

PEAK DISTRICT
AND
NORTHERN COUNTIES'
FOOTPATHS PRESERVATION
SOCIETY.

**“THE RAMBLER
AND
THE LAW.”**

BY
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PRICE 2d.

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Peak District and Northern Counties'
Footpaths Preservation Society.

PREFACE.

THIS little Handbook has been written for, and is published on behalf of, the above Society, which exists primarily to preserve public rights of way, and to protect the interests of ramblers and pedestrians throughout the North of England.

During the 19 years of its existence, the public are indebted to the Society for the opening of the Kinderscout (1897), Doctor's Gate (1912), and many other rights of way of vital importance and high scenic interest to all lovers of Nature. During this period the erection of 50 sign posts in various parts of Derbyshire, etc., have re-opened and popularised many previously almost unknown public paths.

At all times the Society is most willing to give advice and counsel to any private member, and much of its most useful work is that which cannot be referred to in public or upon printed reports of the year's work.

There is much work required to be performed ; funds are inadequate, and the Society cannot exist upon sympathy alone. It must have funds, and you, a conscientious walker, have a duty to perform. Do you subscribe ?

The Honorary Secretary is ARTHUR R. MOON, 78, King Street, Manchester ; and the Honorary Treasurer (F. W. WIGELSWORTH), 19, Derby Road, Heaton Chapel, Stockport, will gladly acknowledge subscriptions of 1s. and upwards.

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The Pedestrian and the Law.

A Highway being, in simple words, a public way or road upon which all have a right to go (except for the necessary reservations and exceptions implied by legal terms and court decisions), includes and equally refers to a public footpath as also to a bridle way. Further, it is a means of progressing from one fixed point to another.

That full definition of a Highway is important in law was a fact fully appreciated by the individual who, stopping on the public highway to watch game shooting, found afterwards that he had no remedy against the keeper who assaulted and moved him out of the way of the sportsman. Similarly, a Highway is no place for a picnic, a public meeting, an al fresco dance, or an itinerant auctioneer's stand.

Except when closed by Act of Parliament or utterly destroyed by

Act of God, a Highway only legally ceases to exist when the object for which it was made, dedicated, or used also ceases to exist, and mere obliteration, whether by natural causes (river erosions, vegetable over-growth, etc.), or due to the fact of non-usage, does not affect its existence and the right of the public to pass over it without interruption or interference.

Landowners or tenants, especially of arable lands and grouse moors, sometimes deliberately obliterate a path in order to deceive timid persons or those who cannot follow the directions of an ordnance survey map.

A Highway or Public Right of Way must, however, be carefully distinguished from a Private Right of Way.

A Private Right of Way is a right-of-way acquired by an individual—by virtue of his ownership of adjacent land, and not by the public—

to pass over the land of another person.

Prior to the Prescription Act (1832), to establish a Private Right of Way it was necessary for a claimant to prove "user" from time immemorial or to adopt the picturesque legal phrase, "from the time when King Richard came back from the Holy Land." This, in the absence of preponderating evidence to the contrary, added to proof of 20 years' usage, the courts would presume and accept, otherwise the fiction of a grant or deed made to him by his opponent—or forefathers, and unfortunately lost, would occasionally be accepted as being evident by the fact of 20 years or more of "user."

The term "User" may be simply defined as an act of using. Its legal quality and value consists in its being essential to any claim to a right of way. Physically speaking, it does not imply or involve in

its meaning anything beyond the fact of simple (pedestrian locomotion).

The Prescription Act abolished the absurd fiction of proof of user from Crusading times and enacted that 20 years user should give a presumption, and 40 years an indefensible right of way. Such rights, however, are, by this Act, limited to individuals, and the public, as such, have no share in them. Except for their relation to the Right of Way Bill, which (together with Public Rights of Way) is referred to later on, these rights are outside the scope of this article.

Public Highways.

The right of the pedestrian to use the King's highway is one of the most valuable and cherished public possessions. Without let or hindrance, he has the right to walk in the middle of the road, and any

interference with his rights—by obstruction or otherwise—can be fully vindicated in a Court of law, despite assertions to the contrary.

Notwithstanding the legal right of the pedestrian to the full and free use of any part of the King's highway in passing along between one point and another, the modern multitude of motor-cars have, to all intents and purposes, driven him off the main trunk, county, and inter-urban roads, and therefore, these remarks must be chiefly directed to the rights of the public in respect of ancient bridle-ways and footpaths. Legally speaking, there is no distinction between a Highway (ancient or otherwise) and public rights of way except the technical one as to the liability of persons or public bodies to repair them. The only possible exception is in the case of a "Church Way," which is a public right of way for the parishioners only, and hence more

analogous to a private than a public right of way.

Incidentally, it may be noted that a "Church Way" is a purely ecclesiastical conception, and has no connection with a prescription of private right to go through a Church, which any individual may acquire. The public, apart from parishioners, apparently can acquire no such right.

Ancient Highways.

A Bridle Road, "Old Roman Road," or other ancient footpath is as much a highway as a modern turnpike road. Indeed, man was the first user of a way, and the primeval forest footpath, the later bridle road, and the modern tar-sprayed turnpike, are simply three stages of Man's evolutionary progression.

These Ways may not be closed or obstructed (except by Act of Parliament), and they can only be

diverted (or closed because of non-necessity) by an order of Quarter Sessions, after, in the latter case, publicity has been given to the intention by exhibition of public notices at each end of the Way, and by Press notices, and the public are allowed full right to approve, object, or oppose the order.

The care and repair of such a Bridle Road, "Old Roman Road," or footpath (in fact, the Highway), is placed upon the Local Authority. It never ceases to be a Highway because of "non-user," but only in case of its total destruction, i.e., if it ceases by Act of God to be a possible means of passing between two points.

Should a bridle way, or footpath, etc., become "founderous" (in such a bad condition that in certain places it is really impassable—as when washed away in places by the erosive action of a stream or river) then a pedestrian has the right to

walk on the adjacent land for the purpose of continuing his journey.

Owners of grouse moors, through which these bridle ways or footpaths pass, frequently encourage them to fall into disrepair, and then instruct their gamekeepers to prevent walkers from going on the adjacent land. In such a case, many previously non-combative and law-be-frightened pedestrians will rejoice to know that the keeper thus renders himself liable to legal proceedings for an obstruction.

Under the Local Government Act, 1894, and Administrative (L.G.B.) Orders issued January and March, 1895. Local Authorities are entrusted with the repair and protection of footpaths and bridle-ways. That they fail lamentably in their obvious duties in this respect is due to the fact that in rural and even suburban districts the Parish, Rural, and sometimes Urban District Councils, are practically

nominees of the local landowner; and the tenant who makes himself prominent by his defence of public rights often becomes a marked man.

Public Rights of Way.

Public Rights of Way rest upon a legal fiction of "implied dedication." Just as in private rights of way there was the fiction of a "lost grant," so here there must be a fiction that the owner of the land has at some time kindly consented to give the public a right to pass over his land. Surely a most humorous fiction in view of the churlish opposition shewn by landowners. The public have stood by apathetically for years, and as a result lost many miles of footpaths because of the lack of a measure such as the Rights of Way Bill.

The question of "dedication," although a highly technical point, must be dealt with, if only for the

reason that it is commonly thought that uninterrupted "user" alone is sufficient to establish a public right of way, an illusion which the Court of Chancery has many times dispelled.

No specific length of user is required, and in one case six years continuous "user" was held to be evidence of "implied dedication."

In point of fact, however, after considerable conflict of judicial opinion, it is now generally accepted that there can be no legal and public dedication of any path except by the absolute owner of the land over which it passes.

The greater portion of the land in rural England is entailed and vested in trustees, who cannot in themselves legally dedicate a footpath. Hence it is evident that, in a few years' time (fortified by the state of the law as at present interpreted and acknowledged) the public will be liable to lose its most valuable footpaths.

The law is full of pitfalls and intricacies, and under present conditions an actual right-of-way is difficult to acquire, and, when acquired, more difficult to vindicate and retain. Further, the individual is subjected to considerable vexations whilst allowed to exercise his right. Being a foot passenger, he cannot complain if the owner or tenant erects reasonable obstructions (stiles, etc.), which, effectually preventing cattle from straying, at the same time prevent him from taking a bicycle or perambulator along the path, and are prohibitive to aged persons or cripples.

Should the pedestrian remove what may be considered unreasonable obstructions purposely laid to prevent free passage, or unnecessarily high stiles, etc., he must be very careful how he proceeds, for an unnecessary blow with a hammer may amount to malicious damage.

Trespassing.

If a walker is trespassing, or has wandered innocently from a right-of-way, and is assailed by the owner or his keepers, they can request him to go back to the proper road or path by the nearest way, and in the event of refusal they can remove him without unnecessary physical force. They cannot make him retrace his steps and leave by the way he came, nor can they institute prosecution for trespass alone; they must prove damage done to crops or walls, etc., and, plus costs, the amount of the fine is the amount of damage done by the act of trespass.

A good way of dealing with an angry farmer or keeper is to tender to him some nominal sum in satisfaction of any damage which has, or may have, been caused by the act of known or innocent trespass, and to state that the trespasser does not

himself claim any right of way. Upon such occasion it is better to leave the dog at home, or the trespasser will be liable for "trespass in search of game." In parenthesis, a passive resister, by lying down and asking a keeper to convey him bodily to the nearest public road or path, will often overcome wrath and be allowed to proceed on the way. The civil remedy against trespass (where actual damage cannot be proved) is a costly action for a perpetual injunction, breach of which is punishable by imprisonment for contempt of court. An owner or tenant is not bound to keep or repair the right of way which passes over his land, but he must not plough it up every year (or periodically) unless the dedication of the path was made subject to the exercise of such right. Otherwise the public can walk across his own land or over growing crops. Similarly, a farmer is free to scare and terrify the pedestrian by placing

a bull in the field unless he knows that the bull is "dangerous to mankind."

The Right of Way Bill.

Apart from the highly technical point of "dedication" (a matter outside the scope of these observations), the evidence required to establish a right-of-way is so difficult to codify that only a measure like Lord Eversley's Right of Way Bill can dispose of it. The Bill, in its main principles, provides that where evidence is given of 40 years "user" of a way, public claims cannot be defeated by showing that the land has been in family settlement during this period, and in the same absence of rebutting evidence negativing the intention of the owner to dedicate, 20 years of uninterrupted usage shall be sufficient evidence of "dedication" unless it be proved that during such period no owner in possession was

capable of "dedicating." This Bill proposes to assimilate and link up the law of Public to that of Private rights-of-way as previously referred to in these pages. The provisions identical with those embodied in the Prescription Act (1832) would then apply to Public rights-of-way; and, instead of the litigious risks incidental to a judicial decision on "dedication," the simpler method of a time limit would operate and prevent future adverse decisions where "user" is fully proved during 50 or 60 years, and during the lifetime of the oldest inhabitants. Lord Eversley's Bill has been "blocked" once in the House of Lords, and twice in the House of Commons, and only a strongly organised body of public opinion will propel it safely through the legislative chambers.

The Manx Legislative Council (9/4/13) passed a bill which, in certain clauses, provides a right of access

over such of the uncultivated mountains and moorlands of the Isle of Man as are vested in the Commons Trustees of the Island.

The Duties of Local Bodies.

The Local Authorities are vested with power to act in the case of disputed public rights-of-way, and, under the "L.G.B." Memoranda of January and March, 1895 (re Powers and Duties of Parish Councils and Parish Meetings under the Local Government Act, 1894, with respect to Rights-of-Way, Roadside Wastes, Commons, Village Greens, and Recreation Grounds), they are instructed that they must move upon their own initiative. At the same time, the "Memo" sound a note of unnecessary caution as to reviving disputes which have lain fallow for any length of time (to the undoubted satisfaction of the landowners concerned), and thus the procedure of perpetual injunction (by the landowner against a per-

sistent tenant or resident) is the usual legal result. The procedure followed is that the Parish Meeting, or, if it exists, the Parish Council, requests the highway authority (usually the Rural District Council) to take action and institute proceedings for obstructions against the landowner. Comprised (as is usual) chiefly of the owners, their nominees, or interested persons, it obviously declines to act in defence of public rights. The Parish Council may then petition the County Council to hold an inquiry, and then, if favourably impressed, to take up the case on its behalf. That august body does not desire to dictate to Rural District Councils, and so it invariably resolves that there is no ground for interference.

So the public Right-of-Way remains closed, or some village Hampden is worsted by an application for a perpetual injunction, the expenses of resisting which he

cannot afford to meet unless he is backed by enthusiastic public support or some wealthy friends, or otherwise is relieved by some David who comes to the rescue with a Writ for "mandamus" against the public authority which culpably fails to perform its legal duty. Otherwise, public-spirited citizens may forcibly remove all obstructions, and succeed in maintaining their rights, provided that the landowner is afraid to incur the wide publicity consequent upon his action for a perpetual injunction.

Indeed, in many cases an individual act of forcible removal of obstructions is often the only remedy to adopt.

The passing into law of Lord Eversley's Bill would solve hundreds of disputed questions, and prevent selfish encroachments in the future. Meanwhile public opinion is the lever which moves the ponderous legislative machine into action.

The Charm of the Footpath Way.

The main road is now taboo to the walker, who has perforce yielded possession to the express drivers of dust-distributing motor-cars. The path-way—or the old bridle way—is now the walker's most cherished possession. It conducts to the pleasant fields, the shady woods and the embowered, embroidered river sides; to Beauty adorned for the æsthetic eye, and to the nooks where lovers lie.

It leads to the sombre solitude, and the wind-swept moor; the wide and sweeping view; it climbs upward to the cloud-capped mountain's head. Poets dream along its inspiring track; there the weary regain renewing rest; the nerve-wrecked are restored for future strife; weary eyes find sweet relief; the weak are there made strong; 'tis where Bohemians make acratic

revelry; and Health is wed to Happiness, along the Footpath Way.

A growing public of pathfinders will most surely soon learn to protect and preserve what they appreciate.

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