

and liberty to dig after money there. if one discover a treasure by chance
jurisdiction or magical arts, whether in his own or another's ground, the
treasure is forfeited to the Exchequer l. i. c. de thesauris.

The modern usage as to treasures, is generally different from the
Roman Law

Covarruvias (in c. Peccatum de Reg. Jur. in 6 part 3 § 2 n. 7) does
Cad. tit. § de acquir. Res. Dom. n. 31) Cyprian Regner (Consul. Decretum
§ 39, Jus de Res. Div.) Prosper Farinacius (de variis L. u. s. h. o. m. i. b. i. s.
Quaest. 104 n. 32) and others Deliver it as an almost universal Rule
now prevailing in the world, that treasures whatsoever found belong
to the King. But in the opinion of very Considerable Lawyers (as in
Comm. ad Tit. Jus. de Res. Div. § 37 Paul. Voet. Comm. ibid. l. c. de
Comm. ad Tit. § de acquir. Res. Dom. n. 11 Groeneweg. de legib. abrog. ac
39 Jus de Res. Div. Van Leunen Consul. Decretum. part 1 lib. 2 c. 3 n. 1
the Roman Law still takes place as to this matter in holland. H. Grotius
de Jure B. & P. lib. 2 c. 18 n. 7) will have Treasures in Germany, France
and Denmark to be a case ally due to the King. But that will not
appear to obtain uniformly every where in Germany (Carpzov. 2 l. c.
§ 3 Def. 4. 5) Nor yet in France Greg. Tholoan. Syntag. lib. 3 c. 11 n.
Comm. 3 Comm. 44 Jus. papen 13 tit. 7 Arrest. 1. C. de Jure B. & P.
France lib. 2 tit. 3 n. 11 Molin. ad Paris. 1 lib. 2 c. 10.

By the Customs of most places in France, the King has right
a third part of treasures, and the other two thirds are divided Equally
between the finder and the owner of the ground where the treasure was
found. And a moiety of the treasure is given to the Lord of the Manor
when the finder is owner of the ground. But there is one custom
which in this case gives to the finder two thirds, viz. one third as part
and another third as Proprietor of the ground where the treasure was
found, Les Loix Civiles de France. 2. Liv. 1. tit. 6. sect. 3. Art. 7.

The Ancient Common Law of England in relation to treasure
seems to have been the same with the Roman Law. But as for warlike
treasures were appropriated to the use of the King, or to the Lord of the
Liberty by special grant or Prescription, as it were by consent of
Nations (Bracton de Legib. Anglie lib. 3 Cap. 3 § 4 Britton fol. 20
Wood Just. of the Laws of England B. 2. Chap. 20. They distinguish
between treasures found at land, and those found in the sea, and say
that if a treasure be found in the sea the finder shall have it (Fosk. 2
168. The Wrecks of the sea belong to the Crown (ibid. 167. The
Law of Scotland doth also give Treasures to the King by his prerogative
or to others claiming by his grant (Stair lib. 2. tit. 1. § 5. So that
Treasures are now appropriated by the finders only, when there is
a National Community that hath the same appropriated to them.

The Imaginary Possession of being within their territories, which is sufficient
Ture Gentians to exclude other Nations, or private persons of the same Na-
tion from laying claim to such things. But the Emperor Leo (Nov. Leon.
51) charges those with perverſa ſuſpiciſas a criminal ſententia, who
had Invented the Right of the Prince to Treasures, contrary to the Tenor of
the Ancient Roman Laws.

Sec. 4
of Deodands.

A Deodand (Deodandum) is a thing given or rather forfeited as it were
to god for the Satisfaction of his Wrath in case of Misadventure whereby
any Christian Man without the fault of any reasonable Creature comes
to a violent death, that is when any vessel or moveable Inanimate thing doth
cause his untimely death, and he dies within a Year and a day after it. As
if a horse should throw off his rider and so kill him, or if a wheel falling
a cart and striking to the death of some thing, or if a mill wheel
Cunningly over him should kill him. In the first case the cart, or the
second the cart and horses, and in the third the mill wheel, or the
and forfeited to the King at the discretion of the King's Bench, or the
strikes off in provisions by his Majesty's Justices. This kind of Man for
the for him to be not properly a homicide nor punishable as a crime,
Law takes notice of it as far as the nature of the thing will bear, in
order to raise the greater abhorrence of Murder. The Law agrees also
to that of Moses Exo. 21. 28. Doth not ground the forfeiture in any
Default in the unhappy Instrument or occasion of such death, since
it extends to things without life, to which the plain no manner of
fault can be Imputed.

All Weapons whereby one Man kills another are forfeited as
Deodands. Where a thing not in Motion causes a Man's death, the
part of it only which is the Immediate Cause is forfeited. As where
one Climbing upon the wheel of a cart while it stands still, falls from
it and dyes of the fall, the wheel only is forfeited: But where ever
a thing which is the occasion of a Man's death, is in Motion at the
time, not only that part of it which immediately wounds him, but all
things which move together with it, and helps to make the wound
more Dangerous are forfeited also according to the Rule, Omnia
quae movent ad Mortem sunt Deodanda. Thus if one hath been
killed by a bribe from one of the wheels of a cart in Motion, the
Cart and Loading also would be forfeited, because the weight thereof
made the hurt the greater. It is said, that a Ship by a fall from which
a Man is drowned in fresh water will be forfeited, but not the
Merchandise therein, because these no way contributed to his death.