
(1910) 03 MAD CK 0069
In the Madras High Court

The Official Assignee of Madras

APPELLANT

Vs

D. Rajam Iyer

RESPONDENT

Date of Decision : 16-03-1910

Acts Referred:

Citation : 6 Ind. Cas. 383

Hon'ble Judges : Munro, J; Miller, J; Abdur Rahim, J

Bench : Full Bench

Judgement

Miller, J.—This is a somewhat peculiar case. The Madras Railway Company remitted money to Messrs Arbuthnot & Co. to the credit of the claimant, Rajam Iyer. Arbuthnot & Co. informed Rajam Iyer, who was not one of their customers, that this had been . done and asked for his instructions. But before he could instruct them, they suspended payment. Now it seems to me that in this case the principle enunciated in Official Assignee of Madras v. Smith 32 M. 68 L: 5 M.L.T. 164 : 1 Ind. Cas. 712 is not applicable. The Madras Railway did not intend Messrs. Arbuthnot & Co. to use the money as their Bankers and Arbuthnot & Co., it seems to me, could not possibly have done so. They were not the Bankers of the Railway Company and the money remitted was not an advance to them by the Railway Company; it was money due to and in course of remittance to a third party and Messrs. Arbuthnot & Co. did not treat the money as money lodged with them as Banker. In their letter to Rajam Iyer, they suggest that if he desires to open an account with them he can do so indicating clearly enough that till he does so, they are not his Bankers. Tt is not clear why they received the money from the Railway Company, but possibly they hoped to get a new customer; for some reason they did receive it but I do not think they held it as bankers of Rajam Iyer. They held it, so far as the evidence shows, as agents of the Railway Company for remittance to Rajam Iyer.

2. Mr. Dowring argues that the money should be treated as money remitted to Arbuthnot & Co., by Rajam Iyer without instructions; we must, he says, assume that Rajam Iyer asked the Railway Company to remit to Arbuthnot & Co.

3. It is no doubt probable that some such request was made, but I am not prepared to assume against Rajam Iyer that he did more than ask that the money might be sent to him through Messrs. Arbuthnot & Co. It would not be right to assume more than this, seeing that he was not a customer of Arbuthnot & Co. and, so far as I know, gave no instructions himself to Arbuthnot & Co.

4. I find nothing here to raise the presumption that Messrs. Arbuthnot & Co. received or were intended to receive the, remittance as bankers and I think, therefore, that the appeal must be dismissed with all costs out of the estate.

Munro, J.

5. The distinction drawn by Mr. Justice Miller between this case and Official Assignee of Madras v. Smith 32 M. 68 L: 5 M.L.T. 164 : 1 Ind. Cas. 712 seems to me to be a real distinction, though I do not think it was seriously insisted upon at the former hearing. I, therefore, agree to the proposed order.

Abdur Rahim, J.

6. I agree that the appeal should be dismissed for reasons which I have stated at length in the appeal against the order of the learned Commissioner in Insolvency.