

further enquiry. My contention, however, is that this is not the law either in Canada or in England, and Cook does not hold otherwise, but clearly defines the English law on the subject in section 557 of his work, when he quotes from a recent English decision as follows: "An English Court has recently said: 'The true rule to be inferred from the cases as between tenant for life and remainderman, seems to me to be that the tenant for life is entitled to all payments out of profits made by the company, unless they have been validly capitalized by the company by resolution or otherwise,' *Re Piercy* (1906), 95 L.T. Rep. 868." I venture to say that there is no English decision that contravenes in the slightest degree the decision in the *Piercy* case, and that the dictum of Mr. Justice Neville, above quoted, is good law in Canada to-day. At this point I may refer to and discuss the celebrated case of *Bouch v. Sproule*, 57 L.T. Rep. 345, 12 App. Cas. 385, which has so often been invoked on behalf of remainderman and capital, and which was relied upon in the *Piercy* case, but without success, because the two cases were not only not parallel, but had no similarity so far as concerned the essential points.

The *Bouch* case came first before a single judge, Mr. Justice Kay, and was decided by him in favour of capital. It then went to the Court of Appeal consisting of three Lord Justices, and was there decided in favour of income. Thence it was taken to the House of Lords consisting of four Lords of Appeal and was there decided in favour of capital, reversing the decision of the Court of Appeal, and upholding that of Mr. Justice Kay. I need hardly say that in a like case the decision in *Re Bouch* must govern throughout the British Dominions, unless it were affected by statute; and if the law and the facts in that case were paralleled by the law and the facts in the case of "found money," the question would be settled beyond dispute in favour of capital as relating to the latter. I now propose to review this celebrated case, which has so often been quoted and so much relied on; and to shew that it has no similarity to, and no bearing upon, the matter in hand.