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as to the present status of the rule. It is one of due care under the circumstances. The elements of "outrunning headlights," i.e., the speed of the vehicle as related to the range of the headlights and the effectiveness of the brake mechanism, are simply considered as relatively important factors in determining the presence or absence of contributory negligence as a matter of law. Since the bare fact of a collision would in most cases give rise to an inference that plaintiff was "outrunning his headlights," it seems that the only effective means of withstanding a demurrer or nonsuit is a careful marshalling of facts that tend to show extenuating circumstances in the particular case. Facts having a bearing of importance for this purpose have been indicated by a recent note.

A comparison with the status of the rule, or its equivalent, in other jurisdictions indicates that the North Carolina Supreme Court has taken a sensible approach to a difficult problem which is of importance to many North Carolina motorists. In the light of recent decisions, the following statement seems to be indicative of the court's attitude toward "outrunning headlights":

One must operate a motor vehicle at night in a manner that will enable him to avoid striking objects that, by the exercise of reasonable care, he should perceive or anticipate as they come within the range of the headlights of his vehicle.

JOHN R. MONTGOMERY, JR.

Bailments—Validity of Contract Limiting Liability for Negligence

Automobile owner contracted with defendant parking lot operator for parking privileges, the parties agreeing orally that defendant would

The situation here is similar to the doctrine enunciated by the court that, the failure of a motorist to stop at a point where a clear view may be had of railroad tracks before crossing them is contributory negligence as a matter of law. Parker v. Atlantic Coast Line R. R., 232 N. C. 472, 61 S. E. 2d 370 (1950). It is interesting to note that this doctrine appeared in North Carolina in 1927, the same year as the rule of "outrunning headlights." Harrison v. North Carolina R. R., 194 N. C. 656, 140 S. E. 598 (1927). The rigid doctrine is generally considered to be the result of Baltimore & Ohio Ry. v. Goodman, 275 U. S. 66 (1927). But, by the recognition of "modifying factors," the North Carolina Court has, for most purposes, transformed the doctrine into a standard of reasonable care. See Note, 29 N. C. L. Rev. 301 (1951).
not be liable for loss by theft or fire. While parked in defendant's lot, the automobile was stolen. In an action for the value of the automobile, the agreement was allowed as a defense, and judgment was for defendant. The North Carolina Supreme Court granted a new trial, holding the agreement void as violating public policy. The court recognized that ordinary mutual benefit bailees may make such contracts, but refused to allow such a contract where the bailee is a professional, and holds himself out to the public on a uniform basis.

This decision stands alone in North Carolina as regards professional bailees. It is supported, however, by analogous cases involving public service corporations. Also, in the early case of *Hanes v. Shapiro* it was indicated by way of dictum that this was the policy in North Carolina. Dicta in succeeding cases reaffirmed this.

The validity of exculpatory agreements which relieve the bailee of all liability for his own negligence has been questioned for some time. As pertains to ordinary mutual benefit bailees such contracts are generally held to be valid, if they violate no rule of public policy and if there is no great disparity of bargaining power between the parties. In recent years, the courts have differentiated between the ordinary mutual benefit bailee, dealing with the public on an individual basis, and the professional mutual benefit bailee, who deals with the public on a uniform basis.

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1 This note does not cover those cases where the exculpatory clause is pleaded on the sole grounds that such limiting terms were displayed on signs or printed on identification stubs. See *Gwertzman, Contracts Limiting the Bailee's Liability*, 299 Ins. L. J. 1059 (1947) ; Note, 40 Mich. L. Rev. 897 (1942).


3 Slocumb v. Raleigh, C. & S. R.R., 165 N. C. 338, 81 S. E. 335 (1914) ; Singleton v. A. C. L. R.R., 203 N. C. 462, 166 S. E. 305 (1932). In the Singleton case plaintiff bailor left cotton on defendant bailee's railroad station platform, not to be shipped, and with no obligation to ship it. Plaintiff agreed that defendant was exempt from liability for any negligent destruction. The court upheld the agreement. Here the bailment was not in the performance of defendant's duties as a common carrier, but was a special contract in which the public had no interest.


form basis. The latter category is generally held to include parking lots, garages, check rooms, and warehouses. Here, the majority view seems to be that such an exculpatory agreement is void. This is based on disparity of bargaining power, the public nature of the undertaking, and, in some cases, on statutory interpretation. A few jurisdictions take the position that such contracts do not violate any public policy. Others uphold such agreements on the ground that the

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10 Scott Auto & Supply Co. v. McQueen, 111 Okla. 107, 226 Pac. 372 (1924); See Note, 175 A. L. R. 12, 128 (1948).
11 Denver Union Terminal R. Co. v. Culliman, 72 Colo. 248, 210 Pac. 602 (1922); Note, 22 Mich. L. Rev. 154 (1923); Note, 175 A. L. R. 12, 120 (1948).
12 Arkansas Power & Light Co. v. Kerr, 204 Ark. 238, 161 S. W. 2d 403 (1942); Note, 175 A. L. R. 12, 131 (1948).
14 Garages: Parris v. Jaquith, 70 Colo. 63, 197 Pac. 750 (1920); Renfroe v. Fouché, 26 Ga. App. 340, 106 S. E. 303 (1921); Wienberger v. Werremeyer, 224 Ill. App. 217 (1922); Gulf & S. T. R. Co. v. Sutton Motor Co., 12 La. App. 495, 126 So. 458 (1930); Nagaki v. Stockfleth, 141 Neb. 676, 4 N. W. 2d 766 (1942); Scott Auto & Supply Co. v. McQueen, 111 Okla. 107, 226 Pac. 372 (1924); Simms v. Sullivan, 100 Or. 487, 198 Pac. 240 (1921). Where the garage charges less than the average because of such a contract, the contract may be upheld. Automobile Underwriters of America v. Langlin, 6 La. App. 67 (1927).
15 Check Rooms: Denver Union Terminal R. Co. v. Culliman, 72 Colo. 248, 210 Pac. 602 (1922). In this field the courts appear more inclined to uphold such agreements, if they are expressly made. See Note, 175 A. L. R. 12, 123 (1948).
16 Warehouses: Arkansas Power & Light Co. v. Kerr, 204 Ark. 239, 161 S. W. 2d 408 (1942); England v. Lyon Fireproof Storage Co., 94 Cal. App. 562, 271 Pac. 532 (1928); Marlowe v. Conway Iron Works, 130 S. C. 256, 125 S. E. 569 (1924); Central Meat Market v. Longwell’s Transfer, Inc., 62 S. W. 2d 87 (Tex. Com. App. 1933). When warehousemen are concerned, the courts are practically unanimous in holding that they shall not be allowed to make such contracts. See Note, 175 A. L. R. 12, 131 (1948).
17 See generally, 4 Williston, Contracts §1065A (Rev. ed. 1936).
18 See note 9 supra.
20 Section 3 of The Uniform Warehouse Receipts Act reads: “A Warehouseman may insert in a receipt . . . any other terms and conditions, provided that such terms and conditions shall not . . . (b) In any wise impair his obligation to exercise that degree of care . . . which a reasonably careful man would exercise in regard to similar goods of his own.” In cases arising under this statute it has been held that public policy would be violated by allowing an exculpatory clause. Lawrence Warehouse Co. v. Defense Supplies Corp., 164 F. 2d 773 (9th Cir. 1947); Morse v. Imperial Grain & Warehouse Co., 40 Cal. App. 574, 181 Pac. 815 (1919); Renfroe v. Fouché, 26 Ga. App. 340, 106 S. E. 303 (1921); Scott Auto & Supply Co. v. McQueen, 111 Okla. 107, 226 Pac. 372 (1924); Bank of California Nat. Assn. v. Schmalz, 139 Or. 163, 9 P. 2d 112 (1932).
21 Fidelity Storage Co. v. Kingsbury, 76 F. 2d 978 (D. C. Cir.), modified on other grounds, 79 F. 2d 705 (D. C. Cir. 1935); Kravitz v. Parking Service Co., 29 Ala. App. 523, 199 So. 727, cert. denied, 240 Ala. 467, 199 So. 731 (1940). This is the English common law holding; except where modified by statute, an ordinary
parties must be given freedom of contract. This view does not seem to be supported by reason, however, as it is a generally recognized principle that freedom of contract is always controlled by considerations of public policy.

In the instant case, the great disparity of bargaining power was recognized, the court pointing out that the conditions were predetermined in favor of the bailee. Thus, the court’s reasoning that a professional bailee in such a position cannot contract away his liability is clearly supported by the weight of authority and reason.

JAMES M. HOLLOWELL.

Charities—Liability for Torts of Employees

Liability is generally incurred by employers for the negligent conduct of their employees in the course of their employment. However, at

the constantly increasing number of automobiles renders the question of parking a matter of public concern. People who work in the business sections of our cities and towns and who rely on automobiles for transportation find it difficult—sometimes impossible—to locate a place on the public streets where daily parking is permitted. They are driven to seek accommodation in some parking lot maintained for the service of the public. There they are met by predetermined conditions which create a marked disparity of bargaining power and place them in the position where they must either accede to the conditions or else forego the desired service. Miller’s Mutual Fire Insurance Assoc. v. Parker, 234 N. C. 20, 24, 65 S. E. 2d 341, 343 (1951).

1 Liability is based on the respondeat superior doctrine. The reason for the doctrine is that it is more just to make the person who has entrusted his employee with the power of acting in his business responsible for injury occasioned to another in the course of so acting, rather than leave the other, an entirely innocent party, to bear the loss or attempt a usually inadequate recovery from the employee. Schiedivy v. McDernott, 113 Cal. App. 218, 298 Pac. 107 (1931); Phillips v. Western Union Tel. Co., 270 Mo. 676, 195 S. W. 711 (1917); Bernstein v. Western Union Tel. Co., 174 Misc. Rep. 74, 18 N. Y. S. 2d 856 (1940); Wright v. Wright, 229 N. C. 503, 50 S. E. 2d 540 (1948); Hammond v. Eckerd’s, 220 N. C. 596, 18 S. E. 2d 151 (1942); West v. F. W. Woolworth Co., 215 N. C. 211, 1 S. E. 2d 546 (1939).