(1868) 05 CAL CK 0001

Calcutta High Court

Case No: None

Moolchand		APPELLANT
	Vs	
Robinson		RESPONDENT

Date of Decision: May 19, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that it is very doubtful whether the defendant was a bailee or not. My present impression is that he was not; that in order to secure business in screwing cotton, it was necessary for him to have certain godowns in which the owners of the cotton might deposit it, until it should be ascertained whether it was necessary to screw it or not. It is not because the defendant kept a servant at those godowns that he necessarily received into his custody all the goods that were deposited there; and I should rather say upon the evidence that the plaintiffs were themselves keeping the goods in the defendant''s godowns, possibly with the prospect of having to pay some rent for the use of those godowns, in the event of the cotton being kept there for a long time, and of the defendant not being ultimately called upon to screw it. Unless the defendant had the custody of the goods, it appears to me that he was not a bailee at all. But even if he was a bailee, it appears to me that he was a bailee without reward, and that there was nothing in the terms of the bailment which secured to him a reward for taking care of those goods. The contingency of his being employed to screw the goods, and of the profit which he may derive therefrom, was not a reward which altered the legal terms of the bailment. I agree that the defendant, if he was a bailee, whether gratuitous or not, was bound to account to the plaintiffs for the manner in which the goods were kept but I do not agree that it is necessary for every bailee to show the manner in which goods, which are proved to have been lost, were lost. But even if the defendant in this case were a bailee for reward, or a gratuitous bailee, I am of opinion that he has sufficiently accounted for the goods, and that neither upon his own showing, nor upon the evidence adduced on the part of the plaintiff, has such a ease been made out as to show that he is liable for the loss.

2. Under these circumstances, it appears to me that the judgment of the learned Judge was correct, and that it must be affirmed with costs to be taxed on Scale No. 2.

Markby, J.

3. I take this to be an action for breach of contract, and though the issues have not been settled in an exact form, I consider that the questions, which we are called upon to decide, are, what was the duty imposed by the contract, and has that duty been performed? I cannot quite agree with the Chief Justice in the view which he takes of the fact of the case. It appears to me that the cotton was delivered by the plaintiffs into the possession of the defendant. It was placed by permission of the defendant in certain screw godowns which were his property, and which were under the charge of his servant, who kept the key. And Mr. Robinson says, in so many words, that he considered the cotton was in his possession from the time it was sent to the screws. It appears to me, therefore, that the cotton was delivered by the plaintiffs into the custody of the defendant, and that makes him what the law calls a bailee of the cotton. Then comes the question, for what purpose was the defendant a bailee of the cotton? I think he was a bailee for safe custody only, and that it was no part whatever of his duty to see to the right delivery of the cotton to the purchasers. Mr. Justice Norman has found, as a fact, that the owners of the cotton superintended its delivery, and that finding is supported by the evidence of one of the plaintiffs. All responsibility, therefore, as to the right delivery of the cotton, in my opinion, rests with the owners of it, and not with the screw owners. I doubt, however, very much whether the screw owners can be called gratuitous bailees consistently with the finding of Mr. Justice Norman, that the cotton was placed in the screw godowns for the mutual advantage of both parties. It is not necessary to take a person out of the category of gratuitous bailees, that he should receive, in return for his trouble and care in keeping the goods, any money or other valuable thing. In many cases, the bare possession of the thing is a sufficient advantage to render the bailment not gratuitous, as in the ordinary case of a loan. If a man borrow some article from his neighbour, with a view to his own advantage, he is not a gratuitous bailee, and whether the possession of the article turns out to be ultimately advantageous or not, is, in my opinion, wholly immaterial. In my opinion, therefore, these goods were delivered to the defendant for safe custody, and this bailment, in my opinion, was not gratuitous. But it does not appear to me at all necessary for the defendant, in order to succeed in this case, to show that he was a gratuitous bailee. All bailees who are not gratuitous, have not the same duty imposed upon them. A borrower is not a gratuitous bailee, a hirer is not a gratuitous bailee, a carrier is not a gratuitous bailee, and yet the duties of these three persons are by no means identical. The duty, where it is not expressly defined by words, is to be determined from the situation of the parties, and looking to the situation of the parties in this ease, I think the whole duty of the defendant was to put the goods under look and key in charge of a proper servant, and in a proper place with reference to the nature of the goods deposited. That duty he has discharged, and having discharged his duty, no action will lie against him. It has been suggested that, at any rate, the defendant was bound to

deliver the goods on demand. Undoubtedly he was so, if he had them; but if he had them not, then he was bound to give a proper account of what they had done with them, so that it may be judged whether or no, he has properly discharged his duty as bailee. In this case he had not the goods in his possession, and could not redeliver them; but he has, I think, fulfilled the alternative obligation, and "by showing how be kept the goods, has enabled us to say that he has discharged his duty. The plaintiffs suggest that the loss arose by delivery of the cotton to the wrong purchasers. If that was the cause of loss, in my opinion, the defendant was not responsible for it. Although, therefore, I am unable to take the same view of the facts as the Chief Justice, I arrive at the same conclusion, and think the decree of the Court below ought to be affirmed. I would add that the case of Reeve v. Palmer (5 C. B. N. S., 84), which has been referred to, is altogether distinguishable. There the defendant did not show, as the defendant has shown in this case, what precautions he had taken for the safe protection of the property entrusted to him.