respondent on *Ex parte Ward, In re Coustan*(1). But that case has no bearing on the present question. There the point for decision was whether certain goods were within the order and disposition of the bankrupt with the consent of the true owner of the goods and it was held that, the owner having in sufficient time before bankruptcy asked the bankrupt to forward the goods to him furnishing the bankrupt at the same time with a cheque for cost of carriage and clearance from the warehouse, the consent of the owner had been determined by the demand for possession. With every deference therefore I am of opinion that the order of the learned Chief Justice sitting as Commissioner in Insolvency is based on a misapprehension of the law and I would allow the appeal and dismiss with costs the claim of Ramachandra Aiyar to be paid in priority to the other creditors of Arbuthnot & Co.

Messrs. *King & Josselyn*, attorneys for appellant.

C. Vijiaragavalu Naidu, attorney for respondent.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909. August 16. September 28.

THE OFFICIAL ASSIGNEE OF MADRAS AND AS SUCH THE ASSIGNEE OF THE PROPERTY AND CREDITS OF ARBUTHNOT & COMPANY, INSOLVENT DEBTORS (RESPONDENT), APPELLANT,

v.

A. E. A. LUPPRIAN (PETITIONER), RESPONDENT.*

Fiduciary relationship—Direction by creditor to debtor—How far such direction can create fiduciary relationship between creditor and debtor.

A customer who had certain amount standing to his credit in a Bank, gave directions to the Bank to utilise the money for a certain purpose and the officers of the Bank, when the customer called at the Bank, informed him that his instructions would be carried out in due course. The Bank became insolvent before the directions were so carried out. On a motion by the creditor to have his amount paid in full:

Held, per MUNRO, J., that, by virtue of the direction by the customer, the Bank held the money for a specific purpose and that a fiduciary relationship was established between the customer and the Bank. The customer was therefore entitled to be paid his money in full.

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(1) (1872) L.R., 8 Ch. App., 144.

* Original Side Appeal No. 50 of 1908.

MUNRO AND ABDUR RAHIM, JJ. — OFFICIAL ASSIGNEE OF MADRAS v. LUPPRIAN.

Per ABDUR RAHIM, J.—The direction by the customer did not alter the relation of creditor and debtor between the customer and the Bank into a fiduciary relationship. Such relationship could not be created unless the debtor by some unequivocal act, shows that he had changed his position into that of a bailee. The mere promise to carry out the customer's directions, without doing anything to appropriate the money, is not sufficient. The customer was only entitled to prove for his debt.

APPEAL from the order and judgment of Sir Arnold White, Chief Justice, in the exercise of the jurisdiction of this Court for the relief of Insolvent debtors at Madras in Petition No. 181 of 1906.

The facts for the purpose of this case are sufficiently stated in the judgment.

D. M. C. Downing for appellant.

K. Ramanath Shenai for respondent.

JUDGMENTS (MUNRO, J.)—This is an appeal by the Official Assignee against an order of the learned Chief Justice sitting as Commissioner in insolvency.

The facts are not in dispute. The respondent had, on the 5th August 1906, Rs. 600, standing to the credit of his current account with Arbuthnot & Co. On the above date he wrote to Arbuthnot & Co., and requested them to buy on his behalf a Government promissory note for Rs. 1,000 when the amount of his current account reached that sum. On the 30th September 1906, he again wrote and requested Arbuthnot & Co., to buy the promissory note as there was then Rs. 1,000 to his credit. He received no reply up to 10th October. He then called at the bank and was told by two officers of the bank that his instructions would be carried out in due course. The promissory note had not, however, been purchased when Arbuthnot & Co. suspended payment on the 22nd October 1906, though it could have been bought for Rs. 1,000 between the 30th September and the 22nd October. On these facts the learned Commissioner held that Arbuthnot & Co. held the sum of Rs. 1,000 in a fiduciary capacity, and directed the Official Assignee to pay the whole amount to the respondent.

As pointed out in my judgment in *Official Assignee of Madras* v. *Ramachendra Aiyar*(1), it was competent for the respondent to give such directions with regard to the money standing to the

(1) (1910) I.L.R., 33 Mad., 134.

credit of his current account as would thereafter cause Messrs. Arbuthnot & Co. to hold the money in a fiduciary capacity. The effect of his order to them to buy was the same as if he had attended in person at the bank, drawn his money, as he was entitled to do at any time, and then placed it in the hands of Messrs. Arbuthnot & Co. for the specific purpose of buying the promissory note. In the face of the respondent's specific directions Messrs. Arbuthnot & Co. were not entitled to use the money as their own but clearly held it in a fiduciary capacity. For the appellant, *In re Barned's Banking Company (Limited), (Massey's Case)*(1) is relied upon. There one Massey paid into a bank a certain sum with instructions to remit it to another firm. Next day the bank stopped payment without having made the remittance. It was held that Massey had only the right to prove with the general creditors, as the bank stopped payment before taking any steps to apply the money as directed. I am, with great respect, unable to see how this circumstance could affect the character of the money in the hands of the bank. It was money which the bank was clearly not entitled to use as its own. Heber Hart in his 'Law of Banking', second edition, page 146, makes the comment in a foot-note that the decision seems of doubtful authority and we have not been referred to any case in which it has been followed. In *King* v. *Hutton*(2) it was pointed out that where a stock-broker receives from his client a sum of money for the purchase of stock, he has only a special property in the money so handed to him for a specific purpose, and if he became bankrupt while the stock was unpurchased the money would not go into the general account in the bankruptcy. The same principle would, I think, apply when money is handed to a banker for the specific purpose of purchasing securities, and as has been shown, that is in effect the position in the present case. In *Prince* v. *Oriental Bank Corporation*(3) it was observed that the decision in *De Bernales* v. *Fuller*(4) might be supported on the ground that money had been paid in specifically for the payment of the particular bill and had been accepted by the bankers for that purpose, and that they made themselves, by so accepting the money, agents to hold it for the plaintiffs. Again in *Vaughan* v.

(1) (1870) (39) J.Ch., 635.
(2) (1900) 2 Q.B., 504.
(3) (1878) L.R., 3 App. Cases, 325 at p. 334.
(4) (1810) 14 East, 590.

MUNRO AND ABDUR RAHIM, JJ.

OFFICIAL ASSIGNEE OF MADRAS v. LUPPRIAN.

Halliday(1) mention is made of the rule of law that, if a remittance is sent for a specific purpose, the person who receives the money must either apply it for the purpose for which it is sent or else return it. I think the order of the learned Commissioner is right and would dismiss the appeal with taxed costs to be paid out of the estate.

The appeal is dismissed accordingly.

ABDUR RAHIM, J.—One Lupprian who has a current account with Arbuthnot & Co. had to his credit on the 5th August 1906 Rs. 600 and on that date he wrote to Arbuthnot & Co., requesting them to buy for him a Government promissory note for Rs. 1,000 when the balance to his credit reached the sum of Rs. 1,000. On the 30th September the amount to his credit then being Rs. 1,000, Lupprian informed the bankers of the fact and asked them to buy a Government promissory note for the amount. On the 10th October he not having received any reply to his letter interviewed some of the officers at the bank who told him that no reply was necessary as his instructions would be carried out in due course. But in fact Arbuthnot & Co. never bought any promissory note before they stopped payment.

I think the reasoning which I have applied to in *Official Assignee of Madras* v. *Ramachandra Aiyar*(2) also applies to these facts. The only difference between the two cases is that in the former the customer asked the bankers to pay the money to himself while in the latter he asked them to invest the amount due from them in Government promissory notes. Having regard to the usual course of business of bankers, I shall take it that Arbuthnot & Co. were under an obligation to buy the Government promissory note for Lupprian just as they were in the other case to repay to Ramachandra Iyer the amount due to him. And it may be that their failure to invest the money as directed would entitle Lupprian to recover damages for breach of that contract. But the question here is did the direction given by Lupprian to his bankers to buy Government promissory notes followed by a promise on their part to carry out the directions have the effect of making them bailees or trustees with respect to the amount in question? Such a case does not fall within the rule established

(1) (1874) L.R., 9 Ch. App., 561 at p. 568.
(2) (1910) I.L.R., 33 Mad., 134.

by *In re Hallett's Estate*(1), *Burdick* v. *Garrick*(2) and *Gibert* v. *Gonard*(3) and similar cases, nor in my opinion does it come within the meaning of that rule. As I have said, before you can make the rule applicable you must first of all find an entrustment or bailment. But it is argued that there is nothing to prevent a debtor consenting to hold the amount due from him as agent or bailee for the purpose of applying it in the manner designated by the creditor, for instance, in this case, it is said, it would be unreasonable to insist that Lupprian should have gone to the counter of Arbuthnot & Co. and received the Rs. 1,000 due to him and then and there handed over the amount again to them for buying Government promissory notes. I think there is force in this argument in so far that the law would not insist upon a mere superfluous formality if there is evidence of some unequivocal act on the part of the debtor, showing that he had changed his position into that of a bailee with respect to the money due from him. Obviously a mere promise to carry out the directions of the customer so long as he does nothing towards appropriating the money to any specific purpose will not suffice, for, such a promise can have no higher legal effect, so far as the present question is concerned, than a promise to pay the debt. Something has to be done which would enable the Court to say that a particular sum is held by the banker as trustee or agent for some specific purpose and which he is not therefore entitled to use but which he is bound to keep apart from his own money. It may not be necessary to separate the amount physically by tying it up in a bag or otherwise and the law would, I apprehend, regard it as a sufficient act of separation or appropriation if, for instance, an entry to that effect were made in the bankers' books of accounts. Here nothing was done by Arbuthnot & Co. towards appropriating the Rs. 1,000 to the purpose of buying any Government promissory notes and the matter rested in a mere promise when they became bankrupts. In taking this view of the law I am not going so far as *In re Barned's Banking Company (Ltd.) Massey's Case*(4) in which it was held that when money is received by a banker to be applied in a specific manner and that banker stops payment before taking any steps towards applying it for that

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(1) (1879) 13 Ch.D., 696.
(2) (1870) 5 Ch.App., 233.
(3) (54) L.J.Ch., 439.
(4) (1870) 39 L.J.Ch., 635.

MUNRO AND ABDUR RAHIM, JJ.

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purpose the payer cannot recover the money paid and I shall have something more to say hereafter regarding that case. But I am distinctly of opinion that to hold that Arbuthnot & Co. ever assumed any fiduciary character in respect of the money sought to be recovered would be going much further than what these authorities warrant or the principles of equity would justify.

I hold therefore that Lupprian has only a right of proof as a creditor of Arbuthnot & Co. and the appeal ought to be allowed with costs.

Messrs. *King & Josselyn*—attorneys for appellant.

Messrs. *Grant & Greatorex*—attorneys for respondent.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909. August 17. September 28.

THE OFFICIAL ASSIGNEE OF MADRAS AND AS SUCH THE ASSIGNEE OF ARBUTHNOT & Co. AND SIR GEORGE GOUGH ARBUTHNOT AND JOHN MONTGOMORY YOUNG, PARTNERS IN THE SAID FIRM OF ARBUTHNOT & Co., INSOLVENTS (RESPONDENTS), APPELLANTS,

v.

THE ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY, LIMITED (PETITIONERS), RESPONDENTS.*

Fiduciary relationship—When banker holds money as agent—Banker holding money as agent not a debtor.

O, who owed certain money to *M.C.*, sent a cheque to Bank *A* for the amount, asking *A* to place the amount to the credit of *M.C.*, who at the time had no account with *A*. *M.C.* was informed by *A* that the amount was placed to her credit. *M.C.*, on the 5th October, asked *A* to send her the amount and *A* sent *M.C.*, a form of receipt to be signed by her. *M.C.* signed the receipt and sent it to *A*, who received it before the 20th when *A* suspended payment. *A* applied to the Court for the relief of insolvent debtors and the estate of *A* was vested in the Official Assignee. On a motion by *M.C.* claiming payment:

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* Original Side Appeal No. 56 of 1908.