On the contrary, the objection invited him quite clearly to assume that the sum expended, considered as a whole, was not within s. 53.

I turn, therefore, to the ground stated in the objection. It is supported, as I understand the argument, by alternative propositions: first, that £603 would have been the cost of repair, if repair had been decided upon, and that for that reason it is right that £603 should be treated as chargeable to income account; and secondly, that if the work actually involved in the replacement of the ceiling be considered in detail, it will be found that some things that were done would have had to be done even for the purpose of repair, and accordingly when the amount that was expended is analysed it will be found to include some items which would have entered into the cost of repair if the company had contented itself with repair.

The answer to the first proposition is that when a taxpayer has two courses open to him, one involving an expenditure which will be an allowable deduction for income tax and the other involving an expenditure which will not be an allowable deduction, and for his own reasons he chooses the second course, he cannot have his income tax assessed as if he had exercised his choice in the opposite way. Section 53 is concerned with expenditure which was in fact incurred, not with expenditure which could have been incurred but was not.

The cases of *Highland Railway Co.* v. *Balderston* (1) and *Rhodesia Railways Ltd.* v. *Income Tax Collector, Bechuanaland* (2), which were relied upon in the Board of Review, provide no support for the view that where an actual expenditure is not an allowable deduction a notional expenditure may be. In the former of those cases worn-out rails and chairs on a railway line had been replaced by rails and chairs which were not only new but heavier and better. The only question which the courts were asked to consider was whether that portion of the cost which was attributed by the railway company to the superior quality of the new rails and chairs over rails and chairs similar to the old ones was an expenditure of a capital nature. No question arose in the case as to whether the amount of the expenditure which would have been incurred if rails of the same quality as the old had been used was an expenditure of a revenue nature, and certainly nothing was said which lends any countenance to the idea. The second of the two cases cited also related to a railway line. Parts of the line were renewed so as to bring it back to normal condition but not so as to make it capable of giving more service than the original line. The Privy

(1) (1889) 2 Tax Cas. 485. (2) (1933) A.C. 368.

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Council held that the expenditure was not of a capital nature, for although steel sleepers had been used in place of wooden sleepers, the renewals effected constituted no improvement. Their Lordships approved a passage from the *Highland Railway Co.'s Case* (1), but only as an illustration of the contrast between the cost of relaying the line so as to restore it to its original condition (an income charge) and the cost of relaying the line as to improve it (a capital charge). This contrast is between two kinds of assumed actual expenditure. The judgment does not support, and in fact its language is inconsistent with, the notion that if an actual expenditure was a capital charge, being for relaying the line so as to improve it, you can divide it into two parts and attribute an income character to one of those parts on the ground that a similar amount would have been expended on income account if the line had been simply relaid so as to restore it to its original condition. It is true, as one member of the Board of Review has pointed out, that from the report (2) it appears that two additional steel sleepers per rail length were introduced in carrying out the work, and the cost of these additional sleepers, which were regarded as an improvement, was charged by the appellant to capital and was not included in the sum claimed as a deduction. That does not make the case an authority for any principle of apportionment applicable here; it only shows that on the facts of that case the parties found it possible to segregate the cost of repairs actually effected which were chargeable against income from the cost of improvements actually effected which were chargeable against capital.

The second proposition relates to some evidence given by Mr. Roberts to the effect that if the ceiling had been merely patched up some of the same items would have entered into the cost as entered into the cost of the new ceiling. These items were :—

	£	s.	d.
Erection of a tubular scaffold over three week-ends and planked out	£275	0	0
Insertion of further joists, hangars, fillets and straps to purlins to whole of ceiling labour and materials	200	0	0
Nails, hoop iron straps and other sundries etc. ..	28	0	0
	£503	0	0

But the capital or income character of expenditure actually incurred depends upon the nature of the purpose for which it was

(1) (1889) 2 Tax Cas. 485. (2) (1889) 2 Tax Cas., at p. 492.

incurred. If a total expenditure is of a capital nature, so is every part of it; you cannot take a portion of the work done, such as the erection of a scaffolding and, closing your eyes to the purpose for which it was in fact erected, attribute to the cost of that portion an income nature for no better reason than that the same scaffolding would have been erected in order to serve a purpose which, if it had existed, would have made the total expenditure an income charge.

In the result I am of opinion that, however the case is approached, the commissioner's appeal should be allowed, the decision of the Board of Review should be set aside, and the commissioner's decision to disallow the respondent company's objection should be restored. The respondent company must pay the costs of this appeal.

Appeal allowed. Decision of the Board of Review set aside and the commissioner's decision restored. Respondent to pay the costs of the appeal.

Solicitor for the appellant, *D. D. Bell*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Minter, Simpson & Co.*

J. B.

[PRIVY COUNCIL.]

NATIONAL BANK OF AUSTRALASIA LIMITED
DEFENDANT,
} APPELLANT;

AND

SCOTTISH UNION AND NATIONAL INSURANCE COMPANY AND OTHERS
DEFENDANTS AND PLAINTIFF,
} RESPONDENTS.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

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1952.
July 10.

Viscount Simon, Lords Normand, Oaksey, Tucker and Cohen.

Currency—Queensland Bank—Business in England and Australia—Scheme of arrangement—Sanction by English and Australian courts—Stock issued to creditors—Currency (as between English and Australian) not specified—English and Australian registers—Liberty to change from one register to another—Winding up—Currency in which stock payable.

A bank was formed in Queensland in 1872. It carried on the business of banking; and, accordingly, accepted deposits in England and Australia. In 1893 it suspended payment. The larger portion of its liabilities was due to English customers and creditors generally. A scheme of arrangement was entered into, but it failed; and a further scheme was entered into in 1897. The latter scheme—as well as the former—received the approval in the first instance of the Supreme Court of Queensland and subsequently of the High Court of Justice in England. The latter scheme provided for the issue of interminable inscribed deposit stock, which was to become repayable in certain circumstances, including the liquidation of the bank. The form of stock certificate prescribed provided for the statement of the amount thereof by the use of the £ sign, but it did not state whether English or Australian currency was intended. It contained no provision for statement of the place of issue or the place of payment in the event of its becoming payable. Of the certificates in fact issued, some indicated the place of issue, but it did not appear that any of them indicated a place of payment. The scheme provided for a register of stock in England and for one in Australia; also for the transfer of stock from either to the other. The bank went into voluntary liquidation in 1947.

Held that Australian currency was the measure of the bank's obligations to the holders of stock, wherever registered.

Decision of the High Court: *National Bank of Australasia Ltd.* v. *Scottish Union and National Insurance Co.*, (1951) 84 C.L.R. 177, varied.

Decision of the Supreme Court of Queensland (*Macrossan* C.J.): *In re Queensland National Bank Ltd. (In Voluntary Liquidation)*, (1950) Q.S.R. 264, restored with variations.

APPEAL from the High Court.

This was an appeal by the appellant in the High Court from the decision of that Court in *National Bank of Australasia Ltd.* v. *Scottish Union and National Insurance Co.* (1).

G. E. Barwick Q.C. and *G. A. C. Lucas*, for the appellant.

D. I. Menzies Q.C., *Frank Gahan* Q.C. and *G. Le Quesne*, for the respondents.

LORD COHEN delivered the judgment of their Lordships as follows:—

This appeal raises the question whether the liability of the Queensland National Bank Limited (hereinafter called the "Bank") in respect of its interminable inscribed deposit stock created under a scheme of arrangement between the Bank and its creditors which was sanctioned in the year 1897 sounds in English pounds or Australian pounds or partly in one currency and partly in the other. The facts relating to the matter are as follows.

The Bank was incorporated as a limited liability company in Queensland in the year 1872. In 1878 it opened an office in London. A local board of directors was appointed with powers delegated by the Bank. In the course of its operations the London branch accepted deposits the amount of which by March 1893 exceeded £2,900,000. These deposits carried interest at the rate of £4 to £5 per cent per annum.

On 15th May 1893 the Bank suspended payment. Petitions to wind up the Bank were presented in Queensland, New South Wales and in England. A scheme of arrangement (hereinafter referred to as "the old scheme") was prepared with a view to securing for the Bank a moratorium and was brought before the appropriate courts in Queensland, New South Wales and England. At that time the Bank owed the Queensland Government more than £2,000,000 and it owed creditors other than the Government, in

(1) (1951) 84 C.L.R. 177.

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England £2,897,000, in New South Wales £110,000 and in Queensland £1,860,000. The old scheme was duly sanctioned by the Courts concerned. It provided that the debt owing to the Queensland Government was to be paid in full in terms of an agreement between the Bank and the Government, and that creditors other than the Government were to accept, in satisfaction and discharge of their claims against the Bank, certain securities described in the scheme as deposit receipts. These were made interchangeable in certain events into negotiable deposit receipts or inscribed deposit stock. A moratorium was thus provided for the discharge of the Bank's indebtedness to its creditors. Payment of the principal moneys and interest due in respect of the deposit receipts was to be made at the places where they had been payable before the old scheme became operative.

Pursuant to the old scheme the winding-up proceedings in each country were stayed. By the end of the year 1896 it had become clear that the moratorium provided by the old scheme was insufficient to enable the Bank to find its feet and a new scheme was prepared. Meetings of creditors were convened in Sydney and Brisbane pursuant to orders of the Courts of New South Wales and Queensland respectively. In England, as it was impossible to obtain the sanction of the Court to a scheme of arrangement unless the Bank was being wound up, a petition was presented for the winding up of the Bank and a winding-up order was duly made. A meeting of creditors was then convened in England to consider the scheme. The scheme was approved by the requisite majorities at the meetings held in New South Wales, Queensland and England respectively and was sanctioned by the Supreme Court of New South Wales on 15th April 1897, by the Supreme Court of Queensland on 12th May 1897 and by the High Court of Justice in England on 4th June 1897. By the same order the High Court of Justice stayed all proceedings in the winding up except for the purpose of carrying the order and the scheme into effect.

The chief relevant provisions of the new scheme may be summarized as follows :—

Clause 1. " Court " was defined as the Supreme Court of Queensland ; " Stock " as interminable inscribed deposit stock created in pursuance of clause 3 of the new scheme ; and " The said securities " as deposit receipts, negotiable deposit receipts and the coupons thereof, and inscribed deposit stock issued or given to creditors under the old scheme or held by the Bank for security for any advances made to them by the Bank, and all similar

documents held by creditors of the Bank at the date of the old scheme and which had not been exchanged for any of the mentioned securities.

Clause 2. The Queensland Government was to receive in discharge of all principal moneys and interest then owing to such Government 15s. in the £ upon the principal moneys payable in five annual instalments beginning in 1917 carrying interest at the rate of $3\frac{1}{2}$ per cent per annum and a further 5s. in the £ upon such principal moneys payable without interest out of profits or in so far as not so paid on 1st July 1921.

Clause 3. Within six months of the new scheme being sanctioned by the Court, the Bank was to create and allot to the registered holders of the said securities, stock carrying interest at the rate of $3\frac{1}{2}$ per cent per annum to an amount equal to 75 per cent of the principal moneys so secured after deducting from such principal moneys any fractional part of £1 owing to such registered holders respectively.

Clause 4. Each registered holder of the said securities was to surrender his securities under the old scheme at the office where such securities were payable and to accept in discharge thereof an amount of stock equal to 15s. in the £ upon the principal moneys thereby secured. The interest on the stock was to be paid half-yearly at the offices in Queensland, Sydney and London respectively at which the stock was registered.

Clause 5. On default for six months in the payment of any interest payable on the stock, if the Government or registered holders of stock to an amount equal to two-thirds of the stock for the time being unredeemed, calculated at its par value, should call in the principal moneys secured by the stock or on an order being made or an effective resolution being passed for winding up the Bank, the principal moneys were immediately to become payable.

Clause 6. The stock was to be issued and held subject to the provisions of the new scheme and to the conditions set forth in the schedule thereto.

Clause 7. Each half-year, of the Bank's profits not reserved to meet contingencies, one-quarter was to be paid to the Government until 5s. in the £ of its debt had been paid, and one-half (or when the Government had received 5s. in the £, three-quarters) was to be carried to a special fund and, as the directors might determine, be distributed amongst the stockholders ratably until an aggregate amount or bonus equal to 5s. in the £ on the principal moneys secured by the said securities had been paid and thereafter the

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special fund was to be applied in payment of moneys due to the Government under the new scheme. The remaining quarter of the Bank's profits was to be carried for at least ten years from 31st March 1897 to the Bank's ordinary reserve fund.

Clause 10. After the Government had been paid in full, the Bank might after notice redeem and cancel the whole or any part of the stock held by any stockholder at its market value but at not less than the par value together with so much of 5s. in the £ upon the amount of the principal moneys secured by the said securities in exchange for which such stock was allotted as had not been previously paid out of profits. The holder in accordance with such notice was bound to surrender the stock to be redeemed in exchange for payment including interest. Such surrender delivery and payment was to be made at the office where such stock was registered.

Clause 12. So long as £500,000 was unredeemed one London director, not necessarily a shareholder of the Bank, was to be appointed by the registered stockholders, and in Brisbane there were to be five directors, three of whom (not necessarily shareholders) were to be elected by the registered holders of the stock, each of whom was to have one, two, three or four votes according to whether his holding of stock was not less than £500, £2,000 or £5,000 or exceeding £5,000.

Clause 13. As soon as conveniently might be after the new scheme was finally sanctioned by the Court, the nominal capital of the Bank was to be reduced from £1,600,000 divided into 200,000 shares of £8 each to £1,000,000 divided into 200,000 shares of £5 each.

Clause 14. The Bank was, as soon as practicable after the new scheme had been finally sanctioned by the Court, to make all necessary amendments or alterations in its articles of association for the purpose of giving effect to the scheme.

The chief relevant provisions of the schedule to the new scheme may be summarized as follows :—

Clause 1. Registers of the stock were to be kept by the Bank at its head office in Brisbane or at its branch offices in Queensland, Sydney or London (as the case might be) at which the securities in exchange for which such stock was allotted were at the time of such allotment payable, or at the office of the Bank to which such stock might be transferred as provided by clause 3 of the schedule.

Clause 3. Any registered holder of any stock was entitled to require the manager at the office where the stock was for the time being registered to have the stock transferred at his own expense

to the register kept at any other office and upon such transfer being effected the said stock was to be deemed to be registered at the last-mentioned office.

Clause 5. Every registered holder was to be entitled to a certificate of his stock in the form or to the effect following :—

"THE QUEENSLAND NATIONAL BANK LIMITED.

Interminable Inscribed Deposit Stock.

No. £

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

This is to certify that of is the registered holder of of the above stock, which Stock is constituted pursuant to the provisions of the scheme of arrangement sanctioned by the Supreme Court of Queensland on the day of , 189 , and is issued subject to the provisions and conditions therein, and in the schedule thereto respectively contained."

Clause 10. Prescribed the form of transfer. This expressed the transfer to be made "in consideration of the sum of £ ."

Clause 14 provided for a fee of 2s. 6d. being payable for the registration of each transfer.

Clause 21 provided for the payment of a sum not exceeding 2s. 6d. for any new certificate issued in replacement of certificates worn out, defaced, lost or destroyed.

The whole of the indebtedness of the Bank to the Government had been discharged before the resolution to wind up the Bank hereinafter mentioned was passed.

Pursuant to the new scheme, the Bank created stock to an amount of £3,116,621 of which £1,083,097 was inscribed on the Australian register and £2,033,524 was inscribed on the London register. Transfers of stock between persons and between registers took place and the Bank from time to time itself bought various amounts of the stock. In the result at the date of the winding-up resolution there was £729,269 of the stock registered on the Australian register and £1,829,817 thereof registered on the London register.

The bonus of 5s. in the £ to which the stockholders were entitled under clause 7 of the scheme had been paid to them in full by the end of the year 1918.

From the commencement of the scheme the Bank paid interest on stock registered on the London register in English currency at the rate of 3½ per cent per annum on the face value thereof,

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although it was at the same time paying interest on stock registered on Australian registers in Australian currency at the same rate on the same face value. It continued so to do until the commencement of the winding up.

Until the year 1942 the Bank drew up all its balance sheets on the basis that the English £ and the Australian £ were interchangeable at par, but in the year 1942 pursuant to an order made by the Treasurer of the Commonwealth of Australia in the exercise of powers conferred on him by the *National Security (War-time Banking Control) Regulations* it converted for purposes of its balance sheets its indebtedness in respect of stock inscribed on the English register into Australian £s at the then current rate of exchange.

In the year 1947 the appellant became the holder either in its own name or in the name of its nominees of all of the shares in the Bank, and thereafter the Bank was placed into voluntary liquidation by resolution passed on 30th October 1947. As a result of the liquidation of the Bank the principal moneys secured by the stock became payable and the liquidator was faced with the question as to the amounts in Australian £s for which he should admit proofs in such liquidation in respect of such principal moneys. He issued a summons in the Supreme Court of Queensland for the determination of this question on the 21st December 1948.

At the date of the commencement of the winding up of the Bank there existed the following classes of stockholders :—(i) those whose stock was at that date registered on the London register and had been at all times so registered ; (ii) those whose stock was at that date registered on the London register but which had been transferred thereto from an Australian register ; (iii) those whose stock was at that date registered on an Australian register and had been at all times so registered ; (iv) those whose stock was at that date registered on an Australian register but which had been transferred thereto from the London register ; (v) those whose stock was at that date and at the date of issue thereof registered on the London register but which had at an intermediate period been registered on an Australian register ; and (vi) those whose stock was at that date and at the date of issue thereof registered on an Australian register but which had at an intermediate period been registered on the London register.

The Supreme Court of Queensland made representation orders under which class (i) was to be represented by the first respondent, class (ii) by the second respondent, and classes (iii) and (iv) were to be represented by one Edward Robert Crouch. No representation orders were made as regards class (v) or class (vi), but at the

hearing of the motion below mentioned argument was addressed on behalf of class (v) by the second respondent and on behalf of class (vi) by Mr. Crouch.

On 24th December 1948 the liquidator gave notice of motion raising with greater particularity the points to be decided on the summons. The notice of motion contained questions framed so as to cover every possible alternative. Their Lordships do not find it necessary to set the questions out in full. In substance they all raise the same point, namely, whether a unit of the stock gives different rights to the holder when such unit is redeemed according to the place where the unit was registered either (*a*) at the date of issue of the stock or (*b*) at the date of commencement of the winding up.

Macrossan C.J. held that the place of registration at the date of original issue of the stock was the governing factor and that accordingly the liquidator must admit proofs on the footing that the Bank's obligations in respect of stock originally registered in London were obligations in English currency, that its obligations in respect of stock originally registered in Australia were obligations in Australian currency and that no regard was to be had to any subsequent change of registration. He directed that the equivalent in Australian currency of the face value of principal and interest payable in English currency be ascertained as at the date of the commencement of the winding up.

From this order the appellant appealed to the High Court of Australia contending that the obligation of the Bank in respect of all the stock was an obligation to pay Australian currency without regard to the place of registration. The second respondent entered a cross-notice of appeal contending that the critical date in determining liability of the Bank was the date of liquidation and not the date of the original issue of the stock. Mr. Crouch did not appear on the hearing of that appeal; nor has he taken any part in the proceedings before this Board.

The High Court (*Dixon*, *Williams*, *Webb* and *Fullagar* JJ., *Latham* C.J. dissenting) allowed the cross-appeal and in view of their conclusion on the cross-appeal directed a further variation of the order of the Supreme Court to give effect to their opinion that the material matter in deciding whether the obligation sounded in English pounds or Australian pounds was the place of registration at the date of commencement of the winding up and not the place of registration at the date of issue of the stock. Subject to this variation the High Court dismissed the appellant's appeal. *Latham* C.J. would have allowed the appeal and would have

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dismissed the cross-appeal, being of opinon that the obligations of the Bank in respect of the stock sounded only in Australian currency irrespective of the place of registration (1). It is from this decision of the High Court that the present appeal is brought.

Their Lordships agree with *Latham* C.J. that the question to be determined is not strictly speaking the construction of a contract though the consent of three-quarters of the creditors concerned was needed before the scheme could be sanctioned. It is a question of construction of the words creating the stock. No doubt the document setting out the terms of the scheme must be looked at as a whole and in the light of relevant surrounding circumstances, but the real question to be decided is as to the nature and incidence of the stock.

In their Lordships' opinion the salient feature of the new scheme was that under clause 3 the Bank was to create and allot a new stock and that the registered holders of the then existing securities were to accept the new stock in satisfaction and discharge of such securities. These securities arose from deposits made some in London and some in Australia and no doubt the London depositors became entitled by virtue of such deposit to be repaid in London pounds while the Australian depositors were entitled to be repaid in Queensland pounds or New South Wales pounds. The distinction between Queensland pounds and New South Wales pounds ceased to be material and their Lordships will therefore on occasion refer to them both as Australian pounds. Their Lordships will assume that the rights of the depositors were unchanged in the respect above stated by the old scheme. But once the new scheme came into force and they received stock to the amount of 75 per cent of the pounds previously owing it does not at all follow that the stock they received was not composed of units which were interchangeable in nature. If the new scheme had provided that instead of receiving in exchange parcels of the stock quantified in pounds, the depositors were to receive parcels of something else, e.g., Port of London stock, there would be no doubt that each unit of what they received was in every respect the equivalent of every other unit, and since the English £ and the Australian £ were not in 1897 in fact different in value, there would be nothing surprising in the depositors getting in substitution for their old rights something each unit of which was the same as every other. The whole question is whether the stock was of this uniform nature or not.

The language of clauses 3 and 4 which deals with the creation and allotment of the stock seems better adapted to describe stock

(1) (1951) 84 C.L.R. 177.

of a uniform nature than to describe stock with the peculiar rights recognized by the order of the High Court. Moreover, the very use of the word stock itself connotes uniformity. "Debenture stock," as pointed out in *Lindley* on *Companies*, 6th ed., p. 346, "is merely borrowed capital consolidated into one mass for the sake of convenience. Instead of each lender having a separate bond or mortgage, he has a certificate entitling him to a certain sum, being a portion of one large loan." But the feature of the stock which is most significant is the fact that the holder of it was given the right to transfer from one register to another just as he might please. The original depositors had no such right nor were they given any such right by the old scheme. It was the circumstance that their deposits had been made at a definite place and were repayable there and only there which is the strong reason for saying that under the old scheme they were entitled to be repaid the face value of the deposit receipts or other security which they held in the currency of the place of registration. But in as much as the interminable inscribed deposit stock which was substituted for the old securities could be moved about from register to register as the holders pleased, this is a new feature which their Lordships consider goes far to establish that the stock did not give the various holders thereof a different right of repayment according to where it might for the time being be registered.

There are other features in the new scheme which support the view that on its proper interpretation the stock when redeemable is redeemable in Queensland pounds wherever it might happen for the time being to be or to have been registered. It was created by a Queensland bank. While the new scheme was sanctioned by three different Courts a study of the new scheme, which was in identical language before all three Courts, shows quite clearly that the order of the Queensland Court is regarded as the governing order. Certificates of the stock, wherever registered, were in the same form and certify that the holder owns the number of units of the stock therein stated which was created pursuant to the provisions of the scheme sanctioned by the Supreme Court of Queensland. The scheme defines the "Court" as meaning the Supreme Court of Queensland when for instance it requires the Bank to effect the necessary alterations of its articles as soon as practicable after the scheme has been finally sanctioned by the Court. The power to appoint directors is made dependent on £500,000 of stock being unredeemed and as that right is to become effective when proper provisions have been made in articles of association in the other provisions of which a reference to a pound

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is clearly a reference to an Australian pound, the natural inference is that by £500,000 is meant 500,000 Australian pounds. The same observation may properly be made in relation to the voting rights of the stockholders at meetings of the Bank for which provision also has to be made in the articles of association.

There are no doubt places where the symbol £ must mean £ English or £ Queensland as the case may be. This is plainly the case where the new scheme directs fractions of £1 to be paid in cash and to be disregarded in calculating the amount of stock to be created. It may be that the same is true in the clauses in the schedule dealing with the fee to be paid for the registration of a transfer and the issue of a fresh stock certificate in the place of one lost, defaced or destroyed, but these minor provisions cannot displace the inference which their Lordships would draw from the more important clauses to which they have already referred.

Looking at the scheme as a whole, their Lordships agree with *Latham* C.J. that the liability of the Bank in respect of the stock is for a fixed amount in Australian pounds and that the Bank's liability—the stock—is and always has been limited to paying to each registered holder, on the occurrence of an event making the principal moneys payable, Queensland pounds equal to the nominal value of the stock held by him and in the meantime to paying in Queensland pounds interest on the said principal moneys at the rate of $3\frac{1}{2}$ per cent per annum.

The majority in the High Court did not all base their conclusions on the same line of reasoning, but two main points seem to have influenced their decision; (1) the history of the liabilities which were dealt with by the scheme and (2) the fact that as they interpreted the scheme the interest and principal moneys were payable at the place of registration.

Their Lordships have already dealt with the first point. In their opinion the majority in the High Court did not give sufficient weight to the fact that one stock was being issued in place of the pre-existing liabilities, or to the radical difference between the new scheme and the old scheme resulting from the fact that under the new scheme stock could be moved from register to register at the will of the holders.

As regards the second point it is to be observed that in view of the right to transfer from register to register the facts are essentially different from those which existed in *Adelaide Electric Supply Co. Ltd.* v. *Prudential Assurance Co. Ltd.* (1), where the dividends were payable only in Australia. The present case is more like *Auckland*

(1) (1934) A.C. 122.

Corporation v. *Alliance Assurance Co. Ltd.* (1) and *Bonython* v. *Commonwealth of Australia* (2), in both of which cases there was an option in the debenture holder to demand payment in England, or in New Zealand or Australia as the case might be. Referring to such a provision both *Dixon* J. and *Fullagar* J. in the present case point out that "great care", to quote *Dixon* J., "must be exercised in using the place of payment as a consideration supporting an inference that the substance of the obligation is to be measured in the money of the same place" (3). It may still be possible to draw the inference (see *Auckland Corporation* v. *Alliance Assurance Co. Ltd.* (1)) but, as appears from the observations of Lord *Simonds* in *Bonython's Case* (4), that case must be regarded as a very special decision on the facts of the particular case. In the present case, for the reasons already indicated, their Lordships think that the caution which *Dixon* J. and *Fullagar* J. administered to themselves should have led them to the opposite conclusion to that which they in fact reached.

Mr. *Menzies* for the respondents invited their Lordships to treat the case as one in which there was in 1897 the same money of account in England and Queensland. He based his argument on some *obiter dicta* of certain of the learned Lords in the *Adelaide Case* (5) and on some observations of Lord *Simonds* in *Bonython's Case* (6), where Lord *Simonds*, delivering the judgment of the Board, said: "though there were in a real sense two monetary systems, the money of account was the same and the money of payment substantially the same in the two countries".

These observations lend some colour to Mr. *Menzies'* argument but their Lordships think that reading the judgment as a whole, the Board was expressing the view, which their Lordships believe to be correct, that if, as the Board found to be the case in *Bonython's Case* (2), there were in 1897 different monetary systems in England and Queensland, it necessarily follows that there were different moneys of account. They may, as indeed they did both in *Bonython's Case* (2) and the present case, bear the same denomination and have the same value at the date of issue of the security under consideration, but they were none the less potentially different. That this was the view of the Board is, their Lordships think, made clear by certain observations, which read as follows:—

"It appears to their Lordships that in the consideration of this question too much emphasis should not be laid upon the fact that

(1) (1937) A.C. 587.
(2) (1951) A.C. 201; (1950) 81 C.L.R. 486.
(3) (1951) 84 C.L.R., at p. 227.
(4) (1951) A.C., at p. 221; (1950) 81 C.L.R., at p. 499.
(5) (1934) A.C. 122.
(6) (1951) A.C., at p. 219; (1950) 81 C.L.R., at p. 497.