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At the present we do not deal with the binding Covenant. Of course, it is to be wished that the principles embodied in the Charter would be universally assumed as obligatory in the relations amongst men and governments everywhere. However, unless and until the human rights provisions are declared self-executing, our courts are not justified in anticipating such obligations; for, rather than being supreme law, the Charter provisions are at the most an indication of the national public policy. They must therefore await legislative action for only Congress can properly determine how this Government is to "cooperate" with the United Nations.

THE BAILEE'S RIGHT TO RECOVER FULL DAMAGES: HISTORICALLY AND CRITICALLY

A person in possession of personal property has the powers of an owner as against all the world, save the man with a better right to possession.[1] This rule of law has always been applied to allow takers[2] and finders[3] full damages against third persons who converted or damaged the goods. Their right to recover a sum over and above their own interest in the chattel is based solely on their possession. Certainly, any other principle would be "an invitation to all the world to scramble for possession."[4]

There are two different opinions, however, as to what is the basis of the *bailee's* right to recover full damages from a third person tortfeasor. One view is that this right exists because of his posses-

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International Proposals Affecting So-Called Human Rights, 14 L. & CONTEMP. PROB. 479 (1949); Rix, *Human Rights and International Law: Effect of the Covenant Under Our Constitution*, 35 A. B. A. J. 551 (1949). There has been comment on the Covenant in almost every issue of the AMERICAN BAR ASSOCIATION JOURNAL since March, 1948. The arguments against the Covenant may be summed up in three points.

1. It is an invasion of the domestic jurisdiction of the United States.
2. This country's participation is unconstitutional.
3. Participation is dangerously unwise as our form of government is threatened.

In the opinion of the writer of this note, the authorities cited in note 51 *supra* have succeeded in refuting these charges.

[1] HOLMES, THE COMMON LAW 246 (1881); POLLOCK & WRIGHT, POSSESSION IN THE COMMON LAW 93 (1888); RESTATEMENT, TORTS § 895 (1939).

[2] Anderson v. Gouldberg, 51 Minn. 294, 53 N. W. 636 (1892); *accord*, New England Box Co. v. C & R Const. Co., 313 Mass. 696, 49 N. E. 2d 121 (1943).

[3] Armory v. Delamirie, 1 Strange 505, 93 Eng. Rep. 664 (1722); Deaderick v. Aulds, 86 Tenn. 14, 5 S. W. 487 (1887).

[4] Webb v. Fox, 7 Term Reports 392, 397, 101 Eng. Rep. 1037, 1040 (1797).

sion of the bailed chattel.[5] The other view bases this right on his liability over to the bailor.[6] The purpose of this article is to briefly examine the historical development of this right of the bailee, to uncover the reason for these two different opinions, to ascertain the historically true reason why a bailee may recover full damages, and to determine whether this rule, which has come down to us from ancient days, is adaptable to modern principles of law.

It was recognized by the English law of the 12th century that, by virtue of his possession, the bailee was entitled to all the rights of an owner as against all the world, except the bailor. Holmes, in reviewing the law of that era, has this to say:

> Cattle were the principal property known, and cattle stealing the principal form of wrongful taking of property. Of law there was very little, and what there was, depended almost wholly upon the party himself to enforce. . . . If the cattle were come up with before three days were gone, the pursuer had the right to take and keep them, subject only to swearing that he lost them against his will . . . . But, if all that a man had to swear was that he had lost possession against his will, it is a natural conclusion that the right to take the oath and make use of the procedure depended on possession, and not ownership. Possession was not merely sufficient, but it was essential . . . this procedure . . . was the only remedy and was confined to the man in possession . . . .[7]

As the bailee, alone, had redress,[8] it was only just that he should be responsible to his bailor. It is for this reason that, originally, the liability of the bailee to his bailor was absolute.[9]

In the 13th century, however, a new approach gradually appeared. Judicial reasoning, heavily influenced by the legal renaissance of the 12th century,[10] and by the introduction of Roman legal concepts, developed the thought that the basis of the bailee's right to recover was his liability over to the bailor, rather than his possession.[11] No longer could a bailee in possession be regarded as an owner, for now, unlike a taker or finder, he openly acknowledged the better title of his bailor. Since under such circumstances possession was apparently not equal to ownership, the only position consistent with reason was a holding that the right to sue was based upon lia-

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[5] HOLMES, THE COMMON LAW 164 *et seq.* (1881); POLLOCK & WRIGHT, POSSESSION IN THE COMMON LAW 166 (1888).

[6] See the discussion of this view in Terry v. Pennsylvania R. R., 35 Del. 1, 156 Atl. 787 (1931); WALSH, HISTORY OF ENGLISH & AMERICAN LAW § 79 (1926).

[7] HOLMES, THE COMMON LAW 165 (1881); see 2 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW 157 (2d ed. 1899).

[8] 1 WALSH, COMMENTARIES ON LAW OF REAL PROPERTY 43 (1947).

[9] HOLMES, THE COMMON LAW 167 (1881). But see Beale, *The Carrier's Liability: Its History,* 11 HARV. L. REV. 158 (1897), who doubts that the absolute liability rule was ever the law of England.

[10] WALSH, HISTORY OF ENGLISH & AMERICAN LAW § 1 (1926).

[11] 3 HOLDSWORTH, HISTORY OF ENGLISH LAW 341 (3d ed. 1927).

bility over.[12] At first, the bailee was answerable to the owner because he was the only person who could sue. Now it was said that he could sue because he was answerable to the owner.[13]

The question now arises as to what is the historically true reason for allowing the bailee to sue for full damages. Is it his liability over, or his possession? It may be said in support of the "liability over" theory that since written records were not commonly kept in early English law, it is by no means certain that the bailor was unable to sue and was limited solely to a remedy against the bailee.[14] If in fact the bailor could sue, the bailee's right probably stemmed more from his liability over than from his possession. Moreover, in the 13th century, it was definitely established that the basis of the bailee's right was his liability over to his bailor, and this was accepted as the true reason down to the 19th century.[15]

In support of the "possession" theory, Holdsworth contends:

> I think the evidence goes to show that the bailee's right to sue was based on his possession. It is, I think . . . that English law did start from the old conception of the Germanic law which gave the bailee as possessor the rights and powers of the owner. It is no doubt true that these old conceptions were modified as the result of the legal renaissance of the 13th century. But they were not wholly got rid of . . . . No doubt the Roman conceptions of ownership and possession exercised a disturbing influence . . . . But . . . [it did not] succeed in ousting the old idea that possession is ownership as against all the world, save as against the man with the better right.[16]

If we accept the "possession" theory, not only historical accuracy, but also consistency in reasoning is obtained, as the same common law principles will apply to a bailee as well as to a taker or finder whose rights as a possessor have never been doubted. If we accept the "liability over" theory, an irregularity is introduced into our conception of possession, because we must then treat a bailee differently than other possessors. Even though the "liability over" theory was constantly repeated down through the centuries, it can be stated that this reiteration was made in cases in which the statement was inconsequential.

Throughout the Middle Ages, and to a great extent down to the end of the 17th century, the basis of the bailee's right to recover was not a question of much practical importance. The only exceptions to the absolute liability rule were cases in which the bailee was unable to sue anyone, namely, when the bailed property was destroyed

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[12] 3 HOLDSWORTH, *op. cit. supra* note 11, at 339; PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 421 (2d ed. 1936).

[13] HOLMES, THE COMMON LAW 167 (1881).

[14] PLUCKNETT, *op. cit. supra* note 12, at 421; 2 POLLOCK & MAITLAND, *op. cit. supra* note 7, at 172.

[15] 3 HOLDSWORTH, *op. cit. supra* note 11, at 341; Claridge v. South Staffordshire Ry., [1892] 1 Q. B. 422.

[16] 3 HOLDSWORTH, *op. cit. supra* note 11, at 346.

by the king's enemies or by an act of God.[17] Consequently, there was no urgency to resolve what was then an academic question and thus we find during the 17th,[18] 18th,[19] and 19th[20] centuries, the statement that the bailee can recover full damages, because of his liability over reiterated.

But when the bailee's liability is no longer considered absolute, the question ceases to be merely academic. Cases will then arise in which the bailee is not liable to the bailor, and if his right to recover full damages is based on liability over, it can be readily seen that he will fail in his action, while, if his right is based on possession, he can recover full damages.

Although the absolute liability rule of the bailee was being repeated as late as the 17th century,[21] it was being indirectly weakened in many ways.[22] These tendencies culminated in the elimination of the bailee's absolute liability by Holt, C.J., in *Coggs v. Bernard*.[23] As a result of that decision, the question of the basis of the bailee's right to recover full damages became a practical one.

The issue was not finally settled, however, until 1901, when the Court of Appeal in *The Winkfield* case[24] authoritatively decided in favor of the view that the bailee's right to sue for full damages is based on his possession. Collins, M.R., said:

> . . . I have now shewn by authority, the root principles of the whole discussion is that, as against a wrongdoer, possession is title. The chattel that has been converted or damaged, is deemed to be the chattel of the possessor and of no other, and, therefore, its loss or deterioration is his loss, and to him, if he demands it, it must be recouped. His obligation to account to the bailor is really not ad rem in the discussion . . . . As between bailee and stranger possession gives title—that is, not a limited interest, but absolute and complete ownership, and he is entitled to receive back a complete equivalent for the whole loss or deterioration of the thing itself.[25]

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[17] PLUCKNETT, *op. cit. supra* note 12, at 423; WALSH, COMMENTARIES ON THE LAW OF REAL PROPERTY 44 (1947).

[18] Southcot v. Bennet, 1 Cro. Eliza. 815, 78 Eng. Rep. 1041 (1601); *see* Heydon & Smith's Case, 13 Co. Rep. 68, 77 Eng. Rep. 1477, 1478 (1611).

[19] CHASE'S BLACKSTONE 563 (2d ed. 1884).

[20] Rooth v. Wilson, 1 B. & Ald. 59, 106 Eng. Rep. 22 (1817); Claridge v. South Staffordshire Ry., [1892] 1 Q. B. 422.

[21] Southcot v. Bennet, 1 Cro. Eliza. 815, 78 Eng. Rep. 1041 (1601).

[22] Bailees were making special contracts with their bailors which excluded the rule of absolute liability. Servants and factors were excluded from the category of bailees. The supersedence of detinue, the bailor's action against the bailee by actions on the case of assumpsit or otherwise, threw emphasis on negligence or contract liability. See PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 423 (2d ed. 1936).

[23] 2 Ld. Raym. 909, 92 Eng. Rep. 107 (1703). His historical investigation showed that there was no authority for the decision in the Southcot's Case, 1 Cro. Eliza. 815, 78 Eng. Rep. 1041 (1601), and for its rigid rule of absolute liability. He substituted several rules requiring standard of care suitable to the different sorts of bailment.

[24] [1902] 1 P. 42.

[25] *Id.* at 60.

There appears to be little doubt as to the historical accuracy of the *Winkfield* holding. An overwhelming majority of courts favor the "possession" theory today.[26]

It has been observed that in early English law, the right of the bailee to recover the chattel was justifiable because he was the only one with a remedy; that the bailee's right to recover full damages during the Middle Ages and down to *Coggs v. Bernard* was a reasonable conclusion to the premise that he was absolutely liable over to the bailor. Now it must be determined whether or not this right to recover full damages, even though he is not liable, by virtue of the "possession" theory is sound and equitable today.

By endorsing this theory, the courts adhere to the common law doctrine that possession of personal property gives rise to title good as against all but the true owner. It has a stabilizing effect by preventing that which Lord Keyes predicted would occur if the rule in relation to possession was otherwise: namely, a scramble for chattels.[27] It is practical and expedient in some cases. Today, as in early days of English law, situations arise whereby the bailee can more effectively invoke legal processes against the wrongdoer than the bailor. For example, where the bailed goods are damaged or converted in a jurisdiction other than the one in which the bailment relation arose, the bailee unquestionably learns of the wrong before the bailor, and has a better understanding of the facts which constitute the wrong.[28] It is also economical to both the public and the parties involved, because generally the full amount of damages are recovered in a single litigation.

But, although one agrees with the correctness of the *Winkfield* decision and appreciates some of its ensuing advantages, it is submitted that it gives rise to some difficulties. We have here a problem involving three interested parties, where one of them does not participate in the litigation. Therefore, we must judge the effect of the holding upon the absent bailor. Has the court been heedful of his position? Also, what are the effects upon the present parties? Has the court given the wrongdoer and the bailee adequate consideration? The problem is not a simple one because the outcome of a particular set of circumstances is not always easily manifested. Historical facts should be discriminatingly utilized, as they may befuddle rather than

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[26] United Fruit Co. v. United States, 33 F. 2d 664 (5th Cir. 1929); Associates Discount Corp. v. Gillinean, 322 Mass. 490, 78 N. E. 2d 192 (1948); Motor Finance Co. v. Noyes, 139 Me. 159, 28 A. 2d 235 (1942); Berger v. 34th St. Garage, 274 App. Div. 414, 84 N. Y. S. 2d 348 (1st Dep't 1948); Sumner v. Brenner, 53 N. Y. S. 2d 250 (Sup. Ct. 1945); Hopkins v. Colonial Stores, 224 N. C. 137, 29 S. E. 2d 455 (1944); RESTATEMENT, TORTS § 218, comment *h*, § 222, comment *h* (1934).

[27] See note 4 *supra*.

[28] Instances in which this practical advantage may exist, however, are principally cases of common carriers, who are not generally within the class of bailees with which we are concerned, because of their quasi-insurer nature.

aid one. Our task does not end with the answer that this or that principle of law is historically correct. We must go further and ascertain whether or not it is adaptable today as a fair-working rule of law.

It can not be denied that in resolving the rights of takers and finders there is a feasible explanation for adhering to the "possession" theory. In most of these cases, the owner is unknown and his future identification is a matter of pure speculation, thus the court is justified in refusing to spend time and money in an attempt to determine whether or not the plaintiff has title. In these instances, in order to expedite the dispensation of justice, the courts are required to take such a position. The status of a bailee, however, who is not liable is perspicuously distinguishable from these cases. He admits the title to be in an ascertained owner and he is under no duty to that owner to reimburse him for the loss from his personal or individual assets. In a substantial number of suits brought by the bailee against a third person wrongdoer, the bailee's interest, if any, is very small in contrast to the bailor's interest. Notwithstanding this, he is permitted to sue without the knowledge or consent [29] of the bailor for the full value of damages to the bailed property caused by the tortfeasor.[30] One example will suffice to point up the problem facing the bailor. A bailee hires a car worth $3500 from the bailor for one week at the approximate charge of $25. The car, while in the bailee's possession, is converted on the fifth day of the bailment by *X*. We know that the bailee's interest in the car at this time is negligible compared with the bailor's interest. The bailee then commences an action for conversion without the knowledge or consent of the bailor. In consequence, the bailor is barred from bringing a later action; [31] he is denied the right to elect between trover and replevin; he is not consulted in the choice of the attorney representing the bailee; and he is not approached to give an estimate of the value of his automobile. It is true that he may compel the bailee to account to him for his share of the recovery:

> . . . the bailee has to account for the thing bailed, so he must account for that which has become its equivalent and now represents it. What he has received above his own interest, he has received to the use of his bailor.[32]

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[29] *See* Berger v. 34th St. Garage, 274 App. Div. 414, 418, 84 N. Y. S. 2d 348, 352 (1st Dep't 1948).

[30] Smyth v. Fidelity & Deposit Co. of Maryland, 326 Pa. 391, 192 Atl. 640, 644 (1937); Kerr v. Great Atlantic & Pacific Tea Co., 129 Me. 48, 149 Atl. 618 (1930); see note 26 *supra*.

[31] *See* The Vale Royal, 51 F. Supp. 412, 423 (Md. 1923); First Commercial Bank of Pontiac v. Valentine, 209 N. Y. 145, 150, 102 N. E. 544, 546 (1913); Fletcher v. Perry, 104 Vt. 229, 158 Atl. 679, 681 (1932). The statement in these cases is in the nature of dicta, a prior recovery by the bailor or bailee not being indicated by the facts. But we can be assured that if the bailee has full recovery, the courts would invoke the doctrine that a wrongdoer can not be vexed twice for the same wrong.

[32] The Winkfield, [1902] 1 P. 42, 60.

This constructive trust doctrine is of little value to him if through the incompetency of the attorney chosen by the bailee, or through the indifference of the bailee, or if the bailee enters into a settlement agreement with the tortfeasor,[33] the proceeds recovered are less than the actual value of his property.

Even on the assumption that the bailee is a prudent plaintiff and engages a competent attorney, and does not settle the suit, another problem presents itself. This is the possibility that the bailee may, by concealing his assets or by absconding, make the bailor's right against him for an accounting of no real value. Furthermore, even if the bailee does not conceal or abscond, he still has a definite advantage over his bailor. The question then arises as to the amount each is to receive so as to satisfy his respective interest. Keeping in mind that the bailee has possession of the assets, it is apparent that he has a bargaining power over his bailor. The bailor in many instances will settle for a sum less than his real interest rather than engage in costly litigation to require an accounting by the bailee.

The result of the *Winkfield* decision thus has the following consequences: it is completely attentive to the tortfeasor's position by protecting him from double liability; it gives more than sufficient consideration to the bailee by allowing him to recover over and above his own interest in the chattel; it fails to protect the bailor adequately, who, when one considers the modern conception of ownership, should be considered above the other two. This problem presents a situation which calls for correction. There is no practical reason for permitting the bailee to recover the full damages to property in his possession in cases where, under modern legal principles, he is not liable.

There are two ways in which the protection of the bailor could be realized. One school of thought feels that since this is not an open question, but rather one which has been accepted down through history, arguments for its revision should be addressed to the legislature. The other contends that we should not be bound by an early common law rule unless it is supported by reason and logic. What may have been a practical common law rule years ago may not be adaptable to the changed conditions and principles of law of modern society, and thus should be modified by the courts.

We must now determine which of the above two currents of thought is more satisfactory to provide the bailor with adequate protection.

There is no doubt that when a given rule of law proves to be inadequate we are prone to say that this is a problem for the legislature. This, of course, is the simplest method to dispense with an issue. But it is submitted that such an attitude is not conducive to progressive legal thought. There are occasions when legislative approval and sanction are conditions precedent to the correction of

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33 While a court action is public notice to all concerned, a settlement or

an inequity but it is suggested that this problem is not one of those instances. The legislature should not be unduly burdened. The difficulty can be satisfactorily resolved by judicial action.

Before passing to a consideration of these suggestions, it might be well to mention that there is existing legislation which might be implemented to alleviate some of the difficulty of our problem. A majority of jurisdictions now permit intervention by an interested party in an action. One phase of it is Section 193(b) of the New York Civil Practice Act.[34] A part of this statute which might be applied here, states, that upon timely application any person shall be permitted to intervene in an action, when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action. This is, of course, only a partial solution. It is only effective when the bailor knows of the litigation by the bailee. It does not aid or protect the bailor who is ignorant of the action.

Then there is Section 193, subdivision 1, of the New York Civil Practice Act which might be utilized.[35] Its objective was to substantially revise the Civil Practice Act, with respect to parties to an action. In effect, it is a statutory classification of necessary parties into (1) indispensable and (2) conditionally necessary parties. If the bailor were considered a conditionally necessary party, the court could, upon its own motion or the motion of a party to the action, order the bringing in of the omitted bailor provided he is subject to the jurisdiction of the court.[36] This section does not fully correct our problem because two conditions must be met. First, the courts must consider the bailor a conditionally necessary party. There has been no indication that the courts are inclined to such a proposition.[37] Secondly, the bailor must be subject to the court's jurisdiction. This would not occur in some cases because the bailed property is removed to foreign jurisdictions.

By way of analogy, we can refer to a section in the New York Real Property Law, which protects the interest of those who have a future interest in the land, by requiring that they be made parties to any proceeding for damages.[38] Those who favor legislative action

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release may be negotiated in secret. Thus, the settlement must be a "fair" settlement without fraud or collusion in order to bind the bailor. But what is "fair" may be slightly less in some instances than the actual value. Belli v. Forsyth, 301 Mass. 203, 16 N. E. 2d 656 (1938); National Bond & Investment Co. v. Gill, 123 Pa. Super. 341, 187 Atl. 75 (1936).

[34] Laws of N. Y. 1946, c. 971; see also FED. R. CIV. P. 24.

[35] Laws of N. Y. 1946, c. 971; see also PRASHKER, NEW YORK PRACTICE 184 (1947).

[36] 12 REPORTS OF JUDICIAL COUNCIL 180 (1946).

[37] The writer has been unable to find any case in which there has been a discussion of the desirability of classifying a bailor as a conditionally necessary party.

[38] N. Y. REAL PROP. LAW § 538 which says, "When the ownership of land is divided into a possessory estate for life or for years and one or more future

as the solution to the bailor's problem may well argue: Why not a similar statute to protect the owner-bailor of personal property?

With respect to the heretofore mentioned statement that judicial action could satisfactorily settle our problem, we shall consider two suggestions which could be accepted as a suitable plan for protecting the bailor. The first would apply the well known principle of reason which in substance declares that even though a rule of law is historically true, that fact alone is not an adequate defense for its continued existence and, therefore, it should be modified by decisional law. In cases where the bailee is no longer liable over, he should be restricted to recovering only to the extent of his own interest. The bailor should recover his own damages. Some courts have, under another factual relationship, applied this reasoning. At one time a tenant for life or years could recover for permanent damages to the freehold. The reason for this was that the landlord had no cause of action against the trespasser.[39] In consequence, the tenant was liable over for damages caused by a third person. Later the landlord had a cause of action against strangers. Thus the reason for the earlier rule allowing a tenant to recover for permanent damage ceased to exist and the courts now stated that the tenant could only recover for the damages caused to his interest in the property.[40]

The second and most salutary solution suggested is that before the bailee is allowed to collect in full when he is not liable over, there should be some indication that the owner-bailor acquiesces in the lawsuit. This permission, it is said, may be either expressed or implied.

> . . . if the bailee's collection from the wrongdoer is to bar the bailor from any action against the wrongdoer, the law ought not to allow the bailee to collect full damages, unless that is done with the expressed or implied consent of the bailor.[41]

If the bailor consents to the bailee's commencement of an action for full damages, the heretofore mentioned criticisms may not be raised. Consent in this sense implies authority to act on one's behalf.

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interests, and a person having none of these interests causes damage to such land, the damages recoverable by the owner of such possessory interest from the wrongdoing third person may include damages caused to interests in the affected land other than those owned by parties to the action or proceeding when, but only when, all living persons who have either a possessory or future interest in the affected land are parties thereto . . . ."

39 N. Y. REAL PROP. LAW § 531; Rogers v. Atlantic Gulf & Pacific Co., 213 N. Y. 246, 253, 107 N. E. 661, 662 (1915).

40 Zimmerman v. Shreeve, 59 Md. 357 (1882) (defendant cut timber, lessee recovered compensation only for his interest); Carter v. Cairo R. R., 240 Ill. 152, 88 N. E. 493 (1909) (mining property damaged by defendant, lessee recovered only up to the value of his term); Brouster v. Shell Pipe Line Corp., 16 S. W. 2d 672 (Mo. 1929); Shell Petroleum v. Parker, 37 S. W. 2d 1064 (Tex. 1931); RESTATEMENT, PROPERTY § 118 (1936). *Contra:* Rogers v. Atlantic Gulf & Pacific Co., 213 N. Y. 246, 107 N. E. 661 (1915).

41 Warren, *Qualifying as Plaintiff in an Action for a Conversion*, 49 HARV. L. REV. 1084, 1097 (1936).

It may be presumed, therefore, that the bailor will allow the bailee to act on his behalf only after he is assured that the bailee will carry on with the utmost consideration, in respect to the bailor's interest in the property. If perchance, the bailee, after consent is given, acts in a manner detrimental to the bailor, the answer will not be that a rule of law, but rather that the bailor's own act denied him the consideration to which he is entitled. If the bailor does not consent to the bailee's suit, there is no problem. The bailor will then pursue his own remedies and he cannot complain of his own deeds whatever their consequences. But what of the wrongdoer? This suggestion involves the possibility of two suits against him. Is it not more efficient for the administration of justice and more just to the wrongdoer to settle the matter in one action? There is undoubtedly merit in these contentions. They are counterbalanced, however, when we realize the inadequate consideration given to the bailor under the present principle and that if it were not for the wrongdoer's action, we would have no problem. Moreover, the policy of eliminating multiplicity of suits whenever possible should not be extended to situations wherein one party may be harmed by its enforcement.

It is apparent that this latter recommendation effectually solves our problem. The introduction of this prerequisite to the bailee's commencement of an action for full damages when he is not liable would produce the resultant effect we are seeking; namely, the full protection of the bailor's interest.

PROBLEMS OF THE INVENTOR UNDER THE ATOMIC ENERGY ACT

Introduction

A strange phenomenom of the so-called Atomic Age is that the Atomic Energy Act itself has received so little public discussion.[1] The Act is a relatively radical departure from the precepts normally followed in government activities.[2] A huge and powerful government organization is created and private activity in the same field is proscribed.[3] Private possession of more than a trifling amount of the source materials of atomic energy is forbidden unless under government license for research or medical purposes.[4] Even then

[1] See Marks, *The Atomic Energy Act: Public Administration Without Public Debate,* 15 U. OF CHI. L. REV. 809 (1948). Mr. Marks was General Counsel of the Atomic Energy Commission.

[2] See Miller, *A Law is Passed—The Atomic Energy Act of 1946,* 15 U. OF CHI. L. REV. 799 (1948).

[3] 60 STAT. 759, 42 U. S. C. A. 1804(b) (Supp. 1949).

[4] 60 STAT. 760, 42 U. S. C. A. 1805(a) (Supp. 1949).