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of the plot in 1898 under an allotment made at a revenue partition. In the circumstances there seems little doubt that the defendants are in possession under a *bona fide* claim of title and have made out a strong *prima facie* case that they are not trespassers. I am, therefore, of opinion that the provisions of section 127 of the Oudh Rent Act are not applicable to the present case.

Srivastava, J.

I, therefore, allow the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance with costs throughout.

Appeal allowed.

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

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February, 18

SITLA BAKHSH SINGH (APPLICANT) *v.* BAIJ NATH (OPPOSITE-PARTY)*

Contract Act (IX of 1872), section 148—Silver entrusted to goldsmith for making ornament—Theft—No negligence and want of proper care—Bailment—Contract, whether one of bailment—Goldsmith, whether liable for damages.

Where some silver and cash are given to a goldsmith for making an ornament and there is a theft at the shop of the goldsmith and the silver is lost not due to his carelessness or negligence, *held*, that the contract between the parties is one of bailment within the meaning of section 148 of the Contract Act and the goldsmith is not liable for the loss of the silver. *Maung San Myaing* v. *Maung Po Hman* (1), relied on.

Mr. *Pirthipal Singh*, for the applicant.

Mr. *Bani Bilas Misra*, for the opposite party.

SRIVASTAVA, J.:—This is an application in revision under section 25 of the Small Cause Courts Act against the order and decree, dated the 20th of August, 1935, of the learned First Additional Judge of the Court of Small Causes, Lucknow.

*Section 25 Application No. 126 of 1935, against the decree of Babu Shiva Gopal Mathur, First Additional Judge, Small Cause Court, Lucknow, dated the 20th of August, 1935.

(1) (1912) 15 I.C., 451.

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The defendant-opposite-party carries on the business of a goldsmith. Admittedly on the 29th of October, 1933, the plaintiff-applicant entrusted the defendant with silver weighing Rs.85 and paid Rs.5 in cash for the purpose of making of a pair of *karas*. As the defendant failed to make the *karas* as promised by him the plaintiff brought the suit which has given rise to this application for recovery of the price of the silver and the sum of Rs.5 paid in cash together with interest by way of damages. It was contended in defence that a theft had been committed at the defendant's shop and the silver deposited with him by the plaintiff together with other valuables had been stolen. It was further pleaded that in the circumstances the position of the defendant being that of a bailee, he was not responsible for the loss. The lower Court found that the theft did take place as alleged and that the silver belonging to the plaintiff was stolen. It was further of opinion that the defendant was not guilty of any carelessness or negligence inasmuch as the silver in question had been kept locked in an almirah and a chaukidar was employed to keep watch at night. In result the lower Court held that the plaintiff was not entitled to any relief in respect of the silver entrusted to the defendant. Accordingly the suit was decreed for the sum of Rs.5 only with proportionate costs.

The finding of the lower Court about the defendant having taken necessary care of the goods such as is required by section 151 of the Contract Act is a finding of fact which is not open to question in revision. The only question of law which arises for determination is whether the contract between the parties was one of bailment within the meaning of section 148 of the Indian Contract Act. The section defines bailment as the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. In the present case no doubt the silver which

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had been handed to the defendant was not to be returned in specie but it had to be returned in the shape of a finished article, namely the *karas*. It has been argued that it was open to the defendant to dispose of the silver which had been given to him in any way he liked and to make the *karas* out of other silver of the same quality. This might be so, but the test in such a case ought to be the intention of the parties at the time of the transaction. I am inclined to agree with the lower Court that in the circumstances of this case it must be held that when silver was entrusted to the defendant for the purpose of the making of the *karas* the intention was that the same silver would be used for the purpose. There is no evidence as regards the quality of the silver which was supplied to the defendant, but it is obvious that the *karas* were intended to be of the same quality as that of the silver which had been entrusted to the defendant. The words "otherwise disposed of according to the directions of the person delivering them" sufficiently cover a case like the present. In *Maung San Myaing* v. *Maung Po Hman* (1) some precious stones and lumps of gold of a particular quality and three sovereigns were given to a goldsmith to convert into jewellery and were lost by theft not caused by want of proper care. It was held by the Lower Burma Chief Court that as the intention was to convert the identical stones and lumps of gold into jewellery the ownership did not pass to the goldsmith and the transaction being one of bailment he was absolved from liability for the loss, but that the same intention could not be inferred in the case of the three sovereigns. The case is very similar to the present one and supports the view of the lower Court. I am therefore of opinion that the decision of the lower Court is correct and must be upheld.

I accordingly dismiss the application with costs.

Application dismissed.

(1) (1912) 15 I.C., 431.