and those in Massachusetts have been so modified by subsequent decisions as to greatly weaken, if not destroy their applicability.

These cases, if applicable, are, however, substantially overruled by *Conro* v. *Conro*, 21 Legal Intelligencer. 124, where the slander was of want of chastity in gross terms, and was met by evidence in mitigation of damages, of a bad general reputation in that particular. This decision is undoubtedly applicable to the present case, which was an action of slander for a charge of perjury, and the evidence rejected was a bad general reputation for truth and veracity. Upon authority therefore, and clearly upon principle, the evidence should have been admitted.

Judgment reversed, and *venire de novo* awarded.

SUPERIOR COURT.

Before Robertson, C. J., Garvin and McCunn, J.J.

Wilkins v. Earle et al.

Liability of innkeepers for money lost from safe.

The rules of law governing the liability of an innkeeper for the safety of a guest's baggage, are the same as those which regulate the liability of common carriers as to a passenger's baggage.

An innkeeper is liable to a guest for the loss of a sum of money brought into the inn only for an amount sufficient for his travelling expenses, in the absence of proof of a special contract.

A notice posted in defendant's hotel required a package deposited in defendant's custody for safe keeping to be "properly labelled," and the clerk informed plaintiff that he must describe the property before a redelivery. The plaintiff, on delivering a package for deposit in defendant's safe, informed the clerk that it was "money," and wrote his name upon the envelope.

Held, that this did not amount to a special contract for the safe keeping of the deposit, and the plaintiff was guilty of negligence in not describing the value of the package more particularly.

A notice, to be sufficient to relieve the plaintiff from the imputation of negligence, should be not only of the kind of property, but its value.

[General Term, June 28.]

In this case, the Chief Justice delivered the following opinion:

By the Court: Robertson, C. J.—The liability of keepers of inns for property, which travellers who are guests therein bring with them, is as old as the existence of inns in England (Hollingshed's Chronicle, cited in Edw. on Bailment, App. 620). The whole doctrine in relation thereto is summarily stated in the recital of an ancient original writ, entered in the Register of Writs (f. 105) among writs of trespass (on the case), and set out at length in Fitzherbert's *Natura Brevium* (94 a. b.). Such writ forms the groundwork of the early decision in *Coyle's* case (8 Rep. 32), in which the general principles embraced in such doctrine are evolved from such writ; all of which have some bearing on this case, and are in substance as follows:

1. The place of loss is required to be an inn (*communa hospitium*), which is defined to be "a house where the traveller is furnished with everything he has occasion for on the way" (*Thompson* v. *Lay*, 3 B. & A. 283), the keeper of it not being bound to furnish anything else (*Fell* v. *Knight*, 8 M. & W. 276); such as a place of sale for goods (*Burgess* v. *Clement*, 4 M & S. 306), or to receive any one but travellers (*Rex* v. *Luellin*, 12 Mod. 445), or anything but what is usually brought with or carried by them (*Broadwood* v. *Granava*, 10 Ex 417; S. C. 24 Law J. [Ex.], 1). Although he is liable to an action for not receiving them (Com. Dig. Action on the case; *Rex* v. *Jones*, 7 C. & P. 213; Bacon's Abr. Inns Court, C. 3; *Thompson* v. *Lay*, 3 B. & A. 283), as well apparently as indictment (Year Book, 5 Edw. IV., Easter T., fol. 10, by Hogdon, J; 1 C. & K. 404; Edw. on Bailm. 408), he cannot make any terms or conditions with his guests (6 T. R. 17, per Ld. Kenyon; *Cole* v. *Goodwin*, 19 Wend. 269, per Cowen, J). A house becomes an inn by the mere custom of receiving persons transiently as guests, without a definite agreement as to time (*Wintermonte* v. *Clarke*, 5 Sandf. 242; *Taylor* v. *Monnot*, 4 Duer, 116). But a mere restaurant or place of eating is not one (*Carpenter* v. *Taylor*, 1 Hilt. 193).

2. The guest must be a traveller (1 Roll. Abr. 394; 2 Brome, 254; *Rex* v. *Luellin*, 12 Mod. 445; *Ingolsbee* v. *Wood*, 36 Barb. 452; Bacon's Abr. Inns, C. 5; *Parkhurst* v. *Foster*, Salk. 388); the time of his stopping is, however, immaterial, whether it be of some duration or for mere refreshment (*Barnell* v. *Mellor*, 5 T. R. 273; *Carpenter* v. *Taylor*, 1 Hilt. 193; *McDonald* v. *Egerton*, 5 Barb. 56).

3. The loss or injury for which the innkeeper is liable is that of or to goods and chattels (*bona et catalla*) placed within the inclosure and shelter of the inn and its appurtenances (*infra hospitium*), as laid down in the Year Books (11 Hen. IV. 45 a. b.; 22 Hen. VI. 21 b.; 42 Eliz. 3, 11 a. b.; 42 Ap. pl. 1). Although animals put out to pasture at the guest's request are not so (1 Roll. Abr. 34; 4 Len. 6; 2 Browne, 255; *Hawley* v. *Smith*, 25 Wend. 262); yet vehicles left in the street by the innkeeper's servant (*Jones* v. *Tyler*, Ad. & El. 522), or a waggon-load of goods in like manner placed in an unenclosed shed (*Piper* v. *Manny*, 24 Wend. 282), or a sleigh-load of grain in an outhouse, where such articles were usually stored (*Clute* v. *Wiggins*, 14 J. R. 175), and goods placed in a "commercial" room (*Richmond* v. *Smith*, 8 B. & C. 9), were held to be so.

4. The person by whom the articles were taken, or the mode of loss, is immaterial (Year Book, 22 Hen. VI. 38, pl. 8; Roll. Abr. Tit. Hostler, 7; *Clute* v. *Wiggins*, *ubi sup.*; *Giles* v. *Libby*, 36 Barb. 70; 2 Kent's Com. 593; Story's Com. 306, secs. 470, 479; Bell's Com. 402–3, 4th ed., 496, 5th ed.; Edwards on Bailm., 400, 403, 407; Jones on Bailm. 94), unless such person were the servant or companion of the guest (Cro. Eliz. 285; *Burgess* v. *Clements*, *ubi sup.*; *Fowler* v. *Dorlan*, 24 Barb. 384), or the negligence of the guest contributed to the loss (10 Eliz., Dyer, 266; *Burgess* v. *Clements*, *ut ante*; *Farnsworth* v. *Parkwood*, 1 Stark. 249).

5. For clothing, ornaments of the person, including a reasonable amount of jewellery generally worn by travellers, which embraces a gold watch and chain, gold pen and pencil-case (*Giles* v. *Libby*, *ubi. sup.*), and for sufficient money to pay the travelling and other reasonable daily expenses of the guest, the innkeeper is held liable (*Taylor* v. *Monnot* and *Giles* v. *Libby*, *ubi sup.*; *Van Wyck* v. *Howard*, 12 How. Pr. 197; *Stanton* v. *Leland*, 4 E. D. Smith, 88).

(*To be continued.*)