[28TH APRIL, 1891.]

At the annual meeting of the Society held on this date, office-bearers for the succeeding session were elected. Mr. Hugh Macleod, Writer, read a paper on "*Ancient Celtic Laws.*" Mr. Macleod's paper was as follows:—

ANCIENT CELTIC LAWS.

In choosing Ancient Celtic Laws as the subject of my address, I did not count upon the difficulty and labour attending its treatment in a manner worthy of this Society and satisfactory to myself. The most careless thinker, and the most casual and superficial reader of history cannot fail to realise how very difficult it is to speculate with any degree of certainty upon any event, even in modern times, far less to tear asunder the veil of haze and obscurity that surrounds early institutions. To penetrate beyond the age of writing and printing, and deduce with a sure degree of satisfaction any authentic account of men and events is well nigh impossible. But unfortunately, the task is rendered almost insuperably hard with reference to the early history of the Celts in Britain, owing to their hatred of anything foreign and to the backward state of their civilization. We must candidly admit that as far as the Celts in Britain are concerned, we are absolutely without any *reliable* information. However partial or one sided a nation's history may be when written or narrated by the prejudiced native, it is upon the whole more to be relied upon than that which is furnished

by the foreigner who knows neither the language nor the customs of the people of whom he is writing. So it is with us. We have only a few hoary traditions of military prowess, of feud and faction, of blood and battle, of love and enmity. For an account of the early inhabitants and institutions of Britain, we have to rely upon Roman historians, whose works, in my estimation, are, for the most part, the coloured, exaggerated and prejudiced reports of the early traveller into a strange land. The still more unfortunate fact is that our own early writers differ so materially on so many events relating to the conditions of the people, and important events relating to our history, that one is left to grope amidst a chaotic mass of myth, mystery, fable and fact, and each for himself conclude and deduct according to the bent of his mind, or the object he has in view. As the Duke of Argyle puts it in that remarkable work of his "Scotland as it Was and Is," which all of you should read, however much you may differ from his conclusions—"The Celtic period of Scottish History has been peculiarly the field of a fabulous narrative of no ordinary perplexity due to the rivalries and ambitions of ecclesiastical establishments and church parties." We are therefore groping in the dark for any authentic account of the jurisprudence—if we may at this stage use that term—of our ancestors. All Law was no doubt traditionary, originating in the authority of the father as head of his family, and as the early unit of society in Roman and Greek communities, but, with us, I rather think in the customs of the family, so that in Celtic communities law would be

peculiarly traditionary, there having been such a strong prejudice, in fact, discouragement of written precepts. We must therefore look to local customs and usages, and unrecorded practices, where we can find these generally observed, for the Laws of Scotland, down, at all events, until the Kingdom of Scotland was consolidated in the 12th century. Now can we with any degree of truth assert what the early institutions of Caledonia were, say, up to the 12th century? I trow not. I fear the reason is obvious and that on two grounds. First we have no written account of any system of jurisprudence: all we have is legendary. Secondly, I fear none such existed as a completed system. It would seem rather that each social unit, be it the family, or the "fine," sept, or *tuath*, or clan, formulated and enforced its own private behests; and in general *might* prevailed. The rude comprehension of justice and right gave way before lawless ambition and selfish proclivities. Certainly by the aid of modern Philology we can trace back the meaning of certain words and phrases, and, applying these to certain customs, we can form a more or less hazy idea of what were the more general prevailing customs in our Celtic communities in Scotland. Our difficulty therefore is to predicate with certainty that general customs prevailed to such an extent as to warrant us in applying to them the term Law. Generally speaking we must assume there were; for without some defined checks upon waywardness and rapacity, which would be common to all, there could be no cohesion. But when and whence did these early customs spring? It is impossible to say. It

is obvious that many customs which existed, and now exist among tribal communities of the Aryan stock, may have existed among their remote ancestors prior to their dispersion. But as I have said, some general principles did exist which regulated certain relations of life and which had the sanction of the greater part of the community, and were accordingly observed whether they could at all times be enforced or not, we may safely conclude. As Chalmers says, *Caledonia*, Vol. I.—"We need not however go back for those to Teutonic tribes of Germany, for the inhabitants of North Britain were Celtic and their jurisprudence was analogous to the nature of a Gaelic people. Nor need we trace their principles back to feudal principle." And as Argyll says, "These were at best modern introductions to North Britian, were long opposed and were antagonistic to the genius of the Celtic people and a Celtic race".—*Scotland as it Was and Is.* Now we have traces of customs from an early age, which regulated the succession to crowns, to land and title, to chiefship, to church patrimony at a later stage, and to marriage; and it will be my object for a few minutes to examine a few of these and pass on to the consideration of a Celtic system of jurisprudence as beautiful and as mathematically precise, and withal, as authentic as the legal maxims of Solon or the minute compendium of the Twelve Tables. I refer to the early Laws of Ireland—the *Seanachus Mór.* Before doing so, however, let me here state that the earliest codification we have of what is termed Scotch Law, is that contained in the work called "*Regiam Majestatem,*

(first published in 1609), so called from the first two words in the compilation. The title of this work which has caused so much bitter discussion, is so quaint that it is worth quoting.

REGIAM MAJESTATEM.

THE

Auld Laws and Constitutions of Scotland.

Faithfullie collected fruth of the Register and other Auld Authentic Bukes fra the Dayes of Good King Malcolm the Second, until the time of King James I. of Gude memorie, and trewlie corrected in sundrie faults and errors committed, Be ignorant writers, and translated out of Latin in Scottish Language, to the use and knowledge of all the subjects within this Realme, with ane large Table of the contents thereof

BE

Sir John Skene, of Curriehill, Clerk of oure Sovereign Lord's Register, Counsell and Rollis, Edinburgh.

Printed by John Wood and sold by him.
J. Bell and C. Elliot.
1774.

This work is of very doubtful origin. Craig and Stair, two of our greatest feudal Lawyers and Jurists, contend that it is not a Book of Scottish Law at all. It has been ascribed to Malcolm II. as *Leges Macolmi Secundus* and to David I., but from internal evidence this could not be so. It contains, however, as Scotch Law many Celtic customs. Perhaps the surest and safest theory to adopt concerning it is that of Chalmers,

viz:—that it is a compilation of English Law, Scotch and Celtic customs, and ecclesiastical canons handed down as a Scotch Code. Poor old Sir John Skene, however, stoutly maintains its authenticity against the more formidable opinion of Stair and Craig.

Let us then examine a few of the Celtic customs which we may regard, perhaps with hesitation, as worthy of the name of Law in the sense of the term as understood by us. Take for example what is known as *Byr* Law. That is short Law or summary Law. This system of jurisprudence was determined by consent of neighbours who were elected in Byr Law Councils. It was in fact a Law of arbitration. The system was analogous to our present system of appointing two neighbours to fix any damage to land or property. (See O'Brien and Shaw's Dictionary.)

In this relation mention may be made of Calp Law, or the right of the chief to an ox, cow, mare or horse on the death of his clansman. This can best be described in the words of the Statute abolishing it in the year 1617. "His Majesty's Lieges have sustained great hurt and skayth these many years bygone by the chiefs of Clans within the Highlands and Isles of his Kingdom, by the unlawful taking from them their children and executors after their decease, under the name of Caulpes of their best Aucht, whether it be ane mare or horse, or cow, alleging their predecessors to have been in possession thereof for maintaining and defending of them against their enemies and evil willars of old. Therefore it is ordained, &c." (Acts of Parl, vol. IV. p. 548.)

With regard to the early church law of Scotland, we are on safer ground; for from the time of the introduction of christianity by St. Columba, we have a comparatively authentic account of ecclestiastical matters. Due allowance, however, must be made to the natural inclination or bias of early clerical writers to make their own and their church's doings appear glorified in the early pages of history. The early religion, if we may so use the term, was Pagan—a species of Fetichism peopling all the objects of nature with evil Beings. These evil spirits were the cause of all the peculiar changes and phenomena existing in nature. In other words nature was personified, and the mysterious Beings composing it, who were required to be appeased or dreaded, lived in the Heavens, or in the Earth, or the Sea. The priests of this order were called "Druidh." They exercised great authority among the people, and were supposed to be able to work great wonders. Mr. Skene deals with this subject very elaborately and points out that the popular conception of the Druids, with their stone, circles, and cromlechs, said to represent temples and altars, human sacrifices, and worship of Baal—is quite wrong. As we know the first christian church was founded in Iona in 492 by St. Columba. Some centuries later the chief seat was removed to Dunkeld. It was, of course, a branch of the Irish church and was, accordingly, governed by the same laws; the Abbot being the chief ruler, had under him Bishops who were under

the Monastic rule and who celebrated the Eucharist. St. Columba was of the Hy Neill tribe of Ireland who were patron Saints of many ecclesiastical establishments; therefore on his death, according to the Celtic Law, his successor as Abbot, who required to be of the tribe of the patron Saint, was found in the person of Baithene, a cousin of St. Columba, and superior of the monastery of Tiree, and, of course, of the Hy. Neill. Skene tells us that prior to 1139, celibacy was enforced upon Monks. It seems not to have been unlawful before then, and, as a consequence, a direct descent from the ecclesiastical persons themselves came in place of the older system, and church offices thus became hereditary. As Abbots and Superiors did not frequently take orders, laymen were appointed to perform many ecclesiastical functions, such as a "Sagart." These laymen soon came to secure all the privileges and emoluments of the Abbacy.—Skene vol. II. p. 341. In the early church Saturday was by law a day of rest, and on the Sabbath was celebrated the resurrection. It is stated that Margaret, wife of Canmore, urgently pleaded for this at a Council at which her husband acted as interpreter.

The early influence of ecclesiastics in the formation of laws we shall see when dealing with the *Seanachus Mòr*, but it may be here pointed out also. Thus Adamnan,* who wrote the life of St. Columba, went in

* What appears very strange, Adamnan in his Life of St. Columba chronicles the most minute details about the life and work of St. Columba and his Monks; but not a word as to the character and social condition of the people among whom those laboured.

697 to Ireland, accompanied by Bruide, son of Deird, King of the Picts, to attend a synod of 39 ecclesiastics and 47 chiefs, presided over by the King of Armagh, and passed a law exempting women from what was called "Fecht" or "Sluagad"—the duty of attending Hostages or Expeditions—this was afterwards appropiately termed "*lex innocentium.*" Again, the church synod of Cashel decided in 1172 that all church lands shall be free from all exactions on the part of secular persons, Mormaors, or Tosseachs, &c. We thus see that Law and Religion were closely related, and, while the Abbot acted as Priest and legislator, the Druid, earlier still, very often did the same, and decreed according to traditional maxims. They sometimes shared their powers with the chiefs and heads of tribes and were termed Fear gu-breath, of whom more anon under the name of Brehon or Breathibh.

Adamnan tells us of the Island of Council where a council of 12 sat daily for the administration of Justice; and I suppose you all have heard of the Statutes of Iona In the time of James VI., Commissioners and chiefs and clergy met in Iona and decreed—

I.—That Inns be provided at certain places.

II.—That chiefs be compelled to find their own supporters.

III.—That Sorners be punished, &c.

IV.—That Bards, &c. be punished in stocks, and by banishment.

LAW OF CORONATION.

An early custom was that of crowning the Kings

on a coronation stone, and proclaiming them from the coronation chair on the stone which was placed on an eminence;* this was a necessary legal ceremony. Thus we are told that Kenneth McAlpine, 850, Mal. II. 1006 and Robert Bruce, 1306, sat "Super montem de Scone." In Scone the hill was called the Mute-hill, Quothgran Law in Lanark, and Tynwald in Man. In like manner the inauguration of a chief was celebrated.

The next custom which is is worthy of the name of law is .

GAVEL.

The succession to the land was called Gavel; although on the establishment of the Feudal system the latter may fairly be said to have regulated both the succession to the chiefship and, undoubtedly, the land. According to the law of Gavel, brothers succeeded before sons: the brother being considered one step nearer the common ancestor than the son. The chief characteristic of this system was that females were entirely excluded, the land of the clan being divided in certain proportions amongst the male branches of the family. A great portion of the land however remained with the chief, as well as the principal residence or seat, and, by this distribution, the chief surrounded himself by members of the clan who had been freed from selfish ambition, and whose interest it was to support the head of the family. This principle was

*The office of placing the king on the coronation stone was the hereditary right of the Earls of Fife.

evidently the outcome of military instinct, as it tended very much to strengthen the power of the chief, extend his connections, and secure the obedience and co-operation of the more powerful branches of the clan.

It would appear that this system differed from the Gavel Kind of the English, and also the Brehon Law, for, under the latter, the system was pretty much the same as that which prevailed in Scotch Law, whereby the widow and children succeed to the deceased's moveable estate.

Here is an instance of the form of charter given by the Lords of the Isles to some of their followers. You will notice it is in rhyme.

"Tha mise Domhnul nan Domhnuill
Am shuidhe air Dun Domhnuill
Toirt coir do Mhac Aoidh air Kilmaluaig
On diugh gus am màireach
'S gu la bhrath mar sin."

The chief then knelt on the Black Stone and confirmed the grant.

LAND AND ITS BURDENS.

Going back to a very early period of our history we find, according to Skene, that the members of the Tribe were divided into *Saor*—free, and *Daor*—unfree. But there was another distinction of rank depending upon the wealth or possession of the individual. Such as the "Fer Midba" or inferior man, the "Bo-aire" or cow lord. Owing to the superior wealth in cattle of

the Bo-aire, he at a remote period got beyond the family unit and became entitled to the possession of a household for himself. Of the Bo-aire class there were six grades, the Og-aire, the Aitchech ar Athreba, Bo-aire febhsa, Bruighfer, Fer fothla, and Aire Coisring.

With regard to the burdens on land they were "Cain" and "Conveth." These were fixed payments in kind by way of rent, generally the produce of the land. "Cain" originally meant "Law." *Conveth* or *cean mhath* was a payment of first fruits. In its early form it resembles "Maills and Duties" of Scotch Charters, or the "Coinmhedha" or Coigny of the Irish—a night's meal or refection, which latterly became a fixed amount of produce when the tribe land became crown land or feudal land. In the Western Isles it took the name of "Cuidiche" or "Cuid oidhche" a night's portion. This was continued as a burden on land in Athol as recently as 1720.*

Another burden was "Feacht," a service in war on behalf of the chiefs to which the possessor of land was subject. "Feacht" and "Sluagad" are the "*Expeditis* or *exercitus* of the Feudal charters, and we find them awanting in Ecclesiastical charters.

Then there was what is called "Coin and Livery." This consisted in what we now term military requisitions. The chiefs perpetually quartered themselves and their retainers upon their tenants. Another

* See Skene's "Celtic Scotland," Vol. III.
Scotland as it Was and Is—Vol. I.
O'Brien and Shaw's Dictionary.

name for this was "Bonacht," or a right of living at free quarters upon the tenants.

"Coshering" was another burden on land. It means the visitations and progresses made by the Lord of the land and his followers among the tenants. Then there were Sessings of the Kerne, or support for Lords, horses and attendants, and so forth. Similar burdens were Tallages and Spendings.

LAND TENURE.

With regard to land tenure it cannot be disputed that the chief had in modern times no better title to the land, than that his ancestors possessed it from time immemorial. The pen that wrote his charter was the sword, and the ink was the blood of his clansmen. Many chiefs were greatly alarmed when Bruce required them to exhibit their charters. Thus Macdonald of Keppoch, 1678, disdained to hold by a sheepskin parchment the lands of Glenroy. The Mackintosh had a crown charter for these lands and claimed them, but Keppoch and his clansmen fought and thrashed the Mackintosh, who thereupon renounced his claim. It is also well known that the ancestors of Lord Reay had no charter for their Lands until 1499. Among the Gaelic race, the social unit was the "family" or "Tuath," and not, as now, the individual. This word "Tuath" was latterly applied to a community and to the territory occupied by it. So that the land at a very early stage was vested in the community. The clan lived in patriarchal fashion, at all events down to the 15th century; but from that date the practice

of giving charters to individuals became common, and had the effect of not only depriving the general body of the clan of any right to clan territory, but also divested a portion of the clan, who held indefeasible rights to particular lands, of all claims upon these lands. It is unnecessary here to go into the question of the position or jurisdiction of the *Maormor*, whether he preceded the chief, had a clan right or a crown right to lands, or whether he was merely a Lord High Steward appointed by the King. But whatever power or position he held, that power was broken up in the 16th century, and many clans sprang prominently into existence, choosing for leaders very often Saxon nobles, who at once obtained charters and became Feudal landlords; and, thus forever, ended the ancient form of succession to land in the Highlands.*

The next custom of importance in the early, middle, and later period of the purely Celtic dominance, and which is worthy of the name of Law, is that of Tanistry.

TANISTRY.

The law of Tanistry not only decided chiefship, but, until 1056, it determined the succession of the Kings of Scotland during the Celtic dynasty. During his life a chief often appointed his successor from the members of his family. Hence the name.

The word *Tanistear* is derived from *Tanaiste*, signifying equal, and *fear*—a man. *Tanistear* is therefore one equal to, or parallel with the chief.

* Skene, "Celtic Scotland," Vol. III.

Generally the duty of the Tanister was to lead in battle. The descent by Tanistry was to the oldest and most worthy of blood and name, but the consent of the clan was absolutely necessary. The Tanister required to give proof of his military abilities; a male although illegitimate being preferred to a female. Indeed it is asserted that women were excluded in general by the Tanist Law; but cases occur where they held the sovereignty of the clan by hereditary right. Age and experience, and power to lead and command, were the great considerations. Logan maintains that he was equal to being Captain of the clan, or Toshich; while Dr. Macpherson thinks they are quite distinct; and "Nether Lochaber" holds that *Tanistear* is the origin of Thane. The Tanister maintained himself out of lands set apart for that purpose out of tributary possessions. In some of the Western Isles it went the length of a third of the estate during the lifetime of the chief. If Tanister and Toshich be synonymous, we have the origin of the MacDuffs. Malcolm Canmore gave Macduff, Thane of Fife, a grant to him and his heirs to lead the van of the Royal Army as Toshich—hence Mac in Toshich, the Macintoshes. The same system prevailed in Ireland, and in the Saxon Heptarchy. *Vide* Sir James Ware's Antiq. Hist. of Ireland, Cap. 8. "The Tanistear was the third in dignity. The Rhi being first and Tierna or Tigherna Ti—one; and fearann—land, being the second."

HANDFASTING.

A most remarkable custom prevalent in early Celtic

Scotland was "Handfasting." To us moderns it may appear surpassing strange, but on reflection we may readily conclude with what purpose it prevailed so generally in an early social community; and it is on account of its generality of observance that I venture to introduce it here as an early Celtic Law. The law of "Handfasting" consisted of a contract between an intended husband and wife, whereby they cohabited as husband and wife for the period of one year and a day. If at the lapse of that period there were no issue, each was at liberty to return to his or her own domicile. Of course the contract was between the parents; but if there were issue from the lady the marriage was *ipso facto* good, and no formal or religious ceremony was required to validate the marriage. The marriage was good in law. The object seemed to be to secure the lineal succession to the chief. This custom or law prevailed until well on in the 16th century, for we find then that the issue of a Handfast marriage claimed the Earldom of Sutherland. The feudal law however had by this time engrafted itself so strongly on Highland Law, and *prevailed* in Scotch Law that his claim was not admitted; that Law, in contradistinction to the Highland Law, regarding the issue of such marriages as a bastard.

Now side by side with this early marriage law, there was what is termed in the Latin tongue the *Jus primae noctis*, or *Merchetae Mulierum*; the ancient equivalent of what is known in Feudal Law as the casualty of marriage. Some historians assert

that such a barbarous law never prevailed in the Highlands, but we have good authority for holding that the Cummings were expelled from their lands in Lochaber for a more than harsh exaction of this right. (Logan's Scottish Gael, Volume I., page 219.) In comparatively modern times it was termed *merchet* or maiden fee. This fee was paid to the Superior on the marriage of a daughter of a dependant. It ranged from one calf in the case of a poor man, to that of twelve cows and more in the case of the daughter of an Earl. (See Acts of Parliament, Vol. I., p. 640.)

FOSTERAGE.

Then there was the Law of Fosterage, which in unbroken observance has been handed down to us, at all events to the memory of living man, as rigid and inexorable in its principles as the Laws of the Medes and Persians. It however corresponds so exactly with the same system which prevailed in Ireland, that the very limited treatment which it can receive at my hands, may be left over until we come to deal with the *Seanachus Mòr*, which contains most unique details concerning it.

PRESCRIPTION OF CRIME.

I am not aware that it has ever been contended that the crime of murder could be expiated by self banishment for a time, but I have noticed one case in which it would appear that at least in one portion of the Highlands, a certain law of prescription of this nature held good. I refer to the case of one Farquhar MacRae,

from Kintail, who had committed murder. He voluntarily banished himself from his country and kindred for a period of 7 years, and on his return he was held to have expiated the crime. No proceedings were taken against him.

CREACHS.

The rule of law applicable to cattle lifting were inexorably enforced and accordingly observed. These creachs were only made on hostile tribes, not on friends. The chief through whose lands the foray passed was entitled to a certain contribution. If none such were paid, the clan set out in pursuit, and on recovery of the spoil, the chief got two thirds, and the captors one third. In 1341, Munro of Foulis refused to pay this contribution to the laird of Mackintosh through whose lands he passed. He was pursued and his party soundly thrashed and deprived of the spoil. When the track of the cattle was lost, the person on whose property it might happen became liable either to recover the trace or make restitution of the amount lost.

Tasgal money was a reward offered for the recovery of stolen cattle.

BREHON.

While such was the state of indefiniteness regarding laws properly so called in the Highlands in early Celtic Scotland, it is pleasing to turn aside to the consideration of the early Celtic Laws of Ireland, concerning which there can be no manner of doubt. These are embodied in what are called the Brehon Laws

or Brehon Tracts, a most unique and interesting collection of laws embracing almost every conceivable relation and form of sociology, in many respects corresponding to many of our own Gaelic customs—"The natives of the North part of Scotland being a colony of the Irish used the like customary Laws" says Usher, see discourse, Vol. I. p. 95. The Laws are, according to Argyll, (Scotland as it Was and Is, vol. I) "traces and relics of times when Celtic usages and ideas were the same as those of all their Aryan brethren, and which led to the glorious history of the "Twelve Tables." In Gaelic the Brehon Laws are known as the *Seanachus Mòr*—a term for which, in the Glossary of the first volume, different derivations are given.

Whatever be the meaning of the word, the Brehon it may be premised had a clerk or *Clerach* who registered his proceedings, or his *dicta.* The office was hereditary in certain families, but the Brehon had no *exclusive* jurisdiction in any particular district nor any fixed salary for his services. He was indeed a consulting lawyer with a knowledge of precedents. He sat on a hillock and sometimes on the middle or key stone of a bridge. Logan thinks this a relic of Druidism. David I. sat at his Palace gate deciding questions arising among the poor. Again circular stone enclosures—*cearcail* or *circus* were used, and latterly the church or chapel, but this was found to conflict with the original dignity of such a building and the practice was discontinued. Thus we can trace the courts of justice of the early Greeks who

also at first held their courts in the open air, and at quite a modern date, the same prevailed in the Isle of Man, (Logan vol. p. 212). Does it not also remind us of the glorious days of the early Greek Philosophers, when Plato and Socrates, lectured on abstruse problems of Philosophy in their Academic Groves. The *Seanachus Mòr*, or Brehon Laws, retained their authority in parts of Ireland until the beginning of the 17th century—a period of 1200 years—until the power of the Irish chieftains was finally broken in the reign of Queen Elizabeth—of course, English Law prevailed there from the time of Henry II. in the 12th century, but only within what was termed the English *pale.*

The origin of the *Seanachus Mòr* is ascribed to the decisions of Brehons who were Judges and Law Givers, to Kings and to Poet Judges—the first of whom was *Amergin Ghungel.* The *Seanachus Mòr* was composed in the time of Laighair, son of Niall of the nine Hostages, King of Erin, about 432—between six and nine years after St. Patrick's arrival in Ireland, or according to the authority of the Four Masters 438 to 441 A.D. The supposition is that St. Patrick who was himself the son of a Roman Magistrate, and a true christian, having seen in Ireland the barbarous pagan customs which regulated the so-called jurisprudence of the country, introduced so much of the Theodosian Code (438) as was christian and conformable to the Civil Law of Rome, and grafted it on to such of the Irish customs as were humane and reasonable in his evangelic light. He himself assisted in writing it along with eight others.

It was composed at *Temhair* or Tara celebrated in History and Poetry, and at Rath-gathair, 16 miles from Tara. The former was, as the Glossary states, a Royal Residence, and more pleasant in Summer and Autumn, and the latter more agreeable in Winter and Spring.

The MSS. of the *Seanachus Mòr* are four in number in Irish Black Letter. Three of these are in Trinity College, Dublin, and one in the Harleian Library, Brit. Museum. This latter is very complete and is dated 1578. The Translators were two of the foremost Celtic scholars living, Dr. O'Donovan and Professor O'Curry.

The text and the Glossary differ very much, and from the number of obsolete words appearing in it, the work of translation was so very difficult that the learned authors had to leave untranslated several words.

The first vol. of the *Seanachus Mòr* deals with what was called *athgabhail*— a law of distress. It will be interesting for a moment or two to consider a few examples of this law, and the different ways in which it was maintained. The *athgabhail* or law of distress, was the universal remedy by which rights were vindicated and wrongs redressed.

The Plaintiff in court having first given the proper notice, proceeded in the case of his debtor—not a chief —to distrain. If a chief, he was bound to give notice, and also "to fast upon him." This fasting consisted in going to his residence, and waiting there for a certain time without food.

If he did not within a certain time, receive satis-

faction for his claim, or a pledge, therefor, he forthwith accompanied by a law agent, witnesses and others, seized distress and his debtor's cattle.

Distress when seized, was in certain cases liable to a "stay." (*Anadh* which was a period varying according to fixed rules during which the debtor received back the distress—the creditor having a lien on it. "Athgabhail air fut" was "a distress with time," and an "immediate distress" was *(tul athgabhail)*—the peculiarity of the latter was that during the fixed period of the "stay," the distress was not allowed to remain in the debtor's possession, but in that of the creditor, or in one of the recognised Greens or Pounds. If the debt were not paid at the end of the stay, the creditor took away the distress and put it in pound. He then served a notice letting his debtor know where the cattle were impounded. The distress lay in the pound a certain period termed "dithuin," and expenses thereby occasioned ran against the distress. At the end of the delay in pound, the forfeiting time "lobadh" ran during which the distress became forfeited at the rate of three Seds per day. If the entire value of the distress thus forfeited was equal to original debt and the subsequent expenses, the debt was liquidated, if less, a second distress was taken, and if more—surplus was returned. All this was managed by the party himself, or his law agent with witnesses and other necessary parties.

Debtor could give a pledge or "Gell" e.g. his son, or an article of value, that he would within a certain time try the right to the distress by law, and the creditor

was bound to receive such pledge. If he didn't go to law, the pledge became forfeited for original debt. At any time up to end of "dithuin," the debtor could recover his cattle by paying the debt and such expenses as had been occasioned, but if he neglected to redeem until the "dithuin" had expired, then he could only redeem such of them as were unforfeited. It may here be mentioned that this Law of distress has a parallel in Hindoo Law.

Then we have innumerable cases in which distress could be levied. Thus the distress of one day for weapons for the battle, for withholding food tribute for the King, for taking care of a son from the breast, or a son of a mad, a diseased, deaf, blind, &c., woman. Two days for one woman speaking evil of another, three days for hosting, for the crime of a son using a neighbour's horse, or boat, stripping the dead &c. Five days for satirising a woman after her death, for a nick-name, for the right of a poet crossing a territory &c. Ten days for robbing a hunter's tent, or digging a churchyard &c.

The 2nd vol. of *Seanachus Mór*, completes the treatise in the Law of distress, and deals with

(1) The Law of Services and Hostage Sureties,
(2) The Law of Fosterage,
(3) The two Laws of Tenure, &c.,
(4) The Law of Social connexions.

As to the treatment of distress when taken, it was prescribed that it was to be brought into a strong place for secure keeping, and protection. The mode in which distress is to be carried into effect, differs in the

case of different animals, and in relation to persons of different tribes, occupations or professions, all indicating that the chief wealth of the country consisted then as now in cattle, sheep and pigs. The most notable peculiarity, however, points to the great estimation in which bees were held: indeed, there is in the Brehon Laws a short code on the subject. No doubt honey would be in great demand, there being no such thing as sugar, which was used in Europe only as a medicine until 1466, and as giving us an indirect proof of the date of the MSS., we have no mention of potato as an article of rent payment, although as we know the excellent weed was introduced into Ireland by Sir Walter Raleigh in 1610. As regards persons, Kings, Bishops, and Chief Poets were freed from distraint, but their Officers or Steward Bailiffs were called in their place, a custom handed down to the present day in the case of Royalty, when the Lord Advocate or the Attorney General sues or is sued in place of the Queen.

As to the limitations of distress, a rule existed something similar to that which existed with ourselves, until recently in the form of the landlord's hypothec in agricultural lands.

As to the exemptions certain cattle were exempt, if other less valuable cattle were present sufficient to satisfy the claim.

In the case of fools, madmen, idiots, and dumb people, their persons were exempt from distress, but their guardians could be distrained. Women and boys were liable for their own debts only.

Distress could be kept in two kinds of Forts. "Lis"

and "Dun" of which there are many in Ireland.

With regards to the Law of Hostage Sureties, this branch arose from the division of authority owing to Ireland being composed of different Provincial Kingdoms, and sub-kingdoms, corresponding to the modern Baronies.

The "Giall" or hostage surety of the defendant was one whom a plaintiff might sue if the defendant absconded, and from whom a plaintiff was bound to accept pledges or securities. Hostage surety of either party on payment, was entitled to indemnification.

Fosterage, or "Cain Iarrath"—or the Cain Law of fosterage. "Cain" meaning Law—as a law applying to all Ireland. A Law which prevailed in Wales, (See Ancient Laws of Wales folio vol. 1841 p. 393) among the Anglo-Saxons and the Scandinavian nations. There were two kinds in Ireland as in Scotland. Fosterage for affection in which case there was no remuneration, and fosterage for payment, the terms of which were regulated by the rank of the parties. The most ancient scale given in the *Seanachus Mòr* is three "Seds" for the son of an og-aire-chief; five for the son of a Bo-aire-chief; ten in the case of an Aire-desa-chief, and of an Aire-tuise-chief, and 30 for the son of a King. There were seven grades of poets, and in their case the price of fosterage varied according to the grade. There are various regulations as to the dress and food to be given to the foster sons. There are most interesting provisions as to the instruction to be given to foster children, from herding in the case of boys, and grinding corn in the case of girls in the

humbler ranks, to horsemanship, shooting, chess-playing, and swimming, in the case of boys &c., sewing and embroidering, in the case of girls, of the higher ranks. While among other privileges the son of a King was to have a horse in the time of races.

There are very intricate, minute, and precise rules regulating when and why a foster father might return the foster child, and when the child could be taken from the foster father; and the fee varied accordingly. In any case fosterage terminated at the age of selection—14 years in the case of girls, and 17 in the case of boys. There were mutual obligations on the part of the foster father and the foster son, and when the foster father restored the child, he gave a parting gift called the "Seds of lawful maintenance."

Probably the most important, and to us the most interesting of the early Celtic Laws, is that regulating the tenure of land, and while this subject is most exhaustively treated in the *Seanachus Mòr* we can only in the space of this lecture, deal with the main characteristics. The principal heading under which Land tenure is dealt with are *Cain Saerrath* and *Cain Aigillne*, words of a technical meaning. *Cain-Saerrath* meaning the Cain-Law of *Saer* stock tenure, and *Cain Aigillne*, the Cain-law of *Daer*—stock tenure. Generally speaking the early Land system of Ireland resembled that which subsisted in the Roman Colonies —indeed to the present, I think, in the north of Italy—viz. *Metayer* tenure, by which the chief supplied the stock and the occupier the labour. It would thus appear that the chief's claim for *rent* depended on

his supplying stock, which he might do in *Saerrath* or *Daerrath*—interpreted by the learned translators of the *Seanachus Mòr* to mean *free* and *base* tenancy. Dr. O'Donovan, however, objected to this meaning pointing out that *Saer tuatha* and *daer tuatha*, do not mean "Noble" tribes and "Unfree" tribes. Be that as it may in *Saer* stock tenure it seems the chief gave the stock without requiring any security from the tenant, the return being manual labour, attendance at military expeditions, &c. By meaas of this class of grants a chief could soon raise a formidable army around him. The tenant however might come to terms with the chief whereby he could take the stock with security—on *Daer* stock tenure. An almost perfect illustration of this early land tenure we have in our own country to the present day in the shape of Steel-bow; and in the South country is the very common practice of farmers letting out cows on hire to what are termed Bowers—the custom is termed Bowing. *

That most generally used was the *Daer* stock system, and from its optional nature the lawyers called it *Cain Aigillne*—the security being termed "*Giallna*"—security. This contract could not be broken at will by either party, and there were very stringent rules regarding its observance, and penalties enforced in the event of either party putting an end to it in an arbitrary manner. The stock supplied under this system was termed *Scoit turchuidhe*, viz.—horses and oxen and "turcrec" a certain number of cattle. Each occupier of land must

**Seanachus Mòr* and "Scotland as it Was and Is."

belong to a certain tribe, and be liable for tribal obligations, such as the support of old members of the tribe who had no children and liable in all contracts entered into by others of the tribe, if made with the consent of the tribe. At this stage, and when land was tribal, no occupier of a part of it could dispose of it in any way, the tribe being able to protect itself by proclamation. The chieftainship of the tribe, the learned translators clearly show, was an office which was held at the will of the tribe, and not as a matter of right. Thus the law prescribed.

"Every head defends its members, if it be a goodly head, of good deeds, of good morals, exempt, affable, and capable. The body of every head is his tribe, for there is no body without a head. The head of every tribe should be the man of the tribe who is most experienced, the most noble, the most wealthy, the wisest, the most learned, the most truly popular, the most powerful to oppose, the most steadfast to sue for profits, and to be sued for losses."

Here we have every characteristic detailed which our own Highland ancestors required in their rulers or chiefs. In short the whole of the provisions of the early system of Irish land tenure, go to show that both chief and tenant entered into their so-called contracts on equal terms; the rights and obligations of each being equally recognised. So true is this that we find this semi-social relationship treated of in the *Seanachus Mór* under the title "Cain Lanamhna," or the law of "Social Connections," Thus we find that in return for "offering *requiem* for souls," and the

receiving of a son for instruction, &c., the tenants in this case termed *Saer Manaich* and *Daer Manaiche* gave tithes, first fruits and alms, and full "honour price" when strong and in health, and one third "honour price" at the time of death. The Law of Social Connections or Family Law is exhaustively dealt with in Vol. II. Here are a few illustrations. Where a father was under obligation to foster his daughter and pay the price of her fosterage, he receiving the whole of her first "*Coibche*," or wedding gift and certain portions of the other gifts down to the twenty-first. The brother who succeeded to the father as heir was under the same obligations and entitled to the same rights as the father in respect of his sister; a custom which it is said resembles the Hindoo Law. The mother's obligation was to foster her son. He was to aid his mother in poverty, and support her in old age, as well also as his foster mother. Similar obligations subsisted between the foster-tutor or literary foster-father, and his pupil. Under this division it is stated that the wife was equal to the husband, where each had equal property. Except in very few cases it was unlawful to make contracts without the consent of each—a condition of relationship which even we of the present day with our modern enlightenment have scarcely yet attained. Although it is only fair here to state that in England the Law is more favourable to woman in respect to her separate property, but possibly in that respect alone, than it is with us in Scotland.

This part of the *Seanachus Mòr* deals further with such subjects as Separation, Adultery, Abductions,

Violence, Deceit, Lunacy, Irregular Connections, &c.

Among the Celts almost every crime was expiated by a payment made over to the party injured, or his representatives in the event of death, and sometimes to the chief. It was called "*eric*"—a reparation. It differed in amount according to the *status* of the individual; and a great deal depended on whether the culprit was Bond or Free; which by the way, was also the case with regard to dues on marriage.* The principle of *Eric* was not peculiar to the ancient Laws of Ireland, or to the Highland customs. The same thing practically subsisted in the English Law in the form of appeal to combat, which according to Messrs. Hancock & O'Mahoney had its origin in those times when a pecuniary satisfaction called "Weregeld" was paid to the relations of the injured party. It is sometimes called *Cro*, with us, and "assythment" in Scotch Law. The Germans had the same law, and the Swedes under the name "Kimbote."† The Salic, Frank, and Greek Law contained the same principle. The standard of value put upon the crime and rank was termed "Honour Price" or Enechlann. The *Cro*, which may mean cows or death, and *Cru* blood—of the King of Scotland was 1000 Kye, or 3000 ounces of gold, and his "Kelchyn" was 100 Kye. *Kelchyn* is "giall," a pledge; and *Cine*, kindred. This was a fine on confession of guilt. The *Cro* differing with rank, points clearly to there having been some classes of these early communities treated as *free*, and others as *servile*.

* Skene's "Celtic Scotland," Vol. III., Cap. 6.
† Neilson's, "*Trial by Combat.*" Skene, Vol. III., 110.

The third volume of the *Seanachus Mòr* contains what has been termed the "Corus bescna," or customary Law of Ireland, as well as the Book of Aicill, which gives valuable information regarding the life and condition of the people. It deals chiefly however, with wrongs or crimes, or in English phraseology *Torts*, going into minute details of the *Eric* or *Cro*. In this connection it may be pointed out, that in all early communities crime was not crime in the sense we understand the term. Crime partook more of the nature of a wrong which could be palliated or attoned for by a payment in money or otherwise. Hence the *Eric* or *Cru* just referred to. Crime in early times was not looked upon as we now do as an offence against the State. Crimes were simply offences against the particular individual, and the State put in motion civil machinery something like that for trial of a civil cause and it was not until after a great advance in civilization had taken place that crimes were looked upon and punished as breaches of good order and government. But time will not permit of our pursuing this subject further. Any one with leisure and inclination can find much that is interesting in the study of the customs of our country; while it is matter for special congratulation that our Irish brethren at a time when the most of Europe was groping in darkness, possessed a Code of Laws, civil and moral, of which nations of this enlightened age might well be proud.

Of course there have been many Highland Customs to which I have not even referred. These could by no

means be dignified by the name of Law, therefore they lay beyond my province; and in any event my friend, Mr. Whyte, has dealt with these in his address in a manner more attractive than I could.