

*Claims to the possession of Land  
The Law and Practice (Third Edition)*

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The expressed intention of this book is to be of equal value to landowners making possession claims and to tenants or other occupiers resisting such claims. But it is very much a practitioner's book. Its 930 pp (667 of text and 257 of Forms) is a comprehensive survey of all you need know about the subject. A carefully prepared index of 34 pages fails to make the thousand page mark. Add the tables of Contents, Cases, Practice Directions, Statutes, Supreme and County Court Rules, and other Regulations and Orders, and the mark is exceeded by 62pp.

The general reader would be daunted by its complexity; but this is not the fault of the authors. It is the fault of the law. Indeed the authors have done a wonderful job in bringing the complexity into recognizable shape as far as is possible. Their first sentence says it all. "The history of possession goes back as far as the law itself, and reveals a wayward tendency for each method for the recovery of land to become more and more complicated." The general reader, if he ever ventured upon such a book, would be anxious to discover the reasons for this in history. But very wisely the authors devote only a couple of pages to history without going into underlying reasons.

In one respect, however, the book could be a useful reference book for readers of *Land and Liberty*. In its later pages it gives a short history of the attempts by Parliament in the present century to do something about the law of Landlord and Tenant, and the unfortunate side effects which have always resulted. The Rent and Mortgage Restriction Acts, for example began their ill-fated career in 1915. "From those very modest beginnings has grown a statutory code of formidable difficulty" ... [then quoting Sir Robert Mewgarry, the former Vice-Chancellor] ... "Anybody could be forgiven for making a mistake about the hasty and ill-considered language of this chaotic series of Acts the horrors of which are hastening many of the judges to a grave", but the standard of drafting for the new statutory creation, the Assured Tenancy, is no better.

That is not the end by any means of interference by parliamentary legislation. Agricultural tenancies, agricultural tied cottages, business tenancies, long

residential leaseholds, secure tenancies, are all protected. All the foregoing can be ascertained simply by reading the Introduction. To discover the evil results in economic and social terms, one has to go to the appropriate places in the later chapters. Again by way of example, on p294 appears a comment that "It was found that restraining the rent that the landlord could charge, coupled with the granting tenure to the tenant of the necessary security of tenure, landlords less willing to let". One would have thought this could have been foreseen by our legislators! "Variants of the Rent Acts appeared (for example, the 'restricted contract' and the protected shorthold tenancy) which allowed landlords to let on more favourable terms (see pages 40 and 297); and there were experimental systems (see Appendix 6 for ss 56-58 HA 1980) which have now fallen by the wayside".

Perhaps this last citation gives some idea of the comprehensiveness of the book, and its thoroughness, as well as its competent cross-referencing. Two pages later there is a more extensive peep at the economic consequences of this ridiculous course of legislation.

In order to understand why the government wants high rents, the reader is invited to look very briefly at some figures which illustrate the point. Suppose, for example, that X, a private sector landlord, can borrow £50,000 to buy and rent out a property (at an interest cost of say 115%, being £7,500 a year). For that £50,000 X can buy a flat in outer London or a small house outside the commuter belt. In order to repay the interest alone, X has to pay a rent of at least £7,500 a year, equal to about £150 a week - which makes no provision for paying off capital, repairs or insurance. Nor is there any provision to cover the risk that the tenant will decamp with arrears of rent leaving behind him unrepaired damage to the premises. If the landlord is not able to recover at least that order of rent from the tenant, the investment is a bad use of capital; he is unlikely to wish to rent out property as a business, and if he is burdened with a sitting tenant, his financial interests are served by trying to remove the tenant with a view to selling the premises with vacant possession. A weekly rent of £150

per week is far above the "fair rent" payable under a Rent Act or R(Ag)A 1976 occupation and considerably in excess of the rent which is asked under a secure tenancy.

Under the regime of assured tenancies rents have risen to near the level required to return the investment. There is now more property available for rent. On the other hand, as the example shows, a rent sufficient to make it worthwhile for the landlord to let is beyond the reach of many people on low incomes, including some in employment.

Resort to the welfare state and the unfortunate taxpayer is here combined with a refusal to allow the necessary expenditure. Readers of *Land and Liberty* can make their own judgement on this and other absurd contradictions. This is by no means the only little gem of this kind illustrating the futility of letting parliament interfere with a market they have made no effort to understand.

It clearly requires investigation by some small body of people versed in the philosophy of land who understand thoroughly the distinctions between land and the buildings on it, and the land and buildings together - the hereditament. It would help of course if they also knew how lands differ in value and why, and who is the proper recipient of ground rent. With that qualification the writers of this book should be the first to be recruited.

There are a number of similar little insights. Remarking on the profusion of compulsory purchase legislation, (p625) we are reminded that "the enabling powers are all statutory and they neatly illustrate an important feature of English law, namely that a freehold is not an absolute title". This truth ought to be more widely realized. Then "the number of [these] statutory provisions to acquire land compulsorily must be counted in thousands". Again, "with [their] aid everything from a bus shelter to the Channel tunnel can be located to best and most economic effect without fear of obstruction by private landowners." A certain wry humour here, as elsewhere, peeps through. The Land owner can object, but if he is unable to stop the compulsory purchase, he is entitled to receive compensation.

The ordinary reader would not want to have to search through this impressive tome just to find these and many similar interesting little bits. This is a practitioner's book, and a most useful one. Claims for possession have for many years been a lucrative field for a large number of lawyers. Without this sort of book it is a minefield. The lawyers should be grateful to the authors and to the publishers.

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