

R. & R. CUNNINGHAM v. VOLLMERS¹
RE-EXAMINED

SHALOM SCHACHTER*

In a recent comment² regarding the above case, Professor Harvey offered the opinion that the law in Manitoba is different from other provinces. Focusing on the different wordings of the corresponding statutes, Professor Harvey argued that *The Hotel Keepers Act*³ (hereinafter called *The Manitoba Act*) by omitting the phrase "in addition to all other remedies provided by law" which is included in *The Innkeepers Act*⁴ (hereinafter called *The Alberta Act*) replaced rather than supplemented the common law rights of innkeepers.

With respect I disagree. I suggest that the phrase referring to "other remedies" is immaterial and that innkeepers in Manitoba may place a lien on third party goods brought by a guest.

*Harding v. Johnston*⁵ bears on this issue. The case concerned the rights of a stable keeper to place a lien on animals that she had stabled or fed. The governing law was *The Stable Keepers Act*⁶ which stated that a stable keeper had the same rights that a hotel keeper possessed under *The Hotel Keepers Act*⁷ (hereinafter known as *The Former Manitoba Act*). The court held that stable keepers only received the statutory rights of hotel keepers but not their common law rights. Under *The Former Manitoba Act* the goods subject to a lien were limited to those actually owned by the guest.⁸ In the instant case the goods in question were stolen and therefore were not subject to lien. Chief Justice Howell stated⁹ that there was no need to determine whether the hotel keeper's common law right in relation to third party goods was taken away by *The Former Manitoba Act*.

Mr. Justice Perdue did, however, offer *obiter* to the effect that nothing in *The Former Manitoba Act* interfered with the hotel keeper's common law rights.¹⁰ Mr. Justice Perdue could have noticed that *The Former Manitoba Act* differed from *An Act Respecting Innkeepers*¹¹ which contained the "other.

* Student, Faculty of Law, University of Manitoba.

1. (1973), 35 D.L.R. (3d) 761 (ALTA. S.C.).

2. (1977), 7 Man. L.J. 217.

3. R.S.M. 1970, c. H150.

4. R.S.A. 1970, c. 186.

5. (1909), 18 Man. R. 625. (Man. C.A.).

6. R.S.M. 1902, c. 159, s. 2.

7. R.S.M. 1902, c. 75.

8. *Id.*, at s. 4.

9. *Supra* n. 5, at 627.

10. *Supra* n. 5, at 630.

11. R.S.O. 1897, c. 187.

remedies" phrase.¹² The absence of such a phrase did not prevent him from making his observation. The third member of the Court, Mr. Justice Richards concurred, although it is unclear with which of the judgments he concurred. However, the ratio of the case has been understood to stand for the proposition that *The Former Manitoba Act* supplements the common law.¹³ The wording¹⁴ of *The Manitoba Act* in the relevant section is identical to the provision of *The Former Manitoba Act* and therefore the common law rights should continue to exist.

The case of *United Typewriter Co. v. King Edward Hotel Co.*¹⁵ does not necessarily rebut my argument. In that case Chief Justice Meredith directly refers¹⁶ to the "other remedies" phrase¹⁷ in finding the favour of the innkeeper. His reference to the phrase however can be understood, not as an essential foundation to his decision but only to negate conclusively any argument the plaintiff may have had.

Nevertheless there is no direct Manitoba authority for my argument. Argument can however, be had with Professor Harvey's comment that the *Vollmers* case turned on the inclusion of the "other remedies" phrase. That comment implies that the innkeeper's lien rights were codified by *The Alberta Act*. It would hold that the prior common law was wiped out and the innkeeper depended completely on the statute. The argument would conclude that the innkeeper was only able to succeed in *Vollmers* due to the inclusion of the "other remedies" phrase in Section 3 of *The Alberta Act* which in effect reintroduced the common law remedies. However, a close reading of the section indicates that the "other remedies" phrase does not appear until Subsection 2 which limits its coverage to property of the guest and not of a third party. If the innkeeper could not detain the third party's goods in the first instance how could she regain possession of them one month later? Thus, if the statute was not meant to supplement the common law, the innkeeper in *Vollmers* would have had to lose.

Should it be argued that the statute codified only some rights and not others, I would respond by stating that once a statute is accepted as a codification of the law, it is a codification for all provisions unless otherwise expressly indicated. The reverse would cause undue uncertainty as to the proper state of the law.

12. *Id.*, at s. 2(1).

13. 18 *Can. Abr.* (2nd. ed.) 275, para. 178.

14. *Supra* n. 3. s. 3.

15. (1914), 20 D.L.R. 519 (Ont. S.C.).

16. *Id.*, at 520.

17. R.S.O. 1914, c. 173, s. 3(2). Its relevant provision is identical to the one in n. 11.

My argument is strengthened by the case of *Robins & Co. v. Gray*.¹⁸ In 1863, the British Parliament intervened in the common law relationship between innkeeper and guest on the side of the innkeeper by limiting under certain conditions her liability for belongings of the guest. The statute¹⁹ did not contain any "other remedies" phrase and was completely silent on the right to place a lien. If the statute were meant to replace rather than supplement the common law then there would have been no right to detain even the guests property, let alone the property of a third party. The Court in finding for the innkeeper must have conclusively held that the statute was meant to supplement the common law.

Having found out that third party property may still be subject to a lien, Manitoba innkeepers can again get a good night's sleep even if their guests cannot.

18. [1895] 2 Q.B. 501 (C.A.).

19. *An Act to amend the Law Respecting the Liability of Innkeepers and to Prevent Certain Frauds Upon Them*, 26 & 27 Vic., c. 41 (U.K.).

