Finding Is Not Keeping But the Law Is Obscure

Statute Says Finder of Lost Property Must Make "Every Reasonable Effort" to Locate Owner, but Doesn't Compel Him to Advertise

(New York Post.)

Finding is not keeping, under the law, despite the ancient bucolic maxim. That is to say, the unintentional loss of an article by its owner, as distinguished from its voluntary abandonment, does not divest the loser of title to it, nor does its finding confer title upon the finder. It may even be dangerous for an honest finder of property to keep it and treat it as his own. The present law considers that honest finders may become dishonest keepers. In fact, there is something quite demoralizng in the finding of a bulky bank roll. Too often it stirs one's primitive cupidity. Then money, which has no earmarks, is not disturbing to one's sense of security. And when combined are found opportunity, temptation, and a supposed immunity rfom detection, the voice of conscience must be strong, indeed, to make itself heard. What do we see when we examine the so-called "Lost and Found" columns of the newspapers. A hundred losers seeking finders to one finder trying to discover the true owner of lost property

This condition is due in part only to the weakness of human nature. The law is partly to blame, for while our statute makes it a crime for a finder of property to appropriate it to his own use without having first made "every reasonable effort" to find the owner, it does not specifically direct the finder of lost property to adopt the most reasonable course to find the owner, namely, to advertise for him, and charge the expense of the advertisement upon the proprty or its value. The finder may advertise; yes, at his own expense. But the loser, when discovered, is not obligated to reimburse him. Nor is it made the duty of a finder of lost property to read the newspaper, or definitely to do any other particular thing to find the loser. If the finder of an articles possesses knowledge or means of inffuiry, whatever this may exactly mean, he may not appropriate the property prior to reasonable efforts to discover the owner. That is all the law says, according to an article in the New York Law Review for April.

Under early decisions, no actual finder of property was deemed guilty of larceny or embezzlement, the theory bein gthat the original coming into possession was not unlawful, irrespective of a subsequent conversion or unlawful withholding.

People vs. Anderson (14 Johns, 294) decided in the year 1817, was a prosecution for the alleged theft of a trunk, lost from a coach in the highway. It was held that in taking and keeping the trunk the deefndant was not guilty of larceny, the court holding that the prisoner found the trunk bona fide, and consequently, that it had been lost by its proprietor, and that the bona fide finder of a lost article, or of a lost trunk containing goods, cannot be guilty of larceny by any subsequent act of his in concealing or appropriating to his own use the article, or the contents of a trunk thus found.

In People vs. McGarren (17 Wend. 460) decided in the year 1837, a different sort of case was involved and a different result reached. Here the complainant left his whip in the defendant's store. The defendant, knowing whose property it was, denied knowledge of the article, when the complainant sought to reclaim it. For this the defendant was convicted of larceny.

Case of a Lost Wallet.

In People vs. Cogdell (13 Gill 94 1841) it appeared that one Warren lost his pocketbook on the highway; and the defendant found and concealed it with the bills, fraudulently and with intent, as the prosecution insisted, to convert the whole to his own use The evidence was entirely sufficient to warrant the jury in so finding. Nevertheless, the defendant was acquitted. The court thus reefrs to certain language in the M'Garren case to the effect that the finder may be guilty where the finder may be guilty wheer he knows the owner of the property.

"All we asserted there was that probably the rule must be confined to such a case as the present, wheer it does not appear that the prisoner knew, or had the means of knowing the true owner; and cases were cited to that effect. One was where the pocketbook found was legibly marked with the owner's name, the finder being able to read. Such cases themselves imply, if the owner has placed no mark about the property and none exists by which the finder can discover him, the case must still be considered, as it long has been, one of mere trover and conversion—not of larceny."

"In People vs. Swan (1 Park. Crim. Rep. 9 1945) the deefndant was convicted for taking and keeping a pocketbook where it contained documents identifying the owner, which the defendant had examined.

It is by no means certain that the Legislature, in enacting the Penal Code in 1881, intended merely to codify the existing rule. The statute requires the finder to make "every reasonable effort" to find the owner in any case where he has either knowledge as to his identity or even "means of inquiry." Assuming, then, that the law was changed in 1881, what does the statute mean? When has the finder exhausted "every reasonable effort to find the owner"? Advertising is certainly a "means of inquiry as to the true owner." Is he required to use this means?

We do not find any satisfactory answer to these questions under the decisions of New York. But clearly there could be no duty to advertise lost property in the absence of the right to charge the expense upon the property.

Examples of illiberality on the part of the losers of restored property operate as a further deterrent to efforts to find owners. Not many weeks ago the papers contained the account of a child who returned a large roll of money to a wealthy woman, receiving twenty-five cents for the trouble. An even worse case is reported from Oregon. Some boys, while cleaning an outbuilding, found $7,000 in gold coin in an old tin box. In a trial of the case it developed that the defendants had demanded the box of coins from the boys, who turned it over to him.

Thereupon, the defendant said: "Here's five cents, boys. We put the money there some time ago, and were going to buy something with it. Don't say anything about it, and the Lord will bless you;" In making this statement the pious donor of the nickel lied. He had never put the money in the outhouse, and it is recorded that the boys were allowed to recover it from him.

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