

## The case of the gold and sapphire Tudor pin from Farnham Park

A Tudor gold and sapphire pin was discovered in Farnham Park in August 1992 by a metal detector user, operating without permission, who nevertheless duly reported the find to the coroner. A brief description of the pin is given below together with a summary of the subsequent legal case, which is itself of considerable interest to those concerned with finds of antiquities.

### Description

The pin, actually a decorative jewel somewhat similar in nature to a brooch, is made of gold with a sapphire gemstone set at its centre. It consists of three main elements — a central flower set on a circular backing plate, to the rear of which is attached an S-shaped pin (fig 1).

The flower comprises the sapphire, which is cut into a hexagon with a flat square upper face, the edges of which are bevelled, set centrally into a six-sided mounting. The sapphire is dark blue in colour and has a slight flaw, which may be the result of drilling from the base. Two rings of five gold petals surround it, each cut out of sheet gold and scored with parallel lines as if originally intended for enamelling.

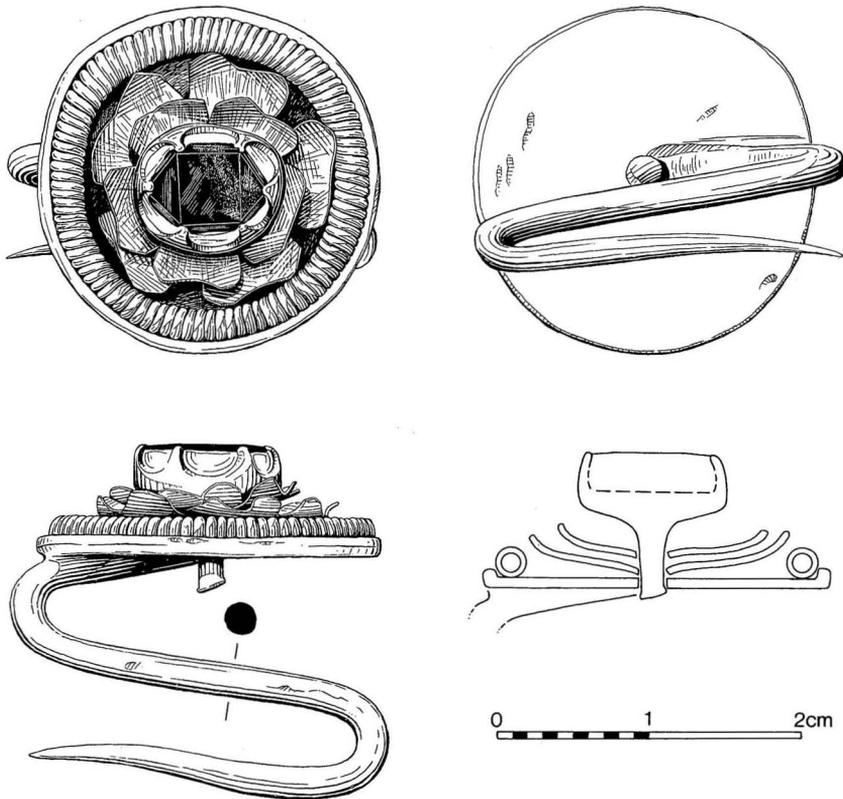


Fig 1 The gold and sapphire Tudor pin from Farnham Park. (Drawing by David Williams)

The circular plate, on which these features are set, is also scored and has an outer frame within which is a ring of finely coiled gold wire. Beneath the plate is an S-shaped pin and all three elements of the jewel are held together by a central rivet. The gold used is very pure. The British Museum has analysed the level at c 95–99%, though that of the S-shaped pin is slightly less pure, perhaps because of the need for this section to be stiffer in order to serve its purpose of penetrating cloth.

Two other jewels with similar petal decoration and gemstone settings are known from England and three others, with different decorations, are known with S-shaped pins. All date to the late medieval or early Tudor periods, but none is identical to the Farnham pin.

The pin may have functioned as a brooch, to hold two pieces of cloth together, but is perhaps more likely to have been used as a decoration on a hat or bonnet. A number of portraits of the period show personages such as Prince Arthur and Henry VIII, wearing caps bearing one or more badges not apparently dissimilar to the Farnham pin. It therefore seems likely that this unique and valuable jewel was lost from the hat of, perhaps, a nobleman while he was walking or riding in the park, sometime in the opening years of the 16th century. A full report on the pin has been published by Cherry (1997).

### **The legal case**

Farnham Park — the ‘New Park’ — is, in origin, a medieval deer park attached to Farnham Castle, both of which belonged to the bishopric of Winchester. Now owned by Waverley Borough Council and used as a public open space, the park has been the site of a number of finds of Treasure Trove over the last twenty years or so. As a result, the use of metal detectors was prohibited in the early 1980s and this was still the situation when Mr Fletcher, a visitor to the area, took his metal detector into the park and started searching for treasure. Following a positive response, he dug a hole c 20cm deep and found the now famous Farnham pin. In so doing, he set in process a series of events, which ultimately clarified the law in relation to the ownership of objects found on, in, or attached to land.

The jewel is not only a unique and historic object, but its discovery also gave rise to a unique and historic legal case — *Waverley Borough Council v Fletcher* — the outcome of which has wide implications for landowners and for finders of all ‘chattels’, including antiquities (Palmer 1995).

As already described, Mr Fletcher, after discovering the jewel, correctly handed the pin to the Guildford coroner, who then held a Treasure Trove inquest. In the event, the jury held that the jewel was not Treasure Trove and therefore not the property of the Crown, on the grounds that it was likely to have been a casual loss and not deliberately hidden with the intention of recovery (this being one of the requirements of the old law of Treasure Trove). Unfortunately, and despite being informed that ownership was in dispute, the coroner returned the jewel to the finder.

At this point, Waverley Borough Council, which had not given permission for Mr Fletcher to operate his machine in the park, became concerned at the wider implications of the situation and accordingly commenced proceedings against him in order to reclaim ownership of the pin. The case came before the High Court in early 1994 and it soon became clear that the crux of the matter was the nature of the council’s ownership of the land. Farnham Park had been conveyed freehold to the council (in fact to its predecessor, Farnham Urban District Council) in 1930, subject to certain covenants. These stipulated that the council would at all times use the park as a public open space, that the land would be used only for pleasure or recreation-ground purposes and that the land would not be used for purposes other than for a listed range of recreations, or sports of like nature.

The park is indeed open to the public, but the council exercised control through a ranger, whose house was located within its boundaries. Various by-laws regulate the use of the park and while none specifically bans the use of metal detectors, nevertheless it was the council’s policy to forbid their use. Notices to this effect had been erected, but all had been pulled down by persons unknown and consequently Mr Fletcher was unaware of the council’s policy on the subject.

Mr Fletcher contended that the council had no possession of the pin, as a landowner had to show intention to exert control over the land and things upon or in it. His second argument was that, irrespective of possession, the council was obliged to allow him to search on its land and to remove objects, as under the terms of the 1930 conveyance, 'public recreation' was permitted and that metal detecting was a 'recreation' for this purpose.

The High Court found in favour of Mr Fletcher and the pin was returned to him, whereupon the council, with widespread support from concerned landowners such as the National Trust, launched an appeal against the decision. This came before the Court of Appeal and the case was reported in *The Times* on 12 July 1995.

The court ruled that objects that were attached to or lay under the land belonged to the lawful possessor of that land, irrespective of any specific intention to exercise control and irrespective of how the object came to be where it was. This is in distinction to objects which are found unattached or on the surface of the land, where the owner of the land has better title than a finder only if he showed intention to control the land and anything found thereon. So, for instance, if a watch is found on, say, a pavement, then the finder is likely to obtain good title as against the landowner, provided that the original owner is unknown — the much quoted law of 'finders keepers'. However, in the case of the gold pin, the council had the better title, as it was 'attached' to the land in the sense that it was found below the ground surface.

The court also held that metal detecting was not a 'recreation' that had been envisaged under the 1930 conveyance, as it was not 'of a like nature' to those sports that had been specifically mentioned, such as golf and cricket. This was because metal detecting, involving as it does the digging up and removal of objects, is fundamentally different in nature to competitive games coming within the generally accepted definition of 'sport'.

Accordingly the council had the power to prohibit the use of metal detectors and Mr Fletcher's activities could be curbed, even though he had not contravened a by-law or the general criminal law. In this the council was held to be acting as a trustee for the public. As a result the council won the case and was given possession of the pin, which was put on display in the Museum of Farnham. Unfortunately, it was subsequently stolen from the museum on 27 January 1999.

#### ACKNOWLEDGEMENTS

I am grateful to John Cherry of the British Museum for permission to use his original notes as the basis for the first part of this article. The drawing is by David Williams and the details of the legal case were obtained from various law reports and, with his kind permission, from a paper on the subject by Professor Norman Palmer.

#### BIBLIOGRAPHY

Cherry, J, 1997 The Farnham pin, *Antiq* 7, 77, 388–93

Palmer, N, 1995 Title to discovered antiquities after the Waverley decision, in *Transacting in Art II*, *Inst of Art and Law*, Leicester