

INTRODUCTION TO LAW

CASE NOTES



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SAMPLE

Coggs v Bernard (1703) 2 Ld Raym 909

Source: <http://www.commonlii.org/int/cases/EngR/1790/371.pdf>

Note: Old English cases such as these can be difficult to locate. They are worth your time because they not only provide an understanding of the prevailing common law at the time; they also serve as a 'road map' of judicial reasoning and can articulate the social and political themes of the era. They also serve to demonstrate how effective the use of 'plain English' is in modern judgments.

Court details: Lord Raymond's King's Bench (United Kingdom).

Procedural history: The case was heard on appeal.

Facts:

- The plaintiff in the matter is Coggs.
- The defendant was Bernard.
- The defendant undertook to remove goods consisting of 'several hogsheads of brandy' from one cellar to another.
- The defendant was not a porter by trade and was not paid for his service.
- When relocated to the second cellar, one of the casks was 'staved, and a great quantity of brandy, viz. so many gallons of brandy was spilt'.
- The defendant pleaded not guilty at first instance but was found guilty – he owed a duty of care.
- The appeal was brought by form of 'a motion to arrest judgment, that the declaration is insufficient, because the defendant is neither laid to be a common porter, nor that he is to have any reward for his labour. So that the defendant is not chargeable by his trade, and a private person cannot be charged in an action without reward'.

Issue: Whether the defendant had acted negligently when doing 'the office' (bailment) for another.

Reasoning / Decision (Commentary): Here, an early statement of law is made in the judgment – 'If a man undertakes to carry goods (a) safely and securely, he is responsible for any damage they may sustain in the carriage thro' his neglect tho' he was not a common carrier and was to have nothing for the carriage'.

It was considered that if a man undertakes, 'to do a thing without hire, no action lies for the nonfeasance: but if he enters upon the doing it, action lies for a misfeasance, if through his own neglect or mismanagement, because it is a deceit; but not if by mere accident'.

The case also serves to two subsequent purposes. The first (and most applicable for introductory law students) is to provide the importance of precedent. This is reflected in Sir John Powell's quote: 'Lest us consider the reason of the case. For nothing is law that is not reason. Upon consideration of the authorities cited, I find no such difference'.

The second is authority categorising the forms of bailment. Holt CJ proposed the following six categories:

- 1) A bare naked bailment of goods. That is delivery of goods from one to another to keep for use of the bailor (a *depositum*) as mentioned in *Southcote's case* (1601) Cro Eliz 815.
- 2) Lending goods or chattels of use to friend to be used by them (a *commodatum*).
- 3) Leaving goods with a bailee on provision of hire (*locatio et conduction*).
- 4) Goods or chattels are delivered to another as security for money borrowed by the bailor.
- 5) Goods or chattels are delivered to be transported for payment.
- 6) Goods or chattels are delivered to be transported without payment (for gratis).

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