

Eng. Rep.]

OPPENHEIM V. WHITE LION HOTEL CO.

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but he then goes on to give instances in which the innkeeper is absolved by reason of the guest having taken the responsibility upon himself. It was urged on the jury by the counsel for the plaintiff that it was not an unreasonable thing for the plaintiff to have left his money in his pocket, and to have left the door unlocked. Some people have an objection to locking their doors. On the other hand, it was urged that if a guest at an inn did not like to lock his door, he ought to put his money away more carefully. All these things are questions of degree and of fact. I think that the County Court judge left the question quite properly to the jury. It seems to me a mistake to say that the innkeeper is responsible unless there has been gross negligence on the part of the guest, as the term "gross negligence," as was pointed out in *Cashill v. Wright*, is apt, unless explained, to mislead the jury. It was very clearly laid down by Erle, J., in *Cashill v. Wright*, what negligence on the part of the guest absolves the landlord, where he says, that "the goods remain under the charge of the innkeeper and the protection of the inn, so as to make the innkeeper liable as for breach of duty, unless the negligence of the guest occasions the loss in such a way as that the loss would not have happened, if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances." I think in this case it was a question for the jury whether there was not some negligence on the part of the plaintiff, but for which the loss would not have happened. The appeal, therefore, must be dismissed with costs.

KEATING, J.—I am of the same opinion. Mr. Oppenheim contends that the County Court judge ought to have told the jury that there was no evidence to show want of ordinary care on the part of the plaintiff. If there was no such evidence, then the question whether the plaintiff had taken such care did not arise. I think, however, that the judge was bound to leave all the circumstances to the jury. Mr. Oppenheim has contended that, if we say the County Court judge was right, we shall be laying down as matter of law that a guest at an inn is, under all circumstances, bound to lock his door. But all that we do say is, that under the circumstances, the judge was right in leaving the question to the jury. The only question of law that arises is, whether there was any evidence to go to the jury. I think there was, and that the appeal must be dismissed.

M. SMITH, J.—I am of the same opinion. I think that the direction of the judge was perfectly consistent in point of law. That is not disputed by Mr. Oppenheim, and, indeed, it could not be, for the direction was precisely in accordance with the judgment of the Court in *Cashill v. Wright*. But what Mr. Oppenheim says is, that there was no evidence of negligence on the part of the plaintiff conducing to the loss, and that, therefore, the judge ought to have directed the jury that they could not find for the defendants on the ground of any negligence on the part of the plaintiff. I am of opinion, however, that there was evidence for the consideration of the jury, and that they were the proper tribunal to decide the question. I quite agree

with Mr. Oppenheim that a man is not bound to lock his door; that is a question for himself. At the same time, I should be far from saying, that in the present state of the travelling world, a man had taken proper precautions who left his door unlocked. I do not say that his not locking his door *ipso facto* relieves the innkeeper from his liability, still the fact is a strong one, especially when there are other circumstances of negligence. All these things depend on circumstances. What may be an ordinary act at a small inn may assume a different aspect at a monster hotel. Then, again, the plaintiff had a considerable sum of money with him, and he took out the bag containing it in the commercial room. It was a question for the jury what sort of room this was, and to what kind of people the plaintiff gave an opportunity of seeing his money. The plaintiff then went to bed, leaving the money in his pocket, and though there was a key in the lock, he did not lock his door. I think the judge would have been wrong not to have left these matters to the jury, and that the appeal must be dismissed.

Judgment for the respondent.

NOTES OF RECENT DECISIONS IN THE PROVINCE OF QUEBEC.

ALIMONY.

A wife has no action against her husband for alimentary allowance on the ground that she cannot be comfortable in the house of her husband. She must reside with him. (Mondelet, Mackay and Beaudry, JJ.)—*Conlan v. Clarke*, 1 Rev. Crit. 473.

BANKING.

Held, that when a bank discounts for A. a draft by him on B., and accepts a check for the proceeds and delivers it to A., for transmission to B., to enable B. therewith to retire a draft for a similar amount, drawn by A. and accepted by B. for A.'s accommodation, and about to fall due at the branch of the bank where B. resides, on the faith of A.'s representation, assurance and undertaking (without authority, however, from B.) that B. will accept the new draft, and B. receives the check, and before using it has knowledge of the transaction as between A. and the bank, B. cannot legally use the check to retire his own acceptance on the old draft, without accepting the new one.—*Torrance et al. v. Bank of B. N. America*, 15 L. C. J. 169.

BILLS AND NOTES—ALTERATION.

The word "months," which had been omitted in a note after the word "three," had been inserted by the holder without the knowledge of the endorser. *Held*, that this was not alteration, and that the endorser was liable. (Torrance, J.)—*Lainé v. Clarke*, 1 Rev. Crit. 475.