

a highway comprises all portions of land over which every subject of the Crown may lawfully pass. This summary by the leading text-books on the subject of highways is no doubt wide, but in this, as in all the definitions, there exists one common factor, namely, that the way or place, whatever it may be, is open to all the King's subjects, and not merely to a limited or privileged few.

It is an essential element of a highway that it should be open to all members of the public. It, therefore, excludes a way over which a right of passage is given by license or in exercise of a right of ownership or occupation of adjoining land whereby an easement over such way is granted or possessed. Roads commonly called "occupation" roads, laid out for the accommodation of the occupiers of adjoining properties, do not come within the definitions. Nor, again, do village greens, parks, or fields, over which the inhabitants of a particular district have by custom or otherwise obtained a right of recreation.

Though a way to be a highway must be open to all and sundry it need not be a thoroughfare. "If it were otherwise, in such a great town as this (London) it would be a trap to make people trespassers." So said Lord Kenyon, C. J., in *Rugby Charity Trustees v. Merryweather*, 1790, East 375 n. The subject, however, has not rested there, and subsequently to this pronouncement there was considerable discussion on the matter and views were expressed contradictory to the above. Since the case of *Bateman v. Bluck*, 1852, 18 Q. B. 870, however, the question has been at rest. In that case the plaintiff brought an action for trespass for entering the plaintiff's close and pulling down a wall therein. The plea was stated that the close was a public pavement within the Metropolitan Paving Act; 57 Geo. III., cxxix, that the plaintiff unlawfully and contrary to the Act erected therein the said wall, and because the wall encumbered the pavement and plaintiff refused on defendant's request to remove the same, defendant entered and pulled it down. It was held, on motion for judgment, *non obstante veredicto*, that the plea was bad for shewing that it was absolutely necessary for defendant, in order to exercise the alleged right of passage, to remove the wall. And it was further held that a public highway may in law exist over a place which is not a thoroughfare. Lord Campbell, C. J., thus delivered judgment: