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BAILMENT-EFFECT OF SETTLEMENT BY BAILEE AS A BAR TO ACTION BY BAILOR

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RECENT DECISIONS

BAILMENT—EFFECT OF SETTLEMENT BY BAILEE AS A BAR TO ACTION BY BAILOR—Plaintiff, as assignee of conditional vendor, brought an action against defendant for damage done to an automobile sold to one Zinner under a conditional sales agreement. The automobile was damaged through the negligence of the defendant and one Fulbrush, who, acting independently and with no knowledge of the plaintiff's claim, settled with Zinner for the full amount of damage; defendant and Fulbrush paying Zinner $429.55. The plaintiff later repossessed the automobile as Zinner failed to keep up his payments under the conditional sales agreement. Plaintiff sold the automobile in its damaged condition and brought this action for the difference in the sum realized and the balance due him at the time he repossessed the automobile. The trial court awarded the plaintiff $409, but the appellate court vacated the finding and entered judgment for the defendant. *Held*, affirmed. Where a conditional vendee, as bailee, makes a settlement for full damages, a release given by him will bar another action by the conditional vendor, as bailor. *Associates Discount Corporation v. Gillineau*, (Mass. 1948) 78 N.E. (2d) 192.

It is a general rule of law that a bailee may bring an action against a tortfeasor for full damages done to goods in his possession,[1] the principle being that possession is sufficient ground on which to maintain the action.[2] One court has allowed such recovery on the ground that the bailee is the bailor's agent.[3] The bailee is deemed to hold money, in excess of his interest, in trust for the bailor [4] and the action of the bailee is a bar to a future action by the bailor.[5] The majority rule, in the analogous cases of mortgages and conditional sales, is that a settlement or release, for the full amount by the one in possession, constitutes a bar to a second action just as a court action is a bar.[6] However, in all cases, it

[1] The Winkfield, [1902] Prob. Div. 42; Kerr v. Great Atlantic & Pacific Tea Co., 129 Me. 48, 149 A. 618 (1930); Gardner v. Freystown Mut. Fire Ins. Co., 350 Pa. 1, 37 A. (2d) 535 (1944); Smyth v. Fidelity & Deposit Co. of Maryland, 326 Pa. 391, 192 A. 640 (1937).

[2] Industrial Inv. Co. v. King, 159 Miss. 491, 132 S. 333 (1931).

[3] Masterson v. International & G.N. Ry. Co., (Tex. Civ. App. 1900) 55 S.W. 577.

[4] Railway Express Agency v. Goodman's New York and Connecticut Express Corp., 129 Conn. 386, 28 A. (2d) 869 (1942); Hopkins v. Colonial Stores, 224 N.C. 137, 29 S.E. (2d) 455 (1944).

[5] First National Bank v. Union Ry. Co., 153 Tenn. 386 at 389-390, 284 S.W. 363 (1926): "It is well settled that either the conditional vendor or vendee can prosecute an action for injury to the property by a third party. . . . Also where the relationship is that of bailor and bailee. A recovery by one is a bar to a recovery by the other." See also Gardner v. Freystown Mut. Fire Ins. Co., 350 Pa. 1, 37 A. (2d) 535 (1944); The Vale Royal, (D.C. Md. 1943) 51 F. Supp. 412.

[6] J. E. Harris v. Seaboard Air Line Railway Company, 190 N.C. 480, 130 S.E. 319 (1925); Mercer v. New Amsterdam Casualty Co., 211 N.C. 288, 189 S.E. 762 (1937); Chicago, R.I. & P. Ry. Co. v. Earl, 121 Ark. 514, 181 S.W. 925 (1916); Lowery v. Louisville & N.R. Co., 228 Ala. 137, 153 S. 467 (1934); 118 A.L.R. 1338 at 1344 (1939); contra: French v. Osmer, 67 Vt. 427 (1895). Most cases so

must appear that the settlement and release were made in good faith and without fraud or collusion,[7] for while a court action is public notice to all concerned, a settlement or release may be negotiated in secret. Thus, if the bailor knows that a settlement has been made and accepts benefits under the settlement, it is proper to deny him an action against the wrongdoer.[8] But if all settlements which purport to cover full damages acted as a bar, a bailor might be denied a recovery where the bailee settled for an inadequate sum due to his contributory negligence in injuring the goods, or where the settlement was not sufficient to protect the bailor's claim.[9] Consequently, where the bailee negotiated a settlement for a sum inadequate to compensate the bailor's loss, a release given by the bailee was refused in evidence, in a later action by the bailor, on the ground that it was incompetent and immaterial,[10] and it has been held that a bailor may recover damages to his property even though the bailee has settled for his own personal injuries and purported to give a release for all damages.[11] If the bailee, however, has negotiated a fair settlement for the full amount of damages, the courts have refused to allow an action by the bailor against the third party wrongdoer even if the bailee has failed to repair the property.[12] Such a holding would seem to be based on the maxim that a tort-feasor should not be vexed twice for the same wrong.[13] If the bailee achieved a fair settlement for the full amount of damages, it would appear just to follow this maxim and leave the bailor to an action against his bailee; but where the bailee has settled for less than the full amount of liability, the bailor should have an action as in the

holding are ones in which the wrongdoer has notice of the vendor's or mortgagee's claim; see Commercial Securities Inc. v. Mast, 145 Ore. 394, 28 P. (2d) 635 (1934); Miller v. Hortman-Salmen Co., (La. 1933) 145 S. 786.

[7] Motor Finance Co. v. Noyes, 139 Me. 159, 28 A. (2d) 235 (1942); First National Bank v. Union Ry. Co., 153 Tenn. 386, 284 S.W. 363 (1926).

[8] Mercantile Bank of the Americas, Inc. v. Flower Lighterage Co., (C.C.A. 2d, 1926) 10 F. (2d) 705.

[9] 6 AM. JUR., Bailment, § 358 at p. 440, note 8: "Doubtless there are circumstances under which injustice would result from allowing the wrongdoer to plead the bailee's release in bar, for example, where the consideration paid therefor is less than the value of the bailor's reversionary interest, or is reduced in amount to a nominal figure by reason of the bailee's contributory negligence. . . ."

[10] National Bond & Investment Co. v. Gill, 123 Pa. Super. 341 at 346, 187 A. 75 (1936): "Of course, the bailee had a right to settle for his own damages, but to hold that a settlement made by him would bar the right of his bailor to recover from the tortfeasor the value of its ownership and interest in the car would be unreasonable and unjust." See also 21 MINN. L. REV. 449 (1937); 50 HARV. L. REV. 829 (1937).

[11] Belli v. Forsyth, 301 Mass. 203, 16 N.E. (2d) 656 (1938).

[12] Juniata Acceptance Corporation v. Hoffman, 139 Pa. Super. 87, 11 A. (2d) 494 (1939). In distinguishing the earlier case of National Bond & Investment Co. v. Gill, 123 Pa. Super. 341, 187 A. 75 (1936), the court said at p. 90, "There exists also an important distinction between the Gill Case and the one at bar. In the former the defendant paid but part of the damage; here the defendant paid the full amount of damage to the bailee."

[13] Hardman v. Brett, (C.C. N.Y. 1889) 37 F. 803; Industrial Inv. Co. v. King, 159 Miss. 491, 132 S. 333 (1931).

case where the bailee has brought a court action for his interest only.[14] Thus, where a settlement or release is interposed as a bar to an action by a bailor, the court should disallow the action only after it has determined that the settlement covered the full amount and was fairly determined. The effect of settlement by mere possessors who are not bailees or in positions analogous thereto is outside the scope of this note.

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[14] Rindge v. Coleraine, 11 Gray (Mass.) 157 (1858); Fletcher v. Perry, 104 Vt. 229, 158 A. 679 (1932) where, in the dictum, at p. 233, the court states: "But a recovery by the bailee to the extent only of his possessory interest is not a bar to an action by the bailor for damages to his reversionary interest." Railway Express Agency, Inc. v. Goodman's New York and Connecticut Express Corporation, 129 Conn. 386, 28 A. (2d) 869 (1942).