

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, 1866.

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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" over location where it was found. *Bridges v. Hawkesworth* established this standard, concluding that such custody can be established by showing that the found object was intentionally, as opposed to accidentally, deposited. 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 the act that got the pocket-book on the table, not what has occurred 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. 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.

De facto possession can also be established by "manifest intention to exercise control" of the area in which the object was found, as articulated in *South Staffordshire v. Sharman*. The court in *South Staf-*

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fordshire defined such control by whether the found object was “attached to or under [the] land.” The court in *Hannah v. Peel* repeated this holding.

Here, while the pocket-book was not attached to or under the land, Medina still manifested intention to exercise control over the object’s location.

McAvoy certainly points out that the pocket-book was on a table, and thus not attached to the shop nor under it. And the public was allowed into Medina’s shop.

However, as contemplated in *Hannah*, a property owner can still possess something “lying unattached on the surface of his land.” They can still manifest control and therefore *de facto* possession.

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 the fact the pocket-book was found in the public part of the shop is not controlling because, as the court in *Bridges* observed, the focus on such finds is whether the object was intentionally deposited, which in this case it was.

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 by itself. 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 the location where the pocket-book was found to establish prior possession as compared to McAvoy.

Judgment for Defendant, Medina.