

[Title]

Performance to Quasi-Holder of Claim (Loan Secured by Deposit)

[Deciding Court]

Supreme Court

[Date of Decision]

23 February 1984

[Case No.]

Case No. 260 (o) of 1980

[Case Name]

Final Appeal in Deposit Repayment Claim

[Source]

*Minshu* Vol. 38 No. 3: 455

[Party Names]

Appellant (Defendant, Intermediate Appellee) Kanda Shinyo Kinko

v

Appellee (Plaintiff, Intermediate Appellant) Toshio Ishijima

[Summary of Facts]

(1) X (Plaintiff, Intermediate Appellant, Final Appellee) made a fixed term deposit with Y, a credit association, (Defendant, Intermediate Appellee, Final Appellant) through A's introduction, and A carried out the procedures for the deposit on behalf of X. (2) The deposit instrument was delivered to A with the approval of X, and X also entrusted A with its seal. (3) However, A went to Y together with B, who pretended to be X, to apply for a loan secured by the deposit made by X, and an officer of Y provided this loan under the mistaken belief that B was X. (4) When X subsequently asked Y about the deposit, X discovered that the deposit had become security for a loan. (5) Y subsequently notified X that Y had set the deposit off against the loan obligation. X demanded Y repay the deposit. The court at first instance found that Y was exempt from liability because Article 478 of the *Civil Code* applied, either by analogy or due to an exemption clause. However, Y lost in the lower court, which found that Y could not have been acting without knowledge at the time of the set-off. Y then filed a final appeal.

[Summary of Decision]

Decision reversed and remanded.

“At the very least, as far as the effectiveness of the set-off is concerned, it can be viewed substantively in the same way as repayment due to early cancellation of a fixed term deposit, and it is appropriate to do so. It is therefore a reasonable interpretation that if it is recognized that the above financial institution exercised the reasonable duty of care that it is required to exercise as a financial institution upon recognizing the above third party as the depositor at the time of executing the contract for the above loan, the provisions of Article 478 of the *Civil Code* apply by analogy, and the above financial institution may duly assert against the true depositor a set-off of the loan claim held against the above third party, and the fixed term deposit claim provided as security (in this case, even if the financial institution knew, at the time of expressing its intention to carry out a set-off, that the above third party and the true depositor were not the same person, this has no impact on the above conclusion).”

