stricter requirements of thorough and impartial pre-trial investigation,[39] a reduction in the punishment for rape, and some measure of control over courts-martial proceedings by civil authorities.[40] The abandonment of the principle, deeply imbedded in our system of military justice, that courts-martial are not courts of law but mere instruments of command for the purpose of enforcing discipline, is long overdue.[41]

The instant case suggests that the civil courts are prepared to ignore traditional concepts in order to correct abuses by military courts. However, it is apparent that the reforms needed today call for comprehensive revision of military law and courts-martial procedure by Congress and not a piecemeal and uncertain attack by the civil courts.

Personal Property—Possession—Finder's Right to Chattel Superior to Owner of Premises—[England].—The defendant purchased a house in 1938, but he did not occupy it. The house remained unoccupied until it was requisitioned by the Army in 1940. The plaintiff, a soldier, was stationed in the house when he found a brooch in the crevice of a window frame. He turned it over to the police, who, unable to find the true owner, gave it to the defendant. The plaintiff sued for the return of the brooch or its value. *Held*, the plaintiff is entitled to judgment because the defendant had neither known of the brooch nor had he ever had physical possession of the premises on which it was found. The true owner being undiscovered, the finder has good title. *Hannah v. Peel.*[1]

[39] Specifically, the recommendations are that failure to have a thorough and impartial pre-trial investigation and further, the use of oppressive and threatening practices to force admission in investigation would be *jurisdictional errors*. In England, "it is firmly established in military law that the investigation of the case by the commanding officer, in the prescribed manner, is vital to the jurisdiction of a court-martial." 24 Can. Bar Rev. 210, 211 (1946); cf., suggested reforms of the English court-martial system in an earlier period, 47 Law Times 219 (1869).

[40] See N.Y. Times, § 1, p. 1, col. 3 (April 21, 1946), listing the suggested reforms to the Articles of War made by a special subcommittee of the House of Representatives Military Affairs Committee. Other recommendations included placing enlisted men on courts-martial when enlisted men are being tried, giving increased publicity to courts-martial and inviting public attendance, providing for more adequate reviews of proceedings. See Rosenblatt, op. cit. supra, note 34, for additional recommendations. The War Department has appointed an advisory board on military justice with members selected by the American Bar Association to review the entire court-martial procedure.

[41] See Ansell, op. cit. supra, note 34, at 149; Bruce, Double Jeopardy and Courts-Martial, 3 Minn. L. Rev. 484 (1919). There is much to be learned from the military law of other countries. In England ". . . . the High Court can control the proceedings of courts-martial by means of the prerogative writs, by actions for damages and for injunctions against individual officers who exceed their jurisdiction . . . . and by criminal prosecutions of such officers. . . . ." 75 L. J. 336 (1933). In Nazi Germany and France there were two different systems of military justice for war and peace, professional lawyers sat on the courts-martial, appellate courts were provided for full review and in Germany enlisted men sat on courts-martial. Rheinstein, op. cit. supra, note 33, at 168, 170.

[1] [1945] K.B. 509.

Although relatively few in number, the cases on finder's rights have provoked an extraordinary amount of learned discussion, partly because the decisions usually turn on the point of who has possession.[2] It is with possession that metaphysics gains its flimsy foothold in the law of property,[3] and the problem of the finder is among the most abstruse of possessory questions. In view of the complexity of many modern property interests, it might be expected that the problem would be more complex than it actually is, but the finder usually finds only a chattel of a small or movable nature. One is unlikely to find a lost or mislaid corporation, factory, or steam shovel. The problem is not clouded by the peculiar rules of admiralty[4] or real property.[5] Usually the chattel found is capable of reduction to possession in a physical sense,[6] and the finder once having so reduced it has only the duty of seeking the true owner.[7] If the latter cannot be found, then the finder has good title.[8]

The foregoing analysis is probably true as a generalization but it begs the question of who is a "finder" as that term is used by the courts to exclude mere temporary possessors of the goods of an occupier of premises. Thus in the instant case,[9] the owner of the house claimed he had a continuing prior possession

[2] ". . . . the scholarly literature on possession bears quantitatively the same relation to the case-law and practice as the literature on *Hamlet* to the play itself." Riesman, Possession and the Law of Finders, 52 Harv. L. Rev. 1105 (1939).

[3] See the philosophical attacks on the problem discussed in Holmes, The Common Law 206-46 (1881); Pollock and Wright, Possession in the Common Law (1888); Salmond, Jurisprudence 364-415 (Parker's 9th ed. 1937).

[4] In admiralty, the finder ("salvor") of a lost vessel or cargo has a sizable lien on found items against the true owner. See 1 Benedict, Admiralty § 117 (6th ed., 1940). His title is good against all the world but the true owner. There are apparently no admiralty cases of conflict between a finder and the owner of the premises on which the article is found, probably because any imaginable situation would remove the case from the admiralty jurisdiction. One variety of such a situation was presented in the case of Antonio G. D'Elia, reported in A5 Corporate Reorganizations 20 (1942) (opinion of referee in U.S. D.C. Cal., 1941).

[5] The policy considerations governing the law of adverse possession and squatter's rights in real property differ from those controlling chattels because of the destructibility and mobility of the latter. See 1 Tiffany, Real Property § 1 (3d ed., 1939); Maitland, The Law of Real Property, in 1 Collected Papers 162, 171 (1911). The real property distinctions do enter, of course, in determining whether the finder is a trespasser or one on the premises of right.

[6] At first sight it might appear impossible to find an intangible interest. But suppose that A discovers in B's house a manuscript of the work of an undiscoverable poet. A, not a trespasser, copies the poem and sells it. Did B have any property in the poem that is capable of being stolen? There are apparently no cases on this point.

[7] This duty seems to be rather negative; the finder runs a risk of being held for conversion if he sells the chattel, and some cases find him guilty of larceny. Brown, Personal Property § 15 (1936). In some jurisdictions he has a statutory duty of seeking the owner. See Ill. Rev. Stat. (1945) c. 50, § 28, where the finder is required to advertise. This is a standard provision of the statutes concerning finders' rights.

[8] Cleveland R. Co. v. Durschuk, 31 Ohio App. 248, 166 N.E. 909 (1928); People v. Beach, 62 Cal. App. 2d 803, 145 P. 2d 685 (1944).

[9] The court treated the problem of the relation of the parties as unimportant since it was clear that the plaintiff was on the premises of right (was not a trespasser) and he was in no

of the brooch, such as would prevent the plaintiff from becoming a true finder.[10] By the court's reasoning, if the owner had at one time seen the brooch and left it where it lay, he would have possessed it; for the decision not to move the object is as much an exercise of control as the moving of the object, and control is one of the elements in the construction of possession.[11] Here the owner of the house would not be entitled to the brooch solely by his purchase of the house,[12] and not knowing of the brooch and never having occupied the premises, it was said that he had exercised no control over the lost chattel. But he had a general power, prior to the Army's occupancy of the house, to keep strangers out, and thus to prevent others from possessing the unknown chattel. Thus strictly speaking, any owner of premises has control over an article therein.

The lack of knowledge of the chattel or of the nature of the premises cannot, however, suffice to defeat the owner of the premises. There could be an intent on his part to reduce all lost or mislaid articles to possession,[13] even without knowing of them. Such an intent, however, must be actual, not constructive. Thus a purchaser might wish to buy a house on the possibility of finding old letters or documents therein, and thus be said to possess the papers, even if he knew only of the bare possibility of their existence. Or a railroad may intend to possess all parcels left behind by passengers, and so notify the public.[14] But the

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special relationship to the defendant (was not his servant or agent). A servant, it is sometimes said, cannot find against his master. This seems to be the rule of South Staffordshire Water Co. v. Sharman, [1896] 2 Q.B. 44, at least according to Salmond, op. cit. supra, note 3, at 384. If this rule exists, it is not followed in most American cases. Toledo Trust Co. v. Simmons, 52 Ohio App. 373, 3 N.E. 2d 661 (1935).

The court in the instant case appears to be the first to realize that the true doctrine of Bridges v. Hawkesworth, 21 L.J.Q.B. 75 (1851), is that the place of finding is immaterial except in so far as it affects the status of the finder (i.e., whether he is a trespasser). See, Does the Place Where a Lost Article Is Found Determine the Rights of the Finder?, 15 Ky. L. J. 225 (1927).

[10] See Elwes v. Brigg Gas Co., 33 Ch. Div. 562 (1886); Pollock and Wright, op. cit. supra, note 3, at 41.

[11] Thus, where the owner of a car is forced at the point of a gun to drive for a thief, he is no longer in control and has lost possession. Root v. State, 25 So. 2d 180 (Ala. App., 1946), aff'd 25 So. 2d 182 (Ala., 1946).

[12] This statement must be qualified by the dicta mentioned in note 10, supra, as to real property, where it is generally stated that the owner owns all that is on or in the land. The cases so stating usually concern buried objects, and the American cases favor the finder. Zornes v. Bowen, 223 Iowa 1141, 274 N.W. 877 (1937) (money beneath floor of house goes to finder); Vickery v. Hardin, 77 Ind. App. 558, 133 N.E. 922 (1922) (coins in ground go to finder). Contra: State ex rel. Scott v. Buzard, 235 Mo. App. 636, 144 S.W. 2d 847 (1940). In the case of chattels, it is clear that the mere purchase of an article does not convey unknown objects contained in it. Durfee v. Jones, 11 R.I. 588 (1877).

[13] Merry v. Green, 7 M. & W. 623 (Ex., 1841).

[14] See Foulke v. New York Consolidated R. Co., 228 N.Y. 269, 127 N.E. 237 (1920). This intent is implied where the occupier is in a fiduciary relationship with the supposed true owner. Thus a safe deposit company has a claim superior to that of a finder as to articles found in the company's rooms. Silcott v. Louisville Trust Co., 205 Ky. 234, 265 S.W. 612 (1924).

mere purchase of premises does not, as a matter of law, imply an intent to possess any unknown chattel therein,[15] despite the intent of most owners to exclude others from the premises in which the unknown chattel lies. There must be some sort of knowledge or awareness of the article to give rise to the intent. Because of the lack of either control or intent on the part of the owner of the premises in the instant case, the court awarded title to the finder.

It is difficult to see any considerations of practicality or justice which lead to the firmly established doctrine that a finder, as a prior possessor, has a better claim than the occupier. It has been suggested that a romantic outlook on life has found its way into our law in the favoring of finders.[16] In any event, it is probable that the cases on finders' rights represent an extreme example of the mechanical application of a concept. A sensitivity to the subtleties of possession has led the courts to conclusions which ignore the ordinary ideas of purchase and which are inconsistent with common doctrines of property.[17] In most of the cases, the determination of which party was prior possessor is a pleading of the conclusion. The common law principle of the protection of possession has been defended as good sense, because it satisfies in an orderly manner an irradicable instinct, that of defending what one holds in one's hand.[18] But in contemporary society, the instinct to defend what lies on one's land is probably nearly as fundamental, and it should be of no concern to the law that one instinct is shared with the animals and the other is a product of the society itself.

The extremes to which the American courts have gone in protecting the finder lead to impractical conclusions. There is little probability of fraud in the possession of lost articles by the owner of the premises, whereas there is more than a suspicion of fraud or theft in many "findings." If we are concerned with the position of the true owner, it is preferable that the chattel is retained by the owner of the premises where it was lost or mislaid. Attempts to split the custody of the article from the legal interest therein by awarding the custody to the occupier of the premises, but awarding title to the finder if the true owner cannot be found, are also impractical. The system would be too complex to be applied to such small transactions.

In the instant case, society cannot be said to have any independent interest in the ownership of the brooch, and an economical disposition of the problem should be to award title to the occupier of the premises. However, even the medieval law recognized the paramount interest of the community in more valu-

[15] Some of the American cases go so far as to permit a trespasser to find against the owner of the land. Groover v. Tippins, 51 Ga. App. 47, 179 S.E. 634 (1935).

[16] Riesman, op. cit. supra, note 2, at 1112. Possibly this favoritism has deeper roots. At least it seems to be a recurrent phenomenon with children.

[17] Thus the case of buried objects going to the finder seems inconsistent with the common law doctrine of usque ad infernos. See 2 Tiffany, Real Property § 585 (3d ed., 1939).

[18] Holmes, The Common Law 213 (1881).

able items by awarding to the king all treasure trove wherever found.[19] Possibly today the true owner of really valuable chattels can always be discovered, and hence the law should develop rules solely for the disposition of small articles. But it is not beyond possibility, especially after the war, that the abandoned equipment of dissolved corporations may be subject to a true finding,[20] and at the time be a sizable windfall. Even if it is assumed that some incentive should be given for finding or reporting findings, it is not clear why a casual finder should be so generously rewarded.[21] Despite his limited award the salvor of ships is often a professional.[22] However, any law attempting to seize for the state all lost or mislaid articles[23] is apt to be unenforceable because the community can have no interest in prosecuting sporadic claims rarely exceeding a hundred dollars in value. Statutes attempting to give the government such rights have become dead letters probably for this reason, and hence have often been ignored when items of large value are found.

Sherman Antitrust Act—Patents—Legality of Cross-licensing Agreement between Owners of Complementary Patents Setting Prices at which Sublicensees Sell Patented Articles—[Federal].—The two principal defendants, Line Material Company and Southern States Equipment Corporation, owners of complementary patents for dropout fuse cutouts, executed a cross-licensing agreement authorizing one of the patentees to sublicense other manufacturers under both patents on condition that the sublicensees would not sell the patent-

[19] This doctrine still survives in England. Attorney-General v. Trustees of the British Museum, [1903] 2 Ch. 598; Emden, The Law of Treasure-Trove, Past and Present, 42 L.Q. Rev. 368 (1926). The American cases usually ignore the distinction between ordinary chattels and treasure trove, and award the latter to the finder. Groover v. Tippins, 51 Ga. App. 47, 179 S.E. 634 (1935); Danielson v. Roberts, 44 Ore. 108, 74 Pac. 913 (1904).

[20] It is not always possible to locate the stockholders of a dissolved corporation. See In re Hull Copper Co., 46 Ariz. 270, 50 P. 2d 560 (1935), where, on liquidation, $46,309.20 was left after all stockholders who could be located had been paid.

[21] Seven of the American jurisdictions limit the finder by statute, some giving part of the find to the government. See Mich. Stat. Ann. (Henderson, 1937) § 18.708 (town gets one-half); Ore. Code Ann. (1941) § 70–704 (county gets one-half); N.H. Rev. Laws (1942) c. 270, § 6 (town gets all).

[22] Robinson, Admiralty Law in the United States § 99 (1939). Some statutes take an admiralty analogy and allow the finder a lien against the true owner for more than the finder's expenses. Iowa Code (1939) § 12211 (10 per cent of value); Ala. Code Ann. (Michie, 1940) c. 47, § 157 ("reasonable" reward).

[23] American statutes dealing with the subject tend to emphasize the interest of the community. See provisions mentioned in note 21, supra. These provisions appear to be dead letters, and in any case none of them clarify the relationship of finders and owners of premises. See Weeks v. Hackett, 104 Me. 264, 71 Atl. 858 (1908), where the find was called "treasure trove" and thus removed from the statute. General ignorance of the statutory provisions means that there is no public cooperation. Statutes dealing with escheat have met with slightly greater success, but still encounter judicial hostility. See Illinois Bell Telephone Co. v. Slattery, 102 F. 2d 58 (C.C.A. 7th, 1939).