Larceny, Bailment, Misappropriation of Funds by a Broker

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resentatives of a deceased, his heirs or estate." The policy in suit was not so made; it being made payable to "Cohen and Kirsner, a partnership, its successors or assigns."

Thus the only logical conclusion for the court to come to was that the avails of the insurance policy were held by the administratrix as part of the general assets of the estate of Charles W. Cohen, deceased, subject to claims of creditors, and not distributable to his heirs at law.

AL H. HURLEY

Intoxicating Liquors: Searches and Seizures.

In the case of Fabri v. United States (24 Fed. (2d) 185), a prohibition agent searched the residence of Fabri under authority of a search warrant, which he assumed to be valid, and seized and took away quantities of various liquors. Upon his arrest Fabri appeared and filed a verified petition, assailing the validity of the warrant, praying that it be quashed and the evidence so obtained suppressed and that the seized property be ordered returned to him at his home. In the petition he alleges only that he was in possession, and not that he was in the lawful possession of the property. Upon a hearing the court below ordered the warrant quashed and the evidence suppressed, but denied the prayer for a return of the property. Defendant sued out a writ of error, which is directed to the part of the order denying him a return of the seized property.

The court held that "where upon an unlawful search of a dwelling house, government agents seize property, the possession of which may or may not have been unlawful, the person from whose possession it is wrongfully taken is prima facie entitled to its restoration, and that the government can make successful resistance to an appropriate petition for its return only by showing affirmatively, by proofs other than those obtained as a result of the unlawful search, that the property was, at the time of seizure, being used in the commission of crime."

Upon the general question of the duty of the courts to order the return of liquor wrongfully seized by government agents in the course of an unlawful search, there is hopeless conflict in the federal courts. In arriving at its conclusion this court said, "Possession of liquor in a dwelling house may be lawful or unlawful, depending upon the mode of acquisition or the intended use," and "Unless we resort to the facts disclosed by the search there is no ground at all on which to invoke the presumption of section 33 of the National Prohibition Act (41 Stat. 317; U.S.C.A. No. 50.)."

EUGENE M. HAERTLE

Larceny, Bailment, Misappropriation of Funds by a Broker.

Section 343.17, Statutes, among other things provides that "Whoever being a bailee of any chattel, money or valuable security shall fraudulently take or fraudulently convert the same to his own use or to the use of any person other than the owner thereof . . . . shall be guilty of larceny."

A bailment "is a delivery of goods in trust, upon an agreement expressed or implied, that the trust shall be duly exercised, and the goods returned or delivered over when the purpose of the bailment
is accomplished." In every bailment the possession of the thing bailed is in the bailee while the ownership remains in the bailor. There is an agreement between the bailor and bailee upon which we may predicate a contractual relation. These elementary principles must be kept in mind in order to try and understand the decision of the Supreme Court of Illinois in the case of People v. Wildeman. An interesting Wisconsin case which might aid in the solution of the problem presented, is Burns v. State, to which we shall later advert.

The facts of the Illinois case were briefly these:

Wildeman was engaged in the business of selling bonds in the city of Chicago. Through one of his employees he sold to the complaining witness a $500 bond in April, 1924. Later he wrote the complaining witness that the bond she had purchased had gone down in value and suggested that she change or sell it. In response to a letter she came to his office and turned the bond over to him, and was told that he would attempt to get a different bond in its place, and sometime later she replied that whatever he decided in the matter would be satisfactory to her. Shortly after December 20, 1925, the office furniture and property of the defendant were sold under an execution, and his bank account garnisheed. A few days later defendant was arrested on the charge of larceny as bailee. He testified that he sold the bond and placed the funds in his account in the bank and owing to the closing of his business he was unable to negotiate for another bond. The only question in the case was whether the defendant had committed the crime of larceny as bailee. Was he a bailee in a strict sense of the word?

The Court says: "In order that such an offense exists there must be a bailment and relation of bailor and bailee."

Clearly the defendant cannot be convicted unless he was a bailee of the complainant witnesses' bond. In order that there be a bailment, the identical thing must be returned by the bailee when the trust is over; for example, if A deposits a $5 bill with B in an envelope with the understanding that he is to get that $5 bill back in the envelope, the relationship is a bailment; but, if A merely deposits the $5 and is willing to receive back five other dollars, the bank becomes A's debtor and not a bailee. The defendant was a broker with authority to sell a bond and get another in its place; then, clearly, there cannot be a bailment relation created because the identical bond was not to be returned. The rule is of universal application that the same identical thing in either its original or an altered form must be returned. But here, no such relation was created by the acts of the parties. The writer believes that the Court (although it seemingly decided against the weight of authority) properly held that there was no bailment and hence defendant could not be convicted of larceny as bailee. The Court construed the relation to be one of debtor and

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1 Cooley on Torts, page 631.
2 Vide Elliott on Contract, pgr. 2985.
4 145 Wis. 373, 128 N.W. 987.
5 Cyc. 199.
NOTES AND COMMENT


The Court in construing the criminal statute, which resembles our own Section 343.17, says: "There must, however, in any event, be a bailment in order that the relationship of bailee exists. There is no bailment here, and therefore no bailee or larceny as bailee. The relationship existing between plaintiff in error and the complaining witness is that of debtor and creditor."

In the case of Burns v. State, supra, the Court held that a person picking up money that was thrown away by an insane individual became a bailee of the money and when he converted it, he could be prosecuted under the statutes for the crime of larceny as bailee. The two cases are easily distinguishable; in the Wisconsin case, the person picking up the money had to return the same money to the bailor; in the Illinois case, the broker had no such duty imposed upon him by his contractual engagement.

An extended annotation on the "relation between customer and broker receiving bonds or other securities for sale or exchange" can be found in 52 A.L.R. 501.

SAM GOLDENBERG

Master and Servant; Workmen's Compensation Act; Indemnity to Permanently Disabled Minor Employee.

"Proper administration of the Workmen's Compensation Act requires appreciation of the manifest legislative purpose thereof, i.e., to abolish the common law system of compensating injured employees as unsuitable to modern conditions and conceptions of moral obligations, and substitute therefor one based on the highest present conception of man's humanity to man and obligations to the employee class."

The instant case presents an interpretation of a heretofore unconstrued provision contained in the Workmen's Compensation Act, which interpretation serves to carry out the above quoted purpose.

In brief substance, the facts of the case are these: the defendant in this action (plaintiff below) a minor, was permanently disabled while in the employ of the appellant, and was awarded a weekly compensation of $22.50 under the following provision:

"If an employee is a minor and is permanently disabled, his weekly earnings on which to compute the indemnity accruing to him for permanent disability shall be determined on the basis of the earnings that such minor, if not disabled, probably would earn after attaining the age of twenty-one years. Unless otherwise established his earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable."

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140 Ill. 146, 333 Am. St. Rep. 221, 29 N.E. 904.
74 Ill. 213.
55 Ill. 44.
City of Milwaukee v. Miller, 154 Wis. 652.
Badger Carton Co. v. Industrial Commission of Wisconsin, 218 N.W. 190.
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Section 102.11, sub section 1, Wis. R.S., 1925.