

## BAILMENT.

*Edwards v. Newland & Co.*<sup>1</sup> is a decision that should be noted by owners of furniture depositaries. Somervell and Denning L.JJ. held that a contract to store furniture is one where the personal care of the bailee is of the essence of the contract, so that if the bailee, without agreement with the bailor, hands the goods to a sub-bailee, he is in breach of his contract *ab initio*. Tucker and Somervell L.JJ. also held that, apart from the doctrine of personal care being the essence of the contract, the contract of bailment relating to storage implies essentially that the bailee will not part with the custody. Both approaches lead to the same result that, if the goods, while in the hands of the sub-bailee, are destroyed by enemy action or theft, it is no defence to the bailee that the sub-bailee exercised all reasonable care. The bailee can escape, according to the doctrine of *Lilley v. Doubleday*<sup>2</sup>, only where the risk is independent of his acts and inherent in the property itself. The instant case makes it clear that this doctrine is not confined to carriers who make an unauthorised deviation, but applies to all bailments, save where there is an express or implied permission from the bailor to delegate the control to a sub-bailee. Thus, in a case where a car is delivered to a garage for repairs, there may be implied permission to send it to the factory for certain tests.

The bailee in *Edwards v. Newland* was in a difficulty concerning proof of facts. Apparently owing to a misapprehension of the law, the bailee conducted the case in the court below on the ground that the sub-bailee exercised reasonable care, and therefore that the bailee was not liable. This point failing in the Court of Appeal, the bailee then wished to allege that the sub-bailee was negligent so as to obtain an indemnity from the sub-bailee as a third party, but it was held to be too late to raise that point.

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1. (1950) 66 T.L.R. (Pt. 2) 321.
2. (1881) 7 Q.B.D. 510.

## CHARITY: BEQUEST TO GOVERNMENT DEPARTMENT.

Whilst it is fairly well established that gifts to the Government in aid of revenue are charitable in the legal sense, the effect of a gift to a particular department of the Government has lacked authority. This question, together with others less noteworthy, was raised before Dean J. in *Re Cain*<sup>1</sup> by the testator's gift of a fourth part of his residuary estate to "The Children's Welfare Department, Railway Buildings, Flinders Street, Melbourne." As the department lacked legal standing, being neither a legal entity nor an unincorporated society, the testator had failed to designate any certain beneficiary. It was impossible to regard the gift to the department as a gift to the Government itself.

1. [1950] A.L.R. 796.