

ART. XVI.—*The Shire or County Tolls, belonging to the City of Carlisle.* By WILLIAM NANSON, B.A.

Read at Gilsland, June 21st, 1877.

THERE is at Gilsland, near the Cumberland end of the bridge which crosses the Poltross Burn, the boundary between the counties of Cumberland and Northumberland, a toll-board which informs the passers-by that certain tolls are payable to the city of Carlisle, for horses, cattle, and sheep brought into or taken out of the county of Cumberland for sale. This toll, belonging to the Corporation of Carlisle, is collected at the boundaries of the county, and is known by the name of the shire or county toll. It is now payable only on horses, cattle, and sheep, but formerly extended to goods and merchandise, as well as live stock, as appears by the following list of tolls, which takes us back to a time when the carrying trade in the north of England was conducted by means of pack-horses. The toll was to be paid for all cattle bought in the county and carried or driven out of the same to any other place, or that have passed or do pass out of the said county to any other place to be sold; and for all goods carried in packs or otherwise on horseback or men's backs into or out of the county to be sold, if the same were above the value of 6½d., after the following rates, that is to say —

	D.
For every bull, ox, cow, or steer	1
For every horse	2
For every score of sheep	2
For every horse-load of any commodities which came out of Scotland or Ireland, at the coming into the said county	4
And at going out thereof	1
For every fardell on horsebacks or men's backs, being less than a pack	1
And for all goods passing out of the said county for Scot- land, being less than a pack	4
	You

You will observe that there is no mention of carts or waggons, for the list was drawn up before the military way was made, and when the only road from Newcastle to Carlisle was by the old packhorse road called the "Stane-gate." You will also observe that special mention is made of goods coming into the county from Scotland or Ireland, and passing out of the county into Scotland. The list is not at all clear, and it is difficult to say whether there was a toll on English goods or not. If there was, as seems probable, it has not been collected for many years. Scotchmen were, it is said, always charged with a double toll both on entering the city of Carlisle and county of Cumberland, and the Corporation were formerly possessed of a toll which was always, whilst it existed, called the "Scotch toll." This Scotch toll was abolished by the sixth article of the Act of Union, which directed generally

"That all parts of the United Kingdom for ever, from and after the Union, shall have the same allowances, encouragements, and draw-backs, and be under the same prohibitions, restrictions, and regulations of trade, and liable to the same customs and duties on import and export,"

and particularly,

"That from and after the Union, no Scots cattle carried into England shall be liable to any other duties either on public or private accounts, than those duties to which the cattle of England are or shall be liable within the said Kingdom."

The citizens of Carlisle lost a considerable part of their revenue by the abolition of the Scotch toll, and they presented a petition to the House of Commons praying for compensation. Their petition was successful, and an Act of Parliament passed in the fifth year of Queen Anne's reign which authorised the raising of money for various purposes, directed it to be applied, amongst other things,

"For enabling her Majesty to make a recompense, not exceeding 264*l.* to the mayor, aldermen, and citizens of the city of Carlisle for such tolls as they are to be deprived of by the 6th article

article of the said Treaty of Union, which recompense is to go to and for the same purposes to which the said tolls ought to have been applied."

The Corporation subsequently procured a license from the crown to hold lands in mortmain, and invest the money in the purchase of land. From the same Act of Parliament we get information of another toll levied within the county of Cumberland, for a further purpose to which the money raised under the Act was to be applied, was,

"For enabling her Majesty to make a recompense, not exceeding 5000*l.* to Joseph Musgrave, Thomas Musgrave, and George Musgrave, sons of Sir Christopher Musgrave, Baronet, deceased, in full discharge of all tolls in Westmorland and Cumberland, that were granted to Sir Philip Musgrave by Charles II., and which are specified in the grants of James II. and King William III., to the late Sir Christopher Musgrave."

What was the precise nature of these tolls I have not as yet been able to discover, but it is quite certain that they were something different from the shire toll, because we know that the citizens of Carlisle and the Musgraves were both collecting their tolls at the same time.* The original grant I have not seen, but I have been shown a copy of the petition of the Musgraves for compensation, in which they speak of "the taking off the *duties* of Scotch cattle," which looks as if the tolls were of the nature of customs. It seems also that the greatest portion was collected at the port of Whitehaven, which confirms this supposition. As to the Scotch toll of the citizens of Carlisle, it was generally let to farm separately, and not as a part of the shire toll, and it was collected at several places along the border by men who were called "waiters."

* *Note by the Editor.* William Christian was collector of the tolls in the time of Charles II., probably for the Corporation; he and Sir Philip Musgrave were always at loggerheads about the tolls, and Christian got Sir Philip arrested as he was going to attend a meeting of Deputy Lieutenants. In the Record Office is a strongly worded complaint by Sir Philip of this indignity.—See my *Cumberland and Westmorland M.P's.*, pp 14, 417. These tolls were the subject of much correspondence between Sir Philip Musgrave and Sir Joseph Williamson, from which I hope Mr. Nanson will find additional information on this interesting subject.

And

And now how are we to account for the fact that the citizens of Carlisle have the right of taking toll, outside the liberties of their city, at the boundary of the county of Cumberland? The explanation of the matter is to be found in a writ of Henry III. to the sheriff of Cumberland, dated the 29th September, in the fifth year of his reign (A.D. 1221), and preserved in the Chancery Fine Rolls. This writ is a most important document, not only because it distinctly mentions the shire toll by name, and is probably the only early document which does mention it, but also because it contains most valuable information respecting the early municipal history of Carlisle. It begins by reciting that an inquisition had been made by the King's command, whereby it was found that the citizens of Carlisle had formerly held their city of the sheriff of Cumberland at a yearly rent of £52, and that, together with the city, the citizens were accustomed to have two mills which were under the city, and a certain fishery in Eden, and the toll of the shire (*theolonium comitatus*) to make the ferm or rent of the city. It then states that the king has granted to the citizens their city with the appurtenances to farm during his pleasure at a yearly rent of £60, to be paid by the citizens at the Exchequer, half-yearly at Easter and Michaelmas, and commands the sheriff to cause the citizens to have full seisin of the city, together with the mills, and fishery, and toll, to enable them to pay the yearly rent of £60. This is briefly what is contained in the writ, and as it gives us the date of a transaction which is an important point in the history of Carlisle, an explanation of what took place, although necessarily rather technical, may not be without interest.

The sheriff to whom the writ is addressed was in every county the officer who represented the King, and whose business it was to collect whatever was due to him. Twice a year, at Easter and Michaelmas, the sheriff went up to the Court at Westminster to render an account of the revenue

revenue of his shire to the Barons of the Exchequer, who sat at their counting-table, once covered by the well-known chequered cloth, and received the money from the sheriff. There were many different items which the sheriff had to account for, as the revenue was derived from various sources; but the first item was always the "firma comitatus," the ferm of the shire. It included all the ancient claims which the King, as the head of the nation, had upon owners of land in the kingdom, to enable him to keep up his royal state, and to support his retinue when he travelled through the country. These offerings were before the Conquest frequently made in kind, and corn and cattle were brought to the Treasury as the tribute of the various shires; but under the Norman Kings this share of the produce of the land was commuted for a money payment. Besides this ancient source of revenue the king, as king, was possessed of large estates, which formed the royal demesne or crown lands. The revenue derived from the demesne land in the county was included in the former part of the "firma comitatus." The sheriff had also to account for many items not included in the ferm of the shire which may be classed under the head of feudal income. These consisted of the rents and services due to the king from the tenants of manors which were in his hands, and of aids, reliefs, and other feudal incidents which the crown exacted from the holder of fiefs. The feudal incidents varied in amount in different years, but the "firma comitatus," was a fixed sum, supposed to represent the average income derived from the county, and for this sum the sheriff was bound to account. All that he collected over and above the amount he was allowed to appropriate to his own use; when it fell short he had to make up the difference out of his own purse. It is easy to see that such a system left the door open for a good deal of extortion on the part of the sheriff.

Let us now look at the position of the city of Carlisle
under

under this system. Situate in the southern part of the old Strathclyde, which was conquered by William Rufus, and the city having been restored and fortified by him, Carlisle became a royal city, a part of the demesne of the crown. Many English towns belonged to lay lords and some to ecclesiastical, but the citizens of Carlisle were tenants of the king, and held their land and houses within the city of him. The consequence of this was that the rents they had to pay for their burgages, and all other profits derived from the town, were collected by the sheriff as the financial officer of the crown, and he accounted for them to the Exchequer as part of the "firma comitatus." The earlier rolls containing the sheriff's accounts do not furnish us with the proportion paid by Carlisle as a town of the royal demesne, but merely state that the sheriff paid so much for the ferm of the shire, without specifying the items. The City was under the jurisdiction of the sheriff, who exercised the same superintendence within its walls as he did over the county. He collected from the citizens the rents of their burgage tenements and he watched over their Courts of Justice, and took the fees paid by the suitors for the crown. Such a system, as the town grew in wealth and importance, became a great burthen. The sheriff wanted to get as much money from the county as he could, and money was most easily rung from the rich burghers. As early as the reign of Henry II. they had formed themselves into a merchant guild, and probably in that reign, after Carlisle had been surrendered by Malcolm, and finally annexed to the kingdom of England, the first step was taken towards separating the city from the county, and securing it against the exactions of the sheriff. The writ tells us that quite early in the reign of Henry III. the proportion payable to the sheriff as a contribution of Carlisle to the ferm of the county of Cumberland had been settled at a fixed sum, and therefore it seems probable that this was done under Henry II., when the citizens obtained their

their first charter and liberty to form a free merchant guild. This guild or brotherhood of the leading citizens probably prevailed upon the sheriff to let them rent from him the profits of the city at a fixed sum. The sheriff was saved the trouble of collecting, and the citizens levied the amount of the rents proportionately amongst themselves, thus getting rid of foreign interference. The sum of £52 which the citizens paid yearly to the sheriff, besides the rent of the city, or *firma burgi*, as it was called (just as the rent of the county paid by the sheriff was called *firma comitatus*), included the rents of two mills, a fishery in Eden, and the shire toll. The king, as lord of the city, was entitled to require that all citizens should grind their corn at his mills. The citizens now rented the mills from the sheriff and compelled all the people living in the town to grind their corn at them. They also took the fishery, which they probably found means to make more profitable than the sheriff could, and they were allowed to collect the shire toll. From these three sources they probably made enough to pay the *firma burgi*, and in later times they made a great deal more. Still, the city was only a part of the county under the jurisdiction of the sheriff, who was yet able to exercise his power to the annoyance of the citizens if he was so disposed. The next step, therefore, towards municipal freedom was to take the collection of the *firma burgi* out of the hands of the sheriff altogether, and to make the citizens accountable directly to the crown. And this is just what the writ effected. The sheriff had, before the date of the writ, held the city under the king. Now he is directed to hand it over with the mills, fishery, and toll to the citizens, and they hold it of the king at £60 a-year, during his pleasure. The arrangement does not seem to have been binding on the king. It is certain that long after this time the city was again in the hands of the sheriff, who had probably offered a higher rent than the
citizens

citizens, and it was not until the ninth year of Edward II. that the city was permanently granted to the citizens at a perpetual, or fee-farm, rent of £80 a-year. This continued to be paid until the first year of Edward IV., who reduced the fee-farm rent to £40, on account of the impoverished and ruined state in which the city was left after the Wars of the Roses, and that sum of £40 is still paid out of the city fund every year to Lord Lonsdale, as the grantee of the crown.

It seems, then, that the shire toll, before the citizens got it, belonged to the king, and was either collected or let out by the sheriff, and accounted for by him in the *firma comitatus*. The toll may have had its origin in a duty or custom, imposed by the king on exports and imports, but most likely it was a charge made for the privilege of passing through the royal manors and the great forest of Cumberland which extended at one time from Carlisle to Penrith, and if so, it may well be as old as the conquest by William Rufus. When only a small portion of the country was enclosed, and when the roads were for the most part the tracks of old Roman roads across the moorlands, droves of cattle wandered through the country, going by slow stages from place to place, and finding pasture by the way as they do now in Australia. It was not unreasonable that the owner of the land should demand something for allowing them to pass, and for the grass which the cattle consumed, and in such a payment as this the toll probably originated. The Corporation used to let the shire toll to persons who sometimes may have employed collectors of their own, as is done now, but who more often sub-let the toll at particular places on the boundary to persons living there, and who being on the spot could more easily collect it. These were sometimes the keepers of wayside inns where the drovers stopped to refresh. In an action respecting the shire toll, tried in the last century, one Lucy Slater was a witness. She was the wife of the landlord of an inn at Eamont
v Bridge,

Bridge, perhaps the one adorned with a sign board on which a kilted warrior is shaking hands with a man in a peaceful southern costume, and underneath the motto, "Welcome into Cumberland," and which in recent times happened to be kept by a man of the name of Westmorland. Lucy Slater deposed that toll was demanded at Eamont Bridge at a penny per score of cattle, but that they were not very exact in counting nor in receiving toll for the odd cattle above an even score; that she and her husband paid £40 a-year for the tolls at Eamont Bridge, which they were induced to take because they found a benefit from it in selling liquors; that when the drovers drank freely they were more favourable in counting the cattle; that the drovers always paid the toll very well if her husband or any man attended, but if she only attended, or there were none but women, they often disputed and would evade paying if they could. It seems that the collectors had at times a good deal of difficulty with the drovers, and sometimes, when it was worth while, they seized a cow or a sheep as a distress, a proceeding which was apt to lead to litigation. The old Corporation of Carlisle, however, don't seem to have troubled their heads about free trade or political economy, and whenever their right to their tolls was seriously attacked they were ready to fight for them. In the reign of Charles II. in 1674, at which time the lead mines on Alston Moor began to flourish, they had a dispute with Sir Francis Radcliffe, who was lord of the manor of Alston, and his tenants, because they refused to pay toll at Alston Moor. To enforce their right the Corporation exhibited a bill in Exchequer against Sir Francis. An issue was directed to be tried at York assizes to determine whether the Corporation had a right to take toll in the manor of Alston, and a verdict was found in favour of their right. In the first year of James II., 1685, another bill was exhibited against Sir Francis Radcliffe and others, by Timothy Haddock, the lessee of the tolls. The point in
dispute

dispute seems to have been whether lead ore was liable to pay toll, and whether goods and merchandise coming to the county by sea were also liable. Various issues were raised, and there were several trials at assizes, and hearings before the Court of Exchequer at Westminster, in which Haddock was successful, but the defendants fought hard, and after about ten years of constant litigation they appealed to the House of Lords, which straightway ordered a new trial. This seems to have been too much for poor Timothy Haddock, for he died before the new trial took place, and though there was a talk of reviving the case as late as 1717, it seems after all that it never got decided. In 1761 the Corporation were again obliged to contest their right to the shire toll, and after a hard fight they succeeded in getting a verdict at York assizes, in the summer of 1774, upon which it was decreed that the right of the Corporation to the toll on cattle should be established, and the defendants had to pay the costs; after this the toll does not seem to have ever been very seriously disputed. It was not of course possible to be continually watching the boundaries of the county at all places, and it only paid to collect the toll on the great roads. It is curious, however, to observe that some of the places are not on the present main thoroughfares, but were on what were called drift roads, tracks which were soft and grassy, and well suited for driving cattle along, and which the drovers passed at times when they might be looked for on their way to and from the great fairs. One of these places, called Hudforth, is a ford on the river Eamont, not far from where it joins the Eden, and it is said that many more cattle crossed the boundary here than at Eamont Bridge by the high road, because the roads leading to and from Hudford were soft. Another spot at which the toll was collected was Millrig, near Culgaith, and not far from Hudford, only on the other side of the Eden valley, which seems to have been a great route for cattle going south, especially at the time of Brough Hill

Hill fair. They could go either by the right or left bank of the river, and, besides getting a soft road, they saved the angle made by the high road, which, instead of going straight from Carlisle to Appleby, up the Eden valley, is carried through Penrith, following the course of the great Roman road, which Mr. R. S. Ferguson identifies as the 2nd Iter. Other well-known places were Pooley Bridge, Dud-don Bridge, Cockley Bridge, and Dunmail Raise or Raise Gap as it was called. Toll was also collected at Long Marton, which seems puzzling at first, because it is in Westmorland, and some few miles from the boundary. The reason no doubt was because Long Marton is situate on the Maiden Way. This ancient highway was, before the making of railways, a great drift road for cattle coming into England from Scotland by way of Bewcastle. At that place, if not before, they joined the Maiden Way, and followed its course across Spadeadam Waste and the Gils-land Fells and on from Burdoswald to Alston parish, and then across the wild regions of the Pennine range down to Kirkland, and into Westmorland, where, after crossing Newbiggin Moor, the first village they would come to would be Long Marton. There was no place actually on the boundary where the collector could have lived, except as a hermit, and so he had to take the toll at Long Marton, either before the cattle entered Cumberland or after they had left it. There is not, as far as I know, any toll in all England similar to the shire toll, and the curious fact of its belonging to Carlisle, and its being at any rate older than the beginning of the 13th century, make it to the antiquarian a venerable and interesting impost, though it may be regarded in a different light by political economists and cattle drovers.

Mr. Atkinson observed that the people of Westmorland had never paid tolls on cattle going from Westmorland into Cumberland until four or five years ago, and now it was being refused.—Mr. Cartmell said

said that the reason was the Corporation of Carlisle let their tolls, and the collector did not waste money by collecting what was not worth the trouble, as but few cattle went from Westmorland into Cumberland, compared with those going the other way. Westmorland people had, perhaps, been sharp enough to take their cattle by roads not watched, but they had no exemption that he ever heard of.—Dr. Simpson suggested that perhaps the toll was granted to the people of Cumberland on account of the damage they suffered at the hands of the Scots, and they must look for its origin earlier than Henry II.—Mr. W. Nanson said that in all probability the toll originated because the king had so much land in Cumberland. People passing through used his roads and ate his grass, and in its origin the toll was more likely for the benefit of the king than of the shire.

The following communication from Cornelius Nicholson, Esq., F.G.S., F.S.A., was laid before the Society, at Furness. The two tolls, the Cumberland toll and the Highgate toll, are, in Mr. Nanson's opinion, identical in kind, but different in degree:—

On Customary and Prescriptive Tolls,—in illustration of the "Shire Tolls" in Cumberland.

Mr. Nanson read, at the Archæological Society, at Gilsland, an interesting paper on the *Shire Toll*, collected for the passage of horses, cattle, and sheep, at the northern boundary of the county of Cumberland. And though he has evidently made a searching enquiry into the subject he has not been able to trace the date of its origin, nor its royal or subject founder. And, he adds, in conclusion, "there is not, as far as he knows, any toll in England similar to this shire toll." So, in the discussion that followed, it was observed that Mr. A. E. Freeman (the historian, I presume?) had stated "that it was one of the most peculiar things he had met with."

We have a case almost exactly similar, at Highgate, on the north side of London, and I regret to add that the date of *this* prescriptive toll is involved in almost as much uncertainty as the shire toll in Cumberland. Mr. Nanson conjectures that, in the last-named case, "it was most likely a charge made for the privilege of passing through the royal manors in the great forest of Cumberland, (? Inglewood.) So, in this other instance in the south. It was a toll imposed by the then Bishop of London, the owner of the forest of Middlesex,* for so

* The Bishops of London, before the Reformation, were quite as powerful, if not more powerful, than kings.—*St. Dunstan*, for an example, who, like Guy of Warwick, was a kingmaker.

much

much of the native forest as still remains goes to this day by the name of *The Bishop's Wood*. Norden, in his "Speculum Britanniae," says, "The ancient highwaie from Clerkenwell northwards was refused of wayfaring men and carriers by reason of the deepness and dirtie passage in the winter season. In regarde whereof it was agreed between the Bishop of London and the Countrie that a newe waie should be laide forth through the said Bishop's Park, for which new waie all carriers, packmen, and such like travellers yealde a certain tole, which is now farmed at £40 per ann." [A tremendous rent at that time—1593.] Camden, in his "Britannia," noticing this road, (styled elsewhere "*a causeway*,") says, "it must have been opened upwards of 500 years." That carries the origin to a *very* remote antiquity. Of one thing, I think, there can be no doubt, namely, that the adoption of this "newe waie" over Highgate hill gave the name to Highgate, which is composed of two purely Saxon words, *heah-gate*. Further, this toll is not leviabie on carriages or on equestrians, but on lead-horses, cattle, sheep, and pigs. The charge is 1d. for a horse or cow, and 4d. for a score of cows. There was, within living memory, a *gate* at Highgate, fixed to the public-house called "Gate-house"; the bar now consists of a pole swung across the road; but the toll-collector is not in constant attendance day and night, and the toll is chiefly made at the time of Barnett-fair, which is, or rather which was, a time of great traffic. The bar is *only* put across the road at that time.

At the Highgate petty sessions, I and my brother magistrates have had frequent summonses to adjudicate arising from squabbles and scuffles between the toll-collector and obstinate passengers, and we have been appealed to by the lessee of the toll to support him in what he calls his *lawful* duty. We say that we have jurisdiction only on a charge of assault, *pure et simple*. I am not aware that the legal right to levy and collect the toll has ever come before any court, or received judicial sanction. Mr. Nanson is better authority than I can pretend to be on the legal question; my simple lay opinion is against its legality, and still more against its equity, for this road at Highgate is now a parochial highway, kept in repair by the parish authorities. If then, the tax be for upholding the road, surely the bishop or his lessee has lost his title if he ever had one.