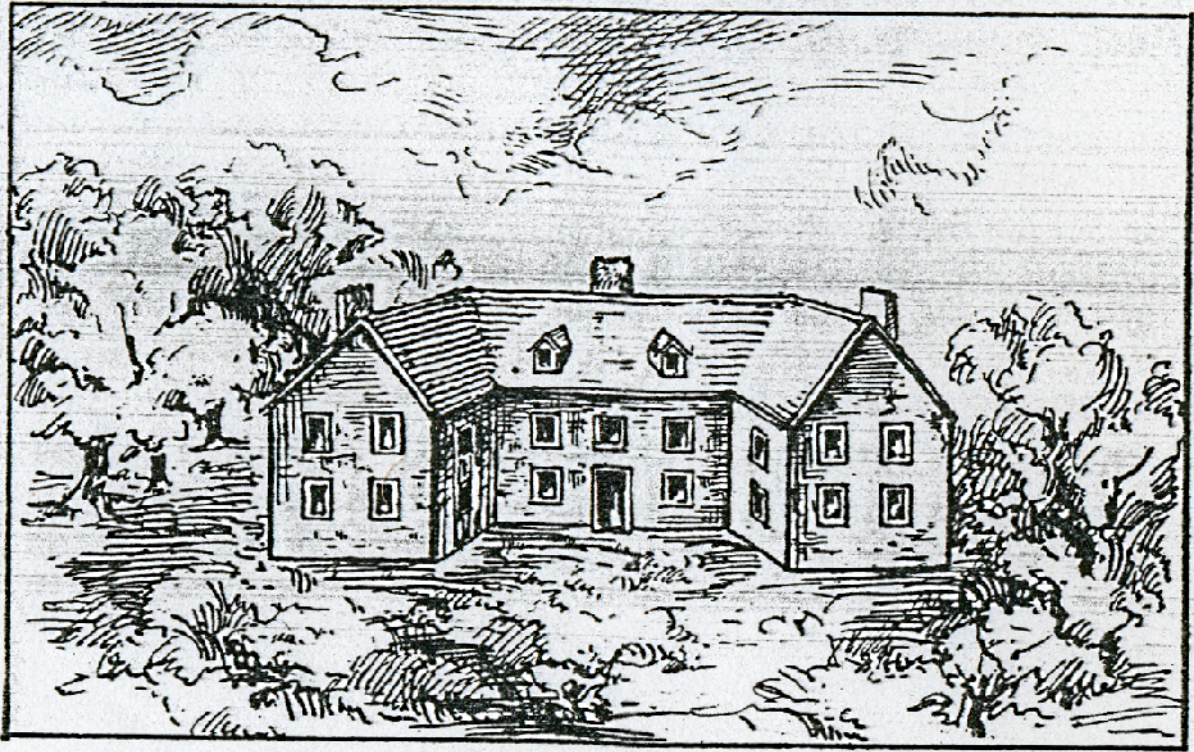


excavation." How the "g" was lost and the word softened to Smaws may be found explained in Prof. Skeat's *Principles of English Etymology* first series, page 364.

In feudal times Smaws was the seat of two important local families, the Normanvilles and Calls. I have mentioned William Call in the Tadcaster Lay Subsidies of the time of Edward III. Alan Calle, of Smaws, was one of the jurors at an enquiry held in York concerning a rent due to the Prioress and Nuns of Appleton from the mill at Newton Kyme in 1268-9.* In 1260, as appears from the



SMAWS HALL, TWO CENTURIES AGO.

inquisition previously quoted of William de Kyme, Ralph de Normanville held of the said William, $3\frac{1}{2}$ carucates of land in Smaws and in Cold Coniston, in the parish of Gargrave in Craven. Other records of this family I have already given. Smaws now forms part of the property belonging to the family of Varley, and is rented by Mr. Francis Colley, who resides in a good house on the Station Road.

It is a very pleasant walk hence to Stutton, or we may continue the road to Newton Kyme between the rich parks of Toulston Lodge (H. H. Riley Smith, Esq., J.P.) on the left and Newton Kyme Hall (Misses Bethell) on the right. Many kinds of wild flowers may be gathered in season about this pleasant neighbourhood; the sweet-odoured, large-leaved violet occurring in some profusion in many sheltered places about Smaws and Stutton. The pretty autumn-crocus also grows wild about here.

* See *Yorkshire Inquisitions*, vol. i., page 106.

Around Stutton the landscape assumes a very picturesque character, and where the historic Cock Beck flows towards the Wharfe, on the east side of the railway, the ground rises to a considerable elevation and is nicely wooded. A somewhat important 'fault' may be traced northwards towards Tadcaster, keeping parallel with and close to the railway, which from the north of Towton to Tadcaster, runs over the Middle Red Marls and Lower Magnesian Limestone. This fault throws out several beautiful springs in the neighbourhood of the village, and it seems to be the cause of the remarkable (dry) little valley which extends for about a mile south-west to Headley Bar, and embraces the ancient Jackdaw Crag quarry. It is, I have no doubt, the Thevedale or Thevesdale, so frequently mentioned in the early records of York Minster. The picturesque little dale and quarry are on the Hazelwood estate of the Vavasours, but the quarry has not been worked for many years. It was formerly a very popular place for picnics. From it an ancient road led down to the Cock Beck, whence the stone for the Minster was transported by boat to York from the staith at Kettleman Bridge (*see* page 228). A little below Jackdaw Crag is another smaller abandoned excavation, locally known as the "Abbey Rash" quarry, a name that carries with it a suggestion of its having been worked by one of the monasteries mentioned on page 244.

Stutton in Saxon times consisted of three separate manors, afterwards held by the Percies and the De Arches families. The old corn-mill below the village on the Cock Beck (where it still stands) appears to have been in working order in 1085-6, and was then worth 5s. There are now no houses of any particular antiquity in the village. In former times several notable families resided here, and the place also gave name to the ancient family of Stutton. Stutton Grove, at one time the residence of Captain Markham, was about fifty years ago converted into a Boys' Boarding School, conducted by Mr. Wm. Stacey, but it is now a farm-house.*

The Masons, Milners, and Williamsons, were living here at least two centuries before the Reformation, and resided here long afterwards. Many of them are buried within the old church at Tadcaster. The Stothards, too, are an old local family, recorded in the Poll Tax of 2nd Richard II. (1378) as living at Wighill-cum-Esedyke. Members of the family were resident at Stutton nearly two centuries ago, and produced several remarkable men. Thomas Stothard was

* In the spring of 1901, while ploughing near here, in a field belonging to the Wingate Hill farm of Mr. J. Cundall, an iron spear-head, about a foot long, was turned up. It is now in possession of Mr. J. W. Deans, of the Steam Plough Works, Selby.

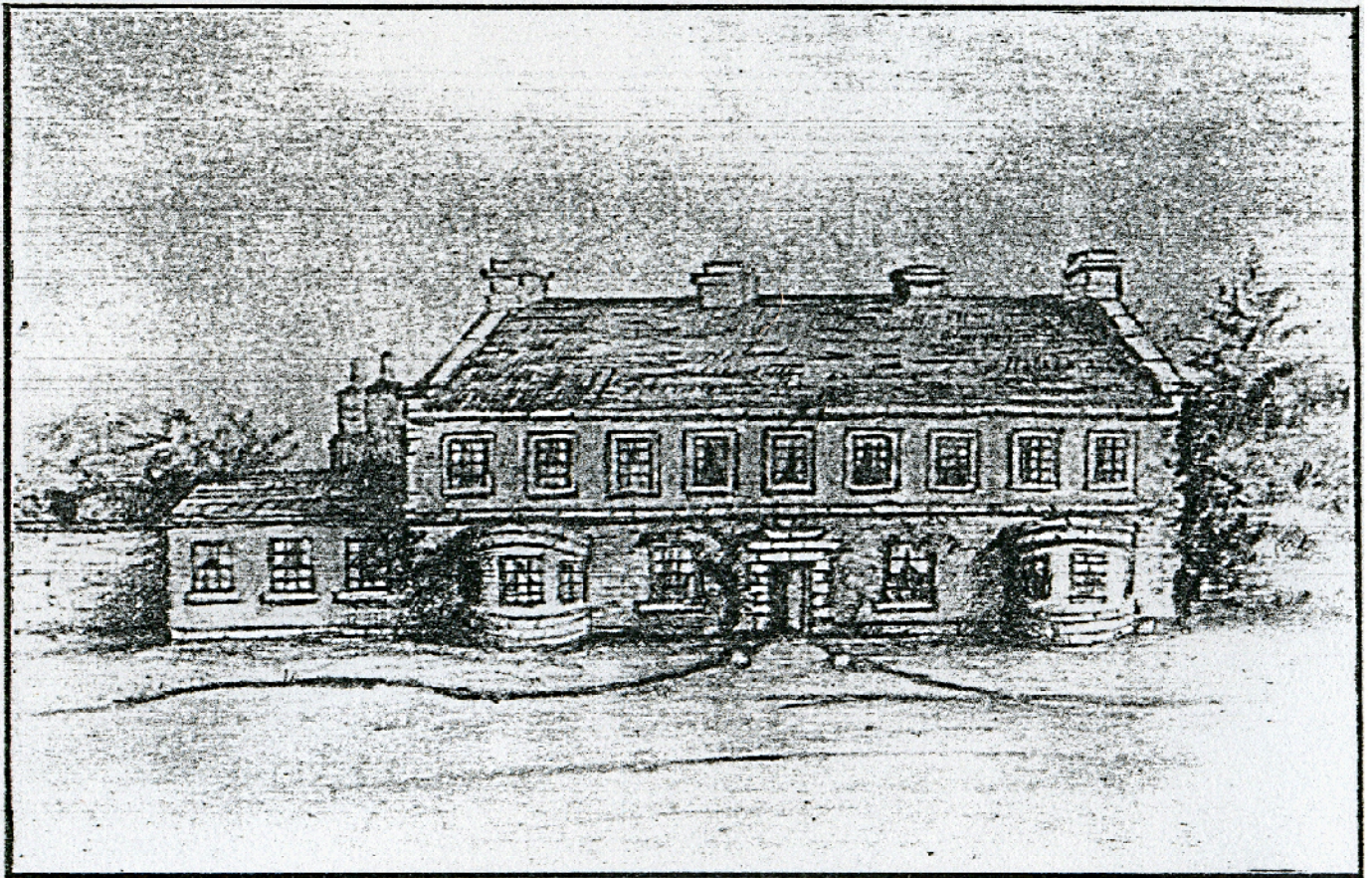
a farmer and innkeeper at Stutton, and in 1754 removed to London, to the *Black Horse* inn, in Long Acre, where he died in 1760. His son, Thomas, who was born in 1755, was sent to be educated at Stutton, and he remained there till he was of age to be apprenticed. Having a liking for art, he studied drawing and painting with great assiduity, and subsequently achieved considerable distinction as an artist. He was elected a member of the Royal Academy in 1794. He died in 1834, and afterwards his *Life with Personal Reminiscences*, was written by his daughter-in-law, Mrs. Bray, and published, with portrait, in 1851. His son, Charles Alfred Stothard, F.S.A., who married Eliza Kempe, a well-known authoress (afterwards the wife of the Rev. E. A. Bray, rector of Tavistock), became a celebrated antiquarian draughtsman. His magnificent work, *The Monumental Effigies of Great Britain*, embraces drawings of all the important historical monuments dating from the Norman Conquest to the Reformation, and was published in 1817 at 19 guineas. A writer in the *Gentleman's Magazine*, speaks of the minuteness, delicacy, and accuracy of Mr. Stothard's representations, which he says, "cannot be surpassed. They are specimens of sculpture, which for grandeur, simplicity, and chastity of style, are not to be surpassed, if equalled, by any nation in Europe." He was also author of a work entitled *Seals Illustrative of the Reign of Elizabeth*. He died in 1821, at the early age of 35.

About a mile to the west of Stutton is the famous Smaws Quarry, whence a road runs to Toulston, a very old property, mentioned in *Domesday* as Togleston. Osbern de Arches had seven carucates and seven bovates in Toulston, Newton Kyme, and Oglethorp, and there was also a carucate here within the fee of Laci. In the 13th century 1½ carucates in Toulston were held by William de Elkenton immediately of the superior lord, William de Kyme, who died in 1260. At the same time Thomas de Katherton held also a carucate of land in Toulston of William de Katherton, and the Prior of Helaugh held another half-carucate there of the said William de Katherton, and he held of William de Kyme. The boundaries of Toulston were afterwards the object of extended litigation, as will be related in the next chapter.

In 1378 there were twelve married couples and seven single adults living at Toulston, of whom Oliva Danyl, *hostiler*, was the chief taxpayer. From the high rate at which she was assessed (18d.) she must have been something more than an innkeeper; in all probability she was a general brewer as well. Her husband was dead before 1378, and the business seems to have been then carried on by herself and children (apparently), two of whom, Cassaunder and Teffan, are

mentioned in the same Poll Tax. The Arthingtons, or Ardingtons, were also seated at Toulston before the Reformation, and probably were a branch of the family long settled in the parish of Snaith. John Ardington of Wolston (Toulston), died in 1562, and his widow Jane, died at Toulston in 1564. Francis Ardington and Janet, his wife, were both buried at Tadcaster in 1604.

Toulston eventually came to the Fairfaxes, and the gallant Sir William Fairfax, shortly after his marriage in 1630, took up his residence here with his beautiful and accomplished lady, who was a daughter of Sir Thomas Chaloner, of Guisborough, in Cleveland.



TOULSTON LODGE IN 1828.

In 1640 it was sold to Sir Robert Barwick, the Recorder of Doncaster, who was knighted by Charles I. in 1641. and died in 1660. His wife, Lady Barwick, was Ursula, daughter of Walter Strickland, and sister of Sir Wm. Strickland, Bart. Robert Barwick, their son and heir, did not marry, and was accidentally drowned in the Wharfe, on June 16th, 1660. Lady Barwick died Oct. 4th, 1682, aged 81; the eventual heiress of Toulston being her daughter, Frances, who married, Henry, fourth Lord Fairfax.* The estate was

* See Markham's *Life of Robert Fairfax*, page 12. For pedigree of Barwick see vol. iv. of Hunter's *Familiae Minorum Gentium*, edited by Mr. J. W. Clay, F.S.A., for the Harleian Society. See also *Gentleman's Magazine*, vol. xxi. (1844), page 28.

kept in the family till about the year 1775, when, in consequence of the American War, it was sold by the Hon. George William Fairfax, of Belvoir, Virginia, who died at Bath, in April, 1787.* He was half-brother to Brian, 8th Lord Fairfax, to whom the title was confirmed by the House of Lords. His son Thomas, of Varcluse, was 9th Baron, and he was father of Charles, 10th Lord Fairfax, who was Speaker of the House of Commons in California, and Clerk of the Supreme Court of that State from 1857 to 1862. He died in 1869. Through the courtesy of the present Lord Fairfax I am permitted to append his portrait.

The village of Toulston is now reduced to a couple of farms, the Old Hall Farm (Mr. W. D. Stephenson), which was tenanted by the



CHARLES, TENTH LORD FAIRFAX.

late Mr. Wm. Smith for about fifty years; and St. Helen's Grange (Mr. John Watson). There is also an old abandoned smithy, standing beside the now little-used thoroughfare leading into Rudgate. The old Hall of the Fairfaxes was pulled down many years ago. From the particulars given in the great boundary dispute, elsewhere mentioned, it appears that it was erected by Sir Thomas Fairfax

* At Toulston Lodge I have seen an interesting plan of the Toulston estate, dated 1760, at which time it belonged to the same George William Fairfax. On this map all the old field-names and boundaries are clearly indicated.

about the year 1603, and the material for the purpose was obtained from the neighbouring Robshaw Holes quarry. The house stood upon an elevated site a little to the south of the present Hall Farm, and on a piece of open grassy ground below, are a number of old fruit trees, survivors no doubt, of the home orchard. On the gable of an old cow-shed appeared the date 1653, with the initials of Barwick, and a drawing of this, made in 1841, is at Toulston Lodge.

Toulston Lodge, doubtless a dower-house of the Fairfaxes, is a pleasant old-fashioned country mansion, having an extensive front very prettily covered with creeping plants. It has been much improved and enlarged during the last century, and particularly during the past few years, by the present owner of the estate. The view on page 317 exhibits the south front as it appeared in 1828, and another view, from a recent photograph by Lemaire & Co., prefacing this chapter, depicts the same front as it is at present. A shield of arms, formerly over the north door, and now inserted in the south front, exhibits Barwick empaled with Strickland. There is also in the yard behind, a large alarm-bell, inscribed "HY. FAIRFAX, OF TOULSTON, 1773,"* which is inexplicable, as Henry Fairfax died in 1759, and his brother George William, who settled in America, succeeded to the property, which passed out of his family, as stated above, about the year 1775.

About the end of the 18th century, Peregrine Wentworth lived at Toulston and he appears to have occupied the house for a period of over forty years. He was of the family of Wentworth of Woolley, a branch of which was long seated at West Bretton.† Sir Butler Cavendish Wentworth, Bart., who died without issue in 1741, married Bridget, daughter of Sir Ralph Milbanke, Bart., of Halnaby. She was married again in 1748, in York Minster, to John Murray, Esq., and died in 1774. Sir Frederick Milbank long resided at Toulston Lodge, and he is stated to have been honoured with a visit by George IV., who dined at the Lodge, and a large portrait of whom, painted in oil, hangs in the handsome entrance hall. Afterwards the house was occupied as a ladies' school, kept by Mrs. Stoney, and subsequently as a boys' school. At that time it was the property of

* During a recent visit to Toulston I had pointed out to me an oaken door lintel, which had formed part of a beam in the old stable, and had cut upon it: "17 H. F. 33," obviously the initials of the same Henry Fairfax.

† Peregrine Wentworth was the eldest son of Matthew Wentworth, of Wakefield, and was born in 1722, and was sometime Captain of a Company of Grenadiers in the Fourth Regiment. He died in 1809 and was interred in York Minster, having married (1) Mary, eldest daughter of Beilby Thompson, Esq., of Escrick, co. York, and (2) Mary, eldest daughter of Ralph Ashton, Esq., of Cuerdale, co. Lanc., and widow of the Rev. John Whitton, of Lupsett.

the Brown family of Leeds. From them it descended to the trustees of Yorke Scarlett, Esq., of the island of Gigha, West Scotland, who about 1890 sold it to the present owner and occupant of the Lodge, Herbert H. Riley-Smith, Esq., J.P., principal of the great firm of brewers already alluded to. Mr. Riley-Smith has very largely extended and improved the house, as well as laid out and beautified the surrounding grounds. He also added the present porch on the principal or south front, and placed his arms, cut in stone, above it. In this porch has been placed a small stone inscribed "E. C. 1729," found in a rubble-wall of the old stable, pulled down about five years ago. In the grounds, to the east of the mansion, are two very large old yew-trees, an apparent indication of the site adjoining having been occupied at an early period. The planting of yew-trees by the side of dwellings and in churchyards was greatly encouraged by our feudal monarchs and landowners, as the wood of that tree was highly esteemed in the manufacture of bows, and in several of our early statutes the yew is specially mentioned for this purpose.

The present mansion, as suggested, in all probability occupies the site of an older building. A coin of Queen Elizabeth, perhaps lost by a former resident on the site, was dug up in front of the house a few years ago. I have already remarked that the present proprietor has very greatly enlarged and beautified the old house, and the modern fittings and decorations of the interior are such as few English country houses may rival. These extensive improvements display wonderful versatility and executive skill, and it is worthy of note they are the sole design of a local architect, Mr. Thorman, of Tadcaster. The ornate and massive oak-carving in the grand entrance-hall is particularly handsome, and bears many a suggestion of the sturdy Puritanism of the former historic owners of the estate, the Fairfaxes. Standing, for example, on the staircase newels, are to be seen, carved in heart of oak, "moss-troopers" of the Cromwellian period and quaintly-garbed Puritans, holding lamps of light, and seeming to act as sentinels to the rooms above. The oak-panelled walls and carvings, ornamental ceilings, and mantel-pieces of rarest marble and alabaster, are all treated in the same antique and expressive manner, and in a variety of original forms.

CHAPTER XXVIII.

TADCASTER V. NEWTON KYME: A GREAT BOUNDARY DISPUTE.

Protracted dispute—Purchase of Toulston in 1640—Reputed encroachments by Sir Robert Barwick—Toulston warren-house—The Fairfaxes at Toulston—The Earl of Northumberland's claim—An action for trespass—Reputed boundaries of Toulston manor—Toulston coney-warren—Evidence of 28 witnesses—Riding the bounds—Some old boundary-marks—Sir Thos. Fairfax rides the bounds—Trial at the Assizes—Enclosure of the common in 1790—The dispute revived—Rev. Henry Wray and his tithes—The case put to arbitration—Settlement of the dispute.



THE following particulars of a protracted disagreement respecting the boundaries of the parishes of Tadcaster and Newton Kyme, at Toulston, I have gathered and abridged from some rather voluminous records preserved among the Parish Papers at the rectory of Newton Kyme. The dispute began in 1654, and does not appear to have been finally adjusted until 1809. Apart from the historical importance of the controversy, the documents are instructive for the information they afford on the many old yeomen and other families then living in the district, as well as for the many interesting allusions to ancient boundary-stones and other places and objects, which, in some cases, may happily still be identified.

As stated in the previous chapter, Sir Robert Barwick had bought the manor of Toulston in 1640, at which time he was living at York. In the Bill of Complaint which was brought against him in 1654, by Algernon, Earl of Northumberland, it appears that certain encroachments were reputed to have been made on the wastes of the manor of Tadcaster. The complainant did not admit that the manor of Toulston had any wastes at all. But Sir Robert claimed to be well acquainted with the history and aspects of the place long before he purchased it, affirming that one, Edmund Fairfax, Esq.,* son and heir of Sir Philip Fairfax, of Steeton, died seized and possessed of the manor or lordship of Toulston, and as parcel thereof of an important coney-warren, with burrows stored with coneyes, also the

* He married a daughter of Sir William Irwin, and died in 1636, leaving a daughter, Mary, who died in infancy. Sir Philip Fairfax died in 1613.

lodge or messuage called Toulston Warren House, which had then as now (1654) a warrener's dwelling there.* Then the same descended to William Fairfax, his brother and heir, and that in the right of these two brothers, or the survivor of them, from the year 1618 till 1630, when Sir Wm. Fairfax married and came to live at Toulston. Sir William Sheffield, as lessee or farmer, had enjoyed the said lodge and warren, and disposed thereof without interruption, and received a yearly rent for the same of his subfarmer thereof.

It was, however, contended for the Earl, that the said coney-warren was on the wastes of Tadcaster, and yet it appears that matters were allowed to proceed as formerly for many years after the purchase of the estate by Sir Robert Barwick in 1640. Ultimately, however, on some provocation, it was decided to test the validity of Sir Robert's title to the waste which he claimed as parcel of the manor of Toulston. Henry Favel, gent., his lordship's steward, and William Moorefield, his bailiff of the manor of Tadcaster, authorised about a score men to assemble on the said waste and there to dig up and destroy some of the burrows belonging to the said coney-warren, for the doing of which the said Sir Robert was obliged to bring an action for trespass at the common law in order to maintain his rights.

The real issue of the dispute was whether the Earl's manor of Tadcaster extended, as was affirmed, to a certain point called the Ox Pasture hedge, and so included the coney-warren. Sir Robert, however, held that his manor of Toulston extended southwards to an ancient boundary-stone or meetstone, erected in the form of a cross composed of two great stones, called Emcross,† and which had stood in its then (1654) position "before ye memory of any man now living," about half-a-mile distant from his enclosed grounds of Toulston. He further affirmed that "overthwart the said wastes of Toulston there doth lie a common highway leading directly from Headley Grange to the end of Rudgate Lane, which way is yearly much frequented by country people, especially in the summer season, both night and day, with carts and wains for carriage of coals from the coal-pitts in sundry places beyond Headley aforesaid. And in that space, namely between the highway and the said enclosed ground of Toulston do lie all the said coney-burrows and Lodge, and there neither is nor can be any abiding or burrows conveniently for conies whereby to enlarge the warren beyond that highway."

Sir Robert also denied that he had erected a tenement or cottage upon any part of the said wastes, for such cottage as he hath is the

* The old warren-house is still standing, but has been raised a storey, and converted into two cottages.

† A very similar old cross is illustrated in my *Upper Wharfedale*, page 243.

ancient Lodge of the said coney-warren. "anciently builded before the time of his memory, and being the habitation of the warriners there for the time being." He also denied that the said Warren House or coney-burrows were or ever were parcel of or belonging to Tadcaster, or formed any part of the demesnes thereof. And Sir Robert prays for a fair trial.

The Earl of Northumberland brought forward sixteen witnesses to dispute Sir Robert Barwick's statements. They were sworn and examined 11th January, 1655, and their depositions fill about thirty folios of MS. George Badman, of Wakefield Outwood, yeoman, then aged 60 years, had been formerly warrener at the said Warren House for about 20 years, and John Barker, of Askham Richard, yeoman, aged 66 years, declared that he had heard Thomas, late Lord Fairfax, say that he would ask leave of the Earl of Northumberland to build a house for a warrener, and if the same should be noisome or troublesome to the said Earl or his tenants, he, Lord Fairfax, would pull it down. Thomas Cawood, of Askham Richard, aged 56, said that when he was a schoolboy, about 40 years ago, at the town of Tadcaster, he did with his then master and a great many other inhabitants of the said township go on perambulation for two or three years together from certain thorns near Headley, over the Moor leaving Robson Holes on the left hand and Smaws quarry on the right hand, and so over to the dwelling called Smaws House, and he supposed that to be the boundaries of the manor of Tadcaster for that "ye ancient men then (1615) walked the said Perambulation, and declared the same so to be." Robert Boone, of Tadcaster, yeoman, aged 82 (in 1655) declared the perambulations for 40 years and above to be :

"From the White Quarry to Headley Thorns and so to a place called Humes Nooke, and from thence down to ye Moor within six score yards of a parcel of ground called ye Oxclose, and then down to ye place where ye Warren House now standeth, ye same being within the bounds of Tadcaster, on ye right hand, and from thence to ye Quarry called Robson Holes, ye same being within ye bounds of Toulston, he conceiveth, and so all along ye moor to ye place called Smaws Sheep Loane, and he further saith that the burrows of the defendant have been made or cast at least twelve score yards within the manor of Tadcaster."

William Turpin, of Stutton, yeoman, aged 63, and George Dibb, of East Keswick, yeoman, aged 54, confirmed the above. Anthony Horner, of Tadcaster, yeoman, aged 61; Matthew Daniel, of Wighill, grassman, aged 61; Joshua Haworth, of Wressell, gent.; and Robert Beane, of Ouston, yeoman, aged 58, gave similar evidence, stating that the Warren House was always taken as being about a hundred yards within the limits of the manor of Tadcaster. James Dallamore, warrener, of Bramham, aged 40; Thomas Hudson, of Stutton, aged 47; and George Turpin, of Stutton, aged 60, said that

the acre of ground enclosed belonged to the inhabitants of Tadcaster, who had privilege for their cattle to take common by bit of mouth. Ottiwell Wilson, of Tadcaster, aged 62, and Wm. Bell, of Tadcaster, linen-webster, aged 76, said that 60 years ago (*i.e.*, before 1600) there was no warren-house standing on the ground now (1655) occupied. He further said that he had perambulated the bounds with the minister and parishioners of Tadcaster, and they first went to Stutton and so to Wingate Cross, and then came down Hesslewood Warren to the White Quarry, and thence to Headley Thorns, and there set several marks on the trees, and so to a hill called Earle Hill, leaving the place where the said Warren House now standeth on the right towards Tadcaster, and then hard by Robson Holes, leaving them on the left hand, to the Smaws. Edward Morley, of Newton Kyme, blacksmith, aged 73, said the parishioners of Tadcaster took the said Warren House within the bounds of the parish of Tadcaster, and the parishioners of Newton Kyme on their perambulations did also take the same within their parish.

Twelve witnesses were sworn and examined (same date, 1655) on behalf of Sir Robert Barwick. George Boardman, of Wakefield Outwood, yeoman, aged 60, said that 24 years ago he had farmed for six years the said coney-warren at a yearly rent of 4s. a year, paid to Sir Wm. Fairfax, the reputed owner thereof, without interruption. Francis Jefferson, of Eskrigg, yeoman, aged 70 years, said he "did know Sir Thos. Fairfax, Kt., then of Denton (about 1605), afterwards Lord Fairfax, and grandfather to ye Lord Fairfax that now is (1655), and that the said Lord Fairfax, ye grandfather, about fifty or sixty years ago, and after him Sir Philip Fairfax, of Steeton, Kt., and after him Sir William Fairfax, of Steeton, Kt., son of ye said Sir Philip Fairfax, were several and successive owners of ye lordship and manor of Toulston, and of ye coney-warren upon Toulston Moor, as parcel of the same, and had the profits thereof in their several times." He further declared "the said coney-warren was kept by one Thompson as a warrener and servant to ye said Lord Fairfax, ye grandfather, to his own use, and that afterwards ye owner of Toulston lett ye same coney-warren to farm to divers persons, as namely to one John Dibb, and after him to one Weatherhead, and after him to one Boardman, and divers others, and that during the same time the burrows were kept up by ye several and successive owners and farmers of the said warren, without any interruption of any of ye Lords or owners of Tadcaster that ever he heard of." He further saith "that ye Lordship of Toulston and ye Lodge and Warren be within ye parish of Newton Kyme, and that he hath ridden ye bounds about 47 years ago, and ye said warren and lodge were taken in as belonging to Toulston in ye said parish."

The rector of Newton Kyme, Thomas Clapham, clerk, aged 60 years (born 1595), said he was induced to believe that the said coney-warren is within the parish of Newton Kyme, for that the late inhabitants of the Warren House have buried such as did die there, and have published marriages of such as lived there, in the parish church of Newton, and they also were accustomed to receive the sacrament at the same church of Newton, and not at Tadcaster, during those four years last past that he was minister at Newton. He also stated that the inhabitants of the Warren House do pay assessment within the parish of Newton, and that he claims to have a right of common in Toulston and Newton in respect of his glebe. John Laycock, of Steeton, yeoman, aged 72, said that he was servant to Lord Fairfax fifty years ago (about 1605), and about forty-three years ago Sir Thomas Fairfax, of Denton, afterwards Lord Fairfax, did on the occasion of some difference betwixt himself and the inhabitants of Headley, call the most ancient freeholders and tenants of Newton and Toulston to set forth the boundaries of the said manor of Toulston by him claimed, and to distinguish the same from Tadcaster Moor. Accordingly the said Sir Thomas Fairfax, in his own proper person, did with the said freeholders and tenants, ride and go the said bounders, that is to say, "from a bounder-stone near unto Emcross up towards Headley to another bounder near Headley Lodge, and so to Oglethorpe Moor, and he saith that from the said bounder-stone near Emcross to ye enclosed ground of Toulston called Oxclose is near half-a-mile, and that the said coney-warren and lodge lie betwixt ye said Oxclose and ye bounders aforesaid." William Armstrong, of Bramham, aged 62; Anthony Horner, of Tadcaster, yeoman, aged 60; Matthew Daniell, of Wighill, grassman, aged 61, confirmed above, and the latter stated that about 43 years ago he was Parish Clerk of Newton for several years, and did receive his yearly clerk's wages from the inhabitants of the Lodge belonging to the said coney-warren. George Dibb, of East Keswick, yeoman, aged 54, said that the assessments payable within the constabulary of Newton-cum-Toulston have been usually paid for the said coney-warren and lodge to the Constable of Newton-cum-Toulston, and never to the Constabulary of Tadcaster that he had ever heard of. Richard Burley, of Bramham, mason, aged 61, said that he was accustomed to join the processions of the parishioners of Newton on their perambulations yearly, ten days before Whitsuntide, and they went to a place called "Wool wha Gap," and thence to Emcross and so towards Headley Lodge and "ye Windmill Nooke, and so to Toulston Oxclose End, and in these perambulations or walks they did always take in Toulston Lodge and Warren," and so it hath

been yearly and anciently continued. William Kitchingman, of Toulston, aged 22, deputed he was present at a trial at the Assizes held in York Castle last Lent [1654], when after two or three hours spent in debating the matter, Sir Robert Barwick had obtained a verdict. But whether the controversy in 1655 had a similar termination the papers before me do not clearly indicate.

Matters seem to have gone on pretty much as before, and it was not until the great common was enclosed in 1790, that any serious dispute arose. The parishioners of Tadcaster then laid claim to the whole common, and in consequence proceeded to lay and levy their parochial rates and assessments on many acres of land claimed by the people of Newton Kyme to be within their parish. The latter who, time out of memory, had right of common before the enclosure, and afterwards had allotments of fields, and those allotments as also the whole of the enclosed lands, their more powerful neighbours claimed to be in their parish to the great injustice and detriment, it was declared, of the inhabitants of Newton Kyme.

Since the enclosure of the common and the commencement of proceedings in 1804, the minister and inhabitants of Newton had frequently travelled their parish boundaries, and had always given public notice of their intention to the minister and churchwardens of Tadcaster. And their perambulations had never been disputed until the present year, when the inhabitants of Tadcaster for the first time since the enclosure had traversed their boundaries and had taken in all the allotments belonging to Newton Kyme. The minister and inhabitants of Newton seem to have been well aware that if they had assessed the occupiers of the disputed lands, the said occupiers who live in the town and parish of Tadcaster, would refuse to pay the assessments, and would refer to the judgment of the Justices at the Quarter Sessions. But the Justices would certainly have refused to determine the case, as they were, by law, not empowered to determine the boundaries of any parish.

It was evidently a very anxious time to the then rector of Newton Kyme, the Rev. Henry Wray, in whose name the proceedings were instituted and with whom most of the correspondence concerning the dispute was carried on. He appears to have been indefatigable in his efforts to prove the justice of the claims of his parishioners, and as the sequel shews was largely successful. In 1797 he had tithed certain corn lands in front of Toulston Lodge by setting a bough in every tenth stook of corn, but next morning one James Heptonstall carried away the tithe, so marked, to Tadcaster. For several years about this time, it may be observed, Mr. Wray had taken tithe in

kind, and for the three years last past, Peregrine Wentworth, who had lived at Toulston Lodge now (1802) forty-two years, compounded and paid Mr. Wray for the tithes thereof.

The late Mr. Girling, who was vicar of Tadcaster 22 years, and afterwards rector of Newton Kyme 42 years, and other rectors since, had perambulated the boundaries, and they had always included the lands they now claimed to be within the parish of Newton Kyme. The bowling-green belonging to Toulston Lodge, lying south-west some distance from the front of it, was, they affirmed, always included in Newton Kyme.

Finally it was proposed to submit the case for arbitration to two counsel. The Earl of Egremont, patron of the living of Tadcaster, Mr. Ashbridge, vicar, Messrs. Shann and Todd, impropiators of the great tithes of Tadcaster, were to nominate one counsel on their part, and Robert Fairfax, Esq., patron of the living of Newton Kyme, Henry Wray, rector of the same, were to nominate the other counsel. Lord Egremont wrote from Petworth, Feb. 23rd, 1802, proposing one legal gentleman to be agreed upon by all parties, as not only less expensive, but avoiding the chance of disagreement of the two. The difference, however, was still in abeyance in 1807-8, when the vicar of Bramham, Mr. Bownas, objected to a settlement before the boundary of the parishes of Bramham and Newton Kyme had been settled over part of the common near to Headley Warren House, and the Enclosure Commissioners were called on to settle the point.

At length the whole matter terminated by the equal division of the disputed lands between the two parishes of Tadcaster and Newton Kyme, as appears by the following note :

Tadcaster, 13 Oct., 1808.

It is proposed that for settling the Boundary on Tadcaster High Moor at present disputed between the Vicarage & Parish of Tadr. & the Rectory & Par. of Newton Kyme, the Lands containing about 170 acres comprised within the Line of Boundary disputed between the two parishes on their differt. perambulations., be divided in equal moieties as to value between the Parishes & Tithe Owners of each Parish & that the comparative Value & consequent extent & the situation of each moiety of the Land so to be allotted to the several Parishes be referred to an indiffert. Person to be agreed on by the Patron & Vicar of Tadcaster and Messrs. Shann & Todd, as owners of the great Tithes of Tadcaster and the Patron & Rector of Newton Kyme.

Present : REV. H. WRAY.

MR. THOS. SHANN.

MR. TYLER.

MR. ADDINELL.

Messrs. Thorpe & Gray, of York, were the solicitors for the Rev. Henry Wray, against Peregrine Wentworth, Esq., George

Addinal, Leonard Jewison, and James Robinson, and Messrs. Thorpe and Gray's Bill of Costs from Dec. 17th, 1807, to Jan. 25th, 1809, amounted to £23 6s. 9d. On the last-mentioned date there is this entry :

" On receiving draft of intended agreement for dividing and assigning the disputed lands to the respective parishes, perusing the same on behalf of yourself (Rev. H. Wray) and Mr. Fairfax. 10s."

Toulston Lodge is now, as heretofore, within the parish of Newton Kyme, but the land is in Tadcaster ; and Headley Warren House, also mentioned above, is included in the parish of Bramham.