St. John's Law Review

Volume 7
Issue 2 *Volume 7, May 1933, Number 2*

Article 17

June 2014

Bailments--Liability of Sleeping Car Companies for Passenger's Baggage--Prima Facie Case--Burden of Proof (Van Dike v. Pullman Co., 145 Misc. 452 (1932))

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intent of the legislature.[8] The owner is not liable under the statute in any event if permission, either expressed or implied, to use the automobile is not given.[9] But if such permission is given, the law applies with full vigor.[10]

V. G. R.

BAILMENTS—LIABILITY OF SLEEPING CAR COMPANIES FOR PASSENGER'S BAGGAGE—PRIMA FACIE CASE—BURDEN OF PROOF.—Van Dike, plaintiff, arrived at the Hoboken, N. J., station of the Delaware, Lackawanna and Western R. R. in order to take a train. Van Dike had already purchased both railway and Pullman accommodations and he and his party proceeded down the platform toward the train, the plaintiff carrying his own bag. As the party reached the Pullman assigned to the plaintiff, a porter wearing the regular Pullman uniform and a hat with a brass shield, on which was inscribed "Pullman," took plaintiff's bag and entered the Pullman to place it on Van Dike's berth. In about five minutes, plaintiff proceeded to his designated berth where he discovered that the bag he had handed the Pullman porter was missing. He immediately notified the train porter but a thorough search was of no avail. Plaintiff could not identify any particular porter as the one who took his bag. *Held,* defendant liable to plaintiff for negligence of servant, who on taking the baggage of Van Dike, assumed the liability of bailee. Passenger's proof of delivery of bag to the Pullman porter, demand for the return of same, and defendant's inability to return same, constituted a *prima facie* case which defendant failed to rebut. *Van Dike* v. *Pullman Co.,* 145 Misc. 452, 260 N. Y. Supp. 292 (1932).

The liability of sleeping car companies for the loss of personal effects and baggage of a passenger is not that of insurer, as in the case of inn-keepers and common carriers, but they are liable only for loss or injury due to their negligence.[1] Mere proof of loss of

[8] In the case of Katz v. Wolff and Reinheimer, Inc., 129 Misc. 384, 221 N. Y. Supp. 476 (1927), the Court states that the statute was designed to make the owner of a vehicle liable for injuries caused by negligent operation of *any* person whose permission to operate same, *can be implied from all the surrounding circumstances.*

[9] Fluegal v. Coudert, 244 N. Y. 393, 155 N. E. 683 (1927); Bamonte v. Davenport, 245 N. Y. 594, 157 N. E. 871 (1927).

[10] Psota v. L. I. R. R. Co., 246 N. Y. 388, 159 N. E. 180 (1927); Cohen v. Neustadter, 247 N. Y. 207, 160 N. E. 12 (1928).

[1] Carpenter v. N. Y., N. H. & H. R. R. Co., 124 N. Y. 53, 26 N. E. 277 (1891); Adams v. N. J. Steamboat Co., 151 N. Y. 163, 45 N. E. 369 (1896); Goldstein v. Pullman Co., 220 N. Y. 549, 116 N. E. 376 (1917); Sneddon v. Payne, 114 Misc. 537, 187 N. Y. Supp. 185 (1921).

luggage therefore does not make out a *prima facie* case.[2] However, where the passenger's property is taken by the company into its custody and control, a failure, refusal, or inability to return same on demand, established a *prima facie* case.[3] But the burden of proof never leaves the plaintiff. If a *prima facie* case is made out, the coming forward with proof shifts to defendant to show lack of negligence and use of due care.[4] If the *prima facie* case is thus rebutted, then plaintiff must show by a fair preponderance of the evidence that defendant was negligent.[5]

The Court in the case at bar distinguished between this case and *Sneddon* v. *Payne*[6] in that in the latter case, "the plaintiff handed his bag to a 'red cap' porter *not in the employ of the defendant.*"[7]

V. G. R.

BANKING LAW—CORPORATION MERGER—LIABILITY TO DISSENTING STOCKHOLDERS.—In 1932 the Chatham National Bank and Trust Co. merged with the Manufacturers Trust Co., the respondents in this proceeding. At a meeting held prior to the merger, the appellant, a stockholder in the surviving corporation, had voiced his objection and demanded appraisal of and payment for his stock by virtue of the Banking Law, §496. This denied, he brought suit to enforce his claim, but the Supreme Court and the Appellate Division[1] similarly overruled the plaintiff's contention and held that the section applied only to the dissenting stockholders of the corporation being merged and not to those of the merging corporation. On appeal, *held,* Section 496 of the Banking Law (Laws of 1914, c. 369) applies to the dissenting stockholders of both or all the corporations involved in the merger. *Matter of Cantor,* 261 N. Y. 6; 184 N. E. 474 (1933).

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[2] Carpenter v. N. Y., N. H. & H. R. R. Co., *supra* note 1; Cohen v. N. Y. Cent. etc. R. Co., 121 App. Div. 5, 105 N. Y. Supp. 483 (4th Dept. 1907); Weingart v. Pullman Co., 58 Misc. 187, 108 N. Y. Supp. 972 (1908).

[3] Goldstein v. Pullman Co., *supra* note 1; Croll v. Pullman Co., 61 Misc. 265, 113 N. Y. Supp. 542 (1908); Sherman v. Pullman Co., 79 Misc. 52, 139 N. Y. Supp. 51 (1913); Holden v. Davis, 119 Misc. 492, 196 N. Y. Supp. 552 (1922); Irving v. Pullman Co., 84 N. Y. Supp. 248 (1903).

[4] Carpenter v. N. Y., N. H. & H. R. R. Co., *supra* note 1; Van Dike v. Pullman Co., instant case.

[5] *Ibid.*

[6] Sneddon v. Payne, *supra* note 1. In this case a station porter took plaintiff's bag into the Pullman car while plaintiff was delayed outside about two minutes in order to have his ticket inspected. On entering, his bag was missing. *Held,* defendant not liable without proof of negligence.

[7] Van Dike v. Pullman Co., instant case, at 460, 260 N. Y. Supp. at 301.

[1] Matter of Cantor, 236 App. Div. 356, 258 N. Y. Supp. 628 (1st Dept. 1932).