

TREASURE TROVE.¹

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The subject of Treasure Trove is based on ancient law, or custom, and thus properly belongs to the antiquarian branch of archæology. I may, therefore, be permitted to offer a few remarks which may afford some useful information; for how soon may not any one of us find hidden or other treasure and be at a loss to know what to do with it and what is the responsibility!

This was illustrated last night, when a valuable diamond bracelet was found by the Treasurer of our Institute on the floor of one of the rooms of this Town Hall, which had been dropped by one of the guests, during the hospitable entertainment of the Mayor and Mayoress who kindly took charge of it. Fortunately the owner was discovered the same night, no doubt to her great and unexpected joy, as it was found without lighting a candle or sweeping the floor, or seeking diligently for it.

That "Finding is keeping," we have been accustomed to hear and to say from our earliest childhood, and it is true, to a certain extent only, like many other maxims.

Treasure Trove is an exception to this saying. It becomes necessary, therefore, to define Treasure trove, and who has a right to it.

It is easy to infer that the word "trove" is derived from the French word "trouvê." But we must state what kind of treasure is meant by the words "Treasure trove," and where must it be found, and how about the owner, and how it differs from other findings.

¹ Read in the Antiquarian Section, at the Chester Meeting, August 13th, 1883.

- 1st. This word "Treasure," in connection with Treasure Trove, is confined to *gold or silver* money, coins, plate, or bullion, *not* copper, lead, bronze, or other metals, or things.
- 2nd. It must be found *hidden* in the earth, or in walls, beams, chimnies, 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.
- 3rd. When the owner thereof, or his representatives, cannot be ascertained.
- 4th. *Then* and then only it belongs to the Crown or the grantees of the Crown.

The earliest mention of Treasure Trove of which I am aware, is that in the third chapter of Job, v. 21, where, speaking of death, Job says: "Which long for death but it cometh not, and dig for it more than for hid treasures."

Josephus says, that Solomon *laid up* vast treasures in the tomb of his Father David, which remained untouched till the time of Hyrcanus, who, on an occasion of public emergency, opened one of the cells and took out 3000 talents of silver. Much wealth was afterwards extracted from another cell by Herod (Antiq. L. vii, c. 15 s. 3). He says, *laid up* not "hidden." It was not Treasure Trove, as it was not hidden, but *deposited* simply.

If gold or silver be found, which has been deposited,—not hidden—in a tomb, coffin or other place; or when gold or silver coins have been deposited openly, and with no secrecy, as in the foundation stone of a building to mark its date, when found it would *not* be "Treasure Trove."

In time of war, or common or special intestine danger or insecurity, it has been the practice for persons to hide valuables which are not portable, hoping to survive and, when all danger is past, to recover their hidden treasure—but alas! how many have not survived or have not returned, leaving the hiding place a secret. From these causes operating for

thousands of years, it may easily be understood that vast treasures still remain hidden.

In very ancient times "Treasure Trove" belonged to the owner of the soil. This may be inferred from the passage in Job; as well as from the parable, wherein the Kingdom of Heaven is likened unto a *treasure, hid in a field*, the which, when a man hath found, he hideth, and for joy thereof goeth, and selleth all that he hath, and *buyeth* that field. This he would not have done, if the Lord, or King, would have been entitled to take it from him. We learn also in the Talmud, that it was the rule with the Jewish, as with most other nations, for found treasure to be the property of the owner of the land in which it was discovered.

Most of us have read the fable of the farmer, and his sons, when, on his death bed, he told them to dig deep a certain field for hidden treasure; this they would not have done, unless they would have been entitled to it when found.

That the finder was entitled was also the rule of the Civil Law. But, afterwards, probably by usurpation, or vis major, the King claimed and took Treasure Trove, and it became a part of the King's prerogative and revenue, and according to Grotius he was entitled to this hidden treasure by the *jus commune gentium*, for *it is observed* (he adds) not only in England, but in Germany, France, Spain, and Denmark. When the King became entitled he might dig in the land of a subject for Treasure Trove, for he had the property therein when found.

That the Crown of England became entitled to Treasure Trove for very many centuries past is evident from the Statute of 4th Edward I (1275-6) which directs the Coroner to hold an Inquest, to enquire among other things where Treasure is said to be found.

"A Coroner ought also to enquire of treasure that is found, who were the finders, and likewise who is suspected thereof, and that they be well perceived, when one liveth riotously, hunting taverns, and hath not do so of long time, hereupon, he may be attached for this suspicion by 4, 5, or 6 or more pledges, if he

can be found; and how many soever be found culpable by inquisition in manner aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to the Gaol."

There have been frequent prosecutions for this offence. In January 1863 some rings, and other pieces of gold, were ploughed up in a field at Mountfield, Sussex. The ploughman sold them for 5s. 6d., *i.e.* at 6d. per pound for old brass. The purchaser knew their value, and the circumstances under which they were found and sold them for £529 13s. 7d. He was indicted at the Assizes and found guilty for unlawfully, wilfully, and knowingly concealing the Treasure Trove. *Reg. v. Thomas and Willett*, 33 L.L., 22 M.C.

So in 1867, (an Irish case) a man was indicted for having secreted in a palliasse Treasure Trove, *viz.* : Coins of Queen Elizabeth, King Charles, and the Commonwealth, and sold them for 4s. 10d. per ounce for old silver. *Queen v. Poole*, 2 Irish R., C.L. 36.

A most remarkable instance of Treasure Trove occurred at Aberdeen, in May last, in excavating in Ross Court, Nipper Kirk Gate (one of the oldest parts of the City) where from 12,000 to 14,000 old coins were found in a bronze urn, filled to the brim, of various dates and countries; English coins of the reigns of Edward I and Edward II predominated, but there were also Scotch coins of the reigns of David and Alexander, French coins and Ecclesiastical moneys—varying from the size of a modern 3d. piece to a shilling. They were hidden probably about the time of the Battle of Barra, fought near Inverary, between the forces of Edward of England and Robert the Bruce.

The owner of the ground in which the find was made, refused to give them up, but the Queen's Remembrancer instructed by the Procurator Fiscal of the City to claim them, on behalf of the Crown, forced him to do so. The report will be found in the Times of the 3rd. June, and Illustrated News of the 12th June last, and other Newspapers. Very recently also, the Treasury, claimed and added to the National collections several old English gold coins of various dates which were

found in cutting up old beams in a farm house in a cavity carefully prepared for their reception.

As we are here at Chester, I may mention, in order to show that Treasure Trove is restricted to gold and silver, the recent discovery of Roman remains exhibited in the Chester Museum, we saw yesterday. In June last in excavating for the Chester Gasworks at a depth of 23 feet below the surface, a pig of Roman lead was discovered in a state of excellent preservation. The inscription it bears along the upper surface is as follows:—"Imp. Vesp. Avg V. T. Imp. III," while on the side is inscribed "De Ceangis." Its weight is 199 lbs.

The lead was a tribute from the tribe in North Wales, known as the Ceangi, and was cast during the fifth consulate of the Emperor Vespasian, and the third consulate of Titus—that is, in A.D. 74. Many bones of men and animals, fragments of Roman tiles and pottery, and Roman coins of the time of Vespasian and Titus, in good preservation, were found near—(see the Times June 12th, 1886.) There is no question that this, being *Lead*, was not Treasure Trove, and the Crown had no right to it.

Another recent discovery which was not Treasure Trove, viz., that of an ancient oak boat, supposed to be at least 2000 years old, embedded in alluvial soil of the River Ancholme at Brigg, North Lincolnshire, at a depth of 4 feet at one end and 6 feet at the other, may, on account of its unusual antiquarian interest be alluded to here.

It was discovered by the Brigg Gas Company in making excavations. The land had been leased to them in 1885, for 99 years, with powers to excavate the soil to the depth of 15 feet for the purposes of the foundations of a Gasometer, and to remove the soil when excavated.

It was held by Mr. Justice Chitty, that the boat belonged to the owners of the soil; on the well-known rule of law, that what is fixed to the soil, belongs to the soil; even by the operation of natural causes (*Elwes v. The Brigg Gas Company*, 2 L. Times Rep. 782.)

But "finding is keeping" is true, in many cases, *e.g.*, a chimney sweep having found a jewel, took it to the shop of a jeweller, who kept it; and it was held that the sweep was entitled to it as against the jeweller, and all the world, except the true owner. (*Armory v. Delamire*, 1 Strange, 501 Smith L. cases, vol. i, p. 374.)

So when a customer found in a shop a bundle of bank notes, accidentally dropped by a stranger, he was held to be entitled to them (*Bridger v. Hawkesworth*, 21 L. J., 2 B. 75.)

So our Treasurer, would have been entitled to keep the diamond bracelet found by him on the floor, if the owner had not and could not be found.

But "finding is keeping" is not the case, when the owner of lost property is known, or can reasonably be ascertained by the finder. If the finder wilfully and knowingly appropriate the lost property, he may be indicted for stealing it—the secrecy, with which he did it, would be strong evidence of guilt.

The oft cited case is that (of *Merry v. Green*, 7 M. and W. 672) in which it was held that the purchaser of a bureau at a sale, having found therein bank notes and money, in a secret drawer, and appropriated it, would be guilty of a felonious taking, if he had express notice that the bureau only, or if he had no reason to believe that more than the bureau was sold; but if he had reasonable ground for believing that he bought the bureau with its contents, he had a colourable right, and it was no larceny.

In connection with Treasure Trove, I must not omit to allude briefly to the Divining Rod, by the aid of which in certain hands, with certain fluids, it was pretended (as a magnet will attract iron) that hidden treasure might be found; and no doubt in some instances the Rod was made to point to treasure hidden for the purpose, thus practising on the credulity of weak minds.

A remarkable instance of the Divining Rod having been used, occurred at St. Denis, for the purpose of discovering the Cathedral funds said to have been secreted in 1793. The operator having taken care previously to get ten credulous shop-keepers to advance

100 f. each, with the promise of a share of the spoil. The account will be found in the *Times* of 25th September, 1882.¹

Counterfeit coins have been frequently sold as "Treasure Trove," which required the skill and experience of the numismatic, to detect as modern Birmingham or other ware.

In consequence of the right of the Crown to Treasure Trove, it has very frequently happened, that most valuable finds have not reached their hands, but have found their way into the crucible, or been sold for their value. It is now the practice of the Crown to pay to the finder of Treasure Trove the full bullion value thereof, in pursuance of an order Dated the 10th July, 1871. This does not hold out a sufficient inducement to the finder to deliver it up. He often retains or disposes of it for his own profit (although illegally); for the bullion value may be small, especially if silver, but of very great value as a scarce coin.

It is hoped that the Crown will reward the finder and owner of the soil by a per centage based on the value of the Treasure Trove, and that if rare and curious objects of Treasure Trove are handed by Government to the British Museum, the transfer will be made at a price commensurate with what has been given for them.

Although therefore, according to the old saying "finding is keeping," it is true to a certain extent only, like many other maxims; for it is not so with Treasure Trove, where the thing found appertains to the soil, as in the case of the oak ship or pig of lead, or where the true owner is, or reasonably can and ought to be found.

Since reading the above paper, the following tentative order has been issued by the Treasury. It embodies so important a relaxation, that it should be inserted here.

¹ In Brand's *Pop. Antiq.* 623, and *Notes and Queries*, 6th Series VI. 325, will be

found a more detailed account of the Divining Rod.

“ WHITEHALL,
27th August, 1886.

SIR,

I am directed by the Secretary of State to acquaint you that the Lords Commissioners of the Treasury, being desirous to render as effective as possible the assistance which is given to the efforts of Antiquarian Societies for the preservation of objects of general interest, by the assertion of the claim of the Crown to coins and antiquities coming under the description of Treasure Trove, have reconsidered that practice, as intimated to you in the Circular of 15th July, 1871, of paying to the finder of articles of Treasure Trove, on behalf of the Crown, the full bullion value of such articles.

Their Lordships with a view to encourage the finders of coin and ornaments to notify the fact of their discovery to the Government, are ready to modify their existing regulations; and to return to the finders, who fully and promptly report their discoveries and hand over the same to the Authorities, the coins and objects which are not actually required for national institutions, and the sums received from such institutions as the *antiquarian* value of such of the coins or objects as are retained and sold to them, subject to the deduction of a percentage at the rate, either

1. Of 20 per cent. from the antiquarian value of the coins or objects retained; or,
2. A sum of 10 per cent. from the value of all the objects discovered, as may hereafter be determined.

This arrangement is tentative in character; and the complete right of the Crown, as established by Law, to all articles of Treasure Trove is preserved.

I am to request that you will have the goodness to make this alteration in practice generally known, more especially to Pawnbrokers and other similar dealers within your jurisdiction.

I am,

Sir,

Your obedient Servant,

GODFREY LUSHINGTON.

To the Chairman of Quarter Sessions.

This order does not interfere with the relative rights of finders and owners of the soil. They remain as heretofore, and can only be regulated by an Act of Parliament, similar to “The Indian Treasure Trove Act, 1878,” which enacts that “Treasure” in that Act means anything of any value, hidden *in the soil* or in any way *affixed thereto*.

That the finder must (under severe Penalties), give notice in writing to the Government “Collector,” whenever any treasure exceeding in amount or value ten rupees, is found of the nature and amount or, approximate value of such treasure, of the place where it was found, and of the date of the finding; and the Col-

lector is to give notification requiring claimants to appear, and this enables him to settle disputes between the finder and claimant, and to divide the treasure between them, or to declare Treasure Trove to be ownerless and deliver such treasure to the finder.

By section 16, power is given to acquire the treasure, on behalf of the government, on payment to the persons entitled, a sum equal to the value of the materials of such treasure or portion thereof, together with one fifth of such value. I am indebted to Mr. Justice Pinhey, late judge of the High Court of Bombay, and a member of this Institute, for referring me to the Indian Act.