COMMONS AND COMMON FIELDS, OR, THE HISTORY AND POLICY OF THE LAWS RELATING TO COMMONS AND ENCLOSURES IN ENGLAND: BEING THE YORKE PRIZE ESSAY OF THE UNIVERSITY OF CAMBRIDGE FOR THE YEAR 1886

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649553082

Commons and Common Fields, or, The History and Policy of the Laws Relating to Commons and Enclosures in England: Being the Yorke Prize Essay of the University of Cambridge for the Year 1886 by Thomas Edward Scrutton

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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BEING THE YORKE PRIZE ESSAY OF THE UNIVERSITY OF CAMBRIDGE FOR THE YEAR 1886.

BY

THOMAS EDWARD SCRUTTON, M.A., LL.B.,

BARRISTER AT LAW; PROFESSOR OF CONSTITUTIONAL LAW IN, AND FELLOW OF, UNIVERSITY COLLEGE, LONDON: AUTHOR OF "CHARTERPARTIES AND BILLS OF LADING"; "THE LAWS OF COPYRIGHT"; "THE INFLUENCE OF THE ROMAN LAW ON THE LAW OF ENGLAND"; ETC.

CAMBRIDGE:
AT THE UNIVERSITY PRESS.
1887

Cambridge:
PRINTED BY C. J. CLAY, M.A. AND SONS,
AT THE UNIVERSITY PRESS.

PREFACE.

THE Yorke Prize of the University of Cambridge, to the establishment of which this work owes its existence, was founded about fourteen years ago by Edmund Yorke, late Fellow of St Catharine's College, Cambridge, and, under a scheme of the Court of Chancery, is given annually to that graduate of the University, of not more than seven years' standing from his first degree, who shall be the author of the best essay on some subject relating to the "Law of Property, its Principles, and History in various ages and Countries." The subject prescribed for the year 1886 by the Adjudicators (R. Romer, Q.C., and C. S. Kenny, M.P.), was "The History and Policy of the Laws relating to Commons and Enclosures in the United Kingdom." The Prize was awarded to the Essay bearing the motto: "Enclosures make fat beasts and lean poor people", which is now published in accordance with the conditions of the Award.

The subject originally prescribed for the Yorke Prize being so wide, the following pages have been intentionally limited to England, and in that country to two aspects of the subject proposed; (1):—an examination of the accuracy of the legal theory of the origin of rights of common, as compared with the early history of those rights as depicted by historians, a discussion which, as historical students do not agree among themselves on the matter, must necessarily include some investigation and criticism of the evidence available; (2):—a historical sketch of the policy of the legislature and the practice of landowners with regard to the distribution of common lands into several ownership, and the enclosure of open fields and wastes. This in its turn must include both the agricultural and economical question

of the common fields, and the social and economical question of commons as open spaces.

The mixed question of law and history is dealt with in the first three chapters of the essay; it is one of great difficulty, and great importance. The recent work of Mr Seebohm, whatever be its merits and faults in other respects, has certainly compelled those who assert the existence of a Free Village Community in England to carefully restate their position, which had become through premature popularisation and the crude generalisation and parrot-like repetition of crammers and their victims indefensible in some of its doctrines. Especially the attack on the legal theory of rights of common, (which is that they originate in law from the grant of a lord,) commenced by Mr Joshua Williams and Mr Digby, appears to overlook the state of the historical evidence as to the condition of things at the time when the lord's grant must have been made or implied. The following pages advocate the view that the legal theory is historically accurate, if stated with proper limitations; that except in the Eastern and Danish counties, the existence of Free Village Communities in England for some centuries before the Conquest, is, as Kemble recognised, historically very doubtful; and that Common Appendant, which is usually put forward as the direct survival of the Free Community, can be clearly shown to have no such origin in the vast majority of the manors of England.

This discussion also involves an examination of the very difficult question of the relation of the Statute of Merton to earlier law; and an attempt to prove that the distinction between Commons Appendant and Appurtenant only originates in the 15th century. The subject matter of the first two chapters has already appeared in the Law Quarterly Review for October, 1887.

The question of the origin of Manors and Manorial Courts, and the early relations of the lord to his tenants, are still far from settled. Now that copyhold tenures are rapidly dying out, when Manorial Courts have become almost obsolete, and in

most cases the lord of the manor no longer derives more than a nominal profit therefrom, it is much to be desired that each lord of a manor would regard it as a duty of his position to provide for at any rate the safety, if not for the publicity, of his Court-rolls. Large as is the mass of materials now made public, it is only by a careful and minute examination of the history of each manor, and comparison of contemporaneous rolls, that any conclusions of value as to the early history of the English Village Community can be reached. Such publications as the Domesday of St Paul's, edited by Archdeacon Hale, or the Custumals of Battle Abbey, just edited by Mr Scargill Bird for the Camden Society, are worth in the light they throw on early English history, whole libraries of imaginative descriptions of the Mark in England, based on institutions alleged to exist in some other country and at some other time.

While this part of the discussion from its technicality loses its full meaning to all but specialists, the subject treated of in the second part of the essay is of interest to every English citizen and is becoming of more and more importance every day. The growth of population and the adulteration of the chief means of living, pure air, for which our ever-increasing factories are responsible, bring more and more to the front the need of open spaces, accessible from our great towns. The speculative builder and the wealthy landowner alike prey upon roadside wastes, and neighbouring Commons. Both the poor, who are deprived of any interest in the land, and the public, more and more restricted to the hard high road, are affected by the Policy of Enclosure and Individualism.

The following pages give the history of Commons and Common Fields in this country. After explaining what is known of their early condition, the great change from arable land to pasture in the 15th and 16th centuries, with its results; the reclamation of the fens, and the disorders of the Civil War, in the 17th century; the great movement towards enclosures in the 18th century, based on a policy of agricultural advantage,

and finding its climax in the establishment and work of the Board of Agriculture at the close of the century; the reaction from this one-sided narrow view of the problem as it arises in the present century; the recognition of the vital interests of the public in open spaces; the struggles with the encroachments of Lords of the Manor on the one hand, and the shortsightedness and apathy of Parliament and of the Crown officials on the other; the foundation of the Common Preservation Society; all these matters are dealt with in turn. The last chapter contains some suggestions as to Reforms needed to ensure the success of the Policy of open spaces at present in favour.

The present session has seen the passage by the Government of an Allotment Act, which is certainly a step in the right direction. Its full merits can only be judged after experience of its operation: the activity of sanitary authorities, the exact constitution of the forthcoming county authority, "any representative body elected by the inhabitants of the county which may be established under any Act of any future session of Parliament", the policy of the Local Government Board which is to act for the local county authority till "any future session of parliament" establishes it, are as yet unknown quantities. The restriction of allotments in size to one acre, and the absence of any provision that the allotment land shall be near the labouring population, a condition essential to success and by its absence the cause of much past failure, seem unfortunate, but in the present political position we may be thankful even for small mercies.

The importance of the question of open spaces to England of to-day, still more to the England of the future, can hardly be exaggerated. It is hoped that the following pages may assist the public understanding of the problem, and add in however small degree to the forces at work to keep the land of England from becoming closed to the people of England.

T. E. S.

1 Essex Court, Temple.
September 27, 1887.

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