the rule somewhat more broadly than most American cases would justify. It reads in part as follows: "Where danger to others is likely to attend the doing of a certain work, unless care is observed, the person having it to do is under a duty to see that it is done with reasonable care." In *Warden* v. *Pennsylvania R. R. Co.*, 123 Ohio St. 305, 175 N.E. 207 (1931), that syllabus was read to the jury, and they were told to decide whether or not the work was dangerous. The instruction was approved by the Supreme Court. The work being done was the construction of a temporary trestle over a busy street, and the negligence consisted in leaving a plank extending over the highway in such a position that the plaintiff ran into it and was injured. The language used above is similar to that in Section 297 of the Restatement: "One who employs an independent contractor to do work which is inherently dangerous to others is subject to liability for bodily harm caused to them by the contractor's failure to exercise reasonable care to prevent harm resulting from the dangerous character of the work." The comment and the explanatory notes, however, make it rather clear that the section applies only to ultra-hazardous work or work involving the use of ultra-hazardous instrumentalities, such as blasting, the use of fire in clearing land, and the tearing down of high walls.

Unless we can say that the work of painting the sign was inherently dangerous, it is submitted that none of the propositions stated in the Restatement of the Law of Torts is broad enough to impose liability in the principal case. Indeed, the negligence in the principal case would probably be classed as collateral negligence. See comments and illustrations in Sections 296 and 297. But the Reporter was careful to explain that the American Law Institute did not intend to discourage further extensions of liability. Tentative Draft No. 6, page 59.

D. M. POSTLEWAITE.

PERSONAL PROPERTY

RIGHT OF FINDER AS AGAINST THIRD PERSON

Plaintiff, as an employee of the Toledo Trust Co. operated an electric door from a cage, admitting identified safety deposit customers, employees who worked in the offices in the rear and on the second floor, and visitors. In July, 1920, plaintiff found an unmarked envelope containing five hundred dollars on the floor of the small lobby adjacent to her cage. She reported it to the vice-president of the bank, who placed the money in a special account. Upon a demand for the money and a refusal, plaintiff sued in July, 1933. It was held that the judg-

ment for the plaintiff was not barred by the statute of limitations on grounds; (1) a continuing trust is exempt from its operation, Ohio Gen. Code Sec. 11, 236 and; (2) it does not begin to run until demand and refusal, Ohio Gen. Code Sec. 11, 224. The judgment was affirmed on appeal. *Toledo Trust Co.* v. *Simmons*, 52 Ohio App. 373 (Oct. 7, 1935).

Where property has been left on a desk or table in a quasi-public place or private premises, courts in both the United States and England will hold for the owner of the premises as against a finder on the theory of custody. *State* v. *Courtsol*, 89 Conn. 564, 94 Atl. 973 (1915); *Foster* v. *Fidelity Safe Deposit Co.*, 264 Mo. 89, 174 S.W. 376 (1915); *Kincaid* v. *Eaton*, 98 Mass. 139 (1867); *Heddle* v. *Bank of Hamilton*, 17 B.C. 306, 6 B.R.C. 256 (1912); *Loucks* v. *Gallogly*, 23 N.Y. Supp. 126 (1892); Aigler, Rights of Finders, 21 Mich. L. Rev. 664, 57 Am. L. Rev. 511; *McAvoy* v. *Medina*, 11 Allen 548, 87 Am. Dec. 733 (1866).

If the circumstances are such as to justify classifying an article as lost, the United States courts will hold the finder entitled to retain the property, whether found on a quasi-public or private premises. *Cleveland R. Co.* v. *Durschuk*, 31 Ohio App. 248, 166 N.E. 909 (1928); *Hoagland* v. *Forest Park Amusement Co.*, 170 Mo. 335, 70 S.W. 878 (1902); *Bowen* v. *Sullivan*, 62 Ind. 281, 30 Am. Rep. 172 (1878); *Matthews* v. *Harsell*, 1 E. D. Smith (N.Y.) 393 (1852); *Tatum* v. *Sharpless*, 6 Phila. 18 (1865); *Hamaker* v. *Blanchard*, 90 Pa. 377, 35 Am. Rep. 664 (1879); Thayer on Possession, 18 Harv. L.R. 196. The English courts, however, are unwilling to draw the distinction between "lost" and "left" property when the lost article is found on a private place. The theory is that the owner of the locus in quo is entitled to all property attached to or under the land. *South Staffordshire Water Co.* v. *Sharman*, 2 Q.B. 44 (1896); Pollock and Wright, Essay on Possession in the Common Law, 41; Shartel, Meaning of Possession, 16 Minn. L. Rev. 611; Holmes, Possession in the Common Law, 206; *Bridges* v. *Hawkesworth*, 21 L. J. Q. B. (N.S.) 75 (1851).

Cases involving the finding of articles on the premises of safety deposit companies are few. In one case, by the extension of the custody theory, the arbitrary distinction between "lost" and "left" property was considered immaterial, and the safety deposit company held to be entitled to the bond found on the floor of a private room maintained for box-renters exclusively. *Silicott* v. *Louisville Trust Co.*, 205 Ky. 234, 265 S.W. 612 (1924). In the principal case the court refused to reject the distinction, but its conclusion may be justified on the ground that the money was found in the lobby of a semi-public place.

Due primarily to the nature of the business, it is a question of policy for the courts to decide, whether they will extend the custody theory, to cover property lost anywhere on the premises of a safety deposit company. WILLIAM CREME.

SALES

IMPLIED WARRANTY OF FOOD SOLD IN A RESTAURANT — SALE OR SERVICE — JOINDER OF ACTIONS

The plaintiff's husband purchased a sandwich in defendant's restaurant, ate it and died of ptomaine poisoning caused by it. Notice of the death was given by plaintiff after her appointment as administratrix. The petition contained counts based upon negligence and implied warranty of fitness of food for human consumption. Recovery was had on the latter count, no negligence having been proved. *Schuler* v. *Union News Co.*, (Mass. 1936), 4 N.E. (2d) 465.

In the early law, an innkeeper was not liable for food served a patron on theory of implied warranty, but he was liable for negligence in its preparation. Beale, Innkeepers, Sec. 169; Keilway, 91; 1 Williston on "Sales" (2d Ed.) Sec. 242b. A majority of the courts of last resort still refuse to hold hotels and restaurants liable upon an implied warranty of food sold for human consumption. *Merrill* v. *Hodson*, 88 Conn 314, 9 Atl. 533 (1914); *Rickner* v. *Ritz Restaurant*, 13 N. J. Mis., 818, 181 Atl. 398 (1935); *Nisky* v. *Child's Co.*, 103 N.J.L. 464, 135 Atl. 805 (1927); *Valeri* v. *Pullman Co.*, 218 Fed. 519 (1914); *Rowe* v. *Louisville N.R. Co.*, 29 Ga. App. 151, 113 S.E. 823 (1922); *Travis* v. *Louisville R. Co.*, 183 Ala. 415, 62 So. 851 (1913); *Sheffer* v. *Willoughby*, 163 Ill. 518, 45 N.E. 253 (1896); *Burkhardt* v. *Arnion Co.*, 115 Conn. 249, 161 Atl. 385 (1932). "The question is supposed to depend on whether the restaurant keeper made a 'sale' to the customer of the injurious food." 1 Williston on "Sales" (2d Ed.) Sec. 2426. If it is a sale it comes within Sec. 15 (1) of the Uniform Sales Act and there is an implied warranty. *Heise* v. *Gillette*, 83 Ind. 551, 149 N.E. 182 (1925); *Smith* v. *Carlos*, 215 Mo. App. 488, 247 S.W. 468 (1923); *Barrington* v. *Hotel Astor*, 184 N.Y. App. 317, 171 N.Y.S. 840 (1919); *West* v. *Katspanas*, 107 Pa. Super. 118, 162 Atl. 685 (1932); *Goetten* v. *Owl Drug Co.*, 49 Pac. (2d) 286 (1935); *Smith* v. *Geerish*, 256 Mass. 183, 152 N.E. 318 (1926). But if it is not a sale then it is a rendition of service and there is no implied warranty. The courts which refuse to imply a warranty do so on the theory that restaurants render