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## BUSINESS AT LAW: RETRIEVING COMMERCIAL DISPUTES FROM EIGHTEENTH-CENTURY CHANCERY

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**ABSTRACT.** *Recent work on the records of civil litigation in the central courts of Westminster has refined and extended our knowledge of levels of litigation and the types of dispute pursued at law in early modern England. This article discusses two interrelated business disputes at the port of Whitehaven in the first half of the eighteenth century pursued by two of its prominent merchants, both frequent litigants in a period when litigation overall was declining, and suggests some reasons for that decline. It matches the formal court records of King's Bench, Common Pleas, and Chancery with some illuminating, often acerbic, private correspondence, thereby exploring the process and background of litigation, and demonstrating how a third party could influence the conduct and direction of the disputes, while himself remaining almost invisible in the formal legal record.*

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Over the last decade there have appeared the first results of some pioneering surveys and investigations into the massive and unwieldy records of civil litigation in the English central courts. Christopher Brooks has tabulated fluctuations in the volume of proceedings at law to determine broad trends in litigiousness and the part played by law in the shaping of society, while Henry Horwitz and Patrick Polden have analysed annual samples of Chancery proceedings to give a breakdown of bills before the court by subject matter and duration of process, and of suitors by socio-economic status and geographical location.<sup>1</sup> One firm conclusion to emerge from these intensive labours is that the early eighteenth century witnessed a marked decline in the number of cases coming before the central courts. In Chancery in the year 1734/5 a total of 3,240 bills of complaint were entered. In 1720/1 it had been 3,453; in 1700/1, 5,707. There is no equally simple and reliable way of estimating numbers of suits initiated in the courts of Common Pleas and King's Bench, but the decline in the number carried on far enough to be entered on the plea rolls of those

<sup>1</sup> C. W. Brooks led the way, by examining civil litigation at common law in 'Interpersonal conflict and social tension: civil litigation in England, 1640–1830', in A. L. Beier, D. Cannadine, and J. E. Rosenheim, eds., *The first modern society* (Cambridge, 1989), pp. 357–99, and more recently in his *Lawyers, litigation and English society since 1740* (London, 1998). Henry Horwitz and Patrick Polden, 'Continuity or change in the court of Chancery in the seventeenth and eighteenth centuries?', *Journal of British Studies*, 35 (1996), pp. 24–57.

courts is even steeper. We now know that in the first half of the eighteenth century fewer people were engaging in civil litigation than at any time in either of the two preceding or the two succeeding centuries.<sup>2</sup> Even the 250 per cent increase in the number of business cases taken to Chancery between 1627 and 1818/19 did not keep pace with concurrent economic expansion.<sup>3</sup> But in any case we do not know whether merchants were more or less likely to sue than shopkeepers or small tradesmen, or even the gentleman landowner, for as Horwitz points out, not all gentlemen plaintiffs were litigating over land-related matters, neither were all traders and craftsmen pursuing business disputes.<sup>4</sup> Previous studies have largely focused on courts of common law,<sup>5</sup> and on the formal records of the courts rather than the experience and perceptions of the clients who used them.<sup>6</sup> Litigation as an aspect of business life is still startlingly absent from monographs devoted to particular merchant groups. David Hancock, commenting on the relative avoidance of litigation by the merchants he has studied, remarks that ‘until further work on litigation and litigiousness is done, any conclusion is conjectural’.<sup>7</sup>

## I

This article is a study of a complex of court cases involving Thomas and Walter Lutwidge, merchants of the port of Whitehaven in Cumberland during the first half of the eighteenth century, frequent litigants still in this era of subsiding litigation. Thomas Lutwidge came from Dublin in about 1690, settling in Whitehaven to become a prominent tobacco merchant with further interests in malting, brewing, and distilling. In 1721, by then a very wealthy, childless widower, he married as his second wife Lucy, sister of Sir Henry Hoghton, bart., of Hoghton Tower in Lancashire. The settlement and then the birth of a son to this marriage extinguished the expectations of his nephew Walter, whom he had employed first as his clerk and then as master on one or other of

<sup>2</sup> Horwitz and Polden, ‘Continuity or change’, p. 30; Brooks, *Lawyers*, pp. 29–33.

<sup>3</sup> Horwitz and Polden, ‘Continuity or change’, pp. 37–8. <sup>4</sup> *Ibid.*, p. 48.

<sup>5</sup> In particular, Brooks’s detailed studies of litigation at common law, and C. W. Francis, ‘Practice, strategy and institution: debt collection in the English common law courts, 1740–1840’, *Northwestern University Law Review*, 80 (1986), pp. 807–908. Henry Horwitz has analysed Exchequer equity litigation in ‘Chancery’s “younger sister”: the court of Exchequer and its equity jurisdiction, 1649–1841’, *Historical Research*, 72 (1999), pp. 160–82. For the work of local courts, see Craig Muldrew ‘Credit and the courts: debt litigation in a seventeenth century urban community’, *Economic History Review*, 46 (1993), pp. 23–38, and W. A. Champion, ‘Litigation in the boroughs: the Shrewsbury *Curia Parva*, 1480–1730’, *Journal of Legal History*, 15 (1994), pp. 201–22.

<sup>6</sup> One recent and fruitful exception is Muldrew, who examines some of the common law processes of litigation for debt through the diaries of Samuel Pepys, William Chaytor, Thomas Turner, and others in *The economy of obligation* (London, 1998), ch. 9.

<sup>7</sup> David Hancock, *Citizens of the world: London merchants and the integration of the British Atlantic community, 1735–1785* (Cambridge, 1995), p. 249 n. 21. See also R. Grassby, *The business community of seventeenth-century England* (Cambridge, 1995), pp. 214–18, for an outline of options available to creditors wishing to sue.

his ships. Walter thereupon set up as a merchant on his own account, with equal success.<sup>8</sup>

Thomas Lutwidge was a defendant in two suits in Chancery and himself initiated six cases in that court, one in the Exchequer, and a suit in a Dutch court concerning ship insurance. He was complainant or defendant in five known further suits at common law and five cases before the Scottish High Court of Admiralty, one of which he took on appeal to the House of Lords. Walter Lutwidge was defendant in two separate cases in Admiralty courts, one of which began in the High Court of Admiralty in Scotland with a subsequent appeal to its counterpart in England, while the other began in the latter court before moving on appeal to the Court of Delegates. Besides at least half a dozen cases against him at common law for debt, he was either defendant or complainant in four, possibly five, cases in the Irish Chancery, and at least one in Maryland. He can be identified as complainant in three Chancery bills and defendant in a fourth, which was one of those brought by his uncle. His own casual remarks imply that he had been engaged in many more suits than we know of.

Walter Lutwidge himself noticed a sharp decline in legal business in his later years, and offered a reason for it. In 1746 he wrote to his attorney in Ireland:

to be sure the dilatoriness of the law is become a great grievance both here and with you, it's come to that pass in this kingdom that most people would choose to lose their debts rather than go to law, which occasions most disputes to be put to reference, the business of the law in this country is not above one quarter of what it was seven or ten years ago, our practisers are quite down and begin to cry aloud against one another, there is a crisis in all things.<sup>9</sup>

But if we look behind his words, and turn to analyse how he or his opponents actually behaved while waging their lawsuits we find an alternative explanation. The 'dilatoriness of the law' was deliberately exploited to weaken the opponent through legal costs or loss of reputation and credit or simply to evade temporarily (or even permanently) the terms of an agreement, the payment of wages or customs duties, and the repayment of debts.

Walter might in private correspondence with his cousin and attorney Richard Baynes profess an abhorrence of lawsuits. To his London agent he claimed that 'Few men who have been so long as I have been in so extensive a trade as I have been has had fewer, and those few in a general way have arisen from my benevolent temper' because he had lacked due caution in 'granting favours and being bound for friends'.<sup>10</sup> The language of reconciliation, trust, and friendship is invoked to such a degree that we can only wonder that

<sup>8</sup> For a discussion of Walter's trading activities, see Edward Hughes, *North country life in the eighteenth century* (2 vols., Oxford, 1965), II, pp. 28–63. Note that Hughes had no idea of the existence of a Thomas Lutwidge other than Walter's son Thomas.

<sup>9</sup> Lutwidge to John Nicholson, 23 June 1746. The letter books of Walter Lutwidge, Cumbria Record Office (CRO), DX/525/1–2. References to Lutwidge's letters are to these letter books. I have modernized spelling and dates. <sup>10</sup> Lutwidge to Jeremiah Smith, 2 June 1747.

lawsuits occurred at all. Yet litigation for him was often merely a way of conducting business by other means. He routinely used writs to ‘terrify’, and he warned as he pressed for payment of debts, ‘If once we begin, the remedy will be worse than the disease.’<sup>11</sup> He reminded Baynes that, as the charge was small, he often sent for writs even though he might never actually serve them.<sup>12</sup>

His choice of court appears to have been entirely governed by the nature of the issue in dispute. At common law, a plaintiff who could ‘prove his debt’ could expect to recover, especially on money bonds, bills of exchange, and promissory notes.<sup>13</sup> In Chancery, complainants had to argue that they had no remedy at common law, routinely citing the loss of documents by fire or their misappropriation by the other side, or the absence of witnesses ‘who are all dead or gone beyond the seas’. In the category of business disputes we generally find that ruptured partnerships, interpretation of contracts, and disagreements over complicated or inadequate accounts are considered matters for Chancery.

Nevertheless, some aspects of Chancery procedure in particular lent themselves to those intent on prevarication or spite. All save one of the Lutwidges’ Chancery bills were exhibited with the sole purpose of staving off execution of judgement already given against them at common law, for Chancery had the power to grant an injunction to halt proceedings at law while the matter in complaint was heard in its jurisdiction. This delayed recovery of the debt and multiplied legal costs. Secondly, once the defendant had put in his answer, the complainant was permitted to take exceptions to the ‘insufficiency’ of all or part of it and to keep excepting for as long as the court allowed: ‘to puzzle the matter with exceptions’ as Walter Lutwidge once put it.<sup>14</sup>

Beyond the records of legal process the Lutwidges generated, three independent files of correspondence survive to help us explore the context of

<sup>11</sup> Lutwidge to Edward Mawd, 8 Oct. 1740.

<sup>12</sup> Lutwidge to Richard Baynes, 6 Jan. 1740 and also 22 Nov. 1739, ‘Cousin Dickey, what I meant by hinting as I did to you was that in my way it’s necessary sometimes to send for writs which is not intended to be served nor discovered even to the parties provided the end may be answered without.’ Muldrew’s work on levels of debt litigation has led him to conclude that this was ‘a fairly normative business practice’, *Economy of obligation*, p. 274. Likewise many who entered a bill in Chancery did so in the hope that the very act would of itself bring the other party to heel; and judging by the proportion of cases which proceeded no further, this was not hopelessly optimistic.

<sup>13</sup> Francis, ‘Practice, strategy and institution’, pp. 812–14. Money bonds were the most certain as they involved both writing and sealing, hence Lowther to Spedding, 27 Oct. 1737, ‘It must be a warning never to give anybody the least advantage to squabble in money matters by trusting to their own promises to make things good where they are not absolutely tied down in black and white and in most cases under hand and seal.’ (See n. 16 below for archival reference.)

<sup>14</sup> Lutwidge to Crookshanks, 31 Dec. 1740. He could also cite an instance in another case where both tactics were combined: ‘the defendant [at common law] Wilson filed a bill [in Chancery] against Jackson and obtained an injunction, Jackson answered, he excepted, he answered again, he excepted and so on for many terms, at last upon the court being satisfied with the fullness of Jackson’s answer, and upon a motion, dismissed the bill’. Lutwidge to Joseph Stanwix, 26 Jan. 1741. *Jackson v. Wilson* is at PRO CP40/3453, rot. 1231 and *Wilson v. Jackson* PRO C12 1787/20, C33/356, fos. 8, 71, and 107.

their litigation for whatever light it sheds on the business of going to law in early modern England. Two letter books of Walter Lutwidge preserve what he wrote to his agents, his lawyers and Sir James Lowther between August 1739 and February 1741 and from May 1746 to October 1749. Lowther was the proprietor of the manor of St Bees, in which Whitehaven lay, and was also the owner of the most productive collieries in the region and the principal supplier of coal to Dublin. He also had shares in a number of commercial enterprises in the town. He represented the county of Cumberland in parliament, and lived in London, managing his Whitehaven affairs through his agent John Spedding, who developed business interests there on his own account.<sup>15</sup> The two corresponded thrice a week, except when Lowther travelled to Whitehaven during the summer parliamentary recess. In their exchanges the two Lutwidges for many years appear as ‘friends’, Lowther’s term for the distressingly few substantial citizens of Whitehaven who were prepared to support him in controversies over town government, harbour management, and the orderly conduct of trade. He refers to Thomas as ‘Mr Lutwidge’ and accords him the tolerant respect due to a slightly errant recruit to landed society; Walter is ‘Captain Lutwidge’ or simply ‘The Captain’, perhaps just to distinguish him from his uncle, but possibly in sly allusion to a drastic privateering escapade in earlier life which was to return to haunt him in later years. It is only as they begin to forfeit the status of ‘friends’ that their law business becomes a topic for discussion between Lowther and his agent.<sup>16</sup> In his early years as proprietor of Whitehaven Lowther had himself several times been drawn into litigation, with, on the whole, discouraging results: he had been outwitted and defied by tradesmen, vexed and kept dangling by a group of small freeholders, and defeated in a parliamentary election as a result of the odium incurred in another suit. In his old age he was taking advantage of the law as frequently and to better effect, but had discovered how to make others shoulder the expense and opprobrium.

One other source provides some commentary on the activities of the Lutwidges. By the mid-eighteenth century, Whitehaven had become one of the country’s busiest ports, exporting coal to Dublin and importing tobacco from Virginia and Maryland, mainly to be re-exported to northern Europe: it endured a corresponding presence in the town of officers of his majesty’s customs, reporting regularly to the commissioners in London their disputes with merchants and ships’ masters.<sup>17</sup> In these letters the name Lutwidge recurs

<sup>15</sup> J. V. Beckett, ‘Estate management in eighteenth-century England: the Lowther–Spedding relationship in Cumberland’, in John Chartres and David Hey, eds., *English rural society 1500–1800* (Cambridge, 1990), pp. 55–72.

<sup>16</sup> The correspondence of Sir James Lowther and John Spedding, CRO, D/Lons/W2/1/54–116. I have where necessary deciphered Spedding’s shorthand.

<sup>17</sup> PRO Cust 82/1, 3, 4, and 5. Cust 82/2, covering the years 1730–4, is missing. For the Whitehaven tobacco trade and the customs, see Jacob Price, *France and the Chesapeake* (Ann Arbor, 1973); Robert Nash, ‘The English and Scottish tobacco trades in the seventeenth and eighteenth centuries: legal and illegal trade’, *Economic History Review*, 35 (1982), pp. 354–72.

like the tolling of a bell. In 1720 '[Thomas Lutwidge] is the only merchant we are almost constantly forced to differ with.'<sup>18</sup> That was before they had Walter to differ with as well. He was to sue a body of customs officers on two separate occasions, Thomas four times. No wonder the officers concluded one letter 'We humbly hope and desire we may have your encouragement and protection from so implacable an enemy with so deep a purse.'<sup>19</sup>

## II

In 1728 Walter Lutwidge encroached on territory forbidden even to Lowther's 'friends'. The proprietor of Seaton colliery, a promising venture a few miles along the coast, offered a long lease, but indicated he would not entertain a bid from Lowther, whose near monopoly of good collieries was much resented in the neighbourhood. Spedding thereupon formed a consortium with Walter Lutwidge and a third party to buy the lease. He believed that the other two had tacitly understood that they were to sell out their shares to Lowther, whose motive for getting control of Seaton was to retard rather than advance its exploitation, so that it should be an adjunct and not a competitor to Whitehaven. Collieries, he maintained, 'Are fittest for those whom providence has bestowed estates of that kind upon'.<sup>20</sup> Lutwidge, however, insisted on retaining his share, and wanted both the colliery and its adjacent harbour at Workington developed to the full. For the rest of their lives Seaton was to remain a cause of mutual recrimination, and ultimately of legal warfare on many fronts. Within a few years James Lowther was looking for opportunities to make life difficult for Walter Lutwidge, and found the means in the declining finances of Thomas Lutwidge, with whom he had no quarrel. The disappearance of his ship the *Prince Frederick* early in 1735 occasioned Thomas a loss of £1,000 on the uninsured part, and nearly three years of litigation before he received the £1,000 for what had been insured, precipitating a cash flow crisis from which he was never able to recover. By 1737 both Walter and Thomas were in trouble resisting Lowther's moves to foreclose his mortgage on a failing glassworks enterprise he and they ran in partnership with Spedding and two other Whitehaven merchants, with Walter's son-in-law, James Arbuckle, as their Irish agent. Walter kept the company's accounts, and showed a reluctance to produce them. He was also behind-hand in paying for his share of the *Cumberland*, a new ship he had agreed to build with Lowther, who was considering litigation on both matters.<sup>21</sup> Walter was threatening

<sup>18</sup> PRO Cust 82/1, J. Blencow, Richard Gibson, and Thomas Chambers to the commissioners, 29 May 1720.

<sup>19</sup> PRO Cust 82/1, J. Blencow, Richard Gibson, and Thomas Chambers to the commissioners, 14 May 1720.

<sup>20</sup> Lowther to Spedding 28 Jan. 1730. For local unease at Lowther's attempts to monopolize the coal trade in the eighteenth century, see J. V. Beckett, *Coal and tobacco: the Lowthers and the economic development of West Cumberland, 1660-1760* (Cambridge, 1981).

<sup>21</sup> His wording of the threat underscores the choice of court according to the matter in dispute: he would 'proceed in equity' to compel Walter to honour his agreement to buy a share, and at the

action over the management of Seaton colliery but he was also suing the commissioners of customs in Scotland, being threatened with legal action by the Russia Company, pursued by the crew of the *Cockermouth* for their wages, and dunned by his solicitor for unpaid legal fees. It was therefore Lowther's complacent expectation that 'the Captain's provoking carriage ... will probably occasion him trouble enough so that those that love peace and quietness may see him employed with either those of his own temper or with others that have public money to expend against him'.<sup>22</sup>

Those 'others' were the officers of the custom house, whom Walter had lately further antagonized. They had long had a covert agreement with the masters and owners of ships that, in return for higher than usual fees for attendance, they would accept underestimates of the ships' capacities when assessing duty payable. This was beneficial to the coal carriers, who had to pay or give bond for the export duty before clearing for Dublin, but not to the Lutwidges and other Virginia merchants, who would normally reclaim the import duty on their tobacco on re-exporting it to Europe, but still had to pay the high fees. In 1737, chiefly as a result of Walter's public agitation, the customs officers were obliged to accept a new, reduced scale of fees. They retaliated with a strict remeasurement of ships in port, which could increase the duty paid by the coal ships by as much as one third.<sup>23</sup> Lowther had all along connived at the old agreement, which in effect subsidized the trade in his coal. But at least he could hope that the officers would seize any opportunity to catch Walter making false entries or landing smuggled goods. 'As the Captain grows so bad to deal with', he suggested to Spedding, 'You will do well to be intimate with Mr Burrow and the officers who may be made use of to keep him in order ... to be sure, he [Burrow] will make use of proper hints to annoy his greatest enemy.'<sup>24</sup>

At the end of 1738, Thomas Lutwidge defaulted on several bonds worth altogether £1,000 for money borrowed from Richard Gibson, the chief customs officer of the port, leaving his sureties liable for a penalty bond of double the sum. They were none other than Walter Lutwidge and William Hicks, a merchant who had begun his career as Thomas's apprentice. They applied to Lowther for a loan to clear the bonds, and Lowther agreed; for with a shrewd idea of what would happen next, he was banking on rather more than interest payments. Hicks and Walter paid off the bonds and then joined with Gibson

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same time (because Walter was also in his debt) 'call for my money at common law', for the partnership had been but a verbal promise, while the money had been lent upon bond. Lowther to Spedding, 11 Oct. 1737. On 15 Oct. 1737 he reiterates, 'I will proceed at law to get my money from him and in Chancery to compel him to perform his engagements.'

<sup>22</sup> Lowther to Spedding, 16 Nov. 1737 and 26 Nov. 1737, 'If he is at ease himself will be always plaguing some unwary person or other.'

<sup>23</sup> Such tit-for-tat measures had been a feature of the port's history during the second half of the seventeenth century.

<sup>24</sup> Lowther to Spedding, 1 Oct. 1737. Lutwidge had previously sued Burrow in Common Pleas. PRO CP40/3402, rot. 1122.

and James Jackson to recover the debt from Thomas at common law. The sealed bonds as evidence ensured a verdict in their favour, and so, as Walter bluntly summarized the episode some years later, ‘Upon hearing we recovered, but the defendant to gain time trumped up a fictitious bill in Chancery against us and got an injunction to stop execution.’<sup>25</sup> The deeper context we have described is invisible in the bill of complaint entered by Thomas Lutwidge against Richard Gibson, James Jackson, William Hicks, and Walter Lutwidge on 22 January 1739<sup>26</sup> and there is no mention in the court record of the bill’s midwife, Sir James Lowther, yet his advice and badgering was largely responsible for it, and it partly served ends of his own.<sup>27</sup> The ‘dilatoriness of the law’, a feature of so much criticism in this period, turns out to be delays initiated and spun out by the litigants themselves if it suited their purposes. James Jackson claimed in his answer that Lutwidge had vowed to ‘keep me in Chancery all his lifetime and that he will die in jail rather than pay one farthing’.<sup>28</sup>

It is worthwhile examining the bill in some detail, for it shows still further how suing in Chancery could be made to serve a purpose well beyond that of determining a dispute. The procedural rules of common law ensured that the pleading was confined to a single issue, narrowly defined, while Chancery allowed (and even by its form of procedure, encouraged) a much more expansive story-telling to relate how the complainant had become embroiled in the particular dilemma – in this bill, a series of three separate tales describe how the various defendants severally owed Thomas Lutwidge large sums of money, which more than cancelled out the amount they were suing him for at common law. Such storytelling tended to rely on a great elaboration of circumstantial detail to provide ‘colour’ to the plea, and could of course be used to insinuate all sorts of other misdemeanours committed by the other side, and against other parties besides the complainant. As Lowther learnt what Thomas planned to allege he saw how, with careful shepherding, such a bill could serve many of his own purposes.

Thomas accused William Hicks (in collusion with his father and brother) of defrauding him of vast sums through forged passes and pretended exportation of tobacco. Lowther hoped the insinuation that his majesty’s customs was also being defrauded would force the customs officers to conduct a more stringent scrutiny of the tobacco traders, leaving the coal ships in peace. Richard Gibson, the officer chiefly responsible for the old scale of fees, had escaped official censure. Lowther was keen to have the matter ‘brought upon the stage again’ for it could lead to Gibson’s replacement by someone more compliant to his

<sup>25</sup> Lutwidge to Enoch Hall, 27 Jan. 1741. Court records show that Thomas ‘brought a writ of error and obtained an injunction for stay of the defendants’ proceeding at law’, PRO C33/372, fo. 142. For Chancery process, see Henry Horwitz, *Chancery equity records and proceedings, 1600–1800: a guide to documents in the Public Record Office* (London, 1995).

<sup>26</sup> The bill is at PRO C11/2459/39.

<sup>27</sup> ‘When this bill is filed I hope to make a good use of it as to the main matter we have in view’, Lowther to Spedding, 4 Jan. 1739. <sup>28</sup> PRO C11/2459/39, the answer of James Jackson.

interests. Thomas claiming that Gibson ought to repay the fees he had illegally taken for more than twenty years might lead to this desirable outcome. 'If some squabbling could be raised' among the various parties to produce a Chancery suit 'it might be of service towards bringing about a resignation on reasonable terms' and 'a rout will give a handle for bringing about what we desire'.<sup>29</sup>

Finally, Thomas charged Walter with never repaying money lent him to pay costs and damages won by the owners of the ship *Jane* in a lawsuit thirty years before. A vivid rehearsal of Walter's youthful behaviour as a privateering captain charged with the capture of this ship and the torture of the crew would puncture his present respectability. Having uncle and nephew at such odds might get them to agree to wind up the glassworks, which had now sunk further into Lowther's debt for loads of coal, and would keep Walter too preoccupied to proceed with his threat of suing Lowther over the management of Seaton.

No wonder the advice flooded down from London. 'If Mr Lutwidge can be encouraged, he may work the Captain much harder upon our scheme than by anything of his own contriving, for he has too much spite and no judgment', though Spedding should not divulge the true source of 'our scheme': 'not to show him the paper but for you to explain to him in short minutes taken from it as occurring to yourself.'<sup>30</sup> He must be persuaded to load his bill with such specific accusations that he would have endless grounds for taking exceptions to the various answers, thereby spinning out proceedings for a very long time.<sup>31</sup> To broaden the impact of the suit and involve still more people, Lowther suggested the other partners in the glassworks join with Thomas in filing a separate bill against Walter alone, charging him with keeping fraudulent accounts.<sup>32</sup> They could get proof, he urged, simply by retrieving the accounts Walter had tendered in Ireland in a suit involving James Arbuckle. 'Such bold sharpers are often caught so ... The Captain would hardly scruple charging Arbuckle's affair different ways in the two kingdoms and Mr Lutwidge might make vast advantage of it if well managed.'<sup>33</sup>

To defeat the purpose of any intended commission of bankruptcy, Lowther suggested that Thomas save his real estate by transferring it to Sir Henry Hoghton, in trust to protect Lucy's jointure, and so 'secure every penny from their rapacious paws'. This would serve his main purpose of 'keeping up the suits among them for years, to hinder them from plaguing other folks'.<sup>34</sup>

However, the bill filed in January 1739 proved disappointingly thin, in particular 'that against Mr Gibson about his fees is but just touched upon, which ought to have been enforced in the strongest manner'. Neither were the accusations of forging debentures laid against Hicks and his family. Lowther

<sup>29</sup> Lowther to Spedding, 27 Sept. and 26 Oct. 1738.

<sup>30</sup> Lowther to Spedding, 2 Jan. 1739.

<sup>31</sup> Lowther to Spedding, 29 Mar. and 28 Apr. 1739.

<sup>32</sup> The suggestion brought an approving response from Spedding, 'It is best to set them by the ears together about the glass-house affairs and keep out of the broil it will occasion', 10 Dec. 1738. The other partners declined to engage.

<sup>33</sup> Lowther to Spedding, 25 Jan. 1739.

<sup>34</sup> Lowther to Spedding, 8 Feb. 1739.

thereupon advised persuading them to delay putting in their answers by threatening to reveal the evidence of forgery to the customs commissioners: in the time so gained the bill should be amended to concentrate and reinforce the attack on Gibson.<sup>35</sup>

Meanwhile, Thomas had run out of time on another front. He owed a further £1,000 in bonds to the customs house, payable that April. Once again Lowther was on hand, to lend Sir Henry Hoghton the money to meet the debt, provided Thomas first agreed to make over his share of the glassworks. Seeing Thomas's assets dissolve before their eyes, Walter and Hicks moved to get what they could and, in breach of the continuing Chancery injunction, sued out an attachment on £500 insurance money owed Thomas in Rotterdam. This turned out to be the tail of a very angry serpent: Lowther himself held the insurance policy as security for an earlier bond. He was quick to urge contempt of Chancery and suggest names of several who might swear affidavits that the attachment had destroyed Thomas's credit and reputation in Holland. Yet, though Walter and Hicks were forced by a court order to restore the goods, Thomas made no further move and the Chancery case runs into the sands of silence or exhaustion.<sup>36</sup> Lowther travelled north in early June 1739 and the letters between employer and steward cease until September. All we know from records of court process is that Thomas did not take exceptions to the insufficiency of the defendants' answers within the time limited and that Hicks and Walter petitioned Chancery to reduce their attorney's huge bill of costs.<sup>37</sup>

The suit had become one of the many which petered out before the taking of depositions or a final decree, leaving historians free to conjecture that the issue had been settled by informal arbitration. Only from later correspondence can we piece together the outcome. Hicks remained unscathed, as Thomas, for all his extravagant accusations, had not produced convincing proof of fraud. Chancery lifted the injunction, allowing Walter and Hicks to execute judgement on the bond and seize whatever they could, but Spedding reported that they had been obliged to make 'so many appointments of sums of money for Mrs Lutwidge's support that they are far from being paid off their debt'. Thomas himself retired to Ireland.<sup>38</sup> The dilatoriness of equity had at least allowed him to get most of his assets beyond the reach of his creditors, and had

<sup>35</sup> Lowther to Spedding, 12 and 14 Apr. 1739.

<sup>36</sup> Lowther to Spedding, 10 May 1739, 'You will hear that my Lord Chancellor has ordered Captain Lutwidge and Hicks to answer their contempt of his injunction on the 4 of June next for arresting Mr Lutwidge's effects in Holland ... this will be a great advantage to Mr Lutwidge in getting him time to take exceptions to the answers.' Walter and Hicks complied with a court order to restore the goods. PRO C33/372, fos. 257 and 330.

<sup>37</sup> PRO C33/372, fo. 324; C33/378 and C38/464. The bill of fees and disbursements tendered by their attorney amounted to £111-10-10, taxed to £102-12-11. They were outraged at this minute adjustment.

<sup>38</sup> Spedding to Lowther, 26 Dec. 1744. A family memoranda book records that Thomas removed to Ireland 13 Feb. 1741 and died there 28 Aug. 1745. Lancashire Record Office, DDLG 4/4. (The nine uncatalogued boxes of Lutwidge papers in this archive relate almost entirely to the later eighteenth and early nineteenth centuries.)

cost them dear. Lowther, on the other hand, without being party to any suit, with no legal costs to pay and his loan to Sir Henry Hoghton adequately secured, through adroit manipulation of the dispute achieved his own ends. He had dissolved the glassworks and kept Walter too preoccupied to sue over Seaton. He had a promise from Sir Robert Walpole to force Gibson's resignation at Lowther's pleasure.<sup>39</sup> By the end of 1739, engaged in promoting a turnpike and harbour bill on his own terms against much local hostility, he had further reason to be gratified about his loan to Walter. That loan was effectively silencing one who would otherwise have been his chief opponent.

### III

The decline in litigation uncovered by Brooks leads him to posit a culture where the law had become in some way disconnected from society, 'a withdrawal of the law from the general cultural currency of the period'.<sup>40</sup> Yet a lawsuit in Chancery which went beyond bill of complaint and its answer to the taking of depositions was played out over many months, frequently years, and involved a chain of people from the great merchants who attempted arbitration, partners in ships and cargoes, the servant girl who minded the shop to the cooper who made the barrels and kegs – witnesses and swearers of affidavits who came from many levels of society, all gaining some notion of the legal process, its possibilities and disadvantages.

A second case begun in Chancery in 1746 between Walter Lutwidge and John Spedding spanned nine years and demonstrates just how closely a suit could enmesh a neighbourhood and how purposefully it was driven to achieve that very end. Lutwidge claimed that Spedding and two others had without his consent dissolved their partnership in a ropery, and that besides his quarter of the capital, he was owed at least £1,500 in unpaid commission for his travels across the north of England and into Scotland selling flax, which he had persuaded the partners to import as a sideline.<sup>41</sup> He knew that in suing Spedding he was in effect suing Lowther, and believed that he was to be excluded for his continued refusal to part with his share in the Seaton colliery.<sup>42</sup>

'I doubt not the Captain will have work enough on his hands', wrote Lowther gleefully, 'For when such detested folks have 3 or 4 suits on their hands others will think it their best time to seek for justice'.<sup>43</sup> He accordingly named three creditors whom Spedding should urge to sue forthwith, and suggested that the crew of the *Cockermouth*, who had begun proceedings in 1737 for unpaid

<sup>39</sup> Lowther to Spedding, 1 Nov. 1739. That the promise lapsed when Walpole lost office in 1742 probably did not matter. Gibson is not reported as causing any further trouble to Lowther.

<sup>40</sup> Brooks, *Lawyers*, p. 95.

<sup>41</sup> PRO C12/1872/5.

<sup>42</sup> 'For Sir James has made that and anything else that relates to me as his own cause ... and all because I won't part with my one third of Seaton colliery.' Lutwidge to Smith, 12 Jan. 1747. Very few of Spedding's letters survive after the middle of 1745, but Lowther describes his efforts on his steward's behalf, and his comments on the missing letters are often full enough to glean what Spedding had written.

<sup>43</sup> Lowther to Spedding, 4 Dec. 1746.

wages, should be encouraged to revive their cause. Before long it also occurred to him that ‘as he owes for three parcels of coals and those of longstanding, he may be sued for them, either together, or separately to put him to charges’, and he regretted not having thought of this last point in time to have one of the trials brought on at the more distant Lancaster assizes.

The Chancery suit is thus accompanied by a baggage train of suits at common law designed to distress Lutwidge and to involve as many as possible in the public denigration of his character, moral worth, and business ability. Lutwidge was soon complaining that Sir James ‘is doing all that a man can do to propagate law suits against me though he has no more to do with it than the man from the moon’.<sup>44</sup> By the end of 1748, he had been forced to settle with the three creditors ‘so that now’, he wrote to his London banker, ‘He has no more folks to distress me with that I can think of.’ But Lowther reckoned the sailors also could expect ‘a good sum of money from that cruel oppressor’, and began suggesting names of more who might sue.<sup>45</sup> On the other side, he believed a suit between two of his tenants that year had resulted from ‘the Captain’s encouraging everything that may raise disputes in anything that has relation to me or my estate.’<sup>46</sup>

Spedding too had initiated retaliatory proceedings at common law over an unpaid promissory note, which Lutwidge claimed was on the account of the company and not his personal debt. He was able to delay the trial for a year by tendering an affidavit that a crucial witness was abroad. When the court found for Spedding, he evaded payment for a further year, first by revising his Chancery bill to include the matter and thereupon pray for an injunction, then by suing out two consecutive writs of error and finally tendering another affidavit that a witness was again overseas. Rebuffed by the courts at each turn, he toyed with the idea of appealing to the House of Lords, but in the end declined a course which Lowther reckoned would cost at least £50 and would only do further harm to his credit and reputation.<sup>47</sup> When he finally complied with the judgement on the note in November 1748, having ascertained that Spedding preferred to receive the money at Whitehaven, Walter took care to pay it in London.

‘Such proceedings’, Lowther optimistically observed, ‘Will make him so detestable, nobody will have to do with him’, ‘Everyone will abhor him’,<sup>48</sup> ‘At long run everybody is apt to fall on such devourers of mankind.’<sup>49</sup> Lutwidge maintained that it was Lowther’s set purpose to destroy his business credit and

<sup>44</sup> Lutwidge to Baynes, 26 Mar. 1748. Walter complained to Lowther, ‘I have been sued by Gerard Robinson on account of the *Cumberland*, it’s said at your instigation and that you’ll be at the expence thereof. I hope it’s not true and yet he told me as much before he went away’, 22 Mar. 1748. For the suit itself, PRO CP40/3562, rots. 730 and 739.

<sup>45</sup> Lutwidge to Smith, 5 Oct. 1748; Lowther to Spedding, 8 and 12 Nov. 1748.

<sup>46</sup> Lowther to Spedding, 22 Nov. 1748.

<sup>47</sup> Lowther to Spedding, 26 May 1748: ‘This is practised by very few, but such as are looked upon as bad as bankrupts.’

<sup>48</sup> Lowther to Spedding, 10 and 29 Jan. 1747.

<sup>49</sup> Lowther to Spedding, 6 Jan. 1747.

personal reputation. Lowther's version was that he was merely giving him scope to destroy them himself by his own legal subterfuges. The town and county at large were encouraged to view him as a cheat and a rogue. Even his appointment as high sheriff for Cumberland in 1748 served merely to demonstrate that he had no 'friends' powerful enough to save him from this irksome duty, while the office itself would expose him the more to public scrutiny, 'for it will only make people talk the more of his vile practices and make it more known to the judges and lawyers what he is, and if he is caught playing tricks he will be roasted the more'.<sup>50</sup>

In 1750, with no end yet in sight to the Chancery suit, a new controversy arose when Lutwidge started extracting clay without leave on some land he held by the local customary tenure. Lowther was at this time dangerously ill, and in August had to have a leg amputated. Although unable to write his own letters for several months, he dictated rigorous directions for the defence of his seigniorial rights and the jurisdiction of his customary court, a matter requiring both application and finesse, as the precise terms of such tenures were little understood by outsiders, and lawyers especially were ignorant of customary rights.<sup>51</sup> He was forced to the trouble of obtaining a trial by special jury at the next assizes, and sent detailed advice to ensure a list of suitably compliant jurors. Spedding and Henry Littledale, his Whitehaven attorney, were to mark:

who we may look upon as well disposed to do justice. You may mark the best disposed in order accordingly as 1a, 2a and so on and the most doubtful and suspicious persons 1b, 2b and so on. I think Walter Lutwidge can't strike out 12 so as not leave us enough for a pretty good 24 to stand for the Jury.<sup>52</sup>

Lowther survived another four years, in which the rancour did not abate. His final affront was to deny his antagonist the normal credit for coal supplies so as to 'expose him as one not fit to be trusted with a wagon load or a sack of coals without paying ready money'.<sup>53</sup>

Walter boasted that 'a man of £30,000 fortune with my government and knowledge need not much fear the malice of as great a tyrant as ever was at Syracuse' but a letter to a son-in-law expresses vulnerability about his reputation and his desire to have his side of the story told to stop 'the villainous reports which is given out by him at London, and even in the country, and in

<sup>50</sup> Lowther to Spedding, 17 Nov. 1747, 16 Jan. and 3 Nov. 1748. When Lowther discovered that Spedding's brother's name was in the list for the following year he laid the blame on Lutwidge's 'contrivance' and used his own influence to have it removed.

<sup>51</sup> Lowther to Spedding, 23 and 30 Apr. 1751, and 'The right is plain, but the proceedings are nice which is a very great hardship in the practice of the law, in many cases', 26 May 1751.

<sup>52</sup> 6 July 1751. Lowther travelled north in July (in a specially adapted coach) and did not return to London until October, so we have no further report on the issue. In 1749, while engaged in a suit with Sir William Fleming over customary fines due on his estate at Beckermest, a few miles south of Whitehaven, Walter's chief concern had been that Sir James, in Whitehaven for the summer, would be consulted over the choice of the jury.

<sup>53</sup> Lowther to Spedding, 29 Oct. 1754.

a most notorious manner'.<sup>54</sup> In his turn he sought to undercut Lowther's own reputation, representing his behaviour as gross commercial vindictiveness, and as 'rooting into dunghill places and erecting dunghills for the sake of the manure'. He explored the possibility of having his case printed and circulated amongst the nation's merchants: 'truly I will print my case against Sir James if he won't do me justice'.<sup>55</sup>

Their letters also reveal how each side manipulated the history of the rope company to serve their version of the failed partnership, and show how far clients, rather than their lawyers, could drive the case along. Lutwidge, along with many other merchants, complained that lawyers had no understanding of mercantile practice and custom.<sup>56</sup> He attempted to remedy their ignorance by doing much of his own legal drafting. His own lawyer had been first his brother-in-law, Richard Baynes of Cockermouth, but after the vituperative wrangle over fees, he employed Baynes's son, Richard junior, directing him to seek further advice of counsel in London where necessary. Walter would send a rough outline of his intended plea to his attorney for comment and advice, or ask for a draft, which he would then comb for inaccuracies, criticize if crucial points had been omitted, and suggest further arguments to clinch the outcome. When Baynes junior had the temerity to remonstrate at the length of his client's letters ('which you seemed to think required more answer than a bill in chancery'), the riposte epitomized Walter's view of the lawyer-client relationship: 'I don't nor did not expect you should answer every paragraph, I only pretend to be the producer of the matter and you the refiner.' ('I am the loaf and you the knife' he had told Baynes senior, on an earlier occasion.)<sup>57</sup> He thought himself as capable of drawing up a bill as any 'country attorney' and throughout took the lead in suggesting tactics rather than passively responding to his lawyers' advice.

With the recently published guide to Chancery proceedings and as the manuscript indexes become available on-line, more and more scholars will turn to using these kinds of record. Horwitz explains every stage of Chancery process from the filing of the bill to the master's report and decree and reminds us, *inter alia*, that while the bill of complaint itself was unsworn the answers were taken under oath.<sup>58</sup> What might this mean in practice? Lowther's own strategy when Chancery proceedings were in the air was wherever possible to let the other side begin them. Being able to mull over the matter alleged in the bill would

<sup>54</sup> Lutwidge to Baynes, 17 June 1747, and to John Cookson, 18 Jan. 1747.

<sup>55</sup> Lutwidge to Smith, 5 Oct. 1748, to Baynes, 18 Jan. 1747.

<sup>56</sup> Sir Josiah Child complained in 1693 that it was well if a merchant could make his counsel understand one half of the case, 'we being amongst them as in a foreign country, our language strange to them, and theirs as strange to us'. *A new discourse of trade* (London, 1693), pp. 113–14.

<sup>57</sup> Lutwidge to Baynes, 12 Feb. 1747 and 2 May 1740.

<sup>58</sup> Horwitz, *Chancery equity records and proceedings 1600–1800*, p. 15. Tim Stretton epitomizes the explosion of interest in legal materials as 'the closest thing historians get to a gold rush'. 'Social historians and the records of litigation', in Solvi Songer, ed., *Fact, fiction and forensic evidence* (Oslo, 1997), p. 15.

indicate the evidence the complainant depended on and the best way to counter it.<sup>59</sup> Also the answer, unlike the bill, was sworn on oath, and so would carry more weight with the court: God almighty and his angels guarded those 'who stand on the rock of innocence and truth'.<sup>60</sup> In the ropery suit, however, convinced as he was that Lutwidge's allegations were false, and demonstrably so, he suggested that Spedding should file a brief, even perfunctory answer, and then enter a cross bill, which would in turn put Lutwidge under oath, forcing him to disown many of the claims 'which he expressly charged as true before', or else commit perjury.<sup>61</sup>

A historian who calls up the case and smooths out the crumpled parchments will be reminded again of how casually even great merchants organized partnerships and kept accounts, but would not detect the absence of one of the key players. Lowther was to involve himself in the minutest detail of both legal process and out-of-court tactics. It was he who revised the attorney's drafts, and supplied his own notes on the case for them to consider: 'the lawyers do little unless their clients are able to digest things for them' and one who could not set out his case 'in a clear light has a sad time among them'.<sup>62</sup> He personally numbered the lines of the entire 212 pages of the Chancery office copy of Lutwidge's answer to the cross bill, to make cross-referencing easier.<sup>63</sup> He suggested interrogatories which would draw out the most convincing testimony, emphasizing that he himself could contravert many of the claims in the bill simply by tendering Walter's own letters to him. And Walter knew what he was thinking, for he admitted anxiously to Baynes, 'I have wrote him some very thankful letters for his favours that way which is natural in such like cases which no doubt he would produce against me.'<sup>64</sup> Yet in all the voluminous court records of the case, even in Spedding's answer, which covers five half sheep skins, Sir James Lowther appears only as the ground landlord of the ropewalk itself and the owner of collieries which consumed vast quantities of rope.

In describing legal disputes historians are often obliged by the absence of most other evidence to rely almost entirely on the depositions taken under oath

<sup>59</sup> Lowther to Spedding, 25 Nov., 6 and 16 Dec. 1746. Spedding's answer is at PRO C12/1872/5 and his cross bill at C12/2230/20. <sup>60</sup> Lowther to Spedding, 21 Jan. 1748.

<sup>61</sup> Lowther to Spedding, 25 Nov. and 4 Dec. 1746, and 9 June 1747. For his part, Lutwidge described Spedding's answer as 'a heap of perjury from end to end', Lutwidge to Baynes, 27 Nov. 1747.

<sup>62</sup> Lowther to Spedding, 12 Dec. 1748, 24 Jan. 1749.

<sup>63</sup> Lowther to Spedding, 26 Jan. 1749, 'Inclosed is to be added to the state of proceedings I sent you in mine of the 21st which when I have completed after comparing it with the Cross Bill, which will occasion some alterations and additions, I shall send you a copy of it referring to the several places in WL's Answer, the copy of which I have taken from the Office copy, which is 212 sheets, and I have marked my copy in the margin so as to point to anything in the Office copy to compare it with the remarks I shall make, and you may make your copy the same, there being in every sheet of the Office copy 15 lines and six words great or small in a line except the first sheet which is only four words in each of the first six lines and six words in the other nine and the first sheet ends with Make Answer. If you mark your copy of the Answer in that manner you will find it answer within a few lines to 212 pages, without such a method which I believe very few have, it is endless work to show the falsehood of long Answers where they are to show the very words that are to be falsified.'

<sup>64</sup> Lutwidge to Baynes, 28 Dec. 1746.

to reconstruct what might have happened. In so doing, the wiliness of the protagonists should not be underestimated. Witnesses called to give evidence could only be questioned on matter already alleged in either bill or answer, so in framing them careful thought had to be given to ‘proper turns on which to found interrogatories’.<sup>65</sup> From the outset, therefore, the parties had to keep in mind what testimony they ultimately hoped to elicit (or to suppress), hence what questions their matter must (or their opponent’s might) permit them to ask, and elaborate their claims in bill or answer accordingly. Considering who to choose as willing and suitable witnesses likewise exercised their minds: who would speak out clearly, who could be pressured to repay a past favour, and, above all, who could be relied upon on the day to understand what was required of him and to supply it. Walter Lutwidge believed that most of the Whitehaven merchants and ship-masters would be reluctant to depose ‘against Sir James and his gang’ for fear of retribution at the harbourside. He thought that they would swear to whatever suited Spedding, who could reward them by reserving for their ships the best quality coal sold to them in good measure. In the event, each side got the depositions they had determined their interrogatories would elicit: that it was common merchant practice for a partner to charge commission, or that it was not; that Walter had the chief care of selling the flax, or that he did not; that he had spent most of his time on company trade, or that he had not.<sup>66</sup> Each knew exactly why they had chosen a particular witness to appear for them: historians can rarely be so sure.

Muldrew’s study of the resolution of disputes in the early modern period emphasizes the strenuous efforts made by friends and kin to settle a dispute informally rather than fight it through the courts, and, somewhat tentatively, links the move to arbitration in the eighteenth century to emerging notions of commercial ‘politeness’.<sup>67</sup> Brooks suggests growing costs of litigation, or that the law was becoming less accessible and less local, as more issues were decided in the central courts at Westminster.<sup>68</sup> In the letter to his Irish attorney quoted earlier, Walter Lutwidge admitted that more disputes were being ‘put to reference’ and settled by arbitration, but for him the shift resulted not from newly flowing springs of humankindness but from problems inherent in the legal system. Arbitration for him was quite clearly linked to a diminution of what he could otherwise claim and expect; it was synonymous with losing his debts.<sup>69</sup> Lowther, too, was to remark, ‘There is very little business now in Westminster Hall, people are tired with delays, expences and exorbitant fees and so make up their matters.’<sup>70</sup> Walter had in the past helped resolve other

<sup>65</sup> Lutwidge to Spedding, 26 Mar. 1748.

<sup>66</sup> PRO C12/1877/26, depositions in the case, May 1753. Walter, in spite of his anxieties that none would stand out for him, was able to muster roughly equal weight and numbers.

<sup>67</sup> Craig Muldrew, ‘The culture of reconciliation: community and the settlement of economic disputes in early modern England’, *Historical Journal*, 39 (1996), pp. 915–42, and *The economy of obligation*, p. 242.

<sup>68</sup> Brooks, *Lawyers*, p. 62.

<sup>69</sup> Lutwidge to Baynes, 2 Feb. 1747.

<sup>70</sup> Lowther to Spedding, 23 May 1747.

merchants' differences and certainly did consider arbitration in his suit against Spedding. 'I am entirely of your opinion that a bad award is better than a fat verdict', he wrote to Smith, but added that he had no hope of settling the matter with any kind of parity by local arbitration, and preferred merchants of London, Liverpool, or Chester. The local men, he explained to Baynes, were all 'Sir James's creatures' who, with Spedding, had 'everyone under their belts'.<sup>71</sup> However, since this particular lawsuit was carried on as much to inflict damage on reputation as to unravel disputed accounts, Lowther believed that the more Lutwidge's 'scandalous' methods of account keeping became common gossip amongst the local merchants, the fewer would be willing to venture into new partnerships with him. For this reason he wanted any arbitration to be at Whitehaven, where it would be widely discussed, and hoped Walter's rejection of it would be taken as a slur on the local merchants' characters.<sup>72</sup>

The parties were drawn into these various suits not because of the particular civil wrongs alleged in bill or declaration but because of their respective situations as clients or opponents of Lowther and the strategic requirements of his economic interests. Seaton was in contention because working it so as to make money for one partner would lose money for the other. Lowther wanted to close down the glassworks because he reckoned the value of the business was dangerously little more than what he was owed on mortgage. He had a direct interest in the success of the ropery in that the greatest proportion of his steward's income came from this and similar commercial enterprises, enabling him to retain a man of Spedding's ability on a salary of only £60.

Who won, who lost the ropery suit? At the hearing in November 1754, the Lord Chancellor instructed a Chancery master to investigate the accounts. Lowther described his cousin's version of the hearing with anticipation of victory to come: 'My Lord Chancellor took so much notice of Walter Lutwidge's uncommon and unreasonable demands the master will be apt to suspect him guilty of everything the solicitor can charge him with about cooking up accounts, and dressing up things different ways.'<sup>73</sup> But he had been equally confident in predicting that Walter would compromise and that had not happened. He had much earlier dreaded the dispute coming to this pass, for Chancery's perusal of the accounts would, he knew, be 'an endless piece of work'.<sup>74</sup> Only Walter's death in 1755 terminated that process. Spedding continued to operate the company by himself and it was sold after his death for £1,800.<sup>75</sup>

<sup>71</sup> Lutwidge to Smith, 2 June 1747, and to Baynes, 30 Nov. 1746 and 2 Feb. 1747.

<sup>72</sup> Lowther to Spedding, 11 Apr. 1749.

<sup>73</sup> Chancery order in PRO C33/404, fo. 79; Lowther to Spedding, 9 Nov. 1754.

<sup>74</sup> Lowther to Spedding, 9 Feb. 1749 and 26 Jan. 1749, where he suspects that Lutwidge is aiming for a 'tedious examination before the Master'.

<sup>75</sup> CRO DX/448/14, Milbeck estate accounts 1774–88, unnumbered folio re Roper Company. Spedding died intestate in 1758, his effects amounting to £6,500. No such detail survives to estimate Walter's fortune at his death.

## IV

The perils of using court records have been often and cogently rehearsed, but they survive too plentifully to be avoided, and are often the only record of what else was happening in the life of an individual besides baptism, marriage, and death. Though the vignettes which appear in the pleadings and depositions highlight discord and dispute, they also testify to expectations of their contraries: the anticipation of a successful partnership, the friendship and trust which led to a loan or an agreement to be surety for a bond. To bridge the gap which we rightly suspect often exists between court record and what actually happened we need wherever possible to explore the correspondence of the litigants and their associates. The experience of Thomas and Walter Lutwidge was no doubt untypical, in the sense that few merchants found themselves bestridden by such a colossus as Sir James Lowther, but in going to law they used what was available, and their experience of doing so does much to show us how and why the law could be used to compound or resolve disputes.