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BAILMENTS-DELIVERY OF POSSESSION-LIABILITY OF SHOPKEEPER FOR LOSS OF ARTICLE LEFT IN RECEPTION ROOM

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RECENT DECISIONS

BAILMENTS—DELIVERY OF POSSESSION—LIABILITY OF SHOPKEEPER FOR LOSS OF ARTICLE LEFT IN RECEPTION ROOM—Without the knowledge of defendants, plaintiff hung her coat on a hook provided for wraps in the unattended reception room of defendants' beauty shop. Upon leaving, plaintiff returned to the reception room but was unable to find her coat. Judgment for its value was recovered in the lower court upon the theory that defendants were bailees of the coat and had been negligent in caring for it. *Held*, reversed. No bailment existed because there was no change of possession of the coat sufficient to constitute a delivery. *Theobald v. Satterthwaite*, (Wash. 1948) 190 P. (2d) 714.

A bailment requires a delivery of the goods by the bailor to the bailee resulting in the lawful possession of chattels by one who is not the owner.[1] The American Law Institute, in accord with most views, defines possession in terms of physical control and an intent to exercise such control to the exclusion of all persons.[2] However, no definition of possession can be formulated which will serve as a general standard to enable a court to state categorically that a person under a particular set of facts has sufficient possession of chattels to satisfy the law of bailments.[3] In the principal case, the court could not conceive of the defendants having possession of an article which they did not knowingly receive. Although language to the effect that knowledge is a prerequisite of possession may be found in cases and textbooks,[4] the doctrine receives little support from the better reasoned authorities.[5] It seems clear that a possessor need not have knowledge of the nature or even the existence of the specific chattels which he possesses, as illustrated by the involuntary bailment[6] and safety deposit box cases.[7] The common misapprehension that bailees are liable as a matter of course for the loss of goods while in their possession has caused some courts to avoid unjust results by holding knowledge a prerequisite to possession. Actually, such absolute liability attaches to only a few particular types of bailees,[8] and generally mere proof of loss will

[1] 4 WILLISTON, CONTRACTS, rev. ed., § 1032 (1936); Foulke v. N.Y. Consol. R. Co., 228 N.Y. 269, 127 N.E. 237 (1920); BROWN, PERSONAL PROPERTY, § 73 (1936).

[2] 1 TORTS RESTATEMENT, § 216 (1934); 21 CORN. L.Q. 325 at 328 (1936); HOLMES, THE COMMON LAW 216 (1881); BROWN, PERSONAL PROPERTY 18, and §§ 74, 75 (1936).

[3] Shartel, "Meanings of Possession," 16 MINN. L. REV. 611 (1932).

[4] 8 C.J.S., Bailments, § 27; Samples v. Geary, (Mo. App. 1927) 292 S.W. 1066; Posner v. N.Y. Central R. Co., 154 Misc. 591, 277 N.Y.S. 671 (1935); 1 A.L.R. 394 (1919).

[5] Webster v. Lane, 125 Misc. 868, 212 N.Y.S. 298 (1925); 21 CORN. L.Q. 325 (1936); BROWN, PERSONAL PROPERTY, § 75 (1936).

[6] Ridgely Operating Co. v. White, 227 Ala. 459, 150 S. 693 (1933), noted in 47 HARV. L. REV. 1433 (1934).

[7] 6 AM. JUR., Bailments, § 72 (1937); 21 CORN. L.Q. 325 (1936); Kramer v. Grand Natl. Bank of St. Louis, 336 Mo. 1022, 81 S.W. (2d) 961 (1935); Natl. Safe Deposit Co. v. Stead, 250 Ill. 584, 95 N.E. 973 (1911).

[8] 56 AM. JUR., Warehouses, § 127 (1947); Crittenden & Co. v. North British & M. Ins. Co., (C.C.A. 5th, 1929) 31 F. (2d) 700; 28 AM. JUR., Innkeepers, § 67

not mean liability unless it is shown that the bailee has not exercised the degree of care commensurate with the circumstances.[9] The element of knowledge should go to the determination of the ultimate question of liability, being merely one of the circumstances to be considered in fixing the degree of care required. The court in the principal case could have concluded that the defendants had possession of the coat and a valid bailment existed, a conclusion not unreasonable on the facts,[10] but that defendants would not necessarily be liable unless the evidence showed that they did not exercise reasonable care under the circumstances.

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(1947); Hulett v. Swift, 33 N.Y. 571 (1865); 9 AM. JUR., Carriers, § 661 (1937); Southern Pacific Co. v. Itule, 51 Ariz. 25, 74 P. (2d) 38 (1937), 115 A.L.R. 1268 (1938).

[9] 45 MICH. L. REV. 625 (1947); Laidlow, "Principles of Bailment," 37 COM. L.J. 134 (1932); Krumsky v. Loeser, 37 Misc. 504, 75 N.Y.S. 1012 (1902).

[10] Webster v. Lane, 125 Misc. 868, 212 N.Y.S. 298 (1925) (wraps left by patient in dentist's waiting room constituted sufficient delivery of possession to dentist to render him a bailee of wraps); Levesque v. Nanny, (Me. 1947) 53 A. (2d) 703 (plaintiff, having made an appointment with defendant, came to defendant's beauty parlor and hung her coat on a hook provided for that purpose. In a suit for recovery of loss, the defendant was not held to be a bailee of the coat); Dilberto v. Harris, 95 Ga. 571, 23 S.E. 112 (1894) (where customer hung coat and hat on coat rack in barber shop while being shaved, barber was held to be a bailee for hire); Nolde v. WDAS Broadcasting Station, Inc., 108 Pa. Super. 242, 164 A. 804 (1933) (plaintiff, a singer, left her coat in the reception room of the defendant's broadcasting station from which it disappeared. The court held that defendant was not a bailee of the coat because there had been no delivery of the coat to the possession of the defendant).