University of Pennsylvania
LAW REVIEW

The Ancient Brehon Laws of Ireland

Author(s): M. J. Gorman

Source: *University of Pennsylvania Law Review and American Law Register*, Feb., 1913, Vol. 61, No. 4 (Feb., 1913), pp. 217-233

Published by: The University of Pennsylvania Law Review

Stable URL: https://www.jstor.org/stable/3313365

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at https://about.jstor.org/terms

The University of Pennsylvania Law Review is collaborating with JSTOR to digitize, preserve and extend access to *University of Pennsylvania Law Review and American Law Register*

JSTOR

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Published Monthly, Except July, August and September, by the University of Pennsylvania Law School, at No. 8 West King St., Lancaster, Pa., and 34th and Chestnut Streets, Philadelphia, Pa.

VOLUME 61 FEBRUARY, 1913 NUMBER 4

THE ANCIENT BREHON LAWS OF IRELAND

It is to the combined results of the antiquarian industry of a Welshman, the zealous enthusiasm of an Englishman, the wise foresight of an Irishman, and the generous liberality of a Scotsman, that we owe the preservation to the present day of three of the most important existing manuscripts of the ancient Brehon Laws, under which Ireland was governed for upwards of 1200 years. For many years after the English gained a foothold in Ireland, it was a criminal offence to be found in possession of a document written in the Irish language. All sorts of devices were therefore resorted to, for the purpose of concealing them, but the greater number were discovered, and burned or destroyed by the English soldiery.

About the year 1700, Edward Lhwyd, the eminent Welsh scholar, made a tour through Ireland, and he there obtained in various parts of the country about 20 or 30 old parchment manuscripts, amongst which were the three precious ones above mentioned. These manuscripts subsequently became a part of the Chandos collection, and later they came into the hands of Sir John Seabright, a Scotsman. About the year 1778, Colonel Vallancey, an Englishman, was sent by the Government to superintend some works in Cork. He had previously spent many years in India, and was a distinguished Oriental scholar. Being struck with the similarity between certain words in Irish and Hindustani, he began to study the Irish language, in which he soon became very proficient.

This content downloaded from 104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

In 1782, he obtained permission from Sir John Seabright to inspect the manuscripts in his possession, and he subsequently published a translation of some parts of them. In 1783, he wrote to Edmund Burke, pointing out the national importance to Ireland of these manuscripts and the desirability of their restoration to Irish custody. Burke fortunately prevailed on Sir John Seabright, in August of that year, to present the manuscripts to the library of Trinity College, Dublin. There they remained for nearly seventy years, unnoticed and almost forgotten, except by O'Reilly, who refers to them in his essay on the "Ancient Institutes of Ireland," published in 1824. In 1852, a commission was appointed by the government to superintend the transcription and translation of these manuscripts, as well as other ancient Irish manuscripts in the possession of the Royal Irish Academy, the British Museum and the Bodleian Library at Oxford. The commissioners employed the eminent Irish scholars Dr. O'Donovan and Professor O'Curry to do the work. Both these gentlemen died while engaged on it, and afterwards Dr. Neilson Hancock, Dr. O'Mahony, Dr. Alexander Richey and Dr. Robert Atkinson were severally appointed to complete the task. Some idea of the difficulty of this undertaking may be had when it is known that the text was in a dialect which had become obsolete centuries before, and that the best Irish dictionaries then in existence did not enable one to understand the language, which was in fact entirely unintelligible to one who knew only the modern Irish. By dint of laborious study, repeated transcriptions, translations, comparisons, and revisions, the entire manuscripts were rendered into English, with the exception of a few technical law words, for which no adequate translations have yet been found. The result is embodied in five large volumes, which were printed at the expense of the government. The first volume was published in 1865, the second in 1869, the third in 1873, the fourth in 1879, and the fifth and final volume, together with a glossary, in 1901. These books contain, on one page the ancient Irish text, with the explanatory notes and comments of subsequent annotators, in the same language, and on the opposite page the English translations of text and notes. They have thus made the whole subject of the ancient Irish laws accessible to the interested student. The only thing lacking in the

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

glossary is the pronunciation of the names of persons and places which occur in the books, as without this, one not familiar with old Irish names can never be sure of getting them exactly right.

Before discussing the Brehon laws, let us first briefly consider their origin, the period of their duration and the time and manner of their abolition. Long before the arrival of St. Patrick in Ireland in the year 432, and probably before the Christian era, the Brehon law was in force in that country. So far as known, it had not been yet reduced to writing, but was rhymed and committed to memory, and thus handed down from one generation of Brehons to another. The introduction of Christianity necessitated many modifications, and these changes were effected by nine men appointed for that purpose by a special assembly convened by St. Patrick. Three of these were bishops, including St. Patrick himself, three more were kings, including Laeghaire the "Ard Righ" or high king, and the remaining three were Brehons, one of whom was especially skilled in the then ancient dialect of the country, in which these laws had been preserved. Their labors extended over the years 438 to 441, and all the previous Brehon laws were examined and revised. Many were rejected as obsolete, or as pertaining to Pagan rites, or as unsuited to the altered conditions of the people. The remainder, with suitable emendations, were finally embodied into the "Senchus Mor" or "Great Book of Irish Law," which neither bishop, King nor Brehon ever afterwards attempted to alter. The "Senchus Mor" does not, however, appear to have entirely covered what would now be called the criminal law, as that is principally contained in the "Book of Aicill" mentioned hereafter.

The "Ard Righ" had attached to his court a council of Chief Brehons or judges, who settled all matters within the central province, and decided on the obligations of the four provincial kings to the "Ard Righ," as well as their mutual obligations to each other. Each provincial King had also his circle of Brehons, but of lower rank than those of the "Ard Righ," to decide all matters within their respective territories. Finally, each chief had one or more Brehons attached to his household, to decide the quarrels of his tribe. The office of Brehon was, by custom, hereditary in certain families, but a Brehon as such, had no exclusive

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

jurisdiction in any specified district. His position was much like that of a professional lawyer, who was consulted by his clients and paid for his opinion. Many Brehons who attained great fame as arbitrators, acquired wealth in the exercise of their profession. There were several law schools at which the younger Brehons were instructed in their business. In the absence of printed books, and the great scarcity of written ones, the education naturally was first the committing to memory of the customs of the locality, and afterwards applying them to imaginary cases, suggested by the teachers.

The Brehon had no legislative power, and was under no obligation to improve the law. He had no knowledge of any other system, and could not therefore see the imperfections in his own. Students were then, as now, more desirious of acquiring practical information of immediate value to themselves, than to learn general principles from which the practical rules were derived. It thus resulted that in the great body of the Brehon law, there is no exposition of the general principles of the law, but only a mass of particular rules. The consequence is that the modern reader often finds himself unable to obtain any general view of the system, or to grasp the general principles that are usually taken for granted in the discussions. The only period during which the laws of the "Senchus Mor" were acknowledged over the whole of Ireland was from its compilation until the invasion of Ireland by the Pagan Danes in 792. This was the golden age of Ireland. After 300 years of fighting, first with Danes, and afterwards with Normans, the latter, in the end of the 12th century, introduced their feudal system, which finally, in the 17th century, entirely supplanted the Brehon law. There was much resemblance between the Brehon laws and those of ancient Britain, and it is in fact claimed on good authority, that King Alfred the Great borrowed many of his laws from Ireland. These laws were also transferred to Scotland, but were there early modified by the feudal system, whereas in Ireland they retained all their native purity, until they were supplanted by English law.

Though the Anglo-Saxon legislators, by a statute passed in Kilkenny in 1367, denounced the Brehon law as "wicked and damnable," yet, down to the reign of Elizabeth, it continued to be as

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

implicitly obeyed in Ireland, outside of the English Pale, as it had been in the fifth century. Even the English settlers outside of the Pale had adopted the Brehon laws, and great Anglo-Saxon lords in Ireland kept Brehons in their service like the Irish chiefs. The surrender of Kinsale and the fall of the Castle of Dunboy in 1602, paved the way for its final overthrow. In the year 1612, the ninth year of the reign of James I, the common law of England became the jurisprudence of the sister island, and the English Judges held their first Assize circuit throughout the whole of Ireland. There is reason to believe however, that, before that time, and even before the landing of Strongbow, the Irish themselves had become sensible of the deficiencies of their primitive system of legislation to meet the requirements of the changed condition of affairs. There is certainly evidence to show that several of the Irish chieftains, from the reign of Edward III to that of Henry VIII, declared their desire to be governed by English laws. It was not, however, the desire of those responsible for the government of Ireland to extend the protection of these laws to the "Irishrie." The reason was obvious, because to rob a "mere Irishman" was not then theft, and to kill him was no murder, but merely punishable by a petty fine. It is no wonder, therefore, that the Irish clung so tenaciously to their Brehon laws, because they found no protection under the English substitutes.

With this brief, but necessary, introduction, we will now proceed to consider the principal features and provisions of the Brehon laws. The five published volumes already spoken of, contain the "Senchus Mor," the book of Aicill, and certain miscellaneous law tracts. The first portion of the "Senchus Mor" deals with the law of distress or seizure without suit, which appears to have been the universal remedy by which rights were vindicated and wrongs were redressed. There were no regular courts of law, before which a creditor could summon an unwilling debtor. The creditor therefore first gave notice to the debtor of his claim, and if this was not settled, he proceeded to distrain the cattle of the debtor. The chief wealth of the country consisted in horses, cattle, sheep and pigs. The law required that in distraining cattle that were not in a cow house, a stone was to be thrown over them three times before witnesses, to indicate that they were seized. If satisfaction was not

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

given within a certain time, or a pledge to proceed to arbitration, the creditor, accompanied by his law agent and witnesses, removed the cattle so distrained, and put them in a pound. He then served notice on the debtor, and the distrained cattle became forfeited gradually, so much a day, to the creditor, until the debt and costs were paid. If it was found that enough had not been seized, a second seizure was made and the same process gone through. The debtor could, by giving a sufficient pledge that he would have the dispute legally tried, obtain his cattle back. If he afterwards refused to carry out his promise, the pledge was forfeited for the debt. This procedure applied to a dispute between men of the same grade, but where the debtor was a person of chieftain grade, it was necessary, before making the distress, not only to serve the notice, but also to "fast on him," as it was called. This remarkable process points very strongly to the Hindu origin of the Brehon laws, where, as pointed out by Sir Henry Maine in his "Early Institutions," a similar practice called "sitting dharna," existed until recently, when it was prohibited by the government. It consisted in the creditor sitting at the door of the debtor, and abstaining from food until he consented to refer the dispute to a Brehon. The spectacle of a hungry and clamorous creditor (who, though he was not allowed to eat, was allowed to talk) sitting at a chieftain's door and proclaiming his wrongs to the passerby, would be such a disgrace, that it would soon wring the necessary consent from the debtor to have the claim adjudicated upon. It is solemnly declared in the "Senchus Mor" that "He who does not give a pledge to fasting is an evader of all," and that "the judgment on him is that he pay double the thing for which he was fasted upon." When the consent was obtained, the parties would thereupon proceed to a Brehon, who, after hearing the evidence, would give judgment according to the merits of the case, and the unsuccessful party would be ordered to bear the costs.

Specific and detailed provisions were made as to the different kinds of distress, the modes of taking and of keeping them, the limitations as to taking a distress and the cases of exemption from distress. The property distrained was to be brought into a strong place for safe-keeping, and the law gave minute directions as to the penalty in case of any accident happening to the cattle while under

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

seizure. Strict provisions existed for punishing every illegal act in connection with a distress, whether committed through ignorance, difficulty or carelessness. Appropriate fines were appointed for the different acts of illegality, and the expense of feeding and tending the cattle when impounded, were to be paid out of the proceeds of the goods seized. A stranger or a landless man could not act as a law agent, and there were also restrictions as to the selection of advocates.

A debtor who had no property to be seized, could be arrested after one day's notice, unless he gave security that he would remain and have his case tried, and that he would pay the debt, if adjudged to do so. If he tried to escape, he might be arrested anywhere outside of the territory where he resided, and if he had no residence, he might be arrested anywhere. Kings and bishops were the only persons exempt from distress.

Growing out of this system of procedure arose the law of hostage sureties, caused by the division of Ireland into a number of distinct provincial kingdoms and sub-kingdoms. The former corresponded practically with the four provinces as they exist today, and the sub-kingdoms were somewhat similar to the modern baronies. When the plaintiff belonged to one of the sub-kingdoms and the defendant to another, a different system of sureties had to be adopted. The hostage surety of the defendant was one from whom a plaintiff was bound to accept pledges, and whom he might sue if the defendant absconded.

One of the principal features of Irish society was the prevalence of fosterage, that is, placing the children in the charge of other members of the tribe during their early years. Fosterage was either "for affection," in which case the foster parents received no remuneration, or "for payment," in which the terms are regulated according to the rank of the contracting parties. The kind of food, clothing and education to be supplied to the different ranks of foster children were all minutely regulated by law. The period of fosterage terminated when the young people arrived at a marriageable age, which was fourteen for girls, and seventeen for boys. The foster father was liable for all wrongs committed by his foster children and for any injuries which they sustained while under his charge. On the other hand, the children were obliged to support

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

their foster father in his old age, in case his own children were dead or unable to support him. Naturally, however, less was expected from girls than from boys in this respect. This law of fosterage was also prevalent among the Anglo Saxons, the Welsh and the Scandinavians.

As regards land tenure, the most important characteristic was that each occupier of land belonged to a tribe, and was liable, in common with the other members, to certain tribal obligations, and he was bound to offer his interest in it for sale to a member of the tribe before selling it to an outsider. The chieftainship of the tribe was an office like that of a president of a republic, and not like that of a hereditary monarch. The chief's claim for rent was not for the use of the land, as in England, but for stock supplied by him to the occupiers of the land. This system is said to have originated in the states and colonies of ancient Rome, to have been common in France till the time of the revolution in 1789, and to still continue in the north of Italy. The Norman chiefs who had been familiar with this tenure in France, readily adopted it upon their settling in Ireland, notwithstanding the stringent English laws against it. The rent was paid by doing manual labor or rendering military service. The law contained very careful provisions for guarding against arbitrary termination, by either the chief or the tenant, of this tenure, when it was once entered into, and each party was protected against the wilful neglect of the other. When the English law was finally established in Ireland, the tenants were deprived of their joint ownership of the land, and to this is mainly attributable all the subsequent trouble and misery over the land question in Ireland, which has continued even to our own day.

The question of social connections formed an important part of the law. The connections mentioned are eight in number, the two most important of which are those between a chief and his tenants and those between the Church and her tenants. The duty of the Church towards the tenants of its lands was described as "preaching and offering and requiem for souls, and the receiving of every son for instruction." From the tenants were due tithes, first fruits and alms. The other matters dealt with under this head are the relations between different members of the family.

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

The remaining part of the "Senchus Mor" is known as "The Corus Bescna," and relates to contracts and obligations. These are divided into, 1st, those created by the actual agreement of the parties; and 2nd, those which arose from the social position of the parties, independent of any actual agreement. Under the first head are treated such things as the sale and purchase of goods and chattels, and under the second, the reciprocal rights of the chief and the tribe, and the Church and the people. The latter regulations were practically new, having been rendered necessary by the introduction of Christianity, and were therefore known as "the law of the letter," on account of their having been first promulgated at the same time as writing was introduced into the country. In addition to tithes and first fruits already mentioned, the Church was also entitled by this law to "firstlings," that is every first male animal, but it is very doubtful whether these rights were ever insisted upon. These rules had no connection with ordinary canon law, but were local regulations between the National Church and its members. In other countries the early missionaries introduced Christianity and Roman Law at the same time, but in Ireland, the organization of the Church appears to have been developed more according to local ideas.

Having now completed our brief review of the "Senchus Mor," we shall turn our attention to the Book of Aicill. This book, which is contained in the third volume, deals with the criminal law, and professes to be a compilation of the opinions of King Cormac Mac Art, who reigned in Ireland about 200 years before the time of St. Patrick, and whose opinions were revised and brought into their present form by Cennfaeladth the Learned, about the year 650. It may be well to preface our remarks on this ancient criminal code by explaining that no distinction was made between what are now known as torts or private wrongs on the one hand, and crimes or public wrongs on the other. The King or his ministers did not undertake to punish any criminal act, even murder, but left it to the person injured, or his family or tribe, to exact compensation in the same way as for an ordinary act of trespass. If satisfaction was not duly given, the offender was compelled to arbitrate before a Brehon, in much the same way as for an ordinary debt. If he refused or was unable to pay the amount awarded, his

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

kinsmen were obliged to do so, or to deliver him up to the aggrieved parties, who were entitled to wreak their vengeance on him, even to the extent of putting him to death. If he abandoned his tribe, he became an outlaw, and might be killed by those who were aggrieved. The amount of payment to be made necessarily varied according to the rank of the injured person and his family, and the nature and extent of the injury. This involved a very complicated system of pecuniary compensation, every detail of which was provided for in the work under consideration. The great body of the work consists of statements of the mode in which wrongs were to be described, and forms or precedents to be followed in calculating the damages to be awarded. Where the wrong was the act of more than one person, or was committed against more than one, the apportionment of the amounts to be paid and received was still more complicated. There being no metallic currency then in Ireland, the fine was calculated in "cumhals," which were the conventional units of value, a "cumhal" being equivalent to the value of three cows. Where the damages exceeded three "cumhals," the payment was to be made in three species of goods, *viz.*, one-third in cows, one-third in horses, and one-third in silver. Ordinarily, the amount of the fine in cases of murder was double that in ordinary cases of manslaughter. An important element in the calculation of the amount of damages was the intention of the wrongdoer, both as to the person whom he intended to injure, and the nature of the injury he intended to inflict. In the case of injuries inflicted on the person, it was attempted to schedule all possible hurts at different amounts. The laws of Athelbright, the Saxon King of Kent, who was baptized by St. Augustine, were on the same principle, and contain no less than sixty-seven different items of the sums to be paid for different injuries. Similar provisions existed in the laws of the other Saxon Kingdoms. Alfred the Great was the first English King to enact laws for the punishment of murder by death. It is evident from the introduction to the "Senchus Mor," that St. Patrick, prior to the compilation of that great work, endeavored to introduce a similar law into Ireland, as he actually obtained the passing of a sentence of death on the murderer of his charioteer, but it is also evident that this form of punishment was not agreeable to the people and was not afterwards insisted upon.

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

The punishment of wrongs resulting from negligence, as distinguished from wilful wrongs, is treated of under what are called "exemptions," and the attendant circumstances are considered to diminish the fixed amount of damages otherwise payable. The amount of these damages was also affected by what is now known as the contributory negligence of the injured party. It is evident from this and similar provisions, that the Brehon system would, under favorable circumstances, have developed into a modern civil code. If mercantile habits had been introduced and commerce established with other nations, the cumbersome preliminary proceedings would no doubt have been abandoned, as they gradually were abolished in England, and the Brehon would eventually have assumed the fixed position of a Judge. But no such development took place, and the legal distinction between public and private wrongs was not carried beyond the incipient stage above mentioned, nor were the principles applicable to the cases of contract ever clearly distinguished from those applicable to torts or crimes.

The fourth volume contains miscellaneous tracts illustrating the land laws of Ireland under the Brehon system. The first of these is entitled "On taking lawful possession." The ancient Irish never formed town communities, and had no fixed judicial system, all judicial authority, as already shown, being derived from voluntary submission to arbitration. The claimant of land therefore, was in this, as in cases of claims for debts and damages, obliged, in the first place, to take the law into his own hands, to compel his opponent to agree to arbitration before a Brehon. The claimant gave notice to the occupant that he intended to enter on the land in pursuance of his claim. This notice was repeated at the end of ten days, and if no satisfactory answer was returned, then the claimant, accompanied by his witnesses, and leading two horses by the bridles, crossed the boundary and remained upon the border of the contested premises for a day and a night. He then left, and on the fifth and tenth days thereafter, he repeated the notice. If satisfaction was still denied, he again entered with four horses and two witnesses, and advanced one-third of the way towards the centre of the lands. If the occupier was still obdurate the claimant again withdrew, and for two days more, gave notice

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

of his intention to make his final entry. He then entered again with eight horses and four witnesses, some of whom had to be of chieftain rank, and this time he advanced to the centre of the land and took possession, unless the occupier submitted to arbitration. The periods required for the notices and entries were intended to give the occupier time to consider whether he would consent to arbitration, and the final entry was made in such a form that he was compelled either to do this or abandon possession. This procedure was very similar to the ancient law of Wales. The necessity of bringing horses, when making the different entries, was dispensed with in certain cases, for instance in the case of a fort, or a church without land belonging to it, or an island, or a place where they were liable to be seized.

If the claimant failed to sustain his right to the land, he was considered in law as a trespasser, and was compelled to pay accordingly, and these damages varied according to various circumstances of the case, prominent among which was the question as to whether there was a full fence, a half fence or no fence at all. There is only one case mentioned in the Brehon law where the King was to be called upon to decide between two subjects, and that was where, in a dispute about the ownership of land, there was no local Brehon versed in the customary law of the district. The modern doctrine which, in a case of fraud, protects a purchaser for valuable consideration without notice, was recognized in the following provision: "In the case of a person who buys without stealing or concealment, with purity of conscience, the purchase is his lawful property according to God and man; if his conscience is free, his soul is free." Certain parties could not enforce a contract against certain other parties, even if made according to legal forms, for example, a bondman against his chief, a son against his father, or a monk against his abbot. But if a "defective covenant" as it was called, was once acknowledged as binding by the chief, the father, or the abbot, he could not afterwards repudiate it.

In considering the tract entitled "The succession to land," it must be borne in mind that the ownership of the undivided land was vested in the tribe, and that the rights of each member were only temporary and personal. And even where land was allowed in separate ownership, it did not descend, upon the owner's death,

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

to the persons who, we now consider, would be his heirs. The owner, as head of a house, acquired the property for his household, and his possession was rather that of a manager of a partnership than of an absolute owner. The household did not necessarily include all his descendants, as sons or daughters might have left it in his lifetime, and it often included persons who were not descendants. Upon his death the property descended to the other members of the household as joint tenants, the eldest male member of the household becoming the head. Each successive head had certain limited rights of alienation, but he could make no disposition of the land to the detriment of the next four generations of his descendants. When the entire line of inheritors gave out, the land thus left without an owner fell back into the general tribe land out of which it had been taken, or in some exceptional cases, became the property of the chief.

The contents of the next tract, which is entitled "Judgments of co-tenancy," show that the idea of exclusive ownership of land did, however, exist in certain cases. Thus the members of a household who were joint tenants under the law, might, by their unanimous consent, sever the joint tenancy. After the division had been made, the duty of fencing their respective shares fell upon the several parties. The different kinds of fences were specified; and the shares to be built by each owner, as well as the means of enforcing this duty, were carefully prescribed. The claims for trespasses of horses, cattle, pigs, hens, dogs and even cats, were all minutely provided for. The various kinds of "man trespass," as it is called, are also enumerated, and the compensation therefor is specifically laid down. In certain specified emergencies, the breaking down of fences and crossing another's land is justified, provided the trespasser observed the minute regulations laid down for the purpose. Agricultural leases were not unknown, but in such cases, they were purely matters of mercantile contract, instead of representing the position of lord and vassal as in England. They were entirely distinct from the cattle tenure between chief and tenant previously referred to.

Another tract is entitled "Bee judgments." The culture of bees in the middle ages possessed an importance which, in our modern days, it has altogether lost. Sugar being very rare and

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

expensive, honey was largely employed to sweeten food, and beeswax was extensively used for candles. It is quite natural therefore that the subject of bees should have occupied the attention of the Brehons. Even the great legal authority, Blackstone, did not deem it beneath him, learnedly to discuss the same question in his Commentaries on the law of England. The ownership of bees, their honey and their swarms are all minutely provided for under all possible conditions, and provision was also made for compensation, not only to persons stung by bees, but to persons whose bees were killed, either intentionally or inadvertently.

The subject of "Right of water" is treated of in another tract. Water mills were introduced into Ireland by King Cormac Mac Art in the third century, and there being no ancient customs with reference to them to fall back upon, the Brehons proceeded to build upon the subject, by analogy, a body of what is, in modern days, known as "judge-made law." One of the first and most necessary provisions was that "Every co-tenant is bound to permit the other co-tenant to conduct drawn water across the border." Lands could be compulsorily taken for the construction of a mill-race or pond, but the lands of a church, a dun or a fair green were exempted from this liability. The owners of mill courses were exempt from damages for accidents arising from their construction.

In the tract entitled "Divisions of land" we get the Irish table of superficial measurements, which was as follows: Three grains in an inch, six inches in a hand, two hands in a foot, six feet in a pace, six paces in an "intritt" measure, six "intritts" in a "lait" measure, and six "laits" in a "forach" measure. The translators were unable to find any corresponding English words for the last three measures.

The tract which retains its Irish title of "Crith Grabblach" gives a detailed description of the several social ranks and organizations of the Irish tribes. The laity were divided into seven grades, to correspond with the seven orders in the Church. In the sequel of the tract it is laid down that the highest dignity on earth is that of the Church, the highest dignity in the Church is a bishop, and the highest bishop is "the Bishop of Peter's Church." Various penalties are provided for injuries to the clergy, according to their official position and the nature of the injury inflicted, but one-

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

third of the penalty specified was to be deducted if the cleric was married, which shows that, while celibacy was favored, it was not then insisted on, among the secular clergy. A further short and unnamed fragment of a tract dealing with the law of succession completes the fourth volume.

The fifth and remaining volume, which was edited by Dr. Robert Atkinson, consists of certain tracts translated by Dr. O'Donovan and Professor O'Curry. The first of these is called "Small Primer," and was evidently intended as a kind of manual, and probably used as such in the law schools of Ireland. The introductory remarks show the influence of the Civil Law as well as some knowledge of Canon Law, and there is a tripartite analysis of "Judgment" into truth, law and nature. This tract gives a fuller insight into the general direction of Brehon thought and procedure.

The next division deals with "Heptads," of which eighty-two are printed, though the learned editor points out that about a dozen more are known from other sources, so he considers that the Brehons had probably elaborated a hundred of these Heptads as a manual for reference. He adds that "it can hardly be doubted that a work of this kind, in the hands or memory of a competent oral teacher, would be a very effective medium for instruction in the Brehon practice, but it may be admitted that the solution in the continuity of oral teaching by trained Brehons has left no small confusion and misunderstanding." The use of the formula seems to suggest that it was a relic handed down from an earlier period and possibly connected with the well-known septenary division of the grades. The number seven had become, to a certain extent, consecrated by the biblical references, such as the seven days of creation and the seven years of jubilee, etc.

The third tract is entitled "Judgments on pledge interests," which are defined as "judgments that are given about the interests that are given with the pledge, or about the pledges with which the interests are given after their being lost." The series of objects concerning which these elaborate regulations are formulated begins with the needle and covers all the different articles in domestic use, ending with the pledge interests of a weapon, and forming a presentation of the general circumstances of social life of early Ireland.

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

The fourth subject, "On the confirmation of right and law," is elaborated into a series of Triads, but this series is not continuously carried out. There are set down a number of *dicta* which apparently are merely accumulations of notes taken from some larger work. There does not seem to be any link of association between the various items, and it is obvious that some of them have no bearing on the subjects indicated by the title of the tract. After a detailed discussion of fines, it ends with what is apparently an enumeration of objects that are, to a certain extent, free to all, that is, objects that the tribesmen could make use of without liability to prosecution.

The fifth and final tract, "On the removal of covenants," is a brief dissertation on certain rights of property, and it introduces certain further Triads. The tract discusses the question of prescription, and ends with some notices of the rights and status of the different members of the family.

This brief and necessarily very incomplete sketch of the Ancient Laws of Ireland will enable us to place some estimate upon their merits as well as their defects. The latter were attributable to the circumstances under which these laws were first formed, and the absence of any Parliamentary or other power, to repeal obsolete laws, or to introduce necessary amendments. The existence of an hereditary legal caste like the Brehons withdrew the laws from the criticism of public opinion and, in a measure, no doubt prevented the establishment of legislative and judicial authority. While therefore much that has been said against these laws by prejudiced and ignorant English writers is open to strong objection, still it must be admitted that they were an obstacle in the way of any considerable social or commercial progress. The laws were made largely for the advantage of the ruling classes. The English real property laws were at one time certainly open to the same objection, but the Courts and Parliament during the past century have effected many radical reforms in these laws.

But if we are to judge of the Brehon Laws on the whole, and see how far they were adapted to attain the end which is the great object of all law, *viz.*: not merely to settle disputes as they arise, but to infuse into the hearts of the people a love of justice, we shall find that the great lawyer who was most responsible for the final

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms

overthrow of the Brehon laws, and who freely criticized their provisions, has himself furnished the strongest testimony to their beneficial effect upon the Irish race. Sir John Davies, Attorney-General to James I, in concluding his none too friendly report on the state of Ireland, felt constrained to make the following remarkable admission: "There is no nation of people under the sun that doth love equal and indifferent justice better than the Irish, and will rest better satisfied with the execution thereof, although it be against themselves, so as they may have the protection and benefit of the law, when, upon just cause they do desire it."

M. J. Gorman.

Ottawa, January, 1913.

This content downloaded from
104.28.89.17 on Mon, 21 Sep 2026 13:49:28 UTC
All use subject to https://about.jstor.org/terms