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Proof of Theft of Bailed Goods Does Not of Itself Rebut Presumption of Bailee's Negligence.

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CASE NOTES

BAILMENTS—Evidence—Proof of Theft of Bailed Goods Does Not of Itself Rebut Presumption of Bailee's Negligence

Classified Parking Systems v. Dansereau,

535 S.W.2d 14 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

Ron Dansereau entered into an agreement with Classified Parking Systems by which he was allowed to park his car in a lot owned by Classified for a period of approximately six weeks. In return, Dansereau paid Classified a ten dollar fee. To enable the attendants to move the car when necessary to gain access to other vehicles in the lot, Classified required Dansereau to leave his keys in the ignition each day. Dansereau exercised this parking privilege for approximately one month, sometimes parking the car himself and sometimes allowing an attendant to park it. On September 14, 1970, however, when Dansereau went to the lot in the late afternoon to reclaim his car after having parked it there early that morning, the vehicle was missing. Several weeks later, the Houston police returned Dansereau's car to him, stripped of several accessories as well as the engine, wheels, and transmission. Neither party contested the fact that the auto had been stolen and stripped.

Dansereau sued to recover the value of his car and was awarded \$3,000 damages. Classified appealed, contending that judgment should not have been rendered for Dansereau because no negligence was alleged, and that any presumption of negligence established by Classified's failure to redeliver the auto was rebutted by the proof that the car had been stolen. Held—*Affirmed*. A presumption of negligence on the part of a bailee is established by his failure to return the bailed goods on demand and the bailee may not rebut this presumption of negligence simply by showing that the bailed items were stolen, but must show that the theft occurred without his negligence.¹

When an owner of personal property intentionally relinquishes control of that property to another with the understanding that the property will later be returned to him, he creates a bailment.² Where the bailment is for the

1. *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

2. A frequent question in parking lot cases is whether or not a bailment was created. The lease of a parking space where the owner simply parks and locks his car constitutes only a landlord-tenant or a licensor-licensee relationship. On the other hand, when the owner surrenders possession of his car to an attendant who then parks it, retains the keys, and assumes control over it, a bailor-bailee relationship is created. The

mutual benefit of the two parties, as is a bailment for hire, then the bailee has the responsibility of exercising ordinary care.³ Thus, in order to recover for lost or damaged property, the bailor has the burden of proving that the bailee departed from the standard of ordinary care.⁴ The courts, however, have almost universally recognized a presumption of the bailee's negligence where the bailee is unable to redeliver the goods or where he redelivers them in a damaged condition.⁵ The rationale behind this presumption is that the bailee is always in a better position to offer proof of his own care for the bailed property than is the bailor to offer proof of negligence.⁶ Consequently, the burden of proceeding with the evidence is on the bailee.⁷ If he can show that the loss was not due to his negligence, then the presumption "disappears" and the bailor is charged with presenting specific allegations of negligence.⁸

lot operator must have the intent to exercise control for there to be a bailment. *Panhandle S. Plains Fair Ass'n v. Chappell*, 142 S.W.2d 934, 936 (Tex. Civ. App.—Amarillo 1940, no writ); *McAshan v. Cavitt*, 149 Tex. 147, 150, 229 S.W.2d 1016, 1018 (1950); C. SMITH & R. BOYER, *SURVEY OF THE LAW OF PROPERTY* 465-66 (2d ed. 1971).

3. *E.g.*, *Allright, Inc. v. Elledge*, 515 S.W.2d 266, 268 (Tex. 1974); *Allright, Inc. v. Yeager*, 512 S.W.2d 731, 733 (Tex. Civ. App.—Houston [1st Dist.] 1974, writ ref'd n.r.e.); *Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd). "Ordinary care" has been defined as "that degree of care, skill, and diligence, respectively, that an ordinarily prudent person would use in the transaction of his own business under like or similar circumstances." *Guitar v. Randel*, 147 S.W. 642, 647 (Tex. Civ. App.—El Paso 1912, writ ref'd).

4. *Trammell v. Whitlock*, 150 Tex. 500, 504, 242 S.W.2d 157, 159 (1951); *Hislop v. Ordner*, 67 S.W. 337, 338 (Tex. Civ. App. 1902, no writ).

5. *E.g.*, *National Broadcasting Co. v. Rose*, 215 A.2d 123, 126 (Conn. 1965); *Gaudin Motor Co. v. Wodarek*, 356 P.2d 638, 639 (Nev. 1960); *Shoreland Freezers, Inc. v. Textile Ice & Fuel Co.*, 129 S.E.2d 424, 425 (S.C. 1963). *See generally* 9 J. WIGMORE, *EVIDENCE* § 2508, at 375-76 (3d ed. 1940). This presumption has long been recognized in Texas. *E.g.*, *Trammell v. Whitlock*, 150 Tex. 500, 504-05, 242 S.W.2d 157, 159 (1951); *Allright Parking Sys., Inc. v. Deniger*, 508 S.W.2d 127, 128 (Tex. Civ. App.—Eastland 1974, no writ); *H.O. Dyer, Inc. v. Steele*, 489 S.W.2d 686, 688 (Tex. Civ. App.—Houston [1st Dist.] 1972, no writ); *see Mims v. Mitchell*, 1 Tex. 443, 448 (1846).

6. *Callihan v. Montrieff*, 71 S.W.2d 564, 569 (Tex. Civ. App.—Fort Worth 1934, writ ref'd).

7. Cases cited note 5 *supra*. The courts have made a distinction between the burden of proof and the burden of going forward with the evidence. The burden of proof remains at all times on the bailor, as it is he who brings the suit and he who must convince the jury if he is to recover. When he establishes the presumption of negligence, however, the bailor makes a prima facie case. The burden of going forward with the evidence, or of rebutting the presumption, then falls on the bailee. Thus, the burden of going forward with the evidence shifts, whereas the burden of proof does not. *Buchanan v. Byrd*, 519 S.W.2d 841, 843 (Tex. 1975); *Trammell v. Whitlock*, 150 Tex. 500, 504-05, 242 S.W.2d 157, 159 (1951). Contrary to this well-established rule, some jurisdictions hold that the burden of proof, as well as the burden of proceeding with the evidence, shifts to the bailee when the bailor makes a prima facie case for recovery. *E.g.*, *Low v. Park Price Co.*, 503 P.2d 291, 294 (Idaho 1972).

8. *Falls Church Airpark Co. v. Mooney Aircraft, Inc.*, 254 F.2d 920, 923-24 (5th Cir. 1958); *H.O. Dyer, Inc. v. Steele*, 489 S.W.2d 686, 688 (Tex. Civ. App.—Houston

The Texas courts have consistently held that a bailee can also rebut a presumption of his negligence by successfully proving that the bailed property was lost or damaged by theft or fire.⁹ By simply proving that the bailed property was stolen or burned, the bailee was relieved of showing due care and the burden of proceeding with the evidence again shifted to the bailor.¹⁰ Only when the bailor made specific allegations concerning the bailee's negligence in failing to prevent the fire or theft, or in failing to take precautions to prevent further loss after the fact, did the bailee sustain the burden of showing that he exercised proper care over the bailed goods.¹¹

In a recent case, *Buchanan v. Byrd*,¹² the Texas Supreme Court was asked to extend the fire and theft exception to include other situations. Not only did the court refuse to make this extension, but it questioned the exception itself, stating: "[T]he rule applied in Texas fire and theft cases is contrary to the weight and trend of modern authorities. . . . We are convinced that the rule should be reexamined in an appropriate case instead of extending its application to other types of bailment losses."¹³ This dictum

[1st Dist.] 1972, no writ); *Upper Valley Aviation, Inc. v. Fryer*, 392 S.W.2d 737, 740 (Tex. Civ. App.—Corpus Christi 1965, writ ref'd n.r.e.). The case goes to the jury where the presumption is not considered. *Alpine Forwarding Co. v. Pennsylvania R.R.*, 60 F.2d 734, 736 (2d Cir.), cert. denied, 287 U.S. 647 (1932); *Trammell v. Whitlock*, 150 Tex. 500, 505, 242 S.W.2d 157, 159 (1951). If the presumption is not rebutted, the bailee is subject to a directed verdict for the bailor. *Beck v. Lasater*, 286 S.W.2d 957, 959 (Tex. Civ. App.—Amarillo 1956, writ ref'd n.r.e.); see *Stringer v. Yarbrough*, 378 S.W.2d 416, 417 (Tex. Civ. App.—El Paso 1964, writ ref'd n.r.e.).

9. *E.g.*, *Wagner v. Betts*, 496 S.W.2d 190, 194 (Tex. Civ. App.—Tyler 1973, writ ref'd n.r.e.) (theft); *McElroy v. General Texas Asphalt Co.*, 427 S.W.2d 719, 720 (Tex. Civ. App.—Waco 1968, writ ref'd n.r.e.) (fire); *Irish v. Virdell*, 379 S.W.2d 935, 936-37 (Tex. Civ. App.—Austin 1964, writ ref'd) (fire); *Davis v. Hasdorff*, 207 S.W.2d 424, 425 (Tex. Civ. App.—San Antonio 1947, no writ) (theft).

10. *E.g.*, *Wagner v. Betts*, 496 S.W.2d 190, 194 (Tex. Civ. App.—Tyler 1973, writ ref'd n.r.e.) (theft); *Allright, Inc. v. Brubaker*, 473 S.W.2d 593, 594 (Tex. Civ. App.—Houston [14th Dist.] 1971, no writ) (theft); *Western Woods Prods. Co. v. Bagley*, 274 S.W.2d 111, 112 (Tex. Civ. App.—Texarkana 1954, writ ref'd n.r.e.) (fire); *Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd) (fire); cf. *Cleaver v. Drake-Brannum Constr. Co.*, 195 S.W. 206, 207 (Tex. Civ. App.—Galveston 1917, no writ) (flood).

11. See, *e.g.*, *McAshan v. Cavitt*, 149 Tex. 147, 229 S.W.2d 1016 (1950) (preventing initial loss); *Western Woods Prods. Co. v. Bagley*, 274 S.W.2d 111, 114 (Tex. Civ. App.—Texarkana 1954, writ ref'd n.r.e.) (preventing further loss or taking precautions after loss); *Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd) (preventing initial loss).

12. 519 S.W.2d 841 (Tex. 1975).

13. *Id.* at 844. This case involved recovery for a horse which had been bailed to a stable. The horse escaped and was killed by a train. The bailee alleged that proof of the accident involving the train should be sufficient to rebut the presumption of negligence. The court ruled otherwise. *Id.* at 844.

Several prior Texas cases had attempted to minimize the fire and theft exception. *Allright Parking Sys., Inc. v. Deniger*, 508 S.W.2d 127 (Tex. Civ. App.—Eastland 1974, no writ) (bailor's limited proof sufficient to require bailee to present evidence of his lack

in *Buchanan* became the basis for the reexamination of the Texas fire and theft exception by the Houston Court of Civil Appeals in *Classified Parking Systems v. Dansereau*.¹⁴

Essentially, *Dansereau* destroys the exception concerning theft.¹⁵ This decision requires a bailee to prove that proper care was exercised, even where the loss was caused directly by the criminal acts of a third party.¹⁶ Thus, if the bailee cannot show that ordinary care was exercised to prevent theft, he then becomes liable for the value of the stolen goods.¹⁷ To avoid liability, proof is required that the property was stored in a location that a reasonable man would consider sufficiently safe from theft, that adequate precautions were taken to secure the property, and that once the theft occurred adequate steps were taken to recover the property.¹⁸

Although the *Dansereau* opinion deals exclusively with theft, this case impliedly overrules the exception concerning fire because both fire and theft

of negligence in theft case); *Callihan v. Montrief*, 71 S.W.2d 564 (Tex. Civ. App.—Fort Worth 1934, writ ref'd) (proof of fire without proof of negligence insufficient to rebut presumption of negligence in a gratuitous bailment); *Exporters' & Traders' Compress & Warehouse Co. v. Shulze*, 253 S.W. 702 (Tex. Civ. App.—Austin 1923) (fire without proof of lack of negligence insufficient to rebut presumption), *rev'd*, 265 S.W. 133 (Tex. Comm'n App. 1924, jdgmt adopted); *Staley v. Colony Union Gin Co.*, 163 S.W. 381 (Tex. Civ. App.—Amarillo 1914, no writ) (implied that proof of lack of fault by bailee was necessary, or at least desirable). Until *Buchanan*, however, the exception remained well-fixed in Texas law. *See, e.g.*, *Allright Texas, Inc. v. Simons*, 501 S.W.2d 145 (Tex. Civ. App.—Houston [1st Dist.] 1973, writ ref'd n.r.e.); *H.O. Dyer, Inc. v. Steele*, 489 S.W.2d 686 (Tex. Civ. App.—Houston [1st Dist.] 1972, no writ); *Allright, Inc. v. Brubaker*, 473 S.W.2d 593 (Tex. Civ. App.—Houston [14th Dist.] 1971, no writ).

14. 535 S.W.2d 14 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

15. *Id.* at 16.

16. *See id.* at 14.

17. *Id.* at 15. In all respects, the bailee for the mutual benefit of both parties must exercise such care as a reasonable prudent man would exercise. Cases cited note 3 *supra*.

18. *See Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 15 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ); *accord*, *Allright Texas, Inc. v. Simons*, 501 S.W.2d 145, 147 (Tex. Civ. App.—Houston [1st Dist.] 1973, writ ref'd n.r.e.) (lack of precautions to secure property); *Ablon v. Hawker*, 200 S.W.2d 265, 268 (Tex. Civ. App.—Dallas 1947, writ ref'd n.r.e.) (storage of car in building without barriers or obstructions to keep strangers out after parking lot closed found to be reasonable and not indicative of lack of ordinary care); *Rhodes v. Turner*, 171 S.W.2d 208, 211 (Tex. Civ. App.—Fort Worth), *motion for leave to file petition for mandamus overruled sub nom.*, *Rhodes v. McDonald*, 141 Tex. 478, 172 S.W.2d 972 (1943) (storage of car in outdoor lot without railings on one side and part of another such that cars could be quickly stolen and driven directly into street found to be evidence of negligence); *cf.* *Western Woods Prods. Co. v. Bagley*, 274 S.W.2d 111, 114 (Tex. Civ. App.—Texarkana 1954, writ ref'd n.r.e.) (fire); *Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd) (fire).

In his brief, the attorney for *Classified* alleged that damages should be reduced because of *Classified's* prompt action in notifying police and acting as a reasonable man would in order to facilitate recovery of the car. Brief for Appellant at 12, *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ). In

have traditionally been considered to be covered by a single exception.¹⁹ In the event of destruction by fire, *Dansereau* may require that the bailee show that he took adequate precautions to prevent the outbreak of the fire and adequate steps to extinguish the fire once it had begun.²⁰ He must also show that a reasonable man would not have stored the goods in a fireproof building.²¹

Dansereau abrogates previous Texas holdings that no presumption of negligence is raised by the destruction of the bailed property by fire or theft.²² The presumption of negligence is now raised in all cases, regardless of the method by which the damage or loss occurred. Thus, because of the *Dansereau* decision, a bailee in Texas can no longer rebut the presumption of his negligence by a simple showing that the bailed property was stolen or burned, because these contingencies now raise the presumption of his negligence just as any other loss.²³

One consequence of the *Dansereau* decision is that the burden of proceeding with the evidence now remains on the bailee even when the loss by theft or fire is proven.²⁴ Where previously, the showing by the bailee of loss by

a prior case, the court awarded damages to a bailor including the amount which he had spent to recover his car when the bailee made insufficient efforts to recover the car. *Rhodes v. Turner*, 171 S.W.2d 208, 212 (Tex. Civ. App.—Fort Worth), *motion for leave to file petition for mandamus overruled sub nom.*, *Rhodes v. McDonald*, 141 Tex. 478, 172 S.W.2d 972 (1943).

19. Almost without exception, the Texas courts have referred to this exception by using the words "fire and theft" regardless of which situation the case included. The same rule has always been applied to either contingency. *See, e.g.*, *Buchanan v. Byrd*, 519 S.W.2d 841, 844 (Tex. 1975); *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ); *Allright, Inc. v. De Wint*, 487 S.W.2d 182, 184 (Tex. Civ. App.—Houston [1st Dist.] 1972, no writ).

20. *See Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 15 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ); *accord*, *Western Woods Prods. Co. v. Bagley*, 274 S.W.2d 111, 114 (Tex. Civ. App.—Texarkana 1954, writ ref'd n.r.e.); *Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd).

21. *See Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

22. *Compare Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ), *with Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd), *and Davis v. Hasdorff*, 207 S.W.2d 424, 425 (Tex. Civ. App.—San Antonio 1947, no writ).

23. *Compare Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ) (procedure outlined for proving case in which fire or theft is involved), *with Astronauts Warehouses, Inc. v. Adams Sales Co.*, 508 S.W.2d 171 (Tex. Civ. App.—San Antonio 1974, no writ) (in suit involving neither fire nor theft, bailor recovered because he presented prima facie case and there was insufficient proof of bailee's due care), *and Houston Aviation Prods. Co. v. Gulf Ports Crating Co.*, 422 S.W.2d 844 (Tex. Civ. App.—Houston 1967, writ ref'd n.r.e.) (bailor could not recover for damage against bailee because he could not prove that bailed property was in good condition when bailed).

24. The fact that the presumption of negligence is not rebutted by the simple proof of theft or fire means that the burden of proceeding with the evidence does not change, but rather that it continues to be upon the bailee. *See Classified Parking Sys. v.*

fire or theft caused the burden of proceeding with the evidence to shift back to the bailor, *Dansereau* prevents such a shift until the bailee shows not only the loss by fire or theft, but also his own lack of negligence concerning that loss.²⁵ *Dansereau* logically leaves the burden of proceeding with the evidence on the bailee, the party to whom direct access to the facts is usually most available.

Perhaps the most important result of the change implemented by *Dansereau* concerns the right of recovery in those cases where the cause of the loss is unknown.²⁶ In cases where the bailed property was stolen, but neither party knows when, how, or by whom, and in cases where destruction was by fire of an unknown origin, *Dansereau* allows recovery by the bailor, because the bailee would probably be unable to show that he exercised due care.²⁷ Under the previous rule, however, recovery would have been denied in such a case and the bailor left without a remedy because the bailor could not have proven negligence on the part of the bailee.²⁸

Because the bailor may now recover from the bailee in those cases in which neither party is aware of the exact circumstances surrounding the loss, a potentially greater liability is placed on the bailee. The bailee is now liable for damage to bailed property, even in those cases where he has exercised proper care, if he is unable to show the exact circumstances surrounding the fire or theft.²⁹ The bailee is liable for the value of the bailed goods even when he has exercised ordinary care over them if he is unable to present evidence of that care sufficiently convincing to satisfy the jury.³⁰

Public policy requires that this additional burden be placed on the bailee since the bailee is in the best position to testify as to the circumstances

Dansereau, 535 S.W.2d 14, 15-16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

25. *Compare* *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ) (burden of proceeding remains with bailee), *with* *Allright, Inc. v. Brubaker*, 473 S.W.2d 593, 594-95 (Tex. Civ. App.—Houston [14th Dist.] 1971, no writ) (burden shifted upon proof of theft), *and* *Mustang Aviation, Inc. v. Ridgway*, 231 S.W.2d 677, 678 (Tex. Civ. App.—Dallas 1950, writ ref'd) (burden shifted upon proof of fire).

26. Comment, *Presumptions and the Burden of Proving a Bailee's Negligence: Sufficiency of Proof to Rebut a Bailor's Prima Facie Case*, 31 TEXAS L. REV. 46, 47 (1952).

27. *See* *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

28. *See* *Texas City Terminal Ry. v. American Equitable Assurance Co.*, 130 F. Supp. 843, 863 (S.D. Tex. 1955) (recovery denied, partially because bailor could not prove negligence on the part of the bailee because fire and explosion of fertilizer destroyed evidence); *Irish v. Virdell*, 379 S.W.2d 935, 936 (Tex. Civ. App.—Austin 1964, writ ref'd) (fire of undetermined origin caused destruction of bailor's truck and bailor could prove no negligence so recovery was denied).

29. *See* *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

30. *Id.* at 16.

surrounding the loss of the bailed property and such information is "peculiarly within his own knowledge."³¹ Thus he should be aware of the occurrence of the loss as well as the reasons therefor.³² Because he is charged with exercising ordinary care over the bailed goods,³³ it is more equitable that the bailee bear liability even when it cannot be positively determined that he was actually negligent. In such cases, there is no question of the lack of negligence of the bailor; and because the loss must be borne by one of the two parties, it would appear more equitable to place the burden of liability on the bailee, the party which is most likely to have been negligent. It is patently unjust to allow a bailee to escape all liability for the bailed goods through mere proof that the property burned or was stolen without also proving due care.³⁴ This is particularly true in cases such as *Dansereau* where the apparent negligence of the bailee proximately caused the theft or fire which resulted in the loss.³⁵ Additionally, placing the burden upon the bailee will act as an incentive for bailees to exercise greater caution in their treatment of goods entrusted to them.

The *Dansereau* decision makes the case for recovery easier for the bailor, because a presumption of negligence is now raised in all bailment cases when the bailed property is not returned in the same condition as when it was bailed. Despite the fact that the burden placed on the bailee is more severe, it is more equitable that he bear the burden of showing his care to prevent fire and theft than to require that the bailor prove lack of such care.

Practically, *Dansereau* aligns Texas with a majority of other states by abandoning the philosophy that bailed property lost by fire or theft should be treated differently from bailed property lost or damaged by other means. It represents a simplification of our system of recovery in bailment cases and insures greater justice for the parties concerned. It is probable that other Texas courts will follow the *Dansereau* decision since it is the first "appropriate case" to have been decided since the Texas Supreme Court questioned the fire and theft exception in *Buchanan v. Byrd*.³⁶

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31. *Callihan v. Montrief*, 71 S.W.2d 564, 569 (Tex. Civ. App.—Fort Worth 1934, writ ref'd).

32. *Id.* at 569.

33. Cases cited note 3 *supra*.

34. See *Classified Parking Sys. v. Dansereau*, 535 S.W.2d 14, 16 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ); Comment, *Presumptions and the Burden of Proving a Bailee's Negligence: Sufficiency of Proof to Rebut a Bailor's Prima Facie Case*, 31 TEXAS L. REV. 46, 55 (1952).

35. In numerous bailment cases, the negligence of the bailee was directly responsible for the loss. See, e.g., *Classified Parking Sys. v. Kirby*, 507 S.W.2d 586 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ); *H.O. Dyer, Inc. v. Steele*, 489 S.W.2d 686 (Tex. Civ. App.—Houston [1st Dist.] 1972, no writ); *Ablon v. Hawker*, 200 S.W.2d 265 (Tex. Civ. App.—Dallas 1947, writ ref'd n.r.e.).

36. 519 S.W.2d 841, 844 (Tex. 1975).