Present : Schneider and Garvin JJ. 1928.

THE IMPERIAL BANK OF INDIA, LTD. *v.* PERERA *et al.*

29—D. C. (Inty.) Colombo, 3,404.

*Bank—Testamentary case—Money lying to the credit of deceased—Order of District Judge to deposit money in Court—*Ultra vires.

It is not competent for a District Court in the course of testamentary proceedings to compel a Bank to deposit in Court money lying to the credit of the deceased customer, whose estate is being administered.

APPEAL from an order of the District Judge of Colombo.

H. V. Perera, for appellant.

March 28, 1928. SCHNEIDER J.—

Admittedly the sum of Rs. 9,755 had been deposited by the deceased testator and was lying in the Imperial Bank of India to the credit of his account current at the date of his death. In this action in which his estate is being administered an application was made to the District Judge for an order directing the Bank "to bring into Court the sum lying to the credit of the deceased testator." The Bank resisted the demand that the money should be brought into Court. Its reasons for doing so are not apparent from the record. After hearing argument the learned District

1928.

SCHNEIDER J.

The Imperial Bank of India, Ltd. v. Perera

Judge made order directing the Bank to deposit in Court on or before a given date the sum of Rs. 3,755. This appeal is against that order.

On reading the order of the learned District Judge it is apparent that he had not considered or appreciated the relation of a Bank to its customer. Grant in his *Law of Banking, 7th ed., p. 2,* states the law as follows :—

> " The legal relation of Banker and customer in their ordinary dealings in money is simply that of debtor and creditor. If the Banker makes advances or grants an overdraft the Banker is creditor. On the other hand, if the customer opens an account and deposits money the customer is creditor and the amount deposited or advanced can be recovered in an action for money lent, the deposit or advance creating a common law debt. So money paid into a Bank ceases altogether to be money of the person who paid it in. It is the money of the Banker who is bound to return an equivalent by paying a sum equal to that deposited by him when he asks for it."

A number of cases are cited by the author in support of this statement. The appellant Bank is in the position of a debtor of the deceased testator, and, in my opinion, it was not competent for the District Judge to make an order in the course of this case to compel the Bank to deposit in Court the money lying to the credit of the deceased testator. If the Bank had been an ordinary debtor and had refused payment of a debt the proper procedure for recovering it would be a properly constituted action. I am not aware why the Bank has refused in this instance to bring the money into Court, but it is possible that it might have been advised that if it did bring money into Court upon an order of the District Judge, which was *ultra vires* it might be regarded as a voluntary payment and not a payment made upon compulsion in pursuance of a valid order of Court. If that view were taken, then the defence would not be open to the Bank, if sued by any person lawfully entitled to the money, that it had paid the money into Court upon an order of the Court. But whatever may have been the reasons which actuated the Bank, in my opinion, the Bank was within its rights in objecting to deposit the money in Court upon an order made by the Judge in this testamentary action. If the executors of the deceased testator had perfected their title by obtaining probate the situation might have been different, but I express no opinion thereon. I set aside the order of the District Judge, and direct that the respondents do pay to the appellant Bank the costs of the argument in the lower Court and of this appeal.

GARVIN J.—I agree.

Appeal allowed.