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Statutory Limitation of Innkeepers' Liability

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and parol evidence was properly rejected. *Farrell v. Mentzer*³⁷ which is relied on as an exposition of the law of constructive trusts arose when the plaintiff, being about to bid for the property at a trustee's sale, orally agreed that one Wright was to bid for the property. Wright was then to transfer the property so purchased to the defendant, who was in turn to convey one-half to the plaintiff upon being reimbursed. The defendant received the property as had been planned, but refused to convey to the plaintiff. The supreme court held that parol evidence of the agreement to convey to the plaintiff would violate the Statute of Frauds. Clearly in this case it would, for the contract itself tried to bind an interest in the land. Cases of agreements to purchase at a judicial sale and either hold in trust or convey later are clearly distinguishable because the Statute of Frauds bars proof of either the contract or the express trust.³⁸ *Farrell v. Mentzer* is a sound case and authority of the strongest sort on the law of constructive trusts in Washington, but factually it is not controlling in the *Carkonen* case.

It may be said that the *Carkonen* case has this very decided effect upon so much of the 4th section of the Statute of Frauds as is set forth in REM. REV. STAT. § 10550. The court has declared that the oral employment of an agent to purchase land does affect an interest in the land, and thus the employment is within the statute. In this position the court is well supported by other decisions.³⁹ It is arguable, however, that this holding is inconsistent with the Washington cases which say that an oral agreement to form a partnership to deal in land is not within the statute.⁴⁰

It is apparent, then, that the present stand of the court on this point is sound, and on the construction of the statute requiring the agreement employing the broker to be in writing is also supported by good authority, if not entirely consistent with certain previous pronouncements on the subject. Accepting the premises of the court, there can be no quarrel with the decision.

HARDYN B. SOULE.

STATUTORY LIMITATION OF INNKEEPERS' LIABILITY

Many of the earliest cases of which reports are extant deal with the liability of the innkeeper to his guest, and the earliest known Roman law gave an action against the innkeeper if the baggage of the guest was in any way damaged, lost or stolen.¹ At common law the innkeeper was the insurer of the baggage of his guest. He was under an absolute liability unless he could prove that the loss was caused by an Act of God, the public enemy, by the act of the guest or of the guest's servants.² This absolute

³⁷102 Wash. 629, 174 Pac. 482 (1918).

³⁸More than an agency is involved in such cases. 3 BOGERT, TRUSTS AND TRUSTEES (1st ed. 1935) § 1571.

³⁹See note 23, *supra*.

⁴⁰See note 29, *supra*.

¹WHARTON, INNKEEPERS (1st ed., 1876) 88.

²This rule was first laid down in Y. B. 10 Henry VII, p. 26 (1495), and has been reiterated from time to time by practically all courts down to the present.

liability was extended to include all movable goods, and even those goods upon which a felony could not be committed.³ The Washington Court has fully approved of this common law rule and has applied it strictly.⁴

This stringent rule of the common law developed through necessity. There being many ruffians and robbers abroad at night throughout the land, the wayfarer had to put up at an inn or else likely suffer the loss of all his goods and possibly his life. Often the innkeeper was sorely tempted to cast his lot with that of the highwayman, with the natural result that the traveler could never feel secure.⁵ This led to the common law placing an absolute liability upon the innkeeper, thus taking all the profits out of such conspiracy with the highwayman.

With the advance of civilization, improved means of transportation and competitive hotels or inns, the traveler was no longer forced to rely upon a single inn, except in isolated cases—but could more often make his choice. Discounting the possibility of conspiracy among innkeepers, the necessity for stringent regulation by law became less and less, with the result that the innkeeper has gradually escaped from the rigid rule of the common law by means of various statutory changes.⁶

One of the first statutory invasions was to limit liability to those cases wherein the innkeeper had been negligent. At common law lack of negligence could not be pleaded as a defense, and in fact the innkeeper was liable even though he had used the greatest of care and the goods had been forcefully taken from him by robbers.⁷

Another means used to avoid stringent liability was the attempt to have the courts declare that some goods which the traveler carried with him could not be considered as baggage. At common law the liability of carriers was limited to whatever baggage was required for the personal needs and convenience of the passenger, either for his immediate needs, according to his station in life, or to the ultimate purpose of his journey.⁸ Some courts, by analogy, applied this rule to innkeepers, although on a somewhat broader basis.⁹ The majority of courts, however, have refused to limit the liability to goods reasonably required in traveling,¹⁰ since the attempts of the courts to limit liability by the classification of

³*Calye's Case*, 8 Co. 32a, 77 Eng. Rep. 520 (1585) is cited as the leading case upon the common law liability of innkeepers. The court said: "Although the guest does not deliver his goods to the innkeeper to keep, nor acquaint him with them; yet if they be carried away or stolen, the innkeeper is liable, except for theft caused by the servant of the guest."

⁴*Watt v. Kilbury*, 53 Wash. 446, 102 Pac. 403 (1909); *Featherstone v. Dessert*, 173 Wash. 264, 22 P. (2d) 1050 (1933).

⁵EDWARDS, BAILMENTS (1st ed. 1855) 403.

⁶For an early case discussing the reason for the relaxation of the rule see *Wilkins v. Earle*, 44 N. Y. 172, 189 (1870).

⁷EDWARDS, BAILMENTS (2d ed. 1878) § 463.

⁸*Macrow v. Great Western Ry.*, L. R. 6 Q. B. 612 (1871).

⁹*Wilkins v. Earle*, 44 N. Y. 172 (1870).

¹⁰*Berkshire Woolen Co. v. Proctor*, 7 Cush. 417 (Mass. 1851); *Pinkerton v. Woodward*, 33 Cal. 557 (1867).

baggage merely led to confusion, and in some cases to ridicule.¹¹

The tendency of modern legislation is to divide baggage into two classes.¹² Into the first falls money, jewels, securities and other valuables of small compass, but of large value, which may easily be deposited in the innkeeper's safe for safe-keeping.¹³ As to this class of baggage the statutes generally provide that the innkeeper is under an absolute liability only in case such goods are deposited in the safe. The amount which the innkeeper is required to accept is also limited by statute. The second class of goods is that baggage of a bulky nature which, of necessity, must be kept in the room of the guest.¹⁴ Most statutes disregard any distinctions as to what constitutes baggage in this class, but rather limit the innkeeper's liability to certain specified amounts. In this class the innkeeper is only liable if negligent, but the fact of loss is *prima facie* evidence of negligence.¹⁵

In line with this policy, Washington, in 1890, passed its first statute in regard to the liability of innkeepers.¹⁶ This statute provided that when an innkeeper made available a suitable safe, he could require his guests to deposit money, banknotes, jewelry, articles of gold and silver manufacture, precious stones and bullion in the safe, and if such goods were not so deposited the innkeeper would be saved from liability.

In 1915 the legislature passed the first statute actually limiting the amount of liability of the innkeeper.¹⁷ It provided that, as before, certain articles should be deposited in the hotel safe, but also provided that the innkeeper should not be required to accept for deposit goods valued at more than \$1000.00 and limited his liability to that amount, except in those cases of special contract between the innkeeper and his guest. The act expressly provided:

"Hotelkeeper shall be liable for *any loss* of the above enumerated articles . . . if caused by the theft or negligence of the hotelkeeper or his servants." (Italics ours.)

The act further provided for limitations as to the amount of liability for baggage left in the rooms, determined by the size of the hotel, amount paid for services and other factors.¹⁸

¹¹The early cases variously held that baggage did not include certain special items: *Myers v. Cottrill*, 17 Fed. Cas. No. 9,985 (E. D. Wis. 1873) (samples of commercial travelers); *Pettigrew v. Barnum*, 11 Md. 434, 69 Am. Dec. 212 (1857) (merchandise and silver tableware); *Giles v. Fauntleroy*, 13 Md. 126 (1859) (pistols).

¹²14 R. C. L. 529.

¹³N. Y. Laws 1855, c. 421 amended N. Y. Laws 1897, c. 305; PIERCE'S CODE (1933) § 2805.

¹⁴PIERCE'S CODE (1933) § 2806.

¹⁵The basis for modern legislation may be found in *Calye's Case*, 8 Co. 32a, 77 Eng. Rep. 520 (1585), cited *supra* note 3, in which we find the following statement: "The innkeeper requires his guest to put his goods in such a chamber under lock and key, and then he will warrant them, and otherwise not." See also *Bean v. Ford*, 65 Misc. Rep. 481, 119 N. Y. S. 1074 (1909).

¹⁶Wash. Laws 1889, p. 95, 1 HILL'S CODE (1891) § 2712, PIERCE'S CODE (1902) § 5586.

¹⁷Wash. Laws 1915, c. 190 § 3, PIERCE'S CODE (1919) § 2806.

¹⁸It is interesting to note that the Act of 1889, Wash. Laws 1889, p. 95, cited *supra* note 16, was not repealed by the Act of 1915, Wash. Laws 1915,

Minor changes in the Act of 1915 were enacted in 1919, and finally in 1933 the law was re-enacted with several important changes. The class of goods required to be deposited in the hotel safe was expanded to include: money, banknotes, jewelry, precious stones and ornaments, railway mileage books or tickets, negotiable securities or other valuable papers, bullion, or property of small compass. The \$1000.00 limitation still remained. Thus, the innkeeper was not required to accept anything worth more than \$1000.00 nor was he required to accept goods of unusual or large bulk. The significant feature of the Act of 1933, however, lies in the fact that the final clause of the previous acts, which expressly removed the limitation of liability in case of the negligence of the innkeeper or his servants, was here omitted, and in its place the following clause was substituted:

“*Provided, however, that in case of such deposit of such property, the proprietor . . . shall in no event be liable for loss or destruction thereof, or damage thereto, unless caused by the theft or gross negligence of such proprietor . . . or his employees.*”

All courts have uniformly held that statutes limiting the common law liability must be strictly construed. All courts of other states have at all times and the courts of this state have heretofore held that the statutory limitation of liability for goods deposited in the safe would not apply where the loss was occasioned through the negligence or the theft by the innkeeper or his servants.¹⁹

The Act of 1933 has been strictly construed by the Supreme Court of this state in the recent case of *Goodwin v. Georgian Hotel Co.*²⁰ and has thus brought in a new phase of innkeeper's liability. In that case the plaintiff, a guest in defendant's hotel, deposited an envelope containing \$1500 in the hotel safe for safe-keeping, taking a receipt therefor, but without special agreement as to the amount of the innkeeper's liability. When the plaintiff presented his claim check, the envelope and the money could not be found. Defendant claimed that plaintiff was guilty of fraud (that he had previously reclaimed the money), but that in any case it was not liable for more than the statutory limitation of \$1000, having posted the proper statutory notices to guests. Plaintiff claimed that the innkeeper had failed to show a lack of negligence and that

c. 190 § 3, nor are any records to be found which indicate that it has ever been repealed by the legislature or otherwise disposed of, although the Act of 1889 has not been carried forward by the various code writers.

¹⁹*Watt v. Kilbury*, 53 Wash. 446, 102 Pac. 403 (1909); *Featherstone v. Dessert*, 173 Wash. 264, 22 P. (2d) 1050 (1933); *Gillett v. Waldorf Hotel Co.*, 136 Wash. 615, 241 Pac. 14 (1925); *Johnston v. Mobile Hotel*, — Ala. —, 167 So. 595 (1936); *Jones v. Savannah Hotel Co.*, 141 Ga. 530, 81 S. E. 874 (1914); *Rockhill v. Congress Hotel Co.*, 237 Ill. 98, 86 N. E. 740 (1908); *Edwards House v. Davis*, 124 Miss. 485, 86 So. 849 (1921); *Leon v. Kitchen Bros. Hotel Co.*, — Neb. —, 277 N. W. 823 (1938); *Millhiser v. Beau Site Co.*, 251 N. Y. 290, 167 N. E. 447 (1929); *Dallas Hotel Co. v. Davison*, 23 S. W. (2d) 708 (Tex. 1930).

²⁰97 Wash. Dec. 150, 84 P. (2d) 681 (1938).

hence the limitation did not apply. *Held*: The burden of proof rests upon the innkeeper to show a lack of negligence, and here the defendant failed to sustain the burden and was guilty of negligence, but that the "one-thousand-dollar limitation applies to losses caused by the theft of an employee or by the gross negligence of the hotelkeeper or his, or its, employees."

The court also held that the only time the statutory limitation would not apply would be in case of actual theft or embezzlement by the innkeeper himself, whether individual or corporate, basing this last upon the contention that the legislature could not have intended the limitation to apply in such cases.

Originally the statutory limitation of liability was designed to relieve the innkeeper from too heavy a burden caused by losses entirely beyond his control. In effect the statute allowed the innkeeper to say to the guest, "I will not be liable for the loss of certain properties for any cause whatsoever, unless such properties are deposited in my safe for safekeeping." In part the Act of 1933 reads:

"... if guests . . . neglect to deliver such property . . . for deposit in the safe or vault, the proprietor . . . shall not be liable for any loss . . . sustained by such guests . . . by negligence of such proprietor . . . or his . . . employees, or by fire, theft, burglary, or any other cause whatsoever."

Conversely, then, it would seem that the innkeeper would be liable for such loss if the goods were properly deposited, regardless of the reason for the loss, but the statute continues in this manner:

"... and if such guests deposit such property . . . proprietor . . . shall not be liable for the loss . . . exceeding . . . one thousand dollars, notwithstanding said property may be of greater value, unless by special arrangement in writing with such proprietor . . . Provided, however, that in case of such deposit of such property, the proprietor . . . shall in no event be liable for loss . . . unless caused by the theft or gross negligence of such proprietor, or his . . . agents, servants or employees."

This clearly indicates that the innkeeper is to be held only for the statutory limit, and it seems apparent that the innkeeper shall not be liable in any case in which gross negligence has not been shown. The saving feature is that the burden of proof is upon the innkeeper to show a lack of negligence, the court, in the *Goodwin* case, saying:

"... in many cases . . . it would be well-nigh impossible for him (the guest) ever to prove theft by, or gross negligence on the part of, those connected with the hotel. We, therefore, hold, as we have in former cases, that, when the guest of an hotel proves that he has deposited money or other valuables for safekeeping with the hotel and they have not been returned to him on demand, he has made a *prima facie* case of liability and the burden is then upon the hotelkeeper to come forward with evidence to show

that the loss or destruction, if any, was not caused by the gross negligence of, or theft by, himself or employees."²¹

It is submitted that the Washington Supreme Court, in the *Goodwin* case correctly interpreted the statute in its true meaning. However, the legislature, by the Act of 1933, placed the State of Washington in a unique position as regards the liability of innkeepers. It is doubtful whether the legislature wished to or intended to take such an extreme turn from the common law as is taken in the Act of 1933. Under the normal statute few cases ever reached the courts because the statute clearly set forth the liabilities of the innkeeper and he knew that in certain cases he had to pay. On the other hand under the Act of 1933, an interpreted by the court, there is grave possibility of increased litigation, for the innkeeper may now hide behind the statute to avoid the consequences of his own negligence.²²

GEORGE M. MARTIN.

JUDICIAL NOTICE OF THE LAW OF SISTER STATES UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE FEDERAL CONSTITUTION

A year ago in the case of *State v. Johnson*¹ the court approved the admission in evidence of certified photostatic copies of fingerprint records from penitentiaries of Oregon and California to prove the identity of the defendant as a prior inmate of those institutions. The court relied on a federal statute² which, under authority of Article IV, § 1, of the Federal Constitution,³ sets forth the procedure for certification of records that was followed in that case. The statute further provides that when such procedure shall have been followed,

“the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.”

It therefore became necessary for the court to investigate the

¹See *Watt v. Kilbury*, 53 Wash. 446, 102 Pac. 403 (1909); *Gillett v. Waldorf Hotel Co.*, 136 Wash. 615, 241 Pac. 14 (1925); *Davis v. Cohen*, 253 Mich. 330, 235 N. W. 173 (1931).

²In handing down the decision in the *Georgian Hotel* case the court pointed out with approval a statement of the New York Court of Appeals in the case of *Milhiser v. Beau Site Co.*, in which that court reversed a lower court decision interpreting the New York statute in the same manner as the Washington statute has been interpreted, and in which the court said: “Such a holding by this court would nullify the purpose of the statute and be in conflict with the spirit and intent thereof.” The Washington statute is copied from the New York statute of 1897, and, with the exception of the final clause in the act, follows the present New York law very closely.

³194 Wash. 438, 78 P. (2d) 561 (1938).

⁴REV. STAT. § 906 (1875), 28 U. S. C. 688 (1934).

⁵“Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”