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Indiana Law Journal

Volume 13 | Issue 3

Article 2

2-1938

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Recommended Citation

Cole, Lyman H. (1938) "Tourist Homes and Cabins as Inns," *Indiana Law Journal*: Vol. 13: Iss. 3, Article 2.

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TOURIST HOMES AND CABINS AS INNS

By LYMAN H. COLE*

The growing popularity of travel by automobile has demanded the development of additional and somewhat different resort accommodations than those utilized by the business or pleasure seeking visitor to a city. Thus fertilized by necessity the property owners along the automobile trails have labored. Home owners have placed their second best furniture in the spare room and erected a sign by the highway, "Tourist Rooms", or perhaps something more enticing such as "Twilight Rest House", done in colors. Cabins in varying degrees of artistic taste and luxury have been constructed under cool trees and the blistering sun, in green grass and choking dust. Pasture lots have been converted into camping grounds for the trailer and tent where the occupant may be supplied with electricity and grills or perhaps left unaided to make his peace with nature. The horizon of billboards is obstructed with instructions to "Slow Down for Jake's Cabins" or "Hurry to the Lone Pine Tourist Home."¹

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¹ Statistics on the extent of the new tourist accommodation business are conflicting. There are some twenty to thirty thousand cabin camps in the country representing a capital investment of a quarter of a billion dollars. They have increased 1,000% in 15 years. *New York Times*, Sept. 1, 1935, p. 13. There are some 200,000 private homes offering tourist accommodations. *Ibid.* There are 16,411 cabin camps operating 166,062 cottages. The camps are increasing at the rate of 500 a year. *Business Week*, Feb. 8, 1936, p. 31. Government survey, admittedly incomplete, reports 11,257 tourist cabins and camps. There are 1,440 in California alone. U. S. Department of Commerce, Bureau of Census, Census 1935, *Tourist Camps*. Reported that over 400,000 "shacks" erected for auto tourists over four year period; an investment of over sixty million dollars. *The Architectural Record*, Dec. 1933, p. 457. It has been reported that there are 10,000 tourist cabin camps. The average five-cabin camp represents an investment of \$20,000. Approximately 25% of the cabins are equipped for cooking. *Hardware Age*, Apr. 11, 1935, p. 46f. A. A. A. Official Directory of Cottages, Camps, Courts and Inns, 1933, lists 4,000 approved camps. The extent of the new business is illustrated by two former hotel men who erected 102 tourist "apartments". They have enjoyed 80% occupancy in the winter and 100% in the summer. They have had a net

As yet the courts appear to have been bothered but little with the problems arising between the proprietor of these establishments and the tourist who patronizes him,² but it is inevitable that questions will arise when the proprietor turns the weary tourist from his door, when the tourist's luggage or automobile is stolen, when the tourist is injured, when the proprietor desires to rid himself of a guest, or where the proprietor prefers to retain the luggage of the tourist rather than accept his check.

The solution to these and similar problems will be governed to a material degree by determining the relationship which exists between the proprietor and tourist. Which volume of his encyclopedia or digest shall the lawyer consult in determining the existing rights, powers, privileges and immunities? The attorney is confronted with an arrangement where the property of one is being occupied by another with the consent of the former. Such situations are treated under the legal titles of Landlord and Tenant, Innkeeper and Guest, Lodging House Keeper and Lodger, and Licensor and Licensee.³ The element of consent to the occupancy renders

profit of \$30,000 per year. *Hotel Management*, June, 1930, p. 543ff. The popular price for a cabin, two persons, is one dollar per day. Some charge only fifty cents and a few have rates as high as nine dollars. *Business Week*, Feb. 8, 1936, p. 31. For figures showing the competition between these new tourist accommodations and established hotels, see *infra* note 49.

Ernest F. Hodgson, builder of anything from a "whelping pen to a tenroom house" takes credit as being the founder of the tourist camp. *Catalogue of Hodgson Houses, 1935*, E. F. Hodgson Co., Dover, Mass. The first tourist cabin was built in Douglas, Arizona, in 1913. *Business Week*, Feb. 1936, p. 31.

² The question is raised in *Brown, Personal Property* (1936) p. 440. For a discussion of the only reported case the author has found on the subject, see *infra* note 3.

³ In *Crockett v. Troyk et al.*, — Tex. Civ. App. —, 78 S. W. (2d) 1012 (1935), there was an action for injuries to a tourist as a result of an explosion of a gas stove. The court assumed that the relationship of innkeeper and guest existed: (p. 1012) "Appellee . . . sued appellant . . . and recovered judgment for \$4,000 as damages resulting from injuries received by appellee in a gas explosion, which occurred in the tourist cabin of appellant *while the relation of innkeeper and guest existed* between them." (Author's italics). The court then relies upon this premise in determining the sufficiency of the plaintiff's evidence: (p. 1014) "It is also well settled, both at common law and by the decisions of this country, that, where a guest has proved use by

it improbable that the tourist will be considered a trespasser. It is possible that in solving these problems by statute or judicial legislation a new pigeonhole will be created as a repository for rules different from those applied under the labels above mentioned, but undoubtedly at the first the judicial approach will seek a solution by applying the rules established under the titles mentioned above.

It is not the object of this paper to forecast the ultimate holdings of any court in a particular controversy. At the present it is sufficient to deal with the first step that must be taken when litigation arises between the proprietor of these new accommodations and the tourist, namely, from which existing legal subject shall rules be selected.⁴ A definite answer will not be attempted, but only a consideration of the factors which may influence the court's determination.

LANDLORD AND TENANT

In distinguishing a tenant from other occupants of property it is frequently said that he has an interest in the realty while the others have not,⁶ but such a statement is of little help; it describes a result rather than pointing out an aid to discovering it. Of greater utility in the present problem is the fact that the tenant's occupancy is generally characterized by exclusive control and obligation to keep the property in

an innkeeper of unsafe and defective gas fixtures, and appliances, in consequence of which gas has escaped, causing injury to the guest, he has established a prima facie case of negligence against the innkeeper."

The author has corresponded with the counsel of both litigants in this case and had an opportunity to examine some of the briefs. Counsel for the appellee state that it was never seriously disputed that the innkeeper-guest relationship existed. Some innkeeper cases are cited in the appellee's brief, but there is no analysis of the assumption. Counsel for the appellant state that the innkeeper-guest question did not arise until appeal and the appellant only sought to have the issue disregarded as being improperly raised at that time.

⁴ No attempt will be made here to discuss the different rules applicable under any particular subject. The governing principles of each are, in general, well established and readily available in any standard encyclopedia or text.

⁶35 C. J. 951 (1924).

its proper condition.⁷ The creation of the tenancy is commonly attended with formalities.⁸

Seldom are these elements present when the tourist takes a room in a tourist home, or occupies a cabin, or parks his trailer on a lot. Certainly exclusive possession or responsibility for the upkeep are not within the expressed understanding, nor can they ordinarily be implied in fact. However, it seems quite possible that the tourist, even when occupying a room in a tourist home, may become a tenant as this result has been reached in regard to a "traveler" in an establishment recognized as an inn;⁹ but in the absence of definite expression this will seldom occur except where the occupancy has been or is to be of considerable duration.¹⁰

Where the premises occupied are separate and apart from other land or buildings, as the cabin or camping ground, there is a closer objective analogy to the typical landlord and tenant case. But even here the distinctions in the permanency of the occupation, the lack of formalities, the limited use anticipated, and the absence of responsibility are all factors bidding strongly for the rejection of the landlord and tenant relationship in the typical situation of the tourist and his host.

⁷ *Marden v. Radford*, 229 Mo. App. 789, 84 S. W. (2d) 947 (1935). The proprietor's retention of keys, right of supervision and inspection, and care of furnishings and equipment are important factors in determining the relation of lodger rather than tenant. *Carroll v. Cooney*, 116 Conn. 112, 163 Atl. 599 (1933). The fact that the occupants took charge of their rooms in the hotel by cleaning them, furnishing linen, and making the beds, indicates a tenant relationship rather than that of innkeeper and guest. *Murray v. Hagens*, 175 La. 813, 143 So. 505 (1932).

⁸ For discussion of characteristics generally of landlord and tenant relationship see I Underhill, *Law of Landlord and Tenant* (1909) sec. 199, I McAdam, *Landlord and Tenant*, (4th ed. 1910) sec. 42.

⁹ *Mathews v. Livingston*, 86 Conn. 263, 85 Atl. 529 (1912).

¹⁰ *DeWolf v. Ford*, 193 N. Y. 397, 86 N. E. 527 (1908). "While there can be a tenancy of real estate in a single room, or in furnished rooms; yet this can only be created by clear terms of the demise." I Taylor, *Landlord and Tenant*, 87f. For discussion of the relationship of a permanent occupant of an apartment in a hotel. *Marden v. Radford*, 229 Mo. App. 789, 84 S. W. (2d) 947 (1935). See also *supra* note 8.

LODGER OR GUEST

Not all persons occupying the property of another are relegated to the classification of bare licensees if they fail to qualify as tenants. Between them and the owner or proprietor may exist the relation of innkeeper and guest or lodging house keeper and lodger;¹¹ the rights and duties therein involved differing considerably from that of landlord and tenant.¹² In view of the fact that these relationships have been held to exist only where sleeping accommodations,¹³ at least are supplied it would appear that the tourist camping ground would be beyond the pale of either a lodging house or inn. Thus, a process of elimination suggests that ordinarily the trailer occupant or camper will be declared licensee.¹⁴ However, it may be a blind justice which will classify a luxurious camping ground beneath a cabin which offers no more protection and comfort than canvas covering and an army cot.¹⁵

¹¹ On the distinction generally between lodgers, guests, and tenants, see *Mathews v. Livingston*, 86 Conn. 263, 85 Atl. 529 (1912); *DeWolf v. Ford*, 119 App. Div. 808, 104 N. Y. S. 876, rev'd 193 N. Y. 397, 86 N. E. 527 (1908).

The term boarding house keeper and boarder is frequently used. No distinction appears to be drawn generally as to law applicable to establishments technically boarding houses or lodging houses.

¹² At common law the business of an innkeeper is quasi-public, invested with many privileges and burdened with correspondingly great responsibilities. *DeWolf v. Ford*, 193 N. Y. 297, 86 N. E. 527 (1908). The extraordinary liability of an innkeeper is not based strictly in tort or contract, but arises from the public profession. Keener, *Law of Quasi-Contract* (1893) p. 18. 3 Holdsworth, *History of English Law*, (1923) 385. On innkeeper law generally, see Brown, *Personal Property*, (1936) sec. 102-106; Elliot, *Bailments and Carriers*, (1914) ch. VII; Goddard, *Bailments and Carriers* (2d ed. 1928) ch. IX.

¹³ *Lewis v. Hitchcock*, 10 Fed. 4 (1882). *Cromwell v. Stephens*, 2 Daly 15 (N. Y. 1867). Where food without lodging is offered the establishment is not an inn. *Sheffer v. Willoughby*, 163 Ill. 578, 45 N. E. 253 (1896). A bath-house is not an inn. *Walpert v. Bohan*, 126 Ga. 532, 55 S. E. 181 (1906).

¹⁴ Statutory regulations in Florida group tourist cabins and camps. Compiled *General Laws of Florida* (1927) sec. 4140.

¹⁵ The difficulty of drawing a line between camping grounds and hotels is illustrated by the accommodations furnished tourists at Yellowstone National Park. At the top, at least in price, is the standard hotel. Second, there is the "inn" where the traveler has an individual cabin, linen and heat supplied.

In view of the fact that where sleeping accommodations are furnished, and the relation of landlord and tenant is not established, the status of proprietor and occupant has generally been held that of innkeeper and guest or lodging house keeper and lodger, it is probable that the tourist home and cabin will be classified under one of these titles. In distinguishing the lodger from the guest the judicial approach has been deductive. The court will test the particular facts by the innkeeper-guest requirements and if found wanting conclude the relationship to be that of lodging house keeper and lodger. Such shall be the present procedure. The creation of the innkeeper-guest relationship requires the presence of certain essentials on behalf of both parties. If either is found wanting the relationship is destroyed regardless of the sufficiency of the other's qualifications.

The sole requirement imposed upon the guest is that he shall be 'a traveler'¹⁷ partaking of the inn's hospitality.¹⁸

Meals are served in a central dining hall. Third, the "housekeeping cabins" where individual cabins—a thin board floor and wall with canvas top—are furnished, containing a bedstead and small stove. The occupant must supply his own linen, fire, and food. Fourth, the camping ground where only the stove remains of the accommodations furnished in the housekeeping cabins.

¹⁷ Walling v. Potter, 35 Conn. 183 (1868). Ross v. Mellin, 36 Minn. 421, 32 N. W. 172 (1887). In Re Doubleday, 173 App. Div. 739, 159 N. Y. S. 947 (1916), *rev'd* decree In Re Clyde's Estate, 155 N. Y. S. 621. A guest is a transient person who resorts to an inn for accommodations. DeLapp v. Van Closter, 136 Mo. App. 475, 118 S. W. 120 (1909); Holstein v. Phillip & Sims, 146 N. C. 366, 59 S. E. 1037 (1907). Originally it is said that the inn catered to travelers and the lodging house to residents. McIntosh v. Schops, 92 Ore. 307, 180 Pac. 593 (1919). The fact that the traveler pays a rate provided for residents is not conclusive of his guest status. Hall v. Pike, 100 Mass. 495 (1868). The guest need not register to establish his relationship. Heil v. Memphis Hotel Co., 124 Tenn. 376, 136 S. W. 997 (1911).

¹⁸ "The universal rule seems to be that one cannot become a guest of a hotel unless he procures some accommodation. He must procure a meal, room, drink, feed for his horse, or at least offer to buy something of the innkeeper, before he becomes a guest." Tulane Hotel Co. v. Holohan, 112 Tenn. 214, 79 S. W. 113 (1904).

In the ordinary case the traveler occupies his room, but he may use it to dress rather than for sleeping. Lynar v. Mossop, 36 U. C. Q. B. 230 (1875). A traveler who engages a room at an inn with no intention of occupying it is not a guest. Bunn v. Johnson, 77 Mo. App. 596 (1898). It has been held that one who only purchases a drink at an inn is a guest. McDonald

Certainly the ordinary automobile tourist is within this term as it is commonly understood. Such a conclusion is strengthened by the liberal construction given by the courts. Residents of a city in which an inn is located have been held such when temporarily staying there,¹⁹ guests have been held to maintain their status as travelers even though remaining at the inn for considerable periods of time.²⁰

v. Edgerton, 5 Barb, 560 (N. Y. 1849); *McDaniels v. Robinson*, 26 Vt. 316, 62 Am. Dec. 574 (1854); *Bennett v. Mellor*, 5 T. R. 273 (K. B. 1793); cf. *The Queen v. Rymer*, 2 Q. B. D. 136 (1877). But later cases have denied this. *Commonwealth v. Hagan*, 140 Mass. 289, 3 N. E. 207 (1885); *Commonwealth v. Moore*, 145 Mass. 244, 13 N. E. 893, (1887); *Carpenter v. Taylor*, 1 Hilt. 193 (N. Y. 1856); *Gastenhofer v. Clair*, 10 Daly 265 (N. Y. 1881). A traveler who only dines at an inn has been held a guest. *Bowell v. DeWald*, 2 Ind. App. 303, 28 N. E. 430 (1891); *Hill v. Memphis Hotel Co.*, 124 Tenn. 376, 136 S. W. 997 (1911); *McDaniels v. Robinson*, 26 Vt. 316, 62 Am. Dec. 574 (1854); *Orchard v. Bush & Co.*, 2 Q. B. 284 (1898). But one who only attends a special banquet or dance at an inn is not a guest. *Carter v. Hobbs*, 12 Mich. 52, 83 Am. Dec. 762 (1863); *Amey v. Winchester*, 68 N. H. 447, 39 Atl. 487 (1895); *Fitch v. Casler*, 17 Hun. 126 (N. Y. 1879). One who only stables his horse at an inn has been held a guest. *Russell v. Fagan*, 7 Houst. 389, 8 Atl. 258 (Del. 1886); *Mason v. Thompson*, 9 Pick. 280, 20 Am. Dec. 471 (Mass. 1830); *McDaniels v. Robinson*, 26 Vt. 316, 62 Am. Dec. 574 (1854). But this holding has been denied. *Brewer v. Caswell*, 132 Ga. 563, 64 S. E. 674 (1909); *Thickstun v. Howard*, 8 Blackf. 535 (Ind. 1847); *Healy v. Gray*, 68 Me. 489, 19 Am. Rep. 244 (1878); *Grinnell v. Cook*, 3 Hill 485, 38 Am. Dec. 663 (N. Y. 1842). One merely taking advantage of gratuitous accommodations of a hotel is not a guest. *Baker v. Bailey*, 103 Ark. 12, 145 S. W. 532 (1912); *Parker v. Dixon*, 132 Minn. 367, 157 N. W. 583 (1916); *Arcade Hotel Co. v. Wiatt*, 44 Ohio St. 32, 4 N. E. 398 (1886). One who merely visits a guest at an inn is not a guest. *Moody v. Kenney*, 153 La. 1007, 97 So. 21 (1923). It has been held that one resorting to an inn for an unlawful purpose is not a guest. *Curtis v. Murphy*, 63 Wis. 4, 22 N. W. 825 (1885).

¹⁹ *Walling v. Potter*, 35 Conn. 183 (1868). *Hart v. Mills Hotel Trust*, 144 Misc. 121, 258 N. Y. S. 417 (1932); *Arcade Hotel Co. v. Wiatt*, 44 Ohio St. 32, 4 N. E. 398 (1886). "It is true that he (plaintiff) rented by the week and that his home was in the city ———, but this fact alone is insufficient to transform the status of the defendant from an innkeeper to landlord." *Babin v. Thormander* —, La. —, 167 So. 241 (1936).

²⁰ Persons staying at an inn for a period of several months may be guests if their stay is temporary or of indefinite duration. *Hancock v. Rand*, 94 N. Y. 1, 46 Am. Rep. 112 (1873); *Metzger v. Schnabel*, 23 Misc. 698, 52 N. Y. S. 105 (1898); *Fisher v. Bonneville Hotel Co.*, 53 Utah 588, 188 Pac. 816 (1920). Admittedly the distinction is hard to make where the occupancy

The requirements imposed upon the proprietor of an inn are more difficult to ascertain and apply.²¹ Primarily it is to be noted that the status of an innkeeper is to be judged subjectively.²² It is not conclusive that the proprietor may, in his desire to avoid onerous responsibilities, declare his establishment is not an inn. One cannot act as an innkeeper and avoid the status by verbal denial of his actions.²³ The label which is adopted for the enterprise is not controlling. Advertising a place as a "hotel" is not conclusive that it is an inn;²⁴ the "What Cheer House" has been held an inn.²⁵ The terms "hotel", "inn", and "tavern", while of different

is of considerable time. The following cases should be compared with those above. *Smith v. Dorchester Hotel Co.*, 145 Wash. 344, 259 Pac. 1085 (1927); *Haff v. Adams*, 6 Ariz. 395, 59 Pac. 111 (1899). Though one goes to an inn originally as a guest such status may be lost by becoming a resident. *Crapo v. Rockwell*, 48 Misc. 1, 94 N. Y. S. 1122 (1905). *Lamond v. Gordon Hotels, Ltd.* 1 Q. B. 541 (1897). See also *infra* note 30.

²¹ For definitions and distinguishing features of innkeepers, generally, see, *Birmingham Ry. Light & Power Co. v. Drennen*, 175 Ala. 338, 57 So. 876 (1912); *City of Independence v. Richardson*, 117 Kan. 656, 232 Pac. 1044 (1925). At common law the innkeeper subject to extraordinary rules was the "common innkeeper." *Lane v. Cotton*, 12 Mod. 427 (K. B. 1701).

²² Compare *Baldwin Piano Co. v. Congress Hotel*, 243 Ill. App. 118 (1926), where a room was engaged for a year with the provision that the innkeeper-guest relationship should prevail. It was held that the relation existed though in the absence of the agreement it would not.

The possession or absence of a license is not determinative of the innkeeper status. *Norcross v. Norcross*, 53 Me. 163 (1865); *Commonwealth v. Wetherbee*, 101 Mass. 214 (1869); but in the enforcement of a lien statute the possession of a license may be a deciding element. *Randall v. Tuell*, 89 Me. 443, 36 Atl. 910 (1897). The fact that a register is kept at an establishment does not make it an inn. *Roberts v. Case Hotel Co.*, 106 Misc. 481, 175 N. Y. S. 123 (1919).

²³ *Howth v. Franklin*, 20 Tex. 798, 73 Am. Dec. 218 (1858). A place designated as a "boarding house" may be an inn. *Re Brewster*, 39 Misc. 689, 80 N. Y. S. 666 (1903).

²⁴ *Fay v. Pacific Improvement Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943 (1892). *Nelson v. Johnson*, 104 Minn. 440, 116 N. W. 828 (1908). Advertising a place as a "hotel" has been relied upon as an important, though inconclusive, factor in determining the innkeeper status. *Johnson v. Chadbourn Finance Co.*, 89 Minn. 310, 94 N. W. 874 (1903).

²⁵ *Pinkerton v. Woodward*, 23 Cal. 557, 91 Am. Dec. 657 (1867); same as to "Elm House", *Spring v. Hager*, 145 Mass. 186, 13 N. E. 397 (1887).

origin,²⁶ are usually considered synonymous today.²⁷ Consequently it would appear that the use of the terms "tourist home", "tourist cabin", or "camping ground" would be an inconclusive distinction.

Of primary importance among the innkeepers requirements is that there must be a holding out to receive all, to the extent of one's ability, who reasonably apply, who are in a proper condition to be received, and who are able to pay a reasonable charge.²⁸ In exposition of this it is frequently said that the lodging house keeper makes a special contract with each lodger while the innkeeper does not.²⁹ This is not

²⁶ For a discussion of the origin of each of these terms see *Cromwell v. Stephens*, 2 Daly 15 (N. Y. 1867).

²⁷ *Waitt Construction Co. v. Chase*, 197 App. Div. 327, 188 N. Y. S. 589 (1921); *People v. Jones*, 54 Barb 311 (N. Y. 1863); annotation, 19 A. L. R. 519 (1922); *Goddard, Bailments and Carriers* (2d ed. 1928) sec. 162.

²⁸ *Russell v. Fagan*, 7 Houst. 389, 8 Atl. 258 (Del. 1886); *Holstein v. Phillips & Sims*, 146 N. C. 366, 59 S. E. 1037 (1907); *Hill v. Memphis Hotel Co.*, 124 Tenn. 376, 136 S. W. 997 (1911); *Thompson v. Lacy*, 3 B. & Ald. 283 (K. B. 1820). The lodging house keeper may select his patrons, the innkeeper may not. *Beall v. Beck*, 3 Cranch C. C. 666 (U. S. 1829); *Atlantic City v. Hemsley*, 76 N. J. L. 354, 70 Atl. 322 (1908). One who entertains strangers only occasionally, though receiving compensation, is not an innkeeper. *Kisten v. Hildebrand*, 9 B. Mon. 72, 48 Am. Dec. 416 (Ky. 1848). One who entertained a circus troupe and occasionally transient guests is presumed an innkeeper. *Commonwealth v. Wetherbee*, 101 Mass. 214 (1869). The fact that the house is not open all night does not bar the innkeeper status. *Ibid.* One who keeps a house for all who choose to visit it and extends a general invitation to the public is an innkeeper though the house is on enclosed ground. *Fay v. Pacific Improvement Co.*, 43 Cal. 253, 26 Pac. 1099, 28 Pac. 943 (1892). Though the principal patrons are permanent residents it is an inn if there is a holding out to receive all transients. *Pettit v. Thomas*, 103 Ark. 593, 148 S. W. 501 (1912). A private club is not an inn. *Audubon Country Club v. Commonwealth*, 169 Ky. 399, 183 S. W. 911 (1916).

²⁹ *Pettit v. Thomas*, 103 Ark. 593, 148 S. W. 501 (1912); *Wintermute v. Clark*, 7 N. Y. Super. Ct. (4 Duer) 146 (1851); *Cromwell v. Stephens*, 2 Daly 15 (N. Y. 1867); *Thompson v. Lacy*, 3 B. & Ald. 283 (K. B. 1820). The lodger is under an express contract for a certain time at a certain rate, while the guest at the inn is entertained from day to day under an implied contract. *Willard v. Reinhardt*, 2 E. D. Smith 148 (N. Y. 1853); *McClagherty v. Cline*, 128 Tenn. 605, 163 S. W. 801 (1913). "The guest comes without any bargain for time, remains without one, and may go when he pleases, paying only for the actual entertainment which he receives." *Shoecraft v. Bailey*, 25 Ia. 553 (1868). The lodging house keeper has the right to select his guests while the innkeeper does not. *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Commonwealth v. Cuncannon*, 3 Brewst. 344 (Pa. 1869).

literally accurate,³⁰ but it does suggest that where the proprietor is making special inquiry as to the business, morals, etc., of applicants for his accommodations he is not undertaking to deal with the public indiscriminately. The fact that furnishing accommodations is only incidental to the principal occupation of the proprietor or use of the premises is immaterial.³¹ However, persons have been excluded from the innkeeper status when acceptance of guests is a matter of hospitality even though some compensation is charged.³²

The entertainment provided has often been a conclusive factor in determining whether an establishment is an inn.³³ Originally it appears to have been required that in addition to providing sleeping quarters there should be liquor, food, and stabling.³⁴ As liquor and stabling ceased to be prime necessities of the traveler they were abandoned as required factors of the innkeeper status.³⁵ Formerly it was considered

³⁰ Persons taking a room at a weekly or monthly rate have been held guests. *Pettit v. Thomas*, 103 Ark. 593, 148 S. W. 501 (1912); *Gross v. Saratoga European Hotel & Resort Co.*, 176 Ill. App. 160 (1912); *Babin v. Thormander*, — La. —, 167 So. 241 (1936); *R. L. Polk Co. v. Melenbacker*, 136 Mich. 611, 99 N. W. 867 (1904); *Fisher v. Bonneville Hotel Co.*, 55 Utah 588, 188 Pac. 856 (1920); annotation, 12 A. L. R. 26 (1921).

³¹ Fact that part of the building was a grocery is immaterial. *Commonwealth v. Wetherbee*, 101 Mass. 214 (1869). By statute in Georgia it is provided that, "Persons entertaining only a few individuals, or simply for the accommodation of travelers, are not innkeepers, but depositaries for hire, bound to ordinary diligence." Code of Georgia (1933) sec 52-102.

³² This result was in instances where householders in sparsely settled country accommodated travelers where there was no other place that they might stay. *Lyon v. Smith, Morris*, Iowa 184 (1843); *Howth v. Franklin*, 20 Tex. 798, 73 Am. Dec. 218 (1858). A hospital, primarily for care of the sick, is not an inn though otherwise apparently meeting the requirements of such. *Hull Hospital Inc. v. Wheeler*, 216 Iowa 1394, 250 N. W. 637 (1933).

³³ "And I take the true definition of an inn to be, a house where the traveler is furnished with everything which he has occasion for whilst upon his journey." *Thompson v. Lacy*, 3 B. & Ald. 283 (K. B. 1820). The inn should provide those things which the traveler has occasion to use. *Dickeson v. Rogers*, 23 Tenn. (4 Hump.) 179, 40 Am. Dec. 642 (1843).

³⁴ *Johnson v. Chadbourn Finance Co.*, 89 Minn. 310, 94 N. W. 874 (1903). *Nelson v. Johnson*, 104 Minn. 440, 116 N. W. 828 (1908).

³⁵ As the inn must supply the needs of the traveler then as his needs become fewer, as in the use of the horse, the definition of an inn is modified. *Fay v. Pacific Improvement Co.*, 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943 (1892); *Johnson v. Chadbourn Finance Co.*, 89 Minn. 310, 94 N. W. 874 (1903).

not only essential that food should be provided³⁶ but that the innkeeper should be the vitualer.³⁷ Certainly the requirement of single proprietorship over food and lodging has been abandoned³⁸ and perhaps even the requirement of food itself in view of its general accessibility.³⁹ The more recent cases have so stated, although there are sufficient decisions to the contrary to render the question doubtful.

Does the proprietor of the new tourist establishments meet these requirements? Apparently his advertisements purport

Stable is not essential. *Thompson v. Lacy*, 3 B. & Ald. 283, (K. B. 1820); *Kisten v. Hildebrand*, 9 B. Mon. 72, 48 Am. Dec. 416 (Ky. 1848); *Commonwealth v. Wetherbee*, 101 Mass. 214 (1869); *cf.* "Every innkeeper shall keep good entertainment for man and horse." *Purdon's Pennsylvania Statutes* (1936) Tit. 37, sec. 31. Liquor is not necessary. *Cunningham v. Philip*, 12 Times L. R. 352 (Q. B. D. 1896); *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1867); *Curtis v. State*, 5 Ohio (5 Ham.) 324 (1832).

³⁶ *Cromwell v. Stephens*, 2 Daly 15 (N. Y. 1867); *Kelly v. N. Y. Excise Com'rs.*, 54 How. Prac. 327 (N. Y. 1877); *Dixon v. Robbins*, 246 N. Y. 169, 158 N. E. 63 (1927), but see comment on latter case *infra* note 65.

³⁷ *Kopper v. Willis*, 9 Daly 460 (N. Y. 1881); *Cochrane v. Schryver*, 12 Daly 174 (N. Y. 1883).

³⁸ *Pinkerton v. Woodward*, 33 Cal. 557, 91 Am. Dec. 657 (1857); *Johnson v. Chadbourn Finance Co.*, 89 Minn. 310, 94 N. W. 874 (1903); *Metzler v. Terminal Hotel Co.*, 135 Mo. App. 410, 115 S. W. 1037 (1908).

³⁹ *Metzler v. Terminal Hotel Co.*, 135 Mo. App. 410, 115 S. W. 1037 (1909); *Kanelles v. Lock*, 12 Ohio App. 210 (1919); *Huntley v. Stanchfield*, 168 Wis. 119, 169 N. W. 276 (1918). *Quaere*: *Johnson v. Chadbourn Finance Co.*, 89 Minn. 310, 94 N. W. 874 (1903). "In early days and under primitive conditions it was necessary, in order to bring a place within the legal definition of an inn—that lodging, food, drink, and stabling should be furnished to travelers. But as cities grew, and modes of living, travel, and transportation of persons changed, the legal definition of an inn was modified thereby, and a bar to supply the guests with drink and a stable for the care of their horses are now no longer essential requisites of an inn. Why, then, should a dining room, or cafe, or a restaurant to supply guests with food, be now held an essential requisite of an inn or hotel? The reason for so holding that the supplying of guests with food is necessary requisite of an inn has as effectually ceased as it has with reference to drink and stabling." *Nelson v. Johnson*, 104 Minn. 440, 116 N. W. 828 (1908).

In some statutory definitions of inns and hotels the requirement of serving food is omitted. Revised Statutes of Illinois (1935) Cahill ed. c. 70, par. 6; Code of Iowa (1935) sec. 2808; Revised Code of Montana (1935) sec. 2485; Throckmorton's Ohio Code (1936) sec. 843-1; Vernon's Texas Statutes (1936) sec. 4596. Some statutes expressly require meals to be served. Revised Statutes of Kansas (1923) sec. 36-101; Compiled General Laws of Florida (1927) sec. 3353.

dealings with the public generally.⁴⁰ He seldom expresses interest in his guests other than that of mercenary character. Though the revenue from tourists is frequently only incidental to his regular business his open door policy is motivated by other considerations than Christian brotherhood. If serving of food is still essential then perhaps a majority of tourist homes and cabins can be nothing more than lodging houses, but, as stated, there is a trend against this requirement.

The process followed thus far, of objectively matching accepted definitions against new situations, is not entirely trustworthy. There are examples, within the law of innkeepers, that the judicial mind does not always so operate; that enterprises technically within such definitions have been excluded from the classification.⁴¹

The most outstanding example of this is with regard to sleeping cars where with considerable uniformity it has been held that they are not inns.⁴² Obviously there are many

⁴⁰ In regard to tourist homes it has been stated that the only question as to their status as inns is whether there is a sufficient holding out to deal with the public generally. Brown, *Personal Property* (1936) p. 440.

⁴¹ "We may not look solely to old definitions when we determine the meaning of a word which must be applied under changed conditions." Dixon v. Robbins, 246 N. Y. 169, 158 N. E. 63 (1927).

⁴² Blum v. Southern Pullman Palace Car Co., 1 Flip 500, (C.C.R. 1876); Pullman Palace Car Co. v. Adams, 120 Ala. 581, 24 So. 921 (1898); Pullman Palace Car Co. v. Freudenstein, 3 Colo. App. 540, 34 Pac. 578 (1893); Kates v. Pullman Palace Car Co., 95 Ga. 810, 23 S.E. 186 (1896); Pullman Palace Car Co. v. Hall, 106 Ga. 765, 32 S.E. 923 (1899); Pullman Palace Car Co. v. Smith, 73 Ill. 360, 24 Am. Rep. 258 (1874); Woodruff Sleeping & Parlor Car Co. v. Diehl, 84 Ind. 474, 43 Am. Rep. 102 (1882); Pullman Palace Car Co. v. Gaylord, 6 Ky. L. Rep. 279 (1884); Whicher v. Boston & A. R. R., 176 Mass. 275, 57 N. E. 601 (1900); Welch v. Pullman Palace Car Co., 16 Abb. Pr. 352 (N.Y. 1884); Illinois Central R.R. v. Handy, 63 Misc. 609, 56 Am. Rep. 846 (N.Y. 1886); Garrett v. Southern Ry. Co., 172 N.C. 737, 90 S.E. 903 (1916); Fall River & M. Co. v. Pullman Palace Car Co., 6 Ohio Dec. 85 (1896); Pullman Palace Car Co. v. Gardner, 3 Penny 84 (Pa. 1883); Pullman Palace Car Co. v. Gavin, 93 Tenn. 53, 23 S.W. 70 (1893); Dargan v. Pullman Palace Car Co., 2 Wills 691 (Tex. 1885); Pullman Co. v. Hatch, 30 Tex. Civ. App. 303, 70 S.W. 771 (1902). *Contra*: Pullman Palace Car Co. v. Lowe, 28 Neb. 239, 44 N.W. 226 (1889); Sise v. Pullman Palace Car Co., 1 Quebec Super. Ct. 9 (1892). Notice that in note 46 *infra* the New York and Illinois courts have held passenger boats to be inns while denying that status to the sleeping car.

distinctions between the Pullman car and the inn, but when we attempt to apply to it the definitions and requirements of an inn it would appear that there is a close conformity. There is a holding out to serve all, the furnishing of lodging, and even meals are provided, though ordinarily under a different management. The fact that the traveler on the Pullman also receives transportation would seem immaterial, yet the courts have been content to say that a sleeping car is not an inn. The distinctions which have been suggested are obviously fallible. The fact that the sleeping car company does not furnish food has been stated⁴³ with a disregard for the fact that this requirement has long been abandoned in the case of recognized inns.⁴⁴ The fact that the sleeping car company accommodates only those which the railroad will carry is a thin distinction in view of the fact that the obligations of the carrier and innkeeper to serve are practically identical.⁴⁵

This same tendency to ignore the exact words of the definition has been noted in attempts to classify passenger boats as inns.⁴⁶ It has been stated as sufficient reason for denying the classification that the court knew of no decision declaring a boat to be an inn.⁴⁷ A few cases have held hotels at summer resorts and watering places not to be inns because of their seasonal operation.⁴⁸

⁴³ Garrett v. Southern R. Co., 172 N.C. 737, 90 S.E. 903 (1916).

⁴⁴ See *supra* note 38.

⁴⁵ As to whether sleeping cars should be held inns, see Beale, *Inn-Keepers and Hotels* (1906) p. 236f; cf. Elliot, *Bailments and Carriers* (1914) p. 116.

⁴⁶ Steamships are not inns. Clark v. Burns, 118 Mass. 275, 19 Am. Rep. 456 (1875). *Contra*: St. George v. Hamburg-American Line, 198 Ill. App. 96 (1916); Adams v. New Jersey Steamboat Co., 151 N.Y. 163, 45 N.E. 369 (1896). By statute steamboats have been classified with inns, "hotel, inn or steamboat." Cahill's Consolidated Laws of New Jersey (1930) c. 21, sec. 200.

⁴⁷ ". . . We have heard of no case in which the principles of law governing innkeepers have been extended to steamboat operators" *The Crystal Palace v. Vanderpool*, 16 B. Mon. 302 (Ky. 1855).

⁴⁸ Parkhurst v. Foster, 1 Salk. 387, (K.B. 1699); Bonner v. Welborn, 7 Ga. 296 (1849). *Contra*: Willis v. McMahon, 89 Cal. 156, 26 Pac. 649 (1891); Holstein v. Phillips & Sims, 146 N.C. 366, 59 S.E. 1037 (1907); McCaugherty v. Cline, 128 Tenn. 605, 163 S.W. 801 (1913). A hospital, though apparently meeting the requirements of an inn, has been held not to be such. *Hull Hospital Inc. v. Wheeler*, 216 Iowa 1394, 250 N.W. 637 (1933).

The objective process of testing the tourist home and cabin upon a definition patterned from parts of decisions fails to give proper consideration to the subjective nature of the problem. The fact that to a large extent the new tourist accommodations are competing with inns and hotels for the patronage of travelers⁴⁹ suggests that physical differences are immaterial and that in fairness they should enjoy the same rights and be subject to the same burdens.⁵⁰ Undoubtedly this competitive factor has influenced the courts to abandon the requirements of stabling, liquor, a dining room under the innkeeper's management, and perhaps even the dining room itself.⁵¹

Opposed, at least partially, to this argument is the consideration of the necessity and reason for the continuance of the extraordinary rights and duties of innkeepers. Subconsciously, if not expressly, judges will be influenced accord-

⁴⁹ "Many camps now have the appearance of a modern hotel with apartments consisting of bedroom, dining room, bath and with garage handy. Adjacent to the apartments will be found a restaurant, a motion picture place, a swimming pool and park to complete the attractions." *The Highway Magazine*, Dec., 1931, p. 314. Present trend is to heat cabins in order that they may be available the year round. One camp in Iowa furnishes portable typewriters and is so popular with salesmen that they make reservation two and three weeks in advance. *Hardware Age*, Apr. 11, 1935, p. 46f. A survey of 101 motoring parties showed that 57 stopped at hotels, 39 at cabins or tourist homes, and 5 carried their own camping equipment. Another survey of expenditures of 1262 motoring parties showed that they spent at hotels, exclusive of meals, \$13,586, at tourist camps \$11,321. *Tourist News*, Sept., 1935. Hotel journals have spoken highly of accommodations offered in tourist cabins, particularly in the southwest. *Hotel Management*, 1930, p. 543 ff. One hotel in Indiana advertises "accommodations similar to auto camps." *The Architectural Record*, Dec., 1933, p. 457. Against the tourist cabin competition the hotels are defenseless. Many have gone over to the enemy's camp by furnishing cottage accommodations and only serving meals in the hotel. *Business Week*, Feb. 8, 1936, p. 31. For other information as to the extent of the business, see *supra* note 1.

⁵⁰ "It may be that under changing conditions the common-law liability of an innkeeper may be extended by analogy and compelling logic of particular facts to cases where at common law the person sought to be charged with that liability was not an innkeeper." *Dixon v. Robbins*, 246 N.Y. 169, 158 N.E. 63 (1927).

⁵¹ This is expressed or implied in practically all cases cited *supra* in notes 35 and 38.

ing to their opinions of the necessity of protecting both the tourist and host or whether today innkeeper rules are an impractical burden. It has been stated that the need of protection is still present,⁵² but certainly the conditions originally giving rise to the need are hardly to be recognized today. Traveling in early England was not only adventurous but dangerous. Brigands were an accepted hazard. At nightfall the traveler seldom had a selection of hostelries. He needs must pray that he will be accepted at the inn and if accepted pray that he is not in a den of thieves. The government had small concern with the traveler's problems. Robbery and personal violence were largely treated as purely civil matters.⁵³

It is true that travelers are robbed today and probably some tourist homes and cabins are merely fronts for more nefarious practices, but the motoring tourist of today is seldom left to a Hobson's choice of accommodations, nor is the opportunity of injury and robbery much greater than in his own home. Probably the law of innkeepers originated as a feeble attempt to aid the traveler's self protection, but it is doubtful if today the tourist determines upon his journey influenced by the soothing thought of the protection afforded by the law of innkeepers. It is further doubtful if the innkeeper is restrained from wrong or motivated to improve his establishment by fear of his extraordinary liability. Certainly the widespread statutory modification of the law of innkeepers sanctions this argument. Probably the same thought has played a subconscious part in determining that Pullman cars, boats, and summer hotels were not inns.⁵⁴

⁵² *Nelson v. Johnson*, 104 Minn. 440, 116 N.W. 828 (1908); *Hulett v. Swift*, 33 N.Y. 571, 88 Am. Dec. 405 (1865); *Goddard, Bailments & Carriers* (2d ed. 1928) sec. 161.

⁵³ For a history of early conditions confronting the traveler, see *Crapo v. Rockwell*, 48 Misc. 1, 94 N.Y.S. 1122 (1903); *Beale, Innkeepers and Hotels* (1906) pp. 3-5; *Goddard, Bailments and Carriers* (2d ed. 1928) sec. 161.

⁵⁴ "Innkeepers, in the true sense of that term, are rare in modern times and are progressively diminishing." *Ford v. Waldorf System, Inc.*, — R.I. —, 188 Atl. 633 (1936). The "peculiar liability of the innkeeper is one of great rigor and should not be extended beyond proper limits." *Pullman Palace Car Co. v. Smith*, 73 Ill. 360, 24 Am. Rep. 258 (1874).

STATUTES⁵⁵

If it is concluded that tourist homes and cabins are within the realm of innkeepers a further search must be made to determinè the statutory modification of the common law generally and the application of such enactments to the new situation. Even if it be determined that these new tourist accommodations are not within the common law classification, a careful examination of so-called innkeeper statutes is still essential as many of these laws deal with persons not innkeepers at common law, but who in some manner are engaged in providing sleeping accommodations.⁵⁶

The object of most of these statutes may be grouped roughly under four headings: (1) Those dealing with licensing provisions; (2) those imposing health and safety regulations; (3) those limiting liability for loss of goods; (4) those providing a statutory lien. These enactments do not read, "The common law of innkeepers is hereby amended", but those affected are described with varying degrees of particularity.

First, there are the statutes which attempt to describe definitely those subject to its provisions:

"Every building—used—or advertised—to the public to be an inn, hotel, or public lodging house or place where sleeping accommodations are furnished for hire to transient guests, whether with or without meals, in which five or more rooms are used for the accommodation of such transient guests—for the purpose of this act shall be deemed to be a hotel."⁵⁷

⁵⁵ A complete survey of all state legislation is not attempted, only an amount sufficient for illustration. Delaware appears to be the only state having made no changes in the common law of innkeepers.

⁵⁶ Due to the recent origin of the new tourist accommodations few "innkeeper" statutes expressly refer to them. Vermont requires registers to be kept by a "hotel, inn, lodging house, or roadside camp or cabin." Public Laws of Vermont (1933) sec. 8189. See also notes 76 and 77 *infra*.

⁵⁷ Revised Code of Montana (1935) sec. 2485. See also General Laws of State of California (1931) Acts 8548, sec. 10; Revised Statutes of Illinois (1935) (Cahill ed.) c. 70, par. 6; Throckmorton's Ohio Code (1936) sec. 843-1. "Hotels and other structures two-stories high, with ten or more sleeping rooms, where sleeping accommodations are furnished to the public . . ." etc. Mason's Minnesota Statutes (1927) sec. 5895, 5896. Some statutes,

Second, some statutes apparently attempt to achieve inclusiveness by using a variety of terms such as "hotel", "inn", "boarding-house", and "lodging-house keepers".⁵⁸

Third, there is the statute employing only the common law term "inn".⁵⁹

Fourth, there is the statute which uses only the term "hotel".⁶⁰

Due to the diversity of language used in different states, and even within the same state, conclusions generally as to the effect of such statutes upon tourist homes and cabins are impossible. Again this paper must resort to generalities and be content with broad suggestions and considerations which may influence the application.

Under the first type of statute suggested above the apparent exactness of the definition would imply an equally strict application. In the case of the tourist home a counting of rooms devoted to use would be the apparent test. In the case of the camping ground the absence of a building would be conclusive. To apply the statute to five or more cabins

similar to that stated in the text expressly require meals to be served. Revised Statutes of Kansas (1923) sec. 36-101; Compiled General Laws of Florida (1927) sec. 3353.

⁵⁸ Revised Code of Arizona (1928) sec. 2038; Compiled General Laws of Florida (1927) sec. 5375; Code of Georgia (1933) sec. 52-105; Burns' Indiana Statutes (1933) sec. 37-205, 37-206, 48-1407 cl. 39; Carrolls' Kentucky Statutes (8th ed. Baldwin Revision 1936) sec. 3058-2; Revised Statutes of Maine (1930) c. 36 sec. 11, 15; Revised Code of Montana (1935) sec. 7675; Cahill's Consolidated Laws of New Jersey (1930) c. 21. sec. 207; Throckmorton's Ohio Code (1936) sec. 4785-59; Code of Tennessee (1932) sec. 8012; Vernon's Texas Statutes (1936) sec. 4592; Virginia Code (1936) sec. 1502; West Virginia Code (1932) sec. 3921.

⁵⁹ Revised Code of Arizona (1928) sec. 2041; Carrolls' Kentucky Statutes (8th ed. Baldwin Revision 1936) sec. 2176; Revised Statutes of Maine (1930) c. 36, sec. 1, 5; Revised Code of Montana (1935) sec. 7673, 7674; Cahill's Consolidated Laws of New Jersey (1930) c. 41, sec. 514; Throckmorton's Ohio Code (1936) sec. 5981, 5984; Purdon's Pennsylvania Statutes (1936) Tit. 37, sec. 31.

⁶⁰ Digest of Statutes of Arkansas (1919) sec. 2849, 7112; Compiled General Laws of Florida (1927) sec. 37758; Revised Statutes of Illinois (1935) Cahill ed. c. 70, para. 1, 2; Burns' Indiana Statutes (1933) sec. 37-101, 42-1301, 42-1302; Code of Iowa (1935) sec. 1536; Revised Statutes of Kansas (1923) sec. 58-208; Cahill's Consolidated Laws of New Jersey (1930) c. 21, sec. 201, c. 46, sec. 355; West Virginia Code (1932) sec. 1366.

the court must either ignore the singular use of the term "building" or look upon the cabins as a single rather than separate units.^{60½} Some statutes, similar to the one under consideration, do not require a certain number of rooms in the building and consequently there would be less difficulty in holding tourist cabins within their scope.⁶¹

The application of the second type of statute suggested above may turn largely upon the court's approach. If each term that is used is examined separately, it is quite possible to conclude that the tourist accommodation is not within its meaning.⁶² However, it would appear more in accord with the object of the enactment to view the terms as a unit. The apparent employment of all known terms describing those engaged in furnishing sleeping accommodations suggests strongly that all persons engaged in such business were to be affected.⁶³ The apparent attempt to avoid technical lines should influence a liberal construction. The absence of the terms "tourist home" and "tourist cabin" would appear due

^{60½} If the court attempts a literal construction of "building" it may draw a distinction between cabins arranged in a row having a partition wall and a continuous roof and those cabins separated from each other by a few inches.

⁶¹ Code of Tennessee (1932) sec. 5275. "Hotel" shall mean any building or structure equipped, used, advertised as, or held out to the public to be an inn, hotel, or public lodging house or place where sleeping accommodations are furnished transient guests for hire, whether with or without meals." Code of Iowa (1935) sec. 2808. "Every building or structure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public to be a place where accommodations are furnished to the public whether with or without meals and furnishing accommodations for periods of less than one week shall for the purpose of this act be deemed an hotel." *Mason's Minnesota Statutes* (1927) sec. 5903.

⁶² A hospital was held not within a lien statute applying to an "inn, rooming house, and eating house or any structure where rooms and board are furnished whether to permanent or transient occupants." *Hull Hospital, Inc. v. Wheeler*, 216 Iowa 1394, 250 N.W. 637 (1933).

⁶³ Some statutes use in addition to the terms mentioned some catch-all: "or place of entertainment for transient or permanent guests or lodgers." *Burns' Indiana Statutes* (1933) sec. 37-301; "or any structure where rooms or board are furnished." Code of Iowa (1935) sec. 10348-9; "and keepers of houses of private entertainment." *Carrolls' Kentucky Statutes* (8th ed. Baldwin Revision 1936) sec. 2179a-1; "or house of private entertainment." *Virginia Code* (1936) sec. 6444.

only to the fact that such terms were unknown at the time of the statute's enactment.

In those statutes which employ only the term "inn" or "innkeeper" logic may suggest application only to those falling within the legal definition of such persons or establishments at common law. "Inn" has not been a term of common use for considerable time. Its appearance in legislation indicates a studied attempt to amend or supplement the common law rules on that subject and, equally important, only those rules.

Where "hotel" is the sole description of the scope of the enactment, our problem becomes more complicated. Certainly "hotel", standing alone, does not have the sense of broadness conveyed by those statutes referring to "every structure for the accommodation of travelers" or to "a hotel, lodging house, rooming house or boarding house." It would appear logical that at least the statute under consideration was restricted to those who are innkeepers at common law, but does it include all such innkeepers? It has been previously stated that "hotel" and "inn" are synonymous, and it is possible that the Gordian knot may be cut upon this premise,⁶⁴ but it is to be remembered that the decisions declaring such identity of meaning were considering only the effect of the particular label which a proprietor attached to his establishment so far as his status as an innkeeper was concerned.⁶⁵ In common understanding it is doubtful if "hotel" is as inclusive as "inn"; certainly the former term conveys a more

⁶⁴ Some statutes use the terms together, "innkeeper and hotel keeper" or "inn and hotel." Digest of Statutes of Arkansas (1919) sec. 5559-5562, 5564-5568; Revised Statutes of Maine (1930) c. 36, sec. 14; Cahill's Consolidated Laws of New Jersey (1930) c. 7, sec. 40; Purdon's Pennsylvania Statutes (1936) Tit. 37, sec. 61, 64, 71; Code of Tennessee (1932) sec. 6680; Public Laws of Vermont (1933) sec. 8184, 8192-8195, 8648.

⁶⁵ See notes *supra* 24-27. In *Dixon v. Robbins*, 246 N.Y. 169, 158 N.E. 63 (1927) the court states that "inn" and "hotel" are recognized as synonymous, but in holding the establishment in question—see note 75—not within a statute applying to "hotels" the court avoids saying whether it was a common law inn.

definite picture to the mind.⁶⁶ The entire dispute would appear to turn upon whether the term is used in a technical sense, whether it is a genus or species.

Previously, in applying the common law definition of innkeepers to tourist homes and cabins, it was suggested that the objective matching of definitive words was not the only test applied by the courts. The same is true in attempting to apply the words of a statute to new situations similar to, but in many respects distinguishable from, the class of affected things named. Thus, is an electric interurban line a "railroad" or an airplane a "motor vehicle"? Such cases illustrate the difficulty of applying the words of statutes to newly created situations. It has been suggested as a rule of statutory construction that:

"Where a statute deals with a genus, and the thing which afterwards comes into existence is a species thereof, the language of the statute will generally be extended to the species, although it was not known and could not have been contemplated by the legislature when the act was passed; but where the statute shows plainly that the word is not used as describing the whole genus put forward as applicable to the case, but only some species thereof, the rule has no application."⁶⁷

While perhaps pleasing to the ear such a rule is too flaccid for application.

⁶⁶ It has been recognized that the term "hotel" standing alone in a statute is not necessarily to be interpreted as a common law inn. ". . . the term 'hotel' is not applicable to a building, maintained as . . . the defendant's building . . ., with few, if any, of those characteristics which mark a 'hotel' or 'inn' as understood . . . in . . . common speech." *Dixon v. Robbins*, 246 N.Y. 169, 158 N.E. 63 (1927). In holding an ordinance applying to "hotels" was not applicable to an establishment furnishing lodging to impecunious transients at 25c a night, it was said, ". . . it is not what is strictly known as a hotel." *Cromwell v. Stephens*, 2 Daly 15 (N.Y. 1867).

⁶⁷ 55 C.J. 973f (1932). "If the language used is broad enough to include things not yet known but which may afterwards come into being, then they too are included, but the terms used must be comprehensive enough to include them." *Franklin & P. Ry. Co. v. Shoemaker's Committee*, 156 Va. 619, 159 S.E. 100 (1931). ". . . things not existing at the time of the enactment of a law may be held to be within its terms in cases dealing with a genus of things." *Pellish Brothers v. Cooper*, 47 Wyo. 480, 38 Pac. (2d) 607, 608 (1934).

Even in statutes clearly referring to a genus some courts have shied at including a new species when it is dissimilar to the mental picture portrayed by the legislative description.⁶⁸ As Justice Holmes said in regard to airplanes being classed as "motor vehicles":

"When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it seems to us that a similar policy applies, or upon the speculation that if the Legislature had thought of it, very likely broader words would have been used."⁶⁹

The word picture conveyed by statutory language may be vague. It is doubtful if many courts apply the rule even when the picture is clear. "Telegraph" has been held to include "telephone".⁷⁰ Considerable diversity of opinion has been demonstrated as to whether "railroad" statutes include electric interurban lines⁷¹ and whether "locomotives" include

⁶⁸ In determining whether women were qualified as jurymen as being "voters" after the 19th Amendment, it has been said: "Those words, however, like the words of every statute, are not to be interpreted in their simple literal meaning, but in connection with the history of the times and the entire system of which it forms a part, in the light of the Constitution, of the common law, and of previous legislation upon the same subject." Re Opinion of Justices, 237 Mass. 591, 130 N.E. 685 (1921).

⁶⁹ *McBoyle v. U. S.*, 283 U. S. 25, 27, 51 S.Ct. 340, 75 L. Ed. 816 (1931). "There is always a tendency to construe statutes in the light in which they appear when the construction is given. . . . But in endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the surrounding circumstances." *Platt v. Union Pacific R. R. Co.*, 99 U.S. 48, 63, 25 L. Ed. 424 (1878).

⁷⁰ The distinction between the two is referred to as a "slight technical difference." *Northwestern Telephone Co. v. Chicago, M. & St. P. Ry. Co.*, 76 Minn. 334, 79 N.W. 315 (1899).

⁷¹ Yes, *Campbell v. Greenville, S. & A. Ry. Co.*, 97 S.C. 383, 81 S.E. 676 (1914). No, *Bohmer's Admx. v. Kentucky Traction & Terminal Co.*, 212 Ky. 524, 279 S.W. 955 (1925); *Stem v. Nashville Interurban Ry.*, 142 Tenn. 494, 221 S.W. 192 (1920); *Shortino v. Salt Lake & U. R. Co.*, 52 Utah 476, 174 Pac. 860 (1918). A statute of 1889 as to "transportation companies", was held applicable to taxi cab companies. *Commonwealth v. Quaker City Cab Co.*, 287 Pa. 161, 134 Atl. 404 (1926). Authority given a city to regulate "garages" was construed to mean public garages and the

electric and gasoline propelled engines.⁷² It is doubtful if a further discussion of this problem by analogy to other situations will prove fruitful.⁷³ A more careful consideration of each case might partially relieve the objective confusion. As stated in regard to whether the new tourist proprietors were innkeepers at common law, undoubtedly the determination of the problem will be influenced by a consideration of the purpose of the statute and the necessity and practicality of applying it to the new situation.⁷⁴ Thus, it is doubtful if a statute requiring "hotels" to have fire escapes or rope lad-

fact that there was a subsequent need for regulation of private garages housing five or more cars is immaterial. *Crerar Clinch Coal Co. v. City of Chicago*, 341 Ill. 471, 173 N.E. 484 (1930).

⁷² *No, Franklin & P. Ry. Co. v. Shoemaker's Committee*, 156 Va. 619, 159 S.E. 100 (1931); *Hudson v. S. W. Mo. R. Co.*, 173 Mo. App. 611, 159 SW. 9 (1913); *Yazoo & M. V. R. Co. v. Day*, 120 Miss. 296, 82 So. 148 (1919).

⁷³ In statutes dealing with the "practice of medicine" or "treatment of disease" considerable diversity of opinion has arisen as to application to persons other than the orthodox M.D. As to Christian Science practitioners: Yes, *State v. Bushwell*, 40 Neb. 158, 58 N.W. 728 (1894). No, *State v. Mylod*, 20 R.I. 632, 40 Atl. 753 (1898). As to osteopaths: Yes, *Bragg v. State*, 134 Ala. 165, 32 So. 767 (1902); *Little v. State*, 60 Neb. 749, 84 N.W. 248 (1900). As to chiropodists: No, *State v. Armstrong*, 38 Idaho 493, 225 Pac. 491 (1923). As to dentists: No, *State, ex rel. v. Fisher*, 119 Mo. 344, 24 S.W. 167 (1893). As to chiropractors: Yes, *Louisiana State Board of Medicine v. Fife*, 162 La. 681, 111 So. 58 (1926). An exemption statute of 1886 applying to "tools, team and implements, or stock in trade" was held to include the automobile of a taxi driver. *Pellish Brothers v. Cooper*, 47 Wyo. 480, 38 Pac. (2d) 607 (1934). For conflicting cases on this, see 28 A.L.R. 74 (1924). Dispute has arisen as to whether women, since the 19th amendment, are eligible for jury service as "qualified voters." Yes, *Commonwealth v. Maxwell*, 271 Pa. 378, 114 Atl. 825 (1921). No, *Re Opinion of Justices*, 237 Mass. 591, 130 N.E. 685 (1921); *Commonwealth v. Welosky*, 276 Mass. 398, 177 N.E. 656 (1931). As to whether a bank stockholder's double liability law applies to banks of discount and deposit as distinguished from banks of issue and circulation when the latter was the common type of bank at the time of the law's adoption: Yes, *Gaiser v. Buck*, 203 Ind. 9, 174 N.E. 83, 179 N.E. 1 (1931). No, *Allen v. Clayton*, 63 Iowa 11, 18 N.W. 663 (1884).

⁷⁴ A statute granting liens to "hotels", defined to include "inn, rooming house, and eating house, or any structure where rooms and board are furnished to permanent or transient occupants" was held not to include a hospital. *Hull Hospital, Inc. v. Wheeler*, 216 Iowa 1394, 250 N.W. 637 (1933).

ders will be applied to tourist cabins,⁷⁵ but, on the other hand, we would not be shocked at a decision which stated that a register of guests should be kept because such was required under a statute applying to "hotels". The propriety of applying these statutes is not always so obvious, as in the case of those providing for licenses, limited liability and liens.

CONCLUSION

An appropriate title for this paper would be "A Tempest in a Teapot." Nothing more has been attempted other than to ask questions, suggest answers and then criticize them. Sometimes it is by such fumbling methods that the law progresses. If this paper has suggested some of the major problems which may arise and the logic underlying possible answers, it is believed that for the present we should not venture further. The only conclusion which may be forecast is that in view of the variety of possible questions and equal variety of possible answers a uniformity of judicial solution is hardly to be expected.

The questions which the new tourist accommodations present are not of pressing social or economic importance and will probably never become issues of the day. It is in such situations that legislation may do much to anticipate difficul-

⁷⁵ A statute requiring fire escapes on "hotels" was held inapplicable to an establishment furnishing only sleeping accommodations to transients. "The statute construed according to its letter and spirit does not apply to such a building." *Dixon v. Robbins*, 246 N.Y. 169, 158 N.E. 63 (1927). Such reasoning was demonstrated where a city ordinance fixed the water rates for "hotels" according to the number of rooms. The court held it inapplicable to an establishment furnishing lodging to travelers where part of the rooms were not and could not be supplied with water; the court said, ". . . it is not such an establishment as could have been contemplated . . . , as it is not to be supposed that there was an intention to tax a man for all the lodging rooms of a building if water could not be supplied to them, and he is compelled to obtain it elsewhere." *Cromwell v. Stephens*, 2 Daly 15 (N.Y. 1867). In determining whether "locomotive engines" includes electric and gasoline engines courts, in answering in the negative, have been influenced by the impracticality of requiring such engines to be equipped with a steam whistle, as required by the statute. *Libby v. New York, N. H. & H. R. Co.*, 273 Mass. 522, 174 N.E. 171 (1930); *Franklin & P. Ry. Co. v. Shoemaker's Committee*, 156 Va. 619, 159 S.E. 100 (1931).

ties by providing a few rules which will in most instances provide an equitable disposition of problems. Statutes which fix the right of the proprietor to a lien upon the goods of his guest⁷⁶ and clarify his liability for loss of such goods may be easily drafted and will determine the majority of conflicts which arise. Rules of safety and general health provided for the ordinary hotel are frequently impractical in application to the tourist home and cabin. No doubt those states which have placed the determination of such matters under the authority of the state board of health are finding a satisfactory solution.⁷⁷

⁷⁶ This has been done in Florida. Compiled General Laws of Florida (1927) sec. 4149.

⁷⁷ Compiled General Laws of Florida (1927) sec. 4144, Revised Code of Montana (1935) sec. 2454.2; Revised Statutes of Maine (1930) c. 36, sec. 28, 29.