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REX v. SUNDERLAND JUSTICES. *Ex parte* HODGKINSON.

Humphreys J.

second ground, as follows; that the order was not made judicially, the said justices having stopped the case and determined the issue in favour of the complainant before the case for the defence had been fully presented to them. [His Lordship discussed the evidence on this point, and continued:] It is plain that the justices, after being made aware that the defendant had in attendance, and wished to call, other witnesses, declined to hear those witnesses and decided against him. In the circumstances, in my opinion, the order made by the justices cannot stand and the order of certiorari must go, but I think it must be accompanied by an order of mandamus to hear and determine the complaint according to law.

OLIVER J. I have had an opportunity of reading the judgment that my Lord has just pronounced, and I desire to say that I entirely agree with it and would seek to add only these few words. Technically, there is nothing to prevent the re-hearing of applications in bastardy cases. That right, however, should obviously only be exercised in cases where there is fresh evidence of a serious kind. It is unthinkable that, on the same facts and on the same evidence, the same tribunal, though perhaps differently constituted, should be invited to reverse a previous decision of its own.

Solicitors for applicant: *Isadore Goldman & Son, for R. R. Crute & Son, Sunderland.*

Solicitors for respondents: *Taylor, Willcocks & Co., for Nesbitt, Cook & Carter, Sunderland.*

W. L. L. B.

HANNAH *v.* PEEL.

1945

June 11, 13.

Birkett J.

Trover—Detinue—Possession—Chattel found on land never occupied by freeholder—Owner of chattel unknown—Right of finder.

The defendant was the owner of a house which he had never himself occupied. While the house was requisitioned, the plaintiff, a soldier, found in a bedroom used as a sick-bay, loose in a crevice on the top of a window frame, a brooch, the owner of which was unknown. There was no evidence that the defendant had any knowledge of the existence of the brooch before it was found by the plaintiff; but the police to whom the plaintiff handed the brooch

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to ascertain its owner, delivered it to the defendant who claimed it as being on premises of which he was the owner.

Held, that the plaintiff, as finder, was entitled to the possession of the brooch as against all others than its owner.

Bridges v. *Hawkesworth* (1851) 21 L. J. (Q. B.) 75; 15 Jur. 1079, followed.

South Staffordshire Water Co. v. *Sharman* [1896] 2 Q. B. 44 and *Elwes* v. *Brigg Gas Co.* (1886) 33 Ch. D. 562, distinguished.

ACTION tried by Birkett J.

On December 13, 1938, the freehold of Gwernhaylod House, Overton-on-Dee, Shropshire, was conveyed to the defendant, Major Hugh Edward Ethelston Peel, who from that time to the end of 1940 never himself occupied the house and it remained unoccupied until October 5, 1939, when it was requisitioned, but after some months was released from requisition. Thereafter it remained unoccupied until July 18, 1940, when it was again requisitioned, the defendant being compensated by a payment at the rate of 250*l.* a year. In August, 1940, the plaintiff, Duncan Hannah, a lance-corporal, serving in a battery of the Royal Artillery, was stationed at the house and on the 21st of that month, when in a bedroom, used as a sick-bay, he was adjusting the black-out curtains when his hand touched something on the top of a window-frame, loose in a crevice, which he thought was a piece of dirt or plaster. The plaintiff grasped it and dropped it on the outside window ledge. On the following morning he saw that it was a brooch covered with cobwebs and dirt. Later, he took it with him when he went home on leave and his wife having told him it might be of value, at the end of October, 1940, he informed his commanding officer of his find and, on his advice, handed it over to the police, receiving a receipt for it. In August, 1942, the owner not having been found the police handed the brooch to the defendant, who sold it in October, 1942, for 66*l.*, to Messrs. Spink & Son, Ltd., of London, who resold it in the following month for 88*l.* There was no evidence that the defendant had any knowledge of the existence of the brooch before it was found by the plaintiff. The defendant had offered the plaintiff a reward for the brooch, but the plaintiff refused to accept this and maintained throughout his right to the possession of the brooch as against all persons other than the owner, who was unknown. By a letter, dated October 5, 1942, the plaintiff's solicitors demanded the return of the brooch

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from the defendant, but it was not returned and on October 21, 1943, the plaintiff issued his writ claiming the return of the brooch, or its value, and damages for its detention. By his defence, the defendant claimed the brooch on the ground that he was the owner of Gwernhaylod House and in possession thereof.

Scott Cairns for plaintiff. The plaintiff, as the finder of this brooch, is entitled to its possession as against all persons other than the owner, who is unknown: *Armory* v. *Delamirie* (1). The case of *Bridges* v. *Hawkesworth* (2) is precisely in point, for in that case the finder of a parcel of bank-notes found it on the floor of a shop. The defendant here had no knowledge of the existence of the brooch, as the shopkeeper in *Bridges* v. *Hawkesworth* (2) had no knowledge of the existence of the parcel of banknotes. As Professor A. L. Goodhart pointed out in his "Three Cases on Possession," in "Essays in Jurisprudence "and the Common Law" (1931), at pp. 76-90, Mr. Justice O. W. Holmes, Sir Frederick Pollock and Sir John Salmond all consider the decision in *Bridges* v. *Hawkesworth* (2) to be correct; Mr. Justice Holmes on the ground that "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" (3); Sir Frederick Pollock on the lack of de facto control by the shopkeeper (4); and Sir John Salmond on the absence of the animus possidendi (5). Lord Russell of Killowen C.J., in *South Staffordshire Water Co.* v. *Sharman* (6) said that the ground of the decision in *Bridges* v. *Hawkesworth* (2) as was pointed out by Patteson J. was 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." But that was not so, since Patteson J. said in the earlier case that the county court judge, whose decision was appealed, was mistaken in holding that the place in which the parcel of notes was found made any difference (7). In *South Staffordshire Water Co.* v. *Sharman* (6) the defendant while

(1) (1722) 1 Str. 505.
(2) (1851) 21 L. J. (Q. B.) 75; 15 Jur. 1079.
(3) The Common Law (1881) at p. 222.
(4) Pollock and Wright on Possession in the Common Law, at p. 37 and seq.
(5) Jurisprudence (9th ed.) 381-2.
(6) [1896] 2 Q. B. 44, 47.
(7) 21 L. J. (Q. B.) 78.

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cleaning out, under the plaintiffs' orders, a pool of water on their land, found two rings in the mud at the bottom of the pool. It was held that the plaintiffs were entitled to the possession of the rings. It is a sufficient explanation of that case that Sharman, as the servant or agent of the water company, though he was the first to obtain the custody of the rings, obtained possession of them for his employers, the water company, and could claim no title to them for himself. It may be that a man owns everything which is attached to or under his land: see *Elwes* v. *Brigg Gas Co.* (1). But a man does not of necessity own or possess a chattel which is lying unattached on the surface of his land. The defendant did not know of the existence of this brooch and had never exercised any kind of control over it. The plaintiff, therefore, as its finder, is entitled to its possession.

Binney for defendant. The defendant was entitled to the possession of the brooch because, when it was found, it was on his land. Lord Russell of Killowen C.J. said in *South Staffordshire Water Co.* v. *Sharman* (2): "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 it 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." If that statement of law is correct, the defendant here should succeed. The owner of this land does not lose his right to the chattels found on or in it by letting the land: *Elwes* v. *Brigg Gas Co.* (1). The brooch here was found in a crevice of masonry and the facts are similar to those in *South Staffordshire Water Co.* v. *Sharman* (2). In neither case did the owner of the land know of the existence of the thing found. *Bridges* v. *Hawkesworth* (3) can be distinguished on the ground that the parcel of notes was found in a part of the shop to which the public had access—in effect they were found in a public place. If *Bridges* v. *Hawkesworth* (3) is not distinguishable, it has been overruled by *South Staffordshire Water Co.* v. *Sharman* (2) and *Elwes* v. *Briggs Gas Co.* (1).

Cur. adv. vult.

June 13. BIRKETT J. There is no issue of fact in this case

(1) (1886) 33 Ch. D. 562.
(2) [1896] 2 Q. B. 44, 47.
(3) 21 L. J. (Q. B.) 75; 15 Jur. 1079.

between the parties. As to the issue in law, the rival claims of the parties can be stated in this way: The plaintiff says: "I claim the brooch as its finder 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 on 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 on this issue is in a very uncertain state and there is need of an authoritative decision of a higher court. Obviously if it could be said with certainty that this is the law, that the finder of a lost article, wherever found, has a good title against all the world save the true owner, then, of course, all my difficulties would be resolved; or again, if it could be said with equal certainty that this is the law, that the possessor of land is entitled as against the finder to all chattels found on the land, again my difficulties would be resolved. But, unfortunately, the authorities give some support to each of these conflicting propositions.

In the famous case of *Armory* v. *Delamirie* (1), the plaintiff, who was a chimney sweeper's boy, found a jewel and carried it to the defendant's shop, who was a goldsmith, in order to know what it was, and he delivered it into the hands of the apprentice in the goldsmith's shop, who made a pretence of weighing it and took out the stones and called to the master to let him know that it came to three-halfpence. The master offered the boy the money who refused to take it and insisted on having the jewel again. Whereupon the apprentice handed him back the socket of the jewel without the stones, and an action was brought in trover against the master, and it was ruled "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." The case of *Bridges* v. *Hawkesworth* (2) is in process of becoming almost equally as famous because of the disputation which has raged around it. The headnote in the Jurist is as follows: "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."

(1) 1 Str. 505.

(2) 21 L. J. (Q. B.) 75; 15 Jur. 1079.

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The case was in fact an appeal against a decision of the county court judge at Westminster. The facts appear to have been that in the year 1847 the plaintiff, who was a commercial traveller, called on a firm named Byfield & Hawkesworth 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 on 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*l*. 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. Then various 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 refused to deliver them up to the plaintiff, and an action was 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. Thereupon the appeal was brought which came before the court composed of Patteson J. and Wightman J. Patteson J. said: "The notes which are "the subject of this action were incidentally dropped, by mere "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* (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." Then a little later: "The

(1) 1 Str. 505.

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" 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 defen- " dant's shop gives him, the defendant, the right to have them " as against the plaintiff, who found them." After discussing the cases, and the argument, the learned judge 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 respon- " sibility, except from the communication made to him by the " plaintiff, the finder, and the steps taken by way of advertise- " ment. . . . 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."

It is to be observed that in *Bridges* v. *Hawkesworth* (1) which has been the subject of immense disputation, neither counsel put forward any argument on the fact that the notes were found in a shop. Counsel for the appellant assumed throughout that the position was the same as if the parcel had been found in a private house, and the learned judge spoke of " the " protection of his " (the shopkeeper's) " house." The case for the appellant was that the shopkeeper never knew of the notes. Again, what is curious is that there was no suggestion that the place where the notes were found was in any way material; indeed, the judge in giving the judgment of the court expressly repudiates this and said in terms " The learned " judge was mistaken in holding that the place in which they " were found makes any legal difference." It is, therefore, a little remarkable that in *South Staffordshire Water Co.* v. *Sharman* (2), Lord Russell of Killowen C.J. said: " The case " of *Bridges* v. *Hawkesworth* (1) stands by itself, and on special " grounds; and on those grounds it seems to me that the

(1) 21 L. J. (Q. B.) 75; 15 Jur. 1079.

(2) [1896] 2 Q. B. 47.

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" decision in that case was right. Someone had accidentally " dropped a bundle of banknotes in a public shop. The shop- " keeper 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." 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. Lord Russell continued: " 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 any reference to the public part of the shop and, indeed, went out of his way to say that the learned county court judge was wrong in holding that the place where they were found made any legal difference.

Bridges v. *Hawkesworth* (1) has been the subject of considerable comment by text-book writers and, amongst others, by Mr. Justice Oliver Wendell Holmes, Sir Frederick Pollock and Sir John Salmond. All three agree that the case was rightly decided, but they differ as to the grounds on which it was decided and put forward grounds, none of which, so far as I can discover, were ever advanced by the judges who decided the case. Mr. Justice Oliver Wendell Holmes wrote (2): " Common law judges and civilians would agree that the finder " got possession first and so could keep it as against the shop- " keeper. 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 by the judges who heard the case. Sir Frederick Pollock, whilst he agreed with Mr. Justice Holmes that *Bridges* v. *Hawkesworth* (1) was properly decided wrote (3): " In such a case as *Bridges* v. " *Hawkesworth* (1), where a parcel of banknotes was dropped

(1) 21 L. J. (Q. B.) 75; 15 Jur. 1079.

(2) The Common Law (1881) at p. 222.

(3) Possession in the Common Law (Pollock and Wright) at p. 39.

" 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 emphasizes the lack of de facto control on the part of the shopkeeper. Sir John Salmond wrote (1): " In *Bridges* v. *Hawkesworth* (2) 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 his work " Essays " in Jurisprudence and the Common Law " (1931) has put forward a further view that perhaps *Bridges* v. *Hawkesworth* (2) was wrongly decided. It is clear from the decision in *Bridges* v. *Hawkesworth* (2) that an occupier of land does not in all cases possess an unattached thing on his land even though the true owner has lost possession.

With regard to *South Staffordshire Water Co.* v. *Sharman* (3), the first two lines of the headnote are: " The possessor of land is " generally entitled, as against the finder, to chattels found on " the land." I am not sure that this is accurate. The facts were that the defendant Sharman, while cleaning out, under the orders of the plaintiffs, the South Staffordshire Water Company, 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 company against Sharman in detinue it was held that the company were entitled to the rings. Lord Russell of Killowen C.J. said (4): " 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

(1) Jurisprudence (9th ed.) 382.
(2) 21 L. J. (Q. B.) 75; 15 Jur. 1079.
(3) [1896] 2 Q. B. 44.
(4) Ibid. 46.

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" plaintiffs must show that they had actual control over the " locus in quo and the things in it; but under the circum- " stances, 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* (1), 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 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, the words used being " attached to or under that land." Lord Russell continued: " ' 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 unauthorized inter- " ' ference.' 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 " unauthorized interference." Then Lord Russell cited the passage which I read earlier in this judgment and continued: " 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 there is extending the meaning of the passage he had cited from Pollock and Wright's essay on " Possession in the Common " Law," where the learned authors say that the possession of

(1) 21 L. J. (Q. B.) 75; 15 Jur. 1079.

" land carries with it possession of everything which is attached to or under that land. Then Lord Russell adds possession of everything which may be on or in that land. *South Staffordshire Water Co.* v. *Sharman* (1) which was relied on by counsel for the defendant, has also been the subject of some discussion. It has been said that it establishes that if a man finds a thing as the servant or agent of another, he finds it not for himself, but for that other, and indeed that seems to afford a sufficient explanation of the case. The rings found at the bottom of the pool 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 to which I need refer is *Elwes* v. *Brigg Gas Co.* (2), in which land had been demised to a gas company for ninety-nine years with a reservation to the lessor of all mines and minerals. A pre-historic boat embedded in the soil was discovered by the lessees when they were digging to make a gasholder. 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. Chitty J. said (3) " 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." Then he gave the reasons, and continued: " 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

(1) [1896] 2 Q. B. 44.
(2) 33 Ch. D. 562.
(3) Ibid. 568.

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" 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."

A review of these judgments shows that the authorities are in an unsatisfactory state, and I observe that Sir John Salmond in his book on Jurisprudence (9th ed., at p. 383), after referring to the cases of *Elwes* v. *Brigg Gas Co.* (1) and *South Staffordshire Water Co.* v. *Sharman* (2), said : " 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* (3). 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," and he cites *Armory* v. *Delamirie* (4) and *Bridges* v. *Hawkesworth* (3) in support of that proposition. Then he continues : " This principle, however, is subject to " important exceptions, in which, owing to the special cir- " cumstances of the case, the better right is in him on whose " property the thing is found," and he names three cases as the principal ones : " 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." The second limitation Sir John Salmond puts is : " If anyone finds " a thing as the servant or agent of another he finds it not for " himself, but for his employer." Then : " 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 wrong- " doing." It is fairly clear from the authorities 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 from *Bridges* v. *Hawkesworth* (3), 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. A difficulty however, 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 on the land from which he intends to exclude others, if Mr. Justice Holmes

(1) 33 Ch. D. 562.
(2) [1896] 2 Q. B. 44.
(3) 21 L. J. (Q. B.) 75 ; 15 Jur. 1079.
(4) 1 Str. 504.

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is right ; or he may possess those things of which he has a de facto control, if Sir Frederick Pollock is right.

There is no doubt that in this case the brooch was lost in the ordinary meaning of that term, and I should imagine it had 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 the brooch might be of some value, he took the advice of his commanding officer and handed it to the police. His conduct was commendable and meritorious. The defendant was never physically in possession of these premises at any time. It is clear that 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 notice by the finder. A discussion of the merits does not seem to help, but it is clear on the facts that the brooch was " lost " in the ordinary meaning of that word ; that it was " found " by the plaintiff in the ordinary meaning of that word, that its true owner has never been found, that the defendant was the owner of the premises and had his notice drawn to this matter by the plaintiff, who found the brooch. In those circumstances I propose to follow the decision in *Bridges* v. *Hawkesworth* (1), and to give judgment in this case for the plaintiff for 66*l.*

Judgment for plaintiff.

Solicitors for plaintiff: *Slaughter & May.*
Solicitors for defendant: *Rooper & Whately.*

(1) 21 L. J. (Q. B.) 75 ; 15 Jur. 1079.

C. G. M.

BRETT *v.* THROWER.

C. A.

1945

June 12.

Scott, MacKinnon and Morton L.JJ.

County court—Practice—Counter-claim—Nuisance—Title to hereditament not in question—Damages not exceeding 20*l.—Ancillary injunction—Appeal without leave of judge—No right of appeal—County Courts Act,* 1934 (24 & 25 *Geo.* 5, *c.* 53), *s.* 105 (*a*).

In an action or counter-claim for damages, not exceeding 20*l.*, for nuisance, the addition of a claim by the aggrieved party for an ancillary injunction does not take the case out of the definite