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TROVER AND CONVERSION—DAMAGES—WRONGFUL SALE OF HOUSEHOLD GOODS AND HEIRLOOMS BY WAREHOUSEMAN.—The plaintiff sued the storage company for the conversion of certain household goods stored with the defendant. The property, namely certain furniture, clothing, and keepsakes, was sold for unpaid storage fees. The warehouseman did not give the plaintiff proper notice of the sale. The referee, to whom the case was referred for the computation of damages, awarded the plaintiff an amount based upon the values set forth in the testimony of an expert witness upon the secondhand market value of the property. Judgment was entered for that sum. On appeal, *held*, judgment reversed and modified; the proper criterion of damages is the actual value of the property to the owner, exclusive of any sentimental or fanciful notions of worth. *Harvey v. Wheeler Storage and Transfer Co.*, (Wis. 1938) 277 N.W. 627.

In an action for the conversion of personal property, the market value of the property at the time and the place of the conversion is ordinarily the basis for the determination of damages. A distinction, however, is raised between ordinary personal property and personal property specially adapted to individual use such as clothing, household furniture, heirlooms, and keepsakes. In an action against a warehouseman for the conversion of certain wearing apparel and household goods, it was held that goods kept for personal use cannot in any fair sense be said to have a market value or at least a market value indicative of the true value of the property to the owner, and that a basis for recovery should be the actual money loss to the owner and not merely the re-sale price on the open market. *Lake v. Dye*, 232 N.Y. 209, 133 N.E. 448 (1921). Similarly in a suit for the loss of household effects, it was held that the secondhand price of personal property is so depreciated compared to the actual or extrinsic value to the owner that it is not a just compensation for the actual loss and is therefore not be used as the basis for the determination of the damages. *Pecos & N. T. Ry. v. Grundy*, (Tex. Civ. App. 1914) 171 S.W. 318. In a case like the instant case, where a warehouseman sold property without due notice to its owner, it was held that the amount to be recovered should not be restricted to the price which could be realized at a sale in the open market, but that the owner should be permitted to recover the true value of the property based upon actual money loss and upon other circumstances peculiar to the individual case. *Weinstein v. Santini Transfer Co.*, 155 Misc. 139, 278 N.Y. Supp. 388 (1935); *Taggart v. Graby*, 159 Misc. 155, 286 N.Y. Supp. 382 (1936). Thus, in the determination of the value of converted property, the market price is not entirely excluded from consideration, but is rather made one of several factors that together make up the value of the property to the individual owner. Other determinates were enumerated in a suit for the loss of household effects by fire, it being held that where the property has a peculiar value to its owner the just rule of damages is the actual value of the property destroyed, taking into consideration the original cost of the article, the depreciation, the practicability of replacing it, and such other considerations as in the particular case affect its value to the owner. *Lloyd v. Haugh Storage & Transfer*, 223 Pa. 148, 72 Atl. 516 (1909). Similarly in an action for the conversion of a Persian rug and other personal property, the court permitted, in the determination of damages, introduction of evidence of the cost of the article when new, the amount of depreciation since the purchase, the length of time which the property has been used, the condition of the property at the time of its conversion, and the expense of replacing the goods. *Jelalian v. New York, N. H. & H. R. Co.*, 134 App. Div. 381, 119 N.Y. Supp. 136 (1909); *Cf. Stanley v. Smith*, 135 Ark. 502, 205

S.W. 889 (1918). In another case "actual loss" was defined as the loss which the owner would sustain, in terms of money, by being deprived of the articles so specifically adapted to the use of himself and his family. *St. Louis & S. F. R. Co. v. Dunham*, 36 Okla. 724, 129 Pac. 862 (1913). In an action for the conversion of a slightly used overcoat its purchase price was held to be prima facie evidence of its value. *Gold v. Rousso*, 238 Ill. App. 427 (1925). However in a similar case, it was held that the cost price of napkins when new was insufficient to form the basis for the computation of damages for their conversion seven months after their purchase during which time they had been used. *Independence Linen Supply and Steam Laundry v. Zakrowsky*, 158 N.Y. Supp. 721 (1916). The use of the original cost price was further limited in *International & G. N. R. Co. v. Bartek*, (Tex. Civ. App. 1915) 175 S.W. 1106, where it was held that the damages for conversion of personal property cannot be based solely on their original cost because such damages would be excessive. The use of market value of personal property in the determination of damages is also limited, as it was held in the instant case that the term "market" in order to be used must imply not only that one party may readily sell the goods in question at a given price, but also that there is some one who, desiring just such a particular article, may readily buy it at the given price. Thus in an action for the conversion of a sofa, a witness was permitted to testify as an expert that the sofa would be worth \$50 to one who liked antique furniture, but if sold on the secondhand furniture market or at an auction it would be worth probably only \$20. *Bradley v. Hooker*, 175 Mass. 142, 55 N.E. 848 (1900). Similarly the showing of an appreciable demand for the particular type of property plus a fair market value does not exclude the consideration of the other factors in the determination of loss. In a suit by the lessee of a hotel for the conversion of furniture seized by the lessor for non-payment of rent, it was held that the failure to plead the absence of a market value did not prevent the plaintiff from raising the issue of the actual value to the owner. *Wutke v. Yolton*, (Tex. Civ. App. 1934) 71 S.W. (2d) 549; *Wald Transfer and Storage v. Giese*, (Tex. Civ. App. 1937) 101 S.W. (2d) 603. The exclusion of sentimental and fanciful values placed on property as a factor in the determination of actual value is practically universal. However certain of the cases involving the conversion of heirlooms and keepsakes show a tendency to enhance the actual value by a consideration of the special nature of the property as an heirloom or keepsake. In *Bateman v. Ryder*, 106 Tenn. 712, 64 S.W. 48 (1909), it was held that although ordinarily there can be no recovery for the sentimental value of personal property, the rule that damages must be adequate would seem to indicate that in cases involving the conversion of family pictures and other heirlooms a special value should be allowed. The use of the term "special value" does not however infer that sentimental associations may be used as a factor in the determination of the damages, for in an action for the conversion of a portrait, though the court permitted an enhanced valuation, it specifically refused to permit testimony as to the value of the portrait based upon the associations connected with it on the grounds that this would be an attempt to assess sentimental damages. *Louisville & N. R. Co. v. Stewart*, 78 Miss. 600, 26 So. 394 (1901). In a case regarded by many as the leading case on damages for the conversion of heirlooms, it was held that the rule of damages is to be the actual value, taking into account the original cost of the portrait and the expense and practicability of replacing it, together with such other considerations as in the particular case affect its value to the owner. *Green v. Boston & L. R. Co.*, 128 Mass. 221 (1880). Thus it would seem that the same factors govern the estimation of damages for the

conversion of heirlooms and keepsakes as govern the estimation of damages for the conversion of household goods and clothing. This may also be inferred from the holding of a later case where in a suit for the conversion of a hand carved gold leafed picture frame formerly belonging to the plaintiff's mother, and an heirloom in the plaintiff's family from the eighteenth century while the family was yet a member of the nobility, it was held that the special value of the frame as an heirloom was to be the measure of the damages even though it exceeded the market value of the frame. *Kalinowski v. Newhouse & Sons*, (Mo. App. 1932) 54 S.W. (2d) 1094.

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