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The Customs of the Forest of Dean

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THE CUSTOMS OF THE FOREST OF DEAN.

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IN submitting to your notice a few observations on the history of Forest of Dean and its inhabitants, I must ask you to understand that I cannot lay claim to any original research, and I would refer those of you who desire to gain more detailed information on the locality to the valuable papers contributed by the late Sir John Maclean to the records of the Gloucestershire Society, and which are to be found in the earlier volumes of their transactions. Nicholls' History and Wood's Laws of the Forest of Dean may also be studied with advantage, and "A Week's Holiday in the Forest," by the late John Bellows may prove of service to any who may be tempted to explore the district at any future time. It is certainly a district which, for charm of scenery, is equalled by few, and affords to the student of forestry, the lover of nature, or the searcher after health as many opportunities of obtaining what he desires as are to be found in other better-known and more widely advertised localities.

It is impossible within the limits of a short paper to attempt to deal with more than one or two points, and I propose, therefore, this afternoon only to say something to you first about the Forest Laws, and secondly about that peculiar race of men, the Freeminers of the Forest.

The Forest as it exists to-day comprises an area of about 22,000 acres, lying between the Severn and the Wye, and having on its southern and northern boundaries a considerable quantity of woodlands in private ownership. Nor is it very materially less than in the days of Edward III. In the reign of Henry II. it was reputed to extend to the gates of Gloucester, meaning thereby that the whole

area between the Severn and the Wye up to Goodrich, and thence to Newent and Gloucester, was under Forest Law, but there is good reason for believing that at the time of the Conquest the eastern and southern boundaries were very much as they are now, and that the large accretions which were made were carried out by the Conqueror and his immediate descendants.¹

The passion of the Norman kings for the chase carried them to great lengths in this matter, and the preservation of the deer was their principal and, indeed, only concern. John Manwood, writing in the seventeenth century, stated:—"There doth grow unto the King by a Forest these two benefits—first, the plenty and increase of deer, as well for the provision of venison for the King's Court as also for the princely delight and pleasure of the King to hunt for his recreation, when his Grace is wearied with the burden of cares in matters of the commonwealth; secondly the great woods and timber trees as well of his subjects as of his own demesne woods being within the Forest are most especially preserved thereby, to be in readiness when the King shall have need of them, which otherwise would be cut down and destroyed."² But this regard for the preservation of the timber was an after-thought, born in Elizabethan times, and had no place in the mind of the Conqueror or his sons. For them the vert was only of service for the protection of the venison, and the constant enlargements of Forest areas made by every king up to the days of John was a continual source of dispute between the monarch and his subjects, and a grievance by which the latter were acutely affected. To quote Manwood again: "It is plainly showed that the King then might and yet may also make a Forest in every place where he pleaseth as well in the lands and inheritance of any of his subjects as in his own Demesne Lands and Inheritance which was a great loss and hindrance to those that were owners of those lands, which were so afforested.

¹ See Taylor, *Domesday Survey of Gloucestershire*, p. 26.

² Manwood's *Forest Law*, p. 70.

For after the same was so afforested, their pastures and profits of their lands was devoured by the wilde beasts of the King without any recompence for the same to be made unto them. And this law of afforesting of the lands and inheritance of other men did then so dayly increase, that the same was thought a very extream heavy burden, as wel unto noblemen and gentlemen, as also unto the poor Commonalty of this Realm to bear : for that they might not enclose their land nor improve the same to their best profit . . . but they were forced to suffer their said lands afforested to lie open and not enclosed. And if any of them did chance to offend against the Assizes or Laws of the Forest the punishment was very great for a small offence : and the forfeitures for the same according to the will and pleasure of the King and not according to the quantity of the trespass, nor yet according to the course of the Common Law of this Realm.

And this law did continue during the life of King Henry the second and after his decease the same continued likewise during the reign of King Richard the first. And then after his decease likewise during the reign of King John. And every one of the said kings did dayly increase and make more new Forests and more in the lands of their subjects, to the great hindrance and impoverishing of their subjects.”

Advantage was therefore taken of the feebleness and youth of Henry III. to pass the “*Charta de Foresta*,” which enacted that all woods other than the demesne woods of the Crown which had been made Forest by Richard and John should be forthwith disafforested. All forests made by Henry II. were to be viewed, and if forest had been made of any other wood than the demesne “whereby the owner of the wood hath hurt,” it was likewise to be disafforested. Freeholders were to have their woods as they had been at the Coronation of Henry II. The Swainmote Court was only to be held three times in any year. Those living outside the Forest were not to be summoned before the Justices of the Forest, unless impleaded there or as sureties for someone attached for breach of Forest Law. No man was henceforth to lose life or limb for killing deer, but was to

pay a fine or suffer imprisonment for a year and a day for the first offence, and for a second offence to be outlawed. Impositions of the Foresters were to be restrained, and no constable or bailiff was to hold pleas of the Forest; but the Foresters were to attach those trespassing and present them to the Verderers, by whom attachments were to be enrolled and presented to the Chief Justices of the Forest.

These enactments, which were afterwards amplified by the Assize and Customs of the Forest to Edward I. marked a great advance; but it was many years, and many perambulations were made, before the exact limits of the Forest were finally decided. Fosbrooke relates an instance in 1639 where at a Justice Seat a case was tried as to whether the perambulations of the Forest of Dean made in the years 12th Henry III., and 10th Edward I., or the perambulations of the 28th Edward I. represented the true limits of the Forest. The jury in that case gave a verdict that the earlier and larger perambulations were the correct ones.¹ No change was made by the Charter in the officers of the Forest. These were for the most part ministerial, and had been created by a Statute attributed to Canute in the eleventh century. Of these, the occupations of Foresters, Woodward, Regardor, Agistor and Bailiffs are sufficiently denoted by their names; but it may be of interest to say something about the Verderers, who were and are judicial officers "Chosen by the King's writ in the full county of the same shire within which the Forest is, and sworn to keep the Assizes or Laws of the Forest, and also to view, receive and enroll the Attachments and Presentments of all Manner of trespasses of the Forest, of Vert and of Venison." There were to be four of them in every Forest who ought to be "esquires, gentlemen of good account, ability and living, which are wise and discreet men, and well learned in the

¹ Fosbrooke, *Hist. of Gloucestershire*, vol. 1, p. 94. See also *3d. Rep. of the Commissioners of Woods and Forests*, App., where the date is given as 1634.

Laws of the Forest." Their oath further enjoined them to "deal indifferently with all the King's liege people," and to do equal right and justice both to the poor and to the rich, and not to oppress any person for any reward, favour or malice. It will thus be seen that by virtue of their office the Verderers stood between the Crown and the people, and being, as they still are, elected by vote of the freeholders of the county, they were equally responsible both for the protection of the vert and venison, and for the prevention of illegal exactions or impositions of the ministerial officers. They presided over the Courts of Swainmote and Attachments, the former of which was held three times a year, and was the Court of the Freeholders within the Forest, at which attended all those who owed suit and service, and at which presentments were made by a jury of any encroachments within the Forest. The Court of Attachments was held every forty days, and it dealt principally with offences against the vert or the venison, though it would seem that presentments might also there be made by the Foresters as to forfeitures, assarts or waste committed within the Forest, which would be received and adjourned to the next Swainmote Court, when the matter would be dealt with.¹ All the proceedings in the Verderers' Court were enrolled and presented to the Justices of the Forest, of whom there were two—one for the north and the other for the south of the Trent. Their Courts were usually held once in three years.

The Forest, which was a favourite hunting ground of the earlier Kings, ceased to be frequently visited after the reign of John. Of the five beasts of the Forest, the wolf had disappeared at a very early date; the wild boar followed, probably in the thirteenth or fourteenth century; the hart and hind remained until about the middle of the nineteenth century, when they were destroyed on account of the incessant trouble with deer-stealers and poachers;

¹ Manwood, pp. 441-2.

whilst the hare alone still exists. It was not until Tudor times that the value of the oak timber for naval purposes and as a national asset came to be recognised. Tradition, which is probably false, asserts that the leaders of the Spanish Armada had orders to destroy the Forest of Dean, but there is better authority for saying that Drake visited the Forest to choose trees suitable for shipbuilding; and the house at which he resided at Gatcombe, a little hamlet on the Severn, called Drake's House, can still be pointed out.¹ In 1638, a survey was made of the wood, timber and soil of the Forest, when it appeared that there were 105,557 trees, containing 61,928 tons of timber and 153,209 cords of wood. An entire sale was shortly afterwards made to Sir John Wintour, of Lydney, which caused considerable dissatisfaction in the district, as only 4,000 acres were reserved for the commoners, whilst 18,000 acres were disafforested. In 1656, the grant was declared void, and measures were taken during the Commonwealth to preserve and improve the woods. On the restoration of Charles II., however, the grant again came into force, and Sir John began to renew his enclosures; but meeting with great opposition, and representations having been made to the Government, a Commission was appointed to inquire into the state of the Forest. It was then found that there were 25,929 oaks and 4,204 beeches, 30,133 trees in all. On the return of this Commission further negotiations were entered into with Sir John Wintour, who surrendered his grant, and a new grant issued to two nominees of his of all trees growing in the forest except 11,335 tons of ship-timber fit for the navy. This new grant was followed by consequences so destructive to the Forest that complaint was made to the House of Commons, and a stop was put to any further cutting of timber. In 1667, a fresh survey was made, when it was found that out of the 30,133 trees only 200 remained, and of the 11,335 tons, reserved for the navy,

¹ Nicholls, *History of Forest of Dean*, p. 22.

not more than 1,100 tons had been delivered. An Act of Parliament was, therefore, passed in 1668 annulling all previous grants concerning the disafforesting of the Forest, and directing the enclosure within the next two years of 11,000 acres to be set apart for the growth and preservation of timber, and giving power to take in further areas on an equal amount of land being thrown open and set free for commonage whenever the wood should have grown to such a size as to be free from danger of browsing by deer or cattle. The deer of all kinds were to be restricted to a maximum of 800.¹

A period of considerable activity followed ; 8,487 acres were enclosed forthwith, and the remaining 2,513 acres some little time later.² The whole of the forest was divided into six walks or districts, and a keeper's lodge was erected on each. The Speech House, which since its erection has been the general place of meeting for Verderers' Courts and all other matters connected with the forest, was also built ; encroachments were checked, and for a time much improvement to the woodland resulted. This did not, however, last very long ; abuses gradually crept in ; administration became lax, and when the Commissioners of Woods made their report in 1788 the woodland was in a very neglected state.³ Many of the fences of the enclosures had been either thrown down or suffered to decay ; encroachments had again multiplied, and the Commissioners found that not only had a considerable pecuniary loss accrued to the State, but that the supply of timber for the navy was totally insufficient, and that what supply there was was becoming every year more precarious and uncertain. They made several recommendations, but no legislation followed until 1808, when an Act was passed explanatory of the Act of Charles II., and *inter alia* making the offence

¹ 20 Chas. II, c. 8. See Wood's *Laws of Dean Forest*, p. 25.

² Nicholls, p. 46.

³ 3rd Report of Commissioners of Woods and Forests, *passim*.

of wilfully destroying or breaking down any of the fences of the enclosures punishable with a £10 penalty on the first occasion, £20 on the second, and on the third a felony punishable with transportation for seven years, or fine or imprisonment. By the end of the Napoleonic War the forest had been almost entirely denuded of its oak timber, but there was a good deal of replanting during the earlier part of the nineteenth century, although nothing like 11,000 acres were enclosed at one time. Then again followed a period when little was done, but since 1900, under the past and present surveyors, considerable enclosures have been made and planted, principally with larch, Douglas fir, and other coniferous trees. A school of forestry has been instituted, and the forest bids fair to occupy in the future a leading position in all that pertains to the growth and management of timber and the science of forestry.

Both coal and iron ore are to be found in the Forest. The latter was worked by the Romans, who, no doubt employed the native inhabitants to work for them, and it is probable that after their departure iron still continued to be obtained. William the Conqueror, at any rate, laid a yearly charge upon the city of Gloucester to furnish him with iron, and in the time of Henry III. regulations were made restraining the number of "forgiæ errantes" or itinerant forges in the Forest. In 1282, these were, however, reported to be upwards of 72 in number, and much trouble was occasioned by the demands of the miners to cut timber both for charcoal and for use in their workings. One of the best-known instances of this was the right given to the abbots of Flaxley to cut two oaks weekly for their forge, which was so destructive to the Forest that it was commuted for a grant in lieu of 872 acres of woodland which became thereafter known as Abbots' Wood, and the Crown gradually adopted the principle of licensing all the forges or of letting them out to

farm. In 1612 a grant was made to the Earl of Pembroke of the sole liberty to dig for mine ore, cinders (*i.e.*, the refuse cinders left in the old Roman workings), stone, and seacoal, and forbidding anyone else to take or carry out of the Forest timber, ore, or cinders, without his consent, save such timber as might be required for His Majesty's shipping. In 1635 a survey was made of the ironworks in the Forest by Mr. Wyrral. Iron-mining continued during the seventeenth and eighteenth centuries, but gradually declined in the nineteenth until it is at the present day non-existent, except for the attempt being made by Capt. Pringle to re-open the Wigpool workings.

I have laid some little stress upon the iron-mining, because in considering the rights and privileges of the free-miners there is in many people's minds an idea that they related to and were obtained by the coal-miners, whereas, as a matter of history, the coal-miners occupied a very subsidiary position until the discovery of the steam-engine brought coal into prominence as a cheap and certain method of obtaining power. Indeed, in these days, when a stoppage in the coal industry produces such wide and calamitous effects, it is worth while reflecting for how short a time in the history of the world coal has been of first-rate importance, and how very improbable it is that the strangle hold which it now possesses over the other industries of the country will be of any long duration. Be that as it may, there is little mention made until the sixteenth century of sea-coal, as it was then commonly called, and such workings as there were were of the most primitive description, and only dealt with the outcrop or such veins as were easily reached by shallow workings. A brass in Newland Church of the 15th century depicts a miner—undoubtedly an iron-miner—clad in almost the identical dress and furnished with the same candle holder stuck in his mouth as the iron-miners were accustomed to wear to the middle of the last century. The coal-

mines were worked throughout the seventeenth and eighteenth centuries, and were governed for a considerable time by the orders of the Mine Law Court which sat at fairly frequent, though irregular, intervals between 1663 and 1754, and which contributed materially to the good order and management of the various gales and workings for coal within the Forest. The Mine Law Court was of very ancient origin. It claimed to have sole jurisdiction over all matters pertaining to miners in the Forest. It was held before the Constable at the Castle of St. Briavels. No person was to be present save the Constable and his clerk, the Gaveller, the parties to the dispute, and the miners who formed the jury. In the first place the latter were 12 in number; an appeal then lay to 24, and then to the full court of 48, whose decision was final. No person might appear to plead for either party; and the miners of the jury held a stick of holly upon which the witness put his hand and swore on his faith as to the truth of his statements. After 1754 its orders ceased and disputes became frequent between the "Freeminers" who claimed the sole right to dig for coal, and "foreigners" as they were then called, to whom grants or licenses had been issued. These disputes culminated in a riot in 1831, which led to the passing of the Dean Forest Commission Act of the same year, by which Commissioners were appointed to inquire into the claims and privileges of the Freeminers.

These Commissioners having taken evidence presented a report in 1835¹ which is to be found fully set out in Wood's *Laws of Dean Forest*, p. 88, and of which the following is an abridgment:—

They find that the origin of the rights and privileges of the Freeminers is involved in obscurity and they cannot upon search find anything which enables them to refer to it with certainty.

¹ *Fourth Rep. of D. F. Commn. of 1831.*

They refer to the working of the ironmines by the Romans and say that it is not clear whether coal was also used by them.

The sea-coal mine is, however, mentioned in the book of the *Laws and Customs of the Miners of the Forest of Dean*, printed by William Cooper at the Pelican in Little Britain in 1687 (of which, according to Nicholls¹, a manuscript copy dated 1673 was preserved in the office of the Deputy Gaveller, and which is prefaced by an introduction commencing—"Bee itt in minde and Remembrance what y^e Customes and Franchises hath been that were granted tyme out of Minde, and after in tyme of the Excellent and redoubted Prince, King Edward, unto the Miners of the Forrest of Deane and the Castle of St. Briavells"). There is some dispute as to whether King Edward referred to was the First or Third, but it must be taken that the customs existed before and at the time of the latter Monarch. An express reservation of the rights and privileges of the miners is made by the 12th section of the Statute, 20 Chas. II, c. 3, and the office of Gaveller appears to be consistent rather with a right in the miners to some enjoyment of the mines under the Crown, than with their being employed as labourers or servants.²

The qualification for a Freeminer is considered to be that the person should be born within the Hundred of St. Briavels, should work in one of the mines for a year and a day, and should abide within the Hundred. It is, however, insisted upon by many of the miners that in addition he should be the son of a free father. Every Freeminer duly qualified claims the right to demand of the Gaveller a gale, *i.e.* a spot of ground

¹ Nicholls, *Hist. of Forest of Dean*, p. 13.

² The area over which the Freeminers claimed their rights is given to be "Between Chepstowe Bridge and Gloucester Bridge, the halfe deale of Newent, Rosse Ash, Monmouth Bridge, and soe farr in the Seassoames as the blast of a horne or the voice of a man may bee heard."—*Laws and Customs of the Miners*, c. 1.

chosen by himself for sinking a mine, and this, provided that it does not interfere with the works of any other mine, the Gaveller considers himself as obliged to give, receiving a fee of five shillings and inserting the name of the Freeminer in the gale-book. The limit of interfering with other works has from time to time been altered, but at the present time appears to be in respect to levels at the distance of 1,000 yards to the land-side and with respect to pits to a radius of 12 yards from the centre of the pit.

Possession is given with the following ceremonies: The Gaveller cuts a stick and, asking the applicant how many verna or partners he has, cuts a notch for every partner and one for the King. A turf is then cut, the stick forked down, the turf put over it, and the applicant is then supposed to be in full possession. The Freeminer is compelled to proceed with the work by working one day in the following year and a day in each subsequent year and a day, under pain of the forfeiture of the gale, and to pay an annual sum of two guineas for each vein of coal he intends to work until he gets at the coal, after which the Gaveller agrees with him as to the composition or royalty to be paid to the King in lieu of his fifth, the King having the right to put in a fifth man if an agreement is not arrived at.

The right to the gale is considered by the miners to carry with it the right to claim timber for the use of their works. This appears to be confined to offal and soft wood, but those using the railroad are prohibited by statute from claiming any timber. The Freeminers further claim to have the right to have land galed to them not only in the open lands of the Forest, but also in all enclosed lands except churchyards, gardens and orchards, and except in such enclosures as have been made by the Crown under the Statute 48th George III.

The Commissioners found that certain rights and privi-

leges of Freeminers for working the Forest mines by custom exist; that such rights and privileges were originally personal; that strict custom required that the mines should be worked by companies of four persons called verns or partners, the King being considered as a fifth, and that all verns were required to be Freeminers and were to be assisted only in their work by their sons or apprentices; and that the introduction of engines under license from the Crown was an inroad upon custom. By the greater outlay of capital which has taken place under this new system the custom of working by partners and apprentices has been nearly abolished, and has been succeeded by the practice of working the mines by hired labourers. The Commissioners also found that the Freeminers, since the abolition of the Mine Law Court, had leased, sold, or mortgaged the works under their gales to "foreigners," and the Freeminers had, in certain instances, been employed by "foreigners" to get gales granted to themselves in order to transfer them at once to such "foreigners." They considered these practices illegal and that "foreigners" had exercised the rights and privileges of Freeminers contrary to ancient custom.

Shortly following the publication of this report, viz. in 1838, the Dean Forest Mines Act was passed, which, after reciting that the Crown is seized of the soil, timber, mines, and minerals in the forest subject to certain rights of common and further is or claims to be seized of all other mines and minerals within or under any part of the lands of the Hundred of St. Briavels except such mines or minerals as may have been granted out to any subject and not since reverted to the Crown, and further reciting the claims of the Freeminers to open mines and quarries within the open lands of the Forest or within the Hundred, and further that these alleged usages and claims are uncertain

and undefined, and require to be regulated and amended, appoints certain commissioners to carry the act into effect, and enacts that all male persons born or hereafter to be born in the Hundred and abiding within the Hundred of St. Briavels of the age of 21 years and upwards who shall have worked a year and a day in a coal or iron-mine within the said Hundred shall be deemed and taken to be Freemen for the purposes of the Act.

Quarrymen with the same qualifications, who shall have worked a year and a day in a stone-quarry are also to be taken as Freemen so far as stone-quarries within the open lands of the forest are concerned. A register of Freemen is to be made and the names and residences of those claiming to be Freemen entered therein subject to the right of the Gaveller to have satisfactory evidence produced to him by those claiming. No person is to be deemed to be a Freeman who is not so registered.

Freemen duly registered are to have the exclusive right of having gales or works granted to them to open mines within the Hundred, or to have gales or leases of quarries within the Forest, and they are to be permitted to sell, transfer, assign or dispose of such gales when assigned either to each other or to any other person, but that a quarryman registered as a Freeman on that account cannot have a gale made to him of any mine, though a Freeman registered as a miner may have a gale of a quarry granted to him.

Sales of gales granted previous to the passing of the Act are confirmed: royalties are to be fixed and future rents determined in lieu of the right of the Crown to put in a fifth man: grants of gales are to be entered in the Gavel-ler's books and assignments also. No Freeman is to have more than three gales granted him at any one time, and no gales are to be granted within the enclosed lands set apart for the growing of timber: gales are to be granted in order of application and where there is more than one

application on the same day for the same gale the matter is to be decided by lot.¹

This Act which constitutes the Charter of the Freeminers was afterwards amplified by the Dean Forest Amendment Act 1861, particularly as to the registration², transfer and surrender of gales and further by the Dean Forest Mines Act 1904, which provided for the amalgamation of gales in order as is stated in the preamble to facilitate the opening and working of certain of the lower series of coal seams.³

Such are the rights and privileges of the Freeminers of the Forest of Dean, based upon immemorial custom, and, since 1838, confirmed by statute. It is interesting in these days when so much is said about the nationalisation of the coal industry to note that here at any rate is a coal-field in which the soil and the minerals are in possession of the State, and the right to dig for coal is exclusively in the hands of those who are by occupation miners. The capitalist only intervenes because without him—or at any rate without the capital which he supplies—the right of the Freeminers to dig for coal where deep pits and expensive machinery are required is practically worthless. It would seem to be a pity that in the recent dispute the Freeminers, in distinction from the general body of miners, gave no lead or took collectively no action in a matter which is of vital importance to themselves, and is bound to have very far-reaching effects upon the mining industry in the Forest.

Those who travel in the Forest will find the Forester a very interesting problem. He still retains many traces of his ancient race, and is of a type entirely distinct from those who dwell on the Cotswold hills or in the Vale of Gloucester, and although there has been, during

¹ SS. 14, 15, 23, 40, 41, 44, 57, 58, 60, 61, 64.

² 24 and 25 Vic., c. 40.

³ 4 Ed. vii, c. 156.

the last hundred years, a strong infusion of "foreign blood," particularly Welsh, he remains with strong characteristics, shrewd, humorous, and kindly, intensely devoted to his own country and birth-place, and exceedingly loyal to those in whom he trusts. Whether as miner, woodman, agriculturist, or fisherman, nothing connected with rural life or rural pursuits comes amiss to him, and in his own special occupation of mining he is equalled by few and excelled by none of other districts. Although the outlook for the coalfield is for the moment dark, you will, I am sure, with me wish him prosperity and a long life to those privileges which he so highly prizes and which are of such ancient origin.