Proc Hampsh Field Club Archaeol Soc **48**, 1992, 143–159

SILVICULTURAL INCLOSURE IN THE NEW FOREST FROM 1850 TO 1877

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ABSTRACT

The Deer Removal Act of 1851 did not end restrictions on commoning and indeed the claims of over a third of commoners were rejected. The continuing conflict of interests led to a recommendation in 1868 that the New Forest should be disafforested, but by this time there was growing interest in the Forest as a public amenity. A parliamentary inquiry in 1875 led to the New Forest Act 1877 which brought further inclosure to an end. This Act remains in force today.

INTRODUCTION

Two earlier papers have dealt with the beginnings of silvicultural inclosure in the New Forest. In particular these dealt with the very limited inclosure made in the late seventeenth and eighteenth century, and the more vigorous approach made during the first half of the nineteenth century, a period that also saw the virtual overthrow of the medieval system of forest management and its supplantation by the Office of Woods. This paper continues the story from the Deer Removal Act of 1851 to the New Forest Act of 1877, the latter being a turning point in the history of the Forest.

The effects of the Deer Removal Act were far different from those which the commoners had been led to expect, and it would appear that in two important matters they had been misled during the passage of the Bill, although this was not evident at the time. The first of these was in the belief that the Crown was relinquishing its forestal rights in the New Forest. The crown solicitor had stated this to the select committee dealing with the Bill, the first draft of which had provided that the right of the crown to 'keep Deer and other Beasts of Forest or Chase ... shall absolutely cease'. However, in a subsequent draft the very significant words 'and other Beasts of Forest or Chase' were deleted from the body of the Bill although retained in the preamble, and were removed entirely from the ensuing Act. As a result of this change it was found that the removal of the deer was not synonymous with the ending of the associated constraints on commoning, and these continued to be imposed by the crown. Secondly, the provision in the Act that claims of common rights should be determined by the verderers, was completely nullified by the action of the crown in lodging objections to every claim, thus ensuring that determination of the claims should be removed to a less sympathic tribunal. This resulted in the claims of over a third of commoners being completely rejected, and those of the remainder reduced.

Over the next twenty years the creation of new silvicultural inclosures progressively diminished the value of commoners' rights, and this appeared to be the deliberate intention of the crown as a prelude to disafforestation and the general enclosure of the New Forest. However, over the same period the New Forest was increasingly being seen as part of the nation's heritage. This was in part due to the increase in public accessibility and residency which had followed the construction of the Southampton and Dorchester railway, from the publication in 1863 of John Wise's *The New Forest its History and its Scenery*, and also from the national concern which had arisen from the loss of other forests and commons. In 1868 a select committee was to recommend disafforestation as the only way to resolve the differences between crown and commoners, but by this time this recommendation was clearly contrary to public opinion, and a further parliamentary inquiry was held in

1875. This led to the New Forest Act 1877 and an end to further inclosure. The principal provisions of this Act have remained in force to the present day.

THE NEW FOREST DEER REMOVAL ACT 1851

Following the reports of Lord Duncan's committee in 1848 and 1849, and of Lord Portman's commission in 1850, work on a New Forest Bill was in hand by January 1851. The passage of this Bill can be followed in considerable detail as the costs of John Gardiner, solicitor to the Office of Woods, were subsequently published (*Report* No 247, 1875, app 2). Acting on the instructions of Lord Seymour (later 12th Duke of Somerset), the first commissioner of woods, the final draft was completed by Gardiner on the 14th February, and the Bill published on the 19th May. Its main provisions were for the removal of the deer and the cessation of the crown's right to keep deer and other beasts of the chase, but it saved any other forestal rights. In exchange the crown was to take the right to inclose an additional 14,000 acres, these to be planted with trees of any species (*Bill*, No 311). By the 7th August the entire parliamentary process had been completed.

The passing of this Act was no small achievement on the part of the Office of Woods, gaining advantages to the crown even greater than those sought under the very similar Bill of 1792 which had been so soundly defeated. This time the ground had been well prepared, in particular by the reports of 1848, 1849, and 1850, with public opinion having been turned against the forest system. Even the Board's own inefficiency and dishonesty served to contribute to this end:

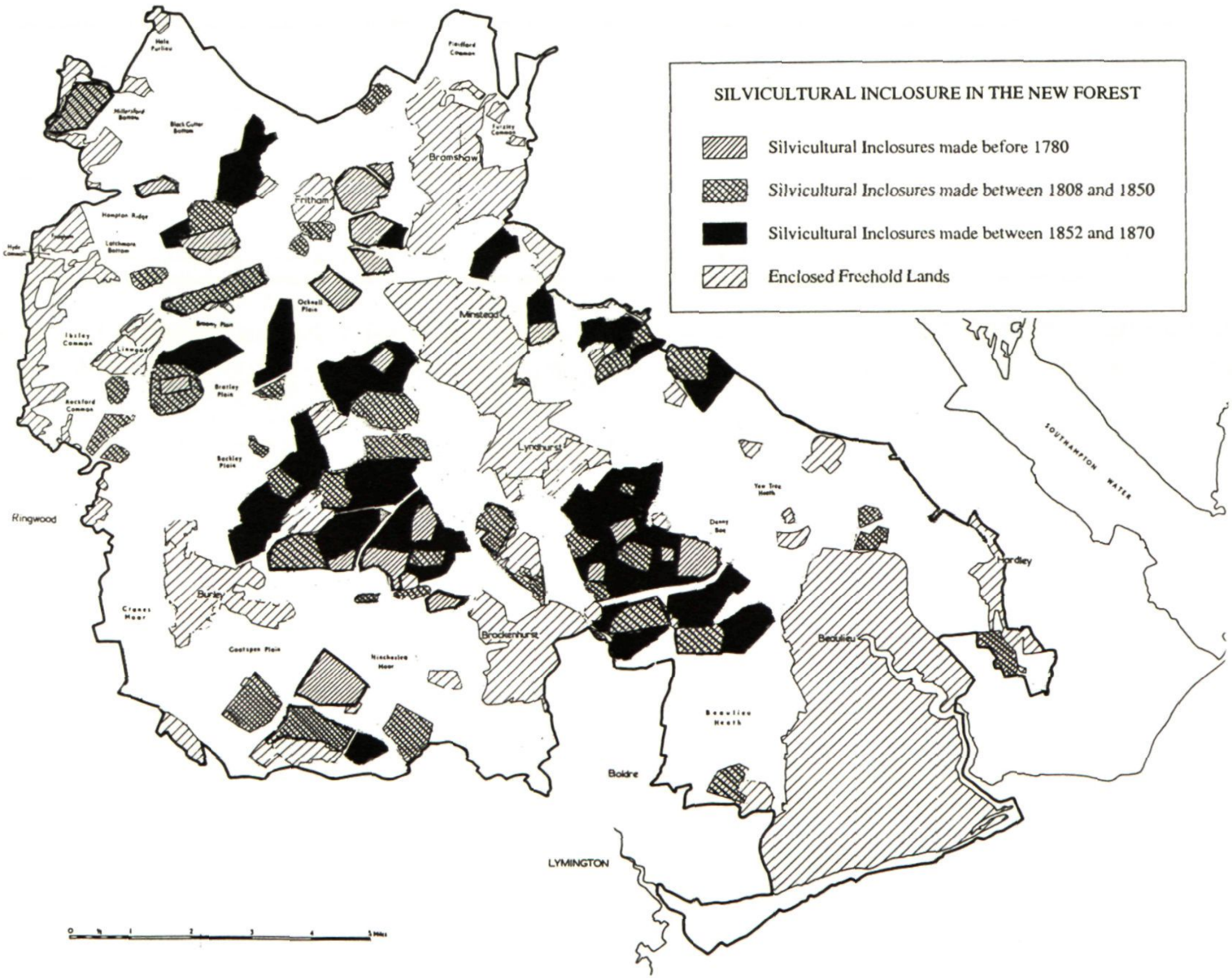
> The evidence already printed discloses a system of peculation of great extent, which has given rise to a statement, that 'Government has resolved that the New Forest shall be disafforested.' This report is current in the Forest and its neighbourhood; and such determination is not at all improbable, considering the evils arising from forest laws, and the utter uselessness of the domain as contributing to the state of Royalty . . . No one is interested in the preservation of the New Forest but the lawless foresters and borderers, and the gentlemen who have seats in it (*Illustrated London News*, 21 Oct 1848).

Perhaps also of significance was the influential support lost through the deterioration of the hunting, as Lord Malmesbury recorded in 1848:

> Yesterday Lords Canning, Granville, Douglas, and Rivers came from Highcliffe, where they had been staying for the hunting in the New Forest. They were all so disgusted with the danger on the ground that they declared they would never hunt there again. One man, a groom, was killed, three gentlemen very much hurt, and Lord Granville had his face cut by the boughs of a tree against which his horse carried him (Malmesbury, I, 228).

This time the legislation could be presented as being for the removal of the deer, the accompanying inclosure being no more than proper compensation due to the crown for the giving up of this 'very important and most valuable vested right'. It was conveniently ignored that the 1849 report had found that the keeping of deer 'had ceased to be an object of advantage or recreation to the Crown', and had shown that each buck killed was costing the crown upwards of £100 (*Report* 1868, p 35). Little or no time was allowed for local consultation and protest, or even for the proper understanding of the many intermediary changes made to the Bill, and opposition could only be mounted by a few of the more influential landowners, in particular the Duke of Buccleuch, Lord Malmesbury, and Charles Castleman.

Concurrent with the Bill, at Lord Seymour's urging, Gardiner was pressing the Queen's Remembrancer's Office for a commission to be issued for the inclosure of 4,051 acres under the Act of 9 & 10 William III in lieu of a similar area recently thrown open. The draft of this commission was received on the 16th May, a


SILVICULTURAL INCLOSURE IN THE NEW FOREST
Silvicultural Inclosures made before 1780
Silvicultural Inclosures made between 1808 and 1850
Silvicultural Inclosures made between 1852 and 1870
Enclosed Freehold Lands
Bramshaw
Fritham
Minstead
Lyndhurst
Ringwood
Burley
Brockenhurst
Boldre
Beaulieu
Hardley
LYMINGTON
SOUTHAMPTON WATER

treasury warrant issued on the 22nd May, and a meeting of the inclosure commissioners was ordered by Lord Seymour, this being held on the 18th June. No explanation was given as to why Seymour wanted the inclosure meeting to be held at this particular time, but probably his purpose was to maximise the crown's interest should the pending legislation result in disafforestation rather than further inclosure. At the same time it may have served to distract attention from the Bill, and it also provided an opportunity for negotiation with the major local landowners who served on the inclosure commission, these including Henry Compton, John Mills, and William Sloan Stanley in their capacity as verderers, and John Morant as a local justice of the peace (New Forest, Commissions of Enclosure).

At the second reading on the 2nd June, the Deer Removal Bill was opposed by Grantley Berkeley, an ardent sportsman, on the grounds that if passed it would have the effect of depriving the poor of 20,000 acres of forest rights, these consisting of turf-cutting and fuel. Henry Compton, the member for South Hampshire and a large local landowner, did not oppose the Bill, but considered that the rights of the commoners should be taken into consideration before the Bill was adopted. Earlier that day he had been in conference with Gardiner. In reply Lord Seymour said that in the first instance the only way to improve the property of the crown forests was to get rid of the deer. He could not interfere with the claims, but thought it best to leave them to be decided in the ordinary way. His great object was to get rid of the deer. After the hearing of further objections, the Bill was committed to a Select Committee, the membership of which was to include Lord Duncan, Lord Seymour, and Henry Compton (*Parl Debates*, 2 June 1851, cols 344–5).

A petition against the Bill, and a memorial to the queen against the removal of the deer, was presented on the 14th June by the Duke of Buccleuch and others, these including Lord Malmesbury, John Morant, Sir Charles Hulse, John Mills, and Mr Castleman. However, John Morant differed from the other petitioners in that he wished to have the fallow deer removed and to retain only the small number of red deer. This petition was heard by the Select Committee on the 20th June, ironically the very same day on which a protest meeting of the small commoners was held in Lyndhurst, and in consequence their interests and views were not presented before the Committee (PRO F24/72). However, William Stead, the steward to the court of verderers, was to inform Gardiner 'of a strong opposition which was getting up in the Forest against the Bill ... offering to render any assistance in his power'.

On the 21st June, Gardiner was occupied in preparing the evidence of Lawrence Cumberbatch, the deputy surveyor of the New Forest. This, with Gardiner's own evidence, was heard by the Select Committee on the 25th June, and dealt with the disafforestation of other forests, with a valuation of the New Forest prepared for the Office of Woods in 1849 by John Clutton, with opinions given before Lord Duncan's committee as to the damage caused by deer, and with the report of Lord Portman's commission that it saw no objection to the proposal to remove the deer. No evidence was heard from the petitioners, who stated that they would 'reserve their opposition for another place'. The next day Gardiner, in conference with Clutton and Cumberbatch, was preparing the evidence that Clutton should give, but this proved unnecessary as an amended Bill was published without Clutton being called. The same day Gardiner was instructing William Stead 'in communication with Mr Cumberbatch, to get up materials and evidence in the country to support the Bill in the Lords, and answer the threatened opposition in that House' (*Report* No 192, page v; Bill No 441; *Report* No 247, pp 168, 249).

Notwithstanding the petitioners' declared intention to reserve their opposition for the Lords, on the 3rd July Gardiner was approached by their solicitor, Mr Coxwell:

> on his desiring to have some confidential communication with us, with the view of seeing whether some agreement might not be come to so as to

> obviate all further opposition. He talked of 4,000 acres as a compensation for the right of Deer, but we told him it was entirely out of the question . . . Mr Coxwell said that our statements had shaken his former impressions on the subject, and that he would see Mr Compton with the view of having a meeting fixed with Lord Seymour.

This was followed by a memorandum from Malmesbury to Seymour, with a series of meetings taking place on the 8th July. The first of these was between Gardiner and Coxwell to discuss amendments suggested by Lord Malmesbury, the Duke of Buccleuch, and others, on the constituting of a court to determine the claims of commoners, and after Coxwell had been to consult with Malmesbury, Gardiner was authorised by Seymour to 'endeavour to come to some understanding' with Malmesbury and Coxwell. That afternoon Gardiner met with Malmesbury and Coxwell:

> . . . fully discussing the whole matter, when his Lordship said he would see Lord Seymour tomorrow, with the view of settling quantity clauses, to be inserted thereafter, for constituting local tribunal to hear, investigate, and determine rights of common . . . Verderers, and a barrister nominated by the Crown to be the Court to determine common rights . . . His Lordship waived any restriction as regarded trees to be planted; waived all mention of finality; also waived any restriction as to Crown's rights, other than the right of Deer . . .

and the next day Seymour instructed Gardiner that:

> he had settled with Lord Malmesbury that the Crown allotment should be reduced from 14,000 to 10,000 acres, that the new inclosures should not be less than 300 acres each [this to prevent the crown from selectively inclosing only the better land], and that clauses for settling the rights of common must be prepared and introduced into the Bill.

Further discussions between Gardiner, Compton, and Castleman, took place on the 12th July as to the framing of the new clauses, and the agreement of Lord Seymour was obtained. On the 17th July these amendments were adopted by the Select Committee, and a further amended Bill was published (*Bill*, No 548). On the 19th July, with further slight amendment, the Bill went through a committee of the whole House, and on the 22nd was given a third reading.

The Bill was passed to the Lords on the 24th July, with Gardiner still in close attendance:

> . . . conferring with Lord Carlisle [former first commissioner of woods], Lord Malmesbury, and Lord Bessborough, and endeavouring to make arrangements for the suspension of Standing Orders or for a speedy reference of the Bill to Lord Redesdale's Committee.

On the 29th Gardiner was 'altering a print of the Bill showing amendments to be made in the Lords' Committee', and on the 30th was 'Attending Lord Redesdale's Committee when the Bill, as amended by us, passed through the Committee'. The third reading was on the 4th August, the royal assent given on the 5th, and the Act published on the 7th August 1851 (*Bill*, No 250; Stat 14 & 15 Vict, c 76; *Report* No 247, app 2).

In retrospect it is difficult to see why the opponents of the Bill, who after deciding on the 25th June not to appear before the Commons Select Committee, only eight days later should have entered into negotiation with Lord Seymour, and shortly afterwards have agreed to a settlement verging upon capitulation, this without the case for the commoners having been presented before either the Commons or the Lords. Presumably the petitioners must have considered that in the current political climate they stood little chance of winning their case, and that in their negotiations with Lord Seymour they had obtained the maximum possible concessions. The removal of the deer was seen as the ending of the constraints of forest law, and the inclusion of clauses for the settlement of rights of common was a major gain. Also the reduction from 14,000 to 10,000 acres in the area of inclosure was an obvious improvement, although this was offset by the concession that

the crown was no longer to be restricted to the planting of broadleaved species. However, some years later it was claimed by Castleman that:

> The real reason why the opposition stopped was the threat of inclosure. It was said to us distinctly that if the Bill or something like it did not pass, the forest must be inclosed, and it was under that threat that this arrangement was made, which is now termed a compromise (*Report* 1868, p 35).

This allegation is certainly supported by the evidence given by Gardiner to the Select Committee, this dealing with the disafforestation of other forests and the valuation to be placed upon the New Forest. Also, at the same time, a Bill for the disafforestation of Hainault (Waltham) Forest was passing through Parliament, and this would have added weight to the threat (*Stat* 14 & 15 Vict, c 43; Fisher, 349; *Report* 1849, App).

For the commoners disafforestation was an undesirable alternative. The allotments to the smaller commoners would have been no compensation for the loss of grazing and turbary rights, while the large commoners were already major landowners, and for aesthetic and sporting considerations preferred the Forest to remain open and uninclosed rather than enlarge their estates with added areas of heathland. Only in the light of subsequent events can it be seen that disafforestation could well have been the most advantageous option. At this time in the New Forest there were still over 57,000 acres of uninclosed land, these having been valued at between ten shillings (50p) and one shilling and sixpence (7½p) an acre with a total annual value of £12,306. Of this over half the value (£6,300) comprised the 3,600 acres of former plantations, together with the 9,000 acres of natural woodland. On the basis of the Waltham award, these 12,600 acres would have comprised the allotment made to the crown, and the remaining 44,400 acres the commoners' allotment. In effect, in agreeing to the inclosure of a further 10,000 acres, the petitioners were accepting most of the losses of disafforestation, but without the benefit of a final settlement.

For the small commoners the agreed settlement contained little or nothing of advantage. The removal of the deer was of principal profit to the adjacent landowners in that it increased the agricultural value of their estates, as was shown by the support of Henry Compton, and the partial support of John Morant, for this measure. Also the inclusion of clauses in the Act for the determination of common rights was obviously of greater value and concern to the owners of these rights than to their tenants. At this time the twenty major landowners owned over 75% of the lands to which common rights were attached. Conversely, the reduction in the area available for grazing and turbary was of fundamental concern to the small commoners who exercised these rights, while this affected the large landowners only indirectly through the rents that could be charged for commoners' holdings.

While the major landowners may have seen the 1851 Act as a satisfactory compromise and settlement, among the small commoners there appears to have been considerable discontent, while the Office of Woods never saw it as a settlement, but as a further step towards their objective, the extinction of common rights in the New Forest.

THOMAS FRANCIS KENNEDY, COMMISSIONER OF WOODS, 1851–4

At the same time as the Deer Removal Act, a major change took place in the Office of Woods and Forests with the re-creation of the Office of Works, which since 1832 had been consolidated with Woods and Forests, with Lord Seymour, then first commissioner of woods, changing his office to become the first commissioner of works (*Stat* 14 & 15 Vict, c 42). On the 10th October 1851 the work of the two remaining commissioners of woods was divided, with Mr Gore being appointed in charge of the Land Revenue, and Thomas Francis Kennedy in charge of the Woods and Forests. Kennedy had been appointed a junior commissioner of woods and forests in September 1850.

Kennedy would appear to have been a man of considerable ability, action, and determination, and for these very reasons was unable to conform with the then existing establishment. At this time the Treasury had the patronage of all appointments in the office of woods, and Kennedy found that with one exception his staff were new to their duties, and the papers in the office were in a most unsatisfactory condition. This Kennedy reported to the Treasury on the day following his appointment, but with an unfortunate result in that Mr Cumming, the one experienced person, was summarily dismissed by the Treasury on the grounds that he had been privately employed by a previous secretary. Kennedy's version was somewhat different, that:

> I found him very useful, and faithful to me in the discharge of his duties, and I employed him; but in that disagreeable controversy to which I alluded, the Treasury decided that Mr Cumming should be turned out of office altogether, and I considered that Mr Cumming was used in a very harsh and unjust manner. He was supposed to have behaved ill in some way, from which I totally dissented, because he merely told me that which he was bound to tell upon some circumstances essential for me to know . . . (*Report* 1854, p 76)

From this unfortunate beginning Kennedy's relationship with the Treasury progressively worsened. In March 1852, because of the inadequacies of his resources, Kennedy was unable to prepare his annual report on time, and instead he took the singular step of presenting to parliament a special report detailing his problems, this including copies of his correspondence with the Treasury (*Return* No 562, 1852). In general, Kennedy saw the Treasury as ignoring his recommendations and those of his professional adviser, James Brown of Arniston, accepting instead those of John Clutton, employed by the Treasury since the time of the 1849 select committee as an 'independent' consultant, and, incidentally, a person who invariably returned a favourable report upon the condition and management of the royal forests. Matters came to a climax early in 1854, when Kennedy stated in evidence:

> . . . all the duties that I performed formerly are performed by the other Commissioner, excepting those relating to the manor of Lyndhurst; so that at this moment I am invested with the transaction of the affairs of the manor of Lyndhurst, worth about £4 a year. I am at present a Commissioner of Woods . . . My patent is still in existence, and I apprehend cannot be cancelled but by the issue of a fresh commission. The Treasury had no power to assign the whole of my duties, and therefore they assigned everything but the manor of Lyndhurst, and that is still vested in me. My feeling is, that I think I really ought to be divested of that onerous charge.

Kennedy believed that the Treasury's attitude had led to a general loss of confidence, and to insubordination and incivility on the part of his officers. In the New Forest he had an additional problem in that the deputy surveyor, Lawrence Henry Cumberbatch, was a disciple of John Clutton. He had formerly worked for Clutton, had been appointed to the New Forest in 1849 at the age of 21, and for the next two years had worked under Clutton's supervision. On one occasion he was accused by Kennedy of 'distinct disobedience of orders, refusal to give me the information which I required', and in consequence was suspended from office for six days and threatened with dismissal. These difficulties are well documented in the published correspondence and reports, but are largely outside the scope of this paper.

THE CONTINUED DIMINUTION OF COMMON RIGHTS

Despite their differences, in one matter Kennedy, Cumberbatch, and the Treasury were of one mind. This was in their intent to increase the crown's interest at the expense of common rights. Largely this was to be achieved through the crown's new powers of inclosure and planting, but at the same time no opportunity was missed to lessen in other ways the value of the commoners' rights. In February 1852 the keepers were instructed to carry out a drift of the Forest, a procedure 'which gave considerable

dissatisfaction as without notice 203 cattle were impounded and penalities to the amount of £75.5. enforced'. (This may have been facilitated by the presence of twelve additional constables who had been appointed following the outbreak that winter of several incendiary fires, these leading to several convictions at the subsequent Winchester summer assizes) (*Report* 1853, pp 149–50).

The cause of this 'dissatisfaction' was not simply over the impounding of a number of cattle, but the realization by the commoners that they had been misled and tricked over the Deer Removal Act. As first drafted and discussed the Bill had been for the extinguishment of the right of the Crown to keep deer and 'other beasts of the forest', and when questioned by the select committee on the 25th June 1851 regarding the residual rights of the crown, Gardiner had stated that:

> The Crown's rights are very clearly defined upon the residue; its right of soil as lord of the manor, equivalent to that. The forestal right will be gone . . . the Crown will be simply in the position of a lord of the manor, entitled to the sale of the timber (*Report* No 192, 1875).

However, the following day and unnoticed at the time, the words 'and other Beasts of Forest or Chase' were struck out in the amended Bill, thus allowing the crown to continue to claim forestal rights in the New Forest. It later emerged that this had been done at the instigation of Sir William Alexander, counsel for the crown, and it would seem inconceivable that this was done without the knowledge and approval of Seymour and Gardiner. When at the 1868 inquiry Gardiner was challenged over his 1851 evidence, he simply replied: 'I do not think I could have said so; if I said so, I could not have meant it . . .' He then went on to claim that the 'forestal rights' retained by the crown included the right to keep wild boars, wolves, and all birds and beasts, and fowls of warren and chase, and the right of shooting and sporting over private estates. At the same time J K Howard, the then commissioner of woods, justified the occasional enforcement of the winter heyning 'just to maintain the right of the Crown' (*Report* 1868, pp 72, 102) The right of shooting over private estates was only exercised once a year, and at the end of the shooting season, so as to cause as little inconvenience as possible to the owners (*Report* No 247, 1875, Q 1167).

In the following months the crown's intentions became clearer. In his belated annual report Kennedy wrote that:

> It would be premature to state at length the views which I entertain with reference to the whole of the common rights of the New Forest. I consider them to be profitable and truly beneficial to no one, and that so long as they exist, the magnificent space of which the New Forest consists can never be turned to real advantage (*Report* 1852, p 76)

This view he reiterated in 1853, adding that:

> . . . the investigations now in progress respecting the rights of commoners are important and essential, more especially as the amount of the claims under the Act present a formidable array; and while there is no doubt that a large amount of real rights exist, there can be as little doubt that the claims preferred are excessive, and that when they come to be investigated and decided on, their present magnitude will be materially diminished' (*Report* 1853, p 153)

More outspoken, but not intended for publication, was a report made by Cumberbatch to Kennedy on the 31st December 1853, that:

> It appears to me important that the Crown should, as soon as possible, exercise its right of inclosing the 16,000 acres, because, exclusive of other advantages, by so doing, all the best pasture would be taken from the commoners, and the value of their rights of pasture, would thus be materially diminished, which would be of importance to the Crown in the event of any such rights being commuted . . . (*Report* 1854, p 123)

(That this report became public was only because of Kennedy's altercation with the Treasury and the ensuing publication of correspondence).

THE REGISTRATION OF CLAIMS

During the negotiations over the Deer Removal Bill, on the 8th July 1851, Gardiner had been instructed by Lord Seymour to 'endeavour to come to some understanding' with Lord Malmesbury. After discussion it was arranged for Malmesbury to meet Seymour 'with the view . . . for constituting local tribunal to hear, investigate, and determine rights of common . . . Verderers and a barrister nominated by the Crown to be the Court to determine common rights', and following this meeting, Seymour instructed Gardiner that 'clauses for settling the rights of common must be prepared and introduced into the Bill' (*Report* No 247, 1875, App).

Ten months later it became obvious that the office of woods had no intention that claims should be settled by the verderers as agreed between Seymour and Malmesbury. Although less than two years since the comprehensive report by Hume for the Portman commission, Kennedy reported:

> it had been deemed necessary that a gentleman should be appointed on behalf of the Crown to conduct a local inquiry in the Forest contemporaneous with the preferment of claims by parties, to go historically into the subject, in order to procure materials on which sound conclusions might be arrived at in due time . . .

and to this end in February 1852 the Treasury appointed a Mr A M Price to work under the direction of the crown solicitor. Price submitted his report on the 6th January 1852, with Kennedy commenting that:

> I have reason to think that Mr Price's inquiry has been conducted by him in a manner alike creditable to him and calculated to render essential service in the subsequent proceedings about to take place in adjudicating upon the claims preferred; and the mode of proceeding in reference to those claims, so far as the rights and interests of the Crown are concerned, is now under the consideration of the Law Advisers of Her Majesty. (*Report* 1853, p 152)

Armed with Price's inquiry the crown was to lodge objections to every claim, disputing the existence or nature of the rights preferred, and it was therefore considered expedient that commissioners should be appointed to decide upon the claims, these commissioners to comprise the county court judge for Southampton and two barristers-at-law (*Stat* 17 & 18 Vict, c 49). In the words of John Gardiner:

> 1311 claims are here adjudicated upon, in every one of which I was the sole objector; of course they were all banded to a man, each to support his neighbour. Out of the 1311, I managed to expunge about 460, and I do not think there were more than two claims that were not cut down (*Report* 1868, pp 106–7).

The *Register of Decisions on Claims to Forest Rights* was published in 1858, but even this was not to be the final assault upon commoners' rights. In 1861 a further Bill was introduced by the Treasury:

> in order to ensure the proper Use and Enjoyment of the said Rights and to prevent Abuses thereof, and for the better Management of the said Forest in other respects . . .

The main provisions of the Bill were for the appointment of up to six agisters to be paid for 'out of the Revenues of the said Forest', that depastured stock were to be marked 'by an Agister in such Manner as he may think necessary for the Purpose of Identification', and for the introduction of agistment fees. There can be little doubt as to the purpose and timing of this Bill, that while it had been comparatively simple to obtain the rejection of the claims of 460 commoners, it was a different matter when it came to trying to enforce these decisions and to remove stock 'illegally' depastured from the Forest (*Bill* 1861). At the time this Bill was not proceeded, although the essence of its provisions were later to be incorporated in the New Forest Act 1877 (*Statute* 40 & 41 Vict). At this time, however, any injustice to those denied their claims in 1858 was ameliorated by means of an amend-

ment which allowed the verderers in their discretion:

> to allow cattle and other animals belonging to persons, not being commoners, but being owners or occupiers of land adjacent to or abutting on the forest, to depasture in the forest . . . (*Statute* 42 & 43 Vict).

SILVICULTURAL INCLOSURE

As mentioned above, in June 1851 a warrant had been obtained for the inclosure of a further 4,051 acres under the Act of 9 & 10 William III, and the completion of these plantations was to occupy the office of woods for the next few years. A warrant for the inclosure of 10,000 acres under the Deer Removal Act was not obtained until June 1855, but by November that year the commissioners for inclosure had already agreed to the first 2,050 acres of plantations to be inclosed under this Act.

It was not until March 1866 that the office of woods proposed the inclosure of a further 7,650 acres, these then being agreed. However in May 1866 three new commissioners, C D Esdaile, Charles Castleman, and Williams Freeman, were appointed to replace deceased members of the commission, and at the next meeting held in October 1866 the new commissioners expressed considerable criticism of the proposed inclosures (New Forest, Commissions of Enclosure). To some extent this renewed opposition would have stemmed from the recent recommendation of a parliamentary committee that there should be no further inclosure of commons within the metropolitan police area. This report had been followed by a spate of private inclosure by landowners intent upon forestalling any constraining legislation, and this in turn had led to the setting up in autumn 1865 of the Commons Preservation Society (Lefevre 1894, 37–39).

No progress was made at the next meeting of the inclosure commissioners held in June 1867. In attendance at this meeting were Lord Henry Scott to protest on behalf of the Duke of Buccleuch, and Lord Somerton who petitioned that:

> the operation of the Deer Removal Act inflicts great hardship on the Commoners and that it is expedient that pending mature negotiations with a view to a remedy for their hardships, no further inclosures should be made in the New Forest (New Forest, Commissions of Enclosure)

PROPOSALS FOR DISAFFORESTATION

In July 1867 a return of enclosures in the New Forest was called for in the House of Commons (*Return* No 430, 1867), and the following month seven petitions, in similar terms to that brought to the inclosure commissioners, were presented by Viscount Eversley to the House of Lords. In response the Duke of Buckingham called for a report as to the exact state of the New Forest since the passing of the Deer Removal Act (*Parl Debates* 12.8.1867). This report, presented to the House of Lords in February 1868, initially had been prepared for the Treasury by J K Howard (4th son of the Earl of Suffolk), the commissioner of woods. From this it is evident that the objective of the office of woods remained unchanged:

> It may indeed be open to doubt whether it would be to the true interest of the Crown and the public revenue that any disafforestation of the New Forest should take place until after the powers of inclosure . . . have been much more largely exercised than has hitherto been done; (*Return* No 123, 1871, p 12).

In May 1868 a select committee of the House of Lords was appointed to inquire into the operation of the Deer Removal Act with reference to the various petitions and to J K Howard's report. This committee was to report that:

> The interests of the Crown and of the commoners are at variance . . . The Committee are of opinion that the only effective remedy for this unsatisfactory state of affairs, will be found in the adoption of the course pursued in regard to other

> Royal forests. This course consists in the appointment of a Commissioner for the purpose of allotting to the Crown certain portions of the forest in fee, freed from all common rights, and leaving the residue to the commoners to deal with in such manner as they may think best (*Report* 1868, p vi)

THE NEW FOREST – A NATIONAL PARK

Publication of the 1868 report reawakened public interest in the New Forest. 'The public saw that unless they took some decided action in the matter, the Forest would unquestionably be inclosed, and lost for ever to the nation' (Jenkinson 1871). Letters appeared in *The Times*, and a small booklet, *The New Forest . . . a Matter of National Interest*, was written by Henry Jenkinson in 1870 and published early in 1871 (*Report* No 247, 1875, p 124). Jenkinson claimed that:

> . . . in consequence of the vast enclosures and plantations made pursuant to the provisions of the Deer Removal Act, the whole character of the district was gradually becoming changed from a free, open, uninclosed space, to one dense mass of sombre fir plantation . . . that . . . the interests of the Commoners who claimed the full and free enjoyment of their Common rights, and of the public who desired the preservation of the Forest as a National Park of unrivalled beauty, were identical . . . that of the 9,000 acres of old natural self-sown Forest existing in 1849, only 5,000 acres now remain covered with standing timber . . . the object of the Commissioners was to carry out the statutory powers reposed in them, in such a manner as to select and inclose for the purposes of planting all the more valuable portions of the Forest, as rapidly as the funds at their disposal permitted. Thus since the year 1851 over 10,000 acres have been inclosed, a larger quantity than had been inclosed in the previous century and a half.

Jenkinson's booklet concluded with the appeal that:

> . . . Parliament will forbid alike the inclosure, sale, or destruction of any portion of the magnificent timber of which the old natural self-sown Forest is composed; and will effectually preserve to us and our children, this one remaining National Forest . . .

In the face of this mounting public concern, and perhaps in the anticipation that they were unlikely to achieve further inclosure, the office of woods now introduced a Bill to disafforest the New Forest, this being brought to the Commons in March 1871 (*Bill* No 81, 1871). However, when William Baxter, a Treasury joint secretary, was asked on the 1st May whether he intended to proceed with the Bill, he replied:

> Looking, Sir, to the great pressure of public business, and to the interest manifested by the House in forest questions, I do not intend to proceed with the New Forest Bill this Session, and perhaps I may be allowed this opportunity of stating . . . that it is not intended, pending legislation, to make any fresh inclosures in the New Forest, and that no timber is to be felled except for current repairs, the necessary thinning of plantations, and the satisfaction of legal rights to fuel (*Parl Debates*, 1 May 1871)

On the 10th May, the Bill was formally withdrawn.

This was to produce a remarkable response from J K Howard in the form of a report to the Treasury, dated the 8th June and subsequently tabled in the Commons on the 16th June. Howard had now abandoned his position of three years earlier, that disafforestation would not be in the interests of the crown, claiming instead that:

> Disafforestation, or a separation of the rights of the Crown and the commoners . . . would thereby remove the causes which obstruct improvement and tend to excite discontent . . . The Crown would have the exclusive control and enjoyment of a compact estate . . .

He went on to disclaim Baxter's undertaking that there would be no more inclosures pending legislation. So far as Howard was concerned:

> ... the Act ... directs that the inclosures authorised shall be made by virtue of Commissions ... These Commissions are not answerable to the Treasury, their returns being made direct to the Court of Exchequer ... nothing short of an Act of Parliament can absolve the members of the Commission from their statutory duty ...

Furthermore he claimed that the commissioners of woods were the trustees of the New Forest on behalf of the sovereign, and that:

> ... a resolution of the House of Commons on behalf of the tenant for life, embodying a proposal such as that suggested in relation to the New Forest, would not release the Commissioner in charge of New Forest from the performance of his duties as trustee of a settled estate, one of these duties being to take care that the statutory powers of the Crown in regard to the making of plantations in the New Forest are duly exercised. If the resolution were passed, it would place the Commissioner in the dilemma of having either to disregard it, or to violate the trust imposed upon him by Acts of Parliament (*Return* No 293, 1871)

In the debate which followed on the 20th June, virtually every speaker was critical of the commissioner of woods. William Cowper-Temple, the member for South Hampshire, said that:

> the Commissioner of Woods stated that it was his duty to manage the Forests for the benefit of the public, but he took a different view from the majority of hon. Members as to what the interests of the public really were. He repudiated any benefit but a pecuniary one.

The Alderman W Lawrence ventured to think 'the Commissioners had entirely mistaken their position', Lord Henry Scott found the paper to be 'full of inaccuracies', Sir Harry Verney that 'the Commissioners of Woods and Forests were really unfit to be intrusted with the management of the New Forest', Beresford Hope that 'the argument of Mr Howard's Paper fell to the ground', and M Chambers that 'a perusal of that manuscript must convince every hon Member that the forests were being mismanaged ... the unanimity of opinion that prevailed among hon Members was the condemnation of the Commissioners'.

Sir Charles Dilke was also concerned with mismanagement. He alleged that the recent inclosure of Denny Wood had been done in anticipation of disafforestation, because:

> the Commissioners ... wished to retain that beautiful wood as a choice and compact estate in itself, with a view that it should ultimately pass to the Crown, unincumbered with rights of common, or other public rights ... A local answer was given, that it was inclosed in order to allow self-sown timber to spring up. If so, that was illegal; but he had been told upon the spot, that the only self-sown timber that was ever seen in the New Forest now was Scotch fir, and that the cones were found stuck in rows in the ground a long way from the trees from whence they came. They might be self-sown; but the self-sowing process was aided by Her Majesty's keepers and Her Majesty's carts.

William Baxter, secretary to the Treasury, wished the House to understand that 'Mr Howard was alone responsible for what he thought and said, although the Treasury was responsible for what he did'. A motion proposed by Henry Fawcett was in precisely the same terms as the answer he had given on the 1st May, and:

> although it was rather an unusual thing to found a Motion upon an Answer given by a Member of the Government, yet the Government could not object to the Motion because they intended to take the precise course which he had stated in that Answer.

Subsequently, Fawcett's motion was carried without division, so that in the words of Beresford Hope 'it might go forth to the country that Parliament had unanimously determined to preserve the New Forest for the recreation of the public' (*Parl Debates* 20 June 1871).

However, in the office of woods this message would appear to have gone unheeded. In May 1874, following the fall of Gladstone's administration, W H Smith the new secretary to the Treasury, informed Lord Henry Scott that he had received a request from the commissioners of woods to be allowed to carry out

the provisions of the Deer Removal Act, on the grounds that the resolution of the House of Commons passed in June 1871 was no longer in force, a new House of Commons having been elected. In October, W H Smith spent a week in the Forest, but the following March announced that the government did not intend to bring in a New Forest bill, and that the office of woods would therefore resume their powers of enclosure. This prompted Scott, on the 16th March 1875, to move that a Common's select committee be appointed to report upon the present condition of affairs in the New Forest and into the operation of the Deer Removal Act (Jonas 1967).

This committee, under the chairmanship of W H Smith, included Lord Henry Scott and William Cowper-Temple the joint members for South Hampshire. Cowper-Temple, the stepson of Lord Palmerston, was a most experienced politician having been a member of the House since 1835. He had acted as secretary to Lord Melbourne, his uncle, had held a succession of governmental posts, had carried the Metropolitan Commons Act in 1866, and had been the first president of the Commons Preservation Society. From the 7th May to the 25th June the committee heard the evidence of many witnesses, and on the 9th July met to consider its report, starting off with eight resolutions proposed by the chairman, a lengthy draft report already prepared, printed, and circulated by Henry Scott (Scott 1875), and three short resolutions by Cowper-Temple. These alternative proposals differed in the area proposed for inclosures, not surprisingly that of W H Smith recommending that the office of woods should be allowed to complete the remaining 5,000 acres provided for under the Deer Removal Act. Henry Scott recommended a further 400 acres to bring the crown's total up to a round 20,000 acres, while Cowper-Temple proposed no further inclosure. In the event Cowper-Temple's judgement proved correct, and when he moved his own resolution as an amendment to that of W H Smith, this was carried by one vote (*Report* 1875, p xv). Apparently this amendment, although he had given it his support, caused Henry Scott to fear that the committee's recommendations would no longer receive government support (Pasmore, p 21). In consequence at the next meeting he moved two further amendments which he thought to be a necessary concession to government opinion, one giving the office of woods unrestricted use of the inclosures, the second reserving the crown's rights in the possibility of future disafforestation.

Needless to say the committee's report received predictable criticism from James Howard in his subsequent report to the Treasury, that:

> the proposals contained in the third, fourth, and fifth resolutions are not only inconsistent with the attainment of the objects mentioned in the first and second resolutions, but are inequitable as between the Crown and the commoners, are inexpedient on public grounds, and cannot be carried into effect without serious detriment to the State ... the real conflict of interests on the subject of the New Forest, is not between the Crown and the public, but between the State on the one hand, and the commoners, that is to say, the local landowners, on the other hand (*Return* No 214, 1877).

In this report Howard chose to ignore the major public complaint, the destruction which had taken place of large areas of ancient and picturesque woodland of which it was estimated that 4,000 acres, or nearly half the 1849 total, had been destroyed over a period of twenty years. As early as 1860 the felling of a great many of the Forest's ancient yew trees and of some of England's finest and largest beech trees, had been questioned by Malmesbury in the Lords (*Parl Debates* 23.2.1860).

The New Forest Bill, prepared by W H Smith, was published on the 30th April 1877 and contained most of the recommendations of the 1875 committee, but with the notable omission of Henry Scott's amendment giving the crown unrestricted management of the inclosures, a concession which he had thought essential to the successful passage of the bill.

Much of the bill was devoted to the reconstitution of the Verderers' Court so as to better represent the commoners and to regulate the exercise of common rights (*Bill* 1877). On the 17th May, at the second reading, some objections were raised by Lord Edmond Fitzmaurice to the possible inclusion on the select committee of someone so personally involved as Lord Henry Scott. This was followed by correspondence in *The Times*, and when on the 7th June, Fitzmaurice, but not Scott, was nominated to the committee, there was further acrimony. The following day it was alleged by Fitzmaurice that Scott 'had made certain charges against him (Lord Edmond Fitzmaurice) with reference to his conduct in relation to that Bill' (*Parl Debates*, 8 June 1877). As Fitzmaurice was an active member of the Commons Society, only the previous year having worked in combination with other members of the Society during the committee stage of the Commons Act 1876, it could be that the move to exclude Henry Scott was a deliberate decision on the part of Cowper-Temple, Sir William Harcourt (also a member of the Society), and Fitzmaurice. Already a petition had been presented, signed by over 400 commoners, against the bill being altered, and the representatives of the Commons Society may well have considered that more could be gained unhampered by Scott's somewhat cautious ideas upon what was necessary or expedient to ensure the passage of the bill.

The mood of the country was for conservation, and this had been acknowledged by government. The previous year in his introduction of the Commons Act 1876, Richard Cross, the home secretary, had stated that:

> The feeling of the country had changed . . . they [Parliament] had to consider . . . what was really best calculated to promote the health and material prosperity of the people . . . (Lefevre 1984, 279–81).

While the New Forest bill was good as drafted, in this climate there was no reason why it should not be further improved, and this was skilfully achieved by the select committee. For the previous two years the office of woods had been able to point out that Cowper-Temple's amendment of 1875, the stopping of further inclosure, had been carried by only a single vote, but this was now convincingly rectified. Acting as devil's advocate, an amendment was put by Fitzmaurice that inclosure should be allowed to continue under the provisions of the Deer Removal Act, this time to be decisively defeated by eight votes to one. In the next section, the one in which Scott had considered that the crown should be given a free hand in the inclosures, the committee took the contrary view that:

> in cutting timber or trees . . . care shall be taken to maintain the picturesque character of the ground . . . having regard to the ornamental as well as the profitable use of the ground.

and in a subsequent section dealing with the preservation of the unenclosed woodland, the words 'as far as is practicable' were struck out by the committee. Both these amendments were carried unanimously (*Report* 1877). As amended the bill completed its passage through Parliament and on the 23rd July received the royal assent.

CONCLUSION

Between 1700 and 1871 some 17,680 acres of the best common land in the New Forest was taken and inclosed for silvicultural plantations. The commoners, in compensation for their loss of common rights, received only the doubtful benefit of the removal of the deer, and even this was to be short-lived as the deer were later allowed to return.

In putting a halt to further inclosure the New Forest Act 1877 was a turning point in the history of the Forest and a major victory for the commoners, with the majority of its provisions remaining in force today. For the public at large the New Forest Act was also a victory in that it safeguarded the remaining ancient un-

enclosed woodlands of the Forest, although far less successful in its directive that the inclosures should be managed with regard to the ornamental as well as the profitable use of the ground. Over the next hundred years most of the broadleaved crops within the inclosures were to be progressively replaced by conifer species, but that is another story.

APPENDIX – New Forest Inclosures made between 1851 and 1870

Year	Name	Acreage	NGR
1852	Frame Heath	420	SU3403
	Broadley	176	SZ2599
	Island Thorns	492	SU2115
1853	Park Hill	694	SU3106
	Oakley	823	SU2306
1859	Dames Slough	358	SU2405
	Vinny Ridge	359	SU2605
	Pound Hill	236	SU2704
1860	Shave Green	246	SU2812
	Brockis Hill	160	SU3011
	Denny Lodge	280	SU3304
1861	Milkham	394	SU2009
1862	Slufter	371	SU2209
1864	Sloden	306	SU2013
	Busketts Lawn	342	SU3110
1866	Perry Wood	794	SU3102
1867	Deer Leap	302	SU3409
	Knights Wood	563	SU2506
1868	Kings Garn	304	SU2513
1869	Highland Water	786	SU2409
1870	Denny	462	SU3304
	Hawk Hill	394	SU3502

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