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Bailment -- Use of Coin Operated Lockers

be set aside only if not supported by substantial evidence.[26] The courts are in the same position as they were under the Wagner Act in reviewing to determine whether or not there is substantial evidence to sustain the findings on the record as a whole.[27] The provisions in the Wagner Act that findings supported by evidence are conclusive is qualified in both the Administrative Procedure Act and the Taft-Hartley Act by the word "substantial".[28] But the Supreme Court has interpreted the word "evidence" in the Wagner Act as meaning substantial evidence.[29] The courts have said that all that has been done by the statutes is to make definite what was already implied by the courts.[30]

The principal case, though not alone in holding that the scope of judicial review has been broadened,[31] appears to be the strongest on the side it takes. Certainly there are changes in procedure by the Administrative Procedure Act and the Taft-Hartley Act, but whether or not there has been a substantial broadening of judicial review is not obvious. The majority of cases recognize that it was the intent of Congress to broaden the scope of judicial review but that they were not successful. The court in the instant case has rendered the decision with deference to interpretations by the members of Congress in the Congressional reports of both the Administrative Procedure Act and the Taft-Hartley Act. While, strictly speaking, the scope of review may not have been extended, the practical effect is a lessening of power in the National Labor Relations Board by the abolition of hearsay and expert inferences unsupported by evidence.

BAILMENT — USE OF COIN OPERATED LOCKERS

Defendant rented coin operated lockers to the public retaining duplicate keys which were used to remove goods left overtime. Plaintiff placed jewelry in one of the lockers, locked it, took the key; and, opening the locker within the time allowed for storage, he found the jewelry missing. An action based on constructive bailment was brought by the plaintiff to recover the value of the goods stored. *Held*, that since the defendant could not exclude the plaintiff's access to and control over the plaintiff's property, the exclusive possession and physical control essential to a constructive bailment were absent and no recovery was allowed. *Marsh v. American Locker Co.*, 72 A.2d 343 (Super. Ct. N.J. 1950).

In both actual and constructive bailment the common law relationship

26. *See* NLRB v. Minnesota Mining & Mfg. Co., *supra* note 25.
27. *See* NLRB v. Continental Oil Co., *supra* note 21.
28. See note 6 *supra*.
29. *See* NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 299 (1939).
30. *See* NLRB v. Universal Camera Corp., *supra* note 24.
31. See note 20 *supra*.

of bailor and bailee arises only when the bailee acquires possession,[1] coupled with full knowledge that the goods in question have come within his custody.[2] In order to have possession there must be both physical control over the thing possessed and a manifested intent to exercise that control.[3] Intent may be manifested directly in actual bailment where there is a physical delivery by the bailor of the subject matter of the bailment and an oral or written acceptance at that time by the bailee.[4] In constructive bailment the bailee's intent to control is implied when the bailee knowingly assumes control of the property so as to exclude the possession of the owner and all other persons.[5] Further, if there is no delivery and relinquishment of exclusive possession and the owner's access is not limited by the alleged bailee,[6] no rights or liabilities incident to constructive bailment will exist.[7]

Decisions on the question of constructive bailment indicate that such a bailment arises only in stances where exclusive physical control and possession on the part of the bailee can be proved.[8] The doctrine of constructive bailment has been applied by the courts in safety deposit box[9] and parking lot[10] cases where it was shown that the bailor had no acess to or control over his property without the bailee's consent. However, courts have steadfastly refused to find a bailment when both the alleged bailee and the alleged bailor exercised mutual access to and control over property in parked

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1. Lord v. Oklahoma State Fair Ass'n, 95 Okla. 294, 219 Pac. 714 (1928); Spencer v. First Carolinas Jt. Stock Land Bank, 167 S.C. 36, 165 S.E. 731 (1932); 4 WILLISTON, CONTRACTS 2890 (rev. ed. 1936).

2. Homan v. Burkhart, 108 Cal. App. 363, 291 Pac. 624 (1940); Waters v. Beau Site Co., 114 Misc. 65, 186 N.Y. Supp. 731 (City Ct. 1920); 4 WILLISTON, CONTRACTS 2890 (rev. ed. 1936).

3. BROWN, PERSONAL PROPERTY 231. (1936).

4. Willis v. West, 212 N.C. 656, 194 S.E. 313 (1937).

5. Bertig v. Norman, 101 Ark. 75, 141 S.W. 201 (1912); Wood Livestock Co. v. Oregon Short Line Ry. Co., 50 Idaho 524, 298 Pac. 371 (1931); Hope v. Costello, 222 Mo. App. 187, 297 S.W. 100 (Kans. City Ct. App. 1929); Suits v. Electric Park Amusement Co., 213 Mo. App. 275, 249 S.W. 656 (Kans. City Ct. App. 1923); Wills v. West, *supra* note 4; Posner v. New York Central Ry. Co., 154 Misc. 591, 277 N.Y. Supp. 671 (Munic. Ct. 1935); Key v. Bethurum, 146 Okla. 237, 293 Pac. 1084 (1920); Broaddus v. Commercial Nat. Bank of Muskogee, 133 Okla. 1042, 237 Pac. 583 (1925); Tillinghast v. Johnson, 34 R.I. 136, 82 Atl. 788 (1912).

6. Zucker v. Kenworthy Brothers, Inc., 130 N.J.L. 385, 33 A.2d 349 (Sup. Ct. 1943); Zweeres v. Thibault, 112 Vt. 264, 23 A.2d 529 (1942).

7. BROWN, PERSONAL PROPERTY 230 (1936); 4 WILLISTON, CONTRACTS 2890 (rev.ed. 1936).

8. Cussen v. So. Calif. Sav. Bank, 133 Cal. 534, 65 Pac. 1099 (1898); Malone v. Santora, 135 Conn. 286, 64 A.2d 51 (1949); Shaefer v. Washington Safety Deposit Co., 281 Ill. 43, 117 N.E. 781 (1917); Lockwood v. Manhattan Storage & Warehouse Co., 28 App. Div. 68, 50 N.Y. Supp. 974 (1st Div. 1898); 4 WILLISTON, CONTRACTS 2923 (rev.ed. 1936).

9. Cussen v. So. Calif. Sav. Bank, *supra* note 8; Shaefer v. Washington Safety Deposit Co., *supra* note 8 (although the safe deposit key was in the possession of the depositor, the box was left in a place which was wholly within the possession and control of the other party and not accessible to the depositor without the former's consent); Lockwood v. Manhattan Storage & Warehouse Co., *supra* note 8 (access to safe deposit vaults could only be had by the use of two keys, one of which was held by the company, and the other by the person renting the box).

10. Malone v. Santora, *supra* note 8 (car keys left in cars under the direction of the parking lot attendants).

vehicles,[11] storage rooms,[12] lodging rooms,[13] offices,[14] and public bowling alley lockers.[15]

The holding in the instant case is consistent with decisions rendered in all the cases where it has been found that the alleged bailee only had mutual but non-exclusive access to, or power of physical control over, premises and personal property of the alleged bailor. The principal case, one of only three appellate cases concerning coin operated lockers,[16] is in accord with an earlier decision, rendered by another court, against the defendant company withholding relief for loss of goods on bailment principles.[17]

BANKRUPTCY — ATTORNEY'S FEES FOR REPRESENTING CONFLICTING INTERESTS

An attorney was awarded fees for services rendered in connection with a corporate reorganization proceeding begun under § 77 B[1] of the Bankruptcy Act. His capacity was that of counsel for two sets of bondholders, one of which held "deficit series" bonds, while the other possessed bonds of the "surplus series". Since the latter was to be paid first, any successful argument by the attorney on behalf of the former would reduce the amount available to the "surplus series" bondholders. Judge Learned Hand *held*, that although fees are usually denied to attorneys who represent conflicting interests in corporate reorganization proceedings, an allowance should be granted but should be reduced by, at least, one-third. *Silbiger v. Prudence Bonds Corp.*, 180 F.2d 917 (2d Cir. 1950).

Section 241[2] of the Bankruptcy Act gives to the Bankruptcy Court[3] the power to award reasonable compensation for services rendered by at-

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11. Ex Parte Mobile Light & Ry. Co., 211 Ala. 525, 101 So. 177 (1924); Suits v. Electric Park Amusement Co., *supra* note 5; Lord v. Oklahoma State Fair Ass'n, *supra* note 1 (in the preceding cases no car keys were left with parking lot personnel); *The Parking Lot Cases*, 27 GEO. L.J. 162.

12. Slaughter v. Levy, 214 Mo. App. 95, 257 S.W. 1063 (1924) (both landlord and tenant had keys to rented storage rooms).

13. Wills v. West, *supra* note 4 (tenant used lodging rooms for storage of personal property; landlord retained key thereto for purposes of maid service).

14. Broaddus v. Commercial Nat. Bank of Muskogee, *supra* note 5 (landlord had pass key and rendered janitor service).

15. Cornelious v. Berinstein, 183 N.Y. Misc. 685, 50 N.Y.S.2d 186 (Sup. Ct. 1944) (locker accessible to alley operator and person who rented locker).

16. Marsh v. American Locker Co., 72 A.2d 343 (Super. Ct. N.J. 1950); Dyer v. American Locker Co., 72 N.Y.S.2d 451 (1st Dep't. 1947) (per curiam); Keleman v. American Locker Co., 182 N.Y. Misc. 1058, 47 N.Y.S. 2d 411 (City Ct. 1944) (latter case decided on question of neligence, not bailment).

17. Dyer v. American Locker Co., *supra* note 16.

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1. 30 STAT. 544 (1898), as amended 11 U.S.C. 1 *et seq.* (1946).

2. 52 STAT. 900 (1938), 11 U.S.C. 641 (1946).

3. Leiman v. Guttman, 336 U.S. 1 (1949); Brown v. Gerdes, 321 U.S. 178 (1944).