William & Mary Law Review

Volume 12 | Issue 1 Article 7

Abandoned Property at Sea: Who Owns the Salvage "Finds"?

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ABANDONED PROPERTY AT SEA: WHO OWNS THE SALVAGE "FINDS"?

Unsuspected reefs, tempestuous weather, ocean currents, tidal movements, murky waters, and shifting sands have from time immemorial claimed ship and cargo so effectively that searching owners abandoned all hope of reclamation. Buried sea treasure of gold coins, precious stones, or empty vessels of historical value have inspired treasure hunters, for hobby or profit, to take up the search. Today, modern treasure hunters are often corporations with sophisticated equipment. But who owns these newly discovered "finds" after years of abandonment by the original owner? The law is unclear.

> I believe that there is no branch of salvage law so little understood and free from misconception to proctors and laymen alike, as the question pertaining to ownership of distressed, abandoned, or wrecked property at sea.[1]

In considering this question of legal ownership, an examination will be made of ancient maritime law, English and American common law, and some modern statutes governing title to goods found at sea. At each stage in the development of the law, the focus will be on the interest of the finder claiming title in competition with the sovereign. Bear in mind that in this regard the ancient maritime law and old common law rules have greater importance than to serve as a mere historical review. In 1956 and again in 1968, two state supreme courts went counter to almost two hundred years of settled American law in preempting the finder's claim to title by invoking their version of the common law as it existed prior to our Declaration of Independence.[2]

Rules on Ancient Maritime Law

Although history records the use of ships by Phoenicians, Egyptians, Greeks, and Romans, nothing in the form of a maritime ordinance or formal sea code pertaining to salvage appeared until the Maritime Or-

1. M. Norris, The Law of Salvage § 157 (1958).

2. State *ex rel.* Ervin v. Massachusetts Co., 95 So. 2d 902 (Fla. 1956), *cert. denied*, 355 U.S. 881 (1957); State *ex rel.* Wade v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

dinance of Trani promulgated in 1063.[3] Section 19 of that code rewarded the finder with half the goods found floating at sea if the owner appeared, "[a]nd if at the end of thirty days the owner shall not appear, nor any lawful person on his behalf, the goods shall belong to him, who has found them."[4] Two centuries later, by the Laws of Oleron—the precursor of English maritime law[5]—goods cast upon the sea to lighten the load by reason of tempestuous weather became the lawful possessions of the first occupant.[6] Property found in the sea, "in floods or in rivers, if it be precious stones, fishes or any treasure of the sea, which never belonged to any man in point of property," was adjudged to the first finder.[7] The spirit of the ancient "savage laws" in northern Europe and on the coast of the Baltic Sea allowed ". . . the inhabitants to seize on whatever they could get as lawful prize."[8] Britton stated:

> If found on the shore, they (the shipwrecked goods) are a wreck and belong to the king; but if they are found in the sea further off from the shore, then whatever has been found shall belong to the finder, because it may be said to be then no man's goods; the king no more than a private person.[9]

Thus, the ancient maritime law adheres to the natural law concept of ownership by possession.

Evolution of the English Rule

The common law rules are important to Americans for it is often stated that our ancestors brought with them and claimed as our birth-

3. *See* G. Gilmore & C. Black, The Law of Admiralty § 1-2 (1957); M. Norris, *supra* note 1, § 7 (1958). Trani was an ancient Italian City among many trading cities that arose around the Mediterranean seaports. Venice, by 1400, is said to have had 3000 ships afloat; probably the greatest maritime power of that day.

4. The Black Book of Admiralty 523, 537 (Twiss ed. 1876).

5. *See* M. Norris, *supra* note 1, § 8 n.2. Richard I who reigned from 1189 to 1199, introduced the code into England.

6. The Laws of Oleron, reprinted in 30 F. Cas. 1171, 1184 (1897).

> Art. XXXII . . . this holds true only in such cases, as when the master, merchant, and mariners, have so ejected and cast out the said goods, as that they give over all hope or desire of ever recovering them again, and so leave them as things utterly lost and given over by them, without ever making any enquiry or pursuit after them: in which case only the first occupant becomes the lawful proprietor thereof.

7. *Id.* Art. XXXIV.

8. 1 W. Blackstone, Commentaries *292-93.

9. Murphy v. Dunham, 38 F. 503, 508 (E.D. Mich. 1889).

right those general principles of common law that existed down to the fourth day of July 1776.[10] To determine the exact nature of the common law in 1776 in the area of salvage finds, however, is most difficult and has produced much litigation. Case law is now multifarious and disorganized, and the legal authorities, Blackstone, Britton, Bracton and Coke, often disagree. Compounding this dilemma, the concept of "treasure trove" developed separately according to its own distinct principles.

At common law, goods lost at sea fell into four categories: wreck, flotsam, jetsam, and ligan. To constitute legal wreck the goods must come to shore, while flotsam is property still awash at sea. Jetsam is sunken goods thrown overboard to save the ship, and ligan is sunken goods tied to a buoy or cork in order to facilitate recovery.[11] By the early common law, goods that reached shore (wreck) belonged to the crown as part of the king's prerogative.

> Wreck, by the ancient common law, was where any ship was lost at sea and the goods or cargo were thrown upon land; in which case these goods, so wrecked, were adjudged to belong to the king: for it was held, that, by the loss of ship, all property was gone out of the original owner.[12]

Although the origin of this rule is uncertain, Blackstone reveals its purpose as being related indirectly to the sovereign's protection of the seas from the plundering of pirates and robbers.[13] Yet the rule was harsh since the true owner still suffered a total loss.[14] In 1275, by the Statute of Westminster, the rule became more equitable in favor of the distressed proprietors:

> Concerning wreck of the sea, it is agreed, that where a man, a dog, or a cat escape quick out of a ship, that such ship nor barge, nor anything within them, shall be ajudged wreck; but the goods shall be saved and kept by view of the sheriff, coroner, or king's bailiff, and delivered into the hands of such as are of the town where the goods were found; so that if any sue for these goods, and after prove

10. State *ex rel.* Ervin v. Massachusetts Co., 95 So. 2d 902, 904 (Fla. 1956), *cert. denied*, 355 U.S. 881 (1957); State *ex rel.* Wade v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482, 490 (1968).

11. 1 W. BLACKSTONE, COMMENTARIES *290-94.

12. *Id.* at 290.

13. *Id.* at 289.

14. *Id.* at 290.

> that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay; and if not they shall remain to the king . . . .[15]

The statute simply gave the owner a year and a day to reclaim goods washed ashore by proving his mark upon them. It is to be observed that by its express terms the statute refers only to legal wreck, goods thrown upon the shore, without mention of flotsam, jetsam, ligan or treasure trove. Nonetheless, in *Constable's Case* decided in 1601, Sir Edward Coke, noting that Bracton and Britton had held to the contrary, resolved by the Court of the King's Bench that the king's prerogative should extend also to flotsam, jetsam, and ligan, "although they be in or upon the sea; for the sea is the king's allegiance, and parcel of his crown of England. . . ." [16] Thus the king's royal prerogative was expanded at this point from *wreccum maris* to include flotsam, jetsam and ligan.

Another of the king's prerogatives is "treasure trove." Blackstone asserts that only gold or silver in coin, plate, or bullion found hidden *in* the earth belonged to the king; but if found in the sea or *upon* the earth it belongs to the finder, if no owner appears.[17]

> So it seems it is the *hiding*, not the *abandoning* of it, that gives the king a property. . . . A man, that hides his treasure in a secret place, evidently does not mean to relinquish his property; but reserves the right of claiming it again, when he sees occasion: and if he dies, and the secret also dies with him, the law gives it to the king, in part of his royal revenue. But a man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it: and therefore it belongs, as in a state of nature, to the first occupant or finder . . . .[18]

Blackstone points out that formerly at common law all treasure trove belonged to the finder. As the law developed, the king's prerogative to a limited extent was founded upon the need to protect the king's right to coinage.[19] Britton held approximately the same view. "[O]f treasure

15. STATUTE OF WESTMINSTER, 3 Edw. 1, c. 4 (1275).

16. 77 Eng. Rep. 218, 223 (K.B. 1601).

17. 1 W. BLACKSTONE, COMMENTARIES *295.

18. *Id.*

19. *Id.* at 296. *See* 3 J. STEPHEN, HISTORY OF THE CRIMINAL LAW OF ENGLAND 177-79 (1883). Coinage offenses were treason at common law punishable by death.

hid in the ground, we will that it be ours [the crown]; and if it be found at sea, be it to the finder." [20] No cases are to be found by the year 1776 that either accept or reject Blackstone's view.

In 1834, however, the king successfully asserted his claim to all treasure trove in *Talbot v. Lewis*.[21] The finder's claim of treasure trove in valuable coins found in the sands along the seashore was summarily brushed aside. The court stated that since the coins could not have dropped from the clouds, they were *presumed* to have come from a wrecked vessel, and therefore the law of "wreck" applied. Thus, Blackstone's theory of treasure trove was apparently ignored.

Another significant step in favor of the crown is found in *The King v. Property Derelict*.[22] Gold coins and watches were found onboard an old ship drifting at sea, her sides and deck rotted and covered with barnacles. In a very brief decision the court stated that the law did not sanction a private distribution, and that "whatever property is found derelict" must either be returned to the owners or condemned to the crown as a droit of admiralty. Perhaps the brevity of this case can be explained because it followed *The Aquila*,[23] in which a Swedish ship and its cargo were found floating at sea. Although the ship was returned to its rightful owner, both the king and the finder asserted ownership in the unclaimed cargo. Since the goods had not come ashore, nor were they ever cast out of the vessel, they fit none of the technical terms of wreck, flotsam, jetsam or ligan. In deciding for the crown, the court made a sweeping postulation that the technical terms appeared to have been done away with, and that what was found derelict on the seas belonged to the sovereign.

> It is certainly very true that property may be so acquired [by possession]: but the question is, to whom is it acquired? By the law of nature, to the individual finder or occupant: But in a state of civil society, although property may be acquired by occupancy, it is not necessarily acquired to the occupant himself; for the positive regulations of the state may have made alterations on the subject; and may, for reason of public peace and policy, have appropriated it to other persons, as for instance to the State, itself, or to its grantees.
>
> It will depend, therefore, on the law of each country to determine,

20. Constable's Case, 77 Eng. Rep. 218, 223 (K.B. 1601).
21. 172 Eng. Rep. 1383 (Ex. 1834).
22. 166 Eng. Rep. 136 (Adm. 1825).
23. 165 Eng. Rep. 87 (Adm. 1798).

> whether property so acquired by occupancy, shall accrue to the individual finder, or to the sovereign, and his representatives? And I consider it to be the general rule of civilized countries, that what is found derelict on the seas, is acquired beneficially for the sovereign, if no owner shall appear.[24]

The tenor of the quotation expresses the court's feeling that the case could have been decided either way. Perhaps this, and the confused state of the English law by 1776, accounts for the present view among American courts which find no difficulty in citing English authorities to justify ownership for either the state[25] or the finder.[26] In any case it is now well established in Britain that ownership of all goods abandoned at sea is settled in favor of the crown.

This settled English rule did not crystalize until well after the American revolution of 1776. The few cases that did exist around that period were all concerned with cargo; none mentioned the sunken vessel itself as part of the royal prerogative. Finally, ownership of the land upon which the goods were thrust conveyed, in itself, no right to the property lodging there.

The American Rule

It is established in the United States as well as in England that ownership of derelict goods is not in issue unless the original owner has abandoned his title to the property.[27] It is equally well established that owners of sunken or derelict vessels may abandon them so effectively as to divest themselves completely of title.[28] But where the claims of

24. *Id.* at 89.

25. *See* State *ex rel.* Ervin v. Massachusetts Co., 95 So. 2d 902 (Fla. 1956), *cert. denied*, 355 U.S. 881 (1957); State *ex rel.* Wade v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

26. Murphy v. Dunham, 38 F. 503 (E.D. Mich. 1889); Thompson v. United States, 62 Ct. Cl. 516 (1926).

27. *See, e.g.*, The Port Hunter, 6 F. Supp. 1009 (D.C. Mass. 1934); Annot., 63 A.L.R. 2d 1369, 1370 (1959).

28. *See, e.g.*, Thompson v. United States, 62 Ct. Cl. 516 (1926); Eads v. Brazelton, 22 Ark. 499, (1861); Annot., 63 A.L.R.2d 1369, 1372 (1959). Abandonment is an intentional relinquishment of all right, title and possession of a thing without the intention of ever reclaiming it. It consists of two elements, act and intention, with intention to abandon being the most important. It is a question of fact determined from all the circumstances. A mere passage of time will not necessarily work an abandonment if the owner has clearly shown a constant intent to salvage it. In *Eads v. Brazelton* the court apparently implied abandonment from the long period of time

the original owner are not in issue, and the contest is between sovereign and finder, American courts have consistently held contrary to the British rule, subordinating sovereign rights to those of the finder who obtains title by occupancy. These courts, although acknowledging the existence of the English rule, have found many reasons to permit the finder's claims to prevail. The following are among the reasons cited to reach this salutary result: (1) The severe English rule with regard to wreck did not become part of American common law.[29] (2) It is not the pure English common law which prevails in the United States, but the common law as it existed in the American colonies prior to 1776, modified by local institutions.[30]

> It is worthwhile to notice that our colonial policy radically differed from the severe common-law rules as to wrecks and as to property floating on the high seas . . . and that this difference is now accepted as part of our common law.[31]

(3) The United States' courts believed they should not be bound by a British rule that did not evolve until after the Declaration of Independence.[32] (4) A vessel abandoned in navigable waters of the United States belongs to the finder that reduces it to possession.[33] (5) Abandoned goods are simply property lying at the bottom of the sea that awaits its owner.[34] (6) At common law, the Statute of Westminster applied only to wreck in its technical term (goods washed ashore), and has no application to derelict property found at sea.[35]

But the most frequently asserted justification for the American rule, exemplified by *United States v. Tyndale*[36] and *Thompson v. United States*,[37] is that while the American sovereign has the *inherent* power to assert ownership, it, unlike the English crown, has never actually done so; further, until the legislature appropriates such property to the sov-

(28 years) the vessel and cargo had been left undisturbed in a shifting river bed that since had formed an island over the vessel.

29. United States v. Tyndale, 116 F. 820, 823 (1st Cir. 1902).

30. Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 229 (1845).

31. United States v. Tyndale, 116 F. 820, 823 (1st Cir. 1902).

32. *Cf.* Coleman v. Davis, 120 So. 2d 56, 58 (1st Dist. Ct. App. Fla. 1960).

33. Thompson v. United States, 62 Ct. Cl. 516, 524 (1926).

34. Murphy v. Dunham, 38 F. 503, 509 (E.D. Mich. 1889).

35. *Id.*

36. 116 F. 820 (1st Cir. 1902).

37. 62 Ct. Cl. 516 (1926).

ereign, the courts will continue to favor the finder.[38] In *Tyndale* money was recovered from an unidentified body found floating at sea. The United States Court of Appeals for the First Circuit held for the finder:

> The only propositions before us are: First, that the United States have a superior right to the possession of the fund. . . . [W]e are of the opinion that it would have been appropriate, and within its constitutional powers, for congress to have taken control of this fund; but it has not done so.[39]

And in *Thompson*, the United States Court of Claims reached a similar conclusion concerning a derelict and abandoned vessel:

> Congress could undoubtedly provide that the proceeds of derelict and abandoned vessels in navigable waters of the United States be paid into the Treasury; but no such law has been passed, and until it is the principle of natural law must prevail.[40]

Murphy v. Dunham[41] was a case of first impression that provided a federal district court with an opportunity to examine the common law application in America. In that case, a schooner filled with 1,375 tons of chestnut coal sank to the bottom of Lake Michigan. The salvor made no effort to recover the vessel but succeeded in raising 981 tons of coal which he sold in the Chicago open market. In a suit for conversion brought by the original owner, the salvor defended on the grounds that after a year and a day the property belonged either to the United States, or to the state of Illinois in its sovereign capacity, or to himself, the finder. The court, after a lengthy examination of the ordinance of Trani, the rules of Oleron, and the Statute of Westminster, reasoned that: (1) The Statute of Westminster is confined to goods cast upon the shore, or to flotsam, jetsam, and ligan. (2) The United States has no title to property sunk in Lake Michigan, as the states proprietorship extends to the center of the lake, subject only to the right of Congress

38. The only federal statute giving the United States power over derelicts merely allows the Secretary of the Army to remove any craft or sunken object which endangers or obstructs the navigable waters of the United States. This statutory provision does not purport to give ownership, as the cost of removal may be charged against the owners, and the United States is not liable for any damage inflicted on the sunken object while removing it. 33 U.S.C. §§ 414-15 (1964).

39. 116 F. at 821.

40. 62 Ct. Cl. at 524.

41. 38 F. 503 (E.D. Mich. 1889).

to control its navigation. (3) Since ownership was not given to Illinois by virtue of any state statute, absent such statute, title did not pass to the state as a sovereign. (4) The finder could not claim title over the owner who had not abandoned his claim to the vessel or cargo.[42]

Fifteen years ago, it would have been a fair conclusion that American courts uniformly vested title in the finder. In 1956, however, the Supreme Court of Florida, in *State ex rel. Ervin v. Massachusetts Co.*,[43] by invoking its version of the English common law as it existed in 1776, awarded ownership of a sunken vessel to the state. An old battleship was sunk off the coast of Florida in the Gulf of Mexico during target practice by the United States Coast Artillery in 1922. It laid scuttled in shallow water well within Florida's territorial grasp.[44] Several of the gun turrets remained above water providing navigational aid to small craft, and the vessel had become a favorite fishing spot for local anglers.[45] The Navy Department repudiated any claim it might have had to the vessel. When the Massachusetts salvage company started operations to raise her, the state intervened claiming a proprietary interest in the ship by virtue of its sovereign prerogative under the English common law. The court granted the requested state injunction holding:

> We conclude, therefore, that the wreck of the vessel is a "derelict" which, at common law, would belong to the crown in its office of Admiralty at the end of a year and a day . . . that since the property was resting in the territorial waters of the state of Florida . . . [it] belongs to the state in its sovereign capacity.[46]

While the decision might have been justified on other grounds,[47] there are several unique aspects of this opinion that are questionable. The case was decided by Justice Roberts who overruled *Howard v. Sharlin*,[48] an opinion which he had authored four years earlier. The Florida court virtually ignored one hundred and ninety years of American state and

42. *Id.* at 503-12.

43. 95 So. 2d 902 (Fla. 1956).

44. Florida's boundaries extend one marine league into the Atlantic and three leagues (about nine miles) into the Gulf of Mexico. FLA. CONST. art. II, § 1.

45. Two intervening fishing clubs sought to enjoin the defendant company from further salvage operations.

46. 95 So. 2d at 907.

47. Since the people of Florida had long used it as a fishing spot and for navigational purposes, they might have asserted their rights as the party first to have taken possession.

48. 61 So. 2d 181 (Fla. 1952).

federal court decisions, relying solely on primitive English cases far removed from American law, all of which were decided after 1776.[49] The opinion relied heavily upon the Statute of Westminster of 1275, failing to note that the statute applied only to wreck. It was, as noted earlier, *Constable's Case* which extended the king's prerogative to flotsam, jetsam, and ligan.[50] It is impossible to fit a sunken battleship into any of these categories, and prior to 1776 a sunken vessel was not part of the royal prerogative under any circumstances. Without mention of Blackstone or any legal commentators of that period, the court contented itself with a quote from *Carver's Carriage of Goods by Sea*,[51] an interpretation of the early common law which was favorable to the state. No cases are to be found holding that derelict property belongs to the state merely because it rests on the sovereign's submerged territory. Finally, after clutching at straws in order to fashion a rule that would mete out the desired result, the court concluded that, although they had no express statutory authority, various Florida statutes dealing with derelict goods demonstrated the state legislature's intent to preempt for the state those fiscal incidents which were the king's at common law.

Such a radical departure from the accepted American view made it difficult to assess the place of this decision in American law, and perhaps it should have been labeled a singular case. With this prerogative authority, however, states could prevent historical treasures from escaping their grasp no matter who discovered them. With this in mind, North Carolina asserted its sovereign prerogative in *State ex rel. Wade v. Flying "W" Enterprises, Inc.*[52] During 1962, the state had supervised salvage and restoration operations upon the hulks of three Confederate Blockade Runners, the *S.S. Modern Greece*, *S.S. Phanton*, *S.S. Ranger*, and three other vessels known as the *S.S. Venus*, *S.S. Ella Beauregard*, and *S.S. Condor*. In 1965, defendants dived for and removed small historical items from the three confederate ships and from a Spanish privateer, *The Fortune*, upon which the state had not been working. All of these derelict vessels lay submerged within the three mile territorial limits of North Carolina's coast. The state brought suit to permanently enjoin

49. The court cites The Tubantia, [1924] Eng. L. Rep. 78 (P. Div.); The King v. Two Casks of Tallow, 166 Eng. Rep. 414 (Adm. 1837); The King v. Forty-Nine Casks of Brandy, 166 Eng. Rep. 401 (Adm. 1836); H.M.S. Thetis, 166 Eng. Rep. 390 (Adm. 1835); The Aquila, 165 Eng. Rep. 87 (Adm. 1798).

50. 77 Eng. Rep. 218 (K.B. 1601).

51. R. COLINVAUX, CARVER'S CARRIAGE OF GOODS BY SEA, 568 (10th ed. 1957).

52. 273 N.C. 399, 160 S.E.2d 482 (1968).

defendants from undertaking diving operations on these and all vessels lying within its territorial waters. Citing *State ex rel. Ervin v. Massachusetts Co.* as authority, and reiterating its version of the common law, the North Carolina Supreme Court found for the state and thus gave added impetus to the insecure foundation of the *Ervin* case. No other state courts have yet adopted or alluded to this prerogative theory, and it appears settled in the federal courts that the finder's claim is preferred to that of the sovereign.

Martin J. Norris, in his authoritative text, *The Law of Salvage*,[53] presents an entirely different approach to the question of ownership which favors neither state nor finder. He expresses the opinion that the owner of property lost at sea is *never* divested of his title, the salvor merely obtains a possessory salvage lien.[54] He believes state courts should not handle such cases, and that all abandoned property "should rightfully operate under the protection and guidance of our admiralty courts." [55] His theory has not, however, won acceptance. In *Wiggins v. 1100 Tons, More or Less, of Italian Marble*,[56] Judge Hoffman, ruling for the United States District Court for the Eastern District of Virginia (Norfolk Division) expressly took issue with Norris' view, holding:

53. M. NORRIS, *supra* note 1.

54. *Id.* § 150. "Should a vessel be abandoned without hope of recovery or return, the right of property still remains in her owner. The salvor obtains a right of possession; he does not acquire ownership or title to the salved property."

55. *Id.* § 158 (Supp. 1970).

> When marine property has been affirmatively and publicly abandoned by its owners, there may be inclination to regard it as a legitimate "find" subject to the possession and ownership of whosoever discovers it. In consonance with the established policy of the maritime law that salvors should look to the admiralty courts for reward, the settlement of disputes and the ultimate disposition of the rescued property, it is, in my opinion, far better and wiser not to recognize or regard publicly abandoned property as a "find."
>
> The salutary admiralty rules with respect to the possessory rights of salvors are designed to provide an orderly and well-governed procedure for the protection and disposition of distressed property found on navigable waters. Were publicly abandoned marine property discovered on the high seas—international waters—regarded at law as a "find" it could well be that violent and lawless acts of the eager or desperate "finders" would be thus encouraged. Furthermore, the conveyance of good title to the rescued vessel, cargo or other marine property would be questionable under the circumstances with perhaps serious loss of value of the salved goods. Salvors of abandoned property, either abandoned at law or in fact, should rightfully operate under the protection and guidance of our admiralty courts.

Id.

56. 186 F. Supp. 452 (1960).

> If there be an affirmative act of abandonment such as in *The African Queen* . . . it is, in effect, a repudiation of ownership and the party taking possession under salvage operations may be considered a finder under the doctrine of *animus revertendi*, i.e., the owner has no intention of returning.[57]

Another case similarly held that once the true owner abandoned his property and relinquished ownership he could not reclaim title from the salvor.[58]

It does little good to speculate on the possible reversal of *State ex rel. Ervin*, and *Wiggins*, as title to abandoned sea treasure has now become enmeshed in Florida's and North Carolina's statutory enactments.

> It is further declared to be the public policy of the state that all treasure trove, artifacts and objects having intrinsic or historical . . . value which have been abandoned on state-owned sovereignty submerged lands shall belong to the state of Florida with the title thereto vested in the Florida Board of Archives and History . . . .[59]

North Carolina's statute is similar in major respects,[60] and other states could readily enact the same. Thus the finder who could once claim a paramount right to newly discovered goods has been preempted statutorily by the state's claiming a vested title as soon as the property is abandoned on their submerged lands. The finder has little recourse to such disenfranchisement of property rights except to prove the statute unconstitutional. The claim has yet to come before the courts.

At least one author has advanced the argument that the state's preemption of title could raise the constitutional question of state interference in what is essentially a federal question.[61] That is, it becomes the duty of the salvor to bring distressed property to safety for eventual return to the owner, or at least to where the owner may be in a position to reclaim it, and that claims of state ownership would conflict with or may reduce the finder's salvage reward.[62]

> The state's claim can therefore be said to conflict with the policy of

57. *Id.* at 456.

58. Nippon Shosen Kaisha, K.K. v. United States, 238 F. Supp. 55 (1964).

59. FLA. STAT. ANN. ch. 267, § 267.061(1)(b) (Supp. 1969).

60. N.C. GEN. STAT. § 121-22 (Replacement Vol. Supp. 1969).

61. M. NORRIS, *supra* note 1, § 157.

62. *Id.*

> the maritime law of encouraging the recovery of distressed property by holding out the right to be liberally rewarded . . . .[63]

It must be observed, however, that by the express terms of Florida's statute, state rights are limited to "articles of historical value," which after years of abandonment, can hardly be termed "distressed" property in a sense that threats to life or property are imminent. The problem essentially reduces to one of public policy. Should private fortune seekers, not bent on rescuing ships in distress, be permitted to indiscriminately and perhaps inefficiently disturb or remove historical treasures which the state is trying to preserve? One can hardly attack the intent behind a state legislature's attempt to preserve historical pieces for the edification and benefit of all its citizens.

As to the question of state law interfering with federal maritime law, it would appear that historical artifacts do not fit into the traditional concept of maritime salvage laws which for purposes of uniformity require federal control. State regulation over historical treasures found within their territorial grasp are "maritime but local" and do not disrupt the uniformity of federal maritime law.[64] The few states that have asserted their sovereign prerogative have premised their claims upon ownership of the submerged lands beneath the territorial waters. It is conceivable, therefore, that abandoned property recovered beyond the three-mile limit may be regarded as within the sovereignty of the coastal power. No case yet exists, but perhaps the issue will be resolved from pending litigation between state and federal governments concerning ownership of the seabed mineral wealth lying outside the three-mile limit.[65]

CONCLUSION

Should a casual skin diver manage to bring up from the deep an old sea chest or ancient relic, he can no longer be certain that the recovered

63. *Id.*

64. The "maritime but local" rule has been applied to other areas of maritime law where state enacted regulations with local application were not said to disrupt the uniformity of maritime regulations. A representative selection of maritime but local cases are collected in Justice Black's opinion in Davis v. Department of Labor and Industries of Washington, 317 U.S. 249, 253 (1942).

65. *See* Note, *The Federal-State Offshore Oil Dispute*, 11 WM. & MARY L. REV. 755, 760 (1970). "The attorneys general of the thirteen eastern states involved in the above suit are also working on proposed legislation which they expect to present to Congress in the near future."

property is his. Under the auspices of a public policy concerned with preserving historical resources, the once settled American law governing abandoned property at sea which favored the finder has been disputed. Whether the question of state ownership versus private rights will be expanded beyond the three-mile limit remains to be seen. In any event, the natural law concept of ownership by possession which was once the established basis for legal decisions on abandoned property at sea in America is no longer a certainty.

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