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COURT :—The appeal is allowed. The decrees of courts are set aside. The suit will be remanded court, through the District Judge, to be restored to al number and tried according to law.

*Appeal decreed.*

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*Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.*

IAN AND SON (DEFENDANTS) *v.* A. CAMERON (PLAINTIFF).*

1922 *June*, 7.

*Act IX of 1872 (Indian Contract Act), section 151—Hotel-keeper—Liability of hotel-keeper for safe custody of property of guests.*

The liabilities of a hotel-keeper to his guests are regulated by the ian Contract Act, and in the absence of any specific agreement in a given se, the rules in Chapter IX of that Act will apply.

Where, therefore, the property of a guest at a hotel was stolen from room while he was at dinner in a different part of the hotel building, and was found that the room occupied by him was to the knowledge of the tel-keeper in an insecure condition, which the latter had taken no steps to ectify, it was *held* that the hotel-keeper was liable. *Rampal Singh* v. *Murray & Co.* (1) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Dr. *Kailas Nath Katju*, for the appellants.

Babu *Sital Prasad Ghosh*, for the respondent.

RYVES and GOKUL PRASAD, JJ. :—The facts out of which this appeal arises are these :—The plaintiff (respondent), who is a commercial traveller, went to Cawnpore, in September, 1918, and put up as a guest at the Civil and Military Hotel, Cawnpore, which was owned by the defendant (appellant). While staying in the hotel, he alleged that a suit-case of his, containing valuables to something over Rs. 3,000 in value, was stolen from the room he occupied, while he was at dinner in another part of the building. He claimed to recover the value of the stolen goods from the defendant on the ground that the loss was due to the neglect of the defendant in keeping the premises in an unsafe condition. The defendant (appellant), among other pleas, pleaded that if the theft was committed, it was due to the fault or connivance of the plaintiff's own servant and that the defendant was not liable, and that the defendant had kept proper care and had taken proper steps to provide for the security of travellers staying in the hotel, and that there was no negligence on his part. The trial court

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* Second Appeal No. 1526 of 1920, from a decree of L. S. White, District Judge of Cawnpore, dated the 30th of July, 1920, confirming a decree of Ganga Prasad Varma, Subordinate Judge of Cawnpore, dated the 26th of August, 1919.

(1) (1899) I. L. R., 22 All., 164.

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came to the conclusion that there was no statute l applicable, and held that, therefore, it must be gu common law in England. Having found that i proved that the plaintiff had in any way been negli that under the common law of England it was unneces the plaintiff to prove that there was any negligence on t of the defendant, and that if goods were lost in an inn th keeper was *primâ facie* liable and that the *onus* lay on to prove otherwise, it decreed the suit. On appeal, this de and the reasons for it were maintained by the learned Dist Judge. On appeal to this Court objection was taken to t finding on the point of law arrived at by the court below. Th decision was based largely on the case of *Whateley* v. *Pala Pestanji* (1). That was a case referred by the Court of Sma Causes in Bombay to the High Court, and, from the opening words of the judgment of the High Court, it would seem that the case was one concerning a hotel situated in the Island of Bombay, for the opening words are :—" There is no law but the common law of England to regulate the relation of innkeeper and guest in Bombay, in a case between a European and a Parsi." It is argued for the respondent that in the absence of any statute law dealing with the subject in this country, the common law of England should be applied. It was, however, pointed out by their Lordships of the Privy Council in the case of *Waghela Rajsanji* v. *Shekh Masluddin* (2), that that is so, but only if the rules of English law are found applicable to Indian society and the circumstances. There can be no doubt that hotels are built and managed very differently in England and in India, more certainly so in the mufassil parts of India at the present time. Owing to the climate and for other reasons, the quarters in which the residents live in Indian hotels are much more open and unconfined than in England. Unlike an English hotel, an Indian hotel is more or less a thoroughfare to which the public have free access—pedlars with their wares, unemployed servants seeking employment, and so on—including snake-charmers, jugglers and such. It is also the custom in India for guests to take private servants with them, who have access not only to their master's rooms but also have opportunities of access to the rooms occupied by other persons, and menial servants

(1) (1866) 3 Bom. H. C. Rep., 137.
(2) (1887) L. R., 14 I. A., 89 (96).

must be employed and have of necessity frequent access, at least to the bath-rooms. We may point out that even in England the common law was greatly modified in favour of the inn-keeper by the Inn-keepers' Liability Act of 1863 and other Acts. Under these circumstances, it would be quite impossible to apply the common law of England, in force against inn-keepers, in the mufassil in India.

There is nothing to show that the Bombay decision was meant to apply, or has any application, to the mufassil of India. That case, also, was decided in 1866, before the Indian Contract Act was passed. It seems to us that the liabilities of a hotel-keeper to his guests are now regulated by the Indian Contract Act, and in the absence of any specific agreement in a given case, we think that the rules in Chapter IX of the Indian Contract Act would apply. The case of *Rampal Singh* v. *Murray & Co.* (1) would seem to confirm this view, although it is not fully applicable to the facts of this particular case.

It is remarkable that (so far as we know) there is no reported decision in any of the Indian Courts on the subject. Having come to the conclusion, when the appeal was first heard by us, that while the decree of the courts below could not be maintained on the ground taken by those courts, we thought it necessary, before deciding the case, to send down an issue as to whether the defendant had taken such care of the goods of the plaintiff as was required by section 151 of the Indian Contract Act. In other words, we thought the Indian Contract Act was applicable. The parties were allowed to give such further evidence on this issue as they desired, and the learned District Judge has found as a fact as follows:—The hotel building is divided into two main blocks, the public and dining rooms and some residential rooms are in one block, and other dwelling rooms are in a separate block at some distance from the main block. The detached block of dwelling rooms consists of a verandah, extending the whole length of the building, six sleeping rooms leading into two bath-rooms each at the rear, and each bath-room has a door leading out to the back. It is found that at the back of this block there is an open unfenced maidan, so that any one who pleased could have access to the back of these quarters. It was also found that the bath-room, connected with the sleeping room which the plaintiff occupied, was unsafe and could easily be entered

(1) (1899) I. L. R., 22 All., 164.

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from the back. It was admitted that the plaintiff had a servant with him, and that on the evening of the 27th of September, at about 8 o'clock when the plaintiff went to the main building to have his dinner, this servant was left in or about the room: that shortly afterwards, the suit-case was stolen from the room. It is found that the plaintiff's servant followed the thief unsuccessfully. It is also found that there had been two other thefts within the year in the hotel to the knowledge of the manager, and it is not denied by him, as asserted by the plaintiff, that his notice had been brought to the unsafe condition of the bath-room. On the evidence, the court has come to the conclusion that the defendant had not taken such care to ensure the safety of the property of the guests as a man of ordinary prudence would, under the circumstances, take of his own goods, and that there was negligence on his part. In other words, the finding is against the defendant. Objection is taken to the finding, mainly on the ground that as the plaintiff actually had a servant in his own employ and had left his servant in or near the room at about the time the theft took place, the defendant was absolved from liability, and that, at any rate, so far as this plaintiff was concerned, there was no obligation for the defendant to take special care to ensure the safety of his goods. We are not prepared to accept this argument. It was the duty of the defendant to keep his premises in such a condition of safety as would reasonably prevent theft. The finding here is that the whole of the back of the detached premises was unsafe; that the fact that it was unsafe had been brought to the notice of the defendant and that, therefore, he should not only have had the doors repaired, but that he should have had a watchman at the back of these premises as the only means of ensuring safety, and prevent anybody entering the premises if he had a mind to do so. In our opinion, on this finding, which is one of fact, binding on us in second appeal, the appeal fails and it is dismissed with costs.

*Appeal dismissed.*