

stands thus: The plaintiff has proved that the loss in question was of property that he had at the hotel as a guest; the defendants have left it in doubt whether the loss occurred through the negligence of the plaintiff or through the negligence of their own servants; in order to escape liability they were bound to prove that the loss occurred through the negligence of the plaintiff; and the defendants are therefore liable, apart from the act of Parliament which I am about to refer to, for the whole amount of the claim. The act of Parliament (26 & 27 Vict., chap. 41) leaves the rights and obligations of the parties as they were before, but says that the plaintiff shall only recover £30, unless he can show that the loss arose through the wilful act, default or neglect of the defendant or his servants. To get rid of this limitation of the defendants' liability the plaintiff has to prove that the loss has been the result of such wilful act, default or neglect, and I think that he must prove that the loss was solely so caused, and that if it may have been caused partly by his own negligence, he fails to get rid of the limitation. In the present case I think that the plaintiff has not shown that the loss was caused solely by the wilful act, default or neglect of the defendants' servants. If the goods were lost after they were placed in the corridor the loss was so caused; but the burden of proof is upon the plaintiff to show that. As it is not proved whether the loss occurred in the room or in the corridor, and as, for this purpose, the onus of proof is shifted, I think that the plaintiff has failed to get rid of the limitation of liability given to the defendants by the act of Parliament.

In my opinion there ought to have been judgment for the plaintiff for £30.

BOWEN, L. J. This case turns on inferences of fact, but it is an interesting case to a lawyer, because the result depends upon nice questions as to onus of proof. In order to arrive at a correct conclusion, it is necessary to follow the shifting of that onus from the defendants to the plaintiff. The reason why we have to determine whether the relation of innkeeper and guest existed between the defendants and the plaintiff is, that if the plaintiff can only rely on the negligence of the defendants as bailees, it is, of course, for

him to prove his case; whereas, if he can bring himself within the relationship of landlord and guest, it lies on the landlords to discharge themselves from liability. There is no doubt that during the whole of the day on which the plaintiff arrived at the hotel his goods were on the premises, and that in the course of the day some of them disappeared. The difficulty in the case arises from the fact, that if the loss of the goods happened before they were removed by the defendants from the room where the plaintiff had left them to the corridor, there would then have been such negligence on the plaintiff's part causing the loss as would prevent him from recovering, notwithstanding the subsequent negligence of the defendants; if the loss happened after they were removed, then the plaintiff would be entitled to recover. We desire to know therefore whether the goods were lost before or after they were removed; but we are unable to ascertain. Thereupon it becomes necessary to decide upon which of the parties the onus of proof rests. And this depends, as I have said, upon whether the relationship of host and guest ever existed between them, and upon whether, if it ever existed, it ceased when the plaintiff left the hotel in the morning. If such a relationship never existed, or if it ceased in the morning, the plaintiff would have to show that the goods were lost after they were put out into the corridor, which he could not do, and his action would consequently fail. In considering what was the relationship between the parties, you start with this, that a person who goes to an hotel has the right to the use of an unoccupied room. If a room is let to a guest who has not arrived, that is an unoccupied room. Until the room is actually wanted for the guest who has engaged it, it seems to me that the hotelkeeper is bound not to refuse accommodation at his house to any person applying for it. The hotel is not full until those who have engaged the rooms have arrived. The plaintiff, when he arrived at this hotel, was told by the manageress that the hotel was full, that he could not have a bed room, but that there was a room then vacant, which was engaged by a lady and gentleman who were expected to arrive during that day, but that the plaintiff could