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Court of Appeal

Bucknill , Singleton and Denning L.JJ.

1948 Dec. 2, 3.

Negligence—Residential hotel and boarding—house not constituting "an inn"—Notice under Innkeepers' Liability Act, 1863 conspicuous in hall—Notice in bedroom: "Proprietors will not hold themselves responsible for articles lost or stolen, unless handed to manageress for safe custody"—No exemption from liability for negligence of

A notice in the bedroom of a private residential hotel stated: "The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manageress for safe custody. Valuables should be deposited for safe custody in a sealed package and a receipt obtained." A notice pursuant to s. 3 of the Innkeepers' Liability Act, 1863 , was conspicuously displayed in the hall of the hotel. It was found that the house was not an inn at common law.

A man and his wife, on arrival at the hotel as guests, in accordance with the custom of the hotel paid for a week's board and residence in advance. They then went upstairs to the bedroom allotted to them, where the first-mentioned notice was displayed.

Held, by SINGLETON and DENNING L.JJ., that the terms of the notice in the bedroom formed no part of the contract made between the guests and the proprietors of the hotel. The contract had been made before the guests could see the notice. It was for an indeterminate period, to which an end could be put by notice on either side, and the terms of the notice in the bedroom could form no part of the contract until that contract had been so terminated.

Per DENNING L.J.: Persons who rely on a contract to exempt themselves from their common law liability must prove that contract strictly. The best way of proving such a contract was by a written document signed by the party to be bound. Another way was by handing to him before or at the time of the contract a written notice, specifying its terms, and making it clear to him that the contract was on those terms. A prominent public notice which was plain for him to see when he made the contract or an express oral stipulation would, no doubt, have the same effect. But nothing short of one or other of these three ways would suffice.

On the issue of construction of the notice in the bedroom *Held* by BUCKN *ILL L.J.* , that a person reading the two notices, (that in the bedroom and that in the hall) would not think that the notice in the bedroom was intended to exempt the proprietors of the hotel in respect of loss or theft due to the negligence of their servants; and by SINGLETON and DENNING L.JJ. that, on the assumption that the house was not a common inn, the notice in the bedroom did not exempt the proprietors of the hotel in respect of loss or theft due to the negligence of their servants.

A resident guest at this hotel closed the self-locking door of the bedroom, went downstairs and hung the Yale key of her bedroom door on the hook marked with the number of her room on the key-board provided for that purpose in the reception office. She then left the hotel. On her return she found the key missing from the key-board and certain furs and other property of hers ***534*** missing from her bedroom. It was found that the property had been stolen by a stranger through the negligence of the hotel proprietors' servants.

Per DENNING I..J.: As to the negligence of the hotel company and the onus of proof - When the plaintiff put the key of her room on the hook in the reception office, she put it in charge of the hotel company. It gave access to her room, and it was their duty to take reasonable care to see that it was not taken by any unauthorized person. It was so taken, and consequences followed which might reasonably have been foreseen, viz., the thief used it to get into the bedroom and steal. At common law the hotel proprietors were liable for the loss, unless they discharged the burden of proving that they took reasonable care of the key.

Appeal from Oliver J.

The plaintiff Mrs. V. E. Olley and her husband stayed as guests for reward in the defendants' hotel, which had about a hundred rooms and was mainly residential, from May, 1945, to February, 1947. When they first went to the hotel they were asked in accordance with the custom of the hotel to pay for a week's board and residence in advance. That they did and then proceeded to the bedroom allotted to them. On November 7, 1945, at about 11 a.m., the plaintiff left her bedroom on the third floor, closed the self-locking door, went downstairs to the hall and thence into the reception office, hung the Yale key of her room on the hook marked with the number of her room on the keyboard provided for the purpose, and went out of doors. To one entering the hotel by the main entrance there was a lounge on the right and the reception office faced the entrance, with an "L" shaped counter enclosing it. Access from the hall to the reception office was obtained by raising a flap in the counter. In a conspicuous place nearby there was displayed a notice complying with the terms of s. 3 of the Inkeepers Liability Act, 1863 .

At about 3 p.m. on the same day a Colonel Crerer was talking with a fellow guest in the lounge of the hotel when he noticed a young man come in at the main entrance of the hotel walk straight through into the reception office, come out again, walk past the staircase to the self-operating passenger lift, and ascend therein. At the foot of the staircase as he passed was a bust of the Duke of Marlborough which the porter on duty was busily engaged in cleaning. There was a receptionist whose turn of duty it was to be at the reception office at the time when the young man entered it; but there was no evidence whether or not she was temporarily absent at the time, since ***535*** Colonel Crerer could not see into the office from where he was seated. About a quarter of an hour after he had ascended in the lift the young man reappeared in the lounge, carrying a box which he had not had with him when he entered the lift. This fact attracted the attention of Colonel Crerer. The young man at once left the hotel.

The plaintiff returned to the hotel at about 3.30 p.m. and on going to the reception office found that her key was no longer on the keyboard. With the aid of a pass-key she entered her room and found furs, jewellery worth 50***l.***, articles of personal clothing and a hat-box missing.

In the plaintiff's bedroom behind a door leading to the washstand was a notice containing some fifteen paragraphs the first of which read: "The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manageress for safe custody. Valuables should be deposited for safe custody in a sealed package and a receipt obtained."

The plaintiff by her action claimed from the defendants the value of the articles missing, alleging that they were negligent in failing to guard or supervise the keyboard and in permitting a person unknown to enter their hotel and to leave it with the plaintiff's property. She also claimed that in the contract between the plaintiff and the defendants there was an implied term that the defendants would take proper care for the safety of the plaintiff's property in her bedroom and would keep the plaintiff's bedroom key in their custody and control and adequately guard it when it was upon their keyboard; and she alleged breaches of that contract. The defendants denied negligence, the terms of any such contract as alleged, and any breach thereof. They further pleaded (1.) that they received the plaintiff as a guest into their hotel subject to the terms contained in the notice exhibited in

her bedroom and that they were accordingly not responsible for the articles stolen, whether or not they were negligent; (2.) that the plaintiff was guilty of contributory negligence in depositing the key on the keyboard; and (3.) that the hotel was a common inn and they, having complied with the terms of s. 3 of the Innkeepers Act, 1863 , were by the terms of that Act not liable for a greater amount than 30*l*.

At the trial the plaintiff called evidence the effect of which has been related, and one of her witnesses was the manageress of the hotel. There was evidence that the system for the deposit of keys had worked well for three years. The ***536** defendants did not call the receptionist or the porter referred to or any evidence. The trial judge found (1.) that the plaintiff's goods were stolen by the young man seen by Colonel Crerer, (2.) that the defendants were and (3.) the plaintiff was not guilty of negligence and (4.) that the defendants' negligence was the cause of the plaintiff's loss (5.). He held that the hotel was not an inn at common law; (6.) that the plaintiff was not a traveller but a resident at the hotel, and (7.) that though the plaintiff had notice of the contents of the first paragraph of the notice in her bedroom, the terms of that notice were ambiguous and so did not absolve the defendants from liability. Accordingly he gave judgment for the plaintiff for 329*l*. 2s. 0d.

The defendants appealed, and the plaintiff cross-appealed.

Montague Berryman K.C., Phineas Quass and *Dingle Foot* for the defendants. There was no evidence here of negligence on the part of the proprietors of the hotel or of their servants. The plaintiff was not bound to place her key on the keyboard. She had resided in the hotel from May to November, 1945, and well knew the conditions. It was evident that the receptionist might be called away from the reception office on some errand of duty or of necessity or have been engaged in telephoning. Neither could she possibly know by sight every resident of this hotel of a hundred rooms, perhaps some one hundred and fifty or more in number, several of whom might have arrived at the hotel on the previous day and perhaps would only stay one night. The plaintiff knew the conditions of leaving her key in the office and left it there, although she might have taken it with her in her handbag. The plaintiff was warned by the notice in her bedroom: "Valuables should be deposited for safe custody in a sealed package and a receipt obtained." *Jones v. Jackson* [1] . No doubt the proprietors had to take reasonable care of the guests' property, having regard to all the circumstances. *Scarborough v. Cosgrove* [2] . As Romer L.J. said in that case [3] : The proprietor is bound to carry on the business with reasonable care "having regard to the nature and normal conduct of the business as known to the guest, or as represented to the guest by him." The liability on the defendants was that of the proprietor of a residential hotel or boarding-house, since the trial judge found ***537** (i.) that the house was not an inn at common law, and (ii.) that, even if it had been an inn, the plaintiff was not a traveller there but a residential guest. See *Lamond v. Richard* [4] . There was evidence that the system of leaving keys on the keyboard had worked without untoward incident for three years. The conditions being well known to the plaintiff, if the defendants were guilty of negligence the plaintiff was equally guilty of negligence, and if the loss was caused by negligence it was so caused by the plaintiff. The duty of the proprietors is that of taking care. They must take reasonable care that the door is kept shut against thieves but the duty does not amount to a guarantee that the door will be kept shut against thieves, *Paterson v. Norris* [5] .

The notice in the plaintiff's bedroom, of which she must have had knowledge was a part of the contract between the plaintiff and the defendants, either originally, or after the first week of board and residence had elapsed, and the contract was renewed: it was renewed on the express terms that the defendants were not responsible for articles lost or stolen unless they were handed to the manageress for safe custody. The contract would be renewed week by week. This was a residential hotel and the only liability of its proprietors with regard to their guests' property was for the negligence of themselves or their servants. The exemption in the bedroom notice must, therefore, have referred to that liability: otherwise it would have been otiose. That being so, there was no necessity for the defendants to include in the bedroom notice after the words "lost or stolen" the words "by the negligence of the proprietors of the hotel or their servants." Unless this bedroom notice protected the defendants against their liability for negligence it could have had no effect. *Turner v. Civil Service Supply Association Ld.* [6] ; *Fagan v. Green & Edwards, Ld.* [7] and *Alderslade v. Hendon Laundry, Ld.* [8] . The defendants had taken all reasonable steps to bring to the notice of the plaintiff the existence of this limitation of their liability and the plaintiff was bound by this term of their contract *Hood v. Anchor Lane (Henderson Brothers), Ld.* [9] . Scrutton L.J. said in *Rutter v. Palmer* [10] : "In construing an exemption clause certain general rules may be applied: First the ***538** defendant is not exempted from liability for the negligence of his servants unless adequate words are used; secondly, the liability of the defendant, apart from the exempting words, must be ascertained; then the particular clause in question must be considered; and if the only liability of the party pleading the exemption is a liability for negligence, the clause will more readily operate to exempt him." So where the only liability for which the defendant is responsible is a liability for negligence, such a condition will protect him, although negligence is not specially mentioned therein: *Reynolds v. Boston Deep Sea Co.* [11] . Here the only liability of the defendants pleading the exemption was a liability for negligence. The

notice displayed in the hall by the defendants could not be considered to be contractual, since it was only displayed pursuant to statute, to limit liability in case the defendants' hotel should be held at any time to be a common inn.

Glyn-Jones K.C. and *G. G. Baker* for the plaintiff.

[BUCKNILL L.J. The court need not trouble you on the issue of negligence on the part of the plaintiff or the defendants, but they would like to hear you on the question whether the defendants were not exempted from liability by the terms of the notice in the plaintiff's bedroom.]

The trial judge found that the Marlborough Court Hotel was not a common inn. But neither the plaintiff nor the defendants would be certain of that on November 7, 1945. The defendants by exhibition of the terms of s. 1 of the Innkeepers' Liability Act, 1863 , pursuant to s. 3 of that Act, would appear to have considered that their hotel was a common inn. The plaintiff, therefore, would not read the notice displayed in her bedroom with the knowledge that the only liability against which the defendants need exempt themselves was negligence. Had the hotel been a common inn the notice could not have exempted the defendants against their negligence and that of their servants. In that case, the exemption would have applied to the liability of the defendants as insurers. The onus lies on the defendants, if they desire to exempt themselves from liability, to show that they have done so clearly and without ambiguity. As Scrutton L.J. said in *Rutter v. Palmer* [12] : "The defendant is not exempted from liability for the negligence of his servants, unless adequate words were used."

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Secondly, it was for the defendants to show that the notice in the bedroom formed part of the contract between the plaintiff and the defendants. There was no evidence that there was any contract between the defendants, the proprietors of this hotel, and the plaintiff. The husband and wife arrived together at the hotel and the presumption is that the defendants' contract was with the husband, Mr. Olley, in respect of the board and residence, both of himself and of his wife. If there were no contract between the defendants and the plaintiff, there was no contract in which could be incorporated the terms of the notice in her bedroom. If there was a contract between the defendants and the plaintiff, it must have been concluded before the plaintiff and her luggage arrived at the bedroom where she could have the opportunity of seeing the terms of the notice displayed there. Such a contract is for an indeterminate period which continues until it has been terminated by one party or the other. This contract was still continuing on November 7, 1945.

Montague Berryman K.C. in reply. The contract for board and residence was between the plaintiff and the defendants. See the judgment of Tucker J. in *Lockett v. A. & M. Charles, Ld.* [13] .

BUCKNILL L.J.

The trial judge came to certain conclusions of fact. The first and most important was that the defendants were negligent and that their negligence caused the loss. He said: "I think that from the point of view of a responsible hotel this is a thoroughly bad and negligent system, to have a rack of keys within absolutely easy access to anyone coming into these premises to help himself or herself to." He found that the plaintiff was not guilty of negligence; he found that the hotel was not a common inn, and he found that, although the plaintiff had notice of the terms of the announcement in her bedroom relied upon in the defence, these did not absolve the defendants from liability. Each of these findings has been discussed before us.

On the main point, whether the defendants were negligent, a plan has been produced which shows the general lay-out of the ground floor of the hotel. The main entrance contains the usual swing doors. Then anyone going in when they have got into the hall can either go up the stairs into the lounge or into the cloakroom on the left, or they can go ***540** on until they come to the reception office where normally, on arrival, a guest would be received. The reception office is bounded by the usual counter in the shape of an "L" and at one end of the counter there is a flap which can be raised and which will enable anybody to walk in. At the back of the reception office there is a letter rack 9 ft. long stretching right away to the wall at the further end of the office. Then, at right-angles to the rack and on the far wall there is the keyboard, and a little in front of the keyboard and rather to the right of it as you stand facing the keyboard there is an enclosed office, where we were told the accounts were mainly done. Then, according to the plan, in a conspicuous place is framed the terms of s. 1 of the Innkeepers Act, 1863 , in compliance with s. 3 of that Act. I am a little surprised to see it placed in such a prominent position on the plan if, as it is now alleged, the hotel was not an inn at common law. It seems that one can get into the reception office from the back by means of three swing doors, and I suppose that entrance is used by the staff. There was no evidence given as to the general use of this keyboard. Mr. Olley in fact said that he never used it; Mrs. Olley did use it. Mrs. Olley was not invited expressly to put her key on the keyboard, but the fact that a keyboard was there with a hook with the number of her key underneath it, and the fact that the keyboard was in the reception office, seems to me to be an implied invitation to guests to use the keyboard if they were so minded.

At the foot of the staircase there is a bust of the Duke of Marlborough, and on November 7, 1945, the porter who was on duty, instead of attending to what I should have thought was his obvious job of seeing who was coming in by the main door, was engaged cleaning the bust, and had his back to the passage so that he was not able to see a certain young man who was seen by Colonel Crerer to pass from the reception office to the lift. It is remarkable that the porter was not called as a witness; in fact, the defendants did not call any evidence. What he was doing after he had finished cleaning the bust, one does not know. Other evidence as to what happened on that particular afternoon was the evidence of the manageress, Miss Robbie, who was called by the plaintiff. She said that it is the practice to have one receptionist on duty, and that when Miss Robbie went away the receptionist would be sitting in the front office. She was a Miss Alexander, an elderly lady who was thinking of retiring. But what **541* Miss Alexander was doing at the time this young man came in and went out does not appear, since she was not called as a witness. In those circumstances, the judge had no difficulty in finding that these goods were stolen by this young man who came in to the hotel, went upstairs and went out again, without being noticed by anybody of the defendants' staff.

Was there in those circumstances negligence on the part of the defendants? The learned judge has found negligence on the ground that the keys were within absolutely easy access to anyone coming into those premises. Speaking for myself, I do not agree with that ground, because if Miss Alexander had been on duty in the reception office she could not have failed to see this young man come in, and she could hardly have failed to ask him what he was doing, taking a key off the board. She would know that he was not a guest in the house, because the evidence is that a very large proportion of the people staying in this hotel were residents: it was a residential hotel. It may be that occasionally somebody got a bed there for the night. The porter also, if he was on duty in the hall, would have asked; he would see the young man going up and his suspicions would be aroused when he saw him come down with a hat-box or suitcase in his hand. The negligence in my opinion, is not that the keyboard was in a dangerous place, but that there was on that afternoon no watch being kept over the main entrance or the keyboard or the way upstairs to see that no stranger came in. I think the plaintiff has made out her case that on this occasion the defendants, through their agents, were negligent. The points made on this question by the defendants, if I appreciated them rightly, were, first of all, that a keyboard was placed there merely for the convenience of residents and that it might equally well have been put in the hall at the bottom of the stairs. I cannot agree with that. The position of the keyboard seems to me to indicate that it had been placed in as safe a position as it could conveniently be put. It is quite true that it was put there for the convenience of the residents, but it is far better that the room should be locked up, when the guest goes out, and I should have thought myself that hotels would much prefer that a guest should leave his key in a safe place in the hotel rather than take it out and perhaps lose it, with all the serious results which would arise from that. Then, it is said that the receptionist and the hotel porter were on duty. I do not think that the evidence bears that out at all. I do not **542* think they were about, at any rate in any such position as enabled them to see what was going on. Then it was said that the system had worked for three years and there had been no incident of this kind before. It is often the case that people take risks and nothing untoward happens for quite a long time; then perhaps they get rather too careless and an accident occurs. I do not think the fact that a system has worked for three years proves that there was no negligence on this particular occasion. With regard to the question of contributory negligence, it was said that if the system was bad the plaintiff had adopted it. There again, I do not think that the position of the keyboard was such as to make it negligent, in itself, to put the key there. I think the plaintiff was entitled to expect that a reasonable watch would be kept on the hall and on strangers coming into the hotel. I agree with the learned judge's finding on that point.

Then one comes to the interesting question as to this notice in the plaintiff's bedroom. I do not think that Mrs. Olley ever read the notice displayed in the hall under the Innkeepers' Liability Act, 1863 ; in fact, I do not think that she was ever quite certain that it was there; but it is clear that it was there. The notice contained the terms of s. 1 of the Act. Anybody reading the notice would, I think, come to the conclusion, that if the guest's property were stolen through the neglect of the innkeeper the innkeeper would be liable to a greater amount than 30*l*. Up in the bedroom behind a door, leading to the washstand, but in a position where it could be seen, there was another notice. I do not know how it was headed because the photograph does not show that there is any heading, but the material clause is cl. 1, "The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manageress for safe custody. Valuables should be deposited for safe custody in a sealed package and a receipt obtained." Then there are about fourteen other reminders as to what the guests are expected to do. It seems to me that if a very careful person had read that notice after reading the notice in the hall, he would have come to the conclusion that the notice in the bedroom was not intended to exempt the proprietors from liability in respect of loss or theft caused by the neglect of the proprietors.

I do not propose to refer to the various cases which have been cited. The case of *Scarborough v. Cosgrove* [14] , lays **543* it down quite clearly that the duty on the part of a boarding house keeper with reference to the property brought by a guest into his house is no more than to take reasonable care for the safety of that property. It is said that unless one reads into the notice in the bedroom something to this effect, "The proprietors will not hold themselves responsible for articles lost or stolen, through

the neglect of the proprietors, unless handed to the manageress for safe custody," the notice would be otiose, because it is only stating what is the position at common law. The answer to that, I think, is two-fold. First, anybody reading that notice would be entitled to couple it. with the notice in the hall about the keeper of a common law inn and his liability. Secondly, if one was to interpret it as suggested, namely, by putting in the words "through the neglect of the proprietors," it would be extremely difficult to know what was the position with reference to property handed to the manageress for safe custody. Does that mean that if the property is handed to the manageress for safe custody the proprietors will be liable only on proof of their negligence? I think the guest would be in an impossible position. How could he possibly prove what was the cause of the loss of the property which he had handed to the manageress? I myself do not think that that is the right way of reading the notice in the bedroom. In my view, it is merely a general statement on the lines of the notice in the hall, namely, that the proprietors of the hotel are not responsible for articles lost or stolen unless there has been negligence on their part causing the loss. That being so, it has no bearing on this particular case, because the loss here was caused by the neglect of the proprietors' agents.

As regards the question whether this was or was not an inn at common law, the learned judge has not given any reasons for his decision that it was not a common inn. The question whether any particular house be a common inn is a question of fact. That being so, I should be very slow to disturb the learned judge's finding that this was not a common inn at the time when the plaintiff went there. There is a passage in Halsbury's Laws of England, 2nd ed., vol. 18, p. 138, para. 197: that "A house used as a 'private hotel,' that is to say, for the reception of persons who desire to go and live there, appears not to be an inn." I think that the evidence does establish that this was a private hotel, much more like a private hotel than a common inn. For these reasons, in my judgment this appeal should be dismissed.

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SINGLETON L.J.

I am of the same opinion. The defendants are the keepers of an hotel known as Marlborough Court Hotel, Lancaster Gate, and the plaintiff was a guest in that hotel. She, like many others, lived there for months on end and she knew the place quite well. It was her habit to leave her key in the reception office when she left the hotel. In the reception office there was a place provided for keys - a key rack. She knew that, and she had been accustomed to putting the key in its place upon the key rack; and she knew that that rack was at the back of the reception office. Normally, in the reception office there was one of the hotel staff, and normally there was at least one porter in the hotel on duty. We were supplied with a plan of the ground floor of the hotel. When one goes in through the main entrance, the reception office is at the back of the buildings almost directly opposite the door, and on the right-hand side there is a lounge. On November 7, 1945, the plaintiff left the hotel in the morning leaving her key as usual on the rack in the reception office. When she returned later in the day her key was missing and certain articles had been stolen from her room. During the course of the afternoon another guest at the hotel had seen someone go to the reception office, enter the reception office, come out after a very short space of time, then go to the lift and apparently use the lift, and about a quarter of an hour later that same person came from the lift carrying a bag or parcel, or something of that kind. The learned judge on the evidence found that that person was the person who had taken the key of Mrs. Olley from the key rack, and had then gone to her bedroom and stolen her goods. At that time of day there ought to have been someone on duty in the reception office. It may be there was. The witness, Colonel Crerer, who saw this man, could not see whether anyone was on duty in the reception office at that moment or not, by reason of his position in the lounge; but there was during the afternoon someone on duty. If that person who was in charge of the reception office left the reception office for some good purpose, she ought to have told the porter. The porter at the time was cleaning the bust of the Duke of Marlborough. Either the lady receptionist left the reception office without telling the porter or, if she was in the office, she ought to have seen the unknown man who went to the key rack and took the plaintiff's key and who later came down in the lift and disappeared with the plaintiff's goods. Those facts are, in my view, ample to support the finding of ***545** negligence against the defendants; and, indeed, they made no answer. The defendants might have called the receptionist; they might have called the porter who was on duty; they might have given some evidence as to the general system. They called no evidence whatever. They left the case just where it stood at the end of the plaintiff's evidence, having, of course, obtained some admissions by cross-examination. The trial judge found that the defendants were negligent. I cannot see any answer to that. I think there was the clearest evidence of negligence and the judge was justified in finding it, the plaintiff's evidence being as it was, uncontradicted.

In those circumstances I do not consider that any good purpose would be served by embarking upon a diligent inquiry as to whether the defendants carried on at the time a common inn or a guest house or boarding house. If their establishment was a common inn, and if they were negligent in the conduct of that, they would lose the protection of the Innkeepers' Liability Act, 1863, s. 1 . If it was not a common inn, but something less than that, they are responsible, as I read the authorities, for negligence. A number of authorities from *Scarborough v. Cosgrove* [15] , downwards would seem to show the measure of their responsibility. This court had to deal with the question in the case of *Scarborough v. Cosgrove* [16] , and Collins M.R. said that

there was a duty on the part of the boarding house keeper to take reasonable care for the safety of property brought by a guest into his house - to take reasonable care. If in such circumstances the boarding house keeper fails to take reasonable care he is guilty of negligence. Romer L.J. put the matter a little differently, though the result was the same. I think it is right to read a few lines of his judgment because it seems to me apposite to this case. He said [17] : "Seeing that the landlord carries on his business of a boarding house keeper for reward, I think he is bound to carry on that business with reasonable care, having regard to the nature and normal conduct of the business as known to the guest, or as represented to the guest by him; and if, by reason of a breach of that duty on his part, the luggage is lost I can see no reason why he should not be held liable for the loss to the guest." the Lord Justice said: "I think he is bound to carry on that business with reasonable care." So it seems to me that, if this was a boarding house, the defendants were bound to carry on that business with ***546** reasonable care, which would include reasonable care of a part of the hotel in which they had by implication invited guests to leave keys of bedrooms.

Therefore, I do not think it desirable to examine in detail the question whether this was a common inn or a boarding house In either event the defendants are responsible for negligence, subject to this further and more difficult question. Mr. Berryman on behalf of the defendants raised a question as to the true effect of a document which was exhibited in the bedroom occupied by the plaintiff and her husband. That document was inside some sort of cupboard which hid the washstand in the bedroom. That began in this way: "The proprietors will not hold themselves responsible for articles lost or stolen unless handed to the manageress for safe custody. Valuables should be deposited for safe custody in a sealed package and a receipt obtained." I agree with what my Lord said, that the terms of that notice at its commencement are rather more like something embraced in a notice under the Innkeepers' Liability Act, 1863 , than anything else. Mr. Berryman submitted that those words which I have read should be read into the contract between the plaintiff and the defendants and that, if they were so read, they must be or ought to be regarded as freeing the defendants from their own negligence, and he cited a number of authorities in support of that proposition. The most useful, perhaps, was a case in the Court of Appeal, *Rutter v. Palmer* [18] , where Scrutton L.J., dealing with a somewhat similar question, said [19] : "In construing an exemption clause certain general rules may be applied: First the defendant is not exempted from liability for the negligence of his servants unless adequate words are used; secondly, the liability of the defendant apart from the exempting words must be ascertained; then the particular clause in question must be considered; and if the only liability of the party pleading the exemption is a liability for negligence, the clause will more readily operate to exempt him."

Mr. Berryman submitted that upon the finding of the judge the defendants were the keepers of a guest house and their only liability could be for negligence and, therefore, the effect of the words at the head of the notice, embraced in the contract as they should be, must be to exclude the defendants from ***547** liability for negligence. I confess that I feel some difficulty about those words of Scrutton L.J., "secondly, the liability of the defendant apart from the exempting words must be ascertained" If one has to look back now and say what the defendants were in the year 1945 and construe the contract with that in mind, well and good; it might be necessary to consider more seriously whether they were keepers of a common inn or merely boarding house keepers; but I find it a little difficult to ascertain what the true contractual basis would be if in fact they were keepers of a boarding house, when quite clearly from the notice they exhibited in the entrance hall of the hotel they regarded themselves as keepers of a common inn; and so too might the plaintiff be expected to regard them, having regard to what they exhibited in the hotel. Thus it is not easy to see the basis of the contract. I am more attracted, I confess, in considering this matter by the earlier words of Scrutton L.J.: "First, the defendant is not exempted from liability for the negligence of his servants unless adequate words are used." If the defendants who would prima facie be liable for their own negligence, seek to exempt themselves by words of some kind, they must show, first, that those words form part of the contract between the parties and, secondly, that those words are so clear that they must be understood by the parties in the circumstances as absolving the defendants from the results of their own negligence. On both those points it seems to me that the defendants' argument fails. It is clear that when the plaintiff and her husband went to the hotel they had not seen the notice. Apparently, by the custom of the hotel, they were asked to pay a week in advance, and when they went to the bedroom for the first time they had not seen the notice, and the words at the head of the notice could not be part of the contract between the parties. Then when did they become so? I asked Mr. Berryman, and I am afraid it was not a very easy question to answer; he might say it was at the end of the first week when the second payment was made and the notice was seen, although the plaintiff said she did not read the notice. But there ought to be some certainty in a matter of this kind, and there is none. I do not attach great importance to Mr. Glyn-Jones's point as to the husband in all probability being the payer, the contracting party. If he was, I am inclined to think he would have contracted in this regard on behalf of his wife. But I do think there is more importance ***548** in his further submission that this contract when it was entered into was not a contract for a fixed period subject to renewal, but was a contract for an indeterminate period to which an end could be put by notice, and an end was not put to that contract by notice at the time this loss took place. Indeed, the conditions so far as one knows remained the same. I do not think it is open to the defendants to place reliance upon that notice in the bedroom or, at least, I do not think they are exempted by the words at the head of that notice from their liability for negligence. I agree, if I may say so, with what my Lord said upon the subject, and I attach even more importance to the fact that

this was no part of the contract at the time when the parties first went into the bedroom; and there is no evidence to show that there was ever any alteration whatever in the terms of that contract. I agree with the submission which Mr. Glyn-Jones made that it is for the defendants to show that these words formed part of the contract and that they had only one clear meaning. I think they are ambiguous in more ways than one. That is all I need say upon that side of the case.

There is one further matter. It was submitted on behalf of the defendants that the plaintiff herself must have been guilty of negligence if the defendants were guilty of negligence. I do not so regard the position. The plaintiff in leaving her kev upon the key rack was entitled to expect that the defendants would perform their duty and carry on their business reasonably having regard to the circumstances, as Romer L.J. said in *Scarborough v. Cosgrove* [20] . She was entitled to expect them to perform their part of the contract. In leaving her key upon the key rack she was doing that which the defendants, by inference at least, asked her to do. I see no evidence of any contributory negligence on her part.

DENNING L.J.

I agree. When Mrs. Olley put the key of her room on the hook in the reception office, she put it in charge of the hotel company. It gave access to her room, and it was their duty to take reasonable care to see that it was not taken by any unauthorized person. It was so taken, and consequences followed which might reasonably have been foreseen - a thief used it to get into the room and steal. At common law the hotel company are liable for that loss unless they prove that they took reasonable care of the key. They have not proved it. ***549*** They did not call either the receptionist or the porter to explain how the key came to be taken.

The only other point in the case is whether the hotel company are protected by the notice which they put in the bedrooms, "The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manageress for safe custody." The first question is whether that notice formed part of the contract. Now people who rely on a contract to exempt themselves from their common law liability must prove that contract strictly. Not only must the terms of the contract be clearly proved, but also the intention to create legal relations - the intention to be legally bound - must also be clearly proved. The best way of proving it is by a written document signed by the party to be bound. Another way is by handing him before or at the time of the contract a written notice specifying its terms and making it clear to him that the contract is on those terms. A prominent public notice which is plain for him to see when he makes the contract or an express oral stipulation would, no doubt, have the same effect. But nothing short of one of these three ways will suffice. It has been held that mere notices put on receipts for money do not make a contract. (See *Chapelton v. Barry Urban District Council* [21] .) So, also, in my opinion, notices put up in bedrooms do not of themselves make a contract. As a rule, the guest does not see them until after he has been accepted as a guest. The hotel company no doubt hope that the guest will be held bound by them, but the hope is vain unless they clearly show that he agreed to be bound by them, which is rarely the case.

Assuming, however, that Mrs. Olley did agree to be bound by the terms of this notice, there remains the question whether on its true interpretation it exempted the hotel company from liability for their own negligence. It is said, and, indeed, with some support from the authorities, that this depends on whether the hotel was a common inn with the liability at common law of an insurer, or a private hotel with liability only for negligence. I confess that I do not think it should depend on that question. It should depend on the words of the contract. In order to exempt a person from liability for negligence, the exemption should be clear on the face of the contract. It should not depend on what view the courts may ultimately take on the question of whether the house is a common inn or a private hotel. ***550*** In cases where it is clearly a common inn or, indeed, where it is uncertain whether it is a common inn or a private hotel, I am of opinion that a notice in these terms would not exempt the hotel company from liability for negligence but only from any liability as insurers. Indeed, even if it were clearly not a common inn but only a private hotel, I should be of the same opinion. Ample content can be given to the notice by construing it as a warning that the hotel company is not liable, in the absence of negligence. As such it serves a useful purpose. It is a warning to the guest that he must do his part to take care of his things himself, and, if need be, insure them. It is unnecessary to go further and to construe the notice as a contractual exemption of the hotel company from their common law liability for negligence. I agree that the appeal should be dismissed.

Representation

Solicitors for the defendants: Hair & Co . Solicitors for the plaintiff: Gardiner & Co .

Appeal dismissed. (C. G. M.)

Footnotes

1 *(1873) 29 L. T. 399* .
2 *[1905] 2 K. B. 805* .
3 Ibid. 815.
4 *[1897] 1 Q. B. 541* .
5 *(1914) 30 T. L. R. 393* .
6 *[1926] 1 K. B. 50* .
7 *[1926] 1 K. B. 102* .
8 *[1945] K. B. 189* .
9 *[1918] A. C. 837* .
10 *[1922] 2 K. B. 87* , 92.
11 *(1921) 38 T. L. R. 22* , affirmed *(1922) 38 T. L. R. 429* .
12 *[1922] 2 K. B. 87* , 92.
13 *[1938] 4 All E. R. 170* , 172.
14 *[1905] 2 K. B. 805* .
15 *[1905] 2 K. B. 805* .
16 *[1905] 2 K. B. 805* .
17 Ibid. 815.
18 *[1922] 2 K. B. 87* .
19 Ibid. 92.
20 *[1905] 2 K. B. 805* , 812.
21 *[1940] 1 K. B. 532* .