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BAILMENTS - LIABILITY OF PARKING LOT OWNER FOR A STOLEN CAR

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RECENT DECISIONS

BAILMENTS — LIABILITY OF PARKING LOT OWNER FOR A STOLEN CAR — Plaintiff parked her car at defendant's parking lot, paying the required fee and leaving the key in the car. The plaintiff testified that this was done at the attendant's request, and this testimony was not directly controverted. The attendant left the lot about midnight, and some time after that time the car was stolen. *Held*, that a bailment existed, and that the plaintiff had set up a prima facie case of liability on the part of the bailee for failing to exercise due care. *Auto. Ins. Co. v. Syndicate Parking Co.*, 58 Ohio App. 148, 16 N. E. (2d) 239 (1937).

A decision note in this *Review* a few years ago [1] discussed the parking lot bailment cases which had been decided up to 1932. The writer concluded that solution of the bailment problem depended on whether there had been a change of possession from the owner of the car to the parking lot operator, and that in the usual case it was proper to find that such a change had been made and that the operator was liable for the loss of the car. This conclusion diverged from the holdings in the first cases where attempts were made to fix a bailee's duty on owners of outdoor parking places, these early decisions indicating the courts' reluctance to impose the same liability on parking lot operators as on garage keepers.[2] As was pointed out by the writer of that decision note, however, the question of bailment in these cases is simply one of change of possession; so the decision in any particular case must be based on the existence or non-existence of factors which are thought to indicate such a change. The degree to which the lot is enclosed, and thus the degree to which the owner may practicably exclude trespassers, for instance, certainly is an important factor.[3] The giving of a check in the nature of a receipt, while not indispensable to a bailment on the one hand and not always indicative of it on the other, is generally associated with a transfer of possession from the owner.[4] The payment of a fee will generally be thought to indicate a bailment, although of course such a fee could be compensation for a license to park rather than a bailment for hire.[5] The

[1] 30 MICH. L. REV. 614 (1932).

[2] For liability of garage owners, see 65 A. L. R. 431 (1930). For a discussion of the early cases concerning parking lots, see 34 A. L. R. 925 (1924).

[3] Ex parte Mobile Light & Ry., 211 Ala. 525, 101 So. 177 (1924); Suits v. Electric Park Amusement Co., 213 Mo. App. 275, 249 S. W. 656 (1923); Lord v. Oklahoma State Fair Assn., 95 Okla. 294, 219 P. 713 (1923). Because of the existence of other and stronger indications of change of possession in the more recent cases, this factor was of greater importance in the early cases than it is now.

[4] The writer has found but a few cases where a bailment was found to exist that a claim check was not given. See, however, Doherty v. Ernest, 284 Mass. 341, 187 N. E. 620 (1933), noted in 18 MINN. L. REV. 352 (1934).

[5] In Leonard Bros. v. Standifer, (Tex. Civ. App. 1933) 65 S. W. (2d) 1112, the court found a bailment even though the parking privilege was gratuitous. The case is noted in 12 TEX. L. REV. 347 (1934). Of course the standard of care required of the bailee may vary, depending upon whether there was compensation or, whether on the contrary, the service was gratuitous.

most important factor, however, seems to be whether the key is retained by the owner of the automobile or is handed over to the attendant along with the machine. It is suggested that the present day universal practice of leaving the car key with the attendant is sufficient to distinguish the fact situations of the more recent cases, which invariably find a bailment, from those older ones where bailments were found not to exist.[6] While, then, a generalization drawn ten or fifteen years ago that parking lot owners are not bailees is now incorrect, it is not because the law has changed, but because the mode of doing business has considerably altered. The principal case reached a sound conclusion, and one backed by authority. In this case, after the court correctly found that there was a bailment relation, it also correctly held the defendant to the duty of using reasonable care to protect the bailed article.[7] Furthermore, the plaintiff would have set up a prima facie case by showing only delivery of the car and the failure to redeliver, the burden being on the defendant to show that the loss occurred through no negligence attributable to him.[8] It is also submitted that it is not necessary to find a bailment in order to hold the parking lot owner liable to the owner of the car; liability may be predicated upon a contract, express or implied, to keep safely.[9] While there are no decisions holding squarely that such a promise was impliedly made by the operator of the lot, there is at least one decision where it seems such a contract would have been found if it had not been for other special factors,[10] and there are decisions in other fact situations in the field of bailments which would be ample authority for the holding.[11]

[6] Holding bailments to exist: Keenan Hotel Co. v. Funk, 93 Ind. App. 677, 177 N. E. 364 (1931); Doherty v. Ernest, 284 Mass. 341, 187 N. E. 620 (1933); Baione v. Heavey, 103 Pa. Super. 529, 158 A. 181 (1932); Osborn v. Cline, 263 N. Y. 434, 189 N. E. 483 (1934), reversing 236 App. Div. 710, 258 N. Y. S. 998 (1932); Beetson v. Hollywood A. C., 109 Cal. App. 715, 293 P. 821 (1930). See also decision notes in 18 MINN. L. REV. 352 (1934); 80 UNIV. PA. L. REV. 1158 (1932). In each of the cases cited the owner of the car surrendered his key to the attendant. The writer feels that the existence of this fact will in most cases make it unnecessary to consider the factors discussed by the courts in the cases cited in note 2, supra.

[7] See 65 A. L. R. 431 (1930). A disclaimer of liability in the bailment contract will not relieve the bailee of the consequences of his own negligence. Baione v. Heavey, 103 Pa. Super. 529, 158 A. 181 (1932); Downs v. Sley System Garages, 129 Pa. Super. 68, 194 A. 772 (1937).

[8] Hartford Fire Ins. Co. v. Doll, 5 La. App. 226 (1926); General Exchange Ins. Corp. v. Service Parking Grounds, Inc., 254 Mich. 1, 235 N. W. 898 (1931).

[9] The courts have been worried somewhat in trying to decide the relation of the car owner and the operator of the parking lot if a bailment was found not to exist. Under the implied contract principle, it would make no difference whether the relation was licensor-licensee, lessor-lessee, or something else.

[10] Ex parte Mobile Light & Ry., 211 Ala. 525, 101 So. 177 (1924). The court refuses to find the contract because of a published disclaimer of liability by the parking lot owner. Disclaimers of liability, then, which are ineffective in the case of a bailment (note 6, above), would operate to defeat recovery here by showing that a contract was not agreed upon.

[11] McDonald v. Wm. D. Perkins & Co., 133 Wash. 622, 234 P. 456 (1925). The court held there was no necessity of finding a bailment to hold the owner of a

When the operator has set up placards advertising the merits of his service, such as the care with which he will treat the automobiles left on his lot, the opportunity would seem to be especially ripe to present this theory to the court.

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safe deposit box liable for valuables which disappeared from the box. It was said that a contract to keep the contents safely arose out of the "nature of the transaction."

HALE, BAILMENTS AND CARRIERS 250 (1896): "The similarity between safe-deposit companies and bailees lies in the fact that the former, by express contract, assume certain duties, which, in the absence of express contract, are imposed upon the latter by law." On this point see also 11 MINN. L. REV. 440 (1927).