Volume 44
Issue 1 *Dickinson Law Review - Volume 44, 1939-1940*

10-1-1939

Liability of Gratuitous Bailors for Injuries to Third Persons Due to Unknown Defects

Thomas Wood

death for the benefit of the group of beneficiaries named in the statutes. The rule provides that if the personal representative fails to bring suit within six months from the time the right accrues, then the named beneficiary or beneficiaries may do so.

Since the new rules are intended merely to correct procedural difficulties they do not effect the substantive law. Contributory negligence of the sole beneficiary is still a defense. Whether the contributory negligence of one of several beneficiaries will defeat the executor or administrator's representative suit is still unanswered.

YORK, PA. HENRY C. KESSLER, JR.*

LIABILITY OF GRATUITOUS BAILORS FOR INJURIES TO THIRD PERSONS DUE TO UNKNOWN DEFECTS

The duty owed by gratuitous bailors to third persons, who are not involved in the bailment and who, therefore, are not subject to defenses available against the bailee, is difficult to ascertain. Increasingly widespread use of the automobile, resulting in more frequent gratuitous bailment, has led to a number of adjudications bearing on this duty of gratuitous bailors, which warrant consideration. Though their significance may be qualified by recognition that they concern bailments of a particular type of chattel, it is worthy of notice that the basis of most is a concept common to bailment of chattels in general.

It is generally agreed that gratuitous bailors are liable for injuries caused to third persons by defects known to the bailor at the time of bailment and not disclosed to the bailee,[1] but there is very little authority on the question of liability for injuries caused by unknown defects in the bailed article, which defects could have been ascertained by the exercise of ordinary or reasonable diligence. This note is concerned with the latter question.

The basis of liability to third persons is considered to be "the obligation which the law imposes upon every man to refrain from acts of omission or commission which he may reasonably expect would result in injury to third persons."

---

*A.B. 1935, LL.B. 1937, Catholic University of America; Librarian York County Law Library.

---

[1]RESTATEMENT, TORTS, (1934) §§ 405 & 388; Jenkins v. Spitler, (W. Va.) 199 S. E. 368 (1938); McCallister v. Farra, 117 Ore. 286, 243 Pac. 785 (1926); Tannahill v. Dep. Oil and Gas Co., 110 Kan. 254, 203 Pac. 909 (1922); 61 A. L. R. 1340.

Vaughn et al v. Millington Motor Co.[2] Clearly, the duty does not rest upon the contract of bailment,[3] and so it should not vary accordingly as the bailment is for hire or gratuitous. However, the courts which have not decided the question may conclude that gratuitous bailors are not liable for injuries thus resulting, despite the fact that they declare the presence of a contractual benefit is not the basis for recovery in cases involving bailment for hire.[4] When faced with a gratuitous bailment situation, they may refuse to impose liability for failure to use reasonable care to inspect, on the basis that the bailor was not benefitted and so should not be burdened with liability for failure to inspect. Professor Bohlen,[5] in concluding that the basis of affirmative obligations is derivation of benefit by the obligor, lends support to such action, as does the policy which favors freedom of transfer of chattels, for imposition of liability would cause people to refrain from lending chattels for another's purposes.[6]

The Restatement of the Law of Torts[7] defines the duty of a gratuitous bailor, to all parties, as being limited to the exercise of reasonable care to inform the bailee of defects which are known to the bailor or which he should realize as existing from facts known to him. In regard to the existence of a duty to inspect, the comment is:

> "The fact that a chattel is supplied for the use of others does not of itself impose on the supplier a duty to make an inspection of the chattel, no matter how cursory, in order to discover whether it is fit for the use for which it is supplied."[8]

It is also stated that a duty to inspect will be imposed when the bailment is to the advantage of the bailor, thus implying that a gratuitous bailor has no such duty to perform.

These declarations are deprived of their significance by the fact that the section was apparently written with regard to the rights of the bailee and those claiming through him. Nothing else appearing, however, the Restatement must be taken as imposing no affirmative duty to inspect, even where facts known to the bailor would ordinarily recommend inspection.

The case of *Sturtevant et al. v. Pagel et ux.*[9] is the clearest declaration based on exclusively common law principles. According to the evidence, the gratuitous

---

[2]160 Tenn. 197, 22 S.W. 2d 226 (1929); Saunders System v. Adams, 217 Ala. 621, 117 So. 72 (1912); Heaven v. Pender, 11 Q.B.D. 503 (1882-3).

[3]Macpherson v. Buick Motor Co., 217 N. Y. 382, 111 N.E. 1050 (1916).

[4]Vaughn v. Millington Motor Co., 160 Tenn. 197, 22 S.W. 2d 226 (1929) cited note 2, *supra.*

[5]Bohlen, *Basis of Affirmative Obligations in the Law of Torts.* (1905) 53 U. OF PA. L. REV. 209, 232.

[6]Note (1930) 78 U. OF PA. L. REV. 413, 418.

[7]§§405 & 388.

[8]§388, comment (k).

[9]Texas, 109 S.W. 2d 556 (1937).

bailor did not know of the defect and he failed to exercise any diligence to assure himself that the automobile was in safe condition. The court concluded that,

> "if the owner of the car knows, or should know by the use of ordinary diligence, that the brakes on his car are in a bad working order, and are inadequate to stop and control the speed of the car, and he permits another to use such car upon the public streets, he would be liable for all damages resulting from the use of such car due to the inadequacy of the brakes."

New York, as early as 1923, concluded that a gratuitous bailor who failed to inspect the brakes, which, being defective, were the proximate cause of an accident, was liable for injuries to a third person. *Donovan v. Garvas.*[10] The character of the duty was admitted to be dependent on legislative inspection standards, but its basis was accredited to the common law. The statute was considered as defining the extent of the duty rather than as establishing it; the duty being recognized as antedating the statute.

Evidence that the owner had sanctioned use of his automobile by another, when the brakes were defective, was held sufficient to sustain a verdict against him for injuries to a third person resulting from the defective brakes. *Hinsch v. Amirkanian.*[11] The court did not deem the question of knowledge of the defect material, supporting the lower court's judgment on the basis that bailment of a defective chattel which proved defective was a negligent act.

In another instance, a gratuitous bailor was held liable for injuries to a third person when "the only undisputed evidence was that F. knew or should have known the condition of the car." *Foster v. Farra.*[12] The court reasoned from the statutory provisions in establishing the extent of the duty.

In *Borlin v. Corliss,*[13] a gratuitous bailor was held not liable for injury caused by defects which were not shown to have been ascertainable by an ordinary inspection. The court assumed that the bailor would have been liable had it been shown that ordinary inspection would have disclosed the defect; denying liability because of lack of evidence to that effect.

California, in the case of *Rocha v. Garcia,*[14] held liable a gratuitous bailor who knew the brakes on his automobile were "a little bit worn" when he loaned it to another. The court did not declare whether the defendant was negligent in failing to inform the bailee of the condition of the brakes or in failing to inspect the automobile in an effort to ascertain its true condition. As in the

---

[10] 200 N.Y.S. 253 (1923).
[11] 104 N. J. L. 260, 145 Atl. 232 (1929).
[12] 117 Ore. 286, 243 Pac. 278 (1926).
[13] 262 Mass. 115, 159 N.E. 612 (1928).
[14] 203 Cal. 167, 263, 238 (1928).

Foster v. Farra case, the fact that the defendant had sanctioned use of a chattel which proved defective was the concern of the court.

The authorities discussed reflect a trend contrary to the position taken by the Restatement in that they either impose or favor imposition of a duty to inspect in absence of any benefit accruing to the bailor from the bailment. The Restatement does not require even a cursory inspection; it requires only that defects which are known or should be realized be disclosed to the bailee. Although it is difficult to determine whether the decisions presented are products of factors peculiar to bailment of automobiles, since the principles upon which they are based are principles of general application, they merit attention.

Pennsylvania's position cannot be definitely ascertained. The courts, generally speaking, favor the Restatement in situations where there is no clear precedent. Unless the Restatement prevails, it is a fair conclusion that the rights of third persons against a gratuitous bailor, who has bailed a defective chattel, are not bounded by the same limits which determine the bailor's liability to the bailee and those claiming through him. The gratuitous bailor may well be required to exercise reasonable care in inspecting the bailed article for defects, in order to avoid liability to third persons he should reasonably expect to be in the vicinity of its use.

THOMAS WOOD

THE RIGHT OF PRIVACY AND SOME OF ITS RECENT DEVELOPMENTS

The scope of this note is the nature and history of the right of privacy with special consideration of the cases where the doctrine has been the controlling factor. The jurisdiction of equity as it relates to this particular right involves complexities too numerous for a simple note.

NATURE AND HISTORY

The right of privacy is the right of an individual to be let alone, or to live a life of seclusion or to be free from unwarranted publicity or to live without unwarranted interference by the public about matters with which the public is not concerned.[1] Where the right is recognized, its violation is a tort,[2] it being the complement of the right of immunity of one's person.[3]

---

[1]Pavesich v. New England Life Ins. Co., 112 Ga. 190, 50 S. E. 68 (1905).
[2]Warren and Brandeis, *Right of Privacy* (1890) 4 HARV. L. REV. 193.
[3]Roberson v. Rochester Folding Box Co., 171 N. Y. 538, 59 L. R. A. 478 (1903), Gray, J. dissenting.