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A NEW LOOK AT THE LIABILITY OF INN KEEPERS FOR GUEST PROPERTY UNDER NEW YORK LAW

GERARD A. NAVAGH*

ONE of the oldest vocations pursued by civilized man is that of the maintenance of a public house for the entertainment and repose of travelers. The inn antedates by far the founding of Christianity and references to them will be found in some of the most memorable passages from the Bible.¹ Because of the public nature of the undertaking of inn keepers, the basic principles of law relating to their liability for property of their guests were fixed by the English common law at a very early date, and these principles have been carried down to the present time with certain limitations imposed by statute.

The function and purpose of the inns or hotels have changed with new methods of travel and the varying conditions of society. Each such change brings with it new problems in connection with the application of common law principles to the altered circumstances. In colonial days in this country the inns were located at convenient places beside the post roads. With the coming of the railroads, they were generally clustered about the terminals in the business sections of the cities. Today, with the increased popularity of the airplane and the automobile as means of transportation, there is a marked trend away from locations in metropolitan areas: the motel and motor courts will be found dotting every highway and inns are being located adjacent to air terminals in the suburbs of our large cities. These changes in the public traveling habits have profoundly affected the construction and the operation of hotels. It appears appropriate and timely, therefore, that we pause briefly in this period of transition to review the origin of the law of inn keepers and take a new look at its present state before we attempt to project its future development.

I. HISTORICAL ORIGIN OF LIABILITY

The common law principles of the inn keeper's insurer's liability for property of his guests had their origin in the conditions existing in England at the time the principles were formulated in the fourteenth and fifteenth century. At that time in England there was a considerable amount of traveling but the roads were bad and generally passable only on foot or

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1. The Nativity of Christ—"And she brought forth her first born son, and wrapped him in swaddling clothes, and laid him in a manger, because there was no room for them in the inn." (Luke 2:7); Parable of the Good Samaritan—"But a certain Samaritan as he journeyed came upon him, and seeing him, was moved with compassion. And he went up to him and bound up his wounds, pouring on oil and wine. And setting him on his own beast, he brought him to an inn and took care of him." (Luke 10:33-34).

horseback. In addition to the poor roads, the medieval traveler had to contend with robbers and outlaws of all sorts who infested the forests through which the roads passed. As the travelers proceeded in companies, there was little likelihood of an attack during daylight but at night the danger was considerable. As a result of these conditions the wayfarer traveled with as little baggage as possible and obtained his food and shelter for the night at an inn.² There he was compelled to place the safety of his property with an unknown host who sometimes proved unworthy of the trust. At the inn the guest's property would ordinarily be committed to the care of servants over whom the guest had no control, and witnesses to whom he might resort in the event of loss would ordinarily favor the inn keeper. For all practical purposes the guest was without remedy in the event of a breach of trust on the part of the inn keeper. To safeguard the traveler, so peculiarly exposed to such depredation, there was established in England a custom of the realm which made the inn keeper absolutely liable for the full value of the property of his guest committed to him for safekeeping. The only exceptions to this absolute liability were in those cases where the loss was caused by the negligence or fraud of the guest, by act of God, or the public enemy.³

The English settlers of America brought with them the principles embodied in the common law as their heritage and shield. The common law principles which were in existence on April 19, 1775 continued in effect as the law of the State of New York after the War of Independence and down to the present time, except insofar as they may since have been changed by statute.⁴ So much for the common law principles. Now, let us turn and see how the principles have been modified by statute in New York and the policy underlying such modifications.

II. LEGISLATIVE POLICY UNDERLYING STATUTORY MODIFICATIONS

The days of violence which originally gave rise to the inn keeper's common law insurer's liability passed with the advance of our civilization. Many economic and sociological changes took place. The small wayside inn gradually gave way with the transition brought about by the modern modes of transportation and in its place arose the large hotels in our metropolitan areas. There was a reduction in the danger of loss of guest property and guests often brought to the hotel property of great value not necessary for travel. The common law imposed upon the hotel keeper a large potential liability for such property; a liability out of all proportion to the compensation which the hotel received from its guests, for even

2. Beale, *Law of Innkeepers* § 3 (1905).

3. *Millhiser v. Beau Site Co.*, 251 N.Y. 290, 292-93, 167 N.E. 447 (1929); *Wilkins v. Earle*, 44 N.Y. 172, 178 (1870); *Hulett v. Swift*, 33 N.Y. 571, 572 (1865).

4. N.Y. Const. art. I, § 14.

the highest priced accommodations. There came into existence other ways for a traveler carrying very valuable property to get protection, such as insurance; he was no longer solely dependent on the inn keeper. As it appeared most unfair, in the light of these altered circumstances, to impose such a greatly expanded unlimited common law liability upon the hotel keeper who usually had no knowledge of the value of the property of its guests, New York and many other states enacted legislation to protect the hotel from fraudulent claims and to impose upon the guests a portion of the risk of loss. In New York, this legislation will be found in sections 200 through 203-a of the General Business Law. These statutes impose certain limitations upon the amount the guest may recover under the common law theory for the loss of, or damage to, his property and the limitations are made dependent upon the nature of the property and the particular place upon the hotel premises where the loss or damage occurred. The statutes are in derogation of the common law and in order to be protected to the extent of the limitation, the hotel must strictly comply with the terms of the statute.⁵

Before proceeding to an examination of the statutes, there is a fundamental point which should be emphasized. These statutes do not create any liability. The liability already exists under the common law. The statutes assume the existence of the common law liability,⁶ but limit the amount of the recovery of the guest.⁷ It also should be noted that the statutes are applicable only where an inn keeper-guest relationship exists and the existence of such relationship is a factual question. In another relationship such as landlord and tenant, you would not have the insurer's liability and the limitation would not be needed.

III. LIABILITY FOR VALUABLES

Section 200 of the New York General Business Law⁸ prescribes that where a hotel keeper provides a safe for the safekeeping of money, jewels,

5. *Epp v. Bowman-Biltmore Hotel Corp.*, 171 Misc. 338, 339, 12 N.Y.S. 2d 384, 385 (N.Y. Munic. Ct. 1939); *Briggs v. Todd*, 28 Misc. 208, 59 N.Y. Supp. 23 (Sup. Ct., App. T. 1899).

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

7. *Honig v. Riley*, 244 N.Y. 105, 110, 155 N.E. 65, 67 (1926).

8. "§ 200. Safes; limited liability

Whenever the proprietor or manager of any hotel, inn or steamboat shall provide a safe in the office of such hotel or steamboat, or other convenient place for the safe keeping of any money, jewels, ornaments, bank notes, bonds, negotiable securities or precious stones, belonging to the guests of or travelers in such hotel, inn or steamboat, and shall notify the guests or travelers thereof by posting a notice stating the fact that such safe is provided, in which such property may be deposited, in a public and conspicuous place and manner in the office and public rooms, and in the public parlors of such hotel or inn, or saloon of such steamboat; and if such guest or traveler shall neglect to deliver such property, to the person in charge of such office for deposit in such safe, the proprietor or manager of such hotel or steamboat

ornaments, bank notes, bonds, negotiable securities or precious stones belonging to guests and notifies the guests of that fact by posting a copy of the section, the hotel keeper will not be liable for the loss of such valuables if the guest neglects to make a deposit of the property. Furthermore, the hotel keeper is not required to receive property for safe-keeping exceeding \$500 in value. If property exceeding \$500 in value is deposited with the hotel, it is not liable, for any loss in excess of that figure by theft or otherwise, except where there is a special agreement in writing.

In order to avail itself of the protection of section 200, the hotel must post a printed copy of the statute in the office, public rooms, and public parlors of the hotel.⁹

As we have seen, the statute does not create any liability but assumes the liability already exists under the common law and limits the amount of the guest's recovery. The section exempts the inn keeper from liability for specified property when the guest neglects to deposit it but the exemption is limited to the particular species of property named in the section and it can not be extended in its operation so as to include property not fairly within its terms. It has been held that certain articles of use are not "jewels" as that word is used in the statute and the hotel's insurer's liability continues with respect to such items. In this category are included among others, watches, watch chains, rosaries and silver traveling articles.¹⁰

Neither does the statute have the effect of limiting the liability of the hotel where the guest does not have reasonable time in which to deposit his property. As for example, when the property is lost immediately after his arrival at the hotel. The courts take the view that there could be no neglect to deposit before there had been an opportunity to deliver.¹¹

shall not be liable for any loss of such property, sustained by such guest or traveler by theft or otherwise; but no hotel or steamboat proprietor, manager or lessee shall be obliged to receive property on deposit for safe keeping, exceeding five hundred dollars in value; and if such guest or traveler shall deliver such property, to the person in charge of such office for deposit in such safe, said proprietor, manager or lessee shall not be liable for any loss thereof, sustained by such guest or traveler by theft or otherwise, in any sum exceeding the sum of five hundred dollars, unless by special agreement in writing with such proprietor, manager or lessee. As amended L. 1923, c. 417, eff. May 21, 1923.⁹

9. *Millhisser v. Beau Site Co.*, 251 N.Y. 290, 296, 167 N.E. 447, 449 (1929).

10. *Ramaley v. Leland*, 43 N.Y. 539 (1871) (watch); *Kennedy v. Bowman-Baltimore Hotel Corp.*, 157 Misc. 416, 283 N.Y. Supp. 900 (Sup. Ct., App. T. 1935) (watch); *Hart v. Mills Hotel*, 144 Misc. 121, 258 N.Y. Supp. 417 (Sup. Ct. 1932) (watch, chain, and knife); *Jones v. Hotel Lathan Co.*, 62 Misc. 620, 115 N.Y. Supp. 1034 (Sup. Ct., App. T. 1909) (watch, watch chain, purse, and rosary); *Wies v. Hoffman House*, 28 Misc. 225, 59 N.Y. Supp. 38 (Sup. Ct., App. T. 1899) (traveling bag and silver traveling articles); *Briggs v. Todd*, 28 Misc. 208, 59 N.Y. Supp. 23 (Sup. Ct., App. T. 1899).

11. *Rosenplaenter v. Roessle*, 54 N.Y. 262 (1873).

It also appears that where the guest has packed his property preliminary to an imminent leaving of the hotel premises, the inn keeper's absolute liability would continue, for here again, there could have been no neglect to deposit.¹²

There is also a line of cases which have held in effect that where the action is predicated upon the theory of negligence, the statute would not constitute a defense to the hotel keeper. In *Hyman v. Southwest Hotel Co.*,¹³ a plaintiff deposited jewelry for safekeeping with the clerk of the hotel. After the deposit was made, the building was destroyed by fire and the valuables were taken out of the safe, placed in a bag and brought to another building. After an inventory was made, it was found that the plaintiff's property could not be located. The court in that case held that if during the fire the property had been taken from the safe in uninjured condition by the hotel manager and he thereafter handled it so carelessly and negligently as to result in its loss, then section 200 could not be invoked in a negligence action so as to limit the liability of the hotel keeper. And in *Chatillon v. Co-Operative Apartment Co.*,¹⁴ where the defendant was being moved from one room to another in the same hotel at the request of and for the convenience of the hotel and it was alleged that her jewel case and contents were lost or stolen through the negligence of the hotel or its employees, it was held that section 200 of the General Business Law would not constitute a bar to a recovery for the full amount where the action is predicated upon negligence.¹⁵

It has frequently been contended in the courts on behalf of guests who have suffered losses that a literal reading of the statute would protect the hotel keeper from civil action even though he had wrongfully stolen the property himself. It is clear that the statute affords no limitation of liability in such a case. The statute does, however, protect the hotel keeper by limiting his liability where the property has been wrongfully stolen by one of the hotel keeper's employees. The courts make a distinction in such cases between a theft *by* a hotel keeper and a theft *from* a hotel keeper by a third person. This principle is very clearly set forth in the case of *Millhiser v. Beau Site Co.*,¹⁶ where a transient guest delivered a package containing jewelry of the value of \$369,800 to the hotel clerk for safekeeping. Later when the package was called for, it was found that jewelry to the extent of \$50,000 was missing. Thereafter, the clerk

12. *Bendetson v. French*, 46 N.Y. 266 (1871).

13. 146 App. Div. 341, 130 N.Y. Supp. 766 (3d Dep't 1911).

14. 90 Misc. 108, 152 N.Y. Supp. 593 (Sup. Ct. 1915), *aff'd*, 171 App. Div. 910, 155 N.Y. Supp. 1097 (1st Dep't 1915).

15. See *Shaine v. Jacobson, Inc.*, 121 Misc. 590, 201 N.Y. Supp. 781 (Sup. Ct. 1923). Cf. *Davis v. Hotel Chelsea*, 186 N.Y. Supp. 75 (Sup. Ct., App. T. 1921); *Millhiser v. Beau Site Co.*, 251 N.Y. 290, 167 N.E. 447 (1929).

16. 251 N.Y. 290, 167 N.E. 447 (1929).

who had received the package from the guest was convicted of stealing the missing jewelry. The court in its opinion stated:

"We do not hold that Section 200 limits the liability of the hotel . . . where the value of the articles left for safekeeping in a safe is not disclosed, and the articles are stolen by the hotel keeper. Such a theft would be by the hotel keeper from the guest and not a theft from the hotel keeper. We read the statute to mean a theft of the articles from the hotel keeper and not a theft by the hotel from the guest. An act of the defendant's employee in stealing the jewelry was a wrongful act, outside the scope of his employment and for his own enrichment. It was not in any sense the act of the defendant."¹⁷

It was noted above that section 200¹⁸ requires that the statutes be posted in a "public and conspicuous place and manner in the office and public rooms and in the public parlors of such hotel." In the *Millhiser* case, since the hotel failed to post the statutes, it was liable for the full \$50,000 damages. However, it has been held that where the hotel has failed to post the statutes, actual notice given to the guest by the hotel of the availability of facilities for the deposit of his valuables was sufficient compliance with the requirements of the statute.¹⁹

IV. LIABILITY FOR PERSONAL PROPERTY OTHER THAN VALUABLES

As we have seen, section 200 of the General Business Law limits the hotel keeper's liability only for valuables specified in the section. There is however another section which limits the inn keeper's liability for other personal property. This is section 201 of the General Business Law.²⁰

17. *Id.* at 295, 167 N.E. at 448.

18. N.Y. General Business Law § 206 contains a similar provision.

19. *Purvis v. Coleman*, 21 N.Y. 111 (1860); *Williams v. Margolis*, 98 N.Y.S. 2d 25 (Sup. Ct., App. T. 1950).

20. "§ 201. Liability for loss of clothing and other personal property limited.

No hotel keeper except as provided in the foregoing section shall be liable for damage to or loss of wearing apparel or other personal property in the room or rooms assigned to a guest for any sum exceeding the sum of five hundred dollars, unless it shall appear that such loss occurred through the fault or negligence of such keeper, nor shall he be liable in any sum exceeding the sum of one hundred dollars for the loss of or damage to any such property when delivered to such keeper for storage or safe keeping in the store room, baggage room or other place elsewhere than in the room or rooms assigned to such guest, unless at the time of delivering the same for storage or safe keeping such value in excess of one hundred dollars shall be stated and a written receipt, stating such value, shall be issued by such keeper, but in no event shall such keeper be liable beyond five hundred dollars, unless it shall appear that such loss occurred through his fault or negligence, and such keeper may make a reasonable charge for storing or keeping such property, nor shall he be liable for the loss of or damage to any merchandise samples or merchandise for sale, unless the guest shall have given such keeper prior written notice of having the same in his possession, together with the value thereof, the receipt of which notice the hotel keeper shall acknowledge in writing over the signature of himself or his agent, but in no event shall such keeper be liable beyond five hundred dollars, unless it shall appear that such loss or damage occurred through his fault or negligence; as to property deposited by guests or patrons in

That section places various limitations upon the recovery of a guest for loss of or damage to his personal property other than valuables. The amount of the limitation is dependent upon the nature of the property and the place about the hotel premises where the particular property may have been lost. The statute relates to five distinct types of losses: (a) from guest rooms; (b) from store rooms or baggage rooms; (c) merchandise for sale and samples; (d) parcels and check rooms; and (e) losses by fire. In the interest of clarity and to facilitate the handling of the subject matter, we will discuss each of the five categories separately.

Losses from Guest Rooms

In placing the limitation upon losses from the guest's room, the statute provides that no hotel keeper shall be liable for damage to or loss of wearing apparel or other personal property in the rooms assigned to the guest for any sum exceeding the sum of \$500, unless it shall appear that the loss occurred through the fault or negligence of the hotel keeper. This portion of the statute is clear and unambiguous and the courts have had little difficulty in applying its provisions to the facts of cases coming before them. It simply means that the hotel keeper's insurer's liability is limited to \$500. If, however, the guest should plead and prove fault or negligence on the part of the hotel keeper in the handling of his personal property, then the statute would not apply and the guest could recover the full value of his property. If, on the other hand, the guest is negligent, such negligence would defeat his right to recovery.²¹

Losses from Store Rooms or Baggage Rooms

The portion of the statute which limits the hotel keeper's liability for losses from store rooms and baggage rooms is by far the most interesting provision of the various statutes imposing limitations of liability for guest losses and has been involved in cases before the appellate courts in numerous instances. Under this provision of the statute no hotel keeper is liable for any sum exceeding \$100 for the loss of or damage to property delivered to the hotel keeper for storage or safekeeping in the store rooms,

the parcel or check room of any hotel or restaurant, the delivery of which is evidence by a check or receipt therefor and for which no fee or charge is exacted, the proprietor shall not be liable beyond seventy-five dollars, unless such value in excess of seventy-five dollars shall be stated upon delivery and a written receipt, stating such value, shall be issued, but he shall in no event be liable beyond one hundred dollars, unless such loss occurs through his fault or negligence. Notwithstanding anything hereinabove contained, no hotel keeper shall be liable for damage to or loss of such property by fire, when it shall appear that such fire was occasioned without his fault or negligence. Added L. 1924, c. 506; amended L. 1925, c. 400, eff. April 8, 1925."

21. *Cohen v. Janlee*, 276 App. Div. 67, 92 N.Y.S. 2d 852 (1st Dep't 1949); *Becker v. Warner*, 90 Hun 187 (N.Y. Sup. Ct., Gen. T. 1895).

baggage rooms or other places elsewhere than in the room or rooms assigned to the guest, unless the guest at the time he delivered the property for storage stated value in excess of \$100, and obtained a written receipt with such stated value from the hotel keeper. In no event, however, is the hotel keeper to be liable beyond \$500 when value has been disclosed and a receipt issued, unless it appears that such loss occurred through the fault or negligence of the hotel keeper. In other words, if the guest deposits his property and does not state any value and obtain a receipt, the liability of the hotel is limited to \$100 even though it is negligent. If the value is stated and a receipt is obtained, then the limitation would increase to \$500. It is only in this latter instance that the hotel may be liable for a greater amount in the event of negligence.

The foregoing interpretation of the statute was sustained in the case of *Honig v. Riley*.²² The underlying principle involved in the statute is that it is designed to prevent possible frauds upon hotel keepers. Apparently the Legislature was of the opinion that \$100 was the reasonable value of articles of property for which the hotel keeper should be asked to assume liability in the absence of notice of a greater value. As stated above, when the hotel keeper is given special notice of greater value, his insurer's liability is increased to \$500 for loss or damage, and to the full value of the property if he is negligent. Under these latter conditions, he has actual notice of the unusual value of the property placed in his charge; thus he is on guard. The Legislature apparently felt that it was not unfair to hold the hotel keeper with notice of value liable for the full value of property lost in a store room where it was lost through want of care on his part. The element of notice however is lacking in the case of an article lost without declaration of value. The effect and purpose of this part of the act is to create a conclusive presumption that an article lost in a store room or baggage room without declaration of value does not exceed the value of \$100.

This portion of the statute was apparently drafted along the same lines as the provisions of contracts of public carriers stipulating limited liability in the event of loss occasioned by the carrier's own negligence. It had been held prior to the time of the enactment of this legislation that carrier contracts requiring written declarations of unusual value and containing a proviso to the effect that where the shipper failed to declare such value liability would be limited to a fixed nominal amount, was not against public policy. This principle was decided in *Rathbone v. N.Y.C. &*

22. 244 N.Y. 105, 155 N.E. 65 (1926). See also *Hoult v. Knott Corp.*, 115 N.Y.L.J., No. 151, p. 2559, cols. 6-7 (N.Y. City Ct. 1946). Cf. *Rawen v. 14 E. 66th St. Corp.*, 126 Misc. 247, 213 N.Y. Supp. 333 (N.Y. Munic. Ct. 1925). The holding in this case appears to have been overruled by the decision of the Court of Appeals in *Honig v. Riley*, see note 7 supra.

H.R.R.R., where the court citing the case of *Magnin v. Dinsmore*,²³ stated:

"It was held that in such cases the carrier had the right to insist upon information with reference to the kind and value of the property as a condition precedent to his liability for negligence for two reasons: 1st, that he might bestow a degree of care commensurate with the risk assumed; and 2d, that he might exact a greater reward for its transportation. If this information is withheld, he is manifestly misled and deceived to his prejudice. He presumably omits the care which he would otherwise give, and he loses the additional compensation to which he is justly entitled."²⁴

The Legislature was undoubtedly familiar with the decisions of the courts upholding the carrier's contracts limiting liability in the event of loss where value had not been disclosed and felt that it was not unreasonable for the guest of a hotel to bear a portion of the risk of loss in such cases. This contention was advanced in *Honig v. Riley*, and the court clearly held that only where value is stated and a receipt is delivered is the exemption from liability in excess of the \$500 maximum dependent upon freedom from negligence or fault. Cardozo, writing for a unanimous court, held as follows:

"The construction is confirmed when the provision is read in conjunction with the provisions immediately preceding it as part of a connected plan. The guest at an inn who delivers goods to the innkeeper for storage or safekeeping in a place other than in his room must state the value of the goods and procure an appropriate receipt. If he fails to do this, the liability of the inn keeper is limited to \$100. In no event, however, is there to be liability in excess of \$500 except for fault or negligence. There are similar provisions in respect of liability for merchandise samples or merchandise for sale. From the beginning of the section to the end, the exemption from liability in excess of the prescribed maximum is absolute where value is concealed. Only where value is stated and a receipt delivered is the exemption made dependent upon freedom from negligence or other fault."²⁵

In the recent case of *Dajkovich v. Waldorf Astoria Corp.*,²⁶ the court permitted a recovery in excess of the \$100 limitation where value was not declared. In that case the guest had left the property at a hotel planning to take up residence at a later date. She went to Europe and was prevented by the war from returning for some seven years. The hotel continued to store the property of the guest free of charge for almost six years and then sold it as unclaimed property pursuant to the provisions of sections 207 and 209 of the General Business Law after mailing notices to the prior residences of the guest and publishing the notice of sale in a local newspaper. The notices mailed were returned to the hotel undelivered. On the trial, there was testimony to the effect that a repre-

23. 70 N.Y. 410 (1877).

24. 140 N.Y. 48, 52, 35 N.E. 418, 420 (1893).

25. 244 N.Y. at 109, 155 N.E. at 66.

26. 285 App. Div. 421, 137 N.Y.S. 2d 764 (1st Dep't 1955).

sentative of the guest made claim for the return of the baggage and offered to take possession of it in November of 1945. As a result of such offer, the trial court held that the baggage could not be deemed to have been unclaimed for six months at the time of sale in January 1946, within the meaning of section 207 of the General Business Law. All of the conversations with the guest and her representatives were had with a single clerk and no entry was made upon any of the records of the hotel so that its management was unaware of the whereabouts of the guest and had no knowledge of the alleged offer at the time of the sale. Upon return to this country the guest commenced suit for \$53,613 and recovered a judgment of \$17,573.36 after trial with a jury. The hotel contended that it had rightfully sold the property pursuant to section 207 and that, in any event, even if there had been some mistake on its part, its liability would be limited to \$100 under section 201 of the General Business Law since value had not been declared. On the appeal the Appellate Division, First Department, held that the hotel did not bring itself within the statute and apparently treated the hotel's mistake as a "conversion." The court further stated that it was not the contemplation of the statute "to limit an innkeeper's liability for its own misappropriation of a guest's property, albeit without *animus furandi*."²⁷

However, in *Adler v. Savoy Plaza, Inc.*,²⁸ the same court held that section 201 did apply where property was delivered by a night manager to an imposter. Judge Peck in the majority opinion stated:

"No value in excess of \$100 having been stated or written receipt secured, defendant's liability for the value of the suit case and its contents, other than jewelry, was limited to \$100. Negligence or even gross negligence on the part of the defendant is no consideration. . . ."²⁹

The act of the night manager in delivering the property to an imposter constituted a conversion. Apparently the court does not feel that conversion is always fatal to the invocation of the statute but that circumstances must be weighed in each case. The decision of the Appellate Division in the *Dajkovich* case may, however, have turned on the point that the court was of the opinion that "There was no 'loss' or 'damage' in this case, and no misadventure of the kind which is contemplated by the statute."³⁰

In *Adler v. Savoy Plaza, Inc.*, it was held that the statute applied where the guest was awaiting accommodations. Frequently cases come up in which the question involved is whether or not the hotel continues to be entitled to the limitation of liability after the guest had departed from

27. Id. at 423, 137 N.Y.S. 2d at 766.

28. 279 App. Div. 110, 103 N.Y.S. 2d 80 (1st Dep't 1951).

29. Id. at 115, 103 N.Y.S. 2d at 83.

30. 285 App. Div. at 422, 137 N.Y.S. 2d at 765.

the premises. In the recent decision of *Dilkes v. Sheraton*,³¹ it was held that the operative date of the statute was the date of deposit and that the limitation would continue in existence even after the departure of the guest from the hotel premises.

Losses of Merchandise and Samples

The section also contains a provision to the effect that no hotel keeper shall be liable for the loss of or damage to any merchandise samples or merchandise for sale unless the guest shall have given the hotel keeper prior written notice of having the same in his possession, stated the value thereof, and obtained a signed receipt from the hotel keeper acknowledging the receipt of such samples, but in no event is the hotel keeper to be liable beyond \$500 unless it appears that the loss or damage occurred through his fault or negligence. This provision of the statute was upheld and applied in *Hagerstrom v. Brainard Hotel Corp.*³²

Losses from Parcel and Check Rooms

Insofar as losses from parcel and check rooms are concerned, section 201 provides that no hotel or restaurant shall be liable beyond the sum of \$75 for losses from such rooms where the delivery has been evidenced by a check or receipt for which no fee is charged. It is further provided that the hotel keeper shall not be liable in excess of \$75 unless the excess value is stated and a receipt is obtained in which event the hotel or restaurant shall not be liable beyond \$100 except where loss occurs through its fault or negligence. This provision of the statute was interpreted by the courts in *Honig v. Riley*. In that case it was held that the liability of a restaurant was limited to \$75 in the absence of a declaration of value and receipt of check. Had a value been declared and a receipt obtained, the amount of the limitation would be increased to \$100. It is only where value is declared that the restaurateur would be liable for a greater amount if it was shown that the loss occurred through his fault or negligence.

Not all checking facilities would constitute a "check room" within the meaning of this section. For example, in *Peters v. Knott Corp.*,³³ it was held that racks located in a hallway on the main floor of the inn between the lobby and the entrance to the dining room did not constitute a check room within the meaning of that statute. In *Gardner v. Roosevelt Hotel*,³⁴

31. 282 App. Div. 488, 125 N.Y.S. 2d 38 (1st Dep't 1953).

32. 45 F. 2d 130 (2d Cir. 1930).

33. 191 Misc. 898, 82 N.Y.S. 2d 650 (Sup. Ct., App. T. 1948).

34. 175 Misc. 610, 24 N.Y.S. 2d 261 (N.Y. City Ct. 1940), rev'd, 176 Misc. 546, 282 N.Y.S. 2d 78 (Sup. Ct., App. T. 1941), reinstated, 263 App. Div. 268, 32 N.Y.S. 2d 208 (1st Dep't 1942).

it was held that checking facilities located on the mezzanine floor of a hotel and enclosed by tables and unused racks did constitute a "check room."³⁵ In *Jacobson v. Belplaza Corp.*,³⁶ it was held that the statute limited the liability of hotel and restaurant proprietors but afforded no protection to independent contractors who operated facilities on a concession basis.³⁷

Losses by Fire

The last provision of section 201 relates to losses occasioned by fire and provides that the hotel keeper shall not be liable for damage to or loss of property by fire when it appears that the fire was occasioned without his fault or negligence. Under this section, it was held in the case of *Steiner v. O'Leary*,³⁸ that the burden of proof in such a case is upon the hotel to show its freedom from negligence. A hotel must plead and prove the absence of fault or negligence in such cases.³⁹

V. LIABILITY FOR LOSSES IN OUT-BUILDINGS

Section 202 of the General Business Law⁴⁰ provides that no inn keeper shall be liable for the loss or destruction by fire of property of a guest stored with his knowledge in a barn or out-building where it shall appear that the loss or destruction was the work of an incendiary or occurred without the fault or negligence of the inn keeper. Under this provision of the statute, it has been held that the burden of proof is upon the inn keeper to show absence of negligence on his part.⁴¹

35. The Appellate Division reversed on appeal because no proof was offered that the statute had been posted in accordance with the requirements of Section 205.

36. 80 F. Supp. 917 (S.D.N.Y. 1948).

37. See also *Marks v. Planetary Recreations, Inc.*, 86 N.Y.S. 2d 487 (Sup. Ct. 1948), aff'd, 274 App. Div. 993, 85 N.Y.S. 2d 316 (1st Dep't 1948). However, one court has indicated that there might be liability as against the hotel where the checking facilities are operated by an independent contractor and the guest has been led to believe that the check room is operated by the hotel. *Grishman v. The Lincoln, Inc.*, 28 N.Y.S. 2d 488 (Sup. Ct., App. T. 1941).

38. 186 Misc. 236, 59 N.Y.S. 2d 729 (N.Y. City Ct. 1945), aff'd, 186 Misc. 577, 64 N.Y.S. 2d 529 (Sup. Ct., App. T. 1946).

39. *Swetlow v. Zindorest Park, Inc.*, 201 Misc. 116, 107 N.Y.S. 2d 786 (N.Y. City Ct. 1951), modified, 202 Misc. 628, 116 N.Y.S. 2d 203 (Sup. Ct., App. T. 1952), aff'd, 231 App. Div. 369, 119 N.Y.S. 2d 446 (1st Dep't 1953).

40. " § 202. Loss by fire

No inn keeper shall be liable for the loss or destruction by fire of property received by him from a guest, stored or being with the knowledge of such guest in a barn or other out-building, where it shall appear that such loss or destruction was the work of an incendiary, and occurred without the fault or negligence of such inn keeper."

41. *Faucett v. Nichols*, 64 N.Y. 377 (1866).

VI. LOSS OF ANIMALS BY FIRE

Section 203 of the General Business Law⁴² provides that the value of any animal belonging to a guest and destroyed by fire shall be deemed to be of a value not in excess of \$300 unless an agreement shall be proved providing for a higher estimate of value.

VII. LIABILITY FOR PROPERTY LOST IN TRANSIT

Section 203-a of the General Business Law⁴³ provides that no hotel keeper shall be liable for any sum exceeding \$250 for the loss of, or damage to, property of a guest delivered to the hotel keeper for transport to or from the hotel, unless at the time of the delivery of the property value in excess of \$250 shall be stated by the guest and a written receipt stating such value shall be issued by the hotel keeper. If, however, such a receipt is issued, the hotel keeper shall not be liable beyond \$500 unless it shall appear that such loss or damage occurred through his fault or negligence.

VIII. STATUTORY POSTING REQUIREMENTS

Under the General Business Law it is required that the keeper of every hotel shall post in a public and conspicuous place and manner in the office *or* public room and in the public parlors of the hotel, a printed copy of sections 200, 201 and 206. This latter section prescribes the general posting requirements with respect to limitations of liability and the posting of rates of charges for accommodations.⁴⁴

Section 200 dealing with the hotel keeper's limitation of liability for valuables requires the posting in the office *and* public rooms and in the public parlors of the hotel, while the general requirement in section 206 demands the posting in the office *or* public room and in the public parlors

42. "§ 203. Value of animals

No animal belonging to a guest and destroyed by fire while on the premises of any inn keeper shall be deemed of greater value than three hundred dollars, unless an agreement shall be proved between such guest and inn keeper that a higher estimate shall be made of the same."

43. "§ 203-a. Hotel keeper's liability for property in transport

No hotel keeper shall be liable in any sum exceeding the sum of two hundred and fifty dollars for the loss of or damage to property of a guest delivered to such keeper, his agent or employee, for transport to or from the hotel, unless at the time of delivering the same such value in excess of two hundred and fifty dollars shall be stated by such guest and a written receipt stating such value shall be issued by such keeper; provided, however, that where such written receipt is issued the keeper shall not be liable beyond five hundred dollars unless it shall appear that such loss or damage occurred through his fault or negligence. Added L. 1937, c. 741, eff. May 28, 1937."

44. "§ 206. Rates to be posted; penalty for violation

Every keeper of a hotel or inn shall post in a public and conspicuous place and manner in the office or public room, and in the public parlors of such hotel or inn, a printed copy of this section and sections two hundred and two hundred and one. . . ."

of such hotel. The courts have held that both sections must be read as a whole and insofar as valuables are concerned, the requirements of section 200 would not be complied with unless the statute was posted in the office and public room and public parlors.⁴⁵

A hotel keeper is required to post copies of sections 203-a and 203-b relating to property in transport in the registration office and public rooms.

IX. MOTELS

The increased use of the automobile as a means of transportation has given rise to a somewhat new class of lodging accommodations catering to the particular needs of the motoring public. At the present time there are no reported cases dealing specifically with the question of the liability of the operators of motels and motor courts for property of their patrons. At some future date, however, the courts will have to determine the nature of the liability of these establishments and also whether the limitations of liability contained in the General Business Law are applicable to such operations.

This question has, however, been touched upon by the courts in zoning and negligence actions. In *Von der Heide v. Zoning Board of Appeals*,⁴⁶ it was held that a motel was not an "inn" within the meaning of that word used in a zoning ordinance. But in *Schermer v. Fremar Corp.*,⁴⁷ it was held that although a place is designated as a motel, it may be deemed a hotel for zoning purposes. It will be recognized, of course, that zoning regulations involve considerations of a different nature from those dealt with in property liability cases.

In an action to recover damages for personal injuries, the Kentucky Court of Appeals in *Langford v. Vandaveer*, stated:

"It is clear the character of the place as respects the relationship of guest and the legal responsibility of the operator as an innkeeper is not lost because of the type of structure or facility being called by a different name."⁴⁸

It would seem that cases of this type must necessarily be decided upon the facts as they appear in each particular instance. Some motels do furnish transient guests with all the customary hotel services such as lodging, meals, maid service, telephone or desk service, laundry service, and all of the other essential services found in a hotel operation. The guest in some such establishments is permitted to stay for as long or short

45. *Epp v. Bowman-Biltmore Hotels Corp.*, 171 Misc. 338, 341. 12 N.Y.S. 2d 384, 386 (N.Y. Munic. Ct. 1939).

46. 204 Misc. 746, 123 N.Y.S. 2d 726 (Sup. Ct.), aff'd, 282 App. Div. 1076, 126 N.Y.S. 2d 852 (2d Dep't 1953).

47. 36 N.J. Super. 46, 114 A.2d 757 (Ch. 1955).

48. 254 S.W. 2d 498, 500 (Ky. Ct. of App. 1953).

a period as he desires. In such cases, it would appear to follow that the common law principle of inn keeper's insurer's liability would be applicable. Many of these establishments come closer to the old type inn than some hotels.⁴⁹ The statutes limiting liabilities, as we have seen, usually refer to an inn, hotel or hotel keeper and such statutes are strictly construed. While there are no reported cases having to do with the liability of motels for property of their patrons, it would appear that if the establishment is a hotel in fact, then the limitation of liability should apply even though the establishment is referred to as a "motel" or other name.⁵⁰

X. CONCLUSION

It has been the purpose of this article to trace the growth of the principle of inn keeper's insurer's liability. The Legislature in effecting modifications of this principle of absolute liability was required to appraise and balance two conflicting interests: the inn keeper's and the guest's. This conflict of interest has been resolved by legislation which provides in most cases for a continuation of the inn keeper's insurer's liability for the value of property which a guest might reasonably be expected to have in his possession but requires the guest to bear the risk of loss of property in excess of such value. It is reasonable to assume that the law of inn keepers will be extended in its application to newer types of accommodations such as motels, which possess the essential characteristics of hotels.

49. *Ibid.*

50. See *Friedman v. Shindlers Prairie House, Inc.*, 224 App. Div. 232, 230 N.Y. Supp. 44 (3d Dep't 1928), which involved a determination of whether an establishment was a hotel or a boarding house. See also *Dixon v. Robbins*, 246 N.Y. 169, 158 N.E. 63 (1927); *Waite Construction Co. v. Chase*, 197 App. Div. 333, 188 N.Y. Supp. 589 (1st Dep't 1921).