

finds a waiter in the vestibule or at the door of the dining room taking the customers' coats, sticks, etc. The mere fact that this waiter took the man's chattels, and disposed of them where he (the waiter) chose, would be evidence upon which a jury might properly find that the restaurant-keeper was a bailee of the chattels, and, accordingly, liable as a bailee should injury or loss occur; and this because such a practice does, or even might, add to the popularity and distinction of the establishment, and was probably adopted by the proprietor or manager with that very object in view: *per* Mr. Justice Charles in *Ultzen v. Nicols*, 70 L.T. Rep. 140; (1894) 1 Q.B. 92.

3. Thirdly, suppose that a man (traveller or not) enter a restaurant, or a "tea shop," and a waiter, without being asked, takes his hat and hangs it upon a hook behind him, and suppose that, while he is enjoying his meal, the hat disappears. Now, a person cannot be made liable as a bailee without his consent; and it has to be confessed that these assumptions present a vexatious and troublesome question whether they show a bailment of the hat, or merely a taking of the hat as an act of good nature, or an act of service, and without any intention of taking charge of it. Still, on the whole, they present evidence upon which a jury might find a bailment, and, if so, more assuredly, that the restaurant-keeper was guilty of negligence while the hat was in his custody, owing to want of reasonable care on his part: *Ultzen v. Nicols*, *ubi sup.*; and *cf.*, as to the negligence, *Phipps v. New Claridge Hotel*, 22 Times L. Rep. 49; *Bullen v. Swan*, 23 Times L. Rep. 258; *Giblin v. M'Mullen*, L. Rep. 2 P.C. 317).

4. Lastly, at a subscription dance or concert held in a country institute or assembly room, a subscriber leaves his overcoat in the cloak room, and it is afterwards found missing. The evidence may negative a bailment with the entertainment committee, and as to any breach of an implied contract by the committee to take proper care of any chattels so deposited, it may be negative by the low price of the tickets: *Baker v. Cain*, *Times*, 23rd Nov., 1812, p. 3.

It is evident, therefore, that if the place visited be not an inn, the customer must show some express or implied contractual