

[Bridges v Hawkesworth \[1843-60\] All ER Rep 122](#)

Also reported 21 LJQB 75; 18 LTOS 154; 16 Jur 1079

COURT OF QUEEN'S BENCH

Patteson and Wightman JJ

19 June 1851

Chattel — Ownership — Rights of finder — Chattels found on private premises — Right of finder to chattels against all persons except real owner.

In October 1847, the plaintiff, a traveller, visited the defendant's shop on business, and as he was leaving he noticed a parcel on the floor inside the shop which he picked up and showed to a shopman. On its being opened it was found to contain banknotes. The plaintiff informed the defendant and requested him to keep the notes until the owner appeared to claim them. The defendant advertised the discovery of the notes in a newspaper. Three years having elapsed and no owner having appeared to claim them, the plaintiff applied to the defendant for the return of the notes, offering to pay the expense of the advertising and to indemnify him in case the real owner should afterwards appear, but the defendant refused to deliver the notes to the plaintiff. In an action in the county court for their recovery the judge found as a fact that the plaintiff, when he handed over the notes to the defendant, did not intend to give up any title to them that he might possess.

Held: the fact that the plaintiff found the notes inside the defendant's shop did not take the case out of the general rule of law that the finder of a lost article is entitled to it as against all persons except the real owner; by handing the notes to the defendant the plaintiff had not divested himself of any title to them which he might have had; the steps taken by the defendant to find the real owner were taken by him as agent of the plaintiff; and, as the real owner could not be found, the plaintiff's title was paramount.

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Cases referred to:

(1) *Armory v Delamirie* (1722) 1 Stra 505; 93 ER 664; 3 Digest (Repl) 67, 83.

(2) *Merry v Green* (1841) 7 M & N 623; 10 LJMC 154; 151 ER 916; 3 Digest (Repl) 69, 91.

Also referred to in argument:

R v Kerr (1837) 8 C & P 176; 3 Digest (Repl) 70, 102.

Cartwright v Green (1803) 8 Ves 405; 2 Leach, 952; 32 ER 412; 3 Digest (Repl) 69, 90.

Isaack v Clark (1615) 2 Bulst 306; Moore KB 841; 1 Roll Rep 126; 80 ER 1143; 3 Digest (Repl) 69, 96.

Sutton v Moody (1697) 1 Ld Raym 250; 3 Salk 290; Holt, KB 608; 1 Com 34; Comb 458; 5 Mod 375; 91 ER 1063; 2 Digest (Repl) 292, 12.

Smith v Milles (1786) 1 Term Rep 475; 99 ER 1205; 5 Digest (Repl) 894, 7437.

Burn v Morris (1834) 2 Cr & M 579; 4 Tyr 485; 3 LJ Ex 193; 149 ER 891; 42 Digest 996, 236.

Swan's Case (1592) 7 Co Rep 15b; 77 ER 435; 19 Digest (Repl) 198, 1381.

Semayne's Case (1604) 5 Co Rep 91a; 77 ER 194; sub nom *Seyman v Gresham*, Cro Eliz 908; sub nom *Semayne v Gresham*, Moore KB 668; Yelv 29; 21 Digest (Repl) 566, 614.

May v Harvey (1811) 13 East, 197; 104 ER 345; 3 Digest (Repl) 124, 424.

Ogle v Atkinson (1814) 5 Taunt 759; 1 Marsh 323; 128 F-R 890; 3 Digest (Repl) 107, 305.

Templeman v Case (1711) 10 Mod Rep 24; 88 ER 608; 21 Digest (Repl) 645, 1320.

R v Thurborn (1849) 1 Den 387; T & M 67; 18 LJMC 140; 13 JP 459; sub nom *R v Wood*, 4 New Mag Cas 27; 3 New Sess Cas 581; 13 LTOS 548; 3 Cox CC 453, CCR; 3 Digest (Repl) 70, 103.

Notes

Distinguished: *South Staffordshire Water Co v Sharman*, [1895-9] All ER Rep 259. Followed: *Hannah v Peel*, [1945] 2 All ER 288. Considered: *Corpn of London v Appleyard*, [1963] 2 All ER 834. Referred to: *Hibbert v McKiernan*, [1948] 1 All ER 860.

As to the rights of a person finding lost chattels on the premises of another, see 2 HALSBURY'S LAWS (3rd Edn) 99 et seq; and for cases see 3 Digest (Repl) 67 et seq.

Cases referred to: Appeal by the plaintiff from a decision of the Westminster County Court in an action brought by the plaintiff to recover from the defendant the value of several banknotes, which he had found on the floor of the defendant's shop.

In October 1847, the plaintiff, a traveller for a firm with which the defendant's shopkeeper, had dealings, went into the defendant's shop on business; and, as he was leaving, picked up from the floor a parcel containing banknotes to the amount of 65 pounds. He immediately showed it to the shopman; and thereupon the defendant was called in to the shop, and requested by the plaintiff to keep the notes, until the owner appeared to claim them. The defendant did so, and advertised the notes in a newspaper; but no owner claimed them. After three years had elapsed, the plaintiff applied to the defendant to return the notes, offering to pay the expenses of advertising, and to indemnify him in case the real owner should afterwards appear; but the defendant refused to do so, and consequently the present action was brought. The judge decided in favour of the title of the defendant, but found as a fact that the plaintiff, when he handed the notes over to the defendant, did not intend to divest himself of any title which he might have to them.

Gray (with him Heath) for the plaintiff.

Hake for the defendant.

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Cur adv vult

26 November 1851

PATTESON J:

(delivered the following judgment of the court)

The notes which are the subject of this action were dropped by mere accident in the defendant's shop by the owner of them. The facts do not warrant the supposition that they had been deposited there intentionally, nor has the case

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been put at all upon that ground. The plaintiff found them on the floor, they being manifestly lost by someone. The general right of the finder to any article which has been lost as against all the world except the true owner, was established in *Armory v Delamirie* (1) which has never been disputed. This right would clearly have accrued to the plaintiff had the notes been picked up by him outside the shop of the defendant; and if he once had the right, the case finds that he did not intend by delivering the notes to the defendant, to waive the title (if any) which he had to them, but they were handed to the defendant merely for the purpose of delivering them to the owner, should he appear.

Nothing that was done afterwards has altered the state of things; the advertisements inserted in the newspapers referring to the defendant had the same object: the plaintiff has tendered the expense of these advertisements to the defendant, and offered him an indemnity against any claim to be made by the real owner, and has demanded the notes. The case, therefore, resolves itself to the single point on which it appears that the judge decided it, namely, whether the circumstance of the notes being found in the defendant's shop gives him, the defendant, the right to have them, as against the plaintiff who found them. There is no authority in our law to be found directly in point. Perhaps the nearest case is that of *Merry v Green* (2) but it differs to many respects from the present. We were referred, in the course of the argument, to the work of VON SAVIGNY ON POSSESSION edited by PERRY, CJ; but even this work, full as it is of subtle distinctions and nice reasonings, does not afford a solution of the present question.

It was well asked on the argument, if the defendant has the right, when did it accrue to him? If at all, it must have been antecedent to the finding by the plaintiff, for that finding could not give the defendant any right. If the notes had been accidentally kicked out of the shop, and there found by some one passing by. Could it be contended that the defendant was entitled to them from the mere fact of their being originally dropped in his shop? If the discovery had never been communicated to the defendant, could the real owner have had any cause of action against him because they were found in his house? Certainly not. The notes never were in the custody of the defendant, nor within the protection of his house, before they were found, as they would have been had they been intentionally deposited there. The defendant has come under no responsibility, except from the communication made to him by the plaintiff, the finder, and the steps taken by way of advertisement. These steps were really taken by the defendant as the agent of the plaintiff, and he has been offered an indemnity, the sufficiency of which is not disputed.

We find, therefore, no circumstances to take this case out of the general rule of law that the finder of a lost article is entitled to it as against all persons, except the real owner; and we think that that rule must prevail, and that the judge was mistaken in holding that the place in which they were found makes any legal difference. Our judgment is, therefore, that the plaintiff is entitled to these notes as against the defendant; that the judgment of the court below must be reversed, and judgment given for the plaintiff for 50 pounds; the plaintiff to have the costs of appeal.

Appeal allowed.