

# PRIMITIVE FOLK-MOOTS;

OR,

OPEN-AIR ASSEMBLIES IN BRITAIN.

BY

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LONDON:

SAMPSON LOW, MARSTON, SEARLE & RIVINGTON,  
CROWN BUILDINGS, 188, FLEET STREET.

1880.

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TO  
WILLIAM JOHN THOMS, ESQ., F.S.A.,  
THE FOUNDER OF "NOTES AND QUERIES,"  
AND  
THE TOILER AT MANY GOOD WORKS,  
**This Book is Dedicated**  
BY THE AUTHOR,  
IN SINCERE ADMIRATION OF A LITERARY LIFE,  
WHICH INSPIRES IN ALL THE DEEPEST FEELINGS OF  
RESPECT AND ESTEEM.

## P R E F A C E .

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BEFORE a work is laid before the public, the author should be quite satisfied of its *raison d'être*: he should know exactly upon which shelf and by the side of what existing works in the national library it ought to be placed; he should, in fact, be always sure of the gap in literature that he proposes to fill up. Of course, he may not eventually be able to fill it up worthily, but the student will not be altogether unthankful or unappreciative if the desideratum be fairly attained. Speaking now of the present work, I would point out that chronologically it holds a place prior to any existing works on English Constitutional History, because it treats of a period of history prior to any that has been yet undertaken. Mr. Kemble and Mr. Freeman go far enough back to be enabled to look upon the borderland of my subject; but, then, in so doing, the one steps on to Swiss ground, and the other on to German. Canon Stubbs commences his great work at a period when all primitive institutions were developing into historical institutions. Mr. Coote passes over the primitive period by one magnificent bridge of Roman civilization. I can only hope, therefore, that the pride of place which the subject is

entitled to may not be materially damaged by my treatment of it.

I am quite aware that, according to the highest canons of historical writing, this book possesses many drawbacks. The author of any work dealing with archæological monuments should doubtless have visited and examined for himself each object, or at all events a majority of objects—a representative majority. But I cannot profess to have done this in respect of any of the great archæological remains that I venture to treat of. My sources of knowledge are entirely literary; that is to say, I am dependent for the descriptions of the places mentioned upon the published accounts scattered throughout English literature, or upon the accounts kindly furnished by friends. My work is therefore in this respect an historical compilation merely.

Again, when an historical subject is treated for the first time, I hold it to be superlatively necessary to make the record of the facts as clear as possible; not to destroy the completeness of any item of fact for the purpose of making it fit in with any historical theory.

Now, from the long series of instances of open-air assemblies in Britain, I have built up an historical theory concerning the Primitive Folk-moots of Britain. This theory is based, I believe, upon the strongest possible foundation; it is an induction drawn from a very wide circle of facts. But in every instance I have sought to keep my facts as complete as possible—topographically, historically, and politically. My first care has not been the proof of my historical induction, but the collection of all the known or possible instances of the open-air assembly in Great Britain which I could

come upon during a long period of research. And if, with these fragments of antiquity, I have endeavoured to build a fabric which, as I submit, gives us an important picture of primitive times; if my argument throughout is that these open-air assemblies are survivals of primitive open-air assemblies, I am dependent for proofs of this argument upon the evidence given by the collected examples as they stand in English history or tradition at this present day, instead of the more strictly scientific data afforded by an archaeological arrangement of the primitive features only of each example.

If, therefore, my conclusions be not so scientifically arranged as they might be, let me plead my adherence to the necessity of placing on record, very clearly, the facts by which the subject may hereafter be more fully worked up, and which, more than anything else, are essential to a first study.

And if the use to which I have ventured to put these fragments of olden times be not acceptable to the purely antiquarian scholar, let him remember that the fragments themselves are quite visible to him, and are uninjured.

Thus, therefore, I trust that the student of primitive culture and the antiquary may both be able to see some merit in my work as a useful contribution of materials rightly and scientifically placed for future use.

I find that a few typographical errors have crept into the text, which I have noted in a table of errata; and perhaps in mitigation, not in excuse, of this default, I may plead that my work has been done after the busy day of official life is over.

I must acknowledge with sincere gratitude the great

assistance I have had from many kind friends, which I have always acknowledged in the text of the book. But I must be invidious enough to specially allude to Dr. Alexander Laing, Mr. James Hardy of Oldcambus, Mr. John Fenton, and Mr. T. Fairman Ordish, who have assisted me by something more than the ordinary means of literary assistance. Mr. Edward Peacock, F.S.A., has also sent me many useful references, which I have not been able to acknowledge in the text. I must also be permitted to express my obligations to the editors of the *Athenæum* and *Notes and Queries*, for their kindness in publishing my wants from time to time. And, lastly, to one kind and learned antiquary I owe so much, that I have ventured to still further increase the debt by placing his name on my book in a somewhat more prominent position than at the end of the preface.

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#### ERRATA.

- Page 9, line 32, *for* "Lavelaye" *read* "Laveleye."  
,, 66, line 29, *for* "Skene's" *read* "Innes's."  
,, 82, line 10, and page 83, line 7, *for* "Doomsday" *read* "Domesday."  
,, 97, line 30, *for* "Landesgemeind" *read* "Landesgemeinde."  
,, 219, the derivation of Malmsbury from *Mallum berg* is, unfortunately, not correct. The Rev. A. L. Mayhew kindly writes to me that "in two MSS. the name is written 'Ealdelmesburh.' Thorpe thinks the initial 'M' may be due to the preposition 'Im.' It was very common to prefix the preposition to names of monasteries : see Indexes to Beda." This is one illustration of the necessity for a *Dictionary of Place-Names*, for which I have pleaded in *Notes and Queries* (6th Series, i. 433).

# PRIMITIVE FOLK-MOOTS.



## CHAPTER I.

### INTRODUCTION.

Present State of Early English History—Primitive Institutions still traceable from Indigenous Sources—The Place occupied by the Folk-moot—General Characteristics of the Primitive Assembly—Its Development in English History—The Particular Value of the Evidence of Open-air Meetings—Their Connection with other Primitive Features—The Arrangement of the Examples to be investigated.

NO branch of English history has been remodelled so entirely upon a new basis as the early period, before the existence of English records. Comparative Philology, Comparative Politics, and Comparative Jurisprudence have united in producing a philosophy of history which enables us to understand the political life and institutions of this early period, almost as satisfactorily as if our knowledge had been derived from the evidence of written records. One has only to compare, for instance, the authorities used by Kemble and Stubbs with those used by Hume, and even Hallam, to at once perceive the full significance of this. The latter are almost entirely English—early chronicles and other historical docu-

ments of that class ; the former appeal to the comparative method, and call in the evidence of foreign early history as evidence of early English history ; nay, take English history itself back to a foreign home for its origin.

Yet, curious and complete as we must admit this new historical picture to be, now and again we come across a hurried generalization, or perhaps even a missing link in the chain of evidence.\* It is not always made clear by the followers of the comparative method of historical study, why the chief authorities for early English institutions should be German, and why a particular institution existing in Germany should be looked upon as the parent of a similar institution existing in England. But the truth is, no systematic attempt has yet been made to trace out the early history of Britain from the archaic remains that still exist in the land. The materials for early English history are assumed to be lost from that point where literature ceases to give evidence, and all information anterior to this is obtained from the continental home whence we departed from our Teutonic kinsmen.

But, irrespective of the weighty arguments which an early Celtic occupation and a Roman conquest bring to bear upon the question of an exclusive Teutonic origin of English institutions, it appears to

\* Mr. Freeman says, "When positive evidence within our own land fails us, we must go for illustration and explanation, not to the facts, the theories, the controversies, of modern politics, but to the kindred institutions of kindred nations on the Continent. Our Parliament is the true and lawful representative, by true and lawful succession, of the ancient Meeting of the Wise ; but, if we would search out the origin and constitution of that Meeting of the Wise, we must go to the Marzfeld of the Frankish kings, to the Landesgemeinden of Uri and Unterwalden." —*Norm. Conq.* i. 75, 76.

me not only that traces of primitive institutions are by no means lost to the student of our island antiquities, but that it is worth while spending some time and labour in working out the proposition as to how much of the primitive history of Britain may be restored to knowledge. It is perfectly true that, at the very threshold of such an inquiry, we meet with a difficulty that may perhaps militate against its value as an historical inquiry concerning Britain and her inhabitants. I mean the difficulty of deciding whether any given primitive institution may be of Celtic or Teutonic origin. For of course it is necessary to work upon the comparative method : to ascertain first what are the usages of primitive mankind, and to work back upon this basis from the evidence to be adduced from British sources. And the usages of primitive man are not only Celtic, or only Teutonic, or indeed only Aryan ; they are to a great extent common to nearly all the races into which external circumstances have separated the people of the earth. But if this difficulty be admitted—and, so far as the present inquiry is concerned, it is fully and completely admitted—there is a considerable counterbalancing gain. By establishing some clear evidence of primitive political institutions in Britain, we at once clear the ground of the theory of the exclusive Roman origin of English history, because Roman influences on Britain were civilizing, not primitive ; and, with reference to Rome, the question then becomes—and this is really an important question—how far did Roman influence bring the primitive institutions of the land within its enormous power, and so develop them that they are practically the outcome of the Romano-barbaric world? But, having established this historical ques-

tion, it is no part of the present inquiry to *answer* it. It simply demonstrates the historical basis of Roman influence in Britain to rest upon the proposition contained in this main question, instead of leaving it to rest upon the other proposition as to how much of English history is really Roman history continued to modern times; and it leaves the answer to students who have specially studied the matter. And a still further gain to be obtained from an inquiry into the primitive history of Britain is the establishment of an historical position for the many archaic customs, the many archæological remains, the many remnants of antiquity which have been collected in our museums or enshrined in our antiquarian literature. These, at present, do not represent much in the acquired knowledge of mankind; they are curiosities admired by the few who take an interest in them, because they are peculiar and belong to a past age. But when once labelled as portions of the evidence of man's historical development from brute to civilization, they assume a scientific value which the philosophers of a future age will know how to acknowledge.

Now the materials of this primitive history of Britain are at last being gradually unfolded; not upon any elaborate plan, or by any definite set of workers, but by different students and in detached and accidental groups, so to speak. Each worker hitherto has arranged his studies according to his own requirements, and not with reference to their bearing upon the primitive history of Britain. Still many notes can be collected showing that this latter subject is advancing. Something has been made known of the primitive mythology—the village gods and the

village faiths and beliefs—from the researches of folklorists. Some portions of the domestic life have been elucidated by our archæologists. The agricultural life—which leads the way to the whole social and political life, for agriculture is the foundation of the primitive community—has been investigated with the clearest results. And thus we have materials for the religious, domestic, and economical phases of primitive British history all more or less at the disposal of the historian. But to crown all this, to make the materials for the primitive history of Britain appear reasonably complete, there is still wanting some research into the politics of that epoch. Primitive politics is a comprehensive subject in the history of early mankind. It has been worked out with success from the evidence of some of the nations of antiquity and of modern barbarism; and some of its phases, at all events, may still be worked out from the primitive history of Britain.

Thus, it will be gathered that I venture to place the primitive assembly in a very foremost position among the institutions of our forefathers. As one of the chief elements of primitive politics, it stands almost at the apex of that group of studies on the early history of mankind which has just been indicated. Indeed, it represents all that primitive man had to fall back upon in his struggles for right and justice, in his connection with men of his own tribe or village, and perhaps with those of foreign tribes or villages. It figures out the solidity of the foundation upon which it was based, namely, the patriarchal community; and it adds one more to those common features in the sociology of the human race which modern science has succeeded in establishing.

Comparative Jurisprudence has made known some of the general characteristics of the primitive assembly. They have been picked out from the remnants of early Aryan history which remain to the modern student, and they are of the utmost value to the right understanding of early juridical thought. They supply, so to speak, the general conceptions with which this branch of the study of primitive politics ought to be approached. But we do not thus obtain definite groups of historical examples; we do not have before us graphic and individual illustrations—there is simply the general induction which the comparative method of historical inquiry has perfected.

This general induction may be stated in general terms to be as follows:—In the first place, there is no definition of the functions of the primitive assembly—no clear division between legislating and judging. “In the infancy of society,” says Sir Henry Maine, “many conceptions are found blended together which are now distinct, and many associations which are now inseparable from particular processes or institutions are not found coupled with them; there is abundant proof that legislative and judicial power are not distinguished in primitive thought” (*Early History of Institutions*, p. 26). Again, in its most primitive form, the assembly was essentially democratic. Its legislation in Aryan countries consisted of the apportionment of the agricultural tenements and the duties incident to an agricultural community; its judgments consisted of the settlement of village wrongs, and occasionally the trial of a village criminal. “Licet apud concilium accusare quoque, et discrimen capitis intendere” (Tacitus, *Germ.* xii.). This primitive council gave birth to the Athenian Ekklesia, to



the Roman Comitia, to our own Witan and Parliament. But when it first comes to the notice of the historian, it is fluctuating amidst a whole cluster of influences, which, as development proceeds, almost eclipses the original form. It is seen in history sometimes owning a responsibility to the entire body of freemen, sometimes disclaiming it, sometimes overshadowed by the authority of an hereditary chief (*Early History of Institutions*, p. 388).

Turning from these varying functions and characteristics of the primitive assembly—the sometimes wholly legislative and sometimes wholly judicial, the sometimes democratic in form and the sometimes autocratic—there is the further question to consider: To what social unit or aggregation is it incident?

Most clearly it is not the assembly of a State, as we understand the term State now. As just now pointed out, it gives birth to the assembly of the State; and this is because the State, as a rule, is a vast federation of communities bound together by some external tie. As the primitive community, sovereign within its own bounds, becomes aggregated with other communities, it gives up just so much of its own sovereign power as will serve to create the new sovereign power of the new State. Thus, the shires of England were once sovereign communities; and they amalgamated into the new kingdom of the West Saxons. And as a natural consequence the old shire-moots became the local branches of the new Witenagemot: they lent their aid to the formation of the new Witan; they established the first rules of its formation by the old rules which had long governed them; they established its democratic character—the right of every freeman to attend and take part in its proceedings; the right

of every shire-man to be a Witan-man. We can only just perceive these influences of the old primitive assemblies of the local communities upon the national assembly of early Saxon times; they crop up upon great state occasions, in spite of the enormous influence which Roman sovereignty was working, in spite of the new kingship which Roman ceremony had fostered, in spite of the new nobility and new Court associations which Roman power had developed. But all these Roman influences upon the central governing authority—upon the Teutonic-founded Witan and upon the new kingship and the new ceremonial—left the local communities to do almost as they would have done in old times, and to develop almost as they would have done if no Roman power had swept over them. Nowhere can Roman influence be traced in more powerful form, than in the development of the national sovereignty. It drew the national sovereignty away, so to speak, from the local sovereignties, which would otherwise have shared some of its power. It clothed the new national sovereignty with its own civilized ceremonial; and by the dazzling power, as well as the ordinary sociological influences, of this ceremonial, the national sovereignty took upon itself the guidance of the nation, received upon itself the changes which national progress, and subsequently foreign conquest, always bring about.

In this wise the old local communities retained much of the primitive influence and many of the primitive forms. The old shire-moot was called upon to take part in the State government at a comparatively early date; and accordingly we lose sight of many of its primitive characteristics at an early stage in its history. But still its primitive characteristics *are* discoverable. The

hundred-moot, the manor courts, the forest courts, the courts of the liberties and franchises, and the courts of some municipalities, however, carry on the primitive associations to within the memory, or at all events the knowledge, of the modern student.

We shall find that many of these courts are occupied now, as they were occupied in primitive times, in carrying out the legislation and the judicial trials of agricultural communities. Almost everywhere in Aryan lands there are most remarkable reminiscences of the primitive agricultural community. England, it is well known, is not behindhand in the evidence she gives of this primitive institution. Sir Henry Maine and Professor Nasse, of Bonn, have only laid the foundation of, and shown the path to, a still further extension of evidence. It is everywhere forthcoming that England at one time in its history was entirely divided, as it is now even partially so, into groups of self-governing, almost self-supporting, agricultural communities. Certain modes of cultivation, particular divisions of cultivated lands, are the characteristics which have, up to the present time, formed the sole basis of evidence in England. These village rules of cultivation survive now as fixed unalterable customs, incident to certain manors or other jurisdictions. There is not one word of an assembly of the cultivators which met to decide the course of cultivation, the division of the lands, and the rights of the individual villagers. Yet such an assembly is an undoubted element of the primitive village community. In Russia the assembly of inhabitants of the commune determines the time of sowing and harvest (Lavelaye's *Primitive Property*, p. 14). In Switzerland all the commoners above the age of eighteen assemble, of absolute right, every

year in April, to receive the report of accounts and to regulate current affairs (*Ibid.* p. 94). In Germany the inhabitants assembled to deliberate on all that concerned the cultivation, and to determine the order and time of the various agricultural operations (*Ibid.* p. 111). In Holland the partners in the work met once a year, on St. Peter's Day, in a general assembly, or *holting*. They appeared in arms; and no one could absent himself, under pain of a fine. This assembly directed all the details as to the enjoyment of the common property; appointed the works to be executed; imposed pecuniary penalties for the violation of rules, and nominated the officers charged with the executive power. The mound where the *holting* met (*Malenpol*) is still visible in Heldermaenveld, and at Spoolderberg, near Zwolle (*Ibid.* pp. 283, 284).

Here, then, we have evidence of the legislative duties of the old village assembly. Its judicial duties do not want any particularization—they exist at every court leet of a manor, at every criminal jurisdiction of modern local courts. I do not mean to say that it is possible, or even necessary as a logical position, to gather together all the groups of cultivating communities, and all local courts having civil and criminal jurisdiction, either in existence at the present time, or as recorded in literary archives, and restore to each group substantial evidence of its primitive original, by placing alongside of the evidence of primitive mode of agriculture, evidence of primitive courts of justice. But what I want to establish is, that in these modern local courts we have survivals of the *primitive* assembly which was incident to every initial group of men banded together into a cultivating community, to every extended amalgamation of smaller communities into

larger communities, to every original sovereign State in its primitive development ; and, finally, that, if not incident to, it is traceable in the collected influences which at first formed the Witenagemot of England.

It now becomes necessary to answer a very important question which meets us at this stage of the subject, and which, indeed, modifies the whole form of our subsequent researches : By what means is the primitive assembly, or, as we may now call it, primitive folk-moot, to be recognized in modern Britain, or, from the historical records of modern Britain ?

It is clear, in the first place, that we cannot trace it out by means of those general characteristics which have been noticed above.\* They are too indefinite, and have entered too much into the composition of the modern assembly. We have lords of the manor exercising judicial functions, and assemblies of the people, in select or popular bodies, exercising legislative functions, all over the kingdom. That these are remnants of the primitive folk-moots there cannot be any doubt ; but, then, they are surrounded with machinery of quite modern date, and cannot, therefore, be applied to the requirements needed in the present research.

It is necessary, then, to appeal to some other distinctive feature, or features, of the primitive assembly, in order to trace out its existence in Britain. And this, I think, will be found in the open-air meeting. In the instance quoted above from Holland, as to the cultivating community being governed by its own

\* "As to the constitution of these great councils," says Mr. Freeman, "our information is of the vaguest kind" (*Norm. Cong.*, i. 111). And this remark applies equally well to the local assemblies of early English history.

assembly, it will be remembered that the place of meeting is particularly mentioned as still existing. It is a great mound of earth, in the open air, under the light of heaven. In this particular feature of the primitive assembly can be identified a means by which examples may be traced out in Britain on tolerably sure and very extensive grounds. It is not necessary to associate every example of open-air meetings with other known primitive characteristics of the assembly. For it is only possible now to regain from the memorials of the past, fragmentary evidence of primitive institutions. In some few cases we shall have something more than fragmentary evidence. But, in an extensive research, to attempt to look for anything else would be to put one's self in opposition to the whole historical development of English institutions, and, in fact, to shoot above the mark. And we cannot expect to meet with examples identical in every particular with the originals from which they have started. Some portions of their outline will have been altered, some portions also of their internal construction. Sometimes it will be the legislative functions that are the most prominent, sometimes the judicial functions; sometimes, again, it will be that the popular assembly is the most prominent form, and sometimes the chief, or lord of the manor. And these important considerations form an additional reason why the search should be limited to some unmistakable feature of the primitive assembly.

In taking the open-air meeting as the key-note of the evidence, there is an undoubted gain in the precision and accuracy of our researches. As we shall presently see, this feature of the primitive

assembly is found in many social groups which lie at present outside the field of Comparative Jurisprudence; and it will certainly enable the student to make a more elaborate comparison of the assemblies of Aryan countries. Mr. Freeman, it is well known, has worked out this comparison as a chapter of Comparative Politics, but then his researches with regard to Britain, for instance, are less comprehensive and less satisfactory than those with regard to Teutonic countries, and to Greece and Rome. But the thoroughly distinctive feature of an open-air meeting is very easily traced, and very easily grouped into archæological sections. We can show that Britain sends forth to the study of primitive politics a contribution scarcely second in value to that received from any other civilized nation; and, further than this, that in the open-air meeting we have hit upon an element of primitive political life, which may perhaps carry the study of Comparative Jurisprudence beyond its hitherto restricted boundary of Aryan history.

It will not serve any good purpose, therefore, to delay considering the evidence of the primitive folk-moot in Britain until some other significant features can be associated with every example of the open-air meeting. The disturbance of primitive institutions, or rather their development, has been too great to allow of much use being made of a whole group of survivals, instead of one particular survival. As Sir Henry Maine observes, no institution of the primitive world is likely to have been preserved to our day, unless it has acquired an elasticity foreign to its original nature through some vivifying legal fiction (*Ancient Law*, p. 264). And, accordingly, the open-air court, as it is still found in Britain, becomes a very signifi-

cant factor among British institutions, and a very important relic of primitive times. It is in its nature as a survival from primitive times that it becomes of the greatest prominence here. In some few instances to be brought forward, other relics of the primitive assembly will be found clustering round this first-found basis, and further researches will make it clear that the open-air meetings of modern times possess other important features, which have been borne along by the same historical breeze that has preserved the primitive form and place of meeting. On the very threshold of our inquiry, indeed, it is possible to see connected with the open-air meeting another very important characteristic of the primitive assembly, namely, the right of the whole body of freemen to attend and take part in the proceedings. These two elements are, indeed, so much a part of each other, that it is difficult to say when the one separates from the other. An open-air assembly, with no restricted space, no secret meeting, must have originally been identical with the primary popular assembly. And we have evidence of their connection in a peculiar capitulary of Charlemagne, which Sir Francis Palgrave quotes in illustration of the very portion of the subject with which I am now dealing. This capitulary directs that a roofed building shall be constructed, wherein the *mallum* shall be held. Sir Francis Palgrave then adds that a sober and plausible reason is assigned for the regulation, and the missus may have expatiated on the paternal care of the sovereign, anxious to protect the suitors from the inclemencies of the weather, from the burning rays of the sun, and the piercing blasts of the wind. But it may be doubted whether this enactment, which is contemporaneous



with another dispensing all freemen from attendance, excepting only the "Vassi" of the Count, and the Scabini, proceeded merely from a wish to consult the convenience of the people. Legislators often follow the maxim, that it is politic to have one reason to offer and another to conceal; and, without being too astute in the wiles of policy, it will not be considered as a very extravagant conjecture that Charlemagne may have been willing to disperse the theory which hitherto had attended these courts, by substituting the solemn session within the walls of the Stadthaus, in the place of the council mustered in the field. Whether intended or not, this effect was produced. The popular assemblies, from being the conventions of the people, became mere courts of justice; and the nation, instead of joining the priests and nobles who deliberated in the Champ de Mars, only heard of the resolutions which had been adopted by the peers in the presence of the sovereign (*History of English Commonwealth*, i. pp. 138, 139).

This places very clearly before us a most important and remarkable stage in the history of the continental primitive assembly. The right of every freeman to attend the assembly and the open-air meeting are concomitant; and abrogating the latter was the first step to destroying the former. In England, however, we do not even meet with these two disturbing agencies in the history of the primitive assembly. Mr. Freeman cannot discover anything to show that the right of the common freeman to take his place in the general assembly of the nation was ever formally taken away in our own country (*Comparative Politics*, p. 219). And the same remark might be applied to the local assemblies. We know perfectly well that the

general assembly of the people—whether we understand the hundred-moot, the shire-moot, or the Witenagemot—has in course of time shrunk up into a representative body, and we know that this is only following a law which is shown to belong to the general development of national institutions; but it has never been formally abolished, and in point of fact exists down to modern times, at all events in historical theory, every time an open-air meeting is held. When we have evidence of an open-air meeting, therefore, we practically obtain evidence also of the survival of the primitive popular assembly. I shall, in addition, be able to point out some remarkable instances, where, under extraordinary circumstances, the old primary assembly was actually resorted to after it had been disused for years, and I shall be able to describe one or two survivals of the primitive assembly, complete in almost every matter of detail; but still, for all practical purposes, the fact of the open-air meeting is the main, and very often the only, link by which we can now trace reminiscences of the primitive folk-moots of Britain.

But it should be remembered that the primitive popular assembly, and what might be understood now of a popular assembly, are two totally different things. The "people" then were not what the people are now. It cannot be too often impressed upon the consideration of those dealing with primitive history, that the unit of society was not the individual, as at present, but the family. Every family then possessed rights and political status, just as now every individual possesses them. And this corporate unit of the State did not represent itself on state occasions by the whole group of persons composing it; that is, by the chief of the

household, together with his children and grandchildren, his attendants and his slaves. These often counted up to a considerable number, according to the power and wealth of the household chief. But, for State purposes, all but the chief were mere ciphers in the community. He was lord, sometimes no doubt listening to the wishes or counsel of his house community, but more often exercising his *patria potestas* despotically and powerfully. He was answerable to the State for their conduct; to him was relegated their punishment or reward; and he alone, therefore, attended the State assembly—the council of his village, his tribe, or his nation. Thus, then, though in theory essentially a democratic institution, admitting *all the members* of the community to its deliberations, the primitive popular assembly was not democratic as we now understand the term. All who had no right to attend did not, in the eye of ancient law, exist; the law of the State did not comprehend them within its bounds. And, of course, from this starting-point many varying developments have taken place. In some instances the household chiefs have retained the power in their own hands, even after the legal definition of “the people” had been transferred from them exclusively to every individual. In some cases, again, “the people” have grown in power at a rate parallel to the extension of their legal recognition, until we see them finally meeting by representation, because their numbers will not permit them to meet popularly, although, as in the case of many parish vestries, the right of every man to attend the village council is still extant. It will now, perhaps, be better understood by this rough outline of one of the most important features of primitive society that the primitive assembly in

Great Britain will appear, in its modern survival, not by any common form of meeting, but by the simple relic of the place of meeting still being in the open air.

Thus, then, I have limited the object of research to the primitive *open-air* assembly; and, accepting the modification implied by this title, I think we shall find a very instructive chapter in the study of primitive politics.

Now, I find that the examples I have collected of the primitive open-air assembly in Britain fall into three distinctive groups, namely, examples from early records before the primitive influences had given way, revivals, and survivals. This division, though perfectly arbitrary, so far as the archæology of the subject is concerned—for one group is just as archaic as either of the others—will be found to give an argumentative relationship to the several stages of the inquiry. We first of all gather together one or two definite examples of the open-air assembly, belonging to a time when it might be supposed that it had not ceased to be an ordinary institution of the land; we then find that, on certain special occasions, for great objects or to meet the requirements of men who had not forgotten the old state of things, assemblies which had met for years under cover, and in diminished numbers, once more resumed their old form. From the stage represented by these two groups of evidence to that represented by the survival, it is an easy step. It will first of all have been shown that the assemblies belonging to the nation and to various local jurisdictions in England *did* meet in the open-air by certain well-known spots, or did gather the whole body of freemen in one general meeting; and, armed with these facts, we can then proceed throughout the length and

breadth of the land to see in what manner this primitive institution has survived. We find the survivals, again, divided into two great sections—the historical, and the traditional and philological. In the group of historical survivals are included many examples of open-air meetings of various legal assemblies—some great franchises, the forest courts, manor courts, and others which represent in uninterrupted succession the primitive institutions of Celtic and Anglo-Saxon Britain. And in the group of traditional and philological survivals are included many old customs that only now receive their correct interpretation, and many significant derivations of topographical nomenclature. By this means it becomes possible to obtain some idea of the widespread custom of open-air assemblies, and to put on record a primitive phase of British history, instead of a series of peculiar instances of British antiquities. Our information would be singularly wanting in comprehensive value, if we had to rely upon tradition or place names only, and would, perhaps, only amount to a conjecture after all; and it would be quite impossible to trace the custom as a general one, belonging to the primitive history of Britain, if we had simply to rely upon one or two isolated examples and an extensive argumentative groundwork. Thus, though as a matter of historical arrangement I keep the three divisions asunder, as a question of historical evidence they form part of one important period, and lend their aid to its illustration.

## CHAPTER II.

## EXAMPLES FROM OTHER LANDS.

Necessity of obtaining non-British Evidence of the Open-air Meetings—*From Modern Savage Life*: Iroquois, Araucanians, African tribes, Negritto races—*The Great Nations of Antiquity*: Hebrews, Hindoos—*Early European History*: Northern Nations, Iceland, Denmark, Saxony, Germany, France—Summary.

IN endeavouring to ascertain what portions of civilized life are relics of a bygone age, it is not possible to be content with general appearances or theoretical probabilities. We must have some historical evidence upon the subject. And although, in the present research, the evidence of very early records will be brought to bear upon this question, in no place do they tell us sufficient of the assemblies and councils of the time to enable us to say at once that the meeting in the open air was one of their most distinctive features. And, moreover, the records of these open-air meetings are very meagre, containing not one word about the form or the ceremonies of the assembly. It is better, therefore, to go outside British antiquities, and see what evidence there is of open-air assemblies associated with primitive communities in other lands and among other peoples; and the result can then be clearly applied to what is found to exist in Britain. It is, of course, only now that the primitive history of man-

kind is being elucidated, that it becomes possible to ascertain what contribution to this primitive history can be obtained from Britain. Old records and strange customs that have no meaning when judged from the usages of modern times, are seen in altogether a different light when the student has placed himself, as it were, in ages long before the events chronicled in the old records or the strange customs had passed away from ordinary life. He is then looking down the stream of time, not back upon it, with a vision dulled by the influences of civilized history and present surroundings. And the knowledge thus gained of primitive life can be applied to the facts of our own national history in all stages of its development, and with the result that customs and institutions which have been laid on one side as not illustrative of British history, are found to be illustrative of the history of early mankind—to be, in fact, a contribution of knowledge from primitive Britain to primitive man. For Mr. Spencer has proved that no true conception of the higher types of family in their relations to the higher social types, can be obtained without previous study of the lower types of family in relation to the lower social types. In this case, as in many others, error results when conclusions are drawn from the more complex products of evolution, in ignorance of the simpler products from which they have been derived; misinterpretation is caused by analysis of phenomena from above downwards, instead of synthesis of them from below upwards (*Principles of Sociology*, i. 711–713).

It is, then, necessary to give some consideration, even if it be rapid, to some of the authorities who have dealt with the assemblies of primitive societies.

These group themselves into three divisions, namely, (a) those relating to modern savage life, (b) some great nations of antiquity, and (c) early European history. The examples to be mentioned are typical rather than exhaustive, and will reflect upon the examples in Britain many of the features they specially portray.

(a.) The traditional origin of the government of the Iroquois North American Indians is peculiarly interesting in connection with the present subject. The tribes were at one time separate and hostile bands, although of generic origin, and were drawn together in council to deliberate upon the plan of a League, which a wise man of the Onondaga nation had projected. Tradition has preserved the name of Da-ga-no-we-da as the founder of the League, and the first lawgiver of the Ho-de-no-san-nee. It likewise points to the northern shore of the Onondaga Lake as the place where the first council-fire was kindled, around which the chiefs and wise men of the several nations were gathered, and where its establishment was effected. The influence of the first council place was never afterwards destroyed. Although the place of meeting was not always confined to Onondaga, the custody of the "Council Brand," and also of the "Wampum" into which the laws of the League "had been talked," was given by an hereditary grant to the Onondagas. The council-fire in the Onondaga Valley, situate in the most central position, became in effect the seat of government for the League. At stated periods, usually in the autumn of the year, and upon exigencies of a public or domestic character, the sachems of the League assembled in council at Onondaga to legislate for the common welfare (see Authorities quoted in Spencer's *Descriptive Sociology*).



Among the Araucanians, again, the triple power that constitutes the sovereign authority is vested in the great body of the nobility, who decide every important question in the manner of the ancient Germans or modern Poles, in a general diet which is called the great council. This assembly is usually held in some large plain, where they combine the pleasures of the table with their public deliberations. Their code of laws, which is traditionary, is in reality nothing more than primordial usages or tacit conventions that have been established among them (*Ibid.*).

Among the African tribes, the Hottentots have a national court, composed of village chiefs; and presided over by the national chief; and village courts, composed of the men of the village, and presided over by the village chief. They assemble at the residence of the chief. The Bechuanas have Pitshos, or parliaments, convened for the transaction of important business in an inclosed area, which is always set apart for the public assemblies. It is from five and twenty to thirty yards across, and surrounded by either a hedge of branches or a rough, irregular palisade. The Kaffir tribes have a head chief, councillors, and subordinate chiefs, chosen by the people, forming the legislative, judicial, and executive authorities of the tribe; and their meetings, for transacting public business, are held in a cattle-fold. Among the Congo people, the village chief and the members of his family form the legislative and judicial council, which meets under the boughs of a tree—the *Ficus religiosa* (Spencer's *Descriptive Sociology*). But one of the very best examples is given in Lieutenant Cameron's *Across Africa*. The village of Manyuéma is shown in a plate in the first volume (p. 352); and it is an

almost perfect drawing of what one might imagine the primitive Aryan village to have been. The enclosure is bounded by palisades ; the huts are all ranged in long streets, sometimes parallel, and at others radiating from a large central space ; and in the centre are, what most interest us now, the palāver huts and palm trees.

And proceeding to the lowest types of mankind, among whom little or no political organization exists for any long period together, we find that the forum of the Tannese, a tribe of the Negritto race, is an open circular space in every village, where the chief assembles for business, under the shades of a great banyan tree (Spencer's authorities in *Descriptive Sociology*).

(b.) The great nations of antiquity I define to be those nations which have left a history and a literature for modern times. The great Assyrian kingdoms, the Egyptians, the Hebrews, the Hindoos, Greece, and Rome are, of course, the most familiar types. In order to be as concise as possible, it is, perhaps, not necessary to draw illustrations from all these sources, although I have no doubt that such could be done if occasion called for it.

However, let us begin with the example of the Hebrews. The researches of modern Hebraists incontestably prove that Hebrew history has developed along lines very nearly parallel to those of other histories.\* But perhaps more than other history it has

\* I ought to mention some studies contributed by my friend Mr. John Fenton to the *Theological Review*, as my evidence of this fact. Pursuing the track marked out by Ewald, Mr. Fenton, writing on *The Primitive Hebrew Land Tenure* and on *The Goel*, has used all the researches and all the methods of the sociologist in elucidating the fact that primitive Hebrew life is parallel to primitive life in general.

retained among its records archaisms which have not been swept away by the growth of later institutions. Thus, when "Joshua gathered all the tribes of Israel to Shechem, and called for the elders of Israel, and for their heads, and for their judges, and for their officers," he summoned in the primitive form an assembly of the people. They met to decide a most important question—their adherence to their national religion. And "Joshua made a covenant with the people that day, and set them a statute and an ordinance in Shechem. And Joshua wrote these words in the book of the law of God, and took a great stone, and set it up there under an oak, that was by the sanctuary of the Lord" (Joshua xxiv. 1, 25, 26). And this oak at Shechem was subsequently used as a meeting-place; for "all the men of Shechem gathered together, and all the house of Millo, and went, and made Abimelech king, by the oak of the pillar that was in Shechem" (Judges ix. 6). The oak is again mentioned in conjunction with a solemn meeting-place, when the angel of the Lord came to Gideon, the son of Joash, "and sat under an oak which was in Ophrah" (vi. 11). Deborah gave judgment under a palm tree: "And she dwelt under the palm tree of Deborah, between Ramah and Bethel in Mount Ephraim: and the children of Israel came up to her for judgment" (iv. 5).

Without going more elaborately into the evidence from the Bible—and there is much more than can be mentioned now—it will be necessary to state the following references to assemblies near large stones. We shall meet again with the assembly meeting in the vicinity, or within the circle, of large stones; and it is well, therefore, to notice the archæological

value of the Biblical evidence. The story of Adonijah usurping the crown commences with the legal ceremony of summoning the assembly: "And Adonijah slew sheep and oxen and fat cattle by the stone of Zoheleth, which is by En-rogel, and called all his brethren the king's sons, and all the men of Judah the king's servants" (1 Kings i. 9). The crowning of Joash is minutely described—"the king stood by the pillar, as the manner was, and the princes and the trumpeters by the king, and all the people of the land rejoiced, and blew with trumpets" (2 Kings xi. 14). And, again, King Josiah "stood by a pillar" to make a covenant, "and all the people stood to the covenant" (xxiii. 3).

In connection with pillars of stone as the places of assembly, there is also some evidence relative to ancient pavements as seats of judgment: "And they saw the God of Israel: and there was under his feet as it were a paved work of a sapphire stone, and as it were the body of heaven in his clearness" (Exod. xxiv. 10). In the New Testament also we read, "When Pilate therefore heard that saying, he brought Jesus forth, and sat down in the judgment seat in a place that is called the Pavement, but in the Hebrew, Gabbatha" (St. John xix. 13); and Dr. Adam Clarke's commentary on the latter passage thoroughly identifies this as the open-air court of justice.

Turning next to Aryan lands, it will no doubt be expected that India would supply some significant evidence. The general conception is obtained from two instances of a kind of proverbial saying, which I shall quote. In the *Nāradiyā Dharma-śāstra*, translated by Dr. Jolly, it is said that "cases decided by women, at night, abroad, *in the inside of a house*, and

by enemies, shall be reversed" (p. 8); and from the *Yajnavalkya's Law-book*, translated into German by Dr. Stenzler, a parallel passage is given as follows:—"Cases which have been decided by violence or fraud, the king shall declare null; as also such as have been decided by women, at night, *inside a house*, outside the place of justice, or by enemies" (p. 51). Here it will be clearly seen that one of the distinctive features of legal assemblies is the meeting under the light of heaven. And that legal assemblies did so meet there is ample evidence, I think, without travelling very far into the extensive literature of Hindoo archæology. Lassen mentions the fact that "the people met in assembly in the cowshed of the village" (*Indische Alterthumskunde*, i. 808), and here we have a curious parallel to the previous instance of such a place of assembly being used among the Kaffir tribes. One of the most general of the Hindoo tribunals is the panchayet. It is practically the village council, and decides all disputes relating to the village. It is, writes the Rev. J. Long in his pamphlet on *Village Communities in India and Russia*, still used by the Hindoos in investigating offences against caste, and the members, whose number is not limited by any rule, may be seen sitting on a mat under a tree, by the roadside or in the market-place, administering justice. Sir John Malcolm says of the Bhils (Hill tribes of India) that in all quarrels or disputes, great or trifling, they have recourse to the panchayet, which often consists of several hundred members, as every person connected with the plaintiff or defendant has a right to attend; these assemblies meet under the shade of a tree (*Central India*, i. 577). The *Smriti Chundrika*, a celebrated work on Hindu law, gives a list of *sabhās*

or courts of different classes, composed of foresters, merchants, military, chosen by the parties themselves; and these simple courts were like those of arbitration—settling matters in a cheap and simple way under a tree (note to Rev. J. Long's pamphlet, as above, p. 29).

(c.) The third division comprises early European history. The archæology of most of the nations of northern and western Europe has been sufficiently investigated to bring it within the definition of being evidence of primitive man; for there exists either a traditional literature, or an accumulation of archæological remains which leaves no doubt that primitive history may be traced therefrom.

According to the Edda given in Mallet's *Northern Antiquities*, the Allfather in the beginning established governors; and ordered them to decide whatever differences should arise among men, and to regulate the government of the celestial city. The assembly of these judges was held in the plain called Ida, which is in the middle of the divine abode. Their first work was to build a hall, wherein are twelve seats for themselves, besides the throne which is occupied by the Allfather (English Translation of Mallet, ii. 41). Again, in another chapter, it is said that the capital of the gods is under the ash Ygdrasil, where the gods assemble every day and administer justice (ii. 49). In this, as in other matters, the gods are made to conform themselves to the manners of men, and it is quite as much to our purpose that these particulars of judicial assemblies are supposed to relate to heavenly beings, as if they had been related of mankind.

A great Thing was held in the Island of Guley,

where there was a hill, exactly resembling the Tynwald Hill of Man, on which the court was held in the open air. This sacred place was paled off by staves stuck in the ground and cords run through the staves. These cords were called vebond (the sacred cord), and the pales vestengr (holy poles); the place within was called Langretta (Train's *History of the Isle of Man*, ii. 189, note).

A circle of stones in the village of Oye, near Flekkefjord, adjoining the Naze of Norway, was, according to oral tradition, used by the people of that village for judicial proceedings (*Arch. Journ.* i. 249).

Iceland presents to the student of primitive political institutions a picture which is as grand as it is perfect. And nowhere is this picture so carefully placed before the English student as in Sir George Dasent's *Introduction to the Story of Burnt Njal*. Accordingly, I take from this source the following particulars of the Icelandic assembly.

By the end of the period of the first occupation of Iceland, a number of little kingdoms had been formed all round the coast, ruled by the priests, who, at stated times, convened their adherents and retainers to meetings for the settlement of matters which concerned any or all of them. These were called "Things"—meetings, *i.e.* Mot-things. Each was independent of the other, and quarrels between the members of two separate Things could only be settled as the quarrels of nations are settled, by treaty or war. But the time soon arrived when the progress of political thought began to work upon this disjointed constitution; and then amalgamation of local Things into an Althing, of local jurisdiction into a commonwealth jurisdiction, was the historical result. The common-

wealth of Iceland grew into existence just the same as the commonwealth of England, and, indeed, the same as the commonwealth of almost all Aryan nations—by amalgamation, not by a newly formed organization.

Thus, then, we have the Althing and the local Things; and it is expressly understood that the Althing was in all essential matters a faithful representation of the local Thing. Premising that each had its Thingbrekka, or Hill of Laws, let me at once, therefore, proceed to speak of those features of the Althing which more specially appertain to the present inquiry.

At the institution of the Althing, the most knotty part of the whole question was—where the great Thing, where the common place of meeting, should be. A man named Grim-goatshoe—a name probably taken from his skill as a cragsman—was set to do what may be called the footwork of the scheme. He walked throughout the whole island to seek a fitting spot for the commonwealth to meet. He found it southwest of the fells, where the broad lands of a freeman, which had just been confiscated for murder, gave ample space for the annual gathering of some thousands of souls, and where there was an abundance of wood and water, as well as forage for their horses. Some consideration was also felt for the fact that it lay in the Thing of the priesthood founded by Ingolf, the first settler, the priest of which thus became what may be termed the high-priest of the island, inasmuch as the legal capital of the country was within his jurisdiction; and in this we have a curious parallel, if not an important one, to the Iroquois place of meeting already noticed.

All the judicial meetings of the Icelanders were in close connection with their religious rites, as Church



and State were, in fact, identical. In its legal capacity, the Althing was both a deliberative and executive assembly—both Parliament and High Court of Justice in one.

Every freeman was bound to be present at the local Things, and even at the Althing. It was therefore considered a right and proper thing to ride to the Althing, if for no other reason than that of seeing the world. Besides law matters, much else was done there in the way of business between man and man. Pleasure was not excluded. There were feasts and biddings to feasts; and, as we know in Hrut's and Gunnar's cases, marriages might be made there, for a man went thither often with his wife and daughters.

The Thingvalla, or Thing-field itself, was a vast sunken plain of lava, about four miles broad and rather more than four miles deep, lying with a dip or slope from north-east to south-west, between two great lips or furrows. A stream called Öxará (Axe-water) cuts off a rocky portion of the plain, so as almost to form an island. This is the famous Hill of Laws, or Lögberg, which was the heart of the Icelandic body politic. Here, on the highest peak of the rock, formal notices of trials and proclamations on matters of public interest were uttered by word of mouth, and here, too, on the more level portion of it was the Court of Laws (Lögregta—the supreme court and deliberative assembly, or parliament, of the commonwealth). The entrance to it was by a neck of land, so narrow that three bold men might hold it against a host. Crossing the river and standing on its eastern bank was the spot where the old Quarter Courts sat.

The booths of the freemen and others who flocked to the Althing were placed along the banks of the

Axewater. With regard to their position, it seems certain that the chiefs and Thing-men from the same quarter all established themselves on the same part of the Thing-field.

Having thus noticed the salient points of the topography of the Thing-field, we may turn to some of the ceremonies incident to the Court of Law. It is not necessary to follow Sir George Dasent through his masterly description of the formalities of an Icelandic trial; these details can all be obtained by reference to his work. But for our present purpose it is useful, I think, to add one or two additional quotations on the formation of the court. It is here, indeed, that for the first time we are able to look beyond the open-air meeting to some other features of the primitive assembly, and so hereafter to gather together a wider consensus of evidence from British antiquities.

Thus, before the Court solemnly sat, it was girt round with hallowed cords (vèbönd) running from stake to stake. At the same time a crowd of men stood round, without the verge of the sacred ring, and expressed by a deep hum of praise, and sometimes even by loud shouts of applause, their sympathy with one side or the other, and their sense of the skill displayed in the conduct of the case. No judge or usher then interfered to stifle those outbreaks of popular feelings which are part of the Northman's free and open nature. One thing more to tell of this Icelandic legal assembly and its important evidence to the present study will be completed. After judgment was given against the defendant, he was termed "sekr"—"guilty" or "convicted"—and the plaintiff then went on to make his adversary an outlaw, if the offence was such as to call down that punishment.

This was done by formal notice at the Hill of Laws, but the sentence was not complete, so long as the Court of Execution (Fèránsdómr) had not been held. This court was to be held at the outlaw's own abode, within fourteen days after the last day of the Althing. If the outlaw had property enough to pay his debts, his wife's dower, the fines to which he had been sentenced, and the priests' fee and bail, he had three places of asylum granted to him for three years, till he could get a passage to foreign parts, to fulfil the three years' exile which was the sentence of the court in cases punishable by the lesser outlawry. No man could touch him on his way to or from the places of refuge, or to or from the ship; nor might any shipmaster refuse him a passage, under peril of falling into outlawry himself.

This example of the Icelandic Thing is the most perfect that is known to history. Scandinavia, rich in its evidence of primitive institutions, is perhaps richest in its example of the primitive assembly. But, not to dwell too closely upon this just now, let me turn to Denmark for another phase of the subject. The election of a king of Denmark, in ancient times, was commonly had in this solemn manner. As many of the nobles as were senators, and had power to give their votes, agreed upon some convenient place in the fields, where, seating themselves in a circle, upon so many great stones, they gave their votes. This done, they placed their newly elected monarch upon a stone higher than the rest, either in the middle of the circle, or at some small distance at one side, and saluted him king.\* We learn also from Dr. Hibbert that in each

\* Hutchinson's *History of Cumberland*, i. 227; see also Plot's *Natural History of Oxfordshire*, pp. 339, 340.

of the three kingdoms anciently included in Denmark, namely, at Lunden in Scania, at Leyra in Zealand, and at Wiburg in Jutland, a stone circle was to be seen, where, according to tradition, a Ting was held whenever, upon the death of a sovereign or leader, an election of his successor took place (*Archæologia Scotica*, iii. 197).

A place of judicature such as was used in old times in the Northern nations, is described by Wormius as taking up no less than six and forty great stones of stupendous magnitude within a circle (*Olai Wormii Mon. Danic.* lib. i. cap. 10), and a stone in the middle for the judges to sit on. These places of judicature seem always to have had their muniments of stone, of a quadrangular, oval figure, and only to be entered at two sides, as that at Diething mentioned by Wormius. They were placed upon a rising ground for the advantage of prospect, in order that the common people, assembled to confirm the suffrages or votes of the electors by their universal applause and congratulatory acclamations, might see and witness the solemn manner of election. Now, that the Northern nations usually erected such circles of rude stones for the election of their kings is fully testified by Olaus Wormius: "Reperiuntur inquit in his oris loca quædam in quibus Reges olim solenni creabantur pompâ, quæ cincta adhuc grandibus saxis, ut plurimum duodecim, conspiciuntur, in medio grandiore quodam prominente, cui omnium suffragiis Electum Regem imponebant, magnoque applausu excipiebant. Hic et comitia celebrabant, et de Regni negotiis consultabant. Regem vero designaturi electores Saxis insistebant forum cingentibus, decreti firmitudinem pronunciantes."\*

\* *Olai Wormii Mon. Dan.* lib. i. cap. 12, quoted by Dr. Charleton

The states of East Friesland, even so late as the thirteenth century, assembled under three large oaks which grew near Aurich ; and it is not more than three centuries ago that most of the German princes held their conferences under trees (Mallet's *Northern Antiquities*, Eng. Trans., ii. 53).

In Saxony there existed a singular jurisdiction, which claimed a direct descent from the pagan polity and mystic ritual of the earliest Teutons. There were also tribunals in many parts of Saxony, not retaining so many mystical ceremonies, yet still betraying their common origin ; and the Vehm̃ic tribunals of Westphalia followed a custom which we shall see is incident to these Saxon courts, namely, to hold the courts beneath "the eye of light."

The curious and almost unique jurisdiction of this Free Court of Corbey, as it was styled, is described by Sir Francis Palgrave in the second volume of his *History of the English Commonwealth*, which contains the proofs and illustrations to the first volume (see pages cxliv.-cxlviii.). I do not think any objection will be raised against transcribing this account here ; for although the work of Sir Francis Palgrave is very well known to students, it is not always accessible, and the account of the Free Court of Corbey is very illustrative of much that I shall have to state hereafter.

We learn from the historians of Saxony that the "Frey Feldgericht" of Corbey was, in pagan times, under the supremacy of the priests of the Eresburgh. The court was composed of sixteen persons, who held their offices for life. The senior member presided as the "Gerefa" or "Graff ;" the junior performed the

in *Stonehenge restored to the Danes* ; Plot's *Natural History of Oxfordshire*, pp. 339, 340.

humbler duties of "Frohner," or summoner; the remaining fourteen acted as the "Echevins," and by them all judgments were pronounced or declared.

The seat of judgment—the king's seat, or "Königstuhl"—was always established on the greensward; and the tribunal was also raised or appointed in the common fields of the Gau, for the purpose of deciding disputes relating to the land within its precincts. Such a "king's seat" was a plot sixteen feet in length, and sixteen feet in breadth; and when the ground was first consecrated, the Frohner dug a grave in the centre, in which each of the free Echevins threw a handful of ashes, a coal, and a tile. If any doubt arose whether a place of judgment had been duly hallowed, the judges sought for the tokens. If they were not found, then all the judgments which had been given became null and void. It was also of the very essence that it should be held beneath the sky, and by the light of the sun.

When a criminal was to be judged, or a cause to be decided, the Graff and the free Echevins assembled round the Königstuhl; and the Frohner, having proclaimed silence, opened the proceedings by reciting the following rhymes:—

"Sir Graff, with permission,  
I beg you to say,  
According to law, and without delay,  
If I, your knave,  
Who judgment crave,  
With your good grace,  
Upon the king's seat, this seat may place."

To this address the Graff replied—

"While the sun shines with even light  
Upon masters and knaves, I shall declare

The law of might, according to right.  
Place the king's seat true and square ;  
Let even measure, for justice sake,  
Be given in sight of God and man,  
That the plaintiff his complaint may make,  
And the defendant answer—if he can."

In conformity to this permission, the Frohner placed the seat of judgment in the middle of the plot, and then he spake for the second time :—

"Sir Graff, master brave,  
I remind you of your honour, here,  
And, moreover, that I am your knave ;  
Tell me, therefore, for law sincere,  
If these mete-wands are even and sure,  
Fit for the rich and fit for the poor,  
Both to measure land and condition ;  
Tell me as you would eschew perdition."

And, so speaking, he laid the mete-wand on the ground. The Graff then began to try the measure, by placing his right foot against the wand, and he was followed by the other free Echevins in rank and order, according to seniority. The length of the mete-wand being thus proved, the Frohner spake for the third time :—

"Sir Graff, I ask by permission  
If I, with your mete-wand, may mete  
Openly, and without displeasure,  
Here the king's free judgment seat."

And the Graff replied—

"I permit right,  
And I forbid wrong,  
Under the pains and penalties  
That to the old known laws belong."

Now was the time of measuring the mystic plot ;

it was measured by the mete-wand along and athwart, and when the dimensions were found to be true, the Graff placed himself in the seat of judgment, and gave the charge to the assembled free Echevins, warning them to pronounce judgment, according to right and justice :—

“ On this day, with common consent,  
And under the clear firmament,  
A free field court is established here,  
In the open eye of day,  
Enter soberly, ye who may ;  
The seat in its place is pight,  
The mete-wand is found to be right ;  
Declare your judgments without delay ;  
And let the doom be truly given,  
Whilst yet the sun shines bright in heaven.”

Judgment was given by the free Echevins according to plurality of votes. The jurisdiction of the court extended to all crimes committed in the open air— thefts of cattle or agricultural implements, trespasses, and even murder. But unless the eye of light saw the deed, the free court, assembled beneath the sky, could not judge the offender.

The free judges also appear to have possessed originally a territorial jurisdiction. A free tenant could not sell his land to a villain, but only to another free tenant. A surrender of the tenement was made in court ; and as soon as the free tenant was divested of his land, he became “ dienstbar ”—a vassal or villain.

This full account of the Free Court of Corbey is but the preface to a great collection from Germany. Grimm, it is well known, in his *Deutsche Rechtsalterthümer*, has devoted a chapter to the meeting-places of the court of justice. From this chapter it is neces-



sary to gather some of the most distinctive landmarks of our subject. This is all the more necessary, because from the completeness of Grimm's collection of examples, and from the advantages of his mode of arrangement, it will be found that many of the collections of examples relating to Britain in the following pages are grouped upon the basis adopted by him.

An ancient court of justice was never held otherwise than in the open \*—under the open heaven, in a forest, under broad-shaded trees, on a little hill, beside a fountain. Narrow buildings would not have contained the assembled multitude; and the idea of heathendom required sacred places for the holding of a court of justice, in which sacrifices could be brought and divine oracles could be obtained. These sacrifices the Christian faith destroyed, but it left the old places of justice undisturbed. We are therefore able, even in later times, to reckon up a number of places which custom and prestige retained for holding courts of justice. Nevertheless, their meaning mostly escapes us, and we remain in the dark as to *why* here on the mountain, there under the tree, here in the street, there beside the water, the law should have been pronounced.

After this general opening of the subject, Grimm proceeds to set forth the examples he had collected relative to the place of meeting of the primitive assembly. There was the court of justice in the forest, which was held in the middle of the forest, and where most of the *mark* and forest matters were

\* At Athens most of the courts of justice were covered, excepting those in which murder was judged, and probably also the *Helixæa*, etc. Perhaps the idea was also held by our forefathers that judge and criminal should not be together under one roof (Grimm).

settled. Then there were the courts held under special trees. Under the oak several instances are given from different parts of Germany, and such instances as the "Landgericht ad septem quercus," "villa parochialis septem quercuum," lead to the conclusion that towns known by the names of "Dreieich" and "Sibenaich"—Threeoaks and Seven-oaks—were probably at one time old court-places. Courts held under limes are even more frequent. They group themselves into meetings simply under the tree, before the house under the limes, before the church under the limes, in open lanes in the middle of the village under a lime, by the mountains under the limes. These two trees, the oak and the lime, very nearly monopolize the custom, though there are isolated instances of courts being held under other trees—thus, under a fir tree at Lostorf, under the nut trees at Rüdesheim, by the elder tree *in loco prope* Ludenghusen, and before the hawthorn.

We next come to meetings of the assembly upon large and open meadows in the neighbourhood of a river. Of these Grimm gives several examples, which it will not be necessary to enumerate here, as they do not possess any distinctive feature. In the neighbourhood of rivers and streams also are several instances of meetings of civil tribunals; they assembled *juxta fluvium*, *super fluvium*, *in littori laci* Turicini, *juxta littus aquæ* in Gensungen, *super vadum amnis*.

Then there are open-air courts before the mill, at the well, in the courtyard of the monastery between the house and the well. Several instances are mentioned of meetings before bridges—at Würzburg, at Steinheim, at Hirsaw; and mention is made also of the custom of meeting at great burial-places.

Perhaps the largest group of instances falls under that of mountains and hills. The name "Mallberg"—*mallo bergus*—is borne by many places in Germany; and Grimm collects many examples of court-hills which it would be needless to repeat.

Of courts held by great stones, Grimm confesses a want of documentary evidence, but points out that the later proofs which he brings forward contain some very ancient customs. In these proofs we do not get any description of the stones, beyond such examples as "in campo apud longum lapidem, quod *landding* dicitur," and the court held under the free heavens "upon a great flat stone." It is, however, clearly brought out that some of these stones were not so much used as the "judgment seat," or the "Königstuhl," as for the purpose of executing criminals—of exercising that corporal punishment which, for the first time from these remains of the primitive legal tribunal, we ascertain was incident to them.

We have next a very familiar meeting-place of the legal tribunals of antiquity, namely, before the gate of the city. In the Middle Ages, Grimm says, stone steps were placed at the town gates, which were used for mounting or alighting from horseback. These steps were termed *perron* in French poems of the thirteenth century, but upon such a *perron* the lord of justice or his representative was wont to sit. Many instances are then set forth in detail of meeting-places before the gate of the city and in the streets.

There were also many councils before church doors, or in the churchyard; and Grimm asks the significant question, Did some survival here operate of the old heathen religion which bound together sacrifice and judgment?

This concludes Grimm's splendid collection of examples of the primitive assembly meeting under the light of heaven. His pages give in detail all that we can desire relative to German antiquity, and, to some extent, they give much more. They are, in point of fact, the first attempt to collect evidence of this important subject, and therefore the first recognition of its historical value.

Again, from France there seems ample evidence of the open-air assembly, instances of which have been collected by Michelet in his *Origines du Droit Français* (liv. iv. cap. ii.), following upon the line that Grimm had already worked out. Giving some typical examples of this collection, we have the following account :—

“ Trials often take place under trees :—1. Aux trois chênes, Aux cinq chênes. There are more often still instances of the lime tree. Thus : Le lieu des sept tilleuls. 2. Trial under the fir tree by the great Imperial way (A.D. 1324) —under the birch tree (A.D. 1189)—under the walnut tree—under the elder tree—before the hawthorn under the blue heavens—the seat of the free under the pear tree—on the rising ground at the place called Le Hêtre de Fer, where a free judge ought to sit (A.D. 1490). There are some trials under the elm ; for example, in a village in the bailiwick of Remiremont. At Paris, the vassals came to pay their services at the elm of Saint Gervais. ‘ Attendez-moi sous l'orme,’ says a French proverb.

“ The ancient assemblies in the Champ de Mars et Mai were held probably in the fields, near rivers. One finds also some examples of trials held by rivers, by a bridge, or a boat. The Lake de Grand-lieu had high, low, and middle justice. The tribunal was seated in a boat at two hundred paces from the bank : when the judge pronounced sentence, it was necessary for his right foot to touch the water of the lake. In Brittany the lakes were and are still held in great veneration ; they carry thither on a certain day some butter and bread. Trials are held sometimes in caves and near tombs ; but more often they

gave judgments on the hill. The Salic law speaks often of the Mallberg, or hill of assembly—It was decided, for the well-being and common utility of the country, that the assizes of France, which were held near Gisors, should be transferred, until the king decides otherwise, near to Chaumont (*calvum montem*), where it was the custom to hold them anciently.

“A hill is called *pui* in the Romance language: it is under the *puis* that the Redercker of Flanders and Picardy held their assemblies. *Pui* is rendered in the Latin of the Middle Ages by *podium*, *pogium*; in Provençal, *pueg*, *puei*, *puoi*, *pug*; in Italian, *pog*, *poggio*—for example, the *Poggio* imperial, near Florence.

“Trials often took place in a circle of stones: ‘And heralds restrained the crowds; then the elders ranged themselves in a sacred circle on the polished stones’ (*Iliad*, xviii. 505). The circles of Druidical stones continued to serve as tribunals wherever Christianity had not destroyed them. Ranged in a certain order, the stones marked the field of battle. In France, in La Bresse, the juge-mage de Bourg was seated before the market-place, until the fifteenth century. We call the “*siège de la pierre hardie*” the jurisdiction of the chapter of Saint-Dié on the Meurthe. There is at Bourges and other places “*la pierre de la crie*.” We find something analogous among the Romans: ‘Thou art there, standing by the stone where the crier cries the sales (*præco prædicat*).’ See, in Laurière, Bretesches, a pulpit of stone where they make proclamations.

“In certain places, the chief sits on the steps before a house, to administer justice. Joinville held often, by order of the king, pleas of the gate—*plaids de la port*. It is, without doubt, the sense of the *stapulus regis* (the stair of the king) in the Ripuarian laws.”

It now only remains to shortly summarize the result of this collection of examples from other lands, and to see how it may be applied to the evidence forthcoming from our own country.

It is not necessary to arrange in other than the present geographical groups the collection of places where the assemblies of other lands used to meet, in

order to obtain some general conclusions from them. Objects of nature—trees, streams, plains, hills, etc.—are the favourite meeting-places; the first advance upon artificial constructions would be such as the cattle-fold of the Kaffirs and the cowshed of the Hindoos; and it is only when arriving at a comparatively later social development that stone pillars or stone circles become the fashion. Among the Hebrews and the Greeks, perhaps, of the nations of antiquity, and among the Danish and the French, to some extent, of modern civilized countries, we see the strongest tendencies to use stones or other artificial monuments. It is remarkable that among the Germans no trace can be found of such usages. The explanation of these various usages does not seem to rest upon very definite historical grounds. Stones and the stone age are relics of man in one of his earliest stages of development, and we seem to penetrate to absolutely prehistoric times in coming upon the grassy seats of the Corbey Court, and the other objects of nature connected with the meeting-places of the primitive assembly.\* To summarize, then, the places where the primitive assembly can be shown to have met—besides the forest, under special trees, in meadows, on mountains and hills, at burial-places, mills, wells, bridges, church doors, in the court-yard of the monastery, at the gates of the city, all definitely arranged by Grimm in his early Teutonic section—we have enclosed village areas, as among the Bechuanas and the tribe mentioned by Cameron; the cattle-fold and cowshed, as among the Kaffirs and Hindoos; the chief's residence, as among the Hottentots; by large

\* In Exodus xx. 24, 25, the transition from the "altar of earth" to an "altar of stone" unhewn, is plainly discernible.

artificial stones, as among the Hebrews, and in Denmark.

But besides the importance of noting carefully the places of the meeting, there are the *forms* and some of the associations of the meetings to be noted. The magnificent examples of Iceland and the Free Court of Corbey give other features than the place of meeting alone, by which to trace out the survival of the primitive folk-moot in Britain. In Iceland every freeman must attend—the primary assembly of the people; at Corbey the primary assembly has shrunk to a representative assembly of “sixteen.” Then we have the fencing of the court, the position of the tribunal in the common lands, the old rhymes used at the opening ceremony, the land jurisdiction of the court—all of which make the picture much more definite and tangible than the bare record of an open-air meeting; and help to rekindle life into the primitive antiquities of Britain, which have lain dormant for so long under the weight of unscientific treatment and unscholarly neglect. We know by these great examples of the primitive assembly, that the open-air meeting is not a mere unmeaning relic of old times; we know that by the continuity of this one special feature we have an important link with all, or nearly all, the principal features of the primitive assembly; and, finally, that from such materials we can now write something like a reliable chapter of primitive politics.

Having obtained this knowledge of the distinctive features of the primitive assembly or court of justice, it now becomes possible to inquire about some of the traces of its existence in Great Britain. To begin with, it is perfectly well known that the early inhabi-

tants of Britain were in a primitive stage of society. But between the Celts, the first primitive inhabitants, and the Saxons, the second primitive inhabitants, comes the all-abiding influence of the Roman conquerors. At the time the Romans conquered Britain, Rome was not a primitive nation. Her people had advanced along the line of civilization to a considerable extent; and for the purposes of comparative politics, therefore, Roman institutions stand on a level with some stages of modern European institutions. Her *civilizing* influences not only varied the primitive institutions of the Celtic Britons, who preceded her, but also the primitive institutions of the Anglo-Saxons, who followed after her. Although, therefore, we know perfectly well that the sources of primitive history in Britain are derived from two branches of the Aryan family, the Celtic and Teutonic, who occupied her territory, yet the superstructure of Imperial Rome has always made our knowledge of some points of this primitive history extremely difficult to establish. As long as we do not allow our researches to rest at the stage of Roman influence, it generally becomes possible to trace back the original primitive institution, but, as before stated, only in a fragmentary condition. Still, it is there, in our own land, among our own native institutions; and it is well worth preserving.

At the commencement of this chapter, I pointed out that it was necessary to appeal to the evidence of other lands before dealing with the evidence of our own land, because sociological science requires a sociological medium, through which to observe the institutions of civilized countries in their primitive condition. And it is in this light that Mr. Freeman's well-known examples from Switzerland should be



viewed. At present they usurp the place which ought to be occupied by English examples. These Swiss cantons, it will be found hereafter, simply reflect what is going on in our midst, though it may well be in diminished forms and in less national importance: they do not supply all that is known of the earliest growth of the English constitution, but they help to perfect the scientific medium by which the English constitution may be traced from English evidence alone. As Mr. Freeman places the picture before us, its reality and vividness is very instructive. We read that from the market-place of Altdorf, the little capital of the canton of Uri, the procession makes its way to the place of meeting at Bözlingen. First marches the little army of the canton; overhead floats the banner, the bull's head of Uri; and before them all, on the shoulders of men clad in a garb of ages past, are borne the famous horns, the spoils of the wild bull of ancient days. Then, with their lictors before them, come the magistrates of the commonwealth on horseback, the chief magistrate, the Landammann, with his sword by his side. The people follow the chiefs whom they have chosen, to the place of meeting, a circle in a green meadow. The multitude of freemen take their seats around the chief ruler of the commonwealth, whose term of office comes that day to an end. The assembly opens; a short space is first given to prayer, and then comes the business of the day. In Appenzell we miss the solemn procession, the mounted magistrates, the military pomp of Uri; but we find in their stead an immemorial custom, which breathes, perhaps more than any other, the spirit of the days when freedom was not a thing of course, but a thing for which men

had to give their toil, and, if need be, their blood. Each man who makes his way to the Landesgemeinde of Trogen, bears at his side the sword which the law compels him to carry and forbids him to draw (Freeman's *Growth of the English Constitution*, pp. 3-7). The transfer of these examples from their pride of place in English Constitutional History to their own proper niche in the political institutions of early mankind, will be, I venture to think, the proper answer to Mr. Freeman's own question—"Why have I begun a discourse on the constitution of England with a picture of the doings of two small commonwealths whose political and social state is widely different from our own?"

## CHAPTER III.

## THE EVIDENCE OF EARLY ENGLISH RECORDS.

Historical Value of this Evidence—Evidence of Popular Gatherings—Beda—Anglo-Saxon Chronicle—Mr. Kemble's Examples—Council on the Banks of the River Nodder—On the Banks of the Nidd—On the Humber—Other Meetings—King Edgar's Charter to Ely—Welsh Examples—Cuckamsley Hill—Bridge at Grantebrugge—Infra cimiterium Eliensis—On the Tyne.

EXAMPLES of the open-air assembly collected from the earliest documentary history that has come down to modern times, must essentially be considered as examples belonging to times when primitive institutions had not entirely passed away from a current existence—in other words, as the earliest possible “survivals.” We have no view of early English history so primitive as to exhibit the open-air assembly in its full force, and with all its contemporary surroundings. It had begun to shrink into a narrower form than when it is first of all pictured in the pages of Tacitus; and it had begun to meet elsewhere than under the light of heaven. We never, in point of fact, see its primitive form as the one prevailing form; or, indeed, the appeal to outside history would have been needless.

But although this is so perfectly true, there is another phase of the history of the primitive folk-moot

in Britain which is almost equally valuable as a record from an English Tacitus would have been—I mean the phase which shows the transition from primitive to more civilized institutions. Thus, the documents which give the evidence of early English assemblies sometimes tell us of the popular gathering, sometimes of the open-air meeting. On the other hand, a large proportion of these documents do not give any clue whatever to the nature and form of the meeting. But there is good reason for this. For, of course, as the folk-moot is nowhere described in any of the codes of laws, or in any of the early chronicles, the open-air meeting was not a feature to be any more specially noted and recorded, than any other primitive features which belonged to it. It was no more to these early historians or legal scribes to see a great meeting upon a plain or a hill, or by the banks of a famous stream, than it is to modern historians to see and hear of our great meetings, in Parliament and elsewhere, under the roofs of halls specially built for the purpose. It is not, therefore, a matter of surprise that we meet with so few records of open-air assemblies in the very early times of our history; and it falls in with this general view of the case to observe that special mention is made of such a meeting as that in the upper floor of a house at Calne (*Chron. Sax.*, an. 978).

But, irrespective of the records of open-air meetings in early chronicles and charters, there is ample evidence of the right of popular attendance and of this right being often exercised. The expression so often met with in legal documents, “all the men of the shire,” “all the men of the hundred,” must have been literal in meaning during its earliest usage. No doubt, in course of time it came to mean a small

majority of men who could have met in a roofed building—a hall or a lord's house; but originally this could not have been so. The same expression is made use of in the earliest charters and in Domesday; and the shire, the riding, the hundred, and the "village" are all associated with this legal formula. Every legal formula has an origin from actual fact, and these great gatherings of freemen must have been actual during a considerable period of early English history. They must have met, then, in the open air and in the open lands of their respective jurisdictions; for no buildings of that time, at all events, could have been erected to meet the requirements of such assemblies.

This is the general proposition with which it is necessary to approach the consideration of the evidence to be derived from early legal documents. I shall proceed now to give a few examples in illustration, but the reader must go a great way beyond these examples. He must bear in mind that they are typical only of many hundreds of such examples, and he must carry the force of their numbers along with him to the next stage of the evidence. In one charter of Æðelstán, A.D. 931, the act is said to have been confirmed "*tota plebis generalitate ovante*" (*Cod. Dip.*, No. 1103); and the act of another meeting at Winchester in 934, which was attended by ninety-two persons, is described to have been executed "*tota populi generalitate*" (*Ibid.*, No. 364). The deposition of Sigeberht is stated to have taken place in an assembly of *proceres* and *populus*, the princes and people of the whole realm (*Hen. Hunt.*, lib. iv.). A doubtful charter of Ini, A.D. 725, is said to be consented to "*cum præsentia populationis*" (*Cod. Dip.*,

No. 73). Again, Æðelstán in 938 declares that certain land had been forfeited for theft, by the just judgment "totius populi et seniorum et primatum," and that the original charters were cancelled "ab omni populo" (*Ibid.*, No. 374).

But perhaps one of the best instances is the charter whereby Æðelstán, a duke, booked land to Abingdon. The boundaries were solemnly led, and then the assembled bishops and abbots excommunicated any one who should dispossess the monastery; and all the people that stood around said, "So be it! so be it!"—"et dixit omnis populus qui ibi aderat. Fiat. Fiat!" (*Cod. Dip.*, No. 1129). Here is the "Aye, aye," and it brings in its train the right to have cried, "Nay, nay." Other instances occur where it may incontestably be asserted that the whole free population of a district took parts in the acts of a council. In a grant of freedom to a serf, early in the ninth century, made in the presence of the laity and clergy of Llandaff, the concluding clause is—"et dicat omnis populus, fiat, fiat" (Haddan and Stubbs's *Councils*, i. 206). Similar acts of manumission occur in Cornwall.\* Thus, in A.D. 1050-1071, the witnesses are "all the hundred of Quick" (*Ibid.*, i. 689), "all the hundred of Holcombe" (*Ibid.*, i. 690). And, without multiplying instances indefinitely, there seems to be ample reason for the conclusion come to by Mr. Kemble, that "the people who were in the neighbourhood, who happened to be collected in arms during a sitting of the Witan, or who thought it worth while to attend their meeting, were very probably allowed to do so, and to exercise at least a right of conclamation."†

\* Kemble, *C. D.* No. 1351.

† *Saxons in England*, ii. 237; see also Freeman's *Norm. Conq.*, i. 106-111, on the "Origin and Powers of the Witenagemót."

Having established this initial point in the evidence to be derived from early historical documents, it is not, I think, too much to say that the attendance of all the people of a district and the meeting in the open air are identical features of the one primitive institution. In modern times we are accustomed to think of large halls and theatres capable of holding as many people as those who in old times chose to act upon their right of attendance at the assembly of their district or of the nation; but our Saxon forefathers thought more of the freedom of the open air, and of the magic spell enclosed within the four walls of a building. In the chief towns and cities even, we do not find traces of large halls or buildings where the Witan might have met. Least of all do we find any traces of such structures in the many out-of-the-way places, or villages, which the charters enumerate as the meeting-places of the local or national *gemóts*. The following example is illustrative of the kind of place erected for council meetings, when they had ceased to be in the open air. In a doubtful charter of Ini it is said, "*pro ampliori firmitatis testamento, principes et senatores, iudices et patricos subscribere fecimus; actum publice, et confirmatum in lignea basilica*" (*Cod. Dip.*, No. 51, and see No. 93).

There certainly was no special place of meeting, and, except in the celebrated instance of Cloveshoo, there is no record of any decisions as to where subsequent meetings were to be held. The practice seems to have been to hold the meeting in the locality of the cause about to be heard, or the crime about to be adjudicated upon. Justice, in fact, was brought home to every man's door. In going through any series

of documents relating to legal assemblies, this is very evident. Thus, in the *Liber Eliensis*, there are many such examples as the following :—" Æthelwoldus episcopus emit Grantedene . . . coram testimonio Eadgari regis . . . et aliorum sapientum qui tunc ibi aderant" (pp. 157, 158). The casual nature of such a meeting is evident. It must, then, have been an habitual practice to have met in the open air. But, not to urge more in this direction of general conclusions, let me draw attention to a passage from one of our seventeenth century historians, who arrives at the same conclusion that I do, and who parallels Sir Francis Palgrave's remarks upon the charter of Charlemagne, already noted.

At the end of King Ethelwolf's charter of tithes, A.D. 855, after the subscriptions of the bishops, earls, and other great men, the following clause occurs :—" aliorumque Fidelium infinita multitudo, qui omnes Regium chirographum laudaverunt, Dignitates verò sua nomina subscripserunt." \*

Sir James Tyrrell, writing in 1696, observes upon this, that "tho' only the Dignified Persons subscribed their names, yet all the rest of the Multitude had a Right to approve, and give their Consents to what was there transacted : But it cannot be imagined that this Charter would ever take notice of the approbation of the meer Rabble without, however they might shew a joy and satisfaction at what was there done by their Hollowing and Shouting. And this I conceive to be the Reason why these Councils often met in the open Air, when the Weather would

\* The charters in the *Codex Dip.*, Nos. 270 and 271, do not give this clause. The charter seems to be an undoubted forgery, but the point of my text is not altered by this fact.



permit, because no one Room could easily hold them." \*

Turning from this general phase of the evidence to some special examples of early meetings in the open air, it will be seen that from every side of the question, as it is presented to the modern inquirer, the primitive folk-moot is brought into prominent notice. Mr. Kemble quotes from Hincmar, *Epistola de ordine Palatii*, the fact that on the continent the general councils were held in fine weather in the open air, or, if occasion required, in houses devoted for the purpose—"sed nec illud prætermittendum, quomodo, si tempus serenum erat, extra, sin autem intra, diversa loca distincta erant" (*Saxons in England*, ii. 189). But he does not apply the parallel to English instances; he leaves the German authority to speak for English history, and usurp the place of English examples. It is true that from these early records, instances are not very numerous; but, gathered together and placed in their relative position with other instances of later dates and other jurisdictions, they form a very valuable group of evidence.

From Beda and the Anglo-Saxon Chronicle very important information is to be obtained. The two earliest references are from Beda, who details the particulars with curious exactitude: "The king, Ethelbert of Kent, came into the island of Thanet, and sitting in the open air, ordered Augustine and his companions to be brought into his presence. For he had taken precaution that they should not come to him in any house, lest, according to an ancient superstition, if they practised any magical acts, they might impose upon

\* See Sir James Tyrrell's *The General History of England*, i. Introd. p. civ.

him, and so get the better of him." \* Here is the "ancient superstition," which has already been noticed as existing in India, cropping up again in our own English records. And another open-air meeting is held later on: "In 603, Augustine, with the assistance of King Ethelbert, convocavit ad suum colloquium episcopos sive doctores proximæ Brittonum provinciæ, in loco qui usque hodie lingua Anglorum 'Augustinæ Ac,' † on the borders of the Wiccii and West Saxons" (Beda, *Ecc. Hist.*, book ii. cap. 2). "The Britons confessed that it was the true way of righteousness which Augustine taught; but that they could not depart from their ancient customs without the consent and leave of their people; and they therefore desired that a second synod might be appointed, at which more of their number would be present" (*Ibid.*). This second synod was subsequently held; and, though we are assured of the numerous attendance, the chronicler does not think it necessary to state the place or the manner of meeting. ‡

Mr. Kemble, without noticing the two instances just mentioned, has collected in the second volume of his

\* Beda, *Ecc. Hist.*, book i. cap. 25; *Hen. Hunt.*, lib. iii.

† Many places have contended for the scene of this assembly. Some have supposed it at *Aka* or *Rock*; others, at a place called the *Apostle's Oak*, near Stanford Bridge; others, again, suppose it to have been the *Mitre Oak*, in the parish of Hartlebury (see Nash's *Worcestershire*, ii. 399; also Tyrrell's *History of England*, sub anno 604; Camden's *Britannia*, sub voce "Worcestershire," and Gibson's note; Wilkins's *On Copyholds*, ii. p. 14). Haddan and Stubbs (*Councils*, i. 122, iii. 41) decide that "either Aust or some spot on the Severn, possibly just across the Severn, between Aust and the mouth of the Avon, would have been conveniently near to Caerleon for Augustin. Somewhere in that neighbourhood, therefore, on the plain of the Severn, probably stood Augustin's Oak" (see also Allies's *History and Folklore of Worcestershire*, p. 205).

‡ But see *Saxons in England*, ii. p. 200.

*Saxons in England* all the references from Beda and the Anglo-Saxon Chronicle of the meetings of the *Witenagemot* of the Saxons. This important collection tells us much of the subject with which we are now dealing. And of the one hundred and fifty-one meetings of the Witan of England of which Mr. Kemble has been able to collect the records, where is the place of meeting found to be? Not always in the great cities and towns; not in the capitals or palaces of the kings; but, except in some few instances, at places either altogether unknown to modern history, or which have become known mainly through these meetings.

It will be well for one moment just to look a little more closely into this collection of Witan meetings. And first of all let us take into consideration the meetings held in the cities. The earliest is the synod at Hertford in 673, recorded by Beda. The first held in London was in 811; in Worcester, 878 and 899; in Gloucester, 896; in Winchester, 901; in Exeter, 904; in Nottingham, 930; in Colchester, 931; in Buckingham, 934; in Dorchester, 935; in Abingdon, 937; in Oxford, 1015; and in Northampton, 1065. And altogether, out of the list compiled by Mr. Kemble, only thirty-five meetings are held in these great towns.

Some of the places where these meetings were held give by their names, or other circumstances, the clue to the open-air gathering. Thus, at Cloveshoo we have the record of five great meetings; but, though a great many theories have been advanced upon the identification of this place, which seems to have been at Cliffe, in Kent,\* one thing is certain, that it was not

\* See the whole question discussed in a paper by Mr. Kerslake, read before the Bristol and Gloucestershire Archæological Society, on *The Supremacy of Mercia*. But note Haddan and Stubbs's *Councils*, iii. 122.

a city or great town. They must have met, then, at some place in the district not marked now, either by tree, hill, or stream; and it is curious to note that the charter of the meeting held A.D. 825 contains the clause "on ðære meran stowe" at Clofeshoas (*Cod. Dip.*, No. 219). That these meetings at Cloveshoo were not always peaceable, and would require the space which an open-air meeting only could afford, we have some slight evidence, from the Chronicle of Ethelwerd. Unnoticed by Kemble, a synod is recorded to have been held here in 822,\* at which two dukes were slain—Burhelm and Mucca. Another favourite place of meeting was Ockley, where three of Kemble's Witans assembled, and which in Alfred's time, according to Asser, was simply Ac-lea—that is, an oak plain. This name is common to villages in Bedfordshire, Buckinghamshire, Northamptonshire, Oxfordshire, Essex, Gloucestershire, Staffordshire, Suffolk, Berkshire, Shropshire, Surrey, and Hampshire. In the north the name may be traced to Aycliffe, or even Auckland, and in the *Durham Ritual*, published by the Surtees Society, there is a note illustrative of the open-air meeting, written by a Provost Aldred, at "Suðan þudigan gæte æt A'clee, on þest Sæxum," in the tent of Elfsige, the bishop. The note is of the tenth century, but the place is probably the synodical place of encampment (Haddan and Stubbs's *Councils*, iii. 439). Again, the gemót of Ecgrif of Northumberland was summoned at Twyford, on the river Alne, and Beda himself interprets this name, not as belonging to a town, but simply the two fords (*Ecc. Hist.*, iv. 28); and the charter is plain enough in its language

\* See also Wilkins's *Councils*, i. 172.

—"congregato sinodo circum fluuium alne in loco qui dicitur æt tuiford" (*Cod. Dip.*, No. 25).

As seen above (page 41), Grimm notices the connection between the temple and the place of assembly; and this connection brings out the historical importance of meetings which are held in churches. There can be little doubt that the church or temple of primitive society was the self-same spot as the assembly-place of the people and the court of justice; the whole history of ancient law and early institutions tells us that this must be so: and the gemót which assembled "in æcclesia Saluatoris Laterana," in 709 (*Cod. Dip.*, No. 61), and in St. Paul's Church, London, in A.D. 973 (*Ibid.*, No. 580), although the veriest scraps of history, preserved, as it were, in spite of themselves, help to carry us back to the primitive life of our ancestors.\*

These important considerations on general grounds to be derived from Mr. Kemble's collection of the Witenagemots of Saxon times introduce us to the actual examples of open-air meetings, which it is our special business to notice. Thus, the first Witenagemot of which we have any detailed record was holden in 627, near the city of York. The Saxons did not assemble in the great city of the Romans—they met outside its walls, and for a purpose which would not certainly brook the restraint of a building. No less important business was discussed there than the desertion of paganism and reception of Christianity by the people

\* I have met with other instances of assemblies in churches, but not early enough to be of importance here. Thus at Norham in 1290 (Hutchinson's *Northumberland*, ii. 32); the court of St. Martins-le-Grand (see *Mun. Corp. Rept.* [*London*], p. 123). See also *Archæologia*, xxii. 200.

of Northumberland. The whole story is told by Beda (*Ecc. Hist.*, ii. 13): the stirring address of the Bishop Paulinus, the conversion of Eadmund, the king, and the vigorous onslaught there and then made, in sight of all the assembled people, upon the sacred altars of the pagan faith by the high-priest Cœfi. The next instance is the gemót held by Archbishop Theodore, on the plain of Heathfield, as *Beda* terms it, "in loco qui Saxonico vocabulo Hæthfeld nominatur" (*Ibid.*, iv. 17), in the presence of the kings of Northumberland, Mercia, East Anglia, and Kent. On July 30, 685, a Mercian synod was held "juxta vadum Berghford" (*Cod. Dip.*, No. 26). In 702 a council is held "in campo qui dicitur Onestrefelda," and the whole story, as we have it in Haddan and Stubbs's *Councils* (iii. 251), is interesting as an account of the condemnation of Bishop Wilfrið. From a charter of Adhelm (*Cod. Dip.*, No. 54) we learn that before 705 a council had been held upon the banks of the river Woder, which is possibly, Mr. Kemble thinks, the "synodus suæ gentis" mentioned by Beda (*Ecc. Hist.*, v. 18). Upon the death of Aldfrið in 705, a gemót was held upon the banks of the Nidd, and after long debates Bishop Wilfrið was restored to his see and possessions (*Beda, Ibid.*, v. 19). A passage printed in Haddan and Stubbs's *Councils* (iii. 265) describes this meeting—"in unum locum juxta fluvium Nid ab oriente congregati Rex cum suis principibus, et tres Episcopi ejus cum abbatibus: deinde sedentibus Rege et Episcopis cum principibus eorum in loco synodali," . . . Archbishop Brihtwald opens the debate. In A.D. 791, Eadwulf, heretoga or duke of the South Saxons, granted to Wethun, Bishop of Selsey, the wood called Cealtborg-steal, near Ferring, by a deed made "on the hill

called Biohchandoune." (*Cod. Dip.*, No. 1015). This hill was doubtless that on which the present chapel, known by the name of Buncton, stands (*Lower's Hist. Suss.*, i. 88; *Suss. Arch. Coll.*, viii. 185). A council was held in 839 at a place now not to be recognized—"in australe parte fluminis Humbræ in loco qui dicitur æt Astran," or in the Latin equivalent, "Vetustissimus," which is simply an old place of meeting on the river Humber (*Cod. Dip.* No. 240). A grant of land at Mersham, by Ethelbert, King of Kent and Wessex, to his thegn Dryhtwald, in 862, is made "cum consensu et consilio episcoporum et principum meorum et ecclesiasticarum et sæcularium," in an assembly at *Willheres trio* (*Ibid.*, No. 287). King Edgar's charter to Ely Abbey, bearing date at Wulsamere, A.D. 970, describes in special terms the open-air meeting—not privately and in a corner, as the charter expresses it, but in the most public manner, and under the canopy of heaven, in the presence of the king, the queen, and all the bishops and great men of the kingdom, then and there assembled—"in villa regali, quæ famoso vocabulo a solicolis Wlfamere nominatur; non clam in angulo, sed sub divo palam evidentissime; scientibus totius regni mei primatibus." \*

This little group of examples of early open-air folk-moots must present a picture of real significance, not of accidental peculiarity, to the student of English institutions. It may not represent a numerical importance, and I have suggested the probable reason why examples of this period are not numerous, but

\* Sir James Tyrrell quotes this charter in slightly different terms from *Chartæ Antiq. in Turri Lond. B.* (see *Gen. Hist. of England*, i. Intro. p. civ.). I have used the copy given in the *Liber Eliensis*, p. 112; and see Bentham's *Hist. of Ely*, Appendix No. 1.

they certainly show us a new light by which to read other passages of meagre chronicle narrative. The people have a real constitutional life here, not a constant submission to the central sovereignty and its new imperial influences. They keep up as long as may be the old charters of their rights—charters not inscribed by Latin lawyers or churchmen, but engraved on the hearts and in the recollections of freemen. And upon this extension of our subject, it may be well to ask whether, for instance, the exploits of one East Anglian hero at the dawn of the eleventh century do not aid English constitutional history, as well as English political history? Ulfeytel and his army fought the Danes, and the East Anglian Witan legislated against the results of Danish victories; but were not the East Anglian army and the East Anglian Witan one and the same body of men? Mr. Freeman's graphic account does not expressly say so; the chronicles do not expressly say so; but, knowing that meetings in the open air were strictly in accordance with contemporary practice, the inference is that the army and the Witan of East Anglia were identical, just as the army and assembly of other early Aryan people were identical.

In Wales we have the following instances:—Two councils were held in 569, and the editors of that valuable work, *Councils and Ecclesiastical Documents of Great Britain and Ireland*, state that there is a wooded spot, four miles from Llanddewi Brefi, and close to Loventium and to a Roman tumulus still existing, called, however, Llwyn Garu, which, perhaps, may be the place of meeting (i. 117). A grant of liberties by Llywelyn, Prince of Wales, to Bishop Anian, of St. Asaph, is dated 1269, "apud Montem Altum," identi-



fied with Mold in Flintshire (*Ibid.* i. 498), which Mr. Isaac Taylor, without reference to this grant, has placed among those place names which give evidence of the old moot-hill (*Words and Places*, p. 198).

Before passing away from the records of these primitive assemblies, there is one special account to which I wish to direct attention. It looks very much as if we had here an instance of a local gemót whose gathering was in the primitive form—the popular assembly, and the open-air meeting-place. The local assemblies are necessarily not prominently recorded by imperial lawyers, and it is fortunate to have had preserved so good an example as that now to be noticed. The height which, under the corrupted form of Cuckamsley, still preserves the name of Cwichehm, a West Saxon king, was the spot where, in times of peace, the people of Berkshire had held their local assemblies (Freeman's *Norm. Conq.*, i. 361). A charter relating the proceedings at one of these assemblies is preserved in the *Codex Diplomaticus* of Mr. Kemble (No. 693, vol. iii. p. 292), and as the whole record is extremely curious and valuable,\* I do not hesitate to give a translation of it, for which I am indebted to the kindness of Mr. Henry Charles Coote, F.S.A.

“It is shown in this record how Wynflæd led her witnesses at Wulfamere before King Æthelred, viz. Sigeric, archbishop, and Ordbyrht, bishop, and Ælfric, ealderman, and Ælfthryth, the king's mother, they being all witnesses that Ælfric gave to Wynflæd the land at Hacceburn and Bradanfeld in exchange for the land at Deccet. Then the king sent straightway by the archbishop and those that were with him as witnesses to Leofwin, and they certified this to him. Then would he not

\* See Mr. Kemble in *Arch. Journ.* vol. xiv. p. 131. The height is described in Sir R. C. Hoare's *Ancient North Wiltshire*, p. 51.

[accept it], except it were referred to the scir gemote. Then it was done so. Then sent the king, by Ælvere, abbot, his writ [*inseget*] to the gemote at Cwiclemes-hlæwe, and there greeted all the Witan that were there assembled, viz. Æthelsige, bishop, and Æscwig, bishop, and Ælfric, abbot, and all the shire, and bade and commanded that they should determine between Wynflæd and Leofwin as rightly as to them should seem ever most right. And Sigeric, archbishop, sent his certificate concerning the same, and Ordbyrht, bishop, his. Then Wynflæd was assigned to claim it for herself. Then led she her claim [*i.e.* the witnesses for her claim], with the assistance of Ælfthryth, the king's mother, viz. Wulfgar, abbot, and Wulfstan, priest, and Ælfric, dishtane of the Æthelings, and Eadwine, and Eadelm, and Ælfhelm, and Ælfwine, and Ælfweard, and Eadwold, and Eadric, and Ælfgar, and Eadgyfu, abbess, and Liofrun, abbess, and Æthelhild, and Eadgyfu at Leofecan-ora, and her sister and her daughter, and Ælfgyfu, her daughter, and Wulfwin, and Æthelgyfu, and Æthelflæd, and many a good thane and good woman, [so many] that we cannot enumerate all; so that the full oath was in attendance, as well of men as of women. Then said the Witan that it would be better that the oath [*i.e.* the persons ready to swear on behalf of the plaintiffs] should be dismissed than that it should be given, because after that there would be no friendship, and it would be demanded that, as for a robbery [committed by him], he [Leofric] should make compensation for it, and pay to the king his were. Then he dismissed the oath [*i.e.* he agreed to its dismissal], and delivered up to Æthelsige, bishop, [the] land without further contest, [and promised] that he would not thenceforth bring any suit or respect thereof. Then she [Wynflæd] was ordered to bring to his [Leofwin's] father gold and silver, all that she had. Then did she so. She durst support her oath [*i.e.* she paid the money under protest that she could have proved her case by witnesses who would support her foreoath]. He would not, however, accede to this, unless she would swear that her claim was confined to that particular [*i.e.* he would have an entire release]. Then said she that she might not of her part, nor he of his; \* and Ælfgar, the king's gerefa [sheriff], took part in this."

\* This sentence is far from clear, but it is evident that Wynflæd made no further concession.

It is strange that the great importance of this charter should have been missed by our constitutional historians. Professor Stubbs passes it by altogether, and Mr. Freeman barely glances at it. Mr. Coote, however, has used it for the purpose of illustrating some remarkable parallels between English and Latin civil procedure (*Romans of Britain*, pp. 296-303) ; but, though no one can doubt that the enormous influence of civilizing Rome is here seen at its greatest advantage, is it not also a fact to notice, that, in spite of the procedure having been Latinized (no doubt by the lawyers of that age), the court, so far as the people were concerned—so far, that is, as the original primitive influences were concerned—was still altogether outside the exhaustive effects of Roman influences,—a fact that is shown by its retention of so important a relic of its primitive origin as the meeting in the open air? Here once again we see, what I believe—and have worked out to some extent in the introduction to my little book on Municipal Offices—is often to be traced, namely, Roman ceremonial forms encrusting English institutions.

There are some few other early records of local jurisdictions holding their assemblies in the open air. Thus, a famous place of meeting of one of the courts of the monks of Ely was at "Grantebrugge." In the *Liber Eliensis* this is very frequently mentioned as the place where "generali placito," "totum hundredum," "placitum civium et hundretanorum," were summoned ; and in one important passage we discover that the actual meeting-place was at the bridge of Grantebrugge (see p. 135). Another reference says, "Tandem veniens Ægelwinus alderman ad Grantebrugge, habuit ibi grande placitum civium et hundre-

tanorum coram xxiii. iudicibus, subtus Thernigefeld prope Maideneburge" (p. 137). In the same work, *Liber Eliensis*, are many indications of the primitive nature of the assemblies of the hundreds and the shires. One is irresistibly drawn to the conclusion, by the circumstances recorded of these meetings, that they were invariably attended by many more people than could be crowded under a roofed building. And besides this indirect evidence of open-air meetings, there are other special features which reveal characteristics of a primitive stage of society. Keeping, however, to the special purpose of the present work, I will not do more than mention one or two further instances of open-air assemblies—not recorded, be it observed, as if they were something unusual, but simply that the chronicler had thought fit to give some little additional information:—"Interea venit Ægelwinus alderman ad Ely, et infra cimiterium ad aquilonalem portam monasterii tenuit placitum cum toto hundreto, ibique causam sive litem" (p. 131). Here a special value arises from the fact of the meeting being held near the "gate"—a place so frequently connected with this purpose (see again *Liber Eliensis* p. 133); and that the cemetery was not an unusual place of meeting there is negative evidence from the prohibition contained in an old Scotch law—"Inhibitum est quod placita vite aut terrarum seu aliquarum querelarum tenta sint in sancta ecclesia vel in cimeterio vel in aliquo alio loco sacrato" (Skene's *Acts of Parliament of Scotland*, i. 388).

Bishop Liuthari, in a doubtful charter of August 26, 675, grants certain privileges to the abbots, "actum publice juxta flumen Bladon" (*Cod. Dip.*, No. 11).

Early recorded instances of the open-air meetings of

folk-moots in England, though meagre, as we have seen, in point of information, are necessary in supplying the link between early times and the later times, about which a great deal will presently be said. I shall conclude these examples with a story, valuable from its surrounding details, which Roger of Wendover relates of the shire-moot of Durham. The men of Durham were oppressed and down-trodden by Walchere, Bishop of Durham. At length they resolved to come with concealed weapons to the county court (*ad placita comitatus*), and repel these injuries by force, if necessary. And when, shortly after, *at the accustomed place*, the inhabitants assembled and demanded that justice should be done them, the bishop answered that he would not grant them justice before they paid him four hundred pounds. Upon this, one of them, speaking for all, requested the bishop to allow them to hold a conference concerning what he demanded. This being granted, they withdrew for a little while, and, at the signal of one of them, seized their arms and murdered without mercy the bishop and a hundred men with him, *near the river Tyne*, where the pleas which led to his death used to be held by the bishop.\*

Without speaking of the special reference to the accustomed place of meeting near the river Tyne, it is perfectly obvious that the slaughter of a hundred men must have been accomplished by a number of armed men—the legitimate attendants of the court, be it observed, armed in a legitimate manner—incapable of being packed in a shirehall belonging to that period.

These representative examples will, no doubt, be

\* See Roger of Wendover's Chronicle, *sub anno* 1075.

quite sufficient to establish the fact of open-air meetings having been held at the earliest times to which our literary sources of knowledge belong. It should be borne in mind that the early English chronicles are not the offspring of the Saxon mind, but of the Roman mind, and the early English charters are, in form and legal antiquity, not Saxon, but Latin. Thus, we do not get much that belongs to primitive life, and what there is has been preserved by accident or under the wing of Latin legal formulæ. Again, both chronicle and charter deal, as a rule, with the most developed portions of the Anglo-Saxon nationality—the sovereign and his court, the abbots and clergy of the Roman Church. With the people, among whom the primitive forms and the primitive associations were extant, both for a longer period of time and in many more instances, the earliest literary documents have very little, or indeed no, connection. The evidence preserved for the modern student from the people of ancient times is obtained from actual survivals instead of historical examples, and these survivals, of course, existed (though unrecorded) throughout the period covered by the evidence that has just been considered.

## CHAPTER IV.

## THE REVIVAL OF THE PRIMITIVE FORM.

Historical Value of the Revival—*Evidence of the National Assembly reviving its old Open-air Meetings*: Mr. Freeman's Examples, Runymede—*The Local Assembly*: Penenden Heath, Shire-moot of Berks, Mendip—Summary.

IN the consideration of "revivals" of the primitive assembly in Britain, it is well at once to point out that examples under this head only become historically logical upon the assumption that more decisive examples of the primitive assembly are forthcoming. Because if, without any reference to examples from early records, or examples from historical survivals, it were put forth as a proposition that an assembly accustomed to meet according to modern practices, but suddenly meeting in the open air, was simply a meeting of the primitive assembly in its old form, there would clearly be wanting a great deal of evidence to establish it. It would be necessary to trace back its history to some anterior period when it could be shown to have met in the primitive form, and this would be next to an impossibility, at all events in each individual case. It is allowable, however, to leave the history of any one particular assembly, and fall back upon the general history of the subject as an argument in favour of the theory.

of revivals, so long as that general history is of a decisive nature; for the inference is so strong that a resumption of old forms would be much more likely than a design of new forms—especially when they do not agree with the spirit of the age—that the want of pure historical evidence is fully compensated for.

But I think there is something more in favour of my theory of revivals than the logical position just stated. We find it in the history of the national assembly itself. In that history Mr. Freeman has pointed out that, in its primitive form, the national Witan was attended by the general body of free citizens, and that gradually it had shrunk to a narrower body of representative men—men who had the means and the time for always attending, and so gaining a kind of general influence over the rest (*Comparative Politics*, Lect. V.) It is by this narrow body of representative men that the historical national council is known. Other meetings, less select and much more tumultuous, are looked upon as great mob assemblies of a temporarily ungoverned people. Our old historians cannot recognize in these instances any relics of constitutional history, or any relics of popular rights. But in England, as elsewhere among Aryan peoples, there is a comparative phase of the history of the national council which I can best express by the term “revival;” and hence I am led to the conclusion that if *Comparative Politics* allows of the establishment of a “revival” of the primitive form of the national assembly, it will equally well allow of the establishment of revivals of the primitive forms of local assemblies.

It is necessary, first of all, then, to set forth the examples Mr. Freeman gives in illustration of the revival



of the old form of the national assembly. That it was exercised only by fits and starts, he says, is simply what was to be looked for from the unfixed and informal nature of our early institutions in general. But the rites associated with it went on; it cannot be said to have wholly vanished so long as the people were called on to cry, "Yea, yea," even though there was no thought of their crying, "Nay, nay," at the election and consecration of kings (*Comparative Politics*, p. 220).

This is the general proposition, and the instance specially illustrating it is as follows:—

On the morning of the 15th of September, 1052, the assembly of the nation met. The stirring events which produced this meeting were also the cause of its popular form, and they are vividly described by Mr. Freeman (*Norm. Conq.*, ii. 308–331). From his pen also we learn that the people of England—for such a gathering may well deserve that name—came together to welcome its friends and to pronounce sentence upon its enemies. The two armies and the citizens of London formed a multitude which no building could contain. That *mickle gemót*, whose memory long lived in the minds of Englishmen, came together, in old Teutonic fashion, in the open air without the walls of London—"widutan Lundene," says the Peterborough chronicler. On that great day the English people appeared, in all the fulness of its ancient rights, as a co-ordinate authority with the English king. Men came armed to the place of meeting. There sat the King of the English, driven at last to meet face to face with the free assembly of his people; there were all the earls and all the best men that were in this land; there was the mighty

multitude of English freemen (Freeman's *Norm. Conq.*, ii. 332, 333). It will not be necessary here to further detail the events of this great revival of the primitive assembly of the people ; the restoration of Godwin and his sons was the chief work, and such a work, with its manifold results, belongs to the history of England.

It is, of course, impossible now to determine the nature of those gatherings, which, on the occasions when great events were stirring, met to decide the choice of kings. The election of kings is a primitive right of the folk-moot. We have seen its primitive associations in ancient Denmark, and we know from many examples that the right was exercised in some form or other in Anglo-Saxon England.\* Mr. Freeman connects the events of some later elections—that of Harold and that of Henry VIII. more particularly (see *Comp. Pol.*, p. 220)—with the events of the old open-air gathering of the national Witan ; and, without attempting to do more than record this connection, we may pass from these phases of the revival of the primitive folk-moot to a more definite phase, where the evidence is more emphatic and decisive.

Matthew of Westminster (1215) records that Runymede was the field of council where, in times of yore, the Anglo-Saxons were wont to meet and consult on the welfare of the State ;† and here, every Englishman knows, the great feudatories obtained from the trembling and guilty hands of the most disgraceful monarch that ever wore the crown of England, the great palla-

\* Kemble, *Saxons in England*, ii. 214-219 ; Freeman, *Norm. Conq.*, i. 591 ; Stubbs, *Const. Hist.*, i. 136.

† See Palgrave hereon, *Hist. Eng. Com.*, i. 140 ; and Taylor, *Words and Places*, pp. 196, 197. Also cf. Blackstone, *Introd. to Magna Charta* ; and Thompson, *Historical Essay on Magna Charta*, p. 526.

dium of English rights and privileges—Magna Carta. There must have been something more than accident, something more even than diplomatic design, in thus assembling on the historic field of Runymede. The whole nation was stirred to its very depths; men thought of old times, and brought up the treasured memories of the past—memories that had remained dormant for so many years, during the harsh, unbending rule of the Norman conquerors; and these memories did more for them than all the diplomatic or political skill of the most successful statesmen of that time. For they brought back the principles of their primitive institutions, and based the opening of mediæval liberties upon a foundation that belonged to the very home of all liberty. They took the Englishman of the twelfth century back in thought to times whereof the picture of the Swiss cantons is the best exponent. We shall meet again with instances where, on special occasions, present institutions were put on one side, and men reverted, almost as a matter of intuition, to the institutions of their forefathers; but these do not vie in importance with the present instance—for the foundation of the nation itself was there laid.

Unfortunately, however, we do not possess a good contemporary account of this great meeting at Runymede. "As is so often the case in great crises of history," observes Professor Stubbs on this very fact, "the attention of the historians is devoted to points of minor interest; and when we should hear of great constitutional debates, we find only the record of the doings of the legate and the bishops" (*Const. Hist.*, i. 528). Blackstone makes a similar complaint in his masterly account of the Great Charter. And the

result is that modern historians have been all along viewing it from the later periods—viewing it from a standpoint where the English constitution has passed beyond all the events that made the Great Charter possible. But instead of looking back upon it, we should place ourselves historically in a position to look forward to it. From this latter position, the collective people who range themselves on the one side, as against the king on the other, are undoubtedly the assembly of the nation—the Witan; the armed multitude who appeared on the side of the barons was not merely the army which was to enforce the demands of its leaders, but it was the assembly of the nation in arms. And the debate lasted four days, from the 15th of June to the 19th (Blackstone, p. 296). But with so noble a result, we cannot do more than record the fact of the great open-air assembly—place it in its proper place as evidence of primitive institutions—without a single chance of ascertaining if the old council-mead of the Anglo-Saxons once more witnessed the forms and ceremonies of the old council. That it is not so improbable a circumstance for a parliament to have met, at this comparatively late date, in the open air—to have resumed, in point of fact, an important characteristic which had never been taken away by legislation, but had only died out by desuetude—let me notice that it has been doubted by some of our chroniclers whether the famous council or parliament of Kenilworth actually held their meeting at the castle. A sufficient proof to the contrary is given by one of the copies of the Dictum being dated “in castris apud Kenilworth,” whilst we know that the award was in other copies dated on the 31st of

October, the castle not being surrendered until the 31st of December following (*Arch. Journ.*, xxi. 149, 150). Here, then, is an example of the old form—the assembly was sometimes the nation in arms. Again, I must instance the peculiar coincidence that a parliament was held by Edward I., in 1290, at Clipston Park, and that down to quite modern times there was a very old oak in the park, which the common people call the “Parliament Oak” (*Gent. Mag.*, 1791, p. 523). Although no contemporary record exists now to state the fact, does it become too uncritical a question to ask whether this Parliament Oak and this council-mead do not belong to one phase of political life, and that a primitive phase? Is it wrong historically to place these two great meetings together as revivals of a system which had not then died out of memory, as revivals of a free meeting of the same Witan of England which had given Godwin and his sons liberty?

The first instance of a “revival” of a local assembly in its old form will be found to be thoroughly complete on all points. We can trace it historically through all the stages which have been pointed out as incidental to every true form of a revival, namely, the early history, the mediæval resumption of early historical associations, and a continuance in modern times of important archaic surroundings.

This is the magnificent legal record of an assembly of the county folk-moot, attended by all the men of the shire, specially attended by some old men learned in the laws and customs, which met to do judgment between man and man, as the old primary assembly of the people used to meet, under the light of heaven—the great folk-moot held upon Pennenden Heath, in Kent, in 1072, when three days were employed in dis-

cussing the adverse rights of Odo, Bishop of Bayeux, and Lanfranc, Archbishop of Canterbury. Every scrap of information concerning this important gathering is worthy of the most jealous preservation. Our constitutional historians seem to have strangely missed its real significance. Sir Francis Palgrave hides it under his discussion of the introduction of Trial by Jury, thus post-dating its archaic value (*Hist. of Eng. Com.*, i. 254) ; Hallam and even Professor Stubbs do not record it ; and Mr. Freeman, though careful to note its proper and subsidiary evidence towards the history of the Norman Conquest,\* does not place it in its far more important position as one of the most valuable contributions of English history to the science of Comparative Politics. In the former it may illustrate the statesmanlike character of William, that "nothing was further from his thoughts than to root out the laws of England, and to bring in some foreign code of his own devising in their stead ;" but in the latter it shows that these very laws of England have an equal right with those of Greece and Rome, and with those of Germany and Scandinavia, to a distinctive, instead of a subordinate, position in the unwritten code of the primitive Aryan.

Of this great folk-moot we have several accounts. Wilkins prints a record of it in his *Concilia magnæ Britanniae*. It is also recorded in the Chronicle of Eadmer by Gervase (*Act. Pont. Cant.*), and in the appendix to the Winchester Chronicle. But the fullest account, says Mr. Freeman (*Hist. Norm. Conq.*), is found in Bishop Ernulf's Rochester History, *Anglia Sacra* (i. 334). It might be expected, too, that the papers of the Dean and Chapter of Canterbury would

\* See Freeman's *Hist. of Norm. Conq.* iv. 364, *et seq.*

contain some relic of so important an event in their history. The only document now to be found, however, is an incomplete thirteenth-century copy (Hist. MSS. Commission, 5th Rep. 462).\*

Before entering upon the special illustrative points of this great open-air assembly, it will be interesting and instructive to have before us a translation of one of the original accounts. There could be no improvement upon the simple terseness of the official language :—

“ In the time of the great King William, who conquered the English kingdom and subjected it to his rule, it happened that Odo, Bishop of Bayeux and the king’s brother, came into England much earlier than Archbishop Lanfranc, and resided in the county of Kent, where he possessed great influence and exercised no little power. And because in those days there was no one in that county who could resist a man of such strength, by reason of the great power which he had, he seized many lands belonging to the archbishopric of Canterbury, and some customs, and by usurpation added them to his rule. But it happened, not long after this, that the aforesaid Lanfranc, Abbot of Caen, also came into England, by the king’s command, and, by the grace of God, was raised to the archbishopric of Canterbury and made primate of all the realm of England. When he had resided there for some little time, and found that many lands anciently belonging to his see were not in his possession, and discovered that, by the negligence of his predecessors, these had been seized and distributed, after diligent inquiry, being well assured of the truth, as speedily as possible, and without delay, he made suit to the king on that account. Therefore the king commanded all the county [comitatum totum] to sit without delay, and all the men of the county—Frenchmen, and especially Englishmen learned in the old laws and customs—to assemble. When these were assembled on Pennenden Heath [apud Pinendenam], all together deliberated. And when many suits were brought there for the recovery of lands, and disputes about the legal customs were raised between the archbishop

\* Elton, *Tenures of Kent*, p. 63, mentions a MS. account in the British Museum.

and the aforesaid Bishop of Bayeux, and also about the royal customs and those of the archbishop, because these could not be ended on the first day, the whole county [totus comitatus] was detained there for three days. In those three days Archbishop Lanfranc recovered many lands which were held by the bishop's men—namely, Herbert, son of Ivo, Turolde of Rochester, Ralph de Courbe-Espine, and many others, with all the customs and everything which pertained to those lands—from the Bishop of Bayeux, and from his men above mentioned, and from others; namely, Detlinges, Estokes, Prestetuna, Damtuna, and many other small lands. And from Hugh of Montfort he recovered Rucking and Brook; and from Ralph de Courbe-Espine, pasturage of the value of sixty shillings in Grean [Island]. And all those lands and others he recovered so free and unquestioned, that, on that day on which the suit was ended, not a man remained in the whole realm of England who could make any complaint thereof, or bring any claim, however small, to those lands. And in the same suit, he recovered not only those lands aforesaid and others, but he also revived all the liberties of his church and all his customs, and established his right in them when revived—soca, saca, toll, team, flymena fyrmthe, grithbrece, foresteal, haimfare, infangentheof, with all their customs, equal to these or smaller, on land and on water, in wood, on road, and in meadow, and in all other things, within the city and without, within the burg and without, and in all other places. And it was proved by all those upright and wise men who were there present, and also agreed and judged by the whole county [toto comitatu], that, as the king himself holds his lands free and quiet in his domain, the Archbishop of Canterbury holds his lands in all things free and quiet in his domain. At this suit were present Geoffrey, Bishop of Coutances, who represented the king, and held that court; Archbishop Lanfranc, who, as has been said, pleaded and recovered all; also the Earl of Kent, namely, the aforesaid Odo, Bishop of Bayeux; Ernest, Bishop of Rochester; Agelric, Bishop of Chichester, a very old man, and most learned in the laws of the land, who was brought there in a wagon, by the king's command, to discuss and explain the ancient legal customs; Richard of Tunbridge; Hugh of Montfort; William of Arques; Haimo, the sheriff; and many other barons of the king and of the archbishop; and many men of those bishops; and other men of other counties; also men, both French and



English, of much and great authority with all that county. In the presence of all these, it was shown, by many most evident proofs, that the King of England has no customs in all the lands of the church of Canterbury, except three only; and the three which he has are these: First, if any man of the archbishop digs into the king's highway, which runs from city to city; second, if any one cuts down a tree near the king's highway, and lets it fall across the road—concerning these two customs, those who are taken in the act while so doing, whether pledge may have been received from them or not, yet, at the prosecution of the king's officer and with pledge, shall pay what ought justly to be paid. The third custom 'is of this kind: If any one on the king's highway sheds blood, or commits homicide, or does any other unlawful thing, if he is seized in the act and detained, he shall pay the fine to the king; but if he be not seized there, and shall once more depart thence without giving pledge, the king can justly exact nothing from him. In like way, it was shown in the same suit that the Archbishop of Canterbury ought to have many customs on all the lands of the king and of the earl; for, from that day on which Alleluia is ended to the octave of Easter, if any one sheds blood, he shall pay fine to the archbishop. And at any time, as well in Lent as at any other time, whoever commits that offence which is called cildwite, the archbishop shall have either the whole or the half of the fine—in Lent the whole, and at any other time either the whole or half of the fine. He has also, in all the same lands, whatever seems to pertain to the care and safety of souls."\*

Now, in this simple record there is plenty of material for the historian of primitive institutions to work upon. Here is the old local assembly of Kent—which had, so far as we can tell, for years before this one important meeting been giving way to the notion that a few of the more powerful men, together with those living near

\* Original Latin of this deed is given in Wilkins's *Concilia magnæ Britanniae et Hiberniae*, vol. i. p. 323. The English translation I have collated from *Essays in Anglo-Saxon Law* (Boston, 1876), pp. 369-374. See also Larking's *Doomsday of Kent*, Appendix No. xiv.

the place of assembly, would do the business of the shire, just as well as the whole assembly of the shire—once again resuming the full compass of its old form, once again swelling into something far greater than the narrow local assembly into which it had gradually shrunk. For it is not to be supposed that the assembly of Kent was different from the assembly of other shires and of other Aryan tribes. By the law which Mr. Freeman has worked out in the field of Comparative Politics, it had, no doubt, gradually shrunk into a narrow body of representative men; but before the hand of the centralized government had been placed upon the narrow body, and had created a legislation for extraordinary cases, the dispute between two of the greatest men of the shire—men who would not be governed by the hundred-moot, or by the shire-moot as it stood in its narrowed form—brought about one of the old primitive gatherings of the shire-men. In just the same manner, Mr. Freeman has, we have seen, collected examples which show that on a few great days, when the heart of the nation was stirred to its depths, armed multitudes, which no building, no city, could contain, took part, as of old, in the election of kings, in the banishment of public enemies, in the declaration of war and peace (*Comparative Politics*, p. 219). As in the national assembly, so now in the local assembly. The open-air meeting on Pennenden Heath was certainly too large to meet under any roof. All the men of the county were there—Frenchmen, and especially Englishmen learned in the old laws and customs. And the dispute was between two Kentish men—Odo, Earl of Kent in this case, more than Bishop of Bayeux, and Lanfranc, Archbishop of Canterbury. Only two

extraneous features mar the perfect beauty of this primitive picture of English institutions: the one is that Lanfranc made suit to the king, who *commanded* all the county to sit; the other, that "other men of other counties were present." But these can very easily be accounted for, I think. It is true that the king commanded, but he commanded only what by old English law he could command. It was no Norman introduction, this great gathering of freemen; it was rather a Norman submission to English law and custom. Again, if strangers were present, it was only the men of the county who "agreed and judged," and the strangers were only a very slight Norman intrusion upon English law and custom.

But we are able to penetrate behind this great revival of the primitive assembly of Kent, to a time when its primitive form was its ordinary form. It is only, however, a single and rapid glance that is to be obtained of this archaic history; we cannot dwell on it and study it unconnected with the meeting just recorded. And this fact brings in its train the conclusion that this open-air assembly of all the men of the shire was, no doubt, a return to the old state of things, before the old state of things had been entirely eradicated from the customary law of England. We cannot assume it to be anything more than a return—to be, in fact, the ordinary mode of meeting in the shape of an historical survival—only because we do not find any specific mention of this kind of meeting of the shire of Kent, either before or after this one particular gathering on Pennenden Heath.\* It is

\* It is interesting to note that a great meeting was held here in 1828, on the important question of Catholic Emancipation (see Furley's *Weald of Kent*, vol. ii. p. 654).

incredible that the record of such a meeting in 1072 should stand alone, if it had been preceded or followed by similar meetings ; and it is therefore safer to follow the general law applicable to the primary assembly in trying to understand the importance of the meeting on Pennenden Heath. And this mode of treating the subject meets with no opposition from the fact now about to be noticed. Pennenden Heath was not a mere casual meeting-place ; it was the ancient meeting-place of the shire. A passage in the *Doomsday of Kent* sets the matter quite at rest: "Si fuerint præmoniti ut convenient ad sciram, ibunt usque ad Pinnedennan, non longius." Here, then, the old shire-moot was accustomed to assemble in the primitive fashion of the primitive world ; and if it had not suddenly revived and as suddenly stopped such meetings in 1072, if it could be shown that 1072 was not the end, but the commencement of the gradual shrinking into the narrower form, nothing would have been wanting to fix upon the shire-moot of Kent as one of the most complete survivals of a most important archaic institution.

There is further evidence which carries the history forward to later times, and supplies the last link in the chain of archaic reproduction. The old shire-moot of Kent did not move very hastily away from the recollections, even if it did discontinue the form, of its old open-air meetings on Pennenden Heath (see Furley's *Weald of Kent*, i. 758). The county house is situated even now on the north side of Pennenden Heath, and the sheriff still continues to hold his county courts there monthly, and he takes the poll for the members of the county till it is adjourned to Maidstone. On the opposite side of the heath, also, was

the gallows for the public execution of criminals (Hasted's *Hist. of Kent*, ii. 132). And most important of all, there is a lofty mound there, at the meeting of the roads from Maidstone, now enclosed within the grounds of Foley House, which has a very suspicious look as having been the Moot-hill on which the meetings were held (Larking's *Doomsday of Kent*, Note No. 41, p. 160). Here, then, we have a very nearly complete story: the old record which proves the early custom; the more modern record which tells of a sudden resumption of old forms in the old place; and the modern local historian detailing the last vestiges of the primitive meeting-place.

Before passing away from the revival of the ancient form of gathering by the shire-moots of England, it is well to notice that Camden, without any knowledge of this law of Comparative Politics, has described the shire gathering of Berkshire in almost the precise terms of the historical surroundings of a revival. Berkshire, he says, is "from Beroke, a disbarked oak, to which, when the State was in more than ordinary Danger, the Inhabitants were wont in ancient Times to resort and consult about public matters" (Camden's *Britannia*, p. 137). The definitions here are too vague to place this alongside of such an example as Pennenden Heath; but the spirit of the revival is strongly evident, and therefore must find mention here.

We next come to a very important example of the revival of the primitive form of assembly of the people in the open air; and, although this example is of a still more local character than that of the shire-moot of Kent, it bears exactly upon the same parts of our subject, and repeats exactly the same evidence of the recurrence to the primitive popular

gathering, after having for some time adopted the representative method. The lordship and forest of Mendip belonged to the hundred of Wells-Forum, and matters incident to the court were always dealt with in the usual manner before the twelve suitors chosen for the court.\* But in the reign of Edward IV. something far more popular was adopted, the record of which I give entire, as it appears from a document given in the sixth Report of the Historical Manuscripts Commission :—

“Be it well known that this is enrolled in the King’s Majesty’s Court of Exchequer, by the time of King Edward IV., of a great debate that was in the county of Somerset, between the Lord Bonville’s tenants of Chuton and the Prior of Greenwær : King Edward commanded Lord Chock, the Lord Chief Justice of England, to go down and set a concord and peace upon the said forest of Mendip. Lord Chock appointed a place of the Lord Bishop of Bath and Wells called ‘the Forge’ upon Mendip, and ordered the commoners to appear, specially the four Lords Royal upon Mendip, *i.e.* the Bishop of Bath and Wells, the Lord of Glaston, Lord Bonville, the Lord of Chewton, and the Lord of Richmond ; they and 10,000 people appeared and drew up sixty-four articles as to commoners and miners, known as the Mendip Laws.”†

Now, this appears to me to bear most significantly upon the matter before us. An important dispute had arisen, which required something more than ordinary legislation to set right. Perhaps even the ordinary method of dealing with such matters, before the twelve chosen men, had been tried and had

\* See a matter adjudicated in the Hundred Court of Wells, as it is called, relating to Chewton Mendip, in Hist. MSS. Com. iii. 355, A.D. 1229.

† Vol. vi. p. 347 ; also see a copy of the laws, vol. i. p. 93. The whole code of laws is given in Phelps’s *History of Somerset*, vol. ii. p. 5. See also Blount’s *Tenures of Land*, by Hazlitt, p. 216.

failed. At all events, the collected inhabitants of the liberty are summoned together on this special occasion, and this gathering was based upon the principles of the old primary assembly of the freemen of a district. The question, broadly stated, is this: years after the primitive open-air court or assembly had been disused—had shrunk into a small representative assembly, exactly in the same way as almost all such primitive assemblies had shrunk as peoples and tribes developed into nations and countries—one great and important case arose, requiring extraordinary legislation, and the means adopted were not based upon the Court statesmanship of the period, but upon a conscious or unconscious statesmanship derived from the primitive history of the people. This can be nothing else than an historical revival, therefore, and must be classified with the other instances which do not bear the more significant stamp of survival, only because they had not continued their primitive meetings in an unbroken series from primitive times.

For it must be considered that it is only when some extraordinary pressure is put upon any given institution, that its true strength is brought out and its vitality, as being grasped by the people, is ascertained. An everlasting routine of similar events does not produce history: it is only the ever-progressing national strides. But very often national events strain to the utmost local institutions, and it is these occasional strains that reveal a great deal of the inner machinery which supports the whole fabric. Thus, in the reign of Charles I., the muster-rolls of the hundred recall the concilium of Tacitus, where every citizen was a soldier and every soldier a citizen. A

general muster is attended by all the inhabitants of the hundred, and a warrant from one of Cromwell's generals desires the constables to summon all the men of the hundred of Williton to appear before him in complete arms on a certain day (Hist. MSS. Com., 6th Rep. 347). Such instances as these could be multiplied indefinitely—they represent the general system of falling back upon the old organization at a time when a later would not answer the purpose, or when a later had not been substituted, during long years of inaction, for the old organization, which answered very well under the old *régime*. The armed hundreds were the self-same institutions that gave name to the wapentakes (*weapon-tak*) of northern England; only that the modern instance met for military purposes only, at the command of a central government, instead of for civil and judicial purposes, according to the customs of old times. This instance of using the old machinery of the hundred for a modern purpose is simply a "revival," and it helps to explain those examples of the primitive open-air assemblies of England which have just now been classified as "revivals."



## CHAPTER V.

## THE HISTORICAL SURVIVAL IN ENGLAND.

Sources of Evidence—Historical Value of the Survival—Tynwald, Isle of Man—Its Initial Importance—Gorseddau of Wales—*The Hundred Courts*: Of Norfolk, Stone in Somersetshire, Alwicke and Younsmere in Sussex, Swanborough in Wilts, of Warwickshire—Liberty of Tynedale—*Manorial Courts*: Their Primitive Origin—Aston and Cote, Somerton, Pamber, Rochford, Dunstone, Guernsey, Warnham, Morehall, Combebank, Langsett, Stoneleigh, Kingsborough, and others—*Forest Courts*: Hesketh in Cumberland, Belbroughton in Worcestershire, Charnwood, Knaresborough—Court of Foresters at Oswaldslow—Mayfield Manor—Court of Dens in Kent—*Mining Courts*: Stannary Courts of Cornwall, Mining Courts of Dean, Derbyshire Barmote—The Court of Shepway—*Municipal Boroughs*: High Wycombe, Lostwithiel, Bishop's Castle, Hastings, Lichfield, Southampton, Folkestone, Dover, London.

PROFESSOR STUBBS, in searching for modern illustrations of the ancient constitution of the Anglo-Saxon courts, fixes upon the great franchises as furnishing the best instances; for they were less touched by general legislation, and have preserved their constitution in greater integrity (*Const. Hist.* i. 107). In like manner it is necessary, in searching for survivals of the primitive assembly, to exclude, except in some isolated exceptions which will be noticed

later on, all idea of having to deal with the recognized portions of the modern State machinery. Under the crushing powers of a strong centralized government, primitive institutions soon gave way, and it is only in the side wings of the political fabric that we can hope to find remnants of its past state. The shire and the village are descended from primitive institutions, but they have been called upon to take their place in the political constitution of later times, and we accordingly find them represented more strongly in traditional than in historical evidence. It is, therefore, to the barony, the manor, and the liberty that we shall have to turn for evidence of the survival of the primitive assembly, and to some of those peculiar franchises which have, fortunately, been allowed to remain amongst us without being called upon to do any duties beyond those incident to their locality.

It will have been noticed that, up to the present time, all the evidence of the primitive folk-moot in Great Britain has rested simply and entirely upon the open-air meeting and the popular assembly. The necessarily meagre legal documents of early times only mention the meeting of open-air councils; they do not mention any of the forms of the court or any of the archaic surroundings which must have existed. The only document detailing any legal procedure—that of the council at Cuckhamsley Hill—is, as Mr. Coote shows, permanently enshrined in Roman forms and ceremonies. And the very nature of the examples of revival precludes us from expecting any additional information from them. But now we come to the survival. Again, the open-air meeting is the most prominent element of the primitive folk-moot that we

shall have to consider. But, in one or two instances, we have a great deal more than this one element ; not exactly perfect types of all the primitive characteristics, but a group of fresh evidences, which enables us to see more clearly the primitive surroundings of the whole subject. Here, for the first time, we shall have instances of the primitive folk-moot which will show the value of the evidence of open-air meetings, because they show at the same time many of the forms and ceremonies with which primitive open-air meetings are connected. And these features of the subject belong to the very essence of survivals. Dr. Tylor, to whom scientists are indebted for the introduction of the term and the definition of its historical significance, gives in general terms what I have attempted to particularize. He says, "When a custom, an art, or an opinion is fairly started in the world, disturbing influences may long affect it so slightly, that it may keep its course from generation to generation, as a stream once settled in its bed will flow on for ever. This is mere permanence of culture ; and the special wonder about it is, that the change and revolution of human affairs should have left so many of its fullest rivulets to run so long. . . . When in the process of time there has come general change in the condition of a people, it is usual, notwithstanding, to find much that manifestly had not its origin in the new state of things, but has simply lasted on into it. On the strength of these survivals, it becomes possible to declare that the civilization of the people they are observed among must have been derived from an earlier state, in which the proper home and meaning of these things are to be found ; and thus collections of such facts are to be worked as mines

of historical knowledge. In dealing with such materials, experience of what actually happens is the main guide" (*Primitive Culture*, i. 70, 71). This is the general definition of a survival, and I proceed to treat of the survival in politics on the same principle as Dr. Tylor treats of the "survival in culture."

All writers who have paid attention to the early antiquities of Britain, and especially those who have sought to penetrate into the sources of our constitutional history, have turned to the Isle of Man, with its Tynwald Hill, its House of Keys, and its primitive customs, for a type of the earliest times. Although the antiquities of the Isle of Man are Norse rather than English, and would be grouped, therefore, rather with the Scottish than the English survival of the open-air primitive assembly, there is something more than the fact of the English connection with the island and its government during later years which makes it proper to place it first on the list of historical survivals. The fact is, it is the most perfect of all the examples which the British Isles can produce. We shall find, in the course of our researches, that many nearly perfect types will be forthcoming, but none so perfect as that from the Isle of Man. Just as the Free Court of Corbey and the Icelandic Things give us the most complete of all examples of the primitive assemblies of Aryan history outside Britain, so does the Tynwald Hill Court of the Isle of Man stand forth as the most perfect of all examples within Britain. And it makes a bridge, therefore, between the most perfect from other lands and the least perfect in Britain. In the examples of the open-air meetings which have already been considered, and in those yet to be considered, we can, by historical analogy, trace the same primitive

features which will be seen to belong to the Tynwald of the Isle of Man. At each stage in the collections of examples to be brought forward from Britain we shall be able to see a resemblance to one or more features of the Tynwald Court ; and as the evidence of each separate example grows less and less distinct if taken as standing by itself, it becomes more and more historically valuable when connecting it with the apex of the whole subject, as I am inclined to consider the Tynwald Hill.

Fortunately, there exists a most perfect and authentic account of the Tynwald Court. When Sir John Stanley first visited the island in the fourteenth century, being unacquainted with many of the customs of the people, as well as with the forms and ceremonies observed by the former kings in state affairs, he sent queries to the Deemsters and Keys, to which he required answers in writing. The forms and ceremonies which had been observed previously to the accession of the house of Stanley to the throne of Man, at the great annual assembly of the islanders at the Tynwald Hill on the feast-day of St. John the Baptist, are thus described in the statute book :—

“ Our doughtful and gracious Lord, this is the constitution of old time, the which we have given in our days : First, you shall come thither in your Royal Array, as a King ought to do, by the Prerogatives and Royalties of the Land of Mann. And upon the Hill of Tynwald sitt in a chaire, covered with a Royall cloath and cushions, and your visage unto the East, and your sword before you, holden with the point upwards : \* your barons in the third degree sitting beside you, and your beneficed men and

\* I think it worth while drawing attention here to the old municipal contention of the mayor having the sword borne before him “with the point upright” (see Gomme’s *Index of Municipal Offices*, Introduction, p. 18).

your Deemsters before you sitting ; and your Clarke, your Knights, Esquires, and Yeomen, about you in the third degree ; and the worthiest Men in your Land [these are the twenty-four keys] to be called in before your Deemsters, if you will ask any Thing of them, and to hear the Government of your Land and your Will ; and the Commons to stand without the Circle of the Hill, with three Clarks in their Surplisses. And your Deemsters shall make Call in the Coroner of Glenfaba : and he shall call in all the Coroners of Man, and their Yards in their Hands, with their Weapons upon them, either Sword or Axe. And the Mooares, that is, to Witt of every Sheading. Then the Chief Coroner, that is the Coroner of Glenfaba, shall make Affence, upon Paine of Life and Lyme, that noe Man make any Disturbance or Stirr in the Time of Tynwald, or any Murmur or Rising in the King's Presence, upon Paine of Hanging and Drawing. And then shall let your Barrons and all others know you to be their King and Lord." \*

There are many other items of early Manx constitutional customs in this old record, but for our present purpose the above is quite sufficient. Here, indeed, we have very nearly a complete picture of the primitive assembly, and of course it throws out many suggestive parallels to those already noticed from other lands. Its name, Tingwald or Tingwall, exactly corresponds to other names of places of judicial assembly among the Norse people.† The Norwegian Thing in the Island of Guley is, perhaps, its nearest parallel. The hill, we are told, exactly resembled the Tynwald Hill ; the sacred place was fenced off by staves stuck in the ground ; the prohibition of disturbances was also very stringent. We meet with very similar parallels in the Free Court of Corbey. Then there is the armed attendance—either with sword or axe—which the Swiss example brings

\* This account is taken from Train's *History of the Isle of Man*, vol. ii. pp. 188–190. See also Stuart's *Sculptured Stones of Scotland*, ii. li.

† See Worsaae, *Danes and Norwegians*, p. 295.

so prominently into notice ; and altogether there cannot be a doubt of the great significance of this Tynwald Court of the Isle of Man as a contribution to the history of the primitive assemblies in Britain.

The hill itself stands upon the lawn called St. John's Green, near the church of that name, three miles from Peel, on the main road to Douglas, and is said to have been originally raised with earth taken from all the seventeen parishes in the island. The mound is of circular form, and was formerly surrounded by a wall about one hundred yards in circumference. The approach to the top is by a flight of steps, directly facing the ancient chapel of St. John's, to which there is a spacious road of approach from the foot of the mound. There are three circular grass seats or benches below the summit, which are regularly advanced three feet above each other. The circumference of the lowest is about eighty yards ; the diameter of the top being six feet (*Train's Hist. of Isle of Man*, i. 271).

The Tynwald Court was the general assembly for the whole island, and for purposes of less importance, or of more local interest, there were other courts whose characteristics are equally primitive as those of the Tynwald Court.

The House of Keys, though, in its present form and under its present designation, of a somewhat late origin, consists of twenty-four landholders of the island, and was anciently called *Chor na Faid*, which, in the Manx language, signifies "the assembly of wise men" (*Train*, ii. 195). The functions of this assembly need not detain us here, except to notice that they were both legislative and judicial—a very primitive characteristic ; but the chief importance of this

"assembly of wise men," next to its old-world title, is that it met in the open air. Thus, in 1422 it met on the hill of Reneurling; in 1429, on the top of Cronk Urleigh, or the Hill of the Eagle; in 1430, between the gates of the Castle of Rushen; and in each of the parishes of Onchan, Patrick, and German, there is an estate called Ballaguayle, which derived its name from being a court or place where justice was administered (Train, i. 271; ii. 197, 221).

And, finally, there were the "deemsters" and the "coroners," both of whom exercised functions and have an encircling of local customs which are eminently primitive. There were two divisions of the island over which the deemsters had jurisdiction. So little were the modern forms of legal ceremony attended to, that the deemster's presence, whether walking or riding, constituted a court; and the plaintiff, meeting his opponent when the officer was in view, might drag him to an instant tribunal, and hold him until the case was decided. The warrant issued by the deemster, whether for the citation or apprehension of a delinquent, was a bit of stone or slate having the initials of his name scratched on it. In ancient times the deemsters governed the people by a *jus non scriptum*, which was committed to their fidelity as a sacred and holy thing, and which they were to transmit to posterity by oral tradition; hence their decisions were termed *breast law* (Train, ii. 201-204). And, lastly, they must judge in the open air, that magic might have less power over them (*Ibid.* i. 269). Here we have undoubtedly a judge judging according to the customs of primitive times. Already among the Hindoos and among the early Saxons of England, the same superstition concerning the possible magic



of roofed buildings as places of justice has been noticed, and it also occurs in Ireland when the Brehon judges sat in the open air ; and the stone symbol, the traditional law, and the immediate justice are all to be paralleled in the early history of institutions, a comprehensive glance at which Sir Henry Maine has given us from the illustrations of Irish antiquities.

Then come the coroners of the island, who have a jurisdiction evidently going back into primitive times. It will be remembered that the Coroner of Glenfaba had it as a duty to fence the great Tynwald Court. It is prescribed in the ancient proceedings of the common law or sheading court that the Coroner of Glenfaba fence that court, both in Manx and English, and proclaim that it is the King of Man's pleasure "that men, both rich and poor, deaf and dumb, halt, lame, and blind, come hither on horseback or on foot, or be drawn thither upon horse or car, that they may know the King of Man's pleasure and the laws of his country." And he named the four honest men of every sheading to go upon the "grand inquest," which was held twice a year, between the outer gates of the Castle of Rushen, where a large stone chair was placed for the governor, and a lesser one for each of the deemsters (Train, ii. 211).

All this proves the archaic nature of the duties, if not of the title, of the coroners of the Isle of Man. The most important duty for our present purpose is that of fencing the court. In the account of the Free Court of Corbey, it will be remembered that the words of the "fencing" have been preserved, and it is a matter of much regret that though the custom of "fencing" has not been quite obliterated from English survivals, there seems to be no traces of the old words

left. I can find no mention of them, either in Manx records or in Scotch, where presently it will be seen the custom has survived.\* And they would have been a strong basis for an important chapter of comparative jurisprudence. Perhaps, however, among the hidden treasures of folk-lore, some day we may gain a little evidence of these old rhymes. It appears to me that they should be sought for among the traditional cries of town and municipal officials, such as that of the Mayor of Scarborough, upon which, according to Abraham de la Pryme, the saying "A Scarborough warning" is based. According to this account we read—

"Scarburg Warning is a proverb in many places of the north, signifying any sudden warning given upon any account. Some think it arose from the sudden coming of an enemy against the castle there, and, having discharged a broadside, then commands them to surrender. Others think that the proverb had its original from other things, but all varys. However, this is the true origin thereof: The town is a corporation town, and, tho' it is very poor now to what it was formerly, yet it has a . . . who is commonly a poor man, they haveing no rich ones amongst them. About two days before Michilmass day the sayd . . . being arrayed in his gown of state, he mounts upon horseback, and has his attendants with him, and the macebear[er] carrying the mace before him, with two fiders and a base viol. Thus marching in state (as bigg as the lord mare of London) all along the shore side, they make many halts, and the cryer crys thus with a strange sort of a singing voice, high and low :—

'Whay ! Whay ! Whay !  
Pay your gavelage hā !  
Between this and Michaelmas Day,  
Or you'll be fined, I say !'

---

\* You find in all records of old court proceedings the commencement is, "sectis vocatis—curia legitime affirmata," or when it comes to the time when Scots was used—"Suits called, the court lawfully fenced" (Innes' *Scotch Legal Antiquities*, p. 62).

Then the fiddlers begin to dance, and caper, and play, fit to make one burst with laughter that sees and hears them. Then they go on again and cry as before, with the greatest majesty and gravity imaginable, none of this comical crew being seen so much as to smile all the time, when us spectators are almost bursten with laughing. This is the true origin of the proverb, for this custome of gavelage is a certain tribute that every house pays to the . . . when he is pleased to call for it, and he gives not above one day warning, and may call for it when he pleases."—*Diary of A. de la Pryme* (Surtees Society), p. 126.

Putting on one side the diarist's comments on this custom, there appears to me to be a clear trace of the old custom of the rhyming formulæ incident to the primitive court, as at Corbey.

I do not think anything could well be more complete than this example of the primitive assembly in the Isle of Man. Down to modern times the survival has been kept up. Once a year, on St. John's Day, the Governor of Man, attended by a military escort, sets out from Castle Town, and, together with the Tynwald Court, attends divine service in St. John's Chapel. After the service the whole court repairs in solemn procession to the hill, whence all the laws that have been passed in the course of the year are proclaimed in English and Manx. The procession then proceeds to the chapel, where the laws are signed and sealed. Such an archaic picture as this is not often seen in modern history, unless we search for it in savage life. The nearest parallel, and indeed it is a remarkable parallel, is the Landsgemeind of Uri and Unterwalden. The procession there is nearly identical with the procession in the Isle of Man. And the great Danish antiquary, Worsaae, has summed up its position with reference to the Things of the other Norse lands in so graphic and powerful a

manner, that I shall conclude my notes by quoting the passage. "Amongst all Scandinavian Thing hills, or Thing walls," he says, "that can be traced in the old Danish part of England; in the Norwegian part of Scotland, as well as in the Orkney and Shetland Islands, and which also formerly existed in Iceland, Norway, and throughout the north, Tynwald in Man is the only one still in use. It is, indeed, highly remarkable that the last remains of the old Scandinavian Thing, which, for the protection of public liberty, was held in the open air, in the presence of the assembled people, and conducted by the people's chiefs and representatives, are to be met with, not in the north itself, but in a little island, far towards the west, and in the midst of the British kingdom. The history of the Manx Thing Court remarkably illustrates that spirit of freedom and that political ability which animated the men who in ancient times emigrated from Norway and the rest of the Scandinavian north" (Worsaae's *Danes and Norwegians*, p. 296).

In Wales primitive institutions lasted much longer than in England. It is not so much a matter of surprise, therefore, to find that open-air assemblies were held as late as the seventeenth century. In these later times the meetings were for the purpose of preserving relics of Druidism—an object which, for the present purpose, becomes exceedingly valuable. We learn that several Gorseddau were held from the beginning of the fifteenth century, under the sanction of Sir Richard Neville and others; and a subsequent one in 1573, under the auspices of William Herbert, Earl of Pembroke; and one at Bewpr in the year 1681, under the authority of Sir Richard Basset. As the ceremony of these Gorseddau, or meetings, is

extremely valuable and illustrative, betraying a singular affinity, says Sir Francis Palgrave, to the forms adopted in the Free Field Court of Corbey (*Hist. Eng. Com.* ii. p. cxlv.), I transcribe from Owen Pugh's translation of *Heroic Elegies and other Pieces of Lywarc Hen*, the following curious account:—

“The regular times of holding a Gorsedd, or meeting, were the two solstices and equinoxes; subordinate meetings might also be held every new and full moon, and also at the quarter days, which were chiefly for instructing disciples. The regular meetings were supposed to be well known, with respect to time and place; for there were appointed places as well as times. Irregular meetings could only be held by proclamations; or if arbitrarily held on urgent occasions, their acts required the confirmation of a Gorsedd, or public assent by subsequent proclamation. The Gorseddau, or meetings, were always held in the open air, and in the face of the sun, and eye of the light. The place was set apart by forming a circle of stones around the Maen Gorsedd. At the Gorseddau it was absolutely necessary to recite the bardic traditions; and with this whatever came before them was considered, and determined upon. The Bards always stood bareheaded and barefooted, in their uncoloured robes, at the Gorsedd, and within the Cylc Cyngrair, or circle of Federation. The ceremony used on the opening of a meeting was the sheathing of a sword, on the Maen Gorsedd, at which all the presiding Bards assisted; and this was accompanied with a very short pertinent discourse. When the business was finished, the meeting was closed by taking up, but not unsheathing, the sword, with a few words on the occasion, when all covered their heads and feet. There were certain mottos used by the Bards; that for the general assembly of the Isle of Britain was—‘Y Gwir yn erbyn y Byd’—‘The Truth in opposition to the World.’ Those for the provincial meetings were such as had been adopted on the first establishment of them respectively. They were used as declaratory of the *Cadair* or *Talaith*, meeting or province, whereof the Bard was a member, or of the meeting that enacted anything respecting the institution. The *Gorseddau* and *Cadeiriau*, or the general and provincial assemblies, always

virtually exist ; and if they do not visibly appear, they are to be called on to make their appearance, by the proclamation of a Gorsedd Ynys Prydain, where three graduated Bards must preside ; and as in individuals, so in collective bodies, those Cadeiriau or Provincial chairs took no precedency one of the other on any occasion, but all were equal in estimation and dignity. It was requisite that every Bard should be known as of some provincial Cadair, for the sake of visible distinction, though the Beirdd Ynys Prydain (which was their general title) were of every one ; for they all existed in them, as the fountain from whence all are derived ; and should any have disappeared, the Beirdd Ynys Prydain might call them out by proclamation, or by actually appearing at such meetings, and give them immediate visibility, or by the same means constitute new ones. A Gorsedd might be so held as to be a national and also a provincial one at the same time. It was not necessary that a provincial Cadair should be actually held within its peculiar territory ; for it might be held anywhere in Britain, or even in a foreign country, as might also a Gorsedd Ynys Prydain, retaining on such occasion the appropriate titles ; which were ‘Beirdd Ynys Prydain trwy’r Byd,’ and ‘Twyddedogion Byd’—‘The Bards of the Isle of Britain through the world,’ and ‘those who are at liberty through the world.’

“At a meeting there was always one, called the Dadgeiniad, or the reciter, whose business was to recite the traditions and poems ; to make proclamations, announce candidates, open and close the Gorsedd, and the like. A Bard generally executed the office ; but it might be done by one, or as many as were necessary, of the Awenyddion, or disciples. A Gorsedd was opened and closed, as before observed, with short discourses, which were formal with respect to the matter, but there was no necessity for their being so in words. The following was the purport of what was said at the opening of one of them :—

“‘The Truth against the World. Under the protection of the Bards of the Isle of Britain, are all who repair to this place, where there is not a naked weapon against them ; and all who seek for the privilege and graduation appertaining to science and Bardism, let them demand it from Iolo Morganwg, W. Mechain, Hywell Eryri, and D. Ddu Eryri, they being all graduated Bards, according to the privilege of the Bards of the Isle of Britain. The Truth against the World.’

"In closing the Gorsedd, the presiding Bard took up the sword, and named the Bards that were mentioned in the opening ; except some of them were to be rejected or suspended, and then they were noticed thus:—

"*Iolo Morganwg* and *W. Mechain*, Bards graduated in the privilege of the Bards of the Isle of Britain ; and *D. Dhu Eryri*, a Bard claimant under the privileges of the chair of *Dimetia*—Heart united to Heart."

"This alteration in the manner of naming the Bards from what was done in the opening of the Gorsedd, implies that *D. Dhu Eryri* is suspended, and *Hywel Eryri* rejected or excepted against, and for that reason not admitted to their degrees for which they were candidates.

"From the above form it will appear that such candidates as are named in the proclamation, and passed over in silence at a Gorsedd, are rejected, and can never afterwards be admitted ; and such as are called at a Gorsedd, after being named, '*Beirdd wrth hawl ac arddel*'—'Bards claimant or presumptive'—it implies suspension of the decision of the Gorsedd concerning them, till a future opportunity.

"When it had been proved before a Gorsedd that a Bard had been guilty of any criminal act, he was suspended or degraded, as occasion required. The first was by proclamation, in which he was called Bard claimant and presumptive, as before noticed. Degradation was a particular act of the Gorsedd, before the close of it, and it was called '*Dwyn oyr cyvlavan yn ei erbyn*'—'To bring the assault of warfare against him.'

"After the decision all the Bards covered their heads, and one of them unsheathed the sword, named the person aloud three times, with the sword lifted in his hand, adding when he was last named—'*Noeth yw cleddyv yn ei erbyn*'—'The sword is naked against him.' This concluded the ceremony, and he could never after be readmitted ; and he was called '*Gwr wrth ddivrawd ac anraith*'—'A man deprived of privilege and exposed to warfare.' For the purpose of degrading a Bard, it is sometimes deemed most proper to hold a particular Gorsedd for that purpose, by proclamation, in which the occasion should be specified in this peculiar form of words : 'Where there will not be a naked weapon against any one but *Madog Min*, a man deprived of privilege and exposed to warfare ;' all besides in the proclamation to be in the usual manner. Such having been

published, it is not necessary that the Gorsedd therein proclaimed should be actually held, for it has a virtual existence, and all that is necessary on this occasion is to announce to the public the degradation of such a Bard.

“The proclamation was to this purpose :—

“‘When it was the year of our Lord one thousand seven hundred and ninety-two, and *the sun in the point of the vernal equinox*, a summons and invitation was given, in the *hearing of the country and the prince*, under the period of a year and a day, with protection for all such as might seek for *privilege, and graduation* appertaining to *science and Bardism*, to repair to the top of Pumlumon in ‘Powys, at the expiration of the year and the day, in the hours of noon, *where there will not be a naked weapon against them*; and then, in the presence of Iolo Morganwg, *Bard according to the privilege of the Bards of the Isle of Britain*, and with him W. Mechain, Hywel Eryri, and D. Dhu Eryri, they being all graduated Bards *under the privilege and custom of the Bards of Britain*, for the purpose of pronouncing the judgment of a Gorsedd, *in the eye of the sun and face of the light*, on all with respect to *genius and moral conduct* who may seek for *precedency and privilege, according to the privilege and custom of the Bards of the Isle of Britain*. The Truth in opposition to the World.’” \*

Here we have a very full description of the whole proceedings of this singular Welsh assembly, or convention of British Bards. It is fairly within the area of primitive politics. But there is one important feature of which I must give some further detail. It is the actual form of the place of meeting. In a rather curious volume of *Letters from Snowdon*, published anonymously in 1770, it is stated that the court of judicature was situated on the most conspicuous eminence, in the open air. The remains of many of these judgment seats were to be seen. They consisted of two circumvallations of a circular form,

\* *Heroic Elegies and other pieces of Llywarc Hen, with a literal translation*, by William Owen, pp. xlvi.—liii.



one comprehended within the other. The centre was raised, and seems to have been the place where the judge sat. The inner circumvallation was intended for the parties and witnesses, and the outer for the multitude (*Letter xvii.*). And in a passage quoted by Train in his *History of the Isle of Man*, from Toland's *History of the Druids*, we learn that the assembly met at a mound cast up for the purpose, upon which was placed the judgment seat, so that the king or Brenin, when seated in it, might have his back to the sun or weather. Some of these mounds were square and some round, but both round and square were called *Gorseddevy Dadle*, that is "the mount of pleading" (Train, vol. i. p. 273, *note*).

This then concludes all that need be said in description of the survival of the open-air primitive assembly in Wales.

These two instances, the Tynwald of the Isle of Man and the Gorseddau of Wales, stand forth as the most finished types of the historical survival of the primitive folk-moot in Britain. One is Norse, the other Celtic, in origin, but both belong to the range of primitive politics. The differences that occur between the details of each are due to the influences of race; but the common basis of their outlines is due to the influences of their primitive origin. We shall henceforth meet with nothing so definite in outline, or so complete in detail; there will be a constant reflex of later examples back upon these two—the fragments of the primitive assembly represented by the open-air meeting only, or by little else besides, must in thought at least be supplied with all the surroundings that are incident to the two great examples just described.

There is no historical survival of the primitive open-

air gathering of the shiremoot. The concentrating energy of the central government brought this ancient court under its influence, and placed upon it duties and associations belonging to the history of civilized times. Like almost all English institutions its primitive origin can be traced back; but the chain is broken between early records and the traditional survival.

With the hundred the position is somewhat different. Among modern institutions the hundred has always had a tendency to decay, and at the present time there are hardly any duties of local government attached to it. This tendency began very early, as Professor Stubbs has pointed out (*Const. Hist. Eng.* i. 107). The hundred was never called upon, as the shire has been, to take part in the movements of modern political necessities. It has been left pretty much to its own devices: it had more vitality than the manor, because its area of jurisdiction was wider, and because it had some fiscal duties which the State could not abolish all at once. And accordingly we see it, among early English institutions, not so prominent as the shire, more prominent than the manor.

This middle position, if I may so call it, quadrates exactly with its position in the evidence as to primitive folk-moots in Britain. It has retained some few instances of the open-air meeting. The number of instances I am able to bring forward might no doubt be increased by further research among our literary sources of knowledge, or by more information from local sources which has never found its way into literature. Still the number would not be large; and the more one examines official records of Court Rolls, the more one comes to the conclusion, that it was of

no legal value, and naturally of not much local interest, to put on record the place of meeting.

As a fair criterion of the evidence which the hundred courts contribute to our subject, it is only necessary to turn to Blomefield's *History of Norfolk*, and take from thence all the information about the meeting-places of the hundreds of Norfolk. It is a great pity that local historians have not devoted more of their researches to the subject of local institutions. Each local history would then contain a contribution to the national history, and would be of far wider interest than it is now.

But of the hundred courts of Norfolk we have ample evidence. Of meetings on natural eminences there are three instances:—Humble-yard hundred takes its name from a valley in the parish of Swerdeston, where the hundred court was anciently kept, and which in evidences still retains the name of Hvmble-yard, the low yard or court (Blomefield, v. 1). The hundred court of Clackclose hundred was held in 18 Edw. I. at Clackclose Hill, on the common of Stradset (vii. 268). And the court for the hundred of Taverham was kept at Fretenham Hill (x. 398). Of meetings on barrows or tumuli the following important instances occur:—About the centre of the hundred of Grimeshou, two miles from Weeting, on the road from Brandon to Norwich, is a very curious encampment in a semicircular form. At the east end of this entrenchment is a tumulus, pointing towards Thetford, and here the hundred court used to be held. This remarkable place retains the name of "Grimes Graves" (ii. 148). The hundred of Forehoe, or Feorhou, takes its name from the four hills where the hundred court used to be held. They lie between

Barford and Kimberley, in the field belonging to the parish of Carleton, from them called Carleton Fourhoe, on the south side of the great road leading from Norwich to Hingham (ii. 374). The hundred of Greenhoe takes its name from the green hills, or tumuli, lying by the London road to Swaffham (vi. 1). The hundred court of Smethdon is said by some to have been kept at a place in the parish of Bircham Magna, called the Barrow, which is diked round, except twenty yards in the south-east side for the better ascent (x. 287). The ancient place of holding Freebridge hundred was at Flitcham Burgh, where is a tumulus, about a mile from the town on the road to Sharnburn. In the 3rd of Elizabeth it appears from a rental of Sir Richard Southwell that his manor of Walsoken paid then to the queen's bailiff of the hundred, 40s. per annum, suit of the court, held under an oak, at Gaywood near Lynn, and was called "Gaywood Oak Fee." After this, the court was held at an oak at Wigenhale, St. Germans, called "Fitton Oak," in a farm of that name belonging to the town of Lynn (viii. 328). The hundred court of Gallow hundred might be anciently held at a place that gave name to it. Philip, son of Richard de Doketon, granted by deed, sans date, to Richard de Dunton three pieces of land in the fields of Dunton, at Galehow, and in 6th Edward II. Hugh de Dunton had lands at Galehoges, in Dunton field. In 5 Hen. IV. the court was held at Fakenham-Dam, which place might probably have been called Galestow, that is, a hill at the water; in the 3rd and 10th Eliz. the hundred court was held at Longfield Stone. Brothercross hundred seems to have taken its name from a cross placed at the ford or pass over the river at Burnham

(vii. 2), where the courts used to be held. And then there are other familiar places used by the Norfolk hundred courts. In 29 Hen. VI. the hundred court of Eynford was held at Repeham, where the ford was situated over the river Eyn, from which the hundred takes its name (viii. 182). The hundred of Depwade takes its name from the Deep-ford over the river Taseburgh, which though now of no great remark was in early days fordable in no place in this hundred but here only (v. 123). In 1639 the hundred court of Mitford was held at "Brok-pit" (x. 195). The hundred court of North Erpingham was held at Guneby Gate, probably near Gunton town. William de Valentia, lord of Matlask, was sued in 52 Hen. III. for withdrawing a suit of court at Gunegate (viii. 71). In 1226 the hundred court of South Erpingham was held at Cawston Park gate; for William de Calthorp and Nicholas de Rippen, who had a dispute of right, both appeared and left it to six of their neighbours, who knew the facts, there to determine it (vi. 240). Launditch hundred takes its name from a long ditch with a bank that divides the two parishes of Longham and Beeston, and runs north and south; where, at the crossing of it by the Norwich road, the hundred court was anciently kept (ix. 456). The hundred of Earsham, or Hersham, as spelt in Domesday, seems to signify the station of the army, and there is an encampment near the church, upon which the hundred court was formerly held.

Such a collection as this from one county shows pretty clearly the general prevalence of the custom at some earlier period in our history. The evidence from other counties is nothing like so extensive; in

fact, we only get a few detached instances, of great value, it is true, in themselves, but not so generally valuable as this group of examples from Norfolk.

The court of the hundred of Stone, in Somersetshire, is held very early in the morning, at a standing stone on a hill within the hundred. In the stone is a hollow, into which it is customary on opening the court to pour a bottle of port wine (*Proceedings of Society of Antiquaries*, iv. 183). The court leet of Alwicke in Sussex was kept at a place called Alwicke Green, and the hundred court of Younsmere on the open downs at a place still known as "Younsmere Pit" (*Suss. Arch. Coll.*, vol. xxiii. pp. 226, 231, *note.*)

The Rev. R. Nicholson kindly informs me that by the side of the road between Woodborough and Pewsey, Wilts, and in the parish of Manningford-Bruce, is a hillock on which grow two or three ash trees of no great age, but which may possibly spring from the site of an old tree. It is called "Swanborough Tump," or "Swanborough Ashes." The name of the hundred is Swanborough, and within the memory of an old man, who died a few years ago, courts used to be held here.

The hundred of Knightlow, in Warwickshire, has a very instructive history, for the following account of which I am indebted to Mr. W. G. Fretton, F.S.A. :—"Five and a half miles north-east of Coventry, on the old coach road from Birmingham to London, just within the parish boundary of Ryton-on-Dunsmore, and on the ridge of elevated flat land at the top of Knightlow Hill, stands what remains of an old way-side cross. It rests upon a mound of artificially raised earth, or tumulus, to the left on ascending the road, and from this mound the hill is said to derive its

name. A new piece of road here was made in the early coaching days to give easier ascent and descent to the hill, so that now the site is hid from view when one is upon the road. From this high and elevated spot a good view is seen of the surrounding country, with the spires of Coventry in the distance. Here at this stone is annually collected for the Duke of Buccleuch, by his steward, on Martinmas Eve at sun rising (November 11), what is called wroth (or ward) money, from various parishes in the hundred of Knightlow. The tumulus upon which the cross rested is about thirty or thirty-five feet square, with sides running parallel to the road, having a large fir tree growing at each angle, of which the people round about say that the four trees represent four knights who were killed and buried there. The portion remaining of the cross is thirty inches square at the top, with a hole in the centre to receive the shaft, and the whole structure would correspond with those at present in existence at Meriden and Dunchurch. Its date was probably the time of Edward III. There is a mason's mark on one side in the shape of a cross, six inches long, which shows it was set up by a master mason of his trade guild. The wroth money has been collected from time immemorial, excepting for a few years about the beginning of this present century, but the Scott family subsequently revived it, or kept up 'the charter,' as it is locally called. On the eve of St. Martin, November 11, 1879, the annual custom was gone through at 6.45 in the morning, when the wroth money was collected. There were thirty-four persons present to witness the ceremony. The steward having invited the party to stand round the stone (the original custom was to walk three times round

it), proceeded to read 'the Charter of Assembly,' which opens thus—'Wroth silver collected annually at Knightlow Cross by the Duke of Buccleuch, as Lord of the Manor of the Hundred of Knightlow.' The next proceeding was the calling over of the names of the parishes liable to the fee, and the amount due from each, when the parish, by their representatives present, cast the required sum into the hollow of the stone. The amounts collected were—

	<i>s.</i>	<i>d.</i>
Astley, Arley, Burbery, Shilton, Little Wal- ton, Barnacle, and Wolfcote (one penny each parish) ... ..	0	7
Whitley, Radford Semele, Bourton, Napton, Bramcote, and Draycote (three half-pence each) ... ..	0	9
Princethorpe, Stretton-on-Dunsmore, Bubben- hall, Ladbroke, Churchover, Waverley, and Weston (twopence each) ... ..	1	2
Wolston, Hillmorton, Hopsford, and Marton (fourpence each) ... ..	1	4
Leamington Hastings (twelve pence) ...	1	0
Long Ichington (two shillings and twopence)	2	2
Arbury ... ..	2	3½
	<hr/>	
	9	3½

Ryton pays nothing, although the stone is in the parish. The fine for non-payment was in olden time one pound for every penny not forthcoming, or else the forfeiture of a white bull with a red nose and ears of the same colour. The fine has not been paid within man's memory. No one seems to know (not even the steward of the duke himself) why or for



that purpose the money was originally collected, or why one parish should pay more than another." \* This is certainly a most curious and valuable example of the primitive assembly of the hundred. The old functions of the court have dwindled down into the mere payment of lord's dues, but there are many characteristics still remaining which take us back to early times, and it will be noted as one of these that the place where the meeting is held is specially honoured, as among the Iroquois Indians and in Iceland, by being, in this case, the only parish exempt from payment of the fine.

Warwickshire also gives us other important examples. "There is no place," says Dugdale, "whereof Barlichway hundred takes the name, other than a little plot of ground, about eight yards square, now enclosed with a hedge, and situate upon the top of a hill in the middle way between Haseler and Binton, and about half a mile from Temple Grafton; which is reputed to be the very place where those three parishes do meet; the court being there kept for part of this hundred twice a year. The stile thereof Barlichway Grede, but by the vulgar called Barly Gredecourt.

\* Dugdale mentions the custom recorded above, but not so minutely (see *Hist. of Warwickshire*, p. 4). The following note is also worth recording:—

"Brinklow [an earthwork] became a parish, and for a time it gave name to a hundred. In the Pipe Roll of 1st Richard I. (1189-90) it is recorded—'Vicecomes debet ijs et iijd de Brinkelawa-hundreda pro s also present' et pro murdr'. Soon afterwards it became absorbed, as it still continues, in the larger hundred of Knightlow, also named from its tumulus, and its separate existence was only continued as a 'Letu' or Leet, so called because at Brinklow was a court for many of the surrounding manors. Whether, as at Kenilworth and elsewhere, the Mota was the seat of the moot or court is uncertain, but not improbable."—*Archæological Journal*, xxxv. 112.

For the rest of this hundred there is also a court leet kept twice in the year at a place called Bredon Crosse, in the parish of Ipsley, where the basis of the crosse yet remains" (Dugdale's *Warwickshire*, p. 641). "The place which gives name to the liberty of Pathlow is a tumulus, or heap of earth, situate in a lane on the top of a hill, upon the left hand of the road leading from Wotton Wawen to Stratford-upon-Avon; near unto it being certain enclosed ground, bearing the name of Pathlows to this day. To this place there is a court leet as also a court baron belonging, and kept twice in the year. The place where they are kept is in the lane before mentioned, and is commonly made choice of in that part where the hedges are the best shelter from the wind" (*Ibid.* p. 642). "Anciently Colshill, which stands about the middle of the hundred, gave name to the hundred of Hemlingford; and to this day the Three Weeks' Court, held for the same hundred, is kept there" (*Ibid.* p. 869). A charter in the *Codex Diplomaticus* carries the meetings on Colshill back to early Anglo-Saxon times. Cœnulf of Mercia grants certain lands in 799, and a clause at the end of the charter is as follows:—"Eodem anno facta est pax inter Merciones et occidentales Saxones et cum juramentis firmo fœdere roborata est, sub regibus Cœnuulfo et Ecgberhto. Hanc donationem consensit, et cum sua manu signum crucis imposuit, cum episcopis et principibus, quorum nomina hic infra habentur, in eodem concilio, qui dicitur Colleshyl" (vol. i., No. clxxvi.). Mr. Kemble, in his "Index of Places" to the *Codex Diplomaticus*, queries the Colleshyl of this charter as Coleshill in Wiltshire, but I think it was more probably Coleshill hundred.

The royalty or liberty of Tynedale was one of the royal manors, and of this district Wark, where the barony court is still held, was the capital. In 1279 this liberty was part of the possessions of the Scottish kings, and the courts were then held on the Moot Hill, a large artificial mound near the town, on which there are still traces of stone buildings. Fortunately, a document has been preserved and published which gives us the record of one year's judicial proceedings at the old Moot Hill at Wark. The document in question is the Roll of the Justices Itinerant of King Alexander III. of Scotland, of the pleas held at Wark in the thirty-first year of that monarch's reign—1289 (see *Archæologia Æliana*, vol. iii., N. S., pp. 147-149); and it is printed by the Archæological Institute in the two volumes relating to Northumberland (vol. ii. pp. 254, 255). The iter itself is, of course, drawn in the cramped law-Latin of the time, and does not illustrate any special features of the primitive folk-moot, except the meeting in the open air at the Moot Hill.

We have now to pass from the hundred to the manor. When we come to consider the traditional and philological survival in a succeeding chapter, the evidence as to the hundred will be more complete than it stands at present. Examples will then be added to our list upon which those just noted will reflect an historical value. And thus, from the two groups of evidence, the information with reference to the hundred courts will be fairly complete. These instances of open-air hundred-moots have not afforded much information beyond the fact that their place of meeting was the same as that adopted in primitive times. We have the stone-

cross brought into prominence as a meeting-place : beneath the shelter of the country hedges in the open lanes, as in Germany ; and the more usual meeting-places on the barrow and tumulus. But, with the manor, we can go a step further than this. Here we have a whole cluster of primitive associations connected with the open-air meetings : the picture of primitive life, in fact, again becomes clearer. It is well ascertained now that the manorial courts belong to an older system of institutions than that belonging to Norman history, when it came into contact with English at the time of the Conquest (see Stubbs, *Const. Hist.*, i. 399, note 2). "Under the name of manorial courts," says Sir Henry Maine, "three courts are usually included, which legal theory keeps apart—the court leet, the court baron, and the customary court of the manor. There cannot be reasonable doubt of the legitimate descent of all three from the assembly of the township. Besides the wide criminal and civil jurisdiction which belonged to them, and which, though it has been partly abolished, has chiefly lost its importance through insensible decay, they long continued in the exercise of administrative or regulative powers, which are scarcely distinguishable from legislation" (*Village Communities*, p. 139).

To these important considerations must be added a still more important relic of the descent of the manor from primitive times, when all the inhabitants of a district joined in the legislative and the judicial duties necessary for their well-being. It has been frequently mentioned by antiquaries that the courts of the manor were always at one time held in the open air, and there seems to be no doubt that the modern custom of holding them at public-houses,

instead of at a properly constituted court-hall, is simply a transfer dictated by notions of comfort, and by the greater facility for transacting the more prosaic and formal routine of the present business of manor courts.\* Many of the peculiar tenures incident to copyhold lands could only be practised in an open-air court. Let me instance here the curious custom in the manors of East and West Enborne in Berkshire, Torre in Devonshire, and "other parts of the west" as recorded in the *Spectator* (Nos. 614, 623). The steward of the Enborne manors adjourned the court to "Burnabybright" that they might have a day before them, and the court being set and filled with a great concourse of people, the solemnities began, the unchaste widows of the tenants riding into court backward upon a black ram. But beyond the general assumptions derivable from such examples as this, which, indeed, point to the open-air meeting as a universal custom, there are, as with the hundreds, comparatively few examples of the open-air meeting of the manor court to be found actually on record. This, however, seems to be quite capable of logical explanation. The custom was so general that mention of it would have been superfluous. The manor courts were not, like the great shire-

\* "As to the place in which the court leet is held, that, it has been said, may be anywhere within the precinct; but, more strictly speaking, ought to be certain and accustomed. Formerly, either for the convenience of the suitors, or from an excellent principle of the common law, that courts of justice should be as public as possible, it used to be held in the open air, upon a fair green, on the side of a hill, or under a large tree" (Ritson on *Court Leets*, Introd. p. ix., quoting *Spelman v. Mallobergium*, and Kennet's *Paroch. Antiq.*, Glos. v. *Franciplegium*).

"The steward or bailiffs of a leet would, in bad weather, occasionally hold courts in the church, where, notwithstanding a canon, it is in many places still held" (*Ibid.*).

moots, called upon to take an active part in the State administration; their work seldom, if ever, rose above a very ordinary routine of business—the trial of petty offences, the election of petty officers, and the regulation of agricultural matters; and, accordingly, we do not meet with any of those extraordinary incidents which have brought out the history and illustrated the development of other primitive folk-moots. Manors were always the lowest form of judicial organization, and, never being definitely recognized by State legislation, were constantly losing even their own proper functions, instead of adding more important functions and coping with extraordinary duties. If, therefore, we add to these historical facts the lamentable literary fact that manorial records have not yet found their way on to our bookshelves as historical publications, in spite of the earnest pleading of many influential scholars,\* we can sufficiently understand the present meagre group of evidence towards the subject now being dealt with.

When we do arrive at the open-air assembly of the manor, however, we see before us something more of the primitive world than the open-air court alone. Up to this point in our researches we have not been able to connect the open-air court with the court of

\* "It is deeply to be lamented that the *very early* customs found in copies of court rolls in England have not been collected and published. Such a step could not possibly affect the interests of lords of manors, or their stewards; but the collection would furnish invaluable materials for law and history" (Kemble's *Saxons in England*, i. 55, note). "Court rolls and computi are deserving of a very careful study. The importance of these documents has not, I think, been sufficiently attended to" (Mr. Alfred J. Horwood in Report of Hist. MSS. Commission, ii. 69). See also Mr. Edward Peacock, F.S.A., in the *Athenæum*, August, 1879, p. 146, and my own note at page 209 of the same journal.

the primitive village community as it survives in England at the present day. It has been stated in the introduction why this could not be so as a general rule; but now that I have come to one example of this very important connection between the two survivals of primitive institutions, it is worth while, I think, recapitulating here the particular value of this portion of the evidence. No portion of the early history of English institutions has been more satisfactorily investigated than that relating to the primitive village community. First, Sir Henry Maine took up the broad ground of comparison of some of the modern English land customs with the archaic land communities of India. Then these researches were applied more directly to some of the details of English land customs. Professor Nasse, of Bonn, made some remarkable discoveries with regard to the eastern counties of England; Mr. Seebohm has carried the investigation into Cambridgeshire and along the lines of English mediæval literature; and perhaps I may mention my own work in tracing out the survival of the primitive village communities from the land possessions of many of our municipal corporations.\*

But all these researches deal with the primitive village community from its aspect as an agricultural co-operation. The arrangement of the lands, the periodical allotment of arable plots among all the tenants entitled to the privilege, and the peculiar methods by which these primitive customs are still kept up, have formed the chief part of the investigations. There has been no attempt to rear above the agricultural

\* In June, 1878, I addressed a letter to the Society of Antiquaries, through Mr. Thoms, on Traces of the Primitive Village Community in English Municipal Corporations. It will be published in *Archæologia*.

community what still remains of its primitive constitution as a political community. The first great essential for such an attempt is the communal court or assembly. Are there any signs of the survival of the primitive communal assembly in England similar to those existing in Holland, Germany, and Russia?

Repeating what has been said in the introductory chapter, the first answer to this question is that this primitive assembly can be traced out with singular clearness by means of general characteristics and functions. Many of our manorial courts and many of our parish vestries retain remarkable customs which can best be interpreted by the theory of their development from primitive village courts. But general characteristics do not give a decisive historical interpretation. By working along the more restricted line of investigation now being used, it is possible, however, to throw considerable additional light on this important subject. There is, it is true, only one perfect example to be brought forward; but this one survival is sufficient, and more than sufficient, to appeal to the less perfect examples which have kept up the remembrance of their primitive origin by retaining the important custom of meeting in the open air.

The customs of the Oxfordshire manor of Aston and Cote, or Aston-Boges, as it is commonly called, have been explained at some length in the thirty-third and thirty-fifth volumes of *Archæologia*. The author of the communications, Mr. Benjamin Williams, fully grasps the drift of the archaic nature of these customs, and he has rightly urged their identification with the customs of the primitive village community. After describing the tenures of land and their important significance, Mr. Williams comes upon the village



court. The lands are divided into sixteen hides, and to the court each hide of land sends its representative. "These 'sixteens,' as they are called, make orders, amerce suitors for non-appearance, set penalties, make presentments, choose officers, lot the commons, etc., and their orders, *if proclaimed from the Town Cross*, are binding on the inhabitants." The Customary of the manor thus notes this open-air meeting: "The sayd Sixteens hath not any authority to make any orders, or to set any amercements touching y<sup>e</sup> comons, except there be and doe meet att y<sup>e</sup> Crosse nine of y<sup>e</sup> sayd Sixteens att y<sup>e</sup> time, and those nine may pinn y<sup>e</sup> rest of y<sup>e</sup> Sixteens" (*Archæologia*, xxxv. 472).

Here is a primitive open-air court of the utmost importance to historical investigation. Its name, the Sixteens, enables us to go far afield for other similar names; its meeting-place, the parish cross, makes us group under a new historical heading the parish crosses which exist throughout England;\* its connection with the hide of land introduces a range of associations far outside the present subject. These two latter results are too extensive and too indefinite to proceed with any further just now, but I must say one word more on the court of sixteens.

We have seen above that the Free Court of Corbey was composed of sixteen persons. Again, in the land of Ditmarsh there existed down to modern times

\* Mr. Rimmer does not say enough in his *Ancient Stone Crosses of England* to exactly identify the village cross with the meeting-place of village assembly. Still the preaching crosses are very curiously suited to the purpose: there are very many crosses near ancient wells (see page 22); they were often the place of collecting tolls (page 9); and there were probably not fewer than five thousand crosses in England at the time of the Reformation (page 15). Iconoclasm has been our worst enemy as usual.

a remarkably primitive constitution. Mr. Williams has described this at considerable length in the thirty-seventh volume of *Archæologia*. The principal point, however, now to be noticed is the name of the assemblies or courts. There were in every parish "the sixteens," as they were called, or in large parishes "twenty-four." This similarity between the primitive village courts of Corbey, Ditmarsh, and the Oxfordshire manor enables us to ask with greater significance whether any other courts are thus named in England. And it is a remarkable fact that in many English municipal towns the oldest name for the governing body is that derived from the number of their members. I have not been able to identify a "sixteen," though I cannot but think that such a name still remains: but there are, as at Ditmarsh, the "twenty-four" at Winchester, Beccles, and York; and then we have the "twenty men" at Totnes, the "fifteen" at Kingston, the "six men" at Wenlock—all names older than any other more general titles of these municipal corporations.

In this particular instance of the Oxfordshire manor we have primitive agricultural customs under the same home as the primitive village assembly. The survival is complete on almost all points. But it is also unique. It is not necessary to state again, what has been said before, that the very theory of survivals prevents us from expecting a large numerical force of complete, or nearly complete, examples. The evidence *can* only be fragmentary; and can only resemble the broad outline of the original, not the complex details. We shall have, therefore, for the future to deal with the survival of the primitive village assembly only, and leave out of present

consideration the attending associations of early agricultural life. The court of the manor of Somerton, in Somersetshire, met in a great moor belonging to the manor. All the commoners were bound to appear by the custom of their tenure, and the matters to be adjudicated upon were matters which formed the principal staple of political life to the primitive world. They met for the better ordering of the cattle of the tenants, to present to the homage jury all offences in the common, and to make bye-laws for the better ordering thereof (*Blount's Tenures*, by Hazlitt, p. 287). Such legislation as this, unimportant to modern politics, represents by an unbroken succession the legislation of the people of the primitive world. It is exactly what took place in the village communities of Germany, Holland, and Russia. The village communities legislated thus all over Europe before the people who formed them had made any progress towards nationality; and although the manor of Somerton appears here as, in some sense, an isolated relic of this early life, it is not too much to say that it represents the customary courts of the manors throughout England. Other customary courts may not have retained the piece of moorland, or the field, whereon the tenants assembled, sufficiently late to be notified by the local antiquarian or historian; but they have retained some other phases of their primitive origin. "Even in the last extremity of decline," says Sir Henry Maine, "the manorial courts have not wholly ceased to be regarded as the tie which connects the common interests of a definite group of persons engaged in the cultivation of the soil" (*Village Communities*, p. 140). And it is from the fact that the cultivation of the soil

represents the sole bond of cohesion, the sole business of the people, the sole necessity for government of any kind, that such instances as Somerton are valuable even in their isolation.

We now get still further away from agricultural associations. The court leet holden annually for the manor of Pamber, near Basingstoke, in Hampshire, is opened *sub dio*, in a small piece of ground, called "Lady Mead" (a corruption of *Law-day Mead*), which belongs to the tything-man for the year. Thence an adjournment is made to a neighbouring public-house. The proceedings of the court are recorded on a piece of wood called a "Tally," about three feet long, and an inch and a half square, furnished every year by the steward. In a lawsuit at Winchester one of these singular records was produced in evidence. The lord of the manor is chosen annually; to whom belong stray cattle, etc., and who has a right to hunt and hawk as far as Windsor (*Gent. Magazine*, April, 1810, pp. 308, 309).

Here the Law-day Mead, the record by Tally, the election of the lord of the manor are all customs belonging to the primitive tribe, not to the political State. This lord of the manor is still only *primus inter pares*; he has never encroached upon the rights of the community in proportion as he found these rights become less and less certain according to the progress of the modern law of real property; his power has never grown by means of the process so well known by the term "commendation," by means of his increasing authority over the waste lands of the community, nor by that superior wealth which marked the initial progress of the Irish chieftain. He is, in fact, still the representative of the old elective

Teutonic chieftains of the time of Tacitus and Cæsar, even though the English manor cannot be compared to the German tribe; and his surroundings are equally primitive. The Tally belongs to a period before the epoch of written records, and quadrates exactly with the principles and constitution of the primitive open-air assembly.

On King's Hill, in Rochford, Essex, on every Wednesday morning next after Michaelmas Day, at cock's crowing, there is by ancient custom a court held, which is vulgarly called the Lawless Court. The steward and suitors whisper to each other, and have no candles, nor any pen and ink, but supply that office with a coal; and he that owes suit or service thereto, and appears not, forfeits to the lord double his rent for every hour he is absent. The court is called Lawless because held at an unlawful or lawless hour, or *quia dicta sine lege*. The title of it in the Court Rolls runs thus to this day (Charnock's *Customs of Essex*, 1870, pp. 24, 25) :—

“Curia de domino Rege,  
Dicta sine lege,  
Tenta est ibidem.  
Per ejusdem consuetudinem;  
Ante ortum solis,  
Luceat nisi solus.  
Senescallus solus  
Nil scribit nisi colis.  
Toties [? quoties] voluerit,  
Gallus ut cantaverit;  
Per cuius soli sonitus  
Curia est summonita [? Cœtus est summonitus].  
Clamat clam pro Rege.  
In curia sine lege  
Et nisi cito venerint,  
Citius pœnituerint;

Et nisi clam accedant [? accedat],  
Curia non attendat.  
Qui venerit cum lumine,  
Errat in regimine.  
Et dum sunt [? sint] sine lumine,  
Capti sunt in crimine ;  
Curia sine cura,  
Jurati [? jurata] de injuria."

Then the heading of the roll proceeds thus: "Tenta ibidem die Mercurii (ante diem) proximo post festum Sancti Michaelis Archangelii, anno regni regis," etc.\*

It is difficult to hit upon the *rationale* of this very singular custom. One can see at a glance that it does not belong to modern times, and its very quaintness and seriousness seems to demand that its origin should be carried back to a period which can explain by its own special circumstances matters that seem strangely out of joint with succeeding ages. We cannot even look upon it as an obsolete custom so far as the present age is concerned, for Mr. Charnock has given two separate accounts from eye-witnesses of meetings of this court in 1862, (*Manorial Customs of Essex*, p. 25), and in 1868 Mr. W. H. Black attended the meeting and describes his experiences in the *Proceedings of the Society of Antiquaries* (iv. 178-181). The mediæval tradition of its origin having arisen from a lord of the manor overhearing a conspiracy against himself, and as a punishment ordering that all the tenants on his manor should ever afterwards assemble at a certain hour of the night, on the same spot where the conspirators met, and do homage for their lands, leaves the explanation quite outside the domain of primitive politics and totally inadequate to

\* I have adopted the rendering given by Mr. Black in *Proceedings of the Society of Antiquaries*, iv. 174.

the circumstances. But from Mr. Black's judicious observations upon the subject, and from a comparison with the open-air courts of other districts, the Lawless Court of King's Hill can be shown to belong to that group of primitive politics now being treated of.

The meeting at night time, instead of at day, "under the light of heaven," is a change made, no doubt, under the oppressive influences of mediæval chieftainship. Feudal lords were, of course, adverse to free, open courts, and the tenants had to take the best steps they could. The tradition of its mediæval origin is so far true, then, that we here have the clue to the midnight meeting. The conspiracy against the lord was a conspiracy to keep up the old institutions when the lord wished to abrogate them altogether: for it is not the only instance of a midnight or an early morning meeting; there are others, as at Stone and Knightlow.

The next stage in my historical theory of the Lawless Court is to place the doggerel Latin rhymes as the survival of an older—a primitive—formula for fencing the court. The whole surroundings of the court are broken and shattered. They have been kept up in old times in spite of many obstacles and much oppression, and they appear to us of these times without any strict *rationale*. We must not expect exact identification, therefore: as long as the general outline is correct and faithful, we must be content. And the general outline in this case compares very favourably with the outline of the Free Court of Corbey. The words of the fencing are spoken before the opening of the court, and they are in a kind of rhythm. The modern Latin is hopelessly corrupt, as Mr. Black points out, and we probably

only obtain a lawyer's translation of the original formula into the law language of the times. But such as it is, Mr. Black translates it as follows :—

“The Court of the Lord the King  
Called the Court without Law,  
Holden there  
By the custom thereof  
Before sunrise,  
Unless it be twilight.  
The steward alone  
Writes nothing but with coals,  
As often as he will,  
When the Cock shall have crowed ;  
By the sound of which only  
The Court is summoned.  
He crieth secretly for the King  
In the Court without Law ;  
And unless they quickly come,  
They shall the more quickly repent ;  
And unless they come secretly,  
Let not the Court attend.  
He who hath come with a light,  
Erreth in behaviour.  
And until they be without a light,  
They are taken in default.  
The Court without care—  
The jury of injury.”

And connected with this fencing of the court as it has come down to us, is the use of coal for writing, by the steward. The writing consisted merely of “notches,” like the record by tally ; and coal has already had its use in the primitive open-air assembly in the instance of the Free Court of Corbey.

Finally, there is the place of meeting to notice. “The ground is flat,” says Mr. Black, “and on a level with the market-place of Rochford, but it stands higher than that part of the town where flows the



river Roche, to which there is a considerable descent southward from the central part of the town. Erected here is a post of wood, painted white, and standing five feet above the ground ; its top is wrought with mouldings and finishes in a sharp pyramid. Its shape is that of a candle, with wick and flame, only it is quadrilateral in its whole length and the edges are planed off."\* This post was unknown to literature until this account of it by Mr. Black, who considers it to be a *Roman landmark*, belonging to the series of measures to and from London Stone, and that the preservation of it was the chief object of the Lawless Court.† Of the tradition of London Stone, and the true analogy to this post of the Lawless Court, I shall have to speak hereafter ; but, for the present, all that it is necessary to say, in concluding this commentary upon the Lawless Court of Rochford, is that Roman landmarks may well have become Saxon landmarks too—not for geographical purposes, or military purposes, but as meeting-places of the primitive assemblies which were held by the then primitive inhabitants of Britain ; for presently there will be many instances to mention of open-air courts being held around a single stone.

Mr. Robert Dymond, F.S.A., kindly sends me an example from Devonshire. Of the six manors within the large parish of Widecombe-in-the-Moor (*i.e.* Dartmoor), that of Dunstone is the smallest in area save one. It comprises 933 acres, 400 of which are common, and it includes the hamlets of Dunstone and Venton and several small farms. Dunstone, as the name of a manor, occurs more than once in the portion of Domesday devoted to Devonshire,

\* *Proceedings of Society of Antiquaries*, iv. 179.      † *Ibid.* 182.

but this one may be clearly identified by the connection with it of Blackslade, or Blacheslach, as the original has it. It was one of the many manors bestowed by the Conqueror on Ralph de Pomeroie, and it is a curious fact that the farm of Blackslade has remained (as it does now) in the possession of the lord of the manor from the time of the Conquest. It remained with the Pomeroy family for at least two centuries, and appears to have passed under several lords of other names until Mr. Dymond purchased it in 1869. But the point which is of most interest now is this. In 1869 there was something more than a vague tradition that the manor courts were formerly held in the open air in a small open space or village green in the hamlet of Dunstone, and that the chief rents were deposited in a hollow or "rock basin" on the upper side of a huge granite boulder in the middle of the green, where a granite cross formerly stood. Mr. Dymond resolved to revive the practice of the open-air court, and did so two years ago.

Near the village of Stoneleigh, in Warwickshire, is a tumulus, overlooking the river and churchyard beyond, known as Motslow Hill, a name quite indicative of the use to which it was put, and which is thus described by Dugdale (*Antiquities of Warwickshire*, p. 254):—The "tenants had wont from antient time, every 3 Weeks, to do their Suite at the King's Court, held for this Mannour upon a hill, then and yet called Motslow Hill, on the south side the river opposite to the Church (having that appellation because of the Pleadings there; the word *Mote* being to this Day used in that Sense by our Lawyers); each Tenant holding one Yard Land, and paying yearly xxxd., viz. 1d.

an acre in regard every yard land contained xxx acre and no more."

From Mr. Edgar MacCulloch, F.S.A., I have obtained a most interesting account of the open-air courts of Guernsey. It appears that open-air courts still exist in this island in connection with the innumerable small sub-fiefs into which the original larger manors have been subdivided. The courts are still kept up for the purpose of preserving the boundaries of the various fiefs, and collecting the "chef-rente" and other feudal duties owed to the seigneur, and although some of them are held in the manor house itself, or in some small building erected for the purpose, a great number are held in the open air, and in places where there is no appearance of any dwelling having ever stood. Even where there is a house, the stone seats of the seneschal and vavasseurs are often to be found outside, under the shelter of a hedge or tree. These primitive seats of justice—for in olden times disputes between tenants on a fief seem to have been decided in the manorial court—generally consist of from three to five or more rough blocks of unhewn granite, and some of them have very much the appearance of having been originally parts of a cromlech. The court of the fief De Carteret, in the parish of St. Marie du Castel, is one of these. Its situation on the brow of a hill sloping to the west is just where one would expect to find a cromlech, and a neighbouring property bears the significant name of "La Pouquelaye," which is given in these islands, and in some parts of Normandy, to cromlechs. In the churchyard of the same parish, near the north-west angle of the church, are three large stones, where the court of the fief Lihon, belonging to the Priory of N.D. de Lihon,

a dependency of the Priory of St. Michel du Valle, itself depending on the famous Abbey of Mont St. Michel, was held till very lately, when the cumbrous machinery of the "Cour Saint Michel," consisting of a seneschal, eleven vavasseurs, three or more prévôts, bordiers, and other officers, who were paid for doing nothing, was done away with by order of the Queen in Council, the manorial rights having been in the hands of the Crown ever since the suppression of the alien priories. There is an open-air court of another kind here. The chief magistrate, the bailiff (or, on the present occasion, Mr. MacCulloch, as his lieutenant), had to preside at a meeting of the Royal Court on 3rd December, 1879, on a spot of ground which is in dispute between two parishes. The court, at which all the officers must be present, was opened with the usual formalities of prayer, etc., the case opened by the advocates of the respective parties, the witnesses evoked and sworn, and as many heard on the spot as were necessary to explain the nature of the respective pretensions of the parties so far as the ground itself is concerned. It is a very primitive proceeding, but a very substantial way of doing justice where it is practicable, for an inspection with one's own eyes of the place is far more satisfactory than any plan could ever be. This proceeding is called a "vue de justice." Mr. MacCulloch remembers one being held about two years ago, when the members took their seats on one of those old cromlech-like stones spoken of above.

I have now to mention an important example kindly sent me by Mr. Eugène E. Street, of Bognor. The court baron of the manor of Warnham (there is no trace of a leet) is opened by proclamation in the corner of a field just without the village of Warnham,

and then adjourned to the "Sussex Oak" public-house. This spot is the site of the ancient manor or court house. The court was opened by the steward on the 8th of February, 1878, in the midst of a driving snow-storm. This is information not contained in any history of Sussex, that I am aware of, and is not mentioned in the valuable series of *Sussex Archæological Collections* (vols. i.-xxv).

Now, there appears to me to be more than one link with the primitive politics of Britain preserved in this open-air manor court. We have had instances of open-air courts meeting in fields, and instances of them meeting under trees; but in this one instance there seems to be a double association; and I would interpret it, judging from my other evidence on the subject, in this wise: the court of the primitive local jurisdiction, descended to modern times in the shape of a manor, met in its accustomed place—the field outside the town (*tūn*), just where it might have been expected to meet, judging from such important evidence as Mr. Kemble brings to bear upon the subject (see *Saxons in England*, i. 75). But under the Sussex Oak, situated also in or near the village, the court of the higher jurisdiction, perhaps the shire-moot, was accustomed to meet. When the latter, therefore, gave way to modern political influences—was brought into the State machinery of modern England—the primitive custom of holding this court under the Sussex Oak was given up. But the local court, still influenced by primitive associations, kept up the reverence always paid to places of meeting by adjourning its own meeting from its accustomed place to the far more important and far more sacred spot—the deserted meeting-place of the shire-moot.

There are several instances of open-air manorial courts which can now be grouped together to illustrate various phases of the subject that have been brought forward already. The Crown is supreme lord of the fee both of Morehall Belne and Bryans Bell in Worcestershire; and suit and service are done at the court leet held under a tree at Churchill (Nash's *Worcestershire*, i. 57). Combe-bank (in Wiltshire) crosses the down, in fine preservation, from the neighbourhood of Winterbourne Clenstone to Colwood. For some distance it forms the highway of this wood, and then enters it and disappears. Mr. Guest, the writer of a paper on "the Belgic Ditches" in the *Archæological Journal*, employed a guide to assist him in his researches, and he informs us that this guide "has for years 'cried the courts' at the bank: \* after proclamations duly made on this ancient earthwork, the courts are held in the valley at an old manor house which lies some two miles from the bank" (*Arch. Journ.* viii. 149, note). Here we have an important instance of the decay of open-air courts—the proclamation on the bank being the only relic which enables us to identify the old custom of meeting on the bank.

The translator of Mallet's *Northern Antiquities* says that he knows of a manor in Shropshire where the manor court is held under a very aged tree; there

\* As an instance of outdoor proclamations, I may note that in the north wall of St. Mary's Hall, Coventry, on a level with the Great Hall, with which it communicates by a narrow passage, is a doorway, walled up, outside which are traces of there having been a balcony, from whence the acts of leet were formerly published by the mayor. This is evidence from which we may reasonably draw the inference that the consummation of the act required the most public announcement. Mr. W. G. Fretton kindly sends me this note.

the steward calls over the copyholders, and forms a jury; and then adjourns the court to a neighbouring inn for the despatch of business (see vol. ii. *note*, page 56). I have not been able to discover this manor from any of the local historians of Shropshire. Watkins, in his *Treatise on Copyholds* (ii. 15), also quotes the above passage, and says he knows of a similar custom in several other manors. In the beginning of the last century there was at Langsett, in Yorkshire, an old yew-tree in Alderman's-Head grounds, near the river, under which the court for the manor of Penisale had been held from time immemorial. Around this tree the market and the fair were said by tradition to have been held, on a green plot in which it stood, and there is a tradition that there was once a town called Panisale around this tree (Hunter's *South Yorkshire*, ii. 359). The name of Alderman's-Head, which belongs to a house and farm near the place, seems to take us back to the time when the alderman was simply the oldest man of the community, for there is no trace of this locality ever having belonged to the municipal alderman.

At the foot of Saltash, there abuts upon the sea a rock, called Ashtorre, *alias* Esses Torre, which is invested with the jurisdiction of a manor, and here are rendered the suits of many gentlemen, as freeholders in knight's service (Carew's *Survey of Cornwall*, p. 114). On the south-west declivity of Bredon Hill, just above the village of Norton, in Worcestershire, there are two tall, turret-like masses of white oolite rock, commonly called "The King and Queen." A manorial court was held at this spot, as we learn from an old document in Nash's *Worcestershire* (i. 130).

Among the Coldingham charters printed in Raine's *North Durham*, there are some which mention the place of meeting,—a rather unusual circumstance with official documents. Thus No. 185 is a charter of David de Guikeswude, concerning the wood of Aldecambus, which sets forth that the matters in dispute were settled in the full court of the prior at "Homele-noll" ("in plena curia prefati Prioris abjurasse apud Homelenoll"). Charters No. 333 and No. 334 give other courts on "Homelsnol." Mr. James Hardy, of Oldcambus, informs me that although the people derive the name of the bare-hill where the court was held from Homily, a sermon preached there, the hill is really named from its smoothness all over the summit, free from any abrupt excrescences, like the head of a cow that has no horns, which is called a "humlie cow."\* There is a place in Roxburghshire also corresponding in name to the Humilie-knowe upon which courts were held.

The manorial open-air court has now been associated with various phases of primitive life, and I think to complete the picture thus laid before us—a picture only, of course, satisfactory as illustrating some archaic fragments of early institutions—nothing could be found more suitable than the account of the meeting of the court of the manor of Kingsborough, in the Isle of Sheppey. This court is held under a gigantic elm-tree, known by the name of the "Kingsborough Elm." The position of this tree is perfectly in accordance with the requirement of primitive history. It stands on the most elevated part of the island, where the people could assemble in great

\* "Of their black cattle, some are without horns, called by the Scots, humble cows" (Dr. Johnson's *Journey to Western Islands*, i. 186).



numbers. The court is held on the Monday next after the Feast of Pentecost,\* and its business now consists in choosing a constable (who has jurisdiction over the whole island), the ferry-warden, and other officers, and of arranging the assessment of the rates and other matters chiefly connected with the ferry between the island and the 'mainland' (*Gentleman's Magazine*, January, 1839, p. 29). Election of officers is here connected with the more important administrative duties of the imposition of taxes; and no combination of incidents is better suitable for the illustration of the present subject.

The next group of instances to be mentioned is that of the Forest Courts. These take us outside the cultivated lands of the primitive village community to the all-important and all-sacred boundary. In the instance of Warnham manor, the importance of the boundary as a place of meeting was pointed out, and we now come to actual forest courts. The courts of the forest, even down to modern times, give us a very early type of local institutions, and Professor Stubbs has specially enumerated them among his illustrations of early English constitutional history (*Const. Hist.*, i. 107). The representative "four men and a reeve" stand out here very plainly. But early as this system of representation undoubtedly is; valuable as such instances as the courts of the forest of Knaresborough being composed of the constable and four men from each township, of the manor of Wakefield by the constable and two men, and of the half-hundred of Chingford by the reeve and two men, are to the constitutional historian; there is something more valuable still, of a still more primitive origin, in the fact that before the making

of the Charta Forestal, all men within the county, of what quality soever, were bound to appear at the court of justice seat upon a general summons (Manwood's *Forest Laws*, p. 12). Here we have not representation, but popular assemblage—not a representative, but a primary assembly; and this primitive phase of history has survived down to the modern times by the permanence of the custom of the open-air meetings. Again, I do not say that the modern open-air meeting gives, unless in some few very exceptional cases, much further contribution to the study of primitive politics than that of its meeting-place only; but I contend that by this relic alone is preserved a link with the past that cannot be obtained elsewhere in anything like so perfect a manner.

In the parish of Hesketh, in Cumberland, the court of the forest of Inglewood is held yearly on the day of St. Barnabas. The suitors are assembled in the open air, by the highway side, at the accustomed place, now no otherwise marked than by an ancient thorn. Here attend the inhabitants of above twenty mesne manors, from whom, according to the ancient forest court, a jury for the whole jurisdiction is balloted and sworn, and here are paid the annual dues to the lord of the forest, compositions for improvements, purprestures, agistments, and pastures of the foresters (Hutchinson's *History of Cumberland*, i. 504).

At Belbroughton, in Worcestershire, was formerly a wood five miles in extent, and the manor of Forfield or Fairfield, formed a part of the great forest of Feckenham, at which place the lords justices of the king's forest on this side Trent held their courts (Allies' *Worcestershire*, p. 135.)

The three courts of the forest of Charnwood met in the open air; that of the lordship of Whitwick, near Sharples Rocks, where the place may still be traced. It is called the Swanimote Rock, and below it is a spot bearing the name of Lady Aspin's Pool, a legend of which is printed in Potter's *History and Antiquities of Charnwood Forest* (p. 156). The court of the lordship of Groby met at Copt Oak, which stands on high grounds, and derives its name from the fact of once having been surrounded with a coped wall (*Ibid.* 150). And the court of the lordship of Sheepshed met on Iveshead, one of the most important of the forest hills. It is isolated from the general range, and from one view presents a bold outline, with a double summit like a saddle-back. Swain's Hill, the spot where the swanimote court met, lies at the foot of Iveshead, and a little distance from it stands the "Hangman's Stone," which furnishes the subject of a ballad legend (*Ibid.* p. 177).

The court for the forest of Knaresborough is styled the Sheriff Torne, or Great Court Leet, and is now held in the castle of Knaresborough twice a year. The adjourned court, however, takes us back to primitive institutions, for it is held in different parts of the forest as fixed at the Sheriff Torne. Constables for this district were formerly appointed at this court. Though shorn of much of its greatness, it cannot cease to exist, as the greater part of the land in the forest is held by copy of court roll, and the principal business is receiving surrenders, admitting copyhold tenants, preventing nuisances, receiving rents, and fines for encroachment, etc. (Grainge's *History of the Forest of Knaresborough*, p. 92).

A court of foresters belonging to the district of the

hundred of Oswaldslow, in Worcestershire, must be included in this section of the evidence. This court had a criminal jurisdiction, and its process is a very curious illustration of a primitive survival. If a person were found guilty of murder by the verdict of twelve men, thereupon charged and sworn from the four townships adjoining the place where the crime was committed, his head was to be struck off with an axe by which the chief forester held the fee of the lord, and at a place called "Siwet Oaks," where the court always sat in judgment (Nash's *Worcestershire*, i. lxxii.-lxxiv).

Somner, in his *Treatise on Gavelkind*, tells us that in a roll of accounts in Mayfield manor in Sussex, dated 11 Edw. III., it is set forth how the lord, or his bailiff and tenants, were wont to meet upon Woodhouse Moor at certain seasons, called Paroc-time, to hold a Paroc—a court-like kind of meeting, not much unlike the forest swaine-môte, where an account was taken of the service of swine-gavel, and generally of what hogs or swine had been taken in to feed and fatten the year past, or the last pawnage or masting time, and rent accordingly paid and received for the same (see p. 33 of the edition of 1660).

Another very striking example of the primitive folk-moot is the "Court of Dens" in Kent. This appears, says Mr. Kemble (Appendix A. to vol. i., *Saxons in England*, p. 481), to have been a mark-court in the sense in which mark-court is used throughout his second chapter, and which gradually became a lord's court, only when the head mark-man succeeded in raising himself at the expense of his fellows: a court of the little marks, marches, or pastures in Kent, long

after the meaning of such marks or marches had been forgotten : a court which in earlier times met to regulate the rights of mark-men in the dens or pastures.

It appears that this Court of Dens was held at Aldington, and that it claimed jurisdiction over a considerable space. Mr. Kemble enumerates some twenty-five dens which might have been subject to the court of Aldington ; but, he adds, the total was at least thirty-two, if not forty-four.\* Sir Roger Twysden, a learned man and a lawyer, had to attend this Court of Dens, and as his journal entries of the proceedings are so valuable to the subject before us, I think it may be well to reproduce them here from Mr. Kemble's Appendix. They are to the following effect :—

“ 18th September, 1655. I was at Aldyngton Court, at the chusing the officers to gather the Lord's Rent, where grew a question, whither, if the Lord released our Rent, Sute, and Service, to the Court, we were subject to the slavery of attendance, and whither the Tenants could prescribe men, &c., &c., &c., or impose an office upon them,—and it was the whole resolution of the Court, the Lord might sell his quit-rents and all manner of attendance on the Court, and then he could not be tyed to any office, nor the Tenants impose any office upon him. . . .”

“ The 16th September, 1656, I went to Aldyngton Court, but came too late, there beeing layd on me the office for collecting the 32 Dennes, for my land in them. I desired to know what land it was . . . in

\* But see Furley's *Weald of Kent*, Appendix C., vol. ii., for a list of the denes in the district, which must have originally exceeded four hundred !

the 32 Dens upon which the office was laid, but this I could not learn . . . the issue was, that if they can name the land or descry it, I am to do it, —if not, I refused to gather it.”

“1658. I was at Aldyngton Court again, and then there was much stir about this land which could not bee found. I still insisted the Denne of Plevynden held of Wye, that the 16s. 2d. ob. I payd was for light money in time past. The Conclusion was, They will destrain me if they can find the land, and then come to a trial in their Court which is held at Smethe.”

“1659. I was at Aldington Court, where I came before the Steward sate, yet were they then chusing for the 32 Dens, and Mr. Short brought me a note for chusing Mr. John Maynard, Serg<sup>t</sup>. at Law . . . he was not chosen after the ancient custom of the Court, that is, to present two to the Steward, and he to take one . . . The tenants of the 12 Dennes pretended if it were sometime a custom it had been long interrupted, and refused to follow the example of the 32 . . . after dinner, this grew a great dispute, Mr. Short complaining of partiality, that the choice of one man was received for the 12 and not for the 32 Dennes. This drew on the manner of chusing of the 32 Dennes, which was, that they usually met at 9 o'clock long before the Steward himself could reach the Court, made choice of one man before there was a Court. . . . This brought forth an excellent order, that the Dennes should chuse and present the person by them chosen after the manner the other Culets did. . . . Coming away, the Bailiff told me he had a writ to distreyn me for the rent of the 32 Dennes. I told him I had no land held of it that I knew. . . .

Sir Edward Sydnam, Lord of the Manor, and who is to answer the rents to the Exchequer, told me I would be distreyned for it,—my answer was, I was not willing to make my land chargeable with a burthen more than my ancestors had paid—that there was a Court of Survey to be kept in the spring,—that if I could not then discharge myself of having land, held of the 32 Dens, I would and must pay it."

"*Aldington Court*, 1664. S<sup>r</sup>. John Maynard, Serg<sup>t</sup>. at Law, was chosen to the Great office though it were affirmed, he being King's Serg<sup>t</sup>. would procure a discharge. The order before mentioned of 6s. 8d. for such Culets as received from the Steward a transcript of what they were to collect, and 10s. for the Great office, was at this Court willingly assented to."

There are some important points to be noted in this record of Aldington court—points which, if Mr. Kemble is wrong in endeavouring to trace from them evidence of the mark-court,\* still afford us a satisfactory glimpse into primitive history. Thus, "the chusing before the steward himself could reach the court" is obviously a clear mark of the transition, not quite complete, from a popular court to a lord's court: the allusion to "the slavery of attendance" gives the keynote to that law of shrinking up from a primary assembly to a representative assembly which Mr. Freeman illustrates from the lessons of Comparative Politics. Beyond this, however, there is some evidence, I think, that these Courts of Dens at one time met in the open air. Without such evidence Sir Roger Twysden's invaluable notes would bring the court of Aldington within the compass of the present inquiry; but to have the open-air meeting in

\* See Furley's *Weald of Kent*, ii. 734, 735.

addition is to bring it within the shadow of those great examples already treated of. Now, the port of Lydd was one of the Denss of the court of Aldington ; and in a curious document mentioned in the Historical Manuscript Commission, it is stated that "the circuit of ground commonly called 'the Bishoprick' is in the ancient records of the principall court of Aldington called 'the Denn of Lydd,' whereof came first the name of 'Densmarsh.'" Upon this plot of ground, thus connected by name with the Court of Dens, no doubt the court met ; for its description tallies exactly with other plots of ground used for such purposes, and which will be mentioned later on : it was "a bank of ground much higher than all the rest of the marshes or ground adjoining " (see Hist. MSS. Commission, 5th Report, p. 531).

Here for the first time we do not meet with a perfect unanimity of historical survival ; we do not, in point of fact, have the record of the court and the record of its meeting in the open air from one definite example. We have instead, first, some evidence of the assembly of the court, with many primitive associations ; secondly, some evidence of the open-air meeting. But the two pieces of evidence are not associated with each other in the same way as they have been in previous instances. The fact is, we have in this instance to treat of that phase of the historical survival which has been more than usually influenced by its modern surroundings. As suggested throughout, the open-air meeting is of itself a perfect survival from primitive times ; it has come down to us through many vicissitudes, and in spite of many influences, social and political, which have always been against it. If the account of the court of



Aldington, therefore, does not fit in the niche prepared for its reception quite so easily as it should do to make it perfectly historical, there is the satisfaction of knowing that it gives us some detailed evidence not always forthcoming in other examples.

That the mining districts of England give important examples of primitive history is borne out by the evidence already noted of Mendip. The passing of the Mendip Laws is of itself a remarkable phase of primitive life ; but place it alongside of similar phases elsewhere, and its value as historical evidence is increased a hundred-fold. We have similar phases, then, in the mining districts of Cornwall, Devon, and Derbyshire, not of revivals, but of actual survivals of the open-air meetings. If Mendip, therefore, standing alone makes us think more of the singularity than of the historical value of its evidence, Mendip, Cornwall, Devon, and Derbyshire cannot fail to carry us across the border of political into primitive life.

The Stannary Courts of the duchy of Cornwall were held on the summit of the Croken Torre, where the seats, roughly hewn in the moor stone, indicated the tribunal (Palgrave, *Eng. Com.*, i. 140) ; but the steward now generally adjourns the meeting to the neighbouring town (*Gent. Mag.*, 1832, ii. 221).

The constitution of the Stannary Court is well worth attention. "The Tynners of the whole shire," says Carew (*Hist. of Cornwall*, p. 18), "are divided into four quarters, two called Moores, of the places where the Tynne is wrought, viz., Foy-moore and Blacke-moore; the other Tiwarnail and Penwith. To each of these is assigned a Steward who keeps his court once in every three weeks. Their mode of trial is by a verdict of a jury of six Tynners, according to

which the Steward pronounces judgment." But above these local courts is reared the great Stannary Court of the shire. "In matters of important consequence, appertayning to the whole Stannary," says Carew, "the Lord Warden, or his under Warden, useth to impannell a jury of foure and twenty principall Tynners, which consist of sixe out of every quarter returnable by the Maiors of the foure Stannery townes, and whose acts do bind the residue."

Now, the law obtaining in these courts is entirely customary law—there is no trace of central legislation, no trace of anything but what is of purely local growth. "The varietie of customes," we are told, "which in every place (welneere) differ one from another, yeeldeth them in a maner an unlimited scope, to averre what they list, and so to close the best Lawyer's mouth with this one speach, *our custome is contrary*" (Carew's *Hist. of Cornwall*, p. 19). "The name of Croken Torre," says Mr. Taylor, "seems to point to a deliberative assembly. The Welsh word *gragan*, to speak aloud, gives the origin of the English word *to creak*; and the Croken Torre is evidently the 'the speaking hill.' And, moreover, the name of 'Wistman's Wood' in the immediate neighbourhood, suggests the wisdom traditionally imputed to the grave and reverend seniors who took part in the debates" (*Words and Places*, p. 197).\*

A curious document relating to the mines of the

\* Pearce, in his *Laws and Customs of the Stannaries in the Counties of Cornwall and Devon* (London, MDCCXXV.), prints the acts passed by the "magna curia Domini Regis Ducatus sui cornubiæ Te[n]jata apud Crockerentorre in comitatu Devon." The four Stannary Courts of Chaggeforde, Aysburton, Plymton, and Tavistock were represented by twenty-four jurates each. The acts are dated 2 Henry VIII., 24 Henry VIII., 25 Henry VIII., 6 Edward VI., and 16 Elizabeth.

Forest of Dean also gives some evidence upon our subject. It is entitled *The Miners' Laws and Privileges*, and was first printed by William Cooper, at the Pelican, in Little Britain, 1687, from a manuscript copy preserved in the office of the Deputy Gaveller, to which a postscript is added, "Written out of a parchm<sup>t</sup> roll, now in ye hands of Richard Morse, of Clowerwall, 7 June, 1673, by Tho: Davies." This manuscript is used by Nicholls in *Historical and Descriptive Account of the Forest of Dean* (pp. 13, 14). It alludes to "the court of the wood," at the "speech" before the verderers; to the court of Debtors at St. Briavel's Castle; to the mine court as regulated by the constable, clerk, and gaveller; and the miners' jury of twelve, twenty-four, or forty-eight, where all causes relating to the mines were to be heard. "Three hands," or three witnesses, were required in evidence, and the oath was taken with a stick of holly held in the hand.\* All this is primitive enough; but, what is more to our present purpose, the miners of Mitchel Deane, Little Deane, and Ruer Deane were called "beneath the wood" (Nicholls, as above, p. 14). Now, the date of the erection of the "speech-house," as it was significantly called, is 1680 (*Ibid.* p. 51), and until that date, therefore, we may conclude that these mining courts kept up the old practice of meeting beneath the wood.

The Barmote of the Derbyshire miners is another instance. The derivation of the name carries us at once to the associations of primitive institutions. From Anglo-Saxon "berg" and "gemote," it evidently

\* See a note by Sir Francis Palgrave on this subject in *Hist. of Eng. Com.*, vol. ii. p. cxv.

means the hill-court. From an old rhymed chronicle on *The Liberties and Customs of the Lead Miners within the Wapentake of Wirksworth*,\* written by Edward Manlove, steward of the Barghmoot Court in 1653, we are able fortunately to learn a great many of the archaisms of this court. It was latterly held in the Barghmoot Hall at Wirksworth; but formerly on the mine itself, in the open air.

“And two great Courts of Barghmoot ought to be  
In every year upon the minery,  
To punish miners that transgress the Law,  
To curb offenders, and to keep in awe  
Such as be cavers, or do rob men’s Coes,  
Such as be pilferers, or do steal men’s Stows :”

and for numerous other offences duly set out in Manlove’s rhymes. The miners also at these Courts had—

“To swear Barghmasters, that they faithfully  
Perform their duties in the minery  
And make arrests, and eke impartially  
Impannel Jurors, causes for to try ;  
And see that right be done from time to time,  
Both to the Lord, and Farmers, on the mine.  
To swear a Jury for a half-year’s time,  
(By custom call’d) the Body of the Mine,  
Who miners are, and Custom understand,  
And by the Custom they have some command.  
They may view groves, when miners do complain,  
Relieve the wronged, wrong-doers restrain.”

Besides the two great Courts above mentioned—

“The Steward ought a Three Weeks’ Court withall  
To keep at Wirksworth, in the Barghmoot hall,

\* This was originally printed in 1653; and a second edition was printed in 1851, by Mr. Thomas Tapping.

For hearing causes (after the arrests)  
And doing right to them that be opprest,  
And if the Barghmaster make an arrest,  
The Steward may (at the Plaintiff's request)  
Appoint a Court, for trial on the Rake \*  
Within ten days."

The great principle underlying these customs is that of rapid and speedy justice—that justice which is brought home to every man's door. On the spot where the wrong was committed, as soon as possible after the crime, was the ruling idea—an idea belonging to the institutions of primitive times :—

"And then and there the Cause must tried be  
Before the Steward of the minery."

We now pass away from the mining courts to another group. All the courts of the Cinque Ports are referable to primitive times—their customs, their constitution, and their duties represent, in continuous succession, the customs, constitution, and duties of primitive folk-moots. But of one, the court of Shepway, the open-air meeting still survives.† The grand court of Shepway appears to have derived its name from the place where, in olden times, it was wont to be held. One of the divisions of the county of Kent is still known as the Lathe of Shepway. In the parish of Lympne there is a spot yet known as the "Shepway Cross,"

\* A vein of ore.

† The Court of Brotherhood usually met in the Brotherhood House at New Romney, but the Court of Guestling met in the church (Jeake's *Charters of the Cinque Ports*, p. 109). This meeting in the church is primitive. It is curious to observe that a river at Sandwich is called "The Gestling," and it is situate "by the 'thief-downs' where persons condemned within the liberty were buried alive" (*Arch. Cantiana*, xii. 336). This seems to be a relic of the old place of meeting of the Guestling court.

and history tells us that it was at this spot the business of the ports, from a very early period, used to be transacted. There are no buildings now extant or traceable at the "Shepway Cross," the court being held in the open air. "Within a quarter of a mile from Lymne Church," says Dr. Plot in a Letter\* to the Royal Society, Sept. 3, 1693, "is *Shipway Court*, a Field where the Lord-Warden of the Cinque-ports are (*sic*) sworn and causes concerning the Ports try'd."

The warden, however, had the right to hold his court at any place he pleased within the ports. Limiting the inquiry to the open-air courts as positively known to history, we find that it has been the custom of the Lord Warden, having received his appointment, to summon his first court of Shepway to take his "serement" or oath of office. It is recorded that Prince Edward took the serement at Shepway Cross in A.D. 1265. But later on the place of meeting was altered to Braidenstone Hill at Dover. The Braidenstone was the ruin of a Roman pharos which was built on the highest point of the western heights. Dr. Harris gives an account of the proceedings held in 1694 (*History of Kent* [1719], pp. 482-484), and he mentions having by him a copy of an ancient record taken out of Dover Castle, the title of which was, *Nota de Regula quo modo Curia de Shipweia ordinetur et observetur* (*Ibid.*, Appendix, p. xxxvi.). This record gives in full the description of the ceremony. Mr. Edward Knocker, also, on the occasion of Lord Palmerston's installation as Warden of the

\* This letter is printed by Curll in a small pamphlet, *Miscellanies on several Curious Subjects; now first publish'd from their Respective Originals* (London, 1714), kindly lent me by Mr. Thoms.

Cinque Ports, in 1861, took the opportunity of publishing a description of the ceremony, which was then performed in accordance with all the old rites and privileges. The procession marches from the town to the hill, and as soon as the Lord Warden has taken his seat, solemn proclamation is made as follows:—"All mayors, bailiffs, and jurats of the five ports and their members that be summoned and warned to appear here in their proper persons before the Lord Warden at this the King's Majesty's Court of Shipway, here to be holden this day, draw ye near and attend to the Court upon peril that shall fail of it." Reading the full account of this proceeding, one is almost irresistibly drawn to a comparison of the *Landesgemeinden* of Uri and Appenzell. The comparison is not complete on all points, it is true: the English survival is not so true a type of the primitive institution as the Swiss survival; but the same spirit seems to breathe through both examples—the same freedom that is exemplified by the Swiss canton is exemplified by the English Cinque Ports; the only difference is that the English Cinque Ports have taken more active part in the political history of the Western world than have the Swiss cantons, and they have therefore lost much of their primitive surroundings.

We have now brought the evidence of the historical survivals of the primitive folk-moot in England to a fairly satisfactory position. We have found early records of the open-air meetings of the national Witan and of the shire-moots; we have found late survivals of the open-air meetings, and of something a great deal more valuable still—some of the primitive customs and surroundings of the open-air meetings of

other local jurisdictions ; and we have found late survivals of open-air hundred and manor courts. We have not been able to produce a long catalogue of survivals among those institutions of the country which have not been touched by central legislation, but have been allowed to insensibly die out ; yet the instances produced are, at all events, representative and powerful. They show the pertinacity of the old life of the people where few disturbing influences are at work ; and, I think, they call for the remark that the wonder is, not that so few have been found, but that the numerical scarcity should be so historically rich.

Thus, then, the shire is represented, the great franchises are represented, the manors are represented, and all three carry on the evidence to that broader and less restricted platform of inquiry upon which we shall presently stand when dealing with the traditional and philological division of our subject. The shire is already known to the student of English constitutional history as being of primitive origin ; and the manor and franchise are able to add now one more piece of evidence to that which already declares for them a similar home. But with the town it is somewhat different. Here, at all events, we have a development of institutions to keep pace with the increase of commercial activity ; and, to a very great extent, we lose sight of so primitive a stage as that to which the open-air court belongs. In another chapter I shall be able to suggest that a survival of the old village assembly exists in the Byerlaw Courts of our northern towns, but the evidence for this does not depend upon the open-air meeting and cannot therefore be included here. Still there



remains one source which enables us to reflect the primitive open-air assembly of towns from the historical survival to the philological survival. For, if the village and the township have passed over to the manor a great deal of the primitive history which once belonged to another and older unity in the primitive constitution, the municipal corporation—stronger than the rural township in resisting the encroachments of feudal chieftainship, more consolidated than the isolated village in retaining some portion of the old system—has preserved for the modern inquirer some instances of the open-air assembly. Thus, the mayor of High Wycombe held his court in the field called “the Rye” in the reign of Henry VII. (Hist. MSS. Com., 5th Report, p. 557). The court leet of the borough of Rochester was held in the open air upon the Boley-Hill, a place within the city\* (*Report on the Municipal Corporations of England and Wales*, part ii. p. 857). A very curious instance occurs at Lostwithiel, which in some respects might lead to the conclusion that a shire-moot once met in this place. A court entitled “of the maritime water of Fowey belonging to the borough of Lostwithiel,” is held on the “Shirehall Moor” belonging to the borough, and after having been opened there, is usually adjourned thence to the Guildhall. The court is held before the mayor, deputy recorder, justice, and capital burgesses. All persons holding a boat on the river are summoned to attend the court. These jurors amerce defaulters, and they

\* A tumulus on Bakewell Moor is named Bole-hill (see Bateman's *Ten Years' Diggings*, p. 104); and there are others near Wirksworth and Bamford (*Ibid.* 290). Has this name any connection with the Boley-Hill of the text, and has *Boley Hill* any connection with *Burleigh Hill*, about which much will presently be said?

present all nuisances on the river and all obstruction to the navigation. And they act as conservators of the water of Fowey (*Mun. Corp. Com.*, i. 546). And perhaps it may not be too much to suggest that the corporation of Bishop's Castle, in Salop, also presents us with a relic of these primitive times in the common belonging to the corporation and called "The Moat" (Mote), or Burgesses' Hill (*Ibid.*, iv. 2600). The constablewick of Garstang, to the year 1816, issued its laws and regulations from Constable Hill, on the Wyre (*Historic Soc. of Lanc. and Chesh.*, ix. p. 61).

Coming to the seaports in the south of England, already connected with primitive institutions by means of the courts of the Cinque Ports, there is a wonderful contribution to the evidence already noted in connection with municipal boroughs. At the bottom of the High Street, Hastings, is an open space, called "The Hundred Place," and here the principal business of the corporation was transacted, such as the elections of the barons to Parliament, the bailiff and inquest men for Yarmouth, etc. This is a clear survival of the open-air hundred court among our municipal institutions, and the matter is set completely at rest by the evidence of a custumal, A.D. 1357, which states that on this spot, time out of mind, all the commonalty was to assemble the Sunday next after the day which is called Hock-day, and choose a bailiff, etc.; "and if the said bailiff be absent, or will not accept the charge, all the commoners shall go and beat down his chief tenement" (*Sussex Arch. Coll.*, xii. 197).

One of the ancient courts of the city of Lichfield was called the "Court of Array, or View of Men and Arms." This was opened at the Guildhall on Whit

Monday each year, and then adjourned to a mount in the vicinity, called "Greenhill." A procession of constables, morris dancers, men in armour, etc., was formed, and the city was paraded. The custom is still retained in the annual festival on the same day, and known as "Greenhill Bowers" (see Harwood's *Lichfield*).

Some curious information is given in Watkin's *Treatise on Copyholds* (p. 16) as to the rights of the constable of Dover, which enables us to include Dover in the present group of instances. The constable of the castle of Dover is forbidden, by stat. 28 Edw. I. c. 7, to hold certain pleas "a la porte du chastel" which, as the author of *Observations on the Statutes* very justly remarks (pp. 186, 187), should be translated "at the gate," and not "*within*" as it is usually rendered. And the same learned writer gives some other passages from foreign sources, wherein are mentioned "les ples de la porte."

Pevensey also comes within this circle of evidence. In 1327 the abbot of Robertsbridge brought an action against Ralph de Camoys, for seizing and carrying off, at a place called "Sabineland," in the parish of Chiddingleghe, three heifers, which the defendant alleged were justly distrained upon for homage due to him from the abbot, but not rendered. This action was tried "at the court held at the castle gate of Pevense," but was not decided until ten years later, at the same place (*Suss. Arch. Coll.*, viii. 158).

The customs and ceremonies attending the choice of the mayor of Folkestone were of a very significant nature. The mayor was chosen annually on the 8th of September. Early in the morning the town serjeant sounded the horn at the residence of every jurat and

commoner, summoning them to assemble that day in the churchyard to elect a new mayor for the year ensuing. After attending divine service in the morning, the retiring mayor and jurats withdrew to the cross or pedestal in the churchyard, where the commoners and freemen were assembled. The old mayor shortly addressed them, and requested them to depart into the chancel of the church, and elect a new mayor, which they accordingly did. If either the mayor or any of the jurats refuse to assume their respective offices upon being elected, the commons, as at Hastings, "were to go and beat down their principal messuage"\* (*Appendix to the Report of the Commissioners on the Public Records*, vol. viii., 1837, page 453). And a similar custom took place at Seaford. The bailiff was annually elected on Michaelmas Day. At the summons of the church bell the assembly of freemen took place in the Town Hall, and after the *pro-forma* business had been gone through, the freemen, leaving the jurats behind them on the bench, retired in a body to a certain gate-post near West House, and there elected their chief officer for the ensuing year. The townsmen are attended on this occasion by the serjeant-at-mace in his proper costume, bearing the ensign of the bailiff's authority in the shape of a small mace of silver. The procession commences at a place called the Old Tree, where it appears the pillory anciently stood, as it is called in old documents "the Pillory Tree." The place of execution, or rather the perquisite of the finisher of the law, is still pointed to

\* Near the church at Folkestone is a place still known by the name of the "Bail," a name connected with the court of justice, as we see by the "Old Bailey" at London. "Bailey Hill" is also the name of a barrow in the parish of Friston (*Suss. Arch. Coll.*, v. 208). See also *Arch. Cant.* ix. 64-5.

by the name of a piece of land called "the Hangman's Acre" (*Sussex Arch. Coll.*, vii. 90, 91).

An old custom at Southampton clearly takes us back to the primitive folk-moot. A procession round the boundaries used to be made yearly by the sheriffs, bailiffs, and court leet, a few days previously to which the housekeepers were summoned to attend, and a fine of one penny was imposed upon all those who did not choose to take part in the ceremony. This custom was commonly known by the name of Cutthorn, from the circumstance of the court having been formerly holden at a particular spot on Southampton Common, called the "Cuttled Thorn," now planted with trees. The grand procession now takes place only once in five or seven years, and it sets out on the morning of the second Tuesday after Easter week, anciently termed "Hock Tuesday," from the Burgate, and having made a complete circuit of the county, re-enters the town at the south-eastern gate. At the respective meer or boundary stones on the road it was formerly usual to perform various ludicrous ceremonies, called "colts," over those persons who had never before attended the procession (*Appendix to the Report of the Commissioners on the Public Records*, vol. viii., 1837, page 494).

And, lastly, London itself affords us some valuable evidence of this primitive survival. I have mentioned above that the tradition of London Stone is connected with the tradition of an open-air assembly. I am indebted to Mr. Henry Charles Coote, F.S.A., for the clue to my information under this head. In a paper read at a meeting of the London and Middlesex Archæological Society, and printed in their Transactions for 1878, Mr. Coote rescues the traditions

about London Stone from a mass of irrelevant material, and identifies "London Stone the fragment with London Stone the house of Fitzaylwin, the first Lord of London." But in the process of this identification we pass a piece of municipal folklore, as Mr. Coote aptly terms it, which to my mind leads us a great deal further back than the times of Fitzaylwin. Holinshed, the historian, tells us that when Cade, in 1450, forced his way into London, he first of all proceeded to London Stone, and having struck his sword upon it, said, in reference to himself and in explanation of his own action, "Now is Mortimer lord of this city." And Mr. Coote rightly concludes that this act was not a piece of foolish acting—it meant something to the mob who followed the rebel chief. But here Mr. Coote and I part company. I go a step further back into the past than the identification mentioned above, and place the tradition as belonging to times when the London Stone was, as we have seen other great stones were, the place where the suitors of an open-air assembly were accustomed to gather together and to legislate for the government of the city. There is some kind of traditional evidence of this fact, besides curious historical parallels to be noted later on. Thus, at the Lord Mayor's Court, the summons or calling of the defendant was orally made, and in early times was, without doubt, a substantive summons and bidding of the debtor to appear in court, and by some supposed to have been at London Stone (Brandon's *Customary Law of Foreign Attachment*, p. 6), which has been considered to be the spot where all public proclamations and general summonses were made, and the tendering and making payments of debts, etc., and the place

of meeting for merchants (Brandon's *Lord Mayor's Court of the City of London*, p. 14, note <sup>p</sup>). It is a curious illustration of, or perhaps I should say parallel to, this traditional evidence of London Stone to observe that the justices itinerant in the time of Edward I. sat at the stone cross (opposite the Bishop of Worcester's house, now Somerset Place) in the Strand. This venerable monument, which was even then ancient, is mentioned by Stow, as standing headless in 1598. The justices probably, in bad weather, sometimes sat in the bishop's house (Ritson's *Court Leets*, Introd. p. ix. *n.*). And lastly we must deal with Paul's Cross. It has been suggested above that the town crosses to be met with all over England may be identified with ancient meeting-places of the local assemblies. As a matter of history the origin of the town cross is lost in the obscurity caused by its Christian significance. But that Paul's Cross, London, was a place of assembly, there is not a shadow of doubt. A general assembly was held there in 1259, by command of Henry III. (*Remembrancia of the City of London*, p. 54, note). But beyond this, at the east end of St. Paul's Church, adjoining the cross, there was a plot of ground on which the citizens were in the habit of holding their folk-moots, and of making parade of arms. Adjoining this ground was the Clochier, or Campanile, of St. Paul's, a separate building, the great bell of which summoned the citizens alike to the manifold duties of the folk-moot and to the assumption of arms. These facts are ascertained from an important entry in the *Liber Custumarum* of London, where we find complaint made that the Dean and Chapter had illegally taken possession of this plot of ground—"appropriaverunt sibi et ecclesiæ

suæ quendam placeam terræ, in qua quidem placea Major et communitas istius civitatis debent et solent tenere Curiam suam, quæ dicitur 'Folkmot' . . . et continet in longitudine xxx. pedes, et in latitudine xx. pedes in aliquo loco, et in quibusdam aliis locis xv. pedes, et ubi minus est, viii. pedes" (*Liber Custumarum*, pp. 338, 339). This complaint was made in the 14th year of Edward II. (1321); \* and it had to be repeated so late as 1603, for there exists a letter from the Lord Mayor to the Chancellor of the Duchy of Lancaster, touching the City's right to a room of two square yards of ground, or thereabouts, at Paul's Cross, which the City had enjoyed time out of mind (*Remembrancia*, 438).

These examples from our great towns, those which have a place among the municipalities of England, too, are really very important to the present inquiry. One is apt to consider the open-air courts of country manors and hundreds as the result of mediæval or modern necessity, instead of a survival from primitive times—to argue that because their business was very often with the open lands of the district, they would naturally meet on the spot where the matter was in dispute. The first answer to this course of reasoning is that there are other considerations, already set forth, which completely answer this theory from its own

\* Stowe gives us a somewhat different story four years earlier: "King Edward the second, in the tenth year of his raigne, graunted that the saide church yarde should be inclosed with a wall where it wanted, for the murthers and robberies that were there committed. But the citizens then claimed the east part of the church yarde to bee the place of assembly to their folke-motes, and that the great steeple there scituate was to that use, their common bell, which being there rung, all the inhabitants of the citie might heare and come together" (*Stowe's Survey of London*, edit. 1598, p. 263).



standpoint. But the second, and perhaps the most telling answer from a logical point of view, is the fact that such towns as Dover and London, for instance, built on the sites of Roman cities, surrounded on all sides by the practical influences of roofed buildings, should yet have retained the early open-air meetings. Among the folklore of the inhabitants of these cities there must assuredly have been considerable traces of the ancient beliefs in the magical untrustworthiness of roofed halls—beliefs which remained extant alongside of municipal rights derived from Roman civilization, of commercial success, and of moral and political development.

## CHAPTER VI.

## OPEN-AIR COURTS IN SCOTLAND.

Orkney and Shetland—Scone—Barony of Langforgrund—  
Stratherne—Crieff—Liston—Torbolton—Dunning—Ellon—  
Hawick—Badenach—Cupar—Conan—Aberdeen—Cluny—  
Birlaw Court.

DR. HIBBERT has devoted a long and very learned paper in *Archæologia Scotica* (iii. pp. 103-210) to the consideration of the Tings of Orkney and Shetland. It is almost natural to turn to these outskirts of our island to learn most of the primitive associations of our island antiquities. These outlying lands were the first to receive the incoming of the earliest colonists, or of foreign conquerors; and they are among the last to part with the historical influences that either or both of these early inhabitants brought with them.

The main result of Dr. Hibbert's researches are summed up under three headings: (a) That the Ting was either held upon the site, or was made an appendage of the hof or temple, which was dedicated to the rites of the Edda; (b) that the religious element was taken away from the forms and customs of the Ting, after Christian churches had been established; and (c) that three species of Tings existed in these islands, namely, the Tings held for

the preservation of good neighbourhood, the circuit Tings, and the Al-ting.

It was by no means necessary that the structure of the Ting and the hof should be invariably alike. Neither was it essential that the Ting should be circumscribed by columnar stones. In short, the construction indicative of the site of a Ting can be reduced to no general uniformity; nothing was essential to it but a fence within which peace was proclaimed. The entrance to the Ting was generally on the east; and it was a special injunction in the edicts of the Scandinavians, that the laughman, in giving doom, should sit with his face to that quarter of the heavens.

Following this general description from Dr. Hibbert, let us see now what he says about the organization of the various Tings.

And first of the parish Ting. In Orkney and Shetland there existed two descriptions of parish Tings. The first bore the name of an airff, its object being the confirmation of landed inheritance according to the laws of udal succession; the second was for preventing minor breaches of peace, and for adjusting village grievances regarding trespasses on land, poundage, etc.

So extremely primitive are the duties of the Ting with reference to landed inheritance, that it is necessary to shortly notice the chief features.

After the death of a udaller, his children, or nearest of kin if he had no children, made application to the foude\* to divide the inheritance among

\* The Foged or Foude was an important personage, employed by the Jarl as a sort of steward or prefect. He presided over all the Tings of his parish, assisted by "the best men" (Dr. Hibbert in *Archæologia Scotica*, iii. 168).

them. Having called a court, the foudé caused the heirs to give up a faithful inventory, upon oath, of the whole substance left by the heritor deceased, which he divided equally amongst them, and caused a shynd bill to be written thereupon, which was signed, sealed, and delivered to the heirs. Another important law was, that no one could sell land unless it was first offered to the nearest of the seller's kindred; a right of redemption remaining for them a considerable period after the sale had been effected. For all this a Ting must be held. Also when a udaller was desirous of making a will, which could not legally be done without the consent of the udal born, the foudé was obliged to hold a Ting.

But since Dr. Hibbert wrote, some new and valuable evidence has been forthcoming.

The Attestations and Decrees of the Lawmen of Orkney go far to illustrate the nature and mode of administration of the ancient laws of the islands; and, as most of their early records have been destroyed or lost, these documents are now the more valuable. Some of them, printed in the fifth volume of the *Miscellany of the Spalding Club*, I shall now quote, "In a 'dome dempt at Kirkwall, in the Lawting,' in June, 1514, by 'Nicol Haw, Lawman of Zetland and Orkney for the tyme,' affirming a sale of land by Nicol Fraser, or Frysell, which was challenged by his brother, Alexander Fraser, it is stated, that the 'said Nicol diver and syndrie tymis come to the said Alexander, and offerit him the bying of all and haile his rychtis and his fateris heritag befor any utheris, and he refusit it all tymis; and, thaireafter, he come before the best and wirthiest in the cuntre, and diuers and sindrie tymis in *courtis* and *heid stanes*.'

"Again, it is stated in another MS., dated at Kirkwall, 1st May, 1550, that 'sein it meritable is to furthschaw ye veritie quhairthrow ye hyding thairoff generis prejudice, harm and skaith to ye righteous. Than it is yat I, ye forsaid Edward to . . . makke knawin yt I and my spous, Jonet of Ska, quhom God assoilzie, at *tyng* and *stein* diuerss days and yeris in the burght of Kirkwall, and in to landwardt quhair it effeir it, we maid it knawin yat Barnard of Kamsto and his aris had tayne and violentlie possedit four merkis land, and ane half wt ye profeits yir mony zeris pertening to my said wyffis mother, Katheren of Papley,' etc. And in a third MS., or rather a fragment of one, which appears to have been the minutes of a Sub-Foudry or Bailie Court, held in the parish of Saint Andrews, the preamble runs thus: 'Ane staine haldin at Tankarnes.' The only part of the date which remains is the words, 'fyfty iii. zeris;' but it is probable that it was 1553. Now, these extracts go to prove that, while the intimation of the sale of lands was made in Kirkwall, in the 'Tyng' or Head Court, it was also necessary, when the property lay in a landward parish, to give notice of the seller's intention at the *stein*, in the parish in which the lands were situated. And, although it may be said that the 'staine,' as shown by the last extract, simply meant the Sub-Foudry Court of the parish, yet this makes it all the more evident that these Courts had at least formerly been held at the standing stone, or Heid Stane, and that the one was so associated with the other, that a 'Court' and a 'staine' became synonymous terms" (*The Miscellany of the Spalding Club*, vol. v. Editor's preface, pp. 37-39).

This is a remarkable conclusion to arrive at, but it is quite warranted by historical analogy. The standing stone is to be met with not in one parish only, nor in one county. Quoting the above preface once more, it is stated that "In some of the Parishes and Islands a single standing stone is still seen in a central or commanding position. It may be difficult or impossible now to ascertain the purpose for which these large undressed blocks of stone were originally erected. It may have been to commemorate a victory, or to point out the spot where a warrior fell, or the ashes of a chief were interred. But, although their earlier history is shrouded in mystery, yet it is very interesting to know that in later times these standing stones became the places of public resort, where the Sub-Foudry Courts were held, and intimations relative to sale of lands and similar transactions were given, with the same view to publicity that similar intimations are now made at market crosses and church doors."

Dr. Hibbert describes the meeting-place of some of these local Tings. The place appointed for the adjudication of airffs was originally the site in which all other parish Tings were held. It was indicated by loose rubble stones, so arranged as to form a double concentric circle, in the centre of which a pile of stones was raised, to afford a seat for the judge, while the remaining part of the inner circle was occupied by the doomers. The opposite parties in the cause, and the witnesses or compurgators, stood in the outer circle. In the commencement of the seventeenth century the parish Tings had ceased to be held in the open air, a covered building having been provided for the purpose.

The next description of Tings which Dr. Hibbert explains includes those which were held for hearing weightier causes. The custom in Shetland of making the circuit of the Tings was kept up so late as the eighteenth century. In the years 1602 and 1604, Earl Patrick Stewart, as justiciary of Shetland, made his circuit of the Tings, which were situated in Sounburgh, Burray, Bressay, Walls, Aithsting, Delting, Fetlar, and Unst. The circuit ended in the middle of August, at which time the Lawting commenced. In the following year, the circuit commenced on the 9th of June, and ended at Tingwall on the 15th of July, the Lawting being held on the third day ensuing; and in 1604 the circuit lasted from the 20th of June to the 20th August, the Lawting sitting six days afterwards. When a circuit Ting was to be held, which was published by the symbol of an axe or staff being sent round to the Ting-men, the following was the order of the proceedings:—The suits were called; the Ting was lawfully fenced, and frequently the grid proclaimed; then the names of the raadmen, styled by the Scottish settlers the *rothmen*, and of the laugrett-men were called over. Deeds of court always passed in the name of the judge and assize, or the sheriff and assize.

The construction of the Tings by which the Shetland thingsokens were characterized, deserves particular notice. As superior causes were tried in them, they appear to have been formed by means of ranges of loose stones piled a foot or two high, into circles trebly concentric; while adjacent to them was occasionally to be seen a circle intended for the lesser or parish Tings, which was only doubly concentric.\*

\* Dr. Hibbert in *Arch. Scot.* iii. 180. Worsaae considers these circles to be simply burial-places (see *Danes and Norwegians*, p. 233).

At the Hill of Crucifield, in Unst, the sites of ground thus marked out are three in number. The first of these is formed by three concentric circles, the diameter of the outermost circle being sixty-seven feet, of the middle one fifty-four feet and three quarters, and of the innermost forty feet. There is a small central heap of stones in the middle of the enclosure twelve feet in diameter. About a mile from this arch is another Ting, in the centre of which is a small heap of stones; the diameter of the outermost circle being fifty-five feet, and of the central heap ten feet and a half. And at the distance of about eighty feet from the last-mentioned Ting is a third, consisting of a central heap, enclosed by more than two concentric circles; the diameter of the outermost being twenty-two feet, and of the innermost seventeen feet. In the north of the island of Fetlar, similar concentric circles formed of loose stones were constructed. They are about thirty-six feet in diameter, having a single stone in the centre.

It cannot be doubted, says Dr. Hibbert, but that these circles were severally intended to divide, in an order of precedence, the different ranks of the Tingmen who were convened. When the concentric circle was treble, the central space must have been devoted to the accommodation of the laughman, and to that of the raadmen or councillors who were with him; the large central stone, or pile of stones, being his doomstool. The interval, which was formed by the second concentric circle, was intended for the laugrett-men. The last and largest interval formed by the third concentric circle was probably reserved for the opposite parties in an action, the plaintiff and defendant,



for the compurgators and witnesses, while the populace stood on the outside.

The geographical sites of the Tings in Shetland, of which actual vestiges or traditional records remain, are explained by Dr. Hibbert in a chart (see *Arch. Scot.* iii. 182); and it will be well to more particularly notice some of the places where these local Tings met. A tradition of the Edda relates the circumstances by which, upon the extremity of a promontory into the sea, a Ting should be placed where all men should have doom. We have met with one such instance, if not two, in England. In Shetland, likewise, there is a bold promontory to be seen called Thorsness. The summit is crowned by a large and tall block of granite, which was, no doubt, revered as a Thorstein, and must have given its name of Thorsness; while in the contiguous part of the headland a Ting was erected, which still retains the name of the "Ting of Thorsness." \*

"In the Island of Ila there was fixed a large stone, seven feet square, in which there was a cavity or deep impression made to receive the feet of Mack-Donald, who was crowned King of the Isles standing in this stone; and swore that he would continue his vassals in the possession of their lands, and do exact justice to all his subjects; and then his father's sword was put into his hand; and the Bishop of Argyle and seven priests anointed him king, in presence of all the heads of the tribes in the Isles and Continent: and at the same time an orator rehearsed a catalogue of his ancestors" (King's *Munimenta Antiqua*, i. 147). Here also the High Court of Judicature sat, consisting of

\* *Archæologia Scotica*, iii. 133. See *New Statistical Account of Scotland*, xv. "Shetland," p. 98.

fourteen, to whom there was an appeal from all the courts in the Isles ; and the eleventh share in the sum in debate was due to the principal judge (*Ibid.*).

The final stage of legal jurisdiction in Orkney and Shetland was the Althing, or Lawting, as Dr. Hibbert says it is called. It was generally convened once a year, agreeably to the general laws of Norway, and in Shetland the Lawting was convened in July or August, immediately after the circuit Tings had been held. It is said that in Shetland all udallers, indiscriminately, were obliged to attend the Lawting. Although Dr. Hibbert doubts this, it should be noted that it is simply a reminiscence of what we have already seen is the earliest form of the primitive assembly. Afterwards, no doubt, in Shetland as elsewhere, it shrank into a smaller body—the “named” or chosen men. These chosen udallers, in assembling from different parts of the country, were mounted on the hardy race of animals known by the name of shelties. They first halted at the houses on the east side of the Lock of Thingwall, where persons were appointed to tether their horses and to undertake the charge of them ; for the loss and trouble of which the occupiers were repaid from the proceeds of the usual impost of *scat*—the scat of some lands in Wiesdale, the scat of Quarf, and half of the scat of Coningsburgh.

The sovereign or chief of a province was always acknowledged to be the supreme head or judge of the Lawting, and in his absence a laughman presided. As soon as the udallers of Shetland had assembled to their Lawting, the suits were called. This form continued for the three first days, and for non-appearance each person was liable to the fine of forty pounds,

Scots money. The fencing of the court followed, which act was performed with the greatest solemnity. In Orkney and Shetland the fencing was often accompanied with the proclamation of the grid. This solemn formula, which, in pagan times, no lips may utter save those of an ordsman or diviner of some sacred oracle, was still retained in Scandinavia, the only change which was made being an imprecation to the God of the Christians to punish the gridniding or peace-breaker, instead of invoking Odin, the gods, and all good men. We do not know the exact formula used in the Lawtings of Orkney and Shetland, but that so late as the year 1514 the publication of the grid was considered indispensable, a record, already quoted, of this date fully shows:—"At Kirk-wall, on Tuesday, in the Lawting, in the moneth of Junii, the yeir of God ane thousand five hundreth and fourtein yeirs. A dome dempt be me, Nicoll Hall, lawman of Zetland and Orkney for the tyme, and ane certane of famous, discreit, and unsuspect personis, of Rothmen and Rothmenisonis [raadmen and raadmen's sons] chosen the Grit ayth sworne" (Hibbert's *Description of the Shetland Islands*, p. 309).

The next circumstance which occurred in the convening of the Althing was the choosing of the assize. In the *sederunt* of the Shetland Lawting, held in 1604, the entry is as follows:—"The suits callit, the court lawfully fencit, the assize chosen, sworn and admittit." This assize was formed from the chosen men out of each district of the country that were summoned to the Lawting. And then comes the final step—the hearing of the actions at law.

Thus I have traced from Dr. Hibbert's memoir the salient features of the Althing of Orkney and Shet-

land ; and it remains to see where this Althing was accustomed to meet, for in the place of meeting we have the most important connection between modern and primitive times.

Dr. Hibbert does not say much about this. The Lawting, he says, was situated in a valley which, from this circumstance, was named Thingvöller, now corrupted into Tingwall. The actual site of the Lawting was in a small holm adjoining the north shore of a freshwater lake, the Tingaholm, as it is named, not being more than ninety feet in diameter. After Patrick Stewart, Earl of Orkney, had built Scalloway Castle, the Lawting was removed to the open field adjoining, named Scalloway Banks. But Dr. Martin, in describing "the ancient court of justice" in the Shetland Islands, supplies many important particulars of the ancient place of meeting. "It was held in Holm, in the parish of Tingwall, in the middle of the main land. This Holm is an Island in the middle of a fresh-water lake ; it is to this day called the Law-Ting, and the parish in all probability hath its name from it. The entrance to this Holm is by some stones laid in the water ; and in the Holm there are four great stones upon which sat the Judg, Clerk, and other officers of the Court. The Inhabitants that had Law suits, attended at some distance from the Holm, on the other side of the Lake ; and when any one of them was called by the officer, he entred by the stepping stones ; and being dismissed, he returned the same way. The Inhabitants have a Tradition among them, that after one had received sentence of death upon the Holm, he obtained a remission, provided he made his escape through the croud of people on the Lake side and touched Ting-

wall steeple before any could lay hold on him. This steeple was in those days an asylum for malefactors and debtors to flee into." \*

Coming now to the mainland of Scotland, from these important and extensive reminiscences of old-world days, it will be found that the examples of Orkney and Shetland enable us to recognize by comparison a great many instances of open-air assemblies which, at present, have never received attention at the hands of the historian of early institutions. The Tings of Orkney and Shetland are not new to the antiquary, as the lengthy memoir of Dr. Hibbert shows, but they have never been called upon to take their place as the pioneers of research on the mainland of Scotland, and they have never been placed in their true position in the history of the early institutions of Great Britain. The first instance to notice is of course the famous moot-hill of Scone, which has in a measure shared the associations of the coronation stone, now in Westminster Abbey, and so been preserved from that oblivion which forms a portion of the historical characteristics of the moot-hills of antiquity. It is about seventy yards from the palace of Scone, and is an oval-shaped rising ground or hillock, having on the top a flat area of about one hundred yards by sixty: this was the *mons placiti* of the Regiam Magestatem and the *Collis Credulitatis* of the Chronicles (Skene *on the Coronation Stone: Proceedings of Soc. of Ant. Scot.* viii. 70).

First let us deal with the coronation of the kings of

\* *A Description of the Western Islands of Scotland*, 1716, p. 383; see also Worsaae, *Danes and Norwegians*, p. 232. The *New Statistical Account of Scotland*, in noticing this "holm," supposes it to be "a place of defence" (vol. xv. "Shetland," p. 109).

Scotland at the stone which stood in the churchyard at the east end of the church, not far from the moot-hill.

Without entering into the traditions which have become associated with this stone, it will be sufficient, I think, to note the conclusions which Mr. Skene and Mr. Stuart have worked out so clearly in their contributions to the *Proceedings of the Society of Antiquaries of Scotland*. It was the custom of Celtic tribes to inaugurate their kings upon a sacred stone, supposed to symbolize the monarchy. The Irish kings were inaugurated on the *Lia Fail* at Tara, the *sedes principalis* of Ireland (Skene as above, p. 99; and Mr. Stuart's notes of reference). These stones were probably often enclosed in a chair made of other substance than that of stone. Thus, on a pillar at Dunfallandy, in Athole, there is a group at the top, above the other sculptures, consisting of two men (one of whom bears a rod) in chairs, with a cross between them, on what may be a conventional representation of a moot-hill (Stuart as above, p. 102). The delivery of a rod to the newly elected chief was one of the ceremonies at Hebridean inaugurations (Martin's *Western Islands*, p. 102), and Mr. Stuart thinks that this stone at Dunfallandy may preserve a picture of the inauguration of a Pictish chief of Athole, who sits on one chair, with the tanist, or heir apparent, on the other.\* On a sculp-

\* Mr. Stuart also points out that "one of the conditions of Celtic inauguration, described by Dr. O'Donovan, was the laying aside by the chief of his weapons, and the placing of a straight white wand in his hand by the Brehon of the district;" and see also Spencer's account of the delivery of a wand to the Irish captains at their election.—*Ancient Irish Histories*, p. 11 (see Mr. Stuart as above, pp. 102, 103). Perhaps the stone-chair called "Canna's Stone" in Carmarthenshire is a

tured slab, at Aldbar, near Brechin, are two figures, who occupy the same chair or bench, and who may represent the same officials of Angus. And from these important facts Mr. Stuart draws the conclusion that chairs of state must have been common among the Pictish tribes (as above, pp. 101, 102), and that the coronation stone of Scone was simply the inauguration stone of the Pictish people when Scone became their capital, and which continued in its use when the dynasty and race of the Scots become predominant (as above, p. 99).

Such then is the primitive origin of the Scottish coronation stone. For examples of the historical survival of the custom of coronation at this stone there is ample evidence. Fordun's description of the coronation of Alexander III., on Tuesday, the 13th of July, 1249, is so graphic, says Mr. Skene, that we can almost picture the scene. "And it was done that the same Earl Walter Comyn, and the whole clergy, the Earls Malcolm Earl of Fife, and Malise Earl of Stratherne, and other nobles uniting with them, immediately led the future King Alexander to the cross, which stands in the *cimeterium*; and, having there placed him in the regal chair, decked with silk cloths embroidered with gold, the Bishop of St. Andrews, the others assisting him, consecrated him king, the king himself sitting, as was proper, upon the regal chair—that is, the stone—and the earls and other nobles placing vestments under his feet, with bent knees, before the stone. And, behold, everything being completed, a certain Scotch mountaineer, suddenly kneeling before the throne with bent head, saluted the king in his

parallel instance to the Scotch stone (see Wirt Sikes, *British Goblins*, p. 362).

mother tongue in these Scottish words: Benach de Re Alban Alexander, Mac Alexander, Mac William, Mac Henri, Mac David, and thus, repeating the genealogy of the Scottish kings, rehearsed them to the end" (Skene as above, p. 73).

Other coronations had the same formula as this, and it is therefore needless to repeat the story. Here we have the open-air assembly engaged in one of the most important acts—the election of their king. It is true that we lose sight to some extent of the assembled crowd on the Mount of Belief, "gazing at the solemn scene" (Skene as above, p. 73) in the glare of the ceremonial surroundings; but with such a foreground, with the blue sky to be witness of the scene, one can scarcely doubt that the people were present, ready to say, "Nay, nay," or "Yea, yea," if there had been good cause for so doing.

But besides the coronation of kings of Scotland on the coronation stone, there were the open-air parliaments on the moot-hill. If the first is a relic of Pictish primitive life, the second is a relic of Saxon primitive life—at least, such it appears to me. The ethnological origin, however, of these institutions does not now concern us, and our only care is to record the examples which the pages of history have preserved. Robert II. was crowned at Scone on the 26th of March, 1371, and on the following day convened the prelates, earls, barons, and nobles before him, "the king sitting, as use is, in the royal seat, upon the mount of Scone." On the 18th of March, 1390, Robert III. held a parliament at Scone "upon the mount of Scone." These parliaments held at Scone consisted, Mr. Skene tells us, of what were called the two estates of Scotland, viz. the barons and higher



clergy. Thus, in a parliament held at Scone in 1303, the expression is "congregatis et comparentibus prelati et proceribus regni;" and of another, held at Scone in 1285, Wynton says (vii. c. ix.):

"Alexander the thryd oure king  
Gert mak at Scone a gret gadryng,  
The sextene day eftyr Pasce,  
Quhair thare the statis gadryd was."

In 1209 King William the Lion held an assembly of the prelates, earls, barons, and frecholders of Scone, in which it was ordained "that the holy Scottish Church, the holy religion, and entire clergy, should be maintained, with all their rights, liberties, and privileges, in quiet peace, and always under royal protection." The assembly recorded in the Pictish Chronicle in 906 was obviously of this nature. It was held on the Mount of Belief, and there Constantine the king, and Cellach, Bishop of St. Andrews, issued an ordinance for the laws, faith, discipline, and rights of the Church.

These instances taken from Mr. Skene's paper in the *Proceedings of the Society of Antiquaries of Scotland*, already mentioned, really supply us with all the material that is necessary to the present purpose. The moot-hill of Scone, called the Mount of Belief, was the scene of open-air assemblies under the kings of Scotland in early times, and in comparatively late times. It is no use lamenting that the old formulæ and ceremonies have not been preserved—the probable "fencing" the court; the assembly of the people as well as the assembly of the nobles—because it is not in the nature of survivals to appear in all their early forms, to be an exact reproduction of

their primitive originals. And, moreover, the moot-hill of Scone was not a local moot-hill, but the national one. A nation, even though it be a very early development in the history of civilization, has outgrown a great deal of the old primitive life of former times. It has been built up by the aggregation of smaller communities, and the government of this new community must, to a very great extent, be the product of the extraordinary circumstances bringing about the fusion, instead of the slow development from one stage of primitive life to another, and finally to the early stages of civilization. The moot-hill of Scone, therefore, is historically a very important survival among the open-air assemblies of Britain; it corresponds to those open-air meetings of the Witan of England, which took place, as we have seen, only by fits and starts, except at a time when we can scarcely distinguish the national Witan from the local Witan of the shire where it assembled.

Passing from the moot-hill of Scone, which is so valuable in attesting the survival of primitive institutions where we might least expect to meet with such a phenomenon, namely, with the central sovereignty of the kingdom, we come to the more local institutions—those appertaining to the baronial chieftains and lesser fiefs. In Scotland we meet with no such territorial institutions as the shire and the hundred of England; the open-air courts of Scotland are entirely incident to the baronial franchise and manor.\*

The following account of the court of the barony of Langforgrund, held in 1385, I take entirely from a most curious set of documents mentioned in the Reports of the Historical Manuscripts Commission.

\* See Innes' *Scotch Legal Antiquities*, p. 97.

The documents are extremely valuable and almost unique, and I do not hesitate to give a verbatim transcript of the Commissioner's description of them:—

“Among the lands belonging to Sir Patrick Keith Murray are those of Easter Fowlis in the Carse of Gowrie, which formerly belonged to the Lords Gray. The old title deeds of these are unarranged, and mingled with them are masses of accounts and letters on family affairs of comparatively recent date. From these, however, are selected a few documents of considerable interest, the first being of a class almost unknown in Scotland. In form it is a long, narrow roll of parchment, of separate pieces stitched together, and it contains the record of four barony courts held by Sir Patrick Gray, as Superior of the Barony of Langforgrund, on a moot-hill or mound, called in the record the ‘hund hil’ of Langforgrund, in the year 1385. It is valuable as an example of the formal procedure of one of these feudal courts, with a final judgment; and for preserving specimens of the vernacular Scotch of the Carse of Gowrie at a very early period.

“The first Court was held at the hill on Tuesday, the 16th of January, 1385. The Court being fenced, and the authority of the Serjeant admitted, he was demanded if he had executed the precept for summoning the tenants and parceners of Lytylton and Lowranston of Achlyrcoman to appear, who answered that he had done so, and read to the Court his citation as follows:—‘I, Robyn Jopson, sergand, lauchfully made and ordanyt of the chef part of the barony of Langforgund (*sic*) throu Sir Patrick Gray, lord of that ilk chef part of that ilk barony in the sheradom of Perth, somonde at the chef plaz of the teneindri of

Lytilton and Lowranstone of Ochtyrcomane within Lytilton, Sir Thomas the Hay, of Lowchqwhorwart, and Dam Jonat, his spouse, throw reson of his spouse, Sir William of Cunygham, and Dam Margaret, his spouse, Elezabeth of Maxwel, Alexandir of Kocborne and Katerin, his spouse, for reson of his spouse, and Dugal McDuel, and Eufam, his spouse, for resone of his spouse, the Wedynysday, the xvi. day of the moneth of Nouember, that thai apere lauchfolly at the Hundhil in Langforgrond, in the sheradom of Perth, to Sir Patrick Gray, lord of the chef part of Langforgonde, and orlard of the landys of Lytilton and Louranzstone of Ouchtircomon, thys tewysday that nw ys the xvi. day of this moneth of Jenuer, to schaw how and for qwat caus, throw qwat chartir or ewydens thai halde or clemys to hald the landys or tenandris of Lytiltone and Lowranzstone of Achtyrcoman of hym, and of his chef parts of the Barony of Langforgond within the sheradom of Perth, and to do this day efter my somonz for yhour haldyng as the law and ordyr of law askys in yt selfe, yat I haf mad this somondys in this maner as I hafe recordyt laufully, lo here my witnez Robyn Jonson of Balligyrnach and Richard of Pentland, William Scot and Androw Yhong.'

"None of the parties appearing, the Court decerned by the mouth of Robert Laurenson, then Dempster of the King's Court, as well as of the Barony Court, that the Serjeant should levy a distraint from each of the tenants not compearing, of the value of six cows, and that they should again be summoned to a second Court at the Hundhill to be held on Saturday, the 3rd of February, there to show by what right they possessed the lands in question.

“On that day the Court was constituted with the same formalities as before, and the Serjeant’s citation was read and recorded, but the parties failed to appear. The Court again ordered a distraint of the like value of six cows to be raised, and a fresh summons to a Court to be held at the Hundhill on Tuesday, the 25th day of February.

“On that day a third Court was held with the like result, and the parties were ordered to be cited to a fourth Court to be held at the same place on Thursday, the 8th of March.

“On that day accordingly, a fourth Court was held at the Hundhill by Sir Patrick Gray, at which Sir Thomas Hay appeared and pleaded that he ought not to be held liable in the fines levied for his previous non-appearance, and Sir Patrick of his special grace passed from the question thus raised, and proceeded to ask Sir Thomas by what title he claimed to possess his part of the lands in dispute, who answered that he had no charter thereof, nor did he know on what grounds the claim of the coparceners rested, but he requested a delay of fifteen days before the giving of judgment, which Sir Patrick was pleased to grant. None of the other parties appeared, and after the whole proceedings in the record had been read over, the following deliverance was pronounced :—

“‘That the Curt fullery awisit with the consale of mony gude men thair beand, decretyt that the lande of Lytilton and Lowrandston in Ouchtercomane aucht to dwell yn to Sir Patrick Grayis handis, to the tyme that it was lauchfully recouerit fra the forsayde Sir Patrick othir with trefy or with proces of lauch, the doune of qwhilk decrete the forsayde Sir Patrick delayt graciously deferryt tyl his lauchfulle day next eftir

pas, to prowē gif the forsayde personaris walde seke hym othir with tretys grace or lauch, and assignet thareto, tewisday the xxi. day of Auryll next for to caus his dome to procede and to be giffyn gif thai come noucht, and that he made manyfest in playne Curt.'

"At the final Court, held at the Hundhill on the 21st of April, 'throw Sir Patrick Gray, lorde of the chefe barony of Langforgonde, mony nobillis thare beande, with consale of tha nobillis, and of his curt, he wele awisit that the forsayde personaris contenynt in his proses souch hym nother with grace, lufe, na with lauch, to delay his dome na his proces, with consale of the forsayde curt and noblis that thare was, throw the moutht of Robert Louranson than demstare of oure lord the kingis curt, and of his, it was giffyn for dome that the Lytilton and Lowrandston of Ouchtercomane suld dwell in the handis of the forsayde Sir Patrick and his ayeris, quhill the tyme that all the forsaydis personaris and all thaire namys nemmyt sulde recourir the landys othir be grace trety or proses of law, and thus endyt the proces.'

"This record appears to be especially valuable for its fulness of detail, and as almost a solitary specimen of the proceedings of a Barony Court in Scotland in the fourteenth century. It will be observed that the Court was held on a hill or mound—the moot-hill of early Celtic times—and that the Baron was attended in his little Court by the same officers as figure in the Courts of the Sovereign, while the especial character of the proceedings is that of their strict adherence to legal formalities" (Hist. MSS. Com., 3rd Report, p. 410).

Thus far the Commissioner : but what innumerable suggestions crowd upon the student of primitive institutions ! The court is fenced and the authority of the serjeant formally admitted, just as the courts of Saxony were fenced by a dialogue between the judge and the prosecutor, and the authority of the Fröhner formally admitted. The dempster is there to proclaim judgment, just as the deemsters or doomsmen of the north proclaimed the dooms in primitive times. The punishment of distraint of cattle takes us to those primitive forms of legal remedies, before society had progressed towards a complete administration of justice, when the commonwealth, as Sir Henry Maine observes, interfered through its various organs, rather to keep order and to see fair play in quarrels, than to take them, as it now does, into its own hands for adjudication (*Early History of Institutions*, p. 261). The lord and his council serve to remind us of the once existent primary assembly ; and, finally, the meeting on the “hund-hil” supplies the remaining link of a most magnificent survival from primitive times. This survival has indeed found its way into the statute law. In one of the early acts printed in Mr. Cosmo Innes’ edition of the first volume of the *Acts of Parliament of Scotland*, the proceedings of the barony court of Langforgrund are generalized into legal formulæ, and without transcribing the whole act, which is extremely curious and valuable, the following quotation must find a place here :—

“THE MANER OF THE JUSTICE AYR.

“Fyrst call the soytoure, syne rede the justice powere, syne fens the courtis, than tak the dempstare

ande gare him be suorne, syne call the soytis agane, ande jlka man twys, and jlka lard ande his soyt, gif ony be absent amercy the absent. And gif baith be absent amercy jlk ane be thame self. Ande that beand don gare call the breuis ande the pertys summond gif ony be. . . . Ande at the said day at the partyng of jlk air the justice shal at the market cross gare blav out on him thris with a blawing horne" (see pp. 343, 344).\*

The spot is still pointed out where the steward of the king's estate of Stratherne, in Perthshire, was in the habit of holding his court, after the earldom was forfeited to the Crown in the year 1320. The spot referred to is a circle about twelve yards in diameter, which is situated in a field belonging to Mr. M'Laurin, of the Broich, and which was surrounded with a low wall of earth and stone. It is marked out by a blasted tree which stands in the middle of it, and many are the tales which are told of those who were arraigned, and tried, and condemned at this dread tribunal. The Gallows Hill is a little to the west of the town of Crieff, adjacent to a street which bears the same name. The fate of those who were once arraigned and brought to trial was looked upon by their companions as being already sealed; and "the kind gallows of Crieff" became a by-word among those who deemed it very likely that it might put a period to their own existence. Sir Walter Scott alludes to this celebrated gibbet in vol. i. of *Waverley* (*New Stat. Account of Scot.* x. 497, 498).

\* The proceedings at a barony court are very well described in an old satirical poem, "The copie of a Baron's court newly translated by What-you-call-him, Clerk to the same." (By Patrick Anderson, n.d. *temp.* Charles I.) Reprinted at Edinburgh, in 1821, with notes.



It is a common opinion that the name of the town and parish of Crieff is derived from the Gaelic word *Crubha*, a tree. Close to the Roman road, and near the field where the stewards of the king's estate of Stratherne were wont to hold their courts, stands a large upright stone, which is understood to have been either a memorial of some Roman event, or the remains of a Druidical circle. It is well known that many of these circles once existed in the neighbourhood, though most of them have been removed for agricultural purposes. There is one, or at least part of one, in the park in front of Fern-tower House. The largest and several of the smaller stones of the circle are still remaining, and the spot is remarkable for more than Druidical rites.

In former days the principal fairs in Crieff were opened with considerable pomp by the Duke of Perth in person. He held his court (often in the open air) in the morning, with a view to make the necessary arrangements, settle differences, and provide against the commission of outrages among the community. He afterwards rode through the market at the head of his guard, and proclaimed his titles at the different marches or boundaries of his property. Many of the feuars are bound by their charters to provide a given number of the halbert-men that composed the guard at the fairs; and it is not many years since their services were dispensed with, the halberts still being preserved in the armoury at Drummond Castle (*Ibid.* x. 503, 525).

Now these facts represent very valuable vestiges of the old place of meeting at Crieff. But they are only the preface to still more valuable evidence. Turning to the Historical Manuscripts Commission

again, we gather some more information about this ancient steward's court. The hillock was called the "stayt," or "schat," of Crieff. There are still extant several documents illustrating the mode of proceeding in these courts, and I shall transcribe for these pages the facts mentioned by the Commissioners (see Historical Manuscript Commission, 3rd Report, p. 418). One of these is a notarial instrument, dated the 12th of May, 1475, showing that James Heryng, of Lethendy, appeared as prolocutor for William Talzour before Sir William Murray, of Trewyne, his depute, in the Court of the Stewartry, declaring to be false a certain judgment given by the mouth of William Reid, dempster of the said court, as follows:—

"I, James Heryng, for spekar for Vylzam Talzour, says to ye Vylzam reyd, dempstar of the stewart curt of Stratherne, that the dowme that thow has gyffyn with thi mowtht sayand that the brocht that Master Thomas of Mureff fand is of vayll and the brocht that I, James Heryng, for spekare for the said Wylzam Talzour fand in the sergeandis hand of the said curt in the name and on the behalf of the said Vylzam is of na wayll is false, and rottyn in the self, because it is giffyn expresse in the contrare of the curse of comone law, protestand for may rasonis to schaw quhen myster is, and thar to sergeand of the said curt ane brocht in thi hand and ane brocht to folow my brocht and racontyr wyth in the term of law." Whereupon the said James Heryng, prolocutor of the said William Talzour, asked in name and on behalf of the said William, from the said judges, the said judgment to be enrolled in presence of the said court, pledge and re-pledge, with the foresaid processes of the said court, and all and

sundry these things to be read in open court before the said judges or the said court should rise, and asked the said judgment and the said rollment to be sealed with the seal of office of the said judge, and to be delivered to the said William, and offered the said William to procure, with instance, a seal to be affixed for closing and sealing of the said judgment, and all and sundry things which to the declaration of falsing the said doom could belong in order of law.

Another is a notarial instrument taken in the court of the stewartry of Stratherne, held at the stayt of Crieff, May 12, 1475, at the instance of the said James Heryng, and as prolocutor of William Talzour, and in presence of Sir William Murray of Tullybardine, Knight, steward of the stewartry of Stratherne, and John Murray of Trevyne, deputy steward, by which he asserted and found a bröch in the hand of the serjeant or officer of the court that Master Thomas Murray, alleged procurator for John Strang in a certain cause moved between the said John Strang and the said William, could not be lawful procurator, nor was the said William Talzour bound to answer the said Master Thomas in a lawsuit, nor could the said Master Thomas judicially pursue the said William, because the said Master Thomas was not lawfully constituted procurator for prosecuting or pursuing the said William, neither was security found for the said William by the said John Strang, because he was not constituted procurator but by a certain roll shown in Court, and not by any procuratory written under the proper seal of the said John, nor under a seal procured, with other points of necessity required for procuratory.

On the execution, in 1437, of Walter, Earl of

Athol, whom King James I. had created Earl of Stratherne for his lifetime, the earldom was annexed to the Crown. The jurisdiction of the stewards of the stewartry of Stratherne was extensive and important, and on the office being granted by James III. to Drummond of Cargill, the Morays became desirous of being released from such power in the hands of a neighbour, and the laird obtained a charter from the king in 1473, with a fresh erection of his lands into a barony, and an exemption of them from the jurisdiction of the stewards. Soon after, Murray of Tullibardin was appointed steward, when a fresh charter of erection and exemption was procured from the Crown in 1482, and Umfra Moray took instruments thereon in the stewart court in presence of Sir William Mureff, the steward, and withdrew his suit, "*levavit rectam suam de predicta curia*," which was transferred to the Court of the King's Sheriff at Perth. The claims of the stewards were not easily overcome, however, for Lord Drummond having become steward, he summoned Moray again to appear in his courts; on which the latter presented his petition to James IV., calling upon him to discharge the steward from all such claims in terms of the exemption contained in the royal charters (*Hist. MSS. Com.*, iii. 418). This persistence in the keeping up of the old local rights is very instructive to the student of the present subject. It gives a very powerful aid to the belief that local institutions have died out only after a severe struggle, and not without leaving most important vestiges of their existence behind.

The original records of the Temple Courts held at Liston in January and February, 1459, by Henry Levyingstoun, Preceptor, also take us over similar

ground to the preceding. The first is dated 24th January, 1459; and the second bears that the court was fenced, the suits called, and an assize chosen. The nature of the business and the mode of its transaction will be seen from the minutes:—

“*Jacobus Mathei recitavit plegium quem inuenit Johannes Wilkison, vizt. quod debet arare et occupare predictam terram quam serjiandus arare inhibuit et illam arare voluit, cum periculo juris.*”

“*Dominus petiit in curia ab Alano Ricardi de seruicio sibi debito pro terris de Medhope, qui Alanus per suum procuratorem petiit a domino mature auisari, qui remotus de curia et mature auisatus, intrans dixit per dictum suum procuratorem se debere seruicia in suis curiis de Liston, et illa velle perimplere.*”

“*Johannes Bissate in amerciamento curie propter disturbiam et querelam injuste factam in curia.*”

“*Penes plegium quem inuenit Johannes Wilkison, ordinatum per assisam quod Thomas Daw illa die ad quindenam ut in propria curia probabit legitime quod Johannes Wilkison dedit consensum et concessit ad partitionem illius terre penes quem plegius fuit inuentus.*”

“*Braciatores sunt in uoluntate domini*” (see *Historical Manuscripts Commission*, iii. 408).

The court hill was reserved in many grants of land in Scotland. It was the right of the superior to assemble his vassals and exercise his other prerogatives on it, and this legal reservation allows the introduction of an important feature into the present inquiry.

So late as the reign of James IV. we meet with an important reference to this hill. In 1511 a charter of the barony of Torbolton ordains the “court

hill to be the principal messuage thereof, where the seazing shall be taken."\* Of this hill of Torbolton we get some information from the *New Statistical Account of Scotland* (vol. v., p. 747). "The hill" or "Tor-bol" is a beautiful green knoll surmounted by an artificial summit termed the "moat" (mote). The hill has, in different states of society, been used for very dissimilar purposes. It was a place of worship. One of those implements of stone termed celts was dug up when cutting a drain in a field about a mile to the north-west of the hill. The form of the hill and its moat, truncated at the top, adapted it admirably for the administration of justice; and across a small brook, on the summit of an elevated piece of ground to the south-east, is a place still called "the Gallows Hill."

At Dunning there exists the remains of a rath or dun, from which it is probable the town took its name. A remarkable fact brings the importance of this somewhat more prominently forward. In a charter, dated 13th February, 1380, granting the meadow of Dunning and other lands to John Rollo, is a clause by which the Earl of Stratherne reserves the "Cathedra comitis," or chair on which he administered justice, and the place of the "domus capitalis" of the lands of Fyndony "ex parte orientali cathedre supradicte."†

Ellon, in Aberdeenshire, appears to have been, from the most ancient period to which records extend, the head place of jurisdiction of the earldom of Buchan. Among other proofs in evidence of this

\* *Archæologia*, xxii. 201. See also Privy Seal Register, quoted by Chalmer's *Caledonia*, vol. iii. p. 455; *Gent. Mag.*, September, 1832, p. 222.

† See Hist. MSS. Com., iii. 406; *Gent. Mag.*, September, 1832, p. 223.

point is a charter now in the possession of Captain Ferguson of Pitfour, granted before the year 1206, by which Fergus, Earl of Buchan, in conveying certain lands to John the son of Uthred, makes him bound to yield, along with his other vassals, suit and presence thrice a year at the earl's head court of Ellon. The court in question was held in the open air. Its sessions took place on a slight eminence, rising up from the left bank of the Ythan, about eighty or ninety yards below the site of the bridge of Ellon. This eminence bore anciently the name of the moot-hill of Ellon; but was commonly called in later times "The Earl's Hill." It is specially mentioned in the charters of the Buchan family (*New Statistical Account of Scotland*, xii. 903).

At the upper extremity of the town of Hawick, in Roxburghshire, and overlooking the main street, is a relic of great antiquity, which is usually denominated the "Moat" (Mote). This consists of an artificial mound of earth, which is circular at the base, while it rises in a conical form to the height of thirty feet, and is almost flat upon the top. It contains about 4060 cubic yards, whilst the circumference is 117 feet at the top, and 312 at the base. Like tumuli of a similar description which are to be met with in other places, it is supposed by some to have been used at a distant period as a court for the administration of justice, and by others as a place of assembly, where the chiefs of the district held their deliberations on public affairs. The probability is that it was employed for both these purposes, and this supposition, whilst justified by local tradition, is strengthened by the authority both of Pennant and Sir W. Scott (*New Stat. Account of Scotland*, iii. 392).

Sir Alexander Ramsay was acting in his capacity as sheriff of Teviotdale, and holding a court upon this hill, *temp.* David II., when he was seized by Sir William Douglas and thrown into prison.

A court was held by Alexander Stewart, lord of Badenach, the king's lieutenant, in 1380, to which he cited the holders of certain lands in the regality of Badenach to appear and produce their titles to their lands. This court was called to be held "apud le standand stanys de Ester Kyngucy in Badenach," or, as the place is elsewhere called in the same record, "de la Rathe de Kyngucy estir" (*Chartular. Morav.* p. 184).\*

The magistrates of Keir, in Dumfriesshire, held their court on the "Court Knowe" (*New Stat. Account of Scotland*, iv. 467).

A disposition of certain lands granted in 1681 by James, Earl of Airlie, proceeded on an appraising "led in a court holden on the Beitchell Hill of Cupar, in Angus, being the ordinary court-place of the regality thereof" (*Historical MSS. Com.*, ii. 187). It appears from the rental book of the Cistercian abbey of Cupar-Angus, published by the Grampian Club, that the court of the Bishop was held at Lauchil (Law-hill) in 1460 (see p. 130).

Mr. Stuart, in the second volume of his *Sculptured Stones of Scotland*, printed by the Spalding Club, has collected some instances of open-air courts from the registers of abbeys and other records, and, using the information thus derived, we have the following instances:—

On the hill of Conan, in the upper part of the

\* Quoted in Stuart's *Sculptured Stones of Scotland*, ii. p. xli. See also *Archæologia*, xxii. p. 200; *Gent. Mag.*, September, 1832, p. 223.



parish of St. Vigeans, in Forfarshire, is a large and prominent sepulchral cairn. From an early period this cairn has been the seat of courts and judicial meetings. Thus, in 1254, a dispute having arisen as to the boundaries of the lands of Conan and the lands of Tulach, the parties met on the day of St. Alban the Martyr, "super Carnconnan," when the dispute was compounded (*Register de Aberbroth*, i. 322). A charter by the abbot, of certain lands in the territory of Glammis, in favour of John Lyon, dated in 1375, takes the latter bound to pay "unam sectam curie nostre capitali apud carnconan;" and in 1409, when Alexander of Ouchtirlowny was served heir to his brother William in the lands of Kennymekil, in the parish of Kincoldrum, the inquest was held by the bailie of the abbot's regality "apud Carnconane" (Stuart as above, ii., p. xli.).

In 1380 the Bishop of Aberdeen held a court for the production of the title-deeds of his vassals claiming to hold their lands of the see of Aberdeen "apud montem capelle beati Thome martyris juxta canoniam de Aberdon." This is a natural gravelly hillock called "Tillidron," which is still nearly entire. It is situate a little to the west of the cathedral, on high ground overlooking the valley of the Don and the surrounding country (*Registr. Episcop. Aberdon*, i. 143).\*

In the year 1298 a court was held by the abbot of Kelso "apud pontem de Eterig" (*Liber de Calchou*, p. 179).

In the year 1398 the Bishop of Moray held a court "apud Pontem Episcopi," when a trial by jury took place (*Register. Morav.*, p. 212).

\* See also *Gent. Mag.*, 1832, ii. p. 222.

In the early records of the Sheriff Court of Aberdeen are many instances of courts held at different localities throughout the shire. In November, 1504, the sheriff held a court, when a cause was continued to the first day of the ensuing month of March, to the Sheriff Court of Drumblait, "to behaldin at the furd of Scleoth." In February, 1557, the court of the sheriff was held "apud le Standland stanis de Huntlie." In May, 1557, the court was held "apud crucem fori ville de Turriff."

The courts held by single stones in England have their parallel in Scotland. Thus "le graystane de Cluny" was the spot where the vassals of Cluny paid their suit. The Earl of Mar held three head courts at the "stone of Migveth" in Cromar (*Antiq. of the Shires of Aberdeen and Banff*, Spalding Club, ii. 48, iv. 716).

In 1349 William, Earl of Ross, Justiciary of Scotland, on the north of the Forth, held a court to try a cause against William of St. Michael, accused of deforcing the officers of the Bishop of Aberdeen. The process narrates: "Quia specialiter requisiti per dominum nostrum regem et locum suum tenentem ad sustinendum et protegendum patrimonium regium ecclesie Aberdonensis." "Comparuimus cum nobilibus quam plurimis de consilio domini nostri Regis et nostro ad unum diem legitimum per juris ordines ordinatum apud stantes lapides de Rane en le Garuiach" (*Reg. Episcop. Aberdon*, i. 79).

The next instance I have to speak of is the Birlaw Court. Sir Francis Palgrave has noticed the important place which this court occupies in the early history of the legislative functions of the popular communities. "The laws of Burlaw, or Birlaw," he

says, quoting from Skene's *de Verborum Significatione*, "were made and determined by the neighbours elected by common consent, in the Burlaw or Byrlaw Courts, wherein knowledge was taken of complaints between neighbour and neighbour, which men, so chosen, were judges and arbitrators. Until the recent devastation in Sutherland," he continues, "the clans settled all questions relating to the pasturage of their glens, by a jury composed of the most ancient inhabitants, and constituting a court of the same nature" (*Hist. of Eng. Commonwealth*, i. p. 80).

Now, all this is extremely primitive: it is another example of the legislating agricultural community which I have already noticed with reference to the English manors, and in another chapter I shall deal with the Byerlaw Courts of northern England. The Birlaw Court of Scotland, too, like the English manor, met in the open air. This I learn from some highly interesting accounts given in the *New Statistical Account of Scotland*: Till the middle of last century, there was visible, on the east of the present school-house at Whitsome, in Berwickshire, a kind of mound—the Birle Knowe or justice court of bygone days. Thither the villagers usually repaired, to submit their petty grievances and ask redress; and there the Birliemen, after hearing parties, pronounced their cheap and sapient decisions (see vol. ii. p. 172). At Yester, in Haddingtonshire, the whole associations of the Birlaw Court are of the most primitive nature. There the "feuars" meet every two or three years to choose two bailies and a committee of five, by whom the affairs of the village are managed. In ancient times the Marquis of Tweeddale's factor (who held the office of baron bailie), and the two bailies

chosen by the feuars, met three times a year at the Cross to settle disputes and try delinquents. The existence of this court (which was called the Birla or Boorlaw Court) accounts for the following characteristic passage in Sir John Sinclair's *Statistical Account*: "There is not one lawyer or attorney in the whole parish; and the people make it their study to keep their affairs as much out of the hands of such men as possible." The Boorlaw Court had a constable to enforce their orders, and this functionary still remains in office. The punishment usually inflicted by the court for misdemeanours was a night's confinement in the Black Hole or the *Jougs* at the Tron. The jougs were pieces of wood fastened round the neck of the culprit, and attached to an upright post, which still stands in the centre of the village, and is used for weighing goods at the fairs. Here the culprit stood in a sort of pillory, exposed to the taunts and missiles of the villagers (*Ibid.*, vol. ii. p. 166). There was also a Birley Court at Crawford (*Ibid.*, vol. vi. p. 337). Dr. Robert Chambers describes the Birlaw Court at Galashiels in his *Picture of Scotland* (i. 135, 136). This Birlie Court was held *sub dio* at the Cross every Saturday, and it was the tribunal before which were determined all matters of property and trespass within the barony. Six Birliemen were chosen to act as a sort of jury throughout the ensuing year.

I cannot pass away from the rich stores of early historical life which Scottish institutions present to us without mentioning the following very curious instance. It is not exactly on all fours with the other types that I have enumerated, but it so thoroughly represents a primitive period of local institutions that

it finds a most appropriate place here. We shall find, later on, that this baronial code of laws has a parallel in some codes of village laws to be met with in northern England and in Scotland—a parallel which places the Scottish Baron Court well within the circle of primitive life.

Among the large masses of documents belonging to Lord Wharnccliffe, and in the hands of his agent at Dundee, there is a MS. volume entitled *Court Book of the Baronies of Newtyle, Keillours, Cowty, and Bendochie*, begun September, 1725, when Patrick Grant of Bonhard, Baillie, held his court at the mill of Newtyle, and at which Mr. Charles Rattray, of Gelliebanks, produced a letter of bailliary and chamberlainry, granted by Anne, Countess of Bute, in his favour. The courts seem ordinarily to have been held at Haltoun and Newtyle, and the proceedings illustrate the condition of agriculture in the district, and in some measure bear on points of social economy.

“In a court held on 8th November, 1725, certain Acts were passed and recorded, with a direction that they should be read over once or twice in the year, when the tenants should be convened in greatest number. The Acts had the following heads:—

“1. Act anent commonties.

“2. Act anent planting and cutting of trees and breaking of enclosures.

“3. Act anent the milnes and farm meall.

“4. Act anent the moss.

“5. Act anent breaking of enclosures.

“6. Act anent vagrant persons. The tenants were prohibited from admitting any person into their grass-houses who have not a visible way of living, and are

not of good fame, and bring not a sufficient testimony of their good behaviour.

"7. Act anent good neighbourhood. The tenants in use to have common herds for sheep and cattle are not to take on them to separate their flocks, or refuse to join in the common charge of keeping herds, and that they have their respective proportions of grass, meal, and teathing of their own field, according to their proper shares, under the penalty of ten pounds toties quoties.

"8. Act anent the meadow.

"9. Act anent sward ground.

"10. Act anent smyddies.

"11. Act anent stipends.

"12. Act anent biggins.

"13. Act anent the tenants—attending courts, etc.

"14. Act anent sowing of pease.

"15. Act anent complaints and assessments.

"16. Act anent the disposal of corns.

"17. Act anent millars.

"At the court which followed this one, other acts of a like nature were passed, and bear to have been made at the instance of the Countess of Bute, 'and sanctioned by the tenants of Rosehaugh's Estate in Perth and Forfar.'

"One of the additional Acts thus enacted is against public-houses and offices not authorized, and provides 'That none presume to set up an alehouse, brew or vend ale or any other liquors, neither set up smiddies or exercise the smith's craft, nor set up malt barns or make malt, but by the special allowance or approbation of the master; and when any persons are so authorized and appointed to exercise these different trades, that all the inhabitants of the barony be ob-

liged, as their occasions require, to employ them ; and the brewers, smiths, and maltmen of the barony shall be preferred to all others ; they in their respective offices giving due service, attendance, and work, to those of the barony who employ them. The penalty of the possessors or tenants not employing them shall be 40s. Scots, and the penalty of the brewers, smiths, and maltmen not doing faithfully their parts shall be 10*l.* Scots, besides the damages.'

"Others are 'For encouraging the closing of grounds,' and 'For encouraging and regulating the spinning of yarn'" (Hist. MSS. Commission, v. 623).

## CHAPTER VII.

## TRADITIONAL AND PHILOLOGICAL EVIDENCE.

Historical Value of this Evidence—Allusions in Old Writers—  
In Folk-tales—Kingston—*Shire-moot*: Shire Oaks, Nottinghamshire, Staffordshire, Shyrack, Sherrieff Muir, Shire Stones, etc., Town Names—Hundred-moots—General Value of the Evidence of Open-air Shire and Hundred Moots—Some Circles of Stones—Moot Barrows—Moot-Hills—Hill of Banners—Place Names connected with Moot-Hills—Place Names connected with Tingwalls—Courts of Ridings—Hustings Court—Field Names—Trees.

WE have now seen what the historical records of the country can produce in the shape of evidence of the primitive open-air assembly. And undoubtedly it is true that the extent and quality of the evidence establish a very firm basis indeed, upon which to erect a still more extending group of evidence. For it is to be observed that isolated instances dotted here and there over the country, though assisted by the fact that a thousand years of historical progress have passed over them without obliterating them, are not sufficient of themselves to establish a primitive phase of historical life. The argument would be a powerful one; but with so many disturbing influences, arising chiefly from the all-important fact of a Roman conquest and occupation, it could not be complete. There would still remain the strong inference that, after all, many of these examples might be the product



of quite a different historical influence than that of primitive life. There is still the strong argument that of all the more important local institutions of modern Britain, the hundred only has preserved a few historical survivals of its open-air assemblies. What has become of the primitive shire-moot, of which early instances of open-air meetings have been already noticed? What has become of those other hundred-moots not included among the historical survivals? What has become of the village-moot which belonged to the old agricultural life? But now that it becomes possible to make the historical evidence a logical basis upon which to found a traditional and philological evidence, many portions of our broken picture are restored. We meet the primitive shire-moot and the hundred-moot in a more extended field of evidence; here, too, we meet with instances of other jurisdictions which the primitive institutions of the land must have recognized. We get such a mass of evidence together—some going direct home to the question in hand, some proceeding by more circuitous routes, but all in the same ultimate direction—that the only possible comment upon it is, that it is very nearly complete; and the only possible conclusion to derive from it is, that it establishes all that is sought to be established.

There are many traces of the prevailing popular opinion that many courts of legal jurisdiction in this country were held in the open air, although nowhere have I been able to discover that the true historical significance of the custom has been grasped by any writer.\* Shakspeare's "Public Place near the city

\* It may be well perhaps to quote some examples of this:—"It would be curious if it should turn out that those monuments, which our antiquaries of last century named Druids' circles, were places where

gate," in *Measure for Measure* (Act v. sc. 1), seems to be a reflection of it—an application of ordinary English custom to ordinary foreign customs. The Lord Chief Justice seems to act judicially in a London street in *2 Henry IV.* (Act ii. sc. 1);\* and "the court of

the old Celtic people met for deliberation and for administering their common affairs, for legislation, for judgment giving, as well as for burial, for religious rites and ceremonies, and solemn contracts—in short, filling the idea and original purpose of *the Church*" (Cosmo Innes' *Scotch Legal Antiquities*, p. 98). "Of course, among all rude people, and often also among those more civilized, open-air assemblies of the people will take place; but then these will always be near the great centres of population. Men will go into the desert for religious purposes, but they prefer talking politics near home. In some communities a Campus Martius or a Thingfield may be set apart for the purpose; but the first requisite of such a place of assembly is that it shall be open and free from encumbrance of any sort. A moot-hill, too, like the terraced Tynwald Mount in the Isle of Man, is an intelligible arrangement, not for a deliberative assembly, but as a rostrum from which to proclaim law. We can also understand why shire courts should be held on barrows, as seems often to have been the case. For here the judge occupied a dignified position on the summit. His assessors stood behind him, and the pleaders and people in front" (Fergusson's *Rude Stone Monuments*, p. 71). I quote this not for Mr. Fergusson's arguments, but for his facts. Ancient society did go out of its way to find secluded meeting-places: and the influences are sufficiently great, as was seen in the last chapter, to retain an open-air meeting in the midst of great cities where halls could have been built for the purpose. "The artificial mounds of earth, called motes or moats, are sometimes found in the south of Scotland, and I suppose in England also. Perhaps they might likewise be found in the north of Scotland, although I never heard of any of them there. From the name and other circumstances, it would seem that these had been erected by our ancestors as theatres of justice: as all courts were held in the open air by the Saxons; and probably the same custom might prevail among other tribes of the same people. Such of these mounds as have been demolished, were found to consist entirely of earth, without having had anything seemingly placed by design within them. There are usually some stones placed on end round the base of these artificial mounts" (J. Anderson in *Archæologia*, v. 243).

\* It is curious to observe that the Hall-motes of the Fishmongers' Company of London were held, "one at the Bridge and the other at Westfistrete" (*Liber Albus*, i. 380; iii. 151).

justice" at which Hermione is tried in the *Winter's Tale* (Act iii. sc. 2) is, perhaps, in the open air: the queen complains of being

"Hurried

Here to this place, i' the open air, before  
I have got strength of limit."

But even more special indications of this popular opinion are made by writers dealing with such subjects. Thus, a writer in the *Gentleman's Magazine*, pleading for a collection of particulars of famous trees, but pleading, alas! in vain, says "there are many trees in various parts of the country under the branches of which certain assemblies, compacts, and events have taken place" (*Gent. Mag.*, May, 1846). In *Notes and Queries*, again, almost the same pleading has been made, and with almost the same unhappy result (see January, 1852). Daines Barrington, in his *Observations on the more Ancient Statutes* (p. 144), quotes some clauses, 13 Edward I., relative to fees claimed by certain officers from the spectators at the law courts, and although in England he cannot find any evidence of the open court, in Scotland, he says, by a statute of William and Mary, all causes must be tried by open doors, rape, felony, and the like being excepted. Here is an undoubted reference to the transition from open-air to hall courts.

But the most archaic traces of popular opinion as to the open-air meetings of assemblies are to be found in some of our traditional folk-tales. The folk-tale is itself a survival from primitive times, and in some cases it has brought away with its fairy narrative remnants of archaic social existence. It is a pity that English folk-tales are so few and so despoiled of all their archaic mould and associations: they are the

barest possible survivals, and do not represent anything like the handsome structure of their Celtic brethren. In these, the Celtic romances, we have many features of primitive times; and keeping to the subject now immediately concerning us, the following extracts show the value of their evidence. I am unfortunately limited to Irish examples,\* but although we do not touch Ireland in the present researches, these examples should be considered as typical of the value of traditional evidence. It is not the place here to enlarge upon the historical position of the folk-tale—it stands here simply as the product of a primitive people, which has been handed down to modern times, not by the aid of literature, but by the aid of popular story-telling.

In Dr. Joyce's recently published *Old Celtic Romances*, there are the following passages which relate to the assemblies of primitive times. These passages, it should be noted, occur quite incidentally during the course of the story—they belong to the same era of thought and human action as the fairy legend, the giant, and the witch.

"After the battle of Tailtenn, the Dedannans of the five provinces of Erin assembled in one place of meeting, to consider on their state, and to choose a king" (p. 1).

The next instance gives a broader outline of the assembly. A great fair-meeting was held by the King of Ireland, Nuada of the Silver Hand, on the

\* Curiously enough, we find no mention in the Scotch popular romances of the open-air gatherings. The following quotation may refer to the custom perhaps, but it is not conclusive:—"On the day when O'Donull came out to hold right and justice . . . (there were twelve men with him)" (Campbell's *Popular Tales of the West Highlands*, i. 308).

Hill of Usna. Not long had the people been assembled, when they beheld a stately band of warriors, all mounted on white steeds, coming towards them from the east, and at their head rode a young champion, tall and comely. "This young warrior was Luga of the Long Arms. . . . This troop came forward to where the King of Erin sat surrounded by the Dedannans, and both parties exchanged friendly greetings. A short time after this they saw another company approaching, quite unlike the first, for they were grim and surly looking ; namely, the tax-gatherers of the Fomorians, to the number of nine nines, who were coming to demand their yearly tribute from the men of Erin. When they reached the place where the king sat, the entire assembly—the king himself among the rest—rose up before them" (pp. 38, 39). Here, without following the story further, the assembling in arms, the payment of the tributes at the council-hill, the sitting of the king and his assembly, are all significant elements of the primitive assembly. In a later part of the same story we have "the Great Plain of the Assembly" mentioned (p. 48). Another graphic picture is given a little later on, when the warrior Luga, above mentioned, demands justice upon the slayers of his father, at the great council on Tara hill. Luga asked the king that the chain of silence should be shaken ; and when it was shaken, and when all were listening in silence, he stood up and made his plea, which ended in the *eric-fine* being imposed upon the three children of Turenn, the accomplishment of which forms the basis of the fairy tale which follows (p. 54). Then, in another place in the same tale, when the brothers are on their adventurous journey, fulfilling their *eric-fine*, they come to the house of

the King of Sigar ; and "it happened that the king was holding a fair-meeting on the broad, level green before the palace" (p. 75). And then we have a picture of the sons of Turenn coming back and presenting their *eric-fine* at a fair-meeting on the plain before Tara ; of its refusal by Luga on account of not being complete in every particular, for "there is one kind of fine that must be paid to the last farthing, namely, an *eric fine*. And, moreover, O king, thou and the Dedannans whom I see here present are guarantees for the full payment of my *eric-fine*" (pp. 84-86).

In another story the hero Maildun asks the island queen how she passes her life, and the reply is, "The good king who formerly ruled over this island was my husband. He died after a long reign, and as he left no son, I now reign, the sole ruler of the island. And every day I go to the Great Plain, to administer justice and to decide causes among my people" (p. 153).

The beginning of another story is—"Once upon a time, a noble, warlike king ruled over Lochlann, whose name was Colga of the Hard Weapons. On a certain occasion, this king held a meeting of his chief people, on the broad, green plain before his palace of Berva. And when they were all gathered together, he spoke to them in a loud, clear voice, from where he sat high on his throne ; and he asked them whether they found any fault with the manner in which he ruled them, and whether they knew of anything deserving of blame in him as their sovereign lord and king. They replied, as if with the voice of one man, that they found no fault of any kind" (p. 177).

The last example is also a valuable one. A dispute

has occurred respecting the enchanted horse, the Gilla Dacker, and "a meeting was called on the green to hear the award." Speeches are made and the awards are given (p. 270).

Now, these examples make up a very important contribution of traditional evidence. Indeed, the very *raison d'être* of the folk-tale seems to me to rest upon the assumption that it penetrates to the most primitive period of political institutions. It may relate to mythological conceptions: but it must take root in a political society, and so bear the imprint of its origin. And the characteristics of the primitive society which gives birth to the folk-tale also take us back to the assembly of the people. Mr. Denton, the editor of a work on *Serbian Folk-Lore*, supplies the link necessary to prove this. Long tedious debates, he says, in the national Parliament, or Skoupchina, were summed up and reported throughout the country in a way which would astonish the readers of the debates in our English Parliaments. The whole discussion took the form of a long song or poem, which was recited in the open air before the villagers assembled to hear the course and result of the debate. Thus we have, in the practice still existing in Serbia, an instance of the way in which a Serbian Homer would naturally have communicated to his countrymen all the details of meetings at the council board. What is national or political to the Serbian now, may become the folk-tale of the future, just as in Homer we have one of the most glorious of all traditional stories.

Another indication of the prevalence of the custom is found in laws which, down to the eleventh century, says Sir Francis Palgrave, prohibited the Anglo-

Saxon from worshipping the tree, the rock, and the stream or fountain, showing that the vicinity of the popular courts to these objects of the Pagan faith was not altogether an accidental coincidence (*Eng. Com.*, i. 140). It is curious what a number of instances of this custom exist in our modern folk-lore. But without staying to enumerate these, which, indeed, deserve a special collection, for they illustrate a special feature of primitive life, it will be useful to refer to two known collections. Mr. Stuart, in the second volume of his *Sculptured Stones of Scotland*, has collected together the most important passages; and Mr. Akerman has contributed a paper to the Numismatic Society (1838), "On the Stone Worship of the Ancients, illustrated by their Coins."

Parallel to the hill of Scone in Scotland, with its stone upon which the kings were crowned, we have in England the well-known example of Kingston. It has already been pointed out that one of the most important functions of the old national assembly was the election and deposition of kings. In the early records of open-air meetings of the Witenagemot there is no trace of this function having been exercised. It revived in the cases of King Harold and Henry VIII., where a great national crisis was to be met. But it did not survive, as other functions had done. Thus the traditional evidence afforded by Kingston fits in very appropriately. According to Leland, "the Tounisch men have certen knowlege of a few kinges crownid ther, afore the Conquest;" and in his *Commentary on the Cygnea Cantio*, he adds, "I have been told that this was done in the midst of the market-place, a lofty platform being erected, that the ceremony might be seen from afar by a multitude of



people, which, however, I do not state as a fact known with certainty." Brayley, in his *History of Surrey*, records these two passages from Leland, and says that "The stone on which the monarchs are traditionally said to have sat during the ceremony, is still preserved with religious care, and forms a very curious relic of the olden time" (iii. 5). This is the only piece of traditional evidence relative to the meeting of an assembly which might in any sense be termed the national assembly. We have already seen that both in the early records of English history, and in those records which belong to post-Norman times, the national assembly, although representing the most developed portion of the national constitution, takes the historical inquirer back to primitive times. The ancient Danes, the ancient Scotch, the ancient Irish, all elected their kings at an open-air meeting of the nation, assembled near a stone held specially sacred to this purpose. And to these examples must be added that of the ancient English. We cannot trace any of the forms and ceremonies; we cannot historically know of the great shout that signified the people's consent to the election: but, taking the traditional evidence as true in the scientific sense, these blanks in our picture need not startle the student. We may transfer the shouts at King Harold's or King Henry's election to the old meeting-place at the king's stone; we may apply to Scotland to give us the details, being well assured that the general outline is true enough.

We thus take leave of the national folk-moot, and turn to the local assemblies, to carry on the inquiry into its last stage. "In England," says Sir Francis Palgrave, "the ancient mode of assembling the suitors

of the hundred 'beneath the sky' continued to be retained with very remarkable steadiness. Within memory, at least within the memory of those who flourished when English topography began to be studied, the primeval custom still flourished throughout the realm. Halikeld wapentake derives its name from the consecrated spring whose worship was forbidden by Cnut. Modbury, the mootbergh, vies with the Tinwald of Man; and similar examples of hundred and manor courts held upon moot-hills or beneath ancient trees may be found in every shire" (*Hist. of Eng. Commonwealth*, ii. p. clviii). And, again, to this important passage from Sir Francis Palgrave may be added an equally important one from Mr. Kemble, who carries us a step further by applying the same principle to the mark—or, as I would add in face of later evidence, the representative of the mark—and to the shire: "In a charter of the year 971 (*Cod. Dip.*, No. 568) we find the word *mearcmót*, which can there mean only the place where such a court, *mót*, or meeting was held; while the *mearcbeorh*, which is not at all of rare occurrence, appears to denote the hill or mound which was the site of the court, and the place where the free settlers met at stated periods, to do right between man and man" (*Saxons in England*, i. 55, 56). "A Kentish charter names the *gemótbeorh* (*Cod. Dip.*, No. 364), which might apply to the shire-moot" (*Ibid.*, p. 56, *note*).

Thus these two authors bring into general notice the open-air meetings of the shire, the hundred, and the mark. Looking a little further afield, however, let us begin with the shire-moot, and see what topographical or traditional evidence there is of its meeting in the open air. "Accident," says Mr.

Kemble, "must more or less have determined the seat of the Gá-jurisdiction: perhaps here and there some powerful leading mark, already in the possession of a holy site, may have drawn the neighbouring settler into its territory; but as the possession and guardianship of the seat of government could not but lead to the indication of certain privileges and material advantages to its holders, it is not unreasonable to believe that when the marks coalesced on equal terms, the temple lands would be placed without the peculiar territorial possession of each, as they often were in Greece, upon the *ἑσχαρία* or boundary land. On the summit of a range of hills, on the watershed from which the fertilizing streams descended, at the point where the boundaries of two or three communities touched one another, was the proper place for the common periodical assemblage of the freemen: and such sites, marked even to this day by a few venerable oaks, may be observed in various parts of England" (*Saxons in England*, i. 75).

Mr. Kemble, in a note to this passage, says that he has met with the *scirác* in Anglo-Saxon charters. This significant word, however, is to be found in closer relationship to the meeting-place of the shire-moot than from its name alone. A great "Shire Oak" stood at the meeting-place of Yorkshire, Nottinghamshire, and Derbyshire, and its branches could afford shelter to 230 horsemen. Such, too, is the Crouch Oak at Addlestone, in Surrey, one of the ancient border-marks of Windsor Forest (*Quarterly Review*: "Sacred Trees and Flowers," July, 1863). Under these ancient trees, no doubt, the shire-moots met, and the first-named tree has given its name to the village of Shireoaks which has grown up around it.

The Nottinghamshire moot, says Mr. Taylor, was held under an oak in Sherwood (Shirewood), and the county of Berks derives its name from the bare-oak beside which the shire-moot met (*Words and Places*, p. 197).\* The shire oak of Staffordshire was still standing in 1842, by the side of the road from Walsall to Lichfield, and about four miles and a half from the former place † (see Garner's *Nat. Hist. of Staffordshire*); and perhaps "the County Oak" on the borders of Sussex and Surrey (see Lower's *Hist. of Sussex*, i. 124), may belong to the same class. Then we have instances like "Shireveswood," mentioned in the boundaries of Clarendon Forest (Hoare's *Mod. Wilts*, 117). A most important example is that of the "Shyreack" in Headingley, Yorkshire. In the *Annals of Leeds*, by Edward Parsons, the Shyrack oak is thus mentioned: "The principal object in the village of Headingley is the venerable oak. . . . This remarkable tree has been conjectured by some to have witnessed the horrible religious rites of the ancient Britons, and, in fact, to have formed part of a Druidical grove. Universal tradition declares this to have been the tree under which, in Saxon times, the shire meetings were held, and from which the name of (Shire oak) Skyrack has been imposed upon the wapen-

\* I have noted Mr. Taylor's derivation, though I cannot discover the authority upon which it is based, unless it is that of Camden only. Asser, in his *Life of Alfred*, says that Berkshire had its name from the wood of "Berroc," where the box-tree grows most abundantly. For Camden's authority, see *ante*, page 83.

† A letter among the Earl of Denbigh's collection gives intelligence of Prince Rupert, "that yesterday hee kept his rendezvous at Shire-okcs, and last night quartered at Hampton Brewood" (*Hist. MSS. Com.*, iv. p. 265<sup>a</sup>). This can hardly be the same shire oak as mentioned in the text, as the march from Brewood to Wallsall in one day would be an extraordinary feat.

take" (vol. i. p. 190). In Whitaker's edition of *Thoresby's Ducatus Leodiensis* (p. 81) the following explanation is given:—"It may not be amiss here to note that this wapentake of Skireake seems to have received its denomination from some such a convention at some noted oak, or to use a local word, Kenspack-ake." This subject has been discussed in *Notes and Queries* (see 3rd Series, xii. 503; 4th Series, i. 58; 5th Series, xii. 69, 117), and the only remnant of this historical oak now left is the name of an inn at Headingley.

In Ravenmeols, on the coast of Lancashire, near the old burial-ground and modern church of St. Luke, is an eminence bearing the name of "Sherrocks Hill," which appears to me to indicate a Shire-oaks hill, and hence a place where the shire-moots were held. The name of "Shire Lane" for a neighbouring road is corroborative of some such occasion.\* There is a "Shire Lane," too, adjoining the eastern entrance to the ancient encampment known as Choulesbury in Bucks (*Arch. Journ.*, xiv. 273); and it is almost impossible not to connect this monument also with the ancient meeting-place of the shire-moot. The significance of the name of "Shire Lane," the proximity of the roadway to the *eastern* entrance, the mound itself, all are conjoint evidence of the one historical survival.†

\* I get my facts, though not my derivation, from a paper contributed to the Literary and Philosophical Society of Liverpool by Mr. Joseph Boulton, F.R.I.B.A., and of which I shall have to speak further on. Mr. Boulton is inclined to derive Sherrocks from *Siorramachd*, a county, shire, or sheriffdom. This certainly has the advantage of separating the "Oaks" from the "Hill," which my derivation combines.

† See a description of the encampment in Lipscomb's *Hist. of Bucks*, iii. 314.

I will now briefly enumerate some remaining evidence of the open-air meeting of the shire-moot. Sheriff Muir, in Cumberland, is more generally connected with the battle that took place there ; but there is another fact which brings the place within the scope of the present subject. We learn from Brockett's *Glossary of North Country Words*, that the explanation of the old saying, "A sherry moor," is from a tumultuous assemblage of people usual on Gateshead hill, when the judges were met by the sheriff on what is still called Sheriff Hill.\* Here is an undoubted link with the shire-moot.† And another is the Four-Shire Stone on the borders of Worcestershire, Oxfordshire, Warwickshire, and Gloucestershire.‡ On the border-land of these four shires, the shire-moot, or maybe a Witan of a more extensive jurisdiction, would find its fittest place of meeting, and from it we are enabled to trace out more prominently Mr. Kemble's reasoning on the connection of the mark with the meeting-place of the local gemót. We gather a contribution to this group of evidence, also, from the "Three-Shire Stone" of Cheshire, Derbyshire, and Staffordshire, mentioned in the *Reliquary* (v. 131). Something is to be gained also from an old tenure of land in Surrey. In 19 Henry III. a William

\* See *The Denham Tracts*, now being edited for the Folk-Lore Society by Mr. James Hardy, for this reference.

† A sheriff muir in Scotland supplies a good parallel to the text : "This muir, being both central for the county and well adapted for mustering the Tweeddale Militia whilst the unfortunate animosities subsisted between the sister kingdoms, was the place where the sheriff-depute was accustomed to summon them to appear before him on a certain day and at an appointed hour ; hence it was called the sheriff muir, and still retains the name" (*New Statistical Account of Scotland*, iii. 123, "Peebles-shire").

‡ See Plot's *History of Oxfordshire*, p. 335.

Frankelen held certain lands in Lederede (Leatherhead) of the king's fee, by finding a pavilion or hall for the county court, as often as it should happen to be held there (*Plac. Coronæ*, 19 Henry III., Surrey, quoted in *Blount's Tenures* by Hazlitt, p. 191). Such a pavilion could only be of a temporary nature—one step, indeed, from the open-air meeting; for Leatherhead was not the customary place of meeting, and no shire-hall was yet erected to check the uncertain wanderings of the shire-moot.\*

It is necessary now to turn to the evidence of our town names. Many instances occur in which the word "shire" is connected with some natural place, a river, brook, hill, ford, etc., in forming a modern place name; and it is not difficult from the light of other facts to connect these places with the meetings of the shire-moot. Thus, there is "Shirburn" in Oxfordshire; "Sherborne" in Dorsetshire and Gloucestershire; "Sherburn" in Durham and Yorkshire; "Shereford" in Norfolk; "Sherford" in Devon; "Shirebrook," "Shirland," and "Shirley" in Derbyshire; "Shireshead" in Lancashire; "Shirley," "Sherbourne," and "Sherfield" in Hants; "Shirley" in Surrey; and "Sherbourne" and "Shirley" in Warwickshire. Shrewton parish, in Wiltshire, was once "Shirevton" (Hoare's *Modern Wilts*, p. 34); and so Shrewsbury, the capital town of Shropshire, was once "Shirevsbury," the shire-hill. There is not a county in England which does not supply a goodly list of towns, the names of which are thus connected with the natural objects which were sacred to the in-

\* There is some sort of parallel to this in France. In the appendage of the lands of Epleben, near Gera, are two manses of arable lands; the possessor of these lands ought, at certain times, to construct a summer tribunal (Michelet, *Origines du Droit Français*, p. 145).

stitutions of primitive times. But without setting these forth here, I would suggest that the special enumeration associated with "Sevenoaks" in Kent\* and Cheshire; the "Seven Sisters" of Tottenham in Middlesex; "Five Ashes," a scattered hamlet in the parish of Mayfield, Sussex; "Forwood" in Devon, "Fourfolks" in Somerset, and "Fourstones" in Northumberland, may very well connect these places with the ancient meetings of the shire-moot, particularly as both four and seven were numbers which were supposed to have a mystical meaning.

We now pass on to the hundred. It has already been noticed that there are some very important historical survivals of the open-air gathering of the hundred court. And so complete seems to be the evidence of the traditional and philological survival—the complement to all that has been said on the historical survival—that the best plan of arrangement will be found to be according to counties. Here we have a fair picture of the whole subject, and are able to grasp more readily how complete the evidence becomes as we proceed with our researches. Mr. Taylor observes that the names of the English hundreds are often very curious and significant, guiding us for the most part to the spot appointed for the assemblage of the heads of households in pre-historic times. These places are sometimes important towns or villages, but quite as often barrows, dikes, trees, and heaths—conspicuous landmarks rather than centres of population (*Words and Places*, p. 197). In this spirit I shall approach the subject of the hundred names, picking out the most significant and leaving

\* It is an additional argument to note that there was a "Gallows Common" near Sevenoaks in Kent.



them when recorded in these pages to tell their own tale. The names of the hundreds want a very careful examination. Some are found to be identical with town names, but the majority have a name incident to themselves alone. This is a feature that requires explanation, and I am inclined to meet it by the suggestion, exemplified by the evidence of Malmesbury hundred, that round some ancient meeting-places towns grew up in course of time. However, let this be as it may, a great deal of primitive history lies enshrouded in the names of the English hundreds.

In Cheshire the hundred of Bucklow met on Bucklow Hill (Palgrave, *Eng. Com.*, ii. p. clviii.).

The meeting-places of the hundreds of Dorset have been discovered by the Rev. R. W. Eyton in his splendid work, *A Key to Doomsday*. From this work it will be seen (p. 143) that of the thirty-nine pre-Doomsday hundreds, fifteen can be shown to have met in the open air, one unknown, and twenty-three in inhabited places. In the first division we have eight meeting on barrows or hills, namely, Albretesberga, Hunesberga, and Langeberga, the sites of which are now lost; Bedeberia on Badbury Hill, Cereberga on Loose Barrow, Celberga on Chalbury Hill, Haselora on Hasler, a barrow near Steeple, Morberga on Modbury Hill. The courts of Canendona and Glochresdon met on duns the sites of which are now lost; and those of Golderonestona and Stane near monoliths. The hundred of Oglescoma met in a comb or valley near Portisham; that of Cuferdstroue under a tree on Culliford Barrow in Whitcomb parish, and of Haltone under a tree in

Hilton parish; Concredic (now Comsditch) at a point in the line of an ancient foss.\*

Brocash hundred, in Herefordshire, was so called from a great ash under which the meetings of the hundred court were held (Nash's *History of Worcest.*, i. p. lix.). Then the most important of the names of the remaining hundreds of this county are Greytrees, Webtrees; Radlow, meaning council-hill; Wormelow, and Stretford.

In Kent, on the confines of the parishes of Godmersham and Chilham (both in the hundred of Ashford), is a place called Hundred-beech (*Gent. Mag.*, 1791, i. 523). There are some important hundred names also to notice: Bleangate, Westgate; Downhamford, Kinghamford, Twyford, Ashford, Dartford; Tunbridge, Alvesbridge; Ringslow, Hadlow; Calehill; Barnfield, Larkfield, Littlefield; Washlingstone, Stouting, Toltingtrough, Ospring, Shamwell.

In Lancashire the hundred of Warrington met upon the moot-hill in the town of the same name, and which is described later on.

In Lincolnshire the men of one of the hundreds met at the "three houes," *Trehos*. Connected with the same derivation are the names Langoe, Aslaoe, Haverstoe, Candlehoe, Wraggoe. And besides these are other hundred names of importance: Beltisloe Gartree, Ludborough, meaning the people's hill, and Yarborough.

The hundred of Ossulstone, in Middlesex, derived its name from a geometric stone placed by the Romans near the north-east angle of Hyde Park (*Lond. and Mid. Arch. Soc.*, iv. p. 62); and there are the two

\* Mr. Isaac Taylor has something to say about the modern hundreds of Dorset: see *Words and Places*, p. 197.

names of Elthorne and Spelthorne connecting the meeting-place with the thorn tree.

In Northamptonshire the hundred of Fawsley met under an enormous beech called Mangrave Beech (Palgrave, *Eng. Com.*, ii. p. clviii.). Hamfordshoe, Spelhoe, Huxloe, Nairsford, Polebrook, Willybrook, and Rothwell are names that may be grouped among those indicative of the ancient place of meeting.

In Nottinghamshire the hundred court of Bingham is called the Moothouse Court, and the place where it stands, "Moothouse Pit" (Cowel's *Law Dict.*). And then we have such names as Bassetlaw, Broxtow, Thurgarton, and Rushcliffe, which include all the remaining hundreds of this county, except Newark.

In Oxfordshire a hillock in the parish of Fritwell, called Ploughley Hill, standing just within Oxfordshire, on the Postway, gives name to the hundred wherein it stands (Plot's *Nat. Hist. of Oxfordshire*, p. 325). And we have Ewelme and Langtree as the most significant names. Besides these, there is another meeting-place of an Oxford hundred preserved to us in the *Codex Diplomaticus* (No. 709), where the "hundred tree" at Winchendon is mentioned in the boundaries, and Mr. Kemble identifies this place as Winchdon in Oxfordshire.\*

In Warwickshire, too, besides the important examples mentioned in chapter v., there is a grand old oak tree called "the Hundred's Oak," or "the Hundred Oaks," about half a mile from Kenilworth Castle.†

In Staffordshire Offlow Barrow gives name to the

\* I am rather inclined to think this should be identified with Winchendon in Bucks, but Mr. Kemble puts no query in his index, so I have followed him for the present.

† Miss Zornlin, of Winchester, has kindly sent me this example among others.

hundred wherein it is situated, and no doubt indicates the ancient place of meeting; Barrow Copt Hill gave name to a hundred; and Elford Low, which has an oak on its summit, to its hundred (Garner's *Nat. Hist. of Staffordshire*, p. 67). Totmanslow hundred is named from a village of the same name, where there is still a vestige of a low or tumulus; Pirehill hundred from an eminence near Stone; Cuddlestone from a bridge near Penkridge (*Ibid.*, 74).

In Surrey the hundred of Sheffield met under an oak (Palgrave, *Eng. Com.*, ii. p. clviii.) Connected with the same idea of meeting under trees are the names of two other hundreds, Copthorne and Elmbridge.

In Sussex the names have nearly all a significant derivation and surrounding. The name of Bramber, one of the rapes of Sussex, is Saxon Brymmburh, a hill fortification, which accurately describes the situation of the castle in the town of Bramber. The original area of the fortress occupied a kind of irregular oval (Lower's *Hist. of Sussex*, i. 73). The village of Danehill gave its name to the hundred of Danehill-Horsted (*Ibid.*, i. 131). The hundred of Staple derives its name from a place in the parish of Ewhurst, and a hamlet still bears the name of Staple Cross (*Ibid.*, i. 169). Netherfield, a hamlet in the parish of Battle, gives its name to the hundred. The place is seated on high ground (*Ibid.*, ii. 57). Palcham, a southdown parish constituting the hundred of Dean, in which Hollingbury Hill is a castrametation in the south-east quarter (*Ibid.*, ii. 78). Poynings gives name to a hundred. In this parish is the remarkable chasm of the south downs, known as the Devil's Dyke. Connected with it is an earthwork called the "Poorman's Wall," evidently a corruption. The entrenchment is oval

and nearly a mile in circumference (*Ibid.*, ii. 108). Ringmer gives its name to the hundred. The parish surrounds an open space called Ringmer Green (ii. 117). Then we have Singlecross; Arisford, Brightford, Dumpford; Longbridge, Rotherbridge, Stockbridge; Fishergate; Tarring; Tipnoak; Ewhurst, Henhurst; Gostrow, Holmstrow; Baldslow; Bexhill, Buttinghill; Netherfield, Ninfield, Hartfield, Loxfield, Rotherfield; Bishopstone.

In Wiltshire, besides the Swanborough Tump already recorded in a previous chapter, there is a very interesting example in Malmsbury hundred. Taking the name of the hundred, Malmsbury, in the first place, to mean the *mallum berg*, the "s" finding its way in the present town name for the sake of euphony, we have a very good identification of the old place of meeting. But there is something more than this philological signification of the name. The highest part of Malmsbury Common, situated about a mile to the south-west of the town, is called the "Hundred Hill" (Britton's *Beauties of Wiltshire*, iii. 85, and *note*). Here, then, I would place the old meeting-place of the hundred. In course of time people began to congregate round this meeting-place, and to form themselves into a township or community. In the time of Athelstan the monks of the abbey were compelled to grant cultivating rights to this new community over the lands surrounding their village. It is curious to observe that the old cultivating customs of the primitive village community are, or were until lately, still preserved in the modern corporation of Malmsbury, and I have stated the points of this survival in the *Athenæum* of April 24, 1880, page 537. One curious reminiscence of the com-

munity having been founded near the meeting-place of the hundred-moot is the division of their lands into "hundreds," before the allotment of portions to the burgesses or freemen. The names of the other hundreds of this county are likewise significant: there are Trustfield, Kinwardstone, Whorweldsdown. And there is a "hundewood" mentioned in the boundaries of Penchet Forest, which perhaps belongs to this class of place names (Hoare's *Modern Wiltshire*, p. 117).

In Worcestershire there are some very important examples. There is a hill which now goes by the name of Low Hill, situated partly in White Ladies Aston and partly in Stoulton, on the boundary of Wolverton, in Worcestershire. Chambers, in his *Biographical Illustrations of Worcestershire* (p. 6), states that Edgar granted considerable privileges to the manors possessed by the bishop and church of Worcester, uniting them all, viz. three hundred yards of land, and for the most part lying contiguous in one hundred, whose court was appointed to be held under the bishop, at a place about four miles to the east of Worcester, called in memory of the bishop, *Oswaldeslawe*, or Oswald's Mount. Dr. Nash is inclined to identify this mount with Cruckbarrow Hill, but Mr. Allies, quoting the boundaries of Wolverton from the *Codex Diplomaticus* (Nos. 570, 612), shows very clearly that the "Low Hill" was most probably the place where the laws and customs of the hundred of Oswaldslow were promulgated (see Allies' *Worcestershire*, pp. 220, 221). The hundred of Oswaldslow was, according to Dr. Nash, made up of three hundreds known by the significant names of Wulfereslow, Winburgtrowe, and Cuthburglowe (*Hist. of Worcest.*, p. i. lviii). Nor is this

the only significant circumstance connected with this hundred. From the same authority we learn that there are seven court leets belonging to the hundred. One was held without Sidbury Gate, formerly at a place called Swinsceade Green—Syinsceade in Heming's *Chartulary* (294); another held at or near Radford Bridge, in Alve Church parish; a third at a hill in Fladbury parish; a fourth at Firintish, near Picket Oak; a fifth at Bredon Hill, at a place called "the King and Queen;" a sixth at or near Rye Elm; and the seventh at or near Stoke Hill. Some of the places, adds the author, are upon great commons, others in fields, others on hills or under trees (vol. i. pp. lx., lxii.). Again, the hundred of Doddingtree probably held its courts under a great tree on Abberley Hill (*Ibid.*, i. p. lix.); that of Wodingtree under a tree (Whitaker's *Thoresby's Ducatus Leodiensis*, p. 81).

From Yorkshire Sir Francis Palgrave enumerates the hundreds of Halikeld, which derived its name from the consecrated spring whose worship was forbidden by Cnute; Barkestone, held under an ash tree called Barkestone Ash; Clarho, on a small hillock near Acton Mauleverer (*Hist. of Eng. Com.*, ii. p. clviii.). The forest of Galtree, in the North Riding, gave name to the wapentake of Galtree. Its vast circumference originally included a greater part of the adjoining wapentakes of Bolesford and Annessi, till its outskirts were, in later times, gradually lessened by successive disafforestments. At the time of its formation the places of assembly for the men of the wapentakes were removed without its limits—Girlestre to Birdforth, and Bolesford, where was a ford across the river Fosse, to Bulmer. And with the change of the place of assembly came also the change in the name of the

hundred, for Girlestre and Bolesford are now called Birdforth and Bulmer (*Plumpton Correspondence*, Camden Society, p. 11). One of the lost hundreds in the East Riding, the district round Bridlington, was called "Hunton," and there is a small tumulus in a field a mile or so from Bridlington still so called, which was, no doubt, the place of assembly; but all memory, even of the existence of this hundred, has long since passed away (see *Notes and Queries*, 5th Series, xi. p. 413). Then we have the significant hundred names of Osgoldcross, Ewecross, and Staincross, all indicating a place of meeting such as we have met with in historical examples—the parish cross; and neither of these names belonged to a town or other division of the county.

Of the counties from which I have not been able to collect any local evidence, either literary or oral, all of them supply evidence of their own quite sufficient to entitle it to a place here. I shall content myself, however, with enumerating, without any comment, the names of the hundreds evidently connected with our subject.

In Bedfordshire there are Wixamtree and Barford. In Berks—Faircross, Beynhurst, Ganfield, Ock (Oak). In Bucks—Cottesloe. In Cambridge—Radfield (Council-field); Armingford, Chilford, Whittlesford; Longstow, Northstow; Staploe, Thriplow. Derbyshire—Appletree. Essex—Becontree, Winstree; Dengie (Thingoe); Tendring; Chafford, Chelmsford, Hinckford, Rochford, Uttlesford. Gloucestershire—Crowthorne, Grumbalds Ash, Longtree, Thornbury; Bledisloe, Botloe; Brightswell Barrow; Dudstone, Tibaldstone, Whitstone; Kiftsgate, Raps-gate. Herts—Edwinstree. Huntingdonshire—Hurst-



ingstone, Leightonstone; Norman Cross. Leicestershire—Gartree, Sparkenhoe. Salop—Brimstree; Memslow, Purslow, Pimhill, Ford, Bradford. Somersetshire—Catsash, Horethorne (boundary thorn); Bulstone, Bempstone Stone, Whitstone (as in Gloucestershire); Andersfield, Wellow. Suffolk—Blything, Thingoe (Thing),\* Lothingland, Thredling; Carlford, Cosford, Lackford, Mutford, Samford, Wangford; Loes; Plomesgate.

We have now dealt with the hundreds of all the counties of England, except Cornwall, Cumberland, Durham, Northumberland, and Westmoreland, which are not divided as the other counties are. When there is no actual survival of the open-air court, therefore, there is traditional survival; and when there is no traditional survival, there are significant names which take us at once to associations with the meeting-places of primitive times.

The shire-moot and hundred-moot were courts of definite jurisdiction, having to some extent certain geographical limits. They appear among the institutions of the land, not so much in the garb of their primitive Teutonic origin, as shrouded in the mantle of Imperial Rome—in other words, I would say that the shire and the hundred are undoubtedly primitive institutions, and therefore not originated from the civilized polity of Rome: † but that when they appear

\* See Taylor's *Words and Places*, p. 200.

† I must note here that Mr. Coote holds strongly the opposite opinion (see *Romans of Britain*, pp. 341, 342). I have always bowed to the great learning of this important work, but I think we penetrate the police arrangements of Roman times when we come upon the primitive assembly of the hundred. No doubt Roman influence adapted the hundred jurisdiction and organization to the Romanized sovereignty of England; but the adaptation did not disturb the primitive origin.

as English institutions, they have unquestionably been influenced by the Roman theory of government ; they have become territorial, instead of patriarchal ; they have become subsidiary jurisdictions in a national English polity, instead of remaining primary jurisdictions of a tribal polity. And this welding of petty tribes into one nation, of local assemblies into a national Witan, was not the work of the Anglo-Saxon, because the Anglo-Saxon could not step all at once from primitive to civilized life. It was really the work of the great Roman mind.

But Rome at this time was tottering on her throne. She might influence, but she could not command. The barbarian would take from her, for his own welfare, all the great lessons she had to teach in the wielding of imperial power, and in the reconstruction of the map of Europe into several nationalities. And thus it is that we have, in modern European history, primitive institutions alongside institutions that are the product of a long experience of civilized organization. The shire and the hundred are influenced so far by the new state of affairs as to be included in the institutions of a national English government, but they do not all at once throw away all the forms of their primitive origin.

This view of the influence of Rome on English institutions appears to me to be the true "neglected fact of English history," if I may venture to paraphrase the title of a now celebrated work. That Roman influence made itself deeply felt is unquestionable ; indeed, England could not have grown without it. But that it swept away everything in its path, all the primitive ways and customs, all the mythology and faiths, all the primitive institutions, cannot be

true so long as it is possible to trace out the remnants of those that remain to us now.

Besides, then, the jurisdiction of the shire and the hundred, there are other local jurisdictions which cannot be classified under any generic title, only because they have never appeared in the polity of England, except as survivals of a past history. These local jurisdictions are, as might be expected, scattered throughout the land. They were, no doubt, originally formed by the accidents that regulate a first settlement in an uninhabited or a conquered country; and though, therefore, some may be traced to Celtic sources and some to Anglo-Saxon sources, both groups are equally important to the present subject, because both groups belong to a primitive phase of Aryan history, and therefore, comparatively speaking, are contemporaneous. They represent the early settlements of patriarchal or family communities, each community independent of each other, with its own chief, its own laws, its own government, its own household gods. And moreover, in these early times there were other causes operating to multiply the local jurisdictions of justice and legislation than the one primary and archaic cause just mentioned—that of community of race and habitation. There was the growing power of personality among certain members of the local communities, and the consequent growing power of aggrandizement and encroachment. This often led to the prevention of one suitor, by force of arms, from replying to the charge of his adversary at an approaching moot or Thing. All who attended were armed: and among the early Scandinavians many remarkable instances are given of conflicts between suitors who would not wait for the appeal to the

court. The state sovereignty was powerless—it did not act as supreme sovereign, but only as a peaceful arbitrator; for it is thus that the beginnings of law and sovereignty are ascertained to have existed in relation to each other. And the principal remedy, therefore, by which these evils were attempted to be remedied was the multiplication of courts of higher jurisdiction than the house Thing or the village Thing. That such was the ascertained case among the early Scandinavians, Dr. Hibbert establishes in his treatise on “Tings of Orkney and Shetland” in *Archæologia Scotica*; and early Aryan history has too many points of similitude, and early Anglo-Scandinavian history in particular, not to make it almost a truism to say that the same multiplication went on in Celtic and then in Teutonic Britain.

The next group of evidence, then, carries the subject beyond the shire and the hundred. We shall have to deal with examples of the open-air court, whose jurisdiction and power is not known and cannot be recovered. Many of these examples may, no doubt, anciently have belonged to shire-moots, or, perhaps to hundred-moots, the connection being no longer evident. But still, in the majority of instances, I should be inclined to say the jurisdiction was, perhaps, older than the shire and the hundred, and therefore belonging to a primitive community which broke up at the dawn of civilization.

Undoubtedly the most remarkable remnants of primitive times are to be found in the huge circles of stones which lie scattered in all parts of the land. In face of modern researches on the subject, it seems hard to suggest that any of these stone circles were ever used, let alone constructed, for the purpose of

holding assemblies ; but in some instances the formation of the circles, or some circumstance connected with them, so exactly corresponds to the necessities of an open-air place of assembly, that there is little doubt that those antiquaries are right who appropriate to them the primitive usage.\* Some stones and some tumuli, says Mr. Fergusson, may have been erected to commemorate events, and some mounds certainly were erected as "moots" or "Things"—places of judgment or assembly. In like manner some circles may have been originally, or may afterwards have been used as, places of assembly, or may have been what may more properly be called temples of the dead than tombs. These, however, certainly are the exceptions (*Rude Stone Monuments*, p. 26). It will be my task now, therefore, to briefly enumerate those instances of circles of stones which can be said, upon tolerably sure evidence, to have been used for the open-air assembly.

According to King's *Munimenta Antiqua*, the circles of stones may be divided into four classes, three of

\* See Palgrave, *Hist. Eng. Com.*, i. 140. "The Druidical circles, as they are called, have an equal claim to be considered both as temples and as places of judicial conventions, where the priesthood offered the sacrifice and delivered the law, where the accused submitted to the fearful ordeal, and where the offender was punished for his crime."

Mr. Guest, who writes on "Belgic Ditches" in the *Archæological Journal* (viii. 156), ascribes to Stonehenge the purposes for which I have advocated these other monuments of British archæology. So much has been written and discussed about Stonehenge, that it seems to me quite impossible to deduce any satisfactory theory about its origin and use ; but looking at all the authorities, taking into consideration all the historical facts surrounding the primitive condition of popular assemblies, there is nothing to my mind which invalidates the remark that Stonehenge was the central situation most suitable for the "locus consecratus," where justice was administered and assemblies held.

which essentially belong to the present subject. The first is for the purpose of "turning rounds" and dances, and are those circles where the stones are placed uniformly at equal distance and are not great in bulk; the third is for assemblies and council meetings, and has a high stone in the centre (or on the outside) of smaller ones; and the fourth is for a court of judicature, where all the stones are rather low. This division, though liable to alteration from later researches,\* practically groups very distinctive styles in the stone circles of England. In connection with these groups, so far as they relate to the open-air courts of primitive times, there are some further particulars necessary; and the questions laid down by the Archæological Institute for the purpose of a systematic inquiry into these monuments of antiquity give us a very good summary of what these new particulars would include. Those useful for our present purpose are—

(1.) Are there in the parish or township any rocks or stones which are objects either of tradition or of popular superstition, and what names do they severally bear?

(4.) What is their number, their average height, breadth, and thickness, and their distance from each other? If arranged circularly, elliptically, in parallel rows, or otherwise?

(5.) Are any of them long stones vertically planted in the earth; are they isolated, or are they within or near a circle of similar upright stones or other such monuments of a similar character?

(7.) Have any through or between them a hole

\* Mr. Fergusson, *Rude Stone Monuments*, p. 29, classes them into (1) Tumuli, (2) Dolmens, (3) Circles, (4) Avenues, (5) Menhirs.

sufficiently large to admit the passage of a child or adult? Have any been fashioned into any regular form? Have they any kind of sculpture?

(9.) Are any of these monuments on or near the bounds of the parish or other ancient geographical division?

(12.) Are there any trees, wells, or springs which are of superstitious interest, and at what distance are they from the present church? (See *Archæological Journal*, ii. 66, 67.)

Such questions as these I would put concerning any of the monuments which are attributed to the meeting-place of a court of judicature or assembly of legislators; and such I have indeed asked myself in considering the placement of those we shall presently consider. It is a pity that England cannot establish for herself an Archæological Survey, to have all these important matters settled once and for all, to give the historian the material for his labours.

In the parish of Addingham is the monument called by the country people "Long Meg and her Daughters." It forms nearly an exact circle of three hundred and fifty paces in circumference, of massy stones, most of which remain standing upright. These are sixty-seven in number, of various qualities and species, not hewn nor touched with tool. At the southern side of this circle, about the distance of seventeen paces from its nearest part, is an upright column, naturally of a square form, of red freestone, with which the country abounds. This stone is placed with one of its angles towards the circle. In that part of the circle which is most contiguous to the column four large stones form a square figure, as if they had supported some table stone, or had

enclosed a space more particularly kept holy than the rest. Towards the east, west, and north, two stones of great magnitude are placed in the circle, at a greater distance from each other than those in other parts, as if intended especially for entrances into this mystic mound (Hutchinson's *Hist. of Cumberland*, i. 226).\* This description of a most important monument of primitive times is but the prelude to saying that "Long Meg and her Daughters" was adopted for offices of law; a court of judicature and place of public assembly for the dispensing of justice.† The number of stones in the circle probably, Hutchinson thinks, denotes the number of delegates who from their several districts and tribes were members of the convention held in this place (*Ibid.*, 250). And although Mr. Fergusson opposes this supposition with all the weight of his powerful argument (*Rude Stone Monuments*, p. 127), I am content to rest upon the suggestion that the grave monuments of the famous King Arthur and his soldiers were afterwards turned into the meeting-place of an assembly of his Teutonic successors. The position of Long Meg, outside the circle, indicates this. It is well known that monuments thus placed were used for the election of kings in primitive Denmark; and it is not known that the graves of chiefs were placed outside the circle which marked the graves of their soldiers. To the latter theory of Mr. Fergusson's, therefore, is opposed the historical fact. There is, indeed, no occasion to dis-

\* But Stuart says, "Two cairns of stones were within the circle, and were believed to cover the remains of the dead. When Stukely visited this circle the cairns had been removed, but the round spots on which they had been piled were of a different colour from the rest of the surface" (*Sculptured Stones of Scot.*, ii. p. xxiii.).

† Long Meg is also described in *Gent. Mag.*, 1752, pp. 311, 372.



pute the reasoning of Mr. Fergusson as to the original construction of the monument; but the position of Long Meg, and the fact that she is of different stone to the rest, proves that a later people had a hand in leaving the circle as it is found in modern times.

Another instance is even more definite. A number of vastly large stones, which the country people call "Roll-rich Stones," are placed in a circular figure, and bear the tradition that they were once men, and were turned into stones. They are irregular, and of unequal height. The highest of them, which lies out of the ring *to the east*, is called "the King." They are pitched upon the top of a hill, about half a mile south-east of a village called Long Compton, and compose a ring, not exactly circular. Few of the stones exceed four feet in altitude, some of them reaching scarcely two. There are now twenty-two standing, and some of them pitched so close together, edge by edge, that it is evident they were intended to form a close wall. The great stone called "the King" stands eight feet high, seven broad, and about twelve inches thick. A bank to the north of "the King" is in all probability as ancient as "the King" himself, the country people joining them both together in a rhyme, which is in everybody's mouth:

"If *Long Compton* thou canst see,  
Then King of England thou shalt be."

You cannot see Long Compton where this King stands, but if you step but a yard to the north of him, it discovers itself over the top of this bank, which intercepted your view of it (Hutchinson's *Hist. of Cumberland*, i. 229, 230). This must unquestionably be a place of meeting for the election

of king and chieftain, just as we have seen is found in Denmark.\* The stone called "the King" finds its counterpart in the "König Stühlen," and the undoubted reference to the election of a king in the now garbled popular rhyme places the question beyond all doubt. With this instance may also be connected another one from Derbyshire.† It is a circle of stones about half a mile north-east from the Router Rocks upon Stanton Moor.‡ This circle is called the "Nine Ladies," and is composed of the same number of rude stones from three to four feet in height and of different breadths; one single stone, called "the King," standing at a distance of thirty-four yards (Bateman's *Antiq. of Derbyshire*, p. 112). And we have a "King-standing Hill" in Sussex, which may, perhaps, reflect the early tradition (see Lower's *History*, i. 21).

Upon exactly the same footing I would place some other instances which I will now mention.

Near St. Buriens, in Cornwall, in a place which the Cornishmen called "Biscowe Woune," are to be seen nineteen stones set in a circle, distant every one of them about twelve feet from the other, and in the very centre one pitched far higher and bigger than the rest (quoted in Hutchinson's *History of Cumber-*

\* See, however, Fergusson's *Rude Stone Monuments*, pp. 150-152.

† Mr. Fergusson rejects the theory of this being a place of meeting (see *Rude Stone Monuments*, p. 49).

‡ The following instance from Hutchinson is not so clear: "On the Tod-law in Elsdon are three stone columns placed in a triangular order, twelve feet distant from each other, and each column twelve feet in diameter. It was, as we have seen, the custom of the Danes, at the solemn investiture of their kings, or men of chief authority, to erect monuments of this nature: and no doubt this is a relic of the same custom and of the same people" (Hutchinson's *Hist. of Northumberland*, i. 195).

land, i. 227), and which King in his *Munimenta Antiqua* specially attributes to the assembly for electing the king (i. 146).

A small, but not unsightly, mountain, near Cocker-mouth, is called "Muta" or "Moota," on the pinnacle of which is one stone called "Muta" or "Moota Man" (Hutchinson's *Hist. of Cumberland*, i. 253).

A mile and a half east of Hollington is a hill called the "Mote Law," having a square entrenchment upon it, in the middle of which is a hearthstone for kindling alarm fires on. The subsequent use to which this Mote Law appears to have been put, the beacon hill of modern times, has somewhat hidden its more primitive characteristics, perhaps; but in this instance there is an additional piece of evidence in the fact that not far from this Mote Law is another curious hill with several gradations of artificial terraces on its sides, and bearing the significant name of the "Hanging Shaws" (*Gent. Mag.*, vol. cii. pt. i. p. 581). There is also a mount, having flights of terraces round its sides, called the "Hanging Shaws" near Chollerton, in Northumberland (Hutchinson's *Hist.*, i. 177). Again, on the east side of Harlow Moor, near the top of a declivity overlooking Darley Dale, are three remarkable stones standing about a quarter of a mile from each other. One is called "Cat's Stone;" the second "Gorse Stone," which appellation Mr. Rooke supposes to be derived from the British "Gorsed;" the third is called "Heart Stone" (Bateman's *Antiq. of Derbyshire*, p. 119).

It seems possible also that a traditionary story of the family of Featherstonhaughs leads us also to the importance of a central stone on a hill or artificial eminence. This family settled in the parish of

Kirkoswald, Cumberland. The following strange story is related by the historian of Cumberland from Machel: "Their house (in Northumberland) was formerly upon a hill, where there are two stones called Featherstones, and was moated about for a defence against the Scots; but, upon the ruin of this, the house was afterwards built in the holme or valley under the hill, which they then called Haugh, and thence it was called Featherstonhaugh. Courts of manors were anciently, and many of them to this day are, held in the open air: the place distinguished by a large stone, which the steward uses as a table, at which the homage take the oath. It seems probable that the stones mentioned in Mr. Machel's account were used for such purpose in former ages, and were called Feuder-stones, where the feudal tenants of the manor were assembled" (Hutchinson's *Hist. of Cumberland*, i. 207).

Some ancient remains at Lacra, known by the name of Olk-kirk, consist of two stone circles, three artificial platforms or terraces, and an enclosure dyke. The entrance to the circles is from the east, which together with the artificial terraces, points to the strong supposition of this being once used for public gatherings. These ruins are described in the first volume of the *Transactions of the Cumberland and Westmoreland Antiquarian and Archæological Society*, and the author gives several analogies between them and those in the Isle of Man, which we have seen were used for the purpose of the open-air court. To a similar origin can doubtless be ascribed the monument known as the "Sunken Kirks," and described by Hutchinson in his *History of Cumberland* (ii. 387).

These stones and stone circles are commonly

attributed to a Celtic origin ; and in placing them in the evidence of the primitive assemblies of Britain it is difficult to distinguish between the early Celtic survival and the later Teutonic. That they were Celtic meeting-places for the legal and civil tribunals is open to doubt, perhaps, judging from the important arguments adduced by Mr. Fergusson in his *Rude Stone Monuments*. But the question which I have suggested is whether these monuments, originally constructed as military or funeral monuments, were afterwards used as meeting-places of political assemblies.

There is another group of instances now to be considered, which gives by analogy some sort of an answer to the query just suggested. Wright, in one of his numerous papers, in *Archæologia*, mentions the fact that the custom of holding assemblies or wakes about ancient barrows was common among our Anglo-Saxon forefathers (see vol. xxxiii. p. 264). The ancient barrows situate generally in open moors and fields presented very appropriate surroundings for the assembly of the people. And we find accordingly that many examples can be cited.

These examples come to us in the shape of the name attached to some particular barrow, picked very often out of a group of barrows. The popular names of these relics of antiquity would be a useful collection to the student of folk-lore, for they bring forth rich associations of early Saxon beliefs. But out of the variety of names by which these tumuli are popularly known there is one that specially belongs to the present subject—it is that of “Moot-Loe.” While nearly every barrow has a name attached to it of more or less primitive origin, of more or less significant

import, we come now and again upon one, and seldom more than one in the same locality, which bears the name so well known as belonging to the Anglo-Saxon assembly. Here, then, is the material for an important section of our subject, for it is not dealing too lightly with philological probabilities to instance the moot barrows as places of the open-air meeting.

Thus, among a rich collection of barrow names of Derbyshire, there are three which undoubtedly belong here. A large flat barrow, called Moot-Lowe, is situated in a field of considerable elevation, the tumulus being about fifteen yards in diameter and about four feet high, with a level summit (Bateman's *Antiq. of Derbyshire*, p. 51). Another with the same name, the same height, and with double the circumference, with the same flat level top, is half-way between Alsop Moore and Dovedale (*Ibid.*, p. 68). And the third is situate upon the extremity of a hillside near Middleton, and is called Moot-Lowe Bank (p. 99).<sup>\*</sup> At the foot of the east side of the Worcestershire Beacon, there is a piece of ground called Twinbarrow, and it is brought into the associations of the present subject by its near proximity to a farm called the "Moat Farm" (Allies' *Hist., etc., of Worcestershire*, p. 166). There are Moot-Lows also at or near Hanson, Grange Mill, and Youlgrave; a Mutte-Low at Calton (Bateman's *Ten Years' Diggings: List of Barrows*, p. 293); and a Muttilow Hill in Cambridgeshire (Jewitt's *Grave Mounds and their Contents*, p. 35). Connected, too, with the same group are Lady, *i.e.* Law-day, low near Blore, and another near Chapel-en-le-Frith (Bateman as above, p. 292).<sup>†</sup>

<sup>\*</sup> See also *Archæological Journal*, i. 247.

<sup>†</sup> Hatfield Barrow, in Wiltshire, Sir Richard Hoare considers to be

There are other hills, which either from their names or other circumstance must be grouped under this section of our evidence. Thus the court of the Honour of Huntingdon, called "the Baron's Mote," was, no doubt, held upon the mound known by the name of "Earl's Barton" (*Archæological Journal*, xxxv. 119)..

In the parish of Brampton is an eminence, which Camden speaks of, called "the Mote." It is a natural mount of a fine conic form, in height, from the town, somewhat about three hundred and sixty feet; it rises on every part very swift. Near forty feet from the crown of this eminence a ditch is cut quite round the hill, and it appears as if the materials thrown out from thence had been carried to the summit, to form the breastwork there. The crown of the hill is formed into a plain forty paces diameter, defended by the breastwork, which was used as a *parley* hill or open court for the dispensing of justice (Hutchinson's *Hist. of Cumberland*, i. 127). And of a similar description is the moot-hill of Warrington described in the *Proceedings of the Historic Society of Lancashire and Cheshire*, 1852 (p. 53). We read that "the form of the hill was a very perfect oval, with a flattened summit. The height above the land surrounding it was three yards. A trench or watercourse ran at its base on the south and west sides, and on the outside of which were distinct remains of a vallum or earthen parapet. Its level summit measured from east to west fifty-four yards, and from north to south forty-three yards. The south and west sides were steep and abrupt, terminating below in the ditch and vallum; whilst on the north and east, although the form of the mound

designed for a hill altar or place of general assembly (*Ancient North Wiltshire*, p. 7).

was very clearly defined, its sides sloped more gradually to the low ground near it."

The Castle Hill of Penwortham is referred to a similar origin. In the *Transactions* of the same learned society it is noted (vol. ix. pp. 61-70) that "Grose's *Military Antiquities* contain a plan of a Norman fortalice, and represent such an eminence as Castle Hill, as being always, or nearly so, erected in the outer bailey for a court hill, or tribunal, where the baron, as high justiciar, executed justice. . . . Castle Hill, then, in all probability, was the tribunal of Penwortham's baron, where Ranulph, Earl of Chester, held his court after he had received confirmation from Henry III. of the lands between the Ribble and Mersey, and succeeding mass and mesne lords their courts leet and baron, or, as it is usually styled, the King's Court—the *Aula Regis*. Tradition says that a verdict of the *Aula Regis* of Penwortham, not a century and a half ago, executed a criminal, but whether on Castle Hill or in Hangman's Field cannot be ascertained."

There is also a Moot-Hill, a mound of earth, nearly thirty feet in height, raised upon the edge of a steep declivity on the shores of the Bay of Morecambe, a plate of which is given in *Archæologia* (vol. xxxi. p. 452). On the confines of the lake district there are hills called "Moutay" and "Caermote," and there is a "Moot-Hill" at Naseby, all of which have probably served as the meeting-places of local popular assemblies (Taylor's *Words and Places*, 197). There is a "Mote Law" about a mile east of St. Oswalds, in Northumberland; it has a square entrenchment, and in the centre is placed a large stone, used for the fire of a beacon in later times (Hutchinson's *Northumber-*



land, i. 174). The town of Elsdon, near Risingham, possesses a Mote-Hill (i. 193). At the south end of the town of Workington, in Cumberland, is an eminence called the Mote-Hill, and on it an artificial mount, whose base is 160 yards round, protected by a deep ditch, almost surrounding it, ceasing where the steepness of the hill rendered such a defence unnecessary. This mount is a little hollowed at the top, and it has been found to consist of no other materials than the soil that had been flung out of the foss (Pennant's *Tour in Scotland*, p. 54). A strong entrenchment south-west of Netherby is called by Pennant Liddel's Strength, or the Mote (*Tour in Scotland*, p. 74). In the village of Wappinbury, about five miles east of Leamington, is an ancient encampment having a field adjoining it, called by the villagers the "Motefield," and Miss Zornlin, to whom I am indebted for this information, thinks that the hill itself has the appearance of a hill of council.

But perhaps the most remarkable of English moot-hills is that at Downton in Wiltshire, the seat of Lord Arundel of Wardour, and to whom I have to acknowledge my indebtedness for the following information, derived from a small pamphlet on the subject by Mr. Edward T. Stevens, F.S.A. The earthworks are of a horseshoe form, with a mound on the south-west extremity, another mound at the north-western end, and two smaller mounds upon the northern limb. Within this horseshoe-shaped earthwork stands an isolated mound. These earthworks, as far as is known, have always borne the name of the "Moot-Hill," and no doubt were used as a place of assembly (see a paper by Mr. Clark on "The Earthworks of the Wiltshire Avon," in *Arch. Journ.*,

xxxii. p. 305). The especial feature of these earth-works—the “moot” itself—is situated on the slope of a hill, the whole western side of which is cut into deep terraces, curving inward, and forming a kind of amphitheatre. There are six of these terraces, which increase in length from the crown of the hill to its base. At the foot of the hill the ground is flat, and probably formed the area in which the freemen were assembled, “without the circle of the hill,” as at Tynwald Hill already noticed. According to popular belief, prisoners were tried at this moot-hill, and, if found guilty, were then taken to another of the mounds, which passes by the name of “Bevis Mount,” where they were executed.

This concludes our examples of moot-hills. Rich in themselves, they also lend their aid in identifying other hills as moot-hills, which have not carried down to modern times the name by which they can be most easily identified.

There is a remarkable hill in the parish of Bromsberrow, which, though actually lying in Gloucestershire, is upon the border of Worcestershire. It is called Conygree, perhaps from its being a fine locality for rabbits. It lies near the church, and is of an oval form and about fifty feet high, and about seven hundred yards round the base. There is a very ancient yew tree at the top, and the whole of the hill is now planted with trees. A trench encircles the apex, and a pathway winds round the hill to the top from the south side in an easterly direction. The hill is thought to have been a hill altar, where the Druids held an annual assembly for judicial and other purposes (*Allies' Hist., etc., of Worcestershire*, p. 70).

Ringston Hill, an eminence partly natural and

partly artificial, is near a point at which meet the three wapentakes of Strafford, Stancross, and Osgodcross. This mound appears to be connected in some manner with the early political state of this district. It was a place of rendezvous in the time of the Civil Wars; for in the accounts of the township of Sheffield in 1645 occurs this entry: "In money, coats, and the charges of a guard which went to Ringston Hill with five men that were pressed, £4 13 3" (Hunter's *S. Yorkshire*, ii. 407).

Near the northern extremity of the parish of Broadwater, in Sussex, is an ancient earthwork, consisting of a rampart and trench following the course of the hill. It is called Cissbury, and belongs to the same class of works as Caburn Chanctonbury and Rooke's Hill, all cresting the Southdown ridge. But of the history attached to these hills nothing is known. The historian of Sussex can find no other primitive use for them except that of being sacred enclosures belonging to the altars of some primeval race (Lower's *Hist. of Sussex*, i. 86). But there seems to be a connection between the name of Cissbury and Cissa, the founder of Chichester and the South Saxon kingdom. And why not, therefore, the connection which would bring it within the compass of our present researches, as the moot-hill of his kingdom, instead of a military fortress, as it has been urged in the *Sussex Archæological Collections* (iii. 182), for Cissa was a peaceful rather than a warlike monarch? The Caburn in the town of Glynde resembles in shape a depressed cone, and its ground plan is nearly circular (Lower's *Hist. of Sussex*, i. 196), the mound of earth thrown up within the ramparts corresponding precisely with the Gorseddaû, from which the Druids

were accustomed to pronounce their decrees (*Sussex Arch. Coll.*, iii. 183). These facts seem to bring Cissbury and Caburn, at all events, within the limits of the open-air courts of primitive Britain.

Another very good instance of this type of the open-air place of meeting is "The Mayborough," a little distance from Penrith, situated on the summit of a small hill. It is a vast circular bank, surrounding an area of eighty-eight yards in diameter, and having an entrance on the east side. Near the middle is an upright stone nine feet eight inches high, and seventeen feet in circumference: and others had originally been placed near it so as to form a square. This curious place seems, in truth, to have been a British court for the administration of justice, and for other civil purposes, such as inaugurations.\* And an almost similar instance is that in Anglesey called Bryn-gwyn, at Tre'r Dryw, which is mentioned by Rowland (*Mona Antiq.*, p. 89). And before finishing our record of moot-hills let me notice, as belonging to the same group of evidence, two mounds called the "Hills of the Banners," at a village called Redbourn (perhaps a form of "Radbourn," the council stream), near St. Albans. Quoting Roger of Wendover for his authority, a writer in *Archæologia* (vol. xxxiii. p. 264) traces the origin of the name to the fact that "there used to be assemblies of the faithful people held around them, when, according to ancient custom, they yearly made a solemn procession to the church of St. Albans." These assemblies and processions, not now in the form of a judicial or legal assembly, seem to me to

\* King's *Mun. Antiq.*, p. 197. It is said by Stukeley to have formerly had two circles of stones on its area (see Stuart's *Sculptured Stones of Scotland*, ii. xli.) But cf. Fergusson's *Rude Stone Monuments*, p. 127.

refer us to a time when religion and justice and law were associated with one spot in the locality where the people worshipped and received justice.

Turning to the names of places, to continue this evidence of the existence of the moots of antiquity, there are "Willimoteswick" in Northumberland, "Moat Quarter" in Cumberland, "Mold" in Flint, "Mold Ash" in Kent, "Mold Green" in Yorkshire, "Motcomb" in Dorsetshire, "Mottisfont" and "Mottistone" in Hants, and "Mouldsworth" in Cheshire, all of which take us back to the moot. A hamlet in the parish of Weston-super-Mare is called Midgley, the mediæval name being Modesley, undoubtedly Moot-ley, *i.e.* Moot-field; and in the hamlet is a field called "Court-Garden." \* There is a whole group of place names in Kent which belong to this division. There is the Mote Wood near Nettleshead, a possession of Sir Roger Twysden, and from Hasted's *History* I collect the manors of Little Mote (i. 308), Cosin's Moat (Mote) (i. 400), Moat Borough (Moteborough) in Igtham (ii. 246); Moathall in Bersted (ii. 486); Mottenden (ii. 391); the hamlet of Mottingham (i. 57),† and several estates called Moatlands in

\* The Rev. S. H. A. Hervey kindly sends me this example. He says, "I have been making excavations in Court Garden, to see whether I could find anything to corroborate the tradition of its being the site of Alfred's Palace; and have found extensive foundations, fragments of pottery, etc.; but I believe nothing that can be put down to an earlier period than the eleventh century."

† At no great distance from Mottingham Place, a seat in the hamlet, is a small estate called *Fairy Hill* (Hasted, i. 58)—a name which, if traditional, carries the influences of Mottingham to early times. This Mottingham, it appears, is sometimes called Nottingham, and this fact brings into the group of Moot-inghams Nottingham and its shire, Nottingham in Caithness and Gloucestershire, Notting Hill in Middlesex, and Nottingham in Dorsetshire (see Mr. Boulton's paper on *The Danish Intrusion into South Britain*).

Hadlow (ii. 318) and in Brenchley (ii. 368), Modingden or Mottenden in Hedcorne (ii. 391), Modinton in Hollingborne (ii. 469), the Mote in Maidstone (i. 97), le Mote in Brenchley (ii. 368), and then there is Moteneye Marsh.

Mr. Taylor includes Ludlow, "the people's hill," as an instance of the moot-hill of antiquity, to which might be added Ludborough and Ludbrooke in Kent, and Ludwell in Wilts; for the "people" met by the side of brooks and wells, as well as on the summit of hills. A manor in Kent, once known by the name of Court-Hawe, and now Croken Hill (Hasted's *Kent*, i. 308), must also be mentioned because of its possible philological connection with the Croken-torre about which I have already spoken. There is also a Croken Hill in Norton, Worcestershire (Allies' *Hist.*, p. 292). A place in Warley Wigorn called Fartherhall, styled a manor in some ancient evidences, is thus recorded in the court roll of Henry VII.: "Dominus concessit Willielmo Hadley manerium vocat le Fotherhal de Wearley in com. Wigorn. cum le Parkefield, Barnefield, etc. except. aqua de la mote apud predict. manerium cum piscaria ejusdem aque, reservat." From mention being made of a moot here, Nash concludes it is the same as is now called the Mote Farm, and reckoned within the manor of Wareley (Nash's *Worcestershire*, i. 524).

Within a mile of the Mythe Tute, near Tewkesbury, there is a hill called Sarn Hill, in Bushley parish, Worcestershire. In Gough's *Camden* (i. 387), it is stated that the British word "Sarn" means a pavement; and it seems, therefore, probable that a seat of judgment may have formerly stood upon this hill. It is spelt "Searn Hill" in the ordnance map, "Sern

Hill" in the map of Mr. Isaac Taylor, and "Sarn Hill" in the *Further Report of the Commissioners for Inquiry concerning Charities*; and it has already been noticed that pavements were anciently used as seats of judgment by the Hebrews.

Mr. Allies, from whom the above particulars are obtained, gives a list of place names probably connected with the same primitive custom. There is a place called Sarn Hill in the parish of Elmley Castle, and Sarnsfield parish is in the hundred of Wolphy in Herefordshire. A reef of rocks called Sarn Badrig, or Patrick's Causeway, extends out to sea about twenty-one miles from the coast of Merionethshire. Connected no doubt with this is the word "Yarn," which in Welsh means a seat of judgment. There are Old Yarnhill and Old Yarnhill Meadow in Feckenham; a hill formerly called Yarnborough, but now Ambury, in Stourbridge; Yarnell Lane in Bromsgrove; Sivy Yarn in Upper Sapey, Herefordshire; Yarnsbury Camp in Wiltshire;\* and Yarnton in Oxfordshire. Darnhill Orchard and Darnhill Homestead in Knighton-on-Teme; Darnhale, now Darnhill Grange, or Grane, in Cheshire; and Domesday mentions Darenden in Kent, Darneford in Wilts, and Darninton in Yorkshire (Allies' *Hist., etc., of Worcestershire*, pp. 128, 129). There are also Darnley in Yorkshire, Yarnfield in Somersetshire, and Yarnscombe in Devonshire, which belong to this group of place names.

Mr. Allies also thinks it probable that the name of the Malvern Hills leads us in the same direction. "Vern," he says, "is derived from the 'Sarn' or

\* This is described by Sir R. C. Hoare, *Ancient South Wiltshire*, p. 89.

'Yarn;' and the Malvern Hills would signify, therefore, the mountain of the seat of judgment, or the high court or seat of judgment, proving it to have been an important station of the ancient Britons. In corroboration of this view, the Malvern range contains what is considered to be an ancient British triangular-shaped camp. In addition to this, it is crossed by very ancient roads. Jones, in his *Brecknockshire* (i. 26), makes Moel-y-Yarn, which is pure Welsh, signify a high court or seat of judgment (*Allies' Hist., etc., of Worcestershire*, p. 153).

A still further group of instances from town names is probably to be derived from the association of the prefix "Rad," from Anglo-Saxon "raed," council. And it is a significant fact that, with very few exceptions, all the towns having this syllable in their names are also associated with another syllable, signifying some natural object near which we know council-meetings were held. Thus, Radbourne in Derbyshire and Radbourn in Warwickshire introduce the running stream; Radcliffe in Lancashire and Yorkshire, Radclive in Bucks, Radley in Berks, and Radlow in Hereford, associate the meetings with a cliff or hill; Radford in Notts, Oxon, and Warwickshire, with the ford over the river; Radwell in Beds and Herts: while the remaining names not classified under these headings, consist of Radfield in Cambridgeshire, Radstock in Somersetshire, Radstone in Northamptonshire, and Radway in Warwickshire, all capable of easy interpretation; while Radcot in Oxon, Raddington in Somersetshire, Radipole in Dorset, Radlett in Herts, Radnage in Bucks, Radnor in Cheshire and the county of Radnor, Rodmell, anciently Rádmell (*Lower, Hist. Sussex*, ii. 123), in Sussex,



and Radwinter in Essex, have alone lost the link which enables us to identify them with a locality for the meeting of the council.

From some very interesting papers contributed to the Literary and Philosophical Society of Liverpool and the Historic Society of Lancashire and Cheshire by Mr. Joseph Boulton, F.R.I.B.A., and of which the author was kind enough to send me copies, I am enabled to add some additional instances to the philological collections. The root of the first part of Ravensworth may be found in K. *ribheann*, the royal hill, on which, according to O'Donovan, royal companies or parleys were held. In Kirkby Ravensworth in Yorkshire, such a hill appears in the ridge dividing the watershed of Swaledale from that of Teesdale. High Feldom is manifestly the rock or cliff of the Dooks, *fail-do-meas*. In Crosby Ravensworth, the royal hill may well have been one of two eminences not far from the village. Between these two Ravensworths lie Ravenstonedale and Ravesat Moor. In Ravenstonedale the royal hill appears to be represented by Wandale Hill, in which name the prefix *Wan* seems allied to K. *wanid*, a chief or great person. In Ravenglass, on the coast of Cumberland, the royal hill is apparently occupied by the castle of Muncaster.\* There are many names with the prefix Raven in England, and if Mr. Boulton is correct in his derivation they should all be connected with the primitive assembly. Thus, Ravendale and Ravensthorpe in Lincolnshire, Ravenfield and Ravensthorpe in Yorkshire, Ravenhead in Lancashire, Raveningham

\* The titles of Mr. Boulton's papers are *The Danish Intrusion into South Britain*, read before the Literary and Philosophical Society of Liverpool, January 26, 1874, and *Glimpses of Pre-Roman Civilization in England*.

in Norfolk, Ravenscroft in Cheshire, Ravendale and Ravenstone in Derby, Ravensden in Beds, Ravens-thorpe in Northampton, Ravenstone in Bucks, are all significant enough to be noted here.

Mr. Boulton gives us further instances, of which I will enumerate some. The utmost promontory of Spurnhead was called by some people Conny Head, a name probably related to K. *Conn*, counsel. That extreme point, like the moot-hill in Morecombe Bay noticed above, would possess the security arising from isolation which is so characteristic of eminences selected for folk-moots. So the name of Blencathara for the hill usually called Saddleback, in Cumberland, connects it with Keltic, *Tara*. In the neighbourhood of Saddleback is another hill called Latrigg—a name very suggestive of a similar connection—Lathroid (*lawreed*), an assembly; but looking to the proximity of Blencathara, the correct form may be *ladh-rig*, that is, the law or Thing of the suzerain or *rex regulus*. Laterigg in Westmoreland is allied to this. In the Latherbarrows, near Windermere, Wastwater, and Ennerdale appear places of meetings near great roads: so also Ladder Brow, a name for the shepherd's crag near Lodore.

It has already been noticed that the Northmen of Iceland and elsewhere styled their judicial and legislative assemblies, "Things."\* And it is not surprising that we find relics of the introduction of the

\* In Ireland, too, there is a trace of the Scandinavian "Thing." "A document of the year 1258," says Worsaae, "conveys a gift of some ground in the suburbs of Dublin, in Thengmotha. This Thing place, which seems to have been not far from the present site of Dublin Castle, where the Norwegians had erected a strong fortress, gave to the surrounding parish of St. Andrew the surname of 'de Thengmote'" (*Danes and Norwegians*, p. 322).

Scandinavian Things into England. In the Danelagh, as well as in most of the detached Scandinavian colonies, we find local names which prove the former existence of these Things (Taylor, *Words and Places*, p. 199).

Thus, not far from the centre of the Cheshire colony in the Wirall, we find the village of Thingwall. Near Wrabness, within the limits of the little colony in the north-east of Essex, we find a place whose name, Dengewell, probably marks the spot where the local jurisdiction was exercised.\* In Devonshire, where we have no direct evidence of a Danish colonization, there is a group of town names of distinctively Danish origin, and Mr. Taylor draws attention to the significance of an isolated farmhouse bearing the name of Dingwell. It stands on a plateau, steeply scarped on three sides, and about a mile from the village of Thurshelton, a name every syllable of which is of the Icelandic type, denoting the *tun* or enclosure round the *skaaler*, or wooden booths, which were, as already noticed in the Icelandic Things, erected at some little distance from the Thingvellir, for the convenience of persons attending the Thing.

In the Danelagh we meet with several places bearing names which may, with greater or less certainty, be regarded as meeting-places of local Things. In Northamptonshire we have, near Kettering, a place called Finedon,† which was anciently written "Thingdon," and there is a place called Dingley near Market

\* See Worsaae's *Danes and Norwegians in England, etc.*, pp. 70, 158.

† There is a Findon in Sussex, and there exists now a mound known by the name of "Tormur" (Lower's *Hist. of Sussex*, i. 178).

Harborough. We find Tinwell in the county of Rutland, Tingrith in Bedfordshire, and Tingewick in the north of Buckinghamshire. Ixworth in Thingoe, near Bury St. Edmunds, was probably the meeting-place of the Suffolk Thing. In Yorkshire there are Tinsley near Rotherham, and Thwing near Bridlington. In Durham, on the extreme border of the Danelagh, we find Dinsdale, a place which is almost entirely surrounded by one of the bends of the Tees, and is thus well protected from hostile intrusion, as is the case with so many of these sites. In Cumberland and Westmoreland, the vale of Legberthwaite, no doubt, contained the lögberg, or "hill of laws," from which the local enactments were promulgated. This valuable contribution to the subject I obtain from Mr. Taylor's *Words and Places* (pp. 199, 200); and besides these there are still the following names to notice, which equally belong to this group of evidence:—Thingwall in Lancashire; Dingstow in Monmouthshire; Tingley, or more truly Ting-law, as it was written in an old map, in the neighbourhood of Armley, near Leeds (Whitaker's *Thoresby's Ducatus Leodiensis*, p. 190); the manor of Tong in Kent (Hasted's *Kent*, ii. 601), and the towns named Tong in Salop, Yorkshire, and Lancashire, and perhaps Tongham in Surrey. The parish of Martin Hussingtree, near Droitwich, is probably a corruption of House-thing-tree, or, perhaps, merely housing-tree (see *Notes and Queries*, 5th Series, xii. 448). "The Tien-lath ought not to be forgotten, because the lord's court is called here. It belonged of old to the Earls of Cumberland, who there deposited their tythe-corn" (Whitaker's *Leeds*, p. 39).

It is open to question whether the "ridings" of

Yorkshire, and, in old times, of Lincolnshire, do not bear traces in their names of the Things of the Northmen. In Domesday Book the ridings or Lincolnshire were spelt Nort-treding, West-treding, and Sud-treding, and these divisions were called by the Anglo-Saxons "priding" or "thrithing." And it does not appear to me unreasonable then to adopt Worsaae's view of the question, as he puts it forward in his account of the Danes and Norwegians in England. As they were foreign to the Anglo-Saxons, he says, whose historians did not know how to explain their origin, and as they also appear exclusively in the two most Danish districts in England, it is surely not unreasonable to seek their origin in Scandinavian institutions, in which a simple and natural explanation of them may certainly be found. In Scandinavia, and particularly in the south of Norway, provinces or Fylker (petty kingdoms) were not only divided into halves (hálfur) and fourths (fjórðungar), but also into thirds, or Tredinger, which completely answers to the north-English "thrithing." It was, moreover, precisely to the Tredings-Things that all disputed causes were referred from the smaller district Things (Worsaae, pp. 158, 159). This, it seems to me, restores some of the evidence which Professor Stubbs cannot discover as to the ridings once having courts of their own (*Const. Hist.*, i. 108); and, taken in connection with the other facts of the present researches, it is certainly valuable enough to restore the north-English "ridings" to a position among the philological survivals of the Danish Thing, and therefore of the open-air court. For it must be remembered that in the Domesday survey the riding is placed on exactly the same

footing as the hundred and the wapentake in the capacity of witnessing grants of land. To witness a grant of land in Domesday times seems to me simply a relic of the old legislating on a grant of land—one of the oldest duties of the primitive assembly. Most of the Anglo-Saxon grants were made in a local gemót, sometimes in the Witenagemót itself. The "homines de treading" had their say in a dispute about lands "in Richesbi hundred" (Bigelow's *Placita Anglo-Normannica*, quoting Domesday, p. 55); "in Wilgebi hundred," "de Hornecastre wapentac" (*Ibid.*, p. 56); the "homines de treading" decided about the lands of Archbishop Thomas; and Robert the Dispenser was defeated in an action for lands "testimonio treading" (*Ibid.*, p. 58). In two instances the wapentake and the treading are both witnesses—"per testimonium hominum wapentac et treading:" "dicit wapentac et treading" (*Ibid.* p. 57). That these are survivals of the "treading moots," that the treading is a survival of the primitive "Thing," are conclusions which I think the evidence sufficiently attests.

Perhaps, however, the most striking and remarkable memorial of the power of the Danes and other Northmen in England, is the establishment of one of their courts of justice—their open-air primitive court, that is—in some of our cities. "Husthings," says Worsaae in his *Danes and Norwegians in England*, "are specially mentioned in the Sagas as having been held in the north, particularly by kings, jarls, and other powerful individuals" (p. 19). And we have the hustings court in London, Winchester, Lincoln, York, Great Yarmouth, Norwich, and it was formerly found in the Isle of Sheppey.

There are not many records of the hustings court

as it formerly existed in these ancient towns. Scattered here and there among early chronicles and other documents, however, are certain glimpses of the hustings court, which bring it more prominently before the student of primitive politics than the tradition of its name alone. The Saxon Chronicle thus gives a picture of the hustings court of London—a picture revealing the assembly in arms, a turbulent free assembly which would have its way, and which was swayed, not by the voice of chiefs or kings, but by the voice of the unreasoning populace. Liberty had on this occasion grown into licence ; but encroachments upon liberty such as this help the modern student to obtain more knowledge of the machinery of early legislation and early courts of justice, than could ever have been revealed by ordinary routine. “In this year” (A.D. 1012), says the Chronicle, “came the Aldorman Eadric and all the highest Witan, ordained and lay, of the Angle race to London, before Easter ; and there they were so long after Easter as until all the tribute was paid : that was eight and forty thousand pounds. Then on the Saturday the army was greatly excited against the bishop, because he would not promise them any money, but forbade that anything should be given for him. They were also very drunken, for wine had been brought thither from the south. They then took the bishop, led him to their ‘husting,’ on the Sunday eve ; and there they then shamefully murdered him.” This was quick revenge in the form of justice, parallel to that other example on the banks of the Tyne, which seems to have had more justification than the Chronicle allows us to suppose was the case in London.

Shorn of a great deal of its former power, there are

yet remnants of the primitive jurisdiction of the hustings court. The hustings is the county court of London, and as such has all the powers incident thereto, and retains a great deal of the now obsolete jurisdiction of the ancient shire-mote (Pulling's *Laws, Customs, and Usages of London*, p. 170). To this court also properly belongs the enrolment of deeds, wills, etc.—a jurisdiction derived from that ancient system existing amongst our northern ancestors, who, ignorant of letters, required every legal act and form to be pronounced in public; and consequently, such important matters as the conveyance of land, or the publication of a will, to be declared in the presence of the assembly in the county court. It is laid down, therefore, that, by ancient custom, lands in London might pass by mere parol; for as the transaction was recorded in the hustings, no other voucher was needed (*Ibid.*, pp. 175, 176).<sup>\*</sup> Then, again, the Recorder of London had to certify the judgments of the court, not by the written legal documents of modern times, but *ore tenus*, a species of that “breast law” which is current in the Isle of Man, and a distinct survival of primitive times.<sup>†</sup>

We now approach the final stages of the traditional and philological evidence of our subject so far as it relates to England, and it will be found that there are also traces of the meetings of the primitive assembly having been held in fields, as well as on hills or by streams and sacred fountains. The Runymede field of council has already been dealt with as a typical example. We obtain information about others from

<sup>\*</sup> See also the *Report of the Commissioners on Municipal Corporations*, 1835 (London), p. 122.

<sup>†</sup> On record by oral testimony, see Palgrave's *Hist. Eng. Commonwealth*, vol. ii. p. clxiii.



local tradition, and from the names applied to them in the present day.

The parish of Scropwick in Lincolnshire was held by three Saxon thanes, one of whom held the manor, and his aula or court was at Kirkby, in a situation near the church, distinguished at the present day by the name of the Hall Close, and marked by the remains of a moat and foundation (*Gent. Mag.*, 1833, i. 114). The proximity to the church here is an important association with the primitive assembly. And one cannot doubt but that the raised fields which are constantly to be met with in different parts of the country, and the "round-hill fields," are relics of the same institution. Thus, near Weary Hall in Ireby is a field, containing about an acre and a half of land, which appears to have been moated about, and raised above the level of the neighbouring field, but there are no remains of building upon it (*Hutchinson's Hist. of Cumberland*, ii. 364, n.). A field in Bromsgrove parish is called by the significant name of "the King's Chair" (*Allies' Worcestershire*, p. 312). At Chester there was a field called Lady (Law-day) Barrow hey (*Fishwick's Commonwealth Church Survey*, p. 240); and we read of the Gallow-tree Fieldes and Mott-house Field at Cowden in Kent. (*Arch. Cant.* xi. 392). Then there is a Mote Field at Buckland, in Buckinghamshire; a Mote Close at Grendon Underwood; a Moot Thorne Field at Messingham, in Lincolnshire; and a Mote Farm at Minshall-Vernon, in Cheshire. Such names as these lie scattered all over England. But a group of names which tells most significantly of this subject is one collected by Mr. Allies in his *Folk-Lore and History of Worcestershire*, as compounded with the syllable *raed*, "council," which we have before

noticed, and which makes it probable that judicial and other meetings were held there. In the parish of Great Malvern there are Upper Radnor Meadow and Lower Radnor Meadow. There is Radnal Field in Elmbridge, in Doderhill; Radnal Pit in Belbroughton; Rad Meadow in Claines; Rad Meadow in Hindlip; Rad Castle Orchard and Rad Meadow in Stoke Bliss; Radge Coppice in Abberley; Radnall in Rushock; Radbury Bank in Martley; and Rad Meadow in Great Witley (Allies, pp. 167, 284).

We now pass to the evidence that trees give to our subject. Already it has been duly noted how the trysting-trees are supposed to be the old meeting-places of the shire gemót, and some trees connected with the hundred-moot have also been enumerated. There are two or three others, however, to note—a little less definite in name and tradition, perhaps, than those already dealt with, but equally valuable, I venture to think, to the present subject.

The proverbial name given to an ancient oak situate near Brampton was the "Capon Tree." It obtained its name from the judges being formerly met here by javelin-men, well armed and mounted, from Carlisle, who, in addition to the armour on their backs, were further loaded with a goodly number of cold capons; and here, under the spreading branches of this once stately tree, the learned judges and their body-guard partook of their humble food \* (*The Denham Tracts*). No doubt the modern custom has strayed from the original institution, but the survival of the feast, and the meeting of the judges and the armed men, are certainly significant of some primitive assembly here. And stepping for one moment into the border-land

\* See also Hutchinson's *Cumberland*, i. 129.

of Scotland, this is further illustrated. In Roxburghshire, near Jedburgh, stands the king of the woods, a beautiful oak of vigorous growth, and near to it the "Capon Tree," a short-stemmed but very wide-spreading oak, the legend attached to which is that it served as a trysting-place for the border clans of former times (Selby's *History of British Forest-Trees*, p. 255).

The Watch Elm at Stoke Gifford, in Gloucestershire, was so called from its being the place where, in former times, those met who were appointed to do watch and ward, and from it being the standard from whence they went to make their respective rounds (*Gent. Mag.*, 1766, p. 504). There is a Lady Oak (Law-day Oak) in the turnpike road from Shrewsbury to Wenlock (*Ibid.*, 1810, p. 432).

We have preserved to us, moreover, a distinct tradition among the songs of the Staffordshire agricultural poet:—

"O Langley Bush ! the shepherd's sacred shade,  
Thy hollow trunk oft gain'd a look from me ;  
\* \* \* \* \*

What truth the story of the swain allows,  
That tells of honours which thy young days knew,  
Of ' Langley Court ' being kept beneath thy boughs  
I cannot tell—thus much I know is true,  
That thou art reverenc'd : even the rude clan  
Of lawless gipsies, driven from stage to stage,  
Pilfering the hedges of the husbandman,  
Spare thee, as sacred, in thy withering age."  
Clare's *Village Minstrel*.

Let me finish my examples under this chapter with these lines from the village poet ; they express a great deal, simple though they be. They tell us of the

present age that we are not careful to preserve our monuments of antiquity—an antiquity which reveals to us liberties and freedom, the roots of our present commonwealth of power and justice. They tell us also that, if it is too late to urge upon the legislature to preserve, or our archæological societies to record, the existence of trees so historical as “Langley Bush,” it is not too late for historians to bring out fresh life from the dry leaves of antiquity, whereby we may learn something more of man and his works. Thus, then, much that has gradually dropped out of the pages of English history, much that has been set aside for more stirring narratives of political civilization, is once more placed in its proper position. In tracing out the traditional and philological evidence of primitive folk-moots in England, we have stood upon a platform which has been erected by the master-hands and master-minds of modern scientists—a platform that is broad enough and strong enough to enable us to give unrestricted scope to research and to historical comparison. Gaps left by historical survivals have now been filled up; for we have dealt with the national Witan and the shire-moots, and we have completed the evidence of the hundred-moots. Then again, we have penetrated to other relics of the primitive folk-moot. I think we have restored the riding-moots to historical existence, and the hustings courts of some municipal towns find a place among a large group of survivals of primitive institutions, instead of being, as hitherto, an isolated reminiscence of Danish conquest. Stone circles and moot-hills, moot-barrows and moot-fields, testify to a general prevalence of the primitive courts of justice and legislation, while the many examples connected with the

Scandinavian Things carry us once more beyond the domain of modern politics. All these groups of evidence will be still more strengthened by later researches into the Scottish examples, but taken even as they stand, looked at from the same historical standpoint as the twin sciences of comparative jurisprudence and comparative politics, it will be found that they go to make our knowledge of primitive man much more perfect, now that we can penetrate back to him so clearly through a history belonging to civilized man.

## CHAPTER VIII.

EVIDENCE OF PLACE NAMES AND TRADITION IN  
SCOTLAND.

Old Traditional Rhymes—Some Circles of Stones—Moot-Hills  
—Law-Hills—Court-Hills—Gallows Hills—Other Names.

THE principal source from which we obtain information of the reminiscences of the open-air court in Scotland is fortunately within a comparatively small compass. Why is it that England does not possess a similar topographical publication to *The Statistical Account of Scotland*? No doubt these Scottish collections are imperfect when judged from an historical point of view; no doubt they might have been arranged under much superior forms, and been entrusted to much more historical hands. But as they stand, they are unique, and therefore of incalculable value to the historian and antiquary. Sir John Sinclair in 1791-99 published under his direction *The Statistical Account of Scotland*, in twenty-one volumes, and in 1834-44 the plan of this collection was adapted in order to obtain more recent information. Thus was obtained *The New Statistical Account*.

Having thus pointed out the source from which the greater part of the following facts is taken, it is comparatively easy to divide our evidence into distinctive groups.

The first group will consist of those examples which, whether from tradition or from the archaeological features of the place, give some little detail of the manner of holding the open-air assembly.

In the centre of the parish of Killeen and Kilchenzie, the rude remains of MacDonald's Castle are still visible, from which, if any credit can be attached to a kind of doggerel rhyme in the Keltic language,\* the potent and turbulent proprietor was in the habit of granting charters for land to his obsequious vassals and dependents. In the neighbourhood there is a projecting cliff, called Stac-a-Chrochaire, or Hangman's Rock, where, it is said, criminals were suspended by the neck with very little ceremony (*New Statistical Account of Scotland*, vii. 384). A similar instance is recorded in the parish of North Knapdale. Near the south-western extremity is a conical eminence 120 yards in circumference at the base, and about thirty feet in height. This mound is called Dun Dumhul (Dundonald), on which, according to tradition, the Lord of the Isles used to hold courts of justice, and inflict severe and summary punishment upon those whom he adjudged guilty. A tradition still exists which illustrates the primitive character of these relics of antiquity. A culprit was arraigned and condemned to death, but contrived to make his escape while the officers of the court were making preparations to put the sentence into execution. The Lord of the Isles, who was greatly exasperated, ordered one of his vassals to pursue and bring back the culprit. He

\* The translation of this rhyme is given as follows: "I, MacDonald, sitting upon Dundonald, give you a right to your farm from this day till to-morrow, and every day thereafter, so long as you have food for the great MacDonald of the Isles."

was hotly pursued and soon overtaken, and, after a desperate struggle, carried back and executed. The Lord of the Isles, to mark his approbation of the bravery and promptitude of his vassal, gave him a charter of the lands of Kilmahunaig in the following words (as translated): "I, Donald, chieftain of the Clan-donald, sitting on Dundonald, give a right to Mackay to Kilmahunaig, from this day till to-morrow, and so on for ever" (*Ibid.*, vol. vii. p. 636).

Within the park at Murie there is an artificial mound of a circular form, forty yards in diameter at the base, and about thirty feet in diameter at the top, the height being about twenty feet. The platform at the top is surrounded by a low turf wall, with a walk outside of it. This mound is called the Law Knoll. Its sides are planted with trees, and it stands at the head of an old avenue of lofty oaks which leads in a straight line towards a place, at the distance of two miles, which is now called Gallow Flat, but which tradition reports to be the Gallow Knoll (*Ibid.*, x. 386, "Errol").

At Auchtergaven, the sheriffs said to have held his court on a rising ground still called the Court Hill; and there were lately, and still may be, at the east end of Roch-an-roy Wood, some oaks which long went under the name of the Hanged-Men's Trees (*Ibid.*, x. 425).

Close beside the manse at Blairgowrie, there formerly existed a green conical mount, about two hundred yards in circumference, called the Hurcheon or Urchin Hill, on which, according to tradition, the Earls of Glowrie held their baron courts. The hill or mount had a flat space on the top, which was surrounded with an embankment or rampart of earth.



There is a ridge or rising ground within less than a quarter of a mile to the westward of this knoll, which still bears the name of the Gallow Bank (*Ibid.*, x. 914).

It is also stated that there is in the island of Islay a circular mound of earth; with terrace-formed steps, which was no doubt once used by the Norwegians as a Thing place, like the similar one in the Isle of Man (Worsaae, *Danes and Norwegians*, p. 278).

The Dingwall of Ross-shire has acquired its name from a field where the Ting was held : there is also a Tingwall in Dumfriesshire (*Archæologia Scotica*, iii. 131). In the latter place there are some annual customs which seem to keep up the old recollections of the Thing. On Tinwald Downs there are annual races in the month of September, at which period assemblies are held in the town of Dumfries; and at a competition for the "siller gun," as it is called, every member of the incorporation is bound, under a penalty, to appear armed with a firelock; and to answer to his name (*New Stat. Account of Scotland*, iv. 16). Is not this the popular armed gathering of olden times?

The second group of evidence relates to the instances of the open-air meetings at great stones or circles of stones.

"At Tweedsmuir, in Peeblesshire, on the opposite side of the Tweed (left), and close by the road leading from the church to Menzion House, there are the remains of a Druidical temple, or Pictish court of justice. Only one stone is left of a number similar in appearance and size which stood together, and which have been removed for the purposes of dike-building, etc. It is called the Standing Stone, and is five feet

above the surface of the earth. From behind it, a person of diminutive stature, known by the name of Little John, discharged an arrow at the head of a freebooter of formidable dimensions, who greatly annoyed the peaceful inhabitants, and who, though on the opposite side of the Tweed, was unable to elude the deadly stroke.\* A tumulus, at the spot where he fell, is still pointed out as the giant's grave; and certain it is that sixteen years ago a labourer, in removing the stones of a cairn at the spot, found the grave of some ancient hero" (*Ibid.*, iii. 63).

Dr. Smith, in his *History of the Druids*, says that the Highlanders called the "rocking stones," "Clacha-Breath," that is, "the stones of judgment;" but Mr. Huddleston, in his notes to his edition of *Toland*, objects to this application, inasmuch as no two "rocking stones" are to be found together. There are two, however, a little to the north-west of the hill of Kirriemuir, within a few yards of each other (*Ibid.*, xi. 177), and the derivation of Dr. Smith is doubtless a correct one.

At Trinity Gask, in Perthshire, there is a peculiar-looking stone standing on the high ground, called the Borestone. It has borne an inscription which it is impossible to decipher. Some maintain that it was a trysting-place for the hunting of the wild boar; others, that it was an instrument of punishment, with which idea the stone corresponds. It is about five and a half feet high, with two holes at the top, through which the arms of the delinquent might be thrust, and be kept there in a sort of pillory. "There are many traditions and legends connected with this relic,

\* This event is thought to have given rise to the well-known story of Jack the Giant-Killer.

but," says the writer, too hastily, it is to be feared, "they are too absurd to be committed to writing" (*Ibid.*, x. 337, 338).

"On the farm of Balinloan, at Little Dunkeld, there is a remarkable stone, of large size, called Clack-amhoid, or the stone where the court was held" (*Ibid.*, x. 1007).

"A sculptured stone, which formerly stood on a rising ground in Logie-Coldstone, in Aberdeenshire, still bears the name of Tomachar—'hillock of the chair'" (*Ibid.*, xii. 1072).

"At Kilmorie, to the north of Blackwater Foot and not far from Sliabh nan carachan, is another (cairn), said to mark the spot where Fingal held his court of justice. The stone on which the culprit stood is still pointed out, and called the 'Panel's Stone'" (*Ibid.*, v. 54).

"At Aboyne and Glentanner, in Aberdeenshire, is a large round stone with a hole in the centre, somewhat like that of a millstone, and supposed to have been used for the erection of a gibbet-tree. That it was a gibbet stone may be the more readily inferred from its being placed at the foot of a natural tumulus, which bears the significant name of Tìremòd, *i.e.* "the court ground'" (*Ibid.*, xii. 1059).

"At Mouswald in Dumfriesshire, are two mounds, one called Stryal, about 288 feet in circumference, and the other called Deadmangill; and tradition has handed down that at one place malefactors were tried, and executed at the other" (*Ibid.*, iv. 445).

"Among the curious remains of antiquity at Inverury, in Aberdeenshire, are the Bass and the Koning or Conyng Hillock, two tumuli of conical form. About the name and origin of these, especially

the former, antiquaries have been much perplexed. There are at least two other places in Scotland called by this name—the Bass at the mouth of the Forth, and the Bass near Dryburgh on the Tweed. Some maintain that it had been used for judicial purposes; that it was the central court for the district, to which appeals lay from the local courts held within the circles of stones, still popularly, though very erroneously, called Druidical circles. The old popular belief that it would be of evil omen, unhappy or dangerous, to interfere with the Bass, as the plague or pest was buried in it, and if opened might escape, at once suggests the idea that it is of sepulchral character. The popular belief gives the mound of the Coning Hillock as the burial-place of the king. The mound is undoubtedly artificial, whether raised for a sepulchre or seat of judgment" (*Ibid.*, xii. 680, 681).

A circle of stones in the neighbourhood of Monks-hill is situate at a place called the Hill of Fiddess. It is forty-six feet in diameter, and consists of nine long stones placed on end in a circular form at distances nearly equal. The area within this circle is smooth and somewhat lower than the ground around it. By this means, and by a small bank carried quite round between the stones, which is still a little higher than the ground about it, the circular area has been very distinctly defined. Between two stones that are nearest the meridian line, on the south side of the area, is laid on its side a long stone, at each end of which are placed two other stones smaller than any of those that form the outer circle. These are a little within the circle, and at a somewhat greater distance from one another; and still further within the circular line are placed

two other stones. Behind the large stone the earth is raised something more than a foot higher than the rest of the circular area.

This description is taken from a very accurate account printed in *Archæologia* (vol. v. pp. 246, 247). The author considers this circle to be a religious monument—on the raised stage the priest officiating, the large stone supplying the place of an altar. But this theory does not appear to fit in with the extreme simplicity of the place and with the outside position of the large stone. And King, in his *Munimenta Antiqua* (i. 144), rejects the theory of religious use, and considers the large stone to have been “rather the seat of the presiding judge.”

In the parish of Covington there is a round hill, on which is a circle surrounded with large stones, erected on one end close to one another. At the distance of ten yards there is another wall of stones closely resembling the former, and within which a large mound of earth is erected. This was probably a sheriff's court, for the name of the adjacent farm seems to favour the local tradition, for it is called Sheriff Flats (Sinclair's *Stat. Account of Scotland*, i. 193).

There are a great number of moot-hills situated in all parts of Scotland; in fact, says Chalmers, in his *Caledonia*, “there was a moot-hill in every district of North Britain.” In many cases the tradition or memory of the open-air courts still remains very vividly in the neighbourhood. A town in Perthshire is called Muthill. “We derive the name from the Gaelic word *Mòdail*, compounded of *Mod*, signifying a court of justice, and *Dail*, a field, bounded by river and hill; and accordingly that part of the parish lying near to the village presents something of a delightful

field or valley, limited by river and hill. The name was formerly spelled Mothil, as appears from a brief history of the Culdees, selected by Keith, wherein it is said that one Michael was parson of Mothil, and Macbeath was his chaplain. There is still a place in the village, called 'the Ward,' where the chief of the strath distributed justice to his vassals. From this, Muthill would seem to be held in some esteem, and it is certain that, previous to the Reformation, it was the residence of the Dean of Dumblane, and afterwards the seat of the presbytery, which now meets in Auchterarder" (*New Stat. Account of Scotland*, x. 311).

"On the lands of Hill of Beith, there is one of those moot-hills on which our ancestors received the award of their judges. . . . The moot-hill of Beith, being in a barony belonging to the Church, was of course the place of judgment from which the Abbot of Kilwinning administered justice to his vassals and tenants. The hill itself is smaller than others in the district. The lands on which the one in Beith stands are, from this circumstance, called the Hill of Beith" (*Ibid.*, v. 580).

"At Hamilton, in the haugh, to the north of the palace, there is an ancient moat-hill or seat of justice. It appears to be about thirty feet diameter at the base, and about fifteen or sixteen feet high, and is flat at the top. When it stood formerly in the midst of the town, it formed part of the garden of an alehouse, and was dressed with the spade and adorned with plants. It cannot be less than eight or nine hundred years old, as no erections of the kind have been in use since the reign of Malcolm Canmore. Near the moat-hill is an ancient stone cross, about four feet

high, bearing no inscription. It is said to have been the cross of the Netherton" (*Ibid.*, vi. 271).

"Towards the west end of the vale of Appin and within half a mile of the junction of the Tay and Lyon, at Dull, in Perthshire, there are three apparently artificial mounds of earth, of a flattish conical shape situated within a short distance of each other, and forming a quadrant of a circle. [They are called moat-hills]" (*Ibid.*, x. 767).

At Auchterless, in Aberdeenshire, is a small artificial eminence of an oval shape, surrounded by a ditch, and still retaining the name of the Moat-head. The "Gallow Hill" is in its neighbourhood (*Ibid.*, xii. 286). At Cupar, in Fifeshire, a mound runs in a serpentine direction till it terminates in what is now called the School, but anciently the Castle Hill. About the middle there is a peak of greater elevation than the rest, which is called the Moot-Hill, and on which, according to tradition, the Earls of Fife used to hold councils of war and dispense the awards of justice (*Ibid.*, ix. 3). "At Stirling a small mount, forming part of the Gowland Hill . . . is surrounded by a kind of parapet, and has on it the remains of artificial works, from which appearances, combined with its name Mote-Hill, it seems to have been the place where councils of the chiefs were held and justice administered. It is also known by the name of the Hurly-Haaky, probably from its being the scene of a childish sport known to have been practised at a later time" (viii. 403). A tumulus called the Bow Butts in Grose's *Antiquities of Scotland*, in Glencairn, Dumfriesshire, is commonly known as the Mote (iv. 331). There is an artificial mound called the Mote, and an elevated bank called Galabank, evidently Gallow Bank, at

Annan, Dumfriesshire (iv. 525). At Kirkcudbright there are two moots, one in the town called Moat-Brae, and another in the country called Moot-hill (iv. 23). Between the rivers Dee and Urr in the parish of Crossmichael, Kirkcudbrightshire, are six moots, some of which are very large and entire. That on the farm of Garranton differs in form from the rest, having one side curved inwards, whereas the others are all of a circular or oval form, and each of these moots has a roadway to the summit by a sloping passage towards the east (iv. 195, 196).

On the left bank of the river, just above the town of Dumfries, is an eminence designated as the Moat Brae, and at no great distance is another mound, of similar nature, called the Kirkland Moot (*Ibid.*, iv. 11). On the summit of a steep bank, at the junction of the Cree and Penkill in Minnegaff, Kirkcudbrightshire, is a moot-hill (iv. 129). Just at the brink of the Ken, near the church of Dalry, Kirkcudbrightshire, is a moot which is still almost entire (iv. 370).

And there are also moot-hills, not requiring special description or notice, at Caputh in Perthshire (x. 671); at Pettie in Inverness-shire (xiv. 390); at Borgue in Kirkcudbright (iv. 53); in the valley of Palnure, near Bargaly, and an isolated spot on Badrochurd Moor, Kirkcudbrightshire (iv. 128); at Kelton (iv. 157), Troqueer (iv. 227), Kirkbean (iv. 238), Kirkpatrick-Durham (iv. 258); the mote of Urr, one of the largest of its kind (iv. 351); at Inch in Wigtonshire (iv. 86).

Many of these moot-hills are associated, either by popular tradition or by some peculiarity of their structure, with the old Pagan places of worship. But this fact only assists us to understand another element in connection with the primitive court of justice.



Among primitive people the places chosen for the meeting of the council were always made sacred and fenced round, so to speak, by the awful sanctity of the gods. Indeed, the sanction of ancient law was derived, not from the powerful arm of national or tribal justice as in civilized law, but from the divine wisdom and power of the national or tribal gods. Accordingly the modern association of places of justice with places of worship is quite in accordance with the spirit of primitive times.

Closely allied to the moot-hill is the law-hill. Of this also there are several examples to be met with. There are two artificial mounds at Kirkdean, of a conical figure, termed laws. One of them, named Bractullo (Bractie Law), is on the estate of the Idvies; the other, called the Gallows Hill, is on the lands of Gardyne (xi. 386). At Kinnell, not far from the Wuddy Law, are the Gallow Law and Pit, where, if we may believe tradition, capital punishment was inflicted in ancient times (xi. 399). Upon the Hill of Laws, near the middle of the parish of Monifieth, are the remains of a vitrified fort. A low wall seems to have encircled the whole top of the hill, which is flat, one hundred and thirty yards in length, by sixty-six in breadth. A mile to the west of the Laws is the Gallowhill of Ethiebeaton (xi. 546). A hill, called Law, at Lawton, is said to have been the place where Macbeth dispensed laws and settled differences among his subjects (x. 1170). Craig appears to have been an ancient feudal barony, as a field behind the house is still called Law Field; an adjoining house is still called Balgrove, that is, *the withie*, or prison house; and a rising ground on the property is called Govan Hill, the withie hill, or place of execution

(xi. 251). There still exist at Craigie some artificial mounds (named law-hills), on which, in former times, persons guilty of crimes, real or supposed, are said to have been tried (v. 765). Formerly there was a round mound at Symington, called the Law-Hill, at the foot of the village, partly natural, partly artificial, when the proprietor, Mr. Boyd, in improving his land, caused the Law-Hill to be levelled with the adjacent field. Those employed in doing so found, at no great depth from the surface, several arrow heads, made of iron, most of them barbed and very rudely constructed. They also found combs made of horn, in a tolerable state of preservation. There is also an eminence near Helenton, called the Mote-Hill, upon which a ruin stands, but of which tradition takes no notice (v. 567). And there is a conical hill called a Law in the south-east of the parish of Rayne, in Aberdeenshire (xii. 424); a hill called Glenly Law in Abernethy, in Perthshire (x. 221); and a conical artificial hillock, called the Law Hillock, at Deskford in Banffshire (xiii. 67).

There are also a few instances of court-hills, which belong to the same category as moot-hills and law-hills. The Court-Hill of Lecroft is in the neighbourhood of the church, and near it is the Gallow Hill (x. 1161). At Kinclaven the Court-Hill is covered with oak coppices (x. 1130). And there are Court-Hills at Lunan (xi. 325); at Rosemarkie (xiv. 354); and a Court Hillock at Bellie in Elgonshire (xiii. 119). An interesting account is given of the Court-Hill at Dalry, which is useful in showing the construction of these mounds. It is situated in the vicinity of the town, and is of a conical form, and covered with the finest verdure. A stone, which tra-

dition asserts to have supported the gallows, formerly stood a little east of the moat. A few years ago an attempt was made to level this interesting monument of antiquity, in order to fill up some hollows in the field where it is situated, but the hill proving to have been formed of rubbish, the design was abandoned, not, however, till the appearance of the place was greatly disfigured (v. 220).

It will have been noticed that with many of the moot-hills and law-hills just enumerated, are associated another hill or place, connected with the "Gallows." No doubt the erection of the gallows completed the machinery of the ancient assembly places—the local judges adjudged the wrongdoer, and saw him executed forthwith. To complete the former sections, therefore, it will now be necessary to enumerate some examples of the gallows hills that remain in modern times. It has been remarked, indeed, that in Scotland there are few places that have not a gallows hill. In the south-east of Larkall the Gallows Hill is a conical rising ground. Near the village of Inch, in Aberdeenshire, it is also a rising hill (xii. 751). At Monzie, in Perthshire, it is a small eminence on the right-hand side of the road (x. 273). In Banffshire there are gallows hills at Banff (xiii. 26), Grange (xiii. 214), and Boindie (xiii. 226). There is one at Rafford in Elginshire (xiii. 251); at Roseneath in Dumbartonshire (viii. 105); at Edgell (xi. 622); at Fordoun (xi. 85); at Kincardine in Monteith (x. 1259); at Inverkeilor (xi. 325); and at Urquahart in Invernessshire (xiv. 45). One of the eminences at Ruthven is called the Gallows Hill, and a small field adjoining is still known by the name of "the Hangman's Acres" (xi. 413). It is called Gallow Bank at Garrock

(xi. 39) and at Inverkeithing in Fifeshire (ix. 237). Reminiscences appear at Drumoak in Aberdeenshire under the name of Gallow Farm (xii. 888). Near the village of Gallowhill is a field called Gallows-hoal, and in a field about a hundred yards north from the school-house is a well, said to have been used by the executioner for washing his hands, and which still goes by the name of the Hangie's Well (x. 1170). At Lamberlaws, on a knoll projecting into the sea, appears to have stood at one time a gallows for the execution of criminals. In allusion to this circumstance, the locality is sometimes called Gallows Knoll (ix. 413). At Clunie, a little to the north of Stanley Knowe, there is a rising ground, styled the Gallow Drum, and about three hundred yards south-west of the minister's glebe is another eminence, named the Gibbet Knowe (x. 1025).

There are some few places distinguished by less well-known names, which I will now enumerate.

There is a farm in Boleskine called "Tom-a-bhoid," and another of the same name in Abertarff, derived from "Tom," a green eminence, which describes the local positions of both, and "mod," an assembly or court, the term being still applied to an assembly of persons qualified to administer justice (xiv. 56). At Pettie, in Inverness-shire, we meet with the same name—Tom-a-mhoid—and associated with a curious piece of folk-lore which is of great value in illustration of its primitive antiquity. The Tom-a-mhoid, or Court-Hill, is said to have been a favourite abode of fairies; and a story is told of a farmer's wife having been detained amongst them for a whole year, without being sensible of the loss of time, and returning home to the delight and surprise of her friends (xiv. 392).

The hill at Inverness, called Tomnahurick, or the Watchman's Hill, was celebrated in olden times, according to local belief, as the favourite and chief resort in the north of the tiny race of fairies. It was used as a great moot, or gathering hill, on various occasions of public importance ; and this curious fact identifies the hill with the primitive assembly, because we know that the fairies descend to us, as a part of our folk-lore, from primitive times (xiv. 13).

At Govan we meet with the significant name of Doomster Hill. This is a small circular hill on the south side of the Clyde, and immediately opposite the ferry-house (vi. 690). Near the house of Cumbernauld there is an eminence called the Towe Hill, where, in the olden time, the feudal baron held his court. The Gallows Knowe was always near the moot-hill, *alias* court-hall, of those times ; and it is not at all improbable that the Towe Hill might be the place where the baron's sentence was carried into speedy execution (viii. 142). At Elgin, too, at the west end of the town, is a small green hill, called the Lady Hill, doubtless the Law-day Hill we have already met with in England (xiii. 8). The present name of the parish of Rothesay is said to be derived from the Gaelic "*Roth-suiohe*," circular seat, or the place where courts were held and justice dispensed (v. 95).

As in England, there are some reminiscences too of trees being used as the place of assembly, and with these examples I shall conclude the evidence of Scottish place names and local traditions. "A venerable tree, according to the tradition of the county, was for generations known by the name of the Judgment Thorn ; and at about a mile south of this seat of

judgment is a field still distinguished by the name of Galliflat, or Gallow's Flat, where judgment was carried into execution, and about three hundred yards south from the old castle is the vestige of a small station or camp, called Watchman Knowe" (*New Stat. Account of Scotland*, iv. 96). "An ash tree in Applegarth churchyard is called the Gorget Tree, from the circumstance of its having, it is said, been used as a pillory in the days of yore" (*Ibid.*, iv. 175).

Looking back upon the evidence of the meeting-places of the political assemblies of primitive times, and more especially the evidence derived from Scotland—the stone circles, the terraced mounds, the moot-hills—the question comes very forcibly home to the student, Why has not the richest nation in the world cared for its archæological monuments, and preserved them from the iconoclast's hands? Why, again, has not an archæological survey of our island been accomplished? These monuments carry us back to the very initial points in English constitutional history—they show us the very beginning of the history of the English commonwealth. But all this might be made much clearer and much more extended in view, if the means were at hand to identify the less-known monuments by a comparison with the well-known monuments. It ought to be possible to take the Tynwald Hill of the Isle of Man, the Ting sites of Orkney and Shetland, the moot-hill of Scone, and those other examples which are undoubted in their origin, and then to make a march of comparison throughout the land, to group all the other monuments in sections according to their degrees of likeness with the typical examples. With this result to work upon, it would be quite possible to map out

the primitive settlements in Britain, to trace out their ethnological origin, and to produce a picture of the early history of English institutions which would be the starting-point of future workers in this wide field. Even as they stand in this book, they tell us much that was unknown before, because they have at least been taken out of their isolation as local antiquities, and restored to their rightful position in the history of our land.

## CHAPTER IX.

## SOME FURTHER EVIDENCE.

*The Mode of Summons:* The Axe and the Arrow; the Cross; the Wardstaff of the Ongar Hundred; the Dumb Borsholder of Chart—*Officers of the Primitive Court:* Birliemen, Radmen, Stallere—Conclusion.

THERE are some further customs still extant which may be referred to the meetings of the primitive folk-moots. Leaving behind us for the present the particular evidence of open-air meetings, we may turn to some details of the constitution of the assemblies. Thus, in the first place, we have evidence of the primitive mode of summons—a mode so indicative of primitive life as not to be mistaken; and then the titles and duties of some officers of the primitive court are still extant, either in early documentary evidence or in actual survival at the present day. I shall shortly state the evidence to be derived from these two sources—it is not substantial enough to be elaborated yet, but it is quite sufficient to confirm the position taken up in the introductory chapter, namely, that hereafter many additional customs will be found to cluster round the open-air meetings of courts of justice. In Norway the delivery of a message-stick was a legal summons: "Now shall the message-stick be carried by the right message-bearer to the winter



house, and not to the summer residence. If any one neglect the message-stick, let him forfeit an ora of silver to the king. Let all the bondes, to whose houses the message-stick arrives, journey to the Ting, except those who have no servants." Sometimes a hieroglyphic token was used. If a man was murdered, his heir was required to send about an arrow to assemble a Ting (Dr. Hibbert in *Arch. Scot.*, iii. 136).

Now, this same primitive mode of summoning the assembly of the people is to be found in Great Britain. When the circuit Ting of Shetland was to have been held, it was published by the symbol of an axe or staff being sent round to the Ting-men. Then in Orkney, says Dr. Hibbert, "the delivery of a piece of stone or slate, on which the gode signed his runes, was the summons given by the godordsmen to his Ting-men" (*Arch. Scot.*, iii. 136).

In the Highlands of Scotland, when a chieftain designed to summon his clansmen, he slew a goat, and making a cross of any light wood, seared its extremities in the fire and extinguished them in the blood of the animal. This was called "the fiery cross" (Train, *History of the Isle of Man*, p. 72).

In the Isle of Man the captain of each parish, who may be considered a subordinate sheriff, is conservator of the peace, and to his custody is committed the cross, an instrument of the size of a man, which, in cases of emergency requiring public aid, is conveyed by him to a neighbour, who carries it forward to another; and thus it proceeds from house to house till it has performed the entire circuit of the parish; and its detention through neglect or other impediment would be regarded with much dread by the inhabitants of the houses in which it should occur. This ancient

custom is still observed. "The last occasion on which it was practised was calculated to strip it of all romantic associations. The late Mr. Gawne, who had large property in the neighbourhood of Castletown, having a few years ago lost some sheep, summoned forth the captain of the parish, and the cross was exhibited not in vain, for the robber was detected" (Lord Teignmouth's *Sketches*, ii. 238, 239; quoted in Train's *Isle of Man*, vol. i. p. 72.)

Here we have undoubted relics of the old mode of summons. Another important example takes us into England. The summons to the hundred court of Edisbury, in Cheshire, was anciently performed in a manner not unlike the gathering of the Highland clans by the circuit of the fiery cross. The messenger bore a large oaken ball, perforated and slung on a leathern thong, the ends of which were fixed on an iron bar. After summoning one township, he was met on the limits of the next by a person to whom he transferred the summons and the ball, which was sent in this manner round the circuit of the hundred (Ormerod's *History of Cheshire*, ii. 4).

But the most important example is yet to be noted. The Wardstaff of the Ongar hundred appears, says Sir Francis Palgrave, as a strange and uncouth fragment of the earliest customs of the Teutons.\* Despite its modern corruptions, the following account betrays many important primitive characteristics, and I do not hesitate in transcribing from the pages of the local historian † a piece of archaic history so essential to the present subject :—

\* *Eng. Com.* ii., p. clviii.

† Morant (*Hist. Essex*, vol. i. p. 126) says, "The MS. whence this was taken is an account of the rents of the Hundred in the time of John

"Aungar Hundr.—The order of the gathering and yearly making of the Wardstaff of the King there, with the due course and circumstance of the yearly watch, ward, and service royall incident to the same. That is to say,

"First, the Bailiffe of the said Libertie, or Hundred, shall gather and yearly make the Wardstaffe, of some willow bough, growing in Abbasse Rothing Wood, the Sunday next before Hock-Munday,\* which shall contain in length iii. quarters of a yard, and viii. inches round in compasse, or thereabout. And hee shall convey the same ymediately unto the Mannor Place of Ruckwood Hall, in Abbasse Rothing afores'd, where the Lord of the said Manor for the tyme being shall *reverently the same receive into his house, and shall rowle itt upp in a faire fine linnen cloth or towell*, and so lay it upon some pillow or cushion on a table or cubberd standing in the *chiefe or highest place in the Hall* of the said Maner Place, there to remaine until the said Bailiffe shall have refreshed himself. And when the said Bailiffe shall see convenient tyme to departe, he shall convey the same staffe by *sunne shineing* unto Wardhatch-lane besides Long Barnes, in Roothing aforesaid; when and where the said Lord of Ruckwood Hall, and all and everie other tennant and tennants,

Stoner (of Loughton), who had a grant of it for his life in the 34th of Hen. VIII., which are said to be such as have been executed, done, paid, used, observed, and kept, not only in the time of Ed. III. and Rob. Bruce, sometime King of Scots, but also in the time of his noble progenitors, Kings of England, long before, when the Saxons inhabited this realme, as manifestly may appeare more at large by ancient records thereof made by Humphry de Bohun, then Earl of Hereford and Essex and Constable of England, Lord of the said Hundred, dated at Pleashy the 10th of July, in the 11th of the said King Edward, as also by divers others ancient and sundrie notable records, the same remaining written in the Saxon tongue."

\* A fortnight after Easter.

landowners, which by reason of their tenure doe hould their lands likewise by service royall, to watch and warde the said staffe there, upon convenient summons and warning to be given unto them yearly by the said Lord of Ruckwood Hall for the time being, with their full ordinarie number of able men well harnished with sufficient weapon shall attend. Whereuppon the Lord of Ruckwood Hall shall then and there yearly at his proper costs and charges, have readie prepared a great rope called a barr, with a bell hanging on the end of the same, which he shall cause to be extended overthwart the said lane, as the custom hath beene, to stay and arrest such people as would pass by. Att the end of which said barr, not far from the said bell, shall be *laid down reverently* the said staffe upon a pillowe or cushion, on the ground; which done, forthwith the said Bailiffe shall severally call the names of all the aforesaid tenants, landowners, who shall present their said ordinarie number of men accordingly. Then shall the said Bailiffe in the King our Sovereigne Lord's name, straightlie charge and comand them and everie of them to watch and keep the ward in due silence, soe that the King be harmless and the countree scatheless, untill the sunne arrising, when good houre shall be for the said Lord of Ruckwood Hall to repair unto the said Staffe, who in the presence of the whole watch shall take the same staffe into his hand, and shall make uppon the upper rind of the same with a knife, a score or notch, as a marke or token, declaring their loyall service done for that year in this behalfe; and soe shall deliver the said Staffe unto the Bailiffe, sending it unto the Lord or landowner of the Mannor of Fiffeld, or unto the Tennant resiant, saying this notable narracion of the

Wardstaffe hereafter written, in the Saxon tongue ;  
which done, they may hale up the said barr, and  
depart at their pleasure.

“ Iche athied the Staffe byleue  
Thanne Staffe Iche toke byleue,  
Byleue Iche will tellen  
How the Staffe have I got :  
Yotlie Staffe to me com,  
As he hoveon for to don,  
Faire and well Iche him underfing  
As Iche hoveon for to don.  
All, iche theron challenged  
That theron was for to challenge,  
Nameliche, this, and this,  
And all that ther was for to challenge.

“ Fayer iche him upp dede,  
As iche houton for to don,  
All iche warnyd to the ward to cum,  
That thereto houton for to cum  
By *sunne shining*.

“ We our roope yonder brouton,  
A roope celtan, as we houton for to don,  
And there waren and wakeden,  
And the ward soe kept  
That the King was harmeles  
And the Country scatheless.

“ And a morn when itt day was,  
And the sun arisen was,  
Faier honour waren to us toke,  
Als us houton for to don.

“ Fayre on the Staffe wee scorden  
As we houton for to don.  
Fayre we him senden,  
Hether we houuen for to sende.

“ And zif ther is any man,  
That this, withsiggen \* can ;

---

\* *Widrægen*, to *guinsay*.

Iche am here ready for to don  
 Ayens himself iche one.  
 Other mid him, on,  
 Other mid myn feren  
 Als we ther waren.

"Sir, by leave, take this Staffe,  
 This is the Tale of the Wardstaffe.\*

"The *Munday* following, called *Hock-Munday*, the said Staffe shall be presented yearly unto the Lord and owner of the manor of *Fiffild* for the time being, or his resient, who shall ymediately unfold the clothes it is wrapped in, that it may appear by the score made thereon, how the aforesaid Lord of Ruckwood Hall and other tennants, which by reason of their tenures of their lands, owe suit and service to watch the said Staffe at Abbass-Rothing aforesaid, have done their watch and service-royall accordingly the night before. Then shall he clothe it again, lay it in order, and use it in every degree as the Lord of *Ruckwood Hall* hath done, etc.

"This is called *Abbass Rothing Watch*.

"*Tuesday* following, it is carried to the Lord of the Mannor of *Nash Hall* in *High Ongar*, who, etc., as before. This is called *Stondon Watch*.

"N.B.—The watch is kept at *Horrelsford*, alias *Hallsford*.

"*Navestock Watch*.

"*Wednesday* following, the same is yearly presented to the Lord of the Mannor of *Loft Hall* in *Navestock*, etc. The watch is kept in *Three Wants Lane*.

\* This is taken from Sir Francis Palgrave's version in *Hist. of Eng. Com.*, ii. pp. clx. clxi. He says, "The corruptions that this 'Tale' has sustained have been partly remedied by conjecture, in which I have enjoyed the able assistance of Mr. Price and Mr. Singer."

*"Stapleford-Abbots Watch.*

"*Thursday* following, the said Staffe shall be yearly presented to the Lord of *Battels Hall*, etc. The watch is kept at *Pissingford Bridge*.

*"Lamborne.*

"*Friday* following, the said Staff shall be yearly presented to the Lord of the Manor of *Lamborne Hall*, etc. The watch is kept at a cross in the middle of the town of *Abridge*.

*"Chigwell.*

"The *Sunday* following, the Staff shall be presented to the landowners of *Loughborrow*, etc. The watch kept at the cross against the church.

*"Theydon Gernon.*

"The *Monday* following, the Staff shall be presented to the Lord of the Manor of *Gaynes Park Hall*, etc. The watch kept at *Webbis-Cross* in *Theydon Gernon*.

*"Morton.*

"The *Tuesday* following, the said Staffe shall be yearly presented to the Lord of the Manor of *Blake Hall*, etc. Watch kept in the midst of the town of *Morton*.

*"Maudlin-Laver.*

"The *Wednesday* following, the Staffe shall be presented yearly unto the Lord of the Manor of *High Laver*, etc. Watch at Poole-lane end in *Maudlin-Laver*.

"The ceremony of the watch in each parish I have omitted, being the same as in *Abbase-Rothing*. I have also omitted the number of watchmen in each parish.

"This Procession seems to have been a yearly muster of fencible men, who were appointed to guard the Hundred against murthers and robberies, for both

which it was liable to pay a fine. If, by preventing these, the King receives no harm, as in the loss of a subject, or the felonious breach of his peace, the subject escapes a fine, otherwise due for suffering a murderer or thief to escape.

"The ceremony began at Abbasse-Rothing, as at the extremity of the Hundred, went on to Chigwell, the other extreme, and returned to High Laver, which was in the neighbourhood of Ruckwood Hall. At one of these two maner-houses we may suppose it deposited, with due regard to royal authority.

"What we learn from records concerning the design of this ceremony of the Wardstaff is, that it was to represent the King's person,\* and to keep the King's peace. Some lands were held by the service of finding two men to watch with the Wardstaff, of keeping the Wardstaff; and of paying the Ward-silver, and doing white-service at the Wardstaff.†

"To conclude: this Wardstaff was to be carried through the towns and hundreds of Essex, as far as a

\* "Margaret Nyngge ten' . . . 4 acr' pasture, 2 acr' prati, 3 acr' bosci in Bobingworth de Dño Rege, per servic' custodiendi Virgam Dñi Regis vocat' le Wardstaffe apud Bobbingworthe annuatim cum ibid' venerit; per quam quidem Virgam, Persona Dñi Regis representatur." *Inquis.*, 15 Hen. VIII., March 1st (quoted in Palgrave's *Eng. Com.*, ii. p. clxii.).

† "Johūs Wright ten' Maner' de Kelvedon de Robtō Dño Riche, ut de le Wardstaffe; et per servic' inveniendi duos homines ad vigiland' cum p' dcō Wardstaffe, pro omnibus serviciis, &c." (*Inquis.*, 6 Jaco., July 16). "Reginald Bysmere ten' Maner' de Daweshall in Lambourn, de Duce Buck' ut de Castro de Ongar, per fid' & reddit 2s. per ann. vocat' Ward silver, ac ad faciend' dcō Luci, Album servic' ad le Wardstaffe in Hundred' de Ongar" (*Inquis.*, 22 Hen. VII.). "Cecilia Welis ten' Maner de Maddels in Epping, &c., de eodem Duce per servic' custodiendi le Wardstaffe pro omni servic' custodiendi le Wardstaffe pro omni servic', &c.," *Inquis.*, 23 Hen. VII. (quoted in Palgrave's *Eng. Com.*, ii. p. clxii.)



place called Atte Wode near the sea, and be thrown there into the sea.\* This custom hath been long neglected" (Morant's *Essex*, vol. ii. p. 126).

It will be at once seen that many associations of the primitive folk-moot which have been brought forth in the preceding pages are here again prominent. As a means of summons, the Wardstaff takes us back to primitive institutions, and the whole story is one that fits in admirably with other features of our subject. But, besides this, we meet again with the parish cross in the middle of the town of Abridge, against the church of Loughborrow, at "Webbis-cross" in Theydon Gernon; then we have the parish lane at Aungar, Navestock, and at Maudlin-Laver. And, lastly, the Wardstaff itself is notched, as the Tally at Pamber, near Basingstoke, is notched.

And then we have another important example in the Dumb Borsholder of Chart, the following account of which is interesting:—"Pizein Well is a hamlet within the manor of Chart. The Dumb Borsholder of Chart, as he was called, formerly claimed a separate and exclusive jurisdiction over the inhabitants of that liberty, which originally consisted of only twelve houses. This Dumb Borsholder was always first called at the court leet holden for the hundred of Twyford; when his keeper (who was yearly appointed by this court) held him up to his call, with a neckcloth or handkerchief put through the iron rings fixed in his top, and answered for him.

\* "Isabella de Dover, pro dimid' Maner' de Chyngelford, debebat, per ballivum, ad le Hokeday ferre quoddam baculum vocat' Wardstaff, pro pace Regis servanda, qui baculus deferri debet per vill' et Hundr' Essex usque locum vocat' Attewode prope mare, et ibi projici in mare." *Rot. Assis.*, 56 Hen. III., rot. 4 (quoted in Palgrave's *Eng. Com.*, ii. p. clxii.).

This ancient custom has now been discontinued for one hundred and four years, and the Borsholder put in by the quarter sessions for Wateringbury claims jurisdiction over the entire parish, including the liberty of Chart.

"The Dumb Borsholder of Chart is a staff of wood, that by age has become perfectly black; it is three feet and half an inch long, and has an iron ring on the bottom. It once had four more by the sides, near the top; three of these, however, are now wanting, though the marks remain where they were inserted. The circumference is greater at some places than at others, and it has a square iron spike fixed in the top, four and a half inches long, which, perhaps, was used to break open a door upon occasion, which was done without a warrant from a justice of the peace, when it was suspected that persons or things were unlawfully concealed in any of those twelve houses above mentioned.

"As to the precise antiquity of this Dumb Borsholder of Chart it is not easy to determine, but we may with great probability take it as the type of the original staves borne by constables in early times.

"We will close this short history with an extract from the court rolls of the manor of Chart in Wateringbury. At—

"'The Court Baron of Sir Roger Twigsden, Knight and Baronett, holden there on Tuesdaie the twentieth daie of May, in the year of our Lord God, 1657,' among other returns from the homage is the following:—

"'Item—they presente that within this mannor there is a custome, which is that the tennants belonging to this mannor have a staffe, which is the bosholder, and

within his libertie, which are only twelve howses, may with the same staffe search within this precinct, and that this bosholder evyre yeare is carried to Yalding, to the Hundred Court, and there is called the ffirst of all the bosholders, and there does his service as a bosholder; and that whosoever of the Twelve carry him thether, eleaven howses paie a penny a piece to him that carried it, and that evrie one of the twelve take their turne for carrying of it.'

"Affirors to the homage,

'Examinatum per Senescallum ibidem,

'THOM TOMLYN.'"\*

These examples of the primitive mode of summoning the folk-moot are illustrative associations of the meeting in the open air. They supply another link by which open-air meetings are connected with primitive institutions—they allow us to accept the historical position that around the open-air courts of modern times a whole group of curious survivals from primitive life are clustered. And they bring within the compass of primitive life certain institutions which have become a part of modern civilization. Thus as an emblem of local authority, nothing is more important than the municipal mace. It has been referred to Roman times for its origin, and to the turbulent times of mediæval Christianity, when the weapons of war were the chief signal of power. But without being able to advance any new information as to the origin of the municipal mace, there is certainly an historical parallel—an historical relationship, I would almost say—between the municipal mace and

\* Extract from *The Dumb Bosholder of Chart*, in the parish of Wateringbury, by the Rev. H. Stevens (*Arch. Cant.*, vol. ii. pp. 85-88).

the old "staffs" for summoning the court. The duties of the serjeants-at-mace of the old municipalities were to execute process, summon juries, attend the borough courts, and these officers bore the mace as the symbol of their legal actions. Between the municipal mace, the constable's staff, and the sheriff's wand there is a bridge of historical evidence still to be constructed when the materials have been got ready, and that bridge, it appears to me, will lead us on to the high road of primitive life.

And now, turning to the last matter for consideration, namely, some of the offices known to have belonged to primitive assemblies, there will be, I think, some interesting facts to be brought forward for future contemplation.

The office of Burlieman is the first to be noted. It has been already shown, that the Burlaw Court of Scotland met in the open air for the adjustment of village grievances, and that the Burlieman acted in the capacity of judge. Now, this Burlieman is another relic from the Northmen which has left its stamp not only upon the primitive history of Scotland, but of England also. In Cleasby and Vigfusson's *Icelandic Dictionary* we have the Icelandic "bœr," corresponding to the first syllable of our burly, or as it should be written, birlaw, and bylaw; and Professor Skeat says that the Birlieman is precisely equivalent to the Icelandic *bæjarlögmaðr*, a town justice (*Athenæum*, 2nd August, 1879). But in England at the present time we do not see him in his full capacity of village judge, seated on the village justice-seat, the "knowe" of the Berwickshire village. It is only possible to trace back this portion of his primitive functions, and their connection with the primitive assembly, through

the channel of the Scotch survival. And this would be quite sufficient, even if there were no other channel. But, turning to the evidence of Burliemen from the village records of England, there is much more to interest the student of primitive folk-moots. In Yorkshire a very ancient distribution of the wide district called Bradfield is its distribution into four Byerlaws, each of which, no doubt, had its court of husbandmen to determine petty questions which arose in a district where boundaries were not easily defined, and rights of pasturage, therefore, affording frequent occasions of dispute. Bradfield was divided into four Byerlaws: Waldershelf, Westmonlagh or Westnal, Bradfield, Dungworth and Stannington. Among significant names in the area of these Byerlaws there are Seven Stone Siack, Lord's Bank, Norr Bank (Hunter's *S. Yorks.*, ii. 191). Then there is Brampton Byerlaw, and Hunter says that this word adheres to the name of many of the towns of Hallamshire (*Ibid.*, ii. 74). These Byerlaws seem to be what Barnaby Googe means by the Country Lawes when, speaking of the management of young woods, he says, "The Country Lawes have therein well provided that where such springs [woods] are, they shall feed no goates, nor such cattell" (*Book of Husbandry*, 4to, 1614, p. 96). But this primitive legislation is best exemplified by Whitaker, the historian of Whalley, who has preserved a code of Byerlaws belonging to Extwistle. We have here vestiges of the primitive village community again coming to the front—the legislation of a primitive agricultural community, the judgments of a primitive judicial court. Whitaker says, "A species of internal regulation prevailed in the manors of Blackburnshire, of which I have met with no distinct

account, but in the township of Extwistle and that of Downham."

I will now give a transcript of the primitive code of Extwistle:—

"The Byrelaw of Extwisell, confirmed by John Towneley, of Towneley, Esquire, John Parker, of Estwisell, and others, May, A.D. 1561.

"First. It is agreed that foure Byrelaw men be chosen and appoynted for the saide townshipp.

"2nd. It<sup>m</sup>, that noe townesman shal tayke anie beast, shepe, or horse, to ye coñon, except yt be a poore man that hath kyne to geve him milk, or a horse or other beste to leade his eldyng—sub pœna iiis. ivd.

"3rd. It<sup>m</sup>, if anie inhabitant ther stawve anie thornes in Swindene to forfet iis.

"4th. It<sup>m</sup>, if anie inhabitant ther cutt downe or fell anie thornes in Swindene, to forfet iiis. ivd., except ye saide byrelaw men assent to ye saide fellyng or stawving.

"5th. It<sup>m</sup>, if anie man sell anie slate oute of ye saide townshipp, to forfet for ev'y waineload xiid. It<sup>m</sup>, for ev'y waineload of lime.

"6th. It<sup>m</sup>, all goodes of straye to be impounded, and ye owners to paie for ev'y horse or mare vid., for ev'y horne beste, except shepe, ivd. and for ev'y shepe id., and for ev'ry fold break vis. viiid.

"7th. It<sup>m</sup>, noe servyng man to have above x. shepe on ye coñon w<sup>th</sup>out assent of ye byrelaw men.

"8th. It<sup>m</sup>, all ringe yards to bee made afore ye xv. of March yerely sub pœna iiis. ivd., and at ye same day al cattel to be avoyded out of ye fields under like paine.

"9th. It<sup>m</sup>, noe grass to bee mowne, shorne, or

pulled, between ye Feste of ye Nativitie of o'r Lorde and ye laste daye of September, on peine for ev'ry defaute, of iis.

"10th. It<sup>m</sup>, if anie kinde of evil neighborhode be comittyd and founde by ye byerlaw men, to paye for ev<sup>y</sup> such defaute iiis. ivd.

"11th. It<sup>m</sup>, for ev'ry defaute in breaking of hedge or cuting wode in ye enclosures, ev'ry trespasser to paye iiis. ivd."

And then the historian adds: "After the word 'comon' in the second article I suppose the words 'before some certain day' to be omitted. The words *starwe* (to stub or grub up) and *elding* are now obsolete. The corn-fields evidently lay open. With respect to the ninth article, it was an ancient custom to mow rough hay, both upon the commons and in the forests" (Whitaker's *History of Whalley*, p. 379).\*

From this descriptive account of the legislative functions of the Byerlaw assembly we may turn with instruction to the duties attached to the office of Burliemen. This office existed in later times, no doubt, independently of the elective assembly which is connected with its earlier phase. We find it still

\* Another of these primitive codes of law is preserved in the appendix to Carr's *History of Coldingham*. It relates to Anchencraw, a rural village in the parish of Coldingham. The historian says (p. 120)—

"A common of considerable extent was appropriated by these lairds for the pasturage of their flocks; and for the prevention of disputes, and the punishment of offenders, a code of laws, called The Boorlaw, was executed and enforced by a *quorum* of legislators elected from this rustic community, who held the title of the Birlaw or Boorlaw men. This simple statute book is in the possession of Wm. Hood, Esq., proprietor of the contiguous estate of Sunnyside."

I have not thought it worth while to reprint this as well as the Extwistle example. Both are extremely valuable, and both follow a common line of action, indicating a common origin.

extant in many villages of England and Scotland. In Scotland,\* besides the instances given in the previous chapter, where it is connected with the open-air Birlaw Court, there are examples of the Burlie-man as the chosen officer of the community, without reference to the Birlaw Court. And these examples again carry us to the primitive agricultural customs of the village community. There is preserved in Lord Forbes' charter-room a rental of the old Forbes property, made up in the year 1532. The land is divided into ploughs, each of eight oxen. The ploughgate of land is sometimes let to four tenants, each of whom contributed the work of his pair of oxen to the common plough. These joint tenants were bound to keep good neighbourhood, that is, to perform their respective shares of the farm labour, at the sight of umpires called "birleymen," chosen by themselves. These birleymen were the arbiters, the referees in rural differences, between tenants of the same estate. The settlement of the rights of outgoing and incoming tenants, of the value of meliorations, and all such matters, was in their hands for the most part; and in the old time to dispute the award of a birleyman left a stain upon a man's character (Innes' *Scotch Legal Antiquities*, p. 254). Again, on the estate of Robertson of Struan (all around Lock Rannock), from the factor's report we gather that most of the inhabitants had a

\* "Bylaws in Scotland are called Burlaw or Birlaw (Skene, *de Verb Sig.*) which, he says, are laws made and determined by consent of neighbours elected and chosen by common approbation in the courts called Birlaw Courts, where they take cognizance of complaints between neighbour and neighbour; which men so chosen are judges and arbitrators to the effect aforesaid, and are called Birlawmen; for Bawr or Bawrsman in Dutch is *Rusticus*, and so Birlaw is no other, but *Lege Rusticorum*" (Cowel's *Interpreter*, *sub voc.* Bilaws).



right of common pasture, and that there were constant quarrels about the number kept by each, which the baron-bailie referred to the adjudication of the birleyman of the district (*Ibid.*, p. 268). It will be noticed in the first example how apparent it is that the sanction accompanying the birlieman's laws is not derived from a central government, is not enforced by the aid of a governmental police. The sanction is a part of the moral code of the district which has created the office, and it is based, therefore, upon the truest principles of ancient law.

I must mention some other examples from Scotland. Mr. James Hardy, of Oldcambus, has been kind enough to send me an extract from the book of the court baron of Stitchell, Roxburghshire (A.D. 1655), from which it appears that certain tenants on the estate were "elected and chosen to be Burlawmen, to decyde all matters questionable and debaitable among neyborgs and to impose stents and publick Impositions, and to divyd the samyn equally and proportionally without partiality, conform to ilk anes severall possessions, with power to any twa of them with the factor [of the Baronnie] to convey, stent, divyde, [and] decerne efter mature deliberation." Through the kindness of Dr. Alexander Laing I have obtained a copy of the articles and conditions of lease of farms and possessions on the estates of the Marquess of Breadalbane, in the county of Perth, and in the districts of Glenorchy and Gleneavite, in the county of Argyll, entered into between the marquess and his tenants. We see from this document how the Birlieman of modern times is separated from his old associations. He has duties to perform now very similar to those he had to perform in old times. He

settles disputes, he values the rights of outgoing and incoming tenants, he acts as the general arbiter of peace ; but he is now the nominee of the lord more than of the tenants—an officer performing duties attached to modern land-holding, not to primitive communal rights.

The following cutting from the *Southern Counties* (Scotland) *Register*, sent to the *Athenæum*, gives us another example :—

“*Berwickshire: Earlstoun.*—Court of Bourlawmen : Mr. Joseph Ker ; Mr. James Mather.—The men holding this somewhat rare office are sworn when appointed to give judgment, to the best of their knowledge and ability, in cases that come before them, and their decision is understood to be absolute in point of law. Their work as Bourlawmen consists of fixing the amount of damages done by straying or pounded cattle and the like” (*Athenæum*, 16th August, 1879).

My last instance, and it is worth while, I think, bringing all the instances that remain, is the Barlawmen of the barony of Skene. Among the papers of Sir James Horne Burnett, at Crathes Castle, are the court books of this barony. A considerable amount of formality appears in the proceedings of these miniature courts (Hist. MSS. Com., ii. 197), selections from the records of which have been printed in a volume of miscellanies of the Spalding Club.

And now let us turn to England. I have already pointed out the evident connection of the Byerlaw assembly with the assembly of the village community, and now it is necessary to turn to examples of the office of Burlieman still extant without the assembly. In my *Index of Municipal Offices* I pointed out that the Bur-

leightmen of Beaumaris impound all waifs and strays, abate encroachments, inquire into all differences respecting the wastes, and generally act as the agents of the corporation in their character as lords of the manor (see Introduction, p. 33). An interesting discussion arose in the columns of the *Athenæum* upon this important office, and I collect here the examples there printed.

A correspondent writes from Warrington (on 26th July, 1879, p. 115) that "in the Honour and Fee of Halton, and of the Manors of Frodsham and Lyme Handley, in Cheshire, and of the Honour and Fee of Mackesfield and of the Manor of Widnes in Lancashire, Burleymen are still appointed at the Courts Leet and Courts Baron. Men of agricultural experience are always chosen, and their duty is to value damages, *e.g.* to crops, from cattle straying, or the like. The late judge of the Warrington County Court was in the habit of relying upon their evidence, and (by consent, of course) referring cases to them, and often observed how useful a general appointment of such agricultural referees would be." "Burleymen" is marked obsolete in Mr. Peacock's *Glossary of the Dialect of Manley and Corringham*. It also appears that in the court leet records of the city of Manchester these officers are frequently mentioned; two or more, it would seem, were appointed to oversee each of the more important streets. From 1552 to 1584 the word is spelled in these documents "byrlamen" or "birlamen." In 1590 the "bylawmen" for the Mylnegate had not done their duty in making presentments of swine that had been unyoked. In 1593 there was an order made that swine were not to come into the church or churchyard, nor into the

market-place on market-days ; and in the following year the "berlawmen" of every street were charged to be careful for their own circuits, and in general to look after the church and churchyard. In 1595 the "berlawmen" were fined for suffering swine to go up and down the street unyoked.

Another correspondent, who writes from Altrincham, tells us that at the "Altrincham Court Leet, which is known to have been held since A.D. 1290, Burleymen are annually appointed, who often prove useful in settling disputes. Their duty is to assess damage to gardens and fields caused by stray horses, cows, hens, etc. In some of the old records Burleymen has been \*spelled bye-lawman. In Knutsford and Mobberley townships Burleymen are appointed, and to show that neither the word nor the office is obsolete, within the past two years they have given evidence in the county court of damage to growing crops and gardens" (*Athenæum*, 2nd August, 1879).

The accounts of the Feoffees of the Common Lands of Rotherham, in Yorkshire, show that it was the annual custom for "the closes to be cast open" at Michaelmas, when the presence of the "bylaw-men" is constantly mentioned, and the throwing open the land to the free use of all commoners was the occasion of some rural festivity. In 1591 we have, "To the byer law-men for casting open closes according to our custome, 2s." In 1620 the constables paid the "Bye-lawe men with the rest of the neabors," and again for "Ale, brede and chese, by reason of the multitude of pore people which follow the Bye-law men." In 1622 there was a fuller account. The Feoffees

"Paid for 2 cheeses at the castinge open  
of the feildes                      ...                      ...                      5                      0

for 6 doz. and di. bread ... ..	6	6
for 11 gallons and a half of Ale ... ..	3	10
more for ale and bread which was bestowed on the Bylawmen then ..		12d.
bestowed in ale on them after the casting of the hedges open ... ..		14d.
paid for carrying these thinges to the feild		6d.'

"The byerley-mens byll" for 1578 has been preserved; it shows a number of fines imposed for wrongfully keeping horses on the common, and other like offences. These items all agree with the account of the duties of Burley-man at Warrington, and with Jamieson's explanation (*Scottish Dictionary*): "*Birlic-man*. One who assesses damages; a parish arbiter; a referee" (*Athenæum*, 2nd August, 1879).

Then, among scattered instances; we learn from an ancient court roll of Kirton-in-Lindsey, that two "Birlimen" were appointed for Houghton, Middleton, and Erburie (Hist. MSS. Com., iv. 368), and in the manor of Scotter, in Lincolnshire, four "burleymen" were appointed in 1586 (Mr. Peacock in *Archæologia*, xlv.).

These examples, brought together by local knowledge, which is generally so much more valuable than that finding its way into many of our local histories, quite establish the Birlieman as an officer of the primitive village community, and connected therefore with the primitive village assembly.

An office peculiar to the Things of Scandinavia and the northern people was called the "raadman." Dr. Hibbert informs us that whenever the Jarl of Orkney, or, in his absence, a laughman, sat in the Ting, he was assisted in his decrees by *raadmen* or

councillors, who are simply described as "the best men" of the district. In Orkney and Shetland the name of "raadmen" was familiar to the natives so late as the seventeenth century (*Archæologia Scotica*, iii. 177).

Now, from the Domesday Book it appears that there were numerous "raadmen" in England at the time of the Conquest, who possessed considerable estates. These raadmen, therefore, must in some way or other be connected with the ancient "Things" of England—perhaps had themselves officiated in the capacity that their title suggests. There is, however, no direct evidence to establish their actual fulfilment of the office, and they must then be included among the traditional survivals.

Some of the principal instances of the occurrence of the name must be given. Sir Henry Ellis cannot determine the meaning or derivation of this title of Radman, and refers to Dr. Nash's conjecture, in his *Observations on the Domesday for Worcestershire*, that they were probably a kind of freemen who served on horseback—"equestris homo sive Miles" (*Introd. to Domes.*, i. 74). But with the above means of interpretation, there is no need to dwell upon the guesses of these early scholars; the English Radmen were undoubtedly the same as the northern Raadmen. Sir Henry Ellis also places, as another form of the title *Radmanni*, that of *Rachenistres* or *Radchenistres*.

In Worcestershire there were Radmanni at Longdune, of whom it is said, "De eo tēi i. Radman Lefric unā hið & unā v. & ibi h̃t i. car. & iii. uil̃. & viii. borð. cū. iii. cař;" in Poiwic, "ibi fueř viii. Radmans. Age-luuard. Eduuard. Brictrmer. Saulf- Aluuin- Godric. Aluui. Ketelbert. h̃ntes inter se x. cař. & plures bord̃.

& seruos. cū vii. caṛ. Qđ tenēb. ualḃ. c. solid. Ibi Radmans secabant i<sup>na</sup> die in anno in p<sup>a</sup>tis dñi. & oñe seruitiū qđ eis iubebat<sup>r</sup> faciebant.” These quotations, given by Sir Henry Ellis in his *Introduction to Domesday* (i. 73), may, no doubt, be looked upon as typical. The distribution of these Radmen, according to the Domesday Survey, was as follows : 1 Racheneste cum sua caruca in Berkshire (*Ellis*, ii. 423) ; 145 Radmans in Cheshire (*Ibid.*, p. 430) ; 137 Radchenistri in Gloucestershire (*Ibid.*, p. 445) ; 5 Radchenistri in Hampshire (*Ibid.*, p. 450) ; 47 Radchenistri and 24 Radmans in Herefordshire (*Ibid.*, p. 454) ; 3 Radchenistri and 167 Radmans in Shropshire (*Ibid.*, p. 481) ; 3 Radchenistri and 33 Radmans in Worcestershire (*Ibid.*, p. 505) ; making altogether a total of 196 Radchenistri and 369 Radmans (*Ibid.*, p. 514).

Sir Francis Palgrave notices an officer mentioned only in one document, under the special denomination of “Thegn at rōde and ðet runan.” The Redesmen, Rōdegifan, or Counsellors, occur in the Chronicles and in the more precise language of the charters (*Eng. Com.*, ii. p. cccxlviii.). In a charter (Somner’s *Gavelkind*, p. 213) of Cnut, the witnesses are set out by name, and then comes the general body under the title of “all the king’s rædesmen.” We have “Rodemanns” mentioned in a charter of Henry de Laci in 1302 (Whitaker’s *Hist. of Whalley*, p. 351). And they appear in a very remarkable writ or patent, issued by Henry III. : “This know ye all well, that we will and grant that our Rædsmen all, or the most of them . . . and this was done before our sworn Rædesmen, Boniface, Archbishop of Canterbury,” etc. (Palgrave’s *Eng. Com.*, ii. p. cccxlix.).

There is another office by which we can gain

some idea of the survival of the primitive folk-moot in England. The dignity of "stallere" was an established one in the courts of the Scandinavian kings. He was superintendent of the Court, or a sort of High Steward, and attended the "Thing" meetings for the king ; but more particularly in cases which concerned the Court (Worsaae's *Danes and Norwegians*, p. 146). There do not seem to be any late survivals of this office in England. But in one of Edward's letters, dated 1062, the following names appear :—"Esgarus, regiæ procurator aulæ ; Bunderinus, regis palatinus ;" and "Adzurus, regis dapifer : " and the different Latin titles are translated in contemporary letters by one and the same word, "steallere," or "stalre" (Worsaae as above). Again, an English diploma, dated 1060-1066, is signed by "Esegar steallere," "Bondig steallere," and "Roulf steallere" (*Cod. Dip.*, No. 809). "Esgarus quidam, stallere" is found in *Liber Eliensis* (p. 216). A charter of Cnut gives among the witnesses "Thored, the stallere" (Palgrave's *Hist. Eng. Com.*, ii. p. ccxxvi. ; also *Cod. Dip.*, No. 1328). Then there are from the *Codex Diplomaticus*, "Esgar steallere," 1044-1066 (Nos. 771, 828, 855, 864), "Wimarc steallere" (Nos. 771, 822, 828, 850, 871, 904, 956, 1338), "Ælfstan steallere" (No. 773), "Eadnoth steallere" (No. 845), "Lyfing steallere" (Nos. 956, 1338) and "Osgod clapa steallere" in the Anglo-Saxon Chronicle, A.D. 1047. Sir Francis Palgrave also observes upon this officer that he held the highest station in the Witenagemot, and was the first man in the kingdom below the king. It was at the marriage of Tovi the Proud, who possessed this dignity—"qui totius Angliæ post regem, primus stallere sive Vexillifer Regis"—that Hardicnut ex-



pired. Elgar or Algar, often noticed as a member of the Witenagemot in the charters of the Confessor, was imprisoned by the Conqueror, and kept in chains till his death—"Algarus quidam stallere." Many stalleres are noticed in the writs of the Confessor (*Hist. of Eng. Commonwealth*, ii. p. cccxlv).

These examples of the primitive method of summons and of officers of the primitive assemblies close the evidence which open-air courts afford to the student of our island antiquities. This evidence has been summarized historically as we arrived at the various stages of our progress, and it does not seem necessary to recapitulate the results of the summaries. There may be something to say, however, on another head. These researches tell us that Englishmen of the nineteenth century are connected by innumerable ties to Englishmen of preceding centuries, before Cromwell had broken many of the fetters of feudal monarchy, before William had fastened those fetters, before Alfred had written any letter of his great name on the pages of English history. That there is much more to be done with the evidence here brought together from places where its importance has never been noticed, and that there is still further research to be made, following upon the same lines as I have indicated here, is, of course, self-evident—is, I would hope, one of the results to which this book may lead. I do not pretend to have dealt with the subject in any other way than as a first contributor of knowledge—a collector of important examples which lie scattered throughout local histories, or in the unwritten knowledge of local

antiquaries, where they are of little value until brought to light as contributions to the early germs of national history. In going over the ground that our subject has taken up, we have travelled back into ages where the historian cannot penetrate without the aid of the people, and their traditions, and their clinging to old customs and habits, which breathe of the freedom belonging to primitive life. And this underlying factor in our political progress should be the subject of study by those who legislate in this century for the well-being of the masses. These masses are not separated by very vast chasms from the thoughts and associations of their early history ; their development in the social progress has proceeded by tolerably sure and steady lines, uninjured by the luxuries of social life, unswayed by the philosophy or the science of the scholar, and but little influenced by the powers of that great central government which was the work of the Roman mind and the proud inheritance of the Roman conquest of this island. The Saxon could never have produced from his own institutions the Rex, the Emperor, the Basileus, of the seventh and tenth centuries, and all their gradually increasing governmental powers. He went on taking part in his local institutions without much thought that they were being welded into a national constitution ; and only when these local institutions were touched by a sudden or a rough hand did he step forth in their defence, and appear by the side of Lanfranc on Pennenden Heath or of the Barons at Runymede. Otherwise the question of national government went on without his thoughts or his assistance. The Roman principle of letting the people alone and pursuing the great questions of government without

them, was thoroughly understood by Alfred, by William, by Henry, and by the glorious Edward. We of this age, however, are differently placed. Local institutions are not hidden from the eye of the central government, and we are apt to think little of customs not created by Act of Parliament. Let it be remembered, however, that the performance of these customs, the exercise of local rights and privileges, have occupied the people of England for more than ten centuries, and have occupied them well. It has been an occupation which has kept alive the truest instincts of our race, and transferred the burning questions of ambitious and progressive men from the national Witan to the parish vestry, thereby giving unreasoning power its smallest scope of influence, and allowing time for the acts of statesmen to have their full effect. It has restricted the conflict of man against man to the area of village politics, where the village pound and stocks take the place of the criminal prison, and village games and carousals the place of civil war. It has, in short, kept alive the real principle of local self-government. Now and again the village life of England has been disturbed by outside events; but when the monarchs of England wanted soldiers to fight their battles, and to win a name and a place for the nation, they did not use the machinery of centralized power, but they summoned the men of England to arms in the same mode as they had been summoned to arms and to the meetings of their village assemblies for centuries past—a mode which inspires in the magnificent lines of Mrs. Hemans the spirit of the free and vigorous past:—

“ There was heard the sound of a coming foe ;  
There was sent through Britain a bended bow ;

And a voice was poured on the free winds far,  
As the land rose up at the sign of war.

\* \* \* \* \*

And the reaper armed like a freeman's son ;  
And the bended bow and the voice passed on."

Politicians, then, who seek to legislate for the *people*, who attempt to alter old institutions, or to set up new ones, should first of all learn what the necessities are by studying their causes, and this can chiefly be done by studying how far the old institutions may be modified and reformed to meet the requirements of new developments.

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