

INSURANCE OF BANK DEPOSIT RECEIPTS.

A very curious case, one of many resultant from the Australian financial troubles of 1893, has recently been decided in favour of the plaintiff, a Mr. Murdock. He brought an action on a policy dated 12th May, 1893, whereby the defendants to the suit insured him against any loss which he might incur in respect of money deposited by him in the City of Melbourne Bank. The judgment delivered by Mr. Justice Bigham will prove interesting to bankers and their clients. He said:—

On 16th May, 1893, the City of Melbourne Bank suspended payment. The plaintiff was at the time a creditor of the bank in respect of money which he had deposited and for which he had received what are called deposit receipts. On 12th May, 1893, he effected with the defendants the policy now sued on. It is a policy which recites that the plaintiff has paid to the defendants a premium "to insure from loss by the insolvency of the City of Melbourne Bank sums of money as hereinafter mentioned deposited with the said bank, viz.:—£200 repayable on 2nd October, 1893, and £300 repayable on 23rd July, 1894." The policy then goes on to state that the defendants do bind themselves to pay and make good to the plaintiff all such loss by insolvency of the said bank of interest and also of the principal sums deposited, with leave for the plaintiff to exchange his deposit receipts for other deposit receipts (but not for shares) in pursuance of any scheme of reconstruction without prejudice to this insurance. The policy then proceeds as follows:—"It is understood and agreed that interest is payable hereunder when due and default is made by the bank and continues payable hereunder on the principal or any balance thereof until the principal is paid by the bank and (or) the underwriters; and the principal sums less any portion of the principal previously received from the bank when the final dividend in bankruptcy or liquidation is declared." The question in the case is whether the final dividend here referred to has been declared so as to entitle the plaintiff to recover from the defendants the balance of principal still due to him. The plaintiff says it has; the defendants say it has not. On 10th June, 1893, the bank was reconstructed, and the reconstructed bank issued to the plaintiff five deposit receipts for £100 each, payable at intervals of twelve months (the first falling due on 16th June, 1898), with interest at 4 1/2 per cent. These deposit receipts were issued in exchange for the two receipts mentioned in the policy. In June, 1895, the reconstructed bank stopped payment, and on 17th June, 1895, it was ordered to be compulsorily wound up. Subsequently three dividends, amounting in the aggregate to 5s. 7d. in the £, were paid to the plaintiff and the other creditors. The last of these dividends was declared on 18th October, 1897, and was paid on 5th February, 1898. It was a dividend of 1s. in the £, and it did not purport to be a final dividend. Nothing has been paid since by the liquidator, but the de-

fendants have, in accordance with the policy, paid interest to the plaintiff on the unpaid balance of his deposit. The liquidation of the reconstructed bank has not yet been formally closed, but it has for all business purposes come to an end. On 25th November, 1897, an order of court was made sanctioning a scheme under the Joint Stock Companies Arrangement Act 1870, whereby the remaining assets of the bank were transferred to a new company called the Melbourne Assets Company, Limited. The new company was registered on 17th December, 1897. The main object of this new company was, no doubt, to nurse and realise the assets which were to be transferred to it, but the memorandum of association did not limit its business to this object, and the new company took over the assets of three other Australian banks which were in a similar position to the Melbourne Bank. It was thought, no doubt rightly, that this scheme would enable the creditors of the four banks to realise the assets more cheaply and advantageously than could be done by allowing the liquidations to proceed under the winding-up orders of the court. By the scheme the new company was to issue to the creditors of the Melbourne Bank debentures for a certain proportion of their claims and a fully-paid £1 share for every £100 of the balance of their claims. The old shareholders had by this time ceased to have any interest in the assets—that is to say, the assets were insufficient to pay the liabilities. The plaintiff has had tendered to him the debentures and shares in the new company applicable to the unsatisfied balance of his deposit, but he has refused to accept them, and he now claims to have the balance due to him paid by the defendants under the policy. The defendants object to pay on the ground that "the final dividend in bankruptcy or liquidation" has not yet been declared, and that such a declaration is by the terms of the policy a condition precedent to any liability for the payment of the balance of the principal moneys. I think this contention is wrong. There was no bankruptcy, and there never was, and never could be, any dividend declared in bankruptcy. At the time the policy was issued the scheme for the reconstruction of the bank was evidently in contemplation, because the policy expressly authorises the plaintiff to accept other deposit receipts, but not shares, in pursuance of such a scheme of reconstruction. He did accept the fresh deposit receipts, and the bank was reconstructed. It did not, however, succeed. In 1895 it went into liquidation, and this is the liquidation contemplated as being possible, and accordingly provided for by the policy. That liquidation has now come to an end. The Bank of Melbourne has itself ceased to exist, even for the purpose of being wound up. No further dividends in the liquidation can be declared, and, therefore, the final dividend has been declared. The defendants say the plaintiff must wait until the assets company is wound up, if ever it is wound up; it would follow that if there were a scheme for the formation of