Indiana Law Journal

Volume 7 | Issue 7 Article 3

4-1932

Bailments-Nature of Relationship-Duty of Bailee

RECENT CASE NOTES

BAILMENTS—NATURE OF RELATIONSHIP—DUTY OF BAILEE—The evidence offered at the trial was conflicting, but by that which was most favorable to the plaintiff, and hence tended to support the judgment of the lower court, the facts were as follows: the plaintiff ordered $60,000 worth of Fourth Liberty Loan bonds through the trust company of which the defendant is receiver. During the following year $60,000 worth of these bonds were purchased by the bank and recorded as belonging to the plaintiff. They were kept in the private safe deposit box of the president of the trust company. The plaintiff contends that the benefits of this arrangement were mutual, since he was continuing an account at the bank in consideration for this service. When the bank became insolvent and the defendant took charge as receiver, none of the bonds could be found. The plaintiff filed these proceedings to have himself declared a preferred creditor for the sum of $60,000, with interest and costs. The court decreed that he was a preferred creditor as to a part of that sum, since some of the bonds had been sold through its president (though the latter testified that they had soon been replaced), and a general creditor as to the remainder. This is an appeal from an order of the Appellate Court substantially affirming the result below. *Held,* reversed as to the part declaring the plaintiff a preferred creditor; affirmed as to the part declaring him a general creditor as to $60,000, with interest and costs.[1]

During the course of the opinion the court said, "Appellee insists that under the evidence in this case the trust company held possession of the bonds as bailee for him, and therefore a trust relation existed. Conceding this statement to be correct, and construing the evidence favorable to him, the benefits of the bailment might be considered reciprocal, and hence the trust company would be required to use the same diligence in the care of appellee's bonds as it would in the care of its own securities, and for neglect of ordinary care it would be liable for their value."

There can be no doubt but that there existed between the plaintiff and the trust company a bailment relation. The transaction amounted to a special deposit,[2] which may be defined as "a deposit for safe keeping to be returned intact or for some specific purpose not contemplating a credit on general account."[3] Where there is a special deposit the relation between the parties is that of bailor and bailee.[4] But it cannot be said that any true trust relationship existed.[5] In spite of the fact that many courts have employed the term "trust" in connection with bailments,[6] the co-existence of a trust and a bailment is impossible.[7] In a bailment the

[1] *Crowder v. Abbott,* Supreme Court of Indiana, December 22, 1931, 178 N. E. 860.

[2] *Fogg v. Tyler,* 109 Me. 109, 82 Atl. 1008 (1912).

[3] 3 R. C. L. 517 (sec. 146).

[4] *Fogg v. Tyler (supra)*; *Alston v. State,* 92 Ala. 124, 9 So. 732 (1891); *Anderson v. Pacific Bank,* 112 Cal. 598, 44 Pac. 1063 (1896).

[5] *Doyle v. Burns,* 123 Iowa 488, 498, 99 N. W. 195 (1904).

[6] 3 R. C. L. 72 (sec. 2), and cases cited.

[7] *Doyle v. Burns, supra,* note 4.

bailor always retains legal title,[8] the bailee only having a special possessory interest.[9] In a trust the trustee has legal title, and the *cestui qui* trust only an equitable interest.[10] It is obvious that one person cannot hold legal title as a bailor and an equitable one as a *cestui qui* trust at the same time that another holds legal title as trustee and a mere possessory interest as bailee.

The court said that conceding that the benefits of this bailment might be reciprocal, the bank "would be required to exercise the same diligence in the care of appellee's bonds as it would in the care of its own securities." It has long been the law in Indiana that there are no degrees of negligence.[11] In two recent cases[12] it was held that there were no degrees of diligence either, and that negligence was simply a failure to exercise the same care an ordinary reasonably prudent person would under exactly the same circumstances. The principal case leads one to conjecture as to whether the court intended to overrule these decisions and reestablish the doctrine of degrees of diligence. When the court said that the trust company was required to exercise the same care in respect to plaintiff's bonds as it would in respect to its own, there, at least, it must have misstated its position. This particular trust company may have been very careless with its own securities. That surely would not affect the duty it owed the plaintiff. The court undoubtedly meant that the bailor was under a duty to exercise the same care that a reasonably prudent trust company would use in the care of its own securities.

This, however, did not influence the result of the case, as the reversal was based upon the doctrine that a special deposit can give rise to a preferred claim only when the property deposited or, if it has been sold, the funds received for it, can be traced into the receiver's hands. That this result is correct can hardly be doubted after an examination of the numerous cases the court cited. W. H. H.

CONSTITUTIONAL LAW—EXTENDING TERM OF PROSECUTING ATTORNEY—The appellant was elected prosecutor for the Johnson-Brown judicial district at the 1928 election, but his term of office did not commence until January 1, 1930. By Acts 1929, page 49, it was provided that all terms of prosecutors should commence on the first of January immediately following the regular biennial election, and that in judicial districts where the term of the prosecutor elected at the 1928 election did not expire until December, 1931, there should be no election for prosecutor in such district at the 1930 election. Appellee obtained nomination and election at the 1930 election, regardless of the provisions of such act. Appellant brought this action

[8] *Scott Mining etc. Co. v. Shultz,* 67 Kans. 605, 73 Pac. 903 (1903); *Hans v. Shipiro,* 168 N. C. 24, 84 S. E. 33 (1915); *In re Wright-Dana Hardware Co.,* 211 Fed. 908 (1914); *Northcut v. State,* 60 Tex. Cr. 259, 131 S. W. 1128 (1910); *Anderson v. Pacific Bank, supra,* note 4.

[9] *Philadelphia Lamp Co. v. Del. Mar. Supply Co.,* 5 Boyce (Del.) 81, 90 Atl. 595 (1914); *Engel v. Scott,* 60 Minn. 39, 61 N. E. 825 (1895).

[10] *Hospes v. N. W. Mfg. Co.,* 48 Minn. 174, 50 N. W. 1117 (1892); *Hawkins v. Donnerberg,* 40 Ore. 97, 66 Pac. 691 (1901); *Wallace v. Wainwright,* 87 Pa. St. 263 (1878).

[11] *Bedford, etc. R. R. Co. v. Rainbolt,* 99 Ind. 551 (1885).

[12] *Union Traction Co. v. Berry, Adm.,* 188 Ind. 514, 121 N. E. 655 (1919); *Pittsburgh, C. C. & St. L. R. R. v. Stephens,* 86 Ind. App. 251, 157 N. E. 58 (1927).