

in which the defendant was held not liable. I think that case can be distinguished; but, even if it cannot, it is not a decision that I am obliged to follow.

In cases like this, the question whether there is actionable negligence must be determined in the light of all the circumstances of the particular case in hand; and it does not follow, because in one case there was found to be no actionable negligence, that in another case resembling it, though not in all respects similar, the same conclusion must be reached.

No doubt, this is a hard case on the defendant; but, in my opinion, there must be judgment for the plaintiff for the \$300 and the costs of the action.

The defendant appealed from the judgment of DENTON, Jun. Co. C.J.

The appeal was heard by BOYD, C., RIDDELL and SUTHERLAND, JJ.

H. C. Macdonald, for the defendant, argued that the defendant was a gratuitous bailee, and so only liable for gross negligence, which his handing over of the money to Innes did not amount to: *Tindall v. Hayward*, 7 U.C.L.J. O.S. 243; *Brown v. Livingstone*, 21 U.C.R. 438; *Palin v. Reid*, 10 A.R. 63; *Whitechurch Limited v. Cavanagh*, [1902] A.C. 117. To render the defendant liable, in the circumstances, Innes must have acted within the scope of his authority, which he did not do: *Coll v. Toronto R.W. Co.*, 25 A.R. 55. There was no contract binding on the defendant to procure the tickets for the plaintiff, as there was no consideration for the promise.

W. D. McPherson, K.C., for the plaintiff, was not called upon.

The judgment of the Court was delivered by BOYD, C.:—While commending the assiduity of counsel for the appellant, we must state that the law is against him. We believe the judgment of the trial Judge is right. A personal trust was contemplated here. The defendant should have notified the plaintiff before delegating the trust to another, if he wished to escape liability. He did not do this, so he took the risk. The personal element differentiates this case from ordinary bailment.

The appeal must be dismissed with costs.