and in addition is free from the foreign death duties due in respect of his legacy in so far as these duties serve the purpose of discharging United Kingdom estate duty due under the convention.

F. E. Koch.

National Bank of Australasia, Ltd. v. Scottish Union and National Insurance Co., Ltd. [1952] A.C. 498 is the latest decision on the meaning of the word "pound" in a transaction having English and Australian elements. The case is of more interest to specialists in currency law than it is to specialists in the conflict of laws. As usual in such cases the facts were somewhat complicated and, at the risk of distorting the issues, only an outline can be presented here.

In 1898 the Queensland National Bank, which was incorporated in Queensland and had a branch office in London, suspended payment. It owed nearly £8,000,000 to English creditors and nearly £4,000,000 to Australian creditors, including £2,000,000 to the Queensland Government. In 1897 a scheme of arrangement was prepared, replacing an earlier abortive scheme, and duly sanctioned by the courts in Queensland, New South Wales and England. Under the scheme the bank created interminable inscribed deposit stock which the creditors accepted in satisfaction of their claims; registers were kept in England and Australia, and any registered holder was entitled at his option to transfer his stock from one register to another. In 1947 the bank went into voluntary liquidation, and the principal moneys became due. The question was whether the bank's obligation sounded in English or Australian pounds or partly in one currency and partly in another.

Macrossan C.J. in the Supreme Court of Queensland held that stockholders whose stock was originally registered in London were entitled to be paid the face value of their stock in English pounds and stockholders whose stock was originally registered in Australia were entitled to be paid the face value of their stock in Australian pounds ([1950] Q.S.R. 264). His decision was varied by the High Court of Australia, which held by a majority (Latham C.J. dissenting) that the material date was the date of winding up, and not that of first registration, with the result that stockholders on the London register in 1947 were entitled to be paid in English pounds and stockholders on the Australian register at that date were entitled to be paid in Australian pounds (84 Com.L.R. 177). The Privy Council held that both Australian courts had been wrong and that all stockholders, irrespective of the place of registration of their stock, were entitled to be paid in Australian pounds only.
Two main reasons led to this conclusion. The first was that since "the very use of the word stock connotes uniformity" there was only one obligation, and the fact that the stock could be moved from register to register went 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." (pp. 509-510). The second reason was that "if, as the Board found to be the case in Bonython's Case [1951] A.C. 201, there were in 1897 different monetary systems in England and Queensland, it necessarily follows that there were different moneys of account." (p. 512).

The case differs from other money of account cases in that the debtor's obligation was not contractual: it was imposed by force of the orders of the various courts which sanctioned the scheme. It was natural that an eminent company lawyer like Lord Cohen (who delivered the judgment of the Board) should be impressed by the uniform nature of stock. But there is much force in the majority opinion of the High Court of Australia, that the bank had three separate obligations to its creditors in Queensland, New South Wales and England, the money of account of the first two being Australian pounds and of the third English pounds. For as Fullagar J. pointed out with his customary lucidity (84 Com.L.R. 177, 244), the English deposits were in "English money lent in England by people in England, repayable in England, and the proper law of the contract between debtor and creditor was English," and in the learned judge's opinion "the nature of those obligations was not changed either by the institution of the first scheme or by the institution of the second scheme." Moreover, the decision of the Privy Council involves the conclusion that when the English court approved the scheme in 1897, it must have intended it to impose an obligation in a currency other than that of England, although the existence of this other currency was at that date in the contemplation of nobody. Yet it had only recently been held in Bonython's Case [1951] A.C. 201, 222, that when the legislature of a self-governing colony uses terms apt to describe its own lawful money, it ought not to be presumed to refer to some currency other than its own.

The decision that the moneys of account of England and Queensland were different in 1897 seems, with respect, as surprising as the decision of Lords Warrington, Tomlin and Russell in Adelaide Electric Supply Co., Ltd. v. Prudential Assurance Co., Ltd. [1984] A.C. 122, that the English and Australian pounds were the same in 1982, when the latter had depreciated to the extent of 25 per cent. in terms of the former. For in 1897, as Dr. Mann has recently pointed out (68 L.Q.R. 194), the United Kingdom Parliament still
had power to legislate for a colony; colonial legislation was still subject to the Colonial Laws Validity Act, 1865; it was not until 1900 that the Commonwealth of Australia was given power to legislate with regard to currency, coinage and legal tender (Commonwealth of Australia Act, 1900, s. 51 (xii)); and it was not until 1909 that it exercised this power (Coinage Act, No. 6 of 1909). Nor is the conclusion rendered any more acceptable by saying that in 1897 the two currencies were "potentially different," for that is merely being wise after the event. Is the United Kingdom (or English) pound "potentially different" today from the Scottish pound, the Northern Irish pound, the Dublin pound? The truth is that we still await an authoritative determination of what factors render one currency different in law from another, notwithstanding the amount of learning that has been lavished on this subject. We do not even know for certain whether the answer depends on constitutional considerations, e.g., different legislative backing, as Dr. Mann suggests, or on commercial considerations, e.g., different coinage, note issue, and banking systems (see per Dixon J. in Bonython's Case, 75 Com. L.R. 589, 620). An economist perceives a difference between two currencies when one can be quoted in terms of the other. Judged by this test, the English and Australian pounds did not become distinct until 1909 or 1910.

With great respect to those who think otherwise, it may be suggested that in these money of account cases it is immaterial whether the currencies were different when the obligation was contracted.

If, as was obviously the case in the Bonython and National Bank Cases, and (pace Lords Warrington, Tomlin and Russell) also in the Adelaide Electric Case, the two currencies were separate at the time for payment, it does not seem to matter what the position was when the obligation was created. For the problem is to ascertain the intention of the parties, and from that point of view it seems quite immaterial whether the moneys of account were actually the same or were merely assumed to be so. It is significant that in the National Bank Case both Dixon and Fullagar JJ. in the High Court of Australia stated categorically that the moneys of account of England and Queensland were the same in 1897; yet the problem before them was the same as that before the Privy Council, though they solved it in a different way.

One comfort which may be derived from the National Bank Case is that the judgment of the Board makes no reference to Lord Wright's heretical doctrine that there is a "well-known principle of the conflict of laws" that "prima facie, whatever is the proper law of the contract regarded as a whole, the law of the place of performance should be applied in respect of any particular obligation.
which is performable in a particular country other than the country of the proper law” (Adelaide Electric Case [1984] A.C. 122, 151; cf. Auckland Corporation v. Alliance Assurance Co., Ltd. [1987] A.C. 587, 606; Mount Albert Borough Council v. Australasian, etc. Assurance Society, Ltd. [1988] A.C. 224, 241–242). One may reasonably conclude that the condemnation of this lex loci solutionis theory in Bonython’s Case was final. On the other hand, the decision throws no light on the vexed question whether, in English domestic law (and the domestic law of Queensland is no doubt the same), the presumption is that an ambiguously described money of account is the moneta causae (that is the currency of the proper law) or the moneta loci solutionis (that is, the currency of the place of payment). In Bonython’s Case, Lord Simonds came perilously close to arguing that because Queensland was the proper law of the contract, therefore the Australian pound was the money of account ([1951] A.C. 201, 221). The conclusion obviously does not follow. As Latham C.J. pointed out in the National Bank Case (84 Com. L.R. 177, 208–209), the role of the proper law is merely to furnish the necessary canons of interpretation and presumptions: it cannot itself determine the money of account without the assistance of some rule or presumption. In arguing the appeal to the Privy Council, counsel for the appellants is reported to have said that “the proper law of the contract must be found, and having found it, prima facie these currency expressions in the document will be referring to the currency of the proper law.” There is much to be said for such a presumption, though Dr. Mann prefers the presumption in favour of the currency of the place of payment (Mann, The Legal Aspect of Money, p. 179). Unless every case of this kind is to be litigated, a presumption one way or the other there must be. Its authoritative formulation for English (and Australian) domestic law is one of the most urgent tasks awaiting appellate tribunals in this difficult branch of law.

J. H. C. Morris.

**AUSTRALIAN COMMENTARY**

**Divorce and Domicile**

In *Dicey* ¹ under the heading “change of domicile during [divorce] proceedings” we find the brief comment that “there does not appear to be a reported English case in which the point has been taken that a husband has changed his domicile while a matrimonial suit is pending, but the courts of South Australia, Queensland,