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Bailment--Liability of Parking Lot Operator (*Tammelleo v. Solomon*, 66 A.2d 101 (R.I. 1949))

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Act.⁸ Their scope of inquiry is as broad as any dispute arising out of or in connection with the contract (except where restricted in the submission),⁹ and their basis is an irrevocable contract¹⁰ which cannot be altered by the act of one party in refusing to arbitrate.¹¹ Thus the arbitrators have a wide scope of inquiry without regard to the formalities of counterclaims and their independence as actions. In the instant case the court rises above the controversy surrounding the application of the doctrine of *res judicata* since the *Schuylkill* decision,¹² and solves the problem confronting it by simple syllogistic reasoning. Arbitration presupposes dispute, premises the court. The dispute submitted was whether the vendee had a valid objection to paying the otherwise absolute debt which arose on delivery of the goods contracted for. Therefore, in awarding the full amount to the vendor, the merits of the defense were absolutely determined. The other party's non-appearance in the prior proceeding had no bearing on the decision, for jurisdiction and consent to the proceeding had been given beforehand in the original contract.¹³

The inviolability of contracts is the strength of the arbitration method. By applying normal contract rules to the arbitration clause, the courts have succeeded in reducing their already overburdened calendars. They are loath to vitiate this advantage by allowing further litigation on a valid award. This decision is in line with that manifest trend.

I. F. B.

BAILMENT—LIABILITY OF PARKING LOT OPERATOR.—Plaintiff parked his automobile on defendant's parking lot and paid a fee to an employee, who after requesting plaintiff to leave the ignition key in the lock, inquired when the automobile would be claimed. Plaintiff was uncertain when he would return. The attendant suggested that he would put the ignition key beneath the floormat of the car in the event that the plaintiff returned after eleven P.M. at which time the lot closed. To this the plaintiff agreed. About two hours

⁸ N. Y. CIV. PRAC. ACT §§ 1462, 1462-a.

⁹ *Lipman v. Haeuser Shellac Co.*, 289 N. Y. 76, 43 N. E. 2d 817 (1942); *Fidler v. Cooper*, 19 Wend. 285 (N. Y. 1838); *Wheeler v. Van Houton*, 28 Johns. 311 (N. Y. 1815); *Matter of Pierce v. Brown Buick Co.*, 258 App. Div. 679, 17 N. Y. S. 2d 889 (2d Dep't 1940), *aff'd*, 283 N. Y. 669, 28 N. E. 2d 400 (1940); *Samuel Kaplan & Sons v. Fascinator Blouse Co.*, — Misc. —, 70 N. Y. S. 2d 8 (Sup. Ct. 1947).

¹⁰ N. Y. CIV. PRAC. ACT § 1448.

¹¹ *Matter of Zimmerman v. Cohen*, 236 N. Y. 15, 139 N. E. 764 (1923) (of course either party can bring action in the courts in the first instance and thus supersede the right to arbitrate).

¹² *Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp.*, *supra* note 2.

¹³ N. Y. CIV. PRAC. ACT § 1450.

after closing time the vehicle was driven away by a third person and damaged. An action of trespass on the case was instituted for the alleged negligence of the defendants as bailees of the automobile. *Held*, judgment for defendants. Although the relationship was one of bailment, the bailment terminated at the time the lot closed, putting the vehicle back in the constructive possession of the plaintiff. *Tammelleo v. Solomon*, — R. I. —, 66 A. 2d 101 (1949).

The first issue to be determined was whether or not the transaction amounted to a bailment. Whether the relationship between a parking lot proprietor and a patron is that of bailment depends upon the place, conditions and nature of the transaction.¹ The circumstances surrounding the parking of a car upon a lot can give rise to either a bailment, license, or lease.² If possession and control of the automobile have been delivered to the proprietor of the parking lot, and a payment has been made, there is a bailment for hire.³ The courts are in accord as to what is sufficient to constitute a transfer of possession giving rise to a bailment. Bailments have been found to exist in those instances where there is issued a stub to be surrendered on claiming the car, a fee is collected and the keys are left in the car for the convenience of the management to facilitate the entrance and exit of other cars by shifting about the ones on the lot.⁴ Courts have declined to find a bailment in those cases where the car owner does not relinquish control, as where he parks the car himself, retains the key and removes it without surrendering a check.⁵ The instant case, in finding a bailment, is supported by, and adds to, the weight of authority.

The instructions given the jury in the instant case—that defendants would have been liable if plaintiff had no notice of the time of closing and if he did not agree that the key be left under the mat of the car—are in accord with the authority as established by two other leading cases on point, *Starita v. Campbell*⁶ and *Automobile Ins. Co. of Hartford v. Syndicate Parking Co.*⁷ In the latter case, under

¹ *Malone v. Santora*, 135 Conn. 286, 64 A. 2d 51 (1949); *Osborn v. Cline*, 263 N. Y. 434, 189 N. E. 483 (1934).

² See Note, 131 A. L. R. 1175 (1941); Jones, *The Parking Lot Cases*, 27 *Geo. L. L.* 162 (1938).

³ WILLISTON, *CONTRACTS* § 1065A (revd. ed. 1936); *Beetson v. Hollywood Athletic Club*, 109 Cal. App. 715, 293 Pac. 821 (1930); *Doherty v. Ernst*, 284 Mass. 341, 187 N. E. 620 (1933); *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (1924); *Wendt v. Sley System Garages*, 124 Pa. Super. 224, 188 Atl. 624 (1936).

⁴ *Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 N. E. 2d 389 (1940); *General Exch. Ins. Corp. v. Service Parking Grounds*, 254 Mich. 1, 235 N. W. 898 (1931); *Baione v. Heavy*, 103 Pa. Super. 529, 158 Atl. 181 (1932).

⁵ *Ex parte Mobile Light & R.*, 211 Ala. 525, 101 So. 177 (1924); *Osborn v. Cline*, 263 N. Y. 434, 189 N. E. 483 (1934).

⁶ 72 R. I. 405, 52 A. 2d 303 (1947).

⁷ 58 Ohio App. 148, 16 N. E. 2d 239 (1937).

similar circumstances, it was decided that defendant's attendant did not exercise the proper degree of care when he quitted the lot at midnight leaving the key in the unguarded automobile without having previously informed the motorist of the hour of closing. Relying on *Continental Ins. Co. v. Himbert*,⁸ the court also instructed the jury that the converse of the above rule would be true, *i.e.*, that if the plaintiff knew the time of closing and agreed that the key be placed under the mat, then defendants would not be liable, for the duration of the bailment contract was limited to closing time, and by leaving the key in the car after closing as stipulated, there was a constructive delivery of the car.

That New York is aligned with the weight of authority and the case under discussion in finding a bailment under such circumstances, there is no doubt.⁹ Whether New York would ascribe to a bailee the duty of giving notice to a bailor that his car—the keys inside—will be unprotected after a certain time, is not known. There are no New York cases on the point. It seems elementary that this obligation is reasonable and not so burdensome as to be outside the scope of a bailee's duty of due care.

A. C. M.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF LAW—EXCLUSION OF NEGROES FROM JURIES.—The prisoner, a Negro, was convicted of the capital crime of rape upon a verdict returned by a jury composed entirely of white men.¹ At the trial the judge unexpectedly caused a special venire of petit jurors to be summoned from Warren County, 82 miles away.² Counsel for prisoner presented a challenge to the entire array of petit jurors on the ground of systematic exclusion of Negroes from petit juries of Warren County contrary to the United States Constitution and the laws of North Carolina. Counsel then moved for time to allow the defense to get evidence to sustain the challenge. This motion was denied by the trial judge thus forcing defendant's counsel to undertake to support the challenge by calling six witnesses at random from among bystanders in the court room. The judge thereupon overruled the

⁸ 37 So. 2d 605 (La. App. 1948).

⁹ *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (1924); *Potomac Ins. Co. v. Donovan*, 274 App. Div. 666, 87 N. Y. S. 2d 145 (1949).

¹ This was the second trial and appeal of the prisoner. His former conviction had been set aside because of denial of the constitutional right of equal protection of law through the purposeful exclusion of the members of his race from the grand jury by which he was indicted. *State v. Speller*, 229 N. C. 67, 47 S. E. 2d 537 (1948).

² N. C. GEN. STAT. ANN. §§ 1-86 provides that the judge may summon jurors from any other county in the same judicial district, if he has probable grounds to believe that a fair and impartial trial cannot otherwise be obtained.