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Recommended Citation

Harris, William J. (1946) "The Title of a Finder in New York," *St. John's Law Review*: Vol. 21 : No. 1 , Article 4.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol21/iss1/4>

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THE TITLE OF A FINDER IN NEW YORK

Since the venerated decision of *Armory v. Delamirie*¹ in which the Chancery Court announced, "that the finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable him to keep it against all but the rightful owner," that fundamental proposition has been unchallenged.

In the wake of that decision have followed exhaustive distinctions between property which is lost, mislaid or abandoned.² Refinements have been promulgated as to the *locus in quo*, the place where found, and the relationship, if any, between the finder and the owner of the locus.³ Further analyses are devoted to the duties of a finder and his right to compensation if the owner is subsequently found.⁴ That such distinctions are reasonable and quite necessary admits of no dispute; the abundant material on the subject is itself evidence of the necessity.

In a recent New York case, *Cohen v. Manufacturers Deposit Company*,⁵ the court was confronted with the issue of possession as between the finder and the owner of the locus. The Appellate Division held that a bundle of currency found on the floor of a booth in a safe deposit vault, with no proof available as to how it came to be there, is regarded as mislaid, not lost, and that the safe deposit company is entitled to possession rather than the finder, a leasee of a deposit box. The court said:

Property is lost in a legal sense when its owner parts with possession unwittingly and involuntarily through negligence or inadvertance, e.g., when the owner accidentally and unintentionally leaves property in a public place. Property is said to be mislaid in a legal sense when the owner has voluntarily and intentionally placed it where he can resort to it and then forgets, e.g., where the owner voluntarily places property on a desk or a table in a place of business and then forgets where he laid it (*cf.* 26 C. J. 1134; AMER. JUR. 631-3).⁶

The court then distinguishes between property found in a place open to the public and the instant case where the property was found in a place access to which was limited to customers and employees of the defendant company.

Although fine distinctions and close refinements are myriad and well taken, on that aspect of a finder's rights, the problem which is submitted here for consideration is: When, if ever, does a finder of

¹ *Armory v. Delamirie*, (Ct. Ch. 1722) 1 Strange 505.

² Notes (1930) 10 B. U. L. REV. 103, (1944) 49 DICK. L. REV. 124, (1939) 8 FORDHAM L. REV. 222, (1933) 3 IDAHO L. REV. 165.

³ Notes (1936) 22 CORN. L. Q. 263, (1927) 16 KY. L. J. 51, (1941) 21 ORE. L. REV. 85.

⁴ BROWN, PERSONAL PROPERTY, § 15, p. 27; note 1916A L. R. A. 660.

⁵ N. Y. Law Journal, Vol. 116, No. 117, Nov. 30, 1946, p. 1521, col. 1; N. Y. Law Journal, Dec. 5, 6, 1946, editorials.

⁶ *Ibid.*

lost chattels gain such ownership as will enable him to prevail against the true owner?

Assume that in the City of New York *A* finds a valuable necklace and turns it over to the property clerk⁷ who advertises for the owner. After ninety days, no owner having appeared, the necklace is returned to the finder who now has a right to the necklace against all but the true owner. It is established that *A* would prevail against a subsequent finder, a thief or one who negligently damages the property.⁸

Assume further that *A*, one month after the return of the jewel from the property clerk, sells the necklace. Has he, by the sale, exercised a right of dominion over the property inconsistent with that of the true owner so as to become a converter? The answer must be in the affirmative because the pertinent section of the Administrative Code merely provides that if no lawful claimant has appeared within three months, the property shall be turned over to the finder. There is no provision purporting to transfer title and furthermore, the property clerk informs the finder that he regains the chattel subject to the true owner's claim. Presumably, the finder never acquires title paramount to the true owner's, since the courts have not modified the doctrine of *Armory v. Delamirie* to that extent.

Excluding the statute of limitations, which is a bar to the plaintiff's remedy and does not transfer title, there appears to be but one method by which a finder may acquire title to found chattels, and that is by adverse possession. Though there is no statute, as in the case of realty, declaring that adverse possession of chattels confers title upon the possessor, it is generally accepted that, by analogy to realty, it will operate to transfer title. It is not clear how, in the absence of a statute, that result is effected. Nevertheless, the weight of authority in the United States dictates that the expiration of the statutory period not only bars the owner's legal remedy but also extinguishes his title, transferring it to the adverse possessor.⁹ In *Lightfoot v. Davis*,¹⁰ the New York Court of Appeals reviewed and

⁷ Administrative Code of the City of New York § 435-4.1. "Any person who finds any lost money or property of or exceeding the value of ten dollars shall report such finding to and deposit such money or property in a police station house within ten days after the finding thereof. Such money or property shall thereupon be transmitted to the property clerk . . . Such money or property as shall remain in the custody of the property clerk for a period of three months without a lawful claimant entitled thereto shall be turned over to the person who found and deposited the same." Failure to comply with this section is punishable by a fine of not more than one thousand dollars or imprisonment not exceeding one year, or both.

⁸ *Clark v. Maloney*, 3 Harr. 68 (Ct. Errors and App., Del. 1839).

⁹ *Sadler v. Sadler*, 16 Ark. 463 (1860); *Wynn v. Lee*, 5 Ga. 217 (1848); *Morey v. Haggerty*, 122 Me. 212, 119 Atl. 527 (1923); *Merrill v. Bullard*, 59 Vt. 389, 8 Atl. 157 (1887).

¹⁰ *Lightfoot v. Davis*, 198 N. Y. 261, 91 N. E. 582 (1910).

approved the majority view, though it was not necessary to the decision of that case. Accepting, then, the weight of authority, consideration must be given to the doctrine of adverse possession.

One of the essential elements of adverse possession and the only one necessary for consideration here is that the holding must be hostile to the owner. Clearly, this is not the case where a finder takes charge of lost goods pending the arrival of the true owner.

It is generally agreed that a finder's status is that of a quasi-bailee. His holding is tentative and can not be accurately termed adverse. Mere possession, not hostile but in subordination to the rights of the true owner will not be adverse, no matter how long continued.¹¹ Furthermore, a finder is chargeable with negligence, if he fails to use due care in the keeping of the property.¹²

It may be conceived that, in a particular case, a finder does hold adversely; a repudiation of the "bailment," a conversion, would establish his holding as adverse, but that repudiation must be brought home to the owner, actually or constructively before the statute of limitations would begin to run. Again, a denial of the true owner's rights must be unequivocal. The law is well settled that acts which themselves imply an assertion of title or a right of dominion over personal property, such as a sale, rental or destruction, amount to a conversion.¹³

This rule, however, is subject to the qualification that it must be an interference with the property which would not, as against the true owner, be justified, or at least excused in one who came lawfully into possession of the goods So the finder is justified in taking steps for their protection and safe custody until he finds the true owner. And therefore it is not a conversion if he bona fide removes them to a place of security.¹⁴

Since acquisition of title by adverse possession rests upon a statute of limitations, it becomes important to determine when the statute starts to run in favor of the possessor. Returning to the hypothetical case presented at the beginning of this note, suppose *A* neglected to notify the property clerk of his find. He would be punishable by a fine of \$1,000 or a year's imprisonment or both.¹⁵ If *A*, with intent to deprive the owner of his property, makes no effort to locate him, when knowledge or means of inquiry as to his whereabouts are available, he may be guilty of larceny.¹⁶ If *A* should conceal himself or leave the jurisdiction, he does not become clothed with title after six years, for the statute of limitations is suspended during the period of such concealment or removal.¹⁷ The running

¹¹ BROWN, PERSONAL PROPERTY, § 17, p. 32.

¹² *Mulgrave v. Ogden*, (Q. B. 1591) Cro. Eliz. 219, 78 Eng. Rep. 475.

¹³ *Spooner v. Manchester*, 133 Mass. 270, 43 Am. Dec. 514 (1882).

¹⁴ *Hollins v. Fowler*, 44 L. J. Q. B. 169, L. R. 7, H. L. 757 (1875).

¹⁵ Administrative Code of the City of New York § 435-4.1.

¹⁶ N. Y. PENAL LAW § 1300.

¹⁷ N. Y. CIV. PRAC. ACT § 19.

of the statute of limitations can not be said to commence at the time the property is lost, for it may not be found nor taken into possession by another immediately after it has been separated from the owner. At the time of the finding, the true owner has no knowledge as to whom he should pursue for recovery and hence the statute should not be clocked from that moment. It would seem that the statute of limitations may properly be deemed to run from the time the property clerk advertised the finding, for the owner is thereby given constructive, if not actual, notice and therefore he is not being deprived of his property without due process of law.

If then, we assume that the finder has fulfilled the requirements of the Administrative Code, that the property clerk has duly advertised the finding, that the property has been returned to the finder, that the finder has held it adversely for six years, and finally, that adverse possession transfers title, we may conclude that the finder has at last acquired a title paramount to the loser's.

To subject a finder to these conditions precedent is clearly a burden upon him. The difficulties which would arise in the assumed case require no exposition. That there is need for corrective legislation is equally apparent. Massachusetts has resolved the problem by a statute declaring that:¹⁸

If the owner of lost money or goods does not appear within one year after the finding thereof, they shall enure to the finder provided he has complied with section one.

(Section one provides that the finder inform the police or advertise the finding in a way calculated to notify the true owner.)

No decisions have been found which test the meaning of the word "enure" as used in the statute. However, the intent of the Massachusetts Legislature appears to be clear. A reasonable interpretation of the statute would vest title in the finder after one year. A strict construction of "enure", thereby limiting the finder's title to one "good against all but the true owner," would stunt the effect and apparent purpose of the statute and merely be an unnecessary codification of the common law doctrine.

It is recognized that the enactment of a statute similar to that in force in Massachusetts would present constitutional difficulties in respect to the due process clause. That is, does a statute purporting to transfer title to a finder violate the true owner's right to the chattel without due process? A partial reply to the objection lies in the corollary of the statute imposing on the finder a duty to surrender the chattel for one year, thereby affording the loser an inestimably greater opportunity to recover his lost chattel than he would have in the absence of the statute. It does not seem to be unjust, that a loser, who enjoys the protection and advantages of a statute, should

¹⁸ Annotated Laws of Massachusetts, Vol. 4, c. 134, § 4 (1934).

yield also to the less advantageous provisions of the same statute. In effect the legislation would establish the property as abandoned, after the one year has elapsed, thereby creating in the finder a title paramount to the loser's. It can not be fairly contended that a loser who makes no effort to reclaim his chattel has not abandoned it. Clearly, the statute could have no retroactive effect. Prospectively it would be valid as to residents of the state who lose property, but a problem might be anticipated as to non-residents. That is, may a non-resident who loses property here be deprived of it by operation of the statute?

Irrespective of the constitutional difficulties which may be encountered, a statute, clearly defining the rights and duties of a finder, is preferable to the nebulous status of a finder in this state, where, if the presumptions enumerated above prevail, a finder may be vested with title only after six years. If he does not hold adversely, his property is always subject to divestment by the true owner. A statute modeled after the Massachusetts statute is undeniably advantageous and would erase an existing anomaly in the law. It is not contended that the one-year limitation, as prescribed in the Massachusetts statute, would be a satisfactory period in this state, since the size and population of the state are factors to be taken into account. Such determination rests properly in the legislature. It is submitted, however, that a finder, who has complied with the law and in good faith given a true owner every opportunity to recover his chattel, is entitled to something more than an ownership "good against all but the rightful owner."

WILLIAM J. HARRIS.

PARENTAL LIABILITY FOR INCAPABLE MINOR CHILD'S OPERATION OF AUTOMOBILE

As an elementary principle, a parent is not liable for the torts of his minor children unless they are committed at his direction or authorized by him or subsequently ratified by him. This principle is subject to certain well known exceptions. Thus, a statute may impose liability on the parent regardless of his culpability,¹ or the act of the parent in relation to the child and the ensuing tort may have been negligent of itself.²

¹ CAL. VEH. CODE § 352 (b)—"Minor's Negligence Imputed to Parent in Certain Cases. Any negligence or wilful misconduct of a minor whether licensed or not under this code in driving a motor vehicle upon a highway with the express or implied permission of the parents or the person or guardian having custody of the minor shall be imputed to such parents or such person or guardian for all purposes of civil damages and such parents or such person or guardian shall be jointly and severally liable with such minor for any damages proximately resulting from such negligence or wilful misconduct."

² HARPER, LAW OF TORTS (1933) § 283, p. 622.