

Irish Law Tracts Re-Edited

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IRISH LAW TRACTS RE-EDITED

I. *Coibnes Uisci Thairidne*

It is now exactly a century since the principal Irish legal manuscripts were transcribed and translated by O'Donovan and O'Curry as a preliminary to the publication of the official edition (Ancient Laws of Ireland, henceforth referred to as AL). When we weigh the measure of their achievement against the tremendous difficulties of their task, we may well say: *gigantes erant super terram in diebus illis*. Yet admiration for these remarkable men should not blind us to the fact that their work has to a large extent been rendered out of date by the progress of Irish studies over the past hundred years, above all by the work of Rudolf Thurneysen. Further, a comparison of their transcripts with the original manuscripts shows that, though they generally maintained a high standard of accuracy as copyists, their practice of silently expanding all scribal abbreviations involved them in so many errors as to make the Irish text of AL a very unsafe basis on which to work. Lastly the arbitrary selection of a single (and sometimes inferior) manuscript, and the exclusion of variant readings, for which the subsequent editors of AL were alone responsible,[1] make it impossible for the modern student to do research on any law tract unless he has access to all the unpublished manuscript materials.

For these and other reasons I had decided to postpone all further work on the separate tracts until I had made available to other students the entire *corpus* of Irish legal manuscripts in a diplomatic edition. But I have now come to realize that this is a *travail de longue haleine* which, even in the most favourable circumstances, will take several years to complete, and in the meantime there may be room for a less ambitious project. Accordingly I venture to offer the readers of this number of ÉRIU the first of a series of 'Irish law tracts re-edited', in which I shall endeavour to correct, as far as I can, both the text and translation of the official edition.[2]

The main purpose of the series is to provide reliable texts, based on all the extant manuscripts, together with translations which, though all too often tentative and uncertain, can at least claim a greater degree of accuracy than was possible a century ago. I shall be primarily concerned with the ancient text of the tracts, whose importance for the study of Old Irish has been abundantly demonstrated by Thurneysen. Although

[1] Atkinson, the editor of the fifth volume, supplied some (though not always the most important) variants from two other MSS. of the Heptads.

[2] Three of the most important tracts in AL have already been re-edited by Thurneysen; *Cáin Aicillne* (ZCP xiv. 336–93), *Cáin Sóerraith* (ZCP xv. 238–53), and *Cáin Lánamna* (EIL 1–75).

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early linguistic forms have been, on the whole, remarkably well preserved in the late manuscripts which alone survive, it is inevitable that some corruptions and neologisms should have crept into the work of scribes who were unfamiliar with obsolete words or constructions in the text. In such cases I have not hesitated to emend the text and, where the emendation is reasonably certain, to print it in my revised edition and relegate the manuscript readings to footnotes. On the other hand, where the text is doubtful or defective, I print it as it stands in the best manuscript and discuss possible emendations in the notes.

In editing the text I use square brackets to insert letters, syllables, or words omitted in the manuscripts and round brackets for superfluous letters or other material incorrectly added by the scribes (through dittography, etc.). I have also normalized the lenition of consonants, and over long vowels I have supplied the mark of length (which is almost invariably omitted in legal manuscripts).

As for the glosses and commentaries I had originally intended to follow Thurneysen's example and omit all of them that have already been published in the official edition. O'Donovan and O'Curry had as a rule no difficulty in coping with this later material, so that even today there are comparatively few corrections to be made in their transcription and translation. Besides, most of the later glosses and all the commentaries are virtually worthless as aids to understanding the text they profess to expound; indeed, the device adopted by the first translators of interpreting an obscure piece of text in terms of the gloss or commentary is one of the chief sources of error in their translations.

None the less I have decided to include the later material for four reasons. First, the glosses (though not the commentaries) are occasionally of assistance to us in restoring a word or phrase of the text which has been either omitted or miscopied or modernized by later scribes. And here the so-called 'etymological' glosses are sometimes quite valuable, that is, where they date from a period when the correct form of the word to be 'analysed' was still preserved in the copy of the text before them.[1] Secondly, both gloss and commentary often supply evidence of legal change either by their obvious unfamiliarity with the institutions described in the text or by their efforts to fit the rules of their own day into the obsolete framework of the earlier period.[2] Thirdly the glosses are by no means uniform in date. In some manuscripts we even find the text glossed by separate scribes,[3] one of whom may differ

[1] A good example will be found in § 10^3 of the present tract, cf. p. 82 *infra*. On the other hand, the technique of emending the text in the light of the gloss must be used with caution. Sometimes the text was already corrupt before it was glossed. Of this, too, we have an example in the present tract, cf. § 5 and p. 79 *infra*.

[2] For examples cf. § 3^2 (and p. 78 *infra*).

[3] For example, in the fragment of H 2. 15 which includes the only complete recension of the tract edited here, Dr. Best has distinguished 'three principal scholiasts' and four occasional glossators at work. Cf. p. 55 *infra*.

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from the other in the interpretation of the same piece of text. In the official edition these alternative interpretations are usually printed as though they were a single gloss, thus giving an impression of utter confusion which is somewhat unfair to the later jurists. Lastly, the language of the glosses and commentaries is well worthy of investigation by students of the historical grammar of Irish, and I can only hope that my decision to re-edit the later as well as the early material may facilitate scholars who are competent to undertake this long-neglected task.

In general, glosses and commentaries are printed as they appear in the manuscripts, suggested emendations being relegated to footnotes. Square brackets are used to distinguish contributions in other hands besides that of the principal scribe. In the translation these additions are printed in italics, and all pseudo-etymological and conventional glosses are given between inverted commas.

The notes appended to the edition are almost entirely concerned with textual and philological matters. To discuss at any length the legal problems raised by certain passages of text would mean imposing an intolerable strain on the hospitality of ÉRIU. At the same time it would be impossible to ignore such problems altogether, and where some knowledge of them is necessary for the elucidation of the text, they are briefly discussed in the notes. Further, a summary account of the subject-matter is prefaced to the edition of each tract.

I begin with the short tract *Coibnes uisci thairidne* (henceforward referred to as CU) which has been sorely mishandled in the official edition (AL iv. 206–22). The only complete recension of this tract is that which survives in H 2. 15, the earliest of our legal manuscripts. In the facsimile published by the Irish MSS. Commission CU occupies pp. 16–18, where it follows the much longer and more important 'Bee-Judgements' (*Bechbretha*). From the linguistic as well as the legal standpoint both tracts are closely connected, and it may be taken as certain that they received their 'canonical' form at the hands of the same compiler, who incorporated in each of them a substantial amount of earlier material. This archaic stratum is more apparent in the longer tract, but CU despite its brevity also preserves a number of very old forms; e.g. *nad frithrolat* § 9, *do-airchestar* § 11, *i nneoch ma ro-látar* §§ 4, 7. The compiler actually refers to CU in the 'Bee-Judgements' (AL iv. 166. 23), and he uses the same formula to conclude both tracts (cf. § 15 with AL iv. 202. 5).

The section of the manuscript in which these two tracts are included may date from the fourteenth century.[1] The unknown scribe of the text has in general preserved old forms reasonably well. His chief failing is a

[1] For a full palaeographical analysis see Dr. Best's Introduction to the Facsimile pp. ix f. and his *Addenda and Corrigenda* in Analecta Hibernica, x. 301 f.

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tendency to drop words and phrases in the archetype through homoioteleuton, etc. Attempts to supply these omissions were afterwards made in the margins by one or other of the glossators. It is important to note, however, that at least four of these insertions (§§ 6[b], 7[g], 12[c], 14[d]) are suspect, the text being apparently complete without them, and one (§ 9[d]) is merely an unsuccessful attempt to paraphrase an unfamiliar form.

In the glosses and commentaries three separate hands can be distinguished. (1) The great bulk of the glosses were written by Lucas Ó Dalláin (L), whose script has been identified by Dr. Best in another manuscript of the fourteenth century. Afterwards some fresh glosses were added by two further scholiasts, who also expanded or modified certain glosses written by L. These later scribes were (2) Aedh mac Aedhagáin, whose autograph, dated Christmas Eve 1550, furnishes an inferior limit for the work of his predecessors, the unknown scribe of the text and the principal glossator (L); and (3) Cairbre (C)—a common name among the Mac Egans—whose occasional additions to the glosses of both L and A show him to be the latest of the three. In the present edition all these subsidiary glosses are printed within heavy square brackets with A or C appended according as they are the work of Aedh or Cairbre; in the translation italics are used to distinguish them from the glosses written by L.

Three commentaries, describing the (later) 'circuit of the mill', were written in the margins: (I) by L in the upper margin of p. 16, continued in the lower margin of p. 17; (II) in verse, also by L, in the lower margin of p. 16; (III) added subsequently by C in the lower margin of p. 17. In the present edition these commentaries are printed separately at the end of the text and glosses. In order to round off the picture I have added (IV) a transcript and translation of the only other commentary known to me which deals with this subject: a passage in Rawl. 506, f. 32[b]2 (O'D. 2317 f.).

Since CU formed part of the 'middle third' of the *Senchas Már*,[1] and must therefore have been well known in the law schools, it is strange that we should be almost entirely dependent on a single manuscript for the text of this tract. Apart from some isolated fragments quoted in later commentaries we have only a few glossed extracts from the opening sentences in H 3. 18, p. 398 a (O'C. 892). As Thurneysen has shown, the scribe of this section of H 3. 18 had before him an independent recension of the *Senchas Már* in which archaic forms were remarkably well preserved, hence it is all the more unfortunate that his extracts from CU should be so meagre. The glosses, too, which he copied from his exemplar are very different from those of the later scholiasts; linguistically they belong to the Old Irish period, and most of them afford genuine help in interpreting the text. In view of their great importance, these

[1] See Thurneysen, ZCP xvi. 172, xviii. 356 f.

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extracts from H, both text and glosses, are printed in the edition, whereas occasional quotations found in other manuscripts are relegated to the notes.[1]

Although *uisce tairidne* may be used for any kind of water-course or aqueduct, in the present tract it has the specialized meaning of 'mill-race'. Obviously, then, a *terminus post quem* for the composition of CU is the introduction of water-mills into Ireland.[2] These figure among the many innovations with which Middle-Irish writers have credited Cormac mac Airt,[3] but the first reference to them in the Annals occurs about the middle of the seventh century.[4] In the lives of saints who flourished in this and the preceding century water-mills are mentioned on several occasions. Perhaps the best-known example is the legend of St. Fechín of Fore, who, in order to save his monks from toiling at the quern, commissioned a wright to erect a mill on the monastery land and subsequently provided it with a miraculous mill-race.[5] Indeed it may well be that the replacement of querns by water-mills first spread from the monasteries,[6] and if so we have an interesting parallel with bee-keeping, which (as we have seen) forms the subject-matter of the tract immediately preceding CU in H 2. 15.[7] In both cases the jurists would have been faced with the problem of grafting an important innovation on to their traditional law of 'neighbourhood' (*comaithches*). In both cases, too, the problem was fundamentally the same: what were to be the legal

[1] References are there given to the page of the transcripts by O'Donovan (O'D.) and O'Curry (O'C.), which are more accessible to students than the original MSS., though in every case I have collated the transcript with the original.

[2] For the most up-to-date information on the structure of these mills (with vertical shaft and horizontal wheel) the reader is referred to the important article by Dr. E. Cecil Curwen, 'The Problem of Early Water-Mills' in *Antiquity* xviii. 130–46, where the evidence in the Irish laws (notably AL i. 124. 17 f.) is cited and analysed. See also A. T. Lucas, 'The Horizontal Mill in Ireland' in JRSAI lxxxiii (1953), 1–36, where valuable fresh evidence is adduced.

[3] Cf. Meyer, Otia Merseiana, ii. 75 f. (the story of Ciarnat); Vendryes, Rev. archéologique xiv. 263–74.

[4] AU 650, Tig. 651, FM 647. The event chronicled here was the source of the remarkable story edited by Meyer in Hib. Min. 70 ff., although the youths killed by the mill-shaft (see pp. 84 f. *infra*) have here become the sons of Diarmait mac Cerrbéoil who reigned a century earlier.

[5] Cf. V.SS.H. ii. 81 f.; RC xii. 344 § 9; Lism. Lives, 4678 ff.

[6] It is true that this theory seems to conflict with Dr. Curwen's conclusion (*op. cit.*, pp. 140, 144) that the type of early water-mill found in Ireland (with vertical shaft and horizontal wheel) was introduced from Spain or southern France, not from Britain, where only the 'Vitruvian' type of mill is found. But at least it is possible that the use of water-mills on a large scale was associated with the developments in husbandry for which the monasteries were responsible. Further, the use of the week as the period of rotation (p. 59 *infra*) suggests that Christianity was already established.

[7] The legendary account of the introduction of bees from Britain by Mo-Domnóc, which was current as early as the eighth century (cf. Fél. Feb. 13), was doubtless based on the fact that apiculture on a large scale was first practised in the monasteries (cf. ZCP xv. 320).

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relations between him on whose land the apiary or the mill was situated and his neighbours whose land provided water for the mill or sustenance for the bees? We shall see presently that the jurists solved the problem by inventing new rules which they then sought to attach to the traditional system by the method of analogy. From a juridical standpoint, therefore, both of these tracts have considerable interest, for they show the Irish jurists, whose normal approach to all legal questions is severely concrete, attempting to relate specific provisions to a general rule of law, even though this primitive essay in jurisprudence is far from successful.

In its final redaction CU is even more diffuse and disconnected than the average law tract. Of the fifteen paragraphs into which I have divided the text four (§§ 4–7) have nothing to do with the subject, and in two others (§§ 9, 13) the mill-race figures merely as an item in a list. But neither the legal historian nor the student of early Irish social conditions will feel inclined to censure the compiler for a discursiveness which supplies valuable information on things much more important than mills and mill-races, e.g. adoption (§§ 4, 6), the creation of servitudes (§ 9), agreements which may be rescinded despite the presence of sureties (§ 5) and, conversely, agreements which are irrevocable though unsecured (§ 7).

Our tract shows that at the time of its compilation mills could be owned jointly or severally. The opening sections are entirely concerned with the former type, but for the sake of clearness it will be best to take the privately owned mill first. Here the owner[1] has erected a mill on his own land; he has what the glossators and commentators call *ceand* (§ 12[3]) or *cenn-áit* (IV) *muilind* 'the head of a mill'.[2] If water to work the mill has to be conducted across the land of a neighbour, the owner must pay him a fee which varies according to the nature of the land breached: one *sét* for arable land, half of that amount for rough land (§ 10). This is apparently a single payment, not a periodical rent. But there are certain types of land which receive no fee for allowing water to be conducted through them since they derive substantial benefit from the irrigation (§ 12). Indeed, according to the text, their owners must themselves 'pay' for the watercourse, but the glossator (§ 12[2]) may be right in declaring that here 'payment' consists in foregoing the customary fee; alternatively the clause may mean that they themselves must provide the labour to construct the channel, whereas normally this burden would fall on the mill-owner.

[1] To avoid confusion I use the word 'owner' throughout this article when referring to a mill owned in severalty in order to distinguish it from the jointly owned mill. Strictly speaking, of course, the mill owned in severalty belonged to one *fine*, and the jointly owned mill was held in partnership by more than one *fine*.

[2] Perhaps this expression represents the counterpart of the 'eight members which serve a mill' (*im ocht mbullu ara-fognat muillond*) listed in AL i. 124. 17 f. These include the 'source' (*topur*), the millrace (for *tuinide* read *tuididen*, cf. the gloss 140. 19), etc.

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It should be noted that a neighbouring land-holder is not free to refuse a passage to the water across his land (§ 10). This, according to the glossator (§ 10[1], cf. also IV) is one of the two cases where a person is compelled by law to alienate part of his property even against his will.[1] Further, when the mill-race has been accepted (either by formal agreement or tacit acquiescence) by two successive owners, the mill-owner acquires an absolute title to it as against their heirs (§ 9); or to use the terminology of Roman law, he acquires by prescription the servitude of *aquaeductus* over his neighbour's land. On the other hand, an exception to the foregoing rules is made in favour of certain types of 'privileged' land across which no one can claim the right to conduct water (§ 11).

Instead of the legal fee each owner whose land has been breached may elect to take a day's free grinding at the mill (§ 10). This is misinterpreted by the glossator (§ 10[9]) as meaning that he takes his place in the 'circuit of the mill' (*cuairt muilind*, for which see p. 62 *infra*). But the system of regular rotation applied only to mills held in joint ownership. Here, on the contrary, the mill is owned in severalty, not in partnership; hence the rule can only mean that a neighbour across whose land the mill-race flows may choose, as an alternative to the legal fee, the right to a day's free use of the mill at regular intervals. What the interval was we are not told in the text, but it was doubtless a substantial one, perhaps a year. All other persons may only grind their corn at the mill with the consent of the owner, who will normally demand a certain proportion of the grain as payment.

This is the type of mill we find attached to monasteries and to the estates of the wealthier members of the 'noble grades'.[2] A commoner, too, could own a mill in severalty provided he had the necessary capital to pay for its construction and servicing.[3] But several references in the tracts make it quite clear that the average freeman had no more than a 'share in the mill' (*cuit i mmuiliunn*)[4] where his corn was ground. And it is with such mills, owned in common by a group of neighbouring freeholders, that the opening sections of CU are concerned.

Doubtless the situation as they describe it is overschematized and does not always correspond to the realities of everyday life. For example, partnership in a mill would seem to be restricted by CU to those whose lands are situated between the 'source' and the 'pond' inclusive, i.e. to those who own (1) the land where the water is turned off, (2) the land

[1] Elsewhere (O'C. 229, 240, O'D. 2282, etc.) 'three' instances are mentioned, though only two are specified, one of which is *coibnes uisci tairidne*.

[2] Such mills are often mentioned in the lives of the saints, e.g. V.SS.H. ii. 209 (xi), BNnE. i. 26 (viii), etc.

[3] This would normally include, in addition to compensating those neighbours through whose land the water was conducted, payment of a fee to the mill-wright (*sáer muilinn*). According to AL v. 104. 12 this skilled craftsman had the status of an *aire déso*.

[4] Cf. Cr. Gabl. 96, 155, 192.

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(or parcels of land) through which the mill-race is conducted, (3) the land where the water is ponded. In practice, however, other neighbours must surely have been capable of joining in the partnership, provided they contributed to the work of constructing and servicing the mill and its accessories.[1] Yet for our purposes it will suffice to follow the text and take the mill as having been erected by the co-operation of the free-holders between the 'source' and the 'pond'. Each of these is a partner in the mill, and his 'share' consists in the right to the exclusive use of the mill for a certain proportion of the period of rotation between the various owners.

What is the length of the period of rotation? Here the commentators (I–IV) have, owing to their elaborate descriptions of an eighteen-day 'circuit of the mill', obscured the older and simpler rule of a weekly rotation. Only the glossator in H (§ 1[1]) has preserved this rule, but it can also be inferred from the text itself, where the number of days mentioned adds up to seven. The inclusion of Sunday as a working day affords proof of the relative antiquity of CU. From other sources we know that the Church had great difficulty in enforcing the observance of Sunday as a day of rest, and it is perhaps significant that *Cáin Domnaig*, compiled in the second half of the ninth century, expressly prohibits the grinding of corn on Sundays.[2] Whether or not the longer 'circuit' described in the commentaries really embodies a later development (a question we shall have to discuss presently), there is not the slightest doubt that in the text the use of the jointly-owned mill rotates among the partners in weekly cycles. It only remains, therefore, to determine the proportion of each cycle that is allotted to the various partners.

Confronted with this problem, for which there were no precedents in their traditional lore, the jurists professed to solve it by an analogy which is reflected in the title of the present tract. The claims of the partners are deemed to be regulated in accordance with the claims of the various kin-groups (*fini*) to the estate of a deceased member of the kin. All the parcels of land affected, from the source of the mill-race to the mill-pond, are regarded as 'akin' to the water in varying degrees of proximity. First comes the land in which the water is diverted (*tobar* in the glosses); this is the 'basic stock' (*bunad*, § 1), in other words the *derbfine* of the water, and therefore has the first claim. Next, the land—or rather lands, for the text always assumes a plurality of owners—through which the water is conducted; these comprise the *íarfine*, the wider circle of the kin (extending to third cousins). Finally there is the land in which the water

[1] In *Críth Gablach* (see preceding note) a 'share in a mill' figures among the property qualifications of every *ócaire* and *bóaire*, but this may be mere schematism (cf. p. xix of my edition).

[2] Anecd. iii. 21. 6. Cf. also the legend related by Giraldus Cambrensis (Top. Hib., cap. li) of a mill in Ossory which refused to grind on Sundays. In the later 'circuit' of three weeks or 'eighteen days', Sundays are, of course, excluded.

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is ponded (normally that on which the mill stands); this is the *indfine*, the last circle of the kin for most legal purposes.

But the analogy does not work out in practice. If we suppose that the respective shares of these three 'kin-groups' correspond to the shares of three *fini* in the estate of a deceased kinsman, we are at once faced by the difficulty that as long as any member of his *derbfine* survives the two wider circles receive nothing. Only when the *derbfine* is extinct is the estate divided between the *iarfine* and *indfine* in unequal shares. Applied to the present case, this rule would, of course, confer on the land where the water is turned off a complete monopoly of the mill. Yet in our text the so-called *derbfine* gets nothing more than a certain priority over the other lands; the first day of the rotation is allotted to it (§ 1). The next three days go to the lands through which the water is conducted (the '*iarfine*'). With the schematism that is so characteristic of Irish law tracts CU fixes their number at three (§ 2); but the glossator in H (§ 2^1) once more shows his sense of reality by pointing out that three days are assigned to all the intermediate lands, whatever be their number. The remaining three days belong to the land in which the mill-pond is situated (§ 3).

Even the compiler of CU has realized that this final arrangement plays havoc with his analogy with the 'kin-groups', since the 'pond', which as *indfine* should receive the smallest share, actually gets three times as much as the 'source' or *derbfine*. His explanation why 'the *indfine* is preferred to the *derbfine*' (§ 3) is ingenious, though very far-fetched. In the legal language the vb. *fo-sissethar*, which normally means 'supports, sustains', has also the specialized meaning 'adopts'. Hence by a play on the two meanings the water which is 'supported' in the mill-pond is equated to a person who has been adopted by a member of his *indfine*; in such a case, of course, the claims of his adoptive family would receive preference over those of his *derbfine*. The compiler seeks to clinch this argument by pointing out (§ 4) that in certain contracts of adoption the amount involved is three *séoit*, and these he solemnly compares with the three days here given to the *indfine*, the land which 'adopts' the water. Unfortunately for his analogy the three *séoit* are received *by* the prospective adoptee from his adopter, not vice versa.

As the parallel thus breaks down at every point, it is obvious that this analogy with the kin-groups cannot have really provided the source of the rules of rotation. These were first worked out independently in the schools to meet a situation (which doubtless arose often in practice) where a group of neighbours between the 'source' and the 'pond' (inclusive) collaborated in erecting a mill and providing it with water. The comparison with the kin-groups can only represent an afterthought, an attempt by some jurist, perhaps the compiler of CU himself, to find a traditional basis for this relatively new arrangement.

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Except for the precious fragments in H, the glosses and commentaries give virtually no help in elucidating the rules of the text. Sometimes they seem to be merely guessing at the meaning of institutions which were obsolete in their day. Take for example their efforts to explain *déolaid* 'gratis' as applied to the shares of the 'source' (§ 1) and the 'pond' (§ 3) in the rotation of the mill. According to L (§ 1^{7}) this means that the owner of the 'source' is dispensed from casting lots with the other partners in order to determine the order of priority between them, whereas A suggests (§ 1^{5}) that he is simply freed from the duty of constructing the mill-race, an 'explanation' which L himself had already advanced for *déolaid* in regard to the owner of the 'pond' (§ 3^{10}). Neither interpretation is correct. The true meaning is supplied by an earlier glossator in H 4. 22, p. 20 (O'C. 1982) who defines the 'share in the mill' (*cuit i mmuiliunn*) possessed by the partners as *bleith deolaid . . . cin fochraic do gabail de* 'free grinding . . . without a fee being taken from him'. In the text, therefore, *déolaid* means exactly what it says, and these later interpretations are quite fanciful.

A similar air of unreality pervades the elaborate set of rules laid down in the four commentaries. One can never be sure whether the information supplied by late commentators reflects a genuine change in practice; all too often it consists of mere academic exercises which seek to establish an unreal synthesis between various (and sometimes conflicting) rules found in different tracts. Here it is at least evident that our commentators are describing a system which combines the characteristics of the two types of mill that are so sharply differentiated in the text itself. Their mill is at once privately owned and yet capable of permanent 'rotation'. This remarkable result is achieved by assuming that the mill itself, the site on which it stands, the land or lands through which the mill-race passes, and the land in which the water is turned off are each owned by a different person. In other words *X* erects a mill on land belonging to *A*, conveys the water from *B*'s land through the land of *C* and *D*, and ponds it in *E*'s land. All these proprietors may then elect to be compensated by a single payment. A lump sum amounting to 60 (or 30) 'scruples' is divided between them in the following proportions: 30 (or 15) to *E*, 10 (or 5) each to *A* and *B*, and the remaining 10 (or 5) to *C* and *D* jointly.

How have these figures been arrived at? I suggest they are based on a distortion of one of the rules in the text. It will be remembered that a person whose land has been breached in order to provide water for another's (private) mill may elect to take a payment of ten or five 'scruples' according to the nature of the land breached (§ 10). The commentators have sought to 'harmonize' this rule, which of course applied only to private mills in the text, with their scheme of 'rotation'. Hence they put forward a system under which, instead of a separate payment to each intermediate owner, a lump sum is divided between all

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the interested parties in proportion to their respective shares in the 'circuit of the mill'. For example *E*, the owner of the 'pond', gets three times as much as *B* the owner of the 'source', just as in the 'circuit of the mill' *E* gets three days and *B* one.

Should the landholders prefer it, they are each allotted a certain share in what the glossators and commentators call ***cuairt muilinn***, 'the circuit of the mill'. But unlike the partners in the jointly owned mill of the text period, they have no monopoly of the rotation; indeed between them they account for only one-third of the 'circuit'. The period of rotation has now become three weeks, or eighteen working days, Sundays being no longer included. Of this the 'source' (*B*) gets one day, the 'pond' (*E*) three, the intermediate lands (*C*, *D*) one, and the land 'below the pond' (*A*, i.e. the owner of the site on which the mill itself stands) one. The first two items have been taken over unchanged from the old weekly rotation of the text period, but the remainder has been considerably altered owing to (1) the dropping of Sunday, (2) the need to find an extra *fine* (cf. p. 78 *infra*) which has led to the introduction of *A* as a new item. The remaining two-thirds of the 'circuit' are reserved in equal proportions for the 'wrights' and the 'service', in other words to those who have constructed and those who maintain the mill and its accessories. Although for schematic reasons a distinction is drawn between them, the commentators imply that both of these shares will normally vest in the same person, i.e. *X*, who has had the mill constructed and provides the labour for servicing it. Indeed one of them (IV) states that *X* may compensate the mill-wright by a single payment (and hence by implication take over his share of the 'circuit').

What is the source of this later system of rotation? It is, I think, an attempt to 'harmonize' the old rule of a weekly rotation with another rule, constantly referred to by the later jurists, governing the distribution of the profits derived from certain 'structures' (*déntada*) which have been erected by the co-operation of two or more neighbours. Under this rule one-third of the profits goes to the 'land' (i.e. to the owner of the site), one-third to the 'skilled labour' of the builder, and one-third to the 'service'.[1] Obviously our commentators felt that a mill should be included in such *déntada*, since two of them (I and IV) actually cite the rule. By expanding the 'circuit' to three weeks they sought to reconcile the weekly rotation of the text (though with certain modifications) with the other principle that only one-third of the 'profits' should go to the 'land' (under which heading they classed *all* the lands between the source and the pond), the remaining two-thirds being reserved for the 'wrights' and the 'service'. The whole construction is a typical example of the art of the later jurists, and strengthens the suspicion that the elaborate

[1] Cf. the somewhat similar threefold division of the 'profits' in the case of divorce *communi consensu*, EIL p. 20.

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'circuit of the mill' which they have formulated, and even enshrined in verse, is based on academic speculation rather than on the practice of their own day.

In the first place it is highly improbable that the mill itself, the site on which it stands, and the land in which the mill-pond is situated should each be owned by different persons. Normally a man will construct on his own land a mill and a pond to store the water which drives it; further, he will often provide the labour for making the aqueduct and servicing the mill. But in that case, assuming he has already exercised his right of compensating the mill-wright by a single payment, he will be entitled to five-sixths of the whole 'circuit'. It is even possible that most of the remaining sixth will also accrue to him. Suppose, for example, the owner of the 'source' elects to receive a single payment instead of his share of the rotation; this will give the mill-owner all but one day of the eighteen-day circuit. And then, assuming there are two or more intermediate owners who share this remaining day between them, what happens if they are not unanimous in choosing rotation? These are problems which the commentators could hardly have failed to discuss had their 'circuit of the mill' been a practical reality.

No doubt, to judge from the example of other countries, the co-operative mill, owned jointly by two or more neighbouring families, continued to exist in medieval Ireland side by side with the private mill. But on the details of the partnership and the extent to which these differed from the conditions described in the text we get no enlightenment from the glosses and commentaries. Here, as always, the ancient text must be studied by and for itself, and making due allowance for the difficulty of the language, it will be found, I think, to give a fairly coherent picture of contemporary institutions.

D. A. BINCHY

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TEXT AND GLOSSES

§ 1. (*p.* 16*a*) Coibnius[a1] uisci thairidne[b] hi fintedaib griain as(as)a tairi[d]-nider[2]; ar iss é coibnius uisci[c] thairidne la *Féniu*[c] tír asa tairidnither[b3]. Ar is ed ón áiles ca*ch* cétlá[d4] déolaid[5] sech na crícha[e6] olchena[e][7]. Ar nicon fess cate bunad ind uisci[c] acht a tír asa tairidnither[8].

[a] coibnes H. [b] toir-. [c] -e. [d] ca*ch* cétla H. [e] *sec* cach *crich* H.

[1] [.i. comfine H]. [2] .i. ata coibintius no comducus don ine isinn uisce tairngithir and a dualgus ind earaind dara tairgit*er* e. [3] .i. uair is e coibintius no comhduchus ind uisce thairgitir and do reir ind fenechais. [4] [.i. la tuisech d*in* cuairt 7 is co cenn .uii.muine in cuairt muil*inn* H]. [5] [.i. cen log do ar tus .i. deolaid leis ar aba int uisce do tabairt as, no is e chuit a deol*aid* nochon ece*n* a tachal A]. [6] [.i. sech cach tir t*ara* reth int usge H]. [7] .i. uair is isidhe airiltniges in cedla di i ndeoladchaire seac na fearanda olcheana. is e cuid in deolaidh nocon eigen di crandcur. [8] .i. uair nocon eas c'ait i mi bunudh eile icon uisce acht in fearand asa tairgit*er* e .i. asin tobor.

§ 2. Iss a suidiu friss-drengatar na lá aili[a] dar tr[i][b] tíre[c1] bess-da nessom[2].

[a] -e. [b] tir *with* i *erased.* [c] *tar tri* tiri H.

[1] [7 im*murgu* cid mo do thirib t*ars*a reth nis mbiat acht t*ri* la nama .i. confodhluith*er* aturro H]. [2] .i. is asan ai eadha isin dreimnigt*ir* na laithi eile da luct na t*ri* fearand is neasu doib [.i. iar tabairt laithe do top*ur* C].

§ 3. Iar suidiu[1] do-tét indfine[2] ar béolu de(i)rbfine[3,4]. Ar is sí in[d]fine i fin(d)tedaib griain[5] a tír i fuissither[a6,7]. Ar is [s]ruithiu la *Féniu* in fóesam[b] and sen[8] olda[a]s a tír asa tairidnit[h]er[9]. Air iss ed áiles tri lá déolaide (*p.* 16*b*) sech na crícha olchena[e][10] amal bés fóessma[c11,12].

[a] in fuisedar H. [b] foes|am *added in margin by C.* [c] am*al* mbes foesam H.

[1] [.i. iar tabairt luai*n* do topu*r* C]. [2] .i. ar iarine .i. in lind. [3] .i. [ria tirib no i*n* tir C] o thobur gu lind. [4] [.i. i*n* lin*n* A]. [5] .i. air is in cosmhailius na indini ar iarini i finiduidhchibh ind fearaind. [6] .i. fearand a fuisidnighthir .i. in lind. [7] [.i. int uisce .i. lind H]. [8] .i. uair is uaisli da reir ind feneachais i*n* fearand i fuisnigth*er* [no i fothaigt*er* i*nt* usque A] .i. in lind. [9] .i. oldas in fearand dara tairngithir e, [ind ire o tobur co lind A]. [10] .i. uair is i sin airiltnighes tri la di i ndeoladhcairi seach na fearan*na* eile cheana. is e cuid in deolaidh nocon eige*n* a tochailt. [11] .i. am*al* bes in me*ic* foesmha. [12] [.i. fosesither nech in*n* | i norb*a* .i. adndai*m* nama o beluib 7 ni taod ratha fine aire 7 ni natai*m* aige fine im*murgu* indi sin iar*um* coma doberthar tri *séoit* isan cor mbel sin H].

§ 4. Ar atá fóessam la *Féniu* nad áili acht tri séotu ara c[h]uru bél[1];

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TRANSLATION

§ 1. [There is] kinship[1] of conducted water in the kin-shares of the land out of which it is led[2]; for in Irish law the [root of] kinship of conducted water is the land out of which it is led[3]. The latter it is that is entitled to every first day[4] [of the rotation] gratis[5] in preference to the remaining lands[6,7]. For it is not known where is the origin (i.e. the original stock) of the water except the land out of which it is led[8].

[1] *joint-family* H. [2] The family has kinship or joint right of inheritance in the water which is conducted there by right of the land across which it is conducted. [3] For according to the Irish law this is the kinship or joint right of inheritance in the water that is conducted. [4] *the first day of the circuit, and the circuit of the mill lasts a week* H. [5] *at the commencement, without payment; it is gratis in his (the author's) opinion on account of the water being brought from it; or the force of 'gratis' is: there is no obligation [on the owner of this land] to trench it.* [6] *in preference to every other land across which the water runs* H. [7] For it is this that merits the first day gratuitously in preference to the remaining lands. The force of 'gratis' is: it (i.e. its owner) is not obliged to draw lots. [8] For it is not known where there is any other original stock of the water except the land out of which it is drawn, i.e. from the source.

§ 2. [Starting] from the latter the other days are graded (?distributed) over the three lands nearest to it[1,2].

[1] *And moreover though it runs across more [than three] lands, they have only three days, i.e. it is shared between them* H. [2] It is from 'that lawful case' that the other days are advanced (?) to the people of the three lands nearest to them, *i.e. after a day has been given to the source.*

§ 3. After that[1] the *indfine*[2] comes in front of (i.e. is preferred to) the *derbfine*[3,4]. For in the kin-shares of land the land in which [the water] is supported[6,7] is the *indfine*[5]. For in Irish law the 'adoption' [of the water] in that [land] is of greater account[8] than is the land out of which it is led[9]. For it (i.e. the 'adopting' land) is entitled to three days gratis in preference to the remaining lands[10], as in the practice of adoption[11,12].

[1] *After Monday has been given to the source.* [2] [used here] for the *iarfine*, i.e. the pond. [3] *before the lands or the land* from source to pond. [4] *the pond.* [5] For it is by analogy with the *indfine*, [used here] for the *iarfine*, in the family inheritance-rights of the land. [6] the land in which it is supported, i.e. the pond. [7] *the water, i.e. the pond* H. [8] For according to the Irish law the land in which it is supported, *or in which the water is entertained*, i.e. the pond, is nobler. [9] than the land across which it is drawn, *i.e. the area from source to pond.* [10] For it is that which merits three days gratuitously in preference to the other lands remaining. The force of 'gratis' is: there is no obligation [on the owner of the land where the water is ponded] to trench it. [11] like the custom of the adopted son. [12] *by which a person is adopted into [another's] patrimony. He (the adopter) only acknowledges him by word of mouth, and sureties from the [adopter's] family do not warrant him, neither does the head of the kin acknowledge him in it (i.e. as a member of it) afterwards. Three* séoit *are given [to the adoptee as compensation] for that contract* H.

§ 4. For in Irish law there is a [particular kind] of adoption which entails nothing more than three *séoit* [as compensation] for its contracts[1];

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fo bíth nand asse[a] díchenglad cor mbél[2] i nneoch ma ro látar[b3] ce[n] ní do fácbáil leo[4] neoch ma ro látar[b5].

[a] asu. [b] ralatar.

[1] .i. uair ata *mac* foesma da naisneidend in fenecus 7 nocon airiltnigend se acht *tri séotu* .i. *tri* ba ar treabaire co coir o belaib o rigaibh cona comgradaib da *mac* foesma da geiline no da deirbine dar braigid fini 7 darrormact sealba in seanoir [.i. fæs*am* *gr*aid fla*th*a tar b*r*aigit fi*ni* 7 tar ceann forc*r*aide sealba C]. [2] .i. fon fath nocon urusa gei*n* ni da cheangal donti risi tabar treabaire gu coir o belaib. [3] .i. do neoch sin ma racuiredh e. [4] .i. ge*n* ni d'agbail acu cona m*ac*aib foesma. [5] .i. di*n* neoch sin ma racuiredh e [.i. mada ri*n*lite*r* A].

§ 5. Inge[a] nóe curu at(h)a thaithbechta[i][b1] la *Féniu* cia r[o nas]aiter[2]; hit é(i)-side nad álet fini[c3] foda-(f)occair[4] fo bíth[d] frisn(a)da-bruid[i] sochaide[5].

[a] Acht. [b] -bectha. [c] fine fine (*dittography*). [d] uith.

[1] .i. ar na hulib choraib is taithmhecta [.i. cor moga, cor manaig, c*or* m*ei*c beoathar, cobce do* bæth, c*or* baith fri gæt, c*or* da ban gin a cele, c*or* dorce, c*or* mesce, c*or* omna C]. [2] .i. cia imrait*er* iad. [3] .i. is iad sin 7 nochon adha lenas i*n*n ini iad ma fastadh. [4] .i. bid indi fin† ga firog*r*a. [5] .i. fon fath bid in sochaidhe ga frithrud [coraite a taithmech C].

§ 6. Ar ni téchta[e] na*ch* fóessam arna tésat[a] rátha fine[1] 7 nad forngara á(i)ge fine[2]. Ar di-c(h)englaither cach c(h)or cen ráith[b] la *Féniu*[3].

[a] tegat. [b] fi*n*e *inserted between* raith *and* la *by A*.

[1] .i. uair nocho dliged lium m*ac* foesmha do ghabail imuich mani dechsad treabairi don ini ris [*im* log na gaire do tabairt do C]. [2] .i. mana rab int oghai bis don ini ga fo*r*congor. [3] .i. ci*n*nas ceangailt*er* ga*ch* cunrudh gein treabairi and da reir i*n*de fenechais.

§ 7. Inge .uii. n-uasalchuru nadat assai[a] do thaithbiuch[1] neoch ma ro lát(h)ar[2]: tabert ríg; tabairt eps*coip*; audbert[b] ar a[n]muin[3]; tabe(i)rt fileth[4]; commuin (*p.* 17*a*) athar 7 a meicc[5]; comt[h]us ca*ch*a lá[na]mna[6]; ní[c] do-beir flaith[d] dia chéliu[e]—sé[oi]t turchlaithe[7], no rath dar airdig[8], no t[h]urcreicc dia n-airbiat(h)ar[9]; ní[c] i n-aiccdit*er*[f10] fir nime[11] 7 soscéla[e] cr*íst*, ar dlega[i]r do cach déorad dé saigid a nadma[e][g12] amal ad-rogesta[e] ind[13] no do-dic[h]sed a chelebrad aire[14].

[a] asu. [b] apt. [c] Ni *beginning a fresh paragraph*. [d] fi⁻. [e] -e. [f] ineiccdit-. [g] sos̄ (= soscéli?) *added in margin by C*.

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* *read* da. † *read* ind fini.

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because it is not proper to dissolve contracts[2], if they have been concluded[3], without something being left with them [as compensation][4] if they have been concluded[5].

[1] For there is an adopted son of whom the law speaks who is only entitled to three *séoit*; i.e. three cows [are due] for 'proper security by word of mouth' from kings and their compeers to an adopted son from the *gelfine* or the *derbfine* [who has been introduced] against the will of the family, and the [adopting] elder has increased [his hereditary share of] property in land [in this case]; *i.e. adoption of a member of the noble grades against the will of the family and in spite of increase of property [by the adopter].* [2] for the reason that it is not easy that nothing should be bound for [the benefit of] him to whom 'proper security by word of mouth' is given. [3] 'as a result of that thing' if it has been contracted. [4] without something being left with them, together with their adopted sons. [5] 'as a result of that thing' if it is has been contracted, *i.e. if they have been entered into.*

§ 5. Except for nine contracts which are rescindable[1] in Irish law even though they have been bound (warranted by sureties)[2]. It is these that do not adhere to(?) the family[3] which [subsequently] denounces them[4], because a group of persons oppose them[5].

[1] [Here used] for all the contracts that are rescindable, *i.e.* (1) *the contract of a slave*, (2) *the contract of a monk (or a tenant of church land)*, (3) *the contract of a son whose father is living*, (4) *a bargain made by two fools*, (5) *a contract made by a fool with a normal person*, (6) *the contract of two women without [the authorization of] their husbands*, (7) *a contract of darkness (made in error)*, (8) *a contract of drunkenness*, (9) *a contract of fear (made under duress).* [2] though they be considered. [3] It is these that the family does not 'lawfully follow' as regards their being held fast. [4] The family is 'truly denouncing' them. [5] For the reason that the group is opposing them, *it is all the more proper to rescind them.*

§ 6. For no adoption is legally valid which sureties of the [adopter's] family have not warranted[1] and which the head of the family does not authorize[2]. For in Irish law every contract without a surety is (= may be) dissolved[3].

[1] For I do not deem it lawful to take an adopted son from outside unless sureties from the family have guaranteed *that the fee for maintaining [his adoptive father] shall be given to him.* [2] if the 'perfect one' of the family does not authorize it. [3] How is any contract bound without (= unless there be) surety for it according to the law?

§ 7. Except seven high contracts which it is not possible to rescind[1] if they have been made[2]: (1) what is given by(?) a king; (2) what is given by(?) a bishop; (3) an offering for one's soul[3]; (4) what is given to a poet[4]; (5) the mutual obligation of a father and his son[5]; (6) the joint economy of every 'pair'[6]; (7) what a lord gives to his client, [i.e.] the price of submission[7], or a grant for extra services(?)[8], or a fief for which food-rent is supplied[9]; (8) a thing for which the men of heaven[10] and the gospel of Christ are invoked [as sureties][11], for every 'exile of God' is obliged to enforce their suretyship[12] as though he himself had been invoked for it[13] or as though his celebration [of religious rites] had guaranteed it[14].

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[1] .i. ar act. acht na .uii. curu uaisli 7 nocon urusu a taithmeach. [2] .i. ma dia rolæit*er* iad. [3].i. *in*ni udhbras neach ar anmain. [4] .i. tabairt dob*er*ar don ilidh. tabarta dligtheacha sin. [5] .i. na muine cumthar it*er* in m*ac* 7 *in* nathair do com-loigib.* [6] .i. in cumaid uais bis it*er* in lanamhain do co*m*loichib. [7] .i. in *sét* dab*er*ar ar clodh i tar. [8] .i. in rath dab*er*ar eir en† uraindig, arind imarcraid biata 7 mancaine. [9] .i. no in creic thorithneach ratha dia nuasalbiatar in flaith. [10] .i. ni i ngeiscet*ar*. [11] .i. muint*er* nime. [12] .i. uair dleagar do gach deo-raidh de indsaigidh a nascaireacta side. [13] .i. am*al* doroguitea e fein ind [is am-*laidh* dleg*air* de a tobach g*in* gu habairt*er* ris A]. [14] .i. no dodighsedh a labra ciallaidhe aire.

§ 8. Cáin ca*ch* uisci thairidne la *Féniu*[1]: fris-drengar a tír asa tairid-nit*her*[2] 7 i(n) suidig(i)ther[3].

[1] .i. riagail inn uisce tairngithir and do reir ind enechais. [2] .i. firdreimnigt*er* da luct na fearand dara tairngit*er* e [.i. *in* topar .i. in ir o topar co lin*n* A]. [3] .i. in lind.

§ 9. Ar ata[a]t .iii. cáini[a] nad chumgat comarbai do chumscuchud[1] dia n-árdamat a n-athair [7 a senathair] fria n-aimsir[2]: cáin ca*ch* uisci[a] t[h]airidne[3] 7 cáin inbir[4] 7 cáin drochit[5]. Air it hé téora trebuiri[a] in sin[b] nad [f]rithrolat comarbai[c6] dia n-árdamat a(i)thir 7 senathair[7] fri [a n-]amseir[8]. Neoch ma 'd-rodmatar[d9] [e](neoch) dle(a)ga[i]r[e] a mb[u]ith samlaid[10] co bráth, im déolaid[11] fa lóg dlegar[f]a réir (*p.* 17*b*) brithemon[13].[14]

[a] -e. [b] sen. [c] no na cu*m*gat comarbai do cumscugud *added in margin by A.* [d] -aiter. [e–e] *added above the line by L.* [f] nā dlighthir.

[1] .i. uair atad teora riaghla nad cuimhged na comedaide orba du cumscugud [acht co tartar luagh doib C]. [2] .i. dia rabad a nathair 7 a seanathair ina roaididin fria naimsir. [3] .i. riaghail ind uisci tairngithir and. [4] .i. riagail inbir na coradh no riaghail *in* neich bis i ninde b*er*a na corad. [5] .i. riaghail in droicid. [6] .i. uair is iad sin tri neichi treabara na firathcuired na comedaidh orba. [7] .i. dia rabad a natair 7 a senatair ina roaididin [7 se bodein A. [8] .i. iub*aile* iar treb*aire* so 7 ni fest*ar*‡ cia can a cetracha fris A] [9] .i. ina neichi sin ma dia rabad ina roaidi-di*n*. [10] .i. seichim no indsaigi*m* gu ndlegar a mbeith amhlaidh sin. [11] .i. gid i naisgidh. [12] .i. gid logh daberthar da cind. [13] .i. seichim no indsaigim gu ndleagar a mbeith amhlaid sin da reir in breithoma*n*. [14] [Ma rabas in a aididi*n* sin co tairnig a nen*amh* ari*n* fearan, .i. cora eisc, is a ndilsi do g*r*es o sei*n* amach 7 a mbeith am*al* cach rudradh iar t*r*eb*aire*; no da*no* ceana is re rudartha do riagail riu: ma rabas i*n*a aititi*n* re re trir is a ndilsi o sein amach, acht mai*n* raib m*ac* in tres fear dib re maraen re athair ina aititi*n* ina eccodhnach, 7 ma robai nocho ba dileas iat do gres no co raib in co*m*at si*n* ina aititi*n* iar diachtai*n* ceille codhnaigh A].

§ 10. Dligid ca*ch* comaithech diarailiu[a] tuididin usci[b] thairidne tara c[h]rích[1] i neoch ma fo-creth(th)er [c]a foc[h]raic téchta[i][c 2]; ro[-ch]

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* *This gloss is written again by A after the last words on p.* 16 *b*: .i. na mæne cumthar it*er* in m*ac* 7 *in* nathair da comluigtib. † *read* arin? ‡ *read* fess?

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[1] [*inge* stands] for *acht*. Except the seven high contracts whose rescission is not easy. [2] if they have been made. [3] what a person offers for his soul. [4] a thing given to the poet. The foregoing (1–4) are things legally conveyed. [5] the 'possessions that are equalized' between the son and the father from their mutual remissions. [6] the 'lofty community' of mutual remissions that exists between the pair. [7] the *sét* that is given for 'stooping into baseness'. [8] the fief that is given for the 'extra drink', for excessive food-rent and service. [9] or the 'relieving purchase' of a fief for which the lord is 'nobly fed'. [10] a thing for which they are besought. [11] the community of Heaven. [12] For every exile of God is obliged to levy their suretyship. [13] as though he himself had been besought for it; *even so is he obliged to enforce it, though he is not told of it* [*at the time*]. [14] or his 'sensible speech' had gone security for it.

§ 8. The rule of every watercourse in Irish law[1]: it is graded (?) from the land out of which [the water] is drawn[2] and (= to) that in which it is settled (ponded)[3].

[1] the rule of the water that is conducted there according to the law. [2] It is 'truly advanced' to the people of the lands across which it is drawn: *the source* [*or*] *the area from source to pond*. [3] the pond.

§ 9. For there are three rules (servitudes) which heirs are not capable of altering[1] if their father and their grandfather have acknowledged [them] throughout their lifetime[2]: the rule of every watercourse[3], and the rule of an estuary (a fishing weir)[4], and the rule of a bridge[5]. For these are the three burdens which heirs cannot dispute[6] if [their] father and grandfather have acknowledged [them][7] throughout their lifetime[8]. If they have been acknowledged[9], they are to remain so for ever[10], whether they be gratis[11] or whether a fee[12] is due(?)[13] according to the decision of a judge.[14]

[1] For there are three rules which the 'keepers of inheritance' are not able to alter, *provided a fee have been given to them*. [2] if their father and their grandfather were in 'complete admission' of them during their time. [3] the rule of the water which is drawn there. [4] the rule of the *inber* of the weir, or the rule of what is 'at the end of the stake' of the weir. [5] the rule of the bridge. [6] For these are three enduring(?) things which the 'keepers of inheritance' do not 'truly reject'. [7] if their father and their grandfather have been in 'complete admission' of them, *and he himself* (*viz. the third in descent*). [8] *This is a case of prescription after security, and it is not known*(?) *whence* [*comes*] *a forty-year period for it*. [9] 'those things', if they have been in 'complete admission' of them. [10] 'I say or I advance that' they should be thus. [11] though it be gratuitously. [12] though a fee be given in return for them. [13] 'I say or I advance that' they should be thus according to the judge's decision. [14] *If there has been acknowledgement of these until their erection on the land has been completed, e.g. a fishing weir, they are permanently alienated from that on, being like every* [*case of*] *prescription after security. Or, on the other hand, the* [*normal*] *period of prescription is to be applied to them: if there has been acknowledgement of them for a period of three* [*successive*] *lives, they are alienated from that on, provided the son of the third man of them was not an immature minor when he acknowledged them together with his father; and if he was, they shall not be permanently alienated until he has acknowledged them for a corresponding period after he has attained mental maturity.*

§ 10. Each neighbour is entitled from the other to [be allowed to] conduct a mill-race across his land[1] if it be paid for with its proper fee[2]; and

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suidiged a fochraic-side *for* séo(i)t deich screpul[d] [e]dar cach m(b)ru[i]g do-tǽt[3]. Neoch mad e(a) t[h]am[4], ceni gaba[f] acht lethgabail[e] de[5], di-renar in chruth-so[6]. Mad ainmín[7] im*murgu* is let[h]sét inna lóg-side.[8] Alailiu[a] is lá ca*ch*(a) tíre do-tét dlega(i)r aire[9].

[a] -le. [b] -e. [c–c] *added over line by L.* [d] screbul. [e–e] *added in margin by L.* [f] genigaba.

[1] .i. dligidh ca*ch* comaitheach da cheili targudh ind uisci tairngit*er* and darin fearand [7 is e sin *in* darna hi*n*adh isin berla i *n*uraileann dlig*ed* ar dui*n*e a fear*and* do reic ci*n* cob ail leis A]. [2] .i. ini sin ma dia ndeice*n*naigt*er* e gusan creic loige ita do reir dligid [is and is eicean a reic A]. [3] .i. secim no indsaigim rosuidigedh a deicreic loighi side f*or* sed .x. screb*al* ca*ch* earaind dara teid se. [4] .i. is and ata si*n*. [5] .i. gein gu gaba se acht leath in gabail de, .i. in casceme, troig gu ceatraimthe troiged, uair da traigid gu leith se in ceim inraic. [6] .i. eirnit*er* do e fon ngne seo. [7] .i. madh ainethamh. [8] .i. .u. sgrib*ail* i*n*a log side [.i. leth na n.x. screp*al* A]. [9] .i. gne aile, is la gacha fearaind dara teid se dleagar aire in tan is cuairt muilind.

§ 11. At*aat* .iii. tíre la *Féniu* tar nach assa[e] do-airc[h]est(h)ar uisce[1]: nemed cille[2] no dúin[3], no (a) maigen f[e]irt[4].

[1] .i. dar nach usu int uisci da tarraing. [2] .i. in releg. [3] .i. lar duini in righ. .i. feart æibind [no aibi*nn* A no aimin*n* C] ind oenaig.

§ 12. At*aat* tri tíre aili[a] la *Féniu* na[d] dlegat fochraicc[1], noch it[b] héssom di-renat tuididin tairsiu[2]: tír inid taidle[a] muilenn[3] co tabair torad[4]; treb ocna bí usce arda-fogna[5] co tairidnither seicce[6], [c]co mbí uisce[d] neire ar(a)d[a]-fogna[c7]; clad bis fás[8] conid lína tóla[e] n-uisci[a9].

[a] -e. [b] nă at. [c–c] *added in margin by L.* [d] -i.

[1] .i. na dlegaid deicreicc loige doib. [2] .i. seichim no indsaigi*m* gonad iad sum deice*n*naiges a tharraing tarsu, 7 is e cea*n*nach dabe*r*aid air a legod seocu gen logh. [3] .i. ceand muilind [co tab*air* a tor*ad* .i. i*m*adh uisce A]. [4] .i. gu tobair a thoradh do uisce do legod cuigi, [.i. do iasc A]. [5] .i. 7 teach gusna bi uisci riam [aca uasal-fogna*m* A] fognas i, [.i. coruice sin .i. tir i mbi muilen*n* ca*n* uisce co tairngith*er* secha ferand do A]. [6] .i. co tarngit*er* seachu e. [7] .i. conad e int uisci sin fognas i. [8] .i. cein uisci and. [9] .i. co linand imad uisci e.

§ 13. At*aat* .uii. claid la *Féniu* na[d] dírenatar[a] cinaid, cia robdait[*h*]*er* indib[2], a[i]r ad-gérad cách di threbairi[b] mani dénta[e] ruidles de[3]: clad dúne[4], clad cille[5], clad f[e]irt[6,7], clad usci t[h]airidne[8], (*p.* 18*a*) clad linne muilind, clad fót[b]aig móna[9], clad bís im droichet[10]. [11]

[a] -aiter. [b] -e.

[1] .i. ataid .uii. cluidh da naisneide*n*d in*n* fenechas 7 nocon eirnit*er* eiric ina cintaib. [2] .i. cia robait*er* intib. [3] .i. uair daurgairfedh a treb*air*e im gac*h* nduini mani

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the fee for this has been fixed at a *sét* worth ten scruples for every stead to which it comes[3]. If it be arable land[4], though it (the mill-race) occupy but half a pace (?)[5], it is paid for in this wise[6]. If, however, it be rough land[7], a half-*sét* is the fee for that[8]. Alternatively a day [at the mill] for each parcel of land to which it comes is due for it[9].

[1] Each neighbour has a right against the other to draw the water that is drawn across the land. *And this is one of the two places in the text where the law commands a person to sell his land even though he does not wish to do so.* [2] 'that thing', if it be 'well purchased' with the purchase price which is according to law, *in that case it must be sold.* [3] 'I say' or 'I advance', the 'good purchase of value' of this has been fixed at a *sét* worth ten scruples for every land it goes across. [4] It is in that case that the foregoing applies. [5] though it take from it but half of the pace (?), i.e. of the footstep, a foot and a quarter, for the full pace is two feet and a half. [6] It is paid to him in this manner. [7] if it be non-arable land. [9] five scruples as the fee for that, *i.e. half of the ten scruples.* [9] Another way: a day for every [person's] land it goes across is due for it when it is the circuit of the mill [that obtains].

§ 11. There are in Irish law three lands across which it is improper that water be conducted[1]: the sanctuary of a church[2] or of a fortress[3] or the precinct of a grave mound[4].

[1] across which it is not proper to draw the water. [2] the churchyard. [3] the ground of the king's fortress. [4] the beautiful mound of the fair green.

§ 12. There are in Irish law three other lands which are not entitled to a fee[1], and it is they themselves rather that pay for the leading [of water] across them[2]: land in which a mill is installed (?)[3] so that it yields profit[4]; a stead which has no water to serve it[5] until [the mill-race] is conducted across it[6], so that there is (?) . . . water to serve it[7]; a ditch which is empty[8] until a spate of water fills it[9].

[1] which are not entitled to 'good purchase' of payment. [2] 'I say or I advance that' it is these that 'well purchase' the drawing of it across them, and the purchase price they give for it is to let it pass without a fee. [3] the head of a mill, *so that it yields its profit, i.e. abundance of water.* [4] so that it yields its profit *of fish* as a result of letting water come to it. [5] and a house which hitherto has no water to serve it—'*nobly serving' it up to then; land in which there is a mill with no water until [the water] is conducted across his land.* [6] until it is conducted across them. [7] so that it is that water which serves it. [8] with no water in it. [9] until abundance of water fills it.

§ 13. There are in Irish law seven ditches whose liabilities are not atoned for[1], whatever may have been drowned in them[2], for everyone would sue on the ground of [the owner's] responsibility if immunity were not established therefor[3]: (1) the ditch of a fort[4]; (2) the ditch of a church[5]; (3) the ditch of a grave-mound[6]; [7] (4) the ditch of a mill-race[8]; (5) the ditch of a mill-pond; (6) the ditch of a peat-hag[9]; (7) the ditch which is round a bridge[10].

[1] There are seven ditches of which the law speaks and no mulct is paid for their liabilities. [2] though drowning have taken place in them. [3] For his surety

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suidigthea na neichi seo a rondilsi. [4] .i. in rig [.i. donither im dun na flatha da daingniugud A]. [5] .i. in releg. [6] .i. inn oenaig. [7] [.i. cid inndligthech so uile is lan* A]. [8] .i. clad ind uisci tairngiter cum in muilind [in tan ata ina dliged A]. [9] .i. in clad asa tabar fodbach na mona, .i. na cuiteda [acna bi forcongrad no aicbeile A]. [10] .i. clad bis laim re ceand in droichid. [11] ara coitcinne na cladh sa gunach urusa cin d'agra fora tigernaib; no is dentadha iad arnar cind ugdair cinnedh denmha, 7 ma dharona iad mar is dlighthaidhi conrainig is denta diraith iad.

§ 14. Ar óthá suidiu hícad cách cinaid a c[h]laid[1] di cach animbiu[a] do-róna nech in[n]a tír[2] do neoch fo-rroí[3] 7 do-lína tóla[e] n-uisci[b] [4] cenmothá na .uii. cladu-so[c]. ([d]Ar ad-gairead cách a trebaire mana rosamaightea na rodilse-so[d] [5]).

[a] anime. [b] -e. [c] claidseo. [d–d] *added in margin by A. Omit.*

[1] .i. otha inn ai eadha isin imach icaidh cinaidh a cluidh [do cach ni anmainiges† se ina thir do neoch bis co indligthech A]. [2] .i. dani neach ina fearand. [3] .i. do neoch risa firfuactnaigend se. [4] ·i· di neoch linas imadh uisci. [5] [.i. rohordaiged im cach trebaire mana samaigthea na hernaile so do rodilse A].

§ 15. Is for sund ro suidiged coibnius uisci[a] t[h]airidne la *Féniu.*

[a] -e.

Commentaries

I. (p. 16 *marg. sup.*) [Ocht la .x. comlan isi in cuairt muilinn C] Luan do thobor, mairt do lind, cedain is dardain do śæraib, æn diden 7 satharnd do ricnamh; luan [atherrac C] do lind, mairt o thobor go lind, cedain 7 dardain do særaib, oen diden 7 satharnd do richnamh; luan do lind, mairt o lind sis, cedain 7 dardain do śæraib, oen diden 7 satarnd do richnamh. In tan is cuairt sin. In tan is log imorro is .x. scribaill for tobor 7 a .x. o thobor gu lind 7 deich scribaill .xx.et for lind 7 a .x. o lind sis, conadh tri fichid screaball uile sin, madh eathamh. Madh aneathamh is a leath, .i. .u. scribaill for tobor 7 a .u. o thobor gu lind 7 a .u. deg for lind 7 a .u. o lind sis, conadh .x. scribaill ficed uile sin. Cith fodera conidh cutruma forna fearandaib in tan is cuairt, geinmotha lind, 7 nochu cutruma orro in tan is logh? Is e in fath fodera: a rogha tugadh d'earaib na fearann in cuairt dabiadh doib no in logh 7 isi rogha rugsadar cuairt. Trian da thir 7 gusna hearnailib bide malle ria, 7 trian do eladhain śair, 7 trian do biud 7 do borbhrichnum .i. .ui. edh cectar de.

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* = is slán. † *read* animiges.

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would prohibit(?) it for every person if these things were not established in immunity. [4] of the king, *i.e. which is made round the ruler's fort to strengthen it.* [5] the churchyard. [6] of the fair green. [7] *Though all these be illegal (improperly constructed), it is [a case of] immunity.* [8] the ditch of the water that is conducted to the mill, *when it is [constructed] according to law.* [9] the ditch out of which the sod-cutting of turf is taken, the pits, *where there is neither [the duty to give] warning nor danger.* [10] a ditch which is beside the head of the bridge. [11] These ditches are so common that it is not feasible to sue their proprietors for liability [incurred by them]; or they are structures for which the authors [of the text] have not specified a particular type of construction, and if a person has made them as lawfully as he could, they are immune structures.

§ 14. For from that on let each pay for the liability of his ditch[1]—arising from every defective fence which a person may have made on his land[2]—for anything which it may have injured[3], and (= or) which a spate of water floods[4], apart from these seven ditches. (*For his surety would sue everyone if these immunities had not been established*).[5]

[1] From 'that lawful case' out he pays the liability of his ditch, *for everything in his land which he fences defectively, for what is unlawfully made.* [2] which one makes in his land. [3] for what it 'truly injures'. [4] for what abundance of water fills. [5] *His surety has been arranged(?) for everyone if these things had not been established as an immunity.*

§ 15. It is on the foregoing [rules] that the kinship of conducted water has been established in Irish law.

I. *The circuit of the mill consists of eighteen days in all*: Monday to the source, Tuesday to the pond, Wednesday and Thursday to the wrights, Friday and Saturday to the service; Monday *again (i.e. of the second week)* to the pond, Tuesday [to the lands] from source to pond, Wednesday and Thursday to the wrights, Friday and Saturday to the service; Monday to the pond, Tuesday [to the land] below the pond, Wednesday and Thursday to the wrights, Friday and Saturday to the service. The foregoing applies when there is rotation. On the other hand when payment is made, [the fee] is ten scruples for the source, and ten [for the lands] from source to pond, and thirty scruples for the pond, and ten [for the land] below the pond, making sixty scruples in all, if it be arable land. If it be non-arable land [the fee] is half of this: five scruples for the source, and five [for the land] from source to pond, and fifteen for the pond, and five [for the land] below the pond, making fifteen scruples in all. Why is the amount for the [various] lands, apart from the pond, equal in case of rotation and unequal in case of payment? This is the reason: the owners of the lands were given their choice whether they would have rotation or payment and they chose rotation. One-third for the land and its appurtenances, and one-third for the skilled labour of the wright, and one-third for [him who provides] the feeding and the unskilled service, one-sixth for each of them.

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(p. 17 *marg. inf.*) Cid fo*dera* go fuiled t*r*i .xx.it screb*all* do loct na fearand roleadradh su*n*d, 7 masa mhuilend cumaile t*r*i mbo na fagand acht samhaisg da log i laim ir bunaid? Is e in fath: da dæinib na fearand daleadrad and dab*er*ar a rogha in* chuairt muilind dabertar doib no 'n iat na scrib*aill*; 7 masa mhor leosomh na denad muilend ar fearand ind ir eile.

II.

1 Luan do thobar, toramh ngr*i*nd,
i*n* mairt ina diaidh don lind,
cedain dardain, dail in raith,
a tabairt dana særaib.

2 Aine 7 satharnd, seol nglan,
is eadh rosaigh a frichnamh;
is i sin, sith gu mbail,
a cuid choir dan cetṡeachtmhain.

3 Luan 7 mairt, meabuir mbind,
dona tirib gusu*n* lind
7 otha in lind amach,
nis toraimh a natharach.

4 Cedain dardain, dingnaib ngal,
isi*n* tectmain seo do ricnamh,
æine satharnd, sluind go lu,
do ṡoeraib ariisiu.

5 In t*r*eas seachtmain, nach inill,
tuc luan 7 mairt do lind;
cedain dardain, ni dær clu,
tabair don tær in cursu.

6 Æine 7 satharnd, sir ngnath,
do ricnamh a neidhenach.
ocht laithi deg, digrais dal,
is i sin a cuairt comlan;

7 Gen bes muilend fo*r*a bleith
rantar am*ail* ro randadh;
a comhroind is amhlaidh seo
mani reacat ar seodo.

8 Crist gunig g*ach* mbeathaidh mbi,
m*ac* don ingin eabraidhi,
sil adhaimh, ilardha in sluag
richfidid uili i*n* noenluan.

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* ni *MS. with subscript* m *added in a later hand* (*C*?).

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Why is it that the owners of the lands which have been breached in this case get thirty scruples, whereas in the case of a mill worth a *cumal* amounting to three cows he (the owner of the mill?) leaves but a yearling heifer as payment in the hands of the owner [of the land breached]? This is the reason: the owners of the lands which have been breached are given their choice whether it is to be the circuit of the mill or the scruples that shall be given to them. And if they deem the amount excessive, let them not construct a mill on the other man's land.

II. 1 Monday to the source, a pleasant service (?),
The following Tuesday to the pond,
Wednesday and Thursday, a lucky tryst(?),
Are to be given to the wrights.

2 Friday and Saturday, a clear course,
Are what the service of it (the mill) attains;
That is—peace with prosperity—
Their proper share of the first week.

3 Monday and Tuesday, sweet memory,
To the lands as far as the pond
And beyond the pond—
To change(?) them does not help(?) them.

4 Wednesday and Thursday, with monuments of valiant deeds(?)
[Go] to the service this week,
Friday and Saturday—name it lightly(?)—
Again to the wrights.

5 The third week, which is not secure(?),
Give Monday and Tuesday to the pond,
Wednesday and Thursday, not base their renown,
Give to the wright this turn.

6 Friday and Saturday, enduring the custom(?),
To the service as the last [item].
Eighteen days, excellent the arrangement,
That is the complete circuit;

7 As long as mill shall grind
Let it be apportioned as it has been apportioned here.
Thus is their share [fixed]
Unless they sell it for *séts*.

8 Christ who controls all living life,
Son of the Hebrew maiden,
The race of Adam, numerous the throng,
They shall all come to Him on the same Monday.

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III. [Ocht la .x. com*l*ana is si in cuairt .i. luan tuiseach do thopa*r*, mairt do lin*n*idh, cetain 7 dardai*n* do særaib, ai*n* didi*n* 7 sathar*n* do frichnum; luan 7 mairt do thairidi*n* o linni co topa*r* 7 o muilinn sis, cetain 7 dar*dain* do fritg*num*, ai*n* 7 sat*arn* do tsær; lu*an* 7 m*airt* do lin*n*i, cet*ain* 7 dar*dain* do sær, ai*n* 7 sath*arn* da f*richnum*. Tossach cuarta in so doridisi: lua*n* do tob*ur* 7 m*airt* do li*nn*i, cet*ain* 7 d*ardain* do s*aer*, ai*n* 7 s*atharn* do f*richnum*. Da la do cach ae a sechtmain, a .iii. a coictigis do ca*cha**, a .ui. dia .xx.it aidche, ocht la cach æ dia mis, .i. a .iiii. do lin*n*i, a do do thopur, a do† tairidi*n* i coitci*nn*us it*er* lin*n*i 7 topa*r* 7 o muil*iunn* sis, confodl*aither* side etarru uile C.]

IV. (*Rawl.* 506 f. 32 *b*2.) Duine seo 7 ce*n*nait muilind aici 7 nucun uil uisci aicci fei*n* 7 ata uisci i co*mh*foccus do, 7 urailidh dlig*ed* ar lucht na fearan*n* uil et*arro* conair do lecudh do*nn* uisci tarrsu ce*n* gub ail leo, 7 is e sin in dhara hinadh is*in* b*er*la i *n*nurailеand dlig*ed* ar duine a seoit du reicc gin gub ail leis. 7 a rroga du lucht na fearan*n* *in* cuairt muilind ragas doibh no in scripaill. *in* tan is cuairt muilind luan du thobur, mairt du lind, cetai*n* dardain du ṡaeraibh, an*n*‡ 7 sathurn*n* du rithgnum. lua*n* du i*nn*ir o thobur gu lind, mairt du lind, cetain dardai*n* du rithgnu*m*, aini 7 sathurn*n* du saeraibh. du*n* chuairt tanaisi sin.

Mas dun treas chuairt luan d'othaigh, mairt do lind, cetain 7 dardain du ṡaeraibh, aini 7 sathurn*n* du rithgnu*m*h. 7 a rogo d'fir muilind i*n* logh dab*er*a du ṡaer no i*n* cuairt muili*n*d. Cid fod*er*a conidh cutr*u*ma ata in chuairt muili*n*d doibh cidh fearan*n* eathai*m* cidh fearan*n* aneathai*m*, 7 nach cutr*u*ma atat na scribaill? Is e fath fod*er*a: indissid leobur deithb*ir* na screpaill air fo aiccnedh ethaim no anethaim 7 nuccun i*n*disen*n* deithbi*r* na cuarta muilind. intan imo*rro* is [s]crip*aill* dob*er*ar do lucht na tire is t*r*i fichit scrip*all* doibh.

Masa eathum .x. scripaill fichet doibh do lind 7 .x. scrip*aill* do thobur 7 .x. scrip*aill* do i*nn*ir o thobur gu lind 7 .x. scripail de fothaigh.

Mas aneathamh imo*rro* is .u. scrip*aill* decc do lind§ 7 .u. scrip*aill*** i*nn*ir o thobur cu lind 7 .u. scrip*aill* do fothaigh, conadh .x. scrip*aill* ficheat uile fair. 7 i*n* cutr*u*ma is fiu i*n* muileand sei*n* iarna de*n*amh is a thria*n* donti racen*n*aig na tiri 7 a t*r*ian (*f.* 33 *a* 1) do ṡæraibh 7 a t*r*ian do adbhur 7 do bhiudh 7 do rithgnum, 7 a leath sidhe d'adbur .i. seisedh, 7 .ui.edh do biudh 7 do rithgna*m* .i. aili decc do cach æ.

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* *read* cach ae. † *supply* do. ‡ *read* aín.
§ *Supply* 7 .u. scripaill do thobur. ** *Supply* do (*or* d').

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III. *The circuit consists of eighteen days in all: the first Monday to the well, Tuesday to the pool, Wednesday and Thursday to the wrights, Friday and Saturday to the service; Monday and Tuesday to the mill-race between pond and source and below the mill, Wednesday and Thursday to the service, Friday and Saturday to the wright; Monday and Tuesday to the pond, Wednesday and Thursday to the wright, Friday and Saturday to the service. Here the circuit begins again: Monday to the source and Tuesday to the pond, Wednesday and Thursday to the wright, Friday and Saturday to the service. Two days in a week for each of them, four in a fortnight for each of them, six in three weeks, eight in a month for each of them, viz. four for the well, two for the source, two for the mill-race as a whole—between pond and source and below the mill, this being divided between all of them (the intermediate land owners).*

IV. This is [a case of] a person having the head (site) of a mill; he himself has no water, and there is water in the vicinity. The law compels the owners of the lands that lie between him and it (the water) to allow a passage for the water across them (the lands), even though they may be unwilling to do so. And this is one of the two instances in the text where the law compels a person to sell his property though he does not wish to do so. And the owners of the lands have their choice as to whether they shall get the circuit of the mill or the scruples. When it is the circuit of the mill [that they choose], Monday [is given] to the source, Tuesday to the pond, Wednesday and Thursday to the wrights, Friday and Saturday to the service. Monday to the area from source to pond, Tuesday to the pond, Wednesday and Thursday to the service, Friday and Saturday to the wrights. That is the second [week of the] circuit.

As for the third [week of the] circuit, Monday to the wheelhouse, Tuesday to the pond, Wednesday and Thursday to the wrights, Friday and Saturday to the service. And the owner of the mill has his choice as to whether he shall give a fee or circuit of the mill to the wright. Why is it that the circuit of the mill amounts to the same for them (the owners of the intermediate lands) whether the land be arable or non-arable, whereas [the respective amounts of] the scruples are not the same? This is the reason: the text specifies a difference in the [number of] scruples for it (the land) according as it is arable or non-arable, whereas it specifies no such difference in the circuit of the mill. Now when it is scruples (i.e. a single payment) that are given to the owners of the lands they get sixty scruples [in all].

In the case of arable land, fifteen of these scruples [go] to the pond, ten to the source, ten to the area from source to pond, and ten to the wheelhouse.

In the case of non-arable land, on the other hand, fifteen scruples [go] to the pond, [five to the source,] five to the area from source to pond, and five to the wheelhouse, making thirty scruples in all. And of the amount which this mill is worth after its construction, one-third goes to him who has purchased the lands (i.e. who has paid the above-mentioned fees to their owners), and one-third to [the person or persons who have provided] the materials and the food and the [unskilled] labour—half of that amount, viz. one-sixth, going to the materials, and one-sixth to food and labour, i.e. one-twelfth to each of them.

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NOTES

§ 1. H has preserved the older form *coibnes* (<*com-fine* with the regular suffix *-assu-*, cf. Gr. § 261). Elsewhere, including the O. Ir. Glosses, we find *coibnius*, cf. Gr. § 259. 3.

In CU the denominative vb. *tairidnid*, formed from the vb. n. *tairiden*, has almost entirely superseded the old vb. * *do-airet* (*to-air-fed-*), which survives only in *do-airc*[*h*]*estar* § 11. Following the gloss (²) one might emend MS. *asasatoirinider* to *tarsa tairidnider* 'across which it is conducted'; cf. also *usci tuiridne tur* (sic) *cricha* AL iv. 166. 23 f. But the emendation would be difficult to reconcile with what follows. For the compiler regards the land in which the water is diverted as constituting the *coibnes*, to which he attaches a more specialized meaning than usual. He takes *coibnes* as = *bunad* 'original stock', the 'root' of kinship, which here—as generally in the older stratum of the tracts—means the *derbḟine* (cf. p. 59 *supra*). I have no other example of *coibnes* used in this restricted sense.

§ 2. The meaning assigned to *fris-dring*, lit. 'climbs against', here and in § 8 is uncertain. I have not met this cpd. elsewhere. In AL ii. 320. 11, iv. 384 the denom. vb. *drēimnigthir* (pass.) glosses the simplex *dringid*. For *bess-da nessom* cf. Gr. § 427; one would expect the copula to be pl. and the inf. pron. to be neut. sg. (referring to *ttr* in §1).

§ 3. Note that the land which contains the source of the mill-race is here by implication identified with the *derbḟine*. The two remaining 'kin-groups' are the *íarḟine*, the land (or lands) across which the water is conducted, and the *indḟine*, the land in which it is ponded. This classification corresponds to the three circles of kindred that alone had legal significance in the archaic period. Subsequently, however, the narrower circle of the *gelḟine*, which was introduced by the jurists within the period of the texts,* replaced the *derbḟine* for most purposes. Accordingly the glossators in CU (and also in the *Bechbretha*, AL iv. 168. 9 f.) interpret the 'kin-groups' according to the later fourfold classification. Thus the land in which the water is diverted, i.e. the *derbḟine* of the text, has now become the *gelḟine*†. Similarly the land 'from source to pond' is now the *derbḟine*, not the *íarḟine*, whereas the land in which the mill-pond is situated, formerly the *indḟine* (as definitely stated in the text here) has become the *íarḟine*. Finally another parcel of land is introduced to correspond to the *indḟine* under this new arrangement, viz. the land 'below the pond' (cf. commentaries I and IV, also AL iv. 168. 10); in other words the land on which the mill itself stands (cf. p. 62 *supra* and the note on *fothach* pp. 84 f. *infra*). This rearrangement has compelled the glossator in ² and ⁴ to 'interpret' *indḟine* in the text as 'used for *íarḟine*'.

For *amal bés fóessma* cf. *fri bēs coma(i)ltuir* AL v. 394. 24. The reading of H gives no sense as it stands; one could emend it to *amail bid fóesam* 'as though it were [a case of] fosterage', but on the whole it is more probable that *fóesam* is an error for gen. *fóesma*, the form found in the other MS. In gloss⁸ (H) *coma* is obscure; hardly for *acht coma* (= *camai*) 'nevertheless', cf. AL iv. 252. 17, etc. The meaning of this gloss is discussed in the notes to § 4.

§ 4. For (*i*) *neoch ma ro látar* cf. ZCP xvi. 271. As the clause occurs twice in the same sentence, Thurneysen proposed to read on the second occasion *la nech 'ma ralatar* 'with him concerning whom they have been made', but such repetitions are not unusual in the law tracts. *ro látar* is perfective pres. (subj.?) of *fo-ceird*; cf. also O'Dav. 1192, where the phrase is cited expressly from this tract.

The 'analogy' suggested in this section has already been discussed (p. 60 *supra*). The case is correctly outlined in H (gloss⁸ of the preceding section): a prospective adopter has bound himself by simple contract, but this contract has not been warranted by the necessary sureties from his kindred (*rátha fine*, cf. § 6); neither has the head of the kin

* Cf. 'The Linguistic and Historical Value of the Irish Law Tracts' (Rhys Lecture, British Academy, 1943), pp. 31 f.

† It is true that the *gelḟine* actually appears in the text of the *Bechbretha* (iv. 166. 24), but this I take to be a later insertion.

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authorized the adoption. Hence the adoption cannot take effect (cf. § 6), but the youth who was to have benefited from it is regarded as having acquired certain rights under the contract for which he is compensated by receiving three *séoit* from the property of his would-be adopter. The glossators in the principal MS. (1) are quite at sea in their attempts to explain this special case, but it would be impossible to discuss their 'explanations' without opening up the whole question of adoption in Irish law.

§ 5. I am not sure that *acht* is to be emended to *inge* merely because it is followed by the acc. pl. *curu*. As *acht* was originally a preposition (cf. Gr. § 908), it may have governed the acc. in the earlier period of the language when used in the sense of 'except'. I have noted other instances in the archaic stratum of legal texts, e.g. *imrim eich ach*[*t*] *tri heocha* (= *eochu*) AL v. 474. 9; cf. also iv. 194. 26. On the other hand, in *acht na cuic curu ata taithmechta*[*i*] AL i. 50. 32, which offers a close parallel to the present passage, the gloss (52. 22) *inge ar acht* shows that *inge* was the original reading; cf. ZCP xvi. 177, 183. Cf. also § 8, where *inge* is used in a similar context.

The evidence of several parallel passages, e.g. AL i. 50. 32 (ZCP xvi. 177), shows that *raiter* in our MS. is an error for *ro nasaiter* (rectius *nasatar*), perfective pr. subj. pass. of *nascid*. Yet the glossator (2), taking *cia raiter* to mean 'though they be uttered', gives the futile explanation 'though they be considered' (or 'discussed'). Here we have a good example of a glossator attempting to interpret a passage of text that was already corrupt when he was at work on it. I believe that a considerable number of late glosses are similarly based upon a corrupt text, though the lack of parallel passages usually renders proof more difficult than in the present case. All this serves to reinforce the lesson (too often ignored even today) that no reliance whatever can be placed on the attempts of later glossators to explain doubtful or obscure words and phrases in the text.

The glossator (3) takes *-ālet* to be a cpd. of *lenaid* with either *ad-* or *aith-* (the 'etymological' gloss *adha* serves for both preverbs, which also fall together as *ad-* in deuterotonic forms). The cpd. *aith-len-* (vb. n. *aithle*) is well attested, but the form here would require *ad-len-* meaning 'adhere to' (cf. the original sense of *lenaid*, Lewis-Pedersen § 578). The existence of this cpd., however, has not yet been satisfactorily established. The compilers of the Bonn Dictionary, it is true, give *-áilet* (i. 17) as 3 pl. consuetudinal present of *ad-len* (presumably formed by analogy with those cpds. of the subst. vb. that have been assimilated to cpds. of *benaid*?), but later (ii. 63) they omit to list *ad-len-* among the cpds. of *lenaid*; in any case, assuming that the cpd. exists, the form here is more likely to be the ordinary pr. indic. (*-áillet* < *áilnet*). One might, of course, ignore the 'etymological' gloss and emend to *-éllet* (< *élnet*), from *as-léna* 'sullies', more particularly as *ní as-len fini* constantly figures among the contracts of an emancipated son which may be rescinded by his father (e.g. AL ii. 218. 2; v. 286. 12; O'D. 382; O'C. 1088, 1994, 2142; cf. also *cuir as-lenat orba* Bürgsch. 11, § 36). But though Thurneysen agrees with previous translators in taking the vb. to be *as-léna*,* all the MSS. read *aslen* or *islen*, which suggests that this is a strong vb., possibly yet another cpd. of *lenaid* (with *ess-*).

For *fris-bruidi* 'objects to, repudiates', cf. Hessen's Lex. i. 14, further Ml. 44[b]12, ÉRIU xii. 18, § 23 (and O'Dav. 821). The MS. form could be the pret., but as this tense is hardly ever used in legal rules, we are doubtless justified in restoring a final *-i*. The clause means that the adopter's consent to the contract is overridden by the opposition of the remaining members of his *fine*. Cf. AL v. 510. 7 f., where in a closely similar case the text states: *us* (=*is*) *treise in da teangaid dec dia tindtug oldas in aentenga dia hastad* 'the twelve tongues [of the *derbfine*] are more mighty to rescind it than is the single tongue to hold it fast'.

Both glossators in 1 have misunderstood the nature of the 'nine rescindable contracts' mentioned in the text. These are obviously agreements which, though warranted by sureties in proper legal fashion, can be subsequently rescinded at the option of the *fine* of one (or both) of the contracting parties. The consent of the whole *fine* (normally

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* ZCP xv. 312, where *ni as-len fini* (Caratnia § 7[1]) is rendered 'etwas, was (seine) Sippe schädigt (eigentlich: besudelt)'.

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signified by the head of the kin) is required for contracts by any of its members which may involve it in future liabilities, e.g. an agreement to enter into base clientship (ZCP xiv. 374) or, as in the present instance, to adopt an outsider. The first glossator (L), however, thinks that *all* rescindable contracts are referred to, and the list subsequently added by A increases the confusion, for in the last three of these the repudiation is effected by the contracting party himself and in the remaining contracts by his 'superior' (who, as in the case of his lord or his abbot, need not be a member of his *fine*). To judge from the language, A's list would seem to be old, though I have not met it in any text. It includes all the items in the much better known list of 'five rescindable contracts' which occurs in the introduction to the *Senchas Már* (AL i. 50. 32 f. = ZCP xvi. 177, § 12) and elsewhere. For *coibche* (3) in the older sense of 'bargain, contract' (gl. *cunnradh* O'Dav. 565), cf. EIL p. 114; cf. also *is fastaithi coibche in da gaeth* 'the contract of two sensible parties is to be held fast' C 2400, O'D. 800 (where it is glossed *cor da sochunn*).

§ 6. Following the gloss, I was first inclined to emend *tegat* to *-dechsat*, perfective subj.; but Dr. O'Brien suggests *-tésat*, an archaic form of pr. subj. *-tíasat*, as being closer to the MS. reading. In legal texts the indic. is hardly ever found in a clause of this kind and the second vb. *-forngara* is clearly subj.

The interpolator who added *fine* after *rāith* has misunderstood the text, which here refers to the general rule that *all* unsecured contracts are revocable. The exceptions to this rule are given in § 7.

§ 7. This heptad has not been included in the official collection (AL v. 118 ff.). It enumerates those contracts which are valid and irrescindable once they have been entered into, even though no sureties have been avouched by either side. The first four items also appear in Heptad xxv (AL v. 212 f., more fully in CCF pp. 47 f.), a list of seven *tabarta* which are 'irretrievably alienated' (*dílsem*) even without the intervention of sureties. The word *tabart* should not be translated 'gift'; it means anything that has been handed over—or, to use the terminology of Roman law, conveyed by *traditio*—not necessarily (or even usually) a gratuitous donation. The glosses on the other heptad (cf. AL v. 214. 21 and CCF p. 49, §§ 91 f.) reflect the uncertainty of the later jurists as to whether *tabart rig* (*t. epscoip*) means something handed over by or to a king (bishop); in our tract both items are left unglossed. The analogy of *tabart filed*, which corresponds to *duais tēchta do filid* in the other heptad, might seem to suggest that the *tabart* is made to the king or bishop, but much more probably it refers to a grant made by him.

A discussion of the various meanings of *commuin* (< *com*+*moin*, cf. CCF pp. 74 f.) must be postponed to a future occasion. Here it refers to the mutual 'give and take' in the relations between father and son, who in Irish law are so closely identified that they do not even constitute a *lánamain* or 'pair' (cf. EIL pp. 12 f.) but are deemed rather to form a single legal person. Either may make full use of the other's property without giving rise to any legal claim (AL v. 480. 11); *a fortiori*, therefore, they have no need of sureties in their dealings with one another. This applies also to transactions affecting the joint economy (*cumthus*, cf. EIL pp. 17 f.) of every 'pair', husband and wife, father and daughter, mother and son, etc. (*ibid.* p. 4).

For the *séoit turchloithe* 'chattels of submission' a single payment (equal in amount to his honour-price) received by the client from the lord on the conclusion of every contract of unfree clientship (*giallnae*), cf. ZCP xiv. 339 f., xv. 259, xvi. 210, and Cr. Gabl. p. 97. The sg. *sét* here is doubtless a scribal error, as elsewhere the pl. is always found. I am not sure of the precise meaning of *rath tar airdig* ('a fief overflowing [the] goblet'?). Thurneysen, after some hesitation (cf. ZCP xiv. 362 f., 393, xvi. 210) accepted the explanation given in the present gloss ([8]) and took it to mean an additional amount of capital advanced by the lord to cover any rent or service the client might render which went beyond the legal amount due from him; but the whole matter needs further investigation. For *turchrecc*, lit. 'fore-purchase', the delivery of the fief (*rath*) by the lord, and hence often used for the fief itself, cf. ZCP xiv. 339, Cr. Gabl. p. 96.

The last item (8) has been responsible for much confusion. In the MS. it begins a new paragraph, and this, together with the fact that the heptad is complete without it,

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led Thurneysen (Bürgsch. p. 59) to take it as a separate beginning *Ni inaiccditer fir nime* tr. 'The men of Heaven are not invoked as sureties', etc. But the technical term for this process is always *ad-guid* and there is no other example of a decompound *ind-ad-guid-*. Further, Thurneysen's rendering does not suit the context, for obviously if these sacred persons or objects may not be invoked as sureties there can be no obligation on any one to enforce their guarantee. I suggest, therefore, that we should read *ní i n-aiccditer* and take this as an eighth type of contract—doubtless inserted as an afterthought by the compiler of CU—which, though it carries a supernatural warranty instead of the normal guarantee by earthly sureties, is none the less valid in law.

I hope to deal elsewhere with this interesting survival under the Christian dispensation of the pre-Christian practice, so often mentioned in the sagas, of avouching the sun, moon, and similar objects of worship as guarantors of a solemn engagement. Here I must confine myself to textual problems. The form *-eiccditer* is an error for *-aiccditer* (pass. pl. of *ad-guid*, the technical term for 'invoking' as surety, cf. Bürgsch. p. 60). For the gloss *i ngeiscetar* ([10]) one might have expected *i n-uc(a)-ēiscetar*, the usual 'etymological' gloss on the prototonic forms of this vb. (e.g. AL iv. 34. 23, where *rohuceisced* glosses *-aicaidter* = *-aicditer*, iv. 58. 8, v. 308. 24), but as the ipv. sg. *aic* is glossed *ēisci-siu* AL ii. 116. 14, perhaps we should read *i n-ēisciter* here.

The concluding words are quoted in a similar context in two other MSS.:

(1) H 3. 17 col. 571 (O'D. 795): dlegar do deo*rad* de a saighesiu*m* a nadma am*a*il doroichista ind no dodigsedh a ceileb*rad* air.
(2) Eg. 88 f. 31[a]1 (O'C. 2395): dlegar do deora de a saighisium a nadma amail adrogesta ind no dodighsi a celebra aire.

For *ad-rogestae*, perfective past subj. pass. of *ad-guid*, (1) reads *do-roichista*, which looks like the corresponding form of *di-guid* (vb. n. *dígde*); cf. also *doroguitea* in[13]. For the *deorad Dé* cf. ÉRIU xii. 58 f. For *do-tét ar* (beside *téit ar* § 6) in the sense of 'goes security for, guarantees', cf. Bürgsch. p. 35. For *celebrad*, originally 'celebration of the canonical hours', but possibly used here of celebrating Mass, cf. Plummer V.SS.H. i. cxv, note 14. On the other hand, in the law tracts the word sometimes seems to mean a special ceremony in the course of which obligations were solemnly entered into, e.g. AL v. 178. 24, 388. 27. Cf. Bürgsch. p. 15. The *deorad Dé* is accordingly regarded as the legal 'agent' of the heavenly 'sureties', bound to enforce their 'guarantee' should the party who avouched them in support of his promise subsequently default. C's insertion of *sōs* (probably = *soscéli*) is hard to justify; but perhaps the archetype had *a nadma-som* (or *-side*).

§ 9. The opening clause is quoted in two other MSS., where it is accompanied by more detailed commentaries:

(1) Eg. 88 f. 38[a]2 (C 2472 f.): Atait teora cana na cuimgid comarbaib do cumscughudh dia narrdamadh a naithri 7 a senaithri fria naimsir.
(2) H 3. 17 col. 544 (O'D. 756): Atait .iii. cana na cuimgit comarba do cumscugudh.

This section enumerates three types of servitude to which one's land may become subject by what continental jurists call 'adversative prescription'. The first alone is relevant to the present tract: where two successive owners of a parcel of land have acquiesced in a mill-race flowing through it, then the owner of the land on which the mill is situated acquires a perpetual right corresponding to the Roman servitude of *aquaeductus*. The second, lit. 'the rule of an estuary', means, as the commentator ([8]) has rightly seen*, a fishing-weir that has been erected in an estuary. Although in our day the Supreme Court has held that 'in Brehon law the right of fishing for salmon was vested in the inhabitants of the Tuath' (*Moore* v. *Attorney-General and Others*, 1934 Ir. Reports at p. 64), further study of the relevant texts has convinced me that privately owned salmon- and other fishing-weirs were recognized and protected already in the

* Here, as frequently in the glosses and commentaries, the symbol *.i.* is equivalent to *e.g.* The other two servitudes are specified in the commentary in C 2473: *ma ta fer buna a n-aititin tesgadh*[*a*] *a ferainn no droithid do denam air* 'if an owner acquiesces in the breaching of his land (i.e. for the mill-race) or the construction of a bridge(?) on it.

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oldest stratum of the law tracts. Most of them were situated in tidal waters, then as now the most profitable location. In the present case *A* has erected such a weir from *B*'s land; if his user has been acquiesced in for two generations by *B* and his successor, then *A*'s descendants acquire a permanent title to the fishery, which would normally vest in the riparian owner.* And this will apply whether *A* has erected the weir without *B*'s consent or whether (as is in general more likely) he has done so by agreement and has compensated *B*; the point is that once *B* and his immediate successor have suffered this derogation from their right of ownership, their descendants take the land burdened with a perpetual servitude of the fishery in favour of *A*'s heirs.

The third case is not so clear owing to some doubt as to the precise meaning of *drochet* in this context. If it bears its usual meaning of 'bridge' (as I have translated), we are concerned with two parcels of land separated by a stream. Should the owner of one parcel construct a bridge across the stream and this structure be tolerated by two successive owners on the opposite bank, their successors are no longer free to demolish the bridge on their side; in other words their land is burdened with something like the Roman servitude *oneris ferendi*. Yet it seems strange that such a slight interference with the owner's control over his property should require such a lengthy period of prescription, and Thurneysen may be right in suggesting (Bürgsch. p. 84) that *drochet* here means 'Knüppeldamm', a road of wooden planks which one landholder has built across his neighbour's low-lying or marshy land.

For *trebaire* = 'die Pflichten des *trebars*, seine Haftung als Landbesitzer', cf. Bürgsch p. 84. The old form-[*f*]*rithrolat*, perfective pr. ind. of *fris-cuirethar*, has been paraphrased in the margin by A, whose alternative version is taken from the previous sentence. The insertion of 7 *a senathair* is justified by the context as well as by the gloss (²) and the parallel passage (1) above.

The last sentence has been corruptly transmitted. In the MS. it reads *neoch madrodm* | *aiter* (*neoch dleagar* added above the line by L) *ambith samlaid* | *cobrath imdeolaid fa* | *log nādligthir areir* | *brithemon*. The lack of parallel passages makes any attempt at reconstruction hazardous, and my proposed emendations are therefore purely tentative, though the general sense must be something like what I have suggested. (Gloss [13], however, shows that the glossator took the text to contain *neoch* or *noch* before *dleagar*.)

Glossators and commentators, including those in (1) and (2) above, were obviously unfamiliar with the rule laid down in the text. But a full analysis of their conflicting 'explanations', in which different types and periods of prescription are jumbled together, would be impossible without opening up a difficult and complex subject on which much of the relevant material is still unpublished. It must suffice to say that they hesitate between (1) immediate acquisition of the servitude once the construction (of the mill-race, weir, etc.) has been completed without protest from the owner of the servient tenement, (2) a period of years (forty, fifty, or ninety), and (3) *three* generations, the normal prescriptive period when reckoned in lives (as opposed to two in the present case). The addendum requiring that the son of 'the third man' have attained full legal capacity for a certain period before the servitude is indefeasibly established illustrates the tendency of the later jurists to introduce fresh (and probably imaginary) complexities into the relatively simple rules of the ancient text.

§ 10. Cf. p. 58 *supra*. The precise distinction between *tuididen* (*to-di-fed-*) and *tairiden* (*to-air-fed-*) is difficult to establish. In the excerpts from the *Bechbretha* in H 3. 18 (O'C. 889) [*uisce*] *tairidne* is glossed *tuididne*. It may be mere chance that in the surviving law tracts *tuididen* is always used, as here, for the act of conducting water (cf. also § 12), whereas *tairiden* occurs only in the expression *uisce tairidne*; but cf. *do-airchestar* § 11.

The use of *sechim no indsaigim* in [3], the conventional gloss on enclitic *-ch* 'and' (as well as on *no-ch*, for which see Gr. p. 550), entitles us to emend the verbal form in the text to *ro-ch-suidiged*; cf. ZCP xiii. 299 f., xviii. 100 f. Here, as often elsewhere, the pseudo-etymological gloss has preserved an archaism which has been either suppressed or miscopied by a later scribe of the text.

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* Cf. also Bürgsch. p. 84.

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The normal *sét* contains twelve 'scruples'. According to this method of reckoning, the Roman basis of which is clearly shown by the terminology, 1 *screpol* (< Lat. *scrupulus -um*) = $\frac{1}{24}$ of an *uinge* (< Lat. *uncia*), which = 1 milch cow (*bó*) = 2 *séoit*.

In the absence of other examples it is impossible to say whether *gabal* (or *gabál*?) is really the equivalent of one pace (*céim*), i.e. two feet and a half, as the glossator ([5]) suggests.

For this use of *alailiu* cf. Bergin, ÉRIU xiv. 29 f.

§ 11. Cf. p. 58 *supra*. I take *do-airchestar* to be pass. pr. subj. perfective (with *-com-*) of **do·airet* 'conducts', the only finite form of this cpd. that has hitherto been discovered; cf. Gr. § 533. On the other hand, as the existence of a cpd. *to-di-com-fed-* (beside *to-di-fed-*) is well attested, it is possible that there was a similar cpd. *to-air-com-fed-*; if so, the form here would be non-perfective.

In § 13 *dún* is inflected as an *s*-stem; here, however, it is an *o*-stem, which was apparently the older flexion, cf. Gr. § 280.5. There is some evidence that *fert*, too, was originally a neut. *o*-stem; cf. *Fert n-Aife, F. n-Ailbi, F. mbecc* Onom., and gen. sg. *feirt* AU 862. (The fem. *iā*-stem *fertae*, given as 'the O. Ir. form' in RIA. Dict. F col. 93, is probably a collective.) The law glossators almost invariably take it to mean the raised portion or 'platform' of a fair green (cf. [3] and § 13 [6]; for a suggested explanation of the conventional gloss see Thurneysen, ZCP xx. 369). More often than not, however, it seems to be used, as generally in the sagas, for a pre-Christian tumulus or grave-mound, as opposed to the Christian terms *relic, rúam*, etc.; cf. V. Trip. 317. 18. Just as in ancient Rome a grave on a private estate was a *res religiosa* and hence *extra commercium*, so the pagan Irish may well have regarded the *fert* and its precincts as a *nemed* or sacred place (cf. Gaul. *νεμητον*) to which such general rules as that formulated in § 10 did not apply. Note also that the glossator ([2]) interprets *nemed cille* as a (Christian) cemetery.

The reason why two later scholiasts should each have inserted an alternative spelling of the common adj. *aíbind* (cf. ÉRIU xiv. 1 f.) in gl.[4] is obscure to me.

§ 12. Cf. p. 57 *supra*. My translation of *inid-taidle[a] muilenn*, lit. 'in which a mill installs itself', is based on the analogy of (*tíre*) *inid-c[h]uirethar a torad* 'into which the fruit is projected', lit. 'projects itself', AL iv. 168. 2 (*Bechbretha*). I have no other examples of *do-aidlea* with a reflexive inf. pron., and it would doubtless be rash to suggest that the use of this reflexive construction in place of the passive is an archaism.

The words *combi uisci neire aradfogna*, written in the margin by the first glossator (L), look like another of those unnecessary additions which we find in §§ 6[b], 7[g], 14[d], for the text is logically complete without them. Nor is the fact that they are glossed decisive against this view, for the clearly spurious addition in § 14[d] has also been provided with a gloss. Note also that two words (*uisce arda-fogna*) are repeated from the previous clause. If, however, we assume that the addition is genuine, the word *neire* raises a difficulty which the glossator does not even attempt to solve. Were it not for the initial *n-*, one might take it as *eir[r]e*, 3 sg. fem. (referring to *treb*) of the conjugated prep. *ar*, cf. Gr. p. 679, note 102; but *uisce*, so far as I know, was never neuter. Further, the glossator ([7]) takes *combi* as the copula, whereas the subst. vb. would be required in this construction; but confusion between the two is not uncommon in the glosses, and we should probably read *co mbí* in any case. A possible emendation would be *co mbí uisce na rré* (temporal acc.) 'so that there is water at any time (= all the time)'; cf. *na rrē soirche fo-cerdat in be[i]ch saithe* 'at any time during daylight that the bees swarm' AL iv. 172. 12 (*Bechbretha*). On the whole, however, it seems more likely that even if some words were really dropped by the scribe of the text, they are not correctly reproduced in the marginal addition.

§ 13. This heptad, which is also cited (without glosses) in O'C. 72, does not appear in the official collection (AL v. 118 ff.). For the meaning assigned to *trebaire* here and in § 9 cf. Bürgsch. p. 84. In *fótbach*, lit. 'sod-cutting', the second element is that which appears in all cpds. of *bongid*, e.g. *tobach, combach, taidbech*, etc., though the vb. n. of the simplex is *buain*. A similar form in nominal composition is *murbach* (*muirbech*) 'break-

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water', cf. RIA Contrr. M col. 205. Here too, as in § 9, *drochet* may mean a plank (or 'corduroy') road rather than a bridge.

The glossator in [3] has misunderstood the meaning and construction of the text. The vb. by which he glosses *ad-gérad* (sec. future of *ad-gair*) seems to be *do-urgair* (*to-air-*[*uss-*?] *gar-*), which is generally translated 'incites'; cf. ÉRIU xi. 69 and RIA Contrr. TO-TU s.v. *turgaire*. But this meaning is based on a very doubtful gloss in AL iii. 156; cf. AL v. 420. 10, where *do-airgair* seems to mean 'restrains, prohibits' (unless, indeed, it is an error for *do-airngir* 'promises').

The expression *dénta* (pl. *déntada*) *díráith* in [11] is often found in the law commentaries; e.g. AL iii. 162. 30, 172. 15, 18, 264. 5, v. 488. 25, etc. The invariable translation 'lawful building(s)' conceals the real meaning of *dí-ráith*, lit. 'without warranty', hence 'not liable (for damage which may result from failure in construction), immune'. Cf. Corm. 472 (and H 3. 18, p. 67, O'C. 104), where *díráith*, which is given as an 'etymological' analysis of *drúth*, is defined as *cen fiach fair ina chintaib* 'not subject to a penalty for his liabilities'.

§ 14. For *animbe* (generally written *anime*) 'defective fencing' see Plummer, ÉRIU x. 115, who suggests that *anmainiges* in gloss[1] should be emended to *animiges*, a denom. vb. formed from the first word. *fo-rroí* is perfective pr. subj. rel. (*-rr-* < *-nr-*) of *fo-fich*. After *cenmothá* one would expect the acc. in such an old text, and the acc. pl. form of the article (*na*) indicates that the nom. pl. *claid* is a scribal innovation.

The last sentence has been added in the margin* by the second glossator (A), who has also provided it with a gloss. There are the strongest reasons for doubting its authenticity; it paraphrases a sentence of § 13 in distinctly later language (cf. *mana rosamaigtea* pl.; elsewhere this vb. only appears in the glosses; *rodílsi* for *ruidlesa*). Almost certainly, therefore, it did not belong to the original text.

I. For a brief analysis of this and the following commentaries cf. pp. 61 f. *supra*.

I do not know what type of mill is meant by *muilenn cumaile tri mbó* and why the fee paid to the neighbouring owner should be less for it than in the case of the mill described here. Note that the commentator envisages both types of mill as erected on someone else's land.

II. My translation of the chevilles in which this poem abounds is often uncertain.

1*a*. *tōramh* in this cheville (and in *torruimh nglē* AL i. 288) is probably a late form of O. Ir. *torrama* (cf. *tóramh* IGT 80, § 28), and should, I think, be distinguished from *toraim(m)*, *toromm*, etc., which is also found in chevilles; cf. RIA Contrr. TO-TU coll. 255, 262.

2*c*. This line is a syllable short. For *sin* read *side*?

3*d*. *-toraimh*, if it is really a verbal form, is obscure. I have taken it to be connected with *tōramh* in 1*a*, though in that case one would expect an *a*-verb.

4*d*. The metre requires *aridissiu*.

8*d*. In mediaeval Irish eschatology the Last Judgement is regarded as due to take place on a Monday. Cf. *go ttí laithe an luan-brátha* BnNE. i. 194. 16.

III. The only reason why C has added his version of the 'circuit' would seem to be that he wished to support II in its minor variations from I, e.g. concerning the allocation of Monday and Tuesday in the second week and Thursday in the third.

IV. Cf. p. 55 *supra*. The exact meaning of *fothach* has, I think, escaped previous translators. Thus in BnNE. i. 336 Plummer renders *fothach muilinn* by 'mill-pond'. And in the celebrated story of the sons of Diarmait mac Cerrbéoil (cf. p. 56, n. 4 *supra*), who were drowned in the *fothach* of Mael Odran's mill, Meyer (Hib. Min. 70 f.) gives the

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* In AL it has been inserted in the middle of the previous sentence owing to confusion caused by the scribe's two *signes de renvoi*, the first (wrongly) after *tola*, the second (correctly) after *claidseo*. In addition *ar ad-gairead* has been misread as *are cogairead*.

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same meaning to this word, though the context clearly indicates that the *f.* was distinct from the *linn.* We are told that the youths were crushed to death by the revolving mill-shaft which was set in motion by Mael Odran's command. Now the mill-shaft is not in the pond, but rather, as the other commentators (I and IV) say, 'below the pond', and is set in motion by the force of the water which is directed from the higher level through a chute against the paddles of the (horizontal) wheel. It can hardly be mere coincidence that in the plan of a Shetland mill given by Curwen (*op. cit.*, p. 141) the 'wheelhouse' or lower chamber of the mill, containing the shaft and the wheel, is locally called the 'under-house'. Since, according to Curwen, the vertical mill was introduced into the Shetlands from Ireland by the Norse (p. 144), and since, further, many of the technical terms used by the islanders are obviously translations from Gaelic, I suggest that *fothach* = *fo*+*tech*, a neut. *s*-stem (dat. *fothaig*). Cf. also Lucas, *op. cit.*, pp. 21 f. We have already seen how the glossators and commentators, in order to create an additional '*fine*' in the 'kin-groups' of the water, were forced to regard the mill itself as a separate 'family' from the pond (cf. note on § 3, p. 78 *supra*).

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