

BAILEE—BAILMENT OF CHATTEL—LOSS OF CHATTEL BAILED BY NEGLIGENCE OF WRONG-DOER—POSSESSORY TITLE AS AGAINST WRONG-DOER—MEASURE OF DAMAGES.

The Winkfield (1902) P. 42, was an admiralty action, in which the Postmaster-General claimed to recover out of a fund in court as the damages resulting from the loss of a vessel by collision, a large sum by way of damages for the loss of certain mail bags and other contents in the vessel which had been sunk in the collision. Jeune, P.P.D., had dismissed the claim on the ground that the Postmaster-General was under no liability to the owners of the letters and parcels which had been lost, and was therefore under the case of *Claridge v. South Staffordshire Tramway Co.* (1892, 1 Q.B. 422, precluded from recovering their value. The argument in the Court of Appeal therefore turned principally on the question whether a bailee under no personal liability to the bailor could recover for the loss of the bailment occasioned by the negligence of a wrong-doer. The point was elaborately argued before the Court of Appeal Collins, M.R., and Stirling and Mathew, L.J.J., who came to the conclusion that the bailee could recover and that *Claridge's case* was erroneously decided. The Master of the Rolls, who delivered the judgment of the court, affirms that the root principle is that "as against a wrong-doer possession is title," and though the bailee may not be liable for the loss, yet, as in this case, if he recovers the value of the thing bailed, he must then account therefor to his bailor, and a recovery by the bailee would be an answer to any action by the bailor. The case is an important addition to the law of bailment.

PROBATE ACTION—ACTION TO REVOKE PROBATE GRANTED UPON PROOF IN SOLEMN FORM—RES JUDICATA—FRAUD CHARGED AGAINST PERSON NOT PARTY TO FORMER SUIT.

Birch v. Birch (1902) P. 62, was an action to revoke a probate granted upon proof of a will in solemn form in a former action. The plaintiff had been a party defendant in the former suit, but now claimed that the will in question had been obtained by the fraud of a beneficiary under the will who was not a party to the former proceedings. The defendants applied to stay the proceedings and dismiss the action on the ground that the matter was res judicata. Barnes, J., refused the motion, on the ground that a probate action differs from other actions, and that though no fraud