

R. Prestow to ? Capt. Payne

Sep. 23 1792

38739-40

23 Sept 1792

Sir!

Tho' I was not so fortunate as ~~to~~ to be at home when the Mr. Calls called on me in their way to Plymouth, yet I had an Interview with them at that Place on the following Day, & at this Place on their Return. They took their Departure, hence for Exeter this Morning, well prepared I believed to inform you, & the Council of his Royal Highness the Prince of Wales on the Subject of all those Heads of Inquiry, relative to the Forest of Dartmore, to which their Attention was directed.

Admitting the Custom under which the Tenants claim to be intitled to a New take upon every Surrender to be good in Point of Law I am well satisfied it cannot be supported in Point of Evidence. The Return of New takes made by the Steward at the Foot of one of the Presentments of a very early Date, the Variance in the Usage in regard to the Quantity of Land inclosed for New takes, the Circumstance that the Tenants of the New takes have always paid their Rents to the Lessee or Farmer of the accidental or casual Profits of the Forest, & not to the Reeve who collects the Quit Rents payable by the Copyholders that the Tenants of the New takes have never been called upon as the Copyholders are, to assist in the Drifts of the Forests, as not being Tenants of the same Sort as the Owners of the 25 antient Tenements, added to the Conduct of Mr. Heywood while Lessee of the casual Profits of the Forest, in throwing open the Inclosures by which the New takes were fenced, collectively considered, appear to me to be decisive of the Question between His Royal Highness & the Proprietors of

R.S.P.

Newtakes in Opposition to the Claim they have set on Foot. Whether it would be right at this Juncture to appoint an alting Steward is a point I must entirely refer to your Judgment, & the Report of Mr. Gole; observing only that the Tenants are reduced to the utmost Straits, & much embarrassed for want of a Steward to receive their Surrenders; & many of those Grievances of which Complaint has been made by the Farmers of the casual Profits, are constantly increasing from the same Cause. Whenever a Steward is appointed, it will be right, I submit, to restrain him from receiving Surrenders from any Persons besides the Owners of the 35 ancient Tenements; the Owners of the Newtakes falling, as I conceive, under a different Description, and having no Pretence in Point of Law to be deemed Copyholders, tho' their Tenancy and Title depend altogether upon Copies of Court roll. No Point of Law, I believe, ^{is more clear,} than that those Lands only are grantable by Copy of Court roll, which have been immemorially demised by this means. A Copyhold cannot be created at this Day. This is a necessary Conclusion from the Principle already stated. Had the Custom let up been to annex Eight Acres to every Tenement upon every Surrender thereof, it would have steered clear of this Objection, though it would still have been open to the Objection to which Mr. Justice Keeth, while at the Bar, animadverted in his Opinion on the Case stated on behalf of Mr. Heywood. So far as the Practice has come under my Observation, the Newtakes have been granted by separate Copies of Court roll; & the Rent which ought to

R. Prestow to J. Capt. Payne

Sep. 23 1792

38740

have been paid by the Custom to 1 Shilling, & consequently the same Proviso
mistake, is different for different Newtakes. A strong Circumstance against
the Custom also is that the like does not that I can discover, exist within
any other Manor

The Right of the Venue men who are numerous, and of the Copyholders,
to Common of Pasture, & of divers other Persons to Common of Turbarry seem to
deserve the most Attention. On an Inclosure Bill, & the Proceedings under it
the Difficulty will be to fix on a Plan for regulating the Compensation to be made
to them for their respective Interests. Beyond all Question the Rights they
exercise are far more extensive than those to which they are legally intitled.

Should the Plan to be adopted be to give them a pecuniary Satisfaction
such Satisfaction might be adjusted in Regard to those who have Common of
Pasture, before Commissioners upon the Survey, and subsequent Evidence of
judicious Surveyors, from a Calculation to be formed of the Number of Cattle
for which they are intitled to Common, according to the Extent & Goodness of
their Estates to which this Right is annexed, & the Value to them of this
their Right of Common. The Amount I should imagine will be very
inconsiderable compared with the Number of Cattle they now depasture on
the Forest. The Commons abutting on the Forest, will also in some measure
fall under this Observation, in Regard to the Persons who exercise
a Right on them; & there is very little Doubt, but that his Royal Highness's
Interest in the Commons, will be nearly if not fully equal in Value, to the
Commoners, to the Compensation to be made to the Venue men; especially when
the Inconvenience & Expence of attending to their Cattle is set against

the gross value of their commonable Rights. — The Ratio of Calculation of the gross Value of the commonable Rights may be easily formed, from the Prices paid by Strangers to the Owners of Newtakes for depasturing Cattle. — The Price is very moderate.

Whether the Scarcity of wood, in the inland parts of the County, bordering on the Forest, will not render the Want of Turps, for Fuel, a serious Inconvenience, will also require some Consideration. Perhaps it may be thought prudent to suffer this Right to be exercised in those parts of the Forest which will not admit of Cultivation & are fit for this Purpose only.

Should the Inclosure of the Forest in the whole or in part be determined on, I shall be particularly happy to be employed as Surveyor & Commissioner as their Solicitor; and should the Appointment of the Stewardship of the Forest be conferred on me, you may rely on my Endeavours and Exertions, for accomplishing such measures as shall be judged expedient by his Royal Highness's Council, and for promoting the Interest of his Royal Highness so far as it shall be in my Power: and your Recommendation in Order to my Appointment, will be a Favor I shall ever gratefully acknowledge. And I have the Honor to be with great Respect

Your very obedient
every humble Servant

Abburton

23rd Sept. 1792.

Rich. Preston

P.S. on referring to some Copies of Courtroll in my Possession the Title of the Manor of Lydford seem to be rather customary Freeholders, & Copyholders simply. —

Newtakes