BOOK REVIEWS

Copyhold, Equity, and the Common Law. By Charles Montgomery Gray. Cambridge: Harvard University Press, 1963. Pp. 254. $6.50.

Copyholds are not and never have been a part of the American law of property.[1] Hence American lawyers—even those who specialize in the law of property—will not be immediately concerned with Professor Gray's monograph on *Copyhold, Equity, and the Common Law.* Nevertheless, American legal scholars, some of whom will surely be conveyancers, should be much interested in and perhaps even excited by Professor Gray's report. It is an extensive study of the numerous bills and other pleadings in the Court of Chancery, the Star Chamber, and the Court of Requests of the reign of Henry VIII, examined at the Public Records Office, and of the many unprinted reports of common law cases, principally of the sixteenth and early seventeenth centuries, found in various collections of manuscripts in the British Museum.

The appeal of the study for American lawyers will not depend upon the details of the law of copyholds which Professor Gray reports, but rather upon the development of remedies for the protection of copyholders which he traces in careful detail. At the beginning of the period of the study, copyhold lands were "owned" by the lord of the manor in which they were situated. Though those lands had been used by the copyholders and their predecessors from time immemorial, the interest which they had was classified as a tenancy at the will of the lord of the manor in whom both the seisin and the freehold were vested. According to the traditional legal theory, the lord might lawfully evict the copyholder "at what time it pleaseth him."[2] And yet, in con-

1 WILLIAMS, REAL PROPERTY 333 (4th Am. ed. 1872): "The law of copyholds has no application on this side of the Atlantic, and has, indeed, been altogether omitted by Professor Greenleaf in his edition of Cruise on Real Property." See also 1 WASHBURN, AMERICAN LAW OF REAL PROPERTY 26 (1860).

In England, copyhold land was enfranchised by the Law of Property Act, 1922, 12 & 13 Geo. 5, § 128(1), which became effective January 1, 1926; Law of Property (Postponement) Act, 1924, 15 Geo. 5, c. 4.

2 LITTLETON, TENURES § 68 (1813). See also *id.* at § 77; Coke, *The Compleat Copyholder,* § VIII in THREE LAW TRACTS (1764): "The lords upon the least occasion (sometimes without any colour of reason, only upon discontentment and malice; sometimes again upon some sudden fantastick humour, only to make evident to the world the height of their power and authority) would expel out of house and home their poor

sequence of the developments which Professor Gray traces, by the end of the Elizabethan period the lord had been all but stripped of the right to use and develop the land of which he was seised.[3] Substantially all that remained of the lord's property were the various feudal rents and incidents such as fines, heriots, reliefs, escheats and forfeitures[4]—the value of which was, of course, insignificant in comparison with the rental value of the land. In short, most of the beneficial interests in copyhold lands had been taken from the lords and vested in the copyholders.[5] This had been done without a mandate from parliament, and indeed, in theory at least, without altering the lord's title to copyhold lands. The courts continued to say that the lord was the freeholder and seised of the land, while the copyholder was but a tenant at will, albeit holding according to the custom of the manor.[6] The justification which the courts gave for protecting the copyholders was that they and their predecessors had been permitted to use the land according to the customs of the manors from time immemorial. Hence it would be not merely an abuse of legal power, but an unlawful act for the lords to exercise the privilege, inherent in tenancies at will, to terminate the relationship and evict the tenant.

It is commonly accepted, whatever may be the rule of the civil law, that under the Anglo-American system of law a property right is not destroyed by nonuse or, if the right is an estate in land, even by abandon-

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copyholders, leaving them helpless and remediless by any course of law, and driving them to sue by way of petition."

3 2 BLACKSTONE, COMMENTARIES 95 (8th ed. 1778): "[C]opyholders are in truth no other but villeins, who, by a long series of immemorial encroachments on the lord, have at last established a customary right to those estates, which before were held absolutely at the lord's will."

4 Coke, *supra* note 2, at § IX: "But now copyholders stand upon a surer ground; now they weigh not their lord's displeasure, they shake not at every sudden blast of wind, they eat, drink and sleep securely; only having a special care of the main chance (*viz.*) to perform carefully what duties and services soever their tenure doth exact, and custom doth require: then let lord frown, the copyholder cares not, knowing himself safe, and not within any danger. For if the lord's anger grow to expulsion, the law hath provided several weapons of remedy; for it is at his election either to sue a *sub-poena*, or an action of trespass against the lord. Time has dealt very favourably with copyholders in divers respects."

5 Ordinarily the copyholder's rights of enjoyment did not include minerals or the timber; but even as to these the lord could neither remove the minerals or cut the timber without the copyholder's consent; ROYAL COMM'N TO INQUIRE INTO THE LAW OF ENGLAND RESPECTING REAL PROPERTY, THIRD REP. 15 (1832); 1 SCRIVEN, COPYHOLD 499-515 (3d ed. 1833).

6 "Although a copyholder has in judgment of law but an estate at will . . . yet custom has so established and fixed his estate, that by the custom of the manor it is descendible, and his heirs shall inherit it, and therefore his estate is not merely *ad voluntatem domini*, but *ad voluntatem domini secundum consuetudinem manerii* . . . ." Brown's Case, 4 Co. Rep. 21a, 76 Eng. Rep. 911, 912 (1581). See also LITTLETON, *supra* note 2, at § 73; SIMPSON, INTRODUCTION TO THE HISTORY OF THE LAND LAW 158 (1961).

ment.[7] And yet it is clear, both in England and in America, that the nature and extent of the use to which land has been put may have an important effect upon the owner's privileges of enjoyment. In some instances, as those in which statutes of limitation are controlling, estates in land may be destroyed[8] or, as in the prescription cases, encumbered because of the nature of the use to which the land has been put. In others, even though the owner's estate continues as a fee simple absolute, his rights of enjoyment often are drastically affected because of the history of its use and enjoyment.

Common, modern illustrations are afforded by various regulatory schemes such as building codes, zoning laws, the numerous statutes for the regulation of such activities as agriculture, mining, the production of oil and gas and the use of water for irrigation, and various other types of planning acts. The impact of such schemes upon a particular landowner often depends upon the nature and extent of the use to which the land is devoted at the time when the scheme becomes effective. Under such acts, for example, the privilege of a landowner to use a wooden house as a residence,[9] to conduct a business such as a sanitarium[10] or a junk-yard,[11] to produce crops such as cotton[12] or tobacco,[13] to tap underground water for the irrigation of crops[14] or to use the land for many other purposes often will depend upon whether the particular tract was being used for such purpose at a date specified in the statutes. Thus one effect of such programs may be that property rights which have been used are preserved and identical property rights which have not been used are destroyed. Yet from the point of view of legal theory, such legislation has not altered the owner's estate. Even though the effects of the regulations may be drastic and far-reaching, it is said that the estate continues to be absolute and unencumbered. The typical title report

7 Simonton, *Abandonment of Interests in Land*, 25 ILL. L. REV. 261 (1930).

8 Hughes v. Graves, 39 Vt. 359 (1867).

9 See Bettey v. City of Sidney, 79 Mont. 314, 257 Pac. 1007 (1927); Crossman v. City of Galveston, 112 Tex. 303, 247 S.W. 810 (1923). Compare Soderfelt v. City of Drayton, 79 N.D. 742, 59 N.W.2d 502 (1953).

10 Jones v. City of Los Angeles, 211 Cal. 304, 295 Pac. 14 (1930). Compare Hadacheck v. Sebastian, 239 U.S. 394 (1915) (established brick yard); Consolidated Rock Prods. Co. v. City of Los Angeles, 57 Cal. 2d 515, 370 P.2d 342, *appeal dismissed*, 371 U.S. 36 (1962) (parcel suitable only for use as a gravel pit); West Bros. Brick Co. v. City of Alexandria, 169 Va. 271, 192 S.E. 881 (1937) (brickmaker's reserve supply of clay).

11 Harbison v. City of Buffalo, 4 N.Y.2d 553, 152 N.E.2d 42 (1958). Compare City of Los Angeles v. Gage, 127 Cal. App. 2d 442, 274 P.2d 34 (1954) (wholesale and retail plumbing supply business). See also Note, *Amortization of Property Uses Not Conforming to Zoning Regulations*, 9 U. CHI. L. REV. 477 (1942).

12 63 Stat. 1057 (1949), 7 U.S.C. § 1345 (1952).

13 65 Stat. 422 (1951), 7 U.S.C. § 1313 (1952).

14 Southwest Eng'r Co. v. Ernst, 79 Ariz. 403, 291 P.2d 764 (1955). Compare Bernstein v. Bush, 29 Cal. 2d 773, 177 P.2d 913 (1947) (oil and gas).

will not show such restrictions.[15] Occasionally when the changes are unusually burdensome some scholars will protest that the old estates have been destroyed by the politicians.[16] Usually these objections will be brushed aside with some such comment as "all that has happened is that the fruits of ownership have become less sweet; but that is nothing new in land law"[17]—a theory amply supported, as Professor Gray's study demonstrates so admirably, by the law of copyholds in the merrie years of Henry VIII and Elizabeth I.

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15 Passero, *Effect of Zoning Ordinances and Violations Upon Marketability of Property*, 24 ALBANY L. REV. 167, 176 (1960).

16 Cross, *The Diminishing Fee*, 20 LAW & CONTEMP. PROB. 517 (1955); Potter, *Caveat Emptor or Conveyancing Under the Planning Acts*, 13 CONVEY. (n.s.) 3 (1948); Potter, *The Twilight of Landowning*, 12 CONVEY. (n.s.) 3 (1947).

17 MEGARRY, A MANUAL OF THE LAW OF REAL PROPERTY 615-16 (3d ed. 1962): "When the Town and Country Planning Act of 1947 was enacted, some strange suggestions were made as to its fundamental effect on English land law. It was even contended that the fee simple in land no longer existed, but instead each landowner had merely a fee simple in the existing or permitted use of his land. This view appears to have been based on the need to obtain permission for any development, and on the obligation to pay a development charge. . . . In truth, the theory would not bear examination, and it has gained no foothold in the courts or among practitioners. Planning control affects the use and enjoyment of land, but not the estates or interests in it; and development charges, while they existed, were a purely fiscal burden. Planning matters must be duly investigated for the protection of purchasers, but they are not technically matters of title. The right to use property in a particular way is not in itself property. The fee simple in land remains the same fee simple as before. 'All that has happened is that the fruits of ownership have become less sweet; but that is nothing new in land law.'"

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The Life Insurance Enterprise, 1885-1910: A Study in the Limits of Corporate Power. By MORTON KELLER. Cambridge: The Belknap Press of Harvard University Press, 1963. Pp. xiv, 338. $7.25.

This is a history of selected aspects of the growth of five great life insurance companies from the late 19th century to the investigation of the industry by New York's Armstrong Committee in 1905 and its immediate aftermath. The five companies include the three giants of that time: The Mutual Life Insurance Company, the Equitable Life Assurance Society and the New York Life Insurance Company. The other two are the Prudential Insurance Company and the Metropolitan Life Insurance Company, which began by selling workingmen's burial insurance (industrial insurance) and then moved into regular life insurance. The book deals mainly with four features of the companies' development: their internal organization and marketing techniques; their effort to build