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A Treatise of the laws of the forest

Manwood, John

London, 1665

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Chap. X.

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assartare enim est densas silvas eradicare, & in culturam redigere; soz to assart (saith he) is to root up thick woods, and to bring the same to tillage: so by this appeareth that the woꝝd Assart is to destroy any covert by the rooting up of the same, to make it to continue a plain: The French woꝝd that is now in use soz this matter, is Aracher, which is eradicare, oꝝ eruncare. In the Register in the Writ of Ad quod dampnum, there the woꝝd is Assertare, not Assartare, as Budæus useth the same.

CHAP. X.

1. Of Purprestures of the Forest.
2. What shall be said to be Purprestures within the Forest.
3. How many sorts of Purprestures there are.
4. What forfeiture or punishment there doth grow to him that doth commit Purpresture within the demesne Woods or lands of the King.
5. What forfeiture or punishment there doth grow to him that doth commit Purpresture within his own woods or lands.
6. Whereof the same taketh the name of Purpresture.
7. What difference there is between Waste, Assart, and Purpresture.

1. Of Purprestures of the Forest.

Purpresture in a forest is a trespassse so hurtful and offensive to the Wert and Menison of the same, that if there were not certain sharp Lawes to inhibit it, and also to punish the offenders therein, soz example sake, forests would in short time decay, and be

no forests, by reason of Purprestures only: For as a Waste of the forest is a mean to decay the same, by cutting down of the woods & covert; And an Aflarr, by destroying of woods, and converting the land of the soil into tillage; so a Purpresture is likewise another special means to decay a forest, by building and new erecting of houses and other inclosures therein: for if it were lawfull for every man that is an inheritor of lands or tenements within a forest, to build and erect houses upon the same at his will and pleasure, then every forest would in short time become so populous, and so full of people, and houses, that the wild beasts of the forest could not have any abode or being within any forest, by reason of the multitude of people and houses there: For as the first forests were made in places that were not inhabited with people, and then afterwards by the Kings especial license and favour, some few men were admitted to dwell and inhabit in forests, and so by little and little, in time, forests became populous: But yet by license of the King only, or by his sufferance.

We may read of some Kings of this land, that when they made forests, they did pull down both houses and Churches that were within the same, and so thereby caused an utter depopulation of that place, for the quiet of the wild beasts: Then much more, if by the Lawes of this Realm Kings and Princes may pull down Houses and Churches that are already builded, to make forests in such places where they please to have forests; They may, by the same Lawes, restrain and forbid all inhabitants, and all those that have lands or woods within forests (that have been antient forests along time) to new erect or build any more houses or buildings than are already builded there, without especial license of the King or his Justice in Charge: For new erections and increasing of dwelling houses within forests, are;

1. Ad terrorem ferarum, for that the sight of many houses in a forest is a terror to the wild beasts of the forest.
2. Ad nocumentum Forestæ, for that the pestring of the forest with many houses is noisome to the forest: for that the people and inhabitants will daily destroy and spoil the best thereof.
3. Ad superonerationem Forestæ, for that by reason of many houses the forest must needs be surcharged with many cattel.
4. Ad exilationem ferarum Forestæ, for that the multitude of people and their dogs do cause the exile of the wild beasts from the forest.

Then therefore, what can there be in a forest that may more decay or hurt a forest then Purprestures? and the permission and sufferance of one purpresture in a forest doth cause many more purprestures to be made, by reason of that one: and therefore in the good government, and care of preserving of forests, there must be great regard had therein for the avoiding of purprestures, lest that by the tolleration and permission of purprestures the forests be soon spoiled and decayed. But now, before that I do speak any more of purprestures, it is necessary to declare, what a Purpresture of the forest is.

2: What is a Purpresture within the Forest.

And therefore you shall understand, that a Purpresture of the forest is most properly, whereas any man doth make any manner of encroachment upon the Kings forest, be it in building, inclosure, or by using of any liberty or privilege, without lawful warrant so to do, that is called a Purpresture of the forest. And in Libro rubro Scaccarii, titulo Accidentibus, ita est: scilicet,

In libro Scaccarii, in titulo de Accidentibus.

Quod purprestura fit interdum per negligentiam Vicecomitis, vel ministrorum regis, vel per continuationem in longa tempora, vel bellicam tempestatem, ut qui habitant propè fundum Coronæ, vel adjacent, aliquam eorundem portionem sibi usurpant, & suis portionibus ascribant: Cum autem per Iustrantes Judices per Sacramentum legitimorum virorum compertum fuerit, appretiantur, & Vicecomiti traduntur, unde seorsim respondeat, & hanc dicimus purpresturam, vel occupationem injustam: which in English is thus, In the Red Book of the Exchequer, in the title de Accidentibus, it is written, That purpresture is sometime made by the negligence of the Sheriff, or by the negligence of the Kings Officers or Ministers of the forest; so that by long continuance of time, or by war, those that do dwell neer to any land of the Crown, or that are adjoyning to the Kings land, do unjustly take any porttion thereof from the King, and do adde the same to their own land: But when this matter is found out by the diligent examination of the Judges, and by the oath of good and lawfull men, then those purprestures or lands that were so taken from the King, shall be apprysed and delibered unto the Sheriff again, whereof he shall specially answer unto the King. And this we call a purpresture, or the wrongfull occupation of the land of another man. And although that this place doth rather seem to probe what is a purpresture by the Common Law, then by the Forest Law, yet hereby it is plainly proved, that to make any incroachment upon the King without warrant or good title, is a purpresture by the Common Law, and eben so it is by the Forest Law, And Master Heker saith, That if any man take or incroach unto himself any thing that he hath no right unto, that is a purpresture. But it is thought that those words of Master Heker in that place are a little too general: For the taking

the plea or handling of this matter doth appertain unto the Crown of our Sovereign Lord the King. And so by this you may perfectly discern and know, what by the Law is or shall be accompted, or taken for a Purpresture.

Assisa Lanca-
striz, an. 12. E. 3.
fol. 6.

And in the Assises of Lancaster, in anno duodecimo of Edward the Third, it was there adjudged, in the general Eyre of the forest, that the Assises of the forest are, that no man may inclose any ground within the Forest, ad nocumentum ferarum: And that if a man do make any such new inclosures in any land within the Forest, that the same is a purpresture of the Forest. And that if any man have a license to inclose any ground within the Forest, he may not inclose the same, cum alta haya & fossato, nec cum alio pallatio: for if he do, that is contra assisam forestiz.

Ass. Lancastr. an.
12. E. 3. f. 6.

And it was there also adjudged, that if a man do build any house within the Forest without license, although that the same be within his own free land, the same is a Purpresture of the Forest: And the judgement of Purpresture is there set down to be this, Quod ipse in misericordia, & quod clausum prædictum profernatur. And if he that doth make Purpresture, do grant over his land wherein the Purpresture is made, both he and the Grantee shall be amerced for the same.

And note, that it appeareth by the claim of the Ab- of Merival, in anno 12. Edward the Third, in the Assises of Pickring and Lancaster, that within the Regard of any Forest, no man may build any houses or barkaries.

Ass. Lanc. fol. 9.
an. 12. E. 3.

And it was also there adjudged, in the case of the Pri- or of Lancaster, that no man may build any new houses or barkaries within the Forest, nor use Tillage in any new grounds that have not been used to be put to Tillage before, without especial license so to do.

And

And also it appeareth there in the same Assises by a claim made by the Prior and Convent of Beriball, that no man may make any buildings within the Forests, (except he have good warrant from the King, or from the Lord of the Forest, so to do,) for the Abbot, in the case aforesaid, made his claim by grant, that he might make *omnimodum commodum suum infra Forestam, sine assartando, & sine edificando, modis omnibus*: But by this it appeareth, by his grant, that to assart, and to make any purprestures of the Forest, were excepted; therefore he might not do either of them.

In Trinity Term, anno 7. Eliz. it was clearly resolved by the most part of all the Judges, and the Du. Counsel, at Serjeants Anne, in the presence of the Earl of Suffex, then Lord chief Justice in Eyre of all her Majesty's Forests on this side Trent, That the building of any new house within the feberal soil or waste of any man within a Forest, is a Purpresture, and annoyance to the Forest and Game; And also finable, or else arreparable for the tolleration or suffering of that to stand, which is at the judgement and discretion of the Lord chief Justice in Eyre of the forest, or otherwise to be plucked down and destroyed at his will and pleasure. The aforesaid Earl of Suffex, being Lord chief Justice in Eyre of all the forests on this side Trent, and being learned himself in the Lawes of the forest, yet, because that he would be the more perfectly resolved, what was Purpresture by the Lawes of the forest, he caused the Judges, as well of the Common Pleas, as of the Kings Bench, and all the Duens learned counsel in the Lawes of this Realm, to assemble themselves together at Serjeants Anne in Fleetstreet, and then there they delibered this their opinion, as aforesaid; Sir James Dyer being then chief Justice of the Common Pleas; who of zeal & labour that he did bear unto the knowledge and learning;

Anno 7. Eliz.
Dyer, fol. 140.
pla. 45.

ning of the Law, did keep a memory of this case, where-
by the same came to be Printed in his book of years and
terms, for the better instruction of others hereafter.
Thus having sufficiently declared and proved, what is
Purpresture by the Common Laws of this Realm;
and also what is Purpresture by the Laws of the
forest, it is necessary also to declare the Species of Pur-
presture.

3. How many sorts of Purprestures there are.

And therefore you shall understand that of those
foresaid Purprestures, there are four sorts of
them, that is to say,

- | | | |
|-------------|---|---|
| Purpresture | } | 1. Against the King only. |
| | | 2. Against the K. and the commonwealth. |
| | | 3. Against the K. and a common person. |
| | | 4. Against a common person only. |

1. Purpresture against the King only is, whereas
any man doth new erect or build any dwelling house or
any other house within the forest without license, where
there hath never been any house before, although that
the same be in his own ground. This is a Purpresture
against the King only, and not against any other man,
for this is no Encroachment upon any man, but only
upon the Kings forest.

2. Purpresture against the King and the Common-
wealth, is, whereas any man doth new erect a house or
Mill upon the Kings highway, or waste soil, within
any forest, by reason whereof the common passage of
his Subjects is hindered: This is a Purpresture against
the King, and also against the Commonwealth. In like
manner it is, when a man doth new erect a house or a
Mill in his own land within the forest, which is to the
hindrance or annoyance of the common passage of the
Kings

Kings Subjects, this also is a Purpresture against the King and the Commonweale.

3. Purpresture against the King and a common person, is, whereas any man hath certain land inclosed, lying within a Forest, adjoining upon the waste soil of the Lord of a Manor, and the owner of the same land incroacheth upon the waste soil of the said Lord of the Manor, and by removing of his hedge taketh in part of his waste soil, and so wrongfully enlargeth his own ground, this is a Purpresture of the Forest against the King, to new inclose land that was not inclosed before: and this is also Purpresture against the Lord of the Manor, for as much as parcel of his waste soil is wrongfully taken in and inclosed.

4. Purpresture against a Common person only, is, whereas a man having an antient dwelling house, or another house within the Forest, and by enlarging of the same house, he doth incroach upon the land of another man, this is said to be a Purpresture against a common person only, for that the same, being an antient house before, and might lawfully stand there, the King hath little wrong by this incroachment. And so note, that Purprestures in the Forest are in these four sorts.

And so you may see, that where any man doth wrongfully incroach any thing unto himself within the Forest, either upon the King, or upon any other person, the same is a Purpresture. And if any man without good warrant do take upon him any Jurisdiction or Franchise within the forest, that is also a Purpresture of the forest.

And if any man do hold a Fair or Market without the grant of the King, or lawful prescription, that is also a Purpresture; and if any man do take in, or inclose any of the Kings waste soil within the Forest, that is also a Purpresture; and if any man do build any Swine-

cote

cote of Hobel, upon the Kings waste soil, or the waste soil of any other man within the Forrest, that is also a Purpresture of the Forrest.

4. The forfeiture and punishment of such as commit Purpresture in the demesne woods or lands of the King.

The forfeiture and punishment that the Law of the Forrest doth appoint for such offenders as do make any purpresture in the Kings own demesne woods or lands within the Forrest, is, as before already hath been declared for assarts, which is, that if any man be found making of any Purpresture in the Kings demesne woods or lands, that then his body shall be forthwith detained in prison without bail or mainprize, until that he hath made his fine with the King for the same offence, which fine is arbitrable at the will and pleasure of the King. And as *H. Glanvil* saith, in his 9. Book and II. Chapter. *Et qui per Juratam ipsam, aliquam hujusmodi fecisse Purpresturam convictus fuerit, in misericordia domini regis remanet de toto feodo quod de eo tenet, & quod occupavit reddet,* which is, that he which shall be convicted by a Jury to have made any such Purpresture upon the King, he shall remain for the same at the Kings mercy, for his whole fee that he holdeth of the King, and the Purpresture that he hath made shall be yielded to the King also.

And so he, that doth make a Purpresture within any of the Kings demesne woods or lands within the Forrest, is fineable for the same at the Kings will and pleasure, and not at any certain fine. And you must needs think, that the Law intendeth a very grievous fine to be laid upon him that will attempt to make any Purpresture upon the King in his own demesne lands

Assis Forestæ,
An. 6. Ed. 1.

Glanvil, in li.
bro 9. f. 72. c. 11.

of woods; and therefore the fine for a Purpresture is aggravated and increased according to the quality and quantity of the offence; and besides that, he that is so fineable, he shall yield the place upon the which the Purpresture is made, to the King, to whom in right it doth belong and appertain.

5. The forfeiture and punishment of such as commit Purpresture in their own woods or lands.

The forfeiture and punishment that the Lawes of the Forest do inflict upon him that doth make any Purpresture in his own woods or lands within the Forest, as before in Affairs hath been already declared, is, that he that is found making of any Purpresture, out of the Kings demesne woods or lands, within the regard of the Forest, his body shall be attached and detained in prison, until that he be delivered by six pledges; and if he shall be found offending so again the second time, then his body shall be attached and detained in prison, until that he shall be delivered by twelve pledges; and if he shall be found offending so again the third time, then his body shall be attached and detained in prison until that he shall have made his fine with the King for that offence; and in this case, the offender is not bailable by the Law, by any man, but only by the Lord chief Justice in Eyre of the Forest, of his special labour and grace.

And in this case also, the fine is uncertain for such Purprestures, and arbitrable at the will and pleasure of the King, according to the quality and quantity of the offence.

And this note, that for every Purpresture that a man doth make in his own lands or woods, that he hath within the forest, as in building up of any house, whereas

*Johnston M.
Affia & con-
suetudines fo-
restæ, An. 6.
Ed. 1.*

Dyer 140. pl. 45.

whereas there hath not been any before, there the judgment is twofold, that is to say, first, that he shall pay a fine to the King, for the making of the same Purpresture, according to the quality and quantity thereof: And secondly, that the same house or purpresture so made shall be pulled down again, or else to pay yearly a certain rent unto the King, for suffering of the same to remain still, which is at the choice and discretion of the Lord chief Justice in Chace of the forest.

6. Whereof it is called Purpresture.

M. Glanvil, fol.
71. lib. 9. cap. 11.

This English word Purpresture, which M. Glanvil calleth Purprestura, or Porprestura, in Latin, being but a new made Latin word, is derived from the old French word Pourpris, which signifieth, to take from another, and to inclose unto himself, or to incroach upon another. There is no such word in use in the Latin tongue as Purprestura is, but only amongst Lawyers, which did first frame that Latin word of the foresaid French word Pourpris; for that which is called Pourpris in French, the Latinists do call Conseptum, an inclosing together, or an inclosure; and by usage, this word Purpresture amongst Lawyers in the general sence is now taken for any thing which any man by wrong hath incroached upon another, and by inclosure or usage appropriated unto himself.

7. The difference between Waste, Assart, and Purpresture.

Some men do hold an opinion, that the difference between Purpresture and Assarts is, that Purpresture is made upon the woods or lands of the King only, and Assarts is made in the woods or lands of other men:

men: but that is not so, for a man may make Purpresture and Assarts also, as well in the woods and lands of the King, as in the lands and woods of other men: And e contrario, Purpresture and Assarts may be made as well in the woods and lands of other men, as in the woods and lands of the King. And that is proved by the words and meaning of Charta de Foresta, articulo 4. whereas the King by the said Charter doth grant, that all Archbishops, Bishops, Abbots, Priors, Carls, Barons, Knights, and Freeholders, which have their woods within Forests, that they shall have and enjoy their own woods that they have within Forests, in such sort as they had them at the time of the first Coronation of King Henry the Second, which was before the making of the Charter.

Charta de Foresta, articulo 4.

And the King doth also, there, by the same Charter, further grant unto them a general pardon for ever, for all Purprestures, Wastes, and Assarts, made and done before the making of the said Charter in their own woods; for the words are there, Habeant Boscos suos, that is to say, they shall have their own woods, &c. And afterwards the words of the pardon are, quod quieti sint imperpetuum de omnibus Purpresturis, vastis, & Assartis factis in illis Boscis, which is, that they shall be quiet for ever of all Purprestures, Wastes, and Assarts, which are made or done in their own woods within the Forest. Then both Purprestures and Assarts may be made in the woods and lands of other men, as well as in the woods and lands of the King, which is contrary to the opinion of M. Treherne, and also of M. Archer, in their readings of the Laws of the Forest, which I do greatly marvel at: for it doth also most plainly appear by the assises and customs of the Forest, which were made and established in anno 6. E. 1 articulo 4. in these words, Si quis inventus fuerit in dominico domini

Assisa & consuetudines forestae, articulo 4. Vide Rastals abridgment of statutes, in Forestis, 21.

M

regis

regis, affartando vel Purpresturam faciendo, Corpus debet protinus retineri, sin autem extra dominicum, infra rewardum, debet poni per sex plegios, & si alias inveniatur, debet duplicare ejus plegios, si tertio, corpus debet retineri: If any man shall be found in the Kings demesne woods or lands affarting or making of any Purpresture within the Forrest, his body shall be forthwith retained in prison for that offence: but if any man be found affarting or making of Purpresture out of the demesne woods or lands of the King, in any other mans woods or lands, being within the regard of the forest, then he shall be delivered by six pledges; and if he shall be found offending again in such sort the second time, then he shall be delivered by twelve pledges: but if he shall be found so offending again the third time, then his body shall be forthwith detained in prison for that offence without any bail or mainprise, &c. By which words, and meaning of the Law it self, it doth appear, first, that both Affarts and Purprestures may be made and done in the demesne woods of the King: and therefore the Statute hath appointed an especial manner of proceeding and punishment, only for such Affarts and Purprestures as are made and done in the Kings own woods and lands, which is differing from the proceeding and punishment appointed for Affarts and Purprestures made in the lands and woods of other men: and secondly, that both Affarts and purprestures may be made and done in the woods and lands of other men, as well as in the woods and lands of the King; and therefore the same Statute hath also there set down a manner of proceeding and punishment for Affarts and purprestures that are made and done in the woods and lands of other men, differing from the proceeding and punishment appointed for such Affarts and purprestures as are made and done in the Kings demesne woods and lands, Ergo,

it

it is not the land of the King, nor the land of any other man, that doth make the difference between Assarts and purpzefture, seeing that both Assarts and purpzefture are made as well in the woods and lands of the one as the other, and so (to conclude) in both: but surely the true difference between Assarts and purpzefture is, that purpzefture is a wzongful Encroaching of a new thing, that was not befoze, upon the King or a common person: and Assarts is, the conberthing of any covert of the forest into arable land, as already befoze hath bxn declared. And because that every purpzefture of the Forest is fineable at the will and pleasure of the King, according to the quality and quantity of the same offences, therefore to the end that the manifest truth may in every point the better appear, it is necessary, that in all presentments and indictments of any manner of purpzefture that shall be made or done within the forest, they do contain the certainty of these ten points hereafter following:

1. Who made the Purpzefture.
2. What manner of Purpzefture the same is.
3. When the same was done.
4. Where the ground doth lie wherein the Purpzefture is made.
5. In whose tenure the same now is.
6. What quantity of ground the same doth contain.
7. What the same is worth by the year to be letten.
8. Whether that the same Purpzefture be made upon the soil and inheritance of the King, or upon the soil of any common person.
9. In whose fee the same is, and in what parish.
10. Whose inheritance the same is.