Case and Comment

GARNISHMENT — OPERATION OF GARNISHING ORDER — TIME OF ISSUE OR SERVICE. — *Canadian Bank of Commerce* v. *Dabrowski and Hunt*[1] rules on an obscure point that, one would think, should have been settled half a century ago. The plaintiff issued a garnishing order against an auctioneer who held chattels of the defendant for sale. The order was issued at 10.00 A.M. on March 3rd, but was not served at once. At 11.30 A.M. the garnishee sold the chattels and then for the first time became indebted to the defendant. The order was served later the same day. Next the Bank of Montreal served another garnishing order on the auctioneer, who paid money into court under the first order, with a notice stating that the Bank of Montreal also claimed it. On a summons taken out by the plaintiff to require the Bank of Montreal to state its claim to the moneys, the Bank of Montreal claimed that the plaintiff's order was invalid; the judge agreed and set it aside, his reasons being:

> It seems clear upon the authorities that when the garnishee order was issued herein there were no debts or obligations owing, payable or accruing due from the garnishee to the defendants. It is true that moneys did become due and payable on the same day after the auction sale was held and apparently prior to the service of the garnishee order, but that does not help the plaintiff since the essential time is the time when the garnishee order was issued, not the time it was served. The plaintiff's garnishee order therefore must be set aside: *Vater* v. *Styles: Metropolitan Life Insur. Co. (Garnishee)* [1930] 2 WWR 241, 42 BCR 463. A number of other cases are noted in *Power's Index-Digest of Western Practice Cases* on this point.

The court thus treated the point as well settled. It is submitted however that, far from this being so, there is almost an entire dearth of real authority on the subject; and that, apart from the possible exception of *Thoreson* v. *Blairmore*,[2] which will be considered later, the recent decision makes the only express ruling on the point pronounced either in England or Canada. There are in-

[1] (1954) 13 W.W.R. (N.S.) 442 (B.C.).
[2] [1927] 2 W.W.R. 439.

deed a number of dicta (mostly in Canadian courts) that support the decision, but an equal number against it. In England little has been said on the subject; but a number of indications practically satisfy the writer that English legal views are quite inconsistent with the ruling in the *Dabrowski* case.

But first let us see what the Canadian decisions offer. The actual decision in *Vater* v. *Styles*, cited in the quotation just given, is not in point. The court there held against a garnishing order because at no material time was there an attachable debt, and the only utterance in point was that of one judge out of five (McPhillips J.A.), who said obiter that the test was whether there was a debt when the order issued. But the point did not arise, because there was no debt when the order was served.

Power's Practice Digest[3] does state that there must be a debt owing when the order issues, citing *Faas* v. *McManus*,[4] *Thoreson* v. *Blairmore*, *supra*, *Hart* v. *Edmonton*,[5] *Vater* v. *Styles*, *supra*, and *Lake of the Woods Milling Co.* v. *Collin*.[6] But *Faas* v. *McManus* and *Hart* v. *Edmonton* are cases like *Vater* v. *Styles*, in which there was no attachable debt even at the time of service, so that statements found in these cases to the effect that there must be a debt when the order issues are again purely obiter. The *Collin* case falls in the same class, except that the dicta to the same effect are much vaguer.

Thoreson v. *Blairmore* goes a little farther. The garnishee in that case did not appear to have been indebted either at the date of the order or of service, though the judge (Ford J.) thought there was slightly more doubt about the later date. He avoided resolving this doubt by saying it did not arise if the debt had to exist at the date of the order. He adopted the view that this was necessary because Harvey C.J. had expressed that view in *Hart* v. *Edmonton*. He failed to note that Harvey C.J.'s expressions were purely obiter, and it is hard to see how Ford J.'s decision can have any more weight than the dicta on which it was founded.

There are several other cases in the same class as *Faas* v. *McManus* and *Hart* v. *Edmonton:* that is, they contain dicta to the effect that there must be a debt when the order issues; but actually the point never arose, because there was not even a debt when the order was served. These cases include—and there are probably quite a few others—*Kirkham* v. *Kirkham*,[7] *Scully* v. *Madigan*[8] and *Blind River* v. *White Falls Lumber Co.*[9]

[3] (2nd ed) p. 406.
[4] [1929] 3 W.W.R. 598.
[5] (1909), 2 Alta. L.R. 130.
[6] (1900), 13 Man. R 154.
[7] (1936), 50 B C.R. 481.
[8] (1913), 4 O.W.N. 1003.
[9] (1919), 160 W.N. 189.

On the other hand, there is no lack of cases containing dicta as strongly the other way, or which show the court assuming throughout that the whole test of the effectiveness of a garnishing order is the existence of a debt when the order was served. These include: *Quercetti* v. *Tranquilli*,[10] *Mason* v. *Macleod*,[11] *McCraney* v. *McLeod*,[12] *Central Bank* v. *Ellis*,[13] *Power* v. *Jackson Mines*[14] and *Black* v. *Hohlstens*.[15] And several of these are appellate cases.

Since the Canadian authorities speak with such an uncertain voice, let us turn to England, whence so much of our law comes. Here we find no express decisions, but yet some strong indications of legal thought. English views are expressed thus in *Halsbury's Laws of England*:[16]

> To be capable of attachment, there must be in existence, at the date when the attachment becomes operative, something which the law recognises as a debt. . . .

A note on "operative" refers us to page 113, where it is stated:

> The order nisi gives no rights to the judgment creditor until it has been served on the garnishee Until service any disposition of the debt made by the judgment debtor takes priority over the order, and payment to the judgment debtor by the garnishee will discharge him.

These passages taken together seem clearly to mean that any debt existing when the order is served is attachable.

The English case nearest in point is perhaps *Kelly* v. *Rider*.[17] Here the defendant had been employed by the garnishee to furnish meals at so much a head, and on the trial of an issue as to the garnishee's indebtedness, the evidence was directed to whether the attaching order had been served on the garnishee after the meals had been served and their price earned. Charles J. held that the order had been served afterwards, so that the price was attached. It was throughout quite clear that the order had been made before the meals were served, but everyone treated that fact as quite irrelevant, which is at least a strong indication of English legal thought on the point, and the decision itself is at variance with the *ratio* of the *Dabrowski* case. In England and in most of the Canadian provinces, if the garnishee disputes his liability to pay, the court directs the trial of an issue, and obviously the form of that issue is very important, so that an official indication of what form it should take would be of the highest significance. In England we have such

[10] (1941), 56 B.C.R. 481.
[11] [1925] 1 W.W.R 165
[12] (1885), 10 P.R. 539.
[13] (1893), 20 O.A R. 364.
[14] (1907), 13 B C.R 202.
[15] (1915), 9 O.W.N. 5.
[16] (2nd ed.) Vol. 14, p. 108.
[17] (1895), 11 T.L.R. 206.

an indication. There garnishing procedure is governed by rules of court, and Form 40B of Appendix K to the Rules of the Supreme Court, which may be considered statutory, prescribes a form of order for an issue between a judgment creditor and a garnishee. This directs that

> the question to be tried shall be whether the said garnishee was indebted to the judgment debtor in any and what amount at the time the said order nisi was served.

Moreover, by O. 61, R. 33, of the English rules, masters may prescribe additional forms; and they have prescribed an additional form of order for an issue for official use (see Annual Practice note to Form 40B), which can be found in Chitty's Queen's Bench Forms.[18] This prescribes an issue in the same form as Form 40B, that is, to try the garnishee's liability at the time the order nisi was served. In the case of *Power* v. *Jackson Mines*[19] an issue between the plaintiff and garnishee was directed, and it took the same form.[20]

If the *Dabrowski* decision were right, such an issue would not decide the most material point; that decision would require an issue as to whether the garnishee was both at the time the order was issued and the time when it was served indebted to the defendant. That this is the real issue has apparently gone unsuspected for a century in England, where garnishment was first authorized by the Common Law Procedure Act, 1854.

Let us consider some of the anomalies that will result if the *Dabrowski* ruling prevails. Take the case where the garnishee is a bank and when the garnishing order issues the defendant has an account of $1.00, but when it is served has an account of $1,000. According to the *Dabrowski* ruling, the order is only operative as to $1.00. But how can such a result be justified? The order cannot be set aside on the basis that no money was owing at the date of the order (even if that were a good basis); it cannot be set aside on the basis that the affidavit leading the order was untrue, for it was not.

The only theory on which limitation of the attachment to $1.00 could be argued would be this: the registrar's order is what attaches the debt, and he must be regarded as attaching only debts that exist when he makes his order. That view however is negatived by authority. In *Re Stanhope Silkstone Collieries Co.*[21] it was held that a creditor of a company, who obtained a garnishing order but

[18] (17th ed.) p. 571.
[19] (1907), 13 B.C.R. 202.
[20] *Ibid.*, p. 207.
[21] (1879), 11 Ch. D. 160.

did not serve it until after a winding-up order was made against the company, was not a secured creditor at the beginning of the winding-up. Bramwell L.J. said at page 163 that the order

> does not purport to attach the debts, but orders 'that they be attached', that is, upon something further being done. It is like the order for the attachment of a person for contempt. He is not attached upon the writ issuing, but he is attached under it.

This seems to make sense, and rationalizes the assumption that obviously prevails in England, namely, that the date of service of a garnishing order is the sole test as to what it catches. The very term "garnishing" seems to support Bramwell L.J.; for the literal meaning of "garnish", which has rather been forgotten, is "warn". Obviously a registrar cannot "warn" a garnishee by merely making an order; he only enables the plaintiff to warn the garnishee by service.

If the plaintiff must run the risk that the obligation to the defendant may be lessened between the time of the order and the time of the service, why should the risks be all one way? Why should he not equally have the benefit of any interim increase in the garnishee's obligation?

Where nothing is owing by the garnishee when the order is made but a substantial sum is owing when it is served, no doubt the order ought not to stand if the plaintiff made his affidavit of the garnishee's indebtedness knowing it to be false. But the plaintiff only swears that he is informed of the indebtedness and believes it exists, and if this is literally true, there is no deception even if the information proves untrue. In the *Dabrowski* case the order was set aside, not because the affidavit was proved untrue, but because there was in fact nothing owing at the date of the order. But if there had been $1.00 owing at the time, that objection would have been unfounded. It is hard to see how the order could then have been held not to operate, even to the extent of many thousand dollars, if these were due when the order was served. It is certainly hard to see why a debt of $1.00 when the order was made should make all this difference.

Apparently, according to English views, it would make no difference. In *Vinall* v. *DePass*,[22] for instance, the House of Lords refused to hold a garnishing order bad because the only debt suggested in the affidavit to lead it was not really due; it was enough that the garnishee owed something.

[22] [1892] A.C. 90

The *Dabrowski* ruling could create great practical difficulties, even intolerable hardship, particularly where the garnishee is a bank, as it is in perhaps most cases. Hitherto, when a garnishee disputed liability for the whole or part of the sum named in the order, the garnishee filed a dispute note stating that at the time of service of the order he was not indebted, or only indebted in a named sum, which he paid into court. The *Dabrowski* ruling requires him to say that neither when the order was made nor when it was served was he indebted, and he can safely pay in only the least sum owing by him at either of these times. But, particularly in the case of a garnishee bank, that course may be quite impossible to follow. Cheques may be paid or received by a bank at any moment during banking hours. This does not matter too much if service of the order alone counts. But if the bank can only pay into court the amount due when an order was made, which may have been days before the bank knows of it, then its position becomes hopeless. How can the bank possibly tell whether a sum received or paid out on the same day as a garnishing order was signed was received or paid before or after the moment when the order was signed? Registrars do not keep records of the moments when they sign orders, nor do banks keep records of the moments when they receive or pay cheques.

These considerations alone show that the *Dabrowski* ruling makes the position of banks impossible. And other garnishees could be almost equally embarrassed. The hardships that such a ruling must in time produce would prove intolerable. The very fact that it would do so throws the strongest doubt on its soundness.

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JUDGMENTS — RECIPROCAL ENFORCEMENT — FOREIGN JUDGMENT FOR COSTS. — At intervals, though fortunately not often, we see judicial misunderstanding of earlier rulings pile up until it brings about a decision that would probably astonish the original makers. *Koven et al.* v. *Toole*[1] seems to be such a decision. The head note thus rightly sums up the decision:

> Where a judgment obtained in another province is such that an action on it in Manitoba could not succeed, e.g., a judgment for costs, it

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[1] (1954) 13 W.W.R. (N.S.) 444

cannot be registered under *The Reciprocal Enforcement of Judgments Act*, 1950, ch. 43 (Man.).

It may be added that the judgment in question was a final judgment of a superior court, namely, the Supreme Court of British Columbia, which was rendered on the dismissal of an action. The Manitoba court expressly held that this judgment could not have been sued on, and clearly considered it a principle of private international law that no foreign judgment for costs can be sued on.

It is submitted that there is no good basis for this ruling and that none of the cases cited as justifying it are in point. The first case cited is *Graham* v. *Harrison*.[2] This is beside the mark because what was sued on in Manitoba here was not a judgment at all but what the court described as "an interlocutory judge's order"; and the court pointed out that at the time the English action in which it was made was still going on.

The court in *Koven* v. *Toole* went on to say:

> In *Crowe* v. *Graham* (1910) 22 OLR 145, the Divisional Court of Ontario unanimously held that such a judgment could not be sued on.

"Such a judgment" obviously meant a judgment for costs; and this states the effect of the reasoning in *Crowe* v. *Graham* misleadingly. Three judgments were sued on there and the Ontario court held the action would not lie, not because the judgments were for costs —it is not even clear that they were—but because they were judgments of a division court, which was an inferior court, with peculiar statutory powers preventing any of its judgments from being sued on. Thus Riddell J. stated that:[3]

> We are, therefore, bound to hold that a division court judgment is not in the nature of a final judgment.

And Middleton J. was equally explicit[4] as to why the action failed:

> The plaintiff, having a cause of action, has resorted to the statutory forum—the result is that his original claim has been transmuted into a judgment bereft of some of the qualities ordinarily incident to common law judgments, and subject to such benevolent supervision and restraint as precludes any action upon it in any other forum. . . .

The court in *Koven* v. *Toole* quoted from Middleton J.'s same judgment as follows:

> An order of any Court for payment of costs cannot be enforced in any other Court, because it is not regarded as a judgment imposing any obligation, but as a mere remedy ancillary to the proceeding in that Court itself. This is so even when the order 'may be enforced in the

[2] (1889), 6 Man R. 210.
[3] (1910), 22 O.L.R. at p. 149.
[4] *Ibid.*, p. 151.

> same manner as a judgment' — thus merely indicating that, in the Court itself, the same process may be employed to enforce payment of money under an order as under a judgment: *Furber* v. *Taylor* [1900] 2 QB 719, 69 LJQB 898; *Re Kerr* v. *Smith* (1894) 24 OR 473.

But this in no way supports *Koven* v. *Toole*. All Middleton J. is saying is that an order is not a judgment and cannot, like a judgment, be enforced in another court. This applied no more to orders for costs than any other orders. It may also be mentioned that neither *Furber* v. *Taylor* nor *Re Kerr* v. *Smith* dealt with an order of a superior court, but both with orders of an inferior court subject to "supervision and restraint". Moreover, it seems clear that Middleton J. was referring only to interlocutory orders, because immediately following the passage last quoted he said:

> Where the rights of the parties are adjudicated upon and determined, although the determination is in the form of an order, an action will lie: *Godfrey* v. *George* [1896] 1 Q.B. 48; *Pritchett* v. *English and Colonial Syndicate* [1899] 2 Q.B. 428.

When we look at *Godfrey* v. *George* we find that it is an express decision that an action will lie on an order for costs only made in the High Court; and the same was also held in *Re Boyd, Ex p. McDermott*.[5] Both these decisions come from the English Court of Appeal; and it seems impossible to reconcile the ruling in *Koven* v. *Toole* with them.

The only other case cited in *Koven* v. *Toole* as justification for it is *Canadian Credit Men's Trust Association* v. *Ryan*.[6] But this merely decides that a foreign judgment rendered without jurisdiction over the defendant cannot be registered under the Reciprocal Enforcement of Judgments Act; and the foreign judgment there was not a judgment for costs.

Finally, it may be said that one will look in vain in *Pigott on Foreign Judgments* and in books on conflict of laws, like *Dicey*, for any suggestion that a foreign judgment for costs, if it is a final judgment of a superior court, cannot be sued on. An action was successfully brought in England on a foreign judgment for costs as early as 1842.[7]

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[5] [1895] 1 Q.B. 611.
[6] [1929] 3 W.W.R. 403.
[7] *Russell* v. *Smyth*, 9 M. & W. 810.

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LEGISLATION — INNKEEPERS — LIMITATION OF LIABILITY FOR LOSS OF GUEST'S VEHICLE. — The Case and Comment section of an earlier volume of this Review included a comment written by Professor R. Graham Murray analyzing the case of *Williams* v. *Linnitt*[1] and discussing it as an illustration of the absurdity and difficulty of applying the common law of innkeepers to the inn of today.[2] The principles of common law liability of innkeepers, founded on the custom of the realm, were once again applied in this instance — this time in a case where a nearby resident dropped in at the inn for a drink, leaving his car in an outer court which was open to the street. Despite the fact that the innkeeper purported to limit his liability by the posting of a sign, he was held liable when the car was lost.

Three general principles of the law of innkeepers' liability are clearly restated in *Williams* v. *Linnitt*. They are that: (1) innkeeper's liability is not limited to "travellers", but extends to every person who avails himself of the hospitality of the inn; (2) an innkeeper cannot contract out of liability; and (3) liability for loss is dependent upon the vehicle of a guest being parked within a particular area, this area of liability having been variously described as the "hospitium", "curtilage" or "premises" of the inn.

Professor Murray points out that, today, an innkeepers' liability is limited to a fixed amount by statute for the loss of personal chattels of guests (providing proper notice is displayed). It is only in the case of "horses and carriages" (including cars) that the innkeeper is fixed with total liability under common law. Professor Murray considers that a serious problem for the innkeeper results from the omission to include vehicles among those things for which he may limit his liability. In his words:

> This is a problem for the legislature. *Williams* v. *Linnitt* should serve as a timely warning that some of the solicitude the common law displays towards the common wayfarer might now be better shown to the poor innkeeper. . . . Whatever the reason in earlier times for not permitting the innkeeper to relieve himself of his strict liability in the case of horses and carriages, the same reason surely does not hold in Canada today in the case of the modern automobile.[3]

The Nova Scotia legislature has recently passed an amendment to the Innkeepers' Act of that province, supplying a new section on the innkeeper's liability for the loss of his guest's vehicle or its con-

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[1] [1951] 1 All E R. 278.

[2] Innkeeper — Liability for Loss of Guest's Car — Traveller — *Infra Hospitium* — Contracting out of Liability — Innkeepers Liability Acts (1951), 29 Can. Bar Rev. 768.

[3] *Ibid.*, p. 774.

tents.[4] The operative subsection purporting to limit the liability reads as follows:

> 8(1) No innkeeper shall be liable for the loss of a vehicle of a guest or of its contents except where the loss occurs when the vehicle is stored or parked in a garage of the inn or in a car park within the precincts of the inn or maintained elsewhere by the innkeeper and where a fee is charged by the innkeeper for the storage or parking or where the innkeeper or his servant accepts the vehicle for handling or safekeeping.[5]

It is interesting to examine this amendment to determine the manner in which it has attempted to correct the omission indicated in Professor Murray's comment, and the extent to which it has eased the burden on the innkeeper.

The subsection provides for general exemption from liability, except in two instances, that is, for:

(i) loss, where a fee for parking or storage is charged, and the guest's vehicle is placed in a garage of the inn or in an innkeeper's car park, within or outside the premises;

(ii) loss, where the innkeeper accepts the vehicle for handling or safekeeping.

In the first instance, the innkeeper is liable if the car is placed in the hotel's garage or lot, conditional on the charging of a fee. But what is his position when a fee is not charged? Obviously, where liability is dependent upon the charging of a fee, no sensible innkeeper would impose a fee. With no direct charge on his guests for this service, he would enjoy the double benefit of avoiding liability, while at the same time offering an inducement to prospective customers in the form of free parking. The criterion of liability cannot, it is submitted, realistically hinge upon the payment or non-payment of a parking fee. Is it realistic to set up as a standard of liability an essential factor (the charging of a fee) which is dispensed with merely by doing nothing?

In the second instance, the innkeeper is liable if the car is *accepted* by him for handling and storage. Is it possible that, in this part of the subsection, the legislature attempted to make up the deficiency described in the previous paragraph by providing for cases in which no fee is charged? Would the innkeeper then be liable where he "accepts" a car whether a fee is charged or not? The

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[4] 1953, N. S. Laws, c. 28.

[5] The rest of the amendment, or subsection (2), reads as follows: "(2) In this Section 'vehicle' includes a motor vehicle as defined in The Motor Vehicle Act, a horse and carriage, and chattels used in connection with a vehicle".

wording of the second part of the subsection provides scant assistance in determining an answer to these questions. The unfortunate employment of the word "accepts" creates more difficulties than it solves, for "accepts" permits of two meanings.

In the wider, more popular sense—that of consenting to receive—the word would cover the case where the innkeeper makes a car park available for the use of his guests and, when one of them makes use of it, the innkeeper can be said to have accepted his car. The guest makes use of services freely offered and makes the innkeeper liable thereby, for if the innkeeper acquiesces in this act, he establishes his liability whether a fee is charged or not. Yet where does this approach leave us with the first exception in the subsection? If this be the desired meaning, the first exception is included in the second and rendered by the latter inoperative or meaningless. This is so because, by the first, he is liable only if he charges a fee, but by the second he is liable irrespective of whether he makes a charge.

As it hardly seems possible that the legislature intended to open a door only to slam it again in the same piece of legislation, we must look to a more restricted meaning of this word. "Accepts" may have a connotation similar to that attached to it in contract law—broadly speaking, to take responsibility for, by a specific undertaking. In this sense of the word, acceptance is entirely within the innkeeper's own control. He can accept some and reject others. It follows from this that knowledge of the transaction is a prerequisite to such an acceptance. It is a matter between the innkeeper and the individual guest.

The context of the subsection lends support to this inference, as it is not bare acceptance, but acceptance "for handling or safekeeping", that is mentioned. This phrase seems to convey more than simple acquiescence, if only because of its similarity to the "deposit of valuables" clauses that appear at present in most innkeepers' acts, in which the innkeeper assumes complete responsibility for valuables placed in his care and control.

Now, if this alternative sense is taken, it is seen that liability may be escaped so long as the innkeeper avoids an express assumption of responsibility. He may permit or even invite, but, so long as he refrains from accepting, no liability attaches to him. His recommended course would be merely to do nothing, so that, if a question of liability arose, he could assert that his guest had the use of his premises, but at no time did he "accept for handling or safekeeping". The ease with which the innkeeper may thus evade this

statutory liability might well lead a cynic to hazard that the amendment might better read: "No innkeeper shall be liable".

It cannot be doubted, however, that *Williams* v. *Linnitt*[6] is severe in its consequences. If the desired end of the legislation is complete liability of the innkeeper as an insurer, the common law need not be altered: the case will suffice. On the other hand, if the goal is complete removal of liability, the legislation should not be obscure by reason of unsubstantial qualifications. It may be that a limitation of liability is desirable. If it is, the limitation should, of course, be as clear and unambiguous as the subject permits.

At the base of the second part of the subsection lies a principle which perhaps is more consistent with the evolution of the law of innkeepers. The traditional liability of the innkeeper is founded upon the concern of the common law for the welfare of those who travel. The common law is clear that, where a person holds himself out for the reception of any person seeking rest or refreshment, he is liable if his guest's goods are lost or stolen. In the second part of the subsection, liability of the innkeeper is dependent upon his willingness, express or implied, to act in such a way that he becomes liable under the law. It is by his actions in holding himself out to receive automobiles for safekeeping, whether he charges a fee or not, that he is made liable. Is it possible to extend this idea past the limited use in the present amendment?

At common law, the innkeeper is liable only for the loss of his guest's property within a certain area of protection—a hospitium. This term "hospitium" has been affixed to the area within which the courts have decided that the innkeeper should be deemed to have held himself out as offering protection to his guests' property. It follows then that if a legislature undertakes to limit the *incidence and frequency* of liability, they may achieve this end by a careful definition of the area within which the innkeeper holds himself out. The question is then: In what instances is the innkeeper to be considered by statute as holding himself out? The most obvious instance that comes to mind is when the inn possesses a garage. By maintaining a garage at the inn, the innkeeper holds himself out to protect his guests' cars. If they are parked in his garage, it is submitted that he should be liable. Where the garage represents the full extent of the parking facilities provided by the innkeeper, and the guest parks his car elsewhere in a place of his own choosing, the innkeeper is not liable, because the area of liability is circumscribed by the confines of the garage.

[6] *Supra*, footnote 1.

However, every inn does not have a garage, nor every garage unlimited parking space. Can the innkeeper avoid liability by not having a garage or by providing one that is inadequate and filling it up? In the case of a full garage or the absence of a garage, it is suggested that the innkeeper should only be liable where he holds out a place for safe parking—a place specifically reserved and designated by the innkeeper for the parking of vehicles of guests. The way in which the innkeeper reserves and designates may vary with the circumstances, but the fact remains that it is for the innkeeper to set out the place and its boundaries. When this holding-out is made in the absence of garage facilities, or where garage facilities are exhausted, he implies that he is ready to receive his guests' cars.

In defining the area of liability by a statute, let us limit the situations in which the innkeeper should be made liable to the two instances just cited. The application of such a definition is not without its own problems. Suppose a guest were to approach an inn by car. He is presumed to know the statute law of innkeepers. He would be presumed to know that the innkeeper is liable for the loss of his car only if it were placed in the inn's garage, or if he found no garage or a full one, in a place the innkeeper specifically reserved and designated. The one thing he might not know would be whether the inn has a garage at all. He would encounter many inns having both a garage and parking lot. He might find a brilliantly lit parking lot obscuring a well-hidden garage. If he were to park his car in what appeared to be the only parking space, invitingly placed for his use, he would assume liability for his own loss.

It is seen that an essential component in determining the extent of the guest's rights is his knowledge of the facilities open to him. If he knows that the inn has garage space and he chooses to put his car in the parking lot, he assumes his own loss if it is stolen. It therefore becomes a matter of policy whether we make the guest bound to inquire about the facilities offered or whether we make the innkeeper bound to give the guest notice of the parking facilities he has to offer. It is submitted that it would be both unfair and impractical to impose upon the innkeeper the burden of giving "effective notice" with all its inherent legal difficulties. It is more practical for the guest to be put on his guard and make the assumption that when he makes his choice he has knowledge of the alternatives open to him. This presumption of knowledge of his surroundings would be added to his presumed knowledge of the statute law of innkeepers.

In addition to the liability arising out of the parking of a car by a guest on the premises of an inn, the innkeeper should be liable where he actually takes charge of the guest's vehicle and disposes of it in a place of his own choosing. This, we have concluded, is what was contemplated by the Nova Scotia legislature in providing for the case "where the innkeeper or his servant accepts the vehicle for handling or safekeeping".

The problem of qualifying the liability of an innkeeper for the loss of his guests' goods permits of no ready answer, but by a careful definition of terms it may be possible to draft a realistic and equitable solution.

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The Moral Tradition of Responsibility

I have written a good deal since I wrote you last; actually since I came here I have eighty pages done; and even granted that I shall rewrite it twice at least I feel *in medias res*. It is curious how setting out one's convictions revises them. I came back for instance to a much greater regard for the Montesquieu-Tocqueville-Mill school than ever before. I felt, that is, how much more political questions are moral questions, I mean of character, of *esprit*, and how little questions of machinery and formulae. I don't belittle the latter. But I suspect that a guild chairman under guild socialism would not be very different from a cabinet minister of today. I have been writing about responsibility and as I have written it has become incredibly more urgent to me to find the secret of the moral tradition which builds responsibility than of the political machinery which secures it; *e.g.*, the King in Parliament could always decide that the present House of Commons should sit permanently. It doesn't, not because of a fear of revolution, but because it really wants, within the limit of its knowledge, to act decently. I agree that there are governments, the France of the *Ancien régime*, the Russia of 1903, of which this is untrue. But I should be inclined to guess that few governments can live long without acquiring a tradition that it is worth while to seek the right. Certainly if they don't no considerations of machinery can really prevent them from seeking the wrong (Harold J. Laski to Mr. Justice Holmes, August 29th, 1923, Holmes-Laski Letters (1953))

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