

is accepted becomes instantly a guest. Story Bailm., § 477. "It is well settled that if a person goes to an inn as a wayfarer and traveller, and the innkeeper receives him into his inn as such, he becomes the innkeeper's guest, and the relation of landlord and guest, with all its rights and liabilities, is instantly established between them." *Jalie v. Cardinal*, 35 Wis. 118.

"The cases show that to entitle one to the privileges and protection of a guest he must have the character of a traveller; one who is a mere temporary lodger, in distinction from one who engages for a fixed period at a certain agreed rate. The main distinction is the fact that one is a wayfarer, or *transiens*; and it matters not how long he remains provided he assumes this character." 7 Am. Dec., note to *Clute v. Wiggins*, 451.

In these definitions the prominent idea is, that a guest must be a traveller, wayfarer or a transient comer to an inn for lodging and entertainment. It is not now deemed essential that a person should have come from a distance to constitute a guest. "Distance is not material. A townsman or a neighbour may be a traveller, and therefore a guest at an inn as well as he who comes from a distance or from a foreign country."—*Walling v. Potter*, 35 Conn. 183.

Justice Wilde says, in *Mason v. Thompson*, 9 Pick. 284, that "it is clearly settled that to constitute a guest in legal contemplation it is not essential that he should be a lodger or have any refreshment at the inn. If he leaves his horse there, the innkeeper is chargeable on account of the benefit he is to receive for the keeping of the horse."

Judge Bronson, in commenting on this case in *Grinnell v. Cook*, 3 Hill, 485-490, says where the owner of a horse sent the animal to an inn to be kept, but never went there himself, and never intended to go there as a guest, it seemed but little short of downright absurdity to say that in legal contemplation he was a guest. On principle it would seem that a person should himself be either actively or constructively at the inn or hotel for entertainment in order to establish the relation of landlord and guest.

In *Atkinson v. Sellers*, 5 C. B. (N. S.) 442 Cockburn, C. J., remarks: "Of course a man

could not be said to be a traveller who goes to a place merely for the purpose of taking refreshments. But if he goes to an inn for refreshments in the course of a journey, whether of business or of pleasure, he is entitled to demand refreshment and the innkeeper is justified in supplying it."

If a traveller have no personal entertainment or refreshment at an inn, but simply care and food for his horse, he may be a guest, for he makes the inn his temporary abode—his home for the time being. *Ingalsbee v. Wood*, 36 Barb. 452; *Coykendall v. Eaton*, 55 id. 188. And while the definition of guest has been somewhat extended from its original meaning, it does not include every one who goes to an inn for convenience to accomplish some purpose. If a man or woman go together or meet by concert at an inn or hotel in the town or city where they reside, and take a room for no other purpose than to have illicit intercourse, can it be that the law protects them as guests? Is the extraordinary rule of liability which was originally adopted from the considerations of public policy to protect travellers and wayfarers, not merely from the negligence but the dishonesty of innkeepers and their servants, to be extended to such persons? If so, then for a like reason it should protect a thief who takes a room at an inn and improves the opportunity thus given to enter the rooms and steal the goods of guests and boarders. We do not think that the relation of innkeeper and guest can or does arise in the cases supposed. One whose *status* is a guest is a traveller or transient comer who puts up an inn for a lawful purpose to receive its customary lodging and entertainment. It is not one who takes a room solely to commit an offence against the laws of the State. So upon the facts detailed by the plaintiff himself we have no hesitation in saying that he was not a guest at the hotel within the legal sense of the term. The relation of landlord and guest was never established between them. We feel the more confidence in the correctness of this conclusion when we consider the duties of an innkeeper. An innkeeper is bound to take in all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation;