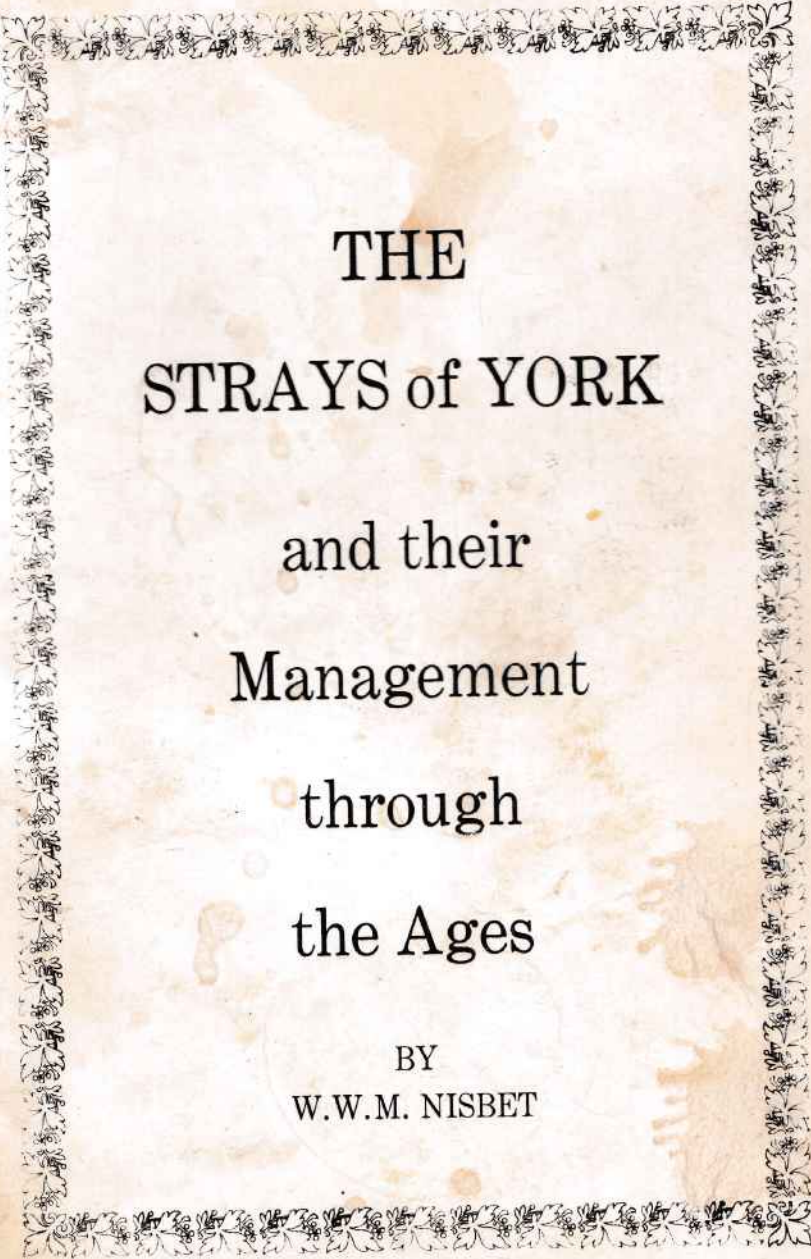


J. L. DEARLOVE.

A decorative border with a repeating floral and vine pattern surrounds the central text.

THE
STRAYS of YORK

and their
Management
through
the Ages

BY
W. W. M. NISBET

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FOREWORD

This short history of the Strays of York was written, partly out of curiosity, and also to rectify my own ignorance about these ancient lands.

Having lived for some years overlooking part of Monk Stray, I was inevitably aware of its existence and grateful for the open outlook which it presented. Yet my total knowledge of this stray was a vague impression that it was connected, in some way, with freemen and probably created by some long forgotten Act of Parliament. Various encroachments upon stray land, in the form of two electricity substations, a public lavatory and a commercial parking lot, prompted my curiosity to find out how, and by whom, the stray was owned and managed.

I talked with freemen, with officials of the Town Clerk's Department and with members of the Corporation Parks Committee. To my surprise, what little information I received was vague, ill-informed, contradictory or down right evasive. This proved to be more confusing than enlightening and I decided to see for myself what documented information was available. This turned out to be a fairly complex task, especially when my interest broadened to include all four of the York Strays. Gradually information was built up, but it became so involved that the various bits and pieces had to be mustered in some sort of sequence and this book was started, as if by accident.

The first two chapters are intended as a general introduction before discussing the York Strays in particular. Firstly, it was felt that a brief account of how English land was held, divided and managed through the ages would be of help in understanding the historical significance of commons and strays. This encompasses the division of land in Anglo-Saxon times, and the formation of manors and the system of feudal land tenure following the Norman Conquest. Secondly, freemen have been so inextricably involved in the use and management of the strays from their earliest days, that an understanding of the role and significance of freemen seemed to be a necessary preliminary.

While the actual history of York Strays can be assembled in a fairly straightforward manner, what is more difficult is to sort out the legal complexities which seem to have enmeshed the management of the strays, from their creation through to this very time. This has involved reading, and trying to interpret, various Inclosure Acts passed up to some 200 years ago, as well as the amending statutory legislation of more recent date. Legal facts and arguments may loom large in this account of the strays and for this I make no apology. Little appears to have been written on this subject, which is a complex one. Over the years, the number of legal wrangles which have flared up between the

freemen and York Corporation, and even between the freemen themselves, would suggest that it is a subject which is much misunderstood and certainly misinterpreted. If my conclusions are correct, as I believe them to be, they may give a timely warning that the future of the York Strays is not so secure as is generally imagined.

If this book provokes public interest in the Strays of York, encourages their more widespread use and creates an awareness of the need to guard against encroachment, then its purpose will have been achieved.

ACKNOWLEDGEMENTS

I would like to thank the staff of the reference department of York Public Library for their courtesy in making so freely available various books, manuscripts and maps, and for suggesting possible lines of research.

I gratefully acknowledge the information and guidance received from the following sources:—

1. A Short History of England, by Ransome.
2. The writings of William Giles, a deputy Town Clerk of York towards the beginning of the 20th century.
3. The writings of George Benson, of about the same era.
4. The Registry of Deeds, Northallerton.
5. How York Governs Itself, published in 1928.
6. The Victoria History of Yorkshire, City of York.
7. The Report of the Royal Commission on Common Land, 1955-1958.
8. The Commons, Open Spaces and Footpaths Society.
9. The Charity Commissioners.
10. The Ministry of Housing and Local Government.
11. The Strays and Ways of York, published in 1968.
12. Mr. Harry Ward, Past Master of the Guild of Freemen of the City of York and currently President of the Freemen of England, who has given much encouragement and information towards the compilation of this book.

THE DIVISION OF ENGLISH LAND FROM ANGLO-SAXON TIMES

Before discussing the Strays of York in particular, it may prove helpful to refer to the historical background of English land in general. The acquisition and tenure of land has motivated man throughout the entire history of the world, and probably nowhere is this more evidenced than in England. Until the commencement of the industrial revolution, in the late 18th century, land was the most important and the most coveted possession which could be acquired. Indeed the whole social and political structure of England was based upon a system of interdependent land tenure. In the early centuries lands changed hands so frequently, whether by internal warring or by foreign invasion, that no stable pattern can be shown regarding the holding or division of English lands. In fact, it was not until the reign of Alfred, 871-901, that a reliable history of England began. By his instructions, a narrative of the events of each year was kept in various monasteries and collated in the Anglo-Saxon Chronicle, so that, since Alfred began to reign, we have a history of English events written by men who were living at the time.

In Anglo-Saxon times, England was comprised of a number of shires which had formerly been small kingdoms, such as Essex, Wessex, Mercia and Northumbria, amongst others. Each shire was divided into smaller districts which were called 'hundreds' (except in the northern Danish counties, which included the modern Yorkshire, where the term used was 'wapen-take'). Each hundred contained a number of townships and the officer of the township was the town 'reeve'. He called the grown men of the township to meet in the town 'moot', where they settled matters which concerned the township. If the town was defended by a mound, it was called a burgh, borough or bury, which are only different ways of spelling the same word, which means 'defence'. The men of the township had to keep in repair the bridges and fortifications which the township contained and, if need be, they had to fight. The hundred was presided over by the 'hundred-man' or 'hundred-elder' and its meeting was the 'hundred-moot', which dealt with the business of the hundred. The head of the shire was the 'ealdorman', 'elderman' or 'alderman', who was placed over it by the king and the wise men of the whole kingdom. Beside him, in Christian times, was the bishop, and the king was represented by the 'shire-reeve', or, as we now call him, 'sheriff'. The meeting of the men of the shire was called the 'shire-moot'. There they settled all quarrels.

A group of shires made the kingdom. This was governed by the king and his 'witena-gemot', which means the 'meeting of the wise men'. A meeting of the witena-gemot was made up of the king and members of

his family, the ealdormen, the archbishops and bishops, and the king's 'thegns'. Although the word thegn means servant, it was thought an honour to be the servant of a great man, so the king's thegns were really nobles.

The above gives a brief account of the general division of land within the kingdom, but, within the village and town communities land was further divided. In the turbulent life of Anglo-Saxon times, villages and towns were established primarily as a form of self preservation against domestic or foreign invasion. It was usual, indeed necessary, that men should band together for their own safety, preferably under the protection of a great and powerful lord. The lord owned most of the land within the community, while some men, with the full rights of freemen and classed as free 'churls', might own land, of considerably less extent. The other men living under the protection of the lord were only tenants of whatever land they cultivated, and the amount of land allowed to them was in proportion to their standing in the 'unfree' community. Between the 'serfs', who were slaves, and the churls, who might or might not be freemen, were several graduated classes of men, all tied in service to their lord. The churl was a man of substance and his holding of land was normally the largest, apart from the lord's estates. If the churl was a freeman he would probably own his land and, if not free, would rent the land from the lord under terms of service or payment. A normal holding for a churl was probably originally a 'hide' of land, this term meaning 'household' and denoting the amount of land considered adequate for one family. This could vary between 60 to 120 acres. The larger division of land, previously described as a 'hundred', was probably calculated as 100 hides, although this was not always adhered to in later times. Going down the social scale of unfree tenants, these men were granted proportionately smaller holdings, on terms of agricultural and often military service to their lord. A slave could not hold land.

In each English shire there were parcels of land which belonged to settlements, villages and townships, but had not been given to any one man. This was called 'folkland'. It is probable that in these folklands we can see the beginnings of common lands and strays, where the villagers were free to pasture their cattle.

This system of land holding and division continued with little alteration until the reign of William the Conqueror, 1066-1087. After the Norman conquest of England, William rewarded his followers with titles and lands, but in so doing he followed a careful plan. He had plenty of annexed land to dispose of, but in distributing it he took great care that no-one should have too much land in one place, thus becoming too powerful and a potential danger to the throne. This is

why, even to-day, we find noble families owning estates in various parts of the country. It was usual for a person who had been granted land to build a house upon his estate, and the French for a dwelling or residence was 'manoir'. This became corrupted to 'manor' and later was used to describe the estate rather than the house. In English law, a manor is now defined as an estate in fee simple in a tract of land granted by the sovereign to a subject in consideration of some service. The subject in turn grants portions of the estate to others, who hold of him by a process known as sub-infeudation. The creation of new manors has been forbidden since the statute of Quia Emptores, 1289. A manor usually includes a manor-house with demesne lands, freehold tenements originally carved out of the demesne lands, waste and common lands of the manor. It was usual for a manor to maintain a manorial court, to regulate behaviour and settle disputes. Such a court was presided over by the lord of the manor or his agent, together with officers of the court appointed from the tenants of the manor. Relics of the punishments imposed by these old courts are still to be found in the shape of the stocks, the ducking stool and the scold's bridle, sometimes to be seen on village greens or in museums. York is fortunate to preserve one of the very few remaining manorial courts, the court of the manor of Clifton, which, although now largely divested of authority, still appoints officers and convenes meetings. Under this feudal system of land tenure, the retainers of the lord of the manor were granted tenancy and common rights over a portion of the manorial land on a condition of personal service to their lord, this including agricultural and military service when required. In and after the 12th century some tenants were able to free themselves from such service by the substitution of a money payment, called 'scutage'. Feudalism, by which the whole of society was bound together by a system of land tenure, persisted strongly until the late 18th century, when it began to decline, although it was late in the 19th century before manorial courts virtually disappeared.

Domesday Book. In 1085 William the Conqueror ordered a complete survey of the whole kingdom to be made, so that he might know exactly how much land each man had and what payments were due to the king. Commissioners were sent to the shire-moots, where they learned the general divisions of the shire, then to the hundred-moot, and finally they called before them, from each township, the reeve, the parish priest and six villeins or men who held land under the lord of the township. From them they learned the amount of arable, pasture and wood land. These and other particulars were written out in a book, called the Domesday Book. It gives a picture of all England except Cumberland, Westmorland and Durham and is of incalculable value as

a description of England at that time.

In the reign of Edward I, 1272-1307, several statutes were passed which regulated the granting or holding of land.

Statute of Mortmain. Mortmain means 'dead hand' and when land was owned by a body of men and not by an individual, it was said in Roman law to be held in mortua manu, i.e. in mortmain. Land held by the church was said to be in mortmain. This land escaped some of the feudal services and payments and therefore church land was unrewarding to the crown in terms of revenue. Also many persons made sham grants of their land to the church, receiving it back as tenants on easy terms, thus avoiding their feudal dues. Accordingly the Parliament of 1279 passed a very strict law to forbid land being given to the clergy without the consent of the king. Much of the land in and around York was held by the church in medieval times.

Statute of Quia Emptores. This struck a strong blow at the power of the great barons, by preventing them from granting out portions of their estates to be held as manors under sub-tenancies. Such portions were always to be held from the superior lord and, as the king was the superior of all the great barons, this statute added largely to his power.

Statute of De Donis Conditionabilis (Entails). This enacted that when an estate was granted to a man and his heirs, the holder of the property, being only a life-tenant, could not part with it. Such estates were said to be entailed, and the passing of this Act was an important event in the history of English land tenure.

Description of a Manor.

In the middle ages all England was divided into manors. The Crown owned all the land and it may be assumed that the lord of a manor was granted his land directly from the Crown or, in some cases, before the Statute of Quia Emptores, from a superior or mesne lord. The lord of the manor was therefore a tenant-in-chief of the manor lands, but he was considered to be the owner of the soil, i.e. tenant in fee simple.

The land of a manor was divided into three distinct portions, and was held variously by different classes of tenants.

The 'demesne land' was that part of the manor which the lord did not grant out but normally retained for his own occupation and use or that of his servants. This usually comprised the manor house and grounds, together with the 'home farm'.

The remaining arable land was granted out to the lord's tenants. This land was farmed under the open field system, there being no fences or hedges separating the allotments. The arable land, for crops, and meadow land, for hay, were granted out in strips which were open to each other and separated only by double furrows or baulks. Each tenant took the produce from his allotted strips, but when the crops were gathered and the hay was harvested, these lands were thrown open for the communal pasturing by the tenants of 'commonable beasts', by which was meant, beasts of the plough and those which would manure the ground. Since these lands were for individual use for about half the year and for common use during the remainder they became known as 'half-year lands' or 'Lammas lands', since they became commonable at Lammas, originally the 1st August but later the 12th August.

Finally there was usually an expanse of 'waste land' which was uncultivated and upon which the lord and his tenants and even the villagers who had no land might pasture animals, collect wood, dig turf or peat, take sand or stone, and so forth.

The lord of the manor, his farming tenants and also the villagers all had varying rights which had usually arisen through ancient custom but most of which became enforceable at common law.

The lord had exclusive control over and benefit from the demesne lands. He did not have any rights over the half-year lands for the pasturing of commonable beasts but custom of the manor sometimes demanded that certain of his farming tenants gave him part of their farm produce as a feudal due. The manorial waste remained vested in the lord of the manor in fee simple, holding of the Crown, but usually subject to common rights exercisable by the tenant farmers and villagers. The nature and extent of the lord's rights over the waste land would depend on the custom of the manor, but unless a contrary custom was shown, the lord had all the timber, mineral and sporting rights, and such grazing rights as were left when all the grazing rights of the commoners were satisfied. The lord had his own mill and dovecot and the tenants were obliged to get their corn ground at the lord's mill and were not allowed to keep pigeons. Although the lord shared various rights with his tenants he was strictly speaking not a 'commoner', because he owned the land and his rights were not 'rights of common', but rights of ownership.

The tenant farmers were divided into two categories. Firstly there were the 'freehold tenants' who had been granted their strips of land, holding in fee simple from the lord of the manor. This was as near to private possession as was possible under the manorial system and these tenants were virtually free from customary dues and services to the lord. The only right exercised by the lord was a 'right of escheat' which meant that the land reverted to the lord if the

tenant died without heirs or (after 1540) intestate. The freehold tenants shared in the common pasturing on the half-year lands and whatever rights were exercisable over the manorial waste. Since these rights were held over lands which they did not themselves own in fee simple these were, by common law, true 'rights of common' and were classed as rights of common 'appendant' to their possession of a freehold. The rights of common of pasture over the half-year lands were often called 'rights of average' and those over the manorial waste were called 'rights of stray'. There seems little doubt that the freehold tenants would be of the freeman class of society.

The second class of tenant was the 'customary tenant', holding land in what might be termed a 'leasehold' tenure, title to the soil in fee simple remaining in the lord of the manor. Instead of paying a monetary rent, the custom of a manor might require each customary tenant to give his or his labourers services on the lord's desmone farm for so many days each year, or give a proportion of his farm produce to the lord. Apart from such feudal services and dues, there was usually a military obligation imposed upon such tenants. It was sometimes possible for customary tenants to pay a fixed sum instead of performing services, because the lords, especially when they were going on a crusade or had reliefs to pay, were glad to get the ready money. When such an arrangement was made it was noted on the roll of the manor and a copy was given to the tenant, who was then called a 'copyholder' and his land a 'copyhold'. The customary tenants, none of whom were tenants in fee simple, could not hold rights of common appendant, i.e. annexed to freehold ownership of the soil, and although they shared the rights of average over the half-year lands and the rights of stray and other rights over the manorial waste, these were called rights of common 'appurtenant', i.e. rights created by grant of the owner of the soil and appertaining or attached to a particular holding whereby the holder was entitled to common rights on land.

The villagers of the manor who did not hold land, except perhaps a small amount attached to their cottages or messuages, had no rights over the half-year lands but had appurtenant rights over the manorial waste, in common with the lord of the manor, the freehold and customary tenants.

A manor was administered by a system of manorial courts. Formerly there were three such courts, the court baron for the freeholders of the manor, the customary court for the copyhold and customary tenants and the court leet exercising a criminal jurisdiction. The two former courts eventually fell into disuse and the court leet assumed the added responsibility for managing the common lands of the manor. The pasturing of the common lands was regulated by

awarding to each commoner his 'stint', by which is meant the number and kinds of animal each common right holder was entitled to put on the common land. The amount of each stint varied according to the rule of 'levancy and couchancy', literally 'rising and sleeping', a rule which dated back at least to the 13th century. This limited the number of commonable animals which the holder of a right of common might pasture to the number which could be maintained on the farm during the winter. The tenants who could produce the most winter fodder for their animals would therefore have the largest stints, which meant that the size of the stint was roughly proportional to the amount of land farmed or the amount of hay grown. To ensure that the customs of the manor regarding pasturing were conducted in a proper manner, field reeves or pasture masters were elected from amongst the tenants and fines for illegal pasturing could be imposed by the court leet.

The above is a description of a manor in its simplest form, as a single entity, but many of the manors were ill-defined in their boundaries, especially those of the waste lands. Cattle from an adjacent manor would often stray onto the waste land of another manor. This came to be accepted as normal or inevitable and such intercommoning was said to be legal 'pur cause de vicinage'.

The Reign of Henry VIII, 1509-1547. This was a period in history when many of the English commons were either annexed or at least reduced in size, by royal grant. In this era some of the nobles set about acquiring vast estates. Henry had seized much church land during the dissolution of the monasteries and some of this land he granted to his court favourites. With perhaps more far reaching effect, Henry allowed the enclosure of many commons to add to the increasing estates of the nobles. The loss of common land was a serious blow to the peasant community who, of late, were having a hard time. Prices had risen sharply owing to the base coinage which Henry had issued and, at the same time, there was less demand for labour, for sheep farms were the fashion and these required far fewer labourers than did arable lands. Unemployment and poverty reached an unprecedented scale. With the enclosure of commons, although this added to the wealth of the landowners, it was hard for the villagers, who used to turn their cattle, pigs and geese to graze upon them. Everywhere there was indignation at the conduct of the new landowners, who were seeking to make fortunes out of the land, instead of keeping to the customs of their more benevolent predecessors. After Henry's death in 1547, the Duke of Somerset, the Lord Protector acting for the young and ailing Edward VI, attempted to repeal the enclosure of commons, but this failed against the strong opposition of the land owning nobles. In 1549, exasperated by their grievances, the peasantry of Norfolk rose under Ket, a tanner, and formed a camp on Mousehold Hill, close to

Norwich. There they had the obnoxious gentry of the neighbourhood brought before them and, after conviction, imprisoned them in the camp. They did no murder and all their proceedings were perfectly orderly. Somerset sympathised with their complaints and would have liked to redress their grievances. A pardon was offered but, through some misunderstanding, was refused. The Earl of Warwick, with foreign mercenaries, was sent against the insurgents. More than three thousand rebels fell in the fight and the insurgent counties were severally punished.

In 1661, during the reign of Charles II, Parliament abolished the practice of holding land on military tenure. Such feudal dues had long been a source of complaint, for it was held that the objects of feudalism had disappeared. This Act may be considered the death knell of true feudalism, although the manorial system survived for a further two hundred years.

The Inclosure Acts of the 18th and 19th centuries.

Inclosure or enclosure (old spelling) means the termination of common rights and the appropriation of land for other purposes. In this period the lands inclosed were usually the common or waste lands of manors, over which freemen and commoners of villages and townships had long exercised rights of common, usually a right to pasture cattle. The greater concentration of population in towns after the start of the industrial revolution made commons have a new and different value. Although agriculture and animal husbandry were still important, the expanding towns needed land for building houses, industrial developments and new roads. The existing common lands were often situated in areas which impeded such expansion and, consequently, this era produced a rash of Inclosure Acts to allow alternative use to be made of these lands. The York Strays, as we now know them, are the smaller remnants of the ancient and larger commons which surrounded York, all of which were subject to Inclosure Acts at various times between 1757 and 1824. Throughout England, inclosure was occurring so fast, under private and local Acts, that control became essential. In 1845 a General Inclosure Act was passed on the principle that, before further inclosures would be allowed, the consent of one third of the commoners was necessary, that the commons were to be regulated by schemes sanctioned by Parliament, and that where commons were situated within five miles of towns of a population of 10,000 or more, the expediency of the proposed inclosure had to be proved and allotments had to be made for recreation and field gardens.

The foregoing account of land tenure and division under the Anglo-Saxon and the Norman feudal systems has been given in general terms. The Strays of York will be discussed in more particular detail in later chapters.

THE FREEMEN OF YORK

It is impossible to discuss the Strays of York without firstly giving some account of the Freemen of York, for they have been partly or wholly responsible for the administration of the strays, from 'time immemorial'. The phrase, time immemorial or, 'time whereof the memory of man runneth not to the contrary', is generally a very loosely used expression but, in the strict legal sense, is quite clearly defined. In English law, a right is considered to be immemorial, or existed 'time out of mind', unless it can be proved that it must have commenced after the 3rd September 1189, the beginning of the reign of Richard I. There is little doubt that certain freemen held common rights over ancient lands outwith York prior to that date, but it is impossible to be more specific. The origin of the word 'freeman' or its more modern synonym 'burgess' is even more obscure.

By definition, a freeman is one, usually of full age, enjoying the full privileges and immunities of citizenship, as distinct from a 'freedman', who is one delivered from the restraints of bondage, but who usually is not placed in a position of full social or even political equality with him who was born free. Before the passing of the Municipal Corporation Act in 1835, freemen enjoyed a special status in boroughs, the details of which varied according to the charter under which the particular borough was constituted, but usually included the exclusive right of trading, or of exercising a craft, within the borough, and of voting at elections for and sitting upon the borough council, of which, as a body corporate, the freemen formed a part. The right to vote at a parliamentary election was usually confined to freemen or to the borough council. The right to become a freeman depended upon birth, purchase, gift or apprenticeship to a freeman.

The above is a comparatively modern definition of a freeman. To attempt to trace the origin of freemen is an exercise of considerable complexity. Authentic records of freemen's history are extremely sparse and it was usually only after a town or city had been granted a Royal Charter that a Freemen's Roll was kept and some continuity of their history recorded. While various references to freemen are made in English history, such references presuppose the existence of freemen without giving much information regarding origin. It is more than probable that the strict interpretation of the word 'freeman' has changed and evolved through the centuries, as the role and status of freemen has certainly altered during the varied eras of history. There are several phases in the story of freemen, which cannot be dated, but which merge imperceptibly into each other, usually concurrent with changes in the economic or the political climate of the country. Any attempt to trace the history of freemen, while relying on docu-

mented evidence as far as possible, must also be largely speculative, since so little has been recorded.

Slave, Freedman and Freeman.

From the earliest days, society of all nations has been made up of slaves and freemen. The freemen occupied the land whilst the slaves were not allowed to possess anything and were the property of their masters. In this distinction between slave and master must surely lie the origin of freemen and the prefix 'free' undoubtedly meant 'free from tied servitude to a master'. By definition, a freeman is one who is born free, while a freedman is one released from bondage, i.e. a slave granted his freedom from or by his master. Although a freedman may not have had the social or political status equal to a freeman, his descendants would then be born free and entitled to claim their privileges, and responsibilities, as freemen. It was obviously extremely important for a man to be free, and to be able to prove that he was free.

At one time York had its own slave market and it is suggested that the sight of fair haired Northumbrian boys, perhaps shipped from York and sold in Rome, prompted Pope Gregory the Great to send missionaries to England. In the year 597 he sent Augustine, a monk, with a number of clergy to commence the conversion of the English people to christianity. The last recorded sale by auction of a slave, a coloured boy, was at Lichfield in 1771. Slavery in England was finally abolished by statute in 1807, and throughout the colonies in 1833. It was a Yorkshireman, William Wilberforce, who led the campaign to end slavery and the Wilberforce School for the Blind at King's Manor, York was built as a memorial to this enlightened man. In the colonies, as a step between slavery and freedom, it was laid down that the slaves were to work for their masters as apprentices for seven, later reduced to four years. This is significantly similar to the practice of a non-freeman serving an apprenticeship to a freeman to obtain the right to become a freeman.

Freemen in Anglo-Saxon Times

It is in Anglo-Saxon times that we see the first significant change in the meaning of the word 'freeman'. Freemen, of the land owning churl class, began to assume responsibilities in the local administration of villages and townships. They formed the town-moot, the forerunner of a town council, and from their number was appointed the town-reeve who was, in some ways, similar to a mayor in present times, the main difference being that the town-reeve probably represented those above him, i.e. a lord, a baron or the king, whereas a mayor represents those

below him, i.e. the townfolk. Both concerned themselves with the affairs of the township. Collectively these freemen were responsible, together with the lord, for the defence of their village or township and for the administration of local law and order, subject to the officers of the hundred-moot. The freemen had certain privileges, one of the most important being the right to pasture cattle and horses upon the 'folkland' or commons. Thus the first step in the evolution of freemen, away from the slave and master connotation, was the creation of what may be called the 'pasturing' freemen, also advancing in political significance.

Prior to the 9th century, most of the freemen associated with York were of this class, engaged in farming and with rights of pasture over whatever commons were adjacent to the city. It is probable, but unrecorded, that such commons would be the forerunners of the Knavesmire and Hob Moor. Events during this century were to add the next chapter to the history of York freemen.

In the year 867 the Danes invaded and captured York, forming a settlement. Where 'thorpe' is included in a place name, this is a clear indication of an early Danish settlement, and there are many examples of this around York. The Danes were great traders and, under their direction, York became an important port and commercial centre. The river Ouse communicated with the North Sea and was navigable for the size of ships used at that time. Gradually trade built up and goods were shipped to and from Denmark, Norway, Iceland, Scotland and Ireland.

Freemen's Guilds formed in York.

Quite naturally, some of the York freemen turned from the traditional agriculture to become engaged in commerce. Thus was developed the next class of freemen in York, the trading and craft freemen. These freemen formed an association called the Merchants' Guild and assumed the exclusive rights to trade within and from the city. Their Guild-house or 'hans-hus', in which they held their meetings, is mentioned during the reign of William the Conqueror. The Guild prospered, the head of it being known as the Alderman of the Merchant Guild of York. The Merchants' Guild gave place to various craft guilds. Amongst the earliest was that of the Weavers of York, who, in the reign of Edward I paid ten pounds yearly to the king's exchequer for the privilege. In later times, when yearly dues were not required, each craft formed a guild of its own, with a Master and Searcher. From the Mercers' Guild sprang the Merchant Adventurers. Of the wealthier guilds having their own guild hall, two survive, namely the Merchant Adventurers' Hall in Piccadilly and the Merchant Taylors' Hall in Aldwark, York. Trading charters were granted by Henry I, Henry II,

and Richard I, by which York freemen were exempt from the payment of certain tolls and fees, not only locally, but throughout the country and York freemen who traded with other parts of England, or even abroad through the port of Hull, derived much benefit from these exemptions.

The word 'freeman' had therefore become even more meaningful. It was not enough to be a freeman in the general and original meaning of the word for, in towns, cities and boroughs such as York, the privilege of trading or exercising a craft was held exclusively by those freemen who were also 'freemen of the city'. Freemen from other parts, coming to live in York, were not automatically admitted as freemen of the city, nor could they claim the same rights and privileges. Although historical references are not clear on the following point, it would appear that, while the pasturing freemen and the merchant and craft freemen classes were both freemen of the city, their rights and privileges were kept distinctly apart, certainly until the middle of the 19th century.

York is granted a Royal Charter.

Although, as already stated, the freemen citizens of York had received trading charters by royal assent, it was not until the latter part of the reign of King John that the citizens obtained, from that monarch, the most important charter, in 1213. By this charter the city itself was granted to the citizens at an annual rent of £160 and York was constituted an independent municipality, empowered to manage its own affairs. Up to this date, York had been ruled by a reeve or praepositus appointed by the king, but henceforth the citizens were granted the right of electing their own Mayor. It is probable that the first Mayor of York was Hugh de Selby, holding office from 1213 to 1217.

Magna Charta Libertatum.

Within the Great Charter of Liberties, extorted from King John in 1215 by the confederated barons, was an important reference to freemen. The 39th article contains the celebrated clause which forbids arbitrary imprisonment and punishment without lawful trial:—

"Let no freeman (Nullus Liber Homo) be imprisoned or disseized or outlawed, or in any manner injured or proceeded against by us, otherwise than by legal judgment of his peers, or by the law of the land. We shall sell, delay or deny right of justice to none."

While this was an extremely important advancement in English justice, it is also true to say that, in this period, by far the greater number of people living in rural England were personally unfree, people generally described throughout the middle ages as villeins.

The Freemen's Roll.

While freemen undoubtedly existed in York long before the city was granted its Royal Charter in 1213, it is from this time that more is known about York freemen, their guilds, their administration of the strays or commons, and their part in local and national government. At first, every inhabitant of York, not in servitude, was deemed to be a citizen and entitled to participate in the various privileges and immunities awarded by this or previous charters, but, as these advantages became known, they were sought by those residing in nearby towns and villages and by those from more distant places. To control an unwanted influx to the city and to safeguard the rights of the existing York freemen, it became necessary for the civic authorities to register the names of all who were admitted from time to time as freemen of the city, and to regulate such admissions. The earliest register of freemen begins in 1272, the first year of the reign of Edward I. To this day, as each new freeman is sworn in, his name is entered in the Freemen's Roll, which is kept in York's Guildhall.

How the freedom of the city was obtained.

The freedom of the City of York could be obtained in three ways:— Firstly, by servitude; that is, by apprenticeship to a freeman for seven years. Secondly, by patrimony; that is, all the sons of a freeman could claim the freedom as a birthright and could be enrolled on attaining the age of 21 years. Thirdly, by redemption; that is, by the order of the Mayor and court of Aldermen, and obtained by purchase or gift. The purchasing of freedom was discontinued by statute in 1835. Application to be entered as a freeman had to be made to the Upper House, which comprised the Mayor, Aldermen, Sheriffs and those who had been Sheriffs. Their power to admit a petitioner was discretionary and they fixed the sum payable on admission to the Freemen's Roll, a sum which has varied through the years and according to the status and circumstance of the applicant. The lowest fee, under two pounds, was usually charged to those seeking freedom by patrimony and the monies received at each enrolment of new freemen were divided between the Town Clerk, the sword bearer, the four officers of the mace and the porter. There was also a stamp duty charge. Similar fees were payable upon admission by servitude, with the addition of one pound paid under a law passed in the reign of Henry VII, and which went into Corporation funds. Double fees were paid by persons admitted as gentlemen, clergymen, attorneys, apothecaries, surgeons, merchants or grocers. The highest fees were probably paid by persons seeking to be Parliamentary candidates for the city, for such persons had to be free in their constituency in order to be legally returned. In such cases the fee

could range from £150 to £200. At the present time the freedom of the City of York is mainly obtained by right of patrimony and, less frequently, by servitude. Under the Honorary Freedom of Borough Act, 1885, the council of a borough may admit to the freedom of the borough persons of distinction, or persons who have rendered eminent service to the borough, but these honorary freemen obtain no rights of voting or of sharing in the benefit of common lands or other property.

The Freeman's Oath.

No person could be admitted to the freedom of the city without first taking a prescribed oath before the Mayor (later Lord Mayor). The format of this oath has changed slightly through the years and the following is an example of the oath taken by freemen in the mid 19th century. It would appear that the first paragraph of the oath was sworn by the applicant and addressed to the Mayor, while the second paragraph was addressed by the Mayor to the applicant.

City of York

The oath of every Freeman of this City.

This hear you, my Lord Mayor, and good men:

That I from henceforth shall be true and trusty to our Sovereign Lady Queen Victoria and to this City of York; and the same City shall save and maintain to our said Sovereign Lady the Queen and her Successors; and all the Franchises and Freedoms of the same City maintain and uphold with the best of my Power and Cunning, and with my Body and Goods so often as it shall need my help — SO HELP ME GOD.

You shall be obedient to the Lord Mayor and Sheriff of this City, that are, or shall be for the time being, and justified after the Laws, Customs, and Orders of the same City; the Goods of any Stranger, or Men unfranchised, you shall not avow for your own, by which the Lord Mayor or Sheriff may lose their Tolls or Customs, or any other Duties that belong to them: the Counsels and Privities of the same City you shall well and truly keep; and all these points and articles before rehearsed shall keep anenst you; and for nothing let, but you shall do so — SO HELP YOU GOD.

The Privileges and Duties of Freemen.

Originally the pasturing freemen of York had the right to set their cattle upon any of the commons and half-year lands which formed the ancient strays around the city, but the division of the city by the rivers Ouse and Foss made it more convenient for the freemen to

confine their pasturing to the more accessible commons. It therefore became the custom, and later was made mandatory, that the freemen residing in the wards of Bootham, Micklegate, Monk and Walmgate should only exercise rights of pasture over the common lands adjacent to these wards. The extent and nature of these lands, and the manner in which they were used and managed, will be discussed more fully later, as will be the creation of the modern strays.

The position of freemen belonging to the merchant and craft guilds was much more complicated and subject to rules and regulations made and enforced by these guilds. By ancient charters granted by Henry I, Henry II and Richard I, York freemen were exempt from the payment of certain tolls and dues, not only locally, but throughout the country, while those freemen who traded abroad had an acquittance of toll, lastage, wreckage, pontage, passage and trespass, and all customs throughout Normandy, Aquitaine, Angiers and Poitiers. In other words, within the whole of the Angevin Empire, they were free from all the local charges which burdened traders in these times. Since such tolls are now discontinued, this privilege is no longer of value to present freemen.

Within the city it was the exclusive privilege of the freemen of York to carry on retail and craft trades. A non-freeman attempting to trade was liable to prosecution. According to custom, no person, not being free of the city, except the widow or partner in trade of a freeman, was entitled to sell, or put to sale, any wares or merchandise, or keep a shop, or open room for the sale of the same, within the city, with the exception of two places, namely the Mint Yard and a place called the Davy Hall. It was to obtain this privilege of trading that most freedoms were purchased. Non citizens from outlying villages were allowed to sell their goods, mostly farm produce, but were restricted to vending in the market place and they had to pay for this privilege.

Before the passing of the Reform Bill in 1832, only freemen could vote for the election of the city's representatives in Parliament. Until the early 20th century York elected two members and candidates had to be free of the city to be returned. As the freedom of the city could be obtained by purchase, until this was stopped in 1835, it was common for a wealthy candidate to buy freedoms for a considerable number of non-freemen, on the usual condition that they voted for him.

Until the passing of the Municipal Corporation Act in 1835, only freemen could vote for, or be elected to, York Council. They enjoyed, therefore, the exclusive privilege of being involved in the administration of the city. This Act curtailed the power of the freemen in several respects. Although the right of freemen to vote at Parliamentary and Municipal elections was retained, this was no longer exclusive and non-freemen could now vote and present themselves for election.

The old self-elected Corporation ceased with this Act and subsequently the reformed Corporation was a representative one containing non-freemen amongst its members. From 1213 to the passing of this Municipal Act in 1835, the title or style of York Corporation had been 'The Mayor and Commonalty of the City of York', but thereafter was changed to 'The Lord Mayor, Aldermen and Citizens of the City of York', and still remains so today. As well as having to share their franchise rights, the freemen, by this Act, were deprived of their monopoly in trading and, from that year, non-freemen, for the first time, were able to take part in both the political and commercial life of the city. It was also enacted that the purchasing of freedoms be abolished. The privileges remaining to the merchant and craft freemen were few, but they were allowed to retain existing interests in any property held by the freemen as a corporate body. The common of pasture rights held by the pasturing freemen were preserved and in no way diminished.

As well as the privileges which the freemen enjoyed, at least up to 1835, it should be remembered that the freemen also accepted heavy duties. Theirs was the responsibility of defending the city, repairing the fortified walls, maintaining bridges, cleansing the rivers and streets, and maintaining law and order. Failure in such duties or an unwillingness to accept civic responsibilities often resulted in heavy fines. By a system of Wardens and Pasture Masters the common stray lands were administered. Elected freemen formed and conducted York Corporation and, although this monopoly in local government was eventually to be considered unfair and unrepresentative, it is well to remember that, but for the initiative of the freemen, our present system of local government might well be much less sophisticated than it is today.

Freemen also played a large part in the creation of the House of Commons. In 1333 the knights of the shires joined with the citizens and burgesses (freemen) and Parliament was divided into two houses, as it is today. The lay and spiritual peers formed the House of Lords and the knights of the shires together with the citizens and burgesses constituted the House of Commons.

As the rights and privileges of the York freemen declined following the Municipal Corporation Act of 1835, their place in society also diminished. In an attempt to re-establish flagging interest amongst its members, York freemen formed a Gild in 1953. This Gild has 26 members of its court and holds quarterly meetings to discuss matters of concern to freemen. The annual general meeting of the Gild is held in York Guildhall and successive Lord Mayors, whether freemen or not, officiate as Presidents. In 1966 the Gild acquired a home for its records and for its meetings in the ancient St. William's College.

THE ANCIENT STRAYS OF YORK.

Although situated in the midst of a great agricultural area, York, from early times, had established itself as an important commercial centre. Its place in agriculture was more as a distributing point, rather than a producing area. There were few residents actively concerned with arable farming, except in the suburbs of the city, where most of the so called 'pasturing' freemen resided. Originally York was poorly endowed with common pasture lands, but gradually, over the centuries, the city established an intricate system of rights of common over many of the lands surrounding the city. Before describing the position and extent of each of the four main tracts of land which came to be used as pastures, it is essential to differentiate between the types of land which made up these ancient strays. They fall into three categories.

Firstly, there were common lands owned by the city and upon which the freemen had enjoyed common of pasture from time immemorial. These consisted entirely of the ancient commons of the Knavesmire and Hob (or York) Moor, where title to soil and freehold was vested in the Mayor and Commonalty of York. Together, these lands comprised about 320 acres, but were badly drained, and only readily accessible to freemen residing to the West of the river Ouse. This was an inadequate area for the city's pasturing requirements, especially as York grew in size and the number of freemen increased.

A further source of pasture had to be found to supplement the land owned by the city. Outwith the city walls, but in the suburbs and precincts of York, were many parcels or closes of enclosed land, owned privately, but coming within the jurisdiction of the York Corporation. Much of this land belonged to the church, the Archbishop of York and the Abbot of St. Mary's being substantial land owners, while most of the remainder was owned by, or leased to, inhabitants of houses built in the growing suburbs outside Bootham, Micklegate, Walmgate and Monk Bars. By arrangement with the Corporation these lands came to be held on a restricted tenure. The owners or lessees could use these lands for arable farming usually during the spring and summer months, but, from approximately October to the end of March, the lands had to be thrown open to allow freemen to pasture their cattle and horses. Because of this arrangement these closes of land became known as 'half-year' lands, which is self explanatory. The pasturing rights over such lands were called rights of 'average'. This word may derive from the Latin 'averi' meaning cattle, but it has also been suggested that average was the after-mow, the stubble or grass after the harvest had been carried away. These half-year rights were not always exclusive to the freemen of the city, being, in some cases, shared by the commoners of neighbouring townships, for example, the manors and

townships of Heworth and Clifton, which, in these days, were outwith the city boundary. There are many recorded disputes concerning these half-year lands. The owners, being deprived of the use and earning capacity of their land for half the year, resented this unwelcome restriction and made many attempts to rid themselves of the freemen's and commoners' rights of average. There was also bitterness on the part of the freemen when, in order to raise money, the Corporation used the ploy of suspending rights of average on payment of a fee by the owner of the land, leaving him the unrestricted use of the land for the full year, to the detriment of the freemen.

Although the half-year lands added to the area of freemen's pasture, it was still inadequate, especially in spring and summer. After negotiation between York Corporation and nearby townships and manors, further pasturing rights were acquired over various moors, commons and waste lands in areas accessible to the ward freemen. Again, this pasturing was not exclusive to York freemen who had to intercommon with the inhabitants of various villages and townships, as well as with the lords of manors whose lands were involved in such arrangements. These lands covered vast areas, adequate for the freemen's pasturing requirements and with the added advantage that pasturing was normally allowed during the whole year. The pasturing rights over these lands were called rights of 'stray' and, as the name implies, the cattle could roam free. It is from this word that the pasturing lands around York came to be known as 'strays', although, strictly speaking, the Knavesmire, Hob Moor and the half-year lands should not have been so called.

The disposition of the ancient stray lands was largely governed by the lay-out of the city and its environs, there being two inter-dependent factors involved. Firstly, the walled city of York had four main bars or gates, called Bootham, Micklegate, Walmgate and Monk Bars, and the city was originally divided into four wards of the same names. The first suburbs of the city were established outwith these bars and it was in these suburbs that most of the pasturing freemen resided. Clearly it was desirable that pasture land for the freemen's cattle and horses should be conveniently accessible from these four points. The second consideration was the manner in which the rivers Ouse and Foss divided York and the surrounding districts. The rivers were useful as a source of watering places but, having few bridges in the early days, they also formed natural boundaries which conveniently divided the environs of the city into four distinct areas, accessible from the four bars and suburbs of York. Although, originally, York freemen had the right to put their cattle upon any of the strays, it was decided, probably in the 16th century, to restrict the freemen to pasturing on the stray adjacent to their ward.

The Ancient Bootham Ward Stray.

The area restricted to the freemen of Bootham ward lay to the north of the city, in the wedge of land formed between the rivers Ouse and Foss. There was no land in this area owned by the city and the stray was comprised of half-year or average lands, and various ancient commons over which full year rights had been negotiated.

Half-year rights were enjoyed over several privately owned closes of land in the suburbs of Bootham and, more extensively, over land lying within the manor of Clifton. In the 15th century, the lord of the manor of Clifton was the Abbot of St. Mary's Abbey and it was by agreement between York Corporation and the Abbot, in 1484, that the Bootham freemen gained rights of average over extensive lands lying between the Clifton highway and the river Foss. Access ways were provided to the river Ouse for watering and into the forest of Galtres.

Full year rights of stray were acquired over the ancient commons and moors of Clifton, Huntington, Rawcliffe and Wigginton, these rights being shared with the commoners of villages and townships adjacent to these lands.

In 1632, by an Inclosure Act, certain lands in Wigginton were inclosed and, in compensation for their loss of rights of stray, an allotment was made of a 60 acre pasture, called the Intack, to be enjoyed exclusively by the pasturing freemen of Bootham ward.

The Ancient Micklegate Ward Stray.

This stray lay to the south-west of the city and entirely to the west of the river Ouse.

In this ward the city owned title to soil and freehold over the two ancient commons of the Knavesmire and Hob (or York) Moor, containing respectively some 250 and 70 acres. This was poor and badly drained land but, from time immemorial, York freemen had enjoyed the right to put their cattle upon these lands. These were whole year pastures.

Rights of average had been negotiated for the Micklegate freemen over certain closes of land adjacent to the Knavesmire and Hob Moor. Most of these lands were privately owned but some were church lands, held by St. Clement's Priory. The half-year rights of average were shared with the commoners of the townships of Dringhouses, Middlethorpe and Clementhorpe.

Having the benefit of full year pasture over the 320 acres of the Knavesmire and Hob Moor it was not considered necessary to negotiate further rights of stray over other outlying moors or commons.

The Ancient Walmgate Ward Stray.

This stray lay to the south east of the city and to the east of the river Ouse.

The freemen of Walmgate ward enjoyed half-year rights of average over a large acreage of grounds and closes in the south-east environs of the city, some of the lands being privately owned and others being the property of the York religious house, St. Leonard's Hospital. Towards Fulford, where the Abbot of St. Mary's was again an extensive landowner, average rights were negotiated over certain open fields and meadows. For the watering of cattle, access was provided to the river Ouse.

The Walmgate freemen intercommoned with the commoners of Gate Fulford over Fulford Moor and even further south over Tilmire Moor, which was shared with several other townships.

The city owned no land in this stray area.

The Ancient Monk Ward Stray.

This stray lay to the north-east of the city and was the only stray divided by a river. Although most of the stray land lay to the east of the river Foss, there were some half-year lands situated on the city side of the river. Communication to the outlying parts of this stray was by Monk bridge.

On the city side of the Foss the half-year lands comprised several closes in the area now called the Groves, adjoining Huntington Road. On the east of the river, average had been negotiated over Grange Field, the property of the Archbishop of York and over three other parcels of land within the city bounds, called Hall Field, North Field and Mill Field.

Full year pasture was enjoyed by intercommoning on the moors of Heworth and Stockton, which the freemen of Monk ward shared with the commoners of the township of Heworth and the villagers of Stockton on Forest.

There was no land belonging to the city included in the ancient Monk ward stray.

These, then were the ancient York Strays, which had evolved gradually over the centuries, built up to a complicated system of pasture lands, by negotiation with various landowners and commoners of adjacent villages and townships. Between 1757 and 1824 all four of these ancient strays were subject to Inclosure Acts and, by the Awards following these Acts, the smaller modern strays were created, as will be shown later.

THE INCLOSURE ACTS OF THE 18th AND 19th CENTURIES.

All four of the ancient York Strays were, at varying times, subject to Inclosure Acts and by these Acts the smaller modern strays were created.

The purpose of an Inclosure Act was to extinguish existing rights of common over land which was considered to be capable of profitable development if freed from the restrictions of such common rights. In other words, the manorial system of open field farming, dating from the eleventh century, with its shared rights of common over half-year fields, pastures and waste land, was now thought to be an irksome impediment to progressive farming. The longstanding idea of a farming commune was giving way to the concept of consolidating the customary strips of land into fenced or hedged fields and creating self-contained farms for the exclusive use of individual freehold owners or tenants, at all times of the year. To present a Bill of Inclosure to Parliament, agreement had to be reached among all the holders of common rights and by the ensuing Inclosure Act commissioners were appointed to apportion the land into separate parcels free of common rights. By this process of inclosure under Inclosure Acts most of the open fields and meadows disappeared and the now familiar picture of a mass of inclosed fields, each cultivated or grazed by an individual owner or tenant, appeared.

It was the duty of the commissioners appointed to implement an Inclosure Act to survey the land to be inclosed, to ascertain who held rights of common, to assess the proportionate value of each person's rights and, by the publication of an Inclosure Award, to divide the land according to an assessment of individual interests. Where appropriate, the Commissioners did allot, to the person or persons concerned, such land as would fairly compensate for losing rights of common over the larger area of the now inclosed land. It was usual to set out public roads, private access roads, bridlepaths and footpaths where necessity required and the new owners of the awarded allotments were commanded to fence or hedge the boundaries of their awarded parcel of land.

To inclose and divide the ancient Strays of York was no simple task for these were very large tracts of land, title to which was held variously by the Crown, the Church, Lords of Manors, the Mayor and Commonalty of the City of York (i.e. York Corporation) and freehold owners of diverse ancient inclosures. In the division of the strays under Inclosure Acts all these land holders had rights by virtue of being owners in fee simple. In addition there were the rights of common appurtenant, exercised by customary and copyhold tenants,

villagers of manors, and certain freemen of the four York Wards of Bootham, Micklegate, Monk and Walmgate who inhabited houses and messuages in the suburbs or precincts of the city. A 'messuage' was a house together with outbuildings and any attached land. Entitlement to an allotment under an Inclosure Act varied tremendously, the size of an allotment being roughly in proportion to the amount of land currently held by each individual or to the number of cattle which comprised his stint. Where the interest of an individual was sufficiently large a personal allotment of a parcel of land was made and this was required to be fenced or hedged. In the case of cottagers and villagers whose interests were so small that they could not be given land in severalty with an obligation to fence, they were treated collectively and the Commissioners set aside a common field or fields of an area commensurate with their aggregate interests. This land being shared amongst the villagers, no single commoner could hold title to the freehold and soil. It was usual to allot such common land to be held in fee simple by the town or village moot, or in more modern usage, the town or parish council, nevertheless with the intent that the commoners specified in the Inclosure Award should have the exclusive enjoyment of this common land in perpetuity and in a manner usually defined in the Award. Most of the village commons around York and indeed throughout England were created in this manner although their original intended use by specified village commoners may have lapsed or varied over the years.

Although most of the craft and trade freemen of York had absolutely no interest or entitlement over the ancient York Strays, there was a considerable number of York freemen who were commoners. These pasturing freemen intercommoned over the ancient strays and were therefore entitled to share in the division of land subject to an Inclosure Act, provided they held rights of common over the land to be inclosed. In the manner described above, those York freemen whose entitlement did not merit individual awards were treated collectively and proportionate commons or, as they are now called, strays were set aside for their use. While individual interests may have been small, in aggregate the amount of land awarded for the enjoyment of such freemen could be considerable. For example, when Heworth Moor was to be divided and inclosed by an Act of Parliament in 1817, the appointed commissioners calculated that the collective interest of the pasturing freemen of Monk Ward amounted to an "equal moiety" or one half of the land to be re-allocated by inclosure, over 120 acres.

All four of the ancient York Strays were, at varying times, subject to Inclosure Acts and the lands awarded for the use of the freemen now constitute the smaller modern strays. In all cases title to the awarded lands was vested in the Mayor and Commonalty of the City of

York (i.e. York Corporation) to be held in trust for all time for the exclusive enjoyment of such freemen and their successors as were defined in the Awards.

Although the Inclosure Acts extinguished rights of common over the whole of the ancient strays, the Inclosure Awards re-established the freemen's rights of common over the newly created strays.

THE MODERN STRAYS OF YORK

Inclosure Awards are generally long rambling documents and, in describing the creation of the modern strays, a precis of each Award will be given, but only of such parts of the Awards which appertain to the allotment of the four York Strays. While, perhaps, it would be more understandable to translate the wording of the Awards into more modern and less legalistic language, it is important that the intent of the Awards should not become ambiguous by so doing. Where it is considered necessary to clarify the meaning of any of the Awards, a summary, in simpler terms, will be given.

Bootham Ward Stray.

This stray consists of about 180 acres of land situate in the several townships of Clifton and Huntington, within a short distance from the City of York (now within the city boundary). Since 1632, following an Inclosure Act, Bootham ward freemen had enjoyed the exclusive right to pasture upon a 60 acre parcel of land called the Intack, as well as sharing rights, prior to this date, over the whole of the medieval Bootham Stray. The Intack was to form the nucleus around which the modern stray was constituted. The further 120 acres was an allotment made from the larger ancient Bootham Stray by virtue of an Inclosure Act passed in 1763, entitled:—"An Act for extinguishing the right of average in and upon the ancient Inclosures in the Township of Clifton in the County of York, and in Bootham in the suburbs of the City of York, and for dividing and inclosing the Common and Moor of Clifton aforesaid."

Inclosure Award. "By an award bearing the date the 19th day of March, 1764, the Commissioners appointed by virtue of the said Act did allot and award unto the Mayor and Commonalty of the said City of York in trust for the Freemen of the said City from time to time inhabiting in ancient messuages within the ward of Bootham aforesaid—91 acres and 18 perches of land abutting as therein mentioned and the said Commissioners did also allot and award to the said Mayor and Commonalty in trust for such freemen inhabitants of Bootham

Ward aforesaid as and for a road to the said allotment and for the passage of their cattle to water at the public watering place near Earsley (now Yearsley) Bridge in the said County of York—21 acres, 2 roods and 32 perches of land abutting as therein mentioned which said several allotments were thereby so awarded to the said Mayor and Commonalty in trust for such freemen of Bootham Ward aforesaid in lieu of and as a full and adequate compensation and equivalent in value as well for the right of average of such freemen in and upon the inclosed lands and grounds within the Township of Clifton aforesaid and the inclosed lands and grounds within Bootham in the suburbs of the City of York subject to such right of average as aforesaid as for the right of common or stray upon the said Common and Moor of Clifton aforesaid and the Commissioners did also allot and award to the Mayor and Commonalty in trust for such freemen of Bootham Ward—8 acres and 32 perches of land abutting as therein mentioned to the intent and purpose that the Pasture Masters of Bootham Ward aforesaid for the time being might by and out of rents and profits thereof maintain and keep in repair so much of the Public Highway (this presumably means Wigginton Road) therein mentioned as should be carried through the allotments thereinbefore awarded to the said Mayor and Commonalty in trust for such freemen aforesaid.”

In simpler terms, the Award gave to the Mayor and Commonalty, i.e. York Corporation, in trust for certain freemen of Bootham Ward, some 91 acres of pasture and a further 21 acres to serve as an access road to this pasture and to a public watering place. These grants of land were in lieu of and in compensation for their now extinguished common rights of stray and average over all the former ancient stray lands. The Award also allotted a further 8 acres to provide an income from which to maintain the public highway running through the new stray. The existing 60 acre pasture called the Intack was incorporated with the above land to give the modern Bootham Stray an area of some 180 acres.

Walmgate Ward Stray.

This consists of an ancient common called Low Moor containing about 80 acres situate in the township of Gate Fulford within a short distance of the City of York and also about 25 acres of land which were heretofore old inclosures in the same township and contiguous to the said Low Moor. These parcels of land were awarded at different times under two distinct Inclosure Acts.

Low Moor was allotted and awarded by virtue of an Act of Parliament passed in the year 1757, entitled:—“An Act for dividing and inclosing certain fields meadows and commons in the Manor of Fulford

in the County of York.” This allotment was part of some 800 acres of ancient commons including East Moor and West Moor.

Inclosure Award. “The Commissioners did allot and award that part of the said commons or waste grounds called Low Moor as aforesaid to the Mayor and Commonalty of the said City of York in trust for and for the benefit of the said freemen of the said City who were and should be from time to time occupiers of ancient messuages within Walmgate Ward aforesaid to be enjoyed by such freemen in severalty for ever thereafter exclusive of all other persons and exempt from the payment of all tithes and ecclesiastical dues in lieu and full satisfaction of all their right and interest of in or to the said common fields commons and old inclosures in the township of Gate Fulford or any of them. Provided that the said Low Moor should be depastured only from the 12th day of May to the 10th day of October in each year and that each person having common right thereon should and might turn on and keep upon the same during the said time in each year one yelding (gelding) one mare and one foal under two years old or one cow and one calf under two years old being such person’s own property and no other cattle.”

Although this award of about 80 acres was again made in compensation for the Walmgate freemen losing their pasturing rights over the larger ancient stray lands, this Award is more restricted in its intent. The pasturing freemen were only allowed to use the land during part of each year and the number of horses or cattle which each freeman could pasture was specified.

The additional 25 acres were awarded by virtue of an Act of Parliament passed in 1824, entitled:—“An Act for extinguishing the rights of stray and average over certain lands called Half-Year lands situate without Walmgate Bar in the suburbs or precincts of the City of York.” These half-year lands contained together 140 acres or thereabouts and certain freemen of Walmgate Ward were entitled to right of common stray or average over these lands from the 10th day of October to the 6th day of April in every year. It was enacted that, in fair compensation for the loss of the freemen’s rights of common, the Mayor and Commonalty of the City of York, in trust for such freemen, should be awarded the equivalent of two thirteenth parts of these half-year lands, but since no part of the land would lie contiguous to Low Moor it was further enacted that the awarded lands should be sold and from the money arising from this sale more suitably situated land should be purchased.

Inclosure Award. “The Commissioners made their Award dated the 18th day of July 1828 whereby after reciting that they had in pursuance of the said Act caused certain allotments therein described

to be sold by public auction and that the monies arising from such sale amounted to the sum of £5,404 and that the said Mayor and Commonalty in pursuance of the said Act contracted and agreed with Richard Hobson Esquire for the purchase of certain closes or parcels of land thereafter described for the sum of £5,404 and that by certain Indentures of Lease and Release bearing date respectively the 22nd and 23rd days of March 1825 and made between the said Richard Hobson of the one part and said Mayor and Commonalty of the other part the said Richard Hobson did convey and assure unto the said Mayor and Commonalty and their successors the said lands and hereditaments so contracted to be purchased as aforesaid containing together 25 acres 1 rood and 38 perches to hold unto the said Mayor and Commonalty and their successors for ever nevertheless upon trust and to the intent that the same hereditaments and premises might be exclusively and at all times in the year enjoyed by such freemen as for the time being would respectively have been entitled to right of common stray or average in over and upon the said several closes or parcels of ground in the said Act called half-year lands in case the said Act had not been passed and for such and the like cattle and under such and the like regulations and restrictions (as far as circumstances would permit) as such freemen were entitled to enjoy the same."

The Inclosure Act recognised that the half-year lands could not be allotted to give the freemen a pasture adjacent to the previously awarded Low Moor and so the proportionate amount of land awarded for the use of the freemen was sold and more suitably situated land was purchased which would abut onto Low Moor. Unlike Low Moor this was to be a whole year pasture and it was not stipulated how many cattle or horses each freeman could pasture, only that the newly awarded land should be used and managed in a manner similar to that which applied to the half-year lands before they were inclosed.

Monk Ward Stray.

This consists of about 130 acres of land situate in the township of Heworth and is part of the larger tract of land called Heworth Moor. This allotment was made by virtue of an Act of Parliament passed in 1817 entitled "An Act for dividing and inclosing Heworth Moor in the Manor and Township of Heworth in the North Riding of the County of York and for extinguishing rights of stray and average over certain lands called Half-Year Lands situate in the suburbs or precincts of the City of York." It was found that this Act did not sufficiently define the boundaries and the ownership of the lands involved and in the following year, 1818, an Amending Act was passed to clarify these points before the Commissioners could proceed with their Award.

Inclosure Award. "The Commissioners by their Award bearing the date the 16th day of January 1822 did set out and allot unto the Mayor and Commonalty of the City of York to be exclusively enjoyed by such freemen of the said city residing in Monk Ward aforesaid as for the time being would have been entitled to right of common stray or average in over and upon the lands and grounds by the said Act intended to be divided allotted and inclosed in case the same Act had not been passed and for such and the like cattle and under such and the like regulations and restrictions as such freemen respectively did or were entitled to enjoy: the same three several pieces or parcels of land or ground as the same were then inclosed and fenced containing respectively: 68 acres and 3 roods: 18 acres and 18 perches: and 31 acres respectively bounded as therein mentioned which said three allotments the said Commissioners did declare to be one specific moiety or equal half part of the residue of the lands or grounds by the said Act intended to be divided allotted and inclosed. And the said Commissioners did also allot to the said Mayor and Commonalty a parcel of land containing 8 acres 1 rood and 20 perches which had been purchased with the surplus of certain monies arising from the exoneration of the said farm called Heworth Grange and the said closes or parcels of land therein mentioned from such rights of stray and average as aforesaid in the manner prescribed by the said Act which last mentioned allotment the said Commissioners did declare should be for ever enjoyed by such freemen as aforesaid in the same manner as the said first mentioned allotments."

Since the above allotments an addition was made to Monk Ward Stray of a close or parcel of land containing about 5 acres which was purchased from Mr. Peter Theakston for the sum of £498 and by Indentures of Lease and Release bearing the dates 27th and 28th September 1826 conveyed to six persons who were then Wardens and Pasture Masters of Monk Ward Stray. To hold unto and to the use of the said six persons their heirs and assigns for ever. Nevertheless upon trust and to the intent that the same hereditaments might be exclusively enjoyed by the freemen of the City of York residing in and occupying houses in Monk Ward aforesaid in the same mode and manner as the commonable lands and grounds then belonging to or in trust for the said freemen were or should be or might for the time being be used or enjoyed. The money invested in the purchase of the last mentioned close or parcel of land had arisen from the rents of a proportion of the land acquired under the 1817 Inclosure Act, the Pasture Masters having let to a tenant for a short term of years in order to bring the land into a better state of cultivation.

The lands allotted by this Award and forming the new Monk Stray did not all lie contiguous with each other but bordered each side of

Malton Road in fairly narrow strips. Unlike the Bootham Award, there was no stipulation that the Pasture Masters should maintain this public highway which divided the stray, but it was ordered that the owners, i.e. York Corporation, should maintain the boundary hedges and ditches which bordered Malton Road, or, as it was called in the Award, the York to Malton Turnpike Road, and also that part of the stray abutting on Stockton Road (now Stockton Lane). It would appear that in the case of the 5 acres purchased in 1826, the title to soil and freehold would be vested in the ward freemen or their nominees, whereas in the case of the other four allotments comprising Monk Stray, title was awarded to the Mayor and Commonalty.

Micklegate Ward Stray.

This consists of two ancient commons, one called the 'Knavesmire' containing about 250 acres and the other called 'Hob Moor', otherwise 'York Moor' containing about 70 acres, and also some 117 acres of land acquired in trust for the freemen in lieu of their rights of average over certain half-year lands. Part of the Knavesmire is in the townships of Middlethorpe and Dringhouses in the Ainsty, while the rest of Micklegate Ward Stray lies within the city boundary.

Upon the two ancient commons of the Knavesmire and Hob Moor the freemen of the City of York inhabiting within Micklegate Ward and within certain parts of Bootham, Monk and Walmgate Wards have, from time immemorial, exercised and enjoyed certain rights of pasture subject to such regulations as have been from time to time adopted by the Corporation or by the Wardens and Pasture Masters appointed to administer these commons. It has always been held that the soil and freehold was rested in the Mayor and Commonalty, in trust nevertheless for the use of the pasturing freemen by custom entitled to rights of common. These commons were also subject to certain limited rights of pasture by the occupiers of houses in the adjacent villages of Middlethorpe and Dringhouses which have likewise been exercised from time immemorial. The present Micklegate Stray was created by the additional allotment of land contiguous to the existing commons of Knavesmire and Hob Moor. An Act of Parliament was passed in the year 1822 entitled "An Act for dividing and inclosing the common waste and uninclosed lands within the Manor and Township of Dringhouses in the County of the City of York and for extinguishing the rights of stray and average over certain lands called Half-Year Lands situate within the Townships of Dringhouses Middlethorpe and Clementhorpe in the said County of the City and within such parts of the suburbs of the City of York as are comprised in the division of the same City called Micklegate Ward."

Inclosure Award. "The Commissioners made their Award dated the 28th day of December 1825 and did thereby set out and allot unto the Mayor and Commonalty of the said City of York and their Successors from the said several closes or parcels of ground in the said Act called half-year lands the several allotments therein particularly described containing in the whole 66 acres and 19 perches being the allotments from the said half-year lands as circumstances would permit to be set out so as to connect with the said ancient pastures called Knavesmire and Hob Moor or either of them. And the said Commissioners did thereby declare and appoint that the several allotments thereinbefore set out and allotted unto the said Mayor and Commonalty were so awarded to the intent that the same might be held by them the said Mayor and Commonalty and their Successors for ever to be exclusively at all times of the year enjoyed by such freemen and other persons as for the time being in case the said recited Act had not been passed would respectively have been entitled to right of common stray and average in over and upon the said several closes or parcels of ground by the same Act called half-year lands and therefore authorised and directed to be exonerated from such rights and for such and the like cattle and under such and the like regulations and restrictions (as far as circumstances would permit) as such freemen and other persons did or were entitled to enjoy the same."

Several other allotments not being so locally situated as to be set out connected to the ancient pastures called Knavesmire and Hob Moor were sold as directed by the Act and from the money arising from such sales "The Commissioners did further allot to the said Mayor and Commonalty and their Successors The said several closes or parcels of land or ground therein described containing together 17 acres 2 roods and 30 perches being the lands purchased in pursuance and for the purposes of the said Act by and with the sum of £2,318 the aggregate amount of the monies raised by the sales of the said several allotments thereinbefore mentioned to have been sold as aforesaid and which several closes purchased as last mentioned were all situate as to be connected with the said ancient pasture called Hob Moor And the said Commissioners did declare that they had allotted to the said Mayor and Commonalty and their Successors the said several closes or parcels of land or ground so purchased as aforesaid To the intent that the same should for ever exclusively be enjoyed by such freemen and other persons as aforesaid in the same manner as the allotment thereinbefore made to the said Mayor and Commonalty for the exclusive use of such freemen and other persons as were by the said Act directed to be enjoyed."

Micklegate appears to be the only York Stray where the ward freemen were not awarded exclusive rights over the stray. Even after

the Inclosure Act the rights of commoners of adjacent townships were retained and certain freemen of the other three strays could continue to pasture on Micklegate Stray if they wished. This had probably arisen from the time, many centuries ago, when the only common lands available to the city were the Knavesmire and Hob Moor and consequently these pastures had to be shared by all the freemen of York and, to a lesser extent, by the commoners of nearby townships.

In view of legal arguments which were to arise later in the history of York Strays it may be as well to emphasise one or two facts pertaining to the Inclosure Acts and their Awards.

With the exception of 5 acres of land purchased by the freemen of Monk Ward and incorporated into their stray, all other lands allotted to form the four modern strays were awarded to the Mayor and Commonalty of the City of York, i.e. York Corporation. The freemen, therefore, did not own the strays, although they were to dispute this point at later dates. What they were awarded was an exclusive right, in perpetuity, to pasture their cattle and horses upon the strays. Except for part of Walmgate Stray, the manner in which this right could be exercised was vague and was usually described as 'for such and the like cattle and under such and the like regulations and restrictions' which applied prior to the passing of the Inclosure Acts. In view of future actions by the freemen, it should be made quite clear that nowhere within the Acts or Awards is there any entitlement for the freemen to derive any additional benefit, financial or otherwise, from the strays, other than to pasture their own cattle upon them. There is one last point which later was to assume importance. Not all of the ward freemen were awarded rights over the strays, but only certain of them, those who had been entitled to enjoy such rights prior to the Inclosure Acts. This seems to substantiate the opinion that, prior to 1835, the freemen of York could be divided into two classes, the pasturing freemen and the craft and trade freemen, the latter having no rights over the strays.

THE MANAGEMENT OF YORK STRAYS, up to 1835.

It should be remembered that, up to 1835, only freemen were franchised and entitled to vote or take part in municipal affairs. Therefore, since non-freemen could not intrude into any form of local government, the York Strays were administered, at all levels, by the freemen themselves. The Mayor and Aldermen were, ex-officio, Wardens of the strays, it being the custom for three of the Aldermen to

be appointed Wardens of each Ward Stray, the Mayor (later Lord Mayor) during his Mayoralty being a Warden of each stray. Since all the Wardens were therefore also members of the Corporation, that body held the supreme authority in the management of the strays. Next in line of authority came the Pasture Masters, who were appointed by the Mayor and Aldermen at a Ward-Mote Court held at or about Easter in every year, four Pasture Masters being elected for each stray and sworn in at the same Court. On appointment each Pasture Master had to swear the following oath:—

Pasture Master's Oath.

You shall swear that during the time you shall continue to be Pasture Master of . . . Ward you shall see that the public commons of the said Ward be not encroached upon, and that no unlawful goods be suffered to call upon the same: and that from time to time and at all times during so long as you shall continue Pasture Master you shall prevent all persons that put uncommonable goods upon your said commons: and also give a just account of all such sums and sums of money as shall come to your hands, for or by reason of the same office, when you shall be thereunto required: and to do all things belonging to the said office, as far as your knowledge and skill will extend. SO HELP YOU GOD.

It was the duty of the Pasture Masters, under the advice and superintendence of the Wardens, to use proper means for preventing the common pastures from being injured or encroached upon and generally to protect the freemen in the exercise and enjoyment of their rights of stray. In each ward a herdsman was appointed by the Pasture Masters and it was his business, under their orders, to clean the ditches, repair the fences, keep the keys of the gates, impound cattle trespassing and constantly to look after the pastures and the cattle of the freemen. The herdsman's wages and other expenses attendant upon the management of the strays were defrayed by means of an annual sum paid by the freemen for each head of cattle depastured, the amount of which was, from time to time, fixed by the Pasture Masters. The Pasture Masters kept an account of their receipts and disbursements and, every year, rendered a statement thereof to the Wardens, by whom the same was audited. The accounts were not in any manner made public or communicated to the freemen at large.

Until 1819 it had been the custom of the Mayor to ride the bounds of those grounds over which the freemen enjoyed rights of stray and average, but this practice was discontinued after this date.

MUNICIPAL CORPORATION ACT, 1835.

Prior to the passing of this Act, only freemen were franchised in local government and it therefore followed that all officers administering the strays were themselves freemen. However, by this Act, the freemen lost their hitherto exclusive rights to trade and also to vote at municipal elections and sit upon the Council. Non-freemen were now franchised and it seemed certain that, as more non-freemen were elected to the Council, so the power of the freemen would diminish. This could lead to the strays being managed, at Corporation and Warden level, by non-freemen, not a very acceptable situation as far as the freemen were concerned. The Act did preserve the freemen's interest in any corporate property and the rights of those freemen entitled to enjoy the strays were retained intact. By this Act the title of incorporation for York Corporation was changed from the Mayor and Commonalty of the City of York and became, as it remains today, the Mayor, Aldermen and Citizens of the City of York. The new Municipal Council elected under the provisions of the Act was, of course, the first Council to which non-freemen could be elected and this was to provoke a dispute over the management of the strays.

The new Council, shortly after election, was proceeding to appoint Pasture Masters for the ensuing year and being desirous that the election of these officers should be satisfactory to the parties interested in the strays they determined to afford the freemen having rights of stray in each ward an opportunity of nominating six persons as 'lights' (a short list or leet) from whom three Pasture Masters for the ensuing year might be chosen by the Council. Upon this determination being communicated to the freemen an opinion was found to prevail amongst them that the Council did not possess the power of appointment and the freemen intimated that they would not accept or recognise any appointment made. The Council therefore resolved to take no further steps until a Professional Opinion had been obtained on the subject. The depositions accompanying the request for an Opinion are too lengthy to quote here but, briefly, the Corporation argued that the Municipal Council as the organ of the newly constituted Corporation had assumed the duty of management of the strays in the same manner as it was exercised by the Corporal Body previously to the passing of the Municipal Act. The freemen, for their part, made two points of argument. Firstly, that any Inclosure Award made to the Mayor and Commonalty was, in effect, an award to the freemen and that they, as a body, held title to soil and freehold over the strays. The second point argued was that now the newly elected Council was not exclusively comprised of freemen members, it was not competent to administer the strays over which the freemen held exclusive rights.

Opinion Requested.

First:— Whether the soil and freehold of the Strays and Common Pastures are now vested in the present Corporation?

Second:— Whether the customs and usages which were in existence relative to the appointment of Wardens and Pasture Masters and the regulation of the Strays continue in force; and if they have become void, in whom the regulation or management of the Strays is vested, and if in the Freemen, in what manner they can exercise it?

Opinion Given.

First:— The Soil and Freehold of all the Strays and Common Pastures are now vested in the present Corporation as Trustees for the benefit of the Freemen.

Second:— The same difficulties and disputes which are above described have occurred at Beverley and other places and the case of property rested in a Corporation, for the exclusive benefit of the Freemen, has not been distinctly contemplated in framing the Municipal Corporation Act and is not sufficiently provided for. There must be some new legislation on the subject, as the Freemen have no powers to make bye-laws or regulations for the management of such property, and it is doubtful whether the power to make such bye-laws and regulations which belonged to the old Corporation or particular parts of them be transferred to the new.

In the meantime I would most earnestly recommend to the Corporation and to the Freemen of York to come to some amicable arrangement for the management of their Strays and Pastures. As the Freemen have exclusively the beneficial interest, their wishes ought to be attended to. Such appointments and rules as they reasonably submit to the Town Council should, I think, be adopted and sanctioned. In this way litigation may be avoided and the property turned to the best advantage.

J. Campbell,
Temple.
April 14th 1836.

The above was only a Counsel's Opinion and not a Court judgment and there was a detectable reluctance on the part of the freemen to accept that the strays were owned by the city. On several subsequent occasions the freemen again challenged the Corporation's title to the strays, but never successfully and never with sufficient conviction to take the matter to litigation. The freemen's argument that 'Mayor and

Commonalty' was synonymous with 'Mayor and Freemen' and that an award to the Mayor and Commonalty was, in fact, an award to the freemen as a body, was probably based on the opinion that, non-freemen being unfranchised, the freemen 'were' the Corporation. Commonalty, by definition, means 'the general body of the people without reference to rank or title' and although, prior to 1835, the freemen were certainly the omnipotent class, it cannot be ignored that non-freemen also constituted part, however insignificant a part, of the general body of the people. Although consensus of evidence makes it clear that the freemen, as such, never owned the strays, it is entirely possible that, even to-day, some freemen will remain unconvinced.

The question of the management of the strays was by no means resolved by Counsel's Opinion, but was left to goodwill and understanding between the parties concerned, a state of affairs not always easily attained. It is plain to see why the freemen were concerned at the possible changes which the Municipal Corporation Act might bring. While the strays were managed at all levels exclusively by freemen, this was an acceptable arrangement but, after this Act, with non-freemen eligible to be elected to the City Council, it was possible that a situation could arise where the Lord Mayor, ex-officio Warden of all four strays, and the Aldermen appointed as Wardens could be non-freemen. Since the ward Pasture Masters had to act under the over-riding authority of the Wardens, it would be by no means certain that the interests of the freemen would be preserved and guarded. This seems to have been a reasonable and justified fear on the part of the freemen. Counsel's Opinion had done little to clarify the problem and it was to be some years before a satisfactory agreement was finally reached.

YORK STRAYS IN THE LATE 19th CENTURY

Prior to the passing of the Municipal Corporation Act in 1835, the merchant freemen of York had their own exclusive privilege of trading within the city and, hitherto, had not cast envious eyes upon the pasturing freemen's common of pasture rights over the stray lands. However, by this Act, the merchant freemen were virtually stripped of their privileges, only retaining interest in freemen's corporate property, while the pasturing freemen's rights over the strays remained intact. Whether in a mood of covetousness or other motivation, the merchant freemen now laid claim to share in the enjoyment of the strays. On the 23rd of January, 1837, the Pasture Masters of the four strays convened a meeting of all freemen at the Hall of Pleas, Minster Yard. This was a long and stormy meeting, the eventual outcome being that it was resolved to grant to all freemen, without restriction, the

privilege of right of stray over whichever stray land was appropriate to the ward in which they resided. Whether the terms of the Inclosure Awards legally allowed this extension of rights of stray to the merchant freemen is perhaps debatable, but it is a fact that, from this time, all freemen of York could exercise such rights.

While hitherto the strays had been reasonably adequate for the needs of the pasturing freemen, the sudden increase in the number of freemen now sharing these pastures was to cause a considerable problem of over-stocking. Some of the merchant freemen did own, or now acquired cattle or horses which they set upon the strays. Others, not owning cattle, doubtless considered that they did not benefit from the rights of stray which they had so recently obtained. To overcome this apparent inequity, a system of 'fathering' cattle became common practice. By this was meant that freemen, not owning cattle, sold or leased their pasturing rights to non-freemen who would then put their own cattle on the strays. This further increased the problem of over-stocking the strays with cattle, while those freemen who did not indulge in this doubtful practice of 'fathering' cattle still felt that they were not enjoying an equitable benefit from the strays. It was decided, therefore, to introduce a new system of management for the strays, with the intent that all freemen would have an equal benefit from their ward strays. As well as restricting the number of cattle which each freeman, or his nominee, could pasture it was resolved that all cattle pastured upon the strays, whether owned by freemen or non-freemen, should be paid for directly to the Pasture Masters and that any profit therefrom should be distributed annually to ward freemen and to widows of freemen. For example, the charges for pasturing cattle in 1840 were:— 10 shillings per cow and 12 shillings per horse for one year. Records show that the charges for Micklegate Ward were raised in 1867 to 20 shillings per cow and 30 shillings per horse, while in 1888 Bootham Ward charged 30 shillings per cow and 45 shillings per horse, with an additional 5 shillings to each non-freeman.

The dispute between the freemen and the Corporation over the management of the strays, which had arisen following the Municipal Corporation Act of 1835, was eventually resolved in 1849 when the Corporation at last ceded to the wishes of the freemen and, from that year, the freemen in the four wards took over the administration of the strays and the Corporation ceased to be represented at the annual Ward-Mote Courts.

Although not strictly in accordance with the terms of the various Inclosure Awards, the freemen used several means of increasing their revenue from the strays. The use of the Knavesmire as a race course became a substantial source of income to the Micklegate freemen, who also added to their finances by the temporary leasing of parts of

this stray as exercise and training grounds for military purposes. For example, an annual assembly of the Earl de Grey's Corps of Yeomanry was held on the Knavesmire, while the Yorkshire Hussars and the 9th Lancers are recorded as using this stray for training and as a polo ground. On Bootham Stray were installed Rifle Butts and Range, at one time used by the York Artillery and the 1st West Yorkshire Rifles. The Butts were destroyed by a gale around 1892 and were not rebuilt. For a time Walmgate freemen also derived income from military use, while in the case of Monk Stray an additional recorded income was from leasing part of this stray for the playing of cricket.

Although the sole right awarded to the freemen by the Inclosure Awards was to pasture their own cattle upon their ward stray, it is evident from the above observations that the freemen, having gained control of the management of the strays, were now regarding the strays as a potential source of income. This may have been a highly irregular practice but, rightly or wrongly, such use of the strays came to be accepted as normal.

Parliamentary Return of Common Lands.

In 1870, Parliament called for a "Return of all Boroughs and Cities in the United Kingdom possessing Common or other Lands, in respect of which the Freemen or other privileged Inhabitants claim any exclusive Right of Property or Use; and distinguishing those Places in which such privileged Inhabitants claim any Parliamentary or Municipal Franchise, or Immunity from Tolls or Dues paid by other inhabitants."

York made the following return:—"There is in the suburbs of this city a large extent of pasture land in respect of which the freemen of this city exercise the exclusive right of use. The quantity of this land is nearly 400 acres. The freemen have the Parliamentary franchise vested in them and their right to be admitted to the freedom of the city is by birthright, or seven years' apprenticeship to a freeman. According to the charters granted at various times to the city, the free citizens were to be quit and freed of and from the payment of all or any manner of tolls, lastage, wreck, pontage, passage, murrage, anchorage, terrage, and trespasses, and of all other customs throughout all England, Normandy, Aquitain, Anjou, and Picardy, and throughout all the ports and sea coasts thereof; but to what extent this immunity from tolls and dues, previously enjoyed by these free citizens, was affected by the passing of the General Act, 5 & 6 Will. 4, c76 (An Act to provide for the Regulation of Municipal Corporations in England and Wales), has not received the opinion or judgment of any court of law, no case having arisen where the pre-existing freedom from tollage, etc. was contested, and the freemen now pay the same tolls and dues as are paid by the other inhabitants of the city."

By 1870 the quantity of pasture land, i.e. the strays, was more in the region of 800 acres instead of the 400 acres quoted in the above return. It is possible that only such parts of the strays which lay within the city boundaries were designated in the return. The charters referred to were undoubtedly those granted by Henry I, Henry II, and Richard I.

The Crown v. York (Bootham) Pasture Masters.

Although the income from the strays was by no means substantial, it was, apparently sufficient to attract the attention of the Commissioners of Inland Revenue.

In 1891, the Crown brought an action against the Bootham Ward Pasture Masters, claiming duty in respect of their lands, which were alleged to be assessed in pursuance of the Customs and Inland Revenue Act, 1885. The case was brought in the Queen's Bench Division and the result was inconclusive, each party succeeding and each failing in part, and to a substantial extent.

The Commissioners of Inland Revenue appealed from the order of the Divisional Court as to the liability of the income of land appropriated to the freemen of Bootham Ward to taxation under the Customs and Inland Revenue Act, 1885, and there was a cross appeal by the defendants, the Pasture Masters, who sought reversal of part of the judgment of the Divisional Court.

The case was heard in the Court of Appeal on the 18th February, 1892. The Solicitor General, on behalf of the Crown, stated that the question was whether the income in question came within the exemptions provided by the 2nd section of the Act, or in other words, whether it was entitled to be regarded as property which, or the income or profits thereof, should be legally appropriated or applied for the benefit of the public at large, or of any county, shire, borough, or place, or the ratepayers or inhabitants thereof, or in any manner expressly prescribed by Act of Parliament, or as property applied for religious or charitable purposes. The Pasture Masters contended that this particular land was exempt, as being appropriated to a charitable purpose.

On the 25th March, 1892 the reserved judgment was delivered. Their Lordships held that the property was not exempt, as it could only be said to be applied to a charitable purpose, in a technical sense of the word.

The above judgment, as well as being financially important to the freemen of that, and subsequent times, was to assume significance some 70 years later, in a different context, when part of the York Corporation's objection to registering the York Strays under the Commons Registration Act, 1965, was that the strays were lands subject to charitable trusts.

YORK STRAYS IN THE 20th CENTURY

York Strays passed into the 20th century under the control and management of the ward freemen, but this was to be a century of considerable change. Not only were there several Acts of Parliament which amended the manner in which the strays could be administered and used, but there was also a resurgence of the old struggle between the freemen and York Corporation over who should manage the strays. The new century was barely a few years old when the Corporation succeeded in gaining control of Micklegate Stray.

York (Micklegate Strays) Act, 1907.

An Act:— "To enable the Lord Mayor, Aldermen and Citizens of the city of York to acquire the rights of the freemen and others in or in respect of certain lands or strays known as Micklegate Strays and to make provision for the management thereof and for other purposes."

Micklegate Stray was the first of the four York Strays to be brought back under the Corporation's administration. It would appear that the Corporation first requested to take over this stray in 1903, having refused to sanction a fresh lease to York Race Course Committee for their course on the Knavesmire. This refusal was on the grounds that the city in general and not the freemen alone should benefit from the increased rent proposed in the new lease. The freemen disputed the Corporation's claim to ownership of soil and freehold (this is reminiscent of 1835!) and it looked as if the matter would have to be decided by court action. However, after the Corporation had offered to pay the freemen £1,000 per year, litigation was avoided by the freemen's acceptance of this offer. The proposal was eventually embodied in a Bill submitted to Parliament in 1907. A select committee of the House of Commons decided that a Charitable Trust was, in fact, being created and the Charity Commissioners were asked to establish a scheme for the disposal of the £1,000 per annum. The Act was passed later that year, Micklegate Stray then passing into the Corporation's administration.

By this Act, the original Inclosure Act of 1822 was revoked and the freemen's rights over Micklegate Stray were extinguished as follows:— "From and after the commencement of this Act and in consideration of the redeemable annuity hereinafter referred to, all rights of common and other rights and interests of the freemen and the widows of freemen in and over the Micklegate Strays shall be and the same are by this Act extinguished and henceforth the Corporation shall (subject to the provisions of this Act and to such outstanding rights of commonage and other rights if any as are hereinafter mentioned) for ever hold and enjoy the Micklegate Strays for an

inheritance in fee simple in possession freed and discharged from all rights and interests of the freemen and the widows of freemen as aforesaid."

In 1970, York Corporation was to allege that the rights of the freemen over the strays of Bootham, Monk and Walmgate were not legally 'rights of common'. To judge the truth of such an allegation, it should here be noted that, in the formulation of the above Act, it was considered necessary to extinguish the freemen's 'rights of common' over Micklegate Strays. It would seem reasonable to assume that, if the Micklegate freemen enjoyed 'rights of common', so also did the freemen of the other three strays.

The York (Micklegate Strays) Act, 1907 lays down the conditions under which York Corporation must manage Micklegate Stray. Since much public controversy has been raised over the subsequent management of this and the other three strays, it may clarify the situation if the provisions of this Act in respect of management are quoted in full.

York (Micklegate Strays) Act 1907.

Part III.—Management of Micklegate Strays.

15. "Micklegate Strays shall subject as in this Act provided and subject to the rights of the persons (if any) other than the freemen entitled to commonable or other rights until such rights shall have been extinguished or acquired by the Corporation for ever be maintained by the Corporation as open spaces so as to secure to the citizens of York the full enjoyment of the same as places of public resort and recreation and the provisions of this Act and of the Act of 1902 and of the Public Health Acts relating to parks and pleasure grounds and to the borrowing of money for the purposes thereof shall subject as aforesaid apply to such lands: Provided as follows—

- (1) The Corporation may by resolution dedicate any part or parts of Micklegate Strays for the purpose of making or widening any street under the Public Health Acts;
- (2) The Corporation may with the consent of the Board of Agriculture and Fisheries and subject to such conditions as the Corporation may think fit exchange any part of Micklegate Strays for other lands within or in the neighbourhood of the city and adjoining or near to Micklegate Strays and any conveyance from the Corporation expressed to be made in pursuance of this section shall operate as a valid conveyance of the land to be conveyed and the lands received by the Corporation by way of exchange shall for ever thereafter be subject in all respects to the provisions of this Act as if they were part of

Micklegate Strays: Provided that no part of such Strays fronting and abutting upon Tadcaster Road and no part thereof situate to the east of Southbank Road and Albemarle Terrace and known as Scarcroft shall be exchanged under the provisions of this section;

(3) The Act passed in the third year of the reign of King George IV. referred to in the preamble to this Act shall cease to apply to any part of Micklegate Strays. (This refers to the original Inclosure Act of 1822.)

16. (1) The heads of terms for lease dated the thirtieth day of April one thousand nine hundred and seven as altered and set forth in the Schedule to this Act are hereby confirmed and made binding on the Corporation and the York Race Committee respectively and may and shall be carried into effect accordingly.

(2) Such lease shall be granted within six months from the passing of this Act and until the same shall have been granted nothing in this Act contained shall take away diminish or otherwise prejudicially effect any of the property or rights heretofore owned exercised or enjoyed by the York Race Committee in and over Micklegate Strays.

17. In addition to the powers of the Corporation under the Public Health Acts and the Act of 1902 the Corporation shall have the following powers in relation to the Micklegate Strays:—

(1) The Corporation may lease such part or parts of the Micklegate Strays as may be necessary for the purpose of erecting and maintaining enclosures stands and other buildings booths tents and stalls in connection with the racecourse;

(2) The Corporation may let any part of the Micklegate Strays not exceeding twenty acres for a period not exceeding six weeks in any year for the purposes of circuses and other public entertainments;

(3) The Corporation may set apart so much of the Micklegate Strays as is situate on the southerly side of the footpath leading from Campleshon Lane to Tadcaster Road at a point three hundred yards south of St. George's Place in the city or any part thereof for the purpose of holding agricultural horticultural and other shows and for the drilling of soldiers the exercising of horses the playing of games and other like purposes and may make agreements as to the control and maintenance of the parts so set aside subject as hereinafter mentioned;

(4) In addition to the land for the time being forming the racecourse comprised in the lease to be granted in pursuance of the heads of terms set forth in the Schedule to this Act the Corporation may set apart and let for the purposes of a racecourse any part of the Micklegate Strays not exceeding five acres;

(5) The Corporation may let the right of pasturing cattle sheep and horses upon the Micklegate Strays.

18. (1) The Corporation may close to the public any part of Micklegate Strays leased or let under the first second and fourth sub-sections of the last preceding section of this Act during the period of the lease or letting.

(2) The Corporation may close to the public any part of Micklegate Strays set apart under the third sub-section of the last preceding section of this Act for the purpose of an agricultural show for such period as may be necessary.

(3) The Corporation may close to the public any part of Micklegate Strays set apart under the third sub-section of the last preceding section of this Act for any purpose other than that of an agricultural show for not more than twenty-one days in any one year nor more than six days on any one occasion: Provided that no part of Micklegate Strays so set apart shall be closed under the provisions of this sub-section on any Sunday.

(4) The Corporation or their lessees or licensees may make charges for admission to any part of Micklegate Strays so closed to the public as aforesaid:

(5) Provided that during the continuance of the lease to be granted by the Corporation to the York Race Committee in pursuance of the heads of terms set forth in the Schedule to this Act the Corporation shall not by the exercise of any of the powers of this or the last preceding section in any manner prejudicially affect the rights of the York Race Committee under such lease."

As well as the above regulations for the management of the Micklegate Strays, it was provided within the Act that the Corporation could make revoke or alter bye-laws. Briefly, the intent of such bye-laws would be to prevent fires, nuisances, bird or animal poaching and snaring, unauthorised pasturing and, in general, to maintain the amenities of the Micklegate Strays.

The Micklegate Trust.

In 1908, the Charity Commissioners produced a scheme for the disposal of the £1,000 per annum which the Corporation had contracted to pay out of income derived from the Micklegate Strays. A Micklegate Charity Trust was created which provided that, after the sum of £1 per

annum was paid to each freeman of Micklegate Ward and to each widow of such freemen, the surplus income from this trust was to be applied for the benefit of freemen, widows and children, in payment of pensions, medical benefits, apprenticeships, bursaries or outfits. This charitable trust still exists up to the present day and is registered under the Charities Act, 1960.

The foregoing account virtually ends the history of the management of Micklegate Stray, for the terms of the York (Micklegate Strays) Act still apply to this day. In the concluding part of this narrative any further changes in administration or public entitlement to use the strays should be taken to refer to the strays of Bootham, Monk and Walmgate and not to Micklegate Stray.

It should be remembered that, although Micklegate Stray was now to be managed by the Corporation under fairly liberal restrictions and regulations, the other three strays were still held on the terms of their original Inclosure Acts and Awards. The freemen of these strays still retained their rights of common, but this was their sole statutory entitlement. It may be that, seeing the diverse and now legitimate ways in which the Corporation could increase revenue from the Micklegate Strays, the Pasture Masters of the other strays were tempted to do likewise. Certainly the irregular practices, which had been employed in the late 19th century to gain revenue from the strays, were increased rather than diminished. In one way this is understandable for, in the 20th century, few freemen owned cattle or were capable of enjoying their rights of common in the manner originally intended.

THE LAW OF PROPERTY ACT, 1925.

Within this rather comprehensive Act there are two sections which have pertinent bearing upon the use and administration of the York Strays.

In Section 193 it is enacted that:—

“Members of the public shall have rights of access for air and exercise to any land which is a Metropolitan Common, or manorial waste, or a common which is wholly or partly situated within a borough or urban district, and to any land which at the commencement of this Act (1st January 1926) is subject to rights of common.”

It is also enacted in this section that:—

“Such rights of access shall not include any right to draw or

drive upon the land a carriage, cart, caravan, truck or other vehicle, or to camp or light any fire thereon. (Penalty upon summary conviction a fine not exceeding forty shillings for each offence.)”

In Section 194 it is enacted that:—

“The erection of any building or fence, or the construction of any other work, whereby access to land to which this section applies is prevented or impeded, shall not be lawful unless the consent of the Minister thereto is obtained.” and “Where any building or fence is erected, or any other work constructed without such consent as is required by this section, the County Court within whose jurisdiction the land is situated shall, on application being made by the council of any county or borough or district concerned, or by the Lord of the Manor or any other person interested in the common, have power to make an order for the removal of the work and the restoration of the land to the condition in which it was before the work was erected or constructed . . . ”

The York Strays, excluding Micklegate Stray, would appear to qualify as land subject to Sections 193 and 194 of the Law of Property Act either as ‘commons which are wholly or partly situated within a borough or urban district’ or ‘land which at the commencement of this Act is subject to rights of common’, or indeed the strays appear to satisfy the requirements of both categories.

Although, by custom over the years, the public may have walked over the strays, now this right of access was assured by statute. Under Section 194 the future of the strays was, or should have been, secure against encroachment by fencing or building. However, it is unfortunately true that there are several instances of fences and buildings which violate this Act, some permitted with the knowledge and approval of the ward Pasture Masters and others by York Corporation. This gradual erosion of the stray land areas has been the subject of comment and disapproval in recent years and certainly ought to provoke more general public outcry if the sanctity of these ancient commons is to be preserved. In 1968, the York Group for the Promotion of Planning published a booklet entitled ‘The Strays and Ways of York’ and in a foreword the Archbishop of York, referring to the strays writes— “. . . an unexplored treasure of which people are largely ignorant. In this ignorance lies the danger to the community. York needs these open spaces—the quality of the City’s life will be lower without them and the strain of life greater. Destruction by encroachment— ‘here a little and there a little’ —can go on all too easily unless people know of the Strays and appreciate them.” It was encroachment, such as the Archbishop refers to, which prompted the writing of this book.

THE FREEMEN SURRENDER THE STRAYS.

From 1849 until 1907, the ward freemen held control over the management of all four York Strays. In this latter year, as has been previously shown, Micklegate Stray passed into the hands of York Corporation, the other three strays still being held by the freemen. In 1947, for reasons which have not been made publicly known, York Corporation reached agreement with the freemen of Bootham Ward whereby the control and management of Bootham Stray would be henceforth handed over to the Corporation. In the following year, 1948, a similar agreement was made in respect of Walmgate Stray. The freemen of Monk Ward refused to participate in such an arrangement, pointing to the honour of retaining their ancient pasturage rights, but eventually, in 1958, they capitulated to the Corporation's proposals and the last of the four York Strays passed out of the control of the freemen.

Although the terms of the 'take-over' agreements may differ slightly in some particulars, they follow the same general pattern and the following extract from the Monk Stray agreement can be taken to have the same intent as those for the Bootham and Walmgate Strays.

"**AGREEMENT** dated 11th August, 1958 between Norman Lister, William Aydon, Arthur Calvert, Alfred Ayers, John McDonald, Arthur Thorpe and the Lord Mayor, Aldermen and Citizens of the City of York.

WHEREAS certain lands described in the first schedule hereto (hereinafter called Monk Stray) together with certain buildings thereon as in the first schedule mentioned are vested in the Corporation in trust for the Freemen and widows of deceased Freemen of Monk Ward in the said City.

And whereas the Wardens and Pasture Masters are by ancient custom the duly authorised representatives of the Freemen and they and their predecessors do manage and have managed Monk Stray and have distributed the profits thereof annually to the Freemen.

And whereas a sum of One hundred pounds has been deposited by the Wardens and Pasture Masters in the General Department of the York County Savings Bank and a further sum of Four hundred pounds has been deposited by them in the Investment Department of the said Bank.

And whereas the Wardens and Pasture Masters have accounted for and paid to the Corporation all cash received by them on behalf of the Freemen up to the date hereof.

And whereas with the intention of making Monk Stray available as an open space for the benefit and enjoyment of the Citizens of the

said City it has been agreed between the Wardens and Pasture Masters and the Corporation to transfer the management thereof to the Corporation on the terms and subject to the conditions hereinafter set forth.

And whereas at a meeting of the Freemen duly convened and held on the fourteenth day of January One thousand nine hundred and fifty eight the said terms and conditions were explained and it was resolved that the meeting approved the said terms and conditions and authorised the Wardens and Pasture Masters to carry them into effect and enter into this agreement on their behalf.

And whereas the Corporation acting in pursuance of the powers vested in them in that behalf agreed to the said terms and conditions by resolution dated the third day of March One thousand nine hundred and fifty eight.

NOW IT IS HEREBY AGREED as follows:—

1. On the first day of April 1958 the Wardens and Pasture Masters shall relinquish the management and control of Monk Stray and the Corporation shall assume the same.
2. On and after the first day of April 1958 all income and other monies of whatsoever kind which but for this agreement would have been receivable by the Wardens and Pasture Masters in respect of Monk Stray shall be receivable by the Corporation and all rates, assessment charges and other outgoings of whatever kind which but for this agreement would have been payable by the Wardens and Pasture Masters in respect of Monk Stray shall be payable by the Corporation.
3. Any balance of cash in hand or standing to the credit of the Wardens and Pasture Masters in the hereinbefore recited departments of the York County Savings Bank or in any other Bank or other Trustee Savings Bank on the thirty first of March 1958 shall be transferred to the Corporation.
4. All records and documents held by the Wardens and Pasture Masters in relation to Monk Stray shall be transferred to the Corporation; such records and documents to be preserved by the Corporation; the Wardens and Pasture Masters to have access to them upon application at all reasonable times.
5. The Corporation hereby undertake to maintain Monk Stray as an open space for the recreation of the public for all time and not to erect thereon any building other than sports pavilions, band stands, public lavatories or other similar buildings for the recreation or convenience of the public but this provision shall not prohibit the use as a golf course of any part of Monk Stray now being so used nor the maintenance of the buildings mentioned in the first schedule hereto nor

the erections of extensions to the Herdsman's Cottage nor the erection of such other outbuildings as may be necessary to the enjoyment of the Herdsman's Cottage as a dwelling house.

6. The Corporation hereby undertake to take over and employ the Herdsman on the same terms and conditions of employment as hitherto and allow him to occupy the Herdsman's Cottage on the same terms and conditions as hitherto.

7. The Corporation hereby undertake to honour the several lettings or agreements set out in the second schedule hereto and also such other lettings not evidenced in writing but existing on the first day of April 1958 which are binding upon the Wardens and Pasture Masters provided that the land uses are not contrary to the provisions of the Town and Country Planning Act, 1947-1954 or to any amendments thereof or regulations made thereunder.

8. The Corporation hereby covenant and agree with the Wardens and Pasture Masters that they will pay annually in perpetuity in the manner provided in the third schedule hereto to every freeman (which expression for the purposes of this clause and of clauses 9, 10 and 11 and the third schedule hereto shall include every freeman's widow and every future freeman and freeman's widow) of Monk Ward in the said City the sum of One pound.

9. For the purpose of carrying into effect the provisions of the last preceding clause of this agreement and of the third schedule hereto the Corporation shall recognise the Wardens and Pasture Masters as the duly authorised representatives of the freemen and shall also recognise their successors who may be appointed from time to time at a duly convened meeting of the freemen provided that the appointment of any such successor shall be notified in writing to the Corporation within one week thereof.

10. For the purpose of identifying the persons entitled to receive the sums mentioned in clause 8 hereof the Corporation shall allow the Wardens and Pasture Masters the use free of charge of a convenient room on one evening in September in every year or in the event of their being unable to provide such a room the Corporation shall pay to the Wardens and Pasture Masters the reasonable cost of hiring such a room as aforesaid.

11. The Corporation shall pay to the Wardens and Pasture Masters in every year such sum as may be agreed between the parties hereto as the expenses reasonably incurred by the Wardens and Pasture Masters in ascertaining the persons entitled to receive the sum mentioned in clause 8 hereof and in distributing the same including the reasonable remuneration of the Pasture Masters.

12. The Corporation shall be willing to receive and consider suggestions from the Wardens and Pasture Masters from time to time on matters relevant to the use of the Stray and buildings thereon but this will not bind the Corporation to act upon any such suggestion.

IN WITNESS whereof the Wardens and Pasture Masters have hereunto set their hands and seals and the Corporation have caused their Corporation Seal to be hereunto affixed the day and year first hereinbefore written."

There are two other schedules to this agreement and, briefly, they give a definition of the lands which together comprise Monk Stray, list the various buildings upon the Stray together with any lettings and agreements existing, and give the procedure for distributing the freemen's annuity.

The above agreement, and those for the other two strays, would appear, at first sight, to be reasonable and, if suitably implemented, would result in considerable benefit to the citizens of York. There are, however, some aspects which on closer inspection gave, or have since given, cause for concern. The undertaking by the Corporation to maintain these strays for public recreation has remained, with a very few exceptions, largely unfulfilled. Most of the stray lands remain barren and unkempt. Sign posting of access ways to the strays and definition of their boundaries is practically non-existent. Relatively few people know the precise location of the strays and many who, usually by accident, find themselves on stray land must wonder if they are trespassing on some farmer's private fields. The boundaries have been encroached upon in many instances, fences debar public access, and buildings of various kinds have been built, all of which are violating the Corporation's undertaking in the 'take-over' agreements. This does not augur well for the future sanctity of York Strays.

Another disturbing fact is that, by these agreements, the freemen, many of whom must retain considerable interest in and concern over the strays, have so completely surrendered their rights to participate in the future of their ancient heritage. It is obvious from clause 12 of the Monk Stray agreement that, while the Corporation are prepared to consider suggestions from the freemen, they are in no way bound to act upon such advice. The determination of the Corporation to exercise autonomous control may be judged by an extract from the minutes of a Parks and Allotments Committee meeting dated 8th December 1966:—

"Your Committee have decided not to accede to the request of the Gild of Freemen of the City of York, that an extract from the agenda for the meetings of your Committee should be sent to the Gild whenever any items pertinent to the Strays of York are to be dealt with. The Gild

requested that such extracts be sent prior to the Committee Meetings taking place."

If this reasonable request had been granted, the freemen could have held a very useful 'watching brief' over the future management of the strays, but even this is denied to them.

Perhaps the most important doubt which exists regarding these three agreements is whether they are legally binding. The fact that the ward freemen voluntarily surrendered the management of the strays to the Corporation is unquestioned, but they went further. By accepting an annuity payment, the freemen also surrendered or compounded their rights of common of pasture, rights which had been awarded to them and their successors in perpetuity, by Acts of Parliament. Did one set of freemen, at one period in time, have the legal authority to take such a decision, which affected not only themselves but future generations of freemen? Counsel's Opinion on this question was privately sought and is given below:—

Opinion requested.

"What power have the freemen or Pasture Masters to relinquish on behalf of the freemen the freemen's rights?"

Opinion given.

"There is no doubt that the freemen and Pasture Masters have purported to do this. My view of the matter is that the trusts established for all time by the Inclosure Acts and the Awards cannot be violated or terminated by the action of the beneficiaries at any one time. It seems to me that what has been attempted here is to take a short cut when the proper course would have been to have procured a variation of the trusts by the Courts or by Parliament as was done in the case of the Micklegate Strays."

The above opinion would appear to leave the way open for future freemen, if they are so minded, to challenge the validity of the agreements which abrogate rights which were awarded by Acts of Parliament passed variously between 150 to 200 years ago. The Inclosure Acts concerning the Strays of Bootham, Monk and Walmgate have never been repealed.

ROYAL COMMISSION ON COMMON LAND 1955-1958.

On the 1st December 1955 it was commanded that a Royal Commission be set up and the Royal Warrant gave the following terms of reference:—

"WHEREAS we have deemed it expedient that a Commission should forthwith issue to recommend what changes, if any, are desirable

in the law relating to common land in order to promote the benefit of those holding manorial and common rights, the enjoyment of the public, or, where at present little or no use is made of such land, its use for some other desirable purpose."

The Commission gathered its information from witnesses, correspondents and visits to common land throughout England and Wales and a Report of findings and recommendations was presented to Parliament in July 1958. This Report was to form the basis upon which the Commons Registration Act, 1965 was formulated.

Although the Commissioners did not visit York, the list of witnesses included York City Council, who, presumably, supplied relevant information concerning commons situated within its jurisdiction.

Table III gives the total acreage of "Commons as reported by local authorities to the Royal Commission 1956/58" and this contains the entry:— York-City, 811 acres. This is the approximate total acreage of the four York Strays.

In a chapter on geographical distribution of common lands the following entry is made:—

"The City of York. The open lands known as the Strays of York are in a sense common lands but the original use was restricted to certain persons. They were managed and protected by Pasture Masters who were appointed at one time by the Corporation but who are now appointed by the Freemen of the Ward. Until 1948 Bootham Stray (163.8 acres) was controlled and managed by the Pasture Masters who in that year relinquished control to the Corporation, the money received in compensation providing an income for former right holders. The Corporation covenanted to maintain the Stray for ever as an open space. Much is still let for agricultural purposes, part used by the public but not for organised games. Walmgate Stray (94 acres) is similarly controlled, and so, since the 1st April, 1958, is Monk Stray (138 acres). Part is let to a Golf Club, the major part though open to the public is used for summer pasture. Micklegate Stray comprises in all 415 acres, and is also controlled by the Corporation as an open space, part for the agistment of cattle and horses, part as a racecourse and for the exercising of horses. In all the Strays of York thus cover 811 acres partly within but partly without the city bounds."

The above description of York Strays, although slightly inaccurate must have been provided by York City Council and it seems clear that, at that time, the Council held the opinion that York Strays were lands which were within the scope of the Commission's inquiry. Indeed the Report states that "most of the commons with which this Commission is concerned are either portions of the ancient waste or commons set aside by inclosure commissioners for the maintenance of the cottagers

whose interests were so small that they could not be given land in severalty with an obligation to fence." This is exactly how the modern York Strays were created, if, instead of 'cottagers', the words 'freemen inhabitants of certain cottages and messuages' are substituted.

THE COMMONS REGISTRATION ACT, 1965.

The purpose of this Act is to find out and register the facts about the estimated 1½ million acres of common land (and town and village greens) in England and Wales. On many commons it is not known for certain who owns the common rights or who owns the common itself. There may be doubts about where the boundary of the common runs, or even whether the land is common at all. Similar doubts exist about many village greens. By putting an end to these doubts the Act will enable better use to be made of commons and greens.

The position of the York Strays under this Act was considered by both the Corporation and the York freemen. It was decided that Micklegate Stray could be considered exempt from registration since its legal status was sufficiently clearly defined by the terms of the York (Micklegate Strays) Act, 1907. It was resolved that the other three strays should be registered. The Pasture Masters of Monk Stray and of Bootham Stray made application to register these strays on the 12th May 1967 and on the 28th September 1967, respectively. Lastly Walmgate Stray was registered on the 11th December 1967, this registration being made by the Corporation by its own decision as no application to register had been made by the Walmgate Pasture Masters.

The above registrations were due to become final on the 30th September 1970. On the 23rd September, only seven days before this date, York Corporation lodged objections to these provisional registrations, in the following terms:—

"That the land described in the plan annexed to the application for registration is not Common Land, the Trustees (York Corporation) having received a circular from the Charity Commission dated 20th August 1968 intimating that land held on charitable trusts is not registrable as Common Land and should not be so registered. The Trustees took advice of Counsel and he expressed the opinion that the Stray is not 'Common Land' registrable under the Commons Registration Act nor a 'common' nor 'land subject to rights of common' for the purposes of Sections 193 and 194 of the Law of Property Act, 1925."

This was a surprising volte-face by the Corporation considering that they themselves had made the application to register Walmgate Stray.

The Commons Registration Act provides that, where an objection is made to a registration, time will be allowed for the applicant and the objector to settle their difference by agreement between themselves. If they fail to do so, the Commons Registration Authority will refer the dispute to a Commons Commissioner for arbitration. In early October 1970, following discussion between York Corporation and the Pasture Masters of Monk and Bootham Strays, the Pasture Masters withdrew the registrations for these two strays, while the Corporation withdrew the registration in respect of Walmgate Stray. This action having been taken, the question of the legal status of York Strays will not now go to the arbitration of a Commons Commissioner; the strays are no longer commons and are not, and never will be, registered under this Act; and any person holding a contrary opinion is now out of time to re-register the strays and has no statutory right to object to the withdrawal of the original registrations.

Given the reasonable assumption that it is desirable to preserve and protect the York Strays against past or future encroachment, then this last minute manoeuvring by the Corporation to block the registrations is quite beyond understanding. Instead of the strays having the powerful statutory protection of the Commons Registration Act, which incidentally would have confirmed the provisions of the Law of Property Act, 1925, their legal status is now somewhat obscure and ill-defined. These lands are now owned by the Corporation, are managed exclusively by the Corporation, and appear to be subject only to conditions dictated by the Corporation. If this is a continuation of the historical struggle for control of the strays, then York Corporation has succeeded in grasping this power very firmly indeed. The past record of Corporation management does little to allay fear for the future preservation of the strays and, indeed, the possible consequences of non-registration are so far reaching that it is important to try to assess whether the Corporation was legally correct in the terms of objections to registration, whether there is any possible ulterior motive and whether the Pasture Masters were justified or even prudent in withdrawing their original registrations without allowing the matter to come before a Commons Commissioners for arbitration. It should be made quite clear that other similar 'freemen's lands' have been registered, a near example being the Beverley Strays.

York Corporation's Objection to registration.

The Corporation's objection to registration has been quoted previously, but will now be examined in its various particulars. The

text of the objection may be divided into two parts and they will be discussed separately.

The first part of the objection is— "That the land described in the plan annexed to the application for registration is not Common Land, the Trustees (York Corporation) having received a circular from the Charity Commission dated 20th August 1968 intimating that land held on charitable trusts is not registrable as Common Land and should not be so registered."

This part of the objection is either very carelessly or very carefully worded. It should be noted that the Corporation does not state that the strays (Bootham, Monk and Walmgate) 'are' lands held on charitable trusts but, unless such an implication is assumed, this part of the objection would be irrelevant. The obvious way to check whether the strays were lands subject to charitable trusts was by direct enquiry to the Charity Commission. This was done and the following facts were contained in the reply.

The circular referred to was sent by the Charity Commission to all Registration Authorities, of which York was one. It was purely an informative guide to the rights and wrongs of registration and did not refer in any specific way to York Strays nor did it make any suggestion that the strays are held upon charitable trusts. The Charity Commission has searched its records of registrations, which are mandatory under the Charities Act, 1960, and although there is a registration for a Micklegate Charity in connection with Micklegate Strays, there are no registrations of any kind concerning Bootham, Monk and Walmgate Strays. There seems little doubt, with the exception of Micklegate Stray, that York Strays are not lands held upon charitable trusts and the previously quoted judgment given by the Court of Appeal in the case of the Crown v. York (Bootham) Pasture Masters in 1891 appears to confirm this opinion. However, unless the above facts were known by, or disclosed to the ward freemen, it is entirely possible that this part of the Corporation's objection may have influenced the freemen in their decision to withdraw the original registrations under the Commons Registration Act.

The second part of the objection is that "The Trustees took advice of Counsel and he expressed the opinion that the Stray is not 'Common Land' registrable under the Commons Registration Act nor a 'common' nor 'land subject to rights of common' for the purposes of Sections 193 and 194 of the Law of Property Act, 1925."

To discuss Counsel's Opinion, and it is only an opinion, is rather more difficult than ascertaining the charitable status of the strays. Research for this book certainly does not agree with the opinion expressed by Counsel, but it may be that the following quotations and

arguments, while perhaps not entirely conclusive, do at least cast reasonable doubt on Counsel's Opinion.

The Pasture Masters Oath, previously quoted in full, contains these words:— "... you shall see that the *public commons* of the said ward be not encroached upon . . .". The strays are here referred to as public commons. The Pasture Masters, themselves freemen, were unlikely to incorporate such a description into their oath unless factually correct, for history has shown that the freemen would have preferred to consider the strays as private land owned by the freemen themselves, even though the Inclosure Awards show otherwise.

In 1928 a book was published called "How York Governs Itself". This book was written by various members of York Council and reference is made to the strays in Chapter 10, which was written by Councillor A. G. Watson, then chairman of York Parks Committee:—

"On the roads leading out of the City are four great tracts of land called 'strays', with an area of 778 acres. These are partly ancient *commons* and partly enclosures of certain parts of *common lands* which, under various Acts of Parliament, were awarded to the Lord Mayor and Commonalty of York. The legal estate and freehold is vested in the Corporation, whilst the Freemen of the City own the *rights of pasturage*."

Later in the same chapter it is written:—

"Whether the Strays of York are used as well as they might be is often debated, but sooner or later public attention will be turned in this direction in view of the growing demand for recreation grounds. Under the Law of Property Act, 1925, certain changes for the better are possible, for it is provided in Section 193 (1) of the Act that the public shall have right of access, of air and exercise to any *land which is common* wholly or partly situated within the borough."

Whatever the present York Council may think, it is eminently clear that, in 1928, the opinion was held that the strays were common lands and subject to the Law of Property Act, 1925, Section 193.

In 1955 a Royal Commission on Common Land was commanded and in 1958 the Commission's Report was published. In Table 3 is listed the acreage of "Commons as reported by local authorities to the Royal Commission 1956/58." Under York-City the entry for common lands is given as 811 acres. This is approximately the aggregate acreage of the four York Strays. Since this return was reported to the Royal Commission by York Corporation, it is obvious that, at this fairly recent time, the strays were considered to be common lands.

Lastly, Counsel avers that the strays are not 'lands subject to rights of common' for the purposes of Sections 193 and 194 of the Law of Property Act, 1925. This is a difficult question to resolve in respect to so called 'freemen's lands' and varying legal judgments have been

given in different cases throughout England. Each case must be judged on the exact terms of the individual Inclosure Award by which the land was allotted, the vital factor being the ownership in fee simple of the land. By definition a 'right of common' is a profit which a man has *in the land of another*, as to pasture beasts therein (common of pasture), to catch fish (common of piscary), to dig turf (common of turbary), to cut wood (common of estovers) or the like. There can be no doubt that certain freemen were awarded the right to pasture cattle upon the strays. This is an historical fact, but whether such a right of pasture is a legal right of common is perhaps more difficult to prove categorically. There are two possible interpretations of the freemen's right of pasture.

Firstly, if, as the research for this book appears to prove, title to soil and freehold is vested in York Corporation, then the pasturing of cattle upon the strays by the ward freemen is a 'profit in the land of another' and could be held to be a legal right of common, classified as a 'common of pasture'. On the other hand, if the freemen had owned title to the strays, and this is a belief genuinely but erroneously held by some present day freemen, their right to pasture cattle, although similar in all respects, would not be a true right of common, but more correctly termed an 'easement'. That the freemen held legal rights of common over the strays is supported by Part 2, para. 5 of the York (Micklegate Strays) Act, 1907 which states:— "... all *rights of common* and other rights and interests of the Freemen and of the widows of Freemen in and over Micklegate Strays shall be and the same are by this Act extinguished . . ." It seems reasonable to assume that the ward freemen of the other three strays would also hold rights of common. The questionable surrender of these rights in the 1947, 48 and 58 'take-over' agreements is irrelevant in respect of the Law of Property Act since, to prove that the strays of Bootham, Monk and Walmgate are lands subject to this Act, it is only necessary to establish that rights of common existed at the commencement of this Act, which was the 1st January 1926. This would appear to be the case, no matter how the later agreements may be interpreted.

Secondly, it is possible that the right exercised by the freemen could be designated as a 'right of sole pasture', which is an exclusive right to take the pasture by the mouths of cattle, i.e. to graze them, excluding participation by the owner of the soil. Some legal authorities do not consider this to be a true right of common, but the Commons Registration Act recognises a 'right of sole pasture' as a qualification for registration of land subject to such a right.

While the above remarks and arguments may possibly be open to different interpretation, they must at least cast grave doubts upon the authenticity of the Corporation's objection to the registration of the strays under the Commons Registration Act, 1965. What is not in

doubt is that, by blocking the registrations, the strays now have the minimum of statutory protection, instead of the maximum safeguards which could have been attained so easily by allowing the provisional registrations to become final.

Whether the Corporation had any ulterior motive must remain, at least for the present, purely speculative but there are several possible advantages which the Corporation could gain by preventing the registration of the strays and disavowing that they are lands subject to the Law of Property Act.

The most obvious advantage is that the Corporation can now exercise the fullest autonomous control over the strays with the minimum of statutory restrictions.

There have been so many instances of building, fencing, letting to private enterprise and other encroachments upon stray land, all unsupported by legal authority that, if these irregular practices were challenged under Section 194 of the Law of Property Act, 1925, this could be a source of acute embarrassment and considerable cost to the Corporation.

No-one, outside the Corporation, can forecast the future policies envisaged for the strays, but there is an ever increasing demand for more and more land to be made available for building development. The strays no longer have adequate statutory protection against this possibility and therein may lie the greatest threat to the future sanctity of the Strays of York.

THE COUNTRYSIDE ACT, 1968

This relates to land to which the public have rights of access and would appear to be applicable to York Strays. This Act gives local authorities new and more wide ranging powers over such lands.

Within the Act a Local Authority may:—

- (a) Lay out, plant and improve the site, and erect buildings and carry out works.
- (b) Provide facilities and services for the enjoyment or convenience of the public, including meals and refreshments, parking places for vehicles, shelters and lavatory accommodation.
- (c) Provide facilities and services for open-air recreation.

There is, however, a sensible safeguard against possible misuse of these new powers, for it is enacted in Section 6 (1) of this Act that "The powers conferred by this and the three next following sections shall be exercisable for the purpose of providing, or improving, opportunities for the enjoyment of the countryside by the public."

CONCLUSION.

The present legal status of the strays is probably less clearly defined than ever it has been in their entire history. The conclusions drawn from the research involved in the preparation of this book are in many ways contrary to the opinions held by both the Corporation and the York Freemen.

To summarise a highly controversial subject, the conclusions reached are that the York Strays should be held and managed under the terms and provisions of:—

- (a) The York (Micklegate Strays) Act, 1907. This applies only to the management of Micklegate Stray.
- (b) The original Inclosure Acts and their Awards by which the strays of Bootham, Monk and Walmgate were created. These have never been revoked and should still constitute the principal Acts under which these three strays are held.
- (c) Sections 193 and 194 of the Law of Property Act, 1925, insofar as they amend the provisions of the Inclosure Acts and Awards.
- (d) The Countryside Act, 1968, insofar as it amends the restrictions imposed by the Law of Property Act, 1925.
- (e) The 1947, 48 and 58 agreements by which York Corporation assumed control and management of Bootham, Walmgate and Monk Strays. These agreements may be of doubtful legality but, having been made, it is assumed that the terms and provisions should be honoured.

To the above list should have been, and nearly was, added the Commons Registration Act, 1965. Rightly or wrongly the York Strays can now never be registered under this Act.

This concludes the varied history of the Strays of York and their management through the ages. Most of the text is fact, some is comment on events relating to the strays, while part of the content is an attempt to interpret the legal complexities which always seem to have surrounded their management.