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PUBLIC POLICY AND THE FINDERS CASES

EDWARD P. MORTON*

A theory of law, to have existence other than in the theorist's own mind, must be one that finds support in the decisions of the courts. On the other hand, a theory to have a useful existence must be one that accords with a wise policy. It must tend to bring about desirable ends. The basic policy in connection with lost articles must surely be to secure their restoration to the persons who lost them. Of course, other policies are not to be ignored. We have no right to expect to accomplish one aim completely if the cost be the sacrifice of other socially desirable ends. But it will aid in the accomplishment of any purpose if we understand clearly what that purpose is. In connection with the law of finders the purpose surely is the restoration of things lost to those who lost them unless, in a particular factual situation, some countervailing purpose looms up larger. It is the purpose of this article to show that the adjudicated cases, with rather few exceptions, may be fitted into a simple theory that tends toward the accomplishment of that basic socially-desirable purpose.

If lost articles are to get back into the hands of their losers, the law should encourage finders to make their finds known. A state of the law that tends to cause the less conscientious among us to hide something he finds under his coat and keep quiet about his stroke of luck is not desirable. In general, therefore, the only loss the finder ought to be made to anticipate is the handing over to the loser himself, and in this case it may be reasonably expected that the hope of a reward will provide ample inducement. But in those cases where the loser cannot be found, it would seem obvious that the law should go as far as possible to see that the right of retention of the thing by the finder be its own reward. Of course, no one has ever suggested that the finder be preferred to the true owner of the article who lost it. Even though the loser is merely a prior finder who has in turn lost it, the law seems settled that the new finder will have to yield to him.¹ But except for persons who have lost the thing, the finder should have a claim superior to anyone else unless there is some per-

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1. *Clark v. Maloney*, 3 Harr. (Del) 68, is the leading case. In this action of trover for the value of ten pine logs found adrift in a creek by the defendant, it appeared that plaintiff himself had had possession of the logs only by virtue of finding them. He too had come upon them adrift in the creek, and a freshet had subsequently carried them away. But the court held the plaintiff's prior possession was sufficient to justify recovery from defendant.

suasive reason for departing from our basic rule in favor of the finder and preferring someone else.²

To justify allowing the finder to retain the thing found, it is to be noted that we really have no need to prove that the finder's claim is *better* than his rivals; it is enough that we show that it is *as good as* theirs. It was the act of the finder that brought the article to light, and he ought to be permitted to retain the benefit of that act unless a good reason exists to shift that benefit to someone else.

THE FINDER VS. THE OWNER OF THE PLACE WHERE FOUND

The cases show that the finder's chief rival is the owner of the place where the thing is found. Unless the owner of the place is himself the finder, it is hard to justify giving him any claim to lost articles,³ and this is the attitude generally taken by American courts.⁴ In the English cases, however, there appears to have been a rather strong tendency to prefer the landowner to the finder; but *Bridges v. Hawkesworth*⁵ is fully in accord with the American point of view and seems unquestionably sound. *South Staffordshire Water Co. v. Sharman*,⁶ involving the finding of two gold rings in mud being removed during the cleaning of a reservoir, seems impossible to justify. The presence of the rings was certainly utterly unsuspected until the finder discovered them, and it seems quite unsound to regard the possessors of the pool as in possession of the rings. The finder was not

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2. It has often been pointed out that the rights of a finder are not as broad as stated in *Armory v. Delamirie*, 1 Strange 505, 93 Eng. Reprint 664. There the court said that a finder may retain the article "against all but the rightful owner." Of course, that is not true. This sweeping dictum makes no exception for the situation dealt with in the preceding footnote. This article will point out other situations where a person other than the finder is preferred.
 3. The situation concerning *misaid* or *forgotten* articles, as distinguished from things that have been truly *lost*, will be discussed later. In a sense, an article not "lost" cannot be found. At any rate, the present paragraph deals only with articles that have been *lost*.
 4. The most recent case is *Erickson v. Sinykin*, Minn. (1947) 26 N. W. (2d) 172, in which a painter, while at work decorating a room in defendants' hotel, found \$760 in paper currency under a rug. Defendants claimed the money by virtue of their ownership of the hotel, but the Supreme Court of Minnesota held that the painter as finder acquired a claim superior to that of the owners of the premises where the money was found. *In accord: Toledo Trust Co. v. Simmons*, 52 Ohio App. 373, 3 N.E. (2d) 661; *Tatum v. Sharpless*, 6 Phila., Pa., 18; *Hamaker v. Blanchard*, 90 Pa. 377, 35 Atl. 664; *Groover v. Tippins*, 51 Ga. App. 47, 179 S.E. 634; *Zornes v. Bowen*, 223 Iowa 1141, 274 N.W. 877; *Vickery v. Hardin*, 77 Ind. App. 558, 133 N.E. 922; *Danielson v. Roberts*, 44 Or. 108, 74 P. 913; and *Weeks v. Hackett*, 104 Me. 264, 71 Atl. 858. The five cases last cited are "treasure-trove" cases, but may properly be included for the reason that American courts rarely deem it necessary to distinguish between treasure-trove and lost property. The English rule as to gold and silver in coin or bullion going to the Crown for the benefit of the currency seems not to have had any effect in America.
 5. Queen's Bench 1851, 21 L.J., N.S., 75. A pocketbook found on the floor in the public part of the defendant's store, the true owner not being found, was held to belong to the plaintiff rather than the owner of the shop where found.
 6. Q.B. Div. 1896, 2 Q.B. 44.

on the premises wrongfully, and there seems not the least reason to deprive him of the benefit of his find.⁷ Wills, J., who gave a brief concurring opinion, ended, "I will only add that a contrary decision would, as I think, be a great and most unwise encouragement to dishonesty." It is too bad that the learned justice did not tell us why he thought so. Actually one might expect the effect of the *Sharman* decision to be the clearest invitation to dishonesty. It is hard to doubt that in England after this decision a shrewd finder, knowing of the decision and finding himself in much the position that Sharman had occupied, would feel a very great temptation to slip the rings quickly in his pocket and say nothing about his stroke of luck. To a workman in his position it might be rather hard to give a completely satisfying reason why the owner of the premises should get the benefit of his find.

Fortunately the American courts seem not to have approved of the *Sharman* decision; and the cases usually show a preference for the finder over the owner of the place where found. *Toledo Trust Co. v. Simmons*⁸ holds that money found on the floor in a semi-private part of a bank goes to the employee-finder rather than to the bank.⁹

7. An occasional commentator has suggested that the justification for the *Sharman* decision lies in the fact that the finder was working for the owner of the reservoir as an employee at the time he found the rings. But this was certainly not the basis of the decision as the court saw it. Lord Russell, C.J., makes it very clear that the case was decided on the ground that the employer's possession of the freehold carried with it control over things lying in the pool.

In the recent case, *Hannah v. Peel*, (1945) 1 K.B. 509, a soldier found an old and valuable brooch in a crevice in the wall of a bed-chamber in a house requisitioned by the British Army for a rest center. The *Sharman* decision was urged upon the court by counsel for the owner of the estate, but the court decided for the finder. Failure to follow the *Sharman* case might indicate dissatisfaction with its doctrine even in England.

The effect of the employer-employee relationship upon the law of finding will be considered later in this article.

8. 52 Ohio App. 373, 3 N.E. (2d) 661. Cited *supra* note 4.

9. A case that seems to take the contrary view is *Silcott v. Louisville Trust Co.*, 205 Ky. 234, 265 S.W. 612, which holds that the trust company rather than a customer-finder is entitled to a Liberty bond found on the floor in the safety vault department. It is not easy to explain the decision, although the opinion states that the case does not involve the question whether, in the case the true owner is not found, the bond is to go *ultimately* to the company or to the finder. "What might be the ultimate rights of the trust company if the owner is never found," says the court, "is wholly unnecessary to determine." Of course, if the court is merely deciding that the bank is entitled to a temporary custody of the bond for the purpose of locating its owner, no possible objection should be raised to the case.

A possible explanation of the decision in this case is the court's confusion of lost and *mislaid* property. Apparently the court classifies the bond as the latter rather than the former. The rules pertaining to mislaid property will be dealt with later in this article.

A 1947 case hardly distinguishable on its facts from the *Silcott* case, and reaching the same result on the authority of that case, is *Pyle v. Springfield Marine Bank*, 330 Ill. App. 1, 70 N.E. (2d) 257. The property, a government bond, was found by a customer of the bank on the floor in one of the small private rooms in the safe department; but here again the court declares that it is not determining the ultimate ownership of the bond but only "the right of possession and custody of the property until the lawful owner is

*Durfee v. Jones*¹⁰ shows that the same rule applies when it is a piece of furniture or other personal property in which the find is made. In this Rhode Island case the bailee of an old safe was held entitled to keep a roll of bills he found in a crack in the lining of the safe as against a claim of the owner of the safe who had left it with him to sell. *Cleveland Ry. Co. v. Durschuk*¹¹ shows the same preference for the finder where money was found on the floor of a streetcar by one of the passengers. *Bowen v. Sullivan*¹² decided that the finder of two fifty dollar bills in an old envelope was entitled to the money rather than the owner of a paper factory who had bought the envelope in a bale of waste paper; and *In re Savarino*¹³ holds that money found on the floor of a taxicab goes to the passenger finding it rather than to the driver in possession of the cab. It would seem clear, therefore, that the courts—at least in America—are rather definitely committed to the doctrine that the actual possession acquired by the finder is to be preferred to the dubious “possession” of the owner of the place, growing out of the fact that the lost article, quite unknown to him, happens to have fallen there.¹⁴

TRESPASSING FINDERS

Shall the rule that a finder's right to ultimate possession of the thing found is not to be defeated by the claim of the owner of the place where found extend to cases where the finder is trespassing at

ascertained”. The authority of the *Silcott* case seems also to explain the decision in *Cohen v. Manufacturers Safe Deposit Co.*, N.Y. (1946) 65 N.Y.S. (2d) 791, wherein the lessee of a safe deposit box found a package of currency on the floor of a compartment in the safe deposit vault. The Appellate Division emphasized the fact that access to the compartment was limited to bank employees and lessees of boxes in the vault. The explanation of the decision seems to be the private nature of the place where the money was found. Evidently this court's view is that finders are not to be preferred to owners of premises not open to the general public.

10. 11 R.I. 588, 23 Am. Rep. 528, 1877.

11. 31 Ohio App. 248, 166 N.E. 909.

12. 62 Ind. 281, 30 Am. Rep. 172, 1878.

13. U.S. Dist. Ct., S.D., N.Y. 1932, 1 F. Supp. 331.

14. For reasons not easy to understand, courts have had a greater tendency to prefer the owner of the land to the finder of lost property in cases where the thing found was imbedded in the ground. Perhaps the best known of these cases is *Elwes v. Brigg Gas Co.*, L.R. 33 Ch. Div. 562, 1886. In that case the lessee under a 99 year lease unearthed an ancient boat forty-five feet long while lawfully excavating for the foundations of certain structures for lessee's gas works. In spite of the fact that the reversioner was not aware of the existence of the boat, and in spite of the fact that the article was personalty by no stretch of the imagination capable of being regarded as “affixed” to the realty, the English court held that the reversioner, being entitled to the inheritance, was in possession of the ground and “of everything that lay beneath the surface down to the centre of the earth.”

An occasional attempt has been made to justify the *Elwes* case on the theory, derived from a sentence in the court's opinion, that although the lessee's discovery of the boat was lawful the attempt to move it from its resting place was an unlawful act. The basis for any such theory seems completely removed by the reported fact that the boat lay in such position as to necessitate its entire removal in order for the lessee to reach the depth and area required for the approved structures. A taking of possession of it by the

the time of the finding; or should the policy of the law to protect private property from unlawful entry be allowed to prevail over the general policy of protecting finders' rights? The few cases that have dealt with the problem seem to have indicated a satisfactory answer. Except where the trespass is trivial or merely technical, it seems reasonable to say that the fact that he is trespassing ought to deprive the finder of his normal preference over the owner of the place where found. Thus in *Barker v. Bates*¹⁵ the Massachusetts court said that the owner of the land had a prior *right to possession*¹⁶ of a piece of timber that had washed ashore on his land. The court held that a finding by one who entered upon the land without authority gave the

lessee was therefore in no way unlawful. It is submitted that the lessee-finder should have been permitted to retain it.

The dubious doctrine of the *Elwes* case seems to have defeated the finder also in the Oregon case of *Ferguson v. Ray*, 44 Or. 557, 77 P. 600, in which the discovery of a piece or two of gold-bearing quartz lying on the surface of the ground by the lessee of the land caused him to dig down and unearth a rotted canvas bag containing a considerable quantity of the same valuable mineral. The reasoning of the court is not free from confusion; but the court seems to think that the finder, though he might have a good claim to the piece or two he found lying on the surface had no right to retain the quartz in the bag. Following the *Sharman* and the *Elwes* cases, the court takes the view that the owner of the land has possession of articles below the surface of his land. But if the reversioner's possession included the quartz in the bag below the surface it is hard to see why he was not likewise possessed of the pieces on the surface. It is submitted that a sounder view would be that he had no possession of either.

The court's different treatment of the pieces of quartz resting upon the ground and those buried in it is hard to understand. Can it be that the owner of the freehold is more clearly "possessed of" an article of personal property, of which he has not the slightest knowledge, when buried in the ground than when lying on the surface of it? This seems highly dubious. Perhaps what the court objects to is the finder's digging into the freehold. Even though the finder be not originally a trespasser, it may be argued that he becomes one when he begins disturbing the soil. This, however, seems never to have caused a judicial frown in the "treasure trove" cases. Treasure trove is quite commonly found buried in the ground, but the cases fail to indicate that finders are given an inferior claim to treasure so buried than to treasure found elsewhere. In the light of this, it is hard to see why the Oregon court in *Ferguson v. Ray* seemed to regard the buried state of some of the quartz as important. If the disturbance of the freehold is important here, why should digging be less objectionable when the property is treasure trove?

The most likely explanation of the different treatment accorded *non-treasure-trove* property found buried in the ground and that discovered on the surface is that articles found lying on the ground must have been dropped there inadvertently (thus "lost"), whereas property buried in the ground would normally have been placed there purposely and subsequently forgotten. The situation as to "mislaid" property will be treated later in this article.

15. 13 Pick. 255, 23 Am. Dec. 678, 1832.

16. The court wisely refrained from stating that the owner of the land was in possession of the timber. It confined itself to saying that the owner had a prior "right to possession". Obviously a land owner is no more "possessed" of a piece of personalty resting on his land, of which he has no knowledge, when the finder is a trespasser than when he has entered the land lawfully. Any distinction between the rights of trespassers and the rights of others must be based, not on any theory of possession in the land owner, but on considerations of public policy. The question would seem to be whether to allow the policy of discouraging trespass to over-ride the policy of encouraging the reporting of finds by giving to finders rights inferior only to the person who lost the property.

finder no right to retain the timber as against a claim by the owner of the land.

In the light of the policy behind our rule—that of encouraging the reporting of finds by giving the finder rights second only to those of the loser—can the doctrine of *Barker v. Bates* be justified? It is submitted that the rule of this case is not objectionable unless extended to trivial trespasses. Perhaps, for example, any walking across a railroad track other than at a public crossing constitutes a trespass, but it is certainly too insignificant a legal wrong to justify a denial of finders' rights to the "trespasser". *Groover v. Tippins*¹⁷ indicates that courts may be expected to apply this trespasser rule with restraint; the Georgia court there allowed the finder to prevail despite an allegation of the owner of the land that the finder was a trespasser.¹⁸

From the point of view of policy there seems no serious objection to denying finders' rights to persons who are committing substantial trespasses. It is not likely that making this exception to our rule of preferring finders will really tend to cause the trespasser to conceal his find; what *will* produce this result is the fear of the consequences of the trespass. If he has committed more than a trivial trespass he may reasonably be expected to remain silent about both trespass and find. On the other hand it is not so important to discourage insignificant trespasses, and in such cases there will not be the reluctance on the part of the "trespasser" to report his find. Surely no fear of the consequence of a trivial trespass would enter his mind to induce silence.

FINDING BY EMPLOYEES

If giving finders' rights encourages those who find things to make their good luck known, it would seem that such encouragement would act no less upon employees than upon the rest of mankind. Courts should be as reluctant, therefore, to deny to employees the benefit of their luck as to any other finder. But what of the long-established doctrine of *respondet superior*? The doctrine that the act of a servant is the act of the master is a fiction created only to bring about desired legal ends; and in line with our purpose to encourage the reporting

17. 51 Ga. App. 47, 179 S.E. 634. Cited *supra* note 4.

18. As to this allegation, the Court of Appeals simply said "This is not a suit in trespass, but is a suit in trover for the recovery of the property or its value."

The effect of a trivial trespass seems to have been discussed most fully in a case reported only in the Baltimore Daily Record, Feb. 11 and 16, 1935. The case, *Gaither v. Jones*, cited also in a note in Warren's *Cases on Property* (2d Ed.) 1938, p. 129, was tried in Circuit Court No. 2 of Baltimore City, Eugene O'Dunne, Judge. The court held that the fact that two boy finders were technically trespassers while playing in an unexcavated part of a cellar did not prevent them acquiring, as against the owner of the premises, finders' rights in a buried "treasure" of several thousand gold coins they found there. Decision for the finders was affirmed by a *per curiam* order of the Court of Appeals of Maryland by a 4 to 4 decision. 179 Atl. 928.

of finds the doctrine should here be given a narrow interpretation. The doctrine is never applied to acts not "within the scope of the employment"; and, as a matter of fact, it seems rather doubtful that anyone has ever really been employed to find things. There is thus no compelling reason to hold that finding falls within the scope of the employment; and, indeed, the courts have rarely so held.¹⁹ The hotel servant in *Hamaker v. Blanchard*,²⁰ who found three twenty dollar bills while at work in the lobby of her employer's hotel, was not barred from recovery of the money. It was a farm hand who found the jar of gold coins in *Vickery v. Hardin*.²¹ He was given finders rights even though at work for his employer at the time of his find. In *Tatum v. Sharpless*,²² a railroad conductor who found a pocketbook on one of the seats in his train was not denied finders' rights, in spite of the master-servant relationship. The safety-vault attendant in *Toledo Trust Co. v. Simmons*²³ who found \$500 on the floor of the bank was regarded as an ordinary finder; and the boys who found the "treasure" in *Danielson v. Roberts*²⁴ were not regarded as hired to find even though employed to clean out the old hen house where the money was found. Although there are occasional cases to the contrary, it is believed that the rule of the cases just cited is sound. Only on the rarest case need the facts justify a holding that the finding of things is really included within the scope of employment. Such may possibly be the case with respect to certain employees in banks. Where large sums of money are handled, the management may reasonably expect frequent losses on the part of customers and employees. To insure the speedy discovery of money and other valuable property thus lost, the financial institution may deem it wise to employ attendants—whether called guards or watchmen or by some other title—one of the real purposes of whose employment is the prompt finding of valuables lost in the institution. It is hard to regard a finding by such an employe as outside the scope of the employment,²⁵ but who can

19. In *Hume v. Elder*, 178 App. Div. 652, 165 N.Y.S. 849, the driver of an ice-wagon, while driving for his employer, found a pail lying in the roadway. In trying to retain it he injured the loser of the pail who was trying to re-take it. In a suit for damages for the injury, the court denied relief against the employer on the theory that the finding of the pail was not within the scope of the driver's employment.

20. 90 Pa. 377, 35 Am. Rep. 664, 1879.

21. 77 Ind. App. 553, 133 N.E. 922. Cited *supra* Note 4.

22. 6 Phila., Pa., 18, 1865.

23. 52 Ohio App. 373, 3 N.E. (2d) 666, Cited *supra* Notes 4 and 8.

24. 44 Or. 108, 74 P. 913, 65 L.R.A. 526, 102 Am. St. Rep. 627, 1904.

25. An example of such an employment is found in *M'Dowell v. Ulster Bank*, 33 Irish Law Times, 225 (1899). The plaintiff was employed as porter in the defendant's bank, and it appeared to be his duty to sweep out the lobby of the bank daily at closing time. One day while so engaged he found a parcel lying on the floor under one of the tables provided for the use of customers in preparing checks. In the parcel he discovered £25 in notes. The court decided that the bank was entitled to the money on the ground that it was the plaintiff's duty to pick up items of this sort. The finding was thus held to have been within his employment.

say that it might not aid in the accomplishment of our general purpose, and thus in the end work even to the interests of the bank itself, if the bank were to agree with such employees that finders' rights would extend to them? At any rate, it would seem that the courts should not construe an employment as an *employment to find* unless it is unavoidable under the facts of the case.

MISLAID PROPERTY

Not everything that is "found" has actually been "lost". Quite commonly an article has been laid down by its possessor and then forgotten. Such property is not really *lost*; it is "mislaid" or "forgotten". It is thus not always possible, when the presence of an article is discovered, to know whether it has been lost or mislaid. A hat hanging on a hook and a piece of luggage in the baggage rack over the seat in a railway coach were undoubtedly put in their respective places intentionally. They were "left" there; and if the owner does not now remember them, they are not "lost" but "mislaid". A pocket-book on the floor of the car, on the other hand, unquestionably must have fallen there without the loser's notice. But a lady's handbag on the seat of the car presents quite a different problem. It may have been placed there intentionally and then forgotten, or it may have slipped there in the first place quite without the lady's knowledge.

In spite of this difficulty of being sure whether an article has been lost or only misplaced, the courts have usually tried to maintain a distinction between the two. This in *McAvoy v. Medina*,²⁶ where the facts indicated that a pocketbook found on the table in defendant's barbershop must have been placed on the table intentionally by a previous customer, the plaintiff, a subsequent patron of the shop who picked it up, was held not to be a finder of "lost" property. He was thus denied finders' rights.²⁷ In *State ex rel. Scott v. Buzard*²⁸ a metal box containing several thousand dollars, found in the wall of a building being torn down by a wrecking company, was held to have been placed there intentionally; and the workman who discovered the box was held not to be a finder of "lost" property. Similarly, in *Flax v. Monticello Realty Co.*,²⁹ a diamond brooch found in a crevice in a mattress in a hotel was held to have been "mislaid" rather than "lost". Accordingly, the court held that the owner of the hotel was entitled to possession until the true owner might be found.³⁰

26. 11 Allen (Mass.) 548, 87 Am. Dec. 733 (1866).

27. "Property voluntarily laid down is not in legal contemplation lost. The right of possession as against all except the true owner is in the owner or occupant of the premises where it is discovered, since he has custody of the property, and owes a duty to the owner as a gratuitous bailee with respect thereto." *Norris v. Camp*, C.C.A. 1944, 144 F. (2d) 1.

28. Mo. App. 1940, 144 S.W. (2d) 847.

29. 185 Va. 474, 39 S.E. (2d) 308.

30. In accord is *Foster v. Fidelity Safe Deposit Co.*, 162 Mo. App. 165, 145 S.W. 139, where the property was bills in an envelope lying upon a desk in a com-

Although courts rather consistently make this distinction between lost and mislaid property, giving finders' rights only in the case of the former, one rarely finds advanced a theory to support such distinction. The notion seems to be that property voluntarily laid down is somehow placed within the "protection of the house", and comes into the possession of the owner of the premises; but any attempt at legal analysis of the problem along these lines surely must lead to confusion. How is it that the possessor of the premises acquires possession only of *mislaid articles*, and not of *lost* ones, when he has not the least knowledge of the existence of either, and of course has no *intent* to control either? If he gets possession of mislaid articles, *when* does he acquire such possession? Is it when the article is first laid down, or when the deposit of the article slips from the mind of the one so placing it, or does the possessor of the freehold get possession only after the visitor has left the premises? It is submitted that the state of mind of the owner of the freehold and his control over the two classes of articles are absolutely identical in the two cases. Theory offers no valid basis for distinction between the two. A distinction between lost and mislaid property seems highly dubious even if you could always be sure which is which on the facts.

A TEMPORARY POSSESSION TO FACILITATE RESTORATION TO LOSER

For lack of satisfactory theory to support a distinction between lost and mislaid property, it must be that the explanation of the line so generally drawn between the two by the courts is to be found in considerations of public policy. The courts evidently realize that one who has mislaid property is fairly likely to remember later what he has done. He may thus be expected to return to reclaim the mislaid property. This is perhaps less likely in the case of *lost* property, for the actual parting with the property must have occurred quite unwittingly. There is thus much to be said for a rule giving at least a temporary custody to the owner of the premises where property has been mislaid.

But why need we confine this rule to mislaid property? There is also the possibility that one who has *lost* property will retrace his steps in the hope of recovering what he has lost. It is therefore desirable that even lost articles be left, at least temporarily, at the place where they were found. This is especially true when the proprietor of the place maintains an office or organization for dealing with "lost and found" articles.³¹ The law should therefore require finders to

partment in the safety vault department. Also in accord is *Foulke v. New York Consolidated Railroad Co.*, 228 N.Y. 269, 125 N.E. 237, 9 A.L.R. 1384, 1920. The property there was a package left upon the seat of a railway car.

31. See Riesman, *Possession and the Law of Finders*, 52 Harv. L. Rev. 1105, 1939. This excellent article shows how enormous is the number of articles handled by "lost and found" departments of railways, theatres, department

leave their finds, whether "lost" or "mislaidd" property, with the owner of the place where found, unless such owner is unwilling to assume responsibility for taking the measures required by law to secure the return of the article to its rightful owner, or for some other reason it appears that relinquishment of possession by the finder will reduce the possibility of the restoration of the property to its rightful owner. It is believed, therefore, that the present rule as to mislaidd property ought to be modified by the courts to provide for a mere temporary possession or custody in the owner of the premises, but in this form extended to apply to lost property as well as to that which is strictly "mislaidd." In so far as such a mere custody is concerned, this rule ought to be applied in *all* cases where return to the rightful owner would seem thereby to be rendered more likely; but it would seem that this rule as to a temporary possession need in no way affect the question as to who shall be ultimately entitled to possession in case efforts and time fail to reveal the true owner.³² As to this ultimate claim, public policy would seem to call for the application of the rule of "finders keepers" to mislaidd property as well as to lost property. As in the true "finder" case, the way to encourage people who discover mislaidd property to make their discoveries known is to make it clear that they take no risk in telling of their good luck, either to the owner of the premises or to anyone else. There thus seems no reason why this rule as to true "finds" ought not also be the rule demanded by public policy to apply equally to mislaidd property.

No reason seems apparent why courts, without the aid of statutory authorization, ought not be able to attain the above result simply by extending the mislaidd property rule, modified to call for a mere temporary custody, to *lost* property, and by extending the present rule of "finders keepers" (so far as the ultimate right to possession is concerned) to mislaidd property as well. If, however, statutory authority is deemed necessary, it would seem that all that is required is a statute declaring that in adjudicating lost and mislaidd property cases, the courts shall have the power to order that property so found shall be left in the custody of the possessor of the place where found for a sufficient time to afford reasonable opportunity for the restoration of the property to its rightful owner.

stores, etc. Mr. Riesman's research indicates that most large establishments of this kind make a practice of returning found articles to the finder when after a reasonable lapse of time the true owner remains unknown.

32. That such an approach to the problem is not wholly without precedent, see *Silcott v. Louisville Trust Co.*, 205 Ky. 234, 265 S.W. 612, and comments about this case and *Pyle v. Springfield Marine Bank* in note 9 *supra*.