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# Modern Liability of Innkeepers Under Virginia Statute

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in a more equitable position, and is better calculated to deal with the problem in such a way as to better attain the furtherance of justice.

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## MODERN LIABILITY OF INNKEEPERS— UNDER VIRGINIA STATUTE

A recent case decided in the United States District Court for the Eastern District of Virginia[1] interpreted a Virginia statute limiting the common law liability of hotelkeepers.[2]

The plaintiff, a jewelry salesman, upon checking into the hotel of the defendant, requested that his valise, containing jewelry afterwards alleged to be of a value in excess of $100,000.00, be placed in the hotel vault which was maintained for the safe-keeping of valuables of guests in compliance with the above cited section of the Virginia Code. The plaintiff informed the clerk that the contents of the valise were valuable but did not indicate its actual value, nor did the clerk inquire as to its specific value. The clerk deposited the valise in the vault, but when the plaintiff requested his valise two days later it could not be found; whereupon plaintiff filed suit for the alleged value of its contents. The defendant filed a motion for summary judgment insisting that his liability was limited to $500.00 by the terms of the Virginia Statute in question. This contention was based on the concluding sentence of that section of the Code which states:

> The keeper of any such hotel, inn or ordinary shall not be obliged to receive from any one guest for deposit, in such office, any property hereinbefore described, exceeding a total value of five hundred dollars.[3]

Since the court entertained the matter as an original proposition, and since the Virginia Code Section in question is apparently not duplicated in any other jurisdiction, (although nearly all jurisdictions now have statutes of one form or another limiting the common law liability of innkeepers), there was a dearth of per-

[1] Sagman v. Richmond Hotels, Inc., 138 F.Supp. 407 (D.C.E.D. Va. 1956).
[2] Va. Code §35-10 (1950).
[3] *Ibid.*

tinent authority on the matter. In considering the cases cited[4] and quoted by Counsel, the court determined that they all involved statutes materially different from Virginia's, and for that reason were " . . . not particularly helpful."[5]

The opinion of the court, therefore, resolves itself largely into statutory interpretation and policy consideration. Judge Hutcheson, in holding the defendant liable as at common law for the full amount of the loss, reasoned that since such statutes are for the benefit of the innkeeper, the innkeeper must comply to bring himself within its limitations. There is nothing in the Virginia statute relating to any absolute limitation of liability: it nowhere requires the guest to declare the value of the property to be protected. Judicial notice was taken of the fact that many guests would be nonresidents of Virginia and would not be lawyers, and that the innkeeper would obviously be more familiar with the statute. The Court concluded that the statute intended to place the duty upon the hotelkeeper to ascertain at his peril the value of the jewelry placed for safekeeping, or to stand liable as an insurer in the event of loss.

The conclusion of the court follows logically from the words of the statute, and though it was appealingly argued by counsel for the defendant that the statute was intended to place an absolute limitation on the common law liability of hotelkeepers, such a construction would have been tortured indeed.

This, however, is not to agree that the substantive effect of such an interpretation is equitable. It is submitted rather, that counsel for the defendant was correct in its plea that such a result

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[4] Cases cited by Plaintiff: Wagner v. Congress Square Hotel, 115 Me. 190, 98 A. 660 (1916); Boswell v. Dewald, 2 Ind.App. 303, 50 Am.St.Rep. 240, 28 N.E. 430 (1891); Wilkins v. Farle, 44 N.Y. 172, 4 Am.Rep. 655 (1870); Goodwin v. Georgian Hotel Co., 197 Wash. 173, 84 P.2d 681, 119 A.L.R. 788 (1938); Hackney v. Southwest Hotels, 210 Ark. 234, 195 S.W.2d 55 (1946); Providence Washington Ins. Co. v. Hotel Marysville, 140 P.2d 689, 60 Cal. App.2d 338 (1943); Stroll v. Almon C. Judd Co., 106 Conn. 551, 138 A. 479 (1927).

Cases cited by Defendant: Providence Washington Ins. Co. v. Hotel Marysville, 140 P.2d 698, 60 Cal.App.2d 338 (1943); Cunningham v. Bucky, 26 S.E. 442, 42 W.Va. 671 (1896); Jones v. Savannah Hotel Co., 14 Ga.App. 618, 82 S.E. 155 (1914); Millhiser v. Bean Site Co., 251 N.Y. 290, 167 N.E. 447 (1929); Ely v. Charellen Corp., 120 F.2d 984 (1941).

[5] Sagman v. Richmond Hotels Inc., *Supra* at 409 (1956).

places a harsh burden on hotelkeepers notwithstanding the fact that it also gives them an opportunity to limit their common law liability through positive action.

What are the needs of modern society that make it necessary to impose upon hotelkeepers a rule that served its purpose well in the days when the highways of England were infested with bandits, and when inns were as much places of protection as places of sustenance and rest? It is suggested that this rule of the common law has outlived its usefulness and that when the reason for the rule ceases, the rule itself should cease.

K. H. L.

## WORKMEN'S COMPENSATION— SUBROGATION RIGHTS OF EMPLOYER BARRED AS AGAINST STATUTORY CO-EMPLOYEES

*Rea* v. *Ford*,[1] a recent decision handed down by the Supreme Court of Appeals of Virginia, places Virginia with a small minority of states in respect to the question: Is a sub-contractor amenable to suit when an employee of the principal contractor is injured due to the negligence of the sub-contractor or his agent? Virginia, along with Massachusetts and Florida, holds that the sub-contractor is not amenable to suit.

The facts of the instant case showed that the principal contractor rented a crane and its crew from a sub-contractor for work on a construction project. During this work, due to negligence of either the sub-contractor or his agent, or both, an industrial accident occurred resulting in the death of one of the principal contractor's employees.[2] Decedent's widow asserted her claim for compensation under the Workmen's Compensation Act against the principal contractor and his insurance carrier. An award was entered in her favor by the industrial commission from which no appeal was taken.[3].

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[1] 198 Va. 712, 96 S.E.2d 92 (1956).

[2] Although agency and negligence questions arose, the court failed to discuss them.

[3] Evidence appeared that the sub-contractor, Ford, had accepted and complied with the act.