THE WINKFIELD
[1900-1903] All. E.R. 346 (P. 1901)

[On April 5, 1900, the Winkfield collided with and sank the Mexican off the coast of Cape Colony, South Africa. The owners of the Winkfield admitted liability for one half of the damage done to the Mexican and her cargo and obtained a decree (under §503 of the Merchant Shipping Act, 1894) limiting their liability to £8 per ton and paid into court £32,514. Against this fund, claims by the owners of the Mexican, passengers, crew, and cargo owners were filed totaling £90,085.

A substantial amount of mail was lost on the Mexican, and the postmaster general filed three classes of claims therefor:

1. £105 for mail bags and parcels which were Crown property,

2. £5,041 for parcels of which the owners had given the postmaster general written authority to represent them, and

3. £1,726, the estimated value of letters and parcels in respect of which no claim had been made by, or instructions received from, the senders or addressees, but which the postmaster general undertook to distribute amongst them. The postmaster general undertook to indemnify the fund in court against any claims put forward by the actual owners of these parcels.

The president of the Probate, Divorce and Admiralty Division (Sir F.H. Jeune) allowed claims (1) and (2) but disallowed claim (3) on the ground, conceded by all parties, that the postmaster general was not liable to the senders or addressees of these parcels for their loss. The postmaster general appealed from the disallowance of claim (3).]

Collins, M.R. . . .
The case was dealt with by all parties in the court below as a claim by a bailee who was under no liability to his bailor for the loss in question. . . .

It seems to me that the position, that possession is good against a wrongdoer and that the latter cannot set up the jus tertii unless he claims under it, is well established in our law, and really concludes this case against the respondents. . . . And the principle being the same, it follows that he can equally recover the whole value of the goods in an action on the case for their loss through the tortious conduct of the defendant. I think it involves this also, that the wrongdoer who is not defending under the title of the bailor is quite unconcerned with what the rights are between the bailor and bailee, and must treat the possessor as the owner of the goods for all purposes quite irrespective of the rights and obligations as between him and the bailor. . . .

. . . It cannot be denied that since the case of Armory v. Delamirie, 1 Stra. 524, not to mention earlier cases from the Year Books onward, a mere finder may recover against a wrongdoer the full value of the thing converted. That decision involves the principle that as between possessor and wrongdoer the presumption of law is, in the words of Lord Campbell in Jeffries v. Great Western Ry. Co., 5 E. & B. 802, at p. 806, "that the person who has possession has the property." In the same case he says (at p. 805):

> I am of the opinion that the law is that a person possessed of goods as his property has a good title as against every stranger, and that one who takes them

> from him, having no title in himself, is a wrongdoer, and cannot defend himself by shewing that there was title in some third person, for *against a wrongdoer possession is title*. The law is so stated by the very learned annotator in his note to Wilbraham v. Snow, [2 Wms. Saund. 47 f.].

Therefore it is not open to the defendant, being a wrongdoer, to inquire into the nature or limitation of the possessor's right, and unless it is competent for him to do so the question of his relation to, or liability towards, the true owner cannot come into the discussion at all; and, therefore, as between those two parties full damages have to be paid without any further inquiry. The extent of the liability of the finder to the true owner not being relevant to the discussion between him and the wrongdoer, the facts which would ascertain it would not have been admissible in evidence, and therefore the right of the finder to recover full damages cannot be made to depend upon the extent of his liability over to the true owner. To hold otherwise would, it seems to me, be in effect to permit a wrongdoer to set up a jus tertii under which he cannot claim. But, if this be the fact in the case of a finder, why should it not be equally the fact in the case of a bailee? Why, as against a wrongdoer, should the nature of the plaintiff's interest in the thing converted be any more relevant to the inquiry, and therefore admissible in evidence, than in the case of a finder? It seems to me that neither in one case nor the other ought it to be competent for the defendant to go into evidence on that matter. . . .

. . . As between bailee and stranger, possession gives title - that is, not a limited interest, but absolute and complete ownership, and he is entitled to receive back a complete equivalent for the whole loss or deterioration of the thing itself. As between bailer and bailee the real interests of each must be inquired into, and, as the bailee has to account for the thing bailed, so he must account for that which has become its equivalent and now represents it. What he has received above his own interest he has received to the use of his bailor. The wrongdoer, having once paid full damages to the bailee, has an answer to any action by the bailor. See Com. Dig. Trespass B. 4, citing Roll. 551, 1.31,569, 1.22, Story on Bailments, 9th ed. s. 352, and the numerous authorities there cited. * * * Appeal allowed.