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Does the Place Where a Lost Article is Found Determine the Rights of the Finder?

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sports are hazardous, will prevent recovery under insurance policies which exempt the insurer from liability where the insured voluntarily exposes himself to unnecessary danger.

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DOES THE PLACE WHERE A LOST ARTICLE IS FOUND DETERMINE THE RIGHTS OF THE FINDER?

In *Silcott* v. *Louisville Trust Co.*,[1] a liberty bond was found on the floor of the safety vault department of a trust company by a renter of a safety box. The room was one of several immediately adjoining the vault and maintained for the convenience of those renting safety vault boxes. There were a number of such private rooms, each of which had a door entering into it with a bolt on the inside for the safety of those who desired to inspect the contents of their lock boxes at their leisure. The vault department was not accessible through the general offices of the trust company, but through a separate door opening into the department, which door was kept closed and locked, and was opened by an attendant only when admission was desired by a customer of such department. It was held that although the bond had been found on the floor, the trust company's right to its custody was superior to that of the finder. The court said that it made no difference whether it was found on the floor or on a desk, thus seemingly deciding that whether the property was lost or mislaid did not affect the question. The decision is based on the conclusion that the trust company, because of the purpose of the room and its semi-private nature, was the custodian of any valuables that might be left there, and that there was a fiduciary relationship existing between the trust company and its patrons which imposed a duty on the company to preserve and protect their property. The court said: "Many cases appear in the books about lost chattels, and the distinction between lost and mislaid chattels has often been pointed out, but we find nowhere a case presenting the precise question here prosented.

"If the bond had been found by appellant on the street or on the floor in a hotel, or in the public part of a banking institu-

[1] 205 Ky. 234, 265 S. W. 612.

tion or business house, or any other place where the general public is expected to be, his right to the custody as against all but the real owner would be clear; but here he finds the bond in a private room, where only a limited class of people have the right to be or can be, and that class composed of the customers of a trust company which is the custodian not only of the private room where alone its customers may be, but of their boxes in its safety vault. We therefore find no difficulty in saying that the bond on the floor when picked up by appellant was in the custody of the trust company as the representative or agent of one of its customers, who was the owner, and that appellant properly turned the bond over to such custodian as the representative of the real owner, who was unknown to them both."

Whether right or wrong in theory the distinction between lost and mislaid property has been carefully preserved by the courts. Lost property may be defined as property which "casually and involuntarily" passes out of the possession of the owner and the whereabouts of which he does not thereafter know.[2] Mislaid property may be defined as "property voluntarily laid down and forgotten."[3] The distinction was discussed in *Foster* v. *Fidelity Safe Deposit Co.*,[4] as follows: "Property," said the court, "may be separated from the owner by being abandoned, or lost, or mislaid. In the first instance, it goes back into a state of nature; or, as is most commonly expressed, it returns to the common mass, and belongs to the first finder, occupier or taker. In the second instance, to be lost it must have been unintentionally or involuntarily parted with; in which case it is also an object which may be found, and the finder is entitled to the possession against everyone but the true owner. But, if it is intentionally put down, it is not lost in a legal sense, though the owner may not remember where he left it, and cannot find it. For 'the loss of goods, in legal and common intendment, depends upon something more than the knowledge or ignorance, the memory or want of memory, of the owner, as to their locality at any given moment.'"

There are statements in the books to the effect that the place where the property is found does not affect the title to the prop-

[2] *Loucks* v. *Gallogly*, 1 Misc. 22, 23 N. Y. S. 126.

[3] *Hoagland* v. *Forest Park Highlands Amusement Co.*, 170 Mo. 335, 70 S. W. 878.

[4] 264 Mo. 89, 174 S. W. 376, L. R. A. 1916A, 655.

erty.[5] Stated thus broadly, this rule is inaccurate. The place where the property is found may be important in determining whether the finder is a trespasser or a licensee. If a trespasser, the owner of the premises should prevail.[6] It is also important, as developed by the decisions, in determining whether the property is lost or only misplaced or concealed. In such cases the place in which the property claimed as lost was found is a potent factor.[7]

The cases have developed a broad distinction between property found on the floor of a place where the public is admitted and that found on a table, desk or seat. In the former case it is uniformly held to be "lost;" in the latter case the courts hold it is only "mislaid" and the owner of the premises is the proper custodian for the true owner. The distinction is well presented in *Loucks* v. *Gallogly*:[8] "In the cases last cited, where the money or property was found on the table of a barber shop, or the counter of a store, the property was not considered lost, on the ground that the place where it was found indicated that the owner had put it there purposely and voluntarily; therefore, it was not lost and could not be found, in the legal sense. As to the roll of bills in question, found by plaintiff on the banking-house desk (one at which persons stand to write), what, in the absence of any direct proof, are we to conclude as an inference of fact from the situation of the money when discovered by him? Is not the inference stronger and more reasonable than any other that it was consciously and voluntarily placed there by the owner while temporarily engaged, writing or otherwise, at the desk, and then inadvertently or thoughtlessly left? Does not the fact that the money was discovered on the desk, and not on the floor, indicate that it had been voluntarily placed there with the intention of retaking it, rather than that it had unconsciously and accidentally fallen from the person of the owner? If it had been found on the floor, as in the cases referred to, where a customer found a purse on the shop floor, and where the servant in a hotel found a roll of bank notes on the floor of a public parlor,

[5] See for example, 2 Parsons on Contracts, page 97.

[6] *Barker* v. *Bates*, 13 Pick. (Mass.) 255. *Contra*, *Deaderick* v. *Oulds*, 86 Tenn. 14.

[7] *Kuykendall* v. *Fisher*, 61 W. Va. 87, 56 S. E. 48, 8 L. R. A. (N. S.) 94.

[8] *Supra.*

that fact would lead to the conclusion that it had been involuntarily dropped by the owner, and hence lost."

As indicated in the above case, property found on the floor has been consistently held to be "lost," rather than "mislaid." In *Bridges* v. *Hawkesworth*[9] the plaintiff being in the shop of the defendant, picked up from the floor a parcel containing bank notes. The defendant, at the request of the finder, took charge of the notes to hold for the owner. After three years, no one having claimed them, the defendant refused to deliver them to the plaintiff. The court held defendant liable in trover for the notes. The court said: "The plaintiff found them on the floor. . . . The notes never were in the custody of the defendant, nor within the protection of his house, before they were found, as they would have been if had been intentionally deposited there; and the defendant has come under no responsibility, except from the communication made to him from the plaintiff, the finder, and the steps taken by way of advertisement."

In *Hamaker* v. *Blanchard*[10] a servant in a hotel was entitled, as against the proprietor, to money found on the floor in a public parlor of the hotel, where no owner was found.

An employee, in *Bowen* v. *Sullivan*[11] was allowed to recover the amount of certain bank notes which she found on the floor of a paper factory, and which she handed to the proprietor to find out if they were genuine.

A few of the cases illustrating the other side of the proposition are the following: In *Loucks* v. *Gallogly*[12] it was held that one who found bank notes lying on a desk used by customers of a bank was not entitled to the notes as against the bank. In *Kinkead* v. *Eaton*[13] the court decided that the officers of the bank were entitled to an article left on a desk in a banking room, and that a finder was not entitled to the advertised reward. In *Lawrence* v. *State*[14] a pocketbook was left on a table in a barber shop and it was held that it was not lost but mislaid property. In

[9] 21 L. J., Q. B. 75.
[10] 90 Pa. 377, 35 Am. Rep. 664.
[11] 62 Ind. 281, 30 Am. Rep. 172.
[12] *Supra.*
[13] 98 Mass. 139, 93 Am. Dec. 142.
[14] 1 Humph 228, 34 Am. Dec. 644. Accord, *McAvoy* v. *Medina*, 11 Allen 548, 87 Am. Dec. 733.

State v. *Courtsol*[15] the court decided that a package found on a seat in a street car was mislaid.

The logic of the distinction between property found on the floor and property found on a table, seat, or desk is illustrated in *Foster* v. *Fidelity Safe Deposit Co.*,[16] where the court said: "From these uniformly recognized rules of law on the subject of lost property has naturally sprung the importance of the condition or situation in which property is alleged to have been found. And the law in this instance, as in so many others, founds its rule upon the natural actions of men and not upon a possibility. Thus, articles of property may be such and circumstances may be such as to make clear they have been voluntarily abandoned by the owner. But normally, men do not voluntarily abandon their money. Therefore, if money be discovered in the highway, or on the ground, or on the floor, it will not be considered as abandoned, nor will it be considered as placed there voluntarily, for that would be unnatural, but as having been lost—that it, casually and unknowingly dropped. But if it be discovered in a drawer, or on a table, it will be considered as having been placed there purposely by the owner, and it is not classed by the law as lost property. The circumstances of its being afterwards forgotten does not go back and characterize the original act."

It is submitted that there are no circumstances in the principal case, *Silcot* v. *Louisville Trust Co.*, that render the usual rules as to lost and mislaid property inapplicable. The finder was not a trespasser, but a licensee under no contract duty to surrender the bond to the trust company. The only distinction between this case and that of *Foster* v. *Fidelity Safe Deposit Co.*, cited *supra*, is that "there the money was found on a desk in a private room of the safety vault company as if it might have been purposely placed there and forgotten by the owner," while in the principal case the bond was found in a similar room but "upon the floor at a place where it may not be presumed an owner would purposely place it." In the Missouri case the usual principles of lost and mislaid property were applied and, quite properly, it seems, it was held that the package belonged

[15] 89 Conn. 564, 94 Atl. 973, L. R. A. 1916A 465. Accord, *Foulke* v. *N. Y. Consol. R. Co.*, 228 N. Y. 269, 127 N. E. 237.

[16] *Supra.*

to the safe deposit company, because it was found on a desk, and was consequently mislaid and not lost property. There seems to be no sound reason for not applying the same principles to the principal case and holding that the bond was lost and the property of the finder, since it was found on the floor.

The court argues that the distinction lies in the fact that the vault department was not open to the public in general, but to a limited number of patrons. Does the fact that the number admitted is changed from the public in general to a smaller number change the situation? We do not think so. It is still semi-public in nature. In such a case there has been no tendency in the decisions to make the owner of the premises bailee for the owner of the lost chattel and we see nothing in *Silcott* v. *Louisville Trust Co.* which should extend the rule, thus making an exception to the well established principles of law relating to lost and mislaid property.

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