

ST. LOUIS LAW REVIEW

Published Quarterly During the University Year by the
Undergraduates of Washington University School of Law.

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NOTES

CURTIS VS. MURPHY.¹

It is rather strange to find that there is but one comment made upon this case by the text book writers on the subject of inns and hotels. This one comment is a somewhat severe criticism made by Prof. Beale in his book on "Innkeepers and Hotels" in which the author states that the only logical and reasonable ground upon which the decision of the court can be upheld is that the plaintiff was not entitled to recover, because he committed a fraud upon the defendant and his agents in representing the strumpet to be his lawful wife.²

In the case of *Curtis v. Murphy*, the plaintiff, a resident of Milwaukee, managing a place of business in the vicinity of defendant's hotel, went to defendant's inn with a prostitute, obtained a room to which he took her, after having registered under an assumed name and representing that the woman was his wife. When received at the hotel, plaintiff deposited some valuables with defendant's clerk,

¹ 63 Wis. 4.

² Beale v. Innkeepers and Hotels, Section 135.

who absconded with it early next morning. The plaintiff was denied judgment in that case, and it was held that plaintiff did not become a guest and that therefore he could not claim the rights of a guest as against the defendant. The ground upon which the court based its opinion that the plaintiff did not become a guest was that he came to the hotel for an unlawful purpose.

A diligent search among the cases shows that there is no other decision that is either in accord or directly in conflict with the main question decided by the Wisconsin court, although there is an apparent disagreement between the Appellate Division of New York and the case under consideration on a very important point, namely, whether or not plaintiff, under the circumstances, becomes a guest at all. *Curtis v. Murphy* holds that the plaintiff never became a guest at the hotel because of his coming there for an unlawful purpose, but the New York Court, in a case almost identical in its facts with the Wisconsin case, says

“that the plaintiff *was a guest* in the defendant’s hotel *cannot be denied*, unless his taking the strumpet to his room *deprived* him of his rights as a guest.”²

The last proposition, however, was not decided, although it is held that the plaintiff does enjoy all the rights of a guest from the time the prostitute leaves the hotel after the unlawful act for which she came has been committed.

In view of this decision and the fact that the Wisconsin case stands alone, we are inclined to strongly doubt the correctness of the case. We concede that the definitions of a guest almost invariably include the proviso that the person claiming to be a guest must come to the inn for the purpose of receiving such accommodation as the innkeeper may furnish, that is, for a lawful purpose. “A guest is a transient person who resorts to, and is received at, an inn for the purpose of obtaining the accommodations which it purports to afford.” *Overstreet vs. Moser*, 88 Mo. App. 72. “A guest is a transient comer or traveler who puts up at an inn for a *lawful* purpose to receive its customary lodging and entertainment.” Words and Phrases.

The composite of the two definitions picked at random, is the definition of a guest most usually and ordinarily given by the courts. Practically all of the definitions contain the provisos that the guest must be a *traveler* and that he must come for a *lawful purpose*. That such a definition is incorrect as far as the proviso that the guest must be a traveler is concerned cannot now be questioned in spite of the fact

² *Lucia v. Omel*, 46 N. Y. App. Div. 200.

that the courts persist in inserting it in their definitions of who is a guest. The question insofar as that proviso is concerned is not whether the person claiming to be a guest is a traveler or not but whether he has been *received into the inn on the footing of a guest*. *Orchard vs. Bush* (1898) Q. B. 284. *Walling v. Potter*, 35 Conn. 183. We should note right here therefore that the controlling and deciding factor upon this point is simply a question of the intention of the parties and the contract into which they enter.

The proviso that the guest must come for a lawful purpose is indeed more unwarranted than that he must be a traveler as far as the decisions involving that phase of the question are concerned. With the exception of the case of *Curtis vs. Murphy*, *supra*, we have not been cited to and have been unable to find any decision which warrants a definition of a "guest" to include that proviso. Wherever this case has been referred to it was cited not because the question in the particular case required a decision as to the lawfulness of the guest's purpose at the inn but simply as authority for including the proviso as to the legality of the guest's conduct at the inn in its general definition. So then we reiterate that the cases, excepting *Curtis vs. Murphy*, do not decide that a person who has been received as a guest at an inn is not a guest simply because he is at the inn for an unlawful purpose, and its insertion as a proviso in the definitions is wholly unjustified by the decisions.

All definitions containing this proviso are too broad and as to it are merely obiter expressions. It is quite clear to our mind that the courts have become confused by the questions as to who *may become* a guest and as to *who is a guest*, with reference to the guest's purpose as is evidenced by the position that they already have taken in respect to the proviso that he must be a traveler. An innkeeper is engaged in a public or quasi-public enterprise, and is, therefore, required by law to receive and accommodate all those who apply to him for entertainment and refreshment. His refusal to receive one who so presents himself, unless his quarters are all taken up, will, just as in the case of all other persons engaged in a public or quasi-public business, subject him to a suit for damages. *To be entitled to insist upon his right to be received* upon the footing of a guest and to entitle him to recover damages in case he is refused admittance, the person seeking to obtain the privileges of a guest, must be a bonafide *traveler*, going to the inn for a *lawful* purpose, otherwise the innkeeper may refuse to accept him and will not be liable in a suit to recover damages for such refusal. Thus a person, who resides in the city and has a home to which he

can easily go for the night could not insist that the innkeeper receive him at his inn, nor could a person insist upon being admitted at an inn if he goes there for an immoral or unlawful purpose. But the person residing in the city will become a guest and will be entitled to the protection accorded by the law to all other guests if he has been received as a guest by the innkeeper. *Curtis v. Murhpy, supra.* Even a person not entitled to demand admittance not being a bona fide traveler, will become a guest and be entitled to all the rights of a guest if he is received voluntarily in the inn upon the footing of a guest. The innkeeper has a right to refuse to receive him, but that right he may waive; and he does waive it by consenting to receive the guest. (Section 135, Beale on Innkeepers and Hotels.)

A person *is or becomes a guest*, and is, therefore, entitled to the rights of a guest as soon as he has been *received and accepted by the innkeeper on the footing of a guest*. The relationship of innkeeper and guest comes into existence as soon as the contract has been entered into by the parties, and until that contract has been terminated, the guest is entitled to all the benefits of his contract, his unlawful purpose at the inn notwithstanding. And though the innkeeper would have been justified in refusing to receive the applicant as a guest, it by no means follows that if he was received the applicant did not occupy the exact position of a guest. The innkeeper can doubtless waive his right to refuse admittance and accept an applicant as his guest; though it is equally clear that he may if he choose accept him on such terms that he will not be a guest. (Beale on Innkeepers and Hotels.)

We are persuaded to adopt this as the correct law because we fail to see where any injustice is done the defendant. The extraordinary liability placed upon the innkeeper with respect to the property of the guest has been approved by all the courts at all times. This rule of extraordinary and burdensome liability it is true found its way into the law because of the policy of the law to protect the property of the traveler and the wayfarer who must needs as it were surrender himself to the innkeeper for protection, but this liability not now placed upon his shoulders because the person sojourning at the inn happens to be a stranger. *It arises out of the contract of the parties.* A bona fide traveler may not be entitled to recover for the loss of his property at the inn, unless he has applied and been received at the inn as a guest—unless he has made a contract with the innkeeper which entitles him to receive the rights and privileges of a guest. Having made the contract by receiving plaintiff as a guest, we can see no reason why plaintiff's unlawful or immoral conduct should relieve the defendant from the lia-

bility which he assumed and for which he was paid. His hazard and risk which he undertook at the time he received plaintiff is not enhanced by plaintiff's conduct at the inn, and plaintiff's conduct has nothing on earth to do with the liability of the innkeeper, or with his extraordinary burden.

The plaintiff though not entitled to *become* a guest *did become* a guest after he was received as such by the defendant and was entitled to the benefits of his contract. It is true that the plaintiff was engaged in an unlawful act, but such matters must be taken care of by the authorities in charge of keeping order and enforcing criminal statutes of the state and the ordinances of the city. Unless the liability of the innkeeper is made less burdensome generally, it is not safe to create any loopholes or exceptions through which he might escape. Exception breeds exception, and if the rule of law laid down in *Curtis v. Murphy* were to be accepted, it would be very difficult to know just where to stop.

It must be admitted that the case of *Curtis vs. Murphy*, *supra*, in which the precise point was involved announces a doctrine in direct conflict with the views we have expressed. With due deference to the learned Court which decided that case we must say that the logic and reasoning which led the court to decide as it did, is wholly unsatisfactory from a legal standpoint, and the decision of the case is the more unacceptable because it does not, as was intimated in *Lucia v. Omel*, *supra*, consider whether plaintiff was *deprived* of his rights as a guest, because he came to the hotel for an unlawful purpose, but holds that the plaintiff did not become a guest at all, a proposition clearly erroneous according to the New York case and wholly unsupported by the cases.

The Wisconsin Court appears to hold that plaintiff was not a guest, because if he had been a guest "he could not have been turned into the street, though his profligate conduct was outraging all decency and ruining the reputation of the hotel." This is a pure dictum and cannot be supported. Under such circumstances, the innkeeper would certainly have a right to turn out a guest, just as he would in the first place have had a right to refuse to accept him. The conclusion of the court that he was not a guest on that account is therefore untenable.