Michigan Law Review

Volume 45 | Issue 5

1947

BAILMENT-UNKNOWN CHATTELS CONTAINED IN OBJECT BAILED

B. E. Heath
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

 Part of the Contracts Commons, and the Torts Commons

Recommended Citation

B. E. Heath, *BAILMENT-UNKNOWN CHATTELS CONTAINED IN OBJECT BAILED*, 45 MICH. L. REV. 625 (1947).
Available at: https://repository.law.umich.edu/mlr/vol45/iss5/8

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

BAILMENT—UNKNOWN CHATTELS CONTAINED IN OBJECT BAILED—Plaintiff's automobile was stolen from defendant's parking lot. Plaintiff had previously disclosed to defendant's agent that certain things were in the car, but had failed to mention other items also present. In an action to recover the value of all the items, *held*, recovery allowed only for those things that defendant knew were in the automobile, he being a bailee of those things only. *Palotto v. Hanna Parking Garage Co.*, (Ohio 1946) 68 N.E. (2d) 170.

The court's conclusion was predicated upon the doctrine that a bailment is a contract and there was, on the facts presented here, no mutual assent, hence no contract. The law of bailments has been needlessly complicated, it is submitted, by the frequent reiteration of this view.[1] In some situations it has even been necessary for courts to imply mutual assent to arrive at the correct result.[2] The es-

[1] STORY, LAW OF BAILMENTS, 8th ed., § 2 (1870). ". . . a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object of the trust."

Frost v. Chaplin Motor Co., 138 Me. 274, 25 A. (2d) 225 (1942); Dennis v. Coleman's Parking and Greasing Stations, Inc., 211 Minn. 597, 2 N.W. (2d) 33 (1942).

[2] Stevens v. St. Botolph Holding Co., 316 Mass. 238, 55 N.E. (2d) 450 (1944); Mee v. Sley System Garages, 124 Pa. Super. 230, 188 A. 626 (1936), (notice inferred from fact that four inches of suitcase in view); Munson v. Blaise, (La. 1943) 12 S.

sence of a bailment is the non-tortious possession of the chattels of another.[3] Commonly such possession is acquired by virtue of a contract, and the duties of the parties to the bailment often are expressed in contract terms.[4] This, however, is a far different thing from asserting that a bailment is a contract, for finders may be bailees and some bailments are involuntary.[5] In many of the cases in which the language of the principal case is used, it is decided merely that the alleged bailee was not liable for what happened to the goods, the result, perhaps wholly sound, being accounted for on the ground that there was no mutual assent, hence no bailment.[6] This reasoning implies of course that bailees are always liable for loss of or harm to the goods, which certainly is not true.[7] At the same time it is perfectly possible that a person may be liable for loss of, or harm to, goods even though he was not a bailee thereof.[8] The result reached in the principal case can be justified by placing a duty upon the defendant-bailee to exercise reasonable care under the circumstances.[9] His lack of knowledge that the items were present in the car would be enough to show that he could not

(2d) 623, (liable for loss of extra tires and tubes and other such equipment of the car which is regarded as within protection of contract of bailment).

[3] 4 WILLISTON, CONTRACTS, rev. ed., § 1032 (1936); Burns v. State, 145 Wis. 373, 128 N.W. 987 (1911); State v. Carr, 118 N.J. L. 233, 192 A. 36 (1937). In Woodson v. Hare, 244 Ala. 301 at 303, 304, 13 S. (2d) 172 (1943), the court said: "Where . . . one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective whether or not there has been any mutual assent, expressed or implied, to such relationship." Cases are collected in, 1 A.L.R. 394 at 395, 399 (1919); 9 A.L.R. 1388 at 1390 (1920); 43 A.L.R. 33 (1926); 36 A.L.R. 372 at 385 (1925); 41 A.L.R. 1015 (1926).

[4] Electrical Products Corporation of Colorado v. Mosko, 88 Colo. 447, 297 P. 991 (1931); Geis v. Mathes, 128 Kan. 753, 280 P. 759 (1929).

[5] Laidlaw, "Principles of Bailment," 16 CORN. L. Q. 286 (1931); Beale, "Gratuitous Undertakings," 5 HARV. L. REV. 222 (1891); Foulke v. N.Y. Consol. R. Co., 228 N.Y. 269, 127 N.E. 237 (1920).

[6] Barnette v. Casey, 124 W. Va. 143, 19 S.E. (2d) 621 (1942); Willis v. Jensen, 82 Utah 148, 22 P. (2d) 220 (1933); Bertig v. Norman, 101 Ark. 75, 141 S.W. 201 (1911).

[7] Horton v. Terminal Hotel & Arcade Co., 114 Mo. App. 357, 89 S.W. 363 (1905), (box containing jewelry); Gerrish v. Muskegon Sav. Bank, 138 Mich. 46, 100 N.W. 1000 (1904), (package containing jewelry); White v. Commonwealth Nat. Bank, 4 Brewst. 234, 29 Fed. Cas. 17,544 (1866). In Rogers v. Murch, 253 Mass. 467 at 471, 149 N.E. 202 (1925) the court said, "Upon the pleadings and evidence the plaintiff should not have been permitted to recover the value of the fur robes which were left in the car by the plaintiff. There is no evidence that the defendant or his agents knew of the presence of the robes in the car when the car was left in his custody; nor is there evidence that he undertook to care for them until the plaintiff should call for his automobile. At most such a bailment was gratuitous and there is no evidence of the defendant's bad faith or gross negligence."

[8] For example, the operator of a parking lot, though not deemed a bailee on the facts, may be found to have made a contract to watch over the car and perhaps to keep it safely.

[9] Laidlaw, "Principles of Bailment," 16 CORN. L. Q. 286 at 304 (1931).

take precautions to protect an unknown chattel.[10] A California statute seems to have solved the problem by stating in essence that the depositary's liability for negligence is limited to the amount which the depositor tells him, or he has reason to suppose the property is worth. Clearly under this statute there would be no liability placed on a bailee for the loss of an unknown chattel.[11]

B. E. Heath

[10] D. A. Schulte, Inc. v. North Terminal Garage Co., 291 Mass. 251, 197 N.E. 16 (1935). Law does not thrust upon one the liabilities of a bailee without his knowledge or consent.

[11] Cal. Civ. Code (Deering, 1941) § 1840: "The liability of a depository for negligence cannot exceed the amount which he is informed by the depositor or has reason to suppose, the thing deposited to be worth."

Homan v. Burkhart, 108 Cal. App. 363, 291 P. 624 (1930).