

# The land registration act 2002



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“ The first man who, having enclosed a piece of ground, bethought himself of saying, ‘ This is mine’, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not anyone have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows: ‘ Beware of listening to this imposter, you are undone if you once forgot that the fruits of the earth belong to us all, and the earth itself to nobody.’.” Jean-Jacques Rousseau, Discourse on Inequality, part II.

Rousseau’s extravagant discourse has successfully expressed the traditional approach to the laws of adverse possession.

It is a well-established principle, which has become a chief exponent of the provision that ultimately the long-term possessor may with time have better title to land than the paper owner. Strikingly, parts 9 and 6 of the Land Registration Act 2002 have sought- in light of new e-conveyancing and compulsory registration measures to revolutionise this area of law, re-writing its parameters regarding the possession of registered land. In turn, conferring greater protection against the acquisition of title by persons of adverse possession, reflecting the fact ‘ that the basis of title to registered land is the fact of registration, not (as in the case with unregistered land) possession’<sup>1</sup>. The law has, to date, been governed by the provisions of the Limitation Act 1980. This is limiting in that, it restricts, by the elapse of time, land ownership. In justification of a concept that, with time, appears to favour rights of the squatter, adverse possession has attempted to purge stale claims and discourage landowners from sleeping on their rights.

Aged, stale claims can be difficult to prove- producing reliable evidence to substantiate a claim can make delayed litigation a gamble- and somewhat futile. Lord St Leonards in support of this stated ‘ All statutes of limitation have for the object of their prevention of the rearing up of claims at great distances of time when limitations are lost’<sup>3</sup>. The alternative justification is important, in a legal concept concerned with the passing of time. Ensuring that those with future interests have no concern with current possessions and thus cannot presently sleep on their entitlements. ‘ Individual hardships will upon the whole, be less, by withholding from one who has slept upon his right, and never yet possessed it, that to take away from the other what he has long been allowed to consider as his own..

.’<sup>4</sup>. An owner’s failure to enforce rights amounts to ‘ tacit acquiescence’<sup>5</sup> in the possession of the squatter- the law apparently accommodates the rights of a person who has been in possession for a long time, squatter or not; Another validation of adverse possession would have been that proof of exercise of rights to land. This, over a reasonable period, could generally be relied upon to substantiate any ownership claim and trump a prior documentary owners interest.

The general premise was that on production of title deeds dating back at least fifteen years the vendor is deemed to have good title of a property. This apparently simplified the problems of proving conclusive ownership of a fee-simple estate, where tracing good title to land would be a costly and protracted process. However, there was a growing sentiment that the adverse possession laws had become antiquated and inconsistent when evaluated against reforms designated to ensure that Land is Registered to

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facilitate a simpler, more plausible conveyancing scheme. An impasse between the basic principles has rendered reform necessary: the basis of title in adverse possession is possession, but the basis of title in registered land is registration. This excused the reforms on a technicality and without intervention of a political motive.

However, it was also clear that this pretext shrouded an issue that sought to readdress the balance between the rights of the registered proprietor as against those of the squatter. Indeed the Law Commission's concluding report of recommendations opened with the statement " It is of course remarkable that the law is prepared to legitimise such ' possession of wrong', which, at least in some cases, is tantamount to sanctioning a theft of land". The Daily Mail's headline, which announced that the new act, was to ' Swat the Squatters'<sup>6</sup>, spoke volumes about a principal motivation for reform. Read also about supreme law of the land The justifications embodied by the old law, appeared in some circumstances to have looked favourably on squatters.

It may be said that The Limitation Act 1980 although technically conferring no rights upon the squatter, actually served to bestow a fee-simple estate on him from the beginning. This may appear perverse in that, it runs concurrently with the owner's own claim to the fee simple estate (until the adverse possession is completed), it realises the underlying English property law concept of relativity of title. The enforcement of property rights are not dependent upon showing supreme entitlement to the land<sup>7</sup>, rather a better right to it that the next party<sup>8</sup>. Inevitably, the outcome of some cases had not looked favourably upon documentary owners. To date, of the large

quantity of applications made to the land registry for adverse possession each year, some three-quarters have been successful.

The justifications for adverse possession have been countered- and the media has had a part in emphasising the shortcomings of a system, which appears to facilitate ‘land theft’. Owners aware of an adverse possession may not wish to engage in litigation of an antagonistic nature. Additionally, to deprive an owner of title simply because he has delayed in claiming compensation is disproportionate. Some landowners may be unaware of the adverse possession of their land, this is particularly relevant to public bodies that have more land than they can efficiently police. Two<sup>9</sup> cases concerning Lambeth Borough Council have exemplified this. In *Ellis v Lambeth LBC*, control and possession of a council house was found to be sufficiently exclusive to exclude ownership.

The council had sent council tax forms for four consecutive years, but the squatter never returned them. The implied representation by silence was understood to indicate that the property was vacant- but this defence was overturned and for want of sufficient detriment on the Council’s part, the squatter was awarded ownership of the property. It was said by the tabloid press that the outcome was ‘Every Homeowners Nightmare’<sup>10</sup>. The House of Lords have clarified the position, establishing that the factual possession- not necessarily of an adverse nature, and an intention to possess, ordained ownership upon a squatter of a plot of registered land. Neuberger J responded to the law in stating that it was ‘illogical’<sup>11</sup> – because the owner cannot be seen to have done anything wrong and ‘disproportionate’<sup>12</sup> because the squatter can obtain an undeserved windfall at the expense of

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the owner. Conclusively, the new Land Registration Act 2002 sought to address these growing concerns, and upon the Law Commission's recommendations, has overhauled the scope of 'squatter's rights'- codifying them in schedule 6 of the new bill.

When implemented in October of this year, it will be incrementally 'more difficult for an applicant to obtain registration through adverse possession of a registered title'<sup>13</sup>- providing the proprietor keeps their address on the register up to date and responds to notices from the land registry. The rules of adverse possession for unregistered title will remain the same however. In policy terms, the new act can be credited with prompting landowners to register title to their land- additionally it has provided a simpler method of settling neighbour disputes. Paper-owners will also be content in the knowledge that these new provisions have indeed protected their property from the vulnerability created by the traditional principle exploited by squatters.

It is unjust however to dismiss the rights of the latter, it has been argued that the newly implemented adverse possession laws do not propose any limit in the predominant number of adverse possession cases on constraining a paper owner's rights. Despite some purveyors of the common law coming to view the principal of adverse possession as "...an Act of peace" <sup>14</sup> with "Long dormant claims (having) often more cruelty than of justice in them." <sup>15</sup>, the new statutory provisions appear to have overwritten any indulgent tendencies toward squatters Those the statute seeks to exclude have expressed tenable arguments as to why adverse possession should be allowed to occur.

They contest that the doctrine of adverse possession is not “sweeping”, that it does not require “strong justification”, and could certainly never be tantamount to “land theft<sup>16</sup>” as land is realty and not capable of being stolen<sup>17</sup>. Indeed the predominant argument of the land commission was concerned with the latter, choosing to ignore that the act of leaving buildings vacant, thereby encouraging urban disfiguration, could also amount, figuratively speaking, to a “theft” of land from the community. In December 1974 Templeman LJ castigated the Crown Estate Commissioners for their handling of property near regents park: “It seems to me a positive scandal that the property has been vacant..

. In my judgement ...

it is profoundly unsatisfactory...that nobody has enjoyed this property since 1970, in a part of the world where housing needs are widely known to be extreme”. The proposal that a landowner, who sleeps on their property rights, leaving land vacant for at least twelve years, is ‘quite blameless’ is becoming less rational as public interest in efficient use of land increases. In an era where land has become a precious commodity, it does indeed seem perverse that a Government, who with one policy<sup>18</sup> heralds the merits of existing building stock for re-development, will simultaneously implement a statute to prevent the very same land from being utilised.

Additionally it has been suggested by pro-squatting organisations that The Land Registration Act even goes so far as to contradict Agenda 21 of the Rio Convention, which seeks to legalise informal settlements of the poor. The same organisations have also been eager to cite research findings which

have pointed out, that squatting in houses that councils cannot afford to do up prevents “ rapid deterioration which occurs in empty properties<sup>19</sup>” and that regulation of this social resource of self-help “ often has the effect of killing it<sup>20</sup>”. To conclude, Part 9 and Schedule 6 of the Land Registration Act 2002 have indeed successfully accommodated the principles of adverse possession within land registration provisions- silencing the tabloid press and simplifying conveyancing disputes, for example. Yet, postulations that there is an apparent disparity between cossetting the rights of the paper owner, and denying those of the squatter, against who the statute is apparently prejudiced, have rightly been voiced. It appears that these statutory provisions have been implemented in the face of growing concerns as to the scarcity of land, which will be no less of a problem in forthcoming years, when practical effects of the act begin to take hold.

In these rational terms, it is difficult to whole-heartedly embrace a statutory measure with a narrow and legalistic focus, operating the disbursement of wider social issues.