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Bailment-Trover and Conversion

RECENT CASE NOTES

BAILMENT—TROVER AND CONVERSION—This was an action by the plaintiff against the defendant for conversion of coal. The defendant was owner of a farm abutting the plaintiff's right of way, and said coal was thrown on the defendant's land by reason of a wreck on this right of way at a point adjoining the defendant's farm. The coal could not be removed without going across the defendant's land, and the plaintiff's agents asked defendant's permission to go on his land and remove the coal. This permission was refused unless the plaintiff would pay $35. An agent of the plaintiff had been authorized to remove the coal, and he did remove some of it, but the defendant forbade him to remove the balance. The jury rendered a general verdict for the defendant, and the plaintiff filed a motion for a new trial on the grounds that the verdict was not sustained by sufficient evidence, and that the verdict was contrary to law. This motion was overruled and judgment rendered. Plaintiff appealed. Held, the defendant was not guilty of conversion.[1]

In the decision of this case, the Indiana Appellate Court apparently proceeded upon the theory that the defendant by refusing the plaintiff permission to come upon his land to get the coal was doing no more than he had a legal right to do, and that therefore such refusal to allow plaintiff to regain possession of his own property, unless a payment of money was made, was not a conversion. Unquestionably this leaves the parties in status quo, and is an unsatisfactory solution of the problem. It is the purpose of this note to show that this solution is incorrect, and with the support of adequate authority to show that there arose a bailment relationship between the parties, under which the defendant incurred certain duties and liabilities, thereby making his refusal of permission to obtain the coal a conversion.

A bailment has been defined as the rightful possession of chattels by one not the owner.[2] Generally, in order to constitute a transaction an actual bailment, there must be a delivery to the bailee, either actual,[3] or what some courts call "constructive".[4] In many cases, however, a bailment arises where the person having possession of chattels holds them under such circumstances that the law imposes upon him the obligation of

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[1] Chicago, I. & L. Ry. Co. v. Pope (1934), 188 N. E. 594.

[2] Williston, Contracts (1920, vol. 2), sec. 1032; Willis, Introduction to Anglo-American Law (1926) 42.

[3] Bertig v. Norman (1911), 101 Ark. 75, 141 S. W. 201; Atl. Coast Line R. R. Co. v. Baker (1903), 118 Ga. 809, 45 S. E. 673; Van Wagoner v. Buckley (1912), 148 App. Div. 808, 133 N. Y. S. 599; Barns v. Stern Bros. (1915), 89 Misc. 385, 151 N. Y. S. 887; Houghton v. Lynch (1868), 13 Minn. 85.

[4] Gilson v. Pennsylvania R. R. Co. (1914), 86 N. J. L. 446, 92 Atl. 59; Sherman v. Hicks (1908), 14 N. M. 439, 94 Pac. 959; Bertig v. Norman (1911), 101 Ark. 75, 141 S. W. 201; Hanes v. Shapiro (1915), 168 N. C. 24, 84 S. E. 33.

delivering them to the owner.[5] In the case of such bailment it is not necessary that there be either actual or constructive delivery.[6] Discussion of examples of this type of bailment will be deferred until the matter of acceptance has been treated.

Since the duties and responsibilities of a bailee cannot be thrust upon a person without his knowledge or against his consent, it is essential to a bailment that there be an acceptance of the subject matter.[7] But it is not requisite that acceptance be actual, one that is constructive is sufficient, as where a person comes into actual possession and control fortuitously or by mistake; for example, where goods were mistakenly delivered by an expressman to a person not the consignee;[8] where property was accidentally stored on a railroad's right of way;[9] where the consignee left goods at the railroad depot without taking them;[10] where property came into possession of a public officer, though it was not his duty to receive it;[11] in the case of a finder;[12] where the span of a bridge was deposited upon a man's land without any fault of the bridge owner;[13] where ties were left upon a right of way which reverted to the original owners of the land;[14] or where a passenger inadvertently left a package upon the seat of a railroad car.[15] Story says, "Such situations might be called involuntary deposits as contradistinguished from those which are necessary and voluntary, inasmuch as the latter presuppose some act of the depositor, whereas the former may be without his assent or knowledge."[16] Hale, in his Law of Bailments and Carriers,[17] says that these deposits may arise whenever the goods of one person have by an unavoidable casulty or accident been lodged upon another's land, as where lumber floating in the river is cast upon a neighbor's land by a sudden freshet, or where goods are blown upon other's land by a tempest;[18] and that the owner of the land is a quasi bailee with duties similar to those of a finder of lost property, so that if he should refuse to deliver the goods to their owner or

[5] Wentworth v. Riggs (1913), 143 N. Y. S. 955; Gilson v. Pennsylvania R. R. Co. (1914), 86 N. J. L. 446, 92 Atl. 59.

[6] Wentworth v. Riggs (1913), 143 N. Y. S. 955.

[7] Bohannon v. Springfield (1846), 9 Ala. 789; Blosser Co. v. Donnan (1910), 8 Ga. App. 285, 68 S. E. 1074; Michigan Central R. Co. v. Carrow (1874), 73 Ill. 348; Krumsky v. Loeser (1902), 37 Misc. 504, 75 N. Y. S. 1012; Delaware, Lackawanna & Western R. R. Co. v. Central Stock-Yard & Transit Co. (1889), 45 N. J. Eq. 50, 17 Atl. 146.

[8] Newhall v. Paige (1858), 10 Gray (Mass.) 366.

[9] Walker v. Norfolk R. R. Co. (1910), 67 W. Va. 273, 275, 67 S. E. 722.

[10] Smith v. Nashua & Lowell R. R. Co. (1853), 27 N. H. 86.

[11] Phelps v. People (1878), 72 N. Y. 334.

[12] Armory v. Delamirie (1722), 1 Str. 505, 93 Eng. Rpr. 664, Smith Lead. Cas. 631.

[13] Foster v. Juniata Bridge Co. (1851), 16 Pa. St. 393.

[14] Moss Tie Co. v. Kreilich (1899), 80 Mo. App. 304.

[15] Foulke v. N. Y. Consolidated R. R. (1920), 228 N. Y. 269, 127 N. E. 237.

[16] Commentaries on the Law of Bailments (1832), secs. 44, 88. Story, in sec. 41, defines a deposit as "a naked bailment of goods, to be kept for the bailor without reward, and to be returned when he shall require it."

[17] (1896) 44.

[18] Anthony v. Haney (1832), 8 Bing. 187, 131 Eng. Repr. 372; Mitten v. Faudrye (1019), Poph. 161, Latch 13, 79 Eng. Repr. 1259; Nicholson v. Chapman (1793), 2H. Bl. 254, 126 Eng. Repr. 536.

to permit him to remove them, he might be held liable for conversion.[19] So, also, the owner might enter and take them away, the entry being authorized by necessity.[20] In a recent article,[21] Laidlaw says, "It is believed that where chattels are cast upon the land, the owner of the land has the possession of the chattel upon it so that he is bailee, for a person in possession of the land is taken to have possession of all that is in or upon it. As long as he is ignorant of the presence of the chattel, doubtless he owes no duty of care towards it."

From an examination of these authorities and an application of their principles to the case under consideration, it is obvious that the defendant was clearly a bailee of an involuntary deposit, as he was certainly aware of the presence of the coal upon his land and acknowledged his control of its removal. The defendant thereby incurred certain duties and liabilities which the law imposes upon bailees.

The duties of a bailee generally are to exercise diligence of some sort in the keeping of the chattel,[22] and to return the identical property bailed, or in some cases the substitute or product of that thing, upon termination of the bailment.[23] The bailee of an involuntary deposit likewise has similar duties, though probably to a lesser degree;[24] in such a bailment, the bailor may at any time terminate the bailment upon giving notice to the bailee.[25]

Therefore, the plaintiff in the principal case terminated the bailment and obtained an immediate right to possession by his demand on the defendant who, as bailee, was under a duty to return the chattel himself, or at least to allow the plaintiff to come upon the land to get the chattel, and his refusal to do this amounted to a conversion as a matter of law; for a conversion may consist of a detention or nondelivery, without legal excuse, after demand for delivery has been made by the person entitled to possession or his duly authorized agent.[26] R. S. O.

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[19] Anthony v. Haney (1832), 8 Bing. 187, 131 Eng Repr. 372; Nicholson v. Chapman (1793), 2H Bl. 254, 126 Eng. Repr. 536.

[20] Mitten v. Faudrye (1019), Poph. 161, Latch 13, 79 Eng. Repr. 1259.

[21] Principles of Bailment (1931), 16 Corn. L. Q. 286.

[22] Whitney v. Lee (1844), 8 Metc. (Mass.) 91; Mason v. St. Louis Union Stock Yards Co. (1894), 60 Mo. App. 93; Warren v. Finn (1913), 84 N. J. L. 206, 86 Atl. 530; Coggs v. Bernard (1703), 2 Ld. Raym. 909, 92 Eng. Repr. 107; Conner v. Winton (1856), 8 Ind. 315.

[23] Jensen v. Eagle Ore Co. (1910), 47 Colo. 306, 107 Pac. 279; Johnson v. Chicago Feather Co. (1912), 172 Ill. App. 81; Hurd v. West (1827), 7 Cow. (N. Y.) 752; Kowing v. Manly (1872), 49 N. Y. 192; Colyar v. Taylor (1860), 1 Cold. (Tenn.) 372; Southcote's Case (1601), 4 Coke 83b; Lichtenheim v. The Boston & P. R. R. Co. (1853), 11 Cush. (Mass.) 70.

[24] Dougherty v. Posegate (1856), 3 Iowa 88; Burns v. State (1910), 145 Wis. 373, 128 N. W. 987; Foulke v. N. Y. Consolidated R. R. (1920), 228 N. Y. 269, 127 N. E. 237.

[25] McLain v. Huffman (1875), 30 Ark. 428; Montgomery v. Evans (1850), 8 Ga. 178; Hodges v. Hurd (1868), 47 Ill. 363; Amberg v. Philbrick (1889), 33 Ill. App. 200; Zackman v. Partridge (1849), 21 Vt. 558.

[26] Coffin v. Anderson (1837), 4 Blackf. 395; Donlin v. McQuade (1896), 61 Mich. 275, 28 N. W. 114; Lopard v. Symons (1904), 85 N. Y. S. 1025; Wykoff v. Stevenson (1884), 46 N. J. L. 326; Nordin v. First Trust & Savings Bank of Pasadena (1931), 118 Cal. App. 697, 6 Pac. (2nd) 92; Denvir v. Crowe (1928), 321 Mo. 212, 9 S. W. (2nd) 957; Alexander H. Abrahams & Co. v. Southwestern R.