

## **Francis Lennard's claim to Kirkoswald, Cumberland, 1634-1652**

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The Lennard family of Kent, 'Lords Dacre of the South', acquired a group of Cumberland manors without payment by orders of the Court of Exchequer between 1649 and 1652. There has been much confusion in previous accounts and this article explains exactly what happened and when, with some discussion of the reaction in Cumberland.

**T**HE township of Kirkoswald lies on the east bank of the river Eden, north-east of Penrith. It is named for a Saxon warrior saint, and a hoard of Saxon coins was found there in 1808. In the reign of King John it was granted a market charter, by which time there was a significant castle. By 1500 both manor and castle were in the powerful hands of the Dacres of the North, barons Dacre of Gilsland and Greystoke. Lord Thomas Dacre enlarged and beautified the castle as one of his principal residences. Shortly before his death in 1525 he founded a collegiate church in Kirkoswald. This did not long survive the Reformation: by the 1580s the College had become a place of refuge against attack, and by 1600 a substantial private house, purchased in 1612 by one Henry Fetherstonhaugh, whose descendants still live there.<sup>1</sup> The Dacres of the North fell from grace in 1570 when Leonard Dacre, a grandson of Lord Thomas, was attainted for treason, and after that Kirkoswald was in crown hands until 1649.

In 1652 the manor and castle of Kirkoswald were awarded by the Court of Exchequer, in addition to other Cumberland manors already so awarded, to Francis Lennard (1619-1662), Lord Dacre of the South, a Kentish nobleman who shared a 200-year-old ancestry with the Dacres of the North. This article explains how and when this happened, aspects misreported by earlier historians; reflects on why his case succeeded and why previous commentators have gone astray; and examines the reaction of the Cumberland tenantry to the lordship of a southern nobleman with no obvious right to it.

### **The Dacres of the North**

Lord Thomas Dacre (1464-1525) and his son Lord William (1490-1563), owned three Cumberland baronies – Gilsland, Burgh-by-Sands and Greystoke. The first two included most of eastern Cumberland and the southern shores of the Solway Firth and had been in Dacre hands for many generations: the third, in central Cumberland, had been acquired by Lord Thomas' marriage. They also owned several Cumberland manors, including Kirkoswald, which lay outside these baronies. Both Lord Thomas and Lord William were at various times Lords Warden of the English Western March and Lord Thomas was commander of the English mounted reserve at Flodden (1513). These were martial men who used their large landed estates to make a distinguished contribution to English military dominance of the Anglo-Scottish frontier in the Tudor age, but later Tudor monarchs preferred military commanders of their own

choosing. The opportunity to break up the vast landholdings which were the root of Dacre power came at the end of the 1560s: Lord William's eldest son, Thomas, fourth baron Dacre, died young in 1566. His widow married Thomas Howard fourth Duke of Norfolk, and died a few months later, leaving one small son (fifth baron Dacre) and three small daughters in the care of the Duke. The child fifth baron was killed in a gymnastics accident in Norfolk in May 1569, and in July 1569 the Earl Marshall's Court at Greenwich ruled, perhaps incorrectly, that the Cumberland baronies should be inherited by the boy's sisters, instead of by their uncle, Leonard Dacre, who was Lord William's second son. Leonard Dacre tried to use the rebellion of the Northern Earls in November 1569 to regain possession, but was defeated in February 1570 and attainted. The last surviving grandson of Lord William, Ranulph Dacre, a son of Leonard Dacre's youngest brother Francis, died in London without issue in 1634, and with his death the line was extinguished.<sup>2</sup>

For some years after Leonard Dacre's attainder most of the lands of the Dacres of the North were in crown hands.<sup>3</sup> The baronies were restored, at various dates, to two daughters of the fourth baron, both of whom married sons of the Duke of Norfolk – Anne who married Philip (now St Philip) Howard, Earl of Arundel and Surrey, and Elizabeth who married Lord William Howard of Naworth. Howard land ownership in Cumberland has remained strong to this day. However, those manors, including Kirkoswald, which lay outside the baronies descended in 1569 by entail to Leonard Dacre, were forfeited in 1570, and remained in crown hands until 1649. This was not fully understood by Nicholson and Burn, the distinguished eighteenth-century historians of Cumberland, who believed incorrectly that Kirkoswald had been part of the estates of the Dacres of the South since the 1460s.<sup>4</sup> A different mistake was made in 1912 by T. H. B. Graham in an article about Kirkoswald Castle:<sup>5</sup> he mistakenly concluded that all these manors came into the hands of Lord William Howard of Naworth, from whom they were acquired at an unknown date by Francis Lennard. Lennard's biographers appear to have reached a similar conclusion, adding that the transfer from Howard to Lennard was the result of litigation and of an arbitration between the Howards and Lennard: but none offer a date for this event, and in fact, as this article seeks to demonstrate, there was no such litigation and no arbitration, and the Howards had never owned Kirkoswald (but might have acquired a royal licence to dismantle Kirkoswald Castle).<sup>6</sup>

### **Francis Lennard and his case (1) Attorney-General Bankes, 1635/1637**

Francis Lennard, Lord Dacre, was born at Chevening, Kent, in 1619 and died in 1662. He was the great grandson of Lady Margaret Lennard, née Fenys or Fynes, whose great-great-great-grandmother, Joan, was born a Dacre and was a first cousin of Lord Thomas second Baron Dacre (of the North). The title Lord Dacre (of the South) derived from a royal arbitration in 1473: the Fynes family, who had briefly owned the baronies of Burgh and Gilsland after Sir Humphrey Dacre (father of Lord Thomas) had fought on the wrong side at Towton (1461), were obliged to restore them to the now ennobled Humphrey, but were granted the privilege of retaining the title of Lord Dacre, which passed from generation to generation, notwithstanding female descent. As a further concession, it was also decided that, should there be a

failure of male descent in the northern branch, the Dacres of the South would have a claim to the Cumberland estates as 'right heirs'.<sup>7</sup>

That situation arose 160 years later with the death of Ranulph Dacre in 1634. Francis Lennard was then 15-years-old and a ward of the crown: the Kirkoswald group of manors had been in crown hands for more than 60 years, and Charles I was bent on financing his administration without recourse to Parliamentary taxation. These were not the most auspicious circumstances to try to wrest lands from the royal hands on the basis of a 160-year old family connection, but an attempt was made in 1635-7 by senior members of the Lennard family. According to a document which reviewed the state of the case after Francis Lennard came of age in 1640,<sup>8</sup> the matter was brought before the Exchequer, the court responsible for adjudicating issues concerning crown property, on 6 June 1635 by the Attorney-General Sir John Bankes. Sir John informed the court that Sir Francis Barnham, 'Comittee of the Lord Dacre' (that is, a person entrusted to act on behalf of Francis Lennard) 'did intend to sue out a mandamus ... to get the lands from the Crowne.' The 'mandamus' referred to was a writ of *amoveas manus*, roughly translated as 'remove the hands [of the king from the lands in question]'.<sup>9</sup>

Sir John, a devoted servant of Charles I, was born in Keswick, Cumberland and knew Kirkoswald well: he had, for example, been steward of the manor of Renwick, which adjoins Kirkoswald, on behalf of Queen's College, Oxford until 1632.<sup>9</sup> It seems that an informal approach had been made to him, and that he took pre-emptive action to bring the matter before the court. The court's reaction was to order that no writ would be awarded without special order, to be made with the consent of the Attorney-General, and that a caveat be entered with the clerk of the court to this effect. The matter was raised again 18 months later on 11 and 15 February 1637 when a similar caveat was entered. On 8 May 1637 '... Mr Attorney Generall that daie informed [the court] that his Ma[jes]tie and his Progenitors had a longe poss[essi]on of the lands in question and moved that Sir Francis Barnham might sett downe the p[ar]ticuler of all the mannors and lands whereunto the ward pretended title and that the Terre Tennts might be called to defend the King's title before any writt or com[ission] were awarded.' Barnham's counsel, a Mr Bish, appeared before the court again on 20 May but the court once more refused to grant the order requested. A further opinion was taken from John Glanville on 7 July 1637<sup>10</sup> and he advised recourse to the remedy of replevin, alleging trespass or wrongful seizure by the crown, but no further action was taken during Francis Lennard's minority, and by 1640 the deteriorating political situation probably precluded further action for many years.

Sir John's reaction is easy to understand. Given the king's policy of governing without parliamentary taxation, there would have to be a strong case (in law or otherwise) to persuade him to part with crown property. It seems clear from documents in the Barrett-Lennard archive that the family *believed* that they had a strong case, but it also seems clear in retrospect (and was probably clear at the time) that it would be far from easy to convince a court of their title. The 1640 document also discloses that Barnham was relying on a precedent, for there had been an earlier successful application by Thomas Howard, Earl of Arundel and Surrey (1585-1646), and Lord William Howard

of Naworth (1560-1640), respectively the son of Lady Anne (Dacre) Howard and the husband of Lady Elizabeth (Dacre) Howard, for a writ of *amoveas manus* for manors in Yorkshire, also held by the crown from Leonard Dacre's attainder. The Howard family were aware of the significance of the death of Ranulph Dacre without issue, and the strength of their own claim. The release of the Yorkshire manors to the Earl of Arundel probably reflected his position on the King's Council, and it is of interest that the Howards had *not* (apparently) used the situation to claim the Cumberland manors.

### **Francis Lennard and his case (2) Attorney-General Prideaux, 1648-52**

Eleven years were to pass before Francis Lennard renewed his claim. In the Hilary Term of the 23rd year of the reign, that is to say the winter of 1647/8, Francis Lennard, now aged 29, commenced his own action in the Court of Exchequer for a writ of *amoveas manus* in relation to that part of Leonard Dacre's Cumberland and Westmorland landholdings still in crown hands. The first record of the cause<sup>11</sup> appears in the court records of the Easter Term 1648 and covers some 520 lines of Latin text, including his plea as presented and the government response and court ruling at Michaelmas 1649. The kernel of Lennard's argument was this: (1) the manors still in crown hands were held by Lord William Dacre at his death in 1563 and were inherited by his son Thomas (d.1566), then by his grandson George (d.1569) and then by Lord William's son Leonard from whom they were forfeited in 1570; (2) they were described by a commission of inquiry in 1588; (3) under the arbitration of 1473 the Cumberland lands should, upon failure of the male line of the Dacres of the North, descend to the 'right heirs' of Sir Thomas Dacre, Lord of Gillesland, grandfather of Francis Lennard's ancestress Lady Joan (Dacre) Fenys; (4) the male line of the Dacres of the North failed with the death of Ranulph Dacre in 1634; (5) that event also ended the right of the crown to continue to hold these lands; (6) the manors should therefore be removed from the hands of the crown and restored to the 'right heir', Francis Lennard, as from Ranulph Dacre's death 14 years earlier.

The case had its own logical validity, but was not intrinsically strong, and in normal circumstances would surely have received the same response as that given in 1635-7 at the behest of Attorney-General Bankes: but in the meanwhile England had been torn apart by civil war, and these were not normal circumstances. At Michaelmas 1649, after seven adjournments from law term to law term, the Attorney General of the Commonwealth, Edmund Prideaux, attended the court in person. He said that he had read the documents relating to the 1473 arbitration, and the Commission of Inquiry following Leonard Dacre's attainder, and was satisfied that the issue male of Sir Thomas Dacre, Lord of Gillesland, was extinguished: he would therefore 'no further present for the Keepers of the Liberty of England by Authority of Parliament in relation to the castle of Dacre and the manors of Blackall, Dacre, Staffell, Mosedale and Glassonby and 12 cottages & 60 acres of land in Glasson'.<sup>12</sup> The court proceeded to award those manors to Francis Lennard: but no decision was taken at that time about Kirkoswald and the delay was not explained. The case was adjourned another twelve times to Michaelmas 1652, when Kirkoswald, and in a separate case Lazonby, were also awarded to Lennard.<sup>13</sup>

It seems likely that the timing of the case, and the nature and timing of the government response and the judicial decisions, were governed by factors which had little to do with the law. Francis Lennard was a Parliamentarian, associated with the Presbyterian faction.<sup>14</sup> As events in the 1630s had shown, he was unlikely to succeed unless the government of the day chose to allow him to do so. For most of 1647, the army high command and Parliament were negotiating with the king for a settlement under his rule, and would not have been sympathetic to a litigious adventure of this kind: but the case had been ready since the 1630s and required little further preparation. When Charles I escaped from army custody on 11 November 1647 and the hope of a peaceful settlement receded, it seems that Francis Lennard and his lawyers, perhaps acting on advice from within the government, decided that the time was ripe to proceed. There is room for further study to establish exactly why Attorney-General Prideaux allowed the case to succeed when his predecessor had stifled it at birth: there may have been a perceived advantage in allowing the ownership of some Cumberland manors to be transferred to a political ally; and perhaps there was a broader policy of returning crown lands into private hands. Nothing has so far been found to explain why some manors were awarded to Francis Lennard at Michaelmas 1649 and others not until three years later, but the delay might have related to the position of Kirkoswald's leading citizen.

#### **Sir Timothy Fetherstonhaugh (1601-1651)<sup>15</sup>**

At some date before 1606, Henry Fetherstonhaugh, a customary tenant of a farm at Dacre, a manor west of Penrith which was also in royal hands, became the steward of these manors.<sup>16</sup> In 1612 he purchased the freehold of the College Kirkoswald, which then became the main residence of the Cumberland Fetherstonhaughs. Henry died in 1626 and was succeeded by his son Timothy, who became in his turn the royal steward, and was knighted by Charles I in 1628. Sir Timothy was wealthy, entrepreneurial and influential. A significant landholder in both Kirkoswald and Dacre, he had coal mines and mills in various places and served as High Sheriff of Cumberland in 1638-9. In 1642 Fetherstonhaugh was appointed a commissioner of array and recruited 3000 men, no doubt including many from the Kirkoswald/Dacre group of manors. He fought, *inter alia*, at Marston Moor in July 1644. When the first phase of the Civil War ended in 1646, he compounded for delinquency in arms, and took the negative oath (not to oppose the forces of Parliament), but he never came to terms with the royal defeat, and the intentions of this powerful Cumbrian may have been a continuing source of concern to the Parliamentarians. There is no record of his participating in the Preston campaign in 1648, but he was back in arms when Charles II came south in 1651 with another Scottish army. Sir Timothy was captured at Wigan on 26 August and imprisoned at Chester Castle: two of his sons reached Worcester and both were killed in the battle on 3 September. He was tried by court martial and executed at Chester on 22 October 1651. About one year after his death Kirkoswald and Lazonby were released by the Court of Exchequer, on the advice of Attorney-General Prideaux, to Francis Lennard.

### The 'arbitration' with the Howards, 1650-1655

Thomas Barrett-Leonard, who used the Lennard family papers to produce a privately published family history in 1908,<sup>17</sup> described his ancestor's acquisition of the Cumberland manors in these terms:

After many years of fruitless litigation an agreement was come to between [Francis Lord Dacre and the Earl of Arundel and Charles Howard of Haworth] to leave matters in dispute to the arbitration of Thomas Widdrington and Matthew Hale ... and Francis Lord Dacre bound himself in a bond for £10,000 to abide the result of this arbitration.

The papers on which Barrett-Lennard based this statement are now in the Essex County Record Office, but primary sources do not support his interpretation – which in any case made no reference to the Exchequer Court proceedings. It seems possible that, expecting to find evidence of litigation between Francis Lennard and the Howards, Barrett-Lennard misidentified some of the material concerned with the Exchequer Court, and there are hand-written notes in the bundles which appear to make this mistake. Research in various archives, including the Howard archives at Durham University and Arundel Castle, has revealed only four documents bearing on transactions between Francis Lennard and the Howards between 1650 and 1655, and no evidence of litigation, nor of a signed arbitration award. The following paragraphs are an attempt to reconstruct what really happened.

The Howard family had not, apparently, taken any action to intervene in Lennard's case at the Court of Exchequer between 1647 and 1649, perhaps because they did not expect his case to stand up in court. If that is a reasonable speculation the Court's award would have been an unwelcome surprise to Henry Frederick Howard (1608-1652), Earl of Arundel and Surrey, son of Lord Thomas Howard (d.1644) and grandson of St Philip Howard and Lady Ann (Dacre). There was now a possibility that if Lennard's ancient claim to the lands of the Dacres of the North could succeed in one court, it might be used in another in a bid to challenge the Howard ownership of the Cumberland baronies. Conversely, if the Parliamentary government were willing to release crown land in this way, perhaps the Howards should now reintroduce their own claim, already validated by the successful proceedings relating to Yorkshire manors in the 1630s. There were also issues of detail which needed to be clarified in any case.

So Arundel, acting in consultation with Charles Howard (1628-1685), the 22-year-old great-grandson of Lord William Howard, who had inherited the barony of Gilsland in 1643 and was now the High Sheriff of Cumberland, engaged the services of Sir Thomas Widdrington, a senior member of the London bar and until recently a Commissioner of the Royal Seal. At about the same time a new attorney joined the Lennard team. This was the redoubtable Matthew Hale, then aged 41 and at the height of his success as a barrister (he would later rise to the highest judicial appointments under Charles II). On 6 June 1650 Widdrington and Hale met to discuss matters between their clients. They were accompanied by a Mr Danby and a Mr Atwood, who were perhaps respectively the Howard and Lennard family lawyers, and there is a note of their discussions, probably written by Hale or Atwood, in the Barrett-Lennard collection.<sup>18</sup> According to this, Hale proposed that 'Lord D should have confirmed to him all the manors so far awarded in the first plea' (i.e. the Exchequer award the

previous Autumn) and also 'the castle of Kirkoswold & the manors of Kirkoswold & Barton with the messuages & lands called Trosterment'. Hale 'doubted not that it would be a fair way to end all [in relation to] Lord D's demands in reference Com Cumbr'. Sir Thomas and Mr Danby agreed with this proposal and both sides agreed to consult their clients and 'all to be without prejudice, accepted or refused'. The message underlying Hale's proposal was surely this: 'allow Francis Lennard to keep what he's got, and have Kirkoswold, Barton-in-Westmorland and Trosterment as well, and he will trouble you no further'. No doubt there had been reference to the possibility that Lennard's claim might extend to the Howard baronies, and a counter-reference to the possibility of the Howards challenging the Exchequer Court decision, but these were no more than negotiating positions.

Since, to all intents and purposes, Hale's proposal is exactly what happened – with the later addition of Lazonby, which was not mentioned at the meeting – it appears that the parties did endorse this agreement. It is what then followed that has caused the confusion, for they also seem to have decided at some later date to document the agreement as though there had been litigation between the Howards and Lennard both as to the baronies and the manors, and a formal arbitration by Widdrington and Hale to resolve the litigation. Two draft arbitration 'awards' survive: the first (draft A) is in the Naworth collection at Durham University;<sup>19</sup> the second (draft B) is in the Barrett-Lennard collection at Chelmsford.<sup>20</sup> Neither is dated and they are in different hands, and, although similar in overall structure, vary in several respects, the most important of which is that draft A is expressed to relate to both Arundel and Naworth interests, whereas draft B relates only to Naworth. In both, Lennard is confirmed in ownership of the Kirkoswold group of manors; in draft A Arundel is confirmed in ownership of the barony of Burgh; and in draft B Charles Howard in ownership of the barony of Gilsland. Draft A is incomplete and it may be that pages dealing with the barony of Gilsland have been lost. It looks likely that the original intention was for a single 'award' dealing with both Burgh and Gilsland, but this changed after the death of Arundel in April 1652, the matter then proceeding (at least for a time) on the basis that the 'award' would deal with Gilsland but not Burgh. If this is right, draft A was written between June 1650 and April 1652; and draft B in 1652 or 1653. Both 'awards' are expressed to be made by Widdrington and Hale, but there appears to have been a further change of mind because no final version was signed by either of them.

At this point, it should be noted that the analysis depends on the (negative) assertion that there was no litigation, no appointment of arbitrators and no final, signed, award. The assertion is based upon the absence of any substantial corpus of documents – pleadings, witness statements etc – in the Barrett-Lennard collection and the Howard collections at Arundel and Durham; and also on the absence of any relevant listing in the indices of the Six Class Series of Chancery Court records at The National Archive. There is, however, evidence of conflicting claims between Lennard and the Howards concerning small parcels of land which would have required settlement by one means or another. Examples will be noted in the discussion of the 1655 document which follows. There is also the case of Trosterment, a hamlet within the manor of Barton which appears at one time to have been regarded as part of the Barony of Greystoke and therefore owned by Arundel.<sup>21</sup>

Perhaps their understanding of 'arbitration' was different from ours, but, in the absence of contentious litigation, the concept of an arbitration, and of adverse claims for both the baronies and the manors, looks like a legal artifice. Widdrington and Hale were engaged to act and advise their respective clients and met in 1650 in that capacity. They reached an agreement which was accepted by their clients and acted upon. Since both the Howards and Lennard had good title, by court judgments and otherwise, to their Cumberland lands, all that was necessary – apart from the renewed application by Lennard for Kirkoswald and Lazonby which were eventually awarded by the Court of Exchequer at Michaelmas 1652 – was a document clarifying minor details, and mutually agreeing that neither had any further claim against the other. That is, whatever its wording, the purpose of the fourth document which was dated 1 May 1655.

This document was an indenture executed by Charles Howard of Naworth and Francis Lennard, 'Lord Dacre of the South'.<sup>22</sup> It recited 'many controversies, differences and suites in law between the Right Honorable Henry late Earl of Arundell and Surrey deceased, the said Charles Howard and the said Francis Lord Dacre concerning diverse mannors etc in the Countyes of Cumberland and Westmerland', and an arbitration by 'the Right Honorable Sir Thomas Widdrington knight now one of the Lord Commissioners for the custody of the great seal of England and the Right Honorable Matthew Hale esq now one of the judges of the Court of Common Pleas', who had made an award upon which the indenture was based. Charles Howard released and confirmed to Francis Lord Dacre 'all those castles and mannors of Dacre and Kirkoswould and all the several manors of Blackhall Brakenthwaite Mosedale Staffull Glassonby Leysonby and Newbiggin in Gilsland', together with the manors of Barton, Martindale and Patterdale in Westmorland, but excepting messuages in Deepdales and Glencoigne 'late in the possession of Henry late Earl of Arundell and Surrey and Alatheia late Countess Dowager of Arundell his mother'. In return Lennard released and confirmed to Charles Howard the barony of Gilsland and all its castles and manors, excepting those awarded to Lennard. Brackenthwaite and Newbiggin were two small manors within the Barony of Gilsland and seem to have been a concession by Howard to Lennard. There was no equivalent transaction between Lennard and the Arundel Howards, and the reference to Deepdales and Glencoigne (nowhere mentioned in the earlier documents of 1650/53) was probably intended to meet the needs of that branch of the family without their formal involvement.

The key expression here is 'release and confirm': in its 1655 context it was a quitclaim meaning 'forgoes any right to make a claim for', but to a twenty-first century researcher it could also mean 'give' or 'sells to'. But Charles Howard did not own the manors and could not (in the second sense) 'release' them to Francis Lennard, nor could Lennard 'release' the barony of Gilsland to Charles Howard, who already owned it. The indenture of 1655 was based on a lawyer's fabricated rationale: it is consistent with, but does not mention, both the ruling of the Earl Marshal's Court in 1569 and the subsequent division of the baronies between Anne and Elizabeth Dacre, and with the 1649/52 Exchequer decisions in favour of Lennard. The document was enrolled at the Court of Chancery on 20 May 1655. A draft of it was in the possession of Thomas Barrett-Lennard in 1908, from which, perhaps, he inferred that his ancestor acquired his Cumberland manors from the Howards; and this also led him to identify



Exchequer related documents as concerned with the 'dispute' with the Howards. It was, perhaps, in reliance on his interpretation that the editors of the Dictionary of National Biography (1908), the Complete Peerage (1916), and Dr Jason Peacey in the ODNB (2004) were also, in their turn, misled. All three thought that the manors had been acquired from the Howards; and the first two thought that Francis Lennard had been forced to accept much less than he had claimed. Dr Peacey saw deeper and concluded that he had done rather well.<sup>23</sup>

So who pressed whom for this indenture three years after Arundel's death, why did it, like the draft arbitration documents, appear to deal with matters which were not in dispute, who dreamed up the concept of an arbitration and why, and how was the need for the document misrepresented? By 1655 Charles Howard (perhaps named by his royalist parents after the late king) was captain of Cromwell's bodyguard, and was closer to the seat of power than was Francis Lennard, and it seems likely that it was Lennard who sought this final confirmation for his Cumberland acquisitions. It also seems likely that the concept of an 'arbitration' also came from the Lennard camp, perhaps from Matthew Hale. It is tempting to think that there might have been a hidden motive and that perhaps Lennard was trying to cover his tracks by making it appear that the acquisition was from the Howards and not the crown. But this is unlikely: it would be expected that in the event of a restoration of the monarchy one of the first royal acts would be to check the Exchequer records. It is more likely that it was the lawyers who chose this elaborate method of recording their clients' intentions, and this serves as a reminder to historians to be especially careful about legal documents and the reasons which are given for writing them. There are some unexplained loose ends, for example Barrett-Lennard's mistaken assertion, for which he gave no authority, that Francis Lennard had to give a £10,000 bond for a non-existent 'arbitration': there is nothing in the archives at Chelmsford to support this, and he may have mistakenly confused two different transactions.

In any case, Francis Lennard needed correct documentation to satisfy a future purchaser. In 1657 he applied to the Deputy Recorders of the Court of Exchequer for exemplifications of title, basically transcripts of the court record, and three of these survive in the Musgrave collection at Carlisle, one relating to Kirkoswald, one to Lazonby, and one to the group of manors awarded in 1649.<sup>24</sup> None of these documents make any reference to an arbitration. In 1660 Charles II was restored to the throne, Francis Lennard was pardoned, and his ownership of the Cumberland manors was not further questioned by crown officials.

### **The reaction of the tenantry**

In 1646, in anticipation of his intended legal action, Francis Lennard appointed a Penrith lawyer named Anthony Grenup (alias Greenup or Greenop) as steward of his Cumberland manors.<sup>25</sup> A court roll for the manor of Dacre, dated 3 October 1651 (a few days before Sir Timothy's execution), survives.<sup>26</sup> The head-note reads:

The Court Leete of the Keepers of the Liberty of England by authority of Parliament with the Court Barron of the Right Honourable Francis Lord Dacre lord of the manor there holden the third day of October for the yeare of our Lord God one thousand six hundred fifty one before Anthony Grenup steward of the said Court.

Grenup would in time become steward of all these manors, including Kirkoswald, Barton and Lazonby, and remained so until his death in 1673. The earliest surviving Kirkoswald manor roll in his hand is 12 October 1653,<sup>27</sup> but there is a Stafffield document signed by Grenup dated 9 October 1649.<sup>28</sup>

The Cumberland tenantry had not had a good war: in addition to the heavy loss of life and shortage of food which would have been the experience of most English people, they had been despoiled by the Scots, fought (most of them) on the losing side, and many would have been particularly saddened by the execution of Sir Timothy. After 80 years of holding land from the crown, they would have been dismayed (but perhaps not surprised) at finding themselves the tenants of a southern nobleman with Parliamentary leanings. The Kirkoswald tenants were probably bowing to necessity when in 1659 they were recorded as saying

And for the generall fyne claymed by our landlord due unto him upon his entry from ourselves & the rest of the tenants within this Manor we doe willingly submitt to his Lordships pleasure therein, upon this confidence of his favour to us that we shalbe as kindly used therein as other his tenants within this County are.<sup>29</sup>

At the Staffell (later Stafffield, a manor adjoining Kirkoswald) manor Court on 14 September 1661<sup>30</sup> the tenantry unanimously submitted to the payment of six years' old rent for the general fine due to Francis Lord Dacre upon his entry 'after the death of his anncesor'. Even the powerful Fetherstonhaughs struggled to defend their interests. In 1707, Thomas Fetherstonhaugh, a grandson of Sir Timothy, recalled:

The estate of S[i]r Timo[thy] sonn of the s[ai]d Harry was sequestered dureing the late Rebellion ... At Restauration of the King Mr Tho[mas] Fetherston sonn of S[i]r Timo[thy] was in a poor condition of w[hi]ch Mr Greenop then steward to Francis L[or]d Dacre took the advantage & acted very severely ag[ains]t him & seiz[e]d of his mill in Kirkoswald for some arrears of rent pretending it was a customary estate under the s[ai]d L[or]d & alsoe cutt down many oaks of great value w[hi]ch grew on Mr Fetherstons freehold lands in Kirkosw[al]d Greenop calling 'em tenent right w[hi]ch the grants from the Crown show to be freehold. And the said Thomas being disabled by his poverty from maintaining his own just rights & titles was over-aw[e]d thorow the threats and menacies of Greenop of bringing vexatious suits ag[ains]t him.<sup>31</sup>

However, during the life of Francis Lennard, there appears to have been no major confrontation, and indeed both he and his steward seem to have behaved with some caution, at least in relation to entry fines due on change of lord or tenant. This was to change after Francis Lennard's death in 1662. He was succeeded by his son Thomas, then aged eight, who in 1674 would marry an illegitimate daughter of Charles II and become earl of Sussex. In 1663 Thomas Lennard's guardians, acting on the advice of Anthony Grenup, mounted a serious challenge to the low levels of entry fine enjoyed by the tenants of Dacre and Barton. In the Musgrave collection there survives a draft petition to Chancery by tenants of the manor of Dacre seeking relief from a threat of forfeiture. Grenup had demanded eight years' rent from all Dacre tenants upon the death of Francis Lennard, but the tenants claimed that the fine should be four years' rent, a custom which had been respected throughout the period of royal ownership and also by Francis Lennard. The tenants refused to pay the higher fines – '... for that if your orators had submitted to the payment thereof or accepted admittances upon such termes they should by their owne consent and act have destroyed their said custom of holding their said tenements by a fine certaine and made themselves

and their posterity for ever afterwards tenants at the will of the Lord'. Grenup had purported to forfeit some of the customary tenements and to award them to a third party, coupling this with an application to the Court of King's Bench. The tenants now sought relief from Chancery.<sup>32</sup>

Clearly there had been a change of policy and Grenup was instructed to take a tough line: but the tenants could do that too, and from this document we learn what they really felt about Francis Lennard's acquisition of the manors, an opinion which, after the Restoration, they now felt emboldened to express. The document recites at length the descent of the manor from William, Lord Dacre, to George, Lord Dacre, to Leonard Dacre, and from him to Elizabeth I and then to King James and then to King Charles, 'who should have received the rents yssues and proffitts ever sithence if his said Maiestie had not been interrupted in the receiving of the same by and dureing the late Troubles', [but for] 'Francis late Lord Dacres of the South pretending himselfe to bee heir generall to some of the Lord Dacres of the North about tenn yeares sithence obteyned a writt of amoveas manus directed to the High Sheriffe of Cumberland whereby hee the said Francis Lord Dacres had the possession of the said manor'. A similar conflict in Barton in Westmorland reached trial in 1666, and the tenants won.<sup>33</sup> The Dacre case does not seem to have proceeded, perhaps because of the result of the Barton case.

When in 1674 Thomas Lennard, now created earl of Sussex, reached his majority he demanded ten years' rent from some of his Cumberland tenants in respect of admittances following his father's death in 1662, and there was widespread protest. The dispute was resolved by his allowing the tenants to buy out their obligation to pay entry fines, other than the token 'God's penny', in exchange for payment of the fine of ten years' rent in respect of his father's death and a further 30 years' rent.<sup>34</sup> By 1700 matters had settled down and the Fetherstonhaughs, who had recovered between 1670 and 1690 and had added to the splendour of the College, were again the stewards of these manors.<sup>35</sup> The earl of Sussex repaired the ancestral home at Dacre Castle but otherwise seems to have occupied himself elsewhere. After his death in 1715, the Cumberland manors were sold to Sir Christopher Musgrave of Edenhall for about £15,000.

## Conclusion

Civil wars are a disaster for most people involved, but an opportunity for a few. Reading the Barrett-Lennard papers at Essex Record Office one cannot help but respect the determination of the Lennard family to recover their 'lost' northern lands, and the conviction that they were perfectly entitled to try. But the attempt made in the 1630s had failed, and Francis Lennard's success in 1647-1652 was made possible only by the Civil Wars and the king's defeat. In Cumberland Lennard was regarded as an undeserving interloper. As for the supposed 'arbitration', it seems likely that it was an expedient invention by his lawyers, and not a deliberate attempt to hide the true nature of his acquisition – but it has certainly misled many historians.

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## Bibliography

**Oxford Dictionary of National Biography**, articles about the following persons:

- (1) Francis Lennard, Lord Dacre, by Jason T. Peacey [I have taken the liberty of disagreeing with Dr Peacey on one specific issue, but have relied on his research in all other respects.]
- (2) Philip (later St Philip) Howard, Earl of Arundel and Surrey, by J. G. Elzinga.
- (3) Thomas Howard, Earl of Arundel and Surrey, by R. Malcolm Smuts.
- (4) Henry Frederick Howard, Earl of Arundel and Surrey, by George Goodwin and J. T. Peacey.
- (5) Charles Howard, later first Earl of Carlisle, by George Goodwin and Sean Kelsey.
- (6) Sir Timothy Fetherstonhaugh, by Andrew J. Hopper.
- (7) Sir Thomas Widdrington, by David Scott.
- (8) Sir Matthew Hale, by Alan Cromartie.

T. Barrett-Lennard, *An account of the Families of Barrett and Lennard*, printed for private circulation 1908; ([www.archive.org/stream/accountoffamilie01barr](http://www.archive.org/stream/accountoffamilie01barr))

E. H. A. Stretton, *Dacre Castle*, published in 1994 by Dalemain Estates, has an interesting account (p58) about the Dacre/Howard 'arbitration'; Stretton recognised the crown interest, and the involvement of the Court of Exchequer, but not its primary importance and the order of events; and he concluded that there had been an arbitration in which the Government was also a party.

A. J. L. Winchester, *John Denton's History of Cumberland*, 2010, Surtees Society with CWAAS: Denton did not record that Kirkoswald and the other manors later awarded to Lennard were at the time of writing still in royal hands following Leonard Dacre's attainder.

## Notes and References

1. A history of the College Kirkoswald by Mrs Fetherstonhaugh and F Haswell was published in *CW2*, xiv, 196: the date of purchase given at p205 is mistaken (Fetherstonhaugh archive, A-20-3). NA – E178/582 describes the state of the building and its use in 1584.
2. NA E159/488 (note 11 below – but these events are well known).
3. NA E178/576.
4. J. Nicolson and R. Burn, *History and Antiquities of the Counties of Cumberland and Westmorland*, 1777, vol 2, 423; their account of Lazonby at p416 is however much closer to the truth.
5. T. H. B. Graham, *Extinct Cumberland Castles*, in *CW2*, xii, 175.
6. Thomas Denton, *Perambulation of Cumberland*, Winchester with Wane, Surtees Society 207, 2003, 326, and note 122.
7. The 1473 proceedings are fully described in NA E159/488 (see note 11 below).
8. ERO Barrett-Lennard collection, D/DL L28.
9. Archives of Queen's College, Oxford, 5A-29, 5A-55.
10. ERO Barrett-Lennard collection, D/DL L30/1.
11. NA E159/488, Easter Term, case L (for 50).
12. The English translation of the Latin original is taken from the 1652 record relating to Kirkoswald which was in English – see note 13 below.
13. The Lazonby record is at NA E/159/491; for the conclusion of the Kirkoswald case I have followed the 1657 exemplification at CRO D/Mus/2/Box 26.

14. J. T. Peacey, *Francis Lennard* [ODNB].
15. A. J. Hopper, *Timothy Fetherstonhaugh* [ODNB].
16. TNA SC2/165/9 and SC2/165/17 which relate to Glassonby and Staffell (Staffield).
17. T. Barrett-Lennard, *families of Barrett and Lennard* – the quotation is from p274.
18. ERO Barrett-Lennard collection, D/DL F39.
19. Durham University, Howard of Naworth collection, C175/275.
20. ERO Barrett-Lennard collection D/DL L30/1.
21. Archives of the Hasell-McCosh family, Dalemain, bundle 360, evidence of Andrew Huddleston.
22. CRO (C) DMD/10/6/12 an original document in the collection of George Gill Mounsey the nineteenth century Carlisle lawyer and antiquary.
23. J. T. Peacey, *Francis Lennard* [ODNB].
24. CRO (C) D/Mus/2/Box 26 (Kirkoswald, and the 1649 manors) and box 29 (Lazonby); there is also a copy in the Hasell-McCosh archive at Dalemain, bundle 381.
25. Archives of the Hasell-McCosh family, Dalemain, bundle 388.
26. Archives of the Hasell-McCosh family, Dalemain, bundle 299(a).
27. CRO (C) D/Mus/1/6/1/3.
28. CRO (C) D/Mus/1/12/2/2.
29. CRO (C) D/Mus/1/6/1/3.
30. CRO (C) D/Mus/1/12/1/3.
31. Archives of the Fetherstonhaugh family, the College, Kirkoswald, A-20-17.
32. CRO (C) D/Mus/2/ Box 64.
33. Archives of the Hasell-McCosh family, Dalemain, bundles 327, 388/392; the presiding judge was Sir Matthew Hale.
34. CRO (C) D/Mus/2/box 27 (Kirkoswald) and box 29 (Lazonby); also Hasell-McCosh archive 17.
35. Archives of the Fetherstonhaugh family, the College, Kirkoswald, A-19-17.

