

THE LAW AND PRACTICE REGARDING COIN FINDS

The Treasure Trove System In Scotland – An Update

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Introduction

A previous article in *Compte Rendu* 42, 1995, pp. 56-61, by my colleague Alison Sheridan gave an excellent summary of the Scottish Treasure Trove system as it then operated. Since that date there have been a number of changes affecting the ways in which portable antiquities are dealt with, both in Scotland and more generally in the UK, and I am grateful to Donal Bateson of the Hunterian Museum at Glasgow University for suggesting I prepare this brief update. More wide-ranging accounts of recent developments can be found elsewhere (Saville 2002 & 2006), although some aspects of the Scottish Treasure Trove system have again been modified since those accounts were written.

In Scotland, portable antiquities of all kinds are covered by the Scots common law precepts of Treasure Trove and *bona vacantia* ('ownerless goods'). The key legal principle, derived from feudal law, which underpins the treatment of Scottish finds through what is now generally known as the 'Treasure Trove system', is *quod nullius est, fit domini regis* ('that which belongs to nobody falls to the Crown') (Carey Miller 2002). The operation of the system is supported by the Scots criminal law, including the common law of theft.

Historically the interpretation of Treasure Trove in Scotland has diverged in many respects from that which pertained elsewhere in the UK, most especially in not being restricted to items of precious metal; in there being no requirement to demonstrate that objects were hidden with intent to recover; and in excluding landowners from any involvement, since they do not possess any rights of ownership over antiquities from their land (Anderson 1904; Hill 1936: 256–62). Many of the key aspects relevant to Scottish Treasure Trove were demonstrated by a famous court case concerning the St Ninian's Isle silver Pictish treasure from Shetland (Carey Miller 2002; Small *et al.* 1973).

Case history and precedent are important to the operation of the Treasure Trove system, which is legally and administratively quite complex (Carey Miller & Sheridan 1996). Basically, however, all ownerless portable antiquities are the property of the Crown unless and until otherwise determined. Finders must report their objects to the Queen's and Lord Treasurer's Remembrancer (QLTR) at the Crown Office (part of the Scottish Government), who is advised by a specialist advisory panel, comprised of individuals appointed by the Scottish Ministers. Reporting is usually via a local museum or direct to the panel's secretariat (now the Treasure Trove Unit), based at National Museums Scotland in Edinburgh.

Once a portable antiquity is claimed as Treasure Trove it is the advisory panel that recommends to the QLTR what its valuation should be for purposes of any ex gratia rewards, and to which museum collection it should be allocated. The system has, all things being equal, an in-built preference for allocation to a museum local to the find-spot, and there is a National Fund for Acquisitions facility, which in normal circumstances provides half the cost of Treasure Trove acquisitions by local museums.

Administrative changes

In 1999 a Scottish Parliament was re-established and the Treasure Trove system was included within the broad range of devolved matters for which the then newly created Scottish Executive (now the Scottish Government) became responsible. Treasure Trove financial and policy responsibility currently sits within the Culture and Gaelic Division of the Scottish Government, part of the portfolio of the Minister for Europe, External Affairs and Culture.

Guidelines for some facets of the Treasure Trove system were issued in 1999 (Scottish Executive 1999a & 1999b), but in 2002-2003 the Executive initiated a comprehensive review of the system (Normand 2003), resulting in the announcement of various changes, which are gradually being implemented, and a new statement of the official position on Treasure Trove:

The Treasure Trove system forms an important part of the Scottish Executive's approach to the preservation of the nation's cultural heritage. The Treasure Trove system will be used to safeguard Scotland's heritage of portable antiquities and archaeological objects by preserving significant claimed objects in the public domain. In accordance with the Executive's policy of increasing access to, and understanding of, our cultural heritage, claimed objects will be held by suitable institutions (usually the National Museums of Scotland or a local museum) for the benefit of the Scottish public. (Scottish Executive 2004)

Although the general administration of the Treasure Trove system and the ultimate responsibility for the claiming and allocation of portable antiquities remains with the QLTR at the Crown Office, the independent advisory panel on which the QLTR relies, and which was previously known as the Treasure Trove Advisory Panel, has been renamed the Scottish Archaeological Finds Allocation Panel (SAFAP) and increased in size to comprise six members. The renaming reflects the fact that the new advisory panel now deals with all finds deriving from archaeological fieldwork in Scotland, as well as the casual finds of portable antiquities. The panel's secretariat, recently rebadged as the Treasure Trove Unit and with a two full-time administrative staff, continues to be based at National Museums Scotland in Edinburgh. The Treasure Trove Unit is firmly established as the first port of call for all issues concerning portable antiquities in Scotland, and maintains the website which publicizes the system and provides information on current finds (www.treasuretrovescotland.co.uk).

Other changes already implemented include the issuing of certificates to all finders of claimed finds and the agreement over written terms of reference for the advisory panel. In 2007 the first annual report on Treasure Trove in Scotland was published by the QLTR for presentation to the Scottish Parliament (Crown Office 2007a), and to date this has been followed by two further annual reports (Crown Office 2007b & 2008). A detailed code of practice for the Treasure Trove system, to replace the existing guidelines, has been drawn up and will be published before the end of 2008 (and as with the annual reports this will be available via the Treasure Trove website).

Legislative change at the Westminster Parliament introduced the Dealing in Cultural Objects (Offences) Act 2003, which came into force at the beginning of 2004. This Act applies in England, Wales and Northern Ireland, but it – or any equivalent legal provision – has not yet been introduced in Scotland, the proposed Bill (Scottish Executive 2006) which was to be the vehicle for introducing it having fallen. Nevertheless, this new Act has impacted in Scotland by making it clear that it is an offence to export portable antiquities found in Scotland to other parts of the UK, unless they have previously been reported through the Treasure Trove system and have the paperwork to show they have been reported and not claimed (DCMS 2005, 15).

Coin finds

As far as coins are concerned, the situation as previously reported (Sheridan 1995: 57-58) remains much the same. The number of notified finds of individual coins, mostly made by users of metal-detectors, has continued to increase, and the vast majority of these are returned to their finders after recording (Bateson & Holmes 2003: 246). The process under the Treasure Trove system is that finders who report a coin are issued with a certificate identifying the coin and confirming that it has not been claimed as Treasure Trove, thus enabling finders lawfully to retain, sell, swap or donate their finds. With increasing recognition of the historical value of individual coin finds (Holmes 2004: 241-242), every effort is made to collaborate with the metal-detecting community over getting the message across that all coin finds should be reported.

It remains the case that most individual pre-medieval coins, if significant for any reason, will be claimed as Treasure Trove, as will all coin hoards (and their receptacles) of whatever period, and in some cases the individual coins from sites which are particularly prolific – so-called ‘market’ or ‘productive’ sites (Pestell & Ulmschneider 2003) – may also be claimed along with all other metal objects from the same locations. Also all coins found as a result of organized archaeological fieldwork will be claimed as part of the general assemblages to which they belong.

Concluding remarks

Whereas in the rest of the UK the concept of Treasure Trove has moved out of common law and into statute with the passing of the Treasure Act 1996 (Carleton 1997), there are no plans to follow this path in Scotland, where the existing Treasure Trove arrangements have numerous advantages (Saville 2002: 799-801). The basic system is robust and potentially a very effective method for protecting and preserving portable antiquities, but it is under-resourced and arguably suffers from being over-centralized. The adoption of an enlarged and dispersed structure, perhaps along the lines of the Portable Antiquities Scheme in England and Wales with its locally-based finds liaison officers (Bland 1999 & 2005), would undoubtedly achieve greater awareness of the Treasure Trove system and higher levels of finds reporting.

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