

Weeds and the Law

Despite a long history of legal concern with certain weeds and the potential for the spread of weeds to provoke arguments between neighbours, the present legal position is surprisingly uncertain. Very few cases concerning weeds have reached the law reports or been used as legal precedents, and those that have are now of doubtful value as the general law has moved on. A handful of Acts of Parliament do have something to say on the subject, but are unlikely to be relevant to the gardener, leaving the legal rules a matter for debate.

In Scotland, the law's concern with weeds dates back to mediaeval times, when legislation was passed in an attempt to control weeds which were damaging to the cereal harvest. The Acts were directed against 'maneleta' or 'guld' (also known as 'gool'), which we know as the corn marigold (Chrysanthemum segetum L.) and which was a widespread and very harmful weed. In addition to having to cleanse the land, tenants who had allowed corn marigold to grow with their corn were to be fined one sheep for each plant, and in some parts of the country there endured for several centuries the custom of 'gool-riding', an inspection of the fields to search and collect the fine for any of the noxious weeds.

The advent of modern agricultural practices and chemical herbicides has solved this particular problem - indeed the corn marigold is now something of a rarity - but the law retains its concern with weeds which can be harmful to agriculture. Under the Weeds Act 1959, the Secretary of State can require the occupier of any land to take such action as may be necessary to prevent the spread of certain 'injurious weeds'. The weeds affected are spear thistle (Cirsium vulgare (Savi) Ten.), creeping or field thistle (Cirsium arvense (L.) Scop.), curled dock (Rumex crispus L.), broad-leaved dock (Rumex obtusifolius L.) and ragwort (Senecio jacobaea L.), and further weeds can be added to this list by the Secretary of State.

It is a criminal offence for the occupier to fail to take the necessary steps within the time specified in the notice served on him, and a further offence is committed if the steps are not taken within fourteen days of the first conviction. In both cases the maximum penalty is a fine of £400. If no action is taken, the Secretary of State may take the necessary steps himself and recover the costs from the occupier, or if he cannot be traced, the owner of the land. Authorised officials have the power to enter and inspect land for the purposes of this Act, and it is an offence to obstruct them.

The other legislation which may be relevant is the Wildlife and Countryside Act 1981. In the first place, there are the provisions designed to protect wild plants. It is an offence intentionally to uproot any wild plant unless one has the permission of the owner or occupier of the land or has written authority from the regional, district or islands council. Since weeds are not being deliberately cultivated, it would appear that they fall within the description of wild plants, but the owner or occupier of a garden will probably be only too happy to give visitors permission to uproot them.

Two other provisions in the Act affecting particular plants are also worth mentioning. Firstly it is an offence for anyone intentionally to pick, uproot or destroy any of the rare plants listed in the Act. Almost 100 species are listed and no matter where they are growing, these plants are protected. The rarity which qualifies plants for inclusion in the list renders it highly unlikely that they will be found as weeds in a garden, but it is not impossible.

Secondly, it is an offence for anyone to 'plant or otherwise cause to grow in the wild' certain species, the two terrestrial ones listed being giant hogweed (Heracleum mantegazzianum Somier & Levrier) and Japanese knotweed (Polygonum cuspidatum Siebold & Zucc., alias Reynoutria

japonica Houtt., alias Fallopia japonica). It could be argued that a failure to control these plants in a position where it is very likely that they will be able to spread into the wild could fall within the terms of this offence, but the provision does not go so far as to impose an obligation to eradicate these plants on one's land. Great care must be taken to avoid the risk of introducing these plants to the wild, e.g. ~~by~~ throwing plants out with domestic rubbish may lead to the growth of new colonies, especially in the case of the very persistent Japanese knotweed which will regenerate from small pieces of rhizome.

Less certain than these statutory rules is the extent to which one can be held liable for the spread of weeds to a neighbour's land under the law of nuisance. The leading case used to be the English one of Giles v Walker ((1890) 24 QBD 656), where a farmer sought to sue his neighbour for the damage caused by thistles spreading from the latter's land after it had been cleared of trees and brought into cultivation. This claim was rejected by the court which asserted that there could be 'no duty as between adjoining occupiers to cut the thistles, which are the natural growth of the soil'.

Although I have not been able to find any reported case in Scotland concerning weeds, the view that there

could be no liability for the spread of naturally occurring living things has been followed in a number of cases in the Scottish courts. These have involved the damage caused by rabbits emerging from land where, in the eyes of the neighbours, they have been inadequately controlled, but none of the claims has been successful (Marshall v Moncrieffe (1912) 28 Sh Ct Rep 343, Gordon v Huntly Lodge Estates Co. Ltd. (1940) 56 Sh Ct Rep 112, Forrest v Irvine (1953) 59 Sh Ct Rep 203). It is however made clear in these cases that liability may arise if an occupier took particular steps to encourage the animals, so that a person may face liability if, for example, he or she was deliberately cultivating the dandelions whose seed was causing problems for neighbouring gardeners.

This general view that there is no liability for the natural spread of naturally occurring things has however been questioned in a number of cases in other jurisdictions sharing essentially the same legal rule. Liability has been imposed for the harm resulting from the spread of a naturally occurring fire in Australia (Goldman v Hargrave [1967] 1 AC 645), from the spread of thistles from one piece of ground to another in New Zealand (French v Auckland City Corporation [1974] 1 NZLR 340), and, in England, from a fall of earth due to natural causes from a steep bank overlooking a house (Leakey v National Trust for Places of Historic Interest and Scenic Beauty [1980] QB

485). In the last of these cases Giles v Walker was formally overruled. As yet there has been no Scottish case to decide whether the courts in Scotland are prepared to follow this development in the law, but there is a possibility that the courts today would be more willing to hold the occupier of land liable to his neighbours for the spread of weeds.

In all circumstances, though, it is necessary for there to be some fault on the part of the offending occupier before liability can be found to exist. Thus deliberate actions or those which are reckless or negligent are necessary before a claim could have any hope of success. This requirement would call for conduct far different from ordinary laziness or incompetence in controlling weeds.

In any event, it will be necessary to establish that the infestation of weeds is in fact attributable to the state of the neighbouring land, a major hurdle in the case of weeds distributed by wind-borne seed, and there will have to be proof of damage or loss suffered by the aggrieved neighbour. The presence of even a few weeds in a garden may be a major annoyance, but in objective terms can hardly be classed as having a significant effect on the property as a whole.

It is thus highly unlikely that the law will intervene, with major obstacles to be overcome in establishing a claim, even if the courts are prepared to impose liability for the natural spread of weeds. Recourse to the law is rarely the best way of dealing with problems between neighbours, and in fighting weeds the best weapons remain the fork and the hoe, not the books of lawyers.

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