



Prescription and Limitation (Scotland) Act 1973

1973 CHAPTER 52

PART I

PRESCRIPTION

Positive prescription

1 Interests in land: general

(1) If in the case of an interest in particular land, being an interest to which this section applies.—

- (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the recording of, a deed which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

(2) This section applies to any interest in land the title to which can competently be recorded.

(3) In the computation of a prescriptive period for the purposes of this section in a case where the deed in question is a decree of adjudication for debt, any period before the expiry of the legal shall be disregarded.

(4) Where in any question involving an interest in any foreshore or in any salmon fishings this section is pled against the Crown as owner of the regalia, subsection (1) above

shall have effect as if for the words " ten years " there were substituted the words " twenty years ".

(5) This section is without prejudice to the operation of section 2 of this Act.

2 Interests in land: special cases

(1) If in the case of an interest in particular land, being an interest to which this section applies.—

- (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the execution of, a deed (whether recorded or not) which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

(2) This section applies—

- (a) to the interest in land of the lessee under a lease;
- (b) to any interest in allodial land;
- (c) to any other interest in land the title to which is of a kind which, under the law in force immediately before the commencement of this Part of this Act, was sufficient to form a foundation for positive prescription without the deed constituting the title having been recorded.

(3) This section is without prejudice to the operation of section 1 of this Act.

3 Positive servitudes and public rights of way

(1) If in the case of a positive servitude over land—

- (a) the servitude has been possessed for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the execution of, a deed which is sufficient in respect of its terms (whether expressly or by implication) to constitute the servitude,

then, as from the expiration of the said period, the validity of the servitude as so constituted shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

(2) If a positive servitude over land has been possessed for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the servitude as so possessed shall be exempt from challenge.

(3) If a public right of way over land has been possessed by the public for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the right of way as so possessed shall be exempt from challenge.

- (4) References in subsections (1) and (2) of this section to possession of a servitude are references to possession of the servitude by any person in possession of the relative dominant tenement.
- (5) This section is without prejudice to the operation of section 7 of this Act.

4 Judicial interruption of periods of possession for purposes of sections 1, 2 and 3

- (1) In sections 1, 2 and 3 of this Act references to a judicial interruption, in relation to possession, are references to the making in appropriate proceedings, by any person having a proper interest to do so, of a claim which challenges the possession in question.
- (2) In this section " appropriate proceedings " means—
- (a) any proceedings in a court of competent jurisdiction in Scotland or elsewhere, except proceedings in the Court of Session initiated by a summons which is not subsequently called;
 - (b) any arbitration in Scotland ;
 - (c) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.
- (3) The date of a judicial interruption shall be taken to be—
- (a) where the claim has been made in an arbitration and the nature of the claim has been stated in a preliminary notice relating to that arbitration, the date when the preliminary notice was served;
 - (b) in any other case, the date when the claim was made.
- (4) In the foregoing subsection " preliminary notice " in relation to an arbitration means a notice served by one party to the arbitration on the other party or parties requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement or any relevant enactment provides that the reference shall be to a person therein named or designated, a notice requiring him or them to submit the dispute to the person so named or designated.

5 Further provisions supplementary to sections 1, 2 and 3

- (1) In sections 1, 2 and 3 of this Act " deed " includes a judicial decree; and for the purposes of the said sections any of the following, namely an instrument of sasine, a notarial instrument and a notice of title, which narrates or declares that a person has a title to an interest in land shall be treated as a deed sufficient to constitute that title in favour of that person.
- (2) Where a deed has been at any time *ex facie* invalid by reason of an informality of execution within the meaning of section 39 of the Conveyancing (Scotland) Act 1874, but the appropriate court has subsequently declared, in pursuance of that section, that it was subscribed by the granter or maker and the witnesses, the deed shall be deemed for the purposes of the said sections 1, 2 and 3 not to be, and not at any time to have been, *ex facie* invalid by reason of any such informality of execution.