Finders keepers? Who owns lost or abandoned objects found on land?

Mark Pawlowski looks at the legal implications of finding a lost or abandoned object on somebody's land. Can you legally keep it or does it belong to the owner or occupier of the land?

The general principle is that the finder of an object is entitled to possess it against all but the rightful owner. This fundamental proposition was established in the old case of *Armory v Delamirie* (1722) 1 Stra 505; 93 ER 664, where a chimney sweeper's boy found a jewel and carried it to a jeweller's shop to find out what it was worth. The jeweller removed the stones and offered the boy a small sum by way of recompense. The boy refused and demanded the stones back. It was held that the boy, as finder of the jewel, could maintain an action of trover against the jeweller.

The trespassing finder

One obvious qualification to the *Armory* rule relates to the trespassing finder. The party against whom he is a trespasser will have a better title to the object. This is based on public policy that wrongdoers should not benefit from their wrongdoing. In these circumstances, the owner or occupier of the land on which the finder was trespassing will acquire good title to the object (in the absence of the true owner of it).

Objects found lying on land

The modern authority in this category is *Parker v British Airways Board* [1982] QB 1004. In this case, the claimant, a passenger at London airport, found a gold bracelet in the executive lounge of an airline (British Airways) at the airport. He handed the bracelet to an employee of the airline, gave his name and address and asked for the bracelet to be returned to him if it was not claimed by the owner. The owner never claimed the bracelet, but instead of returning it to the claimant, the airline sold it and kept the proceeds. The Court of Appeal held that the finder of a chattel (who was not a trespasser) acquired a right to keep it against all but the true owner if the chattel had been abandoned or lost and if he took it into his care and control. That right, however, was subject to the superior right of an occupier of a building to retain chattels found on it if he manifested an intention (express or implied from the circumstances) to exercise exclusive control over the building and the things which were on it. In the instant case, such intention was absent and, therefore, the claimant's prima facie right as finder of the bracelet against all but the true owner prevailed. Similarly, in *Bridges v Hawkesworth* (1851) 21 LJQB 75, someone had accidentally dropped a small parcel of banknotes in a public shop. A customer picked up the

parcel and gave it to the shopkeeper who was unaware that it had been dropped. The owner of the notes was not found and the finder then sought to recover them from the shopkeeper. It was held that he was entitled to do so, the apparent ground of the decision being that the notes, being dropped in the public part of the shop, were never in the custody of the shopkeeper.

Objects found in or attached to land

Where an object is found attached to realty (i.e., land or buildings), the finder (who is not a trespasser) will have some rights but the occupier of the land (or building) will have a superior title. The absence of a manifest intention to control is not the test for objects found in or attached to the land.

In *Waverley Borough Council v Fletcher* [1996] QB 334, the defendant, Mr Fletcher, while using a metal detector in a public park owned by the claimant Council, discovered the presence of an object below the surface. He then dug some nine inches and found a valuable medieval gold brooch. The Court of Appeal, applying the principle that an owner (or lawful possessor of land) owned all that was *in or attached to it*, held that a local authority which owned a public open space had a superior right to that of the finder to things found *in the ground* of that open space and was entitled to possess them against all but the rightful owner. In the circumstances, the defendant did not derive a superior right to the brooch simply because he was entitled as a member of the public to engage in recreational pursuits in the park. In any event, the practice of metal detecting was not a recreation of the sort permitted under the terms under which the Council held the land on behalf of the general public. The digging up and removal of property in the land were also not permitted uses and, in fact, constituted acts of trespass.

A finding by the process of metal-detecting has also been the subject of a decision of the Supreme Court of Ireland. In *Webb v Ireland* [1988] IR 372, the claimants visited a ruined abbey where, using a metal detector, they discovered and dug up a hoard of treasure. It was held that the owner of the land was entitled to possession of any chattel which might be in the land as against the finder of that chattel, even where the finder was excavating the land with the licence of the owner.

In the earlier case of *Elwes v Brigg Gas Company* (1886) 33 Ch D 562, land was leased to a gas company for 99 years with a reservation to the lessor of all mines and minerals on the land. In the course of excavating for the foundations of a gasworks, the company discovered a prehistoric boat embedded in the soil some six feet below the surface. Chitty J held that the boat, whether regarded as a mineral, or as part of the soil in which it was embedded when discovered, or as a chattel, did not pass to the company as lessees, but was the property of the lessor though he was ignorant of its existence at the time of the granting of the lease. In *South Staffordshire Water Co v Sharman* [1896] 2 QB 44, the defendant was employed by the occupier of land to remove mud from the bottom of a pond. He found two gold rings embedded in the mud. The claimant occupier was held to be entitled to the rings as part of the realty.

Similarly, in *London City Corporation v Appleyard* [1963] 2 All ER 834, money was found in a safe, built into one of the walls of a cellar in a building, by workmen who were demolishing it. Inside the safe was a wooden box containing banknotes, issued in 1943 or 1944, to the value of £5,728. The true owner of the notes was never found. The lease from the Corporation (who were the freeholders) to the building owners preserved the Corporation's rights to any article of value found on any remains of former buildings and the workmen were employed by contractors working for the building owners. McNair J held that the Corporation was entitled to the notes. The workmen claimed as finders, but it was clear that an employee (or agent) who finds in the course of his employment (or agency) is obliged to account to his employer (or principal). In the instant case, the building contractors were similarly bound to account to the building owners and they in turn, as occupiers, were contractually bound to account to the Corporation.

Conclusion

It was suggested on behalf of the finder in *Waverley* that there is no sound basis for the distinction between objects found on and in land. Why should it make all the difference whether an article is just on or under the surface? One striking example given in argument was of a lost watch on a muddy path which might, within a day or two, become covered by a thin coating of mud. Why should the landowner's claim become stronger, the deeper the watch becomes embedded in the mud?

A number of sound and practical reasons where given by Auld LJ in *Waverley* for the distinction. First, as we have seen, an object in the land falls to be treated as an integral part of the realty as against all but the true owner. Thus, the finder in detaching the object would, in the absence of permission, become a trespasser. Secondly, the removal of an object in or attached to land would normally involve interference with the land and may damage it. Thirdly, in relation to an object in the ground, it is unlikely in most cases for the true owner to be there to claim it. The law, therefore, provides a substitute owner, namely, the owner or occupier of the land in which it is lodged. In the case of an unattached object, on the other hand, it is likely in most cases to have been recently lost and the true owner may well claim it. In the meantime, there is no compelling reason why it should pass into the possession of the landowner as against a finder unless he, the landowner, has manifested an intention to possess it. As to the example of the watch in the mud, invariably it will always be a matter of fact and degree on which side of the line, on or in the land, an object is found.

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