

Finders

Armory v. Delamirie¹

(1722) 1 Strange 505, 93 Eng. Rep. 664 (K.B.)²

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 pretence of weighing it, took out the stones, and calling to the master³ 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. And now in trover⁴ against the master these points were ruled:

¹ Armory is the name of the chimney sweep who found the jewel, and Delamirie is the name of the goldsmith. Amory is the “plaintiff,” the person who brought the suit. “Delamirie” is the defendant, the person who is sued. In general, when a report refers to a case decided by a trial court, the title is “plaintiff v. defendant.” On appeal, the case title is “appellant v. appellee.” So, if Delamirie had appealed the case, the report of the case decided by the appellate court would be “*Delamirie v. Armory*.”

² This line is the standard way of citing English cases. “Strange” was the last name of an eighteenth century legal reporter. Until the 19th century, reports of cases were not produced by the judges or the court, but rather by individuals who “reported” on judicial proceedings much the way a *New York Times* reporter might report on an election or political protest. Many of these reports were later collected into a set of volumes called *The English Reports*, which is abbreviated “Eng. Rep.” So this case can be found either in the first volume of Strange’s report, starting on p. 505 or in the 93rd volume of the *English Reports* starting on p. 664. In England, there were many courts, including three “common law courts,” which heard most significant property, tort and contract disputes. One of these courts was called King’s Bench (except when the monarch was female, in which case it was called Queen’s Bench), and it is abbreviated “K.B.” (or “Q.B.”). So this case was decided by the court of King’s Bench in 1722.

³ “Master” here means “employer.” People whom we would today call “employer” and “employee” were then called “master” and “servant” or “apprentice.”

⁴ Before procedural reforms of the nineteenth and early twentieth-century, each civil case in England, the U.S. or other common law jurisdictions started with a “writ” or form. There were different writs for different kinds of case, and the procedure for each writ was somewhat different. One of these writs was called “trover,” and it was used for the recovery of personal property. Although there is now only a single form of action – See Federal Rules of Procedure, Rule 2 – the requirements of the ancient forms still, sometimes, influence modern law. As the great legal historian, Fredrick Maitland once wrote, “The forms of action we have buried, but they still rule us from their graves.” *The Forms of Action at Common Law*, Lecture 1 (1909).

1. 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.
2. That the action well lay against the master, who gives a credit to his apprentice, and is answerable for his neglect.
3. As to the value of the jewel several of the trade were examined to prove what a jewel of the finest water that would fit the socket would be worth; and the Chief Justice directed the jury, that unless the defendant did produce the jewel, and shew it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages: which they accordingly did.

Notes & Questions

1. Do you think the Court reached the right result? How do you think Armory got possession of the jewel? Why do you think Delamirie did not return the jewel to Armory? Are there answers to these questions that might suggest that the case was wrongly decided? Can you argue that the case was, nevertheless, rightly decided?
2. Why do you think the court required the defendant to pay damages equal to the value of the best jewel that could fit in the socket? Would it not have been more just to have ordered payment of an amount equal to the average jewel that would fit in the socket?

* * *

The report in this case states a legal rule or “holding”:

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.

Note, however, that later courts are not required to follow a prior court’s statement of the holding. Rather, a later court is only required to decide cases in accordance with the facts and outcome of prior cases. A later court can formulate a new rule and

decide in accordance with the new rule, as long as the new rule, if applied to the facts of the prior case, would not change the outcome of the prior case. The new rule could be either narrower or broader than the rule in the original case. For example, a later court might announce one of the following rules:

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 regain possession, if the finder entrusts the jewel to another who later refuses to return it.

The finder of any personal property, 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.

The finder of any personal property does not by such finding acquire an absolute property or ownership, yet has such a property as will enable him to keep it against a converter.⁵

Questions 3-7 are variations on *Armory v. Delamirie*. For each variation:

- a. What is the outcome if one applied the holding as enunciated in *Armory v. Delarmirie*?
- b. What do you think the most just outcome would be?
- c. Formulate a rule or holding that explains the outcome you think most just. Your proposed holding should, if applied to the facts in *Armory v. Delamirie*, lead to the same result (Armory wins), although, of course, your proposed holding may be phrased differently. The difference could be making an exception to the rule in *Armory v. Delamirie*, broadening the rule, narrowing the rule, or making it more complex in some other way.
- d. In thinking about the most just outcome and in formulating your proposed holding, consider how the outcome and/or your proposed holding might affect future behavior of people who know the law and how it might affect potential future disputes. Would your proposed holding encourage people to

⁵ A “converter” is someone who has committed the tort of conversion. Conversion is intentional use of another’s personal property in a way inconsistent with the owner’s rights.

take one another's property or discourage such takings? Would your proposed holding make it easier or harder for the true owner to reclaim his or her property? Would your proposed holding make disputes harder or easier for lawyers, judges, and juries to resolve? Such issues are sometimes called "policy" concerns. Are there other policy issues that are relevant?

3. Same facts as in *Armory v. Delamirie*, except the true owner, Lord Rasmussen, arrived in the shop as Armory was arguing with Delamirie's apprentice. Lord Rasmussen asked for his ring back. Is the apprentice legally obligated to give the ring and stone to Armory or Lord Rasmussen? What if the apprentice isn't sure whether the ring and stone belong to Lord Rasmussen?
4. Same facts as in *Armory v. Delamirie*, except Delamirie recognized the ring and stone as belonging to Lord Rasmussen.
5. Armory was Delamirie's gardener. While digging a hole for a rose bush that Delamirie wanted to plant, Armory found a ring with a large diamond. Delamirie happened to be strolling nearby at the time, saw the ring in Armory's hand, and asked Armory to give him the ring. Is Amory legally obligated to give the ring to Delamirie?
6. Armory was a guest in Delamirie's house. One day, Armory saw the ring on Delamirie's dresser, put it in his pocket, took it home, and put it on his dresser. Heller was a guest in Armory's house, saw the ring on Amory's dresser and put it in his pocket. Armory was nearby and saw Heller take the ring. Armory demanded his ring back, but Heller refused, saying "that couldn't possibly be your ring." Is Heller legally obligated to give back the ring?
7. As in the original case, Armory was a chimney sweep who found the ring. After finding the ring, he put it in his pocket and started walking to Delamirie's goldsmith shop to have the ring appraised. Unfortunately, Armory's pocket had a hole in it, and the ring fell out. When Armory got to the goldsmith's shop, he was dismayed that he was unable to find the ring. Meanwhile, J. Amour Esq. was walking nearby, saw the ring on sidewalk, and picked it up. Immediately ascertaining its great value, Armour went to the goldsmith shop owned by his good friend, Delamirie. Armour gave the ring to Delamirie for appraisal. Armory, who was still in the goldsmith's shop looking

through his pockets for the ring, recognized the ring and told Delamirie that the ring Amour had just given him (Delamirie) was the ring that Armory had found earlier. To whom is Delamirie legally obligated to give the ring?

8. Japanese law requires finders to return the object to the owner or submit it to the chief of police within seven days. The object is held at the police station for six months. If owner claims the object within six months, the owner is obligated to pay the finder a reward equal to between 5% and 20% of the object's value, depending on the kind of property and the circumstances. If the owner does not claim the object within six months, the object is given back to the finder. Do you think that is a good system? Is it better than the rule established in *Armory v. Delamirie*?