

APPELLATE CIVIL—FULL BENCH.

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

THE OFFICIAL ASSIGNEE OF MADRAS (AND AS SUCH
THE ASSIGNEE OF THE PROPERTIES AND CREDITS OF MESSRS.
ARBUTHNOT & CO., INSOLVENT PETITIONERS)
(COUNTER-PETITIONER), APPELLANT,

1910,
March
4 and 16

v.

D. RAJAM AYYAR (PETITIONER), RESPONDENT.*

Banker and customer—Payment to bank with instructions as to disposal, effect of—
“In suspense” account, meaning of.

When A paid money into a bank with instructions to pay over the same to B who had no account with the bank, and the bank wrote to B stating that they had received the money and held the same in suspense account pending instructions from B.

Held, on appeal from *The Official Assignee of Madras v. Rajam Ayyar* (1910) I.L.R., 33 Mad., 299, by MILLER and MUNRO, JJ., that the bank held the amount as agents of A for remittance to B, and not as bankers either of A or B.

The Official Assignee of Madras v. Smith [(1909) I.L.R., 32 Mad., 68], distinguished.

PER ABDUR RAHIM, J.—That the relationship between the bank and B was not that of debtor and creditor and that the bank held the money in a fiduciary capacity as bailee or agent. A banker holding money of a person “in suspense” does not treat it like an ordinary customer’s money.

The Official Assignee of Madras v. Smith [(1909) I.L.R., 32 Mad., 68], dissented from.

APPEAL under section 15 of the Letters Patent Act (24 and 25 Viet., Cap. 104) against the judgment, dated the 29th September 1909, of the Hon. Mr. Justice ABDUR RAHIM in Original Side Appeal No. 26 of 1908, presented against the order of the Hon. Sir CHARLES ARNOLD WHITE, the Chief Justice, the Insolvency Commissioner, dated the 16th March 1908, in Petition No. 181 of 1906.

The facts of this case are given in *The Official Assignee of Madras v. Rajam Ayyar* (1).

D. M. C. Downing for the appellant.

K. P. Madhava Rao for the respondent.

MILLER, J.—This is a somewhat peculiar case. The Madras Railway Company remitted money to Messrs. Arbuthnot & Co., to the credit of the claimant, Rajam Ayyar. Arbuthnot & Co. informed Rajam Ayyar, who was not one of their customers, that this had been done and asked for his instructions. But before he could instruct them they suspended payment. Now it

* Letters Patent Appeal No. 143 of 1909.

(1) (1909) I.L.R., 33 Mad., 299.

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seems to me that in this case the principle enunciated in *The Official Assignee of Madras v. Smith*(1) is not applicable. The Madras Railway clearly did not intend Messrs. Arbuthnot & Co. to use the money as their bankers, and Arbuthnot & Co., it seems to me could not possibly have done so. They were not the bankers of the Railway Company and the money remitted was not an advance to them by the Railway Company; it was money due to and in course of remittance to a third party and Messrs. Arbuthnot & Co. did not treat the money as money lodged with them as bankers. In their letter to Rajam Ayyar they suggest that if he desires to open an account with them he can do so, indicating clearly enough that till he does so, they are not his bankers. It is not clear why they received the money from the Railway Company, but possibly they hoped to get a new customer; for some reason they did receive it, but I do not think they held it as bankers of Rajam Ayyar. They held it so far as the evidence shows as agents of the Railway Company for remittance to Rajam Ayyar.

Mr. Downing argues that the money should be treated as money remitted to Arbuthnot & Co. by Rajam Ayyar without instructions; we must, he says, assume that Rajam Ayyar asked the Railway Company to remit to Arbuthnot & Co.

It is no doubt probable that some such request was made, but I am not prepared to assume against Rajam Ayyar that he did more than ask that the money might be sent to him through Messrs. Arbuthnot & Co. It would not be right to assume more than this seeing that he was not a customer of Messrs. Arbuthnot & Co., and so far as I know gave no instructions himself to Messrs. Arbuthnot & Co.

I find nothing here to raise the presumption that Messrs. Arbuthnot & Co. received or were intended to receive the remittance as bankers and I think therefore that the Appeal must be dismissed with all costs out of the estate.

MUNRO, J. MUNRO, J.—The distinction drawn by MILLER, J. between this case and *The Official Assignee of Madras v. Smith*(1) seems to me to be a real distinction though I do not think it was seriously insisted upon at the former hearing. I therefore agree to the proposed order.

ABDUR RAHIM, J.—I agree that the appeal should be dismissed for reasons which I have stated at length in the appeal against the order of the learned Commissioner in Insolvency.

Messrs. King and Partridge, attorneys for the appellants.