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Deodand - A Legal Antiquity That May Still Exist

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THE common law is composed, to a large extent, of ancient doctrines and principles. The lawyer who interests himself in the history and growth of those principles acquires a knowledge of subjects sometimes important to the practice as it now exists, but always extremely fascinating. Buried among the reports, yearbooks, and the writings of our earliest authors, are doctrines and theories difficult of comprehension today, yet lawsuits were decided upon them, and our forerunners in the legal profession practised them. No matter how remote they may be, it is unusual to find a single one of these forgotten doctrines or principles that have not had some place, and often a great one, in the growth of the law, and that has not left its imprint upon either the adjective or substantive law as we find it at the present time. If there is such a thing as culture, there is culture in a profession, and it is the contention of the author of this brief survey of one of these ancient theories, that no practitioner is wasting his energy or time, no matter how great his professional duties, in familiarizing himself with the old legal customs, and in general with the growth and development of the law.

Deodand means "a thing forfeited to God." And the action arising therefrom is one of our earliest proceedings in rem. It is defined in Corpus Juris (18 C. J., 489), as "any personal chattel whatever, animate or inanimate, which, becoming the immediate instrument by which the death of a human creature was caused, was forfeited to the king for sale, and a distribution of the proceeds in alms to the poor by his high almoner, for the appeasing of God's wrath." From the third Inst., 57, we have the following: "and therefore every beast or

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thing movable inanimate which occasions the death of a man within the body of a county without the default of himself or another, shall be forfeited to the king as a deodand to be employed in eleemosynam.'"

Where the doctrine originated is impossible to determine. That it existed in England long before the Norman Conquest, we are sure. We have indications of the theory outside of England—from the Law of Moses we find, "if an ox gore a man that he die, the ox shall be stoned and his flesh shall not be eaten." The beast having caused the death of the human, was damned. From the Law of the ancient Athenians we find this same attitude towards the instrumentality causing the death, for "whatever was the cause of a man’s death by falling upon him, was exterminated or cast out of the dominion of the republic." (Æschin. Cont. Cteriph) (Stephen Com. on the Laws of England, Vol. II, p. 567) and again among the ancient Goths we find a law providing for the forfeiture of the sword or weapon employed in the killing of another, even though the actual owner of that weapon were not concerned in the action. (Steirnhook dr. Jure Goth l. 3., c. 4.) (Stephen Com. on the Laws of England, Vol. ii, p. 567)

Probably the doctrine belongs by right to an age when the person who was morally responsible for the tort caused by his own negligence was not liable in a private action. The very basis of it is superstition, the implication being that the instrumentality was morally effected from having caused the death. In truth, this was so far the case that the forfeiture applied, even though the offending instrumentality belonged to the person killed, and we have an early case reported where a man was killed by his own cart, yet the cart was declared deodand and its price given to his children, not necessarily because they were his children and his probable heirs, but more likely because they were needy and it was therefore a pious use of the sum. (Glocestershire Pl, 118) In accordance with ancient ideas, the amount realized from the deodand should have gone to the kinsmen of the person slain, and probably originally it did, but the idea
soon developed that the soul of him slain would not have laid in peace until vengeance was reaked upon the instrumentality, so it was sold and the proceeds of the sale devoted to more pious uses which consisted in donation to the Church and subsequently to the king for distribution as alms, and perhaps at one time to both. Stephen has sensed this, "for it seems to have been originally designed in the blind days of popery as an expiation for the souls of such which as were snatched away by sudden death, and for that purpose ought properly have been given to Holy Church." (Stephen—Laws of England.) We have authority in the case of the stranger who was found dead, whose apparel was taken from his body and applied for the purchase of masses for the good of his soul. (Staunf P C 20, 21) And for the theory that the thing was damned as a result of its part in the killing in that where it was already blest either actually or impliedly by its employment, the doctrine did not apply, as a bell of a church which fell upon the head of the ringer. (1 Sid. 207)

From the earliest records, we see that there was no attempt made to distinguish between cases where the person killed was negligent, and between those cases were he was not at fault, though the distinction does appear in the later reports, especially in those cases decided shortly before the abolition of the doctrine in 1846 (9 & 10 Vict. c 62), and "the large number of deodands collected in every eyre suggests that many horses and boats bore the guilt that should have been ascribed to beer." We find the case of the drunken carter driving his team of oxen and cart loaded with a cask of wine, who so generously imbibed of the contents of his load as to become sufficiently under the influence of it to fall beneath the wheel of his cart which crushed and killed him. The court held that not only the cart but also the cask of wine that was in it, and the oxen that were driving it were deodand and forfeited "to appease God's wrath." (Northumberland Assize Rolls, p. 96)

Another distinction which grew in later years, though originally was not contemplated by the doctrine, was the
necessity of the moving of the object which caused the death. Bracton was certainly one of the most early to advance this limitation. We find that he (Br. 136 b) apparently thought it an abuse to condemn as deodand a thing which had not moved. He distinguishes the horse which throws a man and the horse off which a man stupidly stumbles, the tree which falls upon a human and the circumstance where a human is thrown fatally against a tree, but in reviewing the cases of his time, it is obvious that the distinction was not followed by the courts at so early a period.

The theory developed that the absolute right to the proceeds was vested in the king, to be extensively distributed by him or his high almoner as alms, or to be devoted to public work, as the building of a bridge (the price of a boat is devoted for "God's sake" to the repair of Tewkesburg Bridge, Glocestershire Pl, 237). We find deodands classed with other forfeitures accruing to the crown as royal-fish, treasure-trove, waifes, mines, and astrays, and as such might be granted as a royal franchise by the sovereign to individual subjects (see 3 & 4 Will, c. 99, containing provision for the more speedy recovery of fines, deodands, and so forth, by the crown.) The result for the most part of this investment of the lords of the manor with the power was a rather substantial perversion of the original design of the doctrine and soon but a small proportion of the sums realized were employed as alms or in pious uses.

When Deodand Existed

Perhaps it would be well before we discuss those things which were deodand, to again define the doctrine in its more modern sense, or as it later developed. A deodand is any chattel animate or inanimate which moves to and causes the death of a human being. It was forfeited to the crown or the crown's representative, sold, and the proceeds realized therefrom distributed as alms. We find that the object originally did not necessarily need to move at the time it caused the death, so long as it was
movable, and that where the death was caused by misadventure, as falling upon the thing, it was deodand just as though the thing itself had fallen upon the man. (St. Pl. C. 20) Further, if the object were moving, all the things moving with it at the time it occasioned the death were included with it in the forfeiture. (St. Pl. C20b) (Where a man riding upon a carriage falls from the carriage, and the horses draw the carriage upon him by which he dies, the horses and carriage are deodand, and if the carriage were laden with hay, the hay is included in the deodand. St. Pl. C20) Further, we find that if a man is thrown from the carriage in which he is riding by its overturning, under the wheel of a wagon next to it, and the wagon being loaden passes over him and kills him, the carriage from which he was thrown, the horses drawing it, the wagon which passed over him, the load, and the horses drawing the wagon are all declared deodand and forfeited. (R. 1 Sal. 220) So also, if the objects were not essentially of a movable nature as where one tree topples and falls against another and the latter falls upon and causes the death of a human being, both trees are deodand. (1 Sal. 220) The motion which is the proximate cause of the accident need relate to but one of the moving objects, for example, if the individual is thrown from a carriage by the motion of but one horse, though two or more are drawing the carriage, and as a result of being so thrown, he dies, both of the horses as well as the carriage are forfeited. (St. Pl. C20a)

As we have seen, it made no difference, originally at least and probably not in the later development of the theory, whether or not the person killed were negligent himself. Our test is, was the death accidental and the result of a misadventure, remembering always that the individual must die as a consequence, and that mere injury, no matter how severe, would not result in an invoking of the doctrine. We find also that the question of ownership made no difference in whether or not the forfeiture occurred. The instrumentality was confiscated even though at the time of the accident it was in the possession of and being manipulated by a person to whom
it did not belong, as where the sword of B is used by A and another is killed with it (by accident and not feloniously) the sword will be a deodand. (3 inst., 57 H 33) However, in the Coroner’s inquisition which finds and “levies the deodand,” the property must be alleged to be belonging to the true owner and he must be named and the property described. (Queen v. West, 1 A & E, 826)

The doctrine applied not only to objects upon land but also to vessels and ships upon the water, so long as the water were fresh and not salt. In Blackstone’s Comm. I, 302, we read: “If a man fall from a boat or ship in fresh water and is drowned, it hath been said that the vessel and cargo are, in strictness of law, a deodand.” Probably the reason for the distinction between fresh and salt water is the inherent theory of the common law that we find existent even today, and must have been of even more influence in early time, that it should apply only to Englishmen and not extend beyond the borders of the country. (Nor a ship in the sea or salt water. St. Pl. C29a)

**Where No Deodand Existed**

The only practical way in which we can distinguish between those cases where the instrumentality was forfeited and where it was not, is to turn to the cases themselves. Often they are almost impossible to reconcile with those declaring a forfeiture, yet this is but natural in a doctrine of as old and of as widespread a nature. We find the obvious distinction made between a thing which does not move and one which moves and thereby causes death. The courts came to hold that the former, the thing that had moved was not deodand even tho joined to the thing that had—as if a man falls from the wheel of a carriage and is killed, but the carriage does not move, the wheel only is forfeited. (St. Pl. C. 20) And if a man falls into the water and is carried by the water under a mill and there pressed to death by the wheel of the mill, only the wheel is forfeited. (St. Pl. C. 20b) And if a person falls from a horse upon the
trunk of a tree and breaks his head upon it by which he dies, the horse only shall be forfeited. (St. Pl. C. 20b) From the same sources we find a case reported, perhaps in conflict with those of the same nature, that if an individual is thrown by the motion of the horses from a cart upon which he is sitting, and the cart is laden with litter, only the cart and the horses are deodand, and not the litter. The apparent conflict, however, may be explained in that in this case the cart itself may not have been moving. (St. Pl. C. 20b) To the same effect we find reported a case where the person was thrown from his horse into a river while fording a stream, by the violence of the water. The horse is not a deodand, (R. 2 Cro. 483) the motion of the water being the proximate cause of the accident, and not the beast. (So also if he falls from a horse when he plunges into the water. Semb. 2 Rol. 23.)

Generally if the object sought to be forfeited was a part of, or in some way affixed to real property, the doctrine of deodand did not apply, "so a thing fixed to the freehold shall not be a deodand as a door or gate of a house forced by the wind against a man whereby he is killed." (1 Sid. 307) Nor the sail of a windmill where in turning it struck and caused the death of an individual (1 Sid. 207), nor a millstone or wheel of a mill (R. Mod. Ca. 187); nor a tree which is not severed but blown by the wind against another (1 Sid. 207).

No deodand probably existed even originally where the person who was killed as a result of the accident was a child under fourteen, "so if a child within the age of discretion (viz., fourteen) falls upon a thing movable and is killed it shall not be a deodand, or falls from a cart, ship, horse, &c.” (3 inst., 57) Just why this distinction ever arose is hard to determine. The most plausible theory perhaps is the superstitious or religious nature of the doctrine itself. The article was sold because it was damned and the proceeds employed, to appease God's wrath, in pious uses, so that the soul of the individual slain might rest in peace and his sins be atoned for. According to the religious and common law theory, a child under the age of discretion, or under the
age of fourteen, was incapable of sin, hence there was no occasion for the forfeiture.

**Some Later English Decisions**

The cases here reported all arise within seven years previous to the abolition of the doctrine which occurred in 1846. They are interesting in that they illustrate that deodands was the law in England less than one hundred years ago, and an important law. They show us that the same degree of strictness and the same defenses apply to them as to all pleadings requiring the utmost accuracy or certainty, and they give an insight into the proper procedure where a death of a human is caused by accident or misadventure as a result of a moving object.

*The Queen v. Polwart, 1 A & E, 818:*

In 1840 we find a Coroner's Inquest indicting one, Joseph Polwart for manslaughter, finding that the instrument by which he perpetrated the deed to be a certain steamboat called the Manchester of Berwick, of which he was master, and levying a deodand upon the steamboat as a result of the killing of one Robert Mason, placing a value upon the steamboat of $800. The principal question raised was whether a Coroner's jury can lay a deodand in any case where they find a verdict of murder or manslaughter, and quoting from the opinion of Lord Denman, we find that at least in 1840 and probably at no time could they.

"We are of the opinion that they cannot; and that the latter part of the inquisition, which relates to the deodand, must be quashed.

"All the authorities in our law-books treat deodands as being due where the death is by misadventure; and no one instance has been adduced, or can be found, where a deodand has been laid, where a verdict of murder or manslaughter has been found."

In the opinion he quotes from Lord Coke who in the third Institute uses these words:

"Deodands when any movable thing inanimate, or
beast animate, do move to, or cause the untimely death of any reasonable creature by mischance in any county of the realm, (and not upon the sea, or upon any salt water,) without the will, offence, or fault of himself, or of any person.”

Lord Denman then proceeds to point out that the basic principles upon which the theory of deodand rests are purely a matter of conjecture, and that in this present day he hardly feels called upon to extend, but rather feels he should limit their application only to those cases “recognized by the law” and concludes his opinion:

“We have therefore no difficulty in saying that this finding of a deodand in a case of manslaughter, now for the first time introduced, is bad, and that the inquisition, so far as regards that finding, must be quashed.”

The Queen v. William West, 1 A & E, 826:

The Coroner’s Inquisition was upon three dead bodies. It found that all had come to their deaths accidentally, casually, and by misfortune, that a certain steam engine and a certain railway carriage were moving to their respective deaths, “and are the goods and chattels of, and in the possession of, the proprietors of the Hull and Selby railway, and of the proprietors of the Leeds and Selby railway, and are of the value of 500£ sterling.”

The objection taken to the inquisition by council for the railway company was to the effect that there was no averment in the inquisition that the property attempted to be forfeited was the property of a corporation or corporations, or that such corporations did in fact exist. The inquisition was quashed, the court sustaining the objection of the defendants, Lord Denman saying in his opinion:

“We ought to have some authority brought before us to show that this finding is sufficient. The property must be described. The deodand is to be levied on the owners.”

The Queen v. Brownlow and Others, 11 A & E, 119:

The Coroner’s Inquisition found that the person deceased on a day and place named, being on board a steam-
boat then floating and being navigated in a river, "by misfortune &c., a boiler containing water then and there forming a part of the steam engine on board, the steamboat attached thereto, and that the boiler was then and there used in working the steam engine for the purpose of propelling the steamboat, and was then and there heated by fire then and there forming a part of the steam engine, burst, whereby boiling water and coals, &c., were then and there used in working the steam engine, by misfortune, &c., were cast from the boiler and steam engine, upon the deceased, whereby he then and there received a shock, &c., and thereby became shaken, &c., of which shock, &c., the deceased instantly died, &c.," and that the boiler and steam engine were the cause of the death and were moving thereto and are of the value of, &c.

The question raised was by an objection taken to the inquisition in that it did not sufficiently state the day on which the death had occurred, and the court sustained the objection, quashed the inquisition, holding that the word "instantly" was not a sufficient repeating of the time of the explosion or of the death. There is nothing new, or unique to the doctrine of deodands raised by the objection. The rule that a statement of time and place must be repeated to every issuable and triable fact and that the word "instantly" will not be equivalent to the words "then and there" is the law in practically every common law jurisdiction today unless expressly abrogated by statute.

*The Queen v. Midland Railway Company, 8 Q. B., 587:*

The Coroner's Inquisition found in the year 1844 in the County of Nottingham that an individual by the name of William Varnells, had been killed on a certain railway car as a result of a collision with another train moving in the opposite direction.

The inquisition then went on to ascribe the death to injuries caused by the collision, found a verdict of accidental death, levied a deodand not only on both engines, but on all of the carriages, and found them to be the property of the Midland Railway Company. The
principle objection taken to the inquisition was that it did not appear with sufficient certainty that the carriage in which the deceased had been riding had collided or come in contact with another carriage, tender, or locomotive engine, and further, that it was not alleged sufficiently that any of the other carriages, tender, or engines had come into contact with, or generally moved to the death of the deceased. The question raised was a technical one, arising solely from the insufficient wording of the inquisition. Council for the Crown contended that certain words could be rejected as surplusage, and if so rejected, the inquisition might be read with sufficient meaning, and that the cause of death would then be properly stated. The court, however, quashed the inquisition holding technically that even with the rejection of the words, the pleading would not be aided, stating:

"There are no words, in this inquisition, by rejecting which that sentence can be made intelligible. It is a nominative case without a verb. The subject is described; but nothing is predicated respecting it. We cannot supply by conjecture something more which the jury intended to find, but have not found."

Procedure

Jurisdiction in levying a deodand seems to have rested with the Coroner from the earliest inception of that office. (And by inquisition before the Coroner, it must be found, that it is deodand and the value. St. Pl. C29a.) It was his practice to return all inquisitions finding a deodand as well as those "felo de se" into the crown office where they were filed. (R v. Stanlake, 1 Mod. Rep. 82) It was held that the Coroner should return his examination with the inquisition, and that any person aggrieved by such inquisition could then apply to the King’s Bench to refuse to allow it to be filed. This filing of the inquisition in the crown office was the preliminary step in declaring the forfeiture. The inquisition was then prosecuted by solicitors for the crown, corresponding perhaps to our Attorney General today. Only a few years before
the abolition of the doctrine we find a reported case illuminating in the extreme this question of procedure.

The Queen v. The Great Western Railway Company, 3 A & E, N. S., 333:

The inquisition found that the deceased, one Richard Woolley, was taken by the Coroner of the Borough of Reading by a jury of the Borough of Reading in that borough, and alleged that the death was caused accidentally by the deceased falling in the County of Berks from a carriage, "then and there being in a certain carriage then and there attached to a certain engine then and there drawing the same, it so happened that the said Richard Woolley was then and there casually, accidentally, and by misfortune overturned and violently thrown out of the said carriage to and against the ground; by means whereof the said Richard Woolley did then and there receive one mortal fracture in and upon the hinder part of the head of him, the said Richard Woolley; of which said mortal fracture the said Richard Woolley from the said 24th day of December in the year aforesaid until the 29th day of December in the same year, at the parish and county last aforesaid, and also at the parish of St. Giles in the said borough of Reading, to wit, in a certain hospital there, called the Royal Berkshire Hospital, did languish, and languishing did live; on which said 29th day of December, in the year aforesaid, in the hospital aforesaid, at the parish last aforesaid, in the borough aforesaid, the said Richard Woolley, of the mortal fracture aforesaid, did die."

The inquisition continues with the finding upon oath by the jurors that the deceased met his death accidentally, casually, and by misfortune in the manner described, and finds the value of the carriage and engine to be 100£, and to be the goods and chattels and in the possession of the Great Western Railway Company. The objection raised to the inquisition was that it appeared to be taken before the Coroner of Reading, and yet upon the face of the inquisition itself it is found that the accident occurred in the County of Berks, the defendant
contending that the Coroner had no jurisdiction to lay a deodand except in cases where the accident resulted and the death occurred within the jurisdiction of the Coroner, and also that the property to be seized was also situated within it. After first declaring that the decision rested upon the common law and not upon statutory enactment the court sustained the objection and from the opinion we are able to discover the precise proceeding of the Coroner in levying a deodand. We find first of all that the mere fact of a body lying dead does not give the Coroner jurisdiction. Nor even if the circumstance of the death was sudden. That there must be a reasonable suspicion that the deceased had met his death by some violent or unnatural means. Further, that it is the initial duty of the Coroner before he summons a jury to make some inquiry in order to ascertain just what the circumstances were surrounding the death, and obviously where the death occurred. If he finds that the death occurred beyond the jurisdiction and there is no ground for supposing that either the crime of murder or manslaughter has been committed, he should abstain from summoning a jury at all, and in order that an inquest be taken over the body, it should be removed to the county where the circumstance occurred which was the cause of the death. Quoting from the opinion of Lord Denman, Chief Justice:

"If the verdict be death by the visitation of God, nothing more is done; for in truth it appears that there was no occasion for an inquest. If the verdict be murder or manslaughter, then the want of jurisdiction at common law (if any) is cured by stat. 2 & 3 Ed. 6, c. 24. If the verdict be "per infortunium,"' then the coroner (that is by the jury) is 'to inquire of the deodand and the value and in whose hands, and to seize and deliver the same to the township to be answerable for the same to the King, by the statute of 4 Ed. 1, De Officio Coronatoris;" 2 Hal. Pl. Cr. 62: but this supposes that the circumstances which occasioned the death happened within his jurisdiction, and that the deodand to be seized is also within it. If the facts be otherwise, as in this case, then the finding of
the deodand at all events is merely void; but, as a want of jurisdiction appears upon the face of the proceedings, we are of opinion that the whole inquisition is void."

**English Abolition of Deodands**

That the people of England quite generally accepted forfeitures accruing to the crown under the law of deodands as a matter of course, we have ample evidence in the mention made to them in the newspapers and periodicals of the time; for example, in the May issue, 1755, of the "Gentleman's Magazine," we see the following item:

"The inquisition which sat on the servant, of Mr. Twinborow, who was gored by an ox, of which he died on the 20th past, brought in their verdict, accidental death, by an ox and found the ox a deodand, value of the purchase, the property of a butcher at Wapping."

And in the Mechanic's Magazine in 1838 an account of a jury successfully levying a deodand of 1500£ upon the boiler or the steam engine of the Victoria. In an issue of the same magazine of 1842 we find an article entitled, "The Modern Mechanical Moloc" in which the author severely censures the railroads for the numerous accidents that had occurred, attributing them to a general lack of precaution and scarcity of safety measures, and from it we quote:

"Deodand after deodand has been imposed by honest and indignant juries—deodands surpassing in amount any previously known to our criminal history."

Stephen in his Commentaries on the Law of England, writing shortly before the abolition of the doctrine, illustrates the trend of public sentiment against it, saying:

"But juries have of late very frequently taken upon themselves to mitigate these forfeitures by finding only some trifling thing, or part of an entire thing to have been the occasion of the death. And in such case, although the finding by the jury be hardly warrantable by law, the court of Queen's Bench hath generally refused to interfere on behalf of the 'lord of the franchise to
assist so unequitable a claim.’ (Foster 266, 267, Thus if A, sitting on his wagon, falls, the horses draw on the wagon, the fore-wheel crushes his head, and he dies, and the Coroner’s jury find the wheel only is the deodand, the court will not quash the inquisition. No man can prescribe to it, it must be by the King’s grant) Yet it is obvious that it would be better that a law should be abolished so repugnant to the feelings of mankind, than that the solemn oath under which a juror gives his verdict should be thus evaded.’

The doctrines of deodands was finally abolished in England in 1846 by Statutes 9 & 10 Vict. c62—

‘there shall be no forfeiture of any chattel for or in respect of the same having moved to or caused the death of man; and no Coroner’s jury sworn to inquiry, upon the site of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved to or caused the death of the deceased, or any deodand whatsoever. And it shall not be necessary in any inquisition for homicide to allege the value of the instrument which caused the death of the deceased or to allege that the same was of no value.’

Deodands in the United States

The enactments of the State of Illinois make the common law of England as it existed prior to the fourth year of James I, the law of this state, unless expressly changed or abrogated by statute. (Chap. 28 Ill. Statutes.) We have never expressly abolished or abrogated the doctrine of deodands, and improbable as it may be, it is not impossible to conceive of its application at the present time. It is true we have no king, but we do have a sovereignty in the people themselves. Our Attorney General or States Attorney is the legal representative of, at least indirectly, that sovereignty. We have a Coroner and an inquest, and perhaps some Coroner’s jury today might find death to have been caused by accident and misadventure, that a certain beast or chattel moved to and caused the death, that its value was so many dollars
and levy a deodand upon the beast or chattel, sign and seal the inquisition under oath, the signatures and seals of the Coroner and of the requisite number of jurors being attached thereto and file the inquisition in the Criminal Court. In proceeding upon it, the prosecuting officer would not only encounter no express abolishing statute, but also no case decided within this jurisdiction. Were the action successful, the proceeds of the sale, providing the article were not redeemed by the owner, could just as readily be applied today in public work as originally in alms or pious uses. There is ample authority for such a disposition.

Deodands have been commented upon a number of times by courts of the various states of this country as well as by the Supreme Court of the United States. In the latter it was mere historical dicta, describing it as somewhat analogous to the federal action in rem against an automobile containing liquor under the revenue act, and justifying by way of ancient precedent the general theory of forfeiture. So also the case of Daniels v. Homer, 139 N. C. 219, 51 S. E., 992, involving the forfeiture of nets upon illegal fishing. The only case in this country where the doctrine was raised seriously is the case of Parker-Harris Company v. Tate, 135 Tenn., 509; 188 S. W., 54. The facts were substantially as follows: The plaintiff was an automobile dealer in Memphis, who sold an automobile to one, Richardson, and accepted in payment a cash deposit, the balance in notes to be paid from time to time, with the title remaining in the plaintiff, the vendor, until final payment. Shortly after the sale, while driving the car, the purchaser ran over and killed a small negro boy. The administrator of the deceased brought suit against Richardson, the purchaser, to recover damages for the death. An attachment was issued and the car levied upon under a statute of Tennessee, granting a lien upon the automobile in case of an accident. This is an action of replevin brought by the vendor against the sheriff who had levied the writ of attachment, claiming right of possession by reason of the title retained in the sale. Council for the administrator
contended that the vendor’s lien should have priority, basing his argument upon the theory of the law of deodands. The Court of Civil Appeals sustained the defendant, holding deodands still to be the law in that state and that the statute of Tennessee which grants an injured person a lien upon an automobile was based upon it, and in consequence the statute should have preference and priority, quoting:

"We can best answer this question by tracing the history and development of the idea of responsibility for injuries done by dangerous or quasi-dangerous instrumentalities. This is known as the doctrine of deodand, Practical lawyers may scorn this method of treating of intricate questions if they want to. We are persuaded that this is the only broad, logical, and jurisprudential way of solving provisions that are now in the realm of debate. Analogy is still the great light, and history is a luminary of almost equal force. And it must not be forgotten that numberless rules of the ancient common law are operative today, and that juridical concepts are so persistent as to come to life and illuminating questions arising in ages far distant from their origin."

This decision of the Court of Civil Appeals was appealed to the Supreme Court of the State by the plaintiff below, the vendor, and resulted in a reversal of the Court of Civil Appeals. Judge Williams of the Tennessee Supreme Court, the author of the opinion, holds that the doctrine of deodands should be entirely discarded, and announces it as repugnant to all of our American ideas of justice. He said in part:

"To the credit of American jurisprudence, from the outset the doctrine was deemed to be so repugnant to our ideas of justice as not to be included as a part of the common law of this country."

The opinion of the Supreme Court in holding that the statute was not based upon deodands is undoubtedly correct. The statute provides not for a forfeiture, but only for a lien for damages which were not to be measured by the value of the machine but by the extent of the injury. It is readily apparent to those familiar with the
law of deodands that it does not apply. Mere injury was sufficient under the statute, death was not made essential. Also, the statute provides that the instrumentality be of a dangerous or quasi-dangerous sort, whereas a deodand may be any instrumentality so long as it move to and cause the accidental death of the person injured. We may also note that no cases are cited for the statement to the effect that deodands are not included in the common law of this country. It would seem there should be some justification for so summary a disposition of as well founded a principle. We also find that the opinion is well forfeited by Article 1, par. 12 of the Constitution of 1870 of Tennessee:

"No corruption of blood or forfeiture of estates; no deodands. That no conviction shall work corruption of blood or forfeiture of estate. The estate of such persons as shall destroy their own lives shall descend or vest as in case of natural death. If any person be killed by casualty there shall be no forfeiture in consequence there-of."

No such provision exists in the Constitution or Statute law of the State of Illinois, and the preceding case should hardly serve to deter any one who is interested in and has the means to attempt an application of the doctrine. Whether successful or not, it would be interesting to know the reaction of our own Supreme Court upon a common law principle so ancient and apparently forgotten.