Overview | [1945] KB 509, | **[1945] 2 All ER 288**, 114 LJKB 533, 89 Sol Jo 307, 61 TLR 502

Hannah v Peel
[1945] 2 All ER 288

KING'S BENCH DIVISION

BIRKETT J

11, 13 JUNE 1945

Trover and Detinue — Rights of finder — Brooch found in requisitioned house — Freeholder never in physical occupation of house — True owner of brooch not known — Finder entitled to retain brooch.

The defendant was the owner of a house in Shropshire which had been conveyed to him in 1938, but which he had never actually occupied. The house had remained unoccupied from the time the defendant bought it until after the outbreak of war, when it was requisitioned under the Defence Regulations. In August 1940, the plaintiff, while serving in the Royal Artillery, was stationed in the house and on 21 August he accidentally found a brooch, covered with dust and cobwebs, in an upstairs room which he was occupying at the time. From the condition of the brooch it must have been lost for some considerable time. On realising that the brooch might be valuable, the plaintiff handed the brooch to the police. In August 1942, the police delivered the brooch to the agents of the defendant who gave the chief constable an indemnity against any claim to the brooch. In October 1942, the defendant sold the brooch to a firm of jewellers for £66. The real owner had never been traced. The plaintiff claimed the brooch as the finder. The defendant contended that he was entitled to the brooch since he was the freeholder of the property on which it was found:—

Held – Since the defendant had never been in physical possession of the house and had no knowledge of the brooch until it was brought to his notice by the plaintiff, and since the true owner of the brooch had not been found, the plaintiff was entitled to the brooch or its value.

Bridges v Hawkesworth followed.

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Cases referred to in judgment

Armory v Delamirie (1722), 1 Stra 505, 3 *Digest* 64, 75, 1 Sm LC, 13th Edn, *393*.

Bridges v Hawkesworth (1851), 15 Jur 1079, 3 *Digest* 64, 77, 21 LJQB 75, 18 LTOS *154*.

South Staffordshire Water Co v Sharman [1896] 2 QB 44, 3 *Digest* 65, 80, 65 LJQB 460, 74 LT *761*.

Elwes v Brigg Gas Co (1886), 33 ChD 562, 3 *Digest* 65, 79, 55 LJCh 734, 55 LT *831*.

Notes

The authorities upon the title to goods found are conflicting and unsatisfactory. It is undoubtedly the general principle, deducible from *Armory v Delamirie*, and expressed by Salmond on Jurisprudence, that the first finder of a thing has a good title to it against all but the true owner, even though it is found on the property of another. Birkett J, then regards two propositions as established (i) that a man possesses everything attached to or under his land; (ii) that he does not necessarily possess a thing lying unattached on the surface, even though it is not possessed by anyone else. The second proposition, however, gives rise to a divergence between those who regard the possession of an occupier as synonymous with intention to exclude others, and those who regard it as equivalent to *de facto* control. Here the owner of the premises was never physically in possession of them, and had no knowledge of the goods found, and the court holds that the finder is entitled as against the owner of the premises, following *Bridges v Hawkesworth*, the case of the bank-notes found upon a shop floor.

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As to Rights of Finder, see *Halsbury*, Hailsham Edn, Vol 25, pp 199–201, paras 335, 336; and for Cases, see *Digest*, Vol 3, pp 64–67, Nos 75–95.]

Cases referred to in judgment **Action**

Action for the return of a diamond brooch or its value. The action was brought by the finder of the brooch against the owner of the house in which it was found. The brooch had been handed to the police by the plaintiff and in August 1942, it was delivered by the police to the agents of the defendant, who gave the chief constable an indemnity against any claim to the brooch. The true owner of the brooch had not been found. In October 1942, the defendant sold the brooch to a firm of jewellers. The facts are set out in the judgment.

D A Scott Cairns for the plaintiff.

Cecil Binney for the defendant.

Cur adv vult.

13 June 1945. The following judgment was delivered.

BIRKETT J.

This is an interesting and a difficult point, and, in view of the conflicting state of the authorities, I thought I should like time to look into them. I am bound to say that my researches have been none too helpful, and, it would seem, there is need of an authoritative decision of a higher court.

The plaintiff in this case was Duncan Hannah and the defendant was Hugh Edmund Ethelston Peel. By the pleadings the plaintiff claimed the return of a brooch or the due value, on the ground that he was the finder of the said brooch and had a title against all the world save the true owner. The defendant, on the other hand, denied the plaintiff's right and set out that he was in fact the freeholder of the premises upon which the brooch was found and his title was superior to that of the finder, the plaintiff. Happily there was no dispute about the facts. Evidence was given by the plaintiff and by his commanding officer, Major Lawrie, and there was, in addition, an agreed statement of facts, but there was no issue of fact in the case.

For the purposes of my judgment the facts can be stated quite shortly. In August 1940, the plaintiff, Hannah, was serving as a lance-corporal in a battery of the Royal Artillery and was stationed at Gwernhaylod House, Overton-on-Dee, near Ellesmere, in the county of Shropshire. On 21 August 1940, he was occupying an upstairs room in that house which was being used as a sick bay, and whilst he was adjusting the black-out curtains his hand touched something loose which, at the time, he thought to be a piece of dirt or plaster. He got hold of it and dropped it outside the window on to the window-ledge. The next morning, in the daylight, he found that the thing which he had thought the previous evening, in the black-out, to be a piece of dirt or plaster was still upon the window-ledge outside the window, and it was a brooch, at that time covered with spider's web and dirt. At the moment of finding it in the daylight he thought it to be an object of little value from its appearance, but later at home he cleaned it and showed it to his wife. They then considered that it might be more valuable than was at first supposed, and at the end of October 1940, the plaintiff consulted the officer commanding, Major Lawrie, and took his advice; with the result that the brooch was handed by Major Lawrie on behalf of the plaintiff to Sergeant Blodwell Williams of the Flintshire police at the police station at Overton, and a receipt was given.

The plaintiff then made a statement in writing, and certain correspondence passed between the parties. In a letter of 22 November 1941, the agents to the defendant set up their claim in contradiction to the claim made by the plaintiff. The material words of that letter are:

> 'On the assumption that the brooch was in the wall crevice when Major Peel purchased the house the brooch is Major Peel's property.'

Major Peel offered the brooch to Spink & Son Ltd who offered him £60 for it and later raised that to £66. They themselves sold the brooch for £88.

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The only other fact to be mentioned is that on 13 December 1938, the freehold of this house had been conveyed to the defendant. The defendant never occupied the house, and it remained unoccupied from the time when he bought it until 5 October 1939, when it was requisitioned under notice under the Defence Regulations. The house was then used for some months by the requisitioning authorities. It was then released and remained unoccupied until 16 July 1940, when it was again requisitioned. The defendant received £250 a year as compensation for the requisitioning.

The rival claims can be stated in this way: The plaintiff says: “I claim the brooch as the finder of the brooch and I have a good title against all the world save only the true owner.” The defendant says: “My claim is superior to yours inasmuch as I am the freeholder. The brooch was found upon my property, although I was never in occupation, and my title, therefore, ousts yours and in the absence of the true owner I am entitled to the brooch or its value.” Unhappily the law is in a very uncertain state. Obviously my difficulties would be resolved if it could be said with certainty either that the law is that the finder of a lost article, wherever found, has a good title against all the world save the true owner, or that the law is that the possessor of land is entitled as against the finder to all chattels found on the land. But unhappily those two conflicting statements are by no means clear, and the state of the authorities gives some support to both of them.

Armory v Delamirie which was referred to and relied upon by counsel for the plaintiff, is so well known that I need not read it *in extenso.* There:

> 'The plaintiff being a chimney sweeper's boy found a jewel and carried it to the defendant's shop (who was a goldsmith) to know what it was, and delivered it into the hands of the apprentice, who under a pretence of weighing it, took out the stones, and calling to the master to let him know it came to three-halfpence, the master offered the boy the money, who refused to take it and insisted to have the thing again; whereupon the apprentice delivered him back the socket without the stones. [An action was brought in trover against the master, and] these points were ruled: (1) [the only one that affects this case] That the finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable him to keep it against all but the rightful owner, and consequently may maintain trover.'

Bridges v Hawkesworth, the next case upon which counsel for the plaintiff relied, is in process of becoming almost equally as famous because of the disputation which ranged around it. It is now nearly 100 years old. The headnote reads:

> 'The place in which a lost article is found does not constitute any exception to the general rule of law, that the finder is entitled

to it as against all persons except the owner.'

The case was an appeal against a decision of the county court judge at Westminster. The facts appear to have been that in 1847:

'… the plaintiff, who was [a commercial traveller] called at Messrs. Byfield & Hawkesworth's on business, as he was in the habit of doing, and as he was leaving the shop he picked up a small parcel which was lying upon the floor. He immediately showed it to the shopman, and opened it in his presence, when it was found to consist of a quantity of Bank of England notes, to the amount of £65. The defendant, who was a partner in the firm of Byfield & Hawkesworth, was then called, and the plaintiff told him he had found the notes, and asked the defendant to keep them until the owner appeared to claim them. [Advertisements were put in the papers asking for the owner, but the true owner was never found.] No person having appeared to claim them, and three years having elapsed since they were found, the plaintiff applied to the defendant to have the notes returned to him, and offered to pay the expenses of the advertisements, and to give an indemnity. The defendant had refused to deliver them up to the plaintiff, and an action had been brought in the county court of Westminster in consequence of that refusal.'

The county court judge decided that the defendant, the shopkeeper, was entitled to the custody of the notes as against the plaintiff, and gave judgment for the defendant. Therefore this appeal was brought which came before the court composed of Patteson and Wightman JJ and there was a most interesting argument upon both sides. The court considered its judgment, which is exceedingly important in this case and is relied upon very strongly by counsel for the plaintiff. At p 1082 Patteson J said:

'The notes which are the subject of this action were incidentally dropped, by mere

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accident, in the shop of the defendant, by the owner of them. The facts do not warrant the supposition that they had been deposited there intentionally, nor has the case 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 the case of *Armory* v. *Delamirie* 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 … The case, therefore, resolves itself into the single point on which it appears that the learned judge decided it, namely, whether the circumstance of the notes being found inside the defendant's shop gives him, the defendant, the right to have them as against the plaintiff, who found them.'

Patteson J then discussed the cases and the argument, and said:

> '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; and 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 … We find, therefore, no circumstances in this case to take it 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 learned judge was mistaken in holding that the place in which they were found makes any legal difference. Our judgment, therefore, is, that the plaintiff is entitled to these notes as against the defendant; that the judgment of the court below must be reversed … '

It is to be observed that neither counsel put any argument upon the fact that the notes were found in a shop. Counsel for the appellant assumed throughout that the shop was the same as a private house, and the judge spoke of the protection of his house. The case for the appellant, through his counsel, was that the shopkeeper never knew of the notes. The second thing to be observed is that there was no suggestion that the place where the notes were found was at all material; indeed, the judge in giving the judgment of the court expressly repudiated it and said:

> '… the learned judge was mistaken in holding that the place in which they were found makes any legal difference.'

In those circumstances it is a little remarkable that in the next case to which my attention was drawn, *South Staffordshire Water Co v Sharman* Lord Russell of Killowen LCJ., in delivering the judgment, referred to *Bridges v Hawksworth*, and said, at p 47:

> 'The case of *Bridges* v. *Hawkesworth* stands by itself, and on special grounds; and on those grounds it seems to me that the decision in that case was right. Someone had accidentally dropped a bundle of bank-notes in a public shop. The shopkeeper did not know they had been dropped, and did not in any sense exercise control over them. The shop was open to the public, and they were invited to come there. [Stopping there one moment—that might be a matter of some doubt. Customers were invited there, but whether the public at large was might be open to some question.] A customer picked up the notes and gave them to the shopkeeper in order that he might advertise them. The owner of the notes was not found, and the finder then sought to recover them from the shopkeeper. It was held that he was entitled to do so, the ground of the decision being, as was pointed out by PATTESON, J., that the notes, being dropped in the public part of the shop, were never in the custody of the shopkeeper, or “within the protection of his house.'

Patteson J never made one single word of reference to the public part of the shop and, indeed, went out of his way to say that the county court judge was wrong in holding that the place where they were found made any legal difference at all. That shows some of the difficulties with which one is confronted in a case of this kind.

Bridges v Hawkesworth as I said, has been the subject of very considerable disputation by the text-book writers, some of them very distinguished names in law—eg, Oliver Wendell Holmes, one of the great figures in law, in The Common Law; another great figure, Sir Frederick Pollock, in Pollock and Wright on Possession in the Common Law; and another great figure, Sir John Salmond, in his book on Jurisprudence. They all deal with *Bridges*

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v Hawkesworth, and, whilst agreeing that the case was rightly decided, they differ as to the grounds upon which it was decided and put forward grounds, none of which, so far as I can discover, were ever put forward by the judges who decided the case. For example, O W Holmes deals with two kinds of intent, and so far as I can discover from the report of *Bridges v Hawkesworth*, the judges never referred to "intent" at all. Holmes says, at p 222:

> 'Common law judges and civilians would agree that the finder got possession first, and so could keep it as against the shopkeeper. For the shopkeeper, not knowing of the thing, could not have the intent to appropriate it, and, having invited the public to his shop, he could not have the intent to exclude them from it.'

So he introduces the matter of two intents which are not referred to in the case. Sir Frederick Pollock, whilst he agrees with Holmes that *Bridges v Hawkesworth* was property decided, says, at p 39:

> 'In such a case as *Bridges* v. *Hawkesworth*, where a parcel of bank-notes was dropped on the floor in the part of a shop frequented by customers, it is impossible to say that the shopkeeper has any possession in fact. He does not expect objects of that kind to be on the floor of his shop, and some customer is more likely than the shopkeeper or his servant to see and take them up if they do come there.'

He emphasises the lack of *de facto* control on the part of the shopkeeper.

Sir John Salmond, when dealing with the case, says, at p 382:

> 'In *Bridges* v. *Hawkesworth* a parcel of bank-notes was dropped on the floor of the defendant's shop, where they were found by the plaintiff, a customer. It was held that the plaintiff had a good title to them as against the defendant. For the plaintiff, and not the defendant, was the first to acquire possession of them. The defendant had not the necessary *animus,* for he did not know of their existence.'

Professor Goodhart in our own day in Essays in Jurisprudence and the Common Law has put forward a further view that perhaps *Bridges v Hawkesworth* was wrongly decided.

I mention these matters to show that, whilst the decision in *Bridges v Hawkesworth* as it stands is quite clear, and, if the headnote is right, permits of no dispute, viz, "the place in which a lost article is found does not constitute any exception to the general rule of law, that the finder is entitled to it as against all persons except the owner," it is impossible to find any unambiguous *ratio decidendi* for that case. I think, however, that it is clear from *Bridges v Hawkesworth*, so far as it affects the present case to-day, that the occupier of land does not in all cases possess an unattached thing on his land even though the true owner has lost possession of it. *Bridges v Hawkesworth* may perhaps be the authority at least for that proposition.

With regard to the cases relied upon by counsel for the defendant the first was the *South Staffordshire Water Co v Sharman*. I am not sure that the first line in the headnote is strictly accurate, but it reads thus:

> 'The possessor of land is generally entitled, as against the finder, to chattels found on the land. The defendant [Sharman] while cleaning out, under the plaintiff's orders, a pool of water on their land, found two rings [embedded in the mud at the bottom of the pool]. He declined to deliver them to the plaintiffs, but failed to discover the real owner.'

In an action brought by the plaintiffs, the South Staffordshire Water Co against Sharman in detinue it was held that the plaintiff company were entitled to the rings. Lord Russell of Killowen said that in his view the county court judge (who gave judgment for the defendant on the authority of *Bridges v Hawkesworth)* was wrong, and the decision must be reversed and judgment entered for the plaintiffs. At p 46 he said:

> 'The plaintiffs are the freeholders of the *locus in quo,* and as such they have the right to forbid anybody coming on their land or in any way interfering with it. They had the right to say that their pool should be cleaned out in any way that they thought fit, and to direct what should be done with anything found in the pool in the course of such cleaning out. It is no doubt right, as the counsel for the defendant contended, to say that the plaintiffs must show that they had actual control over the *locus in quo* and the things in it; but under the circumstances, can it be said that the Minster Pool and whatever might be in that pool were not under the control of the plaintiffs? In my opinion they were … The principle on which this case must be decided, and the distinction which must be drawn between this case and that of *Bridges* v. *Hawkesworth*, is to be found in a passage in POLLOCK AND WRIGHT'S ESSAY ON POSSESSION IN THE COMMON LAW, p. 41: "The possession of land carries with it in general, by our

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> law, possession of everything which is attached to or under that land, and, in the absence of a better title elsewhere, the right to possess it also. [If that is right, it would clearly cover the case of the rings embedded in the mud of the pool, "attached to or under that land."] And it makes no difference that the possessor is not aware of the thing's existence … It is free to anyone

> who requires a specific intention as part of a *de facto* possession to treat this as a positive rule of law. But it seems preferable to say that the legal possession rests on a real *de facto* possession constituted by the occupier's general power and intent to exclude unauthorised interference." That is the ground on which I prefer to base my judgment. There is a broad distinction between this case and those cited from BLACKSTONE. Those were cases in which a thing was cast into a public place or into the sea—into a place, in fact, of which it could not be said that anyone had a real *de facto* possession, or a general power and intent to exclude unauthorised interference.'

Lord Russell of Killowen LCJ., then cited the passage I have already cited with regard to *Bridges v Hawkesworth*, and continued, at p 47:

> 'It is somewhat strange [I venture to echo those words] that there is no more direct authority on the question; but the general principle seems to me to be that where a person has possession of house or land, with a manifest intention to exercise control over it and the things which may be upon or in it, then, if something is found on that land, whether by an employee of the owner or by a stranger, the presumption is that the possession of that thing is in the owner of the *locus in quo*.'

It is to be observed that Lord Russell of Killowen there is extending the quotation which he has made from Pollock and Wright. Pollock and Wright speak of the possession of everything which is attached to or under that land, but in this passage Lord Russell is saying, "the things which may be upon or in it." Counsel for the defendant said that the *South Staffordshire Water Co* case was an authority in his favour and that this brooch, which was in the crevice by the window-sill, was covered by that authority. That case, too, has been the subject of some discussion. It puts the doctrine of the right of the finder on the ground that, if anyone finds a thing as the servant or agent of another, he finds it not for himself but for his employer. That seems a sufficient explanation of *Sharman's* case. The rings found at the bottom of the pond were not in the possession of the company, but it seems that though Sharman was the first to obtain possession of them, he obtained them for his employers and could claim no title for himself.

The only other case relied upon by counsel for the defendant to which I need refer is *Elwes v Brigg Gas Co*. There land had been demised to a gas company for 99 years with a reservation to the lessor of all mines and minerals. A prehistoric boat was embedded in the soil 6ft below the surface and was discovered by the lessees in the course of excavating for the foundations of the gas works. It was held:

> '… that the boat, whether regarded as a mineral, or as part of the soil in which it was embedded when discovered, or as a chattel, did not pass to the lessees by the demise, but was the property of the lessor though he was ignorant of its existence at the time of granting the lease.'

At p 568, Chitty J said:

> 'The first question which does actually arise in this case is whether the boat belonged to the plaintiff at the time of the granting of the lease. I hold that it did, whether it ought to be regarded as a mineral, or as part of the soil within the maxim above cited, or as a chattel. If it was a mineral or part of the soil in the sense above indicated, then it clearly belonged to the owners of the inheritance as part of the inheritance itself. But if it ought to be regarded as a chattel, I hold the property in the chattel was vested in the plaintiff, for the following reasons.'

He then gave the reasons. Later he said, at pp 568, 569:

> 'The plaintiff then, being thus in possession of the chattel, it follows that the property in the chattel was vested in him. Obviously the right of the original owner could not be established; it had for centuries been lost or barred, even supposing that the property had not been abandoned when the boat was first left on the spot where it was found. The plaintiff, then, had a lawful possession, good against all the world, and, therefore, the property in the boat. In my opinion it makes no difference, in these circumstances, that the plaintiff was not aware of the existence of the boat.'

The statement of Chitty J that the plaintiff was entitled to the boat because he was in possession of the ground, was another authority, said counsel for the defendant, for his contention that the defendant was entitled to the brooch.

Those are the reasons which led me to say that the authorities are in a rather

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unsatisfactory state, and I observe that Salmond on Jurisprudence (9th Edn, p 383), after referring to *Elwes v Brigg Gas Co*, and *The South Staffordshire Water Co* says:

> 'Cases such as these, however, are capable of explanation on other grounds, and do not involve any necessary conflict either with the theory of possession or with the cases already cited, such as *Bridges* v. *Hawkesworth*. The general principle is that the first finder of a thing has a good title to it against all but the true owner, even though the thing is found on the property of another person *(Armory* v. *Delamirie*, *Bridges* v. *Hawkes-Worth)*. This principle however, is subject to important exceptions, in which, owing to the special circumstances of the case, the better right is in him on whose property the thing is found. [He names three cases as the principal ones.] (1) When he on whose property the thing is found is already in possession not merely of the property, but of the thing itself; as in certain circumstances, even without specific knowledge, he undoubtedly may be … (2) … if anyone finds a thing as the servant or agent of another, he finds it not for himself, but for his employer … (3) A third case in which a finder obtains no title is that in which he gets possession only through a trespass or other act of wrongdoing.'

I think it is fairly clear from the authorities that this proposition would not be doubted, viz, that a man possesses everything which is attached to or under his land. Secondly, it would appear to be the law from the authorities I have

cited, and particularly *Bridges v Hawkesworth*, that a man does not necessarily possess a thing which is lying unattached on the surface of his land even though the thing is not possessed by someone else. But the difficulty arises because the rule which governs things an occupier possesses as against those which he does not has never been very clearly formulated in our law. He may possess everything upon the land from which he intends to exclude others, if O W Holmes is right; or, he may possess those things over which he has a *de facto* control, if Sir Frederick Pollock is right. These things are not clearly laid down in cases. That is all that I think I can usefully say about the authorities. Neither do I think that a discussion of the merits helps at all.

There is no doubt that the brooch was lost in the ordinary connotation of that term, and from the appearance of the brooch when found, ie, the dirt and cobwebs, it had apparently been lost for a very considerable time. Indeed, from this correspondence it appears that at one time the predecessors in title of the defendant were considering making some claim. But the moment the plaintiff discovered that it might be of some value, he did the very proper thing, he took advice and handed it to the police. His conduct was most commendable and meritorious.

It is clear that the defendant, as I gather from the agreed statement of facts, was never physically in possession of these premises at any time. It is clear the brooch was never his in the ordinary acceptation of the term, in that he had the prior possession. He had no knowledge of it until it was brought to his knowledge by the finder. As I say, a discussion of the merits does not seem to help a great deal, but it is clear on the facts (i) that the brooch was lost in the ordinary meaning of words, (ii) it appears to me clear that the brooch was found by the plaintiff in the ordinary meaning of words, and (iii) it is clear that the true owner of the brooch has never been found. The defendant was the owner of the premises and had his notice drawn to this matter by the plaintiff who found the brooch. In all those circumstances I asked for a little time in order that I might consider these authorities which are very difficult to reconcile. The conclusion to which I have come is that I propose to follow the decision in *Bridges v Hawkesworth* and I propose to give judgment in this case for the plaintiff. The brooch itself cannot now be returned, and the only matter of dispute in this case is whether the amount I should fix should be the sum of £66 or the sum of £88. £88 includes the profit which Spink made upon the sale of this brooch. £66 is the amount the defendant received. I propose to give judgment for the plaintiff for £66, with such costs as are permissible to a poor person.

Judgment for the plaintiff for £66 with costs.

Solicitors: *Slaughter & May* (for the plaintiff); *Rooper & Whately* (for the defendant).

P J Johnson Esq Barrister.

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