Marquette Law Review

Volume 22
Issue 1 *December 1937*

Article 7

Bailments: Automobile Parking Lots: Limitation of Liability

Roy C. Packler

RECENT DECISIONS

BAILMENTS—AUTOMOBILE PARKING LOTS—LIMITATION OF LIABILITY.—The plaintiff was an automoble rental corporation which rented a car to one Lejeune. The rentee parked the car on defendant's parking lot at approximately 11:45 p.m., and after paying a fee of fifteen cents received a claim check bearing an identifying number. The rentee returned forty minutes later and found the lot dark, the attendant gone, and the car missing. The plaintiff, owner of the car, seeks to recover the money spent in pursuing, recovering, and reconditioning the car. The claim check contained, among other printed matter, the following words, "We close 12 P.M. Not Responsible for Cars After Closing Time." Although the rentee's attention was not called to the printed matter on the claim check, the trial court found that the parking lot was well lighted and the rentee had reasonable opportunity to read the printed matter. The bailee's limitation of liability on the claim check became a part of the contract and the rentee was bound by it. On appeal, *held,* judgment affirmed. The testimony showed that the plaintiff's car was still on the lot when the defendant's attendant turned out the lights and left. The court felt that this was sufficient to support the finding that the defendant discharged the terms of its contract. *U Drive & Tour, Limited* v. *System Auto Parks, Limited,* (Cal. App. 1937) 71 P. (2d) 354.

An important question in parking lot cases is whether or not a bailment has existed. Where a bailment relationship has been established there is the "rule of thumb" that a bailee to limit his liability must specifically call to the attention of the bailor the conditions of the limitation. This rule has often been applied in cases where a passenger of a railroad checked his baggage. *Brown* v. *Eastern R. R.,* (Mass. 1853) 11 Cush. 97; *Hollister* v. *Nowlen,* (N.Y. 1834) 19 Wend. 234. The old rule is based upon the belief that limitation of a carrier's liability is against public policy since it has a tendency to encourage negligence if not actually to favor frauds and embezzlement by the servants of the carrier. In *Malone* v. *Boston & Worcester R. R.,* (Mass. 1859) 12 Gray 388, the bailee attempted to limit his liability in the same manner as in the principal case. The limitation was printed on the claim check and placards were posted, but the court held that this was not a presumption that the bailor read the notices. With the rise of the automobile parking lot it has become necessary to allow the bailee to limit his liability since the fee he receives is comparatively small in proportion to his responsibility. Many car owners using such lots seek convenience rather than the protection one attendant can divide among many cars. As a result, the courts have been lenient to term a parking lot transaction a "fee paid for the privilege of parking a car" rather than a bailment. In *Leonard Bros.* v. *Standifer,* (Tex. Civ. App. 1933) 65 S.W. (2d) 1112, a parking lot was maintained for the use of the customers of a store. The court stated that gross negligence would have to be proved before the car owner could recover. Where a lot was maintained for patrons of an amusement park the same rule applied. *Suits* v. *Electric Park Amusement Co.,* 213 Mo. App. 275, 249 S.W. 656 (1923). In both cases the owner parked his car, locked it if he chose, and no charge was made for the privilege of parking. In *Lord* v. *Oklahoma State Fair Ass'n.,* 95 Okla. 294, 219 Pac. 713 (1923), a fee of twenty-five cents was charged for parking the car within the fair enclosure, but this afforded the owner no more protection than if he had parked on the street outside of the fair grounds. Where the parking lot was situated near a ball park the fee of fifteen cents was paid for the privilege of parking. The court stated that the lot was for the

convenience of base ball fans and if an elaborate checking system were used it would defeat the very purpose of the lot. *Thompson* v. *Mobile Light & Ry.,* 211 Ala. 525, 101 So. 177 (1924). In cases where a parking lot operator is forced to assume the responsibility of a bailee for hire the fee is usually larger, and the control of the car is turned over to the bailee who reserves the right to move the cars. Such a case is *Galowitz* v. *Magner,* 208 App. Div. 6, 203 N.Y. Supp. 421 (1924) where a fee of fifty cents was charged and the car was kept within an eight-foot wall with an attendant on duty at all times. Here the limitation printed on claim check was ineffective. A limitation saying that the lot was open only between 8 a.m. and 5 p.m. was also ineffective where the bailor was in the habit of coming much later and never being charged extra. A fee of twenty-five cents was charged and two people were on duty after 5 p.m. *General Exchange Ins. Corp.* v. *Service Parking Grounds,* 254 Mich. 1, 235 N.W. 898 (1931). Where the car owner paid thirty-five cents and received a ticket on which was printed " . . . the fee is for the privilege of parking" and no responsibility was "assumed" by the lot owner, the courts decided that since the keys were left in the car it was a bailment and as such the lot operator was *prima facie* responsible. *Baione* v. *Heavey,* 163 Pa. Super. 529, 158 Atl. 181 (1932). In *Keenan Hotel* v. *Funk,* 93 Ind. App. 677, 177 N.E. 364 (1931) a limitation of "Not responsible for fire, accident, or theft" was held ineffective where such injury was due to the negligence of the lot operator. The fee charged was twenty-five cents.

ROY C. PACKLER.

MASTER AND SERVANT—STATUTORY REGULATION OF OPTOMETRY—EMPLOYER AND EMPLOYEE BOTH SUBJECT TO REGULATION.—The defendant, a firm of opticians not registered as optometrists or as physicians, employed a physician duly registered under the law of the commonwealth as such, at a fixed weekly salary, to make free prescriptions for the purchasers of eyeglasses. The other employees of the defendant assisted the purchasers in selecting the shape and the style of the frames desired, ground and fitted the lenses in accordance with the prescriptions of the physician. The purchasers paid nothing except a fixed price for the eyeglasses, which price was identical whether the purchasers furnished their own prescriptions, or procured them from the physician employed by the defendant. The plaintiff brought the bill to restrain the defendant from practicing optometry without a license or being registered as required by law. The case was reported to the Supreme Judicial Court upon agreed facts without decision. *Held,* a decree is granted, restraining the defendant from practicing optometry, either personally or by any servant or employee, unless and until, and then only to the extent that, they shall become lawfully entitled to do so. A person, real or corporate, who is inhibited from directly practicing a profession, because unlicensed to do so, cannot indirectly engage in the practice of such profession by employing one who is not inhibited from practicing the profession, because such one is licensed to do so, except, however, where the statute affirmatively permits it. *McMurdo* v. *Getter,* (Mass. 1937) 10 N.E. (2d) 139.

It is well established that no one can practice law unless he has assiduously complied with all the conditions required by the statutes and the rules of the courts. As the legal entity, the corporation cannot go to law school, pass a bar examination, or in any way comply with the qualifications which necessitate human attributes, it becomes only too patent that the corporation cannot practice law. Since it cannot practice directly, it cannot do so indirectly by employing