sion. It is often held that a bailee for hire, such as a common carrier or warehouseman, cannot exempt himself from liability for his own negligence; these decisions are made without consideration of whether the bailor actually saw the provisions. Neither of the grounds upon which these decisions rest, however, seems to be applicable to the instant case. The parking lot operator does not occupy the "monopolistic" position of a common carrier, nor does exemption of the operator from liability for carelessness endanger members of the public, as does exemption of the common carrier. Conversations with parking lot operators in Chicago indicate that the competitive nature of the business affords considerable protection to customers. The common usages of repairing, free of charge, all damage to automobiles caused by lot attendants and putting unlocked cars into garages when uncalled for at closing time prevail, despite liability exemption clauses. It seems preferable to permit the parties to contract freely in the manner which they conceive to be best suited to their interests and to invalidate only those agreements which are clearly detrimental to the public welfare. If they agree that the bailment shall terminate at a definite time, this will only require the owner to take the risk of his delay in getting back to the lot. Even if they contract to exempt the operator from all liability, enforcement of this provision will only shift the burden of insuring against risk of loss from the lot operator to the car owner.

Bonds—Multiple Collection Clauses—Right of American Bondholder of Canadian Corporation to Recover Face Value of Bonds in United States Dollars—[Federal].—The defendant, a Canadian corporation, issued a series of bonds payable in "dollars . . . . at the Bank of Montreal, in the City of Montreal, Canada, or in the City of New


22 Railroad Co. v. Lockwood, 17 Wall. (U.S.) 357,378-79 (1873); Willis, The Right of Bailees to Contract against Liability for Negligence, 20 Harv. L. Rev. 297, 310 (1907); 85 U. of Pa. L. Rev. 772, 777 (1938).

23 Willis, op. cit. supra note 15.

24 See Santa Fe, P. & P. R. Co. v. Grant Bros. Construction Co., 228 U.S. 177, 188 (1913); 5 Williston, Contracts § 1629A (rev. ed. 1937); Rest., Contracts §§ 574-75 (1932).
York, U.S.A., or in the City of London, England, at the option of the holder. . . ."

The bond contained a further recital that it was "one of a series . . . payable without preference or priority of one over another. . . ." There was a subsequent provision that the bond might, with the consent of the issuer, be surrendered for cancellation and that in lieu thereof the defendant would issue a "bond . . . payable in sterling money of Great Britain, as provided in [the] mortgage . . ." by which the bonds were secured. Upon the refusal of the defendant to pay the principal at maturity, the plaintiff, an American bondholder, instituted an action to recover the face value of his bonds in United States dollars. On appeal to the Circuit Court of Appeals for the Second Circuit from a summary judgment for the plaintiff in a federal district court, held, (1) that the clause "payable without preference or priority" did not preclude the plaintiff's maintaining an action independently of other bondholders, and (2) that the indenture and bond when read together indicated sufficiently the intention of the parties that payment was to be made in terms of Canadian dollars. Judgment reversed. Liebeskind v. Mexican Light & Power Co., Ltd.2

It is possible that the insertion in the bond of the clause "payable without preference or priority" represents another attempt on the part of bond draftsmen to overcome the hostility of the American courts to restrictions upon the bondholders' remedies at law. Customarily, bond draftsmen have not inserted "no-action" clauses in the bond, out of fear that such an insertion would destroy the bond's negotiability and thus its marketability.3 Consequently, they have confined themselves to inserting these "no-action" clauses in the indenture, the bond merely containing reference clauses, of varying strength, with respect to the enforceability of the bondholder's rights. This practice was adopted in the hope that the courts might give full effect to the "no-action" clause while still construing the bond as negotiable. But this attempt has been without success.4 The refusal of the courts to give the "no-action" clause the effect of depriving the bondholder of his action at law can be attributed to two factors. The courts were either influenced by the questionable theory that a contrary holding would render the promise to pay conditional, thus destroying the bond's negotiability, or by the desire to enable the individual bondholder, by bringing an action at law, to force the hand of the trustee to institute action for the protection of all the bondholders. The latter judicial attitude was especially persuasive when corporate books were not readily available to bondholders.

In denying effect to these clauses, the courts have construed them as referring only to the bondholder's rights under the indenture, quite frequently upon the ground that the reference clause was not clear enough to put the bondholder on notice that restric-

1 This decision is not reported.
2 116 F. (2d) 971 (C.C.A. 2d 1941).
4 Note 5 infra.
RECENT CASES

Even if, as the defendant contended, the clause in the bond in the instant case was inserted with the intention of precluding the bondholder's action at law, the attempt failed. The court, in holding that the language used was too ambiguous to have the effect claimed by the defendant, adopted the plaintiff's suggestion that the clause was probably inserted simply to show that all the bonds were entitled to the same rights and privileges despite differences in denomination and date of issue.

The defendant's contention that the bonds were payable in terms of Canadian dollars raises the question whether the provision for payment in Montreal, New York or London was inserted merely to facilitate the collection of the principal at maturity by a non-Canadian bondholder or to provide for payment in terms of different media of currency depending upon where the bondholder sought payment; i.e., whether it was intended to be a multiple collection clause or a multiple currency clause.


For example, a provision for payment of dollars in New York, London or Paris would be a multiple collection clause, whereas a provision for payment of dollars in New York, pounds in London or francs in Paris would be a multiple currency clause. The provision for payment of dollars in London clearly means that the clause in the instant case is not strictly a multiple currency clause.

Adelaide Electric Supply Co., Ltd. v. Prudential Assurance Co., Ltd., [1934] A.C. 122 (provision for payment in pounds in Australia held to require payment in Australian pounds upon presentation for payment in England. This case supposedly overrules the case of Broken Hill Proprietary Co., Ltd. v. Latham, [1933] Ch. 373, where a provision for payment in pounds in various Australian cities or London was held to require payment in Australian pounds upon presentation for payment in London. According to the Adelaide case, payment in the Broken Hill case should have been made in English pounds. However, it is suggested that the cases are consistent inasmuch as the frequent contacts of the transaction with Australia in the Broken Hill case indicate an intention for payment in terms of Australian pounds; New York & Pennsylvania Co. v. Davis, 8 F. (2d) 662 (D.C. N.Y. 1925); Mountain Lumber Co. v. Davis,
ever, is not to be applied when the contract between the parties discloses a contrary intention. The court in the present case reached the conclusion that there was such a contrary intention, and that consequently payment was to be made in terms of Canadian dollars, by construing the bond in conjunction with the indenture. Strong reliance was placed upon the indenture provision that "instead of hereafter issuing bonds, payable in the lawful money of Canada . . . the Company may issue in lieu thereof . . ." bonds payable in British sterling. The court decided that this clause, as well as a later clause providing for the reconversion of the sterling bonds into bonds payable in the "lawful money of Canada," indicated that the parties intended payment of the bonds in terms of Canadian dollars, both before conversion and after reconversion. Furthermore, the court's construction is all the more reasonable in view of the fact that upsetting the defendant's sinking fund (which undoubtedly was built up in Canadian dollars) is a matter of much more serious consequence than the possible violation of the bondholder's expectations.

The court could have reached this result by relying solely upon the recitals in the bond and without taking into consideration the provisions of the indenture. Thus it may be argued that the provisions of the bonds reciting that they were issued in Canada, by a Canadian corporation, and were authenticated by a Canadian trustee would

9 F. (2d) 478 (D.C. N.Y. 1925), aff'd on other grounds, 11 F. (2d) 219 (C.C.A. 2d 1926); Les Commissaires d'Ecole de la Municipalité Scolaire v. La Société des Artisans Canadiens Français, 33 K.B. (Que.) 448 (1922).

Nussbaum suggests that the terminology used by the courts in maintaining this presumption is confusing. What they probably mean is that the debtor is to purchase the monetary unit of the foreign country and give it to the creditor; what they could mean is that the debtor was merely to pay the monetary unit of his country and the creditor to receive the monetary unit of his country, the intermediary making the exchange. Inasmuch as the courts are not interested in what the creditor receives as much as they are in what the debtor pays, he suggests the terms "money of contract" (the substance of the debt) for the latter and "money of payment" for the former. It is only the "money of payment" that should be governed by the law of the place where the obligation is payable. That being settled, the courts could determine what the "money of contract" is without using confusing terminology. Nussbaum, Money in the Law c. 34 (1939).

Levy v. Cleveland C. C. & St. L. R. Co., 210 App. Div. 422, 206 N.Y. Supp. 261 (1924) (provision for payment of francs in Paris, Brussels or Lausanne held to require payment in French francs upon presentation for payment in Lausanne); Morrell v. Ward, 10 Grant Ch. (Ont.) 231 (1863); Quimby v. The Euphemia, Fed. Cas. No. 11,512 (district and date unreported); Rives v. Duke, 105 U.S. 132 (1881); Stewart v. Salamon, 94 U.S. 434 (1876).


This would have disposed of the plaintiff's objection that he was not bound by the indenture provisions because they were not clearly referred to in the bonds. Such an objection was not unreasonable in view of the fact that the defendant did not deny that the indenture was unavailable to bondholders in New York (Plaintiff's Brief, at 34) and in view of the fact that the court may be required to apply the New York rule (note 5 supra) requiring a precise reference clause to warrant reading the bond and indenture together. Nevertheless, the court was probably correct in reading the indenture in conjunction with the bond, inasmuch as the conversion provision in the bond referred the holder directly to the decisive indenture provision.
apprise the holder that they were payable in terms of Canadian currency, even in New York. Furthermore, the defendant was prepared to show that the plaintiff had paid for the bonds either in Canadian dollars to the extent of the face amount of the bonds or the equivalent in United States dollars at the current rate of exchange. It would seem clear, therefore, that the reasonable expectations of the parties should have been that the provision for payment in Montreal, New York or London was inserted merely as a multiple collection clause rather than as a multiple currency clause.

Conflict of Laws—Administration of Decedent's Estate—Situs of Liability Insurance Policy for Purpose of Administration—[Illinois].—While driving through Illinois a domiciliary of Missouri was involved in an automobile accident resulting in his death and the injury of several residents of Illinois. The automobile was sold and the proceeds used to pay deceased's medical expenses. Several months later the public administrator of the Illinois county in which the decedent died was granted letters of administration upon the allegation that the decedent left personal property in Illinois consisting of an automobile and an automobile liability insurance policy. On the same day the injured residents of Illinois instituted suits naming as defendant the administrator of the estate. Subsequently, on the petition of an heir, the letters of administration were revoked by the county court on the ground that there was no property in Illinois to administer, since the automobile had been sold and the proceeds properly applied, and since the liability insurance policy had never been brought into Illinois. On appeal from the judgment of the appellate court affirming the order of the county court, held, that since under the liability policy the decedent could have enforced his rights of exoneration and indemnification against the insurance company in Illinois, where the company was licensed to do business, the policy is an asset of the estate in Illinois; hence the county court had jurisdiction and was under a duty to appoint an administrator. Order of revocation reversed. Furst v. Brady.

The Illinois court would have been without jurisdiction to appoint an ancillary administrator if it had been unwilling to expand the concept of assets to include a contingent right of exoneration and indemnification under a liability insurance policy. The instant case thus raises the question, in traditional terminology, as to what is the "situs" of a liability insurance policy for the purpose of administering the estate of a decedent. But it may be doubted whether a chose in action, an intangible represented by a liability policy, can be regarded as having a "situs"—the words "intangible" and "situs" being contradictory. The questions, therefore, are (1) where will the relationship represented by the policy be recognized and enforced, and (2) where, as a matter of policy in the administration of a decedent's estate, should it be enforced?

The courts have been influenced by several conflicting policies in administering de-

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15 Defendant's Reply Brief, at 18, 19.
3 See Robinson v. Carroll, 87 N.H. 114, 174 Atl. 772 (1934); Christy v. Vest, 36 Iowa 285 (1873); Jeffersonville R. Co. v. Swayne's Adm'r, 26 Ind. 477 (1866).
4 See Goodrich, Conflict of Laws 468 (1938).