1914
February, 17.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

HERBERT ARCHIBALD POCOCK AND ANOTHER (PLAINTIFFS) *v.* THE DELHI AND LONDON BANK, LIMITED, MUSSOORIE, AND OTHERS (DEFENDANTS).*

Will—Executor—Powers of executor in dealing with the estate of his testator.

One P. died, leaving a will by which he directed that certain legacies should be paid out of a fund of Rs. 10,000 invested in fixed deposit in the Delhi and London Bank. The Bank had during P's. life-time advanced certain sums to his daughter on an undertaking by P. that he would stand surety for the loan. P. was also himself indebted to the Bank.

Held on suit by the legatees that the executor of P's. will was perfectly justified, on being satisfied as to the fact of P's. relations with the Bank above described, in permitting the Bank to realize from the fund in question both the amount of the loan to P's. daughter and the amount of his own indebtedness.

THE facts of this case were as follows :—

A Mr. George Pocock made his will on the 4th of October, 1909. In this will he referred to the fact that he had a fixed deposit in the Delhi and London Bank, Limited, Mussoorie Branch, of about Rs. 10,000. He proceeded to give certain legacies out of that fund. The said George Pocock died on the 15th of November, 1909, and his will was duly proved by the defendant, Mr. Bodycot, who was the executor named. The Bank alleged that during his life-time, namely, some time in the year 1906, the Bank advanced to a Mrs. Taylor, a daughter of the deceased, the sum of Rs. 4,000, at the request of Mr. Pocock, the testator, and that he had agreed that the deposit should be security to the Bank for the advance. The executor went into this matter and came to the conclusion that the representation of the Bank was true. The Bank had in their hands a letter which Mr. Pocock had received from the Lucknow Branch of the Bank asking him whether he would give security for the advance to his daughter. This letter was handed over to the Manager of the Bank at the time when Mr. Pocock is alleged to have agreed to be surety for the loan to his daughter and that the deposit should be security. Having satisfied himself on this matter the executor allowed the Bank to deduct the amount due for the advance to Mrs. Taylor and all other sums due by the deceased himself and received the balance of the deposit.

*First Appeal No. 426 of 1912 from a decree of C. H. B. Kendall, Subordinate Judge of Dehra Dun, dated the 3rd of September, 1912.

1914

HERBERT ARCHIBALD POCOCK v. THE DELHI AND LONDON BANK, LIMITED, MUSSOORIE.

The legatees sued to recover the amounts bequeathed to them. Their suit was dismissed by the court of first instance and they thereupon appealed to the High Court.

Mr. *Nihal Chand*, for the appellants.

Mr. *B. E. O'Conor*, for the respondents.

RICHARDS, C. J. and BANERJI J:—The facts connected with the present appeal are shortly as follows. A Mr. George Pocock made his will on the 4th of October, 1909. In this will he referred to the fact that he had a fixed deposit in the Delhi and London Bank, Limited, Mussoorie Branch, of about Rs. 10,000. He proceeded to give certain legacies out of that fund. The said George Pocock died on the 15th of November, 1909, and his will was duly proved by the defendant, Mr. Bodycot, who was the executor named. The Bank alleged that during his life-time, namely, some time in the year 1906, the Bank advanced to a Mrs. Taylor, a daughter of the deceased, the sum of Rs. 4,000, at the request of Mr. Pocock, the testator, and that he had agreed that the deposit should be security to the Bank for the advance. The executor went into this matter and came to the conclusion that the representation of the Bank was true. There can be very little doubt that the executor was justified in the conclusion to which he came. The Bank had in their hands a letter which Mr. Pocock had received from the Lucknow Branch of the Bank asking him whether he would give security for the advance to his daughter. This letter was handed over to the Manager of the Bank at the time when Mr. Pocock is alleged to have agreed to be surety for the loan to his daughter and that the deposit should be security. Having satisfied himself on this matter, the executor allowed the Bank to deduct the amount due for the advance to Mrs. Taylor and all other sums due by the deceased himself and received the balance of the deposit. The executor says that he did this with the assent of the legatees themselves. There can be no doubt that they did assent to this course, but it is possible that they thought that they were reserving to themselves the right to take any further proceedings they thought fit against the Bank. It is somewhat difficult to see how the present suit could be maintained by the legatees against the Bank. The Bank was entitled to look to the executor and to settle all questions with the

executor, so long as there was no fraud. In the present case, however, the plaintiffs, who are some of the legatees of the deceased, Mr. Pocock, have made not only the Bank but also the executor parties to the suit, and it is contended on their behalf that the settlement made by the executor with the Bank was equivalent to the payment of an invalid claim and that, accordingly, not only the executor but the Bank also are liable for the amount. It is contended that it was impossible to create a lien on the deposit save by writing under the hand of the deceased, and that inasmuch as Mrs. Taylor's debt was more than three years old, the Bank could not have sued her, and, therefore, could not have sued the executor as representing the estate of the deceased and that on these grounds the claim of the Bank was an "invalid claim." In our opinion the power of executors acting *bonâ fide* to settle claims in respect of the estate of their testator cannot be disputed. There is certainly no evidence to show that Mrs. Taylor's debt had become time-barred; on the contrary, having regard to the practice of banks, it is much more probable that the debt was still in force against her. The reason why neither the Bank nor the executor thought fit to proceed against her is because she was not considered a "mark" for the amount. It is not suggested, and could not be suggested, that the executor did not act perfectly *bonâ fide* in his dealing with the Bank. We think it quite unnecessary to decide the question whether what occurred between the deceased and the Manager of the Bank at Mussoorie was sufficient to create in law a valid lien on the deposit, because in our opinion under the circumstances of the present case the executor was quite justified in settling with the Bank in the way he did, that is to say, allowing the Bank to deduct the amount of the deceased's own debt and the moneys advanced to his daughter, Mrs. Taylor, for which he had, at least, become surety, they taking over the balance of the money. We think in all probability this was not only the honest course but it was the wisest course that the executor could have adopted. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.