

ART. XI.—*The Jacobite trials, 1746, and the Clarke notebook.* By RUPERT C. JARVIS, F.S.A., F.R.Hist.S.

Read at Carlisle, July 16th, 1952.

THE commission of oyer and terminer and gaol delivery which opened at Carlisle on 12 August and closed on 27 September 1746 consisted of the lord chief baron (Sir Thomas Parker), Sir Thomas Burnett, Sir Thomas Denison, and Baron Charles Clarke; the latter's Notebook of the trials has recently come into the possession of Tullie House, Carlisle. Both the Rev. C. M. L. Bouch, our joint-editor, and myself were able to see this document before its actual acquisition, and I was privileged to have it in my own custody for closer examination and study.

The book measures about $8\frac{1}{2}$ in. by 5 in., and its pages are gathered up into five sections (or "gatherings"), one small, three large, and one small. Because the blank pages, where they occur, are found at the end of one or other of these gatherings, I assume (and the assumption is confirmed by other evidence) that it was the judge's practice to take his notes during the various trials on the assize circuits, in a particular gathering of plain leaves, and thus be able later to bind up (or bundle together) the various batches of gatherings relating to a particular circuit or series of trials. The first of the five gatherings, as they are bound up in the present Notebook, relates to the northern circuit assize trials at Lancaster; the second is in respect of the normal circuit trials at Carlisle; the third and fourth are of the special—that is to say, the Jacobite—trials at St Margaret's Hill (Southwark), York and Carlisle; and the fifth is in respect of St Margaret's Hill, consisting entirely of legal arguments in arrest of judgment (regarding discharge of jury). The

five gatherings were (apparently later) bound together into a single volume in quarter leather and paper board. The actual binding has now become rather brittle and is a shade damaged.

As to the trials under the special commissions—the Jacobite trials—it might seem on first consideration that Carlisle's association with them was really not much more than merely accidental. Ordinarily, one would expect an accused to be indicted in the county where the imputed offence was alleged to have been committed. But after the rising of 1715, the Crown advisers appear to have doubted whether, in the current state of public opinion, they could empanel juries that could be relied upon to convict. Statutory power had therefore to be taken, ostensibly in order "that Justice may more speedily and securely be administered", but more specifically "that the offenders may not conceive any Hope of Impunity . . . from any Power or Interest they may have [in the counties]." This act provided power, therefore, to try any person in custody "in such shire as his Majesty shall direct, and no challenge for the shire shall be allowed."¹ This was no more than a round-about way of saying that the prisoners should be tried at those places, otherwise convenient for the trials, where good sound Whig juries could be hand-picked; hence the trials in Carlisle in 1716. After the '45 also, prisoners were indicted in counties other than those where the alleged treason had been committed. It is clear from other papers² that the venues originally selected were Carlisle and Newcastle. No trials, however, were in fact held at Newcastle, and prisoners already forwarded thither from Carlisle were later returned.³

¹ Statute, 1 Geo. I, stat. 2 (1716) cap. 33.

² Public Record Office: *State Papers, Scotland*, ii series: *bundle 31, no. 17*; and *State Papers, domestic, Geo. II, bundle 83, no. 270 (or 274)*. (This reference seems to be misquoted at Seton & Arnot, *Prisoners of the '45* (Scottish History Society, 1928), vol. i, p. 94. For letters from the secretary of state to the sheriffs of Cumberland and Northumberland, see *SPD, Geo. II, bundle 86, no. 103 (or 262)*.)

³ *SPD, Geo. II, bundle 86, nos. 57 (or 145-8), and 61 (or 95)*.

Once it was decided to hold the trials at Carlisle, however fortuitously, it was clear that (if only to reduce the cost of producing witnesses) the various indictments would be drawn in respect of some act of treason alleged in Carlisle itself, and local witnesses depended upon to secure conviction. In the generality of cases, therefore, the Crown seems to have relied upon the somewhat haphazard method of removing various prisoners from a number of Scottish prisons to Carlisle and then parading Carlisle inhabitants, in batches of 15 a time, before the prisoners, to see which could be identified to particular acts of overt treason locally, e.g. marching with the Jacobites, wearing the plaid or cockade, appearing under arms, patrolling the walls, occupying the castle, guarding the gates, and so on.

This sort of evidence however could not always be produced, as we find for example in the case of John (*alias* James) MacLaring⁴ who was indicted not for high treason merely, but more specifically, “for H[igh] Treason *at Carlisle*”. His case is endorsed “No evidence in Cumberland—not Guilty.”

Incidentally, MacLaring’s case is one of those in which the Clarke Notebook produces the name of a prisoner who is not known⁵ to Sir Bruce Gordon Seton and Jean Gordon Arnot’s usually very reliable standard work, *The Prisoners of the ’45*.⁶ Because, however, many of the prisoners had been quartered in private billets, or had been in one of the licensed houses in Carlisle, and as there had naturally been “incidents” of one sort and another during the occupation, it does not seem to have been so very difficult to find some sort of evidence of identification. All that was wanted from a witness was an obliging “he wore a sash and cockade”, “he bore

⁴ Given by Ewald as “John Mac Claren” (relying upon the *baga de secretis, Life and Times of Prince Charles Stuart*, new edition, 1883, Appendix, p. 437).

⁵ But query No. 1726, “John Mc Camel . . . Taken at Capture of Carlisle (S.P.D. 79-26). There is no further reference to him”.

⁶ *Scottish History Society*, 3 volumes, 1928-9.

arms on the walls", or "he was with the rebels as one of them"; and here was a heaven-sent opportunity of paying off any old score. The Isaac Brown mentioned below, who had his cart of hay taken away from him at the Scotch Gate; the Carlisle gaoler who was sent packing by his erstwhile prisoner; the recorder of Carlisle, whose goods were stopped at the gate on an unofficial "evacuation" of the town; Dr. Waugh's curate who had to entertain a very unwelcome guest; the chancellor's maidservant who had to provide "a Gown and Cassock", "A Band and Common Prayer Book"; the clerk of St Mary's, who was ordered "to ring the Bells as usual" and to provide choirmen and choirboys as well; these and many others in and about Carlisle probably felt that after all they had managed to get their laugh in last.

Had the trials been staged at Lancaster, Manchester or Derby, doubtless the self-same prisoners would have been charged with very similar offences provable by local (i.e. Lancaster, Manchester or Derby) witnesses. For example, Richard Morrison, a barber and wigmaker of Edinburgh, who had acted throughout as *Valet de chambre* to Charles Edward, escaped from Culloden but was taken up four weeks later at Leven in Fife. The offence alleged against him was high treason in Edinburgh, but he was transferred from the Canongate to Carlisle in the August of 1746, and among the witnesses produced against him was Charles Highmore the attorney-at-law of Carlisle, at whose house in English Street⁷ Charles Edward — and hence Richard Morrison — had lodged.

In the results, therefore, the trials provide a number of interesting sidelights upon the occupation of Carlisle, garrisoning the place, life under the occupation, holding the castle, town walls and gates, and of course life at the inns and taverns. Of these last-named, we read of

⁷ For a plate of his house see G. G. Mounsey, *Carlisle in 1745: Authentic Account* (1846), p. 101.

the "Turk's Head", the "Bush", the "Crown & Mitre", the "Duke's Head" and so on.

Robert Threlkeld, servant to William Eddison at the "Crown and Mitre", swore against John Cappock, a tailor of Manchester, younger brother of "parson" Cappock, that he "was quartered at his master's, ye Crown and Mitre in Carlisle among ye other Rebels—Tartan sash and don't remember cockade." Anne Eccles testified that she saw the other Cappock—"parson" Cappock⁸—"in a Cockade and Sash Plad tied with a White Ribband—in Compa[ny] at the Turk's Head with ye Rebels and was one of them." The "Bush" was kept by Thomas Pattinson, the deputy Mayor, very much acting as mayor, and the "Crown and Mitre" by that other character of doubtful conduct, William Addison. Adam Elliott swore against Thomas Warrington, a "Boy of 14 or 15", that he "lived at ye Duke's Head in Carlisle—in a Tartan Sash and a Cockade—he was running after a Chicken."

Of the 385 prisoners already in Carlisle or later brought in, 251 drew lots and thus (in mitigation of the presumed penalty) received punishment, e.g. slavery or transportation, without any form of trial. Of the 134 to be brought before the commission, about 70 of the indictments were in respect of offences alleged in Carlisle or Cumberland; about 70 of the 80 indictments at York were likewise in respect of Cumberland; as were also about 40 of the 70 at Southwark: thus, of a total of about 300 indictments, about 180 were in some respect relating to Cumberland. Baron Clarke provides notes in respect of only 7 of the Southwark prisoners, 49 of the Carlisle, and 15 of the York: total 71.

As to contemporary reports of the trials, the principal manuscript sources are the *baga de secretis* in the Public Record Office,⁹ and the notes of Sir John Strange, counsel

⁸ See below.

⁹ As to which, see the 5th Report of the Deputy Keeper (1844), Appendix II, pp. 172-93; and C. A. Ewald. *Life and Times of Prince Charles Stuart* (new edition, 1883), Appendix pp. 430-40.

for the Crown, now in the British Museum.¹⁰ A selection from the latter was edited by D. Murray Rose and published by James Allardyce in his *Historical Papers of the Jacobite Period, 1699-1750*.¹¹ Much additional information is contained in the prisoners' petitions, now among the state papers in the Public Record Office.¹²

The principal printed sources (apart from that noted above) are the various editions of the trials of the Jacobite lords, namely Lovat, Kilmarnock, Cromartie and Balmerino, and of certain of the commoners, such as Francis Towneley, governor of Carlisle, Thomas Cappock, usually referred to as "bishop" or "mock bishop" of Carlisle, and Thomas Syddall; together with their "Lives, Behaviour and Dying speeches", often unreliable, and sometimes demonstrably false. The principal authority for the prisoners, as distinct from the trials, is Seton and Arnot's *Prisoners of the '45*, already referred to.

According to Baron Clarke's Notebook, the court was already in difficulties on the very first day of the trials proper in Carlisle, because some of the panel for the jury were holders by Tenant Right or Customary Estates,¹³ Baron Clarke notes:—

Friday—12th. Sept—1746—the first day of the Trials.

Jury called over by the Pannell—and appear to a man except in two or three Instances of sickness.

Pannell consists of 110.

I. THOMAS HALES indicted for High Treason &c.

Special Jurymen challenged peremptorily.

Several challenged for not being Freeholders.

Several have customary Estates in this County, but they are not Freehold, nor Copyhold—these not qualified to be Jurors.

Certainly some interesting human stories — if it is stories that are looked for—can be pieced together from

¹⁰ Egerton MSS. 2000.

¹¹ *Spalding Club*, 1896, Vol. II, pp. 339-486.

¹² *S.P. domestic, Geo. II*, see in particular bundle 92.

¹³ Cf. statute, Ric. III (1483), cap. 4.

some of the most scrappy notes of the most scrappy evidence, regarding life in Carlisle during those critical times. Let us take as example the case of "John Henderson, a writer at Edinburgh indicted for High Treason." The prisoner was elsewhere described as "of Castlemains,¹⁴ a writer of Lochmaben."¹⁵

From Baron Clarke's Notebook we find that in October 1745 the "Prisoner came to Carlisle to sell horses." One can imagine that he was encouraged to talk, he being a Scotsman from Scotland. It is known from other sources—but not generally realized—that after the defeat of the government force at Prestonpans in September, some of the fugitives made their escape to Carlisle, as well as some to Berwick. So it chanced that in November a mixed party foregathered in Carlisle¹⁶ and "a soldier of Cope's told them ye Story"—as old soldiers will—but admitted that he owed his life to the intervention of one of the Jacobite leaders, the duke of Perth. One can understand Mr Henderson the Scotsman who had come to Carlisle merely by way of his own business—doubtless hearing all Scotsmen bundled together to the same perdition—remarking that this soldier at least "ought to pray for ye D[uke] of Perth as long as he lived." The Carlisle men present, discussing the incident next day, came to the conclusion that this man Henderson, to say such things as that,¹⁷ must be no better than a Jacobite himself—a sort of fellow-traveller, if you like, a *crypto*-Jacobite—a spy in fact—and got him carried off to Carlisle gaol. (Incidentally, we get a hint of the prevalence of the current spy scare from some of

¹⁴ *List of Persons Concerned in the Rebellion* (Excise Returns), (Scottish History Society 1890) 378; see also the affidavits, *S.P.D. bundle 73, no. 17* (34).

¹⁵ Seton & Arnot, II, pp. 284-5.

¹⁶ The relative affidavits taken in Carlisle say at the "Red Lion" (*S.P. Dom. Geo. II, bundle 73, no. 17* (35-7)). The two versions differ in some of their details. Those who made the affidavits, however, do not appear in the Clarke Notebook.

¹⁷ A story which we find in the soldiers' affidavits (among the secretary of state's papers) that the accused questioned the soldiers about the garrison and defences, finds no echo in the Clarke Notebook.

Hogarth's cartoons.) A witness who knew Henderson came forward and testified that the accused merely "came to Carlisle to sell horses—allways an honest loyal man—both before and since." A fellow prisoner from Carlisle gaol swore that he "was in Gaol with prisoner, when he behaved loyally—gave the prisoners two shillings of ale to drink K[ing] George's health, and success to his Army." But on 16 November, Carlisle fell to the Jacobites; they came to the gaol and finding Henderson was charged with being a Jacobite, they released him *to follow them*. When, however, he showed no keenness (being really no Jacobite at all) they forced him—so the defence ran—and under this duress he at last donned the white cockade. We can see how neatly the tables would now be turned; for the last witness to testify against him swore (which we can well believe) that after the prisoner had been released, he "with broad sword and white Cockade, came and threatened the Turnkey because he had told lies to ye Governor."

Henderson however, white cockade or no, had no intention of marching south with the insurgents—even under duress—and, presumably because he knew his way about between Carlisle and Lochmaben, remained in Carlisle in charge of the Scotch Gate. It may very well be, having regard to the circumstances of his earlier arrest, that during the occupation of Carlisle and his brief spell of authority, Henderson made some "difficulties" for the turnkey, the city bailiff, the recorder, and such like. For example, when news came, in the second week of December, that the Jacobites were northward-bound again, some of the more substantial of the inhabitants of the city—who could not this time take their effects up to the castle—sought to remove them beyond the city. But as we have already hinted, when Richard Gilpin, the recorder, was moving his stuff out, who was on the gate but John Henderson, "who prevented the Recorder's Goods from being carried out . . . He said at the gate

the Recorder's Goods should not go out", much to the annoyance, we imagine, of the recorder. It is interesting to note that Richard Gilpin and other justices mentioned in the commission were present when the commission of oyer and terminer was opened,¹⁸ including also John Waugh, the chancellor, whose name and goods also came up later.

To revert to Henderson, the prisoner: the curious thing is that during November he managed to leave Carlisle and go to his home, presumably at Lochmaben. Because however, to use the words of a witness, "he had left some accounts in Carlisle unsettled" (this witness does not specify whether they were accounts about horses, or accounts with the recorder, bailiff and turnkey), he returned to Carlisle "and didn't come home till two or three days after the Rebels return'd Northwards with ye Duke in their Rear."

His defence was the favourite one—he had been "forced".

"Henderson they forced to take a cockade and cursed him they would stick him if not let it remain—above twenty of them about him, and held on his hat with their drawn swords."

The evidence of his conduct at the gate, however, was against him. Doubtless the recorder saw to that. They brought it out that he had not been a mere sentinel at the gate, but *in charge* of the guard there. For a plea of "forcing" to succeed, a prisoner had to show that he had initially been forced to the fear of his life—which the prisoner had shown; that he remained under duress—which the prisoner contended; and that he took the first opportunity to attempt to escape — where the prisoner failed completely, if he were in charge of the guard on the Scotch gate, and lived at Lochmaben. Certainly, last November and December the prisoner had neatly turned the tables on the turnkey, gaoler, bailiff and recorder; but now the tables were turned on him.

¹⁸ *Scots Magazine* (September 1746), viii, p. 437.

Richard Jackson, whom we know from other sources¹⁹ to be one of the bailiffs of Carlisle, now came forward and gave evidence against him.

“Saw him among the other Rebels often, as one of them—with a cockade and a broadsword under his arm—he was open and frequent with them.”

But Mr Henderson of Lochmaben, who like many since, had come to Carlisle about horses, had backed the wrong horse this time. On the Sunday after he had mounted the guard on the Scotch gate, he was seen by another witness “going over Eden Bridge with his wife—and there was a serv[an]t before with Horses which I thought to be his—he pull’d off his cockade on ye Causeway between the Bridges.”

“He pulled off his Cockade”: was this the end of another “auld song”? Scarcely: the trial was yet to come. One piece of evidence might have turned the scale in the prisoner’s favour, when another prisoner — of the Jacobites this time—testified that he himself

“was taken prisoner at Penrith by the Rebels who brought me to Carlisle Gaol where Henderson was to see me, and in Morning before the Rebels left the town he opened the Gaol and favoured my Escape at five o’clock in the morn[ing:]”

But the jury were not impressed. Baron Clarke noted: —

“N.B. This man a better sort of them—Jury did not Stay a Minute to debate—never went from the Bar and he appeared throughout the whole Trial to have been a very active busy man.”

This John Henderson, then, was with James Brand (next mentioned) and Thomas Cappock (also mentioned below) in the first batch of prisoners executed at Carlisle, namely on 21 October 1746.

Another good story is contained in the evidence relating to the person who appears in the Clarke Notebook as “James Broad”; in the correspondence of Carlisle’s

¹⁹ *Quarter session minute book* (Easter, 1746), 328.

deputy mayor, as "one, Mr Brand, a Qr. Master of Horse"; in the *baga de secretis* as "James Bran, otherwise Brand esquire, otherwise Gentleman"; in Mounsey as "a Quartermaster, one Brawnd of the Rebels"; and in Seton and Arnot as Major James Brand of Baggot's Hussars. Some entries among the secretary of state's papers and the quarter sessions rolls put us on his track. He was the Cumberland militia's first scalp. Baron Clarke notes the evidence of Christopher Harding, William Curry, James Dalton, and Richard Carruthers, all members of the county light horse.²⁰

"Christopher Harding, was stationed at Carlisle with Mr. Kilpatrick,²¹ and were sent out toward Scotland to get intelligence of the Rebels—he went to Egle Fakin²² and went up Bongerswork (?) hill,²³ and we saw the Rebels were coming all towards us—about 100 of them were at the bottom of the Hill—The Prisoner was before all the rest, and Kilpatrick and I were standing on the mountain, and he bid me go down and see who this was—I went down and saw ye white Cockade—came back and told Kilpatrick, and we all went up to him with our guns ready and ask'd who he was, he s[ai]d he belonged to P[rince] Charles, he laid his hand on one of his Pistols and said he would fight for his Prince as long as he could stand—We surrounded him and told him we would shoot him if he didn't surrender—he did surrender and told us he was a Gentleman and hoped we would use him as such—Kilpatrick wouldn't let us rifle him—he had several Pistols—a tartan westecoat—Dragoon Boots—Broad Sword he took from Dragoons at Preston Pans.

Said he was a Q[uar]ter Master and coming to take Quarters for the army at Egle-Fikin—rode a White Horse—brought him to Carlisle that night and staid two hours at ye Gates before we could get in."

²⁰ These men can usually be identified from the muster-rolls among the lieutenancy papers. For example, Christopher Harding appears to have hailed from about Wigton and "rode for" (that is to say, was furnished by) Barnes of Dockray. The evidence of William Curry suggests an error in the muster-roll, where a Mr Matthews, likewise of Wigton, furnishes a "William Caddy." Richard Carruthers "rode" for the duke of Portland.

²¹ Referred to in the quarter sessions rolls as both ensign and lieutenant. Mr Kilpatrick rode with the present prisoner to Newcastle, and thereby appears in the *quarter session minute book* (midsummer, 1748, 346) because, apart from incurring a certain debt at Hexham, he borrowed a horse, and lost it.

²² Ecclefechan.

²³ Presumably Burnswark hill, the spur of which commands the Roman road between Ecclefechan and Lockerbie, still in use in the 18th century.

All this was corroborated. Further evidence was given by Richard Carruthers, who said he "saw him at the Bush in Carlisle"—the house of Pattinson, the notorious deputy mayor. It was Carruthers who, with Kilpatrick himself, "was to carry him to Newcastle", to Wade and "military intelligence" there.

"On ye Road he told me that he intended to have surrendered himself, according to a paper published by General Wade."

It may be significant with regard to the very much disputed part which Thomas Pattinson, the deputy mayor, played in Carlisle before and during the occupation, that when the prisoner was brought into the city, Richard Carruthers, who was to take him to Newcastle, testified that he saw him, not with Colonel Durand at the castle, not with the bailiff at the county gaol, nor with the recorder at the town hall, nor with Major Farrer at the militia headquarters. He "saw him at the Bush in Carlisle"—"The Bush" being Pattinson's licensed house. There can be little doubt that much of the later uncharitable spite which was vented against Pattinson when his luck turned, derived from a petty jealousy that this licensed-victualler/deputy-mayor/highway-surveyor, this admirable-Crichton/Pooh-Bah, had grossed so much of the Whig stage in Carlisle.

But to revert to the prisoner: by the time Broad was being taken along the road from Carlisle to Newcastle, he apparently had the leisure to think about his line of defence, a notion which had not yet struck him, as we shall see later, when he was being examined at Carlisle by Recorder Gilpin for the magistracy and Major Farrer for the militia. Broad's defence was not to deny the facts. It was concerned to show that in the first place, he had been "forced" into rebellion; in the second, that he did in fact escape from the insurgents, but had the ill-luck to be retaken by them; and in the third, that he was in fact escaping from the Jacobites when he was taken up by the Whigs. To support this story, another

prisoner, Hugh Roy, a boy of 14 from Aberdeenshire (in the Duke of Perth's regiment, and captured with his father at Carlisle) was bold enough to come forward and testify that James Broad had in fact deserted, but had been retaken near Lockerbie. He was imprisoned in a barn:—

“Duke of Perth came by as soon as he was put in barn—and bid them take special care of him for he was to be tried next day for Desertion.

Two centinels set over him, one at the fore door—one at the back door.”

At one of the doors his horse had been tied, with his pistols, and broad sword, and coat across the horse. This, Broad apparently knew:—

“He came out to make water—slipp'd his horse, mounted and rode off—this all in a few minutes.”

The case the defence built up therefore was that James Broad—Carlisle's first real prisoner—had been “forced”; had escaped and been recaptured; had escaped again, and was now ahead of the Jacobite army, not in the capacity of a quartermaster, but in that of a Whig fugitive. Further evidence was produced regarding his kindness to the English prisoners after Preston-pans. The Clarke Notebook reads:—

“Eliza Todd: never saw P[risone]r till the night before the battle of Preston—he come to my mothers House at Musselbrough and staid all night. Left ye House about 5 or 6 o'clock next morn—they heard ye battle was over—he got ale and bread from us to carry to ye King's Soldiers which were taken Prisoners here at Musselburgh—he paid for what he had for them.”

This place Musselburgh was “in the way—from Edinburgh.” This was corroborated by Jane Todd, “another Daughter of the Same House.”

This pretty case, however, was smashed by Richard Gilpin, the recorder of Carlisle, and Montague Farrer, the commander of the Carlisle company of the county militia, raised locally in the Eskdale and Cumberland wards.

“Reply

RECORDER GILPIN: was in Carlisle when P[risone]r was brought P[risone]r—and he never made any of these pretences magnified Rebels numbers—said they were 15 or 16 m [thousand] and would be 25 or 30 m, show'd no Remorse.

MAJOR FARRER: pretended no Force—[but said *intercalated*] if Pistols had been loaded they shouldn't have taken him—magnified their Numbers and only said—You can but hang me.²⁴ Thomas Greene saw him at Accle Fakin after he was taken, he said, go your way back some of you to the army and let them know I am taken prisoner by the Elector of Hanover's Men.”

He was found guilty, and Baron Clarke's astute note reads:—

“N.B. a bold daring fellow—but on the whole we thought he lay at Musselburgh the night before the Battle of Gladesmoor [Prestonpans] to avoid the Danger.”

One of the most notorious of the Carlisle prisoners must have been Thomas Cappock of the Manchester regiment, who figures so frequently in the prints of the time as Jacobite “bishop of Carlisle”.

The charge preferred against him was “High Treason in levying war against the King at Carlisle—and taking and holding the castle and City against the King.” Even Mounsey, who was not always very critical in his treatment of material,²⁵ and sympathetic as he was towards the clerical faction in Carlisle, could see that a great deal of nonsense had already been talked about “this young Clergyman.”

²⁴ Pattinson's report from Carlisle to the lord lieutenant said, “he is a very bold fellow, and talks great and without the least shadow of fear”. (S.P.D. *Geo. II, bundle 73, no. 78, enc.*).

²⁵ For example, when Mounsey did not himself know the whereabouts of certain manuscript sources he had the bad habit of implying by ambiguous phrasing that they were not in existence. He says that besides the private letters, Dr Waugh wrote official letters also, “it is believed, to the Duke of Newcastle then Minister of the Crown. The [private letters] have been preserved; those to the Duke of Newcastle are not forthcoming” (Mounsey, preface, viii). They are in fact “forthcoming” exactly where one would expect, namely in the state papers, domestic series, in the Public Record Office. In another ambiguous passage regarding the manuscript sources of the trials, he says, “though it is *much to be wished that a report of the trials of the two Macdonalds had been preserved*, yet possibly had it been so we might have to pronounce the affecting narrative by Sir Walter Scott . . . to be merely a fiction” (*ibid.* 257).

For example, at his trial it was sworn against him, and corroborated, that with his brother (also charged) he joined them, and the Manchester regiment, at Manchester; and also that "Mr Hamilton, the Pretender's Governor of the Castle of Carlisle, made him Bishop, and that was done by order of the young Pretender *soon after the city of Carlisle surrendered to the Rebels.*" Certainly the testimony is not only false—it is inconsistent with itself, for if he did not come in until they arrived at Manchester, he could not have been made bishop of Carlisle *soon after that city surrendered*, whatever the pamphlets and cartoons might have to say. We are a little surprised then to see in Baron Clarke's notes,

"N.B. this is a Young Clergyman who affected the character of Bishop of Carlisle among the Rebels as Report says—"

entered after the terms of the indictment and before the evidence. There is in fact no evidence there that he ever affected the character of bishop of Carlisle. It is of particular interest that he stayed at Dr Waugh's²⁶ house while in Carlisle, and hence it was the chancellor's domestics and Robert Wardale, the curate whom he left in charge,²⁷ who testified against Coppock at the trials; but although certain church and cathedral matters are touched upon, there is not the slightest hint in Clarke's notes or the evidence to suggest that he ever "affected the character of Bishop of Carlisle". Dorothy Tiffin, the Waugh's maidservant, gave evidence for the Crown, as did also Lancelot Beck, the clerk of St Mary's, and John Gardiner (who may very well have been the Gardener who "got safe home with the little mare last Friday", as John Nicolson—who later collaborated with Richard Burn in the *History and Antiquities of the Counties of Westmoreland and Cumberland* — wrote to Chancellor Waugh during the course of the occupation.²⁸

²⁶ Chancellor Waugh was present at the trials, see note above.

²⁷ The curate's letters to the Chancellor during the occupation are printed in Mounsey.

²⁸ Mounsey, 162.

Baron Clarke writes:—

“Mr. Robert Wardall: lives in Carlisle and saw P[risone]r come to Dr. Waugh’s House Friday before Xmas [20th December] When Rebels were in [their *deleted*] Poss[ess]ion and ye Main Body were gone forward to Scotland—I went in and found him Sitting in Drs Study—

Maid gave me a Billet on which was written ‘Th. Cappock’—I showed it him and told him it was very inconvenient, no body being at ye House—and ye Rebels having taken all provisions &c—he said he knew how to make his Quarters good—I laid in the House till ye Town was taken—he often came there and he lay at the House all ye time.”

There is in the evidence quite a deal of information about borrowing a gown and cassock (“My master’s was too big,” said the maidservant); about the orders “to ring the Bell as usual” (it is to be noted that “parson” Cappock wanted the bells *rung*—not confiscated); about the “Xmas Day Service”—corrected to read “*Sermon*”; about the prayers for “K[ing] James—P[rin]ce Charles, Regent of England—Duke of York and Albany and rest of Royal Family”; about the choir—“to order bringing Men and boys as usual”; but nothing about “affecting the character of Bishop of Carlisle”.

It ought not to be necessary to say that not all the evidence is to be taken at its face value. It must be approached critically. A single example should suffice: John Mason testified against Thomas Lawson (a prisoner who had earlier been a chapman of Alyth in Perth) that he had

seen the prisoner often in Carlisle—in white Cockade—and in arms—both Gun and Sword—one night took him lurking about his house—carried him before their Gov[erno]r who committed him.

This might be read as implying that the Jacobite Governor committed him for an offence at the complaint of a Carlisle citizen. We might assume from another source²⁹

²⁹ *S.P. Dom. bundle 92, no. 225.*

however, that it is more likely that Lawson was loitering about the back streets of Carlisle after dark, not to commit some offence against a Whig inhabitant, but rather to make good his escape from the Jacobite garrison—and that his governor knew it. In any case although he was found guilty and sentenced to death, the sentence was (presumably on these grounds) commuted to transportation; and as a matter of fact the prisoner was later pardoned and released, presumably because of ill health.

Although the evidence presented piecemeal, in some of the longer cases, serves to unfold some interesting stories, the shorter cases also are not without their own interest.

There is for example the story of Thomas Barton, “indicted for High Treason at Hesketh in the Forest in this county”, for carrying to Carlisle Charles Edward’s summons to surrender. The case was taken by the lord chief baron; but Charles Clarke has a brief note:—

“acquitted for want of p[ro]ducing the written Message which he was carrying to ye Rebel Gov[ernor]—which was delivered over to the Justice at Hexham.”

There is the even briefer case of

“James Barithwaite a sadler at Penrith, nothing made out ag[ains]t him.

Not Guilty.”

Just that, and no more.

Apart from the Jacobite trials proper, the portions of the volume dealing with the northern circuit trials at Lancaster and the ordinary circuit business at Carlisle are routine, but nevertheless quite interesting.

In the Carlisle section, a number of noted Cumberland families and estates, both old and new, are mentioned, e.g. the Hudlestons, Nicolsons, Pattersons, Nevinsons, Penningtons, Lutwidges and Speddings. One cannot help noticing how much of this legal business was remitted by the judge of assize to Richard Gilpin, the noted recorder of Carlisle, who as we know from the

lieutenancy papers³⁰ and the quarter sessions rolls,³¹ was so active in Carlisle during the course of the rising in his dual capacity of deputy lieutenant and justice of the peace. Indeed, he alone of the civil and civic arm added his signature to those of the commanders of the horse and foot of the militia of Cumberland and Westmorland, to the important letter to the lord lieutenant in the critical days in October and November before Carlisle was besieged, urgently requesting instructions from the lord lieutenant, in the legal and constitutional doubt as to whether or not—and if so, how—at that critical juncture the militia could be legally held embodied.³²

It is very interesting to notice how local (and apparently relatively insignificant) information in the Clarke Notebook can be made to blend in with information from either local or central sources to tell a more complete story. For example, in working on the Cumberland quarter session rolls I was puzzled by an imperfect justice's warrant, produced by the keeper of the Carlisle gaol, committing a certain man on the somewhat vague charge of "being concerned in the Rebellion."³³

Although part of the warrant is torn off, it clearly refers to a "Lancelot —", the surname being in doubt. Later, a Lancelot Hall, who had been taken up "for further Examination &c for being concerned in the Rebellion" by a "Commitment dated the first of February last", submits a petition to the effect that he "has laid in Prison since the date of Commitment to this time to the great prej[udice] of his Health and Circumstances", and "has never yet been able to obtain a hearing."³⁴

³⁰ The Courts, Carlisle, *Lieutenancy minute book*, 16 and 28 September, and 9 October 1745.

³¹ See, for example, Christmas 1745/6, petitions 14, 21 and 24, and Christmas petitions 1746/7, 23.

³² Public Record Office: *S.P.D. Geo. II, bundle 72, no. 34 (enc.)*. I have dealt with this situation more fully in Cumberland Record Series, Vol. I. *The Jacobite Risings of 1715 and 1745* (forthcoming), and in *The Juridical Review*, Vol. LXIV, No. 1, 29-59.

³³ Petition of Richard Goodman, *Easter sessions 1746 petition roll*, 85 and 93.

³⁴ Easter 1746, petition 32 (this petition also slightly damaged).

Lancelot Hall remains, in the quarter sessions rolls, a completely shadowy character, and one wonders what is the story behind it all. Had someone locally a motive for making an accusation against Hall, which could not be brought home? Baron Clarke's Notebook may supply the answer. There is a reference there to a trover action (i.e. a process to recover possession of property found by another and converted to his own use) which tells a good story about Lancelot Hall.

It seems fairly clear that after the action at Clifton, one of the English dragoons stole a gelding belonging to Hall, and sold it for a guinea to a Penrith ostler by the name of Henry Turner. Turner took the horse to be shod and "having him to a Smith, he [the smith] said "'twas Lanty Hall's". Turner the ostler took the horse to the inn in Penrith where he worked, but Lancelot Hall the real owner recognised his horse, whereupon John Watson, the Penrith innkeeper, said they had "bought the Horse of a Soldier for a Guinea—and if Hall would pay ye Guinea he might have ye Horse." Hall said, "No," he would have him and pay nothing. Poor Lancelot Hall who sued the innkeeper—and not the ostler—was non-suited by Baron Clarke, apparently because he had not shown that the innkeeper ever had the horse "but as in his Stable in a Common Inn".

Incidentally, it is interesting to note that in the (unpublished) Excise records relating to the duties collected in Cumberland by the Jacobites,³⁵ the innkeeper's licence duty collected in Penrith amounted to £63. 17s. 3d., of which the John Watson the innkeeper in this case accounted for the modest sum of 1s. 8½d. The entry in the Clarke Notebook then is interesting, not only as illustrating the local repercussions of armies living on the country (the Whigs this time, be it noted—not the Jacobites), but also as sketching in the more shadowy

³⁵ H.M. Customs Library, London, *Excise and Treasury*, Vol. XIV (1743-52), p. 201.

character of the Lancelot Hall of the quarter sessions rolls.

Or again, it would be interesting to know whether the Isaac Brown who gave evidence against Thomas Lawson ("a poor wretched mortal"), was the Isaac Brown of Fenton quarter, Hayton, who was a sergeant in the company (Eskdale and Cumberland wards) of the local militia. He describes himself as "Prisoner in their Hands, and had Centinels set over him, and amongst others the Prisoner was set over him several times." The accused, however, "was himself afterwards comited to a Guard for some Misdemeanor as he told me, but s[aid] twas a false charge." We know that Isaac Brown was local, for he testified against another prisoner, John Henderson of Edinburgh,³⁶ that he saw him "With his Cockade and broad sword—he took a Horse and Cart of Hay from me at Scotch Gate." We know from the quarter sessions rolls that Sergeant Isaac Brown did not draw certain of his militia pay, and that he had to petition the sessions to get it from the county.³⁷ One wonders therefore whether he missed the pay parade by being in the enemy's hands at the time.

I quote these as no more than examples to demonstrate the complementary character of the various records, and to show how these apparently unrelated and somewhat inconsistent odd scraps of evidence may, with a little ingenuity, be fitted together like the pieces of a jig-saw puzzle, into at least some sort of picture, sometimes intelligible, occasionally interesting.

I feel, therefore, that the authorities at Tullie House are to be congratulated upon bringing Baron Clarke's manuscript volume to Carlisle, which seems to be its natural home, where it may be available for consultation and, it is hoped, closer study. I am in any case indebted to them for permission to quote from the hitherto unpublished source.

³⁶ See p. 122 f. above.

³⁷ Easter 1746, petitions, 81-2; and Midsummer, 1746, petitions, 31 and 50-1.