



SCOTTISH LAW COMMISSION

**MEMORANDUM No: 29
CORPOREAL MOVEABLES**

LOST AND ABANDONED PROPERTY

31 August 1976

This Memorandum is published for comment and criticism, and does not represent the final views of the Scottish Law Commission.

The Commission would be grateful if comments were submitted by 31 January 1977. All correspondence should be addressed to:

Mr R Black
Scottish Law Commission
140 Causewayside
EDINBURGH
EH9 1PR

(Telephone: 031-668-2131)

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MEMORANDUM NO 29
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A: INTRODUCTION

1. This is one of a series of Memoranda on corporeal moveables, published simultaneously, the background to which is set out in a general introduction in Memorandum No. 24. That Memorandum also contains a summary of the provisional proposals contained in the whole series.

2. This is not the only investigation which is currently being undertaken into lost and abandoned property. The Working Party on Civic Government, under the chairmanship of Sir Ronald Johnson, is charged with the task of preparing a code of civic government to replace the local Acts and the Burgh Police Acts by the end of 1979; their consultative document was published in April 1976, with a request for comment by the end of July this year, and it contains a section on the disposal of lost property. The Working Party and this Commission have, therefore, both considered the same problems, but from a somewhat different standpoint; our enquiry has been wider, and we have, for example, found it necessary to examine some additional matters such as the rights of certain public undertakings other than local authorities, and the rights of the owner to recover his property. In the circumstances we have annexed the relevant part of the Working Party's Report to this Memorandum, and it appears as an Appendix. We have drawn attention, in the appropriate context, to the solutions which the Working Party have canvassed, whether or not they differ from our own proposals, and this will enable those whom we consult to consider a

fuller range of possible solutions. We propose, in due course, provided that those who submit evidence to us do not raise any objections, to make the results of our own consultation available to the Working Party.

B: EXAMINATION OF THE PRESENT LAW

(1) Common Law

3. It is a basic general principle of Scots law, differing from many legal systems including Roman and English law, that things which were once in ownership but have ceased to have any known owner become the property of the Crown. Once a thing has become the subject of ownership it can never be ownerless. It belongs to the person entitled to it until he loses his right by abandonment, prescription or statutory procedures, and at common law the thing vests in the Crown as soon as the private right is lost. The principle is stated succinctly by Bell¹:

"Things already appropriated, but lost, forgotten, or abandoned, fall under a different rule from that which regulates things that have never been appropriated (section 1288). The rule is, 'quod nullius est fit domini regis'. The principle on which this rests is public expediency, to avoid fraud, contests, and litigation, together with some slight purpose of adding to the public revenue."

If such property is handed over to another it is not as a matter of right but donation.² Thus on failure of all next of kin the estate of a deceased falls to the Crown by caducuary right, and it is the duty of any possessor to hand it over to the Queen's and Lord Treasurer's

¹Principles s.1291. (4th ed.).

²ibid s.1287.

Remembrancer.¹ Similarly by statute² the property of a dissolved company is deemed to be bona vacantia and belongs to the Crown.

4. The common law of Scotland regarding treasure is merely one aspect of the rule quod nullius est fit domini regis (ownerless³ property belongs to the Crown). This rule and Bell's formulation of it were expressly approved by the Lord Ordinary (Hunter) and the Second Division in Lord Advocate v. University of Aberdeen and Budge⁴ when upholding the Crown's claim to buried treasure. The related proposition that the Crown's claim to ownerless property is general and not restricted to treasure is supported by other institutional authority⁵ and by earlier case law.⁶ However, the dearth of case law seems to indicate that Bell was fully justified in asserting that one of the principles upon which the Scottish rule is based is to avoid contests and litigation. We do not know to what extent the public revenue benefited. It would seem that in Scotland the same statutory provisions requiring finders to hand found property over to the police would apply to "treasure". The English law of treasure trove, which is restricted to precious metals, has been criticised as in need of clarification, and the wisdom of abolishing the offence of concealment of treasure by the Theft Act 1968, section 32(1), has been doubted. At least one coroner (whose duties concern

¹Rutherford v. Lord Advocate 1932 S.C.674.

²Companies Act 1948 s.354.

³"Ownerless" in this context does not include things which never had an owner. They - subject to certain exceptions - can be appropriated into private ownership by occupancy.

⁴1963 S.C. 533; the specialties of this case concerning udal law are considered separately later in this Memorandum. See also T B Smith "The Law Relating to the Treasure" in St. Ninian's Isle and its Treasure (Aberdeen University Studies Series No. 152 ed., Small, Thomas & Wilson 1973) p.149 et seq.

⁵For fuller citation see references in Lord Advocate v. University of Aberdeen and Budge.

⁶Gentle v. Smith (1788) 1 Bell Ill. 375; Sands v. Bell and Balfour May 22 1810 F.C; cf. Cleghorn v. Baird (1696) Mor. 13522.

treasure trove in England) has suggested¹ that statute should redefine treasure as all "personal property of antiquarian interest" found buried, hidden or concealed, and that concealment should be a statutory offence.

(2) Relation between Common Law and Statute

5. Superimposed upon the common law are a number of statutory provisions which have not been harmonised with it. Some of the statutes regulating disposal of property are limited in their application to Scotland or apply only to particular local authorities. Others, such as the British Airports Authority (Lost Property) Regulations 1972² and Public Service Vehicles (Lost Property) Regulations 1934 (as amended),³ apply throughout Britain. It is not clear whether the various statutes or statutory instruments, which make no references to the rights of the Crown, abrogate the Crown's claims altogether or whether, if no owner claiming lost property appears, the Crown could claim as owner. So far as United Kingdom or British statutory provisions for disposal are concerned, it may be observed that the common law rights of the Crown over found and abandoned property are not coextensive in Scotland and England, and there seems to be a difference between Scots and English law as to the extent to which the Crown is bound by statutory⁴ provisions. It is not clear to what extent Scottish "lost property" legislation affecting found and abandoned property could be regarded as excluding a claim by the Crown at common law, if the relevant statute did not specifically or by clear implication bind the Crown. The rule that the Crown is not bound by statute unless it is otherwise provided appears to

¹See "Times" 4 Aug. 1975; "Sunday Times" 14 Sep. 1975.

²S.I. 1972/1027.

³S.I. 1934/1268 (Rev. XX, p.436), which does not, however, apply to London, for which special provision has been made.

⁴See J.D.B. Mitchell Constitutional Law (2nd. ed.) p. 183.

have been introduced into Scotland after the Union of 1707 by the Court of Exchequer (which in general applied principles of English law). Nevertheless there is authority for a modified version¹ of the older Scottish doctrine that a statute binds the Crown when it has been passed for the benefit of the public as a whole. Though it could be argued that "lost property" legislation is for the benefit of the public as a whole and consequently binds the Crown, it could also be argued that the Crown could only be deprived of property rights by clear statutory provision. This latter argument might well be fortified by reference to the Scottish Exchequer Court's jurisdiction over caduciary rights. It was formerly an important aspect of the jurisdiction of the Exchequer Court in Scotland to deal with caduciary rights. Small sums might be awarded by way of gift to deserving individuals, while if the property concerned was considerable in amount, a royal donatory was appointed, such as a sheriff of a shire or the magistrates of a burgh, to levy it for the use of the Crown² - unless the Crown wished to confer it as a gift upon a favoured subject. Today such matters are handled by the Queen's and Lord Treasurer's Remembrancer, but, while he is concerned with finds of archaeological interest and treasure, we understand that there has been no case in which his legitimate interests have come into conflict with statutory procedures for disposal of lost property.

(3) Statutory Provisions

6. There are a number of statutory provisions, some specifically relating to Scotland, and others of wider application. We are concerned with the general principles affecting property rights, rather than the details of this legislation.

¹ See e.g. Magistrates of Edinburgh v. Lord Advocate 1912 S.C. 1085.

² e.g. formerly in bastardy Clerk & Scrope Court of Exchequer in Scotland p.222; and see regarding nature of gifts in general p.167.

7. So far as specifically Scottish legislation affecting disposal of lost property is concerned, comprehensive coverage is provided by the Burgh Police (Scotland) Act 1892 section 412 - extended to landward areas by the Lost Property (Scotland) Act 1965. Variants of this legislation appear in local Acts such as the Edinburgh Corporation Order Confirmation Act 1967, sections 497-503; Glasgow Corporation Consolidation (General Powers) Order Confirmation Act 1960, section 152(10), Dundee Corporation (Consolidated Powers) Order Confirmation Act 1957, sections 478, 480 and 481; and Aberdeen Corporation (General Powers) Order Confirmation Act 1938, section 199.¹ Power is conferred on local authorities throughout Great Britain to dispose of abandoned vehicles and other abandoned property (Civic Amenities Act 1967, sections 21-23). In broad terms it may be said that there is comprehensive statutory provision throughout Scotland requiring under penalty finders of lost property to deposit it with the police, (unless some special procedure is appropriate, as under the Public Service Vehicles (Lost Property) Regulations), and providing for its disposal by an authorised public officer if it is not claimed by the owner within a specified period of time. Special provision is made for expeditious disposal of perishable goods, e.g. section 415 of the Burgh Police (Scotland) Act. If the owner claims his property, he may have to pay a sum towards police expenses and a reward to the finder. If the owner does not claim his property, there is sometimes a discretion to award the property to the finder (e.g. section 412 of the Burgh Police (Scotland) Act), and sometimes a direction to do so, subject to deduction of the custodier's expenses. The relevant sections of the 1892 and 1965 Acts (which leave unaffected the provisions of local Acts) provide that if the owner of the property found does not claim or prove his

¹The Aberdeen Corporation (General Powers) Order Confirmation Act 1938, by s. 199 incorporates ss.412 to 415 of the Burgh Police (Scotland) Act, with the exception of "any property found in or on any public service vehicle belonging to the Corporation or railway property."

ownership within six months of the date when the find was reported and deposited "the magistrate may award the same to the finder". By contrast, the Edinburgh Corporation Order Confirmation Act 1967, section 499, provides that after six months from handing over the chief constable shall deliver unclaimed lost property to the finder, or shall sell it and pay the proceeds to the finder.¹ The finder has no such expectation when the British Airports Authority (Lost Property) Regulations 1972, or the Public Service Vehicles (Lost Property) Regulations 1934 as amended, or the Standard Terms and Conditions of Carriage of Passengers and their Luggage dated June 1974² apply. Unclaimed lost property is disposed of for the benefit of the operator under these Regulations or Conditions.

(4) Competition between Finders and other Claimants

8. Since at common law lost property belongs to the Crown in Scotland, if the common law applies, a finder can only acquire by gift of the Crown. Where statute law applies, whether the Acts are general or local, if authority to award unclaimed property to someone other than the owner is conferred - and the power is usually only discretionary - it is in general restricted to benefiting the finder

¹Unclaimed stolen property is to be disposed of after twelve months as provided by the Burgh Police (Scotland) Act 1892, s.415. The Edinburgh Local Act, s.505(1), does not, however, prescribe any minimum period for disposal, and if the owner cannot be ascertained when proceedings are brought, the court may "make such order with respect to the article as the court thinks proper". Presumably, therefore, the only safeguard against overhasty disposal lies in the discretion of the court which is asked to make a disposal order regarding unclaimed stolen property.

²Which relate to railway transport and premises.

alone.¹ Thus competition between actual finder and other claimants, such as employer, or occupier of land where the property was found, does not often arise as in many civilian systems or in English law. There is a dearth of authority on these questions in Scots law, and text writers have relied mainly on English common law rather than statutory authority. Gloag and Henderson² do not expressly adopt the English solutions, but state:

"In England it has been held that banknotes accidentally dropped in a shop by an unknown person belonged not to the shopkeeper, but to the finder; articles embedded in the soil and discovered in the course of operations were held to belong not to the discoverer, but to the owner of the soil."

Professor Walker³ would prefer the claim of the proprietor of heritage to the finder of a moveable in or on heritage when the owner does not appear as claimant. In the old case of Cleghorn v. Baird,⁴ when a small sum of money was found in a cottage while its owner was carrying

¹ However, under the Glasgow Police Act 1866, sections 101 and 103, disposal may be otherwise than to the finder, though it is believed that a Corporation minute authorised the handing over of unclaimed property to a finder. The Glasgow Corporation Consolidation (General Powers) Order Confirmation Act 1960, s.152, prescribes penalties for finders who do not hand over lost property to the owner or the police. The Edinburgh Corporation Order Confirmation Act 1967, s.499, could be construed to confer exclusive rights on a finder, even of valuable property, if it had not been claimed by the owner.

² 7th ed., p.501; see also Bell Principles (10th Guthrie ed.,) s.1291 - an editorial interpolation. The author stated the common law position.

³ See Principles of Scottish Private Law 2nd ed., p. 1550. We do not find the case of Cleghorn v. Baird (1696) Mor. 13522 as altogether clear support for the proposition in the author's text.

⁴ (1696) Mor. 13522.

out repairs, the executors of the deceased occupant were preferred to the owner, who claimed that by the rule of the civil law the money should be equally divided between the master of the ground and the finder. No opinion was expressed as to what the position in law would have been had the find been treated as res nullius. It has been held in Glasgow sheriff court¹ - in a multiplepinding raised by the custodier of the property found - that the claim of a firm of cab-owners was to be preferred to that of their driver who actually "found" the property, but was contractually bound to hand it over to his employer.

(5) Comparative Law

9. We have considered the solutions of a number of foreign legal systems regarding disposal of lost property. In civilian systems, while special rules apply to objects of historic, archaeological or artistic value found buried in the ground, the general rule regarding buried "treasure" is to make equal division between landowner and finder. As regards other types of lost property, there is normally a general duty imposed on finders to notify or to hand over such property to a public authority. If the owner does not claim his property within a prescribed period, it is disposed of either to the finder or for the benefit of the community, a reward being paid to the finder. The basic law is often overlaid by regulations governing the disposal of certain types of property. In some cases, even after sale of unclaimed property, the balance of the proceeds are retained as a fund to compensate in part late claimants. While in Italian² and

¹Corporation of Glasgow v. Northcote (1922) 38 Sh. Ct. Rep. 76 - following English authority. The 1866 Act by s.101 permitted a magistrate upon viva voce evidence to direct delivery to any person "subject to all legal claims".

²Civil Code Arts. 927 et seq.

German¹ law the finder of unclaimed lost property may become owner after a year from notifying his discovery, in French law the original owner may usually reclaim his property, even from an acquirer in good faith, within a period of three years from the time of the loss.² A recent comment³ by Professor J. Carbonnier of Paris indicates dissatisfaction with the present state of French law regarding lost property generally - which he considers disconnected and uncertain - while criticising the provisions of German law as unduly elaborate. The choice in any system regarding disposal must, he thinks, be between the community and the finder. Though the finder may be entitled to a reward, he has, on one view, made no personal effort to justify being awarded the ownership of unclaimed property, which consequently should vest in the community. The Czechoslovak solution⁴ is to distinguish between unclaimed lost property of small and of substantial value. If the property is of small value it is awarded to the finder, while if of substantial value, it is appropriated to the state and a reward is paid to the finder.

10. Though we have found the law of England,⁵ and systems derived from it in the United States⁶ and Canada,⁷ rich in

¹ B.G.B. Arts. 965-984.

² Civil Code Art. 2279.

³ Droit Civil Vol. 3 - Les Biens p. 285.

⁴ Code (1950) Art. 119, cited by Carbonnier, p. 285.

⁵ The relevant English authorities are collected in Crossley Vaines Personal Property 5th ed., Chapter 17 p.419 et seq; also D.R. Harris "The Concept of Possession in English Law" Oxford Essays in Jurisprudence (First Series) p. 69.; O.K. Marshall "The Problem of Finding" (1949) 2 Current Legal Problems p. 68.

⁶ See D. Riesman "Possession and the Law of Finders" (1939) 52 Harv. L.R. 1005 for a comprehensive survey of the law in the United States.

⁷ e.g. E. C. E. Todd (1957) 35 Can. Bar. Rev. 962; S F Sommerfeld (1958) 36 Can. Bar. Rev. 558.

illustrations of "finding situations", the English common law background is so very different from Scots law that we do not think that it would be profitable to analyse it in detail. There is in the English common law no general duty imposed on finders of property to notify the police or other public authority. There has been considerable controversy in English law as to the relative rights of a finder in competition with the occupier of land or premises, or owner of a chattel, such as a safe, in which the lost object was found, or when the relationship of employer and employee existed. The principle of English law is that - except in the special case of treasure trove - the better right to lost property (where the owner has not been traced) is linked to the doctrine of possession, and that, therefore, the occupier of land or the owner of a chattel will be deemed to possess objects found therein - even if he was unaware of their existence before a finder discovered them. The element of trespass on land may also be relevant. Where the articles are found unattached on the surface of land the law is particularly complex. Crossley Vaines writes¹:

" [T]he most that can be said is that a finder only acquires a good title as against all but the true owner when he finds the goods in a public place, leaving open the question of what is a public place, or in circumstances where there can be no animus possidendi or intention to exclude on the part of some person other than the true owner."

11. We note that though distinguished jurists have written extensively on this branch of the English common law, they do not seem satisfied with its theoretical basis, and we should not be inclined to recommend its grafting onto Scots law. Though in certain American states statute law provides for

¹Op. cit. p.426.

escheat of unclaimed and lost property, in general American law is seemingly less preoccupied by the factor of possession of land and premises than is English law.¹ Public opinion favours the finder rather than an occupier. Professor Riesman had suggested that the American rule should be that the claim of the finder should prevail against all but the true owner, except in rare cases where rules of contract or tort require a different result to protect the owner. He would restrict the claims of occupiers in competition with finders to cases where the find was made in the occupier's private home, though finders might be required temporarily to hand over found property to occupiers of stores, hotels, theatres and the like, since those who had lost property would probably seek to trace it back to such premises. Riesman cites the case of Keron v. Cashman², the facts of which would be relevant in a system which rewarded finders or awarded unclaimed property to a finder or finders. In that case a group of boys were playing with an old stocking which one of them had found and eventually it burst (in the hands of the original appropriator) revealing several hundreds of dollars. The court held that all the boys were entitled to participate. Though the court's reasoning might not be altogether relevant for a system outside the Anglo-American common law, the possibility that there may be disputes as to who should qualify as "finder" suggests the desirability of any "lost property" legislation giving to a court an unfettered discretion to determine that question on broad considerations of justice.

12. Statutory provisions in England contrast strikingly with the favour shown by the English common law to the person with the better right to possess unclaimed stolen property. The public interest is preferred to the private windfall. An

¹ D Riesman "Possession and the Law of Finder" (1939) 52 Harv. L.R. 1105.

² 33 Atl. 1055 (N.J. Eq. 1896), (1896) 10 Harv. L.R. 63.

early example is the Hackney Carriages (London) Act 1853. Section 11 required drivers under sanction of fine or imprisonment to hand in at a police station property left in a hackney carriage, and provided that, if the property was unclaimed after one year, it was to be disposed of and, after deduction of expenses and of such reasonable reward as the commissioners determined, the proceeds were to be paid over to the public account. This policy of English statute law has influenced subsequent United Kingdom and British legislation, and seems more appropriate than the English common law for consideration when formulating solutions for disposal of lost property in Scots law.

C: POLICY OBJECTIVES

13. At this stage we set out the broad principles which have influenced our thinking in formulating a modern and internally consistent scheme for the management of lost or abandoned property. While we do not wish to discourage comment on these propositions as such, we invite readers to consider particularly whether they agree with the detailed solutions which, later in this Memorandum, we provisionally reach as a result of the application of these principles.

- (i) The principal objective of the law should be to encourage and assist the owner to recover his property.
- (ii) The owner of lost property should be given a reasonable time within which to reclaim his property.
- (iii) Where the owner does not claim his property within a reasonable period, the law should regulate clearly how the property is to be disposed of, and the nature of the title of the person to whom the property is ultimately delivered.

- (iv) Where property has been abandoned or remains unclaimed by the owner within a reasonable time, the rights of the Crown or of an official custodier subrogated to the Crown's rights should be preferred to those of the finder, who should expect no more than a reasonable reward.
- (v) As a matter not only of law but also of practical expediency, a finder should be encouraged to restore lost property either to the owner or to some public custodier.
- (vi) There should be some reasonable incentive, by means of reward, to encourage finders to hand in or report the discovery of lost property.
- (vii) There should be criminal sanctions to deter dishonest finders from misappropriating lost property.
- (viii) The owner of lost property should know where to direct his enquiries in order to attempt retrieval.
- (ix) Public custodiers of lost property should be relieved of the burden of storage after a reasonable time.
- (x) Where property has been abandoned or remains unclaimed by the owner within a reasonable time, the law should seek to avoid conflicts between the Crown and those who are entrusted by statute with the custody of lost and abandoned property.
- (xi) Whether or not the Crown is to be regarded as the owner of a res nullius, it is desirable to avoid conflicts between central government, local authorities, and other bodies who are financed either wholly or partly out of public funds.
- (xii) It is important to safeguard property of historical, antiquarian or cultural importance.

- (xiii) Apart from (xii), there does not seem to be any fundamental or logical reason, so far as rights of claimants are concerned, to draw a distinction between treasure and other forms of property, or between lost and abandoned property, and the rights of claimants should not depend upon whether the property is or is not treasure, or whether it is abandoned or merely lost.
- (xiv) In principle the rights of claimants should not depend upon the place where the property was found or upon who owned or possessed that place.

D: THE RIGHTS AND DUTIES OF FINDERS,
OWNERS AND OCCUPIERS OF LAND ETC.

(1) What constitutes "finding"?

14. If it is accepted that the law should discourage dishonesty and encourage a finder to deliver property, or at least report its discovery, to the owner or a custodian, it would not be disputed that once a person physically takes possession of an article, he should incur certain obligations. But short of taking possession, should any duty arise? When members of the public pick up a substantial sum of money, or a piece of jewellery or some other valuable object, and hand it over to the police, they usually do so less because of a sense of legal duty but of a moral obligation, attenuated perhaps in the case of articles of small value.

15. It is not thought that the existing statutory provisions impose in general a legal duty to pick up an article. For example, section 412 of the Burgh Police (Scotland) Act provides that "every person finding any goods", etc, "shall report the

fact and deposit such goods" etc, with the appropriate authority. Paragraph 4 of the Public Service Vehicles (Lost Property) Regulations 1934¹ might, however, be construed as imposing such a duty. It provides that "Any person who finds property accidentally left in a vehicle shall immediately hand it in the state in which he finds it to the conductor".

16. For practical reasons we do not think that a person should be under a legal obligation to report the finding of any and every item of lost property unless and until he has, in some way, taken possession of it. We are aware, however, that this is a controversial subject, particularly in archaeological circles, where the imposition of some kind of legal obligation has from time to time been advocated in order to protect objects of antiquarian importance. This points, perhaps, to the desirability of imposing a duty to report the discovery of a limited category of articles.

17. We therefore propose provisionally that there should be no general legal duty to report the discovery of, or take possession of, or acquire some other form of physical control over, lost or abandoned property. However, we invite views on whether there should be a duty to report the discovery of (or perhaps, in appropriate circumstances, to take possession of) a limited category of corporeal moveables, where a criterion such as historical, cultural or antiquarian importance is satisfied.

¹S.I. 1934/1268 (Rev. XX, p. 436).

(2) The rights of finders, etc.

18. As a matter of principle we do not think that rights to property should depend upon the place where the property was found or who was the owner or occupier of that place.¹ The ownership or occupation of that place may be relevant to the question who owns the property and whether or not it is lost or abandoned property, but not to the rights to an object which is in fact lost or abandoned property. Thus as a matter of policy we would exclude the rights of a finder's employer, and the owners and occupiers of land.

19. It is readily apparent from paragraph 7 that the finder's rights differ considerably, depending on where he hands in lost property. Under the Burgh Police (Scotland) Act, section 412, unclaimed lost property may be awarded to the finder, whereas section 499 of the Edinburgh Act appears to confer a right to the property on the finder. Usually the finder will be awarded an unclaimed article which has been handed over to the police, whereas unclaimed property entrusted to the British Airports Authority, British Rail, and the operators of public service vehicles is retained by the operator. It is somewhat anomalous that the finder's expectation should differ so considerably if he hands in lost property at a police station rather than at an airport or a railway station.

20. The expectations of the honest finder who hands over lost property for public custody are presumably that the owner may claim it and that a reasonable reward will be paid. It might be thought that, whether the property is claimed or not, the finder should not become entitled to claim its ownership but should receive no more than a reasonable reward.

¹See the comments above in paras. 10-12 on the approach of English law.

Otherwise there would be a gross disproportion between that reward and the finder's deserts, and the dishonest appropriator might find it convenient to assume the rôle of finder. This risk and the possibility that there may have been several persons concerned with the original and subsequent finding (e.g. a container which is later opened) suggests the desirability of conferring a wide discretion on an official custodian to determine who, if anyone, should receive a reward and how much that reward should be. This would encourage genuine finders to hand over lost property to the custodian. The discretion should exist whether or not the owner reclaims his property. In our view, if an alleged finder is dissatisfied with a custodian's exercise of his discretion, he should be able to apply to the sheriff court for a review of the custodian's decision. The court, inter alia, would adjudicate in the event of competing claims.

21. On the other hand, some might favour the solution of handing back certain unclaimed lost property - possibly only under a certain value, and subject to the deduction of reasonable expenses - to a finder on the basis that, if he continued to possess during a prescriptive period subject to the original owner's right, the public custodian could perhaps be relieved sooner than might otherwise be reasonable of the duty to safeguard lost property. If the view is taken that certain items of small value only should be awarded to the finder, two questions arise: which items? and up to what value? Clearly articles which do not belong to the person who is in possession of them - such as passports and credit cards - should not be awarded to the finder. The most practical solution would seem to be to confer a discretion on the custodian to determine whether

a particular article was of a suitable kind to be given to the finder. The exercise of this particular discretion should not be subject to judicial review. The problem of assessing the value might be resolved by providing that only if the ostensible value of an article was less than, say, £5 might it be handed over. We make this suggestion because of the difficulties inherent in fixing the value of a particular article. An article has a different value to different persons: a cheque card, for example, does not in itself have a pecuniary value in the hands of the holder, but seen through the eyes of an issuing bank, who have to consider the consequences of fraudulent use, it is a very valuable document indeed. A further problem is whether the value should be ascertained when the property is lodged with the custodian; or when it is claimed by the owner; or when it is disposed of by public sale.

22. A further possibility is that rewards be made a matter of right, perhaps representing a fixed fraction of the value of property. Similar problems will arise in calculating the value of the article.

23. The discussion in the preceding paragraphs reveals that on the assumption that the finder can be traced¹, there are several possible courses, which may be summarised as follows and on which we would invite comment.

24. The first solution, which we ourselves prefer, is as follows:

- (a) No finder, employer of a finder, or owner or occupier of land should have any legal right to unclaimed, lost or abandoned property.

¹The Working Party on Civic Government further suggest (para. VI.3 (iii)) that if the finder cannot be traced, or if he fails to take delivery of the property within one month, the property should be sold.

- (b) Where, however, the apparent value of an article found is less than, say, £5, the custodier should be empowered to hand over that article, if unclaimed, to the actual finder in lieu of the appropriate reward.
- (c) The custodier should have a discretion to withhold articles of a kind which he considers unsuitable to be handed over to the finder. There should be no right of appeal to the courts arising out of the exercise of this discretion.
- (d) The custodier should be empowered to pay at his discretion a reasonable financial reward to a finder of claimed or unclaimed property.¹ Any person who claimed to be a finder of such property should be given a right of appeal to the sheriff, who would determine, if necessary, who was the finder, and what the amount of the reward should be.²

25. The second solution is as follows:

- (a) The actual finder should have a right to unclaimed lost and abandoned property, subject in the case of articles above £5 in value to the payment of a reasonable sum to cover the expenses of the custodier.
- (b) This right might be restricted to articles of below, say, £50 in value.
- (c) In assessing these values the apparent value of the article should be taken as the basis for assessment.

¹Cf. the solution proposed by the Working Party on Civic Government, (para. VI.3(ii), quoted in the Appendix) which would provide for a reward equal to 10 per cent of the value, subject to a discretion to increase it, reduce it or waive it altogether in cases of hardship.

²The Working Party on Civic Government propose that, in the event of any dispute over the value, the chief constable should have power to appoint a valuer and to decide whether the finder or owner should pay his fee (para. VI.3(ii)); a finder aggrieved by a chief constable's decision would have a right to require the decision to be referred to a court of summary jurisdiction (para. VI.3(v)). This we understand to be a reference to the sheriff court.

- (d) If the finder's right is restricted to, say, articles of less value than £50, he should be entitled to a reward in respect of more valuable articles whether claimed or not, calculated as in the third solution.

26. The third solution is as follows:

- (a) A finder should have a right to a reward.
- (b) The reward should represent a fixed fraction of the value of the property.
- (c) The value should be ascertained at the time when the property is lodged with the custodian, or when it is claimed by the owner, or when it is disposed of by public sale. (Comment is particularly invited as to which tempus inspiciendum is appropriate.)

(3) The obligations of finders

27. Official custodians of lost articles authorised by the law may at present be the police or undertakings, such as transport authorities, which have statutory powers in relation to articles found on their premises or vehicles. In practice private enterprises such as taxi firms, hotels, theatres and department stores provide facilities for safe custody of articles found on their vehicles or premises, and may require their staff to hand in to their offices articles found therein. Finders of lost articles may come upon them in private property to which the public as such are not admitted - as, for example, a private residence; or in private property to which the public have access - such as a theatre; or in public property - such as a street; or in property covered by statutory regulations - such as an airport.

28. If the article was found in a public place the appropriate public custodiers at present are the police, and if the article was found on premises to which statutory regulations apply, the operators' rights and duties in respect of mislaid property are prescribed by law. Nevertheless, an owner who had mislaid his effects in a private house, a theatre, a restaurant or a store would probably first seek them where he last recalled having them in his possession. Moreover, a private host would probably regard a guest who found mislaid articles in the host's house to be acting uncivilly were he to hand them over to the police rather than to his host. The proprietor of a restaurant might well question the propriety of a diner who, having found a ring of value under the table, wished to take it with him from the restaurant ostensibly to lodge in police custody.

29. On the whole we think that the law should probably recognise that a finder, who has handed over the mislaid article to the occupier of private premises on which it was found, should be regarded as having fulfilled his legal duty of handing over the article to the public authorities - constituting the occupier as his agent. The occupier accepting custody of the mislaid article should, we think, be entitled to retain it for, say, seven full days before handing it over to public custody unless it had been claimed by the owner before the lapse of this time.¹ The occupier should possibly be obliged to intimate to a public custodian, within 48 hours, that he is in possession of the article.

30. The other principal question is whether, and to what extent, duties should be imposed on finders, and in

¹There is evidence that many stores, shops and other businesses are not complying with their existing statutory duties to hand in lost property. One reason is that many English-based firms seem to be unaware of the law of Scotland: see e.g., Edinburgh Evening News, 19th March 1976.

appropriate circumstances custodiers, to hand in or report the discovery of lost property. We consider that the solution contained in section 412 of the Burgh Police (Scotland) Act is too rigid, because it appears to overrule the common law duty of restitution. The section provides that every person finding any goods, articles or money is to report the fact and deposit the goods, etc., within 48 hours. In its terms it appears to exclude what in many cases may appear to be the common sense alternative, which is to restore the property directly to the owner, or to intimate its discovery to him, when his identity can readily be ascertained. We propose for consideration that these alternative duties should be available.

31. In Part E we discuss the existing multiple system for the collection and disposal of lost property, and invite views on the proposal that there might be a single public custodier. If, however, the existing system is to remain, the question arises whether a finder should be obliged to hand the article to one particular authority, or whether he should have the option to deliver it, say, to the police in all cases. This question may be of some importance so long as certain enterprises are entitled to acquire the ownership of unclaimed articles, and if the existing system is retained it would seem correct that the obligation should be to hand the article to the particular authority. This is indeed a feature of the Public Service Vehicles (Lost Property) Regulations, which provide by Regulation 4 that the item is to be handed immediately to the conductor. More generally, however, if there is to be a single custodier, and especially if an authorised organisation is to act as agent on behalf of the custodier, it would seem immaterial to whom the article is handed as long as it is not retained by the finder.

32. The establishment of a single public custodier would entail that certain enterprises would forfeit their existing rights in Scotland, but retain them in other parts of the United Kingdom. This in itself is not an insuperable objection to innovation, because similar problems will arise in all forms of international transport where the law regarding lost property is not the same at the point of departure, the point of arrival, or any intermediate stage. We commented in Part C that the principal objective of the law should be to encourage the owner to recover his property, and it would thus seem appropriate that the article should be entrusted to the custodier at the point of arrival. It should be immaterial at what stage of the journey the article is found and handed over. If the point of arrival is Scotland, the substantive law of Scotland should apply to the property from the time when it is found.

33. Our provisional proposals under this heading may be summarised as follows:

- (1) If an article is found in a public place, the finder who takes possession of it should be obliged to report its discovery, or to hand it over, to its owner or to an authorised custodier, within 48 hours.
- (2) If an article is found on private premises, the finder who takes possession of it should be obliged to report its discovery, or to hand it over, to its owner, to the occupier of the premises, or to an authorised custodier,¹ within 48 hours.

¹See also para. VI.3(1) of the Report of the Working Party on Civic Government, where it is recommended that it should be a defence to a criminal charge if the finder has handed the property to a person appearing to be in authority at the place where it was found.

- (3) If an article found on private premises is handed over to the occupier of those premises, or if its discovery is reported to the occupier, the occupier should be obliged to report its discovery, or to hand it over, (a) to its owner within 48 hours; or (b) to a public custodian after a period of, say, seven full days, if the article has not been claimed by the owner within that time. In the case of (b), the occupier should possibly be obliged to intimate to a public custodian, within 48 hours, that he is in possession of the article.
- (4) If the existing multiple system for the collection and disposal of lost property is to be retained, the obligation should be to report the discovery, or to hand over the property, to the authority on whose premises or vehicle the property is found.
- (5) If property is discovered on a form of transport whose destination is in Scotland, the substantive law of Scotland should apply to the property from the time when it is found.

(4) Penalties

34. Section 412 of the Burgh Police (Scotland) Act 1892 imposes a penalty not exceeding £5 (a fairly substantial sum in the 19th century) on a finder who fails to report and deposit¹ his find with the police within forty-eight hours. It may be thought that such a sanction, unrelated to the value of the property found, may on occasion not prove very effective. Moreover, if finders are rewarded in proportion to the value of property deposited, corresponding considerations of value might seem relevant in punishing clandestine appropriators. The more serious sanction of prosecution for theft

¹The duty to deposit as well as to report the find may be thought unduly exacting in the case, e.g., of bulky objects, and reporting alone with a reasonable excuse for failing to deposit should probably be considered sufficient compliance with the law.

is available in graver cases of appropriation by finding,¹ but the statutory penalty is available for punishing minor offences and when proof of theft might be difficult. We think consideration should be given to increasing the maximum fine, which might indeed be related to the value of the property which the finder had failed to hand over. In some cases, of course, lost property may be dealt with innocently and without knowledge that it had been lost - as when executors assume that moveables (which in fact had been lost by a third party) belonged to a deceased in whose house they were kept. We do not intend in this Memorandum to consider the scope of the criminal law of theft in relation to lost property.

35. The Working Party on Civic Government propose (paragraph VI.3 (i)) that the penalty for failure to hand in property should be a maximum fine of £10, or the value of the property, whichever is the greater. This could in some cases be a very considerable sum. We invite comment on the Working Party's proposal.

E: THE CUSTODIER

(1) Who should be the custodier?

36. At present the function of official public custodier is largely discharged by the police, except where property is found in public service vehicles, aircraft, railway premises, etc. If the present system is to be continued, and there are to be a number of official public custodiers, there is much to be said for retaining the existing rôle of the police. We believe that the public have full confidence in their administration of the present law for

¹For an account of the development of the doctrine of theft by finding see G. H. Gordon Criminal Law p.416 et seq.

disposal of lost or abandoned things. Moreover, in the "grey area" where a thing may have been stolen or lost - or both - the police are likely to be better informed or shrewder appreciators of the probabilities than other public custodiers. In many contexts, they undertake tasks beyond the requirements of strict duty to assist people in distress or difficulty. We are well aware of the many heavy duties imposed on police forces, and it might be thought that their activities in combating crime and regulating public order would not be assisted by increasing their duties relating to custody of mislaid, abandoned or stolen goods. If, on the other hand, funds available for police functions could be augmented by the profitable administration of a scheme for restoring or disposing of such goods, it may well be that useful employment could be given to officers who through age or injury were no longer capable of other police rôles. The police would probably command more public confidence than any other local authority service in relation to the custody, restitution and disposal of lost effects.

37. On the other hand, there may be a case for bringing the responsibility for the care of and disposal of lost and abandoned property under the aegis of a single authority. This might entail abolishing certain statutory functions of the British Airports Authority and others who would thus forfeit the benefits described in paragraph 5. Alternatively these bodies might continue to discharge certain functions in relation to lost property, possibly handing over unclaimed property to the official custodian after a suitable period had elapsed, say 6 months. A single public custodian might assume other functions.¹ The police might be the custodian:

¹Such as those exercised by the Queen's and Lord Treasurer's Remembrancer, referred to in paras. 3, 5, 51 and 65.

alternatively they might act as agents of the official custodier in discharging certain functions. It is possible that the creation of such an office would encourage the claiming of lost property and reduce the number of items which remain unclaimed. We invite views on the proposal that there might be a single public custodier; in particular, whether this function should be discharged by the police or by some other body; and what should be the extent of the custodier's responsibilities.

(2) The duty to trace the owner

38. Another policy question relates to whether a duty should be imposed on a custodier of mislaid property to make efforts to notify the apparent owner, if his identity is seemingly disclosed in or on the article taken in charge. A wallet or handbag or luggage label may indicate the probable owner. If the found article is of considerable value and communication with the apparent owner is easy and relatively inexpensive, it would seem appropriate to notify by post or telephone. On the other hand, if a clearly addressed but opened envelope were found containing a letter, it might or might not be of value to the addressee. The value would not necessarily be patrimonial. We understand that public custodiers do, in fact, take steps to notify the owners of property when they are in a position to do so. We are of the view that there should be a general duty on a public custodier to communicate with an owner of a mislaid article if his identity is apparent from the article or its contents, or can reasonably be ascertained from the article or its contents. We invite comments on this provisional proposal.

39. There are, in addition, cases where the article, or a document contained in the article, includes evidence from which another person may be able to identify the owner. A simple illustration is a cheque card which contains a code number and a card number which would enable the issuing bank to identify the cardholder. We therefore consider that in cases where the identity of the owner of an article cannot be readily ascertained but the article itself, or its contents, indicates the name and address of someone who is likely to trace the owner, there should be a duty on the public custodian to inform that person.

40. Some documents do not belong to the person who has lost them, or else they do not indicate his address. Passports and credit cards (such as Barclaycards and Access Cards) do not become the property of the person to whom they are issued. In such cases we think that there should be a duty to return the document to the issuing authority or agency, and not to the person to whom the document was issued. We invite comment on this provisional proposal.

41. It is not clear whether the duty should arise in all cases, or only where the article is of a certain kind, or over a certain value. It may be said that, because there will be many instances where it will not be possible for a public custodian to place an accurate value on an article, it would not be desirable merely to confer a discretion, as opposed to a duty, on a custodian if he considered the article to be of small value. On the other hand, there is much to be said for conferring a discretion on a custodian not to take steps to trace the owner where the article is obviously of little value, in order to reduce the burden and expense of administration. We therefore propose provisionally that the general duty should not arise in a case where the ostensible

value of an article is, say, less than £5. Documents such as credit cards and passports do not, in the ordinary way, have any patrimonial value as such, but we do not anticipate that any problems would arise. We would expect a custodian entrusted with a discretion, as opposed to a duty, to return such documents to the issuing authority as a matter of course.

F: THE RIGHTS OF THE OWNER

(1) Time for claiming lost property

42. Erskine¹ and Bankton,² discussing the position at common law, considered that it would be inequitable that mislaid property generally should be treated as res nullius in so short a time as one year, as was the rule regarding stray cattle: "Besides frequent instances occur when the owners of lost plate or jewels have reclaimed them from the finder, and even from the bona fide possessor, long after the year without challenge from the King or his donatary". A rule appropriate for silver or gold articles or jewellery is not, however, necessarily suitable for dealing with the disposal of the many lost articles of small value which are deposited with the police and which involve considerable inconvenience to their custodians in respect of storage and administration. We understand that over 90% of lost articles are claimed by their owners within about a fortnight.

(2) Should periods be related to the value?

43. The existing statutory provisions, which were described in paragraph 7, unlike equivalent legislation in some other systems, do not make distinctions according to the value of

¹II.1.12.

²I.8.4. See also Sands v. Bell and Balfour 22 May 1810 F.C..

the property involved, nor make clear what right the finder to whom unclaimed lost property is handed over acquires, in competition with the original owner who appears after the statutory procedure has been carried out. The expressions "deliver" and "award" could be construed to imply the transfer of a right of ownership or merely of possession - though where there is a discretion to sell and pay the proceeds to the finder, it would seem reasonable to imply that the purchaser becomes owner - as would the finder if the property rather than cash is delivered to him.¹ By contrast we note that the New York Personal Property Law 1958 provided for police retention of lost property for the space of six months if its value is up to \$500, for one year if the value is between \$500 and \$5,000, and for three years over the latter value. When the prescribed period has expired and the property has not been claimed by the owner, it is to be handed over to the finder (unless he rejects it) and the finder will acquire a right preferable against all others including the original owner.²

44. We note, however, that modern British legislative and other provisions regarding disposal of lost property give the owner even less time for retrieval than does the Burgh Police (Scotland) Act, and do not take much into account a scale of values in prescribing minimum periods of custody. Thus the British Airports Authority (Lost Property) Regulations 1972 provide³ that if lost property is not redelivered to the owner within three months of the date of delivery for safe custody in a Lost Property Office, the Authority shall be entitled to sell

¹If this is doubtful, the doubt should be resolved by statutory provision.

²i.e. not, as in English law, merely a possessory title.

³Regulation 8.

for the best price that can reasonably be obtained. Nevertheless such sale does not prejudice the right of any person whose rights have been divested by the sale to be paid the proportion of residue of the proceeds after deduction of the Authority's reasonable costs in connection with the sale. (However records regarding particulars of the property and of its disposal need only be retained for twelve months.) The Public Service Vehicles (Lost Property) Regulations 1934 as amended, which apply throughout Britain outside the London area, provide that if lost property is not claimed within three months from the time it was handed over to the operator it shall vest in the operator, who shall, as he thinks fit, either deliver such property to the conductor, or without undue delay sell such property, and in respect of any article which realises a sum in excess of 2/- shall award to the conductor (up to an amount not exceeding £4) one twelfth of the proceeds of such sale.¹ The Standard Terms and Conditions of Carriage of Passengers and their Luggage (June 1974) - which, though not statutory provisions, have a comparable practical effect - provide that all articles found on trains or premises belonging to the British Railways Board shall be handed over to their custody, and if not claimed within three months will be deemed to be abandoned and may be sold or otherwise disposed of, and the proceeds of any such sale may be retained by the Board.²

45. One of the problems which has concerned us in contemplating the relation of periods for disposal to the value of lost property in official custody concerns the difficulty of securing reliable appraisal. The owner, whose interests

¹The London Transport (Lost Property) Regulations 1960 provide that property which has not been claimed within one month shall, vest in the Commission, who shall without undue delay sell the same. However, in the case of property over the value of 10/- disposal may at the Commission's discretion be delayed for such period, not being less than three months, as the Commission shall think fit. (S.I. 1960/2396, Reg. 9.)

²S.II A 20.

are most concerned, is not involved at the time of handing over. The custodian has a reasonable interest in not being burdened with unclaimed property longer than necessary, and would be inclined to estimate a low value in the interests of speedy disposal. The finder, if likely to be rewarded, would be disposed to overvalue. Regulation 9 of the Public Service Vehicles (Lost Property) Regulations 1934 and Regulation 8 of the London Transport (Lost Property) Regulations 1960 provide for valuation of lost property with the object of fixing appropriate charges to be paid by the claimant of lost property. The value is deemed to be that agreed between the Commission and claimant or, failing agreement, such sum as may be fixed by a licensed appraiser for whose fee the claimant is liable. This procedure gives little assistance in solving the problem which confronts us, and it may be thought that the valuation contemplated by the Regulations would be related to the time of claim rather than that of handing over for custody. It might reasonably be inferred that public authorities dealing with lost property on a large scale are likely to gain considerable expertise in appraising values, and almost certainly could distinguish between a category of trivial value and that of apparent substantial value. For the latter the cost of an expert appraisal might be justified, to be paid for as one of the expenses to be deducted on restoring the property to a claimant or otherwise disposing of it.

46. Bearing in mind the peremptory procedures for disposing of lost property under the Regulations referred to, it might seem impracticable to prescribe periods of custody for other lost property according to its value. On the other hand it may be that, if property of very substantial value is mislaid in a public transport vehicle, an airport or a station, it is likely to be claimed more promptly than in situations where an owner has little idea where his lost property has been

placed for safe custody. We consider that there would be an advantage in introducing categories of lost property, according to which the period of custody would depend upon the value of the property, and we invite views on this proposal.

47. As a basis for comment we suggest a possible time and value scale for disposal of unclaimed lost property, whether believed to be stolen or not. The custodier would have the power but not the duty to distribute after the elapse of the following periods:

- (a) for property valued at (say) £50 or less when handed over for custody, disposal should be authorised after three months;
- (b) for property valued at between (say) £50 and £250 when handed over for custody, disposal should be authorised after six months;
- (c) for property valued at over (say) £250 when handed over for custody, disposal should be authorised after one year.

Power should of course be conferred on a custodier to destroy perishables, or sell them promptly and hold the proceeds as a surrogatum.¹ The tariff of valuation should be variable by statutory instrument. There should be a power to make a charge for reasonable expenses, which could be waived at the discretion of the custodier. It might be practicable to store unclaimed property in the most valuable category under special centralised arrangements. It might be thought appropriate to impose a duty on custodiers of property to inform the Crown for such interest as it might have before disposing of property appearing to be worth (say) £2,000 or more, or property of archaeological, historical or artistic value.²

¹Cf. the proposal of the Working Party on Civic Government para. VI.3 (iv)).

²The Working Party on Civic Government propose (para. VI.3 (iii)) a period of one month, subject to a discretion to extend that period.

(3) Title to unclaimed property after disposal

48. The effect of disposal by the custodier, usually by public sale, but possibly by award,¹ should be, we envisage, to create a new statutory title in the acquirer and to cut off the owner's right to the property. This approach contrasts with French law, which would allow an owner in such circumstances to recover his property within three years from the time of his loss on reimbursing the purchaser at the public sale. We should be interested to know if there is support for the French approach. We are provisionally, however, of the opinion that public sale should divest the original owner of, and ~~interest~~ ~~the purchaser~~² with, ownership of the property so sold. The proceeds of sale should be available as a compensation fund out of which the owner of property which realises more than (say) £250 at the sale should be entitled to recover the purchase price, less the custodier's reasonable expenses, within 5 years from disposal.

49. The effect of "delivery" or "awarding" unclaimed lost property to a finder under the present Scottish legislation is unclear. If the original owner were to demand delivery from the finder after the property had been handed over to him, the question would arise as to whether the finder had acquired ownership or merely a possessory title. We understand that in, for example, German and Italian law the finder of unclaimed property to whom it is returned becomes owner. If, contrary to our tentative opinion, the system of handing over unclaimed property to the finder is to continue in Scotland, we think that (except possibly in the case of property with an ostensible value of less than £5) he should

¹ See supra, paras. 24-26.

² By contrast the Working Party on Civic Government propose (para. VI.3 (iii)) that there should be no restriction on the right of the owner to take civil proceedings to recover the property from the person in possession.

acquire merely possessory title until it had been fortified by five years acquisitive prescription. Though this may seem contrary to the policy which we provisionally favour of creating clear title to moveables whenever practicable, we do not think that the finder's position should be assimilated to that of the bona fide onerous acquirer.

50. Our provisional views, on which we invite comment, are as follows:

1. Public sale should divest the original owner and confer a clear title (irrespective of acquisitive prescription) on the purchaser.
2. A compensation fund should be formed from the proceeds of sale, out of which the owner of property which realises more than, say, £250 at the sale, should be entitled to recover the purchase price (less the custodier's reasonable expenses).¹
3. If the present system of handing over unclaimed property to a finder is continued, the finder should acquire merely possessory title until it has been fortified by 5 years acquisitive prescription - except possibly in the case of property with an ostensible value of less than £5.

(4) The disposal of surplus funds

51. The problem of what to do with surplus funds will depend to some extent on whether there is to be a single public custodier. We commented in paragraph 13² that,

¹This suggestion would, in effect, conflict with the proposal of the Working Party on Civic Government that an owner aggrieved by a chief constable's decision would be able to require the decision to be referred to a court of summary jurisdiction (para. VI.3 (v)).

²Subparagraph (iv).

in our view, the rights of the Crown should be preferred to those of the finder, and we developed this argument in paragraphs 19-26. We also proposed in paragraph 48 that there should be a compensation fund out of which the owners of property which realises more than, say, £250 in a public sale should be entitled to recover the purchase price, less the custodier's reasonable expenses. In paragraph 13 we observed that it was desirable to avoid conflicts between central government, local authorities, and other bodies who are financed either wholly or partly out of public funds,¹ and we understand that, in the case of articles of historic, archaeological or cultural value, there is now a committee under the auspices of the Queen's and Lord Treasurer's Remembrancer which ensures that such conflicts are avoided, and makes recommendations for disposal. Nonetheless it seems that after the elimination of such articles, the creation of a compensation fund and the payment of all expenses, there may be a surplus of some kind, and the question arises what should be done with this surplus. We ourselves have formed no concluded view, and would refer to the proposal of the Working Party on Civic Government² that the recipient should be the regional or islands council (as the police authority).³ We invite comment.

G: MISCELLANEOUS PROBLEMS

(1) Lost Dogs

52. The Dogs (Amendment) Act 1928, section 2 allows a finder, who registers his intention at a police station, to keep a stray dog, but the Act does not confer on him title as owner. If the original owner claims the animal, he would seem to be entitled to restitution. We have no strong views on this matter, but consider such a claim would operate harshly if the finder had kept a dog, which might otherwise have been destroyed, for a substantial period. It seems to us

¹Sub-paragraph (xi).

²Para. VI.3 (vi).

³See s.146 of the Local Government (Scotland) Act 1973.

that the claims of the finder should be preferred and his ownership should be recognised after he had kept the dog for one year. A longer acquisitive prescription would seem inappropriate in the case of relatively short-lived animals.

53. We should welcome comment on this very provisional view, and also as to whether (if acceptable) it might be appropriate to extend the solution to other domestic animals, such as cats.

(2) Abandoned Property

54. Abandoned property is res nullius and belongs to the Crown at common law.¹ It is perhaps not conclusively settled that the general rule applies when the identity of the original owner is known and when there is no doubt as to his intention to abandon. We think that this question should be put beyond doubt, and invite comment as to whether an appropriator of deliberately abandoned property should be entitled to become owner if the original owner had clearly intended to relinquish his right.² Alternatively, it should be made clear that the rights of the Crown include all property deliberately abandoned, even if the original owner and his purpose were known.

55. In practice private appropriation would not usually be regarded as unlawful. If, however, lawful appropriation by private persons of res derelictae seemed acceptable, we should be inclined to suggest limiting such acquisition to cases where, should dispute arise, the appropriator by

¹ Bell Principles s.1291; Stair II.1.5 contra III.3.27; Erskine II.1.12 (at least where the original owner is unknown); Bankton I.3.16 and I.8.5; Sands v. Bell and Balfour 22 May 1810 F.C.

² The existing rights of local authorities to scrap and other articles left for collection as rubbish should not, however, in our view be affected.

alleged occupation was able to establish that the res appropriated had in fact been abandoned by the former owner. We invite comment.

(3) Property left by Evicted Tenants

56. We have had drawn to our attention the problems created when an evicted tenant leaves corporeal moveables in the subjects which he had inhabited. These may or may not have belonged to him. Moreover (in cases where no question of hypothec arises) he may owe money to the party who evicted him. That party may wish to give possession to a new tenant, and therefore to get rid of the articles left in situ. Though we think that abandonment might be presumed before the long negative prescription had run¹, and indeed could be inferred even after a short time (as can death at common law) from the facts, such a presumption could not safely be made in the case of articles of any value left behind by the evicted tenant. Nor could he be said to have lost them. Erskine² (writing in the 18th century) seems to assume that "no inconvenience" would result to a possessor of lost moveables by expecting him to keep them until prescription has run. In modern conditions possession of another's moveables whether lost, abandoned, or left behind can be an inconvenience and involve expense.

57. The options available to deal with property left behind by an evicted tenant seem to include

- (a) giving the landlord a duty of custody for a specified period, or (possibly) until he had required the former tenant to remove his property - if his whereabouts are known; or

¹cf. Sands v. Bell and Balfour sup. cit.

²II.1.12.

- (b) giving the landlord the right of public sale, after advertisement, in the interests both of the former tenant and other parties with rights over items of property left behind. The landlord, after deducting his expenses and debts due to him, might hold the balance for the former tenant; or
- (c) extending the procedure relating to found property or uncollected goods to property left behind by an evicted tenant.

58. We are reluctant to impose unnecessary burdens on public authorities which already have duties of disposal of found and unclaimed property (e.g. under the Burgh Police (Scotland) Act section 415), but consider that effects left behind by an evicted tenant may be dealt with as unclaimed property as the law is at present. We suggest provisionally that the statutory procedures available for disposal of lost property should be made clearly applicable to the problem under consideration.

(4) Uncollected Goods

59. Related to the problem of abandonment is that of "uncollected goods". The Disposal of Uncollected Goods Act 1952 is we believe generally accepted throughout Britain to be unnecessarily complicated, and is seldom resorted to in practice. We should be interested to know to what extent, if any, the Act, in fact, is invoked. In Scotland added difficulties arise through an inept attempt to translate the English concept of "bailment" for application in Scotland.¹ The Eighteenth Report of the Law Reform

¹We agree with Walker, Principles of Scottish Private Law 2nd ed. p. 1572, that the expression "deposit" is inapposite and that locatio custodiae would have been more relevant, but so also would locatio operis faciendi.

Committee on Conversion and Detinue¹ justifiably in our view criticises the 1952 Act and recommends its repeal.² We would support the proposal for repeal of the 1952 Act. It seems to be of little practical utility and its repeal would not leave a vacuum in the law. There are statutory procedures for dealing with lost and unclaimed property. In an appropriate case an action of multiplepoinding could be raised by a custodier or supplier of services.

60. It seems expedient, however, to consider more satisfactory procedures to regulate disposal of uncollected goods. We believe that this is a substantial problem, especially for the small repairer and probably for those who service bulky objects. Indeed, ordinary business could in some cases be seriously dislocated if no effective means were available to dispose of uncollected articles after reasonable notice.

61. The Law Reform Committee's proposals are based on conferring a power of sale on the bailee which he would be authorised to exercise, provided he obtained a reasonable price after taking reasonable steps to trace the bailor. The purchaser would acquire title good as against the bailor - but not against other possible claimants; and the bailee, after deducting his charges, would remain accountable to the bailor for the balance. Should the bailee later be found not to have acted reasonably he would be liable to the bailor in a tort action for conversion. If the goods concerned were of considerable value, the bailee could protect himself against an allegation of having behaved unreasonably by seeking the directions of a court.

¹ Cmnd. 4774 (1971).

² Paras. 103-9. In the case of moveables, English law is concerned with possession rather than ownership.

62. It would no doubt be possible to adopt such a solution for Scotland. We take note, however, of the fact that in Scotland, unlike England, abandoned property belongs to the Crown at common law, or to some body on which statutory title has been conferred. Moreover, as discussed in the context of lost property, in Scotland, unlike the common law position in England, there is comprehensive statutory provision for the speedy disposal of abandoned property if it is treated as lost or unclaimed. It may be thought that a person who had commissioned services on articles which he fails to collect should not be more favoured by the law than a person who has accidentally lost his property. Moreover, the supplier of services should be relieved of the burdens of book-keeping and custody within a reasonable time. Further, we are not convinced that in the context of Scots law the conferring of merely defeasible possessory title - as contrasted with ownership - is a policy which should be encouraged unnecessarily. It creates continuing uncertainty as to title. We hesitate to advance even tentative proposals regarding improved procedures for the disposal of uncollected goods without first considering the views of those primarily concerned - providers of services, public authorities and the police in particular.

63. However, as a basis for discussion of an alternative solution to that of the Law Reform Committee, we suggest that the procedures for disposal of lost property could be adapted for the disposal of uncollected articles which had been serviced under contract. The contract itself, provided that it did not contain an unreasonable exemption clause,¹ might regulate disposal

¹The Law Commissions' report on exemption clauses in contracts for services recommended the policing of such clauses. (Exemption Clauses, Second Report: Law Com. no. 69, Scot. Law Com. no. 39 (1975) H.C. 605).

in many cases, but in others a statutory procedure for disposal seems appropriate. Such a procedure should probably take into account the fact that articles in respect of which services such as storage or repair had been rendered vary widely in value; that the police are probably already greatly cumbered by their duties concerning disposal of lost property; and that the administration of disposal procedure is costly. If, however, the surplus after sale of uncollected articles to meet the account due for services were credited to the authority administering the disposal scheme, this might offset the disadvantages of administering it. Moreover, the administration of disposal of uncollected goods and lost property might well be committed to an authority other than the police.

64. We therefore tentatively suggest for consideration a scheme on the following lines:

- (a) In the case of corporeal moveable property worth more than (say) £100 (after the expenses of services, storage and attempts to trace the other contracting party had been deducted), disposal should be administered by the police or other local authority office. The supplier of services, six months after he had twice at monthly intervals sent notice by registered post to the other contracting party at his last known address (if he had disclosed his identity and address), calling on him to pay for the services and collect his property or give instructions regarding it and warning him of the consequences of failure so to do, should (if he received no payment) be authorised to hand over the property to the police (or local

authority) as abandoned property on which services had been rendered. The police (or other authority) would then have a duty to advertise for the owner or other person entitled to possession. (The person who ordered the services to be carried out might have had no title to the property at all). Eventually, after the periods suggested for lost property had elapsed, disposal would be by public sale, the supplier of services being paid his charges with interest, and the balance being applied to the purposes of the local authority or authority administering the scheme. For a limited period the authority might be required to maintain a register of sales and balances held, out of which genuine late claimants might be in part reimbursed. A purchaser at such sale would acquire title as owner.

- (b) In the case of property worth (say) £100 or less, a summary procedure might be appropriate. A period of three months after a single notification might suffice, and the police might be given a discretion to allow the supplier of services to retain custody and dispose of property by public sale, accounting to the police (or other authority) for the surplus after his charges had been met.

We should welcome comments on these alternative approaches and invite suggestions as to other possible procedures.

(5) Objects of Historic, Archaeological and Cultural Value

65. The Scottish institutional writers and later writers¹ treat "treasure" as a discrete category, as does English law and many other legal systems. Nevertheless, in Lord Advocate v. University of Aberdeen and Budge² the opinions of the Inner House judges indicated

¹ See refs cited in Lord Advocate v. University of Aberdeen and Budge; also Macmillan Bona Vacantia pp. 57-9; Rankine Landownership 4th ed. pp. 249-50; J.R. Philip sub voce "Crown" Encyclopaedia of the Laws of Scotland, vol. 5 (1928), p. 326.

² 1963 S.C. 533. See also para. 4 supra.

that the court considered the law on treasure trove to be merely a specialised aspect of the rule quod nullius est fit domini regis. However, Lords Patrick and Mackintosh did discuss the technicalities of this aspect, and seemingly accepted the proposition that¹:

"Treasures, that is, gold or silver, or other precious things hid in the ground, of which no memory is extant, belong likewise to the Crown"

The Crown's property prerogatives were introduced in some cases to protect the public against loss by individual appropriation - but in other cases resulted from the desire to augment the royal revenue in medieval times. The overlap between royal whim and public interest is noted by Rankine.² Since about 1846 it would seem that the Queen's and Lord Treasurer's Remembrancer has been laying claim to finds in Scotland of articles of antiquity, whether of precious metal or not, and whether hidden or not. We assume that under the quod nullius rule, the Crown might claim as owner if a finder were to deposit "treasure" as lost or unclaimed property as required by section 412 of the Burgh Police (Scotland) Act 1892 or equivalent statutory provisions, and there seem to be practical advantages in treating the law of "treasure" as merely one aspect of the law on lost or unclaimed property. In paragraph 17 we invited views on whether there should be a duty to report the discovery of, or perhaps, in appropriate circumstances, to take possession of, a limited category of corporeal moveables, where a criterion such as historical, cultural or antiquarian importance is satisfied. In paragraph 47 we canvassed the suggestion that intimation should be made to the Crown before disposal of certain

¹Bankton I.8.9.

²Landownership (4th ed.) pp. 248-9.

categories of unclaimed property of historic, archaeological or artistic value; and we mentioned in paragraph 51 that there is now a committee under the auspices of the Queen's and Lord Treasurer's Remembrancer which makes recommendations for the disposal of such articles.

66. However, for many years archaeologists have urged¹ that, as in other states, there should be modern Scottish legislation regulating rights over objects of antiquarian or archaeological interest. These constitute part of the national heritage - though local museums might in some cases seem appropriate repositories for exhibition. Some objects such as buried skulls, skeletons and fossils and tiles in situ are not easily classified as moveable property. In England there also seems to be concern with similar problems² - as to the appropriate scope of the law of "treasure trove" and the duty of disclosure of "finds". It has been suggested that to safeguard important finds by encouraging disclosure the Crown should pay appropriate compensation when it claims objects of artistic, historic or archaeological interest. This we believe is done in England when the Crown claims treasure trove and is therefore claiming the Crown's own property. It may be that the law of Scotland regarding protection, disposal and reward in relation to things heritable or moveable of historic, archaeological or cultural value could be improved.

67. Views are invited on the ownership and disposal of objects of historic, archaeological and cultural value, and in particular:

¹An Archaeological Survey of the United Kingdom (1896); Report on the Operation of the Law of Treasure Trove to the Council of the Society of Antiquaries of Scotland (1905); Memorandum on Treasure Trove and Bona Vacantia in Scotland (by the Scottish Federation of Museums and Art Galleries 15 March 1966).

²See "Times" 4 Aug. 1975 and 9 Dec. 1975; "Sunday Times" 14 Sep. 1975.

- (1) Is there a need for special rules to regulate the disposal of these articles?
- (2) Should the Crown's rights extend to all such articles, whether or not of precious metal, and whether or not hidden?
- (3) Are the present arrangements for the disposal of such objects satisfactory?
- (4) Should the Crown be required to pay compensation when it claims such articles, and if so to whom?

(6) Regalia in Udal Land

68. It seems that the weight of authority in international law¹ and in British constitutional law² is probably to the effect that, even in the case of state annexation (though the prerogative rights of an appropriating state essential for government extend to the territory annexed), the "property prerogatives" do not so extend without statutory or other sanction such as accepted custom. There has seemingly been no express extension and no known evidence of custom extending the Scottish "property prerogatives" to the Orkneys or Shetlands.³ It is apparent that the Crown's regalia minora in respect of the foreshore do not

¹ e.g. O'Connell The Law of State Succession pp. 94-5; G Schwarzenberger International Law 3rd.ed., vol. I chapter 10.

² e.g. Campbell v. Hall (1774) 20 St. Tr. 239. On British annexation of the Cape, of Ceylon and of Quebec, for the property prerogatives of the Crown did not apply.

³ Lord Advocate v. University of Aberdeen and Budge 1963 S.C. 533; also St. Ninian's Isle and its Treasure (Aberdeen University Studies series No.152; 1973) esp. pp. 162-3.

extend to the Orkneys and Shetlands,¹ and the constitutional and international law aspects of Crown rights over moveables in these islands have not yet been fully examined or conclusively determined. We think that the law regarding these rights should be put beyond doubt, and invite comment as to what Crown property prerogatives regarding moveables should extend where udal law survives, and whether any measures enacted for the reform of the law of Scotland regarding the disposal of found and unclaimed moveables or objects of archaeological, historical and artistic value should extend to Orkney and Shetland.

(7) Public Interest in Archaeological and Artistic Objects.

69. In concluding this Memorandum we mention briefly a problem which is not an aspect of acquisition of title to lost, abandoned or unclaimed property, but which raises in a different context some of the policy considerations which might be relevant in deciding whether disposal of unclaimed property of archaeological, historical or artistic value should be subject to special legislative provisions. The right of ownership - the most extensive of real rights - comprises in most legal systems the right to make physical use of a thing, to enjoy the fruits and to dispose of it

¹ See especially Smith v. Lerwick Harbour Trs. (1903) 5F 680; Lord Advocate v. Halfour 1907 S.C. 1360; and discussion of udal law and Crown rights by Lord Hunter (L.O.) in Lord Advocate v. University of Aberdeen sup. cit. at p. 539 et seq. Lord Mackintosh's reference p. 563 to Bruce v. Smith (1890) 17 R 1000 is very relevant. Though in that case a tripartite division of the proceeds of a whale drive was pleaded as custom, in fact the law of the udal in the Code of Magnus Hakonsson 1274 comprehends treasure, wreck and whale catches. Since the disappearance of the Gulathing version of the Magnus Code, probably in the 17th Century, the provisions presumably continued to be observed and were therefore (probably erroneously on one view) regarded as custom. The law of the udal did not conform exactly to the modern division of the law into moveable and immoveable rights - see St. Ninian's Isle and its Treasure esp. pp. 156-161.

(including transfer and destruction). The law has, however, imposed a number of restraints on this broad doctrine, especially in relation to heritage, to ensure that buildings of historic interest are preserved. Our law already imposes restraints on the export of private property of archaeological or cultural value, and it may be thought desirable that the law should expressly provide for registration of certain types of privately owned corporeal moveables of archaeological, historical or artistic value, and should expressly prohibit their alteration or destruction. (Analogous provisions are in force in respect of privately owned buildings). Such a law might not only protect objects of recognised artistic value, but also hitherto unknown papers of a deceased author (e.g. Burton or Boswell) or pictures of a deceased artist (e.g. Whistler) from destruction from motives of prudishness and without independent assessment. Article 839 of the Italian Civil Code, for example, provides:

"Privately owned immoveable and moveable things that have artistic, historical, archaeological or ethnographical interest are subject to the provisions of special laws."¹

70. Other legal systems have similar provisions. We have as yet formulated no views on this matter, but we consider that those whom we wish to consult regarding special legislation in relation to disposal of objects of historic, archaeological and artistic value would probably be particularly well qualified to express opinions as to whether, and what, legislation is desirable to protect certain limited categories of privately owned moveable property from misuse, destruction or (possibly) disposal, without offering them for

¹The special legislation affecting objects of antiquarian interest is set out in Appendix 7 to the Code.

acquisition by the state to the detriment of Scotland's national interest. It seems convenient to consult them on the two problems at the same time. Interference with the usual rights of ownership could, in our view, be justified only in very exceptional cases.

71. Comments are invited whether, and if so what, legislation is desirable to protect certain limited categories of privately owned moveable property, which may be regarded as being of public interest, from misuse, destruction or possibly disposal.

H: SUMMARY OF PROVISIONAL PROPOSALS AND OTHER
MATTERS ON WHICH COMMENTS ARE INVITED

The finding of lost and abandoned property

1. There should be no general legal duty to report the discovery of, or take possession of, or acquire some other form of physical control over, lost or abandoned property. (para. 17).

2. Should there be a duty to report the discovery of (or perhaps, in appropriate circumstances, to take possession of) a limited category of corporeal moveables, where a criterion such as historical, cultural or antiquarian importance is satisfied? (para. 17).

The rights of finders, employers of finders,
owners and occupiers of land

3. The employers of finders, owners of land and occupiers of land should have no legal rights to lost and abandoned property. (para. 18).

4. (a) No finder should have any legal right to unclaimed, lost or abandoned property.
- (b) Where, however, the apparent value of an article found is less than, say, £5, the custodier should be empowered to hand over that article, if unclaimed, to the actual finder in lieu of the appropriate reward.
- (c) The custodier should have a discretion to withhold articles of a kind which he considers unsuitable to be handed over to the finder. There should be no right of appeal to the courts arising out of the exercise of this discretion.
- (d) The custodier should be empowered to pay at his discretion a reasonable financial reward to a finder of claimed or unclaimed property. Any

person who claimed to be a finder of such property should be given a right of appeal to the sheriff, who would determine, if necessary, who was the finder, and what the amount of the reward should be. (para. 24).

5. Alternatively:

- (a) The actual finder should have a right to unclaimed lost and abandoned property, subject in the case of articles above £5 in value to the payment of a reasonable sum to cover the expenses of the custodier.
- (b) This right might be restricted to articles of below, say, £50 in value.
- (c) In assessing these values the apparent value of the article should be taken as the basis for assessment.
- (d) If the finder's right is restricted to, say, articles of less value than £50, he should be entitled to a reward in respect of more valuable articles whether claimed or not, calculated as in para. 6. (para. 25).

6. Alternatively:

- (a) A finder should have a right to a reward.
- (b) The reward should represent a fixed fraction of the value of the property.
- (c) The value should be ascertained at the time when the property is lodged with the custodier, or when it is claimed by the owner, or when it is disposed of by public sale. (Comment is particularly invited as to which tempus inspiciendum is appropriate.) (para 26).

The obligations of finders

7. If an article is found in a public place, the finder who takes possession of it should be obliged to report its discovery, or to hand it over, to its owner or to an authorised custodier, within 48 hours. (para. 33).

8. If an article is found on private premises, the finder who takes possession of it should be obliged to report its discovery, or to hand it over, to its owner, to the occupier of the premises, or to an authorised custodier, within 48 hours. (para. 33).

9. If an article found on private premises is handed over to the occupier of those premises, or if its discovery is reported to the occupier, the occupier should be obliged to report its discovery, or to hand it over (a) to its owner within 48 hours; or (b) to a public custodier after a period of, say, seven full days, if the article has not been claimed by the owner within that time. In the case of (b), the occupier should possibly be obliged to intimate to a public custodier, within 48 hours, that he is in possession of the article. (para. 33).

10. If the existing multiple system for the collection and disposal of lost property is to be retained, the obligation should be to report the discovery, or to hand over the property, to the authority on whose premises or vehicle the property is found. (para. 33).

11. If property is discovered on a form of transport whose destination is in Scotland, the substantive law of Scotland should apply to the property from the time when it is found. (para. 33).

Penalties

12. Comment is invited on the proposal by the Working Party on Civic Government that the penalty for failure to hand in property should be a maximum fine of £10, or the value of the property, whichever is the greater. (para. 35).

The Custodier

13. Should there be a single public custodier? (para. 37).

14. If so, should this function be discharged by the police or by some other body? (para. 37).
15. What should be the extent of the responsibilities of a single public custodier? In particular, should he assume the duties of the Queen's and Lord Treasurer's Remembrancer in respect of lost and abandoned property? (para. 37).
16. There should be a general duty on a public custodier to communicate with the owner of a mislaid article if his identity is apparent from the article or its contents, or can reasonably be ascertained from the article or its contents. (para. 38.)
17. Where the identity of the owner of an article cannot be readily ascertained but the article itself, or its contents, indicates the name and address of someone who is likely to trace the owner, there should be a duty on the public custodier to inform that person. (para. 39).
18. Where it is clear that the property, by its nature, does not belong to the person who has lost it, there should be a duty to return the property to the issuing authority or agency, and not to the person to whom the property was issued. (para. 40).
19. The general duties described in proposals 17 and 18 should not arise in a case where the ostensible value of an article is, say, less than £5. (para. 41).

Time for claiming lost property

20. There would be an advantage in introducing categories of lost property, according to which the period of custody would depend upon the value of the property. (para. 46).
21. The custodier would have the power but not the duty to distribute after the elapse of the following periods:
- (a) for property valued at (say) £50 or less when handed over for custody, disposal should be authorised after three months;
 - (b) for property valued at between (say) £50 and £250 when handed over for custody, disposal should be authorised after six months;
 - (c) for property valued at over (say) £250 when handed over for custody, disposal should be authorised after one year. (para. 47).

22. Power should be conferred on a custodier to destroy perishables, or sell them promptly and hold the proceeds as a surrogatum. (para. 47).

23. The tariff of valuation should be variable by statutory instrument. (para. 47).

24. There should be a power to make a charge for reasonable expenses, which could be waived at the discretion of the custodier. (para. 47).

25. Unclaimed property in the most valuable category should, if this is practicable, be stored under special centralised arrangements. (para. 47).

26. Should there be a duty on custodiers of property to inform the Crown for such interest as it might have before disposing of property appearing to be worth (say) £2,000 or more, or property of archaeological, historical or artistic value? (para. 47).

Title to unclaimed property after disposal

27. Public sale should divest the original owner and confer a clear title (irrespective of acquisitive prescription) on the purchaser. (para. 50).

28. A compensation fund should be formed from the proceeds of sale, out of which the owner of property which realises more than, say, £250 at the sale, should be entitled to recover the purchase price (less the custodier's reasonable expenses). (para. 50).

29. If the present system of handing over unclaimed property to a finder is continued, the finder should acquire merely possessory title until it has been fortified by 5 years' acquisitive prescription - except possibly in the case of property with an ostensible value of less than £5. (para. 50).

Disposal of surplus funds

30. Should any surplus funds be made over to the regional or islands council (as the police authority)? (para. 51).

Domestic animals

31. The claims of the finder of a dog should be preferred to those of the owner after he has kept the dog for one year. (para. 53).

32. Would it be appropriate to extend the preceding proposal to other domestic animals, such as cats? (para. 53).

Abandoned property

33. Should the appropriator of deliberately abandoned property be entitled to become owner if the original owner has clearly intended to relinquish his right? (para. 54).

34. Alternatively, should it be made clear that the rights of the Crown include all property deliberately abandoned, even if the original owner and his purpose were known? (para. 54).

35. If lawful appropriation by private persons of abandoned property is acceptable, such acquisition should be limited to cases where, in the event of dispute, the appropriator is able to establish that the property has in fact been abandoned by the former owner. (para. 55).

Evicted tenants

36. The existing proceedings available for the disposal of lost property should be extended to include property left by evicted tenants. (para. 58).

Uncollected goods

37. In the case of uncollected goods worth more than (say) £100 after the expenses of services, storage and attempts to trace the owner have been deducted, disposal should be administered by the police or other local authority office. The supplier of services, 6 months after he has twice at monthly intervals sent notice by registered post to the other contracting party at his last known address (if he had disclosed his identity and address) calling on him to pay for the services and collect his property or give instructions regarding it and warning him of the consequences of failure so to do, should (if he received no payment) be authorised to hand over the property to the police (or local authority) as abandoned property on which services had been rendered. The police (or other authority) would then have a duty to advertise for the owner or other person entitled to possession. (The person who ordered the services to be carried out might have had no title to the property at all.) Eventually, after the periods suggested for lost property had elapsed, disposal would be by public sale, the supplier of services being paid his charges with interest, and the balance being applied to the purposes of the local authority or authority administering the scheme. For a limited period the authority might be required to maintain a register of sales and balances held, out of which genuine late claimants might be in part reimbursed. A purchaser at such sale would acquire title as owner. (para. 64).

38. In the case of uncollected goods worth (say) £100 or less, a summary procedure might be appropriate. A period of 3 months after a single notification might suffice, and the police might be given a discretion to allow the supplier of services to retain custody and dispose of property by public sale, accounting to the police (or other authority) for the surplus after his charges had been met. (para. 64).

Objects of historic, archaeological
and cultural value

39. Is there a need for special rules to regulate the disposal of these articles?

40. Should the Crown's rights extend to all such articles, whether or not of precious metal, and whether or not hidden?

41. Are the present arrangements for the disposal of such objects satisfactory?

42. Should the Crown be required to pay compensation when it claims such articles, and if so to whom? (para. 67).

Regalia in udal land

43. Comments are invited as to what Crown property prerogatives regarding moveables should extend where udal law survives, and whether any measures enacted for the reform of the law of Scotland regarding the disposal of found and unclaimed moveables or objects of archaeological, historical and artistic value should extend to Orkney and Shetland. (para. 68).

Public interest in archaeological and
artistic objects

44. Comments are invited whether, and if so what, legislation is desirable to protect certain limited categories of privately owned moveable property which may be regarded as being of public interest from misuse, destruction or possibly disposal. (para. 71).

APPENDIX
EXTRACT FROM THE REPORT OF THE
WORKING PARTY ON CIVIC GOVERNMENT (APRIL 1976)

VI. LOST AND FOUND PROPERTY

VI.1 The handling and disposal of found property are at present regulated by section 412 of the Burgh Police (Scotland) Act 1892 and the Lost Property (Scotland) Act 1965, which extended the provisions of the 1892 Act to the landward areas of counties with certain minor adjustments. Provisions are also found in the local enactments of Edinburgh, Glasgow and Dundee. We have examined the existing legislation and have concluded that there are a number of practical difficulties in the application of certain of these provisions to the wide variety of circumstances in which property is found and handed in. In particular, we have been concerned about property found on local authority premises, and on the premises of other large organisations not covered by other enactments. The object of our recommendations is to introduce a standard procedure for dealing with lost and found property in all parts of Scotland. In framing them we have drawn upon the comparison of the Burgh Police Act and the then-current Edinburgh provisions which was prepared by the Local Government Law Consolidation Committee more than 20 years ago in connection with a draft Public Order Bill.

VI.2 In our view, the main points to be covered are:

- (i) A requirement to be imposed on the finder to hand over property to the police, who are to make arrangements for its custody.
- (ii) Provisions for its return to the owner, or
- (iii) (if he fails to appear) for its handing over to the finder.

- (iv) The disposal of perishable goods.
- (v) A right of appeal against, for example, decisions by the police on rewards.
- (vi) Arrangements for selling property and disposing of the proceeds.
- (vii) The exclusion from these general arrangements of property found in certain places and premises.

VI.3 We suggest these requirements should be covered on the following lines in the civic government code:-

- (i) Any person finding any article or money is to be required to deliver it, as soon as possible and in any case within 48 hours, to a constable or to any other person at a police station who is authorised by a chief constable for this purpose. This basic requirement poses an immediate difficulty. In some places, such as large shops, it might be unreasonable to insist that found property be delivered to the police. There is a danger that a person leaving a shop with found property would expose himself to a charge of theft by finding; it would be more convenient to him to hand it over in the shop, and it is likely that the loser would return there to recover his property. Accordingly, we recommend that it should be a defence to a charge of stealing by finding if the finder has handed the property to a person appearing to be in authority at the place where it was found. Any person failing to hand in property should be guilty of an offence, carrying

a maximum fine of £10 or the value of the property, whichever is the greater, unless he has reasonable cause for his failure. ("Reasonable cause" would include proof that the property had been handed in at the place where it was found, as specified above.)

- (ii) Lost property should be returned to the owner on his proving his ownership to the satisfaction of the chief constable. Provision should be made for the payment (or deduction) of a reward for the finder equal to 10 per cent of the property's value. The chief constable should have the discretion, if he considers the amount inequitable in any particular case, to reduce or increase the reward or, in the case of hardship, to waive it altogether. In the event of any dispute over the value of found property, the chief constable should have the power to appoint a valuer and to decide whether finder or owner should pay his fee.
- (iii) If the owner of any found property has not claimed it, or has not proved his ownership, within a period of one month from the date of deposit with the police, the chief constable may either deliver the property to the finder or sell it and pay him the proceeds. (The chief constable should have discretion to retain property for a longer period if he thinks fit.) If the finder cannot be traced, or if he fails to take delivery of the property within one month of receiving notice from the chief constable, the latter may cause it to be sold. (There should be no restriction on the right of the owner to take civil proceedings for its recovery from the person in possession.)

- (iv) The chief constable should have discretion to sell or destroy any property of a perishable nature, and in that event the proceeds, if any, shall be deemed to be found property - ie, they are to be retained for the specified period and, if unclaimed, to be offered to the finder.
- (v) Any owner or finder of property aggrieved by a decision of the chief constable with respect to it should be able to require the decision to be referred to a court of summary jurisdiction for final decision.
- (vi) The proceeds of any sale of found property not paid to the owner, finder or valuer (or, if the property is money, such money) are to be accounted for to the appropriate officer of the regional or islands council and paid into that council's funds. (This is the appropriate substitution for the present arrangements so as to provide that payments go to the police authority.)
- (vii) Provision should be made to exclude from the code any property found in any vehicle or premises (such as premises owned by a local authority or by the Railways Board) in respect of which provision is made by any other enactment or byelaw.