

TREASURE TROVE.

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IT is in the interest not only of the individual, but of the community in general, that knowledge of the law of Treasure Trove and its administration should be widely promulgated. To most people the term conveys a vague impression of the discovery of hidden treasure, and their comprehension of the law is usually limited to the knowledge that treasure trove is one of the appurtenances of the Crown, the concealment of which is felonious.

It is hardly necessary, even were it possible, to trace the law of Treasure Trove back to its beginnings. References of the Anglo-Saxon period have all been traced to spurious charters, and the earliest mention of Treasure Trove in this country that can be considered genuine is of the twelfth century, when a man is recorded to have fraudulently appropriated hidden treasure.

The earliest statute preserved to us, which charges the king's officers with the enforcement of the law, dates back to the fourth year of Edward I (1275-76), where it is enacted that :

a coroner, being certified by the king's bailiffs or other honest men of the county, shall go to the place where treasure is said to be found ; that he shall enquire who were the finders and likewise who is suspected thereof, and that may be well perceived when one liveth riotously, haunting taverns, and hath done so of long time ; hereupon he may be attached for this suspicion.

The fullest definition may be found in Blackstone's Commentaries which were published in 1765 :

“ Treasure Trove is where any money or coin, gold, silver, plate or bullion, is found hidden in the earth or other private

place, the owner thereof being unknown ; in which case it belongs to the king ; but if he that hid it be known, or afterwards found out, the owner, and not the king, is entitled to it. Also if it be found in the sea, or upon the earth, it doth not belong to the king, but to the finder if no owner appears. So that it seems that it is the *hiding*, not the *abandoning* of it, that gives the king a property. This difference clearly arises from the different intentions which the law implies in the owner. A man that hides his treasure in a secret place evidently does not mean to relinquish his property ; but reserves a right of claiming it again when he sees occasion ; and, if he dies and the secret dies with him, the law gives it to the king, in part of his royal revenue. But a man that scatters his treasure into the sea, or upon the public surface of the earth, is considered to have absolutely abandoned his property, and returned it to the common stock, without any intention of reclaiming it ; and therefore it belongs, as in a state of nature, to the first occupier or finder ; unless the owner appear and assert his right.

This is the basis of the definition given by Judge Baylis, writing in the *Journal of the Archæological Institute* in 1886 :

1. The word "treasure," in connexion with treasure trove, is confined to *gold* or *silver* money, coins, plate, or bullion, *not* copper, lead, bronze, or other metals or things.

2. It must be found hidden in the earth or in the walls, beams, chimneys, or other secret places above the earth, but affixed to the soil. If found *on* the earth or in the sea, or not hidden, it is not treasure trove.

3. When the owner thereof or his representatives cannot be ascertained.

Then, and then only, it belongs to the Crown or the grantees of the Crown.

It is worth while, at the cost of some repetition, to examine the clauses of Baylis's definition more closely. Firstly, the treasure

must be of gold or silver, whether in coin, plate, or bullion.¹ This definition of the law is due to the fact that until the end of the seventeenth century there was in this country, save in the early middle ages, no coinage except in gold or silver and no metals other than gold or silver were accounted precious metals. But this may well prove a stumbling-block for a coroner's jury ; suppose a hoard were discovered of the platinum coins which were struck in Russia by Nicholas I, would a jury decide that, not being gold or silver, they were not treasure trove, or would they hold that, platinum being a metal more precious than gold or silver and unknown at the time that the law was enacted, a hoard of platinum coins came within the meaning of the Act ? Or again, what is to be the fate of a find of coins made of debased silver, a hoard, let us say, of a hundred half-crowns of our present English coinage ? Are they silver or are they not ?

This is a pertinent question, for we must bear in mind that the object of the enforcement of the law of treasure trove has completely changed in the course of time. Existing originally for the purpose of safeguarding a revenue of the Crown, the law has now come to be administered primarily, if not entirely, with a view to preserving for the community the educational and archæological value of such finds ; indeed so complete is this change that, as we shall see later, the Crown now makes a practice of voluntarily surrendering to the finder the full market value of the treasure. Certain coinages which are of the greatest interest to students are of a debased metal on the border-line between silver and copper ; such are the coins of Carausius, the most interesting Roman Emperor to students of Roman Britain. A large hoard of his coins, which contain nothing more than a mere wash of silver, was recently found at Linchmere, in Sussex, in such fine preservation that the silver-wash still remained, and in appearance they might well be

¹ This is not very clear either in Blackstone or in Baylis's definition. Coke (c. 1628) defined treasure trove as "when any gold or silver in coin, plate, or bullion hath been of ancient time hidden, wheresoever it be found, whereof no person can prove any property."

silver coins ; thanks to the public spirit of the owner of the property on which the hoard was found, the hoard was brought intact to the British Museum and was carefully studied and published before any of the coins were dispersed. Similar hoards have been scattered and their educational value lost to the community. On the other hand, debased coins of the reigns of Henry VIII and Edward VI have been declared treasure trove although containing less than 50 per cent. of silver in the debased metal of which they were made. It would certainly be in the interests of education that the law should be amended, in view of the archæological purpose that it now serves, so as to include not only debased silver but also copper coins.

I have mentioned the responsibility of the coroner's jury in deciding whether objects found are treasure trove. If the objects be voluntarily surrendered, it is not necessary for an inquest to be held, and in the case of coins found in organized excavations this procedure is usually dispensed with. But in other cases it is the general practice to hold an inquest ; the coroner's inquest determines not only whether the objects are treasure trove, but also who the finder is, and this is important for the purpose of the reward ; it also puts on record the circumstances of the find, which may be of archæological interest. But the coroner has no power to decide any claim to the right of treasure trove ; treasure trove *is* the property of the Crown, and any claim to a grant of treasure trove must be substantiated by the claimant. Such grants are rare ; people are often deceived by a belief that the ownership of mineral rights includes the right of treasure trove, but treasure trove requires a special grant.¹ Such a grant, under a charter of Edward IV, was successfully claimed by the City of Bristol in 1923, when a hoard of over 5,000 silver coins of the sixteenth and seventeenth centuries, found in Bristol, was surrendered by the Crown to the City.

¹ Because it is a franchise which is "plucked from the flowers of the Crown," as opposed to those which have no existence till granted, like fairs, markets, etc. The right of the Crown exists even before the finding of the treasure, and therefore the Crown may dig for treasure or give licences to do so.

To return to the definition of treasure trove, the second clause of Judge Baylis's statement lays down that the treasure must be hidden in the earth or in some secret place above the earth but affixed to the soil. A single coin found upon, or even beneath, the soil would not constitute treasure trove, because the *animus revertendi* on the part of the owner is lacking, that is to say, the coin was in all probability accidentally dropped and not deposited with a view to its future recovery. Similarly, coins or ornaments buried in a grave with a body are not treasure trove, as the owner can have had no intention of recovering them.¹ In 1875 some old coins were thrown on a cart on which rubbish was being removed from the ruins of a house at Dean in Bedfordshire; they were ruled not to be treasure trove on the ground that there was no evidence as to their position in the house from which they were removed; in other words, they may never have been hidden. On the other hand, there was an interesting case in 1927 when a hollow flint was picked up in Chute Forest, Wiltshire, by a boy who threw it against a stone and smashed it to find that it contained 65 ancient British gold coins of the beginning of the first century B.C.; the coins were declared treasure trove although the flint that contained them lay on the surface of the soil and was not hidden in any part of a building affixed to the soil. It was presumed that the flint had been buried and had been brought to the surface by movement of the soil.

The third condition in Judge Baylis's definition is that the owner of the treasure or his representatives cannot be found. There have been cases where the representatives of the original owner have laid successful claim to a treasure. In 1868 eighty guineas were found in the wall of an old house near Christchurch; on proof of title by the descendants of the original owner of the house, the coins

¹ Mr. Taffs has kindly informed me of a case which occurred many years ago, probably thirty or more, at Leigh-on-Sea. Pennies of Alfred were found in the hollow of the left shoulder of a skeleton which had been buried with horse and sword. The Crown is said to have brought an action against the finders (does this mean that a coroner's inquest was ordered?), with the result that the coins were declared not to be treasure trove.

were delivered to them. In 1870 coins found in the foundations of Blackfriars Bridge were returned to the Corporation of the City of London on the ground that they were the representatives of Sir Thomas Chitty, Lord Mayor in 1760, by whom the coins were deposited in the foundations. In this case the *animus revertendi* was lacking, however.

In the event of a treasure being found in compliance with these conditions, it is the duty of the finder to surrender it to the Crown; concealing the treasure is a felony which was formerly punishable with death, but now with a fine and imprisonment. Conviction for concealment is, of course, extremely rare, but there is a famous case of the year 1863. Gold ornaments were found at Mountfield, near Battle, in Sussex, by a labourer who, believing them to be of brass, sold them for 5s. 6d. to a man named Silas Thomas; he and his brother-in-law, Stephen Willett, discovering the ornaments to be of gold, disposed of them for £530 to a refiner who immediately melted them down. There seems to have been considerable public interest in the case owing to the place of discovery, which gave rise to a popular opinion that the ornaments were a royal relic of the battle of Hastings. The Treasury therefore procured an inquest before a coroner and jury, by whom the Crown's title to the treasure was established; a prosecution for concealment of the treasure was set on foot against Thomas and Willett, who were found guilty and each fined £265 (the sum received by them from the refiner) and ordered to be imprisoned till payment. After a year in Lewes gaol they were released upon a recommendation from the Home Secretary.

In the course of the last hundred years, great progress has been made in the study of archæology and especially in the method of archæological research. Archæologists have long appreciated the great value of the information that can be obtained from hoards of coins when the hoards are available for examination in their entirety. As a consequence, representation was made to the Treasury in 1860 for inducement to be given to finders of treasure to make voluntary surrender of their finds to the Crown. After

a delay owing to technical difficulties, authority was given, in 1871, to the chief officers of the Police to give publicity to the practice of Her Majesty's Treasury "of paying, on behalf of the Crown, to the finder of coins and antiquities coming under the description of Treasure Trove, the full bullion value thereof." The principle of giving a substantial reward to the finder was adopted, but it is obvious that the object in view, namely, to induce the finder to surrender the treasure, could not be attained by an offer which did not exceed the amount he would get by melting down the treasure; in fact, the Treasury had adopted a half-way position which was bound to be ineffective. Under the old system, the Crown was dependent upon publicity, the honesty of the individual, and the fear of the law, for the preservation of its rights; the new system admitted the weakness of man under strong temptation, but offered a reward too small to remove the temptation.

In 1886 an important discovery of 221 gold coins of the fifteenth and early sixteenth centuries was made at St. Albans under curious circumstances. A builder, who had stacked away in a yard a quantity of old beams that had been removed in the course of the demolition of various old houses in the previous ten years, had one of the old oak beams split for firewood; when a wedge was driven into it some coins fell out, and it was found that the beam had a large circular hole bored in it, and the hole had been filled with coins and plugged with a wooden stopper which had fallen out during the splitting of the wood. The find was reported to the Treasury, who were advised that it was treasure trove, a decision which would seem to be contrary to that given in a case we have already mentioned in which coins were found on the rubbish-cart during the demolition of a house; but here there was the difference that the coins were found hidden in a beam which had once been fixed in a house.

This find was the occasion of a representation to the Treasury upon the inadequate reward given to finders who surrendered treasure they had found, urging especially that the British Museum and other institutions that acquired objects from treasure trove

had to pay for them not the bullion, or metal, value, but the antiquarian value. The representation was successful, and a new circular was issued offering to finders who notify the Government of their discovery such of the objects as are not required for national institutions together with the *antiquarian* value of the objects retained after a deduction of 20 per cent. of the value of the objects retained or 10 per cent. of the whole value of the hoard, the deduction being made with the intention of providing a fund to meet legal expenses.

Legal expenses in connexion with treasure trove are not frequent, and the rather provoking deduction from the finder's reward has been found to produce a fund altogether inadequate for this purpose should serious litigation ever be involved. A further modification has therefore recently been made, and under the existing practice the finder of a treasure who promptly reports his discovery and hands over the treasure to the proper authorities, receives the full antiquarian value of the hoard.

It may be of interest to state rather more precisely what actually happens in the case of a find which is promptly reported. In the first place the finder will, if he is wise, carefully collect all the coins and other objects of the find, including the receptacle, if any, or the fragments of the receptacle in which the coins had been deposited, and will take note of the circumstances of the find, the place and precise position. He will then report to the police and deposit the objects at the police station. The coroner will be informed and will hold an inquest which will decide whether the find is treasure trove. If so, the objects will be forwarded to the Treasury with the inquisition, which states the name of the finder and the circumstances of the find. The coroner is not concerned with the value of the find or with any claim to the right of treasure trove; were there any such claimant, he would have to substantiate his claim with legal proof to the Treasury. If there be no such claim, the objects are sent to the British Museum, where a careful examination is made of the find and a note made with full details for publication. Suppose the find to be gold or silver coins contained in an earthenware

pot which has been broken ; the fragments of the pot are usually, if of any interest, pieced together and, not being treasure trove, are ultimately returned, if required, to the finder. A selection is made of such coins as are required for the national collection and the Royal Mint is allowed, if it wish, to have a pick of the remainder. After that, a selection is allowed to be made by a public museum, in the locality of the find, which would have a local interest in the objects. Each of these institutions, the British Museum, the Mint, and the local museum must pay the full antiquarian value of any objects that it retains ; the money is collected by the British Museum and the full amount is sent by them to the finder. The coins or other objects that remain are returned to the finder, or, if he prefer, sold on his behalf.

In the last five years¹ 17 finds of coins have passed through the hands of the Medal Room staff as treasure trove, making a total of approximately 4,200 coins of which 1,400 were Roman, 2,800 English, and a few Continental. The total antiquarian value of the 17 finds was about £600.

It is often urged that finds of coins should be kept in their entirety and not dispersed or even incorporated with other similar coins. It is indeed true that as knowledge progresses more detail is required in research, and that future generations might obtain from finds information which is missed by the present generation. But such an accumulation of unselected material would defeat its own object. Let us suppose that one were to embark on a study of the coinage of Edward I with all the accumulated material of finds before one—9,000 coins found in 1877 at Montrave, 12,000 from Aberdeen (1886), 2,000 from Blackhills (1911), a huge number, estimated at 200,000 (but probably exaggerated) found in 1831 at Tutbury, and thousands more from numerous other hoards ; it would be impossible to make any headway with such a mass of material ; no man's life would be long enough nor his eyesight strong enough. For the progress of knowledge it is necessary for

¹ This was written in 1930.

coins to be selected and put in their place, each in its proper series, when they come to hand, in order that they may be available for serious work by the student.

But why, it may be asked, should the British Museum have the first pick of all finds to the detriment of local museums which must have a special interest in objects found locally? In the first place the British Museum, as the national museum, represents the Crown and the nation as a whole, and is therefore the proper depository for Crown property of that nature. It is also probably the safest place at present existing at which full access to the objects is possible for serious students. And in the interest of science it is desirable that this practice should remain. In the matter of coins it is, in my opinion, of the utmost importance that there should be centralization so far as possible. Only in very few other museums, notably those of the university towns, are coins at all adequately available for study by experts, and even in these few cases not in the same degree as in the national collection. For the serious student it is necessary to have as large collections as possible and to keep all the specimens carefully arranged in their series for comparison one with another. A single coin of its kind supplies but little information; its informative value lies in the points of resemblance and of contrast which it furnishes in its comparison with other specimens of the same series. Furthermore, students must handle coins and examine them closely through a magnifying glass; their exhibition in a glass case is absolutely useless for purposes of study. In fact the exhibition of coins is a problem to all curators of museums, and it is solved in the British Museum by the exhibition of coins being composed only of electrotype facsimiles; this has the double advantage of exposing both sides of the coin to view at the same time, and of keeping the coins themselves in their series where they can be properly studied and handled.

Perhaps I can make these points more clear by illustration from an actual case. A few years ago there was found on the outskirts of a large midland town (I will not mention its name) a hoard of 240 silver pennies belonging to a period in the Middle Ages when

our coins were so badly struck that there is scarcely ever more than half the legend visible on any one specimen, and the legend is important as it gives the names of the responsible officer, or moneyer, and of the mint at which he struck the coins. By comparison with specimens already in the British Museum, and only by that means, it was possible to interpret the legends on many of the coins. Of the 240 pennies found the British Museum retained 160, many of which completed the readings of coins already in that collection, the remainder being kept in the hope that they might serve the same function for future acquisitions of the same class. The remaining 80 coins, wretched looking objects, were offered to the museum of the town in question, a town which takes high pride in its excellent and well-kept museum. The local authorities, unaware that the other coins of the hoard were miserable objects only slightly less pitiful than the 80 offered to them, were very naturally moved to righteous indignation, and their local pride was very properly aroused at being offered what seemed to be, and indeed was, the riff-raff of the hoard. Their first instinct was to refuse to have anything to do with them, and it was only on second thoughts that they accepted the offer. Now let us consider for what purpose that town required to have any of the coins from the find. Their object was to place them in a case for exhibition to the local public as specimens of a hoard of mediæval coins found near the town. The finest specimens in the hoard would not have served this purpose better, indeed the 80 outcasts were thoroughly representative not only of the hoard but also of our coinage as it was in those days. By the retention of the better coins in the British Museum an important addition has been made to our knowledge and understanding of this period of the English coinage.

Such then is in brief the law and administration of Treasure Trove. With all its difficulties I think we may honestly say that it works more equitably and more advantageously than that of other countries, and that in recent years, with improvement in its administration and its wider understanding, there has been less concealment of treasure than there was in former years.

