

W. H. Gregory, for appeal.

E. P. Clement, K.C., contra.

HON. MR. JUSTICE RIDDELL:—Mrs. Klippert and Mrs. Boehmer were sisters. Mrs. Boehmer was in need of money and applied to her sister for a loan; she had previously lent her (Mrs. B.) money, which had not been returned, and said she would not without security. Mrs. B. had an insurance policy in a life company due, and it was arranged that Mrs. Klippert should lend her \$1,000 and take an assignment of the policy for security. She gave a cheque for \$1,000 to Mrs. B., who drew the money, and deposited it in a bank, and gave Mrs. Klippert a cheque on that account for \$750, which Mrs. Klippert deposited to her own credit.

An attaching order at the instance of the plaintiff was secured on the insurance company shortly after notice of the assignment to the defendant, Mrs. Klippert.

An interpleader was taken and the money paid into Court; thereafter Mrs. Klippert, the defendant, paid to her sister the \$750.

The interpleader was tried before Mr. Justice Lennox, who gave judgment in favour of the defendant.

The whole case depends upon the transaction between the two sisters. Their story is that the loan was really \$1,000 and not \$250, that the sum of \$750 was given by Mrs. B. to her sister, the defendant, to keep for her until she required it.

There are a number of very suspicious circumstances in the case, but one and all are consistent with honesty. The question is purely one of fact, and the learned trial Judge might well have found the other way, but he saw the witnesses and gave credit to the account of the defendant, and was "satisfied that the defendant gave honest testimony as to this transaction."

That being so, I think we cannot interfere with the finding, respecting, as we must, the well-established rule as to Appellate Courts.

The cases are uniform. *Bishop v. Bishop*, 10 O. W. R. 177.

HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH, agreed.