HIGHWAYS

— AND —

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OUR ANCIENT RIGHTS AND HERITAGE.

By G. H. B. WARD.

PRICE 6d.

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FOREWORD.

No apology is offered for this little publication and, I hope, pocket-companion, which, before committing to type, was scrutinised by Mr. Lawrence W. Chubb, the expert Secretary to the Commons and Footpaths Preservation Society, 25, Victoria Street, London, S.W.1, an organisation which deserves better financial support.

The army of valley, mountain, and moorland walkers has grown during the past 25 years, but, owing to the still limited facilities offered during the character-forming period, far too slowly. The day will come when every religious body, works welfare club, and trade union centre will make a "rambling club" an essential form of the organisation and the object, *i.e.*, the making of more responsible, more observant and mentally equipped men and women. The professional man and collegian and the favoured few who are naturally endowed with the "instinct of direction" will continue to start alone and walk alone, or, at most, in selected company. But the average person requires the inducement and training with a club, and association and fellowship along the way. Then he, in his later stages, and after due graduations, may, equally so, fare alone and never be alone.

Although the gross pathway-filchings of the earlier 19th century are no longer possible, the state of the law, as then, is both perplexing and unsatisfactory, and the public, after enjoying a right, in defending it are placed upon the defensive, while the conversion of the turnpike road into—in the near future—a motorist's monopoly will make the footpath-way more important than ever. Public opinion is still weak, and more information is required, and the nature-loving pedestrian must organise to secure a reform which, in agreement with sound public policy, will also promote and extend the physical well-being and efficiency of the nation.

G. H. B. W.

A RAMBLER'S NOTES ON ANCIENT AND LOST BRIDLE-WAYS.

"Those who do not know her footpaths do not England know" is both a trite and a correct statement, and perhaps the need for their protection and preservation is greater than ever before. The growth of the city and the flying motor-car and motor-cycle have made the easier and more prosy road impossible to traverse in comfort, and the mentally tired townsman must perforce pursue the footpath way in order to obtain solace and seclusion in Nature's lonely or pastoral retreats. The announcement in the *Derbyshire Courier* of 18th December, 1920, of the formation of a Saddle Club for Notts. and Derby, for the purpose of riding over the old bridle roads, is only one symptom of the slow return to sanity and search for quietude and solace.

Civilisation and ordinary mediæval communications began with the forest, upland or cross country track to church and abbey

and market, and to the manor courts of the lord, etc., the path to the forest and common, and so from two villages or hamlets to the parish boundaries of the waste or forest common lands whereon the inhabitants had rights (often alluded to in 12th and 13th century charters and grants) to take stone, clay for sheep raddle, turf or wood for their fires, or for the making of wooden ploughs, repairing of fences, houses and buildings, and of feeding their animals, etc. The bridle road, traversed by salt and lead carriers, cloth and other pedlars, and over which the small tradesman or manufacturer took his goods or raw materials to market and usually travelled in company, was, until the modern cross-road was developed—chiefly after Macadam's late 18th century invention—often the only traders' route between, now, relatively important villages which, from modern standpoints, were then almost self-dependent communities. The last users of bridle roads were wandering cattle-drovers who, experts in turnpike toll "dodging," lost

their occupation 50 years ago when railway cross-connections made their work unprofitable. To-day the footpath is, sometimes, the old bridle road unless, as often happens, although passing over the most elevated ground, and giving the best prospects, the historic bridle-way has, for various causes, been lost, lapsed or stolen. If for no other reason, the fact that the nature lover and rambler represents perhaps the most cultured and responsible of the citizens of the land is sufficient ground for claiming that public interest and not private influence or selfishness should decide whether a footpath should be made, or be diverted or closed, and the fact that a person holds or has recently bought land should give him no first power over this most necessary public amenity and utility. And, in this respect, both public interest and enacted law require a little organised awakening and amendation.

A "Highway": What Is It?

Preservation of country-side footpaths is also one of the highest forms of the modern science of preventive medicine, but, at the

present time, the rural authority is often the most reluctant to exercise even the functions already bestowed upon it by Act of Parliament—and not always because the actual landowner often dominates its policy. The country farmer, as well as the shooting tenant, is not, in many cases, a lover of the townsman walker, and his outlook, for obvious reasons, is often narrower than that of his landlord.

Quaint Definitions.

Legally stated, a public highway (and a public footpath is a highway) is a means of progressing between one fixed point and another, and not a place where a public meeting or a friendly gossip may be held and whereon an auctioneer cheap-jack may cry his wares. Mr. Harrison, late of Redmires, near Sheffield, learned this side of the law when, over 20 years ago, in return for his grievances, he stood on the Ringinglow-Burbage Bridge road and endeavoured to spoil a day's shooting.

A highway and footpath cannot be legally destroyed except by act of God, by an Act of Parliament, or by an Order of Justices enrolled at Quarter Sessions, and mere obliteration by ploughing or overgrowth of grass or heather, etc., does not destroy the public right-of-way. The ancient common law right of the public to go over adjacent land when a path becomes "founderous" still remains. I will deal later with the closing order.

Legal and Other Barriers.

The public in the past have found, and may probably find again, that the statutory authority to make a new turnpike road may have automatically closed an historic footpath or bridle way by merely cutting across and placing a wall across the footpath on either side of it. The authority or the Act may not even mention the footpath, but the wall barrier has cut the communication between the two places, and a judge may declare that, under these circumstances, it was never a public way. A footpath is not

necessarily legal because it has been used uninterruptedly for twenty or even ten times twenty years. Before the Prescription Act of 1832, to establish a *private* right of way, occupation road, etc., it was necessary to prove "user," or the act of using from beyond the period of living memory and to the date of the commencement of English law, in the quaint phrase of "from the time when Richard I. came back from the Holy Land"—this, of course, in the absence of recent and continuous uncontested usage or documentary proof during the last twenty years or more accepted by the High Court Judge.

The modern owner and bourgeoisie leaseholder was becoming restive, and the Act of 1832—not yet extended to public rights of way—abolished the picturesque and ancient fiction and substituted 20 years' uninterrupted usage in the case of an absolute owner, as a presumptive, and 40 years in the case of an owner of entailed property, as being sufficient to prove a private right of way.

The Obstacle of "Entail" and "Family Trust."

In law there is no difference between an ancient highway (like the Stanage Pole Roman Road or Barber Booth to Hayfield bridle way, not sanctioned by any Turnpike or other Act), and an ordinary public footpath, and, unless created by Act or Statute, it can only be fully proven when a Court of Law is satisfied, from the evidence, that it has been dedicated by the whole of the owners of the land over which it passes as a public right of way. The laying out and delineation of such a highway on an Enclosure Act Award would be excellent evidence, but it would not be full proof if the way was not physically formed and also "taken to" and regularly used by the public.

In practice this method of proof is often a fiction, and the difficulty is increased because great portions of English land are held under various trust, family, or life settlements renewable at long periods and under which an

owner of the whole or part of the land crossed by a public way is not in absolute possession and so is not able to dedicate and pledge his successor.

Law's Cross Purposes.

Judgments differ to an extraordinary degree. One Judge, in dealing with cases of disputed paths across entailed estates, will hold that unchallenged usage throughout living memory is evidence of an implied dedication before the period of entail commenced, and the public right is preserved; but another Judge, on similar evidence, will decide that although consistent usage throughout living memory is proved, the owner in possession, during the period covered by the evidence, due to some form of family or other settlement, was incapable of dedicating and of binding his successor. Where this can be shown the Judge may require evidence of public use before the family settlement commenced. In the case

of estates entailed for hundreds of years this is impossible, and the public right is sacrificed.

A Grindleford Case.

In the 1912 Grindleford case, between Maynard and Outram, the land was entailed between 1825 and 1880, and the owners were incapable of dedicating, and it was admitted that, after 1880, the owners did not intend to dedicate, and also, owing to cross swearing—and probably very doubtful evidence—that commencement of usage between 1825 and 1880 was not proven. Lord Coleridge, however, was a keen Judge, and he adjourned the case for one day in order to view the 400 yards of well-worn bridle stones West of White Edge Moor, and he was satisfied that it was an ancient highway which must have been dedicated as a public way before 1825.

If I could have produced the evidence of the old and then unknown bridle way and 18th century guide stones, above the disputed portion South of Lady Cross, East of White Edge, a few months earlier, it is possible that the owners would not have taken the case to court. However, the

public won, but, although a clear case, yet, owing to the varying interpretations of law, it might quite as readily have lost the case.

Cutting Off a Bridle Path.

A bridle road in the South was prized by lady and gentleman riders and by local residents, but a person bought a small property, which was crossed and cut in two by the bridle way, and, being held in absolute ownership for many years past, he could not steal it. However, he bought several acres of glebe land from the Ecclesiastical Commissioners and closed the path, contending that incumbents of the living could not dedicate a public right of way. A ducal landowner on the line of route declared that it was a " public " way, and a local Enquiry produced no contrary evidence. But the weak local Council, advised that the *right* was uncertain, and afraid of spending money to prove it, allowed the bridle way to be stolen from the public.

Pitfalls to Lost Roads.

Strictly stated, as in private rights of way there was the legal fiction of a lost grant, given or made in mediæval times so, in public rights of way, it is now generally accepted that, for absolute safety, there can be no legal and public dedication of any footpath except by the absolute owner of the land over which it passes. In one exceptional case, six years of continuous usage was held to be good evidence of "implied dedication" by the owner, but a minimum period of 40 years evidence should be sufficient.

When it is remembered that the greater portion of land in rural districts is entailed and vested in trustees, who cannot themselves legally dedicate a footpath, it will be evident that, under the present state of the law, the public may lose many most valuable footpaths. The law is full of pitfalls and difficulties, and, at present, a right of way is difficult to acquire, and, when acquired, more difficult to vindicate and maintain. So recently as January, 1914, a High Court Judge

declared against the public after 75 years' usage of the path was proved, and chiefly because the land, being under family settlements since 1765, it was held to be impossible to produce evidence of public usage before that date!

Position and Attitude of Local Authorities.

Although a rural authority may be zealous, it may also hesitate, when the title is in doubt, before contesting a case against a wealthy owner who is fully prepared to take the case before the final Appeal Court and involve the authority in expenses amounting to thousands of pounds, and, in the first instance, the case must be tried before a High Court Judge, itself an expensive proceeding.

Further, evidence is often difficult to acquire from the oldest inhabitants, who are best acquainted with the local knowledge and use of a footpath and are peculiarly subject to petty persecutions if they testify against

the squire. Others may, equally, be induced to give misleading evidence. Old plans of lands and properties are invariably in the hands of family lawyers instead of being accessible under a public land office, and, in every case, the production of old plans should be made compulsory as, often enough, they would prove the case on behalf of the public. A private, independent, and public-spirited individual is also very reluctant to fight a case and involve himself in ruin although he might succeed in the action.

The Highway Acts, as extended by the Local Government Act of 1894 and explained by the Departmental Memoranda issued in March, 1895, entrust local authorities with the repair and protection of footpaths and bridle ways. But too often the members of these authorities are practically the nominees of the local landowner, and their open neglect of duty is notorious.

Diversions and Closures.

In the case of a diversion or closing of a footpath the proposer must first lay his plans and reasons before the local authority. If

they agree, magistrates are selected to view the path, and, after viewing, may give assent and, in that case, after public notices have been fixed at each end of the footpath, any member of the public has the right to protest at the next Quarter Sessions before the order to close or divert is issued. But the law gives and the law takes away, for the individual who opposes the claim may be saddled with the costs.

A considerable amount of important evidence is embodied in the detailed Award and accompanying plans of Common Lands enclosed under the thousands of Enclosure Acts passed between 1708 and the present time—but chiefly before 1840. These Acts cover several millions of acres, and, in some cases, the two or three copies of the Awards have already disappeared, although they are of high historic value. The award and plan should be kept by the Parish or Urban Council as a public document, but sometimes it is in the hands of the local landowner or the Vicar, and in every case, even at the County

Council offices, the student is liable to pay at the rate of about 1d. for each eight words extracted. These Acts and Awards should be reprinted out of public funds, and, as important public documents, be made accessible free of charge to the public and the student—in public reference and university libraries, etc.

Public Rights of Way Bill.

From 1905 to 1914 a Private Bill, called the Public Rights of Way Bill, promoted by the Commons and Footpaths Preservation Society, was before the House of Commons, but, never receiving adequate facilities, it was not allowed to become law. A Bill long overdue, in modest fashion it merely reverts to the Prescription Act of 1832 which gave a private right of way after evidence of 20 years of usage in the case of an absolute owner, and 40 years in the case of an owner of entailed property, and places public rights of way upon the same basis. In a word, it seeks to bring legal interpretation to the procedure generally followed immediately after the passing of the Prescription Act. Common-sense should dictate that where the public have enjoyed rights over a number of years the individuals or associations who seek to take them away should themselves be placed upon the defensive. Another point, every Highway Authority should make public plans of all known rights of way within its boundaries.

Bridle Roads and Access to Mountains.

One might readily grant that, with regard to wanton damage, the law might be made a little more stringent. On the other hand, there is no punishment for the person who spoils useful timber and erects a lying trespass board, and induces persons not to use a right of way, who places a bull in a field, ploughs up the land with intent to conceal, and, in other ways, seeks to obstruct or obliterate the right of way. And, if you remove an obstruction, an extra blow with a hammer may be a costly procedure.

A bridle road should mean ten feet of width of public land, sufficient for two horses (carrying panniers) to pass; but how

often could a bicycle or perambulator be taken throughout the course of a bridle road? Six feet, however, is the obviously inadequate width provided and laid down in many Enclosure Awards, but 10 feet is common in Derbyshire Awards.

Another aspect is the Access to Mountains Bill, a most useful measure. Some hundreds of old bridle roads, numbers of which, in effect, are legal at the present day, are lost to the public, and often because the modern developed walker was not aware of them 50 years ago, and the local residents, although it was still the nearest way, were afraid to use them because of the shooting tenant or landlord. These old routes should be the subject of a national survey, and, in many scenic districts, a number of now legally lost bridle ways would be reopened because of the fine scenery and bracing air along the way. The walker is, at least, entitled to have access to all mountain and moorland summits and view points, and what damage, other than setting fire to the heather, can be done upon waste moorland?

Grouse, and Sport.

Grouse shooting alone cries out for reform, and instead of half a day within a shooting butt, and probably a heavier dinner than usual, a middle-aged sportsman would be far better with a healthful day's run with a dog and gun. In addition he would deserve the game he shot.

In pre-war days the average cost of one pound per grouse shot was a waste of good money. Districts like the Lake District, the mountains of North Wales, etc., should be national preserves kept for the health-seeking public, and these and all wastes and moorlands should be accessible to the walker throughout the year, except during the nesting season, when all sensible people would respect the mother bird on her nest. Of course, no bird makes her nest along the footpath.

"Trespassers will be"——!

Trespassing, during the last twenty years, has been relieved of many of its former terrors. If innocently trespassing, one may

ask the owner or the keeper to name the amount of damage, which, usually, is nil, but one is not obliged to offer anything. If he has broken a fence or a wall and is not prepared to restore it, he, being a rambler and a gentleman, might remember Halliwell Sutcliffe's advice to leave half-a-crown behind. No damage can be assessed for taking uncultivated fruits such as blackberries, bilberries, mushrooms, etc. The offender cannot be compelled to go back the way he came, the duty of the owner, etc., being to direct him to the nearest public footpath or road. He may use sufficient force to persuade the unwilling person to depart, but if, unnecessarily, he uses physical force, he is liable to be prosecuted for common assault. The rambler-politician may lie down and ask the irate gentleman to carry him off, and a little exercise of tact often succeeds in one being able to follow his intended route. There is no fine for trespass, but only for the proven damage done. Still a rural magistrate often has a willing and imaginative mind.

The real danger is in repeated trespass where an owner, after giving written warning, serves a writ upon the offenders, and if, after an injunction has been made against him, he repeats the offence, he is liable to be sent to prison for contempt of court, after, of course, having to pay the costs of the injunction made against him, and it must be observed that costs in footpath cases are notoriously high. In the famous Irton case the costs amounted to £15,000.

The Demand for Reform.

One feels that during the next 20 years the law must be radically altered and public rights be better maintained and respected. The public of all classes must rise to its sense of right and responsibility. Great owners or lessees of rural or waste lands cannot be allowed to stand in the way of public rights and liberties. The road walker has gone for ever, and, although he has still the legal right to walk in the middle of the road, he is too conscious of the joys of life to commit suicide under the wheels of a flying motor car. In sheer necessity he must betake himself to the footpath and the lonely hills whence, in the true words of the Psalmist, " cometh his

help." Modern man is crowded into great cities and subject to many modern forms of nervous ailments. Football and cricket are the sports of the healthiest of young men, and modern golf and bowls are often the physical salvation of the middle-aged man. Mountaineering is possible for all active persons, provided that they commence in early years; but gentle walking is the best exercise possible throughout one's life, and national preservation of good physique demands that all reasonable facilities and encouragement should be given to it. The greater the percentage of walkers and nature lovers in the community and the more happier and responsible will be the community itself. No reasonable person can admire the motorist who murders his mileage or the thoughtless, uneducated townsdweller who, often enough to-day, goes about on his Bank Holiday excursion like a chained dog that is suddenly let loose for a few hours. Let us go to the sombre solitude, the wind-swept mountain summit, the health-giving, soul-renewing open air, and the worship of the God of Nature, and in the name of sweeter, saner, and sounder humanity, in the name of our good health and finer manhood, rise to the height of the benefits and blessings we have already received, and be determined to protect and preserve the byways of health and happiness.