The Brehon Laws

A Legal Handbook

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MDCCCXCIV

The Clan, Céiles, & The Land.

IN persuance of our plan we now proceed to consider the free clansmen who held property. Property, for the most part, meant land, the cattle fed upon land, and the crops grown upon land. Our ancestors all lived in the country and mainly by industries connected with land. They had numerous villages, the earliest of which are indicated by the still existing raths ; but they had few towns so large as to form distinct communities with life and interest different from those of the country. Our oldest maritime cities are of Danish origin. Hence the Brehon Laws are in the main applicable only to country life, and contain few rules specially applicable to town communities. The vast majority of freemen owning property were farmers, called Céiles, and for simplicity of description we will take this class as the standard.

The contemporary institutions of any given country are always so interwoven that it is difficult to discuss them separately, and impossible to give a complete account of one without giving as part of it some account of others connected with it. This is emphatically true of a country where society is organised on the system of *clan*, *sept*, and *fine*. That system is as soil in which all other institutions, like trees, have their roots. I have already had to anticipate myself in some respects. In order not to do so to a confusing extent, and in order to turn from hence on subsequent matters all the light we can, it will be necessary to deal, however briefly, with the clan system before treating specially of the Chiles, and to deal with the land system while discussing the Céiles.

The Clan System.

KNOWLEDGE of the real nature of the clan or tribal system would be a master-key to much connected with ancient Ireland that is now mysterious, and would remove many stumbling-blocks, if not all. Possibly the lost books, and lost portions of books, would have furnished this key and given us glimpses of life of which without them we can never dream. They would, at the very least, have illuminated some obscure passages in the existing remains which are now subjects of doubt and liable to misinterpretation. But without them full knowledge of this most interesting subject is lost to us, and if it be recoverable at all can only be so by the expenditure of much labour of many minds. For although the existing remains are in many parts extremely familiar with social and domestic economy, providing even for the legal enforcement of some duties which with us are of merely moral obligation, still the information given, clear enough no doubt for those for whom it was intended, who knew its objects as self-evident facts and were themselves in the current of actual life, is in many respects not clear to us who grope in the dry channel through which that current passed. On certain points no information at all is given ; and although great trouble is taken to explain other points, the writers, so to speak, do not begin at the beginning, but start on an assumed basis of knowledge which we no longer possess. We seek in vain for the why and the where-

fore of things which apparently were so well known to the writers and their contemporaries that they did not need to be stated ; and though much is said round and round a subject, the fundamental facts are evasive. From the time the system began to break up the prolonged agony of the nation has prevented the production of a writer capable of rescuing its fading features from oblivion. We are therefore obliged to pass over the subject very lightly and with uncertain tread, though it is really the most interesting branch, not alone of the law, but of the whole social and political economy. A few facts only appear to be pretty conclusively ascert-ained.

Mr. Seebohm, a diligent searcher after the truths of antiquity so far as regards England, comes to the conclusion that the tribal system was almost, perhaps wholly, universal — that is to say, that every nation has had its tribal period. He says, " It is confined to no race, to no continent, and to no quarter of the globe. Almost every people in historic or prehistoric times has passed or is passing through its stages." This is so ; but while in continental countries, owing to international friction and other external influences, tribes generally suffered dis-intregation and dissolution, and ultimately disappeared, in Ireland, owing mainly to its re-moteness, insularity, and freedom from those influences, the tribal system, while becoming Hibernicised in some respects, perfected and strengthened itself, and attained a highly artistic degree of development such as it probably never reached on any continent; and it was made, and long continued to be, the basis of right, duty, property, law, and civilisation itself.

Tuath, *Cinel* and *Clann*, were the words used interchangeably to denote what we now call indifferently a clan or tribe. It resembled the *Gens* of ancient Rome in that all the members of it claimed descent from a remote *fine*, and from a common ancestor as head of that *fine*, and were therefore kinsfolk, were entitled severally to various rights dependent on the degree of relationship and other facts, and formed collectively a state, political and proprietorial, with a distinct municipal individuality and life, with a legislature of its own and an army *in gremio* ; but in these two latter respects slightly subject to, and forming a member of, a superior state consisting of a federation of similar communities. Each clan was composed of a number of septs, and each sept was composed of a number of *fines*. Kinship was the web and bond of society throughout the whole clan ; and all lesser rights whatsoever were subject to those of the clan. Theoretically it was a true kinship of blood, but in practice it may have been to some extent one of obsorption or adoption. Strangers settling in the district, conducting themselves well, and intermarrying with the clan, were after a few generations indistinguishable from it. A chief or a flaith also occasionally wished to confer on a stranger the dignity and advantages of clanship — practically meaning citizenship — and when he had obtained the sanction of the clan assemblies, the stranger was adopted in the presence of the assembled clan by public proclamation. In the course of time the name *Tuath* came to be applied to the district occup-ied by a clan, and *Cinel* (pronounced *Kinnel*) was then the word used to denote the clan itself. *Fine* (pronounced *Finna*) was also sometimes used in the broad sense of clan, and this was not strictly incorrect since every clan originated in a small *fine* ; but the word *fine* properly meant one of a number of sub-organisms of which the clan consisted. It was a miniature clan, and in fact the germ of a clan and the real social and legal unit. It was considerably more comprehensive than our word *family*. It has been compared with the Roman *familia*, but it was more comprehensive than even that When complete it consisted of the *Flaith-fine* (also called *Ceann-fine*), and sixteen other male members, old members not ceasing to belong to it until sufficient new members had been born or adopted into it, upon which event happening the old were in rotation thrust out to the sept, and perhaps began to form new *fines*. Women, children, and servants, did not enter into this computation. The *flaithfine* or paterfamilias, was the head and most important member of the group, in some sense its guardian and protector, and was the only member in full possession and free exercise of all the rights of citizenship. All the members had certain distinct and

well-recognised rights, and, if of full age, were *sui juris* and mutually liable to and for each other ; but so long as they remained in the *fine*, the immediate exercise of some of their rights was vested in the *flaith-fine*, who should act for them or in whose name they should act. “ No person who is under protection is qualified to sue.”

There are various conflicting theories as to the persons of whom and the manner in which this organism was composed, and even as to whether it was in fact ever composed or ever existed except as a legal fiction ; and no explanation of it or conjecture about it is free from difficulty. Having regard, however, to the frequent mention of it, and of the “ seventeen men” of whom it consisted, by various legal and other writers at times far apart and in various connections, it is quite impossible to believe that it was fictitious; but in practice it may not often have attained or long retained that perfect organisation which the law contemplated ; and the law itself may have contemplated different things at different times. Whether the members of it became members on their birth, or on attaining manhood and acquiring property ; whether they included or represented all within the fifth degree of relationship, or all within the seventeenth degree, are matters in dispute. Without presuming to settle them, let us construct a provisional fine for the purpose of conveying some idea of what it was like. When complete it consisted of “ seventeen men” who were always classified in the following manner : —

1. The *Geilfine* consisted of the *flaith-fine* and his four sons or other nearest male relatives, most of whose rights were vested in him, who on his death were entitled to the largest share of his property, and would succeed to the largest portion of his responsibilities.

2. The *Deirbhfine* consisted of the four male members next to the foregoing in degree of relationship to the *flaith-fine* upon whom, contingently, a smaller share of his property and responsibilities devolved.

3. The *Iarfine* consisted of the four males whose degree of relationship was still farther removed, and upon whom, contingently, still less property and responsibility devolved.

4. The *Innfine* consisted of four males the furthest removed from the *flaith-fine*, upon whom, contingently, the smallest portion of his property and responsibility devolved.

On the birth of a new male member in the first of these groups (or, according to a more probable theory, on his becoming a man and owner of property), the eldest member of that group was crushed out to the second group, the eldest member of the second group was crushed out to the third, the eldest member of the third was crushed out to the fourth, and the eldest member of the fourth, if he had not died, was crushed out of the *fine* altogether, and became an ordinary member of the *sept* or clan, with no special rights or responsibilities in connection with his former *flaith-fine*. Thus the members of the groups were cast off like the coats of an onion, not all at once, but gradually, the groups themselves remaining complete all the time, and never exceeding four members each. And as they were cast off they suffered a loss of rights, but gained in freedom of action and freedom from liabilities, and the *flaith-fine* ceased to represent them, act for them, or be responsible for them. The members of the *fine* also owed a mutual responsibility to each other, were bound in certain cases to enter into suretiship for each other, were liable to compensate for crimes committed by any one of them if the criminal failed to do so ; and in general the law held that there was a solidarity among them. A member who became a criminal was, of course, primarily liable for his own crimes. It would also appear that a person otherwise entitled to become a member in a certain event, forfeited that right, with all the advantages attached to it, by crime. My own opinion is that the members of the *fine* were all full-grown men living on divisions of a farm which had been originally one ; yet that the group included only persons within the fifth or sixth degree of

kindred, and did not extend to the seventeenth, and that the organisation was a natural out-come of the ordinary sentiment of family affection, perhaps somewhat intensified, but at all events systematised and enforced by law.

Various other *fines* are mentioned, and the word *fine* is used in a number of combinations ; but the organism provisionally outlined is the only one of the name of real importance ; and the text, after stating much about the seventeen men, adds, " It is then family relations cease." Presumably it was then the rights of inheritance and the dangers of liability also ceased. Where in the system one should look for the exact counterpart of the modem family is not clear ; nor is it clearly known whether the number of women, their presence or absence, at all affected the constitution of the *fine*. The original purpose and main object of the whole system are, for lack of true knowledge, matters of much conjecture. It is probable that the system continued perfect only so long as the Celtic race remained pure and pre-dominant, and that it became disorganised in the course of the thirteenth century.

The *Sept* was an intermediate organism between the fine and the clan. It consisted of a number of *fines* as the clan consisted of a number of *septs*. It was one of the divisions of the clan assigned a specific part of the territory, and over it and this district a *flaith* was supposed to preside. No rule is stated, and I think none existed, as to the number of persons or of *fines* that might be in a *sept*. The right of the *sept* to undisturbed possession of its assigned portion of the territory was greater than that of the *fine* was subject only to that of the clan, and was very rarely interfered with.

The rules of kinship by which the clan was formed were the same rules by which status was determined ; and this status in turn determined what a man's rights and obligations were, and largely supplied the place of contract and of laws affecting the disposition and devolution of property. The clan system aimed at creating and arranging definite rights and liabilities for every member of the clan at his birth, instead of leaving individuals to arrange these matters in their own ways. Kinship with the clan was the first qualification for the kingship, as for every minor office ; and the king was the officer of the clan, and the type of its manhood, not its despot. Whatever its constitution, the clan when formed was a complete organic and legal entity or corporation, half social, half political, was proprietor of everything and supreme everywhere within its territory. Within historical times the clan owned the land — part of the land directly and immediately, the remainder ultimately. In earlier times it is very probable that the clan owned all the land and every other kind of property absolutely. It is very prob-able that at first neither individual property in land nor even the property of the *fine* in it was recognised, but only that of the clan, and that these smaller rights of property were at first temporary usufructs, which subsequently became permanent encroachments on the rights of the clan. At no time did the land belong either to the state in the broad sense or to the individ-ual absolutely. Each clan was a distinct organism in itself, and the land was its property — its absolute property at first, till parts of it were encroached upon by the growth of private rights, but its ultimate property so long as the clan existed in its integrity. The clan was the all-important thing. After the clan in degree of importance came the *sept*, where one existed, and then the *fine*. The individual was left little to do but to fill the position assigned him and con-form to the system. Among ordinary people the *flaith-fine* was the most important ; but even his duties and liabilities were so clearly laid down as part of the system itself that he does not seem to have been left a wide discretion. This insignificance of the individual seems to us calculated to stifle the best qualities of man and to prevent all progress; and the whole system seems to be one of disintegration rather than of cohesion, and therefore adverse to the growth and continued existence of a true state. Its influence is so all-pervading in public as well as in private life that it amounts to a different system of civilisation from ours.. The average young man from Oxford or Cambridge, or even from Dublin University, with a mind full of fancy

theories, may say lightly that it is the absence of civilisation. It is the absence of his civilisation, but not necessarily of all. There existed a spiritual bond, purer and more potent if wisely utilised than the modern one of a common nationality, the creature of power. And, however the fact is to be explained, the finest qualities of our race have been exhibited under the clan system. They may not have been due to it, but it did not prevent them. Having regard to the number of its inhabitants at the time, Ireland produced more distinguished men under the clan system than it has since done. This is a fact which no fancy theories can displace. It proves that, restricted though the clan system appears to us, it in fact afforded sufficient margin for a person to distinguish himself. A large measure of individual capacity was not alone attainable, but attained. The bravest and most skilful warriors, the most zealous and successful missionaries, poets, musicians, and literary men in astonishing numbers and of astonishing power, taste, and skill, even some artists whose works have scarcely ever been surpassed, and above all a virtuous and happy people, grew up and flourished under the shadow, or the light — whichever it was — of the clan system. All this could not have been the absence of civilisation, but really was a true civilisation different from ours. Our modem notions are therefore an unreliable standard by which to test or judge the clan system. It is entitled, like every other system, to be judged by its results. So judged it has produced much which we are proud to inherit and might be proud to produce. It is quite certain, too, that in those far-off times the clan, with the rights it gave and maintained, formed the greatest bulwark of the poor and weak ; and this explains to some extent the grateful tenacity with which the poor long clung to it. If it restricted men's natural right to make what bargains they pleased, the restriction applied most to the strong and wealthy ; and if it arranged people's affairs for them to a large extent, the service was obviously most useful to those who, from any cause, were feeble. In this way it effectually prevented that violent antagonism of classes which is at once the danger and the disgrace of modern civilisation.

The Céiles and the Land Laws.

A TUATH, cinel, or clan occupied a given district, delimited by natural boundaries, as mountains and rivers, or by arbitrary boundaries first determined by the fortunes of war or otherwise. This whole district belonged, originally and ultimately, to the clan, as a corporation or community, and it was divided in the following manner for the benefit of that community : — Part was allotted to the king or chieftain, part to the flaiths and other public officers, part to the Céiles or free clansmen, for their respective homesteads, part called the Cumhal Senorba was placed under the control of the king or chieftain for the maintenance of the poor, old, and incapable members of the clan, and part called the Fearan Fine, or tribe's quarter, was re-tained as the common land of the whole clan, which every member of the clan was free and equally entitled, *sub modo*, to use. None of this last was held as private property, except for one year, at the end of which it would become common again. There was also a portion of land, the extent of which was diminishing with the progress of ages, which occupied an inter-mediate position between the private land and the common land in this, that, on the death of a holder, all the land of this class held by his sept was divided anew. The land, as regards qual-ity, generally ranged in the order set out, beginning with the king's best, which was usually that longest in cultivation, and ending with the common waste. The land held in common, however, was not all bad land or waste ; some of it was cultivated and some meadowed. Land holders may be divided into three general classes, namely ; first, all who held land officially, including the king, the professional men, and the flaiths; second, the Céiles, or ordinary free clansmen, who held land (as one may say) by birthright, who were the bone and muscle of the community, paid fixed tributes for the maintenance of the state, and formed its army in time of war ; third, the non-free people, some of whom held land under contracts.

It is said by one recent writer that the Céiles were freemen who placed themselves under the protection of a flaith ; and another likens them to the Roman *Clientes* which is substantially the same thing. I believe this to be a direct inversion of what they were. They were the ordinary free clansmen, who, as such, held land by as good a title as then existed, by as good a title as that of the flaith himself. Their rights, to their proper extent, originated in the law like his, and were as fully secured by the law as his. Instead of placing themselves under the protection of a flaith in the sense suggested, they placed, or at all events had the right to place, a flaith of their own choosing and of their own kindred over them to represent them and act for them as occasion required, and to protect, not appropriate, their rights. The two views may practically amount to the same thing if the period viewed is that of the clan's decay ; but one is offensive and repugnant to an efficient clan system, while the other harmonises with that system and is not offensive.

Another modern writer says that the power of disposing of one's own several property was unlimited. He does not state his authority ; nor what he means by property ; nor whether he means property in land or property in chattels. The power of disposing of property in chattels has in all ages and countries been freer than the power of disposing of land. Property in ancient Ireland appears to have been divided into, not real and personal, but separable and inseparable. The inseparable included all lands and a great deal of chattels, and the separable the remainder of the chattels ; and although this division may not have been made specially with reference to the right of disposal, it is pretty safe to assume that that right coincided with it. In many parts of the law, in both text and commentary, there is clear evidence that the individual had not an absolute and unfettered right of entering into important contracts of any kind without the concurrence of others. That being so he could not have an absolute right to sell, which is one of the most important forms of contract at the same time that it is in general an exercise of the right of personal ownership. If by absolute ownership is meant unlimited and perpetual power of use and disposal, then no such thing as absolute ownership of land existed ; and the person called owner was but part owner, part agent, and part trustee for life, with right of enjoyment. The *fine* or sept occupied the position of principal and *cestui que trust*. With the concurrence of the *fine* or sept, the individual could confer an almost absolute title. Without this concurrence he could not. Though the céiles owned, in a sense, the land about their homesteads, and no doubt called it their own, they certainly had not an absolute right either during life or at death to dispose of it to a person outside the clan. Tenure depended on, and was subject to, the tribal status not of the immediate holder alone, but of other members of the *fine* who had in the property vested rights of a character and extent defined by the law. Neither the land nor the tenure of it belonged exclusively to the individual, but partly to the *fine* contingently to the sept — a wider circle ; and though all these had waived or forfeited their rights, or had died, the holder did not thereby acquire a right of absolute disposal, for the paramount rights of the clan itself intervened. And apart from these considerations, and its general repugnancy to the clan organisation, a right of absolute disposal is expressly negatived by distinct passages in the law. In the Corus Bescna we read, " No person should grant land except such as he himself has purchased, unless by the common consent of the tribe, and that he leaves his share of the common lands to revert to the common possession of the tribe after him." That is a perfectly clear statement. Again we read, " It is one of the duties of the tribe to support every tribesman, and the tribe does this when in its proper condition. The proper duties of one towards his tribe are, *that when he has not bought he should not sell* ; that he does not wound; nor desire to wound or betray." From these two passages it is quite clear that the sale of inherited land was not absolutely free. It by no means follows that the sale of purchased land was wholly free from restriction. Little land was purchased, and clearly the sale of it was freer than the sale of inherited land. Even on the disposal of chattels, such as cattle, there were some restrictions. An owner about to sell them should inform the flaith or chief of his tuath of his intention; and the chief or flaith or any

member of the tuath who required the thing about to be sold had a right of pre-emption or first offer.

The ownership of the clan, at first real and positive enough, was becoming vague, indefinite, and scarcely conscious or operative except when the need or the interest of the clan or of a member of the clan was shown to call for its exercise. This most frequently existed and could most easily be shown in connection with land, the most valuable of all property ; but it might also be occasionally shown in a sufficiently acute form if an owner of cattle drove them away and sold them to strangers, while the lands of the clan were understocked. And among small farmers who were often joined for purposes of ploughing, to allow one of such partners to sell his draft beasts at a particular time when his own work was done but not that of his partner, would be to allow injustice; and the laws preferred prevention to punishment.

In connection with this question of disposal, it may not be amiss to point out in passing that in many countries in ancient times property in land was transferred only in a court of law, and that in England the alienation of land was not free until two centuries after the Norman Conquest.

The land held by the céiles as private property, and on which they resided, was subject to an annual *ciss* (= tribute), rather in the nature of revenue for clan purposes than of rent, and to smaller payments resembling rates. All tributes were paid in kind, and wealthy people had to pay in reflections also — which, of course, was a species of payment in kind. Money was little known or used. There is no mention of it in the Senchus Mór. It is mentioned a couple of times in the commentaries on other law tracts. Articles of gold, silver, and copper are spoken of ; but not money in the text. An article called a *sicail* is spoken of in the commentary. Although it was of a fixed value, I think from its having been used only by ladies that it was considered rather an ornament than a coin. Ordinary céiles paid in horses, cattle, sheep, goats, pigs, and other animals, alive or dead ; wheat, barley, malt, flax, onions, dye-plants, firkins of butter, meal, wool, honey, and other products of the land, with, in most cases, “ a handful of candles eight fists in length.” These candles were partially peeled rushes dipped in fat. Bees and honey are so frequently mentioned in the laws that the editors remark that from the Brehon Laws alone a code on the subject of bees might easily be gathered. A curious code it would be too. An owner of bees was obliged to distribute every third year a portion of his honey among his neighbours, because the bees had gathered the honey off the neighbours’ lands. There is even a special tract on “ Bee Judgments.” The importance of bees was largely due to the fact that sugar was unknown. Honey was probably the only sweetening material in use. It was used also in the manufacture of mead ; and beeswax was used in the manufacture of candles, chiefly those employed at royal entertainments and as altar lights. In such times bees with their honey and wax constituted a valuable property.

The ancient laws of Wales also contain many rules relating to bees and honey, far more than the present importance of these things would justify.

Craftsmen and others who could make useful or ornamental articles, and who at the same time held some land, paid for it by whatever they could make, as machinery, agricultural and household implements, tools of various kinds, furniture, articles of clothing, bedding, linen, swords, shields, musical instruments, ornaments of various kinds for the person and for the home ; in short, whatever the skill of one could produce and the fancy of another desire. Manufactured articles being then of greater value than now, and land being cheaper, those articles would pay for more land. Some persons also held land, as in England and on the Continent, by services — services against wolves, pirates, and other enemies ; but this species of tenure does not appear to have been either extensive or continual. There was no

such thing as tenure by ordinary military service. It was at once the right and the duty of every free clansman to render this, whether he held land or not; and a person who, in the absence of sickness or other valid excuse, failed to render military service when required suffered a reduction of status — a diminution of rights and powers. Cottiers holding small plots of land immediately from the flaith often paid for it in manual labour.

In respect of the quantities of the things paid in kind nice calculations must have been difficult, but the laws distinguish three degrees. The first and lowest was the *ciss* fixed by law as payable by every clansman who held land. In the English version of the *Ancient Laws of Ireland* this word is translated " rent." This is due to the modem importance of rent acting on the minds of the translators. Rent is neither a correct translation of the word nor a correct description of the thing. The correct translation of *ciss* is *tribute* ; and the *ciss* was not rent, but tribute. It constituted the ordinary revenue for public purposes; and it was levied on land as being at once the principal class of property and the natural source of support for the state. The second species of payment resembled rent more closely, being a stipulated payment for land to which a man had no title arising from clan status or from the law. The third was called the *ciss ninscis* or *wearisome tribute* and it was rent in reality. It was paid under agreement by a person who did not belong to the clan, that is, either by an outsider or a non-free person residing in the territory.

The measures by which the actual quantities in each case were ascertained were the *cumhal* (pronounced *cooal*) and the *sed* (pronounced *shed*). These terms are of constant recurrence throughout the laws wherever measurable quantities are in question. Cumhal means, literally, a bond-maid or female slave; but in the laws it is never used in any other sense than as a measure of quantity, or rather of value, perhaps what was originally supposed to equal the value of such a slave. As applied to land (*tir-cumhal*) it meant the usufruct for one year of about twenty acres, less or more, according as the land was good or bad. For land was not always measured by its actual superficial extent, but by the number of cows it was capable of feeding. This is still quite a usual mode of measuring land and of calculating its worth. Also if a mill or other useful or profitable structure stood on the land, less of that land would amount to a cumhal than if there were no such structure. In short, cumhal was a measure of value, not of extent. As applied to other things than land, cumhal meant the value of three cows. Translators appear to hesitate at the word *sed*, probably on account of the number of senses in which it is used. It is rendered, " a jewel, a cow, a thing of value." It, however, does not mean any particular species of property, but a certain standard of value, irrespective of species ; and in the Senchus Mór five seds equal three cows. Of course the knowledge of these equivalents hardly helps us at all in determining the present money value of either.

The free clansmen had, in addition to their private lands, the right to turn out cattle and swine to graze on the Fearan Fine or common land, the number of beasts that each person might so turn out being fixed in a general way by the law and specifically determined by the jury already mentioned. This use was not free, however. The rent usually paid for it was one animal yearly for every seven fed in this way.

A céile who required more land than he possessed could obtain it from the chief for one year, or, with the consent of the tribe, permanently, out of the Fearan Fine or any waste land that could be spared. For this the céile paid tribute of the second class mentioned above for ten years, after which the land was subject only to tribute of the first class. The land having in the meantime become more valuable, it is possible that the actual amount of the tribute remained the same.

Of the smaller payments to which landholders were subject, some were certain, others contingent. One of the certain payments was that made by all for the support of the poor, the aged, orphans, and the like belonging to the clan, in addition to the Cumhal Senorba, or Old Age Inheritance, which stood dedicated to their use. The immediate relatives of a criminal were contingently liable to pay compensation for his misdeeds ; and the sept, and even the whole clan, were liable in the contingency of the nearer relatives failing. There was also a somewhat similar liability in respect of certain contracts, if entered into with the consent of the relatives or of the clan.

All the tributes mentioned were paid to the flaith, not as landlord but as a public officer, not for his own use, except so far as the absence of money and other circumstances rendered his use necessary, but to be spent in the interests of the clan. Neither the land nor the tribute issuing out of it belonged to the flaith. He had no power whatever to evict a clansman, *whether the tribute was paid or not.* He might evict an outsider, or a non-free person, to whom he had let land by agreement, if the rent agreed upon was not paid, or for other sufficient cause. But the free clansman's tenure was not the result of any agreement, and was not from the flaith at all, but was a right accruing to him at his birth ; and if he was in default with the tribute the utmost the flaith could do against him was to distrain his cattle or other goods for the amount due. In the case of a number of debts due by the same person, and sued for at the same time, arrears of tribute had to be paid first ; but if a céile died owing arrears of tribute, the amount of those arrears could not be recovered from the céile's heirs. " Every dead man kills his liabilities. It results from the neglect of the flaith that there is no liability upon the heirs of the céile, unless they themselves have committed default after the death of their father."

The collection and expenditure of tribute was the weakest point in the whole Irish system, as it was in that of Rome. The Roman system of government was probably as perfect for the time as is any system of modern Europe, with the exception of this one flaw — the taxes were farmed out to undertakers to collect, instead of being collected by the State. The Irish system provided the flaith for the collection of the tributes, but left them when collected in the hands of the collector. The flaith was at once state receiver and chief executive officer of his district. What did he do with all this rent in kind which was being continually heaped upon him ? The system theoretically provided many useful things for him to do with it ; but the temptation to abuse his position gained as that system lost in controlling power. He was obliged to pay some tribute to the king or chief above him. In time of war he was bound to provide a fixed number of men and horses, together with food for them. He was bound to entertain the king and certain high officials with their respective retinues on certain periodic visits. He was bound to make suitable provision for the public officers of his own small territory. He was bound, with the concurrence of the local assemblies, to keep roads, bridges, and ferries in repair and to make new ones where necessary; to provide protection against storms and floods ; to maintain the public mill of the district, the public fishing-net, and other public institutions which varied with the nature of the district. It was his duty to supply, where needful, the farmers and cottiers with live stock for their lands, chiefly young cattle, according to their various wants, the quality of the land they held, and other circumstances, so that they might, by feeding and using these animals in their respective ways, support themselves and pay the tribute out of the profits. One farmer would, from taste or suitability of circumstances, make a specialty of breeding one particular class of stock, another a different class; and the flaith took up the tributes from the different men at different seasons of the year, thus making the supply keep pace with the demand, always having enough on hands to satisfy all requirements, and letting out to one what he had received from another. In order that the supply should not fail and that the sept should not suffer, the law required every clansman who had a superfluity of stock to dispose of to apprise the flaith of his district before selling them, and the flaith was empowered to enforce this law if necessary. The flaith

was also bound to provide bulls and stallions for the use of the sept. These were very useful functions, and they by no means exhausted the duties which by law the flaith was bound to discharge, and probably did discharge (through servants, of course), so long as the local assemblies exercised their powers of guidance and control. The tributes being in kind, too, it really was hard to make a better use of them than that indicated. But the system was a bad one, bound to break down as soon as the check of a local assembly was removed. Perhaps the flaith exacted nearly as much tribute from the people in a time of peace as in a time of war, and perhaps after exacting tribute he left public works undone, or left those who had paid for them to do them as well ; and with so much property of various kinds in his hands and coming into them, and a feeble assembly or none to demand it or an account of it from him, the temptation to regard it all as his own imposed a strain on the virtue of the flaith, impelling him at once to oppress those beneath him and to shirk his own duty to those above him and to the State, The state receiver became a receiver for himself; the executive officer did not trouble himself to execute much beyond what was to his own advantage.

Some landholders of adequate means raised sufficient stock for their own use, and had no occasion to purchase or hire stock ; or they purchased what they wanted in the ordinary way, from the flaith or from somebody else, and had no account to render. All the Céiles were classified as *Saer* and *Daer*, which terms are translated as *free* and *base* respectively. We are told that the difference was like that which prevailed, and to some extent still prevails, in England between freeholders and copyholders. Beyond this vague comparison, those who make it do not attempt to explain the distinction in the case of those who did not hire stock ; and if the distinction existed among such céiles — as it appears to have done — I have failed to discover in what it consisted. Of this I am very sure, that the difference was *not* the same as that between English freeholders and copyholders, that the conditions of the one country rendered the relations of the other wholly inapplicable, and that the references made to those tenures do not help us in the least. Possibly they are as often made to excuse the writer from explaining as to assist readers to understand. In my opinion, the tenure of all who did not hire stock was a perfectly free tenure, and in their case the terms saer and daer had reference to their comparative wealth and status, and not to the nature of their tenure.

The transactions of the flaith in cattle, however, appear to have consisted in practice mainly in letting out cattle on what may be called a hire-purchase system, which itself was of two kinds ; and it is in the difference between these two kinds that, so far as regards the céiles who hired stock, the real difference between saer and daer consisted. The translators describe this difference, in half-English, as saer-stock tenure and daer-stock tenure. One of our modern writers says that the difference between the saer-stock and the daer-stock tenant was, that the latter paid *Biathad* (pronounced *Beeha*), a word signifying *Food-Tribute*, or a payment made in any eatable material. This is a mistake. Nominally, indeed, certain persons were bound to pay certain amounts of food-tribute, but in practice either or both paid it whenever it happened to be the most convenient form of payment. It was in the *quantity* and the other terms that the difference consisted. And with regard to both these terms, *tenure* being a word used in English law only with reference to land or something issuing out of land, it can hardly be a correct translation at all, since what the flaith let out to the céiles was not land but cattle. In what is called saer-stock tenure the flaith gave the stock without requiring any security, and without any bargain whatever, but subject to the general law which was known to both parties. My own impression is that the flaith was bound to do this, and that the person to whom he so gave stock was a clansman entitled to get stock in this way, and was not a tenant at all. However, let that pass. The flaith gave the stock, and for it the law entitled him to an annual return for seven years of one-third the value of the stock given. This payment being duly made, at the end of seven years the stock became the absolute property of the céile, and

he had no more to pay for them. This was a substantial return. Though not so heavy as modern rent, especially in view of its short duration, it was heavier than the gross amount of tributes paid by the céiles who did not hire stock. The céile might, if he liked, not begin to pay the instalments until the end of the third year, but he was bound to pay up then for those three years.

Daer-stock tenure, among those who hired cattle, was somewhat similar ; but the tenant had to give security for the stock, to render a larger return than the saer-stock tenant did, and if he was a free clansman entitled to take saer-stock the fact of his taking daer- stock seriously affected his status and that of his *fine* rendered him incompetent to give evidence in a court of justice in opposition to the evidence of a flaith, and diminished or extinguished his right, and the right of his *fine* to recover eric or other fine in the event of injury done to him or them. These were such grave consequences that a free clansman could not take daer-stock without the consent of his *fine* and it was only the pressure of poverty would induce him to take daer-stock at all. War generally reduced large numbers to this necessity. It is probable that the law originally contemplated the taking of daer-stock only by men who were not true clansmen.

The rights and duties of both parties in these transactions are so fully and minutely laid down in the laws that there was little occasion for specific contracts, and probably business was done as smoothly without them as with them. There was more need of specific contract in base tenure than in the other, since, although it was provided for by the law, it originated not in a birthright like the other tenure, but in an agreement express or implied. Neither of the tenures was liable to capricious determination by either party. But for just and sufficient cause, and subject to fair conditions, either party might bring the arrangement to an end. It is said that the daer-céile as well as the saer-céile was able, for just cause, to have the contract set aside ; but it is not clear how he could do this except with the voluntary consent of the flaith, first, because the flaith held security, and secondly, because the daer-stock tenant was incompetent to give evidence against a flaith.

If a céile who had taken stock absconded without paying the value, and left no property behind him but the land, unless the *fine* paid for the cattle the flaith was entitled to take and hold so much of the land as would compensate him. The remainder went to the *fine* of the absconding debtor, subject to any debts due by him.

In the laws a daer-man or daer-person is mentioned as distinct from a daer-stock tenant, and “ the full eric fine of a daer-man” is frequently spoken of. What exactly this person was I cannot ascertain.

Devolution of Property.

UNITY of ownership in the clan, so long as it existed and so far as it extended, prevented the devolution of property to individuals in the same sense as in English law. Even to a late period a considerable portion of land was not inheritable by individuals, but remained unchangeably the property of the clan as an immortal corporation. To this land, therefore, no rules of devolution applied. Orba, or lands of inheritance, descended in three different ways : —

I. *According to the rules of gavelkind.* I place this first, not because it was the most important in historical times, but because it was the oldest, was once general, and certainly was the most unlike anything we are now acquainted with. Land held by a man outside his home farm, and which occupied an intermediate position between his private land and the common land of the clan, descended according to the Irish system of gavelkind, that is, on the holder’s death not only the particular land which had been thus held by him but all the land of the

same class belonging to his *sept*, was divided anew amongst the adult males of the sept. It was an unsettled system. Still it must be admitted that it gave some start in life, however crude, to young men who might otherwise have got none. On such a division of land, the amount of it that each person was entitled to receive was fixed in general theory by the law, subject to adjustment in each particular case by a court of twelve men who took differences of quality and other relevant facts into consideration. Their decisions do not appear to have been questioned. If they ever were questioned, no doubt an appeal lay to the brehons. Under this peculiar custom of descent women appear to have been excluded. The amount of land subject to the custom constantly diminished, the custom receding, as it were, from good land and extending to land little cultivated. I think the land subject to this custom must have been unfenced, but it is not so stated. It was that portion of the land of the sept over which an individual right of private property had not yet attained maturity, the interest of each holder not being ownership nor quite a life interest. A large proportion of the good land of Ireland must have been rescued from this custom a century or two before the birth of Christ, if it be true as stated that large quantities of corn were grown and exported in those centuries to Britain, Gaul, and Spain, a thing hardly possible if the land had remained unfenced and subject to this unsettled species of gavelkind. At the time of Cæsar's arrival in Britain the land there was wholly unfenced, except the mounds and fallen timber that encircled the fortresses and clustering hamlets. There was no division into fields, the land being distinguished only as cleared and uncleared in respect of forest, and the people subsisting mainly on meat and milk. But Ireland was more advanced at that time, and (or perhaps *because*) it was more accessible to and more frequented by merchants from the then enlightened nations of the world, the State of Northern Europe being such that merchants could not cross overland in safety. Some of the good land of Ireland was fenced at a very early date, and the law affecting fences and mearings is old and and yet elaborate. The nature of the fence affected the liability for trespass upon landn; hence in dealing with that subject the law describes the fences. There were ditch-and-mound fences, wall fences, stake fences woven with rods and having a blackthorn crest on the top ; and some others.

2. *As private property.* In this case, on the death of the father of a family each member of his *Geilfine* —usually meaning each son not already provided for — was entitled to an equal share of the land and of the cattle fed upon it ; but one of the sons, in addition to his equal share, inherited all the houses and offices constituting the homestead, the valuable fixtures which usually stood upon the same land, and the household, farming and manufacturing implements. Whether this favoured son was the eldest or the youngest is one of the disputed points in connection with that obscure subject the organisation of the *fine*. The preponderance of opinion at present seems to be in favour of the eldest son, and this is probably correct as applied to the Middle Ages ; but I incline to the belief that earlier it was the youngest son who was so favoured. However this may be, as a counterpoise and consideration for the special inheritance, the law held him responsible, as succeeding *flaith-fine* and stem of the family, for the guardianship of his sisters until their, marriage and of any other dependent members of his *fine* obliged him to act as plaintiff and defendant as became necessary in all suits at law concerning them or their property ; and if he was of proper grade bound him to entertain the king, bishop, bards, brehons, and others with their respective retinues. In the foregoing circumstances all the land went to the sons, and daughters had either to depend on the husbands they got or to be provided for out of the movable property. On the occasion of almost every marriage there was a collection, called a *Tinol*, made among the relatives and given to the bride. But this can hardly have been a very substantial amount, and it probably corresponded to modern wedding presents. If daughters were more numerous than sons, and could not be provided for out of the movable property without gross inequality, one or more of their husbands might be admitted to an equal share of the land, and then questions of status would arise as to which of them this should be. If there were no sons, the land, anciently,

went to the nearest male members of the *fine* in the order already described, subject to a provision being made out of it for the daughters. The exclusion of daughters from inheritance seems to us very unfair ; but it was no more so then in Ireland than it was many centuries later under the Normans in England. The chief reason for it in the latter case was, that the land was held by military service, which women were incapable of rendering. The Irish got rid of the anomaly long before the introduction of Christianity, through the exertions, it is said, of Bríg Ambui. She is described by some as a lady judge. There were no lady judges. She was the wife of a judge, made use of her position to acquire an exceptional knowledge of law, gave advice to women regarding the taking possession of land which they claimed, and her advice was so skilful that she succeeded in winning, not alone their particular cases for her clients, but legal equality for her sex in general. She was probably assisted by two facts, namely, that military tenures in the Norman sense did not exist in Ireland, and that Irish women were in those times free and liable to bear arms. However it came about, in the Middle Ages in Ireland, if there were no sons the property was divided equally among the daughters. With regard to the further descent of land thus given to daughters, the text says, " As to a mother's land, her sons shall divide it from the days of her public testament. But the half of it shall revert to the tribe of the original owner of the land ; the other half according to true judgments the seed of her flesh divide."

3. *According to the rules of tanistry.* In order to secure to kings, chiefs, flaiths, and other public officers who acted on behalf of the community, their ancient affluence permanent and undiminished, with all its attendant advantages, the law held the lands assigned them for their public services to be indivisible. The land held by each descended to his successor, as the property of a corporation does in English law. The successor was usually a near relative, but not necessarily so. Thus while the lands held by ordinary people underwent repeated subdivision as they descended, and the rights and privileges which landed property conferred were similarly subdivided, constantly tending downwards to small patches, few rights, and little power, a position of permanent and disproportionate wealth with its attendant power was secured to the people of rank ; and what was apparently a restriction, and was originally intended as such, became in operation a class privilege. And although the flaiths had practically appropriated the official lands to their own families, so far from desiring to free those lands from this rule of descent, they maintained the rule and even extended it to all the lands they could in any way acquire.

The Brehon laws ; a legal handbook (1894)
Author : Ginnell, Laurence, 1854-1923
Subject : Law ; Law, Celtic ; Primitive societies
Publisher : London, T. F. Unwin
Year : 1894
Language : English
Digitizing sponsor : Google
Book from the collections of : unknown library
Collection : americana

Source : Internet Archive
http://www.archive.org/details/brehonlawsalega00ginngoog

Edited and uploaded to www.aughty.org
August 2 2010