The Right of a Finder Depends upon the \textit{locus in quo}

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THE RIGHT OF A FINDER DEPENDS UPON THE

LOCUS IN QUO

A note-writer in an earlier number of the Kentucky Law Journal\(^1\) in commenting on the decision of the Kentucky Court of Appeals in the case of Silcott v. Louisville Trust Co.,\(^2\) reached the conclusion that the court arrived at a wrong result in its finding. In that case the plaintiff found a Liberty bond on the floor of one of several small rooms in the safety vault department of the defendant trust company. These rooms were for the use of renters of safety vault boxes and the doors could be locked on the inside when in use. Access to the safety vault department was through a separate door which was kept closed and locked and was opened by an attendant of the department when admission was desired by a customer. A registry of those who entered was kept which showed the time customers were there and the numbers of the boxes visited. At the time the plaintiff found the bond, he left it with an officer of the trust company with the understanding that if the true owner was not found within six months it should be returned to him. At the end of the six months the bank refused to give up possession. The court held that the trust company was entitled to the custody of the bond as against the finder. It denied that the distinction between a lost and mislaid article governed in such a case and rested its decision upon the ground that the place where an article is found determines the rights of the parties; that since the bond was found in a private room to which a limited class only was admitted, the owner of the premises was entitled to the custody as against the finder.

To the present writer the court seems to have correctly decided the case. While it is the general rule that a finder is entitled to the possession of a lost article as against everybody except the true owner,\(^3\) an exception prevails where an article is found in a place from which the public is excluded. This exception seems to have had its origin in the decision of Bridges v. Hawkesworth.\(^4\) In that case a business agent picked up a package of bank notes on the floor of the defendant’s shop. He

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\(^1\) Volume XV, pp. 225, 230.
\(^2\) 205 Ky. 234, 265 S. W. 612.
\(^3\) Armory v. Delamire, 1 Strange 505.
\(^4\) 21 L. J., 2 Q. B. 75 (1852).
gave the package of the defendant so that he might find the owner. Upon the defendant's failure to find the owner the plaintiff claimed the notes and offered to pay the expenses of advertising. The defendant refused to give them up and the plaintiff sued to recover possession. The court held that he was entitled to the possession against any but the true owner. Since the public had access to the part of the shop where the notes were found the court seemed to think that it could not be said that the notes were ever in the custody of the defendant.

Perhaps the cases most often cited to support the rule that if the place where the chattel is found is not open to the public as such, the finder is not entitled to possession are *South Staffordshire Water Co. v. Sharmans*, Barker *v. Bates*, and Elwes *v. Brigg Gas Co.* In the first of these cases a workman, who was employed to clean out a pool, found two gold rings and other things embedded in the mud. He retained possession of them and the employer sued for their conversion. It was held that the owner of the property where the chattels were found was entitled to them. The case was distinguished from *Bridges v. Hawkesworth* on the ground "that the notes (in the latter case) being dropped in the public part of the shop, were never in the custody of the shopkeeper or 'within the protection of his house,'" whereas in the case under discussion, "the plaintiffs," the court said, "are the freeholders of the *locus in quo*, and as such they have the right to forbid anybody coming on their land or in any way interfering with it."

In *Barker v. Bates* a stick of timber was thrown upon the plaintiff's land by the waves. The defendant found the timber, marked it, and later went upon the land and hauled it away. It was held that the landowner had the better right to the timber as the finder could not get it without committing an act of trespass.

The last case, *Elwes v. Brigg Gas Company*, can hardly be said to be in point since the finder was in possession of the premises under a lease for ninety-nine years at the time of its finding an ancient boat embedded in the soil some five or six feet below the surface. The court in giving the boat to the owner of the

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5 *2 Q. B. 44* (1896).
7 *L. R. 33 Ch. Div. 562* (1886).
fee, rested its decision on the ground that he was in possession not only of the surface but of everything below the surface at the time he made the lease and consequently was in possession of the boat and under the lease the finder did not gain a right to it.

A further illustration of the rule that the owner of the land has a superior right to articles found thereon is the case of aerolites. In Goddard v. Winchell the court held that bodies falling on the land belonged to the landowner.

It has been suggested that a distinction should be made between the case where the article is found on the surface of the land and where it is found embedded in the soil as in the Elwes v. Brigg Gas Company case. Such a distinction, however, does not seem to rest on a firm foundation for in either case if the chattel is found in a place which is not open to the public as such, the finder, as Chief Justice Shaw pointed out in Barker v. Bates, could not justify his entry for the purpose of taking the chattel away, he would subject himself to an action for trespass.

It is submitted that the decision of the Court of Appeals in Silcott v. Louisville Trust Company is sound and well supported by authority.

W. Lewis Roberts.