Much is to be said in favor of the "imposter rule." In a proper case for its application there are really two frauds perpetrated. The first one is on the drawer to induce him to draw the check and the second is on the bank to induce it to cash the check. If the drawer and the cashing bank are equally innocent, then the rule, that as between two innocent parties, the one by whose act (drawing the check) the loss is made possible, should be the one who is forced to bear it, should apply. In such a situation if the drawer is negligent in ascertaining the true identity of the person with whom he is dealing, or if the cashing bank is negligent in failing to require proper identification upon cashing the check, then the result should be varied. In the usual case the imposter will work the fraud as to his identity on the cashing bank in the same manner in which he worked the fraud on the government, as for example, with the use of a stolen adjusted service certificate or by a notary public. In addition, the policy of the law in the commercial field is to make these instruments freely negotiable. This policy assumes even greater importance because of the increased number of government checks in circulation today.

The "imposter rule" is manifestly just and should become the uniform rule in the Federal Courts. It is submitted that the result reached by the court in the instant case is eminently sound.

HAROLD B. BAMBURG*

CONSTITUTIONAL LAW—MUNICIPAL UNDERGROUND AUTOMOBILE PARKING FACILITIES—COMPENSATION TO ADJACENT PROPERTY OWNERS.—The plaintiff was the owner of property abutting Washington Avenue on which was operated a parking lot in downtown Detroit. In 1947 the plaintiff filed a bill in chancery to enjoin the defendant, the City of Detroit, from constructing an auto parking garage under the street surface of Washington Avenue adjoining her property. It was the plaintiff's contention that she was being deprived of property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article Two, Section Nine of the Michi-

This rule is applied almost universally in cases of face-to-face dealings, but where a written order is mailed to the seller, the majority of the courts seem to hold that no title passes to the fraudulent buyer.

* Attorney-at-Law, Sedalia, Mo.; former member of the staff, WASH. U. L. Q.

gan Constitution. The plaintiff further contended that such a municipal garage was a non-governmental function and unconstitutional for that reason also.

The Michigan Supreme Court reversed the trial court and dismissed the bill. The court pointed out that it is a well settled rule that the streets of a city may be used for any purpose which is a necessary public one and that the abutting land owners are not entitled to new compensation. It was held to be immaterial whether the city owned the street in fee or had an easement for highway purposes, as in either case the rights of the land owner would be the same. The court rejected without comment the contention that a public garage was a non-governmental function.[1]

The subject of the instant case raises several questions in the field of public law in relation to correcting the inadequate parking facilities that exist in the larger cities. While the construction of an underground garage below a public street may seem to be a far cry from the courthouse hitching post, in reality it is only a logical development in the state's power to regulate the use of its streets and highways.

Within the limits permitted by law, a municipality, in the exercise of its police power, may enact regulations designed to protect and promote public peace, health, morals, safety, welfare and property.[2] It is from this broad and almost limitless power that the development of city parking has stemmed, and this is the basis upon which the principal case rests. While parking an automobile on a public street for a reasonable time without interfering with traffic or police regulations is a reasonable use of the highway, the primary right of the driver of an automobile for the purpose of travel does not carry with it the right to store his vehicle in the streets. The use of the streets for the purpose of parking is a privilege and not a right and the privileg is subject to reasonable regulations under the police power.[3] It was early established during the growth of the automotive age that the length of time for parking may be regulated as long as it is reasonable and not discriminatory.[4] The next step in the development of parking regulations was the sustaining of ordinances providing for the installation of parking meters as a valid

1. Cleveland v. City of Detroit, 324 Mich. 527, 37 N.W.2d 625 (1949).
2. 62 C. J. S., MUN. CORP. § 147.
3. 60 C. J. S., MOTOR VEHICLES § 28.
4. Allen & Reed Inc. v. Presby, 50 R.I. 53, 144 Atl. 188 (1929).

exercise of the police power.[5] However, even with the street regulations as to the length of time allowed for parking individual vehicles, the problems of adequate parking facilities still plagued the larger municipalities and the doctrine was extended still further to cope with what the courts came to recognized as a public nuisance.[6] The solution advanced was the integration of regulated curb parking with the provision for aff-street parking to free the streets of dangerous and often intolerable conditions of traffic congestion. Legislation of this nature has in general been upheld by the courts as evidenced by the fact that by 1945 twenty-two states and the District of Columbia had enacted laws dealing with parking facilities and in 1946 alone, 65 cities opened new parking lots.[7] In three instances at least the form of off-street parking has been the maintenance of public garages.[8] In only one of these instances has a city been denied the right to maintain a public garage,[9] but this holding by the Ohio court is not inconsistent with the doctrine here developed, for in the Ohio case the primary purpose for the operation of the garage was to raise revenue rather than to abate a public evil. The Ohio court in wording its injunction recognized this distinction. Therefore, it is submitted that the upholding of the proposed construction of a garage in the City of Detroit in the principal case is well within a doctrine already established by the courts of other states.

Granted, then, that a city may condemn land and expend tax monies for the construction and operation of a public garage to abate a public nuisance, does it follow that a public garage is of such a nature that it can be classified as a highway use so that land already dedicated to highway purposes can be used for a garage without further compensation to the abutting owner? In the principal case the Michigan Court answered this question in the affirmative.

---

5. See note 3 *supra.*

6. Lowell v. Boston, 322 Mass. 709, 79 N.E.2d. 713 (1948); Whittier v. Dixon, 24 Cal.2d. 659, 151 P.2d. 5 (1944); McDOUGAL and HABER, PROPERTY, WEALTH, LAND: ALLOCATION, PLANNING AND DEVELOPMENT 896 (1948).

7. McSorley v. Fitzgerald, 359 Pa. 264, 59 A.2d. 142 (1948); Parr v. Ladd, 323 Mich. 592, 36 N.W.2d. 157 (1948).

8. San Francisco v. Linareo, 10 Cal.2d. 441, 106 P.2d. 369 (1940); Lowell v. Boston, 322 Mass. 709, 79 N.E.2d. 713 (1948); Cleveland v. Ruple, 130 Ohio St. 465, 200 N.E. 507 (1936).

9. Cleveland v. Ruple, supra note 8.

It is an elementary proposition given force in all of the states that the land used for public streets and highways in the United States is acquired either by condemnation, dedication, or prescription for highway purposes. However, while the courts have been and are in accord on the mode of acquisition of highway easements[10] there is not that same uniformity as to the extent of those highway easements. Generally speaking the courts have taken two distinct views in determining this problem.

The stricter and probably more logical view is that an appropriation of the highway for a new and distinct purpose, foreign from its orginal object, entitles the prior owner to additional compensation. The reasoning seems to be that any use not contemplated at the time of the original taking or dedication constitutes an additional servitude and thus the prior owner is entitled to the additional compensation.[11]

The second view is that when land is taken or dedicated for use as a highway, it should be presumed to be taken not merely for such purposes and usage as was known at the time of taking, but also for all public purposes present and future, then known or unkown, consistent with the character of such highways and not detrimental to abutting land owners.[12] Under this view the test of a ne wuse as to whether or not it requires compensation is not to be found in the nature of the structure or vehicle, but rather the test becomes the purpose and result of the means employed. If the purpose is not inconsistent or incompatible with the use of the highway and the proposed use is a public one it is a proper highway use.[13] It is immediately apparent that this is a much broader and more workable doctrine, and while courts may differ as to whether a proposed use is consistent or inconsistent with the use and purpose of a highway, it allows a relatively unfettered approach to the solution of existing and future municipal problems, such as inadequate parking facilities.

The majority of the states have adopted the second and more

10. In very few instances, if any, does the state or municipality have a fee simple estate in such land and when the courts speak of fee ownership it would seem that they refer to a fee in the easement for highway purposes rather than of a true unqualified fee estate.

11. Craig v. Rochester City & Brighton R.R., 39 N.Y. 404 (1868).

12. Dakota Central Tel. Co. v. Sprink County Power Co., 42 S.D. 448, 176 N.W. 143 (1920).

13. McWilliams v. Little River Drainage Dist., 369 Mo. 444, 190 S.W. 897 (1916); York v. Walla Walla County, 28 Wash.2d. 891, 184 P.2d. 577 (1947).

liberal view, taking the position that the early common law conception of the extent of a public easement for highway purposes has grown with the times and the public necessity and now includes not only the use of the surface but the use of as much of the land underneath and of the space above as is required for street purposes.[14] The courts supporting this doctrine acknowledge that the primary use of the street is the unrestricted passage of the public but furter maintain there are many incidental and collateral uses. Thus under this doctrine the use of the streets for sewers,[15] water pipes,[16] and gas pipes[17] has been sustained where it is for the benefit of the community. In some states telephone and telegraph lines have been held to be a proper highway use,[18] while in others this has been denied and regarded as an additional servitude with an additional compensation required.[19] In general, passenger street railways operated on the surface have been held to fall within the highway function.[20] Likewise in Massachusetts[21] subways have been held to be within the purpose of streets and in Illinois elevated railways have been held not to constitute additional burdens on the easement.[22]

The stricter view has been adopted almost solely by New York. This accounts for the consistent stand taken by the New York courts in holding that railways,[23] subways[24] and elevated railways,[25] are additional burdens on the highway easement. However, it does not account for the inconsistency of the courts of

14. Graves v. Shattuck, 35 N.H. 257 (1857); Yale U. v. New Haven, 104 Conn. 610, 134 Atl. 268 (1926).
15. Cone v. Hartford, 28 Conn. 363 (1859).
16. Provost v. New Chester Water Co., 162 Pa. St. 275, 29 Atl. 914 (1894).
17. Cheney v. Barker, 198 Mass. 356, 84 N.E. 492 (1908).
18. Pierce v. Drew, 136 Mass. 75 (1883); Julia Bldg. Ass'n v. Bell Tel. Co., 88 Mo. 258 (1885); Carpenter v. Lancaster, 250 Pa. 541, 95 Atl. 702 (1915).
19. Pacific Postal Tel. & Cable Co. v. Irvine, 49 Fed. 113 (C.C.S.D. Cal. 1892); Eels v. Am. Tel. & Telegraph Co., 143 N.Y. 133, 38 N.E. 202 (1894); De Kalb County Tel. Co. v. Dutton, 228 Ill. 178, 81 N.E. 838 (1907).
20. Elliott v. Fair Haven & W.R.R., 32 Conn. 579 (1860); Finch v. Riverside & A. Ry., 87 Cal. 597, 25 Pac. 765 (1891); Chicago, B. & Q. R.R. v. W. Chicago Street R.R., 156 Ill. 255, 40 N.E. 1008 (1895).
21. Sears v. Crocker, 184 Mass. 587, 69 N.E. 327 (1904).
22. Doane v. Lake Street Elev. R.R., 165 Ill. 510, 46 N.E. 520 (1896); Strong v. Northwestern Elev. R.R., 166 Ill. 207, 46 N.E. 1153 (1897).
23. Craig v. Rochester City & Brighton R.R., 39 N.Y. 404 (1868).
24. In Re Opening of New Street, 215 N.Y. 109, 109 N.E. 104 (1915).
25. Re Gilbert Elev. Ry., 38 Hun. 438 (N.Y. 1886).

that state in saying that the public has a so-called greater easement in urban areas and on this basis holding that sewers, water mains, gas pipes and telegraph lines are proper highway purposes in urban communities while denying them to the rural areas without additional compensation on the basis that such uses were not contemplated by the parties.[26]

Therefore while under the stricter rule, it is extremely doubtful whether an underground garage such as was here involved could be built without first compensating the adjoining landowners, under the more liberal view, as adopted by the majority of the states, such a garage would be entirely consistent with the purpose and use of the streets. True, the means chosen by the City of Detroit is new, and perhaps even novel, but that is not the criterion. In relieving traffic congestion a public garage is directly facilitating public passage and this is much more nearly akin to the primary purpose than the installation of sewers or water mains which have from the beginning been held to be incidental to the purpose of a public way. It is submitted therefore that the position taken by the Michigan Supreme Court is well taken and will probably be followed by other courts in the future when they are concerned with the same question.

It should be noted that this decision is not only important in that it supplies a solution to a dangerous and costly municipal problem,[27] but it also supplies a solution which in many instances in the larger urban areas will be less likely to strain the already over-taxed budgets of the municipal governments in that the primary restraint on the providing of adequate parking facilities in the congested districts of our cities today is the almost prohibitive cost of acquiring the land for the facilities. That the facilities must be provided is unquestioned, for without them the cities must either decentralize or lose their importance as community trading and business focal centers.

A. RODNEY WEISS

---

26. See Bloomfield & R. Nat. Gas Light Co. v. Calkins, 62 N.Y. 386 (1875); Brunt v. Town of Flatbush, 128 N.Y. 50, 27 N.E. 973 (1891).

27. It has been estimated that the cost of traffic congestion in Manhattan is $500,000 per day. See 3 REGIONAL SURVEY OF N. Y. AND ITS ENVIRONS 60 (1927).