

Non-Contractual Bailment: A glance At Statutory Bailment

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Abstract:

The contract of bailment is primarily, “the delivery of goods to another, other than a servant, for some purpose upon a condition, express or implied, that after the purpose has been fulfilled, they shall be redelivered to the bailor, or otherwise dealt with according to his directions, or kept till he reclaims them”. Thus, the bailment involves the change of possession and redelivering the same to the real owner. Bailment is said to be a relationship *sui generis*. Then it is understandable that bailment can exist independently of any contract. The law per se recognizes the same under section 71 of the Indian contract Act, 1872, as a person who finds goods belongs to another and takes them into custody is subject to the same responsibility as a bailee. But in this case of *Ram Gulam v. Govt. of U.P.*, it has been held that the Government is not liable for the stolen property of the plaintiff, which had been under the police custody after they recovered the same when it got stolen earlier. Thus, the point of decision in the above case was no bailment would arise without a contract. But, in the case of *L.M. Co-operative Bank v. Prabhudas Hathibhai*, the Court held that the bailment could exist even without the contract. Thus, the applicability of bailment without a contract is *qua* controverting. Whether or not there can be a bailment without any contract is one of the prime queries regarding the concept of non-contractual bailment. Since it is not a *Res Integra* question, the purpose of the paper is to address the subject via doing a comparative study of the related cases with the relevant justification of their respective judgments and analyzing the same with the help of secondary data.

Keywords: *contract of bailment, statutory bailment, quasi-contract of bailment, Respondeat Superior, law commission of India, Act of God.*

Introduction:

Contract of Bailment

Bailment is the delivery of goods by one person to another for some specific reason, upon a contract. Later on, bailee will return the delivered goods after the completion of that particular duty or task. The same has elucidated in section 148 of the Indian contract Act, 1872. The person who hands over those goods become the “bailor” and to whom that good has delivered becomes the “bailee”. In the contract of bailment, the possession of goods transfer takes place since the bailed goods transfer from bailor to the bailee for a specific reason. It implies a sort of relationship in which the personal property (movable) of a person temporarily goes into the possession of another. However, the ownership of those goods conferred on one person, despite the custody of those goods changes to another. Certainly, bailment involves the transfer of possession but not the transfer of ownership. If the owner continues the possession of goods or maintains control over the bailed goods, then there will be no bailment.

Example: If Raju bailed his bike to his friend Niju for a week, meanwhile Raju kept the bike key with himself and often used the bailed bike during those periods of 7 days. Then, in this case, there is no bailment, since Raju maintains control over the bailed.

This same has been held in the cases of *Kaliaporumal Pillai v. Visalakshmi* and *Bank of Lahore v. Sohan Lal*. In *Kaliaporumal Pillai v. Visalakshmi*, a lady took her old jewels to a goldsmith for being melted and converted into a new ornament. Every evening she used to receive the half-made gold jewels, put that into a box, and locks the same. She allowed the locked box to remain in the premise of the goldsmith but kept the key in her possession. Since there is no bailment here, if the jewels got stolen, the goldsmith cannot be made liable. It was the ramification of that lady's deed of keeping the locker key with herself lieu handed over the possession of the half-made ornaments to the goldsmith. In the latter case of *Bank of Lahore v. Sohan Lal*, the bank rented the locker cabinets to the customers for the safe custody of jewels and other valuables. Usually, the bank officials will hand over the locker keys to the concerned customer, without having the keys; no one will open the rented locker. But in this case, the bank manager committed a fraudulent deed by making an additional lever to open the rented locker even without the key. Perchance, if such kept valuables of the plaintiff found missing, the bank can be made liable either as a bailee or on the grounds of vicarious liability on the grounds of the well-known legal maxim *Respondeat Superior*.

Research methodology:

In the present paper, the qualitative research collection of facts has been used to emphasize conclusiveness and objectivity. It relies on a non-empirical research methodology. The Secondary data has been availed, which comprises E-sources, articles, books, and relevant provisions of the Indian Contracts Act of 1872.

Provisions Related to Bailment:

Section 148 of the Indian contracts Act, 1872:

‘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"¹.

The essentials of contract of bailment:

- Delivery of goods for some purpose.
- Either redelivering the goods or disposal of the same as per the directions proposed by the bailor.

Section 149 of the Indian contracts Act, 1872:

‘The delivery to the bailee may be made by doing anything which has the effect of putting the goods in possession of the intended bailee or of any person authorized to hold them on his behalf’².

Temporary delivery of goods: The whole concept of bailment revolves around the fact that there will be a temporary possession of goods, where the delivery and re-delivery of goods will take place between the bailor and bailee upon a contract. The delivery to the bailee may be done either by the actual delivery or constructive delivery.

¹ The Indian Contract Act, 1872, S 148.

² The Indian Contract Act, 1872, S 149.

Actual delivery: the bailor may deliver the good directly to the bailee. For example, Robert's laptop has some issue, addressing the same he leaves his laptop at the service centre for repair. Robert's deed of surrendering the physical possession of property indicates the actual delivery.

Constructive delivery: here, the actual delivery of goods will not take place. Per contra, the bailor keeps possession with himself but handover the mean of custody to the bailee under his authority. For instance, while interpreting the aforementioned case of *Kaliaporumal Pillai v. Visalakshmi*, if the bailor happened to keep the jewel box with herself as qua handed over the key to the goldsmith, and then it would be a constructive bailment.

Return of specific goods: As previously mentioned, the bailee is bound to return the specific good after the completion of the purpose. In every contract of bailment, the bailed goods have to redelivered either the same or in an altered state. There can be no bailment where the thing delivered is not to be specifically returned or accounted for any other exchange. Therefore, it would be no bailment if the delivery of property equivalent in money or other-commodity. Such a transaction might be scale or exchange. Clarity has given in the case of *Kalyani Breweries Ltd v. state of West Bengal*.

Existence of a valid contract: the existence of a valid contract is the pre-eminent condition in the contract of bailment, which implies that the bailed should be returned when the purpose got fulfilled. But, the law per se considers the person who finds a lost property is a bailee, even though there is no contract existing between the finder and the owner.

Herein, in this case of *Ram Gulam v. Govt. of U.P.*, it has been held that no bailment can arise without any contract. The contention is that, whether the bailment could arise only upon a contract or the same can be inferred by implication of law and fact.

Non-contractual bailment:

Although Section 148 of the Indian Contract Act deals with the contract of bailment, it excludes the concept of non-contractual bailment from the realm of its definition. Since the bailment is a sui generis concept, an action against a bailee can neither be taken as an action in the contract, nor in tort, but as an action on its own. Such liabilities of the bailee to take reasonable care will arise out of having possession of others goods, no matter where it is upon a contract or not.

The notion of bailment without a contract is a new age development, which comprises the bailment created by an act of voluntary and non-voluntary taking custody of other's goods. Back then, it was

believed that the bailment would arise only upon contact and relies mainly on the mutual consent of the parties. Per contra, this non-contractual bailment emerges by taking mere possession of goods, which are the property of another irrespective of the consent.

Voluntary possession amounts to bailment: If any person takes the custody of another person's good even without any formal agreement is enough to constitute bailment. In the case of *Ultzen v. Nicholas*, the same view was upheld by the Court. Wherein, the plaintiff went to a restaurant for the sake of dining there. The waiter of that restaurant took the plaintiff's coat and hung the same on a hook behind the plaintiff without requesting him to do so. Later, when the customer wanted to leave, he found the coat missing. It was held that, even though the waiter acted in courtesy to the customer. By taking voluntary possession of someone's property, he is obliged to return the same. Thus, the waiter became the bailee of such coat by assuming the physical possession and control over the same. Since he failed to discharge the duties qua bailee, he was held liable to pay damages to the damage caused (K, 2015).

Involuntary bailment: traditionally, the bailment is the contractual relationship between the bailor and bailee, who agrees to deliver and redeliver the bailed property. But, this term involuntary per se defines the concept of involuntary bailment; in general, the word 'involuntary' connotes accident. Comprehensibly, the bailment arises out of accidental incidents is an involuntary bailment that is the bailee himself lacks the consent to possess the good. Since this kind of bailment lacks pre-consent, it is also known to be a non-contractual-consensual bailment.

For example, Riya went to a shop and negligently left her wallet there. If the shopkeeper happens to find the wallet, which Riya has forgot to take. The shopkeeper is obliged to perform the duty as a bailee to take reasonable care and to return the same to Riya. The same has been given in Section 71 of the Indian Contract Act, which comes under the ambit of quasi-contract.

The concept of involuntary bailment has lambasted on the grounds of the common law principle "A man cannot without his knowledge and consent be considered as a bailee of property" Chitty (2015). However, the *sin qua non-notion* of bailment is its *sui generis* nature.

Traditional precedents: the conventional approach strongly relies on the contention that, without the requisite consent and the knowledge, the bailor and bailee relationship cannot exist. A similar view was expressed in the case of *Lethbridge v Phillips*, wherein a painting was delivered to the defendant without his consent was found damaged. The Court held that no bailment could arise without the consent of the bailee; hence the defendant is not liable to pay damages (Dutta, 2017).

Contemporary approach: the non-voluntary bailee is also liable to discharge the duties of the bailee upon a contract. But, the duties of non-voluntary bailee are still obscure. The responsibilities of accidental

bailee have elucidated in the case of *Hiort v Bott*, where the Court held that the extent of duties on which the non-voluntary bailee was bound to depend on the nature of case facts.

Statutory bailment:

The statutory bailment is the codified definition of bailment dealt with under the Indian Contract Act of 1872. But as already mentioned, the concept of non-contractual bailment has no lucidity. The ascendancy of legislation regarding this notion is muted, which led to the primary reliance on judge-made laws and precedent cases. The followings are the position of different courts in India regarding non-contractual bailment.

Overview of the case: [Ram Gulam v. Govt. of U.P]

Facts: The suit giving rise to the recovery of certain ornament or equivalent price had filed by the appellant against the state of the U.P Government before the Allahabad High Court.

The property of the plaintiff had stolen. Subsequently, the same has recovered, and the police searched and seized the property by exercising the powers conferred on under the Code of Criminal Procedure. Thereafter, it was kept in Collectorate Makhana. Later, from there, it got stolen again and left untraced (Bangia, 2017).

Plaintiff brought an action for the restoration of that property or recovering the value of that property, but it was an unsuccessful plea.

The plaintiff contended that since the servant of the defendant failed to perform duty as the bailee. The Government is liable to pay the value of the stolen property invoking the doctrine of *Respondeat Superior*.

Issues looked by the Court:

1. Whether or not the Government is liable to indemnify the plaintiff since it was in the position of bailee but failed to take reasonable due care (Joshi, 2015)?
2. Whether or not the Government was liable to indemnify the plaintiffs under the rule that a master is responsible for the tortious acts of his servants?

If the Government is in the position of a bailee, how the Government could be held liable?

Duties of the bailee: According to section 151 and 152 of the Indian contract Act, 1872. The onus is on the bailee, to take reasonable care of the goods bailed.

“In all the case of the 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 circumstance, take of his own goods of the same bulk, quality and value of the goods bailed”³.

In the case of Calcutta Credit Corporation Ltd v. Prince Peter of Greece, it was held by Calcutta high court that the defendant had not taken reasonable care to prevent the plaintiff’s car from burning.

And also, it was a duty of the bailee to return the goods on the fulfilment of the purpose. It is in sections 160 and 161 of the Indian contracts Act, 1872.

Issues overlooked by the Court:

Only the first mentioned issue has given no importance, but the rest of the issues were accounted for and dealt with by the Honorable Allahabad High Court.

Decision of the Court:

In Ram Ghulam case, the former issue has not been given any importance by the Court. Since there is no existing contractual relationship, and also the plaintiff had not given the ornaments to the Government for a specific purpose. The Court held that the Government is not in the position of the bailee to perform the duties.

According to the doctrine of '*Respondeat Superior*', the master is only liable for the tortuous deed committed by the servant during the legitimate scope of employment. Then, it has held that the police deed of keeping the recovered property in possession is the discharge of the duty imposed by law. By citing the expectations of the rule of '*Respondeat Superior*' the Allahabad Apex Court held that Government is not liable either in both first and second issues (Joshi, 2015).

Overview of the case: [Co-operative Bank v. Prabhudas Hathibhai]

³ The Indian Contract Act, 1872, S 151.

Facts: a partnership firm pledged some good to the plaintiff bank. However, the pledged packages had stored in the godown belongs to the said firm, the plaintiff bank kept the keys of the locked godown with itself. The said goods were seized by the income-tax officer since there is a non-payment of tax by some partners of the firm. The goods were stored in the same godown, but now the keys were handover to the police. As a result of the heavy rain, there was leakage in the godown's roof, and the goods were found damaged.

Held: The Court observed that the present case would not fall under the Act of God, since the damage caused is not by any force or reason, which is something beyond the respondent's control. Withal, by taking possession of the goods, the Government stands in the position of the bailee. The Court prescribed the respondent to prove that they have taken reasonable care qua bailee and the caused damage was due to the Act of God. As the respondent was unable to prove the contentions, the Government was held liable by the Court as it failed to discharge the duty of bailee. Comprehensibly, the judgment connotes the existence of bailment independent of contract by upholding the obligations of the Government as qua bailee; yet, it has not possessed the goods under a contract.

The observation and view of the Court in the case at hand was accepted by the Apex court while delivering the judgment of *State of Gujarat v. Memon Mahomed*.

Overview of the case: [State of Gujarat v. Memon Mahomed]

Facts: the motor trucks of the plaintiff were confiscated by the customs authorities since there is a non-payment in the import duties of the said vehicle by the plaintiff. Afterwards, the order of seizure was set aside by the revenue tribunal, and a direction was given to re-deliver the confiscated vehicles to the plaintiff. Subsequently, the plaintiff requested the return of said vehicles, but he was informed that the vehicles were disposed of under the direction of the magistrate. Therefore, the aggrieved plaintiff claimed for either the return of the same or damages of 32,000 INR.

Held: The apex court expressed that the Government was supposed to redeliver the vehicles to the concerned person. After when the confiscation was set aside by the tribunal under no circumstances, the Government continue the possession. But, since there is a non-performance in said duty, the Government was held liable to pay damages. Further, the apex court validated the legality of non-contractual bailment by citing Section 71, which treats the finder of lost goods as a bailee.

Overview of the case: [Smt. Basavva Kom Dyamangouda vs the State of Mysore And Anr]

Facts: The plaintiff's ornament worth ten thousand got stolen. The same has been recovered by the police and processed to produce before the magistrate. For verification purposes, the ornaments were maintained in police custody. Regardless, the same has been stolen from the guard room. Later, the plaintiff appealed for the restoration of ornaments.

Held: The Apex court held that the respondent was liable to pay damages since the ornaments were stolen from their custody. Further, the state failed to take reasonable care of the possessed goods.

Recommendation of Indian Law Commission:

The primary question that has arisen is; can there be a bailment when a person took possession of another's good even without a contract of bailment? Since the Indian Contracts Act of 1872 has not defined this issue, and the court decisions in the aforementioned cases were not similar, the law commission of India was happened to address this issue. Before understanding the concept of bailment without a contract, it is a prerequisite to know the position of quasi-contract in the Indian Contracts Act, 1872.

Quasi-contract: the explicit definition of quasi-contracts is nowhere stated in the Indian Contract Act of 1872. In layman's terms, it is an obligation created and imposed by the law on parties, who were not under any prior agreements or contracts. The several essentials of a contract will not present in a quasi-contract since the primary reason for its enforcement is to obviate the wrongful gain of any party over another. Section 71 of the Act is one among the quasi-contracts, which dealt as relation resembling those of contracts.

13th law commission report: "In our opinion, the present definition of the bailment should not be altered. However, 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, as if they were bailor and Bailee under contract express or implied as provided in Section 148" Law Commission of India (1958).

Thus via its report, law commission has suggested the enactment of a separate provision under the Indian contracts Act of 1888 to define the concept of non-contractual bailment.

Analysis/ Findings:

In the studied case of *Ram Gulam v. Govt. of the U.P.*, it has been held that a valid contract is essential for a bailment. Regardless, the Court has overlooked this issue and noticed only, does the Government is responsible for its servant's deeds. Based on the exceptions of the Maxim *Respondent Superior*, the Judgment has given. But in the case of *Co-operative Bank v. Prabhudas Hathibhai*, the Court held that the caused heavy rain would not amount to an Act of God. It further states that the Government was supposed to take reasonable due care and stood in the place of a bailee. Hence, it is comprehensible that, if the possession of the good has transferred but not the ownership, and also it has transferred for a specific period, then there is a possibility of bailment even without a contract. Indeed, the same has been held in the case of *State of Gujarat v. Memon Mahomed* as well. But it solely depends on the facts and status quo of the case. However, looking at the precedent, "the bailment is dealt with by the Contract Act only in the case where it arises from a contract but, it is not correct to say that there cannot be a bailment without an enforceable contract," *vide* the judgment of *State of Gujarat v. Memon Mahomed*. Thus, comprised comprehension is; indeed, the contract of bailment fails when it lacks content, but at the same, it exists when the possession there.

Conclusion and suggestions:

The status of the presence of the quasi-contract of bailment is still not ascertained. However, the comparative study of relevant precedents might be a lucid directive to understand the concept of non-contractual bailment. The quasi-contract of bailment arises in a certain situation, where there is a statutory authority or any other circumstances to possess other's goods for a temporary period of time. Even without any prior contract to possess, when a person voluntarily takes control over the same. Under the ambit of law, he will happen to discharge the duties of a bailee.

While analyzing the suggestions of the Indian Law Commission, its position is parallel to the view expressed by Lord Coleridge in the case of *R v Macdonald* (Sachan, 2019). Wherein he contended the use of the term 'contract of bailment' since it connotes that, the bailment could arise only upon a contract. Withal he stated that a complete bailment could be there independent of any contract. Henceforth, while compiling the outcome of the analysis, for the asked question, whether or not there can be a bailment without a contract? The answer would be yes, and there can be a contract of bailment even without the contract.

In the words of Savigny, “law grows with the growth and strength with the strength of people and its standard of excellence will generally found at any given period to be complete harmony with the prevailing ideas of the best class of citizens” kirui (2017). Comprehensible, law is not static but dynamic. Hence, if the need for a specific provision to address non-contractual bailment arises, such demand should be satisfied in order to obviate the ambiguity. Apparently, the apt definition of bailment should comprise both the consent and possession of the goods.

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