



Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS MONDAY 16 FEBRUARY 2004

LAND REGISTRATION

The system of land registration in Scotland set up by the Land Registration (Scotland) Act 1979 is examined in a discussion paper issued today by the Scottish Law Commission.

In the first of two papers (**Discussion Paper on Land Registration: Void and Voidable Titles (No 125)**) the Commission explores registration of title from the point of view both of policy and also of legal technique. The paper focuses on certain key issues as to the operation and effect of land registration such as void and voidable titles, the state guarantee of title, the underlying theoretical structure, and positive prescription. It makes certain proposals as to the fundamentals of land registration and lays the foundations for the more practical issues in the second paper. It is hoped to issue the second paper before the end of the year.

PROBLEMS WITH THE CURRENT LAW

A key problem with the 1979 Act is that, although it introduced radical changes, it lacks a robust conceptual framework. As a result it is difficult to deal with matters on which there is no specific provision. It is this framework that is the subject-matter of the current paper.

SUMMARY OF PROPOSALS

As under the present law, a *bona fide* acquirer should be able to rely on the Register, supported by a state guarantee.

Usually this would mean that, if the seller was shown on the Register as owner, the acquirer would receive ownership in turn. If, however, there was an error on the Register ("Register error") and the seller (or a predecessor of the seller) had not been in possession for a prescribed period (such as a year), the acquirer's entitlement would be to state compensation ("indemnity") and the property would remain with the "true" owner. In this way a "true" owner who had retained possession would not suffer the loss of his property. The requirement of a seller in possession would replace the existing requirement of a buyer ("proprietor") in possession.

Furthermore, and following the present law, an acquirer should be protected not only in respect of Register error but also in respect of errors – forgery, for example – which affect the current transaction ("transactional error"). But in such a case the entitlement would be to indemnity and not to the property.

Protection against error would require good faith on the part of the acquirer rather than, as at present, the absence of fraud or carelessness.

Subject to what has just been said, and in the interests of simplicity and legal coherence, the question of whether registration confers a real right should be determined by the ordinary law of property. There should, in other words, be a move from what may be a "positive" system of registration under the current law in the direction of a "negative" system.

Finally, positive prescription, excluded in most cases by the 1979 Act, should be reintroduced as a means of cutting off future challenges to the title of the acquirer.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Honourable Lord Eassie. The other Commissioners are currently Professor Gerard Maher QC, Professor Kenneth G C Reid, Professor Joseph M Thomson and Mr Colin J Tyre QC.
2. Further information can be obtained by contacting Mr John Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, e-mail: info@scotlawcom.gov.uk.)
3. The paper may be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshops.