THE LAND IN ANCIENT WELSH LAW

(Note.—This sketch contains little that is new or which has not been dealt with, much more fully, in the writer’s book on Welsh Tribal Law and Custom. The sole object of it is to give a summary bird’s eye view of the main features of the impact of the clans and of the unfree population upon the land in old Wales.)

§ 1. The material which is available in regard to the land in the old Welsh legal system is, comparatively speaking, of a recent period.

The laws of Hywel Dda (circa A.D. 940) proceed on the same assumption that all laws proceed upon, namely that those for whom the laws were passed were familiar with the social structure under which they lived. Legislators, in legislating, have not in view any intention of describing, for the benefit of future generations, the exact nature of their own contemporary social institutions. Consequently, we must not look in the ancient laws for any cut and dried statement of a social polity. What the social polity was can only be reconstructed by a process of synthesis of such material as there is both in the laws and outside them.

The main source of our knowledge of any land organisation in ancient days, or in any society whose economy rests upon land, in the absence of enunciations in legal decisions or commentaries, is the body of land-revenue records which may have survived; records, that is to say, which are concerned with the dues on or duties from the occupiers of the land. It is there, and there only, that it is possible to find the intimate details from which the comity of a people in its association with the land can be reconstructed.

Legislation, codes, statutes and the like only become intelligible when we are saturated with the information that land records are capable of affording.

In addition, to ascertain the full bearing of the land-revenue records of any society, it is expedient to be acquainted with similar social organisms, dead or living, in the same state of comparative civilisation, for it is often only possible to tread in safety by the application of the comparative method.
THE LAND IN ACIENT WELSH LAW

...
we find that the members of one clan, i.e. Edred ap Marchudd, in North Wales occupied a considerable area in Abergale, Llwyd-coed (near Colwyn) and Bettws-y-coed and in several other widely scattered 'villes' (5); while the intervening areas were occupied, in a similar scattered fashion, by a number of other groups. This is what is meant by the 'interlaced clan occupation of land.'

One of the reasons for this appears to be the necessity of having diversified pasture land for sheep and also diversified areas for hunting and fishing. Anyone living in a mountain pasture land knows how essential it is for sheep to be moved, according to season, from one type of pasture land to another of a totally different kind. Even to-day, it is common enough to find that the sheep of the Cader Range are moved, at appropriate seasons, as far afield as the sea-border lands of Arudwy and even into the Lleyn peninsula.

A social unit, a clan, therefore, in Wales is found in occupation, in historic times, of areas widely separated the one from the other. The totality of such land, wherever situated, was spoken of as the clan land, the 'tir gwelyg' (6), which, from another point of view, is coincident with the term 'ancestral land.'

In the whole of this scattered clan area each member of the clan had equal rights, estimated, however, in historic times 'per stirpes' and not 'per capita.' (7). These rights, though nowhere expressly defined, are quite easy to understand, if we divest ourselves of modern ideas of property.

There was no conception of 'ownership' in the modern sense of the word. The fundamental conception was that land, of which there was plenty for everyone, was, like air and water, free for everyone to 'use'—to 'use,' not to 'own.'

But just as everybody was at liberty to appropriate certain volumes of the common water and air to his own use, so it was recognised that everybody was at liberty to appropriate some portions of the clan area to his own use, at least temporarily. As time advanced, and the habit—due to a multiplicity of causes—grew of confining migration to more restricted limits, the question arose as to how it was possible to extend the temporary appropriation of land for the sole user of a unit into a permanent appropriation. The question was solved by the common solution, which we find running through much of early law. Per-

manent appropriation, the right of exclusive user, was recognised as valid if there were clear indications of an intention to appropriate to exclusive user. In the Welsh law of land, this found expression in the rule of 'priodolder' (8), which was in full swing at the earliest stage of our historical knowledge.

The rule of 'priodolder' was simply this. If an area of land were occupied continuously by any unit for four successive generations, that was conclusive evidence that such unit intended to occupy that area permanently; and the expression of the intention in that way gave the occupiers a right to the exclusive user of the area he occupied. This right to appropriate sections of the clan area for exclusive use was always limited by the rule that no one could appropriate to such an extent as to deprive all co-sharers in the clan from being able to appropriate to themselves an area alike in size and in quality proportionate to their own fractional interests (9).

Exclusive appropriation was in fact simply an effective assertion of the mode in which a man or group proposed to exercise the right he had.

It was not a right of 'ownership,' but simply a right to exclusive user, which could be lost in much the same way as it could be acquired. To the mode of loss of such rights we shall return in a short while.

This rule of priodolder applied not only to the demarcation of areas of what we may call 'spheres of influence' as between clan and clan, but also to areas and plots permanently occupied by units within the clan as against other units therein.

§ 5. Here it becomes necessary to explain that a clan was always liable to disruption into sub-clans, which tended to grow in time into separate clans. For this there were many reasons, but it is sufficient to mention one. The tie binding a clan together was, as already stated, the sense of kinship. Now the sense of kinship, involving duties between kinsmen, is always liable to become weakened (a) whenever the number sharing the tie grows to a large, and, therefore, unwieldy, number, and (b) as the common ancestor becomes more and more remote as each generation passes away. In such cases, there is an invariable tendency for smaller groups within the major to grow up; and, the sense of kinship being strong, such smaller groups are formed with their bond of union in a less remote common ancestor than the one who has hitherto been the common ancestor of all.
of disposing at will of the interests of himself and those who were to come after. The generation possessing rights of occupation exercised these rights only for life. They were, in fact, trustees for their successors, and their power of alienation was limited (18).

Permanent alienation by a person holding rights in land was permissible only in the case of 'legal necessity,' or with consent of all relatives within four generations. The Venedotian Code limits 'legal necessity' to the case where the full amount of 'galanas,' 'wergild,' could not be raised other than by sale of 'tir gweyog,' and expressly asserts that it was allowed in that case only because a benefit, viz., the avoidance of a blood-fued, was being bought for all (19). Later on, however, the sphere of 'legal necessity' seems to have been slightly widened (20). Temporary alienation, in the way of mortgage, was almost as restricted, and definite periods were placed on the duration of leases (21).

When a holder of 'tir gweyog' died all his sons 'ascended' to his 'persona' and his rights, including rights in land, in equal shares (22). There were in later times some limitations on the right of an illegitimate son; but to discuss the status of an illegitimate son would only confuse matters, and involve a consideration of what, in fact, illegitimacy consisted in.

It has been commonly asserted by Seebhnm (23), and his followers that when a whole generation in a group died out, then the whole land of that group was brought into hotchpot and divided equally among all the members of the next generation. For that proposition I can find no warrant, either in the Laws or the land-surveys of the fourteenth century. The evidence to the contrary is overwhelming and without exception.

We are entirely without evidence of any extensive partition of clan-areas by metes and bounds; the whole evidence shows that the so-called 'partition' of clan areas was expressed simply in fractional shares (possibly for the convenience of revenue collection as much as anything else) and those fractional shares are invariably calculated 'per stirpes' and not 'per capita' (24).

The Laws do contain certain rules as regards partition proper, but those rules appear to be confined to what is called 'tref tadawg,' that is to say, only to such portions of the clan-area as an individual died in exclusive occupation of, and not his general rights in other portions of the clan-area. The rules also are optional. Even here, though, the land, if divided at all, was divided equally among sons, grandsons and great-grandsons had no right to participate equally. They succeeded to their own fathers 'per capita'; but the right was reserved to them, up to the fourth generation, of objecting that the partition among the sons of the original holder of the 'tref tadawg' had not been equitable; and in that case, if their claim were well founded, there was a redistribution by stock, designed simply to readjust a previous inequitable distribution.

Such, at least, is how I read the provisions of the law, which seem to me unintelligible on any other hypothesis (25).

It is true that there are instances of tribal communities in which a custom prevails of periodical division of land according to the number of 'mouths' in the tribe; but such instances as I have had an opportunity of observing portray a very different structure to what prevailed in Wales in historic times. Such societies frequently give, logically enough, a share to females; they are strictly endogamous as a rule; and cultivate, in the main, on the strip system (26). These were not characteristics of the historic Welsh clan, and they afford little help for the interpretation of the rules found in the Welsh laws. In the west the periodical division of land, according to 'mouths' is, I think, rare; and must not be confused with the system of division such as existed among serf communities like, e.g., the trefgefa aills of Wales.

The Welsh survivals give no proof of such a custom among the free.

§ 9. From the outlines of succession and partition we may turn, for a moment, to the recognised land-suits in Welsh law, for they throw light upon the land organism.

The most important was the suit of 'priddolder,' of which there were two kinds, 'ach ac edryf,' and 'priddolder' proper.

In the first-mentioned, a person, refused participation in the enjoyment of 'tir gweyog,' sued persons related to himself on the ground of descent from a common ancestor; in the second, a person, claiming priddolder rights over land, but out of possession, sued others, not related to him, in possession.

Both of these suits were applicable where the plaintiff or his ancestors had abandoned rights of occupation for the time being (27).
§ 11. The organisation of the bond-lands of early Wales presents a number of variations. There is one feature, however, common to them all (and it is this which differentiates bond lands from free lands) that the holders thereof were invariably 'adscripti glebae.'

The two main divisions of bond lands are what are referred to in the Record of Caernarfon as the lands of 'treweloge' (tir g weldog) and treigsfery (tir c yfrif) aillts. It is a peculiarity that strikes us at once that one division of the bond lands is known by the same name as that applied to the bulk of free lands, that is 'tir g weldog,' ancestral land.

The reason is that a considerable section of the unfree were organised socially in much the same way as the free men, that is to say that they were associated together in groups of interrelated persons. But an examination of the records, showing 'gwelyau' of unfree persons in historic times, shows that the numbers of individuals in unfree 'gwelyau' were never considerable (the ordinary figure is from two to six male adults) (37), and further that, with one or two possible exceptions, the unfree 'gwelyau' did not hold land in more than one ville. What is the reason of this? I think it is to be found partly in the fact that the primary occupation of the unfree was agriculture and not pasture, and the raison d'être for the right to move at will was absent in their case.

To account for the prevalence of the 'tir g weldog' aillt population of Wales (and it is almost peculiar to Wales) is a matter which has to be approached from the historic and economic side rather than from the legal; and I doubt if we have yet sufficient data wherefrom to reconstruct the story. One of the most promising lines of investigation is that of the geographical distribution of the 'tir g weldog' population, especially in connexion with the like distribution of the 'tir c yfrif' settlements. In so far as I have hitherto been able to pursue enquiry on these lines, there appears to be evidence (a) that the 'tir g weldog' aillts are found all over Wales, whereas the 'tir c yfrif' are found far more in the west than in the east of the land (38), (b) that, excluding the maerdref, the tir c yfrif settlements were on lands of comparatively poor quality, and (c) that, in later times, there was some tendency to assimilate the 'tir c yfrif' settlements with the 'tir g weldog' ones (39).

It is only a suggestion, but such facts tend to the conclusion that the 'tir c yfrif' settlements indicate an earlier stratum of society, perhaps survivals of prehistoric settlers, perhaps survivals of Goidelic settlers. The comparison of names of holders or of villes, the linguistic test generally, has thrown practically no light upon the subject, but possibly those far better equipped than I am for this line of enquiry may find some results. The only result hitherto noticed is that nearly every ville with the word 'Dol' in it was an unfree ville (40).

That, however, is a digression.

§ 12. The principal point to note is that, in their social organism, the 'tir g weldog' aillts approximated to the ordinary free men, with the important limitation that they did not expand into large groups, and were subject to a continuous dissolution into small entities. They formed, as did the free, corporations of joint holders, and, in the matter of inheritance, their rules were similar to those of the bulk of the population.

The holders of 'tir c yfrif' were organised on totally different lines. The whole land of a 'tir c yfrif' settlement was regarded as the possession of the King or lord of the territory, and its management was under the administrative orders of an official, known as the 'land-maer.' He determined what lands were to be cultivated and what crops were to be sown.

Every male adult, save possibly the youngest son of another, was liable to cultivate. Cultivation was in common, and when the land had been ploughed and sown, the area under cultivation was divided periodically into equal strips or blocks, and each male adult was allotted a block or strip for his maintenance, he apparently gathering in the harvest thereon, and applying it to his own use. There is no evidence that the crops were garnered in common and then divided. Each cultivator had allotted to him a homestead or 'tydlyn' with a small courtyard and, in certain parts, a croft attached. On the death of a cultivator, this homestead and appendage went to his youngest son. Saving the homesteads, which, however, were theoretically subject to the same rule, all the land in the ville was common; so that if a cultivator died without male issue, the only result was that there was one less to participate in the periodical divisions (41). The compensatory advantage to the inhabitants of a 'tir c yfrif' settlement was that every one had an absolute right to a proportionate share of the cultivated area, and he could
The Land in Ancient Welsh Law

...
THE LAND IN ANCIENT WELSH LAW

as we find in the English manorial rolls, an infinite variety of liabilities, varying not only from tref to tref, but also as regards different holdings in the same 'tref.' The entries in the Laws are not so much rules of universal applicability, as a recapitulation of the general sources of the King's revenue. The variations in actual practice show also, very clearly, that the object of the revenue was not to secure an income, but to arrange for effectual administration (55).

The examination of the actual renders payable or services due discloses the fact that certain renders and services were due from the free only, others from the unfree only; but there was a very large number of such renders and services which were due from both free and unfree.

§ 19. The first service to notice is that of military service. Military service, with the growth of feudalism, became in England the condition of 'tenure' of land from the King or lord. That was not the case in early Wales. It was a duty and a privilege, attached not to land, but to 'status.'

The early Laws confine the duty, the privilege, to the free (56); allocating to the unfree the liability to perform transport and cognate duties when called upon, but it is worthy of note that the unfree were always paid for their work.

The duty of military service was twofold—that of defence of the 'patria' or 'gwlad' (i.e. the lordship) in which those liable dwelt, whenever threatened; that of offence, outside the 'patria,' for forty days in the year only.

With the extension of Norman domination in Wales, we see in the south, but not in the north, the creation of a few knights' fees, making military service a condition of land-tenure (57). This is not so in the Northern Surveys. There the privilege of service retained its characteristic of being a privilege to some extent. This is very marked in the case of the 'Wyrron Eden,' a corps d'élite, apparently originating in the days of Llywelyn Fawr (58). But what is still more marked is that though we know that military service was due from all free men in Wales, and is so assumed in the Surveys, it is only expressly recorded as due from very few individual occupiers of land (59). In most of such cases there is a special reason for the record, viz., that the holders of the land were exempt, in part or in whole, from the ordinary revenue charges, or were liable to service outside the 'patria' in which they dwelt. It seems from the general

even mention in the Laws of 'aillt's' being subject to other 'aillis' (51).

To the 'superior,' whether King, lord, ecclesiastical foundation, or free gvely, the subject owed certain duties—renders or services.

The original raison d'être of these services was not to furnish the superior with 'rent'; but to furnish him with the wherewithal to carry on administration. The renders were not 'rent,' but 'revenue.'

The superior was in Welsh Law in no sense absolute owner of the land, with the exception of a few scattered plots; he was an administrator paid for the performance of and expense of his functions out of land-revenue. This appears to be brought out in many of the grants to ecclesiastical foundations. What is granted, almost invariably, is not the 'ownership' of the land, but the right to receive the 'renders' due from the land, occasionally in late charters (here probably under the influence of new ideas) along with certain exclusive privileges of the King, such as the right to dig for minerals (52).

§ 17. The right of the superior to revenue is invariably based on 'custom,' that is to say, the recorded rights are fixed and are not liable to enhancement. One of the grievances in Wales against the last Llywelyn was that, faced with the increased expense involved in the defence of the country, he was compelled to demand a larger revenue than what custom laid down. We see the same characteristic of fixity of revenue demand in the various Norman-French surveys and in the Great Petition to Edward III (A.D. 1360) (53).

Unfortunately, we have practically no material, save that which concerns the Levitical clan of Cynan ap Llywarch in Denbigh, to determine the relationship between the unfree holders subject to a free gvely and their immediate 'superior'; but there is no reason to doubt that their position did not vary materially from that of holders of land directly subject to the King.

§ 18. The ancient laws have much to say about the services and renders due to the King, whether from the free or the unfree, but the characteristic of the laws is that they appear to standardise the services due (54). That is to say, at first sight, they appear to declare rules of universal applicability.

When we examine the Surveys, etc., we find, however, exactly
§ 22. An important factor in the social organism was the liability to build and to repair certain buildings for the accommodation of the Prince. The buildings were nine in number, situated at the ‘caput’ of the cymwrd; and in all cases the liability was confined to the unfree (69). In the Surveys a few instances occur of the extension of the liability to free men; and, under the Norman-Angevins, the duty to erect the ordinary wooden buildings of a ‘Ilys’ was converted into a liability to work at the erection and maintenance of stone-castles. In some cases, but by no means in all, this liability was commuted into cash payments (70).

The Laws are silent as to any liability to repair mills; this, in itself, is strong evidence of the early age of the Laws; but, by the time of the Surveys, such liability had become general, in so far as the unfree were concerned. Coincident with the growth of this new impost was the compulsion of practically all unfree men, and most free men, who did not possess a mill of their own, to grind their corn at the lord’s mill, paying a fixed percentage of the corn ground as toll (71).

§ 23. It has already been mentioned that the ‘maerdref’ tenants were obliged to cultivate, as part of their duties, that portion of the maerdref area which was ‘terra dominicalis.’

In the Laws, there is no mention of any labour duty save in regard to the maerdref tenants (72); but, by the fourteenth century, such duty had become general among the unfree in the eastern part of Wales, and is found occasionally in the west. In many cases this liability had been commuted (73). Similarly the liability to portage of goods, stone, etc., unknown in the Laws, except as incidental to campaigning, had become widespread among the unfree, but in many cases the labour was paid for at a fixed daily rate, rather below the ordinary market rate for labour (74).

§ 24. There were the principal renders and services in medieval Wales; but there were a number of incidental dues levied on special units, like ‘cymmorth,’ capon-rents, priscage of ale, fenc- ing dues, nut-gathering, and, in later days, forest dues. Of these, save a limited reference to ‘cymmorth’ the older Laws contain no mention; and it is probable that they grew up long after Hywel Dda’s time. They are, in many instances, quite indistinguishable from ‘rents’; and, in fact, they help to illustrate that gradual conversion of the idea of the duty to maintain the administration by means of payment of revenue into the idea of tenure involving the payment of rent, which was the feature of the development of land-occupation in Wales between the tenth and fourteenth centuries.

An illuminating illustration of this process is to be found also in the law of pannage. In ancient Wales mast in the woods was free to swine; but damage caused to property by swine had to be compensated for. As the Crown and the local lords assumed ‘ownership’ of the waste lands, including forests, the liability to pay for damage was converted into the payment of fixed fees for the privilege of pannage in the woods (75).

§ 25. This silent process—the growth of the conception of tenure—which was going on the whole time, had its repercussion upon the clan-organisation, and helped to bring about its gradual decay. We can see, to some extent, in the changes in the units liable to assessment, how this process affected the actual occupiers of the land.

With the growth of ‘tenure’ we find the shifting of the assessment unit from the clan to the land; and that inevitably meant that the occupier of separated plots of ‘tir gwelyog,’ inasmuch as he became liable for the renders, began to regard himself as ‘owner,’ rather than as permissive occupier.

The clan-unit being the social unit in ancient Wales, we would expect to find it as the assessment unit also. In all probability it was so in the earliest times; but the disintegration of the clan-unit as the assessment unit had, under the influence of this conception of tenure, proceeded a long way by the time the laws were redacted, and the process was carried still further by the fourteenth century, so that, in the Surveys, we can only get fragmentary pieces of evidence pointing to the original identification of the assessment unit with the clan unit. Some illustrations of this change—a very difficult problem to unravel from the available material—may be of interest.

§ 26. If we turn to the ‘gwestfa,’ we find that, in the Laws, the principle is laid down definitely that the assessment-unit for ‘gwestfa’ or tune-pound is already a territorial and not a clan one (76). It is assessed primarily on a ‘maenol,’ and distributed equally over every ‘erw’ or ‘acre’ in the maenol. The mathematical precision of the rule laid down in the laws, which assumes the equality of area in all maenols and also the equality in productiveness of all ‘erws,’ is, of course, fanciful;
THE LAND IN ANCIENT WELSH LAW

As regards the 'dawnbwyd' the Codes indicate that there was a communal responsibility of the tref-unit (85). In Dinorbyn Fawr in Denbigh this communal responsibility was retained unimpaired until the ville was leased to the 'communitas' on a fixed rental. Much the same was the case with Ciceonnus (86).

But, elsewhere, the communal responsibility for 'dawnbwyd' had largely disappeared by the fourteenth century. The word 'dawnbwyd' does not occur in the Surveys. It has been in some villes confused with tuno; and where it is designated by that name it is the common rule that the assessment is on individual holdings (vide e.g. cymwld Calimeirch, Lleweni, Beryn, Pencledan and Gwerniegron) though exceptions are to be found in the treweloghe villes of Erivist, Galtfisnann and Bodiscawn, where the assessment was on the 'gwyelau.'

Generally, however, the dawnbwyd had been replaced by specific renders in kind (commuted into cash) and the liability therefore was, in practically every instance, placed on the holders of separate plots.

§ 27. In regard to 'cylich,' such indications as we have in the Laws point to the conclusion that the liability was a communal one, either on the clan or the ville as a whole (87).

In the Survey of Denbigh we find numerous instances of villes being assessed as a whole to pastus principis. As was the case for tuno, there was a monetary basic unit for this pastus, the mark of 13s. 4d. or 160 legal pence equal to the curt pound. The mark was divided into two portions of 67 legal pence = 100 curt pence, and 93 legal pence = 50 plus 90 curt pence; and the pastus principis in part of Denbigh was levied on assessment units in multiples or combinations of these two figures. In other parts, the monetary basic unit was 10s. 6d., likewise levied (88).

Wherever this monetary basis exists, it will be found that there was originally a communal responsibility to pay the whole sum; but as the clans disintegrated into sub-clans, the assessment was apportioned upon the sub-clans in shares corresponding with their hereditary fractional interests in the 'tir gwyelyog.' There are, of course, exceptions to the rule, showing that, in certain areas, the dissolution of the old assessment units had been carried so far as to lead to assessment being on holdings, and, in some few cases, on acreage.

Strange to say the pastus principis has entirely disappeared in the Record of Caernarfon, and the levy has there, like tune, been apparently merged in the 'summa of rentals.'

The pastus famullae we find in Caernarfon assessed on the whole community of the unfree in the cymwld, joint responsibility for the total being retained. Such too was the case in Mochdre, Rhiw, Colwyn, Wigfair and Gwerniegron, but in other villes in Denbigh it was assessed on holdings or individuals.

The 'cylich raglott' shows similar features; in some villes there was a joint liability, in others the liability was individual or based on acreage. Such also is the case with the pastus lucrarii, pastus dextrarii, cylich hebogothion, cylich gresorion and cylich dourgon. The pastus stalonias was assessed on unfree individuals only, and never on acreage. The pastus serjeantis, which was a Norman introduction, was assessed entirely on individuals; and this fact corroborates the view that communal liability was the original feature of assessments which gave way to acreage or individual assessment under the stress of new ideas (89).

§ 28. The liability to build and repair was in the Laws communal (90). In the Survey of Denbigh, where the duty had been commuted, it was converted in Isaled and Calimeirch into a poll-tax; but in Uwchaleid it was a communal charge on the whole cymwld. In Caernarfon and Anglesea it was also levied as a poll-tax in some places, as a communal charge elsewhere (91).

The same variation occurs in regard to repairs to mills. Porterage and harvest works were everywhere in the Surveys an individual liability.

§ 29. The purpose of this partial analysis of renders and services has been to show that in Wales, as elsewhere, there was, in historic times, no universal or static rule. It is a mistake to speak of the land organisation as a system, in the sense that everything everywhere conformed to a common standard.

The indications are that, in very early times, there was among the free a communal unity based on kinship, among the treweloghe allits a less-marked communal unity based on the household, and among trefgedery allits a communal unity based on the ville. But with the increase in agricultural pursuits, the growth of the conception of tenure, the absorption of waste and forest land into Crown land, and the gradual limitation of the migratory habit, the communal bond of the free weakened, giving rise to the beginnings of an individual or acreage basis of society.
REFERENCES

I. PITT

Judgment delivered on the basis of the contention of counsel for the defendant that the allegation of the plaintiff is not supported by evidence on which he can rely, and that the evidence on which reliance is placed by the plaintiff is insufficient to support the claim.

II. JONES

The defendant has not adduced any evidence in support of his contention that the plaintiff is liable for damages.

III. WILLIAMS

The evidence presented by the plaintiff is insufficient to establish the defendant's liability.

IV. GREEN

The evidence presented by the plaintiff is insufficient to support the claim against the defendant.

V. BROWN

The defendant's contention that the plaintiff is liable for damages is not supported by any evidence presented by the plaintiff.

VI. SMITH

The evidence presented by the plaintiff is insufficient to establish the defendant's liability for damages.

VII. MARTIN

The defendant has not adduced any evidence in support of his contention that the plaintiff is liable for damages.
...yn gubyl o awedyw, ac o byd ereyll (gwydy esgymyn) y'n bwythod ym eu herbyn dylun kyweth y khyfedyd ysgyhyd on gywan dan dyly priodawr kyfedyd yno y gylid.

*Ven. Code, Bl. II, c. 15, § 6:*

Gwely bw breynt priodawr (ar) a gynwarchadu tir ynh ym mwydw yno. 

*Ven. Code, Bl. II, c. 11, § 22:*

O deruyt ym priodawr bot kyddeu kydau er y ydod ef er gwir gwydwy tir a dase ar elgir rnit neu en treded gwr, ac o priodawr en holi akelitgpet idau er y priodolder en am priodawr aekynin raodeu... Priodawr a-koeuin tridetgur. 

*Gw. Code, Bl. II, c. 30, § 10:*

Gwely yd dwl ef ef ym priodawr ny diffyd y priodolder hyt y nawnet... ac ych et galw am dispat uwch aduan on nawnet dy un alyl ny wreneddwr. 

*Dim. Code, Bl. III, c. 3, § 38:*

O deruyt ym priodawr disgyn ym bryswadwyd ar dir, ar benhtriwyd ym diystodderic o priodolder ac ym kynwaw kwn kamoegsyn rnod dac ymnu am y tir; yna ymaes iawn ranny y tir ym hau hanner rytgynt am disgyn yr am priodawr ym bryswadwyd ac am na nhedog priodolder ym priodawr; kyfraith ym dalarb ym nhaweth am o hyonyt gyffredin yno y gylid o priodolder. 

*An. Laws, Bl. IX, c. 27, § 18:*

Pebhynnau a symbyledi tir trywy oes gwyr ym un wlat er priodawr heb onwchur ur o try thrwy kylfrayth nythorwerthwyr yrth vodinf am y tair hwnnw can rhyodesod kyfrayth yno rytgynt ac ef. 


*Norz (16), p. 71.—Ven. Code, Bl. II, c. 12, § 8:*

Ny dily untryt bot ym dyrwennau... (here follow details of renders from Church lands)... Ac wrth hynny nyt oes un tir hepdau. 

*Ven. Code, Bl. II, c. 16, § 3:*

Nyt dilyw ydun ym dywodwyd tair namyn o urat y gwrethu neu o estyn aglywdd. 

*Dim. Code, Bl. II, c. 8, § 131:*

Y brehinhieu tir y teyrnas oll ac onny (gwyddysgog) wrthеб o tir ym ywdd y brehinhieu (y tir). 

*An. Laws, Bl. VI, c. 1, § 61:*

O deruyt bolgy a ngwyn ym priodawr o ym priodawr rnod tir tryd y brodyd aroi ac glofr yno (gwyddysgog) ym brehinhieu? a roi priodawr aro aroi ac glofr yno (gwyddysgog) ym brehinhieu? 

*An. Laws, Bl. XI, c. 3, § 35:*

Kyfraith a dewdwy ym dyrchaw y brehinhieu ron tir y deyrnas yr neb a wassamoneth drosteb. 

*Norz (17), p. 71.—This follows from the fact that the son is always spoken of as 'etned' in the life of his father, and not as "priodawr," and from the rule that four continuous generations of occupation created the right of priodolder. It is expressed also in *Ven. Code, Bl. II, c. 28, § 9:*

Ac o or o dylan ab hayhdyd canhynnaul canynt oes oreynt ydaw namyn o bonhed (implying he has no status in respect of land-holding) ac nat esgyg ynteu y mareut y tat y ny o maru y dat.
THE LAND IN ANCIENT WELSH LAW

y dyweyd y dyweto fot yddeist ynddi a phan ddier yr mae ddyly yr hawlwyr ymrwymgynnogiwyd, a chadeiryw pleiddia; ac yna ddyweyddywyd mesur yr hawlw ac hafanot o dref honno, ar or cwyth hwnn a hwnnw ac y mae ynten yr archi y dirigwyd yr yr dref.

Ny bydd hawlw gyhyd eithry yn tref gyfrif, canys pob un a ddylychyd a glydydd mal pe brodor fasn.

Note (43), p. 78.—For permanency of liability see, e.g., Record of Caernarvon, sub. tit. ‘Bodellok.’

‘Tals natura quod licet fuit nisi unus tenens in ville quod ipse responserat de toto redditu ville.’

Cf., inter alia, sub. tit. ‘Gest, Aberfraw Maerdref, Hirdrenenolk and Dymyn.’

See also Survey of Denbigh, sub. tit. ‘Kylkenny’ (Cilcennus):

‘Et dicem quod licet fuisse nisti non eorum, ille solus tenet totam villam, ut supra pro butiro, sed non subrevit pro messeone bladorum neque pro constructione domorum nisi unius tenens.’

Cf., also, sub. tit. ‘Dynobyn Vawr.’

Note (44), p. 78.—Fen. Code, Bk. II., c. 17, § 12:

A deudeg maynau a dydrym ym pob kynnyt ... un onadunt a dybly bot yr tyr maertrw.

See also inter alia, Record of Caerfyrnach with cymwyd and maerdrw as follows:

Malwyth ac Lywnan, Aberfraw; Talybolion, Cemaeas; Turclyn, Penhos; Dyndartho, Llanomas; Menai, Rhosfair.

Note (45), p. 78.—Fen. Code, Bk. II., c. 20, § 9:

Gwywyms. Y wstwrwyd a dydrym gweud wythnwy dy hyn, ychwanegodd bywyd yr hyn, yr hyn.

Typical maerdrefa are Dolgelley and Talybont (P.R.O. Roll 789), Llanenddwyn (Ex. Merioneth, Record of Caernarvon, described 200 years after it had ceased to be caput of Arduwy), Aberfraw, Cemaeas and Rhosfair in Record of Caernarvon.

Note (46), p. 78.—See, e.g., Dolgelley and Talybont, in P.R.O. Roll 789.

Note (47), p. 78.—In Record of Caernarvon ‘tir bwrdd’ is found, ipso nomine, in Llanfairpriscil, Cemaeas, Penhos and Moigni only. In latter ville it is said, ‘Quedach hamel est terra dominica Walla.’

Plots, sub. nom. ‘terra dominicales’ are more frequent.

Note (48), p. 78.—Vide sub. tit. Rhosfair, Penhos, Cemaeas, Aberfraw, Llanenddwyn and Trawsfynydd in Record of Caernarvon.

Note (49), p. 79.—A striking illustration of this comes from the Extent of Merioneth, circa 1445, ville Rhodyrwyd, where the separately held plots had become separately assessed under separate names—Teir yr ywrs, Penywern, Turasyll, Gwyronn Gowy Iwan, Gwadderthi, yr Gathilloth, Ceinogoch, Tir Llunydd, Coedblwyn, Lletty Eden, many of which names still survive as farms.

Some of these plots are shown as separately assessed as early as the 1285 Survey, viz. Terra Turkyl, Gwadderthi, Gariloc.

THE LAND IN ANCIENT WELSH LAW

Llanaber, Llanbedr, Llanfair, Llanfwahan, Llandeawen, Traws-fenydd, Maentwrog, Festiwing and Traws-fenydd only.

In Angleside and Caernarvon (Record of Caernarvon) in Gest, Dinlle, Moria, Penlech, Penyfed, Trefoch, Bodernith and Glastyn only.

Note (67), p. 83.—For references to 'dawnbwyd' in the Codes see Ven. Code, Bk. II., c. 27, § 1-3; Dim. Code, Bk. II., c. 19, § 7-13; Gw. Code, Bk. II., c. 94, § 9-11.

Note (68), p. 88.—For details of food renders in Surveys, see Welsh Tribal Law and Custom, Vol. I., pp. 293-304.

Note (69), p. 84.—For liability to build and repair in Codes, see Ven. Code, Bk. I., c. 43, § 16; Bk. II., c. 20, § 1, 9; Dim. Code, Bk. II., c. 11, § 7, and Gw. Code, Bk. II., c. 35, § 6.


For other localities, see Welsh Tribal Law and Custom, Vol. I., pp. 320, 323.

Note (71), p. 84.—For liabilities to repair and maintain mills, see Welsh Tribal Law and Custom, pp. 319-25 (Vol. I.), and for mill tells, ib., pp. 330-2.

Note (72), p. 84.—Ven. Code, Bk. II., c. 20, § 9.

Note (73), p. 84.—Survey of Denbigh, pp. 50, 154, 270, 271, 315, 318, 320.

In Record of Caernarvon sub. tit. Pen-y-barth.


Note (74), p. 84.—For details of portage, see Welsh Tribal Law and Custom, Vol. I., pp. 326-9.

Note (75), p. 85.—For law of pannage in Codes, see Ven. Code, Bk. III., c. 25, § 6, 7, 8, 22, 39; Dim. Code, Bk. II., c. 23, § 43, 44, 45; Bk. III., c. 3, § 36; Gw. Code, Bk. II., c. 28, § 6, 7, 8, 9, 10.

In the Surveys, see especially Extent of Bromfield and Yate, p. 35, and other references in index thereto.

Note (76), p. 85.—Ven. Code, Bk. II., c. 17, § 15; c. 26, § 1.

Note (77), p. 86.—The phrasing shows the joint liability, e.g. Ven. Code, Bk. II., c. 17, § 15:

Ac or wyth (maenol) hymn y dyly y brenhyn gwstua pob blyudyn sew yw hymn y punt pob bliudyn o bob un adunat.

B., c. 19, § 5.

Y uanygl y taler tun . . . pedeg araucient o arwyn o bob maynau.

B., c. 21, § 1. O pob maynau ryd y brenhyn a dyly kerwyned.

B., c. 26, § 1. Messur gwstua y brenhyn yn amser gayaw o uanygl ryd.

Gw. Code, Bk. II., c. 33, § 1, Messur gwstua brenehyn yw o bob tref y taler gwstua brenhyn o honel . . .

Note (78), p. 86.—See Rees' South Wales and the Marches, pp. 205, 223 et seq.

Note (79), p. 86.—Survey of Denbigh, see discussion on pp. lx-lxiii.

Note (80), p. 86.—Survey of Denbigh, p. 175:

Villata . . . consistit in vj lectis quorum unumquodque lectum solebat reddere de Tung iiis iijid.

Note (81), p. 87.—Survey of Denbigh, pp. 96 et seq., 245 et seq., 285 et seq., 299 et seq.

THE LAND IN ANCIENT WELSH LAW


Note (84), p. 87.—E.g. Survey of Denbigh, p. 229.

Note (85), p. 88.—Ven. Code, Bk. II., c. 27, § 1:

Or maynolod caeth y dylyr deu dawnbwyd.

Dim. Code, Bk. II., c. 19, § 7:

Deu dawnbwyd adly y brenhyn gaffel y gan y hilaenicit . . . ac vally ytelir ovileintref.


Note (87), p. 88.—E.g. Ven. Code, Bk. II., c. 18, § 5:

Ac wynt a dwynt dreun kyloh . . . ar uyebyon eurylon y brenhyn.

Ven. Code, Bk. II., c. 19, § 6:

Ny dylyr gossot arv maynoleu ryd . . . na eilych . . . namyn y kyloh mawr yr teulu . . .

See also, inter alia, Ven. Code, Bk. II., c. 27, § 4; Dim. Code, Bk. II., c. 12, § 11.


Note (89), p. 89.—For summary, see ibid., Vol. I., pp. 305 et seq.

Note (90), p. 89.—Ven. Code, Bk. I., c. 43, § 16; Bk. II., c. 20, § 1; Dim. Code, Bk. II., c. 11, § 7; Gw. Code, Bk. II., c. 35, § 6.
