THE PARKING OF AUTOMOBILES

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It is significant of the modernity of the law of automobiles that one must for a brief title to this paper resort to a neologism. To park, literally speaking, is to bring together in a compact body, within a park or enclosure, objects not in actual service but held for use when required.¹ The parking of artillery is a familiar illustration, and in a similar manner motor vehicles are collected in “parking places” wherever crowds congregate.² In this sense, as one judge observes, “one automobile can no more park than one bird can flock. The idea of assembling inheres in the term.”³ But as the word has come to be used in connection with the regulation of traffic and the prevention of excessive congestion on the highways, it has taken a broader signification. At least figuratively, the stopping of the first car for an unreasonable time is the beginning of parking, although the policeman who tags your car would not be interested in such nice distinctions, even in the absence of a definition in the motor vehicle law. To him as to others, parking, in addition to its original meaning, includes the voluntary act of leaving a car standing on the highway when not in use.⁴

The problems connected with parking are essentially administrative problems, among the most difficult that confront the American municipal corporation. The ever-increasing number of cars, their habitual use by all classes, and, too frequently, the inadequacy and inconvenience of other means of transportation, lead to conditions that call for intelligent regulation in the interest of all who use the streets and highways of our cities and towns; of those who live there, and of those who come there on business or for pleasure. The conflicting interests that must be reconciled,

¹ New Orleans v. Lenfant, 126 La. 455, 52 So. 575 (1910).
² Ex parte Mobile Light & R. R., 211 Ala. 525, 101 So. 177 (1924).
⁴ Kastler v. Tures, 191 Wis. 120, 210 N. W. 415 (1926); Ex parte Corvey, 220 Mo. App. 602, 287 S. W. 879 (1926).
as far as possible, are those of automobile operators who seek a temporary stopping place for their cars, those of carriers of goods and passengers, as well as others whose interest it is that the highways shall be kept clear for traffic, and those of the owners of property adjacent to the highway, whose access thereto is impeded. Local conditions are frequently a factor. It may be of interest to review the cases in which such controversies have come before the courts.

The regulation of motor vehicles used upon the public highways, whether by residents or non-residents, whether for hire or for private use, is an attribute of the police power of the state, and its exercise is nowhere disputed. As Judge Orlady aptly puts it:

"The state legislature has, beyond question, the power to provide for the construction and maintenance of the public highways, whether streets in cities and boroughs, or roads in townships, and it has a full and clear power to provide regulations for their use. It must also be conceded that this power may be delegated without diminution to a local municipality. By which the state imparts to its creature, the municipality, the powers necessary to the performance of its functions and to the protection of its citizens in their persons and property."  

Indeed, it has been held that the legislature may absolutely prohibit the use of motor vehicles, or certain types of vehicles, upon designated highways and streets, or may delegate such power to local authorities. However, in such case, the authority must

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expressly appear and cannot rest on implication. These points are too well settled and the authorities too numerous to merit discussion.

On the more limited question, the regulation of parking, *Pugh v. Des Moines* best deserves to be considered the leading case. There an ordinance provided that no person should, between certain hours, leave standing on certain streets any vehicle for a longer period than twenty minutes for loading and unloading. A bill to restrain its enforcement was brought by the owner of a private passenger automobile, who was accustomed to drive to his office and leave his car standing during business hours in the block where his office was located. His contention was that the ordinance exceeded the powers of the city and was unreasonable. The supreme court reversed the decree of the court below granting an injunction and, after a learned review of the authorities, said:

"We have these propositions established, so far as the city and the general public are concerned: That the public streets of a city are dedicated to public use, and are a public way from 'side to side and end to end,' and that any private use thereof which in any degree detracts from or hinders or prevents its free use as a public way to its full extent is, within the meaning of the law, an obstruction or encumbrance, and any obstruction or encumbrance for private purposes is in law a nuisance."

To the argument that the state automobile law enacted that no municipality could exclude the owner of an automobile from the free use of the highway, the court replied:

"... we must construe this language to mean that free use which is involved in the right to come and go and drive upon the streets without let or hindrance. The idea of the free use of a street does not involve the right to obstruct the free use of the street. If one man, in the exercise

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9 176 Iowa 593, 156 N. W. 892 (1916).

of his right to the free use of the street, can stable his automobile upon the public street and leave it standing there, any number of persons can exercise the same right, until a point is reached where the travel upon the street is absolutely obstructed.”

A similar argument was made in *Beck v. Cox;* where the ordinance under attack required any person leaving a vehicle standing to place it on the right hand side of the street. The regulation, it was held, came within the charter power to keep the streets free from obstruction, which, within limits of reason and fairness, was a subject within the discretion of the city council. The stopping, temporarily and for a reasonable time, of an automobile in a public street for the convenience of the owner, is not to be held an obstruction, but one cannot use the street as a garage contrary to reasonable police regulations. The time, place and manner of the alleged obstruction must be considered.

Somewhat more difficult questions arise when a local regulation is confined to a particular class of vehicles, such as those for hire. In *Comm. v. Rinker,* a summary conviction, under an ordinance placing, on the parking of motor vehicles for hire, restrictions that did not apply to similar private vehicles, was reversed. Under the ordinance, it was observed, one using a hired automobile could not have it parked near a store or railroad station, while one owning a car could park it to await his convenience. “The ordinance,” the court concluded, “which denies the right to the citizen who rides in an automobile hired for the occasion, which is enjoyed by another citizen, who may own his automobile, is both unreasonable and discriminatory, and, therefore void.”

In Texas an ordinance making it a misdemeanor for any person, owning or using a vehicle conveying passengers or goods for hire, to “stop, stand or detain” such vehicle on cer-

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11 Ibid. 609, 156 N. W. at 897.
12 77 W. Va. 442, 87 S. E. 492 (1915).
15 Ibid. 359.
tain streets except when actually engaged in receiving or delivering passengers or goods, was held oppressive and in contravention of common right.\textsuperscript{16} So also, in Missouri, an ordinance \textit{prohibiting} the parking of automobiles carrying passengers for hire was held void, because the law merely authorized municipalities to regulate parking and also because it was unreasonable.\textsuperscript{17} But by the great weight of authority, there is a fundamental difference between the use of highways by the public in the usual way for pleasure or business, and as a place of business or as a main instrumentality for carrying on business for private gain. As to the former the power to regulate should be sparingly exercised and only when reasonably necessary to the public interest; as to the latter the authority to use may be given or withheld. Such grants are in the nature of concessions by the public, which the legislature may confer or withhold, extending the privilege to some persons and denying it to others because of differences of character or capacity, and defining the terms upon which the privilege shall be exercised.\textsuperscript{18} “There is,” says the Supreme Court of Florida, “a distinction between allowing the parking of ordinary vehicles by the general public along streets and allowing owners or operators of taxicabs operated for hire to appropriate a certain portion of a busy street as a location for the conduct of their private business, where their vehicles are kept in the intervals when they are not employed in the carriage of persons or property, and while awaiting, or soliciting, such employment.”\textsuperscript{19} The point was made most explicitly as to stage coaches by Lord


\textsuperscript{17} Baker v. Hasler, 218 Mo. App. 1, 274 S. W. 1095 (1925); City of New Orleans v. Badie, 146 La. 550, 83 So. 826 (1920).


\textsuperscript{19} State v. York, \textit{supra} note 18, at 630, 106 So. at 420.
Ellenborough, who characterized it as “making a stable yard of the king’s highway.” From early times the business of a public hackman has been held to be affected with a public interest and subject to governmental regulation. Hence, long before automobiles came into use, ordinances had been sustained authorizing city officers to prescribe the places where hacks and other vehicles for hire should stand, particularly in the neighborhood of railroad stations, and requiring drivers to obey the directions of the police in regard to the places which their vehicles should occupy, for the prevention of congestion, disorder and the annoyance of travellers. This principle applies equally to motor vehicles even though in some instances it may confer upon one person a position of advantage over another, remembering, of course, that such control is not to be exercised arbitrarily and unreasonably. If vehicles for hire may be assigned to designated parking places on the highway, it would seem proper that they should be secured in the use of such positions. Such was the decision in a recent Massachusetts case, where a conviction was sustained under an ordinance forbidding the parking of vehicles not taxicabs within the limits of any taxicab stand. The establishment of public stands being reasonable and necessary, a further provision was required to make the observance of the regulation possible. “No right of any citizen is impaired,” said the court, “by an ordinance which prohibits the parking of vehicles at a place in a public street or highway where such person has no legal title to the land occupied by the street or highway and has no interest in such greater

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21 Comm. v. Matthews, 122 Mass. 60 (1877); Masterson v. Short, 7 Rob. 241, 299 (N. Y. 1867); St. Paul v. Smith, 27 Minn. 364, 7 N. W. 734 (1880); Veneman v. Jones, 118 Ind. 41, 20 N. E. 644 (1888); Ottawa v. Bodley, 67 Kan. 178, 72 Pac. 545 (1903); Taylor v. Roberts, 84 Fla. 654, 94 So. 874 (1922); Seattle T. & T. Co. v. Seattle, 86 Wash. 594, 150 Pac. 1134 (1915); Matter of Barmore, 174 Cal. 286, 163 Pac. 50 (1917); Yellow Taxicab Co. v. Gaynor, 82 Misc. 94, 143 N. Y. Supp. 279 (1913).

than an easement of travel which is held in common with all citizens." 23

Before considering the rights of adjoining owners in connection with the use of the highway, it may be well, in passing, to mention the rights of such owners in reference to their own property. That one may park one's car and permit others to park on one's own land would seem axiomatic unless the parking is conducted in such a manner as to constitute a nuisance to the neighborhood. If a garage or filling station may be held a nuisance, so also may a parking stand. The question depends upon the nature and result of the acts of which complaint is made, and not upon the means by which they are produced. 24 In Robinson v. London General Omnibus Co., Ltd., 25 the turning, shunting, standing and repairing of motor busses in the street, in such a way that vibration and noise disturbed the owners and occupiers of adjoining houses, was held a nuisance. So much may be conceded without detracting from the owner's right to use his property as he sees fit. One who stands his car on private property with the owner's express permission cannot therefore be brought within the purview of an act directed against the improper use of public streets. 26 In a well-known line of cases it has been sought to limit the control of railroad companies over their stations and depot grounds to the extent of preventing them from giving to one person or corporation the exclusive privilege of going on the railroad's grounds to solicit transportation of baggage and passengers, as tending to create a monopoly detrimental to the travelling public. 27 But a great majority of de-

27 McConnell v. Hays, 92 Ky. 465, 18 S. W. 15 (1892); Indianapolis Union Ry. v. Dohn, 153 Ind. 10, 53 N. E. 937 (1899); Montana U. R. v. Langlois, 9 Mont. 419, 24 Pac. 209 (1886); Kansas C. T. Co. v. James, 298 Mo. 497, 251 S. W. 53 (1923). See cases cited in Mader v. Topeka, 106 Kan. 867, 189 Pac. 969 (1920), and Note (1923) 23 Col. L. Rev. 761.
decisions hold that such a contract by a railroad is valid, and the principle has recently been reaffirmed by the Supreme Court of the United States.\textsuperscript{28} The station grounds, it is said, belong to the railroad company, and it may put them to any use that does not interfere with its duties as a common carrier. The grant of special privileges to one creates no duty to grant like privileges to others, nor is the railroad company bound to permit persons having no business with it to enter its premises, solicit trade and use its property to carry on their own business. It is urged that such exclusive contracts make for good order at depots, prevent annoyance, and serve the convenience and the safety of passengers. Possibly this is so, provided an adequate service be maintained. The duty of carriers to dependent services is a problem of public service law and this special phase of it should not be treated as an isolated topic. Nevertheless, a railroad’s private property cannot be taken, without compensation, for the purpose of establishing a public taxicab stand.

When the special rights of the private owner of property abutting on a public street are examined, it will be found that, while there is some conflict of opinion, at the least his admitted right to air, light and free access confers upon him an interest in the highway peculiar to himself and exceeding that of the general public.\textsuperscript{29} At the most, and in a majority of jurisdictions, he owns the fee of the street or highway to the center line, subject to the easement of travel in the public. At common law, ownership of land adjoining a public road is \textit{prima facie} evidence of title to the soil to the middle of the road,\textsuperscript{30} although the presump-


\textsuperscript{29} Greeley S. Co. v. Riegelmann, 119 Misc. 84, 195 N. Y. Supp. 845 (1922); In re Singer-Kaufman Realty Co., 196 N. Y. Supp. 480 (1922); Fowler v. Nelson, 213 Mo. App. 82, 246 S. W. 638 (1923); Geunazi v. Marin Co., 263 Pac. 825 (Cal. App. 1928). For the conflicting views in the various states see 4 MCQUILLIN, MUNICIPAL CORPORATIONS (3d ed. 1928) § 1409.

\textsuperscript{30} Cooke v. Green, 11 Price 736 (1823); Stevens v. Whistler, 11 East 51 (1809); Marquis of Salisbury v. Great Northern Ry., 5 C. B. (N. S.) 174 (1858); Adams v. Saratoga & W. R. R., 11 Barb. 414 (N. Y. 1851).
tion may be rebutted by the surrounding circumstances. Ordinary the fee to the center of the highway belongs to the abutting landowners. The interest of the public is merely a right of way upon the land for purposes of travel, while the owner retains his proprietorship of the soil, subject to its undisturbed use by the travelling public, against whom neither owner nor stranger has a right to create an obstruction. This is very old law. In 1468 all the justices are reported as agreeing "that in the king's way, the king has nothing except the passage for himself and his people, but the freehold and all the profits and trees belong to the lord of the soil." Modern cases reiterate this principle. In Hickman v. Maisey, the plaintiff had rented land, crossed by a highway, to a horse-trainer. The defendant, after notice not to do so, went on the highway, observing with glasses and taking notes of the trials of race horses. The defendant was held to be a trespasser and enjoined from repeating the acts complained of. The right of the public to pass and repass on a highway, it was said, was subject to reasonable extensions which may from time to time be recognized as necessary in a country becoming more populous and civilized, but they must be such as are not inconsistent with the paramount idea that the right of the public is that of passage. In Vondersmith's Case, a hackman standing in front of a hotel was ordered to leave and was arrested on his refusal to do so. He charged the officer with assault and battery, but the latter was released on habeas corpus. "No one," said the court, "has a right to stand or carry on any business in front of any man's house, and if he is thus annoyed and notifies the party to

32 Y. B. 8 Edw. IV, f. 9, pl. 7 (1468); Y. B. 2 Edw. IV, f. 9, pl. 21 (1462); Lade v. Shepherd, 2 Strange 1004 (1734); Goodtitle v. Alker, 1 Burr. 133 (1757); Dovaston v. Payne, 2 Bl. H. 527 (1795); Stackpole v. Healy, 16 Mass. 33 (1819); St. Mary, Newington v. Jacobs, L. R. 7 Q. B. 47 (1871); Robert v. Sadler, 104 N. Y. 229, 10 N. E. 428 (1887); Burr v. Stevens, 50 Me. 500, 38 Atl. 547 (1899); Breisch v. Locust M. C. Co., 267 Pa. 546, 110 Atl. 242 (1920).
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leave and he don't, he has a perfect right to use sufficient force to compel the offender to go. . . . His refusal to go gave the proprietor a right to take him by the collar and put him off the pavement, or call a public officer to do so, which was the wiser course."35 One has been held to be a trespasser who stood on the sidewalk in front of a man's house and used towards him abusive language, not having stopped for a justifiable purpose. "Suppose," it was added, "a strolling musician stops in front of a gentleman's house, and plays a tune or sings an obscene song under his window, can there be a doubt that he is liable in trespass?"36 The traveller on the public highway has admittedly a right to stop, and may, in case of necessity, load or unload or allow his vehicle to remain a reasonable time for his own convenience, if he does not unduly interfere with the rights of others in their use of the highway. The occasional stopping or standing of carriages or wagons near abutting property, not continued an unusual or unnecessary length of time, is spoken of as an appropriate use of the highway.37 But there is no right to make continuous use of the highway in front of private property as a standing place for one's vehicles, and to cut off or obstruct access to the property, or otherwise interfere therewith, so as to constitute a nuisance.38 It would seem then that, at common law, to leave an automobile constantly standing at the side of the highway in front of private property, against the will of the abutting owner, without authority of law or ordinance, is a trespass where the fee of

35 Vondersmith's Case, supra note 34, at 523.
36 Adams v. Rivers, 11 Barb. 390, 398 (N. Y. 1851); State v. Buckner, Phil. 558 (N. C. 1868); Cook v. Dolan, 6 Pa. Dist. 524 (1897); Huffman v. State, 21 Ind. App. 449, 52 N. E. 713 (1898); State v. Davis, 80 N. C. 351 (1879); In re Heffron, 179 Mo. App. 639, 162 S. W. 652 (1913). Driving cattle to a ditch in front of the plaintiff's premises for drinking purposes is a trespass, not being a mere incidental turning aside while being rightfully driven along the highway. Van Roy v. Watermolen, 125 Wis. 333, 104 N. W. 97 (1905).
37 O'Linda v. Lothrop, 21 Pick. 292 (Mass. 1838); Murray v. McShane, 52 Md. 217 (1879); Duffy v. Dubuque, 63 Iowa 171, 18 N. W. 900 (1884); Smethurst v. Barton Square Church, 148 Mass. 261, 19 N. E. 387 (1889); Birdsell Mfg. Co. v. Loughman, 26 Ind. App. 359, 50 N. E. 872 (1900); Nead v. Roscoe L. Co., 54 App. Div. 621 (N. Y. 1900); Cordano v. Wright, 159 Cal. 610, 115 Pac. 227 (1911).
38 Reynolds v. Clarke, 1 Pitts. Rep. 9 (Pa. 1853); Lippincott v. Lasher, 44 N. J. Eq. 120, 14 Atl. 103 (1888); Turner v. Holtzman, 54 Md. 148 (1880).
the highway is in such owner, and, perhaps, a nuisance where he has but an easement. Can city or state confer such authority?

It has been laid down many times, in controversies foreign to the point now under discussion, that neither the legislature nor the municipal authorities can sanction such a use of a public street or highway as will interfere substantially with the rights of the adjacent owners, without compensation, whether they own the fee of the street or their interest is in the nature of an easement.39 These rights are, principally, the right of access, frequently called that of ingress and egress, the right to light and air, the right of view, and the right to have the street or road kept open as a public highway, for the benefit of the abutting property. So far as the protection of these special interests is concerned, it seems, in practice, to matter little to most courts whether the abutter owns the fee to the center of the highway or not; in either case they are safeguarded as property.40 Similarly, in the cases relating to parking, a precise definition of the true nature of the abutting owner's right is seldom required for his protection. It may be conceded that a license from the municipality to carry on a general business on the highway will not justify the licensee in establishing himself thereon in such a way as to constitute a nuisance. Thus the continual maintenance of a lunch wagon in a public street, obstructing access to the adjoining property, was held a nuisance, giving an abutting owner specially injured the right to sue for an injunction, although the defendant conducted his business under a city license.41 "The easement ac-


quired by the public," it was said in a similar case,42 "includes every reasonable means of transportation for persons and commodities, and of transmission of intelligence, which the advance of civilization may render suitable for a highway. . . . It may well be that the present instrumentalities or methods of travel do not necessarily exhaust the range of uses to which highways may be put, but the acts of the defendant do not belong to the class of purposes for which ways have been established." Where a city granted to an individual, in consideration of a money payment, a permit to keep his wagon, when not in use, in the street in front of his shop, and an injury resulted therefrom to a third person, the city was held liable in damages for maintaining a nuisance.43

Is the establishment of parking spaces in front of private property a legitimate use of the highway? In Branahan v. Hotel Co.,44 a hack stand, established by ordinance of council in front of the plaintiff's hotel, obstructing the street in front of shops occupied by the plaintiff's tenants and interfering with access, was enjoined. The city, said the court, had no power to appropriate the easement of an adjacent owner to private use, without compensation.

"This permanent occupancy of the streets, cutting off access to plaintiff's store rooms, for the convenience and benefit of a private business, cannot be justified on the plea that the public who use hacks are accommodated more readily and on better terms. . . . The same would, doubtless, be the case with other kinds of business located in the streets." 45

Another group of cases upholds the validity of ordinances authorizing the establishment of specially licensed cab stands in

44 39 Ohio St. 333 (1883); McDonald v. Newark, 42 N. J. Eq. 136, 7 Atl. 855 (1886); Schopp v. St. Louis, 117 Mo. 131, 22 S. W. 898 (1893); Lancaster v. Reisner, supra note 39; Ewbank v. Yellow Cab Co., 84 Ind. App. 144, 149 N. E. 647 (1925).
favor of designated operators, with the written consent of the abutting property owners. Without that consent, it is said in McFall v. St. Louis, the city would have no power nor authority to authorize hack and carriage drivers to stand their horses and vehicles upon the streets in front of abutting private properties, and thereby obstruct the ingress and egress. But, in a Virginia case, the court, in upholding such an arrangement, did not wish to be understood as deciding that the ordinance would be invalid without the clause requiring the consent of the abutting owner, provided it was so worded as to prevent interference with his rights. Provisions in ordinances requiring the consent of the owner of property in front of which it was proposed to maintain a taxicab stand, before a permit would be granted to the applicant, have been held reasonable. It has been said that:

"The number of applicants for consent to maintain taxicab stands in front of a given hotel or depot may be so numerous that, if all were granted, the space reasonably available therefore would be overcrowded and the street congested so as to interfere with the right of the public to the use of the street, as well the right of the owner or manager to free ingress or egress." 48

On the other hand, in Illinois an injunction to restrain the maintenance, in front of railroad property, of a hack stand established by ordinance, was refused, and in Ohio an ordinance, making it unlawful for the operator of a vehicle to park in front of a railroad station without permission from the person having the supervision of the station, was held invalid as a delegation of power, and discriminatory in its operation. 49 It seems needless to observe that an abutting owner cannot, by lease or permit, grant the use of part of the street in front of his property to another, so as to confer special privileges upon one who is otherwise entitled to use the street only upon terms equal with others similarly

48 232 Mo. 716, 135 S. W. 51 (1910).
48 Ritchhart v. Barton, 103 Iowa 271, 277, 186 N. W. 851, 853 (1922); Mader v. Topeka, supra note 27.
49 Pennsylvania Co. v. Chicago, 181 Ill. 289, 54 N. E. 825 (1899); Cincinnati v. Cook, 107 Ohio 223, 140 N. E. 655 (1923).
situated. And this is true although the owner may be entitled
privileges in the highway in front of his premises to a some-
what greater extent than the general public, such as temporary
occupation in connection with his business, or a reasonable use
for the purpose of receiving or expediting the departure of guests,
which does not unnecessarily interfere with the public use, or
conflict in other respects with proper municipal control.

In New York, in 1886, the proprietor of a hotel at Saratoga Springs was allowed by the supreme court to recover dam-
ages from a liveryman for injuries sustained through the standing
of the defendant's horses and carriages in front of the hotel,
and an injunction was granted against a continuance of the prac-
tice, the court refusing to receive in evidence an ordinance de-
claring that portion of the highway in front of the plaintiff's
premises a stand for hacks. "... the legislature had not the
power, neither had the municipal authorities," said the court,
"as against the adjoining owner, to confer upon any person the
right to make use of the highway, for any other purpose than to
pass and repass, without the consent of the owner of the fee."

The principle of the decision, however, is limited to cases where
the fee of the highway remains in the abutting owner, by the
Court of Appeals in Waldorf-Astoria Hotel Co. v. City of New
York. There an injunction pendente lite, to restrain officials
of the city from enforcing an ordinance which authorized the

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50 Park Hotel Co. v. Ketchum, supra note 40; Pennsylvania Co. v. Chicago,
(1902); Montgomery v. Parker, 114 Ala. 118, 21 So. 452 (1896); Pagames v.
D. C. 458 (1904); U. S. Restaurant Co. v. Schulte, 67 Misc. 633, 124 N. Y.
555, 125 N. Y. Supp. 220 (1910); City of New Orleans v. Badie, supra note 17;

51 Willard Hotel Co. v. District of Columbia, 23 App. D. C. 273 (1904);
67 (1902); Willis Cab Co. & A. v. The Abbaye, 67 Misc. 568, 124 N. Y. Supp.
756 (1910); People v. May, 98 Misc. 561, 164 N. Y. Supp. 717 (1917); Greeley

52 McCaffrey v. Smith, 41 Hun 117, 119 (N. Y. 1886); Masterson v. Short,
7 Rob. 299 (N. Y. 1867), ibid. 241 (preliminary injunction denied).

53 212 N. Y. 97, 105 N. E. 803 (1914), aff'd, 159 App. Div. 888 (1913),
aff'd, Yellow Taxicab Co. v. Gaynor, 82 Misc. 94, 143 N. Y. Supp. 279 (1913).
mayor to locate and designate as public hack stands the space alongside the curb, adjacent to various public buildings, including hotels, with the further provision that no stand should be designated within fifteen feet on each side of the entrance to any building on the adjacent property, was refused. The order was affirmed in the supreme court and the Court of Appeals. It was urged that an ordinance which permitted the municipal authorities, without the consent of the proprietors, to establish a hack stand on Thirty-fourth Street in front of the hotel premises, infringed rights of the abutting owner which could not be appropriated without his consent, except upon payment of just compensation. The city of New York owns the fee of the land occupied by the streets, its tenure being in trust for street uses, and, although it was urged that this was of no consequence, the court thought otherwise, and found that there was a distinction between the rights of a mere abutter and the rights of an owner in fee, the former having no right to compensation for an added burden so long as it was not exclusive or excessive. The dissenting judges in the supreme court thought the abutter had a right to insist that the street in front of his premises be kept clear of all permanent obstructions such as this cab stand would amount to, because the ordinance contemplated the continuous presence of vehicles, and its practical effect would be to keep a permanent line of hacks in front of the hotel, without the consent and against the will of the proprietor. The Court of Appeals, however, did not feel that the public hack stands provided by the ordinance involved an appropriation of the roadway, and declined to hold that the general provision for an open space of thirty feet in front of hotels and other buildings was so inadequate as to render the ordinance void as a matter of law. If a case arose in which the prescribed space was actually insufficient, and the hack stand unreasonably obstructed access to a hotel, the proprietor could seek redress in the courts against the particular method of enforcing the ordinance which led to results infringing upon his rights. The standard of what had proved convenient in the past, it was sug-

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gested, furnished a ready test of what constituted a reasonable exercise of power under the ordinance.

In the foregoing case, as well as in the others of the same type just discussed, it will be noticed that the abutting property was operated as a hotel, a public calling, but nothing is made of this in the opinion of the court. It is significant that in the ordinance under attack the mayor was authorized to locate public hack stands only alongside the curb adjacent to public buildings, railroad stations, steamship and ferry landings, hotels, restaurants and theatres; places where experience indicated that a number of cabs would be needed. There is, nevertheless, nothing to indicate that, in a jurisdiction where the abutting owner has no more than an easement in the highway, the principle of Waldorf-Astoria Hotel Co. v. City of New York might not be applied to residential or other property, provided the right of access were protected. In Matter of Hofeler v. Buck, where news stands on the sidewalks were held nuisances, the hack stand case was distinguished from the case at bar "by the fact that the use of a hack is incidental to the purpose of a street which is primarily for travel. This also applies to the temporary parking of automobiles." In a built-up city, where traffic conditions are acute, it will seldom be practicable, or even possible, to establish a stand for cars to park in front of private property without measurably interfering with the adjoining owner's easement. Where the common law rule prevails and the title of the owner extends to the center of the highway, the power of the municipality to impose an additional burden on the property in the form of a cab stand has been denied. In McFall v. St. Louis, and is at best doubtful. The eminent domain cases are so conflicting as to be of little help. As put by the Supreme Court:

"The right of an owner of land abutting on public highways has been a fruitful source of litigation in the

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53 Supra note 53. In Pennsylvania Co. v. Chicago, supra note 49, the fact that a railroad company was in many respects a public corporation and amenable to public control was taken into consideration.

54 Supra note 39, at 568, 180 N. Y. Supp. at 412.

55 Supra note 46.

courts of all the States, and the decisions have been conflicting, and often in the same state irreconcilable in principle. The courts have modified or overruled their own decisions, and each state has in the end fixed and limited, by legislation or judicial decision, the rights of abutting owners in accordance with its own view of the law and public policy."

The street railway cases are among those that make it very difficult to draw the line between uses which constitute an additional servitude and those which do not, the tendency being to extend the right to use new means of locomotion as an improved method of travel and in furtherance of the ordinary use of the highway. "When the highway is not restricted in its dedication to some particular mode of use," said Judge Cooley, "it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as formerly." However, in the opinion of one learned commentator, it is difficult to resist the conviction that the rights of the owners of the fee are unjustly impaired by the rules which some of the decisions sanction. There is also an essential difference between the easement of the public in an urban and a suburban highway. The control of cities over the surface of their streets, with a view to the safety and convenience of travel, is necessarily extensive, whereas the power of the counties is more limited. The congestion of city traffic makes this distinction especially important in the regulation of vehicles. In a modern municipality the question of control is complicated by the fact that there may be found streets of more than one type; some where the fee is owned by the adjacent owners, others owned wholly by the city.

59 Elliott, op. cit. supra note 39, § 886; 3 Dillon, MUNICIPAL CORPORATIONS (5th ed. 1911) § 1167.
due to differences in the form of dedication or the title acquired in condemnation proceedings.  

It may conceivably be urged that a city, in the course of its general control of the streets, and in order to expedite the movement of traffic, has power to establish parking places at the side of the highway for the use of public and private vehicles, and that the abutting owner cannot complain, so long as he has free access to the premises, of a use of the highway that is rather a regulation and extension of common practice than the imposition of a new and additional burden upon property. But the old protest against making a stable-yard of the king's highway was no more cogent than the contemporary objection of shopkeepers or house- holders to the establishment, in front of their premises, of a free garage for any thrifty stranger who happens along, on property concededly his for all purposes other than the public's easement of passage. It is unlikely that a city council would go so far as to create expressly parking places for private cars in front of private property without the adjoining owner's consent. If such were the case, viewers in proceedings for the opening of streets should take into account this prospective inconvenience as a factor in estimating damages. Yet, indirectly, this is commonly assumed to be the effect of ordinances which, by forbidding parking on certain streets or on one side of a street, impliedly authorize the use of the unrestricted areas. On such an assumption solid lines of cars daily and nightly fill every inch of the allotted space, but the cases have not yet informed us of the legal consequences. Would an ordinance be held to be a reasonable exercise of the police power, which places permanently the burden of receiving parked cars on the properties on one side of the street, while the fortunate owners on the opposite side are relieved of such burden? In Paris parking is on alternate sides of the street on alternate days, an impartial arrangement, but one that in this country would probably be regarded as unduly fatiguing to the minds of the drivers and police. While the point is undecided, conserva-  

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Hobson v. Philadelphia, 150 Pa. 595, 24 Atl. 1048 (1892). It is common practice in settling claims for damages on the opening of streets to require a deed of the fee from the owner.
tive opinion would probably hold that ordinances authorizing
general parking in designated places on certain highways are
permissive only; that they constitute no more than a waiver by
the municipality of any objections to the standing of vehicles in
the specified areas, but subject to the legal rights of the adjoin-
ing owners, whatever they may prove to be. Otherwise the
municipality might subject itself to damage claims greatly exceed-
ing the cost of a free municipal garage or parking place for its
casual guests, if some litigious citizens should succeed in proving
this practice to be an invasion of their property rights, thereby
opening a new path for raids on the city treasury.

Violations of parking regulations, once the violations are
proved, offer no special procedural difficulties. They are pun-
ished, as other offenses against motor vehicle laws and ordinances
are punished, by indictment or summary proceedings, illustrations
of which will be found in the cases previously cited. In a recent
New York case it has been held that proof of ownership of an
automobile found in a restricted zone raises a presumption that
the owner was in possession and control, which continues until
there is substantial evidence to the contrary. In addition to
these statutory remedies, any unauthorized obstruction which
unnecessarily impedes the lawful use of the highway is a public
nuisance at common law, for which an indictment is an appro-
priate remedy, or a bill in equity for an injunction by the public
authorities. Private citizens who are specially injured by an
obstruction of the highway may sue for damages, and may also

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63 Duluth v. Esterly, 115 Minn. 64, 131 N. W. 791 (1911); People v.
Harden, 110 Misc. 72, 179 N. Y. Supp. 732 (1920); Comm. v. Newhall, 205
D. C. 279 (1900); Huddy, Automobiles (7th ed. 1924) c. 29; Berry, Auto-
mobiles (5th ed. 1926) c. 35; Babbitt, Motor Vehicles (3d ed. 1923) c. 23.
65 King v. Russell, 6 East 427 (1805); Rex v. Cross, supra note 20; Comm.
v. Milliman, 13 S. & R. 403 (Pa. 1825); People v. Cunningham, 1 Denio 524
(N. Y. 1845); Davis v. Bangor, 42 Me. 522 (1856); Turner v. Holtzman, 54
Md. 148 (1880); Pastorino v. Detroit, 182 Mich. 5, 148 N. W. 231 (1914); cf.
66 Sparhawk v. Union P. Ry., 54 Pa. 401 (1867); Attorney General v.
Brighton & Hove Co-op. S. Ass'n, [1900] 1 Ch. 276; Alabama W. R. R. v.
State, 155 Ala. 491, 46 So. 408 (1908).
67 Milarkey v. Foster, 6 Ore. 378 (1877).
maintain a bill in equity where their substantial rights are affected in such a manner that they cannot be adequately compensated in damages. In such controversies familiar principles of the law of nuisance are applicable. Statutes and ordinances requiring vehicles to park or stand in a particular manner are intended to facilitate the safe passage of persons and vehicles using the roadway, and to prescribe safeguards for those coming within the sphere of danger. Disregard of the statutory safeguards is a breach of legal duty and may give rise to a cause of action for negligence. In a recent California case the violation of a city parking ordinance, which resulted in a collision causing injury to the plaintiff, was held negligence per se, rendering the defendant liable in damages when the wrongful act was the proximate cause of the injury.

In another recent California case, where a truck was parked at the intersection of a street, so as to obstruct pedestrian travel in violation of a city ordinance, the owner was held liable for the death of a child who, while attempting to go round the truck, was struck by a car operated with care. But in New Jersey, where a child ran from behind a truck parked on the wrong side of the street and was killed, the illegal parking was held not the proximate cause of the accident. A similar view is expressed in New York, where the fact that a coal truck stopped with its left side to the curb in violation of an ordinance, did not render the owner liable for the death of a child caught by a hook hanging from a chain at the side of the truck. There was nothing, said the court, to


70 Winsky v. De Mandel, 265 Pac. 534 (Cal. 1928).

show that the position of the chain was in any way connected with the rule of law that vehicles must proceed and stop with their right side toward the curb.\textsuperscript{72} A city, it may be added, is not liable for failure to regulate the parking of cars by ordinance.\textsuperscript{73}

Compared with the great number of cases on many other subjects connected with the use of motor vehicles, the number of decisions on parking is inconsiderable, although plentiful enough to indicate in outline the duties and privileges of those concerned. That outline will no doubt be filled in as policies become better defined and practices settled with reference to this method of transportation, still in its legal infancy. In spite of an occasional harsh word from a traffic officer, the attitude of the public, of property owners, officials, and habitual users of the highway has been, on the whole, good-tempered and free from insistence on technical rights. Nearly everyone drives a car, nearly everyone dislikes to pay a garage fee, and to wait the seemingly interminable number of seconds that it takes to get in or out of a garage or parking stand. We like to perpetuate, in this age of machines, the easy-going ways of the pioneers. But the automobile is an instrument of power which will be selfishly used, like the tomahawk and chariot, until, by the attrition of conflict, a \textit{modus vivendi} is established that adapts it to its proper place in the scheme of things mundane.

\textsuperscript{72} Boronkay v. Robinson & Carpenter, 247 N. Y. 365, 160 N. E. 400 (1928).
\textsuperscript{73} Bradley v. City of Oskaloosa, 193 Iowa 1072, 188 N. W. 896 (1922).