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Is There A Presumption of Negligence in the Law of Bailments in Pennsylvania

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IS THERE A PRESUMPTION OF NEGLIGENCE IN THE LAW OF BAILMENTS IN PENNSYLVANIA

In discussing this problem we will assume that there is a bailment, that there has been a demand for the return of the article, and that there has been a failure to return it, or it has been returned in a damaged condition.

When the bailor proves the above, does a presumption of negligence arise? The authorities support the finding that there is a presumption of negligence in the mutual benefit type of bailment or bailment for hire,[1] but that there is no such presumption in the case of a gratuitious bailment.[2]

Let us first consider the mutual benefit bailment. In order for the bailor to recover from the bailee, he must prove a lack of ordinary care.[3] To prove this is often quite difficult because all the information is in the hands of the bailee who has exclusive possession.[4] It is for this reason that a presumption is desirable.

It is more difficult to discover the methods by which this presumption is rebutted. In order to discuss this it will be necessary to break the cases into three classes:

1. Loss or damage caused by fire.
2. Loss or damage caused by theft.
3. Loss or damage caused by means other than specific casualty.

In our first situation where the bailed article is destroyed or damaged by fire, it is said that if destruction by a general fire is shown by clear and satisfactory evidence, this will be sufficient to rebutt the presumption.[5] It is not necessary to show that he exercised proper care over the article, but only that the goods were destroyed by the fire.[6] Merely accounting for the loss in a way not to implicate himself in a charge of negligence is a sufficient defense, unless the plaintiff proves negligence.[7] It naturally follows, that if the bailor shows the fire in his pleadings, no presumption will arise since he has proved the bailee's case for him. It would then be up to the bailor to prove negligence.

In *Schell* v. *Miller Storage Co.*[8] the court says in substance that when the bailor shows a bailment, demand and failure to deliver, the bailee has the duty

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1 Safe Deposit Co. v. Pollock, 85 Pa. 391, 27 Am. Rep. 660 (1878); Logan v. Mathews, 6 Pa. 417 (1847); Schell v. Miller Storage Co., 142 Super 293, 16 A.2d 680 (1940).
2 First National Bank v. Rex, 89 Pa. 308, 33 Am. Rep. 767 (1879); Hibenia Building Associaton v. McGrath, 154 Pa. 296, 26 A. 377 (1893).
3 Tower v. Grocer's Supply and Storage Co., 159 Pa. 106, 28 A. 229 (1893).
4 See note 1 Schell case: Beckman v. Shouse, 5 Rawle 179, 28 Am. Dec. 653 (1835).
5 Yeo v. Miller North Broad Storage Co., 146 Super. 408, 23 A.2d 79 (1941).
6 See note 5.
7 National Line Steamship Co. v. Smart, 107 Pa. 492 (1884).
8 See note 1 Schell case.

of going forward with the evidence accounting for the loss, and if the bailee fails so to do, he is responsible for the loss, it being assumed that the bailee has failed to exercise the ordinary care required. The bailee need not show he used due care, but merely show by clear and satisfactory proof that the goods were lost and the manner. When he has done this and his proofs do not disclose lack of due care on his part, then the bailor must prove the bailee's negligence. This case is the leading case and is cited by all the later cases.

In the same case it is said that the rules are similar in our second classification, loss caused by theft, although the burdens on the bailee may differ in each case. They say the thing required is to give the bailor a sufficient explanation to enable him to conduct an investigation of his own. It has been held to be error to charge that the bailee has the burden of proving that the loss was not due to his negligence.[9] There appear to be several cases in conflict with this statement;[10] however in reality they are not in disagreement. The courts say that if a bailee fails to return the bailed property or give a satisfactory explanation for its disappearance, the bailee has the burden of proving that the loss was not due to his negligence. This is on the theory that the bailee has the best means of ascertaining the facts and must excuse or justify the failure to return. Thus we see that in reality this gives the bailee another method of rebutting the presumption, that of showing he used due care in all operations. It would be used only where the bailee could not give a sufficient accounting and apparently is used in theft cases in the main.[11]

In our third situation, loss or damage caused by means other than specific casualty, the rule is that a general accounting may suffice if it offers an explanation of what occurred. Thus it appears to depend on the circumstances of each case.

A good statement of the rule is found in *O'Malley* v. *Penn-Athletic Club*,[12] where a coat was lost from a checkroom. In substance it was stated, where the property is delivered to a bailee in good condition and it is not returned, the law presumes negligence to be the cause, the burden of going forward is on the bailee to show loss is due to other causes consistent with due care on his part.

The cases have in many instances used the word inference. The question arises, is this a correct usage?

The courts have used the term in situations in which the presumption has been rebutted. In such a case the court says the jury may infer from the evidence placed before them by the bailor and the bailee that there was lack of ordinary care.[13] This use of the word has no effect on the presumption since it is already

9 Carlton v. Sley System Garages, 143 Super. 127, 17 A.2d 748 (1940).
10 Wendt v. Sley System Garage, 124 Super. 224, 188 A. 624 (1936).
11 See note 10.
12 119 Super. 584, 181 A. 370 (1935); See note 1 Logan case.
13 See note 1 Schell case at 298; Widowski v. Lupowitz, 164 Super. 298, 63 A.2d 106 (1949); See note 4 Beckman case.

rebutted. This appears to be a method used by the court to submit the case on its facts to the jury. However there is one case which seems to use the word, inference incorrectly. This is *Woodruff* v. *Painter*[14] where the bailor at the suggestion of a clothing store clerk put his watch in a drawer while having a fitting. The bailor proved non-delivery of the watch and won the case. The court uses inference in the charge, but also says that the bailee must prove loss, theft or fire to explain the non-delivery. The correct result was gained but the wrong word was used. Also, the courts have said that the presumption does not disappear upon the introduction of evidence.[15]

We must also note that the proof offered by the bailee must be by clear and satisfactory evidence in order to rebutt the presumption. Clear and satisfactory evidence is that degree of proof between a preponderance of evidene and beyond a reasonable doubt.[16] It appears from the language of the courts that this is the type of presumption which requires clear and satisfactory proof to rebutt. However, the exhaustive article on presumptions in Pennsylvania which I have cited fails to mention our bailment situation. Nevertheless the court's language seems clear.

We have stated in the beginning of the article that there appears to be no presumption in a gratuitious bailment, for the sole benefit of the bailor. There are no cases to be found in which a presumption was relied upon. It is said, however, that such a bailee is liable only for that loss caused by fraud or for such gross negligence that amounts to fraud, and that the burden of proof is on the bailor.[17] This means little however since the rule is the same in the mutual benefit bailments except as to the degree of care. But from the general attitude of the courts, it would seem that the best rule is to require the bailor to prove negligence affirmatively without the aid of the presumption.

When the bailment is for the sole benefit of the bailee only slight negligence is required to enable the bailor to recover. In such a case it seems evident that the bailor may rely on the presumption since in the mutual benefit bailment the bailor is entitled to a presumption of a lack of ordinary care, a degree higher than slight negligence.

We conclude that there is a presumption of negligence in the mutual benefit bailment, and a bailment for the sole benefit of the bailee, that there is no such presumption in the case of a bailment for the sole benefit of the bailor, and that it is up to the bailee to rebutt this presumption where it arises. This may be done in the following ways depending upon the situation:

1. By giving general proof of fire and showing the goods were destroyed by it.

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14 150 Pa. 91, 24 A. 621 (1892).
15 See note 5 Yeo case; See note 16.
16 Pa. Bar Ass. Q. Oct. 1945 p. 89 and also Jun. 1946, P. 193.
17 See note 2 for both cases.

2. By giving a sufficient accounting or explanation of the theft to enable the bailor to conduct his own investigation of the matter. Whether the bailee has succeeded depends upon the circumstances.

3. By the bailee showing that the failure to return is due to some cause consistent with due care on his part.

4. By showing that he has exercised due care in all respects, if the bailee is unable to rebutt the presumption in any other way.

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