

## R. & R. CUNNINGHAM v. VOLLMERS ONE MORE TIME

CAMERON HARVEY\*

Elsewhere in this issue of the Manitoba Law Journal, Shalom Schachter is offering a contrary opinion to my earlier comment<sup>1</sup> on the state of the law in Manitoba regarding the innkeepers' lien; I have the following observations to make on Mr. Schachter's opinion. He refers to the case of *Harding v. Johnston*<sup>2</sup>, and an *obiter* statement in the judgment of Perdue J.A. in the case, as well as the inclusion of the case in the Canadian Abridgement. In his reference to the judgment of Mr. Justice Perdue, I think that he is mistaken; I think that he has misconstrued what the learned justice wrote. As for the appearance of a resume of the case in the Canadian Abridgement, I am moved to ask, "So what?"; this is really an event of no consequence. The Abridgement is not authoritative; it does not purport to approve or disapprove of the decisions briefed. In the final analysis, I think that the *Harding v. Johnston* case is more supportive of, than detracting from, my thesis of what is the law in Manitoba regarding the innkeepers' lien.

Mr. Schachter's reference to the *United Typewriter*<sup>3</sup> case mystifies me. Similarly in the next paragraph Mr. Schachter loses me entirely. I did not imply that the Alberta legislation codifies the common law regarding innkeepers's lien rights. I state quite clearly that in my view the legislation in Alberta does not codify the common law, but rather it is supplementary or additional to the common law. In my view, it is apparent that s. 3(1) of the Alberta legislation amounts to only a partial enshrinement of the common law and this is strengthened by the wording of s. 3(2). By comparison, ss. 3 and 5 of *The Hotelkeepers Act* of Manitoba were put in the place of the common law regarding innkeepers' lien rights.

In his penultimate paragraph Mr. Schachter refers to the case of *Robins v. Gray*<sup>4</sup> and an English statute enacted in 1863. I do not think that his point is well taken at all. The 1863 statute was not meant to replace the common law generally regarding innkeepers; obviously it was meant to deal only with the liability of innkeepers for the loss of or damage to goods of guests. The *Robins* case was quite properly decided on the basis of the common law which governed. The current Manitoba situation is

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\* Of the Faculty of Law, University of Manitoba

1. (1977), 7 Man. L.J. 217.

2. (1909), 18 Man. R. 625 (Man. C.A.).

3. (1914), 20 D.L.R. 519 (Ont. S.C.).

4. [1895] 2 Q.B. 501 (C.A.).

different, for we have a statute which by its wording replaces the common law in large measure. True, it does not replace the common law entirely. For instance the common law definitions of who is an innkeeper or what is an inn, and who is a guest still govern. But the basic law regarding innkeepers' lien rights and innkeepers' liability has been replaced.

In conclusion, I stand by my original opinion that innkeepers in Manitoba do not have the right to seize the goods of a third party brought onto the premises by a guest.