

Wareham Court Leet

By Mr.H.J.S.Clark

Both the Town Walls and the Common are registered as common-land under the terms of the Commons Registration Act 1965. Together they constitute Unit number CL 23. The boundary of that Unit number is delineated on the plan supplied by Wareham Town Council to Dorset County Council (The registration authority) in the 1960's.

Since the registration the common rights have been extinguished over that part of the area which has been transferred to the Highway Authority for use as a by-pass road. However, an equal area of land has been added to the Common in exchange and is now subject to identically the same rights as was the area taken for the highway. It is a matter of law that if common rights are extinguished over any land then fresh land of no less area shall be substituted and made subject to the same rights as have been extinguished.

So far as I know no grazing rights over Wareham Walls have been registered and therefore none exist.

In 1956 Mr. D. C. D. Ryder granted a long Lease of the Town Walls to Wareham Town Council. The Lease imposed certain obligations on the Lessee to preserve the earthworks. The present Lessee is Purbeck District Council.

Portland Meadow (formerly "Portman's Meadow") which lies between the west end of the Common and the River Piddle is also registered as common-land under Unit number CL 136. Its boundary is shown on the plan accompanying its registration.

The Commoners are the following persons who own grazing rights over the common. The number of runs owned by each is set against his name:

J. Baggs	11
K. Ford	2
R. Sturdy	3
G. Sturdy	10
H.J.S. Clark	4
Total	30

I have not included in that list the rights which are registered in the name of D. C. D. Ryder for a reason which I will explain later.

The interest which each Commoner has is, to use the precise legal phrase: "to eat the grass with the mouths of his cattle". The word cattle in this context includes not only bovine species but horses and donkeys as well, but excludes bulls and stallions.

Commoners are not entitled to run dangerous or diseased animals in the Common.

Grazing Rights over Portland Meadow. From 2nd August in each year until 5th April in the following year, Commoners have identically the same rights over Portland Meadow as they have over the rest of the Common.

The Commoners have no rights over Portland Meadow from 6th April and 1st August in each year.

The Commoners have no rights of any kind other than the grazing rights which I have mentioned, over any part of the Common.

Foreshare Rights over Portland Meadow. By custom each owner of freehold in Portland Meadow may enclose his land from 6th April to 1st August in each year to take his foreshare of hay.

Private Right of Way. The Common is subject to a private right of way for the owners of West Mill to pass and repass with or without vehicles and animals over the roadway between the Common Gate and West Mill.

Public Rights of Way. The Common is subject to such public rights of way as are shown on the map of public rights of way maintained by the Highway Authority.

Public Access for Recreation. Since I have never known any of the successive owners of the Common attempt to prevent any member of the public from walking where he or she likes, the legal position may appear to be of academic interest only. However, I must say that I know of no legal right under which any member of the public can walk, ride or drive over any part of the Common which is not a right of way.

The Law of Property Act 1925 Section 193 made provision for the public to have access for air and exercise over certain places such as Metropolitan commons. The Act further provided that the public should have access to any land which on 1st January 1926 was subject to rights of common provided that the owner of the land had executed a Deed declaring that the provisions of the 1925 Act relating to public access should apply to the land and had deposited the Deed with the Secretary of State. So far as I am aware, no owner of Wareham Common has ever executed such a Deed.

Even if such a Deed had been executed and deposited with the Secretary of State it would not entitle members of the public to drive cars, ride motorcycles on the Common or to camp or light fires or deposit litter there.

I remember that at one time the Wareham Golf Club had permission to use the Common as a golf course.

Rights of Statutory Bodies. As in the case of all privately owned land, representatives of countless statutory bodies have rights of entry under various Acts of Parliament.

Rights of the Lord of the Manor and of the owner of the soil. So far as I am aware, the Lord of the Manor of Wareham and the owner of the soil of Wareham Common have always been one and the same person. I shall not therefore distinguish between his legal rights in one capacity and his legal rights in the other. Obviously, as in many other manors, the Lordship could fall into one hand and the ownership of the soil of the Common into another. If ever such a thing happened then their respective rights would need to be distinguished. As most of the rights to which I shall be referring belong to the owner of the soil as such rather than to the Lord of the Manor as such, I will for simplicity and brevity refer only to the owner of the soil.

As with all privately owned land the owner of the soil is the owner at common law of everything upwards to the heavens and downwards to the centre of the earth except such rights as have been conferred by Deed or by Act of Parliament upon Commoners and others.

So far as he does not interfere with the Commoners he may use the land and its products as absolutely as if no right of common existed.

If sufficient grass is left to the Commoners for their animals, (they own, as I have said, just 30 runs), then the owner of the soil may plant trees, breed rabbits, run cattle and grant licences to strangers to take herbage and pasturage.

The right of the owner to plant trees can be exercised only sparingly if it diminishes the pasture.

The right of the owner to have pasturage for his own cattle on the Common is one of the characteristics of land on which Common rights exist and so long as it continues to be a Common no prescription can deprive him of the right, nor is it dependant on their being a sufficiency of grass for the other Commoners. The owner may, as indeed he always does in respect of Wareham Common, license strangers to put their cattle on the Common but in that case he must not license so many that there is insufficient grass for the Commoners.

The owner may "drive the Common" - that is to say he may round up the animals to check that all are there legitimately.

The fact that land is subject to Common rights does not in any way affect the normal rule that the sporting rights belong to the owner.

The Commons Registration Act 1965 made provision for registration of the names of the owners of common land. Mr. D. C. D. Ryder proved his title as Tenant for Life under the Settled Land Act to the Town Walls, the main Common and the greater part of Portland Meadow. His name was therefore duly registered as owner. He was also registered as the owner of 75 grazing rights in the Common. I now think that that registration of runs was unnecessary because from the earliest times the owner of the soil of a Common could run as many animals as he wished on the Common. The reason why the number of runs registered in Mr. D. C. D. Ryder's name was 75 was because that number of runs was exercised by one of his predecessors, Mr. Caicraft.

The Administration of Wareham Common in 1986. The day-to-day management of the agricultural aspect of the Common - by which I mean the cultivation of the grass, the clearance of gorse, the drainage work, the fencing and suchlike is carried out by an officer of the Court, namely, Mr. John Baggs, the Hayward. Members of the Court Leet carry out a tour of inspection of the Common once a year.

The Hayward also attends to the letting of runs on behalf of the owner of the soil and the Commoners. He collects the fees for the runs, keeps the records of the runs let, pays the expenses incurred by him and hands over the balance annually as at the 25th March to the Steward who pays out of it the other expenses for the year and accounts to the Owner and to the Commoners for the balance according to their respective shares.

The behind-the-scene office work of preparing annual accounts, paying bills, making distributions and dealing with the secretarial side is ably and conscientiously carried out by Mrs. Mockford of the Rempstone Estate Office.

The Jury of the Court leet under its Foreman, Mr. John Egglestone, is elected annually and is available to deal with any matters of concern which may arise such as encroachments, disputes, complaints, irregularities and recommendations. Very few major problems have arisen in recent years but they will no doubt arise from time to time in the future and the combined experience and wisdom of the Court Leet will no doubt be of real value in solving them.

The Commons Registration Act of 1965 did much to clarify the identity of the Commoners and to open the way for simplification of the administration. Until 1965 the term "Commoners" conjured up in the public mind and indeed in the minds of many members of the Court Leet a large body of unidentified simple country rustics who depended for their existence on a cow or horse or donkey and who needed the protection of a Court Leet to protect their ancient rights. However, when the Act unmasked the true identity of the Commoners, they were seen to be Mr. Baggs, Mr. Ford, Mr. Donald Sturdy, Mr. Richard Sturdy and myself, the popular image of Commoners became less picturesque.

Legislative Proposals for the future regulation of Commons. The Department of the Environment and other official bodies have during the past few years been collecting and considering evidence concerning the administration of Commons all over England. This is with a view to introducing legislation for the regulation of Commons on a uniform basis throughout the country. It is apparently envisaged that there will be, in respect of each Common, a committee consisting of representatives of the Local Authority, the Owner, the Commoners and other interested parties such as the Court Leet and recreational bodies. This Committee would be under a statutory obligation to appoint officials, hold meetings and publish accounts and suchlike. The general purpose behind the Proposals may be necessary in the case of many Commons where there is no organisation whatever but in the case of Wareham, it looks to me as though the ultimate result would be the same as at present but with a lot of additional time spent at meetings.

Sources of Law on Commons. The main source of legal authority on Commons is case law by which I mean the judgments in the hundreds of cases which have come before the Courts.

Statutes ancient and complex have contributed the main structure. The following are the chief milestones:

The Commons Act 1236
The Commons Act 1285
The Commons Act 1876
The Commons Amendment Act 1893
The Commons Act 1899
The Commons Act 1908
The Law of Property Act 1925
Report of Royal Commission on Common Land 1955 - 1958
The Commons Registration Act 1965

The following three text books I have not seen but no doubt they say it all:

"Elton on Commons,"
"Williams on Commons"

and most recently:

"An outline of the Law relating to Common Land" by Bryan Ilarris and Gerard Ryan.

The History of Wareham Town Walls & Common.

This is not the place to embark on the long and obscure history of the Town Walls and Common, however fascinating that might be. It would start with a document now over 1000 years old dealing with the manning of the Walls. There is a great deal of information in the County records, the Rempstone Estate Records and in the Minutes of the Court Leet during the period since 1851.

I myself have quite a lot of papers relating to the Common - mostly derived from the Filliter family - which produced two or three Town Clerks of Wareham. These papers include the manuscript book of accounts of the Common maintained by the successive Mayors for the Commoners from 1796 to 1832, also records of the driving of the Common. These documents show in tabulated form the holders of each run, the number of animals he ran and whether they were horses or cows. They show the names of Commoners whose runs were used and the amount paid in respect of each run.

I have a card index compiled with great care in the 1940'S by the late Mr. Geoffrey Williams showing in alphabetical order the names of the Commoners and of those persons to whom the runs were let indicating in each case whether it was used for a horse, cow or donkey. The index covers the period from 1801 to 1870.

Before the Commons Registration Act of 1965, those records would have been of practical value in determining whether claims to rights were true or false. Now they are of interest to local historians only.