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INNKEEPER'S LIABILITY AT COMMON LAW AND UNDER THE STATUTES

By JOSEPH JAMES HEMPHLING

During the past centuries the hotel business has developed from the isolated inns of feudal times into an enterprise which today ranks ninth among the great industries of the United States, occupying a position of importance greater than oil and slightly less than automobiles. There are in the United States 25,950 hotels, representing an investment of \$5,024,000,000, employing 576,000 people and supplying service and accommodations to millions of people yearly.

It is claimed that the law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society. Yet with this rapid progress and changing conditions in the business, the common law liability of the innkeeper has remained constant from the time of its adoption.

With the exception of common carriers, no other phase of business is more vigorously governed by common law, than that of innkeeper. Generally considered the subject of the innkeeper's liability divides itself into two general classes; liability for the loss or injury of the property of the guest, and liability for the safety and protection of the guest while in the inn, each resting upon a somewhat different basis, occasioned largely by reason of the duty of the guest to exercise a reasonable degree of diligence, and by reason of the control of the innkeeper which is materially different when applied respectively to the guest or his property.

Authorities are by no means in harmony as to the extent of the exceptional liability. As to the liability of the innkeeper for the loss or injury of the property of the guest, there are three distinct classes of holdings.

(1) That the innkeeper is prima facie liable for the loss of goods in his care, but may discharge himself by showing that the goods were not lost by his negligence or default. This is the rule as laid down by Justice Storey and is the less rigorous one followed only in a minority of the states. The burden of proof is upon the innkeeper to show that the injury or loss happened without any default whatever on his part, and that he exercised the strictest care and diligence. The hotel keeper may exonerate himself by showing that the loss happened without any fault of his, and that strict care and prudence on his part were not lacking to guard against it.²

(2) That the innkeeper is discharged by showing that the loss or injury was the result of inevitable accident or irresistible force, though not amounting to what the law denominates the act of God, and not attributable to the public enemy.³

(3) The prevailing rule as stated by Justice Kent is that, like a common carrier, an innkeeper is liable absolutely, or as an insurer for all goods of a guest lost in the inn, unless the loss happens by an act of God, or a public enemy, or by fault or negligence of the guest himself.⁴ But even if the goods are injured by an excepted cause the innkeeper is liable if he negligently failed to provide against the loss from this cause.⁵ Where an innkeeper acts in accordance with the definite instructions of the owner, and the goods are thereby lost without negligence of the innkeeper, he is not liable.⁶ If, subsequently to the guest's negligence, the innkeeper

² Laird v. Eichold, 10 Ind. 212; Metcalf v. Hess, 14 Ill. 129; Woodward v. Morse, 18 La. Ann. 156; Towson v. Hovre-de-Grace, (Md.) 14 Am. Dec. 254; Cutler v. Bonney, 30 Mich. 259; Horvth v. Franklin, 20 Texas 798; Howe Mach. Co. v. Rease, 49 Vt. 477.

³ Merritt v. Claghorn, 23 Vt. 177, Kesten v. Hildebrand, (Ky.) 48 Am. D. 416.

⁴ Pinkerton v. Woodward, 33 Cal. 551; Mason v. Thompson, (Mass.) 20 Am. D. 471; DeWolf v. Ford, 193 N. Y. 397; Palace Hotel Co. v. Medart, 87 Oh. St. 130; Shulta v. Wall, 134 Pa. 262; Willette v. Rhineland Paper Co., 145 Wisc. 537; and et al.

⁵ Scheffer v. Carson, 5 S. D. 233.

⁶ Owens v. Geiger, (Mo.) 22 Am. D. 435.

could have avoided the effect thereof but failed to do so, he will be responsible for the loss.⁷

The majority of the jurisdictions have imposed upon the innkeeper the liability of an insurer analogous to that of a common carrier.⁸ Generally, and perhaps universally, the innkeeper has been held to an absolute responsibility for all thefts from within, or unexplained, whether committed by guests, servants or strangers,⁹ unless the owner was responsible for the presence of the thief, as where he brought him to the inn as a companion or servant.

Under the common law, the liability of the hotel keeper covered whatever property the guest brought into the hotel. It was not limited to baggage and wearing apparel or to goods of any particular kind or amount.¹⁰ It has been held that the mere failure of the guest to notify the hotel keeper that a package intrusted to him contained valuables, was not negligence, and the hotel keeper was liable for the loss of them.¹¹

Generally no liability is imposed on the innkeeper for articles left at the hotel by the owner before or after he is a guest.¹² Before liability attaches, it must clearly appear that the owner of the lost or injured property was a guest of the inn at the time the loss occurred, and that the property was *infra hospitium*. Once this is shown, the innkeeper is liable for all personal property brought by the guest into the hotel.¹³ However, under some circumstances, it has been held that the innkeeper is liable as such for the goods of the guest at the time the goods are delivered to him or his servants, before the arrival at the inn of the prospective guest, as where the goods are previously sent by the owner to the inn and received by the innkeeper.¹⁴ But such responsibility is conditioned on the owner becoming a guest within a reasonable time thereafter. The better reasoned rule but rarely followed, is that where the guest and his goods did not arrive at practically the same time, the innkeeper is liable only as a gratuitous bailee,

⁷ *Watson v. Loughran*, (Ga. 38 S. E. 82.

⁸ *Supra* note 4.

⁹ *Lanier v. Youngblood*, 73 Ala. 587; *Johnson v. Richardson*, 17 Ill. 302; *Berkshire Co. v. Proctor*, 7 Cush. 417 (Mass.); *Houser v. Tulley*, 62 Pa. 92.

¹⁰ *Watkins v. Tutwiler*, 200 Ala. 386.

¹¹ *Bowell v. DeWold*, 2 Ind. App. 303.

¹² *Glenn v. Jackson*, 93 Ala. 342; 9 So. 259 (1890); *Wear v. Gibson*, 52 Ark. 364; 12 S. W. 756 (1890); *Toub v. Schmidt*, 60 Hun. 409, 15 N. Y. Supp. 616 (1891).

¹³ *Supra* note 9.

¹⁴ *Flint v. Illinois Hotel Co.*, 149 Ill. App. 404.

and not as an insurer, because the relationship of guest and innkeeper has not yet been established.¹⁵ The guest has a reasonable time after the payment of his account and departure for the removal of his goods and during that reasonable time the liability of the hotel keeper continues.¹⁶ And the hotel keeper is liable as long as the guest is actually on the premises, although he had paid his account and is in the act of departure.¹⁷ Where the property is merely left in the custody of the hotel keeper to be kept by him for the owner, the hotel keeper owes a duty to the owner to exercise ordinary diligence in caring for the property, if he is paid for the keeping of the goods. If he is not paid and is keeping the goods only for the accomodation of the owner of them, he is under an obligation to use only slight diligence and is responsible to the owner for gross neglect or bad faith in the loss of the goods.¹⁸ Property of the guest of which he takes exclusive charge and which he displays in a hotel for business purposes in rooms rented for such purposes, is not covered by the liability of the hotel keeper as such. In regard to such goods he is under no special obligation as an innkeeper. His liability if not fixed by contract is limited to losses caused by his negligence; and as to such goods he is required to exercise only ordinary care and is answerable for negligence.¹⁹

At common law before statutory regulation, an innkeeper could limit his liability, but in order to do so, actual notice had to be given the guest to the effect that he would be liable for the goods of the guest only to a certain extent or on certain conditions.²⁰ And where such express notice, that he must deposit his valuables with the innkeeper or accept the risk of loss, has been given to the guest, he is negligent if he fails to comply with the notice.²¹ So where a guest has been told that he must leave his valuables in the custody of the hotel keeper, but notwithstanding this warning, he kept them in his room, and they were lost, he was barred from recovery by his negligence.²² However, in the

¹⁵ *Hirsh v. Anderson Hotel Co.*, 58 Pa. Super 387.

¹⁶ *Hotel Statler v. Safer*, (Ohio) 134 N. E. 460.

¹⁷ *Seymour v. Cook*, 53 Barb. (N. Y.) 451.

¹⁸ *Carlisle First National Bank v. Graham*, 100 U. S. 699; *Bronnenburg v. Charman*, 80 Ind. 475.

¹⁹ *Abercrombie v. Edwards*, 62 Okla. 54; *Carter v. Hobbs*, 12 Mich. 52; *Meyers v. Cottrill*, 5 Biss. 465, (U. S. 1873).

²⁰ *Wilson v. Holpin*, 1 Daly 496 (N. Y.); *Hesben v. Jackson*, 89 W. Va. 470.

²¹ *Jellie v. Cardinal*, 35 Wisc. 118.

²² *Wilson v. Holpin*, supra note.

absence of statutory authority, an innkeeper cannot limit his liability by a general, public, or constructive notice, not brought to the guest's knowledge.²³ This is generally done by posting them in the several rooms of the inn; but the mere fact of posting them in the rooms is not sufficient; it is necessary that they should come to the actual notice of the guest. Where reasonable regulations have been made, and the guest has had actual notice of them, he will be bound by them if it appears that by reason of his failure to comply with the regulations, the loss occurred. For in such case, it could be reasonably concluded that the loss was occasioned by the negligence of the guest.²⁴

The authorities are equally divided on the question of liability for loss occasioned by accidental fire. It has been held that the innkeeper is an insurer of the property of the guest during the time the guest remains in the inn, and that he can only be excused when the loss of such property is occasioned by the act of God, a public enemy, or is the fault of the guest.²⁵ An accidental fire, it has been held, is not an act of God, unless it was started by lightning or some superhuman agency, and therefore the innkeeper is liable for the loss of goods from that cause.²⁶ Other jurisdictions, have held that there is no liability for loss resulting from an accidental fire, not attributable to the negligence or fault of the innkeeper. This has been the modern tendency of the courts, namely, to enlarge the limitations of the rule fixing the liability, rather than to hold to the severity of it.²⁷

The innkeeper is bound to provide safe premises and is absolutely liable if the goods of a guest are injured by a defect in the premises.²⁸

Whatever the rule of liability and whatever the cause of the loss of goods of the guest, the burden of proving that he is excepted from liability is on the innkeeper; the guest has only to establish the loss. The law presumes that the loss was one for which the innkeeper was liable.²⁹

²³ *Palas v. Harvey Room Co.*, 211 Ill. App. 580.

²⁴ *Fuller v. Coats*, 18 Ohio St. 343; *Purvis v. Coleman*, 21 N. Y. 111.

²⁵ *Fay v. Pacific Imp. Co.*, 93 Col. 253; *Show v. Berry*, 31 Me. 478; *Sibley v. Aldrich*, 33 N. H. 553; *Hulett v. Swift*, 33 N. Y. 571.

²⁶ *Strahl v. Miller*, 97 Neb. 820.

²⁷ *Hurlbart v. Hartman*, 79 Ill. App. 289; *Laird v. Eichold*, 10 Ind. 212; *Vance v. Throckmorton*, 5 Bush. 41 (Ky.); *Burham v. Young*, 72 Me. 273; *Cutler v. Bonney*, 30 Mich. 359; *Dunbar v. Day*, 12 Neb. 596; *Howe Mach. Co. v. Rease*, 49 Vt. 477.

²⁸ *Woodward v. Birch*, 4 Bush. (Ky.) 510.

²⁹ *Bowell v. Dewald*, 2 Ind. App. 303; *Sheffer v. Willoughby*, 163 Ill. 518; *Carhart v. Wainman*, 114 Ga. 632.

When the property of a guest is lost, stolen or destroyed, under such circumstances as will render the innkeeper liable, the proper measure of damages is the market value of the property at the time of the loss. In case the property has no market value, recovery may be had for its actual, intrinsic, pecuniary value to the owner.

It was upon the grounds of public policy that the Romans declared by praetor's edict that if innkeepers did not restore what they had received to keep safe, a judgment would lie against them. The reason assigned for this edict was that it was necessary to place confidence in the innkeeper and to commit the custody of things to him, and unless the rule was thus established, an opportunity would be afforded to him to combine with thieves against those who trusted him, where as they now had an inducement to abstain from such combinations.

Likewise in England the reason for the strict liability of the innkeeper was founded on the conditions of the time. The reason is well expressed by Justice Cochrane in *Crapo v. Rockwell*³¹ in which the court said:

"In those days there was little safety outside of castles and fortified towns for the wayfaring traveler who, exposed on his journey to the depredations of bandits and brigands, had little protection when he sought at night temporary refuge at the wayside inns, established and conducted for his entertainment and convenience. Exposed as he was to robbery and violence, he was compelled to repose confidence, when stopping on his pilgrimages over night, in landlords who were not exempt from temptation; and hence there grew up the salutary principle that a host owed to his guest the duty not only of hospitality, but also of protection."

In the same decision the learned justice admitted that,

"with the march of civilization and the progress of commercial development, the conditions in which the common law liability of the innkeeper to his guest originated have passed away."

However, the court said that other conditions existed which rendered it wise and expedient that the modern hotel keeper

³⁰ *Needles v. Howard*, 1 E. D. Smith (N. Y.).

³¹ 48 Misc. 1, 94 N. Y. Supp. 1122 (1905).

should be bound by the law which grew out of circumstances long since erased by the hand of time. What these other conditions are the court did not state but dismissed the matter without any explanation. Thus the rule of law accompanied by its obsolete reason has been adopted by our courts.

Embodied in our law is the maxim *cessante ratione, cesset ipsa lex*, which means that when the reason of any particular law ceases, so does the law itself, or that the law varies with the varying reasons on which it is founded. As explained in *Beardsley v. Hartford*.³²

"This means that no law can survive the reasons on which it is founded. It needs no statute to change it; it albrogates itself. If the reasons on which a law rests are overborne by opposing reasons, which in the progress of society gain a controlling force, the old law, though still good as an abstract principle, and good in its application to some circumstances, must cease to apply as a controlling principle to the new circumstances."

Notwithstanding the law has placed the strictest liability and responsibility on the hotel owners, so that today, under the common law, while the reason for the liability is no longer existent; the law has continued to remain in force and effect.

The innkeeper having taken upon himself a public employment must serve the public. His first duty is to receive indifferently to his hotel as guests such travellers as may ask for entertainment. He has no general right to select his guests. This is not the result of a contract, but it is a duty imposed by law for a violation of which the innkeeper is liable in such damages as will compensate the traveller for the wrong, and punitive damages in addition if there are aggravating circumstances.³³

The doctrine of the liability of the innkeeper for the safety and protection of his guests proceeds upon the theory that he has control of his house and of the property, servants and guests therein. He selects his own servants, and is responsible for their acts while performing their duties. To a certain extent he has control over his guests; he is not bound to receive all who apply. The innkeeper, in the exercise of sound discretion and good judgment, has the right to refuse to receive persons who are not

³² 50 Conn. 529, 541.

³³ *Curtis v. Murphy*, 63 Wisc. 4.

proper and fit to be harbored and could not be trusted to demean themselves in an orderly manner, limiting those to be received as guests to persons who are fit, law-abiding, and reputable.³⁴ It is for these reasons, and in the following out of the general theory fixing the liability of the innkeeper, that the rule is stable and universal that the innkeeper is bound to exercise reasonable care in protecting the guest within his inn from personal injury while remaining as his guest. The innkeeper's liability for the safety of his guest, is to be distinguished however, from his liability for the safe keeping of the property of the guest, which is that of an insurer limited by certain exceptions heretofore mentioned.

By the great weight of authority it is held that an innkeeper is not an insurer of the safety of the person of his guest, but that the innkeeper's obligations to protect and guard the safety of his guest is limited to the exercise of reasonable care for their safety, comfort, and entertainment.³⁵

For unwarranted assaults upon the guest by himself or his servants the innkeeper is liable in damages; and he must take all reasonable precautions to protect his guests from attack by fellow-guests or strangers. If he harbors drunken or vicious persons, he will be liable for the natural results. He is not an insurer of the personal security of his guest, but he undertakes to use reasonable care to protect him from injury.³⁶

What reasonable care is, is a question of fact for the jury, to be determined by the facts and circumstances of each particular case. It would be at least that care which an ordinary, prudent, and careful innkeeper would exercise for the safety and comfort of his guests under just such circumstances.³⁷

According to a few authorities the innkeeper is responsible for any injury to the guest if he fails to use a very high degree of care.³⁸ This question has not been specifically decided in Indiana.

It is the duty of the innkeeper to exercise ordinary care in keeping the premises in such condition that the guest may be safe while within the inn and using it in the ordinary manner. This is upon the theory that the innkeeper extends an implied invitation to all to come to his house and be entertained; and he is

³⁴ *Markhom v. Brown*, 3 N. H. 523.

³⁵ *Valeri v. Pulman Co.*, 218 Fed. 519.

³⁶ *McHugh v. Schlosser*, 159 Pa. St. 480; *Rommell v. Schambacher*, 120 Pa. St. 579.

³⁷ *Clancy v. Barker*, 131 Fed. 161.

³⁸ *Trulock v. Willey*, 187 Fed. 986.

therefore liable for injuries sustained in consequence of the bad conditions of the premises. And so if a guest should be injured by reason of a defective elevator; or by reason of want of ordinary skillful management of the same;³⁹ or, as has been held, if the guest should be injured by the falling of a ceiling in the inn, which was due to the negligence of the innkeeper in keeping the same in repair,—in all such cases, the guest would have an action against the innkeeper, based upon want of ordinary care. There is, however, this limitation:

“The general duty of an innkeeper to take proper care for the safety of his guest does not extend to every room in his house at all hours of the night or day, but must be limited to those places into which guests may be reasonably supposed to be likely to go in a reasonable belief that they are entitled or invited to do so.”⁴⁰

The hotel keeper owes a trespasser or a mere licensee the duty not to injure him wilfully or wantonly or by act of negligence. He owes no duty to persons not guests nor invited to the hotel by himself or keeping the premises and appliances of the hotel in a safe condition; but he does owe the duty of exercising reasonable care in the maintenance and operation of all the appliances and in the condition of the premises; that every person having lawful business, whether guest, visitor, or otherwise, shall not be injured.⁴¹ This duty, however, does not render the hotel keeper liable where injury was done by an obvious patent defect. Neither does the duty extend to a person who, although even invited to the hotel by the proprietor, becomes a trespasser or mere licensee, as where he remains for an unlawful purpose, nor does it extend to one who wanders into some remote part of the premises not ordinarily open to the public.⁴²

The liability of the innkeeper for injuries to guests occasioned by fire rests upon the proof of negligence upon the part of the innkeeper. If it can be shown that the innkeeper was not guilty of negligence, and that by exercising ordinary diligence the injury could not have been averted in such case at common law, there would be no liability.⁴³

³⁹ *Scott v. Churchill*, 15 Misc. (N. Y.) 80.

⁴⁰ *TenBrock v. Wells*, 47 Fed. 690.

⁴¹ *McCracken v. Myers*, (N. J.) 16 L. R. A. (N. S.) 290.

⁴² *Money v. Traveler's Hotel Co.*, 174 N. C. 509.

⁴³ *Strahl v. Miller*, 97 Neb. 820.

It is the duty of the innkeeper to exercise at least ordinary diligence in keeping the hotel in a sanitary condition. He holds out to the public impliedly, by inviting them to his inn, that they will be entertained in a place that is fit for the purpose for which it is kept. Where, therefore, one by reason of the unsanitary condition of the hotel contracts a disease the innkeeper would be liable. An innkeeper is under an obligation to protect his guest against injury at the hands of a third person, whether guest or stranger. He has been held liable to guests contracting contagious diseases for failure to warn his guests of the presence on the premises of persons having the disease.⁴⁴ And the same obligation rests upon him with reference to foods. It is his duty to furnish to the guests wholesome food; and where, by reason of the unwholesome food; and where, by reason of the unwholesomeness of food; guests are injured, a liability attaches to the innkeeper and an action can be sustained.⁴⁵

A guest is entitled to privacy in the room to which he is assigned and to the exclusive use thereof for all proper and lawful purposes as long as he continues to be a guest. This right is subject only to the rights of the innkeeper or his servants to enter the room at proper times and for proper purposes.⁴⁶ Where the innkeeper, or his employees, without justification or excuse, enter the guest's room and makes unfounded charges of immorality against him, or disturbs him in any other matter, he has a right of action against the innkeeper and may recover damages not only for the actual injury suffered, but also for the injury to his feelings.⁴⁷ Of course there can be no recovery where the disturbance or wrongful entry complained of was brought about by the violation of the law or the reasonable rules of the hotel by the guest.

Where liability exists against the hotel keeper as such for personal injury he is liable to the extent of actual damage suffered by his guest. There is no limitation fixed upon that liability by statute. Generally there is for the wrongful death of a person, the limitation in Indiana being \$10,000.00.

⁴⁴ *Gilbert v. Hoffman*, (Ia.) 23 N. W. 632; *Sheffer v. Wiloughby*, 163 Ill. 518.

⁴⁵ *Friend v. Childs Dining Hall Co.*, 120 N. E. 408 (Mass.).

⁴⁶ *DeWolf v. Ford*, 193 N. Y. 397.

⁴⁷ *Frewen v. Page*, 238 Mass. 499.

Statutory Provisions

The majority of states have today adopted statutes regulating the liability of the innkeeper. A great number of these statutes are merely declaratory of the common law, while others modify the common law rule by limiting, or by prescribing a mode of limiting the liability of the innkeeper.

Prior to statutory regulation, the innkeeper could make reasonable rules and regulations for the conduct of his business, but these rules could not effect the nature or extent of his obligations, as, for instance, his liability for loss of goods, under any circumstances for that would be open to the same objection as contracts limiting liability. These rules and regulations, could, however, so far as they were reasonable, affect the conduct of himself and his guests.⁴⁸

A provision that is very common permits innkeepers to provide a place of safe deposit, and to require guests to place their money and other articles of a nature calculated to tempt dishonest persons, and easy to remove without detection thus giving innkeepers the right to make their liability conditional on actual custody in certain cases.

Statutes limiting the innkeeper's liability always provide for the posting of notice of the limitations, which provisions must be expressly complied with. Thus a notice required to be printed "in ordinary sized plain English type" is not complied with by printing it in very small type, even though the guest could just as easily have read it.⁴⁹ And where the statute requires that notice should be posted, it is not enough to print the notice at the head of the register in which a guest signs his name and this will not exempt the innkeeper from liability under the statute.⁵⁰ Such statutes are in derogation of the common law and should therefore be strictly construed against the innkeeper who is attempting, in reliance upon it, to relieve himself from an obligation toward his guest, which the common law would impose.

Where the guest has complied with the terms of the statute by depositing his valuables with the innkeeper, the innkeeper remains liable for same as at common law.⁵¹ We must consider

⁴⁸ *Stanton v. Leland*, 4 Smith 88 (N. Y.).

⁴⁹ *Porter v. Gilkey*, 57 Mo. 235.

⁵⁰ *Olson v. Crossman*, 31 Minn. 222.

⁵¹ *Wilkins v. Earle*, 44 N. Y. 172.

the negligence of the guest in complying with the statutes. It has been held that where by virtue of a notice posted under authority of the statutes, a guest must lock his door, a guest who has failed to comply with the terms of the notice, and loses goods from his room, is not barred from recovery because of his failure to follow the regulation, unless such failure was the cause of the loss.⁵² The deposit by the guest of his valuables need not be made simultaneous with the entrance of the guest to the hotel. A reasonable time may elapse for the guest to deposit his valuables, and during that time the innkeeper remains liable at common law notwithstanding the statute.⁵³ Likewise, the guest must have a reasonable time in which to collect, pack and remove his property, previous to his departure from the hotel, and after the goods have been given to the guest for that purpose, the innkeeper is responsible for such goods as at common law.⁵⁴

Under the statutes limiting the liability of the hotel keeper in respect to goods brought into the hotel, arise the intricate question, is it necessary to deposit all goods with the innkeeper in order to enforce his responsibility for the goods, or only certain classes of goods which can be spared? Several states have covered this point by the express language of their statutes. Thus in Pennsylvania, the statute provides that the exemption should not apply to "such an amount of money and such articles of goods, jewelry and valuables, as is usual, common and prudent for the guest or boarder to retain in his room or about his person."⁵⁵ Similar provisions are contained in the statutes of Delaware, Iowa, Maine, Massachusetts, Montana, Nebraska, New Hampshire, North Dakota, and Wyoming. As to the articles so excepted, the common law liability remains, regardless of the statute.⁵⁶

Other states specify by the provisions of their statutes that the liability of the innkeeper can only be limited in the case of specific articles, such as money, jewelry, documents, and other articles of great value, and the innkeeper can only require these articles to be deposited in his safe. In Indiana, the statute limits the hotel keeper's liability for the loss of "wearing apparel,

⁵² *Rockhill v. Congress Hotel Co.*, 237, Ill. 98; *Burbank v. Chapin*, 140 Mass. 123.

⁵³ *Becker v. Haynes*, 29 Fed. 441.

⁵⁴ *Bendetson v. French*, 46 N. Y. 266.

⁵⁵ Act of June 12, 1913, P. L. 481.

⁵⁶ *Turner v. Whitaker*, 9 Pa. Super 83.

goods, wares or merchandise" to \$200.00 where the loss occurred without the fault or negligence of the hotel keeper and denying any liability for articles belonging to a guest not within the room assigned to him, unless specially entrusted to the custody of the hotel keeper.⁵⁷

The courts have swung from the strict doctrine holding the innkeeper liable under nearly all circumstances and have now begun to place a distinct responsibility on the guest, which if not performed will bar the guest's recovery for loss, the courts construing the statutes to have been adopted for the benefit of the hotel keepers and not for the guests. In *Jones v. Savannah Hotel Co.*,⁵⁸ the court said "The statute was not enacted for the benefit of travellers; for without it they could rely upon the common law liability of the innkeeper. Its purpose was to relieve the stringent rule of the common law so as to permit the innkeeper to protect himself against liability under certain circumstances" and in *Weis v. Hoffman House*⁵⁹ it was stated: "Such statutes are to be construed not so much as limiting or modifying the extraordinary liability, but as making the guest chargeable with negligence if he omits to avail himself of the means afforded for the protection of his property. The liability of the innkeeper is the same but the failure of the guest to comply with the statute will be such negligence as will defeat the enforcement of the liability." The effect of these statutes is to put the burden of proving the fault on the guest, but they do not excuse the innkeeper for losses due to the wrong of himself or his servants.

In some of the states statutes have been passed requiring innkeepers to provide fire escapes. If an injury was occasioned by reason of the failure of the innkeeper to comply with the statute he would be liable; but even where such statutes exist, if it should be shown that the guest who was injured could not have effected an escape or averted the injury by the use of the fire escape, then the mere fact that there was no fire escape provided would not be sufficient to fix the liability upon the innkeeper, if there was no want of ordinary diligence upon his part. In other words, it would be necessary to show that the injury occurred in consequence of the want of a fire escape.⁶⁰

⁵⁷ Burris Ann. Statutes 1926 Acts. 1907 Sec. 8720.

⁵⁸ 141 Ga. 530.

⁵⁹ 28 Misc. 225, 59 N. Y. Supp. 38.

⁶⁰ Weeks v. McNulty, 101 Tenn. 495.

However, in some jurisdictions the rule as to the liability of the innkeeper for losses arising from an accidental fire has been changed by statute⁶¹ so that the innkeeper is no longer liable for property lost by a fire occasioned by unavoidable casualty or superior force and without any fault or negligence on the part of the innkeeper or his servants.

As we have observed there is a contrariety of opinion regarding the common law liability of the innkeeper, and each state has followed one of the three rules stated herein. As to the liability of the innkeeper, the states are not agreed but judicial legislation interprets it as extraordinary. States which adopted the drastic rule of Justice Kent, that an innkeeper is an insurer of the property of his guest, deemed it propitious in modern times to pass statutes modifying the liability of the innkeeper at common law. In addition to the present statutes in force in the various states limiting the liability of the innkeeper there is still a need for legislation tempering the harshness imposed centuries ago. Statutes may be frankly experimental for they are as easily unmade as made. Judges dare not experiment too widely in rule making for their rules once pronounced are too unyielding. The hand of the law, however aged, should be a living hand not the hand of a ghost of the past laid upon the quick. And statutes assist in making it so.

The reason for the law governing innkeeper's liability ceasing, the development of the business and times, the extension of travel, the expansion of population, the formation of protective hotel associations, both national and local, for the safety and good of the public, the new era of hotel life and hotel competition, demands that there be some uniformity and modification in regard to innkeeper's liability, for the best interests of both the public and the hotel keeper and that some movement is necessary to pass suitable legislation to meet the needs of one of our foremost industries which has not been relieved sufficiently of its common law manacles.

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⁶¹ *Fisher v. Kelsey*, 121 U. S. 333; *Burnham v. Young*, 72 Me. 273; *Faucett v. Nichols*, 64 N. Y. 377.

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