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Striking Gold - The Case of the Shropshire Piano

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In the more than twenty years since the Treasure Act 1996 entered into force there have been many dramatic discoveries of treasure. The media frequently reports the results of remarkable finds, usually made by metal detectorists in fields and open spaces. A unique, not to say bizarre, example, however, is the discovery of a cache of gold coins found concealed in a piano in Shropshire in 2016.[1] *It makes the point that the old law of treasure trove still has a twilight existence in circumstances that are prone to recur.*[2]

In 2016 Bishop's Castle Community College in Shropshire had been presented with five pianos in response to an appeal. The most promising instrument was an old Broadwood upright piano which was selected to receive the attentions of Mr Backhouse, a piano tuner. He discovered a problem that when he struck some of the keys they were partially seized up and not moving freely back to their original position after they had been depressed. This could have been as a result of corrosion as the piano had been stored in damp conditions beforehand. By chance, Mr Backhouse was not only a piano tuner but a piano technician. He therefore decided to lift some of the keys to investigate. When he did so, he found a number of small packages precisely placed in the limited space between the keys and the hollow dustboard below. He initially thought he had found bags of mothballs. Further investigation revealed the largest haul of gold sovereigns ever found in Britain consisting of 913 coins dating from 1847 to 1915[3] and weighing some 6 kgs. In modern terms this represents a sum in excess of £350,000. The legal issue which this discovery posed was the ownership of the coins and, in particular, whether the hoard fell within the definition of treasure under the Treasure Act 1996.

The definition of treasure in section 1 is intricate but reasonably clear. As it relates to coins, section 1(1) requires that there must be, "at least two coins in the same find which are at least 300 years old at that time" and be of at least 10 per cent precious metal. Although the coins were undoubtedly of precious metal, they clearly fell outside the modern definition of treasure under the Act since they were less than 300 years old. Section 1(1)(c) nevertheless provides that treasure includes, "any object which would have been treasure trove if found

1 *The Times* 21 April 2017. A fuller account, which considers some of the conjectural possibilities raised by the case, can be found in a BBC 4 radio documentary, Punt PI – Treasure in the Piano, at <https://www.bbc.co.uk/programmes/b09309h1>. I am particularly indebted to Peter Reavill, Finds Liaison Officer for Herefordshire and Shropshire, who generously provided me with additional information about the case. A detailed technical account of the find appears in the Portable Antiquities Scheme (PAS) records at: <https://finds.org.uk/database/artefacts/record/id/911086 and <https://finds.org.uk/database/artefacts/record/id/911084>.

2 An example might be the discovery of objects in articles of second-hand furniture which is not altogether unusual. An interesting example from the United States is discussed in <https://www.chron.com/houston/article/Secret-drawer-in-estate-sale-dresser-yields-trove-6255839.php>.

3 The effect of s. 3(6) of the 1996 Act is to raise a rebuttable presumption. An object such as a coin is presumed to be of the date shown on the coin unless shown not to be.

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before the commencement" of the Act.[4] The curious question therefore became whether the find amounted to treasure trove under the old law which it was the intention of the 1996 Act to replace because of its manifest shortcomings.[5] The essential questions under the old law of treasure trove are: (1) is the article of gold or silver?; (2) was it deliberately hidden with the intention that the object be retrieved later?; (3) is there a claimant, such as the original owner or a successor in title, who has a better claim to the object than the Crown?

These issues were exhaustively explored in an inquest by the Shropshire Coroner which extended over three months and which, on 20th April 2017, declared the find to be treasure. The route to this conclusion was not, however, straightforward. Nobody could doubt that the hoard was of gold of a high degree of purity. One of the most problematic aspects of the old law was, and indeed as this case shows still is, the need to find an intention on the part of the person who deposited the item(s) to recover it or them at a later time. This, for example, would rule out something placed in the ground, or a river, as a votive offering. For this reason alone the famous Sutton Hoo ship burial did not constitute treasure when it was discovered in 1939.[6] Title in the finds resided in the landowner but for her generosity in donating them to the State. In the Shropshire case it was not stretching probability to infer from the circumstances that there was an intention to recover the money. The size of the hoard and the very deliberate care and skill with which it was concealed make it highly improbable that it was lost or abandoned.[7] It seems improbable that it was intended as a votive offering to the Muse Terpsichore.

The most difficult issue in the case was the third criterion, whether there was an identifiable owner, or their heir, with a better title to the coins and this in turn led to an extensive review of the history of the piano and its contents. Probably the key piece of evidence was the packaging of the coins. This included cardboard used in the cartons for the breakfast cereal still known as 'Shredded Wheat' which was not produced by the factory in Welwyn Garden City before 1926. A close examination of the packaging is at least consistent with the possibility that it dates from the period 1936-38, which could link the deposit to the outbreak of war in 1939. The most probable inference seems to be that the entire hoard was concealed in the piano as a single event after 1936 but may have been packaged and concealed in another place before that. The piano itself was effectively dismantled in the course of the inquiry in a fruitless attempt to extract some clues and to check other cavities. It had been given to the College by a Mr and Mrs Hemmings who in turn had acquired the piano in Saffron Walden in 1983. They had bought the piano from a firm that dealt with house clearances but the firm no longer had records for that year. The case therefore makes the incidental point that even comparatively recent business records may be of no avail because they have been discarded and, not surprisingly, no member of the firm had any recollection of where the piano had been sourced. A railway record showed its delivery from London to Saffron Walden in November 1906, but this still provided no clear link to ownership of the coins. The coroner received some 40 submissions from those either claiming the hoard or providing information bur ultimately he held that none of the claimants, on a balance of probabilities, could adduce satisfactory evidence of ownership. The surprising outcome is that it still remains a mystery who deposited the money and exactly when, or why, this was

4 There is a similar saving provision in the recently enacted Treasure Act 2017 (Isle of Man).

5 See e.g. 'Treasure Trove and the Case for Reform', Roger Bland, (1996) I *Art Antiquity and Law* 11, 'Conservation, Control and Heritage – Public Law and Portable Antiquities', Geoffrey Bennett and C. Brand, (1983) *Anglo American Law Review*, Vol. 12, 141.

6 It would now be treasure under s. 1(1)(i) of the 1996 Act. The range of objects brought within the definition of treasure would also now be enhanced by s. 1(1)(d).

7 This point emerges very clearly from the details of the PAS Report, see note 1 above.

done. The result of a declaration of treasure is that the found property vests in the Crown. However, where no museum expresses interest in the objects (or at least all of them, as happened in this case), the bulk of the items were returned to be divided equally between the owner of the piano, namely the College, and the finder Mr Backhouse.

One issue suggested by the case, which has not yet arisen in the aftermath of a coroner's inquest, is what if a claimant subsequently appears with a compelling claim to the hoard? This of course is very unlikely in the case of ancient deposits but in this case the probable timespan in the region of 70-80 years and the improbability of mislaying without trace 6 kg of gold make it a less far-fetched possibility. One argument would be that a claim against the present possessor of the coins is still possible by virtue of section 4(1) of the 1996 Act. This states that treasure vests in the Crown, "subject to prior interests and rights" and under the principle of *nemo dat quod non habet* the Crown cannot pass a better title to a party who subsequently acquires the goods than it itself possessed. A problem for a claimant might then be that, if this analysis is correct, there would presumably be nothing to prevent the present owner or possessor from raising in an appropriate situation a defence under the Limitation Act 1980. Suppose, for example, the person currently in possession of the coins had carried out work on them such as having them cleaned and then allowed them to be exhibited in a museum on indefinite loan. This might well start time running under section 3 of the 1980 Act so as to defeat a claim in conversion.[8]

Although this case is unique on its facts, a recent case which is comparable, and may well have served as a template for the Shropshire Coroner, is the Hackney Double Eagles case in 2007.[9] That involved the discovery of 70 American Double Eagle gold coins unearthed in the back garden of a house in Hackney by a finder who was digging a pond. The coins were of 90 per cent pure gold and dated between 1854 and 1913 so also fell outside the definition of treasure in section 1(1) of the 1996 Act because they were less than 300 years old. A coroner's inquest was held to ascertain whether the find was within the old law of treasure trove. Before the truth finally emerged there was much, as it turned out, entirely plausible but utterly erroneous, conjecture that the hoard related, for example, to an American serviceman passing through Britain and killed in the First World War. In fact, the extraordinary story that the court heard involved a German Jewish banker from Frankfurt who had fled to London just before Kristallnacht in November 1938 and settled in Hackney with his wife and children. On the outbreak of war he was interned because of his German connection, survived a torpedo attack on a journey to Canada, and found himself eventually in Australia with other members of his immediate family interned on the Isle of Man. His remaining family, who were allowed to stay in the house, buried the coins in the garden apparently at least partly in fear of a Nazi invasion in the summer of 1940. The house was then destroyed in the Blitz and the occupants killed. The owner's son was nevertheless found and in this case successfully claimed the coins as heir to the original owner so defeating what would otherwise have been a successful claim by the Crown to the coins as treasure trove. This case might also be thought to illustrate the unknown, and more often than not unknowable, drama that may lie behind many hoards of whatever date.

Coin hoards deposited in the late nineteenth and twentieth centuries are not altogether unusual and one example is the discovery of 216 gold sovereigns at a metal detectorists

8 *Tower Hamlets LBC v. Bromley LBC* [2015] EWHC 1954 – the 'Old Flo' case is a case in point, discussed in 'Local Authority Ownership of Artworks', Alexander Herman and Katharine Mason, (2016) XXI *Art Antiquity and Law* 83.

9 A useful and illustrated account can be found in *Current Archaeology*, Issue 251 (2011).

event in a field in Twinstead, Essex in 2011.[10] The coins were dated between 1863 and 1912 and were declared treasure under the law of treasure trove. What makes this hoard unusual is that it was not found within or in close proximity to residential properties nor, as usually happens, discovered during renovations or extensions. At least ten such gold hoards are known for the period 1912-15. More discoveries involving section 1(1)(c) of the 1996 Act are therefore eminently foreseeable.

For the future it might be thought that the Shropshire case exposes yet again the difficulties encountered by coroners and those who assist them in operating the arcane law of treasure trove. In such a case much of the burden of assisting the coroner is likely to fall on the local Finds Liaison Officer who may need to devote extensive, unanticipated and unbudgeted time to the case over a prolonged period with no obvious reward for the effort. It is disappointing that section 25 of the Coroners and Justice Act 2009, which would create a single point to report for treasure and a single specialist adjudicator familiar with the law, is still not yet in force. Even if the reason for this is financial constraint it is hard to see why strengthening the criminal sanctions for failing to report a find of treasure in section 30 of the 2009 Act, which creates a new section 8A offence under the Treasure Act 1996 combined with an extension to the normal six months' time limit for summary prosecution in such a case, could not be enacted forthwith without fear of incurring additional public expense. Failure to report a find of treasure is an offence that applies regardless of whether the find falls under the new 1996 Act's definition of treasure or under the retained law of treasure trove.[11]

10 <https://finds.org.uk/database/artefacts/record/id/475376> I am grateful to Ian Richardson, Treasure Registrar British Museum for bringing this to my attention.

11 For a recent discussion of the problem of unreported finds see, 'Floating Culture: the Unrecorded Antiquities of England and Wales', Adam Daubney, *International Journal of Heritage Studies*, 2017, <http://dx.doi.org/10.1080/13527258.2017.1325770>.