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Draft European Convention regarding the liability of innkeepers for loss of or injury to goods brought to inns by guests

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Reginald Thomas PAGET, United Kingdom, Socialist Group

1. 1956 - 8th Session - Third part

Draft Recommendation presented by the Committee on Legal and Administrative Questions

The Assembly,

Considering that the Committee of Ministers are, within the framework of the Programme of Work, studying the possibility of unifying and harmonising the laws of Member States

Considering that they have said that they would welcome the Assembly's proposals in this connection (Document 238, paragraph 87) ;

Considering that the Assembly has expressed the view that the law affecting the liability of innkeepers was a suitable subject for a beginning to be made on the work of unifying the laws of Member States ;

Having examined the draft uniform law and other preparatory work begun before the war by the International Institute for the Unification of Private Law in Rome on this question;

AHaving seen the report of the British Law Reform Committee who considered the work of the International Institute and having noted t h a t an Act based on this report has been passed in the United Kingdom substantially in conformity with the proposals of the Inst i t u t e ;

Recognising that the increase in international travel makes it desirable for the other Member States to adopt a law similar to the British Act,.

Recommends to the Committee of Ministers :

1. t h a t they should appoint a Committee of Experts to prepare, on the basis of t h e draft uniform law drawn up in 1932 by the International Institute for the Unification of Private Law in Rome and of the British Hotel Proprietors' Act, 1956, which is based on the work of the Institute, a European convention setting out a uniform law on the liability of innkeepers ;
2. t h a t authority should be given, as on similar occasions previously, for a joint meeting to be held in due course between the appropriate Sub-committee of the Assembly Committee on Legal and Administrative Questions, on the one hand, and the Committee of Experts, or a Sub-committee thereof, on the other;
3. t h a t the draft Convention should be communicated to the Assembly for an opinion before it is signed by Member Governments.

Report of the Committee on Legal and Administrative Questions (Rapporteur : Mr. PAGET)

1. In 1932 the International Hotel Association submitted to t h e International Institute for the Unification of Private Law in Rome the question of the liability of innkeepers for loss of or injury to goods brought to inns by guests. In view of the increase in international travel the desirability of a commonlaw governing all hotels used by international travellers was recognised. A committee was appointed by the President of the Institute, M. D'Amelio, and consisted of M. D'Amelio himself, First President of the Court of Cassation of the Kingdom of Italy, Sir Cecil Hurst, President of the Permanent Court of International Justice, M. Henri Capitant, Professor of Law in Paris, M. Cesare Pinchetti, President of the International Alliance of Innkeepers, M. Seiler, President of the Swiss Hotels Association, and three members of t h e Secretariat of t h e International Institute for the Unification of Private Law. A draft law was prepared in the following terms :

AR T I C L E 1

Innkeepers are liable for any injury to or destruction or loss of goods brought to the inn by guests. Such liability is limited to 1,000 gold francs.

A R T I C L E 2

The liability of an innkeeper is, however, unlimited :

a. if the loss or damage is due to his fault or to the fault of any person for whom he is responsible;

b. if the goods have been deposited with him or with any person for whom lie is responsible;

c. if he has refused to take deposit of goods which he is bound to receive for safe custody. He is bound to receive such articles as securities, money or other valuables.

A R T I C L E 3

An innkeeper is not liable if he proves t h a t the loss or damage is due :

a. to the guest or any person visiting or accompanying him, or to a person in his employment;

b. to the act of God (vis major).

A R T I C L E 4

The rights of t h e guest, as determined by this law, lapse if he fails to notify the innkeeper of the loss or damage without delay after its discovery

A R T I C L E 5

Any agreement of which the effect is to annul or reduce the innkeeper's liability is void.

AR T I C L E 6

The provisions of the present law apply from the time of arrival of the goods at the inn, except when a guest has dispatched goods in advance and does not stay at the inn himself.

They cease to apply when the goods leave the inn.

AR T I C L E 7

The provisions of the present law do not apply to property such as carriages, motor cars or live animals accommodated in outbuildings or in premises made available by the inn.

The same rule applies to goods of a guest retained by the innkeeper under his lien.

R T I C L E 8

The national law is applicable in all cases not regulated by the present law.

A R T I C L E 9

The innkeeper loses the benefit of the present law, unless he exhibits a copy of it in a part of the inn accessible to guests.

2. The law in question was submitted to the Governments of the Member States in October 1934, and their opinions were requested thereon. The result was disappointing. No reply at all was received from the Governments of France, Switzerland, Sweden, the U. S. A. and Egypt. Belgium, Italy, Spain and the Netherlands supported the draft law in prinr ciples; Denmark and Norway expressed generally unfavourable views, and the United Kingdom was critical of certain aspects. No nation has taken any action to adopt the suggested draft law, and only Britain has taken any action towards a general reform of the law affecting innkeepers.

3. At the present time the law of the member. countries of the Council of Europe varies considerably. The law least favourable to hotel-keepers appears to be t h a t of Holland. Here hotel-keepers would appear to be liable without proof of any fault on their part for any loss or damage to the.goods of their guests without any limitation whatever, save that their liability may be modified but not altogether removed if it is shown that the loss resulted from the guest's own negligence

The law in Belgium is similar to that in Holland, save that the hotel-keepers' liabil i ty is limited to 1,000 francs in so far as the loss consists of money, shares, valuables and jewels not in daily use and not deposited with t h e hotel-keeper for safe custody.

In France t h e law is similar to Holland, save t h a t the liability for jewellery, valuables, shares, money and other precious objects is limited to 20,000 francs unless deposited for safe keeping with the hotel-keeper. The hotelkeeper may still disclaim liability if he can prove t h a t the loss resulted from the fault of the guest of from force majeure.

Swiss law is the most favourable to innkeepers. Here the innkeepers' liability is limited to 1,000 Swiss francs unless the goods are deposited for safe custody with the hotelier or he refuses to take the articles into his safe deposit.

The Turkish law is similar to that of Switzerland, t h e limitationbeing£ 100 (Turkish).

In Austria hotel-keepers are responsible for goods brought by their clients unless they can prove that the loss or damage was not caused by themselves or by their servants, or by persons coming and going into the hotel. If a client has been partially responsible for the loss, damages are apportioned. There is further a limitation of 200 Austrian shillings applicable to jewels, money and papers unless deposited for safe keeping.

In Norway and Denmark hotel-keepers are not responsible, save on proof of negligence.

In Sweden the hotel-keeper appears to be responsible only in so far as he or his servants have been entrusted with the goods. That is to say, when luggage is handed to the porter the hotel proprietor is responsible until the luggage has been put in the guest's room but not afterwards

In Italy the liability of hotel-keepers is limited to 5,000 Italian lire unless negligence can be proved or the goods have been taken into safe custody by the hotel-keeper

In Greece the hotel-keeper is responsible for goods of guests brought to the hotel unless the damage or loss occurs through the client's fault, or through force majeure. So far as jewels, shares or money are concerned t h e liability is limited to 30,000 drachma.

In Germany the hotel-keeper is responsible, without limitation, for goods of guests brought to the hotel unless the damage or loss occurs through the client's fault or negligence, or through the fault or negligence of a person accompanying the client, or through force majeure, or on account of the nature of the goods. As far as money, shares and valuables are concerned the liability is limited to 1,000 German marks, unless these goods are deposited with the hotel-keeper or unless he refuses to accept them for deposit, or unless the loss or damage occurs through his fault or negligence, or through the fault or negligence of his employees.

4. In England the law affecting the liabili ty of innkeepers was considered by the Law Reform Committee consisting of distinguished British judges and lawyers. That Committee reported in April 1954 and its report is attached hereto (Appendix B). The Committee considered amongst other things the desirability of bringing the law into general conformity with the law of other countries. As a result of its recommendations a Bill was prepared and has now passed both Houses of Parliament. Copy of this Act is attached (Appendix A). It will be seen that the gênerai effect of the Act is :

1. That a hotel-keeper or innkeeper shall be defined as one who offers accommodation to any traveller presenting himself who appears able and willing to pay a reasonable sum for t h e services and facilities provided, and who is in a fit state to be received.

2. The innkeeper's liability as an inkeeper at common law is to indemnify the guest against all loss, unless that loss be incurred by reason of the guest's own negligence or by act of God such as a sudden earthquake or typhoon. I t is this liability that is referred to in paragraph 1 (1) of the Act.

3. The innkeeper's liability as an innkeeper applies only to the property of guests who have booked accommodation for the night and is limited in time to the period between the midnights preceding and succeeding the arrival and departure of the guest, and in value to £50 for any one article, and to £100 altogether. These limitations do not apply, however, where the loss, theft or damages resulted through the default, negligence or wilful act of the proprietor or some servant of his, or where the property had been deposited for safe custody with the proprietor, or where the property had been tendered for safe deposit and facilities for depositing refused. Finally, the innkeeper will not be responsible for loss or damage to any motor car in the hotel garage or yard unless, of course, t h a t damage was caused by the negligence of the hotel proprietor or his servants.

5. In view of the fact that this British Act has just been passed and is the result of an investigation that considered foreign law, and in view of the fact that it brings British law into fairly close relationship with the law of most Continental countries, it is suggested that the new British law together with the draft uniform law prepared by the International Institute for the Unification of Private Law in Rome should serve as a model and that other member countries should be asked to reform their law affecting hotel-keepers upon similar lines.

6. This report was prepared by a Subcommittee of the Committee on Legal and Administrative Questions under the chairmanto express warm appreciation for the assisship of M. Schmal, who worked in close touch with the International Institute for the Unification of Private Law in Rome. It is desired tance given by the Institute. The Report was considered by the full Committee on 22nd October 1956 and agreed to unanimously with one abstention, t h a t of M. Kopf, who explained t h a t he could not vote for a measure which, as regards his country at least, would have the effect of diminishing the protection enjoyed by guests at hotels.

Appendix 1 APPENDIX A

Hotel Proprietors Act, 1956

An Act to amend the law relating to inns and innkeepers

A. D. 1956

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Inns and innkeepers

1.

1. An hotel within the meaning of this Act shall, and any other establishment shall not, be deemed to be an inn; and the duties, liabilities and rights which immediately before the commencement of this Act by law attached to an innkeeper as such shall, subject to the provisions of this Act, attach to the proprietor of such an hotel and shall not attach to any other person.
2. The proprietor of an hotel shall, as an innkeeper, be under the like liability, if any, to make good to any guest of his any damage to property brought to the hotel as he would be under to make good the loss thereof
3. In this Act, the expression " hotel " means an establishment held out by the proprietor as offering food, drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received.

Modifications of liabilities and rights of innkeepers as such

2.

1. Without prejudice to any other liability incurred by him with respect to any property brought to the hotel, the proprietor of an hotel shall not be liable as an innkeeper to make good to any traveller any loss of or damage to such property except where :
    a. at the time of the loss or damage sleeping accommodation at the hotel had been engaged for the traveller; and
    b. the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which the traveller was a guest at the hotel and entitled to use the accommodation so engaged.
2. Without prejudice to any other liability or right of his with respect thereto, the proprietor of an hotel shall not as an innkeeper be liable to make good to any guest, of his any loss of or damage to, or have any lien on, any vehicle, or any horse or other live animal or its harness or other equipment.
3. Where the proprietor of an hotel is liable as an innkeeper to make good the loss of or any damage to property brought to the hotel his liability to any one guest shall not exceed fifty pounds in respect of any one article, or one hundred pounds in the aggregate, except where :
    a. the property was stolen, lost or damaged through the default, neglect or wilful act of the proprietor or some servant of his; or
    b. the property was deposited by or on behalf of the guest expressly for safe custody with the proprietor or some servant of his authorised, or appearing to be authorised, for the purpose, and, if so required by the proprietor or that servant, in a container fastened or sealed by the depositor; or
    c. at a time after the guest had arrived at the hotel, either the property in question was offered for deposit as aforesaid and the proprietor or his servant refused to receive it, or the guest or some other guest acting on his behalf wished so to offer the property in question but, through the default of the proprietor or a servant of his, was unable to do so :

Provided that the proprietor shall not be entitled to the protection of this subsection unless, at the time when the property in question was brought to the hotel, a copy of the notico set out in the Schedule to this Act printed in plain type was conspicuously displayed in a place where it could conveniently be read by his guests at or near the reception office or desk or, where there is no reception office or desk, at or near the main entrance to the hotel.

Short title, repeal, extent and commencement. 26 and 27 Vict. C. 41

3.

1. This Act may be cited as the Hotel Proprietors Act, 1956.
2. The Innkeepers' Liability Act, 1863, is hereby repealed.
3. This Act shall not extend to Northern Ireland.
4. This Act shall come into operation on the first day of January, nineteen hundred and fifty-seven.

A. D. 1956 Section 2

S C H E D U L E

Notice - Loss of or damage to guests' property

Under the Hotel Proprietors Act, 1956, a hotel proprietor may in certain circumstances be liable to make good any loss of or damage to a guest's property even though it was not due to any fault of the proprietor or staff of the hotel

This liability, however :

a. extends only to the property of guests who have engaged sleeping accommodation at the hotel;

b. is limited to £ 50 for any one article and a total of £ 100 in the case of any one guest, except in the case of property which has been deposited, or offered for deposit, for safe custody,

c. does not cover motor-cars or other vehicles of any kind or horses or other live animals.

The display of this notice does not constitute an admission either that the Act applies to this hotel or that liability thereunder attaches to the proprietor of this hotel in any particular case.

Appendix 2 APENDIX B

Second Report of the Law Reform Committee in the United Kingdom (Innkeepers' liability for property of travellers, guests and residents)[2]

Members of the Committee :

The Right Honourable Lord Justice Jenkins, Chairman

The Right Honourable Lord Goddard, Lord Chief Justice of England

The Right Honourable Lord Asquith of Bishopstone

The Honourable Mr. Justice Devlin.

The Honourable Mr. Justice Parker.

M. R. J. F. Burrows.

M. W. J. K. Diplock, Q. C.i

M. Gerald Gardiner, Q. C.

M. le professeur A. L. Goodhart, K. B. E., Q. C, D. C. L., LL. D.

M. J. N. Cray, D. S. O., Q. C.

M. R. E. Meggary.

M. R. T. Outen"

M. le professeur Sir David Hughes Parry.

M. le professeur E. C. S. Wade, LL. D

M. D. W. Dobson, 0. B. E., Secrétaire.

M. K. M. Newman, Secrétaire adjoint.

To the Right Honourable the Lord Simonds, Lord High Chancellor of Great Britain

My Lord,

1. The Law Reform Committee was appointed on the 16th June 1952 " to consider, having regard especially to judicial decisions, what changes are desirable in such legal doctrines as the Lord Chancellor may from time to time refer to the Committee " and was subsequently asked by your Lordship to consider whether any changes are desirable in the law relating to innkeepers' liability in respect of the property of travellers, guests and residents.

2. We thought it desirable to refer this matter in the first instance to a sub-committee under the chairmanship of Mr. Justice Parker, to which sub-committee Mr. George Pollock, Q. C. was, with your Lordship's approval, co-opted. The sub-committee took evidence from the associations and other bodies which appeared to be interested and received written memoranda from :

The Brewers' Society

The British Hotels and Restaurants Association

The Law Society

The National Consultative Council of the Retail Liquor Trade of Great Britain and Northern Ireland

The Standing Joint Committee of the Royal Automobile Club, the Automobile Association and the Royal Scottish Automobile Club.

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2. Presented by the Lord High Chancellor to Parliament by Command of Her Majesty, May 1954 (London, H. M. Stationery Office, Cmd. 9161).

In addition the sub-committee heard oral evidence on behalf of the Brewers' Society and the British Hotels and Restaurants Association.

3. The common law has for centuries regarded innkeepers as being in a special position in regard to their duty to receive travellers and their liability for the goods which travellers bring with them to the inn. This liability does not depend upon contract or bailment, but upon the custom of the realm with regard to innkeepers, subject to the modifications made by Parliament in the Innkeepers Liability Act, i863.

4. The Act of 1863 did not attempt to define what was meant by an inn further than by saying that it meant " any hotel, inn, tavern, public house or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests ". Whether such a place constitutes an inn at common law depends upon the facts of the case. The essential requirements appear to be (1) readiness to provide refreshment and accommodation for all travellers willing to pay a reasonable price and who come in a state fit to be received; and (2) the provision of lodging accommodation for those who wish to stay the night. Unless the proprietor holds himself out as prepared to receive all travellers or casual visitors, the place in question cannot generally be regarded in law as an inn. A distinction, which is by no means always easy to apply in individual cases, is thus drawn between an inn and such places as boarding-houses and so-called " private hotels ".

5. An innkeeper's duty is to receive and lodge every " traveller " unless he has reasonable grounds for refusing to do so, and to receive the traveller's horse, carriage, car or other vehicle, and any other goods with which a person usually travels. It has always been the law that the innkeeper's obligations are confined to travellers, but that term has in the course of time received an extended meaning. In Tudor and Stuart times its meaning was confined to those who resorted to the inn for accommodation for the night. But since, at any rate, 1793, when Bennett v. Mellor, 5 Terra Rep. 273, was decided, it has been clear that it is not necessary for a guest at the inn to stay the night in order that he may be regarded as a traveller. It is sufficient that he resorts to the inn for such refreshment as the place affords, and in Williams v. Linnitt (1951) 1 K. B. 565, the Court of Appeal had no difficulty in deciding that a person who visited an inn for a drink, although the inn was only a short distance from his own home, was clearly a traveller. It is true that in Rex v. Higgins (1948) 1 K. B. 165, the Court of Criminal Appeal said that people living in the immediate neighbourhood of an inn would not be travellers, but this view can hardly be sustained since Williams v. Linnitt

After some time at the inn a person may cease to be a traveller and become a mere lodger, but the time required for this purpose may well be an extended one. Mere length of stay is not conclusive but is one of the circumstances to be taken into account. Once the traveller is converted into a lodger, the innkeeper's liability towards him will depend upon the ordinary law of negligence.

6. At common law an innkeeper is under a strict liability to answer for the loss of all goods brought to the inn by a traveller in the sense in which that term has been defined by the courts. He is in effect an insurer of his guests' goods against loss and it is immaterial whether the goods are lost by theft, through the negligence or default of another guest, or by the acts of the innkeeper's own servants. This liability of innkeepers no doubt originated at a time when they were not infrequently the associates of thieves and cutpurses and when travel was a difficult and often hazardous undertaking in which the traveller was largely at the merey of the dishonest innkeeper. As the liability is based on the custom of the realm and not on contract, the innkeeper cannot escape liability by warning his guests to take special precautions, nor can he by any express contract restrict his liability. The only cases in which the innkeeper can escape liability are those where he can show that the loss of the goods was due to act of God or the Queen's enemies, or to the guest's own negligence. The innkeeper is, however, liable only for goods brought within the curtilage or hospitium of the inn, unless by his conduct he has assumed control over goods in another part of the premises. The hospitium consists of the inn buildings themselves or buildings so closely related to them as to be treated for this purpose as forming part of them, for instance, stables or garages annexed to the inn, or an inner court enclosed by the walls of the inn. In Williams v. Linnitt (supra) the majority of the Court of Appeal held that a car park in front of an inn must be regarded as within the hospitium, so that the innkeeper was liable for the loss of a car which was stolen while its owner was having a drink at the inn, and could not escape liability by putting up a notice to the effect that he would not be liable for the loss of anything in the car park.

7. In 1863 Parliament sought to place some restrictions on the strict liability of innkeepers by providing that an innkeeper should not be liable to any guest for the loss of or injury to goods to an amount greater than £30, unless the goods are lost or damaged through the wilful act, default or neglect of the innkeeper or any servant of his, or unless the goods have been deposited expressly for safe custody with the innkeeper. An innkeeper can claim the protection of the Act only if he exhibits a copy of soction 1 in a conspicuous part of the hall or entrance to the inn. More important is the fact that the protection of the Act does not extond to horses or other live animals or to any carriage, which now of course includes a motor car.

8. Although it would appear from the terms of section 1 of the Act that Parliament regarded an innkeeper's liability for damage to a guest's goods as being on the same footing as his liability for loss of the goods, it has been said (see, for example, Halsbury's Laws of England 2nd edn. Vol. XVIII, p. 151) that an innkeeper is not liable for damage to goods unloss he has been negligent. This view appears to be founded on Winkworth v. Raven (1931) 1 K. B. 652 (a case before the Divisional Court in which a guest's car had been damaged by frost while standing in an unheated garage which was open on one side). In the course of his judgment Swift, J. said that an innkeeper is only responsible in case of injury to his guest's goods if negligence on his part is proved. This statement, although frequently quoted, was probably unnecessary for the decision of the case, which could have been decided on the narrower ground that an innkeeper's liability to supply accommodation is satisfied by providing accommodation which is reasonably fit for its purpose. This indeed was the ground on which Macnaghten, J. based his judgment..

In the absence of any clear decision to the contrary, we think that the wording of section 1 of the Act of 1863 may well he sufficient to justify the view that an innkeeper is in law under the same strict liability for damage to goods as he undoubtedly is in the case of their loss, but the matter is not free from doubt.

9. It has been represented to us, notably by the Law Society, that the time has come for an alteration in the old common law liability of an innkeeper as an insurer of his guests' goods. The historical reasons for such a rule have, it is said, to a large extent disappeared. Travel is now very much more common than it used to be and travellers are no longer exposed to danger from highwaymen in league with innkeepers. There has, moreover, been a considerable growth in the number of residential hotels and similar places which are not inns, at which travellers do not have the benefit of the special protection afforded by the common law to those who stay at inns. For these reasons, it is suggested, innkeepers should be placed in the same position as the proprietors of residential hotels and similar establishments and their liability should depend upon negligence, thus removing an anomaly for which the justification is said to have disappeared.

10. We have given careful consideration to the views described in the last paragraph, more particularly as we think that there is considerable force in the argument that the distinction between inns and other places such as residential hotels which are not inns within the meaning of the law is not easy to defend in theory and, often at any rate, difficult to draw clearly in practice. We have come to the conclusion, however, that the principle of strict liability ought to be retained. Apart from the case of motor cars, to which we refer hereafter, the evidence which we have received shows few cases of hardship. That this is so is, we think, due to the universal practice of innkeepers in insuring against their liabilities. From enquiries which we have made, it would appear that in the case of the ordinary hotelkeeper's liability policy the proportion of the premium attributable to the strict liability of an inkeeper forms but a small proportion of the whole, and it is therefore unlikely, so far as his insurance premium is concerned, that an innkeeper would benefit to any appreciable extent by the abolition of the rule of strict liability. We think there is still good reason why persons who hold themselves out as being willing to provide food and lodging for all comers should be under a special obligation in regard to the safety of the goods which travellers bring with them to the inn, and upon which in return the innkeeper, unlike the boarding housekeeper, has a lien for his charges. (We should add that the evidence, we have received satisfies us that a substantial number of innkeepers attach considerable importance to the right to exercise this lien). And the fact that a new class of residential hotels and similar places has grown up does not seem to us to be a valid reason for abolishing the old rule. The traveller is today as much as in the past exposed to the risk of loss through neglect on the part of the innkeeper or his servants, but it is often by the nature of the case difficult, if not impossible, for him to prove negligence, as would be necessary in order to establish the innkeeper's liability if the law were to be altered in the manner suggested by the Law Society; unless, indeed, the burden of disproving negligence were placed on the innkeeper, an alteration which would not, we think, necessarily be acceptable to those who complain of the present law. We think it is not unreasonable that innkeepers should be expected to insure against liability for loss of travellers' goods on their premises. They can do so much more easily and very much more cheaply than the ordinary traveller could insure if the law were altered. We have in mind especially the personal belongings which such a traveller brings with him and which, unlike articles of jewellery, are rarely insured.

We are fortified in this conclusion by the similarity which exists between English law and the laws of many foreign countries under which special obligations are imposed upon innkeepers in regard to the safety of their guests' property. This applies not only to the countries which have accepted the common law, but also, we understand, to such countries as France, Germany and Switzerland.

11. It is no doubt true that one of the unsatisfactory features of the present law is the difficulty of ascertaining whether the premises in question constitute an inn or not. If the distinction between inns and such establishments as residential hotels is to be retained, as we recommend that it should be, it would be satisfactory to provide some easily recognisable basis for the distinction, but wo have not found it possible to do this. We have considered whether some factual test, based, for instance, on the number of bedrooms,

would be satisfactory, but we have come to the conclusion that it would not. Moreover, we think that the difficulty of deciding whether or not any given establishment is an inn is probably greater in theory than in practice, for it seems likely that the owner of any premises whose status might be doubtful will have concluded the question against himself by exhibiting the statutory notice under the Act of 1863. We think, however, that in any legislation which may be drafted to give effect to our recommendations an attempt should be made to define an inn (or, as we suggest it might be called, a hotel) in a more satisfactory way than was done by Parliament in 1863. Such a definition would no doubt turn upon the fact that a hotelkeeper is one who holds himself out as able and willing to provide board and lodging for all persons desirous of making use of the facilities of the hotel and willing to pay the hotelkeeper's reasonable charges therefor, and who come to the hotel in a state fit to be received.

12. We see no reason why the law should not return to its .old conception of a traveller as one who stays the night at the inn or hotel, except that we would include any person by or for whom a bedroom is engaged. If this were done, it would remove the unsatisfactory distinction under the existing law between the position of the person who takes a meal at a restaurant and one who dines out at an " inn ". This change in itself would go a long way towards removing the undoubted grievance felt by innkeepers under modern conditions, particularly in regard to their strict liability for loss of motor cars brought to the inn by persons calling for casual refreshment. The evidence which we have received and the facts of such cases as Williams v. Linnitt (supra) disclose a real hardship in this matter. There is in our view a substantial distinction between the car which a traveller brings with him to an inn and which, unknown to the innkeeper, and contrary, perhaps, to his express instructions, the traveller may leave in a car park, and other property which the traveller takes inside the inn and over which the innkeeper accordingly has some measure of control. There is, moreover, the further point that it is common for owners of motor cars to insure against loss, so that frequently in the case of a claim against an innkeeper the contest is merely one between two insurance companies. We think therefore that it is reasonable that an innkeeper should no longer be under a strict liability in regard to motor vehicles (in which expression we should include motor bicycles) brought to the inn, with the corollary that he should no longer have a lien on them for his charges.

13. Apart from the case of motor vehicles, we think that the principles on which the Innkeepers Liability Act, 1863, was based are satisfactory and should be retained. We recommend, however, that in order to take account of the fall in the value of money the limit of value above which an innkeeper is liable only if the goods have been expressly deposited for safe custody, or if they have been lost through his own act or default, should be increased from £30 to £100. But we think it is reasonable that the innkeeper should not be liable for more than £50 in respect of any one article. The innkeeper's right to take advantage of this statutory limitation of liability should depend upon his exhibiting a copy of the appropriate Act, in a conspicuous position in the reception office if there is one, and if not, at the main entrance to the hotel.

So far as goods deposited for safe custody are concerned, no difficulty appears to have been caused by the wording of the Act of 1863. As we understand that provision, the_ goods must be deposited with the innkeeper or with some person having ostensible authority to receive them for safe custody, but we think that the wording of the existing Act might well be repeated in any future legislation.

14. As we have mentioned in paragraph 8, the existing law regarding an innkeeper's liability for damage to goods is not free from doubt. We do not think that any logical distinction can be drawn between the loss of goods and damage to them, and in our view it should be made clear by declaratory legislation that the innkeeper's liability is the same in both cases. This will in practice make little difference to hotelkeepers as the normal insurance policy extends to cover damage as well as loss.

15. It is not within our province to make any recommendations in regard to the duty to receive travellers which the criminal law imposes upon innkeepers, although if the civil law is altered in the way which we recommend it may be found desirable to bring the criminal law into line on certain points. It may, for instance, be thought necessary to alter the law in regard to an innkeeper's liability to receive a traveller's motor car, and we consider that the obligation to supply refreshment should be confined to those who are travellers within the meaning of paragraph 12 of this report.

16. We may summarise our recommendations as follows :

1. The existing distinction between innkeepers and the proprietors of other establishments such as private and residential hotels, boarding houses, etc., should be preserved. Innkeepers should continue to be under a strict liability to travellers in regard to the loss of property, other than motor vehicles, brought to the inn (paras. 9 and 10).

2. LInkeepers' liability in regard to motor vehicles (in which we include motor bicycles) should be based on negligence (para. 12).

3. An innkeeper should no longer have a lien for his charges on a traveller's motor vehicle (para. 12)..

4. The principles of the Innkeepers Liability Act, 1863, should be retained but the statutory limitation of liability should be raised from £30 to £100, although an innkeeper should not be liable for more than £50 in respect of any one article (para. 13).

5. The right to take advantage of the statutory limitation of liability should depend upon the exhibition of a copy of the relevant Act, in a conspicuous position in the reception office of the inn or, if there is no reception office, at the main entrance (para. 13).

6. An innkeeper's liability in respect of damage to property should be the same as his liability for loss of the property (para. 14).

7. The " travellers " towards whom an innkeeper's strict liability extends should be confined to those who stay the night at the inn, or by or for whom a bedroom is engaged (para. 12).

8. It is desirable that any new legislation should contain a definition of an inn based on the existing common law meaning of the term (para. 11)

David JE N K I N S (Chairman), GODDARD, ASQUITH OF B I S H O P S T O N E , Patrick D E V L I N , Hubert PARKER, R. J. F. BURROWS, Kenneth DIPLOCK, Gerald GA R D I N E R , A. L. GOODHAHT, J . N. GRAY, R. E. MEGARRY, Roland T. OUTEN, D. Hughes PARRY, E. Ç. S. WA D E.

D. W . DOBSON (Secretary), K. M. NEWMAN (Assistant Secretary.

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