should apply, and I think, that by restricting the application of the rule of abatement expressly to suits and appeals, the intention of the legislature was to exclude from its purview cases arising from proceedings in revision. Article 176, Limitation Act, which provides a period of limitation for making the legal representatives a party, refers to legal representatives "of a deceased plaintiff or of a deceased appellant".

In *Thakur Prasad* v. *Fakirullah* (1), their Lordships of the Privy Council, while dealing with section 647 of the Code of Civil Procedure, 1882, which is analogous to section 141 of the present Code, observed as under:—

> "Their Lordships think that the proceedings spoken of in section 647 include original matters in the nature of suits such as proceedings in probate, guardianships and so forth and do not include executions."

In view of the above observations, I do not think that the provisions of section 141 of the Code of Civil Procedure can be read in cases of abatements under Order 22, so as to extend its scope to revisions.

In view of what has been stated above, I am of the considered opinion that the decision of the trial Court was in accordance with law. In the result, this petition is dismissed. There will be no order as to costs.

B.R.T.

CIVIL ORIGINAL

Before Tek Chand, J.

MR. R. L. KHANNA,—*Petitioner*

versus

THE SIMLA BANKING AND INDUSTRIAL CO., LTD. (IN LIQUIDATION),—*Respondent*

Civil Original No. 76 of 1956.

1957

Nov. 29th

Banker and Customer—Customer entrusting bills to the Bank for collection—Relationship created thereby—

(1) I.L.R. 17 All. 106

Whether of principal and agent or creditor and debtor—Agency, whether comes to an end on collection being made —Bank entrusting the bills to another bank for collection—Latter bank going into liquidation—Compromise between the two banks to treat half the amount as preferential and half as ordinary claim—Customer, whether bound by that compromise—Position of sub-agent—Maxim Qui per alium facit per seipsum facere videtur—*Applicability of—Customer, whether entitled to receive the entire amount of the bills in priority.*

Held, that where a customer entrusts his bills to a bank for collection, the relationship of principal and agent is created between the parties and not of creditor and debtor. The agency is not discharged on the receipt of the amount by the bank and by putting it to the credit of the customer under his express or implied authority and the relationship of debtor and customer does not come into existence thereby.

Held further, that where the bank employs another bank for collection of the bills, the latter bank becomes the agent for the former and no privity either in law or in fact is created between the customer and the latter bank. The principle of law is succinctly stated in the maxim *qui per alium facit per seipsum facere videtur*, which means "he who does an act through another is deemed in law to do it himself."

Held also, that the customer is not bound by the compromise made between the two banks whereby they agreed to treat half the amount as a preferential and the other half as an ordinary claim and the customer is entitled to be paid in priority the entire amount of the bills entrusted for collection.

Petition under section 45B of the Banking Companies Act, praying that a decree or pay order for Rs. 3,654 with costs in favour of the petitioner against the respondent Bank, be passed.

SURRINDER SINGH, for Petitioner.

D. N. AWASTHY, for Respondent.

JUDGMENT

TEK CHAND, J.—This is an application made by Shri R. L. Khanna under section 45B of the Banking Companies Act, claiming a sum of Rs. 3,654 from the respondent. The facts of this case are that a short time before the partition of the country, the petitioner gave two treasury bills of Rs. 1,908 and Rs. 1,746, respectively, to the respondent for collection. These bills were drawn by the Sub-Divisional Officer, Anandpur Sub-Division, in favour of the petitioner for part payment of his dues for some contract work done by him. The petitioner states that after giving the two bills to the respondent Bank, he had been making frequent demands but without success. It appears that the two bills given for collection to the respondent Bank were passed on by it to the Federal Bank of India (Punjab), Limited, for collection. The Federal Bank went into liquidation on the 10th of February, 1948, but these bills had been claimed in the treasury before that Bank went into liquidation, as stated by P.W.I., the Liquidator of the Federal Bank of India, and P.W.2, a clerk of the Sub-Treasury, Una. According to P.W.2., the Sub-Treasury, Una, had paid the bill for Rs. 1,908 on the 13th of June, 1947, to the Manager of the Federal Bank of India, Una Branch, and the second bill for Rs. 1,746 was paid on the 30th of July, 1947. This was several months before the Federal Bank went into liquidation. The respondent in this case claimed the amount from the Official Liquidator of the Federal Bank and on the 10th of October, 1952, the respondent and the Liquidator of the Federal Bank agreed among themselves to reduce this amount by 50 per cent as a preferential claim and the claim of the respondent was registered to the extent of one-half as a

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preferential claim and the other half as an ordinary debt. Exhibit Rule 5 is a letter addressed by the Liquidator of the Federal Bank to the Manager of the respondent Bank, dated the 29th of September, 1954, in which it was stated that "the break up of the amount into two equal portions, one of preferential and one of ordinary, was done only as a compromise between the bank and your representative at the time of disposal of the case in Court. There was no longer basis for the split except that we were treating the entire amount as ordinary debt while your representative wanted it to be a preferential one and a via media of splitting it into half and half was eventually agreed."

It is clear from the statement of the petitioner on interrogatories in answer to question No. 4, that these two bills (mentioned as cheques) were given to the respondent Bank for collection only. In reply to a letter received from the petitioner, the Manager of the respondent Bank wrote to him on the 7th of August, 1950, *vide* annexure B, that the Federal Bank of India had not paid the proceeds of the two cheques so far, and that a claim with regard to those two cheques had been lodged with the Liquidator of the Bank and the amount would be remitted as soon as the respondent received the same from the Federal Bank.

The statement of the petitioner coupled with what has been stated in annexure B, and in the absence of any evidence in rebuttal, leaves no room for doubt that the relationship between the parties was that of principal and agent and not of creditor and debtor so far as these two bills were concerned. The Federal Bank of India was, in its turn, the agent of the respondent and there

was no privity either in law or in fact between the petitioner and the Federal Bank of India. The principle of law is succinctly stated in the maxim *Qui per alium facit per seipsum facere videtur*, which means "he who does an act through another is deemed in law to do it himself." The principle is illustrated in Article 63 in Bowstead on Agency (tenth edition, as under:—

> "Every agent who employs a sub-agent is liable to the principal for money received by the sub-agent to the principal's use and is responsible to the principal for the negligence and other breaches of duty of the sub-agent in the course of his employment. . . . . ."

The facts in the case of *Mackersy* v. *Ramsays* (1), were similar. In that case, one Mackersy employed Ramsay and Co., bankers in Edinburgh, to obtain for him payment of a bill drawn on a person resident at Calcutta. Ramsay and Company agreed to do so and wrote to Mackersy promising to credit him with the money when it was received. In the usual course of their business, Ramsay and Company transmitted the bill to Coutts and Company of London and the later forwarded to India to Alexander and Company where the amount was duly paid. A few months later, Alexander and Company became bankrupt. It was held that Ramsay and Company were agents of Mackersy for obtaining payment of the bill, and that payment having been actually made, they became *ipso facto* liable to him for the amount received; and that Mackersy could not be called on to suffer any loss occasioned by the conduct of their sub-agents, as between whom and himself no privity

(1) 57 R.R. 183

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pany of London and the latter forwarded to India existed. Lord Campbell observed:—

> "The general rule of law, that an agent is liable for a sub-agent employed by him, is not confined to cases where the principal has reason to suppose that the act may be done by the agent himself without employing a sub-agent; and here I conceive that the money is to be considered as received by Coutts and Company whose correspondents actually received it at Calcutta, and credited them with the amount five months before their failure. Mackersy could not have interfered with the money either in the hands of Alexander and Company or of the Coutts and Company. There was no privity between him and either of those houses; but payment to Alexander and Company was payment to Coutts and Company and payment to Coutts and Company was payment to Ramsay and Company, the respondents. I approve of the expression of the Lord Ordinary, when speaking of the receipt of the money by Coutts' correspondents at Calcutta, that 'at that moment the law placed it to the credit of the defender'."

Lord Cottenham observed:—

> "Ramsay and Company agreed for consideration, to apply for payment of the bill; they necessarily employed agents for that purpose, who received the amount; their receipt was in law a receipt by them, and subjected them to all the consequences. The appellant,

with whom they so agreed, cannot have anything to do with the conduct of those whom they so employed, or with the state of the account between different parties engaged in this agency."

In *Meyerstein and others* v. *The Eastern Agency Company (Limited)* (1), it was held that where A employed B as his agent and B employed C as his sub-agent, there being no privity of contract between A and C so as to make C liable to A and that, therefore, B, the agent, was liable to A by reason of C's, the sub-agent's default.

Both these authorities were approved by their Lordships of the Privy Council in *Hugh Francis Hools and others* v. *Royal Trust Co., and another* (2), and the above doctrine was, according to the Lord Chancellor, "one of the first and most settled principles of the law of agency".

In *Messrs Juj Sports Limited and others* v. *The New Bank of India Limited* (3), Achhru Ram, J., held that where a cheque or a bill or any other document is entrusted by a customer to a banker for collection, the former received the cheque or the bill or the other document, and collects its amount, as an agent for the latter, and in such a case the banker holds the money as trustee for the customer, irrespective altogether of the consideration whether or not the latter had an account with him on the date of the receipt of the money and whether or not the money had been credited in that account.

(1) (1885) 1 T.L.R. 595
(2) A.I.R. 1930 P.C. 274
(3) (1948) 50 P.L.R. 173

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There is nothing on the record of this case to show that on receipt of he amount by the respondent and by putting it to the credit of the petitioner under the latter's express or implied authority, the agency had been discharged and the relationship of debtor and creditor had come into existence between the banker and the customer. Support for this view is also found in a judgment of a Single Judge, reported in *re. Continental Bank of Asia Limited* (1), where the bank had collected the bills but had failed to remit the proceeds to the petitioners and thereafter it suspended payment and was later on directed to be wound up. The contention raised on behalf of the Official Liquidator in that case, to the effect, that collections having been effected before the bank suspended payment, the relationship between the parties was that of a debtor and creditor was not accepted, and it was held that the relationship between the parties was that of a principal and agent and the money was held by the bank as a trust money in a fiduciary capacity and as such was payable to the petitioners in priority to the general body of creditors.

In view of what has been discussed above, I am of the view that the petitioner is entitled to be paid in priority to the extent of the entire amount of the two bills, namely Rs. 3,654, and the petitioner cannot be compelled to receive half the amount in priority simply because a similar arrangement had been arrived at between the respondent and the Liquidator of the Federal Bank.

In the result, the petition is allowed. In the circumstances of the case, I leave the parties to bear their own costs.

(1) 53 C.W.N. 649.