ART. X.—*The Cumberland court leet and use of the common lands.* By ROBERT S. DILLEY, B.A.

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"Yet would you say, ye were beaten out of door;
And rail upon the hostess of the house;
And say, you would present her at the leet,
Because she brought stone jugs and no sealed quarts . . ."
(The Taming of the Shrew; Induction, Scene II).

Introduction.

THIS article is compiled from information gathered while writing a thesis about the commons and common fields of Cumberland. It is in the form of an interim report on only a limited aspect of the subject, consisting of an outline of the nature of the court leet papers of one estate and an illustration of some of the ways in which they can be used. No attempt is made here to relate the court leet to other sources or to consider the much larger total of manorial court papers from other estates in the county. This is not a definitive treatise on agricultural history but simply an attempt to demonstrate the usefulness of the court leet as an historical source.

The court leet was a manorial court which, under the steward of the lord of the manor, tried such civil and criminal cases as royal justice allowed it as well as enforcing legislation relating to individual and collective responsibilities for the upkeep of the community. The courts considered in this study are those of one estate in West Cumberland; that whose papers are now housed in the Leconfield Estate Office at Cockermouth Castle. The main part of this estate, which was in the hands of the Percies in the 17th century, passed with additions from the Wharton and Latymer estates via the Seymours to the Wyndham family, who now hold it.

Court leet verdict-sheets survive for fifteen of the administrative units in this estate; the lordships of Derwentfells, Egremont and Wigton; the boroughs of Cockermouth and Egremont and the manors of Aspatria, Bolton, Braithwaite and Coledale, Caldbeck, Dean and Whinfell, Eskdale Miterdale and Wasdale-head, Five Towns with Eaglesfield, Kinniside, Nether-wasdale and Westward. Each of these areas had its own court leet, though the turnsmen from the Manor of Braithwaite and Coledale also appeared at the Lordship of Derwentfells court while most present-ments from the Manor of Dean and Whinfell are found in the Manor of Five Towns with Eaglesfield court. In addition there is a handful of court leet entries to be found amongst the court baron papers of the Manors of Great Broughton and of Little Broughton with Birkby.

The total area of these manors[1] is a little under 500 square miles, or about one-third of the county total. The manors vary greatly in size, but more important in this context is the distinction in their physical make-up. Those nearer the coast — Aspatria, Bolton, Great Broughton, Little Broughton, Cockermouth, Dean, Egremont Borough, Egremont Lordship, Five Towns, Westward and Wigton — form what might be termed the "lowland" type. They have little or no land within their boundaries above 1,000 feet[2] and virtually all their area is enclosed today. Quite clearly distinguished from these are the "upland" manors of Braithwaite, Caldbeck, Derwentfells, Eskdale, Kinni-

[1] As these various areas — lordships, boroughs, etc. — all possessed the same type of court leet they will, for convenience, be classified together under the heading "manor". Moreover, the various manors will be designated by the first of their descriptive names only: thus Braithwaite for Braithwaite and Coledale and Five Towns for Five Towns with Eaglesfield. The terms Egremont Borough and Egremont Lordship will be used to prevent confusion.

[2] Large areas over which Egremont Lordship had paramount control were not covered by its court leet jurisdiction. This and any subsequent comments apply only to those townships within the lordship that sent turnsmen to its court leet.

side and Netherwasdale. These have the larger part of their area above 1,000 feet with considerable tracts above 1,500 feet. Open fell, mainly of rough pasture, predominates even today and settlements are sparse and mainly small.

Though this dichotomy should not be overstressed it is very striking. None of the lowland manors has any land at all over 1,500 feet, while all of the upland manors have at least twenty per cent of their area above that height. Only Derwentfells can be considered at all "intermediary": it is large enough to contain the relatively well-populated vales of Lorton and Embleton despite having the majority of its area in open fell.

Nature of the Material.

The information preserved in the court leet papers consists of lists of verdicts recorded at each manorial court from, at the maximum, the early 17th to the late 19th centuries. The form and nature of the documents are fairly consistent. The proceedings of each court are recorded on single sheets; the few pre-1650 verdicts are in Latin and written on vellum;[3] all later ones are on paper and in English. The body of the verdict-sheet is frequently both badly written and badly spelt, especially in the 17th century. In each manor the handwriting changes from year to year. Nearly all the sheets are in a good state of preservation.[4]

[3] The earlier fragments are properly termed court rolls and not verdict-sheets.

[4] It must be emphasized that these remarks apply only to the verdict-sheets of the Leconfield Estate. In other estates there is often no court leet as such, the work of the leet being carried out by some other form of manorial court — baron, by-law, capital or customary. The preservation of the original jury verdicts is the exception rather than the rule; it is more common to find copies, in the same hand for long periods, often in book form. These may date back as far as the 15th century and are often in a very poor state of preservation. Some 15th-century transcripts exist for areas within the Leconfield estate, but these have not been used in the present study.

There are two types of entry in the court leet; pains and amercements. The pains were the regulations covering the use of the common lands of the manor, restricting or encouraging certain activities, usually with a fine specified for non-compliance. Amercements record offences against these local laws, along with the fine imposed (usually a multiple of three shillings and fourpence). Many of the presentments[5] are brief and formalised; others add more details, laying down an exact procedure to be followed or giving particulars of a complicated dispute.

The first problem after decipherment is one of selection. The court leet was responsible for much of the detail of local government, especially those aspects which had remained unchanged since the Middle Ages. Not surprisingly, in a still predominantly rural county, a large part of the courts' activity was directed towards the upkeep of the commons and common fields. However, another part — often the larger — of the courts' interest was in non-agricultural legislation. Local officers had to be elected, heirs to customary hereditaments admitted, roads and ditches kept in repair, markets inspected and regulated. The more "urban-oriented" courts (especially those of the two boroughs — Cockermouth and Egremont) clearly had the upkeep of the fabric of town life more at heart than the regulation of the lord's commons. Amercements in these courts are mostly for such offences as giving short weight, leaving rubbish in the street, selling bad meat and taking in "inmates" (lodgers from other manors not subject to local dues, obligations or jurisdiction). Even in the rural areas many of the offences cannot be considered as "agricultural" in nature — ranging from allowing one's house to fall

[5] The terms "presentments", "offences" and "verdicts" are used throughout to indicate both pains and amercements.

into disrepair to the four people of Braithwaite who in 1691 were presented

> for saying that Thomas Wrenns sarvant man was in bed with the wife of the said Thomas Wrenn being a defameation.

The first level of selection is to specify exactly which of these verdicts is relevant to the establishment of contemporary agricultural practice on the commons and common fields. This is no easy task, especially in view of the wide range of offences which might be presented in any of a number of different ways. The problem is accentuated by the vagueness of the phrase "agricultural practice". Not everything concerned with land, stock and crops — the fundamentals of agriculture — is necessarily pertinent. Thus the process is further complicated by a feedback element; the abstraction of relevant information is governed by one's concept of "agricultural practice" and one's concept of "agricultural practice" is — in part at least — influenced by the nature of the information available. Thus one cannot entirely avoid subjectivity and can only hope to reduce its effect to a minimum by being consistent in always including or excluding particular categories of information. For example, for the purposes of this study, presentments concerning hedges were taken into account, those concerning ditches were not. Hedges have an important function in controlling the grazing of animals, in the regulation of pastures and in the preservation of crops on the common fields. Ditches, in Cumberland, are rarely used for anything but drainage and bear little or no direct relation to communal land-use.

Just over four thousand verdicts were extracted from the court papers of this estate as being relevant to this study. Table I shows the distribution of these by manors.

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TABLE I: *Total number of presentments at each manorial court relating to common land.*

Manor.	Total Presentments.	First Verdict.	Last Verdict.
Aspatria	298	1634	1855
Bolton	264	1678	1820
Braithwaite	107	1678	1868
Cockermouth	189	1639	1770
Derwentfells	336	1677	1858
Egremont Borough	503	1639	1847
Egremont Lordship	321	1639	1819
Eskdale	64	1679	1837
Five Towns	303	1678	1832
Kinniside	82	1682	1857
Netherwasdale	155	1679	1866
Westward	768	1674	1809
Wigton	568	1665	1809
—			
Great Broughton	2	1763	
Little Broughton	3	1762	1811
Caldbeck	27	1722	1757
Dean	17	1697	1754
	(4007)		

Four sets of papers are incomplete (Great Broughton, Little Broughton, Caldbeck and Dean) and total less than 50 presentments[6] between them. The others show a very uneven scatter, from over 750 at Westward to under 75 at Eskdale. Significantly, only one of the eight largest totals is for a highland court — and that is for the extensive Derwentfells lordship which, as has been mentioned, includes a considerable area of lowland. On the other hand, the only lowland manor with under 250 verdicts is the tiny (less than four square miles), almost wholly urban, Cockermouth; which is far more concerned with its streets and its market than its fields. This predominance of the lowland manors is not unexpected; population there is much higher and the proportion of open land to en-

[6] Unless otherwise stated, "presentments", etc., refers only to those relevant to this study.

closed much lower, creating a considerably greater pressure on common rights than found in the fell areas. Thus there is both greater incentive to trespass on these rights and more people to do it.

The second level of selection involves a decision on which part of any given verdict is important and which part can be discarded. Each entry conforms to a certain basic formula. In the case of an amercement this consists of the name of the offender, the nature of his misdemeanour and the fine imposed; in the case of a pain the action forbidden or the step ordered to be taken and the fine concerned. The fines themselves appear to have little significance; there is a general upward trend over the whole period but otherwise the sums appear to vary arbitrarily between a few standardized amounts. Nor do the names of the offenders appear important. Recurrent fines on the same person for the same offence are rare; and in the one or two cases where they are significant the verdicts mention that person's persistent transgressions. Finally, there is much valueless detail in some entries; a mass of circumstantial evidence giving the exact location and ownership of an unrepaired fence or the exact bounds from which no turf may be extracted. This detail may be essential at the time to the establishment of guilt or the limiting of abuses, but it throws no light on the nature of the offence. All such unnecessary information can be omitted.

The court leet in Cumberland dates back at least as far as the 15th century, though few of the papers considered here survive from before the passing of the estate out of the hands of the Earls of Northumberland in 1670. A handful of court rolls have been preserved from the fourth and fifth decades of the 17th century, plus even fewer verdict-sheets from the last few years of the Percy era. However, only a little over three per cent of the total verdicts date from before

1670, and none of the courts begins to have systematic records until that date. Though the court leet did not finally disappear until the 20th century its interests and powers decline considerably after 1720 and become altogether negligible with the enclosure of the commons and the consequent ending of nearly all forms of common right. Patently, the effects of enclosure would be felt earlier and to a greater degree in the more improvable lowland areas; it is, therefore, not surprising to find the upland manors persisting longer as viable institutions than their lowland counterparts.

The earlier part of the period is much the most important in terms of the number of verdicts. Although five of the manors have presentments at their courts after 1850 the great concentration of verdicts is much earlier. Over half had been recorded by 1700, nearly 80 per cent by 1750 and over 95 per cent by 1800. Some courts are obviously in difficulties from an early date; whole townships are presented for failing to send their turnsmen to the court, officers are refusing to perform their duties[7] or even to take up their posts[8] and the courts' pronouncements are being widely ignored. The verdict-sheets for many courts, especially after 1750, are blanks or carry the brief comment "no presentments".[9]

Classification and Comparison.

There are two ways in which the court leet verdicts can be used; these might be termed the comparative and the descriptive; or the general and the specific.

[7] "We doe amercy J. Thwaite as turneman for not presenting things according to custom". (Braithwaite, March 1687.)

[8] We amercy J. Birkhead for refussing of Constable office which is according to custom that unlesse he take his oath to execute the office of Constable before a Justice of the Peace (haveing neglected to take his oath at this Court Leete) within tenn dayes next". (Braithwaite, May 1698.)

[9] Blank sheets could sometimes be due to other reasons than lack of interest: as witness the Bolton court, April 1815 — "There is no presentments nor any fines and we consider the season being very wet and we forgive them all".

The general comparative method involves a comparison of the numbers of each type of offence between the manors and over the years. There are certain limitations to this sort of analysis. Even given the stereotyped formulas used at the courts about a hundred different categories of amercements and pains relevant to this study can be distinguished. This is obviously an altogether too unwieldy number of classes to handle, so some form of classification is essential. By considering the basic subject with which the presentment is concerned and ignoring the way in which it is dealing with it the number of classes can be drastically reduced. However, grouping together such a wide range of offences by their subject-matter is not totally satisfactory; as in most classifications, while a decrease in the number of subdivisions may increase the ease of handling it also involves a decrease in both the accuracy and the meaningfulness of the conclusions reached through a comparison of these subdivisions. Fortunately, this particular limitation is less important in this case than might be expected owing to the great predominance of one or two types of offence within each subdivision.

The four thousand verdicts of this estate can be distinguished into six major subject-matter groupings. These comprise amercements and pains relating to (i) Encroaching; (ii) Estover; (iii) Grazing; (iv) Hedges; (v) Land and Crops; and (vi) Turbary. Each of these groupings covers a range of presentments; for example, under "Estover" are classed amercements for cutting, burning or digging up bracken, gorse, heather and wood and limitations on the exploitation of all of these. The subdivision "Land and Crops" is concerned with disputes over boundaries of strips of common land, amercements for removing another's crops from the common arable or hayfields and so on. Only 25 of the verdicts cannot

be conveniently fitted into one or other of these categories.

An important factor in comparing numbers of verdicts is consistency in the presentation of offenders. There is no reason to believe that every misdemeanour committed and every obligation left unfulfilled was presented to the court. On the contrary, it is far more likely that the number of offences detected and brought before the court would vary with the energy, honesty and ability of the officers responsible. Unfortunately, there is no way of overcoming such inconsistencies based on the nature of the individual; thus the value of direct comparisons of numbers of each type of presentment between manors is drastically limited. However, a more valid picture may be obtained by comparing relative rather than absolute numbers: it would seem more reasonable to conclude that if a certain type of offence occurs more often, as a percentage of the total, in one manor than another then it is dealing with a matter more important in local agrarian life. Table II shows such a comparison, omitting the four manors where the verdict-sheets are too incomplete to allow any reasonable conclusions to be drawn. Even here the actual figures have no great significance, but if it can be assumed that no offence is presented with *less* frequency than a less important one then the relative positions of the various manors and the various offences will be a true one.

It is immediately noticeable that, even within the upland and the lowland subdivisions, there is a wide range in the percentage figures for each type of presentment. This is not really unexpected, in view of the smallness of the total population from which these statistics are drawn and the importance of minor variations in the physical, economic and social environment of each manor. However, such local variations should not obscure the overall picture,

which comes out quite clearly in the comparison of the mean percentages for the two main types of manor.

TABLE II: *The major types of presentment as a percentage of the total number of presentments in each manor.*

	Encroaching	Estover	Grazing[10]	Hedges	Land and Crops	Turbary
"Lowland" Manors						
Aspatria	15	3	23 (21)	25	7	26
Bolton	22	6	19 (18)	13	3	34
Cockermouth	12	16	27 (5)	26	1	16
Egremont Borough	11	12	27 (19)	44	2	4
Egremont Lordship	9	4	16 (14)	57	6	8
Five Towns	10	2	5 (4)	76	2	6
Westward	12	26	8 (8)	6	1	46
Wigton	19	11	7 (3)	11	3	48
All lowland manors	14	12	15 (11)	28	3	28
"Upland" Manors						
Braithwaite	10	13	36 (35)	33	1	5
Derwentfells	6	2	27 (25)	59	0	6
Eskdale	2	5	70 (70)	17	3	3
Kinniside	5	22	32 (32)	28	0	12
Netherwasdale	0	7	78 (78)	10	3	2
All upland manors	6	7	42 (41)	37	1	7
TOTAL ALL MANORS	12	11	20 (17)	30	2	24

Concern over rights of turbary and estover is noticeably greater in the lowland manors. There are four times as many presentments concerning turfs there as in the upland manors and over 70 per cent as many again in the case of bracken and other fuels. Peat-digging is primarily an extractive operation (turf will grow again, but extremely slowly) and is thus subject to the usual laws of supply and demand. The

[10] The figures in brackets show that if all presentments concerning the rearing of swine — an almost exclusively urban occupation — are excluded then the upland/lowland contrast is even greater.

upland areas have abundant turf and only a comparatively loose rein was needed to curb excessive development of the most favoured areas. In the lowland manors the commons were smaller and fuel demands much higher, so a much stricter control was called for.

Similar arguments can be applied to rights of estover; though bracken, gorse, heather and wood are really "cropped" rather than "mined". One would expect to find all these (except possibly wood) much more freely available and in less need of control in the highland than in the lowland areas and it is surprising that the difference in frequency of offences is not more marked. Bracken today is universally a nuisance and it is difficult to imagine why a fell-area such as Kinniside should have nearly a fifth of the presentments at its court leet taken up with preventing people from removing it.

Encroachment on the commons and common fields is also essentially the concern of the lowland manors, where it is over twice as important as in the higher areas. In the fell districts virtually all the arable and meadow land in the valleys would have been long enclosed and there would be little incentive at that time for the individual to take in large areas of common and little opposition to someone who wanted to enclose just a small patch. In the lowlands, with the generally inadequate areas of common interspersed amongst the enclosed lands, a closer watch would need to be kept on all forms of encroaching.

Presentments involving the grazing of animals provide the most clear-cut distribution of all. The nearly three times greater figure in the upland manors (nearly four if presentments concerning swine are omitted) might at first seem anomalous. The smaller areas of common and the higher farming population of the lowlands might have been expected to make

offences against common of pasture as important as those against other forms of common right. However, one cannot apply the same supply-and-demand rules to grazing grass as to turf-extraction or bracken cutting. Fuel forms a fairly constant per capita demand: grazing is variable to supply. Lacking the amenities of the lowland manors for arable farming the fell areas concentrated on sheep- and cattle-raising, which thus became much the most important part of their economy. In addition to this, there was considerable pressure on upland pastures from the inhabitants of lowland manors with more animals than they could feed.

The least satisfactory guide to the use of the common lands, entries concerning the upkeep of hedges, provide the least satisfactory variation between upland and lowland. The slight difference in the means is almost entirely due to the influence of the largest manor in each group, and is not statistically significant. In the lowlands there are more hedges and the distribution of the commons — often intermixed with enclosures — would make the upkeep of these hedges important. In the highland areas hedges are fewer and the boundaries with the commons generally more straightforward: however, the reliance of the economy upon animals meant that a closer watch had to be kept on minor breaches in the hedges. Thus each area had its reasons for being strict on such offences.

The final, and numerically least important, group is that concerned with the regulation of the common fields; their boundaries and their products. Even within this small proportion of the total a fairly clear division can be seen; the more densely-populated lowlands with their complex field-systems generate three times as much trouble in this sector as the uplands.

Overall, quite a clear pattern emerges. The lowland areas are altogether much more restrictive on the exercising of common rights with — in most cases — a much greater number of presentments at the court leet. They are particularly concerned to restrict and control peat-cutting and encroaching and to a lesser extent to limit common of estover. A small proportion of their time is spent settling disputes over the organization of their field-systems. The wide expanses of the commons and wastes in the upland manors and their small, mainly non-arable, enclosed areas needed less control though the primarily pastoral and dairying nature of their economy involved a much greater interest in the regulation of grazing.

There are one or two points of interest to be gained from a chronological as opposed to a chorological study of the presentments. Table III shows the percentage distribution of the six major categories of offence by thirty-year periods.

TABLE III: *Chronological distribution of major groupings of presentments.*

Period.	Encroaching.	Estover.	Grazing.	Hedges.	Land and Crops.	Turbary.	Total.
1630-1659	0	5	4	2	2	2	2
1660-1689	10	32	24	16	22	24	21
1690-1719	28	45	35	34	57	42	37
1720-1749	21	10	13	23	16	17	17
1750-1779	30	6	9	15	3	9	13
1780-1809	8	1	5	7	0	5	5
1810-1839	2	0	4	2	0	0	2
1840-1869	1	1	6	0	0	0	2
TOTAL	12	11	20	30	2	24	

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It can be seen that the figures for hedges and those for turbary both follow the overall pattern quite closely. Those for estover and for fields are heavily weighted towards the earlier period. This could be explained by enclosure and improved grazing techniques resulting in a more thorough use of the remaining areas of common and waste with a consequent reduction in the area of grassland under bracken, gorse and heather. Moreover, the increasing use of coal would reduce the demand for these third-rate fuels. Equally, with the rationalisation of the field-systems, and especially with the enclosure of all forms of open field, a considerable decline in disputes over land- and crop-ownership might be expected.

The column relating to control of grazing also shows a significant pattern. To the end of the first decade of the 19th century the pattern is similar to that of the overall total. However, for the remainder of the 19th century presentments concerning grazing remain at a constant level while all others decline drastically — two-thirds of all presentments in the last sixty years are concerned with grazing alone. Increasing pressure on grazing land caused by increasing numbers of animals and decreasing areas of common resulted in increasing transgressions of rights of pasture. Coupled with this, new enclosures often involved stricter regulation of rights on surviving areas of waste with the consequent need for extra legislation. As most of the long-surviving common grazing areas are in the upland manors it is not surprising that these should have a dominant place in the court records of the 19th century.[11]

The proportion of the total presentments occurring during the 17th and early 18th centuries is smaller for encroaching than for any other category of verdict.

[11] Though over 80 per cent of all presentments are from lowland manors, nearly 90 per cent of those after 1810 are from upland areas.

At this time the enclosed or open infield lands are generally adequate for the needs of each township. Later, with a growing population and with an increasing desire to escape from mere subsistence there is greater pressure on arable and meadow land and open or surreptitious encroachment on the commons increases. Between 1720 and 1800 encroaching is relatively at its highest level, well above the overall mean, whence it suddenly drops off. Enclosure of the commons has by then largely taken place in the lowland manors. The breakdown of medieval system has been acknowledged and encroachment is no longer necessary.

Collation and Description.

In the previous section the general comparative level of analysis was used to determine certain broad characteristics of common agrarian practice. Specific descriptive analysis involves the scrutiny of individual presentments in order to build up a picture of the detailed rules and customs governing the use of the land in each manor. At this level it is not the numbers of presentments that is important but their content and only that percentage of more comprehensive entries will be useful.

The problem here is not one of classification, though the major groupings of the previous section provide useful subject headings, but of reconstruction. As complete a picture as possible has to be built up from a series of small fragments, in the manner of a giant jigsaw puzzle. This is by far the most important use of the manorial court; unfortunately, there is space here to give only a sample of what is possible.

A much greater number of more detailed entries concern grazing than any other major subject group; far too many, in fact, to be dealt with in this article. Two other important but less complex aspects of the

use of the common lands have been chosen for illustration — the extraction of peat from the commons and the problem of preserving the common-held areas from encroachment.

The importance of common of turbary is shown by its 24 per cent share in the total number of presentments. It may seem paradoxical that in what became one of the country's leading coal-mining areas the use of peat as a major source of fuel should have persisted into the 19th century. There is, however, a very simple reason for this. Quantities of peat could be obtained, free of charge, as a common right. Coal, as a mineral, was a right vested in the lord of the manor and had to be bought from him or his contractors. Thus, even when coal came to be used widely there was still a demand for turf as a cheap supplementary fuel. It was only when coal became sufficiently cheap and the labour of digging the turf sufficiently troublesome that peat was completely displaced.

In the lowland areas in particular turf was a valuable commodity and strict regulation was necessary to prevent widespread over-exploitation. The court had three main controls over the rate of turf digging: it could specify areas from which and times when it might not be dug and it could specify quantities that could be taken. The great majority of this group of presentments consists simply of pains stating areas from which turf-extraction was forbidden and amercements for disobeying these pains. Such areas might be put out of bounds indefinitely, or for limited periods only — seven years being a favourite length of time. Other than preventing the peat-mosses themselves from excessive depredation, the jury had two main objects in mind: the preservation of areas favourable to grazing and the prevention of damage to hedges and walls.

So far, turfs have been mentioned solely in terms of their use as a fuel. While this is undoubtedly their main role, it is not their only one. Until recently turfs with the grass still intact ("topping peats" or, more usually, "flacks") were widely used as a roofing material ("rigging flacks") and also to mend walls. This custom, if abused, could strip large tracts of their grass cover faster than it could regenerate. In the fell regions this rarely mattered, but in the lowlands demands for fuel and building materials had to be balanced against grazing requirements. Hence such restrictions as:

> none shall grave any turfe or flackes in any of the out fields of Aspatria. (Aspatria, April 1741.)

Innumerable examples of this type of presentment occurred in all the lowland and in some of the upland manors.

The tendency to dig turf from near hedges needed to be curbed as removal of the grass cover could damage the roots of the hedges or the foundations of the walls. However, as most cart-tracks led alongside hedges and as the out- or ring-hedges generally marked that part of the common nearest the farmsteads the temptation to dig as near them as possible would be great. Many pains specify distances from hedges from within which no turf may be taken, as at Five Towns (October 1701):

> Whereas there is and have been greate abuse made upon the common belonging to the Hamlett of Mooreside and Blindbothell by digging or graving of peates and turbary . . . to prevent abuses on the said common wee doe therefore order that noe man or any for his use shall digg or grave any peates or turffes within two hundred and twenty yards of any out or head hedges belonging to Mooreside or Blindbothell . . . excepting onely for repaireing of moore hedges and repaireing of houses.

Elsewhere distances pained ranged from 10 yards (Wigton, April 1682) to 500 (Bolton, April 1760).

Limitation of turf extraction by time is not universally employed — many of the manors appear to allow graving at any time of the year — but, where enforced, they could be quite strict. Aspatria (April 1699) limited graving to between 26 May and 10 June; Lorton (Derwentfells) gave 1 May as the day on which tenants might begin to grave turfs, 3 May for cottagers; Westward (April 1689) allowed graving after 22 May; Wigton between 1 and 8 June (October 1700), 22 and 31 May (April 1708) and 20 May and 18 June (September 1715). Various other limits were imposed at different times in different manors, but the general pattern was one of licence to dig in May and/or June. Presumably at this time the ground is dry enough for the turf to be in good condition and the summer is still to come to dry the cut peats and to allow the excavated areas a chance to grow more grass. These limits, of course, rarely applied to the "mosses" proper which were small suitable areas set aside specially for the cutting of peat.

The rate of extraction permitted was rarely given in terms of a specified number.[12] It was more usual to employ the term "daywork", or the amount a man could dig between sunrise and sunset, as at Bolton (April 1679):

> no cotger haveing not fower ackers of ground nor farmer which farmers not five pound in the year shall grave above two days worcke in the yeare.

Elsewhere the totals varied from one daywork (the commonest amount) to six or more. Sometimes the limitation applied to certain types of turf[13] or to certain parts of the common[14] and frequently varied

[12] An exception to this is found in Egremont Borough (April 1724) — "no person shall for the priviledge of one Burgage (in one year) grave or digg up any more turff or turffs than four hundred in the place called Brisco".

[13] A pain at Westward (April 1683) limited the tenants of Stoneraise to "six days worke of burning turves".

[14] The one daywork limit at Aspatria (April 1691) applied only to the East Common.

according to the nature of the common-right holder's tenure.[15] The strictness of the limitations varied considerably with changes in supply and demand. In Westward, restrictions imposed in 1722 were repealed in 1730; further pains set out in 1749 were withdrawn the following year. In April 1684 permission is given

> that none within the parish shall be amarcied for graveing of rigin flacks except they grave within some highways.

Five years later only tenants holding at least four acres of land were allowed any turf at all. In one case the right to get turf was tied to the necessity to perform a common obligation — a connection sometimes found in relation to rights of pasture and the upkeep of hedges. In Braithwaite (May 1764) it is ordered

> that if any carry away aney turff or peates of Raveling Moss untill they have first worked or contributed their share of the expence towards repairing of the way leading from the said moss to the Turnpike rood we amerce them.

Generally, the commons were free-for-all to grave where they liked, even if rights to the common pasture were divided on an areal basis; as at Eskdale (April 1727):

> It have been made appear unto us by several credible sworn witnesses that they know it a general custom within the said manor for 40, 50 or 60 years last past that any tenant or occupier might dig and grave peats in any mans cow pasture that was upon the fell uninclosed keeping out of another mans peat pot for two years after it was left graving in it.

There are, however, a few instances where each tenement appears to have its particular area from which to obtain turf, as is shown by the presentment at the Egremont Lordship court of a man

> for graving turbary or peats upon Muncaster Fell in that share of moss accustomed to Muncasters Mill Tenement where he has no right. (October 1754.)

[15] "noe tennant shall grave above four dayes worke of turfs and two dayes worke of flacks half tenements according to their proporcons cottagers one dayes worke of turfes and one dayes worke of flackes". (Wigton, April 1681.)

Of course, in the lowland mosses each person had his own allotted share, as in a common arable field, and there are a number of presentments for graving in another's share or "room".

The rights of the manor as a whole to protect its turf resources were jealously guarded. It was usual to insist, as at Westward, that no-one should dig any turfs

except they do lead them to thire own toffts. (October 1740.)

This rule was particularly strictly applied to those lowland manors, without any great supply of turf of their own, which were near an urban centre. The temptation for the common-right holders to sell surplus turf to the ovens and fires of the towns must have been great. Typical of such offences are presentments for selling Five Towns turf in Cockermouth (Five Towns, April 1690) and Bolton and Westward turf in Wigton (Bolton, April 1683; Westward, October 1674).

There were various minor uses for turf in addition to its value as a fuel and as a roofing material. It was sometimes used as bedding for barns and sheepfolds (Aspatria, April 1683) and sometimes burned to fertilize the ground. This last practice sometimes got out of hand: one man was presented at Egremont Lordship in April 1743

for burning and destroying the common commonly called Sumpton Moor.

and in Dean it was felt necessary to provide

that no customary tenant or freeholder within this manor or any person by their order or for their use shall at any time hereafter grave or digg the soil of the commons or wastes of this manor in order to burn the same into ashes for manuring of ground or other purpose whatsoever except what the said tenants may now lawfully do by reason their being intitled to common of turbary. (October 1741.)

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Finally, various orders were made regarding the preservation of the commons once the turf had been dug. Generally, the idea was to prevent thoughtless exploitation as at Eskdale, where it was enacted that none should dig turfs

but what they dig and grave in a husbandlike manner and set the top again. (April 1769.)

In particular, the intention was to avoid leaving deep pits or waterlogged holes into which cattle or sheep might stumble: thus at Braithwaite it was enacted

that for the future no person may grave above two peats deep upon the commons within the liberty of Rogerset Braythwaite and Coledale and that they shall drain the water off and shall bed the peat pots well. (April 1766.)

The courts also discouraged the leaving of unwanted peats lying around, as these were believed to encourage foot-rot in sheep. Several manors made rules as at Westward (April 1803), whereby

any person keeping any turfs upon the common after the 19th of September without the consent of their neighbours shall be presented

and many people were, in one form or another, fined

for graving of flacks of turves which lyis rotting upon the common. (Aspatria, October 1687.)

In an economy where the open fields and common wastes formed an indispensable adjunct to the land held in severalty attempts by individuals to reduce the common-held area would naturally be dealt with severely. It is not surprising, therefore, to find a large number of people presented for illegally enclosing areas of common for their private use.

This offence was particularly common in the lowland areas. It must have been apparent from an early date, at least to the more enterprising farmers, that it was generally of greater benefit to the individual to have his land enclosed than in common. It must also have been clear that, if he was lucky, an encroacher

might be able to add a few acres to his private holding and still retain all his common rights. It was people of this sort that the jury in Egremont Borough had in mind when they complained that

> Whereas . . . (five people) . . . have hedged in, walled and enclosed severall parcells of common and under woods belong to the Burrough of Egremond, which in all probability they or their heires may in a short time claim as their own proper inheritance, and seriously considering of what ill consequence this dishonest example may be off to other covetous people to follow the like methods of inclosing our woods and commons. Now for the preventing of the great damage and prejudice that these incroachments are like to be to us an our posterity for the future . . . we think it highly just and reasonable that all and every the said offenders that does not pull down and demolish the said late new erected hedges and walls soe the whole Burrough may have the benefitt of their woods and commons as formerly . . . (April 1689.)

Encroachment was frequently the result of an individual's desire to add to his area of arable land, as specified by a number of entries such as:

> for plowing upon the east common. (Aspatria, April 1710.)
>
> for ploughing a parcell of ground called the Meckins and converting it to his own proper use. (Egremont Borough, April 1689.)

However, apart from such major intakes, many minor encroachments were made by the owners of land adjoining the common, as noted in the following presentment from Bolton:

> Whereas several inhabitants of this manor who have had their ring fences in a ruinous condition have for the sake of having sound and commodious ground for erecting new and sufficient hedges upon have made incroachments upon the lords wastes which, though several of the neighbours look on it as not so prejudicial to herbage as the advantages they find in having good ring fences yet others of the said inhabitants of this manor finding it a nuisance to them and complaining thereof we present for such incroachments made the folawing . . . (33 persons). (April 1763.)

The courts were not always so prolix, nor usually

so sympathetically inclined towards these surreptitious encroachers. A far more common form of amercement for this offence was a presentment

> for setting his furth[16] hedge on to the common to the damage of the lord and tenant. (Aspatria, April 1683.)

It might be thought possible to view the amercements for encroaching in the light of fees to condone enclosure rather than as fines for committing a misdemeanour. However, many of the entries specify dates by which the encroachments presented have to be removed, and were quite strict on people who did not comply. The court at Cockermouth (May 1716) found

> that I. Tyson was amercied by the court of the 24th of April 1714 . . . and the 23rd of April 1715 . . . for an improvement on the common and has not demolished the same wholly as yet nor paid any amerciment for the same.

Few names occur with any regularity and none in any way that can be construed as a rent.

Despite many amercements encroachment was not always forbidden. No doubt a certain amount went by unchallenged; much probably never reached the court; some of that which did received treatment similar to that of the Branthwaite man presented

> for encroaching and taking up a parcell of the common belonging to the said place. But none of the said inhabitants complaining of any prejudice, except J. Scott, for so doing, and being more than three years since the same was taken up . . . we humbly presume to let it fall. (Five Towns, April 1725.)

A number of possibly more cautious people applied to the courts for permission to take in a piece of common, and in many cases such permission was granted — though rarely before about 1740. In the 17th and early 18th centuries encroachment of any sort was frowned upon and most courts would have

[16] Furth is a word of Scots derivation meaning "outside". Thus a furth hedge is an out or ring hedge.

followed Cockermouth (April 1713) in pronouncing

> that the hedges about the improvements may be demolished and pulled downe and that noe more doe presume to take up any commons but by consent of the Lord of the Manor and the freeholds of the Burrow.

Small encroachments, especially to straighten or rebuild fences, were often granted — despite the entry in the Bolton court quoted above — in the later 18th and in the 19th centuries. Permission to enclose larger areas was generally only to be had under certain special circumstances. In Kinniside one grant is made (April 1785) on the understanding that the area taken in was to be accepted as part of that person's allotment in the event of the general enclosure of the commons. This proviso was made a number of times in manors where enclosure was thought to be imminent, as the tenants did not want the encroacher to claim an extra share of the commons on a general division on the basis of his new improvement. Later in Kinniside (April 1842) another licence to encroach is allowed on the payment of an "acknowledgement" — presumably in the form of a contribution to public funds. One petitioner in Eskdale (April 1837) is allowed to enclose one piece of common on undertaking to open another piece elsewhere to the fell. However, where the request is for a straightforward enclosure of a large area the juries were not always so co-operative, even late in the 19th century. One entry at Braithwaite records that one man

> applies to be allowed to enclose a piece of common on the lowside of the road adjoining his property near Fell End about 8 or 10 acres. Now we the Jury having considered the said application are of opinion that the same should not be granted and do commend that it be refused. (May 1868.)

In most cases enclosure of the commons meant an end to the manorial court as an instrument of agricultural legislation. Nonetheless, the courts were not

opposed to systematic enclosure; only to illegal reductions of the common-held area by individuals. The courts leet were neither independent self-perpetuating bodies nor instruments of the lords' interests. They were tenant organizations; and if the inhabitants of any manor decided that enclosure of the whole or a part of the commons would be beneficial to the community as a whole then the court would reflect this feeling and perhaps record a decision similar to the following:

> We they present Jury of they Burrough of Egremont do hereby agree and order that all the lands lying within the liberty of Brisco undevided and enclosed shall withall convenient speed be measured set out allotted and devided to the severall and respective burgers in equall propotions to the burgasses and share of burgasses they injoy pursuant to the grant thereof made by Richard Lord Lucy then Lord of the said Burrough provided his Grace the Duke of Somersett shall approve therof upon representation and state thereof being laid before his Grace. (Egremont Borough, October 1749.)

Conclusion.

The scope of this article is necessarily circumscribed, dealing as it does with the records of one estate only and without reference to other sources. The validity of the conclusions drawn here would have been greatly enhanced and the picture made much more detailed had the court records of other estates and other contemporary documents been considered. However, even within the narrow limits imposed it proved impossible to analyse more than a small proportion of the information available.

Nonetheless, it is hoped that the limited aim of illustrating the usefulness of these documents has been achieved. They are not particularly easy to handle. Decipherment can prove tedious, while comparison and reconstruction involve the handling of large quantities of fragmentary and disparate data.[17] How-

[17] I have found punched cards invaluable in sorting and classifying the thousands of individual entries.

ever, these difficulties can be surmounted and are worth surmounting. There is no series of documents from this area that gives a better picture of agricultural affairs at this time. Quite apart from their academic value they never cease to be interesting and amusing with their many illustrations of contemporary life, such as the presentment of the lady from the Borough of Egremont in October 1678

> for saying that the wife of Thomas Peirson was a pick pocket, and that the house of the said Thomas Peirson should be Blone up with Gunpowder.