Irish Brehons and Their Laws
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practitioners, but by empirical medicine vendors to impress their wares—the patent medicines, in short, of the Romans. In that case, then, the existence of the stamp implies the manufacture of the medicament in Ireland; and probably Marcus Juventius Tutianus, the Romano-Hibernian "Holloway," exhibited a shrewd judgment when he selected Tipperary as his head quarters for the manufacture of an eye-salve, "*ad veteres cicatrices.*"[j]

That many of the Romano-British visited Ireland is more than simply probable;—that some remained and died in this island is equally so; but the few scattered Romans who may have died in Ireland were strangers in a strange land, and we cannot expect to find in this country the distinctive Roman sepulchre, authenticated by the many well-known proofs afforded by the manufactures and peculiar burial customs of that people. This brings me back to my starting point, the communication of Mr. Carruthers, and I regret to say, with all due deference to that gentleman, that, though I agree with him to a certain extent, I cannot go all the way with him. I can see no improbability whatever in the assumption that a Roman "had been voyaging past the county Down, and had died either unexpectedly on board, or in a fit of illness after having been removed on shore." But the very act of bringing the body on shore, either alive or dead, under the above conditions, would imply that the deceased was a person of rank or distinction; and it is well known that in such cases it was the Roman custom to burn the body on the nearest convenient spot, and carry away the ashes, to be interred with the usual ceremonies and accompaniments, elsewhere in Italy, Gaul, or Britain, near the remains of the deceased's kindred. Besides, there was nothing distinctively Roman in the remains found near Donaghadee—nothing but what has been found in Celtic as well as Saxon sepulchres. In short, though a Roman might have been buried at the place, and in the manner alleged, there is no evidence whatever to support such an assumption—one, in my opinion, too lightly hazarded.

W. PINKERTON.

IRISH BREHONS AND THEIR LAWS.

BY HERBERT FRANCIS HORE.

An account of the social state of an ancient people is acknowledged to be the most interesting portion of their annals. Accordingly, historiographers, remembering the dictum of Gibbon, that the "laws of a nation form the most instructive portion of its history," are eagerly directing their attention to all that illustrates the old manners, legal customs, and social condition of the nations to whom their labours are devoted. The archæologists and future historians of Ireland have a rich lite-

[j] See the very interesting *Descriptive Catalogue of the Collection of Antiquities and other Objects illustrative of Irish History*, exhibited in the Museum, Belfast, on the occasion of the meeting of the British Association in that town.—Belfast, Archer & Sons, 1852.

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rary treat in store for them in the publication of the Brehon Laws, now progressing under the editorship of Dr. John O'Donovan and Mr. Eugene Curry, who, perhaps, are the only philologists at present capable of doing complete justice to the difficult task. National laws, the reflex of the national mind, re-act on it; and, even when obsolete, have always left imperishable influences on a people whose forefathers were for centuries directed by those cherished institutions. Evidences exist throughout all Ireland that the antique principle of Gavel-kind still works inherently in the impulses of the Irish people. It arose from one of the most natural, yet faulty, ideas of ordinary minds, namely, the desire for general equality. In illustration of the extent to which this desire was formerly fostered by the Gaelic Irish, we quote the following passage from Sir Henry Piers' chorographic account of Westmeath, written in the year 1682; and we do not need to remind readers who are conversant with the management of landed property, and with the evidence appended to the Report of Lord Devon's Land Commission, that minute subdivision of land was, and still is, a systematic national principle in Ireland. Gavel-kind, under a certain modification, has also, for many years, directed the partition of property in France. Its pauperising effects are apparent, and are admirably elucidated in Mr Greg's republication of his two articles in the *Edinburgh Review*, on the socio-political condition of that country.

Sir Henry Piers describes the *Scullogues*, or inferior rank of peasant-tenantry, as joining in a species of community, (which, previously, had been the social union called a *clann*, i.e. the children, or *sliocht*, i.e. seed, or sept,)—and hiring a farm in common. The pasturage of this they grazed conjointly; yet not with equal profits, for the joint-holder who possessed a *collop* or two, viz., a lot of various cattle, was as much entitled to have them ranging indifferently over all the pastures of the holding as he who owned but a *puckawn*. The arable part of the land was by no means tilled and enjoyed in common, but according to the exactest division of property. It was not unusual to see ten or twelve ploughs going in one small field, which, though fenced by one surrounding mearing, contained so many distinct tillage rights. Again, allotments were made according to the quality of the soil; and thence it often happened that a man whose share was three acres had not half an acre conjoined, but his portion was scattered up and down and here and there. "This," observes Sir Henry Piers, "ariseth thro' that great care and concern every man hath lest he should be overreached by his neighbour; and they will take upon them to be judges to an extreme nicety of the quality and quantity of each rood of ground." Our Westmeath landlord accurately describes the method of dividing the arable land among the holders. Lots were drawn for the various parcels, when, says he,—"this done, the wrangle begins, for they to whom the worst lots fall are sure to cavil; and there is no peace till all must divide anew; and if they have not a landlord that can overrule them, they will hinder one another from their labour for a month or two. Hence they have a saying that 'a town without a landlord and a bull, is a town turned topsy-turvy.' Often, at last, rather out of necessity than any love for peace and equity, they agree in making their lots either more equal, or to take to them with more quiet; yet no division can satisfy but that which is the most nice that can be imagined, and certainly the worst and most incommodious,—that is by the ridges:

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yet to this, if peace cannot be had amongst them otherwise, it comes at last. By all which appears how unequally and hard they will bear one upon another; and yet seem outwardly to pretend to nothing but equality."

In older times, the Brehons, doubtless, were often serviceable in arranging these allotments, which the power of the seignior, chieftain, or "landlord," would occasionally be required to confirm. Thus, Piers states that one of the customs of the country with respect to joining together to plough, was called "the law of Owen with the beard," *(Eoghan na feisoge,)* "who was one of their ancient brehons, or judges." The ensuing extract from the judicious Report of the Commissioners appointed to inquire concerning the Ancient Laws and Institutes of Ireland will assuredly interest many of our readers:—

"The subject matter of these laws demonstrates their great antiquity, and indicates the primitive nature of the society in which they prevailed. In spite of the attempts to efface it, traces of heathenism are still discernible in many parts of them. They enumerate various ordeals of a Pagan character, which are expressly termed *magical*, and specify the occasions on which a resort to them was prescribed. There are also provisions in the laws of marriage, which prove that Christianity could have exercised but a feeble influence at the time when they were enacted. Apart from their mere antiquity, these laws are possessed of considerable interest to the historian and jurist. They lay down the privileges and duties of persons of all classes; they define the tenure of land, and the rights of property of all kinds. In a word, they furnish a perfect picture of the society they were designed to regulate, from the constitution of the kingdom and the relations subsisting between the sovereign and the provincial kings, down to the minutest details of domestic life among the serfs."

The refined attention of the Brehon Code to the minutiæ of the rights of property has been pointed out by Dr. Leland; who also, as an impartial historian, in noticing the admirable leniency of its penal provisions, has turned the balance of opinion in its favour on this important score. Many offences which the Draconian English code visited with loss of life or liberty were under it chastised more mercifully by fines.

With respect to superstitious belief in the magical ordeals of the Brehon Laws, this faith is no singular instance of relics of heathenism among modern European nations. Lord Bacon, chief "brehon" to James I., believed, although he was a most practical man of science, that he had discovered a magical sympathy; for he presented to Prince Henry, as "the first fruits of his philosophy, a sympathising stone made of several mixtures, to know the heart of man!" The Irish legal ordeals were, of course, traditionally derived from the pseudo-divine probations of the Druids. Among other tests, huge "rocking-stones" were the most notable touch-stones; if it be true, as alleged, that druidic pretenders to supernatural direction alone knew the point which should be touched to move the rock. So long as the druidic brehons and priests impressed the multitude with faith in their divine power, they had, what Archimedes wanted, another world on which to rest their lever, and could move this one at their pleasure. Shakspeare has developed, in the person of Prospero, the idea of a judicial astrologer combined with an adept, whose white magic, as distinguished from necromancy, enabled him to command purer spirits. Such a sage was "transported and rapt in secret studies;" that is, in the occult sciences; and he possessed:—

"Volumes that he prized more than his dukedom."

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Hereditary Irish physicians' "books" astonished the vulgar with their figured apparatus of astrological diagrams and prognostics.[a] Indeed, as the heathen Irish cultivated astrology, magic, medicine, and vaticinal poetry as kindred sciences, it is probable that their art of judicature also derived much weight from superstitious practices. When knowledge was the monopoly of a single caste, it was easily employed for governing the ignorant. Druidic augurs and astrologers, somewhat conversant with the movements of the moon and planets, were able to predict eclipses and conjunctions of planets, and thus became invested with the divine character borne by the Tuatha De Danaan. What a wild world it must have been when ruled by brehons and chieftains by means of pretended supernatural influences! The suggestion of the Brehon Law Commissioners, that those portions of this law which savour not of Christianity date prior to the prevalence of religion, opens a highly curious subject for archæologic research. Let us notice one special point; namely, the law of A.D. 804, whereby King Aedh, at the instance of Fothadh of the Canons, exempted the clergy from taking part in those "hostings and expeditions" with which he was accustomed to ravage his own realm. It is somewhat of a proof that law was then still promulgated orally, that Fothadh drew up this memorable enactment of "the robber king," (as the royal bards style Aedh) in verse. The Norman subjugation of England principally owed its success to the clergy, who welcomed it as a means of eradicating a very prevalent paganism. How far the conquest of Ireland was similarly favoured by the Romanised clergy, and how far their flocks were heathen, are new questions for future Irish historians.

Turning to another page in the volume of Vallancey's *Collectanea*, from which we have quoted, we find that these Gaelic jurisconsults were sometimes the custodiers of documents, or terriers, in which certain rights to property in land were registered. Sir John Davys, in a letter printed in that volume, describes the interesting interview which he and the lord chancellor had recently had, whilst encamped in M'Guire's territory, with "O'Brislan, a chronicler, and principal brehon of that country." There was a question as to the precise quantities of provisions and other renderings paid to M'Guire out of his mensal or demesne lands, for the support of his house; and this point was referred by the jury "to an old parchment roll, remaining in the hands of" this native judge, who was instantly sent for to the English camp. This happened at a time when an inquiry, instituted by these legal potentates, who were armed with the terrors of *Sassenach* law and military power, threatened to cut off from the chieftain of Fermanagh various sources of his large wealth and power. The old brehon, who lived not far from the camp, "was so aged and decrepid," says Sir John, "as he was scarce able to repair unto us. When he was come, we demanded of him a sight of that ancient roll, wherein, as we were informed, not only the mensal duties did appear, but also the particular rents and other services which were answered to M'Guire out of every part of the country. The old man, seeming to be much troubled with this demand, made answer, that he had such a roll in his keeping before the wars; but that in the late rebellion it was burned, among

[a] *Iar Connaught*, 71.

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others of his papers and books, by certain English soldiers. We were told by some that were present that this was not true; for they affirmed that they had seen the roll in his hand since the wars. Thereupon, my lord chancellor, being then present with us, (for he did not accompany my lord deputy to Ballyshannon, but staid behind in the camp,) did minister an oath unto him, and gave him a very serious charge to inform us truly what was become of the roll. The poor old man, fetching a deep sigh, confessed that he knew where the roll was, but that it was dearer to him than his life, and therefore he would never deliver it out of his hands, unless my lord chancellor would take the like oath that the roll should be restored unto him again: my lord chancellor, smiling, gave him his hand and his word that he should have the roll re-delivered unto him, if he would suffer us to take a view and a copy thereof. And thereupon the old brehon drew the roll out of his bosom, where he did continually bear it about him. It was not very large, but it was written on both sides in a fair Irish character; howbeit some part of the writing was worn and defaced with time and ill keeping. We caused it forthwith to be translated into English, and then we perceived how many vessels of butter, and how many measures of meal, and how many porks, and other such gross duties did arise unto M^cGuire out of his mensal lands." Sir John Davys, a poet, as well as a lawyer, was evidently touched by the pathos of the aged clansman's unwillingness to part with a muniment which attested and had hitherto secured the rights of his chieftain. The old Brehon's heart was as much their repository as his bosom.

In the year 1600, during the ascendancy of general rebellion under Tyrone, an epistolary writer in the county of Carlow stated that:—"The rebels brought forth their Irish books at the Garkill, near Leighlin, importing what lands the several stirps of the Irishry had before the Conquest, and have disclosed their purpose to exclude all the ancient English gentlemen from their possessions."[b] The brehons, who thus taught the Irish their title to their own soil, were as hateful to the English as were the bards, who taught the duty of insurrection. Sir George Carew is traditionally declared to have collected all the Irish MSS. he could lay hands upon, with the sole object of depriving the natives of them. His own eagerness to recover lost estates is well known; and as such MSS. were frequently records as to rights of property, we can understand why he and others seized or destroyed them.

By a policy serviceable to communities remaining in a partial condition of civilisation, several professions among Celtic nations were exercised hereditarily; the oral science of the father being imparted to his sons. In all probability, the families of the Brehons, who were hereditary stipendiary justices of clans, descended from druidic judges. The descent of the Bards, a similar caste of officers, from druids, is perfectly traceable. The functions of cleric and lawyer were occasionally combined in early times, when the clergy formed the most learned class, and were almost the only power at work for good. Under the year 1158, the friars of Donegal record the death of "the Brehon O'Duillennain, who was a professor of law, and also *airchinneach*," i.e. erenagh, archdeacon, or hereditary incumbent, of Ballysadare, county Sligo.

[b] State Paper Office.

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In Scotland the ancient country judges had good lands assigned for their support. In Ireland they were supported by three different means—viz., first, by heritable estates, which were *termon*, i.e., free from rendering tribute to the senior of the clan; secondly, by the rent of a swine, a year old, from every two townlands under their several jurisdictions;[c] and thirdly, by small portions of the *cáina*, i.e., the penalties inflicted for offences. This liberal provision must have gone far to prevent any corrupt means being used to influence them. Each great clan would seem to have had its peculiar family of Brehons. The O'Dorans acted for the Kavanaghs; the O'Breslans for the O'Neills; the M[c]Clancys for the O'Briens; the M[c]Egans for the M[c]Carthys, &c.

Mageoghegan enters the obit of a distinguished Brehon in his version of native annals:—

"Moyleissa Roe MacKeigan, the best-learned in Ireland in the Brehon Lawe, in Irish called Fenechus, died." To this he adds the following note:—

"This Fenechus or Brehon lawe is none other but the civill Lawe, which the Brehons had in an obscure and unknown language, which none could understand except those that studied in the open schools they had. Some were judges, and others were admitted to plead in the open air as barristers, and for their fees, costs, and all, received the eleventh part of the thing in demand of the party for whom it was ordered; the loser paid no costs." "The Brehons of Ireland were divided into several tribes and families, as the MacKeigans, O'Deorans, O'Breasleans, and MacTholies. Every contrey had its peculiar Brehaive" [Breitheamh] "dwelling within itself, that had power to decide the causes of that contrey, and to maintain their controversies against their neighbour contreys, by which they held their lands of the lord of the contrey where they dwelt. This was before the lawes of England were in full force in this land, and before the kingdom was divided into shyres."

The following account of these native lawyers is taken from a manuscript describing the bardic and vagrant professionals who flourished, or the reverse, in Ireland, during the conquering reign of Elizabeth.[d] The document, after stating that the septs in question are, in a manner, all rhymers, that is to say, descended from bardic or minstrel families, proceeds thus:—"The furste of them is calleid the Brehounde, whiche in English is called the judge; and before they will geave judgement they will have pawnes of bothe the parties, the which is called in Irish, *Ulliege;* and then they will geave judgment according to their own dischresions. Theis men be neauters, and the Irishmen will not praie them; they have great pleantie of cattell, and they harbour manye vacabons and ydell parsons, and if their be anye reabell that moves anye rebbellione against the prince, of theis people they ar chiflie mantayned; and if the English armye fortune to travell in that parties wheir they be, they will fle into mountains and woodes, bycause they wold not sucker them with vittals and other;—and further, they will take upon them to judge matters and redresse causes, as well of inherytans as of other matters, although they are ignoraunt; the which is a greatte hinderans to the Quenes Majestie's lawes, and hurtfull to the whole English Pale."

[c] Kilkenny Verdict, S.P.O., 1537.

[d] State Paper Office.

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On this curious account we may make the following comments :—"*Ulliege*" appears as "Oylegeag" in the printed *State Papers*, in the vocabulary of which it is explained to be a fee paid by each litigant to the Brehon for his judgment, and derived from *oilegh*, a brehon, and *eag*, payment. The Earl of Ormond writes, in 1538;—"I have proclaimed over all the countie of Tipperary, that no *caines*," [penalties] "*alleyiegs*, erikes," [fines for manslaughter] "Irishe brehons, nether that lawe, *rahownes*, and many like exactions and extorsions, shall cease." This latter Gaelic word is explained as fees on a brehonic decision; but the text does not bear out this explanation; and we may remark that the vocabulary in question is occasionally faulty.

The above statement, that the Brehons were neutral in matters of war, discloses these professional landholders in special lights. Reverencing their useful office, a Gaelic chieftain, however fiercely he ravaged the country of a hostile sept, respected all that belonged to castes so sacred as the clergy, bards, and brehons. Hence these classes were prosperous during periods of rapine and destruction; but hence, also, they were enabled to support and succour many of their countrymen who were obnoxious to the English government; and they were therefore particularly the objects of the conquerors' vengeance. Consequently, these administrators of laws so inimical to the English and hurtful to their rule occasionally underwent the severest penalty of the law from Queen Elizabeth's satraps. Sir William Drury, lord president of Munster, acquainted the English privy council on the 24th March, 1577-8, that he had hanged, at Limerick, "a judge of Rory Oge's" (O'More's) "termed a Breghon, who was much esteemed among the common people, and taught and practised only such laws as were repugnant to Her Majesty."[e] The ensuing *morceau* of these baneful laws is a literary and historic curiosity, because it is declared by scholars thoroughly versed in the brehon code to be not merely a fictitious quotation, but a disgraceful proof of subserviency to the conquering government of the day. Sir Edward Fyton, to whom the following legal (or illegal) opinion was given, was at the time the newly-appointed lord president of Connaught, a province then recently brought under the dominion of Dublin Castle.

S. P. O.
Ireland. *Sir Edw. Fyton to Lord Burghley. Athlone*, 31 *Jan*, 1571-2. *Extract.*

"I beseech your Lordschip pardon me to tell you a strange case: We are dryven, partely by the coldenes of such as myght do good, but cheffely through our owne weakenes, to make proffe what good wyll cum by allowyng agayne of that old Iryshe law, now longe tyme forbydden, called 'Kylcolgashe:' and that your Lordschip may the better understand how detestable it is, and what myschyef we be dryven to, when we reule that as the best meane we are able to use for mendyng of the countrey, I have ben bold to send your Lordschip here inclosed the very descryptyon of the same, as it was gyven me in wrytyng by one of theyr awne Judges called Breanes. I pray God ther may be better means found and followed to brydle theym, then such as be boath agaynst the law of God, nature, and honesty ED. FYTON."

[e] State Paper Office.

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"Magnifico seu ingenuo viro ac in partibus Connaciæ præoptato Domino precedenti Edwardo militi Fiton et suis commilitonibus, ego Jacopus Oscingin licet indignus considero quod jure divino filius non reportat iniquitatem patris, et e contra et etiam jure civili delictum unius non causat in alio defectum juxta id quod dicit rubrica ne filius pro parte neque pater pro filio neque uxor pro marito nec maritus pro uxore, sed nos accepimus ab arbitris qui dicuntur judices seculares a quibus accepimus jure consuetudinario quod omnes deberent condempnari usque ad quartam generationem non solum in recta linea sed etiam in collateralibus, sed dico me esse excusatum cum jus meum non disponit de damnatione alicujus nisi saltem delinquentis, ideoque si vultis procedere secundum antiquam consuetudinem Hibernicorum aut secundum dispositionem juris cum idem est jus nostrum et jus vestrum quibus juribus consuetudo est contraria habiatis procedere si vultis.

(Note in Fitton's hand.) This is the Breanes owne hand wrytyng whose name is Jamys Oscyngan."

Reference in other documents is sometimes made to a native legal usage, under the name of "the law of *Kincolgas*." This word, which is variously spelt, seems properly to be *Ceanncolgach*, which may mean affinity to the head, or chief. It is said that, by this special custom, every chieftain was obliged to arrest any offender of his sept, probably for trial by the clansmen. In 1572, at a time when the Bourkes of Clanricard and Mayo were vainly endeavouring to restore Gaelic laws in their countries, in order that they might divide land by gavel, and govern their people according to former usage, they "revived the law of Kincolgas."[f] Sir Edward Fyton was the principal instrument in frustrating their attempt.

Vallancey's first volume cannot be replaced on the shelf without noticing its *Dissertations on National Customs, and State-Laws of the Ancient Irish*, its treatise called *The Law of Tanistry Illustrated*, and its fragment of Brehon Laws. Our space does not permit us to offer much disquisition on the policy of these laws, which, indeed, are necessarily too various to be noticed even succinctly. We may, however, mention the two salient points in which they differed from the feudal law of the English; for it was their effects that rendered them so obnoxious to the conquerors, who were therefore constantly bent, during four centuries, on the difficult task of eradicating them, and, with Roman and true policy, extending their own laws to the conquered. Indeed no better evidence is needed than that afforded by the above-mentioned treatise, to prove that the law of male-gavel was the principal cause of the protracted poverty and barbarity of the Irish; and that the custom of election by tanistic succession was the fertile source of clannish internecine strife, and general civil war. Aiming, on the one hand, at a broad equality, yet permitting chieftains to assume the monocracy which invariably arises from frequent appeals to arms, the brehon code, scrupulously minute in its decisions between vassal and vassal, was powerless to restrain the licentious misrule of armed power, by which, after all, the dictates of law must be enforced. During ages when the election for chieftaincies was decided by majorities

[f] State Paper Office.

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of battle-axes, and when the temple of the Irish Janus was always open, the Latin proverb, *silent leges inter arma*, may have frequently suggested itself to all classically learned clerks and brehons. Well might Edward I., (who has been aptly styled the English Justinian, and who successfully prevailed on the Celts of North Wales, after his conquest of them, to adopt feudal laws) have declared the laws of the Irish to be repugnant to justice, and hateful to God. Never would 8,000 marks—the sum offered to this prince by the Celts of Ireland, in order that he should relieve them from laws they were groaning under—have been better applied, if it could then have purchased English jurisdiction for them. The claim of women to property is founded upon the ordinances the Creator prescribed for the welfare of human beings. "If a man die and have no son, then ye shall cause his inheritance to pass unto his daughter." Thus were the Israelites commanded in the Book of Numbers, chap. 27, verse 9. In this instance, therefore, the Celtic law is contrary to God's law. Nor, strictly considered, is the following system of transmission of property as described by Campion, less repugnant to it:—"The inheritance descendeth not to the Sonne, but to the Brother, Nephew, or Cousin germaine, eldest and most valiant: for the childe, being oftentimes left in nonage, or otherwise young and unskillfull, was never able to defend his patrimonie, being his no longer then he can hold it by force of armes. But by that time he grow to a competent age, and have buryed an Uncle or two, he also taketh his turne, and leaveth it in like order to his posterity. This custome breedeth among them continnuall warres and treasons." Hence, indeed, the frequency of those clan-contests by which the Irish cut the Gordian knot of their law with their swords; declaring, in the words of their proverb:—"No surer judge than a field of battle!"

Edmond Spenser, whose intimate acquaintance with the Irish entitles him to be heard with respect, thus writes of them and their jurisprudence:—

"It is a nation ever acquainted with warres, though but amongst themselves, and in their own kind of military discipline, trayned up ever from their youthes, which they have never yet beene taught to lay aside, nor made to learn obedience unto lawes, scarcely to know the name of law, but in stead thereof have always preserved and kept their owne law, which is the Brehon law.

Eudox.—What is that which you call the Brehon law? It is a word unto us altogether unknowne.

Iren.—It is a rule of right unwritten, but delivered by tradition from one to another, in which oftentimes there appeareth great show of equity, in determining the right betweene party and party; but in many things repugning quite both to God's law and man's; as, for example, in the case of murder, the Brehon, that is their judge, will compound betweene the murderer and the friends of the party murdered, which prosecute the action, that the malefactor shall give unto them, or to the child or wife of him that is slain, a recompence, which they call an Eriach: by which vilde law of theirs many murders amongst them are made up and smothered. And this judge, being as hee is called the Lord's Brehon, adjudgeth for the most part a better share unto his Lord, that is the Lord of the soyle, or the head of that sept, and also unto himselfe for his judgement a greater portion then unto plaintiffs or the parties grieved.

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EUDOX.—This is a most wicked law indeed; but I trust it is not now used in Ireland, since the kings of England have had the absolute dominion thereof, and established their owne lawes there.

IREN.—Yes, truly: for there be many wide countries in Ireland which the lawes of England were never established in, nor any acknowledgment of subjection made; and also even in those which are subdued, and seeme to acknowledge subjection, yet the same Brehon law is practised among themselves; by reason, that dwelling, as they doe, whole nations and septs of the Irish together, without any Englishmen amongst them, they may do what they list, and compound or altogether conceal amongst themselves their owne crimes, of which no notice can be had by them which would and might amend the same by the rule of the lawes of England."

In so far as the laws of the Irish differed from the rules of the English, they kept those who adhered to them in a constant condition of alienation from the government in Dublin, and were therefore necessarily abolished. This important abolition did not take place universally until the reign of the first Stuart, when the paraphernalia of provincial judicatures were provided.

We would be well inclined further to compare Gothic and feudal laws with Celtic and clan customs, were it not that, as "brehon" Dogberry says:—"Comparisons are odorous!"

From the very few deeds in the Irish language which exist on record we obtain additional insight into the jurisconsult practice of the Brehons, one of whose functions may have been to prepare and draw up these documents. There is an interesting paper by Mr. Hardiman on ancient Irish deeds, in the 15th volume of the Transactions of the Royal Irish Academy. Certain "testamentary precepts" are in existence, attributed to Moran Mac Main, who is said to have been chief brehon to the monarch Feradach, in the 1st century. But full credence cannot be given to such pretensions of antiquity. This Gaelic "lord chancellor" was owner of the miraculous instrument for insuring justice known as "Moran's collar," believed to have been a gorget of ductile gold, which had so thoroughly imbibed its first wearer's love of equity that it always contracted round the throat of an unrighteous judge, even to suffocation. The memoirs of our mythic countryman, Captain Rock, contain the ensuing account of this valuable substitute for statutes of the realm, legal precedents, and trial by jury:—

"The chief judge, on all solemn and interesting occasions, had a kind of collar placed round his neck, which possessed the wonderful power of contracting or relaxing, according to the impartiality of the sentence pronounced by him, and which pinched most inconveniently when an unjust decision was uttered. The use of this collar has been since discontinued, on account of the risk of strangulation to which it exposed many honourable judges, and the collar itself was supposed to be lost; but to the inexpressible joy of all lovers of Irish curiosities, it was again discovered a short time since, and is at present, I understand, worn on all occasions by the Chief Justice of Ireland, with the greatest possible ease and comfort to himself."

Whilst this marvellous collar remained in the limbo of lost things, succeeding chief Brehons were left to the study of their profession; and some doubtless were as proficient as Chaucer's "Sergeant of the Lawe," to whom the laws of real property being but A, B, C:—

"All was fee-simple to him in effect."

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There must have been considerable difficulty in mastering the entire scope of the native code. In the first place, its MSS. tomes were so scarce that knowledge of it was hardly to be obtained otherwise than by the ear, with the exception of the assistance derived from a few Terriers relating to property. So that the lawyer of a populous clan had generally to depend on memory in deciding on the multiform cases coming before him. Luckily for him, there was no court of appeal. How his legal lore must have differed from that of Chaucer's learned Sergeant, of whom we are told:—

"In termes had he case and doomes alle,
That fro the time of King Will weren falle.
Thereto he coude endite, and make a thing,
Ther coude no wight pinch at his writing;
And every statute coude he plaine by rote."

By the following extract, we perceive how thoroughly dependent the law was upon the sword. When, in 1526, "the Fox" became *oir-righ*, or subordinate king, under Mageoghegan, it was agreed that:—"Whenever either a *Goill* or a *Gaoidhil*, [a foreigner or a Gael] shall sue the Fox or any person in his territory, that the decision of Muirchertach Mac Egan, or of the Brehon who shall be by them appointed, be submitted to; and when this will not be accepted from them, then that Magheoghegan shall be bound to spend his country and Fox's country, for obtaining justice for the Fox and his country, as well as to compel them and him to render justice."

Sir Henry Piers paraphrases an expression of the earnest care with which contemporary Gaelic landlords were accustomed, in chieftain fashion, to protect their tenantry, by writing:—"They are very industrious to preserve them from the wrongs and oppressions of others;"—"and so mean a matter it is with Irishmen to be protected, that it is a common saying with them, what boots it to us to have a landlord, if he defend us not both in just and unjust causes; and another saying they have as rife is this, defend us and spend us."

Let us now turn to some detached notices of the subject under consideration, in the writings of various authors; since it is part of the business of the archæologist to put together every scrap which makes up the mosaic of his topic. Edmund Campion, the ill-fated Jesuit, (who was a native of London, where he was born in January, 1540, and whose family, nothing being known of his parentage, may have come from Western Normandy where his surname is still found) gives the following account of the Brehons, in his lively chapter "Of the meere Irish:"—

"Other lawyers they have, liable to certaine families, which, after the custome of the country, determine and judge causes. These consider of wrongs offered and received among their neighbours; be it murder or fellony, or tresspasse, all is redeemed by composition, (except the grudge of parties seeke revenge): and the time they have to spare from spoyling and proyning, they lightly bestow in parling about such matters. The Breighoon (so they call this kind of lawyer) sitteth him downe on a banke, the Lords and Gentlemen at variance round about him, and then they proceede." "To robbe and prey their enemies, they deeme it none offence; nor seeke any means to recover their

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losse, but ever to watche [for] the like turne. But if neighbours and friends send their Cators to purloyne one another, such actions are judged by the Breighoones aforesaid."

These "cators," or caterers, were, in plain parlance, thieves.

Camden writes that the native Irish nobles and chieftains "have their lawyers, called *Breahans*, (the Goths called them *Bellagines*), a most illiterate set of men, who, on set days, on some high hill, determine the disputes of the neighbourhood. Before them the pleader, in a complaining strain, sets forth the injuries he has received, which are denied by the party accused. On conviction of a theft, they pronounce sentence of restitution or compensation."

From other authority we learn that the Brehon seated himself on the top of a hillock, and sometimes placed himself on the middle of a bridge. Another writer states that any one who had suffered wrong sat on an ox's hide in a public thoroughfare. This was a calm and very un-national mode of seeking justice: yet certainly preferable to the custom of the aggrieved taking the law into his own hands, and giving the offender a "hiding."

Sir Richard Cox, the partisan historian of Ireland, dipped deep in black gall when penning the ensuing paragraph:—

"Nor were their laws better than their governours [their chieftains]: it was no written law; no digested or well-compiled rule of right; it was only the will of the Brehon or the Lord. They pretended to certain traditions or customs, which they wrested and interpreted to by-ends, and to serve a turn. The manner of deciding controversies was equally ridiculous with the law they judged by; for the Brehon used to sit on a sod or turf, or a heap of stones, on the top of a hill, or rather a mountain, without canopy or covering, and without clerks, registers, or records, or indeed any formality of a court of judicature. Every lord had one of these arbitrary Brehons, who, *to be sure, took care not to disoblige his patron.* The greatest crimes, as murder and rape, were not punished otherwise than by fine, whereof the Brehon had the eleventh part for his fees; and robbery and theft were not counted offences at all, if done to any body except their lord's own followers. They reckoned all such stealths to be clear gain; built castles on isthmuses and other inaccessible places, purposely to secure such prey and plunder as they could get; and he was esteemed the bravest man that was most dexterous at this sport of plundering and cow-stealing."

Although it is now beyond question that the Irish Gael must eventually have succumbed to the subjugation destined for them by the proximity of a mightier neighbouring nation, a cursory insight into the nature of the brehonic laws regarding property and power gives us the reason why clans constituted by these laws were so attached to their institutions as to prefer them to any other, and why these were the very basis of the protracted struggle. By the law of male-gavel, hopes of advancement were held out to every "duine-uasal;" and he was at the least secure of one great object of Gaelic ambition, a portion of land; for, so extreme was the subdivision, that, as Sir John Davys found, according as the native families increased and multiplied, their possessions were, "from time to time, divided and subdivided, and broken into so many small parcels, as almost every acre of land hath a

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separate owner, who termeth himself a lord, and his portion of land his country." The law of tanistry was still more liberal in promises to the ambitious; since every man of noble blood, who became distinguished as a warrior, was eligible to the chieftaincy of his tribe. Men brought up with such prospects were not likely to relinquish them, or to submit to the narrow individuality of feudalism caused by the law of primogeniture. At the same time, there are many indications that adhesion to the old Irish law had become relaxed among the chieftains themselves, who would gladly have exchanged their precarious tenure for hereditary transmission, and who would have succeeded in so doing but for the principle embodied in the Gaelic proverb:—"Stronger than the chief are the vassals."

Upon the subject of the conflict between English and Brehon laws, especially during the sixteenth century, our readers may be referred to the pages of the *Annuary* lately published by the Kilkenny Archæological Society. Some points in proof of our position may not, however, be omitted. For example, when O'Brien, eager to be created hereditary Earl of Thomond, entreated Henry VIII. that "the lawes of England may be executed in Tomond, and the naughty laws and customs of that country may be clearly put away for ever," it is manifest that this chieftain wished for the abolition of those principles of succession which endangered his own peace, and menaced the claim of his son. This was the period when efforts were making by government to induce the feudal peers to relinquish the native mode of dealing with the *indigènes*. "If Yrisshemen use their owlde lawes," wrote the viceroy, in 1546, "so dothe the Erle of Urmounde, and all the lorde marchers in Ireland." The labours of the High Commissioners for the Reformation of Ireland, in the year 1537, (whose documents are now in course of being edited in the above-mentioned publication,) were specially directed to the reform of the Anglo-Irish, and to the abolition of brehon usages among them. An unpublished statute of 16th Edward IV. was enacted "against the wicked and damnable Brehon Law," which is stated to be followed in the county of Waterford, to the great injury of the country. With the exception of the narrow territory called the Pale, which included only those champaign parts of Leinster that were adjacent to the metropolis, the Anglo-Irish districts were almost entirely under the system of brehon jurisprudence. Let us hear how a great O'Neill characterised this system. Hugh, Earl of Tyrone, in a petition to the English privy council, (dated 15th April, 1590,) writes of "the incivility" of his country, where, observes he, "Her Majesty hath neither law, judge, or government, *save such as is received by tradition.*" A few years subsequently, however, when this arch-rebel discarded the title of Earl for the prouder one of O'Neill, no chieftain in Ireland was less willing to substitute foreign laws for those native and time-honoured customs of his clansmen. Indeed, to resist English law was the principal object of his rebellion; as it had also been of the revolt of Garret, sixteenth Earl of Desmond, who "had a judge of his own," and ruled his numerous vassals in a manner almost as completely Celtic as if he had descended from Malachi of the Golden Collar. What can we think of a legal system which, as Lord Tyrone objected to it, was merely traditional? The statutes of the realm could be referred to: but laws that depended on memory only must have been subserviently liable to variation.

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No instance has been met with, however, of any accusation against these Gaelic judges that they perverted justice for bribes. This negative testimony is not a little honourable to them. All will remember that the wickedness of Babylon is declared to have proceeded from that "Seed of Chanaan, the ancient judges;" and that bribery corrupted the "wisest, brightest, meanest of mankind," whose life is a "checkered spectacle of glory and shame." Many may also be unhappily aware how strong is the power given by the law to men who have used this power injudiciously and unjustly. There is an old French proverb: —"Qui tient la pöelle par la queue il la tourne ou il veut;" which we may interpret, in application—he who holds the law can expound it as he lists. Our archæologists know how unscrupulously Sir John Davys, King James the First's attorney-general in Ireland, forced up royal rights in his hot-bed of special-pleading Cases; and they may imagine that O'Neill's or M^{c}Carthy's chief brehon was not backward in giving his autocratic *Righ* similar proofs of loyalty. It is, at the same time, probable that the native laws were administered with tolerably even-handed justice in territories which were temporarily blessed with peace, and, moreover, with those rarities, good rulers. But, the authority of a Gaelic jurisconsult must have been confused and devious when he acted under the sway of a palatine Anglo-Irish earl, such as Ormond or Kildare, who governed his vassals and tenants by usages as mixed as their blood. Perhaps no other nations were more litigious than the Normans and the Irish; for, in fact, contests at law are the channel in which the combative spirit of a race runs during peace. Accordingly, it is not surprising to read that the Irish Gael employed the time undevoted to rapine and war in the discussion of their differences. The Brehons acted prudently in requiring payment of their fees prior to entering upon suits; a preliminary which may often have checked litigiousness,—a disposition best corrected by an empty purse.

Lord Coke would not suffer the Brehon usage to be dignified by the name of law:—it was, he said, merely "a lewd custom," i.e., a system fraught with license, rather than a rule or law. Barbarous, traditional, and oral customs, which were either followed or disregarded according to human passions, are certainly not to be ranked with such a regular code of laws as the "collective wisdom" of centuries of English parliaments and judicature have perfected. Hooker, in his dedication to Sir Walter Raleigh of a translation of Giraldus Cambrensis' *Irish History*, observes:—"No realm, no nation, no state, no commonwealth throughout Europe, can yield more nor so many profitable lawes, directions, rules, examples, and discourses, either in matters of religion, or of civill government, or of martiall affairs, than do the histories of this little Isle of Britain or England. I would to God I might, or were able to saie the like, or the halfe like, of Ireland; a countrie, the more barren of good things, the more replenished with actions of blood, murther, and lothsome outrages; which, to anie good reader are greevoss and irkesome to be read and considered, much more for anie man to pen and set downe in writing, and to reduce into an historie. Which hath been some cause whie I was alienated and utterlie discouraged to intermedle therein; for, being earnestlie requested, by reason of my some acquaintance with the manners and conditions of that nation during my short

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abode therein, to continue the historie of that land, from the death of King Henrie the Eight unto these presents, which hitherto hath not been touched; I find no matter of an historie worthie to be recorded, but rather a tragedie of cruelties to be abhorred, and no historie of good things to be followed."

However superior the English system of law was, in the method of legislating by acts of parliament, and in its regular courts, salaried judges, juries, &c., to the rude Gaelic practice, we cannot turn with any gratification to the records which throw light on the practice of law among the conquerors. Even so late in Elizabeth's reign as 1576, it was declared that the course of law in Dublin was "a bare shadow of Westminster Hall." We suspect that the "Court of Justice" in Dublin Castle was occasionally a *dark* shadow of the Star Chamber in the old Palace of Westminster. Moran's miraculous gorget was lost and forgotten. Some years previously, even the building itself was rotten and ruinous. "If this hall" [in the Castle] "is not rebuilt," wrote the Master of the Rolls, "the majesty and estimation of the law will perish, the justices being then enforced to minister the laws upon hills, as it were brehons, or wild Irishmen, in their eriotts." These *oireachtas*, or assemblies, were the open-air parliaments of the Gael, usually held, like the *Things* of the Scandinavians, upon an eminence. The word is still understood in the North. The Privy-Council Book of 25th Eliz., contains an entry of an order forbidding Desmond to "assemble the Queen's people upon hills, or use any *Iraghtes* or parties upon hills." Sir John Harrington, the wit, and the translator of Ariosto, says that the high hill in Leix called Croshiduff was "the general rate hill of Leinster." Primitive and rustic as was the scene in which the Irish people met for public legislation, the agreements they determined on are declared to have been carried out with a constancy not found among more polished nations. Chief Baron Finglas thus contrasts the way in which law was respected in his time by the Irish and by the Anglo-Irish, making a statement highly creditable to the former:—

"It is a great abusion and reproach that the laws and statutes made in this land are not observed ne kept after the making of them eight days; which matter is one of the distructions of Englishmen of this lond; and divers Irishmen doth observe and kepe suche lawes and statutes which they make upon hills in their country, firm and stable, without breaking them for any favour or reward."

Indeed native customs had then totally eclipsed the foreign code. The Anglo-Irish barons dwelling on the borders were either so dissatisfied with the administration of the English law, or so wedded to the usages of their Gaelic relatives, that "divers march lords and captaynes" interdicted those under their rule from pursuing any action according to "the king's laws."[s] Yet, at this very period, the Master of the Rolls, with strong professional jealousy, advised the Lord Deputy to enforce the statutes, in order "that no brehoone's lawes be useid." The Viceroy, however, was as powerless in this respect as the President of the United States now is to enforce the Maine liquor-law in Kentucky. It was even found proper on one occasion to recognise the authority of the native jurisprudists in a Gaelic region, where no other lawyers could exist. An excerpt from the Council Book,

[s] Printed S. P., 1537.

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temp. Elizabeth runs as follows :—" An order deposing William Owre O'Carroll from the captenship of Ely, and making Teige O'Carroll capten; in which order," annotates the compiler, " the Brehouns have libertie to end causes." A record in the *Annals of the Four Masters*, under the year 1554, to the effect that the Earl of Kildare levied a *boraime mor*, i.e., a great cow fine, of 340 cows, from Delvin-Eathra, as an eric for Robert Nugent, his foster-brother, who had been slain by one of the M^cCoghlans, shows that this powerful Anglo-Irish nobleman put the ancient native laws in force so late as the reign of Queen Mary; a fact verified by entries in the Kildare Rental-Book, a most curious MS. now editing for the Kilkenny Archæological Society.

The United Kingdom has for the last hundred years had the example of an ingenious and mighty people, who, during this period, have been governed by a variety of dynasties and codes, and of whom the philosophic few are convinced that institutions, laws, constitutions, and forms of government are not to be valued on abstract principles, but so far as they are proved to be subservient to the practical welfare of the nation. The profound historian, Sismondi, considers that there is a constant compensation in the affairs of mankind; so that, whether a country is submerged in barbarism, or illuminated by civilisation, the sum of human happiness is the same. This idea, however, is so opposed to our feelings, that it must be contrary to truth. The Irish nation, whose wretchedness seems to have been fuller a thousand years ago than it ever was under the 999 years' lease of misery entailed by the English invasion, must have suffered far more under the despotic and extortionate rule of their own chieftains than even under the foreign oppression of Cromwellian military landlords. Some squires of the last century, indeed, rack-rented their tenantry; but an O'Rourke or O'Flaherty of "good Queen Bess's days" went nigh to flaying them. Dr. Hanmer quotes a current saying as to the exorbitancy of a *Tierna mor*, or great Gaelic lord of that time :—"A cormorant over his tenants;—cess and coyney cutt upon the countrey when he rideth."[h] When mounted for private war, and backed by his horsemen, galloglasses, and savage kerne, nothing of his vassal's property came amiss to him. The happiness of a nation may perhaps resemble that of a man. In youth, freshness of feeling, and the bliss of ignorance, prevent many a sigh :—in manhood, the lights of reason and religion temper many a misery. It is an error all the while, to say that in the sum of human ills there is not very much that kings and laws can cure. " That which is best administered is best" cannot be a safe maxim, because it is impossible for those who have been placed in power by undue means to avoid being occasionally despotic to the malcontent minority; for, as Paley observes, one end common to bad governments is their own preservation. Far beyond oppressive acts of power, however, are the effects of unsound social laws in restraining a people from elevating their condition to the highest pitch their genius and the resources of their country would enable them to attain. The word "politics," in its modern sense, has an altered signification. The politics that should occupy the care of all who may take a useful part in them, are the

[h] S. P. O.

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political economy of the social laws of their fellow citizens—their πολις in the widest meaning. One of our most thoughtful writers has said:—"They who have well considered that kingdoms rise or fall, and that their inhabitants are happy or miserable, not so much from any local or accidental advantages or disadvantages, but accordingly as they are well or ill governed, may best determine how far a virtuous mind can be neutral in politics;"—we will add, can be inactive in aiding to improve the policy of the laws. Montesquieu, in his *Esprit des Lois*, observes:—"It must be remarked that what contributed more than anything else to make the Romans masters of the world was, that having successively conquered all other nations, they renounced their own customs as soon as they found better ones." The Israelites were formed into a peculiar people, and remained so, by a special code. The Normans, who subjugated medieval Northern Europe, retained their aristocratic power by means of the feudal system. They also, like the Romans, evinced their sense in adopting valuable institutions. But the native races of Brittany, Wales, Ireland, and Scotland, isolated in their mountain fastnesses, clung to usages which precluded them from becoming civilised.

INQUIRY INTO THE ORIGIN OF THE NAME OF IRELAND.

BY PROFESSOR ADOLPHE PICTET, GENEVA.*

"If I were fond of the style of certain etymologists, I might also place together the word *Erinn*, the Persian *Iran*, and Ossetic *Iron*. The comparison would probably be quite as bad as with the *Huron* or the *Orinooko*, or anything else." Thus says the learned and acute writer, Pott, in his *Etymological Researches*. [II. 187.] However great may be the respect which I entertain, in most cases, for his judgment, it seems to me that he has here been perhaps rather hasty; the question is not to be settled by a jest. Mere verbal resemblances are no doubt frequently very deceptive, and require great caution; but we must not overlook them when they are corroborated by other facts. The old names of tribes are of high importance in the history of the migrations of nations, and the more obscure these are, the more desirable are the slight glimpses of light which such names may afford. Several names of European people have been already discovered, with more or less certainty, in the East. Why might not we also find there that of the Irish, who were probably the first tribe which detached itself from the ancient Arian stem to migrate towards the West? In such questions, it is true, no positive certainty can be attained; but, if from various sides the

* The following curious and learned investigation has lately appeared in a German publication: and is now, with the concurrence and the latest corrections of the author, translated and presented to our readers. As a specimen of close and careful philological reasoning, we are sure it will be appreciated by Irish scholars. Ed.

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