

(a) Meaning of Bailment:

According to Section 148 of the Indian Contract Act:

"Bailment" is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom the goods are delivered is called the "bailee".

Under the Indian Contract Act, bailment consists of delivery of goods by one person to another for some purpose. Such goods are to be returned when the purpose is accomplished or they are to be disposed of according to the directions of the bailor.⁵

Whether the bailment can arise by a contract only or the same can be inferred by implication of law and fact, has been a matter of controversy. In *Ram Gulam v. Govt. of U.P.*,⁶ the

Allahabad High Court has expressed the view that bailment can arise only out of contract and not otherwise. In this case plaintiff's property, which had been stolen, was recovered by the police. The property was then kept in the police Malkhana. From there it was stolen again and the same could not be traced thereafter. In an action against the State to recover the value of the property with the police was in the capacity of a bailee and the State was liable for its failure to return the property to the plaintiff. It was held that in the absence of a contract to that effect, there was no bailment and therefore the State was not liable.⁷

In *L.M. Co-Operative Bank v. Prabhudas Hathibhai*,⁸ the Bombay High Court has taken the contrary view. In this case some packages of tobacco belonging to A had been pledged to the plaintiff bank but they were still lying in A's godown. The godown was locked and its keys were handed over to the plaintiff bank. Owing to the non-payment of some income-tax dues by A, the said goods were attached by the Collector though they were allowed to remain in the same godown. The key of the godown was handed over to the police there were heavy rains, roof of the godown leaked and the goods inside were damaged. Even though the goods were not in the possession of the Government under a contract, the state was still held liable as a bailee. Similarly, according to the Supreme Court decision in *State of Gujarat v.*

Memon Mahome,⁹ the position of the State in respect of the goods seized by the customs authorities is that of a bailee. If such goods are disposed of before the matter is finally decided and the authorities are not able to return the same when the final order is made, the state has been held liable for the same. In *Trustees, Port of Bombay v. Premier Automobiles Ltd.*,¹⁰ the Supreme Court has, however, held that in the case of statutory bailment the liability of the bailee may be subject to the provisions of some other Act and not to the Indian Contract Act. In this case the plaintiff had imported some machinery from Italy. On arrival at Bombay, the port authority took possession of the same. While the machinery was being transported by the employees of the Board constituted under the Bombay Port Trust Act in a trolley it fell down and was substantially damaged. In an action by the plaintiff it was held that the Board was not liable because according to Section 87 of the Bombay Port Trust Act. The Board was immune from liability for the acts of misfeasance, malfeasance, or non-feasance of any employee appointed under the Act.

It may be mentioned that a great hardship is created for the owner of the goods when he is not able to have any remedy against another person, who negligently loses it, as happened in *Ram Gulam v. Govt of U.P.*, or when the transaction is recognised to be bailment but the bailee is not subject to the duty of care as

was the position in *Trustees, Port of Bombay v. Premier Automobilies*. The Law Commission examined this problem and recommended that in every kind of bailment there should be the same kind of liabilities and disabilities of the bailors and the bailees as stated in the Indian Contract Act. The recommendation is as under:¹¹

In our opinion, the present definition of the bailment should not be altered. But the case of what has been described as quasi-contract of bailment should be provided for in a separate section stating that the bailor and bailee in such cases, must, so far as may be, perform the same duties, and be subject to the same liabilities and disabilities as if they were bailors and bailees under a contract express or implied as provided in Section 148.

It is submitted that in all cases when the goods belonging to one person are in possession or control of the other, this should be treated as bailment. Section 71 of the Indian contract Act is an example of a situation of quasi-bailment in respect of the finder of goods. In all cases of bailment, howsoever arising, the liability and responsibility of the parties should be treated as same to that of the bailor and the bailee under the Indian Contract Act.¹²

If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes a bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Section 149 of the Indian Contract Act, lays down:

The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

So the essential feature of bailment are change of possession, physical or constructive, in specific goods, and no obligation on the part of the bailee to redeliver them, or otherwise deal with them, according to the direction of the bailor.

If a bailee accepts the bailment with full knowledge of an adverse claim, he cannot afterwards set up the existence of such a claim as against the bailor.¹³ In the case of *Davies, ex parte re Sadler*,¹⁴ the bailee received the notice of adverse claim, but he failed in his duty to inform the bailor of such hostile claim, due to which the court rendered him liable to pay damages.

Bailment does not include a loan of money unless the specific coins are agreed to be returned,¹⁵ nor does a deposit of money in bank amount to bailment as decided in the case of *Devendra Kumar Lal Ghanuji v. Gulab Singh*, 1946 Com. Cas. 89. Where the agreement was that the creditor should give money to the debtor to enable him to use it only as a security deposit with the Government and the debtor was to pay interest on the money and to return the security deposit when it was get back from the Government, it does amount to a contract of bailment as there is no contract for the return of the specific goods.¹⁶ Where a quantity of silver was given to a silversmith not to be returned in specie but to be returned in the shape of a finished article, the intention of the parties was that the same silver would be used for the purpose. This was decided in the case of *Sitla Bhakash Singh v. Baij Nath*, that such transaction amounts to a bailment¹⁷. Where, however, some precious stones and lumps of gold of some special quality and three sovereigns were given to goldsmith to convert in to jewellery, the intention was to convert the identical stones and lumps of gold into required jewellery, the ownership there in not having passed to the goldsmith and therefore the transaction so far as it relates to the stones and gold is a bailment.¹⁸

But in respect of the sovereigns, since it was not the intention that the identical sovereigns should be melted and converted, the property therein passed to the goldsmith and therefore transaction to that extent is not a bailment. The keeper of a laundry is a bailee in respect of cloths delivered to him for wash¹⁹.

There may be a valid bailment even though the contract from which it arises is void as where the bailee is a minor,²⁰ or voidable as where the bailee obtains goods by false pretenses and the contract has not been avoided²¹.

In the case of *Raman and Company v. Union of India*,²² it was made amply clear that there are several classes of persons who in the exercise of their profession or calling occupy the position of bailees, such as common carriers, carriers by rail, bankers, factors, warehouse keepers, wharfingers, pawnees, solicitors, attorneys, etc. all of whom are treated alike by the Contract Act in respect of their duties and liabilities as bailees.

(b) Knowledge of the Adverse Claim:

If the bailor has no title, the bailee can have none, for the bailor can give no better title than he has. So if the bailor has no title to the goods, and the bailee in good faith, delivers them back to or dealt with them according to the directions of the bailor, the bailee is not responsible to the owner in respect of such delivery²³. If a person other than the bailor claims the goods bailed, he may apply to the court to stop delivery of the goods to the bailor and to decide the title to the goods. So if the bailee had the notice from the third party about the defective title of the bailor, than the bailee is not supposed to deliver the goods, back to the bailor, if he does so, liability to pay damages can be fixed on the bailee. So a person other than the bailor claims the goods bailed, he may apply to the court to stop delivery of the goods to the bailor and to decide the title to the goods²⁴.

In the case of *K.G. Patel v. T.K.V.R.V. Chettyar*,²⁵ the paddy was brought to the mill for milling and the miller was informed that the rice had been sold to a particular person but later on the bailor gave a notice to the miller asking him not to send the rice to that person and the miller delivers the rice to the bailor, the miller who is in the position of a bailee was

held liable to pay damages for what he has done, to the to whom the rice were sold. i

(c) Implied Warranty of Fitness:

In the contract of bailment, there is an implied warranty that the goods or Chattels bailed, are fit for the purpose for which they are bailed, and if there is breach of such warranty, the bailee is not bound to pay the hire and can return the goods or Chattels after giving notice to the bailor²⁶.

(d) Liability of Hirer of Goods:

Where goods are lent to the bailee for hire, the bailee is only bound to use reasonable care, and he is not liable for loss or injury unless caused by his negligence or that of his servants.²⁷ Moreover he is not liable for damages caused by the act or default of third parties, which he could not by the exercise of ordinary diligence have for seen or prevent²⁸.

The hirer must use the Chattel hired for the purpose for which it was lent to him. So, if horse is let for riding he may not use it for driving, nor if it is let for a ride along a road

may he jump it nor if it is let go to a certain journey should the hirer exceed that journey, or if so happens or done by the hirer, he in addition to his liability for breach of contract and the damage arising therefrom, will also be liable of tort²⁹.

(e) Duty of the Bailee to return the goods and to take care:

(i) Duty to Return the Goods:

It is the duty of the bailee to return or deliver the goods bailed, without demand, or as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.³⁰

If by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time³¹.

(ii) Duty of Care:

The English law makes a distinction between a bailee for reward and a bailee without reward, in respect of the duty of care which they have to exercise over the goods bailed. Under English law, if the goods are bailed to the bailee without

reward, then such bailees are prima facie liable only for gross neglect, fraud or breach of orders and the burden of proof is upon those who attempt to charge them³². On the other hand, a bailee for reward, as where goods are bailed that work may be performed or with respect there to, for pecuniary or other reward is bound not only to perform his part of the contract, but also to use ordinary diligence in preserving the property entrusted to him.³³

But in India, no such distinction has been made between one bailee and another, and all kinds of bailments, whether for reward or without reward, are treated alike in respect of their duty towards the goods bailed. Section 151 of the contract Act lays down:

"In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed".

In the opening words of the section "all cases of bailment" are treated alike in respect of degree or standard of care required of bailees in protecting the goods entrusted to them. This section does not make any distinction between a gratuitous bailee and a bailee for hire as far as the degree and the standard of care to be taken.

(iii) **How much Care is Required:**

The standard of care required of a bailee as laid down in Section 151 of the Indian Contract Act is that of prudent man. A bailee should, therefore, behave or act as a prudent man would behave or act in similar circumstances. It seems clear that in order to give effect to the intention of the Legislature sufficient stress has to be laid on the word "prudent".

Prudence and caution go together and imply attention to owner's own interest. The highest instinct of a human being is the instinct of self preservation, preservation of life and limb, and preservation of property, of the two the latter is the stronger. If one's purse is stolen, he instinctively runs after the man who picked his pocket, even at the risk of some personal injury. When one's own house is on fire, he will rush in to save whatever property he can, even at the risk of receiving some burns. Self interest implies one to do all that, does the law expect a bailee to act in the same manner in respect of the goods bailed. So if a person has salvaged his own goods from a burning house, and left the goods so bailed to him, although there was time and opportunity for him to salvage the bailed goods from the burning house" he cannot under the strict letters of Sec 151 be said to have discharged his duty to the bailor. One cannot make a distinction between his own goods and the bailed goods; one has to treat them as his own. Any slightest distinction which subjects the bailor to loss, damage or injury will render the bailee liable to the bailor. Thus, where A entrusted to B a Chronometer to be repaired, and B allowed his servant to sleep in the shop in which it was deposited, but deposited his own watches

in a more secure place, B was held liable to A for its Value after it has been stolen by his servant.³⁴

In *Lakshmi Narain Balji Nath v. Secretary of state for India*,³⁵ the defendant by dispatching the sixty-eight bales of jute in a boat with 20 to 30 leaks, 1 to 1½ inches in length, on its sides, and allowing the jute to remain in the haul of the boat for 30 hours did not take as much care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value.

How much care the bailee should take? No cast iron standard rule can be laid down for the measure of the same. The nature and amount of care, ought to have taken, varies from case to case and depends upon the fact and circumstances of a case.³⁶

(f) Whether Bailee's Liability can be Contracted Out:

The question whether a bailee can contract himself out of his liability to the bailor for negligence in taking care of the goods is not free from doubt.

Under English Law it seems that it is open to the parties to a contract of bailment, to contract themselves out of such

liability.³⁷ While, the Indian position reflected by Section 151 of the Indian Contract Act, which creates a statutory duty and omits all reference of a contract to the contrary. It does not also speak of any exception. Section 152, on the other hand, says that "In the absence of a special contract", the bailee is not responsible for the loss, destruction or deterioration of the thing bailed if he has taken the amount of care described in Section 151. This means that where the prescribed degree of care is taken by the bailee he is not responsible for the loss, etc. Unless under a special contract between him and bailor, accepts a higher responsibility. Therefore, Section 151 lays down the absolute minimum care required; while Section 152 says liability for loss arising out of a special contract even after required minimum care had been taken by the bailee. In this regard Indian position is clear that the amount of care required by Section 151 is irreducible by any contract.³⁸

(g) Measure of Damages:

The measure of damages which a bailee has to pay to the bailor varies according as the goods bailed are lost, destroyed or deteriorated owing to his default.³⁹ Loss or destruction of the goods bailed may be total or partial, where the goods are totally lost or destroyed through the negligence of the bailee,

he has to make good their value, the measure being the market value if any, or their intrinsic value. If there is no presumption as to the value of anything, and the court has to come to a conclusion about the value on the best material available, and if upon the fact admitted or proved the court draws a strong presumption as to the value, the bailee has not left with any ground for complaint.⁴⁰ Where a passengers' luggage deposited in the cloak room of a railway station is lost, in the absence of anything limiting the liability of the Railway, the passenger was held entitled to recover full value of the lost luggage, but was not entitled to consequential damages resulting from the loss⁴¹.

Where a bailee refuses to redeliver the goods to the bailor, even after demand, he is guilty of conversion and the measure of damages the bailor is entitled to, is the full value of the goods as at the time of conversion. The bailor is not, however, entitled to any damages for wrongful use of the hired chattel, if he makes any delay in filing the suit after demand and refusal.⁴² As the property in the goods bailed remains with the owner, he is under normal circumstances bound to take delivery even if the goods are found to be damaged, his remedy being to claim compensation.

Moreover according to the terms of Section 153, of the Indian Contract Act where the bailee makes any use of the goods bailed which is not in accordance with the conditions of the contract of bailment, the bailee is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.⁴³