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PERSONAL PROPERTY

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Since personal property is one of the comparatively stable fields of the law, one can hardly expect to find in the decisions of a single year even an outline of the entire field. Nevertheless, the personal property cases passed upon by the appellate courts of Georgia during the year under review do point up the fact that the fundamental concepts of personal property law are firmly rooted in our jurisprudence, and are not likely to undergo any radical changes or to be subjected to any unusal interpretations. Indeed, as the cases to be discussed will show, there was in most cases a conflict, not as to the existence or wisdom of the rules of law, but as to whether or not a particular rule fitted the factual situation.

BAILMENTS

A number of the cases under consideration arose out of a bailment relationship, and are interesting in their consideration of the corresponding rights, powers, and duties of bailor and bailee. *McFarland v. Bradley*[1] was a suit for the value of an automobile stored by plaintiff at defendant's parking lot and stolen therefrom during the period of storage. The charge of the trial court was approved by the Court of Appeals, although it was objected to as demanding too much of a bailee. The charge emphasized that the duty of the bailee to protect the property begins with its delivery to him and continues until the purposes of the bailment have been accomplished, and that this duty is not deferred until the bailee discovers, or has reason to discover, that the bailed property is is imminent danger. The detailed charge as to the rights and duties of bailor and bailee seems to be necessary in such cases, in view of the fact that the question of whether the bailee performed his duties with respect to the bailed property is one of fact for the jury.

Two cases emphasized the fact that the degree of care owed by a naked depositary is different from that owed by a bailee for hire. *Williams v. Edwards*[2] was an action in trover for the value of a diamond ring and watch left by plaintiff with defendant to be stored in the latter's grocery store safe. Defendant answered that he stored the items as an accommodation to plaintiff, that his store was burglarized, the safe opened, and the ring and watch taken away, all without any fault of defendant. This answer was held sufficient to relieve defendant of any liability to the bailor, because no neglect of any duty to plaintiff was shown. *Dalton Textile Corp. v. Cooper*[3] hinged upon the right of a naked depositary to terminate the bailment at will. There the defendant in a prior action had tendered into court the amount of money which he admitted owing in the action against

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1. 82 Ga. App. 223, 60 S.E.2d 498 (1950).
2. 82 Ga. App. 76, 60 S.E.2d 538 (1950).
3. 82 Ga. App. 232, 60 S.E.2d 529 (1950).

him. The jury, however, found that he was indebted in a greater amount. After judgment was rendered, but before any steps had been taken to subject the deposited money to partial satisfaction of the judgment, defendant demanded, and the clerk returned to him, the deposited money. Plaintiff in the *Dalton Textile Corp.* case then sought a money rule against the clerk. The court dismissed the rule on the ground that the clerk was a naked depositary and, hence, could terminate the bailment at any time by returning the bailed property to the bailor. What the plaintiff could have done to effect a termination of this bailment, by subjecting the money to satisfaction of his judgment, in no way affects the right of a naked depositary to terminate the bailment at any time while it continues as a gratuitous bailment.

Only one case during the survey period turned squarely on the question of whether a bailment existed in the factual situation. This case was *Tyner & Blackmon v. Fryer Truck & Tractor Co.*,[4] an action for breach of a contract of bailment. Plaintiff had sent its car, by one of its drivers, to defendant for repairs. After effecting some repairs, defendant's mechanic got plaintiff's driver to drive the car on a test run while the mechanic simply rode along to listen to any possible defects in the motor. While on this test run, the car was involved in an accident; damages to plaintiff's car form the basis of this action. A directed verdict for defendant, on the ground that defendant could not be liable for damages caused while plaintiff's agent was in physical control of the car, was reversed on appeal. The evidence was conflicting as to whether or not the bailment had terminated at the time of the accident. If it had not terminated, there was evidence which should have gone to the jury that plaintiff's agent, although driving the car, was doing so at the time of the accident as agent of defendant and under the supervision of defendant's agent, the mechanic. The situation here was held to be outside the scope of Ga. Code Section 12-203, which holds that if the bailor sends his own agent (for example, a driver for his horse), then the bailee can be liable only for his own directions and for gross negligence. This section is interpreted by the court as applying only to situations in which the contract of bailment specifically includes the services of the bailor's agent.

Conversion and Nature of Interest

Since much personal property litigation involves an alleged conversion, it is interesting to note what the courts have considered the essentials of a conversion. In *Rosenberg v. Sund*,[5] a trover action alleging conversion of plaintiff's tractor by defendant, the evidence brought out that defendant did in fact have possession of what was at one time plaintiff's tractor. The tractor had been stolen from plaintiff and cut up into junk pieces, which were then sold to defendant by the thief. On appeal from a judgment for plaintiff—to which he objected as insufficient—the Court of Appeals held that any judgment for plaintiff would have been error. Trover did not lie here because the evidence failed to show a conversion by defendant. It showed, instead, that the only thing defendant agreed to do, or did, was to

4. 83 Ga. App. 393, 63 S.E.2d 695 (1951).
5. 81 Ga. App. 856, 60 S.E.2d 390 (1950).

accept and pay for parts of a tractor, as junk, and as delivered to him in cut up pieces. There was no showing of the conversion by defendant of the tractor itself.

Several cases were decided on the basis of the quantity of an interest in personal property necessary to support an action based upon that interest. In *South v. State*,[6] defendant appealed from a larceny conviction on the ground of a fatal variance between allegation and proof. The indictment alleged that title to the stolen goods was in one person, while the proof showed it to be in a partnership composed of that person and another. The variance was held immaterial, the court reasoning that the interests involved, *i.e.*, that of the partnership and that of the partner as an individual, were so nearly the same that there would be no possibility of defendant's being tried again for the same offense. No other right of defendant was endangered by holding that the variance was immaterial.

The other cases of this type were decided on the question of whether plaintiff in the particular case had sufficient title or interest in the personal property involved to support his action. *Rose City Foods v. Bank of Thomas County*,[7] for example, held that a grantee in a bill of sale to secure debt—even debts subsequently incurred, if the bill of sale so provides—has such an interest in the personalty covered by the bill of sale as will support a cross-action in trover against anyone who wrongfully converts it, including a subsequent grantee whose lien was acquired prior to the acquisition by the first grantee of additional claims to which the prior security was held to apply. *Graham v. Raines*[8] supports the proposition that, upon dissolution of a partnership, the partners became tenants in common as to the partnership property and that, consequently, plaintiff as assignee of one of the former partners could sue in trover for the value of this former partner's interest in personalty stored with defendant by the partnership and still in his possession. The rule that a partner cannot alone maintain an action on a partnership debt was held applicable only to actions *ex contractu*. In *Posey v. Frost Motor Co.*,[9] plaintiff had assigned its retention of title contract to a third party as security for a loan, and after the loan was paid, the contract was redelivered to plaintiff, but without a written assignment back to plaintiff. In a bail trover action to recover possession of the property covered by the retention of title contract, it was held that since plaintiff was in possession of the instrument, he had at least prima facie title to both the instrument and the property covered by it. This prima facie title was held sufficient to support the bail trover action.

In two cases the interest of the plaintiff was held insufficient as the basis of a trover action. In *Lee v. Hamilton*,[10] plaintiff, a county commissioner, had been in possession of an automobile which had been assigned to him by the county for his exclusive use by virtue of his office. While thus in his possession, the car was stolen. In an action in trover for the conversion, the conclusion of the Court of Appeals was that, since plaintiff held the automobile by virtue of his office and not in his own right, then his posses-

6. 83 Ga. App. 332, 63 S.E.2d 614 (1951).
7. 207 Ga. 477, 62 S.E.2d 145 (1950).
8. 83 Ga. App. 581, 64 S.E.2d 98 (1951).
9. 84 Ga. App. 30, 65 S.E.2d 427 (1951).
10. 83 Ga. App. 59, 62 S.E.2d 419 (1950).

sion was the possession of the county; his interest alone would not support the action. This very short opinion belies the fact that there has been considerable controversy on this point. While there have been some vigorous dissenters,[11] the holdings of the Georgia courts on this question have clearly supported the proposition requiring that plaintiff have either a general or a special property, in his own right, in the personalty.[12] Statements are found in many cases[13] to the effect that, to support an action in trover, plaintiff must show either title in himself *or* a right of possession. Close examination of these cases, however, will reveal that the "right of possession" referred to in such cases is really a special property interest, such as the interest of a bailee in bailed property. Possession of the bailee in such a case is in his own right, and not as agent of another. What appears to be the most nearly accurate statement of this point of law is found in *Groover v. Savannah Bank & Trust Co.*,[14] and reiterated in *Cohn v. Rigsby*;[15] to wit, "Absolute title is not essential to the maintenance of an action of trover. An *interest* less than the whole title will be sufficient where it is *coupled with lawful possession* or an immediate right thereto." (Italics supplied.)

The other case in which the interest of plaintiff was held insufficient to support trover was *Browder v. Cox*.[16] There plaintiff sued for recovery of an automobile which had been stolen and had subsequently come into the hands of defendant. Plaintiff was suing for the use of his insurance company which, prior to the filing of this action, had paid plaintiff the full value of the car and had received from him a transfer of all his right, title, and interest in the car. It was held that, since he had transferred all his rights in the car to the insurance company, plaintiff no longer had any interest of any kind which would support an action in trover for recovery of the car.

Deeds as Personal Property

Breen v. Barfield[17] involved an interesting situation which apparently, had been reviewed by the appellate courts of Georgia only once before.[18] The action, begun in the Civil Court of Fulton County, was one of bail trover to recover possession of an undated and unrecorded deed made out to the deceased husband of plaintiff. Several facts, the most important of which was that the alleged value of the deed was the same as the actual value of the land, convinced the Court of Appeals that the action, though in bail trover, was really designed to try title to the land and not to the instrument in question. It was held that, such being the case, the Civil Court of Fulton County had no jurisdiction; actions trying title to land must be brought in the superior court.

11. See dissenting opinion in Mitchell v. Ga. & Ala. Ry. Co., 111 Ga. 760, 36 S.E. 971 (1900).
12. Central of Ga. Ry. Co. v. Greene & Co., 41 Ga. App. 794 (6), 154 S.E. 809, 810 (1930); Paschal v. Godley, 34 Ga. App. 321, 129 S.E. 565 (1925); Andrew v. George Muse Clothing Co., 44 Ga. App. 291, 161 S.E. 296 (1931).
13. Groover v. Iler, 1 Ga. App. 77, 57 S.E. 906 (1907); Gordon & Co. v. Atlantic Coast Line Ry. Co., 7 Ga. App. 354, 66 S.E. 988 (1910); Gay v. Medlock, 11 Ga. App. 478, 75 S.E. 821 (1912); Dudley v. Isler, 21 Ga. App. 615, 94 S.E. 827 (1918).
14. 186 Ga. 476, 198 S.E. 217 (1938).
15. 60 Ga. App. 728, 729, 5 S.E.2d 93, 94 (1939).
16. 83 Ga. App. 738, 64 S.E.2d 460 (1951).
17. 82 Ga. App. 204, 60 S.E.2d 513 (1950).
18. Dobbs v. First National Bank of Atlanta, 65 Ga. App. 796, 16 S.E.2d 485 (1941).

LIENS AND WAREHOUSE RECEIPTS

Most of the remaining personal property cases decided during the survey period were concerned with the relative superiority of certain kinds of liens on personal property. While these cases, perhaps, belong more properly under the heading of Security Transactions, they do involve definite questions of personal property law, and for that reason will be discussed briefly here.

Strickland Motors, Inc. v. State[19] concerned the rights of a conditional seller to intervene and protect his interest in an automobile which was seized while illegally transporting intoxicating liquors. It was held in this case that Ga. Laws 1946, p. 96, 101, par. (g), Ga. Code Ann. Section 58-207 (g)—providing for the protection of such lienholders in condemnation proceedings—afforded adequate protection for them. The conditional seller here did not satisfy the jury that "the illegal use of the property was without his knowledge, connivance, or consent, express or implied," as required by the act.

Mercer v. Shiver[20] held, squarely in accordance with Ga. Code Ann. Section 111-431, that a warehouseman's lien is lost when he surrenders the personal property to the owner, notwithstanding the fact that he did so on the strength of the owner's oral promise to pay the storage charges.

Williams v. Russell[21] involved the question of the relative priority of the claims of two creditors to the personalty of an absconded debtor. In 1946 the debtor had executed a bill of sale of all of his goods to secure a note held by Creditor No. 1. This bill of sale was executed and delivered, but was never recorded, having been lost. Creditor No. 1 secured another bill of sale to take the place of the lost one, and this second bill of sale was recorded a few days prior to the filing of this action by Creditor No. 2, who also held certain notes of the debtor. Creditor No. 2 attached the personalty, and it was levied on, but for some reason he did not file a declaration in attachment. Priority was given to Creditor No. 1 on the ground that Creditor No. 2 lost whatever priority he might have gained had he filed his declaration in attachment prior to the recording of the second bill of sale obtained by Creditor No. 1. Diligence should be rewarded in the absence of any attempt to hinder, delay, or defraud creditors.

Graham v. Frazier[22] spotlights the effect of a warehouseman's receipt issued in compliance with the Uniform Warehouse Receipts Act as adopted in Georgia.[23] This case held that delivery of such a receipt as a pledge and pawn for money owing to a bank by the warehouseman passed title and amounted to a constructive delivery of the commodity. The warehouseman subsequently had no title and could pass none by delivering the commodity to a third person. This decision is in complete accord with the aims of the act, one of which aims was to make the receipt the only true proof of title. A case upholding the conclusiveness of statements made in these receipts is *Millender v. Looper*,[24] which held that such statements cannot be contradicted by parol evidence.

19. 81 Ga. App. 824, 60 S.E.2d 254 (1950).
20. 81 Ga. App. 815, 60 S.E.2d 263 (1950).
21. 82 Ga. App. 529, 61 S.E.2d 567 (1950).
22. 82 Ga. App. 185, 60 S.E.2d 833 (1950).
23. GA. CODE ANN. § 111-401 *et seq.* (Supp. 1947).
24. 82 Ga. App. 563, 61 S.E.2d 573 (1950).

Meders v. Wirchball[25] held that liens against personalty can be established only in accordance with Ga. Code Section 67-2002. Defendant repairman in that case was held not to have complied with this section. The court, nevertheless, went on to point out that, even if he had complied with the section, he still could not have set up this lien—which arises *ex contractu*—as a defense to a trover (tort) action.

Miscellaneous

East Atlanta Bank v. Nicholson[26] is of interest primarily because it teaches the danger inherent in reliance upon apparent ownership of personalty. There defendant had left three automobiles with a used car dealer under an agreement whereby the latter would sell them and the profits would be equally divided. The dealer, instead of selling the cars, executed bills of sale to them to plaintiff bank as security for a loan. The bank admittedly made the loan in complete reliance on the dealer's representations that the cars were his. When the bank later sued in trover for the possession of the cars, it was held that the bank, by relying solely upon the dealer's representations, had failed to exercise proper diligence in the protection of its interests. Defendant's title in the automobiles prevailed.

The essentials of a gift of personalty was the gist of the action in *Combs v. Spurling*.[27] There the brother of defendant's deceased wife claimed title to certain household furnishings on the ground that deceased had made a parol gift of these items to him prior to her death. Since none of the items had been removed from defendant's home, a directed verdict for defendant was affirmed. Plaintiff had failed to show a delivery, one of the essentials of a parol gift of personalty.

Legislation

There were only three laws passed by the last session of the General Assembly affecting personal property rights. The first of these was Ga. Laws 1951, p. 29, which amended Ga. Code Section 29-407. This Code Section had validated deeds (whether to realty or personalty) which were defective in that the caption showed the instrument to have been executed in a county different from the one in which the official attesting witness had power to witness such instruments. The instrument, however, must have been executed within the state. The effect of Ga. Laws 1951, p. 29, was to make this section equally applicable to instruments executed outside the state.

A corollary to this act was Ga. Laws 1951, p. 261, which made all such instruments equally entitled to record, provided they are not excluded from record on some other ground.

The third act was Ga. Laws 1951, p. 207, which amended Ga. Code Section 24-2715, to provide that in counties having a population of more than 117,000 the clerk of the superior court may provide separate index books for the recording of instruments affecting real estate and personal property.

25. 83 Ga. App. 408, 63 S.E.2d 674 (1951).
26. 83 Ga. App. 557, 63 S.E.2d 699 (1951).
27. 83 Ga. App. 854, 65 S.E.2d 63 (1951).