

Communist ideas and Scots property law: *Canning v Glasgow Caledonian University and Another*

Ownership is nine-tenths of property law, or so the saying does not go. For the (unscientifically verified) one-tenth of property law disputes where ownership is not the decisive factor, something else must come into play. This brings an actual turn of phrase to mind, also entirely unscientific, namely that possession is nine-tenths of the law. How Scots law deals with cases where the owner plays but a background role is demonstrated in the case of *Canning v Glasgow Caledonian University and Another* [2015] SC GLA 75. That recent Sheriff Court case, about what to do with a collection of corporeal moveables in a contest between personalities with claims short of ownership, forms the subject of this note.

Checking out the library

There are some cases where it is necessary to delve into background materials or back-stories to render a resulting case comment interesting. *Canning* is not such a case. The findings-in-fact are captivating in their own way: could an argument involving communists and private property be anything but? Whilst further rummaging could well unearth more information, this note will stick to the (slightly convoluted) findings-in-fact.

The corporeal moveables at the centre of this case comprised a library of over 2,000 books and 50 boxes of pamphlets and other materials, which were amassed from a combination of the collection of the late William “Willie” Gallacher (following his death in 1965) and further augmentations to that original collection between 1968 and 2013. Gallacher was a founding member of the Communist Party of Great Britain and his collection was gifted by his executors to the CPGB in 1968. In 1979, Audrey Canning, the pursuer, began to act as a part-time librarian for the CPGB. She became solely responsible for the library’s care at an address occupied by the CPGB for a period between 1980 and 1987. In 1987 “substantial financial difficulties and internal factional conflict” (*Canning*, paragraph 12) meant that the CPGB had to move, in some haste, from the premises housing the library. The pursuer arranged for that to happen, with authorisation from the appropriate office-holder at the CPGB. In 1991, the CPGB was dissolved by an internal vote and its assets were passed to an unincorporated association called Democratic Left. (The pursuer was a member of the CPGB from 1951 until its dissolution; she did not hold membership of any political association thereafter.) In 1997 new premises were again needed for the library and the pursuer again facilitated this, entering into an agreement with Glasgow Caledonian University to house the library but retaining sole responsibility for the care, control and management of it in terms of that agreement with GCU.

Meanwhile, certain members of Democratic Left started to meet under the banner of Democratic Left Scotland. Correspondence indicated this brand was being used in October 1997 and other evidence suggested such an organisation had some kind of *de facto* existence prior to that date, but it was not until 1998 that an unincorporated association distinct from Democratic Left called Democratic Left Scotland (“DLS”) was formed. In 1999 Democratic Left was dissolved and its assets went to a new unincorporated association called New Times Network. At around that time there was

a transfer between New Times Network and DLS, which involved a financial settlement and heritable property in Bathgate but made no reference to the library. In 2013 a dispute arose between DLS – the second defender in the case – and the pursuer as to the ownership of the library, whereupon GCU – the first defender – excluded the pursuer from the library and closed it to the public pending resolution to the dispute. In terms of who owned the library, an unincorporated group known as “Democratic Left Scotland” asserted ownership of the library in 1997, but this was prior to the establishment of an unincorporated association with that name in 1998. As for the pursuer, evidence was led that she had never suggested she had owned the library, but it seems she was advised she may be the owner of the library by solicitors in 2013 (paragraph 18). New Times Network was not involved in the proceedings.

The Competing Claims

Sheriff Reid was left to unpack this set of facts that even the most dastardly of exam setters might hesitate to put before a law student, as follows: the library was owned by CPBP until 1991; there had been no abandonment of property by it (and as such the Crown took no title); ownership flowed to Democratic Left in 1991 and it stayed there until 1999, at which point it flowed to New Times Network; the pursuer in her capacity as depositary (a role that was never terminated by any owner of the library) had certain duties and entitlements, including an entitlement to exercise sole care, control and custody; and as such the pursuer was entitled to delivery of the moveables. Both DLS and the pursuer failed to establish ownership.

Dealing with the pursuer first, her claim to ownership was based initially on abandonment (which would have seen the property go to the Crown following the maxim *quod nullius est fit domini regis* – paragraphs 56-57, 62-63 and 70-80) but then channelled through the provisions of Part VI of the Civic Government (Scotland) Act 1982 relating to lost and abandoned property (which might have trumped the Crown’s right, but could not do so as the procedure there, involving notification to the police and attempts to find the owner, was not followed – paragraphs 64-69). The principles of abandonment are set out in a useful discussion by the sheriff, which also touches on the rules of *occupatio* (paragraphs 58-62), the presumption against donation in the context of derivative acquisition (paragraphs 81-88), and the further presumption that the possessor of a corporeal moveable is its owner (paragraphs 89-100). All of these were unsuccessful in anointing the pursuer as owner: whilst the presumption of ownership that comes with possession might seem like an outwardly attractive solution, the sheriff held that not to be relevant as the pursuer had control of the items for the benefit of someone else rather than herself. This point about the intent behind the control, together with other aspects of the presumption, can be found in a forthcoming chapter by Carey Miller in a collection due for publication by Aberdeen University Press later this year: “The Presumption Arising from Possession of Corporeal Moveable Property: Questioning Received Wisdom” in Simpson, Styles, West and Wilson (eds), *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte*.

In passing, it might be noted that prescription of title – positive or negative – played no role in the sheriff’s decision. Positive prescription is not relevant because there is not (or at least not yet) any certain doctrine for positive prescription for corporeal moveable property in Scots law (cf Simpson, “Positive Prescription of Moveables in

Scots Law” (2009) 13 EdinLR 445, but see now Scot Law Com No.228 *Report on Prescription and Title to Moveable Property* and associated implementation by the Scottish Government), and in any event the pursuer was not acting as if she was the owner for any particular length of time. Negative prescription would have required twenty years of inattention by an owner (in terms of section 8 and Schedule 3 of the Prescription and Limitation (Scotland) Act 1973), and no such continuous time period was proven.

As for DLS, Sheriff Reid seemed unimpressed by the evidence and indeed the attempts at legal logic that were supposed to establish its ownership (paragraphs 101-143). After concluding that neither DLS nor the pursuer was the owner, the not insubstantial question of what to do next weighed heavily. All other potentially interested parties had the proceedings intimated to them, but New Times Network, the Crown and indeed another organisation that might have had a claim as successor decided not to get involved, for whatever reason. No inference was drawn by the sheriff by that non-involvement (paragraph 153) and no further procedure to identify the owner was deemed appropriate (paragraph 165). Rather, the sheriff felt compelled to reach a conclusion which would allow the library to no longer be locked away, and that left the pursuer’s rights as depositary as the biggest show in town. Accordingly, she was granted decree as the person entitled to care, custody and control of the library.

Lessons for the commune

As noted at the outset, only in quirky cases will property law disputes turn on issues other than ownership. Tangentially, there may be such cases in relation to land and outdoor access (see Combe, “Get off that land: non-owner regulation of access to land” 2014 Jur. Rev. 287), but more pertinently it is not impossible to imagine a modern situation where two or more non-owners find themselves in (short-term) disagreement about occupation of a building. In relation to corporeal moveables, the recent publication of a dedicated text on possession (Anderson, *Possession of Corporeal Moveables* (2015)) goes some way to showing the continuing relevance of that relationship to tangible items. Of course, ownership will normally be king, but there can be situations when the king is not in the kingdom. *Canning* gives a guide as to what can happen – and the solutions Scots law can bring to bear – in such situations. Indeed, *Canning* shows what can happen when neither ownership nor strict possession is involved: if possession could ever be argued to be nine-tenths of the law, the other tenth would presumably include detention.

Whilst the scenario in this case might be a dastardly thing to put before law students in an exam, the judgment it produced should prove to be a helpful teaching aid, covering a wide range of Scots property law with a colourful scenario to boot. As for that colourful scenario, one might wonder what this scenario means for communism. Would it be uncharitable to observe that an argument about entitlement to particular pieces of private property does not seem in-keeping with certain aspects of communist doctrine?

[The author of this article circulated a draft version to his friend and colleague Professor David L. Carey Miller prior to its publication and he kindly commented on

that draft. David passed away suddenly shortly afterwards. This article is dedicated to him.]