APPELLATE CIVIL.

Before Falshaw and Kapur, JJ.

THE TRADERS BANK LIMITED,—*Appellant*

versus

THE BULLION AND GRAIN EXCHANGE LIMITED,—*Respondent.*

Regular First Appeal No. 30 of 1953

Banker and Customer—Customer having current account with the Bank—Moneys realized by the Bank for the Customer—Whether Trust Moneys—Jural relationship between Banker and Customer explained.

1954

Sept. 30th

B had current account with T. Bank. On 11th September, 1947, B gave a *hundi* for Rs 16,000 on Bombay Import and Export Agency, Bombay, for realization and credit to the current account. This was done. On 27th September, 1947, T Bank was asked to make cash payment to B. Later a cheque was issued through H. Bank for collection of the amount. On 27th September, 1947, Government declared a moratorium. On 3rd June, 1948, a scheme under section 153 of the Indian Companies Act sanctioned with regard to T. Bank. 1st Instalment was paid under the scheme and was received by B. Thereafter T. Bank prayed for the modification of the scheme. On 17th June, 1950, modified scheme was sanctioned. Later on Plaintiff filed a suit for recovery of Rs. 15,135-7-3, the balance amount of the *hundi* on the ground that the amount of the *hundi* was trust money lying with T. Bank for B. Trial Court decreed the suit holding the amount of the *hundi* to be trust money. T. Bank appealed to the High Court.

Held, that the usual relationship between a Banker and a Customer is that of debtor and creditor. So the money paid into the Bank ceases altogether to be the money of the person paying it. It is the money of the banker who is bound to return an equivalent by paying a sum equal to that deposited with him when he is asked for it and the banker can do as he likes with this money, but when he undertakes to collect moneys for his customer his position is that of an agent. When a bank receives a cheque for collection it is a question of fact to be decided as to what is the relationship between the bank and the customer. It was held that when a crossed cheque is given to a bank the question whether the bank received it as holders for value or as agents for collection is one of fact. If the bank receive the cheque as agents for collection and suspend payment before it is finally cleared at the clearing house, they can only receive and hold the proceeds as collecting agents for their customers, and not on the ordinary bank relationship of debtor and creditor. As the amount was credited to the account of B in Ludhiana

Branch of the Bank on 27th September, 1947, and the intimation given to B and this was done before the branch came to know of the moratorium, the jural relationship between the parties was that of customer and banker and the amount had become part of the general assets of the Bank and was no longer clothed with a fiduciary relationship.

Foley v. *Hill* (1), In re *Farrow's Bank, Limited* (2), *Agra and Masterman's Bank case* (3), *Mackersy* v. *Ramsays* (4), *The New Bank of India, Limited case* (5), *The Indian Hume Pipe Company, Limited* v. *The Travancore National and Quilon Bank Limited (in Liquidation)* (6), *Toovery* v. *Milne* (7), *Edwards* v. *Glyn* (8), *Alliance Bank of India Ltd.* v. *Amritsar Bank (in Liquidation)* (9), re *Brown* Ex parte *Plitt* (10), Ex parte *Dale* (11), *The Official Assignee of Madras* v. *G. Smith* (12), *Modern Automobiles* v. *Travancore National and Quilon Bank* (13), *The Traders Bank, Ltd.* v. *Kalyan Singh* (14), relied upon.

Regular First Appeal from the decree of Shri Raj Indar Singh, Senior Sub-Judge, Ludhiana, dated the 15th January, 1953, granting the plaintiffs a decree for a sum of Rs. 13,240 with proportionate costs.

I. D. DUA and P. L. BAHL, for Appellant.

K. L. GOSAIN and H. L. SIBAL, for Respondent.

JUDGMENT

KAPUR, J. This is a defendant's appeal against a judgment and decree of the Senior Subordinate Judge, Ludhiana, dated the 15th January, 1953, decreeing the plaintiff's suit for a sum of Rs. 13,240 with proportionate costs. **Kapur, J.**

The plaintiff, The Bullion and Grain Exchange Ltd., Ludhiana, is a company carrying on business at Ludhiana. The defendant is the Traders Bank Ltd. The former had a current account with the Bank and on the 11th September

(1) 2. H.L. Cas. 28 at p. 36
(2) (1923) 1 Ch. 41
(3) (1867) 36 L.J. (Ch.) 151
(4) 57 R.R. 183
(5) A.I.R. 1949 E.P. 88
(6) I.L.R. 1943 Mad. 187
(7) 106 E.R. 514
(8) 28 L.J. Q.B. 350
(9) 79 P.R. 1915
(10) 60 L.T. 397
(11) 11 Ch. D. 772
(12) I.L.R. 32 Mad. 68
(13) A.I.R. 1942 Mad. 377
(14) 55 P.L.R. 73

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1947, it gave a *hundi* to the Bank for Rs. 16,000 drawn on Bombay Import and Export Agency, Bombay, with the following instructions:—

> "We enclose herewith *hundi* No. 1116 of even date for your disposal and to get the sum of Rs. 16,000 (sixteen thousand) credited to our current account after realization. Please confirm and oblige."

This *hundi* was realised by the Bombay Branch of the defendant Bank on the 19th September 1947, and they advised the Ludhiana Branch that they had credited a sum of Rs. 16,000 to the Ludhiana Branch being the amount realised from the drawee. It is not quite clear from the evidence as to when this letter was received by the Ludhiana Branch, but the documents Exhibits D.C., D.D. and D.E. (at pages 31 and 32 of the paper book) show that on the 27th September 1947, the Ludhiana Branch debited their Bombay Central Office with Rs. 16,000 deducting Rs. 10 as commission and credited to the plaintiff a sum of Rs. 15,990. This is also shown by the current account Exhibit D.B. (at page 29 of the paper book).

On the 27th September 1947, by a letter (Exhibit P. 1) which shows that it was sent at 10 a.m., instructions were given to the Bank to make cash payment to the plaintiff and then a cheque was issued at 10-30 a.m. on the 27th September through the Hindustan Commercial Bank for collection of the amount of the *hundi* realised by the defendant Bank but it appears that this cheque was not paid.

The defendant Bank originally had its principal place of business at Lahore and before the partition the place of business was transferred to

what became India. Due to the difficulties which these banks got into as a result of the partition the Government of India promulgated an Ordinance called the Banking Companies (East Punjab and Delhi) Ordinance No. XX of 1947. The object of the Ordinance was to enable temporary assistance to be given to certain banking companies in the Provinces of East Punjab and Delhi. It was promulgated on the 27th September 1947. By section 1(3) it came into force at once. It applied to and in relation to banking companies the registered offices of which were situated in the Province of East Punjab or the Province of Delhi. By section 3 power was given to the Central Government to order moratorium in certain cases which consisted of staying all actions and proceedings against a named banking company for a period of three months. The other essential features of this Ordinance are contained in section 4 which gives the obligations of the banking companies during the moratorium and I shall quote section 4 *in extenso*—

"4. OBLIGATIONS OF BANKING COMPANIES DURING MORATORIUM.

While an initial order is in force, the banking company to which it relates—

(a) shall, on demand duly made, pay to any depositor at each branch in which the depositor has a current or deposit account or both, such amounts not exceeding in any month ten *per centum* of the total unencumbered amount in the depositor's current and deposit accounts with the branch on the date of the notification of the order, or two hundred and fifty rupees, whichever is less, and may make, at a branch

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situated within the Provinces of India, payments similarly limited in amount to any person making a demand therefor at the branch who satisfies the company both that he has a current or deposit account with a branch of the company situated outside the Provinces of India, and as to the amount thereof;

(b) shall not accept any deposits, whether in current or deposit account;

(c) shall not, save as provided in clause (a) and save for the purpose of meeting its normal running expenses, dispose of any of its assets.

Explanation.—For the purposes of this section 'month' means a period of thirty days, the first such period commencing on the date of the notification of the order under section 3."

By section 5 the Central Government was given the power to make advances to these banking companies and under section 6 certain accounts were to be maintained and returns made. Section 7 provides the penalties for contravention of the provisions of this Ordinance or for any default in complying with any requirements. This was a temporary measure and was to remain in force for three months.

On the 3rd June 1948, a scheme under section 153 of the Indian Companies Act was sanctioned by the District Judge, Delhi, providing for the payment of the debts due by the Bank and for its restarting the business. The first instalment was paid in accordance with the scheme and when the second instalment fell due the Bank applied for

another scheme which became necessary because of some legislation giving protection to certain displaced debtors and this scheme was sanctioned on the 17th June 1950, by the District Judge, but on appeal being taken to the High Court the order sanctioning the scheme was set aside and under the orders of the High Court a new scheme which is marked as Annexure 'X' was sanctioned on the 16th May 1952, by Harnam Singh, J. This is at page 39 of the paper book. This modified scheme provided that no interest shall be payable as from the 27th September 1947. A different mode of payment was sanctioned but people who had already been paid in full or who were excluded under the terms of the first scheme were not brought under this scheme and remained outside it.

The plaintiff brought a suit for recovery of Rs. 15,135-7-3 alleging that the intimation of realisation of their *hundi* for Rs. 16,000 drawn on the Bombay Import and Export Agency, Bombay, was received at the Ludhiana Branch of the Bank on the 27th September 1947, and this money was lying in trust for the plaintiff, that on the 26th September 1947, the Government issued orders of closing the Bank and its business till further orders and stopped it from accepting further deposits, that the plaintiff instructed the Bank on the 27th September at 10 a.m. not to credit the money to their account but in spite of this instruction the Ludhiana Branch after deduction of commission did credit the amount to the account, that a scheme was sanctioned by the Court as a result of which the deposits were scaled down but the trust monies were to be paid in full, and that as the question whether the amount of the *hundi* was trust money or not was in dispute the matter had to be decided by the Court. The plaintiff prayed for a decree for Rs. 13,240 as principal and Rs. 1,895-7-3 as interest

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The defence of the Bank was that the *hundi* was endorsed in favour of the Bank and it was to be collected and the amount deposited to the credit of the plaintiff's account and when the money was realised on the 19th September 1947, the jural relationship between the plaintiff and the defendant became one of creditor and debtor and it was immaterial as to when the entry was made. It was admitted that the Government had "granted moratorium" but the right of the plaintiff to countermand the previous instructions after the realization of the *hundi* on the 19th September was denied. Thus the Bank denied that the sum of Rs. 15,990 was in the nature of trust money and pleaded that the plaintiff was only an ordinary creditor who had already received Rs. 2,750 and was entitled to receive the balance in accordance with the scheme. On these pleadings the following issues were stated:—

(1) Whether the amount in dispute is not liable to be treated as a deposit under clause No. 2 of the scheme Exhibit D. 1 and is trust money with the Bank as claimed by the plaintiff?

(2) Whether the plaintiff has accepted any instalments under the scheme and what is its effect?

(3) Is the plaintiff entitled to any interest and if so, at what rate?

The learned Judge has held that the amount of the *hundi* was trust money and has, therefore, decreed the suit and the defendant has come up in appeal to this Court.

The evidence on behalf of the plaintiff shows that the Bank suspended payment on the 27th

September 1947, but what time the plaintiff was unable to say. On the same day they handed over the cheque at 10.30 a.m. to the Hindustan Commercial Bank.

On behalf of the defendant Bank evidence was given that the proceeds of the *hundi* were credited in the account of the plaintiff on the 27th September 1947 and no instructions were received by the Ludhiana Branch stopping the crediting of this money to the Bank and D. W. 1. V. S. Duggal has stated that the Bank was doing its business on the 27th September as no instructions had been received "suspending payments" and according to the rules of the Bank this amount formed part of the assets of the Bank on the 19th September when the money was received in the Bank. This witness was cross-examined and he stated that the Bank is doing normal business except in regard to the old assets called "the closed fund" and that normal payments were being made before the 26th September 1947. Evidence was given on commission by Satish Chandra who was Manager of the Bank at Ludhiana on the 27th September 1947 and he stated that he received the letter, Exhibit P. 1, but before he received it the amount of the *hundi* had been credited to the plaintiff's account.

The question to be decided in these circumstances is what is the jural relation between the parties in regard to the proceeds of the *hundi*. The plaintiff claimed and that claim has been sustained by the trial Court that this amount was trust money in that the plaintiff had employed the Bank as an agent for the purpose of realising the *hundi* at Bombay and crediting it to the account of the plaintiff and until the crediting had been done the relationship of principal and agent continued and because on the 27th September the Bank closed its

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business the agency never terminated and the relationship of creditor and debtor never arose in regard to this sum of money. The defendant on the other hand submits that even though they might have been agents for collection when the bill was given to them but as soon as the money was realised by the Bombay Branch and advice given to the Bank at Ludhiana, even in regard to the proceeds of the *hundi*, the relationship was changed into that of a debtor and creditor which was the normal relationship between the parties and therefore the plaintiff is not entitled to get priority in regard to this sum.

In order to determine this we have to see what the law applicable to this case is. The usual relationship between a banker and customer is that of a debtor and creditor. So the money paid into the Bank ceases altogether to be the money of the person paying it. It is the money of the banker who is bound to return an equivalent by paying a sum equal to that deposited with him when he is asked for it: see *Foley* v. *Hill* (1), and the banker can do as he likes with this money (Grant on Banking, page 2), but when he undertakes to collect moneys for his customer his position is that of an agent (Grant on Banking, page 4). It has been held that when a bank receives a cheque for collection it is a question of fact to be decided as to what is the relationship between the bank and the customer. *In re Farrow's Bank, Limited* (2), it was held that when a crossed cheque is given to a bank the question whether the bank received it as holders for value or as agents for collection is one of fact. If the bank receive the cheque as agents for collection and suspend payment before it is finally cleared at the clearing house, they can only receive and hold the proceeds as collecting

(1) 2 H.L. Cas. 28 at p. 36
(2) (1923) 1 Ch. 41

agents for their customer, and not on the ordinary bank relationship of debtor and creditor. In that case Voyce paid into his account at Birmingham branch of Farrow's Bank a crossed cheque drawn on one of the London branches of the City and Midland Bank. The cheque was sent by Farrow's Bank to their agents, the Barclays Bank, for clearance who presented it at the clearing house to the City and Midland Bank and they credited it to the Farrow's Bank on the clearance sheet but subject to recourse. This was on the 17th December. On the 18th the City and Midland Bank debited the drawer and informed its Head Office that the cheque had been cleared. On Sunday, the 19th December, the Farrow's Bank suspended payment and all cash remittances received on Monday were returned and at 8.30 a.m. on Monday, the 20th, notices were posted outside the office that payment had been suspended. After the cheque had been cleared and instructions received by the City and Midland Bank it settled with the Barclays Bank through the clearing house. This was at 12.30 p.m. on Monday, the 20th, and Barclays Bank informed the Farrow's Head Office that the cheque had been cleared and the question arose whether the proceeds of the cheque had become part of the general assets of the Farrow's Bank and therefore were divisible among the creditors or whether Farrow's Bank remained in the position of a mere collecting agent and the proceeds belonged to Voyce. Dealing with this question Lord Sterndale M. R. said at page 53—

> "The question is when did Farrow's Bank receive this money ? If they received it before they suspended payment, they then held the money simply in the relation of debtors to their customer; if

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they did not receive it till after the suspension, they had then given up all their functions as a bank, and they had no right to receive the money and retain it, and the customer would be entitled to recover it."

The case relied upon in *Farrow's Bank case* is the *Agra and Masterman's Bank case* (1), of which the headnote states—

"The ordinary relation between a banker and his customers is merely that of debtor and creditor, and not of trustee and *cestui que trust;* and therefore, where a firm paid a cheque into a branch bank in India to their current account after the stoppage of the parent bank in England, but before the branch had notice of that stoppage, and afterwards, on the same day, the branch received notice of the stoppage of the bank in England, and stopped itself:—Held, that an application by the firm to be repaid the amount of the cheque in full must be refused; but this order was without prejudice to a renewal of the application, if the applicants should find that their cheque had not been cashed until after the branch had received notice of the stoppage of the bank in England."

In an earlier case *Mackersy* v. *Ramsays* (2), Mackersy employed Ramsays, bankers in Edinburgh, to obtain for him payment of a bill drawn on a person resident at Calcutta. Ramsays transmitted the bill to Coutts and Co. of London who

(1) (1 [illegible] 36 L.J. (Ch.) 151
(2) 57 R.R. 183

forwarded it to India to their agents Messrs Palmer and Co. The bill was paid to Palmer and Co. but they failed and it was held that Ramsays were liable to Mackersy. Lord Campbell said at page 203—

> "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."

In regard to the bills for collection, therefore, the law may be stated as follows:—

> "Bills which are remitted by a customer to a banker, and which are not carried by the banker to the credit of the customer until the proceeds are received, will not, if undisposed of before bankruptcy, pass on the banker's bankruptcy to the trustee, but will belong to the customer subject to the banker's lien, being treated as sent to the banker merely for the purpose of obtaining payment when due." (See Halsbury's Laws of England, Volume 2, Third Edition, page 437).

But the *Agra and Masterman's Bank case* (1) shows that if the money has been paid and advice received and the credit made before the notice of stoppage is received in a branch of the bank a payment in full can lawfully be refused.

Several other cases were relied upon by the parties. The plaintiff-respondent relied on a judgment of Achhru Ram, J., *In re the New Bank of India, Limited* (2), which was a case of a bank in which moratorium had been applied and it was held that where the banker had suspended his

(1) (1867) 36 L.J. (Ch.) 151
(2) A.I.R. 1949 E.P. 88

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business before the receipt by him of the amount of a cheque or bill given for collection the banker holds the money as a trustee for the customer irrespective of whether the customer had an account with the bank or not, and until the proceeds of a bill are actually certified to the customer's account under authority, express or implied, the relationship of debtor and creditor does not arise and the proceeds remain with the banker in trust for the customer. In that case the customer when carrying on business at Sialkot used to hand over for collection to the Sialkot Branch of the New Bank, the bills drawn on their customers and quite a number of whom were foreign business concerns. The Bank suspended payment on the 26th September 1947, and a scheme was sanctioned on the 15th March 1948, and this Court was approached for giving directions to the Bank whether the money had to be paid in full or not, and it was held that the customer was entitled to payment in full in preference to other creditors of the Bank, and several cases were relied upon which I shall deal with presently.

The next case relied upon is *The Indian Hume Pipe Company, Limited* v. *The Travancore National and Quilon Bank, Limited (In Liquidation)* (1). There a company was carrying on business in two places Nagercoil and Bombay and the Bank also had its branches at these two places. The company had an account with the Bank at its Nagercoil Branch but did not have any account at Bombay. The company instructed the branch at Bombay to collect a cheque drawn in its favour on another bank at Bombay and to remit the proceeds to the branch at Nagercoil for credit to its account. The money was collected at Bombay but it was never

(1) I.L.R. 1943 Mad. 187

sent to Nagercoil and the Bank went into liquidation. It was held that as far as the company was concerned the two branches of the Quilon Bank were distinct business concerns and the ordinary relationship betw en a banker and customer never existed between the Company and the branch at Bombay. If the money had got into the company's account of the branch at Nagercoil the position of the Bank would not have been that of an agent but that branch would have been entitled to control and use the money. But as the money never got to the branch at Nagercoil, it belonged to the company and they were entitled to the return of it as against the Liquidator. The Court relied upon two cases—*Toovey* v. *Milne* (1), *and Edwards* v. *Glyn* (2), but it is not necessary to deal with these two cases. All that they held was that the bankrupts who were in those cases bankers had no equitable rights to the use of the money as against the sureties because the money had been given to the bankers for a specific purpose and as that purpose failed the moneys were rightly returned to the sureties.

Mr. Gosain also relied on a passage from Halsbury's Laws of England, Volume 2, Third Edition, page 178 in paragraph 336 where it is stated—

> "Where cheques are collected, the banker has a reasonable time, consistent with ordinary book-keeping, in which to pass the proceeds to current account before they are available for drawing against. Where cheques are credited as cash prior to receipt of payment, the customer is only entitled to draw on them at once if there is an agreement,

(1) 106 E.R. 514
(2) 28 L.J. Q.B. 350

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express or implied, to that effect. If the cheque is dishonoured, the banker is entitled to debit the customer's account."

and submitted that even if the advice was received in the Ludhiana Branch of the Bank, until the money was actually credited to the account of the plaintiff it did not become the money of the Bank and remained that of the plaintiff.

He next relied on the *Alliance Bank of India Ltd.* v. *Amritsar Bank (in Liquidation)*, (1). The Delhi Branch of the Alliance Bank sent two bills for collection to the Gwalior Branch of the Amritsar Bank and directed the latter to send "your drafts on realization." The money was realised by the Gwalior Branch and remitted by two drafts on the Delhi Branch of the People's Bank Limited, but before the drafts could be cashed both the People's Bank and the Amritsar Bank went into liquidation and the Alliance Bank claimed payment in full, and it was held that where a person employs another to collect money and remit it to him, the latter stands in a fiduciary relation towards the former and consequently the money collected is held by the latter for a specific purpose and does not pass at his bankruptcy to the bankrupt's property. But as the Alliance Bank had asked the Amritsar Bank to send drafts on Delhi, the special business for which the agency had been created was completed as soon as the drafts were sent and the fiduciary relationship came to an end. Shadi Lal, J., quoted with approval the observations of Cave, J., in *re Brown* ex parte *plitt* (2), "where the debtor is to collect and remit, there is confidence and trust; where the debtor is

(1) 79 P.R. 1915
(2) 60 L.T. 397

to use and repay on demand there is no trust", and said—

> "Further, it is clear that the fact that the money so received has been mixed with other money of the agent is immaterial so long as there is a fund on which the *cestui que* trust can lay his hands. Ex parte *Dale* (1), which lays down the contrary rule, is not now good law and that judgment has been expressly dissented from by the Court of appeal in re Hallett's Estate."

Mr. Gosain then relied on *The Official Assignee of Madras* v. *G. Smith* (2), where it was held that a trust will exist between a banker and a customer when the banker is to collect and remit but not where he is to use and repay.

But these are all cases excepting the judgment of Achhru Ram, J., where the bank had gone into liquidation, and the English cases show that the receipt of the money as for instance in *Farrow's case* (3), was after the banker suspended payment. In *The Indian Hume Pipe Company's case* (4), the cheque for collection was given to the branch of the bank with whom the customer had no account, and it was held in that case that the two branches of the Quilon Bank were distinct and there was no relationship of banker and customer existing between the Pipe Company and the Branch at Bombay. In the case of the Alliance Bank the agent, i.e., the Amritsar Bank, had carried out the terms of the agency and therefore this question which is now before us did not really arise. In

(1) 11 Ch. D. 772
(2) I.L.R. 32 Mad. 68
(3) (1923) 1. Ch. 41
(4) I.L.R. 1943 Mad. 187

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the Official Assignee v. *G. Smith* (1), it was held that a trust exists when the banker is to collect and remit the money but not where he is to collect, credit and repay on demand. This really does not help Mr. Gosain.

The appellants relied on the speech of Lord Campbell in *Mackersy's case* (2), where the liability of the original banker was held to arise because the payment was made to his agent in India. According to the judgment of Lord Campbell the money as soon as it was paid to the agent must be taken to have been placed to the credit of the banker who was the defendant in that case, and the argument on behalf of the appellant is the same that when money was paid to the Bombay Branch of the Traders Bank and they were the agents of the Ludhiana Branch for the purposes of this transaction, the money must be taken to have been placed to the credit of the Ludhiana Branch and thus become available to the plaintiff.

Mr. Inder Dev Dua then relied on *Modern Automobiles* v. *Travancore National and Quilon Bank* (3). There a customer gave to the Bombay Branch of the Bank with whom he had a current account two cheques drawn in his favour on the Madras Branch of the Bank for realization, one for Rs. 1,500 and the other for Rs. 433-2-0. Under the rules of the Bank the cheques were not available for drawing until it was ascertained that the proceeds had been realised by the Bank. The cheques were sent by the Bombay Branch to their Madras Branch. They were realised but before the customer was given any intimation that the amounts had been realised and were available for

(1) I.L.R. 32 Mad. 68
(2) 57 R.R. 183
(3) A.I.R. 1942 Mad. 377

drawing against, the Bank suspended payment and the customer contended that the money was in trust and therefore he was entitled to rank as a preferential creditor. It was found as a fact that the cheque for Rs. 1,500 was realised by the Madras Branch on the 18th and the other one on the 20th of June, both being before the Bank suspended payment, and it was held that in regard to the cheque against which he could not draw the relationship of banker and customer did not arise. It was also held that the proceeds of the cheques must be deemed to have been realised by the Bombay Branch on the respective dates on which they were realised by the Madras Branch, and reliance was placed for this on *Farrow's Bank's case* (1), and on *Mackersy's case* (2). Mr. Dua submits that according to this case if the Ludhiana Branch is deemed to have realised the amount of the Hundi on the date it was collected at Bombay, i.e., the 19th September, 1947, the money should be taken to have been at the credit of the plaintiff on the date of that realization and that it was because of a special contract between the customer and the banker in the Madras Case that one of the cheques was held still to be in trust money.

In the present case there is no proof of the fact that the plaintiff could only draw against the *hundi* when the amount was credited in his account in the Ludhiana Branch. As I read *Mackersy's case* (2), it means this that as soon as the money is received by the agent, it must be taken to have been received by the banker who sent the cheque or the bill for collection, and if that is so, the money will become available to the customer for use in the absence of a contract to the contrary.

(1) (1923) 1 Ch. 41
(2) 57 R.R. 183

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The plaintiff has in this case stated as P.W. 1 that he issued a cheque on the defendant Bank and handed it over to the Hindustan Commercial Bank and the cheque was presented to the defendant on the 27th September 1947. He does not go further and say what happened to the cheque nor has the cheque been produced, and if payment was refused as it appears it was, it has not been shown as to what was the reason for the refusal to honour the cheque. In the absence of this evidence it is difficult to say as to why the cheque was refused.

The evidence on behalf of the defendants, however, shows that on the 27th of September no intimation had been received as to the closing of the Branch at Ludhiana and that the Branch was working as before. Satish Chandra was the Manager of the defendant Bank at Ludhiana. He was examined on commission and on page 14 he has stated that he received the letter of the plaintiffs Exhibit P. 1 asking the Bank not to credit the proceeds of the *hundi* into their account but to make cash payment to them and in reply he sent the letter Exhibit D. 1 of the same date which says—

> "With reference to your letter No. 153/47, dated 27th September 1947, we have to inform you that your bill has been realized and the proceeds less Rs. 10 as commission viz. Rs. 15,990 has already been credited to your current account".

He has also stated that before the letter was received the amount had been credited into the account of the plaintiffs. It is significant that this witness was not cross-examined by the plaintiffs and the defendants have produced a letter from the Bombay Branch informing the Ludhiana

Branch of the realization of money and the debit and credit entries made at Ludhiana on the 27th of September 1947 in regard to the amount of this *hundi*.

The Ordinance about the moratorium was issued on the 27th of September and it came into force at once. The only evidence in regard to the knowledge of this fact is that of Duggal D.W. 1. He has stated on oath that the Ludhiana Branch did not know about this and that it was working and there is no reason why his testimony should be rejected. The appellant therefore relies on *Agra and Masterman's Bank case* (1), which I have already referred to, because as in that case the amount was credited to the account of the customer before any intimation was received in regard to the moratorium in the present case and suspending of payment in the *Agra case* (1). Besides, the evidence produced on behalf of the defendant is that according to the rules of the Bank the amount received on the 19th of September at Bombay formed part of the general assets of the Bank on the day it was received and that is not contradicted by any evidence on behalf of the plaintiff nor was there any cross-examination on this point.

Mr. Inder Dev Dua also relied on *the Traders Bank Ltd.*, v. *Kalyan Singh* (2), but I am unable to draw much assistance from that case in regard to the matter which is now before me.

I am, therefore, of the opinion that in this case on the evidence which has been led the amount was credited to the account of the plaintiff in the Ludhiana Branch on the 27th September 1947 and intimation of this was given to the plaintiff by the

(1) 36 L.J. (Ch.) 151
(2) 55 P.L.R. 73

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letter Exhibit D. 1, and the evidence also shows that this amount was deposited before the Branch at Ludhiana came to know of the moratorium. Therefore, the jural relationship between the parties was that of customer and banker and the amount had become part of the general assets of the Bank and was no longer clothed with a fiduciary relationship. I would, therefore, allow this appeal, set aside the decree of the trial Court and dismiss the plaintiff's suit but in the circumstances of this case I leave the parties to bear their own costs throughout.

Falshaw, J.

FALSHAW, J.—I agree