

THOMAS PETER ELLIS
WELSH TRIBAL LAW
AND CUSTOM
IN THE MIDDLE AGES

IN 2 VOLUMES

VOLUME I

DEDICATED TO THE MEMORY OF

HYWEL DDA

WHO RULED IN WALES A THOUSAND YEARS AGO

AND WHO TO THIS DAY

PERSONIFIES TO HIS PEOPLE

LAW AND JUSTICE

PREFACE

'THE history of Great Britain rises on a rock-bed of Celtic institutions and customs. . . . They (i. e. surveys, &c. relating to Wales) elucidate the working of the tribal system more completely than any other documents of European history.' (Sir Paul Vinogradoff, F.B.A., D.C.L., Corpus Professor of Jurisprudence in the University of Oxford : preface to the Survey of the Honour of Denbigh, 1334.)

'Au point de vue intellectuel, les Lois sont le plus grand titre de gloire des Gallois. L'éminent jurisconsulte allemand, Ferd. Walter, constate qu'à ce point de vue les Gallois ont laissé bien loin derrière eux les autres peuples du moyen âge (Das alte Wales, p. 354). Elles prouvent chez eux une singulière précision, une grande subtilité d'esprit, et une singulière aptitude à la spéculation philosophique.' (J. Loth, Professeur au Collège de France, in Les Mabinogion du Livre Rouge de Hergest.)

'Die Ausbildung des Rechts auf der Grundlage der Gesetze Howels geschah jedoch weit mehr durch die Rechtswissenschaft, welche sich rein aus sich zu einer Blüthe entwickelte, wie bei keinem anderen Volke des Mittelalters vorkommt.' (Professor Ferdinand Walter, University of Bonn, in Das alte Wales.)

§ 1. THE pages that follow contain an attempt at explaining the social and legal system under which the Welsh people lived in the last three or four centuries of indigenous rule.

Such studies of that system as have hitherto been published have been confined, very largely, to explanations of the tribal organization and of the tenure of the land, with incidental references only to other important branches of the law. Many of these studies appear to have been coloured by the use of the so-called Triads of Dyfnwal Moelmud, admittedly a compilation of the sixteenth or seventeenth century, which have been regarded as embodying survivals of the most ancient tradition.

§ 2. A comparison of the Triads with the older Laws can leave scarcely any room for doubt that the former enshrine little beyond a Utopian scheme of society, built round a small amount of genuine fact.

The only safe rule to follow, in using the Triads, is to accept nothing contained in them which is not independently corroborated by the more ancient Laws.

That rule has been followed invariably in this work, with the result that, in many cases, conclusions at variance with those often accepted as to the Welsh tribal system have been arrived at. Whether those conclusions are right or wrong, the present writer would expressly guard himself against being understood as asserting that no other system, or no system with different characteristics, existed in times prior to the beginning of the tenth century.

§ 3. All that has been attempted here has been to take the existing ancient authorities as they stand, and to explain the social and legal system portrayed therein with-

out theorizing unduly as to what may have preceded it and out of which it may have developed.

That has been the primary object of these studies—to portray from the documents we possess what seems to have been the system of government, society, and law in Wales from roughly A.D. 900 to A.D. 1300.

An attempt has been made to explain the whole of the law; not merely the law of the land or the tribe, but the law of crime, civil liabilities, social connexions, procedure, and the multifarious ramifications of a well-developed system of jurisprudence.

§ 4. In doing so, many references of a comparative nature are made to other more or less contemporary provisions of law; to Brehonic, Anglo-Saxon, Scots, Germanic, and, at times, to Roman Law. Such references can, in the nature of things, be only partial. All points of resemblance or differentiation cannot possibly be touched upon; all references, even in regard to particular points, cannot be massed together with any hope of retaining the work within modest dimensions.

Sufficient use, however, has been made of such references to support the conclusions that the Welsh Laws are, in the main, identical with, or similar to, the laws under which the major portion of the extra-Roman populations of Western Europe lived in the period following on the collapse of the Roman Empire, and that the Welsh Laws contain perhaps the most complete picture of that law which the Latin jurists spoke of as the 'Jus Gentium'.

§ 5. The author owes gratitude to many for the help he has received. He would particularly thank Professor J. E. Lloyd, D.Litt., Bangor, who has made many suggestions of value in reading the proofs; Mr. J. G. Edwards, M.A., Fellow of Jesus College, Oxford; Sir Vincent Evans, D.Litt.; Professor E. A. Lewis, D.Litt., Aberystwyth; Mr. Ballinger, M.A., Mr. Davies, Miss Hall, and Dr. de Verres of the National Library of Wales; Principal J. H. Davies, M.A., U.C.,

Wales; the Rev. Canon Fisher, M.A., Cefn Rectory, St. Asaph; Mr. Edward Owen, Wrexham; Mr. R. C. B. Whitaker, All Souls, Oxford; and Mr. G. P. Jones, M.A., Coniston (who was good enough to allow the author to see a valuable manuscript monograph on the pedigrees of Rhos and Rhufuniog), for the assistance each has rendered in different ways. He would also express his acknowledgements to those in charge of the Bodleian Library, the Meyrick Library (Jesus College, Oxford), the Codrington Library (All Souls, Oxford), and the National Library of Wales for the use of books, manuscripts, &c., and for the kindly assistance of the staffs connected therewith. Also to the Delegates of the Clarendon Press for undertaking a publication of this magnitude, and to all employées of that institution who have had anything to do with the transference of the manuscript into print.

Finally, he would express his deep sense of obligation to the late Sir Paul Vinogradoff, D.C.L., whose encouragement to all labouring in the field, so eminently his own, cannot be over-estimated, for his kindness in perusing the first draft of the manuscript, and for his advice and suggestions, which led to a revision or restatement of some of the conclusions arrived at; and to the members of the Board of Celtic Studies of the University of Wales, for their generous assistance in making a grant in aid towards the publication.

§ 6. To attempt to give a complete bibliography of all the works consulted or referred to would be impossible; but reference must be made to some of the most important ones, namely:

Anson, Sir W. R., *Principles of the English Law of Contract*.
Archaeologia Cambrensis.

Austin, J., *Lectures on Jurisprudence*.

Buckle, H. T., *History of Civilization in England*.

Commissioners' Series: *Acts of the Scotch Parliament*; *The Ancient Laws of Ireland*; *Thorpe's Ancient Laws and Institutes of England*; *The Record of Carnarvon*.

De Coulanges, Fustel, Origin of Property in Law.
 Domesday Book.
 Dunn, Lewis, Heraldic Visitations of Wales.
 Edwards, Sir O. M., Wales.
 Ellis, Sir H., General Introduction to Domesday Book.
 Ellis, T. P., The First Extent of Bromfield and Yale.
 Evans, Gwynogfryn, The Black Book of Llandaff and other texts.
 Evans, T., Glossary of Welsh Mediaeval Law.
 Fraser, Sir J. G., Folk-Lore in the Old Testament ; Totemism and Exogamy ; The Golden Bough.
 Geffeken, H., Lex Salica.
 Gildas, Works.
 Giraldus Cambrensis, Itinerary and Description of Wales.
 Guest, Lady Charlotte, The Mabinogion.
 Hessels and Kern, Lex Salica.
 Holland, T. E., The Elements of Jurisprudence.
 Houldsworth, Professor, History of English Law.
 Jubainville, Artois de, La Famille Celtique.
 La Revue Celtique.
 Lewis, Professor E. A., The Boroughs of Snowdonia.
 Lewis, Hubert, Ancient Laws of Wales.
 Lhwyd, Edward, Parochalia.
 Liebermann, E., Gesetze der Angelsachsen and other works.
 Lloyd, Professor J. E., History of Wales to the Edwardian Conquest.
 Llyfr Goch Asaph, Index to.
 Lohr, Prof. J., Les Mabinogion.
 Maine, Sir Henry, Ancient Law ; Early Institutions ; and Early Law and Custom.
 Maitland, F. W., History of English Law.
 M'Lennan, E., Primitive Marriage.
 Mommsen, Professor, Corpus Juris Civilis.
 Monuments, Ancient, of Wales and Monmouthshire.
 Myfyrian Archaeology, The.
 Nennius, History of the Britons.
 Owen, Aneurin, The Ancient Laws and Institutes of Wales.
 Palmer, A. N., and Owen, E., Ancient Tenures in North Wales.
 Peniarth MSS.
 Pennant, T., Tours in Wales.
 Pertz, G. H., Monumenta Germaniae Historica.
 Phillpots, Miss B. S., Kindred and Clan in the Middle Ages and After.
 Pollock, Sir F., and Maitland, F. W., History of English Law.
 Rees, Professor W., South Wales and the Marches.
 Rhys and Brynmor-Jones, The Welsh People.
 Robinson, Professor, History of Scotland.
 Ruthin Court Rolls.
 Sachsenspiegel, The.
 Sandars, T. C., The Code of Justinian.

Seeböhm, Dr. F., The English Village Community ; The Tribal System in Wales ; and Tribal Custom in Anglo-Saxon Law.
 Skene, Professor, The Four Ancient Books of Wales.
 Stone, Gilbert, Wales.
 Strachan-Davidson, J. R., Problems of the Roman Criminal Law.
 Sullivan, Dr. W. K., Manners and Customs.
 Transactions of the Cymmrodorion Society.
 Vinogradoff, Sir Paul, Outlines of Historical Jurisprudence and The Growth of the Manor.
 Vinogradoff, Sir Paul, and Morgan, The Survey of Denbigh.
 Wade-Evans, T., Mediaeval Welsh Law.
 Walter, Prof. F., Das alte Wales.
 Williams, John, The Records of Denbigh and its Lordship.
 Willis-Bund, J., The Black Book of St. David's.
 Y Cymmrodor.

To these works, and to many others, the author is indebted in varying degrees. The extra cost involved in printing must be the excuse for the omission of detailed foot-notes quoting individual references.

§ 7. In conclusion, the author would simply say he has no theories to propound ; he has endeavoured to confine himself to ascertainable facts, and to arrange those facts in an intelligible sequence, in the hope that, in doing so, he might contribute, in some small degree, to a better knowledge of the story of the land and race to which it is his privilege to belong.

He lays no claim to having arrived at any final and definitive conclusion on any point ; and on many matters it is possible that his opinions are wrong or incomplete. If, however, the method of approaching and handling the 'ancient' laws of Wales, as an organic whole, and the endeavour to show that they are comparable in many particulars to other contemporary systems, will tend towards the study of the history of Wales in a true perspective, the writer will be well content, and will feel that the studies of twenty years have not been entirely unprofitable.

T. P. E.

LLYS MYNACH,
 DOLGELLEY,
 MERIONETH.

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INTRODUCTORY

1. *Pre-codification Period.*

§ 1. In the earliest periods of European history the declaration as to what the law was did not take the form of codification or of legislation. Most communities had one or more 'sapientes', whose duty it was to preserve and ascertain the customary law of the community. Such exposition took the form, sometimes of something akin to 'edicts', sometimes of the application of ascertained rules of custom to a particular set of facts submitted, by way of arbitration, to the 'sapientes', sometimes of lectures to aspirants to legal knowledge.

These expositions were frequently preserved in rhythmical or poetical form, and in Wales especially in proverbial or Triadic phrases. They grew, in course of time, into a considerable body of quasi-sacred law or precedent available for subsequent codification when the time for codification arrived.

§ 2. Codification began in Europe in the fifth century. The Welsh codified law dates from a period long after codification had begun in the Western World.

2. *Early Codifications in Western Europe.*

§ 1. Codification of custom in Western Europe, in early times, appears to have been due largely to two influences.

The first of these was the growing power of kingship. Wherever we turn we find that codification is associated with the name of a person who increased the power of the Crown. This is the case, for example, in Wales, for Hywel Dda claimed to be and was the King of all Cymru, and it would seem that one of the objects of codification was to strengthen the power of the King by making law a derivative from him.

The second influence was the power of the Church, which, almost invariably in agreement with the King, aimed at bringing into harmony some of the provisions of Roman Law and tribal custom with the precepts of orthodox Christianity.

§ 2. Rome, prior to the Christian era, though it possessed a number of what may be termed statutory enactments, had nothing which can be described properly as a Code. Whatever the origins of the XII Tables may be, they did not form a Code. They consisted of a few customary rules, which acquired a considerable degree of sanctity, of which all later developments of the law, by means of the Pretorian Edicts and the opinions of the juris-consults, professed to be merely explanatory.

The first great codification of the Roman Law was the Theodosian Code (A. D. 438), which professedly aimed at the harmonizing of that law with Christianity; the Code being a collection of the constitutions of the Emperors from the time of Constantine, based on the prior compilations of Gregorian (A. D. 306) and Hermogenian (A. D. 365). This Code was expanded in and superseded by the Codes of Justinian (A. D. 529).

The example of the Roman Empire was followed by codification elsewhere. Some codifications may have been merely coincident exemplars of a common general tendency.

§ 3. The Salic Law was promulgated about A. D. 481. In its earliest form the christianizing tendency is absent from it, but at the middle and at the end of the sixth century it was reformed by Childibert I and Childibert II so as to agree with Christian teaching.

§ 4. The Irish redaction of the *Senchus Mór* is asserted to be the earliest attempt to codify the extra-Roman Laws in Europe.

It claims to be a compilation of the Ancient Laws of Ireland, hitherto preserved in adjudications and poetry, as modified by the influence of St. Patrick; the laws themselves being represented as having a Mosaic origin, tempered by the law of nature.

The compilation purports to have been made by one Dubhthach and eight others, who examined the poetry of Erin, and what therein was not in opposition to the Scriptures was confirmed as law by the Church in a special assembly convened by St. Patrick.

The earliest date assigned by any scholars to the *Senchus*

Mór is between A. D. 438-41; other authorities place it as centuries later, at least so far as its present form is concerned.

Whatever may be the actual date of the text, there seems no reason to doubt the tradition, enshrined in the *Senchus Mór*, that, soon after the introduction of Christianity, there was a conscious attempt by the clerics to harmonize Irish custom with Christian precepts.

In addition to the *Senchus Mór*, the Brehon tracts contain a number of other treatises. The Book of Aicill professes to be 'legislative', but the remainder, like the *Corus Bescna*, are, like the collections in the second volume of the Welsh Laws, a series of dicta, covering in time many centuries, of persons skilled in the law, partly made as pronouncements without sanction to enforce, partly as educational texts used in institutes for the study of law.

§ 5. The Laws of the Ostrogoths and the Burgundians, the latter under Gundebald, were codified about A. D. 500, and those of the Visigoths about A. D. 506, to which additions were made in the seventh century.

The influence of the Church thereon is profound. For example, the last-mentioned was an abridgement of the Theodosian Code for use among the Visigoths issued on the advice of the bishops and nobles.

At very much the same time the customs of other Teutonic tribes were codified.

§ 6. In England there was never any codification; but many laws, amending custom in some particular or other, were promulgated by different monarchs.

In many of these the influence of the Church is manifest.

In the first laws, those of Æthelbert (A. D. 597-616), it is stated that they were prepared under the advice of St. Augustine. They were followed later in Kent by the Laws of Hlothaire and Edric (A. D. 673-86), and the Laws of Wihtraed (A. D. 690-725).

The last-mentioned particularly illustrate Church influence. It is said that the deliberative convention, which drafted the laws, contained the Archbishop of Britain and the Bishop of Rochester, and 'every degree of the church of that province spoke in unison with the obedient people'.

These laws are mainly concerned with the regulation of morals and Church principles, the enfranchisement of slaves, and the suppression of paganism.

In Wessex, the Laws of Ine (A. D. 688-725) were issued 'with the counsel of Cenred, my father, and of Hedda, my bishop, and of Eorcenwold, my bishop, . . . and also with a large assembly of God's servants'.

The Laws of Ælfred (A. D. 871-901) commence with the Ten Commandments and a summary of Exodus, cc. 21, 22, and 23, followed by the King's own Dooms, many of which are concerned with semi-religious matters. Throughout, the conscious attempt to harmonize Christianity and tribal custom is obvious.

The promulgators of the Laws of King Edmund (A. D. 940-6) also included archbishops and bishops, and even the *Judicia Civitatis Lundoniae* were sanctioned as an ordinance by the participation of the bishops.

Much the same may be said of all the other fragments of Anglo-Saxon Laws prior to the Conquest. They were not codes, but amendments of existing custom effected, to a considerable extent, under the inspiration of the Church.

With the rise of the Normans, Europe entered on a new period, in which a new conception of legislation, as distinct from codification of custom, arose. With that change we have nothing to do here.

§ 7. The importance of the references given to some of the Anglo-Saxon Laws lies, not in the fact that clerics partook in their promulgation, but in the fact that they were one of the motive powers behind such redaction as took place, and in the fact that the conscious object in amending custom at all was, very largely, to bring custom into conformity with the teachings of the Church.

3. *Codification in Wales.*

§ 1. Welsh tradition ascribes the first codification of Cymric Law to one Dyfnwal Moelmud. Who Dyfnwal Moelmud was, when he lived, and what he did in the way of codification is, and apparently must remain, an insoluble problem.

The tradition ascribing to him some codification is

centuries anterior to the spurious Triads named after him. It is possible it contains some echo of an attempt to bring Cymric custom into line with the movement inaugurated by the Theodosian Code. The force of the tradition is so strong that, perhaps, it is unsafe to say there was no attempt at codifying before the time of Hywel Dda; but to assert such codification as a fact, and to assign a date and an author to it, is unwarranted.

§ 2. The Laws of Hywel Dda, a codification of custom, not a new legislation, were redacted in the first half of the tenth century.

The earliest manuscripts, however, of any part of these laws which have survived are of the twelfth or thirteenth centuries.

We do not possess the Laws of Hywel in their original form. What we do possess are many manuscripts, containing what seem to be excerpts from the original Codes made by practising lawyers up to the twelfth and thirteenth centuries, together with some early comments and Triads, from which, in 1841, Mr. Aneurin Owen attempted to reconstruct the original Codes, commonly known as the Venedotian, Dimetian, and Gwentian Codes. In addition, we have a number of notes, in the nature of commentaries, made between the twelfth and fifteenth centuries by lawyers or clerics. The reconstructed Codes occupy the first volume of Mr. Owen's *Ancient Laws and Institutes of Wales*, and the commentaries the second.

§ 3. The study of Welsh legal custom has suffered greatly by the inclusion in the second volume of the so-called Triads of Dyfnwal Moelmud. The temptation to refer to them and to interpret the older laws in their light has been succumbed to by many writers, whose conclusions are thereby somewhat vitiated. To no one more than to Prof. J. E. Lloyd (Bangor) is the debt due for the relegation of these spurious Triads to their proper place.

§ 4. The reconstructed Codes describe how the redaction by Hywel Dda was made.

The preface to the Venedotian Code tells us that Hywel Dda summoned to him six men from each 'cymwd' in

Wales, four of them laics and two clerks. This body, assembled at the White House on the Taf and numbering about a thousand men, 'with mutual counsel and deliberation examined the ancient laws, some of which they suffered to continue unaltered, some they amended, and others they abrogated entirely, and some new laws they enacted'.

The sanctioning authority to the compilation was the King. Another passage in this Code, forming a preface to the Book of Proof, after a like recitation, proceeds to say that the laws were submitted to the Pope for his ratification.

The preface to the Dimetian Code states that the assembly consisted of six men from each 'cymwd', and all the crozier-bearing clergy. At the end of their deliberations, which no doubt served as a means of ascertaining the local customs of each 'cymwd', the actual codification was entrusted to Blegywryd, a skilled lawyer, and twelve of the wisest laics. Their function was to form and write the laws; and to guard against anything opposed to the law of the Church or the law of the Emperor, a striking echo of the survival of the idea of the universality of Roman Law. This Code also refers to the Papal ratification of the laws.

The preface to the Gwentian Code is somewhat similar; and each Code reproduces a malediction pronounced on all who should break the laws.

Subsequent to this codification there were some minor alterations effected by Bleddyn of Powys (A. D. 1060-75), and by the Lord Rhys (A. D. 1155-97), in the matter of appraisement of worths; but, except for these and a few changes wrought by Llywelyn ap Iorwerth and Dafydd ap Llywelyn, the Laws of Hywel Dda remained almost unaltered until the changes brought about by the Statute of Rhuddlan. Indeed, many of their provisions continued in force until the days of the Tudors.¹

§ 5. The redaction of the laws in Wales was due, therefore, to some extent, to the influence of the Church, and the codification was part of a general movement taking place throughout Europe, consciously adjusting custom to the exigencies of a triumphant and militant Catholicism.

¹ V. C. 2, 214; D. C. 338; G. C. 620.

The Codes reproduce custom existing at the time, subject to some modifications; and they became the fixed authority, the Law of the Book, to which appeal could be made in cases of dispute as to what custom was.

4. *The Welsh Codes not immutable.*

§ 1. We must not, however, forget that, though this collection attained to a degree of almost reverent adoration and passionate attachment, such as no other Code, not claiming divine origin, appears to have attained to, and was the standard of law in Wales for many centuries, it was not an immutable Code. It was not altered, except in some minor points, by anything in the nature of legislation, but the laws themselves recognized that they could be overridden in one of two ways.

§ 2. The law allowed the Codes to be overridden by the proof of contrary custom, provided such contrary custom was equitable, or, as it is put, provided it followed the law or had been recognized by judicial precedent. In fact it became a common matter of pleading that parties must declare whether they appealed to the Law of Hywel Dda or some other custom, e.g. the custom of Bleddyn, and according to that declaration the case stood or fell.¹

§ 3. In addition, we have the advanced practice permitted of contracting outside the law. We shall see constantly provisions for the exercise of this power in cases where the law laid down that certain compensation must be paid for certain acts causing damage, &c.; or where by law definite liabilities, like the payment of 'amobyr', were placed on definite persons. In such a case a contract, reducing or altering the compensation or shifting the liability or the like, was valid; and, to use the frequent expression of the laws, 'contract nullifies the law'.

§ 4. It is, therefore, a mistake to imagine, because there were few and unimportant legislative alterations, that the laws were rigid and incapable of expansion. They recognized fully that custom was fluid, and contained in itself machinery for adapting itself, by means of consensus and precedent, to changed and changing conditions.

¹ e.g. D. C. 586; XI. 412.

5. *Laws of Hywel Dda not 'ancient'.*

§ 1. The Laws of Hywel Dda are almost always spoken of as 'ancient', and frequently the word 'ancient' is regarded as a synonym for barbarous and crude. As we consider the provisions of the law we shall observe that the system is an advanced one in many particulars, and that the old Welsh lawyers were possessed of a highly skilled legal acumen.

But apart from that, the Laws of Hywel Dda, though they enshrine much that survived from the remotest past, are not 'ancient', even in the history of Wales. They by no means represent Welsh custom in its earliest stages.

§ 2. Leaving aside the fact that the prefaces to the Codes expressly assert that they do 'amend and abrogate', we know that great and important political changes had been effected in Welsh life in the five centuries which intervened between the fall of the Roman Empire in Britain and the codification of Hywel Dda. Such political changes could not help affecting the customs of the people.

This is not the place to describe those political changes in detail, but some of them may be noted briefly.

Though there is good reason to believe that Christianity had found a firm footing in Roman Britain, it cannot be said that the whole of the Cymric peoples, even in the later periods of the Roman occupation, was Christian. The essential conversion of the Welsh seems to have taken place in the fourth and the fifth centuries. The new religion, though mainly Catholic on its dogmatic side, at first assumed, on its administrative side, a tribal and monastic character; and it was only later that it took on the same type of organization as the Roman Catholic Church.

By the time of Hywel Dda the Welsh had progressed from paganism to a Christian and Catholic outlook on life, and such a revolution could not fail to affect custom.

Moreover, the composition of the Welsh people in A. D. 409, to go no farther back, differed essentially from that of A. D. 941, the approximate date of the redaction. At the earlier date Wales was inhabited by a population, partly pre-Celtic and partly Goidelic, with one important Brythonic

settlement in that part of the country which was afterwards identified with Powys.

The family of Cunedda, round which so much of Welsh medieval history centres, did not reach Wales until the fifth century was advanced, and the chiefs of that house brought with them the Brythonic tribes, whose customs are mainly those which are codified.

Besides, there were many other streams which added to the complex currents of Welsh life—Norse, Danish, Irish, and even Saxon, all of which made some contribution to Welsh life in the interval.

§ 3. Another fact to remember is that, though Wales was profoundly influenced by the Roman occupation, the principal effect on her of the Teutonic invasion was, for a considerable period, to separate her from Rome and all that Rome meant. Though not entirely, yet largely so, Wales was, for centuries, cut off from the mainspring of life in civilized Europe. She was isolated from that centre by a wall of Teutonic barbarians, and her own civilization, partly Roman in origin, tended to become parochial. When once more brought into contact with Rome the contact was largely along a Teutonic highway. The separation from, and the subsequent reassociation with, Rome must have affected Welsh custom profoundly.

§ 4. We need only refer to one more important change.

The first glimpses we get of Wales, after the fall of the Roman Empire, disclose to us a country occupied by a number of tribes under tribal chieftains with no sense of Welsh nationality. These tribal chieftains were of the same race as other tribal chieftains in the north and west of Roman Britain; and Wales, as a nation, did not exist. The first step towards the creation of a Welsh nationality, the formation of the Cymric confederacy, was still a century or more off, and, when it came, it came among the Cymric tribes outside Wales. Welsh nationality within Wales could not arise and did not arise until there was a determinate boundary to Wales, in other words until the making of Offa's Dyke.

The growth, thereafter, was slow; in fact, in spite of the epic struggles of the last rulers of the house of Gwynedd, it

hardly reached fruition until the days of Owain Glyndwr, and in some senses it may be said that the Welsh nation was a creation of the Tudors.

But, from the seventh century on, the conception of a common Welsh nationality under one King in Wales began to spring into life. It was ever present in the minds of Welsh lawyers, and, slow though the realization of it was, the conception influenced Welsh Law and custom.

§ 5. To sum up; the centuries between A. D. 409 and A. D. 941 saw a revolution wrought in religion, in race, in contact with Roman civilization, in a consciousness of national unity, and in the functions of kingship.

The laws, as we have them, are the laws in force when all these changes had been in progress for some time and had affected whatever may have been the original customs of the people.

No doubt it is true that custom survives even the most stupendous of political changes; nevertheless political changes invariably react upon custom.

The customary law of Wales, therefore, which has been preserved to us, is not exclusively and entirely primitive; it is primitive custom surviving after being subjected to many important solvents.

6. *The Extents and Surveys.*

§ 1. References, sometimes in great detail, are made, in subsequent pages, to the Extents and Surveys of the Norman Lawyers, compiled in the fourteenth century, and particularly to the Record of Caernarfon, the Survey of Denbigh, the Black Book of St. David's, and the First Extent of Bromfield and Yale.

The Extents throw light on some doubtful points in the older laws, and the laws themselves frequently explain the Extents.

The gap between these surveys and the Codes is one of four centuries. During these four centuries political changes of great importance took place in Wales.

§ 2. The laws were codified at a time, when, roughly speaking, the boundary line between England and Wales was Offa's Dyke. From the end of the tenth century to the

thirteenth century that boundary line was never stable. Part of what was under indigenous Welsh rule in A. D. 941 was overrun and occupied by Harold in the eleventh century. The whole of Flintshire, much of Denbighshire, small portions of Glamorgan and of Central Wales were surveyed as being in the lordships of vassals of the Norman Crown in Domesday; they succumbed to the Norman power, not quite so easily, but still almost as rapidly, as did England.

Later, either during the weak rule of William Rufus or during the dynastic wars in the reign of Stephen, a considerable portion in North Wales was recaptured and resettled by Welshmen.

In Glamorgan, during the eleventh century, large areas passed permanently under Norman domination. For a while, during the time of Llywelyn ap Iorwerth, the old boundary line was practically restored; but the restoration did not involve the entire eviction of the Norman lords. They became vassals to the Welsh prince.

This restoration, for causes we need not describe here, did not endure; and, before the last desperate struggle of Gwynedd occurred, practically the whole of Wales, except Anglesea, Caernarfon, Merioneth, parts of Denbigh, and Cardigan, was under Norman rule, Powys being under an indigenous house of pronounced pro-Norman sympathies and the rest of Wales forming parts of Norman lordships.

§ 3. For two centuries Wales lived by the sword, and the sword and fire lived on her. The epic of Wales, who defied the Norman power for two hundred years, could not have been enacted without a profound change in her habits and customs. The impact of Norman ideas and Norman arms was perhaps nowhere more marked than in the feudalization of the kingship and the disintegration of the tribal system, which had progressed to some degree before the Surveys were completed.

§ 4. The Church too had become largely Normanized. Many of the prelates of Wales were Norman, and, though some of them were strong supporters of Welsh liberties, the general effect was to make the Church territorial and not

tribal, and to array it on the side of Norman law, which supported some ecclesiastical pretensions unrecognized by the laws of the Welsh.

There were other causes at work also causing radical changes, amongst which we need only refer to the ravages of the great pestilence, to the beginnings of commerce, and to the commencement of town life.

§ 5. The gap, however, between the Laws and the Surveys is nothing like so great as the lapse of four centuries would lead us to expect, at least in North Wales and Cardigan ; and it is filled in a large measure by the commentaries in the second volume of the Ancient Laws.

It is impossible, unfortunately, to trace always when or how changes were effected in these four centuries in Welsh Law and custom ; and indeed no attempt is made here to do so. What is attempted is to give, so far as it is possible, a statement of the general principles of Welsh legal custom operative in the times of the Welsh princes, starting with the Code of Hywel Dda and ending with the surveys of the fourteenth century.

PART I

THE SOCIAL STRUCTURE

I

INTRODUCTORY

1. *The Basis of Society.*

§ 1. If we were compelled to state briefly in what the organization of medieval Welsh society consisted we should employ two words: 'braint' and 'carenydd', status or privilege and kinship.

The one was dependent on the other; but it will conduce, perhaps, to clarity if an attempt be made to describe what 'status' consisted of; postponing the more complex structure of kinship until we deal with the organization of the free population, always bearing in mind that a man's status was determined and conditioned by the position he held in 'kinship'.

§ 2. The whole of a man's rights and privileges, his duties and responsibilities were determined by the status which he occupied in society by virtue of the kinship which was his.

The legal value of his life and honour; the legal value, in many particulars, of his cattle and his goods; the assistance he might obtain to clear himself from the penalties incurred for breaches of the law; the assistance he might have to render to others who broke the law; his interests in land, in woods, in commons, in hunting, and in fishing; his marital relationships were all contingent upon or affected by his status and kinship.

In this particular, though the grades of status might vary, Welsh society was in no way different from other societies at the same stage of development and at the same period of time. All Western Europe rested on the same foundation.

It was one of the contributions to the world, for good or for evil, of Christianity, operating with other forces, to break down status and kinship, and to substitute for it, slowly and gradually, the conception of individual freedom of action and individual isolation; but the operations of Christianity

had produced no distinctly disintegrating effect in Welsh society at the time when the Laws of Hywel Dda were redacted. Status, based on kinship, was still the foundation of society.

2. *Kinds of Status in Welsh Law.*

§ 1. Status in the Welsh Laws was of three kinds ; natural status, status by office, and status of land.¹

§ 2. True individual status was natural ; that is, a man was born into the status he would occupy for life. He might, perhaps, forfeit that status, e. g. by what we should now call crime, and sink into a lower grade ; he might undergo what in Roman Law was termed a *diminutio capitis*. He might, on the other hand, improve his status, e. g. by the acquisition of office ; but the primary factor in determining a man's status was birth.

§ 3. Status by office was personal to the individual who attained to office. There is nothing in the Welsh Laws to indicate that any office was hereditary.² Kingship was partially so, but not entirely. Every other office was attained either by grant, appointment, or election. No office was transmissible to the heirs and successors of a person obtaining it, and so the status of office was not transmissible. Nevertheless, as the acquisition of office enfranchised and made free a man who was hitherto not free, the son of such a person was of free status ; but such son acquired a status higher than that to which he would have attained but for his father's office, not by succeeding to office, but by being born into the higher status occupied by his father. The rule was that a man ascended into the status, not the office, of his father, as that status was when the father died.

§ 4. Status by land the Welsh Laws are ignorant of.

Both in Irish and early Anglo-Saxon Law an advance in status was possible by the acquisition of property or by becoming a priest.

In Ireland a man's 'eneclann' or 'honour-price' was frequently determined by the amount of property he held. In English Law we have frequent references to the enhancement of a man's 'worth' by the acquisition of property ;

¹ D. C. 468.

² Vide Note 1.

see e. g. cc. 7, 8, 9, 10, and 11 of the North People's Law, c. 32 of the Doms of Ine, and cc. 2, 3, 4, and 5 of the Fragment on Ranks.

The Welsh Laws do not recognize any improvement of status by the mere acquisition of property or of priestly functions.

The rank of 'uchelwr' may seem contradictory of this, but it is not so ; and the office of the priesthood, which is sometimes said to have enfranchised the cleric, was, in strict Welsh tribal law, closed to the unfree, and naturally so, as the priesthood itself was tribal.¹

§ 5. Status of land the laws recognize fully. Land might be free-land or it might be bond-land ; and, in the rules regarding 'waedtir', or blood-land, we have, in the law of homicide, an instance of degradation in the status of land.

But the possession of land of a particular status did not affect the status of the individual holding it. The possession of free-land did not make an unfree man free, for the simple reason that, until the law of escheat and regrant to unfree tenants operated under the Norman-Angevins, an unfree man did not hold free-land. So, too, the acquisition of bond-land did not make the holder bond. Where it was possible for a freeman to acquire bond-land—and there was no bar to such acquisition—the freeman, by acquisition, enfranchised that land. He bestowed his own status upon the land he acquired.

§ 6. The primary factor to remember, therefore, in the structure of Welsh society is that it was birth and blood, not possession of goods, that determined a man's position, the birth and blood of free or unfree Welsh origin, or the birth and blood of non-Cymric origin.

There were, probably, expedients whereby a man, who was not of Welsh origin, could acquire Welsh status. Many fanciful expedients of that nature have been alleged to exist—with these we will deal later—but all, real or fanciful, were only expedients ; and one and all of them rested on the fiction that the person acquiring a higher status did so by virtue of acquiring Welsh blood and birth.

¹ Vide Note 2.

II

CLASSES IN WELSH SOCIETY

1. *Classes recognized in Wales.*

The main classes recognized by the Welsh Laws may be stated to be :

(i) the royal class, consisting of the King or Kings or territorial lord, and their entourages ;

(ii) the ' boneddig ' or free-born class, the men of lineage, consisting of the ' uchelwyr ', the married freemen, and the unmarried freemen ;

(iii) the ' aillt ' or ' taeog ' class, the *adscripti glebae*, whose freedom and rights were considerable, but not so wide as those of the freemen ;

(iv) the ' alltud ' class, men of foreign blood resident in the country ; and

(v) the ' caeth ' or bond-servant class, the slaves of other systems of law.

2. *Classes recognized in other systems.*

§ 1. This demarcation is not peculiar to Welsh Law, but it would be impossible to make a complete comparison between the Welsh and other systems of the time.

§ 2. In the Fragment on Ranks in the early Anglo-Saxon Laws (c. 1) it is said, ' It was whilom, in the Laws of the English, that people and law went by ranks, and then were the Witan of worship worthy each according to his condition, eorl and ceorl, thegen and theoden '.

The classification varies from time to time, and the names employed differ in the Saxon and Danish districts. For example, in the Dooms of Ine (A. D. 688-725), we have the King, the ealdorman, the thane, the gesithcund, the ceorl ; in the Laws of Aelfred, two centuries later, the King, the ealdorman, and three groups according to property, the twelve-, six-, and two-hynde-men ; while in the Kentish

Laws we find the King, the eorl, the ceorl, and the laet or freedman.

Notwithstanding the change of nomenclature the main divisions, however, in the Anglo-Saxon Laws are identical with those in Wales.

§ 3. In the Irish Laws there are infinite gradations of ' aire ' or chieftain status ; the free are divided into ' saer-stock ' and ' daer-stock ' tenants, according to the terms of their holding of cattle ; there is a ' fuidhir ' or foreigner class, besides the servile or slave class.

§ 4. In the Burgundian Law we find the King, the ' nobilis ', the ' persona in populo mediocris ', the ' minor persona ', the ' servus ' ; in the Lex Frisionum the ' Rex ', the ' nobilis ', the ' liber ', and the ' litus ' ; while similar divisions existed also in the Lex Salica, the Lex Angliorum, and other Teutonic systems.

3. *Distinction between Welsh Law and other systems.*

§ 1. There are, nevertheless, some differences.

In no system is the position of the ' foreigner ' class so clearly indicated as it is in the Welsh Law. Foreigners in blood appear in all systems, even in the Anglo-Saxon one ; but, except on occasion, it is difficult to differentiate between the stranger in blood and race and the mere wandering stranger to a particular countryside. In Welsh Law, and in this it seems to be peculiar, no free Welshman could be a ' stranger ' in any part of Wales.¹ He was of the Cymry, the confederation, and was never regarded as of strange connexions.

§ 2. Another distinction lies in the fact that, whereas all systems recognize the King or chief, the freeman, the unfree, the slave, the official, and the stranger, the Welsh Laws did not, as did some of the other systems, recognize a ' nobility ' class, separate from the freeman and possessed of higher or exclusive privileges not possessed by other freemen.

The ' uchelwr ', who in some particulars had a higher pecuniary ' worth ' than his fellows, but no other special privileges, was not in any sense a ' noble '. Whatever extra ' worth ' he had was due to no superiority of blood over

¹ Vide Note 3.

other freemen. There were, as we shall see, 'arglwyddi' or lords in Welsh society, but the lord, as such, had no privilege not possessed by the ordinary freeman. He might have more power, but power gave him no extra status. In other words, rank and power formed no criteria of a man's status; the criterion was birth, modified by processes of law, which conferred status by assuming birth, or which depreciated status by depriving a man of his privilege of birth.

III

THE KINGSHIP IN WELSH LAW

1. *Recognition of the monarchical principle.*

§ 1. Kingship is not a necessary element in tribal law in its earliest phases.

In the most archaic survivals of the tribal organization in Europe the King does not exist. The King arose only when there was an amalgamation of tribal entities or clans into a larger entity, and as the need of an executive arm grew.

So long as society consisted of small clan entities, each one acting within its own limits executively, there was no room for a King. How far the idea of kingship arose out of military necessities, how far it evolved out of priestly functions, what the exact relation was between kingship and tribal chieftainship, it would be outside the purpose of this volume to discuss. It would also be outside that purpose to try and determine whether the executive arm of society was first expressed, as some sense of unity between clan and clan arose, in a council of chiefs or directly in kingship.

The immediate point to note is that kingship is a mark, not of a primitive society, but of a society long past the earliest stages of tribal organization, of a society seeking for some centralized authority expressing a wider unity.

The stage of development wherein the King was an essential part of society had been reached in Wales long before the laws were redacted.

§ 2. The head of Welsh society, portrayed in the laws, was the King. There is nothing in those laws pointing to a time when the monarch was unknown. Throughout the whole of Cymric history, so far as it is known to us, the King was there, the head of society, and in the ancient legends and tales of the race it is round the King that interest very largely centres. Gildas, when he tells us that there were kings among the Britons of his time, merely brings into prominence that

early Welsh thought could not conceive of a society without a King.

Throughout the laws there is constant emphasis on the kingly office, its importance, dignity, and necessity.

2. *The constitutional aspect of Welsh kingship.*

§ 1. What was the constitutional aspect of this kingship, so prominent in the Welsh Laws?

We cannot understand Welsh history or Welsh Law fully unless we bear in mind that, whatever may have been the circumstances of the times, however far short in practice the ideals were from realization, Welsh political thought from the earliest times insisted upon two unities, the unity of the whole of the island of Britain, and the unity of the whole of Wales as a portion of and within that island of Britain.

§ 2. The insistence on the unity of Ynys Prydain may be, and probably is, a survival of Roman influences, which formed the province of Britannia out of the area occupied by Rome; the insistence on the unity of Wales may be due partly to the work of Maelgwn Gwynedd, partly to a sense of racial community; but, whatever may be the cause, the two ideals have always existed side by side in Wales and have found frequent expression in law and practice.

The idea of the unity of Ynys Prydain has throughout Welsh history been a living factor, and the sovereignty of Britain, with its seat in London, has always been regarded as one and indivisible.

The Welsh Laws make it clear that the King of Wales was subordinate in theory to the King at London at all times. Wales was not subordinate to England; that was not the conception. The conception was that Ynys Prydain was indivisible, and the 'king' of Wales was under the King at London, be he Brython or Saxon or Norman, who, however many sub-kings there might be in Britain, however ineffective his paramountcy might be in practice, centred in himself the indivisible unity of Britain.

To the King at London the King of Wales owed tribute of £63 per annum; that was the concrete recognition of the

unity of the island, whether the tribute was ever paid or not.¹

§ 3. Likewise the laws recognized the unity of Wales, the unity of one part of many parts of the whole of Britain.

Unfortunately perhaps for Wales, the conception of the unity of Wales was not a conception of absolute unity; that, perhaps, could only have grown up if there had been a conception of independent unity; it was a conception of unity by federation with an acknowledged supremacy, effective or not at different times, resident in Gwynedd.

There were three different parts of Wales—Gwynedd, Powys, and Dinefwr, with their capitals at Aberffraw, Mathrafal, and Dinefwr respectively. Sometimes we get mention of Gwent with the kingly seat at Caerleon; but Gwent was becoming debatable territory when the laws were codified and commented on. Sometimes, too—we may almost say generally—Dinefwr or Deheubarth was split up into many minor principalities; perhaps it would be even more accurate to say Deheubarth was a geographical expression, within whose boundaries there were constantly varying principalities; and Powys, in later days, was divided into Powys Fadog and Powys Gwenwynwyn, but the main conceptional division was into Gwynedd, Powys, and Dinefwr.

The boundaries of these divisions constantly changed. One part was frequently at war with another, but at all times there was a recognition of the ideal that, just as Cymru and Lloegr were one with a paramountcy in London, so too, though the territories were separate, yet the three were one and indivisible under a supreme sovereign with his seat at Aberffraw in Gwynedd.

The laws themselves account for the supremacy of Gwynedd by tracing it back to Maelgwn Gwynedd.

'Maelgwn', it is said, 'became supreme King with Aberffraw for his principal court, and the earls of Mathrafal, Dinefwr, and Caerlleon subject to him and his word paramount over all, and his law paramount, and he not bound to observe their law.'

¹ V. C. 234; XIV. 584.

In one of those priceless fragments of historical lore, which the laws here and there contain, we are told that the Welsh chiefs assembled together 'to see who of them should be appointed supreme King'. 'The place', it is said, 'they chose was on the Traeth Maelgwn at Aberdovey, and thereto came the men of Gwynedd, the men of Powys, the men of Deheubarth, of Reinwg, of Morganwg, and of Seisyllwg. And there Maeldaf the elder . . . placed a chair of waxen wings under Maelgwn, so when the tide came in, no one was able to stay, but Maelgwn, because of his chair.'¹

The family of Cunedda, to which Maelgwn belonged, established itself firmly in the north, less firmly in the south, but still with sufficient decisiveness to establish, for all time, the acknowledged supremacy of Gwynedd.

The subjection of Dinefwr and Mathrafal to Aberffraw was recognized by the payment on behalf of the first-named of four tuns of honey and of Mathrafal of four tuns of flour to Gwynedd every year.²

3. *The arglwyddi or lords.*

§ 1. We must not forget to bear in mind, however, that in addition to the three Kings with principal seats, there were many territorial lords. The Celtic rules of succession as regards land gave each son a right to an equal share in his father's estate, and the royal territories, though not the dignity, were subject to the same rules. Hence, whenever the territories of Wales were, by conquest or default of heirs, centralized in the hands of one man, upon his death the territories were divided, or were liable to be divided, as if they had been a private estate among his sons. Hence we find persistent in Wales small princely or baronial houses occupying sometimes a 'cantref', sometimes more or less. In addition, as in England and elsewhere, the strong arm of the military adventurer frequently carved out for himself and his family a lordship, and oftentimes a lordship was granted, by one Prince or another, to an adherent of his in return for services rendered. These houses rose and fell, some enduring in semi-regal state for a few generations, some becoming extinct rapidly. There was frequently no con-

¹ V. 50.

² XIV. 584.

tinuity in these lesser princely lordships, though there was a constant tendency for the area which had formed a principality at one time, a 'cantref' or a 'cymwd', to reappear as a principality at a later time in the hands of another lord. The vitality of the 'cymwd', as a territorial unit, is in fact one of the striking features of early Wales.

§ 2. Every 'cymwd' had its lord. The lord might be, at any particular moment, the actual supreme ruler of all Wales; he might at another time be a semi-independent lord, owing nominal subordination to one higher than himself.

The term 'arglwydd' is, in fact, sometimes used in the laws to indicate the supreme lord, the King; it is sometimes used to denote merely a superior, just like the word 'lord' was used in England—for instance an 'uchelwr' or landed proprietor is spoken of as 'arglwydd' over his unfree tenants—but generally speaking the term means the territorial lord of a principality or barony, the constitutional validity of whose rights is constantly recognized in the laws.

§ 3. Every lord owed nominal subjection to one or other of the principal royal seats, a subjection which was real or not just in so far as the principal King was strong or weak. Subject, however, to this subordination, each lordly house was a replica of the Supreme Court or 'llys'. It had, so long as it could enforce it, kingly powers within its own territories, just as a baronial house in the Marches had even at a later time. The lord appointed to the local judiciary, where the judiciary was an appointed one, he presided in courts, executed judgement, was the recipient of fines, he enforced contracts, issued interdicts, granted land within his territories, and benefited by escheats. He collected the revenue and customary dues for his own use, exacted blood-fines, and it was to him that the young men residing in his territories were commended as military retainers.

The two main points in which the lord differed from the King were that he had no distinct pecuniary 'worth' attached to him superior to that of an 'uchelwr',¹ and he had no jurisdiction over the Church, which was independent of every one but the King. He had also no right of coinage,

¹ Vide Note 4.

legislation, or of punishment for crimes committed on the highway, all of which powers were reserved for the King with a principal seat.

§ 4. How far this nominal subjection was real depended on the central authority itself; sometimes the latter was weak, and sometimes strong. In the former case its effective rule was confined to a small area; in the latter the local house often disappeared and the King ruled direct. The theory of the supremacy of the King, therefore, was not always translated into practice; the idea of one King over one state was embryonic, and practice found sovereignty diffused.

4. *The functions of the King.*

§ 1. The King, within his own territory, and also the lord within his, was entitled to allegiance, obedience, and military service under well-defined rules, which were enforced by distraint only and not by punishment.¹

§ 2. The King was the source of justice, of rights in land and, in the temporal sense, supreme over the Church, but in every act he was to be guided not by his own will, but by the regulations of custom appropriate thereto.

Justice was administered by Courts acting in his name, and the Courts, and the Courts alone, could award judgement. Of land the King was not the owner, but the administrator in accordance with custom, and, with reference to the Church, it was subordinate to him in all temporal matters, but independent in spiritual.

The exact powers of the King will be apparent when we deal with each one of these matters.

5. *The revenues of the King.*

§ 1. The maintenance of the King's dignity was secured by certain estates, revenues, and dues.

His own private estate or demesne was the 'maer-dref', which will be considered in dealing with the land-laws; his revenues from free-land, the 'gwestfa', and from bond-lands, 'the dawnbwys', will also be dealt with in the same section.

§ 2. In addition, however, to these land revenues the King

¹ D. C. 470.

had other sources of income. The Codes and laws speak of the eight packhorses of the King, the 'pynfarch'.

The packhorses were the sea, which gave him everything thrown up by it until the ebb of the third tide, except where the jetsam was thrown up on to bishop-land, in which case half went to the bishop and half to the King; waste, which included waste land and everything without an owner; the wandering stranger, that is property left by a stranger, not being settled in Wales; a thief, which implies the sum payable by a thief to redeem himself from punishment; a 'marwdy', that is the estate of a childless person, other than a judge or a bishop, dying intestate, and the estate of the Court usher whose heir the King always was; 'ebediw' or heriot; and the two fines of 'dirwy' and 'camlwrw'.¹

§ 3. Wild forest also belonged to the King, subject to the right of every Cymro to cut wood for church-roofs, spear-shafts for use in the King's service, and funeral biers. Similar rights, it may be observed, to cut wood for a roof-tree and its two supporting forks existed over all forest-land, provided always that no one was entitled to cut, even on his own land, oak trees and birches.²

§ 4. In addition there were several miscellaneous dues like 'amobyr' (maiden-fee), 'cynhasedd' (investiture fee), 'halog-dy' (forfeited house-property), 'nets', or cattle found trespassing in the King's herds, right to provender, property forfeited by criminals, court-fees, and tolls from mills, except in Arfon, where there could be no manorial mills at which service must be done.

§ 5. It does not, it may be said, appear that there was anywhere in Wales a definite manorial monopoly in mills in pre-Norman days. We have references to community of interest in mills by a 'gwely' or family of co-proprietors; a provision in the Anomalous Laws that any landed proprietor might stop a mill-stream passing through his land if the mill-owner refused to come to an arrangement with him or proved himself unfriendly; and a reference in the

¹ V. C. 78, 178, 244; D. C. 486, 554; IX. 258, 262; XIV. 608, 632.

² D. C. 448, 450, 586; G. C. 784.

privileges of Arfon to the fact that the men of Arfon were free to grind their corn at their own mills.¹

§ 6. The King was also entitled to levy toll on cattle, demanding a cow from the territory in which the army was operating, and another from each 'cymwd' on the feast of St. Mor.²

With the details of these levies and rights an attempt is made to deal in subsequent pages.

6. *Succession to the kingship.*

§ 1. There is nothing in the laws informing us whether in theory or not the kingship in Wales was elective or hereditary. The implication is that it was a dignity transmissible in the royal 'cenedl'. We know that as a matter of fact the supreme kingship of Gwynedd was transmitted for something like 700 years in the family of Cunedda, with intervals of usurpation, and that other royal houses were likewise descended from the great Burner. There is no reason to suppose that theory was opposed to practice, and there is nothing whatsoever to show that the Imperial idea of election or approbation prevailed in Wales.

§ 2. The implication of the laws is that kingship was hereditary. The heir to the throne, the Edling (a word apparently derived from the Saxon Atheling), it is said in all the three Codes, must be a son, or a brother, or a 'nepos' of the King—the Welsh word 'ney' in these laws meaning exactly what the Latin 'nepos' means, a nephew or grandson.³

§ 3. The rule of descent through males was once departed from in the history of the royal line of Gwynedd. In A. D. 825 the direct male line of Cunedda became extinct with the death of Hywel ap Rhodri. He was succeeded by Merfyn Frych, who was married to a daughter of Rhodri, but this appears to be the only instance of its kind; though it may be compared with the traditional accession of Dyfnwal Moelmud as succeeding through his mother, the sole child of the last King.

§ 4. Though descent was hereditary in the male line, there was no necessary rule of primogeniture. The eldest son had

¹ V. C. 106; X. 344.

² IX. 264; XIV. 582, 610.

³ V. C. 8; D. C. 348; G. C. 626.

a preference, other things being equal, but the successor, who seems to have been nominated in the life of the reigning prince, must be the fittest man of the royal family.

The Welsh Laws never recognized any rule of primogeniture, either in regard to the succession to land or in regard to the headship of a 'cenedl'. In regard to the former there was equal division among sons, in regard to the latter there was no hereditary succession at all. An office, however, was not divisible, and there was a bias, but nothing more than a bias, in favour of primogeniture in the kingship.

The primary rule, in theory, in determining who within the royal 'cenedl' was to succeed, was fitness for the position. The Edling, we are told, must be free from the three blemishes, that is he must be perfect as to his limbs, and must not be deaf or dumb or insane. If the eldest son did not fulfil those conditions, the next son was to be Edling. If there were no competent son, the King's brother was to be Edling; if there were no such competent person, any man coequal in dignity, that is one of the royal 'cenedl', could be Edling.¹ There is, however, no definite proof that the theoretical rule was ever enforced in practice.

We get exactly the same rule indicated in the Irish Laws. According to the Book of Aicill (III. 83, 85) Cormac was displaced, on being accidentally blinded, by his son Coirpre Lifechair; and according to another passage in the same authority it 'was a prohibited thing that one with a blemish should be king at Temhair', a similar prohibition occurring in the Senchus Mór (I. 73) with respect to the King at Emohain.

¹ IX. 304; XIV. 686.

IV

THE ROYAL ENTOURAGE

1. *The Queen.*

§ 1. Comprised in the circle round the King were the Queen, the Edling, and the Court officials.

Not much is said about the Queen in any part of the Codes ; but when we remember that in the early English Laws, the Irish Laws, and the various Germanic Codes, there is a complete absence of any mention of the Queen at all, we must be grateful for even the small light thrown on the position of the consort in the Welsh Laws.

§ 2. There appear to have been no restrictions placed on the circle within which the King might marry ; and, in actual practice, we know that the King did not invariably marry in Wales. At any rate towards the end of the time of the indigenous Welsh princes, David, the son of Owain Gwynedd, married Emma of Anjou, the great Llywelyn, a daughter of King John, the last Llywelyn Eleanor, a daughter of Simon de Montfort, and Gruffydd, the eldest son of the Lord Rhys of Deheubarth, a daughter of William de Breos.

These foreign marriages may have been due to political reasons ; to strengthen, for example, the line of Cunedda in Wales by alliance with Norman houses. Llywelyn the Great married his daughters in the families of De Breos, de Lacy, Mortimer, Clifford, and Chester ; but the general practice was in earlier times to marry within the royal ' cenedl ' or in Ireland. The point, however, is that there was no rule in the royal ' cenedl ' either of exogamy or endogamy.

§ 3. The Queen does not appear to have had any political power ; she was in fact simply the King's consort.

Her dignity was maintained by an enhanced worth and honour-price, she had a wide power of protection, a considerable special entourage of servants, and she possessed certain privileges, such, for example, as the right to a circuit

through the land ; but it is clear that she had no power in matters of State except what she might be able to exercise through her personal influence upon the King. She had no constitutional position, and it was an axiom of Welsh constitutional practice that there could be no Queen regnant.

Such a possibility never occurred to the Welsh lawyers ; and, throughout the long history of the ancient Welsh, there is no instance of a ruling Queen. This is, perhaps, strange, for the institution of a Queen regnant was certainly known among the Brigantes and Iceni. It may be due to the same causes as operated among the Teutonic tribes to bring into existence the rigid exclusion of the Salic Law ; but Welsh Law differed from the Lex Salica not only in permitting, in the line of Cunedda itself, transmission of the royal dignity through a female, but also in allowing, subject to conditions, devolution of land through females.

§ 4. One interesting provision in regard to the Queen's position must be noticed, illustrating as it does the degree of personal freedom possessed by all women in Wales.

The Queen had her own privy purse, and it was the universal rule that one-third of the income derived by the King from his personal land went to the Queen for her separate use.

It should also be noticed that all the officers of the household, including what may be called the executive officers of state, were placed under her socially. They, one and all, received their linen from the Queen, and the Judge of the Court, the supreme judicial power, received, on investiture, his insignia of office, a gold ring, from the Queen.¹

2. *The Edling and the ' Near Relations '.*

§ 1. Next to the King and Queen in the royal entourage came the King's near relations, chief of whom was the heir apparent or Edling, of whom some partial mention has already been made.

Very little is said about the King's near relations other than the Edling, and, though the exact limits of the circle are not stated, it was not extensive.

Like every one else of Welsh descent in Wales, the King had his ' cenedl ', but the ' near relations ' of whom the

¹ V. C. 6 ; D. C. 344 ; G. C. 624.

Codes speak, did not include all who belonged to the King's kindred. The circle appears to have been confined to those male relatives of the King resident at the 'llys' or palace, dependent directly upon the King's bounty and attached to his person.

§ 2. The members of it had a few unimportant privileges, which they retained only so long as they held no land of their own. As soon as they acquired land they ceased to have any special privileges by virtue of royal blood. The status they then assumed differed in no way from that of any other free Welshman.

The land acquired was, if it were bond-land, enfranchised by the acquisition, and held thereafter as free-land, subject to all the incidents and burdens of other free-land.

Membership of the royal kindred was not and could not be lost; that was a matter of birth which could not be altered; but there was no royal caste with special privileges.¹

§ 3. The Edling remained always and entirely upon the King's bounty. His expenditure was at the King's charge, his equipment was furnished by the King. He does not appear to have possessed any privy purse of his own, or any personal estate, and his subservience to the King was so rigorous that he was not allowed to leave the King for a night without express permission.²

He had an exalted 'blood-fine' and 'honour-price'; but the moment he acquired land and struck out for himself he, like the near relations, lost all special privileges and became from that moment just an ordinary free Welshman.

In the rules applicable to the ordinary free Welsh we shall find that the family 'homestead' descended invariably to the youngest son. In the kingly family, the royal 'homestead' was an adjunct to the kingly dignity, and went, not to the youngest son, unless he happened to be Edling and successor, but to the Edling.³

3. *The Officers of the Court.*

§ 1. The Welsh Codes are full of regulations regarding the official circle of the Court.

¹ V. C. 10; D. C. 350; XIV. 608.

² V. C. 8; D. C. 348; G. C. 626.

³ XIV. 578, 686.

The first division of the original Code appears to have consisted of the 'Cyfreithiau y Llys', the laws of the Court, as distinct from the 'Cyfreithiau y Wlad', or laws of the land.

§ 2. The former consist mainly of a statement of the royal officials, their household (not their state) duties, their privileges, remunerations, and worths. The only constitutional officers whose duties are indicated are those of the Penteulu and the Judge.

The Maer and Canghellor, who were the principal administrative and executive officers, were not included in the royal household. It is probable that, in these regulations, we have an attempt of the princely house at imitating, on a smaller scale, the precedence and dignities of the Carolingian Court. Nevertheless, the rules are of value as illustrating the grades of which the princely entourage was composed, as throwing light on the social life of the people, and as evidence of the growth of the royal power.

§ 3. Among the duties of the King was that of a periodical circuit or 'cylch' among the people, partly for sport, partly for administrative and judicial purposes, partly no doubt with a view to recover the dues payable by the occupiers of the land. When we come to consider the land-revenues of Wales we shall see the intimate connexion of some of the sources thereof with the royal and official 'cylchs'.

The three Codes tell us that the King's retinue, while on circuit, was to consist of thirty-six horsemen, twenty-four of whom were the royal officers, twelve the dignitaries of the locality in which the camp was, from time to time, fixed. The King was further accompanied by miscellaneous household servants, 'gwrddas' or gentlemen of the countryside, youths forming the bodyguard, minstrels, and men living on the King's bounty.¹

§ 4. The Codes have much to say about these twenty-four royal officials. Each Code furnishes us with a list, though the lists do not correspond in their entirety.

Each, however, states that of the twenty-four officers sixteen were attached to the King's person, eight to the

¹ V. C. 8; D. C. 348; G. C. 626.

Queen's, and the lists of the sixteen officers of the King are identical.

To him were attached the *Penteulu*, the priest of the household, the steward, the court-judge, the chief falconer, the chief huntsman, the chief groom, the household-bard, the doctor, the page of the chamber, the silentiary, the brewer, the butler, the keeper of the door, the cook, and the candle-bearer. Each of the Codes also attaches to the Queen a steward, priest, chief groom, door-keeper, and handmaiden or chambermaid. In Gwynedd she also had a page, a separate cook, and candle-bearer, while in the South she had a groom of the rein, a sewer, and a footholder.

Besides these twenty-four principal officers of the household, the Venedotian Code mentions eleven 'officers by custom and usage', who include a groom of the rein, footholder, land-'maer', usher, porter, watchman, baking-woman, smith of the Court, chief of song, and laundress, some of whom are incidentally mentioned in the other Codes.

The Codes specify their precedence, place of sitting in hall, duties, lodgings, privileges, pay, and protection.

In regard to precedence all agree in giving the *Penteulu*, the priest of the household, and the steward (the *dapifer* of the Anglo-Saxon Laws), the foremost places, but there agreement ends. In North Wales the chief falconer took precedence of the judge, the reverse was the case in South Wales. The North Welshman gave his brewer a far more exalted place than did the South Walian, and the respective importance of the officers concerned with sport varies slightly.

The bard was eighth in the table of precedence in North Wales, he was eleventh in the South, and the southern Codes agree in giving the Court doctor the last place but one in the table of honour.¹

§ 5. The royal palace consisted of a series of wooden erections, all within a roughly fortified enclosure and surrounded apparently by a ditch. It is described in the Welsh Laws indirectly with a wealth of detail such as can be found nowhere else; and from references to the homesteads, both of

¹ V. C. 4, 10-76; D C 344, 350-394; G. C. 622, 628-684.

free and unfree, we are justified in deducing that the homesteads of the people reproduced on smaller scales the general planning and structure of the royal court.

The principal structure of the royal palace was the hall. Attached to it were apartments for the King and Queen, a kiln-house where corn was parched, stables, barns, a porter's house, and a number of pent-houses.

The hall, the centre of court life, consisted of three parallel rows of wooden pillars, two in each row. At a little distance from these pillars were rows of smaller pillars, the space between the larger and smaller pillars being roofed over with beams and thatch or shingle, while larger beams, similarly covered, stretched across the main pillars, roofing in the centre aisle.

The side aisles were occupied by beds and were partitioned off from the main aisle by screens during the day.

The main aisle was divided into two portions, the upper and the lower, separated from each other by a fire-place.

In later times, herein following Norman rather than Welsh custom, the upper portion was divided into two, the end of the hall containing a raised dais which was the seat of the King and a few privileged officers.

In the Codes, however, this was not the case.

The Codes give rules as to the place of sitting in hall. It is impossible to reconcile in all particulars the variations in the Codes, which no doubt differ according to locality, but in the main they do correspond. They are not, however, of sufficient importance to dwell on further.

§ 6. The duties of the officers of the Court are given in the minutest detail. Many of them are obvious, but others are not.

The *Penteulu* was the principal officer. The post was reserved for a near relative of the King, if such were available, and no 'uchelwr' was eligible. He was the general chief of the palace, maintained the peace of the Court, and, in the absence of the King, presided in hall. He regulated the King's equipage, controlled the music which beguiled the leisure of the revellers in hall, but, most important of all, he was the commanding officer of the small military force

(*teulu*) of the palace, the mobile band of adherents, so characteristic of the period, upon whom ultimately depended the power of the royal authority.¹

The duties of the priest are obvious. He was inseparable from the King, was appointed by the King personally, and, in addition to his ordinary avocations, he was the King's personal scribe.²

The steward, the real 'head of the household', was the principal commissariat officer, responsible for all supplies. He was the head of all the servants and apportioned the lodgings for all in attendance at court. He waited at table on the King, his guest of honour, the Edling, and the chief falconer. He was the tester of liquors, the divider of the 'supper money', the usher to seats in hall, the custodian of the King's spoil in war, and the representative of the King in all actions where the King was a party in the courts.³

The duties of the judge of the Court will be detailed in the section dealing with the judiciary; those of the falconer, groom, bard, huntsman, and brewer are obvious.

The page of the chamber carried the King's messages, made his bed of straw and covered it with the royal mantles and was the cup-bearer; the silentary kept peace in the hall, looked after the liquors under the general supervision of the steward, was responsible for the furniture, and out-of-doors was the collector of the tunc-revenue. The doctor took care of the health of the court; but so little trust was placed in his skill that, if any one died under his treatment, he had to pay a blood-fine, unless an indemnity had been taken before practising from the kinsmen of the patient. He could never leave the King's neighbourhood, and was compelled to accompany his sovereign whenever the latter sallied forth to war.

The butler looked after the cellar and the King's keys; the door-ward kept the palace gate, took messages therefrom to the hall and ran before the King, clearing the road for him with a truncheon. He had to know all the officers of

¹ V. C. 12; D. C. 358; G. C. 636.

² V. C. 16; D. C. 364; G. C. 638.

³ V. C. 18; D. C. 360; G. C. 638.

the Court personally, and if he prevented any of them obtaining access to the palace he was fined for the insult.

The cook, besides cooking, tasted all the King's food; the candle-bearer looked after the lighting of the palace; the groom of the rein held the king's stirrup for him when he mounted and ran by his side while he rode; and the foot-holder held the King's feet in his lap while he dined, acting in the meantime as a 'masseur'. The porter was the gaoler and made Welsh rabbit for the King, besides lighting the fire and providing the palace with straw. The watchman kept guard at night, and so on through the multifarious domestic services which even the primitive palaces of the Welsh princes required to be performed.

§ 7. The remuneration and perquisites of all the officials are given. Most of them were provided with free horses, most also held free land, and all practically were supplied with free clothing, linen by the Queen in summer and woollen by the King in winter.

Each person's share of rations and of liquor is regulated in detail. Liquor seems to have been liberal and almost unstinted in most cases, but the falconer was limited to a modest consumption of three horns-full of mead in the palace and another three horns-full in his lodgings per day, roughly some six quarts of the strongest brew daily, lest his birds should suffer in case of his intoxication.

Many of the officers got fees from causes; some, like the *Penteulu*, got a fixed salary in addition to his perquisites; some were entitled to circuits among the King's subjects; and every one had his proportionate share in the spoils of war, the national pastime of the ancient Welsh.

Of special interest are the priest's tithes, levied not on land, but on salaries and perquisites, the doctor's scale of fees, the candle-bearer's right to the ends of all wax-candles which he bit off, the usher's share in all intestate estates, and the varied rights of different servants in the skins of animals.

§ 8. The lodgings of the servants and others are likewise regulated.

The Edling slept in the hall with the youths of the body-guard; the priest in the chaplain's house; the Penteulu in the largest abode of the royal town; the falconer in the barn along with his birds away from all smoke; the huntsman in the kiln-house, and so on; and to each person a right to grant protection to a specified extent is accorded, a breach of which was an insult to him who gave the protection.

To describe in detail all these incidents would be endless and profitless, but enough has been said to show that the royal entourage was minutely and carefully regulated.

It may be added that the rights and privileges of the royal court extended not only to the place where the King personally was, but to wherever the priest, the steward, and the judge might meet together, that is wherever religion, justice, and administration were present together.

§ 9. Outside the actual Court officials three royal officers have been referred to.

There were the two district administrative officials, the 'maer' (known later as the 'raglot'), and the 'canghellor'. Each 'cymwd' or 'cantref', which was the unit for administration and justice, had a 'maer' and a 'canghellor' (=Lat. *cancellarius*), who, between them, were responsible for representing the King within the 'cymwd', and who carried out all necessary executive acts.

They arranged for the meeting of the judicial courts, entertained plaintiffs, looked after the King's estates, saw to the collection of the revenue, settled the camping grounds and lodgings for the different 'circuits', and in fact did any and everything incident to administration. They had a subordinate staff of four servants and a 'ringyll' or beadle. No head of kindred could be a 'maer' or 'canghellor'; these officers might have to represent the King in a contest between a clan and the King, and no one could occupy both positions.

They must, however, be freemen of the highest dignity. The Canghellor was invested with the insignia of a gold ring, a harp, and a chess-board, and both officers were remunerated by a number of fees and perquisites, some of which came from

the King's waste, which could not be alienated so as to deprive them of their dues therefrom.¹

The third officer of whom passing mention is necessary here was the land-'maer', who was invariably an 'aillt' or unfree man, an officer who regulated the work of the King's demesne or 'maerdref', with regard to which we shall have more to say in later pages.

§ 10. In the Norman Surveys we find a much more numerous body of administrative officials, but the laws are silent in regard to them. Some of them may have come into existence under the later princes, but the greater portion seem to have been of Norman origin, and therefore outside the scope of the present inquiry.

¹ V. C. 188; D. C. 488; G. C. 672.

V

THE BONHEDDIGION OR FREEMEN

Definition in the Laws.

1. *Definition of Boneddig.*

§ 1. The second grade in the society of early medieval Wales was that of the innate 'boneddig', the man of pedigree, or free Welshman.

It has been noted already that the status of the freeman was primarily contingent upon birth and blood.

The three Codes are succinct and emphatic as to what constituted a freeman.

'An innate "boneddig",' says the Venedotian Code, 'is a person who shall be of entire Welsh origin, both by the mother and the father,' and in the two other Codes it is said that 'he is a Cymro by father and mother, without bond, without foreign, without mean descent (*lledach*).'¹

The strict letter of the law, though it was modified in some particulars, confined 'freedom' to a person of pure Welsh descent. Every one else was subject to liabilities and disabilities to which the freeman was not subject.

§ 2. It must not be supposed that freedom was the antithesis to slavery in the modern sense. Slaves there were in Wales, as in all early societies, but all non-freemen were not slaves; far from it.

The word 'freedom' connoted simply a definite status in society, a status involving certain duties and certain privileges, which could be acquired, according to the strict letter of the law, only by pure descent. Persons who had not free status had another status in society, with duties and privileges incident thereto, different from and lesser than those attached to the status of the free.

§ 3. In this organization by status Wales differed in no way from other communities. In Ireland, in England, in

¹ V. C. 178; D. C. 508; G. C. 694.

Scotland, in Rome, among the Teutonic and Scandinavian tribes there was a similar organization, differing in many details, but in essence the same.

At one time or other it would seem that free status in every community depended theoretically upon birth.

Each society invented its own legal fictions whereby the line between the different grades of society could be crossed, upwards and downwards, and whereby a man could descend or ascend from the status in which he was placed by birth.

§ 4. One of the great advantages of the Welsh Laws, in portraying 'freedom', lies in the fact that the free status of society was a living thing. 'Freedom' was the status of the majority of people in Wales; it was not, as it had become in England, among the Teutonic invaders of the Empire, and, so far as we can judge, even among the Irish, the status of an aristocratic minority, but the status of considerably more than half of the Welsh people. This will be apparent from the geographical distribution of the free and the unfree. We find, therefore, in handling the Welsh Laws, that we are in touch with a living system, and not, as in the Anglo-Saxon Laws, with the survivals of a system which was beginning to decay even as early as the seventh century.

2. *Similar class in other systems.*

§ 1. We find the division of society into free and non-free in early Rome—the division into the 'populus' and 'plebs', the former apparently representing the indigenous Roman populace, the latter the accretions to the original inhabitants. The social history of Rome is largely that of a majority striving to attain to fuller rights of citizenship than the laws accorded them.

As the Empire spread, the 'plebs' attained to greater and greater power; a modified citizenship was accorded to the Latin 'colonarii', and, by the Jus Italicum, to people not of Roman blood. Throughout there was a very considerable body of 'coloni', of serfs 'adscripti glebae', and of common domestic or agrarian slaves. Citizenship was eventually accorded to the majority under the levelling influences of Christianity.

§ 2. We have already quoted the extract from the Anglo-

Saxon Fragment on Ranks, which plaintively tells us what was the organization of the English 'whilom', as if the author recognized that he was dealing with a state long past; we find also, in the laws, constant references to the distinction between men of Saxon blood and those who were Wealhas, indicating that, at one time or another, blood and birth formed the dividing line between those who were free and those who were not. At the same time the Kentish and Wessex Laws leave no room for doubt that an aristocracy of landowners had grown up, the overwhelming majority of the cultivators of the soil being manorial serfs; and that possession of goods and not blood and birth had early become the test of a man's status. How far this process had been carried by the time of the coming of the Normans may be judged from the fact that, in Domesday Book, there are over 200,000 unfree men holding land, while the total of the freemen of England was only 35,000, practically all of them in the Danish districts. As all freemen held land it is impossible to determine what percentage the free bore to the unfree, holding and not holding land.

§ 3. Similarly, in the various Germanic Laws, we find a distinction drawn between men of the blood of the tribe, Frank, Lombard, Burgundian or what not, and those not only who were of distinct origin like the conquered Romani, but even those who were of cognate origin to the particular tribe whose laws were laid down. At the same time we can see clearly the limitation of full citizenship to a select few and the debasement of the majority, even of men of full tribal blood, to the status of serfs; coincident, in some cases, with a rise of the original non-tribal elements to a status equivalent to that to which the free tribesmen had been debased.

§ 4. In the Irish Laws, also, we come across distinctions between men of free blood and men who were not of free blood; but on this matter the Irish Laws are sometimes confused.

Nevertheless they are very distinct in insisting on the fact that it was possible for any one to rise in rank, and that a man's status depended to some extent at least upon himself.

The Small Primer (V. 21) says clearly that a man can be better than the man from whom he sprang, and many methods of rising in rank are indicated.

The acquisition of learning was one; becoming a priest; the acquisition of smith craft and other arts were others; the amassing of possessions was still another, with its concomitant that loss of property entailed degradation.¹

'All men are "saer-men"', says the Small Primer (V. 19), 'by their goods, they are "daer-men" by their lips. Every one is a "saer-man" from whom goods are received in "daer-stock", every one is a "daer-man" who takes these unto himself.' The principal test, in fact, in Ireland, was whether a man had gathered to himself sufficient cattle to justify him in letting them out as stock to others.

A 'saer-man' could sink to the status of a 'daer-man' by selling his land, his property, or self into servitude; while a 'daer-man' could rise by 'purchase of land, law, nobility of art, husbandry, and talent'; while the 'brewy' could attain to chieftain status by acquiring double the property possessed by a chief.²

§ 5. Naturally none of these systems are anything like so clear as are the Welsh Laws as to what constituted free descent, nor as to how the free were organized socially; and they are often only understandable by comparison with the similar institutions in Wales.

The consideration of this organization must be our next step, and it introduces us to the vexed question of the exact interpretation of how the tribal system, the system of kin-connexions, operated.

¹ Small Primer, V. 15; Book of Aicill, III. 107; Corus Bescna, IV. 31.

² Small Primer, V. 21, 77.

VI

THE BONHEDDIGION

Explanations of their tribal and kindred organization.

1. *Introductory.*

§ 1. In none of the survivals of early customary law does there exist anything like the same quantity of material relative to the organization of the tribal system, as there exists in the Welsh Laws and the Extents and Surveys of the fourteenth century.

The laws, as it has been said, deal not with a system which had passed away or was passing away, leaving only detritus behind, but with a living organism ; and the Surveys portray that living organism, before it began to disrupt to any appreciable extent, operating in connexion with the land and the revenues and dues from the land.

§ 2. Nevertheless the interpretation and explanation of that system has given rise to varied, and in some cases unsatisfactory, accounts.

Until recently at any rate the popularly accepted view of the Welsh social organization was that which is principally identified with the name of Dr. Seebohm, and which was propounded by him in his Tribal System in Wales, and his Tribal Custom in Anglo-Saxon Law.

2. *Views of Dr. Seebohm.*

§ 1. The important passages in Dr. Seebohm's works, which summarize his conclusion, run as follows :

'The innate "boneddig" . . . belonged to a kindred (*cenedl*). And the Cymric tribe or nation was a bundle of such kindreds bound together by common interests and frequent inter-marriages, as well as by the necessity of mutual protection against foreign foes. . . .

'The whole tribe or federate country under the King was regarded as the supreme kindred. . . .

'Confining attention at present to the lesser kindreds, the kindred proper, which was an organized unit, having its own chief of kindred (*pencenedl*) and other officers, was the kindred

embracing the descendants of a common ancestor to the ninth degree of descent.

'He, the "pencenedl", was assisted by other officers. The Gwentian Code mentions as indispensable the representative (*teispan tyly*), the avenger of the kindred (*dialwr*), and the avoucher (*arddelwr*). . . .

'To sum up the evidence, it would seem that the kindred included the descendants of a common ancestor to the ninth degree, and that this kindred was bound together, not only by the tie of common ancestry, but also by the tribal relation of each one of its members to the Chief of Kindred. . . .

'Associated with the Chief of Kindred and acting as his coadjutors were the seven elders of kindred. . . .

'The Denbigh Extent has made us familiar with the group of descendants down to the great-grandchildren or the fourth degree of descent holding together as a tribal unit of occupation under the name of the "wele" of the common ancestor. . . . Here then is an important line or limit marking a distinctive grade of kinship and inclosing as it were a distinct group of kinsmen, embracing great-grandchildren or second cousins. . . .'

On the assumption that the one time head of a 'wele' was dead, Dr. Seebohm further states :

'Presumably the shares of the sons in the kindred were again called "weles", and so also of the grandsons, if, by the death of their fathers, they had become heads of households. But in cases where the parent was alive the sub-shares of children, according to the custom of gavel-kind, were apparently not called "weles" but "gafaels".

'Passing now from the definite grade of kindred confined to the fourth degree or second cousins, it is at first sight more difficult to comprehend exactly the meaning of the middle grade of kindred, that is the grade extending to the seventh degree of descent or fifth cousin.'

Referring to the same view in his Tribal Custom in Anglo-Saxon Law, p. 23, the author writes :

'Viewed in its simplest, and perhaps earliest form, it (the *wele*) was a family group of four generations, the landed rights of which were vested in the great-grandfather as its chieftain.'

§ 2. It is always difficult to summarize the conclusions of any writer without referring to the authorities quoted on which those conclusions are based, and, in giving material extracts, there is always a risk that something of great importance may be omitted.

It is believed, however, that the following summary fairly represents Dr. Seebohm's conclusions.

Welsh society, he appears to maintain, was organized in three separate grades of kindred, the lower, the middle, and the larger.

The larger grade, to which the name 'cenedl' was applied, consisted of persons related to one another by descent from a common ancestor in the ninth degree on the male side only. Every free Welshman belonged to a unit of that nature, and the whole of the Welsh people consisted of a bundle of such 'cenedloedd'.

Such units were definite organized self-governing entities, under a single head termed the 'pencenedl', who was assisted by a group of officers, including the 'teispantyle', the avenger, the avoucher, and the seven elders of kindred, and formed the 'tribes' of Wales.

The middle grade, to which no specific name is attached, consisted of persons related to each other in the seventh degree; but, inasmuch as that grade included persons descended through females as well as through males, it is difficult to define its place in connexion with the tribe, of which, however, it was some kind of subdivision.

The lower grade, to which the term 'wele' or 'gwely' is applied, consisted of males descended in male descent from a common great-grandfather, i. e. males related within four degrees. Every 'cenedl' consisted of a number of 'weles'.

Such groups were primarily joint land-holding entities, and the land so jointly held was termed 'gwely-land'. If the land were divided between the sons of the common ancestor in the latter's life, the division was said to be into 'gafaels' named after the sons, which, on the death of the common ancestor, became themselves new 'weles'. Dr. Seebohm's view, therefore, is that Welsh society was organized into three ascending groups, the 'gwely', the seven-generation group, and the 'cenedl', each being mutually exclusive of all other 'gwelys', seven-generation groups, and 'cenedls'; and, as each generation died out, there came into existence automatically new groups of the same type.

Consequently no person could belong to exactly the same

'cenedl', seven-generation group, or 'gwely' as his father before him did; and hence 'the tribal system was always forging new links in an endless chain, and the links of kindred always overlapped one another'.

It may be stated briefly here that in propounding this system Dr. Seebohm relied very largely upon the spurious Triads of Dyfnwal Moelmud.

§ 3. These views of Dr. Seebohm's have been adopted by Prof. Rhys and Sir J. Brynmor-Jones in the *Welsh People*, and by a recent writer, Prof. W. Rees, in his very valuable book on *South Wales and the Marches*.

The real founder of this school was, however, Hubert Lewis and not Dr. Seebohm.

3. *Views of Mr. Hubert Lewis.*

§ 1. Hubert Lewis (whose valuable contribution as a pioneer in the study of Welsh Law is perhaps not adequately appreciated) recognizes the difficulties of the view and makes some effort to explain them away.

In Chapter IV of his 'Ancient Laws of Wales' he writes:

'When the family (or *gwely*) ceased to be jointly interested in the common patrimony it did not cease to be an organized community for other purposes. It was a "cenedl" or kindred under a "pencenedl" or chief of kindred. . . . This larger kindred included that which, for purposes of maternity, was also called a kindred, namely . . . the family to the fourth generation . . . but it extended beyond it to the ninth kin or ninth man. . . . As to the larger limit of the kindred we have it distinctly traced. [Here Hubert Lewis relies entirely on the Triads.] The "pencenedl" had certain functions of control, instruction and representation over chiefs of households within the limits of the kindred unto the ninth kin or stock (*ach*) and degree of affinity, and he was himself to be the oldest efficient man in the kindred to the ninth stock or kin, and was to be assisted by (1) a "teispanteulu" . . . and (2) by seven elders or wise men. . . .

'The kindred then only included the family to the ninth degree of affinity.'

Mr. Lewis argues, but it is unnecessary to follow him in this, that the ninth 'ach' was equivalent to a seven-generation group. He ultimately proceeds to discuss the functions of the 'pencenedl' and the *Penteulu*, and elsewhere (pp. 114-15, 307-8) accepts the 'teispantyle', the

seven elders, the 'arddelwr', and 'dialwr' as officers of an organized kindred, relying mainly in respect to them upon the Triads.

§ 2. Mr. Lewis candidly recognizes one of the main difficulties in accepting the view that the 'cenedl' was a body of men related to one another within rigidly fixed degrees of affinity and organized politically and socially under a hierarchy of officials.

He writes (p. 90) :

'It must be confessed, however, that there are some things relating to the organization of the kindred which are rather obscure. If we imagine a family or several related families, composing a kindred under one common chief, making a new settlement in a new district, we can see that it might be several generations before the seventh or so-called ninth from a common ancestor passed away, and so long they would form one "cenedl", with several "pencenedls" succeeding one another. But when the eighth generation from the common ancestor was reached, immediately they would split up into as many new "cenedls" as there were sons of the common ancestor, each man of such eighth generation being in the seventh from one such son. But on the death of all of that generation again divers new "cenedls" would be formed, each tracing descent from the several grandsons of the common ancestor of all and so on. And thus in fact in a long-settled community a "cenedl" would last for one generation, and yet we read of the representative and seven elders handing on the records of pedigrees, &c., to a new "pencenedl" on the death of the former one.

'The two things are not absolutely inconsistent. There might be several such changes by death in one generation, seeing that the "pencenedl" was to be the oldest man. . . . Thus supposing a kindred to have started a new settlement, there would soon arise new kindreds within the original kindred, each with its own head, all under the chief of the whole kindred.'

§ 3. The explanation is no explanation, for if the 'cenedl' were, as it must have been under the assumed organization, confined ultimately to men of one generation—even if we could imagine all men descended from a common ancestor in the ninth degree being contemporaries and not, after such a lapse of time, being born many years apart—it must eventually dwindle down to one individual, the last survivor of the men descended from a common ninth ancestor,

himself the 'pencenedl', 'teispantyle', the seven elders, the avoucher, the avenger, and the complete 'cenedl' all in one.

Mr. Lewis really concedes that the 'pencenedl' was an officer of a more or less continuous entity, that the nine-generation group, as formulated, was not such an entity, and he attempts to meet the difficulty by a suggestion which mitigates, but does not explain; finally proposing as a solution that there were two grades of 'pencenedls', the one ruling over a constantly varying number of nine-generation groups, the other, to whom the first were subordinate, over a loosely organized but nevertheless continuing tribe or kindred.

4. *Views of Prof. J. E. Lloyd.*

§ 1. Prof. Lloyd adopts a view of a partly similar character, but one much more restricted and having very material points of difference, because he rejects the Triads. There seems to be some trace, however, in his exposition, of the theories of the Triads.

He writes : ¹

'The "cenedl" was the kindred or clan, extending far beyond the household or family, but not to be confounded on the other hand with the larger community formed by the people or tribe. . . . It was the body of kinsmen descended from a common ancestor, who, recognizing their relationship, acted in concert in all family matters, such as giving in marriage, acknowledging sons, and above all waging the family feuds and ending them by the payment and receipt of compensation. The unity of this body was maintained by the agnatic principle; the kinship, that is to say, which bound it together was reckoned exclusively through males, so that a man could only belong to one "cenedl", which did not include his wife, his mother, or any maternal relative. . . . The "cenedl" was further limited by being confined to kindred within a certain degree of relationship. The fifth cousin (in Gwynedd the sixth) was, at least for matters of the first importance, the outside man; "beyond that degree", the lawyers alleged, "there could be no computation of kindred". . . . The "cenedl" was so far organized as to have regular officers. . . . Of these officers the chief was the "pencenedl". . . .'

Referring later ² to the land-laws he says :

'Thus arose a subdivision of the "cenedl", the group of

¹ History of Wales, Vol. I, pp. 284 et seq.

² Ibid., p. 300.

men descended in the male line from a common great-grandfather: they could inherit from each other in default of issue and formed the body which it was necessary to consult before any part of the land . . . could be disposed of. . . .'

§ 2. Prof. Lloyd, it will be noticed, differentiates clearly between the tribe and the seven-generation group. The term 'cenedl' he confines to this latter organism, and he makes it similar to Dr. Seebohm's nine-generation group, which the latter distinguishes from his seven-generation group. He, however, insists that the 'cenedl', or group claiming descent from a common ancestor in seven degrees, was strictly agnatic.

Prof. Lloyd rejects the alleged officials given by Dr. Seebohm, but ascribes to his group some functions of self-government. This seven-generation group is made, to all intents and purposes, the unit of society, within which there was a smaller group of men related agnatically in four degrees, which seems to be identical with the 'gwely' of Dr. Seebohm, but to which the term 'gwely' is not applied. No mention is made of the 'gafael', and presumably Prof. Lloyd rejects Dr. Seebohm's view that the 'gafael' was a subdivision of the 'gwely'.

It suffices to note for the present, in regard to part of this view, that it is doubtful if the bond of kinship in seven degrees had anything to do with the disposal of women in marriage. It seems to have been confined to matters of blood-fine alone, a matter wherein the maternal and paternal kinsmen were concerned. Further, nowhere in the laws (and Prof. Lloyd excludes the Triads from consideration) is it said clearly and unmistakably that the 'pencenedl' was the head of a body of kinsmen related one to the other in the seventh degree.

5. *Prima facie* objections to these views.

§ 1. There are, in addition to the crucial difficulty which Hubert Lewis tried to face, many *prima facie* objections to the acceptance of these views, which have all, in spite of differences of details, one common ground, viz. that Welsh society was organized into mutually exclusive groups or 'cenedloedd' limited by degrees (seven or nine) of relation-

ship, that these groups were each ruled by a 'pencenedl' with a staff of officers, and that they each survived but for a generation.

§ 2. We may indicate the sort of *prima facie* objections, which appear in themselves to destroy the fabric created.

(i) The laws are clear that the body over which the 'pencenedl' ruled did not end with the generation to which he belonged. There was a succession of 'pencenedls' in an organism which lasted beyond a particular generation. The post was closed, e.g. to the descendants of any one coming into the 'cenedl' by virtue of maternity for three or four generations, implying clearly that, when a man came into a 'cenedl', that 'cenedl' continued for some generations after him.

(ii) Under the law of affiliation an accepted son was received into his father's 'cenedl'; if rejected he went into his mother's 'cenedl'. How could he possibly be accepted into either of these 'cenedloedd', if it were composed exclusively of persons related to each other in the ninth degree? A man must be related in the tenth degree to such persons as were related to his father in nine.

(iii) In the law relating to the levy of the 'spear penny' there was a special procedure, termed the 'enquiry as to stock',¹ when there was a question whether the persons on whom a demand to contribute was made were related to the murderer in the eighth and ninth degree. Such procedure would have been unnecessary if all persons related in the ninth degree fell automatically into a rigid fixed self-governing unit; for every one would know, from the hour of his birth, to what group a man belonged.

(iv) Women would have practically no place in a system of this kind, and would be outside the 'cenedloedd'. The system formulated overlooks the cognatic view of relationship, which was clearly and distinctly entertained.

It is not proposed, however, to differ from the views of Dr. Seebohm on such grounds only, valid and forcible though

¹ Mr. T. Lewis, in his Glossary of Welsh Mediaeval Law, defines 'cyfarch cyfyll' as 'complete enquiry'.

they may be ; but to examine the facts as we have them, and to deduce therefrom what seems to be a truer explanation.

6. *Views of Prof. Vinogradoff.*

§ 1. Before examining the facts, however, it is necessary to state the views of a school, differing in many essential points from the preceding views, which is identified with the name of its principal exponent, Prof. Vinogradoff.

His views are to be found in his *Outlines of Historical Jurisprudence*, Vol. I, Chap. VIII, and in his *Introduction to the Survey of Denbigh*, part of which is reproduced in the first-mentioned work.

In his *Outlines of Historical Jurisprudence* he deals first with the broad characteristics of the tribal organization in all so-called Aryan communities ; in his *Introduction* he deals primarily with an interpretation of that organization as observed by Norman lawyers in Western Denbighshire in the early part of the fourteenth century.

§ 2. In the former he writes :

'The most profound difference between modern and ancient organization consists in the fact that modern society starts from individuals and adjusts itself primarily to the claims of the individual, whereas ancient society starts from groups, and subordinates individual interests to the claims of these groups. . . .

'The necessary political elements . . . were distributed among formations which we regard now from the point of view of private law ; (such as) . . . kindreds.

'The organization of kinship . . . is . . . dependent on the manner in which relationship is constituted in primitive societies.

'Of the three possible methods of treating relationships, the agnatic, cognatic, and totemic systems, we have to reckon . . . only with the first two. . . .

'There is a marked tendency (i.e. among Aryan communities) towards agnatism. . . .

'By the side of the principal ties of relationship, which start from a patriarchal household and spread out in the ramifications of agnatism, the Aryan nations recognize in a lesser degree the value of relationship through women. . . .

'There arises a dualism of relationship, on the side of the father (the spear), and on the side of the mother (the spindle). . . .

'If we proceed one generation further we have to reckon with an alliance of four families in the ascending line, because

the descent from four grandparents converges in the case of every individual. . . .

'The Germanic conception of the "sippe" came to be applied to relationships on both sides, through males and females, although there are clear traces of an earlier arrangement on strictly agnatic principles. . . .

'The stream of feeling of union naturally diminishes with the remoteness of the degree of kinship. The further two persons are apart from each other in generation and household, the less powerful will be the bond of union between them, and we must, therefore, expect that in all systems of relationship it will be necessary to recognize certain concentric circles within which the rights and duties of relations are more or less intense. . . .

'The conclusion to be drawn from all these examples is that, even in cases where the blood tie is recognized, relations are organized according to households, so that cognation appears as the result of an alliance between patriarchally organized families. The "stirps" consisted of descendants of one particular household ; it could be the house of the father or mother ; but it could also be the house of an uncle or great-uncle. . . .

'In its wider application relationship became kinship. . . . Let us notice the material difference between a kindred and a clan. The latter embraces only agnatic relations ; it is based on the idea of the ever expanding household, and agnation is the fundamental principle which creates and maintains it. In the kindred, on the other hand, cognation is admitted as a concurrent conception. . . . In innumerable cases the two formations overlap, as it were, and combine in all kinds of compromises suggested by utility. . . .

'(In the clan) all members of the clan traced their pedigree from one original household and all regarded themselves as having a share by right in the territory held by the collective body of the clan. . . .

In dealing with the manifestations of the Welsh organization in the *Survey of Denbigh*, Prof. Vinogradoff writes as follows :

'In the surveys of the "cantrefs" of Rewaynok (Rhufuniog) and Roos (Rhos) we find that the kindred appears as a rule to be differentiated into smaller units—the "wele" (*lecta*) and the "gavells". There was no strict line of demarcation between these different terms.

'In general, the terms "wele" or "lectum", meaning literally "bed", might be rendered by the expression "stock", and we can hardly go far wrong in assuming, on the evidence of the Welsh Laws, that the term was usually applied in Welsh tribal custom to the descendants of a common father, grandfather, or great-grandfather. Up to that point a close

community of interests was maintained, not only as against strangers, but also as against more remote relations of the same kindred. . . .

'It must not be supposed that "progenies" and "lectum" are simply interchangeable terms. . . . On the whole, however, a general correspondence appears between the two units of organization in regard to rights of property. Thus we find that the co-parceners of a "lectum" appear as members of the same society of owners in various villages where the stock has rights of property . . . but, by the side of such cases, we naturally find others in which the "lecta" broke up into differentiated settlements in the process of occupying and reclaiming land. . . . In such cases the natural thing would be to speak of the "lectum" as broken up into "gavells". . . . It may seem at first sight that the "gavell" was merely a subdivision of the "wele", and it was in fact so treated by Seeböhm. But it seems that the expression was really used on a different plane. If "lectum" roughly corresponds to the English "stock", "gavell" might be appropriately rendered by the English "holding". . . . What is evidently meant is the territorial basis of the kindred's right, i. e. its holding or estate.

'But the term is constantly employed . . . for the specific holdings among which the possessions of a "kindred" or "wele" are distributed. In this case the "gavell" may be considered in two aspects, either as the closest and narrowest circle of blood relations holding in common, or as the territorial basis of their holding.'

§ 3. With much of what is stated by Prof. Vinogradoff that which follows is in accord. In some points of detail, e.g. in the exact connotation of 'gafael' there is some divergence, but in the main the conclusions arrived at are in agreement with those expressed by Prof. Vinogradoff.

This is particularly so in the recognition of the operation of the cognatic view of relationship as having a definite place in Welsh custom and in the refusal to allocate to the term 'clan' any definite mathematical limitation.

It is taken that, in such references as are made by Prof. Vinogradoff to the fourth and seventh degrees, he does not mean to imply that the 'cenedl' and the 'gwely' were composed solely of persons descended from a common great-great-great-grandfather or a common great-grandfather, and in that case there is little divergence of view in what ensues.

The form of expression is, however, materially different, and the examination of the facts proceeds on different lines.

7. *Summary of conclusions.*

§ 1. Before considering the facts, which have now to be examined in considerable detail, it is necessary to state very briefly the conclusions to which such consideration will lead.

In doing so before the evidence is stated and weighed it will be possible to appreciate the line of argument followed.

§ 2. The first point which it is desired to emphasize is that in the use of such words as 'tribe', 'clan', 'sippe', 'maegth', 'cenedl', 'gwely' and the like, early society was not using definite mathematically limited expressions.

These words, though to the mind of the person using them they conveyed a definite meaning and expressed facts, were really words connoting conceptions rather than clear definable organisms. When an attempt is made to define them in the exact form which modern definitions demand we find that they are elusive and escape definition, and yet we realize fully that to the person originally using them they conveyed a distinct conception.

For instance, the words 'maegth' and 'cenedl', which express very much the same idea, cover different concrete facts at different times, and yet on all occasions there is one underlying conception uniting the different concrete facts expressed by the term.

The application of the word 'maegth' or 'cenedl' to different concrete facts presents, as it were, different facets of the same conception.

§ 3. The underlying conception of all early communities is that of 'relationship' or 'family'. The modern terms 'relationship' or 'family' convey a very distinct conception or set of ideas; they convey a sense of connexion by blood, but they are quite incapable of exact invariable mathematical definition, and the use of the terms will cover any quantity of different concrete facts and will admit, if so applied, of the inclusion or exclusion of both agnatic and cognatic ties.

So it is with the terms used in early custom, which connote the sense of relationship or family. They are indeterminate in the sense that they are and must be invariable in their meaning.

§ 4. Though, however, the terms are indeterminate in

the sense that they cannot and do not convey an invariable meaning, they do nevertheless convey the sense of concrete facts, varying from time to time.

As applied to organisms these terms convey a sense of varying relationships. The widest organism which we find in tribal societies is that which can, in modern language, be best designated 'the tribe'; a body of persons, undetermined by any limitation of degrees, conscious, however, of some unity based on blood ties, real or assumed. In a purely agnatic society, members of a tribe would find the common tie in descent from some real or assumed common male ancestor; but in early Europe tribes were not purely agnatic and they embraced people with no demonstrable blood tie, people related agnatically, people related cognatically, people absorbed by conquest or by some fictitious expedient or otherwise, tending to find their common tie more by linguistic and geographical connexions than by a blood one, but maintaining always the belief in some blood unity.

Below and within 'the tribe' and yet always liable to develop into new 'tribes' within the tribe and even separate from it, we find lesser organisms, to which the term 'clan' can be most conveniently applied. In Western Europe and in Wales the 'clan' within the tribe was nearly always 'agnatic', that is it traced descent from some common male ancestor or founder, less remote than the common ancestor of the tribe. Cognates or strangers might be admitted into a 'clan', but the conception of a 'clan' was that it was a body of relations bound together by descent from a common male ancestor and acting in concert for many purposes. It included not only males descended from a common male ancestor but females likewise descended.

As clans grew or spread outwards they tended to throw off sub-clans tracing descent from some less remote ancestor than the ancestor of the clan, and these sub-clans might in time, as effective organisms, break away, wholly or partially, from the original clan to which they had belonged, becoming independent clans, still, however, frequently retaining a sense or knowledge of their original clanship and remaining within

the original tribe. No mathematical rule governed these diffusions: they were governed by economic and the like considerations.

The more nearly related the members of these clans or sub-clans were, or the more vividly they preserved the knowledge of their unity, the more closely were their economic interests bound together.

Within the clans or sub-clans again were the ordinary households, the ordinary test of which was a marital union, separate habitation, and the possession of a family of children.

§ 5. To each and all of these organisms we frequently find the same word applied, the underlying common connotation of which was relationship, which might at different times be of a tribal, clan, sub-clan, or household character.

§ 6. Across this system of organisms within organisms, not one of which was necessarily limited by any fixed degree of relationship, but which, from the clan downwards tended to be agnatic, there were two other conceptions existing, described by the very same terms denoting relationship as were applied to the organisms of the tribe, clan, sub-clan, or household. The same generic phraseology was used to describe these other conceptions, because there was involved in them a similar sense of relationship.

§ 7. The first of these was the cognatic relationship.

In Western Europe a woman, even when married, always remained of the sub-clan or clan into which she was born. She passed into her husband's family for some purposes of protection and status; but she retained the clanship she possessed before marriage, and did not pass, as in Rome, into the *patria potestas* of her husband or husband's father.

Her children, generally speaking, belonged to the clan of their father, but this did not involve the ignoring of the cognatic relationship between them and their maternal relatives.

That cognatic relationship was preserved intact and involved certain rights and duties, and was expressed frequently by the same generic term, implying relationship, as was employed to designate the tribe or clan. Where there was any differentiation between agnatic and cognatic relationship, it was expressed not in any alteration of the

term implying 'relationship', but by qualifying that term with adjectives denoting 'paternal' and 'maternal'.

The consequence was that every person had rights and duties due from or to both his agnatic and cognatic relatives, and such rights and duties were expressed as being due from or to those bound to him by 'relationship'.

§ 8. None of these conceptions of relationship, whether agnatic or cognatic, was limited by any invariable degree of relationship. It might be that a clan or a sub-clan consisted, as a matter of fact, of persons related to one another in seven or four degrees or, for the matter of that, in any other determinable degree, but limitation by degrees was not a necessary factor in any organism.

§ 9. At the same time we find the fact that relationship in nine, seven, and four degrees was a matter of considerable importance. The exact functions of these limits, which were sometimes reckoned agnatically, sometimes cognatically, we will observe as we proceed. To these relationships, restricted by degrees, we find exactly the same generic term applied as is applied to the organisms of the tribe, clan, &c.

These limits of degrees, which, in some particulars, bounded the rights and duties of an individual due from or towards his agnatic or cognatic relations had no necessary connexion, as we have said, with the organisms of the clan or tribe. They might overlap such organisms, but they were limits of relationship calculated from the standpoint of each and every individual.

To use Prof. Vinogradoff's striking phrase, they formed 'concentric circles'; but they were 'concentric circles' of which each individual was the centre, and the 'concentric circles' varied with each individual, though those of one might partly overlap those of another to a considerable extent; but in no case could the 'concentric circles', which included cognates, of two individuals be identical unless they were full brothers.

This cross-current of ascertaining, for specific purposes, a person's relations within defined circles or degrees of relationship is referred to hereafter as the system of 'com-

putable relations'. It was distinct from, but existed side by side with, the system of tribal or clan organisms, just as the conception of cognatic relationship existed side by side with the conception of agnatic relationship.

The way it would present itself to a tribesman of old would be thus. He would not say that so and so was related to him in the fourth, seventh, or ninth degree through one of his eight great-grandparents and so on, but he would say that so and so was of the line or household (agnatic or cognatic), of one of those eight great-grandparents, and was therefore of kin to him. He would be computing his own relationship to another, but would express the fact in terms of stock or kinship.

§ 10. One of the chief differences between the survivals of early Welsh Law and early Anglo-Saxon Law lies in the fact that the system of tribes and clans was a vital factor in the former, when it had died out in the latter; but, though such organisms had become almost extinct in the latter, the system of 'computable relations' survived in England till long after the Norman Conquest almost as clearly as it continued to exist in Wales.

§ 11. With this general statement of what appears to have been the organization of society throughout Western Europe in that which is termed the tribal period we may now state in tabular form the conclusions which a detailed consideration of the evidence in Wales will ultimately lead us to.

(i) The term 'cenedl' had in Welsh Law no uniform meaning: its fundamental connotation was 'relationship' or 'kinship', and as such was used on different occasions in the sense of tribe, clan, and sub-clan, and to express different grades of relationship or kinship.

(ii) While the 'pencenedl' was a definitely recognized personage, none of the other so-called 'officers' of the 'cenedl' had any existence in the genuine Welsh Laws.

(iii) The Welsh Laws have little to say about the 'tribes', for the reason that the law deals with legal rights and obligations, and the legal rights and obligations incidental to 'tribal' membership were few. Tribal rights and obligations were social and military rather than legal.

(iv) There existed in Wales a number of 'clans', which, though liable to disruption for economic and other reasons, continued in many cases through several generations. They did not automatically terminate and split up into new clans with the extinction of every generation. Such clans, to which the term 'cenedloedd' was applied, had chiefs or 'pencenedls', the 'pencenedls' referred to in the laws.

(v) Such clans, though the members thereof had a real or assumed common descent, were not contingent upon relationship in any specified degree; there was nothing to prevent them, so far as law was concerned, continuing for a hundred generations, there was nothing to prevent them becoming extinguished or dissolving into new clans in less than seven or nine generations.

The 'clan' or 'cenedl' to which a man belonged was ordinarily that to which his father belonged, and, subject to special exceptions, membership of a clan was dependent on male descent.

Though free Welshmen belonged to clans or 'cenedls', it was possible for a man to belong to a clan without a 'pencenedl'.

(vi) The ties of computable relationship between persons descended from a common 'stock', agnatically or cognatically, and related in four, seven, or nine degrees were real and important factors in Welsh Law and society; but there was no grouping of men so related into any organism.

Such ties created connexions, viewed from the standpoint of and varying with each and every individual, upon whom he could call for assistance in definite circumstances and to whom he had to render assistance when called upon, and in respect to whom he had certain rights, duties, or claims. Such connexions, expressed in terms of 'stocks', were also termed the 'cenedl' of each particular individual.

(vii) The tie of computable relationship existing between individuals by a common descent in nine degrees was sometimes, but not always, reckoned through males only.

In regard to land it created certain rights of succession or common interest therein, and was then generally confined to males tracing descent through males and so far might be identifiable with membership of a clan; in regard to crime

or tort it involved certain limited duties of mutual support and assistance, and it then included females and persons tracing descent through females, and was then not identifiable with the clan to which an individual belonged.

The tie of computable relationship, existing between persons by common descent in the seventh degree, included, in addition to males, females and persons tracing descent through females, and was concerned mainly with duties of mutual support and assistance in matters of crime and tort. This degree of relationship was never confined to agnates, and was in no way identifiable with 'clanship'.

The tie of computable relationship, existing between individuals by common descent in four degrees, was concerned primarily with the acquisition of and succession to 'priodolder' rights in land, and was ordinarily reckoned through males only, and might be so far identifiable with clanship.

It was also concerned with some other matters, when females and those related through females were included, and in that case it was not identifiable with clanship.

(viii) The term 'wele' or 'gwely' was not confined to an agnatic group of men related to each other by descent from a common great-grandfather, and the term 'gafael' was not a term applied to a division in any such group preliminary to the 'gafael' developing into a 'gwely'.

The term 'gwely' appears to mean an association of people, with, originally, a real common descent traced agnatically but not confined to descent in four degrees, acting together as a joint family, and in respect to land holding it jointly as one unit or having joint interests therein.

The 'gwely' might be, and sometimes was, coincident with the whole 'clan'; a 'clan' might contain, and did sometimes contain, a number of 'gwelys'.

A 'gwely' tended to split up into new 'gwelys', whenever, as time passed by, new economic factors arose, or where, by expansion, the numbers in a 'gwely' tended to become excessive.

It was, in other words, originally an agnatic corporation holding land as a unit, which might continue to hold land

as such unit for uncounted generations: it might dissolve into new 'gwelys', and tended to do so at any time when the proximity of agnatic relationship between its members grew more distant.

The major portion of the people of medieval Wales held land as members of such units.

The term 'gafael' had no connexion with any degree of relationship or with relationship at all. Primarily it meant simply a holding of land, whether of a tribe, a 'gwely', a group within a 'gwely', or an individual.

The Survey of Denbigh sometimes appears to suggest that a 'gafael' was a regular subdivision of the 'gwely'. What seems to have happened, however, was this.

Men in Wales held together, for the purpose of agriculture and pastoral occupations, in units based on agnatic descent. So long as the idea of full communal ownership prevailed in such units, those units survived as 'gwelys'. But within the 'gwelys' bodies of men, related agnatically more closely *inter se* than all the members of the 'gwely' would be, might and did tend to associate together, and to occupy portions or shares of the whole 'gwely' land as unseparated associations within the major association.

The land of the 'gwely' so held in the Survey of Denbigh by minor groups within the major group was frequently described as the 'gafael' or 'holding' of the minor group; and there was always a possibility, rendered effective by the law of 'prodolder', that such minor groups would, in time, break away entirely or partly from the 'gwely' to which they belonged and become 'gwelys' themselves. In such cases the term 'gafael', which implied a subordination of the rights of the group holding it to the rights of a bigger group, would cease to be used, and as soon as the smaller group regarded itself as separate from the original 'gwely', wholly or partially, it would be termed a 'gwely' and its occupied area or share would be termed the 'gwely' land of the new 'gwely'.

Outside the Survey of Denbigh there is nothing to suggest that a 'gafael' might be a subdivision of a 'gwely'. Elsewhere the term is applied simply and solely to the holding of a group of joint holders, and even of a single individual.

VII

THE BONHEDDIGION

The 'Cenedl' in the Laws.

§ 1. We may commence our investigation with considering the use of the word 'cenedl' in the Welsh Laws.

Mutatis mutandis, it is possible to apply to such use the words of Sir Henry Maine, written in connexion with the Irish 'fine'.¹

'The first instructive fact which strikes us on the threshold of the Brehon Law is that the same word—Fine or Family—is applied to all the subdivisions of Irish society.

'It is used for the Tribe in its largest extension, as pretending to some degree of political independence, and for all intermediary bodies down to the Family, as we understand it, and even for portions of the Family.'

§ 2. The word 'cenedl' is found in none of the published surveys. It is found frequently in the Ancient Laws, and in the commentaries contained in Mr. Aneurin Owen's second volume.

§ 3. Nowhere in the Laws, other than in the dubious Triads, with the possible exception of one passage, does there appear to be any trace of the word 'cenedl' being confined to or implying a self-governing nine-generation group.

The sole possible exception is in the XIth Book, p. 450, where it is said that where land has not been partitioned the law of succession is not extinct until the ninth man, 'and thenceforward relations do not form a "cenedl", as the right of "priodolder" is extinct'. The latter part should not be divorced from the context, and, if we read it with the context, the meaning is, not that the 'cenedl' was a nine-generation group, but that the right to succeed to land survived to any one who was related within nine degrees to the last holder, if there had been no partition of the land, and to no one beyond that degree.

§ 4. The identification of the 'cenedl' with a self-governing

¹ Early Institutions, p. 90.

group of persons interrelated in nine degrees is to be found in the Triads of the Social State, 66, 67, 74, 88, 117, 118, 165, and 223, and perhaps in others of these Triads.

§ 5. But the Triads do not confine the word 'cenedl' to such a group. Not only does Triad 169 say that there is only one country and 'cenedl' in Wales as a whole, but the word 'cenedl' is constantly used elsewhere in the Triads in the sense of the Welsh nation, or of the people living together in a common locality united by some tribal bond. That is the sense in which the word is used in the Triads of Carmotes 1, 8, 24, 26, 28, 32, 34, 49, 50, and in the Triads of the Social State 2, 15, 26, 27, 31, 59, 60, 61, 62, 63, 64, 67, 71, 74, 77, 90, 91, 137, 147, 152, 156, 159, 160, 167, 169, 188, 193, 195, 203, 224, 225, 227, 229, and 248.

§ 6. The word is used vaguely, without any clear guide as to its connotation, in Triads like the Triads of Carmotes 2 and 9; and we get frequent phrases like a 'primary cenedl',¹ 'associated cenedloedd',² and 'federate cenedl',³ where the sense seems to be 'tribes', without any assertion that a 'tribe' consisted of persons interrelated in certain degrees.

It is also used in many other Triads as apparently equivalent to an indefinite tribal connexion;⁴ in others as a smaller but not defined kin-connexion;⁵ in others as the body of relations entitled to bestow a woman in marriage;⁶ and in yet others as the body into which a man may be admitted or from which he may be rejected.⁷

§ 7. It is not urged that these references in the Triads prove by themselves that, in the time of Hywel Dda, the term 'cenedl' had not a very precise meaning (to urge that we must look at the early documents), but it is urged that to give the word the precise meaning of a self-governing nine-generation group on the strength of a few references in the Triads which bear that construction, while overlooking the fact that the Triads themselves use the word in widely different senses, is not justified, particularly when we find

¹ Tr. C. M. 28. ² Tr. S. S. 60. ³ Tr. S. S. 60, 170.

⁴ See Tr. S. S. 62, 85, 142, 168, 169, 175, 200, 211, 245, 246.

⁵ Tr. 54, 99, 149, 166, 167, 210, 225, 227, 229, 247.

⁶ Tr. 67, 116. ⁷ Tr. 118, 119, 120, 121, 211.

that the word is never applied elsewhere to such a self-governing group.

If we turn from the Triads to the Codes and commentaries we shall find many variations in meaning.

§ 8. In the XIVth Book it is used in one passage (p. 592) as equivalent to the whole human race, where it is said that there are the same distinctions (e.g. as to sex) among animals as there are among human kind (*cenedl*). This use of the word is no doubt exceptional; but it is illustrative of the fact that it had to the composer no exclusive strict connotation.

§ 9. The word is also used without there being any indication in the context that the 'cenedl' was in any way limited by degrees. Instances of this usage will be found in V. C. 52, where the worth of a priest is said to be according to the privilege of his 'cenedl', where 'cenedl' might mean tribe, clan, family, or what not; in V. C. 96 and IV. 16, where it is said that the Welsh widow of a foreigner does not revert to the privilege of her 'cenedl'; in G. C. 786, where fostering the son of a lord or guarding the 'penraith' are said to be plagues of a 'cenedl'; in G. C. 790, where a thief or deceiver are said to be hateful to a 'cenedl'; in VI. 118, where it is asserted that a poor thief who was not redeemed by his 'cenedl' was not to be executed, in which passage it probably means men of the same household, for the liability to redeem a thief was not imposed on any specially related body of men; and in V. C. 156, where a new settler is said to be a man who enters on land previously unoccupied by any of his 'cenedl'.

§ 10. The word is also used in the indubitable sense of tribe or nation where it is said that a traitor to his lord can become reconciled to his lord and 'cenedl'; and in fact such is the use of the term in all passages concerned with the law of treason;¹ while the Privileges of Powys make use of the term 'cenedloedd Powys', the tribes of Powys (XV. 746).

§ 11. It is used also as a term implying not a self-governing nine-generation group, but all those from whom an ousted

¹ e.g. D. C. 550; XI. 408.

landowner could claim land by kin and descent—a right reserved to every one, out of possession of ancestral land, till the ninth generation from the common ancestor of the person ousted and those in possession;¹ and in this connexion even the word 'welygord' is sometimes used.²

Similarly also is its usage in the law relating to 'defunct testimony'.³

§ 12. A very common use of the word 'cenedl' is in connexion with that body of computable relatives who were entitled to receive the blood-fine for a murdered man, or who were bound to pay it for a murderer; that is to say relatives in the seventh degree; and it is largely because this 'galanas' liability was confined to persons related in seven generations that Prof. Lloyd identifies the word 'cenedl' with a self-governing seven-generation group.

But nowhere does it appear to be said that the 'cenedl' meant an organized body of men bound together by virtue of kinship in seven degrees. The term is most often used as if we would say 'the "cenedl" (or those of kin) in seven degrees' or 'the "cenedl" (kin) related in "galanas" degrees'; that is as if, for the particular purpose of payment of and receipt of blood-fine, only those of kin to the victim or offender were to share or be indented upon who were within seven degrees of affinity; e. g. in T. D. II. 232, it is said that if a man of Powys living in Gwynedd, or *vice versa*, become subject to blood-fine, and his near kindred (*cenedl welyaug*) are not in the same country, the blood-fine is to be levied *per capita* on those of his 'cenedl' who are in the country up to the seventh man, and in D. C. 408, where it is said that the grades of 'cenedl' (kinship) are denominated in the manner there described up to the fifth cousin.

Instances of the use of the term 'cenedl' in this manner will be found in V. C. 42, 208, 220, 222; T. D. II. 222; V. C. 224, 226, 228; T. D. II. 228, 230, 232, 240; V. C. 230, 254; D. C. 408, 412, 510, 552, 594, 602; G. C. 688, 694, 702, 750, 774; IV. 2, 6, V. 48, 62, 94, VI. 100, 114, VIII. 206, X. 328, 372, XI. 402, 410, XIV. 592, 624, 656, 692, 694.

¹ D. C. 452-4. ² D. C. 546; G. C. 758; XI. 430. ³ G. C. 772.

It is to be noted that in this connexion the word means not simply those related in seven degrees to the murderer or murdered man on the paternal side, but people also related to him on the maternal side, the two branches of kinsmen being often referred to as the 'cenedl' of the father and the 'cenedl' of the mother, i. e. the relations of the father or the mother in seven degrees.¹ In such use it is obvious that all persons related to an offender in seven degrees would not have the same common ancestor in that degree; they might be related to the offender by descent from any one of his thirty-two great-great-great-great-grandfathers or his thirty-two great-great-great-great-grandmothers.

§ 13. In matters of compurgation the jury of compurgation or 'raith' a man might call was frequently limited to those who were of 'galanas kin'. Sometimes it is said that the jury must be of 'cenedl' to a man,² sometimes that they must be of 'cenedl' or 'karenydd' near enough to participate in blood-fine³ (and here we may note that G. C. 702 uses the word 'carenydd' (relationship), as the test of liability to pay blood-fine, and not 'cenedl', so showing the identification of 'cenedl' as a word with 'relationship' only), and sometimes it is said merely that the compurgators must be of 'galanas-kin', without using the word 'cenedl' at all,⁴ or that he must be 'gyfnessafyeit' or 'nessaf idi', i. e. next of kin or of his 'circle of relations'.⁵

§ 14. The term is also used in the sense of that body of computable relatives who, in default of recovery of blood-fine from the relatives in the seventh degree, could be called on to contribute spear-money, that is relatives (*carenydd*) in the eighth and ninth degree,⁶ and, in the procedure laid down for determining whether a man was liable to contribute, the man challenged to contribute and denying relationship in those degrees denied that he was of 'cenedl' to him,⁷ or was of any of the four 'cenhedloedd' or stocks from which

¹ V. C. 96, 98, 208, 222, 226, 228; T. D. II. 232; D. C. 406, 552; G. C. 688, 750, IV. 12, VI. 114, IX. 224, X. 326, XI. 406, XIV. 708.

² V. C. 124-6; VIII. 208, XIV. 708.

³ V. C. 136, 242; V. 66, 84, VI. 100, IX. 224.

⁴ D. C. 398, 430, 436; XIV. 636, 678.

⁵ T. D. II. 224.

⁶ V. C. 114, 116.

⁷ V. C. 224.

the claimant was descended,¹ or that he was of 'carenydd',² and the procedure of 'enquiry as to stock' was then adopted in order to determine the 'carenydd' or 'cyff' (stock) common to both.

§ 15. In connexion with 'blood-fine' also we have references to the 'cenedl welyaug', that is to that body of persons related by male descent who maintained their 'gwely' organization; while yet again we find the term 'welygord', and not 'cenedl', being used as the body of men liable to pay blood-fine,³ side by side with the term 'cenedl'. In IV. 12, also, the liability for blood-fine due by the son of a Welshwoman and a foreigner is limited to the 'cenedl' or relations of the mother up to the third ascent.

§ 16. It is true that there are references in the law of homicide to 'cenedls' which might be regarded as implying that the people of Wales were divided into rigid groups; for example, in D. C. 412, it is said that 'a calamitous homicide is where one kills another, and he is killed by a person of another (or third) "cenedl", who has no claim on him'. Similarly is the case in G. C. 702, 776. So too in D. C. 440, G. C. 776, and X. 372, reference is made to the two 'cenedls', those of the murderer and murdered man residing in different countries, 'cantrefs' or 'cymwds', and in all the Codes to 'perpetual amnesty being declared between the two "cenedls".'

The implication that these groups were seven-generation groups does not follow, and the references really appear to refer to 'tribes' or 'clans' between whom there would be feud for unsatisfied murder.

It is certainly remarkable that no liabilities are imposed upon people related in seven degrees, other than those incident to blood-fine; nor is there any right in land confined to people so related, nor yet has the 'pencenedl' any functions allocated to him in respect of blood-fine. He has certain rights in receiving blood-fine, but no duty to contribute or to levy.

§ 17. Coming to people having rights from and duties to

¹ V. C. 224.

² G. C. 702.

³ D. C. 412.

men related to them in the fourth degree, we find the term 'cenedl' frequently used.

It is constantly used with reference to that body of relations—the ultimate limit of which appears to have been the fourth degree—who had some right to be consulted in the bestowal of a kinswoman in marriage.

The most formal and correct marriage in Wales was by 'rod o cenedl' (gift of kindred), and the word 'cenedl' is invariably used in speaking of this form of marriage. It could be effected by a father, or a brother or, failing them, the nearest male relative in four degrees.

Instances of the use of the word 'cenedl' in this sense will be found in V. C. 96-8, 174; D. C. 442, 444, 514, 528, 552; G. C. 660, 692, 746, 762, 774; IV. 16, V. 84, VII. 138, IX. 284-6, X. 326-30, and XIV. 488, 610, 734.

§ 18. The right of the same relatives to recover a maiden from her abductor is mentioned as the right of the 'cenedl' in V. C. 92; D. C. 518; and G. C. 748; while in D. C. 528 instead of 'cenedl', which is used on the same page, the word 'welygord' is definitely used, showing that for this purpose the words were interchangeable.

§ 19. The term is also used as indicating the relatives entitled to honour-price, or to a fine on the accessories of a murderer, which, according to the weight of authority, belonged to the men related to the victim in the fourth and not the seventh degree. The references given are sometimes to relationship in four, sometimes to the relationship in seven degrees.¹

§ 20. We also find the word 'cenedlauc' applied to certain 'alltudion' or strangers, and a 'stranger' could become 'cenedlauc' in some circumstances in one generation, in others in four.² One passage in the Anomalous Laws using the word 'cenedlauc' is worth quoting as indicating that the term was not confined to a seven-generation group:

'An "alltud cenedlauc" is one whose parents have been in Wales till there have arisen brothers, cousins, second cousins and third cousins and "neyeint" to all of these.

¹ T. D. II. 220-38; V. C. 220-32; D. C. 416, 594; G. C. 702; VIII. 190, IX. 258-60, XI. 402, 436, 438, and XIV. 656, 694, 706.

² D. C. 512.

Henceforth . . . they are "cenedlauc" . . . and that number of men suffices for a "cenedl" ("a hynny o dynion yssyd digaun o cenedl"). All ultimately become "priodorian" and "cenedlauc" if they remain in Cymru till the fourth descent.'

§ 21. The word is also used, in a number of passages, as indicating those relations of a woman violated, or married to a stranger, or given as a hostage, or whose son had avenged one of her relatives from whom her son could claim land by the right of 'mamwys', or maternity, that is to say the male relatives of the mother in the fourth degree, who alone were cited where the son claimed land by such right. Instances will be found in V. C. 98, 174; D. C. 442; G. C. 774, 790; IV. 24, IX. 284, 288, 290, 304, X. 330, XIV. 734.

This probably is the application of 'cenedl' when it is said that certain offences against women are a disgrace to the 'cenedl',¹ where it is said that the 'cenedl' of an unmarried woman or an idiot is responsible for her or his acts;² and where it is said that a woman's 'gwaddol' or estate constitutes her own property so long as she adheres to her 'cenedl'.³

§ 22. The term is also used definitely as the equivalent of relatives holding land jointly among whom rights of partition or readjustment continued until the expiry of the fourth generation;⁴ and in the last-quoted passage the word is also used as equivalent to 'kindred' of whom there could be several grades.

§ 23. Its application to persons related in four degrees may also be the sense applied to it in XI. 406, where provision is made that the guardianship of a minor devolves on the 'cenedl' of the mother and not on the 'cenedl' of the deceased father, lest the latter should betray the minor or kill him for the sake of his land. It certainly could not in that instance imply relations in the seventh degree.

That may also be the sense of the term in the passage⁵ which states that weirs, orchards, and mills are the orna-

¹ T. D. II. 100; D. C. 442; G. C. 754, 778; VIII. 200.

² V. C. 104; D. C. 558; X. 328.

³ D. C. 544; G. C. 762; XI. 448.

⁵ V. C. 178.

⁴ XIV. 606.

ments of a 'cenedl' and so indivisible, though its use here may apply equally to the tribe or clan generally.

§ 24. The term is also frequently employed as indicating the body of tribesmen or clansmen to whom a child was affiliated, the sense there being that where a child's parentage had been determined by the procedure of affiliation, the child acquired the rights and liabilities incident to the son of the father to whom he was affiliated, whether those rights and liabilities were limited by a four-, seven-, or a nine-generation affinity. Instances of its usage in the law of affiliation occur in V. C. 208, 210, 212, 214; D. C. 444-6, 450, 530; G. C. 774, 786, 788; IV. 38, V. 40, 42, 54, 58, 64, 72, X. 326, 328, 336, 338, XIV. 606, 608, 666, 696. The word 'welygord' is used instead of 'cenedl' in this connexion in V. 78.

§ 25. It has already been indicated that many words, meaning relationship generally, are used when the word 'cenedl' is used in the same connexion in other contexts, pointing to the conclusion that these words meaning 'relationship' were interchangeable with 'cenedl'. It has also been pointed out that the word 'welygord' is sometimes used as the equivalent of 'cenedl'.

Other instances of this indiscriminate use of words implying kinship will be found elsewhere in the laws.

The word 'kereint, gereint, or gerenyd' meaning those of kin to each other, is frequently used;¹ so also the word 'kefnassafuyent' or 'nessaf idi', meaning literally 'those near', which is used, *inter alia*, in V. C. 86, 102, 226; D. C. 398, 424, 520; and VIII. 200; likewise the phrase 'o perth e tat, o perth e fam' (on the side of the father, on the side of the mother);² 'cyff' or stock;³ the word 'welygord';⁴ and the words 'car' and 'rieni' (ancestors), the references to which would be interminable.

§ 26. It is clear, therefore, that the term 'cenedl' is not used in the laws as implying a group of persons related within an invariably fixed degree or claiming descent in fixed degrees from one common ancestor; it appears to be used

¹ e. g. in V. C. 86, 136, 226; D. C. 452-4; G. C. 694, 702, 780; IV. 20 and XIV. 636.

² V. C. 114, 132.

³ V. C. 172, 224; D. C. 548; IV. 20, XI. 426. ⁴ D. C. 454; V. 60.

as a generic term, equivalent at times to the word 'tribe' or 'clan', and at other times as equivalent to all relations within known but varying degrees of affinity.

In its primary sense it means 'men of kin' to one another, hence men of the same tribe or clan; and when a particular question of liability or right is under consideration, e.g. the payment or receipt of blood-fine, its application is limited for that purpose to people who have, by virtue of their affinity within known degrees, duties or rights to others related within the same degrees. Hence, though two persons might be of 'cenedl' or kin for blood-fine purposes, they would not necessarily be of 'cenedl' or kin for the purpose of disposing of a woman in marriage. In the former case persons related to one another in seven degrees would be of 'cenedl' or kin to one another because of their mutual rights and responsibilities in the matter of blood-fine; in the latter case, not being related within four degrees, the utmost limit of kinship within which consultation had to take place when a woman was married by 'gift of kin', they would not be of 'cenedl' or kin to each other for that purpose.

VIII

THE BONHEDDIGION

The alleged officers of the 'cenedl'.

1. *Introductory.*

§ 1. We may now turn to consider the existence of the alleged officers of the 'cenedl'.

In Mr. Aneurin Owen's compilation, including the Triads of Dyfnwal Moelmud, we have mention of the 'pencenedl', the 'teispantyle', the seven elders of kindred, the 'dialwr' or avenger, and the 'arddelwr' or avoucher.

Partly on the strength of these references it has been maintained that Welsh society consisted of organized political units of persons related to one another by descent from a common ninth ancestor.

A critical examination of these references will show, however, that there is no justification for the assertion that any of these persons, other than the 'pencenedl', had any existence in fact.

§ 2. It should, however, be said that the proof or disproof of the existence of these officials would not really affect the question very greatly as to whether the 'cenedl' was or was not a body of men so related. Proof of their existence would of course be compatible with such an organism; proof of their non-existence would still leave it possible for such an organism to have existed without them. So, too, the argument that the 'cenedl' was a tribe or clan unlimited by specified degrees of affinity would be unaffected one way or another by the existence or non-existence of these officers.

A cardinal point, however, is made by Dr. Seebohm of the existence of these officers in the development of his theory as to the composition of the 'cenedl', and the subject therefore merits attention at this point.

2. The '*arddelwr*' or avoucher.

§ 1. Let us begin with the avoucher.

The sole mention of the avoucher in any of the laws is in one of the more recent Triads attached to the Gwentian Code, p. 784. These Triads are obviously not excerpts from the original Codes. They are, like all the Welsh Triads, elliptical expressions, which are intelligible only when the key to their explanation has been discovered.

All that is said in the Gwentian Triad is that there are three indispensables of a '*cenedl*', a '*teispanyl*', an avenger, and an avoucher. The '*pencenedl*' is not mentioned in this Triad, and, wherever we get the 'indispensables of kindred' mentioned elsewhere, the avoucher is conspicuous by his absence.

No mention is made in any part of the Venedotian or Dimetian Codes of the avoucher; nor do the Anomalous Laws mention him. No indication of any sort is given as to his duties, but it has been assumed, simply on the strength of this one Triad, which gives a different list of 'indispensables' to other Triads, that every '*cenedl*' had an officer responsible for avouching for a man's position and property.

§ 2. When we come to deal with procedure we shall see there are elaborate provisions as to who could establish an '*arddelw*' or avouchment in defence, cognate in every respect to the 'vouching to warranty' of the Anglo-Saxon Laws.

To avouch a man's innocence or to avouch for property which he claimed as his was a duty imposed on men of kin to him cognizant of the facts, provided they possessed a certain defined status. A man who avouched for another was, in fact, a guarantor of such man, a witness of a definite social status, entitled by virtue of such status to give testimony, and he was not in any sense of the word an official.

There were some cases in which a person avouching need not be of kin to the person whom he was supporting, but he must be cognizant of the facts to which he deposed or of the reliability of the person, the truth of whose assertion he supported.

A neighbour, a host might avouch in certain cases, but it is clear that there was no such person as an 'official' avoucher. The theory that there was an official avoucher attached to a '*cenedl*' is a pure fiction.

§ 3. Not that the Gwentian Triad need be regarded as a forgery; it has simply been misunderstood.

The Triad is, as has been said, an elliptical form of expression; and, when it says that an 'avoucher' is one of the 'indispensables' of kindred, all it means is that among kinsmen the duty of avouching for each other is an indispensable one.

3. The '*dialwr*' or avenger.

§ 1. The next alleged officer to consider is the '*dialwr*' or avenger.

The word is mentioned three times, twice in the spurious Triads of Dyfnwal Moelmud, and once in the Gwentian Triads.

In the former the avenger is mentioned as one of the indispensables of kindred along with the '*pencenedl*' and the '*teispanyl*', and his duties are said to be 'to lead the kindred to battle and war as there may be occasion, to pursue evil-doers, bring them before the Court, and to punish them according to the sentence of the Court and judgement of the country'.

Elsewhere in these Triads it is said that the avenger is bound to proclaim a man who kills a fellow-kinsman, a thief, and a swindler.¹

In the Gwentian Triad (p. 784) he is mentioned as one of the three indispensables along with the '*teispanyl*' and 'avoucher'.

There is no mention of any sort of the avenger in the Codes or the remainder of the Anomalous Laws. It is practically on the Triads alone that an organized kin-group is credited with an officer who led in battle, and acted as general policeman and executioner.

§ 2. Now we know perfectly well from other sources that in the time of the princes, it was the prince, lord, or '*penteulu*' who led to war; that military service was due, not to a

¹ XIII. 516, 532.

kin-group, but to a territorial ruler; that vengeance, where it was exercised at all, was exercised not by an official, but as a duty and privilege by the whole body of persons, collectively and individually, related to the injured kinsman in definite degrees; that in no case did vengeance belong to all persons related in nine degrees, but to people related either in the fourth or seventh degree, according to the nature of the tort for which vengeance had to be taken; and, that where punishment for crime had supplanted vengeance for injury, punishment was inflicted, not by kinsmen of the injured or wronged man, but by the lord.

We may note here, also, that at the time the laws were redacted there was no such offence as 'swindling'; and, whatever may have been the case long before—a matter on which we have no information—theft was not a matter which fell within the cognizance of the kinsmen. Theft had become, clearly and definitely, a crime against the King's peace, punishable by the King or lord and by him alone.

§ 3. The Gwentian Triad appears to mean simply that it was an indispensable duty of kinsmen to avenge wrongs; and, subject to the ousting of the right of vengeance by the jurisdiction of the King in crime, the Triad merely enunciates in common Triadic form an undoubted sentiment; but in no way can it be said that, apart from the spurious Triads of Dyfnwal Moelmud, is there any authority for maintaining that there was an official, charged with leadership in war and the exacting of punishment and retribution, attached to a defined kin-group.

4. *The Seven Elders.*

§ 1. The sole authority for the existence of the seven elders is again the Triads of Dyfnwal Moelmud. They are referred to therein under different names, 'rhiaint' (ancestors), and 'saith henadur' (seven elders).

The whole of the functions ascribed to them by Dr. Seebohm and Mr. Hubert Lewis are derived from the Triads of Carmotes 11 and 14, and the Triads of the Social State 162, 170, 224.

Nowhere else in the laws is there any mention of the

'seven elders of kindred', forming a body of officials assisting the 'pencenedl', acting as legislators, or as maintaining records of kindred. The institution of such elders in a 'cenedl' has no authoritative weight behind it.

§ 2. Elders of the country (*hynet* or *hynafgwy gwlad*), i.e. elders or men of standing in the neighbourhood, are frequently mentioned in the laws as impartial men of position who attend Court with the King or lord, having certain functions in land cases, the principal one being that of making a preliminary investigation into and report upon a claim to land, where the plaintiff sued on the basis of being entitled by 'kin and descent'.¹

Men exercising these functions are never called 'elders of kindred' in the laws, but 'elders of the country-side'.

It seems that, starting from the functions of the elders or men of position in the country-side, acting as it were as a jury of presentment, the composer of the Triads developed an official body of advisers attached to a kin-group.

§ 3. In the VIIth Book, p. 150, 'elders of the cymwd' are referred to as persons who were to make certain investigations and reports in boundary disputes. These 'elders of the cymwd' have nothing whatsoever in common with the 'saith henadur' of the Triads.

In the old MS. Tit. D. II of the Venedotian Code, p. 232, it is said that, when a blood-fine is to be shared, the 'hynafgwy e kenedloedd', that is the senior men of the two kins, paternal and maternal, of the murdered man, are to distribute the blood-fine among those entitled to it up to the seventh degree. Here again these seniors of the 'galanas-kin' to the murdered man have nothing to do with the fictitious 'saith henadur' who legislated, elected 'pencenedls', and chose 'teispantyles'.

§ 4. We should note here too that, in the law of affiliation, there was a rule that, when a man died and after his death the paternity of a child was sworn by the mother upon him, the child could be admitted as a kinsman by the 'pencenedl' and seven men of kin to the father or by twenty-one or fifty men. These men are not called 'elders', and they

¹ e.g. V. C. 144-6; D. C. 454-6; G. C. 758-62.

formed in fact a kind of jury to determine the question of the alleged paternity. It would seem as if the author of the Triads had taken his figure 'seven', found in the 'saith henadur', from this fact.

§ 5. It is inconceivable, if there were such officers as alleged by the Triads, that the substantive portions of the Codes should be silent about them; and that not a single commentator, except the Triadic ones, should refer to them.

5. *The 'teispantyle'.*

§ 1. Turning now to the 'teispantyle' we have some mention of him outside the Triads of Dyfnwal Moelmud; but everything that is said about him appears in Triadic form.

The Triads of Dyfnwal Moelmud give a very elaborate account of the 'teispantyle', and the whole account of his supposed functions is derived exclusively from that source.¹

There is no mention of him in the Venedotian Code at all; the Dimetian Code ignores his existence likewise, except in one of the later Triads (p. 436) attached thereto, which merely says that any one who kills his 'teispantyle' was to forfeit his ancestral land, without describing who he was or what his functions were; and the Gwentian Code, also in the later Triads attached thereto, mentions him only as an indispensable of kindred and as common to kindred, a description of him reproduced in the Triads of the Xth Book.²

§ 2. If the 'teispantyle' had been a definite official we should have expected to find his 'blood-fine' and 'honour-price' mentioned somewhere; we would have expected some mention of his functions or some reference to him in the substantive Codes, but the laws are silent.

The word itself is one of considerable difficulty, so far as its meaning is concerned, and it is impossible to accept him, on the Triadic evidence only, as any kind of tribal official.

6. *The 'Pencenedl' or Chief of Kin.*

§ 1. Turning to the 'pencenedl', there is no doubt that there was such a person, but the accounts given of him are based very largely on the description found in the Triads.

¹ Triads 88, 131, 162, 166, 167, 169, 171, 197.

² G. C. 784, 790; X. 326.

The Triadic account, which there is no object in reproducing, is to be found in Triads 52, 62, 67, 74, 85, 88, 162, 165, 169, 186, and 215.

It is in the Triads alone that the story appears that, after a family or clan had been resident in Wales for nine generations, and not until then, it acquired Welsh citizenship (a conception tribal law knew nothing of); that, on such acquisition, one man—it is not clear which—in the ninth descent from the original settler became 'pencenedl' over all descendants of the same original settler; and that those descendants, then and there, became a 'cenedl', enduring as such for that generation only; at the expiry of which it split up into new 'cenedls', tracing descent from the sons of the original settler.

That is the key-note of the institution of the 'pencenedl' according to the Triads, and it is largely on this description that it has been asserted that early Welsh society consisted of an aggregate of self-contained exclusive groups of men related to one another in nine degrees, altering in composition every generation.

The picture drawn is a captivating one, but, besides being apparently impossible in practice, it has no authority prior to the seventeenth century to support it.

§ 2. It would be possible to show the impracticability of this supposed organism, as a working one, and to establish also that the functions ascribed to the 'pencenedl' are fictitious. For example, there was no such institution in Welsh Law or custom as 'the conventional raith of country'—a sort of parliamentary institution—wherein the 'pencenedl' was spokesman; there was equally no such thing as an 'aillt of kindred', in the sense applied to that term in the Triads, the author of which was ignorant of the difference between an 'aillt' and an 'alltud'. It would, however, be superfluous to do so here, and we must leave this fanciful description alone, simply because it is only the product of a seventeenth-century imagination, unsupported in essentials by any other authority.

To arrive at a finding as to who the 'pencenedl' was, and what the 'cenedl' was over which he was head, we must

look elsewhere. Nowhere else shall we find the 'pencenedl' regarded as the head of a body of men tracing descent in nine generations from a common ancestor.

§ 3. There are many passages in the Codes which speak of the 'pencenedl', leaving no room for doubt that such a person existed.

The rates of his 'blood-fine', honour-price, heriot, and daughter's marriage-fee are frequently stated, and his rights in the blood-fine due for the slaying of a man of kin to him are referred to. These facts establish he was a man of high rank with some kind of authority among persons related or assumed to be related to him.

In addition, many passages in the Codes—some of which appear to be undoubted excerpts from the original Codes, and others unexceptionable expansions of such excerpts—state that the 'pencenedl' must be a man of high position; that no 'maer' or 'canghellor' or person admitted into 'cenedl' by virtue of maternity, nor any descendant of such person for three or four generations could be 'pencenedl'; and that he was entitled to a fee of 2s. whenever a kinsman was 'commended' to him or a youth was acknowledged to be a member of the kin.

Some of these particulars are also referred to in the Anomalous Laws, which, however, add nothing to what is contained in the Codes.

One passage in the Venedotian Code states that the 'pencenedl' is to act in concert with his kinsmen and kinswoman in every circumstance; others in the Dimetian Code assert that appointments to posts in the 'cenedl' were made by him, and that he paid £1 annually to the territorial lord; and one passage in the Gwentian Code provides the information that a 'pencenedl' remained such for life, but the dignity was not hereditary.

In the less reliable Dimetian and Gwentian Triads it is merely said that the murder of a 'pencenedl' involved forfeiture of property; that he was 'common to kindred', and that he had the power of chastising his kinsmen for counsel.¹

¹ V. C. 94, 190, 234-6; D. C. 436, 442, 490, 508, 526, 552, 556; G. C. 672, 692, 790-2; IV. 16-18, VII. 138, X. 326, XIV. 608, 694.

§ 4. These descriptions do not carry us as far as we might wish. We can see, however, that the 'pencenedl' was the chieftain of a body of men, held together by a real or assumed tie of kinship; and that that body of men had a corporate existence, which was independent of and continued after the death of the persons of any one generation belonging to it. The 'pencenedl' was in fact the head of a clan, and the clan consisted of people assumed to be related one to the other without any limitation of affinity by fixed degrees.

The clan, of which he was the head, owed a small annual tribute to the territorial lord, independent of land-cesses and services, and, within the clan, the 'pencenedl' owed duties to all the tribesmen, who in their turn owed submission to him.

The laws establish nothing more, therefore, than that Welsh society contained a number of clans, over each of which there was a chieftain, and that the members of those clans assumed some bond of relationship among themselves. That is the common form of the tribal organization wherever it exists, and there is no necessity to introduce, or justification for introducing, into that organization any fanciful description from the Triads.

§ 5. In attempting to ascertain what the 'cenedl' was over which the 'pencenedl' was chief, we have purposely refrained from considering two matters thus far, viz. the provisions relative to the holding of land, and those relative to 'affiliation'.

In regard to the former the tribal system was independent of and existed prior to the appropriation of land. The land laws were grafted on to the tribal system, when the clan proceeded to appropriate land as 'property'. The tribal system coloured and created the law of property in land; property did not create the tribal system. The law of the land is dealt with later as an adjunct to the tribal system, and it will be seen there that there is nothing in that law which in any degree derogates from the view here taken, or which supports the Triadic explanation.

In regard to the law of affiliation, which is dealt with in the Law of Persons, all we need say here is that, apart from

what has been said above regarding the 'pencenedl', the only other references in the Codes, relating to that dignitary, concern his functions on affiliation. In no passage relating to affiliation is there any indication that the 'cenedl', of which the 'pencenedl' was the head, was a group of persons related to one another in nine or any other specified number of degrees.

On the other hand, the very fact of affiliation, or admission of a child into the 'cenedl' of its alleged father, shows that persons of different degrees of descent from a common ancestor could be members of one and the same 'cenedl'.

One important point, however, has to be noted here, apparent from the provisions relative to affiliation; and that is that the laws make it perfectly clear that there could be 'cenhedloedd' or tribal entities without the existence of any recognized head.

It is provided in all the passages which describe the procedure of affiliation, where the alleged father was dead, that the 'pencenedl' and seven men of the kin could accept or reject, but if there were no 'pencenedl' (not, be it noted, if the 'pencenedl' were dead or absent, but if there were none at all), then twenty-one or fifty men of kin to the deceased father performed that duty.

The frequency of the provision, the references to which are given later, proves that a 'cenedl' without a chief was not an abnormal feature; and that that was so is supported by the fact that there are several references to reception or rejection of a child without any mention of a 'pencenedl' participating.

§ 6. The conclusion seems, therefore, to be justified that the word 'cenedl' means primarily 'kinship' unlimited by degrees.

A man was of 'cenedl' to another if he were descended from some ascertained or ascertainable common ancestor. If two persons were descended from a common ancestor in the fourth, seventh, or ninth degree, then they owed to each other certain duties which varied according to the proximity of relationship. If the common ancestors were more distantly related than the ninth degree, relationship

ceased to be counted as imposing upon them any rights or duties one towards the other.

Next, the term 'cenedl' meant a tribe or clan, because men of a tribe or clan were of kin, or assumed to be of kin, to one another. It mattered not in what degree they were related, so long as they were descended or believed themselves to be descended from some common ancestor, who was credited with having founded the tribe or clan. Within the tribe or clan there were certain claims which one member could make upon another, and such tribe or clan usually, but not invariably, had a 'pencenedl'¹ or chieftain over it.

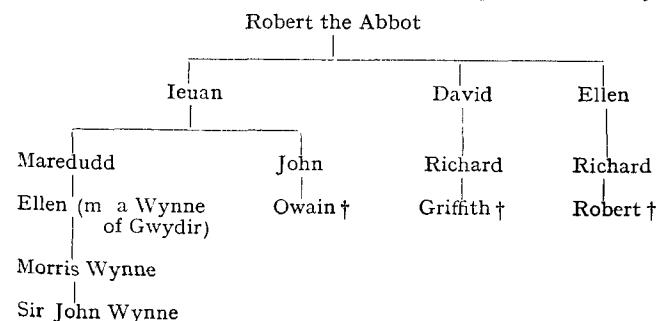
Such tribes or clans, like tribes or clans elsewhere, were subject to decay and dissolution from a multiplicity of causes, but they did not automatically terminate and dissolve into new tribes and clans as each generation died out.

Who some of these tribal entities were in historic times, how they originated, how they decayed and dissolved, must be left for consideration until we can deal with the Surveys and Extents.

This explanation of what the 'cenedl' was will be supported by the facts recorded in the Surveys; but it seems essential to be freed from the mathematical structure created on the basis of the Triads of Dyfnwal Moelmud.

Before, however, proceeding to consider the evidence of the Surveys we must deal with a few other points.

NOTE.—The term 'pencenedle' is used in a peculiar sense by Sir John Wynne in his History of the Gwydir Family. He writes: 'From Robert the Abbot are descended my three pencenedle, because they are descended of Church nobilitye', viz. Griffith ap Richard of Madryn Isa, Robert ap Richard, and Owain ap John. The accompanying pedigree-table shows that all three were related to Sir John through his grandmother only.



¹ Vide Note 5.

IX

THE BONHEDDIGION

The 'gwely' and 'gafael' in the Laws.

§ 1. The use and meaning of the terms 'gwely' and 'gafael' in the Surveys of the fourteenth century will be dealt with later. It is advisable first to see what meaning is ascribed to these terms in the laws, and ascertain if there is anything in the laws supporting Dr. Seebohm's view that a 'gwely' was a body of males tracing descent from a common great-grandfather, and that a 'gafael' consisted of the descendants of sons of that great-grandfather who themselves would grow into a 'gwely' when they, in their turn, counted four generations of descent from such sons.

§ 2. The word 'gwely' is rarely used in the Ancient Laws. The only occasion where it appears to be used by itself occurs in the Venedotian Code, p. 224.

In discussing the levy of the blood-fine from relatives related to the murderer in seven degrees the Code says :

'Though only two or three of the degrees should be ascertained, let the "galanas" be cast upon them ; and that which falls not upon them is to be shared upon the "gwelys" from whom the father is descended, rating two shares upon the stock (*kyff*).'

The explanation of this paragraph is difficult ; but it appears to mean that where the murderer could not trace relatives bound to assist him in each of the seven degrees of kinship, liable to contribute to the blood-fine, the share due from the relatives in each degree was to be paid by the members of such degree as had been traced ; but, where the murderer was unable to discover any relatives of a particular degree of relationship to himself, say the fifth degree, the amount which would have been paid by the relatives of that degree, had they been traced, was to be levied upon persons related to the murderer on the paternal side only and not upon persons related to him on the maternal

side ; each degree of such relations paying twice as much as the degree next in order of proximity of relationship to him ; e.g. the first degree contributing twice as much as the second degree, the second degree twice as much as the third, and so on.

Whether this be the correct explanation of the passage or not, it is obvious that the 'gwely' here does not imply a community descended from a common great-grandfather through males only. No person could possibly have two or more 'gwelys' or bodies of male relations descended by exclusive male descent from one great-grandfather ; but the passage refers to a man having more than one 'gwely'.

§ 3. The term 'welyauc', the adjective formed from 'gwely', occurs on two occasions. In V. C. 168, after the rules for readjustment of partition of land among second cousins have been stated, three MSS. add ' " Tir gwelyauc " is to be treated as we have stated above '.

The context shows that 'tir gwelyauc' is here distinguished from 'tir cyrif', which was not subject to these rules of partition, and does not imply only land held by descendants from a common great-grandfather. Its connotation is simply land held by a 'gwely', without indication as to what a 'gwely' was, in contradistinction to 'tir cyrif', or land held in common by a servile village community.

§ 4. In the same Code,¹ dealing with murder, the term occurs in the following passage :

'Should an innate freeman of Powys be in Gwynedd . . . and become subject to a blood-fine, and his "cenedl gwelyauc" not be in the country with him. . . ,

rules then being given relative to the levy of the blood-fine in those circumstances. Here again there is no necessary signification of descent from a common great-grandfather.

§ 5. The word 'welygord' appears more frequently.

In the Dimetian Code (p. 412, § 33) the word is used as the equivalent of 'cenedl' ; the Gwentian Code (p. 776, § 4) dealing with the same provision of law uses the word 'cenedl' instead of 'welygord'. It is there used to indicate the body liable to contribute to the blood-fine, that is

¹ V. C. 232.

persons related to the murderer in seven degrees, both on the male and the female side.

'Welygord' is used in several passages in which the subject-matter under consideration is the right of a person to sue for land by 'ach ac edryf', a right incident to any one claiming to be connected with the actual holders of land anywhere within nine degrees.

Instances of that use occur in D. C. 546 and XI. 430-2, the term being applied to a family-stock in possession of land, without limitation to a stock of relatives connected in four degrees.

A similar use is to be found in G. C. 756 and V. 60, where it is said that if a 'welygord' be adjudged to lose land in the absence of some of its members, those members can, on their return, have the suit reopened.

It is further used in connexion with the family relations of a woman in D. C. 528 and V. 78. A second marriage-fee, it is said, could not be demanded from a woman who, after marriage and payment of one such fee, was affiliated to a new 'welygord'.

'Whatever she did', it is said, 'during her abode with a former "welygord" is not to constitute a claim upon her in the "welygord" she enters.'

It signifies apparently here the two family groups to which a woman belonged during her maidenhood and her first marriage, or during her first and during her second marriage.

It is used also on two other occasions in the Dimetian Code, in neither of which is there any limitation of its signification to persons related to one another by descent from a common great-grandfather.

In D. C. 454 land-borderers are said to be evidences . . . 'to point out divisions and boundaries between the "welygord"', and in D. C. 546, 'If there be land among a "welygord" unshared, and they all die except one, that one is to have all that land in common'.

These last two passages are not inconsistent with the possibility that a 'gwely' consisted of persons related in four degrees, but they do not show that the term was applied to persons so related and to them only.

§ 6. It is true that Dr. Seebohm does not base his case in regard to the meaning of the word 'gwely' exclusively, or even mainly, upon the Ancient Laws. He relies more particularly upon the Survey of Denbigh, which will be considered later. All that is here maintained is that the Ancient Laws do not support this exclusive identification, and that in those laws 'welygord' implies nothing more than a body of relatives admitting or assuming some common descent as a basis of unity. The word is in fact as indeterminate as to what that common descent might be as the modern English word 'family' or 'stock', which expresses a tie of relationship varying according to the context.

§ 7. As to the word 'gafael' there is nothing in the Ancient Laws in the remotest degree connecting it with a subdivision of a 'gwely' or other family unit. The word is rarely used, and when it is used, e.g. in V. C. 186, it signifies only a territorial measure of the same class as the English 'acre' or 'rood'. In the Venedotian Code it is said that there are four 'randirs' in every 'gafael', four 'gafaels' in every 'tref', and sixty-four 'erws' in every 'gafael', i.e. a 'gafael' consists of approximately sixty-four acres.

§ 8. We have it, therefore, that in the Laws no such signification applies to the words 'gwely' or 'gafael' as is implied by Dr. Seebohm.

It must not, however, be omitted that Dr. Seebohm, in support of his explanation of the word 'gwely' relies upon what the Codes say in reference to the system of partition of land in early Wales.

The rules of partition are considered and explained under the land-laws, and beyond noting the fact that Dr. Seebohm does rely upon them to establish his theory of the 'gwely', it is not necessary to consider them here.

It will suffice to say that the interpretation of those rules given later does not agree with Dr. Seebohm's rendering, and that they do not appear to substantiate his theory of the 'gwely'.

X

THE BONHEDDIGION

Kin responsibility according to degrees of Affinity.

1. *Introductory.*

§ 1. It was said above (Chapter VI) that

' the ties of computable relationship between persons descended from a common stock, agnatically or cognatically, and related in four, seven, or nine degrees, were real and important factors in Welsh Law and society ; but there was no necessary uniform grouping of men so related into any organism. . . . Such relationships might, but did not necessarily, coincide with the tribe or clan. Such ties created connexions viewed from the standpoint of, and varying with, each and every individual upon whom he could call for assistance in definite circumstances, and to whom he had to render assistance when called upon, and in respect to whom he had certain rights or duties or claims. Such connexions, expressed in terms of " stocks ", were also termed the " cenedl " of each particular individual.'

§ 2. We must now consider, and attempt to explain, what these ties of computable relationship were, and what their purpose was in Welsh society.

We can at present give only a sketch of these ties, leaving the authorities to be referred to when we consider the functions of each tie in their respective places.

§ 3. Every man in Wales reckoned his relations, and placed them in categories, according to the proximity or reverse of some common ancestor.

These categories were four in number, and varied with the standpoint of each individual.

Every man had :

- (i) relatives of his own household ;
- (ii) relatives related to him within four degrees ;
- (iii) relatives related to him within seven degrees ;
- (iv) relatives related to him within nine degrees.

Every person in these categories, whether they belonged to the same agnatic clan or not as himself, were of ' cenedl '

or kin to him in such and such a degree, and in regard to each and every one of them he had some right or duty in law.

Beyond the ninth degree the law provided for no rights or duties between men so related ; and hence it is said that the ' cenedl ', in the sense of responsible kinship and not in the sense of the tribe or clan, goes no farther than that.

2. *The household.*

The smallest circle of relations which a man possessed was his household. Ordinarily speaking a household consisted of a man, his wife, and their children until the latter attained to majority. It might also include the lineal descendants of an individual during his life.

The responsibilities and rights existing between a man and his wife, and between a man and his children, are dealt with under the Law of Persons.

3. *The relatives of a man within four degrees.*

§ 1. Every man had, or might have, relatives descended from each of his eight great-grandparents. Every such person would be related to him in four degrees. It is obvious that no two persons, other than brothers and sisters, could have identically the same eight great-grandparents or have a kin or ' cenedl ' within four degrees absolutely identical.

It would be possible, however, for quite a number of persons to be descended in the direct male line in four degrees from one common ancestor.

§ 2. The Welsh Laws do, in some particulars, give rights to persons so interrelated agnatically in the fourth degree.

Subject to the limitation, introduced by the rule of ' mamwys ', which we need not concern ourselves with here, they did, in the matters of acquisition of ' priodolder ' rights in land, of partition and readjustment of partition of land, and of certain rights of succession to land, reckon relationship only through males.

Such rights in land were accordingly confined to persons related to one another by descent from a common great-grandfather in the male line.

Such persons Dr. Seebohm identifies with the ' gwely ',

and maintains that land was held in Wales by groups of men, so related, in common, and, at the expiry of each generation, the 'gwely', tracing descent from a common great-grandfather, was disrupted into new 'gwelys', each tracing descent from one son or other of that common great-grandfather.

We have pointed out that there is nothing in the laws identifying the 'gwely' with Dr. Seebohm's 'gwely'; we shall try to show later that the 'gwely' of the Surveys was likewise not so identifiable.

For the present we need only say that, when determining the scope of certain rights and interests in land, the Welsh Laws reckoned that only such persons were of 'cenedl' or kin to a man as were related to him by male descent from a common great-grandfather.

§ 3. The Welsh Laws did not, however, confine relationship in the fourth degree to exclusive male descent.

In the matter of honour-price for insult to a corpse—a compensation which was divided among persons related to a murdered man in four degrees—the laws included all persons as kin to him, who were descended from any one of his four great-grandfathers or four great-grandmothers, that is, persons who, though all related to the injured person, might have no common ancestor in the fourth degree as among themselves.

§ 4. In addition to reckoning relationship through females as well as males for 'honour-price', there is evidence that, in questions of marriage of a Welshwoman, those persons were considered to be of kin to her who were related to her by descent from any one of her great-grandparents.

4. *The relatives of a man in seven degrees.*

§ 1. The relatives of a man, those of kin to him, in seven degrees were persons upon whom he could call for assistance in paying a blood-fine due by him, and who were entitled to share in a blood-fine payable in case of his being murdered. They are frequently spoken of as the 'galanas-kin'.

Relatives in seven degrees had, in the Welsh Laws, no other duties or rights assigned to them as such.

§ 2. The 'galanas-kin' of a man included everybody

related to him in seven degrees reckoning male and female ascent, that is, anybody and everybody descended from any one of his sixty-four great-great-grandparents. It is obvious that no two persons could have all those ancestors in common other than brothers and sisters, and it is obvious, therefore, that there could be no defined organization of such persons. 'Galanas-kin' varied according to the individual who was murdered or was a murderer.

§ 3. The authorities, quoted in the chapter dealing with homicide (*infra*), are emphatic and clear that 'galanas-kin' included relatives on the paternal and maternal side; and the Venedotian Code reckons in 'galanas-kin' all persons related through any female ascendant up to the seventh ascent.

That authority deserves to be quoted in full at this point:

'The blood-fine proceeds from maternity to maternity unto the seventh descent or the seventh maternity; for the children of the first mother are brothers, and the children of the grandmother are first cousins, and the children of the great-grandmother are second cousins, and the children of the mother in the fourth degree are third cousins, and the children of the mother in the fifth degree are fourth cousins, and the children of the mother in the sixth degree are fifth cousins, and the children of the mother in the seventh degree are sixth cousins, and the blood-fine goes no further than that.'¹

It is quite possible that in actual practice a blood-fine was not levied or distributed in this way; but, whatever may have been the practice, there appears to be no question that, in law, every one related in seven degrees to a person, whether reckoned through males or females, was of 'cenedl' or kin to such person for the purposes of blood-fine.

§ 4. Even if, however, the law be wrongly given in the Venedotian excerpt, the evidence, not only of other passages in the Welsh Law, but of other systems of contemporaneous law, show clearly that, for the purposes of blood-fine, persons were of kin to a man if related either through his father or his mother, and consequently no two persons, other than brothers and sisters, could have identically the same people of kin to them. It is manifest, therefore, that the

¹ V. C. 222.

'cenedl' or clan over which there was a 'pencenedl' was not identifiable with 'galanas-kin'.

5. *The relatives of a man in nine degrees.*

§ 1. The question as to what the Welsh Laws, independent of the spurious Triads, say about the relations of a man in nine degrees is of importance, because, as has been noted, the theory of Dr. Seebohm is that relationship in nine degrees was the tie which formed the larger kindred or tribe.

The Welsh Laws have, as a matter of fact, not very much to say about relationship in nine degrees. Persons so related, however, had two distinct rights or duties.

§ 2. In the first place, where a man had failed to raise the blood-fine due by him from relatives within seven degrees, he was entitled to extend the circle of those from whom he could demand assistance by two degrees; he could demand from each person related in the eighth or ninth degree to him a 'spear-penny' or 'ceiniog baladr', provided that he did not call on a woman or a priest within those two degrees to help him, though persons related through women in those degrees could be called upon.

This tie was merely an extension of the 'galanas-kin'; and what has been said above about the impossibility of the 'galanas-kin' being identified with the 'cenedl' ruled over by a 'pencenedl' applies equally to this extension of the 'galanas-kin'.

§ 3. The second matter in which the Welsh Laws introduce relationship in nine degrees concerns land.

The land-laws are fully dealt with elsewhere, and the importance of relationship in four and nine degrees as regards land is explained in greater detail there than we can venture to attempt here.

We may anticipate, however, so much as to say that exclusive appropriation of tribal land to a particular family could be achieved by continued occupation for four generations. Such occupation gave the family and every member of it rights of 'priodolder' or exclusive occupancy rights. If, after acquiring such rights, either the whole family or any member thereof abandoned the land, the 'priodolder' rights acquired were not extinguished at once. They sur-

vived to all descendants of those abandoning for nine generations; and any person, up to the ninth descent, could claim to recover the abandoned land, either in whole or in part. In other words, the period of limitation within which the heir of a person, who had possessed 'priodolder' rights and had abandoned the land, could claim to recover those rights was a period of nine generations.

It has further to be noted that, according to Mr. Aneurin Owen's rendering of a difficult passage, in computing whether a man was a descendant within nine degrees of the last occupant he was not bound to show male descent only. He could, it is said, claim to obtain possession, provided that, in doing so, he proved that, in his pedigree, 'he did not revert to the distaff more than three times'.¹

Beyond the ninth degree no one could claim to recover because relationship for that purpose was not counted beyond nine degrees.

That is all the genuine Welsh Laws have to say regarding the tie of relationship in nine degrees.

Clearly they do not, in themselves, establish Dr. Seebohm's theory as to the constitution of the Welsh tribe.

¹ A different rendering, however, of this passage exists, making it a rule of pleading only in special suits based on 'kin and descent'. That rendering implies that a claimant would be non-suited, if he failed, after three attempts, to trace his pedigree along the 'rod of court'.

XI

THE BONHEDDIGION

The tribe in other contemporary laws.

§ 1. In order to check how far the present explanation is correct of the tribe and clan and of kin-responsibility, expressed in terms of degrees of affinity, we may consider a few provisions in contemporary laws, using the word 'contemporary' as covering the early Middle Ages generally.

§ 2. *The Sachsenspiegel*. The first document, the *Sachsenspiegel*, a Germanic production of the thirteenth century, has a most illuminating passage.

Among the Germanic Laws there is constant reference to the 'maegda', 'parentes', or 'parentilla'.

The word can be translated into Welsh or English invariably by the terms 'cenedl' or 'kin'; and it is never, expressly or impliedly, limited in its signification by any degree of relationship. It is, in fact, a word like 'cenedl', which may mean the tribe or clan based on kinship, or may mean those of such 'kin' to an individual as were responsible to or for him in particular circumstances.

In the *Sachsenspiegel*, Art. III, we find the word 'sippe'—the Latinized version translating it as 'cognatio'—used with a compound of the word 'maga', 'nail-maga', also rendered in the Latin version as 'cognatio'.

'Sippe' is defined as the equivalent, not of kinship generally, but as the equivalent of computable relationship within which either marriage was prohibited or within which rights of succession existed.

'Now let us consider', runs this document, 'where the "sippe" begins and where it ends. In the head it is ordained that man and wife do stand who are lawfully married. In the joint of the neck are the children born of the same father and mother. . . . Full brothers' and sisters' children stand at the joint where the shoulder joins the arm. . . . In the elbow stands the next, in the wrist the third, and in the first joint

of the middle finger the fourth, in the next joint the fifth, in the third joint the sixth, and in the seventh stands a nail, therefore ends here the "sippe", and that is called the "nail-maga".'

It proceeds to say that marriage between relatives in the fifth joint is prohibited, and that no one is entitled to succeed to another if he be beyond the ninth degree of affinity to the deceased.

This identification of 'computable relationship' with the human body is an interesting one, and is full of suggestion.

According to the Welsh method of computing degrees, persons standing in the 'nail' to one another would be descended in the ninth degree from the common ancestor.

This interesting figure is parallel to the Welsh Law. 'Sippe', computable relationship for the purposes of prohibition on inter-marriage and succession, goes no farther than the fifth or ninth degree. At the ninth degree 'sippe' or the 'nail-maga' stops, but the 'maga' does not. Persons pass out of the 'nail-maga' into the wider 'maga'. This 'maga' or tribe might obviously contain any number of persons of 'sippe' one to the other, without every one being 'sippe' to every one else.

Another important point is manifest. In determining 'sippe' or 'computable relationship' descent was traced through females as well as through males. Full brothers' and sisters' children were classed together, and so on to the end; the children of a sister were as much 'sippe' to the children of a brother as the children of another brother.

§ 3. *Early English Law*. The early English Laws have very little to say on the subject which will help us; but what there is in those laws is identical with the view here taken of the Welsh 'cenedl'.

The clan-system in England, and in fact in most of the Germanic tribes on the Continent, appears to have broken down early. This was probably due to the migrations of the peoples.

The Germanic tribes, as we have them in history, appear to be partly territorial, and, though there was a sentiment of common racial origin in such confederacies as the Franks, the Burgundians, the Lombards, and the like, the sense of

descent from one common ancestor is not greatly to the fore.

The sense of kinship, expressed in the term 'maegda', was, however, present; but the 'maegda' did not connote any specified degree of relationship.

We find frequent references in English Law to the duties of the 'maegtha' of a person to that person, and of the duties of a person to his 'maegtha', but such duties appear to be confined to responsibilities under the law of crime or tort.

In early English Law the responsibility for such acts fell, as in Welsh Law (and it may be added in exactly the same proportions of two to one), upon the kinsmen of the father and the kinsmen of the mother, again showing that the term 'maegtha' was used in the sense of kinship, and not in the sense of an organized community of males limited by a specific degree of relationship.

Indeed the only attempt made in the Anglo-Saxon Laws to define 'maegtha' defines it in the same general way in which we would at the present time define 'kinship'.

'Those are of kin and belong to the same "maegth" who have common blood with each other, or with a third originating in lawful marriage.'

a definition which leaves no room for doubt that 'maegtha' could not possibly be an organized community tracing descent in a specified number of degrees from one common ancestor in the male line.

We have in English Law, however, practically no survival of the idea of 'maegtha' as a clan or 'cenedl' ruled over by a clan chief; such organization had completely broken down among the Anglo-Saxons. What we have surviving is the sense of kinship, traceable through males and females, as involving some duties in law.

What the limit of computable relationship was which rendered men responsible to assist one another in English Law is nowhere expressed; it is always the 'maegth' or 'parentilla', without expressed limitation, that was responsible. Whether at any time there was a limit or not we have no means of knowing, and conjecture would be idle.

In cases of insult (*haelsfang*) to a dead body we have

definite proof, however, that the relatives entitled to share in it were the relatives in four degrees, exactly as in Wales.

In the Laws of King Edmund we are told that the 'haelsfang' goes only to those who are related in the 'cneowe'; and in the *Leges Henrici I* to those 'qui sunt intra genu'. 'Cneowe' and 'genu' here mean not 'knee' but 'elbow'; and, if we bear in mind the picturesque figure of the *Sachsenspiegel*, we see at once that those are related in the 'cneowe' to one another who are descended from a common great-grandfather.

So far, therefore, as the English Laws enable us to judge, they are in accord with the view here taken of the provisions of the Welsh Laws.

§ 4. *Scots Law*. Our knowledge of early Scots Law is very limited, for no attempt appears to have been made to codify Gaelic custom.

However, we know this much that Scotland possessed a clan system; and that each clan, Macduff, Macpherson, or what not, assumed a descent from some common ancestor, but placed no limitation of degrees of relationship on membership of that clan. Macphersons related to each other in the tenth degree or any other degree would still be members of the clan Macpherson, and their sons and grandsons after them would be so too.

We also know that over each clan there was some person or other recognized as chief of the clan.

In addition, however, we have some traces of the computation of relationship up to, and not beyond, nine degrees; not as a test whether a clansman remained a member of the clan, but as a test whether he could or could not demand support from other clansmen in particular circumstances.

In Fragment V, p. 380, of the Scots Acts we find that an attempt was made to abolish compurgation by kinsmen, and it was provided therein:

'The fader nor moder . . . na nane of the cousinage na nane of affinitie within nyne degres', should, in the future, be admitted as a member of a jury of compurgation.

There is some evidence also in addition that nine degrees was the limit for succession.

The material is slight, but it is consistent with what has been said regarding the Welsh system.

§ 5. *Irish Law*. One place we might have hoped to gather some information from is the Brehon Law.

Unfortunately the tribal system of Ireland is so obscurely stated in that law that no two writers have hitherto agreed as to its significance.

Sir Henry Maine, Dr. Sullivan, Hearne, M'Lennan, Arbois de Jubanville, and others have all advanced explanations of the Irish 'fine' system which have little in common with each other; and it can be said with safety that the key to its interpretation has not yet been discovered.

Nevertheless there are some points which are more or less established.

The first and most important, perhaps, is the fact to which reference has already been made, viz. that the term 'fine' has no constant invariable meaning. As Sir Henry Maine has pointed out the word 'fine' is applied to all kinds of ties of kinship, from the widespread tribe down to the household and all intermediary steps between.

The household, a man and his children, is the 'cind-fine', the tribe is the 'fine' *par excellence*. We have, in fact, in the use of the word 'fine' something comparable to the use of the word 'cenedl' in Welsh.

Among the numerous uses of the word 'fine' in the Brehon Laws are the passages which speak of the 'geilfine', the 'dierbhfine', the 'iarfine', and the 'indfine'.

This was a division of relatives apparently regulating the holding of and succession to land within the 'fine' or tribe; but the most varied explanations of how these 'fines' were organized have been given.

What the Irish Laws—both the *Senchus Môr* (II. 331-5) and the tract 'De Fodlaib cineoil tuaiti' (IV. 283)—say is that in the 'geilfine' there were five members, in the 'dierbhfine', 'iarfine', and 'indfine' four each. Whether the members were individuals or groups of individuals or generations is one of the problems connected with the subject as yet unsolved.

However, when a person (or generation) was born he or

it was born into a 'geilfine'; thereupon the senior member (individual or generation) of that 'geilfine' passed into the 'dierbhfine', the senior member of the 'dierbhfine' passed into the 'iarfine', the senior member of the 'iarfine' into the 'indfine', and the senior member of the 'indfine' into the general tribal community or 'duthaig 'ndaine'.

The tract 'De Fodlaib' is most suggestive, especially when we bear in mind the *Sachsenspiegel* identification of 'sippe' with the joints of the human body.

Besides mentioning the 'geilfine', 'dierbhfine', 'iarfine', and 'indfine', that tract refers to the 'deirghfine', 'diubhfine', 'finetacuir', 'glasfine', and the 'ingen ar meraibh'.

The 'dierghfine' appears to have been that section of a tribe on account of whose slayings the tribe had been mulcted in 'coirpdire' or blood-fine, and whose rights thereafter in the tribal land and tribal contracts were diminished; the 'diubhfine' appears to consist of the same class of persons as the 'reputed', but as yet 'unaffiliated', sons of the Welsh Laws; the 'fine-tacuir' of persons adopted into the tribe; and the 'glasfine' of sons of Irish-women by foreigners (*Albanach*). They were, as it were, adjuncts or accretions to the tribe of blood.

The tract says, in regard to the 'indfine', that it was here that family relations ceased ('*irr ann scarait finnthea*'), and henceforth it was a 'community of people', indicating that there was some limit by degrees placed upon responsibilities of some kind; and then, in regard to the 'ingen ar maraibh', it is stated that the 'fine' ends here ('*ir ann diba finntedaib*').

Now 'ingen ar meraibh' means literally 'the nails of the finger', and the tract says that 'men in the "ingen ar meraibh" are those concerning whom it has passed from ear to ear (i. e. concerning whom it is reported) that they are of the "fine"'. It separates from the family, but it obtains a share of the family land. The land is not at all divided, but it is here the family ends'. In other words, though there is no separation from the tribal lands, the right to collateral succession ceases in the 'ingen ar meraibh'.

It does not seem unreasonable to believe that the 'ingen

ar meraibh', the nails of the finger, are persons related in the ninth degree. If that be so, the rules of the tract are identical with what we have said was the rule in Welsh Law.

Computable relationship, conferring some right or other to collateral succession to land or the recovery of a share in land held by persons related in that degree, was reckoned up to, but not beyond, the ninth degree, but the arrival of the ninth degree did not necessarily involve a division of the tribal land and a dissolution of the tribe into new tribes. 'The land was not at all divided' is very emphatic.

The function of the four fines mentioned was indubitably to regulate rights of succession to land.

When any 'fine' died out, three-fourths of the property owned by it passed to the 'fine' above it, that is to the one junior to it, if any; and, if none, to the next immediately senior to it, three-sixteenths to the next in the same order, and one-sixteenth to the next.

Thus if a 'dierbhfine' became extinct, three-fourths of its property passed to the 'geilfine', three-sixteenths to the 'iarfine', and one-sixteenth to the 'indfine'.

Dr. Sullivan identifies the 'geilfine' with relationship in the fifth degree, the 'dierbhfine' with relationship in the ninth, the 'iarfine' with relationship from the ninth to the thirteenth, and the 'indfine' with relationship from the thirteenth to the seventeenth.

Perhaps the most forcible objection to this identification is that relationship is never counted, in any known system of early law, up to the seventeenth degree, and the discovery of all persons related to one another in seventeen degrees would be impracticable. Calculation of relationship up to the fourth, fifth, seventh, and ninth degrees, for the purpose of creating rights or imposing duties, is a common feature of many systems of law, but its computation beyond that is unknown.

There are undoubtedly passages in the Irish Laws consistent only with Dr. Sullivan's explanation. Such, for example, is that in the *Senchus Mór*, II. 161:

'The "geilfine" tribe relationship in the direct line, such as the father, and the son, and the grandson, and the great-

grandson, and the great-grandson in the fifth generation, and the "geilfine" tribe relationship in the reverse line, that is the brother of the father and his son to the fifth generation.'

Arbois de Jubanville identifies the four 'fines' with descendants of a common father, grandfather, great-grandfather, and great-great-grandfather.

Another explanation, at the opposite extreme, is that the 'geilfine' consisted of a man and his four youngest sons, the 'dierbhfine' of the next nearest four relatives, and so on, the maximum number of persons eligible for succession being the seventeen nearest relatives.

Between these explanations there are varieties of guesses.

In all the theories, however, some facts stand out clearly.

The first is that relationship, kinship, for the purposes of succession ceased to be counted at some point or other. Any one beyond that point passed out of kinship for succession into the general tribe or community.

His connexion with those left behind was not severed absolutely; he maintained membership of some general community or tribe, but computable relationship for a particular purpose, viz. succession, ended.

The second point that stands out clearly (and this is more pertinent to the land-laws than the subject now under discussion) is that, where there was succession of 'fine' to 'fine', succession was by stock of 'fine', and not *per-capita* by members of a connected 'fine'.

The third point which appears to stand out is that these 'fines' were not automatically dissoluble. They endured or might endure perpetually. A man might pass in and out of a 'geilfine' for instance, but the 'geilfine' itself continued to exist as a corporation and was independent of the life or lives of any particular person belonging at any one moment to it.

It continued so long as there was a single person surviving capable of admission thereto.

Lastly, it appears that over the whole congeries of 'fines' there was an 'aire' or chieftain, and that the compound 'fine' had mutual responsibilities and rights in contracts, crimes, warranty, and the like.

In view of the uncertainty surrounding the correct interpretation of the Brehon Laws it is dangerous to press resemblances too far ; but, making all due allowance for such difficulties, we seem to have in the Brehon Laws rules of a nature similar to those in the Welsh tribal system, and we seem to have the term 'fine' used both as a general tribe and as a system of computation of kinship for the purposes of defining where certain duties and rights terminated.

XII

THE BONHEDDIGION

The Clans in the Surveys.

1. *Introductory.*

§ 1. We must now turn to the series of Surveys made in Wales, principally in the early fourteenth century, and consider the facts therein in the light of what has been said before.

§ 2. In connexion with them we may start by saying that the Welsh genealogists, especially of the sixteenth and seventeenth centuries, speak of the fifteen 'special tribes' of North Wales.

It has often been assumed that these fifteen tribes form a piece of heraldic and genealogical rubbish. So far as heraldry is concerned they probably do, but so far as genealogy is concerned they do not.

The importance of a study of the Welsh genealogies, as throwing light on the Welsh tribal system, is not one which can be ignored. To enter, however, here into any detailed inquiries and explanations is out of the question, but some conclusions derivable from such investigations may be stated broadly.

What appears to have happened in regard to the formulation of these special tribes was this. Sometime after the reign of Owain Gwynedd the Norman cult of heraldry spread into Wales ; and, as happened in England, a question arose as to who were entitled to 'bear arms'.

Fictitious coats-of-arms, mostly borrowed from Norman sources, were assigned to or appropriated by the heads of important clans ; these clans, whose head men possessed arms, were known thereafter as 'special tribes', and gradually they were limited in number for a variety of causes. Free tribesmen, who did not belong to these 'special' tribes, were recognized by genealogists as having similar tribal

organizations which they designated as 'gwehelythau', 'lineages', the lesser 'gwelys' of the Surveys.

The 'special' tribes were denominated after the principal person of the clan existent in most, but not all, cases in the reign of Owain Gwynedd, and it became, after the annexation of Wales, the test of gentle birth whether a man was or was not descended from one or other of the protonyms of these tribes.

The 'special' tribes are identifiable with the clans or 'cenedls' of the laws and with some of the 'progenies' or 'wyrion' of the Surveys.

§ 3. We find in the Surveys many important clans with determinate names attached to them together with some less important clans, all of whom are organized in and termed 'gwelys', progenies, or 'wyrion'.

The protonym of these clans would, of course, not be the founder of the clan named after him. Such clans must have been in existence for some time before they would be termed clans with a definite nomenclature. In some cases we can trace the family of the protonym in the Surveys back for several generations, by means of the genealogies, to a time even anterior to the days of Hywel Dda. As time went on there was an ever-strengthening tendency to regard the protonym as the originator of the clan, and for every one in the clan to trace descent from him.

The more important clans, which we find in the Surveys, were sufficiently well-established and distinguished in the time of Owain Gwynedd to be regarded as superior, either by virtue of numbers or possessions, to other groups, and we can establish that tribal entities holding areas in the fourteenth century held the same areas centuries earlier.

§ 4. The names of some of the special tribes of the genealogists are important in view of the entries in the Surveys.

Those to which attention will be drawn are, in the Honour of Denbigh, the clans of Marchudd ap Cynan, Hedd Molwynog, Braint Hir, and Marchwithian; in Anglesea, the clans of Hwfa ap Cynddelw, Llywarch ap Bran, and Gweirydd ap Rhys Goch; those in Caernarfon, the clans of Collwyn ap Tango, Maelog Crum, and Nefydd Hardd; those in

Bromfield and Yale, the clans of Sande Hardd, Elidyr, and Ithel ap Eunydd, and in Merioneth the clan of Ednowain ap Bradwen. Others of the special tribes occupied parts of Wales not covered by the Surveys, but it is to be noted that the Surveys introduce us to clans not included in the fifteen special tribes.

2. *The clans in the Honour of Denbigh.*

§ 1. If we turn to the Denbigh Survey we find the four Denbigh clans mentioned above holding land as tribal entities in 1334; we also find a number of smaller tribal entities holding land side by side with them.

In considering the facts recorded in the Survey we can see, in some measure, how clans arose, how they spread and maintained their tribal unity for generations, and how at times they tended to disintegrate or dissolve into new clans.

The progenies, 'wyrion', 'gwelys' of the Surveys do not appear to be tribal kin-connexions limited by definite degrees of affinity. They do not consist of persons interrelated only in the fourth, the seventh, or the ninth degree; they are tribal connexions based on descent from, or attachment to, some specified clan chief, and men of varying degrees of descent from a protonym are found forming 'gwelys' and the like.

The 'gwely' is frequently inclusive of the whole clan, whose existence for centuries is transparent; sometimes the 'gwely' is a fraction of a major 'gwely' or clan, sometimes a minor tribal entity; in fact, a stock descended from any ancestor holding land in common.

We shall never find a 'gwely' splitting up into 'gafaels'; what we do find is groups of men, belonging to a 'gwely', holding separate areas or separate fractions of the whole 'gwely-land'; and then such separate areas or fractions are spoken of as the 'gafaels' or holdings of such groups. Much more frequently we find 'gwelys', without any mention of groups within the 'gwely', holding 'gafaels'; and we find 'gafaels', that is the holding of a whole clan or progenies, without the word 'gwely' being used at all. We shall also find groups within a 'gwely' or a progenies holding separate areas or fractions, and in connexion therewith such groups are spoken of as 'gwelys' within the 'gwely'. We

shall find also holdings or 'gafaels' having no possible relation to the number of sons the protonym of the 'gwely' had.

The evidence, rightly considered, shows that 'gafael' means nothing more or less than a holding of land, whether that holding be the holding of an individual, of a group of men forming a 'gwely' or a portion of a 'gwely', or even of the whole clan.

§ 2. *The Clan of Edred ap Marchudd ap Cynan.* The first clan we have to consider is that of Edred ap Marchudd.

In the majority of the late genealogies Edred appears not as 'ap Marchudd', but as 'ap Inethlan ap Asaf ap Carwed ap Marchudd', and Marchudd is credited with having lived in the ninth century. We need not enter into close genealogical investigations here; but there seems to be no sufficient ground to doubt the accuracy of the Survey of Denbigh in describing Edred as the son, and not as the great-great-grandson, of Marchudd. There appears, moreover, no doubt that Marchudd ap Cynan was not the founder of the clan of which he was at one time chief or 'pencenedl'; that clan appears to have been in existence for generations prior to his time.

Apparently the clan came into the Perfeddwlad, at the invitation of Rhodri Mawr or Anarawd in the ninth century, from Strathclyde under the leadership of a chieftain named Marr.¹ This fact is mentioned here because the next two clans, to which we shall refer, appear to have been of the same original stock as the clan of Edred ap Marchudd, and to have formed at one time or other a single clan with it.

The clan of Edred, which we find definitely named as such in the fourteenth century, existed, therefore, in the same locality in the ninth century; and of the men living in the fourteenth century none are less than nine degrees removed from Edred, some of them are demonstrably more. The continuity of the clan under the same name continued up to a much later date than 1334, and its unity as one of the fifteen special tribes continued well into Tudor times. It was the largest of all the free clans in North Wales, and

¹ For this information I am indebted to Mr. G. A. Jones, M.A., Coniston.

to it belonged Ednyfed Fychan, the Eden' Vaghan of the Surveys, the direct ancestor of Henry Tudor.

A pedigree of this clan, including the total of its members recorded in 1334, is attached hereto.

In Denbigh the descendants of Edred held land in Abergele (with its hamlets Bodelwyddan and Massewig), Llwydcoed, Llysaled, Mathebrud, Heskyn, Mostyn, Beidiog, Cilcein, Trofarth, Cefnllaethfaen, Brynfanigl, Twynan, and Dynorbyn Fychan.

In Caernarfon the clan held land in Penrhyn, Caerhun, Bettws-y-coed, Gloddaeth, and Deganwy (the latter two by intermarriage into the family of Madoc of Gloddaeth), and in Anglesea in Nantfychan, Trefcastell, Penymynydd, Ddrainog, Trescawen, Gwredog, Penhenllys, Bodunod, and Twrgarw.

Edred had four sons. The descendants of Ithel are found in Abergele, Llwydcoed, Mathebrud, and Bettws-y-coed; those of Rhys in Abergele, Llwydcoed, Heskyn, Beidiog, and Mostyn; those of Bleth in Abergele, Llwydcoed, and Cilcein; those of Idenerth in Abergele and its hamlets, Llwydcoed, Trofarth, Cefnllaethfaen, Brynfanigl, Twynan, Llysaled, Dynorbyn Fychan, and the 'villatae' in Anglesea and Caernarfon, with the sole exception of Bettws-y-coed.

The first fact which stands out clearly is that some descendants of each branch of Edred's family held land in Abergele and Llwydcoed. Nowhere else are descendants of all his four sons found together. This points to the fact that the original home of the whole clan was Abergele and Llwydcoed, from which centres there were radiations. As already noted it appears that the clan came into the Perfeddwlad from Strathclyde in the ninth century, and it would seem that the incomers were first allotted Llwydcoed as a base, from which they set forth and established themselves at Abergele.

The next fact which appears from the pedigree table is that, though we are able, from the Survey of Denbigh, to give the names of the members of the clan alive in A.D. 1334, and to show to which branch of Edred's descendants they belonged, we can say, positively, that, with perhaps a few

negligible exceptions, there is no evidence that any of the people then alive were *great-grandsons* of the person under whose name they are shown as descendants. This is of general applicability to all clans in the Survey.

On the other hand, in the clan of Edred, we can, from the material supplied in the Extent of Llysaed, show that the persons alive in A.D. 1334 were *great-grandsons* of Ednyfed Fychan, a son of Ken' ap Ior' ap Gwgan; and, as we know from the Record of Caernarfon, made some eighteen years later, that some of the *great-great-grandsons* of Ednyfed Fychan were alive and old men then, it would seem established that the persons of the clan, alive in A.D. 1334, were at least *great-great-great-great-grandsons* of Idenerth, Bleth, Ithel, and Rhys, and related to no protonym of a 'gwely' or 'gafael' nearer than as *great-great-grandsons*.

The next fact to note is that we have a pedigree table covering at least nine or ten generations (and, if we go back as far as Marr, fifteen or sixteen), throughout which the consciousness of a tribal unity is maintained.

So far as we can see there was no automatic disruption of the clan every generation.

The fourth fact to note is that branches of the clan, without severing themselves from the parent stock in Abergele and Llwydcoed, spread outwards and occupied new areas, in which other members of the original clan held no share. These radiations were caused probably by economic pressure, and were one of the causes for the growth of new tribal entities out of the old one.

In Abergele the clan held one-quarter of the whole 'villata', the remaining three-quarters being held by members of other tribal entities.

The unity of the whole clan is apparent from the fact that it is spoken of as the 'progenies' or the 'wyrion' or the 'gwely' of Edred ap Marchudd; the three terms are used indifferently.

Further, however, we find that the 'gwely' of Edred ap Marchudd was divided into four 'gwelys', those of Ithel, Rhys, Bleth, and Idenerth, and that this 'sub-gwely' of Idenerth was divided into five more 'gwelys', those of his

grandsons Llywarch, Gronw, Rishard, Madoc, and Ior'—a further subdivision due apparently to the fact that the line of Idenerth alone occupied the adjacent hamlets of Bodelwyddan and Massewig.

It is of importance to observe that this division of the 'gwely' into 'sub-gwelys' was not continued in any branch of the family except Idenerth's beyond the sons of Edred in Abergele; that is in the ancestral home a 'gwely' did not disrupt into new 'gwelys' as a matter of course every generation. It is also of importance to observe that there was no division of the land by metes and bounds; the separate shares of each 'sub-gwely' in the land is expressed in fractional shares of the whole.

In Llwydcoed, where the whole clan owned one-third of the ville, there are the same characteristics. The whole clan is spoken of as the progenies, or the 'gwely', or the Wyrion Edred. Again the 'gwely' Edred is divided into the same four 'sub-gwelys', the 'gwely' Idenerth into the same five 'gwelys', which are also called progenies or 'wyrion', and in addition we have, what we have not got in Abergele, the 'gwely' of Ithel divided into two progenies, Ithon and Gronw, each holding half the 'gwely' Ithel.

In Abergele we are told further that the four 'gwelys' named after Edred's four sons got equal shares; that the 'gwely' Ithel contained $1\frac{1}{2}$ 'gafaels'; that in 'gwely' Rhys some of his descendants held one-half of one 'gafael' (one-third of the 'gwely' holding), others one-fifth of a 'gafael' (two-fifteenths of the 'gwely' holding), others one-tenth of a 'gafael' (one-fifteenths of the 'gwely' holding), others one-sixth of the 'gwely', also spoken of as a 'gafael'; and that three-tenths of the whole 'gwely' was escheat.

No mention is made of any 'gafaels' in 'gwely' Bleth or in the 'gwelys' of the sons of Idenerth.

So far as this goes, it shows that two 'sub-gwelys' each held $1\frac{1}{2}$ 'gafaels', others holding fractions of 'gafaels', a fact quite inconsistent with the theory that a 'gwely' was divided in the lifetime of the head of a family into as many 'gafaels' as the head of the family had sons.

In Llwydcoed the word 'gafael' does not occur at all.

We may note here, for reasons apparent later, that the descendants of Ior' ap Gwgan are not spoken of as the Wyrion Eden' in either Abergele or Llwydcoed.

As already noted, nowhere else do we find the descendants of all of Edred's four sons holding land in the same area or 'villata'. The clan apparently expanded, and the holdings in the original settlements of Abergele and Llwydcoed became too contracted. It became necessary for the tribesmen to find more room, and what happened was that some descendants of each of the four sons set out to find fresh pastures.

We may follow the wanderings of each of these branches with some advantage.

The line of Ithel wended forth from Llwydcoed up the valley of the Conway until it reached Mathebrud near Llanrwst.

The family left behind in Abergele only the descendants of Madoc ap Ithon, Hoidilo ap Gronw, and Ririd ap Gronw; but the majority, even of these sub-branches, trekked out to Mathebrud as well, though at the same time all the grandsons of Ithel, except Gronw ap Ithon, kept a hold on land in Llwydcoed.

Notwithstanding, however, the fact that the descendants of some grandsons seem to have evacuated Llwydcoed or Abergele, the descendants of the grandsons left behind did not claim to hold adversely against those who had gone away. That is to say they did not hold as 'gwely' Madoc, Hoidilo, or Ririd in either Abergele or Llwydcoed: transfer of some branches did not involve the disruption of the clan in the ancestral home, and any wanderer could return there at any time and take his place in the common 'gwely'.

As soon, however, as the migrants got to Mathebrud, the name 'gwely' Edred was entirely dropped. The name 'gwely' Ithel was also dropped, and the tribesmen are found divided into two 'gwelys', 'gwelys' or progenies Ithon ap Ithel and Gronw ap Ithel. We have here, therefore, a separation from the original stock or clan in the new

territory acquired, to which other descendants of Edred, not being parties to the acquisition, had no title.

In Mathebrud also for the first time we find a division corresponding with a later generation. The 'gwely' Ithon was divided into eight 'progenies' named after each of his sons, each holding one-eighth of the 'gwely' Ithon, and the 'gwely' Gronw into five progenies, named after each of his sons, and each holding one-fifth of the 'gwely' Gronw.

The word 'gafael' is not mentioned in this 'villata'. It may be noted that the branch of Griffith had become extinct, and his one-eighth share had gone exclusively to some descendants of Ken' and Iorwerth.

From Mathebrud there was an extension of part of this family still farther. From the Record of Caernarfon it appears that some of the descendants of three sons of Ithon, viz. Iorwerth, Ken', and Griffri crossed the Conway and settled in Bettws-y-coed, a village to this day known almost as widely as Bettws Wyrion Ithon.

Notice again it is Wyrion Ithon, not Wyrion Ithel, because the sons of Gronw ap Ithel, not being migrants with the sons of Ithon into Bettws, acquired no share there.

In Bettws the village was divided into three 'gwelys', known after the three migrating brothers.

The story of the descendants of Rhys is similar. Members of every branch of this family trekked southward along the left bank of the Aled until they reached the areas of Heskyn and Mostyn.

Numbers were left in Abergele and Llwydcoed who did not go forth, and there they continued to call themselves 'gwely' Rhys. None of the individual trekkers are found mentioned in Llwydcoed, but in Abergele all are except the descendants of Llywarch.

Arrived in Heskyn and Mostyn, they ceased to call themselves of the Wyrion or 'gwely' Edred or Rhys: they termed themselves simply the progenies of Wilym ap Rhys.

They were subdivided, but not into 'sub-gwelys'. In Heskyn they held five 'gafaels', named after the five sons of Rhys, and in Mostyn four 'gafaels', the descendants of Cuhelyn having no share in the latter village.

The tunc-levy or land assessment indicates that the 'gafaels' were equal fractions.

The line of Cuhelyn, which held nothing in Mostyn, alone occupied Beidiog, where it was termed the 'progenies' Cuhelyn holding one 'gafael', a clear indication that 'gafael' was not a subdivision of a 'gwely', but might be coextensive with a 'gwely'.

The line of Bleth, which we have seen holding in Abergele and Llwydcoed as 'gwely' Bleth only, seems to have trekked almost wholesale to Cilcein, a village to the west of Abergele beyond the river Dulas.

The transfer of the sons of Gwyon ap Bleth seems to have been complete, for we find none of them in either Abergele or Llwydcoed. A considerable number of the other descendants of Bleth retained a footing in Abergele, but very few did in Llwydcoed.

In Cilcein the family is spoken of as the progenies of Bleth ap Edred ap Marchudd, and it held the village in three 'gwelys', named after the sons of Bleth, the shares being approximately equal. 'Gafaels' were non-existent in this branch.

The line of Idenerth was a most prolific one. We have seen that even in Llwydcoed and Abergele the line held in separate 'gwelys'.

The whole family appears to have occupied Trofarth, a village to the south of Cilcein. The title of progenies Gwgan ap Idenerth ap Edred is retained there, and the family held in the same five 'gwelys' as in Abergele and Llwydcoed. It is here that we first come across the name Wyrion Eden' applied to that branch which was descended from Ken' ap Ior' ap Gwgan.

The holders in Trofarth are identical with those in the ancestral villages.

The family as a whole spread further and occupied Cefnllaethfaen; it there appears to have ceased using all terms indicating descent from Edred, and the land was held in equal shares by the same five 'gwelys'.

None of the family spread further other than the descendants of Ken' ap Iorwerth.

This branch furnishes one of the most remarkable illustrations of the Welsh tribal developments.

One of the sons of Ken' ap Ior' was Ednyfed Fychan, the warrior statesman of the time of Llywelyn ap Iorwerth, and the direct ancestor of Henry Tudor.

In the time of Llywelyn, owing to the military exploits of Ednyfed Fychan, the descendants of Ken' ap Ior' were freed from all monetary dues to the Crown, and their sole service was liability for military duties throughout Wales.

They became in fact a sort of *corps d'élite*, and were designated the Wyrion Eden'. There was a conscious line of demarcation between them and the other descendants of Edred, and there seems no doubt that the recognition of their exceptional military valour was the occasion for crystalizing this branch of the clan into a separate clan.

Ednyfed Fychan accumulated a considerable amount of wealth, and, owing to purchases and royal gifts, he acquired a number of villages in Caernarfon and Anglesea. The distinction between such villages and the more ancient ancestral ones is very marked. The latter were held on the old tribal and ancestral lines, the former not tribally, but individually by the descendants of Ednyfed, to whom he separately bequeathed his possessions.

To deal with the ancestral villages first.

The first of these was Twynan, situated to the west of the River Dulas. This was held exclusively by the progenies Ken' ap Ior' ap Gwgan, 'qua vocatur Wyrion Eden', many of whose names are the names of great-grandsons of Ednyfed Fychan. There was no division into 'gwelys' or 'gafaels'.

Brynfanigl is a village situated near Twynan on the other side of the Dulas. There is evidence to show that it was occupied at one time by Marchudd, and apparently it contained the principal 'tyddyn' or homestead of the clan chief.

At any rate in 1334 half of this village was held by the same Wyrion Eden', some of whom held in Twynan as well.

An interesting fact about the Wyrion Eden' is that their possessions in Abergele, Llwydcoed, Cefnllaethfaen,

Trofarth and Twynan were held by exactly the same lot of tribesmen. Most of these do not appear in Brynfanigl, for what reason it is impossible to be certain.

The next village is Dynorbyn Fychan. Dynorbyn Fychan was a sort of cantonment just outside the old royal seat of Dynorbyn Fawr. A section of the Wyrion Eden', described as the progenies of David ap Eynon (? Ednyfed) ap Ken' ap Ior', was located there, apparently as a kind of royal bodyguard, and it held a portion of the village described as the 'gwely' Griffri ap Trahaearn.

No person of that name belonged to the clan of Edred; and we have here an instance where a clan name had become purely territorial and remained the nomenclature of land, once occupied by a clan, long after it had passed into other hands, possibly because, under Welsh Law, the right to repurchase (*writhprid*) survived to the vendors for some generations.

In Llysaed three great-grandsons of Ednyfed Fychan held one-half of the village in one 'gafael', called 'gafael' Wyrion Eden' Vaghan.

In Caerhun (Caernarfon) the family held, out of eight 'gafaels' into which the village was divided, one named after Gronw, either a son or a great-grandson of Ednyfed Fychan, and the holders in the Record of Caernarfon were two sons of Gronw, the great-grandson, Hoel and Tudor, 'et alii coheredes sui'. It seems that this holding was acquired by Ednyfed Fychan and given to his son Gronw. The same men held half of another 'gafael', 'gafael' Cennyn—which would appear to have been purchased—the original name, as in Dynorbyn Fychan, being left unchanged on transfer. Other villages held by descendants of Ednyfed Fychan, in all of which they are spoken of as the Wyrion Eden', were Trefcastell, Penymynydd, Gwredog, Ddrainog, Penhenllys, and Twrgarw, all in Anglesea.

In the last two viles it is said that there was one 'gwely', Tudor ap Madoc, probably an ancient name left undisturbed on acquisition; and in the other viles the same Hoel and Tudor are shown as holding without any designation of 'gwely' or 'gafael'.

Bodunod was held in one 'gwely', known as Ior' ap Gwgan, by great-great-grandsons of Ednyfed Fychan, holding, that is to say, a 'gwely' known by the name of their great-great-great-great-grandfather.

Trescawen appears to have been held by other great-great-grandsons of Ednyfed in a 'gwely' named after their father.

All of these viles were apparently acquisitions of Ednyfed Fychan given to various sons of his.

In the Creuddyn he seems also to have acquired Penrhyn, which was held by descendants of his without designation of 'gwely'; and by alliance with descendants of Maelog Crum, his daughter's descendant, the famous Madoc of Gloddaeth, held Gloddaeth in three 'gwelys', Deganwy, an old 'maerdref', and Nantfychan, where the holdings in the Record of Caernarfon are termed carucates.

The facts of this clan show:

(i) that within the original clan the consciousness of tribal unity could and did survive for several generations, and within the ancestral settlement there was no tendency, except in one line, to develop into sub-clans after the first division;

(ii) the division of the clan into 'gwelys' did not take place every generation, and the unity of 'gwelys' continued for more than four generations;

(iii) the word 'gafael' is almost unknown, and, where 'gafaels' did exist, they bore no correspondence with the number of sons of the prononym of a 'gwely';

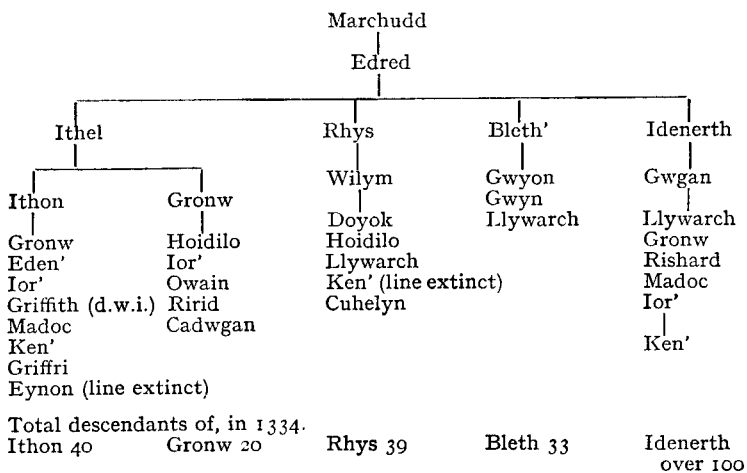
(iv) there was a tendency, when a portion of a clan migrated, for such portion to be composed of men more nearly related to each other than by descent from the common ancestor of the whole clan;

(v) when such portion migrated and acquired new settlements, it was the rule for it to disregard in its new settlements its connexion with the original stock, and therein lay the foundations of what might grow into separate clan entities.

(vi) the definite separation of a portion of a clan from the rest and its development into a separate clan was furthered by extraneous political facts, such as the growth of the power of Ednyfed Fychan;

(vii) the word 'gwely' meant merely a stock claiming some common descent, not necessarily in four generations, acting together and holding land together; and the word 'gafael' meant not a subdivision of a 'gwely', but merely a defined holding of some members of the clan or 'gwely'.

PEDIGREE TABLE OF CLAN EDRED AP
MARCHUDD



§ 3. *The clan of Efelyw.* The clan of Efelyw, or Vuelleneu as it is called in the Survey of Denbigh, appears to be a branch of the original clan of Marchudd, which must have separated off before the time of Edred.

There are some points of difficulty connected with this clan.

Its original home was apparently Llwydcoed and Abergele, in the latter of which its settlement was subsequent to its occupation of Llwydcoed, and it held lands also in Trallwyn.

In Llwydcoed part of the clan is spoken of as the progenies, or 'gwely' or Wyrion Efelyw in three 'gwelys' or progenies, Idenerth, Edenewyn, and Cynan, or, as it is put, 'each progenies holds its own portion as one gwely'. This part of the clan held one-quarter of the village.

One peculiarity is that one-half of another 'gwely' in Llwydcoed, viz. the 'gwely' Alured, which was divided into

[illegible]

A group of which numbers not given.

could exist together which were not of the same generation. This adds confirmation to the view that the 'gwely' was not created every generation, and that the 'gafael' was not a subdivision of a 'gwely' in the generation succeeding that in which the 'gwely' was formed.

The line of Doyok, so far as it was represented by his sons Wylm, Rishard, and Gruffyd, did not go beyond Abergele and Llwydcoed, but the descendants of Rand ap Doyok, who were very numerous, did. Rand had six sons, one of whom, Atha, was illegitimate, and the whole of this family sent out members to Trallwyn near the Conway River.

Following the same precedent as operated elsewhere the descendants of Rand (called 'gafael' Rand in Abergele and 'gwely' Rand in Llwydcoed) are called progenies Rand in Trallwyn, divided into five new 'gwelys' (not heard of before), after each of the legitimate sons of Rand and one 'cynnwys' after the illegitimate one.

The facts of this clan are quite inconsistent with Dr. Seebohm's theory, and we can see that a subdivision was dictated by purely economic reasons, and that a subdivision did not necessarily operate in every ville where a clan held land.

§ 4. *The Wyrion Alured.* Closely associated with the Wyrion Efelyw were the Wyrion Alured. They appear to have been a branch of the same family, but the evidence is not conclusive.

The clan held in Llwydcoed only, and was divided into two 'gwelys', Eignon ap Alured and Madoc ap Alured.

In the 'gwely' Eignon five members of the 'gwely' Cynan ap Efelyw are found with twenty-eight other men.

The 'gwely' Madoc was held, as to half, by the members of the 'gwely' Eignon, and, as to the other half, jointly by two men of the 'gwely' Eignon, ten of the 'gwely' Cynan ap Efelyw, and one other.

Dr. Seebohm's theory will not fit in with the facts of this clan at all.

We seem to have in it a clan in the process of absorption by another clan, of which it was at one time probably a part, or the absorption may be due to a series of purchases. Whatever the reason may be, there is a complete absence of those features essential to the establishment of Dr. See-

bohm's theory, a division each generation into 'gwelys', and a further subdivision into 'gafaels', en route to becoming 'gwelys'.

The 'gwelys' that existed consisted of men who were not more nearly related than in the fifth generation.

§ 5. *The Wyrion Inethlan ap Carwed.* This clan, known as the progenies Inethlan, held land in Abergele only. That it was connected with the Wyrion Edred seems clear.

In the later genealogies Inethlan is shown as the father of Edred and Carwed as Inethlan's grandfather and the son of Marchudd.

There seems no doubt that in the genealogies it sometimes happened that an ancestor, known to be of a particular clan, was assigned a place as a son of another person of the clan, when all that was definitely known was that he was in some way connected. Such genealogies cannot be accepted as establishing without question the details of the descent ascribed, at any rate earlier than A.D. 1200, but they do support the conclusion that persons found therein as father and son were connected in some way or other.

Inethlan himself appears to be identifiable with the Iona-than, lord of Abergele, who, according to the *Annales Cambriae*, died in A.D. 856.

The progenies was not divided into 'gwelys', but into groups holding six 'gafaels', two of which, held jointly, were called the 'gafaels' of Heilyn Goch, and four, held jointly, the 'gafaels' of Edred ap Inethlan. The two 'gafaels' of Heilyn and the four of Edred were equal.

The facts of this clan are also inconsistent with the idea of a first division into 'gwelys' and then into 'gafaels', and some of the existing 'gafaels' bore a name which apparently had been borne at the least for nine generations, while, if the identification is correct of Inethlan with Iona-than, the clan name goes back for some 500 years.

§ 6. *The clan of Marchwithian.* The next clan to consider is that of Marchwithian, which appears in the Survey as descendants of Ystrwth, the grandson of Marchwithian.

This clan is of importance, because, though it formed one clan in historic times, it had definitely split up, in so far as the holding of land was concerned, into three sub-clans by 1334.

Ystrwth had one son Cadwgan, and Cadwgan had three sons, Runon, Ithel, and Cynddelw; the original clan of Ystrwth being divided in 1334 into three clans named after Cadwgan's three sons.

The clan of Runon held land in Prees, Garthgyfanedd, Garthmyncannol, Llanrwst, and Gwydir (Caernarfon); the clan of Ithel in Prees, Carwedfynydd, Beryn, Talabryn, and Dinas Cadfel; and the clan of Cynddelw in Prees, Carwedfynydd, Dinas Cadfel, and Penporchell.

The original family settlement of this clan appears to have been Prees; a large ville in which another important clan, that of Braint Hir, also held land, as well as a number of unfree landholders.

One-sixth of Prees was held in 1334 by the progenies of Runon, one-sixth by those of Cynddelw, and one-sixth by those of Ithel.

Runon had five sons, Tegwared, Iorwerth, Yarthur, Cyneferth, and Gronw, and the area held by the clan in Prees was divided into five equal 'gwelys', named after each of these sons. The whole of the Gronw 'gwely' had escheated, and no further information as to who belonged to it in that ville is available.

A remarkable fact about the Runon branch in Prees is that, though we can trace at least fifty male adults living in Denbigh in 1334, only seven of them are mentioned in Prees. It is obvious, therefore, that the major portion of the branch migrated at some time or other.

Another point to notice is that in the 'gwely' Yarthur, the Master of the Knights Hospitallers of Ysppyty Ivan held a share, possibly by gift, possibly by inheritance or purchase.

It is difficult to be certain, but the first migration of this part of the Ystrwth family appears to have been to Garthgyfanedd, situated in the modern parish of Llanrwst. It was a small ville of some 280 acres, including mountain, waste, and wood, and half of it was held by 'nativi'.

In Garthgyfanedd, as in Prees, there were five equal 'gwelys' named after each of Runon's sons, but the connexion with Ystrwth is definitely dropped there. Few of the family remained in the ville, and there was apparently a further trek.

Here, however, there is an interesting fact to note, viz. that the lands of the 'gwelys' in Garthgyfanedd, though named after the five sons of Runon, were not held exclusively by the respective descendants of those five sons. There was some close association, not only here, but elsewhere, between the 'gwely' Cyneferth and the 'gwely' Tegwared. In Prees some of the Tegwared 'gwely' held a share in the lands of the 'gwely' Cyneferth, others in Llanrwst, Garthmyncannol, and Garthgyfanedd, while members of the 'gwely' Cyneferth, along with one member of the 'gwely' Yarthur, shared in the lands of the 'gwely' Tegwared in Garthgyfanedd.

The next trek of the family appears to have been a bodily one into the vale of the Conway, where they occupied portions of Llanrwst and Garthmyncannol, which thenceforth became their principal homes, and in which we find practically every member of the clan having a location. The two vills are dealt with in the Survey jointly, and we find the family holding there in the same five 'gwelys'.

It will be noticed from the pedigree table that the families of Iorwerth, Yarthur, and Cyneferth were the most prolific. Portions of these branches crossed the Conway into modern Caernarfon, and in the Record of Caernarfon we find them holding Gwydir in three 'gwelys'. This record was compiled eighteen years after the Survey, and the names of such holders as appear were, with one exception, sons of some of those who held in Denbigh. The one exception was a person whose name appears in both documents.

This is of importance because it indicates that the 'gwely' names survived at least into the fifth generation, and perhaps farther. This indication is supported by the fact that Cyneferth is incidentally mentioned as having a son Gwgan, and as we do not find him in the names of any of the ancestors of actual holders in either 1334 or 1352, it is obvious that the holders at both periods were at least great-great-grandsons of Cyneferth.

We have, therefore, established from this branch of the family that there was only one division into 'gwelys' throughout the existence of the clan, and that there was never any division into 'gafaels'. We see also that the division into

The account of the family Ithel ap Cadwgan ap Ystrwth shows clearly that 'gafaels' had nothing to do with the subdivision of 'gwelys', and that a clan could exist for generations, certainly more than four, without any division into recognized 'sub-gwelys'.

The third branch of the Ystrwth family was that of Cynddelw. Cynddelw had two sons, Tenyth and Tegheyrn, and Tenyth had two sons, Heilyn and Elidyr.

In Prees, where the family is called the progenies Cynddelw ap Cadwgan, the whole one-sixth share was originally held by the progenies Tenyth in $2\frac{1}{2}$ 'gafaels', and the progenies of Tegheyrn in one 'gafael'.

Some of Heilyn's descendants, together with Elidyr's and another family, had also bought the land of a 'gwely' called Wele Bagh' and held it jointly.

The family seems to have trekked, jointly with the line of Ithel, to Carwedfynydd; for we find it holding there a 'gafael' Heilyn ap Tenyth, a 'gafael' Elidyr ap Tenyth, and half a 'gafael' Tegheyrn ap Cynddelw, which the holders of the other two 'gafaels' had bought in part. Part joined in the trek to Dinas Cadfel, where the family is called the progenies Cynddelw, holding half the ville in two 'gafaels' named after Heilyn and Elidyr.

It also alone acquired Penporchell, where the progenies of Tenyth ap Cynddelw held half the ville without any division at all.

The story of this branch leads to the same conclusion as does that of the Ithel branch.

A small 'gwely' or sub-clan, which appears to be an offshoot of the clan Marchwithian is the 'gwely' of Rhys Cryg.

It held land in Prees and Penporchell, and also in Galltfaenan, the first probably being the summer, the latter two the winter settlements of the family.

In Prees it held as a complete 'gwely', called 'gwely' Cryg, plus a joint share with the progenies Elidyr of the Ystrwth family in half of another 'gwely', called 'gwely' Bagh', the other half of which was held by the progenies Heilyn of the Ystrwth family. In Penporchell the branch

held one-eighth of the ville in what is termed a 'gafael', and in Galltfaenan one-third the ville in half a 'gafael'. 'Gafael' here represents the whole holdings of the family and can obviously not mean a subdivision of the 'gwely'.

§ 7. *The clan of Braint Hir.* The next clan, that descended from Llywarch, also originated in Prees. It is identifiable with the clan of Braint Hir, an identification for which I am indebted to Mr. G. A. Jones, M.A., of Coniston, Lancs.

Llywarch had two sons, Pill and Cynan; and by 1334 there had been an almost complete separation of the two branches descended from these two sons, and for this there seems to have been a very special reason.

The family was a prolific one, Pill having eight sons, and Cynan seven. The two branches held land in Prees, but nowhere else in the same ville together.

Pill's branch held land in Tebrith, Garthewind, and Rudidien, and Cynan's in Ystrad Cynan, Nantglyn, and Dinas Cadfel.

In Prees each branch held one-sixth of the ville.

The family of Pill was called there the progenies Pill ap Llywarch, and was divided into eight equal 'gwelys' after the names of Pill's eight sons. There was no further subdivision of any sort.

The 'gwelys' of Edenowain and Ithon, which consisted of few descendants, are not found outside Prees; all the others, except the 'gwely' Ior', are found in Tebrith. Ior's family is found alone in Rudidien; so that it appears that part of the family trekked to Rudidien, and the greater portion to Tebrith, each 'gwely' leaving some descendants behind in Prees.

In Rudidien Ior's line is called neither 'gafael' nor 'gwely'; and all we are told is that the holding of Ior' (one-eighth of the ville) was entirely escheat.

Two other persons, Ken' ap Pill Cryg and Heilyn ap Ior' Goch ap Pill, are mentioned as holding one-eighth in the ville; they may be connected with the stock, but there is nothing on which we can base a definite conclusion.

In Tebrith Pill's descendants are definitely spoken of as the Wyrion Pill, divided into five 'gwelys' with equal

rights and responsibilities—the 'gwelys' of Genethlyn, Cemmyng, Cadwgan, Eden', and Rishard. There is no further division of the family.

The most prolific branch of this family was that of Cemmyng, and we find members of it, and it alone, seeking and occupying fresh ground. At some time or other it trekked to Garthewind. The name Wyrion Pill is dropped there, and the descendants of Cemmyng are spoken of as the progenies Cemmyng.

They held there in one 'gwely', whose holdings were divided into two 'gafaels', of which one contained two-thirds of the 'gwely', the other one-third; on what principle the division took place it is impossible to ascertain. The 'gafaels' are spoken of by no name, and are merely termed 'prima' and 'secunda'.

Every man of the Cynan branch of whom we have any trace is found in Ystrad Cynan and Nantglyn Cynan as well as in Prees. In Prees they are called the progenies Cynan ap Llywarch holding $4\frac{1}{2}$ 'gafaels'. The families of Ienaf and Eignon each held one 'gafael', and the families of each of the other five sons half a 'gafael' each.

In Ystrad Cynan and Nantglyn Cynan exactly the same thing happened, except that the holdings were in four 'gafaels', the reason probably being that, as Cyneferth's 'gafael' in Prees was escheat, the same had occurred in Ystrad and Nantglyn, and so mention of its former existence in Ystrad and Nantglyn was omitted.

In Dinas Cadfel the descendants of Llywarch Fychan, Iorwerth, Ienaf, and Nynyvat alone appear. They acquired property there, as we are distinctly told, by buying the mortgagee rights which Prince Llywelyn had acquired from the Ystrwth family.

No mention of 'gwelys' is made; and all we are told is that the descendants of Llywarch and Nynyvat each held half a 'gafael', and the descendants of the other two a 'gafael' each. If we may draw any conclusion from the tunc-levy the 'gafaels' were not equal.

The family had also held land in Gwaenynog Cynan and Nantglyn Sanctorum, whence they were expropriated and

PEDIGREE TABLE OF THE CLAN BRAINT HIR

		Llywarch					
		Cynan			Pill ¹		
		Llywarch	Ior ¹	Eignon	Nynyvat	Cyneferth (line extinct)	Ior ¹ Edenowain Ithon Cemmyng Cadwgan Eden' Rishard Genethlyn (estates escheated)
		Prees, Ystrad, and Nantglyn.	Prees, Ystrad, Nantglyn, and Dinas Cadfel.	Prees, Tebrith and Garthewind.	Tebrith only.	Garthewind only.	Ruaidien only.
(i)	Descendants of Llywarch	..	3	..	..	..	..
(ii)	" Ior ¹	..	5	..	..	..	..
(iii)	" Ienaf	..	9	..	..	..	..
(iv)	" Eignon	..	10	..	..	..	..
(v)	" Meurig	15	..	..	..	..	..
(vi)	" Nynyvat	..	11	..	..	..	..
LINE OF PILL							
(i)	Descendants of Edenowain	2	..	..	..	..	..
(ii)	" Ithon	1	..	..	8	5	..
(iii)	" Cemmyng	1	..	4	5	..	..
(iv)	" Cadwgan	..	..	..	4	..	..
(v)	" Eden	..	..	..	4	..	..
(vi)	" Rishard	..	..	..	2	..	..
(vii)	" Genethlyn	1	..	..	..	..	..
(viii)	" Pill (other than i-vii)	..	..	..	..	..	2 ²

¹ The spelling 'Pill' is adopted as the possible, but by no means certain, Welsh equivalent of the Normanzed Pithle.
² Possibly includes, under one name, the whole family of Cemmyng, and descendants of Ior' holding on a new grant.

settled in Wigfair. They had also been superior landlords in Gwytherin, but the references in these villes throw no light on the tribal organization.

The reason for theseparation between the lines of Cynan and Pill was apparently that the former partook of the nature of an hereditary priestly clan such as was common in Ireland.

This would account for the sudden and distinct demarcation of the family into two clans.

The family is of further importance because there was no second division into 'gwelys'. 'Gwelys' once formed remained permanent for generations, and whenever 'gafaels' are mentioned there is no equality in them. We find also in the family 'gwelys' holding without any subdivision into 'gafaels'; others of the same generation holding 'gafaels' without having split up into 'sub-gwelys'.

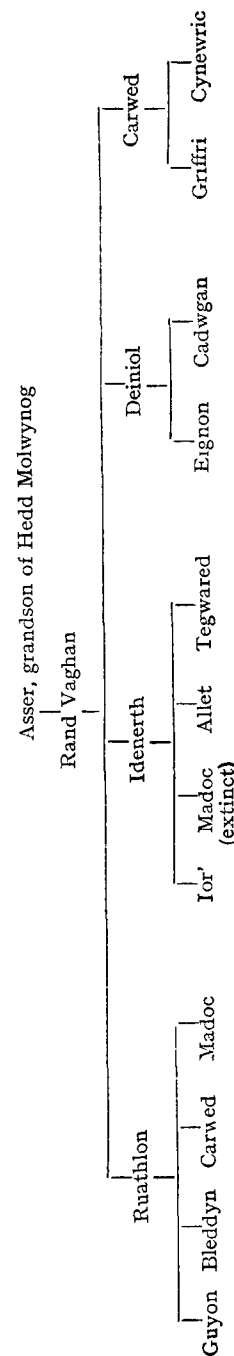
§ 8. *The Clan of Hedd Molwynog.* This clan is represented in the Survey of Denbigh by the progenies of Rand Vaghan ap Asser, Asser being a son of Gwrgi, one of the three sons of Hedd Molwynog, said to have been a contemporary of Henry II, whose ancestry can be traced back a further five or six generations.

The Welsh pedigrees include the name of Ken' ap Bleth Llwyd, whom we find in the Survey of Denbigh as living in 1334, and show him as the great-great-grandson of Guyon, who was the grandson of Rand Vaghan. That is to say, we have here evidence of the continuance of the tribal entity under the same name for at any rate eight generations, with a prior descent of another eight or nine, and evidence also of the endurance of 'gwelys' under the same name for at least six generations.

This clan is sometimes called the Wyrion Rand in the Surveys, and is shown as holding the whole of Deunant, Grugor, Chwilbren, Penclogor, Pennant Aled, half of Hendrenenig, one-third of Pryslygod, and one-thirteenth of Petrual, a series of villes on the River Aled.

The internal organization of this clan is somewhat different from the previously noticed ones, and we have no material available whereby to trace the movements of the clan. They were settled in this particular area as early as the

PEDIGREE TABLE OF THE CLAN HEDD MOLWYNOG



Holding in Petrual as one joint clan.
Holding in seven other villes in fractional shares, calculated per stirpes.
Total number of clan forty-four.

ninth century, and the tribal sentiment remained so strong that the rights of each man extended throughout every ville held by the clan in the fourteenth, that is uninterruptedly for at least five centuries.

Rand Vaghan had four sons, Ruathlon, Idenerth, Deiniol, and Carwed, and except in Petruall the whole tribal holdings were divided into four 'gwelys' named after these sons.

The first 'gwely', Ruathlon, was divided into four equal 'gafaels', named after his four sons, but the descendants of two of these sons, Guyon and Bleddyn, held the two 'gafaels', named after them, jointly.

The second 'gwely', Idenerth, was likewise held in four 'gafaels', named after his four sons. One was held by the descendants of Ior', one by those of Allet, and one by those of Tegward. The fourth, 'gafael' Madoc, was held, as to two-thirds by the holders of 'gafael' Ior', and, as to one-third, by the holders of 'gafael' Allet, and no explanation is given for this unequal distribution in what was a case of collateral succession.

The third 'gwely', Deiniol, was held in two 'gafaels' named after his two sons, each 'gafael' being apparently double the size of the 'gafaels' in the two preceding cases, pointing to succession per 'stirpes'.

The fourth 'gwely' was likewise divided into two 'gafaels' similarly named, each 'gafael' being double the size of the 'gafaels' in 'gwely' Ruathlon and Idenerth.

In Petruall the whole clan held undivided, its holding there being called the 'gwely' Wyrion Rand.

The facts of this clan would not be inconsistent with Dr. Seebohm's theory if we could say that the actual holders in 1334 were the grandsons or great-grandsons of Guyon; but, as already noted, the evidence of the genealogies shows they were not, and so we find 'gwelys' and 'gafaels' running into the sixth and fifth generations.

§ 9. *The clan of Rhys Goch or Idenerth.* This is perhaps the most difficult clan of all to understand. It is sometimes called the clan of Idenerth, and sometimes the clan of Rhys Goch. There is nothing to help us to determine what was the connexion between Idenerth and Rhys Goch.

There are, however, indications that the clan was a branch of the older clan of Hedd Molwynog.

It held land in Pryslygod, Hendrenenig, Melai, Barrog, Petruall, and Garllwyd.

Circumstances point to Melai as its first home with an extension to Garllwyd and then to the other villes.

Idenerth had five sons, Gwyther, Madoc, Heilyn, Guyon, and Runon, and the names of all five are found in Melai. They are there spoken of as the progenies Idenerth, and are divided not into five 'gwelys', but into four 'gwelys' named after Gwyther, Madoc, Heilyn, and Guyon, and two 'gafaels' named after Runon, both of which were entirely escheat. It will be simpler in this case to follow the fortunes of each son's family.

The 'gwely' Gwyther in Melai is said to be divided into six 'gafaels', but the names of seven are given, Ior' ap Ieuan and Ithel ap Ken' (both held by a son of Ior' ap Ieuan), Madoc ap Llywelyn (half of which was held by the same son of Ior'), Carwed, Cynan, Versai (?), and Bothleyn (an error for Gethlyn).

The 'gafael' Gethlyn appears to have been double each of the others.

This 'gwely' Gwyther, and it alone, held land in Hendrenenig, owning as one 'gwely' there. It is there called the progenies Rhys Goch, holding as 'gwely' Gwyther ap Idenerth, divided into six 'gafaels', bearing the same names and held by the same persons as in Melai—the 'gafael' Gethlyn being omitted.

This 'gwely' also alone appears in Barrog, where it is called the 'gwely' Gwyther, and is divided into four 'gafaels', bearing quite distinct names, Ken' Goch, Rhys Goch, Eghenyr Goch, and Gethlyn ap Gwyther. The four 'gafaels' there are of equal size.

The holders of 'gafael' Ken' Goch correspond with the holders of Ior' ap Ieuan and Ithel ap Ken' 'gafaels' in Melai and Hendrenenig, the holders of 'gafael' Rhys Goch with the holders of 'gafaels' Carwed, Cynan, and Versai in the same 'villatae', the holders of 'gafael' Eghenyr Goch with the holders of 'gafael' Madoc ap Llywelyn,

and the holders of 'gafael' Gethlyn with the holders of 'gafael' Gethlyn elsewhere.

We have in fact all the descendants who appear in Melai appearing here, but in different groupings and under different names.

In Petruel and Garllwyd the branch also appears, holding under the name 'gwely' or progenies Gwyther. They held jointly there as a single undivided 'gwely', reference being given to Barrog for their names, thus showing that a branch could be constituted in one way in one ville, and in a different way in another.

The same phenomena appear among the other branches of the progenies Idenerth.

The 'gwely' Madoc held land in Melai, Petruel, Garllwyd, and Pryslygod (where 'gwely' Gwyther held none), but it had none in Hendrenenig or Barrog. In Pryslygod, notwithstanding the fact that the Gwyther line had no land there, the rest of the family of Idenerth is spoken of as the progenies Idenerth.

In Garllwyd and Petruel the 'gwely' Madoc held as a single undivided 'gwely'; in Pryslygod and Melai it was divided into six 'gafaels', Cuhelyn Goch, Eignon ap Ken', David ap Moridyk (=Meredith), Cadwgan ap Wilym, Tegwared ap Ruathlon, and Idenerth ap Wilym.

The 'gwely' Heilyn held land in the same four places as the 'gwely' Madoc. In Pryslygod and Melai it was divided into three 'gafaels', David ap Cadwgan, Ieuan ap Ken', and Atha ap Runon (a name which suggests that originally this 'gafael' was of the line of Runon ap Idenerth). The 'gafael' Atha was held in Pryslygod by the members of the other two 'gafaels' jointly, and in Melai by the David ap Cadwgan 'gafael' only. In Petruel and Garllwyd the branch held as a single undivided 'gwely'.

The 'gwely' Guyon held land in Pryslygod, Melai, Petruel, and Garllwyd also. In Pryslygod and Melai it was divided into three escheated 'gafaels', Ithel Foel, Philip ap Ienaf, and Griff. Ddu, and two other 'gafaels', Esguidon and Meredith ap Trahaiarn. In Petruel the members of the last two 'gafaels' (three in number) held

as an undivided 'gwely', and in Garllwyd the sole holder of the 'gafael' Esguidon of Pryslygod and Melai held alone as the 'gwely' Guyon; ten-elevenths of the 'gwely' had been escheated, and the holder is said to hold one 'gafael' of the 'gwely'.

The facts of this clan appear to show that the original home was Melai, that it expanded as a whole in the direction of Garllwyd and Petruel, and that then the descendants of Gwyther occupied Barrog and Hendrenenig, the descendants of the other sons occupying Pryslygod.

In Petruel and Garllwyd there was never any division beyond the original 'gwelys'; everywhere else there was a division into 'gafaels', but the 'gafaels' and their names were not uniformly constituted in all the villes.

The evidence shows that the tribal connexion continued for many generations, but, especially in the light of the names, we see a state of flux in the clan, and we appear to see the Gwyther line starting to discard the name progenies Idenerth for the name progenies Rhys Goch.

We see also very clearly that the 'gafaels' had no necessary connexion with ancestral shares; that in some cases 'gafaels' were named after the great-grandfather of the existing holders, in others after the father, in others after the existing holder, and in yet others after persons, who, if connected at all, were not connected within less than five or six generations.

The clan is an interesting one, and is in strong contrast to the theory of organization advanced by Dr. Seeböhm.

§ 10. There are some smaller entities, which appear to be offshoots of the original clan of Hedd Molwynog.

The first to notice is the 'gwely' of Cyneferth ap Maer. This small clan, called a 'gwely', is found in Pryslygod, Petruel, and Llysaed. In Llysaed the whole community held a 'gafael'; in Pryslygod and Petruel exactly the same people held as a 'gwely'; and, in the former, three members of the 'gwely' held a separate 'gafael' called Rhys ap Hunyth.

The family indicates that a 'gafael' was not a subdivision of a 'gwely', that 'gwelys' were not limited to

connexions in the fourth degree, and that within a 'gwely' it was quite possible for some members to hold the whole of the tribal land jointly with others, while still holding some area separate from the rest.

§ 11. Another series of entities, apparently offshoots of the clan of Hedd Molwynog, is found in Barrog and Petruall.

We find in those villages four 'gwelys' called respectively Bletherus ap Mentour, Gethlan, Ithok, and Eylene.

'Gethlan' 'gwely' may be of the same origin as the 'gafael' Gethlyn of the progenies Rhys Goch, and Eylene, a Normanized form of Heilyn, may be the 'gwely' Heilyn of the same progenies.

These four 'gwelys' are very intermixed.

The 'gwely' Bletherus was divided into five 'gafaels', named after the five sons of Bletherus. One was escheated, one was held by the co-sharers of the remaining three 'gafaels' jointly in the peculiar shares of 5, 5 and 3, 3 more shares therein being escheat.

The 'gwely' Gethlan was likewise divided into five 'gafaels', named after the five sons of Gethlan. Of one gafael a half was escheat, and the other half was divided equally between the co-sharers of three out of the remaining four 'gafaels'. One holder, Madoc, is identifiable with a co-sharer in 'gwely' Bletherus.

The 'gwely' Ithok was divided into three 'gafaels' named after the sons of Ithok; the 'gafael' Eylene into six, but it is impossible to say that the holders were related in four degrees from the prononym of the 'gafaels'.

In one 'gafael' of the 'gwely' Eylene the same Madoc referred to above was the sole owner; another 'gafael' was held by a co-sharer of one 'gafael' in 'gwely' Gethlan alone, while three persons who were joint with him in a 'gafael' of 'gwely' Gethlan held a 'gafael' in 'gwely' Eylene together with a man who was a co-sharer in 'gwely' Ithok.

§ 12. In Petruall there was a 'gwely' Rhingyll Llwyd,¹ and in Petruall and Talhaearn a monastic 'gwely' called Arthur Menanglwyd, held by persons apparently of the clan of Hedd Molwynog.

¹ This is the suggested original form of the 'Cingyll Loroyd' of the Survey.

In the first-mentioned 'gwely' the same Madoc as mentioned above, along with twelve other co-sharers, held the land jointly. The second-mentioned 'gwely' was undivided in Petruall, but was in four 'gafaels' in Talhaearn, and was held by some of the co-sharers, along with others, from 'gwely' Rhingyll Llwyd so far as one 'gafael' was concerned in Talhaearn and as regards the whole 'gwely' in Petruall.

§ 13. *Smaller clan entities.* We may now consider a number of smaller clan units as they appear in the Survey. Some of these may possibly be additional offshoots of the four great clans hitherto dealt with, which, for lack of information, we are not in a position to place in those clans. Others are clearly smaller groups belonging to less important clans, corresponding with the 'gwehelythau' of the genealogists.

The first of these entities to note is that of Llywarch ap Cyndelig. It held land in Wigfair and its hamlets Bodrochyn and Kinmel. Dr. Seebohm has suggested that it was possibly connected with the family of Cynan ap Llywarch, in which case it would be a branch of the clan of Braint Hir, but the grounds for identification are not conclusive enough to warrant acceptance of the suggestion as proved.

This entity was called a 'gwely'; and it was divided into three portions called 'lecta (i.e. *gwely*) seu gavelle' named after the three sons of Llywarch.

Here we have a clear identification of 'gwely' and 'gafael' as meaning the same thing viewed from different standpoints, one the standpoint of jointness, the other the standpoint of holding.

One of these subdivisions, the 'gwely' Rishard, was held in three 'gafaels' named after Rishard's sons, in one of which proprietors holding in another 'gafael' are included as co-sharers.

Another 'gwely', Cynddelw, was divided into two 'gafaels' named after Cynddelw's sons, while the third, 'gwely' Moridig, was undivided.

§ 14. The next entity is the clan of Owain Goch.

If we may hazard a conclusion from the areas held, this

must have been a largish clan, but the names of only twenty five members are given in the Extent.

It held land in Llwyn, Bachymbyd, Cathys, Caeserwydd, and Llechern.

It is always spoken of as the 'progenies' Owain Goch, and at the end of the Extent of Cymwd Cymeirch the whole of the clan possessions are lumped together as one 'gafael'. The clan was undivided either into 'sub-gwelys' or 'gafaels', and an interesting fact is that the Owain Goch, after whom the 'progenies' was named, was actually alive in 1334. The clan was in fact named after its existing 'pencenedl'.

§ 15. The next entity to note was that of Meredith.

In the Survey it is split up into three sections, named after the three sons of Meredith, Radulf, Ienaf, and Griffith.

The first two had held as separate 'progenies' in Bachymbyd, but the whole of their possessions had been escheated.

The descendants of Griffith, of whom only four are mentioned, held land in Garth, Bachymbyd, Caeserwydd, Llechern, and Archwedlog, villages at a considerable distance apart. From these possessions they were expropriated to other villages.

They are spoken of as the 'progenies' Griffith ap Meredith in the summary of Cymeirch, as a 'gwely' in Archwedlog, and in the end of the Extent of Cymeirch the whole of their possessions are lumped together as one 'gafael'.

As in the case of the progenies Owain Goch, the progenies is denominated after its living 'pencenedl', Griffith ap Meredith.

§ 16. Another small entity is the 'progenies' of Gronw ap Morgant, three of whose names only are mentioned.

It held land in Caeserwydd and Llechern. At the end of the Extent of Cymeirch it is wrongly credited with holding land in Rhiwlas and Bachymbyd.

The term 'progenies' is applied to the unit, and the sum total of their possessions is termed a 'gafael'.

§ 17. In addition to these entities the Survey of Denbigh contains mention of 34 smaller free 'gwelys' in 21 viles, and 25½ free 'gafaels', unconnected with any 'gwelys', in 6 viles (Appendix I).

Many of the 'gwelys' are termed progenies; in some cases (e.g. Prog. Ithel Pengwern in Bachymbyd and Prog. Eignon ap Meredith in Treborth) the whole 'gwely' holding is termed a 'gafael'; in others the 'gwely-holding' is divided into 'gafaels', some of which are subdivided into further 'gafaels'; and in many cases the 'gafaels' are not equal to the number of descendants.

Without exception the partitions are by fractional shares and not by metes and bounds, and the only inference is that there was no partition except of arable portions, which were held separately, the partition by fractional shares indicating the proportion of the tunc and other revenues due from each group. The facts of most of them seem quite unreconcilable with Dr. Seebohm's theory.

3. *The clans in Anglesea.*

§ 1. The Record of Caernarfon unfortunately does not give us anything like as full material as does the Survey of Denbigh. The complete list of holders is never given; it is only occasionally that we are able to trace the holdings of a clan, and it is almost impossible to trace the expansions of clans in the record. We have, however, some important light thrown on the tribal system by entries therein.

§ 2. *The clan of Hwfa ap Cynddelw.* This clan, one of the fifteen special tribes, occupied the south-western corner of Anglesea, owning the viles of Pen Carnisiog, Bodedern, Llechlched, Neubwll, Llechgynfar, Y Werthyr, Tref Uchryd, Tref Gadrod, Bodrowyn, and Tref Ruffydd.

The clan was named after Hwfa ap Cynddelw, and the clan holdings, called the 'gwely' Hwfa, were divided into five 'gwelys' after the five sons of Hwfa.

No further subdivision is indicated as having taken place at any time, and it is clear that the clan holdings throughout the whole of the clan area were held by these five 'gwelys', with a consciousness of a clan unity derived at least from the times of Hwfa ap Cynddelw.

Hwfa ap Cynddelw flourished in the reign of Owain Gwynedd, in whose court he was an officer of state. He was obviously the 'pencenedl' of his clan of the time, and it is possible to trace his descent back for many generations.

The clan henceforth became known after him and it must have occupied the area it occupied in the time of Owain Gwynedd for some generations before.

Owain Gwynedd died in A. D. 1170, and we have here evidence of the continuance of 'gwelys' without subdivision for something like 200 years, a fact inconsistent with Dr. Seebohm's theory.

Moreover, we have in the Record of Caernarfon a statement prepared in A. D. 1538 showing the canons of the ancient tribal monastic church of Caergybi, who were appointed by the 'gwelys' of this clan and of the clan of Llywarch ap Bran, each 'gwely' being the patron of a canonical stall. In 1538 we find the names of the then existing 'gwelys' are identical with the names applied to them in or about A. D. 1170, proof positive of the endurance of 'gwelys' as organized units for a space of well-nigh on four centuries, notwithstanding the political changes which had occurred in the meantime. This right of clan election is incidentally referred to also, two hundred years earlier, in the extent of the ville of Trefflwr.

§ 3. *The clan of Llywarch ap Bran.* We are able to trace parts of this famous clan in the Record of Caernarfon. It is found holding in Trefflwr, Bodychan, and Caergybi, where it was divided into four 'gwelys' named after the four sons of Llywarch. Three of these sons we find also as the protonyms of 'gwelys' in Porthamel.

According to the genealogies the actual holders at the time of the Record of Caernarfon included great-great-great-great-grandsons of Cadwgan ap Llywarch, and the information in those genealogies appears correct, for Llywarch ap Bran was a contemporary and brother-in-law of Owain Gwynedd.

We have proof here of the continuance of 'gwelys' under the same names, without further subdivision, for over two centuries, and, as pointed out above, those 'gwelys' continued as united entities till as late as A. D. 1538.

The clan was connected by ties of blood with the holders of Bodafon; who, at any rate in later times, claimed to be of the clan of Llywarch ap Bran.

In the Record of Caernarfon, Bodafon was held by three tribal entities, the Wyrion Sandde, Wyrion Ithon, and Wyrion Arthen. Sandde, Ithon, and Arthen were sons of Cadrod Hardd, a lineal descendant of Cunedda the Burner, who flourished in the first half of the fifth century, and the holders of 'gwely' Sandde in the Record of Caernarfon were the seventh in descent from Sandde, another clear proof of the endurance unchanged of the gwely unity for centuries.

It is possible, but here we cannot be certain, that the holders of Trefarthen were of the same clan. Trefarthen was held by three 'gwelys', named Cynndelw, Bleddyn, and Madoc, the sons of Arthen, who may be the son of Cadrodd Hardd.

There is also some ground for believing that Heneglwys and Treddistinet belonged to this clan. In the Record of Caernarfon the former was held by three 'gwelys', Ithon ap Itgwon, Trahaeran ap Itgwon, and Eualfyw ap Itgwon, and the latter by two 'gwelys', Tudor ap Itgwon and Gethlyn ap Itgwon, the members of which held both 'gwelys' jointly.

We cannot, however, be certain of the connexion with the clan of Llywarch ap Bran. One of the difficulties in handling the Record of Caernarfon arises from the fact that great losses had occurred in the ranks of the freemen owing to the bubonic plague, and the Record was prepared in a time of considerable economic upheaval.

§ 4. *The clan of Gweirydd ap Rhys Goch.* This clan held land in Caerdegog, Cafnan, and Llanddygfail. Gweirydd had two sons, Cathaearn and Madoc. The former had three sons, Meurig, Llywarch, and Hywel; and in the Record of Caernarfon the clan was holding in four 'gwelys' named after Madoc and the three sons of Cathaearn. The co-sharers in the three last-named, however, held all the three 'gwelys' jointly, so showing that, though there was a division of interest between Madoc and his nephews, the descendants of the latter continued to hold jointly for nearly two centuries. We are able to locate the duration by the fact that Gweirydd ap Rhys Goch died about A. D. 1180.

§ 5. *The clan of Gwalchmai.* The founder of this clan, Gwalchmai, is one of the most famous of all the Welsh poets, the great bard of Owain Gwynedd.

His father was Meilyr, an equally famous poet. Gwalchmai had three sons, David, Elidyr, and Eignon. The descendants of David and Elidyr and other descendants of Meilyr held in separate 'gwelys' in Trewalchmai, Meilyr's descendants also held a 'gwely' in Trefwastrodion, while the Wyrion Eignon held in Trefdistinet, Castell Ior', Lledwigan, and Bodpenwyn in Anglesea, as well as in Marchcroes in Caernarfon. The Wyrion Eignon seem to have separated off almost entirely from the rest of the family, but there was never any further division of the original 'gwelys' of the sons of Gwalchmai. We have in them a further instance of 'gwelys' enduring for some generations under the same name.

§ 6. *Other tribal entities.* As in Denbigh, we have a number of small tribal entities, many of which may be interrelated, but regarding whom our information is insufficient to say more than that a number of them appear to be of the class of 'gwehelythau' of the genealogists. They number altogether 126, holding in 63 villes (Appendix II).

In the whole of these entities there is no mention of the word 'gafael'. Among the free tribesmen of Anglesea the only occasions on which the word is used is in Dyndrofol, Grugor, Trefwalchmai, and Aberffraw, who between them record $4\frac{1}{2}$ 'gafaels'.

In no instance is there a 'gwely' divided into 'gafaels'.

The evidence, therefore, of Anglesea is that there were clans which continued without division for centuries; that in addition there were minor tribal entities, which may or may not have been connected with larger units, and that there was no regular disruption of 'gwelys' into 'gwelys' or 'gafaels'.

4. *The clans in Caernarfon.*

§ 1. It was mentioned above that there were three of the fifteen special tribes of the genealogists located in Caernarfon.

That of Nefydd Hardd deserves special mention. Nefydd Hardd was a contemporary of Owain Gwynedd, who

entrusted his son Idwal to Nefydd Hardd in fosterage. The child Idwal was murdered by a son of Nefydd Hardd, and as a punishment the whole clan was degraded to the status of the unfree.

If the map showing the distribution of the free and unfree in Caernarfon be looked at, it will be seen that the country to the west of the Conway and east of the Snowdon range, the ancestral area of this clan, was almost entirely 'unfree' in the time of Edward III. The reason appears to be that the clan disenfranchisement continued down to that date.

§ 2. In regard to the other two clans, that of Maelog Crwm in the Creuddyn appears to have been more or less absorbed by marriage into the Wyrion Eden'. Mention has already been made of Deganwy and Gloddaeth.

The clan seems to have owned Trefwerth, but in the Record of Caernarfon there is no indication of the tribal connexion.

The ville was held in three 'gwelys', Owain, Caderod, and Gwythir, holding on the same terms as the Wyrion Eden'.

§ 3. The clan of Collwyn ap Tango does not appear as such in the Record of Caernarfon. A minute examination of the pedigrees would no doubt result in showing how some of the holders in the Record were connected with Collwyn ap Tango, but the point is that the Record does not make the tribal connexion apparent on the face of it. It would perhaps be unsafe to say it had definitely broken down; on the other hand it cannot be urged that it continued.

As an indication of what might be ascertained we may take the case of Hywel-y-Ffwyall, the capturer of the French King at Poitiers. He was the great-great-grandson of Eignon ap Gwgan, who was the great-grandson of Collwyn ap Tango.

The battle of Poitiers was almost contemporary with the preparation of the Record of Caernarfon, and in the ville of Penllech we find the family 'gwely' called 'gwely' Eignon ap Gwgan, showing this much that the 'gwely' was then in its fifth generation, and the major clan in its ninth.

§ 4. We have, however, clear proof of five considerable tribal entities in Caernarfon in the fourteenth century; and, as in Denbigh and Anglesea, a number of 'gwelys' which

may or may not be connected with larger tribal units. To these five entities some reference is needed.

(i) The clan of Genethlyn was divided into five 'gwelys', Gronw, Cennyg, Ior', Ken', and Cadwgan. All five owned land in Caegarw, Bodennal, and Llangan; all but 'gwely' Ken' in Rhyd-y-glair; all but 'gwelys' Gronw and Cadwgan in Bachellyn, while 'gwelys' Cennyg and Ior' held land in Bryncelyn, and 'gwely' Ior' some in Bodwynog.

It is not possible to identify all these viles, but they were scattered about Cymwd Cafflogion.

It is clear we have at any rate a considerable tribal unit continuing to hold together; and the evidence, so far as it goes, suggests an outward expansion from Caegarw by different sections of the clan, as we observed occurred in the case of the Denbigh clans.

(ii) The clan of Dewrig held land in Llangan, Bodennal, and Rhyd-y-glair. It may be connected with the clan of Genethlyn. It was divided into seven 'gwelys' named after the sons of Dewrig, and another 'gwely' called the Wyrion Eignon. Beyond proving a large tribal unit the evidence does not justify us in asserting more.

(iii) The clan of Wyn ap Ednewyn, which seems to be a branch of the tribe of Collwyn ap Tango, held land in Treflys, Pennant, Trefan, Abercin, and Rhedynog. It is invariably spoken of as an undivided 'gwely'. In Abercin it is also called, in connexion with some land, half a 'gwely', indicating perhaps that some members of the clan had appropriated tribal land to their own use.

Again, all we can say with certainty is that it was a considerable tribal unit holding together.

(iv) The clan of Gwgan is always described as a single 'gwely'. It too was probably a branch of the tribe Collwyn ap Tango, and it held land in Trefan, Chwilog, Glasfryn, Cader Elway, Rhedynog, and Glyncoed. The area was considerable and widespread.

(v) The Wyrion David, always spoken of as a single undivided 'gwely', held land in Glasfryn, Chwilog, Cader Elway, Llecheithior, and Penarth. It also seems to be a branch of the tribe of Collwyn ap Tango.

§ 5. *Smaller entities.* As in Anglesea we have a number of small tribal entities, which may or may not be offshoots of major clans. We have sixty-seven 'gwelys' holding in thirty-one viles. In no case is there a division of a 'gwely' in 'gafaels'. In one instance in Elernion the whole 'gwely-holding' is termed a 'gafael'.

In addition there are 67½ 'gafaels', not connected with any 'gwely', mentioned in the Caernarfon Extent. In the case of Trefabaithian the whole vile is called a 'gafael'; but the most interesting evidence is that of Conway, where there were twenty-three 'gafaels'. Conway was a newish settlement; there was no tribal bond there, and the 'gafaels' were simply the holdings of entirely unconnected tenants.

The term 'gafael' is practically confined to the Llechwedd 'cymwds', and in the whole county of Caernarfon there is but one instance of the 'gwely-land' being held in separate 'gafaels' (Appendix III).

5. *The clans in Merioneth.*

§ 1. The Merioneth Extent contained in the Record of Caernarfon appears to have been made in the reign of Henry V, and, owing to its incompleteness, it does not enable us to discover much relevant to the clan organization in Wales. The earlier Extent of the thirteenth century omits all clan names, and is a mere revenue summary. They do, however, throw some sidelights on the names 'gwely' and 'gafael'.

§ 2. To take the later extent first. In Cymwd Penllyn the word 'gwely' does not occur at all; all holdings are termed 'gafaels'. The same is the case with Ardudwy Uwchartro, with the exception of Llanfair, where three free 'gwelys' are mentioned, and Uwch Cefn-y-clawdd, where there were sixteen unfree 'gwelys', and Ardudwy Isartro, with the exception of the three associated viles of Llanaber, Llanddwywe, and Llanenddwyn.

In these three viles it is said there were eight free 'gwelys'; but all particulars concerning them had been forgotten, and the same set of co-sharers held them all. Llanaber had also four unfree 'gwelys'.

On the other hand in Talybont the term 'gafael' is never

used. Every holding is the holding of a 'gwely'. The same applies to Ystumaner, the whole 'cymwd' being held by ten free 'gwelys', assessed to revenue and cesses throughout the 'cymwd'. We have here apparently the original tribal unit of Ednowain ap Bradwen (who lived in the eleventh and twelfth centuries, and whose great grandsons were contemporaries of Edward I), divided at some time or other into ten 'gwelys'.

In Talybont we hear of a clan Wyrion Llewelyn ap Tudor, a great-great-grandson of Ednowain, which had no settled habitation. It apparently roamed about the mountains and valleys with its herds and flocks at its own free will. In Uwchpygaff (unidentifiable under that name) we find three similar wandering 'gwelys'.

There is no case of a 'gwely' being subdivided into 'gafaels'.

The Extents of Cregen and Bodgadfan appear to contain 'gwelys' named after sons of Ednowain, that is 300 years after the death of the prononym.

§ 3. It is worthy of note that where there are 'gafaels', there are several in each ville; but where there are 'gwelys' it is rare for there to be more than one in a ville. This indicates that 'gwely' was the tribal unit holding together, the 'gafael' the holdings of men whose tribal tie was breaking down.

Altogether there were 196½ and two-thirds free 'gafaels' in Meirionydd, and only forty-six free 'gwelys', some of which were held by the same set of proprietors.

The county was held almost exclusively by freemen.

Cymwd Penllyn Uwchtrewern contained four villes entirely free, a portion of another free, and the only unfree in the 'cymwd' existed in the other part of that ville, and two 'gafaels' embracing a ville each.

Cymwd Istrewern had ten villes free; in Talybont, besides the wandering 'gwely', there were seventeen villes, two of which only were unfree, including Dolgelley, an old-time 'maerdref'. In Ystumaner, which was held by ten wandering 'gwelys', there were unfree men in three villes, plus 'maerdref' lands in two villes, while in the two 'cymwds' of Ardudwy there were sixteen free villes, in six

of which unfree men held small areas, plus the old 'maerdref' of Llanenddwyn. There were also some unfree holdings in the Ganllwyd valley.

There is nothing in this part of the Record of Caernarfon indicating a tribal system of the nature sketched by Dr. Seebohm.

§ 4. The earlier Extent has only one reference to the word 'gafael' and none to the word 'gwely', but the reference is important. It says that in Ardudwy there are eighty holdings, called 'gafaels', each held by an individual tenant apparently unfree.

6. *The clans on the Church Estates.*

§ 1. The Extent of Bangor Diocese was not compiled with anything like the care displayed in Denbigh and in the Prince's territories.

In no case, however, is the word 'gafael' used as a subdivision of 'gwely'; it is applied on five occasions to separately rented plots. In some villes 'lecta' are referred to without anything to determine when the 'lecta' began to exist under their then names. In the majority of cases the list of co-sharers appears without any terminology being applied to them, as if the scribes regarded them as tenants in common.

The only point of interest to note is that the majority of villes, forty-five in number, were free.

§ 2. In Priestholm there were three 'gwelys' and eleven 'gafaels', in no case a subdivision of a 'gwely'.

§ 3. The Black Book of St. David's only deals with ecclesiastical property, and makes no mention of the surrounding secular lands; and, as it is probable that the same holders held partly under the Church and partly direct from the Crown, as was the case in other parts of Wales, we can never be certain we are in possession of full information regarding the holdings of any unit.

In the Black Book the character of the entries relative to holdings by the free Welsh tribesmen is twofold.

In the more Anglicized portions of South Wales, the joint holdings of Welsh co-sharers are not shown as held by 'gwelys'; they are entered as a kind of coparcenary tenure of groups of individuals, the entry being so many bovates or

carucates held jointly (*a*) by persons whose names are given in full, or (*b*) by two persons named 'et coporcionarii sui'.

This is no doubt a Normanized form of expressing 'gwely' holdings, but beyond showing that holdings were joint we gather nothing as to how the corporation holding together functioned.

The form of holding by two persons 'et coporcionarii sui' is employed universally in Pembrokeshire, wherever the holders were Welsh. The Welsh Hundred, Tydwaldy, Breudy, Vill Camerarium (in which case the tenure is especially referred to as the 'old tenure'), Maboris, and Villa Grandi were recorded almost entirely in this manner.

In Ceredigion (Cardigan), Caermarthen and the Arch-deaconry of Brecon we find, however, a general holding by 'gwelys'.

In the 'patria' of Llandewibrefi there were eight free 'gwelys' which are said to be held on the ancient tenure of 'ach ac edryf' (kin and descent). In no case does the 'gwely' bear a name. They are spoken of simply as the first, second, third 'gwely' and so on; and some names of members thereof, generally three, are given, the list concluding with the words 'and their descendants'. Some 53½ other 'gwelys' are found scattered about in sixteen vills (Appendix IV).

There is nothing to show when the 'gwelys' were formed, or how long they had continued. It is noteworthy that there is no subdivision into 'gafaels' of any existing 'gwely'.

A very interesting series of entries is that where the holders are shown as 'stipes', in some cases being called 'gwelys' as well. The word 'stipes' is apparently the exact equivalent of the 'welygord' or stock of the laws, without any limitation of its meaning to degrees of affinity (Appendix V).

In no case in the Black Book is there any use of the word 'gafael'.

The Black Book shows that in South Wales there was or had been a similar system of joint holding as in North Wales; it does not enable us to postulate that there was or was not a system of tribal entities like the major clans of

the north, except that we have traces of such in the 'stipes' Cynan Elth of Llan Newydd. The absence of reference to large tribal entities does not mean that such did not exist, for the whole area in which they might live is not under review.

§ 4. One of the great misfortunes for students of Welsh history has been the loss or destruction of the Llyfr Goch Asaph. The Index, however, which has fortunately been preserved, is sufficient to show that there was a similar system in the diocese of St. Asaph as elsewhere.

The Index contains reference to an inquisition into the state of Faenol in A.D. 1351. It is said that there were in Faenol six 'gwelys', two termed Pengwern, held of the Bishop, and four others held jointly of the Earl of Chester and the Bishop.

The Index also contains a quotation from the Liber Pergamanam, referring to indentures made in A.D. 1380 between the Bishop and the free tenants and 'priodorian' of Llanelwy, in which it is asserted that there were seven 'gwelys' in Llanelwy, the names of which appear in part to be territorial, while further references show the existence of 'gafaels' in Brenan, Cynwch, Llansanwn, Bryngwyn, and Allt Meliden. Other references show that a system of manorial holdings had found a footing in various parts as early as A.D. 1271.

The information fails, however, to help much in ascertaining the details of the tribal structure.

7. *The clans in Bromfield and Yale.*

§ 1. The hundreds of Bromfield and Yale are fortunate in possessing a series of Extents spreading over several centuries.

We must, however, confine ourselves here to two of these, the first made in A.D. 1315, and another made some 200 years later in A.D. 1508.

The former has been edited in the Cymmrodorion Record Series, No. XI; the latter has not been published hitherto, but important excerpts are given in Palmer and Owen's *Ancient Tenures*.

§ 2. The following extracts from the introductory chapter

to the published Extent give the material facts of the evidence contained therein :

'At the time of Domesday a considerable portion of the Dee valley tracts of Bromfield was in English hands and surveyed as a part of Cheshire. A little later—we cannot be certain of the exact date, but most probably during the reign of William Rufus—the Welsh tribesmen swept down from their hills and drove the English occupants across the Dee. The leaders of this incursion or perhaps series of incursions were Sandde Hardd, Elidyr, and Ithel ap Hunydd. . . .

'One section of the free tribesman, spoken of in the Extent in one place as "the progenies of Ken'", appears to have originated in the ville of Trefydd Bychain, situated in the upland tract beyond the Esclusham Mountain, from whence they poured forth to reconquer the fertile lands which had been theirs in former times. . . .

'We find that Trefydd Bychain was in 1315 occupied by sixty-one joint holders,—the record unfortunately does not speak of "gwelys", but these associations of joint holders are what are called "gwelys" in other Extents, and in fact they are so called in later Extents of Bromfield and Yale;—and we also find a large group or associated groups holding many villages on the slopes of Esclusham Above and in the valley of the Dee. Some of the actual holders in the plains, e.g. in Bersham and in Morton, are found as holding also in Trefydd Bychain.

'Outside the ville of Trefydd Bychain this family or progenies of Ken' is divided into six groups. We find these groups holding the half-upland viles of Christionydd Kenric, Esclusham, Morton, Bersham, Broughton, and Brymbo, the lowland viles of Acton, Erddig, Burras Hova, and Cacca Dutton as follows :

Christionydd Ken.	Group II $\frac{1}{8}$ th ; Group III $\frac{3}{8}$ ths ; Group VI $\frac{1}{2}$.
Esclusham.	Group II $\frac{7}{16}$ ths ; Group IV $\frac{7}{16}$ ths ; Group V $\frac{1}{8}$ th.
Morton.	Group II $\frac{1}{4}$ th ; Group III $\frac{3}{4}$ ths.
Bersham.	Group I $\frac{7}{24}$ ths ; Group IV $\frac{29}{48}$ ths ; Group V $\frac{1}{8}$ th. (The total is $\frac{49}{48}$ ths, and probably the correct fraction for Group IV should be $\frac{28}{48}$ ths.)
Broughton.	Group III all but 24 acres. Group V 24 acres.
Brymbo.	Group IV all.
Acton.	Group II $\frac{1}{4}$ th ; Group III $\frac{3}{4}$ ths.
Erddig, Burras Hova, Gorton, and Cacca Dutton,	Group III all.

'The total numbers of joint holders in each of these groups were respectively 14, 34, 31, 49, 8, and 5, a clan total of 141 male adults.

'Now what do these facts point to ? . . .

'First we see clearly that the original home of the group was Trefydd Bychain. In Trefydd Bychain there was no disruption of the family : it was entirely joint and undivided in 1315, as no doubt it had been for generations. There was an outward expansion from that centre. One expansion was that of the associated Groups II, III, and VI, which occupied Christionydd Ken'. Group VI, which was small, never expanded further. Groups II and III pursued their expanding career and jointly occupied an adjoining area Morton, and, going still further afield, the ville of Acton. Group III expanded still further and occupied by itself the whole of Erddig, Burras Hova, Gorton, and Cacca Dutton, connecting these territories up with the original home by a settlement at Broughton. In another expansion Group II was associated with Groups IV and V and, descending from Trefydd Bychain, occupied Esclusham. Beyond that there was no expansion, but Group IV occupied Brymbo *en route*, and Group V received a small area in Broughton.

'A third expansion was that in which Groups I, IV, and V associated in occupying Bersham.

'The facts are interesting. We find groups, in some cases interlinked, for a general drift eastwards. The unity is maintained in the original tribal home ; but in new acquisitions those members of the clan, who did not participate in conquest, are excluded from interests therein ; and when the new settlements are finally appropriated, by the obtaining of "priodolder" rights, to new settlers, a further subdivision begins to take place and a demarcation of interests occurs, in most instances by a determination into fractional shares, in some cases by an appropriation of specified areas.

'Let us take the next Group. . . .

'The original head of this group was one Rhys Sais, who is mentioned in Domesday as a former owner in Erbistock and who was the father of Elidyr, according to the genealogies. Elidyr gave his name to groups tracing descent from him for at least four centuries after his death. This group also originated in the hills of Trefydd Bychain, for we find some of the tribesmen, who held land jointly in the valleys, members of the group holding land in Trefydd Bychain. It was in fact a branch or connection of the same host, later known as the progenies of Ken', who swept down from the uplands in the reign of William Rufus.

'The Elidyr group or "gwely", to use the name applied later, consisted of four sub-groups or sub-"gwelys" containing respectively 17, 6, 20, and 54 members, a clan total of 97 male adults, and they held territory in the valleys on similar lines

to what we have observed among the "progenies of Ken'", thus :

Ruabon.	Group I $\frac{1}{3}$ rd; Group III $\frac{1}{3}$ rd; Group IV $\frac{1}{3}$ rd.
Marchwiell and Ruyton.	Group I $\frac{1}{4}$ th; Group II $\frac{1}{4}$ th; Group III $\frac{1}{4}$ th; and Group IV $\frac{1}{4}$ th.
Crew.	Group III all, less 20d. of render; Group IV 20d. of render.
Burras Riffri, Acton Parva, Eyton (275½ acres).	Group I.
Erlas.	Group III.
Gwersyllt and Sutton.	Group IV.

'There was a smaller group of eleven men, including some men of Group I, who held another settlement in Eyton, and yet another group of fourteen, which there is reason to believe belonged to the Elidyr and Ken' families, who had originally held land in Hewlington, near Holt, but who had been expropriated from there and given in exchange scattered plots, probably out of escheated lands in the villes of Dinhinlle, Sesswick, Dutton Diffaeth, Dutton-y-Brain, Cacca Dutton, Allington, Hoseley, Marchwiell, and Eyton.

'With this expropriation and transfer we are but little concerned, except to note that part of the policy of the Norman lords in Wales was to break into the tribal bond by planting on lands escheated from a tribe or "gwely" members of another tribe or "gwely".'

'Leaving them out of account as being a later movement we can see that this branch of the Trefydd Bychain family, which never severed its connexion completely with the ancestral home, occupied in a body the wide lands of Marchwiell and Ruyton, which run continuously from the neighbourhood of Wrexham to the Dee. There, at a later time, they divided the lands into equal fractional shares. Group II, the smallest of all, did not extend further, but the rest overran the Ruabon lands, and again divided into three equal fractional shares. Group I then struck out for itself, and occupied the villes of Eyton, Acton, Parva, and Burras Riffri, operating apparently from Marchwiell as a basis. Group III pushed wedges into Erlas and Crew, and Group IV occupied lands in Gwersyllt and Sutton with a few acres in the adjoining ville of Crew.

'If we follow next the fortunes of the Sandde Hardd and Eunydd lines, it appears that they operated together, but eventually broke up into two sections.

'They moved apparently from Dyffryn Clwyd, outside the lordship of Bromfield and Yale, to the west of Llanarmon, and occupied Burton, Allington, and Gresford. In 1315 we find one group of sixty-one men occupying half of Burton jointly,

and another group of fifty-five holding Gresford and Allington. Beyond that they did not expand; except that, later on, a few of them, seven in number from Burton, are found occupying a portion of the Nova Terra in Pickhill, whither no doubt they were transplanted by the Earl of Warrenne.

'In addition to these major tribal units we find also in Bromfield a number of lesser groups holding land in other villes. These lesser groups may be offshoots of the original tribe, occupying in some cases fresh lands by virtue of "priodolder"; but the material available does not justify us in stating that that was so as a definite fact. Brief reference is necessary to these groups. . . .

'Turning now to Yale we find a similar state of things, except that there was there practically no disruption of the clan unit. In Yale there was one very large group, "gwely" or clan, of sixty-seven persons, the head of which was Gronw Goch, who owned the major part of the free lands in Yale.

'The group occupied the whole of Llys-y-cil, Banhadlen, Bodanwydog, Coedrug, and half of Bryneglwys and Cymmau, no information being given as to who owned the other halves, which were possibly demesne lands. This group was, so far as can be judged, never divided at all.

'In addition, there were smaller groups of fourteen, nine, seven, four, four, and two holding respectively Geufron (near Dinas Bran), Alltymbyd, quarter of Llandynan, Gelligynan, Tal-y-bidwal, and Bodedris.

'No doubt some of these may have been offshoots of the Gronw Goch "gwely", appropriating by "priodolder" some plots or acres.

What does this evidence lead to? . . .

'We see large agnatic clans, parts of an original tribe or tribes, holding or occupying extensive areas. In some cases, e.g. in Yale, those agnatic clans show no signs of disruption; they are continuing, as they had continued for generations, as an undivided whole. Elsewhere we find the clan in its ancestral home, e.g. in Trefydd Bychain, continuing without any signs of disruption there, but sending out offshoots to occupy new territories. Within these new territories only those assisting in the acquisition are shown as having any interest; the acquisition is made not for the whole clan but for such members of it who migrate. As time goes on the emigrants split into sub-clans, excluding the descendants of persons of the original clan who did not share in the expansion. They occupy new areas and, by the law or custom of "priodolder", they acquire the right to exclusive occupation.

'Further, these sub-clans again tend, as they grow, to separate off into fresh sub-clans, each with distinct interests in newer territories, all the time, however, maintaining a consciousness of tribal unity, particularly in the ancestral home.

'This is identically the same characteristic as the evidence shows prevailed in the Honour of Denbigh, Caernarfon, and Anglesea.

'At the same time we obtain glimpses of still further subdivisions within the clans or sub-clans by individuals or small groups of individuals appropriating to themselves small areas within the tribal area, paving the way towards the eventual growth of individual ownership.

'Disruption there is constantly going on, but not of necessity under any mathematical rule or because of the operation of some rule of relationship in fixed degrees. The causes of disruption are accidental, economic, or military, and do not of necessity affect the whole area of the clan. That seems to be the system—a clan system liable to disintegration into new clans as the force of events dictates, and not because there was any law or custom prohibiting the association together of men of different degrees of relationship.

'We may pause at this point to consider the use of the word "gafael" in this Extent. As already pointed out the term "gafael" means a holding, and not a subdivision of a "gwely". That is the only sense in which the Welsh language could possibly use the word. It is a common Welsh word of the present day meaning "to hold" or "to grasp". It was in practice applied to a holding, whether that holding was an individual's, or the holding of a group of individuals, and in the Welsh Laws it indicated an ascertainable number of acres.

'Throughout Bromfield and Yale it is used invariably as equivalent to "holding", and as indicating a definite but variable number of acres, sometimes thirty-six and in the case of Wrexham apparently seven.

'Nearly always a "gafael" was an individual holding: there are a few cases of a gafael being employed to designate the holdings of 2, 3, or 4 men, and in one case, Erbistock, it is the term applied to the joint holding of 8 men, where $1\frac{1}{2}$ "gafaels" are said to be equal to 40 acres.

'In Gwensannau we have the additional fact that the holding of one individual is spoken of as a "gafael" "by estimation" . . .

'The word "gafael" is used in this sense only in the Extent.' . . .

and a list is attached, showing the existence of some fifty-five 'gafaels' or fractions of 'gafaels' in six unfree villes, and thirty-five in four free villes (Appendix VI).

§ 3. When we turn to the Survey of Bromfield and Yale, made as late as 23 Henry VII (A. D. 1508), we find both 'gwelys' and 'gafaels'; though throughout the major portion of that lordship both terms had ceased to be used.

Messrs. Palmer and Owen, in their work on Ancient Tenures in North Wales and the Marches, note that in the southern half of Cymwd Merford both 'gwelys' and 'gafaels' existed, and in the northern half 'gwelys' only, and they appear satisfied that there was no essential distinction between the two terms, beyond the point of view from which the association was regarded.

In Sutton there were two free 'gwelys', Sandde ap Elidyr and Meilir ap Elidyr, and one free 'gafael', Madoc ap Elidyr, all tracing descent ultimately from Elidyr. This clan is further found in Ruabon, Ruyton, and Marchwiell, where we find five 'gafaels' called Sandde ap Elidyr, Meilir ap Elidyr, Madoc Warwyn ap Elidyr, Math ap Elidyr, and Iorwerth and Llywelyn ap Madoc ap Elidyr. Here we have the same people spoken of as both 'gwelys' and 'gafaels'.

In Hewlington there was a free 'gafael' Madoc ap Gurgun, divided by the time of Henry VII into seven separate holdings, no longer held by descendants of the prononym.

In Dutton-y-brain there were two 'gafaels' named Ieuan ap Ednowain and Cynddelw ap Ednowain, obviously interrelated, and in Bilston three 'gafaels' Dweyd, Bledwyn Vaghan, and Eden'.

In Dutton Diffaeth there was one free 'gafael'; in Allington five 'gafaels' of the progenies Ithel, named after four sons and one grandson of Ithel. In Treffydd Bychain there were three unequal 'gafaels' of the free progenies Hwfa, who also supplied another 'gafael' in Eglwyseg. In Sontley there were three 'gafaels'.

Esclusham is interesting. There was one 'gafael' Nyniew divided into eight progenies named after the sons of one Ieuf, another 'gafael' Tudor Felyn divided into five progenies and no less than six other 'gafaels' held by the descendants of one Pellyn.

So far as this evidence goes it leads to the same conclusion as the other evidence, viz. that the 'gafael' was not a subdivision of a 'gwely', but meant simply a holding of a variable unit.

The evidence, however, goes further than this.

The Elidyr family has split up, but not entirely beyond his sons. The descendants of his sons hold together in some

villes, and we know definitely that these sons are the grandsons of a man living prior to the preparation of Domesday Book, that is to say we have unmistakable proof of the endurance of 'gwelys', once more without change of name, for some 400 years.

The same in effect may be said of some of the descendants of Sandde Hardd and Ithel ap Eunydd.

Undoubtedly there have been changes since 1315 in other villes, but the point it is intended to make is made, viz. that there were some 'gwelys' which endured for centuries, and that 'gwelys' did not automatically disrupt into new ones every generation.

In Yale, which, in 1315, we saw held principally by one 'gwely', we do not find the same evidence. Possibly because, Yale having been in part the territory of Owain Glyndwr, there had been wholesale escheats of the lands of his supporters, or possibly for some other reason, the whole tribal system there, in so far as the land was concerned, had been broken to pieces. Free 'gwelys' and free 'gafaels' had alike disappeared; the whole land was the land of the lord, and in A.D. 1508 it was let out in 'gafaels', each approximately twenty-two 'erws' in area and paying 14s. rent.

8. *The clans in South Wales.*

The South Welsh evidence helps but little, as no early extents of importance, other than that of St. David's, have survived.

We know, however, that the system must have been of a similar nature to that of the North; and two clans appear in the Ministers' Accounts of the thirteenth century; one a body of three hundred freemen holding jointly as one community the Tir Ralph, Pengelli, and the other the kin of Ieuan ap Madoc, who held jointly in Mefenydd and four other villes; facts, which, in so far as they go, do not point to periodical partitions.

9. *The clans in Domesday.*

Certain parts of Wales and Hereford, which was then distinctly Welsh, were surveyed in Domesday.

The entries in Domesday afford useful information as to

the terms of land-holding, but throw no extra light on the tribal organization.

10. *Conclusion.*

We may now summarize briefly the conclusions to which the evidence of the Surveys and Extents appear to point:

(i) There were in Wales tribal entities of considerable magnitude, having a real or assumed common descent, occupying widely dispersed areas. These entities, sometimes called progenies, 'wyrion', and 'gwelys', seem identifiable with the 'cenhedloedd' of the laws ruled over by a clan chief or 'pencenedl'.

These clans might, and did in many cases, endure and maintain a sense of unity through centuries. There is nothing to show that they automatically dissolved when the members thereof could not trace descent from a common ancestor in the ninth, seventh, or fourth degree.

(ii) In addition we find smaller clan groups, also termed progenies, 'wyrion', and 'gwelys', some of which appear to be fragments broken off from or subdivisions of larger entities, some of more recent origin coming into existence from enfranchisement or other causes. They form nuclei which in time may expand into greater clans.

(iii) Economic and other causes could and did contribute to 'sub-gwelys' starting an existence independent of or partly independent of the larger 'gwely' or clan to which they had originally belonged.

The 'gwely' was in all cases a corporation which held, or had held, land in common.

(iv) The 'gwely' was not necessarily a corporation of persons related one to the other by descent from a common great-grandfather, and did not terminate or dissolve into new 'gwelys' every generation.

(v) The word 'gafael' is applied equally, as equivalent to 'holding', to areas held by clans, fragments of clans, 'gwelys' within a clan, independent 'gwelys', subdivisions of 'gwelys', and even individuals.

A 'gafael' was not a subdivision of a 'gwely' among the sons of a common great-grandfather of the persons existing at any given period.

XIII

THE UNFREE

1. *Introductory.*

§ 1. There were three broad classes of unfree men in early medieval Wales, the 'aillt', the 'alltud', and the 'caeth'. Some confusion has arisen in regard to the 'aillt' and 'alltud' in the past, and that for two reasons.

The first cause, not a very serious one, is due to the fact that the 'aillt' is sometimes spoken of as a 'taeog' (cf. Yorkshire, *tyke*), and sometimes as a 'villain'.

Now 'aillt', 'taeog', and 'villain' are merely local variations, they denote exactly the same class of persons.

The word 'aillt' is the common denomination of the class in North Wales, the word 'taeog' in South Wales, and the word 'villain', borrowed from Norman sources, is employed on rare occasions in the North, and more frequently in the South.

The second cause of confusion is a serious one, due to the use of the Triads of Dyfnwal Moelmud as authoritative. The author of the Triads was ignorant of the distinction between the 'aillt' and the 'alltud'. He used the two words indiscriminately, as if they meant the same thing. The distinction between the two is observed strictly in the Codes and commentaries, in which there is never any confusion.

In addition to confusing the 'aillt' with the 'alltud', the Triads contain a number of provisions, of which the laws are entirely ignorant, relative to the rights of 'aillts' and 'alltuds', the acceptance of which as authoritative has led to more misconceptions.

§ 2. The 'aillt', 'taeog', or 'villain', or unfree Welshman, was generally Welsh in origin, differing from the freeman in that he held bond-land, to the conditions of tenure attaching where to he was subject, and in having, in the eyes of the law, a lower value placed on his life, honour,

and possessions than a freeman, being also subject to some disabilities to which a freeman was not subject.

The unfree seem to have been, in the main, descendants of the aboriginal inhabitants of Wales conquered by the later Brythonic invaders, and placed, not outside the law, but in a position, under the law, of subordination to their conquerors.

§ 3. There are frequent references in the laws to unfree men under the King, and unfree men under the free. The former were tenants holding directly from the King, the latter tenants holding under a freeman or a free clan.

Of King's unfree tenants there were three main divisions, those holding land in an ordinary unfree 'tref', corresponding to the 'treweloghe' viles of the Record of Caernarfon, those holding in a 'register-tref', corresponding to the 'trefgefery' viles of the same Record, and those holding in 'maerdrefs'. The organization of all 'treweloghe' viles was similar, but differed from that of the 'register-trefs' and 'maerdrefs'.

Naturally, just as we find in the rolls of the English manors that there were many variations in dues and services from what may be called the standardized legal conception of the perfect manor, so in the Welsh system of unfree viles there were numerous local variations. The principle of the law was that unfree men in unfree viles were governed by the particular custom of that ville in which they lived, and consequently we do not find in the laws a detailed exposition of the varying incidents of the tenure; though sufficient appears, when combined with the Surveys, to enable us to gain a clear idea of the system under which the unfree lived.

The organization of the 'maerdref', being the King's exclusive home-demesne, and of the 'register-trefs' is on the other hand more minutely described.

§ 4. The foreigner, or 'alltud', unlike the unfree, was invariably an individual of foreign extraction, an Englishman, an Irishman, or what not. A Welshman, who had abandoned his own countryside and migrated to another part of Wales, could not, under the strict law, become an 'alltud'. He was never a 'foreigner' in any part of Wales.

The foreigner, like the indigenous unfree, was divided into foreign tenants of the King, and foreign tenants of the free, and even foreign tenants of the unfree, according to the immediate 'superior' to whom he was commended.

2. *The unfree in the Surveys.*

§ 1. The Surveys of the fourteenth century throw considerable light on the distribution of the unfree communities. The Survey of Denbigh and the Record of Caernarfon, however, treat the unfree on somewhat different lines.

§ 2. In the Denbigh Survey practically all the unfree are classed together as 'nativi'. With few exceptions there is a close resemblance in the organization of and dues from the various 'nativi' villes.

Like the freemen they are found, as a rule, in 'gwelys' or holding 'gafaels', but there is an absence of widespread tribal entities like the major free clans.

The Survey shows that in the time of the Princes there were twelve villes in which 'nativi' held a total of 110½ 'gafaels'.

Many of these villes also had free tenants. Numerous holdings are recorded as fractions of 'gafaels', and in most cases the holders are individuals. The largest number of joint holders (8) is found in Llysfaen, but anything exceeding three is rare.

In Llysfaen one 'gafael' is also termed a 'gwely' holding. Fifty unfree 'gwelys' are found in twenty villes, quite distinct from those where 'gafaels' are found, along with six 'gwelys', partly free and partly unfree.

One of these, 'gwely' Peyned in Prees, is called 'gafael' Peyned in Beryn. Only two of them are shown as held in 'gafaels'; and, besides these two, in only one case (Garllwyd) does the 'gwely' appear to have been held in divided plots. All others are held jointly, the largest number of joint holders being eighteen.

In seven villes the whole of the 'nativi' holdings had disappeared through escheat or expropriation, but the fragments left show that the unfree had, in olden times, held in 'gwelys' or associations of a few joint holders (Appendix VII).

Fragments of 'maerdrefs' or 'register-trefs' are to be found in Ystrad Owain, Dynorbyn Fawr, and Cilcennys.

In addition to these unfree tenants, there are a few 'advocarii' and 'adventitii' recorded, these men being of foreign extraction or migrants from other parts of Wales, having no hereditary connexion with the locality. The purely English settlements like Lleweni, which were held on English tenures and arose after the annexation, do not help us to ascertain the condition of things in the time of the Princes.

§ 3. In the Record of Caernarfon there are many classes of the unfree in Caernarfon and Anglesea. The principal division is into villes 'de natura de treweloghe', and villes held in 'trefgefery' tenure.

The former villes were held by 'gwelys' of unfreemen, the latter by communities organized on a different principle, the principle of register-tenure, with a distinct rule of succession.

The 'treweloghe' villes are sometimes recorded as held in 'gafaels', and sometimes as held by 'gwelys'. The normal entry contains the names of two holders 'et coheredes sui', and in most villes there is more than one 'gwely' group. In Caernarfon there were twenty-nine 'treweloghe' villes, and in Anglesea twenty-one. In many of them we find free holdings as well.

The 'trefgefery' villes are much fewer. In Caernarfon there were fifteen and in Anglesea twelve (Appendix VIII).

In not a single case is an unfree 'gwely' shown as divided into 'gafaels', and in one ville only do we find both 'gwelys' and 'gafaels' existing side by side.

In addition, we have 'maerdrefs' at Deganwy, Dolbadarn, Neigwl, Aberffraw, Bodefri, and Rhosfair.

Tir-bwrdd is mentioned in four villes, and Gardenmen in two. Gwyr Mâl and Gwyr Gwaith are found in Cemmaes and Penrhos only.

All the above were King's tenants, but we have mention also of unfree tenants of the free in twenty-five villes in Anglesea and fourteen in Caernarfon (Appendix VIII). As in Denbigh we find mention of 'advocarii' and 'adventitii' occasionally.

§ 4. In Merioneth the organization of the unfree in 'gwelys'

and their holding of 'gafaels' follows the same territorial divisions as in the case of the free, in the fifteenth-century extent.

'Gafaels' alone are found in Penllyn, where out of 72½ 'gafaels' only six were unfree, viz. in Llanycil, Beddwarian, and Penaran.

In Uwchartro out of 134 'gafaels' six were unfree, but in addition we find in Uwch Cefn-y-clawdd sixteen unfree 'gwelys'. In Isartro there were eighteen unfree 'gafaels' in Llanddwywe and Llanenddwyn, and four unfree 'gwelys' in Llanaber. In Talybont, where there were no 'gafaels', one 'gwely' out of twenty-three was unfree, in Ystumanner one out of fourteen. We also find 'maerdrefs' and 'terra dominicalis' in Llanenddwyn,¹ Dolgelley, Cefyng, and Caethle, and 'terre mal' in Llanenddwyn and Trawsfynydd.

§ 5. In the Extent of Bromfield and Yale (1315) we find manorial centres, obviously the old Welsh 'maerdrefs', shorn of much of the old characteristics, in Wrexham, Marford and Hoseley, and Llanarmon.

In addition, we find a number of unfree tenants in other villes, apparently old 'taeog-trefs'.

In none of these villes do we find definite traces of associations under the name of 'gwely', though we do find a few traces of small kin-associations holding jointly.

In the manorial centres the characteristic is individual liability for services in return for holding land, with a few remnants of joint responsibility. In the other villes the most complete example of an unfree community holding jointly is in Dutton Diffaeth, where six acres of land were held by a group described as 'Heilyn et alii nativi de sanguine suo'. Small groups of four and two in number held plots in four other villes.

Notwithstanding these illustrations of unfree joint holders the general rule was holdings by individuals. Such occur in practically all unfree villes.

In some villages the holdings of individuals are described as 'gafaels' or fractions of 'gafaels'.

¹ Llanenddwyn corresponds with the older 'maerdref' of Ystumgwern, abolished as such when Harlech was built.

It may be noticed also that we find traces of unfreemen holding from free tribesmen in four villes and under the progenies of Ken' and the Elidyr family.

§ 6. In the Black Book of St. David's there are few traces of the unfree. The word 'unfree' is nowhere used.

'Maerdrefs' occur in Castle Poncius, Newtown, and Trefdyn, and we have many traces of 'colonii', 'advocarii', and 'cotarii', generally individuals holding by copy, showing that the hereditary unfree tenants had become copy-holders under a feudal lord. This is characteristic of ecclesiastical estates throughout Europe, for the Church aimed at placing all its tenants, whether originally free or unfree, on the same footing by securing surrender to itself in return for a regrant to copy-holders on less onerous terms.

In the rest of South Wales the prevailing rule was free tenure; 'cymwds' Madubrud, Mafelyw, Selyf, and Hirfryn, for example, having only three unfree villes between them. The South Welsh material is, however, too partial to be of great assistance.

§ 7. Many unfree villes, some of which were held by 'lecta', are found in the Bangor Extent, but the Extent adds nothing to our knowledge.

Remnants of 'maerdrefs' can be traced at Gogarth, Llanrhaiadr, Treffod, and Edeyrn.

§ 8. The only point it is desired to emphasize at this stage is that the Surveys establish that a considerable portion of the unfree in Wales was organized in 'gwelys' of persons interrelated to one another, and that the system of 'taeog-trefs' was the rule and that of 'register trefs' the exception.

Though, however, joint holdings by 'gwelys' prevailed among a considerable portion of the unfree, there is no trace of such men being organized in large clan entities, corresponding to the large 'cenhedloedd' of the free, and it would seem that the unfree 'gwelys' were not of an enduring nature. It is possible that, as in Ireland, these unfree associations were artificial creations, built on the analogy of the free 'gwelys'; on the other hand they may be surviving detritus from a period when the unfree were themselves the free rangers of the hills.

The nature of the unfree holdings will be considered in the chapters on the Land Laws.

3. *The 'alltud' or foreigner.*

§ 1. Of foreigners there were three main kinds: he who was in the country as a mere passer-by; he who was there for more than a passing purpose; and he who had acquired a permanent place in Welsh society. All possessed a considerable degree of freedom of action, they were in no sense serfs; but until a permanent position was acquired in Welsh society they were outside the rule of the common or customary law of the land.

Every foreigner coming into the country was bound in law to place himself under the 'commendation' of the territorial lord, a local 'uchelwr', a freeman or an unfreeman.

§ 2. The Codes regulate the sojourn of temporary foreigners in Wales, and place the responsibility for them upon the person whose protection they had sought.

In the Treaty between the West Saxons and the Wealhas 'who are Dunseatas', i. e. the Welsh of South Wales beyond the Wye, it was provided in the sixth clause thus:

'Neither is to travel, neither a Wealh in the English land, any more than an Englishman in the Wylisc, without the appointed men of the country who shall receive him at the "staeth" (the frontier station on the Wye), and bring him thither without guile.'

This provision corresponds exactly with the provisions of the Welsh Law. There must be some one responsible for the conduct of the stranger.

If a temporary visitor were under the protection of a lord, he was allotted quarters among the settled unfree. He was placed upon their 'dofraeth', much as the lord's retainers were, and the unfree upon whom he was billeted were bound to lodge and to feed him.

A visitor of this nature was expected to show all his property to the host, and the protection of that property fell upon the host, who was bound to make good whatever was lost.

The host did not undertake responsibility for a sword or parts of the wearing apparel; these the guest retained.

No visitor was to tarry unnecessarily, and if he were awaiting a wind he was to go when the wind was favourable; and if he had business to do he was to go in peace when it was finished.¹

§ 3. Two extraordinary provisions for the protection of the foreign visitor were, that, if he fell under any charge and he was ignorant of the language, the King must provide him with an advocate free of charge to defend him, and that no foreigner from beyond the sea or from a different country was liable to any punishment for theft committed by him within the first three days and nights after his arrival in Wales, though he was bound to make good the loss occasioned, if it were shown that he had demanded and been refused food. The reason for this was that if he had been forced to thieve for his subsistence there must have been a failure somewhere to observe the rules of hospitality.²

§ 4. The hospitality which a stranger visitor could demand as of right finds no place in the contemporary English Laws. They approach the matter from a different standpoint, not that of the right of a guest, but that of the liability the host incurred if he entertained a guest.

To this liability we find references in the Laws of Hlothaire and Edric, c. 15, where it is stated that if a man entertained a stranger for three nights, and thereafter fed him, the host became responsible for any damage or harm committed by the stranger. Similar is the rule in Cnut's Secular Laws, c. 28, where the power to entertain a guest was limited to three nights, and in the Laws of the Confessor, c. 23, and those of the Conqueror, c. 48.

In the Laws of Ælfred, c. 34, strict regulations were laid down requiring travelling merchants to report their movements, and it was the general rule of English Law that every person, entering a countryside to which he was a stranger, must place himself in the 'borh' or suretyship of a local resident.

§ 5. The general provisions of the Germanic Codes are similar to the English ones, but in the Lex Burgund., Tit. XXXVIII and XXXIX, we get the subject approached

¹ V. C. 192; D. C. 486.

² V. C. 256; D. C. 446; G. C. 786.

from the same point of view as the Welsh, refusal of hospitality to a stranger being punishable with a fine.

A like rule requiring the temporary visitor to commend himself to a host exists in the Scots Law of King David I:

‘It is lefful to na man to harbery na stranger langer than a nycht, na hald hym in his house wythouten borch.’

§ 6. In the Irish Laws¹ very strict rules are provided regarding the duty of an Irishman to extend hospitality towards strangers, and, in the same authority,² some reference to the stranger is also found. He was apparently always commended to a freeman who had ‘judgement and proof’ against him; and upon his death under the freeman’s protection, the latter took one-third of his body-fine, one-seventh of his death-fine, and all his effects unless there were a ‘bescna’ compact between him and the family of the stranger.

§ 7. The foreigner who came into the country for purposes other than purely temporary ones was likewise bound to place himself under the protection of some superior. He commended himself, not as a fighting man, but as a servant, a labourer (*gwenigaul caeth*), or as a tenant cultivator, and thereafter the person to whom he was commended had to protect him and answer for him to the community.³

The parties were thenceforward bound by what may be termed a ‘customary contract’. Once he had commended himself to a superior the foreigner was not at liberty to terminate the connexion of his own free will without incurring some liability. The tie could be severed by mutual consent, or by the foreigner, subject to certain liabilities, or by the superior, who, if he acted arbitrarily, was deprived of certain claims he otherwise had upon the foreigner.

If the tie were severed by mutual consent, the terms of that consent governed the future relations of the parties, and the foreigner was at liberty to place himself under another superior, but if the foreigner desired to leave his superior against the will of the latter he could only do so on two conditions. He was in that case bound to surrender to his superior one-half of all his goods, including crops and

¹ Book of Aicill, 113.

² Ibid. III. 131.

³ V. 82.

buildings on the land occupied by him, and he was bound to remove himself out of Wales altogether. If he were a Saxon he had to transfer himself beyond Offa’s Dyke; if he were a stranger from beyond the seas he had to go either with the first or third favourable wind.

The removal had to be effected within three days after the sharing of property was over; no further time was given to the foreigner either for garnering or selling his share of corn. If he did not remove himself and his belongings in that time, the whole of his goods went to the superior, and the foreigner himself must either return to his commendation or become an outlaw.¹

§ 8. In the Irish Heptads (V. 361) there is a similar rule entitling a ‘fuidhir’ tenant to separate from his superior upon surrendering two-thirds of his property.

§ 9. The removal of a foreigner outside Welsh territory did not debar him for ever from again entering Wales as a foreigner commended to another person. If he returned to Wales within a year and a day he was bound to place himself under the same commendation as he had been under before his departure; but after the expiry of that period he was at liberty to enter Wales again under another commendation.

Should the tie between foreigner and superior be broken at the arbitrary will of the superior the latter lost all right to any share in the goods of the partnership. The foreigner became entitled to all the movable property he held, and could apparently transfer himself to the commendation of another superior without migration.²

It has to be observed that where there was an arrangement between a superior and a foreigner whereby the latter was accepted as a cultivating tenant, he was regarded as contracting with the heirs and successors of the superior as well, for no foreigner could be freed from the contract by the superior so as to have effect beyond the life of the emancipator, unless he removed himself from Wales; and should any one free his commended foreigner from services, liabilities,

¹ V. C. 182; V. 58-60; VI. 98; IX. 298; XIV. 676, 702.

² V. 76.

and dues, his son could reimpose all the burdens to which the person emancipated had formerly been subject.¹

§ 10. A foreigner under commendation had no right to appear in the Courts. It was the superior, not the foreigner, who was injured by any injury inflicted upon him, and it was the superior who could and must seek redress. So too, if a foreigner were accused of crime or tort, the superior must defend him or pay for him, and if he failed to do so the foreigner was transferred to the commendation of the King.

If a crime or tort were committed by a foreigner while under one commendation, and, before being charged, he was transferred to another superior, ignorant of the delict, the duty of protection and defence fell upon the first lord, who had to make good loss occasioned, and not upon the second lord, who, however, could defend him, if he willed. If he would not do so all rights between him and the foreigner were extinguished.²

Any penalty short of death or mutilation incurred by the foreign criminal had to be endured by the superior, and, if the penalty were death or mutilation, which could be redeemed, the superior was entitled to relieve him therefrom by payment of the corresponding value.

§ 11. The inability of a commended foreigner to transfer himself at will to another lord was secured by a suit known as 'guarding alltudship'. The superior could claim against the new lord for recovery of his foreigner; or, if the foreigner had not commended himself to a new lord and relied on a negation of ever having been a foreigner and an allegation of being a Cymro, the suit could be brought against him personally. The method of conducting this suit is dealt with in the Chapter on Procedure.

§ 12. Some of these principles of responsibility for the conduct of commended men, and the inability of the stranger to transfer himself at will, have their counterpart in English Law.

In the Laws of Athelstan (A.D. 924), c. 22, it is provided that no one is to receive the commended man of another

¹ IX. 298.

² V. C. 256; G. C. 792; V. 78, 90.

without his leave; and if any one did he was compelled to restore the man, and pay as penalty the King's 'oferhrynes'. So, too, in these laws it is provided that no overlord could dismiss his man, accused of a crime, until the overlord 'has done what is right', that is, made good any damage occasioned.

Similarly in Ælfred's Laws, c. 37, a transfer of a man from one 'bold-getael' to another, without the knowledge of the prior overlord, entailed a fine of 120s., payable by the new overlord; who also, unlike the rule in Welsh Law, became responsible for misdeeds committed by the man under his previous commendation.

By the time of Cnut (A.D. 1016-35) the responsibility of an overlord for the misdeeds of his commended man had been reduced to this extent that an overlord, while bound to have his house in 'borh', could escape liability if he swore that he was ignorant of the man's acts.¹

§ 13. The same duty is frequently mentioned in the Germanic Codes, but it will suffice to refer to two passages. The first, in the Lex Frisionum, Tit. XII, describes the method of taking the oath of exculpation by the lord:

'Si servus rem magnam quamlibet furasse dicatur, vel noxam grandem perpetrasset, dominus ejus in reliquiis sanctorum pro hac re jurare debet; si vero de minoribus furtis et noxis a servo perpetratis fuerit interpellatus in vestimento vel pecunia jurare poterit.'

The second, in the Lex Saxonum, Tit. II. 50-53, runs:

'Quicquid servus aut litus, jubente domino, perpetraverit, dominus emendet. Si servus scelus quodlibet, nesciente domino, commiserit, ut puta homicidium, furtum, dominus ejus pro illo juxta qualitatem facti multam componat. Si domino factum servi inputetur quasi consenterit, sua XII manu jurando se purificet.'

An almost identical provision occurs in the Leges Ang. et Werion., c. 59.

Similar rules existed in the Irish Laws, where the liability for a stranger was always upon him who supplied food and lodging (Senchus Môr, I. 191).

§ 14. The foreigner, it may be remarked further, could not

¹ Cnut's Laws, c. 31.

be a compurgator; he could not be a witness against a Welshman; he could not compurgate himself from a charge by means of a jury of kin (though he might do so by his own oath, repeated to the number of times equivalent to the number of compurgators demanded from Welshmen); he could not demand the assistance of kinsmen to pay for his crime; he had, in fact, no independent status to put the law into motion.

He was also prohibited from marrying while under commendation without his superior's consent; and, should he do so, even if the wife were Welsh, the children remained at the disposal of the superior. The reason for this, no doubt, was to preserve to the superior his right of succession to the foreigner. If he were already married or were married with the superior's consent his property went to his children, but, should he die without issue, his superior was his successor. Property of a temporary visitor escheated to the King, subject to the payment of a death-clod fee of 2s. to the owner of the land on which he died.¹

§ 15. The tie between a superior and a foreigner commended to him and occupying land endured for four generations. At the end of that time the family of the foreigner, which had now become settled, acquired a new status.

Two important passages in the laws require quotation in full. In the Vth Book, pp. 86, 94, it is stated:

'If an "alltud" come, and become the King's man, and land be given him, and he occupy the land during his life, and his son and his grandson and his great-grandson during their lives; that great-grandson will be a "priodawr" from thenceforth, and after that the status of an "alltud" ought not to attach to him, but the status of a man who possesses land, and the status of a Cymro.

'If an "alltud" become a man to an "uchelwr" and be with him until his death, and the son of the "alltud" be with the son of the "uchelwr", and the grandson of the "alltud" with the grandson of the "uchelwr", and the great-grandson of the "alltud" with the great-grandson of the "uchelwr", that fourth "uchelwr" will be a "priodawr" over the great-grandson of the "alltud", and his heirs "priodorian" of that great-grandson for ever, and henceforth they are not to go

¹ V. C. 92, 152, 240; D. C. 412, 432, 492, 512, 594; G. C. 692, 748; VI. 100, VII. 132, IX. 218, 220, 222, 258, XIV. 628, 694, 716.

to their country, whence they originate, away from their proprietary lord. . . .

'An "alltud cenedlauc" is an "alltud" whose parents have been in Cymru, until there have arisen brothers, cousins, and third cousins, and "nyeint" to each of these. They are not henceforth to go to the country from which they originated, because they are "cenedlauc". . . . That number of persons suffices for a "cenedl". . . . Every one ultimately become "priodorian" and "cenedlauc" if they remain in Cymru until the fourth descent'.

In the Venedotian Code, p. 182, it is stated:

'As the "alltudion" of the King become "priodorian" in the fourth man after they shall have been placed upon the King's waste, so the "alltudion" of the "uchelwyr" become "priodorian" if they have occupied the same land under them for so long a time, and thenceforward they are not to go from the "uchelwyr, for they are "priodorian" under them.'

Slight reference is made to the same rule in the Xth Book, p. 392, which, dealing with the right of succession to movable property, states that this belongs 'to the son of an "aillt" of the King or "breyr", whom the law calls a "proprietary alltud", that is, one who remains with his lord without removal unto the fourth person on each side'.

A 'priodawr', it may be explained here, was a man entitled to fixed rights of occupation in land, whether he were free or unfree.

The rule embodied in these quotations was that in the fourth generation of continued occupation a foreign family became, to use modern legal phraseology, considered as naturalized, and acquired the full status of an *unfree* Welshman.

To acquire Welsh unfree status it has to be noted that there must be occupation of the *same* land under the *same* family of overlords, so that mere residence in Wales did not confer that status. So, if there were a transfer of a foreigner to a new commendation during the third generation, the fourth generation did not acquire Welsh status. The tie had been broken which would have made the latter *adscriptus glebae*, which was the characteristic of the unfree.

§ 16. This rule has its almost exact equivalent in the Irish Heptads, V. 513. It is there said that every 'fuidhir' was

entitled to his own lawful property, but he paid for no crimes of his relations or even of himself. The chief under whom he held paid for him, and likewise received anything due on his behalf. After three generations' service the 'fuidhir' and his descendants became *adscripti glebae*, but until then they had the full right to depart so long as they left no debts upon the chief.

§ 17. It is unfortunate that, on the authorities quoted and by the misinterpretation of the law of 'mamwys' in the Triads, a theory has been built up regarding the acquisition of Cymric status by foreigners. This alleged system, to which reference is made later, appears to be fictitious. The true Welsh Law was quite simple, devoid of all the complications that an acceptance of the Triadic elaboration involves.

As in all other early communities the primary test, as to whether a Welshman was a Welshman or not, was whether he was of Welsh blood in origin. If he was, he was either free or unfree. If he was not, he was a foreigner; but, if being a foreigner, his family continued in the country for four generations, holding the same land under the same family of free Welshmen, so showing an intention of remaining in Wales, then the foreign family became, not free, but unfree Welshmen, entitled to all the privileges and responsibilities accruing to that status, and holding land under a fixed tenure, which neither he nor his superior could terminate.

4. The 'caeth'.

§ 1. At the very bottom of the social scale came the bondman or 'caeth'. This class was recruited by capture in war, purchase, and sale, voluntary surrender, and perhaps also as a punishment for certain crimes.

The trade of slavery, as pointed out by Prof. Lloyd, was extensively carried on by the Danes of Ireland, who possessed slave-marts in Bristol and Chester.

§ 2. The bondman had a fixed worth upon his life, but it was payable to his master. He had himself no legal rights of any sort; he was regarded, just as an animal was, as the absolute property of his owner, and could be sold by his owner just as cattle could be.

The master was bound to keep him in order, though he was not apparently responsible to indemnify others for acts of his servants other than acts of theft.

A fugitive bondman could be recovered, and his captor was entitled to 2s. from the owner; but there was nothing in the Welsh Laws comparable to the provisions of the *Judicia Civitatis Lundoniae*, which made it law that bondsmen running away should be stoned to death.¹

§ 3. Slaves existed in all early medieval society, and the universal rule was that they were chattels of the owner.

Under the English Law the liability of a master for his slaves' acts was a little wider than in Welsh Law.

The general rule was that a master was assumed to be responsible for his slaves' acts, whether of murder or theft, and was originally liable to make good all damage caused by him; but later the master could free himself from liability on proof, the onus of which was on him, that he was not privy to the act of the slave. This proof was furnished; as all proof was, by fixed oaths of compurgation.²

The general principle, prevalent among Germanic tribes, is tersely put in the *Leges Angli. et Werin.*, Tit. XVI, 'Omne damnum quod servus fecerit, dominus emendat', a rule expressed in many others of the Germanic Codes, e.g. *Lex Burgund.*, Tit. VII, and *Lex Frision.*, Tit. I.

§ 4. So far as it is possible to judge, the 'caeth' class in Wales was not considerable, but we have no means of ascertaining what its exact proportions were.

¹ D. C. 512, 530; V. 56, XI. 402.

² See e.g. *Hloth. et Edric*, cc. 1, 2, 3, and 4, and Athelstan's Ordinance, c. 3.

XIV

THE PRIVILEGES OF THE FREE AND
THE UNFREEI. *According to the Codes.*

§ 1. We may now consider briefly the differences between the privileges of the free and those of the unfree, touching upon some of the fictions in the Triads as well.

§ 2. The first difference related to the tenure of land. The free, and sometimes the unfree, held land by 'gwelys'; but the free held free-land, the unfree unfree-land.

Land held free was subject to certain duties, partly military, partly revenue, due to the lord or King. The unfree were subject to a different type of military service, and to a different assessment of revenue. They were also liable to varying servile dues, like billeting, boon-work, &c. In some ways their dues were more burdensome, and less honourable than the dues from free-land. They are dealt with fully in the Chapters on Renders and Services.

§ 3. The unfree, who held in 'register-trefs', were not so well off as the unfree holding 'treweloghe' lands. The system of tenure and the mode of succession applicable to them were totally different; their tenure depended partly on labour dues, and their cultivation was regulated by the 'land-maer'.

All unfreemen were 'adscripti glebae', but they had fixity of tenure.

The tenant of a 'maerdref' was placed in a position similar to that of a tenant in a 'register-tref', but the 'maerdref' also appears to have contained a number of landless labourers.

The foreigner, till he became 'settled', paid such rents or services as might have been agreed upon, and had no fixity of tenure.

§ 4. The next point of differentiation is between the free and the 'treweloghe' unfree on the one hand, and the foreigner on the other.

All Welshmen had the right of appearing in court to claim amends for injury done, to defend themselves by compurgation and to demand the assistance of kinsmen. An unfree tenant of a freeman was, however, subject to the jurisdiction of his superior's court, if he possessed one, and the same rule applied in the case of unfreemen in a 'register-tref'. The foreigner had none of these rights, and his sole protection was the protection of his superior.

§ 5. The third differentiation was that the freeman had a higher worth placed on his life, honour, and property than an unfreeman had; and the unfree Welshman had a higher valuation than a foreigner. The valuation placed on a Welshman, free or unfree, belonged to himself or his kinsmen, that placed on a foreigner to his superior.

§ 6. The fourth advantage was one reserved for the free. The freeman had freedom to move wherever he liked within or without Wales. His movements were unrestricted, and no penalty attached to absenteeism, unless it continued for nine generations. Absence beyond that indicated an abandonment of all rights. The privilege was expressly confirmed by Edward III on petition, which alleged that the Crown officers were forcing into advowry Welshmen who were transferring themselves from one 'patria' to another.

The unfree could not move at will, and he was bound to the soil he cultivated. Instances in the Surveys, &c., of 'nativi' being brought back to their place of residence are not infrequent.

The right to move whithersoever he willed was the keynote of Welsh freedom. The generality of Englishmen were bound to the soil; the servile tenure was the rock-bed of feudalism, and it was the desire to avoid the same system being thrust upon them which induced the Welsh to maintain their struggle for freedom for so many centuries.

§ 7. The Triads assert that the right of hunting was confined to freemen. This is not quite accurate, for the hunting of roebuck, otter, and foxes was open to every one. The fact, however, that hunting-dogs possessed by the free had a special value, and those of the unfree were not valued

as hunting dogs suggests that the unfreeman's privileges in hunting were less than those of the freeman's.¹

§ 8. A privilege which was confined to the free was the exercise of certain arts and professions.

Advocacy and the judicial office were confined to men of free status. The laws also prohibited any one but a freeman from being a cleric, a bard, or a smith, without permission of the lord. An unfreeman, however, acquiring knowledge of these arts, with such permission, could teach them to his son. Acquisition of such arts enfranchised the acquirer, but the enfranchisement was not transmitted to the son, unless the latter himself became a cleric, bard, or smith.²

2. *The fictions of the Triads.*

§ 1. The Triads alone add certain advantages, possessed by the free, which would not be worthy of mention had they not been used to substantiate an inaccurate account of early Welsh society.

The most important of these fictitious rights was the so-called right to five free 'erws' or acres, upon the basis of which Dr. Seebohm has enlarged on the alleged 'cyfarwys' or right to maintenance of the Welsh tribesman; 'cyfarwys' in that sense being unknown to the Welsh Laws or the Welsh language.

The Triads say that every freeborn Welshman was entitled as of right to five free 'erws'. No attempt is made to determine where they were to come from; and there is no doubt that, starting from the rule that before partition of 'tref-y-tad', whether free or bond, each co-sharer was entitled to exclude from partition the homestead occupied by him along with four 'erws', the author of the Triads anticipated Mr. Jesse Collins in making a provision of five free acres for freemen in his Utopia. No other authority has any knowledge of these 'erws'.

§ 2. The Triads also assert that all old people, destitute persons, children, and inventors were entitled to receive a similar five free 'erws', or failing that a 'spear penny' or 'plough penny', from the 'cenedl'. This attempt at

¹ V. C. 282-4; D. C. 456, 496; G. C. 732-6, 784.

² V. C. 78; D. C. 436; V. 74, X. 326.

fathering on the old Welsh Laws a definite system of poor relief is unsupported by any other authority.

§ 3. They also confer the privilege of carrying arms and horsemanship upon the free alone. In doing so they are in flat contradiction to the rules in the Codes and the facts of history.

Bondmen could not carry arms, every one else could. Foreigners were allowed to carry them, and we have only to look at the escheats suffered by the unfree for the part they took in the wars of Llywelyn and Madoc to realize they were fully armed.

As regards horsemanship, what the laws say is that only an 'uchelwr' could go into battle as a 'marchog', i.e. as a knight or esquire. No freeman could be a 'marchog' in his father's life, and save the small class of 'knights', all others, free and unfree, went into battle as light infantry.

That the right to possess and use horses was enjoyed by the unfree and the foreigner is clear from the provisions that no unfreeman could sell his horses without the lord's permission, that he was responsible for supplying sumpter-horses for the King's commissariat, and must be responsible for the care of a foreigner's horse when billeted on him.¹

§ 4. In the sphere of legal procedure the Triads also accord to freemen a peculiar privilege of appeal, which it designates the 'raith of country'. This alleged procedure is considered in the chapter dealing with the Courts; it may be said here, however, that the Codes do not substantiate that there was any such right of appeal as that stated in the Triads. It was entirely foreign to the only known method of appeal, that by mutual pledging.

¹ V. C. 78, 204; D. C. 348; X. 328, 330.

XV

THE LOSS AND ACQUISITION OF STATUS

WE have now two important points to consider, viz. whether the right of freedom could be forfeited or lost by one born free, the other whether it could be acquired by one who was not born free.

I. *Loss of Status.*

§ 1. Dr. Seebohm (p. 58), after referring to the alleged methods of acquisition of free status by the unfree, says :

'In the reverse case of a tribesman losing or forfeiting the privilege of kin, he became a car-shattered or kin-wrecked person, a person who had broken his kin, and put himself for a time or in part into the position of a stranger in blood,'

and he reverts incidentally to this conception of the car-shattered man as an outcaste from a defined nine-generation group on pp. 61 and 118.

This interpretation of the term 'car-llawedrog' appears to be an erroneous one.

§ 2. The term 'car' in the old Welsh Laws is a common synonym for 'relation'. It is used frequently in conjunction with other words to form compounds, and the question as to the proper signification of 'car-llawedrog' involves the consideration of two other words, 'car-gychwyn' and 'car-dychwel'.

None of these terms are used in the Venedotian Code ; the term 'car-gychwyn' is used once only in each of the Triads attached to the Dimetian and Gwentian Codes, the others in neither, though 'dychwel' by itself is used.

'Car-llawedrog' is found only in the Anomalous Laws, and then but twice, 'car-gychwyn' and 'car-dychwel' but once each in the same collection.

In the Triads of Dyfnwal Moelmud, 'car-llawedrog' is employed twice, 'car-gychwyn' or its equivalent 'symwd-car' four times, and 'car-dychwel' thrice, in one of which cases Mr. Aneurin Owen has translated it as if it were 'car-gychwyn'.

The word 'car-llawedrog' is also used once in the *Leges Wallice*.

The word 'gychwyn' signifies starting, setting out, departure from ; the word 'dychwel' return to ; and the word 'llawedrog' is an old Welsh word, which has not survived into modern Welsh, but whose primary meaning is 'expanding'.

The meaning of the compounds with 'car' will become apparent as we proceed.

§ 3. In the Triads (p. 480) it is said that there are three persons who are 'car-llawedrog', a man without relations, a man without land, and a man dependent on the privilege of a 'pencenedl', apparently meaning a sworn man to the tribal chief.

They proceed to say that he is 'car-llawedrog' who has the privilege of removing his 'car' whither he listeth, or of removing to another place without loss of privilege or nationality, provided he does not go to the land of an enemy stranger.

Obviously this definition does not imply any excommunication or ostracism : it means simply that a man is 'car-llawedrog' who has the right to free movement, and does move, in the exercise of that right, to another territory, not being an enemy territory.

The first part of the Triad is a second and not inconsistent definition. What it says is that a man is free to move if he has no relatives, no land, or is dependent on a 'pencenedl'. In no case is there any sense of being deprived of rights.

In another Triad (p. 480) it is said that one of the 'motes of convergency', that is the duty of meeting together, devolves upon every innate landowner on the approach of a 'car-llawedrog', who is defined as one having the privilege of moving his 'car' or 'vwd' (residence) wherever he wills. That is to say he is a 'car-llawedrog' who, having the right to move, freely exercises that right.

In the Vth Book (p. 96) exactly the same meaning is applied to the term, and it is identified with the term 'car-gychwyn'.

Properly rendered the passage runs thus :

'Should a "boneddig", possessed of ancestral property, enter the service of an "uchelwr" and remain for a time with him, and be killed during such service, the "uchelwr" is to receive his "galanas". . . . So long as he is alive, he may depart from the "uchelwr" whenever he desires, provided that he observes the conditions laid down in the law of Hywel. Such a person is called "car-llawedrog", that is, a person who may be "car-gychwyn" whenever he wills. "Llawedrog" in old Welsh means "tomawc", hence he is "car-tomauc".'

Mr. Aneurin Owen translates 'tomawc' as broken, but 'tomawc' does not appear to mean 'broken'. 'Tonawc', quite a different word, signifies broken into fragments.

'Tomawc' is an adjective connected with two different roots; the first 'tomen'=a heap, dunghill, and hence 'dirty' or 'rustic', and the second 'tom'=pulling or moving, e.g. a draught horse is 'tom'.¹

'Car-tomawc' is equal to 'car-moving', exactly the same as 'car-gychwyn'.

The definition in the Xth Book means, therefore, not that a 'boneddig' could be excommunicated from kin, but that that man was called 'car-llawedrog', or 'car-gychwyn' who, having the right to move freely from his place of origin and ordinary place of residence, did so move, and took up land on a tenancy from another freeman.

In the Leges Wallice (p. 876) the reference runs :

'Qui propter inopiam reliquerit hereditatem suam, et vadit ad virum de cognatis suis, et morabitur in villa ejus cum eo, ille vocabitur "karlauedrauc", et de illo fiat sicut de "bonhedic kanhwynaul" qui fuerit cum optimate.'

The essence of all these references to 'llawedrog' is the exercise of a right to move, for some cause or other, from the home of origin, which as we have seen was the essence of the Welsh conception of freedom.

In the XIVth Book, p. 638, it is said that there are three men who are 'car-llawedrog'—the son of an 'alltud' by a Cymraes, a 'taeog' in service to a man, and one who is 'anlloddoc' from his own ancestral property on the land of another.

The last-mentioned Mr. Owen renders as 'a wealthy

¹ Vide for uses of the word D. C. 570; G. C. 706; Leg. Wal. 861, § 26.

person by inheritance on the land of another', which is quite meaningless.

'Anlloddog' does not mean 'wealthy'; 'anlloeddog', a different word, does, and the latter also means one having an 'anlloedd' or customary place of residence.

'Anlloddog', so far from meaning 'wealthy', means 'profitless', 'destitute of protection'. The phrase therefore appears to mean either a 'destitute wanderer from his own ancestral property on the land of another', or 'a person having a residence on his ancestral property, who is on the land of another'.

§ 4. To understand, however, the full intent of this Triad we have to consider the references to 'car-gychwyn'.

Wherever we find it it is in Triadic form defining the three persons who are 'car-gychwyn', and the persons so defined have a common characteristic.

The Triads of Dyfnwal Moelmud (p. 564) say that there are three acts of departure (*car-gychwyn*) which do not permit of return (*atlychwel*)—the marriage of a woman who can never return to her kin (an incorrect statement of the law by the way), the second departure of a man to a foreign country which prevents him coming back to his ancestral property, and the reception or repudiation of the paternity of a son, which, if once effected, could not be subsequently altered.

The Triads in the Dimetian Code (p. 450) and the Gwentian Code (p. 774) deal with very much the same acts of 'car-gychwyn' as preventing any return. They say that a wife, once lawfully separated or divorced from her husband, can never return to him; that a man who has changed his lordship cannot return nor a man who has been lawfully ejected from property; and that an alleged son, once repudiated, cannot be accepted thereafter as a relative.

We are not concerned with the differences in these Triads as to what constituted 'car-gychwyn' from which there could be no return. What all the references, however, indicate is that marriage, separation, divorce, legal loss of title to land, and lawful acceptance or rejection of paternity are irrevocable acts. There is no sense of excommunication

or kin-wrecking: they only say and mean that certain acts of departure from husband, land, or paternity can never be gone back upon. There was no return from them.

In the XIth Book (p. 422) we have the term used in connexion with temporary tenancies or other rights in land.

It is said that there are three occupations of land (*per-chenogaeth*), which are to continue until such time as 'car-gychwyn' occurs, and for them terms are fixed.

The meaning of this is that there are three kinds of tenancies or holdings, which are to continue until the time fixed by law, at the expiration of which time the man in possession is entitled to and must move. The word here simply implies the removal, the legitimate removal, from land occupied, on the expiration of the legal term of the tenancy.

§ 5. Outside the Triads there are no further references to 'car-gychwyn'. There is one reference to 'car-dychwel' in the so-called Privileges of Powys; where it is stated that a man of Powys has the right to go on any journey he desires without question, and that, if he does so, he is not to be made 'bond', nor is he to be subject to 'car-dychwel'; in order words, that he is not liable to be brought back against his will. The passage merely emphasizes that it is the innate right of the freemen of Powys to move freely whithersoever they please, and that they are not 'adscripti glebae'.¹

§ 6. To turn now to the use of the terms 'car-gychwyn' and 'car-dychwel' which have not yet been noted.

These uses are in the Triads of Dyfnwal Moelmud.

They sometimes use the term 'symwd car'. On p. 476 it is said that the removal of 'car' (*symwd car*) without permission or privilege is an act of 'ormes', injustice, or hurt, implying simply that a man not entitled to move, i.e. one who is 'adscriptus glebae', who does move, commits a wrongful act.

The same meaning is attached to the word in Triad 33 (p. 480), where it is said that one of the three acts which entailed 'bondage' was an illegal departure (*cychwyn*

¹ XV. 744.

angharad) or removal of car (*symwd car*) by one not entitled either by privilege or permission to move.

In Triads 90, 91, 245, and 246 we get references to acts which entail the loss of rights in land by permanent departure to a foreign land, and to the right to recover within a certain time and under certain conditions. There is an echo here of the law relating to the 'cry over the abyss'.

It is said in these Triads that a man loses his privilege of country and kin by entire 'car-gychwyn' to a strange country, and he can recover those rights by entire 'car-dychwel' under pledge to remain in Wales in the future.

The term 'car-dychwel' is also used in Triad 94 relative to the form and class of evidence a man returning from abroad and claiming land must employ, and in Triad 244 we are told that a woman, a bard, and a landless man are not to be compelled to return against their will in order that office and service may be imposed upon them. The word in the Welsh text is 'car-dychwel', which Mr. Owen has translated as if it were 'car-gychwyn'.

§ 7. It is clear, therefore, that the Triads even do not use the terms 'car-llawedrog', 'car-gychwyn', or 'car-dychwel' as implying any excommunication from an organized kin-group, and except in matters of detail they use the terms in the same sense as they are used in the Anomalous Laws.

'Car-llawedrog' and 'car-gychwyn' seem to refer simply to the power a freeman had to move at will, and 'car-dychwel' to a return of a man, who had removed, to the 'status quo ante'. No sense of the breaking of a man is conveyed in the use of these terms.

§ 8. Are there any other references to the possibility of a freeman losing status?

The Triads of Dyfnwal Moelmud, in passages wherein they confuse the 'aillt' and 'alltud', refer to the loss of privilege in the case of treason, murder by waylaying, and the murder of a 'pencenedl' and others, but loss of status is nowhere else asserted to ensue in any one of these cases, though loss of patrimony is. The Venedotian Code (p. 176) says very distinctly that where a man lost patrimony—the

specific case being where he paid it as 'blood-land' in murder reparation—he did not lose status, but remained a freeman.

§ 9. In the law relating to land it is provided that absence for nine generations in a foreign country deprived absentees of any right to recover ancestral land, and the Venedotian Code, p. 172, dealing with this point, says that a 'priodawr' does not lapse from his propriety until he becomes a foreigner, 'for the law says that if a person remain in another country, whether on account of being banished, or for murder or other urgencies, so that he cannot revisit his country freely, his title to land is extinguished in nine generations'; that is to say, to use modern phraseology, that a family lost Welsh citizenship and its right to hold Welsh land when it had shown its intention of acquiring a new domicile by residence in its new domicile for nine generations.

There is no other indication in the Codes of a freeman losing status, except by means of this change of domicile.

§ 10. Degradation to the state of bondage may have been possible where a man deliberately sold himself into bondage; and, in older times, may also be inferred to have been the result of a conviction for certain thefts, inasmuch as the punishment for some thefts was that a man 'became a saleable thief'. This punishment had, by the time of the redaction of the laws, become changed into a cash payment, or, in default, banishment.

We have also noted that in the case of the clan of Nefydd Hardd the whole clan was made 'bond' by Owain Gwynedd because of the murder of his own son, but this was the exercise of a royal power outside the ordinary law.

§ 11. We may, therefore, say that the laws afford no evidence of the reduction of a free Welshman in status except by change of domicile, but that it appears that, at one time, conviction of theft of a particular kind entailed loss of status, and that the King could degrade.

This must not be confused with outlawry. Like all other early communities, the Welsh Law recognized 'outlawry' as a punishment, but 'outlawry' was something quite different to 'loss of status' or degradation to a lower status.

Outlawry meant ordinarily the putting of a man outside all right; he became a beast of the field who could be slain with impunity. It was not a reduction of status, but the wiping of him out of existence as a member of the community altogether. In Welsh Law a person 'outlawed' was given a few days' grace within which to remove himself from Wales; thereafter he could be hunted down, except in some circumstances modifying the general rule, but his banishment did not attain his successors, unless they shared his banishment and continued absent for nine generations.

2. *Acquisition of status.*

§ 1. The important question we have now to consider is whether it was possible for a foreigner or an unfreeman or a bondman to aspire to and attain free status.

The question is discussed by Dr. Seebohm on p. 131 et seq. of his *Tribal System in Wales*, and a somewhat hesitating conclusion is arrived at.

Reference is also made to the subject on pp. 55-7, 76, 120-2, and elsewhere.

The conclusion, roughly stated, arrived at appears to be that in South Wales, though not in North Wales, it was possible by the adoption of certain fictions for a foreigner in blood to ascend to free status.

§ 2. The authorities on which this conclusion is based consist mainly of extracts from the *Triads of Dyfnwal Moelmud*, which cannot be accepted without corroboration.

We have, therefore, to consider the alleged methods of enfranchisement in detail.

In the *Triads* (p. 504) it is said that there are three 'taeogs' (the word is there used inaccurately to cover all people not of free Welsh descent), who do not attain to the reputed descent and privilege of an innate Cymro until the end of the ninth degree; one of these being 'an "aillt" or stranger who shall dwell in Cymry', who cannot become a Welsh citizen of free status till he had been in Wales for nine generations, the contention being that foreigners, who continued on the land for nine generations, became fully free.

§ 3. The laws make no such provision. They make no

mention of the acquisition of *free* Cymric status by any one through residence in Wales for any length of time.

As we have seen already what the laws do say is that continued occupation for four generations by the same family of foreigners of the same land under the King or the same family of freemen made such foreigners 'adscripti glebae', with all the rights and liabilities incident to *unfree* status.

This is a very different matter to the system hinted at in the Triads, and expanded by writers depending largely on the assertions contained in those Triads.

We may here refer to an important piece of evidence found in the Petitions to Edward III in the Record of Caernarfon.

One Llywelyn Foelram of Talabolion complained that he had been dispossessed by the Vicecomes of Anglesea of three of his 'nativi' (i.e. *aillts*), of whom he and his ancestors had been in pacific possession from a time beyond memory. The Vicecomes replied that the ancestors of these alleged 'nativi' had come from Ireland, and had placed themselves freely in the commendation, not of Llywelyn Foelram's ancestors, but in that of the lord, pleading, therefore, that the dispossession was justified. This is a definite case of 'guarding "alltudship"', and the order on the petition was that if the plaintiff could prove that these migrants were his villains, they were to be removed from the lord's commendation and restored.

§ 4. The second method of enfranchisement alleged has obtained currency by an ingenious confusion in the Triads between the right of 'mamwys' or maternity, and the alleged acquisition of free status through residence in Wales for nine generations.

It has resulted in varied and complicated commentaries.

Dr. Seebohm (p. 131), accepting the Triads, says:

'The fact has several times been alluded to that in South Wales the attainment of the position of a free tribesman was possible by residence in Cymru for nine generations, and could be hastened by repeated intermarriages with innate Cymraesau.'

and, on p. 55, he states that:

'Intermarriage with innate Cymraesau generation after generation made the descendant of a stranger an innate Cymro

in the fourth generation. In other words the original stranger's great-grandson, whose blood was at last seven-eighths Cymric, was allowed to attain the right to claim the privileges of a tribesman.'

Rhys and Brynmor-Jones, on p. 192 of *The Welsh People*, reproduce this conclusion.

Dr. Seebohm refers to one authority, the Triads; Rhys and Brynmor-Jones, who are only quoting Dr. Seebohm, refer to none at all.

The authority for this mode of enfranchisement is Triad 67, and other references to it are in Triads 65, 92, 93, 115, 211, and 214.

Nowhere else in the laws is there the slightest mention of the acquisition of freedom by a series of four intermarriages.

§ 5. In the genuine law relating to marriage it is provided that if a Welsh-woman were given in marriage to a foreigner by her kinsmen (i.e. her father, brother, or other near male relative), then, inasmuch as her children could not acquire free-land from their father, they were entitled to what is called 'mamwys', that is, a right, subject to some minor limitations, to claim land from the family which had given their mother in marriage.

They were in fact received as freemen, belonging to the family of their mother's father, ranking in regard to partition as sons to such father.¹

§ 6. It is at once obvious that the theory of the Triads, which required four generations of intermarriage before a foreigner could acquire freedom, is inconsistent with the law of 'mamwys', which, provided the marriage was by gift of kin, gave the offspring of such marriage freedom at once with the rank of a son, not a grandson of the grandfather. The reason for counting a daughter's son in this case as a son is concerned with the law of partition, but the Triads convert it into a power of an innate Cymraes to advance a degree for her foreign husband *en route* to his acquiring 'freedom', and carry it down the line for every subsequent marriage. To reconcile the supposed enfranchisement of resident foreigners in nine generations (itself a fiction) with the true

¹ e. g. V. C. 96, 98, 174, 176; D. C. 442, 552; G. C. 604, 774.

provision of the acquisition of unfree status by foreigners occupying the same land for four, each intermarriage is represented in the Triads as giving a rise, not of one, but, of two steps in the ladder to freedom, the son of the fourth intermarriage being thereby, by a fiction, the ninth in descent and not the fifth or fourth.

This fantastic system of enfranchisement is characteristic of much in the Triads, the author of which was obsessed with the need of making everything fit in with his elaborate creation of a self-governing body of persons related together in the ninth degree.

The Welsh Laws know nothing of the system, nor do any other of the more or less contemporary Codes or Laws on the Continent, in England, Scotland, or Ireland.

The rule of 'mamwys', which is a perfectly simple, reasonable, and intelligible rule, had its origin in the fact that a woman's relations had failed in their duty towards her and her children by marrying her to a foreigner, and must provide for the children accordingly; and that simple rule has been converted by misplaced ingenuity into a method of enfranchisement of aliens.

§ 7. There were, however, means of enfranchisement known to the Welsh Laws.

The acquisition of the full rights of a freeman was possible for a non-freeman, who, with the consent of his lord, was educated and became proficient in scholarship (i.e. tonsured and received into orders), smithcraft, and bardism. These arts, as we have seen, were ordinarily closed to non-freemen, but if the lord permitted them to learn they became free for their lives only, without power to transmit the freedom to their descendants.¹

A serious conflict on this matter arose in A.D. 1360, when the Abbots of Bardsey claimed the right to ordain the sons of their unfree tenants; a claim which the King rejected on the ground that, under Welsh custom, no one could be ordained except by the license of the King or Prince.

The Irish Laws (Bk. V. 21) have a comparable provision

¹ V. C. 78; D. C. 436, 444; X. 326.

in allowing a 'daer' man to become 'saer' through the acquisition of nobility by arts.

The Triads, however, assert that the father's freedom enured to the benefit of his descendants in this way, that it counted as a reduction of one step in the ladder to freedom, up which a foreigner was supposed to be climbing through a series of intermarriages or through occupation of land for nine generations.

Needless to say the Codes and other laws know nothing of this transmission of the benefit, and are quite emphatic that there was no such transmission. They repeatedly describe the sons of such men, freed for life, as 'the bonds of the free'.

§ 8. Similarly situated, though in this case there is no assertion that freedom was for life only, was the unfreeman upon whom the King might confer one of the twenty-four offices of the court. The only direct mention of this in the laws, apart from a possible inference in the IVth Book, p. 12, is in the Dimetian Code, p. 444; but every one of the Codes repeatedly asserts that an officer of the Court held his land 'free', and that 'privilege of office' was recognized. Further, the Surveys contain numerous instances of free 'gwelys' named after persons who had held office, and there seems therefore no doubt that the recipient of office from the King became *ipso facto* enfranchised.

§ 9. The early history of the Church in England, and indeed everywhere else, shows that it was largely through its operations that the rigour of servile land-tenures was mitigated, and that a number of persons bound to the soil became partly or entirely freed. The proportion of men 'adscripti glebae' was nothing like so great in Wales as it was in England; but even in Wales the Church did much to enfranchise the unfree population. There are instances of it in the Book of Llandaff, and as already noted the Black Book of St. David's contains no mention of unfree tenants.

This enfranchisement by the Church is provided for expressly in the Codes.

The Dimetian Code states that the consecration of a

church in a 'taeog-tref' with the King's permission automatically made all the tenants of a 'taeog-tref' free.

The Gwentian Code and the IVth Book appear to provide for emancipation in the same way, for, after mentioning the heriot due from a 'taeog', they state that if there were a church on the 'taeog's' land, the heriot was enhanced to 120 pence, which was the amount of the heriot for free-land.¹

§ 10. This closes the possible methods of emancipation referred to in the laws, with the exception of an interesting statement in the Xth Book, pp. 312-14.

In that Book we have a list of what are called the 'nine accessories of kindred', whereby a stranger could become related to another.

It is unnecessary to reproduce the list, for it is unknown elsewhere, and the list does not purport to enfranchise any one. It simply amounts to a statement of circumstances whereby a stranger acquired a right to demand help from one whom he had helped.

The conclusion, therefore, to which we must come is that the Welsh Laws knew of no means of making an unfreeman a freeman, except through the right of 'mamwys', or through the King's grant of freedom, or through enfranchisement by the Church with the concurrence of the King, or by the exercise of certain professions, which by their very nature severed a man from the soil for his life.

¹ D. C. 444, 542; G. C. 686, 792; IV. 12.

XVI

MEN NEITHER FREE NOR UNFREE

§ 1. The Codes and laws make no mention of any intermediary stage between freedom and unfreedom.

The Surveys, however, introduce us to the existence of a few somewhat abnormal holdings.

The Survey of Denbigh contains a few instances where part of a 'gwely' was free and part unfree, e.g. the 'gwely' Meurig Wenwes and Ieuan Ddu in Llechred, the 'gwely' Morythe in Wigfair, the 'gwely' Pridydd Moch in the same ville, the 'gwely' Hirodel in Meifod, in Eriviat, and the 'gwelys' of the sons of Cathaiarn in Bodiscawn, cases of partial emancipation made, apparently, 'ex dono principis'.

In addition, however, to these we have a few cases of holdings, which the compilers of the Survey described in terms which showed they could not decide whether the holders were free or not.

In Rhosfair (Anglesea) the Record of Caernarfon mentions eight small 'gafaels' of persons whom it describes as 'liberi nativi'. Some of these 'gafaels' were named after occupations, e.g. 'Porthwission' and 'Porthorion', and they seem to be holdings where the original owners had been unfree but whose renders had been placed on the same footing as those of freemen.

In the Survey of Denbigh three vills are mentioned, in which some of the holders are said to be neither pure free nor pure unfree.

In Taldrogh, one-half of the ville was held by one son of Ior' ap Seisil as unfree, the other half by six men, sons of the same Seisyl, along with two other co-sharers, as 'neither free nor unfree'. The differentiation is obviously not one of birth, but there is a differentiation in services and renders.

In Mochdre, a village generally of unfree status, there was one 'gwely', 'gwely' Kendalo or Cynddelw, described as

neither free nor unfree, and in Colwyn, a village of the same general character as Mochdre, one gwely, Caradoc ap Gethloc, is similarly described.

§ 2. We may have here cases where the King, in the exercise of his power of enfranchisement, gave partial emancipation to some 'aillts', expressing that enfranchisement in the terms of holding of land, much in the same way as Edward I did to expropriated villeins whose land he took for the erection of castles or boroughs like Conway and Beaumaris.

That, however, is guess-work, and it seems more probable, as noted by Sir Paul Vinogradoff, that the Norman surveyors, finding men who were 'nativi' by birth and 'adscripti glebae', but who were liable only to renders and services incident to free tenure, were in a quandary as to how to describe them, and recorded them as 'neither fully free nor fully unfree' or as 'liberi nativi'.

§ 3. In the Record of Caernarfon there are ten villes, in which unfreemen are found holding free-land, but they appear to be mainly cases of escheated free-plots leased out to unfree tenants.

In Glyn and Rowen and Bodenfiw we appear, however, to have two cases of unfree-land being enfranchised by the grant of the King.

XVII

THE CHURCH AND THE BARDS

WE have noticed above that the acquisition of personal freedom was possible in Wales by the attainment of scholarly and bardic arts.

Some reference, therefore, to the Church and the Bards may be conveniently made here before we leave the subject of the social structure of early Wales.

I. *The Church.*

§ 1. Perhaps nowhere is the history of the Church of more abiding interest than it is in Wales.

We cannot, however, here consider the interrelations between the Church and the people in the religious and social life of the nation, nor deal with the history of the Church, beyond saying that the laws are most insistent on the need of the Church, and the duty of obedience to it. The subject is one which would require a very considerable volume to deal with satisfactorily.

There are few Welshmen, alas! who have the necessary detachment of spirit to deal equally sympathetically with the Catholic Church, the Celtic Church, the Church in Wales, and the various Free Churches, and capable of estimating their respective qualities and failings, from the point of view of their contributions to Welsh life.

We must limit ourselves to the legal position the Church held in the Welsh Laws.

§ 2. The first striking feature of the Welsh Laws is that the Church was, in no political sense, independent of the State.

Politically it was subordinate to the King. There was no interference by the King in religious matters; he was not the head of the Church spiritually, but the subordination of the Church to the Crown in all matters outside the strictly spiritual life is strongly emphasized.

This is abundantly clear from the provision in the land-

laws that all Church-land was held under the King ; from the provision that all possessors of Church-land must declare their privilege to each new King upon his accession, who was, if he saw the privilege valid, to renew it ; from the fact that gifts in mortmain were circumscribed, and required the sanction of the lord to take effect ; and from the jurisdiction exercised by the King's Court over the tenants of the Church.¹

§ 3. The same subordination appears in the rules regulating the right of sanctuary, a right which was not absolute, but limited.

The sanctuary area was confined to the church itself, the church-yard and the burial-ground. Outside that area the Church could grant no sanctuary, except to the cattle of the offender, which were protected so long as they herded with the cattle of the Church. The Church's right of sanctuary was comparable to, and little more extensive than, the ordinary man's right of protection within his own 'precincts'.

The Church had no power to grant sanctuary to persons under sentence of banishment who broke the order of exile ; it could give no protection against a claim based on suretyship, a claim respecting land, or shelter a man under criminal suretyship (*gorfodogaeth*) so as to prevent his being brought to justice ; nor could it safeguard a man who had disturbed the peace of the King's Court, a hostage breaking his parole, a bondman fleeing from his bondage, or a person defaulting in payment of his cesses.

In other cases the maximum period of sanctuary affordable was seven years, a provision in the Codes which is corroborated by the reference in the Index to the Llyfr Goch Asaph to the great church at Llanelwy which claimed sanctuary for seven years, seven months, and seven days.²

The laws are also most insistent on the point that no church had in itself any right to grant sanctuary.

The power originated in express grant of the King ; such grant was ordinarily assumed, but if a church claimed any

¹ V. C. 138.

² e. g. V. C. 138, 140 ; D. C. 350, 438 ; G. C. 788 ; VIII. 196.

power to grant sanctuary in excepted cases it was bound to substantiate its claim by proof of grant.

Sanctuary appears in a fragmentary form in the Anglo-Saxon Laws ;¹ but the information given therein is far from complete and is largely concerned with the penalties payable for breach of the Church's 'grith'.

That is also the characteristic of the Germanic Laws,² and of the Scots Law,³ and the essential subordination politically of the Church is not so clearly pronounced as it was in Wales.

§ 4. The second characteristic of the Welsh Laws is that they do not attempt to trench on what may be regarded as the sphere of the Church, rules of moral conduct and the like. There is no confusion between sin, which it is the Church's business to deal with, and delict, which it is the function of the law to prescribe appropriate compensation for.

There is a striking absence of all religious regulations, in this differing materially from the English, Irish, and Germanic Laws. There is nothing, for example, comparable to the recitation of the Ten Commandments which appear in Ælfred's Laws, or to Ethelred's Ordinance of Eynsham (A. D. 1008), or Cnut's Ordinance of Winchester.

Further, the Welsh Laws have no mention of witches, soothsayers, and the like, regarding whom there are so many references in English Law,⁴ and there is no mention of the 'devil's banquets', which the Irish Laws descant upon.

This differentiation between sin and delict, between the spheres of morals and the law, is one of the most striking features of Welsh Law, and, in this particular, place them far in advance of any other contemporary laws.

§ 5. The civil subordination of the Church to the King is further emphasized by the fact that inasmuch as a bishopric was a personal dignity, the whole of the bishop's property,

¹ Cf. Æthelberht's Laws, c. 1 ; Dooms of Ine, c. 5 ; and Dooms of Ælfred, cc. 2, 5.

² Vide e. g. Hlothaire's Constitutions, Tit. 1, 2, 3, 4, 5 ; Lex Baiuwar, Tit. 1 ; Lex Saxon., cc. 1-14.

³ e. g. Statute Alex. II, c. 9.

⁴ Vide Laws of Athelstan, c. 6, and the Treaty between Edward and Guthrum, c. 11.

except his vestments, ecclesiastical ornaments, and Church-land, escheated on his death to the King. In regard to abbey-land, the Abbot having no personal property therein, it did not escheat; but every new abbot had to pay 'ebediw' in token of the fact that the Abbey held of the King.¹

§ 6. We have frequent references in the Welsh Laws to bishop-land and abbey-land. Abbots were the heads of religious houses, many of which had grown up round the cells of ancient hermits, and such religious houses were corporations of proprietors; bishops were not such originally, but were personal dignitaries often subordinate to abbeyes, and even when bishoprics became territorial there could be no personal succession to the bishop.

§ 7. In addition to the abbots and bishops we find in the Surveys traces of another order of clerics, whose origin must be Celtic. In several cases we find reference to priests, holding shares in 'gwely-land', sometimes having a separate holding, sometimes being co-sharers with others and related to such co-sharers. They would appear to be family priests, living with the family and following their ordinary avocations. We know that as a matter of fact that was characteristic of the Celtic Church, but the survival of the system into the fourteenth century, especially in the estates of the Church, like those of St. David's, is surprising.

One of the peculiarities of this class of priesthood is the fact that they were married and had children.

§ 8. Another striking fact apparent from the Survey of Denbigh is that there was in Denbigh one tribe of a distinctly Levite complexion. This was the progenies of Cynan ap Llywarch, who held large areas of land, exactly like any other progenies; and, moreover, had under them free-holders and unfree tenants who paid renders to them and not to the King in recognition of the fact that they were the abbots of the tenants. They are comparable in some degree with the tribes of the saints, so characteristic of the Irish Laws, that is, descendants of some original saint who had founded a cell or other religious institution.

§ 9. The importance of the Church in the ordinary

¹ V. C. 170; IV. 10.

political life of the time is evidenced by the existence of the priests of the Court and their functions. There were two priests, those of the Household and of the Queen. The former, along with the priest of the 'cymwd', was invariably present in Court; not only acting as a kind of clerk of the Court, but opening proceedings and accompanying the judges, whenever they retired to consider their decisions, in order to seek a divine blessing upon their deliberations.

All judicial oaths, whether of men bearing testimony or of the compurgators, were under the administration of the Church, being sworn either within the Church precincts or upon relics sanctified by the Church.

The religious sentence of excommunication, if made by name, involved the excommunicant in civil disabilities, rendering him liable to forfeiture of all his movables, unless he made submission to the Church in a month and a day.¹

Mention is made in the Anomalous Laws, but not in the Codes, of tithes: they appear to have been levied on personal property and not on the land, and were payable to the individual priest and not to the Church.²

The dignity and sanction of the church was protected by the provision of the laws that any offence committed in church entailed a double penalty, and over and above this there was the heavy mulct of £14 payable to the church, if it were a 'mother-church', and of £7 if it were not.³

§ 10. There are numerous references in other parts of the laws to the rights of the Church and the position of the priesthood, but these are dealt with in their appropriate places.

Sufficient has been here said to emphasize the two great characteristics of Welsh Law in connexion with the Church, viz. that the Church was politically subordinate to the King or Prince, though spiritually independent, and that there was a clear and conscious division between that which was a sin and that which was a delict.

2. *The Bards.*

§ 1. In the spurious Triads a fanciful account of the alleged organization of the Welsh bards is given. This account has no historical basis.

¹ V. 74, XI. 410.

² X. 328, XIV. 580.

³ V. C. 78.

Nevertheless the bards of early Wales were an important factor, and were the repositories of tribal lore and genealogies, a fact to which Giraldus Cambrensis bears eloquent testimony.

This is not the place to attempt a full account of the bards, and we must be content to state briefly what the genuine laws have to say regarding them.

The rank of the bard was high, carrying with it the privilege of appearing covered in the presence of the King. No one could be a bard except a freeman without the permission of the lord.

In the King's Court there was a Bard of the Household and a Chief of Song. They received horses, land, and clothing free, and were also entitled to a special share in the spoils of war.

Like other Court officers their places at table were carefully regulated, and they stood high in the table of precedence.

The Chief of Song got 2s. from every minstrel whom he trained, and a fee of 2s. on the marriage of every maid.

§ 2. The main function of the Court Bard was to sing when required. The Chief of Song opened proceedings with a song in praise of God, followed by another in praise of the King. Then the Court Bard sang thrice, choosing whatever subject he desired. He was obliged to sing to the Queen in her own apartments in a low voice, beginning with a song of Camlan, where Arthur fell. The bard was also compelled to sing to the Penteulu when called upon.

He accompanied the army to war, and, as the men prepared for fight and divided the spoils of victory, it was his duty to sing to them the Monarchy of Britain.

The Court Bard was invested by the King with a harp, a chess-board, and a gold ring, which he could not part with.

The Chief of Song was entitled to sit in the King's presence, and was hence termed the Chaired Bard.

§ 3. The qualification for office was a power of divination from the lore and prophetic song of Taliesin, and ability to estimate the merits of any new song.

The Chief of Song was in authority over all young minstrels

learning the hair-strung harp; and no one could practice bardism in his jurisdiction without permission. Bards, however, from a foreign country were free to visit any part of Wales, and during such visit were placed as guests among the King's 'aillts'.

Pupils trained by a Chief of Song paid one-third of their gains to their teacher, who supplied them with a harp.

§ 4. A peculiar provision in the Southern Codes shows a bard was lowering the dignity of his art if he performed before the unfree. Should he demand an audience of the King he was to recite one song; should he demand audience of an 'uchelwr' three; but should he demand one of 'taeogs', he had to sing until he was exhausted.

§ 5. The musical instruments were the harp, the 'crwth', and the pipes. The harp played an important part in the social life of the people. The King had his own, the Chief of Song had one, and every freeman possessed one. It could never be distrained on for debt, and it was a disgrace to pledge it. The harp always descended to the youngest son.

The valuation placed on the harp was high, that of the King and the Chief of Song being 10s., that of the freeman 5s.

Such are the only references to the Bards in the genuine laws, but they suffice to show that music and song held a privileged and honoured position in early Welsh society.¹

¹ References in Codes V. C. 14, 32, 60, 76; D. C. 382, 388, 436, 438, 486; G. C. 660, 678.

PART II
THE LAND

I

THE CONCEPTION OF TENURE

§ 1. THROUGHOUT the period—the tenth to the fourteenth century—during which we have material upon which to base our conclusions as to the land system of early Wales, we are faced constantly with the fact that there were two sets of conflicting ideas existing side by side.

These sets of ideas may be conveniently called the ‘pastoral’ and the ‘feudal’.

§ 2. Cymric society had been in the past, if not entirely, at any rate largely, pastoral and tribal. Originally it was not a community settled in definite locations upon land and relying upon agriculture as its means of subsistence.

It consisted of or contained a large number of associated clans of pastoral semi-nomads, who claimed, not exclusive proprietary rights in particular plots of land, but a general right of occupation—exclusively or jointly with other similar pastoral units—of a territory, within which they had the right to graze their flocks and to appropriate, for the time being, small areas, here and there, to raise occasional crops upon.

§ 3. We have already noted that the conception of Welsh freedom was based upon the right to move at will ; and this right to move at will expressed in later law the heritage that the freemen of Wales clung to from the times when they had been warrior nomads having their lands cultivated for them by unfree ‘adscripti glebae’.

Side by side with this pastoral idea there was coexisting the feudal idea ; that is, the exclusive allocation of definite areas or plots to definite units or individuals for agricultural purposes.

§ 4. In the first set of ideas the King—a development of the tribal chief—was regarded as being entitled to maintenance out of the possessions of the semi-nomadic tribesmen, because he was the tribal chief ; in the second set of ideas

he was regarded as the owner of the land, to whom renders or rents or services must be paid in consideration of the fact that the land was held of him.

§ 5. The character of the Welsh countryside is such that large portions of it are, and must always be, essentially favourable to pastoral conditions, and averse from agricultural occupations, while other areas are eminently suited to agriculture. Rugged mountain land and upland moors, like the Snowdon Range, the Hiraethog, and the Berwyns, are interspersed with areas of rich cultivable land like the Vale of Clwyd and the Valley of the Conway.

In North Wales and Cardiganshire, notwithstanding the existence of good agricultural areas like the Vale of Clwyd, the character of the greater part of the land is more suited to pasture than agriculture; in many parts of South Wales, particularly in Glamorgan and Pembroke, the land lends itself more readily to cultivation than it does in the north.

§ 6. The consequence is that in the Wales of the tenth to the fourteenth century the earlier conception of society as free and pastoral and tribal, occupying territory and maintaining clan chiefs, survived in most areas with little alteration, even where there was a gradual settlement upon land being effected; while in other areas the later (not necessarily higher) conception of an agricultural community holding defined plots and paying rents was steadily gaining ground.

§ 7. Wales was not, any more than any other country possessed of divers geographical features, set in one mould.

Conditions varied throughout the length and breadth of the land; but in the laws, as occurs in all old laws when custom was in the process of codification, there was a tendency to bring into harmony those diverse conditions by giving to all of them some common assumed or real characteristics.

§ 8. It happened that at the time of the redaction of the Welsh Laws the conception of 'tenure' was gaining the ascendant in the minds of lawyers. The general trend was towards 'tenure'; and, in consequence, we find in the laws that the tribal occupation of territory for pastoral purposes

was viewed to a large extent as if it were an occupation of land for the purposes of agriculture, that is to say both occupations were expressed in the terms of holdings under the King.

Codification, whether it be by legislative enactment or by the legal theorist attempting to expound custom, tends towards the creation of uniformity; but, because a code of customs has the outward appearance of uniformity, it does not follow necessarily that the customs which are codified were uniform at the time of codification. Even when there is divergence an attempt is made by the codifier to find a common formula which will cover all.

The very fact, however, that customs are reduced to a more or less uniform code tends to induce in the future uniformity in custom.

§ 9. What the Codes of Hywel Dda did for Wales, in the matter of the land, was to indicate a line along which existing custom would tend to develop; they established the conception of tenure as an integral part of Welsh Law, and, as time went on, the development of the land-laws, along the line of tenure, was furthered by the growth of the power of the King and the lords, and by contact with that set of ideas which is commonly spoken of as Norman and feudal.

§ 10. We find in the early Welsh Codes that the theoretical, if not the practical, supremacy of the King had so far been accepted without challenge as to make it a legal axiom that all lands belonged ultimately to the King, and must therefore be held of him.

'No land', says the Venedotian Code, 'is to be without a King.' 'There is no land, even Church-land, without him.' 'No one is secure in taking possession of land but by sentence of law or investiture by the lord.'

'The King is owner of all the land of the Kingdom,' repeats the Dimetian Code; and the Anomalous Laws tell us that the 'King can give the land of his kingdom to any one who shall do service for it.'¹

§ 11. As a necessary corollary to this it followed that what

¹ V. C. 170, 178; D. C. 478; VI. 114, XI. 412.

we may loosely term the 'maintenance allowance' given to the tribal chieftain became regarded as rents, renders, or services paid to the King for land held from him.

Not for one moment that in Wales the idea of tenure was carried to its logical conclusion, and that the King, as owner, could deal with the land held by the occupants, free or unfree, as he willed. That was a Norman-English conception applied with the utmost rigour to those who had fought and died for their land, who, in the euphemistic phrase of the Surveys, 'had died against the peace'.

In Welsh Law the right of occupation was inviolable; and, when translated into practice, the supreme ownership of the King meant nothing more than that the occupant must render to him, as he had rendered to the tribal chieftain, certain defined customary dues, and that, in default of all other heirs, there was an ultimate escheat or lapse of land to the King.

In Welsh Law, just as in Irish Law, the lord could make no grant of property not his own; and, as there was no recognized formality, which had to be observed in the conveyance of land, Welsh Law escaped that extraordinary result, which prevailed in early English Law, that delivery of 'seisin' carried the freehold to the feoffee, even if performed by a person without title.

Similarly a grant once made by the King could never be recalled either by himself or his predecessor.

The King was in practice the ultimate administrator of land, not the arbitrary owner.¹

§ 12. In dealing with the idea of kingship in Wales we noted that, though there was a theoretical supremacy vested in the Kings at Aberffraw, Mathrafal, and Dinefwr with a further supremacy vested in the King at Aberffraw, in actual practice much of the kingly office was exercised by territorial lords, whose position in the order of things was clearly recognized by the Laws of Hywel Dda.

Similarly in regard to land-tenure. Notwithstanding the recognition of the principle that all land was ultimately held of the King—the representative of the old tribal chieftain—renders therefrom were not always paid directly to him.

¹ D. C. 550; G. C. 758; XIV. 588.

Below the King the hierarchy of the lords, within the limits of their territories which were constantly changing, were kings in miniature. Where such existed men owed service and paid dues to the lords, who themselves rendered, or were supposed to render, service and dues to the King. Some renders, which need not detain us here, were rendered exclusively to the King.

§ 13. In addition to the lords, a very considerable portion of land was Church-land, as it was in other countries in Europe.

The acquisition of large estates in Wales by the Church was due to very much the same causes as operated elsewhere; but this is not the place to consider how it came about that so much land passed into the control of the Church.

There were many donations long prior to the codification of Hywel Dda; but the major portion of the estates of the Church found existing at the beginning of the fourteenth century seem, at any rate in North Wales, to have been donated in the lives of Llywelyn ap Iorwerth, Dafydd ap Llywelyn, and Llywelyn ap Griffith. However, what we are concerned with at this stage is that large areas were held by ecclesiastical establishments on much the same conditions as land was held by territorial lords; with this distinction, that once land came to the Church it came there to stay and could not be seized by or be forfeited or escheated to the King.¹

Many dues or renders were, therefore, paid by the occupants of land, free and unfree, direct to the Church and not to the King; they were tenants of the Church, and not tenants of the King, in the first instance.

There were constant efforts in Wales, as elsewhere, by the Church to make the ecclesiastical estates independent islands, as it were, in the midst of the territories of the King or lords, and to free them from all liabilities to the King; but it has to be noted that, however wide the exemptions might be in practice which the Church obtained for its lands, it never succeeded in Wales in creating an independent

¹ The characteristic of grants to the Church in Wales is a grant of the right to receive issues, &c., not a grant of absolute proprietary rights.

'imperium in imperio'; nor, so far as can be seen, did the Church ever succeed, under the princes, in imposing upon lands, not held of it, exactions like tithes, first-fruits, and the like, which it succeeded in doing on the Continent.

Not only does the Venedotian Code expressly say that there is no land, even Church-land, without a King, but we have other emphatic references to the subordination of Church-lands to the King.

In the Dimetian Code, p. 478, it is said :

'If an ecclesiastic shall hold land by title under the King, for which service is to be rendered to the King, he is to answer in the King's court as to the land and its appurtenances, and unless he answer obediently for the land it belongs to the King;'

and the Venedotian Code, p. 138, in another passage states :

'All possessors of Church land are to come to every new King, who succeeds, to declare to him their privilege and their obligation, and the cause is lest the King be deceived. After they have declared it to him, if the King see that the privilege is right, let him continue it. There is no Church protection against "gorescyn",'

meaning, in the latter sentence, that mere long possession by the Church creates no title in its favour.

There were definite restrictions also upon the acquisition of land by the Church without the permission of the King.

No 'priodawr' could give land to an abbey or a church without the lord's consent, and no bishop could consecrate land so given, nor could title to it be defended by the Church to whom it had been given. No doubt the limitations here mentioned occur in the later Anomalous Laws and may possibly be echoes of the Statute of Mortmain and not provisions prevailing in Hywel Dda's time; but, be they so or not, they are in entire accord with the old principle that all land, even Church-land, must have a King.¹

§ 14. The contemporary English system of tenure was essentially different from that of the Welsh. England possessed a more or less complete manorial system in which the majority of the cultivators were unfree and 'adscripti glebae'. The English system may have developed out of an older tribal system similar to that of Wales; but the

¹ VI. 102, XI. 408.

triumph of feudal ideas in England was so complete that we can find but little in them in the least instructive of how the Welsh system operated.

§ 15. The Welsh conception of tenure and the position occupied by the tribesmen towards the King or Chief differed materially from the development that occurred under Irish Law.

It is extremely difficult to describe the Irish system from the existing tracts; but a very brief account seems needed, because it seems likely that in the Irish Laws we have a picture of what the holding of land may have been in Wales long prior to Hywel Dda's redaction.

The Irish provisions appear to relate to a period when the main use of land was pastoral rather than agricultural; and the tenancy of land is expressed rather in the terms of cattle held, that is to say that the conditions on which men held cattle determined their position in respect to the land on which they could graze.

The right of the Chief in Ireland to receive renders rested not upon land, but upon his furnishing stock to the tribesmen.

We have noticed very briefly in the law of status that in Ireland there were endless grades of chieftainship. The principal chief was the King of Kings, but there were six or seven grades of chieftains below him, the 'ri', 'aire forgaill', 'aire ard', 'aire tuisa', 'aire echta', 'aire desa', and 'flaith fria', whose rank was determined partly by blood and partly by the number of cattle possessed, a man rising in grade as his possessions increased.

Below the chieftains came the tenants, but they were tenants really of cattle, not of land; the chieftains themselves also being cattle-tenants of the King.¹

In Ireland the chieftain leased out cattle to tenants either in 'saer-rath' or 'daer-rath', and the conditions on which cattle was held determined the status and duties of the tenants.

The position is described thus in the *Senchus Mór*, II. 345, and in somewhat similar words in the *Small Primer* :

'The social connexion which exists between the chief and

¹ Sm. Pr. V. 25; *Senchus Mór*, I. 281.

his tenants is that he is to give them stock and returnable "seds", and to protect them against every injustice that he is able, and they are to render him victuals and labour and respect, and to return the "seds" to his heir.'

It is impossible here to describe in detail the difference between 'saer-stock' and 'daer-stock' tenancy, but briefly put the distinction was this.

In 'saer-stock' tenancy the tenant received cattle from the chief, without furnishing any security, on condition of furnishing a render every year for seven years to the extent of one-third the value of the stock given, which could be claimed in kind, labour, or military service.

'Saer-stock' tenancy could be imposed upon no one against his will, except by the King. It was the highest form of connexion under Irish Law, but it was terminable at the option of the tenant at any time on his returning the stock received.

Under 'daer-stock' tenancy the Chief gave to the tenant cattle, mainly plough-cattle, in proportion to the honour-price of the Chief. It could be forced on no one, and was a contract freely entered into, except in so far as economic pressure might compel a man to be a tenant at all. Once entered into the contract was not terminable at will.

The tenant paid rent in kind or services, and he was subject to a series of fines should he desire to end the connexion or be neglectful in observing the conditions of tenure.

If the 'daer-stock' tenant continued to hold stock for three generations he became 'adscriptus' to his lord, not bound to the soil, but bound to receive cattle in 'daer stock' tenancy.¹

Land was held not of the Chief, but as part and parcel of a man's rights in the tribe to which he belonged; but it is obvious that the transition from holding stock from the Chief to plough or to graze on tribal land to holding land from the Chief for ploughing or grazing was an easy one, and that the dues for holding stock would readily become dues for holding land.

The transition did not, however, occur in Irish Law, and

¹ *Senchus Mór*, II. 195, 207.

the Corus-fine Law, which regulated the enjoyment of land among tribesmen, was distinct from the Corus-flathe Law, which regulated the relations between the Chief and his tenants.

Tenants of land under the Chief did no doubt exist in Irish Law; but tenants of land were 'fuidhirs' or strangers holding cattle on that part of the tribal land which was of the nature of the Chief's demesne.

§ 16. The Irish Law differed from the Welsh Law also in some particulars with respect to the donation of land to the Church.

Both were strict in regard to the donation of tribal or ancestral land, but the former allowed alienations more readily than the latter.

By the Corus Bescna gifts to the Church were allowed of ancestral property, provided 'too much' was not given, even by a man who had not increased his holding, but on the other hand had actually reduced it. A man who had neither increased nor deteriorated his holding could make grants 'according to his dignity'; while one who had increased without deterioration could dispose of the whole of his acquired property to the Church.

Herein lies an important distinction. In Ireland the controlling power upon alienations to the Church was still the tribe, that is the idea of tenure from the Chief had not arisen; in Wales the power of donation to the Church was under the control of the King, of whom the land was held; and, though we have, in the charters of the Book of Llandaff, numerous instances of the lineal descendants and near collaterals of a donor being associated in a gift to the Church, there is no definite trace of tribal consent being required. That fact throws an interesting sidelight on the law of 'priodolder' in Wales, under which permanent occupation rights were acquired by prescription.

II

TERRITORIAL ORGANIZATION IN WALES

§ 1. IN dealing with the social structure of early Wales it was noted that there was a division of the people into those who were free and those who were unfree.

The same division existed in respect of land; there was free-land held by the free, and unfree-land held by the unfree, 'tir rhyd', and 'tir caeth'.

Before we can enter, however, upon a consideration of the distinction between free- and bond-lands we have to consider the early territorial organization of Wales.

§ 2. The administrative unit of Wales was the 'cymwd'; it was the unit for jurisdiction, it was the unit for the organization of the land. Ordinarily there were two 'cymwds' in each 'cantref', and in theory there were always two, but it happened in practice sometimes that the 'cymwd' and 'cantref' were coextensive, and many 'cantrefs' contained three or even four 'cymwds' in South Wales.

The Codes embody in them a tradition that the whole island was measured by Dyfnwal Moelmud. The value of the tradition is simply that the organization into 'cymwds' was a very old one.

According to this tradition the whole country was divided into 'cymwds', two 'cymwds' to each 'cantref', and each 'cymwd' was in theory exactly equal to every other.

Each 'cymwd' was supposed to consist of fifty 'trefs' or settlements, all theoretically equal, each 'cantref', therefore, consisting of a hundred 'trefs', hence the name 'cant-tref'.

§ 3. In North Wales the 'cymwds' were supposed to be divided into twelve 'maenols', each containing four 'trefs', and two extra 'trefs'.

These extra 'trefs' belonged to the King as his royal demesne, which was under the management of the 'maer'

and 'canghellor'; one 'tref' being reserved in each 'cymwd' for the King's waste-land and summer pasture, the other being his 'maerdref' or home farm.¹ In addition, the King had plots of land known as 'tir bwrdd' or table-land.

Of the twelve 'maenols' four were assigned to the unfree, one to the 'canghellor' of the 'cymwd', one to the 'maer' and six to freemen.

Each 'tref' was supposed to contain 256 'erws' of land, an 'erw' being 4,320 square yards in area, and every holding consisted of four 'erws', the measure of every 'erw' being calculated in more or less intelligible multiples of plough-yokes.²

§ 4. In the southern Codes we are not told how many 'maenols' there were to each 'cymwd', and the measure of the 'erw' and the 'tref' also appear to differ, but the theory was that if a 'tref' were free it contained 1,248 'erws', if it were unfree 936, 312 'erws' in each being for pasturage, the rest for cultivation.

Just as in North Wales there was supposed to be a division into free and non-free 'maenols', so there was a like division in South Wales into 'maenors'.

For every seven unfree 'trefs', constituting a 'maenol' (a term sometimes applied to unfree areas), there were twelve free 'trefs' in a 'maenor', plus what was called an 'upland' 'tref' in hilly tracts, a 'tref' which was apparently free from all dues and charges.³

§ 5. Now all this mathematical regularity is fanciful; it did not correspond with facts. The distribution of the free and unfree varied considerably in proportions in different localities.

What the exact significance of this mathematical expression is, it is difficult to be certain about. A possible explanation is that the country was divided into 'cymwds', and then into tunc-paying areas within the 'cymwd'; each tunc-paying area being, for the purpose of assessment, assumed to contain so many 'trefs' and 'erws', held partly

¹ V. C. 186-8, 190.

² V. C. 166, 186; D. C. 538; G. C. 766.

³ D. C. 536-8; G. C. 766-8.

by the free and partly by the unfree, who paid the area-levy in the proportions they were supposed, theoretically, to hold the land.

We have, unfortunately, nothing in the Surveys which throws light on the matter, but there is one entry in Domesday, which seems to have some connexion with the territorial distribution.

§ 6. In dealing with Strighoil it is said :

'In Wales sunt III Harduices, Lamecare, Poteschiwet, Dinan. Pro his harduicis uolebat habere C. solid. Rog. de jurei.

'Sub Wasuic proposito sunt XIII villae, sub Elmui XIII villae, sub Bleio sunt XIII villae, sub Idhel XIII villae. Hi reddunt XLVII sextaria mellis, XL porc. XLI vaccas, XXVIII solidos pro accipitribus. Tot. hac val. IX lib. X sol. III den.'

The details of the render have a curious resemblance to the 'gwestfa' and supper-money of the Codes, which were commuted into the tunc-levy and supper-money per areas.

The evidence is insufficient, but, such as it is, it favours the possibility that the entry in the Codes relates to a division of the country into tunc-areas.

III

THE LAW OF 'PRIODOLDER'

§ 1. WE have now to turn to a new point in our inquiry, and to try and explain the terms 'priodolder' and 'priodawr', which are commonly rendered into English by the words 'proprietorship' and 'proprietor'.

Not only does the rendition not accurately describe the meaning of 'priodolder' and 'priodawr'; but it has the positive disadvantage of misleading and concealing the real meaning by ascribing to the terms a meaning which has a definite, but different, signification.

The terms connote a set of juridical ideas which cannot be translated into any modern phraseology; and it will be far better to retain the use of the Welsh words than to attempt to render them into English, when such rendition must be necessarily inaccurate.

§ 2. The conception underlying the terms 'priodolder' and 'priodawr' is this, that the occupation of land must have a beginning and that mere occupation does not in itself create any right to exclusive possession. Possession must be continued for four generations before it can be said to have ripened into a right to hold against all comers.

The point of view was that land was regarded as free for every one to use as water or air was. Originally property in land did not vest in any one, and every person or group of persons, belonging to a tribe or clan in occupation of a particular territory, had as much right to use a particular plot of land as any other person or group of persons, in the same way as any person or group had as much right as any other to breathe air.

The first step towards restricting this universal right to use land freely was by the tribal or clan occupation of territory. A clan, or a group of clans, might occupy a particular territory or series of territories. Instead of remaining nomadic in the sense that it could roam about anywhere

it willed, a clan earmarked for its own occupation a particular mountain or valley, or portions of a particular mountain or valley, and excluded, either by force or agreement, another clan from using that earmarked territory. A group of clans might jointly occupy and earmark a territory; in which case it generally occurred that the rights of each clan of the group was expressed in fractional shares of the territory occupied.

§ 3. When we are able to obtain our first view of the Welsh peoples we find that there has been a rough demarcation of land into what we may call spheres of influence of clan units; sometimes a single unit exclusively occupying a defined territory, sometimes a number of units holding among themselves a defined territory with their rights *inter se* expressed in fractional shares.

So long as the unit for holding remained the whole undivided clan and its occupation was pastoral that arrangement could continue indefinitely.

§ 4. We have seen, however, that the clan itself was not a constant unit. It did not end, as has been said, on any mathematical rule; but, under the stress of economic or other reasons, it could and did split up into sub-clans capable of developing into separate clans as time went on. Added to this there was a growth, varying in intensity according to locality, of agricultural occupations necessitating at least the temporary appropriation of plots to persons or groups of persons. There was, in other words, a constant tendency towards settlement (a) to a territory, and (b) to defined plots within a territory.

When the clan had in course of time earmarked its own territory, or was confined to a territory, because other clans had earmarked other surrounding territories, the first step towards settlement was complete.

The same process operated within the clan and the clan territory. There was a separate earmarking of separate areas or plots by units within the clans, whether those units were sub-clans, family groups, or individuals.

§ 5. Earmarking, exclusive possession, did not, however, in Welsh Law become operative at once.

Occupation was termed 'gwarchadw'. 'Gwarchadw' gave certain rights and privileges, but it was not 'priodolder'. The first occupant of a hitherto unappropriated plot in tribal territory was not 'priodawr' of the land which he occupied; he was a new settler, a 'gwr dyfod', a 'man who came', having 'gwarchadw' of the land in his occupation. His son and his grandson after him, continuing the same 'gwarchadw', even when no one else claimed the land, were still not 'priodorian' thereof—they were the second and third men in 'gwarchadw'. It was not until the great-grandson continued the uninterrupted 'gwarchadw' that the occupation, which had been commenced by the 'gwr dyfod', continued by the 'gwarchadw' of the second and third man, fructified in the fourth generation into the rights of a 'priodawr', the right of 'priodolder', that is the right to continue in undisturbed possession.

'If he is the fourth man', says the Venedotian Code, p. 172, 'he is a "priodawr", because a fourth man becomes a "priodawr".' 'In the fourth degree', states the Gwentian Code, p. 756, 'a person becomes a "priodawr", his father, his grandfather, his great-grandfather, and himself the fourth.'

The same rule applied in respect of Church-land: continued occupation and payment of rental and 'ebediw' to the Church for four generations gave the occupant 'priodolder' rights in such land.¹

§ 6. In order to establish 'priodolder' rights at any particular moment in land it was not necessary for any one claiming them to trace possession back to the original new settler from whom he was descended. Such original new settler might be much farther back in the line of ascent than the great-grandfather of the claimant; so, if a person, say in the sixth or seventh generation from the original settler, claimed 'priodolder' rights, it sufficed for him to show occupation for four successive generations.

§ 7. If occupation were interrupted by abandonment at any stage before the fourth generation, the process of acquiring 'priodolder' rights had to be begun all over again;

¹ V. 76.

but once the rights of 'priodolder' had been acquired by continued occupation for four generations, they could not be lost by abandonment, unless the abandonment continued for nine generations. If abandonment continued for that length of time, then 'priodolder' rights were lost. The last man of these nine generations was called the ninth man, and he could always assert and effectively assert his right to possession of the abandoned land as a 'priodawr'.

The Gwentian Code, p. 756, states that 'after he becomes a "priodawr" his title does not become extinguished until the ninth man', and in the Venedotian Code, p. 172, it is expressed as follows: 'A person does not lapse from his "priodolder" until he becomes a foreigner, for the law says, if a person remain in another country, whether on account of being banished or for murder or for other urgent matters, his title is not extinguished until the ninth man, at what time soever he may come and claim it, and he is entitled to all that is left.'

§ 8. It is obvious that, under this conception, there could be two distinct persons, or groups of persons, having rights of 'priodolder' in the same land at the same time; that is, if we employ the English term, that there could be two distinct full and equivalent titles of proprietorship in the same land.

Here we are faced with a conception, which it is impossible to translate into modern legal phraseology; there can, in modern juridical ideas, be only one complete proprietorship. There can be joint proprietorship, but the proprietorship is one, exercised by a number of people jointly.

§ 9. Under Welsh Law, the coexistence of two distinct sets of people having these full and equivalent rights in the same land at the same time could arise in the following way. One family might first occupy and hold it for four generations; that family became 'priodorian' of the land. They might then vacate it and remain out of possession until the ninth man thereafter. In the interval another family might come in and obtain occupation of the land, and that occupation might ripen into 'priodolder' by being continued for four generations, ripening so before the extinction

of the 'priodolder' rights of the first family occupying the land.

It was not possible, however, one authority in the Anomalous Laws (XI. 422) says, for the second family to acquire 'priodolder' rights effective against the first family's if that occupation commenced against the will or knowledge of the first family or if it arose under a contract, whereby the occupant undertook to restore the land on the expiry of the term of the contract.

The latter proviso was undoubtedly true always; but the first proviso must be read simply as meaning that the acquisition of 'priodolder' rights must commence with peaceable possession and not with forcible dispossession.

We see, therefore, how it was possible for two distinct families to hold equivalent 'priodolder' rights in the same land, one in possession and entitled to remain, one out of possession yet entitled to recover it, and a very interesting chapter of Welsh Law provides for the adjustment of these competing rights.

§ 10. Let us consider the case of the ninth man—the last man returning say from exile—coming and claiming land that had been in the 'priodolder' possession of his ancestors.

The rights he had were asserted in a manner described in one of the most striking and picturesque phrases to be found in the Welsh Laws. The returning 'priodawr' came on to the land he claimed, and uttered a cry—the 'diasbad uwch annwn', which Mr. Owen has translated as 'a cry over the abyss'.

'I, who am a "priodawr", cried the man, 'am becoming a man without rights in land;' and, to use the simple laconic phrasing of the Venedotian Code, 'the law listens unto that cry, and grants to him a refuge'.

The ninth man got not necessarily the whole of the estate; he got a share in the land equal to that held by the man who had the longest occupation of the land; counting length of occupation not by years, but by the number of generations through which it had been held.

If a demand for possession were refused, the claimant, whether he were the ninth man or an earlier man, could

enforce it by suit, a suit of 'priodolder', which is described in another portion of these studies.

In any claim for 'priodolder' possession it might happen that both parties were 'priodorion', it might happen that only one was, it might happen that neither was.

The rule applicable to determination of such disputes was simple. In every case a 'priodawr' out of possession could oust a 'non-priodawr' in possession, but a 'non-priodawr' (which included a man out of possession whose family had held possession for three generations only) could never oust a 'priodawr' in possession.

If neither party were 'priodorion', what was the rule?

The Venedotian Code tells us that some authorities, summoned to the White House on the Taff to declare the law, said that in their countryside it was the custom that no 'non-priodawr' could eject another 'non-priodawr'; but the codifiers went on to provide, either following the views of the majority or laying down a new rule, that in that case the land was to go to him whose family had had the longest occupation, so the 'third man' claiming would oust the 'second man' in possession, and the 'second man' claiming would oust a 'new settler'.

The Anomalous Laws, however, give the contrary view; and say that a man, claiming to be a 'priodawr', who was in fact not such, could not eject another 'non-priodawr' in lawful possession by inheritance nor any one claiming title through such a person.

We have here, possibly, a difference in existing local customs, which it was attempted to adjust, but it is important to observe that a 'priodawr's' claim could not be resisted by one in forcible possession.

Where the claimant was a 'priodawr' and the man in possession was also a 'priodawr', then how were the competing claims adjusted? Each had equivalent rights, so the law stepped in and said that the 'law of equation' applied; and that those who had equal rights must share equally, and so the land was divided.

The Venedotian Code says:

'If a man claim, and he be a "priodawr" and there be

others risen to be "priodorion" in opposition to him, the law of equality and division is to take place between them, as one "priodawr" is not to be ousted by another.'

Instead of admitting him, however, to an equal share in the land in dispute, the 'priodawr' in possession could always settle with the 'priodawr' out of possession by assigning to him other land of the same quality and in the same locality with a site for a house, but he could not settle his claim by assigning him land of inferior quality, or status, e. g. by giving him self-acquired land instead of 'priodolder' land, unless the claimant consented to take it, which he then did at his own risk.¹

§ 11. What has been said above in regard to the loss of 'priodolder' rights, and the right of a 'priodawr' to recover his land or a share of his land from occupants has, for the sake of simplicity, been confined to the case of a 'priodawr' claiming land in possession of persons quite unconnected with himself. It must, however, not be confined to that case; it applied equally to the case of the descendants of a man claiming to receive a share in joint property which their ancestor had abandoned in the hands of relatives of his with whom he was, at the time of abandoning, holding the land jointly.

They of course would be 'priodorion' if the abandoner were a 'priodawr'; and if the claimants' ancestor were not a 'priodawr' at abandonment they might, in the interval, have ascended to 'priodawr' status.

The same rules applied exactly: a 'priodawr' would share with a 'priodawr', a 'non-priodawr' would get nothing from a 'priodawr' in possession, and among 'non-priodorion' the longest occupation, which in this case was ordinarily that of the man in possession, would exclude the shortest.

§ 12. At first sight it may occur that it was perhaps unreasonable that a person, who had abandoned his land with the intent of never returning, should subsequently be enabled to recover possession from a man who had occupied and perhaps improved the land. But the law

¹ V. C. 154, 156, 158, 172-6; D. C. 606; V. 76, IX. 276, 304, X. 374.

provided for this contingency by laying down that any one claiming to recover from men in possession must pay to the latter an occupation fee. We need not be detained here by considering the rules regulating the amount of occupation fee; and it suffices for the present to note the existence of the provision as indicative of the completeness with which custom attempted to cover all contingencies.

§ 13. In concluding this description of the rights of 'priodolder' we have to note that the law applied equally to free and unfree land. The 'priodolder' right was in fact a right to claim exclusive appropriation of land by continued occupation, and a right to recover possession of land so appropriated, if dispossessed, and was independent of the question whether the land was free or not.

§ 14. Some free-land could not be appropriated. Forest-land, turbaries, quarries, oakwoods, mills, weirs, and 'corddlan'—an obscure phrase which probably is a corruption for 'corfflan' (graveyard) or 'corlan' (sheepfold)—could not be appropriated.

If, however, a man erected a weir or a mill or the like on land already appropriated he could not be ejected, but if he had not acquired 'priodolder' rights therein, a similar plot, called 'ty a tal', had to be allotted near by to each co-sharer, if available; and, if such were not available, all the co-sharers had to be admitted to participation in any advantages accruing from the mill, &c., apparently on payment of a proportionate share of the cost of erecting; or, if the builder preferred that course, he could remove his materials.¹

§ 15. Even in regard to land, which could not be appropriated so as to allow of the growth of 'priodolder' rights therein, there were rules which secured rights of temporary occupation.²

What were known as 'herb-lands' could be appropriated by any person for a year, provided he manured the land, and the produce of the land so manured went exclusively to the occupant. Woodlands also could be cleared for

cultivation by a co-sharer, provided that a similar area was allotted to the other co-sharer or co-sharers or that the occupier surrendered an equivalent portion of other land in his sole occupation, or that at the expiration of four years' cultivation he admitted the other co-sharers to participate in the cleared land.

So also some unfree land, e. g. land in a 'maer-dref' or a 'trefgefery' ville, could never be appropriated, but, provided land were capable of appropriation, the rights of 'priodolder' applied thereto, whether it were free or unfree.

§ 16. We can see how these rules of 'priodolder' permitted of the appropriation of clan lands to exclusive user by individuals or groups of individuals within the clan; and one of the values of the Welsh Laws is that they indicate the legal process whereby individual ownership arose out of tribal occupation of territory.

In the Survey of Denbigh and the Record of Caernarfon there are literally scores upon scores of instances—far too numerous to quote—showing the process of appropriation by individuals of land within the 'gwely-area' going on. We can see in them the 'priodolder' rights held by the 'gwely', while individuals are holding separate plots, in some cases corresponding with their ancestral share in the whole 'gwely-land', *en route* to acquiring 'priodolder' rights therein to the exclusion of other members of the 'gwely'.

This is particularly so in arable villes, and it is probable that within a 'gwely-area' there was a much stronger tendency for cultivable land than for pastoral to be appropriated to individual use.

¹ V. C. 180; V. 48, VIII. 210, IX. 270, XIV. 578, 688.

² V. C. 180.

IV

THE LAND-HOLDING UNITS

§ 1. THE units which held free-land in early Wales have now to be considered, and we have to clear the ground by restating Dr. Seebohm's explanation of the 'gwely' system as he portrayed it working in connexion with the land.

That explanation may be summarized as follows :

- (1) The common unit for holding land was the 'gwely'.
- (2) The 'gwely' consisted, in its proper form, of persons descended in the male line from a common great-grandfather, and of such persons only, and it was conceived as consisting of a man, his sons, grandsons, and great-grandsons, living at one and at the same time, holding land jointly, under the name of the 'gwely' of the common great-grandfather.
- (3) During the life of the common great-grandfather there might be a temporary subdivision of the lands among his sons, the shares allotted to each son being then known as the 'gafaels' of such sons.
- (4) On the death of the common great-grandfather there was a complete disruption of the 'gwely' named after him, and new 'gwelys' came automatically into existence named after his sons, so that if there had been a temporary subdivision in the life of the great-grandfather into 'gafaels', those 'gafaels' automatically became 'gwelys'.
- (5) There was a system of partition and repartition of land, whereby the land held by a man was first divided among his sons, then upon their death among his grandsons, and then upon their death among his great-grandsons, in all cases 'per capita', after which there could be no subdivision among all his descendants; this system of partition corresponding with the automatic disruption of the 'gwely' of four generations every generation.

- (6) As a corollary to this it was the universal rule that there could be no succession or ascension by any one to a collateral of his more distantly related than by descent from a common great-grandfather, inasmuch as all connexion between relatives ceased beyond the fourth generation by the automatic extinguishment of the 'gwely'.

Such in brief is the description of the normal system of land holding in Wales according to Dr. Seebohm's explanation of the authorities.

With the rules of partition and of collateral succession we shall deal in the succeeding chapters, and at present we confine ourselves to the first four paragraphs of the summary given.

§ 2. It is a matter of agreement that, generally speaking, land was held in early Wales by 'gwelys'; and that the land held by the 'gwelys' was called 'tir gwelyauc'.

Now we have seen, in considering the social structure of Wales, that the 'gwely' might be the whole, or nearly the whole, of the clan, or it might be a very considerable section of a clan, or it might be a small section of a clan; but nowhere have we found, either in the laws in theory, or in the Surveys in practice, any indication of the 'gwely' being confined, of necessity, to descendants of a common great-grandfather.

It is true that there are in the Surveys large numbers of 'gwelys', whose origin cannot be traced back any length of time, because the material for tracing it back is not available. Some of these 'gwelys' may, for all we know, have been named after a common great-grandfather of the existing holders; in some cases, however, we saw 'gwelys' named after ancestors in very remote degrees, in others the 'gwelys' contained men of different generations, and in some cases they were demonstrably named after a person actually living at the time of the Survey, in which cases the co-sharers did not include any lineal descendants of the protonym.

Frequently, however, there was nothing to show in what degree of relationship the person, after whom the 'gwely' was named, stood to the actual existent co-sharers.

Further, there were cases in which a 'gwely' was named, not after a person, but after an occupation such as the 'gwely' of the door-keepers, or the 'gwely' of the smiths, indicating possibly a trade-corporation rather than a kin one as the bond of unity in the 'gwely'.

Likewise we saw that there was nothing in the laws or Surveys to show that the 'gafael' was a subdivision of the 'gwely' of the nature alleged by Dr. Seebohm.

§ 3. What then is the explanation of the system of 'gwely' holding?

We have said that the holdings of lands by 'gwelys' is the commonest, though not the universal, feature of the tenure of land in Wales.

In explaining what the 'gwely' was we have to start with the statement, repeated once more, that the Welsh people were largely semi-nomadic and pastoral in the process of settling; that the 'gwely' is older than and anterior to the permanent occupation of agricultural land, and that the rules governing the relation between the 'gwely' and the land are adaptations of the 'gwely', as a social unit, to the property in land acquired by the 'gwely'.

Bearing that in mind we can understand what the 'gwely' was. It was an association of men descended from, or believing themselves to be descended from, a common ancestor in the male line, banded together for mutual protection, the mutual enjoyment of common property, flocks, &c., each person within it owing to every other and receiving from every other mutual support. Such an association might find its common tie in a common great-grandfather, or in any other common ancestor. It might be coextensive with a clan, there might be many 'gwelys' within a clan; and it was always possible, when economic or other factors arose, for a 'gwely' to split itself up into two or more either at once or by degrees.

§ 4. If we refer to what has been said about the Wyrion Edred ap Marchudd we can actually see the process of disintegration of an original 'gwely' going on before our eyes, and new 'gwelys' being formed out of the parent 'gwely', while the unit of the original 'gwely' is still

retained for some purposes. Such disintegration could be due to lapse of time, the great expansion of the parent 'gwely', the acquisition or occupation of fresh territory by sections of it, and lastly, as another factor, to the military exploits of one of its component parts.

§ 5. Let us follow this process as it probably operated. A nomadic or semi-nomadic association occupied a vacant territory, and, whether because that territory afforded all it wanted or because other adjacent territories were occupied by other associations, it gradually confined its wanderings to that territory and acquired a settlement. As it acquired a settlement some land became permanently allocated to agriculture, an occupation first carried on for the free tribesmen by its bondmen, later by some members of the free association.

By custom, continued occupation for four generations gave that association 'priodolder' rights within the territory occupied, which it could not entirely divest itself of until it abandoned them for nine more generations.

Let us suppose, for the sake of argument, that the territory occupied was a complete 'cymwd', and that the association or clan or 'gwely' acquired therein 'priodolder' rights. It is obvious that when it had remained for four successive generations in possession of the same area it was likely to continue doing so, short of some violent upheaval, and that it had become 'settled' in that area. It is equally obvious that, though each member of the association might have exactly the same customary rights in every inch of the territory occupied as every other member, it was impossible for every person to exercise those rights over every inch. If one man decided on passing a summer in Festiniog and another in Harlech, though they each had the same rights in both places, one would exercise his rights in Festiniog, the other in Harlech.

Separate occupation, though consistent with the possession of a fractional share alone in communal property, must, if continued in, lead to a differentiation of possessory occupation.

Exactly the same process went on within the original

association as had been followed by the association itself. Groups within the association, themselves held together by a tie of common descent from an ancestor less remote than the common ancestor of the major organization, occupied areas within the larger territory of the 'cymwd'; and, when they had held the same for four generations, the same rule of continued occupation for four generations applied to give them 'priodolder' rights in the territory against all other associations. Such groups or 'sub-gwelys', having their own 'priodolder' rights in land, would tend to separate from other 'sub-gwelys' and grow into new 'gwelys', sometimes retaining the consciousness of having belonged to a wider 'gwely', sometimes forgetting it. The greater the lapse of time the looser the original tie would become.

§ 6. That appears to be the correct explanation of the 'gwely'; a series of associations of men bound by some tie of common descent, holding property as a unit, constantly changing as time went on, though changing under no mathematical rule.

V

PARTITION AND COLLATERAL SUCCESSION

§ 1. LET us now turn to the rules relative to division and redivision of land and to collateral succession, upon which Dr. Seebohm has relied in expounding his explanation of the 'gwely' system, and see if they are consistent only with that theory or not.

§ 2. It will be best to state first of all the exact rules of division and redivision as they appear in the laws, then to state the rules regarding collateral succession, before attempting to explain them.

In the Venedotian Code, pp. 166-8, the rules are stated as follows:

'Thus brothers are to share land between them; four "erws" to every "tyddyn" (homestead). . . .

'If there be no buildings on the land, the youngest son is to divide all the "tref y tad", and the eldest is to choose; and each, in seniority, unto the youngest. If there be buildings, the youngest brother but one is to divide the "tyddyns", . . . and the youngest to have his choice of the "tyddyns"; and after that he (the youngest) is to divide all the "tref y tad", and by seniority they are to choose unto the youngest: and that division is to continue during the lives of the brothers.

'And after the brothers are dead, the first cousins are to equalize, if they will it; and thus are they to do: the heir of the youngest brother is to equalize, and the heir of the eldest is to choose, and so by seniority unto the youngest; and that distribution is to continue between them during their lives.

'And if the second cousins should dislike the distribution which took place between their parents, they also may equalize in the same manner as the first cousins, and after that division no one is to distribute or equalize.'

To these rules three MSS. (not including the Black Book of Chirk) add as a postscript:

'"Tir gwelyauc" is to be treated as we have stated', the distinction being between 'tir gwelyauc' and 'tir cyfrif', which was indivisible.

In the Dimetian Code, pp. 542-4, the rules of partition are stated thus :

'When brothers divide their "tref y tad" between them, the youngest is to have the principal "tyddyn", and all the buildings of his father, and eight "erws" of land. . . . Then let every brother take a place to settle on (*eisyddyn*) with 8 "erws" of land : and the youngest son is to share, and they are to choose in succession, from the eldest to the youngest.

'Three times the same "tref y tad" is shared¹ between three grades of kindred : first between brothers ; the second time between cousins ; the third time between second cousins, after that there is to be no division of the land.'

In the Gwentian Code the law is thus stated :

'Three times is land shared,¹ first among brothers, afterwards among cousins, and the third time among second cousins ; thence onwards there is to be no sharing of land. When brothers shall share their "tref y tad", the youngest brother is to possess the principal "eissydyn", with the nearest eight "erws" . . . then let every brother take an "eisyddyn" with eight "erws" ; it belongs to the youngest to share the land, and from oldest to oldest they choose.'

In the Vth Book it is stated (p. 58) :

'Land is not to be shared beyond second cousins', and rules, to which we will refer later, regarding the mutual duty to protect title, are given.

In the IXth Book (p. 272) there are two references. In the first, among the suits for land, a claim for distribution (*cyfran*), a suit for redivision (*adran*), and a claim for final partition (*gorffyn ran*) are mentioned.

In the second (pp. 290-2) the following account is given :

'Distribution (*cyfran*) is, in the first place, to be between brothers ; the youngest is to choose his "tyddyn", with such houses as may be upon the eight "erws" . . . and from oldest to oldest let them choose their "tyddyns", and to every one what houses may be upon his "tyddyn". And after that, let the youngest son share in every case, and from oldest to oldest let them choose.

'Afterwards cousins are entitled to a redivision (*adran*), but no one shall remove from his "tyddyn" for another. . . . And in that manner are second cousins to reshare. And after the third sharing let every one retain his share in his possession. . . .

¹ The actual tense used is the Impersonal form of the Pres. and Fut. Indic., which, in Welsh, takes the place of the Passive Voice.

'Whoever shall have a first sharing (*dechref ran*) is entitled to a final partition (*gorffen ran*).

'If there be one who willeth to claim a final partition, he is to do it thus ;'

and then follow details of pleading in a suit ; from which it appears that a claim for final partition might be against a brother, a cousin, or a second cousin of the plaintiff, and was, in effect, a suit demanding, after partial partition, that all the joint property of parties should be partitioned.

In the XIth Book (p. 426) the only mention is :

'Unto the third degree, there is to be sharing of land in the court of a "cymwd" or "cantref",

the authority there dealing with the venue of jurisdiction.

In the XIVth Book (pp. 638, 656, 686-8) there are three references as follows :

'There are three kinds of relations, on the side of the father, among whom land is shared ; a brother, a cousin, and a second cousin.

'Land is not shared further (than among second cousins).

'No one beyond second cousins are to share with one another. All lands are subject to partition except. . . .

'If the younger son should refuse to share the "tyddyns" as the law requires, these . . . may be seized. . . .

'Thus sharing is to be : first sharing is to take place between brothers, and the youngest son to choose his "tyddyn" ; he is to choose, if he be an "uchelwr", the homestead in which his father resided, and the buildings thereon, and eight legal "erws" around it ; and then the youngest son is to share, and from oldest to oldest choose a "tyddyn" and the buildings thereon, and eight "erws", and then the youngest shares the scattered land (*gwasgar dir*), and let them choose from oldest to oldest, and each to have the buildings that may be on his "tyddyn". Second cousins are to have a resharing of the land, but no one is to move from his "tyddyn".'

§ 3. We may now consider the rules laid down in respect to succession, collateral succession, and escheat. It is noteworthy that there is no reference in the Venedotian Code to this subject.

In the Dimetian Code (p. 544) the rules are as follows :

'No person is to obtain the land of a collateral, as of a brother or of a cousin, or of a second cousin, by claiming it as collateral heir of the deceased, dying without an heir of the body, but by claiming it through one of his ancestors, who had been owner of that land till his death, whether a father,

or a grandfather or a great-grandfather. That land he is to have if he be the nearest relative to the deceased.

'After brothers shall have shared their "tref y tad", and one of them shall have died without an heir of his body or a collateral up to the third cousin, the King is to be heir to that land.

'If there be land undivided among a "gwelygord", and all should die save one person, that one person is to have the whole of the land of the stock, and if he cannot perform the full services for the land it shall vest in the King until he can. . . .

'After there has been a partition accepted among collaterals none of them is to claim a portion out of the share of any other, having an heir, save for a redivision when the time comes. But if any one has no heir of his body his nearest collaterals within three degrees of the stock come into the place of his heirs.'¹

In the Gwentian Code (p. 760) the provision is as follows :

'In respect to joint land, if there be only one heir without failure, he is to have the whole of the land ; after it is shared, however, the King is to be heir to him who fails.'

These rules are much expanded in the Anomalous Laws.

In the IXth Book (p. 270) we have the following expression :

'These are the land-grades ; brothers, cousins, and second cousins.'

In the XIth Book (pp. 396, 426, 448) we have important references :

'There is no hereditary liability to pay a debt of an ancestor, unless a man obtain an inheritance of land, through right and title, on the part of his ancestors : such as a person who may obtain the land of his father, grandfather, or great-grandfather, or a person who may obtain the land of his collateral, dying without an heir of his body, by claiming it through his ancestors as nearest of kin to them.

'The ancestors of a man are his father, grandfather, and great-grandfather. Collaterals are brothers, cousins, and second cousins.

'No one is heir of a person but such as are heirs of his body, and, therefore, a person obtains not the land of his collateral, dying without issue, except such land as was previously occupied by one of his ancestors before him. . . .

'The ancestors of a person are his father, his grandfather, and his great-grandfather, his collaterals are his brothers, cousins, and second cousins, his heirs those who proceed from his body, such as a son, grandson, and great-grandson. . . .

¹ This translation does not follow Mr. Owen's, but it is believed to be correct.

'Should an occupant of land die, the land shall go within the three grades of kindred to the person most nearly related to the deceased through his ancestors.

'Should a "perchen tir" die without an heir of his body or collateral within the degree of second cousins, the King becomes heir to that land.

'Second cousins have the land of the nephew, and the nephew has the land of the uncle who dies without an heir of the body, but a cousin has not the land of another cousin by law, unless it had been unpartitioned between him and the deceased, and for such the law is not extinct until the ninth man, and thence they are not of kin.'

In the XIVth Book (686) the provision runs :

'After brothers shall have shared together the "tref y tad", if one of them die without an heir of his body or a collateral heir from his brother, cousin, or second cousin, there being only third cousins, the King is heir to that land.'

In the Survey of Denbigh we find collateral succession within three grades of collaterals on payment of relief, and, beyond those degrees, escheat to the lord, who was bound to sell at the market price to the nearest heir.

The other Extents deal only with succession as it affected dues payable.

§ 4. On the basis of the extracts quoted it has been maintained that there was a regular subdivision of all land on the death of a person or generation of persons entitled to land among his or their sons, and, on their death, among their sons 'per capita', and, on their death again, among their sons 'per capita'; in other words that there was, every generation, a bringing into hotchpot and partition of 'gwelyland' 'per capita' among all descendants of the common great-grandfather, who was the founder of the 'gwely'; and, with such partition, the formation of new 'gwelys', subject to a like bringing into hotchpot and partition on the extinction of the next generation.

§ 5. Before proceeding farther to examine these extracts, let us turn to the Surveys.

We have already noticed in them numbers of instances where clan-land was not divided at all, but remained intact for generations in the joint possession of members of the clan. We have also observed that in some clans there was

a separation of interests between different groups in such clans, and we have also found definite traces of appropriation of areas to the exclusive use of households under the operation of the law of occupation and 'priodolder'.

If we turn to the Surveys we shall find that, when there was a separation of interests between groups within a clan, that separation involved a demarcation of interests in land, and on examination of actual instances thereof we shall notice three important facts :

(i) that, generally speaking, such separation of interest in clan-land was expressed, not by partition of the joint clan property by metes and bounds, but by a definition of interests in fractional shares ; a mode of partition regulating the right to use the whole area up to a certain limit of user, and, perhaps, being concerned also with the apportionment of the revenue assessed,

(ii) that such fractional shares were calculated, not 'per capita', but 'per stirpes',

(iii) that there was no regular system of bringing land into hotchpot after the first separation of interests.

We may take these instances *seriatim*.

§ 6. Let us take first the progenies of Rand Vaghan ap Asser in the Survey of Denbigh. Rand Vaghan had four sons, Ruathlon, Idenerth, Deiniol, and Carwed. They divided the whole of the interests in Rand Vaghan's holdings, expressing the division in fractional shares and not by demarcation. They excluded from division a small area in Petruel for reasons which it is impossible to be certain about.

These four sons divided equally, that is they got one-fourth share each. Subsequent to their deaths there was a further division in fractional shares. Ruathlon had four sons, Idenerth four, Deiniol and Carwed two each, so, if the division among the grandsons had been 'per capita', each grandson would have got one-twelfth. As a matter of fact they did not. Ruathlon's sons each got one-sixteenth, the four sons of Idenerth divided their father's one-fourth (there was a peculiar subdivision of this fourth later, on the extinction of the line of one of Idenerth's sons, when

the land was not brought into hotchpot for the sons of Ruathlon, Deiniol, and Carwed to share in), and Deiniol's two sons and Carwed's two sons each got one-eighth.

That is to say, the fractional division of Rand Vaghan's land among his grandsons was not 'per capita', it was 'per stirpes'.

§ 7. The progenies of Edred ap Marchudd, in all its branches, held land in Abergele and Llwydcoed.

In Abergele the clan was divided into four 'gwelys', each holding quarter of the ville, and each paying 15*d.* tunc. Three of these 'gwelys' were never subdivided, and there was no readjustment or further partition of shares. The fourth did divide fractionally. It divided into five equal shares, each of which took over 3*d.* of the original 15*d.* tunc.

It is quite clear, therefore, that, in Abergele, once the fractional partition had taken place among the sons of Edred, there was no bringing into hotchpot and division among all the grandsons 'per capita'. What division took place subsequent to the first partition was confined to one 'stirpes' without encroaching on the possessions of the other 'stirpes', and within that 'stirpes' division was again 'per stirpes'.

In Llwydcoed there was the same division into four 'gwelys', each getting an equal share, and each becoming liable for tunc of 15*d.* each.

Two of these 'gwelys' remained undivided thereafter : the other two divided, but they divided separately, again without bringing the whole tribal holdings into hotchpot. Ithel ap Edred had two sons, Ithon and Gronw. Each took one-half of Ithel's share, paying 7½*d.* tunc also. Idenerth had five sons ; each took one-fifth of Idenerth's share, paying 3*d.* tunc each. Here again we have a clear instance of partition 'per stirpes' and not 'per capita'.

In Mathebrud the two sons of Ithel alone held land. These two had respectively five and eight sons, and each branch divided simultaneously. They did not bring the whole of Ithel's estate into hotchpot and divide it into thirteen equal shares as they would have done had the rule been for division 'per capita'. Ithon's sons, eight in number,

each took one-eighth of his share, paying $7\frac{1}{2}d.$ or $8d.$ tunc each, or a total of $5s.$; Gronw's five sons each took one-fifth of his share, paying $1s.$ tunc each, or a total of $5s.$

That again is a clear instance of partition 'per stirpes'.

§ 8. The family of Cadwgan ap Ystrwth affords another instance.

Cadwgan had three sons, and in Prees each took one-sixth of the ville, the rest going to other clans.

These three sons had five, two, and seven sons respectively, and there was a further sharing among them, not 'per capita' into fourteen equal shares, but 'per stirpes', each grandson of Cadwgan getting as his share fifths, halves, or sevenths of one-sixth of the ville.

In Dinas Cadfel two of the sons of Cadwgan, Cynddelw and Ithel, held land, each 'gwely' owning one-half. Ithel's share was never divided among his seven sons; Cynddelw's share was divided among his two sons in equal shares without bringing Ithel's land into partition.

This family again establishes the fact that partition and inheritance were 'per stirpes'.

§ 9. The family of Llywarch also held land in Prees. Llywarch had two sons, each of whose 'gwelys' held one-sixth of the ville, paying $3s. 4d.$ tunc. These two sons had seven and eight sons respectively, and there was a further division in the ville.

That division was not 'per capita'; the fifteen grandsons did not get one-fifteenth each. The seven sons of one son of Llywarch divided unequally among themselves, five getting one-ninth each and two getting two-ninths each, for what reason is not clear, and the eight sons of the other son of Llywarch each got one-eighth of their father's one-sixth share in the ville.

Here again there is a very definite division 'per stirpes' and not 'per capita'.

§ 10. The tribe of Efelyw held land in Llwydcoed and Abergele. There is some doubt about its actual composition, as the position of Syrmonde is questionable.

However there were four sons, Idenerth, Cynan, Edenewyn, and Elidyr.

For some reason the first three each got one-third of one-fourth of the ville, that is one-twelfth, while the line of Elidyr got one-sixth. This was not because Elidyr had twice as many sons, grandsons of Efelyw, as each of his brothers, for he had only one son, Doyok; nor was it because Doyok had twice as many sons, great-grandsons of Efelyw, for though he had four sons, Edenewyn had only one grandson.

Whatever the reason for this inequality may have been, there was no further subdivision involving the shares of Idenerth, Cynan, and Edenewyn.

Elidyr's four grandsons, the sons of Doyok, divided their share into equal parts, but there was no hotchpot made of the whole of the family lands.

This family gives us a further instance, where division was 'per stirpes', and not 'per capita'.

In Abergele Doyok's descendants held ten 'gafaels'. Of these four went to Wilym ap Doyok, two to Rand ap Doyok, two to Rishard ap Doyok, two to the sons of Griffri ap Doyok; but it appears from the tunc-levy that Wilym's four 'gafaels' equalled only two of the other 'gafaels', each of Doyok's sons being apparently assessed to $25d.$ on their holdings.

Here we have an equal division, therefore, among Doyok's sons.

The holding of Griffri was subdivided into two equal portions among his sons, but there was no calling into hotchpot of the shares held by their cousins.

How many sons Wilym and Rishard had is not clear (judging from the names of their descendants they had four and one respectively, but this is largely speculative); but if we credit them with one each only, then, inasmuch as there were six sons of Rand, Gronw, and Sodonei, in getting one-eighth of Doyok's land they would have got far more than they would have been entitled to had partition been in law 'per capita'. They would, if that had been the law, have been entitled to one-tenth, and it is impossible that Rand's sons together would have been content with one-fourth when, if the rule of division had been 'per capita', they would have been entitled to three-fifths.

Here again we get an undoubted case of division 'per stirpes'.

§ 11. The small tribe of Llywarch ap Cynddelw in Wigfair is of interest. Llywarch had three sons, Rishard, Moridyk, and Cynddelw. The total tunc on the holdings was $51\frac{1}{4}d.$, or approximately $17d.$ on each of the three 'gwelys' named after the three sons, had division been equal among themselves. As a matter of fact the tunc was levied at the rates of $21\frac{1}{4}d.$, $12\frac{3}{4}d.$, and $17d.$ respectively, the 'gwely' of Cynddelw alone bearing its proper fractional share.

Rishard had three sons who divided among themselves, taking over tunc-liabilities of $8d.$, $5\frac{1}{2}d.$, and $8d.$ respectively. Moridyk's 'gwely' was never redivided, but Cynddelw's was among his two sons. It seems that here there was a division among the sons of Llywarch, and that there was a subsequent redivision, Cynddelw's sons dividing separately, while the sons of Rishard got land from the Moridyk branch at the latter's expense. But this acquisition bears no resemblance to any possible repartition 'per capita'. There was some interference as between the descendants of Rishard and Moridyk (which did not affect the descendants of Cynddelw), with the distribution 'per stirpes'; but that interference was not due to any need to divide 'per capita'.

The instance does not take us far, but it shows so much that the rule of redivision was not 'per capita'.

§ 12. The last instance of division to which attention may be drawn is that of the progenies Idenerth in Melai. The facts of Melai are very confused, and the evidence of that ville is accordingly inconclusive. However, Idenerth had five sons. His land was divided between four 'gwelys' named after four sons and two 'gafaels' named after another son. These last were escheated, but a note is made that the tunc thereon was $10d.$ The levy of tunc, however, in this ville accords with no ascertainable rule, owing to the number of escheats and divisions into separate holdings which had taken place.

The four 'gwelys' were divided into six, six, three, and five 'gafaels' respectively, but in no case is a 'gafael' named after any son of the founders of the 'gwely'.

If, however, descent had been invariably 'per stirpes' we would expect to find the tunc on these four 'gwelys' approximately equal; the actual figures, allowing for escheats, being somewhere in the neighbourhood of $3s. 8d.$, $2s. 6d.$, $1s. 8d.$, and $3s.$ respectively. This might suggest a descent 'per capita'; but this possibility is at once negated by the fact that the 'gwely' with the largest number of 'gafaels' and the largest number of co-sharers is the one with the lowest tunc. The only conclusion we can come to is that, in this family, the evidence points to no definite result.

§ 13. The Record of Caernarfon and the Extent of Bromfield and Yale furnish similar evidence to this degree, that, generally speaking, separation of interests in clan-land was expressed in fractional shares and not by metes and bounds; but the evidence available does not throw any light on the further question as to whether those fractional shares were estimated 'per capita' or 'per stirpes', for the simple reason that we do not possess the full pedigree tables to enable us to determine the question.

The Record of Caernarfon has, however, in the Extent of Pentraeth (Dindaethwy), one very significant passage—the only reference in explicit terms to a partition by metes and bounds in any survey.

In that ville there were three 'gwelys', which claimed to be of common stock. Two 'gwelys' had private mills, the third had not. The latter claimed the right to mill wherever they chose and to be free of milling at the lord's mill. They did so because they had had a share of old in the village mills, which, however, they had surrendered, *at the time of the partition of the ville*, in lieu of a larger share in land than was allotted to the others.

The evidence must, of course, not be pressed too far. It does not, however, show that there was a partition every generation; it implies rather that a partition was exceptional, and when made was final.

§ 14. We may state, therefore, that the evidence of the Survey of Denbigh establishes that there was no regular periodical partition of clan-land on the death of a holder or a generation of holders; and that, as regards clan-land,

wherever there was a separation of interests in land, it was not a partition by metes and bounds, but a specification of interests in fractional shares calculated 'per stirpes' and not 'per capita'; and, accordingly, that evidence does not corroborate the interpretation put on the extracts we have quoted.

§ 15. With this evidence before us we may return to the extracts from the laws. In so far as they relate to partition of land do they or do they not show:

(i) that there was a regular automatic redistribution of clan-land,

(ii) that such distribution occurred as a matter of course every generation,

(iii) that such distribution was 'per capita' among all descendants of a common great-grandfather?

§ 16. As regards the first point it is noteworthy that the authorities appear to refer to a particular class of land, viz. 'tref y tad', and not to all land. There is, no doubt, a postscript found in three texts of the Venedotian Code that the rules of partition apply to 'tir gwelyauc', but those postscripts are directed to differentiate the land from 'tir cyfrif', in which there never could be any individual partible interests, and do not assert that the whole of 'gwely-land' was subject to the particular law of partition.

What is the meaning of 'tref y tad'? In the Glossary of Welsh Mediaeval Terms it is suggested that 'tref y tad' means 'partible land', the word 'tad' being derived from a root meaning 'to divide'; but this suggestion is not generally accepted. The ordinary simple meaning of the words 'tref y tad' seems to be 'the "tref" or settlement of the father'; that is to say, such landed property as a man possessed in his own right, and not simply a man's share in tribal or clan-land.

Such land could only be either non-tribal land, self-acquired by purchase, grant, or the like, or that part of tribal land in which, under the rules of occupation and 'priodolder', a man had succeeded in acquiring or was in process of acquiring, by virtue of separate appropriation, exclusive interests.

It should be noted carefully that the primary reference in the extracts is to 'brothers' dividing the settlement of their father, and the conclusion is obvious that the property meant is such landed property as the father had some special right to or interest in. It should further be noted that the partition referred to in the laws is a clear case of partition by metes and bounds and not that separation of interest into fractional shares which the Surveys portray, and it seems abundantly clear that the rules of partition in the Codes do not refer to any general periodical distribution of clan-land.

§ 17. As regards the second point it may be admitted that, *prima facie*, it is no straining of the language of some of the texts to assert that 'tref y tad' was subject to a series of three partitions as a matter of course; but if we examine the text of the Venedotian Code and of the XIth Book closely we note that 'the first cousins are to "equalize", if they will it, and the second cousins may "equalize" if they should dislike the distribution which took place between their parents', and further that *if there be one who willeth to claim a final partition*, he is to do it in a particular manner.

The other texts do not insert these important words, but they are not and cannot be meaningless. Their occurrence seems to point to the conclusion that a second and third redistribution of 'tref y tad' did not take place every generation, as a matter of course, but only if persons in those generations felt that the previous partition had not been equitable.

§ 18. On the third point there is nothing apparently in the texts to indicate that the repartition must be 'per capita'; and we are entitled to consider the analogy of the Survey of Denbigh, which shows beyond doubt that a separation of interests in fractional shares was computed 'per stirpes'.

The contention that the partition effected was 'per capita' seems to be based on the assumption that the words translated by Mr. Owen as 'equalize' and 'coequate' mean a division by heads and not by stock. Mr. Owen gives no

such meaning to the words, and the words themselves (*cystadlu* and *cymeunnu*) do not appear to imply any such particularization. They convey the sense of comparison or adjustment; and what the texts say is that, if the cousins or second cousins were not satisfied with the partition of 'tref y tad' accepted by their predecessors, they were entitled to claim a readjustment; no subsequent generation being entitled to a readjustment as the original partition must then be considered final.

The texts therefore appear to supply a negative answer to all three questions asked.

§ 19. If we examine the texts still closer we find that, in law, co-sharers in a 'gwely' could hold together, as we have seen from the Surveys that they did as a matter of fact do, indefinitely; and if they did do so the rule of survivorship within the corporation applied, the last survivor of a 'gwely' being entitled to the whole of the clan-land.

'If there be land *undivided* among a "gwelygord", and all should die save one person, that one person is to have the whole of the land of the stock;' 'in respect to *joint* land, if there be only one without failure he is to have the whole of the land;' and 'where land is *not partitioned*, for such the law is not extinguished until the ninth man', a reference to the right to claim readmission to share in abandoned land.

§ 20. So too if we consider the rules of escheat for failure of heirs, what we observe is that there was escheat to the King only in divided 'tref y tad' land and not in undivided 'gwely-land'.

'After brothers *shall have shared* their "tref y tad" and one of them shall have died without an heir of his body or collateral up to the third cousin, the King is to be heir to that land;' 'after *joint land is shared* the King is to be heir to him who fails;' 'after brothers *shall have shared* together the "tref y tad", if one of them die (without heir or collateral up to the second cousin) the King is heir to that land;' or as it is put in the XIth Book: 'Should a "perchen tir" (occupant or owner) of land die (similarly without heir or collateral) the King becomes heir to that land.'

If we turn to the Surveys we are at once struck with the extreme rarity of escheat 'per defectum heredum'; it is almost non-existent in the Surveys, and it is absolutely non-existent in what we have termed the major 'gwelys', that is in those associations which maintained a conscious unity through several generations. Wherever escheat of this nature does occur, it occurs in relation to small areas held by a 'sub-gwely' or a separated 'gwely'.

§ 21. If we next attempt to interpret the ordinary rules laid down in the extracts as regards succession, we see that the Dimetian Code, 544, states that no one obtained the land of a collateral simply by virtue of being a collateral. He obtained it because he was a descendant of a common ancestor (up to the great-grandfather), common to himself and the deceased collateral, who himself had been owner or occupier of the land up to his death and died possessed thereof.¹

Similar is the intent of the expressions in the XIth Book, that is to say that, where land was 'owned' or separately occupied by an individual, collateral succession was allowed as between his heirs, down to the great-grandsons, only by reckoning descent back to him.

Combining the rules of escheat and succession quoted we find that they say that there is and can be no collateral succession in divided land between persons more distantly related than the fourth generation. Beyond the fourth generation there can be only escheat to the King. In early Welsh Law escheat to the King did not mean, as it meant in Norman Law, that the escheated land became the King's absolute property through its reversion to its fount of origin. It meant that it fell into the King to deal with according to customary rule, and customary rule provided that, when land escheated to the King, the latter must offer it to the nearest collaterals alive of the defunct family and that such collaterals were entitled to pre-empt the land from the King. Land so pre-empted went, if the 'vendee' died without issue, as if it were 'tir gwelyauc', to the brother, cousins, or second cousins of the 'vendee'. This provision

¹ This is a familiar rule in Indian tribal custom.

could only have its origin in the fact that, notwithstanding the separation of the land in question from the clan's ownership by appropriation, the ultimate reversionary right to the land belonged to the clan from whom it had been appropriated.

§ 22. What do all these facts put together appear to signify? Apparently it would seem that the land dealt with was of two kinds. First there was land which was the unappropriated undivided land of a united organism, clan, or 'gwely', remaining intact generation after generation, in respect to which there was neither succession nor escheat, but survivorship, even if the clan were reduced to one man. Secondly there was land, owned or occupied exclusively by an individual, either by virtue of appropriation under the law of occupation and 'priodolder', or by purchase or grant, in respect to which partition among his sons by metes and bounds did and could exist; such partition being subject to readjustment 'per stirpes' for two more generations. If it were partitioned, collateral succession therein was permitted among his descendants related within four degrees to the deceased, if any, and, if none, escheat operated in favour of the King as administrator, subject to a right vested in the clan to recover by pre-emption the land appropriated from its possession. If such land were not partitioned, it became 'gwely-land' of a 'gwely' tracing descent from the person who had first appropriated or acquired it, and so impartible.

In the Scandinavian Law of 'odal-land' we seem to have something similar to this, for 'odal-land' was land which, having been held by a family for five generations, became impartible.

§ 23. It is of interest to note here the immediate effect on the interrelations of persons, hitherto bound together by the tie of the 'gwely', when, as a result of appropriation of land, perfected by occupation for four generations, or by the exclusive acquisition of other lands, a parting of the ways had been arrived at.

Such separation did not in the least affect the mutual responsibilities of persons one to the other under the criminal

or civil law; such responsibilities were entirely independent of the holding of land, and were determined by the 'concentric circles' of computable relationship within which a person stood to others.

In respect to land, so long as a 'gwely' continued to hold any land together, every member thereof was bound to support the title of every other member to a share therein against all outsiders. Such support was rendered by oath in Court and even by surrendering one's own interest in defence of a co-sharer's right; that is to say, if any member lost his share in land, the rest of the 'gwely' must allow him to participate in the balance of the clan-land.

But once there had been appropriation, perfected by occupation for four generations—that is when a branch had acquired 'priodolder' rights in a portion of clan-land—the liability to afford protection in respect thereto came to an end.¹

NOTE.—The law of 'ebediw', or heriot, as it became inaccurately termed, had, in Welsh law, no bearing on the holding of land. See the section on 'ebediw', where it is shown that that due was payable for ascension to personal status, irrespective of the existence of land.

¹ G.C. 760; V. 58; XIV. 636.

VI

'TIR CYNFYF'

§ 1. IN a perfect tribal system there could be no room for individual ownership; but we have seen that in 'gwelyland' individual occupation was allowed, and appropriation, away from the clan, was recognized by the law of 'priodolder'.

Whether any other rights of individual ownership were permitted in the most ancient times in Wales we have no means of ascertaining; but individual ownership of free-land, quite separate from the 'priodolder' holding of tribal-land, was recognized in the times of Hywel Dda, and also in the times of the Surveys.

§ 2. It was rare at both times, and the references to it are of the scantiest description in the laws.

'Tir cynyf' or 'tir cynydd' was land which a person acquired by purchase from another or by gift from the King, or otherwise than by actual hereditary right. It is very clearly distinguished from the latter in the extent of Wigfair and other viles in the Survey of Denbigh.

Few special rules regarding the descent of 'tir cynyf' exist; but there were different rules in regard to the investiture fees payable on accession to it, with which we will deal later.

In the main it seems that 'tir cynyf' was subject to the same rules as appropriated portions of 'tir gwelyauc'. It went to the son or sons of the acquirer, then to the grandsons and great-grandsons, subject to the right of the acquirer to dispose of it at will. Collaterals of the acquirer did not succeed to it; it went to lineal male descendants only; and there was accordingly escheat to the lord if the acquirer's line became extinct.

In the hands of lineal descendants of the acquirer it was 'tir gwelyauc', ancestral land, 'qua' them.

§ 3. Nearly all the estates of the Wyrion Eden' in

Caernarfon and Anglesea were acquired by Ednyfed Fychan; and we find that land, and some other as well, held by individual descendants of the acquirer, such holders also having interests in the 'tir gwelyauc' of the clan to which they belonged.

In the Surveys, principally in the Survey of Denbigh, the terms 'terra emptica', 'tir kennif', 'tir kennyth', 'tirpryn', or 'tir prid' are used for various plots of land of apparently similar origins.

§ 4. Under the Welsh Law of escheat, as we have seen, separated land, left by a person without heirs in the fourth degree, lapsed to the lord, who was at liberty to sell it; subject to pre-emptive rights possessed by relatives of the deceased beyond the fourth degree.

Plots termed 'terra emptica', &c., in the Surveys appear to have been land of that nature, which had fallen in and been sold by the Prince before A. D. 1284. Such land was usually sold for a lump sum, free of all services and renders, except tunc and sometimes military service. Altogether there are some fifteen instances of land of this nature in the Surveys (Appendix IX).

VII

INHERITANCE

§ 1. WE have seen in preceding chapters that in respect to undivided 'gwely-land' or clan-land there was no escheat 'per defectum heredum' and no rule of succession; but a system of survivorship, whereby such clan-land enured to the benefit of the last surviving member of a clan. We have also seen that in respect to appropriated and acquired land the appropriator or acquirer was followed in possession by his lineal descendants down to the fourth generation, his heirs being entitled to partition of the inheritance by metes and bounds. If they partitioned they maintained a rule of collateral succession limited to collaterals in the fourth degree, failing the existence of whom there was escheat to the King, subject to a right of the next nearest collaterals to pre-empt from him; but if they did not partition the land, it became, on the expiry of four generations, 'gwely-land' of a newly formed clan or sub-clan.

§ 2. Succession is at any time hardly the word to apply to inheritance in the Welsh Law. The rule was that a man 'ascended' to the status occupied by his predecessor; and, as part of that status included the right to hold or use land, a man ascended to that right along with all other rights. Wherever, therefore, the word succession is used, it must be understood to be ascension in this sense.

§ 3. The common rule among the free, and also among the 'nativi' holding 'de natura de treweloghe', was that all sons ascended to all the interests in land held by the father, whether those interests were full ownership, or rights in appropriated land, or rights of enjoyment in undivided clan-land.

In ascending all sons shared equally.

§ 4. Certain sons were, however, excluded from ascending to rights in land.

All blemished sons, that is to say every one lacking the

primary senses, or suffering from certain diseases, rendering them incapable and incomplete, were regarded as not being 'men' capable of performing the duties attached to the status of the father and the services incident to the land. Consequently they were not permitted to ascend to land.

Mutes, lepers, deaf persons, cripples were all excluded. Men, however, excluded from inheritance had to be supported with food and clothing by the person or persons excluding them. They were not civilly dead, and, if a whole family were blemished, the land was not forfeited. The incapacity to ascend was personal, and did not attain the descendants of the blemished, who, if they were themselves unblemished, were entitled to succeed. If the whole family were blemished the lord would have custody of the land for the possible unblemished heirs; and any one holding land or a share therein, which would ordinarily have gone to the blemished man, had 'custody' (*gwarchadw*) only. He was in fact trustee for the unblemished heir who might arise.

According to the law as recorded, the son of a priest was always excluded if born after his father had taken orders. In the Surveys, however, we possess, especially in St. David's, numerous instances of the sons of priests holding land jointly with others and separately. The early Celtic Church undoubtedly permitted marriage of its priesthood; and it is probable that the prohibition on the inheritance of a priest's son is a late introduction in the texts, not observed as law in practice.¹

§ 5. The question of the illegitimate son's right to succeed cannot be disposed of until we have considered the law of marriage and the law of affiliation. The same applies to the succession of women, whose rights are dealt with under the law relating to women.

§ 6. Reference must not be omitted to the unusual provision in respect to twins. Passages in the laws provide that twins count as one person; but in one passage we are told that, in order to determine which was the younger, and so entitled to the paternal homestead, the mother's

¹ D. C. 444, 546; G. C. 760; X. 330, XIV. 638.

declaration was conclusive, in the absence of which, the homestead was divided equally.¹

§ 7. Succession by 'mamwys', i. e. by the son of a Welsh-woman given in marriage to a foreigner, is dealt with in the chapter on the law relating to women.

§ 8. We have already sufficiently noted that succession or ascension in the second generation was 'per stirpes', and not 'per capita', and there is nothing in the laws to show that representation was not, by the time of Hywel Dda, accepted as the rule.

The Surveys show that representation was the common practice, and that the son of a son, who predeceased his father, was not excluded from inheritance by his uncles.

§ 9. The cardinal rules of equal succession by all sons, the right of representation, and the succession 'per stirpes' appear to have been common also to the Germanic tribes. It suffices to refer to Lex Alam. Tit. XCI; Lex Baiuor. Tit. XV, 9, and the Lex Longobard. Additae a Grimowaldo, c. 5.

¹ D. C. 596; V. 64, VIII. 210.

VIII

THE POWER OF ALIENATION

§ 1. WE may now consider the rights that a son had in the land held by his father during his life, or, put in another way, the restrictions which custom placed on the right possessed by a holder of land of alienation to the detriment of his heirs and collaterals.

§ 2. We have seen that land was in the main 'gwely-land', in which it was possible to acquire 'priodolder' or exclusive rights of occupation. We have also noticed that in the Surveys ordinarily no person was entered as holding an interest in land in the lifetime of his father. A lineal descendant of a living person was rarely recorded as possessing an interest in land, even 'gwely-land'. In fact no person could ascend to his father's status in his father's life.

Expressed in another way the son's rights were not 'vested' in him in the life of his father; they were as yet inchoate.

That is a phenomenon common to nearly all agricultural communities, and was in no way confined to Wales.

§ 3. Now Dr. Seebohm (Tribal System in Wales, p. 109) seems to consider that this was equivalent to the 'patria potestas' of Rome, that all land vested absolutely in the head of the household, and that such an arrangement might easily lead to oppression by his disinheriting his sons or heirs.

That is an erroneous conception of the situation. The laws show that a man's enjoyment of 'gwely-land' was limited to the duration of his own life, and that rights in land were not vested absolutely in the father; he had a life-interest, and a life-interest only, which must be transmitted to his heirs, and his rights to alienate were very circumscribed.

The sons could not interfere with the management of the land during the father's life, but the father could not manage the land so as to take effect after his death.

He had practically no rights of permanent alienation. He could make no such alienation without the consent of his nearest potential successors, his brothers, cousins, or second cousins.¹ Their consent was an absolute preliminary to any alienation of 'gwely-land', whether held by the alienor in fractional shares or in sole occupancy, unless such alienation were covered by one of the 'lawful necessities' permitting alienation.²

§ 4. The Codes provide what these lawful necessities were, and the remedies the heirs had if an alienation were made in excess of such powers.

The Venedotian Code, p. 176, is very explicit :

'The father is not to deteriorate nor dispose of the rights of his son for land, except during his own life ; neither is the son to deprive the father during his life of land and soil. In like manner the father is not to deprive the son of land, and though he may deprive him, it will be recoverable except in one case.'

That one case was where the father was forced to assign his land as 'blood-land' to the kinsmen of a murdered man when the blood-fine could not be raised in any other way. The special justification for such an alienation was that thereby peace was bought for the son as well as for the father.³

The Dimetian Code, p. 548, is not quite so drastic in its limitations, but it is still sufficiently drastic.

'No one (it says) by law can guarantee land to another in opposition to his heirs, except for their common benefit, or from lawful necessity, nor grant any part of it for a time without an appointed period, so that the heirs may redeem it if given for a valuable consideration or a lawful necessity, and that it be not charged with more than two-thirds of its worth ; and, if it be not so transferred (i.e. transferred without legal necessity, &c.), the heir may recover it whenever he shall claim it.'

The Dimetian Code, like the Venedotian Code, prohibited permanent alienations ; but in exceptional cases it permitted a temporary alienation in the nature of a mortgage redeemable by the heirs.⁴

¹ In tribal custom the right to contest an alienation is not necessarily coincident with the right to succeed.

² V. C. 176 ; IX. 270.

³ V. C. 176 ; X. 330.

⁴ D. C. 604.

Elsewhere the Dimetian Code, p. 596, is as drastic as the Venedotian Code, and says that the alienation of blood-land (*waed-tir*) was the sole case where a father could alienate his son's due without his permission.

The number of lawful necessities is referred to in another passage as three ; and it is said that a son can claim land, disposed of by his father without these necessities, mentioning, however, that a son born subsequent to the alienation had no right to contest it.¹

In the Anomalous Laws there is a passage very similar to the Dimetian Code, which appears to apply to land which was not 'gwely-land', but acquired or separated land.

'An owner (it is said) having no lineal heir can appropriate his land to whomsoever he will. If there be a lineal heir, however, to an owner of land he cannot do so, for the owner of land cannot disinherit his heir, nor assign his land to any one without the consent of his heir, except for their joint interest ; to wit, during his own time, or through being pressed by one of the imperative necessities, which free a person's selling his land without the consent of his heir, such as the necessity for meat and drink, or for money to pay his debts.'²

This passage indicates that 'lawful necessity' included the payment of just debts, the provision of food, and the satisfaction of a blood-fine.

We might also note here the Great Petition from North Wales to Edward III. The petitioners claimed to be allowed to sell land freely ; but the King, relying upon ancient custom, refused to accede to the request, permitting only, what custom permitted, the power to lease for a period not exceeding four years.

§ 5. In the part dealing with the Civil Law passages from the laws are mentioned, which provide that no person was bound to pay ancestral debts, unless he ascended to his ancestor's property ; but, if he did so, he was bound to pay just debts to the extent of the interest acquired in the deceased's estate.

Should a landholder dispose of his property the heir was entitled to recover by what is called a suit of 'gofyniad'.

¹ The Welsh law of alienation, lawful necessities, and the claim of the subsequent-born son to contest is practically identical with the existing Punjab tribal custom.

² XI. 396.

The suit was instituted in the ordinary form of 'dadanhudd', dealt with in the next chapter; and if the alienee pleaded alienation to him for value, the vendor's son was not debarred from recovering. He could always recover on payment of the correct price, or 'wrth-prid' (return-money) as it was called; the reason given being that land is eternal, chattels perishable, and no one could alienate that which was eternal for that which was perishable.¹

Valuable consideration given for land, though it had to be paid by the alienor's heir suing to recover, never carried interest. The exact amount, and only that amount, up to two-thirds the value of the land, was returnable, and this principle of Welsh Law survived in Wales, in the form of the Welsh mortgage, until the beginning of last century. The right to recover alienated land was so jealously guarded that an alienee declining to return the land, when offered the 'wrth-prid', was at once deprived of all right to obtain the 'wrth-prid'.

Another provision guarding the right to recover was that the right of 'priodolder' could not be set up by the alienees in possession against the heirs of the alienor.

The XIth Book goes farther in its restrictions on alienation, and provides that no sale whatsoever could have any effect unless authenticated by record of Court. That is manifestly a later provision making certain documentary evidence essential for a sale.²

There was a further restraint upon permanent alienations in the provision requiring the consent of the territorial lord, abbot, or bishop to any alienation exceeding one year, lest a stranger should be introduced.³

§ 6. Some temporary alienations were permitted by the occupant of land.

A lease for a year (which in law was a year and a day) was permitted without sanction of the lord. Such a lessee was allowed three days' grace within which to vacate, and any one holding over could be ejected by suit based on the terms of the lease; 'benffyc', as it was called, if leased without rent, 'llog', if leased on rent.

¹ X. 380.

² XI. 448.

³ V. C. 180.

Tenancies without agreement appear also to have been recognized. A man might squat on land without interruption, in which case at the end of a year and a day the squatter paid what was termed the 'cledran gwaesafwr', the fee of the protector.

A common form of leasing was where the tenant undertook to improve land, without paying rent. In such cases the tenant was allowed to retain possession for fixed customary periods calculated to give him time to reap the benefit of his improvements. The period varied according to the nature of the improvement effected, clearance of shrub, or the quality of manure applied to the land; and some of these leases were obviously for cultivation purposes, others for pasturage. The terms of such leases were 1, 2, 3, 4, and 5 years.

Tenancies for a term of a year seem to have been common. They appear to have been divided broadly into three classes, the 'gwaesafwr', 'adlamwr', and 'aswynwr', who paid 120*d.*, 60*d.*, and 30*d.* respectively at the expiration of their term of a year. What the precise difference otherwise was is not apparent; but it would seem as if the first-mentioned was an unfreeman, who made a hut on the land of a freeman; the second a freeman who had no land of his own; and the third a freeman who had 'tref y tad' of his own, to which he returned on the expiration of his tenancy.

These tenancies were over and above customary fixed tenures, and the acquired tenancies of foreigners dealt with elsewhere.¹

§ 7. The Brehonic Law is in many respects similar.

Under the *Corus Bescna*, pp. 45-53, gifts to the Church, as we have already noticed, were allowed in certain quantities, according to whether the alienor had increased, retained unincreased or undeteriorated, or had deteriorated the extent of his possessions. Otherwise the rule was that no person could leave a charge on his land, which he did not find upon it.

He could perhaps alienate acquired land, but not tribal

¹ V. C. 104, 180; G. C. 766; V. 42, VI. 104, X. 380, XI. 422.

land without the consent of the 'geilfine'; and then only subject to a condition of ultimate reversion to the 'geilfine'.

In the Small Primer, V 437, it is said that a son could dissolve the contract of his father alienating his lawful land; while the *Senchus Mór*, II. 283, prohibited the sale of tribal land occupied by a tribesman outside the tribe unless he had offered it first to a fellow tribesman who had the right to pre-empt. The same authority provided that every tribesman was to keep his tribal land, and could neither sell it, nor alienate it, nor conceal it, nor give it in payment of compensation for crimes or contracts; and whoever violated this provision was so far put out of the benefit of kinship as to be unable to impugn the contracts of the tribe.

Under the *Corus Bescna*, p. 51, even the Chief could alienate but a small portion of tribal land; and according to some authorities only one-third of his acquired property.

Elsewhere in the *Corus Bescna* alienation on the ground of necessity was permitted to the extent of one-third, if the necessity were little, and one-half if it were great; such necessities being 'lawful debts, health of soul, and maintenance in old age'.

It again provides that no person could create a fresh charge on land, or alienate without the consent of the tribe, subject to the right that a father could alienate land if his son refused to maintain him in old age.

Elsewhere prohibitions are placed on all alienations to the prejudice of the alienor's sons, grandsons, great-grandsons, and great-great-grandsons.¹

This, of course, would not prevent an alienation holding good during the lifetime of the alienor. In fact such a contingency is expressly provided for in the *Senchus Mór* (I. 203), 'One who has sold land cannot unbind it or set it aside'.

§ 8. Comparisons with the English Law are dangerous as the whole system of land-holding was radically different.

Still it should be noted that there were similar restrictions in English Law in respect to the alienation of inherited land. Under *Ælfred's Laws*, c. 41, it was provided that the man

¹ *Ir. Laws*, IV. 257.

who had 'boc-land' left him by his kinsmen was not to give it from his 'maegburg', if such restriction had been placed on the disposal of the land by the original acquirer or the donors.

§ 9. There is the same danger in quoting from the Scots Law; but that similar rules to those of the Welsh Laws existed appears from the *Leges Quatuor Burgorum*, which (c. 107) prohibited the alienation of burgage land by a man having sons, except for personal need, and which (c. 42) provided a right of pre-emption in favour of the heirs.

§ 10. The Germanic Law was similar. Its clearest expression is found in the *Lex Saxon.*, cc. 62, 64:

'Nulli liceat traditionem hereditatis suae facere praeter ad ecclesiam vel regi, ut heredem suum exheredem faciat, nisi forte famis necessitate coactus, ut ab illo qui hoc acceperit sustentetur: mancipia liceat illi dare ac vendere.'

It then proceeds to provide that a freeman driven out of his countryside by need must offer the land first to his nearest relative, then to his overlord; and, only if they declined to buy, was he at liberty to sell to whomsoever he willed.

Provisions of this sort remove the father's rights over land entirely out of anything resembling the 'patria potestas'; and it is a mistake to suppose that the children of the freemen of Wales were in any way subject to the Latin rules.

IX

LAND-SUITS

§ 1. SOME brief account of the land-suits in Wales, which are more particularly dealt with in the Chapters on Procedure, is advisable at this point as illustrative of the general law relative to land.

The Venedotian Code states in one passage that there were three suits for land, a suit of 'priodolder', a suit of 'dadanhudd', and a suit of 'ymwrthyn'. Elsewhere it adds a suit of 'ach ac edryf', a suit of 'rhan' and a suit of 'mamwys'.

§ 2. We have seen above how 'priodolder' rights were acquired, and how it was possible for two sets of people to have 'priodolder' rights in the same land; those who were out of possession, up to the ninth generation of absentees, being entitled to sue those in possession. A suit to recover land, in which persons out of possession claimed 'priodolder' rights from persons in possession, was termed a suit of 'priodolder'.

§ 3. A suit to recover on the ground of 'ach ac edryf' (kin and descent)¹ was a similar suit, brought by a man out of possession, claiming possession of or a share in land, occupied by persons having a common descent with the plaintiff. Such a suit could be brought by any one against relatives in possession, even after partition had been effected, provided always that the dispossession had occurred before such partition had taken place.

The difference between such suit and a suit of 'priodolder' was that, in the latter case, the plaintiff based his claim on a right acquired by prescription; in the former on his having by descent the same right as those in possession.

If loss of possession had followed a partition a suit of kin and descent was not appropriate.

From the essential differences between the two suits, it followed that a suit on 'kin and descent' could not be brought against one person only of a 'gwely' holding a

portion of the land of such 'gwely'. It was essential that the whole 'gwely' should be impleaded, and the plaintiff must seek a share in the whole 'gwely-land', not a share in plots held separately. The reason given for this indicates that it was open to sue even when the original 'gwely' had been broken up.

'Land (it is said) shall be sued for by "kin and descent" from the original share onward in the sovereign court; but in the third descent as between brothers, cousins, and second cousins in the local court. . . . It is not regular to prefer a plaint against one or two or three of the kin and descent beyond the third degree, when there are more of the family stock holding the land in opposition to him, because it may happen for the land to have descended in very small shares among 40 or 60 collaterals.'

It is further pointed out that, if a plaintiff sued each one separately, he would ultimately get one-half of the whole inheritance, whereas he was only entitled to a share proportionate to the number of people among whom the inheritance had descended, and hence he had to sue all jointly.¹

It is to be noted further than in this suit the successful plaintiff could not oust any one from an occupied 'tyddyn', or a place improved by the occupant, provided there was a similar site available for the claimant; if there were no other site the plaintiff was admitted to a share on paying a proportionate share of the cost of the improvements.

§ 4. The suit of 'dadanhudd' is a remarkable one. The term 'dadanhudd' requires some preliminary explanation.

In ancient Wales, as in many other lands, the hearth fire was invested with a semi-sacred character, and was never allowed to go out. When evening fell, and the household retired to rest, the hearth fire was covered up, and a large piece of turf or peat was placed on top which kept the fire smouldering. In the morning the turf or peat was removed, and the fire uncovered. By metaphor, this uncovering of the fire (*dadanhudd*) was applied to a suit where a son claimed land, which had been in the possession of his father or mother, and from which he asserted he had been illegally dispossessed, or of which possession was wrongly refused.

¹ This is the accepted rendition of the words whose actual meaning is 'degree and stock'.

¹ XI. 430.

The plaintiff sought to uncover the paternal hearth which he became entitled to do by recovering the land upon which the hearth originally stood.

The cause of action was that the father or mother had actually held possession till the day of death. Possession of the grandfather or great-grandfather gave no right to 'dadanhudd' if the father had been out of possession; but apparently, if the father had died in the life of his father, the grandson could claim 'dadanhudd' to his grandfather.

A suit of 'dadanhudd' could not be brought if the father's possession had originated in trespass; but, provided there had been grant and delivery by the lord, there was no need to establish rights of 'priodolder' or 'kin and descent'.

There were three kinds of 'dadanhudd'; 'dadanhudd' by tilth and ploughing, car, and bundle and burthern.

In the first, the claimant asserted his father had occupied the land, and had actually tilled and ploughed it; in the second, that his father had occupied the land by having a hut and household on it; and, in the third, that his father had occupied the land by depositing his property thereon and kindling a fire.

In each of these cases the plaintiff establishing his contention was entitled to immediate occupation, but for a time only; and, on the expiration of that time, it was open to the defendant to recover possession, if he could, by a suit of 'priodolder' or 'kin and descent', and to demand proof from plaintiff of his right to continue in possession.

The relief of 'dadanhudd' was of the nature of specific relief, based merely on the occupation of a father or mother, and was applicable where an heir claimed to be put in possession of land over which his father was in process of acquiring 'priodolder' rights. He was entitled to be put in possession so that the chain should not be broken except by legal process.

A person establishing 'dadanhudd' was entitled to enter on the land and remain there without opposition, if he claimed by tilth and ploughing, until 'he turned his back on the stack of the forthcoming harvest', i.e. until the 1st December next following; if he claimed by 'car', until the expiry of either five or nine days; and if by bundle and burthern, until the expiry of three days.

On the expiry of such terms he had to defend his title in a suit of 'priodolder' or kin and descent brought by the defendant.

'Dadanhudd' could be claimed:

(i) by any son or sons jointly against any person, not being another son of the last occupant, on the death of the father,

This claim was by 'privilege of right',

(ii) by the legitimate son against an illegitimate son in occupation. This claim was by 'privilege of marriage',

(iii) by an elder son against a younger son or sons—a claim by 'privilege of age'.

In all of these cases the claimant proving occupation by his father became entitled to immediate and exclusive possession for the fixed period.

It might, however, happen that two men had successively held possession, and the sons of both were out of possession, and both claimed possession against a third person. In that case, as between the two claimants, the one with title was preferred to the other. Similarly, if the son of one original possessor was suing for 'dadanhudd' against the son of another possessor, the former could not get 'dadanhudd' until he proved superior title.

A joint suit by a number of sons against a stranger in possession was admissible. In such case the successful plaintiffs were admitted as a body. Subject, however, to this, 'dadanhudd' could only be given to one man possessing 'privilege' over the man in possession; and there could not be two persons holding 'dadanhudd' possession of the same land. It was, therefore, a preferential right, and could not be claimed by one with privilege equal only to the privilege of the man in possession.

Once a man had obtained 'dadanhudd' he could only be ejected by a suit of 'kin and descent', 'priodolder', or partition, and no one could obtain 'dadanhudd' upon 'dadanhudd'; that is, where a person had established a right to 'dadanhudd', no one could come and claim 'dadanhudd' against him during the currency of his 'dadanhudd'; unless the new claimant claimed 'dadanhudd' to the same deceased possessor, or, if the property had been held jointly, to the other of the joint possessors,

in which case the new claimant was entitled to 'dadanhudd' as against the prior plaintiff if he had superior 'privilege', and to an equal share in 'dadanhudd' if there were equality.

For example, an elder brother could get 'dadanhudd' against a younger, who had already got 'dadanhudd' against a stranger; or, where two sons of two deceased brothers holding land jointly till death were kept out by a stranger, and one son of one brother got 'dadanhudd' of the joint property against the stranger, the son of the other brother could come in and claim equal 'dadanhudd', because his right to 'dadanhudd' of his father's share was superior to the right of the one who had obtained 'dadanhudd' against the stranger.¹

In Irish Law there was something similar to 'dadanhudd'. Ireland, of course, had no courts; but possession of land claimed was obtained by an extra-judicial procedure having a resemblance to 'dadanhudd'.

Notice of claim was issued; and, if not submitted to, it was followed by actual entry on the property, such entry giving, as in 'dadanhudd' possession, title to remain in possession until adjudication by arbitrators to whom the claim was submitted on entry.

§ 5. A suit of 'ymwrthyn', or 'mutual opposition', was one in which one of two persons in possession sued another, also in possession, on the allegation of trespass. The sole question was one of title, and, if the plaintiff could establish superior 'priodolder' rights, the trespasser was evicted; if the alleged trespasser could prove as good a title he was not evicted.

§ 6. A suit of 'rhan' or partition was one to enforce partition, and a suit of 'mamwys' or 'maternity' was a suit to establish a right to land by the son of a Welshwoman, married to a foreigner, the basis of the right of which is dealt with elsewhere.

§ 7. The forms of suit above referred to are illustrative of the system of holding, and corroborate the account above given of that system.

¹ V. C. 170 et seq.; D. C. 466, 538, 540; G. C. 754-6; VI. 106; VII. 140 et seq.; IX. 276 et seq.; X. 380; XI. 420; XIV. 738.

X

'GWARCHADW' (OCCUPATION) FEES

§ 1. SLIGHT reference has been made already to 'gwar-chadw' charges, or fees payable to the occupier of land by others legally evicting him or recovering a share from him.

Whenever land was vacated it could be occupied by other people, provided they obtained investiture or 'cynhasedd' from the lord, or by the lord himself if he did not invest another with it. This occupation was subject to the liability to restore the land, whenever the lawful owner returned and claimed it back or claimed a share left by him or his ancestors in the hands of co-sharers.

Such occupiers were not trespassers; they were deemed to be in lawful possession, 'preserving' the property for the true owner, until the period in which the latter could recover had expired.

A guardian also holding land of a minor till he came of age was regarded in the same light.

§ 2. As preservers they were in all cases entitled to:

- (i) a 'preservation' fee,
- (ii) compensation for improvements,
- (iii) recovery of moneys spent on increasing the 'privilege' of the land.

§ 3. The amount of the 'preservation' fee appears to have been invariably 10s.; but it was not payable if the 'preserver' had held the land for less than a year and a day, if he had failed to render the services attached to the land, or if he declined to surrender the land on the return of the owner without forcing him into Court to assert his title.

Similarly, if possession were refused to the person entitled to it, the latter was not liable to pay any compensation for improvements, nor any expenditure on enhancing the privilege of the land, nor was he compelled to pay

the 'wrth-prid', for which his predecessor had assigned the land to an alienee, who was in law one having custody only.

As a further protection against a preserver abusing his position, it was provided that a successful claimant in Court was entitled to seize all movables found on the land, the title to which he had been forced to establish in Court.¹

¹ D. C. 548, 550; G. C. 758; VI. 120, XI. 398, 432, 448.

XI

THE BOND-LANDS

§ 1. THERE were several kinds of unfree holdings in mediæval Wales; and, as we have already seen, 'aillts' or indigenous unfreemen, who were not slaves, might be 'aillts' of the King or 'aillts' of the freemen.

There appears to be no reason to suppose that the tenures of the unfree tenants of the free differed from those of the King's unfree tenants, except in the fact that their immediate superior differed, and in the fact that some unfree tenants of the free rendered a few services direct to the King, in addition to those rendered to the immediate superior.

§ 2. In the Survey of Denbigh and the Extent of Bromfield and Yale all bond-lands of whatsoever description are spoken of as the holdings of 'nativi'. In the Record of Caernarfon there is a particularization into lands 'de natura de treweloghe', 'trefgefery', 'maerdref', or 'terra dominicalis', 'tir bwrdd', 'gardennen', 'gwyr mal', and 'gwyr gwaith'; while a number of villes occur where the tenure is apparently 'treweloghe' but is not specifically described as such.

The Black Book of St. David's hardly distinguishes the bond-lands from the free; and the former appear to have been converted by the fourteenth century from hereditary unfree tenures into tenures by deed, in which all the old services were retained and fixity of tenure had disappeared.

References to unfree-lands in the laws have to be read, if we would understand them properly, with the entries in the Surveys, particularly with those in the Record of Caernarfon.

§ 3. The difference between the various classes of unfree-land lies partly in the organization and rule of descent operative, and partly in the services each had to render. At present we are only concerned with the organization and rule of descent.

§ 4. The most important class of unfree-land was that referred to in the Record of Caernarfon as 'de natura de treweloghe'.

The word 'treweloghe' is the Normanized form of the Welsh 'tir gwelyauc'; and, as the Surveys show, it was the most common form of holding of unfree-lands.

The characteristic of this tenure was that such lands were held, as was the case with practically the whole of the free-land, by 'gwelys', with this distinction that the unfree 'gwelys' did not expand into large clan entities.

Sometimes the 'gwelys' are mentioned by name; sometimes the holdings of what are obviously 'gwelys' are described as the 'gafaels' of a number of connected relations.

Unfree 'gwelys' are rarely found holding land in more than one ville, whereas free 'gwelys' generally held areas in widely scattered places. The reason for this was that, as already noted, the great distinguishing mark between the free and the unfree was that, whereas the former were at liberty to roam wherever they chose, provided they did not encroach on territory earmarked and settled on by others, the latter were bound to the hereditary acres, on which they were 'adscripti glebae'.

This confinement to a defined area, along with the fact that the 'nativi' were primarily agriculturists, appears to have resulted in much more frequent and general appropriations of land by individuals—no doubt with the consent of the other villagers—and a greater diffusion of individual 'priodolder' rights than among the freeman. Large 'gwelys', with widespread tribal interests, is the feature of the free 'gwely' system. The largest unfree 'gwely' recorded in the Surveys consisted of eighteen men only, and the major portion were much smaller. We can see, therefore, that, though the principles of holding, inheritance, and the like in the unfree 'gwelys' was similar to those of the free 'gwelys', the former tended to break up much more rapidly than the latter.

We have noted that in Denbigh the surveyors drew no distinction in terminology between the different classes of unfree holders; but the fact that nearly all the unfree

holdings in Denbigh were held by 'gwelys' or small groups of associated relatives shows that that system of tenure was the ordinary one in that part of Wales.

§ 5. The 'trefgefery' holdings of the Record of Caernarfon are identical with the 'tir cyfrif' lands of the laws.

The distinguishing feature between 'trefgefery' and 'treweloghe' holdings, according to the Record of Caernarfon, lay in the fact that in the former the assessment to services and dues was made on the whole ville, so that, if there were only one tenant, he was responsible for the liabilities of the whole village; while in the latter the assessment was upon the 'gwely' or 'gafael' of associated holders, of which groupings there might be any number in any particular village.

That definition is given in the extents of Llys Dinorwic, Dolellog, Llanbeblig, Hirdrefaig, Aberffraw, and Dinam, and repeated in the 'treweloghe' viles of Gest and Pentre.

The 'trefgefery' ville was conceived of as a unit in a way the 'treweloghe' ville was not, and, if we turn to the laws, we see wherein the difference lay.

§ 6. The outstanding feature of 'tir cyfrif' viles was that there was no such thing as the right of 'priodolder' in them. No man, no group of men, could appropriate any land to himself or themselves, and there was no ascension of man to man in respect of land.

The whole of the land in a 'tref', held on 'trefgefery' tenure, was common to all the tenants therein. Tenants might have separate occupation of different plots for the time being, but they held those plots, not as their own, but as plots allocated to them in satisfaction of their rights for the season. No matter how long a man or his descendants might by chance hold the same plot, 'priodolder' rights could never be acquired; the land remained, what it had been at the start, the common property of the tenants.

The cultivation of land in a 'trefgefery' ville was regulated or controlled by royal officials, that is, in the ordinary 'trefgefery' viles, by the 'maer'. He determined what crop was to be grown and on what plots; actual cultivation was conducted by all tenants in common, and the 'maer'

was responsible for allocating to each tenant a part and place in the common tillage, and, until that was done, no cultivation could be commenced.

When the actual tillage was completed the cultivated fields were apportioned among those taking part in the co-tillage for the time of harvest. Each took his separate plot or plots and garnered in the produce of those plots. At the end of the harvest all the plots were brought into common, and tilled in common for the next harvest.

If there were any land in the 'tref' not brought into common cultivation any tenant was entitled to cultivate it after the co-tillage was completed, provided he did not take into his sole occupation more than his proportionate area.

Each tenant in a ville held on 'trefgefery' had his homestead, of which he was in practice the permanent occupant, and round the homestead there was a small portion of land annexed. This homestead land, to be provided with which every tenant had a right, and for which he could occupy any vacant site not already having a house upon it, was in theory as much joint and liable to joint cultivation as all the rest of the land in the 'tref'; but it was specially provided that no man should be disturbed in his occupation of homestead land, if there were sufficient other common land to give every tenant in the 'tref' an appropriate share for the same purpose.

In the land of the 'tref', every male adult, with one exception, had a right to a share equal to that of every other male adult.

The apportionment for harvesting of the jointly cultivated land and the right to cultivate land not jointly cultivated were not according to families, but according to the number of male adults; and so all the sons of a tenant, being of age, had a right to the same quantity of land as their father, and each one, son and father, had a right to the same share as every other male in the 'tref'.

The sole exception was that the youngest son had no share; he remained with his father cultivating with him as his assistant until the father died. He had no right of any sort in the 'tref', to which he belonged, apart from his father.

When the father died he assumed the rights of the father; he stepped absolutely into his shoes, and he, and he alone, of all the brothers was entitled to the homestead and the homestead lands.

The land of the 'tref' being joint and common the law provided that when any tenant in the 'tref' died without issue—it mattered not if he left a brother or uncle—his interest, including the homestead land, fell into the general village stock, and every member of the 'tref' had a right to an equal share in it. It was not divided among them; it was absorbed into the village common rights, each tenant having an equal share in it without division.

Interests so falling in were called 'unextinguished erw's'; that is, as there was no succession there was no escheat, and consequently no 'ebediw' or heriot was payable. Should, however, a tenant leave sons, then the homestead and the father's right in the 'tref' devolved upon the youngest son and him alone, and he paid 'ebediw', not for succession to land, for succession to land there was none, but for ascension to the father's 'persona', which entitled the son to participate in the rights of the 'tref' in place of his father. The Dimetian Code allows a daughter to ascend if there were no sons, but we must conclude that the daughter was unmarried.

The right to an equal share in such a 'tref' could be asserted in an action for 'equality', known as 'hawl cyhyd', an action confined to register-land. The action is described in the Anomalous Laws. A man claiming to share appealed direct to the lord, saying he originated in the 'tref' and demanding a share. His demand, if well founded, could not be refused. The whole of the tenants of the 'tref' were summoned, they appointed a representative to plead for them, and if the claimant proved he originated in the 'tref' he had to be admitted perforce.

We are told also in the XIVth Book that no man could claim a right in register-land in more than one ville. This adds proof to the fact that such tenants were 'adscripti glebae'. A tenant of a 'trefgefery' ville was bound to the 'tref' to which he belonged; and not only could he not

be excluded from a 'tref' to which he belonged, but he could not be transferred to another 'tref' while retaining rights in his 'tref' of origin, nor, provided there was a sufficiency of land in his 'tref' to furnish him with sustenance, could he leave his 'tref'.¹

§ 7. This 'trefgefery' tenancy corresponds with that class of tenancy to which Sir John Davis drew attention in the reign of Elizabeth:

'By the Irish custom of gavelkind, the inferior tenanties were partible among all the males of the sept, both bastard and legitimate; and, after partition made, if any one of the sept had died, his portion was not divided among his sonnes, but the Chief of the sept made a new partition of all the lands belonging to that sept, and gave every one his part, according to his antiquity.'

Most Irish tenancies, created by the settlement of 'fuidhirs', appear to have developed into these 'inferior tenanties'; and it is possible that the 'trefgefery' villes of Wales originated in the settlement of foreigners or captives.

§ 8. The 'maerdref' partook of a dual nature, and contained two kinds of land, one the 'terra dominicalis' or home-farm, and the other the land belonging to the 'maerdref' community.

The 'maerdref' was attached to a royal residence, its management was in the hands of the 'land-maer', an unfreeman in origin, so differing from register-land, which might be and was situated at a distance from the royal seat, and so came under the administration of the district officials. The 'maerdref' also contained a number of casual labourers, cultivating plots, and excluded from the area in which the tenants had common rights.

The 'terra dominicalis', when not leased out by the lord, was cultivated by the labour of the 'maerdref-tenants'; they holding and cultivating the remainder of the land as a joint community under regulations and rights indistinguishable from those pertaining in 'register-trefs'.

§ 9. A very clear account of the old 'maerdref' tenure occurs in the Survey of Denbigh:

¹ V. C. 62, 168, 192-4; D. C. 600 G. C. 726, 772; V. 56, 64, IX. 272, 292; XIV. 638, 688, 690.

Under the ville of Dinorbyn Fawr it is stated:

'There is there a certain hamlet pertaining to the said manor. In the time of the princes it was possessed entirely by "nativi", who were wont to perform certain customs and works at the manor of Dinorbyn. It is now rented out to them since the days of the Earl of Lincoln . . . at 35s. 5d. per annum.

'And those customary tenants hold among themselves "hereditarie" the whole of that hamlet. . . .'

Under the extent of Cilcennus, an old 'maerdref', after enumerating the services, it proceeds—thus showing the unity of the ville:

'And they say that although there be only one of them, he alone would hold the whole ville by render, as above, as regards butter; but he would not pay for harvest work nor for repairs of houses, except as a single tenant.'

In the Extent of Bromfield and Yale, 1315, we have facts of interest connected with ancient 'maerdrefs', notwithstanding that the old system was in a state of decay.

In Wrexham the major portion of the land was held on a system of messuage tenements, to which were generally attached a small croft and a few acres of land. Most of these holdings were individual ones. But there was an important area of demesne land, the major portion of which was held by the 'communitas ville', though considerable areas were held by individual tenants or leased to graziers. The association of the 'communitas ville', in holding demesne land, points to the fact that the old idea of jointness in interest was not entirely dead.

In Marford and Hoseley there was a similar system of messuage tenements, the old communal servile tenure having given way to individual servile occupation. Nevertheless there was this much of a survival of the communal tie that the 'communitas ville' made a joint render of £5 per annum, and a mutilated passage in the Extent suggests that the old 'maerdref-lands', formerly ploughed and harrowed jointly, were no longer under cultivation, because the tenants had no ploughs or harrows left wherewith to work.

In St. David's there appear to have been many 'maerdrefs', in all of which, at the time the Black Book was compiled, the land had been leased out.

§ 10. Land known as 'tir bwrdd' was King's land, cultivated apparently by tenants at will. No special account of the tenure of such land is to be found either in the laws or the Surveys. The amount of it was very small.

Mr. A. N. Palmer identifies 'tir bwrdd' with that part of demesne land which was held free of tithes in consideration of the lord maintaining a chapel of ease at his principal place of residence. The identification, though suggestive, is not convincing; for 'tir bwrdd' is not confined to such places of residence. In Miogen it is definitely identified with 'terra dominicalis'.

§ 11. 'Gardennen' or gardenmen are not mentioned in the laws. They are to be found in the Record of Caernarfon at Rhosfair and Aberffraw. They were occupiers of small garden plots, held on a servile tenure, probably like 'tir cyfrif', except that renders were generally in cash alone.

In Bromfield and Yale in A.D. 1508 the germ 'gerddi' appears to have been applied to strips in common cultivated land, arated on lines similar to those in English manors.

§ 12. Land held by 'gwyr mâl', so far as can be ascertained, seems to have been land, similar to 'tir bwrdd', let on cash rent, but with a definite fixity of tenure.

'Gwyr gwaith' existed only in Cemmaes and Penrhos, the condition of tenure being labour services only, with succession apparently hereditary and not on 'trefgefery' principles.

§ 13. As regards 'foreigners', in the Extents the unsettled foreigner is termed an 'advocarius' or 'adventicius'. There was an officer in each 'cymwd', charged with the control of unsettled wanderers. Every one, holding no land, paid 1s. per annum for 'recognitio'; but only four are found in Segrwyd and four in Denbigh. In Penmaen the rule was that every non-holding 'nativus', and every 'adventicius', arranged the amount of his 'recognitio' with the Seneschal or Raglot; and in Llysfaen the amount was fixed at 8d. per head.

A great number of men paying such fees are found in St. David's, where conditions were less settled than in the North; and in South Wales the system continued in force well into the times of Henry VI.

PART III

RENDERS AND SERVICES

I

INTRODUCTORY

§ 1. OUR knowledge of the renders and services in medieval Wales is derived from two principal sources, the laws and the series of Surveys, mainly belonging to the early fourteenth century. Between the two there is a gap of some four centuries.

There are consequently many points of differentiation. Not only are there differences due to lapse of time and the operation of new forces, but there are differences due to the character of the two sets of compilations.

§ 2. The laws and commentaries thereon, being of the nature of a codification, are general in expression, and more or less standardize the main services and renders; the Surveys describe the particular services due from individual holdings.

The former present a degree of uniformity natural to a broad generalization, the latter contain endless variations. The first may be said to contain the principles of renders, the latter their application.

The Surveys also differ materially among themselves, due partly to the variations in localities, partly to the methods employed by the individual compilers.

§ 3. The Survey of Denbigh deals with a tract of country in which Norman or Saxon influence had had little effect, and where the tribes had maintained their ancient organization into the fourteenth century; a tract also in which the indigenous Welsh Court had secured to itself nothing like the same power as in Caernarfon and Anglesea. It was prepared with consummate care and skill, and the superintendent of operations was something of an historian, who was deeply interested in what had been the custom 'in tempore principum'.

§ 4. The Extents of Anglesea and Caernarfon were not concerned so deeply with portraying the erstwhile political organization of the territories and clans with which they dealt: the compilers were only concerned with noting the units owing renders and what renders the units owed.

Anglesea, also, had come much more under the centralizing influence of the royal court, while a considerable amount of disintegration of the clans had occurred, rendering the features of tribal holding more diverse than in Denbigh.

§ 5. The Extent of Bangor Diocese is careless and scrappy, prepared without skill or understanding. The First Extent of Merioneth (*circa* A.D. 1285) is a summary of renders by 'cymwds'; the second is nearly a century and a half later, and seems to be a rough preparatory draft rather than a finished production, and, though of value, presents nothing like the same wealth of material as the Extents of the other three Northern counties.

§ 6. The Extent of Bromfield and Yale, 1315, is of great value in respect to renders and services. The details of these liabilities are given therein with much clarity; and, in some respects, e.g. the levy of pannage dues, military service, and liability to build, they throw some light on the customs of the land absent from other documents.

§ 7. The Black Book of St. David's, though prepared in 1326, is of no great assistance in enabling us to determine what the renders were in South Wales during the time of the princes.

It is of value as picturing the state of South Wales, or part of South Wales, long after that countryside had come under Norman influence and a baronially organized ecclesiastical rule.

The Church in Wales appears to have endeavoured to equalize the status of the free and the unfree, partly by depressing the former, partly by raising the latter; and those who prepared the Black Book were more concerned with giving a Norman legal form to the position of the holders of Church-land, and less with portraying what the old customs of the land were, than those who did similar work in the North.

The result is that the renders in St. David's present a somewhat confused medley, and often we cannot tell whether they had fallen originally on the free or the unfree.

We must, therefore, be content with simply noting the renders referred to in the Black Book briefly, directing those who wish for minute details to Mr. Willis-Bund's admirable introduction to the Black Book.

II

'EBEDIW' AND 'CYNHASEDD'

§ 1. THE first renders to consider are what may be roughly described as succession or ascension duties.

The 'ebediw' of the laws (from the Lat. 'obitus' = death) is generally spoken of in the Surveys as relief or heriot, and 'cynhasedd' as 'gobr' or 'gobr estyn'.

§ 2. Welsh 'ebediw' differed, however, in character from Norman heriot or relief, but tended to become identified with the latter: hence it is not surprising to find that in documents like the Survey of Denbigh the distinction is lost sight of, and both 'ebediw' and 'cynhasedd' are merged in 'relief'.

Heriot in Norman Law was strictly a succession or investiture fee payable to the lord by every one succeeding to his predecessor's landed estate.

'Ebediw' had no concern with land. It was levied on all persons, who ascended in right of lineal descent, to the status of a deceased person. A son paid 'ebediw' when he followed his father in the possession of land; not because he succeeded to the land held by his father, but because he ascended to his status, and assumed the rights and 'persona' of his father, included in which might be a right to land.¹

The true character of 'ebediw' is excellently expressed in the records of Three Castles: 'The heriot custom follows the person, not the lands.'

§ 3. 'Cynhasedd'² or 'gobr estyn', on the other hand, was a land fee payable on investiture, in return for the lord's express or implied grant.

It was payable when any one obtained the right to possess land, otherwise than by lineal ascension; that is by collateral

¹ IV. 14.

² 'Cynhasedd' or 'cynghawsedd' means literally 'a process of law'.

succession, gift, purchase, or other mode of acquisition. Its exact character is well expressed in the Extent of Bangor Diocese, sub. tit. Aberffraw: 'Et si aliquis eorum decesserit sine herede de corpore suo propinquior heres de sanguine tenetur in gobr estyn, videlicet 5s.'

§ 4. 'Ebediw' is frequently spoken of in the Laws as one of the Lord's packhorses, or sources of revenue, and it was payable by free and unfree alike on ascension to the King or lord, except in the cases of a 'maerdref' tenant, when it went to the 'land-maer', of a smith, a huntsman, and of a King's 'aillt', when it went in whole or in part to one of the officers of the court as a perquisite.¹

§ 5. 'Ebediw' was not payable:

(i) by women, because they did not ascend to the status of a male, and because they paid 'amobyr'.²

(ii) on the death of a relative of the King, the Edling, the Penteulu, and in Gwent the Judge. In their cases the official equipment donated by the King returned to him.³

(iii) by the heirs of an executed thief punished in the jurisdiction of his own lord. This was to prevent a lord benefitting by his tenant's death.⁴

(iv) by a youth under 14 if his father were alive. Its exaction was postponed till he could ascend to full status.⁵

(v) on the death of a childless tenant in a 'register-tref'. In that case the land fell into the commonalty of the 'tref'. If there were children, 'ebediw' was paid by the youngest son only as he alone ascended to his father's status, and obtained his 'tyddyn' and a right to a share in the commonalty. Other sons obtained a share in the commonalty in their own right on attaining majority.⁶

§ 6. 'Ebediw' was not payable, but 'cynhasedd' was:

(i) where a man obtained investiture of self-acquired land. In that case the payment enured to the benefit of his son after him, who paid no further due on succession.⁷

(ii) where a man acquired land and died without issue, his successors paid 'cynhasedd'.⁸

¹ e.g. V. C. 62, 78, 188, 194.

² V. C. 8, 16; G. C. 648; IV. 16.

³ V. C. 202; XIV. 574.

⁴ D. C. 546; G. C. 758; IV. 12.

⁵ V. C. 96; D. C. 600.

⁶ V. C. 254; D. C. 600.

⁷ D. C. 600; V. 56.

⁸ IV. 14, V. 60, XI. 408.

(iii) wherever there was collateral succession to 'gwely-land' which had been partitioned. There would of course be no succession in unpartitioned 'gwely-land', but ascension of lineal descendants, and survivorship if none,¹

(iv) wherever a man claimed and obtained a share in land by adjudication of court other than a temporary 'dadanhudd' possession, and where a man took 'custody' of land abandoned by others.²

§ 7. The effect of paying 'cynhasedd' was to give a title to land by the act of investiture without delivery of possession. Such investiture could only be given by the lord in actual possession of the territory in which the land was situated, hence where territorial possession was in dispute between two lords, neither could invest until the issue was decided by battle.

Investiture once given could not be rescinded.³

§ 8. The King's right to 'ebediw' extended over 'laics' on abbey-land, but not apparently over 'laics' on bishop and hospital-land; and where a tenant held different plots under two lords 'ebediw' was payable to both, but if he held several plots under one lord he paid 'ebediw' once only. This essential rule of Welsh custom was confirmed on petition in A.D. 1360 by Edward III.⁴

§ 9. In the laws the rate of 'cynhasedd' is fixed at the uniform rate of 10s. per 'rhandir', and at 20s. or 30s. if an office were attached.

The rate of 'ebediw' was always personal. The abbots of certain ecclesiastical establishments ascending to their predecessors' status paid £10 and £12, others were free.

The 'ebediw' due on the death of principal officers of Court was 30s. or 20s., of the lesser 20s. or 10s., and of an 'uchelwr' 10s. A refugee under the King's protection and a King's 'aillt' with a church on his land had a similar 'ebediw'.

An innate freeman or a King's 'aillt' had an 'ebediw' of 90*d.*, an 'uchelwr's aillt' or a foreigner holding King's land 60*d.*, a male hermit 24*d.*, and a female hermit 12*d.* or 16*d.*

¹ XI. 422, XIV. 606.

² IV. 10.

³ G. C. 762; XI. 422, XIV. 606.

⁴ V. C. 170; G. C. 766; IV. 10, 14.

Some passages refer to a death clod-fee of 24*d.* or 16*d.* paid by the heirs of a stranger to the owner of the land on which the stranger died, but this was not 'ebediw'.

Non-payment of 'ebediw' entailed the forfeiture of the deceased's estate to the King.¹

§ 10. 'Ebediw', 'ipso nomine', is referred to twice in the Survey of Denbigh, where in Beryn and Gwerneigron mention is made of escheat for failure to pay 'ebediw'.

Elsewhere the due is spoken of as 'relief', but relief there includes 'cynhasedd' as well.

The rate of relief among the free in case of lineal descent was 10*s.*; in case of collateral succession up to the third degree it was 20*s.* Among the unfree the rates were 5*s.* and 10*s.* Beyond the third degree there was escheat to the lord, who, if the land were free, and, in the case of Gwytherin, if it were unfree, must sell to the nearest collateral willing to buy at the market value.

There are some few exceptions in this Survey to the general rates. The tenants of 'gafael' Rathe (Denbigh) paid 10*s.* in all cases, those of 'gafael' Cathe 2*s.* The freemen of Nantglyn Sanctorum paid as 'nativi', those of Gwytherin 5*s.*, whatever the degree of relationship might be, and their relief was divided between the Lord and the Abbots in proportion to the 'albadaeth' taken by each.

Gwely Cynddelw in Mochdre, which held on rent in kind only, paid as freemen, and the Wyrion Eden' paid none anywhere. The Map Bonhedd in Mochdre claimed a like exemption.

A few instances are mentioned of escheat for failure to pay relief in Beryn, Gwerneigron, Denbigh, Bodiscawn, and Talabryn, and in Bodiscawn one instance is mentioned of a portion of land so escheated being restored to the true heir on his payment of a proportionate share of the relief due.

§ 11. In the Record of Caernarfon (Anglesea and Caernarfon) 'ebediw' is spoken of as relief and 'cynhasedd' as 'gobr estyn'.

The general rule among the free was that 10*s.* was paid for each liability.

¹ V. C. 96, 158; D. C. 492, 558; G. C. 684, e. g.

Some free units were free, e. g. the Wyrion Eden', the vills of Penmachno, Cwnllanerch, Gwydir, Rhyd-y-glair, and several others.

In Cwm-is-tir the rate was 2*s.*: in Trefdistinet one 'gwely' paid 2*s.* relief.

Among the unfree the rates varied greatly. We find in some villages 10*s.* 'ebediw' and 10*s.* 'cynhasedd', in one 7*s.* 6*d.*, in another 6*s.* 8*d.* and 10*s.*, in others 6*s.* 8*d.*, in one 10*s.* and 6*s.* 8*d.*, in others 5*s.*, among the gardenmen of Aberffraw 2*s.* 'if there be sufficient chattels wherewith to pay' or nothing, and in one village 15*d.* for relief and 10*s.* 'cynhasedd'.

No reason can be assigned for the variations, but it is noteworthy that in the majority of cases the 5*s.* rate prevailed, showing that there had at any rate been little alteration for some four centuries or more.

§ 12. In the Extent of Bangor Diocese 'ebediw' is definitely called 'heriot' and among the 'nativi' it was generally 2*s.* Among the free the rates are not usually given: in many cases land was held free of both relief and 'gobr estyn'.

In Llaniestyn a rate of 20*s.* was payable where the last holder died without issue, and in Bodafon both charges, heriot and 'gobr estyn', stand at the figure of 5*s.* in like circumstances.

This Extent is of interest so far that it shows that on Church estates in the fourteenth century, even in North Wales, the levy of 'ebediw' on ascension to a predecessor's status had become definitely confused with heriot or succession duty to land.

§ 13. In the Second Extent of Merioneth, 'cynhasedd' appears as 'gobr', and 'ebediw' as relief. On the free the levy was generally 10*s.*, but there are cases where it stood at 7*s.* 6*d.* and 6*s.* 8*d.* On the unfree the rate was generally 6*s.* 8*d.*

In the First Extent 'cynhasedd' of 20*s.* and 10*s.* are incidentally mentioned among Roger l'Estrange's unlawful exactions 'pro ingressu terre'.

§ 14. In the Black Book of St. David's, under the Norman

influence prevalent in the administration of the lands of that diocese, the old Welsh 'ebediw' was completely transformed into the Norman-English 'heriot', a term used there to include also the old 'cynhasedd'.

The usual rates were the 'best beast' or double rent (a rule entirely unknown in Welsh Law), or 7s. 6d., 7s., 5s., 3s. 6d., 2s., 1s., and even rates assessed per bovat of land. This change had become common in South Wales. It had become no longer a due payable on ascension to status, but a due payable for succession to land.

A few traces of the old 10s. 'ebediw', now become heriot, are to be found. It survived among the free groups in Prysceli, and in the free 'stipes' holding Penenedon (Cardigan).

§ 15. The due is incidentally referred to in the Index to the Llyfr Goch Asaph, where it is stated that in Llangerniew the heirs of Gronw Felyn held in A.D. 1244 free of relief and 'gobr estyn'.

§ 16. In the Extent of Bromfield and Yale provision appears to be made for escheat of houses to the lord where a man died without heirs, i.e., in strict Welsh Law, without male lineal descendants. Further provisions appear reproducing a variant of the rule that where a man died in possession of partitioned land without heirs or collaterals in the fourth degree there was escheat to the lord, who was, however, bound to convey the escheated property to the next nearest collaterals.

A rate of £3 is mentioned, which is probably to be identified with the old 'cynhasedd'. The passage then continues to fix heriot or ascension duty at 7s. 6d.

This rate, as the rate of heriot, is referred to in numerous passages in the Extent, payable by free and unfree alike 'post mortem antecessorum suorum'. It was of course payable in an associated group only by that individual in the group who ascended to the status of the deceased.

The only variant on this rate occurs in Bodidris, where the tenants of the free paid a heriot of 3s. 9d.

§ 17. In a few places in South Wales the 'relief' assumed strange forms. In Bronllys, e.g. 'custumarii' surrendered

one cart, the plough and harrow irons, all crops, swine, bees, geese, and one horse; while in Llanfihangel toll was taken at the lord's option of the best beast, or all goats, all pigs, all bees, or double rent. Occasionally also we find the best mantle taken.

In South Wales also we occasionally find echoes of the old rule that land escheated must be granted to the nearest heir.

That was specifically so in Edelgan and Warren St. David's, but it is obvious that in South Wales the old Welsh rules had been very largely transformed.¹

¹ The instances of renders, quoted here and elsewhere, chargeable in South Wales, other than in St. David's, have been taken from Prof. W. Rees' invaluable work on 'South Wales and the Marches' in the great majority of cases. It is hoped that this general acknowledgement will avoid the necessity of numerous footnotes. But for this work of minute research much of the South Wales material would not have been available.

III

FOOD LEVIES

1. *Tunc or Gwestfa.*

§ 1. Tunc is one of the most interesting levies in early Welsh society.

The laws state that all free-lands were liable for 'gwestfa'. There was no attempt to assess this charge according to the differences in the quality of land. It was a fixed definite charge upon all free-land at the same rate, and it was payable annually in two instalments at the feasts of All Saints and St. Martin.

Originally 'gwestfa' was payable in kind, and the Codes give details of what was so payable, but the process of commutation had progressed considerably before the time of Hywel Dda, for we find that the 'gwestfa', as a definite assessment, was regarded as equivalent to a pound, and this pound, payable as revenue on the units assessed, was designated the tunc-pound.

§ 2. The term 'gwestfa' is not equivalent to rent. Free-land was not, as already mentioned, originally 'rented' from the King. 'Gwestfa' was the entertainment or maintenance allowance paid to the tribal chieftain, and therefore to the King, by freemen holding free-land.

There were two 'gwestfas' payable, the winter and the summer ones. The winter 'gwestfa' was the principal, and the summer one small and supplementary. The commuted value of the two together was £1.

§ 3. The method of assessment is given in the Venedotian Code. There was a defined assessment circle, and within that circle the total was distributed over every 'erw'. As the Dimetian Code says, 'every "erw" pays equally'.

In the Venedotian Code it is said that, from the free 'maenols', the King was to have a 'gwestfa' of £1 per 'maenol'. The pound was assessed 5s. on each of the four

'trefs' in the 'maenol', the 5s. being again levied at 15d. on each of the four 'gafaels' in the 'tref', that sum being again divided into successive quarters of each 'rhandir' ($3\frac{3}{4}d.$ per 'rhandir'), each homestead ($\frac{1}{16}d.$ per homestead), and each 'erw' ($\frac{1}{6}d.$ per 'erw').

No doubt the mathematical precision is fanciful; but the point to note is that the laws regarded a definite assessment circle as the unit for levy; and, within that circle, the levy was distributed equally on every acre of land.

The Dimetian Code, besides asserting that every 'erw' was assessed equally, says that the tunc-pound or 'gwestfa' was levied not on the 'maenol' as a unit, but on the 'tref', and that in each 'tref' there were four 'rhandirs' on which the 'gwestfa' was distributed. It has been noted that the territorial divisions in South Wales differed from those in North Wales, and, were we to identify the 'tref' of South Wales with that of North Wales, the 'gwestfa' would be much heavier in the former. The Gwentian Code agrees with the Dimetian Code in making the 'tref' the assessment unit.

§ 4. Expressed in terms of kind, in North Wales the tunc-pound was made up of 120d. the value of bread, 60d. the value of liquor, and 60d. the value of 'enllyn', that is eatables other than bread (=Latin 'obsonium' and Irish 'fonaidhm' or 'annlann').

Details are given of the bread, liquor, and 'enllyn'.

Each 'maenol' contributed towards bread a horse load of the best flour grown on the land and seven 'thraves' of oats; towards 'enllyn' a cow or ox, a three-year-old sow, a vessel of butter and some bacon; towards liquor a vat of mead, or double that of 'bragwd' (finest malt-beer), or quadruple that of common ale.

The Southern Codes divide the tunc-pound in the same way as representing bread, 'enllyn', and liquor. The Dimetian Code, however, implies that the tunc-pound was accepted in lieu only when there was a default in sending the supplies in kind at due date, so illustrating the gradual growth of commutation.

The bread to be supplied was as in North Wales; an ox was also to be supplied, but the remaining 'enllyn' was

covered by a tub of honey. Liquor was similarly supplied, but we have an amusing description of the vat in which it was contained. It had to be capacious enough to enable the King and the local elder to bathe therein together.

Mead was supplied by a 'tref' in South Wales, attached to the office of the 'maer' or 'canghellor'; 'bragwd' was accepted from other 'trefs'.

§ 5. With the 'gwestfa' a sum of 2s. was also paid as supper-money, which went to the King's servants, the share of each one of whom is regulated in the Codes.¹

§ 6. In the Southern Codes mention is also made of the summer 'gwestfa', payable in addition to the main winter 'gwestfa'.

The texts on the subject are very confused, but apparently the theory was that each 'tref' was liable to provide four 'dawn-bwyds' or food-rents, consisting of a fat cow on three occasions, and on the fourth of a fat wether or a three-year-old cow.

§ 7. It has to be noted that 'gwestfa' was not, in the Codes, payable to the King by bond-lands. A limited 'gwestfa' was, however, due from the tenants of the 'maer-dref' to the 'land-maer', and in Gwent the falconer was entitled to a 'gwestfa', the amount of which is not stated, from the King's 'taeogs'.

The officer responsible for collecting the 'gwestfa' was the Court silentiary.

§ 8. The 'gwestfa' or tunc-pound is not to be confused with the dues on 'cylch' or circuit, which are dealt with *infra*, and what the Codes show is that a maintenance provision in kind, later commuted into cash equivalents of tunc-pounds, was levied on free-lands only, distributed over assessment circles, each paying one unit of the provision, the levy being collected within the assessment circle from every acre of ground equally.²

§ 9. A similar system of tribute to the Chief in the way of food supplies undoubtedly prevailed in Ireland, but its incidence in that country cannot be ascertained from the laws.

¹ e.g. V. C. 22 et seq.; D. C. 360 et seq.; G. C. 640 et seq.

² References to 'tunc' in Codes V. C. 64, 188, 190, 196, 198 200; D. C. 532; G. C. 766-70.

The Corus Flatha—the Code of the King—'inter alia', deals with banquets due by tenants; such banquets or cesses due by tenants being termed 'human banquets', which are further described in the Corus Bescna, IV. 21, as 'each one's feasting house to the Chief according to the Chief's due to which he is entitled, namely, a supper with ale, a feast without ale, a feast by day', fixed according to stock lent; while in the Senchus Mór, I. 123-7, 215, 231, the 'anadh' or 'stay' in the Law of Distress was one day where food tribute or entertainment of the King for a night was withheld or was in arrears.

In the Crith Gablach also we are told (IV. 345) that a 'King is entitled to be fed freely with his company without curtailment, whatever place he goes round'.

The amount of food tribute is also mentioned in the Small Primer (V. 31) and the Senchus Mór (I. 195, 233, 239).

§ 10. Attention may be directed here to the remarkable passage in the Laws of Ine—apparently an interpellated one—following clause 70, the precise meaning of which is not clear, but which has obviously some connexion with the Welsh 'gwestfa', levied perhaps on some of the Celtic or Wealha holders of land in Wessex.

'With x hides as fostre, 10 vessels of honey, 300 loaves, 12 ambers of Welsh ale, 30 of clear, 2-full-year-old oxen or 10 wethers, 10 geese, 20 hens, 10 chesses, an amber full of butter, 5 salmon, 20 pounds of fodder, and 100 eels.'

§ 11. In Domesday Book we find some traces of the Welsh tunc-system.

We find honey-rents, for example, mentioned as due in Ewias for 32 acres of land; in Caerleon by 'III Walenses lege Walensi viventes'; in Castell de Estrighoiel (along with pigs and sheep); in Arcenfeld (sometimes with sheep); and in many vills on the Herefordshire border, in two of which, Cape and Elvistone, sheep were paid.

Eight cows are mentioned as paid to Rainald from Derniof near Montgomery by Welshmen; and in Bishops-tref in the Hundred of Alicross (Flint)—a manor said to be held by the Welsh Prince Griffith ap Llywelyn—it is stated that whenever he visits the ville each carucate was to render

him 'C. C. hasthas unā cuuā plenā cervisia, una butiri ruscā'.

§ 12. Upon the subject of tunc the Survey of Denbigh throws the very greatest light. It was the most important of all renders in Denbigh.

In theory it was leviable on every one, free and unfree, in this differing from what the Codes portray, but in practice there were several individual exemptions, which no doubt had been granted for services rendered to the Princes at different times.

Under the Norman occupation it was not levied on land which had been escheated and farmed out; and when a fractional share of 'gwely-land' was escheated there was a proportionate reduction made from the tunc levied on the 'gwely'.

By the time of the Survey there had been a complete commutation of the levy, but its basic value was £1, assessed on some unit or other.

In the Survey we obtain occasional glimpses of what that unit was, but generally speaking the unit, whatever it was, had been subdivided and the levy was made in fractions of £1 separately on the divisions of the unit. The fractions in most cases were translated into the terms of fixed amounts; and, inasmuch as there were reductions from these fixed amounts on account of escheats, the fractional conversion being into the nearest farthing, it happens to be difficult at times to determine what the original unit was. In other cases the unit is quite clear.

The details of the levy are given in Appendix X.

§ 13. In the Record of Caernarfon (Anglesea and Caernarfon) 'tunc, ipso nomine', is barely mentioned. It is referred to in seven villatae only.

In the 'trewelloghe' ville of Gest one 'gwely' is mentioned as paying £1 tunc, thereby indicating both that the unfree were assessed to it, and that it was levied on a unit in the first instance.

Elsewhere one holding in Dinlle was assessed at 4*d.*, one plot in Morfa at 2½*d.*, some heirs in one 'gwely' at Penllech at 5¼*d.*, one 'gwely' in Penyfed at 16*d.*, and

another at 2½*d.*, one 'gwely' in Trefeithio at 4½*d.*, and another at 2½*d.* It is mentioned also in Bodenieth, one 'gwely' paying 5*s.*, and Glasfryn, where 2½*d.* was recovered from one 'gwely' only.

These instances throw very little light on the levy. In the Extent of Bangor Diocese 'tunc' is not mentioned at all.

It would appear, however, that throughout Anglesea and Caernarfon the tunc-levy had been absorbed in the 'summa' or rental which was payable on almost every holding. The 'summa' varies very greatly in amount according to the size of the holding or holdings, and the unit likewise varies, but there are many cases where the rental is £1 or some simple multiple or fraction of a pound, and the probability seems to be that in those cases the 'tunc' had become the 'summa' without addition, whereas in other cases the 'summa' included 'tunc' and additions.

Rentals, classed in the 'summa' or total of dues, were payable by free and unfree alike, but there were some estates free altogether. These included many estates of the Church, and a striking instance of complete exemption are those villas occupied by branches of the Wyrion Eden'.

§ 14. In the Second Extent of Merioneth there are some references to 'tunc', but they are confined to the Ardudwy 'cymwds'. In Ardudwy Uwchartro it is summarized thus:

'Maentwrog 10*s.*, Trawsfynydd 10*s.*, Llanbedr 10*s.*, Llanfair 10*s.*, Cartref 1*s.*,'

and is called Tunc Mur y Castell after the famous Roman fort.

In Llanfair it was levied at the rates of 1*s.* per 'gwely' up to 10*s.*; in Llanbedr apparently at the rate of 4*s.* per 'gwely'.

In Llanfihangel rates of 2*d.*, 3*d.*, 3½*d.*, 4*d.*, and 6*d.* per 'gafael' are mentioned, and in Llandecwyn 2*d.*, 5*d.*, and 6*d.*

In Isartro 4*s.* 7*d.* was paid by Llanelltyd, an undetermined amount by Llanaber, 10*s.* 10½*d.* by Llanddwywe, and 1*s.* by the freemen of Llanenddwyn. Festiniog paid 6*s.* 10*d.* and Llanfrothen 15*s.*

'Punt cyflog' (equals pound-hire), which appears to be

the old tunc-pound, amounting to 20s., was paid by the unfree 'gwely' of Llanegryn, and in Llanfendigaid there is a peculiar entry, which may refer to 'tunc' in the past. It runs :

'And there were in that ville, in ancient times, two men, called Eignon ap Philip and Gronw ap Philip, who used to give 5s. at Easter and S. Michael's to the Prince before the Conquest, and afterwards to the King and Prince of Wales.'

The item, however, is mentioned in A.D. 1285 as a 'render of assize', and the only specific reference to 'tunc' at that time is 8s. levied on the free and unfree of Talybont.

§ 15. In the Black Book of St. David's there is no mention of 'tunc' anywhere, but there are indications of its survival in the renders.

Castle Meurig and Prysceli were associated together in the payment of £1 annually over and above the cash-rents, and throughout Ceredigion there were payments by the 'gwelys' and 'stipes' of such fractions of £1 as 6s. 8d., 3s. 4d., 5s., &c.

In some cases the total levied on the 'gwelys' of a ville equal £1, e.g. Nantgwynlle (five 'gwelys', each paying 4s.), and Bangor (four 'gwelys', each paying 5s.), but generally speaking it is impossible to determine what the original tunc-unit area was.

§ 16. In South Wales, outside St. David's, the evidence available is of the slightest. The word 'tunc' is practically non-existent, but each 'cymwd' seems to have been divided into gwestfa-areas, corresponding, in some cases, to the areas occupied by particular clans. Generally speaking, the 'gwestfa' was payable only by the free, and the unit was not the tunc-pound, but the mark of 13s. 4d.

§ 17. In the Extent of Bromfield and Yale there are some references to 'tunc', but not many.

In Sesswick, an unfree ville, the sum of 2s. 2½d. was recovered on this account from a number of holdings separately assessed; in Pickhill, 9½d. was likewise realized. In Beiston one free group paid 4d.; in Dutton Diffaeth either 2d. or 6d. was received from one holding and 12d.

from another; in Dinhinlle 18d., and in Cristionydd Dinhinlle 5d. were levied over some holdings.

The free ville of Dutton y Brain paid 3s. 6d., and the free ville of Burton 8s. 4d., both as units.

Nothing in the way of 'tunc' is recorded as due from Yale, and the whole render from Bromfield was 20s. 6½d.

From these figures it seems possible that Bromfield was originally a tunc-paying unit; but how it came about that 'tunc' was levied on unfree as well as on free-holders, and only on some occupants and not on others, we have no means of determining.

It is possible that as in Caernarfon the 'tunc' originally paid was included elsewhere in the cash-render.

§ 18. The conclusion appears to be obvious that the 'gwestfa', originally an entertainment or maintenance provision, having become commuted into a cash payment, tended, in the hands of Norman scribes, to be regarded as a rental payable for holding land, which in some cases could be enhanced. In Denbigh, the Survey of which was made by a very able man, the true character of the tunc-levy was not confused with other dues and it remained constant, and in a few cases outside Denbigh it was retained in the accounts as more or less equivalent to a quit-rent.

The great difference, however, between the laws and the surveys lies in the fact that 'tunc' in the former was not charged on unfree lands, whereas in the latter we find many instances of its levy on such. The explanation of this appears to be that the Norman lawyers identified the 'dawnbwyd' levied in the laws on the unfree, with the 'tunc' levied on the free.

2. Dawnbwyds.

§ 1. There was in fact a resemblance between the 'dawnbwyd' and 'tunc' in that they were both in origin payments in kind for the maintenance of the royal court.

§ 2. In the Venedotian Code (p. 198) we are told that the bond 'maenols' contributed two 'dawnbwyd' a year to the King, levied apparently on the tref-unit.

The winter 'dawnbwyd' consisted of a three-year-old

sow, a vessel of butter, a full vat of 'bragwd', a thrave of oats, and 26 loaves of the best bread, while a man was provided to light the fire in the King's hall on the night the tribute was brought in, or in default the 'maenol' paid one penny to his substitute.

In the summer the 'dawnbwyd' consisted of a three-year-old wether, a dish of butter, 26 loaves of bread, and the milk of every cow in the 'tref' for one day made into cheese.

§ 3. The Gwentian Code (pp. 768, 770) tells us that the unfree villes paid two 'dawnbwyd', the winter one consisting of a sow, a flitch of bacon, 60 loaves, a barrel of beer, 20 sheaves of oats, and a penny per 'rhandir' for the servants; the summer one consisting of a tub of butter and twelve cheeses made of a day's supply of milk in the 'tref', along with bread.

§ 4. The Dimetian Code (pp. 532-4) is difficult to follow. It starts by saying that the King is to have two 'dawnbwyd' every year from the villein-trefs, the winter one consisting of a sow or tub of butter, a flitch of bacon, 60 loaves, a vat of 'bragwd', 20 sheaves of oats, and one penny for the servants. It then proceeds to say that six 'dawnbwyd' with a vat of ale are to be paid from the winter calends to the May calends, and the measure of a 'dawnbwyd' is given as a side of bacon, or a three-year-old sow or a vessel of butter. It further says that there are three winter 'dawnbwyd' payable for by the carcass of an ox. Following this it recites that the spring 'dawnbwyd' are to be paid for in silver, failing which 12*d.* was to be paid per 'dawnbwyd', also 20 sheaves of oats, 12 small loaves, two large ones, a tub of butter and a cheese made of one day's supply of milk.

We are then told that one penny was to be paid with each 'dawnbwyd' in spring and winter, and finally that the summer 'dawnbwyd' was commuted for 18*d.* and a penny for the officials.

The full connotation of all this is not obvious; but we seem to have intermixed a variety of local customs from different areas, in some of which the possibility of commutation had begun to grow.

In view of the other Codes it would seem that the standard charge was a double 'dawnbwyd', varying slightly in composition, payable in summer and winter, and that commutation was exceptional.

§ 5. The Anomalous Laws have little to say about the 'dawnbwyd', the only reference being to the fact that the King was entitled to supplies from the unfree (XIV. 604).

§ 6. It would seem, therefore, that the bond-hamlets paid maintenance provisions in kind, and though there are traces in South Wales of commutation, it had not progressed far.

It would seem, further, that after the Norman occupation some of these 'dawnbwyd' levies were confused with 'tunc'. At the same time we find in the Surveys many references, not to commuted 'dawnbwyd', but to rentals in kind, probably exemplars of the older 'dawnbwyds'. With these rentals in kind it is now proposed to deal.

3. *Renders in kind.*

§ 1. Rentals in kind, as distinct from 'tunc' or 'dawnbwyd', do not appear in the Ancient Laws. Two facts, however, have to be noticed, not very distinguishable from food-rents.

Reference has already been made to 'tir bwrdd' and to the 'maerdrefs', the latter of which were invariably connected with old royal seats.

§ 2. 'Tir bwrdd' (literally board-land) appears to have been personal property of the King, cultivated expressly for providing his table with supplies, and, in all probability, cultivated either by foreign slaves or by hired labour. Little mention is made of the 'tir bwrdd' in the Codes, and it is merely mentioned as being one of the sources whence the King gets provisions from.

The name survived in occasional villes in the Surveys, e.g. in Llantfairpriscoil, Miogen, Cemmaes, Penrhos, and a few other places.

§ 3. The 'maerdref' holdings were cultivated by the 'maerdref'-tenants, as already noticed, on a 'trefgefery' tenure under the superintendence of the 'land-maer'. Part of the 'maerdref' appears to have been set aside exclusively

for cultivation as 'tir bwrdd'; but, over and above this, the tenants of the 'maerdref' had to supply the King, when at his palace, with sheep, lambs, kids, cheese, butter, and milk, 'according to their ability'. (V. C. 194.)

In the Survey of Denbigh remnants of 'maerdrefs' are to be found in Ystrad Owain (whose tenants were expropriated), Dinorbyn Fawr, and Cilcennus. The 'maerdref' system was not maintained after the Conquest, and, in the record of Dinorbyn Fawr, we are told that the land had previously been held on 'divers customs', but was at that time rented to the occupiers in return for an annual rent, the customary tenants holding the hamlet, with the exception of some plots, among themselves hereditarily; that is, the principle of 'trefgefery' was maintained there, but the renders had been commuted into a cash rent.

In Caernarfon there were 'maerdrefs' at Deganwy (leased out to Madoc Gloddaeth), Dolbadarn, and Neigwl, and in Anglesea at Aberffraw, Cemmaes, Rhosfair, and Bodewrid.

In the Extent of Merioneth there are traces of 'maerdrefs' at Dolgelley, Ystumanner, Cwm Prysor, Ceffyng, Caethle, and Llanenddwyn,¹ where there were four 'gafaels' of 'terra dominicalis called maerdref'. In St. David's such villes existed at Castle Poncius, Newtown, and Trefdyn, and in Bromfield and Yale at Merford, Wrexham, and Llanarmon. In South Wales 'maerdrefs' existed, *inter alia*, at Lampeter, Melindre, and Carregcennan.

In all of these cases the 'maerdrefs' had become almost indistinguishable from other unfree villes.

We find, however, a great variety of food-rents, varying very considerably in their details, in villes which were not 'maerdrefs'.

§ 4. In the Survey of Denbigh we have a number of butter rents, invariably levied on unfree tenants, but in every case the butter rent had been commuted into a cash payment.

In Isaled every nativus paid 3*d.* in lieu of butter rent, and in Taldragh, in the 'gwely' which was 'neither free

¹ Llanenddwyn corresponds with the old 'maerdref' of Ystumgwern, destroyed as the cymwd 'caput' when Harlech Castle was built.

nor unfree', each co-sharer paid 20*d.* on this account. In Uwchaled the rent is found in Llechtalhaiarn on two 'gafaels', in Rudidien on two tenants, and in Garllwyd on one 'gwely', the ordinary rate of commutation being 3*s.* 4*d.* per vas, though in the latter case the liability had been imposed partly on individuals at the rate of 12½*d.* per head.

The average liability per unit was three vases.

In Isdulas, wherever the liability occurs, it was levied at the same rate per vas, the different units being responsible for one to four vases. It was levied on the unfree 'gafaels' of Bodrochyn, Meifod, Cegidog, Dinorbyn Fychan, and Twlgarth. In Uwchdulas the only ville where it survived was the old 'maerdref' of Cilcennus, which paid a lump sum of 30*s.* 3*d.* in lieu of the old produce-rent.

§ 5. In addition to the butter rents there are some few other produce rents confined in all cases to nativi.

Throughout Caimeirch every nativus paid 1*d.* in lieu of a Christmas hen, and each unfree 'gafael' 8*d.* in lieu of a crannoc of oats. In Isaled the Christmas hen does not appear, but each nativus holding a carucate of land paid 8*d.* per carucate in lieu of a crannoc of oats. In Uwchaled there were no produce rents of any kind. In Isdulas the rents varied according to the ville. In Wigfair and Gwern-eigron every nativus having a house paid 1*d.* for a Christmas hen, the Gwyr Newydd claiming exemption in vain. In Meifod, Cegidog, Dinorbyn Fychan, and Twlgarth all butter-paying tenants paid, with each vas of butter, 10 disci of wheat worth ½*d.* each, and two thraves of oats worth 3*d.* each, and in addition each tenant provided a Christmas hen, 1*d.* for a cribac of oats, 2*d.* for an Easter lamb, and 1*d.* for two dozen Easter eggs, Twlgarth tenants paying double.

In Uwchdulas the liability was confined to Mochdre, Rhiw, and Colwyn. There each nativus householder paid 1*d.* for a Christmas hen, each 'gwely' provided a crannoc of oats, the 'gwely' Cynddelw paid a crannoc of oats in lieu of pastus, and the Wyrion Gwyr Newydd did likewise. In Colwyn also the 'gwely' Caradog paid three crannocs

of corn or 6s. in lieu of pastus. In the villes of Penmaen and Llysfaen every nativus possessed of two hens paid over one to the lord each Christmas, but a man having only one cock and one hen was exempt.

§ 6. In Caernarfon and Anglesea the liability to provide food-rents had practically disappeared, and that for a very good reason.

The new class of Prince was no longer resident in his territory and he had no permanent palace to be supplied. In consequence, food-levies appear to have been commuted and included with 'tunc' or 'dawnbwyd' in the summa levied on the holdings as rent.

A few isolated remnants of the older practice survived. The priest's holding at Conway was liable for 9d. per year on account of an Easter lamb, and the villains of the free at Llandinwail, Meyllteyrn, and Bottwynog were mulcted in 9d. for hens.

§ 7. In the Extent of Bangor Diocese, inasmuch as the Bishop continued to reside at Bangor, food-rents survived. Such rents were paid in oats, butter, and bread, without the totals being shown, in four free and twenty unfree villes. Sometimes they were commuted into cash payments.

Corn renders occur also in two villes in the Priestholm Extent.

Christmas hens were due in Bangor from thirteen unfree villes and from the free ville of Tal-y-llyn.

§ 8. In Merioneth mention is made of Christmas hens in Ystumanner, the value of which is placed at 21d. Beyond that there is no mention of produce rents in the Second Extent apart from the pastus and staurus.

In the First Extent butter was rendered by the free and unfree in Talybont and Ystumanner, and by the free of Penllyn, while a free farmer in Nantcol paid butter as rent for a tenancy which he could resign. Hens were paid by one group in Cachelon (Q. Ceffyng) and a few free tenants in Ardudwy. Corn and cash renders are general also in this Extent.

§ 9. In South Wales there are many instances of capon-rents, which seem to have been paid in lieu of dues for

pasturage of cattle in the woods. Such are distinguishable from the Christmas hens, which were payable in many Monmouth and Pembroke manors and in Cymwd Cydwain. They were not paid, as a rule, in any of the countrysides, which still retained, in Norman times, their essentially Welsh organization. Honey-rents existed in Ewyas Harold, commuted to 30s., and in Cattessaies and Glyncothi Forest.

§ 10. We have noted that in St. David's the distinction between the free and the unfree was in process of obliteration. The Norman bishops of that diocese appear to have been much occupied in levying from the unfree all dues hitherto placed on the free, and all burdens hitherto placed on the unfree from the free, still retaining in each case all the dues they had paid previously.

Levies in kind occur throughout the diocese, but for the particular villes reference should be made to the table in Mr. Willis-Bund's introduction to the Black Book.

There are a few cases of capon-rents in Pembroke, but not elsewhere, and an old cheese and flour rent, since commuted, is mentioned as having existed in Tydwaldy, but otherwise the old food-rents appear to have been commuted.

§ 11. The Extent of Bromfield and Yale, 1315, is of importance, for we find there the corn-renders expressed in measures of corn (bushels or meillots and hops), with the cash equivalent at so much per bushel, showing that commutation there had hardly begun to be general. It is of interest, too, to note that this method of record was maintained also in A.D. 1508.

Cash and corn renders were general among both the free and unfree. They varied considerably according to locality. Sometimes the assessment was on individual holdings, and in the case of the large free groups on the group as a whole. This may explain the comparative absence of 'tunc' in Bromfield and Yale.

The corn renders were either in wheat (*frumentum*), white winter wheat (*siligo*), ground oats or oatmeal (*farina avenae*), or unthreshed oats, oats in straw (*avenae*). Wheat was the general render throughout Bromfield; Sontley and Aben-

bury supplied winter wheat as well ; and oats, either ground or unground, was the general render in Yale, and occurs also in Sesswick, Pickhill, Dinhinlle, and Christionydd Ken, while the unfree holders of the old 'maerdref' of Marford and Hoseley combined together to make part of their renders in oats.

Other renders in kind were few. The free ville of Duttony-brain alone rendered butter to the value of 5s. 10d. a year. This is unexpected, for, though the butter render was part of the old Welsh 'gwestfa', in other Extents we do not ordinarily find the render made except by unfree tenants.

The only other render in kind referred to is the Christmas hen. This was never exacted from freemen, but was imposed on a great number, though not all, unfreemen. By the fourteenth century it had become commuted into a charge of 1d., and was levied on individuals, some individuals being responsible for fractions, halves, quarters, and even sixths of a hen. It is found as a due in eleven vills.

4. *Pre-emptive rights of the lord over cattle.*

§ 1. In addition to these rentals we have to take note of certain pre-emptive rights of the lord on cattle, &c.

In Isaled and Uwchaled it had been the old custom that should the lord tour in the 'cymwd', every Welshman, free or unfree, who had, for fifteen days before the tour, an ox, cow, or other animal, or corn or vegetables or other victuals for sale, except butter or cheese, must offer the same to the bailiff at its fair value.

If the bailiff did not buy, the owner was at liberty to sell where he willed. The common fine for failure to offer was 15s.

§ 2. This liability does not occur elsewhere in the Survey, but in the Record of Caernarfon we find it detailed at considerable length in many vills. It is there termed 'staurus', apparently from the English word, 'store'.

Staurus was a liability to provide supplies, when demanded, at a fixed rate ; the total amount of supplies, which could be demanded in a year, being fixed.

It was a liability due only by nativi.

The general prices paid were 5s. for an ox, 3s. 4d. for a cow, and 6d. for a crannoc of corn. The provisions were generally required on All Saints.

In the Creuddyn an ox, a cow, and one quarter of wheat at 8d. per strike was levied on each unfree ville. In Cymwd Isaf staurus was due from all nativi, but the quantity is not stated. The quantity required from Nantconway was three oxen, three cows, and six crannocs of oats from the whole 'cymwd' ; from Cymwd Uchaf an ox and two cows levied on the ville of Wig and all advocarii jointly, who protested that no such liability had existed of old ; from Cymwd Iscor an ox and a cow ; from Uwchcor three oxen or cows and three crannocs of wheat at 2s. 6d. and two crannocs of oats ; from Cafflogion an ox, a cow, and a crannoc of wheat ; from Dinlleyn an ox, a cow, and four crannocs of oats ; from Cymwd Maen an ox, a cow, a crannoc of wheat, and two of oats ; from the vills of Llecheithior, Nevin, Pentre, Bodenolwyn, and Rhedynog in Eifionydd the same as from Cymwd Maen ; from Maldraeth an unstated quantity ; from Llifon an unstated amount from the ville of Bodowain only ; from Talybolion an ox, a cow, two crannocs of wheat, and four of oats at two-thirds the market price ; from the ville of Isdulas in Turcelyn and the ville of Maesoglen unstated quantities, and from Cymwd Din-daethwy nothing.

The 'liberi nativi' of Rhosfair were also liable, and this was the only charge against them other than summa.

§ 3. In the Second Extent of Merioneth we find 'staurus', but there staurus had been commuted into a cash payment. It was levied on the whole of the nativi of a 'cymwd' jointly. Those of Penllyn paid 33s. 4d., those of Talybont 8s. 4d., those of Ystumanner 12s. 6d., those of Isartro and those of Urchartro 10s. In the time of Walter de Manny (*temp.* Edw. III) it was claimed from all nativi.

§ 4. The levy became a matter of serious abuse in North Wales, freemen having been made subject to it, and the great petition of A.D. 1360 brought it to the forefront, with the result that Edward III decreed that it should not be exacted thenceforward from freemen or their tenants.

§ 5. In South Wales the liability seems to have been continued for the purpose of provisioning castles, and in many cases the demand was made of freemen. Serious complaints of abuse arose in Abergavenny, Cemmaes, Gower, and Maelienydd; and it seems that it had become the practice for the lord's officials to buy large quantities of animals at the pre-emptive price, selling them immediately after at the proper market price and pocketing the difference.

The custom of *staurus* was, in South Wales, known sometimes as 'gwarthekig', and in a number of manors and cymwds, e.g. Emlyn, Builth, Dolforwyn, and Neath, a definite number of beasts had to be supplied at a fixed price. Cantref Mawr seems to have been the only place entirely exempt.

5. *Commorth* (Cymorth = 'aid').

§ 1. Comparable to this liability is the 'commorth', found in St. David's and many southern manors, but only mentioned in one of the northern surveys, and the 'collection of sheep'.

§ 2. The 'collection of sheep' was an exaction of one sheep per year levied generally per carucate, and sometimes out of every twenty sheep owned. It was general in Pembroke, but rare elsewhere. Where levied in Ceredigion it was only levied on the occasion of the steward's first visit to the ville.

§ 3. 'Commorth' was not levied in Pembroke, but was general elsewhere in the diocese of St. David's. It consisted of a levy every third year of one or more cows payable by the ville or 'patria'. The number varied according to locality, the lowest being one, the highest eight (Llande-wibrefi).

In Gower the liability to provide eight beasts had been commuted into a payment of four marks, and in Llandewi the due had been commuted to 13s. 4d.

Commorth was levied on the free 'gwelys', just as much as on every other type of tenant.

§ 4. Though almost unknown in North Wales, it was not confined to the ecclesiastical estates in South Wales.

So late as A.D. 1620 we find it mentioned as existing in Pembroke, Caermarthen, and Monmouth.

In the Lansdowne Charters (B. M. 165 (b), f. 72), dated A. D. 1620, it is expressly said that 'there are divers other customs and duties in Wales of sondrie natures, viz.:—commorths. . .'; in the Harley Rolls, cc. 11 (B. M.), the commortha levied in Dyfynog and other places in Brecon and payable to the Duke of Buckingham in A. D. 1587 amounted to £28 9s., and according to Hargrave Coll. 489, ff. 58–656, we find it paid in Brecon, Radnor, and Caermarthen.

In Brecon and Radnor it was paid in cash, the assessment on Brecon being £55 16s. 8d., representing 136 cows every second year, and in Builth £4 16s. 10d., representing 10 cows every second year.

In Caermarthen the levy was in cash, being £4 15s. 2d. every third year on Llan croes and £6 10s. on Gwyddgrug. It existed also in Amgoed, Pwlliniog, Abergavenny (£12), Edelgan, Machen (£5 12s. 9½d.), Tregrug, Glamorgan, Clun, Kidwelly, and elsewhere.

§ 5. In North Wales the due is found only in the First Extent of Merioneth, where it is definitely charged for grazing. In Dolgelley, Nanton, Cefn, Pennal, Ceffyng, and Ystumanner pasture-tenants gave one-half their calves born in a year, though the due had generally been commuted to a cash-payment. In Ardudwy the unfree, as a body, contributed 24 cows and 24 calves (valued at £12) every five years.

§ 6. It is possibly of the same origin as the cow-levy referred to in the *Senchus Mór*, I. 125, which states that the chief, when on the boundary, demands a cow from every tribe, which the champions supply for the victualling of the fort, a reference glossed to mean a cow from every district payable to the chief for his maintenance.

§ 7. *Staurus* and commorth do not appear in the Codes. The Codes do say that no 'aillt' or 'taeog' could sell pigs, honey of his own bees, or home-bred horses without first offering them to the lord or obtaining his permission to sell. If he did so the sale was void, and could be cancelled at the lord's will, but later on, according to the Xth Book, the sale held good, and the 'aillt' was punished with a fine.¹

¹ V. C. 78; D. C. 436; IX. 264, X. 344.

This, of course, was not the 'staurus' of the Extents, but a restricted right of pre-emption vested in the lord, out of which the right of 'staurus' might very easily grow.

The Codes contain nothing comparable to 'commorth' as distinguished from the 'tunc' or 'dawnbwyd', but in the IXth Book, p. 264, the 'cow for the army' and 'the cow at the feast of S Mor' are included in the 'pynfarch'.

They are also mentioned in XIV. 582, 610, but it is noteworthy that the Codes omit the levy in the lists of 'pynfarch' there given.

The occasional references in Domesday appear to show that 'commortha' as well as 'produce-rents' was an old institution; and though the practice of taking cattle, except on payment, was extremely rare in North Wales, it was by no means an uncommon incident of tenure in the South.

6. *Albadeth, Ardreth, and Treth.*

§ 1. It is convenient to refer here to three terms found in the Survey of Denbigh which have some connexion with 'tunc'.

These terms are 'albadaeth', 'ardreth', and 'treth'.

§ 2. Albadeth occurs only in two viles, Nantglyn Sanctorum and Gwytherin.

Nantglyn was held by *nativi* in three 'gwelys' direct of the ecclesiastical progenies, Cynan ap Llywarch. The *nativi* paid no 'tunc' or 'treth', but in lieu of these charges paid 'albadeth' to the lord at All Saints and Holy Cross. One 'gwely' paid 4s. 9½d., and one-third of each of the other two 7½d. They were free of most other dues, and 'albadeth' seems to be a commuted sum for all services such tenants would have rendered had they not held under the privileged clan of abbots.

In Gwytherin the landholders were free, but they held partly under the ecclesiastical clan.

There were three 'gwelys' there. It is said of the first that it held of the lord, but the lord is termed 'their Abbot', from which it would appear that at some time or other the rights of the superior landlords had lapsed to the lord, without the privileges of the tenants being thereby extinguished.

The 'gwely' held in six 'gafaels', each of which paid 'albadeth' to the lord in lieu of 'tunc', 'treth', and nearly all other dues.

There were escheated fractions in these holdings, and the original 'albadeth' appears to have been at the rate of 5s., 5s., 3s. 6d., 3s. 6d., 4s., 3s. 9d., and 3s. 9d. on the respective 'gafaels'. The other two 'gwelys' were held originally of the Abbots of the progenies Cynan ap Llywarch, and not of the lord.

The exact position in Gwytherin is not very clear from the Survey, but what appears to have happened was that the shares of some of the Abbots of the clan were escheated to the lord as well as the shares of some of the tenants under the Abbots. Where the former happened, the lord stepped into the place of the Abbot, and received whatever dues were formerly paid to the Abbot; where the latter happened, the whole tenancy went to the lord, the rights of the Abbot being extinguished by the escheat. The first of these two 'gwelys' consisted of five 'gafaels'. The first two owed nothing to the lord, the third, which had paid 15d. 'albadeth' was entirely escheated, the fourth and fifth were partly escheated, in so far as the Abbot's share was concerned therein. The result was that the tenants paid to the lord a proportionate amount of 'albadeth' which had formerly gone to the Abbot whose share was forfeit. In addition, in both of them a portion of the tenants' rights were escheated, and those shares were farmed out.

In the other 'gwely' three 'gafaels' had never paid anything to the lord. Portions of the tenants' interests, but not the Abbot's, were escheated, and they were dealt with as lord's land.

In the other three 'gafaels' the Abbot's rights were either partially or wholly escheated, and a proportionate share of the 'albadeth' transferred to the lord. In addition, part of the tenants' rights were escheated, and the 'albadeth' thereon was extinguished and the shares let out on annual rents.

The word 'albadeth' is probably a corruption of the Welsh 'abadaeth', which means abbacy.

§ 3. The term 'ardreth' is not often met with, and it appears to be a term connoting a commutation for all or most services. It is found in thirteen viles in the Survey of Denbigh (Appendix XI).

§ 4. Prof. Vinogradoff identifies the word 'treth' with 'ardreth'. This is not quite correct. 'Ardreth' means a commutation for all or some services, generally including 'tunc'. 'Treth' means generally an impost, and may include 'ardreth', but its sense is wider and more restricted.

'Treth' never includes 'tunc'; it sometimes means the totality of commutations for all other services, and is so generic, sometimes the commutation for *pastus principis*, sometimes for other *pastus*, and therefore of particular application.

It is used in the generic sense as equal to all imposts other than 'tunc' when it is said that land is held free of 'tunc' and 'treth' (*vide e.g. the Wyrion Eden' in Abergele, &c.*). It is so used on nine occasions in the Survey of Denbigh.

It is used as equal to 'pastus principis' in Rudidien, Mathebrud, and Dinas Cadfel.

It is distinguished from 'albadeth' in Nantglyn Sanctorum, where the latter word covers both 'tunc' and 'treth'.

Other generic uses of the word occur in Petruall, Cilcennus, Mochdre, Penmaen, and Llysfaen (where it is equal to all *pastus due by nativi*).

IV

'CYLCH'

1. *In the Codes.*

§ 1. One of the features of early Welsh society was the system of periodical circuits (*cylch*), conducted by the Prince and members of his household. These circuits served the purpose of keeping the Prince in touch with affairs in his dominions, of providing for the administration of justice, and further for the maintenance of his equipages, hunting, military, and the like.

The laws state what circuits were recognized by custom, and roughly indicate who were liable to entertain the persons on tour. In the Surveys we get the details of the dues given very fully.

Liability to entertain the Prince or his officials on circuit was separate from the liability to provide 'gwestfas'; and in the old laws was one which occurred only on the occasion of a circuit in a particular locality:

§ 2. The laws recognize only three 'cylchs' imposed on the freemen, viz. that of the Prince, that of the Prince's consort and her daughter, and that of the Penteulu or military commander of the royal bodyguard.

They recognize a number of other 'cylch' imposed on the unfree. Not much, but still enough to enable us to obtain some picture of what they consisted of, is said in the laws about these 'cylch'.

§ 3. *The 'Cylch' of the King.*

The retinue of the King is said in all the Codes to consist of thirty-six horsemen in attendance, in addition to his bodyguard and camp-followers. It is not, however, stated that the King was entitled to demand entertainment for them all on circuit.

No definite regulations are laid down as to the King's circuit, except in the matter of buildings to be put up wherever he stayed.

The right was perhaps unlimited, but in practice not enforced as additional to the 'gwestfas'.¹

¹ V. C. 8; D. C. 348; G. C. 626.

§ 4. *The 'Cylch' of the Queen.*

In the Venedotian Code the Queen's 'cylch' was imposed upon the unfree only, and was limited to the supply of meat and drink for her once a year.

The impost was likewise limited to the unfree in the Dimetian Code; the Queen, with her maids and youths, being entitled to a circuit whenever the King was absent on a foray.

In the Gwentian Code it was not so limited, but could be demanded once a year from all persons, and the same was the case in the Anomalous Laws.

That at one time it was imposable on all men seems clear from the Privileges of Powys, which say that the freemen of Powys obtained exemption from it.¹

§ 5. *The 'Cylch' of the Penteulu.*

The right to this circuit, among free and unfree alike, is detailed in the Venedotian Code. It was arranged for the Penteulu by the King, and took place immediately after Christmas. The bodyguard was divided into three parties, and the Penteulu took these parties on circuit with him alternately.

From this 'cylch' and all succeeding ones Arfon, under its special privileges, was exempt.

Mention of the circuit is to be found also in the XIVth Book, where, as in the Venedotian Code, it is termed the Grand Tourn.²

§ 6. *The 'Cylch' of the 'Maer' and 'Canghellor'.*

This circuit is frequently mentioned. It is always limited to the unfree, and its details are given fully. The 'maer' and 'canghellor' were each entitled to a circuit, accompanied by two or three servants, twice in the year, but the circuit was not to be made in summer, so that harvesting should not be interfered with.

The officer on circuit could select what house he would stay at, and apparently the stay was limited to a day and a night.

In the Southern Codes only an extremely heavy liability is placed on the unfree in connexion with the 'maer'. It is

¹ V. C. 192; D. C. 346; G. C. 770; XIV. 604-6; XV. 746.

² V. C. 16, 106; XIV. 606.

said that, if a 'maer' were unable to maintain a house, he was entitled to call on any 'taeog' in his 'maer-ship' for a year for upkeep. At the end of the year the host could retain certain parts of his stock, &c., and the 'maer' could then impose himself on another tenant on the same terms for a second, and again for a third year. He was then bound to maintain himself for three years, after which he could start indenting on the tenants again.

This liability is hardly a 'cylch'; it is of doubtful origin, and is completely foreign to Welsh ideas, which provided for the support of officials by means of 'cylch', and not permanent quartering.¹

§ 7. *'Cylchs' of other officers.*

The other officers entitled to circuit were the huntsman with his dogs, the grooms with the horses, the youths of the bodyguard, and the falconer.

Minstrels from another country and foreign guests of the King were billeted as occasion required by the King, and the liability was termed 'dofraeth'.

In all these cases the burden could be imposed only on the unfree, in some cases apparently only on register-trefs, and no two officers could be on circuit in the same ville at one and the same time.

Powys, under its privileges, claimed exemption from the 'cylch' of the huntsman and grooms.

All of these circuits, except the Queen's, appear in the various Surveys under other names.

2. *In the Surveys.*§ 1. *The 'pastus principis'.*

The King's circuit is termed the 'pastus principis' in the Survey of Denbigh. It fell only on those who were free.

Its incidence varies with each 'cymwd'. Generally it was recoverable from a progeny or section of a progeny at one local centre only; hence, where a 'gwely' or other unit responsible for its payment held land in a number of vills, it paid 'pastus' at one place only.

Appendix XII gives, so far as possible, the details of the levy and mode of assessment in the Honour of Denbigh.

¹ V. C. 188, 190, 200; D. C. 488, 490; G. C. 672, 770.

No trace of this 'cylch' or 'pastus' is to be found in the Record of Caernarfon or the Extent of Bromfield and Yale. Possibly whatever liability there may have been was included in the rentals.

There is likewise no mention of it in the Black Book of St. David's; a fact sufficiently explained by the territories of St. David's being bishop-land.

Elsewhere in South Wales and the Welsh border it seems to have prevailed in Ewyas, Raglan, Rokeville, Trelach, and Worthybrook (Mon.), but the details of amount and incidence afford little information. The survivals, however, show the probable applicability of the render to the whole of South Wales in earlier times.

In the First Extent of Merioneth the only reference is to a levy of £6 per annum on the monks of Mochrhaidr for one night's entertainment; but 'procuratio', without indication of its purpose, is mentioned in Towyn (3s. 4d.), Cymwd Penllyn (46s. 11d. and 3s. , and as payable by the free of Ardudwy to the extent of £28 per annum.

It appears, however, in the Second Extent under the title of 'gogr ac efran' in Cymwd Talybont, and of 'gogr ac hyl' in Ystumanner. The words mean, apparently, 'food and drink' (see, however, Glossary).

In Talybont the levy was commuted to 3s. 1d. on practically every free 'gwely'; in Nannau the rate was 18s. 6d., and there are a few variations on the standard rate. In Ystumanner the unsettled free 'gwelys' paid a lump sum of 64s. 6d.

'Nativi', especially in Pennal and Caethle, were also liable; but, probably, their original liability was for 'pastus famuliae', lumped in the Extent under the generic title of 'food and drink'.

§ 2. '*Pastus famuliae principis*'.

The 'cylch' of the 'penteulu' and royal bodyguard appears in the Survey of Denbigh as the 'pastus famuliae principis'. In Denbigh the 'pastus' was payable only by 'nativi'.

It was collected at the same four terms as the 'pastus principis', levied on the freemen.

In Caimeirch it was assessed at the rate of 2s. 5½d. per

'gafael' in the viles of Segrwyd, Prion, Postu, and Llewesog. In Isaled the rate was 1s. 5¾d. per man holding land, and was levied on all 'nativi' in Lleweni, Galltfaenan, Prees, Eriviat, Bodiscawn, Beryn, Talabryn, Penporchell, Tywysog, and Taldragh.

Uwchaled was free from the impost, and in Isdulas it was levied in two viles only, Wigfair and Gwerneigrion, which were jointly assessed to an annual render of 8s. 1½d., all butter-renderers being exempt. Uwchdulas was also free from the impost, except the three viles of Mochdre, Rhiw, and Colwyn, which were assessed jointly to 30s. per annum.

In Caernarfon fines at the Grand Tourn, instituted by the Statute of Rhuddlan, appear to have taken the place of the 'pastus famuliae'. The fines were demanded from 'nativi' only, the unit of assessment being the 'cymwd'.

The amount was £1 in the Creuddyn, £2 in Cymwd Isaf, excluding Glyn and Rowen, which were separately assessed to £1; £6 in Nantconway; £2 in Iscor (including the villeins of the free in Bodhanreg); £8 in Uwchcor; £5 in Cafflogion; £6 2s. 8d. in Dinlleyn; £11 in Cymwd Maen (including £5 from the tenants of the Abbot of Conway and £1 from the tenants of Bardsey), and nothing in Cymwd Uchaf and Eifionydd.

The whole of Anglesea was free from the charge.

The Grand Tourns were at Easter and Michaelmas.

The First Extent of Merioneth contains what seems to be a charge for this purpose of £4 per annum levied on the unfree of Penllyn.

§ 3. '*Cylch Ragloti*'.

The circuit of the 'maer' appears in the Survey of Denbigh as the 'pastus ragloti' or 'pastus equi ragloti', and in Caernarfon as the 'cylch ragloti'.

In Denbigh it was charged on every 'nativus gafael' in Caimeirch at the rate of 4d., and was paid at Holy Cross. In Isaled it was charged at the same rate on every unfree landholder, except those of Nantglyn Sanctorum. It is not mentioned in the Customs of Uwchaled, and in Isdulas it is charged only on the unfree of Wigfair and Gwerneigrion, who paid jointly a lump sum of 13½d.; and in Uwchdulas

it is referred to as payable only by the unfree of Mochdre, Rhiw, and Colwyn, where sixteen men each paid $2\frac{1}{2}d.$

In the Record of Caernarfon the 'cylch' was the equivalent of the cost of maintenance of the raglot with one animal and attendant a day. It was levied on nearly all the unfree in Anglesea and Caernarfon at an unstated rate, the unit being sometimes the 'gafael', sometimes the individual, sometimes the bovat.

In Caernarfon it was not levied on any of the free, except one 'gafael' in Conway, but a few cases occur in Anglesea of scattered freeholders in nine villes being charged.

It was not levied on the Gwyr Mal in Cemmaes, but it was on similar holdings in Penrhos.

It is not mentioned in the first Extent of Bromfield and Yale, but, in later times a sum of $2d.$ and a hop of oats and straw were levied from every tenant of freemen and all freemen having no tenants, but possessing a plough, cow, or heifer.

In South Wales it is found in Cardigan in A.D. 1280, the rate there being $2s.$; also in Grosmont, where it was levied at the same rate on bond-tenants. In Elfred the whole 'cymwd' paid a total of £12, while, in St. David's, Mydrim and Emlyn paid $5s.$ on every livery of seisin, a similar sum being paid to the raglot out of the goods of every convicted thief.

A cognate provision occurs in Llandewibrefi, that 'patria' being mulcted to supply salt and other provisions for the Constable.

In the Bangor Extent the 'pastus equi ragloti' appears in several villes, some of which were free. One free 'gwely' in Llaniestyn was subject to it, each member of the 'gwely' finding 'pastus' for the seneschal and his groom for one day per year. It is also mentioned as being due from twelve other villes, and it is repeatedly stated that it is a due not recognized as enforceable by law, but, according to the tenants themselves, rendered of their own free will.

§ 4. Closely allied to it is the 'pastus serjeantis et duorum satellitum', which is found in the Survey of Denbigh.

The Serjeant of the Peace was a Norman innovation, a special officer entrusted with police duties.

In Denbigh, probably acting on analogy with the circuit of the 'maer', the Norman occupants imposed or tried to impose a new 'pastus' to maintain the serjeant when on tour. It appears to have created some opposition, and the facts show that some sort of ineffective compromise was arrived at.

It is to be noted that the new 'pastus' was imposed on free and unfree alike.

In Caimeirch, where English influence was strongest, all holders of land, free and unfree, tenants of the Church and others, were liable to pay $2d.$ each at Pentecost and Michaelmas, or, if the individual preferred it, to provide two 'satellites' with 'sufficient food and drink'. Its estimated value was $60s. 8d.$

The office of Serjeant was, however, farmed at $32s.$, and it seems as if the Serjeant were left to recover his exactions himself.

In Isaled every unfreeman paid $4d.$ per annum if he did not feed two satellites for one day per year. Here, again, the option was with the tenant. In Nantglyn Sanctorum and Penporchell the free tenants paying 'albadeth' are said to be subject to the liability, and in Taldragh the 'gwely', which was neither free nor unfree.

In the Common Customs of the Cymwd the entry is to the effect that the people also say that two satellites ought to be fed by the residents of the 'cymwd', free and unfree, or else an arrangement come to with the officers to pay them an equivalent. The Customs proceed to say that the unfree assert that each of them pays $4d.$ a year to be quit of the liability, but the free disclaimed liability. The Customs conclude by imposing the liability on every householder, free and unfree, but the amount was not specified, as the office of Serjeant was let out to farm at $60s.$ per annum.

It seems that an attempt was being made to convert into a tax that which had hitherto been merely a voluntary act of hospitality. The free declined to regard the imposition as compulsory, and no doubt the Serjeant in practice was left to recover the new impost as best he could.

In Uwchaled we have much the same state of things. Every one, even including the clerical tenants of Gwytherin,

was made liable, provided he was a landholder, to feed the Serjeant and two satellites for one day a year or pay them 3*d.*, whichever the tenant preferred; but the actual levy was not extended, as it was said to pertain to the farm of the office, which was fixed at £2 per annum.

The liability does not appear in Isdulas or Uwchdulas, but as the farm of the office was there fixed at £3 and £5 6*s.* 8*d.* respectively, no doubt the Serjeant attempted to impose himself upon the tribesmen, a thing he could easily do by threats of prosecution for offences, real or imaginary.

In the Extent of Bromfield and Yale, which otherwise contains no mention of 'cylch', we get two curious references to this charge.

It is said, in Dutton Diffaeth, that one Madoc ap Cynan provided 'potura' for the bailiff who maintained the peace or in lieu 18*d.*, and in Llanarmon we are introduced to one Cynan ap Iago, who, once upon a time, had provided 2*s.* 1*d.* for a like purpose, but who had got rid of the liability by adding a small sum to his annual rents and by making the lord his ultimate heir.

Beyond these accidental references there is no other mention of circuit dues in this part of Powys.

§ 5. '*Pastus lucrarii*', '*pennackew et wasion begheyn*'.

These two 'pastus' correspond with the 'cylch' of the huntsmen and dogs, and the 'cylch' of the youths or bodyguard of the Codes.

In the Survey of Denbigh, '*pastus lucrarii cum canibus*' was the liability to entertain the chief huntsman and his dogs when on tour. '*Pastus pennackew et wassion begheyn* (gwaesion bychain)' was the liability to entertain the chief page and the youths, who were commended to the Prince and formed his intimate bodyguard when on tour.

In the Codes the 'cylch' are referred to as due, without any indication as to the extent.

In the Survey of Denbigh they had been commuted into an annual payment, and are usually bracketed together, 1*d.* being the annual liability in the case of the former, $\frac{1}{2}$ *d.* in the case of the latter, representing the value of entertainment for a day and a night.

The liability fell on all, free and unfree alike, with some few exceptions, like the Wyrion Eden'.

According to the Common Customs of Caimeirch, every tenant of a freeman, every freeman possessing a house who had no tenants under him, and every unfreeman having a house was liable for these commuted dues. A freeman having tenants under him was quit of the charge, because it fell on his tenant or tenants instead, and, where a freeman had more than one tenant, each and every one of his tenants was responsible.

The due was payable at Holy Cross.

The same dues are found in all the other 'cymwds'. In Uwchaled, Isdulas, and Uwchdulas the assessment was made separately on the free and the unfree of the whole 'cymwd', and not on each person individually. It was collected from those liable proportionate to the chattels held by each.

In the First Extent of Merioneth the free and unfree of Ardudwy jointly contributed 15*s.* annually as 'pastus' for the master of the king's hunters.

§ 6. Closely allied to this 'pastus' was the 'pastus waission cum leporariis'. This was a special commuted entertainment fee for the youths when out coursing, found only in a portion of Uwchdulas. It was levied from the unfree of Mochdre, Rhiw, and Colwyn (villes to the south of the Creuddyn) only, and its annual value was 7*s.* 3*d.* assessed on the whole of the said unfree in a lump sum.

There is no indication as to how it was apportioned among the men liable.

§ 7. '*Pastus stalionis et garcionis*'.

This corresponds with the 'cylch' of the grooms and horses, which the Codes say occurred once a year upon the unfree only.¹

In the Survey of Denbigh it was due, as in the case of the 'pastus lucrarii', from every freeman who had no tenant, every tenant of a freeman, and from every unfreeman. It represented the cost of entertainment for a day and a night per year, and had formerly been commuted to 2 $\frac{1}{2}$ *d.*, but was, at the time of the Survey, valued at 1*d.* per person.

¹ D. C. 380; G. C. 770-2.

It was not assessed on holdings; so, no matter how many holdings a man had, he paid once only, and if an individual liable held land in different 'cymwds' he paid in one only.

The assessment was made separately on the free and unfree of each 'cymwd', and was apportioned, *inter se*, according to chattels owned. It was payable at Holy Cross.

The priodorian of Nantglyn Sanctorum and the Wyrion Eden' were quit of this charge. Its imposition on other freemen was opposed to the provisions of the Codes.

§ 8. Associated with it in the Survey of Denbigh is the 'pastus dextrarii et garcionis'.

This impost, which meant the entertainment of two of the prince's horses with their grooms, fell on 'nativi' alone.

It was probably a survival of the custom of sending out the king's horses for pasture, differing from the 'pastus stalionis', in that the Groom of the King did not accompany.

In Caimeirch every 'gafael' paid 8½*d.* at the Feast of St. John the Baptist, and 5*d.* at Holy Cross. In Isaled only the 5*d.* payable at Holy Cross appears, but it was charged on every 'nativus' instead of on the holding.

The 'pastus' did not exist in Uwchaled, and in Isdulas it fell only on the 'nativi' of Wigfair and Gwerneigrön, who paid a lump sum together of 8*s.* 8*d.*, and in Uwchdulas on the 'nativi' of Mochdre, Rhiw, and Colwyn, who paid 16*s.* 11*d.* It was not charged on land held of the Church, nor on the 'gwelys' which were neither free nor unfree.

In Caernarfon it was not charged in the Creuddyn, and in fact it was almost confined to Cymwd Isaf and Cymwd Maen.

The only freemen who were liable in Caernarfon were those of Ecclesia S. Peter, where it was levied on the 'gwelys', Rhiw, Bodferin, and Penllech, and there only on some 'gwelys'.

All the unfree in Cymwd Isaf were liable, also those of Bodhanreg, Dinorwic, Clynnog, Llandinwail, Trefgwyn, and Gest, in the majority of which the assessees were villains of the free.

The rate was generally 3*d.* per 'gafael'.

In Anglesea it was levied on nearly all the free and unfree, but its incidence is not stated.

The only exemptions appear to have been in regard to the free in Aberffraw, the senior 'gwely' of the clan of Hwfa ap Cynddelw, and some 'gwelys' out of others in a few other villes. Some individuals within 'gwelys' were also free.

It was imposed on the Gwyr Mal, but not on the Gwyr Gwaith in Cemmaes.

In the First Extent of Merioneth the unfree of Ardudwy paid £5 1*s.* 4*d.*, and of Penllyn £1 17*s.* 11*d.*

'Cylch stalonis' was claimed (*temp.* Ed. III) by the Vicecomes, and was paid in Talybont by the 'nativi' and 'advocarii' (16*s.* 8*d.*), in Cymwd Ystumanner by both free and unfree (26*s.* 8*d.*), in Llanenddwyn (6*s.* 8*d.*) and in Uwchartro (13*s.* 4*d.*), the assessment there being generally on the 'cymwd' or ville.

It is the only 'cylch' found in Bangor, where the due had been commuted by the unfree 'gwelys' of Penrhos for a cash payment of 1½*d.* It, and in fact all true 'cylch', is absent from the Black Book of St. David's, and in South Wales the only trace of it, hitherto noted, is in Tregaron.

Incidental reference to it is found in the Index to the Llyfr Goch Asaph, where it is said that in Maescrofford one Iokyn Ddu made a donation of his land to the Church, and, in return, the Bishop 'conceded to the said Iokyn that neither he nor his heirs should pay for any "gafael", except 3*s.* 2*d.*, and that they should be free from procuracion of two horses, and "balliorum, canum, avium et garcionum"'.

§ 9. 'Cylch hebbogothion (hebbogyddion).'

This 'cylch', the circuit of the falconers, mentioned in the Codes, does not occur in Denbigh. It is found in nine unfree villes in Caernarfon.

In Anglesea a few freemen in seven villes were liable, and tenants in fifteen unfree villes were also liable, Cymwd Menai being entirely quit of the charge.

It is not found elsewhere, but that it was an institution not confined to Wales seems apparent from the Capitulaire of Charlemagne, c. 47, which runs thus:

'Ut venatores nostri, et falconarii, vel reliquii ministrales, qui nobis in palatio adsidue deserviunt, consilium in villis

nostris habeant, secundum quod nos aut regina per litteras nostras jusserimus, quando ad aliquem utilitatem nostram eos miserimus, aut senescalcus et buticalarius de nostro verbo eis aliquid facere praeceperint,'

a very complete account of the institution of 'circuits'.

In the First Extent of Merioneth, however, the tenants in Penllyn paid 2s. 6d. and 1s. to boys looking for hawks' nests in May.

§ 10. *The 'pastus' of the foresters.*

This 'pastus', the cost of entertaining two foresters, does not appear in the Codes. The reason is a simple one, viz. that, in the time of Hywel Dda, there was no exploitation of the forests. They were practically free for use by every one.

In the Survey of Denbigh it did not exist in Caimeirch. In Isaled there appear to be contrary statements. At one time it was assessed at the rate of 4d. per head on every unfree land holder, the 'gwely' which was neither free nor unfree in Taldragh, and the Church unfree tenants of Nantglyn and Penporchell. Elsewhere it is stated that all the 'cymwd', free and unfree alike, contributed to a lump sum of £4 11s., according to their chattels.

In the other three 'cymwds' there was an assessment on the whole 'cymwd' in each case of £2 10s. 8d.

The levy was paid in equal instalments at Pentecost and Michaelmas.

The render is not found in the Record of Caernarfon nor in Bromfield and Yale. There is a reference to it in John de Peteshull's account of the Lordship of Chepstow in A. D. 1310, and also in Chirkland, where all 'cylch' were abolished by charter in the reign of Henry VII. It is also found in South Wales in some viles in the lordship of Usk, Catteshaies, Trelach, and Cwmcaftfan.

It seems as if the 'cylch' were a newly introduced impost, unknown in the earlier days of the Welsh Princes.

§ 11. *'Cylch greorion.'*

This 'cylch', which appears to be a commuted charge in lieu of liability to graze the King's herds, is not mentioned in the Codes. It is also absent from the Survey of Denbigh.

In Caernarfon no trace of it occurs in the Creuddyn, Cafflogion, Cymwd Maen, and in several viles in the other 'cymwds'. It was assessed, as a rule, per 'gafael' at the rate of 1d. or 3d., but in Dinorwic the rate was 40d. on the whole vile, in Bodellog 18d., and Eithinog 2s.

It was general in Eifionydd and Cymwd Uchaf, and, wherever it was levied, free and unfree alike contributed.

In Anglesea it was levied in every 'cymwd' except Menai. In Dindaethwy only three unfree viles were liable, in Turcelyn it was fairly general on free and unfree, and in the other 'cymwds' it was partial and confined in the main to the unfree.

In Merioneth it was levied on the freemen of Uwchcregennen, who paid an unascertained amount for 'gwaith et greorion'.

§ 12. *'Cylch dourgon.'*

This 'cylch' is not found in the Codes or the Survey of Denbigh. It was a sum payable for the maintenance of the King's otter huntsmen and dogs.

In Caernarfon it was common in Cymwd Maen, and was there levied on the free and unfree alike. Nowhere else in Caernarfon was it levied on the free. It was entirely absent from the Creuddyn, Cymwd Isaf, and Cymwd Uchaf: in Iscor it occurs in all unfree viles, in Uwchcor, in Penarth, Bryngwyn, and Clynnog, in Cafflogion in Llandinwail, in Dinlleyn in Trefcoed, and in Eifionydd in all the unfree viles.

The rate is nowhere stated, except in Eifionydd, where there was a 'cymwd' assessment of 5s. 3d.

In Anglesea it occurs in some free and some unfree viles in Maldraeth, Llifon (where, however, it was rare), Talabolion (where it was general on free and unfree), Turcelyn and Dindaethwy (where it was almost universal), but it was entirely unknown in Cymwd Menai.

In the First Extent of Merioneth it was paid by the free of Ardudwy, Ystumanner, and Penllyn, and, in the time of Edward III, Walter de Manny claimed it from a few tenants.

No trace of the levy is found in St. David's or any other of the Surveys of the fourteenth century.

V

LIABILITY TO BUILD AND REPAIR

§ 1. THE three Codes imposed upon the unfree the liability to build certain buildings for the Prince.

In North Wales the buildings were a hall, sleeping chamber, kitchen, stable, kennel-house, privy, barn, kiln-shed, and cow-house.

In South Wales the chapel was substituted for the cow-shed.

The Venedotian Code confines liability for the barn and kiln-house to tenants of the 'maerdref'.¹

The erections were ordinarily of wood, with some rough stonework in the more important buildings.

There was no liability of any sort upon the freemen, and it is particularly to be noticed that the liability to build mills or keep them in order was unknown in early Wales.

§ 2. In the fourteenth century these liabilities had been considerably extended. Freemen were in parts subjected to the duty; some new buildings had been added, and the maintenance of mills had been brought into the category.

In some places the liability had been commuted into cash payments.

We have no certain means of knowing whether some of these liabilities had grown up in the time of the later Princes or were impositions of the Normans, but it is more than probable that the liability of freemen and the inclusion of mills were introduced by the Normans. At any rate they were distinct importations from abroad, and not indigenous to Welsh custom.

§ 3. In Denbigh under the Common Customs of Isaled it was provided that all men, free and unfree, were to pay for the construction and maintenance at Denbigh of a hall, a chamber with a 'gardroba', a chapel, a lotelaria, a pistrina, and fences round the Court at the rate of 1*d.* per

head, except the Wyrion Pithle and the Wyrion Runon, who paid in Uwchdulas, and the priodorian of Nantglyn Sanctorum.

The same details are not given elsewhere, but we find a liability to pay 1½*d.* per head imposed on all 'nativi' in Cairmeirch for the 'constructio domorum' in Ystrad Cynan. The same liability is imposed on the free progenies per progeny and not per head, but in the 'summa' the total is calculated per head.

In Uwchaled there was a joint responsibility of all men for the payment of 15*s.* In Isdulas the butter renters alone of the 'nativi' paid 6*s.* 8*d.* for construction at Dinorbyn Fawr, and the freemen paid separately 13*s.* 4*d.* In Uwchdulas 'nativi' and freemen paid ½*d.* a head for 'constructio' at Cilcennus, in Penmaen one 'gwely' alone paid 14¼*d.*, and in Llysfaen one 'gafael' 10½*d.*, the other 'gwelys' and 'gafaels' being responsible for the 'constructio molendi'.

As regards mills elsewhere in Denbigh the freemen appear to have had no liability to maintain. An entry under Meifod, which seems to imply that the free were responsible for the upkeep of the mill, is an error, as is apparent from the fact that the dues are debited against the unfree only.

The liability of 'nativi', however, was general. In Cairmeirch the 'nativi' had commuted all their liabilities to maintain the mill at Ystrad Owain by the annual payment of 1½*d.* per head; those of Isaled had commuted their services at the Denbigh Mill for 4*d.*, which continued to be exacted, notwithstanding the fact that the mill was in decay.

In Uwchaled there had been no commutation. The 'nativi' of Llechtalhaiarn, Garllwyd, Pencledan, and Rudi-dien were bound to construct and keep in order the mill at the former place, the lord finding the timber, mill-stones, iron, and other requisites.

All the 'nativi' of the 'cymwd' were similarly responsible for the upkeep of the mill at Garllwyd.

In Isdulas the 'nativi' of Wigfair, who paid no butter rents, and the 'nativi' of Gwerneigrön, formerly responsible for the upkeep of the Bragwd Mill at Hendregyda,

¹ V. C. 78, 192-4; D. C. 486; G. C. 772.

had commuted their liabilities for a total of 3s. per annum, and the butter-rendering 'nativi' of the 'cymwd', previously responsible for the upkeep of Meifod Mill, had commuted for the sum of 6s. 8d. annually.

In Uwchdulas the old 'maerdref' of Cilcennus still maintained the mill, the lord finding the material, but the mill was leased to the whole 'communitas ville'.

In Mochdre, Rhiw, and Colwyn the 'nativi' were responsible for all the earthwork necessary to maintain the Rhiw Mill, and in Penmaen and Llysfaen the 'nativi' had commuted their liabilities at varying charges (14d. to 18d.) per 'gwely'.

§ 4. No mention is made of any building or repairing liabilities in the Creuddyn. In Cymwd Isaf every 'gafael' in Castell, free and unfree, paid 3d. per year for repairs to the manor at Aber, and a similar charge fell on practically all other free and unfreemen in the 'cymwd'.

In Nantconway no mention of such liability occurs, and the mill at Dolwyddelan is expressly stated to be repairable by the lord. In Cymwd Uchaf each unfree 'gafael' paid 4d. per year for repairs to the Aber Manor, and many freemen varying rates of 4d. to 8d. per 'gafael' for 'opus manerii' or building. By A.D. 1360 the manor had fallen into disrepair, and an effort was made to compel the freemen to rebuild it, in addition to paying the commuted charge. They petitioned to be allowed to pay £10 towards the restoration, rather than be compelled to work on it. It was in fact a general complaint in North Wales that, though the freeholders had paid the commuted rates, the payments had not been applied to repairs by the officials, who, when repairs became urgent, demanded labour also.

In Iscor the 'villani' paid 20d. for certain 'cylchs' and 'opus manerii' combined, and 5s. for repairs to the mill-stream and mill of Dinorwic. In addition the 'trefgefery' viles paid 20d. and 4½d. respectively for 'opus manerii' at Dolbadarn at the rate of 1½d. per holding. The three viles of Treflan, Llanfair (four 'gwelys'), and Llanrug (except one 'gwely'), all of them free, paid at the rate of 1½d. per 'gwely' for repairs to Dolbadarn manor.

In Uwchcor free and unfree contributed 6s. 8d. together for 'opus manerii' at Caernarfon, but the basis of division is not stated; the 'trefgefery' tenants of Ethinog alone being responsible for keeping the local mill in repair.

In Cafflogion the free (with exceptions), together with the unfree, likewise paid a joint contribution of £2 for 'opus manerii' at Pwllheli, while earthwork at the Kirch Mill and repairs there were performed by the unfree of Pen-y-barth, and the watercourses and mill at Bryncelyn were kept in repair by the unfree of Cylan and Bryncelyn.

In Dinlleyn the villeins of Brynodol and Hirdref were liable to keep the Kirch Mill in repair with the men of Pen-y-barth at the prince's charge. The mill at Cwm-is-tir the prince himself repaired.

Excluding the specially exempted, all free and unfree men in the 'cymwd' paid £2 annually jointly in lieu of 'constructio domorum'. Cymwd Maen was free of all mill-work liability, the mill at Towyn being maintained by the prince, but free and unfree together contributed £2 for 'opus manerii'.

In Eifionydd, a land of mills, the burdens of the unfree were largely concerned with repairs to the mills and watercourses.

The lord had no less than six mills in the 'cymwd'. The watercourse at Pentyrch was maintained by the unfree of Llecheithior and Pentyrch, that at Aberdwyfach by the unfree of Pentyrch, that of Melyn Newydd by Rhedynog, and that of Penychain by Penychain. 'Opus gurgitis' at Aberdwyfach fell on Gest and Pentyrch, and at Melyn Newydd on Rhedynog, who had, however, succeeded in getting it commuted for 40d. per annum; and the mills at Pentyrch, Aberdwyfach, Melyn Newydd, and Penychain were repaired by the unfree of Pentyrch, Botegh, Rhedynog, and Penychain respectively. The unfree of Dolpenmaen and Ffrynclwyd had similar liabilities.

The free of Brynbras and of some of the 'gwelys' in Glasfryn, Pencoed, Chwillog, Caderelway, Doypenarth, and Rhedynog were liable to build the prince's hall, and free and unfree throughout the 'cymwd' paid 10s. 3d. for 'opus manerii' at Criccieth.

§ 5. In Maldraeth the unfree of Aberffraw repaired the

mill and watercourses at Aberffraw, and paid 2s. in commutation of their duty to make sheds for the prince's animals. The unfree of Trefwastrodion and Trefbarneth helped to repair the manor-house at Aberffraw, those of Dyndrofol, Trefeithio, and the Maerdref repaired the mill walls, the roof, watercourses, and ditches, while the unfree of Rhosmor maintained the watercourse and mill at Dyndrofol and did 'opus manerii' at Aberffraw.

Among the free some holders in Trefwastrodion, Tref-distinet, Trefcornor, and Grugor built the King's chamber at Aberffraw, and one free 'gwely' at Aberffraw built part of the outer walls of the palace enclosure, providing nine men for the purpose, who were fed by the Prince while employed.

In Llifon, 'cooptura molendi' and repairs of the fossa and watercourse was incumbent on the unfree of Caergeiliog, Llanlibio, Trefiolthyn, and Trefeibion Meurig. Only in the latter case were the unfree to find the materials. The unfree of Llanlibio repaired the local 'manerium', and helped in making the Prince's hall and chamber. In Trefeibion Meurig the unfree and in Trefiolthyn the 'advocarii' also helped in the latter, and some 'gwelys' built the encircling manor-walls, latrine, and raglot's room.

Some of the free 'gwelys' of the clan of Hwfa ap Cynddelw, along with the free of Caergeiliog, Trefowain,¹ and Arienallt, and one 'gwely' at Llywenan helped in making the King's hall and chamber at Aberffraw, one 'gwely' in Pen Carnisiog, and one in Caergeiliog helped in 'opus manerii'. The charge was also incumbent on the carucate and bovate holders in Bodwarthen and Bodenolwyn.

In Talabolion the unfree of Averalaw, Llanddygfa, Carneddaur,² and Cemlyn roofed the hall, chamber, chapel, and raglot's room, and made the walls and outer fence at Cemmaes. Those of Carneddaur, Averalaw, Cemlyn, and Llanddygfa repaired the watercourses and fossa and roofed the mill. Those of Bodronyn ranked in the matter of building as freemen. Those of Llanfol made the fence at Cemmaes, built walls and roofed the hall and chapel, the raglot's chamber, and the 'garderoll', also repaired the

¹ Trefowain appears to be Llanfihangel yn Nhowyn.

² Unidentified.

watercourses and fossa, and roofed the mill. The Gwyr Gwaith of Cemmaes repaired walls, the fossa, watercourses, and mill, and made the walls and roof of the pantry and botella, and also built the kitchen at Cemmaes.

The freemen, except those of Bodfardden and occasional 'gwelys' here and there, participated in making walls and roofing the hall, chapel, and chamber at Cemmaes.

In Twrcelyn, where there were three mills, all the unfree were responsible to maintain the mill, watercourses, fossa, and roofs at one place or another. Those of Llysduelas and hamlets helped in building the hall and chamber at Penrhos, the 'trefgefery' tenants adding the chapel, latrine, botella, and pantry, while the Gwyr Gwaith built the cookhouse and stable.

Among the free men those of Llysduelas, Bodafon, Lligwy, and Bodewrid were liable to build the hall, chamber, and chapel at Penrhos, the lord being responsible for bringing the material *in situ*, but the liability of the free had been commuted to £3, and of the unfree to £1, so far as the hall and chamber were concerned.

In Dindaethwy the only burden was on the unfree, who were liable only for maintaining the watercourse and fossa of the mill.

In Menai, all unfree, whether of the King or the free, except those of Rhosfair, built the outer fence round the palace at Rhosfair and shared in the duty of making the chapel, raglot's room, latrine, and stable at their own cost. They made all repairs at the mills, provided the materials, and did all work there except carpentry, for which the lord was responsible. They maintained the fossa and watercourses. In A. D. 1360, however, they petitioned that the King should supply all material.

The unfree of Trefgardet were exempt so far as mill-work was concerned, and two 'gafaels' of garden men at Rhosfair had been responsible to build the stables, but had commuted the liability for 1½d. or 1d. The 'maerdref' tenants were responsible for 'opus manerii', as other unfree were, but not for mill work.

All freemen, except a few specially exempted, were responsible for an undefined 'opus manerii'.

§ 6. In Bangor Diocese, building duties lay on the unfree of twelve *villes* only, and their liability was confined to the repair of mill streams, the unfree of Trefos alone being liable for 'opus domorum'. What appears to be a commuted duty of the same type under the head of 'denarii gurgitis' is mentioned in four other *villes*, in one of which, Trefelias, the amount is given as 21 $\frac{3}{4}$ d.

Beyond these repairs of mill streams, the only actual building duty was on the unfree tenants of Garthgogof, who were liable for fencing work, the details of which are not given.

§ 7. No mention of building liabilities occurs in the Second Extent of Merioneth, but, in the First Extent, 103s. and 20s. were levied in Talybont 'cymwd' for houses and mills, 20s. in Ystumanner, 5s. in Penllyn, and 20s. in Ardudwy.

§ 8. In the Black Book of St. David's there are many references to the liability, which, in some instances, had been imposed on the free. Building or repairing mills and their adjuncts, sluices, dams, watercourses, &c., was a burden distributed all over the lordship. Some *villes* were free of it, others not, but the liability or reverse was independent of acknowledged free status.

Building and repairing structures, other than mills, finds no place in Pembroke, but we have traces of the indubitably old Welsh liability in Ceredigion.

The free 'gwely' of Llandewibrefi built a hall, chamber, kitchen, stable, and grange at their own cost; so, too, did Lodrepedran and the villages classed with it.

The tenants of Llanogadwy and other *villes* made fences round the manor-houses, and built and wattled the lord's houses, and the bondmen of Trefin made mud walls round the fort, for which, however, they received payment.

§ 9. An incidental reference of interest is to be found in the Index to the Llyfr Goch Asaph, relative to Llanelwy, where in A.D. 1380, the old liability, existing from time immemorial, which imposed upon the *ville* the duty of providing six men, throughout the year from sunrise to sunset, to maintain the Cathedral, was formally abolished, owing to the 'paucity of men', no doubt caused by the ravages of the plague.

§ 10. In South Wales, outside St. David's, we find the

unfree of Cantref Selyf working at 'hirsoun' once a week, and those of Colewent, along with the free of Aberedw, made a 'hirsoun' round the castle every three years. It was a general duty of free and unfree alike in South Wales to keep the mill and the watercourses in repair, but in some *villes*, e.g. in Cantref Selyf, Ogmere, Raglan, Llanddew, and Lamphey, the burden was imposed on the unfree only.

§ 11. In the lordship of Bromfield and Yale we find the liability imposed on practically all classes, free and unfree alike.

The manor at Llanarmon, consisting of a hall, chamber, stable, grange, and cattle-shed, each 64 feet long and thatched with lathes instead of straw, was maintained by the freeholders of Llysycil, Alltymbyd, and Llandynan, and the unfree of Gwensanau, Erryrys, Bodidris, Chweleirog, and Bryntangor.

The Bryn Eglwys mill, exclusive of iron and iron work, was maintained by the Gronw Goch group in respect of their holdings other than Llysycil and the free priodorian of Tal-ybidwal, Geufon (in part), and Llandynan.

The manor at Marford, consisting of a hall, chamber, and cookhouse, thatched with straw, was maintained by the unfree tenants of Sesswick, Marford, and Pickhill; the mill was thatched and the mill pond kept up by the messuage holders of Pickhill; while the free groups of Beiston, the freemen of Dutton y Brain, Burton, Allington, and Gresford, along with the unfree of Dutton Diffaeth, generally maintained the mill premises.

A similar liability to maintain the Marford mill or the Wrexham mill was imposed on the whole of the progenies of Ken' and the Elidyr family, together with the freemen of Abenbury, Erbistock, and Eyton.

All who were responsible for the Marford and Wrexham mills, except the unfree tenants of Sesswick, Pickhill, and Marford, maintained the manor of Wrexham, consisting of a hall, cookhouse, and chamber, thatched with straw, and this liability they shared with the freemen of Sontley and Eglwyseg, and the unfree tenants of Dinhinlle and Cristionydd Dinhinlle.

VI

PORTERAGE

§ 1. COMPULSORY porterage, whether paid for or not, was entirely unknown under the old Welsh law, except in so far as it was a part of military service. It was obviously introduced by the Normans, who appear to have mapped out the country according to the main roads, and to have imposed upon the unfree the liability to render porterage, usually upon payment according to a fixed tariff.

§ 2. In Denbigh the liability was practically confined to the carrying of material for mill work. In that Honour it is to be found in Llechtalhaiarn, Garllwyd, Pencledan, and Rudidien, the tenants of which unfree villes had to carry the requisite materials to the Llechtalhaiarn mill, and in Mochdre, Rhiw, and Colwyn, whose tenants had to provide and carry material for the Rhiw mill, except the mill stones, axle trees, and mill wheels. In addition, in Uwchaled, the unfree were liable to carry supplies for victualling Denbigh Castle.

§ 3. In the Record of Caernarfon, however, forced labour of one man and horse at 2*d.* per diem was common among the unfree.

In the Creuddyn it was the duty of all 'treweloghe' holders, but not of the 'maerdref' tenants. The rate of payment is not specified in that 'cymwd'. In Cymwd Isaf, porterage was incumbent at fixed rates on the unfree from Conway to Trefriw, Aber and the ferry to Beaumaris; in Nantconway, it was incumbent wherever required; in Cymwd Uchaf likewise, with the addition of food free while engaged, though the jurors stated that the only remuneration was such as the lord was ready to pay; in Cymwd Iscor between Conway and Caernarfon, and to Harlech or within the 'cymwd' at half rates; in Uwchcor from Caernarfon to Criccieth, Nevin and Pwllheli, as well as within the 'cymwd'; and in Cafflogion, where it was

imposed on the villes of Cylan, Bryncelyn, Llaniestyn, and Pen-y-barth, throughout the 'cymwd'.

In the latter 'cymwd' the unfree of Mochras paid 5*d.* per annum in commutation of providing porterage for journeys in the mountains.¹

The unfree of Pen-y-barth also carried materials, without supplying horse transport, for the Kirch mill.

In Dinlleyn the unfree supplied porterage at a fixed rate between Nevin and Caernarfon and Criccieth; in Cymwd Maen the only reference to porterage is in the 'trefgefery' villes and the small 'treweloghe' hamlet of Pegof,² whose tenants carried between the ville and Caernarfon; and in Eifionydd it fell on the unfree tenants of Llecheithior, Ystumllyn, Dolpenmaen, Nevin, Pentyrch, Bodeach,² and Rhedynog, while porterage of stone for the mill was the liability of Gest, Pentre, and Penychain.

§ 4. In Anglesea all classes of the unfree were liable in Aberffraw and elsewhere in Maldraeth. In Llifon those of Treban Meurig carried in return for food and drink, those of Llanlibio apparently without pay of any kind, a burden imposed also on Caergeiliog and Bodenolwyn in respect to building material and grinding stones for the mill.

In Talabolion, carriage of material for the mill was imposed on Llanfol, Cemlyn, and the Gwyr Gwaith of Cemmaes, the latter at their own cost. No labour was supplied by other tenants of Cemmaes.

Hay and oats were carried at reasonable rates by the unfree of Aberalaw and Bodronyn,² and materials and millstones by the tenants of Cemlyn, Llanfol, and the Gwyr Gwaith as far as Penrhos, for which the last-named received food and drink, the others 2*d.* per day.

In Twrcelyn the porterage of millstones was the duty of the tenants of Bodhunod, Lligwy, and Rhos-y-mynach; of other material of the unfree of Bodhunod and Deri throughout Anglesea; and of the Gwyr Gwaith of Penrhos from Penrhos to Cemmaes or Lammas. Porterage of millstones was not paid for.

¹ The phrase used is 'ad helendo in montibus'. Query is 'helendo from 'helynt', meaning, in Old Welsh, 'journey'?

² This ville has not been identified.

In Dindaethwy all 'trefgefery' tenants carried stones for the mill at their own cost, and other material at the rate of 2*d.* per day. In Menai the duty was confined to the 'maerdref' tenants of Rhosfair, who were remunerated by being fed.

§ 5. In the Second Extent of Merioneth, portorage at 2*d.* per day is mentioned for the carriage of stone in thirteen villes, in some of which cases the tenants were fed as well when engaged; while, in the First Extent, the unfree of Dolgelley paid 4*d.*, the foreign tenants of the same ville 4*s.* 6*d.*, the unfree of Talybont 6*s.* 8*d.*, of Ystumanner 20*s.*, of Penllyn 10*s.* and 1*s.* 4*d.*, and of Ardudwy 20*s.*, in all cases for the portorage of victuals.

§ 6. In Bromfield and Yale some references are found to portorage in Bromfield. The unfree of Sesswick and the messuage holders of Pickhill carried stone to Marford mill; a liability shared apparently by the tenants of the freemen of Burton, Allington, and Gresford. In Marford and Hoseley the tenants were liable to compulsory portorage within the lordship of Bromfield, and outside on the charge of the lord for food and the like.

The unfree of Dinhinlle and Cristionydd Kenric were also liable for 'tallage and carriage', but the liability is not referred to elsewhere, and is entirely absent from Yale.

§ 7. In the Black Book of St. David's, portorage varied infinitely in details from place to place, but the burden fell indiscriminately on all tenants.

It included portorage of building material and millstones to the manor-house or mill, of meat, utensils, and other equipage during the Bishop's tour, carriage, between stated points, of all kinds of goods, straw, crops, wood, and the driving of the Bishop's beasts to pasture and mart, &c. It was rarely paid for, but in some few cases a limit was placed on the amount of the burdens.

Nowhere, perhaps, more than in the portorage liabilities does the hand of the Norman appear more strikingly in Wales; and nowhere more convincingly does it appear that, in Wales as it had been in England, the levelling influence of the Church meant levelling down as much as up.

§ 8. In South Wales, portorage or 'averagia' was common. Haulage of timber for castles and manor-houses was imposed on many tenants, free and unfree, in respect of Strigoil, Whitecastle, Builth, Ewyas Lacy, and Llandovery castles and many manors. A like burden was imposed on all tenants in Carmarthen and Cardigan.

In A.D. 1338 ten 'cymwds' were heavily fined for repudiating liability to carry hay and timber, obviously an indication that the exaction was new.

Among other portorage liabilities we find the cartage of charcoal, millstones, tiles, firewood, food, &c., and in South Wales there was hardly a ville which, under Norman rule, escaped the impost.

It is small wonder, therefore, that in A.D. 1360 on a general petition from Wales, Edward III strictly limited the liability to repairing materials and victuals, and then only if paid for at proper rates.

VII

MILL DUTIES

§ 1. MILL duties were of two kinds: compulsory labour and repairs, with which we have already dealt, and suit at mill or compulsory grinding of one's own produce at the lord's mill.

§ 2. Compulsory grinding appears nowhere as a liability on any landholders in the Ancient Welsh Laws, wherein the references to mills are few.

It was one of the privileges of Arfon that milling should be free; and in the Gwentian Code we are told that the smith had the same freedom to mill as the King had. The XIth Book refers to the mill tolls as one of the lord's dues, and the XIVth excludes mills from partition among brothers.

That is practically all the laws have to say on the subject of mills, with the exception of fixing the legal worth of component parts of the mill apparatus.¹

§ 3. In the Surveys, however, many details are given, and the striking note of the Surveys is the great contrast between mill dues in Wales and in England. A very extensive freedom to mill is characteristic of Welsh custom, and any variation from that rule was probably a recent innovation.

§ 4. There were two classes of mills in the Honour of Denbigh, the lord's mills and the mills of the free progenies, in many of which the lord had acquired a share or even full ownership owing to escheat.

The original mills of the lord were situated at Ystrad Owain, Denbigh, Llechtalhairan, Garllwyd, Bragwd (Hendre-gyda), Meifod, Cilcennus, Rhiw, and apparently small mills at Penmaen and Llysfaen.

The lord appears to have acquired by escheat original free mills in ten viles, and shares in twenty-five others.

¹ V. C. 106; G. C. 680; XI. 264; XIV. 688.

It is important to note the very widespread nature of what in old Welsh times had been entirely free mills.

Private mills, in which no portion was escheat, survived in Lleweni and Galltfaenan, and possibly also in Twynan, Taldragh, Chwilbren, and Garllwyd.

All the mills owned by the lord, and all in which he had a share, were leased out on farm, mainly to Englishmen, though one Welsh lessee, Ken' ap Bleth, held a number of the lord's mills.

The only exception to the rule of farming was at Llechtalhaiarn.

These mills were not manorial in the sense that all corn must be ground there. On the contrary, the freemen were at liberty to mill where they willed; and the only place where it was compulsory on the unfree to mill at the lord's mill was in Uwchaled, where all the unfree had to mill at Llechtalhaiarn, paying one-sixteenth of their corn as toll. In no case was suit due by any freeman at any of the lord's mills.

§ 5. In Caernarfon and Anglesea most of the freemen possessed their own mills, and were not bound to mill at the lord's mills. Those who had no mill of their own ground at the lord's mill, some of them at fixed rates, and others free of charge; while some were at liberty to mill wherever they chose, even if they had no mill.

Nothing is said in Creuddyn imposing any mill duty, and no rate is fixed in Cymwd Isaf.

In Cymwd Uchaf the sole freemen who owned no mill, those of Bodfeilir, milled free at Aber. In Mochras the freemen, who owned no mill, milled where they pleased, likewise in Ystumlllyn, Rhedynog, Aberffraw, and throughout Llifon, Twrcelyn, and Dindaethwy, but sometimes, if they milled at the lord's mills, they paid toll. In twenty-two viles only in Caernarfon were any tenants compelled to mill at the lord's mills, and in Anglesea in twelve viles.

In Maldraeth, wheat and barley were milled free, but the thirtieth vas was charged for oats, and in Nantmawr the twenty-ninth.

Nothing is said as to the rates charged from the unfree,

except in the case of the tenants of the free at Hendregadoc, who paid one-twenty-fifth; but the unfree in both Caernarfon and Anglesea were all liable to mill, at unstated rates, at the lord's mill.

§ 6. Apart from the liability to do suit at the mill, no mention is made of mill duties in the Second Extent of Merioneth, Bangor Diocese, or St. David's.

In Merioneth a few freemen in thirteen viles did suit at the lord's mill, and all unfree; and in St. David's many tenants did suit at mill, without any distinctive line of demarcation being apparent.

The First Extent mentions only seven lord's mills, and it is said that the tenants of Penmaen paid, in lieu of mill-charges, half a crannoc of wheat annually, those of Penllyn 16½ crannocs of oats, certain free farmers 4 crannocs, while the proceeds of Penaran amounted to 12 crannocs of oats, and of Ystumgwern to 32 crannocs of wheat.

§ 7. In Bromfield and Yale the lord appears to have had mills at Pickhill, Bryneglwys, Cymmau, Llanarmon, Wrexham, and Marford. Nearly all tenants, free and unfree, milled at one or other of these mills, paying one-sixteenth of their corn as toll. There were a few exceptions, but very few, to this general liability.

There can be no doubt that this was a recent innovation against the spirit and practice of Welsh custom.

§ 8. Freedom to mill appears to have been general also in South Wales. In Rhymni only is there definite trace of compulsory milling; and there are a few rare instances where freedom to mill was secured by payment of a licence fee.

VIII

BOON AND HARVEST WORKS

§ 1. THE system of boon-works, so prevalent in early England, is almost entirely absent from the old Welsh Law.

In the Venedotian Code (p. 194) liability is placed on the tenants of the 'maerdref' to thrash, kiln-dry, reap, harrow, and mow the hay on the King's garden land, and also to thrash and dry any produce received by the King in revenue.

Beyond this summary, confined to 'maerdrefs', there is no mention in the laws of such liabilities. In the Surveys a more extended account is given of such duties.

§ 2. In the Denbigh Survey we have some references to autumn harvest work. It was a liability to assist in gathering in the lord's harvest for three days. It fell on unfree men only, and each day's work was valued at 1½*d.* The liability had been commuted into a cash payment throughout the Honour of Denbigh.

It was due from all unfree in Caimeirch, Isaled, six viles in Isdulas and six in Uwchdulas. In many of these viles a liability to plough and harrow was also commuted. No due of this kind is found in Uwchaled. In Wigfair, where all the unfree admitted liability, the Map Gwyr Newydd claimed exemption on the ground they had no houses there. Their contention was overruled, but the raising of the point is of interest, as it shows that it was ordinarily assessed on residential sites.

§ 3. In the Record of Caernarfon mention is made of Gwyr Gwaith, indicating a labour tenure, in Cemmaes and Penrhos, but no mention is made of harvest work. The only reference to such liabilities appears in Pen-y-barth, where the unfree 'gwelys' paid 5½*d.* per diem in lieu of autumn works and harvesting.

§ 4. The custom prevailed in the Diocese of Bangor, where autumn reaping or 3*d.*, representing three days'

service, is found in twenty-six villes, some of which were free. In two villes in the Priestholme Extent reaping is mentioned as a due.

§ 5. No mention of the duty is found in the Second Extent of Merioneth, save in Pennal, where the unfree worked to the value of 2s. 4d. per year, but it was very common in the First Extent.

In Dolgelley three unfree tenants performed six boon-works per week throughout the year, and the nine unfree foreigners harrowed, ploughed, and sowed to the value of 20s. Ten farmers paid 7s. 4d. for their unfree tenants in Talybont. The boon-works of the unfree of Ystumanner 'maerdref' were valued at 30s. 2d., of Ystumanner 'cymwd' at 7s. 6d., of Ceffyng 4½d., of Penllyn 3s. 4d., of Ystumgwern 10s., and of Ardudwy half a marc (6s. 8d.).

In addition, every landholder in Talybont, except the uchelwyr, paid 1d. per year or supplied one man for a day, every house in Ystumanner 1d. per year for upkeep of harrows, and certain farmers in Penllyn 3s. 4d. in lieu of autumn works.

§ 6. In Bromfield and Yale the liability was widespread among the unfree. Three days' autumn work, reaping and hoeing, valued respectively at 1d. and ½d. per day, was demanded from nearly all the unfree of Wrexham, Marford, and Hoseley. Also from the cotarii of Pickhill and the unfree of Llanarmon and Creigiog, while in the case of Gwensanau, Erryrys, Chweleirog, and Bryntangor the liability was confined to one day's labour. In Wrexham one tenant was liable for twelve days' labour, while in Marford one worked for six days, being paid 1½d. per day, another labourer receiving ½d. per day for food.

In addition, in Marford and Hoseley all tenants had to supply a day's ploughing, valued at 4d. a day, and all tenants, other than cotarii, who possessed horses were liable to harrow for a day, but a mutilated foot-note suggests that the liability had been commuted.

§ 7. Boon-work is frequently mentioned in St. David's. Harvest work, varying infinitely in detail, was general throughout the lordship. In some places the burden was

heavy, in others light; sometimes the lord found food during harvest, in others he did not. The burden fell indiscriminately on all kinds of tenants, and included gathering in the hay, haymaking, ploughing, harrowing, reaping, carrying and stacking corn, weeding vegetable plots, &c.

Some tenants did one, others another, and the duration extended from one to three days.

Full details are given in Mr. Willis-Bund's tables in his Introduction to the Black Book.

§ 8. Elsewhere in South Wales, ploughing and reaping was required in nearly all unfree villes, and it was common also for the unfree to thrash, harrow, winnow, hoe, weed, harvest, wash sheep, and shear. In Hay (now in Hereford) the free were liable to do three days' reaping and ploughing. In Whitecastle the liability was per bovat, each bovat providing an ox for the lord's ploughing for a day, a day's weeding, a day's reaping, a day's hay- and a day's corn-harvesting.

In some manors the assessment was determined by the number of oxen owned by the tenant, while in others, e.g. Cantref Selyf, commutation had become the rule.

There was infinite variety in detail, but boon-work was, in Norman times, almost universal in the South.

IX

MILITARY SERVICE

§ 1. MILITARY service was a characteristic service of early Wales, but it was not a due attached to land. It was a right incidental to status. Men did not hold land in return for military service; the privilege of fighting was a privilege, and not a burden, and was claimed and exercised by freemen as their birthright, incidental to their freedom.

§ 2. A complete study of the military organization of early Wales has yet to be undertaken; but we can only notice here the general outlines as they appear in the Codes.

It was apparently of a twofold character; there was first of all the bands of youths, whose sole occupation was arms, there was secondly the general military levy.

§ 3. Of the bands of youths the laws do not say much.

On attaining the age of fourteen, every Welsh youth was commended to the territorial lord, and it was part of the lord's duty to train him in arms, but he did not necessarily become a professional soldier. As soon as he became entitled to land he appears to have taken up its cultivation and management, and passed into the general body of tribesmen, who could be called out according to fixed rules.

The bands of youths are referred to in Giraldus; the laws, when they speak of 'gwynwyr', also indicate their habit of roaming about the country outside their own lordship in search of occasions to display their prowess in, but the Codes have little to say about them.

We are told simply that if a member of a 'gwynwyr' band belonging to one lord were killed while travelling, under his lord's directions, in other territories and while not engaged in actual battle, his slayer became subject, not to blood-fine, but to be sold as a thief. We also hear that the youths were attached to and resided with the Edling, but they were under the direct discipline of the Penteulu. Their characteristic was unflinching devotion

to their lord, and it was upon them that the maintenance of the Prince's or lord's power immediately depended.

§ 4. The law regulating the general military levy is much more detailed.

The King was the head of the militia of the land. In the army every person, being free, rendered service. So far the system was akin to the feudal system.

But Welsh military law differed materially from the feudal law, not only in the fact that it was not the basis of any land tenure, but because strict limitations were placed on the lord's right of summons to arms.

This was due to the fact that the primary object of the Welsh military levy was defence, not attack.

The Triads, themselves a late production, strike the correct note of the system, when they say that the army was necessary 'for protection against strangers and a border country molesting, and against those violating privilege and law'.

The Codes give effect to this underlying principle. Service might be what we would now call foreign service and home service. Both of these services were due from all freemen; and any landholder incapable of bearing arms was bound to maintain a man in arms to take his place. But the power to call out the levy for foreign service was limited. 'The King', the laws say, 'is not to go out of the country more than once a year, and that for six weeks only.' Continued offensive warfare beyond the border was impossible: the laws did not allow the raising of troops for anything more than a temporary raid; and Welsh history, e.g. in the cases of Richard II and of Owain Glyndwr, bears eloquent testimony to the survival of this ancient provision.

On the other hand, for service within his dominions, the King had full power to call out the levies, whenever and as often as he wished.

Military service was a privilege in which the bondman was not permitted to share. The unfree 'ailts', however, could be recruited for transport work, and every unfree 'tref' was, when called upon, bound to supply a man, a horse, and an axe to form the King's camp, whether in

peace or war, but it is significant that this duty was not a forced one; if the King called for it he had to pay for it. The unfree 'aillts' could also volunteer and, at any rate in later times, did so freely.

The duty of maintaining and repairing the King's castles was incumbent on all except the 'maerdref' tenants. The castles were few in number and unimportant before A.D. 1284, but the legal liability, which was warranted, to a limited extent, by the ancient Welsh laws, became, after 1284, one of the most hated of the oppressive weapons wielded against the Welsh.

Military service was due from all free tenants of the Church, occupying abbey or bishop land. The Venedotian Code is emphatic on that point, but a later, and apparently a clerical, authority in the Anomalous Laws asserts that a laic holding abbey land was not liable to render military service, unless he had secular land in a territorial lord's dominion as well, in which case he rendered service for that land. In this authority we see the later growth of military service being attached to tenure and not to status.

Boys under fourteen and persons insane were to be kept from arms in addition to bondmen, but this provision was concerned with the prevention of murder or accidental homicide. The Triads, however, enumerate a great number of persons who were exempt, including landless men, but these exemptions have no authority in the laws.

The Anomalous Laws have a very interesting provision to the effect that a man returning from war was entitled to free support, and that no man could be sued or summoned while engaged in service, and no creditor could be compelled to accept payment of a debt due to him while likewise engaged.¹

§ 5. There is naturally nothing in the laws relative to strategy and tactics. We know the military levy contained light cavalry and footmen, and that the privileges of Arfon secured the van of the hosts of Gwynedd to the sons of Arfon.

The ordinary equipment were the sword and knife, the

¹ V. C. 78, 170, 190-2; D. C. 486; G. C. 770-2, 780; VI. 114; IX. 302; X. 328; XI. 402; XIV. 604.

spear and buckler, and the bow (made of the wild elm) and arrows. We find mention also of the battle-axe, and, in Giraldus, of long lances, coats of mail, greaves and helmets. We are also told that hauberks were sometimes worn, and that the shields carried were coloured gold or silver or enamelled with blue. Still, the spear in North Wales and the bow and arrow in South Wales were essentially the national weapons.

Regulations of no particular interest are given as to the division of spoil taken in foray. All gold, silver, precious stones, buffalo horns, gold embroidered clothing, goats, furs, arms and prisoners went to the King, the rest was divided among the host.

In regard to prisoners the Anomalous Laws in one passage say the territorial lord whose man took a prisoner became possessed of the prisoner, and we are further told that property looted from Wales and recovered in a counter-foray, 'rescued from war to peace', as it is described in one of the characteristically striking phrases, was to be shared between the recoverer and the prior owner.¹

The early Middle Ages regulated the rights of victors, especially *inter se*, by a very strict code of etiquette, and these rules in Welsh Law were observed generally by all European peoples.

§ 6. In the Survey of Denbigh there is little reference to military service. The general liability to serve is assumed as an incident to land-tenure rather than openly expressed.

It is, however, stated in regard to certain tenants in Gwaenynog, Taldragh, and Gwytherin that they were liable to service in the army like all other freemen of Isaled, and in the Common Customs of Uwchaled it is said that there was the same liability to military service as existed in Isaled.

In addition, we have some special references to military service.

The Wyrion Eden—a special *corps d'élite*—owed no dues except suit at Court and military service with the Prince when called upon. The same rule is repeated in respect to the 'gwely' Hirodel in Meifod, the Wyrion Barth in Brynfanigl,

¹ V. C. 78, 106; G. C. 792; V. 46, 92; XI. 448; XIV. 584.

the 'gwely' Eden' Ringild in Cilcedig, and the holders of the unescheated area in Gwaenynog Wyntus, Gwytherin, and Taldragh. Many escheated areas were regranted on the definite service of castle-ward and general war service.

§ 7. In the Record of Caernarfon military service as the sole render from the Wyrion Eden' is frequently mentioned; it was also the sole due from some of the freeholders of no less than fifteen villes.

The Record also mentions the liability of the garden-men of Rhosfair to supply sumpter-horses.

In some of these cases service was at the King's cost, in others at the tenant's cost for forty days; in one case the service was as 'marchog', in another as far as Shrewsbury, and in another within the marches. It would seem that these special cases were all cases where the liability extended beyond the six weeks of the Codes.

§ 8. In Bromfield and Yale military service was required from practically all freeholders, but in addition we find some unfree men subject to the duty also.

It was required from unfree tenants in eight villes, but it is not mentioned with reference to the other unfree of the lordship. The extent of military service was much wider than what the old laws demanded or what was expected from Crown tenants elsewhere in North Wales. Service was at the lord's expense and equipment; but its duration was limited by the lord's will only, and it is repeatedly asserted that such service was due not only in Wales, but in England and Scotland also, a curious echo of the Scotch wars in which Welsh troops did participate.

§ 9. The liability to military service is not mentioned in the Second Extent of Merioneth, but there is no question it existed there; for, in the proceedings Quo Warranto, in Edward III's reign, the Vicecomes of Merioneth claimed that he, as overlord, was not liable to equip Welshmen called out for war. He attempted to place the burden of equipment on the tenant or the prince, except where called out in his own service.

In the First Extent, moreover, it is said that the free tenants and villains of the King's demesne in Ardudwy serve for six weeks at their own cost.

§ 10. In Bangor Diocese military service is mentioned expressly in no less than thirty villes plus Cymwd Twrcelyn. In the latter it is definitely stated also that all unfree men served just as the free did, and of the thirty villes mentioned by name no less than twenty were unfree.

§ 11. In St. David's military service was of a totally different character. It had become there, in the case of lands held on Knight's fees, the condition of tenure of feudal land. All sorts of people, new burgesses, cottage-tenants, and the like, had duties assigned to them in war, so showing it had there become an incident of tenure and not of status. One interesting survival, however, occurs in Penenedon, where the stock or 'stipes', said to hold by 'antient serjeantry', provided one horseman for three days and three nights at their own cost.

§ 12. In other parts of South Wales there are many references to the liability. Generally speaking there was no liability unless the lord himself went, and in a few cases, like that of the Hospitallers, there was a complete exemption.

A few free tenants were liable to castle-ward, those of Old Radnor and Radnor Trefwern at Radnor Castle, those of Stowe at Newport; while there are traces of a commuted duty of castle-ward at Pembroke and Cardiff. Castle-ward was, of course, not of Welsh origin.

In Cymwd Iscoed all freemen served at their own cost for three days within Cardigan; beyond that period or outside Cardigan at the lord's cost. A similar rule applied in Penterch, St. Clears, Abercwm, Llandeilo, and Pencoed, service at own cost being limited to the 'patria'.

An interesting variety is Cantref Tewdor, where, instead of every freeholder being liable, the whole 'cantref' provided 300 men to serve in Brecon at their own cost and outside at the lord's.

This type of levy was, no doubt, introduced as a result of Edward I's general military policy of fixing quotas.

Instances of unfree tenants being liable are to be found in Cemmaes, Clifford, and adjoining villes, where the liability was at own cost for one day, and Llanfihangel, where the unfree men were equipped as bowmen.

X

MISCELLANEOUS RENDERS AND SERVICES

§ 1. IN the Surveys there are occasional references to other miscellaneous renders, some of which do not appear in the ancient laws.

They would seem to be of later origin, but, except in South Wales, where perhaps the Bishop of St. David's introduced those dues on ecclesiastical lands, we cannot say whether they were all introduced prior to or subsequent to A. D. 1284.

It is possible some of them crept into Wales under the native Princes during the four centuries which elapsed between the codification and the Norman conquest of Wales; on the other hand, it is possible some came in with the resettlement incident to Edward I's occupation.

A brief summary of these additional renders follows.

§ 2. *Forest dues.* Considering the fact that Wales was essentially a forest land, very little information is forthcoming in the laws as to rights in forests.

Casual, but only casual, references are made to the King's forests and to private forests.

In regard to the former the cutting of timber was free to everybody, if required for the roof of a church, spear shafts to be used in the King's service, and for a funeral bier. Out of private woods, it was free to any one to cut, without payment to the owner, timber for a roof-tree and two roof-forks.

Deforestation was not allowed except by agreement of co-sharers. Oak-woods are mentioned as impartible, which indicates the occupation by clans of woodland as common, and regulations for the closing of woods during certain seasons and the right to seize swine trespassing therein occur frequently.

Beyond this there is no mention of woodlands in the laws. We see, however, that there were reserved Crown

forests, common, and private woods, with some right of cutting timber free to all men.¹

In the Surveys we have greater information, and in Denbigh and Merioneth, at any rate, the actual forests are definitely mentioned.

Such forests and waste lands appear to have been of a twofold character: the prince's or lord's woodland and waste, and the communal woodland and waste, that is woods belonging to the 'priodorian' of particular areas.

In addition, there were a few private woods apparently owned by individuals.

In the communal and private woods the lord had acquired shares through escheat on account of participation in the last struggle under Llywelyn and in the war of Madoc.

Generally speaking, in the last-mentioned cases, what the lord did was to lease the forfeited share to the other surviving co-sharers on a fixed rental. In some cases the area was partially deforested, and let out, either as arable or pasture land, to individuals on fixed rents.

There were many princely forests in Denbigh, the chief ones being Cernyfed, Bishopswal, Hafodelwy, Iscaerwen, Coedrachan, Segrwyd, Garth, Lleweni, Le Graba,² Prees, Archwedlog, Pennantcledwen, Pendinas, and Coedrug.

As in the case of the escheated shares in the communal woods, so in the lord's woods, there was a certain amount of deforestation carried out by the lords of Denbigh, the portions deforested being let out on annual rents. In addition pasture rights were given on fixed rentals, and the Survey shows a number of contests between the lord and the freemen, and also between the free and the unfree, relative to the exercise of pasturage rights.

Generally the 'nativi' had the same rights of pasture as the freemen, and the great forest of Prees was common to all tenants in the Honour, forming, apparently, the summer grazing-ground of all northern Denbigh.

In Prion, however, it is stated that the freemen denied that the 'nativi' of Caimeirch had any share in the common

¹ V. C. 180; D. C. 448, 450, 554, 586; G. C. 742, 766, 782, 792; V. 40; IX. 268, 270.

² Q. Nant-y-crabas?

woods, and that all they could claim was pasturage and estover by licence, the 'nativi' claiming the same rights as the free had, according to the measure of 'tunc' paid by them. The unfree claimed similar rights, also, in Postu and Isceibion, and a claim of the 'maerdref' tenants in Cilcennus was definitely rejected.

In Cernyfed woods all tenants are said to have estover by licence. Herbage was leased on a fixed payment to the *communitas ville*, and there was a dispute between the lord and tenants as to what area was included in the leased forests. The same occurred in Coedrachan.

In the small wood of Isceibion the tenants laid claim to pasturage rights, and similar disputes are found elsewhere.

The dispute really was who had proprietary rights in the wood or what was the exact area leased out for pasture.

In regard to rights of cutting wood, &c., the rule in Caimeirch was that the 'priodorion' had estover of housebote and haybote in their own woods, after obtaining licence, provided they did not sell wood or uproot trees. If they did so, even in their own woods, or destroyed green trees they were fined 15s.

In Isaled free and unfree had such rights in their own woods, and those who had no woods of their own could exercise, by licence, the same rights in the common woods. The same was the case in Uwchaled and Isdulas, and, though there is no direct statement to that effect, probably in Uwchdulas as well.

Other Surveys, while mentioning forests, omit reference to popular rights therein.

§ 3. *Fencing-dues.* A small charge, levied on the unfree mainly, is connected with the forests.

This due was a charge of 1d. on any 'nativus', and, in Uwchaled, on the free as well, making new fences or repairing old fences, whether he took the material from his own or the common woods or from the lord's woods. If he had no right in any common or private wood he could get fencing from the lord's woods, but if he had woodland of his own he must still pay the fee.

Mention is made of it everywhere except in Uwchdulas,

which was probably governed by the same rule, as we find the totals of the forest revenue exceed the details given in the Extent. Even in that 'cymwd', it was paid expressly in Penmaen and Llysfaen, wherever a tenant made a fence.

The due is also mentioned in some four vills of the Denbigh estates of the Bangor Diocese, where the rate was 1½d. per ville, some of which were free.

Fencing charges occur also in Bromfield and Yale, and certain tenants were liable to a charge of 1d. per year whenever they fenced their lands or part of their lands, the fee apparently giving the payer licence to cut in the lord's woods for the purpose.

Outside Yale the fee is found only in the case of two tenants in Marford, but throughout Yale, except the southern portion, it was the general rule, and applied to free and unfree alike.

§ 4. *Gathering nuts.* A peculiar due, which may be conveniently classed with forest dues, is the fee for gathering nuts, confined, so far as is known as yet, in North Wales to Bromfield and Yale. The countryside is famous for its nut-rows, and we find a levy of 1½d. per year frequently made as a commutation for the duty to gather nuts, in some cases the charge being reduced to 1d.

The only cases where it was levied on free men were in Eyton, Llandynan, and Dutton y Brain; elsewhere it was levied on nearly all the unfree. In some cases the charge fell only on such tenants as had houses, in others (Sontley and Eglwyseg) on those who had houses in which there was 'smoke' or a 'hearth'.

In South Wales it is found in Cantref Selyf, in lieu of gathering one trugg of nuts, and in Ewyas Harold.

§ 5. '*Hafodydd.*' Occasional mention is made in the Surveys of great grazing areas, other than meadow lands. These are generally called 'hafodydd', or 'ffrithoedd'. The capacity of the 'hafod' is generally mentioned in terms of cattle grazeable. The King appears to have claimed sole ownership therein, and some 'hafodydd' were farmed out to new comers, others were rented to obviously old occupants.

Such 'hafodydd' existed in Nantconway, Iscor, Uwchcor,

and Cwm-is-tir in Caernarfon, and Istreweryn, Talybont, and Uwchartro in Merioneth, eight in number in the Second Extent, six in the First.

It would seem as if some large grazing lands had been appropriated from the tribesmen by the Normans, and their use made a fresh source of profit.

§ 6. '*Turbaries.*' The same fate befell the old '*turbaries*'.

'*Turbaries*' claimed by the lord in Denbigh and leased by him existed at Prees, Cilcein, Trofarth, Hendre, Lleweni, Tebrith, and Llwydcoed. There was another '*turbary*' in Gwytherin in the common waste, which the tenants of the progenies of Cynan ap Llywarch could not use without paying rental of 1s. to the lord of Denbigh. Other '*turbaries*' in Denbigh were not appropriated.

§ 7. *Suit.* Suit can hardly be called a '*render*'; it was a service of homage in recognition of tenure, coupled with a duty to make presentments. Its complete absence in old Welsh Law, and its universal application in the Surveys is eloquent testimony to the growth of the conception of tenure.

There were four kinds of suit, suit at County, at Hundred, at Mill, and at Grand Tourn.

Suit at county (or '*cymwd*') was required of all free estates which contained more than four bovates of land, suit at hundred from most of such estates and all other free estates. With suit at mill we have already dealt. Suit at Grand Tourn, instituted by the Statute of Rhuddlan, was performed by free and unfree of certain vills in Caernarfon and Anglesea.

In Bangor suit was required of all tenants. In Merioneth the free alone appear to have done suit at '*cymwd*' and hundred or hundred only, and in Bromfield and Yale freemen alone held '*per homagium et fidelitatem*'. In St. David's suit was invariably at Court.

The liability was new and feudal, and need not detain us further.

§ 8. *Prisage of ale.* This liability was a recent importation, unknown to the Welsh Law. It is not mentioned in

the Survey of Denbigh; and in the Record of Caernarfon it was confined to a few places in Anglesea and Caernarfon. In Anglesea the '*cymwds*' of Llifon, Talabolion (except Bodfardden), and Twrcelyn were subject to it.

In Caernarfon it appears in Dinlle only.

Sixpence per '*bracula*' was charged on freemen for brewing ale for sale, but not otherwise.

The unfree of Hirdref brewing paid four gallons out of every brew to the Raglot, and the free Church tenants of Ffrwynclwyd paid a prisage of 2s.

In St. David's the prisage is found in various vills, levied at various rates of 4, 6, 7, 12, and 13 gallons per brew. It does not, however, occur in Pembrokeshire.

It does not occur in the earliest Extent of Bromfield and Yale, but it appears there in later times.

In South Wales it was general in towns, the charge being 2d. per quarter of wheat and 1d. per quarter oats. It is found also in Llandeilo, Strigoil, Haverfordwest, Pembroke, Raglan, and Llanfihangel.

In the last two mentioned places brewing was free for two weeks before and after Christmas, Michaelmas, and the Feast of the Annunciation.

In the proceedings Quo Warranto (*temp.* Edw. III) many lords claimed prisage from their tenants. The Bishop of Bangor did so, so also John de Houson and Walter de Manny in Merioneth, Hywel ap Gronw in Penymynydd, John ap Griffith, and Thomas of Myssenden in Caernarfon. The result of the claims is not stated.

§ 9. *Wreck duty.* This service is confined in the Surveys to Pembrokeshire and meant the liability of tenants to guard wreckage on the sea coast. Under the Welsh Law wreckage on Bishop land went, half to the Bishop, half to the King, elsewhere to the King entirely.

In the reign of Edward III the right to '*wreccum maris*' was claimed by the religious houses of Bangor, Conway, and Bardsey.

The duty of guarding was local, and perhaps new, owing to the rising importance of Bristol as a port.

§ 10. *Protecting the shrine.* This was a service confined

to St. David's. There it was a common service, and consisted in going out, either in peace or in war, when the sacred relics peregrinated through the countryside.

The production of relics in lawsuits for the administration of oaths thereon was common to all lands in the Middle Ages; and the guarding of the shrine no doubt included the protection of the relics when being conducted to the venue of trial.

It was a liability imposed both on old Welsh tenants and new English ones, but it was practically confined to the Church estates in Pembrokeshire.

§ 11. *Common fines.* The liability to 'common fine' occurs in name only in St. David's. It really belongs to the subject of criminal law.

A common fine was the customary maximum of fine imposable for breaches of regulations of a minor character. It varied from 10s. to 1s., according to locality.

§ 12. *Tolls on sales.* Tolls on sales were unknown in Welsh Law. In St. David's tolls were paid on the sale of animals, horses, cattle, sheep, &c. This was universal in Cardigan on some animal or other.

The levy was unknown in North Wales, except in Towyn (Merioneth),¹ until boroughs were created, and seems in St. David's to have been an imposition of the Church. It was introduced by the Norman lords into Pembroke, Strigoil, Raglan, Carew, Manorbier, Castle Martin, and Caldey, and had no doubt some connexion with the efforts of the Crown to protect the market-towns which it had established.

The iniquitous laws connected with the establishment of these market-towns is outside the scope of the present volumes.

§ 13. *Guarding of prisoners.* This duty was common in St. David's. Certain vills were bound to guard prisoners, convey them to prison, or carry out the death sentence of the courts.

It is possibly an old survival, for the Welsh Laws are full of provisions for penalties for allowing prisoners to escape.

¹ There are suggestive facts in the Extent of 1285 which point to the possibility that Llywelyn up Gruffydd established a borough at Towyn.

Compulsory attendance at executions is found in the Welsh Hundred, Castle Poncius, and Kerenny, where the holders of Welsh land were compelled to execute offenders convicted at the lord's suit, but not where the offender was convicted on private suit. In Cardigan it was a due imposed on Lodrepedran and vills of the same type, in Ystrad Towi on Abergwily and Llangador, and in Brecon on Glascwm and Llandowe.

§ 14. *Pannage of swine.* By the law of cattle-trespass (*vide infra*) it was permissible for the owner of land or the territorial lord owning woods to seize and impound or kill swine found upon such land or in such woods, except in open seasons.

The proportion of swine which could be seized and the actual pound-fees leviable are detailed in the Codes, but the point of importance to note here is that, in the early Welsh Laws, the entry of swine upon woodlands in the close season was an act of trespass to be compensated for or punished as such, and that during the open season there was freedom for masting in the woods throughout Wales.

In most of the early surveys, save that of Bromfield and Yale, we find little mention of this provision of law, but by the fourteenth century a complete change had taken place.

The old law of compensation for trespass had developed into an adjunct to the law of tenancy; the old freedom of masting during the open season had disappeared, and the levy of compensation or retribution for trespass had grown into a payment of fixed pannage fees for the privilege of pannage. The Welsh Law of trespass was, in fact, assimilated, by a simple process, to the Norman Law of pannage.

In St. David's we find that in Ceredigion one pig out of every seven pannaged was taken as pannage fee. In Llanaith there was a fixed charge of 3s. In Cymwd Llifon the fee leviable was one pig out of every ten or, if less than ten, 2d. per pig. In the First Extent of Merioneth the unfree of Pennal paid 5s.; in Ystumanner one tenant alone paid a like sum, and in Ardudwy the unfree of the 'cymwd' gave an estimated total of twenty-four pigs annually, each

tenant giving one pig, however many he might possess. In Denbigh it is mentioned incidentally in the Customs of Uwchdulas, but outside these instances there is no mention in the Surveys save in the Extent of Bromfield and Yale.

That document illustrates the transformation that had been effected in the legal point of view. In Bromfield the right of access to the woods for pannage was a right belonging to all free men, who paid, however, as the group, the sum of £20 10s., under the name of 'tak'. To this £20 10s. all freemen contributed, a fact indicating the solidarity of the tribesmen in the area. There was no limit to the number of pigs which could be masted for this sum. In Yale the rule was that each free group, other than the Llandynan freemen, gave the lord annually one out of every ten pigs owned by the group, but if it possessed less than ten, 2*d.* was paid for each pig under two years of age, and 1*d.* for every one under a year old.

In Llandynan the rate was one pig provided the owner owned three or more, and there was a like liability in respect to sheep and goats.

Among the unfree of Bromfield and Yale and the freeholders of demesne land in Eyton there were varying rates.

In Eyton one pig was taken from the owner of three or more pigs, and from every one having less than three, 3*d.* per pig.

In Sesswick, Pickhill, Dutton Diffaeth, Dinhinlle, Cris-tionydd Dinhinlle, the same rule was observed, subject to some slight changes where the owner had less than three pigs.

Among the unfree of Yale one pig was taken from every one possessing three or more pigs, and in the majority of cases there the same levy was made on lambs and goats. An identical rule was operative in Marford and Hoseley.

In South Wales it was very general in the Normanized parts, and less general in the districts which were distinctively Welsh.

The rates vary greatly. Sometimes pannage was free up to a certain maximum, thereafter a charge was made either in kind or in cash. Instances of this nature occur in the Cardigan Crown lands, the forest of Machan, Cantref Mawr, and the Towy Valley.

Elsewhere the tax was in kind, one pig out of 2, 3, 5, or 7 being variously taken in Elfael, Cardigan, Glasbury, Llan-fihangel, Perfarth, and other places.

In a few places there was a cash charge per head, varying according to the age of the swine.

Strictly speaking, true pannage was a charge on free tenants only paid in cash, and 'tak' a charge on unfree tenants, a toll in kind; but the distinction was not observed in Wales, hence we find free and unfree alike paying, sometimes pannage, sometimes 'tak'.

Its prevalence in the Normanized areas and its comparative absence from the Welsh ones indicate its foreign origin.

§ 15. *Various.* In addition, there are a few cases in St. David's of glove-rents, needle-rents, spurs-rent, maintenance of ferries, wardship, marriage, supply of wood and mortuary fees. They are all, or nearly all, obvious importations by the Normans, and throw no light on the charges recognized in Welsh Law.

In Bodidris (Yale) a nominal annual due of a pair of white gloves was rendered, and in Llysfaen some escheated areas were let on glove-rents.

In Bangor Diocese one ville was held free on the sole service of working for the Church in Bangor 'diligently' and keeping the books of the Church. In Ederne one tenant held on condition of making plough-irons and mill-irons. In the same diocese three unfree villes were liable to provide manure for the Bishop's home-farm.

In Merioneth, in A.D. 1285, a due of £5, termed 'Ramyon', was paid by Ardudwy, and another of £2 6s. 8*d.*, termed 'Merion', by Penllyn, and in the fifteenth century mention is made of ferry charges on the Dovey.

In South Wales a number of places were mulcted, in later days, in 'tallages' or 'aids'. These were generally levied on the unfree, and occasionally on the free, and were usually annual.

Such tallages are found in Crickadaran (13s. 4*d.*), Ewyas Harold (16s. on the free, 5s. 4*d.* on the unfree), Caldecote (10s.), and Talgarth (6s.). In Tregrug, 49s. 11*d.* was levied

every third year, and in Broughton and Llanfihangel a tallage was demanded when either the lord's daughter was married or his son knighted.

NOTE.—I am inclined to regard 'Merion' as the cylch ragloti, from 'maer', the raglot; 'ramyon', either as the same by the transposition of letters or as equivalent to 'rhwym'—a tie or obligation.

PART IV

THE LAW OF PERSONS

I

THE WORTH OF MEN AND THINGS

1. *Introductory.*

The Welsh Laws placed a fixed monetary value upon the honour, the life, and the limbs of men and women, and upon their cattle, their buildings, and other belongings.

The object of this was threefold: to afford a definite standard for compensation payable when the person or thing was injured or destroyed; to fix a value for damages when a contract or other bargain was broken; and to determine the punishment awardable, in the case of theft, which varied according to the value of 'legal worth' of the article stolen.

Incidentally these tables afford valuable material for the study of the social and economic life of the people of Wales in the tenth century.

2. *'Saraad' Values or Honour-Price.*

§ 1. The value of a person's honour was termed his 'saraad', the word being also used for the act of insult to honour which necessitated the payment of honour-price, for that insult, to the person entitled thereto.

The acts which amounted to insult in law will be considered in the law of torts and crime; at present we are merely concerned with the fixed values prescribed in the Codes.

These values are determined in the Codes, though the different Codes are not in entire agreement with each other on all points.

§ 2. The highest 'honour-price' was naturally that of the King, and it was, to a considerable extent, fanciful.

It was fixed for the King at Aberffraw by the Venedotian Code at 100 cows for each 'cantref' in his dominion; a white bull with red ears for every 100 cows, or if the cattle were black, a black bull; a rod of gold as long as the King in height and as thick as his little finger; a plate of gold,

or a gold cup with a gold cover on it as broad as the King's face and as thick as the nail of a ploughman who had been a ploughman for seven years.

The oldest MS. of all adds that, if the insult to the King were caused by a man from another country, its reparation was £63, the equivalent of the annual tribute due by custom from the King at Aberffraw to the King at London.

The Venedotian Code, being concerned primarily with Gwynedd, fixes no honour-price for other kings; but it implies that other kings had a similar but not quite as high a one, when it states that gold was paid to the King at Aberffraw only.

The Dimetian Code, however, claims a higher position for the King at Dinefwr and every king with a principal seat, i. e. Aberffraw and Mathrafal, as well. For such the honour-price consisted of 100 cows from each 'cantref' in his dominion; a silver rod, long enough to reach from the floor to the King's lips, when the King was seated, and as thick as his long finger; the rod, to have in addition, three knobs at the top and three at the bottom; and a big gold cup, large enough to hold the King's full draught, with a gold cover as broad as the King's face, both as thick as the ploughman's nail or as thick as the shell of a goose's egg.

The Code claimed definitely that gold was due to the King at Dinefwr, as well as to the King at Aberffraw.

The Gwentian Code is practically the same as the Dimetian, but is silent as to the payment of gold.

For kings without a principal seat the Dimetian Code limits the honour-price to 100 kine from each 'cantref'. Such kings would apparently be the higher lords of minor principalities.

The two Southern Codes fix the honour-price of the Lord of Dinefwr, a family which played an important part in Welsh history, at 'as many white cattle with red ears, as will extend, the head of the one to the tail of the other, from Argoel to the palace at Dinefwr, with a bull of the same colour for every score', a peculiarly interesting counterpart of what is to be found in the Norse 'sagas'.

An interesting reference to the rod and the golden plate

is to be found in the story of Branwen, for they formed a part of the honour-price offered to Matholwch by Bran the Blessed.

Though, no doubt, there is much that is fanciful in the computation of the honour-price, the details are not without interest. There is a general recognition of the higher dignity of the northern King; there is proof of the computation of values in cattle, proving the system dates back to a period when the tribes were nomadic and pastoral; and evidence of the fact that silver and gold craftsmanship had attained a high standard.¹

§ 3. The honour-price of the Queen in all Codes was one-third that of the King, without gold and silver; so too was that of the Penteulu. In Gwynedd also that was the measure for the Edling, and all sons and nephews of the King.

The Dimetian Code places the Edling's honour-price at two-thirds of the King's, and allots the same amount to all heirs to the kingdom, while the Gwentian Code gives the Edling the same honour-price as the King, minus the gold and silver.

The King's daughter's was equal to half that of her brother, so long as she remained unmarried, whereafter she was valued according to her husband's rank.²

§ 4. The Priest of the Household had an honour-price, according to the two Southern Codes, of twelve kine, two-thirds of which went to the King; but it is stated elsewhere that Hywel Dda fixed no price for any priest or nun, because insult to a cleric was to be repaired in the Synod, according to ecclesiastical law.

We have here an indication that Wales was not prepared to raise a man's honour-price by virtue of ecclesiastical office, in this being distinguished from the rule in Anglo-Saxon and Irish Law.³

In most countries the Church was able to establish the

¹ V. C. 6, 234; D. C. 346-8; G. C. 624.

² V. C. 6, 10, 12, 234-6; D. C. 348, 356; G. C. 626, 632.

³ Though Welsh law allowed an unfree man to become a priest by licence, and all priests were free, it provided that emancipation must be by grant the day before tonsure, and the priest had no honour-price, in secular law, apart from the freedom inherited or accorded him prior to becoming a priest.

principle that orders ennobled a man and made him ' thegn-worthy '.

In the words of Cnut's Ecclesiastical Laws, c. 4: ' For fear of God rank is discreetly to be acknowledged in holy orders.'

Inasmuch as the custom of Wales insisted on the priesthood being free and indigenous, we appear to have here a survival of the independent Celtic Church, which, when it fell before Rome in the eighth century, was able to maintain for a long time its aloofness from a foreign priesthood.

In the Dimetian Code there is a marked illustration of the struggle which was taking place, for a definite honour-price of £7 was fixed for seven abbots, with the curious addition that a woman of kin to the offender had to become a washerwoman for life as a disgrace to the family.¹

§ 5. The honour-prices of other people are all detailed, with slight alterations, in the different Codes.

They are given below in tabulated form, showing the variations which are recorded.

Pencenedl . . .	9	kine and 180 <i>d.</i>	silver to 27 kine 540 <i>d.</i>
Steward . . .	"	" "	18 " 360
Maer and Canghellor . . .	"	" "	12 " 240
Senior Officers . . .	"	" "	6 " 120
Other officers . . .	6	" 120 <i>d.</i>	
Uchelwr . . .	6	" 120 <i>d.</i>	silver to 12 kine 240 <i>d.</i>
Boneddig with family	4	" 80	
Boneddig unmarried	3	" 60	
King's aillt or alltud	3	" 60	
Uchelwr's " . . .	1½	" 30	
Taeog's alltud . . .	¾	" 15	
Bondman . . .		12-24 <i>d.</i>	

It will be noticed that the basic valuation was that of the freeman, and that all others were multiples or fractions of his valuation, with the sole exception of that of the married freeman, to whose value the value of his wife was also added.

It will also be noticed that the honour-price of a King's unfree or foreigner tenant was the same as that of an ordinary freeman, establishing the fact that in esteem their position, though inferior, was not greatly so.

¹ V. C. 18, 52; D. C. 356, 364, 476, 558; G. C. 638.

In the Xth Book, p. 306, the honour-price for every one, both in England and Wales, is fixed at 4 kine and 80 pieces of silver.

If we bear in mind that the legal value of a cow was 5*s.*, the monetary value of every person's honour is easily ascertainable.

§ 6. The honour-price of a woman was considerably less than that of a man. If she were unmarried, she was valued at one-half what her brother was; and, if she were married, her valuation was fixed at one-third that of her husband. The rule applied even where a ' Cymraes ' married a foreigner, and whatever valuation a married woman had she retained on the death of her husband until remarriage.

§ 7. The son of a free ' Cymraes ', married by gift of kin to a foreigner, ranked for honour-price as a freeman; and an unaffiliated or denied son took the rank of his mother, being a freeman if she were Welsh and free, a foreigner if she were a foreigner, an ' aillt ' if she were an ' aillt '.

§ 8. In addition to the variations noticed, we are informed that a man could choose whether he would be assessed at his own personal valuation or that of his office or dignity as a ' pencenedl's ' man; that, where the insult to a man was coincident with the infringement of the King's privilege of protection, the honour-price was levied at the rate due to the King; and that, in South Wales, the honour-price of judges was paid, not at the rate of the official's value, but at his own personal rate as an ' uchelwr ', the rule in South Wales being that the judiciary of the ' cymwd ' was composed of local landowners.

A variation also existed in the case of the usher, regarding whom it is said that his honour-price depended upon the land on which he was insulted, he taking the valuation of the owner of the land.

There are minor variations which do not affect the principal calculations.

§ 9. We have to note that honour-price could be augmented thrice. The method of calculation was to add one-third to the basic amount for the first augmentation, one-third to that total for the second, and so on; thus, if the

basic value were 90, the first augmentation would be 120, the second 160, and the third 213½.

The Codes are at variance as to augmentation. The Gwentian Code disallows it altogether, it was general in Gwynedd, and confined in Dinefwr to certain free men.

The honour-price of a corpse was never augmented.

There is even a differentiation as to whether the augmentation was in respect to the cattle or the silver.

Wherever augmentation was allowed, it was dependent upon the nature of the insult; and, in certain cases of insult to women, the honour-price, being due for a trifling matter, was decreased.

§ 10. According to the XIVth Book, p. 628, it was the rule that if the legal honour-price were too heavy, it was competent for the person responsible to appeal to custom and have arbitrators appointed to assess it. It would seem, therefore, that the honour-prices were the maxima allowed by law, and that the actual amount payable could be reduced if local custom warranted a reduction.

§ 11. The fixing of a value on personal honour was not peculiar to Wales. The Irish Laws recognized the system under the name of 'eneclann'.¹

In the Irish Laws varying rates are given in many places; and we have this peculiarity, not observable in other tribal Codes, that something akin to the Roman principle of 'diminutio capitis' existed, whereby there could be a reduction in a man's honour-price, without forfeiture of status, on account of tort or breach of contract, the 'diminutio' lasting until the breach or tort were remedied.

The rates of 'eneclann' were fixed according to rank, rank being dependent on property and birth, or, where birth was absent, on double property.

We also appear to get in the Small Primer something resembling the Welsh Law of augmentation, for we are told that there were three divisions on a person's honour: 'eneclann' or one and a half values, 'enech-ruise' or half plus one-seventh value, and 'enech-gris', or one-third plus one-twenty-first value.

¹ e.g. Ir. Laws, IV. 299, 345; V. 23, 31, 71, 97, 99, 175.

The honour-price of a woman was, if married, half that of the husband, but otherwise the rates do not generally correspond with the Welsh ones.

§ 12. In Anglo-Saxon Law we find many traces of the same system of valuation under the name of 'haels'-fang', but the laws do not give us any definite rates.

It is common in the Germanic Codes, e.g. in the Lex Alam., Hlothaire's Constitutions, Tit. XCVIII, and in the many references given in the chapter on the Law of Crimes.

§ 13. The valuation of a person's honour also finds a place in early Scots Law. It appears in the fragment entitled the 'Leges inter Brettos et Scottos' as 'kelchyn', the 'kelchyn'-value varying according to rank from the King down; the carl, the lowest grade in Scots law, having no 'kelchyn'. The word 'enach' is elsewhere used in these fragments when the rate of a wife's honour is mentioned. Her 'enach-value' was two-thirds that of her husband.

There is no doubt, therefore, that the principle of computing the value of a man's honour was of general application in Western Europe.

3. '*Galanas*' worth, or blood-fine.

§ 1. The second valuation placed on the person was the 'galanas' value or worth, the amount at which a man's life was valued.

As in assessing honour-price, so in determining blood-fine, the fundamental basis was the status of the man or woman whose life was to be paid for.

In nearly every case it was expressed in the terms of cattle, for as the Codes say, 'with cattle formerly every payment was made', but, though so expressed, it was payable in money at the rate of 5s. per cow. In nearly every case also the blood-fine had an arithmetical connexion with the honour-price, and where, e.g. the honour-price was 6 kine and 6 score pence, the pence were converted into kine, the blood-fine being 6 score and 6 kine.

§ 2. The blood-fine of the King, Queen, Edling, King's relatives, and the 'Penteulu' was in all cases assessed at three times their respective honour-prices, and the oldest

MS. states that this was the ordinary rule for every person, while the Xth Book asserts the value of all freemen in England and Wales stood at the uniform standard of 63 kine. This was, however, not the rule of the Codes.

Tabulated, the results are as follows :

Pencenedl	189 kine to	567
Steward	189 „	378
Maer and Canghellor	189 „	252
Senior Officers	189 „	126
Other Officers	126	
Uchelwr	126 „	252
Boneddig with family	84 kine	
Unmarried boneddig	63 „	
King's aillt or alltud	63 „	
Uchelwr's „	31 $\frac{1}{2}$ „	
Taeog's alltud	15 $\frac{3}{4}$ „	
Bondman from over the seas	£1 10s.	
Bondman from Britain, or old, maimed, or under twenty	£1	

the lower value of a bondman of Britain being due to the fact that, according to Welsh Law, every man of the Island of the Mighty within Britain was free from bondage, unless by his own act he had sunk into servitude.

The priests attached to the Court were valued according to kindred, not according to ecclesiastical dignity, but the levy was left in the hands of the Church.

§ 3. A woman's blood-fine, whether married or unmarried, always remained half that of her brother's, and did not change, as honour-price did, to correspond with the husband's status.

The same was the rule in English Law, see *Leges*, Hen. I, 70, c. 13: 'Si mulier occidetur, sicut weregeldum eius reddetur ex parte patris sicut observamus in aliis.' Even the woman of easy virtue, who had no honour-price in some cases, had her blood-fine as every other woman had.

§ 4. Special valuations for the reeves of Llan Ismail, Llonio, Tenby, and Llan Rhian are given in the IXth Book¹ at 63 kine from each 'maenor' or village, together with a sheep and a cow between each two cows, and the gift of a woman of kin to work as a washerwoman for life.

¹ IX. 306. Cf. D. C. 558. Reference in Bk. IX may originally have been to certain abbots, and not to reeves.

Hostages, no matter what their personal status was, were valued at the amount due for the individual on whose behalf they stood as hostage.

The same rule as to the children of a Welshwoman by a foreigner and an unaffiliated or denied son appears in blood-fine as in honour-price.

§ 5. The laws also prescribe the blood-fine of a foetus. In North Wales for the first three months it was equal to one-third of a living person, for the second two-thirds, and for the last full fine according to the privilege of the parents, the foetus always being regarded as male until baptism. In South Wales the values were 4s., one-third and full fine according to the same periods, while in one passage of the *Anomalous Laws* the rates were 60*d.*, one-third and one-half fine respectively.

§ 6. It will be seen that the blood-fine might vary according to a man's privilege or his office. It might even vary according to the privilege of a 'pencenedl' to whom a man was commended; but on this point the laws are obscure in meaning. In determining which privilege a man killed should be valued at there was free choice, except where in the killing a limb had been cut off, in which case valuation was according to personal 'status'; or where the person killed was a servant of the King, in which case the assessment was on official status. Otherwise, it is said, in one passage, service, e.g. to an 'uchelwr', was not considered.

§ 7. As in honour-price, so in blood-fine, augmentation was allowed, except in the case of a foreigner, and the same method of increase was adopted, save that in augmenting only the scores were taken; so if the blood-fine were 126, the three augmentations would be 166, 219 $\frac{1}{2}$, and 290 $\frac{2}{3}$ respectively.

Unfortunately, there are no means of ascertaining in what circumstances augmentation was permitted; but possibly it was according to whether the killing were accidental, deliberate, or after preparation.

§ 8. It is interesting to note here the provisions in *Domesday*, relative to Arcenfeld, which was then inhabited by a distinctly Welsh population.

After referring to the fact that there were special customs on other matters, the entry proceeds to say :

'Si quis occidet hominem regis facit "heinfaram" dat regi XX sol. de solutione hominis, de forisfactura C sol.'

'Si alicuius taini hominem occiderit, dat X sol. domino hominis mortui. Quodsi Walensis Walensem occiderit congregantur parentes occisi. Praedantur eum qui occidit ejusque propinquos.'

§ 9. The law of blood-fine is in no way peculiar to Wales. The references to an identical system are found all over Europe, but for the present we are concerned only with rates.

In Ireland the valuation was 7 'cumhals' (slaves) for a freeman, 4 'cumhals' for a stranger residing with a free Irish family, 2½ 'cumhals' for a stranger not so residing, and for a 'daermer' or bond-tenant one-seventh the valuation of his superior.¹

We have, however, in Ireland infinite varieties which it is not worth reproducing here.

§ 10. In England the rates varied at different times, and the mode of assessment was complicated by the consideration as to the nature of the locality where the slaying occurred, e.g. it was higher if a man were killed in the King's 'tun' than if he were killed in an eorl's 'tun'.

The principle of assessment, however, was much the same, viz. according to rank and race, with this modification that in England it was early recognized that a man's rank depended largely on the amount of goods he had accumulated.

Wergild rates are mentioned in the Laws of Athelstan (cc. 21, 25, 26), Laws of Æthelberht (cc. 6, 7, 13, 21, 25, 26, 80), the Laws of Hlothaire and Edric (cc. 12, 34), the Dooms of Ine (cc. 23, 32), Ælfred and Guthrum's Peace (c. 2), Edward and Guthrum's Peace, the Fragment on Wergilds, the Treaty between Ethelred and Olaf Tryggveson, the Treaty between the West Saxons and the Wealhas Dunseatas (c. 3), the Laws of the Confessor (c. 12), and the Laws of the Conqueror (cc. 7, 8, 9, and 22), besides innumerable other places.

¹ Book of Aicill, iii. 537.

§ 11. In Scotland, in the 'Leges inter Brettos et Scottos', the valuation is termed 'cro', and is expressed in cattle equated with gold ores. It varies from the 1,000 'ky' of the King to the 16 of the carl. A married woman's 'cro' was two-thirds her husband's, an unmarried one's half her brother's. The 'cro', it may be noted, varied somewhat, as in English law, according to the locality in which the slaying occurred.

In one part of these laws the 'cro' and the 'gallnes' are referred to, but different rates are not given for the two, and we appear to have simply the dialectic names for the same thing current among the Scots and the Bretons.

Wergilds are also mentioned in the Assize of King William, c. 14. In the Collecta, p. 375, the same rates are given as in the 'Leges inter Brettos et Scottos' after a preliminary statement :

'All laws outhar ar manis law or Goddis law. Be the law of God a heid for a heid, a hand for a hand, ane e for ane e, a fut for a fut. Be the law of man for the lyf of a man 9 score ky . . . & so on.'

Passing reference should be made to what may be an attempt to abolish blood-fines and other statutory worths in the Four Boroughs under the Leges Quatuor Burgorum, c. 17 :

'And it is to wyt at in burgh sall nocht be herde bludewyt na got stokisdynt na merchet na heregelde na nane suilk maner of thyng . . .'

§ 12. In the Germanic Laws, rates of wergild are given, *inter alia*, in Eric's Zealand Law, c. 32 ; the Asega Buch, c. 271 ; the Lex Salica, Codex I, Tit. LIII ; Lex Salica (Lex Emen.), Tit. LVIII, Lex Salica, Codex I, Tit. XV, XIX, XXIII, XXXV, with special rates for death by poisoning, waylaying, or by gang-slaying, and of a foetus, the rates for women varying according to age (Codex I, Tit. XLI, XLII) ; in the Lex Alam., Pactus III, cc. 17, 18 ; Hlothaire's Constitutions, Tit. VIII B, LXIX, LXXXI, XCIII (for foetus), XLIX (for mortlodum), LXIX ; in the Lex Baiuor., Tit. I, II, c. 2, III. cc. 1, 2, IV. c. 30, V, VI, VIII. 19 (foetus), XVIII ; the Lex Burgund., Tit. II, X, L ;

the Lex Frision., Tit. I, IV, XV, XX; Lex Langobard. (Ed. Roth.), cc. 129 to 141, 200, 201; the Lex Saxon., Tit. II, cc. 14-18; Capitulare Saxon., cc. 4-6; the Lex Angli. et Werin., cc. 1-4, 45, 48; the Lex Ribuaria, Tit. VII-XV, XXXVI, LXIII, LXIV, XXVIII, XXX, and the Lex Franc. Chamav., Tit. III-IX.

§ 13. These are far from being exhaustive, and it would be impossible here to deal with the detailed points of resemblance and differences. How extraordinarily close was the general resemblance has, perhaps, never been made so apparent as by Dr. Seebohm's comparison of the equation of values in his 'Tribal Custom in Anglo-Saxon Law'.

Sufficient, however, has been said here to emphasize the fact that the Welsh blood-fines were part of the 'Jus Gentium' of Western Europe.

4. *The worth of limbs.*

§ 1. The third valuation of the person to be found in Welsh Law is the valuation of the limbs.

The human limbs are separately and carefully assessed in value in all the three Codes, and the first striking feature is that, whereas the worth of a man's life and honour were determined by his status in life, the worth of his limbs were not.

'The limbs of all persons', say the laws, 'are of equal worth, whether they be king or villain'; and the peculiar result followed, which struck the author of the Proof Book in the Dimetian Code, that a bondman's hand was worth more than his life.¹

§ 2. The worth of a whole human body was the sum total of the worth of the fourteen members, as they are called. This worth was not coincident with the blood-fine, which might be greater or less, according to status. The blood-fine was the value of an individual to those who were of kin to him, or, if he were a bondman, to his master: the body-value was the value of an individual's body to himself.

The total value of the fourteen members of the human body was expressed in money at £88, or, if we express it in

¹ V. C. 310-14; D. C. 502-6, 602, 606; G. C. 696-700.

terms of cattle and pence, 264 kine and 5,280 pence; the worth of the limbs of any human being being, therefore, higher than the life of any one not of royal status.

That conception of the dignity of the human body as being greater even than life itself is a very striking feature of the Welsh Laws.

The fourteen members of the human body were the tongue, the testicles, and the eleven co-ordinate members, i.e. the two hands, the two feet, the two eyes, the two ears, the two lips, and the nose.

The tongue was worth all the rest of the members of the human body put together, that is, its worth was half that of the whole body, viz. 132 kine and 2,640 pence. Its exalted value was due, as the law says, to the fact that it was the tongue that defended the rest.

Then came the testicles; they were worth the value of the remaining members of the body, the co-ordinate members, or quarter of the value of the whole human body, i.e. 66 kine and 1,320 pence.

The eleven co-ordinate members, the sensitive organs, were worth the remaining quarter, each of the eleven being co-equal in value, viz. 6 kine and 120 pence; the ear, however, being reduced in value to 2 kine and 40 pence, if it were severed without affecting the hearing.

That is the principal division of valuations of limbs, but the valuation does not entirely end here.

Each finger of the hand and each toe of the foot was valued at 1 cow and 20 pence, except the thumb and the big toe, which were worth double, so making up the 6 kine and 120 pence of the whole hand or foot, while each finger was valued according to the joints. If a finger were cut off at the first joint, the loss was worth one-third of the whole finger; if at the second, half or two-thirds; if at the lowest joint, the value of the whole finger, though in working out the exact fractions the Codes get on occasions a trifle inaccurate in arithmetic.

In the Venedotian Code a separate value of 30 pence is placed on the thumb-nail.

The teeth were also valued separately; the front teeth

in South Wales being assessed at 2s., with a triple augmentation, the grinders at 30 or 50 pence, according to different versions; while in North Wales each front tooth had the same value as a finger, and each grinder the value of a thumb.

Valuation, however, went even further. A definite value was placed on blood, on wounds, and certain scars.

It is said that the worth of every person's blood, no matter what his status was, was 2s. The Venedotian Code reduces the worth of the blood of a bondman to 16 pence.

To account for the apparent low figure at which the blood was assessed, the Codes say that, as Christ's blood was esteemed to be worth only 30 pence, no man's should be assessed at a value equivalent to it; but this was not the only reason, for it seems that wherever a limb was severed the price of the blood shed was also added.

There was, moreover, a classification of blood shed into the three 'stays', as they were called; blood from the head to the breast, from the head to the waist, and from the head to the ground. The meaning of this is not necessarily that the blood shed had to fall from the head, but that the blood stains should descend not lower than the breast, the girdle, or ground, as the case might be.

There is some slight confusion on the point in the Codes, and the Dimetian Code appears to refer to the part of the body from which the blood came, but the other references are clear that what was meant was the place to which the blood dropped, indicating thereby the severity of the wound.

In the Codes the differentiation did not apply to the valuation, though the VIIIth Book says the worths were 28, 56, and 120 pence respectively. In the Codes the valuation was always 2s. for the purpose of compensation, but there was a differentiation in the number of compurgators required to deny an accusation and in the penalties payable, not to the person injured, but to the King.

Some blood, however, had no 'worth' at all; blood from the teeth, a scab, or from the nose. Perhaps the humour is unconscious—probably not, as the Codes are

intensely human—and the Venedotian Code, perhaps with a vision of two irate Welshmen prone to fight, says that 'such blood is apt to flow'.

The Dimetian Code misses the humour, and insists on the value being paid if the blood were spilled in anger.

There was a special value placed also on what are termed the conspicuous scars (*creith ogyfarch*).

There were three kinds of conspicuous scars, those on the face, those on the hand, those on the foot, the Gwentian Code confining the two latter to scars on the right hand and right foot.

The breaking of a front tooth was included in the conspicuous scars on the face in South Wales, and so had a double value, as a tooth and as a scar. Cutting the eyelid off is also mentioned as a conspicuous scar.

The value of these scars was 120, 60, and 30 pence respectively. An unexposed scar was worth only 4 pence, and a bruise lasting 27, 18, or 9 days was valued as a conspicuous scar on the face, hand, or foot.

The hair also had a value, fixed at 24 pence, if on the front of the head, and each individual hair had a value of 1 or 2 pennies.

We must note also what are called the three dangerous wounds: a wound on the head penetrating to the brain, a wound in the body exposing the intestines, and a broken arm or leg. The 'worth' of each one of these dangerous wounds was £3, plus the cost of medical attendance.

Even the value of the medical attendance was carefully regulated; it included, according to the Dimetian Code, 4 pence for a pan, in which the doctor was to prepare medicaments, 4 pence for tallow, a penny per night for a night-light, a penny per day for the doctor's food, and another penny for the patient's.

The Venedotian Code provides for a consolidated fee of £1 without food or 180 pence and food.

This Code also allows additional charges of 2s. for applying a tent, 1s. for applying red ointment, 4 pence for applying herbs, and 4 pence for blood letting.

These fees were fixed for all medical attendance, the only

person about the Court who was exempt from paying them being the *Penteulu*.

Lastly, we have to note the value of a bone. Every bone was worth 20 pence, except diminutive bones in the head; if it was from the upper part of the cranium it was worth 4 curt pennies (a curt penny being worth three-quarters of a legal penny), if from the lower part it was worth 4 legal pence. If the bone, however, were very minute it had no value, and the test as to whether it was minute or not is not without its humour. The medical attendant lay prone on the ground, with his elbow resting on the earth. In his hand he held the bone over a copper basin and let it drop into the basin. If it made an audible sound when dropped, it was a bone with a value on it, if it made no sound it had none.

The laws are silent as to how the test was applied if no surgical operation were performed to extract the broken bone.

Much of this valuation is curious, some of it amusing, but it all had its purpose, namely, to fix a standard and prevent the vagaries of individual judges. In many places modern law would be none the worse for a recognized standard on which to assess damages.¹

§ 3. In this matter again Welsh Law was in no way peculiar.

The principles of the Irish Law are difficult to arrive at, largely because the texts cover so wide a period.

In the Book of Aicill bodily injuries were assessed in fractions of the *eric* or *coirpdire fine* (the blood-fine), half the *eric fine*, for example, being payable for a foot, hand, eye, or tongue. In other parts of the law the mathematical certainty of the Welsh Laws is absent and the rates vary according to intention or status; the status bearing on the matter being not, however, that of the person injured but of the person causing the injury, e.g. a bondman paid less than a freeman did for exactly the same injury caused. The measure became, to a large extent, the capacity the

¹ V. C. 42, 310-16; D. C. 390, 446, 456, 502-8, 594; G. C. 664, 698, 700; IV. 38, V. 40, IX. 266-8, XI. 424, VIII. 200.

injured man possessed of exacting reparation. Even then the amount payable was liable to reduction under the Law of Exemptions, according to the circumstances in which the injury was inflicted.

We may say, however, that damages were fixed for the purpose of avoiding revenge; that all injuries, whether accidental or deliberate, were assessed on the same basis, but exemptions were allowed when the injury was accidental.

The Book of Aicill, for example, allowed exemptions in the case of a servant injuring another while at work by an accident incident to the work (a remarkable anticipation of the common law doctrine of 'common employment'), variations according to whether the person injuring was exercising a legal right in an ordinary and customary manner or in an extraordinary and criminal manner, and reductions if there were contributory negligence on the part of the person injured.

The Irish Laws also appear to have made intention to injure, without injury being caused, equivalent to injury.¹

§ 4. The details of injuries in the Anglo-Saxon Laws are even more meticulous than they are in the Welsh Laws. Forty-two sections, or practically half the laws, are devoted to the details of compensation payable for various injuries in the Laws of Æthelbert (cc. 32-72, and c. 87), and 35 in the Laws of Ælfred (c. 35, cc. 44-77).

In the Anglo-Saxon Laws the worth of injuries is often termed the 'angylde' or first value; and we find, in those laws, an addition to the 'angylde' or 'bot' of a 'wite' or fine payable to the King for a breach of his peace.

We may note also that the Anglo-Saxon Laws differ from the Welsh Laws in assessing injuries according to the status of the person injured or the use of a servile person to his owner; hence the loss of an eye or a foot to an 'esne', so rendering him useless as a slave, was equal to the full worth of an 'esne'.

§ 5. The same system prevailed among the Germanic tribes. Tacitus, in his *Germania*, c. 12, notes the custom

¹ Book of Aicill, III. 139, 141, 347, 349, 357, 381; *Senchus Mór*, 181; Ir. Laws, IV. 355.

in his day: 'Pars mulctae regi vel civitati, pars ipse qui vindicatur vel propinquis ejus exsolvitur.'

Assessments of the same character as in the Welsh Law occur, *inter alia*, in the Lex Saxonum, Tit. I, cc. 5, 6, 7, II, cc. 1-13; the Bishop of Roskeld's Kopnhagen Laws, A.D. 1294, c. 61; the Lex Frision., Tit. III, cc. 7, 16, 40, and Tit. XXII (90 subsections); the Additio Sapientum of Wulimar, Tit. II, III (a); the Judicia Wulimari, cc. 1-10; the Lex Langobard. (ed. Rothar.), cc. 31, 43-128, 382-4; the Asega Buch, Pt. III, cc. 5, 16, 17; the Guta Laga, Tit. XIX, cc. 13, 14; King Eric's Zealand Law; the Lex Alamman., Pactus I, cc. 1-4, II, cc. 1, 5, 6, Tit. X, XX, LIX, LX, LXVIII, XCIX; the Lex Burgund., c. 14; the Lex Baiuor., Tit. I, c. 9, 10, Tit. IV, cc. 1, 2, 4-25, V, VI; the Lex Burgund., Tit. XI, XXVI, XLVIII, XCIII; the Lex Salica (Tit. XXXII); the Lex Angli et Werion., cc. 5-25; the Lex Rib., Tit. I-VI, XIX-XXVII, and LXVIII; and the Lex Romana V, where, however, the 'injuria' payable had become assessable by the 'judex'.

§ 6. In the Roman Law of the XII Tables there are indications of a similar character, though they are small. The law was a limb for a limb, but the value of limbs was partly laid down—300 asses for the bone of a freeman, 150 for the bone of a slave, and 25 for all lesser injuries.

§ 7. The system is found also in the Scots Law, 'inter Brettos et Scottos', relating to 'bludedrawyn', the Statuta Gilda, App. II, 90, VII, 91, and IX; and Collecta, pp. 375, 382-4.

§ 8. The general characteristic, however, of all these laws is that injuries were valued according to status, and the Welsh departure from this principle in the matter of injuries is all the more remarkable and may be due to some exceptional insistence of the Celtic Church on the point.

5. The worth of animals.

§ 1. The free Welshmen of Hywel Dda's day were essentially pastoral, evolving slowly into more or less settled agriculturists. Consequently we find a very considerable portion of the Codes devoted to the valuation of animals.

In determining that valuation many considerations

entered. In some cases the status of the owner had a bearing on the question, in practically every case the age of the animal was considered, and likewise the possession or lack of those qualities ('teithi' as they are termed), which rendered an animal complete.

The animals whose worths are detailed in the laws fall into two classes, the domesticated and the wild. In the former category are horses, cows, sheep, goats, pigs, dogs, cats, bees, hawks, geese, ducks, and hens.

§ 2. The legal value of a horse rose in North Wales from 4 pence, its value at birth, to 5s., its value at three years of age. In South Wales it ran up to 8s., in each case by fixed periodical increments. At the age of three the horse was broken in and, as it was broken in, its value rose further.

These values vary in the Codes. A perfect stallion rose to £1, a riding horse to 10s., a pack-horse to the same figure, and a draught-horse, one which could draw the light car of the country, did not advance at all in North Wales.

Mares followed the same rules in the main as the horse. Besides giving us the figures of value we gather from the rules that a horse was never used for ploughing, draught-horses were of an inferior quality, and the horse of greatest value was one useable for light cavalry purposes or as a transport pack-horse.

The worth of a horse appears never to have depended on the status of its owner.

§ 3. A calf was worth 4 pence at birth in North Wales, 6 pence in South Wales; its value rose by incremental stages to 5s., the legal value of a cow with its first calf. It remained at that figure till the fifth calf was born, when it began to deteriorate in value and became subject to appraisement.

The limbs of a cow were also assessed; its ears, horns, eyes, tail, &c., being valued at 4 pence each, and the Dimetian Code adds that the value of the milk of a cow was one penny for a full week's supply.

A bull-calf rose similarly in value to 5s., and, unless it were retained for stud purposes, it was yoked to the plough

at three years of age. At that value of 5s. it remained until the end of its sixth year, when it, too, began to deteriorate as the quality of its work at the plough deteriorated.

§ 4. Sheep and goats commenced at a penny, and advanced to 2*d.* and 4*d.*, the highest value they ever attained, except that rams were valued at 1*s.*

Pigs were much more valuable animals; they rose by incremental stages from 1 to 30 pence. Just as a ram was worth three ewes, so a boar was worth three sows, a general rule in Wales in estimating the comparative value of males and females.

§ 5. Dogs, or rather breeds of dogs, were not numerous in Wales. There were the covert-hound, the greyhound, the cocker spaniel, and the sheep-dog—dogs for sport and dogs for the herds. All other dogs were lumped together under the generic title of cur. The harrier is mentioned in manuscripts of the thirteenth century, but with the express addition that Hywel Dda fixed no worth upon it, as it was a breed unknown in his day.

All curs were worth 4 pence, whoever owned them; every dog belonging to an unfreeman or a foreigner, except the sheep-dog, was also worth only 4 pence. The sheep-dog, whoever his owner might be, was worth 5*s.*, 'provided he went before the herd in the morning, and followed it home at night'.

The King and 'uchelwyr' alone appear to have kept hounds, though no prohibition was laid on others keeping them. Hounds were valued according to the owner's status, and the King's hound was worth double the 'uchelwr's'.

A covert-hound was worth two greyhounds. The puppy belonging to the King was worth 15 pence or 2*s.* till it opened its eyes, thereafter its value doubled till it was a year old, when its value was again doubled. It rose to 10*s.* for another year, and to £1 when trained.

The spaniel of the King or 'uchelwr' was worth £1; if it belonged to an ordinary freeman, 10*s.*

The figures show how very important a part sport and herds played in the life of medieval Wales.

§ 6. Cats were of the same value as sheep, provided they

were mousers; if they were not, their value was only 2 pence.

In South Wales the value of the King's cat was estimated in a manner which was painful to puss. Puss was held head downwards by the tip of its tail until the nose swept the ground. Corn was then heaped round until the tip of the tail was covered. The heap of corn was pussy's value; but what happened to the cat in the meantime is not said.

§ 7. Domestic fowls were generally valued at a penny, if a female, and 2 pence if a full grown male.

The hawk was a valuable bird. Its nest was worth £1: the bird itself 10*s.*, if belonging to the King, and half that if to an 'uchelwr'. A sparrow-hawk was valued at 2*s.*; a 'taeog's' hawk was, however, worth only 1 penny; it was not much use to him as he was not of privilege to hawk.

§ 8. Bees were valued by the swarm at 4*d.* to 24*d.* They were of great importance in the Middle Ages, as honey took the place of the still undiscovered sugar, and mead made of it was a national drink in Wales.

The Gwentian Code does not ascribe their value to utilitarian reasons. It says that bees originated in Paradise, but when man sinned in Eden the bees fled, whence arose the blessing of God upon them, and this blessing made it incumbent for candles made of their wax to be used whenever mass was sung.

§ 9. All pet animals belonging to the King and Queen were said to be worth £1, those of a freeman, 10*s.*, those of an unfree, a curt penny.

§ 10. To provide for any omission in the Codes, animals, and in fact all property which had no fixed worth prescribed, were, provided they could be produced, to be appraised according to the owner's valuation on oath to the effect that he would not have sold except at the figure mentioned; and we are told that, in South Wales, Rhys ap Gruffydd ap Rhys ap Tudor, in the twelfth century, established appraisement in respect to all animals in place of legal worth, perhaps owing to the changes in value that a couple of centuries had brought about. No appraisement of an animal prior to prime age was allowed to equal the

legal worth of an animal in its prime, unless the owner swore he could have sold the animal at that price; nor could any defective animal be appraised at the legal worth of an animal possessed of full 'teithi'. The judges were responsible to check an appraisal, and, if they considered it excessive, the appraiser was fined 180s., his case was dismissed, and he was prosecuted for perjury by the Church.

§ 11. 'Teithi' were the qualities a perfect animal must possess, and in every bargain there was a warranty of 'teithi'.

In the case of a horse it was warranted against staggers for three days, against strangles and glanders for three months, and against farcy for a year. If it were a riding horse it was also warranted not to be restive, the test being that it behaved itself when ridden three times in three days after the bargain in a gathering of men and horses. If it were a draught horse, its 'teithi' was that it could carry a load, draw a car up hill and down hill without swerving. The mare was warranted to bear a foal. This was general for all female animals, and the warranty was satisfied when one of its kind was born.

§ 12. A cow or ox was likewise warranted against the staggers, strangles, and farcy; calves and steers against the staggers and mange, the period counting from the beginning of the next succeeding month. The 'teithi' of an ox was its ability to plough 'in furrow and on sward', that is on either side of the yoke, up hill and down hill without swerving. An ox was yoked to a plough in its third year, and the warranty covered a test for three years succeeding.

The 'teithi' of a cow included ability to give two vessels full of milk a day when in milk. The measure of the vessel was to be 9 inches at the top, 6 in the middle, and 3 at the bottom, with a depth of 9 inches measured diagonally from the edge of the rim to the opposite side of the bottom.

In South Wales the requirements were less. The 'teithi' also included a guarantee against slipping a calf, if the purchaser, his herdsman, and milkmaid all swore that the cause did not originate with them.

§ 13. Pigs were warranted against foot and mouth disease, strangles, and devouring their young. The 'teithi' of a cat included ability to catch mice, to be able to see, hear, and scratch. Likewise she must have no propensity towards eating her kittens. In South Wales painful experience also necessitated a provision that the cat would not go a-caterwauling every new moon.

Sheep were to give milk, bear lambs, and be warranted against the rot till they gorged themselves thrice off the new herbage, as well as against the scab and red water.

All male birds had to be guaranteed to be good crows or singers, and hens to be layers and hatchers.

§ 14. These provisions, far more minute than has been indicated above, emphasize the occupations of the people, and are invaluable for the student of economics.

The comparative value of animals is given in no such detail elsewhere, but it must not be supposed that the system of valuation was peculiar to Wales.

§ 15. In the Anglo-Saxon Laws we find the worth of a ewe in c. 55 of the *Dooms of Ine*, and cc. 58-9 give details of the value attached to the horns of oxen and cows; in the *Judicia Civitatis Lundoniae* the 'ceap-gild' of a horse is put at 10s., subject, however, to appraisal, an ox at 30*d.*, a cow at 20*d.*, a pig at 10*d.*, and a sheep at 1*s.* In the Treaty between the West Saxons and the *Wealhas Dunseatas*, c. 7, different values are given, a horse being assessed at 30*s.*, a mare at 20*s.*, an ox at 30*d.*, a cow at 2*s.*, a pig at 8*d.*, a sheep at 1*s.*, a goat at 2*d.*, subject to appraisal if not produced, and there are many other indications of a like nature.

The law relative to warranty appears also in the *Dooms of Ine*, c. 56:

'If any man buy any kind of cattle, & he then discover any unsoundness within 30 days, then let him throw the cattle on his hands, or let him swear that he knew not of any unsoundness in it when he sold it to him.'

§ 16. Values of animals are also given in Scots Law (*Collecta*, p. 384, c. 3, and p. 385); in the *Lex Alamman*, *Pactus III*, c. 20, *Tit. LXX, LXXII-LXXX, LXXXIV*,

CI, CII; in the Lex Baiuor., Tit. XIV, XX, XXI, XXII, and XVI, where it is coupled with a law of 'teithi'; in the Lex Burgund., Tit. LVIII, XCV, XCVIII; in the Lex Frision., Tit. IV; the Lex Langobard. (ed. Rothar.), c. 332 et seq.; the Lex Saxon., Tit. II, 66; the Capitulare Saxon., CII; and the Lex Ripuar., Tit. XXXVI (11).

§ 17. The worth of wild animals forms really a part of the law of the chase, but a knowledge of the worth of wild was as much a necessary part of a judge's equipment as a knowledge of the worth of the tame.

The principal animal of chase was the hart, whose value was 5s. during the close season, and during the open season it was held to consist of twelve parts, each of which was valued at 5s. An ordinary stag was equal in value to a cow, a hind to a cow, a roebuck to a goat, a roe to a she-goat, a fawn to a kid, a wild boar to a boar. The hare, against the hunting of which there was a strong prejudice in Wales, was not valued, nor was a wolf or a fox.

The skins of wild animals are all valued: that of a roebuck at 1d., that of a fox at 8d., that of an otter or a wolf at 8d., that of a marten at 2s., and that of the rare beaver as high as 10s.

6. *The worth of buildings.*

§ 1. The houses of early Wales were, as in other countries of the same period, made almost entirely of wood. They were consequently very liable to fire, and a detailed valuation is given in the Codes of every piece of wood used in the structure of buildings.

§ 2. The Venedotian Code is clearest in its account, and divides halls into three kinds, the King's, the freeman's, and the non-freeman's.

The columns of the former were valued at 40d., the roof at 80d., and each penthouse at 120d.: the freeman's being 20, 40, and 50d. respectively, and the unfree's 10, 20, and 30d.

The Dimetian and Gwentian Codes are confused.

Separate values are also given for the three temporary buildings, the summer house, the autumn house, and the winter house. Every piece of timber is valued, the beams,

doors, door-frames, rafters, lintels, fireplace, benches, and sills, &c., some being valued at 4d., some at 1d.

§ 3. The most interesting structure other than the hall is the kiln. There were two kinds of kilns used for parching corn, that with a flue, that without; and these are valued according to the status of the owner. If with a flue the King's was worth 10s., the freeman's, 5s., the King's unfree tenant's, 2s. 6d., and the freeman's unfree tenant's, 2s.; if without a flue the value was in each case reduced by half or one-third.

The details are not of great interest, and the main interest lies in the nature of the structures and the maintenance of status as the basis for valuation.

§ 4. Comparable rules existed in some of the Barbarian Laws, e.g. Lex Alamman., Tit. LXXXIII; and Lex Baiuor., Tit. X.

7. *The worth of trees.*

The Codes also give a complete valuation of trees, but the only interest attached thereto lies in the indication afforded as to what were the common trees of the period.

The oak stands out pre-eminently as worth 120d., but this could not be on account of its rarity. Below the oak came the beech, valued at 60d., and the apple likewise.

The yew, if dedicated to a saint, had the same value as the oak, but otherwise it was worth only 15d. or 20d.

Fruit-trees, none of which are detailed other than the sour-crab, were all classed together as worth 2s., trees affording shade at the same figure, thorn trees at 7½d. and 8½d., ash-trees, alders, willows, and hazel-trees coming at the bottom with a value of 4d. to 6d.

There is a comparable valuation in the Lex Baiuor., Tit. XXII.

8. *The worth of things.*

§ 1. Each Code contains a lengthy list of articles separately valued.

In some cases the valuation was enhanced according to the status of the owner, but in the great majority the price was fixed irrespective of the owner, save only that,

according to the Venedotian Code, the ornaments of the King were always to be taken as worth £1 a piece.

The great majority of articles is valued at figures ranging from 4*d.* down to a farthing.

§ 2. The most valued possessions were the drinking horn, the hunting horn, and the horn of march, each worth £1, followed by the harp and cauldron, the 'indispensable' which plays so large a part in Celtic fable. The smith's tools and the royal garments alone approach it in value, and between those and the rest there is a wide gap.

§ 3. The lists are of value in the present day simply as evidence as to how men of the tenth to the twelfth century lived.

Of furniture there is practically no mention. Wearing apparel included plaids, tunics, hose, wadded boots, thonged shoes, buskins, girdles ornamented with gold and silver, mantles, coats, shirts, head coverings, gambasons, bonnets, bands, and robes. Household linen consisted of pillows, cushions, sheets, and a bolster, but the underbedding was of straw. The list of personal ornaments is confined to rings and bracelets; indoor games to a species of chess and dice.

Utensils and tools fill a large place; there are crochans, cauldrons, forks, knives, drinking horns, churns, vats, tubs, sacks, winnowing fans, mashtubs, troughs, coolers, iron and wooden pans, pails of yew and willow, pitchers, barrels, leather bottles, cups of metal, baking boards, bowls, ropes, watering cans, brass pans, baking girdles, dishes, sieves, and the like.

Among tools and implements we find carts, ploughs, harrows, barrows, coulter, hurdles, weaving looms, anvils, bellows, pincers, sledge hammers, bores, grooves, vices, rasps, grindstones, stone mills, querns, axes, augres, wimbles, reaping hooks, shears, spades, pickaxes, billhooks, adzes, chisels, awls, planes, bolts, nippers, polishing stones, locks of wood and iron, spindles, distaffs, flails, skimmers, mallets, shovels, spuds, forks, hammers, and riddles.

Saddlery included pack-saddles, ordinary saddles, bridles, spurs and stirrups of silver and lacquer.

Of indoor furniture only the chest, the stool, the settle, and mirror appear.

For sport there was the ancient coracle, nets of all kinds for fishing, and leashes for sporting dogs; and for war, bows and arrows, spears, battle axes, swords—rough-ground, round-hilted, and white-hilted—shields enamelled in blue and in gold, hauberks, basnets, helms, and crests.

From this list alone we can form a very fair idea of the economic interests of the people, essentially fighters and sportsmen, and engaged in dairy and agricultural pursuits.

The lists are, of course, not exhaustive, and the general rule is laid down that where a fixed value was not ordained in the laws, the article was to be appraised.

§ 4. The only comparable provisions—and they extremely few—are to be found in the Irish Tract, 'Breta im Fuillema Gel Gell', treating of the pledge of goods.

II

THE LAW RELATING TO CHILDREN

§ 1. IN the Roman Law a son and a daughter were at the absolute disposal of the paterfamilias during the life of the latter, and in the strict letter of the law the paterfamilias was not responsible to account to any one for the life or freedom of any of his children or his children's children.

We need not consider here, as it is foreign to the subject, the expedients devised from time to time to mitigate this doctrine, but the fundamental idea of it survived in Roman Law practically until the force of Christian opinion led to its abandonment.

Of this system of 'patria potestas' there is no trace in Welsh Law.

§ 2. A Welsh boy was under the control of his father until 14, when he became a full freeman, but there is nothing whatsoever in the Welsh Laws to lead to any inference that that control was in any way other than disciplinary.

A Welsh boy till the age of 14 was under his father's control simply and solely because he was a minor; it was a necessary stage in the discipline of life.

From birth till the age of seven the boy was incompetent to sue or be sued; he could commit no crime as he had no 'honour-price', i.e. he was not capable of suffering insult.

Damages for injury to him were paid for by the offender to the father, damages caused by him were likewise paid for by the father; but no punishment, other than punishment at home, could be meted out to him.

From the age of 7 to the age of 14 he was in a kind of probationary stage. At the age of 7 he was placed under a priest for religious instruction, and, being under that instruction, he was competent to take an oath, but could

not give evidence. Up to the age of 14 he was not liable to punishment for crime, nor could he be sued, except through his father, or, if his father were dead, some one in *loco parentis*. Damage caused by him was still payable for by the father, damage to him payable for to the father.

In this respect the Welsh Law was similar to the Irish Law, as portrayed in the Cribh Gabhlach, IV. 301.

Up to 14 a boy could own no property apart from his father, if alive. If his father died before that age was attained he became entitled to his father's property under guardianship, but he did not otherwise attain any further status in law.

Throughout this period he was subject to no discipline except that of his father. His status was one of perfect tutelage, or as the Venedotian Code puts it, 'He shall be at his father's platter until 14, and his father lord over him. His father owns all his property which may be in his custody, since his father during that time is to be responsible for him for everything.'

If the son died during minority his father was his sole heir, and, during minority, the father was entitled to chastise his son for instruction and fault.

In case of his father's death, the minor was under the guardianship of a relative, and the rule was that, where there was a dispute between the paternal and maternal relatives as to who should be guardian, some one of the mother's kin must be appointed guardian, at least of the person, 'lest out of greed a man of his father's kin should betray him or poison him'.

This is comparable with the English Law of Hlothaire and Edric, c. 6, which gave the guardianship of a fatherless boy to the maternal kin up to the age of 10, the child being supported by the paternal kin; with the Dooms of Ine, c. 38, which dealt, however, only with the children of 'ceorls'; and also with the Scandinavian Aapenraden Skraa, A.D. 1335.

A similar provision occurs in the Scots Leges Quatuor Burgorum, c. 98, which gave the guardianship of the child

and his chattels to the 'mudyr-half', and of his land to the 'fadyr-half' till the child attained majority.¹

§ 3. The position of a daughter till the age of 12 was identical. She was maintained in her father's house; was, as the law says, at his platter, subject to the same disciplinary control as a boy, and for all her acts the father and father alone was, as in Irish Law, responsible.²

§ 4. At the age of 14 a boy, and at the age of 12 a girl, became absolutely free of parental control.

The Triads of Dyfnwal Moelmud, p. 502, imply that at the age of 14 the boy was commended to the 'pencenedl', and was then admitted to the privilege of kinship. The other laws are silent on this subject, and with the correct meaning of the law of affiliation we deal elsewhere.

At that age the boy was commended to his territorial lord. Commendation was compulsory as in the Scots Law (Assize of David, I, c. 18). A ceremony of tonsure appears from the Mabinogi to have been performed, and thereupon the youth passed absolutely from the control of his father, whose disciplinary powers over him ceased. In fact, chastisement of a son by a father after the age of 14 rendered the latter open to a charge of insult, for which he had to compensate his son.

The youth became a man to his lord, and was entitled to his protection and support. To avoid any chance of a youth remaining uncommended, it was provided that his father, father-in-law, and brothers should be responsible for his acts, even though they had no power of control over him.

At 14 the youth was capable of ascending to the full status of his father, if the latter were dead. On commendation the lord was responsible for training the youth in arms, and one of the characteristics of early Welsh society was the band of armed youths which each lord maintained in his service, the youths identifying themselves absolutely with the interests of the lord.

All movable property, which during the period of military

¹ V. C. 200-2; D. C. 596; VIII. 210, X. 328, 330, 390, XI. 406, XIV. 592. ² V. C. 204.

training a youth acquired, being unmarried, went, upon his death, not to his father but to the lord, but this rule did not extend to ancestral land or 'tir gwelyauc'.

At the age of 21, when the military training was complete, the lord to whom a youth was commended is said to have furnished him with cattle and movables, and thereafter he owed military allegiance to the lord.

It seems to have been customary for a youth, on attaining the age of 21 and on marriage, to be settled by his father on some part of the 'tir gwelyauc', but his rights therein remained inchoate. Till then, whatever family arrangement might be made for the cultivation of the agricultural land of the 'gwely', the legal rights of a youth were at most the right to receive cattle and land out of the lord's waste in return for military service.¹

§ 5. We see, therefore, that the three periods in a man's life were the period of complete tutelage under the father, the period of commendation to the lord and military training continued till the age of 21, and the period of full freedom, which might be passed on invested land, subject to military service to the lord, or on an allotted portion of 'tir gwelyauc' under the occupier's father, or, on the death of the father, as a full co-sharer in 'tir gwelyauc', owing customary military service to the lord.

§ 6. In the Irish Laws we have very minute accounts of the Law of Fosterage, and the incidents and liabilities attaching thereto. That the custom existed in Wales to some extent is undoubted, but the laws have very little to say about it.

All we are told is that one of the 'curses of a "cenedl"' was to have the son of a chieftain imposed upon it in fosterage; and that if a freeman placed his son as a foster-son with an unfreeman, with the consent of the lord (which was a necessary preliminary), the freeman's son succeeded the foster-parent as a son, getting a share of his property equally with the foster-parent's own sons.

All we can gather from the laws is that fosterage was usually the placing of a son of a superior with men of inferior status.²

¹ V. C. 90, 200, 202; VI. 100, VIII. 210, X. 390, XI. 400, XIV. 734.

² V. C. 194; D. C. 542; G. C. 766; IV. 10, IX. 302, XIV. 578, 638, 686.

III

THE LAW RELATING TO WOMEN

1. *General.*

§ 1. The Celtic Law relating to women, as revealed in the Welsh Law, has been frequently misrepresented. In comparison with the status of women in other early laws, that of women in Wales was high.

Little is said in the laws about her position before marriage, but thereafter her position is very fully defined.

§ 2. We have seen that the daughter 'remained at her father's platter' until the age of 12. Till that age she was under his tutelage, and, like a son, was not responsible for tort committed up to the age of 7. She was, in fact, not a legal person until she attained majority. She became a major, not necessarily at the age of 12, but at puberty, which the laws identify broadly with the age of 12, and on arriving at puberty she became marriageable.

If she were not married at that time she became her own mistress, and could elect to remain at her father's platter or not, just as she wished.

She became entitled at puberty to hold property of her own as an unmarried woman, and had full power to go wherever she willed. There was no trace of anything like the 'patria potestas' of the Roman Law in regard to her.

2. *Succession to paternal estate.*

§ 1. The first question to consider, before coming to the question of marriage, is what rights a woman had to succeed to property from her father. The right of a daughter to succeed is quite distinct from the right of a widow, and should always be kept apart. A daughter's right of succession can be considered (a) with respect to land, and (b) with respect to movables.

§ 2. The general principles relating to land in an agricultural community are that daughters are excluded from

succession in the presence of male lineal descendants or, failing them, in the presence of collaterals, sometimes up to a fixed degree of consanguinity, sometimes without such limit; so that, in the latter case, a male collateral, however distantly related, would exclude the female lineal descendant of the last holder.

This general rule is frequently confused with the agnatic principle of succession known to Roman Law, but is in fact something quite distinct, viz. a preference in favour of male heirs and not an absolute exclusion of female ones.

§ 3. The Welsh Laws throw considerable light on this very prevalent system.

We have seen in the law dealing with land that 'tir gwelyauc' was not land 'vested' in any person or persons. It was land appropriated to the use of the clan or individuals or groups of individuals, related or assumed to be related to each other, who, by long occupation, acquired 'priodolder' rights therein.

Within the group occupying the land there was no right of succession, strictly so called, for the group did not die; there were rights of survivorship, and a son 'ascended' to his father's status, acquiring by such ascension the interests held by his father in the 'gwely-land'.

The father himself had no absolute estate; what he held was a life estate, subject to the inchoate rights of his lineal male descendants and of the other members of the 'gwely'. Where such 'gwely-land' was partitioned, rights of collateral succession by males was limited to persons related within four degrees of the deceased.

It might, however, happen that a male became the last or only member of a 'gwely', with no male lineal descendants or collaterals within the fourth degree entitled to survivorship.

The Venedotian Code and the Privileges of Powys definitely excluded a woman from rights of succession in 'tref y tad'; and this implied escheat of such property, when near heirs failed, to the lord or the clan; but the Dimetian Code, in two passages, allowed a daughter to obtain the estate before it could escheat.

In other words, though she could not succeed collaterally, she came in as a lineal descendant when there were no male lineal descendants or collaterals in the fourth degree.¹

In the Ministers' Accounts, &c., in South Wales, there are several interesting instances of female succession.

In Ogmore, Liswerry, Lebenydd, and Rumney, for example, we find the rule, applicable apparently to register-land, that such land went to the youngest son or youngest daughter, in preference to collaterals. Similarly, in respect to 'customary' land in Caldecote, the youngest son inherited; but, if only daughters were left surviving, they succeeded jointly in preference to collaterals, subject, however, to the provision, probably of recent origin, that the holder could pass the property, by surrender in court, to any son or daughter to the exclusion of others.

In Monmouth, with regard to free-land, all sons succeeded equally; failing them, all daughters equally, again subject to the father's right to exclude any one.

The instances that exist may pertain only to unfree or acquired free-land; but it is common enough in South Wales, and indeed occasionally in North Wales, to find women holding in 'gwelys', even for brothers and sisters in the same 'gwely', and in one ville we find a woman being actually the head of a 'gwely'. These may be variations of the general custom, or more probably due to Norman modification.

The ordinary rule, undoubtedly, was that in North Wales women were excluded from rights in land, but perhaps in South Wales they were admitted in default of near heirs.

The South Welsh rule was very similar to the early English rule, where males within five degrees inherited, after which the daughter came in, and the inheritance passed 'ad fusum a lancea'.

The North Welsh rule was identical with the Lex Salica in regard to Salic land, but that law allowed a daughter to succeed before collaterals in respect of 'allodial' land.²

¹ V. C. 174; D. C. 544, 614; XV. 744.

² Lex Salica, Codex K, Tit. LVIII

The Germanic tribes varied very considerably in their customs on this point. Some appear to have given daughters a right of succession in preference to collaterals, while others confined cognatic succession to movables.

The Lex Angl. et Werion., cc. 26, 34, provided that a son excluded a daughter; and, if no son existed, the nearest paternal male relative got the land, provided he was within the fifth degree, the daughter, sister, or mother obtaining the 'pecunia et mancipia'.

After the fifth degree daughters excluded collaterals, and thenceforward 'hereditas ad fusum a lancea transeat'.

In the Lex Rip. LVI children first succeeded, then the father and mother, then the brother and sister, then the sister of the father and mother, then the collaterals up to the fifth degree.

Under Lombardic Law¹ the limit within which collaterals could succeed appears to have been the seventh degree:

'Omnis parentilla usque in septimum geniculum numeretur ut parens parenti per gradum et parentillam heres succedat, sic tamen, ut ille qui succedere vult, nominatim unicuique nomina parentum antecessorum suorum dicat.'

Under the Bavarian Law the limit to collateral succession appears to have been the seventh degree, after which there was escheat to the fisc, but the daughter seems to have been excluded altogether.

§ 4. In regard to other property or 'da', which included all movables and cattle, the Venedotian Code accorded a woman a share equal to half a brother's share in 'da' left by her father. This right to a share in the father's 'da' is not mentioned in the other Codes in the same terms; but in South Wales a daughter was entitled to 'gwaddol', equal to the share of a son, allotted to her 'so as to procure a husband', and in the XIVth Book it is said that a woman's 'gwaddol' formed her own property and descended to her children. This 'gwaddol' seems to be identifiable with the 'da' of the Venedotian Code.²

It would seem, therefore, that a daughter, whether married or not, was entitled to obtain for her maintenance

¹ Ed. Roth. c. 153.

² V. C. 98; D. C. 544; XIV, 606.

and to retain as her own property a share equivalent to half a son's share, at least in her father's movables.

3. *The widow's right in land.*

§ 1. There is no reference in the Welsh Laws to a widow succeeding, even for life, to an interest in her deceased husband's land. Welsh Law provided for the maintenance of a widow in another manner.

The Statute of Rhuddlan, which provided :

'Whereas heretofore women have not been endowed in Wales, the King granteth that they shall be endowed,'

wrought a great change in Welsh custom.

The 'dos' to which it refers was the creation, in favour of a widow, of a right to an assignment of one-third of the whole land, which had been held by her husband, and the right to enforce a settlement upon a wife made by her husband at the door of the church with the consent of the husband's father.

The Statute broke into old custom so far as to make the occupier of separated plots proprietor thereof to the extent of allowing a marriage settlement to be made and to give the wife a partial life estate.

§ 2. Much the same sort of thing occurred in Scotland. There is an interesting passage in the Scots Law of the time of Alexander II (c. 10), illustrative of the introduction into that law of the widow's dower. In A. D. 1230, the widow of John of Burnwill claimed one-third of her deceased husband's land as dower. She was successful in her claim by special decree of Parliament, but it was expressly stated :

'Na befor na nan woman widow was wont be the custom of the kynrik to haff the thyrd of the land in suilike maner.'

In the Germanic Laws there was some variety according to tribes. Under the Lex Salica, for instance, Tit. II, cc. 40, 42, a widow had no interest in her husband's land ; she was absolutely under the control of her husband's heirs, while the Lex Baiuor., Tit. XV, cc. 7, 8, gave her a portion equal to a son's share until death or remarriage.

Under the latter law (Tit. XV. 10) a childless widow got half the 'pecunia', not the land, losing it, however, on

remarriage. At the same time a man could, in absence of male lineal descendants or near collaterals, will the whole or part of his estate to his wife during chastity or widowhood.

§ 3. In the Surveys and other documents of the fourteenth century traces do appear of women holding rights in land. A particularly interesting provision occurs in Ogmores, where a widow of a deceased tenant, dying without issue, retained the land so long as she remained chaste. In Lamphey, also, a similar rule permitting a widow to hold until remarriage had existed, but it had become extinct by the fourteenth century.

These rare instances may be due to one of two causes. They may be exceptions to the general rule of Welsh Law, just as we find in other communities similar exceptional instances ; they may, on the other hand, be simply exemplars of the Norman rule introduced by the Statute of Rhuddlan, for there is no doubt that in the thirteenth century there was a tendency at large to give widows a right in land.

3. *The Law of Marriage. Forms of marriage.*

§ 1. When the western Aryan peoples first come into view the Law of Marriage was in a fluid state.

Marriage as a sacrament was almost non-existent, marriage even as a contract was only slowly struggling into recognition. Marital unions, for they were that rather than marriages, were loose unions, by no means permanent of necessity, but dissoluble either at will or for a cause recognized by custom. Monogamy also was not the strict rule, and we find a recognition of marital unions between one man and several women, generally, however, with the granting of some special status to one wife who would be regarded as the 'wife' *par excellence*.

We find also, at an early stage, different forms of marriage growing up. Some like 'confarreatio' imply some kind of religious sanction, others like 'coemptio' or purchase, 'usus' or prescription, imply contract. Below all these forms of marriage we find concubinage and casual connexion.

Among modes of acquisition of wives the two main ones discernible are acquisition by capture and acquisition by purchase, developing into acquisition by gift. The latter implied a contract, a contract between the kinsmen of the bride and the kinsmen of the bridegroom expressed in the betrothal, and a contract between the parties expressed in the consummation of marriage.

Side by side therewith we discern marital unions commencing 'consensu mulieris', growing by continued 'cohabitatio' into a full union.

Points of contact in the customs of different tribes or peoples relating to marriage are numerous, points of differentiation are almost as frequent.

Into all these differentiations it is impossible to enter here. We are concerned only to state, as accurately as we can, what was the actual Law of Marriage in Wales in the tenth or eleventh century.

The solvent of this law and similar customs among Celtic and Teutonic peoples into marriage, as it is understood to-day, was the Church.

§ 2. Nowhere is the vitality of ancient custom more marked in the Welsh Laws than in the rules regarding marriage, on which matter custom came into sharp conflict with the Law of the Church.

It is significant that the Welsh Laws nowhere refer to the necessity of a religious ceremony; and the Mabinogi makes mention of only one in the numerous passages regarding marriages therein. We know bards were present for a fee was payable to them, but, beyond that, custom demanded no religious ceremonial. This, it may be noted, is common to all early folk-stories, sagas, and the like, whether Celtic or Teutonic.

In the early Canon Law a religious ceremony was not essential, and it was not until the eighth or ninth century that the Church began to insist upon it as absolutely necessary.

In England it was actually in the time of Hywel Dda that the Church secured legislative sanction to the religious ceremonial. It was provided for the first time in c. 8 of

the Laws of Edmund (A. D. 940-6) that 'at the nuptials there shall be a mass-priest by law, who shall, with God's blessing, bind their union to all posterity'.

That recent introduction found no place in the Welsh Codes, nor is it to be found in the Germanic Codes.

Not that it is to be assumed that religious ceremonies were not observed; they were; but a religious ceremony was no essential part of the contract of marriage. To use modern phraseology, the old Welsh Laws regarded marriage as a purely civil contract, to the sanctity of which no religious ceremony could add anything not implied by the contract itself.

§ 3. The Welsh Laws recognized two forms of marriage, that which is termed 'rod o cenedl' (gift of kindred), and that which is termed 'lladrut' (stolen, secret, or furtive), or, as it is translated by Mr. Owen, 'clandestine'.

The first named consisted in the bestowal of a woman in marriage by her relatives, and was the most regular and honourable form of marriage; the other was the bestowal of a woman by herself without consulting her relatives.

No description of the form of gift by the relatives is given, but the name suggests some kind of formality not unlike the Roman method of manumission. The less honourable form of marriage by personal bestowal was, in the eyes of the law, complete by continued cohabitation. In both cases a religious ceremony might or might not be added; but the question the law asked was not whether the marriage was one sanctified by the Church or not, but whether it was by gift of kin or personal bestowal.

There was no difference in the legal effect of a marriage by gift of kin and personal bestowal; both ties were equally binding, and the children of both were legitimate.

The distinction lay in the rights a woman acquired in each case against her husband and against her relatives.

§ 4. Marriage by gift of kin was effected by the bestowal of a woman either by her father or, failing him, by her brothers, or, failing them, by the male relatives related to her in four degrees.

Prof. Lloyd, in his description of the 'cenedl', which he

identifies with a seven-generation group, asserts that the giving in marriage was one of the matters in which that group acted in concert, but the laws do not appear to give countenance to that view.

In the story of Kilwch and Olwen, contained in the *Mabinogi*, we are told that when Kilwch and his companions sought the hand of Olwen from her father, Yspaddaden Penkawr, the latter replied :

'Her four great-grandmothers & her four great- grandsires are yet alive ; it is needful that I should take counsel of them,'

indicating that the limit of relationship entitling a person to have a say in the disposal of a woman was the fourth degree.

This indication in the *Mabinogi* is in accord with the provisions of the law, for, where the son of a Welsh woman given in marriage to an 'alltud' claimed 'mamwys', he claimed it from those related to him in four, not seven, degrees.¹

It seems clear, therefore, that the bestowal of a woman in marriage was the affair of the father, the brother, or the nearest relative in the fourth degree.

It would also appear that where there was more than one person related to the woman in the same degree the right of bestowal in marriage vested in the whole body of relatives so related, and not in any one individual.

This seems clear from the comment of Efnysen in the story of Branwen, the daughter of Llyr, who, when his brother Benedigaïd Fran bestowed his sister Branwen upon Matholwch without consultation, expostulated :

'Thus have they done with my sister, bestowing her without my consent. They could have offered no greater insult to me than this,'

and then proceeded to take revenge for the insult offered.

The point of the story turns on whether Efnysen, who was only a half-brother to Branwen, having the same mother but a different father, was entitled to consultation or not. There could have been no question about it had he been a full brother, but being only a half-brother, the

¹ IX. 286, XIV. 738.

sorrows that Branwen subsequently endured were traceable to the unjustified revenge of the 'quarrelsome' Efnysen.

§ 5. But though the right to bestow vested in relatives in the fourth degree, it is clear that no woman could be forced into the marriage tie against her will, especially if she had been married once before.

In the story of Pwyll, the Prince of Dyfed, we find Rhiannon saying to Pwyll :

'I am Rhiannon, the daughter of Hefeydd Hên, & they sought to give me to a husband against my will. But no husband would I have, & that because of my love for thee,'

and the upshot of the story shows her will prevailed, and she married Pwyll.

This is no fanciful picture of an ancient fairy tale. 'Every woman', runs the Law of Gwynedd in its terse method of expression, 'every woman is to go the way she willesh, freely.' She was not a chattel, but a free person who could not be married to any one against her will.¹

But it would seem that if she were a maiden she had not an absolute right to marry against the will of her kindred. They could, if they chose to exercise that power, pursue an absconding maiden, capture her, and bring her back, 'even if', the Codes say, 'it should annoy her husband', but this right to cancel the marriage of a maid did not extend to the cancellation of the marriage of a woman who was not a maiden.²

Such a woman could marry by personal bestowal if she wished, without interference, and no doubt there were cases where such a marriage by a maid was acquiesced in as a 'fait accompli'; for the very simple reason that, if captured and brought back once, there was no power in the relatives, if the connexion had been consummated, to prevent the woman absconding with some one else immediately after.

To make a personal bestowal marriage a binding tie all that was needed was continued cohabitation.

In the provisions made by the laws as to the rights of

¹ V. C. 96.

² V. C. 92 ; D. C. 518 ; G. C. 748.

women there is a very clear distinction drawn between marriage by gift of kin, marriage by personal bestowal, and a casual connexion not creating the status of marriage.

To appreciate these distinctions it is necessary to refer at some length to certain dues on account of women or payable to women.

4. *The Law of Marriage. Dues payable.*

(1) 'Amobyr'.

§ 1. 'Amobyr', or as it is sometimes called in the Southern Codes, 'gobr', was a fee payable for the maidenhood of a woman.

No marriage could be regarded as complete unless and until the 'amobyr' had been paid to the person entitled to it.

The amount of the 'amobyr' is variously stated in the laws, but generally speaking it was equivalent to the 'ebediw' payable for ascension to the estate of the woman's father.

It was fixed according to status, and the rates given, with their variations, may be tabulated as follows:

King's daughter . . .	£6
Pencenedl's daughter . . .	£1 10s. to £1
Chief Officers' daughter . . .	£1 10s., £1 to 10s.
Minor Officers' daughter . . .	£1 to 10s. to 5s.
Uchelwr's daughter . . .	10s.
Boneddig's daughter . . .	10s.
Aillt's daughter . . .	6s. 8d. to 2s.
Alltud's daughter . . .	2s.
Bondman's daughter . . .	1s.

The Dimetian Code gives as a general rule that the 'amobyr' of a woman was equal to the revenue payable by her father for his land.

Some authorities in the Anomalous Laws assert that no 'amobyr' was payable on account of the daughter of the lord, 'edling', 'pencenedl', and 'penteulu'; but, as the rates are specifically given in the Codes, this is obviously inaccurate.

The fact is that no woman was without 'amobyr' value from the highest to the lowest. It mattered not whether her father possessed land or not, the amount was payable.

A repudiated daughter had 'amobyr' value fixed according to the nationality of her mother, and even the tenants of the Church had an 'amobyr' value placed on their daughters.

§ 2. The 'amobyr' was payable to the King, or territorial lord, for the protection afforded to women in his dominions, and could be recovered by suit. Some MSS. under error refer to it as payable to the woman's father, and one even as payable to her husband.

A few exceptions existed to the rule that the King or lord was the recipient. The 'amobyr' of the King's daughter was payable, not to the King, but to the Queen; that of daughters of the understrappers to the King's principal officers to the immediate superiors, the chief huntsman, the chief groom, &c., either in whole or in part, and that of daughters of tenants of the 'maer-dref' to the 'land-maer'.

The 'amobyr' of bondwomen went to the owner of the woman, and was liable to enhancement in certain circumstances.

§ 3. 'Amobyr' was payable whenever a woman was cohabited with for the first time: it was accordingly payable on marriage by gift of kin, on cohabitation, whether continued or not, on violation, and, if cohabitation were secret, on pregnancy. It is even asserted in the Anomalous Laws that if a man boasted a woman was pregnant by him, even if the boast were false, 'amobyr' was payable by him.

'Amobyr', being a maiden fee, was payable on account of a woman once in her life, and once only; consequently it could not be levied on the remarriage of a widow or separated wife, the violation of a married woman, or on a woman, who, after marriage and payment of 'amobyr', was affiliated to a new kin under a different lord; and, if a maiden were abducted by or fled with a man to whom she was not given in marriage, and her relatives succeeded in recovering her before consummation, the 'amobyr' was not payable, as the woman was still 'virgo intacta'.

§ 4. In the case of marriage it depended on whether

a woman had been married by gift of kin or personal bestowal as to who was liable to pay 'amobyr'.

If she were married by gift of kin, then the person or persons giving her in marriage were responsible to pay. It was customary for the husband to take security from the relatives that they would pay it, and, if he neglected to do so, he might become personally liable. It was also permissible for the relatives and husband to contract outside the law by agreement that the husband or woman should pay it, in which case the husband or woman gave them security. No doubt this occurred when the relatives did not altogether approve of the marriage, but were prepared to withdraw their objections and to make a formal gift when the woman insisted on her right to dispose of herself.

If a woman married by personal bestowal, then the relatives were not responsible for the 'amobyr'; the liability fell upon the woman herself, or the person whom she married.

If a woman were abducted, the abductor paid, and should any person abet an abduction by giving shelter to the eloping couple, that person rendered himself liable to pay the 'amobyr', unless he had taken security from the abductor.

A woman abandoning herself of her own free will to a casual connexion was herself responsible for the 'amobyr', and if she had an illegitimate child, whom she failed to affiliate to a father, she paid the 'amobyr', but apparently if she did affiliate the child the father paid.

In case of violation the person violating, if he were known, was responsible; if he were not known, then no 'amobyr' was payable, inasmuch as it was held that the lord had failed to give the woman that security to which she was entitled from him.

In all cases of alleged violation the woman's oath was conclusive as to the fact whether she had been violated or not, as to the person who had violated her, and as to whether the person violating her was known to her or not.

These rules illustrate very clearly in one particular the

differentiation between marriage by gift of kin, marriage by personal bestowal, and casual connexions.

§ 5. 'Amobyr' finds its place in the Surveys of the fourteenth century, where it is sometimes termed 'leyr-wite' and 'merchetum'.

In English Law 'leyrwite' was a fine payable on conviction of a woman for evil living, and 'merchetum' was a fee payable at marriage.

In the Surveys they are lumped together as one, and no distinction is drawn with respect to payment in the Survey of Denbigh between a first and second marriage, except perhaps in Caimeirch, or between marriage and loose living.

§ 6. The universal rule throughout the Honour of Denbigh was that the 'amobyr' in the case of a woman of free birth was 10s., and in the case of a woman of unfree birth, 5s.

The only exceptions were that the 'nativi' of gafael Rathe in Denbigh, which had formerly been free, paid 10s., the unfree tenants of gafael Cathe paid 2s., the freemen of Gwytherin paid only 5s., and the Wyrion Eden' and some freemen in Mochdre paid nothing.

The tenants of the Church in Nantglyn Sanctorum paid as 'nativi' to the lord, while in Gwytherin the fee went to the lord and Abbots in proportion to the 'albadeth' payable to each.

The 'gwely' in Rhiw, which was neither free nor unfree, paid at the freeman's rate.

The fee was payable by a woman, and failing her, her relatives or friends, the charge being a charge on land. The liability of relatives was limited, however, to one 'amobyr' only. In Lleweni, liability fell upon the husband in the first instance, and failing him, on the woman's relatives.

The extension of the liability to pay 'amobyr' more than once is especially mentioned in Uwchaled and Uwchdulas, where it was payable whenever a woman was married or went astray.

Default in payment entailed, according to the general rule, sequestration of land until paid, but in Bodiscawn,

Gwerneigrion, and Mochdre there are instances of land being escheated for non-payment.

§ 7. In the Record of Caernarfon the general rule among the free was that 10s. was paid for 'amobyr', which is usually shown as paid at the same rate as investiture fee.

Some few estates were free; they correspond with those which were free of heriot or investiture fee.

Among the unfree it was levied at 5s. or 6s. 8d., or at the rate of the 'gobr estyn' or 'ebediw'.

In Merioneth 'amobyr' on the free was usually 10s., but there were a few exceptions fixing it at 2s., 5s., and 6s. 8d.; on the unfree it was generally 6s. 8d., with a few instances of 6s. and 5s. In the Diocese of Bangor the fee was generally 2s. among the unfree, but the amount payable by the free is not stated.

§ 8. In St. David's the old Welsh 'amobyr' had disappeared and become entirely absorbed in the Norman 'merchetum' or English 'leyrwite', whose rate was always 2s. or 1s.

§ 9. In Bromfield and Yale the rule is frequently laid down that 'amobyr' or 'leyrwite' was payable on every occasion on which a woman was married or went astray. This was a considerable extension of the original rule prevalent in the Welsh Laws.

The rates there differ also from those in the laws. Generally speaking the rate imposed on the free of Bromfield was 20s., and the same rate was levied on the unfree of Marford and Hoseley. Only 5s. was demanded from the freemen of Burton and of Geufron.

Two shillings was the common fee among all other unfree-men and among the freeholders of Yale.

There are some few instances of complete exemption. It was not levied at all in Wrexham or Holt, nor in Pickhill, Gelligynan, nor from some of the tenants of Bodidris, Dutton Diffaeth, and Gwensanau.

§ 10. The South Wales records afford little extra information. Occasional glimpses of 'amobyr' are found in the various Ministers' Accounts, but it seems to have been

unrecognized in the free 'cymwds' of Madubrud and Mabelfiw.

In Monmouth we find 'amobyr' had been extended to second marriages or lapses with, however, the provision that the second 'amobyr' was only half of the first.

An interesting variation is the rule, occasionally found, of a special marriage-fine imposed on marriages of unfree women to freemen or outside their own lord's jurisdiction. Such fines occur in Ogmere, Lamphey, Strigoil, and Ede-lagan.

§ 11. Mention of similar dues among other peoples is made below. The great distinction between the Welsh custom and the general custom is that 'amobyr', being a maidenhood fee, was payable once, and once only; among other peoples it was payable on every marriage and every time a woman lapsed. The foreign Norman-English rule was enforced in Wales as time went on, and it formed one of the grounds of complaint in the Great Petition of A. D. 1360 that ancient custom had thereby been violated.¹

(2) 'Cowyll.'

§ 1. 'Cowyll', like 'amobyr', was also a maidenhood fee, but it differed from 'amobyr' in this, that, whereas the latter was payable to the territorial lord, 'cowyll' was payable to the woman herself.

§ 2. The rates mentioned vary very slightly in the Codes, and may be tabulated thus:

King's daughter . . .	£8
Principal Officers' daughter . . .	£3
Minor Officers' daughter . . .	£1 10s.
Boneddig's daughter . . .	£1 10s. to £1
Aillt's daughter . . .	10s.

In South Wales the 'cowyll' of the King's daughter was arranged for by the settlement of land upon her by the husband, a method probably originating from abroad.

It will be noted that no provision was made for 'cowyll' for the daughters of foreigners and bondmen.

¹ References in Laws to Amobyr: V. C. 88, 92, 94, 96, 100-2, 170, 204; D. C. 456, 518, 520, 526, 528, 530, 556, 600-2; G. C. 680, 748, 750, 784; IV. 14, 16, 18, 32-4, V. 66, 78, IX. 264, X. 326, 336, XII. 468, XIV. 574-6, 608, 610-12, 660.

§ 3. 'Cowyll' was invariably paid to the wife by the husband, but it was paid only to maiden wives. The law presumed the chastity of every woman up to the age of 14, and thereafter it was held established by avouchment by the oaths of the seven nearest in relationship to the woman.

§ 4. 'Cowyll' was also payable to every maiden violated, the person responsible for its payment being the offender.

'Cowyll' does not appear to have been paid in cash at the time of marriage; and it had some resemblance to the system of deferred dower known to Mohammedan Law. The wife, on the evening of the marriage, had the right to specify the particular purpose to which her 'cowyll' was to be devoted, but, if she did not then exercise her right, it could be invested in anything of utility for the common purposes of the man and wife. The property, however, in such subject remained the wife's, and it was kept entirely separate from the husband's property. It formed part of the wife's 'peculium', which she could never be deprived of, even for subsequent immorality, and at separation she was entitled to claim her 'cowyll' in full and take it with her.

§ 5. The 'cowyll' of the Welsh Law corresponds with the 'morgengifu' or 'nastheit' of the Germanic Laws, a gift at marriage by the husband to his bride which the wife retained on her husband's death, her divorce, or remarriage, and with the 'tinnskra' of Irish Law.¹

(3) 'Gwaddol.'

§ 1. In the Welsh Laws the words 'gwaddol' and 'agweddi' are often used as if they were interchangeable; but they must not be confused. The actual nature of 'gwaddol', as the right of a daughter to a share in her father's moveables by way of dowry provision, has been discussed above.

§ 2. The 'faderfio' of the Lombardic Law, and the 'maritagium' or 'franc-marriage' of Norman and later English Law, correspond roughly to 'gwaddol', as do also the true 'dos' of the Roman Law and the 'tinol' of Irish Law.

¹ Lex Alam. H. C. Tit. LVI; Ed. Roth. c. 215; Ed. Luit. c. 7.

(4) 'Agweddi.'

§ 1. 'Agweddi' was a dowry payable to a wife, whether a maiden or not, by a husband when the marriage was consummated, sureties being given for its payment before marriage.

The 'agweddi' was also payable to a woman violated in addition to all other mulcts imposed upon the offender.

We find mention of 'agweddi' at least twice in the Mabinogi, viz. in the Dream of Macsen Wledig, and in the Tale of Kilwch and Olwen.

§ 2. There was a marked distinction between the 'agweddi' due to a woman marrying by gift of kin and one marrying by personal bestowal. In the former case the 'agweddi' was fixed as follows:

King's daughter . . .	£24 to £14
Major Officers' daughters . .	£7
Minor Officers' daughters . .	£3
Boneddig's daughters . . .	£3
Aillt's daughters . . .	£1 10s. to £1

It will be noted that, as in the case of 'cowyll', no 'agweddi' was fixed for the daughters of foreigners and bondmen: they were outside the common law for this purpose.

The rates given applied to all women; but if a woman were given by gift of kin on the representation that she was a maiden, and it was ascertained that she had been unchaste before marriage, the laws provided with grim humour for a contemptuous 'agweddi'.

In such a case the moment the husband discovered the fact, at the latest the next morning, he was to call together all the marriage guests; the candles were lit and the woman was put to an oath. If under 12 her oath as to her chastity was conclusive, if mature she had to compurgate herself by the oath of five or seven persons, including her father, mother, brothers, and sisters.

If the charge were not denied the woman's clothes were cut to the level of her hips, she was made to hold the tail, well greased, of a year-old steer, which was thrust through a hole in the house door. Two men prodded the steer, and, if the woman could hold the animal, she could keep it

as her 'agweddi' and that only; if she could not, she had to be content with the grease that clung to her fingers.

§ 2. The 'agweddi' of a woman, marrying by personal bestowal or cohabiting with a man, was determined, in the first instance, by the terms of any contract entered into between the man and the woman in the presence of witnesses, or, if there were no witnesses, according to the terms of the contract as sworn to by the woman.

Failing a contract, the Dimetian Code says that, in ancient times, the woman was entitled to the same 'agweddi' as a wife by gift of kin, but elsewhere it fixes the 'agweddi' of a freeman's daughter, forming such a connexion, at six steers, and of the daughter of a 'taeog' three. The same rates are given in the Gwentian Code, which adds nine steers for the daughter of a 'pencenedl' and a major official, and six for the daughter of a minor official; while the Venedotian Code fixes a total of three steers if there had been cohabitation for three nights, and, if the connexion continued for seven years less three days, the woman became entitled to the ordinary 'agweddi' of a wife by gift of kin.

§ 3. A woman cohabiting with a man for a short period must claim her 'agweddi' in seven days; if she did not she must wait for the expiry of a year and a day.

A woman of ill fame was entitled to no 'agweddi' greater than a penny, and no statement of hers prevailed against a man's denial.

We see, therefore, that cohabitation for three days was equivalent to a marriage, but that a connexion beginning without 'rod o cenedl' did not give the same rights against the husband until it had lasted for seven years, when it assumed exactly the same status as the more formal marriage.

(5) 'Argyfreu.'

The term 'argyfreu' is sometimes used instead of 'agweddi', but its real connotation appears to be the 'paraphernalia' of the woman, her personal jewellery and trinkets.

Such 'argyfreu' always remained the 'peculium' of the woman, and could not be forfeited even for unchastity, though the Venedotian Code appears to imply the contrary.

(6) 'Gowyn' or 'Wynebwerth'.

The dues payable on account of or to women at marriage or cohabitation have been detailed. We must not forget to notice an addition to a woman's 'peculium', which might accrue to her during marriage, and which she could never forfeit.

This was the 'gowyn' or 'wynebwerth', a fine payable by the husband to his wife, who detected him in immorality with another woman.

For the first offence the fine was 10s., for the second £1, and for the third the wife was entitled to separate from her husband. If she endured the third time she had no further cause for complaint on account of her husband's misconduct.

'Gowyn' was also payable to a woman violated in addition to all other penalties, and, in this connexion, the mulct is sometimes called 'dilysrwydd' or 'dilysdawd'.

The word 'wynebwerth', which means face value, it may be noted, is also used in a number of other senses, equivalent to particular acts of insult, but it is unnecessary to refer to them here.

5. *Forms of marriage in contemporary systems.*

§ 1. This Law of Marriage and endowment was not peculiar to Wales. Similarities existed in Roman, Germanic, Anglo-Saxon, and Irish Law, and it will enable us to understand how the Welsh Law stood in relation to other laws if we consider very briefly some of the points of resemblance and difference.

§ 2. Roman Law, in the beginning, regarded all children as the absolute property of the father or senior male ascendant of the family. 'Patria potestas' of this kind did not exist in Wales, but the effect of it in Rome was to produce some results analogous to those in Wales.

No son or daughter could marry without the consent of the 'paterfamilias', and any marriage contracted without such consent was 'void ab initio'; Welsh Law required no consent for the marriage of a male, and marriage by a female was not voided if made without consent.

The age for marriage in Roman Law was the same as in

Wales, 14 in the case of males, and 12 in the case of females.

The essence of the Roman marriage was, as in Wales, the expression and manifestation of an intention to marry.

There were three forms of marriage known to the early law: that by 'confarreatio', limited to the select class to whom the 'jus sacrum' was open, in which some religious ceremony was gone through; that by co-emption, in which there was a fictitious sale and delivery by the 'paterfamilias' to the husband; that by 'usus' or cohabitation.

In all these cases the woman passed absolutely under the dominion of her husband, and the wife had no power to hold property. Marriage by 'confarreatio', never applicable to the bulk of the population, fell into disuse early, and the other two forms correspond roughly with the two Welsh forms, 'rod o cenedl' and 'lladrut'.

In later times the distinction between 'coemptio' and 'cohabitatio' disappeared, and in 'cohabitatio' the wife was enabled to free herself from passing under the dominion of her husband by absenting herself for three nights each year, thereby becoming capable of holding property of her own.

Marriage was not a religious union: it was a contract, and all the law required to determine whether a connexion between a man and woman was a marriage or a mere casual connexion was an expression and manifestation of an intention to live together as man and wife.

In regard to marriage gifts the wife was endowed with 'dos' by her parents, the property in which remained with the wife or donor upon her death, subject to forfeiture in case of the wife's misconduct. At the same time, in the later Empire (*temp.* Theodosius), it became an established custom for the husband to endow his wife with a 'donatio ante nuptias', which, from Justinian's time onwards, could be increased after marriage.

We find nothing in Roman Law corresponding exactly with 'amobyrr' or 'gowyn'.

The 'dos' has some points of resemblance to the 'gwaddol', and the 'donatio ante nuptias' to the 'cowyll' and

'agweddi', but neither of them had, in Roman Law, a definite fixed standard, and the 'donatio' was clearly distinguishable from the Welsh provisions in that it preceded marriage and was not in the nature of a maiden fee. The resemblances are accidental, and it is clear that the Welsh system was not borrowed from the Roman Law.

§ 3. The early English Laws in regard to marriage are fragmentary.

The right of a woman to dispose of herself in marriage was a privilege the Anglo-Saxon Law did not recognize.

Until the Church succeeded in the tenth century in enforcing a religious ceremony upon the people, no religious rite was absolutely essential.

So far as ceremonial was concerned, marriage in Anglo-Saxon Law consisted of betrothal and delivery (*beweddod* and *forgifen*), and a 'wedded' wife was essentially one married by delivery of kinsmen.

Betrothal was the contract to marry, delivery was the actual physical performance of the contract.

Anglo-Saxon Law differed from Welsh Law in that, in the former, marriage was essentially the sale of women.

The bridegroom paid a price—the 'weotuma'—to the male relations of the bride, and, without that payment, there could be no marriage. What was sold was the custody and protection of the woman.

This characteristic of the early English Law of Marriage finds constant expression.

In Athelstan's Law, c. 31, an adulterer had to 'purchase' a new wife for the injured husband, and present her to him, and in c. 75 we find the 'mund' or transfer fee, paid to the family of the bride, given in detail according to rank, ranging from 50s. to 6s., which was doubled if the woman were abducted. 'Mund' was payable for a widow, 'maiden-bot' for a maiden, and in c. 77 we see that the payment of 'maiden-bot' was a guarantee by the givers of the girl that she was a maid, and, if the guarantee were found false, then the husband had, as in Wales, the right of repudiation. The section runs:

'If a man buy a maid with cattle, let the bargain stand,

if it be without guile: but, if there be guile, let him bring her home again, and let his property be restored to him.'

Likewise in c. 82, where a maid was abducted, the abductor had to buy her of her parents, besides paying a 'bôt'. Again in the Laws of Ine compensation was to be paid where, after a man had 'bought' his future wife, the marriage agreed upon was not effected.

The Laws of King Edmund (A.D. 940-6) give a very detailed account of the negotiations between the bridegroom and the relatives of the bride, an essential portion of which was the guarantee of a foster-lean—or pledge to the bride's family—by the bridegroom. The regulation deserves a full paraphrasing, for we see the ancient customs clearly preserved, the Church rite being superadded at the end.

The essential portions runs thus, freely rendered:

'If a man desire to be betrothed, and the relatives of the woman agree, let the bridegroom give surety to the attorneys of the marriage to keep her as wife.

'Then let the bridegroom give surety for the foster-lean (purchase-money). Then let him declare what he will grant the wife if she will choose his will (i.e. submit herself to his dominion), or what he will grant her if she survive. If it be so agreed, she shall be entitled to half the property, and, if they have children, to all, until remarriage, surety being given for all these promises.

'Then when agreement has been reached, let the kinsmen betroth their kinswoman to wife to him who desires her.'

It is at this stage that the laws add for the first time a provision for the presence of a mass priest at nuptials.

The sale of women in marriage was the common practice in England until prohibited by Cnut, c. 75, who first gave the woman the right of free disposal of herself:

'Let none compel either woman or maid to him, whom she herself mislikes, nor for money sell her, unless he be willing to give anything voluntarily.'

§ 4. The payment of purchase money for a bride was the common Teutonic rule of law. It is mentioned in the Lombardic Laws, e.g. cc. 182, 183, 188, 198; the Lex Salica, Tit. XLVI, c. 2; the Capitularies VII, c. 463; the Biarko Law of Denmark, c. 68; the Swedish Law; the

Lex Alamman., Tit. LIV, c. 2; the Lex Burgund., Tit. XII, c. 3; the Lex Luitprandi, Lib. VI, c. 46, and was a common feature also of Scandinavian Law.

The Lex Saxon., e.g. Tit. II. 40, fixes the price of a woman at 300s., and if married without consent of 'parentes', 600s.; and if abducted against her will the 300s. was still paid, the woman restored, and an additional fine of 240s. paid to the girl. If she married against the will of her 'parentes', she lost all her inheritance.

Dealing with the marriage of widows in c. 42, it is said:

'Qui viduam ducere vult offerare tutori precium emptionis ejus consentientibus ad hoc propinquis ejus',

with which may be compared the provision of c. 65:

'Lito regis liceat uxorem ubicumque voluerit, sed non liceat ullam feminam vendere.'

The practice is also evidenced in Theodoric's letter to the King of Thüringen, which runs:

'Qua propter salutantes vos gratia competenti, indicamus nos venientibus legatis vestris impretiabilis quidem rei, sed more gentium suscepisse pretia destinata, equos, argenteo colore vestitos, quales decuit esse nuptiales.'

The Germanic Laws say little about the forms of marriage beyond showing that there was a sale.

The disposal of a woman was undoubtedly in the hands of the 'parentilla', and any woman who married without consent was regarded as having been stolen by the husband. A most typical instance of this attitude occurs in the 'Capitulare de banno dominico' (*temp.* Charlemagne), c. 5, which includes among those who lay under the ban of the Emperor those 'qui raptum fecit, hoc est qui feminam ingenuam trahit contra voluntatem parentum suorum'.

If we may judge from the Lex Langobard., the power of disposal lay first with the father, then the brother, and thereafter with the near male relatives.

The Teutonic system seems, therefore, to have been similar to the Welsh, in that the consent of kin was necessary: it differed in this that among the Teutons a woman was sold, while in Welsh Law there was no present to the parents of the girl as a 'quid pro quo'.

§ 5. We have already noted slightly the attitude of the Teutonic peoples to marriages by personal bestowal.

There are several other references which might be quoted.

Such a marriage with a widow is referred to in Athelstan's Laws, c. 75, as entailing a double 'mund'.

A marriage of this type with a maiden, however, was not recognized unless ratified by the parents. What happened in case a maiden was abducted or seduced was that the maid was to be bought thereafter and a heavy fine paid.

The provision in Ælfred's Laws runs:

'If any one deceive an unbetrothed woman, let him pay for her and marry her, but, if the woman's father will not give her, let him render money according to her dowry.'

Additional 'bôts' were added if the girl were already betrothed to another, and also if she became 'enceinte' (Æthelbert's Laws, c. 83-4), in the latter case a 'wite' of 15s. payable to the King being added.

§ 6. Similar was the case with the Lombardic Law (Ed. Rothar., c. 191).

The Germanic view was that the abduction of a girl, whether with her consent or not, was not so much a moral sin as the deprivation of the 'parentes' of the cash value of the girl in marriage.

In the Lex Burgund., Tit. CI, we get the point clearly expressed. Cohabitation without consent of the 'parentes' and payment of 'weotuma' entailed a heavy 'compositio' and fine, and abduction without marriage nine times the girl's 'pretium', plus a fine. If the abductor would not pay the price the law provided grimly that he was to be handed over to the 'parentes' of the girl to do 'what evil they liked upon him'.

Widows had in some of the Teutonic Laws greater freedom of disposal.

Under the Lex Burgund., for instance, Tit. XIV. 3 and LXVI, the widow could marry as she willed, so also under the Lex Langobard. (Ed. Roth., c. 182), but there the new husband paid the relatives of the old one half what the latter had paid for the woman, and, if they did not agree to this, the widow took her 'morgengifu' and what she had

received from her 'parentes', passed from the 'mund' of the relatives of her deceased husband, and was free to marry.

§ 7. Under Anglo-Saxon Law the liability to pay the purchase price did not end the bridegroom's duties.

The early manorial rolls have many instances of a payment to the lord of the manor a fee corresponding to the 'amoby'—the 'merchetum'—in fact, that was a general rule throughout England and the Continent.

The bridegroom had also to provide a maiden-fee, or 'morgen-gyfa', corresponding exactly to the 'cowyll'. This gift is also found among the Germanic tribes, one of whom, the Lombards, fixed its maximum at not more than one-quarter the husband's property, and, according to the Laws of Edmund, the bridegroom made a settlement upon the bride prior to marriage, to be operative only if he predeceased her.

Failing a settlement the ordinary law corresponded with the English Law of intestacy.

There is not much trace in the English Laws of a dowry by the bride's family similar to the 'gwaddol': the custom, however, did exist under the name of 'fioh' or 'fader feum', which reverted to the father's family if the wife died without issue.

§ 8. In the matter of marriage the Irish Laws, II. 351, III. 533, are somewhat confused. There appears to have been no necessity for any religious ceremony. Marriage was a contract, and nothing more. The husband derived therefrom no greater power of proof upon her than he had before marriage. The consent, however, of the chief of the tribe and of relatives was essential, whether the marriage was by a maiden or a widow, but, as in Wales, it was the duty of a father or tribe to marry a woman to a man of equal rank.¹

Marriage without such consent was not void 'ab initio', but it was an insult to the tribe to be compensated for by the payment of honour-price.²

If the bride were abducted by force, honour-price was payable to the chief of the tribe, the woman's relatives,

¹ Ir. Laws, I. 181, II. 347, 357.

² Ir. Laws, III. 541.

and the woman herself, together with 'coirpdire' or body-fine if the woman died in childbirth. The same penalties were enforced in the case of violation or deception.

If the woman absconded of her own free will no honour-price was payable to her.

This rule in Irish Law is emphasized by the rules relative to children which appear to have no counterpart in other systems, except in the *Lex Alamman*.¹

Ordinarily children belonged, under Irish Law, to the father; but if a woman were abducted, either by force or with her consent, and a child were begotten within a month, such child belonged not to its father but to the woman's father. If the woman had been abducted by force the maternal family could sell the child to the father or not as it chose, and, if it volunteered to sell, the father must buy.

If the woman had absconded of her own free will the father had the option of buying the child or not, and, if he decided to buy, the maternal family must sell.

Some authorities, it is said, insisted on the father buying in all cases. Children begotten after a month were deemed to be the children of a marriage.

The one provision in the *Lex Alamman*, Tit. LII, comparable to this, says that if a man abducted the wife of another man or an unmarried woman without her parents' consent and children were born, then, if the children died, the abductor paid their 'wergild' to the husband or the 'parentes', as the case might be; if the children lived they belonged to the husband or 'parentes'.

Behind all these provisions we see that marriage by gift and delivery of kin was the most regular form as elsewhere, and that marriage by 'cohabitatio' was recognized as a less reputable marriage, but equally valid if the cohabitation endured for a month.

We should, perhaps, here not omit the story in the *Senchus Mór*, I. 71, which shows that marriage outside the tribe without consent of the tribe deprived the issue of all right of support. In the *Senchus Mór* we have the story told of the 'son of Dorn, who is a trespasser on us'.

¹ Bk. of Aicill, III. 311, 541.

What happened was that Dorn had married outside her tribe. Her son, Fotlene, together with five of his mother's kinsmen, killed Eochaidh. The tribesmen of the five gave satisfaction and hostages for their kinsmen, but declined to assist Fotlene, who had to give his own mother as hostage. 'The tribe', it is said, 'did not bear the share of Fotlene, for he was begot against the will of the tribe.'

With regard to gifts the principal gift in Irish Law was 'coibche'. This was in some particulars similar to 'ag-weddi'. It was given by the husband to the wife, and retained by her, on divorce or separation, as against her husband, descending eventually to her daughter. But the relatives of the girl had definite interests in the 'coibche'. If the father of the girl were alive at marriage the whole of it went to him for the first marriage, two-thirds for the second, and so on; the Irish Laws, in their peculiar way of calculating everything to the furthest possible fraction, providing that when a woman married for the twenty-first time, the father got one one-hundred-and-twenty-sixth share of the 'coibche'.¹

If the father were dead, the brother or chief of the tribe got half the interest in the 'coibche' the father would have done, and it is in this connexion that the *Senchus Mór* says that it 'was about the true right of women that the field of battle was first entered upon'.²

Fir and Fergnic were brothers, the sons of Parthalon, and, as was common in early societies, they are represented as having married their sisters Ain and Ian. When Fir married Ain, Parthalon was dead, and a dispute arose between Fir and Fergnic as to which of them was entitled, as chief of the tribe, to the half 'coibche' gift due for the marriage. The arbitrament was the occasion of the first fight known to Irish mythology.

The Irish Laws also recognize an eric-fine payable for violation, and a penalty similar to 'gowyn' when a husband was detected by his wife in immorality, and makes reference to a 'tinol' marriage collection, apparently a

¹ Ir. Laws, I. 149, II. 283, 293, 343, 347, III. 315, IV. 63.

² Ir. Laws, I. 151-5.

dowry given by the tribe, one-third of which was made over to the husband.¹

§ 9. It is clear, therefore, that in many of the essential points, in spite of differences of detail, the Welsh Law was similar to that prevailing throughout Western Europe.

The Welsh Law displays a greater freedom of action accorded to the woman and an absence of sale of women.

Giraldus Cambrensis, following the strict law of the Church, inveighs against the marriage laws of Wales, but nowhere does he attack marriage as being the subject of profit to the relatives.

He does say that 'an ancient custom also prevails of hiring girls from their parents at a certain price, and a stipulated penalty in case of relinquishing their connexion'; but in this statement he has quite misunderstood and misrepresented 'ancient custom'. What he is in truth inveighing against is the fact that, in Welsh customary law, the marriage tie was not indissoluble as the Church would have made it. Every marriage in Wales and elsewhere involved the endowment of the woman; in some laws the endowment was exclusively the woman's, in others part or the whole belonged to the relatives, and, inasmuch as marriage was not of necessity 'till death do them part', the laws prescribed definite rules in regard to the distribution of property in case of dissolution before death.

This is the 'stipulated penalty' to which Giraldus refers, and it introduces us to the next point in the Welsh Law of Marriage.

6. *Duration and dissolution of marriage.*

§ 1. We have already noticed that the customary law of Wales was in violent conflict with the law of the Church in matters of marriage. It was especially so in regard to the dissolution of marriage.

Under Welsh Law marriage was not of necessity for life; ordinarily it continued so, but the laws of what we would now term 'divorce' were liberal.

§ 2. Marriage was dissoluble at any time by mutual

¹ Ir Laws, II 347, 363, 383.

consent of parties, and by the option of either party in certain circumstances and subject to definite restrictions.

The law does not speak of divorce but separation (*ysgar*). A distinction was drawn between separation before and after the expiry of seven years' married life, but the distinction only affected the rights the woman had in property.

§ 3. Whenever there was a separation, no matter for what cause or at what time, the wife was entitled to retain her 'cowyll', 'gowyn', and 'argyfreu', though the Venetian Code would deprive her of the latter if the separation were due to her own immorality.

If separation occurred during the first seven years of marriage, and was due to mutual consent or to the will or fault of the husband, the woman took her 'agweddi', the higher 'agweddi' if she were a wife by gift of kin, the lower, if she were a wife by personal bestowal.

Should the wife, however, depart of her own free will, without fault or consent of the husband, or be put aside on account of immorality, she lost her 'agweddi'; unless she departed on account of the leprosy, impotency, or 'foetid breath' of her husband, in which case she was entitled to her 'agweddi'.

At the end of seven years of marriage a woman's right to 'agweddi' was extinguished, but in its place, whether she were a wife by gift of kin or personal bestowal, she became entitled to a division of all property (*da*) held by her husband and herself.

The right to division was exercisable not only at separation at the end of seven years, other than when caused by her own misconduct, but at the death of her husband at any time before or after seven years. In that case the division was between the heirs of the husband and the widow.

The Gwentian Code, according to one MS., says that the division could take place prior to (*kyn*) the end of seven years, but the other MSS. omit the word 'kyn', and it is obviously an error in transcribing.

§ 4. The three Codes give elaborate lists of all property, and apportion certain things to the wife, certain things to the husband.

Some things were excluded from division. The woman took her 'peculium', 'cowyll', 'argyfreu', and 'gowyn'; the man took his horses, arms, rents from land, honour-price, if any, due to him from his wife, and, according to the privileges of Arfon, all the swine, geese, carts, two of the herd oxen, and a cartload of furniture.

It is impossible to say what was the principle on which the law allotted certain articles to the husband, and others to the wife, except that there was a rough attempt to divide equally.

There is no specific mention of milch cattle, but sheep, swine, and goats were divided half and half, except that, if there were swine and sheep, the husband took the former and the wife the latter, and likewise if there were both sheep and goats.

The family cats, with the exception of one, went to the wife, and all the poultry to the husband, perhaps because there was no longer any hope of agreement between them.

Domestic utensils like milking vessels, dishes, the milk-sieve, pans, and trivets went to the wife; but the husband, because of his superior thirst, walked off with the drinking vessels, and also annexed the kettle and the baking girdle with the iron hob.

Most of the tools, the riddle, augre, hooks, plough, coulter, fuel-axe, winnowing-sheet, hand-axe, iron implements, tubs, and boiler were the perquisites of the husband, and the wife consoled herself with the medium-sized augre, the broad-axe, hedge-bill, ploughshare, and spade.

Of the bedclothes the wife took the upper portion, the husband the lower, contingent on his restoring them should he marry again. He also appropriated the bed coverlet and the bolster.

As regards other clothes the wife took her own, and the husband his, except mantles, which were divided, and the plaid shawl which belonged of right to the husband. All linen was divided half and half.

As to provisions the Gwentian Code says the wife took all the flour; but the other Codes limited her to so much as she could carry from the store-house to the dwelling-

house between her arms and her knees. The bacon in cut went half and half, but there is divergence as to the division of meat, cheese, and butter, the Venedotian and Gwentian versions favouring the wife in these matters more than the Dimetian.

All crops, standing or cut, went to the husband, but, on the other hand, all the flax, linseed, and wool belonged to the wife, as well as the family trinkets kept in the house-bag.

Gold and silver trinkets were, however, divided, so too the nets and balls of yarn, except, if there were children, the children took the yarn.

The quern was rendered useless by the upper stone being assigned to the husband and the lower to the wife.

There is no express mention of articles of furniture, except of the settle, that indigenous piece of Welsh furniture which survives to this day in most Welsh cottages and farm-houses. That went to the husband.

Beds they apparently had none, for even the King slept on rushes spread on the ground, and, perhaps because the people were still mainly pastoral and preferred the sport and excitement of forays to more settled conditions, they do not appear to have been burdened with many household goods, at any rate they are not mentioned in the laws.

The wife was entitled to the use of the cart and yoke of oxen to remove her share, but the property in it was the husband's.

Whatever was not scheduled in the Codes was divided into equal portions by the wife, and the husband made his choice between the two lots.

Half the debts due or owing fell to the husband's portion, and half to the wife's.

Two-thirds of the children stayed with the father, one-third migrated with the wife: the eldest and youngest with the father, the middlemost with the mother. What happened if there were less or more than three is not explained.

If there were a division in anticipation of death the confessor divided, and the healthy one chose.

§ 5. In all cases where separation and division of property was effected, the wife was entitled to and must remain in

her husband's house for nine days. At the expiration of nine days the wife's property was carted off, and, when the last article was removed, she departed on her way, rejoicing or the reverse.

If, however, the husband died and the woman avouched she was enceinte, she could remain in the house until the time of delivery.

It might happen that at separation the wife declared she was enceinte and the event falsified her statement. She was then fined a 'camlwrw'. If her statement proved to be true she was entitled, until the child was born, to a sum equivalent to what would suffice to rear it for six months. On the birth of the child she reared it to the end of the year, the father giving her a milch cow and other property. Thereafter the child was maintained at the mother's charge for six months. At the expiry of that period she was not compelled to look after the child at all, but if she did—and apparently the choice was hers—the father bore two-thirds the cost of keeping it, and the mother one-third till the age of 14, when, if it were a boy, it was commended to the lord.

§ 6. The same term of nine days' right to and compulsory residence is mentioned as applying to the term immediately succeeding marriage, implying apparently that there could be no separation within nine days of marriage, and also to the term following the pleasing information imparted to the wife, who was being rejected, that the husband contemplated bringing another wife to the home in her place. The latter, however, in justice to the North it must be said, was a humour only recognized in two MSS. from Dinefwr, where also the penalty imposed on the husband, importing a new wife, of presenting the outgoing wife with a parcel of cats is alone mentioned.

§ 7. Some of the causes justifying separation have been indicated, but they are not exclusive.

Mutual consent was apparently always sufficient. Special reasons outside mutual consent are also given as justifying the individual partners demanding separation.

If a woman notoriously attached herself to another man

or was guilty of kissing, caressing, or committing adultery with another, she could be put away.

If on marriage with consent of kin the property which had been promised with the wife was short delivered, even to the extent of one penny, that justified the husband in turning the wife out, and appropriating whatever had been sent with her.

The gift of a wife as a maiden wife also, she not being a maiden, we have already seen entitled the wife to a contemptuous 'agweddi', but it also entailed immediate rejection.

We see, therefore, that the husband's right to reject a wife was dependent on unchastity of the wife, either before or after marriage, loose conduct after marriage, short of unchastity, and failure to observe the terms of the marriage contract.

The story of Pwyll, Prince of Dyfed, indicates another ground for divorce in respect of which the laws are silent.

The story states that as there was no issue of the marriage between Pwyll and Rhiannon :

'In the third year the nobles of the land began to be sorrowful at seeing a man they loved so much . . . without an heir. And they came to him, and said, " Lord, we know that thou art not so young as some of the men of this country, and we fear that thou mayest not have an heir of the wife whom thou hast taken. Take, therefore, another wife of whom thou mayest have heirs."'

This Pwyll promised to do if no son were born within a year.

The right to demand separation was not confined to the husband alone.

A wife could separate from her husband on the ground of impotency, leprosy, or foetid breath. She could also separate from him if detected in adultery three times.

The introduction of a strange woman to the house entitled a wife to separation at once. It may be said that a man attempting to do that to the dishonour of his wife committed one of the three great scandals, and brought down upon him the vengeance of the wife's kindred. Moreover, the offended wife had the absolute right to kill her husband's

paramour, wherever she met her, without liability to pay blood-fine, so long as she killed her with her own hands.

One instance of separation must not be overlooked. A foreigner, provided he had not become 'adscriptus glebae', could, as we have seen, leave his lord's protection on resigning half his property. If he wanted to depart to another place, the wife, being a Cymraes, could ask and obtain separation; but, as the going was not an unlawful act, she could not demand a recoupment of the whole of her 'gwaddol', she was limited to a sharing of what was left only.

§ 8. The effect of separation did not culminate in what we may call annulment of the marriage immediately, except in the case of the introduction of a woman to the family house by the husband. In that case the wife was entitled to immediate 'dilysdawd', or assurance of freedom.

Ordinarily, the wife on separation remained on the privilege of her husband, and she remained on that privilege until one or other of them contracted a new marriage.

The contracting of a new marriage ended all ties between the original husband and wife.

There is nothing to show that once separation had taken place the wife could demand a restoration of the 'status quo ante', but she certainly had no such claim if the separation were due to her fault.

The husband had, however, in some cases the right to take his wife back. If the wife had deserted him, he could demand and obtain her restoration, in which case she was liable to pay a fine of three kine, and, if he had rejected her or there had been a separation by mutual consent, he had a 'locus poenitentiae', provided neither he nor she had, in the interval, contracted a new marriage. The husband, being unmarried, in these cases could prevent his wife remarrying, if, as the law puts it, 'he pursued her and overtook her before she had placed both her feet on the bed of her new husband'. Once she had lain down the old tie was irrevocably shattered and the new one prevailed.

We can see now exactly what was the meaning of Giraldus's inveighment. The marriage tie was dissoluble for certain

reasons, but if the husband broke the tie he had to give the wife what Giraldus calls 'a stipulated penalty', but which was in reality the woman's 'agweddi' or a right to division of property.¹

§ 9. The principles of the Welsh Law were common to other early systems with, of course, local variations.

In Rome, in every marriage in which the wife passed into the 'manus' of her husband, the husband had always the power of divorce, but the wife, who was merely a chattel, had not.

If she were not 'in manu', but 'in potestate' of her father, the father could divorce her from her husband at will, and it was not until the reign of Marcus Aurelius that limitations were placed on the father's right to divorce.

In a marriage in which the woman did not pass under the dominion of her husband, parties could be divorced by mutual consent at any time. Moreover, each party had the right to divorce the other at any time in writing and in the presence of seven witnesses, the continuance of the marriage tie being based on a contract implying mutual consent; but should one party divorce the other, against the latter's will, penalties of a heavy character were imposed, unless the divorce were based on grounds of adultery or criminal conduct.

After divorce both parties were free to marry again until the Theodosian Code placed limitations on that right.

§ 10. The early English Laws contain little on the subject of separation or divorce.

The Laws of Ethelred (A. D. 978-1016), under the influence of the Church, absolutely forbade divorce. The very prohibition points to the existence of divorce in custom, and in the earlier laws the right of separation at will is assumed.

The secular laws of Cnut, c. 54 (A. D. 1016-35), supplied a remedy for the old right of divorce on account of the wife's adultery, and directed that her ears and nose were to be cut off; while the Carta of William the Conqueror, c. 35, provided the penalty of death for a woman caught

¹ V. C. 80, 82, 84, 88, 90, 92, 94, 96, 98, 100, 106, 108; D. C. 442, 450, 452, 456, 514, 516, 518, 520, 522, 524, 526; G. C. 696, 746-8, 752, 762, 776-8, 794; V. 70-2, XIV. 578, 580, 610, 630, 648.

'flagrante delicto'. Where the husband was guilty of a similar offence the woman's right was limited to a 'bôt' imposed on the husband.¹

In the Laws of Æthelberht of Kent, promulgated under the influence of St. Augustine, there is a very distinct recognition of the right of separation, for it is provided in cc. 79, 80, that, if a woman with children wished to depart with her children, she was entitled to an equal division of the property, but, if she went away without her children, her right was limited to a child's share.

Rules similar to the Welsh ones are given regarding the division of property on the termination of the marriage tie. The wife was entitled to half the property, if she had children, the other half, if the husband were dead, going to the children: if she had no children she received only her 'morgen-gifa' and 'fader-feum', which went on her death to her paternal kindred.²

This right to half the property she was, according to the Laws of Cnut, c. 74, liable to lose if she remarried in twelve months.

To this right to share in the husband's property there were some exceptions, e.g. in the Laws of Ælfred, c. 8, an abducted woman, who by the Law of the Church could not marry, surviving her abductor, was to have none of the latter's property, nor were her children.

In comparing with the English Law we have to bear in mind that the English Laws are not a codification: they are merely amendments of existing custom, which custom is not declared; and consequently references to unamended custom are absent.

§ 11. Among the Germanic tribes divorce was certainly a matter of common consent. There are frequent references to such separations.

In addition, divorce was permissible by the husband if the wife conspired to kill the husband, if the wife were a slave, and for many similar reasons.³

Under the Lex Alamman., Pactus III, c. 2, separation by

¹ Ethelred's Laws, c. 50.

² Æthelberht's Laws, cc. 78, 81.

³ Pippin's Capitulare, A.D. 753, and Capitulare 757.

consent or death carried, as in Wales, the liability to an equal division of the 'lectuaria', and the same Pactus, c. 3, permitted the husband to divorce on a payment of 40s.

The Lex Baiuor., Tit. VIII, cc. 14, 15, allowed divorce to the husband apparently at will; but, if he divorced his wife for no fault, he paid her kinspeople 40s., and the woman took her 'dos' and bridal gifts. Should the husband then remarry he paid a further 24s., and took oath with twelve men that he had divorced his former wife, not through hatred of her, but through love of his new bride. This entitled the first wife to remarry elsewhere.

Under the Lex Romana (Papianus), Tit. XXI, divorce by agreement is expressly stated to be the rule; divorce by the husband was permissible on account of adultery, criminal conduct (*maleficium*), and other causes, while a wife could divorce her husband if he were a murderer, of criminal conduct, or 'a violator of tombs'.

Under the Lex Burgund., Tit. XXXIV, a woman who left her husband was 'to sink into the mud' (*necetur in luto*), which implies the power to leave, subject to social disgrace. A man leaving his wife without cause paid her her purchase price, plus 12s.

Divorce by adjudication of court was allowed to both sides for adultery, 'maleficium' or 'violation of tombs'; and if a husband divorced his wife otherwise he must leave her all the children and all his property.

Under the Lex Alamman. (Hlothaire's Constitutions, Tit. LV) and the Lex Burgund., Tit. XXIV, a widow might, if childless, remarry on resigning all the property to the husband's family, except what she had brought from her parents.

Similar was the rule in the Lex Langobard., cc. 182, 199 (edit. Rotharis).

It is clear, therefore, that separation by agreement was fully recognized in Germanic Law, and had the same effect, as it had in Wales, as separation by death.

§ 12. In the Irish Laws marriage was a simple contract, and the rules therein are similar to the Welsh rules.

No religious ceremony was needed, nor was marriage

necessarily for life. Separation was allowed by mutual consent, and at separation there was a division of all property, hitherto inalienable by either party.

'If husband and wife separate', runs the law, 'let every separation be without fraud: if there be separation from choice, let them divide lawfully.'¹

Detailed rules as to the division of property are given in the *Cain Lanamhna* (III, pp. 411 et seq.) and the *Senchus Mór* (II. 363). In the *Book of Aicill* (III. 401-5) it is provided that where there was abduction and secrecy, i.e. a voluntary connexion of the nature of 'lladrut', there was no division of offspring.

Immorality of the husband was a ground for separation, and, as in Welsh Law, if a husband introduced another woman to his house he had to pay his wife honour-price, and the woman did so also. The wife, being the first wife, was exempt from liability for any act of hers committed through jealousy against such woman.

Apparently the second woman by continued residence became the man's wife, but a wife of inferior status, the 'adaltrach' wife of contract, to distinguish her from the first wife of contract.

According to the *Heptads* a wife could separate if slandered by her husband, if satirized, repudiated, or struck by him, and if the husband were impotent, became unarmed, or a priest or landless, in all of which cases the wife could recover her dowry. Separation once effected was perpetual.²

We have, therefore, convincing proof that, in the main, the Welsh Law of divorce was the common tribal law of Western Europe.

7. *Restrictions upon marriage.*

§ 1. One of the most interesting subjects in comparative ancient law is the rules laid down as to the persons with whom another may or may not contract marriage.

These rules generally fall under two heads, rules of affinity, which prescribe the blood relations with whom marriage is permitted or not, and racial or social rules,

¹ I. L. II. 357, 363, III. 397.

² I. L. II. 363, III. 293, 541, V. 132, 293-7.

prohibiting the marriage of a man or a woman of a particular tribe from marrying within or without that tribe.

What the connexion between these two sets of rules may be is outside our present purpose, nor could the reasons for the prohibitions be considered without undue digression.

We are concerned only with stating what the Welsh Law was.

§ 2. To deal first with racial and social prohibitions.

We have seen that the test as to whether a man was a free-born Welshman was whether or not he was of pure Welsh descent without taint or admixture of blood both on the paternal and maternal side. That rule is a strict rule of endogamy, and it incorporates the ancient tradition of Welsh custom.

But in practice the rules of strict endogamy did not prevail in the Wales of the tenth century.

There is no direct prohibition in the laws on marriage between a Welshman and a foreign woman, provided she was not a bondwoman. On the contrary, we know that such marriages were frequent, even in the royal line.

To mention only a few instances: Gruffydd ap Cynan's mother was an Irish lady; David, the son of Owain Gwynedd, married Emma, the sister of Henry II; Llywelyn the Great's wife was a daughter of King John; and the bride of the last Llywelyn was a daughter of Simon de Montfort. Inter-marriages between Norman and Welsh were frequent, particularly in the south, and the famous Giraldus Cambrensis was himself the son of such a union.

The law permitted such marriages, and the foreign wife married to a Welshman acquired the privilege of her husband and assumed his nationality, her children becoming inheritors under Cymric Law. Of course such children had no mother-kin to whom they could appeal, but their father's Welsh kin was their kin. Marriage with an unfree woman, though perhaps infrequent, was quite valid; there is no prohibition upon it, and there was no possible legal obstacle to it.¹

§ 3. Marriage with a bondwoman under custom could not take place by 'rod o cenedl', for the simple reason that the woman had no 'cenedl' who could bestow her. If a marriage with a bondwoman could take place at all, it could, under custom, only take place by 'cohabitatio'.

There is no mention of that happening in the Codes. On the other hand, the Codes provide that any one having intercourse with a bondwoman, without the assent of the latter's owner, must pay the owner 1s. for every occasion; and if the bondwoman became pregnant the person responsible had to provide another to take her place during her incapacity, be responsible for the maintenance of the child—the property in whom remained apparently with the woman's owner—and restore the mother to the owner, or, should she die, provide another in her place. This may be compared with the Laws of Æthelberht, c. 31, which provided that where a freeman committed adultery with the wife of another freeman he had to pay 'wergild', and supply a new wife to the injured person.

Further, it is said in the Dimetian Code that a bondwoman, though she might have children by a Cymro or might be abducted by a Cymro, could be recovered by her owner whenever he willed, as might his animal, for 'the status of bondage is stronger than that of concubinage'.

That was the strict letter of the law, but in the Dimetian Code we find that should the man go through the Church ceremony of marriage (*priodas*—a word never applied to marriage by gift of kin or personal bestowal), then the woman was to remain on his privilege on his paying for her to the owner.

That is apparently a later introduction under the influence of the Church, and is mentioned in the one passage only.

The marriage of a Welsh woman to a bondman was inconceivable; it would have involved the reduction of her children to servitude and made them 'kinless', and the possibility of such a thing never occurred to the legislators.¹

§ 4. Marriage between a free-born Cymraes and an unfree man, though probably infrequent, was possible—the

¹ V. C. 96; D. C. 514, 530; G. C. 696.

woman would become unfree herself and her children would be unfree with the status of the unfree.

§ 5. In regard to marriage with foreigners the laws make special provisions therefor, indicating clearly that such marriages were, if not frequent, at least recognized, and that there was no rule of endogamy enforced when the laws were redacted.

In providing for such mixed marriages the law approached the question from the point of view of affording protection to the woman and her children.

As in Ireland, where a father was bound to marry his daughter to a man of equal rank, so every free Cymraes had the right to expect to be married, if married by gift of kin, to a free Cymro landowner.

As it is put in the Venedotian Code: 'A woman is not to be given in marriage, except where her sons can obtain ancestral property (*tref y tad*),' so that her children after her should have the same status and the same rights as her father before her had.

Should, however, her relatives bestow her in marriage upon a foreigner, her sons could demand land from the family of their maternal grandfather by right of 'mamwys'; that is to say, they came in and were given a share in the 'tref y tad' equal to that which the mother would have been entitled to had she been a male. They were considered not as sons of a foreign father, but as sons of their maternal grandfather, ranking as sons to him and not grandsons, because it was sons only who could demand partition.

Special forms of suit and pleadings are elaborated to give effect to these rights.

Not merely had such children the right to land by 'mamwys'—they were full freemen, entitled to the same protection and assistance from their maternal relatives as ordinary freemen were entitled to from both their paternal and maternal ones.

There were some slight, but very slight, differences in the rights of a son of a foreigner and a Welsh woman, married by gift of kin, and a son of two pure-born Welsh parents.

In regard to land, the son of a foreigner, if there were any male descendant of pure Welsh blood in the family, could not claim any hereditary office or the homestead; and this bar affected him, his children, and grandchildren, unless the father were a chieftain of Saxon or Irish origin, in which case there was no bar to him or any descendant.

The right of 'mamwys' could, however, be exercised only in that part of Wales—Gwynedd, Powys, or Deheubarth—where the maternal grandfather was domiciled.

In regard to blood-fine liabilities, the son of a foreigner had no father-kin, and the responsibility to pay for him rested entirely upon the maternal relatives, limited, however, to the fourth degree, that is to those who were responsible for giving the woman in marriage.

A similar right was given, and for identically the same reasons, to the sons of a woman violated by a foreigner, or of one given as a hostage in a foreign land and there having a child.

The Southern Codes add also, but for obviously different reasons, the son of a Welshwoman who had been deprived of his 'tref y tad' on avenging the murder of a kinsman of his mother.

The right of 'mamwys' was not permitted to the sons of a woman who had, without consent of her kin, allied herself to a foreigner.

According to the VIth Book there was a further hindrance to marriage with a foreigner; this authority providing that no foreigner could marry without the leave of the lord to whom he was commended; and should he marry a Cymraes, originating in the lordship, the children became 'foreigners' under the lord. This provision does not occur elsewhere, and it is doubtful if it were of more than local application.¹

§ 6. The Scots Law did not prohibit marriage between a free woman and an unfree man; but, without any distinction as to whether a woman was married by her clan or by her own choice, it disinherited the issue of such

¹ V. C. 96, 98, 174-6; D. C. 442, 552, 604; G. C. 750, 762, 774; IV. 12, V. 86, VI. 100, VII. 138, IX. 286-8, 290, 304, X. 330, XIV. 578, 638, 656.

marriage, though the woman herself lost no right of inheritance.

In Collecta 31 it was provided as follows:

'Twa sisteris frewomen has an heretage as rychtis ayris; the tane takis a throl, the tother a freman. Scho that hes the freman has al the herytage forby that an thryll man may haf nan. The thryll man getis a barn with his wyf. The bond deis. The bondman's wif, hir husband deid, gaes til her heretage and joysis for her lif tym. The weif dies; may the son recover the heretage? Nay, he sal nocht forby that he was gottyn wyth that trollys body at is dede.'

§ 8. A similar provision exists in the Lex Alamman., Tit. LVII:

'Si autem duas sorores absque fratre relictas post mortem patris fuerint, et ad ipsas hereditas paternica contingat, et una nupserit sibi coequalem liberum, alia autem nupserit . . . colonym . . . Illa qui illum liberum nupsit sibi coequalem, illa teneat terram patris eorum, res enim alias aequaliter dividant.

'Illa enim qui illum colonum nupsit non intret in porcionem de terra, quare sibi coequalem non nupsit.'

The Germanic Laws generally provided that a freeman or freewoman marrying a slave sank into servitude with the consort.

This was the rule in the Lex Salica, Cod. I, XXV (5), the Lex Frision, Tit. VI, and the Lex Langobard.¹

The Lex Frision. allowed the woman so marrying to compurgate herself by oath that she did not know her husband's status at the time, and, provided she ceased to live with him, she retained her freedom. Under the Lex Langobard., the slave partner was slain.

The Lex Burgund. regarded such a marriage as adultery, and a freewoman cohabiting with a slave was put to death along with her partner (Tit. XXXV).

A custom appears, however, to have arisen among the Germanic tribes whereby a slave marrying a Frankish woman was granted a 'carta' by the territorial lord to the effect that children of such a union should be free. Doubts as to the validity of such emancipation existed, for in a Capitulary of Charlemagne (date unknown, *vide* Pertz,

¹ Ed. Roth., c. 221.

vol. I, p. 122) it was provided that children born during the life of the lord granting the 'carta' were to be deemed free, but those born subsequently were not. The Capitulary emphasizes the general law that children of mixed marriages were ordinarily unfree.

§ 9. English Law has practically nothing to say on the subject, and Irish Law but little. That such unions did exist in Ireland seems clear from the fact that children of unions between Irishwomen and foreigners ('Albanach') formed the 'glasfine' with rights only to a 'champion's' share in land.¹

§ 10. The restrictions placed upon marriage between persons related within certain degrees appear to have been introduced into Western Europe by the Church; and the fact that in Wales the restrictions, which the Church tried to impose, were ignored, led Giraldus Cambrensis to give vent to that famous invective of his on which so many of the allegations of immorality among the early Celts have been based.

Giraldus Cambrensis accused the Welsh people of the twelfth century of 'vicious licence', and the 'crime of incest', and this charge has been repeated so often that its accuracy has become almost an accepted belief.

What Giraldus meant, however, by these charges is generally omitted; and the contexts in which they are made relate to specific intermarriages, and not to any general laxity of conduct.

Accepting the teaching of the Church, Giraldus regarded certain intermarriages as 'incestuous' and 'vicious'—Welsh Law and custom did not. It was a conflict of views, and the Welsh view, which was the view of most races at the time, is the view that has since prevailed and is accepted at the present time, not only by the Protestant Churches, but by the Roman Catholic Church, which has abandoned the old platform of the medieval Church.

The contexts in Giraldus are two in number. In the first, referring to the Lord Rhys ap Gruffydd and his wife, he writes:

'Gwenllian, his wife, and, according to the common vicious license of the country, his relation in the fourth degree',

¹ Ir Laws, IV. 283.

and, in the second passage, he observes:

'The crime of incest hath so much prevailed, not only among the higher but among the lower orders, that, not having the fear of God before their eye, they are not ashamed of intermarrying with their relations, even in the third degree of consanguinity. From their love of high descent they unite themselves to their own people, refusing to intermarry with strangers.'

The gravamen of the charge made by Giraldus, therefore, is simply this that the Welsh were accustomed to regard with favour marriages between second and third cousins.

§ 11. It is unnecessary to enter into the reasons which induced the medieval Church to regard such marriages as incestuous. That it did so is undoubted, and it is equally undoubted that the Welsh clung tenaciously to the ancient custom in defiance of the Church and its fulminations.

The principal reason why they did was a simple one. On the one hand the Church was exalting the family at the expense of the tribe or clan which it regarded as mutually antagonistic. On the other, the marriage of a woman to a person related to her within three or four degrees meant that she was married within the clan, and within an associated circle in the clan, and the 'gwaddol', which was hers, did not depart to distant relations or strangers. The share of cattle, of which the 'gwaddol' mainly consisted, was kept in a group which had joint interests in land and herds. It was an obvious arrangement of economic advantage in a pastoral and agricultural community: it is one which is observed to the present day among numerous communities dependent for their existence on herds and the soil.

The preference for marriages between near relations found expression in the old Welsh proverb, 'Marry in the kin, and fight the feud with the stranger.'

§ 12. The very same preference existed among the Romans, the Anglo-Saxons, and the Irish, and all Germanic tribes.

In the Roman Empire there was originally no prohibition on marriage on account of consanguinity, except that no person could marry an ascendant or descendant, a brother or a sister, or a descendant of such brother or sister.

Under the Empire marriages of first cousins were prohibited, until legalized by Arcadius and Honorius and recognized by Justinian; but there was never any prohibition on the marriage of second and third cousins.

§ 13. In early English Law there is no restriction on any marriages between relations until the Canon Law placed an interdict thereon. In Bede's *Eccles. History*, Lib. I, c. 27, marriage between first cousins is expressly mentioned as being practised, and, in Pope Gregory's answer to St. Augustine's Fifth Question, only marriages between first cousins are condemned, while marriages between second cousins are expressly permitted.

The first mention we find in the Anglo-Saxon Laws of prohibited degrees occurs in the Laws of Edmund (A.D. 940-6), c. 9:

'Well is it also to be looked to that it be known that they, through kinship, be not too nearly allied, lest that afterwards be divided which before was wrongly joined.'

The same law, as we have seen, first introduced a compulsory religious ceremony.

It is noteworthy that there is a vagueness as to what constituted 'nearness of relationship'; and it was not until Ethelred published his laws at Wantage (A.D. 978-1016) that a definition was given in England as to what the prohibited degrees were. Lex VI, c. 12, of those laws would not go so far as the Church wished, and provided: 'Let it never be that a Christian man may marry within the relationship of six persons in his own kin,' i.e. within the fourth 'joint'.

The same rule was formulated in c. 7 of Cnut's Ecclesiastical Ordinance of Winchester (A.D. 1016-35), and in the *Capitula et Fragmenta Theodori* under the heading, 'De Incestis', we get the same prohibition expressed thus:

'Qui in prima, secunda, vel tertia generatione juncti sunt istis volumus indicare ut separentur.'

The provisions in the Penitential of Theodore, c. 120, and in the Excerpts from the Penitential of Egberht of York, *De Stemmatibus*, c. 140, are of a similar character.

§ 13. The fact is the Church had entered upon a vigorous

campaign against intermarriages, and was attempting, not merely to prevent future unions of what it considered were 'near relations', but to divorce all persons already married within the new prohibited degrees.

The fount and origin of this campaign in the moral law is to be found in Capit. LVI, c. 130, where the Canon Law prohibited all marriages of persons related within seven degrees of relationship. 'Christiani ex propinquitae sui sanguinis usque ad septimum gradum connubia non ducunt,' at the same time insisting on the 'benedictio sacerdotis' as an essential to marriage.

The Church was claiming throughout Europe the right to exercise exclusive jurisdiction in all matters of marriage, and a number of other subjects as well.

§ 14. In the Germanic Laws we find comparable directions to what we have seen in the Anglo-Saxon Laws.

Art. III of the *Sachsenspiegel* prohibited marriages in the fifth joint.

In the *Lex Alamman.*, Tit. XXXIX, as amended by Lantfride, marriages were prohibited as incestuous, if contracted with a father or mother-in-law, a stepfather or stepmother, a brother's daughter, a sister's daughter, a deceased brother's wife, a deceased sister's husband, and first cousins.

That was the first list of prohibited degrees, and it is noteworthy that at first marriages among second cousins were not prohibited.

The same rule occurs in the *Lex Baiuor.*, Tit. VII, which also in c. 3 provided for the annulment of all such marriages, the forfeiture of all goods to the 'fisc', and, in the case of men of little property or status, for their reduction to a state of slavery.

In the *Decretio Childiberti* II, c. 2, marriages with a brother's wife or sister's husband, an uncle's wife or kinsman's wife, or the blood relative of a father's wife, were prohibited, but marriages between distant kinspeople were not banned. So also in the *Lex Langobard.* (Ed. Roth., c. 185). In fact, on the Continent, it was not until Pippin's Capitulary, c. 1 (A.D. 753), that restrictions on marriages

between relations were placed. Persons related in the third degree, already married, were divorced by the Capitulary and given the right to remarry elsewhere, while persons in the fourth degree, already married, were allowed to remain united on performing penances, future marriages being prohibited between relatives so related.

These prohibitions were repeated in the Capitulary of A.D. 757, and in the Capitulare Langobard., A.D. 786, c. 4. In A. D. 801 by the Capitulare Ticinense, c. 20, the marriage of persons related in the fifth joint (i.e. the seventh degree) was prohibited among the Lombards.

There was a progressive extension of the prohibited degrees, from a time when there was no prohibition, to the third, fourth, fifth, and ultimately the seventh degree of consanguinity.

§ 15. It was just this restriction on intermarriage which the Welsh codifiers refused to introduce into their laws, as a violent interference with time-honoured custom.

Likewise, too, no such prohibition was introduced into the Irish Laws.

Such a prohibition must have seemed to the codifiers a new-fangled notion which the Church had for centuries never given utterance to, and yet it is solely on this ground that Giraldus fulminated against 'incestuous' marriages in Wales, and gave origin to the allegation that the 'crime of incest' was a matter to which the ancient Celts were prone.

The fact is simply that the ancient Welsh, while averse from marrying people of foreign extraction and bondmen, were not strict endogamists or exogamists; preferring, however, if it could be arranged, a marriage between relations which would avoid the divorcement of the flocks from the land on which they grazed. Marriages in Wales within the clan were encouraged for their obvious economic advantages.

8. *Inter-marital relations.*

§ 1. We may now consider a number of other points showing the position a woman occupied in regard to her husband after marriage.

The ordinary Roman Law regarded a woman as having passed absolutely into the hand of her husband, and as having no rights apart from her husband.

In the Welsh Law that was not the rule.

§ 2. In regard to property we have seen that a woman had a number of dues or endowments, which formed her 'peculium', and that, if her marriage endured for seven years, she acquired a right to equal sharing. We have here a very definite recognition of the right of a married woman to hold property of her own.

Minute rules are also given in the laws respecting a wife's right to deal, during coverture, with the property of the married couple.

According to the Codes the wife of the King had full and absolute power to give away without the King's permission one-third of the household goods (*dofod*). The wife of a freeman was entitled to give away her own clothes, as much meat and drink as she liked, and the contents of her store-room, and was further at liberty to lend all or any of the family furniture. Flour, cheese, butter, and milk were at her absolute disposal. It is clear, according to the Codes, that a free 'Cymraes' had very wide freedom of action, therefore, in dealing with the joint property, but the Anom. Laws, while recognizing a woman's rights in the joint property, debar her from disposing of it without the husband's consent. The wife of the unfreeman had much less scope for independence. Her rights of giving or lending were restricted to her own headgear, the riddle and the sieve¹

§ 3. In regard to land, a woman could acquire and hold land of her own in her own right by purchase or inheritance, and such land did not pass under the control of her husband. She could be a 'priodawr' in her own right, and was entitled to defend that title without the assistance of her husband. She could further institute a prosecution for theft if her own property were stolen, again showing her right to hold property independent of her husband.²

¹ V. C. 94; D. C. 516; G. C. 748; XIV. 642, 726.

² V. C. 98; D. C. 462, 614; IX. 226, XIV. 680, 708.

§ 4. On the other hand, if she did not possess land, she could not enter into any bargain or be a surety, nor could she be made a party to a claim against her on any personal undertaking, as the undertaking was void, nor could she sue, except for her own 'saraad', without the plaint being filed in her husband's name. Likewise, she could not issue an interdict of cross, or be herself interdicted by cross.

She was, therefore, if without property of her own, incapable of entering into any obligation or enforcing any obligation to herself. Action had to be taken by or against her through her husband.

All women were subject to some disabilities in the courts. They could not be 'inforiners' in theft cases, members of a jury of compurgation, or witnesses against men, except in the case of question as to which of her twin sons was the firstborn, when her evidence was admitted as conclusive, and in some cases of assault upon herself. *A priori*, a wife could not be a witness against her husband, nor a 'protector' (*ceidwad*) in a case of theft present charged against her husband.

So, too, if she committed an offence jointly with her husband, action could not be taken against her—she was considered so far to have been under the domination of her husband, much as was the case under the Doms of Ine, c. 87.¹

§ 5. The rules in regard to status and responsibility for offences, when not committed under the influence of a husband, appear at first sight conflicting.

There is no doubt that prior to marriage a woman's honour-price was assessed according to her father's status; after marriage it was assessed according to her husband's status. It is also clear that any offence a woman committed before marriage had to be compensated for by her own paternal relatives: and it is emphatically stated that a woman who married never reverted, on becoming a widow or apparently on separation, to the status of her father's family.

¹ V. C. 96, 98, 126; D. C. 462; IV. 24, VII. 132, VIII. 198, IX. 218, 254, XI. 404-6 412, XIV. 666-8 672, 712.

On the other hand, the Venedotian Code repeatedly says that a woman's blood-fine did not change on marriage, but remained constant at one-half her brother's, and the only reference in the Codes to persons entitled to a married woman's blood-fine says it went to her own kin.

With this we may compare the provisions of early English Law. Under that law the wife at marriage did not join her husband's 'maegth'. Her father's 'maegth', not her husband's, was responsible for her crime. On this point the *Leges Hen. I.* 70, § 12, and 75, § 8, are clear:

'Similiter, si mulier homicidium faciat, in eam vel in progeniam vel parentes ejus vindicatur, vel inde componet, non in virum suum vel clientelam innocentem,'

and her 'wergild', accordingly, was paid to the parental 'maegth'.

Prof. Vinogradoff defines the position of a married woman under Anglo-Saxon Law thus:

'The fact . . . that the wife did not belong entirely to the gens of her husband, and was not absolutely in their power, but that the protection of her rights rested on the lasting agreement between the two kindreds by the transaction of marriage was the foundation of her position in right and in law,'

and this definition appears to be applicable to Welsh Law, at any rate in so far as marriage by gift of kin was concerned.

A woman's interests were identified with those of her husband, and she was under his 'mund' or protection; but she did not come under anything comparable to the Roman 'patria potestas', and she reserved the considerable right of appeal for protection to her own kin, from whom she was never completely severed, as against the oppressive action of her husband's kin.¹

The Triads go so far as to say that a woman, on marriage, merged her status in that of her husband who owned her, a statement quite uncorroborated.

If on marriage she lost her status of birth, as all authorities say, and yet was so far of her original status as to lead to the payment of blood-fine due for her to her original

¹ V. C. 56, 84, 96, 104, 234, 240; D. C. 514, 528; G. C. 746; IV. 16, V. 84, XI. 404.

family and not to her husband's family, who was responsible for her crimes? One would naturally expect the original family to pay, but the laws do not say so.

On the contrary, it is said in the XIVth Book, p. 712, that 'for everything that a married woman shall do, let her husband answer for her', and the Venedotian Code, p. 104, while laying down that till marriage her relatives are responsible for a woman's acts, provides that her husband shall pay any 'camlwrw' or 'dirwy' to which she becomes subject, excluding all mention of blood-fine or other compensation, not being a fine.

The Dimetian Code, p. 462, says that a wife must answer for her own homicide without her husband, and the Vth Book, p. 64, provides that if a woman kill a man, she is to be accounted a criminal like a man, and is to have her spear-penny, unless she have property to pay with. Nowhere is it clearly said that the woman's paternal and maternal kin were to pay for her, and if she had married outside the kin and gone to another country it would hardly be reasonable to expect them to.

The position of a woman, therefore, after marriage, is not free from difficulty. It would appear that there was some divergence of views resulting in the person of a woman being regarded as still part of her original family, and her will, and deeds resulting therefrom, as under the jurisdiction of her husband.

§ 6. However, it is obvious that a married woman retained a very considerable degree of freedom of action.

She could hold property of her own, she retained her connexion with her original family so far as to give them the right to be compensated if she were killed, and her the right to demand a spear-penny; but, beyond this, without being absorbed into her husband's kin, her husband became responsible for all other acts of hers, and, if she were acting under his influence, she herself was absolved from responsibility.

§ 7. The fact that a woman on marriage was not reduced to subjection to her husband, as in Roman Law, but entered into a partnership in which there were mutual rights and

responsibilities, is illustrated by some minor provisions in the laws.

There are some minor rules regarding 'wynebwerth', whose importance lies not so much in their details as in the recognition of the fact that a man and wife must treat each other reasonably as working partners, and in the absence of all sense of 'subjugation'.

A woman's duties to her husband consisted in remaining chaste, in avoiding the use of contemptuous or insulting speech towards him, and in not playing ducks and drakes with the joint property. If she did any of these things she could be chastised, and might have to pay her husband 'wynebwerth' or honour-price to the extent of three kine.

But she could not be chastised for anything else; if her husband so far forgot himself as to touch his wife for any other reason, he insulted her honour, and had to pay her her honour-price. The chastisement he could at any time inflict was limited to three strokes with a rod.

A married man must remain faithful: the penalties in case of failure we have already seen, but further, should a man, after separation, remarry, he must restore to his original wife the share of the bedding he had received or pay her 'wynebwerth'.

Misconduct of either party was a 'strong scandal' to be sternly reprobated, a 'vexation of the wise' to be accounted for, and, if either charged the other with it, satisfaction had to be rendered.¹

§ 8. The Welsh Law appears, therefore, to establish beyond question that the position of women in early Wales was, compared to most systems of the time, extraordinarily high. A free woman was free, as free as a man in everything that counted for freedom.

¹ V. C. 82, 86, 92, 96, 102-8; D. C. 442-6, 516, 522-4, 556; G. C. 750, 786; V. 54, 94, XIV. 578.

IV

THE LAW OF AFFILIATION

§ 1. BEFORE discussing the rights and status of an illegitimate son, we have to deal at some length with the provisions of the law relative to affiliation. A ceremonial, which will be described more fully later, is given in all the Codes.

§ 2. Dr. Seebohm (Tribal System in Wales, p. 64), in dealing with this ceremonial, refers to it as a formal reception of a legitimate son into kin, that is, into the assumed self-governing 'cenedl', consisting of persons related to each other in nine degrees.

Rhys and Brynmor-Jones (The Welsh People, p. 205) follow Dr. Seebohm in regarding the ceremony as applicable to all sons, legitimate and illegitimate, and as being an induction into a self-governing body of inter-related tribesmen.

Prof. Lloyd (History of Wales, vol. I, pp. 286-7) describes the ceremonial fully and apparently, though he does not expressly say so, regards it as having reference only to illegitimate children. He treats the ceremonial, however, as an admission to an organized body of persons related to one another in seven degrees.

The law relating to 'affiliation' is relied on largely in support of the theory of a self-governing body, interrelated in fixed degrees, because of the functions accorded to the 'pencenedl' therein.

§ 3. It may be conceded thus far that, if the ceremonial applied to legitimate as well as illegitimate children, it connoted something more than the mere determination of a person's paternity, and must have partaken of the nature of initiation into some kind of corporate body, but not necessarily one limited by fixed degrees of relationship. If, however, it applied only to illegitimate children, the object of the ceremonial is sufficiently explained by the assumption that it was a formal establishment and acknowledge-

ment of paternity, giving the illegitimate son the status of a legitimate one.

§ 4. To determine the question we must consider what the authorities actually say, and how they say it.

The Venedotian Code, pp. 206 et seq., starts by describing how the mother of a child is to proceed *when she desires to affiliate the child to a father*, and how a father, *if he desires to do so*, is to deny the paternity. It does not say that this procedure is to be adopted in the case of *all* children, but confines it to those children whom a mother wants to affiliate or a man wants to deny as his.

The oath of the woman was that the alleged father had procreated the child, the oath of the father that he had not; that is, the question at issue was the question of paternity only.

The Code then proceeds to describe the status of a child where the alleged father had denied paternity.

It then divides sons, regarding whom the mother had made an allegation of paternity, into two classes, according as to whether she had *sworn* to the paternity or had merely made an oral declaration. The latter it was not incumbent on the putative father to deny, because there was no oath; the former, if not denied promptly, were deemed to be the sons of the putative father until he denied.

It states definitely that no son could be denied for whose rearing the father had given 'da' to the mother; and, as a legitimate son was 'at his father's platter' from birth, this obviously can apply only to an illegitimate son.

The Code then describes a ceremony of denial or acceptance by the 'pencenedl' and others, *in case the father were dead at the time the mother made the oath of affiliation*, and in that case only; and it is said that the oath of denial was to be the same as the father's oath would have been had he been alive, i. e. the oath was to be a denial of paternity.

This account appears clearly to refer to the denial or admission of paternity of an illegitimate child, and not to any formal ceremonial of reception into or rejection from an organized body; for surely, if there were a formal induction

into a clan or kin-group by the head of that group, it would have been operative in all cases, and not simply in those cases where the father was dead.

§ 5. The account in the Dimetian Code, p. 444, is contained not in the substantive provisions, but in the attached Triads. The account is scanty, and is confined to the *denial* of a child.

There is nothing whatever to indicate any formal induction into any body. The account is confined also to 'reputed children' (*cyswyn fab*), and does not purport to apply to all children. The oath denying paternity was by him *who is said* to be the father of the boy, and it was only when he was dead that the 'pencenedl' and others were to deny.

In another passage, p. 598, dealing with the inability of a dumb woman to swear to paternity, the putative father must accept or deny the child without the mother's oath, 'if the relatives admit that the child is related to them'.

Here again these accounts are inconsistent with the theory that all children went through a ceremonial of induction, and seem to imply nothing more than the determination of the paternity of an illegitimate child.

§ 6. The Gwentian Code, p. 784, leaves even less room for doubt. It starts by describing the modes of affiliation, the first being by the mother, who is definitely described as a 'woman of bush and brake' (that is a woman of loose character, not a wife), swearing that a particular person was the father of her child, the second and third being affiliation by the 'pencenedl' and members of *her* kindred. It then describes the methods of denying a child, the first of which was by the alleged father, who was to take the child, *said to be his son*, and swear he had not begotten him, the second and third modes being by the 'pencenedl' and relatives of the alleged father if the latter were dead.

No ceremony of induction into a clan or kin-group is even hinted at, and there is nothing in this passage beyond a procedure for determining the paternity of a child whose mother was 'a woman of bush and brake'.

§ 7. The Vth Book, pp. 42, 72, after describing the liabili-

ties of relatives for the offences of a 'doubted' son, that is, one whose paternity had neither been admitted nor denied by the putative father, says that no relatives could deny a child found in its lawful bed, and nurtured by the father for a year and a day, or the child of 'a woman of bush and brake' for whose maintenance consideration had been paid, or who had been received by the father in church. The same book confines the relatives to exercising the power of rejecting or accepting a child to those cases where the father had died without taking action.

The meaning of these passages is simply this, that where a child had been born in a man's house in lawful wedlock, or where a man, without any oath of affiliation being taken by the mother, had acquiesced, by sustaining it, that an illegitimate child was his, or, after oath of affiliation in church, had accepted the child, the 'cenedl' had no functions left it.

There is no trace here of any induction into a clan or kin-group; nothing again more than a procedure for determining the paternity of an illegitimate child.

The VIIIth Book, p. 200, referring to affiliation, definitely describes the mother of the child, who was to be affiliated, as unmarried, and prescribes the time at which affiliation was to be made.

The Xth Book, p. 336, merely describes the agencies for affiliation and acceptance, but throws no light on the point now under consideration beyond repeating that the 'pencenedl' had no functions till the father was dead.

The XIVth Book has two important passages.

The first, p. 610, is somewhat mutilated, but, after referring to public concubinage, seduction, and 'dwyn plant o'r gwely deddfol' (bearing children from their lawful bed), as illegalities for which an 'amobyr' was due, it refers to three modes of 'dygir plant o'r gwely deddfol', viz. affiliation by swearing of the mother without denial by the father in a year and a day, affiliation by 'a woman of bush and brake' on her deathbed, and affiliation without swearing.

In the second, p. 666, the oath of the mother 'in extremis' is described, and the passage proceeds to say that, if the

mother and putative father were both dead, the child could seek recognition by the 'cenedl', relying upon the testimony of the priest to whom the mother, when dying, disclosed the name of the father.

These are emphatically references to the affiliation of an illegitimate child, and not a formal induction of a legitimate son into any organized group.

Reliance cannot be placed on the Triads of Dyfnwal Moelmud as a conclusive authority, but even they do not support the contention that affiliation was an induction into a kin-group.

In the Triads there is a brief mention of the denial of 'reputed children', power being granted to the 'pencenedl' and others of kin to deny a child if the father were dead; precluding them, however, from denying a child born in wedlock and supported by the father or illegitimate children supported or publicly acknowledged by him.

They refer also to the acceptance of a son by the father, and, in case he had died without denial or acceptance, and then only, by the 'pencenedl' and relatives.

Finally, in another passage the Triads say what the author meant by a 'reputed' son, viz. the son of one person adopted by another as an heir or the son of 'a woman of bush and brake'.¹

§ 8. Apart from casual references, which throw no light on the present point, those are the accounts given in the laws.

In not one of them is there any trace of a ceremony of formal induction of a child into any self-governing group nor of the acceptance or rejection of a legitimate son: they appear to be obvious references to the affiliation of an illegitimate son to its putative father.

The necessity for affiliating an illegitimate son will appear as we proceed; but it suffices to say here that the very necessity for affiliating an illegitimate son, and the absence of any need for it in the case of a legitimate son, only tends to confirm the view here taken.

§ 9. Taking, therefore, the law of affiliation to refer to

¹ XIII. 526, 528, 564.

illegitimate children alone, we may now proceed to consider the actual procedure.

In considering this procedure we have to remember there were two parts to it, the allegation of the mother, which the Welsh Law terms the actual affiliation (*dwyn* or *dygir*), and the denial or admission by the father or his relatives, termed the 'gwađu' and the 'cymryd'.

In order to avoid confusion the allegation will be termed hereafter the 'assertion of paternity', the denial or admission, 'the denial or admission of paternity', using the word 'affiliation', as it is used in modern law, to describe the completed act.

We have also to bear in mind that an assertion of paternity was not necessary in every case, for the maintenance of an illegitimate child for a year and a day or the public acknowledgement by the father was tantamount to an admission of paternity.

§ 10. The ordinary rule, subject to special exceptions, was, where there was no constructive admission of paternity, for the mother to make the oath of assertion of paternity, and for the father to make the denial or admission of paternity.

The 'assertion of paternity' had to be made in a regular form, and if a woman, instead of following this form, merely made an oral declaration of paternity, the child was said to be a child by declaration, and such declaration gave him no status or claim upon the putative father, who was at full liberty to treat the declaration as a nullity or to deny it, as he chose. A woman making only an oral declaration was promptly mulcted in an 'amobyr' to the King, for she openly confessed a sin by so doing.

The formal assertion of paternity by the mother had to be made immediately after birth; if it were not made then, it could not be made until the child attained the age of 14, and the assertion then had to be supported by the oaths of the six nearest female relatives of the mother.

The regular mode of asserting paternity is described in the Venedotian Code and referred to elsewhere.

If the putative father were a Cymro, the mother brought

the child to the mother-church wherein her burying-place was, and having approached the altar, she placed her right hand upon it and the relics, which must be of her own 'cymwd', and her left hand on the child's head. Standing in front of the altar she swore to God, first by the altar and the sacred relics, and then by the baptism of the child, that the father of the child was the man she named.

If the putative father were a foreigner—a provision which shows clearly there was no question involved of admission into a clan or kin-group—the church selected was the one wherein he received mass.

The Gwentian Code substitutes for the assertion of paternity in church an assertion on oath, made by the mother to the parish priest who was to visit her, just before childbirth. The form of the oath then was an appeal that the child might be born a snake if any one was its father but the person named by the mother.

Both forms are referred to briefly in the XIVth Book, and the latter in the Xth Book.

This completed the assertion of paternity, and it then became the duty of the father, if he were alive, to come forward and either admit or deny his paternity. He was expected, but not compelled, to come forward at once: if he appeared in church with the mother he must deny or admit by the next day, but if he preferred to stay away he could delay his reply for a year and a day.

If he did not come forward at once the child became a reputed son (*cyswynfab*), or a son by sufferance (*mab dioddef*), or a doubted son (*fab amheu*), and remained such until the expiry of the year and a day.

These terms are used in different texts and apply to a child regarding whom an assertion of paternity had been made, which had not been admitted or denied.

If the father remained silent beyond the year and a day, his silence was construed to be an admission of paternity. During the period the child was 'reputed', 'on sufferance', or 'doubted', he occupied the position of an admitted son thus far, that for any injury committed by him, for which reparation was due, his putative father's relations were

compelled to make compensation to the person injured, and there could be no denial of the son until reparation had been made; but, as he had not been accepted, the putative father-kin had no right to share in blood-fine due for him if murdered. There was, therefore, every inducement for a prompt denial if it were going to be made at all. Any denial made within the year and a day had no retrospective effect as regards any liability incurred.

If and when the father was prepared to deny the paternity of the child, he, like the mother, attended church, and, having placed his right hand on the altar and the relics, and his left hand on the child's head, swore, similarly to God, and by the altar, and the sacred relics, and by the Being who created him, that the child was not his.

His oath of denial was conclusive, and no proof of paternity could be brought against his oath; but, if he had acquiesced in the child being his by nurture, proof of the nurture could be produced, and then his denial of paternity was annulled.

If instead of denying paternity the putative father admitted it, the child came at once on to his father's privilege, and could never subsequently be repudiated by the father or any one else.¹

§ II. We may now consider in what cases it was possible for any one other than the mother and putative father to make an assertion of paternity or a denial or admission.

To deal first with assertions.

The Gwentian Code, p. 786, states, without mentioning the circumstances, that in addition to assertion of paternity by the mother, the assertion might be made by the 'pencenedl' and seven men of kin, and, failing the 'pencenedl', by the oaths of fifty men of kin to the woman, adding that the son himself swore first.

The text is corrupt, and the reconstruction open to question. What appears to be the meaning is that if the mother were dead, the son could make an assertion of paternity, and, if the father were dead, the 'pencenedl' with

¹ V. C. 206, 210-12; D. C. 412, 444, 446; G. C. 776, 784-6; IV. 38 V. 40-2, 72, VI. 98, VIII. 200, X. 336-8, XIV. 666.

seven others or fifty men of kin to the putative father might accept.

That would be in accord with other authorities. All we can say, however, is that on this text alone it is impossible to maintain that an assertion of paternity by the relatives of the woman was permissible, especially as no other authority says so.

There are, however, many references to an assertion of paternity being made when the mother was dead or incapable of taking an oath.

In the Dimetian Code, p. 598, it is said that where the mother was dumb, and so incapacitated from swearing, the child, on her death, had to be admitted or denied, without oath of assertion, if the kin of the putative father were prepared to admit relationship. This is in substance repeated in the Vth Book, p. 58, which, however, states that in such a case an assertion of paternity must be made by the son before any one could be called on to admit or deny.

In the Xth Book, pp. 336-8, we are also told that, where the mother was dead, the son could assert paternity, which had to be admitted or denied; provided always the mother herself had made no attempt to assert paternity, and provided apparently also that the putative father was alive when the son made his assertion.

In the XIVth Book, p. 666, we are further told that a son might assert paternity if both his mother and putative father were dead, if the mother had, while 'in extremis', sworn to the confessor that the putative father was the father of the child, in which case the son's assertion had to be supported by the confessor's statement.

We see, therefore, that it was only in exceptional circumstances that a son himself could assert paternity.

§ 12. In regard to the denial or admission of paternity we have to refer now to the functions of the kin, which have been interpreted by Dr. Seebohm and others to mean a formal induction of all youths into a self-governing body, but which appear to have been nothing more than a mode of determining the paternity of a child.

The kin never had in any circumstances anything to do with the matter if the father were alive; they only came in if there had been no determination of alleged paternity in his life.

The duty then of admitting or denying devolved upon the 'pencenedl', if there were one, with seven men of kin; if there were no 'pencenedl', upon twenty-one or fifty men of kin to the putative father.

After the mother had sworn to the child's paternity, they swore in church 'to the utmost scope of reason and conscience' to the same effect as the father would have sworn had he been alive. If this body of men denied paternity, that ended the claim; the oath of denial was final: if they admitted paternity, the 'pencenedl' or the eldest of the twenty-one or fifty took the child by the hand, kissed him *as a sign of relationship* (*arwydd carenydd*), and passed the child down the line of kinsmen, each of whom repeated the kiss.

A judge was always present, so showing it was an adjudication; and, to guard against ulterior motives operating, it was provided that none of the kinsmen denying or admitting paternity could be a kinsman who would benefit in succession by the rejection of the child.

If some admitted, and others denied, the former prevailed. If the child were a daughter, the oath of the son of the putative father was accepted in lieu of his deceased father's oath, in Gwynedd, if there were no property to be shared; and similarly a foreigner, having no right to call relations to his aid, could deny a male or female child, asserted to be the child of his deceased father, subject to the same provision that there was no property to be shared.

It may be repeated that the assertion that this 'admission and rejection' was connected with induction into an organized clan or kin-group seems to be inaccurate, and that the existence of a kin-group limited by degrees is unsupported by any evidence to be derived from this procedure.¹

§ 13. We may now consider what was the result of the

¹ V. C. 210, 212, 214, D. C. 446; G. C. 786; V. 72; X. 328, 338.

admission or denial of paternity, without going into details which may be considered in their appropriate places.

The result of admission was that the child was legitimized and given the same rights as an ordinary legitimate child: the result of denial was that the child was left without a father.

The one could inherit or share in his father's estate, the other could not, and we can understand the absolute necessity of affiliation, for an illegitimate son, when affiliated, succeeded with his legitimate brothers.

The affiliated son had duties towards and against the relatives of his father; the unaffiliated had none and had no relatives on whom he could call for assistance outside his mother's circle of relations. In the latter case the mother's relatives, and they alone, received a share of blood-fine due on his account.

The Triads' assertion that an unaffiliated son fell into bondage for nine generations is entirely unwarranted. The child, if the mother was a Cymraes, remained a Cymro, if a foreigner, a foreigner, but in the former case he was a landless freeman.

Once an assertion of paternity had been denied, neither could the mother make a second assertion of paternity against another man, nor could the putative father repent and subsequently admit; and the statement in the Triads that it was open to revision and that the child's status could be reversed by a subsequent oath of admission has no warrant.

If no assertion of paternity were made the child was in the position of a denied son. He was fatherless, and the only right he had was to demand the assistance of his maternal relatives in paying reparation for crime: he had no right against them for land.

We can understand now why affiliation was necessary. The child without it had no means of protection or assistance comparable to those of an affiliated or legitimate son, and he had no claim to land.

That was the whole object of the Welsh Law, not to encourage or belittle immorality as understood to-day, but

to protect the unoffending child against the effects of an act for which he was in no way responsible.

The Church would bastardize him, subject him to a perpetual taint, deprive him of all rights in property, visit the sins of the father unto the third and the fourth generation. The Welsh Law would 'not visit the sins of the father upon the child', provided only that the paternity of the father could be established without doubt.¹

§ 14. This brings us to the question of the right of the illegitimate child in land. The question is one of considerable difficulty.

Had every illegitimate child a right to a share; or was the 'illegitimate' child, to whom reference is frequently made as possessing a right, a child who was illegitimate in the eyes of the Church, by virtue of the fact that the parents had not been married in Church, but legitimate in the eyes of custom, either by virtue of his parents having been married by continued 'cohabitatio', or by virtue of his acknowledgement by affiliation?

The famous paragraph, on which much of the question depends, is in the Venedotian Code, p. 178:

'The ecclesiastical law says that no son is to have the "tref y tad" except the eldest son born of a proper wife (*wraig briod*); the law of Hywel accords it to the youngest as well as to the eldest son, and decides that neither the sin nor the illegal act of the father is to be brought against the son where the "tref y tad" is concerned.'

We need not concern ourselves with the conflict in regard to primogeniture, beyond noting that here, too, Church Law and custom were at variance.

Let us, however, note that the words 'wraig briod' is a most unusual phrase to find in the Welsh Laws. A wife is almost invariably spoken of simply as 'gwraig'. The word 'priod' is equivalent to the Latin 'propria', and means 'proper'. 'Wraig briod', therefore, means 'a wife properly married', that is, in the eyes of the Church, one married in Church.

The passage, therefore, seems to go no further than to

¹ V. C. 100, 208, 210; D. C. 450, 602; G. C. 774; IV. 34-8, 42, V. 72 X. 326, 336, 338.

say that the Church would only allow sons of a duly celebrated marriage to inherit, but Welsh custom allowed other sons as well.

Is there any evidence that carries us further?

The VIth Book, p. 114, speaks clearly of the son of a Welshman by a foreign woman, even if conceived 'in bush and brake', being entitled to a share in 'tref y tad', but this expression seems to stand entirely alone in the laws.

The Statute of Rhuddlan expressly abolished the old custom of succession of 'illegitimate children'; but that does not help us to determine the question as to who were illegitimate. It is, however, not without its significance that the question of fact, as to whether a son were illegitimate or not, was remitted to the Bishop for certification.

In the Surveys we find many instances of illegitimate sons holding a share, instances of the share of an individual having escheated on the ground that he was illegitimate, and some few instances of an illegitimate son holding 'kenwes' (= *cynnwys*, by permission), a portion less than and separate from that which was held by legitimate descendants. These instances, again, do not assist in determining who was illegitimate, beyond that the very existence of the word 'cynnwys' indicates that there might be cases where an illegitimate son did not always hold as of right.

The Southern Codes throw some light on the question. In the Dimetian Code, pp. 544-6, it is said that 'if a landowner has a legitimate heir, and another who is illegitimate, the legitimate is to inherit the whole, and the illegitimate is to have 'no share'; but in the very next paragraph it allows an unblemished illegitimate son to succeed in presence of a blemished son. The word used for 'legitimate' is 'deddfol', a word which in old Welsh conveys a sense of 'custom', and in later Welsh of 'authority' and 'ceremonial'.

It would be quite a correct translation of the passage in old Welsh to read:

'If a landowner has an heir legitimate by custom, and another who is illegitimate by custom, the legitimate is

to inherit the whole, and the illegitimate is to have no share;'

but we cannot press this too far.

However, what is quite clear is that an illegitimate son was excluded in the presence of a legitimate or legitimized one duly qualified to succeed.

In another passage in the Dimetian Code, p. 444, and in the Gwentian Code, p. 760, it is said that if a man had a son by a woman, begotten 'in bush and brake', and thereafter married her by 'gift of kindred', subsequent thereto having another son by her, the first son was not entitled to share in the land; and in the Gwentian Code, p. 762, we have it very emphatically laid down that 'no son begotten "in bush and brake" is entitled to a share of land, unless by favour'.

If we examine the laws as to the rights of a child born 'in bush and brake' we find those rights very clearly defined.

Each of the Codes and the IVth Book make it perfectly clear that all the mother could seek was maintenance, the scales of which are fixed, and that, in the absence of formal affiliation, not even a subsequent marriage would avail the child.¹

We seem, therefore, to be brought to the conclusion that it was not a rule of Welsh Law that all illegitimate children were entitled to a share in land. Only those were whom the Church called 'illegitimate', but whom the custom of the land regarded as legitimate or legitimized, the one by marriage by 'cohabitatio', the other by affiliation.

§ 15. In its main essentials Cymric Law differed in no way from other laws.

Under Roman Law children born out of wedlock followed the condition of the mother, but they could be legitimized by the act of the father.

In Irish Law, as we know from the famous case of Shan O'Neill, Earl of Kildare, the affiliation of a child to the chieftain of the sept was common, even when there was no doubt that the chief was not the father: it was common because the family acquired a larger share thereby in the tribal lands. So important was the possession of sons that,

¹ V. C. 90; D. C. 530; G. C. 784; IV. 24.

as we have seen, according to the Book of Aicill, the husband of a woman, who gave birth to a child by another man, could insist on regarding that child as his.

In Irish Law the principle that the illegitimate son acknowledged had a right to succeed equally with the legitimate son, existed, but according to the 'Do Fastad Cirt ocus dligid' there was exactly the same limitation as in Wales:

'Children of harlots shall not get a share of land; they belong to the tribe of the mother.'

The same authority shows clearly that the law of affiliation was confined to cases of illegitimacy, proof of paternity, sworn to by the mother or child, entitling an illegitimate child to share in the tribal land.

The Teutonic Laws have little to say regarding affiliation or admission to kin, but under the Lex Langobard. (Ed. Roth., c. 164) a person alleged to be illegitimate could swear to his legitimacy, and his oath could not be repudiated.

That law also (c. 154-60) has an extraordinarily detailed statement as to the right of an illegitimate son to succeed.

If there were one or more legitimate sons, and one or more illegitimate, the latter always succeeded to a definite share as a whole, varying according to the number of legitimate sons thus:

If there were

One legitimate son he got	2/3	the illegitimate sons	1/3
Two „ sons they got	4/5	„ „	1/5
Three „ „	6/7	„ „	1/7
Four „ „	8/9	„ „	1/9
Five „ „	11/12	„ „	1/12
Six „ „	29/30	„ „	1/30
Seven „ „	49/50	„ „	1/50
More than seven „	All	„ „	Nil

In the case of legitimate daughters and illegitimate sons, the daughter got one-third, the illegitimate sons one-third, the parentes one-third; if two daughters they got one-half, the illegitimate sons one-quarter, and the parentes one-quarter; and if there were daughters and sisters they got one-half, the illegitimate sons one-third, and the parentes one-sixth.

Similar shares were allotted for the receipt of a liability for 'wergild' (c. 161).

We may conclude with an excerpt from the Lex Baiuor., XV. 9, which appears to establish that both legitimate and illegitimate children succeeded, for it says that brothers share equally, however many 'mulieres' the father might have had.

'Ut fratres hereditatem patris aequaliter dividant quamvis multas mulieres habuisset et totas liberas fuissent de genealogia sua aut quas non aequaliter divites; unusquisque hereditatem matris suae possideat res autem paternas aequaliter dividunt.'

NOTES

Note 1, p. 16. *Hereditary nature of office.*

See, however, D. C. 489, § 1, which may suggest that in some cases the office of 'maer' and 'canghellor' was hereditary.

Note 2, p. 17. *Enfranchisement of cleric.*

The law regarding the status of clerics is given in different parts of the work. The position may be summarized thus. Systems of customary law, which allowed improvement of status by the acquisition of property, dealt with 'orders' on the same lines. Welsh law, which ordinarily paid no attention to the acquisition of property, did not; and it made no provision for increase of 'worths' and the like, merely because a man took 'orders'. Honour-price it left to the Church, blood-fine was assessed according to birth only.

Welsh custom demanded, inasmuch as the Celtic Church was tribal, that the priesthood must be free. It, however, allowed an unfree man to acquire 'scholarship' and become a priest by permission, but he was enfranchised by grant *before* being ordained, and it was the grant, which created a fiction of birth, and not priesthood, which raised the hitherto unfree priest to the rank and worth of a free man.

Note 3, p. 19.

'No free Welshman could be an "alltud" in Wales.' This is repeatedly stated. The provision in V. C. 177, § 7, applies only to the son of a Welsh-woman by a foreign husband, and merely limits the exercise of the right of 'mamwys' to such land as was held by the kin of the mother in the principality in which the child was born.

The reason of this appears to be that a marriage between a Cymraes and a foreigner required the permission of the territorial lord, whose power to grant permission could not affect the territory of another lord.

Note 4, p. 25.

The 'lord' had no pecuniary worth attached to him superior to that of an 'uchelwr'.

D.C. 346 says that a 'king' other than the three principal kings had a special honour-price. It suggests that, in the lesser principalities of S. Wales, increased worth was attached to ruling princes, but the provision does not apply to all 'arglwyddi' in Wales.

Note 5, p. 83.

The 'pencenedl' was unquestionably a chieftain over some organized tribal unit, organized, however, without limitation of degrees. The question remains whether this tribal unit was (a) the agnatic clan, or (b) the larger tribe, agnatic and cognatic.

On pp. 60, 81, and elsewhere the 'pencenedl' is identified with the chieftain of an agnatic clan. The evidence, on the whole, appears to point to that conclusion rather than to an identification with the chieftain of a larger tribe, though much of the evidence would not be inconsistent with the latter identification.

It is not material to the argument of the book; but as most of the evidence is consistent with either identification, it is desired to make it clear that the author does not insist positively on the exclusive identification of the 'pencenedl' with the headship of an agnatic clan. He would, in no way, exclude the possibility of the 'pencenedl' being sometimes a tribal, rather than a clan, chief.

The principal reason for considering him generally a 'clan'-chief is that he had definite 'legal' duties to perform, such as were incident to clanship; and that tribal duties, as such, were not 'legal' so much as 'social'.