

[HIGH COURT OF AUSTRALIA.]

RUSE APPELLANT ;
 PLAINTIFF,

AND

THE BANK OF AUSTRALASIA RESPONDENT.
 DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
 WESTERN AUSTRALIA.

*Practice—High Court—Appeal from Supreme Court of a State—Case remitted—
 Matter insufficiently determined—Pleadings—Amendments—Evidence—State-
 ments by deceased person.*

Case remitted to the Supreme Court with power to make amendments
 in the pleadings, and, by consent, to admit certain evidence.

APPEAL from the Supreme Court of Western Australia.

This was an appeal by Walter Ruse, the plaintiff in an action brought in the Supreme Court against the Bank of Australasia, in which he claimed payment of a certain sum and interest thereon—the plaintiff alleging that such sum had been deposited by him with the defendant as security for the repayment of certain advances to be made by the defendant to the Hannan's Co-operative Brewery Co., and that all advances made by the defendant to that Company had been repaid. The action had been heard by *Burnside J.*, who nonsuited the plaintiff and entered judgment for the defendant with costs.

H. C. OF A.

1917.

PERTH,

Oct. 30.

Isaacs,
 Gavan Duffy
 and Rich JJ.

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1917.



RUSE

v.

BANK OF
AUSTRAL-
ASIA.

From that decision the plaintiff now appealed to the High Court.

Draper K.C. (with him *Stone*), for the appellant.

Pilkington K.C. (with him *Cox*), for the respondent.

During argument reference was made to *Commercial Bank of Tasmania v. Jones* (1) and *Pledge v. Buss* (2).

The majority of the Court (ISAACS J. and RICH J.) being of opinion that the matter as it stood had not been sufficiently determined, the case was ordered to be remitted to the Supreme Court with power to make any amendments in the pleadings that on application the Judge might think conducive to justice; and, by consent, the Supreme Court was to have power to admit as evidence any statement made by Mr. Hutton, the deceased manager of the Kalgoorlie branch of the defendant Bank, to solicitors or in the course of duty, which that Court might, in its discretion, think ought in the circumstances to be admitted. The costs of the first trial and of the appeal were to be costs in the cause.

Case remitted accordingly.

Solicitors for the appellant, *Stone & Burt*.

Solicitors for the respondent, *Haynes, Robinson & Cox*.

(1) (1893) A.C., 313.

(2) John., 663.