

ORIGINAL CIVIL.

Before Lord-Williams J.

In re BENGAL ZEMINDARI AND BANKING
COMPANY, LIMITED.

1937

Feb. 1.

Company—Liquidation—Cash security deposit—Preferential claim.

Where it was agreed between a banking company and its cashier that the cash security deposited with the bank by the cashier would be held by the bank distinct and separate from other deposits, and that the position of the bank in respect of such security deposit would be that of a trustee and not that of a debtor, the cashier should, in the liquidation of the bank, be treated as a preferential creditor, notwithstanding that the bank had agreed to pay interest on the security deposit and the cashier knew that the bank was using the money in its business.

Re. Alliance Bank of Simla, Ltd : Peter Donald Macpherson v. Dugald McKechnie (1) relied upon.

APPLICATION in chambers.

The facts underlying the application and arguments of counsel appear from the judgment.

S. C. Roy for the applicant.

Prakash Chandra Mallik for the liquidator, opposed.

LORT-WILLIAMS J. The petitioner asks that he may be treated as a preferential creditor in the liquidation of this company. He was appointed cashier of the Calcutta branch at a monthly salary of Rs. 60, on condition, that he furnished security to the extent of Rs. 2,500 in cash. It was agreed on behalf of the company that as the petitioner would be deprived of the use of the money for the period during which it was held as security by the bank, the bank would indemnify him by paying interest on the money at the rate of 5 per cent. per annum. Further, it was agreed

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that the money should be held by the bank distinct and separate from other deposits and that the position of the bank in respect of the security was to be that of trustee and not that of debtor and creditor.

These facts have not been denied by the liquidator, nor has any affidavit been filed by the individual who, in fact, appointed the petitioner as cashier denying that these were the terms. I see no reason to doubt the truth of the statements made by the petitioner. *Prima facie* they are the kind of terms and conditions that I should have expected the petitioner would endeavour to obtain from the bank.

This is an application based on the specific terms of the agreement made with the bank. If it had not been for these specific terms, the fact that the bank had agreed to pay interest upon the security might have militated against the position taken up by the petitioner, because, in the ordinary way, if the bank had to pay interest upon the security, it might be assumed that it was intended that it should use the money in the banking business like any other deposit, so as to enable it to earn the interest which it had to pay to the cashier on his security deposit.

In the case of *Official Assignee of Madras v. Smith* (1) it was held that a trust exists when the banker is to collect and remit but not where he is to use and repay. But in a case heard by the Calcutta High Court, *Re : Alliance Bank of Simla, Ltd. : Peter Donald Macpherson v. Dugald McKechnie* (2) it was held that the fact that the directors of the bank derived profits for the bank by investing a provident fund belonging to the employees did not alter the nature of the fund or convert it into a loan made to the bank by the members.

Similarly, in the present case, the fact that the bank did use the security deposit in its business and

(1) (1908) I. L. R. 32 Mad. 68.

(2) (1924) 28 C. W. N. 721.

that this was known to the cashier who had general charge of the books, did not, in my opinion, alter, in any way, the terms upon which the contract between the petitioner and the bank was made, namely, that the bank would hold the security deposit as trustee for the petitioner, and that a fiduciary relationship was created between the petitioner and the bank in respect of the security deposit.

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The liquidators will have liberty to take the costs out of the assets as between attorney and client.

Certified for counsel.

Application allowed.

Attorney for applicant : *M. K. Roy Chaudhuri.*

Attorney for the liquidator : *H. P. Datta.*

P. K. D.