

(1939) 03 MAD CK 0046
In the Madras High Court

Official Liquidator, Travancore National Bank Subsidiary Co. APPELLANT
Ltd.

Vs

Official Liquidators, Travancore National and Quilon Bank Ltd. RESPONDENT

Date of Decision : 09-03-1939

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : AIR 1940 Mad 258

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is an application by the Official Liquidator of the Travancore National Bank Subsidiary Co., Ltd., hereinafter called the Company, for an order that the Official Liquidators of the Travancore National and Quilon Bank, hereinafter called the Bank, should be directed to admit the claim of the Company in respect of the amounts standing to the credit of the Chitty Savings Bank Accounts utilized for the purpose of paying the dues of its prized subscribers who are its debtors to the extent of. the debt due by the respective subscribers to that Company as a preferential claim. The Subsidiary Company was formed mainly by the Travancore National Bank Ltd., as a private Limited Company having as its subscribers The Travancore National Bank, Ltd., which holds 4998 shares out of 5000 shares, the other two shares being held by one K. Ommen and K.M. Cheriyan, each holding one share. The object of the Company was among other things to conduct chits. The basis of the claim is that the amounts standing in the names of persons who have subscribed for the chits in the company in the Chitty Savings Bank Accounts of the Bank are trust moneys held in trust by the Bank for the Company and therefore the Company is entitled to rank as a preferential creditor of the Bank in respect of the same to the extent of the amounts due to the Company. To appreciate the contention it is necessary to state a few facts. The Company ran a series of chits according to certain rules which are found in a printed pamphlet marked as Ex. A in the case. The chits—were divided into four classes, A, B, C and D each running for 25 months and the

holder of a ticket in each class being bound to subscribe the instalments regularly for the twenty-five consecutive months. The chit amounts of each class of tickets will be separately put up for auction every month, excepting the 25th and the first instalment, will be auctioned, but on the day of the first instalment falling due, the second instalment will be auctioned in advance and similarly each subsequent instalment of the chit will be auctioned on the date of the instalments previous to it. At each auction the bid will begin at a fixed minimum discount and the subscriber who bids for the largest amount will be declared to be the successful bidder. The total amount of discounts of each class of tickets less expenses of management were divided pro rata for those particular classes of tickets both prized and non-prized. The share of discount divided thus due to a subscriber will be given credit to him when he pays the subscription for the instalment to which the auction relates. The net amount of each successful bid which is called the prize amount will be given to the respective successful bidder on his furnishing security to the satisfaction of the Company for payment of the future subscriptions. If he gives security, he is paid the prize amount one week after the date of the next instalment; but if he fails to give security, it is open to the Company to retain the amount and adjust it from time to time towards the subscription due to the Company from such bidder. If after adjustment any amount is due from the subscriber, the subscriber is liable to pay the amount with 12 per cent, interest per annum to the Company. But instead of retaining the said amount there was also a provision in and by which the amount payable for the future subscriptions is deposited in the Bank in such a manner that the instalments of subscription as and when they fall due may be paid to the Company. The rule which, regulates it is Rule 18(b) which runs thus:

Arrangements have been made with the Travancore National and Quilon Bank, Ltd., and its branches providing facilities to every chit subscriber of the company to open Chit Savings Bank Account with them from which Chit instalments will be adjusted as and when they fall due.

2. For the information of the intending subscribers certain rules were framed by the Bank which have been printed as part of the printed pamphlet, Ex. A, containing the rules issued by the Company in the matter of the chits. As a consideration of those rules will become important in defining the actual legal position of the company with reference to the amounts deposited by the subscribers in the said Savings Bank Accounts I reproduce herein the said rules:

1. Chit Savings Bank Account may be opened by any Chit Fund subscriber with an initial deposit of Rs. 5. A minimum balance of Rs. 5 shall always be maintained in every account.
2. Interest will be allowed at the rate of 31/2 pec cent, per annum on the daily balance of Rs. 5 on multiples thereof.
3. Accounts are balanced half-yearly, viz., 30th June and 31st December when the interest earned will be credited to the accounts.

4. Amounts deposited in the Chit Savings Bank Accounts shall not be available for withdrawal for purposes other than for payment of Chit instalments till the termination of the particular Chit in respect of which the account was opened.

5. The Chit Fund subscriptions due every month will be appropriated and adjusted from Chit Savings Bank Account as and when it falls due for payment if there be sufficient balance at credit in the accounts, and receipts forwarded to the respective subscribers.

6. At the termination of the Chit Fund the Chit Savings Bank Account may be treated as an ordinary Savings Bank Account and all the rules relating to the Ordinary Savings Bank Account shall be applicable to it.

7. Any person wishing to open an account should apply in the prescribed form which will be supplied free on application.

3. When the subscribers or the Company choose to adopt this method of payment, that is payment through the Travancore National Bank by depositing in the Chitty Savings Bank Account, the procedure adopted by the Subsidiary Company, and the subscriber appears to be as follows. The subscriber executes a receipt for the amount of the prize which he bid for, which is in the following form:

Received from the Travancore National Bank Subsidiary Co., Ltd., the sum of Rs... due to me on account of the Chit Fund prized amount for my... Ticket No... in your Chit Fund No... which I priced on the... at the. Then he executes two letters in favour of the Travancore National and Quilon Bank, (1) a letter requesting the Bank to open a Chitty Savings Bank Deposit Account with an undertaking to comply with the Bank's rules for the conduct of such account, Ex. B, and (2) a letter asking them to appropriate for the future instalments as they fall due the necessary amount from the said Deposit: in the Chitty Savings Bank Account, Ex. C. The letter to the Bank asking them to open the account runs thus:

Chitty Savings Bank Deposit Place:- Date:-

To

The Travancore National Bank, Ltd.

Dear Sir,

Having read through your revised rules of business you sent to me I now request you to open a Chitty Savings Bank Deposit Account in my name in the books of the Bank, and I herewith tender Rs... for credit thereto as under.

Coin and currency notes ... Rs.

Cheques, Bills, etc ... Rs.

Total ... Rs.

I agree to comply with the Bank's rules for the time being for the conduct of such accounts.

Be good enough to furnish me with a pass book for my use, also to note my signature as under.

Yours faithfully,

4. The letter authorizing the Bank to pay the Company the future instalments as they fall due runs thus:

To

The Travancore National and Quilon Bank, Ltd., Branch,

Dear Sirs,

Re : Prized Ticket in Chit No...

I beg to inform you that I am holding No... in your Chit Fund No... which was prized at the auction conducted on the... for the... instalment. I have acknowledged receipt of the bid amount for which I have given a separate receipt and I confirm my agreement that as security for the due payment of all the future subscriptions towards my above ticket... in Chit No... you will hold as much amount as would cover up the future liability of this in Chitty Savings Bank Account with you.

I also confirm my agreement with you that you will appropriate towards future instalments as they fall due the necessary amount from my deposit in your Chitty Savings Bank Account.

Yours faithfully,

5. The amount that will be deposited into the Bank will be the entire prize money or the amount of the future subscriptions which are payable for each ticket as prescribed by Rule 1(a) because it cannot at that moment be predicated what exactly would be the amount of discount which each subscriber, will get by way of pro rata dividend as per Rule 9. It is also provided that if through the default of the Company the chit should collapse the subscribers who have received prizes will be bound to pay their subscriptions only on the dates on which subscriptions would have fallen due if the chit had not collapsed. This is to show that the debt which has been incurred by a subscriber by reason of having received the prize amount will have to be paid by him in monthly instalments on the several dates on which the subscriptions would have fallen due. In the case of moneys which have been deposited in the Bank in the Chitty Savings Bank Account, the Bank will have to pay the instalments of subscription on the due dates on which the subscriptions would have been ordinarily payable. No oral evidence has been let in as to the nature of the arrangement entered into between a subscriber, the Company and the Bank at the time of the deposit of the prize money in the Chitty Savings Bank Account of the Bank. From the affidavits and from the

documents aforesaid what I gather is this. The Bank which has subscribed almost the share capital of the Company was practically controlling the Company. If the subscriber is not able to give the security, the Company itself takes a receipt for the prize money alleged to have been paid to him, deposits the said amount into the Bank itself by getting a signature to a letter similar to Ex. B and also takes a letter purporting to be addressed to the Bank similar to Ex. C-1.

6. The Bank in pursuance of the letter addressed to them to open an account receives the money and opens a Chitty Savings Bank Account in the name of the subscriber and permits the letter similar to Ex. C-1 addressed to them to remain with the Company. The transactions which purport on paper to be done severally with the Company and the Bank were all done through one agency so that it may be said that every transaction has been done with the consent of both the Bank and the Company. This is plain on a consideration of Ex. C-1. As has already been stated, the form that was adopted for Ex. C-1 was the form that was in use in the Travancore National Bank with the change in the heading "Travancore National and Quilon Bank Ltd." The language of the document was not altered so as to signify that the letter was addressed to the Travancore National and Quilon Bank at the time of the deposit in the Chitty Savings Bank Account. In most parts the language of the letter is unintelligible with reference to the Travancore National and Quilon Bank. Para. 1 of the letter obviously cannot apply to the Travancore National and Quilon Bank except with regard to the words "in Chitty Savings Bank with you." The rest of the paragraphs obviously can only apply to the Company. It is only para. 3 that can properly be referable to the Bank. Para. 1 says that the subscriber is "holding in your chit fund" where the word "your" can only refer to the Company.

7. In para. 2 it states "I have acknowledged receipt of the bid amount" which can only refer to the Company. The said paragraph proceeds to state: "I confirm my agreement that as security for the due payment of all the future subscriptions..." The agreement is only with the Company. The last words, namely in the Chitty Savings Bank Account with you, might refer to the Bank, but having regard to the context and to the previous sentences in the said paragraph, it might also be referable to the Company. It will be seen that under the rules if the subscriber is unable to give security it is open to the Company to retain the prize amount which will be adjusted from time to time towards the subscriptions due as and when they fall due. What the company does is that instead of keeping it in its custody, it purports to deposit the same on behalf of the subscriber and with the consent of the subscriber in the Bank. The words "in the Chitty Savings Bank Account with you" connote that both the Subsidiary Company and the Bank were treated as one; though the Chitty Savings Bank Account is with the Bank, it is treated as if the account is with the Subsidiary Company. The last paragraph says : "I also confirm my agreement with you." It is a pertinent question to ask, was the agreement with the Bank or with the Company? It may mean both. The agreement with the Company is that according to Rule 18(b) in cases where the Chitty Savings Bank Account is opened, the chit instalments will be adjusted as

and when they fall due from that account, that the amount deposited in the Chitty Savings Bank Account should not be withdrawn except for purposes of paying the chit instalments till the termination of the chit and that the chit fund subscriptions should be appropriated and adjusted towards the Chitty Savings Bank Account. The truth is, as I have stated, that the entire transaction is done by one single agency representing both the Bank and the Subsidiary Company. That seems to be also clear from the affidavit of the Official Liquidator of the Subsidiary Co. filed on 14th February 1939. In para. 9 of his affidavit he states thus:

I also understand that in some cases where the prized subscriber failed to furnish security and also failed to make the arrangements mentioned above the Subsidiary Co. deposited the prize amount due to the subscriber into the hands of the Bank in a Chitty Savings Bank Account on the same terms and earmarked for the same purpose, namely payment to the Subsidiary Co. of the monthly subscriptions as and when they fell due and as regards adjustment of subscriptions the same practice was followed in such cases also.

8. It is not in some cases alone, but I think in every case where a subscriber is not able to give the security instead of retaining the amount as per Rule 10 which they could very well have done, they deposited the amount in the Chitty Savings Bank Account and the arrangement, I inferred, was followed. Mr. Parthasarathy, who appeared for the Official Liquidator, stated that it was so. The question is what is the legal relationship that is constituted by the deposit in the Bank between the debtor and the Bank and the company? The transaction as evidenced by Rule 186 of the Chit Fund Rules, the rules of the Chitty Savings Bank, Ex. B and Ex. C-1 operates as an equitable assignment of the money deposited in the Bank in favour of the Company. The agreement referred to in para. 2 of Ex. C-1 is that the prize amount should be retained as security for the due payment of the future instalments in the Chitty Savings Bank Account of the Bank. The intention is clear that the debt due in favour of the company should be discharged from and out of the money deposited in the Bank. When there is an agreement between a debtor and a creditor that a particular debt should be paid from and out of a particular fund or money in the hands of a third party, the agreement will operate as an equitable assignment of the debt or the money. In my opinion the agreement in para. 2 of Ex. C-1 would operate as an absolute assignment of the debt even in English law within the meaning of Section 25, Clause 6, Judicature Act. Much more so would it u/s 130, T.P. Act. Again, reading para. 3 of the letter with Ex. B and the rules relating to the Chitty Savings Bank Account, it is clear that the subscriber has authorised the Bank to pay the future instalments to the Company as and when they fall due from and out of the deposit in the Bank. This authorisation was communicated to the Bank because Ex. C-1 is kept with the Company and has been produced by the Company and it would operate as an assignment of the moneys in favour of the Company. This would be so even if paras. 1 and 2 of Ex. C-1 are eliminated as inapplicable to the Bank. There is enough authority both English and Indian for the view I am

taking. The principle applicable is neatly expressed in Chitty's Book on Contracts at p. 281 thus:

An agreement between a debtor and a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order directing such person to pay such funds to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers.

9. In *Gorring v. Irwell India Rubber Works* (1887) 34 Ch. D. 128 a debtor wrote to a creditor that he would hold at his disposal a sum of money due to the debtor from a third party for goods sold and delivered and it was held that the letter was an immediate equitable assignment though it was not communicated to the third party. Cotton L.J. at p. 134 observed as follows:

When there is a contract for value between the owner of a chose in action and another person which shows that such person is to have benefit of the chose in action, that constitutes a good charge on the chose in action. The form of words is immaterial so long as they show an intention that he is to have such benefit. It is contended that the true construction of the letter is that the appellants (creditors) are to have no charge on the debt till the Company have received the money; but that when they have received it, they shall deal with it in a particular way; but I think the appellants had a good equitable assignment, and had a right to insist on the debt being paid to them and not to the Company.

10. In *In re Westerton; Public Trustee v. Gray* (1919) 2 Ch. 104 the facts were as follows: A testator handed to his landlady Mrs. G. an envelope addressed to her describing it as a present to her. After having delivered that envelope, he again took it from her promising to keep it with him. After his death, on the envelope being opened it was found that it contained (1) a deposit receipt for ₹500 deposited with his Bank; (2) an order in writing signed by him directing the Bank to pay to Mrs. G. the sum of ₹500 then on deposit and (3) a letter addressed to Mrs. G.:

You have been very kind to me and I desire to make some return by giving you the amount of ₹500 now on deposit at the .. Bank as per receipt enclosed.

11. There was no endorsement on the deposit receipt. Sarjant J. held that there was a valid and complete gift to Mrs. G. of the sum on deposit by way of assignment under the Judicature Act, 1873, Section 25, Sub-Section 6, and that the omission to give notice to the Bank was immaterial. The learned Judge in that case followed among other cases the case in *Hardin v. Harding* (1886) 17 Q.B.D. 442. In that case the executors and trustees under a will sent to one of the residuary legatees a statement of account showing a balance to be due to him on account of his share of the residuary estate. He sent this account to his daughter, the plaintiff, with the following direction on it in his handwriting:

I hereby instruct the trustee in power to pay to my daughter Laura Harding, the balance shown in the above statement.

12. It was held that the letter was a valid assignment of the balance in the hands of the trustees in favour of the plaintiff. In *William Brandt's Sons & Co. v. Dunlop Rubber Co.* (1905) A.C. 454, one K and Co., were rubber merchants in Liverpool. Their business was financed by Brandts and also by another firm of Bankers. The arrangement was that the Bankers advanced money for goods purchased and by way of security the Bankers took delivery of the goods to themselves. But when K and Co. purported to sell the goods they got a delivery order from the Bankers who got an engagement from K and Co. that they would hold the goods and proceeds in trust on their behalf. In accordance with this arrangement K and Co. sold certain goods to Dunlop Rubber Co. on 30th December 1902. In connexion with this purchase Brandts had advanced a sum of ₹3430. The goods were delivered to the Dunlops. At the time of the delivery, K and Co. sent to Brandts two documents, (1) a letter by K and Co. to the Dunlops and (2) a letter intended to be signed by or on behalf of the Dunlops and to be returned by them direct to Brandts. The letter intended to be signed by the Dunlops was to the effect that they would remit the value of the goods purchased from K and Co. to Brandts. Brandts forwarded that letter to the Dunlops which was acknowledged by them. They sent it to Brandts. It was held that there was an equitable assignment of the money due from the Dunlops to K and Co. in favour of Brandts. In the Court of Appeal, which was reversed by the House of Lords, the learned Chief Justice took the view that the document did not on the face of it purport to be an assignment nor use the language of an assignment. In repelling that argument Lord Macnaghten made the following observations at p. 462:

An equitable assignment does not always take that form. It may be addressed to the debtor. It may be couched in the language of command. It may be a courteous request. It may assume the form of mere permission. The language is immaterial if the meaning is plain. All that is necessary is that the debtor should be given to understand that the debt has been made over by the creditor to some third person. If the debtor ignores such a notice, he does so at his peril. If the assignment be for valuable consideration and communicated to the third person, it cannot be revoked by the creditor or safely disregarded by the debtor. I think that the documents which passed between Brandts and the Company would of themselves, and apart from Kramrisch and Co.'s undertaking and engagement given to Brandts, have constituted a good equitable assignment.

13. So far as Indian authority is concerned, it is enough to refer to *Navajee v. Administrator General of Madras* (1914) 1 AIR Mad. 281 and *Rama Iyer v. Parthasarathi Chetti* (1918) 5 AIR Mad. 172. I have therefore no hesitation in holding that there has been a valid assignment of the money deposited in the Bank in favour of the Subsidiary Company. One may go so far to say that there has been a novation so as to result in an absolute release of the subscriber in respect of the future subscriptions payable to the Company and at least to the

extent of the money deposited should the amount deposited not cover the total amount of the future subscriptions. In the view I have expressed that the transaction on behalf of the Bank and the Company was done by a single agency all the elements of novation are present. The three parties must be deemed to meet, that is, the debtor (subscriber), the creditor (the Company) and the third party (the Bank) and with the consent of all the three, the transaction was put through. The Bank contracts to pay the Company as and when the subscriptions fall due and the Company agrees to receive them as and when they fall due from the Bank and thus accept the liability of the Bank. As stated in Leake on Contracts, Edn. 8 at page 683:

The liability of a third party may be accepted in satisfaction of the debt of the original debtor, who is thereby discharged under a valid agreement of all the parties to that effect, which gives the creditor a remedy against the third party. Such an agreement before breach constitutes what is called "novation".

14. But the difficulty that arises in adopting this view is created by the language of Ex. C-1, where in para. 2 the term "security" is used. On this an argument may be founded that the assignment of the deposit money by the subscriber was only by way of security for the debt due to the Company. But in answer to this it may well be pointed out that the whole of paras. 1 and 2 in Ex. C-1 are out of place with reference to the Company. The language used therein is properly applicable to cases where the Bank was conducting the chit and retaining the money with itself in its Chitty Savings Bank Account. But taking the said paragraphs applicable to the Company, the substance of the transaction appears to be that the prize money is retained by the Company agreeing to deposit the same with the Bank and take the subscriptions from the Bank itself thus exonerating the subscriber from all liability to future subscription. It seems to me unnecessary to pursue the matter further and express a final opinion in this application as the question of liability of the subscriber to the Company will properly arise in the liquidation proceedings of the Company. I am however convinced that, whether there is a novation or not, there is an assignment in favour of the Company of the moneys deposited in the Bank by the subscriber and the right to realize it is vested in the Bank. Whether the assignment can be termed legal or equitable under the English law, it is an assignment within the meaning of Section 130, T.P. Act. Mr. Parthasarathy on behalf of the Official Liquidator of the Company frankly conceded that if I take that view the Company cannot sustain its claim for preferential payment and can only prove for the moneys due and payable under the account of each subscriber as an ordinary creditor of the Bank.

15. I shall now deal with some of the objections urged against this view. It is contended that the assignment is only of an unascertained amount and further a part of the debt and therefore invalid. The contention is based on the language of Ex. C-1 and Rule 9 of the Chit Fund Rules regulating the payment of discount on each chit, which runs thus:

When the proceedings of each auction are recorded in the chit minutes book the total amount, of discounts of each classes of tickets less expenses of management are divided pro rata among the subscribers for those particular class of tickets, both prized and non-prized including the foreman (the company). The share of discount divided thus due to a subscriber will be given credit to him when he pays the subscription for the instalment to which the auction relates.

16. The contention is outlined thus: the amount is unascertained because what is collected from each subscriber is not the amount of subscription which has to be paid for the ticket according to Rule 1(a) but the said amount less the share of discount which each subscriber is entitled to get from and out of the discount got from the successful bidder in the month previous to that in which the instalment of subscription is collected and consequently it will vary with each month. For this reliance is placed on the words used in para. 2 of Ex. C-1 which are: "You will hold as much amount as would cover up the future liability of this" (subscription) and also on the words in para. 3 which are "the necessary amount from my deposit." But this contention ignores the actual facts of the case. What is retained by the Company is the entire prize money or so much of the amount due for the unexpired period of the chit according to the subscription payable for each ticket as per Rule 1(a) and it is that amount that is deposited in the Bank and accepted by the Bank. What is therefore assigned in favour of the Company is the entire amount deposited in the Bank which is a definite and ascertained sum. The extent of debt incurred to the Company by the subscriber is the total amount of future subscriptions payable in respect of the particular chit in respect whereof the prize was drawn and it is an ascertained amount. This is evident from the security bond taken in cases where successful bidders give security and draw the prize amount: vide Ex. D, the security bond executed in respect of a C class ticket by a subscriber, who drew the prize. According to Rule 1(a) the amount of the chit is Rs. 500 payable in 25 monthly instalments of Rs. 20 each. When the subscriber drew the chit, there yet remained 20 more instalments and the bond was taken for Rs. 400.

17. It is urged that there is difficulty in accepting this view and it is argued that what the Company will be collecting and what the Bank will be paying will be less than the amount of subscriptions which are attributable to each ticket having regard to the fact that the share of discount divided among the subscribers will be given credit to every month and there will remain an excess, and the question is, is the Company to appropriate the balance? It seems to me, no such difficulty arises. If the assignment is by way of security, undoubtedly, the Company will have to pay the balance of the amount that will remain after payment of all the subscriptions. But it is again urged that the Company would not have collected the excess and that would have remained with the Bank and the question is asked who is to collect it? It is the duty of the Company to collect that amount and pay over to the subscriber. The Company is deemed to collect the entire subscription and appropriate only so much of the amount as is necessary for the payment of the instalment for the particular month for which the subscription is

to be collected and retain the discount for and on behalf of the subscriber. Instead of doing so, the Company only collects the amount that is necessary for the payment of the instalment for the particular month and retains the balance with the Bank itself so that at the end of the period of the chit the Company will be bound to collect from the Bank the amounts retained by the Bank and pay them over to the subscribers. The share of discount that is payable under Rule 9(a) is a payment which each subscriber is entitled to get as a matter of right. In fact, the arrangement is clear that the Company retains in its hands the entire amount of the prize money or so much as is necessary for the payment of future instalments of subscription and deposits it on behalf of the subscriber and therefore it is in a way under a trust to account for the surplus that may remain after the payment of all the subscriptions. Where there is an assignment by way of security, there is always a right of redemption implied : vide *Hughes v. Pump House Hotel Co.* (1902) 2 K.B. 190. It is either open to the debtor to pay at any time the debt and have the security released or after the debt is discharged there is an obligation on the part of the assignee to pay back whatever is due to the credit of the assignor. Where the assignment is not by way of security and it is an out and out assignment, even then the Company would be under an obligation to refund to the subscriber the amount which would be properly attributable to the share of discount, which would be given credit to the subscriber every month. In *Burlinson v. Hall* (1884) 12 Q.B.D 347 a debtor was indebted to a creditor in the sum of ₹152-8-3. In order to have that debt liquidated, the debtor assigned to the creditor a debt which he was entitled to get from third persons under an arrangement that the creditor should collect the debts, and out of the same, pay himself the expenses attending the realizations, appropriate the balance towards his debt and, then pay the balance, if any, to the debtor. Held that it was a valid assignment and the obligation rested on the creditor to pay over the surplus to the debtor. No doubt the obligation in this case was express but it can be implied if the circumstances warrant.

18. The next contention as to the assignment being a part of the debt and therefore invalid is based on the fact that in cases where the prize money exceeds the amount of future instalments of subscription, the assignment can only be part of the debt. The view I have taken is the assignment is of the whole debt in which case the assignee will be entitled to appropriate only the amount of the future instalments and in regard to the balance he will be accountable to the assignor. I may instance a case in point which is reported in *Bank of Liverpool v. Holland* (1927) 43 T.L.R. 29. The defendant in that case owed ₹285 to one W who owed money to a Bank in the sum of ₹100 or thereabouts. W assigned to the Bank the whole debt of ₹285 subject to the condition that the amount recoverable shall not at any time exceed ₹150. Held the assignment was a good legal assignment of the whole debt of ₹285 and not merely of a part of the debt. Wright J. in the course of the judgment is reported to have observed thus : He would hold, following *In re Steel Wingh Co.* (1921) 1 Ch. 349, that even if it was an assignment of only part of the debt, it would still be a good equitable

assignment. But was it an assignment of only part of the debt? In his view it was not an assignment of part of the debt, but was an absolute assignment to the Bank of the whole debt, with a proviso that if the Bank should recover more than ₹150 from the debtor they must hold the balance in excess of ₹150 as trustees for Wilkinson. The fact that a creditor remained trustee of part of the debt did not make the assignment any the less absolute: *Comfort v. Betts* (1891) 1 Q.B. 737. The assignment therefore was a good legal assignment.

19. Even assuming it to be part of the debt, it would still be held to be valid according to the decision in *S.A. Rajamier Vs. M.R.M.A. Subramaniam Chettiar and Others*, by which I am bound. Mr. Vepa who urged this point brought to my notice a decision to the contrary reported in *Doraisami Mudaliar and Thangavelu Mudaliar and Co. Vs. M. Doraiswami Iyengar and Others*, but I am bound by the decision of the Division Bench and I therefore think it unnecessary to deal with that matter. After all, the objection as to the validity of assignment of part of the debt is based on the fact that the debtor would be subject to a multiplicity of actions if every part owner of the debt can enforce the part he owns by an action. But it is a mere question of procedure and there would be no objection to a part owner of the debt suing for a debt if he could make the other part owners of the debt parties to the suit and pray for recovery of the whole debt and the part to which he was owner being paid to him. So far as I am concerned, I must take it the assignment is valid in view of the Bench decision. Another argument was addressed based on the ground to whom is the interest payable on the deposit account to go. The answer is that when the debt is assigned, interest will go with it.

20. Besides the application with which I am now dealing on behalf of the company, other applications have been made by individual subscribers of the company for payment in full from and out of the money standing to the credit of the company in the Chitty Savings Bank Account of the moneys paid by them on the ground that the moneys deposited in the Bank were entrusted to the Bank for a specific purpose, that they continued to remain in the Bank for that specific purpose, that they were trust moneys and that they should therefore be directed to be paid to the company by the Bank. The company alleges that the Bank is a trustee for them in respect of the said amounts. The question therefore is was a trust created either in favour of the subscriber or in favour of the company? I am not able to see on what basis the Bank is a trustee for the company. In the view I have taken that the transactions in and by which the money was deposited in the Bank operated as an assignment in favour of the company, no question of trust in I favour of the subscriber arises at all. In the result, the claim of the Official Liquidator for preferential payment fails and he will only be entitled to rank as an ordinary creditor in respect of amounts standing to the credit of the prized subscribers' accounts in the Bank.