of that crucial middle period in the evolution of Welsh law is to be satisfactorily reconstructed, the earlier texts require examination in the light of a considerable body of external evidence including, we would stress, the additional material incorporated in fourteenth- and fifteenth-century editions of the lawbooks. A systematic textual study of the latter, particularly of those in the Blegywyrd tradition, is as important to the advancement of current studies in Welsh law as the need to have at our disposal a complete range of scientifically edited texts of the earlier period.

XV

THE LAW OF WALES—THE LAST PHASE

(1963)

The theme chosen for this lecture, I venture to think, is not unfitting for an occasion when this Honourable Society once again honours the memory of a distinguished benefactor, and a scholar whose colourful and imaginative portrayal of the Welsh medieval scene can still delight and stimulate. Hartwell Jones’s interest was in medieval Welsh churchmen, mine in medieval Welsh lawyers. In Wales, hardly less than in other parts of the medieval Catholic world, both these professions had for long played complementary roles—roles which, by some fatal coincidence, reached a common dénouement in the same epoch-making decade of the sixteenth century. But whereas the office of priest was merely transformed, that of the native jurist was officially extinguished by Tudor legislation. The practitioner of Welsh law, or at least such of his kind as had survived into the sixteenth century, became almost, though as we shall have occasion to observe later on, not quite, redundant as a result of that clause in the act of 1536 which laid down that from henceforth, “the laws, ordinances, and statutes of this realm of England . . . and none other . . . shall be had, used, practised, and executed . . . in the dominion of Wales.” But was the change-over as abrupt as a superficial reading of this provision of the act would suggest? What was the existing alternative to this apparently sweeping enactment? What in terms of actual practice was replaced by what the government hoped would be the exclusive use of English law in Wales as from the feast of All Saints 1536? Unfortunately, so disastrous has been the destruction of records dating from the later middle ages that there can never be complete answers to such questions. History, however, ‘cannot proceed by silences: the chronicler of ill-recorded times has none the less to tell his tale’. There are, of course, some patches which are less dark than others; and it is from one of these firmer foot-holds that I propose to begin my tale by trying to give you a glimpse of some of our old native lawyers at work.

1 Transactions of the Honourable Society of Cymmrodorion, 1963, pp. 7-32. This paper was delivered as the Hartwell Jones Memorial Lecture of the Honourable Society of Cymmrodorion, 1961.

THE LAW OF WALES—

Among the Edwinford manuscripts at the National Library of Wales there are some documents which record, in Welsh, the pleadings in a cause between John ap Thomas and Rhys ap Gwilym over land called Llwew Gwyn in the Caeco of Carmarthenshire.\(^3\) The plaintiff, John, rests his claim (yr hawl ar gafyn) on the assertion that his great-grandmother, Efa ferch Dafydd, was once owner (perchen) of the disputed land until evicted by one Thomas Lloyd from whom the property had descended from hand to hand (o law i law) to Rhys ap Gwilym, the defendant. John now claims Llwew Gwyn on the privilege (braint) formerly enjoyed by his ancestress.

Rhys in his answer to this bill of claim (bil o afyn)\(^4\) does not counter with an absolute assertion of his own right to Llwew Gwyn. He begins with an appeal to the general principle that no one can be a true owner of land (perchen) unless he can show right title (nad perchen neb i dir on i fo yn meddu ar dilyd dilyl) and the ultimate title to the land in question, he proceeds to assert, belongs to the true proprietors (priodoriwn)—namely two brothers, Robert and Ieuan, the sons of Hywel ap Ieuan Ddu, whose land he, Rhys, occupies by inheritance (trefeddafeth) from his own father. But in any case, the answer continues, John’s claim is faulty because (1) a claim could have been asserted in Efa’s life-time, or in the life-time of her children or grandchildren, and so the claim is barred on account of the lapse of three ages of ancestors (taer oes rhiend)\(^5\) and (2) because John started a suit on the self-same issue once before (against Rhys’s father); and having then failed to prosecute the cause to its conclusion within the stipulated period of a year and a day, any subsequent claim on behalf of this plaintiff is barred (a gwallygyr yngfanyn un dydd rhwng ddiwedd yr hyn ymwydwaledog). This last argument is supported by quotations from the lawbooks which state that (1) there are three ways in which law is closed between plaintiff and defendant—namely verbal defect (gwawllawgair), and ambiguity (anhybysyrwydd) in the pleadings, and lapse of time (tro amser).\(^6\) and that (2) he who would wish to bring a plea before a common court should have a ready answer (pwy bynnag a gwyno ar gydlys cydychol parod ei ateb).

\(^{4}\) The term actually occurs in Edwinford MS, 4224.
\(^{5}\) This term occurs in the laws [e.g. Llyfr Blegywydd, pp. 76-7].
\(^{6}\) A.L., II, pp. 316-8, 374-8, where faults in pleading and the manner in which actions were barred are described in some detail. A clear distinction is drawn between gwawll addiroriaeth (defects of pleading)—for example, anhybysyrwydd (ambiguity) or gwawllawgair (verbal defect)—which normally only delayed a process, and argyweddiant (bar) which included the rules relating to tro amser (lapse of time), and which could lead to the total failure of the action.

THE LAST PHASE

John’s reply to all this in his replication or gwrrhateb is terse and to the point. The real issue (pen y ddaad) he argues, is that Efa was wrongfully dispossessed of land of which, until evicted, she was vested and possessed (estynol goresgymol). By evading the real issue, and simply denying (anwirio) that she had a right title (dyi weddyl), Rhys has in law invalidated the whole of his previous pleadings (am bod ef o'r cyfathr ym nwod weddyll lle amddiffynner pen y ddaad bod yr farwol yr hell geicnwn).

Rhys then returns to the attack in his rejoinder (ateb i'r ail hawr) where he argues that Efa was only the pridwraig—a woman holding a form of mortgage—on Llwew Gwyn; and if at one time she was vested (yn estynol) of the land, it was as custodian (gorchediwd) and as a guarantee of repayment of the prid.\(^7\) In law a gorchediwd, he adds, is one who holds or keeps another’s land, and no one can have a right title (dyi weddyl) except a proper and rightful heir (iawn etifedd diwedog).

The penultimate stage of the process is reached with John’s surrejoinder (ateb i'r ail ateb) in which the last argument is summarily dismissed with the plea that he as plaintiff is under no obligation to deny nor to admit that Efa was either pridwraig or lawful heir until he regains possession of the disputed land; and forasmuch as Rhys ap Gwilym has admitted in his rejoinder that Efa was in possession (newn estyn a goresgyn),\(^6\) John again repeats his claim to possession on the privilege (braint) which Efa had.

Finally, we have the detailed judgement of William Morgan and William Dafydd to whom by consent of both parties (drwy gyfiandeb y pleidiau) the pleadings had been submitted. The judges (barnwr) say that, having examined the pleadings (deulin y pleidiau o bob parth), they accept the defendant’s plea that Efa had no true title to Llwew Gwyn (dyi weddyl) because they are satisfied that her true status was that of pridwraig; and therefore she could only have been an adventitious custodian (gorchediwd) which the law defines as one who holds or has custody of another’s rights (iawn a dyi weddyl arall); and no one can be an owner (perchen) unless he can prove a true title (dyi weddyl). They also accept the defendant’s plea that the claim was faulty on account of the lapse of three ages of ancestors; and because John, having entered a claim against Rhys’s father, and having defaulted by not proceeding with the suit within the year after it was commenced, he is barred from any further claim. The seals of William Morgan and William Dafydd (which this document once bore) were affixed to the

\(^{7}\) For a fuller discussion of this term see below, p. 384.
\(^{6}\) In actual fact the defendant in his rejoinder only admits that Efa could have been estynol (invested). The defendant’s omission of goresgym from his rejoinder, and the plaintiff’s assumption that it had been admitted, appear to have been deliberate rather than accidental.
judgement, we are told, on the eighth day of the month of June in the thirty-second year of Henry VIII: that is in the year 1540—four years after the clause in the act cited at the outset was supposed to have come into operation.

The date raises some intriguing questions which will be considered in a later context. At the moment I want to draw your attention to that word *goresgyn* which, as you have observed, is high-lighted in these documents, and which in Welsh law approached nearest to the English legal idea of *possession*. It will be recalled that when Rhys ap Gwilym, acting precisely as the law required of a respondent to a claim by right of ancestry (*hawl rhieni*), asserted a right to an older title than John's, claiming that his right was derived, through the brothers Robert and Ieuann ap Hywel, from the ancient tribal tenure of *priodolder*, John retorted that the basis of his claim (*pen y dd nails*) was the issue of possession (*goresgyn*) and not of ultimate title (*diyd dilys*). The full significance of this counter-plea is brought out later when, to Rhys's taunt that Efa had only been a custodian of a *prid* on Llwyn Gwyn, John replied, in terms which any contemporary English lawyer would have understood, that the law did not require him to admit nor deny that Efa had been either custodian or true heir until the issue of possession was first decided.

Yet if you were to turn to the earliest Welsh lawbooks, such as Peniather MS. 28 and Peniather MS. 29, which were written between 1175 and 1240, you would search in vain for any doctrine of possession in which *goresgyn* or *camoresgyn* (wrong possession) emerge as substantive pleas. Early Welsh law can show nothing really analogous to the possessory assizes and writs of entry devised by the king's courts in the infancy of the English common law to secure interim possession of land to the party with the better *prima facie* claim, pending a more elaborate trial of the issue of ownership or right. In the twelfth and early-thirteenth centuries, the nearest approach in Welsh law to this concept of possession in the strictly legal sense was the action of *dadannudd*. The literal meaning of *dadannudd* is the notion of uncovering the pest fire on a parental hearth, and the action was one in which a son sought brief possession (long enough to perform the symbolic act of *dadannudd*) of a recently deceased parent's land.

The author of the Latin (Peniather 28) version of the laws renders

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*For NLW, Peniather Mss. 28 and 29 see above, p. 294* There is a single reference to *goresgyn* in the early Vespasian texts which suggests that the concept was beginning to influence legal thought in Gwynedd during the first half of the thirteenth century; see *A.L.,* I, p. 139; *Llyfr lorwerth,* p. 43.

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*dadannudd* as possessio, and the action of that name as *actio possessoria*. But *dadannudd* was certainly not a device, as in the common law of England, to secure continuous possession until the question of ultimate title was submitted to judgement. *Dadannudd* was intended, rather, in circumstances of precarious ownership of land when a stable agricultural society was in the making (and those were conditions which unquestionably applied to twelfth-century Wales) to give a son (or in certain circumstances a grandson) token possession—if such possession were necessary to complete an unbroken occupation by the same family over a period of four generations. In those circumstances a short possession by right of *dadannudd* would convert what had hitherto been a conditional occupational use of the land (gwarchadw) into proprietorship (*priodolder*); and on the termination of the *dadannudd*, the claimant would be free to assert his true title (*diyd dilys*) by the proprietary action of *priodolder*.

The concept of *goresgyn* then, clearly belongs to a later phase in Welsh legal history; and to appreciate how it may have crept into native practice a little more must be said about *priodolder* which, as the proceedings over Llwyn Gwyn have already hinted, remained to the end the key-stone of Welsh real property law (*cysraith tir a daear*). That *priodolder* should have continued into the fifteenth century as the most widely diffused of free tenures is explained by the operation of strict rules of inheritance within kindred, and by the virtual prohibition of alienation. The simultaneous working of these two factors ensured that in general the proprietorships created during the agrarian upheavals of the twelfth century descended, theoretically in perpetuity, from kin to kin, or as the lawyers would have put it, and far more neatly, *trwy ach ac edryf*.

But from the second half of the thirteenth century onwards, the *priodolder* system passed through a process of internal change without altogether shedding its restrictive features or dropping the fiction of everlastingness. The action of *priodolder* in fact, and the associated action of *dadannudd*, must inevitably have declined in importance under the more cohesive social conditions of the late-thirteenth century, and eventually, it would appear, ceased to be resorted to altogether, thus leaving only the action of *ach ac edryf* available as a remedy for persons who might claim rights of inheritance under the old law. Meanwhile, however, *ach ac edryf*, with its

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12 There were several other subordinate actions arising out of the *priodolder* principle; for these see, pp. 340-7. It is significant that in the Black Book of St. David's the prevailing tenures is described as *ach ac edryf* and not *priodolder* [see above, p. 362]; and that in the model plaints in *A.L.,* II, pp. 430-75, a plaint of *priodolder* is not included.
extremely limited procedural range, must have proved an entirely inadequately instrument for securing the ends of justice. The impact of new economic forces, following swiftly on the agrarian revolution of the twelfth century, now posed for the lawyers problems of adaptation to novel social circumstances. In the field of tenure the need to make the priodolder system more flexible, without disorganizing its essential framework, such as allowing certain conditional kinds of alienation while keeping intact the alienor’s ultimate right to priodolder, put the inventiveness of the lawyers to a test which brought forth those forms of law which were used by the litigants we met earlier on, and which would have mystified the authors of Peniarth 28 and 29 if they had been called upon to explain them.

In this process the concept of gwarcheidwadaeth, as some of you may have observed, was completely transformed. Instead of being applied, as it once was, to the principle which had brought about the genesis of priodolder, it had become the term used, under the new rules governing conditional alienation, to describe a person’s right, acquired under defined covenants, to the custody of land. The intrusion, moreover, into a rigid, hereditary system of tenure, of methods of land-holding which were entirely alien to its inbred nature, demanded, since the state acquiesced in these intrusions, means to protect the acquired rights of outsiders—of the gorchheidwad—as Efa ferch Dafydd was described in the judgement against her great-grandson.

That such remedies were invented and resorted to generally is made plain when one considers the subtlety shown by the later medieval jurists when expounding doctrine relating inter alia to actions, unknown to the earlier lawyers, such as prid and the three pleas of camoresgyn or wrong possession. There are traces of some of these developments in the later thirteenth-century lawbooks; but if there had not been available later texts of the fourteenth and fifteenth centuries, where such matters are set forth in precise and intimate detail, we would never have known, for example, that, if Rhys ap Gwilym had not successfully invoked against John ap Thomas the traditional defence of limitation of time (what the lawyers called argaeddigaeth amserelod), Rhys could have been much embarrassed by John’s insistence on his right to goresgyn. For the lawyers clearly acknowledged that there were circumstances in which custody of land (gwarcheidwadaeth) could confer valid goresgyn, and that if gorsesgyn

should be united with estyn, that is with an investiture of right in open court, then one who was estynol-goresgynol—such as the defending side, by default, admitted Ef a to have been—had the strongest of all claims to possession. On the other hand (if my understanding of the lawbooks is sound), John, in the event of proceedings continuing on another plea, would have had to produce documentary proof that Efa had held Llwyn Gwyn by that particular form of custody represented by prid. Here we begin to tread even newer ground than we have hitherto been doing in commenting on such matters as goresgyn, priodolder and gwarcheidwadaeth; and as the operation of prid was the fundamental factor in the later dissolution of native tenure, its precise significance must be left to a later stage of this discussion.

But to return for the last time to that word goresgyn. The late T. P. Ellis, the last to attempt a synoptic study of Welsh tribal law and custom, included this term and a quite inadequate definition in the glossary appended to his second volume. But neither in the body of the work nor in the index is there the slightest trace that Ellis even suspected that possession was a theme which required substantive treatment in a history of Welsh law. Although Ellis’s work has its own peculiar merits, the point I have just made illustrates one of its underlying limitations—namely its failure to inspire an evolutionary approach to the study of medieval society in Wales. This too is a weakness which marks J. E. Lloyd’s classic volumes, although he, unlike Ellis, was not primarily interested in, nor concerned with, institutions, and in his later years Lloyd was prepared to take a far less rigid view of things. At the same time, as I know from long experience of teaching Welsh history, a novice studying Ellis and Lloyd in conjunction would be left with the impression that Welsh legal institutions functioned with the same unchanging rhythm for something like eight centuries and more. Yet Maitland as far back as 1904, and Thomas Levi

16 A.L.I., II, pp. 368, 374, 388, 400, 422, 433, 455-9. It is clear from ibid., p. 422 that the act of investiture (estyn) was necessary in the case of land acquired by gurchheidwadaeth. This would follow from the fact that the lord’s permission was necessary before prid and other forms of conditional alienation could be effected. Pleas of camoresgyn (wrong possession) were not admitted in cases of disputed possession among coheirs according to ibid., II, 432, which strengthens the argument for regarding the doctrine of gorsesgyn, and indeed all rules relating to claims arising from new forms of tenure, as a development outside the traditional priodolder system.

17 Ibid., p. 448.

18 Ellis, Tribal Law, II, p. 439.

19 [See above, pp. 291-2]

20 Lloyd, Hist. Wales.

21 See above, pp. 289-90 for Maitland’s essays.
in 192822 (both incidentally distinguished teachers of English law) realized, with remarkable intuitive perception and after only a cursory examination of the printed texts, that the corpus of our native law consists of layer upon layer of material which critically handled can reveal a progressive unfolding of the medieval legal mind.

The fact is that well before the close of the thirteenth century, much of the material gathered together in the legal texts had long been discarded as operable law; and indeed some of it had clearly ceased to be as intelligible to the later lawyer as it possibly is to the modern scholar.23 But working from precedent, the later jurist used this archaic law as the basis upon which to build up his own commentary—a commentary consisting at first of the odd insertion or post-script and developing in time into the long and well-reasoned addendum of the fifteenth-century manuscripts—the kind of commentary which tells us how, within a continuing and traditional mould, the law was progressively changing. Our older law could never in fact have been carried forward into the more sophisticated climate of the later middle ages unless it had meanwhile acquired what Henry Maine described as 'an elasticity foreign to its original nature through some vivifying legal fiction'. What I have tried to say about gorsesgyn illustrates the truth of Maine's maxim, as indeed would many another illustration I could have selected, had not my choice been dictated by the use I made at the outset of the proceedings over Llwyn Gwyn. By turning now to a slightly less technical field we shall meet with further illustrations of the same progressive trends.24

In the early winter of 1281, almost exactly twelve months before the prolonged political struggle between Edward I and Llywelyn ap Gruffudd reached its fatal conclusion, the king, who had by then brought the frontiers of his dominion up to the fringes of Snowdonia, appointed a commission to inquire into the working of the Welsh legal system.25 Though primarily charged with eliciting information which might help to solve a pressing problem of high policy, the commissioners were clearly expected to probe into the presumed weaknesses of the native laws with an eye to their eventual abrogation. Yet, biased or timorous as most of the witnesses were according to their English or Welsh alignments, a minority of the Welsh witnesses came out with some astonishingly frank and honest testimony—testimony which throws considerable light on how and why the kind of change we have been discussing was brought about.

These uninhibited witnesses testify almost unanimously that the prince of Wales, of his own volition after consultation with his council, was free to correct, amend, and amplify the law should it prove to be inadequate.26 Such action was taken, a witness recites, by David ap Llywelyn between 1240 and 1246, when he abolished blood-fine (galaunau) throughout North Wales, because it seemed to him and his council that it was the author of a crime who should be punished, and not his unoffending kinsmen. That enactment, one can tell from a close study of the law, was in fact the climax to a long-drawn-out process of change, and was intended to sweep away the last surviving remnants of a once universal practice. It was also to mark the triumph of an evolving criminal code—a code which, though shaped on a contemporary English model, had evolved some interesting indigenous features, including an attempt to distinguish between capital and non-capital murder—which is something English law has only recently, and rather clumsily, accomplished.27

The curtailment of the elaborate verbal pleadings used to determine suits under the older law was also a process which had clearly begun under the last princes of Gwynedd who, we are told, could abbreviate the law at their discretion. This simplification of procedure was carried even further with the adoption, in a greater or lesser degree according to locality, of the sworn inquest—a simple and direct method of arriving at a verdict by jurors on an issue of fact and used extensively in the king's courts. It is not surprising, of course, that this method was tending to root itself in the Perfeddwlad and in Powys where English pressure had been heavy, albeit intermittent, throughout the century. The significant thing is that the prince of Gwynedd when he, as prince of Wales, exercised a measure of authority in those territories, had not been inclined, according to some of his own judges, to reverse this trend.

There is no reason to question the testimony of one experienced lawyer who spoke before the commission, and who had no apparent axe to grind, that Goronwy ap Heilyn, the prince's leading henchman in the Perfeddwlad, had encouraged people there to avail themselves of the new pro-

22 T. Levi, 'The Laws of Hywel Dda in the light of Roman and Early English Law', Aberystwyth Studies, X (1928), pp. 5-63; see in particular p. 41. Professor Levi perceived that Welsh law showed 'symptoms of a development of a superiority of a right to possess over the mere fact of possession'.
23 [See above, p. 301]
24 [For the problems examined in the preceding section see Dafydd Jenkins, 'A Lawyer looks at Welsh Land Law', Trans. Cymru., 1967, pp. 20-47.]
26 See ibid., p. 199, for example, the evidence of Ithel ap Philip, who is also the witness who cites the action of David on galaunau, and ibid., p. 196 the evidence of Eigion ap Dafydd, who adds that the prince could also 'abbreviate it if it was too lengthy'.
27 See above, pp. 296-307.
Wales showed little sign, on the eve of the Edwardian conquest, of loosening as a result of permeation by new methods of land holding. At the same time there must inevitably have been much litigation among kindred in the commote courts over matters relating to ancient tenure—the system encouraged it, as Giraldus Cambrensis observed a century before the conquest. But the procedure used, if not that of inquisition, appears to have been greatly simplified along lines, to be indicated presently, which had been already firmly established in the lordships of Ceredigion and Ystrad Tywi.

Meanwhile innovation was something to be dealt with in the prince's own supreme court, which in addition to the high feudal jurisdiction it had acquired in the course of the thirteenth century, had brought within its purview issues of error and some of first instance—a remarkable development in a very remarkable age in the history of Wales. Dimly documented as are the activities of the prince's court, compared with those of the royal courts at Westminster, there is sufficient evidence extant to show that the pivotal factor in bringing about the mutations we have been observing was the prince's increasing prerogative power skilfully employed by able lawyers working at the heart of the infant Venedotian state, a fact which may possibly explain why Llywelyn ein Llyw Olaf was none too popular a figure among his own conservatively-minded people.

It is tempting to speculate on what might have been the outcome if this prelude to the last phase in the history of Welsh law had not been cut short by the political disaster of 1282. Native law might, of course, have been assimilated gradually and naturally into the common law of England; on the other hand the potentialities of Welsh law in the thirteenth century suggest that we could have ended with three systems of jurisprudence in these islands. In which case we might today have had a distinguished specialist in Welsh law sitting alongside his English and Scottish brethren (as Lord of Appeal in Ordinary) in the supreme court of the United Kingdom.

But that was not to be. Between the conquest and the Union of 1536 Welsh legal history is one of paradox. While the period produced some very detailed and subtle commentary, and theory in some ways attained its most perfect form, the story of how the principles of native law were
applied in the courts of Wales is one of increasing contraction in face of the inroads of English practice. In some parts of Wales the transition was lingering and prolonged, in others astonishingly rapid. The quickest transition of all was unquestionably in the three new shires of north-west Wales to which the ordinances issued by Edward from Rhuddlan in 1284 were intended more particularly to apply.\(^{35}\) Now it is stated in general terms at the end of the ordinances that the king was prepared to allow the use of Welsh law 'where to the people of Wales have been accustomed' in personal actions, that is in all matters other than criminal offences and real property law. At the same time the alternative English procedure in such matters as trespass and debt, contract, covenant, and dower, as well as the principal proprietary actions of English law, are explained with great precision and detail in other sections of the ordinances. It is evident that as these actions were to be at the disposal of native litigants, the concession relating to the continued use of Welsh law was not intended to be fully implemented. In fact the sequel shows that it must have been the intention of the authorities to bring about a transition from one system to the other by means of a combination of administrative pressure and making the common law actions as attractive as possible to the Welsh.

Even as early as the second quarter of the fourteenth century there is no evidence that Welsh actions were brought into the courts of the three shires;\(^{36}\) by the close of the century, it is clear that the common law had triumphed in this field. Some personal actions had become exceedingly popular: trespass, for example, which was a simple and cheap form of litigation not long introduced into the common law of England. The correspondences in practice, moreover, between some of the personal actions in Welsh and English law (as well as the attitude to innovation adopted in the prince's court on the eve of the conquest) may well in part explain why the change-over was effected with such apparent ease in the king's territories in north-west Wales.\(^{27}\)

On the other hand, in the one surviving great sessions roll for those parts, recording proceedings in the principal court of the shires in the reign of Richard II, there are barely any references to suits over land—that is to real actions.\(^{38}\) For these the ordinances had made separate provision by stating 'that concerning possessions immovable, as lands and tenements, the truth may be tried by good and lawful men of the neigh-

\(^{35}\) Bowen, *Statutes of Wales*, pp. 2-27.

\(^{36}\) This statement is based on a study of the commote court rolls of the three shires of the Principality of North Wales in the Public Record Office.

\(^{27}\) See above, pp. 356-60.

\(^{38}\) PRO, [Plea Rolls, Caernarvonshire] Wales 20/1.
Chirk and Bromfield, lying along the Anglo-Welsh borderlands. In the small lordship of Broniath, it is true, a curious mixture of Welsh and English practice still existed; but even in remote mountain lordships like Mawddwy, pleas by native law have almost disappeared from the rolls. Only in the south-west in Cardiganshire and Carmarthenshire, and in a few neighbouring lordships such as Cydweli, did the law of Hywel flourish until the close of the fifteenth century. Something must therefore be added very briefly about this hard core of resistance in the territories of the old kingdom of Deheubarth which have not hitherto received specific mention, apart from the fact that the proceedings relating to Llwyn Gwyn were concerned with property in the very heart of Carmarthenshire.

The witnesses from the rural parts of Cardiganshire who appeared before the commissioners at Llanbadarn in 1281, were unanimous on two points: it was not the custom in those parts to proceed to trial by inquisition nor to appear before professional judges on the north Wales model. The custom among them, it was asserted, was for trial to proceed in the presence of the lord or his representative, with whom were associated certain landowners drawn from the free-holding community of the commote. The latter are described in the commissioners' report as *sutorium* — and it was these so-called sutors who delivered the verdict and judgement. Though the ideas which these Welsh witnesses were trying to convey are expressed in alien terms, having been made to fit the latinity of the commission's clerk, their testimony is perfectly intelligible to anyone who has assimilated the contents of lawbooks written in south-west Wales. The essential features of that testimony are to be found in those lawbooks: the verdict (*deddryd*) of the leading elders of the land (*benaduraid pennad eddld*), the wise men of the locality well versed in the law of Hywel Dda, otherwise the *brawnwyf* or *baroedd o fraint tir*—leading freemen and judges by privilege of land, such as William Morgan and William Daufydd were certainly.

Such a mode of trial, in its comparative simplicity and directness, contrasts sharply with the elaborate procedure of the older law; or on a different plane, with the professional judges (*ynadon o fraint swydd*) who were.

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43 E.A. Lewis, 'The Court Rolls of the Manor of Broniath', *B.C.S.*, XI (1944), pp. 54-73. For Chirk and Bromfield see the court rolls in the National Library of Wales and the Public Record Office.


45 See below, pp. 388-9.

46 C. Chanc. *R.* Var., pp. 206-10; for the use of the term *sectarii* (sutors) see below, p. 389.

47 *Llyfr Blegywyd*, pp. 98-102; there are numerous other references to this office in the later MSS where the *Llyfr Blegywyd* tradition is developed; see below, p. 383.

48 The evidence given before the commission of 1281 suggests that in south Wales there were official judges who functioned only at levels higher than the commote courts; see below, pp. 387-9.

49 See, for example, the reference to villeinage in *A.L.*, II, p. 365, and for other differences see above, pp. 369-365.

50 Ibid.

51 Indeed it is in the recensions of texts which had their origin in south Wales that some of the most advanced developments are to be found.

52 For these texts, see above, pp. 292-6.

lawyers for immediate service in the courts, even if these conclusions could not be confirmed from actual proceedings such as those concerning Llwyn Gwyn and several other cases of like nature which are still extant. Such proceedings, when examined in the light of the texts under consideration and of a long series of general records emanating from these parts of Wales, show that the old law was still very much alive in one corner of Wales until at least the third quarter of the fifteenth century.

Between 1480 and 1536, however, there are signs that even in this last stronghold of cyfrallt Hywel the local courts were at last capitulating to forces which were now heralding the coming Union of Wales with England—except (and then only at lower social levels) in the field of tenure. As in north Wales, there were reasons, as I have several times foreshadowed, why this should have been so. In conclusion, therefore, it is proposed to outline yet one more development during this last phase in the history of native law which has some bearing on the facts of the case with which this lecture began.

It will be recalled that one reason given for denying true title to Efa ferch Dafydd Morgan was the claim that she was merely pridwrwaig and not priodor in Llwyn Gwyn, or in other words that she had enjoyed the property in question on certain conditions, clearly defined in law, which secured the ultimate title to Robert and Ieuan, the sons of Hywel ap Ieuan Ddu, who were the legal owners or priodorion, although Llwyn Gwyn would appear to have passed out of the possession of the family several generations before their time. For Welsh law, as we have observed, did not permit land held by a member of a free kindred to be sold outright. Under certain circumstances, however, and with the consent of the lord and the kindred, a priodor could enter into a transaction with a third party—the priderwr or pridwrwaig—who in return for an agreed payment would take over possession of the priodor's land for a term of years; and if the property remained unredeemed by the owner or his heirs at the end of the stipulated term, the prid became renewable without limitation for further quadrennial periods.

At the same time, little advantage would appear to have been taken of this permissive principle in the time of the princes; for if extensive use had been made of this concession, the operation of prid would surely have left a more permanent mark on earlier records. Even after the conquest, when one would expect more fluid conditions of land tenure to have been actively encouraged by the authorities (after all every transaction of this kind brought a substantial profit to the crown or marcher lord by way of fine), the natural conservatism of the kindred still discouraged much resort to the one loophole in native custom which theoretically would allow for alienation on a considerable scale.

It was not until the second half of the fourteenth century that the practice of parting with land in this way became common among freeholding communities of pridirion; and in the fifteenth century the practice became very common indeed. The underlying reason for this was the growing morcellation of old holdings under the strain of the native system of partible inheritance or cyfran. This gave wealthy English burgesses and the more prominent Welsh tribemen the opportunity to start building up small estates by acquiring, through prid, the fragmented holdings of former kindred lands. The fields and park lands, for example, which belong to the modern mansion of Peniarrth (where so many copies of our ancient laws were once housed), emerged out of the enclosure of a large number of arable plots, formerly shared among a group of kinsmen, which were acquired, early in the fifteenth century, through a series of prid transactions by the founder of the family at present in occupation.

Prid transactions negotiated with an eye to permanent acquisition were successively renewed for additional four-yearly terms until, with the lapse of four generations, a tenement was finally quit-claimed. Land which had thus passed permanently into the hands of an aliene now came within the orbit of English real property law, like escheat land (tir siédl or tir fforfed).
which had fallen to the crown or marcher lord. By the close of the fifteenth century owners of small estates which had grown up in this way were anticipating the provisions of the Union legislation by openly adopting English methods of conveyancing including entail. But there remained a multitude of Welshmen of the middling or humbler sort who, like John ap Thomas and Rhys ap Gwilym, claimed or enjoyed certain rights under native tenure (tir cymreyg as opposed to tir seisenig as a fifteenth-century bailiff, who kept an account book in Welsh, described the mixture of Welsh and English tenures which existed in his day)—men and women who from conservative instinct, and possibly from motives of pure self-preservation, were clinging tenaciously to a legal heritage which by 1536 had all but disappeared except as a sanction for age-old rights in the soil.

As to the questions posed at the outset, it is reasonably clear, therefore, that although much administrative detail remained to be sorted out in the later statute of 1543, fundamentally the victory of English law was almost completed by 1536. Thus the official proscription of native law and custom in the statute of that year could in fact only have been aimed at those singular survivals of ancient tenure which have loomed large in this discussion. That some Welshmen were as late as 1540 still trying to settle disputes over land in the old manner could be taken as indicating that the clause already cited from the statute of 1536 did not prove as abruptly restrictive as it was apparently intended to be. There would certainly be good reason for such a conclusion if it could be shown that the documents in the Llwyn Gwyn case are official records arising out of proceedings in a legally constituted commote or hundred court. But quite apart from the fact that the documents in question are in Welsh, and not in Latin, certain technical peculiarities in the texts incline one strongly to the view that they are the product of extra-cural arbitration between parties who, despite official prohibition, were stubbornly adhering to customary habits.

We know that several tenurial customs, such as prid, lingered on in the remoter parts of Wales for generations after the Union, and it would appear that matters of controversy arising out of such quasi-legal customs continued until well into the seventeenth century to be thrashed out in unauthorized moots or ddatan in the presence of arbiters versed in the

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64 A glance at the rules relating to peddar rwsym ddati, the four bonds of a suit, A.L., II, pp. 316-18, will show at once how easily it would have been for a clever advocate to prove that the original plea as expressed in the bill of claim was inadmissible because of ambyswerswydd, ambiguity, in the form of pleading. The latter is lacking in much of the detail required by the rules. See the model pleas, A.L., II, pp. 450-75.
65 In the form of the so-called 'Welsh mortgage'; see above, p. 266 for cyf.
assumption that the losing party had the right to challenge an adverse judgement by exchanging pledges with the person who delivered it; but there are few really intelligible references to the procedure which was subsequently followed in determining the appeal except in the late source which has just been mentioned. Even there it is assumed that the reader would know that the issue went to impartial arbiters, described as dosbarthwyr, who were appointed by the central authority. But the clause in question goes on to state that in the event of the decision of dosbarthwyr being in turn challenged by one of the parties, wise men (doethion) were to be summoned from every commote to declare whether the decision was valid or not. If the decision was found to be false, it was required that the verdict be couched in a final judgement delivered by a supreme judge (brawdwr penna).

Now in evidence before the commission of 1281 the abbot of Whitland said that 'if a party wish to make plain of false judgement, twelve men ought to be convoked from each liberty together with the judge of Ystrad Tywi, and if it be found before them that it was badly judged before, the court shall be convicted of false judgement by their decision'. The abbot, it will have been observed, makes no specific reference to dosbarthwyr, nor to any intermediate appeal between what would appear to refer to an original judgement of a court of suitors and a final judgement. But did the abbot in fact have in mind the court from which a plea originated or a court in which dosbarthwyr functioned? At some date in the not too distant past neither dosbarthwyr nor doethion had been employed in pleas of false judgement, for our earliest evidence on this type of plea suggests that the process took the form of an informal debate between judge and appellant in the presence of the lord, each party seeking to prove better precedent from the lawbooks, and in the event of a dead-lock having the matter referred to canonists for final decision. The participation of canonists in the last resort is confirmed in another section of the late source already quoted, which states that if a party desires to appeal against the decision of dosbarthwyr, the matter is to be transmitted for final judgement by canonists—a rather different principle from that laid down elsewhere.

Fortunately, the procedure in use during the fifteenth century is described in considerable detail in a recently discovered record from the lordship court of Cydweli, in which many of the features described in the late law texts and some earlier traditional principles are reproduced. There we find three brawdwyd dosbarth appointed by royal letters patent examining the original judgement of the sectatores; a record of mutual pledging between the petitioner and the suitor who delivered the judgement; the adverse decision which resulted in the petitioner's appeal to the canonists, and much more. The records of the fifteenth century, moreover, make it clear that appeals of this kind from the commote courts of south-west Wales were far from uncommon. But since dosbarthwyr only start to appear in these records during the second half of the fourteenth century, I am inclined to the conclusion that they are a post-conquest phenomenon, and that the procedure of appeal on ordinary issues of error operating in the independent parts of Wales in 1282 is reflected in the evidence given before the commission of inquiry in 1281 and in the law texts quoted, omitting the intermediate appeal to dosbarthwyr from the latter, and allowing for the recognition of an ultimate appeal to canonists as a traditional principle. It is evident that the convocations of the wise, a new development of the thirteenth century, ceased after the conquest, and created a gap which possibly had to be filled in south-west Wales by the appointment from above of a new class of dosbarthwyr.

I am greatly indebted to my friend and former pupil, Mr. J. Beverley Smith, for allowing me to use his transcript of the Cydweli case which he has discovered in the course of his researches. Mr. Smith hopes to publish an edited version of this document in the near future. Mr. Smith and Mr. Ralph Griffiths have also generously placed at my disposal relevant extracts relating to the employment of dosbarthwyr, from ministers' accounts from south-west Wales, which they have studied more closely than I have been able to do.

49 Ibid., pp. 372-5.
50 C. Chanc. R., Various, p. 207.
53 Ibid., pp. 372-4.