

ART. XVI.—*The lieutenancy in Cumberland and Westmorland, 1660-1760.* By RUPERT C. JARVIS, F.S.A., F.R.Hist.S.

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HER Majesty's lieutenant of and in the county — commonly known as the lord lieutenant — is the principal military officer of the crown within the geographical limits of his lieutenancy. The terminal dates of this paper — 1660 and 1760 — mark off a period important in the development of the lieutenancy and the militia. At the Restoration the feudal military tenures were extinguished and, in the absence of a standing army, the defence of the realm had necessarily to be provided by the militia. The Cavalier parliament, therefore, in 1661-1662 refounded the lieutenancy and the militia upon a firm statutory basis<sup>1</sup> after the confusion of the civil war period, and this Restoration settlement remained basically unimpaired until Pitt's reform of 1757,<sup>2</sup> at the opening of the Seven Years' War.

This office of the lieutenancy — with its responsibility for the militia — grew up almost absent-mindedly in the 16th century; it became the source of bitter constitutional quarrel in the 17th, and a matter of considerable confusion in the 18th. Nevertheless, it has been altogether inadequately studied, quite possibly because lieutenancy records before the period of Pitt's reform, are somewhat fugitive.

The questions posed in this paper are the doubts and difficulties which arose at various times — particularly at deputy-lieutenant level — from the uncertainty locally as to the precise constitutional basis of the lieutenancy or

<sup>1</sup> Statutes: 13 Car. II, stat. I, cap. 6; and 14 Car. II (13-14 Car. II in Ruffhead), cap. 3.

<sup>2</sup> 30 Geo. II, cap. 25.

lieutenancies of the two counties of Cumberland and Westmorland, that is to say, the uncertainty whether they constituted one joint (and combined) lieutenancy in respect of the two counties, or two several (and separate) lieutenancies exercised by the same person. It will be shown that these were no mere academic questions for otiose consideration, but questions of very practical difficulty, with some very practical repercussions.

Although various contemporary and other handbooks have been written on the jurisdiction and procedure of justices' courts, courts baron and courts leet, none such has appeared about courts or boards of lieutenancy. In general, little has been written about the subject at large, and nothing about the particular problem posed in this present paper.

The later Tudor period was an important formative time in the history of the lieutenancy.<sup>3</sup> A study of its development in the counties at large, however, will not necessarily provide very firm precedents for the counties of Cumberland and Westmorland, because of the complications of "border service" and the counties' consequential early exemption from ordinary militia service, which came later to be the primary concern of the lieutenancy. For example, as early as the time of John, the knights of Cumberland were able to contend that the military burden of maintaining the march was so great that it relieved them of liability to any other form of military service. Their military obligations to the crown, therefore, were confined to providing safe convoy through the county, to and from Scotland. If they joined the Scottish expedition of Edward I it would be only upon conditions, and these conditions were that they should go and volunteer without prejudice to their freedom from liability and the freedom of their heirs.

<sup>3</sup> J. Harland, *Lancashire Lieutenancy under the Tudors* (Chetham Soc. xlix 1859); G. S. Thomson, "The Origin and Growth of the Office of Deputy Lieutenancy", *Transactions*, Royal Historical Society, 4th series, v (1922) 150-167; and *Lords Lieutenant in the Sixteenth Century* (1923).

Furthermore, their going — if they went — was not to be “drawn into a precedent”. *Non cedat eis eorum heredibus in prejudicium vel trahatur in consequenciam in futurum*.<sup>4</sup> They were not liable, then, to the ordinary militia service of the counties. In certain respects, therefore, the military privileges of the two counties, because of their special service on the Border, came to resemble to some extent the military privileges of a palatinate, and particularly the palatinate of Durham in the north and Chester on the Welsh Marches.<sup>5</sup>

The Border was not, of course, extinguished by the Union of the crowns in 1603, but by the time of the Union of the parliaments in 1707, the two counties had become completely absorbed into the English militia system as established or reconstituted at the Restoration.<sup>6</sup>

In the absence of the Tudor commissions themselves — or even of their text — it is difficult to say what (territorially) was then intended to constitute a lieutenancy. Indeed, even at a much later period it could not be held that the constitution of a lieutenancy as such was at all essential to the crown’s purpose or interest in a county. For example, during the religious and parliamentary troubles of 1678-79 — the Titus Oates affair and the Exclusion Bill — the trained bands were raised in Westmorland altogether outside the lieutenancy procedure, that is to say, by warrants from the justices, issued through the high constables of wards.<sup>7</sup> Or again, during the confusing period in 1688 when viscount Preston who superseded the earl of Thanet in the lieutenancy in 1687 was himself superseded by Sir John Lowther in 1688<sup>8</sup> at a time when it could be said that all lacked proper commissions<sup>9</sup> — it was the justices, and not the lieutenant

<sup>4</sup> *Parliamentary Writs* i 345, no. 41.

<sup>5</sup> R. C. Jarvis, *Jacobite Risings of 1715 and 1745* (Cumberland Record Series i (1954), cited hereunder as *Cumb. Record Ser.* i), 110-111; and *Victoria County History of Cumberland* ii 251-252.

<sup>6</sup> *Cumb. Record Ser.* i 111.

<sup>7</sup> Rydall MSS. (Hist. MSS. Com. XIII vii) 159.

<sup>8</sup> *Patent Roll*, 1 W. & M. i, dorse 25.

<sup>9</sup> Rydall MSS. 223.

or his deputy lieutenants, who issued the warrants for watch and ward to be kept in Cumberland and for the beacons to be fired in the event of invasion or insurrection.<sup>10</sup> It is certain, however, by the terms of the Militia Acts of 1661-62,<sup>11</sup> that after the Restoration the militia itself could not legally be mustered save through the machinery of the lieutenancy: that is to say, the office of lieutenancy had, by the Restoration settlement, become essential to the crown in the counties.<sup>12</sup>

From early times this office of lieutenancy, particularly on the Border and in the marches of North and South Wales, had been exercised on a regional rather than on a county basis, and the great territorial magnates were often appointed over a range or group of counties. Before the close of the 16th century, however, it had already become recognised that the conferment of lieutenancy upon the same person in respect of two or more counties was not intended to constitute those counties, on that account, a single (joint) lieutenancy. Two or more counties might at one time be grouped under a single lieutenant, and at another have each its own lieutenant, or even two lieutenants to a county — as when Charles, first earl of Carlisle and his son Edward Howard, Lord Morpeth, later second earl of Carlisle, were jointly and severally lords lieutenant of Cumberland and Westmorland<sup>13</sup> from 1669 until 1685. Or indeed a county might, as has already been said, be left with no lieutenant at all. A lieutenant appointed to a group of counties might be reappointed again and again to the whole group, or

<sup>10</sup> *Ibid.* 225.

<sup>11</sup> 13 Car. II, stat. 1, cap. 6; and 14 Car. II (13 and 13 in Ruffhead), cap. 3.

<sup>12</sup> The proviso in the Act of 1662 — "... always understood that His Majesty, his heirs and successors, have power and authority to direct and order otherwise . . . any thing in this Act to the contrary notwithstanding" (sec. 2(4)) — must presumably be construed narrowly, e.g. to empower the crown to remove a lieutenant although legally appointed, provided he is succeeded by another lieutenant *also legally appointed*.

<sup>13</sup> They were appointed "with power to each to act apart during the absence of the other beyond the seas." (*Cal. State Papers, Domestic, 1668-69*, 88.)

to one or other of the counties, or to a varying combination of particular counties within the region; but in general the notion seems never to have arisen that the counties "grouped" for the time being therefore constituted on that account a single lieutenancy. The particular factor tending to prevent such a notion from developing may very well have been the realisation that the main practical affect the acceptance of such a notion would have had would be to extend the common-law responsibilities of the ordinary subject, a matter about which the ordinary subject was sometimes particularly sensitive. For example, in 1666-67 the king conferred upon the earl of Carlisle exceptional powers in the four northern counties, powers which a contemporary news letter referred to as those of a "Lord Lieutenant General".<sup>14</sup> "Understanding that the Trained Bands . . . of Cumberland and Westmorland are drawn together upon the news of some disorders happened in Scotland," the king directed the earl of Carlisle to go "with all speed thither to dispose and order the militia so assembled, according as our service shall require." The "Lord Lieutenant General" was directed to draw additional arms from the governor of Carlisle, and ammunition from Berwick Tynemouth and Carlisle, and then to furnish what assistance he could to the earl of Rothes, the commissioner for Scotland.<sup>15</sup> Yet the earl of Carlisle was careful, even in that emergency, not to muster his Cumberland trained bands outside the limits of that county, but rather "as near the border of Cumberland as convenient, so as to be thus on the way to Newcastle if there be occasion."<sup>16</sup>

Thus if two counties, for example, Cumberland and Westmorland, had come to constitute a single (joint) lieutenancy, with (say) a single regiment of trained bands or a single unit of militia light horse, then the private

<sup>14</sup> Rydal MSS. 50.

<sup>15</sup> *SP, Dom.*, Car. II (*SP* 29), bundle 179, no. 24.

<sup>16</sup> Rydal MSS. 50.

soldiers could then have been summoned to muster in any part of the lieutenancy — i.e. in any part of the two counties. The ancient common-law liability, however, to appear in arms upon lawful summons was limited (save in time of insurrection or invasion) to service within the county — the most ancient and the most enduring of the divisions of the country. As parliament asserted almost immediately after the dethronement of Edward II, “No man [shall] be compelled to go out of his shire, but where necessity requireth and sudden coming of strange enemies into the realm.”<sup>17</sup> The prior liability to the county was deeply rooted. There was, for example, the noted occasion in 1588 when the armada was moving up the Channel, and the lieutenants of certain of the southern counties were ordered to muster their men and send them urgently to the defence of the capital. The deputy lieutenants of Dorset, however — supported by their lieutenant — refused to move to London, with the enemy so near to their own county.<sup>18</sup>

It was well established, then, in the passage of time, that the unit for the office of lieutenancy came to be the single county. Immediately after the Revolution, when the Commons went into committee upon the militia bill, it was resolved “that none shall be Lords Lieutenant of above two Counties at once”.<sup>19</sup> By the time of Pitt’s militia act of 1757 the office had become a permanent one, ordinarily identified with a single county, and once granted usually retained for life. For throughout the whole of the period between the Restoration and Pitt’s reform — a period covering a number of constitutional and dynastic crises in which the lieutenancy and the militia were vitally affected — Cumberland and Westmorland were usually coupled together under a single lieutenant.

It is interesting to note at this point that although it

<sup>17</sup> Edw. III, cap. 2 (5).

<sup>18</sup> *SP, Dom.*, Elizabeth I, ccxiii, no. 36.

<sup>19</sup> Rydal MSS. 247.

has often been stated that with the office of lord lieutenant that of *custos rotulorum* is also invariably coupled, yet these offices were not in fact *invariably* so coupled in the county of Westmorland. For example, on the succession of Anne when Lord Carlisle was lord lieutenant of the two counties,<sup>20</sup> he was *custos* in Cumberland<sup>21</sup> only, Lord Thanet being *custos* in Westmorland.<sup>22</sup> And again in 1714, when Carlisle was restored to his lieutenantancies<sup>23</sup> — having been superseded by Thanet in 1712 — the *custos* in respect of Westmorland was Lord Wharton<sup>24</sup> and not Lord Carlisle. The four offices, however, were later united in Carlisle's hands,<sup>25</sup> and upon his death in 1738 in those of viscount Lonsdale.<sup>26</sup>

It is, however, the exceptional circumstances of invariably coupling the two lieutenantancies that lead us to look to other counties for examples of the more normal development of lieutenantancy practice. Although by the time of Anne, unlike the earlier period, it was not usual for a lieutenant to exercise a lieutenantancy in two or three counties, yet it was by no means exceptional, particularly in the old Border counties. Lord Scarborough, for example, was lieutenant of Northumberland, Newcastle upon Tyne and the county of Durham, in much the same way as Lord Carlisle was lieutenant of Cumberland and Westmorland, and the earl of Pembroke exercised his lieutenantancies throughout a number of counties in South Wales. Where, however, Lord Pembroke was lieutenant of Wiltshire and Glamorgan, or the duke of Bedford of Middlesex, Bedfordshire and Cambridgeshire, it was clear that these — on geographical grounds alone — must have been separate and several lieutenantancies, with separate and several deputy lieutenants in each county. It is

<sup>20</sup> *Patent Roll*, 6 W. iii, i, dorset 16; and 1 Anne vi 22.

<sup>21</sup> *Ibid.* 12 W. iii, v, 8; and 1 Anne xiii, dorset 5.

<sup>22</sup> *Ibid.* 1 Anne iv, dorset 8.

<sup>23</sup> *Ibid.* 1 Geo. I vi, dorset 36 and dorset 13.

<sup>24</sup> *Ibid.* 1 Geo. I vi, dorset 34.

<sup>25</sup> *Ibid.* 1 Geo. II viii, 5 and 15.

<sup>26</sup> *Ibid.* 11 Geo. II ii, 19 and 20.

interesting to note that in 1702 separate deputy lieutenants were appointed under Lord Berkeley in respect of Gloucestershire, the city of Gloucester and the city of Bristol respectively.<sup>27</sup> Indeed, in Norfolk under Lord Townshend not only were separate deputy lieutenants appointed in respect of the city of Norwich and the Norwich division of the county, but there was also a separate list for the Lynn and Walsingham division of the county.<sup>28</sup> This cannot, however, be taken to require or imply that the lieutenant thereby limited the authority of particular deputies to particular divisions within the lieutenancy. The contrary had already been established before the death of Elizabeth I. For example, Lord Burleigh in his "articles of instruction" as lieutenant to his deputies in the various "parts" of Lincolnshire, made it clear that although he had specified the parts of Kesteven and Holland and Lindsey each "to be under the particular charge" of particular deputies, "yet my meaning is not," he said, "but that you jointly and severally should have care and regard to the whole body of the shire."<sup>29</sup>

In a return of deputy lieutenants called for in the last of William III, it seems significant that where, for example, Suffolk returned the names of separate deputy lieutenants in respect of the separate divisions of the county (e.g. Ipswich, the town and hamlets of Ipswich, Beccles, Woodbridge, and the franchise of Bury St Edmunds), as did also Pembrokeshire in respect of the county and the town of Haverfordwest,<sup>30</sup> and Northumberland in respect of the county and the town of Newcastle upon Tyne,<sup>31</sup> yet Lord Carlisle returned in respect of Cumberland and Westmorland a list distinguishing whether the respective gentlemen were deputy

<sup>27</sup> *CSP, Dom.*, 1702-3, 396.

<sup>28</sup> *Ibid.* 392.

<sup>29</sup> *SP, Dom.*, Elizabeth I ccvi, no. 62.

<sup>30</sup> *CSP, Dom.*, 1700-02, 257.

<sup>31</sup> *Ibid.* 254.

lieutenants of Cumberland (solely), or of Westmorland (solely) or of Cumberland, and Westmorland (combined).<sup>32</sup> Sir Christopher Musgrave, Sir Richard Musgrave, Sir Wilfrid Lawson, Sir Daniel Fleming, Sir Edward Hasell, Sir John Ballantine, John Dalston and Andrew Hudleston<sup>33</sup> were deputy lieutenants of Cumberland and Westmorland; Richard Patrickson, Anthony Hutton, Robert Carleton and Christopher Richmond were of Cumberland only; while Sir Richard Sandford and Richard Lowther were of Westmorland only.<sup>34</sup> This may not have been intended to do more than mark the fact that certain of the deputies had property qualifications in both counties, while certain others had such qualification only in one county or the other. Whatever it was intended to imply, however, it was quite unlike the practice in any other county.

At the opening of the new reign — the commissions had, of course, been voided by the demise of the crown — Lord Carlisle sent in his list of nominations for the deputy lieutenancies to be laid before the queen for her approbation,<sup>35</sup> and these were in due course approved.<sup>36</sup> The approval of them in this particular form seems to have raised in the minds of certain of the deputy lieutenants doubts as to the validity of their deputations. If certain of them had been appointed deputy lieutenants “of Cumberland and Westmorland”, it seemed necessarily to imply that there was but a single lieutenancy running throughout the two counties — that is, that there was one (joint) lieutenancy, and not two (several). If that were so, those who held deputations in respect of one county only — either of Cumberland or of Westmorland — held from a (joint) lieutenancy a commission that purported to limit their authority to part only of the

<sup>32</sup> *Ibid.* 255.

<sup>33</sup> Name submitted by earl of Carlisle, but excluded by Nottingham (*ibid.* 265).

<sup>34</sup> *CSP, Dom., 1700-02*, 255.

<sup>35</sup> Carlisle MSS. (Hist. MSS. Com., XV R vi) 10.

<sup>36</sup> *CSP, Dom., 1702-03*, 265 and 259.

lieutenancy. The Militia Acts, however (which were now the sole statutory basis for the authority they exercised), provided no legal warrant for such limitation or division. From this it would follow that what purported to be their commissions might in fact lack any legal sanction whatsoever. If, on the other hand, the latter commissions were fully valid, on the grounds that there was in law one lieutenancy of Cumberland and another of Westmorland — that is, that the lieutenancies were several, and not joint — then those who held what purported to be a commission running throughout the two counties, held an invalid warrant from what purported to be a “joint” lieutenancy, but which in fact was non-existent. Because the lieutenancy would come into most active operation precisely in times of dynastic unsettlement — witness, for example, the rapid changes between the Lord Carlisle, Lord Thanet, viscount Preston and Sir John Lowther, between 1685 and 1688 — it was particularly necessary that the lieutenancies should be legally well founded. Furthermore, it is of particular constitutional and legal significance that the terms of the lieutenant’s commission indemnifies him in advance for any action that may be done by him under the authority of his commission; the deputy lieutenant, in contrast, is not thus specifically indemnified.

By the time of the re-settlement of the militia at the Restoration until (and after) the reforms of 1757, almost the whole of the practical business of the lieutenancy in most counties — mustering, arming, equipping, officering and exercising the militia, raising trophy money, paying coat-and-conduct money, and so forth — was transacted not by the lieutenant himself, but by his deputies.<sup>37</sup> If, therefore, by some technical imperfection of their warrants, the deputies were left exercising an authority only doubtfully legal — and left without any form of indemnification — while the lieutenant himself

<sup>37</sup> Geo. I, stat. 2 (1714), cap. 14.

was fully indemnified, but exercising no very practical function (e.g. not signing the warrants authorising the particular charges upon the county stock), it is not to be wondered at that the deputies should feel doubt and hesitation. In the nature of the case, these doubts and hesitations would express themselves most forcibly in times of political difference and tension — 1688, 1715 and 1745. All this is to say that the whole lieutenancy organisation was likely to be weakest at precisely the time when there was the greatest need for it to be strongest. The occasion of the rising of 1715 was such a time, and the rising of 1745 another.

At the critical time of 1714-15 the militia in Cumberland and Westmorland consisted of a troop of horse and seven companies of foot, the latter from the neighbourhoods of Carlisle, Cockermouth, Penrith, Millom, Appleby, Kendal and Kirkby Lonsdale. There can be no doubt that, at least by 1714, these forces raised in the two counties under the current Militia Acts, had come to be generally regarded as a joint body, consisting as the lieutenancy records said, "of a regiment of foot of 7 companies and one troop of horse". The point came to be argued, however, whether this was in fact a single unit, "a regiment of foot of 7 companies" — or two units, of 4 and 3 companies respectively. The point was far from being a merely academic one. For example, during the alarm of 1696, Lord Carlisle received directions from the council to have the militia of his counties properly prepared; he therefore gave instructions to have the companies ready at an hour's notice to march to Carlisle to secure that garrison.<sup>38</sup> If, however, there were two several lieutenancies in the two counties, the men of Westmorland could not, under the authority of the current Militia Acts, nor therefore under the mere warrant of a deputy lieutenant, be required to march beyond the confines of their own county, save — as the

<sup>38</sup> Rydal MSS. 399-440.

ancient act had it — when “necessity requireth and sudden coming of strange enemies into the realm”.<sup>39</sup> Although it may have been only a matter of opinion what necessity required, there were certainly as yet no strange enemies in the realm.

However, it had long been the practice for the trained bands and militia to meet at the Round Table — which stood from Penrith over the Eamont into Westmorland — not only for Westmorland<sup>40</sup> but also for Cumberland.<sup>41</sup> In 1679, “upon the rebelling of the Scotts” they “randezvoused there, in order unto the march of the three Westmorland companies of foot into Carlisle”.<sup>42</sup> In 1685 also “the three Westmorland companies met [at the Round Table] and marched into Penrith”.<sup>43</sup>

It seems to have been realized, however, even at the time that there was something not quite regular in this procedure, and that if the thing were questioned it might give rise to some larger objections. They must be punctilious, therefore, in the observance.

Upon a general mustre, Westmorland companies used [first] to meet in their own county, and Cumberland in theirs, and then both march to the place of general rendezvous.<sup>44</sup>

Thus, wherever they might march after their muster, they were not summoned to muster, nor did they actually muster, beyond the limits of their own county. This however raised a further question: who was competent to sign a warrant in respect of a Cumberland unit in Westmorland or a Westmorland unit in Cumberland? Therefore

No D[eputy] Lie[utenan]ts not named for both counties used to sign any warrants but concerning the county where his state lay, in case he had no estate in both.<sup>45</sup>

<sup>39</sup> 1 Edw. III, cap. 2 (5).

<sup>40</sup> Rydal MSS. 31, 393 and 403.

<sup>41</sup> *Ibid.* 239, 389, 393 and 398.

<sup>42</sup> *Ibid.* 393.

<sup>43</sup> *Ibid.* 403.

<sup>44</sup> Brit. Museum, Add. MSS. 37721, p. 35.

<sup>45</sup> *Ibid.*

For example, the important joint meeting held at Penrith on 26 October 1715<sup>46</sup> was attended by Lord Lonsdale, Daniel Wilson, Alan Chambre, Thomas Lamplugh, Thomas Brougham and Ferdinando Latus.<sup>47</sup> Yet the orders relating to Westmorland were signed only by Lord Lonsdale and the next two<sup>48</sup> and those relating to Cumberland by Lord Lonsdale and the last three.<sup>49</sup> Clearly the disadvantage of this procedure was that it inevitably introduced a distinction between deputy lieutenant and deputy lieutenant not in any way provided for or recognised by law. It seemed indeed to divide them in a way in which the justices used to be divided in the days of the *quorum* clause — those of the *quorum*, and those *not* of the *quorum*. From plantagenet days<sup>50</sup> it had been the practice to distinguish certain of the justices from certain others of them as being “wise men and learned in law” and a clause in the commission of the peace (*Quorum AB unum esse volumus*) in effect precluded the others from proceeding to business — or at least to important business — save in the presence of those “of the *quorum*”.

It is not surprising, therefore, if those deputy lieutenants “not of the *quorum*” objected to this whole extra-statutory procedure. To divide the lieutenancy in this way had no basis, either in law or in custom. Young Lord Lonsdale — acting then in the capacity of vice-lieutenant — expressed it nicely when he reported to the earl of Carlisle, the lord lieutenant, in relation to the steps he was taking in the crisis of 1715, that “some gentlemen whose Deputations are only for one county made some scruple of acting.”<sup>51</sup> Their “scruple of acting” must not be facilely dismissed as an excuse to avoid

<sup>46</sup> For the particular significance of the date, see *Cumb. Record Ser.* i 162-163.

<sup>47</sup> Add. MSS. 37721, 38 rev.

<sup>48</sup> *Cumb. Record Ser.* i 164-165.

<sup>49</sup> *Ibid.* 165-166.

<sup>50</sup> 18 Edw. III, stat. 2 (1344), cap. 2; and 17 Ric. II (1393-94), cap. 10.

<sup>51</sup> Carlisle MSS. 16.

coming down on one side or the other, or as a lack of courage to take the field. As a matter of fact, there was in any case in Westmorland, already before the outbreak of the rising of 1715, some measure of dissatisfaction with the whole lieutenancy machinery as it was working out in practice. There is in the British Museum a volume<sup>52</sup> — which quite possibly belonged to Allan Chambre,<sup>53</sup> a Kendal barrister, agent to James Lowther, cousin of Lord Lonsdale, himself a deputy lieutenant in 1715 — that throws considerable light upon this particular problem.

After a fairly acute summary of the militia law as it then stood, this little volume poses the question: whether the counties of Cumberland and Westmorland are covered by one joint lieutenancy or two several lieutenancies; and consequentially, whether “the regiment of foot and troop of horse be composed of both counties jointly”; whether furthermore the “deputations” of the various deputy lieutenants can (having regard to the terms of the Militia Act of 1662) vary in the terms of their extent from the terms of the lord lieutenant’s own commission. Not only did the Cumberland men occasionally assemble and drill at the Round Table, on the Westmorland side, but the Westmorland deputy lieutenants occasionally held their meetings, as the minutes show, at Penrith on the Cumberland side. Supposing that the lieutenancy were a joint lieutenancy covering both counties, but that the Westmorland deputies actually acting were authorised in Westmorland only, the question could be asked whether the

act of a Westmorland D[ept]y lieut[enan]t made in Cumberland as at Penrith is good as it would be were he authorised through the whole precincts of the lieutenancy.<sup>54</sup>

The question is very pointedly asked:

<sup>52</sup> Add. MSS. 37721.

<sup>53</sup> Or Chambers. N. & B. say, “he varied in writing his surname from several of his ancestors reducing it to the original orthography.”

<sup>54</sup> Add. MSS. 37721, f. 33.

Do not separate deputations [to the deputy lieutenants] or to each county make one lieutenancy two, and if so by what law is the lieutenancy divided?<sup>55</sup>

This went to the legal root of the matter. As a practical issue, if the militia of the two counties is so numerous that it cannot be properly officered without dividing, "doth such division of it make it more useful against a rebellion or invasion?" Let it be supposed that the lieutenancy is in fact joint (and not several), embracing both counties, then the authority of the lord lieutenant and of those whom he so authorises, will extend over the whole of the two counties. By the current militia acts annual general musters are required. If the lord lieutenant be absent from the county (as, indeed, he frequently was) at the time of any annual general muster, and if those deputies who are nominated such in both counties are absent also (as they might very well be), the general muster would be left with

the separate Cumberland Deputies having no command at the round table where the musters are made, [and] the separate Westmorland Deputies at Penrith [with no authority] where the orders are made.<sup>56</sup>

Apart altogether from these perhaps somewhat theoretical points, on the practical side also there were quite definite grounds for complaint. In any case, the general records and the musters had been badly kept; changes, deaths "and several other alterations" had taken place in the past twenty years or more, that had not been allowed for. Furthermore, there were grumblings that while certain persons had been "ill rewarded", others had been well accommodated! Some had been "illegally charged to [find] horse [and horseman]", whilst other "gentlemen of great estates [were] sending fewer horses [and horsemen] than by law are due from them, and some none at all". Some had done less than the law required, whilst others had "done great duty, and been

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

at great expenses by obeying our orders". Some not only had valid complaints, but complained also at "the long delay of hearing their complaints". Clearly then, things were far from satisfactory in the two counties.

The most unfortunate aspect of the whole business was, perhaps, that the doubts and dissensions about the validity of their legal establishment had thus prevented or hindered the reforms in the Westmorland lieutenancy and militia which were due — and overdue — on altogether other grounds. Assessments had been — and still were — imperfect and irregular, records were improperly kept, and worse still, grievances went unredressed. "If these matters be left longer delayed I think it will discredit the two counties" to such an extent that their very loyalty will be brought into question.<sup>57</sup>

Although the deputy lieutenants presumably did not know it, the procedure adopted by the privy council in relation to the two counties was quite unexceptional: it addressed from London not only separate communications to Lord Carlisle in his capacity of *custos rotularum* and in his capacity as lord lieutenant but also one to him as lord lieutenant of Cumberland, and another to him as lord lieutenant of Westmorland.<sup>58</sup> Nevertheless, he for his part seems to have made the practice of addressing his deputies, through his treasurer and muster-master, Hugh Simpson at Penrith, as "of Cumberland and Westmorland" without distinction<sup>59</sup> — as Lord Lonsdale did also.<sup>60</sup> It may, perhaps, have been because of this somewhat too inexact practice that the deputies themselves addressed the captains of companies as "the Captains of the Militia of Cumberland and Westmorland".

However, the spokesman for the deputy lieutenants "not of the *quorum*" — presumably Allan Chambre —

<sup>57</sup> *Ibid.*

<sup>58</sup> Carlisle MSS. 14-15 and *Cumb. Record Ser. i* 149-154, 166 and 216.

<sup>59</sup> *Ibid.* 152 and 161, 232 and 244-245.

<sup>60</sup> *Ibid.* 154, 157 and 165.

addressed a very strongly worded letter to the vice-lieutenant, demanding that the grievances of the deputy lieutenants at least be heard. In any case other reforms were due — or overdue. “The whole troop want to be new modelled”. The whole of the facts ought to be laid before the lord lieutenant, or else a special meeting of the lieutenancy should be called; such special meeting ought to consist of the vice-lieutenant, “with 2 *lawful* deputy lieutenants” — bearing in mind that one of the principal representations bore upon the lawfulness of the present deputy lieutenants — to “appoint a time to hear and redresse our complaints.”<sup>61</sup>

Lord Lonsdale had earlier written to Lord Carlisle informing him that certain of the deputy lieutenants who had been nominated for one county only, doubted the validity of their deputations,

because, as the two counties is but one lieutenancy [as he said] they thought their commissions ought to run through-out the jurisdiction, or else they were in themselves void. I don't doubt but your lordship, who does everything for the good of the county, will consider of this and, if there is any mistake, set it right.<sup>62</sup>

Lord Lonsdale was apparently in error in supposing that “the two counties is but one lieutenancy”, and it may have been on this account that Lord Carlisle did nothing to “set it right”. In the meantime, however, the deputy lieutenants of Westmorland, who were also county justices, found themselves in a very invidious position. As a result of their orders given by them in their capacity as deputy lieutenants, the high constables of wards had inevitably incurred certain expenses which the constables looked to the county to discharge, but which the deputy lieutenants in their capacity of county justices knew could not legally be charged against the county stock. For example, according to the minutes of a lieutenancy meeting held at Appleby on 1 September

<sup>61</sup> Add. MSS. 3772r, f. 43 rev.

<sup>62</sup> Carlisle MSS. 16.

1715<sup>63</sup> the high constable of West Ward had already spent money "for drawing warrants and for Messengers dispersing the Orders of the deputy Leivtents and other services". The high constable of East Ward had had to meet "charges in like manner".<sup>64</sup> If the sum concerned were for the time being advanced from the trophy money, the trophy money had ultimately to be raised from the county and accounted for before the justices at the general quarter sessions.<sup>65</sup>

Some of the gentlemen concerned could not help thinking (as justices) that their authority (as deputy lieutenants) to do these things was somewhat doubtful. These doubts are known to have been talked over in Westmorland, even before the affair of 1715, for example between Alan Chambre, John Cockell who served as an officer in Henry Blencow's (Penrith) company, and Lord Lonsdale the vice-lieutenant. Lonsdale seems to have argued "the then dangerous state of the nation" and to have prevailed upon Chambre, who seems to have had more feeling in the matter, not to make too widely known his "opinion of the unlawfulness of the deposition and of L[ieutenanc]y granted for the single county of W[estmorland]." In compliance with his lordship's request, Chambre replied, "I yet have kept and shall keep secret", these disturbing doubts. Yet, Chambre, as we know from the minutes, certainly attended the meetings of the lieutenancy. He attended the meeting of the Westmorland deputies agreed upon on 24 August 1715 to be held "at the house of Richard Baynes in Appleby on Saturday the 1st of September next at 9 in the forenoon, to make order that the trophy of 2d. and 3d. in the £ be paid in the hands of the Treasurer". He appears to have attended also the joint meeting held "at Harry Hayton's at Penrith" on 14 October, proposed by Lord Lonsdale five days earlier, and a further joint meeting

<sup>63</sup> "1716" in the MSS. but presumably 1715.

<sup>64</sup> Add. MSS. 37721, 42 rev.

<sup>65</sup> 1 Geo. I, stat. 2 (1714), cap. 14, sec. vi.

there on 26 October. This, however, seems as far as Chambre was willing to go. Because of his "opinion of the unlawfulness of the deputations of L[ieutenanc]y", he, for his part "hoped he would be brought from such further acting." He had only "digested [his] objections", and being now "positive that such Deputations are void", he asked Lord Lonsdale to let him stand excused from further acting . . . [he] not having reason to expect another act of indemnity, and not being in circumstances to defend acting."<sup>66</sup> It is important to note that the lieutenancy had by this date so developed locally in dignity and authority that it would no longer be thought a mere impertinence for a deputy lieutenant to speak in such terms to his superiors in the lieutenancy.<sup>67</sup>

In any case, events in the field moved faster than the lieutenancy machinery. The Scottish and English Jacobites joined forces at Kelso on 22 October, and crossed into England on 1 November. On 26 October the mustered militia of Cumberland and Westmorland — the troop of horse and seven companies of foot — were ordered to their respective stations throughout the two counties. Because that force was now feared to be insufficient, the *posse comitatus* was raised by the civil arm on Penrith Fell on 2 November — and dispersed the same day. Occasion had followed upon occasion too suddenly for the finer doubts as to the lieutenancy procedure to be properly resolved. Thus, the events of the Fifteen did not in fact bring the vexations matter to a head.

In the records the rising of 1745-46 also, and particularly in the lieutenancy records, one finds again Lord Lonsdale, now lord lieutenant,<sup>68</sup> still referring to "the

<sup>66</sup> *Ibid.* f. 43 rev.

<sup>67</sup> See, for example, the letter addressed at about this time by the deputy lieutenants of the East Riding to the secretary of state, resenting their lieutenant — "he having little estate interest or acquaintance among them" — leaving out the names of some who had previously acted. This they took to be disrespect, not only to those left out, but to the whole riding. "The whole Riding [therefore] did refuse to accept the Deputations he offered them." (*SP, Dom.*, Geo. I, bundle 1, no. 45.)

<sup>68</sup> *Patent Roll*, 11 Geo. II, 11, 20.

Regiment for Westmorland and Cumberland''<sup>69</sup> as though it were a single unit of a joint lieutenancy, liable to service throughout the two counties. He seems, however, to have taken care to make the distinction of addressing Cumberland lieutenancy business to Thomas Simpson, clerk of the peace of Cumberland, and Westmorland business to Richard Wordsworth of Appleby, clerk of the peace of Westmorland. This was, of course, a quite sensible course, as far as it went, although it was not in fact quite proper, for it was treating the clerk of the peace as clerk to the lieutenancy and treasurer and muster-master of the militia in advance of any formal appointment. In the event the companies were ordered to stations as follows: Cumberland: Colonel Pennington's company, raised from Allerdale Ward above Derwent, at Whitehaven: Major Senhouse's from Allerdale Ward below Derwent, at Cockermouth (with leave to march to Workington); Lieut.-Colonel Fletcher's company from Leath Ward at Penrith; Captain Farrer's company from Cumberland and Eskdale Wards, at Carlisle; Westmorland: Captain Dalton's company at Appleby, Captain Edward Wilson's at Kendal, and Captain Roger Wilson's was moved up to Carlisle. This is to say that the county boundaries were again disregarded and the two lieutenancies were treated as one — with the result that one of the companies of the Westmorland militia was involved in the unhappy (and highly controversial) events in Carlisle.

Once again, however, events in the field moved more quickly than the lieutenancy machinery; the latter, already creaking badly in 1715, broke down altogether in 1745, although on the later occasion the major fault and blame was central rather than local. A closer study<sup>70</sup> than Mounsey<sup>71</sup> for instance was able to make of the

<sup>69</sup> *Cumb. Record Ser.* i 229.

<sup>70</sup> *Ibid.* 112-120; and R. C. Jarvis, "The Lieutenancy and Militia Laws in 1745", in *Juridical Review* lxiv (1952) 29-59.

<sup>71</sup> G. G. Mounsey, *Carlisle in 1745* (1846).

confused legal and constitutional issues of 1745, has shown quite clearly — with special regard, for example, to conduct of the militia in the surrender of Carlisle — that quite genuine and reasonable legal and constitutional doubts were sufficient to account for the hesitation and indecision at the time which hitherto has been thought to be explicable only in terms of the cowardice — or even the treachery — of the militia concerned.

The ill-will and general recriminations following that failure were not very conducive to dispassionate or useful inquiry, and therefore quite understandably, the underlying troubles were not properly diagnosed — or even recognized — and consequently not remedied. Reform, therefore, when it did come, came upon altogether other grounds — the outbreak of the Seven Years' War in 1756 and the consequential threat of invasion from France. Pitt's militia reform of 1757<sup>72</sup> was firmly based not only on the lieutenancy — the lord lieutenant and his deputy lieutenants — but also upon the county as the basic territorial unit. In every case except Middlesex (where the Tower Hamlets was separately recognized), and Yorkshire (where the ridings remained separate) the unit for the quota of men was the simple county — which embraced also, for example, the "counties of cities" within its limits. This had the result of assessing Cumberland (separately from Westmorland) for 320 men, and Westmorland (separately from Cumberland) for 240 men.<sup>73</sup> The jointness or severalty of the lieutenancy of the two counties could never again be questioned.

<sup>72</sup> 30 Geo. II, cap. 25.

<sup>73</sup> *Ibid.* sec. 16.