



1. In the Matter of the following:-
 - (1) Black Mountain, Ystradoynais Higher,
 - (2) An area formerly known as Limestone Quarry. No. 6 in the Great Forest of Brecknock.
2. Forest Fawr Triangles
3.
 - (1) The Eastern area of the Great Forest of Brecknock
 - (2) An area formerly Limestone Quarry No. 1 in the Great Forest of Brecknock both in the parishes of Senny, Glyn, Grag and Ystradfellte
4. Cribbarth Ystradgynlais Higher (part of the Great Forest of Brecknock)
5. Twyn Disgaylfa, Ystradwynlaid Higher and Glyntawe
6. Tract of land known as Siarelad Ystradfellte

DECISION

This dispute relates to the registrations in the respective Land Rights and Ownership sections of the following Register Units Nos. CL.3, CL.11, CL.50, CL.49, CL.63 and CL.114 in the Register of Common Land and is occasioned by Objections made by the persons claiming through one or more of the several persons whose names are set forth in the Schedule to an Allotment made the 10th day of June 1819 by Henry Bryne and John Cheese by section 5 of an Act passed in the 55th year of the reign of His Majesty King George the Third (Cap CXO). The allotment was made pursuant to other sections of the said Act as amended by the provisions of a later Act passed in the 58th year of the same reign (Cap xclx). The objections are based on a claim that the effect of the said allotment was to vest in the persons named in the said Schedule the land containing by admeasurement 17,106 acres and there in referred to as residue for commonage for an estate in fee simple.

I held a hearing for the purpose of inquiring into the dispute at Brecon on the 10 April 1984.

The hearing was attended by Mr E J Selwyn of Jeffreys and Powell, Solicitors of Brecon appearing for the Black Mountain Graziers Association Allotment Holders and Mr R Smith for the trustees of the South Wales Caving Club both in support of the Objection, Mr K M Haynes, Solicitor for Powys County Council and Mr V J Chapman instructed by Mr R J C Roberts, Solicitor for the Welsh Water Authority both of whom supported the registration.

This particular dispute arises out of an allotment made in 1819 of part of the Great Forest of Brecknock (The Forest) for the benefit of the several persons whose names were set forth in a Schedule to the allotment. The allotment was made by two Commissioners appointed by an Act of Parliament (55 Geo. III c.190) pursuant to powers confirmed on them by that Act (the 1815 Act) as amended by a later Act (the 1818 Act) (58 Geo. III c.99).



At the beginning of the 19th century the Forest covered an area of about 40,000 acres west of the Brecon Beacons. According to Historians the Forest had been set aside initially by the Welsh Kings as a reserve in which they could hunt. Such areas were subject to a Special Forest Law prohibiting hunting by outsiders. The Forest was taken over shortly after the Norman invasion of Britain by one of the followers of William the Conqueror. The Forest came into the Crown Ownership by attainder during the reign of Henry VIII.

Throughout most of this period there existed persons who enjoyed rights of common over the Forest but in the later half of the 18th century the rights of the Commoners were challenged by a claim by the Crown to let cattle from outside the area graze the Forest and to receive payment for such grazing even though such grazing left insufficient pasture for the Commoners own herds. The opposition of the Commoners lead in 1786 to the filing of a suit by the Crown against two of the Commoners to substantiate its claim and the verdict of the Court upheld the Crown's claim.

In 1808 an Act (The 1808 Act) (48 Geo.III c.75) was passed to improve the Land Revenue of the Crown in England and also of His Majesty's Duchy of Lancaster. The chief, if not the only, reason for introducing this legislation appears to have been the cost of the Napoleonic Wars. Section 27 of the 1808 Act specifically provided that the power to sell Crown Lands conferred by the Act should apply to the rights and interest of the Crown in the Great Forest.

In the following year a report commissioned by the Surveyor General recommended the sale of the Crown's Interest in the Great Forest. The appearance of this proposal revived the Commoners' claim to exclusive rights of pasturage over the Forest lands and challenged the right of the Crown to let such pasturage to outsiders. The Crown quickly brought proceedings in the Court of Exchequer against two Yeomen Watkin Lloyd and David Jones, who were prominent in the campaign to defend the Commoners' rights. The claim was for 'Intrusion, Trespass and contriving the Disinherision of the Lord the King'.

The issue of these proceedings united the Commoners and other parties in the same int. A committee was formed headed by the Marquis of Camden and it was resolved to defend action and to raise funds for that purpose.

The proceedings were altimately compromised upon terms that the Crown would abandon i proposal of selling the Forest and would instead proceed by way of inclosure by an Inclosure Act.

The terms for inclosure are contained in the 1815 Act. Briefly the proposals were to divide the Forest equally between the Crown and the Commoners. To achieve this end two Commissioners and two Surveyors were appointed to carry out the work of valuing t land and drawing up a list of Commoners. Each Commoner was to receive an allotment c the land to be allotted to the Commoner proportionate to the value of his dominant tenement to the aggregate value of all the dominant tenements owned by all the Common whose claims were admitted. Land so allotted to an individual Commoner was to be so as practicable adjacent to his tenement. Such land was to be conveyed to the allotte and fenced by him at his own expense. The cost of all the valuations and other administrative work was to be paid for by the sale of Forest land and borne in equal shares by the Crown and the Commoners before division of the balance between them.



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For reasons which do not appear to have been contemplated by those who agreed to the provisions of the 1815 Act, the cost of the work to be carried out by the Commissioners and the Surveyors and the amount of land which had to be sold to meet those costs so far exceeded what had been envisaged that the value of the land to be allotted to individual Commoners would not meet the expense of inclosure and cultivation.

It was therefore decided to abandon the original plan of conveying parts of the Forest to individual Commoners and to replace it with an allotment of the residue of the Forest, after provision for expenses and the Crown's half share, to and amongst the several persons entitled to rights of common to be enjoyed by them in common as thereto for but freed from all Forestal rights. One of the tasks of the Commissioners was to draw up a list of the persons entitled to rights of common over the Forest.

These new arrangements are set out in the 1818 Act. Section 1 expressly revoked away other things that part of the 1815 Act which empowered the Commissioners to divide and allot parts of the residue of the Forest to individual Commoners in proportion to the respective value of their tenements. The new provisions for allotment were set out in Section 12 in these terms.

"And be it further enacted, that all the Rest, Residue and Remainder of the said Lands and grounds by the said Act (the 1815 Act) directed to be divided, allotted and inclosed, shall be and remain open and uninclosed for the benefit of the several other Owners or Proprietors of ancient Messuages, Cottages, inclosed Lands and grounds entitled to Rights of Common in, over and upon the said Lands and grounds, according to their several and respective Rights and Interests therein, freed and discharged from all Forestal Rights, and from all Claims of His Majesty, His Heirs and Successors, and all Persons lawfully claiming under him or them, save and except such Rights and Interests as are hereinafter expressly excepted and reserved to His Majesty, His Heirs and successors' Section 14 extinguished all Rights of Common over the King's Allotment.

The Rights and Interests to be expressly excepted and reserved over the land and grounds referred to in Section 14 which are set out at the end of Section 14 were 'minor to any Mines of Coal, Lead Ores, or any other minerals whatsoever in or under the same Forest or any part thereof; but that His Majesty, His Heirs and Successors, and His or their lessers and grantees, Agents, Servants, and Workmen, may search for, raise and carry away all Coal, Lead Ores, Metals, and all other minerals whatsoever, as if this Act had not been passed".

The award made pursuant to the 1818 Act was dated 10 June 1819 and contained a Schedule setting out the names of 542 claimants whose right to be Commoners had been established to the satisfaction of the Commissioners and the Properties for which the respective claims had been made. This Schedule is reprinted as pp. xxxix-lix of a History of the Great Forest of Brecknock by John Lloyd published in 1905 with the addition of a column containing the names and residences of the owners in 1905 of each property appearing in the Schedule to the Award, so far as was then known.



The area allotted to the Crown was 13,860 acres and the area allotted to the Commoners described in the Award as 'Residue for Commonage' was 17,106 acres and the wording of the operative part of the award to the Commoners followed verbatim that contained in Section 12 of the 1818 Act.

In view of the complexity of the claims and the number of individual claimants I held a hearing for the purpose of working out the most expeditious procedure for settling the dispute and as the question whether the allotment made by the Commissioners in their award had transferred to the persons named in the Schedule any interest in the fee simple in the land set aside as the 'Commoners' share seemed fundamental it was agreed that I should deal with this question as a preliminary issue and consideration of the hearing of other disputes should be deferred until after the time for appealing against my decision had expired or the final determination of any appeal against my decision.

Mr Selwyn took me through the relevant provisions of the 1808 Act, the 1815 Act, the 1818 Act and the Allotment. The history of the origins and development of the Forest are to be found in the History of 'The Great Forest of Brecknock' by John Lloyd a Barrister, which was published in 1905.

Mr Smith said that he was a Trustee for the Caving Club of two cottages built on the land which had been allotted to the Crown and the Club claimed to have rights in one or more of the Quarries referred to in the Allotment. He referred to S. 41 of an Act passed in 1801 as an earlier example of the wording of S.18 of the 1818 Act. Mr Haynes submitted that S.34 of the 1815 Act showed that the Crown accepted that before 1815 the Crown accepted that there were persons having rights of common over the Forest.

S.50 of the 1815 Act was not repeated in the 1818 Act. The preamble to the 1818 Act expressly repeals the power of the Commissioners to divide land between individual commoners in proportion to the value of the respective hereditaments ie. the dominant tenements.

The wording of S.79 of the 1815 Act is different from the corresponding provision in the 1818 Act, the promise at the end of S.17.

It is clear from a reading of the 1818 Act that the proposal contained in the 1815 Act of conveying a part of the Commoners' share of the Forest to an individual commoner to be his own property free from any rights of third parties other than those specifically reserved to the Crown had been abandoned in favour of a scheme under which those Commoners whose names appeared in the Schedule were to enjoy the same rights of common over the Commoners' share as they had previously enjoyed over the whole of the Forest.

The wording of the operative part of the Award to the Commoners in the passage on p. xxvii "do hereby award and determine...several names in the said schedule" and in the second paragraph on the following page are in contrast to the words in the second paragraph on p. xxviii which deals with those allotments which have been sold.

Mr Chapman said that the Welsh Water Authority had been registered in the Ownership Section of CL.3 and CL.11 and claimed to be the owners of CL.49. The only objection to the two registrations came from Mr Selwyn's clients.



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It was agreed between his client and Mr Selwyn's client that before 1818 ownership of the soil of the Forest was vested in the Crown. The freehold title to the soil had devolved from the Crown to the Water Authority in so far as the 1818 Act did not vest the soil in Mr Selwyn's clients.

Mr Chapman referred to S.27 of the 1808 Act and S.12 of the 1818 Act. He also pointed out that both the 1815 Act and the 1818 Act had been repealed in 1971, though he did not claim that this was relevant to the question for decision. Mr Selwyn in reply observed that ownership of the soil was nowhere mentioned in the Acts and referred to SS.32 and 34 of the 1815 Act.

At the conclusion of the preamble to the 1818 Act, the new proposals relating to the moiety other than the King's moiety are stated as follows 'to allot....the other moiety thereof to and among the several Persons entitled to Rights of Common, to be enjoyed by them in common as heretofore or in each manner and under such Rules and Regulations as hereinafter mentioned; but freed from all Forestal Rights'. This passage is followed by a specific repeal of those parts of the 1815 Act which empowered the Commissioners to divide and allot the residue of the Forest after providing for the King's allotment among individual commoners and to direct the fencing off of the parts so allotted.

Sections XII and XIII of the 1818 Act emphasise that the land is to remain uninclosed with power for a Commissioner to make regulations limiting the amount of stock that can be grazed. The only change was that the land would be free of Forestal Rights.

In my view the ownership of the soil of the Forest was in the Crown before the allotments directed by the Act of 1818 were made and that ownership continued after the allotments had been made. Neither the allotment made by the Commissioners nor anything else done by them in pursuance of the 1818 Act had the effect of transferring the ownership of any part of the ownership of the soil of that part of the Forest which was allotted to the Commoners share away from the Crown.

I therefore declare that the award made on 12 June 1819 by Henry de Bruyn and John Cheese did not convey to the persons named in the Schedule thereto any freehold estate in the 17,106 acres of open and uninclosed lands of the Forest therein referred to as 'Residue for Commonage' but merely defined the area of the Forest over which such persons would hereafter enjoy such rights of common as they had previously enjoyed over the whole Forest but free from all Forestal Rights.

I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

14th

day of

July

1984

Commons Commissioner