The question raised in the principal case is one of considerable magnitude, and it merits unusual consideration by reason of the fact that it deals with a constitutional provision which purports to reserve rights and powers to the people, not as individuals, but as a body politic. The General Assembly ought to enact legislation at the earliest possible moment for the purpose of preventing the repeal or modification by the councils of non-charter cities of initiated ordinances and ordinances approved by a referendum vote. Such legislation would secure to the people of non-charter cities the protection which they intended to provide to themselves when they enacted the constitutional provisions with regard to the initiative and referendum.

JAMES R. TRITSCHLER.

PERSONAL PROPERTY

BAILMENTS—STATUS OF OWNER OF AUTOMOBILE PARKING LOT—LIABILITY FOR THEFT.

One Sheehan parked his car in defendant's parking lot and received a parking ticket for which he paid the requisite fee. The ticket disclaimed any liability on the part of defendant for theft. The car was stolen, even though Sheehan had locked it. One of the two attendants in charge at the time saw the thief driving the car away, but was unable to overtake him. Plaintiff insurance company, having paid Sheehan for his loss, seeks to recover the value of the car. The Court of Appeals, in reversing a judgment of the Municipal Court of Cleveland, held that defendant, a bailee for hire, was not negligent and therefore not liable for the theft of the car. One judge dissented. *Syndicate Parking, Inc.* v. *General Exchange Ins. Corp., et al.*, 17 Ohio Abs. 596 (1934).

The court, without discussing the point, proceeded upon the assumption that the transaction in question constituted a bailment for hire. Whether or not there was a bailment depends upon the extent of control exercised by defendant over the car. Some courts have held that though a fee is charged, if the owner can remove the car at will, there is merely a license to park and not such a surrender of control as to constitute a bailment. *Lord* v. *Okla. State Fair Ass'n.*, 95 Okla. 294, 219 Pac. 713 (1923); *Thompson* v. *Mobile Light and Railway Co.*, 211 Ala. 525, 101 So. 177, 34 A.L.R. 921 (1924); and see *Suits* v. *Electric Park Amusement Co.*, 213 Mo. App. 275 (1923). In none of these cases was there any condition precedent to the owner's right to possession. But where a condition precedent, such as the presentation

of a parking ticket, has existed, the courts have classed the parking company as a bailee for hire. *Galowitz* v. *Magner*, 208 App. Div. 6, 203 N.Y.S. 421 (1924); *General Exchange Ins. Corp.* v. *Service Parking Grounds, Inc.*, 254 Mich. 1, 235 N.W. 898 (1931); *Keenan Hotel Co.* v. *Funk*, 93 Ind. App. 677, 177 N.E. 364 (1931); *Baione* v. *Heavey*, 103 Pa. Super. 529, 158A. 181 (1932). The fact that it was necessary for the owner to call at the office for his keys was held to have made the parking company a bailee in *Beetson* v. *Hollywood A. C.*, 109 Cal. App. 715, 293 Pac. 821 (1930). However, such a condition precedent has not always been required. In *Doherty* v. *Ernst*, 284 Mass. 341, 187 N.E. 620 (1933), where keys were left in the car so that the attendant might move it about, the court found that there was sufficient control in the parking company to constitute a bailment. On the basis of these decisions the court in the instant case was justified in assuming that a bailment existed, since the owner could be excluded from possession until he surrendered the parking ticket. See 30 Michigan Law Review, 614 (1932); 12 Texas Law Review, 347 (1934).

Had the transaction in question been considered as a license to park and not a bailment, defendant would have been under no duty to exercise care against theft. *Thompson* v. *Mobile Light & Railway Co.*, *supra*; *Lord* v. *Okla. State Fair Ass'n.*, *supra*. But since the court held there was a bailment, defendant was liable for any lack of ordinary care over the car. *Hotels Statler Co.* v. *Safier*, 103 Ohio St. 638, 134 N.E. 460, 22 A.L.R. 1190 (1921); 3 R.C.L. 96. And the fact that the ticket disclaimed the parking company's liability for theft would not relieve defendant of liability if the car was stolen through its negligence. *Keenan Hotel Co.* v. *Funk*, *supra*; *Baione* v. *Heavey*, *supra*.

The courts uniformly hold that misdelivery imposes an absolute liability on a bailee regardless of negligence. *Potomac Ins. Co.* v. *Nickson*, 64 Utah 395, 231 Pac. 445, 42 A.L.R. 128 (1924); *Hall* v. *Boston & W. R. Corp.*, 14 Allen (96 Mass.) 439, 92 Am. Dec. 783 (1867). But where the car is stolen, negligence must be proved, as a bailee is not an insurer against theft. 3 R.C.L. 97. A failure to return on demand raises, in itself, a strong inference of negligence, and it has been held in cases similar to the principal one that a parking company was clearly negligent in permitting a car to be removed without a surrender of the parking ticket. *Galowitz* v. *Magner*, *supra*; *General Exchange Ins. Corp.* v. *Service Parking Grounds, Inc.*, *supra*. Viewing the instant case in the light of these decisions, defendant might have been found negligent in permitting the car to be entered and removed without a surrender of the parking ticket.. The dissenting opinion sup-

ports this view, holding that the facts did not justify a reversal of the judgment of the trial court. However, since one of the attendants, as soon as he discovered the thief, attempted in vain to stop him, there is perhaps some justification for the court's decision.

ARCH. R. HICKS, JR.

RECEIVERS

APPOINTMENT WHEN CORPORATION CONSENTS—COLLATERAL ATTACK.

The First National Bank & Trust Co. of Hamilton, a creditor of the Fischer Hardware Co., took judgment upon a cognovit note against the company on March 2, 1932. After entry of judgment a motion was made for a receiver on the ground that execution would jeopardize the financial stability of the Hardware Co., the assets of which should be conserved for the benefit of general creditors. The company consented to such appointment.

September 21, 1933, the plaintiff, Michigan State Industries, filed suit against the Hardware Co. on a book account and recovered judgment, but execution was returned unsatisfied. Proceedings in aid, instituted November 13, 1933, were dismissed upon determination that the plaintiff was not entitled to subject property in the hands of the receiver to execution upon his judgment.

The Court of Appeals said that the appointment of the receiver was void, notwithstanding the defendant corporation's consent, there being no jurisdiction since there was an adequate remedy at law by levying execution. Being void, such appointment was open to collateral attack. But the plaintiff's delay in filing suit was held to amount to laches sufficient to give rise to estoppel, so that there was no error in dismissing the proceeding in aid of execution. *Michigan State Industries* v. *Fischer Hardware Co.*, 19 Ohio Abs. 184, 2 Ohio Op. 171, 197 N.E. 785 (1934).

In Ohio, the power to appoint receivers is conferred by statute. A receiver may be appointed: "4. After judgment, to dispose to property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment. . . . 6. In all other cases in which receivers heretofore have been appointed by the usages of equity." General Code, Sec. 11894.

The general assertion is often made that ordinarily a receiver will not be appointed at the instance of a mere simple contract creditor. The