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## The Liability of Parking Lot Owners

William F. Podesta

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but such omissions as were made do not detract from either the validity or the value of the statute. Further, they may be supplied by amendment.

It is submitted that in order to perfect the statute, and better effectuate its purpose, the following amendments should be made:

(1) Notary publics, commissioners of deeds and similar public officers should be expressly excluded from the operation of the statute. As was pointed out above, the inclusion of this group is mere supererogation; its exclusion may prevent a possible injustice.

(2) All those who retain outside employment and who derive, therefrom, an income in excess of a stated amount should be included within the statutory inhibition. The avowed purpose of the statute is to alleviate unemployment and to improve the character of teaching in the public schools.<sup>44</sup> The exclusion of those not employed as day teachers would seem, to some extent, to defeat this purpose.

JULIUS R. PASCUZZO, JR.

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## THE LIABILITY OF PARKING LOT OWNERS.

### I.

Recently the courts have been confronted with the sometime difficult problem of determining the exact nature of the legal relationship existing between the owner of a parking lot and the owner of a car parked therein.<sup>1</sup> The cases indicate that the problem has been adequately solved by the courts' determination that the relationship is either one in the nature of licensor and licensee<sup>2</sup> or that of bailor and bailee<sup>3</sup> depending upon whether the owner of the car has merely hired

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<sup>44</sup> *Hendon v. Board of Education*, 281 N. Y. 757, 24 N. E. (2d) 20 (1940).

<sup>1</sup> The problem was presented for the first time in any jurisdiction in *Pennroyal Fair Ass'n v. Hite*, 195 Ky. 732, 243 S. W. 1046 (1922). The New York courts were faced with the problem for the first time in *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1924).

<sup>2</sup> *Ex parte Mobile Light & R. R.*, 211 Ala. 525, 101 So. 177 (1924). See Note (1924) 34 A. L. R. 925. "Cases which have refused to find a bailor-bailee relationship between car owner and parking lot operator have not specified the legal relationship existing between them. The two alternatives would be that of lessor-lessee or that of licensor-licensee." (1924) 18 MINN. L. REV. 352, 353; see (1939) 9 FORTNIGHTLY L. J. 103.

<sup>3</sup> *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1924); *Fire Ass'n of Philadelphia v. Fabian*, 170 Misc. 665, 9 N. Y. S. (2d) 1018 (1938); *Beetson v. Hollywood Athletic Club*, 109 Cal. App. 715, 293 Pac. 821 (1930); *Crawford v. Hall*, 56 Ga. App. 122, 192 S. E. 231 (1937); *Keenan Hotel Co. v. Funk*, 93 Ind. App. 677, 177 N. E. 364 (1931); *Downs v. Sley System Garages*, 129 Pa. 68, 194 Atl. 772 (1937); see *Jones, The Parking Lot Cases* (1938) 27 GEO. L. J. 162; Notes (1934) 14 B. U. L. REV. 368; (1939) 37 MICH. L. REV. 468; (1932) 30 MICH. L. REV. 614.

a place to put the vehicle, or whether he has turned its possession over to the care and custody of the lot owner.<sup>4</sup>

A review of the decisions of the courts of New York,<sup>5</sup> as well as those of other jurisdictions,<sup>6</sup> discloses that in the majority of cases the parking lot owner has been held to be a bailee and, therefore, liable for the theft of or the damage to a patron's car, occasioned by his failure to exercise care in providing for its safety. Despite authority to the contrary,<sup>7</sup> however, the mere fact that the lot owner is engaged in the business of storing automobiles<sup>8</sup> does not *ipso facto* impose upon him the obligations of a bailee. This was aptly indicated in *Osborne v. Cline*,<sup>9</sup> wherein the court stated, "Any house or lot owner may permit for a fee another to put his automobile upon the premises without assuming any responsibility for its safety."<sup>10</sup> Whether the parking lot owner in any given case is in the nature of a licensor, and thus under no active duty to protect a patron's car,<sup>11</sup> or a bailee under the duty to use care, depends entirely upon the method employed by him in conducting his business.<sup>12</sup>

An examination of the factual situations presented in the cases involving suits against parking lot owners, discloses that parking lots may be classified, according to the manner in which they transact business, into two general classifications:<sup>13</sup> *First*, those in which the

<sup>4</sup> In *Osborne v. Cline*, 263 N. Y. 434, 437, 189 N. E. 483, 484 (1934), the court stated, "Whether a person simply hires a place to put his car or whether he has turned its possession over to the care and custody of another depends on the place, the conditions, and the nature of the transaction." See Galowitz v. Magner, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1924).

<sup>5</sup> *Fire Ass'n of Philadelphia v. Fabian*, 170 Misc. 665, 9 N. Y. S. (2d) 1018 (1938); *cf. Lader v. Warsher*, 165 Misc. 559, 1 N. Y. S. (2d) 796 (1939); see note 4, *supra*.

<sup>6</sup> *Doherty v. Ernst*, 284 Mass. 341, 187 N. E. 620 (1933); *White v. American Ins. Co.*, 53 Ga. App. 320, 185 S. E. 605 (1936); *Scherb v. Randolph Wells Auto Park, Inc.*, 30 Ill. App. 298, 22 N. E. (2d) 796 (1939); see cases note 3, *supra*.

<sup>7</sup> BERRY, LAW OF AUTOMOBILES (4th ed. 1924) § 1414.

<sup>8</sup> It has been held that even garage keepers are not bailees as a matter of law. *Hogan v. O'Brien*, 123 Misc. 865, 206 N. Y. Supp. 831 (1924).

<sup>9</sup> 263 N. Y. 434, 189 N. E. 483 (1934).

<sup>10</sup> *Id.* at 437, N. E. at 484.

<sup>11</sup> *Larmore v. Crown Point Iron Co.*, 101 N. Y. 391, 4 N. E. 752 (1886); *Morrison v. Hotel Rutledge Co., Inc.*, 200 App. Div. 636, 193 N. Y. Supp. 428 (1st Dept. 1922); *Stacy v. Shapiro*, 212 App. Div. 723, 209 N. Y. Supp. 305 (1st Dept. 1925) ("Toward a licensee is owed no affirmative duty, but only the duty to refrain from doing anything to hurt him"); EDGAR AND EDGAR, LAW OF TORTS (3d ed. 1936) § 148.

<sup>12</sup> *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1922); *Fire Ass'n of Philadelphia v. Fabian*, 170 Misc. 665, 9 N. Y. Supp. (2d) 1018 (1938); *Doherty v. Ernst*, 284 Mass. 341, 187 N. E. 620 (1933); *Baione v. Heavey*, 103 Pa. 529, 158 Aft. 181 (1932); *cf. Suits v. Electric Park Amusement Co.*, 213 Mo. App. 275, 249 S. W. 656 (1923); *Ex parte Mobile Light & R. R.*, 211 Ala. 525, 101 So. 177 (1924); *Lord v. Oklahoma State Fair Ass'n*, 95 Okla. 294, 219 Pac. 713 (1923).

<sup>13</sup> In *Osborne v. Cline*, 263 N. Y. 434, 437, 189 N. E. 483, 484 (1934), the court stated, "Common knowledge informs us that there are many spots in every

lot attendant collects the fee, and directs the owner where to park, the owner locking the car or not as he sees fit; *second*, and by far the most common method employed at the present time,<sup>14</sup> those in which the lot attendant collects the fee, directs the owner of the car where to park, requests him to leave the keys in the car so that it can be moved if the need to do so arises, and/or gives the owner a check the presentation of which is required before the owner is permitted to retake the car.

Under the first described method of doing business, the courts have held that at best the lot owner is merely a licensor in that the mere presence of the car in the lot, without some other indication of a change in possession, is not sufficient to impose upon the lot owner the duties of a bailee.<sup>15</sup> In *Suits v. Electric Park Amusement Company*,<sup>16</sup> the plaintiff visited an amusement park owned by the defendant and paid the admission fee. The plaintiff then parked his car in an enclosed area to which he was directed by the attendant in charge. The plaintiff locked his car and was not given a claim check. No fee was charged by the defendant for parking in the area. In an action brought by the plaintiff to recover for the theft of the car, the court awarded judgment to the defendant amusement company on the ground that the evidence did not disclose a sufficient delivery of the car to the defendant to constitute him a bailee and, therefore, he was under no obligation to care for the vehicle.

The payment of a fee in the *Suits* case apparently would not have had the effect of creating any responsibility on the part of the defendant for, in *Lord v. Oklahoma State Fair Association*,<sup>17</sup> wherein the factual situation was substantially the same as that presented in the *Suits* case, the court stated, "The most that is shown by the evidence is that the plaintiff paid \* \* \* for the privilege of taking the car within the defendant's enclosure and this was done for his own convenience without any thought on the part of the parties that such car was either actually or constructively in the possession of the defendant."<sup>18</sup>

In New York there has as yet been no direct adjudication<sup>19</sup> of

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city and village where open spaces are used for parking at a very small fee, \* \* \*. Circumstances vary and instances are graded all the way up to the housed garage where cars can be left at more expense."

<sup>14</sup> See Jones, *Parking Lot Cases, op. cit. supra* note 3; Note (1934) 14 B. U. L. REV. 368; (1924) 18 MINN. L. REV. 352.

<sup>15</sup> In *Lord v. Oklahoma State Fair Ass'n*, 95 Okla. 294, 219 Pac. 713, 714 (1923), it appeared that the plaintiff paid a fee to park in the defendant's fair grounds. He was not given a check, nor did he leave the keys in the car at the request or with the knowledge of the defendant. In an action to recover for the theft of the car the defendant lot owner was awarded judgment on the ground that "The plaintiff had the custody of the car when he entered the grounds of the defendant, and retained control of it when he parked. \* \* \* The defendant never at any time had custody or control of the automobile and never any control whatever over it." See Note (1925) 34 A. L. R. 925.

<sup>16</sup> 213 Mo. App. 275, 249 S. W. 656 (1923).

<sup>17</sup> 95 Okla. 294, 219 Pac. 713 (1923).

<sup>18</sup> *Id.* at 714.

<sup>19</sup> In *Lader v. Warsher*, 165 Misc. 559, 1 N. Y. S. (2d) 160 (1937), the

the relationship created between the owner of the car and the owner of a parking lot conducting business in the manner described in the first classification. However, *dictum* in *Osborne v. Cline*<sup>20</sup> to the effect that the mere physical presence of a car in a parking lot is not of itself a sufficient delivery to the parking lot owner to constitute a bailment is a strong indication that the New York courts will follow the rule laid down in *Suits v. Electric Park Amusement Company*<sup>21</sup> and *Lord v. Oklahoma State Fair Association*.<sup>22</sup> It is submitted, however, that in instances in which it appears that an owner of a business operates an *enclosed*<sup>23</sup> parking lot supervised by an attendant, in connection with the business, for the convenience of his customers, liability could be predicated upon him on the theory of an implied contract to care for the vehicle.<sup>24</sup> It seems, however, that in the absence of evidence of a technical delivery of the car to the possession of the lot owner, the law will not impose upon him any obligation to protect the vehicle.

There is authority, however, for the proposition that a parking lot owner may by express agreement with the owner of the car, assume the obligation to care for the vehicle despite the fact that there has not been a change of possession sufficient to support a bailment contract. Thus, in *Pennroyal Fair Association v. Hite*<sup>25</sup> it appeared that the plaintiff drove his car into a fair ground operated by the defen-

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defendant maintained a parking lot in connection with his hotel business, for the convenience of his guests. The plaintiff, a guest at the defendant's hotel, parked his car in the lot and locked it. Some articles were stolen from the car. In an action to recover for the loss, judgment was awarded to the defendant. The court did not state the nature of the relationship between the defendant lot owner and the car owner, but held irrespective of the nature of the relationship, the plaintiff could not recover in that he had not proved negligence on the part of the defendant.

<sup>20</sup> In *Osborne v. Cline*, 263 N. Y. 434, 437, 189 N. E. 483, 484 (1934), it appeared that the plaintiff's wife drove into the defendant's parking lot, paid the required fee and received no claim check. She left the keys in the car and the car was stolen. At the trial there was conflicting testimony as to whether or not the plaintiff's wife had been directed to lock the car. The lower court found that as a matter of law a bailment relationship had been created. On appeal, however, the decision was reversed on the ground that "the jury should have passed upon this [bailment] question in this case and that the judge could not decide it for himself as a matter of law".

<sup>21</sup> 213 Mo. App. 275, 249 S. W. 656 (1923).

<sup>22</sup> 95 Okla. 294, 219 Pac. 713 (1923).

<sup>23</sup> In instances in which it appears that the parking lot is enclosed, the courts have generally stressed that point as an additional factor indicative of the lot owner's possession of the car. See *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1922); *Crawford v. Hall*, 56 Ga. App. 122, 192 S. E. 231 (1937).

<sup>24</sup> See *Bunnell v. Stern*, 122 N. Y. 539, 25 N. E. 910 (1890); *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1922); *Lader v. Warsher*, 165 Misc. 559, 1 N. Y. S. (2d) 796 (1939); *cf. Suits v. Electric Park Ass'n*, 213 Mo. App. 275, 249 S. W. 656 (1923).

<sup>25</sup> 195 Ky. 732, 243 S. W. 1046 (1922); see *Chattanooga Interstate Fair Ass'n v. Benton*, 5 Tenn. App. 480 (1927); *Jones, Parking Lot Cases* (1938) 27 *Geo. L. J.* 162, 164.

dant amusement company and paid the attendant a parking fee. The car owner was not given a parking check and was requested to lock his car. The car was stolen and the defendant fair association was held liable for the loss, since the plaintiff proved that he had entered into an express agreement with the attendant<sup>26</sup> under which the attendant insured the safety of the car. Instances in which liability has been predicated upon parking lot owners on the theory of special contract, however, are few,<sup>27</sup> and inasmuch as liability in these instances arises through express agreement, they are of no aid in the determination of the nature of the jural relationship existing between the parking lot owner and the owner of an automobile parked therein.

## II.

Lot owners conducting business in the manner described under the second classification have, without exception, been held to be bailees<sup>28</sup> and, therefore, under a duty to protect vehicles parked within the parking lot. Before considering cases in which liability has been predicated upon the lot owner on the theory of bailment, however, consideration will be given to the essentials necessary to the creation of a bailment contract.

A bailment may be defined as a delivery of personalty for some particular purpose upon a contract, expressed or implied, that after the purpose has been fulfilled, the property shall be redelivered to the person who delivered it.<sup>29</sup> It has been consistently held that the payment of a fee is not essential to the creation of a bailment contract.<sup>30</sup> However, inasmuch as the payment of a fee does increase the duty of a bailee in respect to the degree of care he must exercise,<sup>31</sup> it is,

<sup>26</sup> In *Pennroyal Fair Ass'n v. Hite*, 195 Ky. 732, 243 S. W. 1046, 1048 (1922), the defendant lot owner proved at the trial that the lot attendant had no actual authority to agree to care for the plaintiff's car. The court found, however, that the attendant had apparent authority to enter into the agreement, stating that, " \* \* \* it requires no argument to show that it was within the apparent scope of the gatekeeper's employment, whose duty it was to, and who did, collect the entrance fee as well as the charges for taking the property into the ground, to make the special contract relied upon."

<sup>27</sup> See notes 25, 26, *supra*.

<sup>28</sup> *Galowitz v. Magner*, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1924); *Beetson v. Hollywood Athletic Club*, 109 Cal. App. 715, 293 Pac. 821 (1930); *Doherty v. Ernst*, 284 Mass. 341, 187 N. E. 620 (1933); see *Jones, Parking Lot Cases* (1938) 27 Geo. L. J. 162; Note (1934) 14 B. U. L. Rev. 368; (1939) 37 MICH. L. REV. 468.

<sup>29</sup> *Hogan v. O'Brien*, 123 Misc. 865, 206 N. Y. Supp. 831 (1924); SCHOU-  
LER, BAILMENTS AND CARRIERS (2d ed. 1887) § 2, p. 2; 4 WILLISTON, CONTRACTS (Rev. ed. 1936) § 1032, p. 2888.

<sup>30</sup> *Seigel v. Spear & Co.*, 234 N. Y. 479, 138 N. E. 414 (1925); *Hellawell v. Hempstead Co-op. Building & Loan Ass'n*, 249 App. Div. 622, 290 N. Y. Supp. 954 (2d Dept. 1936); see 2 WILLISTON, CONTRACTS § 1038, pp. 1950, 1952.

<sup>31</sup> In *Fire Ass'n of Philadelphia v. Fabian*, 170 Misc. 665, 667, 9 N. Y. S. (2d) 1018, 1021 (1938), the court stated, "The degree of care a bailee is bound to exercise depends upon whether the bailment is gratuitous, that is, for the bailor's benefit without expense to him, or is a bailment for hire for the mutual

therefore, a matter to be considered in order to determine whether in any given case the lot owner has used the degree of care required of him.<sup>32</sup>

It is apparent from the above definition and cases dealing with the point,<sup>33</sup> that the prime essentials to the creation of the usual<sup>34</sup> bailment relation is the delivery of the property to the possession and control of the bailee and his consent to such delivery. That the required change of possession of the car to the parking lot owner is adequately effected under the second method of doing business, *i.e.*, by leaving the keys in the car at the request of the attendant<sup>35</sup> plus the issuance of a claim check,<sup>36</sup> is apparently so obvious that the courts invariably assume the existence of a bailment relationship without discussion. Thus, in *Baione v. Heavey*<sup>37</sup> wherein it appeared that the plaintiff car owner in accordance with the defendant lot owner's way of doing business, paid the attendant the required parking fee, left the keys in the car and received a claim check, the court held the defendant parking lot owner liable for the theft of the plaintiff's car on the theory of bailment. That the court in this case was justified in finding a bailment relationship cannot be doubted, especially in view of the fact that the courts have little difficulty in finding a bailment relationship in instances wherein it appears that, although the car owner was not required to leave the keys in the car, he was given a check the presentation of which was required before the owner could retake the car.

Thus, in *Galowitz v. Magner*,<sup>38</sup> although the only evidence of a

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benefit of bailor and bailee. In the former case the degree of care is 'slight'; in the latter case 'reasonable'. The bailee is liable in the former case for 'gross' negligence; in the latter for 'ordinary'. Whether these distinctions are enlightening, the courts still recognize them.<sup>37</sup>

<sup>32</sup> In cases in which the courts determine that the relationship is one in the nature of licensor-licensee, the fact of whether or not a fee has been charged is immaterial. See *Lord v. Oklahoma State Fair Ass'n*, 95 Okla. 294, 219 Pac. 713 (1923).

<sup>33</sup> *Cowen v. Presspritch*, 202 App. Div. 796, 194 N. Y. Supp. 926 (1st Dept. 1922); *Van Wagoner v. Buckley*, 148 App. Div. 808, 133 N. Y. Supp. 599 (2d Dept. 1912); *Krumsky v. Loeser*, 37 Misc. 504, 75 N. Y. Supp. 1012 (1902); *Pattison v. Hammerstein*, 17 Misc. 375, 39 N. Y. Supp. 1039 (1896) ("There must, however, be an acceptance by the bailee of the goods forming the subject matter of the bailment, before there can be any bailment. The law does not insistently thrust the liabilities of a bailee upon one without his knowledge or consent. Such acceptance may be express or implied, but until there is something to show notice or knowledge, until the facts, at least, are known by the person, the law will not constitute him a bailee"); *DOBIE, BAILMENTS AND CARRIERS* (1914) § 11, p. 24.

<sup>34</sup> In some types of bailment, known as constructive bailments, neither an actual nor constructive delivery is required. However, constructive bailments have no application in parking lot cases. See 4 *WILLISTON, CONTRACTS* (Rev. ed. 1936) § 1038A, p. 2900; 6 *AM. JUR.* (1937) § 66, p. 193.

<sup>35</sup> See notes 3, 5, 6, *supra*.

<sup>36</sup> See notes 3, 5, 6, *supra*.

<sup>37</sup> 103 Pa. 529, 158 Atl. 181 (1932).

<sup>38</sup> 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1922).

delivery of the plaintiff's car to the possession of the lot owner was the fact that the defendant lot owner had given the plaintiff a claim check, the court held the lot owner to be a bailee on the theory that the transaction was "of the same nature as checking a parcel."<sup>39</sup> In the *Galowitz* case the necessary change in possession was clearly effected by the issuance of the claim check, for it provided a means whereby the lot owner could retain control of the vehicle even as against the plaintiff owner, until the check was presented.<sup>40</sup> The court found that the necessary consent on the part of the lot owner to such change in possession could be inferred by the fact that the defendant testified that he "maintained \* \* \* [a] fenced parking space<sup>41</sup> and three attendants 'looking after, taking care of the cars as they came in and went out.'"<sup>42</sup>

The only remaining situation in which the question of the lot owner's liability for loss or damage to a patron's car is likely to arise is in instances in which the parking lot owner directs the owner of the car to leave the keys in the ignition, but does not give him a claim check. Under circumstances such as this the courts consistently and justifiably hold that a bailment relation is created between the owner of the parking lot and the owner of the car.<sup>43</sup> Clearly, under these circumstances the two essential requirements of a bailment contract, namely, the delivery of possession of the vehicle to the lot owner, and his consent to such delivery, have been met, the former by the leaving of the keys in the car,<sup>44</sup> and the latter by his request to do so. Indeed, the parking lot owner's consent to the delivery of the possession of a patron's car has been inferred, on his part, from his unprotested knowledge that the owner of the car left the keys in the ignition even though not requested to do so.<sup>45</sup>

Just how far the courts will go in finding the necessary elements of a bailment contract in parking lot cases, is clearly evidenced by the decision of the court in *Fire Association of Philadelphia v. Fabian*.<sup>46</sup>

<sup>39</sup> *Id.* at 8, 203 N. Y. Supp. at 423.

<sup>40</sup> The claim check in the *Galowitz* case contained a disclaimer of the defendant's liability, in fine print. The plaintiff paid no attention except to take the check and put it in his pocket. The court in holding that the disclaimer was ineffective stated, " \* \* \* the disclaimer of liability could only become effective if brought to the plaintiff's knowledge. \* \* \* Its presence on the ticket or stub is quite as consistent with a contract of bailment as with one for a mere rental of parking space." See *Wendt v. Sley System Garage*, 124 Pa. 224, 188 Atl. 624 (1936).

<sup>41</sup> See note 23, *supra*.

<sup>42</sup> *Galowitz v. Magner*, 208 App. Div. 6, 8, 203 N. Y. Supp. 421, 423 (2d Dept. 1922).

<sup>43</sup> The delivery of a key has always been associated with a transfer of possession. BENJAMIN, SALES (7th ed. 1899) § 696, p. 715 ("where goods are ponderous and incapable of being handed over from one to another, there need not be an actual delivery, but it may be done by that which is tantamount, such as the delivery of the key \* \* \*").

<sup>44</sup> See note 43, *supra*.

<sup>45</sup> *Doherty v. Ernst*, 284 Mass. 341, 187 N. E. 620 (1933).

<sup>46</sup> 170 Misc. 665, 9 N. Y. S. (2d) 1018 (1938).

In the *Fire Association of Philadelphia* case it appeared that it was the custom of the patrons of the defendant's parking lot to park their cars wherever space permitted without advising the defendant thereof, and to get them without notifying him except when necessary to move a car before they could make their exit. It was also the custom of the patrons to leave their keys either in the cars or upon a keyboard in an office adjacent to the parking yard. The plaintiff car owner who was familiar with this custom, except that he denied knowledge of the keyboard, parked his car in the defendant's lot and left the keys in it. The car was stolen. The defendant lot owner was found to be a bailee.<sup>47</sup> The court found that inasmuch as the keys were left in the car, the defendant lot owner had a right to exercise physical control over the car at his discretion, and, therefore, the requirement of a change of possession had been met. The court, however, did not consider the lot owner's consent to said change in possession. Seemingly, however, the defendant lot owner's consent could be inferred from the fact that he knew of the custom of his patrons to leave their keys in the cars, and made no objection.

A review of the cases in the various jurisdictions discloses that though the courts are ready to find the necessary delivery of a patron's car to the lot owner with the latter's consent, still the mere presence of the car in the parking lot is not, in itself, a sufficient delivery to constitute the lot owner a bailee. Since, however, the cases indicate that in the majority of instances the parking lot owner either requests the patron to leave the keys in the car or gives the patron a claim check, statements to the effect that the parking lot owner is a bailee,<sup>48</sup> though not technically correct, are practically speaking, a fair statement of his status.

WILLIAM F. PODESTA.

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#### HIGHWAYS AND TOLL ROADS.

A short time ago the New York Court of Appeals, by a three-to-four decision, declared illegal a toll placed by the County of Westchester on the Hutchinson River Parkway.<sup>1</sup> The parkway, the court held, is part of our highway system, and a toll on a public highway is violative of Section 54 of the New York Vehicle and Traffic Law.<sup>2</sup>

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<sup>47</sup> The court in the *Fire Association* case refused to hold the defendant liable, however, on the ground that the plaintiff owner was contributorily negligent in leaving the keys in the car.

<sup>48</sup> See note 7, *supra*.

<sup>1</sup> *People v. Westchester*, 282 N. Y. 224, — N. E. (2d) — (1940).

<sup>2</sup> N. Y. VEHICLE AND TRAFFIC LAW § 54 provides: "Except as otherwise provided in this chapter, local authorities shall have no power to pass, enforce and maintain any ordinance, rule or regulation requiring from any owner of a