

THE GLEN DOLL RIGHT-OF-WAY CASE AND JOCK'S ROAD.

BY JAMES SCRIMGEOUR.

THE famous right-of-way case relating to the path from Braemar via Callater to Clova was fought out in the Court of Session as far back as the years 1886-87. It was one of the cases fought in the public interest by the Scottish Rights-of-Way and Recreation Society, a body which has done, and is still doing, so much good work for hill walkers and trampers generally. The case aroused a great deal of interest, and about a hundred witnesses were cited to give evidence, though all were not called. Nearly all the evidence is interesting, and some of it is distinctly amusing.

It may be premised that the only bit of the road which was in dispute was the stretch between Braedownie, near Clova, and the top of the Tolmount, the 3,000 feet hill which bars the way between Glen Callater and that paradise of botanists with the picturesque name "Glen of the Doll." The precise origin of the word "Doll" is somewhat obscure; perhaps it has the same root as "Dell." From Braedownie southwards the road was admittedly a public one, and as regards the path from Achallater up the Glen to the Tolmount, Invercauld intimated prior to the case that he had never interfered, and had no intention of interfering, with the right-of-way.

A great deal of the evidence centres round the famous—or perhaps better described as infamous—Jock's Road. A shepherd at Acharn said "Jock's road is quite a well-known name. It had that name before I went there, and I do not know how long before. *It was not a good road,*" with which remark hill walkers who have used it will heartily agree. "Jock's road was the only steep bit on the road. The road was just marked with folk and beasts' feet."

The flower-seekers seem to have attracted the old shepherd's attention. He says "There were men they called botanists came that road and gathered flowers and herbs. . . . Some of the botanists would find what they wanted in our glen, and some would go farther. That was what I was thinking, but I did not pay attention. They wandered about looking for flowers." They would appear to the shepherd no doubt as feckless creatures. After telling how he was the most frequent user of Jock's Road when he was living at the Lunkard shieling up on the top, he adds, naively, "I would not be up and down every day. I generally came down on the Saturday night." The remains of the Lunkard shieling can be seen about the top of Jock's Road, near a direction post recently erected.

Another old shepherd was asked if the foot passengers seemed to be botanists. "Yes," he answered, "and tourists with knapsack-like things on their backs. The botanists went out on the south side—the Doll side of the burn, where the herbs were best—but those that were travelling through kept the north side."

A keeper at Callater told how he used to direct shepherds over the Tolmount, saying that "there was a large stone on the skyline there, which I used to show them from my house." This landmark is still known—so I am informed by Mr. John Lamont, the present Callater stalker—but an old milestone which figured prominently in the case, and the existence of which was an important factor in the Society's getting judgment in its favour, is not now to the fore. It was said to be "about 200 yards down from the steading at the lodge. The stone is shaped like a half moon. It is an old-looking stone. The figures 18 are on it. I suppose that means 18 miles from Kirriemuir." The present Glen Doll stalker tells me that the stone was there up to a few years ago, but it disappeared in some mysterious fashion, as the stalker had no knowledge of any one having taken it.

A Bridge of Cally shepherd told an interesting tale of how he was taking his sheep through the Glen of the Doll from Braedownie to Achallater. He says "I was alone. I was stopped by Mr. Macpherson, the defender, and his men.

There were six of them, as far as I can mind. They laid hold of me and Mr. Macpherson *struck me with his feet!*" A more dignified way, perhaps, of saying that he had been kicked. Apparently unwilling to face the fearful odds, he turned tail and went back to Braedownie with his sheep, bringing their tails behind them, no doubt, as the old rhyme has it. Next day he returned with his sheep, but took the precaution to take three hefty friends with him. In Glen Doll a few of the henchmen of the "valiant Phairshon" again met him, but the Phairshon himself was not there, and the satellites, apparently not liking the look of the opposing forces, did not venture to interfere on this occasion. It reads like the workings of some Highland feud of long ago, with a strong element of comedy thrown in.

But probably the most interesting item to be culled from the evidence is the story told by one James Winter as to the origin of the name "Jock's Road." For this particular extract the writer is indebted to the file of *The Dundee Advertiser*, one of the sources from which the foregoing extracts are taken, most of the others being taken from the official report. James Winter, who was formerly shepherd at Braedownie, and was at the time of the case 60 years of age, said that "he knew Jock's Road and how it got its name. It was through a dispute between Lord Aberdeen and Invercauld as to the possession of the road. Invercauld was not very willing to submit to Lord Aberdeen, and one night a man, named John Winters, said to a neighbour that if Lord Aberdeen would not submit he would go and raise the clan. He did go and raise the clan. When Lord Aberdeen got there, the clans were there to face him, and he saw he was not fit to engage them and had to retreat. Then Lord Aberdeen got so agitated when he had to retreat that he was to give a sum of money to anyone who would tell him who raised the clans. Winters then went into ambush there; and that was the way the road got its name. He meant that Winters took refuge at the top of Glen Doll. Witness was a descendant of Winters. He was told the story as a tradition by an old man who was working with him."

This is a derivation of the name "Jock's Road" which

is quite new to the writer, and it is worthy of being disseminated from the reports of this case and perpetuated in a Journal where it will meet the eye of those interested in such matters. One of the corries of Driesh, close by Glen Doll, is known to this day as the Winter Corrie. One is tempted to wonder whether this name also perpetuates the surname of the redoubtable Jock.

The proof lasted several days, and it was decided, both by the Court of Session and by the House of Lords, that the right-of-way was established. The decision was based on the fact that it was proved that the Pass formed the direct and natural access from Clova to Braemar, and that from time immemorial there had existed a well-known and well-defined track through the glen; that there had been a practice of drovers taking sheep from the Braemar markets to the Kirriemuir markets, and that the track had been used by farmers and tourists. Lord Young dissented from the Court of Session judgment on the ground that all the use of the path that had been proved must be ascribed, not to right, but to tolerance on the part of the proprietor. He delivered himself as follows:—"I think that it is far from the interest of those who wish to maintain public rights-of-way to proclaim to proprietors of hill sides and barren country, 'Now, remember that though people are doing you no harm by taking this occasional use of your property, really affording society to your people who live in this remote place, though it will certainly do you no harm if a tourist, wishing to enjoy a fine view, may climb up to a point on your property without you even knowing it—unless you get watchers—doing nothing with which a good-natured man would interfere, still, unless you prevent such use of your property, there will be established a public right which will be prejudicial to you.' That is an undesirable proclamation to make to proprietors. Besides, we ought to have regard to the consideration that to watch a road of fourteen miles in length over a barren country in order to turn back occasional trespassers—assuming them to be trespassers—is practically impossible. I proceed upon this, that there has been very occasional, rare, and harmless use,

such as no ordinary proprietor or tenant would dream of interfering with. . . . So far as my judgment goes, I think the conclusion that public rights-of-way may be established by such evidence is absolutely prejudicial to the public, because it will set all proprietors on their guard to stop innocent, and to them perfectly harmless, use as the only way in which they can prevent a public right established."

There no doubt appeared to be something to be said for Lord Young's view, but after the lapse of forty years, can it be said that any ill effects have followed the decision? Rather the contrary, at least as regards the hills and glens remote from towns, for it must be within the experience of climbers and walkers that comparatively rarely are any obstacles put by ungenerous proprietors in the way of their following their pursuits.