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# Civil Law Property - The Law of Treasure and Lost Things

Gerald L. Walter Jr.

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## Notes

### CIVIL LAW PROPERTY—THE LAW OF TREASURE AND LOST THINGS

Upon the death of the decedent her heirs were placed in possession of her estate. In disposing of the estate the heirs sold decedent's mattress to the vendee-claimants for two dollars and fifty cents. The mattress was delivered to a mattress factory for renovation. In the process of renovation the cotton contents, when subjected to a blast of air, yielded several thousand dollars in gold certificates. The mattress company made no claim for the certificates. The United States brought an interpleader,<sup>1</sup> claiming the certificates but agreeing to pay the rightful owner their face value. The vendees claimed ownership of the certificates by virtue of Article 3423<sup>2</sup> of the Louisiana Civil Code, contending that the certificates were treasure and that therefore ownership vested in them as finders.<sup>3</sup> The heirs, in asserting their right to the certificates, relied on Article 3422,<sup>4</sup> contending that the certificates were lost property and as such should be returned to them. The United States District Court *held* that the heirs would be entitled to the certificates under either Article 3422 or 3423. *United States v. Peter*, 178 F. Supp. 854 (E.D. La. 1959).

Treasure and lost property are considered in the Louisiana Civil Code under the topic of occupancy.<sup>5</sup> The Code provides that the finder of lost property, having advertised the finding,

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1. 28 U.S.C. § 1345 (1958).

2. LA. CIVIL CODE art. 3423 (1870): "Although a treasure be not of the number of the things which are lost or abandoned, or which never belonged to anybody, yet he who finds it on his own land, or on land belonging to nobody, acquires the entire ownership of it; and should such treasure be found on the land of another, one-half of it shall belong to the finder and the other half to the owner of the soil.

"A *treasure* is a thing hidden or buried in the earth, on which no one can prove his property, and which is discovered by chance."

3. The vendees originally contended that when they purchased the mattress, ownership of the gold certificates contained therein was transferred to them. They abandoned this contention when it appeared that it was without merit, as it was unlawful to acquire gold certificates after 1933. A transfer which is prohibited by law is void. LA. CIVIL CODE arts. 12, 1764, 1779, 1885, 1891, 1892, 1893 (1870). See also 31 C.F.R. 53.1 (1934).

4. LA. CIVIL CODE art. 3422 (1870): "If he, who has found a movable thing that was lost, having caused it to be published in newspapers, and having done all that was possible to find out the true owner, can not learn who he is, he remains master of it till he, who was the proper owner, appears and proves his right; but if it be not claimed within ten years, the thing becomes his property, and he may dispose of it at his will."

5. See *id.* arts. 3412, 3413, 3414.

shall become the owner after the passage of ten years, by virtue of a presumption that the property has been abandoned. It is then considered as *res nullius*, a thing with no owner, and the finder who possesses as owner becomes master of it.<sup>6</sup> The necessity of waiting ten years may be avoided if the finder can prove abandonment. Abandonment is a matter not easily proven;<sup>7</sup> however, if the burden of proof can be satisfied, the property is considered as not having an owner, and ownership will vest immediately in the finder.<sup>8</sup> The jurisprudence lends little to the interpretation of Article 3422 since the cases have not dealt with the presumption of abandonment after passage of ten years, but only with proof of actual abandonment.<sup>9</sup> Also the French Code and writers are of little assistance, since the French do not have an article comparable to Article 3422.<sup>10</sup>

It appears that the only statement of law in Louisiana pertaining to the subject of treasure is found in Article 3423 which provides that the finder of treasure acquires ownership immediately upon the finding.<sup>11</sup> While there are no reported cases interpreting Article 3423, the article indicates that there are

6. *Donnell v. Gray*, 215 La. 497, 41 So.2d 66 (1949); *Standard Oil Co. v. Kinnebrew*, 155 La. 1009, 99 So. 802 (1924); *J. A. Bel Lumber Co. v. Stout*, 134 La. 987, 64 So. 881 (1914); *Powell v. Cox*, 92 So.2d 739 (La. App. 1957).

7. See *Donnell v. Gray*, 215 La. 497, 41 So.2d 66 (1949); *The Work of the Louisiana Supreme Court for the 1948-1949 Term*, 10 LOUISIANA LAW REVIEW 120, 178 (1950).

8. LA. CIVIL CODE art. 3421 (1870): "He who finds a thing which is abandoned; that is, which its owner has left with the intention not to keep it any longer, becomes master of it in the same manner as if it had never belonged to any body."

9. *Donnell v. Gray*, 215 La. 497, 41 So.2d 66 (1949); *Standard Oil Co. v. Kinnebrew*, 155 La. 1009, 99 So. 802 (1924); *J. A. Bel Lumber Co. v. Stout*, 134 La. 987, 64 So. 881 (1914); *Pirtle v. Price*, 31 La. Ann. 357 (1879); *Eastman v. Harris*, 4 La. Ann. 193 (1849); *Powell v. Cox*, 92 So.2d 739 (La. App. 1957). See Note, 5 LOYOLA L. REV. 83 (1949).

10. Article 717 of the *Code Civil* provides that lost property will be governed by "special laws"; however, no subsequent legislation has been enacted to provide such laws. Article 2279 of the *Code Civil*, which provides that possession is equivalent to title, specifically excludes from the operation of this article property which is either lost or stolen. As to these, it provides that the owner may reclaim his property within three years from the date the property was found. Planiol deems the finding of lost property to be a mode of acquisition analogous to occupancy, for lost property is as if it were without a master, although this is not technically correct since the master merely has been unable to locate his property. In such case the French provide that ownership will spring from acquisitive prescription of three years, rather than at the moment of taking possession as in the case of true occupancy. See I PLANIOL & RIPERT, *TREATISE ON THE CIVIL LAW* (translation by the Louisiana State Law Institute) nos. 2583-2586 (1959). Thus it can be seen little help is available from the French on the proper interpretation of Article 3422.

11. By virtue of LA. CIVIL CODE art. 3423 (1870), treasure is deemed to be property belonging to no one. One who possesses such property, with the intention of possessing as owner, becomes the owner of the property. *Donnell v. Gray*, 215 La. 497, 41 So.2d 66 (1949) (dictum).

three requirements to be met before property can be considered "treasure": (1) that the property be hidden or buried in the earth, (2) that no one can prove his ownership to the property, and (3) that such property be found by chance. Since Article 3423 is essentially the same as Article 716<sup>12</sup> in the French Civil Code, some assistance may be gained in interpreting Article 3423 by looking to the French. Planiol suggests that the French code definition be interpreted to add the requirement that the treasure be movable.<sup>13</sup> This requirement was incorporated into Article 3423 thereby eliminating the possibility of considering natural resources as treasure. Planiol also suggests that the general rule that treasure is normally hidden or buried in the earth is not to be taken in a restrictive sense, but rather that property found concealed within other movables be also classified as treasure.<sup>14</sup>

In the instant case the court stated that it was not necessary to distinguish the situations intended to be encompassed by the lost property article<sup>15</sup> and the treasure article.<sup>16</sup> In either case the initial determination to be made is whether anyone can prove his ownership of the property. In the instant case the heirs were able to prove to the court's satisfaction that the property belonged to the decedent. It would follow that the heirs could recover under Article 3423, the treasure article, since the certificates could no longer be classified as property to which no one could prove ownership. Although the court's disposition of the instant case seems correct, it leaves in doubt the interpretation of other requirements of Article 3423.<sup>17</sup> Since the court found that the certificates belonged to the decedent, and could be claimed by the heirs, it was not necessary to consider the requirement that treasure be hidden or buried in the earth.

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12. CODE CIVIL art. 716: "Treasure trove belongs to the finder when he finds it on his property. If it is found on another person's property it belongs half to the finder and the other half to the owner of the property. Treasure trove is everything hidden or buried in the earth which no one can prove belongs to him and which is discovered by mere chance." (Wright's transl. 1908).

13. See 1 PLANIOL AND RIPERT, TREATISE ON THE CIVIL LAW (translation by the Louisiana State Law Institute) no. 2578 (1959).

14. See *id.* nos. 2578-2580. Planiol would also deem the requirement of finding by chance to be a useless condition. This contention finds support in the Roman law, since this requirement would seem applicable only to trespassers in the Roman law. CODE 10.15.1; BUCKLAND, A MANUAL OF ROMAN PRIVATE LAW 144 (1928); Note, 15 B.U.L. REV. 656 (1935).

15. LA. CIVIL CODE art. 3422 (1870).

16. *Id.* art. 3423. See *United States v. Peter*, 178 F. Supp. 854, 856 (E.D. La. 1959).

17. A strict interpretation of the article would require not only that the property belong to no one but that it be hidden or buried in the ground and found by chance.

Whether the Louisiana courts will follow the solution suggested by Planiol<sup>18</sup> remains a subject of speculation. Further supporting its decision not to distinguish between the two articles, the court added in a footnote: "Articles 3422 and 3423 merely show that Louisiana has followed the trend toward merging the law of treasure trove with the law of lost property."<sup>19</sup> In referring to the merging of the law of treasure and lost property, the court was apparently referring to the trend toward such a merger in Anglo-American jurisdictions. The Anglo-American case law dealing with found property seems primarily concerned with a determination of whether the property is to be counted as lost of treasure trove with the law of lost property."<sup>19</sup> In referring to determination, the courts have stated that the finder will retain the property against all but the true owner.<sup>21</sup> This is often construed as meaning that the law of treasure and the law of lost property have merged,<sup>22</sup> the rights of the finder in either case being identical. However, the Anglo-American trend toward merger is in relation to the rights of the actual *finder* and not, as in the instant case, one who purchases the object in which the treasure is contained.<sup>23</sup> In relation to the Louisiana law it would seem incorrect to consider Articles 3422 and 3423 as following the trend toward merger, since they are two distinct

18. See 1 PLANIOL & RIPERT, TREATISE ON THE CIVIL LAW (Translation by the Louisiana State Law Institute) no. 2578 (1959).

19. *United States v. Peter*, 178 F. Supp. 854, 856n. (E.D. La. 1959).

20. See *Danielson v. Roberts*, 44 Ore. 108, 74 Pac. 913 (1904); *Groover v. Tippins*, 51 Ga.App. 47, 179 S.E. 634 (1935); *Vickery v. Hardin*, 77 Ind. App. 588, 133 N.E. 922 (1922); 34 AM. JUR. *Lost Property* § 4 (1941); 36 C.J.S. *Finding Lost Goods* § 1 (1943). See also Annot., 170 A.L.R. 707 (1947), where the cases place property which has been found into three classifications: (1) It is considered to be treasure when the property is gold or silver in coin, plate, bullion or paper representations thereof which have been intentionally concealed by a former owner who is now deceased. (2) It is considered as lost when the possession has been casually and involuntarily parted with through negligence or carelessness. (3) It is considered as mislaid when intentionally put in a place by the owner and then forgotten for a time. *But see Schley v. Couch*, 155 Tex. 195, 284 S.W.2d 333 (1955), in which the Texas court rejects any classification of property as treasure. The Texas solution would classify all such property as either lost or mislaid. The determining factor in each case would be the length of time which the property has been concealed.

21. See note 20 *supra*.

22. *Weeks v. Hackett*, 104 Me. 264, 265, 71 Atl. 858 (1908); *Roberson v. Ellis*, 58 Ore. 219, 114 Pac. 100 (1911); BROWN, A TREATISE ON THE LAW OF PERSONAL PROPERTY 25 (1936); Aigler, *Rights of Finders*, 21 MICH. L. REV. 664 (1922); Riesman, *Possession and the Law of Finders*, 52 HARV. L. REV. 1105, 1112 (1939); Comment, 8 FORD. L. REV. 222 (1939); Notes, 6 MINN. L. REV. 527 (1922), 22 TEMP. L.Q. 326, 328 (1949).

23. See Note, 23 TUL. L. REV. 409, 410 (1949): "American courts have consistently held that the finder of treasure has better title than the owner of the *locus in quo*." *Vickery v. Hardin*, 77 Ind. App. 588, 133 N.E. 922 (1922); *Roberson v. Ellis*, 58 Ore. 219, 114 Pac. 100 (1911); *Danielson v. Roberts*, 44 Ore. 108, 74 Pac. 913 (1904).

articles, each applicable in different factual situations. If the conditions set forth in Article 3423 are met, the property can properly be considered treasure and ownership will vest in the finder at the moment of his finding. Article 3422 provides the general rule and operates to preserve the right of the owner to reclaim his property within ten years. This article will be applicable unless the property specifically fits the requirements of other articles, which operate to vest ownership in the finder immediately.<sup>24</sup> Any general conclusion to the effect that Louisiana has followed the Anglo-American trend toward merger would seem improper since the Code operates to vest the finder with ownership immediately in the one case and not until the passage of ten years in the other. However, all that was necessary for the disposition of the instant case was the determination that the heirs had shown satisfactory proof of the ownership by the decedent and therefore were entitled to recover the certificates. Thus the case does not shed much light on the future interpretation of the code provision pertaining to treasure in Louisiana.

*Gerald L. Walter, Jr.*

CONSTITUTIONAL LAW — SELF-INCRIMINATION — DISBARMENT OF  
ATTORNEY FOR PLEADING STATE PRIVILEGE IN A  
JUDICIAL INQUIRY

A New York attorney was called before a judicial inquiry being held for the purpose of investigating unethical practices in the procurement and prosecution of negligence cases handled on a contingent fee basis. The attorney invoked the state privilege against self-incrimination,<sup>1</sup> refusing to testify or to produce his records on negligence cases for which he had filed retainers. It was not disputed that the assertion of the privilege was in good faith, or that the information sought to be elicited was relevant to the purpose of the inquiry. In an original disbarment pro-

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24. LA. CIVIL CODE art. 3420 (1870) (dealing with precious stones); *id.* art. 3421 (dealing with abandoned property); *id.* art. 3423 (dealing with treasure).

1. N.Y. CONST. art. I, § 6 (1938) provides: ". . . nor shall he be compelled in any criminal case to be a witness against himself. . . ." The NEW YORK CODE OF CIVIL PROCEDURE § 83 (1914) provides: "A competent witness shall not be excused from answering a relevant question, on the ground only that the answer may tend to establish the fact, that he owes a debt, or is otherwise subject to a civil suit. But this provision does not require a witness to give an answer, which will tend to accuse himself of a crime or misdemeanor or to expose him to a penalty or forfeiture; nor does it vary any other rule, respecting the examination of a witness."