

LIMITED LIABILITY OF INNKEEPERS UNDER STATUTORY REGULATIONS

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EARLY DEVELOPMENT OF THE LAW

No other phase of business is more rigorously governed by common law, with the exception of common carriers, than that of innkeepers.¹ On their business, the law, as developed during the past six centuries, has placed the strictest doctrines of liability and responsibility, so that today, while the "reason for the rule" is no longer existent, "the rule" nevertheless has continued to remain in force and effect.

It was the conditions of travel and the dangers to which travelers were subjected that originally led to the strict doctrines of liability placed on the innkeeper. In *Crapo v. Rockwell*,² Justice Cochrane says: "This rigorous rule had its origin in the feudal conditions which were the outgrowth of the middle ages." Exigencies of travel necessitated long and dangerous journeys over bad roads, through unpopulated and sparsely developed country, and the wayfarer on his journey was constantly exposed to attacks by bandits and brigands. The inns established along the wayside were his only place of refuge and partial protection—I say partial, because the innkeepers themselves were not beyond temptation, having frequent opportunities of associating with the marauders and outlaws, while the injured guest could seldom or never obtain legal proof of such combination.³ In fact, the innkeeper was looked upon as being nearly as dishonest as the bands of marauders and highwaymen that infested the roads at night. According to Pomponius, in Roman days, the Prætor declared his desire of securing the public from the dishonesty of such men, and by his edict, permitted action against them, if the goods of

¹"An innkeeper is one who holds himself out to the public as ready to accommodate all comers with the conveniences usually supplied to travelers on their journey." COOLEY, TORTS (2d ed. 1888) 757.

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

³BEALE, INNKEEPERS AND HOTELS (1906) 126; JONES, BAILMENTS (4th ed. 1833) 95, 96.

travellers or foreigners were lost or damaged by any means except *damno fatali*, or by inevitable accident.

Therefore the law placed upon the innkeeper the duty of furnishing food, drink and lodging to anyone seeking the same (if he refused he rendered himself liable to action).⁴ In addition the innkeeper had the important duty of protecting his guest and his guest's property. If the traveller, while a guest at the inn, was robbed, the law said it was from defect of care on the part of the innkeeper, inasmuch as he undertook to protect against such a misfortune.

In the earliest case on record⁵ the loss was alleged to be "for defect of guard of the innkeeper and servants." Blackstone says,⁶ "There is also in law always an implied contract with a common innkeeper to secure his guest's goods in his inn."

DOCTRINES OF LIABILITY IN GENERAL

Before the strict doctrines of liability attach, it must be shown that the defendant was in fact an innkeeper. Innkeeping is a public employment, and this characteristic distinguishes the innkeeper from a mere boarding house keeper. Van Zile says:⁷

"One who occasionally entertains travellers for compensation when it suits his pleasure, and who does not hold himself out as the keeper of a house for the accommodation of the travelling public, is not an innkeeper. For example, persons whose houses are situated along the public roads of the country, as farmers living on farms who occasionally or even frequently take in and accommodate travellers and receive compensation therefor, are not innkeepers, nor are they liable as such, nor are keepers of restaurants and eating houses,

⁴ Lord Esher in *Robins v. Gray*, [1895] 2 Q. B. 501, said: "If a traveller comes to an inn with goods which is his luggage—I do not say his personal luggage, but his luggage—the innkeeper by the law of the land is bound to take him and his luggage in."

"Also, if any innkeeper or other victualler, hangs out a sign and opens his house for travellers, it is an implied engagement to entertain all persons who travel that way; and upon his universal assumpsit an action upon the case will lie against him for damages if he without good reason refuses to admit a traveller." 3 BL. COM. *165.

⁵ Y. B. 42 Ed. III, f. II, pl. 13, 367.

⁶ 3 BL. COM. 165.

⁷ BAILMENTS AND CARRIERS (1902) 320.

persons keeping lodging or boarding houses, or sleeping car⁸ or steamship companies, etc., for these do not hold themselves out as ready to furnish accommodations to all comers."⁹

Kent says:¹⁰

"The responsibility of an innkeeper for the horse or goods of his guest, whom he receives and accommodates for hire, has been a point of much discussion in the books. In general, he is responsible at common law for the acts of his domestics, and for thefts, and is found to take all due care of the goods and baggage of his guests deposited in his house, or entrusted to the care of his family or servants, without subtraction or loss, day and night."

In a leading early English case¹¹ it was held that the innkeeper was bound absolutely to keep safe the goods of the guest deposited within the inn whether the guest acquainted the innkeeper that the goods were there or not; he was bound to pay for the goods if stolen, unless the theft was committed by a servant or companion of the guest. The responsibility of the innkeeper extended to all his servants and domestics, but it did not extend to trespasses committed upon the person of the guest nor to loss occasioned by inevitable casualty or by superior force, as robbery.¹²

Generally no liability is imposed on the innkeeper for articles left at the inn by the owner before or after he is a guest.¹³ Be-

⁸ *Clark v. Burns*, 118 Mass. 277 (1875).

⁹ Entertaining strangers occasionally for compensation does not make a person an innkeeper. *State v. Matthews*, 2 Dev. and Bat. 424 (N. C. 1837). A keeper of a coffee house or private boarding or lodging house is not an innkeeper in the sense of the law. *Doe v. Laming*, 4 Campb. 77 (Eng. 1814); *Watling v. McDowal*, 1 BELL'S COMM. 469.

¹⁰ 5 KENT'S COMM. 593.

¹¹ *Calye's Case*, 8 Coke 32 (1584).

¹² A somewhat different view of the innkeepers' responsibility, and one less strict was expressed in *Dawson v. Chamney*, 5 Q. B. 164 (1843), wherein it was held that if the goods of a guest be deposited in a public inn and be lost or injured, the prima facie presumption is that the loss was occasioned by the loss or negligence of the innkeeper or his servants, but the presumption may be rebutted. An innkeeper like a common carrier is an insurer of the goods of his guests and he can only limit his liability by express agreement or notice. *Richmond v. Smith*, 8 B. & C. 9 (Eng. 1828); 5 KENT'S COMM 594.

¹³ *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).

fore 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 inn.¹⁴ 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.¹⁵ But such responsibility is conditioned on the owner becoming a guest within a reasonable time thereafter.

It is to be noted in considering this liability, that a modification arises where a guest uses his room distinctly for business purposes, such as displaying samples, etc., for then in the event of loss of such goods, the innkeeper is liable only as an ordinary bailee for ordinary negligence.¹⁶

LIABILITY GENERALLY IN THE UNITED STATES PRIOR TO STATUTORY REGULATIONS

It is surprising to find in the United States that on a question which has been legally discussed for centuries, there has been so much conflict of opinion as to the true rule for innkeepers' liability for loss of goods. The most extreme doctrine as to liability is

¹⁴Lanier v. Youngblood, 73 Ala. 587 (1883); Johnson v. Richardson, 17 Ill. 302 (1855); Berkshire Co. v. Proctor, 7 Cush. 417 (Mass. 1851); Hauser v. Tulley, 62 Pa. 92 (1869).

"The responsibility is not confined to any particular kind of goods, but extends to money and to all other classes of personal property brought by the guest to the inn, and used by or suitable to the use of the guest." Watkins v. Hotel Tutwiller, 200 Ala. 386, 76 So. 302 (1917).

¹⁵Flint v. Illinois Hotel Co., 149 Ill. App. 404 (1909); Eden v. Drey, 75 Ill. App. 102 (1897). But see Hirsh v. Anderson Hotel Co., 58 Pa. Super. 387, (1914) which held that where the guest and his goods did not arrive at practically the same time, the innkeeper is liable only as a gratuitous bailee, and not as an insurer.

¹⁶Meyers v. Cottrill, 5 Biss. 465 (U. S. 1873); Carter v. Hobbs, 12 Mich. 52 (1863)—"Where the property is brought to a hotel for the purpose of sale or show, such as the goods of commercial travellers, the law does not hold an innkeeper to his strict liability, but only to the exercise of ordinary care and answerable for negligence." Williams v. Norwell Shapeleigh Hardware Co., 29 Okla. 331, 116 Pac. 786 (1911); Abercrombie v. Edwards, 62 Okla. 54, 161 Pac. 1084 (1916).

expressed in *Hulett v. Swift*,¹⁷ in which the New York Court of Appeals held that an innkeeper was an insurer, saying:

“An innkeeper is responsible for the safety of property committed to his custody by a guest. He is an insurer against loss, unless caused by the negligence or fraud of the guest or by the act of God, or by public enemy.”¹⁸

On the other hand, the Supreme Court of Michigan in *Cutler v. Bonney*,¹⁹ a case involving a very similar set of facts, in which a plaintiff sought to recover the value of a certain horse, wagon, and goods destroyed by fire in the barn of the defendant, an innkeeper, which fire was not caused by the defendant or his servants, took a different and more liberal view of the law, saying in its opinion:

“In order to hold a bailee liable for that which is in no respect reputed either to his own negligence or to that of persons for whom he is responsible, there should be found clear authority. The common law has declared this liability against one class of bailees, and has made common carriers responsible for all losses not caused by the public enemies, or from casualty in no way arising out of human action. It is claimed by plaintiff that in this respect common carriers and innkeepers stand on precisely the same footing; . . . the general principle seems to be that the innkeeper guarantees the good conduct of all persons whom he admits under his roof, provided his guests are themselves guilty of no negligence to forfeit the guarantee. . . . The two classes of bailees have been kept carefully separate.”²⁰

¹⁷ 33 N. Y. 571 (1865). For other New York cases expressing a similar view, see *Purvis v. Coleman*, 21 N. Y. 111 (1860); *Wells v. Steam Navigation Company*, 2 Comst. 204 (1849); *Gile v. Libbey*, 36 Barb. 70 (1861); *Ingelsby v. Wood*, 36 Barb. 452 (1862).

¹⁸ Following the case of *Hulett v. Swift*, the legislature of the state of New York saw fit to pass a law modifying the liability of the innkeeper.

¹⁹ 30 Mich. 359 (1874).

²⁰ In England the extreme rule laid down in *Morgan v. Ravey*, 6 H. & N. 265 (1861) still prevails, namely, that the innkeeper is liable for all loss, except that caused by an act of God, or the Queen's enemy, or by the negligence of the guest himself.

Judge Story in his *BAILMENTS* (9th ed. 1878), §472 says:

“Innkeepers are not responsible to the same extent as common carriers,” adding that the presumption of negligence may be repelled by the innkeeper, “by showing that there has been no negligence whatsoever, or that the loss is attributable to the personal negligence of the guest himself, or that it has been occasioned by inevitable casualty or by superior force.”

A few courts have even gone so far as to hold the innkeeper liable only for loss of goods in the inn where he or his servants have been personally negligent. Judge Trumball in *Metcalf v. Hess*,²¹ said:

“It is a harsh rule which makes a person in any case responsible for a loss which has occurred without any fault of his and it can only be justified upon ground of public policy, and in consideration of the numerous opportunities afforded by the nature of his business for fraudulent combination and clandestine dealing to the injury of the owner of the property. The rule ought not to be extended beyond the reason for which it originated.”²²

However, the majority of the jurisdictions have imposed upon the innkeeper the liability of an insurer, analogous to that of a common carrier.²³ He has been held liable for all goods of the guest lost in the inn, unless the loss has been caused by the act of God, or a public enemy, or by the fault or negligence of the owner himself.²⁴ And as to loss occurring by theft committed by his servants, he has always been held liable. In *Hauser v. Tulley*,²⁵ the Court said:

“The liability of an innkeeper arises from the nature of his employment. . . . He is bound to take proper care of the goods, money and baggage of his guest, deposited in his house or entrusted to the care of his family or servants, and he is responsible for their acts as well as the acts of other guests. If the goods of the guest are damaged in the inn, or are stolen from it, by the servants or domestics, or by a stran-

²¹ 14 Ill. 129 (1852).

²² *Howe Machine Co. v. Pease*, 49 Vt. 477 (1877); *Baker v. Dessaner*, 49 Ind. 28 (1874).

²³ *Pettitt v. Thomas*, 103 Ark. 593, 148 S. W. 501 (1912); *Watson v. Houghton*, 112 Ga. 837, 38 S. E. 82 (1900); *Wagner v. Congress Hotel Co.*, 115 Me. 190, 98 Atl. 660 (1916); *Mason v. Thompson*, 9 Pick. 280 (Mass. 1830); *Parker v. Dixon*, 132 Minn. 367, 157 N. W. 583 (1916); *Swanner v. Connor Hotel Co.*, 205 Mo. App. 329, 224 S. W. 123 (1920); *Hulett v. Swift*, *supra* note 17; *Palace Hotel Co. v. Medart*, 87 Ohio 130, 100 N. E. 317 (1912); *Shultz v. Wall*, 134 Pa. 262, 19 Atl. 742 (1890); *Rains v. Maxwell House Co.*, 112 Tenn. 219, 79 S. W. 114 (1903).

²⁴ *Watkins v. Hotel Tutwiller*, *supra* note 14; *Jones v. Savannah Hotel Co.*, 141 Ga. 530, 81 S. E. 874 (1914).

²⁵ *Supra* note 14.

ger guest, he is bound to make restitution, for it is his duty to provide honest servants and to exercise an exact vigilance over all persons coming into his house as guests or otherwise." ²⁶

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.²⁷ Other jurisdictions, however, 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.²⁸

Where the loss occurs through the fault of the guest, his servants, or companions, there is no liability upon the theory that the guest is guilty of contributory negligence. Likewise, it has been held that the guest's failure to lock or bolt the door of the inn, when there is a lock or bolt upon it, may of itself be given to the jury as evidence of negligence on the guest's part.²⁹

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 con-

²⁶ Walsh v. Porterfield, 87 Pa. 376 (1878); Shultz v. Wall, *supra* note 23.

Even where the goods are stolen by a stranger without actual negligence on the part of the innkeeper, the courts have held there has been a breach of the innkeeper's obligation and that he is liable. Lanier v. Youngblood, 73 Ala. 587 (1883); Sasseen v. Clark, 37 Ga. 242 (1867); Johnson v. Richardson, *supra* note 14; Weis v. Hoffman House, 28 Misc. 225, 59 N. Y. Supp. 38 (1899).

²⁷ See Pinkerton v. Woodward, 33 Cal. 557 (1867); Fay v. Pacific Imp. Co., 93 Cal. 253, 26 Pac. 1099 (1892); Shaw v. Berry, 31 Me. 478 (1850); Sibley v. Aldrich, 33 N. H. 553 (1856); Hulett v. Swift, *supra* note 17.

²⁸ See Hurlburt v. Hartman, 79 Ill. App. 289 (1899); Laird v. Eichold, 10 Ind. 212 (1858); Baker v. Dessaner, *supra* note 22; Vance v. Throckmorton, 5 Bush 41 (Ky. 1868); Burnham v. Young, 72 Me. 273 (1881); Cutler v. Bonney, *supra* note 19; Dunbar v. Day, 12 Neb. 596, 12 N. W. 109 (1882); Howe Machine Co. v. Pease, *supra* note 22.

²⁹ Morgan v. Ravey, *supra* note 20; Spring v. Hager, 145 Mass. 186, 13 N. E. 479 (1887); Swann v. Smith, 14 Daly 114 (N. Y. 1887).

ditions.³⁰ And where such express notice, that he must deposit his valuables with the innkeeper or take the risk of loss, has been given to the guest, he is negligent if he fails to comply with the notice.³¹ So where a guest has been told that he must leave his goods at the bar, but notwithstanding this warning, he kept them in his room, and they were lost, he was barred from recovery by his negligence.³² However, in the absence of statutory authority, an innkeeper cannot limit his liability by a general, public, or constructive notice, not brought to the guests' knowledge.³³

LIABILITY UNDER STATUTORY REGULATIONS

Today many states have passed statutes regulating and limiting the liability of innkeepers who comply with the terms and provisions thereof. Likewise, a responsibility is now placed upon the guest which he heretofore did not have. Prior to statutory regulation, the innkeeper, like the common carrier, could make reasonable rules and regulations for the conduct of his business, but these rules could not effect the nature or extent of his obligation, 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.³⁴

The statutes of the various states require the innkeeper to keep a safe deposit box for guests. Furthermore, 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.³⁵ And where the statute requires that notice should be posted, it is not enough to print the notice at the head of the reg-

³⁰ *Wilson v. Halpin*, 1 Daly 496 (N. Y. 1865); *Nesben v. Jackson*, 89 W. Va. 470, 109 S. E. 489 (1921).

³¹ *Jalie v. Cardinal*, 35 Wis. 118 (1874).

³² *Wilson v. Halpin*, *supra* note 30.

³³ *Palas v. Harvey Room Co.*, 211 Ill. App. 580 (1918).

³⁴ *Stanton v. Leland*, 4 E. D. Smith, 88 (N. Y. 1855).

³⁵ *Porter v. Gilkey*, 57 Mo. 235 (1874).

ister in which a guest signs his name,³⁶ and this will not exempt the innkeeper from liability under the statute.

An exception is to be noted in the New York case of *Purvis v. Coleman*,³⁷ in which the innkeeper had failed to post notices in the rooms of the guests as required by the statute, but the plaintiff had been actually informed by a waiter that guests should deposit valuables in a safe in the office founded for that purpose. The court in holding that an action for the loss of his money was barred by the statute said:

“The notice which the statutes require is merely constructive, since it is evident that a notice posted up in the room of a guest may wholly escape his attention, yet he is not permitted to aver his ignorance, but is bound by that presumption which the statute raises. When the facts raising the presumption are proved, his recovery is barred. It is true the statute is silent as to the effect of actual notice, but we cannot believe that the legislature intended that a greater effect should be attributed to the presumed knowledge of a guest than to its actual proof—that while the presumption bars his recovery, the proof must be rejected or disregarded. Such a construction of the intention of the legislature would be most unreasonable . . . and the meaning of the statute we hold to be—that the knowledge of a guest who has failed to deposit his money, or jewelry, in a safe, that he knew to be provided, would defeat his claim for a subsequent loss, and that such is its consequence, whether the knowledge be established by direct or positive, or merely presumptive evidence.”

This decision has been much criticised in later cases, and several courts have declined to follow it. Thus in *Batterson v. Vogel*,³⁸ it was held that an innkeeper who had failed to post a notice in the guest's room as required by the act was nevertheless liable even though it appeared that the guest had read a copy of the act on the register, since the act did not provide that actual knowledge of the provisions of the act should take the place of posting.³⁹

³⁶ *Olson v. Crossman*, 31 Minn. 222, 17 N. W. 375 (1883); *Batterson v. Vogel*, 8 Mo. App. 24 (1879).

³⁷ *Supra* note 17.

³⁸ *Supra* note 36.

³⁹ See *Lanier v. Youngblood*, *supra* note 26; *Porter v. Gilkey*, *supra* note 35.

This seems to be the better view, since such a statute is 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 towards his guest, which the common law would impose.

Certain duties have also been placed upon the guest by these statutory regulations, and we will now consider under what circumstances the innkeeper is still liable as at common law.

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.⁴⁰ But let us suppose the guest is likewise guilty of negligence. Under what circumstances will that bar a recovery? 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 said 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.⁴¹ Thus where a guest was required to lock his door at night, and he failed to do so and his goods were stolen at night by another guest placed in the room, in spite of his objections, by the innkeeper, it was held that the guest might recover for his loss.⁴²

Furthermore, when must the deposit by the guest with the innkeeper be made to prevent the former's being considered negligent for having failed to do so? The deposit need not be made at the very moment of the guest's arrival. A reasonable time may elapse for the guest to deposit his valuables, and during that time the innkeeper remains liable at common law in spite of the statute.⁴³ Likewise, the guest must have a reasonable time in which to collect, pack, and remove his property, previous to his departure from the inn, and after the goods have been given to

⁴⁰ *Wilkins v. Earle*, 44 N. Y. 172 (1870); *Green v. Windsor Hotel Co.*, 26 Que. Super. 97.

⁴¹ *Rockhill v. Congress Hotel Co.*, 237 Ill. 98, 86 N. E. 740 (1908); *Burbank v. Chopin*, 140 Mass. 123, 2 N. E. 934 (1885); *Bendetson v. French*, 46 N. Y. 266 (1871).

⁴² *Gile v. Libbey*, *supra* note 17.

⁴³ See *Becker v. Haynes*, 29 Fed. 441 (1887); *Rosenplaenter v. Roeselle*, 54 N. Y. 262 (1873).

the guest for that purpose, the innkeeper is responsible for such goods as at common law.⁴⁴

A much discussed question is whether, under a statute limiting liability, it is 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,⁴⁵ 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." Similar provisions are contained in the statutes of Delaware, Iowa, Maine, Massachusetts, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, and Wyoming. As to the articles so excepted, the common law liability remains, in spite of the notices.⁴⁶ Other states⁴⁷ 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,⁴⁸ documents, and other articles of great value, and the innkeeper can only require these articles to be deposited in his safe.

But what is the liability of an innkeeper where goods of a guest have not been deposited with the innkeeper as required by statute, and are lost as a result of the negligence of the innkeeper or his servants? Let us consider a hypothetical case. John Smith registers as a guest at a hotel, which has complied with all the requirements of a statute as to maintaining a safe deposit box, giving due notice of limitations, etc. The statute requires that the guest deposit all valuables, such as jewelry, etc., with the hotel

⁴⁴ Bendetson v. French, *supra* note 41.

⁴⁵ Act of May 7, 1855, P. L. 479, PA. STAT. (1920) § 11,935. See also Act of June 12, 1913, P. L. 481, PA. STAT. (1920) § 11,935.

⁴⁶ Turner v. Whitaker, 9 Pa. Super. 83 (1898).

⁴⁷ California, Illinois, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, Washington, West Virginia and Wisconsin.

⁴⁸ The cases differ on the question whether a watch and chain come within the description "jewels and ornaments" or similar language of the statute. In Maryland and New York it has been held that they do not, but that the innkeeper is responsible for them in spite of the statute and notice. See Maltby v. Chapman, 25 Md. 310 (1866); Bernstein v. Sweeney, 33 N. Y. Superior 271 (1871); Ramalay v. Leland, 43 N. Y. 539 (1871).

in safe deposit boxes provided for that purpose. Smith on going to his room at night fails to deposit his valuable jewelry with the hotel, but retains the same in his room. He locks his door before retiring. During the night, an employee of the hotel enters his room with a pass key and steals his jewelry. Subsequently on being arrested, the employee admits the theft, but has meanwhile disposed of the jewelry and cannot make good the loss. Is the hotel keeper liable for the loss sustained by the guest occasioned by the wrongful act of his employee?

Of course, it is important to consider the provisions of the statute applicable in each case. Statutes in some of our states expressly provide that the innkeeper shall remain liable as at common law if the loss occurs through his or his servants' negligence.⁴⁹ However, we will consider that our hypothetical case is controlled by a statute which does not contain such a provision.

Turning to cases which might govern the assumed set of facts, we find none that is similar to our hypothetical case, especially on the point that the loss was admittedly caused by a wrongful act of the innkeeper's employee. Probably the nearest case in point is that of *Jones v. Savannah Hotel Co.*,⁵⁰ in which case a female guest had retired for the night, and, before doing so, took from her person the following articles, which she had been wearing for personal adornment and which were suitable to her station in life, and placed them upon the bureau in her room: five diamond rings, one watch-bracelet, one topaz chain and watch. During the night all these articles were stolen from the room by some person unknown. The innkeeper had an iron safe for the deposit of valuable articles, and had posted in the room of the guest the notice required by statute.

The court was asked two questions. First, was the guest entitled to recover from the innkeeper the value of the property stolen. Second, if the articles were such as were within the purview of the statute, would the guest, notwithstanding any negligence in her failure to deposit the articles in the innkeeper's safe,

⁴⁹ *Edward House v. Davis*, 124 Miss. 485, 86 So. 849 (1920); *Busley v. Hotel Wisconsin Realty Co.*, 166 Wis. 294, 164 N. W. 826 (1917).

⁵⁰ *Supra* note 24.

be entitled to recover, if it appeared that the articles were stolen in consequence of the negligence of the innkeeper either in failing to provide a suitable lock on the door, or in placing a fire escape in such a manner as to afford easy access to the room of the guest from the street below? The court answering the first question said:

“The language of the code section is explicit. The innkeeper had an iron safe for the deposit of valuable articles. He posted the notice required by the statute. . . . The guest had valuable articles consisting of diamond rings, bracelet, watch and chain, which were not deposited in the iron safe, but kept in the room of the guest and were stolen. It is perfectly clear therefore that the innkeeper was relieved of responsibility for them.

“It may seem somewhat of a hardship to require a traveler on retiring at night to deposit articles like those involved in the present case; but the statute is absolute and must be complied with, else the innkeeper will be relieved from liability for the loss of such articles. 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.”

In answer to the second question the court said:

“As the statute declares that the innkeeper will be relieved from responsibility for valuable articles belonging to his guest if he provides an iron safe or other place of deposit for such articles, and posts a notice in accordance with the statute, requiring his guest to place such articles in the safe or other place of deposit, it must follow, where the innkeeper has complied with the requirements of the statute, thus relieving himself from responsibility for such articles, that a guest who failed to comply with such notice could not recover from the innkeeper if it appeared that the articles were stolen in consequence of the negligence of the latter, either in failing to provide a suitable lock on the door of the room occupied by the guest, or in placing a fire-escape in such a manner as to afford easy access to the room from the street below. Had the guest complied with the notice, and thereafter the innkeeper had failed to use the measure of diligence required by

the statute, he would have been liable. To hold that, without complying with the requirements of the notice authorized by the statute, the guest could nevertheless recover as to articles covered by the notice, merely by showing want of diligence on the part of the innkeeper in the respect named, would practically make the statute nugatory."

It is interesting to note that in other cases involving somewhat similar facts, 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. On this point, the Supreme Court of Tennessee in the case of *Rains v. Maxwell House Co.*,⁵¹ said:

"If a guest sees proper to keep his watch and fob and money upon his person or in his room, he does it at his own risk, just as he keeps about his person and in his possession when not in the hotel. If he desires for his own safety or convenience to place the responsibility for its safe keeping upon the hotel keeper during his stay at the hotel as a guest, then he must place it in the safe which the statute requires to be provided by the innkeeper for that purpose. We can put no other construction upon the statute without nullifying wholly or to some extent its provisions. It may be inconvenient to deposit small sums of money and pieces of jewelry of little value in the safe of a hotel, and it may be inconvenient to do without their use during the stay of the guest; but this is a condition to the statute, upon which the hotel keeper can alone be made liable for their safety as an insurer. If a guest desires to avoid these inconveniences, he may retain possession of his money and his jewelry, just as if he were not a guest of the hotel."

Probably the most succinct expression of the law is found in the opinion of the court in *Weis v. Hoffman House*,⁵² wherein it was stated:

⁵¹ *Supra* note 23.

⁵² *Supra* note 26.

“It is said that 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.”

In conclusion it may be said that today, under modern conditions of travel, with the “reason for the rule” no longer present, the legislatures of the various states and the courts in interpreting the statutes enacted by these legislative bodies, are slowly breaking down “the rule” of strict liability of innkeepers, which rule originally arose because of conditions which are no longer existent.