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1948

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

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

UNIVERSITY OF LONDON  
W.C.1  
3 APR 1951  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

Between:

UNIVERSITY OF LONDON  
15 JUL 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

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. 1

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

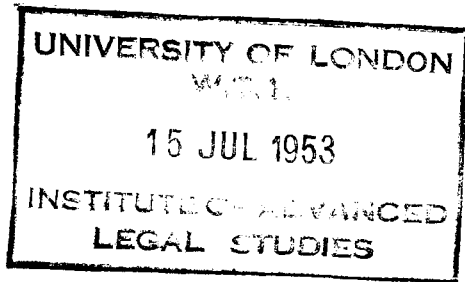
ALLEN ALLEN & HEMSLEY,  
53 Martin Place,  
SYDNEY.

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.

31147

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. 1

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 GEORGE ROLAND LOVE (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and NORMAN BURGOYNE PERKINS (a shareholder of the said Bank suing on behalf of himself and all other holders of shares on any register outside Australia of the said Bank)

THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED and EDWARD RITCHIE KNOX (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and BASIL COLIN SHUBRA HORDERN (a shareholder of the said Bank suing on behalf of himself and all other holders of shares on any register outside Australia of the said Bank)

THE NATIONAL BANK OF AUSTRALASIA LIMITED and HARRY DOUGLAS GIDDY (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and VERA de LAURET RANKIN (a shareholder of the said Bank suing on behalf of herself and all other holders of shares on any register outside Australia of the said Bank)

THE QUEENSLAND NATIONAL BANK LIMITED (IN VOLUNTARY LIQUIDATION) and FRED PACE the Liquidator thereof

THE COMMERCIAL BANK OF AUSTRALIA LIMITED  
and JOHN LANGLEY WEBB (a shareholder and  
director of the said Bank suing on be-  
half of himself and all other holders of  
shares on any register in Australia of  
the said Bank) and LESLIE HORACE AYLIFF  
WHITE (a shareholder of the said Bank  
suing on behalf of himself and all  
other holders of shares on any register  
outside Australia of the said Bank)

THE BANK OF ADELAIDE and SIR HOWARD  
WATSON LLOYD (a shareholder and director  
of the said bank suing on behalf of  
himself and all other holders of shares  
of the said Bank)

THE BALLARAT BANKING COMPANY LIMITED  
and the HONOURABLE JAMES FREDERICK  
KITTSOON (a shareholder and director of  
the said Bank suing on behalf of him-  
self and all other holders of shares of  
the said Bank)

and

THE BRISBANE PERMANENT BUILDING AND  
BANKING COMPANY LIMITED and WALTER EDWIN  
SAVAGE (a shareholder and director of the  
said Bank suing on behalf of himself  
and all other holders of shares of the  
said Bank)

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA, THE RIGHT  
HONOURABLE JOSEPH BENEDICT CHIFLEY the  
Treasurer of the said Commonwealth, THE  
COMMONWEALTH BANK OF AUSTRALIA and HUGH  
TRAILL ARMITAGE the Governor of the Com-  
monwealth Bank of Australia

Defendants

(New South Wales Registry No. 42  
of 1947).

Between:

THE BANK OF AUSTRALASIA, THE UNION BANK  
OF AUSTRALIA LIMITED, THE ENGLISH SCOTTISH  
& AUSTRALIAN BANK LIMITED

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA THE RIGHT

HONOURABLE JOSEPH BENEDICT CHIFLEY the  
Treasurer of the Commonwealth COMMON-  
WEALTH BANK OF AUSTRALIA and HUGH TRAILL  
ARMITAGE the Governor of the Commonwealth  
Bank of Australia

Defendants

(New South Wales Registry No. 43  
of 1947).

Between:

THE STATE OF VICTORIA and the ATTORNEY-  
GENERAL OF THE STATE OF VICTORIA

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA THE RIGHT  
HONOURABLE JOSEPH BENEDICT CHIFLEY (the  
Treasurer of the Commonwealth) THE COMMON-  
WEALTH BANK OF AUSTRALIA and HUGH TRAILL  
ARMITAGE (the Governor of the Common-  
wealth Bank of Australia)

Defendants

(New South Wales Registry No. 44  
of 1947).

Between:

THE STATE OF SOUTH AUSTRALIA and THE  
ATTORNEY-GENERAL OF THE SAID STATE

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA, THE RIGHT  
HONOURABLE JOSEPH BENEDICT CHIFLEY the  
Treasurer of the Commonwealth, THE COMMON-  
WEALTH BANK OF AUSTRALIA and HUGH TRAILL  
ARMITAGE the Governor of the said Bank

Defendants

(South Australia Registry No. 16  
of 1947).

(New South Wales Registry No. 47  
of 1947).

Between:

THE STATE OF WESTERN AUSTRALIA and THE  
ATTORNEY-GENERAL OF THE SAID STATE

Plaintiffs.

and

THE COMMONWEALTH OF AUSTRALIA, THE RIGHT  
HONOURABLE JOSEPH BENEDICT CHIFLEY the  
Treasurer of the Commonwealth THE

COMMONWEALTH BANK OF AUSTRALIA and  
HUGH TRAILL ARMITAGE the Governor of  
the said Bank

Defendants

(Western Australia Registry No. 1  
of 1947).

(New South Wales Registry No. 48  
of 1947).

TRANSCRIPT RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

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1.	Order of Mr. Justice Dixon.	15. 1.1948.	1.
2.	Writ of Summons	28.11.1947.	6.
3.	Notice of Motion for Interlocutory Injunction.	28.11.1947.	14.
4.	Affidavit of Sydney John <u>GANDON</u> - on behalf of Plaintiffs.	19.12.1947.	17.
	Exhibits "A" to "H" ) Annexure "J" and Exhibits ) "L" to "S" thereto )		Not copied; to be produced.
	Annexure "K" thereto:	18. 7.1931.	63.
5.	Affidavit of Joseph Sydney Penell <u>COX</u> - on behalf of Plaintiffs	28.11.1947.	68.
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6.	Writ of Summons.	28.11.1947.	78.
7.	Notice of Motion for Interlocutory Injunction.	28.11.1947.	83.

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| 8. | Affidavit of Francis Favarger<br><u>HASSETT</u> - on behalf of Plaintiffs. | 19.12.1947. | 86.                            |
|    | Exhibits "A" to "C"<br>thereto   | )           | Not copied;<br>to be produced. |
|    | Exhibit "D" thereto  |             | 14.10.1946. 122.               |
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|    | Exhibit "F" thereto  |             | 1. 7.1946. 126.                |
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| 9.  | Writ of Summons  | 28.11.1947. | 134.  |
| 10. | Notice of Motion for Interlocutory<br>Injunction                             | 28.11.1947. | 138.  |
| 11. | Affidavit of Arthur Tennyson <u>SMITHERS</u><br>on behalf of the Plaintiffs. | 28.11.1947. | 140.  |
|     | Exhibit "ATS" thereto  | )           | Not copied.<br><br>(See Exhibit "G"<br>to Affidavit of<br>F.F. Hassett<br>above). |

- |     |  |             |      |
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| 12. | Affidavit of Norman Rees <u>WILLIAMS</u><br>on behalf of the Plaintiffs. | 28.11.1947. | 148. |
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| 14. | Notice of Motion for Interlocutory<br>Injunction.                       | 1.12.1947.  | 159.                           |
| 15. | Affidavit of Ferdinand Caire <u>DREW</u><br>on behalf of the Plaintiffs | 19.12.1947. | 162.                           |
|     | Annexure "A" thereto  | )           | Not copied;<br>to be produced. |

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- |     |                 |             |      |
|-----|-----------------|-------------|------|
| 16. | Writ of Summons | 28.11.1947. | 174. |
|-----|-----------------|-------------|------|

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- |     |  |             |      |
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| 17. | Notice of Motion for Interlocutory Injunction.                     | 5.12.1947.  | 179. |
| 18. | Affidavit of Alex James <u>REID</u> - on behalf of the Plaintiffs. | 23.12.1947. | 182. |

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FOR DOCUMENTS Nos. 19 to 31 (inclusive) - See VOL. 2.

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No. 1 - Order of Mr. Justice Dixon  
dated the 15th day of January, 1948.

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

Between:

BANK OF NEW SOUTH WALES and  
others  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others  
Defendants

(New South Wales Registry  
No. 42 of 1947).

Between:

THE BANK OF AUSTRALASIA and  
others  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others  
Defendants

(New South Wales Registry  
No. 43 of 1947).

Between:

THE STATE OF VICTORIA and  
Another  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others  
Defendants

(New South Wales Registry  
No. 44 of 1947).

1. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

2. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

Between:

THE STATE OF SOUTH AUSTRALIA  
and Another  
and Plaintiffs 5

THE COMMONWEALTH OF AUSTRALIA  
and others  
Defendants  
(South Australia Registry  
No. 16 of 1947). 10  
(New South Wales Registry  
No. 47 of 1947).

Between:

THE STATE OF WESTERN AUSTRALIA  
and Another  
and Plaintiffs 15

THE COMMONWEALTH OF AUSTRALIA  
and others  
Defendants 20  
(Western Australia Registry  
No. 1 of 1947).  
(New South Wales Registry  
No. 48 of 1947).

BEFORE HIS HONOUR MR. JUSTICE DIXON. 25

Thursday the fifteenth day of January 1948.

APPLICATIONS for orders in each of the abovementioned  
actions coming on before His Honour Mr. Justice Dixon  
in Chambers this day pursuant to an order made by His  
Honour in each of the said actions on the 15th day of 30  
December 1947 AND His Honour having adjourned the  
applications into Court this day UPON HEARING what was  
alleged by Mr. Coppel of King's Counsel for the

2. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

3. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

Plaintiffs in Action No. 42 of 1947 with whom appeared  
Mr. Adam of Counsel by Mr. Dean of King's Counsel for  
the Plaintiffs in Action No. 43 of 1947 with whom appear-  
ed Mr. Stanley Lewis Mr. Spicer and Mr. Smith of  
Counsel by Mr. Hudson of King's Counsel for the res- 5  
pective Plaintiffs in Actions Nos. 44, 47 and 48 of 1947  
with whom was Mr. D.I. Menzies of Counsel and by Mr. Tait  
of King's Counsel with whom appeared Mr. Phillips of  
King's Counsel Mr. Gowans and Mr. Menhennitt of Counsel  
for the Defendants in each of the said actions AND the 10  
parties having agreed to treat the motion for an  
interlocutory injunction in each action as the trial  
of the respective action and that the actions be heard  
together AND the parties further agreeing that the  
Affidavits hereinafter set out and the annexures and 15  
exhibits thereto shall subject to all just exceptions be  
read as evidence in all the said actions although filed  
in one only of such actions THAT IS TO SAY the Affidavit  
of Sydney John Gandon sworn on the 19th day of December  
1947 the Affidavit of Joseph Sydney Penell Cox sworn 20  
on the 28th day of November 1947 (both of which are  
filed in Action No. 42 of 1947) the Affidavit of Francis  
Favarger Hassett sworn on the 19th day of December 1947  
(filed in Action No. 43 of 1947) the Affidavits of Arthur  
Tennyson Smithers and of Norman Rees Williams sworn 25  
respectively on the 28th day of November 1947 (both  
filed in Action No. 44 of 1947) the Affidavit of  
Ferdinand Caire Drew sworn on the 19th day of December  
1947 (filed in Action No. 47 of 1947) and the Affidavit  
of Alex James Reid sworn on the 23rd day of December 30

3. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

4. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

1947 (filed in Action No. 48 of 1947) shall be read as  
evidence in all the actions on behalf of the Plaintiffs  
AND the several Affidavits of Leslie Galfreid Melville  
sworn on the 5th and 14th days of January 1948 respect-  
ively the Affidavit of Gordon Murray Shain sworn on the 5  
5th day of January 1948 and the Affidavit of Stuart  
Gordon McFarlane sworn on the 2nd day of January 1948  
(filed in Action No. 42 of 1947) shall be read as evid-  
ence in all the actions in answer and in support of the  
Defendants' case AND the Affidavit of Sydney John Gandon 10  
sworn on the 12th day of January 1948 the Affidavit of  
Norman Lethbridge Cowper sworn on the 21st day of January  
1948 (both of which are filed in Action No. 42 of 1947)  
and the Affidavit of Francis Favarger Hassett sworn on  
the 12th day of January 1948 (filed in Action No. 43 of 15  
1947) shall be read as evidence in all such actions in  
reply THIS COURT DOTH DIRECT AND ORDER that the said  
motions be treated as the trials of the said actions and  
be heard together accordingly upon the said Affidavits  
annexures and exhibits and such further Affidavits or 20  
evidence as the Court or a Justice may allow AND the  
parties having requested His Honour to refer the actions  
to the Full Court for hearing THIS COURT DOTH FURTHER  
ORDER AND DIRECT pursuant to Section 18 of the Judiciary  
Act 1903-1947 that the cases be argued before the Full 25  
Court of this Court AND that all questions involved in  
or arising upon the trials of the actions be referred  
for the consideration of the said Full Court AND the  
said Full Court by order made on the 18th day of December  
1947 having ordered that the determination of the time 30

4. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

5. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

and place for the hearing of the actions before the  
Full Court be referred to His Honour THIS COURT DOTH  
DIRECT that the hearing of the actions commence at  
Melbourne at 10.30 o'clock in the forenoon on Monday  
the 9th day of February 1948 or so soon thereafter as 5  
Counsel may be heard and that for that purpose there  
be a transfer of the causes subject to the further or  
other order of the Court or a Justice to the Principal  
Registry AND THIS COURT DOTH ALSO ORDER that the costs  
of these applications be costs in the cause AND that 10  
there should be a certificate for the attendance of  
Counsel at Chambers.

BY THE COURT,

J.G. HARDMAN,

PRINCIPAL REGISTRAR. 15

5. Order of Mr. Justice Dixon,  
dated the 15th day of  
January, 1948.

No. 2 - Writ of Summons 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

GEORGE VI by the Grace of God of Great Britain Ireland  
and the British Dominions beyond the Seas King  
Defender of the Faith Emperor of India.

TO: THE COMMONWEALTH OF AUSTRALIA the RIGHT HONOURABLE 15  
JOSEPH BENEDICT CHIFLEY the Treasurer of the Common-  
wealth THE COMMONWEALTH BANK OF AUSTRALIA and HUGH  
TRAIL ARMITAGE the Governor of the Commonwealth Bank  
of Australia.

WE COMMAND YOU that within twenty-eight days after the 20  
service of this Writ on you, inclusive of the day of  
such service, you do cause appearances to be entered for  
you in our High Court of Australia in an action at the  
suit of BANK OF NEW SOUTH WALES and GEORGE ROLAND LOVE  
Company Director (a shareholder and director of the said 25  
Bank suing on behalf of himself and all other holders

6. Writ of Summons filed in Action  
No. 42 of 1947 on behalf of the  
Plaintiffs.

7. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

of shares on any register in Australia of the said Bank) and NORMAN BURGOYNE PERKINS Insurance Broker (a shareholder of the said Bank suing on behalf of himself and all other holders of shares on any register outside Australia of the said Bank) THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED and EDWARD RITCHIE KNOX Chartered Accountant (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and BASIL COLIN SHUBRA HORDERN Investor (a shareholder of the said Bank suing on behalf of himself and all other holders of shares on any register outside Australia of the said Bank) THE NATIONAL BANK OF AUSTRALASIA LIMITED and HARRY DOUGLAS GIDDY Chartered Accountant (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and VERA de LAURET RANKIN Married Woman (a shareholder of the said Bank suing on behalf of herself and all other holders of shares on any register outside Australia of the said Bank) THE QUEENSLAND NATIONAL BANK LIMITED (IN VOLUNTARY LIQUIDATION) and FRED PACE the Liquidator thereof THE COMMERCIAL BANK OF AUSTRALIA LIMITED and JOHN LANGLEY WEBB Shipowner (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and LESLIE HORACE AYLIFF WHITE Merchant, (a shareholder of the said Bank suing on behalf of himself and all other holders of shares on any register outside Australia of the said Bank), THE BANK OF ADELAIDE

7. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

8. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

and SIR HOWARD WATSON LLOYD Chartered Accountant (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares of the said Bank), THE BALLARAT BANKING COMPANY LIMITED and THE HONOURABLE JAMES FREDERICK KITTSON Member of the Legislative Council 5 (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares of the said Bank) and THE BRISBANE PERMANENT BUILDING AND BANKING COMPANY LIMITED and WALTER EDWIN SAVAGE Chartered Accountant (a shareholder and director of the said Bank 10 suing on behalf of himself and all other holders of shares of the said Bank) AND TAKE NOTICE that in default of your so doing the Plaintiffs may proceed therein and judgment may be given in your absence.

WITNESS - The Right Honourable Sir John Greig 15  
Latham G.C.M.G. Chief Justice of our said High Court the twenty-eighth day of November in the year of Our Lord one thousand nine hundred and forty-seven.

(L. S.) F.C. LINDSAY  
District Registrar.

N.B. This Writ is to be served within twelve calendar 20 months from the date thereof or if renewed within six calendar months from the date of the last renewal including the day of such date and not afterwards.

Appearances to this Writ may be entered by the Defendants either personally or by Solicitor at the New South Wales 25 Registry of the High Court at Sydney.

If any defendant neither resides nor carries on business in the State of New South Wales, his appearance may, at

Writ of Summons filed in Action  
8. No. 42 of 1947 on behalf of the  
Plaintiffs.



9. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

his option, be entered either at the place abovementioned or at the Principal Registry of the High Court at Melbourne.

THE PLAINTIFFS CLAIM:

1. \_\_\_\_\_ Against all the defendants, a declaration that the Banking Act 1947 is beyond the powers of the Parliament of the Commonwealth, contrary to the Constitution of the Commonwealth, and void. 5

2. \_\_\_\_\_ Alternatively, against all the defendants, a declaration that each of the following provisions of the said Act is beyond the powers of the Parliament of the Commonwealth, contrary to the Constitution of the Commonwealth, and void, namely the provisions contained in:- 10

- (i) Section 6;
- (ii) Section 10;
- (iii) Section 12 and so much of section 14 as relates to shares purchased by the Commonwealth Bank; 15
- (iv) Section 13 and so much of section 14 as relates to shares acquired by the Commonwealth Bank pursuant to section 13; 20
- (v) Sections 17 to 21 both inclusive;
- (vi) Section 22;
- (vii) Section 24;
- (viii) Section 25;
- (ix) Part V. 25
- (x) Section 39;
- (xi) Sections 42, 44 and 45;
- (xii) Section 46;
- (xiii) Section 56;

9. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

10. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

(xiv) Section 59;

(xv) Section 60.

3. \_\_\_\_\_ Against the defendant the Right Honourable Joseph Benedict Chifley and every other person for the time being administering the Department of the Treasury of the Commonwealth, an injunction restraining him from publishing or causing or permitting to be published any notice pursuant to sub-section (1) of Section 13 of the said Act. 5

4. \_\_\_\_\_ Against the defendant Hugh Trail Armitage and every other person for the time being entitled by law to exercise the powers of the Governor of the Commonwealth Bank of Australia an injunction restraining him from appointing or purporting to appoint any person a director of any of the plaintiff Companies. 10 15

5. \_\_\_\_\_ Against the defendant the Right Honourable Joseph Benedict Chifley and every other person for the time being administering the Department of the Treasury of the Commonwealth, an injunction restraining him from giving or causing or permitting to be given any notice pursuant to sub-section (1) of Section 22 of the said Act. 20

6. \_\_\_\_\_ Against the defendant the Commonwealth Bank of Australia, an injunction restraining the said defendant from requiring any of the plaintiff Companies to take any action pursuant to sub-section (8) of Section 24 of the said Act. 25

7. \_\_\_\_\_ Against the defendant the Right Honourable Joseph Benedict Chifley and every other person for the time being administering the Department of the Treasury of the Commonwealth, an injunction restraining him from 30

10. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

11. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

publishing or causing or permitting to be published in the Commonwealth Gazette any notice pursuant to subsection (4) of Section 46 of the said Act.

8. \_\_\_\_\_ Against the defendant Hugh Trail Armitage and every other person for the time being entitled by law to exercise the powers of the Governor of the Commonwealth Bank of Australia, an injunction restraining him from authorizing any person to act under Section 59 of the said Act. 5

9. \_\_\_\_\_ Against all the defendants and every person for the time being administering the Department of the Treasury of the Commonwealth and every person for the time being entitled by law to exercise the powers of the Governor of the Commonwealth Bank of Australia, an injunction restraining them and each of them from taking or causing or permitting to be taken any action in pursuance or purported pursuance of any of the provisions of the said Act directed towards - 10 15

(a) the acquisition by the Commonwealth Bank of Australia of any shares in any of the plaintiff Banks; or 20

(b) the taking over by the Commonwealth Bank of Australia of the business in Australia of any of the plaintiff Banks, or the acquisition of any of their assets or the discharge of any of their liabilities; or 25

(c) requiring any of the plaintiff Banks to cease carrying on banking business in Australia.

10. \_\_\_\_\_ Costs.

11. \_\_\_\_\_ Such further or other relief as to the Court may 30

11. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

12. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

seem fit.

NORMAN COWPER,

Solicitor for Plaintiffs.

Place of Trial - Sydney.

Mode of Trial - Before a Justice without a Jury. 5

This Writ was issued by Norman Lethbridge Cowper a member of the firm of Allen Allen and Hemsley whose address for service is at 53 Martin Place, Sydney, Solicitors for the said Plaintiffs, whose respective addresses are as follows:- 10

Bank of New South Wales:	No. 341 George Street, Sydney.	
George Roland Love:	"Woodarra", Park Avenue, Pymble, New South Wales.	
Norman Burgoyne Perkins:	140 Park Lane, London, W.1 England.	15
The Commercial Banking Company of Sydney Limited:	No. 343 George Street, Sydney.	
Edward Ritchie Knox:	22 Victoria Road, Bellevue Hill, New South Wales.	20
Basil Colin Shubra Hordern:	"Penshurst" George Road, Coombe Warren, Kingston Hill, Surrey, England.	
The National Bank of Australasia Limited:	271 Collins Street, Melbourne.	25
Harry Douglas Giddy:	51 Queen Street, Melbourne.	
Vera de Lauret Rankin:	"Halcyon", Newcomen Street, Newcastle.	
The Queensland National Bank Limited (In liquidation)	Brisbane, Queensland.	30
Fred Pace:	c/- The Queensland National Bank Limited, Brisbane, Queensland.	

12. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

13. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

The Commercial Bank of Australia Limited:	335 Collins Street, Melbourne.	
John Langley Webb:	466 Collins Street, Melbourne.	
Leslie Horace Ayliff White:	"Orchards", Twyford, Berkshire, England.	5
The Bank of Adelaide:	81 King William Street, Adelaide.	
Sir Howard Watson Lloyd:	22 King William Street, Adelaide.	
The Ballarat Banking Company Limited:	21 Lydiard Street, North Ballarat, Victoria.	
The Honourable James Frederick Kittson, M.L.C.:	21 Lydiard Street, North Ballarat, Victoria.	10
The Brisbane Permanent Building and Banking Company Limited:	115 Queen Street, Brisbane.	15
Walter Edwin Savage:	Victoria Avenue, Chelmer, Brisbane.	

NORMAN COWPER,

Solicitor for Plaintiffs.

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13. Writ of Summons filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

No. 3 Notice of Motion for Interlocutory  
Injunction filed in Action No. 42 of 1947 on  
behalf of the Plaintiffs.

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

Between:

<u>BANK OF NEW SOUTH WALES</u> and others	5
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Plaintiffs

and

<u>THE COMMONWEALTH OF AUSTRALIA</u> and others	10
--	----

Defendants

Filed pursuant to leave granted by Mr. Justice Owen Dixon this twenty- eighth day of November, 1947.	15
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<p><u>TAKE NOTICE</u> that an application will be made before a single Justice of this Honourable Court at the Court House Darlinghurst Sydney on Tuesday the Second day of December one thousand nine hundred and forty-seven at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs for injunctions restraining, until the determination of this action or the further order of the Court,</p>	20
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<p>(1) the defendant the Right Honourable Joseph Benedict Chifley and every other person for the time being administering the Department of the Treasury of the Commonwealth from publishing or causing or permitting to be published any notice</p>	25
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14. Notice of Motion for Injunction  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

15. Notice of Motion for Injunction  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

pursuant to sub-section (1) of Section 13 of the  
said Act;

- (2) the defendant Hugh Trail Armitage and every other  
person for the time being entitled by law to exer-  
cise the powers of the Governor of the Common- 5  
wealth Bank of Australia, from appointing or pur-  
porting to appoint any person a director of any  
of the plaintiff Companies;
- (3) the defendant the Right Honourable Joseph Benedict  
Chifley and every other person for the time being 10  
administering the Department of the Treasury of  
the Commonwealth, from giving or causing or per-  
mitting to be given any notice pursuant to sub-  
section (1) of Section 22 of the said Act;
- (4) the defendant the Commonwealth Bank of Australia, 15  
from requiring any of the plaintiff Companies to  
take any action pursuant to sub-section (8) of  
Section 24 of the said Act;
- (5) the defendant the Right Honourable Joseph Benedict  
Chifley and every other person for the time being 20  
administering the Department of the Treasury of  
the Commonwealth, 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 said Act; 25
- (6) the defendant Hugh Trail Armitage and every other  
person for the time being entitled by law to  
exercise the powers of the Governor of the  
Commonwealth Bank of Australia, from authorizing

16. Notice of Motion for Injunction  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

any person to act under Section 59 of the said  
Act;

(7) all the defendants and every person for the time  
being administering the Department of the Treasury  
of the Commonwealth and every person for the time 5  
being entitled by law to exercise the powers of  
the Governor of the Commonwealth Bank of Australia,  
from taking or causing or permitting to be taken  
any action in pursuance or purported pursuance  
of any of the provisions of the said Act directed 10  
towards -

- (a) the acquisition by the Commonwealth Bank of  
Australia of any shares in any of the  
plaintiff Banks; or
- (b) the taking over by the Commonwealth Bank of 15  
Australia of the business in Australia of  
any of the plaintiff Banks, or the acqui-  
sition of any of their assets or the discharge  
of any of their liabilities; or
- (c) requiring any of the plaintiff Banks to 20  
cease carrying on banking business in  
Australia;

AND for such further or other Order as the Court shall  
think fit to make in the premises, upon the grounds appearing  
in and by the Affidavits of Thomas Baker Heffer and Joseph 25  
Sydney Penell Cox both sworn herein on the 28th day of  
November one thousand nine hundred and forty-seven.

DATED this 28th day of November, one thousand nine  
hundred and forty-seven.

ALLEN ALLEN & HEMSLEY, 30  
Solicitors for the Plaintiffs.

This Notice of Motion is filed by Messrs. Allen Allen and  
Hemsley of 53 Martin Place, Sydney, the Solicitors for  
the abovenamed Plaintiffs.



No. 4 - Affidavit of Sydney John Gandon sworn  
the 19th day of December, 1947, 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 GEORGE  
ROLAND LOVE (a shareholder and direc-  
tor of the said Bank suing on behalf  
of himself and all other holders of  
shares on any register in Australia  
of the said Bank) and NORMAN  
BURGOYNE PERKINS (a shareholder of  
the said Bank suing on behalf of  
himself and all other holders of  
shares on any register outside  
Australia of the said Bank)

THE COMMERCIAL BANKING COMPANY OF  
SYDNEY LIMITED and EDWARD RITCHIE  
KNOX (a shareholder and director of  
the said Bank suing on behalf of  
himself and all other holders of  
shares on any register in Australia  
of the said Bank) and BASIL COLIN  
SHUBRA HORDERN (a shareholder of the  
said Bank suing on behalf of himself  
and all other holders of shares on  
any register outside Australia of the  
said Bank)

THE NATIONAL BANK OF AUSTRALASIA LIMITED  
and HARRY DOUGLAS GIDDY (a shareholder  
and director of the said Bank suing on  
behalf of himself and all other holders  
of shares on any register in Australia  
of the said Bank) and VERA de LAURET  
RANKIN (a shareholder of the said Bank  
suing on behalf of herself and all  
other holders of shares on any register  
outside Australia of the said Bank)

THE QUEENSLAND NATIONAL BANK LIMITED  
(IN VOLUNTARY LIQUIDATION) and FRED  
PACE the Liquidator thereof

17. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

18. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

THE COMMERCIAL BANK OF AUSTRALIA LIMITED and JOHN LANGLEY WEBB (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares on any register in Australia of the said Bank) and LESLIE HORACE AYLIFF WHITE (a shareholder of the said Bank suing on behalf of himself and all other holders of shares on any register outside Australia of the said Bank)

THE BANK OF ADELAIDE and SIR HOWARD WATSON LLOYD (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares of the said Bank)

THE BALLARAT BANKING COMPANY LIMITED and the HONOURABLE JAMES FREDERICK KITTSON (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares of the said Bank)

and

THE BRISBANE PERMANENT BUILDING AND BANKING COMPANY LIMITED and WALTER EDWIN SAVAGE (a shareholder and director of the said Bank suing on behalf of himself and all other holders of shares of the said Bank)

Plaintiffs

AND

THE COMMONWEALTH OF AUSTRALIA, the RIGHT HONOURABLE JOSEPH BENEDICT CHIFLEY the Treasurer of the said Commonwealth, THE COMMONWEALTH BANK OF AUSTRALIA and HUGH TRAIL ARMITAGE the Governor of the Commonwealth Bank of Australia

Defendants.

18. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

19. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

I, SYDNEY JOHN GANDON, of Sydney in the State of New  
South Wales, Bank Inspector, make oath and say:-

1.\_\_\_\_\_I am the Senior Chief Inspector and Acting General  
Manager of the Bank of New South Wales. I have had  
forty-one (41) years' experience in banking business in 5  
Australia and overseas. I entered the service of the  
Bank of New South Wales on the seventeenth day of  
September one thousand nine hundred and six and since  
that date have been continuously in its employ. I was  
appointed Sub-Inspector (New South Wales) on the first 10  
day of January one thousand nine hundred and twenty-nine;  
Acting-Assistant Manager, London, on the twenty-second  
day of September one thousand nine hundred and thirty-  
one; City Inspector (Head Office) on the fifth day of  
May one thousand nine hundred and thirty-two; Manager, 15  
Melbourne, on the second day of February one thousand  
nine hundred and thirty-four; Inspector for the State  
of Victoria on the twenty-eighth day of May one thousand  
nine hundred and thirty-six; Chief Inspector (New South  
Wales) on the third day of October one thousand nine 20  
hundred and thirty-nine; and Senior Chief Inspector on  
the thirteenth day of July one thousand nine hundred  
and forty-five.

2.\_\_\_\_\_I am informed by Norman Lethbridge Cowper, a mem-  
ber of the firm of Messieurs Allen Allen & Hemsley, the 25  
Solicitors for the Plaintiffs herein, and verily believe  
that each of the Plaintiff Companies is a body corporate,

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SIGNED AND SWORN this nineteenth day of December, 1947  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

19. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

20. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

having been incorporated as follows:-

- (a) Bank of New South Wales by an Act of the Parliament of New South Wales passed in the fourteenth year of the reign of Her late Majesty Queen Victoria and described as the "Bank of New South Wales Act of 1850"; 5
- (b) The Commercial Banking Company of Sydney Limited on the seventeenth day of June one thousand eight hundred and ninety-three under the provisions of the Companies Act 1874-1891 of the State of New South Wales; 10
- (c) The National Bank of Australasia Limited on the twenty-third day of June one thousand eight hundred and ninety-three pursuant to the provisions of the Companies Act 1890 of the State of Victoria as a Company limited by shares; 15
- (d) The Queensland National Bank Limited on the thirtieth day of March one thousand eight hundred and seventy-two under the Companies Act 1863 of the State of Queensland as a limited Company; 20
- (e) The Commercial Bank of Australia Limited on the twenty-eighth day of April one thousand eight hundred and ninety-three pursuant to the provisions of the Companies Act 1890 of the State of Victoria as a Company limited by shares; 25
- (f) The Bank of Adelaide by an Act of the Province (now State) of South Australia passed in the

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SIGNED AND SWORN this nineteenth day of December, 1947  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

20. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

21. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

twenty-ninth year of the reign of Her late Majesty  
Queen Victoria (the said Bank being subsequently,  
that is to say, on the twenty-first day of  
December one thousand nine hundred and twenty-  
eight, registered as a limited Company under the 5  
Companies Act 1892 of the State of South Australia);

(g) The Ballarat Banking Company Limited on the thir-  
tieth day of May one thousand eight hundred and  
sixty-five under the Companies Statute 1864 of  
the State of Victoria as a limited Company; and 10

(h) The Brisbane Permanent Building and Banking Com-  
pany Limited on the second day of September one  
thousand eight hundred and eighty-seven under the  
Companies Act 1863 of the State of Queensland as  
a limited Company. 15

3. \_\_\_\_\_ Produced and shown to me at the time of swearing  
this my affidavit are documents which the said Norman  
Lethbridge Cowper has informed me and I verily believe  
are true copies of the respective Memoranda and Articles  
of Association or other constating instruments of the 20  
Plaintiff Companies, namely:-

Marked "A": The Deed of Settlement and Public Acts  
of Parliament relating to the Bank of  
New South Wales;

Marked "B": The Memorandum and Articles of 25  
Association of The Commercial Bank-  
ing Company of Sydney Limited

---

SIGNED AND SWORN this nineteenth day of December, 1947  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

21. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

22. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

- Marked "C": The Memorandum and Articles of  
Association of The National Bank of  
Australasia Limited;
- Marked "D": The Memorandum and Articles of  
Association of The Queensland  
National Bank Limited; 5
- Marked "E": The Memorandum and Articles of  
Association of The Commercial Bank  
of Australia Limited;
- Marked "F": The Memorandum and Articles of 10  
Association of The Bank of Adelaide;
- Marked "G": The Memorandum and Articles of  
Association of The Ballarat Banking  
Company Limited; and
- Marked "H": The Memorandum and Articles of 15  
Association of The Brisbane Per-  
manent Building and Banking Company  
Limited.

4. \_\_\_\_\_ I am informed by the Plaintiff Fred Pace and  
verily believe that the Plaintiff The Queensland National 20  
Bank Limited is in voluntary liquidation; that the said  
Fred Pace is the liquidator thereof; and that all the  
shares in the said The Queensland National Bank Limited  
are now held by or on behalf of the Plaintiff The  
National Bank of Australasia Limited. 25

5. \_\_\_\_\_ I have made inquiries personally and through the  
said Norman Lethbridge Cowper of responsible officers

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

22. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

23. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

of each of the Plaintiff Companies other than The  
Queensland National Bank Limited, and I am informed by  
them and verily believe that the Plaintiffs (other than  
the Plaintiff Companies and the said Fred Pace) are all  
truly described in the title of this action.

5

6.\_\_\_\_\_The defendant the Right Honourable Joseph Benedict  
Chifley is the Prime Minister and Treasurer of the Common-  
wealth of Australia; and the Defendant Hugh Trail  
Armitage is the Governor of the Commonwealth Bank of  
Australia.

10

7.\_\_\_\_\_ (i) The Plaintiff, the Bank of New South Wales,  
has registers of members in Sydney, Brisbane,  
Melbourne, Perth, Wellington (New Zealand),  
and London. Its issued capital consists of  
four hundred and thirty-nine thousand shares 15  
each of twenty pounds (£20) all fully paid  
(subject to a reserve liability on winding  
up), of which shares (as at the fifteenth  
day of November one thousand nine hundred  
and forty-seven) two hundred and seventy-five 20  
thousand seven hundred and twenty-nine  
(275,729) were on the said Sydney register,  
eighteen thousand eight hundred and sixty-six  
(18,866) on the said Brisbane register,  
twenty-three thousand one hundred and 25  
seventy-nine (23,179) on the said Melbourne  
register, twelve thousand two hundred and

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

23. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

24. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

thirty-three (12,233) on the said Perth  
register, fifty-two thousand two hundred and  
fifty-four (52,254) on the said Wellington  
(New Zealand) register and fifty-six thousand  
and seven hundred and thirty-nine (56,739) 5  
on the said London register.

(ii) I am informed by the General Manager of the  
Plaintiff The Commercial Banking Company of  
Sydney Limited and believe that the said  
Plaintiff has registers of members in Sydney 10  
Melbourne and London. Its issued capital  
consists of three hundred and seventy-nine  
thousand one hundred and twenty-one (379,121)  
ordinary shares of twenty-five pounds (£25)  
each paid up to twelve pounds ten shillings 15  
(£12.10.0) per share, the reserve liability  
of twelve pounds ten shillings (£12.10.0) per  
share being payable only in the event of and  
for the purposes of liquidation. Of the  
said three hundred and seventy-nine thousand 20  
one hundred and twenty-one (379,121) shares  
three hundred and forty-three thousand and  
thirty-six (343,036) were at the said date  
on the said Sydney register, thirty-two  
thousand nine hundred and thirty (32,930) 25  
on the said Melbourne register, and three  
thousand one hundred and fifty-five (3,155)

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

24. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.



25. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

on the said London register.

(iii) I am informed by the Chief Manager of the  
Plaintiff The National Bank of Australasia  
Limited and believe that the said Plaintiff  
has registers of members in Melbourne, 5  
Adelaide, Brisbane, Sydney and London. Its  
issued capital consists of eight million five  
hundred and twenty-six thousand and twenty-  
five (8,526,025) ordinary shares of one pound  
each, of which three million seven hundred and 10  
twenty-six thousand and twenty-five  
(3,726,025) are fully paid, and four million  
eight hundred thousand (4,800,000) have been  
paid to twelve shillings and sixpence (12/6).  
Of the said eight million five hundred and 15  
twenty-six thousand and twenty-five (8,526,025)  
shares four million three hundred and twenty-  
four thousand four hundred and forty-five  
(4,324,445) were at the said date on the said  
Melbourne register nine hundred and thirteen 20  
thousand two hundred and ninety (913,290) on  
the said Adelaide register, one million nine  
hundred and fifty thousand eight hundred and  
seventy-eight (1,950,878) on the said Bris-  
bane register, nine hundred and six thousand 25  
two hundred and ninety-nine (906,299) on the  
said Sydney register, and four hundred and

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

25. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

26. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

thirty-one thousand one hundred and thirteen  
(431,113) on the said London register.

(iv) I am informed by the Plaintiff Fred Pace and  
believe that the Plaintiff The Queensland  
National Bank Limited (in voluntary liquida- 5  
tion) has registers of members in Brisbane  
and London. Its issued capital consists of  
three hundred and fifty thousand (350,000)  
ordinary shares of five pounds (£5) each, all  
fully paid, of which three hundred and twenty- 10  
three thousand two hundred and six (323,206)  
shares were at the said date on the said  
Brisbane register, and twenty-six thousand  
seven hundred and ninety-four (26,794) on the  
said London register. 15

(v) I am informed by the General Manager of the  
plaintiff The Commercial Bank of Australia  
Limited and believe that the said plaintiff  
has registers of members in Melbourne Sydney  
and London. Its issued capital consists of 20  
two hundred and eleven thousand seven hundred  
and thirty-five (211,735) preference shares  
of ten pounds (£10) each and four million  
(4,000,000) ordinary shares of ten shillings  
(10/-) each, all fully paid, of which one 25  
hundred and forty-one thousand five hundred  
and fifty-four (141,554) preference and

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

26. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

27. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

three million two hundred and two thousand  
nine hundred and eighty-three (3,202,983)  
ordinary shares were at the 30th June, 1947  
on the said Melbourne register, two thousand  
five hundred and twenty-six (2,526) preference 5  
and forty-seven thousand eight hundred and  
ninety-seven (47,897) ordinary shares are on  
the said Sydney register, and sixty-seven  
thousand six hundred and fifty-five (67,655)  
preference and seven hundred and forty-nine 10  
thousand one hundred and twenty (749,120)  
ordinary shares were on the said London  
register.

(vi) I am informed by the General Manager of the  
Plaintiff the Bank of Adelaide and believe 15  
that the said plaintiff has a register of  
members in Adelaide and that its issued  
capital consists of two hundred and fifty  
thousand (250,000) shares of Five pounds (£5)  
each, all fully paid, and all on the said 20  
Adelaide register.

(vii) I am informed by the General Manager of the  
plaintiff The Ballarat Banking Company Limited  
and believe that the said Plaintiff has a  
register of members in Ballarat and that its 25  
issued capital consists of thirty thousand  
(30,000) shares of Ten pounds (£10) each.

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

27. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

28. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

Of the said shares, twelve thousand (12,000)  
have been paid to Eight pounds five shillings  
(£8.5.0) twelve thousand (12,000) to Four  
pounds ten shillings (£4.10.0) and six thous-  
and (6,000) to one pound (£1). All the 5  
said shares are on the said Ballarat register.

(viii) I am informed by the Manager of the plaintiff  
The Brisbane Permanent Building and Banking  
Company Limited and believe that the said  
plaintiff has registers of members in Bris- 10  
bane and at Canberra. Its issued capital  
consists of seven hundred and fifty thousand  
(750,000) shares of One pound (£1) each, all  
fully paid, of which seven hundred and thirty-  
nine thousand nine hundred and fifty-five 15  
(739,955) shares were at the said date on the  
said Brisbane register, and ten thousand and  
forty-five (10,045) shares on the said Can-  
berra register.

8. \_\_\_\_\_(i) The banking business of the plaintiff the 20  
Bank of New South Wales is carried on at its  
head office in Sydney and at two hundred and  
seventy-three (273) branches and seventy (70)  
agencies in New South Wales, one (1) branch  
and one (1) agency in the Australian Capital 25  
Territory, eighty-nine (89) branches and  
thirteen (13) agencies in Victoria, sixteen

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

28. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

29. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

(16) branches and one (1) agency in South  
Australia, seventy-one (71) branches and nine-  
teen (19) agencies in Western Australia,  
eighty-five (85) branches and thirty-one (31)  
agencies in Queensland, four (4) branches in 5  
Tasmania, one (1) branch and one (1) agency  
in the Northern Territory, seventy-six (76)  
branches and nineteen (19) agencies in New  
Zealand, two (2) branches and two (2) agencies  
in Fiji, two (2) branches in the Territory of 10  
Papua-New Guinea, and two (2) branches in  
England.

(ii) I am informed by the General Manager of the  
plaintiff The Commercial Banking Company of  
Sydney Limited and believe that the banking 15  
business of the said plaintiff is carried on  
at its head office in Sydney and at one hun-  
dred and ninety-nine (199) branches and  
thirty-two (32) agencies in New South Wales,  
one (1) branch and two (2) agencies in the 20  
Australian Capital Territory, eighty-six (86)  
branches and twenty-nine (29) agencies in  
Victoria, two (2) branches in South Australia,  
thirty-one (31) branches and one (1) agency  
in Queensland, and one (1) branch in England. 25

(iii) I am informed by the Chief Manager of the  
plaintiff The National Bank of Australasia

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

29. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

30. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

Limited and believe that the banking business  
of the said plaintiff is carried on at its  
head office in Melbourne and at one hundred  
and thirty-seven (137) branches and fifty-  
five (55) agencies in Victoria, forty-three 5  
(43) branches and twenty-six (26) agencies in  
South Australia, forty-two (42) branches and  
fifteen (15) agencies in Western Australia,  
thirty-eight (38) branches and seven (7)  
agencies in New South Wales, forty-seven (47) 10  
branches and fourteen (14) agencies in  
Queensland, two (2) branches in Tasmania, and  
two (2) branches in London.

(iv) I am informed by the said Fred Pace and be-  
lieve that the banking business of the plain- 15  
tiff The Queensland National Bank Limited (in  
voluntary liquidation) is carried on at its  
head office in Brisbane and at eighty-two  
(82) branches and forty-two (42) agencies in  
Queensland, five (5) branches and two (2) 20  
agencies in New South Wales, one (1) branch  
and one (1) agency in the Australian Capital  
Territory, one (1) branch in Victoria, and  
one (1) branch in London.

(v) I am informed by the General Manager of the 25  
plaintiff The Commercial Bank of Australia  
Limited and believe that the banking business

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

30. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

31. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

of the said plaintiff is carried on at its  
head office in Melbourne and at one hundred  
and thirteen (113) branches and fifty-five  
(55) agencies in Victoria, sixty-one (61)  
branches and fifteen (15) agencies in New  
South Wales, forty-nine (49) branches and  
twenty-three (23) agencies in Queensland,  
thirty-six (36) branches and thirty-one (31)  
agencies in South Australia, eighteen (18)  
branches and ten (10) agencies in Western  
Australia, nineteen (19) branches and twenty  
(20) agencies in Tasmania, one (1) branch and  
two (2) agencies in the Australian Capital  
Territory, one (1) branch in the Northern  
Territory, thirty-six (36) branches and  
twenty-seven (27) agencies in New Zealand,  
and one (1) branch in London.

(vi) I am informed by the General Manager of the  
plaintiff The Bank of Adelaide and believe  
that the banking business of the said plaintiff  
is carried on at its head office in Adelaide  
and at fifty-three (53) branches and forty-  
six (46) agencies in South Australia, one (1)  
branch in Victoria, one (1) branch in New  
South Wales, one (1) branch in Queensland,  
two (2) branches in Western Australia, and  
one (1) branch in London.

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

31. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

32. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

- (vii) I am informed by the General Manager of the plaintiff The Ballarat Banking Company Limited and believe that the banking business of the said plaintiff is carried on at its head office in Ballarat and at one (1) branch and one (1) agency in Victoria. 5
- (viii) I am informed by the Manager of the plaintiff The Brisbane Permanent Building and Banking Company Limited and believe that the banking business of the said plaintiff is carried on at its office in Brisbane. 10
- (ix) Many of the branches of the plaintiff Banks mentioned in sub-paragraphs (i) to (vi) inclusive of this paragraph are situated in towns at or close to State borders, and many of the customers of each branch so situated are resident in or carry on business in a State other than that in which the branch where their accounts are kept is situate. 15  
A great number of the customers of the said plaintiff Banks have accounts at more than one branch in Australia and many of them at branches in more than one State. 20
- (x) The information in this paragraph as to the number of branches and agencies states the position as at the fifteenth day of November one thousand nine hundred and forty-seven. 25

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D. Farquharson, J.P.

S.J. Gandon.



33. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

(xi) I am informed by the said Norman Leth-  
bridge Cowper that from enquiries made by  
him of the plaintiff Banks for the pur-  
poses of this action he has ascertained  
and I believe that the total number of 5  
customers' accounts open with the plain-  
tiffs Banks is in excess of one million  
and thirty-eight thousand (1,038,000).

(xii) The distinction between branches and  
agencies referred to in this paragraph is 10  
as follows: An agency is an office  
established at a place where the banking  
business available does not justify the  
establishing of a branch. It operates  
as an outpost of a nearby branch and is 15  
attended at specified hours on specified  
days by an officer of that branch.  
Customers are customers of the branch and  
not of the agency, and all bookkeeping  
in connection with transactions carried 20  
out at the agency is done at the branch.

9.\_\_\_\_\_The customers of the plaintiff Banks include not  
only tens of thousands of industrial commercial and finan-  
cial concerns but also State Governments, and their in-  
strumentalities departments and offices, and local govern- 25  
ment bodies. From my knowledge of the business of the  
Bank of New South Wales in relation to its banking

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transactions with and on behalf of State Governments I  
say that State Governments at present avail themselves  
very largely of the services of private trading banks.  
For example, in New South Wales the procedure to be adopted  
with respect to the banking of the public revenue has long 5  
been prescribed by statute, the Act at present in force  
in respect thereto being the Audit Act 1902. By sub-  
section (1) of Section 20 of that Act it is provided that  
the Treasurer, or some person appointed by him in that be-  
half, shall from day to day pay into a bank keeping 10  
Government accounts all money received into the Treasury;  
and by Sections 22, 27 and 28 of that Act it is required  
that every person receiving revenue shall pay into the  
Treasury or into such bank as the Treasurer directs all  
moneys collected or received by him on account of the 15  
revenue. In the year 1934 an agreement was made under  
Section 17 of the said Act between the Colonial Treasurer,  
on behalf of the Government of New South Wales, and the  
Bank of New South Wales and The Commercial Banking Com-  
pany of Sydney Limited. A true copy of the said Agree- 20  
ment is annexed hereto and marked with the letter "J".  
The said Agreement is still in operation, and in pursuance  
of it the Bank of New South Wales and The Commercial  
Banking Company of Sydney Limited between them handle  
practically the whole of the governmental accounts of the 25  
State Government. The Bank of New South Wales in fact  
has separate departments for such Government accounts at

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Head Office and the Southern Branch staffed by eighteen officers in all. The bulk of the consolidated revenue of the said State is deposited in these accounts in the said two Banks, and the necessary transmissions from place to place in New South Wales and beyond are effected, 5 and moneys are disbursed, in accordance with the directions of the Government given by cheque or otherwise.

10. \_\_\_\_\_ As at the thirtieth day of September one thousand and nine hundred and forty-seven, the number of accounts of State Governments and State Government instrumentalities 10 with the Bank of New South Wales was one thousand five hundred and thirty-eight (1,538), one thousand three hundred and eighty-seven (1,387) of these being in New South Wales. Of the New South Wales accounts two hundred and thirty-nine (239) were accounts of the Depart- 15 ment of the Attorney-General and of Justice, one hundred and thirty-three (133) were accounts of the Department of Agriculture, one hundred and forty-eight (148) of the Department of Lands, forty-nine (49) of the Department of Railways. In addition there were some eighty-five 20 (85) accounts of bodies such as co-operative building societies, hospitals and shire councils guaranteed by State Governments, the overdraft limits on such accounts totalling over four million pounds (£4,000,000).

11. \_\_\_\_\_ I am informed by the General Manager of The 25 Commercial Banking Company of Sydney Limited and believe that as at the thirtieth day of June last the

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36. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

number of accounts of State Governments or State Govern-  
ment instrumentalities with the said Bank was seven hun-  
dred and ninety-five (795), and that at the said date  
there were eighteen (18) accounts of co-operative build-  
ing societies, local government and other bodies guaran- 5  
teed by State Governments, the overdraft limits on such  
accounts totalling more than £796,000.

12. \_\_\_\_\_ I am informed by the General Manager of The Com-  
mercial Bank of Australia Limited and believe that as  
at the thirtieth day of June 1947 the number of accounts 10  
of State Governments with the said Bank was over five  
hundred (500), being accounts used for essential functions  
of government. By way of illustration, there were on the  
said date forty-eight (48) accounts of Clerks of Petty  
Sessions into which are paid fines fees and Crown dues, 15  
and from which from time to time moneys are transferred  
to general revenue; there were sixty-nine (69) State  
schools accounts and twenty-four (24) High schools

accounts in the State of Victoria which are kept in  
funds by the Department of Education and operated upon 20  
mainly for the payment of salaries and wages; there were  
twenty (20) Rivers and Water Supply Commission accounts  
in the said State into which are paid Crown dues and  
other moneys by the said Commission and which are opera-  
ted on mainly for payment of salaries and wages and from 25  
which from time to time moneys are transferred to general  
revenue; and there were twenty-seven (27) Victorian

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37. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

Railways Stationmasters' Official Disbursements Accounts  
which are kept in funds by the Victorian Railways Depart-  
ment and mainly used for the payment of wages. I am  
further informed by him and believe that six accounts of  
public bodies and other customers were guaranteed by 5  
State Governments to a total overdraft limit of ninety-  
five thousand pounds (£95,000).

13. \_\_\_\_\_ I am informed by the Chief Manager of The National  
Bank of Australasia Limited and believe that as at the  
seventh day of November, one thousand nine hundred and 10  
forty-seven the number of State Government accounts with  
the said Bank was five hundred and fifty-two (552), being  
accounts used for essential functions of Government.

For example, in the State of Victoria there were sixty-  
seven (67) accounts of Clerks of Petty Sessions and Clerks 15  
of Courts, eighty-nine (89) police trust accounts into  
which are paid fines motor registration payments and  
other moneys for transfer to Melbourne; forty-four (44)  
Forests Commission accounts which are used for the deposit  
of revenue locally collected and for the payment of wages 20  
and from which from time to time moneys are transferred  
to Melbourne; and one hundred and one (101) State  
school, High school and Technical school accounts mainly  
used for the payment of wages. I am further informed  
by him and believe that the accounts of thirteen (13) 25  
co-operative housing societies in the said State were  
guaranteed by the State Government of Victoria to

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on behalf of the Plaintiffs.

38. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

a total overdraft limit of £1,685,000.

14. \_\_\_\_\_ I am informed by the General Manager of The  
Ballarat Banking Company Limited and believe that as at  
the thirtieth day of June one thousand nine hundred and  
forty-seven the number of Government accounts with the 5  
said Bank was twelve (12) being accounts used for essen-  
tial functions of Government. For example, there were  
five accounts of the Clerk of Courts and Clerk of Petty  
Sessions and three of a State mental hospital.

15. \_\_\_\_\_ I am informed by the General Manager of The Bank 10  
of Adelaide and believe that as at the thirtieth day of  
September one thousand nine hundred and forty-seven the  
number of State Government accounts with the said Bank  
was over one hundred (100) and that these are used for  
essential purposes of Government. For example, there 15  
were fifteen (15) accounts of local courts; ten (10)  
of the South Australian Harbours Board; twenty-eight (28)  
of the State Vermin Board; and forty-one (41) of the  
Electricity Trust of South Australia.

16. \_\_\_\_\_ Several of the plaintiff Banks in the course of 20  
their businesses provide banking and clearing facilities  
on a large scale for State Savings Banks, and, in addit-  
ion, they act as agents for State Savings Banks in a  
large number of places, accepting deposits, opening new  
accounts, making payments, transferring signatures, 25  
collecting pass books for transmission to central  
offices for entry of interest, and receiving payments

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on behalf of the Plaintiffs.

39. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

on account of loans. The Bank of New South Wales in-  
cludes amongst its customers the State Bank of South  
Australia, the Savings Bank of South Australia which is  
a State Government institution, and the State Savings  
Bank of Victoria. As regards the State Bank of South 5  
Australia, the Bank of New South Wales from time to time  
establishes documentary letters of credit on behalf of  
the said Bank for the latter's clients. As regards the  
Savings Bank of South Australia the Bank of New South  
Wales is that institution's principal banker in the State 10  
of South Australia. The Savings Bank operates current  
accounts at the Adelaide office of the Bank of New South  
Wales, and at a number of branches of that bank through-  
out the State. Interest bearing deposits on account of  
the Savings Bank are also held at the Adelaide Office 15  
and the Rundle Street Branch of the Bank of New South  
Wales. In Western Australia the Savings Bank operates  
an account at the Perth Office of the Bank of New South  
Wales. The branches of the Bank of New South Wales in  
Western Australia act as agents for the Savings Bank 20  
for the purpose of making payments to depositors resid-  
ing in or visiting Western Australia. These payments  
are debited to the Savings Bank's account at the Perth  
Office, which is cleared weekly by Perth Office drawing  
on Adelaide. In New South Wales the Bank of New South 25  
Wales acts as agent for the Savings Bank in accordance  
with an Agreement recorded in a letter dated the eighteenth

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40. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

day of July one thousand nine hundred and thirty-one a  
copy of which is annexed hereto and marked with the letter  
"K". The annual balance sheet of the Savings Bank as at  
the thirtieth day of June one thousand nine hundred and  
forty-seven shows as an asset of the Savings Bank an item 5  
"Bank fixed deposits £9,449,000". Of that figure over  
£2,000,000 was deposited with the Bank of New South Wales.  
I am informed by the General Manager of the Savings Bank  
and believe that the balance of the said item represented  
deposits with other private trading banks, with the ex- 10  
ception of £3,015,000 on deposit with the Commonwealth  
Bank.

17. \_\_\_\_\_ At any given moment the Savings Bank of South  
Australia -

- (a) is a creditor of the Bank of New South Wales in 15  
respect of the credit balance in its current  
account with that Bank;
- (b) is a debtor of the Bank of New South Wales for  
amounts paid by the latter as agent of the  
Savings Bank to depositors who have made with- 20  
drawals at branches of the Bank of New South  
Wales;
- (c) is liable to pay the Bank of New South Wales  
amounts represented by cheques drawn (e.g. by  
Friendly Societies and similar institutions 25  
which have cheque accounts with the Savings  
Bank) on the Savings Bank and either paid into

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on behalf of the Plaintiffs.



41. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

the Bank of New South Wales or paid into other  
banks and handed by them to the Bank of New South  
Wales for collection:

- (d) may be a creditor to the Bank of New South Wales  
in respect of bank drafts drawn on the Bank of 5  
New South Wales and paid into the depositors'  
accounts with the Savings Bank;
- (e) may be a debtor to the Bank of New South Wales  
in respect of cheques drawn on the Head Office of  
the Savings Bank by a branch of the Savings Bank 10  
and cashed by the Bank of New South Wales;
- (f) may be a debtor or creditor of the Bank of New  
South Wales in respect of exchange on amounts  
paid by the Bank of New South Wales to Savings  
Bank depositors pursuant to the abovementioned 15  
agency agreement. (This arises from a practice  
under which the Bank of New South Wales
- (i) collects exchange from Savings Bank de-  
positors upon withdrawals made at branches  
of the Bank of New South Wales under the 20  
said agency agreement and accounts for one-  
half of such exchange to the Savings Bank,  
and
- (ii) refrains from collecting any exchange upon  
other withdrawals but charges exchange at 25  
one-half rates against the Savings Bank.)
- (g) is a creditor of the Bank of New South Wales in

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42. Affidavnt of Sydney John Gandon  
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on behalf of the Plaintiffs.

respect of fixed deposits;

(h) is a creditor of the Bank of New South Wales in  
respect of cheques drawn on the Bank of New  
South Wales and paid into the Savings Bank by  
its customers.

5

18. \_\_\_\_\_As regards the State Savings Bank of Victoria,  
that institution conducts nineteen (19) accounts with the  
Bank of New South Wales in Victoria. The Savings Bank  
is not a member of the clearing house. Its branches  
conduct current accounts with the most convenient trading 10  
bank. Cheques and surplus cash lodged by depositors  
are paid into a current account of the Savings Bank with  
a trading bank. Supplies of cash are withdrawn from  
a trading bank account as required and requests for a  
bank cheque by depositors are met by the Savings Bank 15  
giving a depositor a cheque drawn by it on one of its  
current accounts with a trading bank. In Western Aus-  
tralia the State Savings Bank of Victoria conducts an  
account at the Perth Office of the Bank of New South  
Wales and the branches of the latter Bank in Western 20  
Australia act as agents of the Savings Bank in a manner  
similar to that described in connection with the Savings  
Bank of South Australia. The Savings Bank's account  
at the Perth Office of the Bank of New South Wales is  
cleared weekly by Perth office drawing on Melbourne. 25

19. \_\_\_\_\_I am informed by the General Manager of The  
Commercial Banking Company of Sydney Limited and believe

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filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

that the State Savings Bank of Victoria is a customer of  
The Commercial Banking Company of Sydney Limited at  
twenty-eight (28) branches of the said Bank and that the  
Savings Bank of South Australia is a fixed depositor at  
the Adelaide office of The Commercial Banking Company of 5  
Sydney Limited. I am further informed by him and  
believe that the current accounts of the State Savings  
Bank of Victoria with the said Bank are used for clear-  
ance of cheques paid in to the said Savings Bank by de-  
positors and for the replenishment of cash required to 10  
cover withdrawals, and that the Head Office of the State  
Savings Bank of Victoria maintains funds on fixed de-  
posit and at call with the Melbourne office of the said  
Bank. I am further informed by him and believe that  
fifteen (15) branches of The Commercial Banking Company 15  
of Sydney Limited act as Agents for the State Savings  
Bank of Victoria in places where the latter Bank has not  
established a branch, and that the agency arrangements  
provide for the receipt of deposits and the payment of  
withdrawals on behalf of customers of the said Savings 20  
Bank.

20. \_\_\_\_\_ I am informed by the General Manager of The Com-  
mercial Bank of Australia Limited and believe that the  
State Savings Bank of Victoria operates sixty-five (65)  
current accounts with the said Bank in Victoria, and that 25  
the said Bank conducts agencies at seventeen (17) of its  
branches for the said Savings Bank where Savings Bank

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44. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

deposits and withdrawals may be made, and instalments on  
housing loans may be paid. I am further informed by the  
said General Manager and believe that the Savings Bank  
of South Australia operates nineteen (19) current accounts  
with the said Bank in South Australia; that the said 5  
Savings Bank has a large amount of fixed deposits lodged  
with the said Bank; and that the said Bank conducts six  
agencies at its branches for the said Savings Bank where  
Savings Bank lodgments and withdrawals may be made.

21. \_\_\_\_\_ I am informed by the Chief Manager of The National 10  
Bank of Australasia Limited and believe that the State  
Savings Bank of Victoria is a customer of the said Bank  
at fifty-two (52) branches of the said Bank and that the  
said Bank acts as agent for the said Savings Bank at  
twenty-nine branches of the said Bank. I am further 15  
informed by him and believe that the Savings Bank of  
South Australia is a customer of the said Bank at twenty-  
one (21) branches of the said Bank and that the said  
Bank acts as agent for the said Savings Bank at nine (9)  
branches of the said Bank. 20

22. \_\_\_\_\_ I am informed by the General Manager of The Bank  
of Adelaide and believe that the Savings Bank of South  
Australia is a customer of the said Bank at its Head  
Office, and also conducts current accounts at forty-two  
(42) branches of the said Bank in South Australia. I 25  
am further informed by him and believe that The Bank of  
Adelaide acts as agent for the Savings Bank of South

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45. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
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Australia at thirty (30) branches or agencies of the said bank. I am further informed by him and believe that by arrangement The Savings Bank of South Australia has authorised branches of The Bank of Adelaide to cash warrants of the said Savings Bank drawn upon the Bank of New South Wales, Adelaide, and that The Bank of Adelaide on the application of branches of the said Savings Bank remits surplus funds of the branches to the credit of the said Savings Bank with the Bank of New South Wales, Adelaide. I am further informed by him and believe that the State Savings Bank of Victoria is a customer of The Bank of Adelaide at its Melbourne branch where it maintains a substantial current account, and also has large sums on fixed deposit.

23. \_\_\_\_\_ Each of the Plaintiff Banks (other than The Ballarat Banking Company Limited and The Brisbane Permanent Building and Banking Company Limited) operates by means of its branches and agencies spread throughout all or most of the States of the Commonwealth as an Australia-wide organisation. Thus, the whole of its cash and credit resources in the Commonwealth is available to be utilised in its business wherever required in the Commonwealth without regard to State boundaries. In practice the allocation of its funds and credit resources in Australia amongst its branches is constantly fluctuating in accordance with the demands arising from local conditions in various parts of the Commonwealth from time to

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46. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

time, interstate transmission of funds being made as re-  
quired. At all times during the years one thousand nine  
hundred and twenty-four to one thousand nine hundred and  
forty-one inclusive the amount of advances made by the  
Bank of New South Wales in the State of Western Australia 5  
exceeded the amount of deposits held by the said Bank in  
that State. For example, on the thirtieth day of  
September one thousand nine hundred and thirty the total  
advances of the said Bank in the State of Western Aus-  
tralia were nine million two hundred and ninety thousand 10  
pounds (£9,290,000) and the total deposits with the said  
Bank in that State were Three million eight hundred and  
seven thousand pounds (£3,807,000).

24. \_\_\_\_\_ Even the smallest branch of the plaintiff Banks  
(other than The Ballarat Banking Company Limited and The 15  
Brisbane Permanent Building and Banking Company Limited)  
has to transact some interstate banking business for its  
customers. The equipment, accounts and the entire  
organisation of the branch form part of a single banking  
unit designed to function and functioning on an Australia- 20  
wide basis.

25. \_\_\_\_\_ It is an essential feature of the business of each  
of the said Banks that banking transactions constantly  
take place between its branches in different States, and  
between its branches and branches in other States of 25  
other banks. All the plaintiff Banks organised as  
mentioned in paragraph 23 hereof carry on extensive

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on behalf of the Plaintiffs.

interstate operations, including the following principal  
classes of transactions:-

- (a) the collection and negotiation of interstate  
bills of exchange, cheques and promissory notes;
- (b) the transfer of funds interstate; 5
- (c) the establishment of interstate credits;
- (d) the issue and negotiation of travellers' cheques.

26. \_\_\_\_\_(1) Interstate bills of exchange, cheques and  
promissory notes are instruments lodged for  
collection with or negotiated to a bank in 10  
a State other than the State in which they  
are expressed to be payable. In the case  
of these interstate instruments, a bank  
either buys the instrument (which may be  
accompanied by other documents), or obtains 15  
possession thereof on behalf of a customer.  
It forwards the instrument to another State,  
either to a branch of the bank itself or to  
another bank, and thereafter the instrument  
is presented for payment in the other State 20  
by the bank or on its behalf, and on pay-  
ment being received the amount is frequently,  
although not always, transferred to the  
State of origin of the banking transaction  
by sending to that State an interstate 25  
draft, warrant, credit note or telegraphic  
transfer.

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- (2) An example of the interstate operations so  
carried on by the trading banks occurs when  
a bank in Sydney buys from a customer, who  
is say a New South Wales manufacturer of  
machinery, a draft drawn by the customer 5  
upon a person in Victoria to whom he has  
sold machinery. To the draft there are  
annexed the customary shipping documents.  
The bank then, as holder of the draft and  
shipping documents, ordinarily forwards 10  
them to its branch at the place in Victoria  
where the drawee resides and that branch  
presents the draft to the drawee for pay-  
ment. Upon payment being made by the  
drawee, the branch delivers the shipping 15  
documents to the drawee to enable him to  
obtain delivery of the machinery. The  
transfer of funds interstate between the  
two branches is effected by intra-bank  
documents and appropriate entries in the 20  
books of the two branches.
- (3) If the draft is sent direct from Sydney to  
another bank in Victoria to be presented  
for payment, a second interstate trans-  
mission of documents is involved. There 25  
is firstly the transmission of the draft  
and shipping documents to the other bank

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on behalf of the Plaintiffs.



49. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

in Victoria with a request to present the  
draft for payment and remit the proceeds back  
to Sydney. Then there is a second inter-  
state transmission of documents when that  
other bank, in order to remit the proceeds 5  
of the draft, draws an interstate draft or  
warrant therefor on its Sydney office and  
transmits that draft or warrant directly or  
indirectly to the bank in Sydney on whose  
behalf it collected the proceeds of the 10  
draft.

27. \_\_\_\_\_ With regard to the transfer of funds interstate  
the procedure adopted is indicated by the following  
examples:-

- (a) where a customer of a bank in Sydney is desirous 15  
of transferring funds interstate to a branch of  
that bank in Victoria, he purchases from the  
bank in Sydney a draft, warrant, credit note or  
telegraphic transfer for the amount of money  
required in Victoria. The bank in Sydney 20  
credits the branch in Victoria and that branch  
on the presentation of the draft or after the  
receipt of advice makes the amount available to  
the customer and debits the bank in Sydney with  
a like amount; 25
- (b) where a customer of a bank in Sydney is desirous  
of transferring funds interstate to a branch of

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

49. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

50. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

another bank in Victoria, the procedure is  
generally similar to that described in (a) above,  
except that the Bank in Sydney has either to pur-  
chase from the other bank in Sydney a draft,  
warrant, credit note or telegraphic transfer for 5  
the amount required in Victoria, or else to  
transfer the amount to one of its own branches  
in Victoria with instructions to that branch to  
provide the necessary funds at the branch of the  
other bank in Victoria at which the money is to 10  
be paid.

28. \_\_\_\_\_ Where a customer desires to establish an inter-  
state credit either of two procedures may be available:-

(a) a letter of credit may be issued to a person in  
one State authorising a specified branch or 15  
branches of the issuing bank or of another bank  
in another State or States to negotiate the  
cheques or drafts of the person in whose favour  
the credit is established up to the amount  
specified in the letter of credit. Such letter 20  
of credit is then taken or forwarded by the per-  
son to whom it is issued to the State in which  
it is to be used, and must be produced to permit  
operations thereunder, as it constitutes an  
authority to the banker in that State to 25  
negotiate cheques or drafts;

(b) a letter of credit, instead of being issued to an

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
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S.J. Gandon.

50. Affidavit of Sydney John Gandon  
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on behalf of the Plaintiff.

51. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

individual, may be sent direct by the issuing  
bank in one State to its branch or a branch of  
another bank in another State. The person in  
whose favour the credit is established may upon  
identification draw under the credit in the other 5  
State.

In each of the above cases the credit may be a  
clean credit or a documentary credit. In the case of a  
clean credit the bank at which the credit is established  
negotiates cheques or drafts without requiring that they 10  
be accompanied by any documents. In the case of a  
documentary credit the letter of credit stipulates that  
payment is only to be made in exchange for specified  
documents, usually documents of title to goods purchased  
for delivery interstate. Following the negotiation of 15  
a draft or cheque in either case, the draft or cheque  
negotiated is forwarded with the documents, if any, to  
the State where the credit has been issued. Where the  
credit is established at a branch of the same bank the  
draft or cheque and documents, if any, are sent direct 20  
to the branch which established the credit, and that  
branch reimburses the branch in the other State to the  
extent of the moneys paid under the credit. Where the  
credit is established at a branch of another bank in  
another State the cheque or draft and documents, if any, 25  
are generally forwarded to the branch of that other bank  
at the place where the credit originated. That branch

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
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D. Farquharson, J.P.

S.J. Gandon.

51. Affidavit of Sydney John Gandon  
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on behalf of the Plaintiffs.

52. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

reimburses the branch which negotiated the cheque or draft. The cheque or draft and documents, if any, are then handed to the bank which issued the credit in exchange for payment of the amount of the cheque or draft. That bank obtains payment from the person at whose request 5 the credit was issued and delivers to him the relevant documents of title, if any, to enable him to obtain possession of the goods.

29. \_\_\_\_\_ Travellers' cheques are sold to members of the public by a bank in one State for money paid there. 10

Such a cheque entitles the holder to draw money anywhere in Australia where the bank has a branch or has an agent authorised to cash such cheques. When the right of drawing is exercised by the cheque being cashed in another State, it is sent back directly or indirectly 15 to the branch of issue. That branch reimburses directly or indirectly the branch or agent which paid such cheque in the other State, and closes the transaction by debiting against the sum received by it when it sold the traveller's cheque the amount of the reimbursement made 20 by it in respect of the payment in the other State.

30. \_\_\_\_\_ The procedures described in paragraphs 26 to 29 inclusive vary in matters of detail as between different trading banks but not to any material extent.

31. \_\_\_\_\_ Branches of a bank which are situated near the 25 border between two States are in many cases controlled from the chief office of the bank in a State other than

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
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D. Farquharson, J.P.

S.J. Gandon.

52. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

53. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

that in which the branch is situated. In such cases cash is frequently sent interstate from the chief office in question to the branch and from the branch to such chief office.

32.\_\_\_\_\_The interstate banking facilities which are at 5  
present provided by the said banks throughout Australia  
at all places where their branches are established could  
not possibly be provided without the trained staffs,  
equipment and assets which the said banks are enabled to  
maintain on this Australia-wide basis by reason of the 10  
volume of their entire businesses both intrastate and  
interstate. If the banking operations of the said  
Banks were restricted to purely interstate banking  
operations, it would be economically impossible to pro-  
vide the existing interstate banking facilities except 15  
possibly as between the capital cities or some of them.  
This would be so in my opinion for two reasons:-

- (i) the great inconvenience to which customers would  
be subjected by reason of their having to keep  
accounts for interstate and intrastate operations 20  
respectively in separate banks would make it  
practically impossible for them to continue to  
avail themselves of the private trading banks'  
facilities in respect of interstate operations;
- (ii) even if the customers were able and willing to 25  
continue to use the private trading banks for  
interstate transactions, the private trading

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
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S.J. Gandon.

53. Affidavit of Sydney John Gandon  
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on behalf of the Plaintiffs.

54. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

banks would find it impossible to maintain anything  
like the present number of branches and trained  
staff for the purpose of carrying on businesses  
limited to interstate transactions.

33.\_\_\_\_\_The interstate banking operations carried on by 5  
the plaintiff Banks with their customers as aforesaid are  
frequently an integral part of complex transactions which  
include both interstate and intrastate banking operations.  
For example, when an overdraft is granted to a customer to  
enable him to transfer funds interstate the transaction 10  
is inseverable. The agreement between the bank and the  
customer covers both the granting of the overdraft intra-  
state and the transmission of the funds interstate.  
Another example would be an agreement between the bank  
and its customers whereby an overdraft is granted intra- 15  
state upon the terms:-

- (i) that the amount of such overdraft shall be used  
partly to pay the cost of manufacturing goods  
which are to be sold interstate and partly to  
enable funds to be transmitted through the bank 20  
to purchase the necessary raw materials to be  
used in such manufacture; and
- (ii) that the customer's interstate drafts for the  
price of the manufactured goods shall be col-  
lected by the bank and the proceeds applied in 25  
reduction of the overdraft.

In such a case the overdraft would not be granted if the

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at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

54. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

55. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

agreement between the bank and the customer did not provide for the collection by the bank of the interstate drafts; and those drafts would not be received or collected by the bank if the overdraft were not granted.

A further example occurs in the case of a large chain store company in Victoria with branches in that State only, which purchases goods extensively in other States. The head office of the chain store company in Melbourne keeps its main account with its bank in Melbourne.

Each branch of the chain store company keeps an account at a local branch of the same bank. Interstate settlements for goods purchased in other States are effected by the chain store company sending to the vendors cheques drawn on the main account in Melbourne. These cheques are paid by the vendors into their bank accounts in other States which may be with the same bank or with other banks. The cheques are then forwarded by the collecting bank to Melbourne and are met out of the main account of the chain store company there. The funds necessary to meet such cheques are fed into the main account automatically by transfers from the accounts of the chain store company with the local branches of the bank in Victoria. When overdraft accommodation in Melbourne is allowed in order to provide the purchase money for the goods bought interstate, the funds held at the local branches of the bank may by arrangement be treated as a set off against the overdraft in the

---

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S.J. Gandon.

55. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

main account.

34.\_\_\_\_\_The interstate banking operations above described  
are in my opinion essential to the performance of the  
function of the private trading banks in and in relation  
to the carrying on of interstate trade and commerce in 5  
Australia. This may be seen from a consideration of  
what is involved in the production and distribution  
throughout Australia of the basic commodities upon which  
the normal functioning of industry in Australia depends.  
The production of coal and steel in Australia is concen- 10  
trated in the main in the State of New South Wales and  
these products are distributed from that State to each of  
the other States. The producer in New South Wales has  
to meet his expenses of production by payments made in  
that State. It is therefore necessary either that he 15  
should be able, after obtaining payment in other States,  
to transfer the amount received to New South Wales or  
that the purchasers in other States should have the means  
of paying the price of the coal or steel to him in New  
South Wales. The distribution of these commodities 20  
interstate therefore involves as a matter of practical  
necessity interstate banking transactions, and this  
interstate banking is in the main transacted by the  
private trading banks.

35.\_\_\_\_\_An interstate transaction in a manufactured 25  
article, if traced back to the origin of the article,  
frequently involves in practice antecedent interstate

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon



57. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

banking transactions. This may be seen from a particular example. A farmer in South Australia requires new farm machinery and contracts to purchase it from a machinery manufacturer in Melbourne. The manufacturer forwards the machine to South Australia and sells to his bank in Melbourne a draft upon the purchaser for the price of the machinery together with the customary shipping documents. The bank as holder of the draft and documents forwards them to its branch in South Australia. The farmer obtains an advance from his bank in South Australia, and by means thereof pays the amount of the draft to the bank which is the holder thereof in exchange for the shipping documents and so obtains possession of the machinery. But the machinery manufacturer, before he was able to manufacture the machine, had to purchase steel from say Port Kembla in New South Wales. For this purpose he may have procured his bank in Melbourne to establish a documentary credit available in New South Wales in favour of the steel manufacturer there. The steel manufacturer may have shipped the steel to Melbourne and drawn against the credit in New South Wales by documentary draft upon the Melbourne manufacturer. The bank in New South Wales, having negotiated the draft would have forwarded it with accompanying documents to its branch in Melbourne, and the machinery manufacturer would have taken up the draft and documents there and so obtained delivery of

---

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D. Farquharson, J.P.

S.J. Gandon.

57. Affidavit of Sydney John Gandon  
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on behalf of the Plaintiffs.

58. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

the steel.

36.\_\_\_\_\_The banking transactions of the private trading  
banks entered into in relation to the interstate trade in  
goods are of very great magnitude. In many cases, as  
I am advised by Counsel, they result in the bank itself 5  
acquiring an interest in goods the subject of interstate  
trade: as, where a bank discounts a bill drawn by a  
seller in one State upon a buyer in another State, the  
bill being accompanied by a bill of lading endorsed to  
the bank in respect of goods in transit interstate. 10

37.\_\_\_\_\_Each of the plaintiff Banks (other than The  
Ballarat Banking Company Limited and The Brisbane Per-  
manent Building and Banking Company Limited) has sub-  
stantial assets and liabilities outside Australia. In  
regard to some of their assets and liabilities it may be 15  
that no serious practical problem will arise in determin-  
ing whether they are, within the meaning of the Banking  
Act, 1947, "situated or deemed by law to be situated in  
Australia". But each of the said Banks engages in  
international banking transactions on a large scale, and 20  
by reason of such transactions each of them at any given  
time holds assets of great value and is subject to lia-  
bilities of great amount acquired and incurred respective-  
ly in circumstances which would make the ascertainment of  
the location thereof, as at the date of transfer re- 25  
ferred to in the Act, a matter of extreme difficulty  
involving a detailed examination of the facts and law

---

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D. Farquharson, J.P.

S.J. Gandon.

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on behalf of the Plaintiffs.

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filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

relative to each particular transaction. In view of the  
large number of assets and liabilities that would be  
involved, and the complexity of the necessary investiga-  
tions, it would be impossible to ascertain on the date of  
transfer the location of all these assets and liabilities. 5  
Upon a claim for compensation under the Act, there would  
be the greatest difficulty and uncertainty as to the  
location of many assets and liabilities, and as to the  
compensation properly payable therefor. These  
difficulties would be aggravated by the enormous number 10  
of items to be investigated and the complexity of the  
transactions involved.

38. \_\_\_\_\_ In so far as the location, for the purposes of  
the Act, of assets and liabilities of the said Banks  
depends upon or is affected by the place of residence of 15  
the Bank concerned or of other persons, difficulty and  
uncertainty will arise from the facts that the Bank is  
resident in more than one country and that the other  
party also may have more than one residence. In so far  
as the question depends upon or is affected by the place 20  
where the relevant contract is made, difficulty and un-  
certainty will arise from the fact that in some cases  
there is more than one relevant contract and each is  
made in a different country. For example an agreement  
may be made in London between a bank and a customer 25  
there under which the bank undertakes to establish a  
credit of a specified amount in Australia to be drawn on

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

59. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

60. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

by the customer there at places to be subsequently agreed upon. Later an agreement may be made in Australia between the bank and the customer as to the amount which may be drawn against the credit in specified States, and this agreement in turn may be varied from time to time by agreement made in Australia. Similarly, in so far as the question of location depends upon the place for performance of an obligation, difficulties would arise owing to the fact that there are frequently alternative places for performance. For example, an agreement may be made in London between a bank and a customer pursuant to which the bank establishes an irrevocable letter of credit for say one hundred thousand pounds (£100,000) to be drawn against in Australia or New Zealand at the choice of the person in whose favour the credit is established.

39. Additional difficulties in assessing what is the proper amount of compensation will arise where there are secondary obligations and securities to be taken into account. For example, a customer resident overseas may have an overdrawn account with the Bank in Australia which he is unable to pay in full, so that the value of his obligation to the Bank is less than twenty shillings (20/-) in the pound. But the overdraft may be secured by a mortgage over property outside Australia and by a guarantee given by a person outside Australia, and the whole or part of the debt may be recoverable by recourse to these securities. A further example is that at any

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SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:-

D. Farquharson, J.P.

S.J. Gandon.

60. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

61. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

given date there will be a very large volume of goods in transit to and from Australia covered by drafts and documents owned by the Bank; and on that same date the drafts and documents covering a large proportion of such goods will also be in transit to and from Australia. 5

The location of these assets at the date of transfer provided for in the Act may depend on difficult questions of law and fact; and in the common case of pillage before during or after the voyage, further problems will arise as to the assessment of the value of the Bank's rights 10 including its rights under the insurance policy and its rights against the shipowner under the bill of lading.

40. \_\_\_\_\_ Even in the case of assets and liabilities with respect to which there is no problem of location, great difficulties as to assessment of compensation will 15 necessarily arise, particularly where customers and others are not in a position to meet their obligations to the Bank, and in cases of claims by and against the Bank for unliquidated damages for breach of contract or otherwise. Moreover, there are obvious difficulties in 20 valuing contingent assets of the plaintiff Banks and their contingent liabilities, not only in respect of incomplete current transactions, but also in respect of possible claims relating to any alleged wrongful dishonour of cheques and any past dealings which may ultimately 25 form the basis of claims for conversion or otherwise.

41. \_\_\_\_\_ Produced and shown to me at the time of swearing

---

SIGNED AND SWORN this nineteenth day of December, 1947,  
at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

61. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

62. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

this my affidavit and marked respectively "L", "M", "N",  
"O", "P", "Q", "R" and "S" are copies of the last publish-  
ed balance sheets of the respective plaintiff Banks.

SIGNED AND SWORN by the Deponent )  
on the nineteenth day of December )  
one thousand nine hundred and ) S. J. GANDON.  
forty-seven at Sydney in the )  
State of New South Wales )  
Before me: )

5

D. FARQUHARSON, J.P.

62. Affidavit of Sydney John Gandon  
filed in Action No. 42 of 1947  
on behalf of the Plaintiffs.

"K"

Copy.

THE STATE SAVINGS BANK OF SOUTH AUSTRALIA,  
ADELAIDE. 18th July, 1931.

The Manager,  
Bank of New South Wales,  
ADELAIDE.

5

Dear Sir,

With reference to our recent interviews; I  
have pleasure in informing you that at the meeting of 10  
the Board of Trustees held yesterday, your Bank was  
appointed Agent for this Bank for the purpose of making  
repayments to our depositors visiting New South Wales.  
Such payments would be made under one of two methods.  
First Method: This Bank would furnish to the Head 15  
Office or Branch of your Bank at which payment was  
desired, an Advice (somewhat similar to a Letter of  
Credit) containing particulars of the depositor's  
account and a certified specimen signature. It would  
also specify the amount or the maximum amount which the 20  
depositor is authorised to withdraw and any restrictions  
as to time during which such withdrawals might be made.

---

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

Between: BANK OF NEW SOUTH WALES and others  
Plaintiffs  
and

THE COMMONWEALTH OF AUSTRALIA and  
others  
Defendants

This is the copy letter marked "K" referred to in the  
annexed affidavit of Sydney John Gandon sworn herein on  
the nineteenth day of December, 1947 at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

63. Annexure "K" to Affidavit of  
Sydney John Gandon filed in  
Action No. 42 of 1947 on  
behalf of the Plaintiffs.

64. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

The depositor would produce his passbook at the paying Office of your Bank and sign a Form of Withdrawal supplied by this Bank. The paying Office would verify the signature, the passbook balance and other particulars with those on the Advice, enter the amount of withdrawal 5 in the passbook, copy particulars from the passbook entry on to the back of the Advice, pay the amount, return the passbook to the depositor and forward the Form of Withdrawal to the Branch of this Bank at which the account is kept. If the paying Office is a Branch of your Bank 10 that Office would send an Advice of the transaction to your Head Office, Sydney.

Should the depositor apply in the first place at an Office of your Bank, he would write a specimen of his signature on an Advice form (supplies of which would be 15 forwarded by this Bank). The Advice would then be posted direct to the depositor's Bank for completion and return. The subsequent procedure would be the same as if application had been made at the depositor's Bank.

Second Method: Payment of amounts not exceeding £10 in 20 the aggregate every three days, to be made on the

---

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

Between: BANK OF NEW SOUTH WALES and others  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA and  
others  
Defendants

This is the copy letter marked "K" referred to in the annexed affidavit of Sydney John Gandon sworn herein on the nineteenth day of December, 1947 at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

64. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.



65. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

depositor being identified to the satisfaction of the paying office. The onus of providing identification would be on the depositor. Having established his identity the depositor would sign the prescribed form, on the back of which particulars as to the identification 5 of the depositor would be filled in by the paying Office. The paying Office would then make the entry in the pass-book, pay the amount, return the passbook to the depositor and post the form direct to the office at which the account is kept. If the paying Office is a Branch, 10 the Head Office, Sydney, would be advised of the transaction.

General Conditions:

The paying office would under either method deduct exchange at the current rate before making payment. 15 The whole of such exchange would be retained by your Bank.

Your Bank would be responsible for the genuineness of the signature to the Form of Withdrawal in connection with transactions under Method 1. and for payment having 20 been made to the depositor in case of personal identification.

---

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

Between: BANK OF NEW SOUTH WALES and others  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA and  
others

Defendants

This is the copy letter marked "K" referred to in the annexed affidavit of Sydney John Gandon sworn herein on the nineteenth day of December, 1947, at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

65. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

66. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

under Method 2. Therefore, should there be doubt as to a depositor's identity, he should be requested to make application for a withdrawal under Method 1.

All Advices posted from this Bank would be forwarded to the Head Office or Branch of your Bank through your Adelaide Office. Advices sent to Branches would be accompanied by printed instructions and any forms which might be required. 5

Settlements: Your Head Office, Sydney would forward to your Adelaide Office a weekly statement (in duplicate if advantageous to your Bank) showing the following particulars of all transactions:- Date of payment, account, number, depositor's name, amount paid, balance at credit after payment and name of paying office. The total amount of payments shown on each statement would be debited to a special settlement account to be opened at your Adelaide Office, such amount to be paid in by this Bank on receipt of the weekly Statement. 10 15

The necessary forms and printed instructions are in course of preparation, and on their being available, one of our officers will interview you and supply you 20

---

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

Between: BANK OF NEW SOUTH WALES and others  
Plaintiffs

and

THE COMMONWEALTH BANK OF AUSTRALIA and  
others  
Defendants

This is the copy letter marked "K" referred to in the annexed affidavit of Sydney John Gandon sworn herein on the nineteenth day of December, 1947, at Sydney before me:

D. Farquharson, J.P.

S.J.Gandon.

66. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

67. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

with any further information which you may desire.

In the meantime, I shall be glad if you will forward a written notification of your Bank's consent to act as Agent on the lines indicated above and its approval of the suggested means of settlement.

5

Yours faithfully,

(Sgd) C. E. Goldsmith,

Manager.

---

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

Between: BANK OF NEW SOUTH WALES and others  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA and  
others

Defendants.

This is the copy letter marked "K" referred to in the annexed affidavit of Sydney John Gandon sworn herein on the nineteenth day of December, 1947 at Sydney before me:

D. Farquharson, J.P.

S.J. Gandon.

67. Annexure "K" to Affidavit of Sydney John Gandon filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

No. 5 - Affidavit of Joseph Sydney Penell Cox sworn the 28th day of November, 1947 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, JOSEPH SYDNEY PENELL COX of Sydney in the State of New South Wales, Bank Manager, make oath and say:-

1. \_\_\_\_\_ I am the Manager of the Royal Exchange Branch of the Bank of New South Wales. 15

2. \_\_\_\_\_ I have been for thirty-six (36) years an officer of the Bank of New South Wales, having during that period occupied the following positions:-

1920-1926, Security Officer Moree Branch of the said Bank; 20

1926-1930, Chief Clerk to Manager Head Office;

1930-1931, Audit Officer;

1931-1932, Foreign Exchange Officer Head Office (during which period I visited Manila, Japan, China, Singapore and the Netherlands East Indies on the business of the said Bank); 25

---

SIGNED AND SWORN this twenty-eighth day of November, 1947 at Sydney before me:

E.C. Stumm, J.P.

J.S.Cox.

68. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

69. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighty day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

1932-1935, Foreign Exchange Officer, Melbourne;

1935-1936, Assistant Accountant Melbourne Office;

1936-1937, Accountant Melbourne Office;

1937-1938, Manager A.B.C. Branch Collins Street, Melbourne; and

5

since 1938, Manager Royal Exchange Branch.

3.\_\_\_\_\_The said Bank at its said Royal Exchange Branch conducts a very extensive business in all forms of

banking transactions including transactions involving

interstate elements. Customers of the said Bank in-

10

clude a great number of persons engaged in interstate trade and commerce such as woolbrokers, stock and share

brokers, pastoral companies, manufacturers, general

merchants, importers, exporters, engineers and shipping

companies.

15

4.\_\_\_\_\_The following information is given to illustrate various types of interstate banking transactions common-

ly met with in banking practice generally and in par-

ticular in the business of the said Royal Exchange

Branch.

20

5.\_\_\_\_\_Assuming that Smith in Sydney desires to pay one thousand pounds (£1,000) to Brown in Brisbane, he may make use of the facilities available through his bank as follows:-

(a) If Smith has a current account at the Bank of

25

New South Wales, Sydney, he may post a cheque

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SIGNED AND SWORN this twenty-eighth day of November, 1947 at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

69. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

70. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

drawn on that account to Brown. Brown would then normally deposit the cheque to the credit of his own bank account in Brisbane for clearance, or, in some circumstances, his bank may cash it for him. If Brown banks with the Bank of New South Wales in Brisbane the proceeds of the cheque are collected in the following manner: Brown's account is credited with the amount of the cheque and the value of the cheque is then entered on a "debit note", a specimen of which is hereto annexed and marked "A", the amount of which is debited in the Brisbane Branch to an account styled "Clearing Branches Account" per medium of an internal voucher a specimen of which is annexed hereto and marked "B". The debit note, together with the cheque, is then sent by post from the Brisbane Branch to the Sydney Branch on which the cheque is drawn. On receipt in Sydney the debit note is treated as a credit to "Clearing Branches Account" at that branch and the cheque is debited to Smith's account, thus completing the double entry in the Sydney Branch.

(b) Whether or not Smith has a current account, he could purchase from the Bank of New South Wales in Sydney a draft, a specimen of which is hereto annexed and marked "C", in favour of Brown and

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SIGNED AND SWORN this twenty-eighth day of November, 1947 at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

70. Affidavit of Joseph Sydney Penell Cox sworn the twentyeighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

71. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

drawn on the Brisbane Branch of the Bank of New South Wales. He could purchase this draft either for cash or by a cheque drawn on his current account. If he pays for it by cheque his account would immediately be debited with the amount. He then forwards the draft to Brown in Brisbane, and Brown may deal with it in the manner described in sub-paragraph (a) hereof as if it were a cheque. (The difference between the two methods described in sub-paragraph (a) and this sub-paragraph is that a draft confers on Brown the right to immediate clearance, whereas, in the case of a cheque drawn on Sydney, Brown may have to wait for the cheque to be cleared). Immediate clearance of the draft in Brisbane is ensured by the Sydney Branch forwarding an authenticating advice to the paying branch in Brisbane. When Smith purchases a draft the banking practice followed is that he completes a "draft requisition", a specimen of which is annexed hereto and marked "D". The amount of this requisition is entered on a "credit note", a specimen of which is annexed hereto and marked "E", and per medium of an internal voucher, a specimen of which is annexed hereto and marked "F", the amount is credited at the Sydney Branch to an account styled "Transits Outward Account".

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SIGNED AND SWORN this twenty-eighth day of November, 1947  
at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

71. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

72. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

The credit note, together with the requisition,  
is then despatched by the Sydney Branch to the  
Brisbane Branch by post. On receipt in Brisbane  
the credit note is treated as though it were a  
cheque drawn on Sydney and dealtwith in the manner 5  
described in sub-paragraph (a) hereof. To establish  
a corresponding credit in its books the Brisbane  
Branch will treat the requisition (which serves  
also as the authenticating advice) as a credit to  
"Bills Payable Account". On presentation of the 10  
draft by Brown he is paid the amount or given credit  
for it, and the draft is debited to "Bills Payable  
Account".

(c) If Smith does not desire to post a cheque or a  
draft, and whether or not he has a current 15  
account, he could remit money through a Sydney  
branch of the Bank of New South Wales to the  
credit of Brown's account at the Brisbane Branch  
of the said Bank. To effect this transfer Smith  
would complete a "remitting warrant", a specimen 20  
of which is annexed hereto and marked "G", and  
would lodge it at the Branch in Sydney as if it  
were a deposit, together with the appropriate  
amount in cash or by cheque. If he paid by  
cheque his account would immediately be debited. 25  
To effect a corresponding credit the Sydney Branch

---

SIGNED AND SWORN this twenty-eighth day of November, 1947  
at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

72. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.



73. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

would enter the amount of the remitting warrant on a credit note such as is described in sub-paragraph (b) hereof, and the same procedure as therein described would be followed up to the time of the arrival of the credit note and remitting warrant 5 in Brisbane. The Brisbane Branch would deal with the credit note as described in that sub-paragraph and the remitting warrant would be treated as a credit to Brown's account and the amount be immediately available to him. 10

(d) Where Smith desires to make the payment to Brown urgently the amount may be forwarded telegraphically. The procedure is as follows: Smith completes a "money telegram requisition", a specimen of which is annexed hereto and marked "H", and lodges it 15 at the branch in Sydney as if it were a deposit together with the appropriate amount in cash or by cheque. If by cheque, his account will immediately be debited with the amount. The Sydney branch then despatches a coded telegram 20 to the Brisbane Branch instructing it to credit Brown's account immediately. To complete the entry in Sydney the amount of the requisition is entered on a "confirming voucher", a specimen of which is annexed hereto and marked "I", and by 25 the same procedure as outlined in sub-paragraph (b)

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SIGNED AND SWORN this twenty-eighth day of November, 1947 at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

73. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

74. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

hereof the amount is credited to "Transits Out-  
ward Account". The confirming voucher carrying a  
translation of the coded message is posted to  
Brisbane. On receipt of the telegram at Brisbane  
the instructions therein are followed by crediting 5  
Brown's account and debiting an account styled  
"Suspense Account Branches". The voucher used  
for the latter entry is a "debit slip", a specimen  
of which is attached hereto and marked "J". On  
receipt of the confirming voucher the Brisbane 10  
Branch treats it as a cheque drawn on Sydney  
according to the procedure described in sub-  
paragraph (a) hereof and credits "Suspense Account  
Branches" to complete the double entry. An  
ordinary credit slip is used for this purpose, a 15  
specimen of which is annexed hereto and marked "K".

6. \_\_\_\_\_ The procedure adopted in relation to interstate  
promissory notes is as follows:- Assuming Smith of  
Sydney has taken from Brown of Brisbane a promissory  
note payable on a certain future date at the Bank of 20  
New South Wales, Brisbane, Smith may at any time before  
maturity lodge the promissory note with his bank in  
Sydney to be held and ultimately collected on his  
behalf. If he lodges it at some time before maturity  
no entries are made by the Sydney branch other than a 25  
record of the document in a Bills for Collection

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SIGNED AND SWORN this twenty-eighth day of November, 1947  
at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

74. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

75. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

ledger, and a Bills Diary. Shortly before maturity  
the Sydney branch attaches to the bill a "bill for  
collection slip", a specimen of which is annexed hereto  
and marked "L", and forwards the bill and slip to the  
Brisbane branch, where on the due date it is charged to 5  
the account of the maker. The proceeds are returned to  
the Sydney branch by the use of a remitting warrant,  
and there credited to Smith's account.

7.\_\_\_\_\_The procedures outlined above are those followed  
when the interstate banking transaction is one between 10  
two branches of the same bank. Frequently interstate  
transactions take place between branches of different  
banks, and the following examples illustrate types of  
transactions that may occur between a branch of the  
Bank of New South Wales situated in a New South Wales 15  
town where it is the only bank represented, and a branch  
of the Union Bank of Australia Limited situated in a  
Queensland town where it is the only bank represented:-

(a) If a customer of such a branch of the Union  
Bank deposits to the credit of his account a 20  
cheque drawn on such a branch of the Bank of  
New South Wales the Union Bank branch will  
credit its customer and debit some form of sus-  
pense account. It will then forward the cheque  
to the Bank of New South Wales branch requesting 25  
a remittance in settlement. The Bank of New South

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SIGNED AND SWORN this twenty-eighth day of November, 1947  
at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

75. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

76. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

Wales branch will respond by means of an "AC-Z  
Warrant", a specimen of which is annexed hereto  
and marked "M", payable at the Bank of New South  
Wales, Brisbane. The entries passed at the Bank  
of New South Wales branch are a credit to an 5  
account styled "Transits Account" and a debit to  
the customer's account. The AC-Z Warrant is  
then posted by the Bank of New South Wales branch  
to the Union Bank branch. On receipt, the Union  
Bank branch will credit its suspense account and 10  
treat the warrant as a cheque on Brisbane. On  
presentation to the Bank of New South Wales  
Brisbane office that office will treat the item  
as a cheque on the initiating branch (i.e. the  
Bank of New South Wales branch), and it will 15  
be dealt with as described in sub-paragraph (a)  
of paragraph 5 hereof. The debit at the initiat-  
ing branch will be made to Transits Account  
thereby completing the transaction.

(b) If such a branch of the Bank of New South Wales 20  
is requested to transfer money for the credit of  
a specified person at such a branch of the Union  
Bank the procedure adopted is as follows: The  
customer of the Bank of New South Wales branch  
completes a remitting warrant and lodges it as a 25  
deposit with his cheque or cash. The Bank of New

---

SIGNED AND SWORN this twenty-eighth day of November, 1947  
at Sydney before me:

E.C. Stumm, J.P.

J.S. Cox.

76. Affidavit of Joseph Sydney Penell  
Cox sworn the twenty-eighth day  
of November, 1947 and filed in  
Action No. 42 of 1947 on behalf  
of the Plaintiffs.

77. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

South Wales branch will draw an "AB-Warrant", a specimen of which is annexed hereto and marked "N", payable at the Bank of New South Wales, Brisbane, and posts it (without further advice) to the Union Bank branch in Queensland. It then treats the remitting warrant in exactly the same way as a draft requisition as described in sub-paragraph (b) of clause 5 hereof. When the AB-Warrant reaches the Union Bank branch the payee is credited with the amount and the AB-Warrant is treated as a cheque on Brisbane. In the meantime the Bank of New South Wales, Brisbane will have received a credit note and remitting warrant from the Bank of New South Wales branch, and will have treated the remitting warrant as a credit to "Bills Payable Account", and the credit note as a cheque on that branch. On the Union Bank branch presenting the AB-Warrant to the Bank of New South Wales, Brisbane, that office will treat the AB-Warrant as a debit to Bills Payable Account, thus clearing the outstanding credit in that account.

SIGNED AND SWORN by the Deponent )  
on the twenty-eighth day of )  
November one thousand nine )  
hundred and forty-seven at )  
Sydney in the State of New South )  
Wales Before me: ) J.S. COX. 25

E.C. Stumm, J.P.

77. Affidavit of Joseph Sydney Penell Cox sworn the twenty-eighth day of November, 1947 and filed in Action No. 42 of 1947 on behalf of the Plaintiffs.

No. 6 - Writ of Summons filed in Action No. 43  
of 1947 on behalf of the Plaintiffs.

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

Between:

THE BANK OF AUSTRALASIA and 5  
others  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10  
and others  
Defendants

GEORGE VI by the Grace of God of Great Britain  
Ireland and the British Dominions beyond the  
Seas King Defender of the Faith Emperor of  
India. 15

TO:

THE COMMONWEALTH OF AUSTRALIA THE RIGHT HONOURABLE  
JOSEPH BENEDICT CHIFLEY the Treasurer of the Com-  
monwealth COMMONWEALTH BANK OF AUSTRALIA and  
HUGH TRAIL ARMITAGE the Governor of the said Com- 20  
monwealth Bank of Australia.

WE COMMAND YOU that within twenty-eight days after the  
service of this Writ on you, inclusive of the day of  
such service, you do cause Appearances to be entered for  
you in our High Court of Australia in an action at the 25

78. Writ of Summons filed in Action  
No. 43 of 1947 on behalf of the  
Plaintiffs.

79. Writ of Summons filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

suit of THE BANK OF AUSTRALASIA THE UNION BANK OF AUSTRALIA LIMITED and THE ENGLISH SCOTTISH AND AUSTRALIAN BANK LIMITED

AND TAKE NOTICE that in default of your so doing the Plaintiffs may proceed therein and judgment may be given in your absence. 5

WITNESS - The Right Honourable Sir John Greig  
Latham G.C.M.G. Chief Justice of our  
said High Court the 28th day of  
November in the year of Our Lord one 10  
thousand nine hundred and forty-seven.

(L. S.) F.C. LINDSAY,  
District Registrar.

N.B. This Writ is to be served within twelve calendar months from the date thereof or if renewed within six calendar months from the date of the last renewal including the day of such date and not afterwards. 15

Appearances to this Writ may be entered by the Defendants either personally or by Solicitor at the New South Wales Registry of the High Court of Australia. 20

If any Defendant neither resides nor carries on business in the State of New South Wales his or its Appearance may, at his or its option be entered either at the place abovementioned or at the Principal Registry of the High Court at Melbourne. 25

79. Writ of Summons filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

80. Writ of Summons filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

THE PLAINTIFFS CLAIM:-

1. \_\_\_\_\_ Against all the Defendants, a declaration that the Banking Act 1947 is beyond the powers of the Parliament of the Commonwealth, contrary to the Constitution of the Commonwealth and void. 5
2. \_\_\_\_\_ Alternatively, against all the Defendants, a declaration that each of the following provisions of the said Act is beyond the powers of the Parliament of the Commonwealth, contrary to the Constitution of the Commonwealth, and void, namely the provisions contained in:- 10
- (i) Section 6;
  - (ii) Section 10;
  - (iii) Section 12;
  - (iv) Section 13;
  - (v) Section 22; 15
  - (vi) Section 24;
  - (vii) Section 25;
  - (viii) Part V.
  - (ix) Section 39;
  - (x) Sections 42, 44 and 45; 20
  - (xi) Section 46;
  - (xii) Section 56;
  - (xiii) Section 59;
  - (xiv) Section 60.
3. \_\_\_\_\_ As against all the Defendants and any person 25  
for the time being administering the Department of the Treasury of the Commonwealth and any person for the time being entitled by law to exercise the powers of the Governor of the Commonwealth Bank of Australia, an  
injunction restraining them and each of them from taking 30

80. Writ of Summons filed in Action No. 43 of 1947 on behalf of the Plaintiffs.



81. Writ of Summons filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

or causing or permitting to be taken any action in pursuance or purported pursuance of any of the provisions of the said Act directed towards -

(a) The acquisition by the Defendant the Commonwealth Bank of Australia of any shares in any of the banks specified in Parts I and II of the First Schedule of the said Act; 5

(b) the taking over by the Defendant the Commonwealth Bank of Australia of the banking businesses in Australia of any of the Plaintiffs or the acquisition of their assets or the discharge of their liabilities, or - 10

(c) requiring any of the plaintiff Banks to cease carrying on banking business in Australia.

4. \_\_\_\_\_ As against the Defendant the Right Honourable Joseph Benedict Chifley and any other person for the time being administering the Department of the Treasury of the Commonwealth, an injunction restraining him from publishing or causing or permitting to be published any notice pursuant to sub-section (1) of Section 13 of the said Act. 15 20

5. \_\_\_\_\_ As against the Defendant the Right Honourable Joseph Benedict Chifley and any other person for the time being administering the Department of the Treasury of the Commonwealth, an injunction restraining him from giving or causing or permitting to be given any notice pursuant to sub-section (1) of Section 22 of the said Act. 25

6. \_\_\_\_\_ As against the Defendant the Right Honourable Joseph Benedict Chifley and any other person for the time being administering the Department of the Treasury 30

81. Writ of Summons filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

82. Writ of Summons filed in Action  
No. 43 of 1947 on behalf of the  
Plaintiffs.

of the Commonwealth, an injunction restraining him 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 said Act.

7. \_\_\_\_\_ As against the Defendant Hugh Trail Armitage and 5  
any other person for the time being entitled by law to  
exercise the powers of the Governor of the Commonwealth  
Bank of Australia an injunction restraining him from  
authorising any person to act under Section 59 of the  
said Act. 10

8. \_\_\_\_\_ Such further or other relief as to the Court  
may seem fit.

Place of Trial - Sydney.

Mode of Trial - Before a Justice without a Jury.

J.R. BURT, 15  
Solicitor for the Plaintiffs.

This Writ was issued by John Ralph Burt a member of the  
firm of Blake and Riggall Solicitors of 120 William  
Street, Melbourne, in the State of Victoria, whose  
address for service is at the office of Messrs. Allen, 20  
Allen & Hemsley of 53-63 Martin Place, Sydney in the  
State of New South Wales and who are the Solicitors  
for the Plaintiffs.

The respective addresses of the Plaintiffs are as follows:

The Bank of Australasia	-	394-6 Collins Street, Melbourne.	25
The Union Bank of Australia Limited.	-	351 Collins Street, Melbourne.	
The English Scottish and Australian Bank Limited.	-	287 Collins Street, Melbourne.	30

J.R. BURT,  
Solicitor for the Plaintiffs.

82. Writ of Summons filed in Action  
No. 43 of 1947 on behalf of the  
Plaintiffs.

No. 7 - Notice of Motion for Interlocutory  
Injunction 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

Filed pursuant to leave granted  
by His Honour Mr. Justice Dixon  
this 28th day of November, 1947.

TAKE NOTICE that an application will be made to a Justice 15  
of this Honourable Court at the Court House Darlinghurst  
Sydney on Tuesday the 2nd day of December one thousand  
nine hundred and forty-seven at 9.30 o'clock in the fore-  
noon or so soon thereafter as Counsel can be heard on  
behalf of the Plaintiffs for Injunctions until the 20  
determination of this action or the further Order of  
the Court as follows:-

1. \_\_\_\_\_As against all the defendants and any person  
for the time being administering the Department of the  
Treasury of the Commonwealth and any person for the time 25  
being entitled by law to exercise the powers of the  
Governor of the Commonwealth Bank of Australia, an  
injunction restraining them and each of them from taking

83. Notice of Motion for Injunction  
filed in Action No. 43 of 1947  
on behalf of the Plaintiffs.

84. Notice of Motion for Injunction  
filed in Action No. 43 of 1947  
on behalf of the Plaintiffs.

or causing or permitting to be taken any action in  
pursuance or purported pursuance of any of the provis-  
ions of the said Act directed towards -

(a) The acquisition by the Defendant The Commonwealth  
Bank of Australia of any shares in any of the 5  
banks specified in Parts I and II of the First  
Schedule of the said Act:

(b) The taking over by the Defendant the Commonwealth  
Bank of Australia of the banking businesses in  
Australia of any of the Plaintiffs or the acquisi- 10  
tion of their assets or the discharge of their  
liabilities, or -

(c) Requiring any of the Plaintiff Banks to cease  
carrying on banking business in Australia.

2. \_\_\_\_\_As against the Defendant the Right Honourable 15  
Joseph Benedict Chifley and any other person for the  
time being administering the Department of the Treasury  
of the Commonwealth, an injunction restraining him from  
publishing or causing or permitting to be published any  
notice pursuant to sub-section (1) of Section 13 of the 20  
said Act.

3. \_\_\_\_\_As against the Defendant the Right Honourable  
Joseph Benedict Chifley and any other person for the time  
being administering the Department of the Treasury of  
the Commonwealth, an injunction restraining him from 25  
giving or causing or permitting to be given any notice  
pursuant to sub-section (1) of Section 22 of the said  
Act.

4. \_\_\_\_\_As against the Defendant the Right Honourable  
Joseph Benedict Chifley and any other person for the time 30

84. Notice of Motion for Injunction  
filed in Action No. 43 of 1947  
on behalf of the Plaintiffs.

85. Notice of Motion for Injunction  
filed in Action No. 43 of 1947  
on behalf of the Plaintiffs.

being administering the Department of the Treasury of  
the Commonwealth, an injunction restraining him 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 said Act. 5

5. \_\_\_\_\_As against the Defendant Hugh Trail Armitage and  
any other person for the time being entitled by law to  
exercise the powers of the Governor of the Commonwealth  
Bank of Australia an injunction restraining him from  
authorising any person to act under Section 59 of the 10  
said Act.

6. \_\_\_\_\_And for such further or other Order as the Court  
shall think fit to make in the premises, upon the  
grounds appearing in and by the Affidavit of Francis  
Favarger Hassett sworn herein on the twenty-eighth 15  
day of November one thousand nine hundred and forty-  
seven and filed herein.

DATED this 28th day of November one thousand nine hundred  
and forty-seven.

BLAKE & RIGGALL, 20  
Solicitors for the Plaintiffs.

This Notice of Motion is filed by Messrs. Blake & Riggall  
of 120 William Street Melbourne in the State of Victoria,  
Solicitors for the abovenamed Plaintiffs.

85. Notice of Motion for Injunction  
filed in Action No. 43 of 1947  
on behalf of the Plaintiffs.

No. 8 - Affidavit of Francis Favarger Hasset sworn the 19th day of December, 1947 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, THE 5  
UNION BANK OF AUSTRALIA LIMITED  
and THE ENGLISH, SCOTTISH AND  
AUSTRALIAN BANK LIMITED.

Plaintiffs

and 10

THE COMMONWEALTH OF AUSTRALIA  
the RIGHT HONOURABLE JOSEPH  
BENEDICT CHIFLEY the Treasurer  
of the said Commonwealth, THE  
COMMONWEALTH BANK OF AUSTRALIA 15  
and HUGH TRAIL ARMITAGE the  
Governor of the said Common-  
wealth Bank of Australia.

Defendants

I, FRANCIS FAVARGER HASSETT of Martin Place, Sydney in 20  
the State of New South Wales, Bank Manager, make oath  
and say -

1. \_\_\_\_\_ I am the Manager of the Sydney Branch of The  
Bank of Australasia.

2. \_\_\_\_\_ I have had thirty-four years' experience in bank- 25  
ing business in Australia. I entered the service of  
The Bank of Australasia on the second day of August one

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SIGNED AND SWORN this nineteenth day of December, 1947  
at Sydney before me:

R.V. Alexander, J.P.

Frank Hasset.

86. Affidavit of Francis Favarger  
Hasset filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

87. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

thousand nine hundred and thirteen and since that date  
have been continuously in its employ. From time to  
time I have occupied different positions in the Bank in  
different States of the Commonwealth. Since the year  
1939 I have held successively the following executive 5  
positions in the Bank, namely Accountant of the Melbourne  
Branch, Sub-Manager of the Melbourne Branch, Manager of  
the Perth Branch and concurrently Inspector for the  
State of Western Australia, and Manager of the Sydney  
Branch of the Bank. By reason of my experience describ- 10  
ed above I have become fully acquainted with the organisa-  
tion of The Bank of Australasia and the nature of the  
business carried on in Australia by the Banks referred  
to in Parts I and II of the First Schedule to the Banking  
Act 1947 (hereinafter called the private Trading Banks) 15  
and the practices and procedures followed by such banks  
in the conduct of their banking business including their  
interstate and intrastate operations.

3.\_\_\_\_\_I am informed by John Ralph Burt of the firm of  
Messieurs Blake and Riggall the Solicitors for the 20  
Plaintiffs herein and verily believe that each of the  
Plaintiff companies is a body corporate having been  
incorporated as follows:

- (a) The Bank of Australasia was incorporated by  
Royal Charter dated the twenty-first day of May 25  
one thousand eight hundred and thirty-five which

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SIGNED AND SWORN this nineteenth day of December, 1947  
at Sydney before me:

R.V. Alexander, J.P.

Frank Hassett.

87. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

88. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

Charter has been amended from time to time and  
the said original Charter and amendments were con-  
solidated in a further Royal Charter dated the  
third day of September one thousand nine hundred  
and forty-three.

5

(b) The Union Bank of Australia Limited was originally  
constituted by Deed of Settlement dated the  
twenty-sixth day of October one thousand eight  
hundred and thirty-seven under the name Union  
Bank of Australia and subsequently on the first 10  
day of May one thousand eight hundred and eighty  
it was incorporated as a limited company under  
and by virtue of the English Companies Acts  
1862-1879 under the name The Union Bank of  
Australia Limited. 15

(c) The English Scottish and Australian Bank Limited  
was incorporated as a limited company on the ninth  
day of August one thousand eight hundred and  
ninety-three under and by virtue of the English  
Companies Acts 1862-1890. 20

4. \_\_\_\_\_ Produced and shown to me at the time of swearing  
this my affidavit are documents which the said John  
Ralph Burt has informed me and I verily believe are  
true copies of the respective Memoranda and Articles  
of Association or other constating documents of the 25  
Plaintiff Companies namely:-

---

SIGNED AND SWORN this nineteenth day of December, 1947  
at Sydney before me:

R.V. Alexander, J.P.

Frank Hassett.

88. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.



89. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

Marked "A": The said Royal Charter of the twenty-  
first day of May one thousand eight  
hundred and thirty-five constituting  
The Bank of Australasia and the said  
consolidating Charter of the third 5  
day of September one thousand nine  
hundred and forty-three and the by-  
laws rules and regulations of The  
Bank of Australasia.

Marked "B": The Memorandum and Articles of 10  
Association of The Union Bank of  
Australia Limited.

Marked "C": The Memorandum and Articles of  
Association of The English Scottish  
and Australian Bank Limited. 15

5.\_\_\_\_\_(a) I am informed by the said John Ralph Burt  
and verily believe that each of the Plaintiff  
Banks is in possession of an authority in  
writing to carry on banking business in  
Australia granted to it unconditionally by 20  
the Governor-General of the Commonwealth of  
Australia under and by virtue of Part II of  
the Banking Act 1945. Such authorities were  
published in the Commonwealth Government  
Gazette of the twenty-third day of August 25  
one thousand nine hundred and forty-five and

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Frank Hassett.

89. Affidavit of Francis Favarger  
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of 1947 on behalf of the  
Plaintiffs.

90. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

have not been revoked.

(b) The Plaintiff Banks and the other banks named  
in the first schedule to the Banking Act 1947  
are the only persons or corporations carrying  
on general banking business in Australia 5  
other than State Banks and the defendant,  
The Commonwealth Bank of Australia.

6.\_\_\_\_\_The Defendant the Right Honourable Joseph Benedict  
Chifley is the Prime Minister and Treasurer of the Com-  
monwealth of Australia, and the defendant Hugh Trail 10  
Armitage is the Governor of the Commonwealth Bank of  
Australia.

7.\_\_\_\_\_ (i) The issued capital of the plaintiff The Bank  
of Australasia is four million five hundred  
thousand pounds (£4,500,000) divided into 15  
nine hundred thousand (900,000) shares of  
five pounds (£5) each all of which are fully  
paid up. There is under the aforesaid  
Charters a reserve liability of the pro-  
prieters of five pounds (£5) per share. 20  
Share registers are maintained in London,  
in Melbourne, and in Wellington, New Zealand.  
Of the said nine hundred thousand (900,000)  
shares six hundred and ninety-three thousand  
five hundred and nineteen (693,519) are at 25  
present on the London register, one hundred

---

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and twenty-three thousand two hundred and  
ninety (123,290) on the Melbourne register  
and eighty-three thousand one hundred and  
ninety-one (83,191) on the Wellington register.

- (ii) I am informed by the Manager of the Sydney 5  
Branch of the plaintiff The Union Bank of  
Australia Limited and verily believe that  
the issued capital of that Bank is Twelve  
million pounds (£12,000,000) divided into  
eight hundred thousand (800,000) shares of 10  
fifteen pounds (£15) each all of which are  
paid up to five pounds (£5). The balance  
ten pounds (£10) per share cannot be called  
up except in the event and for the purposes  
of a winding up. Share registers are main- 15  
tained in London, in Melbourne, and in  
Wellington, New Zealand. Of the said eight  
hundred thousand (800,000) shares four hundred  
and forty thousand two hundred and eighteen  
(440,218) are at present on the London regis- 20  
ter, one hundred and forty-nine thousand six  
hundred (149,600) on the Melbourne register  
and two hundred and ten thousand one hundred  
and eighty-two (210,182) on the Wellington  
register. 25

(iii) I am informed by the Superintendent for

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92. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

New South Wales of the plaintiff The English  
Scottish and Australian Bank Limited and  
verily believe that the issued capital of  
that Bank is Five million pounds (£5,000,000)  
divided into one million (1,000,000) shares 5  
of Five pounds (£5) each all of which are  
paid up to three pounds (£3). Share  
registers are maintained in London and Mel-  
bourne. Of the said one million (1,000,000)  
shares seven hundred and twenty-two thousand 10  
four hundred and eleven (722,411) are on the  
London register and two hundred and seventy-  
seven thousand five hundred and eighty-nine  
(277,589) on the Melbourne register.

8. \_\_\_\_\_(i) The Plaintiff the Bank of Australasia has 15  
carried on general banking business in accord-  
ance with its Charters ever since its incorpor-  
ation and now carries on such business in the  
United Kingdom, Australia and New Zealand.  
In the United Kingdom its business is carried 20  
on in London where its Head Office is situate.  
In Australia its business extends throughout  
every State of the Commonwealth and to the  
Australian Capital Territory and is carried on  
at and from its principal Australian Office in 25  
Collins Street Melbourne and at and from one

---

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Frank Hassett.

92. Affidavit of Francis Favarger  
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of 1947 on behalf of the  
Plaintiffs.

93. Affidavit of Francis Favarger Hasset filed in Action No.43 of 1947 on behalf of the Plaintiffs.

hundred and eighty-six (186) branches located as follows:-

Victoria	79	
New South Wales	62	
Queensland	18	5
Tasmania	9	
Western Australia	9	
South Australia	8	
Australian Capital Territory	<u>1</u>	10
	186.	
	====	

The Bank has in addition sixty-one (61) agencies in various parts of Australia. In New Zealand the business of the Bank is carried on at and from its principal New Zealand office in Wellington and forty-nine (49) branches and twelve (12) agencies situate in towns throughout the Dominion. The business of the Bank in Australia and New Zealand is directed and controlled by the Court of Directors in London through a Superintendent for Australasia acting under Power of Attorney. There are no local Boards of Directors. The General Meetings of shareholders are held in London.

(ii) I am informed by the Manager of the Sydney Branch of the Plaintiff The Union Bank of Australia Limited and verily believe that that Bank, ever since its original establishment

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Frank Hasset.

93. Affidavit of Francis Favarger Hasset filed in Action No.43 of 1947 on behalf of the Plaintiffs.

94. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

in 1837, has carried on general banking busi-  
ness, in accordance in the first place with  
its Deed of Settlement and later in accord-  
ance with its Memorandum and Articles of  
Association, and it now carries on such 5  
business in the United Kingdom, Australia  
and New Zealand. In the United Kingdom its  
business is carried on in London where its  
Head Office is situate. In Australia its  
business extends throughout every State of 10  
the Commonwealth and is carried on at and from  
its principal Australian office in Collins  
Street Melbourne and at and from one hundred  
and eighty-two (182) branches located as  
follows: 15

New South Wales	58	
Victoria	57	
Queensland	30	
South Australia	18	
Western Australia	16	20
Tasmania	<u>3</u>	
	182	
	===	

The Bank has in addition twenty-nine (29)  
agencies in various parts of Australia.

In New Zealand the business of the Bank is 25

---

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94. Affidavit of Francis Favarger  
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95. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

carried on at and from its principal New  
Zealand office in Wellington and forty-nine  
(49) branches and thirteen (13) agencies  
situate in towns through the Dominion.

The business in Australia and New Zealand 5  
is directed and controlled by the Board of  
Directors in London through a General Manager  
for Australasia. There are no local Boards  
of Directors. The General Meetings of  
shareholders are held in London. 10

(iii) I am informed by the Superintendent for  
New South Wales of the plaintiff The English  
Scottish and Australian Bank Limited and  
verily believe that that Bank ever since its  
incorporation has carried on general bank- 15  
ing business in accordance with its Memor-  
andum and Articles of Association and  
it now carries on such business in the United  
Kingdom and in Australia. In the United  
Kingdom its business is carried on in London 20  
where its Head Office is situate. In  
Australia its business extends throughout  
every State and is carried on at and from its  
Head Office for Australia in Collins Street  
Melbourne and at and from two hundred and 25  
sixteen (216) branches located as follows:

---

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95. Affidavit of Francis Favarger  
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Plaintiffs.

Victoria	81	
New South Wales	55	
South Australia	29	
Queensland	21	
Tasmania	17	5
Western Australia	10	
Northern Territory	<u>3</u>	
	<u>216</u>	
	===	

The Bank has in addition one hundred and  
fifty-two (152) agencies in various parts of 10  
Australia. The business in Australia is  
directed and controlled by the Board of  
Directors in London through a General Manager  
for Australia. There are no local Boards  
of Directors. The General Meetings of 15  
shareholders are held in London.

9.\_\_\_\_\_The business of each of the plaintiff Banks has  
been carried on with considerable success and profit in  
each country in which it has been established as afore-  
said, and has grown to considerable magnitude and a 20  
very valuable goodwill attaches to the business and  
assets of each of the plaintiff Banks in each such  
country.

10.\_\_\_\_\_(i) The total number of accounts of customers in  
Australia of the plaintiff The Bank of 25  
Australasia is approximately one hundred

---

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97. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

and twelve thousand five hundred and sixty  
(112,560).

(ii) I am informed by the Manager of the Sydney  
Branch of the plaintiff The Union Bank of  
Australia Limited and verily believe that 5  
the total number of accounts of customers in  
Australia of that Bank is approximately  
ninety-seven thousand nine hundred and  
thirty (97,930).

(iii) I am informed by the Superintendent for 10  
New South Wales of the plaintiff The  
English Scottish and Australian Bank Limited  
and verily believe that the total number of  
accounts of customers in Australia of that  
Bank is approximately one hundred and 15  
thirty-nine thousand seven hundred and  
thirty (139,730).

11. \_\_\_\_\_ The number of customers in Australia of each of  
the plaintiff Banks is somewhat less than the number of  
accounts set out in the preceding paragraph as a con- 20  
siderable number of the customers have more than one  
account at the same branch or have accounts at more than  
one branch. Often the branches at which such accounts  
are kept are in different States. A number of the  
branches of each of the plaintiff Banks are situated in 25  
towns at or close to the border between different

---

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of 1947 on behalf of the  
Plaintiffs.

States and many of the customers of these branches are  
resident in or carry on business in a State other than  
that in which the branch at which their accounts are  
kept is situate.

12.\_\_\_\_\_In the case of each of the plaintiff Banks the 5  
staff in Australia includes a number of senior officers  
whose duties are not confined to any one State but extend  
to the whole of the Commonwealth. The staff employed in  
Australia by the plaintiff The Bank of Australasia is  
approximately one thousand six hundred (1,600). I am 10  
informed by the Manager of the Sydney Branch of The Union  
Bank of Australia Limited and verily believe that the  
staff employed by it in Australia is approximately one  
thousand three hundred and ten (1,310). I am informed  
by the Superintendent for New South Wales of the 15  
plaintiff The English, Scottish and Australian Bank  
Limited and verily believe that the staff employed by it  
in Australia is approximately two thousand one hundred  
and twenty (2,120).

13.\_\_\_\_\_ All of the members of the staff of each of the 20  
plaintiff Banks are subject to transfer and in fact  
transfers are frequently made from one branch to another  
to meet the demands of the business of the Bank for the  
time being and such transfers are made interstate as  
well as intrastate. 25

14.\_\_\_\_\_Now produced and shown to me and marked "D"

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Plaintiffs.

"E" and "F" respectively are true copies of the last  
published Balance Sheets of the plaintiff The Bank of  
Australasia, the plaintiff The Union Bank of Australia  
Limited and the plaintiff The English Scottish and  
Australian Bank Limited. In respect of the greater part 5  
of the advances referred to in its said Balance Sheet  
each of the plaintiff Banks holds securities of various  
kinds. The total value of such securities is very large.  
So far as concerns the plaintiff The Union Bank of  
Australia Limited and the plaintiff The English Scottish 10  
and Australian Bank Limited respectively, I am informed  
by Harold William Tickner of the former Bank and Neil  
Thomas Findlay of the latter and verily believe, and  
so far as concerns the plaintiff The Bank of Australasia,  
I say of my own knowledge, that in the case of each of the 15  
plaintiff Banks the securities so held include liens over  
a substantial number of shares in the capital of the Banks  
specified in Part I of the First Schedule to the Banking  
Act, 1947.

15.\_\_\_\_\_The principal private trading banks in Australia 20  
including the plaintiff banks are organised and function on  
an Australia-wide basis with branches, staffs, assets and  
credits facilities in each of the various States. One of  
the purposes of this organisation is to enable them to  
carry on interstate banking transactions between their own 25  
branches in different States and with branches of other

---

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100. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
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Plaintiffs.

banks in different States. In fact all the private  
trading banks themselves carry on extensive interstate  
banking operations the total of which for the three  
plaintiff Banks is of the order of Three hundred million  
pounds (£300,000,000) per annum. In arriving at this 5  
figure, there is no duplication by the inclusion of  
debits and credits for the same transactions.

16. \_\_\_\_\_The principal classes of interstate banking  
transactions carried on by the private trading banks  
are:- 10

- (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. 15.

17. \_\_\_\_\_Interstate Bills of Exchange, cheques and  
Promissory Notes are instruments lodged for collection with  
or negotiated to a Bank in a State other than the State in  
which they are expressed to be payable. In the case of  
these interstate instruments, a Bank either buys the 20  
instrument (which may be accompanied by other documents)  
or obtains possession thereof on behalf of a customer.  
It forwards the instrument to another State either to a  
branch of the Bank itself or to another bank, and  
thereafter the instrument is presented for payment in 25  
the other State by the bank or on its behalf and on

---

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101. Affidavit of Francis Favarger  
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Plaintiffs.

payment being received the amount is frequently though not  
always transferred back to the State of origin of the  
instrument by sending to that State an interstate draft,  
warrant, credit note or telegraphic transfer.

18.\_\_\_\_\_An example of the interstate operations so 5  
carried on by the private trading banks themselves occurs  
when a bank in Melbourne buys from a customer, who is  
say a Victorian manufacturer of machinery, a draft  
drawn by the customer upon a person in New South Wales  
to whom he has sold machinery. To the draft there are 10  
annexed the customary shipping documents. The bank  
then, as holder of the draft and shipping documents,  
ordinarily forwards them to its branch at the place in  
New South Wales where the drawee resides and that branch  
presents the draft to the drawee for payment. Upon 15  
payment being made by the drawee, the branch delivers the  
shipping documents to the drawee to enable him to obtain  
delivery of the machinery. The transfer of funds  
interstate between the two branches is effected by  
appropriate debits and credits. 20

19.\_\_\_\_\_If the draft is sent direct from Melbourne to  
another bank in New South Wales to be presented for  
payment, a second interstate transmission of documents  
will be involved. There is firstly the transmission of  
the draft and shipping documents to the other bank in 25  
New South Wales with a request to present the draft for

---

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102. Affidavit of Francis Favarger  
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of 1947 on behalf of the  
Plaintiffs.

payment and remit proceeds back to Melbourne. Then  
there is a second interstate transmission of documents  
when that other bank, in order to remit the proceeds of  
the draft, draws an interstate draft or warrant therefor  
on its Melbourne Office and transmits that draft or 5  
warrant directly or indirectly to the bank in Melbourne  
on whose behalf it collected the proceeds of the draft.

20. Another example of the interstate operations  
carried on by the private trading banks occurs in  
the case of the transfer of funds interstate for a 10  
customer of a bank say in Melbourne to a branch of that  
bank say in New South Wales. The bank in Melbourne  
sells to its customer a draft warrant credit note or  
telegraphic transfer for the amount of money required  
in New South Wales and receives in payment therefor 15  
the customer's cash or funds in Melbourne. The  
transfer to New South Wales is effected by the bank  
in Melbourne crediting with the amount the branch in  
New South Wales at which it is payable and that branch,  
on advice, debiting the bank in Melbourne with a like 20  
amount. In the case of a draft, the instrument may be  
issued to the customer in Melbourne for presentation  
to the branch in New South Wales so as to obtain payment  
there. In other cases, a draft, warrant, credit note  
or telegraphic transfer for the required amount of money 25  
is forwarded direct to the branch in New South Wales

---

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102. Affidavit of Francis Favarger  
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Plaintiffs.

103. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

as its authority to pay it out there.

21.\_\_\_\_\_In the case of a transfer interstate of the funds of a customer say in Melbourne to the branch of another bank say in New South Wales, the bank in Melbourne has either to obtain in Melbourne from the other bank 5 the required amount of funds in New South Wales or to transfer the amount to one of its own branches in New South Wales with instructions to such branch to provide the necessary funds at the branch of the other bank in New South Wales at which the money is to be paid. 10

22.\_\_\_\_\_In the case of a transfer interstate of a private trading bank's own funds from say Melbourne to Sydney the general practice at present is for the private trading bank in Melbourne to obtain from the Commonwealth Bank in Melbourne funds in Sydney in exchange for its own cheque 15 drawn on its account with the Commonwealth Bank in Melbourne, and handed to the Commonwealth Bank there. The Commonwealth Bank effects the actual transfer of funds by appropriate debit and credit entries in its own books. 20

23.\_\_\_\_\_In the case of Interstate Credits the bank either sells in one State a letter of credit to be drawn against in another State or agrees with its customer for value to establish a credit in another State in favour of him or his nominee. When a credit so estab- 25 lished - clean or documentary - is drawn against in

---

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103. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

104. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

another State the bank paying the amount drawn has to  
be reimbursed by and from the bank in the State of issue  
of the credit by funds being transferred from the State  
of issue to the other State. Such transfer is effected  
by the Bank in the other State drawing on the bank in 5  
the State of issue for the amount paid and by such  
draft being duly met and appropriate debits and credits  
being made by the banks in the different States.

24. \_\_\_\_\_ Travellers' cheques are sold to members of the  
public by a bank in one State for money paid there. 10  
Such a cheque entitles the holder to draw money anywhere  
in Australia where the bank has a branch or has an agent  
authorised to cash such cheques. When the right of draw-  
ing is exercised by the cheque being cashed in another  
State, it is forwarded directly or indirectly to the 15  
branch in the State where it was sold. The necessary  
transfer of funds interstate to reimburse the paying  
branch or agent is effected by appropriate debit and  
credit entries in the two States and the transaction  
is completed when the cheque is met by the bank of issue. 20

25. \_\_\_\_\_ Branches of a bank which are situated near the  
border between two States are in many cases controlled  
from a Head Office of the bank in a State other than that  
in which the branch is situated. In such cases notes  
and silver and copper coin are frequently sent inter- 25  
state from the Head Office in question to the branch

---

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105. Affidavit of Francis Favarger  
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of 1947 on behalf of the  
Plaintiffs.

and from the branch to such Head Office.

26.\_\_\_\_\_The procedures described in paragraphs 17 to 24  
inclusive vary in matters of detail as between different  
private trading banks but not to any material extent.

27.\_\_\_\_\_Before the establishment of the Commonwealth Bank 5  
as a Central Bank buying and selling rates expressly  
so called existed for exchange transactions between the  
States and between certain parts of States in Australia.  
The buying and selling rates as between the different  
States and localities varied between limits fixed by 10  
the cost of carriage of gold and the precise rates as  
between different localities, within the limits so  
fixed, varied from time to time in accordance with the  
demand for money in these localities. Since the  
establishment of central banking in Australia the Common- 15  
wealth Bank has made moneys available as required in  
Capital Cities and at other large centres. But a charge  
for exchange is still made on transactions of the private  
trading banks with their customers between different  
States and localities carried out in accordance with 20  
the procedures described in paragraph 16 (a) (b) and (c).

28.\_\_\_\_\_The interstate operations carried on by the  
private trading banks in the manner described above  
are a vital part of the banking business carried on by  
them and are not merely incidental to that business. If 25  
these interstate operations did not form part of their

---

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Frank Hassett.

105. Affidavit of Francis Favarger  
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Plaintiffs.

banking business then that business would be a funda-  
mentally different one from that which they in fact carry  
on. The interstate banking operations carried on by them  
with their customers as aforesaid are so inextricably  
interwoven with intrastate banking operations with the 5  
same customers as to make it quite impracticable to  
segregate the interstate from the intrastate operations.  
For example when an overdraft is granted to a customer to  
enable him to transfer funds interstate the transaction  
is inseverable. The agreement between the bank and the 10  
customer covers both the granting of the overdraft intra-  
state and the transmission of the funds interstate.  
Another example is an agreement between the Bank and its  
customers whereby an overdraft is granted intrastate  
upon the terms that:- 15

- (i) the amount of such overdraft shall be used partly  
to pay the cost of manufacturing goods to be sold  
interstate and partly to enable funds to be trans-  
mitted interstate through the Bank to purchase the  
necessary raw materials to be used in such 20  
manufacture and
- (ii) that the customer's interstate drafts or the pur-  
chaser's interstate cheques for the price of the  
manufactured goods shall be collected through the  
bank and the proceeds applied in reduction of the 25  
overdraft.

---

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R.V. Alexander, J.P.

Frank Hassett.

107. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

In such a case the overdraft would not be granted if the agreement between the bank and the customer did not provide for the collection by the Bank of the interstate drafts or cheques; and those drafts or cheques would not be received or collected by the bank if the overdraft were not granted. 5

A further example is the case of a retail business in Victoria with branches in that State only which purchases goods extensively in other States. The head office of the business in Melbourne keeps its main account with its bank in Melbourne. Each branch of the business keeps an 10 account at a local branch of the same bank. Interstate settlements for goods purchased in other States are effected by the head office sending to the vendors cheques drawn on the main account in Melbourne. These cheques are paid by the vendors into their bank accounts in the other States 15 which may be with the same bank or with other banks. The cheques are then forwarded by the collecting Bank to Melbourne and are met out of the main account of the business there. The funds necessary to meet such cheques are fed into the main account periodically or automatically by 20 transfers from the accounts with the local branches of the Bank in Victoria. When overdraft accommodation in Melbourne is allowed to provide the purchase money for the goods bought interstate the funds held at the local branches of the bank may by arrangement be treated 25 as a set off against the overdraft in the main account.

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at Sydney before me:-

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Frank Hassett.

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29.\_\_\_\_\_The interstate banking operations above described  
are in my opinion essential to the performance of the  
function of the private trading Banks in and in relation  
to the carrying on of interstate trade and commerce in  
Australia. This may be seen from a consideration of 5  
what is involved in the production and distribution  
throughout Australia of the basic commodities upon which  
the normal functioning of industry in Australia depends.  
The production of coal and steel in Australia is con-  
centrated in the main in the State of New South Wales 10  
and these products are distributed from that State to  
each of the other States. The producer in New South Wales  
has to meet his expenses of production by payments made  
in that State. It is therefore necessary either that  
he should be able, after obtaining payment in other States, 15  
to transfer the amount received to New South Wales or that  
the purchasers in other States should have the means of  
paying the price of the coal or steel to him in New South  
Wales.

The distribution of these commodities interstate therefore 20  
involves as a matter of practical necessity interstate  
banking transactions and this interstate banking is in the  
main transacted by the private trading banks.

30.\_\_\_\_\_An interstate transaction in a manufactured  
article, if traced back to the origin of the article, 25  
involves in practice antecedent interstate banking

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transactions. This may be seen from a particular example.  
A farmer in South Australia requires new farm machinery  
and contracts to purchase it from a machinery manufacturer  
in Melbourne. The manufacturer forwards the machine to  
South Australia and sells to his bank in Melbourne a 5  
draft upon the purchaser for the price of the machinery  
together with the customary shipping documents. The  
bank as holder of the draft and documents forwards them  
to its branch in South Australia. The farmer obtains  
an advance from his bank in South Australia and by 10  
means thereof pays the amount of the draft to the bank  
which is the holder thereof in exchange for the shipping  
documents and so obtains possession of the machinery.  
But the machinery manufacturer, before he was able to  
manufacture the machine, had to purchase steel from say 15  
Port Kembla in New South Wales. For this purpose he  
may procure his bank in Melbourne to establish a docu-  
mentary credit available in New South Wales in favour of  
the steel manufacturer there. The steel manufacturer  
ships the steel to Melbourne and draws against the credit 20  
in New South Wales by documentary draft upon the Melbourne  
manufacturer. The Bank in New South Wales having  
negotiated the draft forwards it with accompanying docu-  
ments to its branch in Melbourne and the machinery manu-  
facturer takes up the draft and documents there and so 25  
obtains delivery of the steel.

---

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31.\_\_\_\_\_In my opinion, if the private trading banks were  
precluded from carrying on interstate banking operations,  
although the interstate distribution of commodities might  
be continued on a limited scale for some time it would  
necessarily be brought almost to a standstill before 5  
very long unless interstate banking facilities similar  
to those at present provided by the private trading  
banks were made available to enable the necessary inter-  
state payments of money and interstate transfer of funds  
to be made. 10

32.\_\_\_\_\_The interstate banking transactions of private  
trading banks entered into for the purposes of the carry-  
ing on of the interstate trade in goods are of very great  
magnitude. In many cases these interstate banking  
transactions form an integral part of the interstate 15  
transactions in goods. Thus where a bank discounts a  
bill drawn by a seller in one State on a buyer in another  
State, the bill being accompanied by a bill of lading  
which is endorsed to the Bank, the Bank has as I am  
advised by Counsel an interest in the goods during their 20  
transit interstate. Moreover in many cases the contract  
of sale stipulates for the establishment by the buyer  
of a documentary credit with the Bank in favour of the  
seller for the price of the goods so that the acquisition  
by the Bank of its interest in the goods in transit is 25  
provided for by the contract between the buyer and the

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seller.

33.\_\_\_\_\_Even the smallest branch of the plaintiff Banks  
has to transact some interstate banking business for its  
customers. The equipment, accounts and the whole organ-  
isation of the branch form part of a single banking unit 5  
designed to function and functioning on an Australia  
wide basis. Moreover each branch, in times when the  
amounts being deposited with it exceed the amounts  
being withdrawn from it will be building up surplus  
funds which, by reason of the practice of the banks 10  
relating to the collection of cheques and drafts, will  
accrurate at the head office of the bank in the State  
where the branch is situated. Such surplus funds are  
from time to time transmittted interstate to the head  
office in the State where the Central Administration of 15  
the Bank is situated and from there distributed inter-  
state as required by the bank.

34.\_\_\_\_\_Accordingly the whole of the cash and credit  
resources of each of the plaintiff Banks is available  
for use in the conduct of its business wherever carried 20  
on in Australia so that in the case of each Bank the  
funds of every branch are merely a fluctuating part of  
a single fund used by the Bank to an extent which in  
the different States and parts of the Commonwealth varies  
from time to time in accordance with the fluctuations of 25  
local requirements depending upon seasonal and trade

---

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conditions. From time to time funds are transferred to  
places where they are for the time being required for  
the proper and efficient carrying on of the business  
of the Bank. It is therefore not possible to point  
to any of the Australian assets used by the plaintiff 5  
Banks in their banking business which are used solely for  
intrastate banking purposes.

35.\_\_\_\_Moreover, the interstate banking facilities which  
are at present provided by the plaintiff Banks throughout 10  
Australia at all places where branches are established  
could not possibly be provided without the trained  
staffs, equipment and assets which the plaintiff Banks  
are enabled to maintain on this Australia-wide basis  
by reason of the intrastate banking at present included  
in their banking operations. If the banking operations 15  
of the plaintiff Banks were restricted to purely inter-  
state banking operations it would be in my opinion  
economically impossible to provide the existing inter-  
state banking facilities except possibly as between the  
capital cities or some of them. 20

36.\_\_\_\_Most of the assets of the plaintiff Banks are  
held and most of their liabilities have been incurred  
in the countries in which they carry on business, namely  
in Australia, New Zealand and England. Each of the  
plaintiff Banks holds in addition substantial assets in 25  
other countries. In regard to some of their assets and

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liabilities it may be that no serious practical problem  
would arise in determining whether they are, within  
the meaning of the Banking Act, 1947 "situated or deemed  
by law to be situated in Australia". But each of the  
plaintiff Banks engages in international banking trans- 5  
actions on a large scale. Transactions of this nature  
include -

(a) Credits created under the arrangements made  
overseas in favour of overseas customers  
available for drawing upon in Australia. 10

(b) Dealings in bills of exchange and other negotiable  
instruments drawn in one country and payable in  
another.

(c) Advances to customers resident overseas made  
overseas secured by mortgages, charges or liens 15  
sometimes under seal held in Australia over  
property real or personal in Australia or  
guaranteed by persons resident in Australia.

(d) Advances to customers resident in Australia  
made in Australia secured by mortgages, charges 20  
or liens sometimes under seal held outside  
Australia over property situate out of  
Australia or guaranteed by persons resident  
out of Australia.

By reason of the international banking transactions 25  
in which they engage each of the plaintiff Banks at

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any given time holds assets of great value and is subject  
to liabilities of great amount acquired and incurred  
respectively in circumstances which make the ascertain-  
ment of the location thereof as at the date of transfer  
referred to in the Act a matter of extreme difficulty 5  
involving a detailed examination of the facts and law  
relative to each particular transaction. In view of  
the large number of assets and liabilities that would be  
involved and the complexity of the necessary investiga-  
tions it would be impossible to ascertain on the date of 10  
transfer the location of all these assets and liabilities.

37.\_\_\_\_ Upon a claim for compensation under the Act  
there would be the greatest difficulty and uncertainty  
as to the location of many assets and liabilities and  
as to the compensation properly payable therefor. These 15  
difficulties would be aggravated by the enormous number of  
items to be investigated and the complexity of the  
transactions involved.

38.\_\_\_\_ In so far as the location, for the purposes of  
the Act, of assets and liabilities of the plaintiff 20  
Banks depends upon or is affected by the place of  
residence of the Bank concerned or of other persons,  
difficulty and uncertainty will arise from the facts  
that the Bank is resident in more than one country and  
that the other party also may have more than one resi- 25  
dence. In so far as the question depends upon or is

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affected by the place where the relevant contract is  
made difficulty and uncertainty will arise from the  
fact that in some cases there is more than one relevant  
contract and each is made in a different country. For  
example an agreement may be made in London between the 5  
Bank and a customer there under which the Bank under-  
takes to establish a credit of a specified amount in  
Australia to be drawn on by the customer there at  
places to be subsequently agreed upon. Later an agree-  
ment may be made in Australia between the Bank and the 10  
customer as to the amount which may be drawn against  
the credit in specified States and this agreement in  
turn may be varied from time to time by agreement made  
in Australia. Similarly in so far as the question of  
location depends upon the place for performance of an 15  
obligation difficulties would arise owing to the fact  
that there are frequently alternative places for  
performance. For example an agreement may be made  
in London between the Bank and a customer pursuant  
to which the Bank establishes an irrevocable letter 20  
of credit for say one hundred thousand pounds (£100,000)  
to be drawn against in Australia or New Zealand at  
the choice of the person in whose favour the credit  
is established.

39. Additional difficulties in assessing what is 25  
the proper amount of compensation will arise where

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there are secondary obligations and securities to be  
taken into account. For example a customer resident  
overseas may have an overdrawn account with the Bank  
in Australia which he is unable to pay in full so  
that the value of his obligation to the Bank is less 5  
than twenty shillings (20/-) in the pound. But the  
overdraft may be secured by a mortgage over property  
outside Australia and by a guarantee given by a person  
outside Australia and the whole or part of the debit  
may be recoverable by recourse to these securities. 10  
A further example is that at any given date there will  
be a very large volume of goods in transit to and from  
Australia covered by drafts and documents owned by the  
Bank. And on that same date the drafts and documents  
covering a large proportion of such goods will also be 15  
in transit to and from Australia. The location of  
these assets at the date of transfer provided for in  
the Act may depend on difficult questions of law and  
fact; and in the common case of pillage before during  
or after the voyage, further problems will arise as to 20  
the assessment of the value of the Bank's rights including  
its rights under the insurance policy and its rights  
against the shipowner under the bill of lading.  
40. \_\_\_\_\_ Even in the case of assets and liabilities with  
respect to which there is no problem of location great 25  
difficulties as to assessment of compensation will

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necessarily arise particularly where customers and  
others are not in a position to meet their obligations  
to the Bank and in cases of claims by and against the  
Bank for unliquidated damages for breach of contract  
or otherwise. Moreover there are obvious difficulties 5  
in valuing contingent assets of the plaintiff Banks and  
their contingent liabilities not only in respect of  
incomplete current transactions but also in respect of  
possible claims relating to any alleged wrongful dis-  
honouring of cheques and any past dealings which may 10  
ultimately form the basis of claims for conversion or  
otherwise.

41. \_\_\_\_\_ From my knowledge of the business of The Bank  
of Australasia in relation to its banking transactions  
with and on behalf of State Governments, I say that the 15  
services of private trading banks are at present availed  
of to a very large extent by some State Governments.  
In Victoria the procedure to be adopted with respect to  
the care and management of the Public Revenue has from  
earliest times been prescribed by Statute, the Act at 20  
present in force in respect thereto being the Audit  
Act, 1928. By Section 22 of that Act it is provided  
that every Receiver of Revenue is to make daily payments  
of all such moneys as are received by him to the credit  
of an account called "The Public Account" at such Bank 25  
at such place and in such manner as the Governor-in-Council

---

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from time to time appoints. By Section 75 of the  
Railways Act 1928 the provisions of the Audit Act are  
made applicable subject to the terms of the Railways  
Act itself to railway revenue received by the Victorian  
Railway Commissioners. From early times the practice 5  
has been for each of the main trading Banks carrying  
on business in Victoria to undertake with the Government  
to handle a defined share of "The Public Account" and  
departmental accounts and of all the banking business  
arising from the same. Originally the practice was 10  
for the Government to enter into a formal agreement  
with each Bank specifying the proportion of Government  
business which it was to handle, the terms on which the  
same was to be transacted and the various banking  
services to be performed by the Bank for the Govern- 15  
ment. The last occasion on which formal agreements  
of this kind were entered into was on the first day of  
April one thousand nine hundred and three when separate  
agreements were entered into between the Government  
and each of the plaintiff Banks and the five other 20  
principal private trading Banks then operating in Vic-  
toria whereby each such bank undertook to handle a one-  
eighth share of the Government banking business. Now  
produced and shown to me at the time of swearing this  
my affidavit and marked "G" is the original agreement 25  
with the plaintiff The Union Bank of Australia Limited

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made on the first day of April one thousand nine hundred  
and three as aforesaid.

42.\_\_\_\_\_These agreements have never been formally varied  
or rescinded but from time to time modifications have  
been made in the arrangements between the Banks and 5  
the Government as to certain of the matters dealt with  
therein. In addition some of the Banks which were parties  
to agreements in 1903 have since been amalgamated with  
other Banks and The Bank of New South Wales has under-  
taken a share of the Government business. But the 10  
practice above referred to whereby a proportion of the  
Government banking business is undertaken by each of the  
principal trading Banks operating in the State of Vic-  
toria including the plaintiff Banks has at all times  
been and still is observed. The bulk of the consoli- 15  
dated revenue of the State of Victoria is deposited in  
accounts in the private trading Banks and the necessary  
transmissions from place to place in Victoria and beyond  
are affected and moneys are disbursed in accordance  
with the directions of the Government given by cheque 20  
or otherwise.

43.\_\_\_\_\_Both the debits and the credits to "The Public  
Account" kept at the Head Office of each of the plaintiff  
Banks in Melbourne exceed eight million pounds (£8,000,000)  
annually. The total credits and debits to all the 25  
accounts kept at the Head Offices of the plaintiff Banks

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in Melbourne for the Victorian Railways Commissioners  
amount to millions of pounds annually. The total number  
of accounts of the Government and its Departments and  
Officers with the Plaintiff Banks in Victoria is about  
four hundred and eighty (480) of which about forty (40) 5  
are at Head Offices in Melbourne and the rest at branches  
in the suburbs and in country towns throughout Victoria.  
These include the following numbers and descriptions of  
accounts. Police accounts one hundred and seven (107),  
Clerk of Petty Sessions and Clerk of Courts forty-four (44) 10  
Lands Department and Department of Lands and Survey  
forty-seven (47) Forest Commission ten (10) Electoral  
Divisions eight (8) Gaol Accounts four (4) Crown  
Solicitor two (2) Prothonotary one (1) The Sheriff two  
(2) Crown Law Department one (1) Attorney-General one (1) 15  
Auditor-General two (2) Receivers and Collectors of  
Revenue seven (7) Australian Consolidated Inscribed  
Stock - State Loans Account one (1) State Superannuation  
two (2) Public Service Board two (2) Tender Board three  
(3) Premier's office one (1) Department of Mental 20  
Hygiene seven (7) Chief Secretary two (2) Labour  
Department two (2) Mines Department three (3) Health  
Department five (5) Statists Department three (3)  
Victorian Railways Commissioners sixty-seven (67)  
Education Department one hundred and twenty-eight (128). 25  
44.\_\_\_\_\_Each of the plaintiff Banks in the course of its

---

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business provides banking and clearing facilities on a  
large scale for the State Savings Bank of Victoria and to  
a lesser extent for the Savings Bank of South Australia.  
The said Savings Banks maintain a substantial number of  
accounts at Branches of the plaintiff Banks for the 5  
purpose of obtaining these facilities particularly for  
the clearing of cheques paid in to the credit of deposit-  
ors' accounts with the Savings Banks and for the transfer  
of funds from one branch of the Savings Bank to another.  
The turnover through these accounts amounts to millions 10  
of pounds annually. In addition the plaintiff Banks  
act as Agents for the said Savings Banks at a number of  
places in Victoria and in South Australia at which the  
relative Savings Bank has no branch. The functions  
performed at these Agencies include the receipt of 15  
deposits, the opening of new accounts, the making of  
payments, the transfer of signatures to allow with-  
drawals at other places, the collecting of pass books  
for transmission to Central Offices for entry of interest  
and the receipt of payments on account of loans. The 20  
said Savings Banks at any given date have interest  
bearing deposits with the private trading banks amount-  
ing to millions of pounds.

SIGNED AND SWORN by the abovenamed )  
Deponent on the nineteenth day of )  
December one thousand nine hundred ) FRANK HASSETT. 25  
and forty-seven at Sydney in the )  
State of New South Wales, )  
Before me:- )

R.V. Alexander, J.P. 30  
A Justice of the Peace.

Filed on behalf of the Plaintiffs.

121. Affidavit of Francis Favarger  
Hassett filed in Action No.43  
of 1947 on behalf of the  
Plaintiffs.

EXHIBIT "D".

THE BANK OF AUSTRALASIA.

BALANCE SHEET, OCTOBER 14, 1946.

<u>Liabilities</u>	£	<u>Assets.</u>	£
Circulation	2,630	Specie, Bullion, Government Notes and Bank Balances	11,379,162
Deposits at Interest	22,940,222	Money at Call and Short Notice	525,000
Current Accounts	52,240,758	Treasury Bills - Australian	1,500,000
Bills payable, Drafts in Transit and other Accounts, including provision for contingencies	6,416,056	Special Account with Commonwealth Bank of Australia	21,394,000
Acceptances for Customers, as per contra	<u>384,835</u>	British Government Securities	1,698,594
	81,984,501	Australian and New Zealand Government Securities, and other Investments, including Tax Reserve Certificates	15,011,607
<u>Capital:-</u>		Bills Receivable and Remittances in transit	4,335,580
900,000 Shares of £5 each, fully paid	£4,500,000	Advances to Customers, and other Accounts	34,342,696
(There is under the Charter a reserve liability of the Proprietors of £5 per share)		Liability of Customers for Acceptances, as per contra	384,835
Reserve Fund	2,500,000	Bank premises and Sites in Australia, New Zealand, and London, at Cost less amounts written off	<u>796,337</u>
(Used in the business of the Bank)			91,367,811
Currency Reserve	2,000,000	Liabilities of Customers and others on outstanding Credits, Guarantees, etc. as per contra	4,136,058
(Used in the business of the Bank)			

122. Exhibit "D" to Affidavit of Francis Favarger Hassetts sworn the nineteenth day of December, 1947 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

BALANCE SHEET, OCTOBER 14, 1946  
(Continued)

<u>Liabilities.</u>		<u>Assets.</u>
	£	£
Dividend payable March 28, 1947	123,750	
Profit and loss Account Balance	<u>259,560</u>	
	91,367,811	
<u>Contingent Liabilities:</u>		
Outstanding Credits, Guarantees, etc. as per Contra	<u>4,136,058</u>	
	£95,503,869	<u>£95,503,869.</u>
	=====	=====

NOTE: The Australian and New Zealand assets and liabilities are included at the par rates of exchange and the net difference which would have arisen had they been converted at the rates ruling at the date of the Balance Sheet is covered by Currency Reserves.

G.C. COWAN,  
Manager.

A.H. BULLOCK,  
Accountant.

123. Exhibit "D" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

123. Exhibit "D" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

EXHIBIT "E".

THE UNION BANK OF AUSTRALIA LIMITED.

BALANCE SHEET, 31st AUGUST, 1946.

<u>Liabilities.</u>	£	<u>Assets.</u>	£
Capital		Coin, Bullion, Notes and Cash	
Authorized <u>£12,000,000</u>		at Bankers	12,111,261
Capital		Cheques of other Banks	1,524,509
Issued	12,000,000	Balances with and due from	
Less: Reserve		other Banks	81,758
Liability		Money at Call and Short Notice	
thereon	<u>8,000,000</u>	in London	205,000
Paid up	4,000,000	Treasury Bills Australian Govern-	
Reserve Fund	3,250,000	ment	3,350,000
Final Dividend		Public Securities (valued at or	
payable January, 1947	110,000	under Market Price) -	
Balance of Profit		£	
and Loss Account	<u>175,086</u>	British Government	
Total Shareholders' Funds		Securities	2,440,721
Currency Reserve		Australian Govern-	
Deposits, Bills Payable	7,535,086	ment Securities	5,223,995
and other liabil-	1,600,000	New Zealand Govern-	
ities, including		ment Securities	2,721,431
provisions for		Local and Semi-	
Contingencies and		Government Secur-	
Exchange Adjust-		ities	<u>261,773</u>
ment Account	82,102,890	Tax Reserve Certificates -	
Balances due to		British Government	275,000
other Banks	<u>20,824</u>	Special Deposit with the	
Acceptances, Confirmed		Central Bank Division	
Credits, and Engagements		(Commonwealth Bank of	
on behalf of Customers	5,670,410	Australia)	20,908,000
		Balance of Remittances and	
		Drafts in transit and Bills	
		Receivable at London Office	
		and Branches	<u>6,258,247</u>
			<u>55,361,695</u>

124. Exhibit "E" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

NOTE: The Australian and New Zealand assets and liabilities are included at the par rates of exchange and the net difference which would have arisen had they been converted at the rates ruling at the date of the Balance Sheet is covered by Currency Reserves.

Loans, Advances and Bills discounted (after making provision for debts considered Bad or Doubtful)	35,216,547
Bank Premises in Australia and New Zealand at cost, less amount written off	624,288
London Leasehold Premises at cost	142,305
Less: Reserves against same and accrued interest	86,035
Liabilities of Customers for Acceptances, Confirmed Credits and Engagements per contra	<u>5,670,410</u>
	<u>£96,929,210</u>

125. Exhibit "E" to Affidavit of Francis Favarger Hassetts sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

125. Exhibit "E" to Affidavit of Francis Favarger Hassetts sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

Exhibit "F" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No. 43 of 1947 on behalf of the Plaintiffs.

EXHIBIT "F".

THE ENGLISH, SCOTTISH & AUSTRALIAN BANK LIMITED.

BALANCE SHEET at 1st JULY, 1946.

<u>I. SHARE CAPITAL AND RESERVES:-</u>			
Authorised and Issued 1,000,000 Shares at £5 per Share			<u>£5,000,000.</u>
Paid-up - 1,000,000 Shares £3 per share	£3,000,000		
General Reserve	1,815,000		
Profit and Loss Account	<u>297,621</u>		£5,112,621.
<u>II. DEFERRED LIABILITY:-</u>			
Reserve for estimated future liability for United Kingdom Income Tax 1947/8		<u>168,045</u>	
<u>III. CURRENT ASSETS:-</u>			
Cash in Hand, Bank Balances and Cash in transit and Cheques in course of collection	£5,880,997		
Money at Call in London	1,555,000		
Special Deposit Account with Commonwealth Bank of Australia	23,902,788		
Treasury Bills - Australian	398,406		
Bills Receivable in Hand and in Transit	1,774,752		
Investments at or under Market Value - British Government Securities	1,892,015		
Australian Government Securities	13,007,104		
Tax Reserve Certificates	---		
	<u>48,411,062</u>		
Advances (less Provision for Bad and doubtful debts) Other Accounts	19,264,667		
	<u>342,833</u>		68,018,562
		<u>£5,280,666</u>	
		=====	
		TOTAL:	

126. Exhibit "F" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

Deduct:

IV. CURRENT LIABILITIES AND PROVISIONS -

Perpetual Stocks (Redeemed 1st July 1946)	
Debenture Stock	-
Preferred Inscribed Deposit Stock	-
Deposits, Current Accounts, Bills Payable and other Liabilities (including Reserves for Contingencies)	62,292,261.
Notes in Circulation	796.
Balance due to other Banks	802,496.
Amounts due to Subsidiary Companies	1,182.
Provisions:-	
Australian Income Tax	133,675.
United Kingdom Taxation (including Income Tax liability 1946/7)	184,994.
Proposed Final Dividend	96,250.

£63,511,654.

£4,506,908.

Add:

V. FIXED ASSETS:-

Bank Premises, Furniture and Sites at Cost, less amounts written off	762,343.
Investments in Subsidiary Companies, at cost	11,415.

£5,280,666.

127. Exhibit "F" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

127. Exhibit "F" to Affidavit of Francis Favarger Hassett sworn the nineteenth day of December, 1947 and filed in Action No.43 of 1947 on behalf of the Plaintiffs.

ALL FIGURES IN THESE ACCOUNTS ARE EXPRESSED

IN ENGLISH POUNDS.

128. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

EXHIBIT G.

MEMORANDUM OF AGREEMENT made this first day of April, 1903, between the GOVERNMENT OF VICTORIA and THE UNION BANK OF AUSTRALIA LIMITED Melbourne, whereby the said Bank is constituted a Banker of the Government. 5

1.\_\_\_\_That the Bank shall have one-eighth share, or as near that proportion as may be, of the Public Account and Departmental Accounts, and of all the banking business arising from the same during the continuance of this Agreement, including acting, if terms can be arranged from 10 time to time in conjunction with the other Banks, as Agent for the flotation of Loans.

2.\_\_\_\_The Bank to allow interest on the daily current credit balance of the Public Account at the rate of 1 per cent. per annum, such interest to be credited half-yearly. 15

Interest not to be allowed on any portion of the account which may be in excess of £160,000, except as hereinafter mentioned.

3.\_\_\_\_The Bank to allow interest on the Trust Funds Trustees' Account at the rate of 3 per cent. per annum, 20

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

Between: THE BANK OF AUSTRALASIA and others  
Plaintiffs  
and  
THE COMMONWEALTH OF AUSTRALIA and  
others  
Defendants

This is the copy Agreement marked "G" produced and shown to Francis Favarger Hassett on his swearing his affidavit this nineteenth day of December, 1947 at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

128. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.



129. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

such interest to be calculated on the minimum credit balance during each calendar quarter, and to be credited half-yearly.

Interest not to be allowed on any excess beyond £65,000.

5

4.\_\_\_\_\_The Bank to negotiate Government cheques on, and to receive at and transmit to, places within the State where it has Branches moneys on Government Account free of exchange.

5.\_\_\_\_\_The Bank to negotiate Government cheques on and to transmit moneys on Government Account to other States within the Commonwealth where it is represented at the rate of (1/8th) one-eighth per cent., except in the case of the Northern Territory or South Australia, the North-Western District of Western Australia, and Burketown in Queensland, when the rate will be (1/4) one-quarter per cent. better for the Government than the rate to the public.

15

6.\_\_\_\_\_The Bank to issue drafts on London in exchange for cash to the extent of (1/8th) one-eighth of the

20

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

Between: THE BANK OF AUSTRALASIA and others  
Plaintiffs  
and  
THE COMMONWEALTH OF AUSTRALIA and  
others  
Defendants

This is the copy Agreement marked "G" produced and shown to Francis Favarger Hassett on his swearing his affidavit this nineteenth day of December, 1947 at Sydney before me:

R.V. Alexander, J.P.

Frank Hassett.

129. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

130. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

requirements of the Government, but pro rata with the other banks sharing the Public Account, and for such purposes as the Government may require at 30 and/or 60 days' sight, at (1/8th) one-eighth per cent. less than the Bank's current rate of the day to the public, in addition to stamp duties. 5

7.\_\_\_\_\_The Bank to purchase (1/8th) one-eighth of the Government drafts at 60 days' sight, drawn against funds in London, at (1/8th) one-eighth per cent. better for the government than the current rates at which drafts for that term are purchased by the Bank from the public, in addition to stamp duties; the whole of the drafts of which the Government may have the disposal to be equally distributed amongst the Banks sharing in the Public Account. 10  
The amount this Bank can be required to purchase not to exceed £75,000 per month, and the proceeds of all drafts bought by it to go to credit with it of the Public Account. 15

8.\_\_\_\_\_Advances to be made, if required, to the Government in London to the amount of £25,000 without security, and of £50,000 on security, subject in each case to forty-five 20

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

Between: THE BANK OF AUSTRALASIA and others Plaintiffs  
and  
THE COMMONWEALTH OF AUSTRALIA and  
others Defendants

This is the copy Agreement marked "G" produced and shown to Francis Favarger Hassett on his swearing his affidavit this nineteenth day of December, 1947 at Sydney before me:-

R.V. Alexander, J.P.

Frank Hassett.

130. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

131. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

days' notice, such notice to be given in Melbourne. Any such advance to be subject to fourteen days' notice of repayment.

Interest on such advances to be paid at the rate of 1 per cent. over the rate quoted from day to day by the leading Discount Houses in London for money deposited at fourteen days' notice, but not to be less than 4 per cent. per annum. 5

9. Interest to be allowed by the Bank on Government moneys in the hands of the Bank in London up to £150,000, at the rate of 1 per cent. below the rate quoted from day to day by the leading Discount Houses there for money deposited at fourteen days' notice, but not to exceed 4 per cent. per annum. 10

Fourteen days' notice to be given by the Government before withdrawal of sums exceeding £10,000. 15

In cases where the amount standing to the credit of the Government exceeds £150,000 special arrangements for interest are to be made, and if no agreement can be come to the Government are to be at liberty to place the amount in excess elsewhere in London. 20

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

Between: THE BANK OF AUSTRALASIA and others  
Plaintiffs  
and  
THE COMMONWEALTH OF AUSTRALIA and  
others Defendants

This is the copy Agreement marked "G" produced and shown to Francis Favarger Hassett on his swearing his affidavit this nineteenth day of December, 1947 at Sydney before me:

R.V. Alexander, J.P.

Frank Hassett.

131. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

132. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

10.\_\_\_\_\_The Government to be at liberty to place on special deposit in Melbourne up to £100,000, pro rata with the other Contracting Banks, for a period of twelve months from time to time any sum or sums of money in excess of £130,000 deposited under Clause 2, such deposits to bear 5 interest at the rate allowed at the time to the public on fixed deposits for twelve months by the majority of the Contracting Banks, but not exceeding 4 per cent. per annum. Any further deposits to be the subject of special arrangement with the Contracting Banks. 10

11.\_\_\_\_\_The whole of the Government business is to be divided equally, subject to the special arrangement mentioned in Clause 10, among the eight Banks holding the Government Account, and should any of such Banks other than this Bank fail to carry out its contract with the 15 Government, no requisition shall be made upon this Bank for the defaulting Bank's deficiencies unless with the written consent of this Bank first obtained.

12.\_\_\_\_\_It is understood and agreed that each reconstructed Bank shall assume and be taken to have assumed from the 20 date of its reconstruction all obligations and to have

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

Between: THE BANK OF AUSTRALASIA and others  
Plaintiffs  
and  
THE COMMONWEALTH OF AUSTRALIA and  
others Defendants

This is the copy Agreement marked "G" produced and shown to Francis Favarger Hassett on his swearing his affidavit this nineteenth day of December, 1947 at Sydney before me:

R.V. Alexander, J.P.

Frank Hassett.

132. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

133. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

been invested with all rights in respect of any special Loan contracts entered into by the original Bank with the Government.

13.\_\_\_\_\_This Agreement not to apply to Savings Bank moneys.

5

14.\_\_\_\_\_The duration of this Agreement shall be fixed for twelve months certain from the first day of April, 1903, and shall then be terminable on six months' notice from either side.

Witness: H.W. Meakin  
Under Treasurer  
of Victoria.

Wm. Shiels,  
Treasurer of Victoria.

10

Witness: Geo. H. Roche  
Secy. Contracting  
Banks.

The Union Bank of  
Australia Limited

by its Attorney  
S. Hallamore.

15

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

Between: THE BANK OF AUSTRALASIA and others  
Plaintiffs  
and  
THE COMMONWEALTH OF AUSTRALIA and  
others  
Defendants

This is the copy Agreement marked "G" produced and shown to Francis Favarger Hassett on his swearing his affidavit this nineteenth day of December, 1947 at Sydney before me:

R.V. Alexander, J.P.

Frank Hassett.

133. Affidavit of Francis Favarger Hassett filed in Action No.43 of 1947 on behalf of the Plaintiffs.

No. 9 - Writ of Summons filed in Action No. 44  
of 1947 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA )  
NEW SOUTH WALES REGISTRY. ) No. 44 of 1947.

Between:

THE STATE OF VICTORIA and 5  
Anor.

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others 10

Defendants

GEORGE THE SIXTH by the Grace of God, of Great  
Britain, Ireland and the British Dominions  
beyond the Seas, King Defender of the Faith,  
Emperor of India. 15

TO: The Commonwealth of Australia, Joseph Benedict  
Chifley, The Commonwealth Bank of Australia and  
Hugh Trail Armitage.

WE COMMAND YOU that within twenty-eight days after the  
service of this Writ on you inclusive of the day of such 20  
service, you do cause an appearance to be entered for  
you in Our High Court of Australia, in an action at the  
suit of the State of Victoria and the Attorney-General  
of the State of Victoria; and take notice that in  
default of your so doing the Plaintiffs may proceed 25  
therein, and judgment may be given in your absence.

134. Writ of Summons filed in Action  
No. 44 of 1947 on behalf of the  
Plaintiffs.

135. Writ of Summons filed in Action  
No. 44 of 1947 on behalf of the  
Plaintiffs.

WITNESS: The Right Honourable Sir John Greig  
Latham G.C.M.G., Chief Justice of Our said High  
Court, the 28th day of November in the year of  
Our Lord one thousand nine hundred and forty-  
seven.

5

(L. S.) F.C. LINDSAY,

DISTRICT REGISTRAR.

N.B. This Writ is to be served within twelve calendar  
months from the date thereof, or, if renewed, within six  
calendar months from the date of the last renewal, 10  
including the day of such date, and not afterwards.

Appearance to this Writ may be entered by the Defendants  
either personally or by Solicitor at the New South  
Wales Registry of the High Court.

If any Defendant neither resides nor carries on business 15  
in the State of New South Wales his or its Appearance  
may, at his or its option be entered either at the  
place abovementioned or at the Principal Registry of  
the High Court at Melbourne.

135. Writ of Summons filed in Action  
No. 44 of 1947 on behalf of the  
Plaintiffs.

136. Writ of Summons filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

THE PLAINTIFFS' CLAIM IS FOR:

1. \_\_\_\_\_ A declaration that the Banking Act 1947, or alternatively, that Divisions 2, 3 and 4 of Part IV and every Section thereof and Part VII and Section 56 thereof, are invalid on the grounds that the said Act and the said provisions thereof - 5

(a) are beyond the legislative powers conferred on the Commonwealth Parliament by the Constitution;

(b) are not laws with respect to any subject matter with respect to which the Parliament of the Commonwealth is authorised to make laws by section 51 or any other provision of the Constitution; 10

(c) are in contravention of section 92 of the Constitution; 15

(d) are in contravention of Section 105A of the Constitution and the agreements therein referred to or made thereunder; and

(e) without Constitutional authority deprive the Plaintiff State of capacities powers and rights which are necessary for its continued existence under the Constitution and are essential to the discharge of its Constitutional functions. 20

2. \_\_\_\_\_ An injunction restraining the Defendant the Right Honourable Joseph Benedict Chifley from giving or publishing or causing to be given or published any notice under Sections 13, 22 or 46 of the said Act. 25

3. \_\_\_\_\_ An injunction restraining the Defendants and each of them from doing any other act in exercise of any of

136. Writ of Summons filed in Action No. 44 of 1947 on behalf of the Plaintiffs.



137. Writ of Summons filed in Action  
No. 44 of 1947 on behalf of the  
Plaintiffs.

the powers purported to be conferred by Divisions 2, 3  
and 4 of Part IV and by Part VII of the said Act.

4. \_\_\_\_\_ Such further or other relief as to the Court may  
seem fit.

BIDDULPH & SALENGER

5

As Agent for F.G. Menzies

Solicitor for Plaintiff.

This Writ was issued by Lindon H. Biddulph of the firm  
of Biddulph & Salenger Solicitors of 174 Phillip Street  
Sydney in the State of New South Wales as agent for 10  
Frank Gladstone Menzies of 461 Lonsdale Street Melbourne  
in the State of Victoria whose address for service is  
care of Messrs. Biddulph & Salenger 174 Phillip Street  
Sydney aforesaid Crown Solicitor for the State of  
Victoria and Solicitor for the Plaintiffs. 15

137. Writ of Summons filed in Action  
No. 44 of 1947 on behalf of the  
Plaintiffs.

No. 10 - Notice of Motion for Interlocutory  
Injunction filed in Action No. 44 of 1947 on  
behalf of the Plaintiffs.

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IN THE HIGH COURT OF AUSTRALIA )  
 ) 1947 No. 44.  
NEW SOUTH WALES REGISTRY )

Between:

THE STATE OF VICTORIA and 5  
Another  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others 10  
Defendants

TAKE NOTICE that an application will be made before the  
Honourable Owen Dixon a Justice of this Honourable Court  
at the Court House Darlinghurst Sydney on Tuesday the  
second day of December one thousand nine hundred and 15  
forty-seven at 9.30 o'clock in the forenoon or so soon  
thereafter as Counsel can be heard on behalf of the  
Plaintiffs for injunctions

- (1) restraining the Defendant, the Right Honourable  
Joseph Benedict Chifley the Treasurer of the Com- 20  
monwealth until the determination of this action  
or the further order of the Court from giving or  
publishing or causing to be given or published  
any notice under sections 13, 22 or 46 of the  
Banking Act 1947; 25
- (2) restraining the Defendants and each of them from  
doing any other act in exercise of any of the

138. Notice of Motion for Inter-  
locutory Injunction filed in  
Action No. 44 of 1947 on  
behalf of the Plaintiffs.

139. Notice of Motion for Inter-  
locutory Injunction filed in  
Action No. 44 of 1947 on  
behalf of the Plaintiffs.

powers purported to be conferred by Divisions 2,  
3 and 4 of Part IV by Part VII and section 56  
of the said Act.

AND for such further or other Order as the Court shall  
think fit to make in the premises, upon the grounds 5  
appearing in and by the Affidavits of Arthur Tennyson  
Smithers and Norman Rees Williams sworn herein on the  
twenty-eighth day of November one thousand nine hundred  
and forty-seven.

DATED this first day of December one thousand nine 10  
hundred and forty-seven.

BIDDULPH & SALENGER,

Solicitors for the Plaintiffs.

To the abovenamed Defendants and each of them.

This Notice of Motion is filed by Lindon H. Biddulph of 15  
the firm of Biddulph & Salenger Solicitors of 174 Phillip  
Street Sydney in the State of New South Wales as agent  
for Frank Gladstone Menzies of 461 Lonsdale Street,  
Melbourne in the State of Victoria, Crown Solicitor  
and Solicitor for the Plaintiffs. 20

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139. Notice of Motion for Inter-  
locutory Injunction filed in  
Action No. 44 of 1947 on  
behalf of the Plaintiffs.

No. 11 - Affidavit of Arthur Tennyson Smithers  
 sworn the 28th day of November, 1947 and filed  
 in Action No. 44 of 1947 on behalf of the  
 Plaintiffs.

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<u>IN THE HIGH COURT OF AUSTRALIA</u>	)	
<u>NEW SOUTH WALES REGISTRY.</u>	)	<u>No. 44 of 1947.</u>

Between:

<u>THE STATE OF VICTORIA</u> and Another	5
---	---

Plaintiffs

and

<u>THE COMMONWEALTH OF AUSTRALIA</u> and others	10
--	----

Defendants

I, ARTHUR TENNYSON SMITHERS of 11 Sylverly Grove,  
 Caulfield in the State of Victoria Civil Servant make  
 oath and say:-

1._____I am the Director of Finance for the State of Victoria and permanent head of the Department of the Treasury. Subject to the Treasurer the management and control of the public revenue of the said State is under my supervision.	15
--	----

2._____The public revenue of the said State is managed and administered in accordance with the provisions of the Audit Act 1928.	20
--	----

3._____For the purposes of the receipt, custody, control	
--	--

Date of Swearing: 28/11/47.      A.T. SMITHERS Deponent.

Place of Swearing - Melbourne.    H. Gengoult Smith - Witness.

140. Affidavit of Arthur Tennyson  
 Smithers sworn the 28th day  
 of November, 1947 and filed  
 in Action No. 44 of 1947 on  
 behalf of the Plaintiffs.

141. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

and management of the public revenue, loan and other moneys of the State, and to enable the State to carry on and perform its functions of government, banking facilities are essential and since long prior to the establishment of the Commonwealth such facilities have  
5  
been provided by the private banks carrying on banking business in Victoria.

4. \_\_\_\_\_ Under the system employed for the management and control of the public revenue of the said State all receipts from all sources are paid either directly or  
10  
through Revenue Accounts hereinafter described into an account known as the "Public Account" and from this account either directly or through Advance Accounts hereinafter described all payments and disbursements are made.  
15

5. \_\_\_\_\_ Under Section 22 of the Audit Act 1928 and corresponding earlier enactments the Governor-in-Council has appointed banks into which all public moneys must be paid and the banks so appointed by the Governor-in-Council are the following:-  
20

The Bank of Australasia,  
The Commercial Bank of Australia Limited,  
The Union Bank of Australia Limited,  
The English Scottish & Australian Bank Limited,  
The National Bank of Australia Limited, 25  
The Bank of New South Wales,  
The Commercial Banking Company of Sydney Limited.

The said Public Account of the State is kept at these

---

Date of Swearing: 28/11/47. A.T. SMITHERS - Deponent.

Place of Swearing - Melbourne. H. Gengoult Smith - Witness.

141. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

142. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

banks who between them have undertaken and transact the whole of the banking business of the said State.

6. \_\_\_\_\_ Now produced and shown to me and marked "ATS" is a true copy of a Memorandum embodying the terms of agreements which on 1st April 1903 were entered into 5 between the Government of Victoria and each of the five banks first named in paragraph 5 hereof and three other banks then carrying on business in Victoria. The businesses of two of the latter were taken over by certain of the banks named in paragraph 5, and the business 10 of the third was taken over by the Commercial Banking Company of Sydney Limited which thereupon became a party to an agreement in the same terms. The Bank of New South Wales became a party to an agreement in the same terms in the year 1927. 15

7. \_\_\_\_\_ (a) Clause 2 of the said agreements has been varied from time to time so that interest is now paid by the banks at the rate of one-half per centum per annum on the daily current credit balance of the Public Account, 20 irrespective of the amount of such credit.

(b) Clause 3 of the said agreements no longer operates as the accounts which are referred to therein have ceased to exist.

(c) Insofar as the said agreement relates to 25 overseas banking transactions its operation

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Date of swearing: 28/11/47. A.T. SMITHERS - Deponent.

Place of Swearing: Melbourne. H. Gengoult Smith - Witness.

142. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

143. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

has been affected by the existence of exchange controls exercised in recent years by the Commonwealth Government to which the Plaintiff State has conformed.

(d) For some period the Commonwealth Bank was a party to a similar agreement but it ceased to be a party many years ago although a substantial amount still stands to the credit of the Public Account in the Commonwealth Bank on account of the funding of Treasury Bills in 1944.

8. Except as aforesaid, the said agreements are still in operation and govern the maintenance of the Public Account at the banks referred to in paragraph 5 hereof and the payment of interest thereon.

9. In addition to all revenue, all other moneys received by the Government of Victoria, from whatever source, including loan moneys and payments by the Commonwealth under the States Grants (Tax Reimbursement) Act 1946 are paid ultimately into the Public Account at one or other of the said banks. Pursuant to Section 14 of the Audit Act 1928, Receivers of Revenue numbering approximately 30 have been appointed by the Governor-in-Council. These Receivers of Revenue are stationed in various cities and towns throughout the State and each pays daily into the Public Account at the Head

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Date of Swearing: 28/11/47. A.T. SMITHERS - Deponent.

Place of Swearing: Melbourne. H. Gengoult Smith - Witness.

143. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

144. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

Office or local branch of one of the said banks all moneys received by him. The number of branches of the said banks (including Head Offices) at which payments are so made into the said account is 300. Pursuant to Section 15 of the said Act, Collectors of Imposts, number- 5 ing approximately 165, have been appointed by the Governor-in-Council. Collectors of Imposts are also stationed in various cities and towns throughout the State but do not pay the moneys received by them directly into the public account. Instead they pay all public 10 moneys received by them into Revenue Accounts established at various branches of the said banks throughout the State. The number of accounts so established is approximately 400. No moneys are withdrawn from Revenue Accounts save that at arranged periods each 15 Collector of Imposts draws a cheque on his Revenue Account for the amount paid in by him and forwards such cheque to a Receiver of Revenue who pays the same into the Public Account at one of the said banks. The duties performed by Receivers of Revenue and Collectors of 20 Imposts respectively are more specifically set out in the Audit Act 1928.

10. \_\_\_\_\_ All moneys paid into any bank to the credit of the Public Account are by virtue of Section 31 of the Audit Act 1928 deemed to be money lent by His Majesty 25

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Date of Swearing: 28/11/47. A.T. SMITHERS - Deponent.

Place of Swearing: Melbourne. H. Gengoult Smith - Witness.

144. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.



145. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

to the proprietors of such bank and all payments of whatsoever nature on behalf of the Government of Victoria are made either by Not Negotiable cheque drawn on or by means of moneys drawn from the Public Account at one of the said banks or out of moneys drawn from Advance Accounts established as hereinafter described. The procedure governing the payment of moneys from the Public Account is set out in Sections 31 to 38 of the Audit Act and no cheque drawn upon the Public Account is paid by any Bank unless a Schedule in the form of the 9th Schedule to such Act has been prepared and delivered to such bank with full particulars of the cheques which such bank is thereby authorised to honour.

11.\_\_\_\_\_In cases where such a procedure is convenient the Treasurer opens an "Advance Account" on behalf of a Government Department at a convenient branch of one of the said banks. Money is paid into such accounts by cheques drawn upon the Public Account and appropriate officers are authorised to operate upon such accounts for governmental purposes. Upon receipt by the Treasurer of proper vouchers for payments made out of an advance account he will keep the account in credit to the necessary extent by means of cheques drawn on the Public Account. There have been established approximately 700 such advance accounts at very many branches of the said banks throughout the State.

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Date of Swearing: 28/11/47.

A.T. Smithers - Deponent.

Place of Swearing: Melbourne.

H. Gengoult Smith -Witness.

145. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

146. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

12.\_\_\_\_\_The banking business transacted for the said State by the banks named in paragraph 5 hereof through the Public Account involve a multitude of debit and credit items each year, the annual credits and debits each exceeding £55,000,000. Such transactions relate 5 to every form of governmental function including the maintenance of the government and the parliament of the State and the administration of justice through the Courts of the said State and the provision of moneys necessary for these purposes. 10

13.\_\_\_\_\_I verily believe that the banks named in paragraph 5 hereof are ready and willing to continue to undertake and transact the banking business of the said State and provide the banking facilities necessary to enable it to carry on unless they are prohibited from 15 doing so under the provisions of the Banking Act 1947 or are prevented from doing so by the exercise of the powers of acquisition contained in the said Act. I verily believe that unless restrained by this Honourable Court the powers under the said Act hereinbefore refer- 20 red to will be exercised by the Defendants, and in the event of the private banks named in the first schedule to the said Act being prohibited from carrying on banking business or being prevented from doing so by reason of their assets being acquired by the Commonwealth Bank, 25 in my opinion the only practicable course for the State to

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Date of Swearing: 28/11/47. A.T. SMITHERS - Deponent.

Place of Swearing: Melbourne. H. Gengoult Smith - Witness.

146. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

147. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

pursue will be to accept such banking facilities as may be available to it from the Commonwealth Bank.

SIGNED AND SWORN at Melbourne in the )  
State of Victoria by the said Arthur )  
Tennyson Smithers this 28th day of )  
November 1947 Before me: )

A.T. SMITHERS.

5

H. Gengoult Smith,  
Justice of the Peace.

This Affidavit is filed on behalf of the Plaintiffs.

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147. Affidavit of Arthur Tennyson Smithers sworn the 28th day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.



149. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

Department and the Credit Foncier Department.

3.\_\_\_\_\_By virtue of Section 6 of the said Act the Commissioners of the said Bank hold all real and personal property for and on account of the Government of Victoria, and all moneys belonging to them are declared to be public 5 moneys belonging to His Majesty and the property of the Crown.

4.\_\_\_\_\_By virtue of Sections 30 and 54 of the said Act the repayment of deposits in the said Bank is guaranteed by The Government of Victoria. 10

5.\_\_\_\_\_ (a) The State Savings Bank Department receives moneys on deposit from depositors at interest and pays out moneys to depositors from deposits made by them. So much of the moneys due to depositors as is not retained in cash is 15 invested in terms of Section 55 of the said Act which inter alia authorises the said Bank to make deposits with such banks as are constituted bankers of the Government of Victoria or approved by the Auditor General of the 20 State of Victoria. Pursuant to this authority deposits have been made with the following Banks:-

The Bank of Adelaide.  
The Bank of Australasia. 25  
The Bank of New South Wales.  
The Commercial Bank of Australia Ltd.  
The Commercial Banking Company of Sydney Ltd.

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Date of Swearing: 28/11/47 Deponent: N.R. WILLIAMS  
Place of Swearing: Melbourne Witness: H. Gengoult Smith.

149. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

150. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

The Commonwealth Bank of Australia.  
The English Scottish and Australian Bank Ltd. 5  
The National Bank of Australasia Ltd.  
The Queensland National Bank Ltd.  
The Union Bank of Australia Ltd.

(b) The said Bank is a client of all of the banks referred to in sub-paragraph (a) of this paragraph and has accounts and dealings with such banks as follows:- 10

(i) The Head Office of the said Bank has a current account with each of the banks (other than the Queensland National Bank) referred to in sub-paragraph (a) of this paragraph. The said Bank 15 receives interest from the private trading banks on the balance in excess of £10,000 at credit of these current accounts with varying limitations as to the amount of the interest-bearing 20 balances. The said Bank does not receive interest on its current account with the Commonwealth Bank of Australia (Central Bank) but is permitted by that Bank to purchase from it treasury bills 25 to an amount equivalent to the amount at credit of the current account. This arrangement enables the said Bank to receive from the aggregate of the amount

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Date of Swearing: 28/11/47 Deponent: N.R. WILLIAMS  
Place of Swearing: Melbourne. Witness: H. Gengoult Smith.

150. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

151. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

at credit of its current account with the Commonwealth Bank of Australia and the amount invested in treasury bills, a return not less favourable than the return on moneys invested on current account with the private trading banks. 5

(ii) The Head Office of the said Bank has fixed deposits with each of the banks referred to in sub-paragraph (a) of this paragraph upon which it receives interest at the prevailing rates but such deposits are withdrawable on demand subject to interest adjustment. 10

(iii) Each branch of the said Bank has a current account with the local branch of one of the private trading banks referred to in sub-paragraph (a) of this paragraph. Each branch of the said Bank deposits in such accounts all moneys received which it does not require to retain for "till" money; and draws upon it for any moneys required to replenish its "till" money. From time to time moneys are remitted to the Head Office of the said Bank by a branch and by Head Office to a branch by means of cheques drawn on 15 20 25

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Date of Swearing: 28/11/47. Deponent: N.R. WILLIAMS  
Place of Swearing: Melbourne. Witness: H. Gengoult Smith.

151. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

152. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

the respective current accounts.

(iv) In 81 places in Victoria where the said Bank has not yet established a branch it has appointed six of the banks referred to in sub-paragraph (a) of this paragraph (the exceptions being the Commonwealth Bank of Australia, the Bank of New South Wales, the Queensland National Bank Ltd., and the Bank of Adelaide) to be its agents to receive deposits from depositors and loan payments from borrowers from the Bank and to make payments to depositors. It is not feasible to appoint the Commonwealth Bank of Australia, which is an active competitor for Savings Bank business, as agent for the said Bank in these places. 5 10 15

(v) The said Bank has agreements with the following private trading banks whereby its depositors who are visiting other States may withdraw money from their accounts with the said Bank:- 20

Depositors visiting	) Any branch of the	
New South Wales	) Bank of New South	
Northern Territory	) Wales in those	25
Australian Capital Territory or	) States or Territories.	
Western Australia	)	

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Date of Swearing: 28/11/47. Deponent: N.R. WILLIAMS  
Place of Swearing: Melbourne. Witness: H. Gengoult Smith

152. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.



153. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

Depositors visiting ) Any branch of the  
Queensland ) Queensland National  
Bank Ltd. in that  
State.

6. \_\_\_\_\_ The Credit Foncier Department of the said Bank 5  
in terms of Part III of the said Act makes long-term  
advances to residents of Victoria to enable them to ac-  
quire farm, house, and house and shop properties, makes  
advances to a limited class of prescribed companies and  
acquires and erects homes for sale on extended terms to 10  
persons of small means.

The funds are obtained by the sale of Credit Foncier  
debentures and Credit Foncier debenture stock to the  
Public and the State Savings Bank Department. These  
debentures and stock are secured upon the assets of the 15  
Credit Foncier Department and the due payment of these  
securities is guaranteed by the Government of Victoria.

SIGNED AND SWORN at Melbourne in )  
the State of Victoria by the )  
said NORMAN REES WILLIAMS this ) N.R. WILLIAMS 20  
28th day of November, 1947 )  
Before me - )

H. Gengoult Smith  
Justice of the Peace.

This Affidavit is filed on behalf of the Plaintiffs. 25

153. Affidavit of Norman Rees Williams sworn the twenty-eighth day of November, 1947 and filed in Action No. 44 of 1947 on behalf of the Plaintiffs.

No. 13 - Writ of Summons filed In Action No. 16  
of 1947 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA )  
SOUTH AUSTRALIA REGISTRY. ) No. 16 of 1947.

Between:

THE STATE OF SOUTH AUSTRALIA 5  
and Another  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others 10  
Defendants

GEORGE VI, by the Grace of God of Great Britain,  
Ireland and the British Dominions beyond the  
Seas, King, Defender of the Faith, Emperor of  
India. 15

To:

THE COMMONWEALTH OF AUSTRALIA, THE RIGHT HONOURABLE  
JOSEPH BENEDICT CHIFLEY the Treasurer of the Com-  
monwealth, the COMMONWEALTH BANK OF AUSTRALIA,  
and HUGH TRAIL ARMITAGE the Governor of the said 20  
Bank.

WE COMMAND YOU that within fourteen days after the service  
of this Writ on you, inclusive of the day of such service,  
you do cause appearances to be entered for you in our  
High Court of Australia in an action at the suit of the 25  
State of South Australia and the Attorney General for the

154. Writ of Summons filed in Action  
No. 16 of 1947 on behalf of the  
Plaintiffs.

155. Writ of Summons filed in Action  
No. 16 of 1947 on behalf of the  
Plaintiffs.

said State; and take notice that in default of your so  
doing the plaintiffs may proceed therein, and judgment  
may be given in your absence.

WITNESS: The Right Honourable Sir John Greig  
Latham, G.C.M.G., Chief Justice of our said 5  
High Court, the 28th day of November in the  
year of Our Lord one thousand nine hundred and  
forty-seven.

K.H. KIRKMAN,

DEPUTY DISTRICT REGISTRAR. 10

N.B. This Writ is to be served within twelve months  
from the date thereof, or, if renewed, within six  
calendar months from the date of the last renewal,  
including the day of such date, and not afterwards.

Appearances to this Writ may be entered by the Defend- 15  
ants either personally or by Solicitor at the Registry  
of the High Court at Adelaide, in the State of South  
Australia.

If any defendant neither resides nor carries on business  
in the State of South Australia his appearance may, at 20  
his option, be entered either at the place above mention-  
ed or at the Principal Registry of the High Court at  
Melbourne.

155. Writ of Summons filed in Action  
No. 16 of 1947 on behalf of the  
Plaintiffs.

156. Writ of Summons filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

THE PLAINTIFFS CLAIM:

1. \_\_\_\_\_ Against all the defendants a declaration that the Banking Act, 1947, and each and every section thereof is beyond the power of the Parliament of the Commonwealth and is contrary to the Constitution of the Commonwealth 5 and is void.

2. \_\_\_\_\_ Against all the defendants a declaration that Sections 13, 14, 17, 18, 19, 24, 46 and 56 of the said Act and each of them constitute breaches by the defendant Commonwealth of the rights of the plaintiff State 10 and of the obligations of the Commonwealth under the Financial Agreement set forth in the Schedule to the Appendix to the Amending Financial Agreement Act, 1944, of South Australia and are inconsistent with the terms of the said Agreement and are void, and all such injunc- 15 tions and restraining orders as may be necessary to preserve the rights of the plaintiff State as declared by the said declaration.

3. \_\_\_\_\_ Against all the defendants a declaration that the giving by the said Treasurer of any notice or notices 20 under the Banking Act, 1947, or the taking of any other step under the said Act to abolish the private trading banks or to acquire the businesses thereof will be contrary to the terms of the said Financial Agreement and will constitute a breach of contract on the part of 25 the Commonwealth.

4. \_\_\_\_\_ Against the defendants the Right Honourable Joseph Benedict Chifley and every person for the time being administering the Department of the Treasury of the Commonwealth, the Commonwealth Bank of Australia 30

156. Writ of Summons filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

157. Writ of Summons filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

and Hugh Trail Armitage and every person for the time being performing the functions of Governor of the said Commonwealth Bank, an injunction restraining them and each of them from taking any action in pursuance or pur-  
porting to be in pursuance of the provisions of the Bank- 5  
ing Act, 1947, with a view to or for the purpose of -

(a) the acquisition by the Commonwealth or the Commonwealth Bank of Australia of shares in any of the private banks mentioned in the First Schedule to the said Act; 10

(b) assuming or carrying on the management of the said private banks or any of them for or on behalf of the Commonwealth Bank of Australia or for the purpose of facilitating the control by the said Commonwealth Bank of the Banking business of 15  
private banks:

(c) the taking over by the Commonwealth Bank of Australia of the businesses of the said private banks or any of them; or

(d) prohibiting the said private banks or any of them 20  
from carrying on banking business.

5. \_\_\_\_\_ Such further or other relief as the nature of the case may require.

Place of Trial - Adelaide.

Mode of Trial - Before a Justice without a Jury. 25

A.J. HANNAN,  
Solicitor for the Plaintiffs.

This writ is issued by Albert James Hannan whose address for service is Flinders Street, Adelaide, Solicitor for the plaintiffs.

157. Writ of Summons filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

158. Writ of Summons filed in Action  
No. 16 of 1947 on behalf of the  
Plaintiffs.

This writ was served by me on the defendants at Adelaide  
on the \_\_\_\_\_ day of November, 1947.

Endorsed the \_\_\_\_\_ day of \_\_\_\_\_ 1947.

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158. Writ of Summons filed in Action  
No. 16 of 1947 on behalf of the  
Plaintiffs.

No. 14 - Notice of Motion for Interlocutory  
Injunction filed in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA )  
 ) No. 16 of 1947.  
SOUTH AUSTRALIAN REGISTRY. )

Between:

THE STATE OF SOUTH AUSTRALIA 5  
and Another

Plaintiffs

- and -

THE COMMONWEALTH OF AUSTRALIA 10  
and Others

Defendants.

TAKE NOTICE that an application will be made before the  
Honourable Sir Owen Dixon K.C.M.G., a Justice of this  
Honourable Court at the Court House Darlinghurst Sydney  
on Tuesday the second day of December One thousand nine 15  
hundred and forty-seven at 9.30 o'clock in the forenoon  
or so soon thereafter as counsel can be heard on behalf  
of the Plaintiffs for injunctions -

1. \_\_\_\_\_ Restraining the Defendant the Right Honourable  
Joseph Benedict Chifley and every person for the time 20  
being administering the Department of the Treasury of the  
Commonwealth the Commonwealth Bank of Australia and Hugh  
Trail Armitage and every person for the time being per-  
forming the functions of Governor of the said Commonwealth  
Bank from taking any action in pursuance or purporting 25  
to be in pursuance of the provisions of the Banking Act  
1947 with a view to or for the purpose of -

159. Notice of Motion for Injunction  
filed in Action No. 16 of 1947  
on behalf of the Plaintiffs.

160. Notice of Motion for Injunction  
filed in Action No. 16 of 1947  
on behalf of the Plaintiffs.

- (a) the acquisition by the Commonwealth or the Commonwealth Bank of Australia of shares in any of the private banks mentioned in the First Schedule to the said Act.
- (b) assuming or carrying on the management of the said private banks or any of them for or on behalf of the Commonwealth Bank of Australia or for the purpose of facilitating the control by the said Commonwealth Bank of the Banking Business of private banks. 5 10
- (c) the taking over by the Commonwealth Bank of Australia of the businesses of the said private Banks or any of them or
- (d) prohibiting the said private banks or any of them from carrying on banking business 15

until the determination of this action or the further order of the Court.

2. \_\_\_\_\_ Restraining the Defendant the Right Honourable Joseph Benedict Chifley the Treasurer of the Commonwealth and every person for the time being administering the Department of the Treasury of the Commonwealth until the determination of this action or the further order of the Court from giving or publishing or causing to be given or published any notice under Sections 13, 22, or 46 of the Banking Act 1947. 20 25

3. \_\_\_\_\_ Restraining the Defendants the Right Honourable Joseph Benedict Chifley and every person for the time being administering the Department of the Treasury of the Commonwealth the Commonwealth Bank of Australia and Hugh Trail Armitage and every person for the time being 30



161. Notice of Motion for Injunction  
filed in Action No. 16 of 1947  
on behalf of the Plaintiffs.

performing the functions of Governor of the said Common-  
wealth Bank and each of them from doing any other act in  
pursuance or purporting to be in pursuance of Divisions 2,  
3, and 4 of Part IV of Part VII or of Section 56 of the  
Banking Act 1947

5

AND FOR such further or other order as the Court shall  
think fit to make in the premises upon the grounds appear-  
ing in and by the affidavit of Ferdinand Caire Drew sworn  
herein on the twenty eighth day of November One thousand  
nine hundred and forty seven

10

DATED this first day of December One thousand nine  
hundred and forty seven.

BIDDULPH & SALENGER

Solicitors for the Plaintiffs.

To the abovenamed Defendants and each of them.

15

This Notice of Motion is filed by Lindon Helton Biddulph  
of the firm of Biddulph & Salenger Solicitors of 174  
Phillip Street Sydney in the State of New South Wales  
as agent for Albert James Hannan of Flinders Street  
Adelaide in the State of South Australia, Crown Solicitor  
and Solicitor for the Plaintiffs.

20

161. Notice of Motion for Injunction  
filed in Action No. 16 of 1947  
on behalf of the Plaintiffs.



163. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed in  
Action No. 16 of 1947 on  
behalf of the Plaintiffs.

are assets consisting of Commonwealth Government securi-  
ties, excluding Commonwealth Treasury Bills and debent-  
tures, of the aggregate face value of not less than app-  
roximately £500,000,000 held by the Commonwealth Bank.

I believe that most of the shareholders of the private 5  
trading banks will agree to take their compensation in  
the form of bonds or inscribed stock instead of in cash,  
and that the Commonwealth Bank will attempt to carry out  
such agreements by issuing to shareholders Commonwealth  
Bonds and inscribed stock held by the Commonwealth Bank. 10  
No public loan has been authorised by the Loan Council to  
be raised by the Commonwealth pursuant to the Financial  
Agreement contained in the Schedule to the Appendix to  
the Amending Financial Agreement Act, 1944, of South  
Australia, which Financial Agreement was made pursuant 15  
to Section 105A of the Constitution of the Commonwealth  
of Australia, for the purpose of raising money to satisfy  
such claims.

3.\_\_\_\_\_The principal banking account of the State is  
kept at the office of the Commonwealth Bank at Adelaide 20  
aforesaid. The total payments by the State into its  
banking account amount to over £20,000,000 per annum and  
its drawings also amount to over £20,000,000.

4.\_\_\_\_\_If the private trading banks are abolished, the  
State will be compelled to carry out all its banking 25  
transactions with the Commonwealth Bank exclusively, and  
if the Treasurer of the Commonwealth were to give to the

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F.C. DREW

C.J. Johnston, J.P. 19/12/1947

163. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed in  
Action No. 16 of 1947 on  
behalf of the Plaintiffs.

164. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed in  
Action No. 16 of 1947 on  
behalf of the Plaintiffs.

Council of the Commonwealth Bank a direction as to its  
policy which affected prejudicially or sought to control  
the banking business of the State or any part thereof, the  
State would be unable to avoid such prejudice or escape  
such control by transferring its banking business to any 5  
other bank or conducting it by any other means. The  
exercise of such powers by the Treasurer of the Common-  
wealth might cause considerable dislocation to the  
State's financial transactions and substantial inconven-  
ience, embarrassment and loss would be caused to the 10  
State and the financial policy of the State could be made  
subject to the financial policy of the Commonwealth.

5.\_\_\_\_\_There is a State Bank in South Australia which is  
owned by the Government of the said State and carries on  
the ordinary business of a trading bank pursuant to the 15  
State Bank Act, 1936, of South Australia. The said  
State Bank is known as The State Bank of South Australia  
and is hereinafter called "the State Bank". I am  
familiar with the banking business of the State Bank and  
the manner in which it is carried on. If the private 20  
trading banks were abolished, it would be quite imprac-  
ticable for the State to carry on its general banking  
business with the State Bank because the State Bank is a  
comparatively small bank and could not in my opinion  
profitably use the large sums of money, sometimes amounting<sup>25</sup>  
to over £4,000,000 which would be deposited with it for  
short periods by the State in the course of its banking

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F.C. DREW      C.J. Johnston, J.P.      19/12/1947.

164. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed in  
Action No. 16 of 1947 on  
behalf of the Plaintiffs.

165. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed in  
Action No. 16 of 1947 on  
behalf of the Plaintiffs.

business, and would not pay interest on such moneys to  
the State because it would not be able to earn interest  
on such large sums deposited with it at call.

6.\_\_\_\_\_The State Bank has the following arrangements with  
the private trading banks:-

5

- (1) Full clearing facilities at half rates of ex-  
change.
- (2) Exchange of confidential opinions in respect of  
commercial transactions.
- (3) Privilege of establishing credits on behalf of 10  
customers for the encashment of cheques at points  
within Australia where the State Bank has no  
branch.
- (4) When requested so to do, the trading banks have  
accepted moneys on fixed deposit, thus providing 15  
a short term investment for surplus funds.
- (5) All such other facilities as mentioned in the  
Associated Bank's Handbook, which said Handbook  
was annexed to my affidavit sworn and filed here-  
in on the 28th day of November, 1947 and marked 20  
with the letter "C".

The State Bank has the same arrangements with the Common-  
wealth Bank as it has with the private trading banks and  
in addition:-

- (a) The Commonwealth Bank is its Banker through which 25  
the State Bank makes and obtains settlement for  
transactions passing through the Adelaide Clearing

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F.C. DREW      C.J. Johnston, J.P.      19/12/1947.

165. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed in  
Action No. 16 of 1947 on  
behalf of the Plaintiffs.

166. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth  
day of December, 1947 and  
filed in Action No. 16 of 1947  
on behalf of the Plaintiffs.

House.

- (b) Agency arrangements whereby drafts may be drawn payable at any branch of the Commonwealth Bank, including the London Branch.
- (c) Agency arrangements whereby Documentary Letters of Credit are established in any overseas country on behalf of the customers of the State Bank. 5
- (d) Negotiates as the Agent of the State Bank all overseas Bills of Exchange at a concessional rate and allows the State Bank a small profit on each transaction. 10
- (e) Overdraft accommodation which has the approval of the Treasurer of the State and the Board of Management of the State Bank.

If the private trading banks were abolished, the Commonwealth Bank would be the only bank carrying on business in Australia having branches in other States and in London through which the banking business outside South Australia of the State Bank could be carried on and if the Commonwealth Bank were to withdraw from the State Bank its present clearing and agency privileges the State Bank would be unable to provide suitable banking services for customers in South Australia whose business included the import or export of goods into or from South Australia from or to other States or countries overseas. If interstate clearing facilities were refused by the Commonwealth Bank to customers of the State Bank such customers would be

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F.C. DREW      C.J. Johnston, J.P.      19/12/1947.

166. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth  
day of December, 1947 and  
filed in Action No. 16 of 1947  
on behalf of the Plaintiffs.

167. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

compelled to become customers of the Commonwealth Bank in  
order to obtain payment of cheques received by them in  
payment for goods sold by them.

Because the State Bank is a comparatively small  
bank, it must use facilities provided by other banks in 5  
order to carry on its banking business, and at present  
it uses the facilities provided by the private trading  
banks and by the Commonwealth Bank which are mentioned  
in paragraph 6 hereof. If the private trading banks  
were abolished, the State Bank would be wholly dependent 10  
for the provision of these facilities upon the Common-  
wealth Bank, and the Commonwealth Bank could at any  
time by curtailing or entirely withholding such facili-  
ties seriously diminish the business of the State Bank  
by preventing it from giving full banking facilities to 15  
its customers.

7. There is a State Savings Bank in South Australia  
carrying on the business of a Savings Bank pursuant to  
the Savings Bank of South Australia Act, 1929-1945,  
under the name of The Savings Bank of South Australia 20  
(hereinafter called "the Savings Bank"). I am familiar  
with the Banking business of the said Savings Bank and  
the manner in which it is carried on. The Savings Bank

(a) has a current account

(i) with the Bank of New South Wales for head 25  
of transactions;

(ii) for each of its sixty-four branches with

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F.C. DREW C.J. Johnston, J.P. 19/12/1947.

167. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

168. Affidavit of Ferdinand Caire Drew sworn the nineteenth day of December, 1947 and filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

branches of the private trading banks in various towns and townships in South Australia;

- (b) has appointed from time to time the several private trading banks as its agents for the receipt and repayment of deposits at various places within the State where the Savings Bank has no branch of its own; 5
- (c) has large funds on deposit with the Bank of New South Wales and other private trading banks;
- (d) in the course of its business becomes a debtor or a creditor of private trading banks. 10

It is not a member of the Adelaide Clearing House.

At any given moment the Savings Bank -

- (i) has a credit balance in its current account with the Bank of New South Wales; 15
- (ii) is a debtor of the Bank of New South Wales, the National Bank of Australasia Ltd. and the Queensland National Bank Limited for amounts paid by such Banks as Agents of the Savings Bank to its depositors who have made withdrawals at branches of such Banks in other States; 20
- (iii) is liable to pay to the Bank of New South Wales and other private trading banks the proceeds of cheques drawn by friendly societies and other customers of the said Savings Bank having the right to withdraw money by cheque on the Savings Bank, which cheques have been paid into the Bank of New 25

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F.C. DREW      C.J. Johnston, J.P.      19/12/1947

168. Affidavit of Ferdinand Caire Drew sworn the nineteenth day of December, 1947 and filed in Action No. 16 of 1947 on behalf of the Plaintiffs.



169. Affidavit of Ferdinand Caire Drew sworn the nineteenth day of December, 1947 and filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

South Wales or into other private trading banks and transmitted by them to the Bank of New South Wales for collection;

- (iv) may be in credit with the Bank of New South Wales, or other private trading bank, in respect of Bank 5 drafts drawn on the Bank of New South Wales or other private trading bank and paid into depositors' accounts with the Savings Bank;
- (v) may be a debtor to the Bank of New South Wales or other private trading bank in respect of cheques 10 or drafts drawn on the Head Office of the Savings Bank by a branch of the Savings Bank and cashed by the Bank of New South Wales or such other private trading banks;
- (vi) may be a debtor or creditor of the Bank of New 15 South Wales in respect of exchange on amounts paid by the Bank to an agency agreement. There is a practice under which the Bank of New South Wales -
- (a) collects exchange from Savings Bank deposits 20 upon large withdrawals made at branches of the Bank of New South Wales under the agency agreement and accounts for one-half of such exchange to the Savings Bank, and
- (b) refrains from collecting any exchange upon 25 small withdrawals but charges exchange at half rates against the Savings Bank;

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F.C. DREW      C.J. Johnston, J.P.      19/12/1947.

169. Affidavit of Ferdinand Caire Drew sworn the nineteenth day of December, 1947 and filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

170. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

(vii) is a creditor of the Bank of New South Wales and  
other private trading banks in respect of fixed  
deposits.

(viii) is a creditor of private trading banks in respect  
of cheques drawn on private trading banks and paid 5  
into the Savings Bank by its customers.

If the Bank of New South Wales and the other priv-  
ate trading banks were abolished, the banking business  
of the Savings Bank would immediately be interfered with  
and could be seriously impeded, because the Savings Bank 10  
would be dependent on the Commonwealth Bank for the con-  
tinuance of the necessary facilities and services herein-  
before mentioned.

8.\_\_\_\_\_In my opinion, the Savings Bank is at present  
able to obtain at reasonable rates and prices facilities 15  
and services necessary for the carrying on of its banking  
business by reason of the existence of the private trading  
banks, which are in competition with one another and with  
the Commonwealth Bank, and by reason thereof are willing  
to provide facilities and services for the Savings Bank 20  
at prices and rates lower than would be obtainable if the  
Commonwealth Bank were the only bank from which the  
Savings Bank could obtain such facilities and services and  
the Treasurer of the Commonwealth directed the Council of  
the Commonwealth Bank to increase such prices and rates. 25  
The Savings Bank is in active and direct competition with  
the Savings Bank department of the Commonwealth Bank

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F.C. DREW C.J. Johnston, J.P. 19/12/1947

170. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

171. Affidavit of Ferdinand Caire Drew sworn the nineteenth day of December, 1947 and filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

throughout South Australia, and if the Treasurer of the Commonwealth or the Advisory Council of the Commonwealth Bank should, after the abolition of the private trading banks, adopt (either as the result of a direction by the Treasurer of the Commonwealth or otherwise) the policy 5 of forcing or inducing customers of the Savings Bank to transfer their accounts to the Savings Bank department of the Commonwealth Bank, such policy could be implemented without any difficulty by withdrawing essential services and facilities from the Savings Bank or making 10 these facilities and services available only at such prices and rates as would make it impossible for the Savings Bank to compete successfully with the Savings Bank department of the Commonwealth Bank. The rate of interest which the Savings Bank could pay to its depositors would 15 also be affected by the implementation of any such policy as aforesaid, and especially by the Commonwealth Bank refusing to pay interest on the short term or other deposits of the Savings Bank. Such deposits at present amount to approximately £9,000,000, which is distributed 20 between the Commonwealth Bank and the private trading banks.

9.\_\_\_\_\_It is a common procedure for the Treasurer to open an "Advance Account" on behalf of a Government Department, at a convenient branch of one of the said private trading 25 banks. Money is paid into such account by cheques drawn upon the Government account in the Commonwealth Bank at

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F.C. DREW C.J. Johnston, J.P. 19/12/1947.

171. Affidavit of Ferdinand Caire Drew sworn the nineteenth day of December, 1947 and filed in Action No. 16 of 1947 on behalf of the Plaintiffs.

172. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

Adelaide known as "The Public Account". Appropriate  
officers are authorised to operate upon such accounts  
for governmental purposes. Upon receipt by the Treasur-  
er of the State of proper vouchers for payments made he  
keeps the accounts in credit to the necessary extent by 5  
means of cheques drawn on the Public Account. No inter-  
est is paid by the private trading banks upon any moneys  
standing to the credit of the Advance Accounts.

10.\_\_\_\_In order to enable the State to perform its govern-  
mental functions it is essential that it should be able 10  
to have independence and freedom from the control of any  
other Government and any governmental instrumentality and  
any person or body of persons or any corporation in the  
selection of a bank or banks which will act as the bank  
or banks for the State and with which it can agree upon 15  
such terms and conditions as the Treasurer of the State  
thinks fit for the receipt, custody and transmission of  
public moneys within or without the State and for advances  
to be made and for the charges in respect of the same and  
for the interest payable by or to the said bank or banks 20  
upon balances or advances respectively, and generally for  
the conduct of the banking business of the State. If  
there were only one bank available this right of choice  
and freedom to negotiate such contracts would be lost.

11.\_\_\_\_I know the facts deposed to in paragraphs 1, 3 to 25  
5, and paragraphs 9 and 10 of my own knowledge and the  
facts deposed to in paragraphs 2, 6, 7 and 8 partly from

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F.C. DREW C.J. Johnston, J.P. 19/12/1947

172. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

173. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947 and filed  
in Action No. 16 of 1947 on  
behalf of the Plaintiffs.

my own knowledge and partly from information supplied  
to me which I verily believe to be true.

SWORN at Adelaide this 19th day )  
of December, 1947, before me: ) F.C. DREW

C.J. JOHNSTON, J.P.

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A Justice of the Peace in and for  
the State of South Australia.

This Affidavit is filed by Albert James Hannan, Crown  
Solicitor, Flinders Street, Adelaide, Solicitor for the  
Plaintiffs.

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173. Affidavit of Ferdinand Caire  
Drew sworn the nineteenth day  
of December, 1947, and filed  
in Action No. 16 of 1947, on  
behalf of the Plaintiffs.

No. 16 - Writ of Summons filed in Action No. 1 of  
1947 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA )  
 ) No. 1 of 1947.  
WESTERN AUSTRALIAN DISTRICT REGISTRY )

Between:

THE STATE OF WESTERN AUSTRALIA 5  
and Another  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others 10  
Defendants

GEORGE THE SIXTH by the Grace of God of Great  
Britain Ireland and the British Dominions beyond  
the seas, King, Defender of the Faith, Emperor of  
India. 15

To: THE COMMONWEALTH OF AUSTRALIA, THE RIGHT HONOURABLE  
JOSEPH BENEDICT CHIFLEY the Treasurer of the Com-  
monwealth, THE COMMONWEALTH BANK OF AUSTRALIA, and  
HUGH TRAIL ARMITAGE the Governor of the said Bank.

WE COMMAND YOU that within fourteen days after the ser- 20  
vice of this Writ on you, inclusive of the day of such  
service, you do cause appearance to be entered for you in  
our High Court of Australia in an Action at the suit of  
THE STATE OF WESTERN AUSTRALIA AND THE ATTORNEY GENERAL  
OF THE SAID STATE: And take notice that in default of 25  
your so doing the Plaintiffs may proceed therein, and  
judgment may be given in your absence.

WITNESS - The Right Honourable Sir John Greig

174. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

175. Writ of Summons filed in  
Action No. 1. of 1947 on  
behalf of the Plaintiffs.

Latham, K.C.M.G., Chief Justice of our  
said High Court the twenty-eighth day of  
November in the year of Our Lord one  
thousand nine hundred and forty-seven.

(L. S.)            G.J. BOYLSON,

5

District Registrar.

N.B. This writ is to be served within twelve months from  
the date thereof, or, if renewed, within six calendar  
months, from the date of the last renewal, including the  
day of such date, and not afterwards.

10

Appearance (or appearances) to this Writ may be entered  
by the Defendant (or Defendants) either personally or by  
solicitor at the principal (or District) Registry of the  
High Court, at Perth, in the State of Western Australia.

If any Defendant neither resides or carries on business  
in the State of Western Australia his appearance may, at  
his option, be entered either at the place abovementioned  
or at the Principal Registry of the High Court, Melbourne,  
in the State of Victoria.

15

175. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

176. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

THE PLAINTIFFS CLAIM -

1.\_\_\_\_\_Against all the Defendants a declaration that the Banking Act, 1947, is beyond the power of the Parliament of the Commonwealth and is contrary to the Constitution of the Commonwealth and is void. 5

2.\_\_\_\_\_Against all the Defendants a declaration that sections 13, 14, 17, 18, 19, 24, 46 and 56 of the said Act and each of them constitute breaches by the Defendant Commonwealth of the rights of the Plaintiff State and of the obligations of the Commonwealth under the Financial Agreement set forth in the Schedule in the appendix to the Financial Agreement (Amendment) Act, 1944, of Western Australia and are inconsistent with the terms of the said Agreement and are void, and all such injunctions and restraining orders as may be necessary to vindicate the rights of the Plaintiff State as declared by the said declaration. 10 15

3.\_\_\_\_\_Against all the Defendants a declaration that the giving by the said Treasurer of any notice or notices under the Banking Act, 1947, or the taking of any other steps under the said Act to abolish the private trading banks or to acquire the businesses thereof will be contrary to the terms of the said Financial Agreement and will constitute a breach of the contract on the part of the Commonwealth. 20 25

4.\_\_\_\_\_Against the Defendants the Right Honourable Joseph Benedict Chifley and every person for the time being administering the Department of the Treasury of the Commonwealth, the Commonwealth Bank of Australia and Hugh Trail Armitage and every person for the time being performing 30

176. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.



177. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

the functions of Governor of the said Commonwealth Bank,  
an injunction restraining them and each of them from  
taking any action in pursuance or purporting to be in  
pursuance of the provisions of the Banking Act, 1947,  
with a view to or for the purpose of -

5

(a) the acquisition by the Commonwealth or the Common-  
wealth Bank of Australia of shares in any of the  
private banks mentioned in the First Schedule to  
the said Act;

(b) assuming or carrying on the management of the said 10  
private banks or any of them for or on behalf of  
the Commonwealth Bank of Australia, or for the  
purpose of facilitating the control by the said  
Commonwealth Bank of the banking business of  
private banks;

15

(c) the taking over by the Commonwealth Bank of Aus-  
tralia of the businesses of the said private banks  
or any of them; or

(d) prohibiting the said private banks or any of them  
from carrying on banking business.

20

5. \_\_\_\_\_ Such further or other relief as the nature of the  
case may require.

R.V. NEVILE.

Crown Solicitor.

Place of Trial - Perth.

25

Mode of Trial - Before a Justice with-  
out a Jury.

This Writ was issued by Roy Vivian Nevile of Crown Law  
Offices, Supreme Court Buildings, Perth, in the State of  
Western Australia, whose address for service is Crown Law 30  
Offices, Perth, aforesaid, and in Sydney care of Messrs.

177. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

178. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

Biddulph and Salenger, Solicitors of Selbourne Chambers,  
174 Phillip Street, Sydney, New South Wales.

This Writ was served by me,

on

the Defendants, on                    the                    day  
of                    1947.

Indorsed the                    day of                    1947.

(Signed) .....

Address .....

.....

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178. Writ of Summons filed in  
Action No. 1 of 1947 on  
behalf of the Plaintiffs.

No. 17 - Notice of Motion for Interlocutory  
Injunction filed in Action No. 1 of 1947 on  
behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA )  
 ) No. 1 of 1947.  
WESTERN AUSTRALIAN DISTRICT REGISTRY )

Between:

THE STATE OF WESTERN AUSTRALIA 5  
and Another  
Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA  
and others 10  
Defendants

TAKE NOTICE that an application will be made before the  
Honourable Sir Owen Dixon K.C.M.G. a Justice of this  
Honourable Court at the Court House Darlinghurst Sydney  
on Monday the fifteenth day of December one thousand nine 15  
hundred and forty-seven at 9.30 o'clock in the forenoon  
or so soon thereafter as Counsel can be heard on behalf  
of the Plaintiff for injunctions -

1. \_\_\_\_\_ Restraining the Defendant the Right Honourable  
Joseph Benedict Chifley and every person for the time 20  
being administering the Department of the Treasury of the  
Commonwealth the Commonwealth Bank of Australia and Hugh  
Trail Armitage and every person for the time being per-  
forming the functions of Governor of the said Commonwealth  
Bank from taking any action in pursuance or purporting to 25  
be in pursuance of the provisions of the Banking Act 1947  
with a view to or for the purpose of

(a) the acquisition by the Commonwealth or the Common-  
wealth Bank of Australia of shares in any of the

180. Notice of Motion for Injunction  
filed in Action No. 1 of 1947  
on behalf of the Plaintiffs.

private banks mentioned in the First Schedule to  
the said Act.

- (b) assuming or carrying on the management of the said  
private banks or any of them for or on behalf of the  
Commonwealth Bank of Australia or for the purpose 5  
or facilitating the control by the said Commonwealth  
Bank of the Banking business of private banks
- (c) the taking over by the Commonwealth Bank of Aust-  
ralia or the businesses of the said private banks  
or any of them 10
- (d) prohibiting the said private banks or any of them  
from carrying on banking business

until the determination of this action or the further  
order of the Court.

2. \_\_\_\_\_ Restraining the Defendant The Right Honourable 15  
Joseph Benedict Chifley the Treasurer of the Commonwealth  
and every person for the time being administering the  
Department of the Treasury of the Commonwealth until the  
determination of this action or the further order of the  
Court from giving or publishing or causing to be given or 20  
published any notice under Sections 13, 22, or 46 of the  
Banking Act, 1947.

3. \_\_\_\_\_ Restraining the Defendants the Right Honourable  
Joseph Benedict Chifley and every person for the time being  
administering the Department of the Treasury of the Common- 25  
wealth the Commonwealth Bank of Australia and Hugh Trail  
Armitage and every person for the time being performing the  
functions of Governor of the said Commonwealth Bank and  
each of them from doing any other act in pursuance or  
purporting to be in pursuance of Divisions 2, 3, and 4 of 30  
Part IV of Part VII or of Section 56 of the Banking Act 1947.

180. Notice of Motion for Injunction  
filed in Action No. 1 of 1947  
on behalf of the Plaintiffs.

181. Notice of Motion for Injunction  
filed in Action No. 1 of 1947  
on behalf of the Plaintiffs.

AND FOR such further or other Order as the Court shall  
think fit to make in the premises upon the grounds appear-  
ing in and by the Affidavit of Alex James Reid sworn  
herein on the first day of December, One thousand nine  
hundred and forty-seven. 5

DATED this fifth day of December, One thousand nine  
hundred and forty-seven.

Biddulph & Salenger,  
Solicitors for the Plaintiffs.

TO - the abovenamed Defendants and each of them. 10

This Notice of Motion is filed by Lindon Helton Biddulph  
of the firm of Biddulph & Salenger Solicitors of 174  
Phillip Street, Sydney in the State of New South Wales  
as agent for Roy Vivian Nevile of Crown Law Offices,  
Supreme Court Buildings, Perth, in the State of Western 15  
Australia Crown Solicitor and Solicitor for the Plain-  
tiffs.

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181. Notice of Motion for Injunction  
filed in Action No. 1 of 1947  
on behalf of the Plaintiffs.

No. 18 - Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA )  
 ) No. 1 of 1947.  
WESTERN AUSTRALIAN REGISTRY. )

Between:

THE STATE OF WESTERN AUSTRALIA 5  
and Another

Plaintiffs

and

THE COMMONWEALTH OF AUSTRALIA 10  
and others

Defendants

I, ALEX JAMES REID, of 14 Namur Street, North Perth in the State of Western Australia, Civil Servant, make oath and say as follows:-

1. \_\_\_\_\_ I am the Under Treasurer for the State of Western Australia (hereinafter called "the State") and am well acquainted with the financial transactions of the said State. 15

2. \_\_\_\_\_ The balance sheets of the Commonwealth Bank hereunto annexed and marked "B" (including the Aggregate Balance Sheet of the Bank and the Balance Sheet of the Savings Bank Department of the Bank) show that the only resources of the Commonwealth Bank out of which claims by shareholders of the private trading banks for 20

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SIGNED AND SWORN at Perth this 23rd day of December, 1947, before me:

J.A. Stewart,  
Justice of the Peace etc.

ALEX J. REID.

182. Affidavit of Alex James Reid sworn the 23rd day of December 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

183. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

compensation can be satisfied by the issue to them of Commonwealth Bonds or Inscribed Stock are assets consisting of Commonwealth Government securities, excluding Commonwealth Treasury Bills and debentures, of the aggregate face value of not less than approximately £500,000,000 5 held by the Commonwealth Bank. I believe that most of the shareholders of the private trading banks will agree to take their compensation in the form of bonds of inscribed stock instead of in cash, and that the Commonwealth Bank will attempt to carry out such agreements by 10 issuing to shareholders Commonwealth bonds and inscribed stock held by the Commonwealth Bank. No public loan has been authorised by the Loan Council to be raised by the Commonwealth pursuant to the Financial Agreement contained in the Schedule to the Appendix to the Amending 15 Financial Agreement Act, 1944, of Western Australia, which Financial Agreement was made pursuant to section 105A of the Constitution of the Commonwealth of Australia, for the purpose of raising money to satisfy such claims.

3. \_\_\_\_\_ The principal banking account of the State is kept 20 at the office of the Commonwealth Bank at Perth aforesaid. The total payments by the State into its banking account amount to over £14,000,000 per annum and its drawings also amount to over £14,000,000 per annum.

4. \_\_\_\_\_ If the private trading banks are abolished, the 25 State will be compelled to carry out all its banking

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SIGNED AND SWORN at Perth this 23rd day of December, 1947, before me:

J.A. Stewart,  
Justice of the Peace etc.

ALEX J. REID.

183. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

184. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

transactions with the Commonwealth Bank exclusively and if the Treasurer of the Commonwealth were to give to the Council of the Commonwealth Bank a direction as to its policy which affected prejudicially or sought to control the banking business of the State or any part thereof, 5 the State would be unable to avoid such prejudice or escape such control by transferring its banking business to any other bank or conducting it by any other means. The exercise of such powers by the Treasurer of the Commonwealth might cause considerable dislocation to the 10 State's financial transactions and substantial inconvenience, embarrassment and loss would be caused to the State and the financial policy of the State could be made subject to the financial policy of the Commonwealth. The Commonwealth Bank has, for several years past, allowed 15 the State interest at one per centum per annum on credit accounts up to £300,000 although with no interest on any credit in excess of £300,000.

5. \_\_\_\_\_ There is a State Bank in Western Australia which is owned by the Government of the said State and carries 20 on inter alia the ordinary business of a trading bank pursuant to the Rural and Industries Bank Act, 1944, of Western Australia. The said State Bank is known as the Rural and Industries Bank of Western Australia and is hereinafter called "the State Bank". I am familiar with 25

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SIGNED AND SWORN at Perth this 23rd day of December, 1947, before me:

J.A. Stewart,  
Justice of the Peace, etc.

ALEX J. REID.

184. Affidavit of Alex James Reid sworn the 23rd day of December 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.



185. Affidavit of Alex James Reid sworn the 23rd day of December 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

the banking business of the State Bank and the manner in which it is carried on.

It would be quite impracticable for the State to carry on its general banking business with the State Bank because the State Bank is a comparatively small bank and could not in my opinion profitably use the large sums of money, sometimes amounting to over £2,000,000 which would be deposited with it for short periods by the State in the course of its banking business, and would not pay interest on such moneys to the State because it would not be able to earn interest on such large sums deposited with it at call. 5 10

6. \_\_\_\_\_ The State Bank has the following arrangements with the Commonwealth Bank:-

- (1) Full clearing facilities at half rates of exchange. 15
- (2) Exchange of confidential opinions in respect of commercial transactions.
- (3) Privilege of establishing credits on behalf of customers for the encashment of cheques at points within Australia where the State Bank has no branch. 20
- (4) All such other facilities as mentioned in the Associated Banks' Handbook, Volumes 1 and 2 to which I claim leave to refer and which were 25

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SIGNED AND SWORN at Perth this 23rd day of December, 1947, before me:

J.A. Stewart,  
Justice of the Peace, etc.

ALEX J. REID.

185. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

186. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

marked as exhibit "C" in my affidavit sworn the 1st day of December, 1947.

- (5) The Commonwealth Bank is its Bankers through which the State Bank makes and obtains settlement for transactions passing through the Perth Clearing House. 5
- (6) Agency arrangements whereby drafts may be drawn payable at any branch of the Commonwealth Bank, including the London Branch.
- (7) Agency arrangements whereby Documentary Letters of Credit are established in any overseas country on behalf of the customers of the State Bank. 10
- (8) Negotiates as the Agent of the State Bank all overseas Bills of Exchange at a concessional rate and allows the State Bank a small profit on each transaction. 15

If the private trading banks were abolished, the Commonwealth Bank would be the only bank carrying on business in Australia having branches in other States and in London through which the banking business outside Western Australia of the State Bank could be carried on and if the Commonwealth Bank were to withdraw from the State Bank its present clearing and agency privileges the State Bank would be unable to provide suitable banking services for customers in Western 20 25

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SIGNED AND SWORN at Perth this 23rd day of December, 1947 before me:

J.A. STEWART,  
Justice of the Peace etc.

ALEX J. REID.

186. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

187. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

Australia whose business included the import or export of goods into or from Western Australia from or to other States or countries overseas. If interstate clearing facilities were refused by the Commonwealth Bank to customers of the State Bank, such customers would be compelled to become customers of the Commonwealth Bank in order to obtain payment of cheques received by them in payment for goods sold by them. 5

Because the State Bank is a comparatively small bank, and has only twenty-six branches of its own, it must use facilities provided by some other bank or banks in order to carry on its banking business, and at present it uses the facilities provided by the Commonwealth Bank which are mentioned in paragraph 6 hereof. If the private trading banks were abolished, the State Bank would be wholly dependent for the provision of these facilities upon the Commonwealth Bank, and the Commonwealth Bank could at any time by curtailing or entirely withholding such facilities seriously diminish the business of the State Bank by preventing it from giving full banking facilities to its customers. 10 15 20

7.\_\_\_\_\_In order to enable the State to perform its governmental functions it is essential that it should be able to have independence and freedom from control of any other Government and any governmental instrumentality and any 25

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SIGNED AND SWORN at Perth this 23rd day of December, 1947, before me:

J.A. Stewart,  
Justice of the Peace, etc.

ALEX J. REID.

187. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.

188. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in action No. 1 of 1947 on behalf of the Plaintiffs.

person or body of persons or any corporation in the selection of a bank or banks which will act as the bank or banks for the State and with which it can agree upon such terms and conditions as the Treasurer of the State thinks fit for the receipt, custody and transmission of public moneys within or without the State and for advances to be made and for the charges in respect of the same and for the interest payable by or to the said bank or banks upon the balances or advances respectively, and generally for the conduct of the banking business of the State.

If there were only one bank available this right of choice and freedom to negotiate such contracts would be lost.

8. I know the facts deposed to in paragraphs 1 to 5 and in paragraph 7 of my own knowledge and the facts deposed to in paragraph 6 partly from my own knowledge and partly from information supplied to me which I verily believe to be true.

9. This affidavit is filed in lieu of my affidavit sworn the first day of December, 1947.

SIGNED AND SWORN at Perth this 23rd day of December, 1947 Before me: ALEX J. REID.

J.A. Stewart,

A Justice of the Peace in and for the State of Western Australia.

This Affidavit is filed by ROY VIVIAN NEVILE, the Crown Solicitor of Crown Law Department, Perth, Solicitor for the Plaintiffs, whose agents in Sydney, New South Wales, are Messrs. Biddulph and Salenger, Solicitors of Selborne Chambers, 174 Phillip Street, Sydney, New South Wales.

188. Affidavit of Alex James Reid sworn the 23rd day of December, 1947 and filed in Action No. 1 of 1947 on behalf of the Plaintiffs.