

"THE INNKEEPER'S GUEST"

"The law of England confers exceptional privileges, and imposes exceptional liabilities, upon innkeepers. Those privileges and liabilities attach only in respect of those persons who are in the position of travellers, and come to the inn as travellers in the transitory character of travellers."

So said Lord Justice Lopes some fifty-four years ago in the case of *Lamond v Richard* (1), and in glancing at this statement one may find little wherewith to dispute it. But just what does the learned lord justice mean by the word "traveller"? In what sense, legally, is a person so regarded, that, in coming to an inn, he may be accorded certain rights because of this special status? What must a person do to constitute himself a traveller? That a person had to come within this category, to recover goods lost while at the inn for example, is clear from very early cases. As far back as 1627, the law regarded this status as a necessary element in an action brought against the innkeeper. (*Grimston v an Innkeeper* (2).) Indeed, for those who are Latin scholars, or at least authorities, the early writ of action against the keeper of an inn contained the words "*Ad hospitandos homines, per partes ubi hujusmodi hospitia existunt, transeuntes, et in eisdem hospitantes,*" a free translation of which is "for the entertaining of men passing over through places where such entertainments exist, and for men staying in the same places." (Lingley — Smith). Now how did one get to be classed as a traveller to protect himself and his goods while at an inn?

In early times, when litigation concerning landlords and innkeepers was beginning to be reported, it was considered necessary that a person lodge at the inn, or at least rent a room for the night. This rule of thumb test was not only necessary but was considered sufficient to make a man a traveller. It made no difference whether the person was at the beginning, in the middle, or at the end of a journey — he was a traveller if he rented a room for the night. Chief Justice Coke in *Warbrooke v Griffin* (3), a case heard in 1609, stated one of the first exceptions to the rule when he said that "if a neighbour of the innkeeper came to the innkeeper, he shall not answer for (his) goods, for he is not lodged,....." Similarly if the innkeeper should invite someone such as a neighbour to come in for a short stay, the keeper would still not be liable for that person's goods (*Calve's Case* (4).) The essential element needed to make a person a traveller was the comparatively permanent one of lodging, for at least a night, as opposed to a mere casual visitor.

However, if a traveller stayed for three or more nights, he lost his status of wayfarer and became instead a boarder, with attendant changes in his rights and liabilities. This custom of changing one's category

at the end of three nights' lodging at an inn became unpopular, particularly among the gentlemen of what may be termed the sporting class, who journeyed about viewing horse-races, and, what is more to the point, among lawyers and judges attending the assizes, who had much travelling about from place to place. Often they would stay more than three nights at a particular sitting and yet were loath to relinquish the legal privileges accorded to them as travellers, which they didn't get as boarders — among which was the higher protection of their luggage, etc. Accordingly, the number of nights' lodging one could have and still remain a traveller became indefinite, and as we shall later see, came to depend on the facts of each individual case.

A marked change had taken place in the "lodging test" by the year 1793, for one finds in the case of *Bennet v Mellor* (5) that it had become generally recognized that it was no longer necessary for a man to be lodged for a night at the inn, or even to rent a room, in order to place himself in the position of traveller. It was sufficient if one stopped in for refreshment, liquid or otherwise, which was offered by the inn. In the *Bennett* case (*supra*), plaintiff's servant went to an inn with certain parcels and asked if he might leave them there for a week. Due to lack of room his request was refused; bearing no ill-will however, the servant stopped to partake of refreshment, placing the parcels behind him when doing so. On his departure the parcels were missing. Was the servant in the legal position of traveller so that through his master he might claim protection for the lost parcels? The Court held him so to be, even though he had stopped merely for the space of a few minutes. In the course of his judgment *Grose J.* remarked that "when the plaintiff's servant was sitting in the inn, with the consent of the innkeeper (for the latter did not object to receive him), he was in the same situation as any other guest, and entitled to the same protection for his goods." This will be seen to be a radical departure from the older test of who a traveller was, when a person came to an inn.

In a later case, that of *Orchard v Bush & Co.*, (1898) (6), counsel in argument said that the guest or traveller might stay only a few minutes at the inn to become such, but that he must be doing some travelling of some sort, even if it be merely a journey from office to home. Indeed, in these more modern days, many rightly look upon such a trip as a full-fledged journey; at any rate, in the *Orchard* case (*supra*), the plaintiff was in fact going from his business establishment in Liverpool to his home outside the city. On his way he stopped at the defendant's hotel for supper, where he lost his coat. The plaintiff was considered by the Court to be a wayfarer and consequently protected, with his goods, while in defendant's establishment. *Mr. Justice Willis* remarked, "It is said that in order to make him a guest he must be a wayfarer and traveller. The facts are that...he was on his way to the station from which he travelled home by railway. Why was he not a wayfarer?"

In Lord Justice Denning's disagreement with this idea of a traveller having to be one who is actually journeying we come to the modern view, in my opinion, of what constitutes a traveller—certainly a much more relaxed view than that seen in *Calve's Case* and *Warbrooke v Griffin* (supra). In a very recent case of this year (*Williams v Linnett* (7),) the learned lord justice says that since there is no practical way for an innkeeper to distinguish among his patrons between those who are travelling and those who are not that he must accept all who come to him as being travellers, whether or not they actually be in the process of journeying. The innkeeper is not likely to know all the local inhabitants who drop in for a short stay, and it is not his right to question those who come as to their comings and goings; hence the keeper of the house is bound perforce to accept one and all as travellers, thereby according them rights that they would not otherwise have. With the few exceptions seen earlier (e.g. a neighbour invited by the innkeeper) this seems to be the modern view, affording, as may readily be seen, a much easier mode of protecting one's self and chattels when going to an inn than formerly.

That a person coming to an inn may cease to be a traveller has been strongly pointed out by two nineteenth century cases. In *Thompson v Lacy* (8) a person who had lodged for several months at an inn (or what may, I think, be safely regarded as our modern hotel) was held to have been in the position of a traveller, in spite of his protracted stay. However, in the case of *Lamond v Richard* (supra) a stay of ten months by plaintiff was decided to have changed her status of traveller to that of lodger. The learned judges in that case pointed out that one of the most important factors by which the status may be changed is the length of the stay; every case, though, must depend on its surrounding circumstances to see whether the alteration has taken place.

The latter day use of the word "guest," replacing our older "traveller," has been to my mind a loose one. That it is considered more up-to-date, more dignified, has been seen by the nearly universal use given it on the part of hotel keepers, tourist homes, and places of transient accommodation. Certainly everyone who goes to an inn or hotel isn't a traveller in the strict sense — taking as a very simple example a person who resides at a hotel while his home is being renovated, or who remains at a hotel while searching for a new home. Halsbury seems to treat all so-called guests as travellers, however, pointing out that the primary purpose of people coming to an inn is *causa hospitandi* — loosely, for the sake of (being) entertained.

Judge Gorham, an Ontario County Court judge stated that "One who goes casually to an inn and eats or drinks or sleeps there, is a guest, although not a traveller," (*Fraser v McGibbon* (9)) meaning that a person need not actually be journeying in order to come under the protection afforded by an innkeeper. However, though it perhaps may be a mere

play on words. I prefer to look upon a guest as being a traveller — i.e. that a guest is automatically a traveller so far as obtaining the latter's rights upon coming to a hotel are concerned. Lord Justice Asquith in *Williams v Linnett* (supra) seems to me to state the correct view when he says "There are no decisions which say expressly that anyone can be a guest without being a traveller, and (certain) decisions, in my view, tacitly assume a guest to have fulfilled the qualification necessary to his becoming a guest, namely that he should have been a traveller." This statement seems to be in line with the view taken by Denning L. J. when he thought an innkeeper bound to accept all, with a few exceptions, as travellers.

In closing, let us have regard to the definition of a traveller given by Mr. Justice Kennedy—"...any person, who (is) neither an inhabitant of the house nor a private guest of the innkeeper or his family, but who came into the house as a guest to get such accommodation as is afforded, and he was willing to pay for, (is) a traveller." (*Thompson v Lacy* — supra). In that we have, summed up neatly, what a person must be or do to put himself in that class of persons who may have certain rights accorded to them by law, while at a hotel, which others might not receive. To make a poor witticism, the traveller has come a long way since he first started on his journey towards greater legal protection for himself and his goods. The guest of today owes much to the oldtime traveller who, perhaps unconsciously, has added greatly to his well-being and has altered for the better his status with his host at places of public accommodation.

Bev. Smith — Law II

Bibliography Text

- (1) *Lamond v. Richard* — 77 L.T.R. — 141.
- (2) *Grimston v. an Innkeeper* — 1627 — 124 E.R. — 334.
- (3) *Warbrooke v. Griffin* — 1609 — 123 E.R. — 927.
- (4) *Calye's Case* — 77 E.R. — 520.
- (5) *Bennett v. Mellor* — 1793 — 5 Term Rep. — 273.
- (6) *Orchard v. Bush & Co.* — 1898 — 2 Q.B. — 284.
- (7) *Williams v. Linnett* — 1951 — 1 A.E.R. — 278.
- (8) *Thompson v. Lacy* — 1820 — 106 E.R. — 667.
- (9) *Fraser v. McGibbon* — 1907 — 10 O.W.R. — 54.

Dougherty, West and Gunter

Barristers and Solicitors

C. L. DOUGHERTY, K.C.
H. H. GUNTER

W. J. WEST, K.C.

Telephone 3329

459 KING STREET

FREDERICTON, N. B.

GILBERT & MCGLOAN

Barristers and Solicitors

ADRIAN B. GILBERT, K.C.

DONALD M. GILLIS

T. LOUIS MCGLOAN, K.C.

MARY LOUISE LYNCH

J. CARLISLE HANSON

94 Prince William Street

SAINT JOHN, N. B.

SANFORD & TEED

Barristers and Solicitors

C. F. SANFORD, K.C.

J. P. PALMER

M. GERALD TEED, K.C.

G. F. O'CONNELL

39 Princess Street

SAINT JOHN, N. B.

Winslow, Hughes & Dickson

Barristers and Solicitors

556 Queen Street

FREDERICTON, N. B.