POLICE STAFF COLLEGE

6th JUNIOR COMMAND COURSE

1982

Treasure trove past, present and future: a study of criminal legislation, ancient, modern, and proposed, affecting "antiquities", with particular reference to "treasure hunters",

by

Inspector G.F. Hardy,
Surrey Constabulary.

TABLE OF CONTENTS

PREFACE

This paper is written as a study of legislation, ancient, modern and proposed, within the Criminal Law, that might afford protection for those antiquities which, from time to time, are found in the ground and elsewhere, with particular regard to the activities of 'treasure hunters.'

I would like to thank Mr. Henry Cleere, B.A., Ph.D., F.S.A., M.B.I.M., Director of the Council for British Archaeology, for his assistance in providing information regarding treasure trove and the Antiquities Bill 1981.

The observations and opinions expressed within this paper are my own and do not represent official police policy.

Inspector G.F. Hardy
Surrey Constabulary

Introduction

'The Fertlers of Britain March on Downing Street.'

Such was the heading to an article that appeared in The Times, dated 17th December, 1979. 'Fertling,' the article explained, is argot for the art and craft of amateur metal detecting, which, during the four or five years since it started, has attracted 200,000 adherents and inspired the formation of more than 100 clubs. Those taking part in this demonstration did so in protest against the Ancient Monuments and Archaelogical Areas Act, 1979, to demand that "personal freedom to pursue a constructive and educational hobby is not denied." Mr. Tony Hammond, one of the organisers of D.I.G., the Detector Information Group, is reported as saying, "the new Act has the laudable aim of protecting our heritage; but it is being used to restrict the peaceful activities of detector hobbyists."

The explosion in the popularity of fertling, or treasure hunting as it is more commonly known, is evidenced by the Home Office statistics that were kept in respect of the now discontinued 'pipefinder' and 'metal detector' licences which, until 1980, were issued to all users of this equipment under the Wireless Telegraphy Act 1949. These statistics detail the growth in the licences issued from 2,000 in 1972, to 150,000 at the end of 1979.

The popular use of metal detectors has been facilitated by the development of inexpensive, lightweight and sophisticated equipment which is readily available to everyone. These factors, combined with a catalyst in the form of the almost unquestioned and often greatly publicised successes of some metal detector users in unearthing

'hidden treasure,' have created this rapidly growing hobby.

As the use of metal detectors increases so too does the often fierce debate between treasure hunting devotees and those who consider it causes irreparable harm to our archaeological heritage. This latter view is advanced by a number of very august bodies who have together prepared a campaign against treasure hunting, known as 'STOP - stop taking our past.' A copy of this campaign is attached at Appendix 'A' and it graphically illustrates their arguments against the use of metal detectors. The attitude of the archaeologist is encapsulated in a report published in the Daily Telegraph dated 2nd October, 1979, concerning the launch of the 'STOP' campaign, when Mr. Ian Robertson, of the Museums Associtation, is reported as saying:-

> "Archaeology is part of our national heritage.
> People are not entitled to raid it for their pleasure."

In reply, Mrs. Olive Portsmouth, editor of 'Treasure Hunting' and 'Metal Detecting', explained the "greedy element" in Britain's estimated 50,000 treasure hunters is "about 1%" and that the vast majority of enthusiasts were responsible and knowledgeable.

The Times, dated 23rd June, 1980, includes an article on the publication of the 1979 annual report of the 'Ancient Monuments Board for England.' This report urges magistrates to do more as "legislation has not worked effectively against treasure hunters." After explaining that metal detectors can now find objects buried two feet below the surface the report states:-

> "the unskilled extraction of such objects inevitably causes extensive damage to archaeological deposits and deprives the find of its archaeological context, thereby preventing a full understanding of the object and of the site..... We strongly recommend therefore that magistrates should be made aware of the seriousness of the situation and the need for an effective application of the law as a deterrent."

Before magistrates can even consider these matters they must be brought to their attention and this will inevitably involve the police. So what precisely is the law regarding things found in this way? Accepting that we are not simply considering the financially priceless finds but also those often small and, to the untrained eye, rather insignificant oddments from our past, I propose to explore, in a dispassionate manner, the legal aspects of this question, as far as they relate to the criminal law, where there is the possibility of police involvement.

I will first consider the traditional law of treasure trove, then the more modern legislation, including the possible application of the Theft Act 1968, and conclude with a review of efforts to bring about a reform of legislation.

Chapter One

TREASURE TROVE

Treasure trove is defined by Home Office Circular, number 68/55, dated 18th April, 1955, as being:-

> 'Objects of gold or silver (including coins, plate and bullion) which have been hidden in the soil or in buildings, and of which the original owner cannot be traced, are treasure trove, and by law the property of the Crown.'

An understanding of the origins of treasure trove greatly assists in the realisation of how the existing law can be applied today. Treasure trove has long been part of the Law of England, dating back to the time of Edward the Confessor, in AD900, when it was said:

1.

> 'Treasures from earth belong to the King'

This statement reflects the feudal principal that the Prince of State was not only the possessor of all the land under his dominion but also all the property it contained. The importance of treasure in enriching the king's coffers is highlighted by records of the late eleventh and early twelfth centuries, which quote concealment of any kind of treasure trove as being regarded so seriously as to be on a parallel with treason, punishable by death or "truncation of limbs."

The greatest authority of all on treasure trove was Sir Edward Coke, who was Chief Justice of the Kings Bench until his dismissal in 1616. Having departed from office he set to work and compiled his Institutes, which updated the medieval law to fit the needs and requirements of his time, that of Elizabeth I and James I. His writings on treasure trove form the basis of our law today:

2.

> "Treasure trove is 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, it doth belong to the King, or to some Lord or other by the king's grant, or prescription."

In a different part of his Institutes Coke explains the significance of treasure trove consisting only of 'gold or silver:'

3.

> "The money of England is the treasure of England, and nothing is said to be treasure trove but gold and silver."

The conundrum as to what precisely is meant by 'gold' and 'silver' has long been a matter of debate. The most recent pronouncement, and the one that may well endure, was made by Lord Denning, Master of the Rolls, sitting in the Court of Appeal on the 18th November, 1981, giving judgement in the case of Attorney-General of the Duchy of Lancaster v G.E. Overton (Farms) Ltd.

4.

> "How much gold or silver must be in the object so as to make it treasure trove? In my opinion the only test applicable is this: in order to be a gold or silver object as treasure trove, there must be a "substantial" amount of gold in the object or a "substantial" amount of silver. It will be for the Coroner's jury to decide this question: what is "substantial?" ..... ."
> "..... They should ask themselves: is there a substantial amount of gold or silver such that it could be

properly described as a gold or silver object? It has to be a very considerable amount. It should, I think, be 50 per cent or more gold or silver before it could be described as a gold or silver object."

It is apparent, therefore, that the principles and traditions of treasure trove have their origins in a simple Crown right of forfeiture and are, on a correct analysis, part of our revenue law.

It was only in Victorian times that attempts were made to modify the workings of treasure trove to facilitate the protection and preservation of items of archaelogical interest by establishing the British Museum as a central agency and offering to reward those who reported their finds promptly. However, it can be seen that in restricting treasure trove to simply items of gold or silver it will account for only a very small part of the corpus of archaeological finds as it excludes all other materials, whether organic or mineral.

Even this very small part is halved by another principle of treasure trove in that the object(s) must be proved to have been 'hidden,' in other words - concealed with a view to later recovery. This principle, which forms the basis of what has been termed the mens rea of treasure trove, is described by Sir William Blackstone in his commentaries of 1768:

5.

"..... 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 also dies with him, the law gives it to the king, in part of his royal revenue, but a man who scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property and returned it to the common stock, without any intention of reclaiming it ..... ."

Similarly, items found in graves or tombs are excluded as they cannot be deemed to have been hidden or concealed with a view to later recovery. This was illustrated in the case of the remarkable Sutton Hoo ship burial, uncovered in 1939, which was subsequently found not to be treasure trove.

The current administrative directions concerning treasure trove are contained within Section V of Home Office Circular, number 68/1955, dated 18th April, 1955, which is attached at Appendix 'B', and the legislation involved is section 36 of the Coroner's Act, 1887. It is a coroner's duty, as soon as the finding of any treasure becomes known to him, to summon a jury, consisting of between seven and eleven jurors, to inquire into the matter. Having explained the definition of treasure trove to the jury the coroner should put the following questions to them, which they are to answer from the evidence put before them:-

6.

" 1) Of what did the find consist?
2) Where was the find deposited?
3) Was it intentionally hidden or concealed, or accidentally lost, or purposely abandoned?
4) Is the owner unknown?
5) Who was the finder?
6) Did the finder conceal his find? "

Having determined the answers to these questions the Coroner either directs the jury to find the objects to be or not to be treasure trove or he might, on the jury's findings, declare it.

It is not the function of a coroner to settle disputes as to the title to the objects.

To summarise, it is apparent that 'treasure trove' relates to a very small percentage, estimated as being not more than 0.5% of all archaeological finds. Even these are not fully protected as there is nothing to prevent a finder dividing up his find, into those items which may be treasure trove and those that are not, and dealing with them separately, albeit the find as a whole is of very considerable importance.

In conclusion, 'treasure trove' is of very limited value in protecting the vast majority of finds made by treasure hunters, many of whom, I suspect, are unable to distinguish their finds as gold or silver, owing to the find's condition, or, if they do, it is probable that either they are unaware of the procedure regarding treasure trove or completely ignore it. These assumptions are evidenced by the small number of treasure trove inquests held in this country, which rarely exceed five or six a year [7.], considered against the very large number of metal detectors in use and the number of finds that might reasonably be expected to have been made on the simple balance of probability.

Chapter Two

MODERN LEGISLATION

8.

> "The legislative position, in a nutshell, is this: We have our Ancient Monuments' Act, which protects structures such as ramparts, burial mounds, and the like, but, for portable antiquities, i.e. archaeological finds, we have no statutory protection whatever. Thus, archaeological objects, of whatever importance, may be dug up from the ground quite freely and then sold or even destroyed."

This view was propounded by Mr. Charles Sparrow, Q.C., LL.B., F.S.A., a leading expert on treasure trove, in a paper he presented to the Annual General Meeting of the British Academy of Forensic Sciences in London on 9th June, 1973. I propose to examine various developments and sections of legislation to establish whether the situation is still the same today.

Ancient Monuments and Archaeological Areas Act, 1979

This Act, which became law in October 1980, empowers the Secretary of State to compile and maintain a schedule of monuments and designate areas of archaeological importance. Monuments included in the schedule and areas so designated are afforded the protection of the Act which restricts works that may be carried out, regulates access and, at section 28, specifies the offence of damaging certain ancient monuments.

One aspect of the Ancient Monuments and Archaeological Areas Act, 1979, which updates the 1973 position, is the introduction of a section dealing specifically with the use of metal detectors. Section 42(1) of this Act creates the offence of using a metal detector in a protected

place without the written consent of the Secretary of State and section 42(3) creates the offence of removing any object of archaeological or historical interest so found. An extract from the 1981 edition of Stones Justices Manual, detailing these offences, is attached at Appendix 'C'.

This Act, was greatly welcomed by archaeologists but it is now subject of criticism on the basis that (a) it gives no permanent protection to antiquities, and (b) designated areas are very few and are likely to remain very few. If this latter point does indeed become an established fact then it will greatly undermine the limited value of the Act in affording protection for archaeological sites.

Criminal Damage Act, 1971

If a police officer discovered a treasure hunter armed with his metal detector and trowel busily digging small holes in a farmer's pasture, which would certainly present a hazard for the livestock, or the local park, the officer's mind might, quite reasonably, turn to the offence created by section 1(1) of the Criminal Damage Act, 1971. It has been held that grass can be damaged by trampling it down, (Gayford v Choulder (1898) 1 QB 316) and is easily and rapidly damaged by football, cricket or even bowls (Cf. Laws v Eltringham (1881) 8 QBD 283).

However, cognizance must be taken of the criteria included in the Criminal Damage Act, 1971, as discussed by Smith & Hogan:

9.

> "By its terms s.1 (1) simply and clearly requires mens rea in the traditional sense; that is, D must intend, or be reckless as to, all the consequences and circumstances which constitute the actus reus of criminal damage. It is not enough that D intends to do the act which results in damage if he does not also intend to damage the property of another, or foresee that such damage may occur."

Thus, if the treasure hunter complies with the code of conduct laid down by the Treasure Hunters Association, in that he replaces all the soil and grass carefully, it is reasonable to assume that he would not be guilty of criminal damage. However, if it can be shown that the excavation(s) had been left open with little or no attempt made to restore the ground, I am of the opinion that an offence contrary to section 1(1) would be committed.

The Theft Act 1968

At the outset it should be stated that any person who conceals treasure trove is prima facie guilty of theft in that all items of treasure trove belong to the Crown (with certain rare exceptions - see Appendix 'B'). But, as has already been discussed, the vast majority of archaeological finds are not treasure trove and the question must be addressed as to whether these are capable of being stolen. The campaign against treasure hunting, at Appendix 'A', states:

> "At criminal law, the removal of objects from another man's land is just as much theft as the removal of objects from his house. It matters not who placed the objects in the land or how or when. Their acquisition by the treasure hunter makes him liable to a criminal prosecution under the Theft Act 1968."

Today this statement certainly applies if the land owner, and all land is owned by somebody, is aware of the presence of the treasure hunter and has instructed him that nothing is to be removed from the

land without his permission and, quite probably, where the land owner has taken measures to so advise potential treasure hunters, with notices etc. However, in all other cases I feel the statement made in the campaign is an over-simplification of the law as it stands.

Having considered the definition of 'theft' I am of the view that there are two difficulties presented regarding the question of theft of property found in land, as in the case of the treasure hunter using a metal detector. Firstly, 'property belonging to another' and secondly 'dishonestly.' The question of who owns such property, the land owner or the finder, has long been a matter of academic debate. The question would appear to have been resolved finally by Lord Justice Donaldson, sitting in the Court of Appeal with Lord Justice Eveleigh and Sir David Cairnes, giving judgement in the case of Parker v British Airways Board on 21st December, 1981:-

10.

'Rights and obligations of the finder (a total of 5)

1. The finder of a chattel acquires no rights over it unless (a) it has been abandoned or lost and (b) he takes it into his care and control.
2. The finder of a chattel acquires very limited rights over it if he takes it into his care and control with dishonest intent or in the course of trespassing.'

'Rights and liabilities of an occupier (a total of 4)

1. An occupier of land has rights superior to those of a finder over chattels in or attached to that land and an occupier of a building has similar rights in respect of chattels attached to that building, whether in either case the occupier is aware of the presence of the chattel.'

Thus, from the above decision, it is evident that the owner of the land can be considered to be the 'loser' in the circumstances we are considering.

What then of 'dishonestly' - a basic ingredient in the mens rea of theft? Smith and Hogan are of the view:

11.

> "Everyone has some idea of what is honest and what is dishonest conduct. Perhaps no two people would have absolutely identical views, but most people would find that their views substantially coincide. And it may be safely guessed, the views of most other people would substantially coincide with those of the law. After all, the law seeks here only to represent the standards of right thinking members of society generally."

Smith, in his book The Law of Theft, takes this issue a step further:

12.

> "The onus is clearly on the Crown to prove a dishonest intention and, therefore, if the jury are of the opinion that it is reasonably possible that D believed that he had the right to do what he did, they should acquit."

Therefore, in today's society - rather than in the world of the academic theorist - for that is the context in which 'dishonestly' is to be viewed, are the actions of the treasure hunter we are considering here 'dishonest' for the purposes of the Theft Act 1968? I am of the opinion that they are not for reasons highlighted by Mr. Sparrow in his paper I referred to earlier:

13.

> "The Crown customarily rewards a finder of treasure trove with the market value of his find. The overall result is, thus, a squeezing out of the landowner who, under the general law, is entitled to anything lying in his ground. In the past, with occasional finds, made only by chance, this penalty on the landowner was not obtrusive. Today, with the wholesale use of electronic metal detectors, the Crown reward offers a direct inducement to forcible trespass and pillage, which, if successful, will attract Government subsidy."

Whilst accepting the reasons for rewarding finders of treasure trove, to prevent items being lost for ever, to the nation, it does tend to reinforce the old adage 'finders keepers' and, in so doing, negate the vital ingredient of 'dishonestly' for the offence of theft.

Local Bylaws

In some areas local authorities and councils have introduced by-laws to prohibit the use of metal detectors in parks and open spaces under their control.

Conclusion

It is apparent that, with the exception of treasure trove which is of very limited application, there is little protection afforded by the criminal law, as it is interpreted today, in respect of the great majority of archaeological finds.

Chapter Three

REFORM

The need for reform is summarised by Mr. Sparrow:

14.

> "What concerns the archaeologist most is the unrecorded abstraction from the soil of archaeological material. The science and knowledge of archaeology grow, not from the intrinsic value of finds but from the meticulous recording of the circumstances of each find and the careful comparison of one find with another. In this way, finds themselves may be precisely dated, and, from their dating, buildings and other works of civilisation may also be dated. For all this, the exact circumstances of every find are crucial."

Many countries, from Scotland and Northern Ireland to India and Sarawak, have superior legislation for the protection of antiquities than ourselves and yet we take a considerable pride in our national heritage.

The Unesco Conference in 1956 recommended that each Member State should apply certain principles by legislation for the protection of its archaeological heritage. To this end, it was recommended that each State might oblige any person finding archaeological remains to declare them. The Government of the day expressed itself in favour of the recommended principles for other States, but declined to apply them to the United Kingdom.

During 1971 the Broderick Committee presented its report on their review of the powers of coroners. Amongst other matters the report recommended that:

> "Coroners should continue to exercise the duty of enquiry into finds of treasure until comprehensive legislation is introduced to deal with the whole question of the protection of antiquities."

Again the Government have done nothing in respect of this recommendation.

In the case of Attorney-General of the Duchy of Lancaster v G.E. Overton (Farms) Ltd., previously mentioned, Mr. Justice Dillon, sitting in the High Court, expressed the view that treasure trove is not a satisfactory means for the preservation of recently discovered antiquities and the Master of the Rolls, Lord Denning, sitting in the Court of Appeal, felt it desirable that the law be amended.

In an effort to ameliorate the situation, Lord Abinger has introduced a Bill 'to provide for the better protection of small antiquities discovered in the ground and elsewhere; to amend treasure trove; and for connected purposes.' This Bill, a copy of which is attached at Appendix 'D', received a second reading in the House of Lords on Monday, 8th February, 1982, and was committed into Committee of the Whole House. Upon first reading, Lord Abinger's Bill appears quite simple and straightforward; however, if it becomes law it will have considerable ramifications, not least for coroners and the police.

The Bill does not seek to change the workings of treasure trove, rather, it aims to extend the range of finds to which it would apply (clause 1(2), (a), (b) and (c)) and to remove the necessity to establish that an object was hidden with a view to its recovery (clause 1(3)). Similarly, the Bill does not seek to affect the existing procedure regarding the prerogative to reward finders, despite the decision in the case of Parker v British Airways Board, as above. However, a very significant proposal is made at clause 3, which specifies that a duty be imposed on any person finding an object, which falls within the definition given at clause 1, to forthwith and in any event not later than forty-eight hours afterwards, report such a find to the coroner or any police officer or to the British Museum and, if practicable, leave the object in an undisturbed state where it was found. Clause 4(2) makes it an offence to fail to comply with clause 3.

On examination, Lord Abinger's Bill is fraught with possible difficulties. The most obvious is the potential for an increased workload, both for the coroner and the police, created by the processing of what might conceivably become a significant growth in the number of items which, by virtue of clause 1(2)(c), could be classed as treasure trove.

Perhaps the most serious difficulties for the police would arise from the provisions of clause 3, which, as with the question of workload, is inexorably linked to the decisions made by the Secretary of State in relation to clause 1(2)(c). I have serious doubts as to the practicalities of enforcing clause 3, in that the offence is committed when the find is made and the most likely occasion for the offence to be detected by the police is when the treasure hunter is still searching an area or on his way home with finds in his possession. By virtue of the provisions of the Bill the finder will have the defence that he was going to report the find within the specified forty-eight hours - or even seven days, as has been proposed by some. As if to complicate this point further, there is no mention of police powers to stop, search, detain and seize, which are necessary for the proper enforcement of the offence.

The question is then raised with regard to the finder's possession of the object and the practicalities of leaving it undisturbed, who is to be the judge of this point? Further, if the object is left in situ who is to be responsible for its security? In addition, the word 'finding' is not defined, which will undoubtedly cause some confusion.

I also note that the action to be taken upon receipt of information that an object has been found is not specified. For example, is the object to be seized by police, if so what is then to be done with it? Will the local museums be responsible to the coroner or will all actions be taken through the coroner's officer, usually a police officer or a civilian employed by the police authority?

As can be seen, there are many problems to be resolved. The Earl of Avon, speaking for the Government, during the debate on the second reading of the Bill, summed up the difficulties with clause 3 as follows:

16.

> "..... I am sure that clause 3 is partly too sweeping and partly too vague to serve as it stands."

There are obviously many questions to be asked before this Bill can become law. To this end it is to be hoped that both coroners and the Police Service will be afforded the opportunity to give their views and recommendations as the resultant legislation will require their support if it is to succeed in its objectives.

CONCLUSION

To turn full circle, in my introduction I quoted Mr. Ian Robertson of the Museums Association, as saying:-

> "Archaeology is part of our national heritage.
> People are not entitled to raid it for their pleasure."

I subscribe to this view and consider that all archaeological finds, large or small, valuable or not, should be properly recorded and, at first instance, offered to museums, national then local, in order that society as a whole can derive interest and benefit from them. Morally, I believe treasure hunters to be stealing from society and, theoretically, from the person upon whose land they were when the find was made.

It can be seen from this paper that the existing laws are inadequate to deal with the situation in which our modern, technological society finds itself. If it is accepted, and it may not be for a variety of reasons, not the least being ignorance of the subject, that the majority of our society wish to see legislation introduced with the aim of comprehensive archaeological preservation, then I consider the measures put forward in Lord Abinger's Bill will be a disappointment. I consider they will only achieve a very limited improvement in the present situation for two reasons: (a) the Bill reinforces the finder's claim to the object found by continuing the old treasure trove practice of rewarding or returning objects to the finder, thus giving tacit approval to the practice of treasure hunting and (b) it creates an offence which, in practical terms, will be most difficult to enforce.

Whilst I have every sympathy with the objectives of Lord Abinger's Bill, I cannot help feeling it would be preferable for the Government to 'grasp the nettle' and start again from the beginning with the object of creating a full antiquities statute and, in so doing, dispense with treasure trove, which was described during the second reading of Lord Abinger's Bill as being:

17.

"an instrument of almost pitiable inadequacy
for archaeological preservation."

Inspector G.F. Hardy
Surrey Constabulary

APPENDIX 'A'

STOP TAKING OUR PAST

The campaign against the plundering of Britain's past

STOP is a national campaign promoted by the following major organisations who are concerned that the growing use of metal detectors is having a serious and detrimental effect on the archaeological landscape and the national heritage.

STOP was founded in 1979 in order to bring to the attention of the general public, politicians, local authorities, landowners, schools and metal-detector users themselves the inherent dangers of this 'hobby'.

STOP is actively supported by:

THE ASSOCIATION OF COUNTY ARCHAEOLOGICAL OFFICERS — the body which represents archaeologists employed by county councils

THE COUNCIL FOR BRITISH ARCHAEOLOGY — the representative body for British archaeology, comprising local and national societies, professional units, museums and universities

THE MUSEUMS ASSOCIATION — the body representing the interests of local and national museums

RESCUE, THE BRITISH ARCHAEOLOGICAL TRUST — an independent Trust concerned with the safeguarding of the archaeological environment

THE STANDING CONFERENCE OF UNIT MANAGERS — the association of professional archaeology unit directors

THE SOCIETY OF MUSEUM ARCHAEOLOGISTS — representing archaeologists working within museums

THE UNITED KINGDOM INSTITUTE FOR CONSERVATION — representing all those concerned with the conservation of objects in museums, units, Trusts and universities

YOUNG RESCUE — for children aged 9-16 who are interested in archaeology

in fact **STOP** is supported by all those people, amateurs and professionals, concerned with the excavation, preservation, interpretation and display of material remains.

STOP believes that treasure hunting constitutes a great threat to the country's archaeological heritage, and is thus contrary to the national interest. The concept of treasure hunting is totally at variance with the objectives and practices of archaeology in studying and safeguarding our tangible past for the good of present and future generations.

Further information can be obtained from: **Henry Cleere, Director, Council for British Archaeology,**

WHY STOP?

One of Britain's richest assets is its heritage. Known archaeological sites are not simply oases of antiquity in an archaeological desert, but represent a much more extensive reservoir of information that lies below. An archaeologist can rarely assure a treasure hunter that a particular area is archaeologically 'safe'. As a result, the growth of indiscriminate treasure hunting poses a threat to our past.

There have been other threats, as for example in the early 1970s when large numbers of archaeological sites were destroyed without record by mining, urban development, motorways, intensified agricultural methods and afforestation. But the new threat is hydra-headed, and perhaps more substantial, for it is members of the public themselves who are now destroying their own past.

Only education and improved public awareness can remove this threat. At root it is a social problem which can only be cured by the public itself making the irresponsible aspect of treasure hunting socially unacceptable. **STOP** was formed for this purpose. The campaign aims to increase public understanding through the media, in museums, in schools, through local authorities and landowners. Already several local authorities have responded by prohibiting the use of metal detectors on their land, and the campaign has the support of the Association of District Councils.

The organisations behind **STOP** represent all aspects of archaeology, both professional and amateur. They have all had enough of seeing objects taken away by individuals. They are tired of seeing their efforts in the field thwarted by thoughtless or unscrupulous people with metal detectors. They are aware that a great erosion of history is taking place which will be to the loss not just of this generation but to all generations in the future.

It is time that the public was told how it is being deprived of its common heritage and that is what **STOP** intends to do.

TREASURE HUNTING AND THE LAW

Once a treasure hunter goes outside his own plot of land, he comes within the reach of the law. This principle, therefore, bears upon treasure hunters for most of their operating time. Yet it is quite plain that many treasure hunters either do not know or simply do not care how the law affects them.

In the first place, nobody has any right whatever to go, without permission, on to somebody else's land. All land is owned by somebody. Common land, roadside verges, woodlands, river banks and the seashore are no exception. To go upon another man's land, without his leave actually sought and given, is nothing less than an illegal act. Glib talk about 'doing no harm' or 'thinking the owner would not mind' is beside the point and deceives no-one. Entering the land secretly or at night increases the wrong, whether civil or criminal. A treasure hunter does not go onto somebody else's land to admire the view or blow his nose. He is often bent upon removing, if he can, objects of value which do not belong to him. It would be very odd indeed if the law did not penalise such conduct. In truth, the law operates precisely and firmly in every such case.

At criminal law, the removal of objects from another man's land is just as much theft as the removal of objects from his house. It matters not who placed the objects in the land or how or when. Their acquisition by the treasure hunter makes him liable to a criminal prosecution under the Theft Act 1968. The punishment for theft may be a fine or imprisonment, or both.

Objects that are made of gold or silver may belong to the Crown as treasure trove. Such objects have to be reported to the Coroner at once. The pocketing of such objects will be Crown or are not treasure trove and belong to the landowner in the ordinary way.

At civil law, the mere act of going, without permission, upon another man's land is trespass. The result can be a court injunction and an award of damages against the treasure hunter. It would not assist the treasure hunter to claim that he was seeking, or had indeed found, treasure trove objects, which pass to the Crown. The intention to remove something from the land would, in fact, aggravate the trespass and could increase an award of damages. Furthermore, the treasure hunter may be liable in damages to the landowner for the value of any treasure trove removed. But for the treasure hunter's unlawful entry and interference, the objects, even though treasure trove, would have remained in the landowner's possession and he himself could have secured the reward payable by the Crown for treasure trove.

Archaeological sites, protected by statute, are in a special position. In addition to the penalties already noted, the Ancient Monuments and Archaeological Areas Act 1979 makes it an offence to use a metal detector on such a site without the consent in writing of the Secretary of State. It is a separate offence to remove any object of archaeological or historical interest discovered on such a site by the use of a metal detector.

It is, therefore, clear that the use of a metal detector in the manner adopted by many treasure hunters is a lawless activity. All treasure hunters should understand the true position under the law. Landowners on their side should realise the many legal remedies open to them and to the public authorities for the control and punishment of

A HOBBY?

Treasure hunting has been described as 'Britain's fastest growing hobby'. Home Office figures show that the number of licences has increased about 100% a year since 1974.

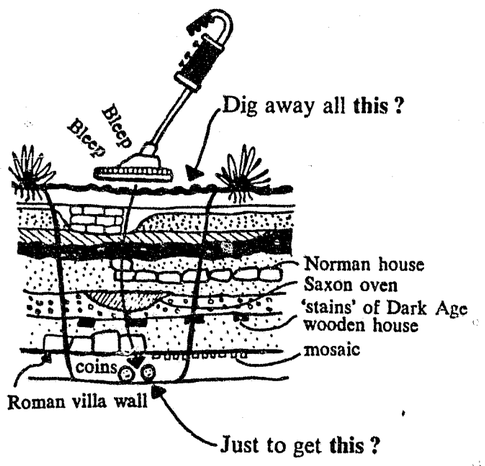
Of these detector owners a large number belong to organised detector clubs whose activities are often responsible and adhere to codes of conduct. It is difficult to work out the total membership of these clubs and societies but it would be fair to say that they constitute only a *minority* of total users. In addition there are those who have no licence at all and escape the official figures.

Many detector users are by nature solitary operators, taking their machines out into fields and operating them in their own favourite and rarely disclosed places. These include people who act purely for their own personal gain, resulting in the removal of objects of importance from our national heritage. These people seldom report their 'finds' to local museums or archaeological groups, or may do so only in order to have their finds identified, free of charge, so that they are better equipped to dispose of the objects for a good price. Some have no interest in the site or even in the object itself — merely its monetary value. They are known to range over the countryside prospecting, often illegally, on protected sites and on private land, often without the knowledge of the landowner.

These 'cowboys' act in direct opposition to the much larger body of people, including some metal-detector users, who have a deep interest in their local and national past. Since the middle of the last century tens of thousands of local historians and amateur archaeologists have found a great satisfaction in studying and recording the material remains of their past and the ancient landscape which contains them. Their work is jeopardised by the depredations of this new hobby and everyone's understanding of the past is at risk.

The conflict is not simply a collision between two hobbies. On the side of the treasure hunters are ranged the forces of big business with their investment in the sale of metal-detecting machines and, more insidiously, the growth in dealing in antiquities.

Britain is unusually rich in the material remains of the past. Until recently this wealth was available to everyone, lovingly investigated, conserved and presented by generations of amateur historians and archaeologists. Metal detectors, in the hands of pirates who act in the name of a hobby, are now being used to plunder that past under the guise of sport.



DAMAGE

Archaeological sites, part of the national heritage, have been ransacked across the country. Treasure hunters have damaged sites protected by law and even some sites which were in the process of excavation.

At the scheduled Roman site of Mildenhall, Wiltshire, a coin hoard was discovered by treasure hunters who removed it. In order to retrieve some useful information about the hoard a controlled rescue excavation was immediately carried out by archaeologists from Devizes. The following night police apprehended three treasure hunters on the same site. The next day more intruders hacked away the remaining undisturbed layers in the region of the hoard. The site was disturbed to a depth of 70cm (2'4") and important historical evidence, including part of a Roman floor, was destroyed and the remains of not one, but two hoards were hopelessly jumbled.

The Mildenhall case is not an isolated example. Instances of treasure hunters working on scheduled sites have been reported from many parts of the country, including Somerset, Dorset, Hampshire, Surrey, Gloucestershire, Essex, Northamptonshire, Lincolnshire and West Yorkshire. Rescue excavations have had to be mounted at the nationally important sites of Uley, Gloucestershire, Wigber Low, Derbyshire and in the New Forest as a result of severe damage by treasure hunters. In the Welsh counties of Glamorgan and Gwent treasure hunters have been observed at work on a wide variety of archaeological sites, including Roman villas, Romano-British settlements, forts, and earthworks of different periods. Two-thirds of the Glamorgan-Gwent cases known to **STOP** concern scheduled ancient monuments.

Treasure hunters often maintain that the holes they dig are very small, and hence that they cannot be held responsible for damage which is inflicted on archaeological sites. This argument takes no account of the cumulative damage which can be caused when a site is repeatedly worked by treasure hunters over a period of time. An excavation at one such site — a Roman temple — revealed that 75% of it had already been disturbed. A visit to another site where users of metal detectors are to be seen at most weekends showed no less than 40 treasure hunters at work. The site is scheduled, that is, protected by law. A number of Roman sites are known to be the targets of incessant treasure hunting.

Perhaps the most unacceptable face of damage caused by treasure hunting occurs when excavations are taking place. At one site in Colchester treasure hunters looted Roman graves and the situation became so bad that a double row of fencing, barbed wire and night security lights had to be erected to protect the site from further pillage.

Damage is not confined to the making of holes in the past. Once a metal object is removed from the ground it may start to decay. Usually it will need careful scientific conservation to make it stable, yet publications on treasure hunting have advocated methods which include the use of baking soda, toothbrushes and even Worcester sauce. This can lead to damage twice over: once when the object is divorced from its site, and again when it is not properly conserved.

The National Farmers' Union, the National Trust and many landowners are concerned that damage has been caused by treasure hunters going on farmland without proper authorisation and digging holes when they locate an object. Holes left empty or badly re-filled are a danger to livestock. Within urban areas the smooth turf of parks and playing fields is scarred and pitted by similar indiscriminate digging.

There are some treasure hunters who act illegally and know it. There are many more who use metal-detectors without realising the damage they may cause and without knowledge of the relevant laws. The number of metal objects brought into museums for identification has increased dramatically in the past two years. To their credit, some treasure hunters donate or loan these finds for research or display. But it is plain that there is a fast-expanding commercial market for British antiquities, that this is linked to the growing popularity of metal detecting, and that a great deal of material is vanishing into the hands of private

THE PURPOSE OF ARCHAEOLOGY

We all need the stability which comes from a thorough knowledge of our own heritage, our own forebears, the landscape they formed in which we live and the objects they made and used which form the basis of our own economy and technology. And, although the past began yesterday, the distant past stretching back to the first settlement of this island is part of a long chain of actions and events which make up our common history.

Archaeologists are not self-appointed custodians. Their training and their work is aimed towards producing a clearer picture of our past which can be passed on to everyone and handed down to future generations. They are concerned with facts. These facts are derived not only from the objects but also from the places whence those objects came, and the structures and settlements in which their users lived and died. Archaeologists are interested in objects made of many different materials — of pottery, stone, bone and glass — as well as of metal and, from a mosaic of tiny bits and pieces, they can reconstruct national treasures like Sutton Hoo and the Roman palace at Fishbourne.

Excavation is probably the best known archaeological technique. The successive layers of evidence laid down by our ancestors are peeled off one by one, starting from the most recent, and are subjected to meticulous study and analysis. The remains of structures and features such as pits, ditches and hearths are recorded and the objects found in them are related to the layers in which they were found. Every morsel of information is extracted from each layer — not excepting the topmost — before the next one is broken into. This information is derived not only from man-made objects but also from the pollen deposited in distant summers, from the minute remains of snails and beetles, and from the charcoal from long-dead hearths.

These archaeological layers form a record nearly as informative as the written word and digging irregular holes to grub out individual objects of metal may be compared to tearing illuminated capitals out of unique manuscripts: the letters have little significance in themselves and the full text is mutilated so that it becomes hard to understand.

It may seem that the archaeologist and treasure hunter are alike in that they seek for buried material — but beyond that there is no comparison. The archaeologist is bound by his training to pass his information on and to house his finds in a museum for everyone's enrichment — some treasure hunters pocket their finds or sell them.

And, for the archaeologist, excavation is only one aspect of his work. Just as significant is fieldwork, a non-destructive technique involving the detailed study of landforms and boundaries and the systematic collection of surface finds that have been revealed by ploughing or animal action. Properly analysed in their exact context these finds can yield as much information about the extent and nature of human settlement and activity as excavation which is used only sparingly by archaeologists because of its destructive nature. The removal of a single class of object — in this case metal —from this surface record can seriously hamper the archaeologist in his interpretation of the results of fieldwork.

It is self-evident that the picture of the past built up so painstakingly by archaeologists for the benefit of their modern descendants is immeasurably richer than the sparse and random glimpses resulting from the jackdaw-like amassing of metal objects by treasure hunters. Moreover the results of the archaeologists' work are freely available for all to enjoy and profit from, to increase our understanding of the past and to deepen our sense of belonging in the present.

Extract from Home Office Circular No. 68/1955

SECTION V

TREASURE TROVE

37. Objects of gold or silver (including coins, plate and bullion) which have been hidden in the soil or in buildings, and of which the original owner cannot be traced, are treasure trove, and by law the property of the Crown* (unless, as in some rare cases, the "franchise of treasure trove" has been expressly granted to a subject, in so far as finds in the particular locality are concerned). It is important for historical and archaeological reasons that any such finds should not be concealed, but should be reported and handed over in their entirety to the proper authority: a finder who fails to do this may be guilty of a criminal offence. If the finder of such objects reports the find promptly, and it is decided that it is treasure trove and, therefore, the property of the Crown,* he will receive its full market value if it is retained for the Crown, the Queen, the Duke of Cornwall, or for a museum. If it is not retained, he will receive back the objects themselves, with full liberty to do what he likes with them; or, if he wishes it, the British Museum will sell them for him at the best price obtainable. If the coroner decides that more than one person was concerned in the finding, then the reward may be divided; but it should be emphasised that the reward is made to the actual finder(s) and not to the owner or occupier of the land.

38. Anyone who finds such objects should report the find to the coroner for the district in which the find is made, but the first intimation of the finding of something that may be treasure trove may sometimes reach the coroner through the police or the Director of the British Museum or the Director of the National Museum of Wales, with whom the finder may have communicated. When the finding of an object that may be treasure trove is reported to a coroner, it is his duty to summon a jury and hold an inquest in order to inquire whether the articles found are or are not treasure trove and who was the finder or were the finders thereof.

39. From the moment when the possibility arises of an inquest being required, the British Museum, or, in the case of finds in Wales, the National Museum of Wales, are available for consultation and advice, which may include, according to the circumstances of the case:—

(*a*) metallurgical examination or cleaning or other museum treatment to establish
  (i) the nature of damaged objects or of objects whose nature has become obscured;
  (ii) whether the metal is gold or silver (long interment in soil may alter the appearance of gold and silver to look like base metal);
(*b*) archaeological advice whether the circumstances suggest that the objects had been hidden, e.g. whether they are likely to have been derived from a hoard (probably treasure trove) or a burial (probably not treasure trove);
(*c*) first aid for damaged or fragile objects;
(*d*) ensuring the attendance of a qualified expert witness to confirm at at the inquest, if held, information derived from action taken under (*a*), (*b*) or (*c*).

40. The containers in which treasure trove may be found and associated finds are often of special scientific and archaeological importance; for

* In Lancashire, and in certain Extra-Palatinate liberties, treasure trove is the property of Her Majesty in right of the Duchy; in Cornwall treasure trove is the property of the Duke of Cornwall in right of the Duchy.

instance, earthenware pots, base-metal basins, purse-mounts, remains of cloth or leather bags and the like. The coroner's duties do not extend to dealing with these. But the British Museum or the National Museum for Wales, as the case may be, would welcome any information about such containers and finds which the coroner can give when communicating with them, and would also welcome an early opportunity to inspect such containers and finds along with the possible treasure trove.

41. Coins and other ancient objects of copper, bronze or any other base metal are not treasure trove and finds need not be reported to coroners (though there may well be a duty to report them to the police or to the owner of the land or building where they are found); but the British Museum, in Wales the National Museum of Wales, or the appropriate local museum, is always glad to hear of such finds and, if they are reported, may in suitable cases purchase them direct, or advise on their disposal.

42. If, in connection with any find, a difficult question of a legal nature arises before or during the inquest, enquiry may be made of the Treasury Solicitor, 3 Birdcage Walk, St. James's Park, London, S.W.1.

43. Upon completion of the inquest, treasure trove, whether found in England or Wales, should be sent to the Director, British Museum, London, W.C.1, who will attend to its disposal and suitable payment to the finder or finders. It is asked that especial care should be taken in the packing of treasure trove and that the method of despatch should be discussed beforehand with the British Museum in the case of particularly valuable or fragile finds.

44. Any expenses incurred in consulting the British Museum or the National Museum for Wales, obtaining the attendance of a witness or witnesses, the despatch of objects for expert examination before an inquest or the despatch of treasure trove for final disposal, fall to be dealt with in accordance with the provisions of sections 25 and 26 of the Coroners Act, 1887, and section 29 of the Coroners (Amendment) Act, 1926.

Extract from Stones Justices Manual 1981, Vol. 1, Pages 980 and 981

PART III (e)

MISCELLANEOUS AND SUPPLEMENTAL

Restrictions on use of metal detectors

42. Restrictions on use of metal detectors.—(1) If a person uses a metal detector in a protected place without the written consent of the Secretary of State he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding £200.

(2) In this section—

"metal detector" means any device designed or adapted for detecting or locating any metal or mineral in the ground; and

"protected place" means any place which is either—

(*a*) the site of a scheduled monument or of any monument under the ownership or guardianship of the Secretary of State or a local authority by virtue of this Act; or

(*b*) situated in an area of archaeological importance.

(3) If a person without the written consent of the Secretary of State removes any object of archaeological or historical interest which he has discovered by the use of a metal detector in a protected place he shall be guilty of an offence and liable (h) on summary conviction to a fine not exceeding the statutory maximum (k) or on conviction on indictment to a fine.

(4) A consent granted by the Secretary of State for the purposes of this section may be granted either unconditionally or subject to conditions.

(5) If any person—

(*a*) in using a metal detector in a protected place in accordance with any consent granted by the Secretary of State for the purposes of this section; or

(*b*) in removing or otherwise dealing with any object which he has discovered by the use of a metal detector in a protected place in accordance with any such consent

fails to comply with any condition attached to the consent, he shall be guilty of an offence and liable, in a case falling within paragraph (*a*) above, to the penalty provided by subsection (1) above, and in a case falling within paragraph (*b*) above, to the penalty provided by subsection (3) above.

(6) In any proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest.

(7) In any proceedings for an offence under subsection (1) or (3) above, it shall be a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he used the metal detector was a protected place and did not believe that it was. [Ancient Monuments and Archaeological Areas Act 1979, s. 42.]

(e) Part III contains ss. 42–65.

(h) For procedure in respect of an offence triable either way, see Magistrates' Courts Act 1980, ss. 18–21, in PART I, *ante*.

(k) For meaning of "the statutory maximum", see s. 61, *post*.

A

B I L L

INTITULED

An Act to provide for the better protection of small antiquities discovered in the ground and elsewhere; to amend treasure trove; and for connected purposes. A.D. 1981.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Protection of portable antiquities and amendment of treasure trove.

1.—(1) After the coming into force of this Act the law of treasure trove shall operate with the amendments specified in this section.

(2) Treasure trove shall comprise not only gold and silver but also any object which is—

(*a*) made of any alloy containing gold or silver; or

(*b*) lying with or adjacent to a treasure trove object; or

(*c*) contained in any class of object specified by order made under this subsection for the protection of portable antiquities by the Secretary of State; and the Secretary of State shall have power to make, amend and revoke such an order.

(3) It shall no longer be necessary to establish that an object was hidden with a view to its recovery.

Preservation of Crown prerogative.

2. Nothing contained in this Act shall affect in any way the prerogative power of the Crown to give rewards or otherwise make payments in respect of treasure trove objects or to return such objects to their finders.

Duty to report finds.

3. Any person finding an object which falls within section 1 of this Act shall forthwith and in any event not later than forty-eight hours afterwards report such finding to the Coroner or any police officer or to the British Museum or (in any case of an object found in Wales) to the National Museum of Wales and shall if and so far as practicable leave undisturbed such object and the place in which it is found.

Supplementary provisions.

4.—(1) An order under section 1(2)(*c*) of this Act shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be varied or revoked by a subsequent order under the subsection.

(2) If any person contravenes section 3 of this Act he shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred pounds.

Short title and extent.

5.—(1) This Act may be cited as the Antiquities Act 1981.

(2) This Act shall not extend to Scotland.

Antiquities [H.L.]

A

B I L L

INTITULED

An Act to provide for the better protection of small antiquities discovered in the ground and elsewhere; to amend treasure trove; and for connected purposes.

The Lord Abinger

Ordered to be printed 3rd December 1981

LONDON
Printed and published by
Her Majesty's Stationery Office
Printed in England at St. Stephen's
Parliamentary Press

30p net
(52519)

(33) 48/3

ISBN 0 10 403382 7

NOTES

1. Attorney-General of the Duchy of Lancaster v. G.E. Overton (Farms) Ltd., The Weekly Law Reports, March 5, 1982, p. 399
2. Ibid. p. 401
3. Ibid. p. 401
4. Ibid. p. 405
5. R.B. Wells, Treasure Trove, (The Police College Magazine, Spring 1967) p. 68
6. W.B. Purchase and H.W. Wollaston, Jervis on the Office and duties of Coroners, ninth edition p. 31-32
7. Gavin Thurston, Coronership p. 42
8. Charles Sparrow, Treasure Trove and the Protection of Antiquities, (Medicine, Science, and the Law, January 1974, Vol. 14. Number 1) p. 9
9. Smith and Hogan, Criminal Law, 4th Edition, p. 655
10. Parker v. British Airways Board, The Weekly Law Reports, March 19, 1982, p. 514
11. Smith and Hogan, Criminal Law, 4th Edition, p. 517
12. J.C. Smith, The Law of Theft, 4th Edition, p. 59 para. 110
13. Charles Sparrow, Treasure Trove and the Protection of Antiquities, (Medicine, Science, and the Law, January 1974, Vol. 14. Number 1) p. 10
14. Ibid. p. 9
15. Home Office, Report of the Committee on Death Certification and Coroners, November 1971, Chairman Judge N.J.L. Brodrick, Q.C. p. 350
16. Hansard, Proceedings of the House of Lords, 8th February, 1982, p. 32
17. Ibid. p. 18

BIBLIOGRAPHY

ATTORNEY-GENERAL OF THE DUCHY OF LANCASTER v. G.E. OVERTON (FARMS) LTD., The Weekly Law Reports, March 5, 1982, p. 397-407

BAKER E.R. and DODGE F.B., Baker and Wilkie's Police Promotion Handbooks, No. 1 Criminal Law, fifth edition, (Butterworths, 1978)

GRIEW, Edward. The Theft Act 1968, second edition, (Sweet and Maxwell, 1974)

HANSARD, Proceedings of the House of Lords, 8 February, 1982, p. 16-33

HIBBERT v. McKIERNAN, The All England Law Reports, 1948, Volume 1, p. 860-863

HOME OFFICE, Report of the Committee on Death Certification and Coroners, November 1971, Chairman Judge N.J.L. Brodrick, Q.C., P. 152-153, paras 13.21-13.27; p. 350, rec. 31

PARKER v. BRITISH AIRWAYS BOARD, The Weekly Law Reports, March 19, 1982, p. 503-518

PURCHASE W.B. and WOLLASTON H.W., Jervis on the Office and Duties of Coroners, ninth edition (Sweet and Maxwell, 1957) p. 27-33

SMITH J.C., The Law of Theft, fourth edition (Butterworths, 1979)

SMITH J.C. and HOGAN B., Criminal Law, fourth edition, (Butterworths, 1978)

SPARROW, Charles, Treasure Trove and the Protection of Antiquities, (Medicine, Science and the Law, volume 14, number 1, January 1974)

STONES JUSTICES MANUAL, 1981, Volume 1 (Butterworths, 1981)

THURSTON, Gavin, Coronership, (Barry Rose Publishers, 1976)

WALKER, Peter N., A Wooden Falsehood, (The Police Review, 26 December, 1975, p. 1626)

WELLS, Sgt. R.B., Treasure Trove, (The Police College Magazine, Spring 1967, p. 65-71)

R. v. WOODMAN, The All England Law Reports, 1974, volume 2, p. 957

END