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Bailments--The Parking Lot Cases

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CASE COMMENTS

BAILMENTS—THE PARKING LOT CASES

The plaintiff drove his automobile into the defendant's lot, leaving the keys in the lock at the request of the defendant's agent. He was handed a ticket stub, marked "parking contract", which provided that the defendant assumed no liability for loss due to fire or theft, and that there would be no attendant on duty after six P.M. The plaintiff paid a fee, and upon returning to the lot, between six and six-fifteen P.M., discovered that his automobile had been stolen. *Held:* The owner was allowed to recover in an action for negligence. The case presents the problem of deciding the relationship that existed between the parties, the liability created by that relationship, and the effect of a "disclaiming liability" ticket. *Sandler* v. *Commonwealth Station Co.*, 307 Mass. 470, 30 N.E. (2d) 389 (1940).

In *Thompson* v. *Mobile Light and R. Co.*[1] the court found the relation was that of lessor and lessee, because the parking lot owner did not have control over the car, but the majority hold that the relation created was that of a bailment for hire.[2]

If there was a bailment of the automobile it is necessary to set up a standard of care which the bailee should have used in order to escape liability. The bailee for hire is not an insurer of the property that is bailed to him.[3] As a bailee, he must use due care, that is, the care of a reasonable, prudent man, in order to escape liability.[4]

If the bailed automobile is damaged the owner may bring an action either for the negligence of the defendent, or on the contract

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[1] 211 Ala. 525, 101 So. 177 (1924).

[2] "It will thus be seen by the great weight of authority that under the common law a parking lot proprietor is held to the obligation of a bailee for hire." Marine Insurance Company, Limited, of London, England v. Rehm, ... La. App.. ....., 177 So. 79, 82, 1937). U. Drive and Tour, Limited, v. System Auto Parks, Limited, 28 Cal. App. 782, 71 P. (2d) 354 (1937); Beetson v. Hollywood Athletic Club, 109 Cal. App. 715, 293 Pac. 821 (1930); Blackburn v. Depoyster, 209 Ky. 105, 272 S.W. 398 (1925); Hartford Fire Insurance Company v. Doll, 5 La. App. 226 (1926); Doherty v. Ernst, 284 Mass. 341, 187 N.E. 620 (1933); Hanna v. Shaw, 244 Mass. 57, 138 N.E. 247 (1923); Galowitz v. Magner, 203 N.Y. Supp. 421, 208 App. Div. 6 (1924).

[3] Goodyear Tire and Rubber Company v. Altamon Springs Hotel Company, 206 Ky. 494, 267 S.W. 555 (1924); Hanna v. Shaw, 244 Mass. 57, 138 N.E. 347 (1923); Huddy, Law of Automobiles (8th ed. 1927) sec. 258.

[4] Blackburn v. Depoyster, 209 Ky. 105, 272 S.W. 398 (1925) (Must use the care that a prudent man would use with his own property); Hartford Fire Insurance Company v. Doll, 5 La. App. 226 (1926); Doherty v. Ernst, 284 Mass. 341, 187 N. E. 621 (1933); Hanna v. Shaw, 244 Mass. 57, 138 N.E. 247 (1923); Smith v. Economical Garage, Incorporated, 107 Misc. Rep. 430, 176 N.Y. Supp. 479 (1919).

for failure to deliver in good condition.[5] If he elects to bring on action on the contract, the bailee may set up as a defense the theft of the car. When this defense is interposed the question arises as to whether the bailee must also prove the absence of negligence on his part.[6] The better view is that the bailee must prove freedom from negligence, because he had control over the property.[7]

The parties to a bailment may diminish the liability of the bailee by special contract, the principle being that the bailee may impose whatever terms he chooses, if he gives the bailor notice that there are special terms and the means of knowing what they are. If the bailor chooses to make the bailment, he is bound by these terms, providing the contract does not violate public policy, and stops short of protection in case of fraud or negligence of the bailee.[8] However, it is usually necessary, especially if the limitation is printed matter on the stub, to actually call it to the bailor's attention.[9] In only a few cases have the courts said that the acceptance of the stub by the bailor was proof that he accepted the limitations printed thereon.[10]

To summarize; the majority holds that the the parking lot owner is a bailee for hire, and this view has been accepted by Kentucky.[11] There is a conflict of opinion on the question of whether the bailor must prove negligence if the bailee alleges a theft as a defense.

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[5] U Drive and Tour, Limited, v. System Auto Parks, Limited, 28 Cal. App. 782, 71 P. (2d) 354 (1937).

[6] Huddy, Law of Automobiles (8th ed. 1927) sec. 253.

[7] U Drive and Tour, Limited, v. System Auto Parks, Limited, 28 Cal. App. 782, 71 P. (2d) 354 (1937); Beetson v. Hollywood Athletic Club, 109 Cal. App. 715, 293 P. 821 (1930); General Exchange Insurance Corporation v. Service Parking Grounds, Incorporated, 254 Mich. 1, 235 N.W. 898 (1931); Baione v. Heavy, 103 Pa. Super. 529, 158 Atl. 181 (1932); Berry, Law of Automobiles (5th ed. 1926) Sec. 1482. *Contra:* Keenan Hotel Company v. Funk, 93 Ind. App. 677, 177 N.E. 364 (1931). "The rule of law as to a bailment for hire is that, when failure to deliver upon demand is shown, a prima facie case of negligence is made out. The defendant may rebut this presumption and excuse such failure by showing that the goods were stolen. The burden is always upon the plaintiff to show that the negligence of the defendant contributed to the theft," Galowitz v. Magner, 208 App. Div. 6, 203 N. Y. Supp. 421, 423 (1924); Leonard Bros. v. Standifer, Tex. Civ. App., 65 S.W. (2d) 1112 (1933).

[8] Wells v. Thomas W. Garland, — Mo. App. —, 39 S. W. (2d) 409 (1931); Fulton Lighterage Co. v. New York Central R.R., 240 N. Y. Supp. 88, 136 Misc. 374 (1930); Munger Automobile Company v. American Lloyds of Dallas, — Tev. Civ. App. —, 267 S.W. 304 (1924).

[9] Marine Insurance Company, Limited, of London, England v. Rehm, — La App. —, 177 So. 79 (1937); Sandler v. Commonwealth Station Company, 307 Mass. 470, 30 N.E. (2d) 389 (1940); Galowitz v. Magner, 208 App. Div. 6, 203 N. Y. Supp. 421 (1924); Spooner v. Starkman, (1937) O. R. 542, (1937) 2 D.L.R. 582.

[10] Thompson v. Mobile Light and R. Company, 211 Ala. 525, 101 So. 177 (1924); Ashby v. Tolhurst, 2 K. B. 242 (1937).

[11] Blackburn v. Depoyster, 209 Ky. 105, 272 S.W. 399 (1925); Pennyroyal Fair Association v. Hite, 195 Ky. 732, 243 S.W. 1046 (1922).

Kentucky would probably follow the majority in saying it is up to the bailee to prove freedom from negligence.[12]

It is possible that Kentucky would not follow the majority in holding that the bailee may limit his liability. This view is based on the Warehousemen Statutes, which in effect say that any person who takes personal property into his care can not make a contract restricting his common law liability for the goods stored.[13] However, because the statute enumerates many articles (an automobile is not included) it is probable that the doctrine of *ejusdem generis* will apply and exclude articles not in the enumerated class. Therefore, since no article of transportation is listed, automobile parking lot owners are doubtlessly excluded. JOHN HOWE

PUBLICATION OF A DEBT—NEWSPAPER'S LIABILITY

A creditor caused a notice to be published in the defendant newspaper stating the amount of plaintiff's overdue bill and requesting payment.[1] The creditor and the newspaper were joined as defendants in this suit by the debtor. The suit as to the newspaper was dismissed and plaintiff appealed. *Held:* The petition stated a good cause of action against defendant newspaper. *Trammel* v. *Citizens News Co.*, 285 Ky. 529, 148 S. W. (2d) 708 (1941).

It is not uncommon for newspapers to be held responsible for publications amounting to libel and those amounting to an invasion of an individual's right of privacy, by the unwarranted use of name and picture. However, this is the first case in which a newspaper has been held liable for invasion of the right of privacy for publishing a notice that the debtor owed a bill and would not pay it.

In most jurisdictions a publication by a private person which imputes to a debtor an unwillingness to pay a just debt is libel per se.[2]

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[12] Goodyear Tire and Rubber Company v. Altamont Springs Hotel Company, 206 Ky. 494, 267 S.W. 555 (1924).

[13] Kentucky Statutes (Carroll, 1936) Sec. 4768; Sec. 4780.

[1] Plaintiff knew that the notice was to appear and had requested defendant newspaper not to publish it. Publication after this notice, however, was not the basis for the decision in the case.

[2] Salomon v. Armour & Co., 123 Fed. 342 (1903); Ferdon v. Dickens, 161 Ala. 181 49 So. 888 (1909); Ingraham v. Lyon, 150 Cal. 254, 38 Pac. 892 (1894); Todd v. Every Evening Printing Co., 6 Pennewill 233, 66 Atl. 97 (Del. 1907); White v. Parks, 93 Ga. 633, 20 S.E. 78 (1894); Thompson v. Adelberg and Berman, 181 Ky. 487, 205 S.W. 558, 3 A.L.R. 1594 (1918); Tuyes v. Chambers, 144 La. 723, 81 So. 265 (1919); Patterson v. Evans, 153 Mo. App. 684, 134 S.W. 1030 (1911); Masters v. Lee, 39 Neb. 574, 58 N.W. 222 (1894); Hutchins v. Page, 72 N.H. 215, 72 Atl. 689 (1909); Wells v. Belstrat Hotel Corp., 308 N.Y. Supp. 625, 212 App. Div. 366 (1925); Cleveland Retail Grocer's Assn. v. Exton, 18 Ohio Cr. Ct. R. 321, 10 O.C.D. 145 (1899); Sanders v. Hall, 22 Tex. Civ. App. 282, 55 S.W. 594 (1899); Nettles v. Somervell, 6 Tex. Civ. App. 627, 25 S.W. 658 (1894); Burton v. O'Neill, Tex. Civ. App. 613, 25 S.W. 1013 (1894); Muetze v. Tuteur, 77 Wis. 236, 46 N.W. 123, 9 L.R.A. 86 (1890); Wolfenden v. Giles, 2 B.C. 279 (1892); Green et ux v. Minnet, et al., 22 Ont. 177 (1891). Note that Kentucky also has called this libel. Thompson v. Adelberg and Berman, *supra.*