

## ANTIQUITIES

### Ancient Irish Deeds and Writings

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*Ancient Irish Deeds and Writings, chiefly relating to landed Property, from the twelfth to the seventeenth century, with Translations, Notes, and a Preliminary Essay.*

Read February 27, 1826.

THE abolition of the ancient tenures of Ireland, and the consequent deduction of title from the crown of England, during the sixteenth and seventeenth centuries, rendered deeds and writings in the Irish language, particularly those relating to landed property, in a great degree useless. Other combining circumstances, but chiefly the policy and care of successive English grantees to destroy all evidence of previous right and possession in the natives, caused those domestic documents to become so scarce, that the few which escaped the general wreck are, at the present day, esteemed valuable rarities, when to be found in the cabinets of the curious. In fact so rare did they become, that Mr. O'Halloran, in the Introduction to his History of Ireland, has given a translation, accompanied by an elaborate description, of a single Irish deed, which he notices as a matter of great curiosity, though not much older than the beginning of the fourteenth century. This is a loss much to be regretted, but particularly so in an historical point of view ; for, next to the publication of the remains of the Brehon law, the written instruments in use under that code would serve to convey more accurate information of the state of society in Ireland, and of the manners, customs and ordinary transactions of the people, than perhaps any other medium at present extant, the printed histories and unpublished annals of the country being in those respects lamentably deficient. This position will appear clearly exemplified by the ancient Irish writings, which I now have the honor of laying before the Academy in their original form, accompanied with close English translations.[1]

This collection principally consists of deeds and instruments relating to property, and almost entirely belongs to that part of Ireland, anciently called *Tuath-Mumhain*, (Thomond) or North Munster. This great territory, which was formerly under the dominion of the powerful family of O'Brien, extended from the Isles of Aran, on the western coast of the kingdom, to *Sliabh-Eibhline* near Cashel in the present county of Tipperary, thence to *Carran-Fearaidh* or *Cnoc-Aine* in the present county of Limerick, and from *Leim-na-con* or Loopshead to *Sliabh-Dala* in Ossory. Part of this tract of country was erected into a county, in the year 1585, by Sir John Perrott, Lord Deputy of Ireland, and received the name " Clare," in commemoration of the Anglo-Norman Earl,[2] to whom Edward the First had, most inconsiderately, and with crying injustice to the natives, made a grant of the entire district, a grant which caused the loss of thousands of lives.[3] The aboriginal inhabitants of Thomond were — the O'Briens, who long possessed kingly power and dignity — the Macnamaras, hereditary Marshals of the country. — The O'Loghlins of Barren, or Eastern Corcomruadh — The Mac Mahons of Corca-Bhaiscin — The Mac Donnells of Darach, descended from the Monarch Brian Boromhe — The O'Connors of Corcamruadh — The O'Deas of Disart-*ui-Deagha* — The O'Hallorans — The O'Gradies, Lords of Muintir-Tir-Conlachta — O'Kearney — O'Daly — O'Slattery — The Mac Bruodins, hereditary historians of North Munster — The O'Gormans, chiefs of Tullichrien — The O'Hehirs of Callain — The O'Molonys of Ceil-Tanan — O'Heffernan and O'Quin of Corrofin — The Mac Clanchys, hereditary judges and lawyers. — The Mac Sweenys Mulconrys, &c. and to several of these families the following instruments will be found to relate.

Many of these documents are of considerable antiquity. The most ancient are without dates or signatures, having been entered into before it became customary in these islands to affix either to written contracts. These belong to the 12th, 13th and 14th centuries. The greater number, however, are dated. The earliest of the latter class occurs in the year 1419, and the latest in the year 1619, about which time the use of the Irish language in legal writings was discontinued.

The deed, No. II. which I conjecture to be as early as the beginning of the 12th century, is a curious specimen of its kind.

Of it and No. XXIX. which is dated in the year 1573, fac-similes are given. The rudeness of the one, and the comparative elegance of the other, will shew the improvement which took place in the art of penmanship between both periods.

Their contents are strikingly interesting at the present day, being illustrative of manners and customs, which have long since disappeared and been forgotten. Like all collections, some of the present articles, taken singly, may be esteemed of little or no value, but combined, their utility becomes obvious and unquestionable. They mutually serve to explain each other, and by so doing develop facts which, otherwise, might have remained buried in oblivion. To adduce a few instances. They evince the characteristic piety of the people, who often commenced and concluded these instruments with some word or expression of a pious tendency, and consecrated their ordinary dealings with the solemnity of religion, by frequently calling on God as a witness to their contracts.[4] They also shew the state of education, for I was not a little surprised to find so few marksmen, as they are termed, among so many original signatures. But here it must be observed, that the district of Thomond, or Clare, like that of Kerry, has been from an early period, and still is, remarkable for the generally improved education of the various classes of its inhabitants. Further, they afford abundant evidence that the Irish natives of those parts acknowledged no other legal jurisdiction than that of the Brehons, until after the commencement of the seventeenth century, when the laws of England, under James the first, were extended over the whole island, and legal muniments were, for the first time, generally written in the English language. The following instruments, combined with the fragments of the Brehon code, published by the late venerable and learned Vallancey, even scanty and imperfect as they are, will demonstrate how long and how steadfastly the people adhered to those laws, which were established in Ireland before the era of Christianity, and continued to the accession of a monarch, to whom the nation willingly submitted, as the lineal descendant of its ancient kings.

Among the most curious may be enumerated No VIII. being an ancient translation of a Brehon Judge's sentence or decree, a record of very rare occurrence. The punishment appears to have been by Eric or Fine, for as murder was punished by an Eric, so a bare attempt to commit it, as in the present case, though unsuccessful, was also subject to a like penalty.[5]

From this fragment it is manifest, notwithstanding some assertions to the contrary, that the decrees of the Brehons were committed, in regular legal form, to writing. It further shews that they were accustomed to insert' in their judgments the terms of the laws on which they founded their decisions. In the present instance such was the case, but the Irish original has not been handed down, and the words of the law are dismissed by an &c. in this old translation.

—Numbers XIV. and XV. present a singular view of the possessions of the O'Brien and Macnamara families, near five centuries ago.

Number XXV. might, with propriety, be termed Articles of Peace, between the Rival Chieftains of those names.

Number XXIX. and the note subjoined to it are amongst the most interesting of the entire. The reader cannot but be struck by the expression in the latter, "*Prostrate upon my knees before your honors,*" as displaying an incident which, it is conceived, would form an appropriate subject for an historical picture, whose leading feature might be the striking contrast between the humiliated Milesian prince on the one side, and the arrogant members of Queen Elizabeth's Irish Privy Council of that day on the other.

But the principal value of investigations like the present lies in the assistance which they afford the local or general historian, in tracing the progress of society, and illustrating the manners and customs of former times. The ancient writings now under consideration, may prove serviceable in these respects. So far as they extend, they shew the use and denomination of money, the value of land and its produce, and the price of several commodities from time to time, for some centuries. From among the matters of various information which they contain the following heads have been selected.

—In No. X. a fine or Eric appears to have been imposed for murder or homicide, but very inadequate in amount to the dreadful crime committed. Although murder was generally punished by fine, as before observed, yet it must not be concluded that that was the only penalty. This and other heinous offences were punishable with death by the ancient laws of Ireland. This severity was however, in general mitigated by the law of Eric or retaliation, to which some historians have given a decided preference over the more sanguinary inflictions of modern times.

—From No. II. it may be inferred that title to lands might have been acquired by force, or in consequence of forfeiture as an Eric. Conor O'Hurley appears to have so acquired the land of Carrowancalla. To Galloglasses he paid sixteen cows and a noble for the Brehon's judgment, by which the transaction was affirmed.

—The consent of the entire tribe or family necessary before an individual could alienate any part of the inheritance, XIX.

—One tribe purchasing land from another becomes bound to furnish, as additional consideration, suitable food and raiment, for a certain period of time, and the disposing party is bound to be clement, or to afford protection to the other, XVIII.

—Cattle given as a marriage portion, XXVI.

—Cattle taken as a prey and the owners made prisoners, VIII.

—A whole town land forfeited for stealing a cow. Crosses of interdiction raised between contending parties, X.

—The same deed written in three languages, Latin, English and Irish, XXX.

—These three languages used in the same instrument, XXIX.

—Cows killed and liquor provided for funerals, XXXII.

—Guarantees and hostages liberated, on payment of twenty marks for some and forty marks for others, XXV.

—Broad cloth, hats, scarlet cloth, grey cloth, aquavita in the fifteenth century, XVII.

—Hides, fells and chines of beasts killed for the chieftains' suppers, or while in camp, given as fees to the Marshall, and the Marshall's fees on the marriage of his chief's daughters, XXIX.

—A cow valued at three shillings. Lands mortgaged for cattle. Fees for Brehon's judgment or decree. Interest for money due, shillings and nobles in use, II

—Rent paid in wheat, in beeves, in wine, in subsisting soldiers and sportsmen, in pence, groats, shillings, marks, and ounces of gold. *O'Brien's Rental*, XIV.

—Lady's rent, exclusive of Lord's rent, ounces of unspecified metal, (this metal is supposed to have been silver, for when gold is specified as rent it seldom exceeds an ounce,) paid, and food once a year reserved as rent, *Mac Namara's Rental*, XV.

—Gardens, orchards and roads, XXVI.

—XXVIII. Public Notaries, a gilt cup valued at nine marks, four garrans and an ambling nag valued at five marks, XVII.

—Five good hackneys and five marks considered as of equal value, XXIX.

—A considerable extent of ground (the dimensions not expressed) with all its grass, moor, wood and arable land, sold for twelve marks, having been previously mortgaged for twelve cows, XXII.

Trivial as these particulars may at first sight appear, yet it must be remembered, that to an accumulation of such facts, made from time to time by men of antiquarian learning and research, and judiciously treated of by their historians, the people of England are mainly indebted for the present perfect state of their National History.

It must be obvious to all capable of considering the subject with attention, that much preliminary labour yet remains to be achieved, before a comprehensive History of Ireland can be fully and faithfully given to the world. When this desirable and much wished for work shall be completed, the Irish character will beam forth in all its native brilliancy from beneath the dark clouds of prejudice and misrepresentation, which have obscured it for centuries. Such a history will moreover be an awful warning to present and future generations, to avoid these internal dissensions, which at all times, even to the present day, have proved the principal impediment to the happiness and prosperity of the country. —Bede and others, at an early period, described Ireland as supereminently blessed with the choicest gifts of nature, as an Island flowing with milk and honey.

Had this venerable historian lived at a later period, he would see those boasted gifts of nature trampled under the foot of the hostile invader. Instead of milk and honey, he would have described Ireland as an Island flowing with blood, and plunged in all the horrors of almost continuous civil warfare and confusion. Tranquillity was for ages a stranger in the land, except for those few gloomy and transient intervals, which in general but preceded more dreadful storms. Yet even during these short cessations of war, the native character sometimes appeared, the cheering sounds of peace were heard, the shuttle and the plough were seen to move, and numerous flocks and herds covered its hills and plains. The art of agriculture too, but with frequent interruptions, flourished in many parts of the kingdom, to a degree that

drew forth reluctant praises from those very men, whose policy and interest it was to misrepresent the country.

The people of the west, remote from the calamities in which the other quarters of the island were generally involved, retained to a late period many of the simple primeval customs of rural and even of pastoral life, as the instruments before us in many instances testify. Amongst them, debts were contracted and paid in living money,[6] lands were given in mortgage or exchange for cows, horses, sheep, &c. and tributes and rents were rendered in cattle or in ounces of gold and silver. In reviewing the manners and state of society in former times, care must be taken not to draw hasty conclusions from the present advanced position of human cultivation, [7] The improvement of man is ever progressive, and in Ireland, notwithstanding the exaggerated allegations of prejudice, and the many obstacles which the people had to contend with, it is certain that they were not more backward in civilization than those of most of the other nations of Europe. The testimony of that distinguished Chief Justice of England, Lord Coke, concerning the Irish people, remains recorded in his Institutes, a triumphant refutation of previous and subsequent misrepresentation. " I have been informed," says this great and good man, "by many of them that have had judicial places there, and partly of mine own knowledge, that there is no nation of the Christian world that are greater lovers of justice than they (the Irish) are, which virtue must of necessity be accompanied by many others." Can it be supposed that a declaration of this kind would be made, and that by such a man, if the Irish people were really what they had been represented by his countrymen and contemporaries ? But his is not the only testimony. Sir John Davis uses even stronger language, to the same effect. Every remnant therefore which tends to illustrate the manners and customs of such a people must be interesting and valuable, not alone in a national point of view, but as a leading feature in the history of mankind. These are the considerations which induced me to undertake the task of preparing these ancient fragments for inspection, and to deposit my humble mite in the treasury of public information,

To those literary friends who have kindly favoured me with their opinions on these documents I feel indebted, particularly to John D' Alton, Esq. Barrister at Law, the highly gifted author of " Dermid, or Erin in the days of Boru," and other talented productions relating to Ireland ; to Thomas Furlong, Esq. who, with poetical genius of a superior order and the heart of a patriot, is deeply skilled in the history of his native land ; and to Mr. James Scurry of Dublin, whose critical knowledge of our ancient language is, perhaps, not excelled.[9] The valuable assistance of the latter, in the translations, deserves my warmest acknowledgments. The few notes which are given may be found useful by the historical student. Finally, I shall feel more than repaid, for any labour I may have had, should this communication answer any of the purposes for which it was intended, and accord with the views, or meet the approval of the Academy.

#### TABLE.

- I. Bond or charge on Land. No date.
- II. Mortgage of Land. No date.
- III. Like. No date.
- IV. Acknowledgment of debts, &c. No date.

- V. Deed of Land. No date.
- VI. Deed of Agreement. No date.
- VII. Mortgage of Land. No date.
- VIII. Brehon's Decree. No date.
- IX. Mortgage of Land. No date.
- X. Forfeiture of Lands, &c. No date.
- XI. Deed of Purchase. No date.
- XII. Deed of Agreement and Award. No date.
- XIII. Mortgage of Land. No date.
- XIV. O'Brien's Rental. No date.
- XV. Mac Namara's Rental. No date.
- XVI. Deed of Purchase. No date.
- XVII. Ancient abstracts. A. D. 1419 1458.
- XVIII. Deed of Agreement. A. D. 1493.
- XIX. Like. A. D. 1502.
- XX. Partition of Land. A. D. 1542.
- XXI. Deed of Purchase of Land. A. D. 1545.
- XXII. Conveyance of Land. No date.
- XXIII. Mortgage of Land. A. D. 1548,
- XXIV. Assignment of Mortgage of Land. A. D. 1548.
- XXV. Bond and Covenant. No date.
- XXVI. Marriage Settlement. A. D. 1560.
- XXVII. Mortgage of Land. A. D. 1562.
- XXVIII. Deed of Sale of Land. A. D. 1573.
- XXIX. Deed of Appointment by Mac Carthy More, A. D. 1584.
- XXX. Conveyance of Land. A. D. 1586.
- XXXI. Release of Mortgage. A. D. 1587.

XXXII. Award. A. D. 1592.

XXXIII. Like. A. D. 1593.

XXXIV. Surrender and conveyance of land. A. D. 1594.

XXXV. Testamentum. A. D. 1603.

XXXVI. Will and Testament A. D. 1606.

XXXVII. Mortgage of Land. A. D. 1608.

XXXVIII. Assignment of Land. A. D. 1612.

XXXIX. Like. A. D. 1619.

[1] To William Dix, Esq. an eminent Solicitor of this city, I am indebted for many of these documents. William Shaw Mason, Esq., author of the Statistical Survey of Ireland, kindly furnished me with a few from his valuable MS. collection. The remainder were in my own possession. It has been suggested that many of a similar nature might be discovered in the library of Trinity College, Dublin, if carefully explored.

[2] By inquisition taken at Castlebank in the County of Clare, on the 23d of August, 1637, it was found, that Edward I. by letters patent dated 26th January, 1275, granted the whole land of Thomond to Thomas De Clare, and the heirs male of his body lawfully begotten, who died thereof seized at Bunratty in 1287 ; that said land descended to Gilbert De Clare his son and heir, who having died without issue, it descended to Richard De Clare his brother, who having died in 1317, the land of Thomond, for want of heirs male of the original grantee, reverted to the crown ; and that at the time of taking the inquisition the fee and inheritance thereof were vested in King Charles I *Orig. Inquis. Rolls Office*. This inquisition was taken by order of Lord Deputy Strafford, in furtherance of his famous impolitic project to dispossess the ancient proprietors of their estates.

[3] From the Annals of Inisfallen we learn that Thomas De Clare, with many other Englishmen of rank, fell in battle with the O'Briens - " A.D. 1287. The Earl Thomas De Clare, the protector of the English of Munster, and the Knights Gerald Fitz-Maurice Richard Taaffe, Richard De Exeter and Nicholas Teling, were slain in a battle fought in Thomond against Turloch son of Teige Caoluisge O'Brien and the Thomonians, in which battle all the knights and Englishmen of Munster were cut off with dreadful slaughter." The same Annals also mention the extent of territory granted to De Clare." The possessions of De Clare and the English of Thomond, at this time, extend from Tiobraid na Huinnsionn to the confines of Bunratty. A.D. 1285."

[4] See Nos. XX XXI In No. XXV. God with his angels are named as sureties, that the rival chieftains O'Brien and Macnamara would not wage war against each other.

[5] 'Vide Harris's Ware, where an instance is adduced under the year 1148, that When Donald O'Ferral and several of his clan conspired to kill Ternan O'Rorke, whom they set upon and grievously wounded ; yet, notwithstanding he escaped with life, his *Eric* was exacted from the O'Ferrals, as if he had been killed." *Vol*, 1. p. 70.

[7] Mr. Henry, in his valuable History of England, states, that *living money*, which was so

general in England before the Norman conquest, is not mentioned by writers after that event. Vol.111- p. 510. It appears to have been in use to a much later period in Ireland.

[8] In England, in the days of Edward I., and even so late as those of Henry VI., we know that £10 or £20 a year were considered a competent estate for a gentleman. One possessing £150 yearly was esteemed rich, and Sir John Fortescue lays down £5 a year "as a fair living for a yeoman." In 1414 the expence of a scholar at the University was but £5 annually. In 1476 Counsel's fees were lower than in our times. In the account of the church-warden of St. Margaret, Westminster, we find, "Roger Fylpot, learned in the law, paid for his opinion given 3s. 8d. with 4d. for his dinner." In 1493 Sir William Drury, one of the richest men in Suffolk, bequeathed fifty marks to each of his daughters. The value of money then was about twenty-four times more than at the present day See Henry's valuable History of England, whose excellent plan will yet, it is hoped, be extended to Ireland. See also Fleetwood's *Chronicon Preciosum*.

[9] It is anxiously hoped by many of Mr. Scurry's friends, that his capabilities may be called forth, in the national task of translating the Brehon laws, the greatest desideratum, next to the publication of the Annals, in Irish literature.

Having now concluded this collection of Irish Deeds, I may, to the more ancient of them, apply the description given of Saxon instruments of a similar nature, by the celebrated English Antiquary, Sir Henry Spellman " The Saxons, in their deeds, observed no set forme, but used honest and perspicuous words to express the thing intended with all brevity, yet not wanting the essential parts of a deed ; as the names of the donor and donee, the consideration, the certainty of the thing given, the limitation of the estate, the reservation, if any were, and the names of the witnesses, which always were many, some for the one part and some for the other. As for dating, it was not usual amongst them. Seals they used not at all, other than (the common seal of Christianity) the sign of the Cross, which they, and all nations following the Greek and Roman Church, accompted the most solemn and inviolable manner of confirming." The Irish deeds of more recent dates generally come within the description of those commonly in use in the time of Hen. III. of England and afterwards, as given by the same Author " I observe in the deeds of that time a very absolute and methodicall composition, which therefore hath ever since been received, and conteyneth in a manner to this day ; consisting upon the parts here following :

1. The Direction. 2. The Parties. 3. The Consideration. 4. The Words of Grant or Donation.
6. The thing granted. 6. The Estate of the Granter. 7. The *Habendum* or Estate granted.
8. The Use whereto. 9. The Reservation, if any were. 10. The Tenure. 11. The Warranty. 12. The Sealing and Delivery. 13. The Date. 14. The Witnesses." —SPELLMAN ' *of Ancient Deeds and Charters*." Vide his English Works, folio, London, 1723. p. 234. 235.

ERRATUM. Page 6, line 9, for XXIX read XXVIII.

### **Ancient Irish deeds and writings : chiefly relating to landed property, from the twelfth to the seventeenth century (1826)**

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