

(1916) 07 AHC CK 0041
In the Allahabad High Court

Musammat Sarswati Kunwar

APPELLANT

Vs

Dr. Badri Prasad and Others

RESPONDENT

Date of Decision : 06-07-1916

Acts Referred:

Contract Act, 1872 — Section 151, 154

Citation : 36 Ind. Cas. 31

Hon'ble Judges : Henry Richards, C.J.; Rafique, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiff seeks to recover a sum of money which, she says, she deposited with the defendant Badri Prasad for safe custody. Badri Prasad admits that he received the money. The plaintiff owed certain creditors the amount which she deposited and they not being immediately present, she asked the defendant to keep the money for her. The defendant put this money into the People's Bank, Bareilly, in his own name. There was a conflict between the parties as to the circumstances under which the money was placed in the Bank. The defendants pleaded that the money had been deposited at the direction and with the express consent of the plaintiff, and there was a considerable amount of evidence from which it might be presumed that the lady had knowledge that the money was being deposited in the Bank. The lower Appellate Court has come to the conclusion that the evidence was not sufficient to justify a finding that the money had been put into the Bank with the express authority of the plaintiff. It was also clearly of opinion that the plaintiff gave no direction that the money should not be put into bank. We must deal with the case upon this finding. There is no evidence to show that the defendant had any doubt as to the solvency of the Bank at the time he made the deposit. His own money was in the same Bank. Section 151 of the Contract Act provides as follows: "In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the

goods bailed." Section 152 provides: "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151." Assuming that there is no distinction between money and any other kind of property, the defendant in the present case seems to have taken exactly the same care of the plaintiff's money as he did of his own. It has not been argued that there is any difference between money and other property. The appellant relies on the provisions of Section 154, which is as follows: "If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them." It is said that perhaps the defendant would have got some interest upon so much of the money as belonged to the plaintiff and which was in deposit to the credit of the defendant. It seems to us that we cannot assume that the defendant made any such use of the plaintiff's money. Under the circumstances of the case it, cannot be said that the defendant used or intended to use the money for his own purposes. It cannot under the circumstances be assumed that he intended to appropriate and would have appropriated to his own use such a small sum as might accrue for interest by virtue of the deposit. We think that under the circumstances the decree of the Court below was correct and should be affirmed. The appeal is dismissed with costs.