

Finder area

Instant case

In the instant case, the finder was not the occupier of the premises where the chattel was found; the chattel was not attached; the other claimant was not the owner of the premises where the chattel was found; the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; the finder handed over the chattel to the other claimant after the finding; neither party relied on the terms of an agreement regarding the right to the chattel; the finder was not a servant of the other claimant; the chattel was not hidden and was not in a position so as to be difficult to find; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

In my opinion—following *Bridges v. Hawkesworth*—the finder wins.

In *Bridges v. Hawkesworth*,¹ an 1851 decision of the Queen’s Bench Division of the English High Court, the plaintiff found a bundle of banknotes on the floor of the public area of a shop. He handed the notes to the shopkeeper in order that the true owner of the notes might be found. Although the owner was never found, the shopkeeper refused to return the notes to the finder. The Court found for the finder, holding that there is a “general right of [a] finder to any article which has been lost as against all the world except the true owner”.² It was further noted that the notes had never been in the custody of the shopkeeper nor within the protection of his house as might be the case had they intentionally been deposited there.

There are several significant similarities between the instant case and *Bridges v. Hawkesworth*: the finder was not the occupier of the premises where the chattel was found; the chattel was not attached; the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; the finder handed over the chattel to the other claimant after the finding; neither party relied on the terms of an agreement regarding the right to the chattel; the finder was not a servant of the other claimant; the chattel was not hidden and was not in a position so as to be difficult to find; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

However, the instant case is not on all fours with *Bridges v. Hawkesworth*. In that case the other claimant was the owner of the premises where the chattel was found.

Nevertheless, I believe that *Bridges v. Hawkesworth* should be followed.

If *City of London Corporation v. Appleyard (1)* is followed then the finder loses.

In *City of London Corporation v. Appleyard (1)*,³ a 1963 decision of the Queen’s Bench Division of the English High Court, workmen employed by Wates Ltd were engaged in cutting a key-way into a cellar wall for the purposes of securing a foundation when they found an old wall-safe built into a recess of the old wall. Inside was a wooden box which contained a large number of Bank of England notes. The notes were handed over to the City of London police who sought interpleader proceedings to determine who was entitled to the possession of the notes.

Wates Ltd was an independent contractor engaged by Yorkwin Investments Ltd for a construction project. Yorkwin was lessee in possession of the property which was owned in fee simple by the City of London.

¹(1851) 21 LJQB 75.

²ibid. at 77 per Patteson J.

³[1963] 1 WLR 982.

The Court followed the decision in *South Staffordshire Water Co. v. Sharman*⁴ in holding that the occupier is, in the absence of a better title elsewhere, entitled to the possession of objects which are attached to or under the land. Consequently, since the notes were in a wooden box within a safe built into the wall of the old building, the safe formed part of the demised premises. Yorkwin, being in lawful possession of the premises, were in *de facto* possession of the safe, even though ignorant of its existence.

Although Yorkwin was entitled to possession as against the finders, they in turn were displaced by the City of London which relied successfully on a term in the lease which granted them the right to certain objects found on the premises.

There are several similarities between the instant case and *London v. Appleyard (1)*: the finder was not the occupier of the premises where the chattel was found; the other claimant was not the owner of the premises where the chattel was found; the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; neither party relied on the terms of an agreement regarding the right to the chattel; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

However, there are several significant differences between the instant case and *London v. Appleyard (1)*. In that case the chattel was attached; the finder did not hand over the chattel to the other claimant after the finding; the finder was a servant of the other claimant; and the chattel was hidden or was in a position so as to be difficult to find.

Despite the fact that *London v. Appleyard (1)* and *Bridges v. Hawkesworth* are both decisions of the Queen's Bench Division of the English High Court, there is nothing in *London v. Appleyard (1)* to warrant any change in my conclusion.

Hypothetical 1

Consider the instant case changed so that the following is true: the other claimant was the owner of the premises where the chattel was found.

If that were so then I would be more strongly of the opinion that—following *Bridges v. Hawkesworth*—the finder wins.

Details of *Bridges v. Hawkesworth* are summarized above. The hypothetical case is on all fours with *Bridges v. Hawkesworth*.

If *City of London Corporation v. Appleyard (2)* or *South Staffordshire Water Co. v. Sharman* are followed then the finder loses.

In *City of London Corporation v. Appleyard (2)*,⁵ a 1963 decision of the Queen's Bench Division of the English High Court, workmen employed by Wates Ltd were engaged in cutting a key-way into a cellar wall for the purposes of securing a foundation when they found an old wall-safe built into a recess of the old wall. Inside was a wooden box which contained a large number of Bank of England notes. The notes were handed over to the City of London police who sought interpleader proceedings to determine who was entitled to the possession of the notes.

Wates Ltd was an independent contractor engaged by Yorkwin Investments Ltd for a construction project. Yorkwin was lessee in possession of the property which was owned in fee simple by the City of London. The Court found that the safe formed part of the demised premises and that, consequently, Yorkwin was entitled to the notes as against the workmen.

⁴[1896] 2 QB 44.

⁵[1963] 1 WLR 982.

The lease contained a clause which purported to grant the rights to “every relic or article of antiquity rarity or value” to the City of London. The sole issue was to determine if the notes fell into that description. The Court could find no reason for limiting the generality of the words and so found for the City of London.

There are several similarities between the hypothetical case and *London v. Appleyard (2)*: the other claimant was the owner of the premises where the chattel was found; the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; the finder handed over the chattel to the other claimant after the finding; the finder was not a servant of the other claimant; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

However, there are several significant differences between the hypothetical case and *London v. Appleyard (2)*. In that case the finder was the occupier of the premises where the chattel was found; the chattel was attached; one of the parties relied on the terms of an agreement made with the other which purported to give her/him the right to the chattel; and the chattel was hidden or was in a position so as to be difficult to find.

Despite the fact that *London v. Appleyard (2)* and *Bridges v. Hawkesworth* are both decisions of the Queen’s Bench Division of the English High Court, there is nothing in *London v. Appleyard (2)* to warrant any change in my conclusion.

In 1896, the Queen’s Bench Division of the English High Court also decided *South Staffordshire Water Co. v. Sharman*.⁶ (Note, however, that *London v. Appleyard (2)* is 67 years more recent than *South Staffordshire v. Sharman*.)

In *South Staffordshire v. Sharman*, the defendant was a workman employed by the plaintiff to clean out a pool located on land owned by the plaintiff. During the operation the defendant found two gold rings embedded in the mud at the bottom of the pool. Although the plaintiff demanded the rings, the defendant refused to give them up. He placed them in the hands of police authorities who unsuccessfully endeavoured to find the owners of the rings. The police returned the rings to the defendant who was then sued in detinue for the recovery of the rings.

It was proved at the trial that there was no special contract between the parties which called upon the defendant to give up any articles which might be found.

Although the county court held in favour of the defendant on the basis of *Bridges v. Hawkesworth*,⁷ the appeal found for the plaintiff on the basis that they had, as owners of the land and pool, the right to exercise control over the same. *Bridges v. Hawkesworth* was distinguished on the grounds that the notes in that case were in a public part of the shop and the shopkeeper did not in any sense control them.

The Court stated a general principle: where a person has possession of a house or land with a manifest intention to exercise control over it and the things which may be upon or in it, then there is a presumption that things found there are in the possession of the owner.

There are several similarities between the hypothetical case and *South Staffordshire v. Sharman*: the finder was not the occupier of the premises where the chattel was found; the other claimant was the owner of the premises where the chattel was found; the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; neither party relied on the terms of an agreement regarding the right to the chattel; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

⁶[1896] 2 QB 44.

⁷(1851) 21 LJQB 75.

However, there are several significant differences between the hypothetical case and *South Staffordshire v. Sharman*. In that case the chattel was attached; the finder did not hand over the chattel to the other claimant after the finding; the finder was a servant of the other claimant; and the chattel was hidden or was in a position so as to be difficult to find.

Despite the fact that *South Staffordshire v. Sharman* and *Bridges v. Hawkesworth* are both decisions of the Queen's Bench Division of the English High Court, there is nothing in *South Staffordshire v. Sharman* to warrant any change in my conclusion.

Hypothetical 2

Consider the instant case changed so that the following is true: the finder was a servant of the other claimant; and the chattel was hidden or was in a position so as to be difficult to find.

If that were so then my opinion would be that—following *City of London Corporation v. Appleyard (1)*—the finder loses.

Details of *London v. Appleyard (1)* are summarized above. There are several significant similarities between the hypothetical case and *London v. Appleyard (1)*: the finder was not the occupier of the premises where the chattel was found; the other claimant was not the owner of the premises where the chattel was found; the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; neither party relied on the terms of an agreement regarding the right to the chattel; the finder was a servant of the other claimant; the chattel was hidden or was in a position so as to be difficult to find; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

However, the hypothetical case is not on all fours with *London v. Appleyard (1)*. In that case the chattel was attached; and the finder did not hand over the chattel to the other claimant after the finding.

Nevertheless, I believe that *London v. Appleyard (1)* should be followed.

If *Hannah v. Peel* is followed then the finder wins.

In *Hannah v. Peel*,⁸ a 1945 decision of the King's Bench Division of the English High Court, a brooch was found by the plaintiff who was a lance-corporal stationed in a house owned by the defendant. The house had been requisitioned by the army during the war and had never been occupied by the defendant.

The plaintiff was adjusting the black-out curtains when he touched something on the top of the window-frame. He thought the object to be a piece of dirt or plaster and he dropped it on the outside window ledge. On the following morning, he saw that it was a brooch and, on the advice of his commanding officer, turned it over to the police for the purpose of finding the owner. In the following year, the police returned the brooch to the defendant who sold it to a jeweller. The plaintiff at all times maintained his rights to the brooch against all persons other than the true owner.

The Court found for the plaintiff on the basis of *Bridges v. Hawkesworth*⁹ after a thorough review of the authorities. The Court further noted that the defendant was never in possession of the premises, that the brooch was never his, and that he had no knowledge of it until it was brought to his notice by the finder.

There are several similarities between the hypothetical case and *Hannah v. Peel*: the finder was not the occupier of the premises where the chattel was found; the chattel was not attached;

⁸[1945] KB 509.

⁹(1851) 21 LJQB 75.

the other claimant was not the true owner of the chattel and was not claiming through the rights of the true owner; neither party relied on the terms of an agreement regarding the right to the chattel; the chattel was hidden or was in a position so as to be difficult to find; an attempt was made to find the true owner of the chattel or, alternatively, the chattel was clearly abandoned; and neither party knew of the existence of the chattel prior to the finding.

However, there are several significant differences between the hypothetical case and *Hannah v. Peel*. In that case the other claimant was the owner of the premises where the chattel was found; the finder did not hand over the chattel to the other claimant after the finding; and the finder was not a servant of the other claimant.

Despite the fact that *Hannah v. Peel* is a decision of the King's Bench Division of the English High Court (and as good authority as a case decided by the Queen's Bench Division of the English High Court—like *London v. Appleyard (1)*), there is nothing in *Hannah v. Peel* to warrant any change in my conclusion.