

Waverley Borough Council, the freehold owner of Farnham Park, Surrey, provided free public access to the park for recreational uses. It exercised control over the park through park rangers and bye-laws.

Ian Fletcher, a member of the public, used his metal detector to locate a medieval brooch in the park grounds.

He dug it up and reported the find.

The council issued proceedings against Mr Fletcher, seeking a declaration that the brooch was its property.

In his defence, Mr Fletcher used the argument of "finders keepers", claiming he was lawfully in the park and that he, as finder, was entitled to keep the brooch.

The questions before the courts were who is entitled to an item found in and attached to land and how is that judgement affected when the land is public open space?

When the case came before the Court of Appeal, Mr Lord Justice Auld noted a distinction between an object found in or attached to land and an object being on the land. He was of the view that where the object was found in or attached to the land, the owner or lawful possessor of the land had a better title to the object.

But where the object was unattached on land, the owner or lawful possessor only had a better title than the finder where he clearly displayed an intention to control it and anything found on it.

In Mr Fletcher's case, being a member of the public and engaging in recreational pursuits in the park did not give a superior right to the brooch. In fact, excavating the soil and removing property in the land were acts of trespass and metal detecting was not a pursuit permitted under the terms by which the park was owned.

This case shows that finders rarely have rights to things found in or attached to land.

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