Overview | [1896] 2 QB 44, 65 LJQB 460, 44 WR 653, | **[1895-9] All ER Rep 259**, 40 Sol Jo 532, | 74 LT 761, 12 TLR 402

South Staffordshire Water Co v Sharman
[1895-99] All ER Rep 259

Also reported ; 65 LJQB 460; [1896] 2 QB 4474 LT 761; 44 WR 653; 12 TLR 402; 40 Sol Jo 532

QUEEN'S BENCH DIVISION

LORD RUSSELL OF KILLOWEN CJ, WILLS J

12 MAY 1896

Chattel — Ownership — Presumption — Chattel found on or under private land — Right of land owner to possession as against finder.

Where a chattel is found upon or under any land which is private property belonging to an owner who has a real de facto possession and exclusive control over such land and the things in or upon it, the presumption is that such chattel is in the possession of the owner of the land and that he is entitled to the possession as against the finder.

Bridges v Hawkesworth (1) (1851) 21 LJQB 75, distinguished.

Cases referred to:

(1) *Bridges v Hawkesworth* (1851) 21 LJQB 75; 18 LTOS 154; 15 Jur 1079; 3 Digest (Repl) 68, 85.

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

(3) *R v Rowe* (1859) Bell, CC 93; 28 LJMC 128; 32 LTOS 339; 23 JP 117; 5 Jur NS 274; 7 WR 236; 8 Cox CC 139, CCR; 15 Digest (Repl) 1086, 10,751.

(4) *Elwes v Brigg Gas Co*(1886) 33 Ch D 562; 55 LJ Ch 734; 55 LT 831; 35 WR 192; 2 TLR 782; 3 Digest (Repl) 69, 88.

Also referred to in argument:

R	*v*	*Clinton*
(1869) IR 4	CL 6; 15 Digest (Repl) 1078, 6560.	
Brew	*v*	*Haren*
(1874) IR 9	CL 29; 44 Digest 74, 541 iii.	

Notes

Applied: *Johnson v. Pickering and Norton*, [1907] 2 KB 437; *Re Cohen, National Provincial Bank, Ltd v Katz*, *[1953] 1 All ER 378*. Referred to: *Hannah v Peel*, *[1945] 2 All ER 288*; *Hibbert v McKiernan*, *[1948] 1 All ER 860*.

As to finding of chattels, see 2 HALSBURY'S LAWS (3rd Edn) 99 et seq; and for cases see 3 DIGEST (Repl) 67 et seq.

Cases referred to: *[*260]*

Appeal by the plaintiffs from Lichfield County Court

The action was an action of detinue brought by the plaintiffs to recover two gold rings as the property of the plaintiffs, found by the defendant in the Minster Pool, Lichfield. The plaintiffs claimed the return of the rings, or 5 pounds for their value, and 1 pound damages for their detention. The plaintiffs were the freeholders by a conveyance dated 6 January 1872, from the mayor, aldermen, and citizens of Lichfield, of land covered by the Minster Pool in Lichfield. The defendant was employed by the plaintiffs in August 1895, with about forty other labourers, to clean out the pool, and while the defendant was so employed he found in the mud from the bottom of the pool the two gold rings in question. The plaintiffs demanded the rings from the defendant, but he refused to deliver them up, and the present action was then brought. It was proved as a fact that there was no special contract between the plaintiffs and the defendant as to the giving up any articles that might be found. The learned judge decided, upon the authority of *Armory v Delamirie* (2) and *Bridges v Hawkesworth* (1) that the defendant had a good title against all the world except the true owner. He, therefore, gave a verdict for the defendant with costs, and gave the plaintiffs leave to appeal upon the terms that the plaintiffs should pay the defendant's costs in any event. The plaintiffs appealed.

William Wills for the plaintiffs.

Disturnal for the defendant.

12 MAY 1896

LORD RUSSELL OF KILLOWEN CJ:

In this case I think that the learned county court judge was wrong, and that his judgment must be reversed. The case is an interesting one, and raises an interesting question. The action is brought to recover two gold rings from the defendant, and the defendant does not deny the detention of the rings, but he denies the plaintiffs' right to claim them. The plaintiffs are the owners in fee of certain land, on which this pool was situate, and for some purpose of their own the plaintiffs employed persons – amongst others the defendant – to clean out the pool. In the course of that cleaning several articles of interest were found, and amongst them these two rings. The plaintiffs were the freeholders of the pool, and they had the right to enjoin on those whom they employed what they were to do with the contents, or any part of the contents, of the pool.

It is no doubt correct, as was contended on behalf of the defendant, that before the plaintiffs can succeed they must make out that they had an actual control over the locus in quo, that is, the pool, and over the contents of the pool. Can it be said, under the circumstances of this case, that the Minster Pool and the contents, of it were not under the Control of the plaintiffs? I think they were under the control of the plaintiffs, just as the piece of iron found in the canal in *R v Rowe* (3) was held to be under the control of the canal company, although they were ignorant of the fact that it was there.

I think that the principle on which this case ought to be decided is well laid down, and also the distinction between this case and *Bridges v Hawkesworth* (1) is well drawn, in POLLOCK AND WRIGHT ON POSSESSION, pp 40, 41, where it is said, speaking of *Bridges v Hawkesworth* (1):

> “A case like this illustrates the importance both of grasping the preliminary conception of facts and of keeping it clear from the supervening questions of right. The finder's right starts from the absence of any de facto control at the moment of finding. And decisions which seem contradictory must not be pronounced to be really so before we have attended to the possibility of differences of fact, which, though minute in themselves, may be material in their consequences. Thus in *Bridges v Hawkesworth* (1) the court did not say that an object dropped by a guest in a private dwelling-house would not be in the custody of the master – 'within the protection of his house' – and therefore in
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> ***[*261]***
>
> his possession; and PATTESON, J, did say that an innkeeper would have possession in the like case … The possession of land carries with it in general, by our 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. And it makes no difference that the possessor is not aware of the thing's existence. So it was lately held concerning a prehistoric boat imbedded in the soil: *Elwes v Brigg Gas Co* (4). It is free to any one who requires a specific intention as part of 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.”

I think that passage is distinctly applicable to this case, and it shows the broad distinction between this case and the cases referred to for the defendant, and especially some of the cases where things were cast away into a public place or into the sea where it could not be said that there was in any one a real de facto possession, or a general power and intent to exclude unauthorised interference.

Bridges v Hawkesworth (1) really stands by itself and on its own special grounds, and, standing on its own grounds, I think the decision was perfectly right. There a person had dropped a bundle of bank notes in a public shop, public, that is to say, in the sense that it was open to the public. A customer came in and picked up the bundle of notes and showed it to the shopman, and afterwards gave it to the shopkeeper in order that he might advertise it. The owner was not found, and the shopkeeper afterwards refused to give up the notes to the customer who had found them. The customer then brought an action against the shopkeeper for the notes, and it was held that he was justified in demanding the notes, and the true ground of that decision is stated by PATTESON J where he says (21 LJQB at p 78):

> "The notes never were in the custody of the defendant, nor within the protection of his house before they were found."

The general principle within which the case falls seems to me to be that where there is possession of a house or land, with a manifest intention to exercise control over it, and the things in or upon it, and with control over that particular locus in quo, then if something is found on it by a person who is either a stranger or a servant, the presumption is that the possession of the thing so found is in the owner of that locus in quo. For these reasons I think judgment must be for the plaintiffs.

WILLS J:

I agree entirely with the judgment of the Lord Chief Justice, and I only wish to add that a decision to the contrary effect would, as it seems to me, be a great encouragement to dishonesty.

Appeal allowed.

Reported by WW ORR ESQ, Barrister-at-Law.