

(1909) 11 MAD CK 0039
In the Madras High Court

Koti Vencatramiah

APPELLANT

Vs

The Official Assignee of Madras

RESPONDENT

Date of Decision : 04-11-1909

Acts Referred:

Citation : (1910) ILR (Mad) 196 : 5 Ind. Cas. 202

Hon'ble Judges : Munro, J;Bakewell, J;Abdul Rahim, J

Bench : Full Bench

Judgement

1. The facts upon which this case has to be decided are those set out in the appellant's affidavit which is not contradicted. It appears, therefore, that the appellant had a fixed deposit with Arbuthnot & Co., that, on the 8th October 1906 he asked Arbuthnot & Co. by letter to send the amount due under the deposit to one Narasimha Row, that on the 16th October Arbuthnot & Co. replied that the deposit would mature on the 16th October and that on that date they would deal with the amount due in accordance with the appellant's instructions of the 8th October, that on the 16th October Arbuthnot & Co. sent to Narasimha Row a money order for Rs. 4-7-0 and the first halves of currency notes for the balance of Rs. 4,930, that on receiving the halves Narasimha Row on the 20th October acknowledged receipt to Arbuthnot & Co., and asked them to send the second halves, that Arbuthnot & Co. became insolvent and the second halves were not sent and that the Official Assignee refused to hand over the Second halves to the appellant. The appellant moved the High Court for an order directing the Official Assignee to handover the second halves of the currency notes. The learned Commissioner in Insolvency dismissed the application, and the appeal against his order was dismissed, though Miller J., was of opinion that the appeal ought to be allowed.

2. Now from the above statement of the facts and from the nature of the claim it is manifest that we are not concerned either with the circumstance that Arbuthnot & Co. became insolvent after sending the half notes or with any question as to what the position would be if the appellant were claiming payment

of his debt in full in preference to the ordinary creditors of the firm. There is nothing to distinguish the present case from the ordinary case where a debtor, wishing to pay his debt, takes a step towards that end by sending to his creditor the half of a currency note, intending at the time to forward the second half in due course, but eventually failing to do so, and the short question is whether the creditor in such a case can insist upon the delivery to him of the second half of the note. In *Smith v. Mundy* 29 L.J.Q.B. 172 : 3 E. k22 : 6 Jur. 977 : 2 L.T. 373, the facts were these: One Williams owed a debt to Mundy. Smith, who had arranged to enter into partnership with Williams, sent the first halves of two Bank of England notes to Mundy and his intention at the time was to send the second halves and so liquidate the debt due by Williams. Mundy acknowledged receipt of the first halves and said he would send a stamped acknowledgment on receipt of the second halves. Smith, however, did not send the second halves, but wrote to Mundy demanding return of the first halves as the proposed partnership between himself and Williams had fallen through. Mundy claimed the right to retain the half notes. Smith-sued to recover them, and judgment was, given in his favour, on the ground that the property in the notes had not passed to Mundy. It has been sought to distinguish this case from the present on two grounds viz., that Smith was not Mundy's debtor, and that Mundy indicated that he did not accept the first halves as payment by saying, he would send a stamped acknowledgment when he received the second halves. As to, the first ground, it is clear from the report that nothing turned upon it and that the:- result would have been the same if. Smith had owed the money himself. As, to the; second ground two of the learned Judges, do not refer to it at all, and as observed by the, learned Commissioner, Cockburn C.J., merely referred to it by way of strengthening, his view as to the intention of the parties. I am, of opinion, therefore that *Smith v. Mundy* 29 L.J.Q.B. 172; cannot be distinguished. Applying the decision in that case, it follows that instead of the appellant being entitled to demand the, second halves from Arbuthnot & Co., the latter were entitled to demand the return, of the first halves from the appellant, Miller J., was, however, of opinion that if it was the intention of Arbuthnot & Co. in sending the half notes, to set apart for the appellant specific notes and to pay by means of them, and if this intention was communicated to the appellant, there was a specific appropriation which the appellant can rely upon against, the Official Assignee. But exactly the same thing might have been said in *Smith v. Mundy* 29 L.J.Q.B. 172 leaving out the matter of insolvency with which we are not concerned. Again Miller, J., observes that Arbuthnot & Co. made representations amounting to a pledge that they would remit the second halves of the particular notes of which the appellant held the first halves and for this he evidently relies upon *Ranken v. Alfaro* 5 Ch. D. 786. Beyond agreeing, to send the amount of of the deposit to the appellants brother-in-law and sending the first halves of the notes, there is no evidence that Arbuthnot & Co., made any representations at all, and there is again nothing more in this case than there was in *Smith v. Mundy* 29 L.J.Q.B. 172. In *Ranken v. Alfaro* 5 Ch. D. 786 : 46 L.J. Ch. 832, it was held that there was a pledge to apply the proceeds of certain coffee in payment of bills held by

the plaintiffs, but the decision turned upon the special facts of the case, and, with all respect, I do not think it has any application to a case like the present, I am of opinion that the appellant's claim was rightly rejected, and would dismiss this appeal with costs.

Abdur Rahim, J.

3. Messrs. Arbuthnot & Co., upon a demand for payment being made by a customer of theirs to whom Rs. 4,934-7-0 was due on a fixed deposit account, sent a money order for Rs. 4-7-0 and the first halves of currency notes for Rs. 4,930, to a person named by their customer. The bankers having stopped payment before sending the remaining halves of the notes, the customer now seeks to recover them from the Official Assignee. He could only succeed if by delivery of the halves, property in the notes passed to the customer, or if it can be said, as held by Miller, J. that the customer became by some rule of equity entitled to the notes or to hold the first halves as security for the debt and to call for delivery of the other halves *Smith v. Mundy* 29 L.J.Q.B. 172 : 6 Jur. 977 clearly establishes that the first proposition cannot be sustained. It is not alleged that the property in the notes was intended to be severed. What was intended by Arbuthnot & Co., was to deliver to the customer the other half notes as well, which still remained with them so as to complete the payment. This is the utmost that can be inferred in favour of the customer. The delivery of the notes was never completed and *Smith v. Mundy* 29 L.J.Q.B. 172 lays down that so long as the act of delivery is not completed, the property in the Bank of England notes and the same rule must be held to be applicable to Indian promissory-notes does not pass where the passing of the property in such notes is alleged to have been effected by delivery. This view of the law has not, so far as I am aware, been doubted, and I feel myself bound to follow it unless it is shown that the law is otherwise on the point in India. The learned Vakil for the appellant has, however, argued that Section 92 of the Indian Contract Act IX of 1872, makes reference. But it is obvious that that section, which occurs in the Chapter relating to sale of goods, does not apply to money or currency notes which are made legal tender by statute, and as such are governed by different considerations, although the definition of goods as found in Section 76 would prima facie seem to be wide enough to cover coins and currency notes. See *In the matter of Captain Michell* 1 C.L.R. 339. *In re The Collector of Salem* 7 M.H.C.R. 233 and *In re Mathur Lalbhai* 25 B.k 702 where the applicability of the definition of goods in Section 76 of the Indian Contract Act of 1872 to currency notes for the purpose of Chapter VII was considered.

4. Mr. Justice Miller, as I understand him, does not dispute the law as laid down in *Smith v. Mundy* 29 L.J.Q.B. 172. But he says that by sending the first halves, Arbuthnot & Co. intended to set apart the specific notes for payment to the appellant and if this intention was communicated to the latter then the notes were specifically appropriated towards such payment and the appellant became entitled to them as against the Official Assignee. This means, I take it, that

although title to the notes was not passed by delivery and change of possession, yet it must be held that the appellant acquired a right to them in equity by virtue of an implied agreement by which the relationship of debtor and creditor came to exist between the parties and the debtor constituted himself a bailee or trustee to their creditor, with respect to these notes. To my mind there is nothing before us from which such an agreement can be inferred, and without evidence of some such agreement the original relationship of debtor and creditor must be held to continue. The plain intention of Arbuthnot & Co., was to discharge the debt by delivery of the notes and not to hold the notes as bailees or trustees of the appellant. This answer meets the other suggestion that the notes were pledged as security for payment of the debt, for it seems to me that nothing was further from the minds of Arbuthnot & Co., or of their customer than that the latter should retain the half notes sent to him as security. In that view of the facts as alleged in the case, the principle of decision in *Ranken v. Alfaro* 5 Ch. D. 786 has no application. I would, therefore, dismiss the appeal with costs.

Bakewell, J.

5. In this case Miller, J., was of opinion that it was the intention of the parties that the creditor should accept the receipt of the first half notes as sufficient security for the payment of his claim, till the other halves could reach him, and that there was a representation by the debtors amounting to a pledge that they would remit the second halves, which gave the creditor a right in equity to call for delivery of the notes.

6. The actual correspondence between the parties has not been produced, and the only evidence before the Court is the appellants' affidavit which states the facts as stated by Munro, J.

7. With all respect to the learned Judge, I fail to see any evidence of the intention which he ascribes to the parties, or of any representation by the debtors that the half notes in their possession would be held by them as security for their debt, and in my opinion there is no evidence in the case that either party intended that the original simple debt should become a secured debt. I think that the facts show simply an intention of the creditor to pay, and of the debtor to receive payment, in cash or its equivalent legal tender, and that owing to the debtor's insolvency this intention was never fully carried out.

8. The question, therefore, is whether the delivery of the half notes to the creditor can be construed as a delivery of the notes so as to pass the property therein. I think that the delivery of the half notes was only one step towards, or preparatory to the actual delivery of the notes, and is merely indicative of the intention of the parties to transfer, and does not constitute a delivery of the notes. This was in effect the decision in *Smith v. Mundy* 29 L.J.Q.B. 172 which in my opinion governs the present case.

9. With reference to the case of *Ranken v. Alfaro* 5 Ch. D. 786, cited by Miller, J. I may point out that there was in that case an express agreement supported by

valuable consideration that certain goods should be held as security for certain debts, and that decision is really only as to the intention of the parties as contained in a particular correspondence.

10. I agree that this appeal should be dismissed with costs.