

COUR DE CIRCUIT.

MONTRÉAL, 9 juin 1885.

Coram LORANGER, J.

DOWNIE v. McLENNAN.

Avis d'inscription.

Cette cause avait été inscrite pour enquête et audition sur le rôle du 12 juin 1885.

Le demandeur donna avis de l'inscription le 9 juin 1885.

Lorsque la cause fut appelée, le défendeur demanda que l'inscription fût rayée, alléguant que l'avis n'avait pas été signifié en temps opportun.

Jugé:—Que dans les causes non appelables, l'avis d'inscription pour enquête et audition doit être donnée au moins trois jours d'avance. (Art. 1099, C. P. C.)

Downie & Lanctôt, avocats du demandeur.

R. D. Matheson, avocat du défendeur.

(L. A. L.)

**INNKEEPER—GUEST—TAKING ROOM
FOR PURPOSES OF PROSTITUTION.**

WISCONSIN SUPREME COURT, MARCH 31, 1885.

CURTIS v. MURPHY (22 N. W. Rep. 825.)

C. went to a hotel near his residence about midnight with a disreputable woman, registered as "C. and wife," and was given a room for the night. Before going to the room he delivered to the night clerk \$102 for safe keeping, and received a receipt therefor. During the night the clerk absconded with the money.

HELD, that *C. was not a guest, and was not entitled to recover the money from the proprietor of the hotel.*

Appeal from County Court, Milwaukee county.

COLE, C. J. The defendant in this action was a proprietor of the St. James Hotel in Milwaukee. The plaintiff was a single man, and kept a saloon not many blocks distant from the hotel. The following facts are clearly shown by the plaintiff's own testimony:—About twelve o'clock at night on the 13th of March, 1882, the plaintiff came to the hotel with a disreputable woman whom he met on the street, and whose name he did not know, and registered himself and the woman as "Thomas Curtis and wife," called

for a room, and it was assigned him by a person or clerk who was in charge of the office. The plaintiff testified that before going to his room he said to this clerk that he saw on the top of the register that all moneys and jewels should be given to the proprietor; when the clerk replied that the proprietor was in bed, and that he held the position of night clerk. Thereupon the plaintiff handed the clerk \$102 for safe keeping, and took a receipt, which read, "I. O. U. \$102," signed by the clerk. That night clerk absconded with the money. The plaintiff sues to recover it of the proprietor of the hotel.

The natural, perhaps necessary inference from the plaintiff's own testimony is that he went to the defendant's hotel at midnight with a prostitute, and engaged a room solely for the purpose of having sexual intercourse with the woman. True, he says that he went to the hotel as a guest, and asked the clerk if he "could stay there for bed and breakfast." But he lived near by, gave no reason why he did not go to his usual lodging-place, therefore we feel entirely justified in assuming that he went to the hotel for the unlawful purposes above indicated. This being the case, the question arises whether he was a guest in a legal sense, and entitled to protection as such. The learned counsel for the defendant insists that he cannot and should not be deemed a guest under the circumstances, and entitled to the rights and privileges of one. If the relation of innkeeper and guest did exist between the parties, it is difficult to perceive upon what ground the defendant can escape responsibility for the loss of the money handed to the clerk or person in charge of the office; for the common law, as is well known, on grounds of public policy, for the protection of travellers, imposes an extraordinary liability on an innkeeper for the goods of his guest, though they may have been lost without his fault.

It is not easy, says Mr. Schouler, to lay down, on the whole, who should be deemed a guest in the common-law sense; the facts in each case must guide the decision. Bailm. 256. A guest is a "traveller or wayfarer who puts up at an inn." *Calye's case*, 8 Coke, 32. "A lodger or stranger in an inn." *Jac. Law Dict.* A traveller who comes to an inn and