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RIGHTS AND DUTIES OF A BAILOR AND A BAILEE

This article is written by Gopalakrishnan R R, a third year B.com LL. B. student at SASTRA deemed to be university, Thanjavur. In bailment, it is important that both the parties understand their rights and duties, as well as the other party's. This article attempts at putting forward the rights and duties of the bailor and bailee.

INTRODUCTION

Section 148 of the Indian Contract Act, 1872 defines bailment as the delivery of goods by one person to another for some purpose. As soon as the purpose is fulfilled, the goods either need to be handed back or disposed off, according to the agreement. The person delivering the goods is called the bailor, whereas the person accepting such delivery of the goods is the bailee. For a bailment to be successful, both the bailor and bailee have to act within certain limits. For this purpose, the Act lays down certain duties that the bailor and the bailee have to abide by while performing their end of the bargain. It also informs about the rights the bailor and bailee have.

DUTIES OF A BAILOR

1. Duty to disclose faults in the goods delivered: (Section 150)

When a bailor delivers the goods to the bailee, it is his duty to notify the bailee about the condition of the good. If the bailor fails to inform about the faults in his good, as a result of which the bailee suffers some loss, the bailor has to compensate the loss.

2. Duty to pay extraordinary expenses: (Section 158)

In case the bailee incurs any expense extraordinarily in the course of a contract of bailment, the bailor has to make up for the same.

Indic Legal Law Journal

3. Duty to compensate in case of pre-mature termination of a bailment: (Section 159)

The act allows for the termination of a bailment for consideration even before the actual period.

4. Duty to receive the goods back:

After the purpose of the contract of bailment is complete, the bailee should either return the goods back to the bailor, or dispose the same. In case the bailee is to return the goods, the bailor has a duty to receive the goods.

5. Duty to indemnify the bailee: (Section 164)

In case the bailor has a defective title to the goods bailed, as a result of which the bailee incurs some loss, the bailor has a duty to indemnify the bailee.

DUTIES OF A BAILEE

1. Duty to take reasonable care of the goods: (Section 151)

When goods are delivered by the bailor to the bailee, the bailee has to duty to take reasonable care of the goods. Reasonable care is the care which any prudent individual in a similar situation will provide. The burden of proof that he or she exercised reasonable care falls on the bailee in case of a claim for negligence.

2. Duty to use the goods for the purpose of the contract: (Section 154)

The bailee shall be liable for any loss incurred while using the goods for any other purpose as is not mentioned in the terms of the contract.

3. Duty to not mix his goods with that of the bailor: (Section 155 and Section 156)

If the bailee mixes the goods with the consent of the bailor, both the parties will have an equal interest in the mixture of the goods.

If the bailee mixes the goods, which can be separated, the bailee will have to bear the expenses of separating the mixture, and also of any damage caused to the goods because of mixing.

In case the goods so mixed cannot be separated, and the bailee mixed the goods without the bailor's consent, he will have to compensate for the whole loss.

4. Duty to credit the profits in favour of the bailor: (Section 163)

Indic Legal Law Journal

The bailee has a duty to deliver any increase or profit accredited to the goods during the period of the bailment, except where exempted by the contract.

5. Duty to return the goods: (Section 161)

When the bailment has expired either due to fulfillment of the purpose or time, the bailee has a duty to return the goods back to the bailor.

These are things the bailor and bailee have to abide by, no matter what. If every duty owed to the other party is fulfilled, the bailor or the bailee will be entitled to the following rights.

RIGHTS OF THE BAILOR

1. Right to avoid the contract: (Section 153)

The bailor has a right to terminate the contract. This right of termination of contract can be exercised in cases where the bailee does any act which is inconsistent with the terms of the contract of bailment.

2. Right to get back the goods: (Section 159)

Even though the goods are lent for a specific purpose or time, when the bailor demands them, he has a right to receive the goods so bailed given that the goods are bailed for consideration.

3. Right to sue a wrongdoer: (Section 180)

If a third party becomes the reason that the goods get damaged or the bailment could not be carried out, the bailor or bailee has a right to sue the said third party.

RIGHTS OF THE BAILEE

1. Right to deliver the goods to any one of the joint bailors: (Section 165)

Subject to the provisions to the contract, a bailee may deliver the goods to any one of the joint bailors, even without the consent of the other bailors.

2. Right to stop delivery of goods to a bailor without title: (Section 166)

If a person who does not have title to the goods claims possession of the goods, the bailee may apply to the court to stop such possession.

3. Right against trespassers: (Section 180)

Indic Legal Law Journal

If a bailee is not able to enjoy the possession of the bailed goods because a third person wrongfully deprives him of the same, he has a right to action for negligence against such third person.

4. Right to lien:

If the bailor declines to pay the charges due to the bailee, the bailee can retain the possession of the goods with himself, for such time as the bailor settles the payment.

CASE LAWS

Hyman & Wife v. Nye & Sons¹

The plaintiff hired a carriage from the defendant for a journey. During the course of travel, a bolt in the carriage broke, as a result of which injury was suffered. The court held the defendant liable as he was under a duty to provide a carriage fit for use.

Reed v. Dean²

A motor launcher was hired for a holiday on the Thames River. The motor caught fire, and the plaintiff could not extinguish the fire as a result of faulty fire fighters. The court held the defendant liable saying that he had a duty to bail goods which were fit for the purpose so bailed.

Blount v. War office³

The plaintiff's house was requisitioned to provide as the War Office. The troops weren't controlled properly, as a result of which some silver plates from the plaintiff's locker were stolen. The court held the war office liable, as reasonable care was not exercised.

Jan and Son v. A Cameron⁴

If the bailor's goods are stolen from the custody of the bailee as a result of negligence, the bailee will be held liable.

¹ (1881) 6 Q.B.D. 685.

² (1949) 1 K.B. 188.

³ (1931) 1 W.L.R. 736.

⁴ I.L.R. (1922) 44 All. 735.

Indic Legal Law Journal

Sanderson v. Collins⁵

The plaintiff gave his carriage to the defendant for repairs. At that time, for the plaintiff's use, the defendant lent his carriage to the plaintiff. The defendant's driver took the plaintiff's carriage and damaged it, but the defendant did not have knowledge of the same. The court held that the defendant was not liable, as the coachman was acting outside the scope of his employment.

CONCLUSION

We have looked at what the rights and duties of a bailor and bailee are. With the help of a few cases, we have tried to understand the concept in some depth. It is crucial that the parties to a contract of bailment perform their duties and are also aware of the rights.

⁵ (1904) 1 K.B. 628.