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# FINDERS-APPLICATION OF STATUTE TO FINDER OF TREASURE TROVE

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FINDERS—APPLICATION OF STATUTE TO FINDER OF TREASURE TROVE—Defendants, a church committee, procured bundles of rags which were distributed to women who wove the rags into rugs. One such bundle was delivered to plaintiff who found $2100 in bills concealed therein. Plaintiff took the money to defendants, but no claimant appeared. A statute[1] provided that a finder of lost money or goods having a value of $3.00 or more must give notice in a prescribed manner, or, failing to do so, be liable to the town in which found for one-half the value of the goods and for the other half to the person who should sue for it. In defense to a suit for restoration of the money, defendants pleaded plaintiff's failure to comply with the statute. On appeal from judgment for plaintiff, *held,* affirmed. The com-

[1] Wis. Stat. (1947) §170.07 et seq.

mon law doctrine of treasure trove has not been merged in the statutory provisions relating to lost property,[2] and title to treasure trove belongs to the finder as against all but the true owner. *Zech v. Accola,* 253 Wis. 80, 33 N.W. (2d) 232 (1948).

Treasure trove is any gold or silver in coin, plate, or bullion, or the paper representatives thereof, the owner of which is unknown, found concealed[3] in the earth or in a house or other private place, but not lying on the ground.[4] In England, from as early as the twelfth century, treasure trove has gone to the Crown. The origin of the rule is obscure, but is probably attributable to both the influence of the Roman law and the king's prerogative respecting coinage.[5] Previous to the present English rule, awarding treasure trove to the sovereign, it seems that title to treasure trove went to the finder as against everyone except the true owner.[6] Since, in the United States, the sovereign has never claimed title to treasure trove, it is frequently stated that the law of treasure trove has been merged with the law of lost goods generally.[7] If this were true, it would seem clear that a statute relating to a finder of lost goods would apply equally to a finder of treasure trove. Likewise, a finding of prior possession in the owner of the locus in quo would often work to defeat the title of the finder.[8] When, however, the nature of the property and the finding both come within the common law definition of treasure trove, the finder has usually been held to have title as against all but the true owner, despite noncompliance with a statute similar to that in Wisconsin[9] and even though the owner

[2] See supra, p. 717, for a related discussion of De Young v. Foster, (Iowa 1948) 32 N.W. (2d) 664.

[3] There must be an intentional concealment, as distinguished from merely an intentional deposit. For instance, money placed on a desk in a safe deposit vault and forgotten is not treasure trove. Foster v. Fidelity Safe Deposit Co., 162 Mo. App. 165, 145 S.W. 139 (1912).

[4] Attorney General v. Trustees of British Museum, 2 Ch. 598 (1903); Weeks v. Hackett, 104 Me. 264, 71 A. 858 (1908).

[5] See Emden, "The Law of Treasure-Trove," 42 LAW QUARTERLY REV. 368 (1926), for a complete discussion of the English law.

[6] Danielson v. Roberts, 44 Ore. 108, 74 P. 913 (1904).

[7] See the principal case; BROWN, PERSONAL PROPERTY 24 (1936). See also discussions in 15 BOST. UNIV. L. REV. 656 (1935) and 23 GEORGETOWN L. J. 559 (1935).

[8] This latter doctrine has often been applied to property other than treasure trove, found under similar circumstances: Goddard v. Winchell, 86 Iowa 71, 52 N.W. 1124 (1892) (aerolite embedded in the soil); Burdick v. Chesebrough, 94 App. Div. (N.Y.) 532, 88 N.Y.S. 13 (1904) (valuable earthenware buried in the soil); Livermore v. White, 74 Me. 452 (1883) (vats of hides buried in the ground); Ferguson v. Ray, 44 Ore. 557, 77 P. 600 (1903) (gold-bearing quartz buried in the ground); Flax v. Monticello Realty Co., 185 Va. 474, 39 S.E. (2d) 308 (1946) (diamond brooch concealed in a mattress); discussed and approved in 46 MICH. L. REV. 235. For a full discussion favoring this rule, see Aigler, "Rights of Finders," 21 MICH. L. REV. 664, esp. 668-680 (1923).

[9] Weeks v. Hackett, supra, note 4; Sovern v. Yoran, 16 Ore. 269, 20 P. 100 (1888); Zornes v. Bowen, 223 Iowa 1141, 274 N.W. 877 (1937). The Wisconsin legislation involved in the principal case is contained in three sections. Two pertain to the finder of "lost money or goods." The third omits reference to "money." Though the provisions for forfeiture are not found in that section, the court obviously deemed such finding of money as in the principal case not covered by the legislation.

of the locus in quo has clearly had a de facto prior possession.[10] Although the distinction between treasure trove and ordinary personal property cannot be rationalized on any sound basis and serves no useful purpose, it is clear that this distinction has not been "merged" but has, rather, become an anomalous rule that has gained a strong hold in legal precedent.[11] The principal case is one more indication that this precedent will not be overthrown by judicial reversal, even though such action could be justified by the underlying policy of the "finder's statute"; that is, protection for the true owner.[12]

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[10] Danielson v. Roberts, supra note 6; Vickery v. Hardin, 77 Ind. App. 558, 133 N.E. 922 (1922); Groover v. Tippins, 51 Ga. App. 47, 179 S.E. 634 (1935); Erickson v. Sinykin, 223 Minn. 232, 26 N.W. (2d) 172 (1947) (where the rule pertaining to treasure trove might have been applied to reach the same result). Criticized in 46 MICH. L. REV. 266 (1947).

[11] See Moreland, "The Rights of Finders of Lost Property," 16 KY. L. J. 3 at 12 (1927). For a discussion favoring the adaptation of the rule of treasure trove to other property, see 21 MINN. L. REV. 191 at 197 (1937).

[12] See the concurring opinion in the principal case at p. 235.