Michigan Law Review

Volume 49 | Issue 4

1951

BAILMENTS-OWNER OF RAILROAD STATION LOCKERS AS BAILEE OF THE USER'S GOODS

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RECENT DECISIONS

BAILMENTS—OWNER OF RAILROAD STATION LOCKERS AS BAILEE OF THE USER'S GOODS—Action was brought by the plaintiffs for the loss of a package of costume jewelry placed in a locker owned by the defendant company. The locker was of the type commonly found in railroad stations; one desiring to use it merely places his goods in the locker, inserts a coin, removes the key and retains it in his possession. Although the defendant kept a master key and reserved the right to remove any article which remained in the locker longer than the 24-hour rental period, it exercised no other control. On the other hand, the user had access to the locker and its contents at any time during the 24-hour period simply by using the key. Plaintiffs contended that there was a breach of a common law bailment on the part of the defendant and liability by the establishment of a prima facia case of negligence resulting from the failure to return the goods. *Held,* no liability. *Marsh v. American Locker Co.,* (N.J. 1950) 72 A. (2d) 343.

In the eyes of the New Jersey court, a decision involving the existence of a bailment pivots upon the element of possession. The controversy[1] among courts and legal writers concerning the need for a contractual relationship in the bailment is passed over in favor of an analysis based squarely on the grounds of possession.[2] Although the concept of possession is an elusive one, it is generally agreed that there must be a union of physical control and a manifested intention to exercise control over the thing possessed.[3] Upon the facts of the case, the court found that the user of the locker remained in primary physical control without intent to relinquish his exclusive control and dominion to the owner of the locker and that there was no intention upon the part of the owner to take control of goods placed in the locker until after the 24-hour period.[4] There then could be no surrender of possession upon which to predicate a bailor-bailee relationship. In reaching this decision, it is interesting and somewhat ironic to note that the court relies upon a case which decides that a bailment exists in the analogous relationship between the user and owner of a safety deposit box.[5] In order to find a bailment in this relationship, the court seems willing to admit that the owner of the box is in possession of the contents of the box. As critics

[1] BROWN, PERSONAL PROPERTY §73 (1936); GODDARD, BAILMENTS AND CARRIERS, 2d ed., §52 (1928); 3 WILLISTON, CONTRACTS §1946 (1927).

[2] The elements of contract do exist here.

[3] BROWN, PERSONAL PROPERTY §74 (1936).

[4] What would have been the result had the goods remained in the locker longer than 24 hours? A recent case held that at the expiration of the period agreed upon for the duration of the bailment, there would be a constructive redelivery to the bailor. Trammelleo v. Solomon, (R.I. 1949) 66 A. (2d) 101. In the principal case there might have been a constructive delivery to the bailee at the agreed time.

[5] Lockwood v. Manhattan Storage and Warehouse Company, 28 App. Div. 68, 50 N.Y.S. 974 (1898). The Lockwood case is the leading decision on the point and states the most widely accepted position on the matter, according to BROWN, PERSONAL PROPERTY §74 (1936).

point out,[6] there is no actual intention on the part of the owner of the box to control the contents; thus one of the elements of possession, intent to control, is absent. The finding of a bailment therefore must rest upon policy grounds rather than on strict logic. In the principal case, the court is cognizant of the absence of intent to control, and thus is following the line of reasoning used by the critics of the safety deposit cases. The court in the principal case also found precedent for its reasoning in a case[7] involving the relationship existing between the owner and user of a locker in a bowling alley, which held that because the user exercised primary control over the locker and its contents, and because the owner had no intent to control, there could be no bailment. The nature of the transaction was thought to be that of landlord and tenant. This is the same type of reasoning used by the court in the principal case. The court was also able to rely upon a policy argument not present in the safety deposit cases. It did not feel justified in placing upon the owner of the locker liability for the loss of goods over which he could have little control, in the absence of control of the premises, and without opportunity to refuse to assume a risk which might well be out of proportion to the small fee charged. Thus the court in the principal case is using the ideas of the safety deposit cases and other similar decisions[8] stressing the importance of possession, but has rejected the reasoning of such cases as applied to a situation involving weak possessory facts without countervailing policy considerations.

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[6] 11 MINN. L. REV. 440 (1927).

[7] Cornelius v. Berinstein, 183 Misc. 685, 50 N.Y.S. (2d) 186 (1944).

[8] Clark v. Burns Hamman Baths, 71 Cal. App. 571, 236 P. 152 (1925), which held a bath-house owner liable as bailee of goods surrendered to him for the purpose of placing them in locker within his control. The key to the locker was given to the customer-bailor, who was required to surrender it to the locker owner in order to repossess the goods. On its facts, this case appears more like the safety deposit situation than does the principal case.