

AN OLD WELSH LAW INCORPORATED INTO THE ACT WHICH ESTABLISHED THE COURTS OF GREAT SESSIONS

Background

Clause 106 of the Act of Parliament passed in 1542–43, which established the Courts of Great Sessions in Wales, includes the following provision:

If any goods or chattels be stolen within the limits of any of the said Shires of Wales, that then upon suit thereof had and made, the track shall be followed from Township to Township, or Lordship to Lordship, according to the laws and customs in that behalf heretofore used in Wales, upon such penalty and danger as heretofore hath been accustomed.¹

The incorporation of this provision arose out of representations made to Thomas Cromwell, Chief Secretary to the king, by Rowland Lee, Bishop of Coventry and Lichfield and President of the King's Council in the Principality and Marches of Wales.²

In 1536 commissioners had been appointed 'to enquire and search out, by all ways and means that they can, all and singular laws, usages and customs used within the said dominion and country of Wales' and deliver a certified return of their findings to the King's Council by 1 November that year.³

Rowland Lee, in his letter dated 20 February in an unspecified year to Thomas Cromwell, advised that 'having in remembrance the charge by our sovereign lord the king committed to us in those parts have by consultation together devised these Articles for the helping of Wales as do ensue wherein after your politic wisdoms at this time the same be by parliament established'.⁴ One of Lee's proposals concerned the tracking of stolen goods and chattels. He drew attention to the fact that 'Where before this time if any goods or chattels had been stolen or any robbery committed or done in Wales or any Lordship Marcher, etc., and the tract thereof brought into any other Lordship Marcher or place in Wales and there delivered to any of the tenants or officers there which could not drive out the said tract into any other lordship or place that then the tenants of the lordship where the tract was left, etc., should recompense the party so robbed etc., which is a good law and custom for the wealth of Wales'.

Lee, however, pointed out that if this law were to be adopted it was open to abuse in that 'the tenants do their diligence to drive out the said tract and cannot so do.

¹ Act of Parliament 34 & 35 Henry 8, c.26.

² British Library, Harley 283, f.162 Letter dated at Ludlow, 20 February [no year is stated] from Rowland Lee to Thomas Cromwell.

³ Act of Parliament 27 Henry 8, c.26, clause 27.

⁴ Harley 283, f.162.

Howbeit, because the tenants only bear the charges thereof, the officers of the said lordships which most part know the said thieves and by whom the said thieves be born, succoured and maintained and do no manner of diligence nor do not regard to take the felons'. He put forward a proposal to overcome this in that he thought 'it necessary it were enacted by parliament that if the officers of the lordship or place where such tract is left etc., do not attach the said felons within one month next after the said felony committed or done and put him to execution within one month next after that, then upon Complaint thereof made to the Commissioners of the Marches that they upon examination thereof to compel such of the officers of every such lordship or place or tenements or both by their discretion in whom most default shall be found to make recompense to the party any custom to the contrary notwithstanding'. Cromwell incorporated the old Welsh law of tracking of goods and chattels, but in so doing, did not make the officers responsible for any of the losses incurred.

The application of Clause 106 in Wales

In early 1570 a petition was submitted to the Council in the Principality and Marches of Wales by Justices of the Peace of several counties in Wales complaining:

that the manner of following tracks from township to township as in use today, is shown to be the cause of many stealths and felonies, of the slow pursuit made after felons, of intolerable charges in suits before this Council for recovery of stolen cattle upon the delivery of track, of frauds, deceits and subtle indirect practices used in following, delivering and leaving the same tracks, of untrue surmise in bills and most detestable perjury oft times committed as well by witnesses to prove the receipt and delivery of tracks who cannot commonly price their cattle above their real value or selling price. It is likewise the only cause whereby poor freeholders and others inhabiting in the townships where the tracks are lost and so compelled to pay for the cattle according to the owner'.⁵

The Council issued out an Order to remedy the abuses. The Order required that the tracking of stolen goods was to be from commote to commote, which was the ancient custom in Wales, and not from township to township as specified in the 1542–43 Act. It also set out the following provisions:

1. The complainant not to call above one person of that place where the track was left to make answer to the Complainant.
2. If process granted and the issues joined, the issues to be set out upon all the parts and points of the Bill of Complaint, which should include:
 - driving track from commote to commote.
 - continual attendance by him who had lost the cattle with such as followed the track from place to place where the cattle were stolen to the place where the track was lost.

⁵ *A Calendar of the Register of the Council in the Marches of Wales [1535], 1569-1591* (Cymmrodorion Record Series no.8), 63–7.

- if failure to prove any of these points and parts of the Bill, then the complainant to pay such costs to the defendant as he, the same defendant, shall depose he has sustained in that suit.
- if true, the inhabitants of the hundred or commote where the track was lost to pay so much value of the cattle as the plaintiff by such sufficient witnesses or proof as the court shall think sufficient or shall prove the same to be worth and not upon affidavit of the plaintiff only.
- if one person who had his goods stolen requested the inhabitants of that township or any other township where the track was driven to pursue the track but they did not, then they are to answer for their remission in doing so to the court.

On 17 November 1572, the Council issued a further Order [Reference 6] excepting certain hundreds from the earlier Order, as follows:

Whereas the Council for the avoidance of perjury in regard to following the tracks of stolen cattle laid down that whole Hundreds and Comotes and not parishes separately should be chargeable therewith. And although this regulation has been of great service yet it has been of late certified to the Council by the Justices of the Peace and certain of the inhabitants and freeholders of Glamorgan and Denbigh, and affirmed as true by William Gerrard, esq., Chief Justice of Glamorgan, who went there to enquire into the matter, that because of the size of the Hundreds there – some of them being estimated at 20 Welsh miles across – people are fined for felonies of which they had no knowledge. Therefore it is ordered that the previous Order shall not apply to the Hundreds mentioned below where the old method of following track parish by parish shall be resorted to.⁶

The hundreds concerned were Caerphilly and Llantrisant in Glamorgan, and Chirk in Denbigh.

On 1 April 1587, the Council issued a further Order in relation to abuses of the tracking of stolen cattle, which had adversely affected the inhabitants of the hundred of Neath. Representations had been made to the Council by Sir William Herbert, kt., Leyson Pryce and Jenkin Franklyn, esqs., J.P.s, of co. Glamorgan:

that the inhabitants of the hundred of Neath there are greatly troubled and impoverished because their Hundred adjoins the counties of Carmarthen and Brecon, and in a great number of felonies committed in these counties, the track of the stolen cattle is lost in their Hundred, the owners not troubling to pursue it past half a mile sometimes from the place where the felony is committed: and as the Justices know by experience that through laxity, the width of the Hundred, and the number of contributors to the payment of compensation, felonies are concealed there, felons not pursued or taken.⁷

⁶ *Ibid.*, 98.

⁷ *Ibid.*, 231–2.

The Council ordered that the parishes in the Hundred of Neath should be responsible and chargeable as in the other two hundreds in Glamorgan (Caerphilly and Llantrisant).

The Montgomeryshire Petition of 1591

In a petition to the Chief Justices of the Montgomeryshire Court of Great Sessions, dated 28 October 1591, a copy of which is attached at Annex A, the Justices of the Peace and gentry of the county of Montgomery complained that various suits relating to the tracking of stolen animals had been commenced without following the purport of the Order of the Council made in early 1570.⁸ The petition recited the original Order of the Council. The petitioners indicated that by not adhering to the Order the multiplicity of suits was leading to the impoverishment of the inhabitants of the places to which the tracks were followed. The petitioners took the opportunity in their petition to request three modifications to the Order:

1. tracking to be from hundred to hundred rather than comote to comote.
2. call one of the wealthiest and sufficient persons at delivery of the track to answer and not any poor man.
3. if confirmed, a true copy may always remain in some public place in court.

Whether or not the petition was accepted and the Order from the Council amended, as proposed, is not known. To what extent suits relating to the tracking of stolen goods and the seeking of compensation against clause 106 of the 1542–43 Act is a subject in need of further research.⁹

Clause 106 remained in force until it was repealed by the Welsh Language Act, 1993.¹⁰

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⁸ National Library of Wales, Montgomeryshire Court of Great Sessions, WALES 4/134–3, m.58. A transcript of the petition is contained in *Montgomeryshire Court of Great Sessions – Calendar of Gaol Files 1591–1595*, compiled and edited by Murray Lloyd Chapman (privately printed 2010), entry 66.

⁹ Research is required to determine the extent to which clause 106 of the 1542–43 Act was invoked by examining the Plea Rolls, Prothonotary Papers and files of Writs of the Courts of Great Sessions.

¹⁰ The Stationery Office, *Welsh Language Act 1993*, c.38.

ANNEX A
TRANSCRIPT OF MONTGOMERYSHIRE GAOL FILE
WALES 4/134-3 m.58

Right honourable and very good Lords, Whereas complaint has often times been made to your lordships by diverse and sundry the J.P.s inhabiting in several counties of Wales and others known as approved to your Lordships as good servitors in the furtherance of Justice in the Counties they dwell in Contending that the manner of following of tracks from township to township, (as the same at this day is used) is by daily experience manifested to be the occasion of many stealths and felonies, of the slow pursuit made to apprehend felons, after the fact is committed, of intolerable charge generally sustained in the suits prosecuted before your Lordships, for recovery of stolen cattle, upon track delivered, of the fraud deceit and subtle indirect practises devised and used in following delivering and leaving the same track of the untrue surmise contained in bill for the obtaining of process for the same and of great horrible wilful and most detestable perjury often times committed, as well by such as become witnesses to prove the receipt and delivery of the tracks who, for the most part, can by no certain knowledge discern the same, as also by the owners of the same cattle who commonly depose the value of the cattle at great price than the same were worth or might have been sold for, and is likewise the only cause Whereby many poor freeholders and others inhabiting in such townships (where such track was left and so compelled to pay for the cattle, stolen, as the same were deposed to be worth by the owners) have been brought to utter impoverishment and beggary, forced to sell their lands and leave their habitation and for redress of all these matters and causes they have exhibited certain articles praying aid, help and reform of your Lordship, who finding the Contents of the said Articles, in most points true, and supposing that if such bills of tracks as now be ordinarily received in Court, And whereupon without denial process is ordinarily granted, were lessened and brought to be fewer in number, that the same would well ease the Complaints and grief which your honours did mind to help, And therefore it was ordered that from thence forth no Bill of Complaint of any person or persons shall at any time thereafter be received in Court and process thereupon granted containing matter for and concerning tracks except the Complainant shall declare by his bill that the Complainant himself, if the cattle were stolen from him, or his keeper, if the cattle were stolen from his keeper followed the same tracks from the place where the same were stolen, to the place where the track was left, from comote to comote, which was the ancient custom of Wales, And not from township to township as since the Ordinance of Wales it has been used And it was further ordered that upon every such Bill of Complaint whereupon process is granted, the Complainant shall not call above one person only of that place where the track was left to make answer to the Complaint, And it was further ordered that upon every such bill, so to be exhibited as is aforesaid and whereupon process shall be granted, issue to be joined, and issues to be set out, upon all the parts and points of the Bill of Complaint, viz: the driving of the track from comote to comote, and his continual attendance that lost the cattle with such as followed the track from the place where the cattle were stolen to the place where the track was lost, and if he fail proof in any of these points and parts of the Bill, then it was ordered that the Complainant shall pay such costs to the defendant as he the same defendant shall depose he has sustained in that suit, And it was further ordered that if the Complainant shall prove the points and parts of the

Bill in form aforesaid, to be true, that then the order to be that the inhabitants of the hundred or comote where the track was lost to pay so much of the value of the cattle as the Plaintiff by such sufficient witnesses or proof as your Lordship shall think sufficient or shall prove the same to be worth, and not upon affidavit of the Plaintiff only, provided always and it was further ordered, that if one person having his cattle stolen (as is aforesaid) shall in convenient time after the felony committed request any of the inhabitants of that township or of any other township to where the track shall be driven to help him to pursue the Track, and if he or they (so requested) deny, that then upon the party's complaint made to your Lordship they to be sent for to answer the Complainant's reasonable costs and damages sustained by their remiss and default, as by the said order signed by your Lordship and remaining of Record in that honourable Court, more at large it does and may appear/ Since the taking whereof, we are informed that diverse bills have been preferred to your honours by diverse persons supposing thereby that their cattle have been stolen from them and sundry orders taken for the payment of the value of their cattle to them, albeit, their Bills did neither purport your Lordship's said order nor they made any such proofs as thereby they should have done, (Yet they satisfied), and diverse of their majesty's subjects impoverished, which moved us as well in our names as in the names of others her majesty's subjects dwelling within the counties of Wales to become humble suitors unto your Lordship for the due performance of the said order herein before recited, so that there may be inserted in the said order from hundred to hundred instead of from comote to comote and that the loser of the cattle shall call by process one of the wealthiest and sufficient persons at the delivery of the track to answer etc., not any poor man etc., And that the same being confirmed by your Lordship or the true copy thereof may always remain in some public place in Court, Whereby her majesty's subjects may be therewith acquainted, And all suits hereafter preferred or orders taken for track only may be answerable and agreeable to the said former order wherein we think your honours should do a very good and charitable deed, And so referring the same to the grave consideration of your good lordship we in all humble and dutiful wise, take our leave and commit your lordship to the tuition of the highest, The 28 October 1591.

signed: Edward Herbert, Edward Herbert, William Williams, John Pryce, Richard Herbert, Richard Herbert, Thomas Purcell, Arthur Pryce, Rees Tannatt, Charles Lloyd, Harry Herbert, Thomas ap Oliver, John Owen, Lewis Blayney, Jenkin Lloyd, Richard Morris, Thomas Lloyd, David Lloyd Meredydd, Edward Pryce, Edward Lloyd, Robert Middleton, William Whittingham, Edward Pryce, Reynald Hughes, Rees ap Edward, Robert ap Oliver, Thomas ap Oliver, Howell Prichard, Griffith ap Hugh Oliver, Humffrey Lloyd, Morris ap Oliver, John ap leuan ap leuan Lloyd, David Lloyd David ap Meredydd, Thomas Griffith, Thomas Tannatt, Humffrey ap Robert, leuan David ap David, Thomas ap John, leuan ap Rees ap Matthew, leuan David Howell ap John, Morris David ap leuan, John Williams, John David ap Howell ap Meredydd, Rees ap Hugh, John Lewis ap Hugh, leuan ap leuan Lloyd, Reynald ap Rudderch, Robert Lloyd, Griffith ap David ap Llewelyn, David ap leuan Goch, leuan ap Robert, leuan Thomas ap Griffith, Richard ap David Goch, leuan ap Richard, Rees ap leuan ap Llewelyn, John David ap Matthew, Howell ap Morris, David ap leuan David ap Guttyn, leuan Lloyd ap leuan Llewelyn ap Meredydd, Owen David Lloyd, David Goch ap leuan Llewelyn, Thomas ap Meredydd, Oliver ap John ap Owen, Richard ap Hugh ap Harry, Cadwaladr ap David ap Gwilym, leuan Morris, leuan Goch ap John ap leuan

ap Owen, Austin ap Howell, Richard ap Howell, Ieuan David ap Rees, Ieuan ap Hugh Pental, David ap Ieuan David ap Gwilym, Ieuan ap David ap David, David ap Ieuan ap John ap Meredydd of Cedewain, Thomas ap Ieuan ap John David Vaughan, Thomas David ap Ieuan ap Howell, David ap Morris ap Owen, John Cadwaladr, Ieuan ap Howell ap Meredydd, John ap Morris David ap Llewelyn, Rees ap Griffith, John David of Castell, Ieuan Lloyd ap John ap Morris, David ap Ieuan ap David, David ap Griffith John, Ieuan ap Rees Bedo, Ieuan ap David ap John, John ap Rees Dio ap Madock, David ap James, Rees ap Howell ap John Duy, Rees ap John David ap Owen, Rees ap Morris.

The mark of John Wyn ap John ap Ieuan ap Owen.