

1942

Present : Soertsz and Keuneman JJ.

POPE *v.* ABDULLA.

93—D. C. Colombo, 2,605.

Bank—Payment of money to Bank—Undials issued to persons living in places where the Bank has other branches—Bank in liquidation—Rights of Depositor.

A merchant, who has to pay money to persons living in towns in India in which a Bank has branches, pays to the Colombo Branch a cheque covering the amount to be paid, giving at the same time the names of the payees and the amount to be paid.

Thereafter, the Colombo Branch issued to the payee a draft or undial addressed to the branch concerned, ordering it to pay on demand, to the party named or order, the sum indicated.

Held, that, on the failure of the Bank, the merchant was entitled to preferential treatment in respect of the sums deposited in connection with the drafts.

A PPEAL from an order of the District Judge of Colombo.

H. V. Perera, K.C. (with him *V. A. Kandiah*), for petitioners, appellants.

N. K. Choksy for respondent.

Cur. adv. vult.

February 17, 1942. KEUNEMAN J.—

The petitioners are creditors of the Colombo Branch of the Bank in question, now in liquidation. They claim preferential payment in respect of various moneys alleged to have been entrusted to the Bank, in connection with certain drafts or undials and also telegraphic transfers. Admittedly the amounts in question were not paid on presentment at the proper places, viz., the branch offices of the Bank in various parts of India. The Bank suspended payment shortly after the issue of these drafts or undials.

The point to be decided depends upon the nature of these transactions. The law has been correctly stated by the District Judge, and may be shortly set out as follows. If a person pays money into a Bank and nothing further happens, the money is regarded as the money of the Bank, with the obligation superadded that the Bank will meet cheques presented to it up to that amount. The relationship created is that of ordinary debtor and creditor. The position, however, is different where the Bank received money in trust, or in a fiduciary capacity, such as an agent or bailee, as a result of directions which set out a particular purpose for which the money is given. In this case, the money does not become the money of the Bank to use as it pleases, but is earmarked for the particular purpose, and should not be mixed with the ordinary funds of the Bank. The right of the person who gives the money to the Bank to follow this money in the event of the insolvency of the Bank need not be gone into in this case, but that right is well-established—see *In re Hallett's Estate*, *In re Knatchbull v. Hallett*¹, and subsequent cases.

The only question argued in this case is whether the moneys in question were received by the Bank in a fiduciary capacity.

¹ (1879) 13 Ch. D. 696.

The procedure followed in the present case is as follows :—A merchant, having obligations to pay individuals living in towns in India, where the Bank has branches, sends particulars to the Colombo Branch, giving the place of payment, the name of the payee, and the amount to be paid. With this, the merchant sends to the respondent a cheque covering the amount to be paid, and the commission charged by the respondent—in the present case the cheque given in payment was not drawn on the respondent Bank, but on other Banks. Upon receipt of the money, the Colombo Branch immediately makes an entry in its books, debiting itself and crediting the branches concerned. Thereupon, Colombo issues to the payee a draft or undial, addressed to the branch concerned, ordering it to pay, on demand, to the party named by the payee or order, the sum indicated. The witness, George, who was himself an accountant under this Bank, and familiar with the practice, added : “ When we issue a draft to the party it shows that the money has left this branch. So that it is no longer here but in the Madras books as money received.” The money is not, however, in fact remitted, but the accounts of the various branches are subsequently reconciled by the Head Office. Colombo then advises the branch in question of the issue of the draft. The branch who receives this advice thereupon debits Colombo, and credits “ the draft payable account”. George adds : “ There will be a credit entry in the Madras branch in the name of the purchaser”, i.e., in the name of the person who has paid the cheque and taken out the draft. Colombo also advises the branch in question of the name of the person to whom the money is to be paid. George stated : “ The moment we issue a draft, that draft is purchased from us on the footing that our branch wherever it may be will pay him or the person he orders to be paid the amount due on that draft, according to its tenor”. A commission is charged on every draft that is given.

Apart from the draft, another procedure is adopted, when expedition is desired. This is called the telegraphic transfer. In this case, no draft is issued, but the payee is given a receipt for the amount paid. Colombo then wires to the branch in question, and undertakes the responsibility of paying the person named in the advice. Commission is also charged in respect of this transaction.

The learned District Judge was of opinion that, in the case of the draft, the transaction was nothing more than a purchase of the draft by the customer, and that this is an ordinary banking transaction. He appears to have regarded the telegraphic transfer also as producing the same relationship between the parties, viz., that of debtor and creditor. But, in my opinion, the evidence goes much further than that, and amounts to an understanding or agreement between the parties that the money is received by the Bank for the purpose of transmission to the appropriate branch for the special purpose of paying the person named in the advice or his order. Mr. Choksy, for the respondent, argued that, even if this was the case, the issue of the draft to the payee alters the relationship of the parties, and puts them in the position of debtor and creditor. He appears to concede that the position is different in the case of the telegraphic transfer. He argued that, in the case of the issue of a draft, the position was akin to that of the Bank giving a promissory note to the

payee, and therefore merely constituting itself a debtor to the payee. But I do not think this is the true position. No doubt, as far as the payee is concerned, he can treat the draft either as a bill of exchange or a promissory note, and, further, there is evidence that a draft of this kind can be negotiated. But it has not been shown that the issue of the draft affects in any way the relationship between the payee and the Bank. I do not think it amounts to more than the creation of a convenient means of collecting at the other end. The draft does not in itself constitute the Bank a debtor of the payee. In the event of the draft being unpaid at the proper place of payment, the right of the payee, as against the Bank, is what it had been at the commencement of the transaction.

I think that the order of the District Judge is wrong, and allow the appeal with costs. I make order that the petitioners are entitled to preferential payment in respect of the sums deposited in connection with the drafts and telegraphic transfers dealt with in the District Judge's order. All costs will be payable out of the assets in the hands of the liquidator.

SOERTSZ J.—I agree.

Appeal allowed.
