

ART. XVIII.—*The Carlisle Jacobite Trials, 1746.* By
RUPERT C. JARVIS, F.S.A., F.R.Hist.S.

Communicated at Carlisle, April 15th, 1961.

ALTHOUGH a great deal has been written about the trials of the Jacobites at Carlisle in 1746 as a chapter in Jacobite history, little has been written about them as a chapter in the history of Carlisle. It is proposed, therefore, to deal with them in this paper from the latter point of view, relying mainly upon unpublished records, namely the correspondence of the Mayor, Corporation and Governor of Carlisle, the Sheriff of Cumberland, and the Crown Solicitor for the trials in Carlisle at the time. These are now contained among the Pelham-Holles papers, now in the muniment room of the University of Nottingham;¹ the Lord Chancellor's papers (Hardwicke MSS.), the Secretary of State's papers (Newcastle MSS.), and the accounts generally of the trials in the Stowe and Egerton MSS., all in the British Museum; and the State Papers (domestic) in the Public Record Office.²

The surrender of Hamilton's Jacobite garrison in Carlisle on 30 December 1745 left Carlisle with more prisoners than any other place in England. In the following August and September many more were sent in from Whitehaven, Penrith, Newcastle, Morpeth, Lancaster, Chester and other places, to face their trials; altogether a total of three hundred and fifteen³ were due to appear in Carlisle on charges of treason. Of those a hundred and eighty drew blank lots⁴ and were excused trial; eight others were sick or otherwise not indicted or if indicted not tried; one pleaded his peerage, and one was re-

¹ Newcastle MSS.: Scottish Affairs (1), cited hereunder as "Pelham-Holles MSS." (by kind permission of the Trustees).

² Cited as "SP. 36/[bundle]/[number]."

³ The figures from various sources are not easy to reconcile.

⁴ As to which, see below.

turned by the grand jury *ignoramus*. This left a hundred and twenty-five to be tried; of these thirty-four were acquitted and ninety-one were convicted, some of these being in due course reprieved.

It was clear at an early stage that there would be two main difficulties in the trials: (1), to produce in court credible witnesses in each case who could reliably identify each of the accused in some overt act of treason; and (2), to empanel responsible juries who could be relied upon to return verdicts for the Crown. There were particular difficulties about prisoners taken in other parts of England or in Scotland, and even within the county of Cumberland the situation was not simple. For example, with regard to those taken at Penrith, they could not remain in Penrith as there was no place of strength of sufficient size locally; nor could they be removed to Carlisle which was already full. They had, therefore, to be transferred to York. The solicitor preparing the prosecutions however, writing from Carlisle in early August (that is to say, before the trials had commenced but after a close scrutiny of the briefs) reported to an official in London known as "the solicitor for carrying on criminal prosecutions", that he could find no evidence in his briefs against the Penrith prisoners, and feared that he would be unable to procure any. "The sending the witnesses from Penrith to York [to identify the prisoners and give evidence there] will be endless, there being perhaps a hundred different persons engaged in taking the Rebels." Nor could the indictments as yet be drawn in Carlisle, Penrith or York, "the people who took [the prisoners] not knowing their names, and we not knowing the men's names who took them." The solicitor could not see "how it can be fixed" he said, "unless these prisoners be removed from York to be tryed here [in Carlisle]. In that case we could summons in the Penrith people and should easily find witnesses to affect them."⁵

⁵ SP. 36/86/23.

On these and other accounts, therefore, it was decided not to try the prisoners in the particular counties where they were in custody, nor in the counties where the alleged offences had been committed,⁶ but to stage trials by special commission in certain convenient centres only. In any case, the Habeas Corpus act had been suspended⁷ and the suspension had been renewed.⁸ Whenever possible only such charges would be framed as could conveniently be proved by witnesses from among the inhabitants of those centres, and only in respect of the remaining prisoners would witnesses have to be brought in from elsewhere to secure their conviction on other charges. The provincial centres originally selected for these trials were Carlisle and Newcastle — obviously because of their convenience to Scotland.

Before the assize judges set out on the ordinary business of their English circuits therefore, warrants of declaimer were sent out against all prisoners detained for treason in any of the gaols of the circuit, to prevent the judges discharging them in the ordinary course of gaol delivery,⁹ and the trials under special commission at Carlisle and Newcastle were pushed forward. At an early stage, however, difficulties began to mount. Within seven weeks of Culloden the Duke of Newcastle, the Secretary of State in London, was writing to the Duke of Cumberland in Scotland about “such a considerable number of prisoners” then being sent from Scotland into England. There was, for example, “no strong place at Newcastle sufficient for keeping safely such a large number”; there were insufficient troops in garrison there, and the only regiment — one of the newly-raised units — was about to be reduced anyway. Orders were given about the prisoners already in Newcastle “for keeping them on board the

⁶ 19 Geo. II, cap. 9. As to the legal basis for this procedure, see R. C. Jarvis, “The Jacobite Trials, 1746, and the Clark Notebook”, CW2 liii 116-135.

⁷ 19 Geo. II, cap. 1.

⁸ 19 Geo. II, cap. 19; and 20 Geo. II, cap. 1.

⁹ SP. 36/85/93.

Transports [— with what effect, much Jacobite literature is eloquent —] 'till it can be considered whether they should be . . . sent to some other convenient place where they may be safely kept till they can be brought to tryal.''¹⁰

Later, all idea of staging trials at Newcastle had to be abandoned, and where the Secretary of State had spoken in May and June of "the trials in Carlisle *and Newcastle*", by the beginning of July he spoke of "the trials *at Carlisle*".¹¹ On 3 July the Commander-in-Chief in Scotland was directed to prepare "a particular account of all the prisoners now confined in any of the prisons in Scotland who were taken in arms . . . that the proper care may be taken and directions given for removing them to Carlisle, or to such other places as their trials shall be appointed."¹² This referred to military prisoners; a letter in somewhat similar terms was sent a week later to the Lord Justice-Clerk with regard to the "prisoners of the peace". The Secretary of State decided that "all such persons in any of the prisons in Scotland on account of their having taken up arms or of having personally joined those that were in arms against his Majesty should be sent under a sufficient guard to Carlisle" in order to take their trials.¹³ It was at Carlisle, then, that the major trials were to be staged.

This course — of removing the prisoners out of Scotland into England — might prove difficult enough with regard to *prisoners*, but the Lord Justice-Clerk (being a lawyer) inquired how any witnesses that "are unwilling to go to Carlisle, and are not themselves with any accession to the Rebellion can be compelled to go thither".¹⁴ Even an English lawyer, the Attorney-General, who had earlier doubted whether witnesses would come

¹⁰ *Ibid.*, 12.

¹¹ *Ibid.*, 36/86/289-290.

¹² *Ibid.*, 36/85/3.

¹³ *Ibid.*, 36/86/290.

¹⁴ *Ibid.*, 229.

voluntarily out of Scotland to Carlisle to give evidence for the crown,¹⁵ now advised that there was no way to compel them to do so, save by a summons sub poena. As the witnesses, however, "cannot be served with sub-pena, till after the indictments", he thought they might perhaps be otherwise persuaded.¹⁶

Apart, however, from these legal niceties, it soon became apparent on altogether other grounds that even if prisoners witnesses and juries could be produced in Carlisle, the prisoners were too many to be tried. As Sir Dudley Ryder the Attorney-General said, the prisoners are "so numerous that the trying of all will be impossible". He inquired urgently, therefore, of the Secretary of State by what means the number of trials could be reduced to more manageable proportions, or in other words, what prisoners or what categories of prisoner might "hope for Royal Mercy", and so he excused trial. "If speedy resolution is not taken concerning this point, they must all be removed to the place of tryal, which will create infinite confusion."¹⁷ As a matter of fact, there were already in Carlisle more prisoners than could be tried, and if more were brought in there would be confusion indeed.

It is clear from the Lord Chancellor's minutes of the cabinet council of 9 July that the cabinet based their decision on the precedent of the Fifteen. After calling for the minutes for 13 December 1715, it was decided that prisoners who were of no particular note, who had not distinguished themselves either in the rising or in subsequent custody, might be permitted (provided they would plead guilty and petition for royal mercy) to cast lots among themselves, and only one in twenty (on whom the lot fell) would be reserved for trial.¹⁸ The prisoners, therefore, who were already in Carlisle would be classi-

¹⁵ *Ibid.*, 36/85/253.

¹⁶ *Ibid.*, 36/86/291.

¹⁷ *Ibid.*, 36/85/14.

¹⁸ *Ibid.*, 108.

fied divided and lotted in due course; but those who were due to arrive from other places could be lotted before despatch, and thus some, at least, of the otherwise inevitable congestion in the city would be avoided.

Already by the middle of June the congestion was very bad and it was destined to become very considerably worse. Even for the troops in garrison — to say nothing about the prisoners — service in Carlisle was a “worse than Egyptian bondage”. They were not in quarters in the Castle, but in licensed houses or private billets in the town; there was a shortage of food and forage, and little or no possibility of getting a bed to lie on. “Our quarters are very bad [and] our men have no small drink for five or six weeks together”, a man in the Duke of Montague’s regiment¹⁹ wrote, and if a soldier complained to his officer or landlord “instead of having his grievance redrest, he is punished.”²⁰ To alleviate some of the congestion, and because there were prisoners in widely separated places in England as well as in Scotland — in Whitehaven, Penrith, Berwick, Morpeth, Newcastle, York, Lancaster, Hull, Chester, Lincoln, Derby, Coventry and so on — it was decided to stage trials not only at Carlisle but also at York and Lincoln.

Philip Carteret Webb, attorney and antiquary (and an early student and collector of record sources) who had already supported the Whig government with a couple of anti-Jacobite pamphlets,²¹ was appointed for the Crown to prosecute at Carlisle.²² As he said (briefly enough) in his “expenses account”, he “set out from London for the North the 18th Day of July 1746, and returned from thence the 14th Day of October, 1746 being in all 89 days.”²³ Incidentally the expense of his journey from

¹⁹ Raised 1745 (SP. 44/186, p. 216) and disbanded 1746 (W.O. 4/42, pp. 126-127 and 135-136).

²⁰ SP. 36/84/127.

²¹ *Remarks on the Pretender's Declaration and Commission, and Remarks on the Pretender's Eldest Son's Second Declaration* (1745).

²² Stowe MSS. 255, p. 5.

²³ Pelham-Holles MSS.

London to Carlisle via London and York, from Carlisle to York and return, and from Carlisle back to London, during twenty-nine days for himself clerks and servants, amounted to no less than £134. 4s., but this was in addition to the £243 (= £2. 14s. per day for 90 days) on account of his chariot and seven horses and four saddle horses.

Before his arrival in the north, however, Carlisle was already full. Richard Gilpin, Justice of the Peace and Deputy Lieutenant for Cumberland and Recorder of Carlisle, had written to London at the end of July to the effect that there would be nowhere in the city to accommodate the considerable numbers of rebel prisoners that were expected. He suggested that the Sheriff might have directions "to erect in the gaol yard, deal hutts or boothes", or that the Governor should have "Orders to furnish the Sheriff with tents out of the stores in the Castle to pitch in the gaol yard, which is dry ground and pretty large."²⁴ The Mayor reported that a survey of the city's licensed houses and their beds showed only two hundred and forty-two beds over above what were required by the inhabitants themselves, a number far too few to billet soldiers lodge juries and accommodate witnesses.²⁵ The principal trouble was that the garrison and the French prisoners were all billeted in the town — "especially as both English and French officers have each a bed." Doubtless, in the circumstances of 1746, little love was lost between the civil and military elements in Carlisle; but it seemed to be the cause of some additional friction between them that in the Castle were neither soldiers nor prisoners. What galled the Mayor and Corporation was not so much that the town was full and daily getting fuller, but that the Castle was all but empty, and apparently likely so to remain.

When, therefore, Philip Carteret Webb arrived in

²⁴ SP. 36/85/242.

²⁵ Add. MSS. 30170, f. 47, and SP. 36/85/427.

Carlisle in the first days of August, to make or superintend all the preliminary legal and other arrangements for the trials, there was, as might be expected, no accommodation to be had. He and his equipage of sixteen horses were kept waiting two hours in the street before stabling of any sort, public or private, could be found. Worse still, as he complained, there was "an absolute refusal of furnishing any of us or our servants with beds". Carlisle with its population of three hundred and fifty-nine (plus children under six) had "but seventy-four public houses in town and in the suburbs", and the garrison and the three hundred and forty-eight French prisoners in billets were "in possession of almost every lodging that was to be had in the town." In these circumstances it seemed impossible to carry out the business of the ordinary Assize, still less the business of the special commission that Webb had come to arrange. For example, Sir Charles Dalston, nominated as foreman of the Grand Jury at the special trials, sent into town for a lodging six weeks before the trials were due to commence — "but could get none".

Webb arrived at two o'clock on 1 August, and tired of his chariot and his sixteen horses standing in the street, he applied himself to Thomas Pattinson. It may have irked the ardent Whig pamphleteer to have to apply to the notorious Mr Pattinson, but he applied to him not in the latter's capacity of Deputy Mayor, but in his capacity as master of the posts. "I informed him of the service I came on and showed him my credentials," says Webb proudly. The credentials may or may not have produced the right impression — but what they did not produce was a bed.

"He told me there was no lodging to be had."

Pattinson probably realized that circumstances had placed him and certain other Carlisle civic dignitaries in an unenviable predicament in relation to the trials.

Pattinson told the Crown Solicitor that there was not a bed to be had in the city but, if he chose, he would

let him have lodging in his own house. This Webb proceeded to inspect. The place happened to be undergoing whitewashing at the time, and “consisted (except his own) only of two upper or garret beds”, which the attorney thoroughly disdained, leaving Pattinson

with telling him I expected he would make use of his interest and authority and see that we were lodged. I saw by his remarks my business was not grateful to him and that nothing would be done.²⁶

The Crown Solicitor — so he said — “soon began to experience what it was to be in a rebel town”, and blessed his good fortune that if he *must* come into Carlisle, he had come into it so early in the day. As to Pattinson, who had offered him his own roof, this “ruler of the Corporation” was only “a cunning designing fellow, and as truly disaffected as if he had been born and bred in the Highlands.”

The solicitor then repaired to Brigadier Fleming, the officer commanding the garrison, who agreed with him “in opinion as to Pattinson”, offered his utmost services, and went with him again to the Deputy Mayor and postmaster. The Deputy Mayor and postmaster, however, who had offered two beds in his own house to the Crown Solicitor, was apparently in no mood to be hectored by a Brigadier sitting in an all but empty castle, with all his men and prisoners billeted in the town. The Brigadier’s efforts with the postmaster were, as might be expected, “to no effect” and upon this said Webb, “the Governor gave me a billett for my servants and horses for one night,” but the solicitor himself was still left as yet without a bed. Late in the evening he had the good luck, firstly to find Colonel Stanwix’s house, and secondly not to find Colonel Stanwix — for he and his family were out of town. He was able to prevail upon the servants to admit him — “just as it was dark” — and contrived to stay (if we are to believe his expense account) for sixty

²⁶ SP. 36/86/23.

days. Perhaps even Colonel Stanwix's house was not absolutely satisfactory in all respects, however, for there is an item for a payment on account of "sundry repairs to Mr Stanwix's kitchen".²⁷

The very next day Webb addressed a strong letter to "the solicitor for carrying on criminal prosecutions" in London.²⁸ There were many more people yet to arrive in Carlisle: four hundred prisoners were understood to be on their way from Scotland; then there were the witnesses from various parts of England and Scotland, and as soon as the trials commenced there would be the judges and their servants, the writers (attorneys and law-agents) from Scotland and their servants, and, of course, the jurymen from the county — for of the grand jury of thirty, only one came from Carlisle itself, and of the petty jury of a hundred and twelve, only four.²⁹ In any case something would have to be done urgently to secure that proper lodging be found at least for the Crown witnesses, otherwise "I foresee they will have none, and will be reduced to lye on straw". A conference was called between the civic and military authorities, and was attended by the Mayor, Joseph Backhouse, Richard Gilpin (Recorder), Alderman Tate and Brigadier Fleming.

The argument from the civic side was quite simple: the city is overcrowded, the castle is vacant. The Governor ought to be ordered to take the troops out of the city into the castle or the castle barrack, where two hundred beds could be fitted up to take four hundred men. The prisoners were in the main military prisoners and not "prisoners of the peace"; they should therefore be in military charge, and not a charge upon the peace. As to the French prisoners, if they could not be taken into the castle, they should be taken out of the town, to Brampton or Penrith or somewhere. The argument from the military side was just as simple: "I did not expect

²⁷ Pelham-Holles MSS.

²⁸ SP. 36/86/23.

²⁹ Stowe MSS. 255, pp. 10 and 6-7.

the worthless magistrates or corporation of this place, who I never found had his Majesty's service much at heart, to show much of their loyalty.'"³⁰

The matter of the French prisoners was an especially sore point. Mostly, they were French only in a technical sense; although they may have assumed French nationality, they were Scots or Irish or of Scottish or Irish extraction, and in any case spoke English. The trial judges and the Crown Solicitor all complained that these enjoyed complete liberty of the city within the walls, and were living in a very expensive manner. They even "give balls or plays to the towns people almost every night". Although this made "the whole run of the Town incline to favour the rebels", certainly nothing was done to confine them.³¹ In any case, "the influence they have by means of the expense they live at prevents many persons giving their testimony." "It is scarce possible to describe to your Grace", wrote Webb to the Secretary of State, "how much this service suffers" in consequence.³²

Jacobite pamphlets were openly bandied about the town and, indeed, placed in the hands of jurymen and witnesses, presumably in an attempt to suborn them. In particular, there were pamphlets which had been written during the reaction after the suppression of the Fifteen and the affair of 1722, now re-issued in London and appearing in Carlisle. There was, for example, a 20-page pamphlet, reprinted in 1746, doing the rounds in Carlisle, entitled *An Argument to prove the Affection of the People of England to be the best Security of the Government*. One passage,³³ characteristic of many, was very apposite in Carlisle in the later summer of 1746. "I believe I speak the sense of every Dispassionate Man of the Kingdom, that the Rebels shall and ought to be pardoned."

³⁰ SP. 36/86/36.

³¹ Add. MSS. 35588, f. 317, and SP. 36/86/23.

³² SP. 36/86/235.

³³ A copy of this pamphlet is filed among the State Papers, marked at the various offending passages.

One who was concerned in the circulation of this pamphlet in Carlisle, "George McFarlen, drover", was taken up and examined by one of the Carlisle Justices, Montague Farrer, better known perhaps as Captain of the Carlisle (Cumberland and Eskdale wards) company of militia who had done garrison in the castle last November before it was surrendered to the Jacobites. McFarlen the drover was taken into custody — but Farrer's examination of him did not disclose the source of supply.³⁴ Occurrences of this character made the continued presence of the French Officers so objectionable in the city. Further batches of prisoners and witnesses arrived from Scotland and the situation in Carlisle grew steadily worse.

In the meantime the business went on of identifying the prisoners, and sorting out the evidence and witnesses against them. With regard to identification, it had earlier been provided that two captains, two lieutenants, two ensigns, ten sergeants, ten corporals and forty private men of Brigadier Bligh's regiment³⁵ should "go into the several prisons and places where the non-commissioned officers and soldiers belonging to the rebels were, in order with the utmost caution, to remark every man so as to be able to know him again."³⁶

It was thought desirable to have some at least of these to "attend the service of the special commission, and to be in Carlisle by the 12th September when the trials will begin." Not only the prisoners but the witnesses also had to be identified, and Richard Jackson, one of the bailiffs of Carlisle, was paid out of crown funds £25 "for his and his clerk's trouble for forty days in attending four hundred and thirty-five of the witnesses for the Crown at Carlisle, calling them over twice a day [etc.]."³⁷ Various other expenses, civil guards for the prisoners, coal and

³⁴ SP. 36/87/143.

³⁵ Brigadier Bligh's regiment, 1740-46; Lord George Sackville's, 1746-49; later the 20th Foot, now the Lancashire Fusiliers.

³⁶ SP. 36/86/73.

³⁷ Pelham-Holles MSS.

candle and so forth, he recovered from the county.³⁸ There were also the welfare services to be paid for, the "apothecary for medicines, given to several of the Witnesses who were sick" (£1. 18s. 2d.), "Beer sundry times for several of the witnesses" (£4. 16s. 6d.), payments to doctors (10 guineas and 11½ guineas),³⁹ and so on. Then there were the "office" expenses, paper, parchment, postages, post-horses, tollgates — Webb said he found "these northern posts come and go out very irregularly."⁴⁰

With regard to the lotting procedure at Carlisle, a batch of forty-one prisoners, sorted and lotted on 20 July, may be taken as typical. Of these, ten had been originally confined in Carlisle on the charge of high treason and levying war, but three were ordered not to be proceeded against owing to the insufficiency of evidence. A further twenty were brought in from Whitehaven, of whom two could be charged only with misdemeanours. There were sixteen further prisoners brought in from Newcastle and Morpeth, making forty-one in this batch. Of these, it was decided to set five apart as witnesses and nineteen were persons of sufficient note or who had distinguished themselves by a degree of guilt in the rising itself or "by indecent behaviour" in custody since, to warrant their trial. This left seventeen, three from Carlisle, nine from Whitehaven, two from Newcastle, and three from Morpeth, to cast lots for trial.⁴¹ The fatal lot fell upon William Elliott from Morpeth: the certificate as to this lotting is noted: "present at drawing of lotts: Governor Fleming and Town Mayor."⁴²

This was not the end of the business, however, for the condition of "lotting" was that the concession was in any case reserved to those who pleaded guilty and peti-

³⁸ Quarter Sessions minute book, Easter 1746, p. 328 (R. C. Jarvis, *Jacobite Risings of 1715 and 1745*. Cumberland Record Series, i 363).

³⁹ Pelham-Holles MSS.

⁴⁰ SP. 36/86/31.

⁴¹ *Ibid.*, 92 and 177.

⁴² *Ibid.*, 177.

tioned for mercy. They would then be transported for life to the plantations, usually under indentures not far distinguished from slavery. In the present case, however, the precise procedure adopted was not the efficient one, namely of requiring the prisoners to plead and petition before drawing the lots. Hence seven of the sixteen men after they had drawn the blank lot and thus escaped trial, protested their innocence, and refused to plead guilty and petition for mercy solely in order to qualify for transportation. The Crown Solicitor himself "questioned whether if they were indicted they could be convicted", for "the evidence against them is so slight". In the circumstances, therefore, the prisoners naturally wished "forthwith to be tried".⁴³ So far as the Crown Solicitor himself was concerned, he managed things otherwise. He says he was "twenty times in Carlisle gaol". The prisoners drawing lots that he was concerned with were all fully apprized of what they were doing. The Order-in-Council was read over to them; they had to own themselves guilty of high treason in levying war against his Majesty; they had to sign a petition submitting themselves to transportation — and then he permitted the lotting to proceed.⁴⁴

The general assembling of the prisoners and the witnesses against them was no simple matter. For example, in the previous November Lieutenant Kirkpatrick of the Cumberland militia light horse had the distinction of having brought into Carlisle the first prisoner taken under arms. "Doing duty in this town", he rode out towards Ecclefechan and took from their advance guard a quartermaster named James Brand or Bran or Brawd. After the prisoner had been examined in Carlisle, Kirkpatrick took him to the military at Newcastle.⁴⁵ All records agree that this Brand was "a most hardened rebell". Incidentally, on his way to Newcastle or on his way back, Kirkpatrick

⁴³ *Ibid.*, 223.

⁴⁴ *Ibid.*, 36/90/18.

⁴⁵ *Ibid.*, 36/73/65.

lost his horse, and hence the incident is recorded in the Cumberland county records.⁴⁶

In August 1746, this Brand or Brawd was back in Carlisle — on trial — but putting up a defence of which no one had heard before. The Crown Solicitor at Carlisle therefore wrote to the Crown Solicitor for criminal prosecutions in London that it was “absolutely necessary for Mr Kirk Patrick to be at Carlisle by the 12th of August”. Kirkpatrick, however, was no longer serving in Dacre’s Cumberland light horse — which had been stood down — he was “in the army in Scotland — but in what regiment I cannot learn”.⁴⁷ In the result, although others in Carlisle testified against the notorious James Brand, Kirkpatrick did not.⁴⁸ He could not be found and the prisoner had to be convicted without Kirkpatrick’s assistance.

There were many complications of this character, especially with witnesses from Scotland, where probably language difficulties contributed some confusion. For example, certain witnesses (not otherwise charged) found themselves among the prisoners on the strength of statements they had made as witnesses. When indicted they pleaded they had surrendered themselves and their arms voluntarily in Scotland under the terms of the Royal proclamation and could not therefore be charged. They had to be acquitted on these grounds.

Not only did all this business in Carlisle cause a shortage of accommodation, food, forage and so forth, but also a shortage of specie. The Crown Solicitor in Carlisle, like Charles Edward before him,⁴⁹ had recourse to the office of the collector of the land tax and other public moneys. To put himself in funds, Philip Carteret Webb would draw a 14-day bill on his principals in London to the order of the receiver of the land tax, Peter How,⁵⁰ who

⁴⁶ Quarter Sessions minute book, Midsummer 1746 (Carlisle), p. 346 (see R. C. Jarvis, *Jacobite Risings of 1715 and 1745*, 311).

⁴⁷ SP. 36/85/140.

⁴⁸ Stowe MSS. 255, ff. 114-122.

⁴⁹ SP. 36/80/315.

⁵⁰ Whose bankruptcy in 1763 occasioned the noted Lowther-Portland conflict (*Lonsdale MSS.* 126).

being a Whitehaven tobacco merchant had other access to money and credit. Incidentally, How was one of those who served on the grand jury. Samuel Billingsley acted as expeditor for the receipt and payment of the various moneys and keeping the necessary accounts, for which service he received £44. 10s., to cover York as well as Carlisle.⁵¹ Apart from these there were also such petty-cash items as Dr Tenton and Dr Dinkel, both of Lancaster, "expended at Carlisle twenty-three days", 11½ guineas each, and "pd Timothy Granham, beer sundry times for seven witnesses", £4. 16s. 6d.

In due course, the four judges named in the special commission arrived in Carlisle, the Lord Chief Baron Sir Thomas Parker of the Court of Exchequer and Sir Thomas Burnett of the Common Pleas, both for the Eastern part of the northern circuit, and Sir Thomas Dennison of the King's Bench and Charles Clark of the Court of Exchequer, both for the Western part.⁵² The Lord Chief Baron arrived in his coach and six with one spare horse and five saddle horses for his servants. His brother barons each came in his coach and six, and three or four saddle horses each for their servants. Chief Baron Parker and Sir Thomas Burnett were accommodated at the house of Charles Highmore — another lawyer — Earl's Inn, once the town residence of the Earls of Egremont, and more recently the lodging of both the Duke of Cumberland and Prince Charles Edward. According to the latter's household book, he paid twenty guineas for four nights and kept the family in the meantime.⁵³ The judges paid sixty guineas for nearly four weeks, and kept their own table.

Sir Thomas Dennison and Baron Clark lodged at John Holmes' house at a more modest cost of forty guineas, the sums in both cases covering "small beer and firing". The cost of tea, coffee and chocolate consumed by the

⁵¹ Pelham-Holles MSS.

⁵² Stowe MSS. 255, p. 2.

⁵³ R. Forbes, *Jacobite Memoirs* 149-150.

judges, their clerks and servants at Carlisle and York came only to £38. 14s. 6d., but the cost of their wine amounted to £253. 15s. 7d. Both of these sums are in addition to the money paid to "two cooks for the expenses of their Lordships' table during forty-five days, the time of the execution of the Commission at York and Carlisle, and for the time and expenses as cook to the Judges." The sum was £415.⁵⁴

At the end of the first week in August — the commission was due to open the following Tuesday — the situation was near chaos. It had been planned to open the commission on the afternoon of Tuesday, 12 August. On the Wednesday the Bishop of Carlisle was to preach his sermon, and the Lord Chief Baron would give his charge to the grand jury. On Wednesday Thursday and Friday they would hear the arraignments, find the bills, and give copies of the indictments to those indicted, adjourn the court on Friday, 15 August until Tuesday, 9 September, and set out for York on the Saturday where they were opening on the following Wednesday, and at Lincoln on the Wednesday week.⁵⁵ Events were to show that such a programme was impossible. About a hundred and forty of the prisoners from Scotland did not come into Carlisle until 13 August and a further hundred witnesses came in on the 13 and 14 August. The Crown Solicitor and the trial judges were much distressed by the prisoners not coming in timely. As the solicitor said on 14 August — two days after the commission opened — "I am an utter stranger to the evidence against these prisoners from Scotland, which consists of many large volumes in folio, which I must begin to read."⁵⁶

Certainly the prisoners and the witnesses had been sent "in an irregular manner to Carlisle". When the slight delay occurred in consequence of the question about the Scottish pleadings, no other bill could be got ready

⁵⁴ Pelham-Holles MSS.

⁵⁵ Stowe MSS. 255, pp. 3-4.

⁵⁶ Add. MSS. 35588, f. 300.

to be presented, for "if the prisoners were come" the witnesses were not arrived, and if the witnesses had arrived "the prisoners were not",⁵⁷ a misfortune that the Lord Justice-Clerk in Scotland "did not feel disposed to blame himself for."⁵⁸ Little wonder the Cumberland grand jury became very uneasy.

A further sixty-one prisoners arrived on 17 August,⁵⁹ and congestion got worse. The Governor consulted with the Sheriff and magistrates as to where to put them all, but "all the assistance I could get from them", he complained in his letter to the Secretary of State of 14 August, "was an old malt-house, . . . and that no place of security."⁶⁰ A quantity of straw — three hundred and sixty "waps", followed by another two hundred "waps", with an additional forty-six "to the sick in the kiln" — was supplied by the magistrates at local cost.⁶¹ The major part of the cost, however, could not be borne by the county.

The Crown Solicitor warned the Secretary of State that "the expence of maintaining [witnesses and prisoners] is excessive", apart from the expense of getting them to Carlisle. The account relating to subsistence alone is no mean item. For example: "Paid at several times to Mr Richard Jackson at Carlisle, being what he paid to the four hundred and thirty-five persons who attended at Carlisle as witnesses for the Crown against the Rebels, many of whom attended there forty days and upwards . . . £1,311. 13s."⁶²

The item includes not only subsistence as such but also horse-hire, loss of time and "expenses home", but does not include the cost of bringing to Carlisle the witnesses from Scotland other than that four hundred and thirty-five; this cost additionally £1,469. 15s. 10d.⁶³

⁵⁷ *Ibid.*, f. 332.

⁵⁸ *Ibid.*, f. 325.

⁵⁹ *Ibid.*, f. 311.

⁶⁰ SP. 36/86.

⁶¹ Quarter Sessions roll, Epiphany 1746/7, petitions 22 (R. C. Jarvis, *Jacobite Risings of 1715 and 1745*, 371-372).

⁶² Pelham-Holles MSS.

⁶³ *Ibid.*

The Crown Solicitor, in his report from Carlisle to London of 14 August, undertook to reduce the number of these witnesses as soon as he was able, but in the meantime two hundred more un-lotted prisoners were expected from Scotland to be in Carlisle on Sunday or Monday, 16 or 17 August; "till they come in, it will not be possible . . . to proceed to the lotts or to know which of the Scotch witnesses may be spared or not."⁶⁴ In consequence of all this, and of the additional fact that "several Scotch advocates and writers" were arriving for the defence, the delay of the judges and their retinues in Carlisle "both in finding the bills and going thro' the tryals will be much longer than was expected".⁶⁵ At first the trial judges suggested that they should "enlarge the time for finding bills here [in Carlisle] to the 20th", but the Cumberland grand jury was already beginning "to be excessive uneasy at the few bills preferred". The trial judges were fearful lest they should upset the grand jury at York also, which they would certainly do if they did not open the commission on the date announced, there being now "not time to give [them] notice to prevent them coming to York . . . from the remote parts of so large a county."⁶⁶

It was known that the grand jury would be "out of humour to be disobliged"; therefore, said the lawyers, "our proceedings could not be delayed at Carlisle." On this account it was suggested that they should divide forces, two only of the judges hearing the preliminary proceedings at Carlisle, the other two proceeding to York. Ultimately it was decided to cancel all proceedings at Lincoln,⁶⁷ since clearly it would be "impossible for the commission to go to Lincoln as was intended", and the Lincoln prisoners commenced to be transferred to Carlisle for trial.

⁶⁴ SP. 36/86/235.

⁶⁵ *Ibid.*, 237.

⁶⁶ Add. MSS. 35588, f. 332-333.

⁶⁷ The Commission was superseded by writ of *supersedeas* under the great seal (Stowe MSS. 255, p. 5).

On Friday, 15 August, twenty-two true bills were found at Carlisle, and on Saturday five more, and on the following Monday and Tuesday a further eighteen and fifteen.⁶⁸ Next day the Crown Solicitor reported to London that the grand Jury stood adjourned — “many of the prisoners arrived too late for the sitting of the Judges.”⁶⁹ “As many witnesses as could be spared” were sent away, and the Crown Solicitor set out for York in the morning, whither the Lord Chief Baron and Justice Burnett would follow.⁷⁰ During Webb’s absence in York his position as solicitor for the crown was filled by Jerome Adderton, a Carlisle attorney. He was “employed by Mr Webb in examining the Carlisle witnesses and attending on these witnesses during all the times of the tryal at Carlisle and was afterwards employed to make out lists of the names places and residences and occupations of the persons who had drawn lotts at Carlisle” — for which he received the sum of £35.⁷¹

In the meantime however, Carlisle had been “so crowded that many of the witnesses who attended on behalf of the Crown had not a bed to lye on. The service will suffer when we come to proceed to the tryals. Unless this can be remedied the witnesses will many of them, as they declare, not attend unless they can be lodged.”⁷² The situation was relieved somewhat by a further lotting of Carlisle prisoners on Sunday, 17 August and more on the Tuesday, to the total of a hundred and eighty; but it could be eased more if the French prisoners “were removed to Brampton, Penrith or any other neighbouring town.”⁷³ The point still rankled: the friction between the civil and military sides had in no way abated.

Joseph Backhouse, the Mayor, told the Secretary of

⁶⁸ SP. 36/86/239 (or 273).

⁶⁹ Add. MSS. 35588, f. 325.

⁷⁰ Baron Dennison went off to Scarborough and Clark to Godmanchester (Add. MSS. 35588, f. 332).

⁷¹ Pelham-Holles MSS.

⁷² SP. 36/86/287.

⁷³ *Ibid.*, 290.

State after the August adjournment and before the September trials, that "this is but a small place for to entertain the number of them that are in it, so that the soldiers wanting that convenience they ought to have makes an uneasiness at present." The corporation however — in general terms — had "always acted and shown their loyalty upon all occasions for his Majesty's Service", and — to be more specific — had "furnished the Commandant for the Castle with quantities of meal and tatoes, and what else he thought necessary to order." The magistrates had gone through the city with the Brigadier "and let him see all the conveniences of this Town."⁷⁴ About the best they could do was to make over "an old malt house, which might contain about a hundred and twenty prisoners or witnesses."

All this overcrowding in Carlisle, however, caused deep concern on another account. The judges who had left Carlisle wrote to the Secretary of State from York on 23 August that the overcrowding at Carlisle was not only dangerous to the health of the prisoners: it was also a menace to the health of the city.

The gaol is so crowded with the prisoners that have cast Lotts that there is danger of contagious disease breaking out among them if they are not immediately removed to Whitehaven or some other more convenient place.⁷⁵

An epidemic of fever in the town might be truly tragic. Furthermore — this may have been even more important to the gentlemen of the long robe — it "will make it highly inconvenient for the council and sollicitors to resort to the prisoners, as by law they ought, to do under proper restriction."⁷⁶ In order to make some additional space, the French prisoners should be removed out of the city, where in any case it was legally improper for them to be, where they "probably inter-mix with jury men and witnesses and corrupt their minds."⁷⁷

⁷⁴ *Ibid.*, 316.

⁷⁵ *Ibid.*, 287.

⁷⁶ Add. MSS. 35588, f. 319, and SP. 36/86/329.

⁷⁷ SP. 36/86/329.

On 23 August the Governor reported from Carlisle that at last the French prisoners had been removed. That morning the last of them (save only the Marquis D' Eguilles, France's ambassador to Charles Edward, and two French officers, Captain Cusack and Captain Stack) had set out under an escort from Howard's regiment for Penrith, where they were to remain until further orders.⁷⁸ As regards witnesses, by the time the trials had started "many hundred came into this place from Scotland". In this they ran some risk, for as the Crown Solicitor said, he himself "detected two of them to be themselves rebels, and they are [now] committed for high treason in levying War."⁷⁹

It is natural if in all this confusion locally the Crown Solicitor was apprehensive that some prisoner or prisoners might somehow or other slip through the official mesh. However, after the trials, he was bold enough to report to the Secretary of State that "we have had the good fortune that not one hath escaped thro' any slip or mistake in the proceedings."⁸⁰ In fact, however, their good fortune was not quite so good as that. For example, of two of the Manchester men who surrendered at Carlisle, Seton and Arnot say nothing at all about Ralph Carter, and of William Cooper merely that he was "taken at capture of Carlisle. No further reference to him."⁸¹ From other sources it is known that both of them were among those who refused to sign the petition for mercy. They were removed to Lancaster Castle, and could not be indicted at the Assizes in the following year for want of evidence, and eventually they were discharged by the court without entering into recognizances, notwithstanding that the Crown opposed that course.⁸²

There was a gruesome reminder of the trials, when,

⁷⁸ *Ibid.*, 324.

⁷⁹ *Ibid.*, 36/87/145.

⁸⁰ *Ibid.*, 434.

⁸¹ *Prisoners of the '45* (Scottish History Society, 3rd ser., xiii-v) ii 127.

⁸² SP. 36/97/146.

during the adjournment, the Sheriff of the county received a warrant from the Secretary of State dated 22 August "for putting up the heads . . . on one of the gates of the city" of Thomas Chadwick and John Berwick, two of the Carlisle garrison, tried and condemned at the trials in London.⁸³ Christopher Pattinson the Sheriff replied that he was unable to do so, for although he had received the warrant safely, he had not received the heads. It was a month later — 20 September — that he was able to report that he had "yesterday" received the heads, which he had "caused to be set up on the English Gate of this city."⁸⁴

In the meantime the trial judges arrived back in Carlisle from York on Monday, 8 September. "Our Grand Battle will be at Carlisle, which is already swarming with Jacobite Scotts."⁸⁵

The court assembled at the Town Hall on Wednesday, 10 September to proceed with the arraignment of those who stood indicted. The grand jury found true bills against a further batch of prisoners — the late arrivals — and were then discharged. At the opening of the proceedings a number of prisoners refused to plead in English fashion. Furthermore, the same "scruple of conscience . . . seized our Scotch witnesses." It was certainly "a concocted thing", said the Crown Solicitor. "It was certainly a scandalous combination", commented the Lord Chancellor.⁸⁶ After legal argument however, pleas in the Scottish form had to be admitted.

On Friday, 12 September nine prisoners were either tried or pleaded guilty, and the trial then continued each weekday until 26 September, in the morning of which day ten prisoners were disposed of. By noon that day all the trials had been finished, and the judges and their

⁸³ *Ibid.*, 36/87/156.

⁸⁴ *Ibid.*, 288.

⁸⁵ Add. MSS. 35588, f. 323.

⁸⁶ *Ibid.*, f. 325.

retinue set out for York next morning where the trials were due to open the following Thursday.

The daily totals of prisoners who were tried or who pleaded guilty ran as follows: Friday, 12 September, 9; Saturday, 13, 7; Monday, 15, 7; Tuesday, 16, 19; Wednesday, 17, 13; Thursday, 18, 11; Friday, 19, 12; Saturday, 20, 15; Monday, 22, 1; Tuesday, 23, 6; Wednesday, 24, 3; Thursday, 25, 12; Friday, 26, 10. Total 125.⁸⁹

Even with the trials over, there was plenty of excitement in Carlisle. Scarcely were the trials closed than some of the most notorious of the prisoners staged an escape effort. The notorious Thomas Coppock and two other prisoners "endeavour'd to corrupt the centree and had filed off their Irons". Upon this news, said the Crown Solicitor, "I apply'd to the Brigadier Fleming and Lieut.-Colonel Howard, and the guard is just now doubled."⁹⁰ The trouble was that eighty-nine of the ninety-one condemned men were confined "in one long room in the Castle", and the gaol was filled with prisoners who had drawn blank lots. The gaoler in whose custody the prisoners were was "a very bad man of whom anything ill may be expected". Webb reported to the Secretary of State that he had "frequently applied to the High Sheriff to remove him, but without effect."⁹¹

Probably as a result of this the Secretary of State wrote to Christopher Pattinson, the Sheriff, on 3 October informing him that it had been reported that the keeper of Carlisle gaol was "suspected of being very negligent of his office". To this the Sheriff replied that he had now "thought it his duty to discharge him, and appoint a new gaoler". The Sheriff and his Under-Sheriff "alternately have made Carlisle our residence ever since the

⁸⁷ *Ibid.*, 32708, f. 139.

⁸⁸ Stowe MSS. 255, pp. 20-38.

⁸⁹ SP. 36/87/400.

⁹⁰ *Ibid.*, 434.

⁹¹ *Ibid.*, 36/88/1.

Assize, by the Judge's recommendations'', and would continue to do so until after the executions.⁹²

According to the Crown Solicitor's final report to the Secretary of State, eleven of the prisoners had pleaded guilty, forty-nine were tried and convicted, and thirty-one pleaded not guilty but retracted and pleaded guilty. Thus a total of ninety-one were sentenced. Of those acquitted (by consent of the Crown Counsel) eight were on account of being entitled to the benefit of the proclamation about surrender, and the remainder "on account of youth, old age or other favourable circumstance."⁹³

The ninety-one condemned men were now divided by the trial judges into three categories, namely "those who appeared to be most worthy of Royal clemency", those who merely "partook of the general guilt", and "those who appeared upon their trials to be most guilty". In respect of those in the first category to the number of eleven, no date of execution was fixed. In respect of the second category, to the number of fifty, later dates of execution were fixed in order to provide fuller opportunity to examine into the circumstances of their several cases. In respect of the third category, to the number of thirty, executions were fixed in various towns of Cumberland, namely Carlisle, Penrith and Brampton, on forthcoming market days, in Carlisle on Saturday, 18 October, in Brampton the following Tuesday, 21 October, and because the market day at Penrith was on a Tuesday also, the executions were fixed there for the following Tuesday, 28 October.

Finally, the High and Grand Juries of the county of Cumberland were informed "of his Majesty's satisfaction with their good conduct, and of the King's commands . . . to return his Majesty's thanks for the same."⁹⁴ The Crown Solicitor informed the Secretary of the State of "the zeal and readiness of the people of this town [of

⁹² *Ibid.*, 72, and Add. MSS. 35588, f. 346.

⁹³ SP. 36/87/434.

⁹⁴ *Ibid.*, 36/88/16.

Carlisle] in comeing in to give testimony",⁹⁵ and the trial judges were told that "in all your proceedings nothing could be more proper."⁹⁶

The king himself felt — as he put on a minute⁹⁷ under the report of the trial of the last of the rebel lords — "I am glad this tedious affair is over."

ACKNOWLEDGEMENT.

The above paper is the outcome of a more extensive study, namely of Jacobite sources generally, made possible by the generosity of the Leverhulme Research Trustees, to whom I am pleased to express my gratitude.

⁹⁵ *Ibid.*, 36/87/217.

⁹⁶ *Ibid.*, 36/88/47.

⁹⁷ Add. MSS. 32708, f. 2.