

1851 and After: The New Forest at War

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I Background

With the advent of the Court of Surveyors under the Tudors in the 1540s, a 300-year battle commenced over the management of the New Forest. For 250 years a series of skirmishes took place between the Lord Warden's department and the Surveyors with new offices invented such as Preservators to spy upon opposite numbers. Accusations of misdeeds flew back and forth between the two branches of forest governance; a Deputy Surveyor was even fined in the Verderers Court in the mid-18th century.¹

For the 50 years following the *Fifth Report of the Commissioners Appointed to Enquire into the State and Condition of the Woods, Forests, and Land Revenues of the Crown* of 1789 this all changed.² After the failure of a bill in 1792 attempting to put into force the recommendations of the report, an organised campaign was set in train to subdue opposition and remove local influence. Its purpose was clear – enclosure of the forest. The watchword of the 18th and 19th century was, to many, greater efficiency and more productive use of assets, and the Crown Estate was not excluded. An Act of 1808 (48 Geo. III, c.78) paved the way for systematic creeping enclosure by reviving the rolling powers of creating enclosed sylvicultural plantations of an earlier Act of 1698 (9 Will. III, c.33).³

- 1 P. Roberts (ed.), *Ruin and Reform, New Forest Administration 1739–1769* (New Forest Record Series, vol. 2, 2006), p. 14.
- 2 British Parliamentary Papers [hereafter BPP], *The Fifth Report of the Commissioners Appointed to Enquire into the State and Condition of the Woods, Forests, and Land Revenues of the Crown, 1789* [hereafter 5th Report] (2), xlv.
- 3 D.J. Stagg, 'Silvicultural inclosure in the New Forest to 1780', *Proceedings of the Hampshire Field Club and Archaeological Society* 45 (1989), 142.

It was exceptionally well administered by Lord Glenbervie, the first Commissioner of Woods and Forests, who thought deeply about the practicalities of implementation.⁴ By including a couple of acres of agricultural land with a cottage for a 'better sort of woodman', i.e. one who could beat off opposition from the foresters, it gave some form of security for the scheme. With offices such as those of Riding Forester – which paid £500 a year until 1839 – disappearing, the influence and concerns of the local gentry were fading and those of the Crown strengthening.⁵ The incredible waste of looking after deer to feed a variety of non-deserving office holders in London as well as locally was highlighted in reports of 1848–9. Also brought to light was the continued misappropriation of timber by government servants. Commoners were not highly thought of either.⁶

II The War Commences

'Lord Seymour's Cruelty Act', as Grantley Berkeley referred to the Deer Removal Act, came into force in 1851. Although Berkeley's allusion was to cruelty inflicted on the deer of the forest, the title is also apt for the effect it had on New Forest commoners.⁷ The process leading to the Act has been analysed elsewhere and need not detain us here.⁸ The deer were to be removed and in compensation for this loss the Crown gave itself a further 10,000 acres of enclosure for timber growing, again with rolling powers. The ironies were many. The plantations were supposedly being planted to produce Navy timber at a time the Navy was moving to iron hulled ships.⁹ The deer had not been hunted by royalty for nearly 200 years and actually cost the state in the region of £100 for each carcass. For the Crown it was a win-win situation.

4 D.J. Stagg, 'Silvicultural inclosure in the New Forest from 1780 to 1850', *Proceedings of the Hampshire Field Club and Archaeological Society* 46 (1991), 134–6. Glenbervie served this office from 1804 to 1810.

5 BPP, Accounts of pensions granted under the head of compensation or otherwise on the abolition of, or for sinecure offices, and for other Civil Offices abolished, 494 (1834), xli.

6 *The Times*, 20 December 1850.

7 G. Berkeley, *Reminiscences of a Huntsman* (London, 1897), p. 222; 14–15 Vict. c.76, *An Act to Extinguish the Right of the Crown to Deer in the New Forest, and to give compensation in lieu thereof; and for other Purposes relating to the said Forest [hereafter Deer Removal Act]*, 1851.

8 D.J. Stagg, 'Silvicultural inclosure in the New Forest from 1850 to 1877', *Proceedings of the Hampshire Field Club and Archaeological Society* 48 (1993), 143–59.

9 House of Commons Debates, 19 April 1860, vol. 1.57 cc. 2012–37, esp. 2032.

The only incomplete business was the elimination of the rights of the commoners. That was already in hand for with the thousands of acres planted in the previous 40 years there was a substantial reduction in the value of commoning rights. Legally not allowed to de-pasture their stock whilst enclosed, the advent of dense tree cover still provided severe restriction upon the commoners' meaningful exercise of their rights when the fences were thrown down. Further, when the enclosures were 'opened up' the extant Acts allowed for further enclosure of the forest for the growth of timber.¹⁰

At least the commoners thought they would not have the nuisance value of the hunting system when the Bill was passed, as obviously it would remove the potential restriction that protected the deer when they were fawning and in winter when feed was scarce – the fence month and winter heyning. This proved not to be the case. A sleight of hand by the Commissioners of Woods meant that the original phrasing of removal of 'deer and other beasts of the Forest' in the early Bill was reduced to 'deer'.¹¹

III Drifts and Incendiarism

When a drift of the Forest was organised by the verderers without notice on 9 February 1852 it caused widespread upset, not least because the commoners realised they had been duped; not by the verderers, who failed to give notice because they knew the commoners would remove their cattle for the day and escape fines, but by the Act of Parliament.¹² Everyone thought that with the passing of the deer all the old restrictions, many of which had not been applied for decades if not centuries, would have ceased to exist. Resentment turned to anger and many of the old ways returned. In previous centuries various parties seemingly with little or no power had defeated the intentions of some of the most powerful in the land by simple means. Fire.¹³

So the forest was subjected to a series of incendiary fires, one of which destroyed much of an enclosure.¹⁴ These were not just the

10 Deer Removal Act, s. 5.

11 Various: BPP, A Bill to Extinguish the Rights of the Crown to Deer in the New Forest, 1851 (311, 441 and 558), v.

12 BPP, 31st Report of the Commissioners of Woods, Forests and Land Revenues, 1853 (865) lvi [hereafter 31st Report], pp. 149–50 and appendix 17 (D).

13 C.J. Griffin, 'More-than-human histories and the failure of grand state schemes: sylviculture in the New Forest, England', *Cultural Geographies* 17, 4 (2010), 451–72.

14 *Hampshire Advertiser* [hereafter HA], 28 February and 27 March 1852.

traditional heath fires to remove scrub and improve the grazing as detailed by Sumner and others, but deliberate burning of fences and plantations. The Revd Mark Cooper, vicar of Bramshaw, headed a petition of 130 commoners who asked for permission to return their stock by mid-April. This would have allowed them to plant lands otherwise occupied by animals. It was to no avail as Commissioner Kennedy refused.¹⁵

Late in April the fires recommenced. The agitation was not always just targeted against enclosures but sometimes adjacent owners had their property attacked – it caused widespread alarm and a reward was offered by Mr Drummond of Cadland of £100. Moreover, so it was reported in the Hampshire press, ‘Many of the gentry in the New Forest are still obliged to have their mansions watched to protect them from the incendiaries.’¹⁶ A dozen extra police were drafted in on the authority of Commissioner Kennedy, resulting in the arrest and trial of seven men.¹⁷ Found guilty and liable to transportation, leniency was the order of the day. This came with a clearly stated warning from the Judge that, on the advice of the prosecutors, if any further fires were started in the Forest they would be ‘called up, and severe punishment will be inflicted on you.’ This was printed as a notice by the Commissioners of Woods in four local papers, immediately under another about restriction of the exercise of common rights. The Commissioners left no one in any doubt that they had taken on the Lord Warden’s medieval duties and would not hesitate to curb the commoners in any way they could.¹⁸

This seemed to be effective for a time for the following winter no fires were recorded. However the Earl of Malmesbury stated in Parliament that ‘From January to May of that year [1854] no fewer than 24 incendiary fires had taken place in the New Forest...’¹⁹ He was particularly incensed because the Commissioners had stood down the remaining four extra constables and had in addition reduced the number of keepers. A year later it was reported that a reward of £500 was being offered without success.²⁰

Prior to 1851 the New Forest was famous for allowing hunting to continue into April and attracted more people at that time of year than

15 31st Report, 1853, Appendix 17 (A); 17 (B).

16 HA, 17 April 1852.

17 31st Report, p. 150.

18 HA, 7 August 1852.

19 *The Times*, 22 May 1855.

20 *Sussex Advertiser*, 26 May 1856.

any other. Elsewhere enclosed lands were planted in the spring so many packs came to the Forest for an extended season.²¹ Many commoners were involved in the sport, which included fox hunting, and thus benefited many smallholders who kept poultry. This became less and less appealing as the enclosures were made and the deer were reduced.

IV Claims

The printers' ink was barely dry on the 1851 Act when a full enquiry into rights of common was announced in the *London Gazette* in September that year.²² Claims were to be made and received by the verderers in Lyndhurst where they were to be entered into a book and published by the *Gazette*. Any claimant could object to another's claim, as could the Commissioners. This clause was tucked away under a paragraph whose abstract read 'Commissioners of Woods, etc. to prefer any claim in respect of any ancient enclosed lands etc',²³ and slipped into the third and final version of the Bill in July without notice.

Thomas Francis Kennedy, the commissioner responsible for the New Forest, in making his report to Parliament in 1852, whilst the claims were still being made, and long before the question of settlement, let his thoughts be known. In the course of more than a page in his report he stated 'proceedings seem to be in too early a stage to admit of being reported...' but went on to describe 'the injury inflicted' by turf cutting. He then said 'I should not think it proper at present to anticipate these results' and promptly advised that crown servants had been requested to desist from the practice. He prefaced his next remark with 'It would be premature to state at length the views which I entertain with reference to the whole of the common rights in the New Forest,' and continued 'I consider them to be profitable and truly beneficial to no one...'.²⁴ The following year he added 'there can be 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.'²⁵ Clearly he was out to put pressure on those who were to pass judgement on the claims.

His successor in 1855 reported in a similar vein:

21 G. Lascelles, *Thirty five years in the New Forest* (London, 1915), p. 96.

22 *London Gazette*, 19 September 1851.

23 Deer Removal Act, s. 38.

24 BPP, 30th Report of the Commissioners of Her Majesty's Woods, Forests and Land Revenues, 1852 (34), lv, pp. 75-6.

25 31st Report, p. 153.

... it seems to me that the Commoners are far more deeply interested than the Crown in seeing that improper claims are not allowed. As, however, no objections were preferred by the Commoners to any of the claims, the Crown, as a *precautionary* measure [my italics], put in objections to nearly all, in order that no claim should be allowed without investigation by the Commissioners.²⁶

These claims were so numerous that it became necessary to appoint commissioners to hear the cases and so a further Act was passed in 1854.²⁷

Kennedy was a hardworking and enthusiastic, and in many ways able, commissioner with responsibility for the New Forest. Unfortunately, he was not what we might describe as a 'people person'. He fell out with his employers at the Treasury almost as soon as he arrived which left him with staff problems. He clearly had little respect for the young New Forest Deputy Surveyor Cumberbatch. It was the latter incidentally that wrote the famous letter to him, never intended for publication, which did appear in the Report on Royal Forests in 1854. By 'Inclosing the 16,000 acres' the rights of the Commoners '...would thus be materially diminished, which would be of importance to the Crown...' in the event of enclosure.²⁸

It is evident that Kennedy and others at the Exchequer had thought this through; indeed, it was to be the culmination of decades of work. Kennedy though went further than most. Whereas most people saw disafforestation as allocations between Commoners and Crown he went all the way and advocated compulsory purchase of the whole:

I see great advantages to the Crown, the commoners, and to the public, in a final settlement of the New Forest, by a fair ascertainment of the value of the rights of the commoners, and by the purchase of the whole of those rights on behalf of the Crown.

He duly requested that he should be excused to prepare a bill to effect this, using the services of solicitor to the Royal Forests John Gardiner to inform the process.²⁹

Kennedy's tenure was not to last, for his dealings within his own department caused complaints that resulted in William Gladstone,

26 BPP, 33rd Report of the Commissioners of Her Majesty's Woods, Forests and Land Revenues, 1855 (358), xxix, p. 21.

27 17-18 Vict. c 49, An Act for the Settlement of Claims upon and over the New Forest, 1854.

28 BPP, Report from the Select Committee on Crown Forests, 1854 (377), x, p.123.

29 31st Report, p. 154.

then chancellor, recommending his dismissal, which soon followed.³⁰ Malmesbury, who had been involved in the discussions with the Commissioners prior to the 1851 Act had his own view on Kennedy which he expressed forcibly in parliament:

Mr Kennedy, the late Commissioner, was now gone; and of that gentleman he might say, that he did not belong to either of the categories of official gentlemen described the other day by the noble Lord the Secretary for War, when he said that there were two kinds of men—one round men, fitted for round holes; the other, square men, fitted for square holes; Mr. Kennedy belonged to neither, for he was a three-cornered man—a most decidedly triangular man, and unfitted for any hole whatever...³¹

Even with his removal few thought the game would change only one of the players. After all a centuries old objective is not to be lost because of a foul by one of your players, particularly if you write the rules.

From here the process of adjudicating the claims went smoothly for the Crown. Gardiner later claimed that he objected to every claim and of the total of 1,311 expunged 460 of them and cut down all but a couple of the remainder.³² In the event the results were completed in 1857 and a book encompassing the Register of Claims was published in 1858.

V Pasturage Payments Proposed

The next move came in the spring of 1861 with a Bill for 'The Exercise of the Regulation of Common and other Rights in the New Forest...' which allowed for the return of agisters and compulsory agistment with the addition of a licence for grazing stock in the Fence Month.³³ It also authorised the Verderers to set rules and fines for turf cutting.

By mid May a petition to Parliament objecting to the Bill was circulating the Forest.³⁴ The concerns of the commoners at the

30 J.M. Rigg, 'Kennedy, Thomas Francis (1788–1879)', *Dictionary of National Biography*, <http://www.oxforddnb.com/view/article/15393> (accessed 19 March 2015).

31 House of Lords Debates, 21 May 1855, vol. 138 cc. 827–30.

32 BPP, House of Lords Select Committee Report on the New Forest Deer Removal Act, 1851, 1868 (479), viii, p. 107.

33 BPP, A Bill for the Exercise of Common and other Rights in the New Forest in the County of Southampton, 1861 (90), iii.

34 It was unclear who organised this. *The Times*, 16 May 1861 stated that Lt Col. H. Bathurst presented it to Parliament.

potential further loss of rights if this Bill was carried was evident. They felt that any increase in fees could make their rights valueless.³⁵ In the meantime the larger commoners, or perhaps more correctly lords of adjacent manors with common rights met in London to discuss the matter. Concerns were expressed and amendments were suggested to the Commissioners of Woods who declined to agree them.³⁶ The Bill was not quite as draconian as Kennedy would have wanted but could so easily have paved the way for the removal of the commoners.

The verderers organised a meeting of commoners at the Crown Inn in Lyndhurst in July to debate the subject which Henry Compton chaired. He felt the Bill was to the advantage of the commoners as otherwise there would be frequent drifts of the Forest to remove the cattle of strangers – unofficial commoners – and the overstocking by others. Mr Johns, agent to Mr Morant, one of the larger manorial owners, described his concerns forcibly. He felt the Bill was ‘highly objectionable’ and that its purpose ‘was to lessen, to abridge, and to almost extinguish the rights of the commoners...’ and went on ‘He believed all this tended to an ultimate enclosure of the Forest, and whenever that took place, the smaller the amount to which they could screw down the rights of the commoners, so much more would the Crown have left for themselves.’ Although debate continued for a time and some commoners felt that objection was foolhardy, a resolution was put and carried that the government should be asked to withdraw the offending Bill.³⁷ James Howard, Commissioner of Woods, in agreeing their wish insisted that the Bill was solely for the benefit of the commoners and, as they had objected, it would be dropped and existing laws in connection with the Fence Month would be enforced.³⁸

Next it was the verderers who found themselves the target of the Commissioners of Woods. An order was issued by the verderers that on Monday 8 July the Forest should be driven; i.e. stock removed. Their reasoning was that they were there to protect the interest of the commoners and that the genuine commoner was suffering because of the illegal de-pasturing of stock by strangers. This drift did not happen due to ‘a friend at Lyndhurst and a friend at Court’ according to a Ringwood correspondent in the *Salisbury Journal*. The officers of the Forest were commanded ‘not to aid or assist in driving the Forest in the

35 *Salisbury Journal* [hereafter SJ], 18 May 1861.

36 SJ, 22 June 1861.

37 SJ, 22 June 1861.

38 HA, 29 June 1861.

Fence Month'.³⁹ The friend at Lyndhurst would appear to be Lawrence Cumberbatch, the Deputy Surveyor.

Drifts were originally by permission of the Lord Warden but with the death of the last one, the Duke of Cambridge in 1850, authority passed to the Commissioner of Woods and through him Cumberbatch. The verderers took legal advice as to whether any order they made for a drift of the Forest could be countermanded by the Commissioners. They were disappointed to hear that the Commissioners were now in the driving seat and could even de-pasture cattle in the Forest themselves in the Fence Month as legally there were no rights of common in place in that period.⁴⁰

Commissioner Howard was clearly effectively in total control of the forest. The verderers found themselves without any useful authority. Moreover, public opinion remained decidedly against the commoners. Proposals in the Crown Lands Bill of 1866 to lease rather than licence shooting further attacked their rights. It provoked dissent with a 700-name petition handed to parliament.⁴¹

VI The End of the Beginning

In March 1866 the Commissioners of Woods overplayed their hand and precipitated resistance from landowners. At the first meeting of the Enclosure Commissioners for over a decade they asked for and received agreement to plant over seven and a half thousand acres. This had been obtained as there were unfilled vacancies through death amongst the local magistrates sitting on the Commission.⁴² Charles Castleman, Williams Freeman and notably William Clement Esdaile replaced them in May. The tide, if not receding, was for the first time rebuffed with the introduction of these gentlemen. The Commons Preservation Society, formed in 1865 – now known as the Open Spaces Society – was asking questions about the enclosure of commons and open spaces nationally, recognizing a more-than-economic value to their retention as public spaces.

Two years later in June 1867 New Forest landowners met in London, a meeting which led, the following month, to the formation of the New Forest Association [hereafter the NFA]. Their original intention was to

39 SJ, 20 July 1861.

40 HA, 12 December 1863.

41 *The Times*, 8 June 1866.

42 A.H. Pasmore, *Verderers of the New Forest* (Beaulieu, 1977), p. 13.

obtain the best deal for the commoners – and of course themselves as many were their tenants who benefited from grazing rights.⁴³

William Esdaile was the founding father and lead figure of the Association, working with George Briscoe-Eyre. They had discussed Forest problems a few years earlier on a trip to America. The story from here is better known with the 1868 Select Committee appointed to enquire into the workings of the 1851 Act concluding that the interest of the crown and the commoners must always be at variance.⁴⁴

The Commissioners produced another bill, this time to disafforest the New Forest. It would have left 100 acres for public use if carried onto the statute books. It was fought with a counter bill by the NFA. Both were dropped.⁴⁵ Henry Fawcett the blind one-time Postmaster General who had lived at Britford, near Salisbury and knew the Forest well, moved a motion in Parliament to stop felling. This caused hardship for some. A shovel maker living in Minstead, and reliant on wood for his business, complaining that 'There is no timber cut in the Forest'.⁴⁶ Papers flew back and forth extolling the virtues of the Forest or enclosure. A scheme for a 4,000 acre sewage site was proposed on the Forest on behalf of Southampton Council.⁴⁷ Up to this time the policy of the NFA had been to obtain the best deal for the commoners in the event of disafforestation. That changed now to saving the Forest for all time.

At this point a newsagent's son entered the picture. Mr W.H. Smith was a secretary to the treasury who visited the Forest in the autumn of 1874 at the invitation of Lord Henry Scott. He clearly recognised the benefits of retaining the Forest in some form for the public at large as well as the crown and commoners. From there it was a short step to a further parliamentary enquiry – that of 1875. Although Commissioner Howard did not give up he was out of step with both public opinion and parliament. The 1875 report paved the way for the 1877 New Forest Act upon which the principles of modern Forest management are based.⁴⁸

43 G.A. Jonas, *Some Notes on the First 100 years work of the New Forest Association*, New Forest Association Annual Report (Ringwood, 1967), p. 9.

44 P. Roberts, *Saving the New Forest – The New Forest Association the first 150 Years* (forthcoming, 2016).

45 BPP, A Bill to Disafforest the New Forest, 1871 (81), iv.

46 Brigham Young University HBLL Special Collections, Provo, UT, Manuscript Collection, 1130 HBLL/ MSS 6759 folder 2, Golden letters, 11 November 1872.

47 HA, 10 October 1874.

48 BPP, Report from the Select Committee on New Forest, House of Commons, 1875 (341), xiii.

VII Conclusion

The significance of a locally popular movement in opposition to an Act of Parliament implemented by an unsympathetic administration was well demonstrated. It obtained not just a revision but a reversal of Crown policy. Although it is stated that the Commoners have a long memory it would be interesting to know the lasting social impacts of this bruising battle. Clearly the subsequent Deputy Surveyor, Gerald Lascelles found the situation difficult to handle, as described in his *Thirty five years in the New Forest*.⁴⁹ The battle for Epping Forest must have had similar consequences that might usefully be compared to the case of the New Forest. What is known is that the Crown did not give up its ambitions for the New Forest, for in 1891 the War Department proposed a major Rifle Range in the heart of the area.⁵⁰

49 Lascelles, *Thirty five years in the New Forest*.

50 BPP, Copy of the report of the Honourable T. H. W. Pelham, on the suitability and safety of the rifle range which it is proposed to establish in the New Forest, 1892 (247), lxiv.