

(1937) 02 CAL CK 0002

Calcutta High Court

Case No: None

In Re: Bengal Zemindary and
Banking Co. Ltd.

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 1, 1937

Citation: AIR 1937 Cal 221

Hon'ble Judges: Lort-Williams, J; Lord Williams, J

Bench: Division Bench

Judgement

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 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.

2. 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 *Official Assignee of Madras v. G. Smith* (1909) 32 Mad 68 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, [In Re: Alliance Bank of Simla, Ltd.,](#), 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 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 trustees for the petitioner, and that a fiduciary relationship was created between the petitioner and the Bank in respect of the security deposit. The liquidators will have liberty to take the costs out of the assets, as between attorney and client. Certified for counsel.