COMMENT ON RECENT DECISIONS

BAILMENTS — WAREHOUSEMEN — STANDARD OF CARE REQUIRED OF A BANK IN SAFEGUARDING PROPERTY DEPOSITED IN ITS SAFE DEPOSIT VAULTS.—Bank of Grottoes v. Brown, 8 F. (2d.) 321 (Cir. Ct. of App., Fourth Circ., Oct. 20, 1925).

The plaintiff kept some thousands of dollars in coupon Liberty Bonds, as well as some jewelry, in a safe deposit box of the defendant's. Burglars forced the vault, and because the defendant's cash and readily convertible assets were kept in a steel safe in the vault, they were untouched. In the vault were two sets of boxes, differing in the way secured. In the first, among which was plaintiff's, they were secured only by a separate lock on each box, put upon a shelf in the vault, so that one within the vault could remove any box he chose and open it at his pleasure. Most of this class of boxes were opened. In the second set, as is usual, they were put into separate receptacles, each of which was itself secured by a steel door and lock. There was uncontradicted evidence that the burglars had attempted to get into these and failed. The plaintiff had never been in the vault, his box always being handed to him in the banking room itself, so that he supposed the box was in a locked receptacle such as he had often seen in the safe deposit vaults in the cities.

The plaintiff's claim to recover was founded on the allegation that the bank had failed to exercise ordinary care in guarding his valuables. In giving judgment for the plaintiff the court held that he must prove neglect of the bank to take measures to safeguard his property customarily used in the community by ordinarily careful institutions, fairly comparable in size and other conditions with the defendant, and that this had been properly done by one witness having knowledge of prevailing usages, although it might have been done by many witnesses testifying as to usages in different institutions.

So far as may be judged by the limited number of cases on this point, the principal case is in accord with the weight of authority. However, it was held in Underhill v. United States Trust Co. (1922), 195 Ky. 149, 241 S. W. 812, that under an arrangement basing the rental charge upon both the volume and value of the box deposited, the trust company was a bailee for hire, "and as such was under the

duty of exercising the highest degree of care for the protection and preservation of the box and its contents, and liable to Mrs. Underhill for the reasonable value of the box and contents, if it was lost or destroyed as the result of slight negligence on the part of the trust company." Again, in Cussen v. Southern Cal. Sav. Bank (1901), 139 Cal. 534, 65 P. 1099, it was held that "the relationship of bailment for hire existing, it devolved upon defendant to use even more than ordinary care in the safeguarding of plaintiff's property."

In Nat. Safe Dep. Co. v. Stead (1911), 250 Ill. 584, 95 N. E. 973, Hand, J., pointed out: "We think it clear that where a safety deposit company leases a safety deposit box or safe, and the lessee takes possession of the box or safe and places therein his securities or other valuables, the relation of the bailee and bailor is created between the parties to the transaction as to such securities or other valuables, and the fact that the safety deposit company does not know, and that it is not expected it shall know, the character or description of the property which is deposited in such safety deposit box or safe does not change that relation, any more than the relation of a bailee who should receive for safe-keeping a trunk from a bailor would be changed by reason of the fact that the trunk was locked and the key retained by the bailor, although the obligation rested upon the bailee with reference to the care he should bestow upon the property in the trunk might depend upon his knowledge of the contents of the trunk." In Meyer v. Brensinger (1899), 180 Ill. 110, 54 N. E. 159, the court said: "As such bailee or depositary for hire, appellant was bound to exercise ordinary care and diligence in the preservation of the property intrusted to him by the appellee. Ordinary care in such cases is such care as every prudent man takes of his own goods; and ordinary diligence in the preservation of such goods is such diligence as men of common prudence usually exercise about their own affairs." In a later Illinois case, Masonic Temple Safety Dep. Co. v. Langfelt et al. (1905), 117 Ill. App. 652, the court said: "What constitutes reasonable care in the particular case depends upon the circumstances, upon the nature of the company's undertaking, upon the confidence which it invites, and upon the value and character of the deposit entrusted to its care. See Gray v. Merriam, 148 Ill. 179-186. A safe deposit company holds out to the public the implied agreement that property placed in its custody will be protected, so far as reasonable human foresight will permit, from the ordinary dangers to which valuables * * * * are exposed."

Ordinary care as the standard has been also upheld in Morgan v. Citizens Bank of Spring Hope (1925), 190 N. C. 209, 129 S. E. 585;

Security Storage and Trust Co. v. Martin (Md., 1924), 125 A. 449; and Harland v. Pe Ell State Bank (1922), 122 Wash. 289, 210 P. 681. Of some interest is the case of Young v. First. Nat. Bank of Oneida (1924), 150 Tenn. 451, 265 S. W. 681, where it was held that proof that a country bank, which did not represent or advertise that its safe deposit boxes were burglar proof, did not employ a night watchman, only kept the electric lights burning in the bank until approximately 11:00 p. m., did not equip the building with a burglar alarm, and deposited its own securities in a screw door steel safe, did not show lack of ordinary care to protect the plaintiff's bonds deposited in a safe deposit box from burglary. The matter may well be summed up in the words of St. Sure, J., in the case of Webber v. Bank of Tracy (1924), 66 Cal. App. 29, 225 P. 41, where he said: "In the absence of any stipulation between the parties, the limit of a bailee's obligation is the exercise of ordinary care, and he cannot be said to be an insurer of the property against theft, if he has exercised such care. * * * * It would seem that the ordinary care required of a bank in a case like this is that the construction of the bank building and the methods of protection and the general conduct of its business should conform to those of banks in similar communities." It was then held that the bank's negligence in caring for the contents of safe deposit boxes in the burglarized vault was not inferable from its failure to keep them behind the stronger door of the vault, where the bank was accustomed to use the same boxes for its own money and bonds. It was further held that a country bank conforming to the practice of all other such banks in the state of like population and character in maintaining safe deposit vaults in a building as good or better than the ordinary country bank building with the usual interior arrangement, and protecting the vault by doors similar to those of other such banks in similar sized communities, was not liable for the loss of the contents of safe deposit boxes by burglary, though it had neither a night watchman nor a burglar alarm, which no such bank in the state had up to the time of the burglary. J. T. B., '26.

CONTEMPT OF COURT—BILL OF EXCEPTIONS—INTENT. —United States v. Ford, 9 Fed. (2d) 990 (1925).

Defendant, an attorney, in a trial in which he was of counsel, filed a bill of exceptions containing 55 exceptions of which 27 were untrue in fact. One of his assignments of error was that the trial court erred