Editorial

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Our last issue carried an analysis of the English law of market overt. Brian Davenport QC and Antony Ross stigmatised it as an 'ugly mediaeval relic' whose survival could no longer be justified. Their criticisms have since been thrown into sharp relief by an alleged sale at Bermondsey market in London. Two portraits, a Reynolds and a Gainsborough, stolen from the Honourable Society of Lincolns Inn in 1991, were brought to Sothebys in 1993 by a man claiming to have bought them at Bermondsey for £145. Sothebys recognised and retained the portraits, whereupon the alleged buyer issued proceedings for their recovery. The case has attracted much interest, not least because of the perverse and antique nature of the applicable rule of title. If the pictures were bought in good faith at an open, public and legally constituted market, between sunrise and sunset and in accordance with the usage of the market, the buyer is the owner. The normal common law rule of nemo dat quod non habet (he who has no title passes no title) is displaced, to the prejudice of the former owners or their insurers. To many this is a capricious and unappetising result.

The events following the Lincoln's Inn theft appear to have been purely local. So far as is known the pictures never left England, so there is no question of a competing title gained under a foreign lex situs. But municipal rules on title can have cross-border implications, not least by identifying the party entitled to restitution when works are stolen and taken abroad. It is therefore unfortunate that much of the common law governing title to personal property is archaic and obscure. If, for example, the Bermondsey portraits vanished from police custody and resurfaced in a foreign collection, the identity of the proper claimant (the Society, their insurers, the alleged buyer, Sothebys or the police) would depend at least partly on a law which has its origins in the twelfth century and still generates dispute. One might imagine the way in which an explanation of that law would be greeted by an overseas buyer.

Particular problems arise where a residual owner of chattels is no longer traceable. This is often the position with discovered antiquities, a class of cultural object with which this issue is much concerned.

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https://doi.org/10.1017/S0940739193000311 Published online by Cambridge University Press

At common law, the likeliest foundation for a claim to archaeological discoveries is treasure trove or possessory title. Treasure trove is a doctrine scarcely less bizarre than market overt, a senile affront to the maxim cessante ratione legis cessat ipsa lex (when the reason for a law ceases the law itself ceases). And yet if the Treasure Trove Bill which is due to be presented to Parliament this year fails to be enacted the doctrine will probably limp unreformed into the next century: a prospect few would contemplate rapturously. Possessory title carries burdens of its own, not least the evidential challenge of showing that a claimant formerly had possession of something of the existence of which he was then unaware. No case illustrates more graphically the evidential limitations of such title than the claim pursued by John Browning for the return of the 'Icklingham bronzes'. The claim is now reported to have been compromised by the current holder's agreement to convey the objects to the British Museum at a future time, but the result is fortuitous. More recently, reports have emerged of the sale of a dinosaur skeleton by its possessory owner to fund a divorce settlement. The skeleton was his to sell because it was found on his land. Again, the object is to go to a museum but any vindication of the public interest is wholly adventitious.

The inadequacy of general ownership laws to solve special issues of cultural property underlies Sarah Dromgoole's and Nicholas Gaskell's article on title to wreck. In an exhaustive survey, the authors explore the intersecting rights which can subsist in relation to historic wreck and cargo, concluding that the law of finders' title is an unsatisfactory vehicle for the protection of all legitimate interests. They argue that the modern bias in favour of commercial exploitation must be redressed: if necessary by enhanced state ownership and modified salvage rights, supplemented by international convention. The subject is likely to command renewed attention following the recent decision of the United States Supreme Court in the SS *Central America* appeal.

The familiar tensions among mercantile, academic, environmental and nationalist values occupy much of the rest of this issue: from Igor Emetz's and Anatoly Golentzov's essay on the pillage of ancient tombs in the Crimea to Robert K. Paterson's detailed note on the Bolivian textiles case in the courts of Nova Scotia. Similar conflicts were examined at a seminar on the Penal Protection of Cultural Property at the International Institute of Higher Studies in Criminal Sciences in Sicily in March 1992, here reported by Marina Schneider. Public and judicial reaction to the desacralisation and commercial alienation of church property in Canada is described by Benoît Pelletier, while the case for a voluntary national release of cultural objects is put by Simon Jenkins. He cites the 'boom in ethnic identity in the former communist bloc' as showing a correlation between the displacement of peoples and the tenacity of efforts to regain 'tangible memorials' of 'their collective past'.

At the time of writing, the English press is much concerned with the loss of St Ethelburga's church at Bishopsgate, London. Arguably the City's finest mediaeval church, it was destroyed in April by an IRA bomb. Already there are pleas for its reinstatement. Amid the human agony there is still dismay at the loss of such such memorable buildings, whether through terrorism or simple misadventure. If this be so in England, how much greater must be the sense of loss in Eastern Europe, where events defy description. Our next issue will focus in detail upon the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The working of this Convention was recently reviewed at a meeting of experts in The Hague, and recommendations will be passed to the next meeting of the Executive Board of UNESCO. Readers may care to reflect on the efficacy of this Convention in present circumstances and on the failure of both the United States and the United Kingdom to implement it.