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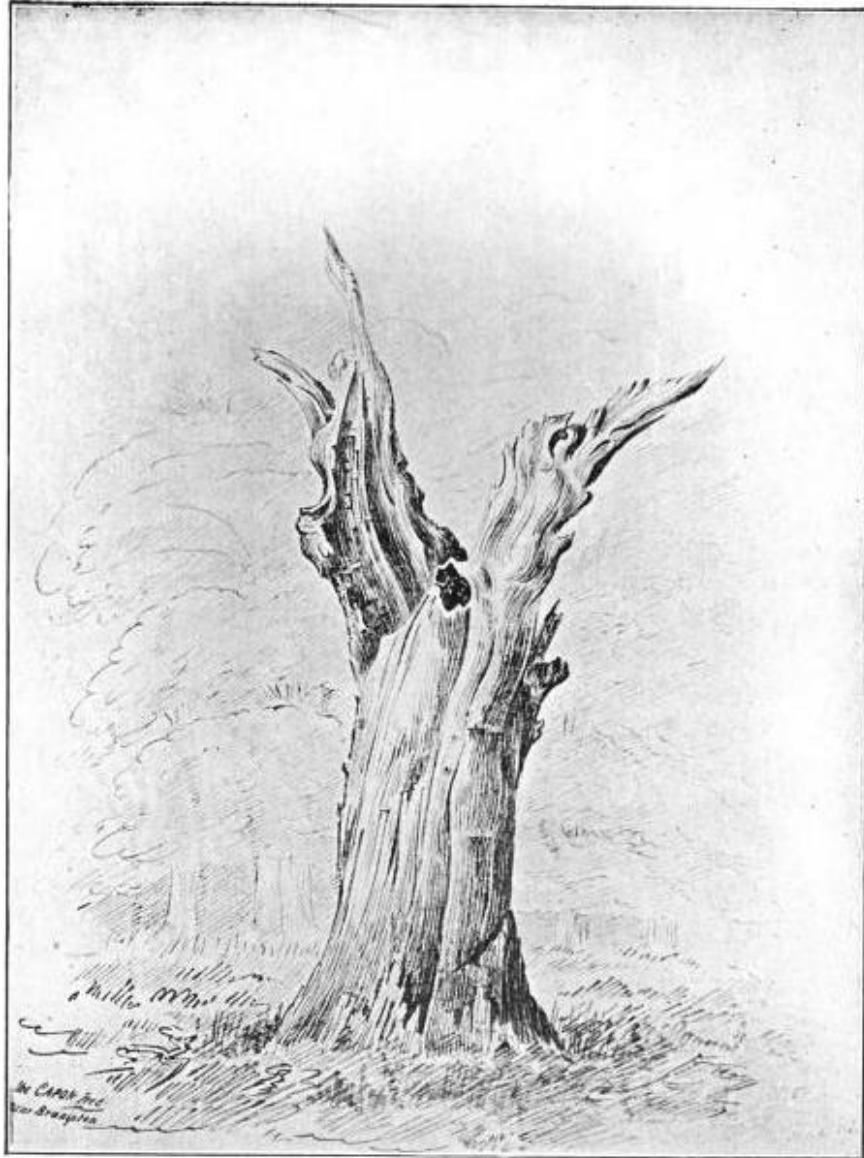
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THE CAPON TREE AS IT WAS IN 1833.

Drawn by the Rev. W. Ford.

Photo, by the Rev. G. J. Goodman.

TO FACE P. 129.

ART. XI.—*The Capon Tree, Brampton, and its Memories.*

By HENRY PENFOLD.

Read at Carlisle, April 19th, 1904.

THE consideration of three maps, all of recent date, have led to the writing of this paper. On the first, of date 1777, we find marked "The Capon Tree"; on the second, the earliest Ordnance Survey, we find marked "The Remains of the Capon Tree"; while on the most recent map the spot is marked "Site of the Capon Tree." This progressive marking of the name justified the placing on record all that is known of this once famous tree; all the more was this necessary when practically nothing in the way of documentary evidence has come down to us to show its original significance and meaning. The Capon Tree in the minds of the inhabitants of this north-eastern corner of the county was associated with many venerable traditions and stories, and we may find it a necessary though an unpleasant task to unshroud this venerable oak and to clear away the fairy tales—of judges under its branches regaling themselves on capons and wine, of the popularly supposed idea that this tree was the place where thousands of border raiders were executed, of tales of Capon Tree boggles; these and many others just as mythical will have to disappear under the plain light of history.

The Capon Tree stood half a mile to the south-west of Brampton on the side of the old paved road from Newcastle to Carlisle, just where this old road is joined by a lane which leads to the Wreay and Brampton Fell, known in the neighbourhood as the Sandy Lonning. The tree gives the name to a small farm of thirty or forty acres, which in 1778, the year of the making of the Brampton award, was sold for the purpose of the payment of the expenses, and ever since has borne the name of the Capon Tree Farm. By the kindness of Lord Carlisle we have examined his valuable collection of estate maps in the muniment room at Naworth, but as the tree stood on common land—land from time immemorial common to the parishioners and therefore not on the Naworth estate—the more ancient of these maps do not contain evidence even of the existence of the tree. From a rare map of the county of Cumberland previous to the passing of the Enclosure Act, and belonging to Mr. Alderman Dobson, we find the tree marked at the very extreme corner of the common land, the property of Lord Carlisle. From this map of date 1777, as well as from the plan accompanying the award and dated 1778, we see this tree marked alone with no other trees near it. Indeed it is the only tree on the plan issued with the award, a plan which covered 1760 acres of common land which lay in Brampton parish. This alone is some indication of the importance attached to it both by the

parishioners and the makers of the award. Was not this then a likely place for a Bramptonian to gratify one of the only pieces of pure sentiment that a Cumbrian indulges, namely, of setting his friends out on the road or meeting them there when going or returning on their way? Perhaps this has some bearing on the name Capon Tree, a point which we will discuss later on in this paper.

Before proceeding we might in passing note that there are other two Capon Trees known to us—one in the pasture at Alnwick Castle, and the other a solitary remaining member of Jed Forest standing near Ferniehurst Castle, Jedburgh, on the estate of the Marquis of Lothian. How then did these trees, all ancient oaks, get the name? We must confess to a certain amount of diffidence in approaching this, to us, thorny question. Singular indeed it is that there is so little printed matter regarding the name. No attempt is made in either the *Transactions* of the Berwickshire Naturalists' Society or in the *Archæologia Aeliana* to give the meaning. As far as our research goes we have discovered two or three attempts to explain the name. The first is from the *History of Alnwick*, by George Tate, F.R.S., F.S.A. (vol. i., p. 436):—

A favourite pastime of the girls was played here (*i.e.*, under the branches of the Capon Tree) and deserves a passing notice because accompanied by a peculiar local song. The name indicates the character of the game; *Kepp* is from Anglo-Saxon *Cepan*, Teutonic *Kappan*, to catch or capture; for when the game was played at by several, the ball was thrown into the air and kepped, or intercepted in its descent by one or other of the girls and it was then thrown up again to be caught or intercepted by some other ... singing at the same time the following ditty:—

Keppy ball, Keppy ball, coban tree,
Come down the long lonning and tell to me
The form and the features, the speech and degree,
Of the man that is my true love to be.
One a maiden, two a wife,
Three a maiden, four a wife, &c.

the numbers being continued so long as the ball could be kept rebounding against the tree. *Capon*, *coban* and *covin*, are several names of the same tree, the letters *p*, *b* and *v* being interchangeable.

The second attempt to explain the meaning of the name is from Jamieson's *Dictionary*:—

A large tree in front of an old Scottish mansion house where the Laird always met his visitors. The term occurs in the following beautiful stanza, the only one known to remain, of a mother's lament for her son.

He was lord o' the hunting horn
 And king o' the coven tree;
 He was lu'ed in a' the west lan waters
 And O he was dear to his ain minnie.

It has been supposed that this is "convoy tree," the place to which the host "convoyed" (accompanied) his departing guests. Much more probably from "Covyne" as signifying convention or place of meeting like Trysting tree.

The third attempt to give the meaning is from *Arboretum and Fruticetum*, p. 1752, by J. C. Loudon. This Capon Tree (at Jedburgh) is said to have been the place where the Border clans met in olden time, and hence the name of Capon from the Scotch word "Kep"—to meet.

Nor can we leave this part of our subject without alluding to Hutchinson's idea of the derivation of the name. He tells us that the name is derived from the fact of the Judges regaling themselves under its branches with a repast, the principal courses of which were capons and wine. This story is repeated also by Lord Macaulay in his *History of England*, (vol. i, chap. iii). This appears to be the most fanciful attempt to give the origin of the name, for while it might be a fact that the Judges *en route* from Newcastle to Carlisle regaled themselves as stated, this could not by any possible manner of means be the explanation of the name when applied to the two trees at Alnwick and Ferniehurst. We are therefore compelled to seek elsewhere for the meaning. First, however, let us understand the significance of the Anglo-Saxon.

Cepan—To take, hold, go about, endeavour, make an attempt, betake oneself to, seek after, catch at, heed, regard, catch, keep.

Bosworth's *Dictionary*.

We do not strain the meaning then when we put down the Capon Tree at Brampton as the trysting tree, the meeting place of the district, to which lovers betook themselves, where friends met friends and where they accompanied them to on their outward journey and sped the parting guest. This idea agrees very well with Jamieson and Loudon, and is confirmed very curiously while writing. Mr. Wm. Barker of the Sands, Brampton, an old "residenter" informs us that the Capon Tree was the rendezvous where all those who in Brampton were inclined for "fisticuffs" met their opponents. He says that on fair, market, or hiring days, the man who considered himself "cock" of the neighbourhood shook the bull ring in the market place, as a sign that he was ready to meet any one who disputed his championship. The opponents always repaired to the Capon Tree, and in the

presence of such backers as assembled fought for the supremacy. There is no evidence whatever of the rhyming game of Keppy ball having been played against the trunk of the ancient oak, though even if it were so, it is likely that with the tree having become a gallows, the innocent play of the children would be stopped or removed to some less gruesome landmark. More likely indeed, is it that both the tree and the game derived their names from the one root, as the meaning given is wide enough to include both derivations. The game of Keppy ball is still played at Brampton but without any ancient rhyme attached to it.

Chancellor Ferguson has said:—"I have always thought that the history of the retreat of the Highlanders was very inadequately dealt with" (these *Transactions*, x., p. 186). With this remark we are in complete concurrence, and the Capon Tree with its associations affords a proper opportunity for adding a few more facts to those already known regarding the rising of "45," as far as it concerns the County of Cumberland. It is proper here in passing to notice the hitherto almost unobserved fact that Brampton was the scene of the official commencement in the rising of the "15," for from Patten's *History of the Rebellion of 1715*, fourth ed., p. 58, we find:—

The next day (November 1st, 1715) they entered England and marched to Brampton, a small market town belonging to the Earl of Carlisle. Here nothing happened but proclaiming the Pretender and taking up the public money, the excise on malt and ale. Here Mr. Forster opened his commission to act as general in England, which had been brought him from the Earl of Mar, and from this day the Highlanders had sixpence per head per day paid them to keep them in good order and under command.

(P. 64.) They expected to have met with some friends here to have joined them, for it was reported that Mr. Dacre of Abbey-Lanercost, a Papist, had promised to raise 40 men; but he was taken with a fortunate fever which hindered him of his design, and prevented him and his family from ruin; he died since; his name, which was very ancient, is now extinct in that estate.*

Turning to the "45," we might remark that on November 11th,† 1745, Prince Charles Edward Stuart passed over this

* This note regarding James Dacre of Lanercost ought to be read in conjunction with "Notes on the Dacres of Lanercost," by the Rev. J. Wilson (these *Transactions*, vol. xii., pp. 338-343). Some of the remarks there made by Mr. Wilson are still further proved by the above extract.

† The dates are taken from Mr. W. B. Laikie's "Itinerary of Prince Charles Edward Stuart," Scottish Historical Society.

old road, and entered Brampton by the Lonning. Two or three days later the Mayor and Corporation passed the tree when going and returning on their errand of delivering upon bended knees the keys of the city to their conqueror at Brampton. Prince Charlie himself, also, on Monday, the 18th November, 1745, left Brampton on his white charger, preceded by his hundred pipers in full Highland panoply, and took possession of the city—the proudest act and the proudest day of his romantic career; and nine months later a procession of six Jacobite sufferers were drawn on hurdles up the old highway, the place of execution being the Capon Tree. The executioner was one William Stout of Hexham, who for the sum of twenty guineas and the perquisites of clothes carried into effect the sentences of the Judges. Twenty suffered at Carlisle, six at Penrith; and on the 21st of October, 1746, six suffered on the Capon Tree at Brampton (*Walker's History of Penrith*, p. 97). The trials at Carlisle in the summer and autumn of 1746 are matters of common knowledge. Suffice it to say that the description given in *Waverley* (chap. 69) by Sir Walter Scott of the execution of Fergus MacIvor and Evan Maccombich is, as competent historians agree, correct in all its detail. The Brampton sufferers were among the 125 who were thrust into the small dungeon of Carlisle Castle, whose only light and ventilation are supplied by a narrow slit in the exterior wall—a piece of inhumanity which can only be compared to the Black Hole of Calcutta. Here they were confined from August 12th, 1746, to the middle of October. The six Brampton sufferers were:—Colonel James Innes, Captain Patrick Lindesay, Ronald Macdonald, Thomas Park, Peter Taylor, and Michael Delard (*The Scots Magazine*, 1746). It is worth while endeavouring to trace these men. This we have done, and thanks to the researches which Mr. W. B. Blaikie has made for us among the State papers in the Public Record Office, we are able to give many particulars concerning them. For the particulars regarding Patrick Lindesay we are indebted to Mr. A. Francis Stewart, a lineal descendant of James Innes.

As James Innes seems to have become a colonel in the service of Prince Charles Edward Stuart and to have been a person of some note in the rising, we will give the particulars regarding him in full:—

S. P. Dom }
George II. } Vol 87. Sept 1746

Unto the Kings most excellent Majesty

The humble petition of James Innes presently prisoner in the Castle of Carlisle under conviction of high treason Sheweth

That I have always behaved myself as a dutiful and loyal subject to your Majesty untill sometime after the breaking out of the late wicked and unnatural Rebellion.

That after the said Rebellion did break out I always expressed a dislike and abhorrence of the attempt.

That sometime in the month of October last a party of the Rebels of about Three hundred armed men came to the town of Cullen the place of my residence, and having by force broke into my house and required me to go with them, I was by their threatenings prevailed upon to comply and to my great sorrow must acknowledge, That I continued sometime in their company tho' I showed a great unwillingness and aversion to their designs.

That being sensible of my crime tho' attended with no atrocious circumstances, I resolved to give your Majesty's Judges no trouble, and therefore threw myself upon your Majesty's known clemency, and upon my arraignment pleaded guilty.

That I am a man of near seventy years of age and have a family whose subsistence depends upon my life, That I have a full sense of and thorough repentance for my crime and therefore with the greatest humility I prostrate myself at your Majesty's feet for mercy.

May it therefore please your most Excellent Majesty to extend your known clemency to your Petitioner who will dedicate the remainder of his days to praying for your Majesty's long and happy reign for the prosperity of your Royal House and that your Majesty's posterity may continue to reign over a People happy in their Sovereigns to the latest ages.

[Signed] James Innes.

Addressed Unto the King's most excellent majesty

The humble petition of James Innes
Prisoner under conviction of High Treason
at Carlisle 1746.

Endorsed R^d from the E of Finlater Sept 29, 1746.

In his letter of Sept. 27 transmitting the petition and the affidavits, the Earl of Finlater says that his transmitting them is not to be interpreted as an attestation from himself as a truth of the facts contained in them.

[Affidavits sent with the petition].

In behalf of James Innes prisoner
under conviction of High Treason at Carlisle.

William Mason, tide waiter in Cullen maketh oath. That he has lived long in the neighbourhood of James Innes presently prisoner in the Castle of Carlisle, and knoweth that the said James Innes is about seventy years of age, and has always behaved himself in a peaceable and dutifull manner as a loyal subject until sometime after the breaking out of the late horrid and unnatural Rebellion. That he has often conversed with the said James Innes before he was engaged therein and about the time of its breaking out and heard him always express in such a manner as shewed a dislike and abhorrence of the attempt. But that sometime in the month of October last one David Tulloch who was engaged in the Rebellion came to the town of Cullen where the Deponent and James Innes lived with a body of about three hundred men in arms, and the Deponent being at that time in company with the said James Innes knows that he refused to see David Tulloch who thereupon broke in by force to the room where James Innes was and required him to go along which after sometime with threats he prevailed on him to do tho' the Deponent has been informed that the said James Innes showed a great unwillingness and aversion to their design.

Signed W Mason

Sworn at Carlisle in the
county of Cumberland the 12th
day of September 1746 before me

T Burnett.

Affidavit of William Ord Merchant and Baillie of Cullen taken at the same date and in the same words.

Such was the plight of those unfortunates who had ventured their all with Prince Charles Edward Stuart. James Innes is a typical case, and we have ventured to give the above lengthy extracts to show the extremes to which these adherents of the unlucky Stuarts had come. We give a further extract from a letter by Mr. W. B. Blaikie:—

James Innes, Brother of Innes, laird of Coxtton in Morayshire, a branch of the ancient family—Innes of Balveny in Banffshire, which had fallen into poverty through loyalty to Charles I. (At the 45 period, the head of the family Sir Robert, of Innes of Ortoun, had to enlist as a private dragoon, though he afterwards got a commission).

James Innes in 1745 was surveyor of the highways in Banffshire. At his trial he pleaded that he was “near to 70 years of age” and that 300 men came into Cullen (Banffshire, where he lived) and forced him to go with them. This was of course the constant plea of all the prisoners. He seems to have been with Glenbucket’s people at first but he received a colonel’s commission and was A.D.C. to Lord Ogilvy.

The next of the Brampton sufferers in importance was Captain Patrick Lindesay, who, says Mr. Francis Stewart, was often called Peter—Peter being an affectionate cognomen for Patrick. He [in the State Papers called a “gentleman”] was a farmer or yeoman in Wester Deans, Peebleshire. He was keeper of the wardrobe at Holyrood to Prince Charles, and proclaimed the Prince as King at St. Andrews. He was captured in July, 1746; when along with six other fugitives he was made prisoner in the Braes of Angus, when he had come down from the mountain fastnesses to look for food. Both Innes and Lindesay pleaded guilty when arraigned, though we are informed that Lindesay “died with great resolution, but persisted in justifying what they had done.”

Ronald Macdonald, another of the Capon Tree victims, was a private in the Edinburgh City Guard and deserted to the Prince. Mr. Blaikie says:—

He was certainly not the Ranald Macdonald who first aroused the enthusiasm of the Highland Chiefs. That Ranald was a brother of Kinloch Moidart and was Captain in Clanranald’s regiment. He lived to be a father of 21 children and is supposed to be the author of the Macdonald narrative in the “Lockhart papers.”

We have been the more particular in these identifications because in the county histories and other local works so many errors appear, and in the latest local publication dealing with this subject, the late J. A. Wheatley’s *Prince Charlie in Cumberland*, (p. 50), we find the author surmising as to whether the Ronald Macdonald executed at Brampton, was the gallant young man who first roused the Highlanders’ enthusiasm. We have now three prisoners left to deal with, Thomas Park, Peter Taylor, and Michael Delard. In the state papers very full accounts of Thomas Park and Peter Taylor are to be found. In his petition to the King, Thomas Park avers that “four Highland men came to his house armed and forcible carried him off with them.” That being “indicted for High Treason before your Majestys Commissioners of Oyer and Terminer at Carlisle, he did not dissemble his offence” but “pled guilty choosing to trust himself to your Majesty’s known clemencie.” On the other hand, there were witnesses ready to prove that Park “was a Sergt in the Manchester Regt that he marcht with the rebel army from Manchester to Derby and from Derby to Carlisle,” also “that he had a white cockade in his cap, and that at Lancaster Kendal and Penrith he carryed an halbert in the Rebel army,” “that he was in Carlisle when it was besieged by ye Duke of Cumberland, wore a plain sash, white cockade and hanger.”

Passing on to the remaining couple we find from the State Papers the following particulars:—

S. P. Dom }
George II. } October 1746 Vol. 88.

State of the cases of the Prisoners who appeared most guilty at Carlisle in L^d Chief Baron's Letter Oct. 6, 1746.

Michael Dellard a common soldier in the Manchester Reg^t who straggled from the rest and by terror and threats raised contributions whilst the army march^t through Lancashire and was taken by the county people.

Peter Taylor was involved in the general guilt of accompanying the Rebels in arms as one of the Manchester Regt. After he was indicted at Carlisle, made his escape but was retaken at Shap on his way to Lancashire.

It appears that no further details of Dellard are in the State Papers, but from the Scots Magazine, 1746, we find that he was an Irishman. Peter Taylor's petition is very much like the others quoted, and expresses in very similar language "his deep sense of the mildness of the government and the justice of the terrible sentence he now his under." That all the six who were executed at Brampton were deeply involved in the raising, is clearly proven. Another fact brought out is that not all, who took part, were Highlanders. Here we have three Highlanders, two Englishmen and one Irishman. Regarding their execution we give another extract from the State Papers, being the letter of the High Sheriff regarding the execution:—

S. P. Dom }
George II. } October 1746 Vol 88.

Carlisle 22nd October 1746

My Lord

On Tuesday last were executed at Brampton agreeable to their sentence Peter Taylor, Michael Dellard, Ronald Macdonald, James Innes, Peter Lindsay, and Thomas Park, who behaved as becoming men in their condition. The three first were Roman Catholics and the last three Protestants; the other four who were ordered for execution along with the above were James Forbes, Richard Morison, Alexander Hutchinson and Stephen Fitzgerald, the three first were reprieved by your Grace's letter of the 17th instant & the last died in prison some time before the day of execution on whose body the coroner took an Inquest.

I am
My Lord

Your Grace's most
obedient humble servant
Chr Pattinson

Endorsed Carlisle Oct 22nd 1746
Mr Pattinson High Sheriff of Cumberland

So ends the tragedy. What became of the bodies of the prisoners is not known from official sources, but the following extract from Allan Cunningham is worth reproducing:—

We were told in our youth by an old lady, who when a girl, was present at the execution of some of the rebels at Carlisle that most of them (all fine young men) were not half dead when cut down; one of them actually struggled with the wretch, who opened his bosom to pluck out his heart. The scene she said haunted her fancy for half a century, and she never reflected on it without a shudder.

It is possible that many Bramptonians gazed on the same gruesome spectacle at the Capon Tree. Little wonder, indeed, is it then that the Capon Tree got the reputation of being the resort of ghosts and boggles, and for at least a century after the execution loomed largely in the talk of the country folk. The bodies, it is probable, were buried under its branches. At the funeral of the Carlisle victims, it is reported in a letter written by Lieut.-Colonel Howard, Governor of Carlisle Castle, that Mr. Douglas, Mr. Graham, the apothecary, Mr. Lowry and Mr. Campbell of Brampton assisted publicly—the latter as mourner, the other three as pall-bearers (Lord Albemarle's *Fifty Years of my Life*). Whether "Mr. Campbell of Brampton" acted the part of mourner over the Capon Tree victims is not known. It is probable that Mr. Campbell himself had come to Brampton with the Prince, for we still have an old lady living here whose grandfather, Robert Campbell, came to Brampton in the "45" and settled in the place. Why the Capon Tree was chosen or why the prisoners were brought to Brampton for execution cannot now accurately be discovered. Conjecture and surmise lead us to think that where the Prince had stayed there the rebels were hung as a warning to those inhabitants who had been fascinated by the urbanity of his bearing and the romance of his undertaking—no less an undertaking than regaining a lost crown and kingdom.

Turning now to the story of the Judges we might give in his own words the description given by Lord Macaulay (*History of England*, vol. i, chap, iii.)

No traveller ventured into that country (Cumberland and Westmorland) without making his will. The Judges on Circuit with

the whole body of barristers, attorneys, clerks and serving men rode on horseback from Newcastle to Carlisle, armed, and escorted by a strong guard under the command of the Sheriffs. It was necessary to carry provisions, for the country was a wilderness which afforded no supplies. The spot where the cavalcade halted to dine, under an immense oak, is not yet forgotten.

This reference to the Capon Tree is grounded on Hutchinson's *History*, and though as we have already seen there is reason to discredit the story of the Judges dining on capons and other comestibles, there is no room to doubt that they rested under this tree, which stood on such a convenient place for that purpose. The old road by which it stood is a continuation of the ancient Stanegate or Carelgate, the Northumberland portion of which can still be partly traced, ("The Military Road in Cumberland," by T. H. Hodgson, these *Transactions*, N.S. ii, p. 274). We believe also that a considerable portion of it in Cumberland in the Brampton locality can also be traced. Another reason for believing that the cavalcade halted here is that the tree was a very large one, and though when Hutchinson wrote, it was then in great decay, from the picture drawn by Rev. W. Ford in 1833 we can in some measure imagine what it had been in its prime. The disappearance of the tree has been hastened by the zeal of the younger portion of the population, who used to knock pieces off and take them away as curiosities. Every vestige of this once majestic oak has now gone, but we are glad to know that the site has been (August, 1904) permanently marked by a graceful and appropriate memorial.

In closing we remark that this tree forms the basis on which is written what purports to be an historical account of the executions at the Capon Tree. It appeared in the *London Journal*, Feb. 10, 1855, but is so grossly overdrawn and inaccurate that no reliance can be placed on its statements. The heading is "The Tragedy of the Capon Tree in 1745." In it the writer states that—

On the anniversary of the execution the spirits of the rebels even in the daytime are seen flitting about with airy ropes round their necks, and incoherent shrieks as if from shadowy forms disturbed are heard ... The dread inspired by the sayings and accounts of old wives and father greybeards, of the fearful sights that some of them had seen in this gloomy place, checked even the young and bold from approaching too near the Capon Tree."

And even yet Brampton mothers frighten rebellious youngsters with Capon Tree boggles, but we, more prosaic and matter of fact, leave with regret these and all other

traditional tales to be handed down from parent to child as memories of the most famous tree in the neighbourhood.