

ART. XXII.—*Disagreements by the Duddon, 1825-1832.*

By SUSAN JOHNSON.

*Read at Carlisle, July 10th, 1964.*

I.

STUDYING the history of the little farm of Logan Beck, which is in the modern parish of Ulpha, I wondered why its rights of pasture and turbary are on the common of Thwaites. The parish boundary against Thwaites runs here along the waters of Logan Beck about sixty yards from the house. I found that there had been a dispute, which began about 1825, between the people of Ulpha and Thwaites about rights of turbary and pasture on the commons. There was then uncertainty about the boundary between these parishes, and between the manor of Ulpha (belonging to Lord Muncaster) and Lord Lonsdale's manor of Thwaites. The disagreement arose between William Lewthwaite of Broadgate and, among others, Thomas Simpson of Beckfoot, and it was first taken to court at the Cumberland Spring Assizes of 1825. Sir William Lewthwaite of Broadgate kindly let me copy the legal brief which was prepared for his fore-elder William Lewthwaite:

The defendant (Simpson) possessed 500 acres in the parish of Millom and by reason thereof ought to have Common of Pasture for all his Commonable Cattle on . . . Thwaites Fell . . . yet he . . . wrongfully intending to injure . . . the Plaintiff (Lewthwaite) on the 1st May 1824 and on divers other days . . . wrongfully with spades . . . cut and dug a great part to wit 1,000 square yards of the Turf of the Waste . . . and . . . 20 cart loads of Turves there then . . . dug . . . carried away, whereby the Plaintiff (Lewthwaite) was greatly injured . . . in the use of his Common of Pasture there . . .

2nd Count That the Plaintiff (Lewthwaite) . . . at the time of the committing of the grievances . . . was lawfully possessed

of a Messuage and appurtenances . . . at the parish aforesaid and by reason thereof of right had . . . Common of Turbary in *Thwaites* Fell to cut . . . Turf and to carry (it) away for . . . fuel to be . . . burnt in his said Messuage, yet the Defendant (Simpson) . . . on 1st May 1824 wrongfully cut . . . and carried away 50 other cart loads of the turf in the . . . Waste

<i>Plea</i>	Not guilty
<i>Damages</i>	£10
<i>Case</i>	This action is brought by the Plaintiff

(Lewthwaite) a Commoner in the Manor of Thwaites against . . . a Stranger who resides in the Manor . . . of Ulpha for injuries to (Lewthwaite's) right of Common the question will be whether (Simpson) and his *Predecessors* (occupiers of the Messuage) have exercised the right . . . of getting Turves . . . on Thwaites Fell for a sufficient length of time to warrant the presumption of a grant of such right from the Lord.

Many of the tenants of Ulpha have of late years been making similar encroachments on Thwaites Fell . . .

(Lewthwaite) is the . . . occupier of a Messuage and a very considerable proprietor and occupier of lands at Broadgate within the Manor of Thwaites of which . . . Lord Lonsdale is Lord, and the Defendant (Simpson) is Tenant and Occupier of a Messuage the property of Mr. Towers of Duddon Grove (who is the real Defendant) which Messuage is at *Beckfoot* in the Manor of Ulpha of which Lord Muncaster is Lord those 2 Manors' Common . . . adjoin on each other . . . but owing to Thwaites Fell being more contiguous than Ulpha Fell to (Simpson) and some others of the Ulpha tenants they have latterly been in the habit of Stealing a March upon Thwaites people and incroaching . . . by getting Turves upon their Common and though some of them may probably have been unmolested therein for such a length of time as to acquire them a right of Turbary upon Thwaites Fell at this day, yet it is presumed no such right has yet been acquired (for Simpson's) Messuage. This Messuage with a farm around it belonged to a family of the name of Cooper for a great number of years prior to 1811. Mr. John Cooper was born in the Messuage (which belonged to his Father) about the year 1760 and lived there unt'l 1811 and . . . never heard any of the family say they had ever got Turves on Thwaites Fell nor did he ever know any got there for the Messuage. He says they had a private "peat Moss" in their own land where they generally got their Peats but when they did not . . . they got them on Ulpha Fell just within the

Ulpha side of what was then conceived to be the Boundary between Ulpha and Thwaites. It is believed that the Thwaites people *now* claim their Boundary as being farther towards Ulpha than it was then considered to be so as to take in . . . the Plot of Ground from which Cooper got his Peats but on the other hand the Ulpha people dispute it and take it within their Line . . . and probably (Simpson) may attempt to shew that Cooper's peats were got within what the Thwaites people now call their Boundary . . . as an Exercise of the right on *Thwaites Fell* however it is "confidently contended as" Cooper got his Peats there believing . . . he was getting them . . . in Ulpha and that such Evidence if offered would not go towards substantiating Defendant's (Simpson's) right on the Commons within . . . Thwaites. If Cooper had supposed he had a right on Thwaites he could have procured them much nearer to his Home which he certainly would have done for he would have saved one half of the distance and would have avoided a very rugged and Mountainous road . . .

The grievance however was committed in what is on both sides admitted to be the Manor of Thwaites. Cooper is Lewthwaite's witness but is either friendly to the Defendant's Cause or averse to interfering.

To show that in 1811 it was not contemplated that (Beckfoot) had a right of Turbary on Thwaites . . . the Newspaper the Cumberland Pacquet . . . of 27th August 1811 will be put in . . . the Beckfoot estate was advertised for sale . . . the farm described as within the Division of Ulpha and entitled to an unlimited right of Pasturage and Turbary on the extensive Commons of Ulpha but never a word of . . . Thwaites Common. About 26 years ago Cooper . . . for some sods to repair his Mill dam at Beckfoot procured some on Thwaites Fell . . . and (Lewthwaite) happening accidentally to see his servants carrying them away to Beckfoot . . . told Cooper he had no right to take away Sods from Thwaites Fell and . . . Cooper never afterwards got any more in Thwaites.

But the action (is about) Right to get Turves . . . for fuel. It is not denied by (Lewthwaite) that (Simpson) has since 1811 got Turves for Fuel on Thwaites Fell to consume at Beckfoot but as it is expected that he can shew no such usage prior to that such Usage will not avail. — There are 2 other *cottages* at Beckfoot to which Turves have been carried from Thwaites Fell for a longer period than to (Simpson's) Messuage but that cannot affect (Lewthwaite's) right to sustain this action. In June last (Lewthwaite) caused (Simpson) to be served with a Notice Not

to . . . carry away Peats. (Simpson) in the face of such Notice ordered his Servants to carry them to his Messuage.

The Defendant's Lanlord (*sic* — Towers) to obtain rights . . . on Thwaites Fell is even now by a tenant of his attempting to gain such rights (for) a farm in the Manor of Dunnerdale (Rowfold), not even in the same county.

Evidence to be given by — William Lewthwaite of Swinside, John Williamson and Thomas Cannon and Joseph Pattinson a labourer employed by Simpson to dig Thwaites' Peats, and John Proctor a labourer who dug peats for Cooper on Cooper's *own* ground. "John Nicholson Cooper to state that neither he nor his father ever dug Turves on Thwaites Fell, but on the *Ulpha* side of the Boundary. He got the Peats in the Peat Pots under White How . . . the Ulpha Boundary was always said to be from Cloven Cragg in a line to Paddy Craggs which left the Peat Pots under White How in Ulpha. Thomas Cannon of Bowscale has heard old John Whinfield of Ulpha, now dead, say that the long ridge of stones on the East of the Peat Pots under the White How was the Boundary between Ulpha and Thwaites.

Jane Mawson was with Myles Cooper at Beckfoot from 51 years ago — for 10 years they got Peats opposite Bowscale fields in Ulpha . . . they carried them to Bowscale Peat House except in the evenings they carried their carts laden down to Beckfoot — they did not consider they had a right on Thwaites and never turned anything out there — they had to go up Thwaites Fell a long way before they got to Ulpha Fell — if they had a right on Thwaites they could have got Peats nearer home and better Peats . . . Bowscale Peat House is in Ulpha. The road was very rough up to White How.

George Robinson a Surveyor will prove . . . that the Peat Pots under the White How are about 1150 yards farther from Beckfoot than the Peats Pots where (Simpson) got his Peats last year and that the distance from the lowest Peat Pot on Thwaites Fell where he might formerly have got Peats to White How is 2750 yards. He will speak . . . as to the rugged state of the Ground up Thwaites Fell to White How."

George Robinson received £11. 17s. od. from Mr. Postlethwaite for his surveying and journeys to the Assizes. Debts to C. Hobson included this — "Several of the inhabitants of Ulpha and other Divisions having hounded sheep and dug Turves on Thwaites Fell — Attending the Common of Management appointed by the Prosecution and advising — 6s. 8d." A notice was served on those in the habit of hounding sheep on Thwaites

Fell . . . Thomas Wood of Seaton Hall, John Banks of Bowscales, Nicholas Whinfield of Whinfield Ground, Thomas Preston of Folds, and Thomas Tapping tenant of Rowfold in Dunnerdale. Notices were furnished to William Briggs Ed. Simpson and Henry Benn for digging Turves, and one to Whinfield for baiting and disturbing Cattle and sheep.

The lawyer claimed 6s. 8d. for going to Broadgate and drawing up an authority to be signed by the three managers, Lewthwaite, Steel and Troughton.

Expenses for going to Carlisle for the Assizes included his own and his horse's, and J. Lewthwaite's coach hire, and witnesses' "expences on the road from Carlisle (there all night) . . . Horses thence home, toll etc. For coach hire expences and loss of time of John and Joseph Cooper, John Proctor, Joseph Pattinson, and George Robinson, William Lewthwaite and Thomas Cannon at the Summer Assizes 1825 — £21. 12s. 4d." The whole bill by Michaelmas Term 1825, including defendant's costs of £139. 10s., was £324. 19s. 6d.

A few points arise out of this — Mr William Lewthwaite found it necessary to issue a notice against a farmer as far away as Bootle for hounding his sheep in Thwaites. The reason why Rowfold claimed rights on Thwaites common was — as explained to me by Mr J. Hartshorn of Rowfold — that the small farm of Bowscale in Thwaites was farmed with Rowfold.

The Walk Mill close against Logan Beck on the north-east bank is not here mentioned. From the house's documents it would seem that its turbary rights might be in Ulpha: an agreement of 1770 between William Singleton, Lord of Ulpha, and Thomas Askew states that Singleton sells his part of "Walke Mill and house and garden and . . . if Askew should build a dwelling house upon the Premises Askew or his Mother is to have liberty to get Peats yearly in Ulpha Park sufficient for that Dwelling House and . . . Askew or his Mother is to Digg and Grave the Moss in a Husbandlike manner, and . . .

Askew or his Mother is to pay . . . Singleton two shillings and sixpence yearly particularly for the said Peats . . . Askew is to agree with and pay Richard Atkinson for Damages during . . . his present Lease in Frith Hall and Ulpha Park."<sup>1</sup> Whether the mill-house itself had its turbary rights in Park Moss is not stated. George Robinson who surveyed these peatmosses would be the Broughton surveyor who drew the Thwaites tithe-map in 1848. The evidence here given about the Ulpha-Thwaites boundary mentions "Cloven Cragg" near White How. This must be the jumble of split rock now locally called Cloven Stone. It is conspicuous on the grassy slope some 300 yards S.W. of the ruined farm of Bowscale. (The Ordnance Survey 6-inch map marks this Cloven Stone, and marks the parish boundary running here north of it.) Great and Little Paddy Craggs are on the southern shoulder of Buckbarrow.

The *Carlisle Patriot* of 20 August 1825 reported the case at Cumberland Assizes: the prosecution complained that "Mr. Simpson, tenant of Beckfoot, having a right of common on Thwaites Fell, came upon it to get turfs, which he was not entitled to take . . . John Nicholson Cooper, owner of Beckfoot before . . . Mr. Towers, deposed that . . . he did not get turfs on Thwaites-fell but on Ulpha-fell, although it would have been more convenient to have obtained them on Thwaites. He was never present at a boundary riding. He had turned cattle on Thwaites Fell at Thwaites Gate, the nearest point of the common to the premises. Some cottagers there also got turf on Thwaites . . . George Robinson put in a plan of the common. He had heard that there were disputes about the boundary between Ulpha and Thwaites. The defence was proceeding to argue, laying stress on the turning out of cattle, though it was admitted that the fact was not conclusive in a case of turbary, when the

<sup>1</sup> I quote this by courtesy of Professor P. S. James of Leeds University.

parties agreed to refer this question, and that of the boundary, entering a nominal verdict for Mr. Lewthwaite."

A document in the Public Record Office indicates that the dispute came before the King's Bench in 1825, when Richard Towers was plaintiff on behalf of his Beckfoot tenant. The record<sup>2</sup> reads — "Whereas Richard Towers<sup>3</sup> is possessed of a messuage and 500 acres in the parish of Millom and by right ought to have common of pasture for all his commonable cattle levant and couchant in his land in a common called Thwaites Fell . . . Yet William Lewthwaite on 1 January 1820 and other days wrongfully erected . . . two peathouses two turf houses two erections two buildings and two barns upon the Common and kept them so erected . . . whereby Towers was and is greatly injured in the use of his common of pasture. And whereas Towers is possessed of a certain other messuage in the parish and during this time ought to have had common of turbary in Thwaites Fell . . . for fuel to be burnt in his said messuage Yet Lewthwaite erected (the buildings) . . . whereby Towers was and is greatly injured in the enjoyment of his common of turbary there to the damage of Two hundred pounds. And Lewthwaite says he is not guilty." So now for the first time Lewthwaite's "trespass" of building peat-houses and barns is mentioned, and Towers seems to have shifted the ground for his complaint from Beckfoot to a less debatable house. I found no record of the outcome of this case.

At the Record Office, Carlisle, I searched to see what note of the boundary dispute there might be in the records of the manors of Ulpha and Thwaites. Lord Lonsdale's

<sup>2</sup> King's Bench — reference Rotulet 2229.

<sup>3</sup> See CW2 lxiv 341. Mr Timothy Cockerill there wrote that Duddon Grove estate — i.e. Duddon Hall — was bought by Richard Towers, said to have been a cobbler's son from Ulverston, "who . . . wished to set up as a gentleman". He was an unpopular man, fond of litigating against his neighbours.

documents include this undated memorandum, which looks as if it belongs to this period:

Boundary between Ulpha and Thwaites Common and also between Bootle and Lord Lowther's manor. Whitehow Bounder mark between Ulpha and Thwaites Fell to Prior Park Corner (opposite corner of Bouskill Estate). Then as Water divides to Great Paddy Cragg. (About Buckbarrow Cragg Thwaites Sheep pasture.) Then in a line to Little Paddy Cragg. Then straight to Charity Chair. Then straight to Black Dyke and down the Beck to Bootle.

On the other side of this paper is written:

Boundary claimed by Lord Muncaster — To Charity Chair and thence S.E. to Black Dyke being the confines of Felside Pasture next Swinside, thence to Rowantree ford, thence along the side of the boundary of the Manor of Whicham and Sylecroft to a place called the Henton (?) in a direct line South-westerly between Great Goddarside and Little Goddarside being the South-west boundary of the Manor of Whicham and Sylecroft, and from there in a direct line Westerly to a great stone upon the Common or Fell about a place called Broughton Tenement near Monkfoss, and from the said Great Stone South-west or near west to a place called Gutterby farmland directly to Low Watermarsh.

With a great deal of help from Mr Thomas Bowes of Ulverston, whose family has been farming Fenwick, Thwaites, since the 17th century, I have placed some of these landmarks: Prior Park Corner would be the point where Prior Park — a great walled enclosure S.W. of Buckbarrow (1-inch map) — lies near to the land where Bowscale had its grazing rights; then we follow the water-shed to Great Paddy Crag. Charity Chair is marked on C. and J. Greenwood's map of Cumberland (1821) south-west of Little Paddy Crag. Both the Bootle Tithe Map of 1849 and the modern 6-inch map have it in approximately the same place, south-east of Stoneside. Just where the large-scale modern maps mark Charity Chair, down the slope roughly south-east from the top of Stoneside, there is a group of rocks in the grass. As the wall comes down from Stoneside it here makes a



bend, and on its north-east side right against a well-kept round sheepfold is what I take to be the chair. Why Charity? "Black Dyke" would be Black Dub, Mr Bowes suggests. South-west from there brings us not to any modern Leavyn Sike but to Grassoms, Grassgill Beck and Hentoe Beck, southern tributaries of Crookley Beck: as the 6-inch map has Levens Moss north of Crookley Beck, perhaps this beck was called Leavyn Sike in the past. The Henton could well be the modern Hentoe Hill from which Hentoe Beck drains into Crookley Beck. Of Goddarsides I find no trace here. (There is a Godderside by Holker Hall, Lancashire.) Broughton Tenement as such does not seem to survive, but the 6-inch map has Broughton Stone high on the fell some 600 yards south-east of Monk Foss. Here, where the gently sloping high moor yields to the sudden drop to the meadows by the coast, is a humped greystone slanting off to the south, a look-out for birds, conspicuous in the blaeberries and heather. It is about four feet high and nine long.

I notice that Lord Lonsdale's copy of the Thwaites tithe-map of 1848 (now in the Record Office, Carlisle) shows the parish boundary as running up Logan Beck and then on two alternative lines, either through Little Paddy Crag or (north of that) through Great Paddy Crag, to Bootle common. The Tithe Redemption Office's official tithe-maps for Ulpha and Thwaites do not show this corner.

The Brockbank family of Gateside, Whicham, kindly lent me a printed description, apparently of c. 1850-1860, of the boundaries of the parish of Bootle: it mentions many of these same boundary-marks — "As far as the boundaries abut upon the commons and wastes of Ulpha and Thwaites from Great Paddy Crag, in a southerly direction till they reach the Black Dub . . . as set out in the award of J. J. Rawlinson Esquire . . . 29 November 1838." (He was appointed Commissioner under the Commutation of Tithes Act.)

"The Boundary from Great Paddy Crag to the Black Dub to be from the summit of Great Paddy Crag where a Saint Andrew's Cross has been recently marked thereon, in a straight line to a boundary stone now recently set up on Little Paddy Crag, and from thence in a straight line to Peg Crag, and from thence in a south-westerly direction to a place where a boundary stone has been now recently set up, and from thence in a straight line to a point at the side of the public highway from Broughton in Furness to Bootle, where a pile of stones has for a long time past stood, and where a freestone boundary stone has been now recently set up, with 'Bootle' carved on the west side and 'Thwaites' carved on the east side, and from thence in a straight line to a place in the ancient but now disused road over Stone-side, where a pile of stones has stood for a long time past and a boundary stone has been now recently set up, and from thence in a straight line to Stoneside Crag where a Saint Andrew's Cross has been recently marked, and from thence in a straight line to Charity Chair at a point where a Saint Andrew's Cross has been recently marked, and from thence in a straight line to a boundary stone now recently set up on the margin of Black Dub, all of which . . . stones are marked with the letter 'B' on the side next Bootle and with the letter 'T' on the side next Thwaites." Peg Crag is marked on the 6-inch map, just south of Paddy Crag. The freestone boundary stone by the "highway to Bootle" survives, a few yards south-west of this highway in the wall running to Stone-side's top. Any boundary stone "on the margin of Black Dub" must long ago have become founderaus, like those looking for it in the bog-cotton.

To us it may seem that the people of four generations ago made a surprising commotion over rights on infertile and somewhat featureless land. Hutchinson (i 532) described Thwaites in 1794 as "a melancholy mountainous and inhospitable tract. Birth and habit reconcile

most situations: thence alone must be derived the estimate of an eligible one". Thus these fore-elders of Ulpha and Thwaites considered their turbary rights well worth repeated lawsuits.

To return to William Lewthwaite and Richard Towers and his tenant at Beckfoot: after 1825 ill-feeling between them continued, and in August 1830 Mr Lewthwaite brought a case against Mr Towers, not about turbary, but about a right of way he claimed through Beckfoot. The *Cumberland Pacquet* of 24 August 1830 reported:

Mr. Lewthwaite is proprietor of Low Park and Mr. Towers is proprietor of the adjoining estate of Beckfoot through which Mr. Lewthwaite claims right of way . . . It was not impossible to get to the Low Park by any other road but formerly the estate could not be beneficially occupied without that road and now the want of it was a great inconvenience to the proprietor. Mr. Towers claimed the right of driving cattle along the margin of Mr. Lewthwaite's land and it was probable that the two rights had been established by mutual consent.

William Newton of Green in Millom — . . . There was wood growing upon the Low Park 47 years ago, and I cut some oak wood from it. The estate was occupied by Miles Cooper. I took wood away by Beckfoot road . . . a gate at the end of the Park led through Duddon Grove to Broughton. We went close by the front of Miles Cooper's house. Any other way they must have gone right up the hill — a full cart could not. I was never stopped by Miles Cooper.

William Marr — About 47 years ago my father took the felling of the timber at the Low Park, and we made charcoal, and led it by Beckfoot.

John Briggs — I went to live . . . at Frith Hall 40 years ago. My father farmed the Low Park . . . He cut the wood growing upon it. There was a way through the Beckfoot estate from Low Park . . . into the road. We led wood by that road.

Thomas Casson — I bought the fall of wood at Low Park about 30 years ago. It was led along the old road.

John Ormanday — I was proprietor of Low Park which I sold two years ago — the road through Beckfoot estate was always used. Last fall I called upon Towers for leave to pass through the tenter field which would have been a great convenience for part of the road . . . It was so narrow and rocky that it was impossible to get through with any convenience. Mr. Towers

thought it would be better to go by the head of the field. I was to bear the expense, and set people to work. Mr. Towers afterwards stopped the people. I have frequently used the old road since. The tenant made opposition. I went with nineteen horses and carts to assert my right; and Mr. Towers's man obstructed me — I went forward with my carts. This was in 1821. Mr. Towers did not bring any action, though there was much threatening. I have done this every year since.

Under the direction of the Judge, Mr Justice Bayley, a verdict was returned for the plaintiff — “damages one shilling”. Low Park lies east of Penn, a steep and rough fell, and north of Beckfoot. The contours of the land make the road past Beckfoot the obvious way from Low Park to Duddon Bridge.

After this verdict in favour of Mr Lewthwaite the case was not dropped by the Beckfoot party. At the Cumberland Spring Assizes, 1831, Mr Simpson brought a case against Mr Lewthwaite contending that he<sup>4</sup> “had not proved the right of way because that must be taken to be a way leading from his land *immediately* into Simpson's close. Mr Justice Parke directed the verdict for Simpson but gave Lewthwaite leave to move to enter a verdict for him”. This case, too, went to King's Bench, and in 1832 a final opinion was given by four judges:<sup>5</sup> “There is this difference in pleading . . . that in prescribing for a public way it is not necessary to state the termini, but in prescribing for a private way the termini must be stated. But it is not necessary to set out the intervening closes. A right of way is proved to extend from Lewthwaite's land over certain other intervening closes into and over Simpson's closes and so into the public highway.” So Mr Lewthwaite's victory was confirmed.

The route from Ulpha past Duddon Hall was, according to the late Mr Frank Warriner,<sup>6</sup> at another time scene of a

<sup>4</sup> Law Reports, Barnewall & Adolphus, King's Bench, January 1832.

<sup>5</sup> Law Journal, 26 January 1832 — King's Bench.

<sup>6</sup> *Millom People and Places* (1937) 48.

famous battle. The owner of Rainsbarrow, a coppice wood famed for its nuts, claimed to have the use of the cart-track past Duddon Hall. Mr Towers, owner of Duddon Hall, disputed this; the principals kept on good terms, the scrapping was between their followers. Towers was reputed to feed his men well . . . good roast beef seven days a week. They crowed over the Broughton fellows whose diet they said consisted of 'taties and red herrings. The champion of the Broughton side, waving a dead cat . . . charged the Duddon Hall men furiously yelling "Come on you roast beef men. I'll show you what 'taties and red herrings can do". The enemy fled. Locks were knocked off gates, gates thrown into ditches, and the laden timber-carts passed through in triumphal procession.