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HOTELKEEPERS LIABILITY FOR NEGLIGENT LOSS OF PROPERTY OF A GUEST

(Act of June 12, 1913, as Amended in 1931, June 22, P.L. 659.)

An unduly misinterpreted field of Pennsylvania law concerns the liability of hotelkeepers for loss of the goods of a guest. For the purposes of this discussion, assume the following set of facts:

S, a traveling jewelry salesman, carrying a bag containing sample diamonds valued at \$50,000 registers at H Hotel and checks his bag at the desk, receiving a receipt therefor. When S asks for his bag the next day it is missing. S has evidence which will prove negligence on the part of H Hotel in allowing the bag to be lost or stolen. S sues H Hotel for the full \$50,000 loss.

Under Pennsylvania law, what result?¹

I. COMMON LAW LIABILITY.

At common law, there was little, if any, dispute that an innkeeper,² regardless of absence of fault on his part, was answerable as an insurer for all losses happening to the goods of travelers who became his guests, except only such as were caused by:

- a. Acts of God, or
- b. Acts of the Public Enemy, or
- c. Acts of the guests's servant or companion that the guest brings with him, or
- d. Acts of the guest himself.³

A New York court⁴ has explained the rule as:

"... (h)aving its origin in the feudal conditions which were the outgrowth of the Middle Ages. 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 in landlords who were not exempt from temptation; and hence there grew up the duty of protection."

Although the original reasons behind the hotelkeeper's insurer liability have ceased to exist, others have arisen and thus there has been no relaxation in the rule of his common law liability, except as such liability has been modified by statute.⁵

¹ This statement of assumed facts is based on the case of *Freudenheim v. Eppley et al.*, 88 F.2d 280 (Circuit Court of Appeals, Third District, Jan. 25, 1937).

² A hotelkeeper and an innkeeper occupy the same status in the law. *Appeal of Wellsboro Hotel Co.*, 336 Pa. 171, 7 A.2d 334, 122 A.L.R. 1936.

³ *Cayle's Case*, 8 Rep. 63, 2 Kent Comm. 594; *Shultz v. Wall*, 134 Pa. 262 (1890); *Featherstone v. Dessert*, 22 P.2d 1050 (1933).

⁴ *Crapo v. Rockwell*, 48 Misc. Rep. 1, 94 N.Y. Supp. 1122, 17 N.Y. Ann. Cas. 112 (1905).

⁵ *Hulett v. Swift*, 33 N.Y. 571, 88 Am. Dec. 405 (1865).

A very early Pennsylvania Supreme Court decision⁶ ruled that:

"On principles of law, an innkeeper is liable for whatever is deposited in his house, and this on the grounds of soundest public policy and convenience."

The later case of *Walsh v. Porterfield*⁷ continued the common law liability by deciding that:

"An innkeeper is bound to pay for goods stolen in his house from a guest, unless stolen by the servant or companion of the guest. 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."⁸

In a few jurisdictions, the liability of the innkeeper is not that of an insurer, but is predicated upon negligence or wrongful act, and he may exonerate himself by showing that the loss or injury was not attributable to any fault on the part of himself or his employees or agents.⁹ Even where liability is based on negligence, however, most jurisdictions require more than ordinary care.¹⁰

* * * * *

First Conclusion:

It is clear that, under the law of Pennsylvania and the prevailing view in all jurisdictions, the H Hotel in the assumed state of facts would be liable to S as an insurer for the entire loss occasioned to him if the problem arose under common law principles.

II. STATUTORY PROVISIONS.

In most jurisdictions, including Pennsylvania, express statutory provisions permit the proprietor of an inn or hotel to relieve himself from his strict common law liability, in respect of certain classes of property, upon compliance with the prescribed conditions. Said statutes being in derogation of common law, *a fortiori* they are to be strictly construed.¹¹

Pennsylvania's act is entitled: "Non-Liability For Valuables Not Deposited In Safe" and was enacted in 1913 and amended to include apartment hotelkeepers in 1931.¹² Pertinent sections of the act are:

Section One: "No innkeeper. . . who constantly has in his inn. . . a metal safe or suitable vault, in good order and fit for the custody of

⁶ *Sneider v. Geiss*, 1 Yeates 34, (1791).

⁷ *Walsh et al. v. Porterfield*, 87 Pa. 376 (1878).

⁸ See also: *Houser v. Tully*, 62 Pa. 92, 1 Am. Rep. 390; and 28 Am. Jur., *Innkeepers*, 67, for cases supporting this doctrine of liability.

⁹ 28 Am. Jur., *Innkeeper*, 68, and cases cited therein.

¹⁰ *Ibid.*

¹¹ *Stoll v. Almon Judd Co.*, 106 Conn. 551; 138 A. 479; *Kentucky Hotel v. Cinnotti*, 298 Ky. 88, 182 (S.W.2d) 27; 28 Am. Jur., *Innkeepers*, 75, 1952 Supp.

¹² Act of 1913, June 12, P.L. 481, §§ 1 & 2, 37 P.S. 61 as amended, Act of June 22, 1931, P.L. 659, 37 P.S. 61. Note: The Amendment of 1931 was for the sole purpose of bringing apartment hotelkeepers within the scope of the 1913 Act.

money, . . . jewelry, . . . precious stones. . . , and who keeps a copy of this section. . . posted. . . shall be liable for the loss or injury suffered by any guest, unless such guest has offered to deliver the same to such innkeeper. . . for custody in such metal safe or vault, and such innkeeper. . . has omitted or refused to take it and deposit it in such safe or vault for custody, and to give such guest a receipt therefor: Provided however, That the innkeeper of any inn. . . shall not be obliged to receive from any one guest, for deposit in such safe or vault, any property hereinbefore described exceeding a total value of three hundred dollars, and shall not be liable for any excess of such property, whether received or not."

Section Two: "Any hotelkeeper may, by special arrangement with a guest, receive for deposit in such safe or vault any property, upon such terms as they may agree to, in writing, but every hotelkeeper shall be liable for any loss of the above-enumerated articles of a guest in his inn, . . . after said articles have been accepted for deposit, if caused by the theft or negligence of the hotelkeeper, or any of his servants."¹³

The dominant aim of this discussion will be the interpretation and construction of this statute, which has been enacted in identical or similar form in most jurisdictions, in the light of the assumed state of facts heretofore given. In other words, may S, our traveling jewelry salesman, recover his \$50,000 loss under or in spite of the above act.

* * * * *

It seems imperative to specify the type of goods within the meaning of the statute at the outset. Clearly the Act of 1913 refers only to valuables, i.e., money, jewelry, etc., of the type a prudent person would not normally carry around with him. As our Superior Court has stated:

"The Act of May 7, 1855 (the forerunner to the Act of 1913) which provides a manner in which innkeepers shall safely keep valuable property of their guests, shall not apply to such an amount of money and such articles of goods, jewelry, and valuables as it is usually common and prudent for the guest to retain in his room or about his premises or person, . . . the innkeeper retains his common law liability as to such articles."¹⁴

The innkeeper remains liable, therefore, as an *insurer* for all valuables of the type a guest normally keeps with him in his room because the statute is not applicable to them. *A fortiori*, the innkeeper is liable as an insurer for valuables worth less than \$300 which are offered for deposit and refused.¹⁵

The problem is thus narrowed down to our situation where the guest offers goods of a value greater than \$300 (in the hypothetical situation—\$50,000)

¹³ *Ibid.*

¹⁴ *Turner v. Whittaker*, 9 Pa. Super. 83, 43 W.N.C. 375; See also *Franchinia v. Palumbo*, Appellant, 79 Pa. Super. 234 (1922).

¹⁵ See n. 12, *supra*.

which are offered for deposit, accepted for deposit, and then through the innkeeper's negligence are stolen or lost.

To bring himself within the protection of the act, the innkeeper must:

(a) constantly have in his hotel a metal safe or suitable vault, in good order and fit for the custody of money, bank notes, jewelry, precious stones;

(b) keep on the doors of the sleeping rooms used by guests suitable locks and on the transoms and rooms suitable fastenings;

(c) constantly and conspicuously post in not less than ten conspicuous places, copies of above section of the act;

The innkeeper will not be protected even though he has complied with the above requirements if:

(d) such innkeeper or hotelkeeper has omitted or refused to take the chattels and deposit them in such safe or vault for custody;

(e) and to give such a guest a receipt therefor.

It is of great import to remember that since the said Act of 1913 is in derogation of the innkeeper's common law liability as an insurer, it will be strictly construed and failure to abide by the provisions set forth therein will leave the common law liability unaffected by the statute.¹⁶

* * * * *

Second Conclusion:

If H Hotel should fail in any of the above requirements, i.e., fail to have a suitable vault, fail to post said notices, fail to place the goods in said vault, etc., then the H Hotel remains, as at common law, liable to S for the full \$50,000 loss as an insurer. We have assumed compliance in the above requirements, therefor we come to the question of negligence.

III. NEGLIGENCE OF INNKEEPER CAUSING LOSS OF GUEST'S PROPERTY IN PENNSYLVANIA.

The great majority of jurisdictions rule that even though the innkeeper has complied with the statute and the guest has deposited his property for safekeeping, if the loss is occasioned by negligence, or wrongful act of the innkeeper or his employees, he is nevertheless liable, since the statutes have not removed the common-law liability in this respect.¹⁷

Another authority states the rule this way:

" . . . a statute regulating or limiting the liability of an innkeeper is not applicable where the guest bases his cause of action solely on

¹⁶ 119 A.L.R. 796; Shultz v. Wall, 134 Pa. 262, 19 A. 742, 8 L.R.A. 97 (1890).

¹⁷ 28 Am. Jur. 591, 74 See also: Elcox v. Hill, 98 US. 218, 25 L. Ed. 103; Goodwin v. Georgian Hotel Co., 197 Wash. 173, 84 P.2d 681, 119 A.L.R. 788.

the negligence of the innkeeper in keeping property deposited with him and *not upon his common law liability as an insurer.*"¹⁸ (Emphasis supplied.)

Pennsylvania has expressly followed this rule in the leading case of *Benjamin v. Colonial Hotel Company*.¹⁹ In this case the plaintiff deposited money in defendant's vault, which was unexplainably lost overnight. Defendant relied on exact compliance with the terms of the Act of 1913; but plaintiff had *sued in trespass to recover the loss through the alleged negligence of defendant*. In reversing a verdict for defendant and awarding a *venire facias de novo*, the Supreme Court said:

"Plaintiff founded his case entirely upon an allegation of negligence, and made no claim against defendant on its common law liability as an insurer; hence *the said act of 1913 is not here important, as it does not attempt to relieve an innkeeper from liability, for loss of property on deposit, as a result of his own negligence or that of his servants. See section two of the act.*" (Emphasis supplied.)

The opinion further stated:

". . . protecting the property of a guest is for the joint benefit of both host and guest and stands on the basis of a bailment for hire, where the bailee is required to use ordinary care and is liable for ordinary neglect."

This above ruling was followed in the later case of *Baumstein v. Pittsburgh Hotels Co.*,²⁰ wherein it was stated:

"Guest-Plaintiff sued the hotel for loss of a package of diamonds which was deposited in its safe. The diamonds disappeared and the hotel could not explain its loss. As the case rested upon negligence, the Act of 1913 had no application, and the hotel's liability depended upon ordinary rather than slight care as custodian of guest's property."

Again in *Kleckner, Appellant, v. Hotel Strand*,²¹ plaintiff sued for loss of his traveling bag in trespass. The Superior Court reversed a lower court's refusal to take off a non-suit, stating:

". . . the case may properly be termed a bailment for mutual benefit. Such bailments arise where there exists a possibility or chance of expected profit to accrue from the patronage of the intending guest."

Federal courts, construing Pennsylvania law, have sustained the majority rule making the innkeeper liable for his negligence in spite of the Act of 1913. In the case of *Fruedenheim et. al. v. Eppler et al.*,²² plaintiff sued Pittsburgh Hotels Corporation to recover damages for the alleged negligence of defendant in failing to keep safely some \$40,000 worth of its diamonds deposited with defendant by a guest at the hotel. Plaintiff recovered a verdict of \$41,893.13 in a trial

¹⁸ 32 C.J. 552.

¹⁹ 112 A. 54 (1920).

²⁰ 76 P.L.J. 918 (Com. Pl., 1928).

²¹ 60 Pa. Super. 617 (1915).

²² 88 Fed. 2d 280 (C.C.A., Pa., 1937).

where the only contested question was whether plaintiff, under the particular circumstances of the case, was a guest of the hotel as that term is construed in the law. The federal court stated that:

" . . . if plaintiff was a guest in the hotel, the hotel is liable for the loss of the diamonds."

In *Adelphia Hotel Co. v. Providence Stock Co.*,²³ plaintiff sued in trespass for the loss of the contents of a trunk. Plaintiff was a traveling salesman of a jewelry concern and deposited a trunk of jewelry samples at defendant hotel. In affirming recovery for plaintiff for the market value of the samples, the court said:

" . . . the instruction (of the trial court) we think, confined the defendant's responsibility to the legal minimum,—that of care in the degree which the law imposes upon a bailee for hire."

* * * * *

Third Conclusion:

Under the law of Pennsylvania and the law of the federal courts which construed Pennsylvania law, an innkeeper may be sued and held liable for his negligence in spite of the Act of 1913. The purpose of the act was to relieve the heavy burden on an innkeeper, i.e., his insurer liability, when, and only when, he strictly complied with the provisions of the act. Section One of the Act of 1913 contains the language:

"Provided, however, That the keeper of any inn or hotel shall not be obliged to receive from any one guest, for deposit in such safe or vault, any property hereinbefore described exceeding a total value of three hundred dollars, and shall not be liable for any excess of such property, *whether received or not.*" (Emphasis supplied.)

As has been shown, however, this limit of liability only applies when the innkeeper exercises due care, i.e., the care required of a bailee in a mutual benefit bailment.²⁴ The act, and thereby the limit of liability, has no application or effect in the face of negligence on the part of the innkeeper.

It has recently been said that:

" . . . indeed, a statute regulating or limiting the liability of an innkeeper is not applicable where the guest bases his cause of action on the negligence of the innkeeper in keeping property deposited with him and not on his common law liability as an insurer."²⁵

Under the mandate of the above-stated majority rule, therefor, the H Hotel, in our set of facts, would be liable to S for the entire \$50,000 loss on the basis of his negligence, and the Act of 1913 would afford H Hotel no protection.

²³ 227 Fed. Rep. 905 (C.C.A., Pa., 1922)

²⁴ Benjamin v. Colonial Hotel Company, 268 Pa. 459, 112 A. 54, (1920).

²⁵ 43 C.J.S., Innkeepers, 17; Shiman Bros. & Co. v. Nebraska Nat. Hotel Co., 143 Neb. 404, 9 N.W. 2d 807, 814.

IV. NEGLIGENCE OF THE INNKEEPER IN JURISDICTIONS OTHER THAN PENNSYLVANIA.

In the oft-cited case of *Stoll v. Almon C. Judd Co.*,²⁶ an action was brought for the loss of jewelry deposited with an innkeeper under a statute very similar to that of Pennsylvania. By way of defense the hotel clerk claimed that he did not know that the bags which were checked contained jewelry. The court, after discussing the common law insurer liability and subsequent statutory modification stated that:

" . . . the doctrine of liability covers all personal property brought by the guest to the inn (Beale #191). Plaintiff should have let defendant know the character of the deposit so that he may know that it is valuable and to be safely kept. The burden is on the innkeeper to ascertain the exact value if he wishes."

Plaintiff proved negligence and recovered a \$7,500 verdict—the statute being held of no effect in the face of negligence.

In *Shiman Bros. and Co. v. Nebraska Natl. Hotel Co.*,²⁷ an action was brought to recover \$45,965.95 for loss of a salesman's trunk containing a quantity of jewelry. Nebraska has a statute identical to that of Pennsylvania, modifying the innkeeper's common law insurer liability.^{28a} The court held, *inter alia*:

" . . . a statute regulating or limiting the liability of an innkeeper applies only to his common law liability as an insurer and has no application where the cause of action of the guest is based solely on the negligence of the innkeeper in caring for property entrusted to him. . . . even if he complies with the statute, but is negligent, he is liable since the statute does not relieve his liability in this respect. . . . We conclude, therefore, that the present suit is predicated on the negligence of the hotelkeeper, its agents and servants, and that the statute modifying the common law liability of the hotel company as an insurer has no application."^{28b}

In *Rockhill v. Congress Hotel Co.*,²⁹ the Illinois court stated, in discussing liability under a statute very similar to that of Pennsylvania:

" . . . But here the Act did not apply, for the reason that the loss occurred by the negligence of the porter or servants of the defendant, and the statute affords no protection against such a loss." Seventeen years later the same court held:

"It would seem that where the loss results from the negligence of the innkeeper or his servants the statute is not applicable. . . . Of the Wisconsin case of *Busley v. Hotel Wisconsin Realty Co.*, 166 Wis. 294, we said: 'It was expressly held in construing a similar statute that, where the goods of a guest are lost through the negligence of the innkeeper,

²⁶ 138 A. 478 (1927).

²⁷ 143 Neb. 404, 9 N.W. 2d 807.

^{28a} Comp. St. Supp. 1935, §§ 41-118.

^{28b} See also 28 Am. Jur. 541, 32 C.J. 552.

²⁹ 237 Ill. 98 (1908).

the limitation as to amount does not apply and the guest may recover the full amount of his loss.'"³⁰

The minority view is set forth in the Maine case of *Levesque v. Columbia Hotel*,³¹ where the court interpreting a statute like that of Pennsylvania held:

"If the hotel does not comply with the statute it is left under the old common law obligation as an insurer with this exception—that *his liability is limited to \$300 whether he receives the property or not.*" (Emphasis supplied.)

The court, in so holding, spoke of a "strong public policy," and noted that a hotel "is not a bank." This writer feels that the above holding is untenable. Does this mean that no matter how careless the hotel is with the paying guests's property, the hotel is protected by a \$300 liability limit? Can the hotel throw the guest's money out the window and be subject to a mere nominal sum liability? How does this view give any effect or importance to the second section of the Act of 1913 wherein it reads:

". . .but every innkeeper or hotelkeeper shall be liable for any loss of the above-enumerated articles of a guest in his inn or hotel, *after said articles have been accepted for deposit, if caused by the theft or negligence of the innkeeper or hotelkeeper, or any of his servants.*"³² (Emphasis supplied.)

The minority view is too rash a step from the common law insurer liability. Such a step was clearly not intended by the framers of the various statutes above discussed. The purpose of the statutes was to relieve the innkeeper from his insurer liability when he complied with the provisions of the act and when he exercised due care in the subsequent protection of the deposited articles.

As was aptly stated in *Hall v. Hotel Sherman Co.*,³³ in construing a statute like that of Maine and Pennsylvania:

"Any construction is unreasonable which would deprive a guest of the amount of his actual loss because he took precaution to deposit his valuables with the proprietor to be placed in the safe. This would remove any incentive of the proprietor to guard carefully valuables deposited with him. This would defeat the evident purpose of the statute, which must be construed as meaning, that under the circumstances named, the proprietor shall not be liable in an amount exceeding \$250, 'unless such loss or injury shall occur through the fault or negligence of the said hotel proprietor or through his servants or employees in said hotel.'"

³⁰ *Burton v. Drake Hotel Co.*, 237 Ill. App. 76 (1925).

³¹ 141 Me. 393, 44 A.2d 728, (1945).

³² § 2, Act of 1913. See n. 12, supra.

³³ 236 Ill. App. 386 (1925).

Final Conclusions:

(1) At common law H Hotel would have been liable to S, the traveling jewelry salesman, for the full amount of his loss, i.e., \$50,000, whether H Hotel-keeper was negligent or not. The innkeeper was liable as an *insurer* of all that the guest brought with him.

(2) Under the Pennsylvania Act of 1913, modifying the innkeeper's common law liability, the H Hotel could materially limit its responsibility for lost goods. If H Hotel strictly complied with the provisions of the statute *and* exercised due care in protecting the articles deposited by S, the liability in case of loss would be limited to \$300 under Section One of the act.

(3) If on the other hand, H Hotel, after showing compliance with the statute, was guilty of ordinary neglect in protecting the deposited goods, then irrespective of the Act of 1913, the H Hotel could be held liable for the entire \$50,000 loss. In such a case, the relationship is deemed to be that of a mutual benefit bailment.

(4) If the H Hotel, for one reason or another, did not comply specifically with the requirements of the Act of 1913, and did accept the goods of S for deposit; then the statute affords no protection to H Hotel, and the situation is as at common law. The H Hotel would be liable as an insurer for the loss of \$50,000. The Act of 1913, being in derogation of the common law, must be strictly construed.

(5) Under the minority or Maine view, however, the H Hotel would, upon compliance with the provisions of the act, be liable only to the extent of \$300 whether negligent or not. Of course, even under this view, if the H Hotel did not comply with the provisions of the act, and thereby bring itself within the act's protection, the common law liability as an insurer would apply.

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