

Common and Uncommon Rights to Land

PAULINE DAY



GREATER AND LESSER HOUSEBOTES, estovers, turbary, vicinage, piscary, feoffment and common socage, manorial wastes, demesne land, neatbeasts, stinted pasture, shack land, heaves and haywards—what a priceless list for the etymologist. So long is it since words like these were common parlance that the authors of *An Outline of the Law Relating to Common Land and Public Access to the Countryside** refer the reader to the *Dictionary of Archaic and Provincial Words* (1897). Yet at one time these words and others of like kind were of utmost importance. They concerned our land and the rights that belonged to the people who lived from it.

Common rights are in fact rights to specified natural products of certain lands, of which the right-holders are not themselves the owners. These rights are various and include rights of common pasture, pannage (the right to feed your pig on beechmasts and acorns that fall to the ground—you must on no account shake the tree!) estovers (the taking of timber or underwood for fuel or for making repairs to your house, wagon, etc.), turbary, the taking of peat or turfs for fuel, the right of common in the soil (the right to take part of the minerals on the land), and piscary (the right to take fish for one's own use). All these rights are private rights, that is to say, they are not open to all and sundry.

A popular misconception regarding common land is that it is open to the general public, who have the right to use it for recreation—in fact as an “open space.” It is true that some “open spaces” support rights of common, but common land is not an “open space.” More-

over, these rights are limited; only certain animals may graze, only a certain amount of peat may be taken. On some land, described in the book as “commonable land” the rights exist for only certain periods of the year.

In 1958 the Royal Commission which had been set up to study common land and the law relating to it, gave its report, and subsequently an Act was passed—the Commons Registration Act, 1965. Within three years from its enactment owners should register their ownership of common land and commoners their rights in it. Failure to register ownership of common land will result in the responsibility for it passing to the local authority, pending future legislation; failure to register rights of common will result in the permanent loss of those rights.

Although the completion of the requisite form is not so difficult, discovering whether one has rights or not, and obtaining proof of rights or ownership is another matter. For those who must embark on this task the book is a welcome aid. It defines and classifies rights of common, traces their inception, distinguishes between various legal definitions of the different rights, and explains their limitations. There is also a list of statutes and a table of cases for those who wish to probe deeper. At the end of the book the Act is given in full and the procedure for registering ownership or rights is set out.

The subject of Common Rights is complex and the book endeavours to be comprehensive as well as concise. It cannot be read quickly but it is an ideal book of reference.

In reading, one is tempted to digress and imagine the Englishman of yesteryear whose material welfare depended on maintaining these rights, fighting so many uneven battles against the owners of the land to whom these rights were an encumbrance. Under the Act all common land will be documented and we shall at last know who owns common land and who has rights in it. Had the system of land taxation continued without interruption since the Conqueror's day, it is likely we would have known all along, and the passing of an Act to rescue for all time the dwindling privileges for a few (on what was for the most part manorial waste or marginal land for the practice of archaic husbandry) would have been unnecessary. But that of course is another story. It just remains to be said that this is a most interesting book and for those of us who have no rights of common, well, we can always dwell wistfully on the problematical joys of owning a neatbeast and a spot of pannage.



**An Outline of Law Relating to Common Land and Public Access to the Countryside* by Bryan Harris and Gerard Ryan. London: Sweet & Maxwell Ltd., 77s. 6d.