The Legal News.

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The expediency of establishing a court of criminal appeal was considered in the English House of Commons during the present session. Sir Wm. Harcourt, while admitting to some extent the justice of the principle, did not think the present system could be charged with serious injustice. The Home Secretary in the course of his remarks made the following important reference to the diminution of crime: "I am happy to think that in this country crime of a serious character is rapidly decreasing. That is one of the most satisfactory features of the time. The sentences of penal servitude are less than one-half what they used to be some years ago. There is, I think, a disposition on the part of those who administer the criminal law to mitigate its severity. I believe that the time has arrived when it may be more considerably done—when the sentences may be less severe and less protracted with equal security to life and property in this country. I have never failed to express that opinion, and upon proper occasions I always like to act upon it. My honored and learned friend has referred to many cases in which men were condemned to death, and the sentences afterwards commuted, and has rather illogically concluded either that the men deserved to die or that they ought to be released as innocent. That is not so. A doubt may have arisen, and in no case of doubt will a Secretary of State allow the sentence of death to be executed."

That some confusion of ideas prevails even in England, with regard to the sanctions of evidence, would appear from the following incident which recently occurred in the City of London Court before Mr. Commissioner Kerr:

"In the course of an action brought by Mrs. Marchant against Mr. C. B. Snelling, a gentleman named Edward Snelling said he wished to make a statement.—Defendant: I object. Are you a Freethinker?—His Honour: I don't know what a Freethinker is. I will ask the witness if he believes in the existence of a God, and in a future state of rewards and punishments?—Witness: I am an Agnostic.—His Honour: I don't know what that is. I have nothing to do with these grand, learned modern words, which are too often in the mouths of the ignorant. Do you believe in a Deity, and a future state?—Witness: No.—His Honour: Then I can't take your evidence.—Witness: Will you allow me to affirm?—His Honour: No; because a person who affirms must state that he has a conscientious objection to take an oath. That is the law of England, whether right or wrong."

But the *Law Journal* thereon remarks:—"Mr. Commissioner Kerr's reading of the statute-book seems to have ceased before the year 1869. He is stated to have rejected a witness because he could not swear, not believing in a Deity, and because he could not affirm, not having a conscientious objection to take the oath, and he applied these two tests as exhausting the law of England 'whether right or wrong.' But this is not the law of England, as everyone knows whose legal education has not stagnated at a somewhat distant period. Has Mr. Commissioner Kerr never heard of the Evidence Amendment Act, 1869, which allows a man to make a solemn promise and declaration if the judge is satisfied that the taking of an oath would have no binding effect on his conscience? We prefer to believe that the report stops abruptly, and that the witness was eventually allowed to make the declaration."

THE LAUDERDALE PEERAGE.

The question on which the title to the Lauderdale peerage and its yearly income of $80,000 a year depend is whether Sir Richard Maitland was legally married according to the laws in force in New York prior to the Revolution. From 1765 to 1772 he was an army officer in the colony. It has always been taken for granted that while here he was married to Mary McAdam, and the title to the peerage has descended on this assumption. An unexpected claimant now appears in the person of Sir James Ramsay Maitland, who contests the claim of Major Frederic Henry Maitland, a lineal descendant of Sir Richard, on the ground that Mary McAdam was not the lawful wife of Sir Richard, and hence that the latter left no legitimate offspring.

The facts relating to the marriage in question are involved in no little obscurity. It appears that Sir Richard lived with Mary McAdam, and that she bore him three children. He recognized her as his wife, and by a will written in 1772 made her and the children his heirs. There appears to have been no formal marriage until shortly before his death, in 1772, when it is claimed the ceremony was performed by the rector of Trinity Church. But as the records of the church were destroyed by fire, there is no documentary evidence of the marriage.

Assuming that he took her as his wife by verbal agreement, that they lived together and recognized one another as husband and wife, the question is whether this, without any formal ceremony in the presence of minister or magistrate, constitutes a valid marriage by the laws of New York in force at that time. That it would constitute a legal marriage by the law as construed at the present time is clear. It is now settled in this State that a man and a woman may contract a valid marriage without any ceremony and without the presence of minister, magistrate or witness, "merely by words of present contract between themselves," and by living together in the married relation. The law on this point was thus laid down by the Court of Appeals in a recent opinion:—

"By the law of this State a man and a woman who are competent to marry each other, without going before a minister or magistrate, without the presence of any person as a witness, with no previous public notice given, with no form or ceremony, civil or religious, and with no record or written evidence of the act kept, and merely by words of present contract between them, may take upon themselves the relations of husband and wife, and be bound to themselves, to the State and society as such; and if after that the marriage is denied, proof of actual cohabitation as husband and wife, acknowledgment and recognition of each other to friends and acquaintances and the public as such, and the general reputation thereof, will enable a court to presume that there was in the beginning an actual and *bona fide* marriage."

This is the interpretation that the highest court of the State now gives not to the statutory but to the common law. The common law prevailed in New York prior to the Revolution. Whether on this point it was then governed by statute, whether the common law of that time is the same as that of to-day, is the question the House of Lords has to decide in the Lauderdale peerage case. On the unexpected claimant rests the burden of proving the invalidity of a marriage which for more than a century has been regarded as valid."—*New York Herald.*

GARON & LAMONTAGNE.

In the case of *Garon & Lamontagne* decided at Quebec during the May Term of the Court of Queen's Bench, Mr. Justice Ramsay delivered the following opinion, which differed in some respects from that of the majority of the Court. The points of difference are noticed in the opinion itself.

RAMSAY, J. This is a very unfortunate piece of litigation. Respondent obtained a franchise for a toll-bridge in the District of Beauce. Within the limits of this franchise some of his neighbours built a bridge. Respondent sued several persons for the penalty for using this bridge. They hurried off to Quebec, it seems, for we have little information on this point of record, and obtained in Chambers a judge's fiat for writs of prohibition against the magistrates. It does not appear that respondent was notified of this proceeding; but when it came to his knowledge that these writs had issued, he instituted proceedings against a number of other persons who, he contended, had violated his privilege.

Again the defendants betook themselves to a judge in Chambers in Quebec, without any kind of notice to respondent, and on the 17th July obtained the following order:—

"Vu la requête ci-dessus et l'affidavit, il "est ordonné et enjoint au dit Joseph Morin, "juge de paix, dans et pour le district de "Beauce, et à tous autres juges de paix, de "suspendre et arrêter toutes procédures en "vertu des sommations mentionnées en la "dite requête, émanées à la poursuite du dit "David Lamontagne, contre les requérants "mentionnés en la dite requête, en date du "8 juillet courant et rapportables le 18 juillet

" courant, jusqu'à ce que le mérite des brefs " de prohibition et les requêtes les accom- " pagnant sous les Nos. 1223 et 1224 des dos- " siers de la Cour Supérieure du district de " Beauce, ait été finalement décidé, *et ce sous* " *toutes peines que de droit pour mépris de cour*;"

Under protection of this *ex parte* proceeding, the defendants presented themselves before the magistrates, and obtained a suspension of the suits in conformity with the order. Appellant then applied to the Court at Beauce for a writ of mandamus in each case, setting up the whole story, and particularly that the magistrates had suspended their proceedings in view of the order of a judge.

On the 10th of December, 1884, the Court at Beauce granted the petitions and ordered the issue of all these writs of *mandamus* enjoining the magistrates to proceed with the suits. We are all of opinion that the judgments, ordering the issue of these writs, should be reversed. The order of the judge in Chambers was not a nullity. I think we should go further and say what we think of the order. Unfortunately the majority of the Court declares that it is not prepared to say more than this, that the order in Chambers was not an absolute nullity. I consider it my duty to be prepared to say what I think of the order, so as to explain why I do not concur entirely in the judgment just rendered. It cannot be said that the order of the judge in Chambers at Quebec is an absolute nullity, because it is signed by a judge of a superior court of law, and one of unlimited jurisdiction, and therefore its legality is taken for granted, until formally set aside. It would be otherwise, with regard to an order of one of the inferior courts of limited jurisdiction. When the latter clearly exceeds its jurisdiction, it is *coram non judice*. The magistrates were therefore right in suspending their proceedings, and they should not have been enjoined. The order of a judge in Chambers, sitting out of the district, to which the case properly belongs, in a contentious proceeding, and without consent of parties, appears to me to be in violation of the whole policy of our judicial organization. It is an act not prohibited in so many words by statute, neither is it sanctioned. A number of sections, however, impliedly exclude such a jurisdiction. For instance, section 16, c. 7, C.S.L.C., provides for sittings of courts and judges at the *Chef-lieu*. Again, section 15 specially gave power to judges of the Superior Court to hear cases in two or more sections at the same time. Section 19 provides for the judge having charge of a district being ill. His place is supplied; the work is not done in another district. Section 25 supplies a remedy where the judge is absent, and celerity is required to avoid the loss of a right. The case does not go to the next district—the prothonotary is empowered to act. Section 20 establishes one exception to the district being the limit of the jurisdiction, and that is where the sole judge in charge of the district is liable to recusation. Then the contentious proceeding may be begun in a neighbouring district. To these may be added cases of *habeas corpus*.

I am therefore of opinion that, although appellants are entitled to a reversal of the judgment of the 10th December, their appeal should be granted without costs, for it is by their manifestly tricky and illegal proceedings that the whole of this worthless litigation has taken place. In this opinion my brother Baby concurs.

In support of the view adopted by the majority of the Court, it has been said that the appellants petitioned the Court sitting at Beauce to suspend the proceedings on all the writs of *mandamus* save one, and that they would be bound by the decision in that case. It has also been said that the judge at Beauce ought to have accorded this demand, that it was a petition which ought to have been granted according to the rules of procedure in France and in England, and that it has been granted here; that the promise of the petitioners to be bound by the decision in the one case, although not signed by the petitioners but by their attorney, was probably authorised, and at any rate the judge might have suggested that the petitioners should enter into an agreement that they would be bound. It seems to me that these reasons are contradictory. If he should have granted a fiat for one mandamus, he was justified in granting them for all.

I do not feel myself called upon to criticise

the refusal of the judge at Beauce to grant this demand for several peremptory reasons. In the first place the refusal to make a suspensory order as required, is purely the refusal to exercise a highly discretionary power unauthorised by any law, and consequently not appealable by its nature. Secondly, the judgment refusing it has not been appealed from, but on the contrary was acquiesced in. The writ of appeal distinctly says the appeal is from the judgment of the 10th December, and so does the factum. So little was the judgment on the petitions (the judgment of the 14th November) considered as being in appeal, that in the record of Garon, sent up as the test case, the petition is not mentioned, and at the argument no one thought of pretending that the appeal was from it. Thirdly, if it had been appealed from, and if it had been appealable, there is no evidence sent up with the record to show that Judge Angers had not exercised a wise discretion in refusing these petitions.

We have heard much of the right of the judge to grant a suspensory order in the suit of A against C, because he has a similar case pending against B. I never heard of a case of the kind till the recent one in Montreal of *The North British and Mercantile & Lambe*, 5 L. N. 323. There is no such procedure mentioned in any of the books under the old law, so far as I know. About the modern law of procedure in France I have no right to speak authoritatively, but I took the trouble to look at the authorities quoted by appellant (Carré and Chauveau and Bioche) and I have not there found any *exception de similarité*. I did find that there was an exception *de connexité*, which is not at all the same thing, and which we have recognised on more than one occasion (1). The practice then is derived from England, but it does not appear, as was said in *The North British, &c., & Lambe*, that such an order would be made in England where there were several plaintiffs and the same defendant, which appears by the report to have been the decision in that case. "Nor will the Courts stay proceedings where the plaintiffs in the several actions are different but the defendants are the same." 2 Lush.

(1) See *Chrétien & Crowley*, 5 Leg. News, 268.

*SUPERIOR COURT—MONTREAL.**

Stenographer's fees—Responsibility of parties.—Held:—That a stenographer, though employed by the attorney *ad litem* of one of the parties to take the evidence of his witnesses, is nevertheless the officer of the court, subject (as regards the performance of his duties and the payment of his fees) to the orders and direction of the prothonotary, and consequently, the party so employing him is relieved of all liability for the stenographer's fees, when he deposits the amount thereof in the hands of the prothonotary.—*Morris* v. *Currie et al.*

Patron et commis—Bref de prohibition.—Jugé:—Que le commis n'est pas un serviteur dans le sens du règlement de la cité de Montréal concernant *les maîtres et les apprentis et serviteurs.—Martin* v. *DeMontigny et al.*

Parties to action—Suit by ship owner—Non joinder of co-proprietors—Amendment.—The plaintiff, part owner of a steamship, brought an action as owner, claiming demurrage, etc., under a charter-party. The defendants denied that they contracted with the plaintiff or that plaintiff was owner. On motion the plaintiff was permitted to amend by making the other part owners co-plaintiffs with him. —*Mackill* v. *Morgan et al.*

Quebec License Act of 1878, 41 *Vic., c.* 3—*Court of Special Sessions of the Peace.—Held:*—1. That the Quebec License Act of 1878 (41 Vict., c. 3) is constitutional.

2. That the Court of Special Sessions of the Peace has jurisdiction over prosecutions instituted by officers of the Revenue.—*Molson & The Court of Special Sessions of the Peace, & Lambe.*

Building Society—Confiscation of shares—Notice—Evidence—Liquidators.—Held:—1. Where an action brought by a transferee was dismissed on the ground that the consideration of the transfer was champertous, that the transferor regained his rights and might institute the action in his own name.

* To appear in full in M. L. R., 1 S. C.

2. The entry of the word 'forfeited' by the secretary of a building society, opposite the names of certain members in the books of the society, is not sufficient evidence that such members received due notice that their shares would be forfeited if their arrears were not paid,—more especially where the entry was made long after the date of such alleged notice.

3. Under C. S. L. C. ch. 69, s. 15, confiscation of shares for non-compliance with the rules of the building society, must be declared. Such declaration may be made by resolution of the board of directors.

4. Where such confiscation has not been declared previous to the liquidation of the society, the liquidators have no authority to pronounce the confiscation.—*Higgins* v. *Power et al.*

Chemin — Rue publique—Obstruction—Jugé: —Qu'un chemin qui a toujours servi à l'usage des propriétaires avoisinants, doit être considéré comme une rue publique; et qu'aucun des voisins n'a le droit de l'obstruer pour la détourner à son propre avantage, sous prétexte que ce chemin est établi sur sa propriété.—*Théoret* v. *Ouimet.*

Seigneuries dans l'ancienne Paroisse de Montréal—Séminaire de St-Sulpice—Droit et valeur de la commutation—Décret—Opposition afin de conserver—Legs et succession—S. R. B. C., ch. 41.—Jugé:—1. Que le droit de commutation sur les immeubles qui sont situés dans les seigneuries appartenant au Séminaire de St-Sulpice, dans les limites de l'ancienne paroisse de Montréal, devient payable à la première mutation de propriété à n'importe quel titre.

2. Que lorsque, dans ces seigneuries, la propriété sujette à la commutation est vendue par décret, les seigneurs ont le droit de faire à cette fin une opposition afin de conserver; mais, ils doivent demander d'abord que la valeur de leur droit de commutation soit fixée par arbitrage, le montant du décret ne pouvant servir à fixer la base.

3. Que dans ces mêmes seigneuries, lorsque le droit s'ouvre par legs ou succession, il n'est payable qu'à l'expiration de dix ans à compter du décès de la personne de laquelle procède l'immeuble, savoir, entre les héritiers et le Séminaire; mais cette loi (S.R.B.C., ch. 41, sec. 67) ne s'applique pas aux tiers.—*DeBellefeuille* v. *D'Odet Dorsennens*, et *Les Ecclésiastiques du Séminaire de St-Sulpice de Montréal*, oppts.

Saisie-revendication — Possession des effets saisis—Appel—Exécution provisoire.—Jugé:—Que lorsque, dans une saisie-revendication, le demandeur a obtenu un jugement d'un des juges de la Cour Supérieure lui accordant la possession des effets saisis pendant l'instance, et qu'une autre des parties dans la cause porte ce jugement en appel, le demandeur peut obtenir l'exécution du jugement par provision, nonobstant l'appel.—*Whitehead* v. *Kieffer et al.*, et *White*, intvt.

Prête-nom — Vente — Tiers. — Jugé:— Que quelque soit l'entente entre le propriétaire de certains meubles et un prête-nom, la vente faite à un tiers de bonne foi par le prête-nom en son nom personnel, est bonne et valable, et le propriétaire ne pourra l'attaquer quand même l'acheteur aurait connu au temps de la vente la qualité du prête-nom, celui-ci étant réputé en pareil cas être le maître absolu de la chose qui fait l'objet de la vente. —*Whitehead* v. *Kiefer et al.*, et *White*, intvt.

Saisie-revendication—Possession des effets saisis—Enlèvement illégal—Mépris de Cour—Contrainte par corps—Appel—Jurisdiction.—Jugé: 1o. Que lorsque, dans une saisie-revendication, la Cour sur requête aura accordé au demandeur la possession des effets saisis, l'enlèvement de ces effets par le défendeur ou par un intervenant dans la cause forcément et contre la volonté du demandeur, constitue ces derniers en mépris de cour, et ils pourront être contraint par corps d'en remettre la possession au demandeur.

2o. Que la cour n'a aucune juridiction pour accorder la possession des meubles saisis à un intervenant, dans une saisie-revendication, lorsque le jugement final maintenant l'intervention a été porté en appel où la saisie est pendante.—*Whitehead* v. *Kieffer*, et *White.*

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

is accepted becomes instantly a guest. Story Bailm., § 477. "It is well settled that if a person goes to an inn as a wayfarer and traveller, and the innkeeper receives him into his inn as such, he becomes the innkeeper's guest, and the relation of landlord and guest, with all its rights and liabilities, is instantly established between them." *Jalie* v. *Cardinal*, 35 Wis. 118.

"The cases show that to entitle one to the privileges and protection of a guest he must have the character of a traveller; one who is a mere temporary lodger, in distinction from one who engages for a fixed period at a certain agreed rate. The main distinction is the fact that one is a wayfarer, or *transiens;* and it matters not how long he remains provided he assumes this character." 7 Am. Dec., note to *Clute* v. *Wiggins*, 451.

In these definitions the prominent idea is, that a guest must be a traveller, wayfarer or a transient comer to an inn for lodging and entertainment. It is not now deemed essential that a person should have come from a distance to constitute a guest. "Distance is not material. A townsman or a neighbour may be a traveller, and therefore a guest at an inn as well as he who comes from a distance or from a foreign country."—*Walling* v. *Potter*, 35 Conn. 183.

Justice Wilde says, in *Mason* v. *Thompson*, 9 Pick. 284, that "it is clearly settled that to constitute a guest in legal contemplation it is not essential that he should be a lodger or have any refreshment at the inn. If he leaves his horse there, the innkeeper is chargeable on account of the benefit he is to receive for the keeping of the horse."

Judge Bronson, in commenting on this case in *Grinnell* v. *Cook*, 3 Hill, 485-490, says where the owner of a horse sent the animal to an inn to be kept, but never went there himself, and never intended to go there as a guest, it seemed but little short of downright absurdity to say that in legal contemplation he was a guest. On principle it would seem that a person should himself be either actively or constructively at the inn or hotel for entertainment in order to establish the relation of landlord and guest.

In *Atkinson* v. *Sellers*, 5 C. B. (N. S.) 442 Cockburn, C. J., remarks: "Of course a man could not be said to be a traveller who goes to a place merely for the purpose of taking refreshments. But if he goes to an inn for refreshments in the course of a journey, whether of business or of pleasure, he is entitled to demand refreshment and the innkeeper is justified in supplying it."

If a traveller have no personal entertainment or refreshment at an inn, but simply care and food for his horse, he may be a guest, for he makes the inn his temporary abode—his home for the time being. *Ingalsbee* v. *Wood*, 36 Barb. 452; *Coykendall* v. *Eaton*, 55 id. 188. And while the definition of guest has been somewhat extended from its original meaning, it does not include every one who goes to an inn for convenience to accomplish some purpose. If a man or woman go together or meet by concert at an inn or hotel in the town or city where they reside, and take a room for no other purpose than to have illicit intercourse, can it be that the law protects them as guests? Is the extraordinary rule of liability which was originally adopted from the considerations of public policy to protect travellers and wayfarers, not merely from the negligence but the dishonesty of innkeepers and their servants, to be extended to such persons? If so, then for a like reason it should protect a thief who takes a room at an inn and improves the opportunity thus given to enter the rooms and steal the goods of guests and boarders. We do not think that the relation of innkeeper and guest can or does arise in the cases supposed. One whose *status* is a guest is a traveller or transient comer who puts up an inn for a lawful purpose to receive its customary lodging and entertainment. It is not one who takes a room solely to commit an offence against the laws of the State. So upon the facts detailed by the plaintiff himself we have no hesitation in saying that he was not a guest at the hotel within the legal sense of the term. The relation of landlord and guest was never established between them. We feel the more confidence in the correctness of this conclusion when we consider the duties of an innkeeper. An innkeeper is bound to take in all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation;

and he must guard their goods with proper diligence. Bac. Abr. tit. "Inn and Innkeeper," C; Story Bailm., § 476.

Now if the defendant had been aware of the purpose of the plaintiff in applying for a room, could he not have refused to receive him into his house? Nay, more, if the plaintiff had been received by the clerk, and a room had been assigned him, could not the defendant, on learning the purpose for which the room had been taken, have incontinently turned the plaintiff and the woman with him into the street, or have called the police and had them arrested? It seems to us there can be no doubt of the right of the defendant thus to have treated the plaintiff. But if the plaintiff was a guest, and entitled to the rights and privileges of a person having that *status* at the hotel, he could not have been turned into the street, though his profligate conduct was outraging all decency and ruining the reputation of the hotel.

The questions which have frequently come before the courts for consideration were whether a person, upon the facts of the case, was a traveller or temporary sojourner, so as to be deemed a guest, or whether he was to be regarded as a boarder, or one at the hotel as a special customer. These questions are elaborately examined in some of the cases above cited; also in *McDaniels* v. *Robinson*, 26 Vt. 316; *Berkshire Woollen Co.* v. *Proctor*, 7 Cush. 417; *Norcross* v. *Norcross*, 53 Me. 163; *Pinkerton* v. *Woodward*, 33 Cal. 557; *Hancock* v. *Rand*, 94 N.Y. 1; *Smith* v. *Keyes*, 2 T. & C. 650; *Fitch* v. *Casler*, 17 Hun, 126; *McDonald* v. *Edgerton*, 5 Barb. 560; *Shoecraft* v. *Bailey*, 25 Iowa, 554; *Manning* v. *Wells*, 9 Humph. 746.

It seems to have been taken for granted in the court below that the plaintiff was a guest at the hotel. But the learned County Court held that section 1725, Rev. Stat., requires the guest to deliver his money to the innkeeper himself, or to a clerk having authority from the innkeeper to receive it. As it did not appear that the clerk in this case had such authority, the defendant was relieved from responsibility for the money lost by the clerk. We should hesitate to affirm the correctness of this view of the law. On the contrary, we think a traveller, when he goes to a hotel at night, and finds a clerk in charge of the office, assigning rooms, etc., has the right to assume that such clerk represents the proprietor, and has authority to take charge of money which may be handed him by a guest for safe-keeping. But still, in the view which we have taken of the character of the plaintiff, and that he was not a guest at the hotel, this error of the court is immaterial. On the whole record the judgment is right, and must be affirmed.

RECENT U.S. DECISIONS.

Gambling Contracts.—When the parties to an executory contract for the sale of property intend that there shall be no delivery thereof, but that the transaction shall be settled by the payment of the difference between the contract price and the market price of the commodity at a time fixed, the contract is void. But it must be shown by a preponderance of the evidence that both parties to the contract intended that it should be performed by a mere payment of differences, and not by a delivery of the property. A party who is sued on such a contract is incompetent to testify as to his intention in entering into it. A party who takes a note given to reimburse the payee for margins advanced by him, with knowledge of that fact, cannot recover thereon.—*National Bank* v. *Oskaloosa Packing Co.*, Sup. Ct., Iowa; April 23, 1885.

GENERAL NOTES.

An interesting case concerning an innkeeper's liability for the property of a drunken guest has recently been decided by the Supreme Court of Michigan. The suit was brought by a pedler to recover the value of his valise and goods worth upward of $300, which were stolen at the defendant's hotel after the pedler had put up there for the night. On the trial it appeared that the plaintiff drank freely at the hotel bar, and became somewhat intoxicated, on the evening the theft was committed. A point was made of this fact by the counsel for the defendant, who insisted that the liability of his client was lessened by reason of the plaintiff's drunkenness. The trial judge, however, took a very different view, and charged the jury, on the contrary, that the defendant's liability, if there were any difference, was greater. "In fact," he said, "when the goods were once placed in his charge, the fact that the owner of the goods got intoxicated there at the bar of the landlord, if anything, should hold the landlord to strict liability on that account." On appeal, the Supreme Court approved this statement of the law, and upheld the verdict for the plaintiff.—*Boston Law Record.*