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# Bailment - Limitation of Liability on Storage Receipt - Applicability to Separate Agreement to Repair - Remedy of Insurer

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District of Columbia decision.[16] In that case it was held that the violation of an ordinance, by leaving the key in a parked vehicle, was the proximate cause of an injury resulting from the unauthorized and negligent use of the vehicle by another. In the instant case, the ordinance, requiring that a three-foot space be maintained between parked vehicles, was undoubtedly enacted to facilitate parking, and prevent the identical situation from arising in which the present defendant found himself. The *quaere* arises as to whether or not the court here has largely nullified the ordinance which was obviously adopted to prevent the inconvenience and damage incurred here by the defendant and plaintiff.[17]

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BAILMENT — LIMITATION OF LIABILITY ON STORAGE RECEIPT — APPLICABILITY TO SEPARATE AGREEMENT TO REPAIR — REMEDY OF INSURER. Plaintiff insurance company, as subrogee, brought an action to recover the value of a fur coat that was lost or stolen while in possession of the defendant furrier, who had contracted to store and repair it. Aware of the coat's $2000 insured value, defendant suggested to the owner that a minimum value of $100 be placed upon it to avoid further insurance. The owner agreed and a storage receipt specifying the $100 valuation was issued, and liability limited to that amount. After being repaired, the coat disappeared on the way to the cold storage vaults. Plaintiff paid the owner the full $2000 valuation and sought recovery against the defendant on the ground that there were two contracts, that defendant was negligent under the alteration contract, thereby rendering inapplicable the liability limitation in the contract for storage. On appeal from a judgment in favor of the defendant, it was *held* that plaintiff was limited to the $100 valuation. A dissenting opinion adhered to the theory that two separate bailment contracts were executed, and that the limitation in the storage contract had no application to the bailment for repairs. *Lumbermen's Mutual Insurance Co. v. F. Z. Cikra, Inc.* 95 N.E.2d 230 (Ohio 1950).

The majority opinion disregarded the element of separate contracts solely on the validity of the receipt limiting the liability of the bailee to the specified $100. The dissent logically points out that the storage contract never became effective because the coat never reached storage, and also that payment for repairs was separate from and in addition to the payment for storage, therefor, the limitation could not be effective. In contending for liability for the full value the dissent relied upon a former Ohio case.[1]

Although it has been contended to the contrary,[2] bailment is generally conceded to be a contractual relationship.[3] Indirectly, a bailment may be said to be the rightful possession of goods by one who is not the owner, that the

16. Ross v. Hartman, 139 F.2d 14 (D.C.Cir. 1943).
17. Defendant in this instant case could possibly have counter claimed. See Harnick v. Levine, 106 N.Y.S. 460 (1st Dist. 1951) (where motorist unable to extricate his vehicle because the defendant had double parked, in violation of a city ordinance, brought suit and was allowed recovery for discomfort and inconvenience).

1. Aetna Casualty & Surety Co. v. Higbee Co., 80 Ohio App. 437, 76 N.E.2d 404 (1947), *rev'd.* on other grounds.
2. Paton, *Bailment: Property or Contract?* 23 Aust. L.J. 591 (1950).
3. Story, Bailments 5 (9th ed. 1878).

trust shall faithfully be executed by returning the property or accounting for it when the special purpose is accomplished.[4] Bailments have been grouped into three classes:[5] (1) the hire of active labor and services, (2) the hire of care and attention about goods, as for deposit, (3) the hired carriage of goods. The distinction has been made between the first two that in the first the principal undertaking is feasance, in the second, custody.[6] Therefor, one who for compensation or as a necessary incident of his business takes another's property into his care and custody is a bailee for hire.[7]

The applicability of a contract limiting the liability of a bailee while the goods are in storage to the same goods while being processed under an agreement to repair them has been decided previously. In an almost identical situation,[8] it was held that the limitation of liability for loss or damage under the contract for storage was inapplicable to the bailee's subsequent separate contract to repair and clean a coat. That case also represents the principle that where goods are specially contracted to be kept in a particular place, and the bailee keeps them in another, he is liable as an insurer.[9] This is also the rule in England.[10] The reasoning is that in going beyond the limits of the bailment the bailee becomes, or is closely akin to, a converter.[11] Hence, it would appear that in the principal case, the bailee would be an insurer upon removing from, or failing to place in storage the bailed goods.

The view has been taken that where a bailee has undertaken expressly or through an established course of dealing to insure property, he is presumtively required to insure it for the full value.[12] Thus, one whose business customarily involves the care and transmission of the valuables of others which are especially susceptible to loss by theft may fail in his duty to exercise reasonable care and be liable if he sends the property uninsured and loss occurs, where insured transmission was equally available and would have avoided the loss.[13] While a bailee for hire is not an insurer of the goods, he is liable for their loss due to his negligence.[14] Nor may he exempt himself from lia-

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4. Knapp, Stout & Co. v. McCaffrey, 178 Ill. 107, 52 N.E. 898 (1899) (the property bailed may rightfully be kept by the bailee until the bailor reclaims it); Union Old Lowell Nat. Bank v. Paine, 318 Mass. 313, 61 N.E.2d 666 (1945); D. M. Ferry & Co. v. Forquer, 61 Mont. 336, 202 Pac. 193 (1921).

5. Hale, Law of Bailments and Carriers 213 (1896).

6. Story, Bailments §422 (8th ed. 1870).

7. Hotels Statler Co. v. Safier, 103 Ohio St. 638, 134 N.E. 460 (1921).

8. Aetna Casualty & Surety Co. v. Higbee Co., 80 Ohio App. 437, 76 N.E.2d 404 (1947) (defendant furrier agreed to store coat under limited liability clause and coat was lost while being cleaned by another company to which it was sent by defendant without klowledge of the bailor).

9. McCurdy v. Wallblom Furniture & Carpet Co., 94 Minn. 326, 102 N.W. 873, (1905).

10. See *In re* Missouri Steamship Co., 42 Ch. D. 321 (1888). *Contra,* Liverpool & Great Western Steam. Co. v. Phenix Ins. Co., 129 U.S. 397 (1889).

11. *See* Heffron v. Brown, 155 Ill. 322, 40 N.E. 583 (1895).

12. Rice Oil Co. v. Atlas Assurance Co., 102 F.2d 561 (9th Cir. 1939); Broussard v. South Texas Rice Co., 103 Tex. 535, 131 S.W. 412 (1910), *aff'g,* 120 S.W. 587 (Tex. Civ. App. 1910).

13. Bank of Monango v. Ellendale Nat. Bank, 52 N.D. 8, 201 N.W. 839 (1924) (where defendant mailed plaintiff's pledged negotiable bonds uninsured to rediscounter and they were stolen in the mail, defendant was bailee with duty to exercise ordinary diligence and reasonable care in transmission of the bonds).

14. Firemen's Fund Insurance Co. v. Schreiber, 150 Wis. 42, 135 N.W. 507 (1912) (it was reasonable for bailee to use the usual means of executing the agreement and delegating the work to employees).

bility for negligence by special contract.[15] North Dakota has imposed upon the bailee for hire the duty of ordinary care,[16] and has held that where one enters into an agreement to return the property or pay its value, he is an insurer of the property.[17] The value of the bailed goods is usually a decisive factor in determining the degree of care required of the bailee.[18]

It is well settled that by actual incorporation into the contract of the limitation of liability,[19] the bailee for hire may limit his contract liability unless the limitation contravenes public policy or violates a statute.[20] Hence, the limitation in the instant case was perfectly valid in regard to the contract for storage. However, it seems from the facts in the case that the storage contract had not become effective when the coat disappeared because the coat never reached storage. Limitation of liability in bailment contracts usually is strictly construed,[21] and it should be confined to the terms and performance of the contract.

In the struggle against public policy, limitation of liability has completely won out in England,[22] but has not fared so well in this country.[23] Freedom of contract should not be hampered unless it actually does operate to the detriment of the public, but neither should this freedom be extended beyond the contract. Where the practice of limiting liability would invite fraud, it should not be allowed to prevail. The wisdom of allowing two parties to contract to the detriment of a third party, in this case the insurance company, is open to question.

JOHN T. ANDERSON

CRIMINAL LAW — EXTRADITION — PERSONS ILLEGALLY BROUGHT WITHIN JURISDICTION — RIGHT TO HABEAS CORPUS OF A PERSON UNLAWFULLY RETURNED TO A STATE FOR PROSECUTION. — It has long been considered settled law in both federal [1] and state [2] courts that an illegality [3] occurring in the methods used to bring a defendant back to a state from which he has fled

15. Scott Auto & Supply Co. v. McQueen, 11 Okl. 107, 226 Pac. 372 (1924) (based upon statute). *But cf.* Interstate Compress Co. v. Agnew, 255 Fed. 508 (8th Cir. 1919) (decided before Erie R. Co. v. Tompkins, refusing to apply law established by Oklahoma decisions).

16. N.D. Rev. Code §47-1504 (1943).

17. Grady v. Schweinler, 16 N.D. 452, 113 N.W. 1031 (1907) (plaintiff's stallion died while in defendant's possession,); *accord,* Steele v. Buck, 61 Ill. 343 (Freem. 1881).

18. *See* Cussen v. Southern California Sav. Bank, 133 Cal. 534, 65 Pac. 1099 (1901).

19. Jones v. Great Northern Ry. Co., 68 Mont. 231, 217 Pac. 673 (1923).

20. See Story, Bailments 31-2 (8th ed. 1870).

21. Minnesota B. & C. Co. v. St. Paul C-S. W. Co., 75 Minn. 445, 77 N.W. 977 (1899); Jones v. Great Northern Ry. Co., 68 Mont. 231, 217 Pac. 673 (1923). *Contra:* Stephens v. Southern Pac. Ry. Co., 109 Cal. 86, 41 Pac. 783 (1895).

22. See 86 U. of Pa. L. Rev. 772, 774 (1938).

23. *Ibid.*

1. Mahon v. Justice, 127 U.S. 700 (1888); Ker v. Illinois, 119 U.S. 436 (1886); United States v. Toombs, 67 F.2d 744 (5th Cir. 1933); *Ex parte* Campbell, 1 F.Supp. 899 (S.D.Tex. 1932). *Cf.* Robinson v. United States, 144 F.2d 392 (6th Cir. 1944) (by the same court which decided the principal cases).

2. People v. Groves, 63 Cal.App. 709, 219 Pac. 1033 (2d Dist. 1923); Joiner v State, 66 Ca.App. 105, 17 S.E.2d 101 (1st Div. 1941); Commonwealth v. Gorman, 288 Mass. 294, 192 N.E. 618 (1934); People v. Eberspacker, 29 N.Y.Supp. 796 (2d Dept. 1894).

3. "Illegality" as used herein refers to acts of abduction or kidnapping, as distinguished from mere procedural or substantive errors occurring during the course of an extradition proceeding. For an able discussion of extradition procedures, see Moorhead, *Texas and Interstate Rendition,* 23 Tex. L. Rev. 228 (1945).