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BAILMENT-LIABILITY OF PARKING LOT OWNER FOR THEFT OF AUTOMOBILE

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RECENT DECISIONS

BAILMENT—LIABILITY OF PARKING LOT OWNER FOR THEFT OF AUTOMOBILE—Defendant mill maintained a free parking lot for its employees. The lot was enclosed, having one gate which was under constant surveillance by defendant's private policeman and kept closed except for short periods during shift changes. During a shift change, plaintiff, an employee of defendant, parked his automobile in the lot, removing and retaining the keys. While plaintiff was working in the mill, the watchman on duty at the gate admitted certain persons to the lot and allowed them to remove plaintiff's car. *Held*, two judges dissenting, this was a bailment for mutual benefit. *Goodyear Clearwarter Mills v. Wheeler*, (Ga. App. 1948) 49 S.E. (2d) 184.

For a bailment to arise, it is necessary that the bailor deliver exclusive possession of the chattel bailed to the bailee.[1] The factors indicating a change of possession in the parking lot cases are: the extent to which the lot is enclosed; giving a claim check to be surrendered upon redelivery of the car; payment of a fee; and leaving the key in the car or with the lot attendant.[2] In the operation of the usual type of lot found in city business sections, most of these factors are present, and a bailment is commonly held to exist.[3] Where, however, the customer parks the car himself and does not relinquish physical control, locks it or not as he chooses, retains the keys, and may remove the car without consulting the parking lot attendants, most courts have refused to find a bailment. The transaction is then regarded as a license, lease or special contract to safeguard the car.[4] The principal case would seem to be of the latter type, for possession by the defendant can be predicated only on the theory that it is in possession of everything on its land. Furthermore, it does not seem that such possession is exclusive and independent of the owner's, and this is an essential element of a bailment. Unless the parking lot operator is in actual physical control of the car or can prevent even the owner from removing it unless a certain procedure is followed, it would seem that he cannot exercise the degree of care required of a bailee. Despite the distinctions drawn by the

[1] 8 C.J.S., Bailments, § 15 (1938); 6 AM. JUR., Bailments, § 64 (1937); GODDARD, BAILMENTS AND CARRIERS, §§ 3, 4 (1928); 18 MINN. L. REV. 352 (1934).

[2] 37 MICH. L. REV. 468 (1939); 30 MICH. L. REV. 614 (1932).

[3] Galowitz v. Magner, 208 App. Div. 6, 203 N.Y.S. 421 (1924); Keenan Hotel Co. v. Funk, 93 Ind. App. 677, 177 N.E. 364 (1931); General Exchange Ins. Corp. v. Service Parking Grounds, 254 Mich. 1, 235 N.W. 898 (1931); Baione v. Heavey, 103 Pa. Super. 529, 158 A. 181 (1932), noted in 80 U. of PA. L. REV. 1158 (1932); Doherty v. Ernst, 284 Mass. 341, 187 N.E. 620 (1933); Automobile Ins. Co. v. Syndicate Parking Co., 58 Ohio App. 148, 16 N.E. (2d) 239 (1937); Sandler v. Commonwealth Station Co., 307 Mass. 470, 30 N.E. (2d) 389 (1940), noted in 8 UNIV. OF CHI. L. REV. 763 (1941).

[4] Suits v. Electric Park Amusement Co., 213 Mo. App. 275, 249 S.W. 656 (1923); Lord v. Okla. State Fair Assoc., 95 Okla. 294, 219 P. 713 (1923); Ex parte Mobile Light & R. Co., 211 Ala. 525, 101 S. 177 (1924). This is true even though the parking area is enclosed and a fee charged: Panhandle South Plains Fair Assoc. v. Chappell, (Tex. Civ. App. 1940) 142 S.W. (2d) 934; Porter v. Los Angeles Turf Club, 40 Cal. App. (2d) 840, 105 P. (2d) 956 (1940).

decided cases,[5] a majority of the Georgia court considered the defendant's possession sufficient and of such character as to impose upon him the duties and liabilities of a bailee. In *Ex parte Mobile Light & R. Co.*,[6] no bailment was found where a parking lot was operated in conjunction with a ballpark, and at the end of the game all the patrons returned for their cars at the same time. The court there stated that a surrender of possession of each car to the attendant to be redelivered at the end of the game would call for a large force of employees, or a system of multiple checks, which would cause delays, defeating the very convenience offered to the public. It seems clear, as pointed out in a dissent in the principal case, that the result would be the same where, during a shift change at the mill, a large number of employees return for their cars at the same time. While the decision in the principal case does not seem justified on the grounds of bailment, it is possible that recovery by plaintiff could be based on the existence of an implied contract. Since defendant's lot was enclosed and a guard maintained, it would not be unreasonable to conclude that the defendant had impliedly contracted to watch over and protect its employees' cars.[7]

Myron J. Nadler

[5] The cases are collected and their factual differences discussed in the following articles and annotations: Jones, "The Parking Lot Cases," 27 GEO. L.J. 162 (1938); 14 B.U.L. REV. 368 (1934); 12 TEX. L. REV. 347 (1934); 34 A.L.R. 925 (1925); 131 A.L.R. 1175 (1941).

[6] 211 Ala. 525, 101 S. 177 (1924).

[7] See Jones, "The Parking Lot Cases," 27 GEO. L.J. 162 at 163 (1938), discussing Pennyroyal Fair Assoc. v. Hite, 195 Ky. 732, 243 S.W. 1046 (1922).