

SILVICULTURAL INCLOSURE IN THE NEW FOREST FROM 1780 TO 1850

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ABSTRACT

In 1780 Burke's scheme for economic reform was to gain considerable support. While this stemmed from the excesses and abuses of the civil list, his proposals went much further in the reform of government institutions, and in particular in the management of crown lands. A prime target was to be the forest system which, with its own officers, courts and laws, had remained virtually unchanged from the middle ages. The forests had long since ceased to be objects of prestige and revenue to the crown, and in consequence the system had already lost much of its former influence and power, and over the centuries had increasingly been seen as an obstacle to progress and profitability in the forms of silviculture and enclosure. Nevertheless the forest system still had powerful support, in particular from the major local landowners and the holders of forestal appointments, and there were legal obstacles to be overcome arising from the shared interests of the holders of common and forest rights.

In the New Forest a commission of enquiry had recommended against disafforestation, this because it was considered that the crown's award would be small against that of the commoners, and that the interest of the crown should first be increased. Instead of disafforestation the crown sought for further powers of silvicultural inclosure, but at the time this move was soundly defeated.

Over the next seventy years the Office of Woods was progressively to strengthen and consolidate its position in the New Forest, this through the re-enactment and exercise of lapsed powers of inclosure, the reduction of the value of common rights, and the steady diminishment of the power, influence, and creditability of those interested in retaining the forest system. It is with these seventy years that the present paper deals.

THE COMMISSIONERS OF LAND REVENUE, 1786–1793

Following Edmund Burke's Plan of Economical Reform (PH, 21, col. 27–8), there was a sustained interest in the forests. In 1782

the Earl of Shelburne appointed Sir John Call and Arthur Holdsworth to enquire into the state of the crown lands, woods, and forests, and a report was made to Parliament the same year (DNB, Sir John Call). In June 1783 John Pitt, the surveyor general of woods and forests, reported that except for the 1000 acres in the New Forest, no new inclosures had been made since 1772, and in the following month Morton Pitt, John Pitt's son, introduced a comprehensive Bill for the better regulation of Forests, this containing provision for the completion of 6000 acres of inclosures in the New Forest, and within all forests of 'so many acres of the now open and uncultivated grounds . . . which may be spared from the Use of Commoners', with planting no longer to be restricted to hardwood trees but to include pine. This Bill was lost when Parliament was prorogued on the 16th July (Bill 1783; JHC, 39, 638).

In 1786, on the advice of William Pitt, the king recommended to Parliament that an inquiry should be made into the condition of the woods, forests, and land revenues of the crown (PH, 26, col. 186). In the Lords the ensuing Bill was depicted by Earl Bathurst as merely an inquiry into the rights of the crown respecting crown lands and forests, and it was carried on the third reading by 28 votes to 18 (PH, 26, no. 208). The commissioners appointed were Sir John Call and Arthur Holdsworth, who had conducted the previous inquiry, with the addition of Sir Charles Middleton, comptroller of the navy (Stat. 26 Geo. 3 c. 87; DNB, John Call and Charles Middleton). Subsequently Holdsworth was replaced by John Fordyce, the surveyor general of the Board of Land Revenue (Report 1797). Between 1787 and 1793 the commissioners published a total of 17 reports of which the fifth, published in

1789, dealt exclusively with the New Forest. In preparation for this a survey had been made in 1787 by A & W Driver, T Richardson, and W King (PRO F20/48; F17/225, 237, 269).

During this time the movement for disafforestation gained considerable support from the publication in 1787 of *Observations on the Land Revenues of the Crown* by John St John, a former surveyor general of Land Revenues. In his view:

The general project of the enclosures of the forests, is so evidently beneficial . . . both as it respects the revenue of the crown, and the wealth of the nation, that it is needless to prove the affirmative of that proposition . . .

but that this enclosure could not be accomplished without first overcoming the opposition of local commoning interests, and:

above all things, great care should be used to render it palatable to the principal proprietors, and popular in the country. (St John, 117–8, 158).

In general this view was shared by the commissioners, that:

a complete Division and Separation of Rights is undoubtedly desirable, in every Forest in which it can be effected with the Concurrence of those having Right of Common, and without forfeiting some great Advantage to the Public in order to obtain it (Report 1789, 30).

However, the New Forest was to be an exception, where:

if the neighbouring Inhabitants will part with their Claims on the Forest at a fair price, it is for the Interest of the Public to purchase them, so as to free the Forest from any Mixture of Rights whatever, without lessening the Extent of the Forest Land;

A further commission should be appointed with powers to purchase commoners' rights, to

set off small rents received by the crown, to exchange crown rights over freehold lands within the Forest, and to exchange intermixed lands. Further the commissioners should be empowered:

to treat and agree with such Persons as may be appointed, by a Majority in Number and Value, of the freeholders and others having Right of Common of Pasture and Pannage in the Forest

in order to agree the proportion of Forest which could be inclosed in exchange for the removal of the deer, and for the commoners to have an uninterrupted right throughout the year to the pasture of the uninclosed remainder. While there was to be provision for arbitration, should the commoners or the freeholders of the county be uncooperative, then the commissioners would have the power to act alone, as:

it is of great Importance to the Public that Measures should be speedily adopted for the Improvement of this valuable Forest (Report 1789, 28–9).

Various reasons were given to justify this course of action in preference to disafforestation; that the better and poorer soils were so intermixed that division would 'mangle the Forest, and increase the Number of Roads, as well as the Expence of Inclosure'; that disafforestation could lead to increased settlement; that the commoners would not be willing to part with their fuel rights for any reasonable price; and that

it would be found difficult to make such a Division as would admit of convenient and satisfactory Allotments of Land to the Claimants . . . and would not, at the same Time, be disadvantageous to the Public (Report 1789, 30).

Such arguments were not put forward against the disafforestation of other forests, although

to some extent they would have been equally applicable.

For the New Forest there was an additional consideration not given in the commissioners' report but to be found in the surveyors' reports of 1787. Should disafforestation take place, William King could not see 'how a greater share than one Twelfth could be deducted from the Woods for Common rights', but 'on those parts which are pasture, and should have been covered with Timber, perhaps six twelfths might be given', and for the heath the crown might expect three twelfths 'as cutting the Turf is the only profit that arises from that kind of Land'.

... By the neglect which has been in the New Forest for many years in the encouraging of Timber, the interest of the Commoners has increased to a great degree ... The New Forest is in a bad state to sell as the Interest of the Crown ... is less than it should be ... (PRO F20/48, 299, 301, 303).

On William King's figures, if the New Forest had been disafforested at this time the entitlement of the crown would have been about one half of the Forest in area, although considerably more in monetary terms because of the value of the timber. Comparison can be made with awards made upon the enclosure of other forests, although these varied according to the nature and extent of the crown's rights. In 1770 the crown's share was a tenth of Knaresborough Forest, in 1777 about two-fifths of Enfield Chase, in 1812 one half of Delamere, one-third of the open commonable lands of Parkhurst, about two-thirds of Alice Holt, and one-third of Windsor Forest. In 1815 the award was a half of Brecknock, and a little more than a half of Exmoor Forest (St John, 117, 157; Reports 1875).

In the New Forest, although not publicly acknowledged, the future policy of the crown was to be directed towards the diminution of the commoners' interest by means of silvicultural plantation. However, a large area of the Forest would not support hardwood

species, but, if the constraint imposed by the 1698 Act could be overcome, some 22,000 acres of this was suitable for the planting of pine. Therefore, in order to achieve its objective, the crown needed statutory authority both for further inclosure and for the planting of softwood species.

THE NEW FOREST BILL 1792

Following the recommendations of the commissioners of Land Revenue, in 1792 a Bill was introduced by William Pitt for the further increase and preservation of timber within the New Forest (JHC, 47, 626). In the preamble it was stated that it was expedient that provision should be made for inclosing parts of the New Forest for the purpose of procuring a supply of timber for the royal navy, and for making further regulation for the growth and preservation of timber and the prevention of abuses.

In compensation for the loss of common rights, the deer were to be destroyed or removed, and in the uninclosed parts of the Forest, common of pasture was to be allowed at all times of the year. However, the Bill went further than the commissioners' report in that it determined as 20,000 acres the area to be inclosed, this was 14,000 acres in addition to the 6,000 acres provided for under the 1698 Act, the inclosures to be made at the rate of 2,000 acres a year, and with provision for the first 20,000 acres to be thrown-open and a further 20,000 acres inclosed in lieu (Bill 1792).

At this time an inquiry was made to find out the extent and value of the common rights, but there is nothing to suggest that the findings were used in determining the area of the proposed inclosures, or that any attempt was made to 'treat and agree' with the freeholders (HRO 2M30/669; PRO F20/51). However a meeting of landowners to explain the purpose of the Bill was convened by George Rose, who about 1784 had purchased the Cuffnells estate at Lyndhurst and was a prominent politician and intimate friend of William Pitt (DNB). Afterwards it was criticised that the destruc-

tion of the rabbits, 'as well as many other things, also of advantage to the commoners, and then proposed by Mr Rose', had been omitted from the Bill. However, the most serious criticism was the extensive powers of inclosure, it being calculated that nearly 20,000 acres could be inclosed within the first 8 years, and that while under the 1698 Act it would have required a minimum of 302 years to inclose and plant 60,000 acres, under the new Bill this could be done in 60 years, and would result in the complete extinguishment of rights of herbage and fuel (Anon. c. 1792).

In the Commons, although Charles Fox did not admire any part of the system and did not think it proper that copyholds should be changed into freeholds, and Mr Hussey was of the opinion that the best way to improve the Forest was to sell it off by public auction and convert it into private property, nevertheless the Bill was given its third reading and passed to the Lords (*Times*, 4th, 15th May 1792). It was there that the Bill encountered more serious opposition. Lord Portchester saw it as a ministerial job to create an undue influence in the county of Southampton, and an attack not only on private, but on royal property. 'It was brought in without the knowledge and assent of those whom it was principally to affect'. Lord Carlisle considered the Bill a most improper one and that it looked to the creation of influence more than to the assistance of the Navy. The places enjoyed under the patronage of the Forest were men who certainly could not, from their avocations elsewhere, attend to their duty there. A certain Gentleman (Mr Rose) had so many places the profit of which he enjoyed that it was impossible for him to attend them all, and particularly his duty in the Forest. Lord Thurlow, the lord chancellor, condemned the Bill as a measure fraught with much mischief to the constitution, the very best principle of which, private property, it went to subvert. It was an attack upon the rights of the crown, and by it the crown would be deprived of a considerable landed property without consent (*Times*, 6th June 1792). In this he may have been seeking to win royal favour as he was already in disagreement with Pitt

and Grenville, and it had previously been arranged that he was to vacate his office upon the prorogation of Parliament (DNB, Edward Thurlow). Nevertheless on the 5th June the Bill passed its second reading.

Behind the scenes the opposition was supported by George, Prince of Wales, and the Duke of Portland suggested the names of peers to whom the Prince should write (Aspinall, vol. II, 251-2). The following two days, the 9th and 10th June, meetings were held between the Duke of Portland and the Earl of Malmesbury concerning the future of the old Whig Party (Harris, II.453-4), and it is probable that the New Forest Bill was also discussed as on the 11th June a petition by local landowners was presented to the Lords, Malmesbury being one of the signatories. This complained that the landowners had not been given due notice of the Bill, that many of the provisions materially affected their properties, that the recommendations of the Commissioners had not been carried out regarding the settlement of disputed boundaries and negotiations with interested parties, and they prayed that the House should not pass the Bill (Lewis, pp 222-4). In response to the petition, Lord Grenville told the Lords that it was not the intention to do the slightest injury to private property, and that the Bill would be postponed to the next session (*Times*, 12th June 1792).

It was to be nearly sixty years before a similar Bill was introduced to Parliament, but during the intervening period a number of changes were introduced, the effect of which in the New Forest was to greatly strengthen the position of the Surveyor General of Woods, and of his successors, the Commissioners of Woods and Forests.

SYLVESTER DOUGLAS, LORD GLENBERVIE, 1803-1814

The appointment in 1803 of Sylvester Douglas, Lord Glenbervie, as Surveyor General of Woods, was to be a turning point in the Office of Woods. His predecessor, John Robinson, had held the office since 1787, and although at

one time he had been a most capable politician, in 1782 he had suffered a paralytic stroke, and this, presumably, affected his subsequent career. His main contribution to silviculture would appear to have been the planting of millions of acorns and twenty thousand oak trees at Windsor. Perhaps for this reason he was a great favourite of George III (DNB, John Robinson).

Sylvester Douglas had enjoyed a successful legal career, but entered political life in 1789 after his marriage to Catherine, the eldest daughter of Lord North. In 1796 he was appointed a Lord of the Treasury, and in 1801 Joint Paymaster General, then letting it be known that he would like to have the survivancy of the office of Surveyor General of Woods (Bickley, I, 162). Subsequently he wrote: 'I grow anxious about the state of Robinson's health. Lord Macartney told me he would be my witness that Dundas said I was certain to have that place' (ibid, I, 232). He obtained this appointment in January 1803, resigned in February 1806, was reappointed in 1807, and in 1810 became the First Commissioner of Woods, Forests, and Land Revenues, a post which he held until August 1814 (DNB). In the performance of his duties Lord Glenbervie was to display a great deal of ability and energy, and in anticipation of his appointment had 'very attentively perused the Reports of the Parliamentary Commissioners' (HRO 11M74, p 23). He saw 'the great purposes' of the Office of Woods as being:

Firstly the appropriation of land adequate to the successive supply of the necessary supply of Timber for the uses of the Navy; secondly the enclosing such land so as to protect the Timber both from criminal depredation and from injury by destructive animals, vermin, etc.; and thirdly to Plant such inclosed land when not ready covered with timber or where the timber growing upon it should have been cut down (HRO 11M74, 129).

His first year was to be 'much occupied by framing and proposing to Government a new

system of regulations and establishments for the conduct of the multifarious business of the office of Woods' (HRO 11M74, 45-6), this resulting in 1806 in legislation for 'the Better Regulation of the Office of the Surveyor General' (Stat. 46 Geo. 3, c. 142). Next he turned his attention to the long-standing evil that the groomkeepers were still largely rewarded by the perquisites of their jobs. In Glenbervie's view the keepers' payments were not adequate to their situations and the important duties which they ought to perform (HRO 11M74, 66), and he proposed substantial increases and additional allowances. This was designed not only to remedy the abuses, but also:

in part intended to render those local Officers amenable in a degree to the controul of the Surveyor General and thereby diminishing the inconvenience of that double and often jarring authority or divisum imperium which had been so often felt and complained of (HRO 11M74, 54)

in effect a first step in reducing the authority and power of the Lord Warden to whom the keepers had previously been responsible.

Glenbervie entertained doubts as to the legality of making further inclosures under the Act of 9 & 10 William III, questioning whether 'it had not become in consequence of the intervening neglect since the first enactment incompetent in point of law' (HRO 11M74, 24). An opinion on this question was obtained from the law officers, Messrs. Percival, Sutton, and Gibbs, and later a second opinion was obtained by Lord Robert Spencer (Surveyor General 1806-7) from Sir Arthur Piggot and Sir Samuel Romilly, the opinions given being that while the initial inclosures made in 1700 might be laid open and an equal quantity of Forest land inclosed, all the rest must be legalized by Act of Parliament (HRO 11M74, 33-4). After the passing of this 'Declaratory Act' in 1808 (Stat. 48 Geo.3 c. 72), no time was wasted in the making of further inclosures, and in 1811 Glenbervie could write that the last of the 6,000 acres had been inclosed, and the whole business was likely to be concluded

with less difficulty than he had foreseen (Sichel, 150). Over a period of five years some 3,930 acres of new inclosures were completed, also a further 850 acres were re-inclosed where earlier plantations had failed (Return 1844). From this time until the Deer Removal Act of 1851, an area approaching 6,000 acres was continually inclosed.

One of the major recommendations of the Commissioners of Land Revenue had been the amalgamation of the Office of Land Revenue with that of Woods and Forests in the interest of more efficient management. This did not take place until 1810, when, following the death of John Fordyce, the then Surveyor General of Land Revenue, Lord Glenbervie became the First Commissioner of the new Board of Woods, Forests, and Land Revenue (BL Add.MSS 38760, ff.186-7; Stat. 50 Geo.3, c. 65).

In August 1814 Glenbervie was removed from office, which he claimed was on a pretext of Lord Liverpool (Bickley, II, 211). Whatever the reason for his dismissal, it could hardly have been on grounds of incompetence. In 1803 at the time of Glenbervie's appointment there were under 2,000 acres of inclosures in the royal forests, and these in a great measure neglected, but by 1814 some 40,000 acres had been inclosed and drained, and the greater part planted (BL Add.MSS 38.760, f.187v). To Glenbervie can also be attributed the disafforestation of Delamere, Alice Holt, Parkhurst, and Windsor in 1812, and probably also of Brecknock and Exmoor although these were not completed until 1815 (see above).

THE NEW FOREST, 1814-1848

Following Glenbervie there was limited opportunity for further inclosure in the New Forest. The 6,000 acre maximum had already been reached, and only when these plantations were of sufficient growth as to be out of danger from browsing animals, usually after twenty years, could they be thrown-open and equivalent areas inclosed in lieu. In this manner 777 acres were inclosed in 1817, 753 acres in 1830, 394

acres in 1843, and 323 acres in 1848. However, there were other ways in which the position of the Office of Woods could be strengthened.

As mentioned above, the division of authority between the Surveyor General and the Lord Warden was seen as a great drawback to improvement (HRO 11M74, 116-7). In 1817 a further step was taken to end this situation, when it was enacted that the offices of Warden and Justice in Eyre should be abolished upon the deaths of the then office holders, with the duties of these offices then being vested in the Commissioner of Woods and Forests (Stat.57 Geo.3, c.61). Due to the machinations of William Sturges Bourne this did not work out in quite the way intended. Sturges Bourne was the owner of Testwood House on the eastern border of the New Forest, and from 1798 had represented various constituencies, being co-member with George Rose for Christchurch from 1802-12, and he had held various political appointments. He had been a life-long friend of George Canning, and in Canning's administration of April 1827 was appointed home secretary, a post which he relinquished on 16th July 1827 to become commissioner of woods and forests, on the 10th August being appointed lord warden by letters patent (DNB George Rose; Report 1834, App., p 35). This office had been void since the death of Prince Frederick in January 1827, and there would appear to be no legal basis for the appointment of Sturges Bourne, and, after his resignation in January 1828 of the office of commissioner of woods, his retention of the office of lord warden until his death in 1845 (DNB, Sturges Bourne). To compound this illegality, Adolphus, Duke of Cambridge, was then appointed lord warden, the office finally being abolished on Adolphus' death in July 1850 (Returns 1847; Report 1852, p 10).

The Office of Woods next turned its attention to stock depastured in the New Forest. Forest law had contained provisions against the depasturing of stock during the fence month (the fifteen days either side of Midsummer Day), and during the winter heyning (from the 23rd November to the 4th May), but in the New Forest stock had been depastured

throughout the year from time immemorial. Although beyond the scope of this paper, there is evidence that this was a concession purchased from the crown in medieval times, the small forest rents such as month money, lease fee money, etc., still paid by commoners in the nineteenth century, being the concessionary payments, although their origin and purpose had long been forgotten. A clause in the 1698 Act had reiterated the forest law restrictions, but these had never been enforced, and no attention appears to have been given in 1819 to the inclusion of similar provisions in an Act for Regulating the Right of Common of Pasture in the New Forest (Stat. 59 Geo.3, c.86). As it was not known that the Office of Woods had disafforestation in mind, the real significance and purpose of the Act was missed, that a 'legal' reduction of the grazing period would result in a similar reduction in the value of the commoners' rights.

It was about this time that the Office of Woods introduced the planting of pine to the New Forest. The 1698 Act had restricted planting in the New Forest to timber trees, but pines had been planted in the vicinity of the Forest as early as 1750 (HRO 25M65/3/38). In 1783 John Pitt had reported that 'many thousand acres in His Majesty's Forests may be inclosed, and applied to raising Pines', also the experimental planting of pine in the New Forest had been recommended by the surveyors of 1787 (Report 1783; PRO F20/48, pp 128, 287, 313, 315), but attempts to introduce the necessary legislation had failed in 1783 and 1792. The way to circumvent the statutory constraint seems to have developed from the recommendation of Thomas Nichols, that oak plantations in bleak situations should be sheltered by firs (Nichols 1791, 23). While in 1816 planting was of an intermixture of acorns and oak plants with a small proportion of Spanish chestnut, by 1823:

The most material alteration in the mode of Planting . . . in addition to those mentioned in our Second Report [1816], is the adoption of a mixture of firs, which, except in the most sheltered situations, we have caused to

be planted with the Oaks, for the last two or three years . . . the majority of opinions received was against the practice; and there being at the time strong prejudice amongst those who had their residences in or near the forests against planting firs, on account of their supposed injury to the beauty of the forest scenery, they were made use of to a very limited extent, and only in situations where there was little hope that oak would succeed (Report 1816, 36; Report 1823, 39-40).

In many of the inclosures these conifer 'nurses' were to outgrow and replace the oak plantations. Also in time the open forest was to become invaded by self-sown pine, this representing a further loss to the commoners in the extent and quality of the land available for grazing.

THE SELECT COMMITTEE OF 1848-1849

A select committee under the chairmanship of Adam Dundas, Viscount Duncan, was appointed in 1848, and reappointed in 1849, to inquire into the expenditure and management of the woods, forests, and land revenues of the crown. This was justified on the grounds that it was some sixty years since the management of the woods and forests had previously been investigated, but the sole purpose of Duncan's committee appears to have been to prepare the way for further disafforestation and inclosure. The committee was not to concern itself with the many forests managed in severalty by the Office of Woods, but only with the few where common rights still continued, these being the New Forest, Whittlewood, Wychwood, Waltham, and Dean.

The 'prejudicial effects' of the intermixture of rights had been 'strongly deprecated' by the Commissioners of 1787, and Duncan's committee was to report that:

the same evils still subsist; in Wychwood and Waltham Forests the Commissioners [of Woods] have considered themselves

obliged to resort to litigation, which has been protracted and expensive; and Your Committee are apprehensive that the condition of these rights, whether in abeyance or in conflict, has led to a considerable demoralization of the population of the district, which nothing but the intervention of Parliament will radically cure.

What the report omitted to say was that in both cases the proceedings had arisen from attempts by the Office of Woods to re-establish ancient forestal rights. The law suit in Wychwood, which cost more than £7000 and continued from 1834 until the death of Lord Churchill in 1845, was in contention of Churchill's claim to possess a right to the deer, this having been granted by Charles II to the Clarendon family (Anon. 1853, 259). The proceedings in Waltham were against local land-owners for enclosing their land, a practice which had begun in the previous century and had been greatly encouraged by moves towards disafforestation such as the sale of the crown's forestal rights in the manor of West Ham. It was not until 1836 that the Office of Woods gave notice that they intended to enforce the rights of the crown (Fisher 1887, 334-46).

Also reported were 'instances of laxity on the part of the local agents of the Board . . . extending over the transactions of many years', and in the New Forest there had been 'irregularities in the felling, lotting, selling and delivering of timber' and 'considerable irregularity in the mode of keeping the official accounts . . .' and frauds by forest officers to a considerable extent attended with much pecuniary loss. In Salcey Forest, which adjoined Whittlewood but had been disafforested in 1828, 'the ill-advised selection of an officer . . . appears to have resulted in proceedings equally reprehensible in their character, and lamentable in their results.'

By July 1849 the work of the select committee was still far from complete. Very few forests had been investigated, and most of the chairman's draft report was still unapproved by the committee members. This contained

recommendations that in the New Forest there should be a qualified power of inclosure, and the other forests disafforested, and that:

any measure having for its object the improved condition of these Forest Districts, would be incomplete unless it involved an entire removal of the deer. A herd of deer in such localities has ceased to be an object of advantage or recreation to the Crown (Report 1848, iii-vii; Report 1849, xi-xxi).

The committee was not reappointed for a third term, and while to the modern reader it may appear that the inquiry did more to demonstrate the shortcomings of the Office of Woods than 'the want of moral habits on the part of the neighbouring population', it had served to turn public opinion against the forests. The *Illustrated London News* wrote that:

The evidence already printed discloses a system of speculation of great extent, which has given rise to the statement, that 'Government has resolved that the New Forest shall be disafforested.' This report is current in the Forest and its neighbourhood; and such determination is not at all improbable, considering the evils arising from forest laws, and the utter uselessness of the domain as contributing to the state of Royalty . . . (*Illustrated London News*, 21 Oct. 1848).

THE PORTMAN COMMISSION

A Bill to Authorize Her Majesty to issue a Commission to inquire into and Report upon Rights or Claims over the New Forest and Waltham Forest was published on the 18th July 1849, the day following the publication of Lord Duncan's second report, just two weeks later on the 1st August, this received the royal assent (Bill 1849). The commissioners appointed were Lord Portman, J L Dampier, and D Daly, who were given powers to inquire into the forest bounds, into illegal inclosures,

whether any lands within the forest were quit of the regard (exempted from forest laws), into rights or claims of common rights, the probable value of these rights, the payments or acknowledgements due to the crown, and the nature of the Forest Courts (Stat. 12 & 13 Vict., c.81). Of Dampier it was to be said that 'no man in Westminster Hall was better conversant with the rights of the Crown' (Report 1868, 106).

In consideration of 'the copious general evidence' appended to the Select Committee Reports of 1848 and 1849, it was thought 'unnecessary to incur the expense or delay of taking any more evidence of a similar kind'. However, meetings were held for 'ascertaining the views, and receiving the suggestions' of interested parties. Also the secretary to the Commissioners, Joseph Burnley Hume, was directed:

to prepare, and to make arrangements for gratuitously distributing in the said forests, blank printed forms, adapted for the statement of all rights and claims in or over the same . . . We have also held meetings in the said forests for the purpose of receiving such statements; and have given directions for an examination thereof, with a view to a Report thereon.

Hume was also instructed 'to devote his leisure to investigating the history of the respective forests', but:

our desire to make a Report, in time to enable your Lordships to take legislative steps thereupon in the present session, has compelled us to direct him to furnish us at once with such information as his researches hitherto may have enabled him to collect, without waiting for an examination of the Court-rolls . . . or for the conclusion of the various other investigations which he has set on foot . . .

Such was the urgency of the Commissioners that a report was published on the 16th May 1850, this based upon the information col-

lected by Joseph Hume and subject to the caveat that:

after considerable deliberation we incline to the opinion that we do not . . . possess the means or authorities which are essentially requisite legally to effect a complete or accurate investigation of the matters in question . . .

This lack of authority, or perhaps the undue haste in making their report, is evident under many of the headings of inquiry such as the question of internal boundaries where it was 'not thought prudent to go any further', and of lands quit of the regard where it was 'proper to refrain from any report or observation'.

On the question of rights or claims of common rights:

. . . our knowledge, and indeed our means of knowledge, are owing to our restricted powers, insufficient to justify us in making any detailed or decided report upon the matter: especially when the rights and interests of so many persons are concerned . . .

and Hume, from his enquiries, could only estimate 'there are probably several thousands of such persons'. This information may have been thought by the Commissioners to be unimportant, as they choose to accept a legal opinion given in 1810 by Sir Vicary Gibbs and Sir Thomas Plumer, the then Attorney General and Solicitor General, that there was a distinction between the king's forestal rights and the lord's right in the soil, and that the Sovereign was entitled to increase the number of deer without limit to the complete exclusion of the commoners' stock (Report 1850, xi-xii).

While the opinion of Gibbs and Plumer appears to have carried little or no weight in subsequent awards made on the disafforestation of Delamere, Parkhurst, Alice Holt, Windsor, Brecknock, and Exmoor (see above), it was to be fundamental to the Portman Commission report:

... it seems to us that the necessity of discussing now or at any other time these and many other analogous questions is superseded by a due consideration of the nature of common of pasture in a royal forest. For if, on the one hand, rights of common of pasture in a forest be conceded to exist legally, on the other hand we think that they may also legally be, so to speak, reduced to nothing ... the right of common of pasture in a forest is contrariwise subservient to the Sovereign's right of increasing the beasts of the forest without limit ...

... we see no objection to the proposal entirely to remove the deer from the New Forest, provided some proper agreement or arrangement shall have been previously made for an allotment to the Crown and public of a sufficient portion of the soil of that forest, in compensation for the surrender of this very important and most valuable vested right ... it might be a question whether the right of common of pasture for horses should not also be got rid of ...

... so far as we have had an opportunity of forming a correct opinion, there exists the most urgent necessity for a speedy and effectual settlement of the affairs of the forest generally; and that every year's delay

is adding, and will continue to add, to the difficulties liable to beset such settlement, and may perhaps ere long, peril or even prejudice the interests of the Crown and public (Report 1850).

These opinions may have come as no surprise to the Office of Woods, as many years later it was revealed that their solicitor, John Gardiner, had played a major part in the compilation of the Portman Report:

I may refer to the facts in that report, and the sub-report, as containing substantially all the information I have to give on the subject, because I was in communication with Mr. Hume, and I believe, a good deal of that matter, was framed in communication with me (Report 1868, 99).

CONCLUSION

During the seventy years dealt with by this paper, the old forest system had been virtually destroyed, many more of the ancient forests had gone, and in the few that remained the authority and influence of the forest officers had been greatly diminished. The way was now prepared for further inclosure in the New Forest, this to be achieved by the New Forest Deer Removal Act 1851.

APPENDIX – New Forest Inclosures made between 1780 and 1850

Year	Name	Acreage	NGR
1808	Hurst Hill	181	SU2805
	Wootton	410	SZ2499
	Holly Hatch	150	SU2111
	New Copse	281	SU3202
1809	Broomy	225	SU2011
	Wilverley (reinclosed)	500	SU2400
	Rhinefield Sandys (reinclosed)	224	SU2504
	Aldridge Hill (reinclosed)	128	SU2703
	Stockley	131	SU3402

Year	Name	Acreage	NGR
1810	Godshill Wood	384	SU1716
	Burley New	330	SU2304
	Lodge Hill	138	SU3209
	Church Place	177	SU1509
1811	Norley Wood	163	SZ1698
	Holmsley	345	SU2200
	Anderwood	169	SU2406
	Roe Wood	342	SU2008
	Set Thorns	318	SZ2699
	Holiday Hill	164	SU2607
	Northerwood	16	SU2808
1817	Amberwood	214	SU2013
	Holm Hill	285	SU2508
	Ramnor	107	SU3104
	King's Copse	159	SU4201
	Shepherd's Copse	12	SU2615
1830	Fold's Gate Hill	22	SU2909
	Stubby Copse	112	SU3204
	Woosen's Hill	84	SU2507
	Bramshaw Wood	63	SU2516
	Costicles	45	SU3210
	Black Knowle	6	SU2903
	Over Corner	6	SU2803
	Fletcher's Hill	74	SU2603
	Ivey Wood	20	SU3102
	Ramnor New	30	SU3104
	Appleslade	87	SU1808
	Little Holm Hill	38	SU3206
	Bratley	46	SU2209
	Backley	42	SU2207
	Beech Bed	77	SU2306
1843	Buckford	38	SU2903
	Clumber	48	SU2603
	Ferny Knapp	21	SU2503
	New Stubby Copse	132	SU3204
	King's Hat	66	SU3805
	Foxhunting	90	SU3804
1848	Linford	203	SU1807
	Hasley	90	SU3203
	Signal Hill	30	SU3104
Total		7023 acres	

Note:

The 1808 Act established the legality of inclosures made under 9 & 10 Will.III c.36 and provided for the completion of 6000 acres of inclosure, with the provision that when established these inclosures could be thrown-open and a similar area inclosed in lieu.

In that a few of the eighteenth century inclosures still remained inclosed, and three other eighteenth century inclosures had been replanted, by 1811 the constraint was reached that not more than 6000 acres could be inclosed at one time. After this date, inclosure in 1817, 1830, 1843, and 1848, only took place as earlier inclosures were thrown-open.

A precise figure is difficult in that certain inclosures were re-inclosed or part re-inclosed, while other early inclosures were incorporated in whole or in part within later inclosures, but by 1848 some 9,500 acres of the New Forest had been inclosed and planted, of which some 3,500 acres had been thrown-open while 6000 acres remained inclosed.

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