

(iii) *Prescription.*

700. It is doubtful what originally was the precise period of prescription in udal law, but whatever that may have been, it is probably, if not explicitly, superseded by the Scots law of prescription.¹ According to Magnus Lagabeter's (Norse) *Landslov* (1263-80),² prescription *odelshaevd*, i.e. *usucapio juris odalici*, was sixty years; "if land is in the possession of the same family (*aetlag*) sixty winters or longer, then it becomes *odel* to the owner."³ By Christian IV.'s *Lovleag* of 1604 the term was reduced to thirty years, and by Christian V.'s *Norske Lov* of 1687 it was further reduced to twenty years.⁴ It is indeed stated in Bell's *Principles*,⁴ citing *Dundas v. Heritors of Orkney*,⁵ that the prescription of udal law is thirty years, but Professor Rankine⁶ points out that the case is no authority for the dictum. Dr. Taranger, Professor in Law in the University of Christiania, however, indicates⁷ that in the Norwegian laws, which are older than Magnus Lagabeter's, e.g. in *Gulathing's Lag* and *Frostathing's Lag*, there had been a thirty years' prescription. He suggests that the Law Book which had validity in Orkney and Zetland at the time of the impignoration in 1468, was not Magnus Lagabeter's (1263-80), but an older law, and that this difficulty can only be set at rest when all the old legal documents are published.

SUBSECTION (2).—*Survivals.*

701. The survivals are in tenure, foreshore, salmon fishings, seat, scattald or commonty, and land measures and weights.

(i) *Tenure.*

702. All lands in Orkney and Shetland remain udal, excepting such as have been feudalised by charter emanating directly from the Crown, or indirectly through earldom or bishopric title. These also are udal: (a) Church lands, under £20 Scots of old valuation, and therefore capable of being transmitted and acquired as udal,⁸ even though once feudalised;⁹ (b) Church lands designated for ecclesiastical purposes; and (c) lands acquired by compulsory sale. The property passes without any written title, service, conveyance, indenture, or investiture—the right being provable by witnesses.¹⁰ As result of the allodial character of udal property it vests in the heir by survivance without service.¹¹

¹ *Earl of Galloway v. Earl of Morton*, 1st July 1752; *Mor.* 16393; *Udallers and Heritors v. Earl of Morton*, 1750, n.r., see para. 713, *infra*; and cf. *South Uist Smallholders v. Cameron*, 1926, 15 L.C. 49.

² *Norges Gamle Love*, vi. 2, 60.

³ See Professor Taranger's *Privatrettens Historie*, p. 392, and his *Rets Historie*, ii. 154; Brand's *Forelæsinger*, i. 162, 163, and his *Tingsret*, p. 260.

⁴ Sec. 932.

⁵ 1777, 5 Bro. Supp. 609.

⁶ *Land-Ownership*, 4th ed., p. 53.

⁸ Act 1690, c. 32.

⁷ *Privatrettens Historie*, p. 391.

⁹ *Beallion v. Gaudie*, 1832, 10 S. 286.

¹⁰ *Ersk.* ii. 3, 18; *Stair*, ii. 3, 11.

¹¹ *McLaren, Wills and Succession*, 3rd ed., i. 99.