

taken to have ratified the act of her daughter in having the amount put to a joint account: and consequently whatever the effect of the writing of August 18th there was a placing by the mother of the money to joint account.

If this did take place it would perhaps be hard to resist the conclusion desired; but the learned trial Judge does not find that what is alleged did take place in fact. He finds that the daughter "returned to her mother and told her that either of them could draw it and that the mother was satisfied." As my learned brother did not specifically find that what is alleged as taking place about a joint account, I have thought it well to see Mr. Justice Kelly in the matter, and he informs me that he did not believe the statements of Mrs. Dunkley first above referred to.

We are therefore to take the facts as found by the learned trial Judge (on this point) as the only facts in the case, and all question of ratification is consequently removed.

Much of the argument addressed to us on behalf of the appellant was based upon the proposition that the bank was a trustee. But since the case of *Foley v. Hill*, 2 H. L. C. 36, the relationship of banker and customer has uniformly been held to be not that of trustee and *cestui que trust* but that of debtor and creditor. There is nothing sacred in the position of banker, he sells the use of money—nor is there anything abstruse or recondite in his relation to his depositor—he is an ordinary debtor.

The bank in this case took Mrs. Kenny's money on the implied agreement to return that to her or her personal representatives when called on so to do. They have paid it to another—they must justify their action.

I am of opinion that the document of August 18th, 1911, has a plain meaning—that it is a direction to the bank to place the customer's money in such a condition as that Esther Dunkley can draw it—and that only. There is no gift of the money to the daughter: if that had been the case there would have been no necessity of directing an arrangement that she might draw. There is no authority to place the money in a joint account in such a way that the survivor should have all. No objection could be taken to the opening of an account protected in such a way that