As regards the questions that the Assistant Sessions Judge thought fit to put to the jury, I consider that section 303, Criminal Procedure Code, does not authorize him to question the jury as to the grounds for their opinion, although it would be convenient and even desirable when such references are made that the Court that makes the reference as well as the Court that disposes of it should know what is in the mind of the jury. *Emperor* v. *Siranadu*(1) and *Public Prosecutor* v. *Abdul Hameed*(2) have laid down that such questions should *not* be asked. I think that all Courts should follow those decisions, and I am of opinion that so long as the present wording of the Criminal Procedure Code is retained, a Sessions Judge is neither authorized to ask questions nor is the jury bound to answer questions, as to the reasons for their verdict, and that they can only be asked questions to make it clear what their verdict is when it is ambiguous.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Moore.

THE OFFICIAL ASSIGNEE OF MADRAS (APPLICANT), APPELLANT,

v.

S. R. M. M. R. M. RAMASWAMY CHETTI (GARNISHEE), RESPONDENT.*

1920, April, 12 and 14.

Presidency Towns Insolvency Act (III of 1909), sec. 115—Immunity of Official Assignee from stamp duty, whether applicable to his attorney—Nattukottai Chettis, whether bankers—Loans advanced on or without deposit of goods—Entry in same account—Banker's lien on goods for general balance of accounts—Indian Contract Act (IX of 1872), sec. 171.

An attorney representing the Official Assignee, is entitled to the same privileges as to stamp duty as the latter has under section 115 of the Presidency Towns Insolvency Act. Consequently, the attorney need not pay stamp duty for a copy of the order passed by a Judge of the High Court in the exercise of its insolvency jurisdiction.

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(1) (1907) I.L.R., 30 Mad., 469.

(2) (1913) I.L.R., 36 Mad., 585, at 589 and 590.

* Original Side Appeal No. 63 of 1919.

THE OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMY CHETTY.

It is perfectly general knowledge, and it has been recognized in judicial decisions, that Nattukottai Chettis are the Indian bankers of this part of the country.

Vellayappa Chettiar v. *Unnamalai Achi*, (1917) 6 L.W., 687 and *Annamal[t] Chetti* v. *Annamalai Chetti*, (1919) 10 L.W., 67, referred to.

The garnishee, a Nattukottai Chetti, had, in addition to money-lending business, customers who deposited money with him, kept pass books and went with them and drew money, and he paid interest on the deposits and bought and sold hundies and lent money on securities. *Held*, the garnishee was a banker. It appeared that diamonds were deposited by a customer with the garnishee from time to time and advances made thereon and the diamonds were redeemed from time to time but also that loans were made by him without deposit of diamonds and entered in the same account.

Held, on the insolvency of the customer that under section 171, Indian Contract Act, the garnishee was entitled as a banker to retain the deposits as security for his general balance of account with the insolvent, and that no contract to the contrary had been proved in the case.

APPEAL against the judgment and order of the Hon'ble Mr. Justice COUTTS TROTTER, dated the 2nd day of September 1919, passed in the exercise of the High Court's insolvency jurisdiction in Insolvency Petition No. 115 of 1917.

The material facts appear in the judgment pronounced by COUTTS TROTTER, J., which is as follows :—

In this case the insolvent, one Muthiah Chetti, was a dealer in diamonds. Towards the end of his career he became extremely embarrassed, financially, and from time to time raised sums of money from several Nattukottai Chetti merchants, by pledging parcels of diamonds with them against advances. The present garnishee is one of the Nattukottai Chetti merchants with whom he had a large number of dealings, and at the time when the crash came and Muthiah Chetti was adjudicated insolvent, there were eight outstanding loans covered by deposits of diamonds and promissory notes. It was arranged between the Official Assignee and the garnishee that the diamonds should be sold and an account kept of what each lot realized. The result is that on five of these transactions there has been a surplus and on three there has been a deficiency. The Official Assignee's contention is that the garnishee is bound to hand over each surplus in full and retain only his right to prove in the insolvency for the deficiencies. The garnishee pleads the right to set off the deficiencies against the surpluses and hand over to the Official Assignee only the balance so resulting on the whole account.

The garnishee's case is put in two ways, and though it would be sufficient for me to decide for him on either point to establish

his right, I think as both are points of importance and as this case is not likely to end in this Court, I ought to express my opinion on both. The first point taken before me by the garnishee is that the transactions which he had with the insolvent were transactions of a banker with his customer and that accordingly he is entitled to the general lien of a banker over his customer's securities which is conferred by the law merchant and embodied in section 171 of the Indian Contract Act. The first step the garnishee has to accomplish is therefore to show that he is a banker within the meaning of the Contract Act. It is not very easy to give a definition of 'banker.' Dr. Heber Hart in his Law of Banking says: "A banker is one who in the ordinary course of his business honours cheques drawn upon him by persons from, and for whom, he receives moneys on current account." That no doubt emphasises the aspect of a banker's business which is most familiar in modern commercial conditions. But, there were bankers before cheques, and one has to get further below the surface of things and seek for something more fundamental. Dr. Thomas Hodgkin, who is not only a great historian but a very eminent banker, says somewhere in his "Italy and Her Invaders," speaking of the bankers and money lenders of the later Roman Empire: "The essential difference between a banker and a money lender is that a money lender lends his own money and a banker lends other peoples". That seems to me to express with great insight the distinguishing feature of a banker's business, and every one knows that a Nattukottai Chetti, while he may have a lot of his own money invested in his business, habitually lends other people's money along with it. Dr. Heber Hart says: "A banker is also a lender of money. The profitable conduct of the business of banking necessarily involves the lending or advancing of money by way of allowing over-drafts on current account, making loans in the form of advances, or discounting bills". I may add that in *Kunhan Mayan* v., The *Bank of Madras* (1), a loan of money on a pledge of jewels was recognized as a legitimate banking operation to which the general lien of bankers attached. It seems to me to make no difference to the essence of the matter that the loan in the case of the Bank of Madras would take the form of opening a credit in the dealer's favour on which he could draw by cheque, whereas in the case of a Nattukottai Chetti it would take the form of an advance of hard cash. The fact that the transaction is more primitive, or more direct, does not seem to me to affect its real character. One has to have regard to the customs and state of advancement of the

(1) (1896) I.L.R., 19 Mad., 234.

THE OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMY CHETTY.

people on whose affairs one has to adjudicate and there are hundreds of rich merchants in Madras carrying out every week of their lives commercial transactions on a large scale with a complicated system of mercantile credit who have never drawn or had drawn in their favour a single cheque during their whole career. Further, in *Vellayappa Chettiar* v. *Unnamalai Achi*(1), this Court has expressly recognized that a Nattukottai Chetti of the ordinary type does exercise the functions of a banker. I am therefore of opinion that the relations of the garnishee to Muthiah Chetti in this case may properly be regarded as those of banker and customer.

That being so, by virtue of the Contract Act a general lien will enure to the banker "in the absence of a contract to the contrary." Such a contract of course need not be and could hardly ever be explicit. But the terms of the contract or the nature of the transaction, in any particular case, may be such as impliedly to negative the right to a general lien on the customer's security. The line is often very hard to draw. There has been a long series of decisions of English Courts, and I propose to examine the most important of those which seem to me to bear upon the present question. On such a subject one hardly expects to derive very much assistance from the decisions of Indian Courts, which are occupied in determining very different matters. In *Jones* v. *Peppercorne*(2), the plaintiffs deposited some bonds with their bankers, Strahan, Paul and Bates. The latter employed the defendants Messrs. Peppercorne of the Stock Exchange as their brokers, and in order to raise money from their brokers they deposited with them their clients' (the plaintiffs') security. That was of course a fraud by the bankers upon the plaintiffs. Nothing turns upon that, and the case was dealt with in argument on the footing that the bonds for the purpose of determining the question of law might be regarded as the property of Strahan, Paul and Bates. There were two specific transactions, one a deposit of 108 bonds as security for a specific loan of £5,000 and the other a deposit of 80 bonds as security for another advance of £23,000. Eventually Strahan, Paul and Bates, were adjudicated bankrupt, and the brokers while admitting that the sale of the bonds had realized a surplus after repayment of the specific loans of £5,000 and £23,000, claimed to retain that against the general balance of account arising out of other transactions between them and Strahan, Paul and Bates in respect of which money was due to them. The Court upheld the general lien of the brokers, which for present purposes may be considered as identical with that of bankers, on the ground that the

(1) (1917) 6 L.W., 687. (2) (1858) 70 E.R., 490.

general lien was not excluded by the mere fact of there being a special contract whereby the security was on the face of it deposited as security for a specific loan. PAGE WOOD, V.C., relied for that doctrine upon the case of *Brandao* v. *Barnett*(1). As that case was decided adversely to the claim for a general lien, I turn to it to examine the reason for which the House of Lords so decided, and I think that the reason is to be found in its very special circumstances. In that case the customer deposited with his bankers tin boxes, of which he kept the keys, containing exchequer bills, the sole duty of the bankers being to receive interest on those bills and when directed by the customer to take the bills from his hands, get them exchanged for new bills, and return these to the customer. The House of Lords held, that on the bills locked up in the box, the bankers had no lien to secure the general account of the customer. The *ratio decidendi* appears to me to be not a limitation of the general lien of the bank to securities of the customer pledged for a special primary purpose. On the facts of the case the securities were never pledged with the bankers at all, but were merely physically placed in the bank, possession being retained in the hands of the customer, and the banker's relation to him being limited to a purpose so narrow as to preclude the idea that the bankers could do anything but return them to the customer when he asked for them. The case is really analogous to the common practice of packing up silver and other valuables in boxes and putting them in banks, when a customer closes up his house for a time. They are deposited with the bank for safe custody only, and such a purpose by necessary implication precludes the idea of a general lien. *Re European Bank*, Agra Bank claim(2), appears to me merely to re-affirm the principle that the fact that securities are primarily deposited against one account does not prevent a lien attaching to them in respect of a separate account of the same customer. The next case that I need refer to is *Re Bowes*(3), the case mainly relied upon by Mr. Devadoss. In that case Bowes deposited with his bankers a policy on his life by way of equitable mortgage to secure the repayment of moneys, not exceeding in the whole at any one time the sum of £4,000. When the time for adjustment came, Bowes' overdraft on his bankers exceeded £5,000. NORTH, J., held that the terms of the deposit necessarily implied that the policy was to be a security for £4,000 and no more, and that it followed that if the debt exceeded £4,000 the security could not be applied to cover

(1) (1846) 12 Cl. & Fin. 787., 8 E.R.. 1622. (2) (1872) 8 Ch. App., 41.
(3) (1886) 33 Ch. D., 586.

THE OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMY CHETTY.

it. I respectfully agree with that decision, because I think that in that case the bankers were rightly treated as having said, "If we lend you £4,000, this policy is available to us as our security. If we lend you more, it is not". I may refer to two other cases which seem to me to belong to the same class as *Brandao* v. *Barnett*(1), and when closely scrutinized to contain no new doctrine as to the nature or extent of the banker's lien but merely to decide on the particular facts that there had been no pledge of the suggested securities at all. The first is *Wylde* v. *Radford*(2). In that case there was a deposit of title-deeds which covered the title to two properties, and accompanying the deposit was a memorandum which expressly stated that the deposit was meant to effect a pledge of one only of the properties to which the deeds related. The Court held, and it is difficult to see how it could hold otherwise, that there had been no pledge whatever of the second property, and that no lien attached to it or to the part of the title-deeds relating to it. Similarly in *Wolstenholm* v. *Sheffield Union Banking Co.*,(3), a partnership had an account with the bank and one of the partners had a separate private account of his own with the same bank. At a time when both accounts were overdrawn, the partner asked for a specific advance of £500 to be secured by a deposit of title-deeds of a property belonging to him. He wanted the money really for the purposes of the firm, and I gather from the report that a portion of the advance was in fact put to the credit of the firm's account and not of the private account of the partner. The partner subsequently became bankrupt and a sale of the property realized a surplus after satisfying the partner's debt on his private account with the bank, which surplus the bank claimed by virtue of their general lien to apply to the extinguishment of the debt of the partnership to them. The Court of Appeal held that the loan was a loan to the partner on the property secured, and that it was immaterial that the money was by his direction handed over in part at least to the use of the partnership. As Lord ESHER says, the claim of the bank was in fact to retain the property of one man to pay the debts of another. That seems to me to be tantamount to saying merely that the Court treated the deposit as never having been pledged either towards the general partnership account or towards any particular transaction of the partnership, and obviously if there was no pledge to secure any partnership debt, no question of the general lien could arise at all.

(1) (1846) 12 Cl. & Fin., 787; 8 E.R., 1622. (2) (1863) 33 L.J. (Ch.), 51.
(3) (1886) 54 L.T., 746.

I must now apply the principle derived from these cases to the present circumstances. The principle appears to me to be that the presumption is in favour of a general lien and that presumption is not ousted by the mere fact that the pledge of the security was originally made against a specific advance, but will only be ousted if the terms of the pledge, or the manner in which it has been dealt with by the parties, raises the inference that they must have intended to exclude the operation of the general lien. For that purpose I have to look at the accounts in this case, it not being suggested that there is anything in the nature of an explicit negation of the lien. When sums of money were paid in by Muttiah Chetti, as they were from time to time, they were usually credited to one of the specific loans, and I infer that the diamonds deposited against that specific loan were released. On the other hand I find that there were a number of loans where there was no specific promissory note recorded as being given or any pledge of diamonds. I take at random the entries of the 26th Margali (9th January 1916) and 7th Ani (20th June 1916), where two sums of money seem to have been lent without any specific deposit of diamonds and without giving a promissory note to distinguish the advances from a general extension of the credit of the account. I cannot suppose that these advances which appear in the current account in the ordinary way were contemplated for a moment by the parties as having been made without any security and without the garnishee having the right of relying on the diamonds already in his hand as covering them also. The fact that when moneys sufficient to repay a specific advance were put in the hands of the garnishee he from time to time appears to have released the diamonds deposited to secure that particular advance seems to me to be by no means conclusive. The question is not whether the banker in fact released a particular pledge on re-payment of the particular debt which he was at liberty to do if he liked, but whether he was bound to do so. In my opinion he was not and he could at any time, if there was a general balance against Muthiah Chetti, have refused to release any given parcel of diamonds on tender of the specific sum for which they were originally pledged. This appears to me to be the effect of *Re London and Globe Financial Corporation*(1). In that case, if I may respectfully say so, I think that BUCKLEY, J., puts his finger on the point really decided in *Brandao* v. *Barnett*(2) and *Wylde* v. *Radford*(3), namely, that in those

(1) [1902] 2 Ch., 416. (2) (1846) 12 Cl. & Fin. 787; 8 E.R., 1622.
(3) (1868) 33 L.J. (Ch.), 51.

THE OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMY CHETTY.

cases the person who claimed the lien never held the property over which he claimed to exercise the lien in his own right but as a mere agent or bailee for the customer. I am therefore of opinion that in this case the right of general lien is established and that on that account the Official Assignee's claim fails.

The other contention on behalf of the garnishee was that he was entitled to a set-off under section 47 of the Presidency Towns Insolvency Act which runs as follows:

"Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more, shall be claimed or paid on either side respectively."

Section 38 of the English Bankruptcy Act contains the words, 'mutual credit, mutual debts, or other mutual dealings,' as had the earlier English Statutes. Except as a saving of words, I do not think this makes any difference, because as I read the decisions on the subject, the governing words are, 'the sum due from the one party shall be set off against any sum due from the other party which occur both in the English and Indian Acts. What the section requires, broadly, is that there should be a debt on both sides, and the voluminous case law on the subject which I shall briefly examine is really directed to ascertain what can be said to be legally a debt on one side or the other.

The starting point is the leading case of *Rose* v. *Hart*(1). In that case the bankrupt had deposited cloths with the defendant, a fuller, to be dressed, he then owing money to the defendant, for work done on other cloths in previous transactions. The assignee demanded delivery of the cloths tendering the amount due for dressing them. The defendant claimed to set off the amount owing to him on previous transactions. The Court held that this claim could not be maintained, as there was no debt due from the fuller to the bankrupt but only an obligation to return the goods when the work ordered to be done upon them was executed and the Court laid it down that mutual credits are such credits only as must in their nature terminate in debts. Later cases have interpreted this established rule as meaning not credits which must *ex necessitate rei* terminate in debts, but credits which have a natural tendency to terminate in debts, not in claims differing in their nature from a debt. Thus in

(1) (1818) 8 Taunt., 499.

Rose v. *Hart*(1) itself, the credit of the cloths which the fuller may be supposed to have made to the account of the bankrupt would not naturally terminate in a debt but in an obligation to return the cloths. Most of the cases when examined resolve themselves into a consideration of the question whether the facts of each case constituted a credit which had a natural tendency to resolve itself into a debt. Considerable difficulty has arisen in cases relating to the discounting of bills. But with those I am not directly concerned. I confess to very great difficulty in understanding the decision in *Young* v. *Bank of Bengal*(2), nor are my difficulties entirely resolved by the explanation of that decision given by Baron PARKE, who was a party to it, in *Alsagar* v. *Currie*(3), If it were necessary for me to express an opinion on this subject, I should prefer the opinion of WALLIS, J., in *In the matter of Canthom* (4) to that of TREVELYAN, J., in *A. B. Miller* v. *The National Bank of India*(5). See also the observations of BOVILL, C.J., in *Naoroji* v. *Chartered Bank of India*(6). In *Eberle's Hotels and Restaurant Co.* v. *Jonas* (7), the plaintiff company before it was wound up had deposited some cigars with the defendants to secure a debt. After the winding up the liquidator claimed a return of the cigars on payment of the debt which they were deposited to secure. The defendants refused to give them up unless the liquidator paid another debt due from the company to them which they claimed to set off under the Bankruptcy Act. The Court held that they were not entitled to do so as the right of the plaintiffs did not create a pecuniary liability in the defendants but only an obligation to return the cigars, and that this was not affected by the fact that a judgment in trover in their favour would take the ordinary form of ordering the return of the goods or their value. In *Palmer* v. *Day & Sons* (8), the debtor owed fees to a firm of auctioneers and subsequently he handed over some pictures to them with instructions to sell them subject to his approval of prices. The Court held that the deposit of the pictures with a mandate to sell constituted the giving of credit to the auctioneers. It is clear that the Court based its judgment on the positive mandate to sell which if executed must result in a money debt due from the auctioneers to the owner of the pictures. Lord RUSSELL, C.J., points out in his judgment the reasons underlying the decisions and says that unless the dealings are such

(1) (1818) 8 Taunt., 499.
(2) (1836) 1 M.I.A., 87.
(3) (1844) 12 M. & W., 751.
(4) (1910) I.L.R., 33 Mad., 53.
(5) (1892) I.L.R., 19 Calc., 146.
(6) (1868) L.R., 3 C.P., 444.
(7) (1887) 18 Q.B.D., 459.
(8) [1895] 2 Q.B., 618.

as will end on each side in a money claim the claims are incommensurable and that there cannot be an account as between goods and money and no balance can be struck. Lord RUSSELL also suggests in that judgment that the debt must be one that arises out of contract, a dictum which was followed by VAUGHAN WILLIAMS, J., in *Re Mid-Kent Fruit Factory*(1). The next case that I will refer to is *Re Daintry, Ex parte Mant*(2). The facts of that case are rather complicated but it is necessary to state them at some length before the decision can be understood. The parties were both solicitors and Daintrey owed Mant £86. Subsequently Daintrey sold his practice to Mant on the terms that he should be remunerated out of the profits of the business. After Mant and Mant (that was the title of the firm) had carried on the practice they had acquired from him for three years, they owed him under their agreement a sum of £300 which the trustee in Daintrey's bankruptcy claimed. Mant and Mant asserted the right to set off against this the sum of £86 that Daintrey owed them previously. Their claim was upheld. The point of that decision I take to be that you ought to look at the date of the receiving order to see whether at that date the relations between the parties were such as must naturally eventuate in mutual money debts. There need not be money actually owing at that date, provided the contractual obligations are already in existence which must in the natural course of things eventuate in subsequent money debts. Whether or no those relations have taken their natural course and resulted in a money debt is to be ascertained when the claim on the one side or the other is presented, as is pointed out very clearly by BIGHAM, J., at page 568. This case is relied upon by Mr. Grant as negativing the suggestion that the relation which exists between parties at the time of adjudication must involve a debt due at that date, though its amount may be uncertain. Solicitors' businesses are not always profitable and it is quite possible that Daintrey's business in Mant and Mant's hands might have yielded not profit but loss, in which case no moneys would have become due to Daintrey. Yet the Court of Appeal treated the contract as one that in the natural course of events must terminate in a debt from Mant and Mant to Daintrey. *Lord (Trustee of)* v. *Great Eastern Railway*(3) is a further affirmation of the principle that you cannot set off goods against money. *In re Taylor, Ex parte Norvell*(4) is an interesting if rather complicated case which gave rise to a conflict of judicial opinion.

(1) [1896] 1 Ch., 567.
(2) [1900] 1 Q.B., 546.
(3) [1908] 2 K.B., 54.
(4) [1910] 1 K.B., 562.

In that case Taylor owed Norvell £257 for work done and Norvell had entered into a binding contract with Taylor, of which specific performance had been decreed in his favour, for the purchase of the property of Taylor, and he claimed that in paying Taylor's trustee in bankruptcy for the price of the property he was entitled to deduct £257 which Taylor previously owed him. The decision of the majority of the Court of appeal really amounts to this: that a decree for specific performance imposes upon the purchaser an obligation of the nature of a money debt and does not merely invest him with a right to the conveyance of the land. *Provincial Bill Posting Company* v. *Low Moor Iron Company*(1) does not appear to me to be a decision on the section at all. *Shivi Gowda* v. *Fernandes*,(2) is not a decision on the insolvency statute and in any case only appears to me to re-affirm the principle that money and goods are incommensurable.

Applying the principles derivable from these authorities to the present case, what is the result? The argument of Mr. Grant is, as I understand it, something like this. These diamonds were deposited subject to the provision of law that on default they could be sold. A creditor must be assumed to contemplate that the security will be worth more than the debt for which it is deposited and it must therefore have been in the contemplation of the parties that the natural result of the transactions would be that there would be a money surplus in the hands of the pledgee which would be a debt owing from him to the pledgor. It is no answer to say that you have to assume the contingency of default, because that would exclude the case of banks which have discounted bills, even accommodation bills where the liability of the drawer or holder is only contingent upon the non-payment of the acceptor, and there is ample authority for holding that a bank which has discounted a bill is a creditor of the person for whom it has discounted it. I feel and admit the difficulty of accounting logically for the decisions relating to the discounting of bills, and as I have said before I cannot quite see how they are reconcilable with *Young* v. *Bank of Bengal*(3), or perhaps I should rather say how *Young* v. *Bank of Bengal*(3), can be logically brought into line with the other authorities. But I think I can rest my decision on this matter on a narrower ground. To my mind, at the material date, that is, the date of adjudication when the diamonds were still in the hands of the pledgees unsold, the cross obligation was incommensurable with the money debt on the part of the pledgor. The primary duty that lay upon the

(1) [1909] 2 K.B., 344. (2) (1911) I.L.R., 34 Mad., 513.
(3) (1836) 1 M.I.A., 87.

THE OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMY CHETTY.

pledgees though no doubt it was contingent was not to pay a sum of money but to return the diamonds, and that obligation could only be turned into a money debt by the fulfilment of a series of contingencies, namely, that the debtor should make default, that the pledgee should exercise his right of sale, and that the sale should result in a surplus. I think that these contingencies are too numerous to enable me to say that at the date of adjudication there was anything due from the pledgee which could be said to be such as would naturally result in an obligation to pay money.

In the result, as the garnishee succeeds on the first point though I have held that he fails on the second, there must be judgment in his favour with costs on the original side scale.

Against this judgment in favour of the Garnishee, the Official Assignee of Madras preferred this appeal.

The Hon'ble *M. D. Devadoss* for the appellant.

A. Krishnaswami Ayyar and *M. Subbaraya Ayyar* for the respondent.

The JUDGMENT of the Court was delivered by

WALLIS, C.J. WALLIS, C.J.—This is an appeal by the Official Assignee from the order of COUTTS TROTTER, J., on a garnishee summons. The first objection taken is that the appeal is filed out of time. The Official Assignee was represented by an attorney who claimed the same privileges as to stamp duty as the Official Assignee has by virtue of section 115 of the Presidency Towns Insolvency Act. This was apparently disputed in the Insolvency office and a claim was made upon the Official Assignee's attorney for stamp duty for a copy of the order appealed against, and the attorney ultimately paid it to save time. But the question before us is whether the attorney as representing the Official Assignee has any stamp duty to pay. If not, the appeal is in time. As pointed out by Mr. A. Krishnaswami Ayyar, the wording of section 115 is taken from the English Insolvency Act, and it was no doubt framed with reference to English practice. But at the same time it has to be applied to the practice obtaining in this Court. Now section 115 says

"No stamp duty or fee shall be chargeable for any application made by the Official Assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application."

The application for a copy appears to be either an application made to the Court, or an application for the issue of an order

made by the Court on his application, because the only method of issuing orders which is known to us here is the issue of a copy. Therefore we are of opinion that the appeal is within time.

The question in the appeal is whether the garnishee was entitled to a banker's lien in respect of advances made by him on various packets of diamonds deposited with him. The first question is whether he was a banker. Mr. A. Krishnaswami Ayyar has called our attention to an Irish case, *In Re Shield's Estate*(1), in which the question was whether the party there was a banker. In this case, we have evidence given that this garnishee who is a Nattukottai Chetti does banking business and money lending business, that he has customers who deposit money with him and who keep pass books and come with these pass books and draw money, that he pays interest on their deposits, and that he buys and sells hundis and lends money on securities. There is abundant evidence that in this particular case the garnishee did carry on banking business, and further than that it is perfectly general knowledge, and we have recognized it in *Vellayappa Chettiar* v. *Unnamalai Achi*(2) and *Annamali Chetti* v. *Annamalai Chetty*(3) that these Nattukottai Chettis are really the Indian bankers of this part of the country. There is therefore no reason why the garnishee in this case should not be entitled to a banker's lien. Under section 171 of the Indian Contract Act, bankers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; and we agree with the learned Judge that the Official Assignee in this case has failed to show any contract to the contrary. What he has shown is that various advances were made from time to time on the security of deposits of diamonds, and that the diamonds so deposited were redeemed from time to time. But it also appears that loans were made without any deposit of diamonds at all which are included in the same account. The garnishee's affidavit also shows that all the diamonds were the subject of a sort of second pledge to another creditor. There is no reason for differing from the learned Judge in his conclusion that a contract to the contrary has not been proved.

In the result the appeal fails and is dismissed with costs.

Short and Bewes, Solicitors for the appellant.

K.R.

(1) (1901) 1 Ir. R., 172. (2) (1917) 6 L.W., 687.
(3) (1919) 10 L.W., 67.