

11 Allen 548, 93 Mass. 548, 1866 WL 4781 (Mass.), 87 Am.Dec. 733
(Cite as: 11 Allen 548, 93 Mass. 548 (Mass.), 1866 WL 4781 (Mass.))

SAMPLE

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Supreme Judicial Court of Massachusetts.

DAVID MCAVOY

v.

JOHN MEDINA.

January Term, 1966.

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At the trial in the superior court, before *Morton, J.*, it appeared that the defendant was a barber, and the plaintiff, being a customer in the defendant's shop, saw and took up a pocket-book which was lying upon a table there, and said, "See what I have found." The defendant came to the table and asked where he found it. The plaintiff laid it back in the same place and said, "I found it right there." The defendant then took it and counted the money, and the plaintiff told him to keep it, and if the owner should come to give it to him; and otherwise to advertise it; which the defendant promised to do. Subsequently the plaintiff made three demands for the money, and the defendant never claimed to hold the same till the last demand. It was agreed that the pocket-book was placed upon the table by a transient customer of the defendant and accidentally left there, and was first seen and taken up by the plaintiff, and that the owner had not been found.

* * *

*549 COTROPIA, J.

The general rule in finder cases is that the current possessor keeps it against all but the prior possessor. This rule is derived from the holding in *Armory v. Delamirie*, where the court found that the finder keeps the found object against all but rightful owner.

The question these facts present is who is the

prior possessor. While McAvoy found the pocket-book before Medina had knowledge of it, Medina can still be a prior possessor through his ownership of the shop in which the pocket-book was found. Medina argues that he had *de facto* possession before McAvoy found the pocket-book.

Such *de facto* possession by Medina can be established if Medina has "custody" or "control" over the found pocket-book. *Bridges v. Hawkesworth* established this rule, and *South Staffordshire* reaffirmed it.

One way to establish a landowner's custody over a found object is by showing that the object was intentionally, as opposed to accidentally, deposited. See *Bridges*. The decision in *Hannah v. Peel* further affirms this approach, focusing on whether the found item was mislaid versus lost.

Here, the facts establish the pocket-book was intentionally placed on the table—it was mislaid—and thus Medina, the property owner, had "custody" over it.

It can be argued that the pocket-book was "accidentally left there" on the table given that the parties agreed this was the case and we do not know how the pocket-book got to the table. There is also evidence that the pocket-book is lost because the parties agreed that the customer who left it was "transient" and has yet, years later, to return for the pocket-book.

However, the focus for determining custody, pursuant to *Bridges*, is on how the pocket-book initially got on the table, not what occurs afterwards. The location on a table, as opposed to on the ground such as in *Bridges*, establishes intentional deposit by the pocket-book's prior possessor. A customer purposely set it there. And while in this case such an individual has not come back, the law is trying to ensure in future cases that such mislaid objects are kept on the premises to increase the chance of the objects return to their prior owner.

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Notably, the *Hannah* court focused on whether the found object was “lost” in the ordinary meaning of the word, *see Hannah*, which is not the case here. These facts indicate that the pocketbook was not there long. There were no cobwebs or dirt on the pocketbook—like the brooch in *Hannah*—or any other indicators that the prior possessor left the pocketbook in the shop many, many years ago. Just because the prior possessor has not returned for the pocketbook is overly relevant. *See South Staffordshire*.

Evidence that Medina exhibited “manifest intention to exercise control” over the area in which the object was found can also establish the necessary custody to prove *de facto* possession. *See South Staffordshire*. If the pocket-book was “in the protection of [Medina’s] house,” then Medina was in possession of it. *See Bridges*.

Medina manifested such an intention. The shop is private property owned by Medina. McAvoy was a customer Medina allowed in the shop, as was the customer who left the pocket-book. Medina, unlike Peel in *Hannah*, took physical possession of the shop and put it to use. And while the pocket-book was found in the public part of the shop, it was found on a table—a location Medina is more likely to control—as opposed to the floor, where the bundle of notes was found in *Bridges*.

The court in *South Staffordshire* also looked to see if found object was “attached to or under [the] land” in order to establish *de facto* possession by the landowner. The court in *Hannah v. Peel* repeated this holding.

McAvoy certainly points out that the pocket-book was on a table, and thus not attached to the shop nor under it.

But Medina still manifested intention to exercise control over the object itself as well as the object’s location. And, as contemplated by the court in *Hannah*, a property owner can still possess something “lying unattached on the surface of his land.” They can still manifest control, such as by the intentional deposit of the pocket-book and the control over the table on which they were found, and therefore *de facto* possession.

Finally, while it is true that Medina did not act

nobly, and McAvoy the opposite by turning over the pocket-book, this fact has never been controlling on its own. Sharman acted with such good intentions and was still not awarded the rings in *South Staffordshire*. A concern may be that ignoring such evidence will incentivize finders to not find, leaving objects unused. However, given the amount of custody and control Medina exercised over the shop, the pocket-book would have eventually been found by Medina himself and put back into use as wanted by property law.

Accordingly, Medina exercised enough custody and control over both the pocket-book and the location where the pocket-book was found to establish possession prior to McAvoy.

Judgment for Defendant, Medina.