liability as innkeepers, to make good the loss incurred by plaintiff.

19. No witnesses were called on behalf of the defendants.

20. The case was tried by a jury, and the judge of the County Court, in summing up the case, after referring to the facts of the case, and explaining the law as regards the liability of innkeepers for the safe custody of the property of their guests, proceeded to direct the jury that the question they would have to consider in this case was whether the loss would or would not have happened if the plaintiff had used the ordinary care that a prudent man might reasonably be expected to have taken under the circumstances In the former case they would find for the plaintiff, in the latter for the defendants.

The jury found a verdict for the defendants.

The plaintiff being dissatisfied with the question submitted to the jury by the learned judge, gave notice of appeal.

The question for the consideration of the Court is, was the judge of the County Court right in leaving the question of negligence to the jury in the form hereinbefore stated, without telling them (as the plaintiff contends) that the facts proved did not in law amount to such negligence as would exonerate the defendants from their liability as innkeepers to reimburse the plaintiff for the loss of the £27..

If the opinion of the Court should be in the affirmative, then the appeal to be dismissed with costs; if in the negative, then a verdict to be entered for the plaintiff for £27, with costs of the appeal, it being agreed that in that event each party shall pay his own costs in the court below.

Oppenheim for the appellant. The County Court judge ought not to have left the question of the plaintiff's negligence to the jury, as there was no evidence of negligence on his part. The defendants were bound to satisfy the jury that there was negligence on the part of the plaintiff, but for which the money would not have been stolen. That he failed to do He cited *Ford* v. *London and South-Western Railway Company*, 2 F. & F. 730; *Morgan* v. *Ravey*, 2 F & F. 283; *Cashill* v. *Wright*, 6 E. & B 895; *Burgess* v. *Clements*, 4 M. & S. 306; *Armistead* v. *Wilde*, 17 Q. B. 261; *Cayle's Case*, 1 Sm. L. C. 105.

Charles, for the respondents, was not called upon.

WILLES, J.—I am of opinion that this appeal must be dismissed. It appears that the appellant went to an inn of considerable size in Bristol, and went with a sum of money in his pocket, which he did not publicly exhibit, though he took no precaution to prevent its being seen. He engaged a bedroom, to the door of which there was a lock and key; but though he shut the door on going to bed, he neglected to lock it. He left the money in a place where it could be got at by a person who quietly entered the room. The money having been stolen by somebody who entered the bed room at night while the appellant was asleep, this action was brought. As a matter of law, it is insufficient to set up in answer to the action the bare fact that the appellant had a large sum of money and yet left his door unlocked. It is the duty of the innkeeper to take proper care of the property of his guests, and it is possible that he may not have taken proper care to prevent suspicious persons from entering the inn. It might be that, though the jury might think that there was some evidence of negligence on the part of the guest, their judgment on this point might be overborne by evidence of negligence on the part of the landlord, The negligence here imputed to the appellant is that though there was a key in the lock of the door, the appellant did not turn it, and the appellant's counsel has, in answer to that cited the dictum of Lord Coke in *Cayle's case* (1 Sm. L. C. 107), that in such a case "it is no excuse for the innkeeper to say that he delivered the guest the key of the chamber in which he lodged, and that he left the chamber door open." That is referred to by Erle, J., in *Cashill* v. *Wright*, 6 E. & B. 894, who asks, "Can there be such a general rule? Must not the particular circumstances be taken into consideration? Suppose an innkeeper tells his guest: 'Take care of yourself, for some pickpockets have come into the place,' and after that the guest leaves the door open." Lord Coke indeed said that the innkeeper did not get rid of his liability by giving his guest the key; but he never said that such guest, to whom a key has been given, need not, under any circumstances, use it. Supposing that, as was the case in *Burgess* v. *Clements*, 4 M. & S. 306, a stranger had once or twice looked into the room, or other circumstances had happened which ought to have excited the suspicion of the guest, can it be said that under these circumstances he is under no obligation to fasten the door? Lord Coke goes on, after using the expression cited, to give instances in which the innkeeper will be absolved. "If the guest's servant," he says, "or he who lodges with him, steals or carries away his goods, the inkeeper shall not be charged Moreover, he intimates that a guest may by his own act, take away the responsibility of the innkeeper. "The innkeeper," he says, "requires his guest that he will put his goods in such a chamber under lock and key, and then he will warrant them, otherwise not; the guest lets them lie in an outer court, where they are taken away, the innkeeper shall not be charged, for the fault is in the guest." Therefore, it is quite clear what Lord Coke meant by saying that it is no answer for the innkeeper to say that he gave his guest the key, but that the guest did not use it, was that the innkeeper was not, as matter of law, *ipso facto*, absolved by the mere delivery of the key; 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