Michigan Law Review

Volume 44 | Issue 6

1946

INNKEEPERS-FAILURE OF GUEST TO DISCLOSE CHARACTER OF CONTENTS OF BAGGAGE AS NEGLIGENCE

Kenneth Liles
University of Michigan Law School

INNKEEPERS—FAILURE OF GUEST TO DISCLOSE CHARACTER OF CONTENTS OF BAGGAGE AS NEGLIGENCE—In an action seeking damages, based on the alleged negligence of a bailee for hire in causing the loss in transit of a salesman's stock of valuable jewelry, because the departing bailor-guest's failure to disclose the extraordinary value of the contents of his trunk amounted to negligence, *held*, recovery denied. *Shiman Bros. & Co., Inc. v. Nebraska National Hotel Co.*, (Neb. 1945) 18 N.W. (2d) 551.

While it is well settled that the innkeeper, whether as virtual insurer or an ordinary bailee for hire, is not liable for losses occasioned by the guest's own negligence, it is not so clear what constitutes such negligence, the question being

one of fact depending on the circumstances of the case and usually left to the jury.[1] It has generally been held that an innkeeper under his rigorous common law liability is not excused of responsibility by the failure of the guest to reveal the nature or value of his baggage. However, if the valuables are of an unusual nature, not in keeping with the traveler's apparent business or financial standing, the guest's failure to make proper notification might be negligence.[2] For example, recovery is invariably allowed where the loss is of personal wearing apparel.[3] It is not so readily granted where the loss is a valuable antique.[4] But recovery for loss of jewelry has been permitted despite the absence of warning to the innkeeper.[5] When reason for the harsh rule against the innkeeper disappeared, statutes were passed ending his liability as virtual insurer and limiting liability as bailee for hire if a safe place for valuables be kept. If a guest would hold an innkeeper under a statute, necessarily he must himself have complied with that statute by offering his valuables for safe keeping. Though no authority clearly states what information the guest must offer when he makes his deposit, it has been held that the innkeeper is entitled to such notice of the character of the property as to enable him to take proper care of it.[6] For how else would the innkeeper know whether a package should be locked up in a safe? Yet the guest is under no other obligation than to indicate the nature of the deposited article; the monetary value of the goods need not be revealed.[7] Perhaps this limitation on required information is not so bad as it appears since people normally either overvalue or undervalue property depending on whether they seek to impress others or fear theft. Insofar as the innkeeper statutes are in derogation of the common law they are strictly construed and are not held applicable to circumstances such as those in the principal case where the guest has either not yet arrived or already checked out of the hotel. Goods lost in transit come under the common law unless expressly covered by statute.[8] However, in the principal case, as the plaintiff's pleading was grounded solely on negligence, the innkeeper was not a common law insurer, but only a bailee for hire. As such, the innkeeper's duty was merely to exercise ordinary care.[9] And by definition such care would depend on the nature of the goods to be kept. Certainly the same time and facilities of a bailee would not be required in keeping a worn out automobile tire as in protecting an expen-

[1] In a previous appeal of this case to the supreme court the cause was remanded for a new trial on the question of negligence, the trial court having erroneously ruled that the plaintiff could not recover as a matter of law. Shiman Bros. & Co., Inc. v. Nebraska Nat. Hotel Co., 143 Neb. 404, 9 N.W. (2d) 807 (1943).

[2] For collected cases, see 53 A.L.R. 1048 et. seq. (1928).

[3] For a strong case, because an instruction that the guest need not have informed the innkeeper of the value of clothing in a trunk was upheld, see Wolf Hotel Co. v. Parker, 87 Ind. App. 333, 158 N.E. 294 (1927).

[4] See Crosby v. 20 Fifth Ave. Hotel Co., Inc., 173 Misc. 604, 17 N.Y.S. (2d) 498 (1940).

[5] For a case similar in fact situation to the principal case where the opposite result was reached, see Rockhill v. Congress Hotel Co., 237 Ill. 98, 86 N.E. 740 (1908). See note, 22 L.R.A. (N.S.) 576 (1909).

[6] Stoll v. Almon C. Judd Co., 106 Conn. 551, 138 A. 479 (1927).

[7] Ibid.

[8] See criticism of the goods lost in transit rule in Davidson v. Madison Corp., 257 N.Y. 120, 177 N.E. 393 (1931).

[9] Peet v. Roth Hotel Co., 191 Minn. 151, 253 N.W. 546 (1934).

sive necklace. So, it appears that the bailor himself was negligent in not informing the bailee of the valuable nature of goods placed in bailment and that such negligence contributed proximately to the resulting loss of the goods; therefore, the bailor-guest could not recover from the bailee-innkeeper.[10] The result reached in the principal case is in harmony with present day legislative policy of reforming the common law by shifting the burden of insurance from the innkeeper to where it belongs, that is, on the owner of the property. There is great injustice and possibility of fraud in allowing a guest to recover large sums for luggage lost in transit when no notice has been given to the innkeeper of the nature or value of the contents. Interestingly, it is noted that within a week after the final decision in the principal case the Nebraska state legislature amended the innkeeper statute to cover loss of property in transport and to place a further limit on liability of the innkeeper.[11]

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[10] Crosby v. 20 Fifth Ave. Hotel Co., 173 Misc. 604, 17 N.Y.S. (2d) 498 (1940).

[11] Neb. Rev. Stat. (1943) § 41-122, amended by 58th session of legislature, approved May 10, 1945, adding following sections:

"§ 4. For any loss of, or damage to, any property of a guest while in transport to or from any hotel . . . whether or not such loss or damage is occasioned by the negligence of such proprietor . . . the amount which may be recovered against such proprietor shall not exceed five hundred dollars unless the guest shall have declared a greater value upon the property in writing and delivered such declaration. . . ."

§ 5. (Limited recovery for property within the hotel, loss due to negligent proprietor, to one thousand dollars, unless prior statement in writing submitted declaring the greater value). Neb. Laws (1945) c. 98, p. 323 at 325, 326.