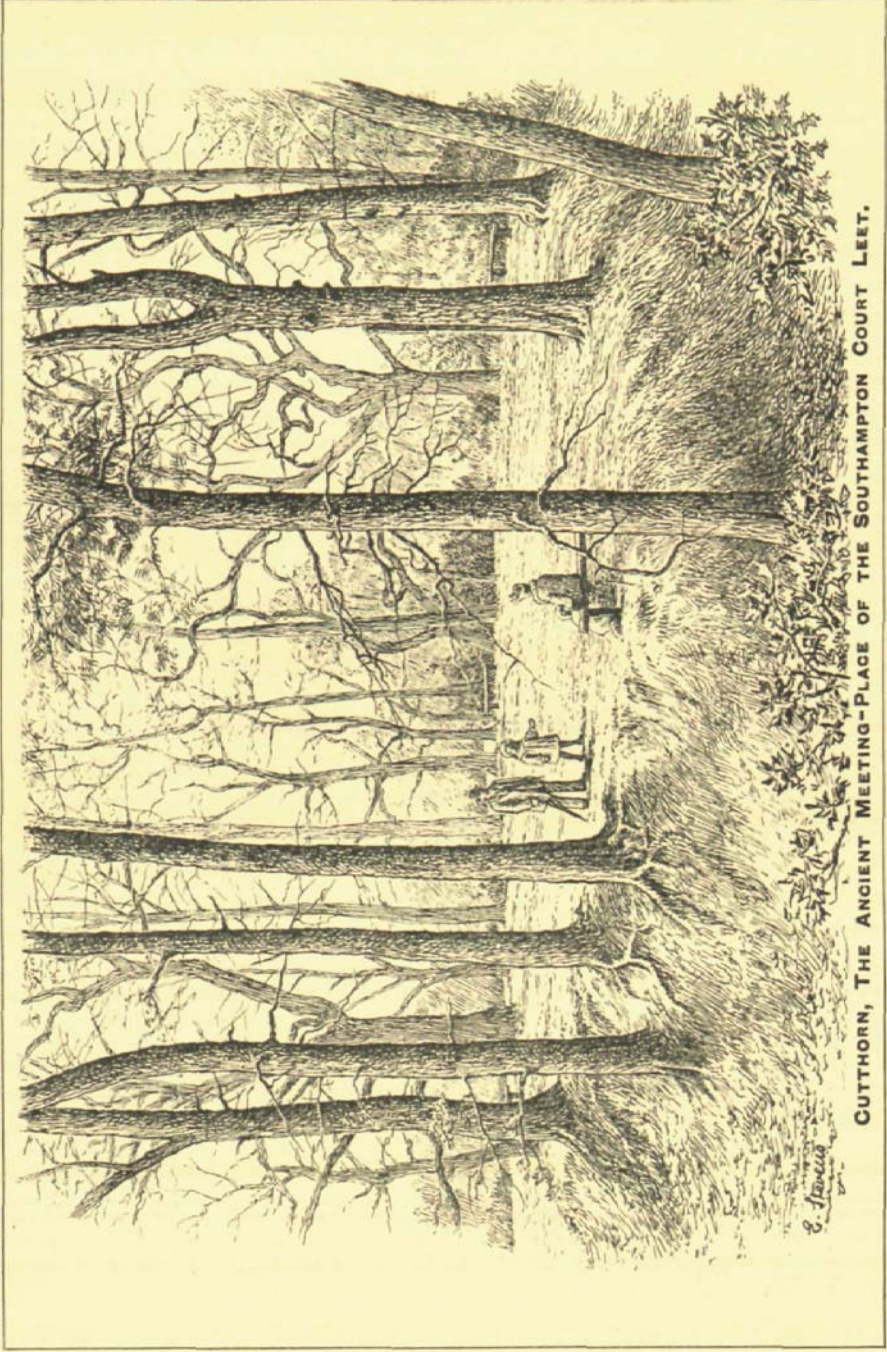


HANTS FIELD CLUB AND ARCHÆOLOGICAL SOCIETY.



E. Stevens

CUTTHORN, THE ANCIENT MEETING-PLACE OF THE SOUTHAMPTON COURT LEET.

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THE
COURT LEET OF SOUTHAMPTON.¹

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¹This paper embodies the substance of an address delivered before the Hampshire Field Club at Cuthorn, the ancient meeting place of the Court, on the "Lawday," May 16th, 1905.

The Borough of Southampton is rich in antiquities. Its documents cover a period of over seven centuries; its walls and gates date back to the days of Norman and Plantagenet kings; its traditions connect it at many points with the whole long course of English history. But among all the authentic relics of the past which survive to the present day, probably none can compare in age or in dignity with the court—for the last six centuries known as the Court Leet—which meets each year on the third Tuesday after Easter.

Of course at the present day the court is a mere ghost of its former self. It no longer has part or lot in the government of the borough. It is allowed to haunt the scenes of its old authority and power only by the kindly tolerance of the modern rulers of the town, who generously and wisely hesitate to "lay" with the stern hand of practical common sense a spectre so venerable, so suggestive of memories great and beneficent. It is no small thing, and it speaks by no means indistinctly of the reverence that still exists among us, that some thirty busy men of affairs can be found year by year willing to give up half a morning in order to take part with smiles, and yet with intelligent appreciation, in a venerable pageant from which all substantial reality has long since vanished.

The procedure which is observed at the present time is as follows:—A notice is posted on the board at the Municipal Buildings, about a week before the Lawday,¹ requiring all who owe obedience to the court to come and pay their suit and service in the Audit House on the day and at the hour (11 a.m.) specified. Since this is in effect a summons to all the adult males within the limit of the borough, with a very few exceptions, it is perhaps well that, in a population of 110,000, attendance is no longer strictly enforced. Next, a special summons is issued to some thirty burgesses, mainly members of the Council and other public bodies, calling upon them to serve on the jury. It runs thus:—“This is to will and require you to attend at the Municipal Offices, on Tuesday, the..... at eleven o'clock in the forenoon, to do and perform the several duties of a jurymen at the Court Leet or Lawday, then and there to be holden according to the ancient custom.” On the day appointed some of the jurors attend and others do not; of the latter some send excuses and others do not. There is a laughing demand that defaulters shall be fined, as in the old days. But nothing comes of it; the ghostly court administers but a spectral law, and it has no longer power to strike with the smallest penalty the recalcitrant sons of men. The Usher of the Court (one of the Town Sergeants) opens the proceedings by saying in a loud voice, “All manner of persons that do owe suit and service to the Court Leet and Lawday, now to be holden in and for the Town and County of the Town of Southampton, draw near and give your attendance and answer your names.” Next the steward (the Town Clerk) takes up the theme and cries, “You good men that are returned to inquire for our Sovereign Lord the King, answer to your names,” and he proceeds to call the roll of the jurors and to mark the names of those who respond. The swearing-in of the jury then ensues; first the foreman (the Sheriff) stands up and takes the oath in accordance with the following exhortation of the steward:—“You as foreman of the jury shall enquire and

¹ The Lawday, or Lage-day, was properly any day of open court. The term was generally applied however only to the more solemn courts of a County or Hundred. The Cartulary of the Abbey of Glastonbury speaks of summonses “ad duos Lage-daies per annum, unum ad festum beati Martini et alium ad la Hokedaie.”

true presentment make of all such things as shall be given you in charge. The King's council your own and your fellows' you shall well and truly keep. You shall present nothing out of hatred and malice, nor shall conceal anything out of love, fear, or affection, but in all things you shall well and truly present as the same shall come to your knowledge." The remainder of the jury are sworn *en bloc*.

After these preliminaries are concluded, the steward reads his charge to the jurors, and tells them into what causes they are to make enquiry. The charge has come down unchanged through many generations, and its quaint admonitions, taking its hearers back to the days when Southampton was a small and semi-rural town, sound strange, pathetic, and unreal, as they are addressed to the merchants and professional men of a large and flourishing modern port. Among the things into which the jurors are to enquire are:—whether the Tything-men have discharged their duties, whether the stocks are kept in repair (for they are "very useful as the world now goes"), whether any pound-breaches have been made, whether unlawful games such as tennis or bowling are carried on, whether any persons illegally kill hares by tracing them in the snow, whether there are any forestallers and engrossers in the town, and generally whether "any other nuisance to the annoyance of the king's subjects" is committed.

At the conclusion of the charge the boundaries of the borough are enumerated, and then as a rule the court is adjourned and the jurors troop gaily into the Mayor's Parlour, where the Sheriff entertains them with champagne and other delights!

How changed from the solemn proceedings of four or five centuries ago! In those remote mediæval times the coming of the Lawday was one of the great events of the year. Business throughout the town must have been suspended; for all the burgesses in the town was required to be present, and none could leave the town so as to miss attendance without special permission from the Mayor. The proceedings, too, were lengthy; for three meals were required by the jurors to support them under their onerous duties.¹

¹On one occasion in the 17th century a bill amounting to £11 4s. 4d., was sent in for *four* meals. But someone, presumably the Steward, endorsed it with a strong protest:—"The townne dothe alwayes allowe to the Jurrey but three mealles and this acompt is for four meales."

Early in the morning the burgesses, who were expected to come on horseback, met the Mayor, Aldermen, and Discreets at the Bargate. Thence the company set out to beat the bounds. Down to the Western Shore they went, along the waterside till they came to the little stream that runs at the foot of Four-post hill, across the stream at Acard's or Acorn bridge, and then up through the village of Hill (a much debated and contested region) and on to Hode Cross¹ at the N.W. corner of the great Heath or Common. Thence they turned sharply to the east and advanced some half mile or so until they reached the Winchester way and, close to it, their meeting place of Cutthorn (see illustration). Here they found that great preparations had been made for their coming. The mound had been defended from the populace; boards had been erected into a platform for the jurors; a booth had been set up outside the enclosure; viands and wood had been collected, and all things made ready for a feast.²

Into the enclosure went the Mayor and his brethren, with jurors and the perambulating burgesses, and the opening formalities were gone through much as they are at the present day, save that an air of grave and serious business brooded over all the assembly. Were they not gathered together to defend their communal privileges, to maintain their municipal rights, to assert and affirm their immemorial claims? They

¹ Davies's History of Southampton, p. 44.

²The Steward's Book for A.D. 1499, gives the following particulars of the expenses of the feast of that year:—

| | s. | d. | | s. | d. |
|-------------------------------|-----|------|------------------------------|-----|-----|
| A crophe of beffe | ... | 2 4 | Two gallons claret wyne | ... | 7 4 |
| Four leggs of mutton | ... | 1 0 | Orengys | ... | 0 2 |
| do. do. | ... | 1 0 | Musterd and vinegar | ... | 0 2 |
| Three dozen of bred | ... | 3 0 | Two hundred of wood | ... | 1 4 |
| Half a barrel doble beer | ... | 1 8 | A man to dresse the mette... | ... | 0 8 |
| Half a barrel fyn Hyl beer... | ... | 1 0 | Two poor men to turn | ... | 0 5 |
| Ten gallons peny ale | ... | 0 10 | Two poor boys... | ... | 0 2 |
| Twelve chickens | ... | 1 0 | A cart to Cutthorn | ... | 0 8 |
| Four pyggs | ... | 2 0 | For whyt dyshes | ... | 0 8 |
| Two lambys | ... | 2 0 | Making a both... | ... | 0 3 |
| Butter and eggs | ... | 0 8 | Hyre of two garnysche off | | |
| Chese | ... | 3 0 | Wessell | ... | 0 8 |
| Salt | ... | 0 1 | The 12 men when they gave | | |
| Half a bushel of flowre | ... | 0 8 | their verdyt | ... | 2 0 |
| Half a pound of peper | ... | 0 8 | Two men beyring the two | | |
| Saffryn, cloves, and mace | ... | 0 4 | long planks, and setting | | |
| Preuyns and raysyns | ... | 0 8 | the two barrys | ... | 0 4 |

swore their oaths in grim and solemn earnest ; they listened to the Steward's charge with intelligent and discriminating attention, and they proceeded to appoint Beadles for each ward, Surveyors for the highways, Overseers and Drivers of the Common to see that their rulings concerning the borough's wealth were carried into effect. Then they turned to the business of the Court, listened to the complaints of the burgesses, made their presentment of offenders to the Mayor, and indicated the penalties to be imposed. It is evident from several of the extant records that they were able to get through but a small fraction of their work on the Lawday itself. Entries occur dated as long as six weeks after the date of the opening of the Court. We may suppose then that the assembly worked hard till, say, noon, then adjourned the proceedings and passed out from the enclosure to enjoy the substantial luxuries of the great feast. When the feast was concluded, more business might be done by way of prelude to the second meal which we know was expected. Then, as the lengthening shadows told of the waning of the day, the company would set out from Cutthorn to complete the riding of the bounds. Down they would go towards the Itchen with the setting sun behind them, and before them on their left the glorious panorama of wood and mead and down that leads on to the ancient capital of England. Then southward they would wend their way along the right bank of the Itchen till they re-entered the town by the Maison Dieu (strangely corrupted in the books to "Sandy") Gate. By that time, no doubt, they were ready for their third meal, probably a supper in the Guildhall.

It is time now to ask what was the origin and what were the functions of this court which occupied so important a place in the judicial system of the Middle Ages. As to origin, the Court Leet seems to have developed out of the Sheriff's Tourn,¹ or Great Court of the Hundred, held every six months before the Sheriff, for the taking of the view of frank-pledge, and the trying of minor criminal cases. Although there is no evidence that in historic times the Southampton Court Leet ever met more than once a year, yet we have one important

¹ Tourn or Turn = the Sheriff's Court, kept twice every year. Britton calls it Tour, id est ambitus circuitus.

record of 1397 which gives us the link to connect this court with the ancient tourn of the Sheriff. In an Indenture of Concord, dated 20 Richard II., made between the Prior of S. Denys and the Mayor of Southampton, it is agreed that the tenants of the Priory "apud villatam de Porteswoda comoraturi facient sectas suas semel vel bis annuatim ad visus franci plegii tenendos per Majorem et ballivos villæ predictæ vel successores suos apud le Cutthorn vel alibi," i.e., shall pay their suit once *or twice* a year at the views of frank-pledge held at Cutthorn or elsewhere.

The term "Leet" is a very obscure one. It can be traced back to the thirteenth century, and to the eastern counties.¹ Then and there it seems to have had a territorial connotation, and thus it may well be akin to the O.E. term "lathe."² In the fourteenth century it was generally applied to the Sheriff's Tourn in the Hundreds, and to the borough and manorial courts which exercised similar powers. It came to be a recognised maxim of the lawyers that "every man is in some leet or other."

As to the functions of the court, only the briefest summary can here be given.

The cases which the jurors presented to the consideration of the Mayor and his brethren were divisible into two large classes.

(a) First, there were serious offences, mainly felonies of one kind or another, which the Court had power to enquire into, but which it had not power to punish. Such offences were treason, murder, manslaughter, burglary, robbery, theft, and arson. For punishment those who had committed these crimes had to be sent to the Quarter Sessions or to the Assizes. The records of the Southampton Court contain, so far as I am aware, no examples of cases of this class. We must not therefore assume that crime was unknown in old Southampton, but rather that from the sixteenth century at any rate, the frequent Petty Sessions of the Justices of the Peace provided a more prompt and effective method of dealing with it.

¹ Cf Rev. W. Hudson's "Leet Jurisdiction in Norwich, 1288, A.D." published by the Selden Society.

² Cf Oxford English Dictionary, Article "Leet."

(b) The second class of cases which came before the Court consisted of those with which it had full competence to deal—powers not only of enquiry, but also of decision and, if necessary, of punishment. The following were the principal items of this class :—

- (1) **Common Nuisances**—such as encroachments on the public lands, interference with the highways or foot-paths, pollution of the air, and offences against sanitary regulations generally.
- (2) **Evil Persons**—whose habits and behaviour threatened danger to the community. Such were haunters of taverns, eavesdroppers, scolds, bawlers, common barrettors, and usurers.
- (3) **Tresspasses** of the nature of affrays, bloodshed, riots, and unlawful assemblies, when the public peace was disturbed.
- (4) **Instruments of Justice**—the maintenance of stocks, pillory, cucking-stool, and pound for cattle.
- (5) **Trade Regulations**—such as the enforcement of uniformity in weights and measures, the maintenance of standard quality of goods, the fixing of prices, the punishment of deceit, the suppression of forestalling, the prevention of combinations of labourers.
- (6) **Unlawful Games**—the suppression among the lower orders of such games as carding, dicing, skittle playing, bowling, and tennis, which were supposed to interfere with the practice of archery, and to provide opportunities for conspiracy.
- (7) **Local By-Laws**—the enforcement of regulations concerning cattle on the common, watch and ward, repair of walls, paving of streets, building of houses, and so on.

The penalty which was usually inflicted for breach of statute, by-law, or order of court was the imposition of a fine; but other penalties such as imprisonment or exposure in the pillory were occasionally resorted to. Where fines were employed the rule, if the usual custom of Court Leets was

followed, would be that the Mayor and his brethren would decide on the imposition of the fine, while the jurors or special "affecters" appointed by them would fix its amount.

It is clear from the records that, even in 1550, the court was beginning to decline. In the seventeenth century its decay was rapid, and in the eighteenth it sank into a mere formality. In 1617 it ceased to meet at Cutthorn (except on rare occasions), and assembled in the Guildhall over the Bargate. The attendance of the burgesses fell off; the business diminished in amount and degenerated into lifeless routine; the beating of the bounds was abandoned in favour of that simpler enumerating of them which is the practice at the present day. The era of the Court Leet passed away. If we seek the causes of decline, we are able to find three which go far to explain the facts. First, the character of the town changed; it ceased to be agricultural; it ceased to need the defence of walls and gates; it ceased to be troubled by most of the offences which it had been the function of the Court Leet to prevent. Secondly, the court throughout its whole career had been weak on its executive side. It had had an inquisitorial eye and nose, but a feeble and ineffective arm. It had not been able to exact its penalties; it had not succeeded in enforcing its commands. The Rev. W. Hudson, writing concerning the Norwich Leets, gives an instance in which fines of £72 yielded but £17; but this seems a successful result when it is compared with one notable example from the Southampton books. During a century and a quarter, viz. from 1652 to 1778, every year, and wholly in vain, the jurors iterated and re-iterated one urgent and imperative injunction, and in 1778 they ceased, not because they had been obeyed, but because they saw at last that they were lifting up their voices in vain. A third cause of the decadence of the court was the rise of new and conflicting authorities, armed with superior might. Foremost among these were the Justices of the Peace, who in Petty Sessions and Quarter Sessions acted with decisive vigour in cases over which the Court Leet jurors poured forth but ineffective wails. Later on came Municipal and Sanitary Authorities and took away all that remained of prerogative and power. One thing, however, the Court Leet can still do; it can utter ghostly warnings, and thus, as a venerable spirit of

the past, it can help to guard spectre-wise such relics of antiquity as still are left amid the modern town.

NOTE.

It may here be mentioned that the Records of the ancient Court Leet of Southampton are at present being printed and published by the Southampton Record Society (of which the present writer is the Honorary Secretary). The first part, issued last November, covers the years, 1550—1577; the second part, just ready, carries on the work to 1602. The volumes contain entries which illustrate at nearly every point the description of the court given in this paper. Appended are a few typical "presentments" of the jurors:—

(1) *Hogs in the streets* (1550).

"Item none suffer theire hogges to go in the streats by daye nor night upon payne of every default of every hogge 4d. And that it shall be lawfull for the said overseers lorde of mysruell or cryar to impounde the said hogges and take for every hogge so offendinge the said 4d., halffe for them selffes and halffe for the Towne, and to take a distresse in the offenders house for the same.

(2) *Ducks in the streets* (1550).

"Item in like case that none suffer any ducks to go in the streats upon payne of the first defaulte 4d., the second defaulte 8d. and at the third tyme to forfeite the ducks and whosoever takyth them shall have them for themselves."

(3) *The Watch* (1571).

"Item we present that the byddels hathe made great complaint unto us of the disorder of the watche for that as they saye most nights they are to seeke of theire watchmen and whenas the watchmen dothe come together they are such as arre for the most part unlyklye and unmeete men to serve for that purpose, wherefore we dessire that yt may be throughlye considerid of, for that yt standithe the whole towne upon to have the watche throughlye kept, that they may be there in due tyme and also remayne and contynewe in the said watche accordinge to the old custome."

(4) *Wells and Pumps to be put into repair* (1573).

"Item we present that all the comon wells and plomps within this towne be out of reparacons some altogether damnid and fillid vppe, some Lacking Roopes and buckets except St. Lawrans, and St. Michis, wherfore we desire that speedy Remedy maye be hadd for the same for that yt is a thing most necessary and nedfull for the savegard and preservacon of this towne from fyre and such Leek dayngers. And for the speedy redres thereof we desire and think yt good that the inhabitants of every warde maye be comaundid to see the same done repaired and amendid on this syde St. James tyd next vppon payne of 20/- for every one that shall offend."

(5) *The Towers near East Gate in decay* (1574).

"Item we present that the two towares of the towne walles nyxte vnto este gate are founderide and very nedfull to be Reparede wherfor we desyre your Worspipes to have them Vewede and mendide, Leste they faull downe and put the towne to a gretter charge."

(6) *Polluting the Streets with filthy water* (1574).

"Item we present that John harrayson and Robert crosse dothe vse to sett there tobbes vnder ther stalls or bordes to receave the waters and when ther tobbs arre full they presently throweth yt into the gutter of the streat to the great annoyance of the quenes subjects with the stinke thereof, be yt commanded to them to vse yt no more vppon payne of 10/- a pece."

(7) *Divers women wear hats not white caps* (1576).

"Item we present that Dyvers women in this towne doo not weare whyte Cappes but hatts contrarie to the statute as yt may appeere by the churchwardens there presentmets every weecke, as bones wiffe, pawlle elliotts wyffe, Robt Crosses wiff and Lawrence Crosses wife."

(8) *A Cucking Stool to be set up* (1576).

"Item we present that there wantith in this towne a cocking stolle for the punishement of harlots wch is very necessarie to be sett uppe wherof we praye redresse and that yt maye be set vppon the towne dytches wher yt hath heretofore accustomed to be sett."

(9) *Bread for the Communion* (1576).

"Item we present that Mr. Stere Mr. husse and Sir Thomas of St. Migels do vsse to administer the Comunion wth waffer or singing breade w^{ch} ys contrarie to the statutes and book off Comon prayer for yt aperethe by the said books that for the advoydinge and takinge away of superstition the comunion ought to be admynisterid wth the fynest whyte breade that may be gotten and suche as ys vssuallie accostomed to be eaten at mens table."

The clergymen mentioned above are —

Thomas Stere : Rector of All Saints, 1562—(?)1589.

Thomas Husse : Rector of S. Lawrence, 1567—81.

Sir Thomas Banester : Vicar of S. Michael, 1557—88.

