

## ON THE PRESENT STATE OF THE LAW OF "TREASURE-TROVE."

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SOME interest has been lately again excited upon the law of "Treasure-Trove," and more than one scheme has been propounded for its amendment. I hope that, in a matter about which much misunderstanding still prevails, a few remarks explanatory and suggestive may prove not unacceptable.

A short sketch of the history of this franchise will perhaps be the best way of arriving at its present law, and may also present some points of archæological interest in itself.

### I. To begin, then, *ab ovo*.

A rude state of commerce, or an unsettled condition of society, will always addict itself to consigning treasure to the simple and obvious security of burial. Even with ourselves this habit seems to have continued down to quite a modern date, and to an extent which we of this commercial and speculative century are little apt to realise.<sup>1</sup> The owner of a few savings had not always the opportunity, if he had the spirit, to trade with them, or risk them in a "venture": usury was long restrained by many laws, and loans protected by few: and, even in times of peace and comparative safety, the resource of the slothful Hebrew servant in the parable must always and everywhere have borne a large proportion to the trading energy of the other two. In time of war or excitement there was

<sup>1</sup> The reader of the Diary of Samuel Pepys, for instance, cannot fail to have been struck with his practice of keeping all his capital, sometimes 2000*l.* or 3000*l.*, in his own house; and will remember the very amusing account of its burial by his wife and father, when the Dutch fleet was in the Medway (Diary,

June to October, 1667). He hides his goods in the same way during the great fire; and to keep such hoards and to bury them in emergencies was, no doubt, up to that day at least, the common practice of a well-to-do English householder.

no other alternative. Such a hider has only to die with his secret untold, or some landmark on which he has relied has only to be removed, and there lies his hoard for the chance discovery of future ages.

There is a second element of our subject-matter, in the superstition which led almost every religion of antiquity to bury with its dead their personal ornaments or other valuable possessions. These, some of the most ancient deposits of treasure, often forming nearly the sole records of the times from which they date, and only within the last century at all appreciated or scientifically approached, are, for these reasons, if not always the most intrinsically valuable, certainly always among the most interesting and instructive of the discoveries with which our subject treats, and, though not uncommonly overlooked in the discussion, claim in reality a foremost consideration in any dealing with the *verata quæstio* of Treasure-Trove.

Other ways, too, exist in which hiding may take place, so as to bring the things hidden under this franchise, all which may be generally referred to the chapter of accidents. The two which I have mentioned may be considered, in these latitudes at least, where earthquakes and eruptions are unknown, the principal origins of deposits of this nature.

The hasty departure of the Romans left in our own country<sup>2</sup> so much of this precarious wealth that it seems to have influenced Saxon legislation upon the subject. "In nono anno," says the chronicler Æthelwerd,<sup>3</sup> "post eversionem Romæ a Gothis, relictis qui erant in Britannia Romanâ ex gente, multiplices non ferentes gentium minas, scrobibus

<sup>2</sup> Perhaps our earliest intimation of a national law upon the subject is of that of the Jews, and is to be found in our Lord's Parable of the hidden treasure, "which when a man hath found, he hideth, and goeth and selleth all that he hath and buyeth that field" (Matt. xiii. 44). The Jews then gave nothing to the finder, and all to the landlord.

The Roman law varied upon this point at different periods. Constantine I., in A.D. 315, gave treasure found to the Treasury, but returned half to the finder if brought spontaneously (Codex Theodosianus ad verb. "Thesaurus"). Gratian, in A.D. 380, vested it in the finder, with the stipulation that, if he

were not the landlord, he should give the landlord one quarter. Valentinian II., ten years later, gave all unreservedly to the finder. But Justinian lays down a different law, which he attributes to Hadrian (Justin. Inst. lib. ii. tit. i.), giving half to the landlord and half to the finder; and this appears to have remained from his time the Roman law. We find this too the law of the Code Napoleon, and still existing, I believe, as well in some other countries, where I presume the metallic value of the treasure found is still alone thought worthy of legal consideration.

<sup>3</sup> Lib. i. ad an. 418.

occultant thesaurum, aliquam sibi futuram existimantes fortunam; quod illis postea non accidit." And down to our own day these Roman hoards have been constantly coming to light. So numerous, and often so valuable, they could not long escape the King's hands, and we find them early established as a royal right. Whereas they had been "primi inventoris, quasi totius populi; jure naturali," they now became the King's, "jure gentium (as it was easy afterwards to explain it); quia Rex non modo totius populi, sed reipublicæ etiam, caput est."<sup>4</sup> At what period of Saxon rule this first became part of the statute law does not appear. It is not so extant till those laws called Edward the Confessor's, compiled by the Saxons, and in a manner forced upon William after the Conquest. These ordain:<sup>5</sup>

"Thesauri de terrâ regis sunt, nisi in ecclesiâ aut in cimiterio inveniantur. Et si ibi inveniuntur, aurum est regis: et si argentum, dimidium est regis et dimidium ecclesiæ ubi inventum fuerit."

Here the wording of the statute, and the absence of any definition of treasure except what is very plainly indicated in the mention of gold and silver only, imply that it was a well-known and established law before the Conquest;<sup>6</sup> and

<sup>4</sup> Bracton, lib. iii. c. 3.

<sup>5</sup> Legg. Edw. Conf. § xiv.

<sup>6</sup> In the extant charters of grant by the Saxon kings, the gift of the right of hidden treasure very rarely occurs,—never, Mr. Kemble tells us,—but is very common under the name of "ealle hordas bufan eordan and binnan eordan," among the Saxon "general words" in the grants of the first Norman kings; the Saxon phraseology clearly showing that it existed before the Conquest as a distinct right in some one. Its want of earlier mention is accounted for by Mr. Kemble, "by the supposition that such rights were so inherent in the possession of land as not to require particularisation; but that under the Normans, when every right and privilege must be struggled for, and the consequences of the Norman love of litigation were bitterly felt, it became matter of necessity to have them not only tacitly recognised, but solemnly recorded" (Cod. Dip. Æv. Sax. Introd. pp. xliii, xlv).

But I cannot help doubting this explanation. The right of Treasure-Trove, as we have seen, was *not*, even in the earliest times, "inherent in the pos-

session of land," but was in the finder: and these very words, "ealle hordas bufan eordan and binnordan," overlooked by Mr. Kemble, do actually form one of the rights granted by a Saxon Royal Charter in his own collection, that of Eadgar to Glastonbury Abbey in the year 971 (Cod. Dip. Æv. Sax. No. 567, vol. iii. p. 67). May we not rather suppose this right to have become early an acknowledged prerogative of the Saxon Crown, as we know it to have been under Edward the Confessor, and account for its scarce mention in Saxon grants by remembering the difference in tenure of land under the two rules? The land of a Saxon was his own absolutely; and the king, claiming neither lordship over it nor service from it, was the less likely to include in any grant a right thus quite distinct from the land granted,—a mere prerogative of his crown,—a right which was not a rent from the landowner, but a tribute from the finder; not rendered to him as still supreme lord of the soil, but simply as king. Where a lord paramount may easily give up his franchise to a tenant, a king will not be so ready to give away his prerogative to a subject;

there can be little doubt that to this grafting of Saxon on Feudal law we owe it that the claim of the English Crown on Treasure-Trove is to this day less comprehensive—as embracing gold and silver (and coin) only—than in other countries where the claim has its origin solely in the Feudal system.

The laws of Henry I.<sup>7</sup> give “thesaurus inventus,” without further explanation, in a list of the “Jura quæ Rex Angliæ solus et super omnes homines habet in terrâ suâ.”<sup>8</sup> Glanville, writing in the reign of Henry II., gives us the first mention of the crime of “concealment of Treasure-Trove,” “occultatio inventi thesauri fraudulosa,” then referable to trial by duel or ordeal, and punishable by death or loss of limb, as a “crimen læsæ majestatis.”<sup>9</sup> He implies treasure to include “aliquod genus metalli.”

But for the first actual definition of “thesaurus” as a right of the English Crown, we must pass on to Bracton, who wrote in Henry III.’s reign, and who gives it thus:—“Quædam vetus depositio pecuniæ vel alterius metalli, cujus non extat modo memoria, ut jam dominum non habeat.”<sup>1</sup> It will be observed, however, that these definitions, which seem to have been borrowed from the Roman law, are wider than were either before or after this time received in England.

The statute of Edward I., “De placitis Coronæ,” is more explicit on the general subject, though again giving no definition of “Treasure.” It is thus given by Britton,<sup>2</sup> and

and it is a significant fact that the only such grant on record by a Saxon king should have been made to the great and favoured Abbey of Glastonbury. I cannot help thinking it clear, that what under the Saxon rule was a prerogative of the king, grew under the feudal system, as in other countries where it prevailed, to be treated as a right or liberty of the lord paramount; and in this form became so constantly included in the grants of the Norman kings, who, content with the service which acknowledged them the supreme lords of the soil, would give up all other rights over lands to the petty and dependent princes whom it was the essence of the feudal system to create.

<sup>7</sup> Legg. Hen. I. cap. 10.

<sup>8</sup> In the same list occurs the Saxon word “fynderinga,” and this, owing no doubt to the similarity of the Saxon “r”

([r] to a Norman or Latin “n,” has been, it appears, constantly read “fynderinga,” and is even so spelt in one MS. of these laws among the Cottonian collection. Spelman (Gloss. ad. verb.) and others, reading it “fynderinga,” have conjectured it to be the Saxon name of the king’s privilege in “treasure-trove;” and even Sir Edward Coke has adopted this conjecture (Inst. iii. p. 132). But “fynderinga” is no doubt the correct reading, and is otherwise interpreted: and the existence, as I have said, of another Saxon phrase for “hidden treasure,” as well as the mention of “thesaurus inventus” in this same list of rights,—both seem to imply that, even if “fynderinga” be correct, this is not its meaning.

<sup>9</sup> Lib. i. cap. 2, and lib. xiv. cap. 2.

<sup>1</sup> Lib. iii. cap. 3.

<sup>2</sup> Cap. 17.

here we first find the present Norman-French name. I give the passage, however, in the standard translation :—

"Concerning Treasure found concealed in the earth (*Tresor musce en terre trove*), wrecks, waifes, sturgeons, whales, and other things found, which of right belong to, and are detained from Us ; let careful enquiry be made after them, and of the names of those who found them, and to whose hands they came, and what they are worth ; for our pleasure is that Treasure found hidden in the earth shall belong to us, but if found in the sea it shall belong to the finder. Let those also who found it buried, forthwith inform the Coroner of the county or Bailiffs thereof, and it is the Coroner's duty, to go without delay, and enquire whether any of it has been carried off, and by whom, and to save all that can be found for our use ; and those who carried it off shall be delivered to mainprize until the Eyre of the Justices : and if our Justices find that those who carried it off did it with a bad design, they shall be punished by imprisonment and fine, but if without any such design, they shall be amerced only."

The coroner's duties in this matter of the crime of "concealment of Treasure-Trove" are more fully laid down in another statute of Edward I., "*De Officio Coronatoris*."<sup>3</sup> He was, in fact, a detective in the business.

The author of "*Fleta*," writing in the same reign, thus describes this crime.<sup>4</sup> "*Est autem quædam species criminis, quæ presumptuosa est mali, mortem tamen non inducit, licet carceris inclusionem gravemque redemptionem,—quæ est inventio thesauri fraudulenter occultata.*" So since Henry II.'s reign its punishment had come down from death or loss of limb to what it now remains, fine and imprisonment.

It must be remembered, however, that in all these years the Norman kings had been granting away their franchise in many manors with which they had endowed subjects ; and that, in these, the right of the Crown meant, in fact, the right of the Crown's grantee, the lord of the manor.

And now we come to Sir Edward Coke, whose lucid and authoritative statement I give nearly at full length :—

"Treasure-Trove is where any gold or silver, in coin, plate, or bullion,<sup>5</sup> hath been of ancient time hidden, wheresoever it be found, whereof no person can prove any property ; it doth belong to the King, or to some lord or other by the King's grant or prescription. The reason wherefore it belongeth to the King is a rule of the common law, that such goods

<sup>3</sup> Stat. 4 Edw. I. 12/6. Cotton. MS.  
Vesp. B. 7.

<sup>4</sup> Lib. I. cap. 43.

<sup>5</sup> "Plate or bullion," i.e., "worked or unworked."

whereof no person can claim property belong to the King, as wrecks, strays, &c. *Quod non capit Christus, capit Fiscus.* . . . . And now let us peruse this description—

“Gold or silver.—For if it be of any other metall it is no treasure, and if it be no treasure, it belongeth not to the King, for it must be treasure-trove. It is to be observed that veyns of gold and silver in the grounds of subjects belong to the King by his prerogative, for they are royall mines, but not of any other metall whatsoever in subjects’ grounds.

“Wheresoever hidden.—Whether it be of ancient time hidden in the ground, or in the roof or walls or other part of a castle, house, building, ruines, or elsewhere, so as the owner cannot be known.

“Whereof no person can prove any property.—For it is a certain rule, *Quod thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum.*”<sup>6</sup>

Thus much Sir Edward Coke ; and this, resting on the highest possible authority, is (with the amendment lately added to it by Sir George Lewis’s “Circular to the Police”) the present law of the subject.

We may well pass over other writers till we come to Blackstone, whose commentary on the law of this subject has been sometimes a little misunderstood. After stating the law plainly, and almost exactly as Sir Edward Coke had stated it, as quoted above, he proceeds :—“So that it seems it is the *hiding*, and not the *abandoning* of it that gives the King a property.” And, farther on :—“It was judged expedient to allow part of what was found to the King, which part was assigned to be all *hidden* treasure. Such as is casually lost and unclaimed, and also such as is designedly abandoned, still remaining the right of the fortunate finder.”<sup>7</sup>

It has been supposed by some that this his definition of the King’s right is intended to exclude—or at all events *would* exclude—many buried objects, as, for instance, the contents of graves, as being “abandoned.” But such is not Blackstone’s meaning : such discoveries must obviously come under his first category of “hidden.” He is, too, it must be remembered, in these words explaining merely—assigning what *seems* (he qualifies it with the word “seems,”) a broad motive and reason for the law which he has just plainly stated, and not by any means stating actual law. And his explanation amounts to this :—The argument of the law, in thus giving treasure found hidden to the King,

<sup>6</sup> Inst. iii. p. 132.

<sup>7</sup> Comm. vol. i. p. 297.



and that not hidden to the finder, appears to be that it assumes (as in most cases it may assume) hidden treasure to have been hidden with an object, not to have been originally meant to be finally abandoned; while treasure lying on the surface, and unclaimed, may well be considered to have been placed there ignorantly; or, if knowingly, to have been really thrown away and finally abandoned. This, he would say, seems to be the broad and general supposition on which the law has been framed, and which may account to us for a distinction having been made; but that it is law, or even that in particular cases the supposition will always hold good, or that, if not, the law is to bend to suit this view of its probable origin, is an interpretation which Blackstone certainly never meant to be put upon his words.<sup>8</sup>

And, lastly, we come to Sir George Lewis's well-known "Circular to the Police," issued in 1860, which authorised "the payment to finders of ancient coins, gold and silver ornaments, or other relics of antiquity, of the actual value of the articles, on the same being given up for the behoof of the Crown:" and proceeded,—“In all cases where it shall come to the knowledge of the police that such articles have been found, and that the persons having found them refuse or neglect to give them up, Sir George Lewis desires that measures may be taken for their recovery.” This was no doubt a step in the right direction. Its only object was the public advantage; and it was founded upon much justice, good sense, and liberality, as anything of such authorship could not fail to be. But, unfortunately, owing to one or two inherent defects, it has, as is generally admitted, missed its object, and contributed to complicate the difficulty which it sought to remove. Its great defects

<sup>8</sup> I have been anxious to leave no doubt upon this point, because it has been sometimes asserted, and lately with some prominence, that treasure found in graves, as in these days it is so often found, cannot be claimed under this franchise; and these words of Blackstone have been cited in proof of the assertion.

The truth is, with respect to graves, that it has not always been contemplated that they would be rifled to the extent to which we, in the cause of science, now rifle them; and, although our law most clearly includes such discoveries in its

plain words, "treasure found hidden in the earth," writers upon the law have not always had an opportunity of appreciating the full scope of its words. Blackstone's explanation is thus based upon a faulty and inexhaustive division of the subject. That it was, however, really contemplated that these plain words of the law did, and should include treasure found in graves, we may infer with some certainty from our very oldest statute law extant on the subject, which embraces, as I have quoted, treasure found "*in ecclesiâ vel cimiterio*."

I take to be these :—1. That, in asserting the claim of the Crown to *all* “relics of antiquity” (and not to gold, silver, and coins, only), it claimed, as we have seen, too much, and perplexed the question. And, 2. That, in the absence of any expression of intention as to what would become of treasure so consigned to Government, it generated a suspicion and ill-feeling which was quite unnecessary, and which the new feature of the employment of the police in the matter was perhaps not calculated to lessen. Its result has been, undoubtedly, that the law has been quite as industriously evaded as ever. And though, in the well known Hastings case the offenders<sup>9</sup> were caught, and most deservedly punished ; and in other cases, as for instance in the Eccles case, the finder received from Government (rather tardily, it is true) the full intrinsic value of his discovery ; there can be no doubt that enough has not yet been done to place the law upon its proper footing, or to give the public the full advantage of it.

Before, then, we proceed to think of the future, let there be no doubt of the law of the question. The Crown, or its occasional grantee, claims *all gold, silver, and coin found buried or hidden*. The finder claims *everything else, i. e., gold, silver, or coin found not hidden* ; and all other discoveries, whether found hidden or not (provided, of course, in every case no owner can be found). The very prevalent impression that landlords can claim, and the exaggerated ideas of the rights of lords of manors, are errors that cannot be too diligently eradicated.<sup>1</sup>

<sup>9</sup> Not the comparatively innocent finder, as has been supposed, who erred in ignorance both of the law and of the value of his discovery, and was much “more sinned against than sinning ;” but the rogues who robbed both him of his price and the public of their relics, and who might to great advantage have served their full term of sentence at the treadmill, from which a mistaken kindness (must we not think ?) relieved them.

<sup>1</sup> The claim of finders as against landlords is well illustrated by the case of *Bridges v. Hawksworth*. 21 L. J. N. S. Q. B. 75, tried in the Queen’s Bench a few years ago (see also *Armory v. Delamirie*, Smith’s L. C. 151), where a roll of bank notes picked up inside a shop, for which no owner appeared after sufficient advertisement, were adjudged to belong

to the man who picked them up, and not to the tradesman on whose floor they were found, and in whose custody, pending claim, they had been left.

Another error which I have heard boldly put forward may perhaps be refuted in this place, viz., that a single coin cannot constitute what is called “a treasure,” and is not therefore under the law. The smallest piece of gold, silver, or coin, is just so much “thesaurus,” or “treasure,” which is, in its legal sense, a noun of quantity and not of multitude, and equivalent to “gold, silver, and money.” Those who have made this mistake are, in fact, misled by their own use of the phrase “a treasure,” which is unknown to our law ; as we do not say “a gold,” or “a money,” so neither do we say, legally and strictly, “a treasure.”



II. And this brings us to the second part of our subject. Having brought down the history of this franchise to our own time, and shown it to exist, clearly, and to a really well-defined extent, in the Crown or its occasional grantees, I come with great diffidence to the question—"What should the Crown do with it?" How can this existing right best be exercised for the public advantage?

It has been sometimes suggested that the Crown should exercise this right by abdicating it—should now, and for ever, waive all claims of the sort, and vest all discoveries in the finder. It is urged that as long as any claims clash with his, there will be an inducement to the finder to conceal and to melt. That the Crown would lose little, the landlord be benefited much. That competition would arise, and higher prices would ensure greater care. That the relics would, sooner or later, by sale or gift, come to the public museums.—I think I have stated, shortly but fully, the arguments of those who uphold this view.

With much deference to those who put forth these suggestions, I confess that I cannot bring myself to see the advantages held out by their scheme. To resist the tendency to conceal and melt, surely other methods may be adopted. It is a new policy to resist theft by giving the thief what he covets! Imagine a Cornhill jeweller addressing a burglar,—“It is a great trouble to me to keep my premises safe from your gang. Here, take the property, and let us have no more fuss about it!” That the Crown would lose little, is perfectly true,—nothing at all we may say; but the public, for whom the Crown is trustee, would lose a very great deal; while the landlord appears just as far from his imaginary claim as before. Competition would, no doubt, arise, but would infallibly bring with it dispersion: and it is easy for the Crown to offer such a price or reward as will make all possible care worth while to the finder, without in effect subjecting each discovery to a vague species of auction through the neighbourhood, with the view of benefit to his pocket. And, lastly, to expose such discoveries to all the risks of ignorant

It is not “a treasure-trove,” or “treasures-trove,” but “treasure-trove.” It has even been gravely urged that the maxim “*de minimis non curat lex*,” will apply to a

single coin, and I recommend those who think so to steal one from a neighbour's collection and try!

and careless ownership, *in order* that they may (if not lost or destroyed) *perhaps*, and *some day*, revert to the public ;—to cast them on waters so wide, with so vague a hope of finding them, and after so many days ;—seems as eminently unwise a mode of proceeding as can well be adopted. These proposals will be found invariably to emanate from private collectors, and cannot fail to bear the suspicion, that while others are devising how to secure to such discoveries their greatest public and scientific value, these proposers are, perhaps insensibly, devising means to a much smaller end—how best such discoveries, in any state, may be made available to private purchase.

Some remarks against these suicidal suggestions, contained in the pamphlet published six years ago by the late Mr. Rhind, are so apt that I will quote them here. They were written, it must be remembered, before the issue of the “Circular to the Police,” and in the days when the claim of the Crown was exerciseable without any benefit or remuneration to the finder ; so that much of them applies with double force to the state of things at present existing.

“Exaggerated expectations are frequently entertained of the number of valuable relics which would be saved from the crucible by obtaining what is called free-trade in antiquities. Those who have practically had occasion to investigate the circumstances usually attending such affairs, know very well that dread of having his prize wrested from him by the officers of the Crown is far from being the only reason which induces many a discoverer to doom his golden *find*. He is commonly a labourer or a small cottier, probably in an out-of-the-way district. He may or he may not know of the royal right ; but he has an impression that the landlord might require possession to be ceded to him ; or he wishes to keep the matter quiet so as to have a hopeful search all to himself in the vicinity of the lucky spot ; or he has the natural feeling not to publish his piece of good fortune, any more than he would proclaim the amount of his deposit in the savings’ bank, or of the little hoard in the corner of his chest. Do what he can some rumour of the discovery will probably circulate in the neighbouring village or hamlet, which under a proper method of supervision might perhaps reach ears that could turn it to good account, but which with the free-trade system would speedily die away fruitless, as no one, even if he chanced to be a person that cared, could insist upon answers to inquiries. And thus the objects, concealed very likely for a time (many months, as I have sometimes known), are eventually sold, it may be to a passing pedlar, to a watchmaker, not probably in the *nearest* town ; or the finder may send them to a friend, or personally convey them, for disposal in one of the large cities, usually to the pawnbrokers, or to working jewellers. It is sufficiently likely that in the course of time many of these buyers would ascertain that, instead of melting down relics which might come into their hands, it would

be more profitable to try and obtain the extravagant fancy prices which collectors, as well public as private, are sometimes disposed to give ; and it might even happen eventually that in some instances this inducement would operate direct upon the finders. But from what has been said of their usual motives for secrecy, it is very evident that their general policy would be a quiet sale to such middlemen as have been indicated, or a covert transporting of the treasure, if considerable, to one of the large towns ; and so, in one way or the other, the relics would come into the market scarcely even with evidence of authenticity, almost certainly with no trustworthy account of the circumstances in which they had been discovered, probably with no definite specification, except a suspicious assertion of the locality, perhaps county, where they had been procured ; and therefore they would be deprived of any higher scientific utility or significance than if they had been manufactured yesterday in Birmingham."<sup>2</sup>

The advocates of this cession by the Crown seem to me, moreover, to lose sight of the fact that the right of Treasure-Trove is not in every case the Crown's to cede. Regarding the Crown as trustee for the public, the public might, it is true, not unfairly ask it to yield its claim, were such a course clearly desirable. But the lords of manors, with private claims to this franchise by ancient grant (and they would be found, I suspect, more numerous than is often supposed,) are concerned in no such trust, and over these the public has no claim in the world. Any measure of this nature must, therefore, necessarily be partial and incomplete, and leave the matter only more perplexed and unsatisfactory than before ; unless, indeed, it is contemplated to investigate and either purchase or arbitrarily appropriate all these private rights also,—a measure which could not but raise more difficulty and opposition than it could hope to survive. Unadvisable as it appears to alter the statute law upon this subject, would it not also be found impracticable ? Should not, on both grounds, our efforts at reform be directed to the mode in which the law is carried out and applied ?

Again, let us suppose for a moment the claim of the Crown waived, and consider the result. The old and present squabble between landlord, tenant, lord of manor, and finder

<sup>2</sup> The Law of Treasure-Trove, by A. Henry Rhind. Edinburgh, 1858. P. 14. See, too, a paper by Mr. Irving in the Journal of the Archæological Association for 1859, vol. xv. p. 81, which contains much that is good and valuable, and is weak only in dealing too good-

naturally with some of those childish quibbles on the law, with which this question ever and anon becomes unfortunately encumbered, the brothers-german to some of later birth which I have mentioned in a former note.

renewed with double force ; tenant against landlord, both against lord of manor, and all against finder ; concealment by the latter rife than before ; pedlars and hawkers in deeper clover than ever. All this confusion and mischief would infallibly result, uncontrolled and never again controllable, were the strong arm of the Crown once removed.

I have heard landlords, however, advocate this cession to the finder on this very ground, that they would thus regain their legitimate influence in the matter, and by their power over the finder secure to themselves what they regard, however erroneously, as their own by natural right. Given a landlord, resident, popular, and an antiquary ; an estate in a ring fence ; a contented and honest peasantry, with an uncontrollable impulse to bring all their doubts and confide all their secrets to their squire as to a father,—and I am not sure that, considering all things, a better machinery could be devised, or one more practically calculated for the good of science. In a few instances all these conditions are, no doubt, realised, and notably in the case of a landlord who has more than once brought his views on the subject forward. But take England by the acre, and will a thousandth part of her be found so happily situated ? Is not this Utopia, rather than England, and can it be for a moment thought of as a basis for legislation ?

Preserving then, for all these reasons, the present law, how can we place its application on a proper footing ?

The object which we wish to achieve may be said to be twofold. First, to preserve antiquities from the tendency to conceal and melt them immediately after their discovery ; secondly, when so preserved, to keep them from a second burial—perhaps eventual loss or destruction after all—in unappreciating hands. It is useless to legislate for preservation in the first case if we give all facilities for destruction in the second ; useless to save a child in the birth, and then to starve it ! In endeavouring, then, to compass these two objects, we find that over antiquities other than treasure proper—other than gold, silver, and coin—we have no hold beyond that of example ; but that over such as are treasure we have a hold, in this clear right of the Crown,—a hold the more important and responsible for this very possibility of example. Having this hold, is it not downright suicide to give it up ? I do not say that it is a perfect system, but

it is what we have got, and all that we can get. Cannot very great public advantage yet be gained from it?

I cannot but think Sir George Lewis's scheme right in the main, and based upon sound principles. A similar scheme is admitted to be working well in Scotland (where, however, as in Denmark and other countries once purely feudal, seems to exist the advantage of a recognised Government claim to *all* discovered antiquities). But even there we hear loud complaints on one subject (which is also one of the very deficiencies which I am anxious to point out in our own system), the *distribution* of the objects when saved, and the general ignorance which prevails as to their ultimate destiny.

I think that—

1. A clear understanding upon this point, the destiny of antiquities thus secured by Government;

2. A corrected and well-defined statement of what articles Government may and will claim;

3. The addition of an offer to purchase what it does *not* claim, to that of a remuneration (and it should be slightly raised) for what it does claim;—and

4. The elimination, as much as possible, of the police element from the matter;

—are the four chief reforms which the system seems to require. After this, all possible care should be taken that it is perfectly and universally understood in every village and hamlet of the kingdom; and I cannot help thinking that Sir George Lewis's scheme—rid of so much of its claims and threats as is unwarrantable; rid of its suspicions, uncertainties, and perplexities; rid, to some extent, of the police; and more evidently based upon liberality and advantage to the finder—would be found to succeed in its object.

Let us take these suggested improvements in their order of requirement.

First. The clear and corrected statement of the Government claim. I have already shown what this really is, and wherein it differs from Sir George Lewis's claim. The claim is, in reality, perfectly simple and plain, and any perplexity in the matter arises entirely from ignorance. In whatever way the reform may be effected—by circular, placard, proclamation, Act of Parliament, &c.—the greatest care should be taken completely to eradicate this ignorance,

to define the claim of the Crown correctly, and publish it universally, and to let no doubt or disbelief form an excuse for delay and concealment.

Secondly. The addition of an offer to purchase what is not claimed by Government. What is claimed Sir George Lewis has already offered to pay for at its intrinsic or metallic value ; and this price, I think, should be increased (as, indeed, is only fair when we consider its fancy market value), for the purpose of at once and for ever outbidding the melting-pot, which is now, in a finder's calculations, on a par with the Government reward. A finder will not sell dishonestly at melting price when he knows where to come honestly by a fancy price ; and I think the great object should be to foster the impression that the Government depôt, whatever it be, is a better market than the pack of the tramp, or the jeweller's shop in the country town. Let this be a finder's first thought and instinct in the matter, the liability to get into trouble with the police being (as in too many cases it will always be) his secondary thought. I would by no means underrate the importance of this latter hold upon him, or be careless about making him fully aware of it ; but his own pecuniary advantage should, I think, be made paramount to it, and be his most obvious guide in the matter. It will then, too, be easy to induce him to bring instinctively to the same market other discoveries which cannot be claimed there, and these Government should, as I have suggested, offer to purchase in the same manner. In this way the example which our hold upon treasure enables us to give for other discoveries can be exercised to the best advantage, and I hope we may achieve as much with these too, by a liberal appeal to the finder's interest, as the "Circular to the Police" has endeavoured to achieve by a mistaken and untenable claim.

Involved, however, in this branch of the question is the great importance of a speedy realisation of the reward or purchase-money. If a poor man is to wait from summer to winter, as I believe the Eccles finder was doomed to wait, in lingering expectation of his promised wealth, we may be sure that the next hoard discovered in his neighbourhood will go to a readier market, its finder even putting up with a "smaller profit" for the sake of a "quicker return." Ought there not to be an officer of the Treasury, an expert



in the matter of antiquities, specially appointed for this very purpose, to free the discovery as much as possible from the delays so frequent in a public office, and in the present case so disastrous to the objects in view? The subject seems of sufficient importance to claim a special department of its own.

Thirdly. For the clear understanding as to the destiny of antiquities thus claimed or purchased by the Crown. The general advantage of this addition to the scheme is very obvious; but I think it is particularly required to resist the local collector, who is apt to think a little *dilettante* smuggling no very heinous offence, and is now the most industrious evader of the law, and often, it seems pretty plain, more to blame than the finder himself. It is most important to counteract his influence; and may it not best be done by pleasing and pacifying him? He has opportunities of smuggling, against which no law or vigilance can possibly avail, and is the more inclined to exercise and encourage them, from a not unreasonable, and not necessarily selfish, fear and jealousy, that relics—certainly of more interest and value near the spot of their discovery, and along with others of the same local character, than anywhere else in the world—will, when consigned to Government, become perhaps dispersed, at best remain almost unnoticed in an enormous national collection, and, in any event, be certainly lost to the neighbourhood. Without denying to the British Museum the right to relics of great national importance, may we not bring these vigilant enemies over to the side of the law, by including local museums also as depositories of the rescued treasures? May we not make our poachers, as is proverbial, our best game-keepers, by a wiser application of our archæological game-laws, and a wiser distribution of the game preserved? <sup>3</sup> There is not a district of England

<sup>3</sup> I hope no one will feel aggrieved by these remarks upon private collectors. That relics smuggled by them (for smuggling it is when the relic is treasure) come constantly into the very best and most conscientious of hands, I should be and am the last person in the world to deny or to doubt; but let them consider—first, the example which they set, for he who will sell fraudulently to a gentleman one day, will do the same to a tramp the

next; the principle is the same in the rustic's mind, which reckons not of scientific importance to the world, but only of pecuniary advantage to himself. Let them too consider secondly,—however they may lay the flattering unction to their souls that they are doing good, and are procuring valuable records of history to be well cared for,—how long can they answer for the continuance of this care? —quis custodiet ipsos custodes? Collec-

now-a-days which has not some public museum, or some semi-public society, well worthy of being constituted trustee of its own treasures, and with claims upon Government for such possession indisputably strong; for, indeed, what better custodians of valuable records can be found than those most immediately interested in their preservation? To a society with the broad and liberal objects and the nomad habits of the Archæological Institute, it must be sufficiently obvious how real and how great is the importance of preserving local discoveries in their own neighbourhood, and how much practical value is gained, in every point of view, by the juxtaposition of the spot of discovery and the thing discovered. Advantageous, indeed, as such a distribution would be in deprecating smuggling and furthering preservation, would it not be still more so in the increased and permanent usefulness gained for the objects preserved?

Fourthly,—and I have put this point last, from diffidence, not of the necessity for the change, but of my suggestion for a remedy,—we come to the possibility of keeping the police, as much as may be, out of the scheme. Some Government machinery, open to universal access, is necessary, and this was what Sir George Lewis selected. But are the police the best? Does not his scheme owe much of its failure to the air of surveillance and compulsion thus too obviously mixed up with it?—which seems scarcely necessary, and is very apt to create unpleasant feelings in the class to which we owe most of our discoveries. Is not a policeman, too, proverbially difficult to find in time of need, and in how many

tors *have* become bankrupt, *have* become of unsound mind, and at least must die. Who can tell that a future owner will not reset their Saxon fibulæ for his wife in the latest fashion of the nineteenth century?—or be struck with the peculiar adaptability of their Early British Series to the intellectual amusement of chuck-farthing? He may even think that he has provided for this—has executed his will, and left his collection to a museum, or to trustees, and has made all safe. But again, what shall make his *will* safe? Is he sure that it may not be lost or destroyed? Is he sure that it is properly drawn, and is without flaw? Is he sure that his liabilities at his death may not swamp his personalty, and consign his collection to a hammer as destructive of

its collective value as if actually, instead of metaphorically, brought down upon it? I fear that it seems ungenerous and invidious to urge such questions as these on many enlightened, liberal, and conscientious collectors, the pillars of antiquarian science, who feel, as indeed they have the best possible reason to feel, that their collection is subservient to very great public advantage. I can only ask them to consider the case in the long run; whether it is not after all plainly most for the general good, that public records should be in public keeping; and whether any law, which has a tendency to make and keep them so, should not be encouraged and carried out to the utmost.

cases will not the nearest police-station be many miles distant?—the temptation of a readier market must lose us many a discovery. Dealings with a policeman, moreover, are for many reasons regarded with suspicion and dislike, and it should be remembered that it is not every member of what I will call the discovering class, who at all times chooses to face one:—the system of preservation should, at least, be made as easy of carrying out as possible. Of the crime of "Concealment of Treasure-Trove," the police must, of course, take cognizance, as of every other rural crime; but where there is no wish to conceal, and no crime, I cannot but think that the police-station is not the best Government depôt.

It has occurred to me, and I wish to offer the suggestion for what it may be worth, that Government has at its command other machinery, which, while entirely free from odium, fulfils the requisite of ubiquity even better than the police. A gentle and popular machinery, ramifying through the whole country, with a depôt in the centre of every village and hamlet, and daily and most pleasant communication, or means of communication, with every house in England; possessing, moreover, the speediest and safest and most private means of conveyance to head-quarters. A machinery in its very nature accustomed to the trust and care of articles of value, and, through a beneficial measure lately introduced, already increasing daily in its responsibility for "treasure." I need hardly say that I mean the Post-Office. If it were a well-known fact in every village in England (and, here again, how easier made known than by placard at the post-office?) that a finder of hidden gold, silver, or coin,—is not indeed its owner, and is liable to imprisonment for keeping it or disposing of it,—but will, nevertheless, receive in a few days its entire value and something more, as fully and surely as if he were the owner, by simply leaving it, with a description of its finding (the fuller the description the more the value), at his post-office; that of other material so found he is in good truth the actual owner, and may best derive the benefit of his ownership, and get the value of his windfall, by dealing with it in the very same way;—would not all motive and temptation to concealment be gone at once? Once make him understand that his post-office, while in some cases his only lawful

market, is also in all cases his easiest and best ; that his discovery, whether his own by law or not, will there be treated, in every case alike, as if it *were* his own ; that when it is once safely lodged there, no one can step in between him and his full gains by the discovery ; and surely it would not be from the labourer that further evasion of the law would arise.

Thus I have endeavoured to suggest shortly the means by which it has seemed to me that discoveries of antiquities may, having regard to what legal power we hold over them, best be defended from their enemies, whether of the selling or the purchasing class, and best be made available for public and scientific good. Others may wish for sweeping alterations of our statute laws, the effect of which they cannot foretell, and appear scarcely even to have considered. I hope I may, at least, claim for my own suggestions the merit of simplicity, and I cannot help thinking that, if such a scheme were matured in wiser and abler hands, it might prove a not inadequate remedy for the existing evils.