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this view of the matter, it is quite clear to me that the income has not accrued and the amount was rightly excluded from the taxable income of the assessee. I would, therefore, decline to issue a mandamus requiring the income-tax authorities to state a case for the opinion of this Court.

Khosla, C. J.

B.R.T.

APPELLATE CIVIL.

G. D. Khosla, C. J., and D. K. Mahajan, J.

THE OKARA GRAIN BUYERS SYNDICATE, LTD.,— *Appellant.*

versus

THE UNITED COMMERCIAL BANK, LTD., AND ANOTHER,— *Respondents.*

First Appeal From Order No. 14 of 1954.

1960

August, 29th.

Banker and Customer—Customer depositing money in fixed deposit for one year "in account of the District Magistrate, Montgomery"—Nature of the account—District Magistrate—Whether has any interest therein—Customer—Whether entitled to receive payment alone on maturity—Account at a branch office of the bank—Branch office closed—Amount in the account, whether can be demanded from the Head Office of the Bank—Indian Contract Act (IX of 1872)—Section 56—Contract of clearing agents entered into on 30th March, 1947, for one year—Partition of the country on 15th August, 1947, leading to forced migration of the contractor from Pakistan to India—Contract—Whether frustrated.

Held, that where a customer makes a fixed deposit for one year in a bank in his name with the words "in account of District Magistrate, Montgomery", and directs the bank to forward the fixed deposit receipt to the said District Magistrate, the customer remains the owner of the amount and can claim it on the expiry of the period of one year. The words "in account of District Magistrate, Montgomery" are merely descriptive of the account and they do not and

cannot be taken to mean that the amount stood transferred to the District Magistrate, Montgomery. So far as the bank is concerned, there being no direction to the bank by the depositor that the money belonged to the District Magistrate, the bank is not entitled to raise the plea that the money belongs to the District Magistrate because along with the name of the depositor the expression "in the account of the District Magistrate, Montgomery", is tagged on. Nor would the direction by the depositor to the bank to forward the said fixed deposit receipt to the District Magistrate, Montgomery, make the latter the owner of the money. The bank is bound, in such circumstances, to pay the amount to the depositor after the expiry of one year and it cannot come forth with the plea that the concurrence of the District Magistrate is necessary merely from the fact that in the receipt the name of the District Magistrate is mentioned. In any case if the District Magistrate does not take any step to forfeit the amount within one year, the bank cannot withhold the payment of money to the depositor after the expiry of one year unless it is prevented from doing so by due process of law because the bank is not a party to the contract between the depositor and the District Maistrate.

Held, that it is legitimate to presume that when a bank closes its branch, the assets and liabilities of that branch go over to the head office and the persons, who have claims on the branch, have to lodge those claims with the head office. It is now more or less settled that in the case of a bank deposit, whether current or otherwise, the demand for its return has to be made at the branch where the deposit was made and if the branch where the deposit was made is no longer functioning, then the demand has to be made at the head office of the Bank.

Held, that the clearing agency contract entered into between the District Magistrate, Montgomery and the depositor of the amount in the bank on the 30th March, 1947 for one year became impossible of performance after the contractor migrated to India from Pakistan as a result of the partition of the country and became void by reason of frustration and therefore no rights whatever were left in the District Magistrate, Montgomery, regarding the security deposit. Even if it be assumed that the deposit in dispute vested in the District Magistrate, Montgomery,

he could no longer lay claim to it. The question whether any amount of the security deposit could or could not be forfeited could only arise for consideration after the expiry of the period of the contract. The contract having come to an end long before that period, the right of the District Magistrate, Montgomery, to appropriate a part or the whole of the security deposit fell with the contract. In this view of the matter also the Bank cannot raise the plea that the District Magistrate, Montgomery, has any interest in the deposit. The frustration of the contract put an end to any such right.

Case referred by Hon'ble Mr. Justice, Daya Krishan Mahajan, on 22nd February, 1960, to a larger Bench for decision of the important questions involved in the case and the case was finally decided by a Division Bench consisting of Hon'ble the Chief Justice, Mr. G. D. Khosla, and Hon'ble Mr. Justice Mahajan, on 29th August, 1960.

First appeal from the order of the Court of Shri Radha Kishan, Tribunal (Sub-Judge 1st Class), Amritsar, dated 4th December, 1953, dismissing the application.

Application under section 13 of the Displaced Persons (Debts Adjustment) Act, Act LXX of 1951, by a displaced creditor against the respondent the United Commercial Bank, Ltd., of Calcutta, an undisplaced debtor for the realisation of a sum of Rs. 40,800, lying in fixed deposit with the respondent by virtue or a Fixed Deposit Receipt No. 4/18 for Rs. 40,000, dated 30th March, 1947.

H. L. SIBAL AND N. N. GOSWAMY, ADVOCATES, for the Appellant.

D. D. KHANNA AND N. S. CHHACHHI, ADVOCATES, for the Respondents.

JUDGMENT

Mahajan, J. MAHAJAN, J.—This matter came up before me on the 22nd of February, 1960, and in view of the importance of the question involved, was referred to a Division Bench.

The facts are not disputed. However, in order to appreciate the real controversy, it is necessary to set out the facts.

In the United Punjab, there was a monopoly procurement scheme regarding foodgrains and to carry out that scheme, the appellants—The Okara Grain Buyers Syndicate, hereinafter called the Syndicate—were appointed as clearing agents by the District Magistrate, Montgomery. Under one of the terms of the agency, they were required to deposit a sum of Rs. 40,000 in a scheduled bank as security for the due performance of the contract of agency. The District Magistrate, Montgomery, could forfeit the whole or part of this amount for any breach of the terms of the contract. This deposit was made on the 30th of March, 1947. (In the referring order and the order of the Tribunal, the date is stated by mistake to be 30th April, 1947). The period of the agency, in the first instance, was one year and it was to end on the 29th of March, 1948. In pursuance of this appointment, a sum of Rs. 40,000 was deposited by the appellants with the respondent bank (The United Commercial Bank Ltd., H.O., Calcutta—hereinafter called the Bank) Okara Branch,—*vide* fixed deposit receipt, Exhibit D. 5, which is in these terms:—

"Notice of withdrawal given on 29th March, 1947, Due date 29th March, 1948.

THE UNITED COMMERCIAL BANK, LTD

No. MSC 9872 4/18, Okara (Punjab), 29th March, 1947.

Received from The Okara Grain Buyers Syndicate Ltd., Okara a/c District Magistrate, Montgomery, Rupees Forty thousand only as a Deposit at

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the rate of two per cent per annum to remain till notice of twelve months for its withdrawal by either side expires.

FOR THE UNITED COMMERCIAL BANK, LTD

(Sd.) Manager.
(Sd.) Accountant.

Rs. 40,000.

TERMS FOR THE DEPOSIT RECEIPT.

This deposit receipt is issued subject to the following terms and conditions:—

"(1) This receipt is not transferable.

(2) This deposit cannot be withdrawn before due date.

(3) Interest on this deposit ceases on the due date.

(4) The amount of this deposit cannot be withdrawn in part or by cheque or draft.

(5) On due date this deposit should be discharged by the depositors on one anna stamp if it is required to be repaid, otherwise an endorsement as to its renewal should be made in the space provided thereof (therefor).

(6) Receipt will, when so required, be issued in the names of two or more persons and will be made payable to any one or more of them or to the survivors.

Received payment.
Amount.
Interest.
Total:"

This receipt at the instance of the appellants was sent to the District Magistrate, Montgomery.

The work of the agency could not be wholly carried out because of the partition of the country on the 15th of August, 1947. The Bank had to close down its Okara Branch. The appellants being non-Muslims also migrated to India. It may be mentioned that the Bank is still carrying on its business at two places in Pakistan, namely, Karachi and Dacca. It has closed all its numerous branches, which existed in that part of the United Punjab which is now part of Pakistan. The Syndicate after its displacement from Okara established its business at Amritsar. The appellants made a demand on the Bank for the return of the security deposit. The Bank required the appellants to produce the fixed deposit receipt duly discharged by them as well as by the District Magistrate, Montgomery. It seems that some correspondence was also going on between the Bank and an Officer on Special Duty, West Punjab Government, Finance Department, regarding this deposit as would be clear from a letter from the Officer on Special Duty, dated the 24th of August, 1949, which is in these terms:—

"No. 4347-Banks-49/2917

From

N. A. HAROON, ESQUIRE,
Officer on Special Duty, West Punjab
Government, Finance Department.

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To

The General-Manager,
United Commercial Bank, Ltd., 6-D. Lindsay Street, Calcutta.

Dated, Lahore, the 24th August, 1949.

Dear Sir,

With reference to the correspondence resting with your letter No. Misc.-1064/49, dated 21st March, 1949, I am directed to forward copies of the Call Deposit Receipts for your perusal. The proceeds are payable to the District Magistrate, Montgomery, to whose name the amount was deposited. Had the consent of other party (the firm depositing the amount as security) been necessary before operating upon such securities, there was no use in holding them. I am, accordingly, to request that arrangements may kindly be made for an early payment of the amount to the District Magistrate concerned under intimation to the undersigned.

Yours faithfully,

(Sd.) . . .,
for Officer on Special Duty,
West Punjab Government,
Finance Department.

"No.. 5347-Banks-49/2918, dated the 24th August, 1949.

A copy is forwarded for information to the Controller of Food Accounts, West Punjab, Lahore, with reference to his

U.O. No. 3013-FA-49, dated the 11th August, 1949.

By order,

(Sd.) . . .,
for Officer on Special Duty, West Punjab Government, Finance Department."

The amount of Rs. 40,000 was being claimed by the said officer on the ground that it belonged to the District Magistrate, Montgomery. The Officer on Special Duty,—*vide* his letter No. 1990-Banks-49/607, dated 28th February/11th March, 1949, forfeited the security deposits of all the non-Muslims, which were deposited with the Okara Branch of the respondent Bank. The Bank, however, has not so far paid those amounts to the Pakistan authorities nor have they been recovered from the Bank by those authorities by the use of any coercive machinery. In this situation, the petitioners offered to the Bank that the amount be paid to them on their furnishing security for restitution in the event the amount is recovered from the Bank by the Pakistan Government. This suggestion having not been accepted by the Bank, the present petition under section 13 of the Displaced Persons (Debts Adjustment) Act (No. 70 of 1951), hereinafter called the Act has been filed in Amritsar where the petitioner resides. This is permitted under the provisions of the Act. The amount claimed is Rs. 43,200, principal and interest. Interest is claimed up to the 3rd March, 1952, at the rate of Rs. 2 per cent per annum. The petition is against the respondent Bank (respondent No. 1) and the District Magistrate, Montgomery, (Respondent No. 2).

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No one appeared on behalf of respondent No. 2 to defend the petition. However, the petition is opposed by respondent No. 1, the Bank. In reply to the petition, the principal contentions of the Bank are that the amount was deposited in the account of the District Magistrate, Montgomery, and, therefore, it can only be paid over to him and the appellants are not entitled to receive the same; in any case, even if they are entitled to receive the same, they can only receive it after the receipt is duly discharged by the District Magistrate and the appellants; and that the lien of the District Magistrate still exists and as the District Magistrate has forfeited the amount the petition must fail. The jurisdiction of the tribunal to decide the matter was not disputed, though before us for the first time this matter has also been agitated.

The petition was tried by Shri Radha Krishan, Subordinate Judge, Amritsar, acting, as Tribunal under the Act. He held that—

(a) the fixed deposit receipt was in the account of the District Magistrate for a period of one year and was given in lieu of security and that it was not in favour of the petitioners and, therefore, the amount due thereunder could not be paid to them;

(b) the District Magistrate was entitled to forfeit the amount and he had, in fact, forfeited the same; and

(c) in any case, the appellants could not claim the return of the security till they obtained discharge of the receipt from respondent No. 2 because his lien thereon still subsisted;

and therefore, rejected the petition. Against this decision, the present appeal has been preferred under the Displaced Persons (Debts Adjustment) Act.

Before dealing with the respective contentions of the parties, it will be proper to examine the true legal position as it emerges from these facts. It can admit of no doubt that the intention under the contract, which came about between the appellants and the District Magistrate, was to have the amount of Rs. 40,000 as security for the due performance of that contract and for that purpose, the money had to be placed within the control of the District Magistrate, Montgomery, so that after the termination of the contract if he came to the conclusion that there was any breach of the contract he could forfeit a part or the whole of that amount and leave the depositor to have recourse to the Civil Courts for the determination of the question as to whether the forfeiture was or was not justified. Terefore, it has to be seen whether in this case this intended result was achieved or not. In my view what has happened in this case has not translated that intention into reality. This could have been achieved in a variety of ways, i.e., by making the deposit in the name of the District Magistrate, Montgomery, or by giving a direction to the Bank that the District Magistrate held a lien on the fixed deposit receipt and the amount due under it could only be paid after obtaining the concurrence of the District Magistrate, or by the assignment of the fixed deposit receipt to the District Magistrate. But this is not what happened in the present case as will be presently shown. So far as the contract between the appellants and the District Magistrate is concerned, the Bank was no party to it and so far as

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the contract of deposit between the Bank and the appellants is concerned, the District Magistrate was no party to it. As a matter of fact the money was deposited by the appellants and the receipt is issued in their name with the addition of the words "in the account of District Magistrate, Montgomery". What this phrase actually means will be presently seen, but the crux of the matter is that the money belonged to the appellants and was deposited by them and is admitted by the Bank to have been received from them. Therefore, so far as the appellants and the Bank are concerned, the deposit was not subject to any conditions excepting that for a period of one year it could not be withdrawn. The District Magistrate, Montgomery, was nowhere granted any domain over this money.

The further fact that the appellants directed the Bank to forward the fixed deposit receipt to the District Magistrate, Montgomery, would not make the District Magistrate, Montgomery, the owner of the money. It only amounts to a direction that is sometimes given to banks to hand over the receipt or valuable documents to pay the amount of the receipt to the District Magistrate, Montgomery, or not to pay back its proceeds to the appellants in case of a direction to the contrary by the District Magistrate. In this situation, the District Magistrate had to obtain an injunction from a competent Court to stop the bank from paying off the amount after the due date. That being the position of matters, it appears to me that so far as the Bank and the appellants are concerned, the Bank was bound to pay the amount to the appellants after the expiry of one year and it cannot come forth with the plea that the concurrence of the District Magistrate is necessary merely from the fact that in the receipt the name

of the District Magistrate is mentioned. If the money was placed at the disposal of the District Magistrate then the specimen signatures of the District Magistrate would have been required by the Bank, or, in any case, there would have been evidence that the Bank received this amount as the agent of the District Magistrate, Montgomery, and for that purpose there would be privity of contract between the Bank and the District Magistrate. In the present case, no such privity of contract exists between the District Magistrate and the Bank. Therefore, the only conclusion that is possible is that the money, which was, in fact, deposited by the appellants, was payable to them after the period of one year had expired. On the facts of this case, no other conclusion is possible. It may be that the requirement of the contract whereby the security deposit was required was not complied with, but that is a matter between the District Magistrate and the appellants. The Bank cannot raise this plea for the simple reason that it cannot go behind the contract, which it entered into with the appellants when the money was received. The Bank is bound by its own contract and cannot escape liability by having recourse to an independent contract between the appellants and the District Magistrate, Montgomery.

The significance of the words "in account of District Magistrate, Montgomery", in the fixed deposit receipt has now to be examined. To my mind, these words are merely descriptive of the account and they do not and cannot be taken to mean that the amount stood transferred to the District Magistrate, Montgomery. If that were so, in the banker's books the account in the name of the District Magistrate would have been

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opened. No such account has been opened in the present case. The learned counsel for the Bank was repeatedly asked as to how the Bank entered this amount in their account books and also whether there was any account opened in the name of the District Magistrate, Montgomery, but no satisfactory reply was given. This clearly indicates that there is no account of the District Magistrate, Montgomery, with regard to this sum of Rs. 40,000. It is well known that people open number of accounts with banks and to distinguish one account from the other, decriptive words are added and these expressions vary with various persons. For instance, 'A' may open three accounts in his name, No. 1, No. 2 and No. 3, or may similarly open three accounts in his name coupled with the name of his three different sons. That would not make the sons the owners of the accounts. The accounts will still be the accounts of 'A', and he alone would be entitled to operate on them, though for purposes of identity he will have to mention as to which account he is dealing with. In any case, so far as the Bank is concerned, there being no direction to the Bank by the depositor-appellants, that the money belonged to the District Magistrate, the Bank is not entitled to raise the plea that the money belongs to the District Magistrate because along with the name of the appellants, the expression "in the account of the District Magistrate, Montgomery" is tagged on.

Moreover, this matter can be viewed in another light. In the case of security deposits, the legal ownership remains with the person depositing the money though subject to the rider that it may be forfeited by the person for whose

benefit the security is given on the breach of contract inasmuch as the security is deposited for the due performance of the contract. Therefore, before there is a breach of the contract and before the right of forfeiture is exercised, the money would belong to the person depositing the same. In the instant case, till 1949, there is no evidence that the District Magistrate, Montgomery, ever considered that there had been any breach of the contract giving him the right to forfeit the security deposit and, in any case, even if he had the right to forfeit the security deposit, the Bank could not withhold the payment of the money to the depositors after the end of one year unless it was prevented from doing so by due process of law because the Bank was not a party to that contract. By paying this amount the Bank would not run any risk for it could not be held liable for this amount at the instance of the District Magistrate. I am, however, also of the view that the District Magistrate had to exercise his right of forfeiture within the period of one year unless that period was extended by mutual agreement, and, in any case, within a reasonable time of the expiry of that one year. As I have already said, the option was not exercised till 1949. Therefore, in no circumstances, it can be said that there was any justification for the Bank to withhold the payment of the security deposit to the appellants.

Before proceeding to deal with the respective contentions of the parties, it will be proper to refer to another matter, which will have bearing in the decision of this appeal.

The Bank closed its Okara Branch soon after the partition of the country. There is no evidence that the assets and liabilities of that

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branch were transferred to the only two remaining branches in Karachi and Dacca. It will be legitimate to presume that when a Bank closes its branch, the assets and liabilities of that branch go over to the head office, and the persons, who have claims on the branch, have to lodge those claims with the head office. In the instant case, we are concerned with the "bank deposits" and it may be mentioned that the bank deposits were excluded from the definition of evacuee property in section 2(5) of the Evacuee Property Ordinance in Pakistan. [*See* in this connection page 599, paragraph 53 in *Delhi Cloth and General Mills Co., Ltd.* v. *Harnam Singh and others* (1)]. It is now more or less settled that in the case of a bank deposit, whether current or otherwise, the demand for its return has to be made at the branch where the deposit was made and if the branch where the deposit was made is no longer functioning, then the demand has to be made at the head office of the Bank. At this stage, I may mention that the amount of the security deposit was at no time declared evacuee property in Pakistan and it was forfeited in 1949 in terms of the contract of clearing agency entered into between the appellants and the District Magistrate, Montgomery, in 1947. Neither the money has been paid to the Pakistan authorities nor has the same been recovered by them by any coercive process of law. Therefore, in this situation, I must assume that the money is with the head office of the Bank at Calcutta. I am forced to this conclusion also on the short ground that if the money was in Pakistan and amenable to Pakistan Law, the Bank would have raised the plea in defence that the money is in Pakistan and the Indian Courts have no jurisdiction to determine

(1) A.I.R. 1955 S;C; 590

any dispute concerning it. This plea was never raised and, in my view, cannot be raised because in all probability such deposits were transferred to the head office of the Bank or to some of its Indian Branches for the simple reason that they belonged to non-Muslims and there was no law in Pakistan prohibiting their transfer.

The only contention raised by the learned counsel for the appellant is that on the facts of this case the Bank is not justified in withholding the amount of the security deposit from the appellants. He urges that the money belonged to the appellants. It was deposited by them and the only condition of deposit was that it could not be withdrawn wholly or partly before the due date. Therefore, he contends that after the due date the bank had to pay back the same to the appellants, particularly when notice of demand had been given by the appellants and to that notice of demand no objection was raised by the Bank to the effect that it was not proper, not being backed by the District Magistrate, Montgomery. It is also urged that so far as the Bank is concerned, there is no privity of contract between the Bank and the District Magistrate, Montgomery, nor does the Pakistan Law declare the deposits to be evacuee property. Therefore, the view of the Tribunal to the contrary cannot be upheld and the appellants are entitled to an order in their favour.

After giving the matter my careful consideration, I am of the view that the contentions of the learned counsel are sound and must prevail. I have already stated my reasons for coming to this conclusion.

The learned counsel for the appellants has also put forth an alternative argument, which I

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propose to consider now. The argument proceeds thus:

The contract of agency came to an end before the due date by the happening of certain events, those events will figure while dealing with the argument which made its performance impossible and therefore, no rights and liabilities flow from the same even if it be assumed that under that contract the Bank was justified in withholding the payment. In other words, the clearing agency contract became void by reason of frustration and, therefore, no rights whatever were left in the District Magistate, Montgomery, regarding the security deposit.

The contract was entered into in March, 1947, and it had to expire on the 29th of March, 1948, as is indicated by the due date of payment on the fixed deposit receipt. Moreover, it is admitted by both the parties that the contract was for one year and its period was never extended. On the 15th of August, 1947, a memorable event in the history of India came about and the country was divided into what are now India and Pakistan. Okara fell in Pakistan and all the Hindus and Sikhs residing in what is now known as West Pakistan were forced to quit their hearths and homes and became refugees. What they possessed was left behind. What happened before and after the partition of the country is ably set out in the book known as "Stern Reckoning" by my Lord the Chief Justice. After the partition it was impossible for the appellants to carry on the contract. The impossibility came about by the division of the country and the events that followed it and not by any act of the appellants. In this situation it must be held

that the contract became impossible of performance and, therefore, void. See in this connection section 56 of the Indian Contract Act. Reference may also be made to the decision of their Lordships of the Supreme Court in *Satyabrata Ghose* v. *Mugneeram Bangur and Co., and another* (1). At page 47 of the report, Mukherjea J. (as he then was), observed as under:—

> "We hold, therefore, that the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of section 56 of the Indian Contract Act. It would be incorrect to say that section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable recourse can be had to the principles of English Law on the subject of frustration. It must be held also, that, to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English Law 'dehors' these statutory provisions. The decisions of the English Courts possess only a persuasive value and may be helpful in showing how the Courts in England have decided cases under circumstances similar to to those which have come before our Courts."

(1) A.I.R. 1954 S.C. 44.

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It will be of interest to note that the Law of Contract in Pakistan is the same as the Law of Contract in India and, therefore, the result would be the same whichever law is held to apply. Therefore, even if it be assumed that the deposit in dispute vested in the District Magistrate, Montgomery, he could no longer lay claim to it. The question whether any amount of the security deposit could or could not be forfeited could only arise for consideration after the expiry of the period of the contract. The contract having come to an end long before that period, the right of the District Magistrate, Montgomery, to appropriate a part or the whole of the security deposit fell with the contract. In this view of the matter also the Bank cannot raise the plea that the District Magistrate, Montgomery, has any interest in the deposit. The frustration of the contract put an end to any such right.

Now, I proceed to examine the various contentions raised by the learned counsel for the respondent bank.

It is contended in the first instance that on the facts and circumstances proved on the record, the Bank must be deemed to have received the money as an agent of the District Magistrate, Montgomery, and, therefore, the money belonged to the District Magistrate, and not to the appellants. For this contention, reliance has been placed on a decision of the Lahore High Court in *Harisingh* v. *Secretary of State* (1), and a passage from the Practice and Law of Banking by H. P. Sheldon (Eighth Edition) at page 207. I am unable to accept this contention. I have already recorded my reasons in the earlier part

(1) A.I.R. 1932 Lah. 34.

of the judgment for holding that the money never vested in the District Magistrate, Montgomery, and it is not necessary to reiterate them now.

So far as the contention that the Bank received the money of the fixed deposit as the agent of the District Magistrate, Montgomery, is concerned, the authority relied upon has not the remotest bearing. In this authority, the fixed deposit receipt was issued in the name of the Divisional Disbursing Officer and on the receipt it was indicated that the deposit was on account of security of S. Hari Singh, Contractor. It was renewed at least once in the name of the Divisional Disbursing Officer and at his own instance. The Bank came into liquidation and the liquidator paid fifty per cent of the amount of the receipt to the Divisional Disbursing Officer, who in his turn, paid the amount to the person, who had tendered that amount as security. From these facts, the Lahore High Court concluded that the Bank was the accredited agent of the Divisional Disbursing Officer for the purpose of receiving the amount. All these factors are missing from the present case. As a matter of fact, here the money was not deposited in the name of the District Magistrate, Montgomery, but was deposited in the name of the appellants. Therefore, this authority has no applicability.

The following passage in Sheldon's Law of Banking has been relied upon for the contention that the Bank would be aware of the fact that the money had been paid for the benefit of the District Magistrate, Montgomery:—

> "Where a private customer has an account with an obvious label, such as 'Churchwarden's a/c,' or 'Cricket

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Club a/c," the banker can be in no doubt that the account is kept by the customer in a fiduciary capacity. But where the descriptive heading does not clearly indicate the nature of the account, there may be difficulty in determining whether it is a trust account or not. For example, such a heading as "John Jones *re* Henry Smith" would not necessarily indicate a trust account. It is just as likely to be a private account opened by Jones to record his business dealings with Smith. But such a heading as 'John Jones a/c Henry Smith' could fairly be considered to give notice of trust to the banker, and he would not, therefore, be entitled to set off a credit balance on this account against a debit balance on any other account of Jones. If the customer were, e.g., the owner of a large amount of small property and opened an account headed 'Rates a/c,' the inference would be that this was a mere separation of accounts for the customer's own convenience; but an account so labelled and opened by a rate collector or a borough treasurer would naturally suggest to the banker that it was of a fiduciary character. The banker must, in each case, be guided by his knowledge of the circumstances. The various accounts kept by auctioneers and stock-brokers can, in the ordinary way, be set off one against the other, though such customers, from the nature of their business, habitually handle other people's money."

In the first instance, this passage occurs where the author is dealing with the bank's rights of set off *vis-a-vis* its customers, and would not be any authority for the proposition that deposits coupled with the name of another person would be deposits for and on behalf of that other person. I have already held that the name of the other person was used for the purpose of identification of the account and not for the purpose of making that other person an owner of the account, and, in any case it is for the Courts to determine as to who is the real owner of the deposit. Even if the Bank did exercise its rights of set off with regard to such an account, it would not be estopped from pleading that the account, in fact, belonged to the customer and was not a trust account or an account of a third party. All that this passage comes to is that the Bank would be fixed with some sort of knowledge that such an account is not exclusively that of the customer and would not be entitled to the benefit of the initial presumption, for the purposes of onus in case of dispute raised by the party other than the customer.

The second contention of the learned counsel for the respondent Bank is based on term No. 5 of the fixed deposit receipt. On its basis it is argued that without the return of the fixed deposit receipt the Bank cannot be called upon to make the payment. For this purpose, reliance has again been placed on a passage in Sheldon's Law of Banking at page 163, which is in these terms:—

> "If the deposit receipt merely acknowledges the deposit of the money, the banker cannot demand its production before paying over the money. But

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if the form of the receipt is such that the signing of the receipt is a condition precedent to the withdrawal of the money, then the deposit receipt must be returned when the money is handed over. But the banker is not entitled to withhold payment of the money should the receipt be lost or destroyed. All that he can do is to ask the depositor for an indemnity."

No doubt term No. 5 in the fixed deposit receipt requires that on the due date the receipt should be discharged by the depositors on one anna stamp, but in view of the fact that the receipt was with the District Magistrate, Montgomery, who, in view of the peculiarly altered situation, would not hand over the same to the petitioner, because they are non-Muslims, it would be deemed to be as good as lost and, in any case, the appellants are demanding the money on giving indemnity to the Bank and, therefore, even according to Sheldon the non-production of the fixed deposit receipt would not be such an impediment as to entitle the Bank to withhold the payment to the appellants.

The third contention raised is that the amount was held by the Bank in trust for the District Magistrate, Montgomery, and for this purpose reliance has been placed on a decision of the Privy Council in *Official Assignee of Madras* v. *T. Krishanji Bhat* (1). The facts in the Privy Council case are entirely different from the facts in the present case. In the case before their Lordships of the Privy Council, the receipt was in the following terms:—

"Received from Mr. T. Sivasankar Bhat, the sum of rupees ten thousand only

(1) A.I.R. 1933 P.C. 148.

through Mr. T. Sadasiva Tawker, as fixed deposit in the name of his minor son T. Krishanji Bhat, as per instructions contained in Mr, Sivasankar Bhat's letter, dated 5th instant, carrying interest at 9 per cent per annum. Rs. 10,000 T. R. Tawker and Sons."

and the argument before the Privy Council proceeded on the admitted ground that the amount of the deposit was trust amount. In any case, the deposit clearly disclosed the trust. Thus this decision has no applicability to the facts of the present case. Moreover, a trust implies a trustee and a *cestui que trust*. In this case, there is no *cestui que trust* and the amount was not deposited with the Bank as a trustee. This is a case of an ordinary deposit though made for a particular purpose, but *inter se* the depositor and the Bank, the relationship created is only that of a debtor and a creditor and not that of a trustee and a *cestui que trust*. Therefore, I find no force in this contention either.

The fourth contention raised is that the account being a joint account, its payment could only be made if there is a valid discharge by both the persons in whose name the account stands. In the first instance, it is not a joint account. If it were, then specimen signatures of both the joint owners of the account would have been obtained by the Bank. No specimen signatures of the District Magistrate, Montgomery, were obtained in this case. It is not disputed that the account opening form was only filled in by the appellants and the District Magistrate was no party to it. In this view of the matter, this argument has only to be stated to be rejected.

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The last contention which was not raised before the Tribunal and has been raised in this Court is that the Indian Courts have no jurisdiction to adjudicate regarding this deposit, the deposit having been made in Okara, which is now in Pakistan.

This argument is based on the Supreme Court decision in *Delhi Cloth and General Mills's* (supra). It is urged that the elements of the contract out of which the obligation to pay arises are most densely grouped at Okara, which is its natural seat and the place with which the transaction has its closest and most real connection and, therefore, it will be governed by the law prevailing in Pakistan. This argument cannot be accepted in view of the peculiar facts and circumstances of this case. No doubt the security was given at Okara for the due performance of a contract entered into at Okara, but, for the closing of the Bank's branch at Okara, the obligation to pay back the deposit would also have arisen at Okara. All this would have, according to the *Delhi Cloth and General Mills's* case, made the contract subject to the Pakistan Law of Contract at best. Even if the Law of Contract of Pakistan is applied the contract did come to an end by frustration, as already held, and the deposit became free from the obligations, if any, which attached to it under the contract. The deposit being a bank deposit and there being no law in Pakistan prohibiting the transfer of the bank deposits of non-Muslims from Pakistan to India and the same having been transferred to India as held in the earlier part of this judgment, it became payable in India and the suit for its return is, therefore, cognizable by the Civil Courts of India. I have already held that the

Okara Branch of the Bank was closed after the partition of the country and according to the banking law and practice, the liability to return the deposit fell on the head office, which is in Calcutta (India) and, therefore, the demand for its return could only be made in India and for that reason also the Indian Courts will have jurisdiction to entertain the application. So, in whatever perspective the matter is viewed, I have no doubt that the Indian Courts have jurisdiction to entertain the application. It appears that it was for this reason that the Bank did not raise the plea of jurisdiction of Indian Courts before the Tribunal.

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No other contention has been advanced before us.

For the reasons recorded above, I am of the view that this appeal must succeed. I, therefore, allow the same and set aside the order of the Tribunal, and direct that the Bank do pay the amount of the deposit with interest as claimed by the appellants to them. This order, however, will be subject to the rider that the payment will be made on the appellants giving indemnity to the Bank for restitution in the event the Bank is made to pay the amount to Pakistan authorities as undertaken by the appellants in their petition to the Tribunal.

The appellants will be entitled to their costs.

The cross-objections also fail and are dismissed with costs.

Khosla, C. J.

KHOSLA, C.J.—I agree.

B.R.T.