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NARRATIVES IN EARLY IRISH LAW TRACTS

FANGZHE QIU

This dissertation is submitted for the degree of

Doctor of Philosophy

to the National University of Ireland, Cork, Department of Early and Medieval Irish, in which the research was conducted.

Date: December 2014

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Declaration

The undersigned hereby declares that this dissertation, entitled *Narratives in early Irish law tracts* and submitted for the degree of Doctor of Philosophy, is the result of the candidate's own work, except where otherwise acknowledged, and has not been submitted, either in whole or in part, for another degree, either at University College Cork or at any other institution.

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Fangzhe Qiu

Abstract

This thesis presents a study of the 112 narratives collected from the *Corpus Iuris Hibernici*. The selection of narratives is based on criteria informed by modern narratological theories. The significant presence of narratives in early Irish law tracts appears at odds with the normal conception of law texts as consisting solely of provisions, and therefore needs to be accounted for. Since no systematic study has been conducted of these legal narratives, this thesis serves as an introduction by giving firstly an index of narratives and secondly a categorisation of them in terms of distribution, dates and functions. It then carries out a general analysis of the relationship between legal narratives and early Irish literature, and a selected case study of the relationship between legal narratives and the legal institutions in the context of which the narratives are located. It has become clearer, with the progress of argument, that the use of narratives was an integral part of legal writing in medieval Ireland; and the narratives, though having many idiosyncratic features of themselves, are profoundly connected with the learned tradition at large. The legal narratives reveal the intellectual background and compositional concerns of medieval Irish jurists, and they formed a crucial part of the effort to accommodate law tracts into the dynamic tradition of *senchas*. Two appendices are included at the end: one consists of translations of 34 narratives from the index, and the other is a critical edition of one of the narratives discussed in detail, together with translations of some relevant passages.

Brolach

Trí bliana ó shin a socraíodh go mba chuntas ar scéalta i dtráchtais dlí na hÉireann ón Mheánaois an tráchtas seo. Seo staidéar nua, tá súil agam, a sholáthraíonn an dlúthcheangal idir dlí, litríocht, stair agus brainsí eile den léann sa traidisiúin Gaelach agus a shoiléiríonn forbairt an traidisiúin sin.

Níorbh féidir liom an taighde seo a thosú murach an uchtach agus an treorú fial foighneach a fuair mé ó mo stiúrthóir, an tOllamh John Carey. Bhíodh cruinnithe againn beagnach gach seachtain i gcaitheamh na trí bliana chun cibé idéanna a bhí agam a phlé, lasmuigh den mhéid ama a chaith sé ar mo dhréachtanna iomadúla. Chuir sé feabhas mór ar an saothar iomlán, go háirithe ar na gcodanna sin a bhaineann le gnéithe de litríocht na Gaeilge nach bhfuil ach eolas teoranta agam orthu. Fuair mé cúnamh mhórchroíoch chomh maith ón Oll. Liam Breatnach, Oll. Neil McLeod agus Oll. Fergus Kelly a léigh codanna den dréacht níos luaithe agus a chóirigh a lán lochtanna.

Tá mo bhuíochas ag dul d´fhoireann Roinn na Sean- agus na Meán-Ghaeilge, COC: an tOllamh Máire Herbert, an Dr. Kevin Murray agus an Dr. Caitríona Ó Dochartaigh asa dtacaíocht bhuan i gcúrsaí taighde agus i gcúrsaí pearsanta. Thug an Roinn scoláireacht le haghaidh na céad bhliana go fial dom agus i ndiaidh sin fuair mé scoláireacht dhá bhliana ó Choláiste na nEalaíon, an Léinn Cheiltigh agus na nEolaíochtaí Sóisialta, COC. Ghlac mé freisin i ndeiridh na triú bliana le duais ó Rialtas na Síne agus i dtús na ceathrú bliana bronnadh scoláireacht Uí Dhonnabháin orm ón Institiúid Ard-Léinn BÁC. A bhuíochas leis sin, táim in ann an tionscadal seo a chríochnú. Tá an-ádh agamsa agus is mian liom mo bhuíochas a chur in iúl dona daoine agus dona hinstitiúidí seo a thacaigh le mo staidéar.

Tá mic léinn agus scoláirí iontach cabhrach in cibé áit a raibh mé ag obair: an

seomra iarchéimi, Sheraton Court agus Leabharlann Mhic Cana. Is deacair an spreagadh a thug sibh dom a mheas, shoilsigh sibh na laethanta tuirsecha a chaith mé ag scríobh.

Ach téann mo bhuíochas is mó don bheirt a thuigeann agus a thacaíonn le m'obair go ciúin agus le grá iomlán: sin iad mo bhean chéile Peng Lijing agus mo mhac Yizhou. Chuir an Dr. Peng comaoin mhór ar an obair seo lena fios antraipeolaíochta, go háirithe ar an séú caibidil, agus lena cócaireacht iontach. Agus mar gheall ar an gclann, mar a dúirt na Gréagaigh: *τα παιδια αιτια πονων τοις ανθρωποις*, ach is ualach mílis é, go cinnte.

Is eol dom go maith gur iomaí easnamh agus locht atá ar an tráchtas seo, agus ní hiad na daoine atá luaite suas ach mise amháin atá freagrach astu. Níl sa saothar seo ach tosach taighde níos leithne is níos doimhne, toisc gur deacair é an t-ábhar agus gur beag an méid atá déanta air. Ach creidim, mar a deireadh leis na fílí:

'Solas an cleas-sa ad-chluinidh:
doras feasa fiarfaighidh' (Ó Cuív 1973, 139).

List of abbreviations

AFM= *Annals of the Four Masters*, edited in Nicholls, K, ed. 1990. *Annals of the kingdom of Ireland, from the earliest times to the year 1616, by the Four Masters.* 7 vols. 3rd edn. Dublin: De Búrca Rare Books.

ÄID= Meyer, Kuno. 1913-4. *Über die älteste irische Dichtung: I. Rhythmische alliterierende Reimstrophen; II. Rhythmische alliterierende reimlose Strophen.* Abhandlungen der Königlich preussischen Akademie der Wissenschaften; Philosophisch-historische classe 6&10. Berlin: Königl. Akademie der Wissenschaften.

AL= O'Donovan, John et al., eds. 1865-1901. *Ancient Laws of Ireland*. 6 vols. Dublin: H. M. Stationery Office.

ALochCé= *Annals of Loch Cé*, edited in Hennessy, William M., ed. and tr., 1871, *The Annals of Loch Cé. A chronicle of Irish affairs from A.D. 1014 to A.D. 1590*, 2 vols. Rerum Britannicarum Medii Aevi Scriptores 54, London: Longman.

BA= *Berrad Airechta*

CIH= Binchy, D. A., ed. 1978. *Corpus Iuris Hibernici*. 6 vols. Dublin: Dublin Institute for Advanced Studies.

CormY = the Yellow Book of Lecan copy of *Sanas Cormaic*, edited in Meyer, Kuno, ed. 1912. *Sanas Cormaic: edited from the Yellow Book of Lecan*, in *Anecdota from Irish manuscripts*, edited by Osborn Bergin, R. I. Best, Kuno Meyer, and J. G. O'Keeffe, vol. 4. reprint, Felinfach: Llanerch Publishers, 1994..

DCA= *Di Chethairṡlicht Athgabalae*

DIL= Quin, E. G., gen. ed. 1983. *Dictionary of the Irish Language: Based Mainly on Old and Middle Irish Materials (Compact Edition).* Dublin: Royal Irish Academy.

DT= *Din Techtugud*

Etymologiae= Etymologiae sive Origines by Isidore of Seville, edited in Lindsay, W. M., ed. 1911. *Etymologiae sive Origines*. 2 vols. Oxford: Clarendon Press; translated in Barney, Stephen A., W. J. Lewis, J. A. Beach, and Oliver Berghof, trans. 2006. *The Etymologies of Isidore of Seville*. Cambridge: Cambridge

University Press.

GOI= Thurneysen, Rudolf. 1946. *A Grammar of Old Irish*. Translated by D. A. Binchy and Osborn Bergin. Dublin: Dublin Institute for Advanced Studies.

IT= Windisch, Ernst and Whitley Stokes, eds. 1880-1909. *Irische Texte*. 4 vols. Leipzig: Verlag von S. Hirzel.

LEIA= Vendryes, Joseph, and Pierre-Yves Lambert, eds. 1959-1987. *Lexique étymologique de l'irlandais ancien.* 5 vols. Dublin/Paris: Dublin Institute for Advanced Studies/Centre national de la recherche scientifique.

MV = Thurneysen, Rudolf. 1891. "Mittelirische Verslehren I-III" In *Irische Texte* 3. 1, edited by Whitley Stokes and Ernst Windisch, 1–182. Leipzig: Verlag von S. Hirzel.

NLI MS = National Library of Ireland manuscript

NLI MS Cat. = Ní Shéaghdha, Nessa, and Pádraig Ó Macháin, eds. 1961-1996 *Catalogue of Irish manuscripts in the National Library of Ireland*. Studies in Irish Manuscripts. 13 fascs. Dublin: Dublin Institute for Advanced Studies.

O'Dav= O'Davoren's Glossary, edited in Stokes, Whitley, ed. 1904. "O'Davoren's glossary", *Archiv für celtische Lexikographie* 2: 197–504.

OGSM= Old Irish glossing of *Senchas Már*.

Onom.= Hogan, Edmund. 1910. *Onomasticon Goedelicum Locorum et Tribuum Hiberniae et Scotiae*. Dublin: Hodges Figgis and Co. Ltd.

RIA MS= Royal Irish Academy Manuscript

RIA MS Cat. = Mulchrone, Kathleen, Thomas F. O'Rahilly, Elizabeth FitzPatrick, and A. I. Pearson, eds. 1926-1970. *Catalogue of Irish manuscripts in the Royal Irish Academy*. 8 vols. Dublin: Royal Irish Academy.

SM= *Senchas Már*

TCD MS= Trinity College Dublin Manuscript

Thes. = Stokes, Whitley, and John Strachan, eds. 1901–1910. *Thesaurus Palaeohibernicus: a collection of Old-Irish glosses, scholia, prose, and verse*. 3

vols. Cambridge: Cambridge University Press. Reprinted, Dublin: Dublin Institute for Advanced Studies, 1975.

UCD-OFM MS= University College Dublin – Order of Friars Minor Manuscript

Chapter 1: Law, Narrative and Legal Narratives

1.1. Introduction

What should a law text look like?

Even someone completely unconcerned with jurisprudence has some ideas on this subject from daily experiences: law should look like 'No Trespassing', should look like 'Any family with an annual income less than 20,000 Euros is entitled to certain social welfare'. In scholarly jargon, the basic elements of a law text are *provisions*, which are organised according to certain principles to form the hierarchy of articles, sections, chapters and acts. Provisions are, furthermore, either *apodictic*, i.e. unconditional statements such as 'No Trespassing'; or *casuistic*, namely consisting of a hypothetical protasis of condition and an apodosis of legal consequence.[1] Legal provisions are rules, and rules are expected to be unambiguous and general. In other words, rules should not be written as only applying to one specific occasion, but as applying indiscriminately to all similar circumstances in the future. The verb used in the main clause of a provision should therefore be either in the present indicative, denoting a constant fact; or in the grammatical moods classified as 'irrealis', i.e. imperative, subjunctive, conditional, etc.

In the medieval Irish lawbooks, however, we encounter here and there narratives of past or even mythical events, which appear curious if not bizarre to the eyes of one who is accustomed to the modern legal writing style. These narratives, moreover, are not inserted into the lawbooks merely incidentally: with few exceptions, they form an integral and significant part of the legal texts. Some of them were written as part of the canonical law texts dating to the Old Irish period (the 7th to 9th century), while others were incorporated into the glosses and

[1] For the two categories, especially their application to ancient Israelite laws, see Weinfeld (1973).

commentaries whose composition ranges from the late Old Irish period (the 9th century) down to the final succumbing of Gaelic society to English law (the 16th and 17th centuries).

What are we to make of these narratives, then, and of the legal tradition that they bespeak? How should we understand their forms and functions, their relationships with the law as a whole, and the intentions of their authors?

Consider the following passages translated from the Irish law tracts:

> 'Whence was the custom of *ráth*-surety in Irish law established? Since the *ráith*-enclosure of Amairgen was forfeited. For it is he who first provided 'back surety' of entitlement in Ireland: Amairgen 'of *ráth*-surety/ of enclosures', who had seven enclosures. He gave one as *ráth*-surety on behalf of Conall Echlúath. And it was forfeited to Eógan mac Durthacht, so that it is Conall who has first paid a compensation of surety in this island.' [1][2]

> 'The place of this book is Aicill in the precinct of Tara and the time is at the time of Coirpre Lifechar son of Cormac, and the person is Cormac, and the reason of its composition, i.e. the blinding of Cormac by Óengus Gaíbúaidbech after the abduction of the daughter of Solar son of Artchorp by Cellach son of Cormac.' [13]

> 'And it says: a criminal cannot accuse another criminal. i.e. if he is innocent without fault, the man will be entitled to reproach the fault. And as Christ spoke of the Canaanite woman: if there is an innocent person among you, let him throw a stone at her, and as he did not find [anyone], he freed the woman.' [41]

The first of these is from the Old Irish legal text known as the 'Heptads', the second from a Middle Irish prologue prefixed to the tract *Bretha Étgid*, and the third from an Early Modern Irish commentary in a legal digest. One thing the three passages have in common, despite traversing a time span of more than five centuries and bearing different relationships to the tracts with which they are

[2] The number in the square brackets refers to the number of the relevant entry in the index of narratives in Chapter 2, where the locations of the texts in *CIH* are provided. e.g. [1] = *CIH* 63.7-64.5, 97.18-24, 1854.14-36, 2027.30-39, etc.

affiliated, is that they all use narratives as part and parcel of the law. In fact, the extensive use of narratives is one of the most enduring and distinguishing characteristics of medieval Irish legal writing.

Narratives are certainly not absent from lawbooks in other legal traditions. The Sumerian Law of Ur-Namma, perhaps the earliest extant legal monument of mankind (c. 2100 BCE), contains a lengthy prologue enumerating the military and political achievements of the king Ur-Namma to whom the law is attributed (Roth 1997, 15–16). A cosmogonic and theogonic narrative dominates the first book of the Laws of Manu (*Manusmṛti*), the earliest and most influential of the Hindu *Dharmaśāstras* (treatises of legal, religious and moral learning), compiled roughly between 200 BCE and 200 CE (Olivelle 2005). The early medieval Kentish law of Wihtred (written 695 CE), contemporary to most canonical Irish law tracts, begins with an account of the convening of dignitaries to declare the law (Oliver 2002, 152–153). There is of course the *Torah*, which was mainly written in narrative but forms the basis of the Mosaic Law; and there are the numerous narrative materials, known as *aggadah*, in the Mishnaic and the Talmudic compilations of laws, legends and philosophy of the post-biblical Jewish world (Apt 1994, 944–945; Weisberg 2007).

In fact, narratives are not even excluded from the legislation of our own times. The Constitution of Ireland, for instance, begins with an implied narrative of the Founding of the Nation: ‘We, the people of Éire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial, gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,’ (*Constitution of Ireland*, Preamble). In the Common Law systems, furthermore, precedents are legally binding or directive for subsequent decisions to be made on similar or comparable cases, and thus are regarded as part of the law; and precedents, as established through former rulings on cases, inevitably contain more than the

bare principles that the judges extracted: the real-life events which are the flesh of the former cases can never be parted from the principles. Cited in law reports, textbooks, or verdicts made on subsequent cases – legal writings other than acts and statutes – the legally binding precedents are always accompanied by narratives of the events which gave birth to them, or at least by references to these narratives.

Early Irish law, however, surpasses all other legal traditions in the extent to which it employs narratives. Narratives are found not only in the prologues to the law tracts, but also in the main body of the tracts and in glosses and commentaries; they not only refer to the cause and occasion of law-making, but also to a wide range of legendary events, together with historical events ranging from the earliest times down to the near-contemporary in various extents of historical verity; these Irish narratives easily outnumber the narratives found in other legal traditions, save only the *aggadah* stories from the Talmud (Simon-Shoshan 2012, 232–233). Few stories from the Talmud can boast the length and complexity of Irish legal narratives; and the Mishnaic legal narratives, which are usually depicting the lives of Rabbis, are generally less concerned with saga literature and historiography than are the Irish legal narratives.

This phenomenon must be, and indeed can be, addressed from three perspectives: firstly, the nature of the Irish lawbooks; secondly, the intellectual background of the jurists; and lastly, but most importantly, the way in which law was perceived and written in medieval Ireland. And these are the central concerns of this dissertation.

1.2. A review of previous studies in law and literature

Broadly speaking, this study could be categorised as falling in the domain of ‘law and literature’, a subject area which has attracted much scholarly attention

in recent decades. The interdisciplinary study of law and literature emerges from the practical need on the part of each of the two subjects to approach each other in order to better grasp some phenomena in their own respective confines.

1.2.1.

At the one end, literary works such as Franz Kafka's *The Trial* (*Der Process*), Albert Camus's *The Outsider* (*L'Étranger*) or George Orwell's *1984* pose law as one of the major (though often invisible) protagonists, urgently calling for a legal insider's eye to interpret the messages (e.g. Posner 2009; Glen 2007). It soon became evident to literary critics that many literary texts could be illuminated by reference to the stories' historical-legal backdrops (e.g. Hamilton 1983; Ward 1995; and several articles in Hanafin, Geary, and Brooker 2004), much as the investigation of judicial records has not only opened up a new source for historical studies but in so doing has also deepened our understanding of the past in its unique way (e.g. Davis 1984). This trend has been labelled '**law in literature**' (Ward 1995, 4; Brooks 1996, 14–15). Besides shedding light on the text's meaning and literary merits, this approach also provides the clue for tracing the history of ideas, especially for periods when thoughts concerning jurisprudence were seldom written down in theoretical treatises, and can only be retrieved from contemporary literary representations.

1.2.2.

For the converse approach, '**literature in law'**, there is little discussion among modern legal scholars, simply because it is perceived that there are very few, if any, literary texts contained in modern lawbooks, no matter which definition of 'literature' is employed. Instead, what actually interests scholars is usually **'law as literature'** (Ward 1995, 15; Brooks 2002, 9 n. 1).[3] Researchers

[3] There are arguments that lawyers should read literature to humanise themselves (Brooks 1996, 15; Baron 1999, 1063–1064), but these are essentially more related to the problems of the law

have gradually come to realise the importance of reading law in terms of literary theories. The ground for such a realisation was laid by the 'Linguistic Turn' in philosophy since the early 20th century, exemplified by the works of Wittgenstein and Heidegger. The Linguistic Turn locates language and linguistic phenomena at the centre of philosophical concerns, and subjects all branches of human culture to linguistic analysis. Law texts, as a product of and through language, can be examined with the apparatus developed for the linguistic analysis of literary texts. Roland Barthes's iconoclastic criticism of the writer-centred perspective and his emphasis on the reader's role in interpreting literary texts (Barthes 2001) have provided a further impetus for legal scholars to reflect on the traditional image of law as imposed by legislation which could only be objectively observed and analysed. And since law and literature are written and read following similar intellectual patterns, facing similar difficulties of interpretation and based similarly on communal experience, they jointly belong to an interpretative culture, rather than to the conventionally held dialectical culture of reasoning and argument (White 1981; Brooks 1996, 16). Hence, the interpretive tools of literary analysis are applicable to law texts to help us either to unambiguously determine the meaning of the law, or to prove the inevitable ambiguity of legal texts, destined for any intellectual creation such as literary texts.

1.2.3.

The attention of scholars in this area, however, has been drawn to the narrower question of **'narrative in law'**. In his seminal paper titled 'Nomos and Narrative' (Cover 1983), Robert Cover creatively reveals the constitutive role of narrative in law. According to Cover, everyone inhabits a normative cosmos, which he terms '*nomos*'. Our activities are given the value of right or wrong, of

school curriculum than to jurisprudence itself.

lawful or unlawful by the *nomos* we live in. Legal institutions and prescriptions, which are mainly dedicated to the representation of the *nomos*, are likewise located and endowed with meaning by the *nomos* (Cover 1983, 4–5). But the normative world is much more than the promulgated or publicly pronounced legal rules. The *nomos* is an 'entire battery of resources for normative thought and action that are immanent in any living community' (Etxabe 2010, 118), a whole set of conscious or subconscious norms that are in turn prescribed by our culture. And the way to establish and legitimise a *nomos* is through narrative. In Cover's words, 'for every constitution there is an epic, for each decalogue a scripture' (Cover 1983, 4). Rules are rules. They cannot determine their own justice or injustice, but every prescription is placed within a narrative that explains its origin and vests it with legitimacy; while 'every narrative, be it historical or imaginary, is insistent in its demand for its prescriptive point, its moral' (Etxabe 2010, 121, 125). Socially constructed like languages, the narratives on the one hand stay generally stable and are committed to by the majority; on the other, they enable the rules to be ever evolving in the long run as the communal values change. Cover raises the examples of the Amish interpretation of the First Amendment to the U.S. Constitution according to their own narrative of the historical religious persecution, in order to defend their freedom of belief, and of the redemptive argument of the Abolitionists that the Constitution should be read in favour of the antislavery movement according to a different version of the stories of the founding fathers (Cover 1983, 26–40). However, the 'narrative' in Cover's notion is not narrative in the strict sense as defined in modern narratology, namely a specific device for organising the linguistic representation of events (see 1.4 below). Cover's 'narrative' may be 'a theophany, a revolution, a migration, a catastrophe' (Cover 1983, 24), which has been remembered and canonised by a community but does not necessarily have an entextualised form to be told. It is more properly an event which is worth

telling and has the potential for narration, and contains as well ‘the community’s actual societal norms, attitudes and aspirations’ (Levine 1998, 471), but not the narrative per se.

Nevertheless, Cover’s conjunction of law and narrative has been highly influential. The idea that narratives convey values to precepts soon found popularity among legal scholars. But in large part Cover’s inclusive ontology has been silently transformed into more delicate and practical approaches. Some researches draw inspiration from Cover’s Amish example and notice the value of narratives told by disadvantaged groups or individuals in fighting against the legal hegemony of the elites or the majority, in the sense that narratives telling their personal experiences grant the disadvantaged a voice which is irreplaceable and otherwise suppressed in formal documents (e.g. official census, verdicts, police records, etc.), and thereby wins them empathy and power (e.g. Harris 1990).

It takes only a small step for academic interest to turn to the actual narratives in the legal arena, where ‘vivid human stories are played out’ (Gewirtz 1996, 2). These include, in a narrower sense, the narratives employed by litigants and lawyers in the courtroom, and by judges in the verdict. In the Common Law systems, especially, such stories sometimes become part of the law binding upon subsequent lawsuits, and it is therefore possible to add them to the category of ‘narrative in law’ besides the epic prologues of constitutions. In a broader sense, however, news reports of cases, cases in law textbooks, and the extra-curial pronouncements of the lawsuit participants are also studied since they affect the law in many ways as well. The focus on legal narratives continues the classical rhetorical tradition of lawyers - how to make speech serve a purpose - but it benefits a great deal from modern Formalism, narratology and performance theory as well. Its aim is pragmatic: how to evaluate ‘the stories’ persuasive impact, their evidentiary value, and their epistemological implications’ (Baron

1999, 1066), and finally how to test the conclusions in legal practice (e.g. Brooks 2006).

1.2.4.

Though individual narratives are discussed in these studies, their context is that of the general, abstract 'law', not laws or lawbooks. Nevertheless, Cover's article on *nomos* and narrative touches upon another source of narratives which are more readily comparable to the Irish legal narratives, namely the Judaic *aggadah*. The complex relationship between *halakhah* and *aggadah* has intrigued Jewish scholars for more than a millennium, but it is after Cover's contribution that the relationship has been intensively revisited in the light of narrative and law (Apt 1994; Levine 1998; Fraade 2011; Wimpfheimer 2011).

It is notoriously difficult to define *aggadah* (Aramaic אַגָּדָה, not to be confused with the etymologically related *Haggadah*, Hebrew הַגָּדָה, a text to be read on the Passover Seder), as it is not a homogeneous body. In a strict sense, it refers only to rabbinic materials in the Talmud, especially within the part of Mishnah, a code of the Jewish oral traditional laws compiled around 220 CE.[4] *Aggadah* is often defined negatively, as the non-*halakhah* component of the rabbinic tradition. The Mishnaic *halakhah* (הֲלָכָה) in turn is heterogeneous in form, ranging from mere rules, prominent Rabbis' judgments to precedents that reflect the traditions and practices of Second Temple Judaism, but sharing the common feature that they are all explicitly expressed 'in line with formal dichotomies, such as "permissible" and "forbidden", "pure" and "impure", "holy" and "profane"' (Simon-Shoshan 2012, 2; *Encyclopaedia Judaica* 2007, 454). The *aggadah*, then, consists of materials that are not manifestly normative but rather reveal the meaning, values and ideas underlying the legal *halakhah* (*Encyclopaedia Judaica* 2007, 454) and indicate their applications to the daily life of Jewish communities

[4] The term *aggadah* is also used to describe the part of *Midrash* which is mainly homiletic exegesis of the narratives of the Hebrew Bible.

(Apt 1994, 945). These can take the form of expansions of non-legal biblical texts, accounts of post-biblical events, rabbis' life stories, ethical maxims, etc. (Simon-Shoshan 2012, 2–3).

Aggadah and *halakhah* correspond quite closely to Cover's division of narratives and precepts in the world of *nomos*. But as we have seen, it is incorrect to equate Cover's 'narrative' and thus *aggadah* to the concept of narrative as a device of discourse. The variegated forms of *aggadah* and *halakhah* remind us that the quality of being a narrative, the *narrativity*, varies in degree from text to text: in a textual tradition which primarily aims to describe a normative world but interlaces stories with precepts, sayings with judgments, the clear distinction between narrative and non-narrative that is afforded by modern literature and lawbooks is lost (see 1.4).

1.2.5.

Scholars in the field of Irish history and culture have also made distinct contributions to the study of the relationship between law and literature. Editing and publishing texts have always been central concerns in Celtic Studies, and more than a century of accumulation has left us with many editions of narratives found in law texts published as pieces of literature (among the earliest are Meyer (1904a) and Best (1911)). These narratives are usually taken out of their immediate contexts and treated independently for their literary merits or evidential value, and are only occasionally accompanied by legal analysis. It is only recently that studies have begun to show an awareness of the legal contexts and significances of these narratives (e.g. Corthals 2004; L. Breatnach 2009; McLeod 2011a). Previous publications of individual narratives will be cited accordingly in Chapter 2 under the relevant entries.

The tradition of discovery and accumulation has lately also been enriched by approaches from interdisciplinary perspectives, such as the emergent 'law as

literature'. Robin Chapman Stacey's *Dark Speech* (2007), which employs performance theory and other literary criticism devices to scrutinise the law texts, represents a significant advance in thinking of early Irish law texts in terms of literary analysis. Paul Russell's studies on the making and transmitting of legal glosses have revealed that the organic growth of law tracts is more similar to the development of literary traditions than to the promulgation of law codes (Russell 1999; Russell 2008a). Structural, metaphorical and rhetorical concerns have been revealed as being crucial in composing law tracts (Baumgarten 1985; Patterson 1985; Stacey 2002; Kelly 2010; Corthals 2010), and the didactic and poetical value of some legal verses has been thoroughly investigated (Binchy 1971a; Ní Dhonnchadha 1989).

Two excellent general surveys on 'literature in law' should be mentioned. Stacey (2005) points out the intimate connection between law and literature in medieval Ireland and Wales, and the mutually corroborating value that legal and literary texts hold for each other. She then examines the usage of fictional characters and pseudo-historical backdrops in early Irish law, and concludes that the tales, as she indiscriminately calls all the external elements invoked by the law texts, very often act as origin legends or more appropriately 'leading cases'. Stacey also considers the reason for resorting to fictional characters rather than real-life judges as being the same as poetical 'masking' in literature: to construct judicial authority by assuming the voice of a recognised, authoritative tradition.[5]

Liam Breatnach (2010) takes a similar approach to looking at the literary elements in early Irish law texts. The most prominent type, as shown by Breatnach, is the prologue written within the framework of medieval *grammatica*. Another illustration of the relationship of law with literature is the inclusion of narrative tales or sagas in legal texts in order to illustrate legal principles, especially as the 'first' occurrences of the relevant rules. Breatnach also notices

[5] See also Tymoczko (1996); Stacey (2007, 157–171).

the sharing of figures between these tales and saga/non-legal literature at large on the one hand, and the special attention paid to the *filid* in law texts on the other. He then goes on to discuss how knowledge of early Irish law can improve the interpretation of literature, and the common intellectual background of lawyers and other literati in medieval Ireland.

Both studies understand the mixture of literary and 'pure' legal elements in medieval Irish lawbooks as a corollary of the overarching educational background and intellectual interests of the early Irish jurists, and offer preliminary typological and functional descriptions of 'literature in law'. They are all the more valuable for their extensive citations and translations of passages from law tracts, many of which are hitherto unpublished.

However, due to their nature as introductory overviews, neither of these works presents a systematic study of all such literary pieces; no definition, moreover, of 'narrative' or 'tale', or the vaguer 'saga', is given in either article so as to identify the objects for further study. Attribution of a legal principle to a legendary author, for instance, may not qualify as a 'narrative', let alone a 'saga'. As we have seen above, mere attribution to an author or announcer occurs in many other legal traditions around the globe: it is the profound integration of highly developed narratives within the legal writing that distinguishes early Irish lawbooks. We need to see how this integration was possible and what purpose it aimed to achieve.

In a recent publication (Qiu 2013a) I have tried to address the above problems by defining the object of study more closely as 'narratives of incidents reported to happen in the past', and listing the page and line numbers of such narratives in an appendix. That article also aims to offer, following the lead of Stacey and Breatnach, a typological categorisation and description of materials. However, both the definition and the description will be developed much further in this thesis.

Turning to the ground of ‘law in literature’, there is no lack of scholarly treatments which utilise knowledge of early Irish law to advance our understanding of motives and plots in literature. Outstanding studies of this kind have been done by Thomas Charles-Edwards on *Fingal Rónáin* and *Scéla Mucce Meic Dá Thó* (Charles-Edwards 1978; Charles-Edwards 2005a); by Tomás Ó Cathasaigh on one of the best known medieval Irish stories, *Táin Bó Cúailgne* (Ó Cathasaigh 2005a); and by Christophe Archan on the *Dindṡenchas* (Archan 2012a) among others. Liam Breatnach has compared the laws related to dogs with some *Táin Bó Cúailgne* episodes as well (L. Breatnach 1996a, 18–20; L. Breatnach 2010, 234–235). Mention should also be made of one of the CSANA Yearbooks, *Law, Literature and Society* (J. Eska 2008), which contains several articles dedicated to the legal aspect of literary texts.

It is, however, sometimes hard to determine whether a text originally stemmed from a legal context, so that a legal reading of a story might be either ‘law in literature’ if it is regarded as part of a literary cycle (cf. Ó Coileáin 1974), or ‘literature in law’ if it is proven that it comes from a law tract, as noticed by Kaarina Hollo in her study of the figure Sencha mac Ailello who is active both in legally significant stories and in literary narratives found in law texts (Hollo 2007). This boundary-crossing ambivalence of a narrative belonging at the same time to a literary cycle and a law text, I believe, is exactly where the charm lies: not only are stories kept in the laws and legal parlance is employed in stories, but the law always includes literary elements and the literature never loses a legal dimension. A narrative can be incorporated into a law tract or into a larger saga; it can be referred to in the law text or it can refer to a certain legal institution. Narrative is only a vehicle, a method of discourse which requires specific contents. It is the narrative’s free traffic between law and literature which makes early Irish law texts distinctive.

1.3. Narratives in early Irish law

1.3.1.

Early Irish legal writing perfectly exemplifies Cover's concept of the *nomos* which is structured and vindicated by the master narrative. Major lawbooks or law tracts such as the *Senchas Már* or *Bretha Étgid* are introduced by narratives which not only tell the reader of the place, time, participants and reason of their compositions, but also endow the compilation with legitimacy, whether from the religious authority of St. Patrick or from the traditional wisdom of Cormac mac Airt, as well as setting the tenor and style for the whole work. For instance, a predilection for the northern part of Ireland and for the *paruchia* of Armagh is indicated in the Pseudo-historical Prologue to the SM, and is further carried through in its component tracts (L. Breatnach 2011), where the legend of St. Patrick's legislation for the Irish is mentioned over and again, and a prosaic textual style dominates most of the collection's constituent tracts. *Bretha Étgid*, on the other hand, is in one version described as the oral teaching of the pre-Christian sage king Cormac to his son Coirpre, and therefore much of the tract was written in a terse, axiomatic style peppered with 2nd person jussive verbal forms not dissimilar to the construction found in the wisdom literature, such as *Tecosca Cormaic*, which purportedly records dialogues between the same protagonists as in the *Bretha Étgid* narrative (Meyer 1909).

The case with another major compilation, *Bretha Nemed*, is somewhat different, but it conforms with Cover's model as well. From what we know, *Bretha Nemed* does not contain a master narrative to introduce the tracts and to provide the background of its compilation. However, the normative world in which *Bretha Nemed* is situated is identifiable from its prevalent attribution of authorship to a group of legendary jurists: Morann, Athairne, Neire, etc., plus the numerous narratives on the activities of these prominent figures. Most of these

jurists were purportedly active at about the same era as, or one or two generations later than, the time when the main Ulster Cycle stories are purported to have taken place; and indeed, Conchobar mac Nessa himself is found resolving legal disputes in several places (see 4.5.2). The *nomos* of *Bretha Nemed*, therefore, is one whose values and legitimacy are constructed and endorsed by the wisdom and fame of the legendary jurists.

However, the actual production of these lawbooks and tracts evidently did not take place in the pre-historical eras as claimed in their prologues and attributions. No linguistic evidence, for instance, supports the theory that *Senchas Már* was put together at St. Patrick's time in the fifth century of the common era; and both external and internal evidence confirms that *Bretha Nemed* was actually compiled by three kinsmen in the second quarter of the eighth century (L. Breatnach 1984). In fact, the consensus nowadays is that the majority of early Irish law tracts came into being as the products of a mass compilation activity in the 7th and 8th centuries (Kelly 1988, 232); and though almost certainly some cite from older texts or oral traditions, no legal text at present can be safely dated to before the mid-6th century, the watershed between Primitive Irish and Old Irish proper (McCone 1996, 127).

Despite that these attributions and narratives are mostly legendary or even fictitious, the *nomos* of medieval Irish society was still established and legitimised by them. The legendary ancient protagonists endowed their environment with value and meaning. People in the actual society projected their retrospections and appeals, whether political, religious or historical, onto the protagonists of the narratives (cf. Herbert 1989), while the narratives provided the laws with the basic ideology and the necessary authority to apply to contemporary society (cf. Toner 2005). The situation is not unlike the combination of past and present in the Amish narrative, which justifies their freedom and warns against any intrusion into their life style by tracing back to

the founding of their community, as analysed by Cover; but the Irish case is much more complicated. Not only are narratives used in Irish law tracts for more purposes than merely introducing the origin of the tracts, but the ways in which Irish legal narratives acquired their authority are multifarious, as will be revealed in the course of this thesis. Also, though the prestige endowed on St. Patrick and the representation of legal disputes between the Ulaid and the Féni (see 4.5.5) can be regarded as reflecting the political situation of the 7th-century Midlands, for other narratives a historical interpretation appears to be much more difficult. Not every Irish legal narrative, I will argue, can be explained in light of the historical circumstances at the time when it was produced, and not every one concerns the origin of the prescriptions, so the theory of *nomos* meets its limitation in the present case. Moreover, the evident fictitiousness and profound connection with early Irish literature and synthetic historiography may best be accounted for from another angle. Again, this aspect of the subject will find more elaboration in a later chapter.

1.3.2.

As in other societies, medieval Irish laws are defined, interpreted, visualised and justified by narratives. And as is the case elsewhere, when the values of a society change, so will the interpretations of the extant narratives change. But the Irish tradition is quite unique in other aspects. Firstly, as pointed out above, its use of narratives is far more extensive than that of neighbouring cultures, and the narratives endow the legal precepts with meanings and values in more diverse manners (see Chapters 3 and 5) than does the widely used master frame narrative as found in the Sumerian law or in the Kentish law of Wihtred. Secondly, in a manner comparable to the Jewish tradition of *aggadah* and *halakhah*, early Irish legal writings employ various forms of discourse, ranging from apodictic commandments which have the purest ‘law’ look, sequence of situations written

in subjunctive mood, pronouncements by legendary jurists in their respective settings, reference to incidents, to highly literary stories which are undeniably narratives in the full sense. Most other legal traditions, by contrast, use a very limited range of discourse techniques, usually only apodictic and casuistic provisions. Since there is such a wide spectrum of discourses in the Irish lawbooks, if we are to accurately define and analyse the unique element of narratives in early Irish legal writings, we have to return to a literary approach to the law texts and resort to modern narratology.

1.4. ‘Narrative’ in light of modern narratology

1.4.1. The Labov-Waletzky definition

One of the most influential definitions of narrative is formulated by William Labov and Joshua Waletzky in 1967 as a by-product of their sociolinguistic studies of the African American vernacular English spoken in South Harlem, New York (Labov and Waletzky 1967; Labov 1997, 395). They define narrative as ‘any sequence of clauses which contains at least one temporal juncture’, and the basic unit of narrative is ‘the narrative clause, in terms of temporal juncture and displacement sets. It is characteristic of a narrative clause that it cannot be displaced across a temporal juncture without a change in the temporal sequence of the original semantic interpretation’ (Labov and Waletzky 1967, 27–28). A narrative, furthermore, should have both referential and evaluative functions (ibid., 13); and is therefore a ‘choice of a specific linguistic technique to report past events’ (Labov 1997, 395). A complete narrative can be as short as two clauses, a ‘minimal narrative’ such as ‘the last man on Earth sat alone in a room. There was a knock on the door.’ (*Knock*, Fredric Brown)

Labov and Waletzky’s definition, however, focused mainly on the semiotic

features of narrative and bypassed the semantic aspects. This is understandable, since their corpus of materials consists of oral reports of personal experiences in interviews, which are actually quite limited in form and content. The reports, for instance, inevitably concentrate on events really happening to the narrators themselves and are told only from their own viewpoints (Labov 1997, 409). Turning to the literary world of written texts, where the choices of contents and viewpoints are virtually infinite, one feels less sure if any text that contains a temporal conjunction is a narrative, or if the evaluative element is always present, even with Labov's later added limitation that narrative clauses can only use the realis mood (ibid., 400). As in many subjects in the humanities, the touchstone against which a definition can be tested is often empirical falsification. In the present case, this purpose may be served by such a sentence as the following:

'Old people died while babies were born.'

This is in realis mood (indicative, preterite tense); it has the temporal conjunction (*while*), but it is hardly a narrative. It is not a sequence of events but a universal fact, though formally it seems to describe what happened in the past.

1.4.2. The Simon-Shoshan definition

An alternative definition offered by Moshe Simon-Shoshan in his work on the narratives in the Mishnah (Simon-Shoshan 2012) is in this connection highly relevant and suggestive. Simon-Shoshan faces the same problem of the gap between the Labov-Waletzky definition and the body of *aggadah* he is looking into. He considers narrativity as 'a collection of textual attributes' which allow 'all text to exist along a continuum of greater or lesser narrativity depending on the number and prominence of the narrative attributes they contain' (ibid., 16). The two kinds of such textual attributes are according to him 'dynamism' and 'specificity', and they are both observed from the semantic angle. 'Dynamism' means that a narrative should represent more than one happening which 'are

inherently interrelated in such a way as to portray some change in the world represented by the text' (ibid., 18). The 'happening' or 'event' here is roughly the semantic equivalent of Labov's 'sequential clause' (Labov 1997, 398), but the 'inherent interrelationship' must be understood as logical or causal coherence. We can consider the counterexample of news briefings such as 'this morning, a group protested in front of the White House. Later in the afternoon, a flood attacked Southern India', which has events connected by a temporal junction but is clearly not a narrative. Specificity distinguishes statements like 'Old people died while babies were born' from **stories**, or typical narratives. It requires each event depicted in the text to be occurring at a specific time spot, and preferably, to get the most narrativity, occurring only once (Simon-Shoshan 2012, 20).

Still, statements like 'Old people died while babies were born' do possess a certain degree of narrativity, but not as much as the more specific 'that old man died on Saturday, and his grandson was born a week later'.[6] Formally **single-event descriptions**, however, can often be interpreted as condensed or implied narratives, especially if readers are able to implement the scenario from personal experiences or acquired knowledge. We can deduce a whole series of interlocking happenings from statements which seemingly lack dynamism like 'the Allies finally won the Second World War against the Axis in 1945'. Less narrativity is found in other types which we will also encounter in the early Irish law texts. **Dialogues** are supposedly embedded in a time frame and structured as a sequence, so they can be narratives. But pure exchange of words (imagine the question and answer on an exam paper) is not readily linkable to specific time spots; moreover, if a dialogue exerts no actual influence on the material world, it is hardly a narrative. **Pronouncements** from a single person, for the same reason, may or may not be a narrative. Along the grade towards lower narrativity we have **casuistic statements** in the irrealis moods, which, though often presenting

[6] Simon-Shoshan calls the former narratives, and the latter stories. Yet in my opinion, the former type does not adequately cover our common recognition of a narrative.

dynamism, invariably lack the crucial specificity. Perhaps the least narrativity is found in **apodictic statements** like 'No Trespassing'. The last two types, as we have seen, are the most prevalent in modern lawbooks. Simon-Shoshan produced a clear diagram of the grades of narrativity found in different types of Mishnah texts (2012, 26-27). What I wish to add is that the measurement of narrativity is only of a self-contained textual unit; different levels of narrativity can certainly exist between parts of the same text and between part of the text and the text as a whole. Consider the following example:

'"Go away!" she yelled.

"It is very unfortunate," he said, but then unwillingly he picked up his hat and left the house.'

The statements by each protagonist, the dialogue including both statements, and the whole text obviously possess different extents of narrativity.

1.4.3. Application of the Simon-Shoshan model to Irish legal texts

This study is not about the general relationship between early Irish law and literature. It focuses on the special and extensive practice in early Irish legal writing of using narratives which frequently derive from or refer to early Irish literature. The preceding discussion is therefore particularly relevant to this topic. It has to be decided, first of all, which texts in the early Irish legal corpus qualify as narratives that are appropriate for inclusion in this study.

All of the textual types emboldened in the previous section and graded by their relative narrativity are represented in the early Irish law texts. We have full-fledged stories containing multiple interlocking events reported to have happened once in the past. Examples of this type are numerous. Besides [1], [13] and [41] which have already been cited above in 1.1, some stories have been published separately and become well-known for their high literary merits as narratives. The saga of Fergus mac Léti ([21]), for instance, is a sophisticated and dramatic story which, though permeated with legal points, deserves to be called one of the

finest piece of Old Irish literature (Thurneysen 1921, 531–549). The pseudo-historical legend of St. Patrick converting the Irishmen and reforming their pre-Christian laws to conform to the new faith ([17]) in its various versions represents a more dynamic literary tradition which was constantly growing and changing: the order of presenting the events and sometimes even the description of the incidents themselves vary from text to text (Carey 1994a), but the basic level of how these discourses are organised determines that it is still a narrative. There are long narratives stretching to a few vellum pages such as [17] and [21], and also medium-sized ones of ten or twenty lines (e.g. [66] and [90]), and short stories of only two or three lines which however satisfy the criteria listed above of both dynamism and specificity, such as [41] and [85]. [85], for example, reports two incidents: once Fer Muman went into Connacht, and he heard there a conversation between two locals. This qualifies as a minimal story.

We also find single-event descriptions which possess specificity, and multiple incidents can be recovered from the information they provide with reference to, as it is often the case, literary tradition or common sense. Early Irish legal writing is essentially part of an exegetical tradition (see 6.4.3), and it is the nature of exegetical texts to be referential rather than exhaustive. As a result, there is a considerable body of recoverable single-event descriptions throughout the early Irish lawbooks. A few examples will suffice. Some single-event descriptions find elaborations in other places in the legal corpus, and thus it is easy to regard them as abbreviated narratives. Various law tracts from the *Senchas Már* compilation state that St. Patrick helped settle regulations for the Irish people at a convention (e.g. [10], [12], [46]), all doubtless referring to the story as more fully told in [17]). [16] mentions that ‘Cú Chulainn slew his son unintentionally’, which, though it is specific and can of course only happen once, is not a full narrative until the cause, course and consequence are borne out by [73] and [101]; and this story was already attested in Old Irish literature (Ó hUiginn 1996). The same can

be said about [30] reporting that Néide made a satire against Caíar. [79] adds the preceding event that the wife of Caíar loved Néide and therefore induced him to make the satire, and Néide invoked the satirising condition by asking Caíar for a knife that Caíar was forbidden to give away. [79] is a full narrative story and it renders the hidden content of [30] clear.

Dialogues and pronouncements by themselves seldom qualify as narratives. Early Irish law frequently employs the so-called 'textbook style' and '*fénechas*' (Charles-Edwards 1980). Textbook style reflects the deep influence of Latin grammatical learning on native Irish scholars, which often raises the topic of a section or a tract with the classroom question-and-answer discourse markers (Baumgarten 1992), e.g. *Cid ara n-eperr Críth Gablach? Ní anse.* 'For what reason is C. G.. so called? Not difficult' (Binchy 1941, 1); *Cescc, cis lir baird do-cuisin? Ní ansa, a sé décc.* 'A question, how many types of bard are there? Not difficult, sixteen' (L. Breatnach 1987, 50). These are dialogues, but they possess neither dynamism nor specificity, and thus are excluded from the scope of this study. Some dialogues have more specificity as they name the interlocutors and sometimes even the place: e.g. in *CIH* 573.17-29, the conversation was said to take place between Bríathrach and Cormac in Tara, but no concrete event occurred besides their exchange of opinions; the same can be said about the main body of *Gúbretha Caratniad* which is presented in the form of (theoretical) exchange of opnions between Caratnia and the king. These therefore are not narrative. *Fénechas* in Charles-Edwards's usage encompasses early or non-syllabic metres, condensed and allusive passages more commonly known as *retoiric* or *roscada*, and instructions with jussive subjunctive second person verb forms (Charles-Edwards 1980, 146–147; L. Breatnach 1991). Pronouncements and instructions are quite often written in this *fénechas* style, and take up a significant proportion of the *Bretha Nemed* tracts, e.g. *CIH* 2221.12: *Mo Nere Nūallgnaid, dīamba brithum, nīs bera gan fhis cin forus cin fásach.* 'My Nere

Accustomed-to-proclaiming, if you shall be a judge, you shall not deliver them [i.e. judgments] without knowledge, without foundation, without learned texts' (cf. Corthals 2004, 114). There is very limited narrativity in such pronouncements.

However, there are always exceptions. Dialogues and pronouncements can contain narratives. [106], for instance, though it is formulated in the question-and-answer style, contains a minimal narrative: Fergus the Red-Side fell in the battle of the cow of Cooley, and therefore was compensated with body-fine. [57] records a disguised satire, which tells of a tiny battle against a periwinkle by one whose seaside hut was infested. Moreover, once the dialogues and pronouncements are given specific, dynamic contexts, they acquire more narrativity and may become part of a narrative. In the context of early Irish law, the situation is usually a judgment consequent upon an incident. For example in [69], a prose commentary lays out the story which led to the judgment in the canonical text. Also consider [109], which presents a dialogue over the legal issue of recognising a child born out of wedlock. A prose account is prefixed to another copy of this dialogue in *Scéla Mośauluim* (O Daly 1975, 76-77), relating that the enquiry arose from a case brought from Leth Cuinn into Munster under Lugaid Loígde's jurisdiction (see 4.3.4 for further discussion).

A special case should be made of the sequence of stories (*CIH* 2112.29-2118.2) edited with translation by Myles Dillon as 'Stories from the Law-Tracts' (1932). These are all written in prose so as to provide a fuller background to some canonical passages in the two *Bretha Nemed* tracts, which appear mostly as dialogues or pronouncements. The jurist responsible for the sequence of stories had obviously collected them in order to aid studying the tracts (Qiu 2013a, 119), though the possibility remains that some of these stories are later creations which have no bearing on the original intention of the canonical text. Surely many other *Bretha Nemed* passages of which no complementary account survives also have

stories behind them; but the lack of narrativity in these passages *per se* stops them from being the object of this study.

Casuistic statements abound in early Irish law. The typical formula is ‘if X, then Y’, e.g. *CIH* 267.21: *más asa láim docúaid, is amail cétsceinm* ‘if it is out of his hand that it [i.e. the anvil] comes, it is [regarded] as the first springing’. Apodictic clauses are fewer but by no means uncommon, e.g. *CIH* 1361.27: *nī bī séna īar naititiu* ‘let there not be denial after recognition of right’ and also in the instructions (e.g. *CIH* 2221.12 as cited above: ‘you shall not deliver [judgments] without knowledge’, etc.). These naturally have the least narrativity of all.

Thus far I have analysed the major types of statement found in the early Irish legal corpus. The ‘narratives’ chosen for this study include, consequently, 1) dynamic and specific stories, 2) single-event descriptions from which stories are retrievable, and 3) dialogues and pronouncements which contain stories or are complemented by enough details to form a story. In Chapter 2, an index of narratives collected from the legal corpus according to these guidelines will be presented.

1.5. The nature and layout of early Irish law texts

Here I wish to briefly survey the content and physical features of the materials, before plunging into the problem of their composition and development in a future chapter. This section, therefore, will elucidate some crucial basic concepts in the scholarship of early Irish legal texts, in light of the main concerns of this thesis. Several thorough and incisive synopses of this topic have already been written by the leading scholars of early Irish law (Kelly 1988, chap. 10–11; Charles-Edwards 1980; Charles-Edwards 1999; Charles-Edwards 2005b; L. Breatnach 2005a, chap. 7–8).

1.5.1.

Nowadays we talk about ‘early Irish law’ as a legal system constituted abstractly by rules governing all aspects of social life and concretely by individual law texts. The rules do agree more or less across the texts, sharing basic principles, perspectives and terminology. And evidence suggests that, despite the fragmentary and fluctuating political situation in medieval Ireland, the laws applied to, or were at least intended to apply to, the whole island indiscriminately (Binchy 1955, 5; L. Breatnach 2011, 37–39).[7] Thus it is reasonable to speak of early Irish law as a whole. But it will be precarious to think of the Irish system as comparable to modern legal systems, especially some Civil Law ones, in which the departments of law are embodied by a series of well-demarcated law codes that are meant to be in harmony and not to overlap with each other.

We will still observe the distinction between the abstract law and the concrete lawbooks in the discussion here. On the abstract plane, early Irish law was not made by legislature or the king’s chancery, but was recorded by the class of jurists who were of mixed legal, poetic and ecclesiastic backgrounds (Kelly 1988, 21–22) (see further 4.5.3). According to Donnchadh Ó Corráin, these jurists formed a ‘mandarin class’ that transcended political borders (Ó Corráin 1978, 19). But this view may oversimplify the complex relationship between ecclesiastical and secular learning, between canon and native lawyers, and between clerics and laymen (Charles-Edwards 1998; Charles-Edwards 1999a, 39–42). Promulgated laws did exist, usually in the form of *rechtgai* and *cánai* issued or guaranteed by kings, bishops and other prominent persons, and perhaps needing to be renewed or reissued after a certain period (O’Loughlin 2001; Grigg 2005; L. Breatnach

[7] In spite of this, the careful distinction between *urrad*, a local who enjoys an independent legal persona and certain rights, and *deorad*, one who does not have a local status, indicates that jurisdiction was perhaps divided on the level of *túath*. Rules regarding the making of treaties and recognition of rights of persons from another *túath* (Stacey 1994, chap. 3) further confirm the existence of independent jurisdictions in medieval Ireland.

2010, 216; McLeod 2011b). These are in origin and in form quite distinct from the majority of the law texts. We can consider the main body of early Irish law to be a customary law transmitted and interpreted by a learned class of professionals, with regard to the fact that though the law is not the product of a single authority but is distilled from long-termed social practices, sometimes even since the Common Insular Celtic eras (Binchy 1971b; Binchy 1973, 27), the legal professionals, in their guardianship of the law, must have helped define, refine or even invent the law with the passing of time. Early Irish law is thus neither pure *Volksrecht* nor *Juristenrecht* (Beseler 1843).

The earliest records of Irish law were written by jurists, mostly in the form of law tracts, each focusing on certain subject matters. But there is much overlapping between the subjects covered by individual tracts, and they do not always agree with each other. It appears that the most fundamental problems receive the broadest coverage. The honour price of various social ranks, for instance, are mentioned in many tracts. More specialised issues, such as trespass by dogs, are brought up in a limited number of tracts. Disagreements may reflect regional differences, developments over time, or merely diverge opinions of individual jurists.

The law tracts are both descriptive as reports of contemporary accepted social practices; and prescriptive, as legally distilled norms. Though the law tracts betray features of clerical involvement in their composition and often regulate the relationship between the church, its clients (*manaig*) and the laity at large (L. Breatnach 1984; Ó Corráin 1984; L. Breatnach 1986a), they are not religious in the sense of governing the moral and spiritual aspects of people's life or the organisation of the ecclesiastical orders, and thus are distinct from the penitentials (Bieler 1963); and despite some mutual borrowing which occurred between the law tracts and the canon law (Wasserschleben 1874), the law tracts are distinct from the latter in that they were not promulgated by religious

communities or synods. The Irish law tracts are also radically different from the early Germanic laws, including Anglo-Saxon laws, which deal almost exclusively with criminal offences and limit themselves to listing the various punishments that arise from the offences. In contrast, early Irish law covers not only criminal offences but what would in modern terminology be called civil law as well. Among the existing law tracts, we find discussions of the binding of clientship, the dissolving of failed contracts, liability of bee-keeping, marriage arrangements, communal sharing of land, and the allocation of hours for using a mill, to list but a few, besides criminal issues such as homicide, theft or rape that are the sole concern of most other early legal systems. Early Irish law, moreover, actively constructs social relationships rather than passively prescribing the remedy when the relationship or peace is disrupted. It details numerous procedures for people to follow in order to create and maintain a legal relationship, be it contractual, matrimonial, economic, or judicial (cf. Kelly 1986; Stacey 1994).

Though talking about a starting date for the early Irish legal institution is impractical, it is possible to date the individual tracts according to linguistic and historical landmarks. Thanks to the cumulative efforts of the scholars, it has, as was mentioned above, become clear that the existing law tracts can mostly be dated to the golden age of legal compilation in Ireland, namely the 7th and the 8th centuries (Kelly 1988, 232; O'Neill 2011; for exceptions see Kelly 1988, 250): they thus constitute a substantial corpus of the earliest vernacular writings in Ireland. Their sources may have included oral legal tradition, but various textual traditions were also incorporated into the tracts (L. Breatnach 1984; Ó Corráin, L. Breatnach, and Breen 1984). Consensus is still pending on the exact reason why the jurists of that period came to commit their legal tradition to letters. But the repercussions of this rush of textualisation were lasting and profound: it seems that all aspects of the law had then been given textual expression, so that no

original major law tract was written after the 9th century; and whatever forms the law might have had in its pre-life before being written down, it was thereafter fixed and more or less faithfully transmitted for the next millennium.

1.5.2.

The law is given material expression in the lawbooks. The existing manuscripts which carry law texts were mainly written in the late Middle Ages, the earliest being the 12th century Rawlinson B 502 (Bodleian Library, Oxford) which, however, is predominantly non-legal in content and includes only two law tracts. The majority of manuscripts which contain a substantial portion of legal materials were written between the 14th and the 17th century by members of learned families (Kelly 1988, 225; L. Breatnach 2005a, 3–10), so there must have been lost written records of the law in the chain of transmission between the first compilation of law tracts and the surviving late medieval manuscripts. The majority of these extant legal manuscripts were collected by the great antiquarian Edward Lhuyd during his circuit in Ireland in 1699-1700 (Campbell 1960; W. O'Sullivan 1999) and later presented to Trinity College Dublin in 1786 by Sir John Sebright (A. O'Sullivan and W. O'Sullivan 1962, 57), but a number of them were bound with folios (or even paper pages) from diverse origins by Lhuyd himself or subsequently by the curators (ibid., 61), in which case it will be futile to seek the original context of such law texts.

Law tracts compiled in the Old Irish period have been subject to centuries of copying, glossing, accretion and redaction. The outcomes are, as presented in the legal manuscripts, annotated law texts. The term commonly used for the portion of the original law tracts compiled in the 7th - 8th century is **canonical texts**;[8] words or sentences of the canonical texts are annotated by **glosses**; and continuous sections, or the subject matter as a whole, are discussed

[8] The boldfaced terms will be adhered to in the course of this dissertation for referring to these types of text.

independently of the immediate wording of the canonical text in **commentaries**. The canonical texts are often written in script larger than the rest, but this is not necessarily the case. Canonical law tracts were still circulated independently, and throughout the Middle Irish and Early Modern Irish periods, fresh glosses and commentaries kept being furnished, so that a typical lawbook page has a continuous canonical text, often modernised in spelling, interlinear or marginal glosses, and the commentary at the bottom (cf. Kelly 1988, 228-229). Glosses can be interlinear, marginal, or following the relevant passage of canonical texts. The earliest glosses seem to have been made not long after the compilation of the canonical texts themselves, hence in the Old Irish period (L. Breatnach 2005a, chap. 7). These Old Irish glosses are interspersed with short extracts from the canonical texts, without explicit marking of the latter, indicating that originally they were used as ancillary documents side by side with full canonical texts (Russell 1999, 88–89; L. Breatnach 2005a, 350). Commentaries are not tied to specific words and can remark on various topics at the same time; therefore they are often collected, regardless of their provenance, to form a body of explications to early Irish law. A well-organised collection of extracts from canonical tracts accompanied by commentaries, grouped thematically, forms a **digest** (L. Breatnach 2005a, chap. 6). For a fuller description of the types of combination of textual layers see Kelly (2002) and L. Breatnach (2005a, chap. 3).

Lawbooks are products of the learned class made for their private studies, not public records (Charles-Edwards 1999a, 9). The extant lawbooks were mostly written by scribes from the late medieval learned legal, such as the MacEgans who quickly emerged on the stage in the 14th century (Simms 1990), coinciding with the new mass production of legal manuscripts. The pervasive style of classroom dialogue in the law tracts and some later compositions designed evidently to be instruction materials (Ní Dhonnchadha 1989) all bespeak the primary function of the lawbooks as reference manuals. The lawbooks often go

into minute details in their discussion of circumstances where legal problems frequently, or possibly, arise (Sharpe 1986, 180), so as to prepare the lawyers for any case as well as to exercise their minds. The unrealistic erudite distinctions (Kelly 1988, 252) and ultra-creative etymological analysis (Binchy 1943, 19–20) frequent in glosses and commentaries no doubt further diminish the possibility that these lawbooks were intended for other than academic purposes. None of the lawbooks presents a standard, authoritative copy such as is found for the Law of Hammurabi or the *Magna Carta*. Each of them instead fossilises a moment in the fluid scholastic tradition which preserved and changed the law, and represents a textual unity in grammatical and legal discourse (Irvine 1994, 390–391).

1.5.3.

The other side of the coin of this flourishing scholarly tradition is the paucity of documents reporting real-life cases (*Urkunden*) (Binchy 1975a, 27). Although there was a considerable loss of early manuscripts caused by the colonialist policy of the English invaders, especially in the 16th century (Ó Corráin 2011), or even through deliberate neglect and destruction by the Gaelic lawyers themselves (Patterson 1986; Patterson 1989, 47), the lack of curial and transactional records should primarily be attributed to the fact that in Gaelic Ireland, these records were neither deemed necessary nor widely produced. The reliance on an intensive and complicated system of using witnesses, sureties and oral testimony in legal business, as evinced by early Irish law texts, reflects the rarity of written records in the absence of a centralised government which would have a specialised function and interest in keeping public documents. In fact, it seems that ‘the use of documentary evidence was indeed limited in Irish customary legal procedures and broadly restricted to contracts and transactions relating to church property in the pre-Viking period’ (Flanagan 2005, 12).

There is indeed a body of charters, mostly in Latin, which record the grants of

tithes, land and other ecclesiastical benefices to churches and monasteries. Only five early charters of a non-continental type, which Wendy Davies termed 'Celtic' charter tradition, survive from pre-Norman Ireland, plus some fragmentary records of grants (Mac Niocaill 1961) and purchases or quasi-charter materials in the *additamenta* to saints' lives (W. Davies 1982, 259–260). After Norman invasion, more Latin charters issued by Irish kings in the manner of contemporary European charters emerged, but these are far less in number than their European (and British) counterparts (Flanagan 2005). These charters, moreover, cover only a limited portion of the legal business in early Ireland: they document property as reparation or bestowal between lords and churches in accordance with canon law (Herbert 2005, 113).

Secular Irish law readily recognises the importance of written evidence in multiple forms. 'Ogam upon stones (*ogom i n-ailchibh*)' proves the possession of land by one's ancestors (Thurneysen 1928a, 19; Charles-Edwards 1993, 262); 'godly old writing' (*senscríbend deóda*) ranks among the proofs that deny any dissolution of contracts (Thurneysen 1928a, 21);[9] and 'the poem and the letter and the *ogam* in the pillar-stone' are sufficient as evidence in matters concerning boundary, purchase and ownership of territory (Carey 1992, 11). The charters, originating from continental models, served the same function for ecclesiastical property. However, a pluralist toleration of a range of modes of property documentation prevailed up to the end of the twelfth century (Herbert 2005, 115), and the pre-Norman Irish charters are evidentiary rather than dispositive, recording events that had already happened with third person verbal forms. The judicial act of transaction was completed not with the writing of the charter but before it, and the charter was only one of the means to prove the existence and content of the bestowal or transaction (Flanagan 1998, 120). Moreover, for the

[9] These include, besides the Scripture, ecclesiastical documents and probably hagiograpical accounts. For an example of using saint's lives in claiming property rights, see Doherty (1982, 309).

majority of illiterate laymen, formulaic public ceremony and the enforcement by surety no doubt played a more important role in binding and securing contracts (McLeod 1992), and this must have affected the church's reliance on charters as evidence as well (Broun 1994, 16–17). In general, as descriptions of established legal facts, the charters provide us with little information of the dynamic process of how disputes arose and then were settled.

Fortunately there are several documents recording real-life legal disputes that have survived, and these may give us a glimpse of how early Irish law operated on an everyday basis. The earliest of these are perhaps an entry in the Book of Durrow datable to 1103-1116 (Best 1926; Sharpe 1986, 170–171), and item IV of the *notitiae* written on the margins of the Book of Kells edited by Gearóid mac Niocaill, datable to 1106-1153 (Mac Niocaill 1961, 19–20; Herbert 1999). Later records of cases and 'pleadings' prepared for real cases or training purposes are also found with more detailed legal arguments (Ó Cuiv 1960; Binchy 1973, 67–70; Ó Macháin 2004; L. Breatnach 2005a, 336–337). These documents were mostly produced during the 15th and 16th centuries, when native Gaelic customs were falling into desuetude and English Common Law was penetrating into every corner of the society; moreover, the case records deal almost exclusively with land disputes rather than 'criminal' and other issues (Mac Niocaill 1967), with the precious exception of a single leaf in TCD MS 1308, *olim* H 2.12, no. 8iii which lays out an eloquent pleading against the raid and arson whitewashed as 'distraint' by the defendant (*CIH* 2204.1-2208.19) (Binchy 1973, 67–70). This pleading offers a unique window into the use of ancient texts in a late medieval/early modern setting, to which we shall turn in 3.3. In sum, it is quite difficult to recover how Irish law was applied to actual cases in the early Middle Ages.

1.5.4.

One has to rely on the evidence from sagas, hagiography and other accounts for a reflection of early Irish law in action. However, such accounts vary hugely in their value as evidence. Episodes from hagiography contain a lot of information which may be taken as reflecting real cases. Tírechán's *Collectanea* on St. Patrick, for instance, record a grant of land which incurred objections from kinsmen to alienation of kin-land (Bieler 1979, 134–136); and in the *Additamenta* the transmission of dependent *senchléithe* together with the land is mentioned (Bieler 1979, 170; Kelly 1988, 35–36). Adomnán's *Vita Sancti Columbae* tells the story of how a culprit became a *cimbid* and was later ransomed by his kinsman into whose service the culprit entered (Anderson and Anderson 1961, 422; Kelly 1988, 215). Accounts provided by sagas, however, are usually less patent and more easily distorted by the need of the story. Apart from the literature cited in 1.2.5 above, one should mention the story of Cormac mac Airt's rebuttal of Lugaid Mac Con's unfair judgment, pronounced by the latter's steward, on the queen's woad which was eaten by a sheep (O Daly 1975, 70). According to Cormac, Mac Con's decision that the sheep should be forfeited as compensation for the woad plant was unjust, and it should have been 'one shearing for another', namely the fleece of the sheep to compensate for the leaves of the plant. As Fergus Kelly points out, this is at odds with a number of law tracts which state that an animal is forfeit for its offence (Kelly 1997, 141–142). Whether the legal principle raised by Cormac is a new development in law, a different view from individual jurists, or merely a fabrication in order to serve an intrinsic literary and ideological topos (Ó Cathasaigh 1981) is impossible to determine.

It remains to be asked, in the following chapters, whether the narratives found in law tracts can tell us more about the operation of early Irish law either through recording real cases or through fabricating fictitious ones. Yet only a portion of the narratives portray legal disputes (Chapter 3), and the extent to which the

narratives conform to the legal provisions is also uncertain as well (Chapter 5); and the primary function of Irish legal narratives, as will be argued in Chapter 6, is not to provide examples or evidence of how law operated in the early Middle Ages.

1.6. The structure of this thesis

With the definitions and preliminaries set out by this chapter in mind, it is now time to question the nature and the significance of the narratives in early Irish law tracts. A numerically indexed body of such narratives together with their manuscript contexts, selected according to the narratological standard given in this chapter, is provided in Chapter 2, as the starting point for all ensuing analyses. Chapter 3 starts with an overview of the distribution and characteristics of these legal narratives, and attempts to categorise them as regards their different textual functions. Chapter 4 examines the relationship between legal narratives and early Irish literature from outside the law tracts, aiming to establish the intertextual links on several levels ranging from simple copying to sharing of cyclical background settings, with special attention paid to the relationship between Ulster Cycle narratives and legal narratives. Two case studies on the highly complex interactions between legal narratives and legal institutions as stipulated in the provisions are carried out in Chapter 5. Chapter 6 is dedicated firstly to the intellectual background of medieval Irish jurists as evinced by legal narratives, then to the problem of the purpose of employing such a large number of narratives in Irish legal writing. This final chapter aims to argue, that narratives were written in order to incorporate law texts into the all-embracing learned textual tradition as part of the cultural memory (*senchas*) of medieval Ireland.

Chapter 2: A list of narratives in *Corpus Iuris Hibernici*

2.1. Introduction

This chapter is essentially an index of all the narratives that I have identified so far in D. A. Binchy's semi-diplomatic edition of the early Irish vernacular legal texts, *Corpus Iuris Hibernici* (Binchy 1978).

2.1.1.

The six volumes of the *Corpus* contain extended diplomatic transcriptions from individual manuscripts, and are hence not arranged by theme or date of the law tracts themselves. The interlinear glosses are presented following the section of text on which they depend, with numeral references to their locations. Binchy offers no translation and minimum emendation to the texts, although he has expanded most of the abbreviations in light of his understanding.

Though Binchy has omitted many later (especially paper) manuscripts and some important tracts and copies from *CIH* (Binchy 1978, ix–xi; L. Breatnach 2005a, 1–2), it is still by far the most comprehensive record of vernacular Irish law published; and its faithful but clear representation of the raw materials has provided scholars with a fresh start for venturing into the study of early Irish law. The *Ancient Laws of Ireland*, edited and translated in the later part of the 19th century when the understanding of Old Irish and early Irish law was hardly sufficient for such an ambitious project, failed to meet modern scholarly standards. The transcripts of medieval legal manuscripts by Eugene O'Curry and John O'Donovan, on which the edition of *Ancient Laws* is based, are themselves in unpublished manuscripts and are barely accessible to most scholars (Charles-Edwards 1980, 141–144). By contrast, *CIH* has proven itself a reliable and

unbiased source for researchers of early Irish law, and has been adopted as the standard reference for all studies in early Irish law since its publication.

Liam Breatnach's *A Companion to the Corpus Iuris Hibernici* (2005a) has further enhanced our understanding and use of *CIH*, furnishing not only a detailed table of contents of *CIH*, but also comprehensive description of every tract, supplementary cross-references, and analyses of date, authorship and stylistics. This remarkable work charts a map across the vast wilderness of *CIH* (McLeod 2005) and to some extent summarises the knowledge of these texts up to the time of its publication.

2.1.2.

The narratives in the present chapter, accordingly, are taken from the six volumes of *CIH* alone, unless a significant copy is known elsewhere; in such cases the text will be referred to by the catalogue name of the manuscript and the page/folio number. In listing the materials in this index, I will follow the order of the narratives' first appearance in *CIH*. An exception is the group of narratives [84]-[98], where the context is peculiar; these will be discussed in later chapters. Unless specified, page and line numbers provided in this chapter refer to those in the *CIH*, e.g. 1341.5-23, designates lines 5-23 on page 1341 (the six volumes have continuous pagination). Page and line numbers of variants or copies will be separated by semicolons.

Copies or versions of the same narrative in copies of the same tract are naturally grouped as one entry. However, sometimes an incident could be told in various narratives in the same tract or in different tracts (e.g. the legend of St. Patrick's legislation for the Irish is used to explain the origin of several tracts). On such occasions, the versions are grouped as different entries. The opposite situation does exist: that several tracts use the same narrative, with clear evidence of imitation or borrowing, e.g. [35]. In this case, the versions are grouped as one

entry with consequent explanation.

After references to *CIH* numbering in each entry, I give the name of the tract(s) to which the narrative is affiliated, according to the designation by L. Breatnach (2005a). If a narrative does not have known affiliation to any tract – whether it stands alone, occurs only in a legal digest, or the context does not suffice to attribute it to any tract – it is labelled 'Miscellaneous'.

I will also offer a description of the relationship between the versions/copies and the legal context of the narrative, and all the extant editions and translations known to me, excluding the edition and translation in *AL*. But I will refrain from extensive legal discussion in this chapter.

Generally if a narrative has not yet been edited or translated elsewhere, I will provide the diplomatic transcription of *CIH* and my own translation. However, since the full reference to the semi-diplomatic edition of *CIH* is always available, I will not include Binchy's textual footnotes or indicate expansions with italics, as Binchy did, unless this is crucial to the clarification of the text. If, however, the text in question is so difficult that I am uncertain of the correct translation, no translation will be given. When transcriptions and translations are too long to be comfortably accommodated in this chapter, I mark the corresponding item numbers with an asterisk (*), and present them in Appendix 1. In texts copied in this chapter and in Appendix 1, macrons will be supplied on long vowels where the manuscripts do not display them by means of accent marks or 'hair-strokes', and capital letters will be used in spelling the first letters of proper names. For [5], a critical edition of the text from all manuscript evidence is presented in Appendix 2 with complete apparatus and marking of expanded letters.

2.1.3.

Despite my overall aim of presenting all of the evidence afforded by *CIH*, I have decided to omit the witness of several glossaries, especially O'Davoren's

Glossary, from consideration (*CIH* 604.39-633.33; 1069.21-1078.14; 1092.1-1098.42; 1466.11-1531.24; 1568.1-1569.43). Admittedly, the glossaries have provided important, sometimes even unique, testimony to law tracts or the jurists'comments. O'Davoren's Glossary, for instance, is a crucial source in reconstructing the original content of *Senchas Már* and the *Bretha Nemed* tracts (L. Breatnach 1996b). Moreover, these glossaries do include narrative pieces. However, all but one of the omitted glossaries have reached the stage which Paul Russell tagged (c 2), at which '*glossae collectae* from different texts are merged and subsequently alphabetised'; and the sole exception, 1092.1-1098.42, seems to belong to his stage (b), 'an ancillary document in which lemmata and glosses are collected… in textual order' (Russell 1999, 88–89). *Dúil Dromma Cetta* (604.39-633.33; 1069.21-1078.14) contains materials from a wide range of sources, many of which are not legal in nature (Stokes 1859; Russell 1996); similarly, even O'Davoren's Glossary, which is commonly regarded as a 'legal' glossary, draws extensively from *Félire Óengusso* and wisdom literature (L. Breatnach 2005a, 109-156). These glossaries, therefore, represent a type of textual tradition which has already developed away from the legal writing tradition examined in this dissertation, and will not be considered in this index.

2.1.4

I have done my best not to omit any narrative from the list, but it is not sure that I have identified every narrative in *CIH*, especially those within the *Bretha Nemed* tracts. The present chapter, however, includes a sufficient amount of narratives from the whole of *CIH* to provide a representative collection of the material. This list is based on, and has been greatly revised from, an earlier and simpler version already published (Qiu 2013a, 128–137).

2.2. An index of the narratives

1*. 63.7-64.5; 97.18-24; 1854.14-36; 2027.30-39

SM 9 *Heptads*

63.7-64.5 and 1854.14-36 are copies of an appendix in the canonical text of *Heptads* §65 with glosses, and 97.18-24 is a late commentary paraphrasing one of the glosses in 63.19-25. 2027.30-39 is a legal digest on sureties, quoting from the canonical text and glosses.

The narrative comes as an appendix to *Heptads* §65, which deals with seven types of *ráth*-surety: specifically, with the question of who pays the debt to the creditor on the debtor's default. Most of the canonical text has been translated into German in Thurneysen (1928a, 3) and part of it into English by L. Breatnach (2010, 228). In Appendix 1 I translate the text of 63.7-64.5; 97.18-24 and 1854.14-36, following Thurneysen's interpretation of the word-play between *ráth* (paying surety) and *ráith* (an enclosure with wall and ditches), the form and morphology of which have been mingled in the later sources.

The story mentions Eógan mac Durthacht, king of Fernmag in the Ulster Cycle tales; Amairgen, presumably Amairgen mac Eccit, in the same cycle; and Conall Echlúath, interpreted by the glossators as Conall Cernach, Amairgen's son (1854.18; 97.19).[10] This story, however, has left no trace in other Ulster Cycle material.

The legal aspects of this narrative will be investigated in Chapter 5.

2*. 106.39-107.3; 1546.11-19

SM 27 *Bretha for Techt Medbae*

[10] There is another Conall with the same epithet *Echlúath*, son of Lugaid Mind, who was a king of Munster of the Dál Cais (M. A. O'Brien 1962, 170), but it is unlikely that he is the one mentioned here.

Both passages are short excerpts from the sparsely attested tract *Bretha for Techt Medbae*. 1546.11-19 very possibly contains the beginning of the canonical tract, which I mark out in boldface in the text as offered with translation in Appendix 1.

The narrative depicts such a situation: a woman-hospitaller named Medb died, and two sons of her divided the inheritance between them while the third son was away (according to 106.39-107.3 he was in military service (*i n-amhsaine*)). It seems that this third son then raised a lawsuit against his two brothers and judgment has been made. However, the two text witnesses are fragmentary and isolated so no more detail can be gained from them.

3. 155.6-10; 162.10-24

Córus Fine

These two passages belong to two late commentaries on female heirs, and they vary in the names that they give. The first one has Muiresc, Aífe and Ailbe; the second has Muiresc, Fine (?) and Ailbe, naming Eochu as the one who first adjudged on female heirs. Otherwise the wording is much alike. L. Breatnach inclines to believe that these passages belong to *Córus Fine*, on the evidence that 162.25 belongs to that tract (L. Breatnach 2005a, 20).

According to the *Bansenchas* (Dobbs 1930, 294; Dobbs 1931, 170),[11] Muiresc, Aífe and Ailbe were three daughters of Úgaine Mór. They also appear in the *Lebor Gabála* tradition as three daughters of Úgaine, to each of whom a territory was allocated, while Eochu may be one of the sons of Úgaine mentioned in the same list (Macalister 1937, 3:272–273). The *Bansenchas* is evidently dependent on the *Lebor Gabála*.

[11] In the verse *Bansenchas*, which can be ascribed to a dated and named poet, i.e. Gilla Mo Dutu Úa Caiside (*fl*. 1147) (Murray 2004), these three names are found in the Book of Uí Maine and the Book of Lecan copies, but the Book of Leinster gives *Áni, Pasi* and Muiresc (Best 1967, ll. 16621-16622).

The passage lists the different types of rights of holding land property that the daughters of Úgaine were entitled to. Though the structure of the passage is straightforward, the exact meanings of some terms are obscure to me, therefore I do not include a translation in the appendix.

4. 155.24-25

Miscellaneous

The text occurs in a late commentary on the honour-price paid for offending a girl:

> *cumad hī Eithni ingen Chon Culaind aderadh so ac tabairt miscaisi ar Eoghan mac Durrthacht, no cumadh hī Grāini ac tabairt miscaise ar Find.*
> Perhaps it was Eithne daughter of Cú Chulainn who said this at giving hatred to Eógan mac Durthacht, or perhaps it was Gráinne giving hatred to Finn.

The second instance is doubtless a reference to the story of Finn and Gráinne, most probably the one edited and translated by Johan Corthals (1997), which focuses on the *miscais* of Gráinne towards Finn, who has won her by fulfilling the demanding task she requested by the aid of Caílte. But the first one is uncertain. It is reminiscent of the story of Deirdriu in *Longes Mac n-Uislenn* (Hull 1949), which is in many ways comparable to that of Gráinne; and in the end of *Longes Mac n-Uislenn* Deirdriu did hate Eógan. But the name of Eithne daughter of Cú Chulainn is not known anywhere else except for [13] below. There is however an Eithne wife of Cú Chulainn who appears in *Serglige Con Culainn* (Dillon 1953).[12]

5. 205.22-206.26; 907.36-908.14; 1859.6-15; 2019.16-18.

[12] On her identity see Carey (1994b).

SM 11 *Din Techtugud*

205.22-206.26 is canonical text with glosses and a late Middle Irish commentary; 907.36-908.14 and 1859.6-15 are versions of the OGSM, with citations of the canonical text. 2019.16-18 belongs to Digest D38 titled *Do techtugh banda 7 ferrdha sīsana* ‘On female and male legal entry here below’, which cites extensively from *Din Techtugud* and the OGSM. The canonical text is in rimeless verse, which does not mention the specific time or person, but the prose narrative in OGSM provides a detailed story which seems to fit the account of the canonical text.

The canonical verse describes some incorrect steps of normal legal entry by a male freeman. The story tells of the legal entry carried out incidentally by Nin mac Mágach into the land of the Ulaid and its legal consequences.

Parts of the text have been translated in Watkins (1963, 221). The OGSM prose narrative has been normalised and briefly remarked upon in Stifter (2006, 297–298). For my critical edition, translation and discussion see Appendix 2 and Chapter 5.

6. 207.22-209.28; 908.26-909.13; 1241.16-17; 1859.25-1861.5; 2018.16-2019.15, 2019.28-36.

SM 11 *Din Techtugud*

207.22-209.28 is canonical text with glosses and a late Middle Irish commentary; 908.26-909.13 and 1859.25-1861.5 are versions of the OGSM, with citations of the canonical text. 1241.16-17 is a line of the canonical text with a paraphrasing gloss cited in the commentary to *Ántéchtae*, which uses the case of Bríg healing Sencha’s blisters as an example of praise by the kin neutralising the effect of satire, though the *Din Techtugud* passage does not involve satire.

2018.16-2019.15, 2019.28-36 is part of Digest D38 and contains most of the canonical text and many glosses.

The story is in both the canonical text and the glosses. It concerns a woman named Ciannacht who performed legal entry against her kinsmen. The case was referred to Sencha but he ruled on it according to the customs of male-entry; as this was a wrong judgment, blisters arose on his cheek. Bríg corrected his judgment and set up the rules for female-entry, which was carried out as described in the canonical verse. Because of the correction the blisters on Sencha's face subsided.

Parts of the text have been translated in Watkins (1963, 227–228).

7. 209.29-210.11; 909.14-28; 1861.6-11.

SM 11 *Din Techtugud*

209.29-210.11 is canonical text with glosses; 909.14-28 and 1861.6-11 are versions of the OGSM, with citations of the canonical text.

The story is in both the canonical text and the glosses. It concerns a woman named Seithir, who was born a member of the Ulaid but married one of the Féni, and performed legal entry against her kindred. Her request was accepted by the kindred without going to trial, with the condition that the land was to be returned to the kindred after her death.

Parts of the text have been translated in Watkins (1963, 232–233).

8. 215.16-17, 25-28; 1864.29-31; 2040.9-14.

SM 12 *Tosach Bésgnai*

215.16-17 is a canonical text, the glosses on which are printed in 215.25-28. 1864.29-31 and 2040.9-14 cite the second half of the text and its gloss. The three

texts are evidently from the same source.

The canonical text is written in rimeless verse, seven syllables in a line with a trisyllabic cadence. It has been edited and translated, along with other parts of the tract, in Dillon (1936, 138–140) and Charles-Edwards (1993, 517).

According to Dillon (1936, 139), Máer daughter of Cobthach Cáel Breg is only known in this passage. But in the *Lebor Gabála*, she is said to be the daughter of Fergus Cnaí, son of Úgaine Mór, and thus should be the niece of Cobthach (Macalister 1937, 3:272).

9*. 226.31-36; 1061.34-35

SM 14 *Di Astud Chirt 7 Dligid*

226.31-36 is canonical text with glosses, 1061.34-35 is a copy of the canonical text alone. It refers to St. Patrick's authority for the prohibiting of the 'three red portions' (*.iii. dergmírenna*), namely some excessive or illegal gains by the church and the lords from their clients and tenants (225.14-34).

A translation of 226.31-36 is offered in Appendix 1.

10*. 237.35-238.3, 238.18-19, 23-25; 1420.26-29.

SM 14 *Di Astud Chirt 7 Dligid*

237.35-238.3 consists of canonical text and glosses; it forms a continuum with 238.18-19, a canonical text (translated by L. Breatnach (2011, 35)), and 238.23-25, the latter's accompanying glosses. 1420.26-29 is an excerpt from both the canonical text and glosses. It stipulates the condition and forms of ordeal and attributes the rules concerning them to St. Patrick's reformation of law.

The three nobles and three clerics mentioned in the gloss are in accordance with the account in the Pseudo-historical Prologue to the SM (Carey 1994a, 16),

see [17] below.

11. 238.4, 9-16; 916.13-24; 1873.2-10.

SM14 *Di Astud Chirt 7 Dligid*

238.4 is canonical text, 9-16 is part of the commentary written by the scribe of the text telling two variant accounts of the background story of ‘Dorn’s Vessel’. 1873.2-10 is another copy of the same text. 916.13-24 is another version, containing also two variant accounts, which is incorporated in the OGSM.

Both versions have been translated in Carey (2007, 88–89) as one of the earliest specimens of a legend similar to that of the Grail. The version in 916.13-24, along with other texts from the laws, has entered the Middle Irish story *Scél na Fír Flatha*, edited and translated in Stokes (1891a, 191).

12*. 240.21-28; 1378.25-26

SM14 *Di Astud Chirt 7 Dligid*

240.21-28 is canonical text with glosses. 1378.25-26 is part of the Digest B52 citing from the canonical text. It reports that St. Patrick set the upper limit of the quantity of *comdíre* ‘equal compensation’, which is worth 5 *séts*, for a series of offences listed in the previous passages. These offences consist of three types: killing domestic animals of lesser value (such as goose, immature cock and kitten), for which no restitution (*aithgein*) is paid besides the *díre* of 5 *séts* (238.26-30); various minor wrongdoings against property (such as using a quern or riding a horse without permission) (238.31-239.33); and erroneous performance in legal procedures (such as to release distrained cattle from pound or to draw blood in combat without first submitting the dispute to law) (239.34-240.20).

13. 250.1-32; 925.1-926.4; 1144.25-28;

RIA MS. D v 2, 64ra= L. Breatnach (2005a, Appendix 2, 381-382)

Bretha Étgid

These, except for 1144.25-28 which is a citation in Digest A7, are all commentaries prefixed to the law tract in order to explain when and how it was made. The date of composition is no earlier than the Middle Irish period. This is one of the two explanations of the provenance of the law tract, which ascribes it to the teachings of Cormac mac Airt to his son Coirpre after Cormac was blinded inadvertently by Óengus Gaíbúabdech, and names its place of origin as Aicill near Tara. The basic account in the four manuscripts is the same, but the wordings and arrangement of materials show free variation from text to text, and a large amount of *Dindṡenchas*, sagas and other materials intermingle with the texts.

The story of Óengus blinding Cormac appears again in [67] below. It is regarded also as one of the major causes of the expulsion of the Déisi (Meyer 1901a; Meyer 1907; Hull 1959; Ó Cathasaigh 2005b). *Dindṡenchas* accounts about the place Aicill/Achall are quoted (Gwynn 1991, vol. I, 46), which involves the keening of Aicell daughter of Cairpre Nia Fer when her brother Erc was killed in vengeance for the death of Cú Chulainn. Interestingly, the obscure Eithne daughter of Cú Chulainn appears again in 925.23 and in the corresponding passage in RIA MS. D v 2 (see [4] above).

14. 250.33-251.3; 926.5-18;

RIA MS. D v 2, 64Ra= L. Breatnach (2005a, Appendix 2, 381-382)

2144.38; 2186.37-38

Bretha Étgid, *Fothae Mór*; *Córus Iubaile*

Together with the previous item, this narrative forms the second of the two explanations of the provenance of the law tract *Bretha Étgid*. It ascribes the making of the law tract to the memorisation of the teachings of three schools by Cenn Fáelad during his recuperation from the wound that he suffered in the battle of Mag Rath.

250.33-251.3 and 926.5-18 are two copies of the same narrative. The narrative is permeated with Latin grammatical schemata and terminology. It has a very close relationship with the introduction to the 'Book of Cenn Fáelad' in lines 68-78 of the introduction to *Auraicept na nÉices* (Calder 1917, 6–7). The story of Cenn Fáelad, of course, is well known in literary and synthetic historical works (Dillon 1994, 56, 64). There are already many scholarly contributions discussing this story (Mac Cana 1970; Slotkin 1978, 437; Tristram 1990; Georgi 1996; Burnyeat 2007, 216–7).

2144.38 is the beginning of *Fothae Mór.* A narrative introduction introduced by a *accessus* scheme of *locc, aimsir, persa*, etc. may have been intended here, but the text is lost or was never complete. 2186.37-38 is the beginning of *Córus Iubaile*, also lacking a complete scheme. The elements of place and time in these two texts are identical to those in the prologue to *Bretha Étgid* and in the tradition of *Auraicept na nÉces*, and accordingly one can reasonably take these two as belonging to the same narrative as that of Cenn Fáelad in *Bretha Étgid*.

2144.38:

Incipit di Fotha Mōr, 7 locc do Daire Lorāin, ut est…
Fothae Mór starts here, and the place is Doire Lubráin, so…

2186.37-38:

loc don leabur-sa Daire Lubrāin 7 aimsir do aimsir Domnaill mic Āeda mic Ainmirech.
The place of [composition of] this book is Doire Lubráin, and the time of it is the time of Domnall son of Áed son of Ainmirech.

15. 251.17-21; 927.23-27

RIA MS. D v 2, 64Ra= L. Breatnach (2005a, Appendix 2, 384)

Bretha Étgid

The three texts vary only slightly in wording. They occur as part of the glosses explaining several kinds of *éitged*. They make use of biblical incidents, namely that of the fall of Lucifer as an example for '*étgid ria étgid*', the consuming of the fruit by Eve for '*cin íar cin*', and Adam's consenting to Eve for '*étgid na n-étgid*'. 927.23-27 has been translated and discussed in Bracken (2002, 167).

16. 251.32-33; 927.6-7

Bretha Étgid

The two texts have only small differences in wording. In a gloss, they offer an example of (one of?) the twelve divisions of *éitged*:

251.32-33:

> *ocht nairnaile coitcenna forrethet int ēitgid fodeglata,*[13] *.i. na dā fodail dēg ēitgid, deisimrecht air, .i. geogain Cū Culainn a mac i nanfōt.*
> Eight common types which constitute the subdivided inadvertence, i.e. the twelve branches of inadvertence. An example of it, i.e. Cú Chulainn slew his son unintentionally.

For other references to this incident see [73] and [101].

17. 339.1-342.21; 874.35-876.27; 1378.17-21; 1650.1-1653.15; 1655.27-1657.9.

Pseudo-historical Prologue to the SM

[13] Reading *fodedalta.*

The several texts represent versions of a synthetic and accretive tradition, but a common core narrative can be discerned, which has been extracted, edited and translated in Carey (1994a) (the prose part) and McCone (1986a) (Dubthach's judgment in *roscad*); a detailed description of the textual environment of each text can be found in Carey (1994a). Most of these texts are prefixed to copies of *Senchas Már*, while 1378.17-21 belongs to Digest B52, an amalgam of citations from various law tracts. The content quoted in 1378.16-21 is also found in [10] above.

The story told in the narrative has been delineated and analysed in several works (Binchy 1975b; McCone 1986a; McCone 1990, 96–100; Carey 1990, 199; Carey 1994a; Scowcroft 2003). The theory proposed by Nerys Patterson (1986) that the narrative was principally shaped by the stance of the O'Doran family in the 16th century has a serious flaw in that the text itself had taken more or less its present form in the Old Irish period.

18. 342.22-39; 876.10-27; 1656.31-1657.9

Pseudo-historical Prologue to the SM

These are copies of the same text, which is regarded as part of the Pseudo-historical Prologue and is preceded by the main narrative [17] of Patrick's reformation of Irish law; but it provides an independent narrative of event long prior to Patrick's time. The time is in Conchobar mac Nessa's reign, and in the story he is said to have rescinded the poets' monopoly of judicial matters because their language was 'dark' and inaccessible to the ordinary people. The text has been edited and translated by both Carey (1994a, 12–13, 19) and Stacey (2007, 164); and an adaptation of it can be found in the Middle Irish tale *Scél na Fír Flatha* (Stokes 1891a, 186-187).

19*. 342.40-344.23; 688.20-29

Pseudo-historical Prologue to the SM*; Cáin Ḟuithirbe*

342.40-344.23, appended to the Pseudo-historical Prologue, is, as described by Carey, 'a curious piece, in which the traditional question schema is correlated with the sequence of the days of creation' (Carey 1994a, 2). Apart from the beginning, most of it copies from the prose version of the first canto of *Saltair na Rann*, edited (based on the text in British Library MS Egerton 92) also by Carey (1986). It incorporates much of the content of the first chapter of Genesis. A slightly different version of the beginning of this passage was included in the later introduction to *Cáin Ḟuithirbe* (*CIH* 688.20-290), likewise to explain why in the *accessus* scheme *locc* comes first, followed by (in that sequence) *aimser, persa* and *fáth airic*. Another similar version is found in the Preface to *Félire Óengusso* (Stokes 1905, 2). As the text from *Cáin Ḟuithirbe* has not been noticed by Carey, I translate it in Appendix 1.

20. 348.29-349.24

SM 1, *Introduction*.

This narrative occurs in an extensive gloss to one of the provisions in the 'real' introduction to *Senchas Már*. It aims to explain the qualities of a *suí filed* who has the same *díre* as a king, a bishop and a top-ranked canon lawyer (*áige rechta litre,* lit. 'pillar of the Law of Scripture') (L. Breatnach 2011, 4–5). The narrative tells how poets divined the name of a person before St. Patrick arrived, and how St. Patrick reformed their art but kept their status after the coming of the Faith.

This gloss does not appear in the other continuous copy of the *Introduction*. Most of the text has been translated in Carey (1997, 55–57), who points out that

the interpretation of these qualities offered by this narrative is the result of many new developments in re-interpreting the original concepts, and we are actually able to trace most of the steps from other key texts. It is particular noteworthy that the hermeneutic developments during centuries have been fictionalised as a once-off innovation by St. Patrick along with his many other reformations of Irish social life.

21. 352.26-356.38; 881.4-883.36; 1092.2-4; 1663.20-1666.28; 1897.16-34; 2207.37-42.

SM 2 *Di Chethairṡlicht Athgabálae*

This narrative consists in fact of three episodes, some of which may originally have been independent sagas which were absorbed into the law tract at a very early stage, at the latest by the time of the compilation of the tract. 2207.37-42 is a citation in a late document prepared for the purpose of pleading; 1092.2-4 cites from the saga of Fergus mac Léti, and is part of a legal gloss on the word *drinnrosc*. Except for these, all of the other texts are from copies of *Senchas Már* or OGSM. A large portion of the narrative, especially of the canonical part, has been edited and translated in Binchy (1952) and McLeod (2011a).

If arranged in chronological order, the sequence of incidents mentioned in this long narrative should be: (a) the protection of Fergus mac Léti, king of the Ulaid, was violated by sons of nobles of the Féni; Fergus retaliated and was compensated. (b) Fergus encountered *lúchorpáin*[14] and acquired the ability of walking under water. He, however, met a monster on one of his underwater excursions and was distorted. The distortion was kept from his knowledge until Dorn, a handmaid who was part of the previous compensation, revealed it.

[14] Or *Lúpracháin*? On this name and its possible connections to Roman and Greek literature see Bisagni (2012).

Fergus killed Dorn and then slew the monster at the price of his own life. (c) The Féni sought restitution of land the property, and compensation for the handmaid, from the Ulaid. (d) Asal mac Cuinn, a surrogate of the king of the Féni, carried out a disputed distraint upon the Ulaid. (e) Sen mac Áigi pronounced a judgment concerning the dispute.

However, the presentation of the incidents in the texts does not follow a chronological sequence, and there are textual layers. The canonical text of *Di Chethairślicht Athgabálae* begins with (d) in rimeless verse, which is followed by a heptasyllabic poem in the canonical text recapitulating most of (a) and (b), and then a prose account of (e). In the glosses to the heptasyllabic poem in 352.26-356.38 there is a Middle Irish prose account of (a) and (b); in the glosses to the same poem in 881.4-883.36 we find an older version of this prose account dated to the Old Irish period. Both accounts are known as 'The Saga of Fergus mac Léti' firstly through (Thurneysen 1921, 539–541) and then in the edition and translation in Binchy (1952). The saga in both texts is followed by a prose narrative of (c). 1897.16-34 contains the canonical text in full but without glosses; while 1663.20-1666.28 cites fragments of the canonical text, none of the saga, but a large number of glosses drawn from other sources, primarily from poetic/grammatical tracts and SM 11 *Din Techtugud*.

The story of (a) (c) (d) (e) is not known elsewhere. But (b) survives not only in two versions in the law texts, but also in a transformed version the 14th century (O'Grady 1892, 238–252). Evidence even suggests that it existed outside the legal circle at an earlier date (see 4.2).

The composite nature of this text can be seen in its incorporating and grafting of other narratives, e.g. [5] (McLeod 2011a, 27–28), [44] and [45]; and a reconstruction of the development of the text has been attempted by Bart Jaski (2003). The work as we have it evidently arose from a highly complicated

confluence of texts from many genres.

22. 377.24-378.13; 380.14-15, 23-28; 889.9-20; 1685.26-27; 1902.20-28; 1903.20-21, 28-30

SM 2 *Di Chethairṡlicht Athgabálae*

Although separated by some other passages concerning the situations in which *athgabál aile* ‘distraint of staying of two days’ applies, 377.24-378.13 and 380.14-15 are evidently parts of a same narrative. Both texts are canonical texts with glosses. 1685.26-27; 1902.22-24, 27-28; 1903.20-21, 28-30 are copies of the same text. 889.9-20 is part of OGSM containing citations from this text.

The narrative explains the origin of the institution of *athgabál aile* ‘distraint of staying of two days’. It says that Sencha measured the *athgabál aile* in accordance with the laws of nature. The situations of this type of distraint do not become valid upon judgments of court, but their entitlements (*dliged/ratio*[15]) do. The legal measures for all animals that bear twins are decided by Bríg. All of the Ulaid submitted their cases of *athgabál aile* to these two judges.

23. 380.1-13; 1686.28-1687.3

SM 2 *Di Chethairṡlicht Athgabálae*

This narrative is found in the glosses to the tract, taking as its starting-point the words *im tincur rōe, [.i.] tairec n-airm* ‘concerning contribution to battle-ground, i.e. provision of weapon’ in a discussion of a kind of distraint with a waiting period of two days. The canonical text states that the distraint has a two-day staying period ‘for it was to establish truth in a case regarding women that a duel was first fought’ (*CIH* 379.11–12, translation by L. Breatnach (2010, 226)).

[15] On the interpretation of this word see Charles-Edwards (2003).

The scholiast claims in the glosses that the quarrel between two sons of Partholón over the dowry of two sisters was the first battle ever fought in Ireland. The case does not actually refer to distraint for weapons but instead tries to prove why distraint for weapons should be subject to the rules applying to women's property, namely a waiting period (*anad*) of two days (Binchy 1973, 36–37; Raae 2013, 36–37).

The text has been translated by R. Smith (1942, 548), where he also notes that this story is not found in *Lebor Gabála*'s account of Partholón and his progeny. The first battle in Ireland according to *Lebor Gabála* was between Partholón and Cichol Gricenchos of the Fomoiri (Macalister 1937, 3:270–271).

24*. 380.15-381.7; 1903.21-37

SM 2 *Di Chethairṡlicht Athgabálae*

This is another 'legal reformation' story, immediately following [23], which discusses the establishment of the three-day stay type of distraint. It also consists of canonical text and accompanying glosses. The two passages are copies of the same text with minor variants.

It is stated that distraint of staying of three days is the summing up of types of distraint of staying of one day and of two days, as if it were a later addition to the scheme. 'The first distraint of staying of three days ever taken in Ireland', according to the passage, is 'for the failure in hosting of Ailill mac Mátach'. The glosses do not furnish us with more information about the failure, but we can suppose that Ailill gave his 'instant judgments' (*taulbretha*) based on this breach of duty, which is regarded as the founding case of this type of distraint. Not surprisingly, the first situation where the distraint of staying of three days applies is 'for hosting'. The category seems to consist mostly of public duties (Binchy 1973, 39–40). The canonical text of 380.15-22 is translated in Appendix 2.

25*. 406.26-407.26; 1709.6-8

SM 2 *Di Chethairślicht Athgabálae*

The Old Irish canonical text in 406.26-407.2 provides a founding case for another type of distraint, that with five-day stay, and the glosses (407.3-26) basically only paraphrase the content in Middle Irish, adding that the two combatants were Conall Cernach and Lóegaire Búadach. 1709.6-8 has cited a short phrase from the canonical text and added a different set of glosses. 406.26-407.2 has been partially translated in Binchy (1973, 40–41) and L. Breatnach (2010, 227), and is translated in full in Appendix 1, but I omit the glosses as they provide little new information.

26. 449.25-450.12; 1140.20-27; 1924.28-31; 2205.32-39

SM 21 *Bechbretha*

This narrative is part of the canonical text of the tract. It reports the first judgment passed in Ireland with regard to the offence of bees, which was on the blinding of Congal Cáech by a bee. 449.25-32 consists of canonical text with glosses; 1140.20-27 is the canonical text cited in Digest A2; 1924.28-31 is the same digest numbered C12; 2205.32-39 cites the canonical text in a late pleading.

The text has been critically edited and translated by Kelly and Charles-Edwards (1983, 68–71); while the notes on page 123-138 provide very comprehensive studies of the lineage and reign of Congal Cáech, of the designations Ulaid and Féni (but cf. my own discussion in 4.5.5), and of some textual problems.

27. 467.31-33

SM 23 *Bretha im Ḟuillemu Gell*

The narrative is part of the canonical text, which has but only one paraphrasing gloss on *NODACRIAD*. It follows the statement that the pledge value of the honour of a *bóaire* reaches only as far as a *cumal* of an ounce, since 'that is the first *cumal* that ever came into existence' (467.12). The narrative then explains that this first *cumal* was a woman called Mugdorn daughter of Mug. After the narrative, the canonical text returns to discuss appropriate forms of pledge for different ranks. The narrative bears little connection with its context. It is likely, therefore, that this narrative is an early insertion into the tract.

The narrative may be playing on the two senses of *cumal*, i.e. a female slave (usually gl. *ancilla*) and a unit of value (C. Eska 2011). *Cumal* can also refer to a land measurement unit (Mac Niocaill 1971). The facts that the woman Mugdorn's name means 'fist of a male slave', that she was the daughter of Mug, literally 'male slave', and that she took a quern in her hand, a symbol of base manual work, all bespeak her status as a real female slave, yet at the same time indicate that this narrative is a totally fictitious one. But here, as in other places of the same tract, *cumal* appears to take on the general sense of 'value'[16], since the normal Old Irish value of a *cumal*, though inconsistent across the tracts, is more than an ounce of silver (Kelly 1997, 591-593). The historical kingdom of Mugdorna and the legends associated with it have been surveyed in Charles-Edwards (2000, 516–17), but here the name Mugdorna has little bearing with that kingdom.

This text has been translated by Charlene Eska (2011, 36).

28. 527.14-529.19

SM 8 *Córus Bésgnai*

[16] See *CIH* 475.1-4, also Kelly (1988, 112, n.90).

This tract covers a large number of topics, mostly general and fundamental aspects of Irish laws, and it introduces sections with the formula *cach* (R. Smith 1936). The narrative is part of the canonical text with glosses. It starts with a statement: *ARACHTA CACH RACHT*, i.e. [*Is*] *arrachtai cach recht* ‘every law should be bound’. It then explains *IS A SUND CONNARRACHTA IN DĀ RECHT* ‘It is in here (*Senchas Már*) that the two laws have been bound’. The passage goes on to reflect on certain aspects of the story of St. Patrick’s conversion of the Irish and his reformation of their laws through Dubthach the poet. It enumerates persons who ‘first’ did something remarkable: Dubthach who first gave honourable respect to St. Patrick, Corc who first knelt to him, the druid Matha who had prophesied Patrick’s coming, Cáirid who also knelt to St. Patrick, and Erc who first rose up before Patrick at Ferta Fer Féicc. The full story, or stories, are laid out in [17] above and in the lives of Patrick (Bieler 1979, 84, 88, 92, 132, etc.). Matha (Marstrander 1915, 353–356), who is here said to belong to the Túatha Dé Danann or the Fir Bolg (527.31: *do thūathaib Dē Donand, no do Feraib Bolg*), may be the converted druid Matho[n]us mentioned in Tírechán’s *Collectanea* (Bieler 1979, 144, 225); Cáirid is mentioned in a poem in the genealogy as well for arising three times before the saint (M. A. O’Brien 1962, 317-318) and [Conall] Corc mac Luigdech, famous as the ancestor of the Eóganachta (Dillon 1952), is here claimed to have been a *gíall* ‘hostage’ to Lóegaire at this time, whereas in the Pseudo-historical Prologue he is said to be King of Munster and one of the nine-man committee in charge of reforming Irish law. There follows a dialectic remark on the relationship between the law of nature and the law of Scripture, and between the Church and the *túath*. 527.14-529.19 as a whole seems to be a self-contained ‘chapter’ separate from other topics in the tract. The passage has been translated by McCone (1986a, 21–22) and partially by Ó Corráin et. al. (1984, 385-386), L. Breatnach (2010, 227-228;

2011, 11) and by Archan (2012b, 74–75) (in French).

29. 554.17-28; 554.28-555.2; 555.3-12; 557.14-20

Miscellaneous

This is a group of texts citing from *MV* II with late glosses, which contain several incidents of legendary poets composing different types of poems under various circumstances. The tract they belong to is described as ‘a text on the seven grades of *filid*, deriving from *Uraicecht Becc* and *MV* II’ in L. Breatnach (1987, 7–13; 2005, 25). The content derived from *MV* II has been published by Thurneysen (1928b), arranged in the order of *MV* II. See also 3.3.4 for my analysis.

30. 560.27; 2340.24-31

Uraicecht na Ríar

This narrative records the satire composed by the poet Néide on Caíar, but does not mention the circumstance of its composition, which is provided by [79] below. 560.27 cites only the first line of the verse, while 2340.24-31 cites in full.

This text has been edited and translated in L. Breatnach (1987, 114). The entry *gaire* in *Sanas Cormaic* offers a much longer narrative, see Meyer (1912, 58–60); Russell (2008, 34–35).

(582.29)

Miscellaneous

This contains a gloss without apparent context in the manuscript. It reads: *Elg, .i. Ēire, .i. Elga ainm don muic isint Sengaidheilg, co tucad fuirre int ainm-sin, ar is…fil fuirre.* The text is in fact copied from *Cóir Anmann*, §253

(Arbuthnot 2007, II, 65, trans. 138). However, the narrative part has been omitted, and thus it is not treated as an independent entry here. It refers to the swine shape of Ireland that Ith son of Breogan saw from the tower in Spain, which doubtlessly derives from the *Lebor Gabála* tradition (Macalister 1937, 3:11–13，40).

31. 583.11-12

Míadṡlechta

The narrative concerns Conchobar, who according to a verse 'has bound the lands of the Fir Féne', as an example of the provincial king. It has been normalised and translated in L. Breatnach (1986b, 193), and the verse has been cited in *ÄID* II, 28 as a specimen of archaic Irish poetry.

32. 600.1-8

'The distribution of *cró* and *díbad*'

According to this Middle Irish narrative that opens the short tract, the Goídels assembled and decided how *cró*, a kind of body-fine, and *díbad*, inheritable assets, should be divided among the heirs of a deceased person. The decision was endorsed later by St. Patrick, Cenn Fáelad and several other prestigious persons.

The whole tract has been firstly edited in Meyer (1904b) and more recently edited and translated in Murray (2000), with the translation of the narrative on p. 252. Liam Breatnach suggests that 'it may, in fact, have originated as commentary on *Córus Fine*' (L. Breatnach 2005a, 28).

33. 602.34-603.15

Miscellaneous

This curious piece written in early modern Irish narrates how the Romans founded their Twelve Tables. The main content ultimately derives from classical accounts such as Livy (*The History of Rome*, III. 31-37), but there are anachronisms and extra information that cannot be established as inheriting from any known source. A description of the two modes of preserving law – oral among the Spartans and literate among the Athenians – is not found in other sources and may reflect an interesting Irish perspective of jurisprudence. For a translation and discussion see Binchy (1983), also Osborough (1990).

34. 682.1-15

Miscellaneous

The text is written on one of the ten half-leaves left unnumbered in the pagination of the manuscript which contains it (Abbott and Gwynn 1921, 145), and has no obvious affiliation with the law texts on other leaves or with any other treatises. It describes Cain's monstrous descendants and their deformity as a consequence of his fratricide. It has been translated by Simon Rodway (2010, 1–2), and the date is suggested to be Middle Irish. Due to its interesting juxtaposition of biblical incidents with native lore, it has been subject to the scrutiny of several other scholars besides Rodway (Ó Giolláin 1984, 77; Stacey 2005, 70–71; Clarke 2012; Bisagni 2012).

35*. 687.37-688.20; 689.35-690. 16; 1554.1-19; 1580.1-1581.6;

2143.41;

979.23-26; 2146.15

Cáin Ḟuithirbe; Anfuigell; Fothae Becc

According to L. Breatnach (1986a), the tract *Cáin Ḟuithirbe* has not survived in any full, continuous copy. 687.37-688.20 is a later introduction prefixed to the tract, which ascribes the composition of the tract to Amairgen mac Amalgado. However, this ascription is doubtlessly based on the account in the canonical text which involves many other prestigious nobles and clergymen and which is quoted in 689.35-690.16, 1554.1-19 and 1580.1-1581.6 in a fragmentary state. Due to the woeful incompleteness of the text little more can be said about the background narrative than the conclusion drawn from the historical personages represented in it (Binchy 1958, 51–54; L. Breatnach 1986a). Most of the extant canonical text has been translated in the latter article. For more recent arguments on the dating problem see Ó Coileáin (1989); L. Breatnach (2005a, 216–218).

As Binchy (1958, 52) points out, the two prologues to *Fothae Becc* and *Anfuigell* (2143.41; 979.23-26 and 2146.15) are clearly modelled upon the later introduction to *Cáin Ḟuithirbe*. The former two are translated in L. Breatnach (1986a, 37). All these introductions follow the *accessus* scheme. The late introduction in 687.37-688.20, part of which has already been translated in L. Breatnach (2005a, 359-360) is translated in full in Appendix 1.

36*. 725.14-19; 956.14-17; 1113.4-5

Bretha Nemed Dédenach

1113.4-5 is part of the continuous canonical text, which belongs to a section in *Bretha Nemed Dédenach* entitled *Do dliged nād fil dīlsi lóige enech itir* ‘On entitlement that there is no forfeiture of honour-price at all’. 725.14-19 contains glossed citations and 956.14-17 is an excerpt from the tract found among a brocard of Old Irish texts. These are translated in Appendix 1.

The story here doubtlessly refers to the Convention of Druimm Cett (575 CE) and the composition of *Amra Coluim Chille* by Eochaid Dallán. But the central

account here that Eochaid Dallán composed his poem with ‘ten metres’ is not found in the narrative preface to *Amra Coluim Chille*, unless the *mesra* ‘metres, measurements’ designate the ten ‘chapters’ (*caibtil*) of the *Amra* (Stokes 1899, 134–135).

37. 749.10-12

‘An Old Irish text on prescriptive rights’

This text is part of a short passage which discusses instances and evidence that can ‘lock up’ and ‘unlock’ prescriptive acquisition (*rudrad*) of land property. It mentions ‘the twelve stones which the children of Israel brought out of the River Jordan to attest to the miracle which God worked for them’ as an example of ‘what is raised’ (*a ro-corad*) that can be used as proof of lawful ownership. It has been translated in L. Breatnach (2006, 73–74). The story is taken from Joshua 4, where twelve stones from the middle of the River Jordan have been carried out and set up at Gilgal, and stayed there as a memorial of the miraculous crossing.

38. 776.39-777.5; 1493.29; 1500.39

Cáin Ḟuithirbe

There is no continuous canonical text surviving in this part, but it consists of sporadic citations from the canonical text and glosses. L. Breatnach (1986a, 49–50) has carefully distinguished this closing section from the main body of tract and the canonical text from the glosses, and has offered a translation. Some missing text can be supplied from O’Davoren’s Glossary (1493.29; 1500.39, see L. Breatnach (1986a, 50)). The text seems to contain a narrative of Lóegaire’s conversion by St. Patrick.

39. 785.23-25

Uraicecht Coel

This text contains extracts from the tract and glosses. The text is quite fragmentary, and the name Simoirne in it is not otherwise known and are probably corrupt. On the other hand, the other name Sírna occurs in one of the king-list poems in the *Lebor Gabála* (Macalister 1942, 5:502), though that Sírna does not seem to be relevant to this text.

> *Fall, .i. humar 7 trīmoirne Simoirne Sirna .C. mac Máta 7 Ailill mac Māta rombert fer di Ulltaibh, Simoirne no Sirnae ainm fīr naile di Ulltaibh di macaibh Māta as-comhreir fri Concobhar mac Nesa.*
> *Fall* ('negligence'), i.e. a vessel and three spears (?) of Simoirne and Sirnae. Cét mac Máta and Ailill mac Máta who brought a man from the Ulaid, Simoirne or Sirnae is the other true name (?) from the Ulaid, [taken] by the sons of Máta who had paid compensation to Conchobar mac Nessa.

40. 810.29-31; 1097.2-3; 1396.11-17; 1400.5-17; 1558.29-32; 2122.5-26; 2125.3-7, 12-20

Miscellaneous

These citations are found in various contexts, all of which are of a heterogeneous nature. These are translations or free renderings of parts of *Collectio Canonum Hibernensis*, mostly from xl.5, relating various biblical incidents. They are collected and translated in Ó Corráin, L. Breatnach, and Breen (1984, 416–418).

41*. 847.8-11; 1924.1, 7-9

Miscellaneous

847.8-11 belongs to fragments of a commentary, and 1924.1 and 1924.7-9 are

parts of Digest C11, which is headed by the title: *Donī nach dlighinn cairrtech cairrtech nā nemhcairrtech do chairiugh* ‘That a guilty person is not entitled to accuse a guilty or innocent person’ (L. Breatnach 2005a, 74). The language is Early Modern Irish. Both are based on the story of John 8.7, but narrated in regard to the legal principle *criminosus criminosum accusare non potest* ‘a guilty person cannot incriminate others’. I translate both passages in Appendix 1.

42*. 877.16-28

SM 1 *Introduction*

This narrative is part of the OGSM on the phrase *Conchuimne dá ṡen* ‘joint recollection of two elders’ in the ‘genuine’ introduction to *Senchas Már*, accounting for the situation in which a *roscad* was pronounced (877.12-15). This narrative is not found in other copies of the Introduction. It describes a dispute after a large patch of land (30 *cumal*s[17]) was paid in exchange for a milch cow at a time of famine, and focuses on the problem whether this was an unfair transaction that should be revoked. Túathal Techtmar, an ancestor of the Uí Néill, was said to have reached joint verdict with Sencha mac Ailello from the Ulaid.

I am unable to decipher the *roscad* and therefore only translate the prose parts in Appendix 1.

43. 879.23-880.14

SM 1 *Introduction*

This narrative belongs to the OGSM as a prolonged gloss on the term *imbas for-osnai* in the Introduction to *Senchas Már*. *Imbas for-osnai* is required as one of the qualities owned by a *suí filed* ‘master poet’ who has the same honour-price

[17] See Kelly (1997, 574–575) for the size of a *tír cumaile*.

as a king or a bishop (Carey 1997; L. Breatnach 2011, 4–5).

The narrative relates firstly how Finn acquired the ability of *imbas for-osnai* by jamming his thumb between a door and a post at the entrance to the otherworld; then the driving out of Dercc Corra[18] because of Finn's jealousy; and at last how Finn utilised his ability of *imbas* to reveal the identity of the bizarre wild man who was in fact Dercc Corra. One can, of course, divide this into several independent incidents, especially considering the fact that part of it survives independently in other versions (Meyer 1893; Hull 1941, 329–333); and these incidents may indeed have originated as autonomous individual tales. However, the author obviously brought them together and treated them as one continuous narrative linked with temporal conjunctions (e.g. *cinn ree īarom* 'some time afterwards'); and there are logical links between the events, e.g. because Finn had acquired his ability of *imbas* in the first episode, he was able to perform it on a later occasion. This narrative is accordingly treated as a whole, with the title 'Finn and the Man in the tree', in the first edition and translation of both pieces (Meyer 1904a).

Not only is this one of the earliest accounts of the Finn Cycle (Meyer 1910, xviii–xix), but it also tells a peculiar story that incorporates both Latin phrases and obscure rhetorical pronouncements. Kuno Meyer has left out the rhetorical passages untranslated, but one of them has been tentatively restored and translated in Hull (1967). Other scholarly treatments of the text and its significance can be found in Gwynn (1932), Carey (1996; 2005b) and Hollo (2011).

44. 881.4-11; 1663.23-24; 1664.14-17

SM 2 *Di Chethairṡlicht Athgabálae*

[18] For the form and meaning of this name see Carey (2005b, 120-123).

All the attestations of this narrative are found in the OGSM to the second tract of SM, as part of the extensive glosses on the opening line of the tract *tēora ferba fīra* (see [21] above). The core narrative remains the same among these three passages, but the contexts seem to represent different versions, or different stages of development of the OGSM. The story refers to a versified judgment delivered by Fachtna the judge, and associates the three cows mentioned in the verdict with the three cows taken by Cú Roí mac Dáiri.

The judgment is also attested outside the legal corpus. A version is found in the commentary to *Amra Coluim Chille* in Rawlinson B 502 (Stokes 1899, 250–251), but not in other copies of the *Amra* (Crowe 1871, 40–41; Atkinson 1896, 77b; Bernard and Atkinson 1898, vol. 1, 173), cited as part of an explication of the three homonyms of *ferb*. Further, it also occurs in the glossary *Sanas Cormaic*, in entries *fir* and *láith*[19]. These connections have been pointed out by L. Breatnach (2005a, 314–315), Russell (1999, 93–95), Herbert (1989) and Carey (1999). I have recently published a critical edition from all versions and a remark on the textual development (Qiu 2013b).

45. 881.12-14;

TCD MS 1336 (H 3.17), p.840-1

SM 2 *Di Chethairṡlicht Athgabálae*

881.12-14 is part of the OGSM. It follows the previous narrative, and explains the same word *ferb* in the opening line of the tract. It records the first line from the satire made by Coirpre son of Etan, but here, as in the tale *Cath Maige Tuired* preserved in British Library MS Harleian 5280 (Gray 1982, 34; Stokes 1891c, 70), the line where the headword appears is not quoted: '*cin gert* ***ferbu*** *foro-*

[19] Meyer 1994, 47–48, 68. The two entries are also found in other copies of Sanas Cormaic, Leabhar Breac, the Book of Uí Maine and Laud 610: Stokes 1862, 20, 26; Meyer 1919, 309, 314; Stokes 1891a, 156, 158. Also see Russell 1988, 2; I have consulted the online database (http://www.asnc.cam.ac.uk/irishglossaries/) for the transcriptions (last accessed: 20/10/2014).

nassad aithrinde’ (Hull 1930, 67). The whole satire is nonetheless written out in the commentary to *Amra Coluim Chille*, as a gloss to *riss* in ‘*Difhulaing riss re aisned*’ (Stokes 1899, 158–159). Besides, the satire also appears in full in TCD MS 1336, col. 840-1 (not included in *CIH*, but preceding *CIH* 2127.6 in the manuscript), among a miscellany of legal narratives (Abbott and Gwynn 1921, 136–137). Satire has been one of the central topics in several law tracts regulating the poetic grades, and this episode is assigned by Liam Breatnach, based on the evidence from the arrangement of entries in O’Davoren’s Glossary, to the lost initial section of *Bretha Nemed Dédenach* (L. Breatnach 2005a, 187). Its fragments are also included under the entries *cerníne* and *rís* in *Sanas Cormaic*.

881.12-14:

> *bith trāth ferb bō, amail asindubartmar, ut dixit Coirbri mac Eithne, isin aīr dorigne do Bres mac Eladan meic Delbaīth; is [ī] (s)in aīr: Cin cholt for crip cirniniu 7rl.*
> Then *ferb* is ‘cow’, as we have said, as Coirpre son of Etan said in the satire he made for Bres son of Elatha son of Delbaeth; this is the satire: ‘without food speedily on a platter,’ etc.

46*. 884.1-3, 9

SM 2 *Di Chethairṡlicht Athgabálae*

Also part of the OGSM glossing on the tract of distraint. It refers back to the legend in the Pseudo-historical Prologue and enumerates the measures taken by different social groups to enforce their contracts. A translation is offered in Appendix 1.

47. 884.14-5

SM 2 *Di Chethairṡlicht Athgabálae*

This part of the OGSM tries to offer several interpretations of the term *athgabál* ‘distraint’, superficially (and perhaps etymologically) understood as ‘retaking’. The text may be incomplete, as Binchy notes in 884.e, since the syntax seems confusing. The effort of the glossator to explain *athgabál* as ‘retaking’ led him naturally to the *Lebor Gabála*, perhaps recalling the story that the sons of Míl, Éremón among them, retreated from Ireland and entered again as part of an agreement with the incumbent Túatha Dé Danann, but the passage is too brief and corrupted to allow for further interpretation.

> *no ar.ii.e is athgabāil ar fīu as nathgabāil* [Binchy marks here: some words omitted?] *gabāla Maic Ērimon maic Mīled Espāin cēdrogab athgabāil.*
> Or else *athgabál* is [to be explained] according to the value of… of the taking of the son of Éremón son of Míl Espáine who first performed an *athgabál*.

48*. 885.34-886.16; 1578.16-19; 2227.12-19

SM 2 *Di Chethairṡlicht Athgabálae*; *Bretha Nemed Toísech*

After discussing various types of distraint that apply to different situations, the OGSM in 885.34-886.16 asks: *Ces, in fil nī asa toirscēlta dliged (m)bunaid aithgabāla?* ‘A question: is there anything out of which the entitlements of the basis of distraint were revealed?’ It then answers ‘there is indeed (*fil ecin*)’, and narrates an event that happened when Ireland was divided into five provinces. I do not entirely understand what follows, since the key verbal form *cuicuir* is ambiguous. The text seems to be concerned with an agreement between Conchobar mac Nessa and Coirpre Nia Fer concerning the land from ‘The Confluence of Three Rivers’, i.e. where the rivers Barrow, Nore and Suir meet near the city of Waterford (*Onom*. s.v. *c[omar] trí n-uisce*), to the Boyne, namely the whole province of Leinster; and presumably in exchange one gave the other a

hundred of each kind of herd. The transaction of land is mentioned by the passage in 1578.16-19, though there the land is said to be ‘between the Bush and the Boyne’, namely the province of Ulster. In passing 885.38-39 also mentions *fīach āenlāithi in sin im mruig Maic in Ōicc* ‘that is the payment of one day concerning the land of [Óengus] Mac ind Óic’, which refers to the story of *De Gabáil in t-Sída* (Hull 1933). The same set of personage occurs in 2227.12-19, but I am not certain about the exact meaning of that *Bretha Nemed* passage.

Figures from the Ulster Cycle, including Ailill mac Mátach, Celtchar son of Uthidir, Blaí the Hospitaller and Néide mac Athni, each as the representative of a distinct social grade, are named as sureties for this transaction. Snippets of some *fénechas* passages are quoted. Then several circumstances are given, in each of which one of the aforementioned sureties was brought into play, and Fachtna mac Sencha delivered a judgment accordingly, establishing the rules for each type of distraint. 1578.16-19 occurs in a collection of commentaries, and this much shorter passage retells some of this narrative. This is translated in Appendix 1.

49*. 888.24-26

SM 2 *Di Chethairṡlicht Athgabálae*

As part of the OGSM, this short reference occurs in an extended gloss to *IM FOBRITHE* ‘concerning under-cutting’ which requires distraint with one-day stay. It mentions the *muc berrtha* ‘pig of shearing’, which also appears in the *Tripartite Life of St. Patrick* as a price paid for the tonsure received (Mulchrone 1939, 426). The *muc berrtha* here in the canonical text seems also to be a payment for the cutting of hair, as we read in the relevant glosses in another copy of the tract, 370.23-26:

IM FOBRITHE, .i. lōg berrtha, .i. IMin rāth fubaide imin mboim berrta .i. srubān, .uiii.mad bairgine 7 comfat eim na scēine do sail 7 comlethat a cuil do tuind .i. mīr do carrna i talla īarn na scēne di cach leth ina sesam 7 fodaloing, 7 lānbēl in demes tarsna ind aisle iter tiget 7 lethet.
'Concerning under-cutting, that is, the price of hair-cutting, i.e. concerning the surety of under-cutting, concerning the morsel of hair cutting, i.e. a small loaf, an eighth of a loaf and the same length of the haft of a knife of salted pork and the same width of its back to the skin, i.e. a portion of flesh in which the iron [blade] of the knife fits on each side in standing and it supports it, and a full mouth of the scissors across the joint both in thickness and width.'

The translation in Appendix 1 is tentative.

50. 915.33-916.11

SM 14 *Di Astud Chirt 7 Dligid*

This gloss (part of the OGSM) explains the story of *Sín Morainn maic Moín* 'the collar of Morann mac Móen', which can be resorted to in ordeals to distinguish true statements from false ones. However, the collar is not found among the objects of ordeal in the canonical text, cf. [11] above. The narrative gives four explanations of the origin of the collar. The first says that the collar is taken from Commun the Fool from *Síd ar Ḟemun.* The second says that it is an epistle from St. Paul that Morann wore around his neck, and when Caímmíne the Fool saw it, he named it the collar of Morann. The third returns to the *Síd ar Ḟemen,* where Morann slept and saw two women Erb and Erthecht, with a chain between them. He followed and stayed with them. He thought he stayed a day and a night, but actually a year had passed, and he brought the talisman of truth/ordeal (*fír*) from them as a sign. The fourth states that the collar was a membrane (amnion) that had Morann's head wrapped up at his birth but was broken by the waves of the sea. It formed a collar on his shoulder that can tell truth from falsity.

The second story has been translated in Ó Corráin (1987a, 286), and the first, second and fourth stories have found their way into the Middle Irish tale *Scél na Fír Flatha* (Stokes 1891a, 188–190), where the fourth tale has been considerably extended.

51. 974.18-33; 2219.35

Bretha Nemed Toísech

2219.35 is part of the canonical text of *Bretha Nemed Toísech*, under the chapter title of *do nemtiucch gach grāid an so sīs* 'On the conferment of *nemed* status to each grade from here below':

> *bior Decin, fūlacht na Morīgna, indeon an Dagda nemtiger goba.*
> The spit of Deichen, the cooking-pot of the Morrígan and the gridiron of the Dagda confer *nemed*-status to a smith.

In a collection of Old Irish texts with late commentary, 974.18-33 cites from the above line and then describes the history and the operation of these objects in more detail. This text together with the version in TCD MS 1318, *olim* H 2.16 (Yellow Book of Lecan), col. 245, which follows the 'The Setting of the Manor of Tara', have been translated by George Petrie (1839, 213–214). Petrie's translation has recently been revised by William Sayers (2014, 95)

The items seem to be some complicated cooking appliances, which are associated with figures from the so-called 'Mythological Cycle', but except for a versified account of the three items' forms and history in a version of *Acallam na Senórach*,[20] no fuller stories about them survive otherwise. The text from 2219.35 has been quoted in the Yellow Book of Lecan and RIA MS 23 N 10 copies of the *Triads of Ireland* (Meyer 1906a, 16); and an item described under

[20] Recounted in a version of *Acallam na Senórach* found in the Book of Lismore, known as *Acallam Becc*, see Hyde (1916).

[95] has referred to Morrígan's cooking-pot.

52. 990.11-30; 994.1-5; 1195.14-18, 21-22; 1350.22-24; 1352.26-1353.10; 1356.32-36; 1962.36-42; 2046.34-2047.8;

351.27-28; 1897.11-12

Di Astud Chor; SM 1 *Introduction*

Except for 351.27-28 and 1897.11-12 which are from SM 1 *Introduction*, all of these passages belong to the canonical tract of *Di Astud Chor* in rimeless verse, sometimes with glosses, and they actually relate several incidents. They have all been edited and translated by McLeod (1992).

In McLeod's book they are given the following sections: §4, 1350.22-24 holds Adam responsible for his conscious misdeeds; §13, 990.11-19, 1352.26-34, 1962.36-40 claims that Lucifer cannot dislodge himself from his disadvantageous contract; §14, 990.20-24, 1195.14-18, 1352.35-1353.4, 2046.34-39, discusses why Judas was repulsed from heaven from the perspective of early Irish law; §15, 990.25-30, 1353.5-10, 1195.21-22, 2047.1-8, 1962.41-2 raises Adam as an example of irretrievable contract. §33, 994.1-5, 1356.32-36, refers to Adam again as having been secured in a disadvantageous contract. §33 of *Di Astud Chor*, as well as some other sections of this composite tract, was probably taken from SM 1 *Introduction* (351.27-28 and 1897.11-12) (McLeod 1992, 111-112).

The reason that these references are collected here under one entry is clear: not only are they examples of the same legal principle, but they also all refer to biblical events.

53*. 1027.13-18; 1198.28-35; 2145.33-39

Cáin Phátraic; Fothae Mór

1027.13-18 and 1198.28-35 are copies of the same gloss commenting on the canonical text *frithaigthi trā trīan fīach friu* ‘a third of fine, then, should be demanded in return (?) to them’, which probably belongs to the tract *Cáin Phátraic*. 2145.33-39 gives another version of this passage, which occurs as part of the commentary to *Fothae Mór*. In both places the context of the canonical text is not totally lucid, but there is mention of a Fergus who had gone westwards, presumably Fergus mac Roích of the Ulster Cycle. Fergus acted on behalf of his *gilla* in a lawsuit and was entitled to a third of the fine (L. Breatnach 2013), but the *gilla* tried to impugn it. I give my translation of 1027.13-18 and 2145.33-39 in Appendix 1.

54. 1027.21-1028.12; 1280.1-21

Cóic Conara Fugill

The two passages are copies of the same Middle Irish introduction to the tract. The introduction makes use of the *accessus* scheme, and ascribes the tract to Cermna the Poet during the time of Cathal mac Finguine (d.742), who composed it in the little wood of Lugair in Tara. Otherwise, the introduction provides us with little information about this Cermna and how the composition was instigated.

The text has been edited and translated by Thurneysen (1926, 26–27) in German, Archan (2007, 304–307, 318–321) in French, and L. Breatnach (2010, 222) in English.

55*. 1111.1-11

Bretha Nemed Dédenach

The first section of the sole continuous copy of *Bretha Nemed Dédenach* recounts an anecdote of Athairne's conflict with the river Modarn. It is acephalous due to the loss of the first part of the tract, and starts directly with the praise poem that Athairne composed for the Modarn to abate its flooding after his satire against the same river. When the river received his eulogy it retreated to the sea. That is how 'the eulogy washes away the satire' (L. Breatnach 2006, 64–65).

This text, along with most entries below from the TCD MS 1317 copy of the tract, have been transcribed and noted in Gwynn (1942). 1111.3-5 has been normalised and translated in L. Breatnach (2006, 65), while a normalisation and a translation of 1111.1-3 have been offered by Breatnach during a seminar in DIAS. I have included these in Appendix 1, together with my translation of the rest of the passage. The story has been recounted in a 13th century composition by the poet Giolla Brighde mac Con Midhe (Williams 1980, 120–125).

56*. 1111.12-18

Bretha Nemed Dédenach

This part of the canonical text tells of the making of *Cáin Enech* 'Promulgation of Honour', employing the same frame narrative as in the Pseudo-historical Prologue to the SM. It stresses that though corporal offence between two hostile territories would be legitimate, satire that occurred between them should not be. However, I cannot find reference elsewhere to the *Cáin Enech* and the *Báinbretha Uin maic Aim* mentioned here. For my translation see Appendix 1.

57*. 1112. 13-17

Bretha Nemed Dédenach

1112.13-17 may be part of the canonical tract providing a verse as an example of the foregoing type of *aír co ndath molta* ‘satire with a hue of praise’, i.e. satire disguised with seemingly laudatory words. There is no account of the verse’s composition, but the verse itself contains an amusing scene of a certain man, in the manner of a champion (*caimper*, perhaps < Brittonic *campwr*), defending his sleeping chamber (*imscing*, usually in the sense of a royal habitation, cf. CormY 790 (Meyer 1912, 66) and *DIL* s.v.) against the infestation of a periwinkle (*fáechan*) (Kelly 1997, 298), but armed with only a sloe spike. I translate the passage in Appendix 1.

58*. 1112.18-23; 2117.26-2118.2

Bretha Nemed Dédenach

As a contrast to [57] above, 1112.18-23 exemplifies the type *molad co ndath aíre* ‘praise with a hue of satire’. It dedicates the composition to Athairne, who exalted a woman named Dúanach. 2117.26-2118.2, which belongs to the collection of background stories to *Bretha Nemed*, furnishes further information about the considerable wealth of this woman landholder. However, the text evidently breaks off after 2118.2, so we are not given more detail about the occasion on which this poem was made. 2117.26-2118.2 has been edited and translated in Dillon (1932, 63), as Story XIV, and Gwynn has offered an unsatisfactory translation of 1112.18-23 (Gwynn 1942, 59). There is another version of 1112.18-23, with slight difference in the order of verse lines, in *MV* II §103 under the meter *Luasc*. I translate the canonical text in Appendix 1.

59. 1115.33-1116.10; 1296.6-10; 1933.17-21

Bretha Nemed Dédenach

1115.33-1116.10 belongs to the canonical text of *Bretha Nemed Dédenach*, while 1296.6-10 is a citation in Digest B7, 1933.17-21 the corresponding part in Digest C23.

The text starts with a description of the situation: Borur, the servant of Athairne the poet, went with a troop of marauding soldiers into Connacht, and was wounded there. Athairne then chanted a rhetorical judgment addressing the difficult legal problem of how to seek compensation across the borders, as well as emphasising that every client and subject should stay in his territory and cling to his lord.

Several parts of this text have been translated and analysed by Watkins (1963, 226, 230, 236).

60. 1116.29-34; 2117.23-35

Bretha Nemed Dédenach

1116.29-34 is part of Conchobar's speech in the canonical text, demanding full liability from Lóegaire on account of his 'blade and tip'. The incident it indicates is narrated in 2117.23-35 among the collection of *Bretha Nemed* background stories. It tells how Lóegaire Búadach killed a servant of Conall Cernach in a dispute over surety. The prose tale in 2117.23-35 has been translated by Dillon (1932, 62–63), as Story XIII in the collection.

61. 1118.40-1119.16

Bretha Nemed Dédenach

The canonical text of *Bretha Nemed Dédenach* digresses here from the topic of the duty of hospitality to a poet and turns to the explanation of Athairne's epithet *díbech* 'the Miser'. Athairne's niggardliness, according to this narrative,

can be traced to a time before he was born, for he chanted a charm from his mother's womb to break a brewer's vessels and get a drink. The story shows Athairne's notorious extorting manner, and its point is to instruct poets how to use their poetic craft to exact hospitality from others.

The text has been translated with notes by Gwynn (1928), partly translated by L. Breatnach (2005b, 141-142) and translated in full by Carey in Carey and Koch (2003, 63–64).

62. 1119.33-39

Bretha Nemed Dédenach

The canonical text comes under the title *lōgh gach aisde* 'the price of each type of composition'. It starts with the introduction: *Athairne do chan so uman deabhaidh tarla eidir Gaifine mac Athairne 7 mac an aithigh et cetera* 'Athairne chanted this concerning the conflict which occurred between Gaifine, son of Athairne, and the son of the churl, etc.' (L. Breatnach 1987, 44). Then the text continues with Athairne's verdict concerning the atonement paid to a poet while he is advancing his grade. There was probably an underlying story concerning this conflict, but no further account of it is found. The text has been edited and translated by L. Breatnach (1987, 44–45).

63. 1120.16-30

Bretha Nemed Dédenach

This text belongs also to the section on the price of each type of composition. It follows a relatively independent passage elaborating on 'the cauldron of judgments' (Henry 1979), and cites a vivid story concerning Senbecc and Cú Chulainn. It is followed by the comment:

Bó i lōgh laoidhe cona toimsibh tēchta, muna ttoimhsither in aircheadol ní ffil lōgh lais.
'A cow in payment of the poem with proper measurements, unless the poem is measured, there is no payment for it.'

This text has been translated, save the last sentence given above, by Carey (Carey and Koch 2003, 67). Another version of this narrative survives in RIA MS D iv 2, f. 48v, which has been edited and translated by Meyer (1883, 182–184), and translated by Carey (Carey and Koch 2003, 66–67).

64*. 1123.3-11

Bretha Nemed Dédenach

Among the group of passages that interrupt a copy of 'An Advice to Doidin' (R. Smith 1932; Gwynn 1942, 223), this text relates a case involving Fergus Tuile (king of the Uí Líatháin) and Cormac ua Cuinn, and the compensation paid to him, presumably for the offence to his honour. The text is difficult so I only offer a preliminary translation in Appendix 1.

65. 1125.38-1126.6

Bretha Nemed Dédenach

This narrative is included in the section of canonical text that remarks on the interest on the pledge. It starts thus:

Naiscidh Nere cēda ro naisg naidhm. rodcachain im dháil chlaidhim meic Fiothla.
Néire binds, who has bound the first binding-surety, who has recited this concerning the share of the sword of the son of Fíthal.

The rest has been normalised and translated by Carey (1992, 9–10). The whole text evidently refers to a narrative about Cormac's judgment on the son of Fíthal's entitlement to a sword. A much fuller story bearing out most of the points mentioned in this obscure passage occurs in the Middle Irish collection of stories usually known as *Scél na Fír Flatha* (Stokes 1891a, 199–202), where texts from *Bretha Nemed Dédenach* and *Findṡruth Fíthail* are cited. Carey (1992) thinks that the episode in *Scél na Fír Flatha* is a later construction, or re-imagination, based on the fragmentary materials from legal sources, since the original *Bretha Nemed Dédenach* passage here indicates the supremacy of written evidence over ordeal and oral testimony, which is overturned in the *Scél na Fír Flatha* episode.

66. 1126.7-32

Bretha Nemed Dédenach

Directly following [65] above is a narrative concerning Eithne daughter of Amalgaid who tried to free her lover Eochaid the Victorious. Cormac ua Cuinn placed Eochaid over the tribes of the Mugraige people (or, 'the Slaves'), but he was captured and kept in Torach. Eithne, who was in love with Eochaid, learned her poetic art from Ferchertne in the guise of a young man, and visited Tara with her craft. She recited an obscure verse then to incite the men to seize arms and rescue Eochaid, and Bricniu mac Carbad the poet requited to her. Cormac then announced rules regarding an accomplice who brings in a criminal to the enclosure. The content of this narrative has been summarised by Gwynn (1942, 226–227) but I am not aware of edition or translation otherwise.

67*. 1144.7-19; 1317.29-40

Miscellaneous

This poem, with its introductory narrative and glosses, is recorded in two legal digests, A7 (1144.7-19) and B32 (1317.29-40). The two copies are similar. The legal digests summarise the principles concerning the forfeiture of land as compensation for wounding regardless of the culprit's intention. The story it contains is reflected in many other compositions, for instance [13] above and 'The Expulsion of the Déisi'. In Appendix 1 I provide a translation of 1144.7-19. The poem generally adheres to the pattern of a heptasyllabic line with a trisyllabic cadence.

68*. 1176.9-15; 335.34

Bretha Étgid

The canonical text on which this narrative in gloss is dependent reads *Cuirm lium lemnacht la cat* 'I like beer as much as a cat likes new milk'. This, as Ó Cuív points out (1975, 9–11), seems to be a proverb of the temptation an illicit sexual relationship holds for a woman. The glosses and commentary in 1176.10-15 indeed deal with conditions where the enjoinment of a woman into sex may not incur liability, if there is proof that the victim has put herself into a dangerous situation like putting milk in front of a cat. The background of the dispute in the narrative seems to be that Cormac's daughter was abducted by Lugaid son of a Connacht king, but there appears to be no other evidence of this story. The canonical text in 335.34, which is omitted in 1176.9, supplies the name of the woman that was involved: *Grāinde luid lat a Lughaidh* 'Gráinne eloped with you, O Lugaid'. For my translation of 1176.9-15 see Appendix 1.

69*. 1244.18-1245.16

Ántéchtae

This passage from the canonical part of *Ántéchtae* is written in rimeless verse. In my treatment of the text in Appendix 1, I have divided the lines on the principle that the last words of most lines have linking alliteration with the first words in the next line, and each line has two stressed words. The glosses and a commentary tell us more about the tale in focus. Part of the text has been quoted in 'The Contention of the Bards' (McKenna 1918, 88–89; L. Breatnach 2005a, 166–167). The basic storyline is also found in *Cath Maige Mucrama* (O Daly 1975), but there are some details, e.g. the contract between Mac Con and the Britons, that are not mentioned in *Cath Maige Mucrama*.

70*. 1295.2-7

Miscellaneous

1295.2-7 belongs to Digest B6 which pronounces that 'seven *cumal*s are the body fine of every native freeman' (L. Breatnach 2005a, 54). It mentions Cellach son of Cormac mac Airt who fell by the hand of Mug Ruith. This Cellach is credited in [13] with the abduction of the daughter of Sorar (or Solar) which triggered a whole series of events leading to the expulsion of the Déisi and the dethronement of Cormac mac Airt. In that story, however, Cellach was killed by the avenging Óengus from the Déisi, not by Mug Ruith. Mug Ruith is known from an array of often contradictory accounts from the Old Irish period on, as a poet, a druid, and the defender of Munster against Cormac mac Airt's incursion (Carey 2005a; Müller-Lisowski 1923; Sjoestedt 1926; Sjoestedt 1927). Cellach son of Cormac barely features in those accounts, however. I can only find a reference to him in a threat to the druid Art (Sjoestedt 1926, 34), and none of the sources says that he died fighting against Mug Ruith. The sense of this passage seems to mean that Mug Ruith had to compensate for Cellach so as not to cede land to Cormac. For my translation see Appendix 1.

71. 1295.31-38; 1572.24-1573.22

Miscellaneous

1572.24-1573.22 is part of a collection of Old Irish citations and late commentary. A quotation from an unknown Old Irish source governs the passage: *ĪCTHA ENECLANN CONCOBUIR .i. is ūad rohīcad in ēiric, o Fergus*[21] *.i. aire forgill frisaice rīg Ērenn hē* 'The honour-price of Conchobar was paid, i.e. it is by him that the *éric* has been paid; by Fergus, i.e. he was a lord of superior testimony who is the successor designate to the kingship of Ireland[22]'. A bit more of this source has been preserved in *MV* II, where it serves as an example of *cétal roscadach*, part of the curriculum of the twelfth year of a poet's training (Thurneysen 1891, 61). There the line reads (normalised by me from two manuscripts): *Īcthe eneclann Conchobair cīabo óenchoicid comsid ō Fergus 7rl-*. 'The honour-price of Conchobar has been paid by Fergus, though he was the lord of the same province etc.'. In 1572.24-1573.22, the quotation is then followed by a lengthy enumeration of the amount of wealth involved, and finally the cause of this compensation is explained: two native freemen under the protection of Conchobar were killed, and the accumulation of fines reached as high as that of seven persons. 1295.31-38 belongs to the Digest B6, and is obviously an independent set of glosses to the same Old Irish quotation. However, the Old Irish quotation itself does not appear there, and the explanation is somehow different: instead of two native freemen it has three who were slain in the case.

72*. 1302.29-31

[21] *O Fergus* is not written in larger script in the manuscript or in *CIH*, but cf. below the evidence from *MV*, this phrase was also from the Old Irish line.
[22] On the meaning of this see Binchy (1956, 222). The gloss to Fergus appears strange, however, in that in the Ulster Cycle Fergus mac Roích (and indeed Conchobar as well) is never said to be aspiring to become the King of Ireland.

Bretha Echach Maic Luchta?

The text is found in the Digest B10, but is probably a remnant of the tract *Bretha Echach Maic Luchta* which is mentioned in a list in the Pseudo-historical Prologue to the SM (L. Breatnach 2005a, 176). It is quoted to exemplify the regulation concerning the *fer fergach fingalach*, who has performed kin-slaying out of fury or has taken the path of a warrior, and does not enjoy protection (*fáesam*) because of the objection of the *fine*. Eochu mac Luchta is said to be a prehistoric king coeval to the Ulster Cycle personae. According to *Talland Étair* (Ó Dónaill 1996, 66), as well as to some lists of the 'fifths' of Ireland (Dobbs 1917, 40-52), he ruled over the 'fifth' of North Munster. The story of his cousins committing kin-slaying, however, is unknown elsewhere. The tradition recorded in the *Lebor Gabála*, where it mentions that Úgaine Mór was killed by his brother and that Eochu mac Luchta was reared by his mother's sister Medan (Macalister 1942, 5:269), might be related to this narrative which states that Eochu inherited from his aunts. The first half of this text has been translated by L. Breatnach (2005a, 176), but I offer a full translation in Appendix 1.

73*. 1302.32-36

Miscellaneous

This text immediately ensues after the previous one, also aiming to exemplify the *fer fergach fingalach*. It makes use of the favourite story of Cú Chulainn unknowingly killing his son Connlae, cf. [16] and [101]. It shares a part with [101]: 1302.33-35 is very similar to 2128.12-15. My translation is given in Appendix 1.

74*. 1305.34-37

Miscellaneous

This passage, written in Early Modern Irish, occurs in Digest B15. The context is about the clearing of legal liability when one's offence has been paid off. To illustrate this point, the jurist refers to the well-known episode of Christ's passion from the New Testament, but his mentioning of Longinus points to derivation from a later tradition represented by the Gospel of Nicodemus. For the translation see Appendix 1.

75. 1338.5-1341.7; 1589.1-48

Mellbretha

1338.5-1341.7 contains some citations from the tract *Mellbretha* with glosses and commentary. It starts with a Middle Irish introduction with the rhetorical scheme of *locc, aimsir, persa* etc. and an etymological study of the word *Mellbretha*. From the incoherent citations and occasionally from the interpretations of the glossators we can glimpse the existence of a narrative at the beginning of the tract. Fortunately, the coincidental discovery of a vellum piece which carries part of the continuous text from the opening of *Mellbretha* (1589.1-48) has furnished us with further pieces of this picture (O'Sullivan and O'Sullivan 1968). The canonical text is composed in rimeless verse, which tells how Fuaimnech daughter of Conn Cétchathach besieged Tara to seek restitution for her fostersons. Both texts have been edited and translated by Binchy (1968).

76. 1378.28-32

Miscellaneous

Located in Digest B52, this group of references mentions three incidents: the

first one is the story of how Noíndiu (*Naoine* in manuscript) of the nine judgments died after delivering a judgment on his mother (Dobbs 1933; Thurneysen 1936a, 196); the second one concerns Achan (Joshua 7, *Achab* in manuscript) who stole treasure from Jericho; the last is the story of Ananias and Sapphira who stole from the offerings of St. Peter (Acts 5). These stories are used to exemplify the consequence to anyone who objects to the church of God (*cach aon fristaigera fri heclais Dē*). The latter two are referred to several times in *Collectio Canonum Hibernensis* and the story of Ananias was quoted in Adomnán's *Vita Columbae* (Anderson and Anderson 1961, 384) , but I fail to understand how Noíndiu's tale can serve this end. The text has been translated into French and analysed by Lambert (2008, 59–61), but I do not find persuasive the interpretation Lambert provides for Noíndiu's case, that it illustrates how one's deed can rebound onto oneself.

77*. 1431.32-36; 2111.17

SM 46 'Díguin-tract'

The passage in 1431.32-36 was written in small script, but the first sentence, *Robaī turcomrag fer nĒrenn a Slīab Fūait nō cuilt a Maighi Brēgh*, seems to be from the canonical text on which the commentary depends. This is supported by the extract in 2111.17, where the same sentence *BUĪ TURCOMRUG FER N-ĒRENN 7RL-* is in large script and is thereafter glossed. According to L. Breatnach (2005a, 308-309), the text belongs to an incompletely preserved tract whose original name remains unknown. My translation of 1431.32-36 is offered in Appendix 1.

78*. 1510.20-23

SM 39 *Bésgnae Ráithe*

The tract *Bésgnae Ráithe* has not survived in full. However, in the quotations from this tract in *O'Davoren's Glossary* (1115-1116 in the numbering of Stokes (1862)), we can discern a lurking narrative. I cannot determine whether the citation is from the canonical text or glosses. L. Breatnach (2005a, 305) suggests the underlying narrative may be the same with the one in [1]; but it seems more probable that this refers to the *Dindṡenchas* account of *Carn Conaill* (Gwynn 1991, vols. 3, 441–448; Stokes 1894, 478–480). According to the *Dindṡenchas* story, Conall was one of the sons of Úmór from the 'proper Cruithne' (*Cruithne cóir*). Conall and his kinsmen came to Coirpre Nia Fer requesting a land for settling, and entered into a contract of service with king Coirpre in that regard, with four prominent warriors in the Ulster Cycle as paying-sureties (*rátha*). Later Coirpre imposed a tax on Conall's people which they could not stand, and they fled to Connacht to live under the reign of Medb and Ailill. The four sureties pursued them since they had deserted their lord and violated the contract (Archan 2012a, 99–101), and Conall was killed in combat with Cú Chulainn.

The text is translated in Appendix 1.

79*. 1587.18-34

Bretha Nemed Dédenach

L. Breatnach (2005a, 186-187) has shown that this passage, along with the fragmentary citations in 604.7, *O'Dav* 217, 384, 497 and 498, belongs to the lost section of *Bretha Nemed Dédenach*. It provides a versified summary of the tale of Néide satirising Caíar and some background information in prose, plus an analysis of the legal risks and consequences of the satire *glam dícend*, but it does not record the satire itself. The metre of the poem is *sétnad mór* (Murphy 1961, 49). The same story has been referred to in [30]. The passage has been translated

and discussed by Meroney (1949, 212–214), so I only divide the lines of the poem and translate 1587.18-22 in Appendix 1, as Meroney has left several words in this part untranslated.

80. 1653.16-1655.26; 1311.3-5

UCD-OFM MS A9, pp. 41a1-42a14

Pseudo-historical Prologue to the SM

This text is found between two versions of the Pseudo-historical Prologue to the SM (Carey 1994a, 2). The date of composition is probably in the Middle Irish period. It consists of several prose narratives about the lives and deeds of legendary jurists. The text begins with the statement ‘The first legal expert who has ever been in Ireland is Amairgen Glúngel’, but then without telling the story of Amairgen it turns immediately to Cae and Fénius, who are embedded in the context of the synthetic historical tradition. Then it covers Bríg Ambue, Sencha mac Cúil Chlaín, Fachtna mac Senchai, Sencha mac Ailello, and many others. An edition of this text has been prepared in an unpublished M. Litt. thesis submitted by Peter Smith to Trinity College Dublin in 1990, and it is doubtlessly related to a poem edited by the same scholar (P. Smith 1994). A copy of this text from UCD-OFM MS A9, pp. 41a1-42a14 has been edited and translated by McLaughlin (2013). Various parts of the text have been translated and remarked upon in publications (Ó Corráin 1987a, 288–289; McCone 1990, 101; L. Breatnach 2005a, 357). The story about Cae and Fénius enters *Scél na Fír Flatha* under the section of *Airisem ac Altoir* (Stokes 1891a, 192–193).

81. 1946.28-30

Bretha Forloisctheo

The legend of Patrick's convertion of the Irishmen and his legislation resurfaces in this short passage which in itself has very limited narrativity. It occurs in Digest D4, but belongs perhaps to the canonical part of the tract *Bretha Forloisctheo*, of which only two commentaries and some fragmentary citations exist. The text has been translated by L. Breatnach (2005a, 183).

82. 1950.18-23;

TCD MS 1363, *olim* H 4.22, p.181a

TCD MS 1317, *olim* H 2.15b, prefixed note

Miscellaneous

This piece is found in an inserted slip on the responsibility lords bear to clients, the church to *manaig*, sane persons to the insane, etc. Another copy differing from our text only in details of spelling, which has been preserved in TCD MS 1363, p.181a and inserted in a copy of the *Auraicept na nÉces*, has been translated by Bergin (1914). There is another copy of this in TCD MS 1317, *olim* H 2.15b, according to Abbott and Gwynn (1921, 92): 'Prefixed is a note in the handwriting of Maurice Gorman giving the names of the persons who stole the horses, mules, and asses of the cardinal who had been sent from Rome to Ireland to instruct the people in the time of Donnell More O'Brien, king of Munster, in consequence of which crime the Pope sold the rent and law of Ireland to the Saxons.' It relates how for the offence committed by individual Irishmen to a visiting cardinal from Rome, the consequence is to be borne by the whole of Ireland until today. The places it refers to, Cell Mór and Cúil O Sluaisti, are probably located in the Clooney Parish and the Killokennedy Parish of Co. Clare[23]. The offended cardinal should be Giovanni Paparoni (d. 1153/54), who

[23] See the relevant sections in *Ordnance Survey Letters by John O'Donovan and Eugene O'Curry*, 1839 (http://www.clarelibrary.ie/eolas/coclare/history/osl/clooney_bunratty3_cuil_ua_sluaisti.htm; last accessed: 16 Sep. 2013)

was delegated to Ireland in 1151; the consequence, obviously, is the Papal Bull *Laudabiliter* which purported to grant the Angevin king of England Henry II the right over Ireland.

83. 2103.33-34

SM 39 *Bésgnae Ráithe*

2103.33-34 initiates a group of extracts from the final third of SM (L. Breatnach 2005a, 85). The short text probably belongs to *Bésgnae Ráithe* (ibid., 306). It refers again to the legislation by St. Patrick during the reign of Lóegaire. The first sentence of the text has been translated by L. Breatnach (2005a, 306); here I shall offer the translation in full.

> *Conamus la Pātraic i flaith in rīg Laegairi bēscna aitiri cāich fo mīad. Is airi rosuidiged in so la Pātraic dia fis go mbuī, 7 ni arintī bad dligtech.*
> The discipline of the hostage-suretyship of everyone in accordance with his rank has been determined by Patrick in the reign of the king Lóegaire. It is on account of that that this was established by Patrick in order to find out how it was, and it is not because that it would be lawful.

84. 2112.29-36; 2216.25-2217.7

Bretha Nemed Toísech

From [84] to [98] are narratives recorded in sequence in 2112.29- 2117.22, all of which begin with a citation from the canonical part of *Bretha Nemed Toísech* and convey the story underlying the citation in plain prose. 2117.23- 2118.2, which consists of two narratives, is also in this collection. Those two narratives cite from *Bretha Nemed Dédenach* and relate the stories behind the citations. They are already treated in [58] and [60]. All the narratives from this collection have been edited and translated in ‘Stories from the Law-Tracts’ (Dillon 1932),

but Dillon did not explain the contexts of the citations within the *Bretha Nemed* tracts.

This narrative is based on the canonical text of 2216.25-2217.7, which seems to be a rhetorical dialogue between Morann and Neire. The closure of the pronouncements is dicernible due to the use of *dúnad* in each case. One piece of Neire's plea and two pieces of Morann's answer are quoted in the narrative: (Neire:) *A Morann a Maīnigh a Mochtadh, co trebur…* and (Morann:) *Ardu arusc asbér frit...Treba Bresail ní mo bera arraith*. The narrative explains that the dialogue took place when Neire pleaded on behalf of Bresal the Hospitaller to Morann, concerning the fine of trespass that Bresal should have received. 2112.29-36 has been edited and translated as the first of Dillon's Stories.

85. 2112.36-39

Bretha Nemed Toísech

Generally *Bretha Nemed Toísech* has fewer glosses than other tracts in *CIH*, yet this passage appears as a lexical gloss to the word *mó* in the canonical text of 2216.40 and the narrative [84]. It is thus grouped with [84] as the first of the Stories in Myles Dillon's edition (1932, 43). But from the perspective of narratology, it is an independent narrative. It records a dialogue between two men which was heard by Fer Muman during a trip to Connacht. In fact, the dialogue exhibits such high poetic quality that it has been considered a fine specimen of the Indo-European poetical tradition (Watkins 1978; Watkins 1989, 795). This passage has also been absorbed into *Sanas Cormaic* on account of its unusual word *á* 'cart' (Meyer 1912, 8); but there, part of the prose text has been rendered into Latin. Mahon (2006) has presented a comprehensive study of Fer Muman and the texts related to him. For other occurrences of this tale in the glossary tradition, as well as a textual discussion, see Mahon (2006, 246–249).

86. 2113.1-5

Bretha Nemed Toísech

This short text is in fact a gloss to the gloss [85]. It states that ‘it was during the aforementioned circuit that Fer Muman heard a murmuring in the wood’. Fer Muman sent Noinn mac Becáin to inspect what was going on. Noinn returned with an answer in *retoiric*, which Dillon has not included in his translation of the item I (1932, 52) but which is tentatively restored and translated by Mahon (2006, 251-254).

87. 2113.6-15; 2217.8-23

Bretha Nemed Toísech

The second of the Stories opens with a citation from the canonical tract in 2217.8-23, and supplements the pronouncements in the canonical tract with prose narrative. The incident happened in the time of Cormac and Coirpre, when some pigs incited by a hound tore Báemnach into pieces, and compensation was sought. Coirpre decided that only one-fourth fine is taken since it was a first-time offence of the pigs, but Cormac did not agree with him. Part of the canonical text is cited in *Sanas Cormaic*, cf. CormY 876 (Meyer 1912, 74).

88. 2113.16-25; 2217.24-35; 1386.17-24

Bretha Nemed Toísech

The narrative in 2113.16-25 relates a cross-suit between Mugna and Maine concerning the mutual damage caused by each party’s domestic animals, and the decision made by Sencha and Conchobar. Unlike the previous stories I and II, the

canonical text 2217.24-35, to which 2113.16-25 refers, already provides a narrative frame to accommodate the legal pronouncements. 1386.17-24 is a citation of the canonical text in 2217.32-35 among a section on offences by animals. 2113.16-25 is treated as item III in Dillon (1932).

89. 2113.26-2114.4; 2218.4-23; 1134.6-24

Bretha Nemed Toísech

2113.26-2114.4 aims to explicate the story behind the canonical text 2218.4-23, but it breaks off incomplete. 1134.6-24 is found in a copy of *Bretha Nemed Toísech*, which is not a copy of the canonical text, but of the narrative in 2113.26-2114.4, and moreover probably fills up the missing conclusion after 2114.4.

It tells of a king of Ulster, Cernodon (who is not known from other sources) who was niggardly and was blemished as a result of the satires he received. Foachtach stipulated the compensations for wrongful satire and the right of Cernodon in reply to Morann's request.

2113.26-35 has been edited by Meyer (1910b, 300) and the rest from the same manuscript is edited in Dillon (1932) as item IV. The whole passage 2113.26-2114.4, however, is translated by Dillon.

90. 2114.5-24; 2219.37-38

Bretha Nemed Toísech

Item V in the collection explains the word *lūaithrind* with a story of how a certain pattern was engraved on Cú Chulainn's shield. The canonical text in 2219.37-38 is located in a section listing the requirements for every profession to achieve *nemed* status, which includes [51] above. The requirement for a wright is also found in the added material concerning professions in some copies of the

Triads of Ireland, §118 (Meyer 1906a, 16–17) . It reads:

> *lūathrinde lūathluth for aigib, dlūthuccha gan fomus can feiscre, nemtigher*[24] *saor.*
> Swift movement of quick-graving[25] on the surfaces[26], consolidating without estimating without warping, [these] confer *nemed*-status to a wright.

The prose story in 2114.5-24 is written in Middle Irish. This is edited in Best (1911) and translated in Dillon (1932, 54–55).

91. 2114.25-38; 2223.28-33

Bretha Nemed Toísech

The canonical text 2223.28-33, which appears in a section on the importance of giving proper sureties, laments an Óengus. Part of it was taken into *Sanas Cormaic*, cf. CormY 971 (Meyer 1912, 82). The beginning reads:

> *A Ōengus fo aiblib imuis a richt roloiscceth a leath fo nimib ninib*[27]*, nī mō tīre tuind go himbath a mesuib mic Fīachrach Fobricc.*
> O Óengus, under the flames of *imbas* [is] his form, his half was burned under a cloud of venom, no greater is the surface of the land (?) as far as the sea in the judgments of the son of Fiachru Fobrecc.

The prose narrative 2114.25-38 then explains why Óengus the king was half-punished after death, and how it was found out through *imbas* that the reason was his indiscriminate acceptance of perishable pledges. It is edited and translated as

[24] Reading *nemthigidir*.
[25] Literally ‘swift-point’, probably a synecdoche meaning ‘swift-engraving’ (Dillon 1932, 54 n.4). The word is a preposed genitive, also see *Thes.* I. 1.30: *plectas* gl. *lāmrinda nō lūathrinda*, which, contrary to the explanation given in *DIL* (s.v. L 228.8-9), does not seem to denote a specific design rather than a general pattern. Also see CormY 323: *foscerd iarom imonsech fo cossmailess luathrinde* (Meyer 1912, 27), translated by Paul Russell as ‘whirling spirals’ (Russell 2008b, 33). For a discussion on the meaning of this word see Russell (1995, 201–204).
[26] Reading *for aigthib*.
[27] Reading *fo neme nimb* according to CormY 971 and O’Dav 1284.

item VI in Dillon (1932). In the prose narrative, the lineage of this Óengus is given as ‘son of Fiachra Fobrecc, or Óengus son of Ailill Glass, a son of Bresal Brec son of Fiachrae Fobrecc, and king of Ireland. And he is the thirtieth king (or one of the thirty kings) of the Leinster-men who reigned over Ireland.’ (Dillon 1932, 55). As Dillon pointed out, this Óengus is nowhere to be found in the genealogies. There seems to be good ground, moreover, to deem that this Óengus is entirely fictitious, since confusion is shown in the first two patronyms given of him: in the genealogies, the lineage runs: Bresal Brecc, son of Fiachra Fobrecc, son of Ailill Glas (M. A. O’Brien 1962, 101, 335).

92. 2114.39-2115.14; 2229.5-10; 1532.1-17

Bretha Nemed Toísech

The canonical text 2229.5-10 begins thus:

> *Mo Nere Nūallgnaith, dīamba brithem, nī beru nī tuidcis tuidme for toiced tūargabha tochmarc Coitribe cīan coadil…*
> O my Neire Accustomed to Proclaiming, if you shall be a judge, you should not deliver, you should not come to [the judgment of] the union upon a sinful seeking (?), the wooing of Coitribe Long and Beloved…

The text then continues to tell the story of the partly consensual rape of Taidell, the daughter of a *fili* of Conchobar, by a jester of Conchobar named Cotreibe, and the decision thereupon by Sencha. It is written in the typical elevated language of *Bretha Nemed*. The prose narrative in two copies, 2114.39-2115.14 and 1532.1-17, provides us with a fuller account of the cause and content of this judgment. A quotation in the prose narrative, *bert baetan brig ba siúr barrinde*, however, does not belong to the canonical text considered here. 2114.39-2115.14 has been treated as item VII in Dillon (1932).

93. 2115.15-37; 2229.38-2230.1, 2232.17-32; 1298.12-21; 1560.32-1561.13

Bretha Nemed Toísech

L. Breatnach (2005a, 189) has pointed out that f. 157 of British Library MS Nero A7 is misplaced and should originally follow f. 153 and precede the present f. 154. There is ample evidence from [109] that this is the case (see below). Therefore 2229.38-2230.1 and 2232.17-32 form a continuous text. The topic and the persons mentioned there indicate that this is the text referred to in the prose narrative of 2115.15-37, edited and translated as item VIII in Dillon (1932). 1560.32-1561.13 is a copy of the same prose narrative. 1298.12-21 is a glossed copy of the canonical text after 2232.24.

The prose narrative tells how Indua son of Trusc pleaded for his share of kin-property from his deceased father's head of kindred. The latter denied his claim on the ground that Indua had been living with his mother so that there was no proof for his kin status, and the only guarantor was not qualified since he was an exile. The case then was referred to Sencha who ruled in favour of Indua on the condition that he could produce thirty oath-helpers. For the legal institutions concerning recognition of kin status see Ní Chonaill (2011).

94. 2115.38-2116.27; 2232.33-37, 2230.1-5; 1298.28-34

Bretha Nemed Toísech

For the same reason stated in the previous item, the canonical text in 2232.33-37 and 2230.1-5 are consecutive text wrongly separated in binding. There is a glossed copy of 2230.1-5 in 1298.28-34. It consists of a legal pronouncement which declares that a son born from a lecherous woman should not be accepted into the kin. Two proverbial metaphors are used in this text and two narratives

respectively have been supplied to explicate the stories behind them. The prose narrative 2115.38-2116.27 works on the proverb *CŪAILLE FEDA I FEILM NARGID* ‘a wooden stake in a silver fence’, telling a story of Finn and his fool Lomna. The proverb was used by Lomna to reveal to Finn that his wife has betrayed him. The story is also found in CormY 1018, with somewhat older language, under the entry *orc tréith* (Meyer 1912, 87–88), which obviously cites from *Bretha Nemed Toísech*. 2115.38-2116.27 has been treated as item IX in Dillon (1932).

95. 2116.28-32; 2223.34-35

Bretha Nemed Toísech

The canonical text 2223.34-35, to which the prose narrative of 2116.28-32 (edited and translated as item X of Dillon (1932)) serves as a gloss, belongs also to the section which emphasises the consequence of accepting unlawful pledges and includes [91] above. It lists *in cochall Clothrand* ‘the cloak of Clothru’ as one of the things that are not to be given as a pledge. 2116.28-32 then explains this cloak as one of the three treasures found by Finn, which fits the account in the poem *A Rí richid, réidig dam* by Gilla in Chomded húa Cormaic, §25-27, where it is called *cochlán Crothrainne* (Meyer 1910a, 50).

96. 2116.33-41; 2223.35-37

Bretha Nemed Toísech

Following [95], the canonical text of 2223.35-37 with gloss states that the *Brecc Bras* ‘Speckled and Defiant (?)’ of Mac Con is not to be given as a pledge, presumably because of its great value and uniqueness. The prose narrative in 2116.33-41 (Item XI of Dillon (1932)) deplores that ‘there are many tales here,

but it is a pity that they are not known', and describes the clasp of Mac Con. Later in the same passage of the canonical text, two more items are mentioned which apparently bear some background stories. One is *fūlacht na Morrīghna* 'the cooking pot of Morrígan' (see [51] for further description of this object), the other *fi[d]chell Crimthuin Nīad Nár* 'the *fidchell* of Crimthann Nía Náir' (2223.38-39). We know fortunately more about the latter object. It is a golden *fídchell* game that is said to be brought along with other treasures from the Otherworld by Crimthann. It is also the best treasure found by Finn as reported in the poem *Rí richid, réidig dam*, §23 (Meyer 1910a, 50). That both the poem and the law text enumerate this *fídchell* and the cloak in [95] suggests a probable textual relationship. The adventure from which Crimthann acquired this item is well known in early Irish literature (for a general survey of which see Borsje (2012, 164–191)).

97. 2117.1-8; 2230.5; 1379.2-14; 1561.14-19.

Bretha Nemed Toísech

The second metaphor used in the canonical text in 2230.5 (cf. [94] above) warns against the mixture of children born out of lawful union and children begotten *la anfine* 'by [a woman] not from the kin'. Two narratives are then employed to account for the two explanations of the phrase *IS FRAOCH FOR BŪALENN LUIGHNE MAC LA ANFINE*. 2117.1-8 is the first narrative, explaining *FRAOCH FOR BŪALENN LUIGHNE* as a natural phenomenon in a place called Ualand, that only heather and no other flowers grew on the place, just as the children born into free and unfree classes should not be mixed. 1379.2-14 is part of Digest B52 which remarks on this phrase and narrative. 1561.14-19 is a copy of the text of 2117.1-8. The prose narratives in [97] and [98] together are treated as item XII in Dillon (1932).

98. 2117.9-22; 2230.5; 1298.35-36

Bretha Nemed Toísech

The prose narrative in 2117.9-22 also interprets the proverb in 2230.5. It offers an alternative interpretation of the sense as 'a *fraoch* of blood on Luigne's *Ūaland*', and tells a story which is set against the backdrop of the synthetic history of Ireland. This relates that the sons of Míl argued over a piece of rare cloth that they found during their voyage to Ireland, and Amairgen adjudged it to belong to Luigne who first got hold of it. As said, the *fraoch* here may be a metaphorical use of the sense 'heather', but *ūaland* (or, as a glossator noted in the margin, rec. *būalenn*) remains unaccounted for in the narrative. It seems probable that this narrative has little link with the proverb. 1298.35-36 is a terse summary of this narrative.

99*. 2118.9-12; 1121.30-31

Bretha Nemed Dédenach

The narrative in 2218.9-12, which is part of a later brocard of Old Irish texts and glosses, is referring to the canonical text of 1121.30-31. The section concerned here deals with the compensation due to someone who has been improperly praised with a metre (*aiste*) which is lower than what his grade is worth. The narrative here, relating the compensation Athairne paid to the leaders of Luigne,[28] is used as an example. 2118.9-12 is translated in Appendix 1.

[28] Compare the personal name Luigne in the previous narrative. In the *Lebor Gabála*, Luigne is said to be brother to Muimne and Laigne, the three of whom took joint kingship of Ireland. The other two names are clearly eponyms for *Fir Muman* and *Laigin*, and Luigne is most probably created from a tribal name Luigni who had an important existence in Connacht and the midlands as fighting men for the Uí Néill and the Connachta (F. J. Byrne 1987, 69). John Kelleher suggests that Luigne denotes the line of ancient Dál Cuinn and thus reflects a tripartite division of Ireland in prehistory (Kelleher 1968, 146). The Luigni are mentioned in [94] as well as in a number of Finn Cycle stories as the enemy of Finn's *fían*.

100*. 2127.6-18

Miscellaneous

This curious short passage which attributes the first judgment ever passed in Ireland to Amairgen Glúngel (the Bright Knee) appears in a section of TCD MS 1336 which teems with legal narratives. It has been edited by Roland Smith (1931) without translation. The story is mentioned in *Lebor Gabála Érenn*, though there it is not referred to as the first judgment. Part of the text is also found in *Lebor Gabála* (Macalister 1942, 5:118). It explicates an origin legend about legal activity, but in its present manuscript context this passage is not affiliated with law tracts. In the manuscript it is preceded by the anecdote which mentions the same story as reported in [45], and it is followed by [101]. I provide a translation of the text, except for the difficult *roscad* part, in Appendix 1.

101. 2127.19-2128.17

Miscellaneous

The popular tale of Cú Chulainn killing his only son in negligence emerges again in this text, and what is more, the jurist has added a legal episode to the tale: this mentions the trial of Cú Chulainn and the verdict, and gives a detailed legal analysis of the judgment. The verdict is very much in line with the opinion presented in [16] and [73], two other instances where this story is used; it even shares a passage with [73]. However, this text does not seem to be affiliated with any law tract.

The language of the text is Middle Irish. It has been edited and translated by O'Keeffe (1904). An earlier version of this tale, *Aided Óenfir Aífe*, can be found in Meyer (1904c), and for a discussion of the deviation of [101] from the Old

Irish story see Ó hUiginn (1996, 228–229).

102*. 2128.18-25; 114.19-20, 22-23; 893.15-16

SM 31 *Bretha Cairdi*

Next in the collection of legal narratives in TCD MS 1336 is a piece probably from the tract *Bretha Cairdi*. It may serve as an introductory narrative to the tract. According to L. Breatnach (2005a, 88), the text before 2128.18 in the manuscript is omitted from *CIH* but forms part of the narrative; and 114.19-20, 22-23 correspond to some of its words. 893.15-16 does not form a self-standing narrative but is obviously referring to the narrative here. The omitted passage has been edited, but not translated, by L. Breatnach (2005a, 465). The killing of Cormac Cond Loinges and the violation of his *gessa* are mentioned, which probably derive from an early version of *Bruiden Da Choca* (Toner 2007).

I translate the whole text including the passage in L. Breatnach (2005a, 465) and 2128.18-25 in Appendix 1.

103. 2128.34-2129.5

Miscellaneous

2128.34-2129.5, according to Corthals (1995), who has edited and translated the passage, is ‘a retelling of the prose introduction to the *Immathchor [nAilella 7 Airt]* in Middle Irish, followed by the first few words of the *retoiric*s…It seems as if the prose part of the *Immathchor* had been adapted for the use in a collection of *Dindṡenchas*, whence the present note might then have been taken.’ (Corthals 1995, 98).

104*. 2145.8-14

Fothae Mór

This passage follows a discussion of the four types of law (natural, letter, prophets, New Testament) in the commentary to *Fothae Mór*. It raises an anonymous case of a hospitaller from Ulaid being killed in mistake for a hospitaller from Connacht, and discusses the legal consequences under different circumstances. It is translated in Appendix 1.

105. 2192.1-7

Gúbretha Caratniad

The prose introduction to *Gúbretha Caratniad* explains the epithet *tescthai* of Caratnia, and how he became a consultant in legal matters to Conn. It is edited and translated into German by Thurneysen (1925, 306), and has been subsequently translated into English in the discussions of Gerriets (1988, 32) and Stacey (2002).

106. 2196.10-11.

Gúbretha Caratniad

This text appears in the form of an Old Irish gloss to an obscure passage in *Gúbretha Caratniad*, but it seems to bear little connection with the glossed passage and is probably a citation from another Old Irish tract, as are many of other glosses in this copy of the text.[29] Thurneysen (1925, 336–338) has edited and translated this text in German, here I offer an English translation:

Cair, cía rí cétaescomrad colainnéric i nÉre? Ni hansa. Fergus Lethderg

[29] e.g. *CIH* 2199.8-10 is cited from *Bretha Nemed Toísech* (=2143.18 ff.) (L. Breatnach 2006, 71-72).

docer i Cath Bó Cúalgne.
'A question: who is the king that was first compensated with body-fine in Ireland? Not difficult. Fergus the Red-Side who fell in the battle of the cow of Cooley.'

As Thurneysen has pointed out, no Fergus with the epithet *Lethderg* ever shows up in any recension of *Táin Bó Cúailnge* (Thurneysen 1925, 338), nor indeed in any of the Ulster Cycle tales. His namesake is known best from some Middle Irish poems and the *Lebor Gabála* tradition, as a son of Nemed, one of the early settlers of Ireland before the sons of Míl and subsequently the ancestor of the Britons through his son Britan Máel (Macalister 1937, 3:140, 148). Thurneysen suspects this to be an individual misunderstanding or an arbitrary invention.

107*. 2217.36-2218.3

Bretha Nemed Toísech

This text belongs to a section of the canonical tract of *Bretha Nemed Toísech* which deals with the owner's liability to injury caused by possessed items, and immediately follows the canonical text of [88] in the manuscript. It seems to include a judgment given on account of the killing of Adabur mac Delbaíth. In *Sanas Cormaic*, part of the text is cited and noted as the judgment delivered by Sencha or Fachtna, cf. CormY 648 and 877 (Meyer 1912, 53, 74) and the passage in Thurneysen (1936b, 206). The first part of this text has been normalised and translated by Liam Breatnach, and offered to me in personal communication, which I copy in Appendix 1; that is followed by my normalisation of the latter half from this manuscript, for which I have also consulted copies of *Sanas Cormaic*. This latter part, apart from the first line, is now translated by Liam Breatnach (2014, 15).

108. 2224.29-2225.6

Bretha Nemed Toísech

This section of the canonical *Bretha Nemed Toísech* discusses the protection due to the *nemed*-poets and the pledges provided to ensure their safety. The language is difficult. The text alludes to *imdeghuil co nind Athairne arm* ‘protection with the end of Athairne’s weapon (?)’, and how ‘Sencha advised the protection of the poets against the crime of plundering’. It then turns to a statement, of which the first letter(s) is unfortunately unclear: *Re dan* (?) *na mBretha Neme and so sís goleg* ‘… of Bretha Nemed here below at this point’. An evocation of the illustrious jurists ensues, including ‘Sencha, Fachtna, Ferchertne father of Athairne, Amairgen of splendid judgments, Tadg Tendal of the Ulaid, Dubthach from (*da*, rec. *maccu*?) Lugair with the judgments of Conchobar’.

2224.32-34 has been normalised and translated in L. Breatnach (2004, 29).

109. 2230.1-2; 2232.33-37

Bretha Nemed Toísech

As L. Breatnach (2005a, 189) points out, these two passages also occur in *Scéla Mośauluim* §6 (O Daly 1975, 76–77). They present a question raised to Lugaid Loígde father of Mac Con over the issue of how a woman can establish her son’s paternity and her son’s rights to his true father’s property, when a very difficult case was brought from Leth Cuinn to Munster where he was then the king, and Lugaid’s judgment.

Between folio 153 and 154 of the British Library MS Nero A7 there is a lacuna (O’Grady 1992, 145). It is reflected in *CIH* 2230.1, where the previous section breaks off incomplete with folio 153 while folio 154, which contains the

passage in question here, starts with the word *folma*. Judging from the evidence afforded by *Scéla Mośauluim* §6 (*bas gāeth nach claind cummascfa fri fōentrecha folma*) (O Daly 1975, 76) and *O'Dav* 851 (1498.38: *fri faontaca folma*), *folma* is in fact the last word of a sentence. The folio that precedes fol. 154 was misplaced at the end of the manuscript, now fol. 157. This is proven by the context (discussion of the same topic) and the end of fol. 157 which stops at the word *foentaca* immediately before *folma* (L. Breatnach 2005a, 189). Therefore 2232.33-37 and 2230.1-2 are just arbitrarily separated parts of a continuous text.

Scéla Mośauluim §6 is at several points corrupted and thus inferior to 2232.33-37, e.g. *morbe, dlomthairsí* and *foentrecha* in the former vs. *i norba, dlomtuir[;] isi,* and *foentaca* (for *fóentacha*) in the latter.

The text of 2232.33-37 (but not including 2230.1-2) has been restored and extensively discussed in the notes to *Scéla Mośauluim* §6 (O Daly 1975, 132-134). The translation is given in O Daly (1975, 77).

110. 2251.3-4

Miscellaneous

The passage to which 2251.3-4 belongs begins with a comment: *A MBERDA ACHTRAND tar muir is dīles* 'What the foreigners take across the sea, it is immune from claims', and the foreigner shall make no request to the *áes selba* 'people of property', namely the native residents, but the *áes selba* receive a *sét* as the price to take care of the foreigner, especially his legal concerns. The gloss continues:

> *.i. aran trīchatmad rann as d'fer bonadh, amail tucad a cloidhemh do Conall.*
> i.e. because the thirtieth of share is for the owner, as his sword was given to

Conall.

I have no knowledge of the underlying incident here.

111. 2295.7

SM 33 *Bretha Cróilige*

In §32 of *Bretha Cróilige*, the canonical tract lists twelve sorts of woman who are not entitled to sick-maintenance, one of which is *rechtaid gēill*, ‘a ruler of hostage’. The glossator then explained thus: *.i. gabus gīalla, .i. amal robī Meadb Crūacan* ‘i.e one who takes hostages, such as Medb of Crúachan was’. No doubt this refers to the famous character of the Ulster Cycle, but it is uncertain which story the glossator had in mind when he remarked that Medb took hostages. The text has been edited and translated by Binchy (1938, 26–27).

112. 2302.4-6; 1483.24

SM 33 *Bretha Cróilige*

The canonical text in §57 of *Bretha Cróilige* states that ‘for there is a dispute in Irish law as to which is more proper, whether many sexual unions or a single one: for the chosen [people] of God lived in plurality of unions’, and the glossator then cited examples from the Old Testament, such as those of Solomon, David and Jacob, to prove that it is acceptable to God for people to live in polygamy.

The text has been edited and translated by Binchy (1938, 44–47).

Chapter 3: An overview of the narratives in early Irish law texts

3.1. Introduction

How are the legal narratives presented in Chapter 2 distributed across the legal corpus? What are the functions of these narratives in their specific contexts? This chapter seeks to answer these two questions through a general typological investigation of the materials.[30]

3.2. Distribution of the narratives

3.2.1.

We can start with the question of where the narratives are found. Much of the Irish legal corpus has been divided into individual tracts, which provide a convenient descriptive label for the statistics. Out of the 112 narratives collected in Chapter 2, 38 are affiliated with the compilation *Senchas Már*;[31] 34 with the two *Bretha Nemed* tracts; 5 with the lengthy tract *Bretha Étgid*, 3 with the fragmentarily preserved *Cáin Ḟuithirbe*.[32] What I label 'miscellaneous', as stated in Chapter 2, are those narratives which stand alone, which survive only in later legal digests, or for which the context does not suffice for attribution to any tract; these amount to 16 in total. Some of these 'miscellaneous' narratives are written in Old Irish and are seemingly citations from the canonical layer of law tracts,

[30] A similar but much simpler study has been carried out in Qiu (2013a). But the taxonomy and numbers in each category there are inaccurate and are updated in the present discussion.
[31] One should notice that sometimes more than one tract employs the same narrative. In these cases, the narrative is counted as affiliated to the tract where its original context is, not to other tracts which imported this narrative from that tract.
[32] One item, [19], is attested in both the *Senchas Már* and *Cáin Ḟuithirbe*, though in both places it is found in the layer of later commentaries.

but due to the uneven preservation of early Irish legal text, it is impossible to establish their origin.

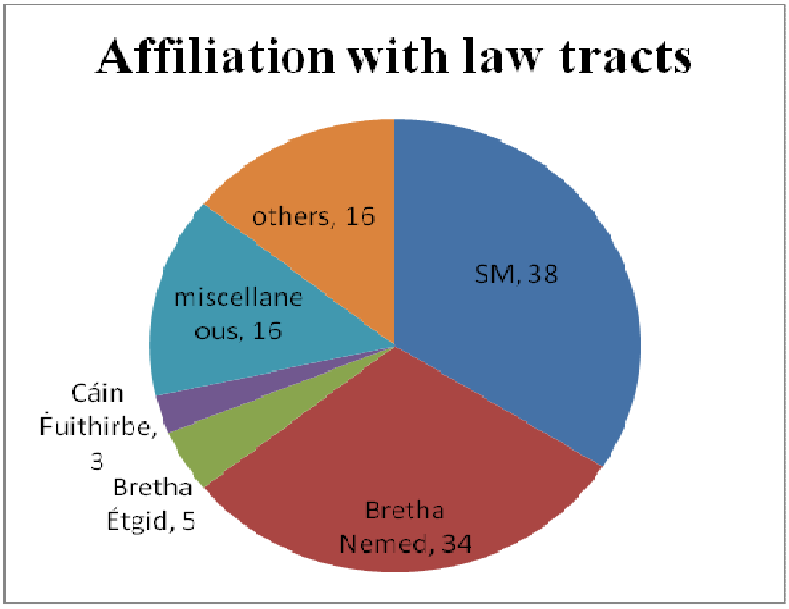
The two *Bretha Nemed* tracts, *Bretha Nemed Toísech* and *Bretha Nemed Dédenach*, occupy about 57 pages in *CIH* (L. Breatnach 2005a, 185, 189). Both the beginning and the end of the latter are lost, yet a fair guess based on the citations from the lost parts would not assign too many extra pages to it. *Senchas Már*, which is the largest single compilation in early Ireland and has attracted the most glosses and commentary, consists of more than forty tracts and accounts for many hundreds of pages in *CIH*. It has a similar number of narratives to *Bretha Nemed*. Incomplete copies of *Bretha Étgid*, on the other hand, take up about 200 pages in disarray (L. Breatnach 2005a, 10–11), but contain only five narratives. It has to be kept in mind that many of the SM tracts survive only in fragments, in some cases only as titles, and that the beginning of *Bretha Nemed Dédenach* is lost, rendering the distribution of the evidence uneven and exact numbers probably unattainable. Yet from what is preserved it is not unfair to say, that *Bretha Nemed* has a strikingly higher concentration of narratives in comparison with other tracts or compilations. Pronouncements and dialogues attributed to legendary figures, which have been excluded from the narrative lists in this study, are also abundant in *Bretha Nemed*.

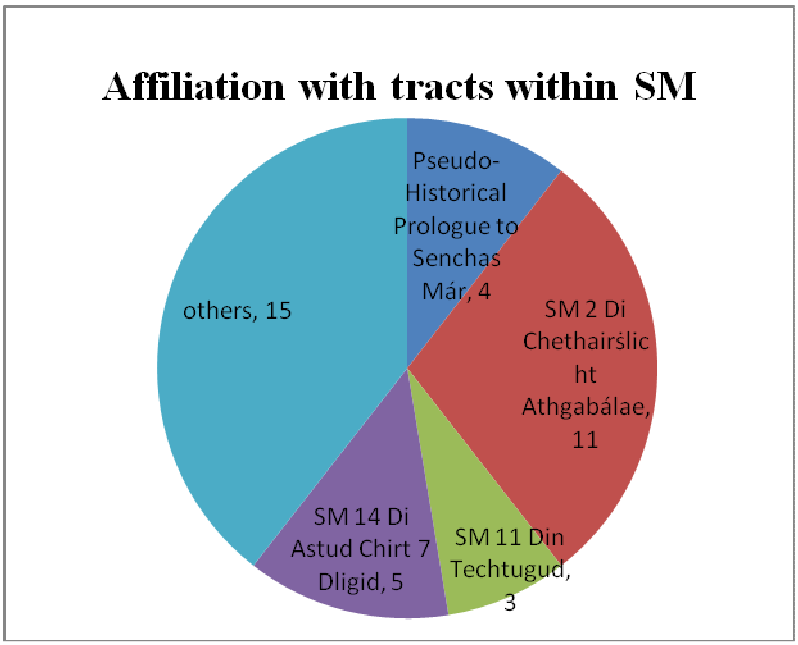
3.2.2.

Of the 38 narratives associated with *Senchas Már* tracts, eleven are from SM 2 *Di Chethairślicht Athgabálae* ‘On Four Paths of Distraint’; five from SM 14 *Di Astud Chirt 7 Dligid* ‘On Establishing of Right and Entitlement’; three from SM 11 *Din Techtugud* ‘On the Legal Entry (Taking Possession)’; and four from the Pseudo-historical Prologue to the SM. The number of narratives affiliated with these four law tracts in the *Senchas Már* adds up to 23, representing almost two-thirds of the total number of narratives found in *Senchas Már*, a compilation with

47 or perhaps 48 tracts, with the later addition of the Pseudo-historical Prologue (L. Breatnach 1996b; McLeod 2005). Again, considering how much of SM has not survived, or has survived only in a very fragmentary state, especially in the last third of this tripartite compilation, the data here may not reflect the whole picture. Nonetheless, among the better-preserved SM tracts, the concentration of narratives is evident. SM 2 and SM 11 are peculiar in *Senchas Már* for their extensive use of *roscad* and rhymeless syllabic verse; and they seem to have a closer interrelationship with one another than with other SM tracts, judging from their similarity in structure, mutual references to each other, and the fact that they are frequently juxtaposed in general discussions such as the Heptads (see 5.2.2). The Pseudo-historical Prologue was intentionally constructed as a narrative introduction not long after *Senchas Már* was compiled; the main body of this prologue consists of two independent narratives ([17] and [18]), and two more were appended to it in a later commentary ([19] and [80]). Three out of five narratives found in SM 14 employ the same Patrician legend as is presented by [17] to expound the origin of its rules. The preference for using narratives in certain tracts, taken in conjunction with the diverse styles and the unsystematic coverage of topics in individual tracts (Murray 2002, 158 n. 8), might lead us to speculate that the compilers collected pre-existing tractates from different sources and maintained their original contents without making any great effort to collate or homogenise these materials. Yet in many SM tracts one finds the same bias toward the Féni, a projection of the Uí Néill hegemony (see 4.5.5), and a deliberate cultivation of the Patrician legend which reflects an Armagh-centred perspective: these factors suggest that *Senchas Már* was compiled and conceived as a unitary whole (L. Breatnach 1996b, 38).

The distribution of narratives in the law tracts can be conveyed more clearly by the following charts:





3.2.3.

52 out of the 112 narratives that I have collected - that is, about half of the narratives - are already attested in the canonical part of the law tracts that were composed in the Old Irish period. Most of these were in due course glossed and commented upon by later jurists, and sometimes more detailed narrative accounts are supplied to explain the obscure words or abbreviated stories in the canonical text. The remaining 60 narratives are found only in the later strata of the law

texts, either in glosses, in commentaries, or in miscellaneous digests or thematic tractates.[33] To further break down the figures, 24 out of the 34 narratives in *Bretha Nemed*, and 21 of the 38 narratives in *Senchas Már*, are found in the canonical texts. These figures show that the practice of incorporating narratives in legal texts is a constant feature of medieval Irish law, from its first textual attestation in the 7th century down to the early modern Irish period, perhaps lasting as late as the production of some of the manuscripts themselves.

3.3. Textual functions of the narratives

What are the functions that the narratives serve in their respective textual and legal environments? One may presume *a priori* that, since they are found in the legal corpus, the narratives were included for their legal significance, especially to illustrate legal principles with prominent cases; and the principles, as established in such cases, are to be followed in later judgments. Some scholars therefore use the term 'leading case' or 'precedent' to describe some of the narratives (Stacey 2005, 73, and n. 45). Robin Stacey rejects the latter term on the grounds that calling these narratives 'precedents' imputes a spurious authority to the judgments which they contain, and wrongly suggests their regulative power in real life, whereas 'leading case' is a suitable term for describing the prominent disputes which 'have been used to lend an air of antiquity (and hence authority) to practices that were in fact quite new', a process she calls 'backward-construction' (ibid. 73). In other words, Stacey believes that these narratives derived from the legal principles, not the opposite. They might exemplify the relevant principles, but they themselves did not enjoy any authority in courts since they were rejected as fictitious by medieval Irish jurists. While her remark on the 'backward-construction' of the narrative cases may be accurate, Stacey's

[33] The Middle Irish tract labelled 'The distribution of *cró* and *díbad*', which contains [32], may have originated as a commentary on another Old Irish tract, see Chapter 2.

use of ‘leading case’ still involves unnecessary confusion with the term’s meaning in modern legal usage. It is also incorrect to regard all the narratives found in *CIH* as involving legal disputes, as we shall see. But first let us focus on Stacey’s theory about the functions of those narratives which appear to report a case settled by prominent jurists. Are they really ‘leading cases’ that were *not* quoted by early Irish lawyers in court to guide the judgment?

In modern Common Law jurisdictions, a ‘leading case’ is defined as ‘an important judicial decision that is frequently regarded as having settled or determined the law upon all points involved in such controversies and thereby serves as a guide for subsequent decisions’ (Thomson/Gale 2004, s.v. *leading case*). A leading case, therefore, refers to an incident which has been judicially supervised and has settled a certain legal problem, usually by the highest judicial authority available, and which should have a binding or guiding effect on similar cases (Qiu 2013a, 112–113). A precedent refers to ‘a court decision that is cited as an example or analogy to resolve similar questions of law in later cases’ (Thomson/Gale 2004, s.v. *precedent*). There are different emphases in the two terms, ‘leading case’ on its importance, and ‘precedent’ on similarity between past and present, but in the Common Law systems they are practically synonyms. There is no solid basis for Stacey’s preference for a term on the grounds of a supposed presence or absence of binding force.

Indeed, the assumed lack of exemplary or guiding effect on the part of a legal narrative is itself questionable. Stacey argues that ‘[t]here was no sense in early Irish society that a legal precedent, once established, ought to be followed in every case’, for ‘[t]he Irish conviction that a person’s status and behaviour could and indeed *should*[34] have an impact on the legal rights that person would enjoy made a system based on precedent not only impossible but undesirable’, ‘[i]n fact, …refusal of the lawbooks to cite decisions made by actual human

[34] Emphasis in the original.

judges…itself constitutes an explicit rejection of the notion of precedent in any real judicial sense' (Stacey 2005, 73). These arguments, in my opinion, are quite problematic.

Firstly, we should distinguish between the textual function of the narrative cases in the lawbooks, and their curial function when quoted by lawyers to vindicate their stances in cases. We can talk about the former with relative confidence, and in fact that is the main task of the following sections. But the latter, because of the scant survival of medieval court records in Ireland (see 1.4.3), is largely unknown to us, so that in a positivist sense, Stacey's denial that legal precedents were followed in subsequent judgments in early Irish society is at best an *argumentum ex silentio* (Patterson 1989, 48–49).

Secondly, absolute equity in status and rights is never realised in any legal system; and case law systems pass judgment according to the analogy, not identity, between precedents (or leading cases) and the case at hand. Early Irish jurists were actually not unfamiliar with the method of proportionate analogy in distributing rights and duties to different social grades (Patterson 1985). Also, no case law system would be so unrealistically rigid as to dictate that a precedent is to be followed in every similar case: times change, and *nomoi* of societies too (see 1.2.3); synchronic situations as well as diachronic developments are surely to be taken into consideration by judges. A legal precedent, if such ever existed in early Ireland, could indeed serve as guidance in legal principle for cases concerning persons of different status under different circumstances.

We should also not confuse the historicity or otherwise of a narrative case with the possible legally binding effect it might have. Modern legal writing generally confines narrative of incidents to the pigeonhole of cases: these are either reports of real-life happenings, some of which have been judicially supervised and may become leading cases; or else are completely fictitious case studies, which have no binding effect in court. This binary opposition of

narrative/case vs. non-narrative/law (code) text (see 1.1), may have led Stacey firstly to consider all narratives to be cases supplementary to law texts, and then to deny their binding effect because they are historically unverifiable. This opposition may not apply to medieval Irish law, however. The question of the motivation behind the almost exclusive employment of legendary (if not totally fictitious) but traditional figures in the narrative cases is a highly complicated one, and is perhaps the key to understanding the whole phenomenon of writing narrative in early Irish law. The deliberate placement of almost all narratives in (pseudo-) historical settings is a strategy, in accordance with Irish historiography, to contextualise the law texts in a traditional and paradigmatic past as well as to (re-)construct the past in light of the present. Narratives serve to accommodate the law into the learned tradition, and the law grants them authority in practice, even if they are not directly reporting a past judicial decision but rather recounting the circumstances of the making of lawbooks, or providing an example of how a word was used. In this sense all the narratives in the legal corpus, not merely the judgment stories, should be treated as a group. These arguments will receive fuller development in Chapter 6. For the moment, we can at least suspend the modern assumption that, in order to be accepted in a court as legally binding, a narrative account must loyally depict factual events.

However, there is a third consideration that the narratives may acquire their binding effect not as precedents or leading cases, but as part of the ancient law text itself. A valuable piece of late medieval pleading (*CIH* 2204.1-2208.19), which was (or was supposed to have been) read in front of judges, offers an instance of how narratives from early legal texts were cited by lawyers in the court (see 1.5.3). The text is found on a single folio in a box of miscellaneous items categorised as TCD MS 1308, *olim* H 2.12, no. 8iii (Abbott and Gwynn 1921, 86; L. Breatnach 2005a, 8), and it is acephalous and probably breaks off incomplete as well. Binchy has summarised the content of what can be gleaned

from the text in his examination of the institution of distraint (*athgabál*) in early Irish law. It seems to have been produced by the advocate for a certain Mac Mathgamain against a Brian who had mustered a band, penetrated into Mac Mathgamain's property and carried out raid and arson in revenge for an earlier grievance. Brian, however, pleaded not guilty on the grounds that his action constituted the legal remedy of distraint. The text gives Mac Mathgamain's advocate's grandiloquent retort, denying the legitimacy of Brian's action (Binchy 1973, 67–70). He cites extensively from ancient law texts and wove them together with his comments and glosses, making his pleading an erudite if not extravagant oration.

In *CIH* 2205.26-28 the advocate makes his point to the judges:

> *7 cuirim-si cucaib, a brithemna, cid mōr do daine 7 d'innilib ó ndēntar fogail, gurab dīles dontī trisi ndēntar īat uili māna f…iadib d'āirithe fogluighus ris.*
> 'And I put [this] to you, o judges, though it was a large number of people and cattle by whom the raid was done, all of them by whom it was done shall be forfeit if not…(several words missing) in particular who committed the trespass against it.'

He then cites (*CIH* 2205.28-40) a passage from the Digest (A2=C12=D40, *CIH* 1140.16-27 etc.):

> *mar ader: a ūa Cuinn, 7 fer rogonar fīadh sochaide, cīa tuill [for]* [35] *slōg fīa ndēntar, no asa clīthor [a ndēntar] mana frirīastar-sidh dia cobair. dia caomtiasat laocha īar nēchta escomna, doslī for gac lāim lānfīach manabat cu[ir] aoenēirce; 7 mar ader senchus: masa sūil rocaocha(d), is a suidiudh aile cocrann forsin lestrai uili, cidbe lestar dia tuit dib arteit a fīach, ar isī .c.na breth insin cetarugad for Congal Caoch caochsat beich, bach rī Temrac cona tabert asa [fleatheamhn]eas; d[o]bert a cin forsan fer badar beich. Nochasi breth innso bretha la Ulta 7 Fēine imbe, ar is do suidiudh [ar]tēt sochaide a cin naonfir 7 nād forfūachtadar uili la Fēniu, amal mart foragar la conu no mucca no cethrai, no fer gonur a ucht slōigh, nochni*

[35] The illegible words in the manuscript that are omitted from *CIH* 2205.28-40 are restored between square brackets according to *CIH* 1140.16-27.

laimter urtac [na fortach][36] *for nech sunnradach dib, doranar in fer uaithibh uilib no dorochradar uili a ndīlsi .i. conach dīles a marbad iter daine 7 [indile no] gu tairge dliged.*

As it says: o grandson of Conn, if a man be killed in the presence of many, what penalty does it incur upon the host in the presence of whom it is done, or under the protection of whom it is done, unless it was delayed through his help, and if the warriors connive [it] after impure slaughters, the full fine deserves on each hand if there be no rightfulness of single compensation; and as the *Senchas [Már]* says:[37] if it be an eye which it has blinded, it is then that it (the injury) requires the casting of lots on all the hives; whichever of the hives it falls upon is forfeit for its (the bee's) offence. For this is the first judgment which was passed on Congal the One-eyed, whom bees blinded in one eye. And he was king of Tara until [this] put him from his kingship, he charged the man who owned the bees with its offence and this is the judgment which was passed by the Ulaid and the Féni about it, for it is in this case in Irish law that a multitude is liable for the offence of one, [an offence] which they have not all committed; as when a carcass is found among dogs or pigs or cattle, or a man who is killed in the midst of a great crowd, and no one ventures a vicarious oath [or an oath] fixing guilt on anyone of them in particular. Compensation for the man is paid by them all, or they have all become forfeit, i.e. it is free to kill them whether humans or animals until they concede justice.

A few textual remarks can be made at this point. The first part of this speech, though addressing the 'grandson of Conn', i.e. Cormac ua Cuinn, does not contain a narrative as defined in 1.4.3. It is more of a pronouncement of the relevant rules, and there is no late feature in its language. The content after '*mar ader senchus*' is an almost verbatim citation from the canonical part of SM 21 *Bechbretha* 'Bee-judgments', §30-35, which forms a self-contained thematic unit in SM 21 and is edited by Kelly and Charles-Edwards (1983, 68–73). However, there are some points where the digests and the pleading jointly disagree (often giving an inferior reading) with the canonical text as attested in the only complete copy of the tract (*CIH* 449.20-32). These are listed in Kelly and Charles-Edwards (1983, 11). Although it is difficult to establish the relationship

[36] This phrase was omitted from the pleading in *CIH* 2205.37.
[37] The translation hereafter is from Kelly and Charles-Edwards (1983, 69–73).

between the digests and the pleading text, there is one omission from the canonical text (*na fortach*) in the pleading but not in the digests; and the specific nature of the pleading text as against the more general thematic nature of the digests lends weight to the supposition that the pleading text derived its materials from the digests, which in turn reflect a later version of the canonical text (also see L. Breatnach 2005a, 337). This later version, significantly, omits the phrase *im chinta bech* 'with regard to offences of bees', therefore making it possible to generalise the principle to all occasions of joint offence.

The elaboration of rules is evidently intended to incriminate all participants in the raid, as it was impossible to identify the particular (*d'āirithe*) perpetrator of each individual offence. Early Irish law readily provided a solution for this kind of situation: as the advocate (and the compiler of the digests) points out, the rule exists in the *Senchas Már*. A narrative is employed in the canonical text ([26]) recounting the first judgment concerning an offence by a multitude; and although the original case concerned the injury to a king by bees, its principle has been intentionally abstracted (through the omission of *im chinta bech*) and applied by analogy to the onslaught wrought by Brian and his followers.[38] To this extent it can surely be regarded as a 'leading case' or 'precedent'. However, the judgment and the incident that occasioned it are not known and referred to, as in modern courts, in an abstract and indexed form, something like ***Congal Rex vs. Honeybees* [630 CE]. Rather, the case is referred to by citing from the canonical law text *en bloc*, which means that the binding force of the narrative depends on its being an integral part of the ancient legal canon, rather than a self-standing happening which embodies certain legal points. Moreover, not only is the story of Congal (d. 637) being blinded by a bee in one eye historically unverifiable, but

[38] In this respect, at least, it hardly justifies Gearóid Mac Niocaill's claim, when he remarked on two other similar and coeval documents, that they are 'characterised by the general irrelevance to the matter at issue of the brocards bandied so freely about…it is difficult to evade the conclusion that relevance of quotation was something the pleader stumbled into more or less by accident' (Mac Niocaill 1967, 304–305). For a rebuttal of Mac Niocaill's view see Ní Dhonnchadha (1989, 161–162).

it is also unlikely, as pointed out by Kelly and Charles-Edwards, that such an injury could ever be inflicted (Kelly and Charles-Edwards 1983, 121–122). In this sense, early Irish law is not a case law system, and we should avoid using 'leading case' or 'precedent' to describe the narratives that contain verdicts on cases, especially for those that do not report judgments or even lawsuits at all (see 3.3.1 ff.).

We can illustrate the points made above by advancing into another narrative cited in this pleading (*CIH* 2207.37-42). The advocate appeals as follows:

> *Bidh anbur breith a breitheamna nac fuil do sochar agantī gabas athgabāil toxail da rēr-sin acht gan druim fri līas do tabairt no a fagbāil ar anadh a lāim cintaigh.* (*CIH* 2207.35-36)
> 'Let it be in your judgment, o judges, that he shall have no benefit, who performed a distraint of carrying-off according to it apart from not providing a cowshed and not leaving them in the staying in the debtor's hand.'

He then goes on to cite a passage from SM 2 *Di Chethairślicht Athgabálae* which contains a narrative of how Asal performed distraint on behalf of the king of the Féni against Mug mac Núadat, the surrogate of the king of Ulaid ([21]). Again, he introduces the citation with *mar ader* 'as it says', but what he cites is not exactly identical to any version of the tract that we have today.

The passage starts as follows:

> *Tēora ferba fīra dosnacht Asal ar Mugh mac Nūdat .i. tēora ferba, fīra, no tēora ba īar fīr, roimaigestar no roimainestar Asal mac Cuinn fēinnedha, athach forrtha rīg Teamrac, for Mug mac Nūadhat, aitheach forrtha choirbre ng[n]athcoir.*
> 'Three milch cows that Asal drove away at the cost of Mug mac Nuadat, that is, three cows, [that are] milch; or three cows, according to the truth, that Asal son of the warrior Conn, the substitute churl of the king of Tara, drove or herded[39] from Mug mac Nuadat, the substitute churl of Coirpre

[39] These are the late perfect 3 sg. deponent forms respectively of *imm-aig* and of *immáinid*, the latter a new verb made from *imm-aig*'s verbal noun.

Gnáthchor.'

This is a citation from the first sentence of the tract and its glosses, as witnessed in *CIH* 352.26, 32-34. But the following explication, *.i. trī ba rogabustar a nathgabāil iman tīr .uii. cumal; 7 toxal do-rad forrtha* 'that is, three cows that he took in distraint concerning the land worth seven *cumal*s, and it is carrying-off that he performed on them' are not found in the extant copies of the tract. Then the advocate gives another citation from an earlier legal text: *fo bīth nīrbu tairisi druim fri līas fo bīth an choctha robí iter Fēine 7 Ullta* 'since a shed [for cattle] was not fit because of the conflicts that were between the Féni and Ulaid', from the Old Irish glosses to SM 2 in *CIH* 883.29-30.[40] He proceeds to argue, this time in his own words, that:

> *Cuirim-si anbur breith, a breitheamna, an trāth nār ordaidh dliged do gabāil a nathgabāil toxail im tīr .uii. cumala d'ferann acht trī ba no sē ba, gur mōr int aneōlus crecha 7 loiscte 7 marbta daine 7 indili do dēnum a tīr, 7 athgabāil toxail do tabairt mar ainm orrtha.*
> 'I submit [it] in your judgment, o judges, whereas the law only ordained the taking of three cows or six cows as distraint of carrying-off concerning land worth seven *cumal*s of area, it is a great ignorance to commit raiding and burning and killing of men and cattle in the land, and to give "distraint by carrying-off" as a name for them.'

The advocate skilfully tailors early materials to suit the contour of his argument: he firstly points out the similarity between the narrative case in an early legal text and Brian's action. In both cases the invaders claim to be exacting *athgabāil toxail tar crīch imderg* (*CIH* 2207.23) or *athgabáil toxa[i]l iter crīchaib imdergaib* (*CIH* 883.31) 'a distraint by carrying-off across/ between conflicting territories'; but then in a sharp turn in his exposition the advocate emphasises the key contrast, that in Asal's case it was a legitimate distraint

[40] *…fo bīth nību tairisi do druim fri līas ann, ar nī lamair fo bīth in chocta buí iter Féni ┐ Ultai…*

concerning seven *cumal*s worth of land[41] and involving a modest amount of property, only a few cows; whereas Brian committed a series of horrible crimes without a legitimate cause (or perhaps with a justification that is deliberately downplayed by the advocate at this point)! This excellent rhetorical piece shows us the wisdom and art of the late medieval Irish lawyers at work. Meanwhile, it is immediately evident that although early texts have been carefully measured and chosen, sometimes with extra explanations added to highlight a point ('three cows that he has taken in distraint concerning the land worth seven *cumal*s'), the primary form of reference continues to be direct citation from the early texts themselves. This seems again to confirm that the authority of the narrative case lies in its being part of the law text, not that it recounts an external event which could be reported independently from the law tract. In a word, the binding force of the narratives resides in its textuality rather than its factuality.

3.3.1.

In the following sections I will establish a categorisation of narratives according to their textual functions in the law text.

The first category I name '*accessus* narratives'. These are narratives which explicitly employ the grammatical *accessus ad auctores* schema (Flower 1916; Quain 1945) to provide an introductory summary of the making or compilation of a lawbook, depicting the circumstances in which the law was made or discovered, without explaining how specific rules in the lawbook were judicially established. There are six of these in my collection: [13], [14], [17], [35], [54] and [75].[42]

The supplement of an *accessus* before an authoritative text as an introduction

[41] Seven *cumal*s is the size of land that qualifies one as an *ócaire*, the lowest grade of freeman, according to *Críth Gablach* (Binchy 1941, 4, l. 91; for support of Binchy's emendation of manuscript reading see CIH 784.22); the actual size itself is a problem which has been much debated, and perhaps changes over time (Kelly 1997, 575).
[42] A list of these narratives is also given in L. Breatnach (2005a, 355-360), but my calculation of the numbers of narratives is different.

is a salient feature in the medieval *grammatica* tradition and can be traced to the influence of Aelius Donatus, a late antique grammarian. Donatus made extensive use of Suetonius's lost work, and incorporated a *vita* of Vergil which precedes his partly lost commentary to Vergil's works. An *accessus*, or a *materia* or an *ingressus* as it is called in different disciplines, was regarded since late antiquity as a necessary preliminary before the students could set out in quest of a text's *sententia*, the deeper, spiritual meaning (Minnis 1984, 13–14). This attitude echoes the fundamental role of *grammatica* in the formation of a textual culture in the Middle Ages, when aspiring students had to learn first to correctly read the letters and to understand the literal sense (*lectio*) before any inquiry of interpretation and appreciation (*enarratio, emendatio* and *iudicium*) could be undertaken (Irvine 1994, 4–5). There are several types of *accessus* schema during the Middle Ages, which have been conveniently classified by R. W. Hunt (1948). The single type that all the Irish law tracts adopt is what Hunt terms 'type A': this normally consists of the four topics of *locus, tempus, persona* and *causa scribendi*. This type is abbreviated from the *septem circumstantiae* of the classic rhetoricians, especially in Boethius's *De differentiis topicis* (Minnis 1984, 224, n. 53), which include *tempus, locus et persona, res, causa, qualitas* (*modus*) and *facultas* (*materia*) (Hunt 1948, 126, n.1). The schema itself was used by continental theologians of the 6th and 7th century in their commentaries on the Bible, but it was also extended to commentary on literary texts, for instance by Remigius of Auxerre (Minnis 1984, 16–17), and was certainly adopted by the Irish literati for grammatical, legal and other types of text, probably through acquaintance with the works of Boethius (Flower 1916). I will argue in a later chapter, that the adoption of the Latinate *grammatica* was in harmony with the indigenous *senchas*, and that the two collaborated to form a tradition out of inherited materials.

The six *accessus* narratives which I have identified are consistent in beginning

the discourse with a synopsis organised according to the 'type A' schema, which is rendered into Irish as *locc, aimser, persa* and *tucait a dénma*.[43] The main body of the narrative then comes after the synopsis. Some of the topics may be omitted in the scheme, e.g. *tucait a dénma* (or *tucait scríbind*) is omitted from the prologue to *Cáin Ḟuithirbe* in [35] and the copy of [17] in *CIH* 874.35-38; *persa* is lacking in the *Anfuigell* version, and only *locc* and *aimser* are accounted for in the *Fothae Becc* version of [35] (unless this is due to the loss of text in transmission). These *accessus* narratives differ from the continental models in two aspects. Firstly, despite the immense influence of Donatus (and commentaries on Donatus) on the Irish grammatical tradition (Poppe 2002), the Irish *accessus* employs the 'type A' schema rather than the 'type B' which was canonised by Donatus and Servius (Irvine 1994, 121–123; Hunt 1948, 126). The Irish usage of *accessus* schema, therefore, may be attributed to the influence of Boethius rather than to that of Donatus. Boethius's *De institutione arithmetica* was certainly known to Irish computists in the 7th century (Ó Néill 2005, 1, n. 1), but the reception of his philosophical/dialectical works, *inter alia* his translation of *Isagoge* and also his *De differentiis topicis*, seems to have occurred later in Ireland, perhaps through Hiberno-Latin grammatical works such as the 8th-century *Anonymus ad Cuimnanum* (Amsler 1989, 211-212) or those of even later commentators such as Sedulius Scottus, and the earliest vernacular *accessus* narrative we possess now (the Pseudo-historical Prologue to the SM) dates only to the late Old Irish period. Secondly, the Irish legal *accessus* focuses less on the author than on the work itself. In the traditional Latin *accessus*, the *locus*, *tempus* and *persona* are all aspects of the author's life, not of the work, and the *persona* often takes the form of an elongated *vita* of the writer. In the commentaries to Vergil's poems, for instance, *locus* and *tempus* almost invariably refer to the poet's hometown and era, rather than to the place and time of the making of the

[43] The last category was sometimes referred to as *tucait scríbind* or *fáth airicc*, etc., see Flower (1916, 150), and also in [17] (e.g. *CIH* 1650.1)

tract.[44] The *accessus* narratives found in Irish law tracts, however, often explicitly state that the *locus* and *tempus* (*locc* and *aimser* in Irish) introduce the background of the making of 'the book' (e.g. [75] *locc don leabar-sa*, *CIH* 1338.5). Moreover, the body of narrative which relates the process of the making of the book is usually located under the category of *tucait a dénma*, whenever it is present, rather than under that of the *persa*. This is in line with the general trend of the usage of *accessus* narrative in other branches of the Irish textual tradition, as noticed by Máire Herbert: '[o]f the *circumstantiae* set out in the prefaces [of the hymns and *Amra Coluim Cille* in the *Liber Hymnorum*], that of *causa scribendi* generally receives most elaboration. Thus the preparatory material becomes largely narrative, rendering the works accessible not so much by the association with *auctores* as by association with memorable events in the lives of saints or biblical personages' (Herbert 1989, 68–69).

The *accessus* narratives all serve as introductory prologues later added to law tracts, and none of them except for [17] can be dated to earlier than the Middle Irish period. Even in the case of [17], the Pseudo-historical Prologue to the SM which was written in the Old Irish period, its secondary nature relative to the compilation as a whole is evident from both its language (Carey 1994, 10) and its content. Consequently one cannot easily give credit to their claims of the time and place of the tracts' making. Two cases in early Irish law where we have reason to believe that what the text says about its own composition is historically true is firstly *Cáin Adomnáin*: external sources confirm that it was enacted in 697 at the Synod of Birr by Adomnán and other dignitaries of Ireland and Scotland, as is told in the canonical part of *Cáin Adomnáin* (Ní Dhonnchadha 1982; Ó Néill and Dumville 2003); and secondly *Cáin Ḟuithirbe* ([35]). It is noteworthy that both tracts have the title of *cáin* 'formally promulgated law, edict' together with a attributive of personal or place name: unlike the scholar-compiled

[44] e.g. MS Monac. lat. 19475 (*olim* Tegernseensis 1475, s. xii) cited in Quain (1945, 219), Suetonius's and Donatus's *Vita Vergilii* as summarized in Irvine (1994, 123).

lawbooks, these record the decisions of assemblies under the direction of certain initiators, and their binding force depended on royal promulgation and support from noble guarantors (Charles-Edwards 1999a, 9). However, in the later transmission of *Cáin Adomnáin*, an unhistorical (at some points even fantastic) legend was appended to the canonical text, narrating how women of Ireland suffered in bondage throughout the five ages and how Adomnán, urged by his mother, set out to right this wrong and initiated the synod at which the *Cáin* was promulgated.[45]

It may further be noted that sometimes the prologues to different tracts make use of the same *accessus* narrative. The time and place described in the prologue to *Cáin Ḟuithirbe* in [34] have obviously been appropriated into the prologues of *Anfuigell* and *Fothae Becc*. As for the case of *Bretha Étgid*, *Fothae Mór* and *Córus Iubaile* sharing a narrative of Cenn Fáelad ([14]), they may all have derived it from the famous *accessus* in *Auracept na nÉces* rather than from each other. These narratives will be visited in 6.4.2.

3.3.2.

The next group are those aetiological narratives that explain the origin of legal institutions. These amount to 33 in total:

[1], [3], [6], [9], [10], [12], [20], [21], [22], [23], [24], [25], [26], [27], [28], [30], [32], [33], [46], [47], [48], [49], [56], [65], [75],[46] [77], [78], [81], [82], [83], [105], [106], [108].

Whereas the *accessus* narratives report the conditions under which the whole law tract was compiled, and were attached to the beginning of the tracts at a later

[45] On this later 'prologue' and its relationship with the historical status of women in Irish society see Ní Dhonnchadha (2001).

[46] [75] has two parts: the first part as recorded in *CIH* 1338.5-1341.7 (British Library MS Egerton 88, ff.28a1-29d) is a Middle Irish commentary in the form of an *accessus* narrative, whereas the second part, *CIH* 1589.1-48, is found on a manuscript fragment and partially preserves the Old Irish canonical text of *Mellbretha* (O'Sullivan and O'Sullivan 1968), which tells of a case initiated by Fuaimnech, apparently that which is referred to in the Middle Irish narratives. [75] is thus counted in both categories of narratives.

stage, the aetiological narratives focus more on the establishment of specific rules or concepts concerning individual legal institutions, and do not necessarily appear at the beginning of the tracts. 20 out of the 33 entries, including the possible case of [83], are actually found in the canonical part of the text and were consequently written no later than the compilation of the tracts. SM 2 *Di Chethairślicht Athgabálae* has a surprisingly high concentration of nine aetiological narratives, accounting respectively for its various types of distraint with the waiting period (*anad*) of one day, two days or five days.

Some of these narratives do explain the origin of a tract or even of the legal system as a whole. For instance, [28] outlines the story of St. Patrick's conversion of the Irish and the convergence of 'two laws' (Carey 1990), which covers the whole Irish law; though what exactly the *Cáin Enech* in [56] refers to is not clear, it seems to be the name of a law tract. Moreover [105], which mainly introduces the biographical background of Caratnia, states that 'any judgment that was brought to Conn, Conn put it to him, and Conn inquired of him "What judgment have you given?"'(Gerriets 1988, 32), with the implication that the tract is a collection of dialogues between Conn and Caratnia. But these accounts never use the *accessus* scheme and therefore do not endow the tracts in question with the same authority and authenticity as an object of study which that scheme confers.

The most popular persona among aetiological narratives is St. Patrick, who features in 11 narratives as the founder of an institution or as the reformer of the whole early Irish legal system. It is said either that he 'has established' (*ro-suidigestar*) a rule ([10], [12], [46], [83]), or that he has forbidden (*ar-rogart; ro-indarb*) certain practices ([9], [20], [81]), or that he approved of and renewed rules made previously by the Irishmen themselves ([28], [32], [56], [75]). These references to St. Patrick's involvement with Irish law reflect a common core legend as elaborated in the Pseudo-historical Prologue to the SM ([17]); the three

attitudes which St. Patrick adopted towards pre-existing rules, namely to expurgate those that conflicted with Christianity, to sustain those in harmony with the teaching of the Church as 'the law of nature [that] reached many things which the law of scripture did not reach'(Carey 1994, 18) and to furnish new ones, are expressed as the major aspects of St. Patrick's revision of Irish law in [17] and [28]. In fact, Liam Breatnach regards [17] as modelled on [28] (L. Breatnach 2011, 36, n. 126), and he argues that the prestige accorded to St. Patrick by narratives from various SM tracts indicates that the *Senchas Már* was probably produced in Armagh during 'a period characterised by the aggrandisement of Armagh', i.e. 660-680 (ibid, 42). Other tracts outside the umbrella of SM also cite St. Patrick as an authority who sanctified and renewed the law ([56] from *Bretha Nemed Dédenach*), blessed it and remedied its inadequacies ([75] from *Mellbretha*), forbade certain violations ([81] from *Bretha Forloisctheo*), and acknowledged the decision of the Gaels themselves ([32] from 'The distribution of *cró* and *díbad*'). In other words, though St. Patrick is mentioned with a much higher frequency in SM tracts, and is credited with the compilation of SM itself, other law tracts also recognise St. Patrick's constitutive role in accommodating native Irish law to Christian faith and ecclesiastical institutions.

Many aetiological narratives stress that the incidents recounted were the 'first' of the kind that ever happened. There are many ways of presenting such 'firsts'. In [1], for instance, it is asked 'whence was the customs of *ráth*-sureties in Irish law established?', and the person who first provided such suretyship in Ireland (*is é-side ceta-tarat ráith íar cúl dligid i nÉire*[47]) is introduced as the answer. Besides the prefix *ceta-* with a verb, *cét* or *cétna* plus a noun are also employed. e.g. [21]: *Sen mac Áigi bertae cétbretha for athgabáil co dáil críche boíe la trí cenéla sóera randsat in indsi-so* 'Sen mac Áigi delivered the first judgments on

[47] Normalised from …*IS EISIDE CIADORAT RAITH IAR CUL DLIGID A NEIRE*, *CIH* 63.7-8.

distraint at a border assembly held by the three free kindreds who shared this island';[48] [27]: *noch is sí cétna cumal ceta-rogab bróin ina láim la firu nÉrenn* 'and she is the first female-slave who first took up a quern in her hand among the people of Ireland'.[49]

But there are other types of aetiological attribution as well. In *Uraicecht na Ríar*, for instance, the *nemed*-status of some grades of poets is explained as resulting from a satire made by Néide, with use of the causal conjunctions *ar* and *fo bíth* ([30]):

> *Ceist, cid ara n-eipertar nemid donaib grádaib-seo? Ní hansae, ar nemchumscugud di ulc friu, fo bíth na haíre tri bricht do-rigni Néide do Chaíar ríg Connacht.*
> 'Why are the members of these grades called *nemed*'s? Not difficult; because of the non-transference of wrong to them, as a result of the satire with a spell which Néide made for Caíar, king of Connacht' (L. Breatnach 1987, 114–5).

A mixed type of 'because' and 'first' can be found in *Bechbretha* ([26]): *air is sí cétnae breth inso ceta-rucad im chinta bech for Congail Cháech cáechsite beich* 'For this is the first judgment which was first passed with regard to the offences of bees on Congal the One-eyed, whom bees blinded in one eye'.[50]

A more complicated relationship between the narrative and the rule is represented by [23], where one kind of distraint with a two-day waiting period (*athgabál aile*) is the distraint 'concerning the contribution to battle-ground, i.e. provision of weapon'. The text explains that this kind of distraint has a two-day stay *ar is im fīr ban cīatoimargaet rōe* 'for it was to establish the truth in a case regarding women that a duel was first fought' (*CIH* 379.11–12). The story referred to, as explained by the scholiast in the glosses, tells of the quarrel

[48] Normalised from *SEAN MAC AIGE BERTA CETBRETHA FOR ATHGABAIL GO DAIL CRICHE BAI LA TRI CENELA SAERA RANDSAT IN INDSI-SO* , *CIH* 1897.27. Translation by L. Breatnach (2010, 226).
[49] Normalised from *NOCHIS SI (NOCHIS SI) CETNA CUMAL CETARAGAIB BROIN INNA LAIM LA FIRU ERENN*, *CIH* 467.32-33.
[50] (Kelly and Charles-Edwards 1983, 68–69), I have slightly altered the translation.

between two sons of Partholón over the dowry of two sisters, which was considered to be the first battle ever fought in Ireland. Although the prefix *cīata-* is used, the story does not actually account for the origin of the kind of distraint for weapons, but instead points out that in the first battle - and presumably the first occasion for providing weapons - in Ireland the dispute centred on women's property, and thus distraint for provision of weapons should be subject to the same rule regulating women's property.

We can further subdivide the aetiological narratives into three thematic types: 1) verdict; 2) legislation and 3) others.

Twelve narratives ([1], [3], [6], [21], [24], [25], [26], [48], [65], [75], [82], [105]) ascribe the origin of legal rules to verdicts concerning specific disputes. The conditions from which the disputes arose, and the contents of the dispute themselves, are often specified by the narratives. An exception is [105], which, while acknowledging that each dialogue between Caratnia and Conn emerged in the context of adjudicating a particular case, never records the contents of these cases. Most of these narratives have legendary figures such as Sencha, Bríg and Neire as the judges who delivered the verdicts, but there is also an interesting passage arguing that the loss of Ireland's sovereignty to the English in law was a result of some Irishmen's stealing from a Roman cardinal ([82]). As regards the previous discussion (see 3.3) on the designation of 'leading cases', this group of narratives comes closest to the modern definition of 'leading cases' in that they involve prominent verdicts constituting rules in certain legal problems, but they number only about a tenth of the whole collection of legal narratives.

Fourteen narratives ([9], [10], [12], [20], [22], [28], [32], [33], [46], [56], [77], [81], [83], [108]) attribute the origin of legal rules to general legislative activities, not to decisions based on specific cases. The motives of such legislation are manifold. Eight narratives refer to the legend of St. Patrick's reforming of Irish law during the time of King Lóegaire mac Néill; the reason for legislation was

accordingly to reconcile native law with Christianity and ecclesiastical institutions. On the other hand, it was by the initiative of the elites of 'the men of Ireland', that the rule regarding the 'precinct of a *sét*' was determined ([77]); likewise, the 'authorities of the Gael' assembled to decide how to divide *cró* and *díbad* since 'it was a difficulty' for them that previously 'a division of each was the same to them' ([32]). [33] is a very peculiar case in the collection in that it tells the origin of the Roman 'Law of the Twelve Tables', largely as put forward in some classical sources (e.g. *Ab Urbe Condita* by Livy) but peppered with distorted timelines and personal names.

3.3.3.

Twenty-six narratives supply further information on the items, persons or events mentioned in an earlier section or an older layer of the text. These I refer to as 'background narratives': [11], [18], [19], [21], [42], [50], [51], [58], [60], [61], [80], [84], [86], [87], [88], [89], [90], [91], [92], [93], [94], [95], [96], [97], [98], [105].

Some of these entries are assigned to the previous two categories as well. The reason for this overlapping is that the function served by a narrative in relation to its textual environment is neither unique nor absolute. A composite narrative such as [21] has several parts: while the carrying-off performed by Asal mac Cuinn and the judgment by Sen mac Áigi that ensues became the origin of distraint in Irish law, the part that narrates Fergus mac Léti's receiving of compensation and his subsequent adventure has nothing to do with distraint, but clearly accounts for the background story which triggers Asal's carrying-off. [105] which tells us the source of the tract also clarifies how Caratnia acquired his epithet 'the Cut-up One' (*tescthai*) and became Conn's consultant. Similarly, [18] which is part of the Pseudo-historical Prologue to the SM, leaps back in time several centuries from St. Patrick to the reign of Conchobar mac Nessa, who

rescinded the poets' monopoly of judicial power. This resulted in everyone sharing the jurisdiction in 'what pertains properly to them' (Carey 1994, 19), presumably meaning that each profession (physicians, smiths, hospitallers etc.) autonomously decided lawsuits concerning members of their trade. The situation at the eve of St. Patrick's arrival, however, was not exactly the same as Conchobar's legacy: when St. Patrick came, the jurisdiction in Ireland was held by only three kinds of professionals: historian, poet and judge. The discrepancy not only suggests diverse origins for the two narratives but may also reflect different doctrines concerning jurisdiction over professionals (*áes dána*). In time span, coherence and structure [18] is much more loosely relevant to [17] than is Fergus mac Léti's adventure to Asal's distraint.

The sequence of narratives *CIH* 2112.29-2118.2 ([84]-[98] and [58], [60]) are of particular interest (Qiu 2013a, 119–120). These were copied as a continuous commentary among some miscellaneous legal glosses and commentaries in the fourth volume of the composite TCD MS 1336, *olim* H 3.17 (Abbott and Gwynn 1921, 130–131). They were all written in prose so as to provide fuller background to certain words, phrases or incidents as alluded to in the canonical text of the two *Bretha Nemed* tracts, which are written in obscure *roscad* and omit most details.[51] Although the canonical texts they elucidate may or may not be narratives themselves - and, in the case of the former, may serve various textual functions in the canonical tracts - the stories told in this commentary were collected as background information and specifically intended as an apparatus for studying the canonical texts. Many of the stories are introduced by the phrase *is é scél for-aithminedar hic* 'this is the story it calls to mind here' (e.g. *CIH* 2112.29 etc., but notice *iss ed scēl* 2113.16 with agreement between the neuter pronoun and noun), following a citation of the relevant text from *Bretha Nemed*. These narratives explain, for instance, the circumstance that led to the lawsuit between

[51] The exception is [85], which is a lexical example of a word from the canonical text, see 3.3.4. below; and [86], which provides a background story of the incident referred to in [85].

Mugna and Maíne ([88]); why Óengus the king was half-punished after death as told in the canonical text ([90]); whence was derived the idiom ‘a wooden stake in a silver fence’ ([94]); and what was ‘the cloak of Clothru’ ([95]). In a few cases, the story is discernible in the canonical text in narrative form, e.g. [89] (*CIH* 2218.4-23); in others the canonical text only mentions a name or an item which does not constitute a narrative, e.g. [90] (*CIH* 2219.37-38).

What we see here is virtually a reference booklet: whereas in other law tracts commentary detailing the story is usually attached to the main text and thus forms part of an annotated copy of the tract, the jurist has here gathered such background stories as a separate collection, following, but not immediately, some glossed fragments of *Bretha Nemed* in the same part of the manuscript (*CIH* 2102.22-30, L. Breatnach 2005a, 84–86). It can be imagined that, much like the OGSM, this booklet was used side by side with a copy of the canonical *Bretha Nemed* text (Russell 1999). It is even remarked at one point: *is mór do scélaib fil sund 7 is líach gan a fis* ‘there are many stories here, and it is a pity not to know them.’ (*CIH* 2116.33-34). Nowhere else is the referential function of the background narratives more explicit.

3.3.4.

By far the largest category is that comprising the forty-nine ‘example narratives’ which exemplify legal points, word usages or poetic metres: [4], [5], [7], [8], [15], [16], [29], [31], [36], [37], [40], [41], [43], [44], [45], [52], [53], [55], [57], [59], [60], [62], [63], [66]-[74], [76], [79], [84], [85], [87]-[93], [99], [104], [107], [109]-[112]. Here too there are overlaps with other categories, and with some *Bretha Nemed* narratives I am less sure about their functions in relation to the law texts.

Many of these narratives employ clear functional conjunctions such as:

amail:

***Amail** adbath Naoine*[52] *Nāembrethach ar*[53] *fuigell fria māthair bebhuis…*
As Noíndiu of the Nine Judgments died after the judgment on his mother who perished… ([76], *CIH* 1378.28-29).

fo chosmailius:

*Fortnosnae a imus… **fo chosmailius** dorigne Finn hūa Baiscne in tan buī in fīan oc Badamair for Brú Ssiuire…*
His *imbas* illuminates him…**similar to what** Finn ua Baiscne did when the *fían* was at Badamar on the bank of the Siur …([43], *CIH* 879.19-24).

desimrecht ar:

*Ocht nairnaile coitcenna forrethet int ēitgid fodeglata, .i. na dā fodail dēg ēitgid, **deisimrecht air,** .i. geogain Cū Culainn a mac i nanfōt.*
Eight common types which constitute the subdivided[54] inadvertence, i.e. the twelve branches of inadvertence. **An example of it**, i.e. Cú Chulainn slew his son unintentionally ([16], *CIH* 251.31-33).

mar ader (a late form frequently used in legal digests (L. Breatnach 2005a, 325)):

***Mar ader**. Fīthal Fīrgaoth mac Aongusa maic Muiredaig maic Reth asbert an breith-so īar coll ṡūla Cormaic…*
As it says: it is Fíthal the truly wise son of Óengus son of Muiredach son of Reth who said this judgment after the wounding of the eye of Cormac…. ([67], *CIH* 1144.7-8).

comad:

***Comhad** ē Cormac hūa Cuind adereth ag fīachugud Luigdech mic rīgh Connacht.*
Perhaps it was Cormac ua Cuinn who uttered it at seeking compensation from Lugaid son of the King of Connacht ([68], *CIH* 1176.10-11).

The stories they tell are mostly significant occurrences that embodied a legal principle, but which did not enjoy aetiological status as the first case or the cause of establishment of institutions. [67], for instance, exemplifies the legal principle

[52] Leg. *Noíndiu*.
[53] Leg. *iar*?
[54] Reading *fodedalta*.

‘that land goes [in compensation] for the wrongdoings, whether for an innocent reason or not of the guilty party’ (*CIH* 1143.34-35, L. Breatnach 2005a, 48), with the story that southern Brega was paid to Cormac mac Airt as a compensation for his loss of eye due to a blow inadvertently struck by Óengus Gaíbúaibthech. In a famous paragraph, it is stated ‘the agreement of two capable people is to be secured just as Adam, possessing perfect good sense, has fallen as a result of consuming from the forbidden tree in paradise’ ([52], McLeod 1992, 141). The Irish jurist pictured a scenario according to which Adam made a disadvantageous contract with the serpent, the performance of which brought about the loss of Eden (Kelly 1988, 159). Though there was no person preceding Adam in Christian chronology, the incident was not regarded as the aetiology of the legal principle but merely as an embodiment of it. A commentary, perhaps appended to *Bretha Echach maic Luchta* ([72]), specifies the rules concerning those who performed kin-slaying out of anger, which implies that such persons would be deprived of inheritance rights, as happened to the sons of the aunts of Eochu mac Luchta, but the details are not very clear from the short narrative. [43] can be regarded as an exception in that it exemplifies not a legal principle, but a poetic divination skill called *imbas for-osnai* (Russell 1995; Carey 1997).

Besides examples that bear out the law in ‘actual’ occurrences, there are some which fall beyond the strict sphere of law but within the confines of the intellectual interests of medieval Irish jurists, namely lexical and metrical examples where a certain word, poetic genre or metre was attested. Irish lexical learning is best represented by the glossaries, which have a pronounced fondness for Isidorean etymology and for explication of obscure words (Russell 1988). The basic approach was to give meanings, often through a lexically allegorical etymological analysis which leads to the ‘reason’ for their existence in the lexicon of the language (Irvine 1994, 37, 222), or to the furnishing of synonyms. But now and then a text, usually a verse, would also be quoted to demonstrate the

usage of the word in question. Not just any text could be cited in this way, but only ones that possessed authoritative power and belonged to the established tradition (see Chapter 6). Narratives grew around such texts to testify to their authority, and in many cases to paraphrase and explain the texts themselves, which tend to be difficult. [44], [45] and [85] are of this type. In OGSM, the glossator generously elaborated on the semantic range of the word *ferb*, which occurs in the very first line of the canonical tract of SM 2 *Di Chethairślicht Athgabálae*. A versified judgment by Fachtna was cited as attestation of the sense 'cow' in the authoritative tradition, and the circumstances of this judgment were further narrated in the subsequent glosses; the glossator even appended a passage referring to the acquisition of three trespassing cows by Cú Roí, also known elsewhere in the sagas ([44]). It is easy to recognise the growth of these layers of text, each as apparatus and explanation to the previous one, which finally fused into a narrative composed of perhaps heterogeneous or even originally unrelated elements. [45] is another quotation demonstrating the sense of 'cow' for *ferb*, this time from a verse which may have been already well grounded in *Bretha Nemed Dédenach* and *Cath Maige Tuired*.[55] [85] cites a dialogue between two Connachtmen regarding the loan of a cart. This is able to stand as a valid example of the word *mó* 'soon' not only by merit of its archaic quality, but also because the dialogue was overheard by Fer Muman the legendary poet.

The early tracts that concern the poetic profession such as *Uraicecht Becc* (trans. in MacNeill 1921, 272–281), *Uraicecht na Ríar* (L. Breatnach 1987) and part of the *Bretha Nemed* tracts only occasionally enter into the discussion of the specific metres or types that a poet should master. For instance, in the canonical text of *Bretha Nemed Dédenach*, it is said that *atá éolus ingnad lasna fileda .i. áer co ndath molta 7 molad co ndath aíre* 'The poets have remarkable expertise, i.e. satire with the appearance of praise, and praise with the appearance of satire.'

[55] The full verse is not found in the extant copies of these two texts, but see the evidence of ascription under the relevant entry in Chapter 2.

(L. Breatnach 2006, 66, normalised from *CIH* 1112.9-10.) Examples of each of these two types were cited, one containing a versified narrative of how a man fought off a periwrinkle 'valiantly' ([57]); the other verse describing a woman, with an incomplete narrative to explain its background accompanying it in the commentary ([58]). The fragment preserved in *CIH* 1587.18-34, according to Liam Breatnach, also belongs to *Bretha Nemed Dédenach* (L. Breatnach 2005a, 186–187). This quotes a satire addressed to Caíar ([79]), which, judging from the context, exemplifies a type of satire called *glám dícenn* (Meroney 1949, 212–226; McLaughlin 2008, 82–84).

The metrical tracts as they are known at present were compiled in the Middle Irish period. They list the metres to be mastered by the professional poets. Each metre is exemplified by citation of verses, usually of one quatrain if it is a syllabic rhyming metre, but these are rarely accompanied by narratives (Ó hAodha 1991). Whereas these metrical tracts were evidently intended as manuals or syllabi for training in the poetic schools, some of their content had been adopted into the law tracts which are concerned with the obligations and privileges of the poetic grades. A commentary to some *Uraicecht Becc* passages ([29]) combines legal message with metrical learning. In discussing the legal entitlements of the poetic grades, the commentator added materials from the metrical tract *MV* II which enumerates the verse types an aspiring poetic student should learn in each year of his twelve-year study (*Duodecim Partes Poeticae*) (Thurneysen 1891, 31–66). In the section on the *dos*, for instance, after stating *.ui. láige déeg laiss, 7 bó logh gacha laighe díb* 'he has sixteen *laíde*, and a cow is the value for each *laíd* of them', the text continues *7 in tres blíadhan dosgní do láigh arachuir* 'and in the third year he makes them in *laíd arachuir*'. A few etymological explanations of the term follow, and the exposition resumes:

> *Laīdh arachuir ann so dorighne Áei mac Ollamhan mic Dhealbhaīth do Fīachna mac Dealbaīth, do rīgh Ērenn .i. isin cuicedh aimser no broite*

dotaisbenadh dó hí. 7 ina codladh dofoillsiged do hí, 7 isī-so int aircedal, 7 deismerecht fuirre.
'This is the *laíd arachuir* which Áe son of Ollam son of Delbáeth made for Fíachna son of Delbáeth, the king of Ireland, that is, in the fifth age of[56] the [Babylonian] Captivity that it was shown to him. And in his sleep it was revealed to him, and this is the *airchetal*, and an example of it' (*CIH* 554.13-20).[57]

The text then cites a verse with glosses. This verse, however, is categorised as *laíd lubenchossach* in *MV* II,[58] and the verse cited in the law tract is much fuller than the excerpt in the metrical tract, not to mention that the metrical tract does not provide the narrative concerning its production (Thurneysen 1928b, 263-264). The same discrepancy exists between other verse examples with narrative in this commentary and in the metrical tracts. Before further study is done on the provenance and transmission of the metrical tracts, it seems safer to say that this commentary absorbed material from a longer version of the metrical tract than the one Thurneysen edited in his *Mittelirische Verslehren*.

3.3.5.

There are a few narratives that I am not able to assign to any of the categories discussed above, as they are either isolated passages or their contexts are opaque. The tale about Cain's monstrous descendants, their deformity a consequence of his fratricide ([34]), has no obvious affiliation with the law texts on the adjacent leaves or with any other legal treatises, and its function thus remains uncertain. [2] and [102] very probably come from two *Senchas Már* tracts, but their contexts cannot be determined due to their nature as isolated excerpts. Other narratives whose functions are undetermined include [38], [39], [64], [100], [101] and [103]. [100]-[103], especially, are recorded as individual narratives in TCD

[56] *na* reading *no* (Thurneysen 1928a, 267, n. 2).
[57] For a story of Áe's recital immediately after his birth and his association with the verse type *aí airchetal*, see Thurneysen (1918, 272–274; 1936).
[58] As Thurneysen has pointed out, different categorisations of a same exemplifying text also happens between the tracts (Thurneysen 1891, 167–168; P. A. Breatnach 2000, 7).

MS 1336, *olim* 3.17, fol. 841-849. Binchy obviously singled these narratives out and put them together in *CIH* for their legal significance; but in the original manuscript, they are scattered among many other equally independent passages, not all of which have legal connotations. It is therefore difficult to say whether these narratives were deliberately collected in this part of the manuscript for their legal connotations, and the contexts of [100]-[103] remain uncertain.

Chapter 4: Legal narratives and early Irish literature

4.1. Introduction

So far the narratives' functions in their contexts have been considered, and we shall now conduct a more detailed study of the contents of individual narratives in the context of early Irish literary and historical tradition in general.

It is, needless to say, notoriously difficult to define what counts as 'literature' or the 'literariness' of a text (Eagleton 2008). The standard seems to fluctuate over time, to develop under the influence of academic trends, and to vary between cultures (Leitch 2001, 1–28). Most modern discussions of early Irish literature take as their points of departure two types of texts: poetry and prose narrative (e.g. Sims-Williams and Poppe 2005; Ní Bhrolcháin 2009). Such a choice is largely based on modern aesthetic taste rather than on medieval Irish literary theories (Ní Mhaonaigh 2006, 32-33). However, not only is our understanding of early Irish metrics and poetics far from adequate,[59] but scholars seem also to be uncertain as to what distinguishes 'prose literature' or 'sagas' from 'functional prose' (such as genealogy, glossaries, law texts, didactic/wisdom texts and chronicles). Thus Rudolf Thurneysen in his groundbreaking *Die irische Helden- und Königsage bis zum siebzehnten Jahrhundert* designated the object of his study as 'stories' (*Erzählungen*), which exclude lyric poetry, didactic texts and legal texts (Thurneysen 1921, 3); and he subsequently used a term *Sage* derived from Germanic cultures (Old High German and Old Norse *saga*), which usually denotes orally transmitted historical

[59] Thus there is as yet no wide consensus as to the metrical rules that govern the early Leinster genealogical poems (Carney 1989; Corthals 1990; L. Breatnach 1996c), and the *roscada*'s relationship to poems with more regular metrical patterns is to a large extent unclear (L. Breatnach 1991b; Isaac 1999).

or mythological accounts, to refer to these stories.[60] Among the stories that Thurneysen selected, however, some are taken from the law tracts without reference to their contexts, such as §33 *Cú Chulainns Zweikampf mit seinem Sohn* III ([101]) and §62 *Echtra Fergusa maic Léte* (one of the episodes of [21]), and versions of others can also be found in legal texts, such as §49 *Comrac Con Culainn re Senbecc ūa nEbricc a Segais* ([63]) and §56 II *Néde und Caier* ([30] and [79]).[61] Thurneysen's treatment appears to imply that these stories had existed independently before being inserted into the legal context. But was this really the case?

Ornamented parlance, arrangement of plots and use of tropes of course bespeak literary creation, apart from more subjective 'literary merits'; one can as well resort to the formalist approach, namely that a work of art focuses on the verbal message for its own sake, as evinced by Roman Jakobson (1960). But in this case, should not the highly decorated and deliberately obscured passages of *Bretha Nemed*, many of which are purely legal in content, be regarded as fine literature? Are not the didactic/wisdom texts such as *Audacht Morainn* and *Tecosca Cormaic*, seldom included in introductions to early Irish literature, as literary as, if not more literary than, prose narratives? On the other hand, many medieval Irish texts reckoned as literature today were clearly intended for scholarly or social functions in the Middle Ages (cf. Poppe 1999a), such as the early Leinster genealogical poems (*Laídṡenchas Laigen*) (Bhreathnach 2000). Even for the 'typically' literary text *Táin Bó Cúailnge*, Gregory Toner has argued that it was not intended to be read as (recreational) literature, but that the author's aim was principally 'to construct a history of the cattle-raid of Cooley following normal medieval historiographical practices' (Toner 2000a, 6). The narratives *Orgain Denna Ríg*, *Esnada Tige Buchet* etc.[62] are recorded among the

[60] Although Thurneysen did include the functional prose categories and poetry under the designation 'irische Literatur'.
[61] For detailed analysis of these narratives see below 3.4.1 and 3.4.2.3.
[62] These are known as *Scélṡenchas Laigen* and concern early Leinster kings.

genealogies of the Laigin in the Oxford, Bodleian Library MS Rawlinson B 502 (Ó Cuív 2001, 1:192–193). The primary role of this group of prose narratives (*scéla*)[63] there, like the versified contents that surround them in the manuscript, is obviously that of (pseudo-) historical records (*scélṡenchas*) in a manuscript whose contents are largely concerned with Leinster kingship (Carney 2005, 479; Poppe 2008, 42–44; Bhreathnach 2013, 403–404). As Donnchadh Ó Corráin observes, '[the] historical "hard-core" is set in a wider context of origin-legends, saga, and derivative romantic and other literature, and this contextual literature is very extensive. One genre flows into another: here, as elsewhere, the border-line between origin-legend and saga, genealogy and incipient historical narrative, is not at all easy to determine' (Ó Corráin 1985, 56). In the *Book of Leinster* (TCD MS 1339, *olim* H 2.18), some of these narratives are not located together with the Leinster genealogies but are found among narratives of the Ulster Cycle and of early kings from other parts of Ireland (Best et al. 1967, 1188–1192; edited in Greene 1955). Nevertheless, 'all characters who feature in the narratives also appear either in the genealogies in this manuscript or in the king-lists attached to its version of *Lebor Gabála*. Marginal entries for *Orgain Denna Ríg* show that the genealogies and the tale were, at least in this case, meant to be read together' (Schlüter 2010, 57), and the *Book of Leinster*, taken as a whole, is also used as a database of historical source of the national past.

I have no intention of entering into a thorough review of the theoretical reception of early Irish literature here.[64] My purpose is rather to show, before engaging in a discussion of the relationship between the legal narratives that I have collected and early Irish literature in general, that 'early Irish literature' itself is an ill-defined category which is inherited from modern literary taste and scholarly conventions, and in most occasions denotes poetry or prose (or

[63] A term which, etymologically, denotes 'what is told' (*LEIA* s.v. *scél*) but is usually translated as 'tiding, story, news'. For its meaning in the Irish learned tradition see Poppe (2008, 54).
[64] Outstanding reviews can be found in Ó Cathasaigh (1984), Herbert (1988), Sims-Williams and Poppe (2005) and Ní Mhaonaigh (2006).

prosimetrum[65]) narratives of substantial length, whereas medieval anthologies in the form of surviving manuscripts generally display a far greater heterogeneity (Ní Mhaonaigh 2006, 33). Moreover, with the discovery of new copies of texts or even new texts in previously unnoticed sources, the corpus of early Irish literature, however defined, is constantly, if only slowly, growing. It is possible to add the bulk of narratives from law tracts to the corpus of early Irish literature,[66] while giving due attention to their similarity to and divergence from literary texts found in non-legal environments. This is not to say that the legal dimension of the narratives is not important; this is in fact a vital aspect of the subject, treatment of which will be reserved for another chapter.

The problem is, again, that sometimes it is perilous to to make assumptions as to a text's having belonged originally to a legal context or a non-legal one. The preservation and transmission of written texts in the Middle Ages were very much dependent on chance, and modern studies in the textual history of Irish materials face the particular difficulty that no more than a handful of pre-12th century manuscripts survive in Ireland (Ó Corráin 2011). In consequence, scholars often have to rely on later manuscripts, some of which were produced almost a millennium after the supposed composition of the texts they contain. Under such circumstances, the fact that late manuscripts manage to preserve any accurate and complete early medieval texts is an extraordinary testimony to an enduring culture, but continuity should not be taken for granted in every case, and therefore stories known today only from law tracts might have once existed outside the juridical context. Many of the law tracts have not survived in full, nor have many stories whose titles or contents have been mentioned in other sources such as the tale-lists (Mac Cana 1980). Furthermore, the direction in which

[65] For the definition of this term and its application to the Irish texts see Harris and Reichl (1997); Mac Cana (1997).
[66] As Myles Dillon did when he titled his edition of narratives from the *Bretha Nemed* commentary 'Stories from the Law-tracts' thereby evading discussion of their legal meanings (Dillon 1932).

narrative passages travelled between legal texts and, say, collections of prose narratives cannot be easily determined. It is thus difficult to judge whether a legal narrative (or part of it) originated under other auspices and was appropriated into the legal context, or whether it was written *ad hoc* for the purpose of the law tract. To be fair, none of the narratives found in a law tract was mechanically 'inserted' there without regard to the context and without any adjustment to link it to the topic. Even in the extreme case of [34], which is recorded on an individual half-leaf and shows no visible textual or thematic affiliation with law texts on other leaves, its legal significance and hence its possible position within a (lost) legal context remains a possibility which is not to be arbitrarily rejected.

My own approach is therefore not to rely exclusively on the aetiological search for an *Urtext* which may or may not stem from a legal context. There are two strands of reasoning that we can follow. The first is that of conventional textual criticism which, by means of comparing variant readings in the texts, tries to establish a prototype and the chronological lineage that encompasses all extant copies. The second is a typological approach which operates on a structural/thematic plane, focusing on the elements in the narratives and their interactions so as to clarify the similarities and differences between narratives as a whole in terms of their contexts. The latter approach is necessary, especially when we do not have 'copies' of the same narrative prototype in legal and non-legal sources at the same time, but 'reference', 'adaptation' or even 'translation into legalese/saga' which can only be compared on the structural or semiotic level. There is indeed a spectrum of types in this structural sense, stretching from reference to an already well-known story, slight retouching of an existing narrative, or major reworking on an earlier theme, all the way to utterly new construction without an obvious archetype. Both approaches will be used to complement each other in the following sections, but, as will soon be evident, the scope for applying the method of textual criticism to legal narratives is quite

limited.

In order to discuss the second approach more meaningfully, we need to introduce the Dutch scholar Mieke Bal's theory distinguishing three layers of narration, namely 'fabula', 'story' and 'text': a 'fabula' is the 'material or content that is worked into a story', 'a series of events' or a group of abstract but interrelated elements consisting of the actors, events, locations and the chronology, which in everyday usage is often referred to as 'the story of X'. A 'story' is the 'fabula' elements organised in a certain way, arranging the elements in particular narrative sequence, highlighting some, discarding others and making choices in 'points of view' to give the story specific aesthetic, moral or emotional aspects, and we often call it 'the X version of a story'. A 'text' is the final and physical demonstration of a 'story' through a medium, usually language, and it is the only directly accessible form through which 'fabula' and 'story' can be perceived (Bal 1997, 6–9; see also the application of this theory to Irish literature in Slotkin 1989; Findon 2011; Scowcroft 1995).

4.2. [21]: a test case for textual and structural analyses

We can take [21] as a test case for trying out the two methodologies mentioned above. As shown already in the relevant entry in Chapter 2, this narrative is logically and chronologically coherent but clearly stratified in episodes. Some episodes, moreover, do not appear to be essential parts of the narrative. In particular, episode (b) of Fergus mac Léti's encounter with the *lúchorpáin* and his death is related to other episodes only by means of the involvement of Dorn daughter of Buide, who was paid to Fergus in (a) to be a handmaid, as part of the compensation for the violation of his protection. The exact legal mechanism leading to the woman's servitude as a *gell* is not yet fully understood despite some scholars' attempts at a workable interpretation (Binchy

1952; McLeod 2011a); nor is the basis of the Féni's claim (c) to retrieve the property they had paid in compensation to Fergus mac Léti earlier. The role played by this embittered woman could have been fulfilled by any handmaid without compromising the plot, and this episode does not deal with any legal issue relevant to distraint at all, not to mention the fact that its dramatic heroism diverges so much from the other more pragmatic episodes imbued with legal significance.

The gist of (a) (b) and (c) is already present in a poem from the canonical text of the law tract *Di Chethairṡlicht Athgabálae*, which can be dated to the 7th -8th century. It is perhaps because this poem is so obscure, that later jurists felt obliged to clarify it in a prose narrative. Two such narratives survive. One is in TCD MS 1337, *olim* H 3.18, *CIH* 882.3-883.31: this is part of the OGSM composed in the 9th century. The other is in British Library MS Harley 432, *CIH* 354.27-356.4: the language of this dates to the 11th century (Binchy 1952, 34–35). Both of these cover the storyline (a) (b) and (c), but a careful textual study reveals that they are not simply recensions from a common original, as Binchy supposes (ibid., 35). In the two prose narratives only the parts telling episode (b) show significant textual correspondence and appear to have derived from a common exemplar; the parts recounting (a) and (c) in the two manuscripts, though similar in plot, are so different in their wording that they were most likely independently written.[67] Structurally speaking, the two prose narratives in the commentary represent two individual 'texts' but the same 'story'. On the contrary, these prose narratives differ so much in arrangement and choice of narrative

[67] e.g. Harley 432: *buī confliucht mōr itir Fēnib isin aimsir sin itir Conn .C.cathach 7 Eachaid Bēlbuide mac Tūathail Tēchtmair. Rohindarbad īaram int Eachu Bēlbuide īar foglaib mōra ō Cund co Fergus co rīg Ulad buī īar sin re cīana imalle fri Fergus.*
vs. H 3.18:
robatar didiu trī rīgtīgernai consnīset flaith Fēni .i. Cond Cētchathach 7 Conn Cētcorach 7 Eochu Bēlbuidhi mac Tūathail Tēchtmair. Luid Eochu for loinges co Fergus mac Lēti rī Ulath do chuinnchid neirt 7 sochraidi īar foglaib mōraib fri Conn ria techt. Buī īarum imale fri Fergus re cīana.

elements from the versified account in the canonical text (as in the omission of many details, and the explicit disapproval of Fergus mac Léiti in the latter), that we can consider the verse to be a different 'story'. However, the 'fabula', in other words the group of elements drawn upon, remains constant.

If we look for other witnesses to this narrative, there appear to be no comparanda for any episode except for (b). In the Middle Irish tale-list embedded in the story *Airec Menman Uraird maic Coise*, usually known as List B, one finds the title *Echtrae Ferguso maic Léti*, but this is not included in the other version of the list (List A) (Mac Cana 1980, 53). As Mac Cana points out, the textual history of the *echtrai* section is doubtful, since the two versions of the list have only three titles in common;[68] items that are not shared by both lists, including *Echtrae Ferguso maic Léti*, are not necessarily additions at a later stage. The exact content of this story is not known, because at present we do not possess a text bearing the title *Echtrae Ferguso maic Léti*; but presumably it did not extend beyond Fergus's death, and therefore episodes (c) (d) (e) should be ruled out. A poem attributed to Cináed úa hArtacáin (d. 975) contains a quatrain referring to Fergus's meeting with the monster and his fall in combat with it, which echoes exactly the 'fabula' of (b), but not of other episodes (Meyer 1906b, 304–305; Binchy 1952, 33). The last evidence comes from a fourteenth-century recasting of the story (O'Grady 1892, 238–252). This rambling romantic tale has little in common with earlier heroic sagas, but one can discern in it elements of episode (b).

These other pieces of evidence are, it seems safe to say, located in non-legal contexts. What do they tell us? A reasonable guess is that a narrative not dissimilar to episode (b) of [21] did exist independently once, and it was titled *Echtrae Ferguso maic Léti*. It was already in circulation in the 8th century, when

[68] One that is only found in List B is *Echtrae Brain maic Febail*. The title given to this tale in its surviving copies (*Immram Brain*), despite some scholars' differing opinions (Carney 1976; Dumville 1976), is more probably the original one (McCone 2000, 64–67; Duignan 2011, 32–34).

the canonical law tract was written, and the same ‘fabula’ had been incorporated into the tract in verse. The independent narrative was known to the 9th-century and the 11th-century jurists, who wrote their commentaries on two slightly different copies of the same tale, as well as to the compiler of List B and to Cináed úa hArtacáin, though whether a full text was accessible to these latter two we cannot tell. The story did not survive the tides of fortune, however, except in the legal commentaries, and in the form of a reconstituted early modern romance. By combining it with extra plots such as the murder of Echu Bélbuide and the distraint by Asal mac Cuinn, the jurists transformed *Echtrae Ferguso maic Léti* into part of a longer legal narrative. Yet what is known to the wider public nowadays as ‘the saga of Fergus mac Léti’ is neither the old core of *Echtrae Ferguso maic Léti*, nor the whole legal narrative [21]; rather, it is Binchy’s edition which consists of (a) and (b). Binchy singles (a) and (b) out from [21] in his edition, taking both as the reflection of an earlier narrative which was ‘pressed into service’ to the tract on distraint (Binchy 1952, 48); while Neil McLeod tries to reveal the legal meanings of these episodes and to connect them to the distraint context (McLeod 2011a).

4.3. Narratives with textual parallels outside the law tracts

However, it is rare enough that a narrative from the law texts has a textual counterpart outside the legal corpus; or that evidence that it once existed as such can be adduced, rendering possible the reconstruction of a chronological stemma and perhaps the recovery of the origin of the text. If we are lucky enough to find similar ‘stories’ or ‘fabulae’ between narratives from within and from without the legal context, in most cases only structural/thematic comparison is feasible under such circumstances. The question then will be less about the provenance of a text than about the configuration of a ‘fabula’ in different contexts. Frequently,

however, neither textual counterpart nor similar ‘fabula’ can be found for a legal narrative, and we will have to look for comparanda on a larger scale: the conventional sets of time-space-personae located in the medieval Irish chronological framework, called ‘cycles’ by modern scholars, will be collated with the sets found in legal narratives. But let us start with a few groups of narratives for which the textual provenance can be more or less certainly proven.

4.3.1.

Besides the items ([19], [21], [40]) mentioned above, derivation from texts outside the legal corpus can be established for no more than a handful of legal narratives. [13] quotes extensively from *Dindṡenchas* but its main part, though recounting a famous ‘fabula’, bears no close resemblance to any other extant texts. [14] appears to be more concerned with grammar than with law, and is textually similar to one of the introductions in the grammatical work *Auraicept na nÉces*; thus it is highly likely that [14] was imported into the law tracts from the grammatical tradition. [29] was quoted from the tract on poetic learning which has been given the title *Mittelirische Verslehren* II by Thurneysen; but, as pointed out above, it varies greatly from the extant copies of this tract (see 3.3.4). The prose introduction to an Old Irish story *Immathcor nAilella 7 Airt* may have been first altered and then adapted into a collection of toponymic legends not unlike the *Dindṡenchas*; a jurist subsequently copied this toponymic-oriented text in a miscellaneous section of TCD MS 1336 (Corthals 1995, 97–98), which was then singled out from the miscellany and included by Binchy in *CIH* for its legal connotations – hence it appears as [102] in my collection.

[45] is a difficult case: it quotes a line from a satire, the full text of which is found elsewhere independently (Hull 1930), and partly in the composite narrative *Cath Maige Tuired* (Gray 1982, 7–11; Carey 1989). Yet there is good reason to believe, as Liam Breatnach has argued, that the source for [45] is the lost

beginning of another law tract, *Bretha Nemed Dédenach* (L. Breatnach 2005a, 187). Did the narrative originate eventually in the legal milieu? Or did the *Bretha Nemed Dédenach* text itself derive from other sources, such as an earlier version of *Cath Maige Tuired* (or its composite 'fabulae')? At present I have to leave the question open.

4.3.2.

Textual transmission from the legal corpus into other contexts is of course also attested. Máirín O Daly has already pointed out that an episode in the tale *Scéla Mośauluim* contains a passage almost identical with part of *Bretha Nemed Toísech* ([109]).[69] Several factors lead me to believe that *Scéla Mośauluim* cited the text from *Bretha Nemed Toísech* rather than the other way round. Firstly, much of the language of *Scéla Mośauluim* falls into the category of later Old Irish (O Daly 1975, 18) while *Bretha Nemed Toísech* was produced in the first half of the 8th century (L. Breatnach 1984). Secondly, *Scéla Mośauluim*, rather than being an integrated story, is evidently a composite account drawing from diverse sources to syncretise the chronology and relationships between the personae of the *Cath Maige Mucrama* 'fabula' (Ó Cathasaigh 1977, 128). Thirdly, the episode in which the shared passage appears is explicitly a citation and a digression from the main narrative. Fourthly, the style of the passage is typical of that of *Bretha Nemed* (alliterative, obscure *roscad*) and finally, the version of the text in [109], though often concealed by the idiosyncratic orthography of the scribe, is much superior to that in *Scéla Mośauluim*.

Although a text corresponding to [71] is also found in *MV* II, I doubt, in contrast to [29], that this text has a legal prototype. The metrical tract treats the Old Irish quotation as an example of *cétal roscadach*. Where it appears in a legal context, the commentary to this quotation supplies abundant (though not

[69](O Daly 1975, 132), though she failed to notice that due to incorrect arrangement of the folios the end of this passage has been put a few folios ahead in the present binding of the manuscript.

necessarily accurate and original) details concerning its legal significance, and shows no sign of being influenced by the metrical tract. The ultimate source of the quotation, unfortunately, is still unclear; but it must have come from a *roscad* passage and probably from the canonical part of an unidentified tract. Both [71] and *MV* II have presumably cited it from that source. Similarly *MV* II also cites the poem in [58], though the order of the lines is slightly different. From the semantic perspective, the order of lines in [58] seems to be more preferrable.

Several other legal narratives emerge in non-legal texts which are more evidently secondary to law texts. Analysis has shown that *Sanas Cormaic* reaped much of its information from legal texts, especially OGSM and the *Bretha Nemed* tracts which, like *Sanas Cormaic* itself, had a Munster affinity; *Sanas Cormaic* often identifies its legal sources and sometimes copies from them *en bloc* (Thurneysen 1914; Russell 1988; Russell 1999). We find parts of [17], [30], [44], [85], [87], [91], [94] and [107] reappear, sometimes directly cited from and explicitly attributed to the legal sources, in *Sanas Cormaic*. In particular, [85], [87], [91], [94] and [107] are all from *Bretha Nemed Toísech*. The canonical texts of [51] and [90] (from *Bretha Nemed Toísech*) are quoted in the *Triads of Ireland* (Meyer 1906a, 16), in a section (117-123 in Meyer's numbering) that obviously borrowed from the part of *Bretha Nemed Toísech* entitled *Do nemtiugud cach gráid* (*CIH* 2219.15-2230.19). However, this section of the *Triads* appears only in two manuscripts: TCD MS 1318, *olim* H 2. 16 (Yellow Book of Lecan), and RIA MS 23 N 10; it is thus probably a later addition to the compilation of *Triads*.

As I have pointed out in a recent paper (Qiu 2013b), not only is [44] copied into several different texts, but during the process of copying, the commentators and glossators showed considerable contextual concerns, trimming and embroidering the materials to suit specific needs. We do not know [44]'s ultimate origin. It seems likely, given its explicit legal relevance, that it was taken from an unidentified law tract, even possibly from the canonical part. Since the judgment

verse in [44] is ascribed to Fachtna son of Sencha, it is also reasonable to assume that it may originally belong to the tract the title of which is referred to in the Pseudo-historical Prologue to the SM as '*Bretha Fachtnai maic Ṡenchath*' or '*Tulbretha Fachtnai*' (Carey 1994a, 13; *CIH* 1655.24). Some other tracts referred to in the same passage actually survive today, but not *Bretha Fachtnai maic Ṡenchath*, though there are some pieces scattered around the corpus that may be attributable to it (L. Breatnach 2005a, 314–315). [44] appears in several other texts invariably with materials adjacent to it in OGSM, so there is no doubt about the direction of transmission. It is presented as evidence of the meaning 'cow' of an uncommon word *ferb*. While this basic function remains unchanged, the arrangement and scope of [44] and relevant materials vary greatly as the context shifts. In the oldest version of OGSM the glosses closely follow the sequence of the canonical law tract and are mainly concerned with explaining the difficult lexemes; then two later recensions of OGSM shift their focus to grammatical and metrical exemplification respectively; the commentary to *Amra Coluim Cille* adjusts its presentation of the material to its primary aim of commenting on the text of the *Amra*; and *Sanas Cormaic* truncates the information superfluous to the glossary's purpose, and divides the narrative between two lexical entries.

An interesting Middle Irish text which, taken as a whole, has so far attracted relatively little scholarly attention (Stokes 1891a; Hull 1949b; McCone 1990; Carey 1992), has absorbed at least five legal narratives: [11], [18], [50], [65] and [80]. The tripartite text, for which I adopt Kim McCone's abbreviated designation *Scél na Fír Flatha* (e.g. McCone 1990, 32), relates in its first part that Cormac mac Airt convened the nobles of Ireland to settle rights and duties for each grade and trade, and goes on to enumerate the twelve ordeals established on that occasion as methods to distinguish truth from falsehood. This section was formulated on the basis of two SM tracts: the Pseudo-historical Prologue and SM 14 *Di Astud Chirt 7 Dligid*. The gathering of nobles under Cormac mac Airt's

auspice to revise the laws and to re-distribute the rights resembles St. Patrick's renowned nine-man committee for reforming Irish law as recorded in the Pseudo-historical Prologue, and patent parallels were drawn: in the Pseudo-historical Prologue, the story of Conchobar's rescinding of the poets' monopoly of legal business ([18]) is said to have preconditioned St. Patrick's reform, and all the authorities empowered by Conchobar became subject to the 'white language', i.e. the scriptures, with the nobles adjudging the measure of lawsuit and speech to each man according to his rank (Carey 1994, 12–13). In *Scél na Fír Flatha*, likewise, a copy of [18] is quoted in §5-6,[70] followed by the comment that 'howbeit each man again encroached on the other's profession, until that great meeting was held by Cormac. So in that great meeting they again separated the men of each art from the others; and everyone of them was ordained to his own art' (Stokes 1891a, 186–187). Of the twelve types of ordeals, the text lists merely ten, six of which are already mentioned in the canonical text of *Di Astud Chirt 7 Dligid*, and one in a version of the Pseudo-historical Prologue ([80]). The canonical law text gives only the names of these ordeals, the details of which – procedures and background stories – are provided in the glosses and commentaries, including the narratives [11] and [50]. The corresponding passage in *Scél na Fír Flatha* is textually very similar to part of the version of [11] in OGSM, and since it manifestly mistakes *ba duirn* 'which Dorn owned' as the genitive of a nonexistent personal name *Badurn*, there should be no doubt that *Scél na Fír Flatha* imported from legal sources (Carey 2007, 89). The divergences between the legal narratives and *Scél na Fír Flatha* can be explained on the hypothesis that the latter drew from other sources and creatively invented some of its episodes, as Carey has convincingly shown in his study on the relationship between [65] and the third part of *Scél na Fír Flatha* that tells the story of Socht's sword; he has reached the conclusion that the *Scél na Fír Flatha*

[70] I am using the paragraph division as used by Stokes (1891a).

sword-tale is a self-consciously constructed edifice with bricks from many (sometimes misunderstood) early sources (Carey 1992). Lastly it is worth pointing out that *Di Astud Chirt 7 Dligid* has the highest concentration in the *Senchas Már* of the Patrician legislation legend which culminates in the Pseudo-historical Prologue: three narratives in different parts of its canonical text make reference to the legend, out of eight in the whole *Senchas Már*. It may not be coincidental that *Scél na Fír Flatha* depends heavily on these two tracts.

A poem attributed to Gilla in Choimded úa Cormaic, who flourished in the mid-12th century, begins with the couplet *Aimirgein Glúngel tuir tend / cét-ugdar amra Éirend* (P. Smith 1994). This must be based on an account of the legendary judges of Ireland ([80]) which is appended to a version of the Pseudo-historical Prologue to the SM, and on the list of pre-*Senchas Már* laws in the Prologue itself. Another narrative [95] that describes 'the cloak of Clothru' finds resonance in the work by the same poet. The canonical text in *Bretha Nemed Toísech* brings up the item, while the name of the cloak and the descriptions in the commentary echo the lines in a section that enumerates groups of important items in the Finn Cycle in a poem on world history by Gilla in Choimded, titled *A Rí ríchid, réidig dam* (Meyer 1910, 50). However, the puzzling sentence *acht ba duine ba cú ba hech* in the legal commentary can only be understood, as Myles Dillon points out (Dillon 1932, 61, n. 1), as 'imperfectly quoted here [from *A Rí ríchid, réidig dam*]'. The sentence's lack of context in the legal commentary led Dillon to mistranslate it as '[b]ut it was a man, a hound, a horse', but in *A Rí ríchid, réidig dam* the meaning is clearer: the whole sentence there reads *ba cú ba duine ba dam/ ra-impúd ra-aitherrach* 'you will be a hound, a man, a stag,/ if you turn it around, if you change it', perhaps indicating the visual effects caused by putting on the cloak. Part of the legal commentary must have been extracted from *A Rí ríchid, réidig dam*, but it preserves a reading preferable to the surviving text of the latter: the reading in the legal commentary, ending in *ech*, in fact provides a

better rhyme with *ra-aitherrach* in a *debhidhe* metre than *dam* in the Book of Leinster copy of the poem does. It is thus plausible that the legal commentary in [95] quoted from a copy of *A rí ríchid, réidig dam* which was closer to the prototype.

Another example is [69], which undoubtedly provided the materials for some quatrains in *Ro chuala ar thagrais a Thaidhg*, one of the poems included in the collection *Iomarbhágh na bhFileadh* 'Dispute of Poets', since the poem explicitly quotes the title of the law tract and a line from [69]. The bardic poem in question was written by Lughaidh Ó Clérigh (d. 1630), from a traditional learned family that served the O'Donnells. He received his education from the Mac Aodhagáins, who were renowned for their achievements in the studies of native law besides poetry (McKenna 1918, x; Simms 2007). *Ro chuala ar thagrais a Thaidhg* contends for the precedence of the Northern half of Ireland over the Southern half, and [69] was used by Lughaidh Ó Clérigh as a witness to the slaying of Art mac Cuinn, one of the high kings *par excellence* from the North, by Lugaid Mac Con of Munster and Ligairne of Leinster.

4.4. Narratives without textual parallels outside the law tracts

The legal narratives we have discussed so far have textual parallels outside the law tracts, and textual critical studies in order to establish their genetic relationship are therefore possible, even though a conclusion is hard to arrive at in some cases. However, when an attested comparable 'text' is lacking, we will have to turn to structural analysis and seek for the same or a similar 'fabula' in a non-legal context.

4.4.1.

We may start with [63]. A narrative with the title *Comracc Con Culaind re Senbecc ūa nEbricc a Segais* 'The Encounter of Cú Chulainn with Senbecc úa Ebricc from Segais' shares the same 'fabula' with [63], but no significant textual correspondence exists between the two. *Comracc Con Culaind re Senbecc* is found in RIA MS D iv 2, f. 48v, following a series of *comperta* and *remscéla* of the Ulster Cycle, and preceding various anecdotes on wonders.[71] It was apparently regarded by the scribe as comprising elements of both the Ulster Cycle and the *mirabilia*. Therefore it employs an opening typical of Ulster Cycle stories (*[F]eacht n-āen di[diu] do Con Culainn la tāeb na Bōine.*…) but is mostly concerned with the wonder-inspiring objects that Senbecc possessed. [63] tells the same 'fabula' in a very different way. It belongs to a section in the canonical *Bretha Nemed Dédenach* headed *lōgh gach aisde* 'price of each type of composition'; the section firstly lays out some general regulations for different types of poems; then a narrative ([62]) illustrates the problem of paying a poet when he advances from one grade to another; the text then returns to discussions of some exceptional circumstances when a panegyric is not awarded, or a satire is not compensated for, etc., and of just verdicts, followed by a passage on 'the cauldron of judgments'. [63] then ensues, before the section concludes with the remark: 'a cow in payment of the poem with proper measurements, unless the chanting is measured, there is no payment for it.' It is hard to see how the narrative of [63] serves to illustrate this conclusion, unless we understand the song that Senbecc chanted to Cú Chulainn as an example of a poem that is not measured (i.e. metrically unregulated), so that Cú Chulainn had a legitimate cause not to grant Senbecc freedom as the price of the poem. The song of Senbecc takes the central place in [63], and the legend of the nuts of Segais,

[71] *Sgel ingnadh for Mhaelosdan* on a mysterious object cast up by the sea (Meyer 1891, 88–89), *Don tSaighnean Teintighi* 'On the Fiery Arrow' (edited by John Carey (2014, 705-713), and *Sénadh Saighri* 'The Blessing of the Church of Saigir' which tells how a band of demonic *crossáin* (jesters, satirists) plaguing the building site of a church were driven away through God's intervention (Harrison 1984). Also see the relevant description in the catalogue (Mulchrone and Fitzpatrick 1943, 3303, fasc. 26-27).

linked with poetic inspiration (T. F. O'Rahilly 1946, 322–323) and the 'cauldron of poesy' in wisdom literature (L. Breatnach 1981, 66, 92ff.), is also duly stressed.

Comracc Con Culaind re Senbecc and [63] no doubt share a common 'fabula' consisting of the capture of Senbecc by Cú Chulainn and the escape of Senbecc through playing magical tunes that lulled Cú Chulainn into slumber. The account makes use of a popular trope in early Irish literature, i.e. the three kinds of hypnotising music: parallels are found in *Cath Maige Mucrama* (O Daly 1975, 40), *Cath Maige Tuired* (Gray 1982, 70) and *Táin Bó Fraích* (Meid 1974, 4). It is likely that this shared 'fabula' did not originate in *Bretha Nemed Dédenach*; since its elements are irrelevant to the legal point, while the legally relevant part, namely the poem chanted by Senbecc, probably did not belong to the original 'fabula'. But the evidence at present does not suffice to tell us more about the textual history of the two related narratives. We can observe, however, that the same 'fabula' was put into service in different contexts, giving the 'story' a *mirabilia* focus and a legal perspective respectively.

While it was clearly drawn upon by a 17th century bardic poet (see 4.3.4 above), the relationship between [69] and the famous story *Cath Maige Mucrama*, with which it shares a basic 'fabula', is not so self-evident. [69] is found in the midst of a section in *Ántéchtae* dealing with the liability of accomplices. The canonical part of [69], written in stress-counting rimeless verse, is very obscure; but the gist of it seems to be a judgment that ten *séts* should be paid by the accomplices involved in Ligairne's killing. The accompanying glosses and lengthy commentary testify to this, and the latter recounts the 'story' in plain prose, which is based on the 'fabula' concerning the battle of Mag Mucrama. The 'fabula' of the battle of Mag Mucrama was no doubt a widely diffused one in medieval Ireland, as attested by the inclusion of *Cath Maige Mucrama* in both Middle-Irish tale lists (Mac Cana 1980, 43, 54) and by the existence of an

impressive array of ‘stories’ developing out of it and the numerous copies of some of these ‘stories’ (O Daly 1975, 1–3). O Daly’s book itself contains four different ‘stories’ which unanimously agree on the basic ‘fabula’, involving the same protagonists and events. The ‘stories’, however, demonstrate divergent topical interests in elaborating their accounts: *Cath Maige Mucrama* narrates the history in chronological order; *Scéla Eógain* focuses on the birth-story of the sons of Eógan and Art; *Scéla Mośauluim* undertakes to synchronise accounts from various sources, distinctively adding an episode about Finn mac Cumaill at the end; and *Cath Cinn Abrad* concentrates on the battle of Cenn Ebrat.

In a similar way, [69] adheres to this ‘fabula’ while developing its own viewpoint. It reviews Mac Con’s dispute with Eógan over the musician in the yew tree, Ailill Ólomm’s judgment, Mac Con’s defeat in the battle of Cenn Ebrat, his exile in Britain, his return with British troops and victory in the battle of Mag Mucrama and the death of Art mac Cuinn. However, the particularity and interest of [69] lie in the information that is not shared by other ‘stories’: it details Mac Con’s contract with the Britons so that they provided him with warriors to fight his way back to Ireland, while he served them against the Saxons. In *Cath Maige Mucrama*, the king of Alba had alliance with the Saxons through marital connection, and he did not impose contractual conditions on lending Mac Con his forces (O Daly 1975, 46). Also, [69] reports that Mac Con brought Olcán and Ligairne with him, the latter two not appearing in other ‘stories’. This Ligairne, who died in plundering Leinster, is nonetheless the central figure mentioned in the judgment in the canonical text. I have not yet been able to find a convincing answer to the question that whether the information about Mac Con’s contract has any legal significance in this context. But in any case, [69] can be fairly described as a legally contextualised ‘story’ based on a ‘fabula’ outside the legal realm.

Another salient example of the contextualisation of a 'fabula' in law is supplied by the story of Cú Chulainn unintentionally killing his son. This figures in no less than three legal narratives: [16], [73] and [101]. The three narratives are all found in the later stratum of commentary and share some readings with each other. [16] contains only a brief reference to the story: *geogain Cū Chulainn a mac i nanfōt* 'Cú Chulainn slew his son in advertence'; this reference appears in [73] as well, along with commentary remarking on the legal consequences; the commentary of [73] in turn seems to derive from the same exemplar as part of [101]. Whereas the reduplicated preterite of the verb *geogain* points to an Old Irish or early Middle Irish date, the commentary shared by [73] and [101] is possibly written in Middle Irish.[72] This combination of an early quotation with commentary, both laden with legal significance, is suggestively reminiscent of the typical structure of Irish law text. It is not inconceivable that an otherwise unattested law text might be the exemplar of the three narratives, from which [16] quoted the canonical sentence, [101] took the commentary, and [73] kept the canonical part as well as an abbreviated version of the commentary. Though probably derived from a single textual exemplar, distinct contextualisation has taken place in the individual narratives. The legal commentary in the longest account [101] shows uniformity in language and style, and therefore may have been inherited from the exemplar *en bloc* and have kept the extent of the original legal discussion. This concerns two problems: firstly, Cú Chulainn was solely responsible for his act but his killing of Connlae was done inadvertently, so he was to pay only half the body-fine (*corpdíre*); secondly, the fine he paid went to Conchobar since Cú Chulainn performed a kin-slaying (*fingal*) and was disentitled from receiving recompense on behalf of his son, and since Conchobar was both the head of the *túath* who acted on behalf of every outlander (*deorad*)

[72] A Middle Irish date of composition is indicated by e.g. the original deponent ending *-star* for all classes of verbs in the 3rd sg. pret/perf.; use of independent pronoun *é* as the object but not as subject except in *ar sé*; no instance of infixed pronoun except in fossilised forms (*cid fodera*); etc.

and the nearest kin to Connlae specifically apart from Cú Chulainn. [16] serves the tract *Bretha Étgid* ‘Judgments of Inadvertence’ and exemplifies the common types of inadvertent offence, and it quotes only the text that mentions the exemplifying incident and its legal quality, i.e. *geogain Cū Chulainn a mac i nanfōt*. [73], on the other hand, is one of the two narratives illustrating the concept of *fer fergach fingalach*, a man who slays his kin out of fury. Though it also mentions the inadvertence or mistake that incurred the killing (‘a non-outlaw in the guise of an outlaw’), it is the kin-slaying aspect of Cú Chulainn’s act that is emphasised and discussed in detail in [73]. [101] may have preserved the original extent of the legal discussion of this incident, but it accommodates a full narrative of how Cú Chulainn killed Connlae instead of the terse reference to the event in [16]. There is no discrepancy in language between the narrative and the legal discussion, so again I suppose that the lost exemplar consisted of *gegain Cú Chulainn a mac i nanfōt* in the canonical part, and the narrative and discussion as presented in [101] in the commentary. As [101] lacks any obvious relevance with its neighbouring texts in the manuscript, we can only compare it with narratives with the same ‘fabula’ to see how contextualisation was at work.

Ruairí Ó hUiginn states in his comprehensive study on this ‘fabula’ that apart from [101], there exists only one prose specimen that bears out this ‘fabula’ before the 17th century (Ó hUiginn 1996, 226–229). The narrative in question is actually our oldest witness to this ‘fabula’, dating to the 9th century, and is given the title *Aided Énfĥir Áifi* in the only manuscript witness, the Yellow Book of Lecan (TCD MS 1318, *olim* H 2.16). In the same study Ó hUiginn has pointed out two structurally important differences between the two texts. Firstly, [101] does not mention Emer or her attempt to reveal the identity of Connlae and to restrain Cú Chulainn from killing him, as told in *Aided Énfĥir Áifi*. This difference is contextually dictated: in order for the case of Cú Chulainn to exemplify manslaughter by mistake (*i n-imraichni*) or in advertence (*i n-anfōt*), he must be

unaware of the identity of his opponent; the disclosure of identity in *Aided Énfîr Áifi*, however, plays a crucial role in stressing the inevitability of the tragic encounter between father and son, both honour-bound by the heroic code (O'Leary 1988). Secondly, [101] adds a quatrain of lament by Cú Chulainn. But there are other dissimilarities to be noted. Not only is the account of Emer informing Cú Chulainn lacking in [101], but closer reading suggests that this is no simple omission but intentional modification. In *Aided Énfîr Áifi*, Cú Chulainn actually responded to Emer and confirmed that he knew it was Connlae that he was to face (Meyer 1904d, 120). By contrast, in [101] Cú Chulainn had to ask for the lad's name after wounding him (*Déna do slōndud bodesta, ūair tāirnic do ré* 'Name yourself now, for your time has come'), further proving his ignorance of the lad's identity. Besides, *Aided Énfîr Áifi* elaborates on the exchange of dialogues and fighting between Connlae and the Ulster heroes, which is typical in the Ulster Cycle tales but omitted from [101]. Also, *Aided Énfîr Áifi* explains the origin of the placename *Tráig Ési* by ascribing it to an event in the narrative, a practice common in Ulster Cycle narratives but again not found in [101]. On the whole, we see the same 'fabula' of Cú Chulainn's filicide represented in a literary context as an intentional but inevitable heroic act against an offender, but as an unintentional kinslaying in the postulated legal exemplar. The exemplar then found expression in three legal narratives, each adopting part of it to suit their immediate juridical topics.

4.4.2.

Some narratives recounting biblical or apocryphal events can more securely be regarded as merely making reference to the 'fabulae' in the Scripture, patristic or other derivative texts. The theme of the fall of Adam and Eve and the banishment of Lucifer, was favourite of the early Irish jurists, as shown by [15] and [52], and this theme is mentioned in passing in [17] and [34]. But while [15],

[17] and [34] take the downfall of these figures as consequences of their violations (*étged/ cin/ sárugud*), [52] interprets the dire aftermaths as resulting from voluntary (though obviously disadvantageous) contracts entered into by Lucifer and Adam out of their exercises of free will. The ‘fabula’ remains the same, yet the legal interpretations vary. These different interpretations may have originated from, or at least been influenced by, the works of Augustinus Hibernicus, Gregory the Great and others (Bracken 2002). There are references to other episodes of the Old and New Testaments: [19] to Genesis 1, [34] to Genesis 4, [37] to Joshua 4, [41] to John 8:7, [74] to John 19:34, [76] to Joshua 7 and Acts 5, and [112] to the lives of the Patriarchs. The immediate sources of most of these items are unclear: for instance, the reference to Joshua 7 in [76] spells the protagonist’s name as *Achab mac ua Chuirmi*, whereas in the Old Testament it is Achan son of Kurmi (Vulgata: *Achan filius Charmi*); apparently [76] has confused this with the name Ahab/Achab (1 Kings 16:29-34). Are we to attribute the error to the late scribe, or to a lay commentator, or to a source in which a textual variant could have influenced the commentator? It would be interesting to see if these narratives are textually more akin to canon laws, martyrology, homilies or other religious treatises, but that is beyond the scope of this study. Thanks to the works of various scholars, however, the textual histories of some biblical narratives have been made clear.

[19], for instance, is based on a prose rendering (titled *De operibus Dei* in one manuscript) of Canto I of *Saltair na Rann*. *Saltair na Rann* itself is a versified summary of biblical history; the prose version is closely dependent on the part of *Saltair na Rann* which retells the first chapter of Genesis (Carey 1986, 1–2); and [19] rewrites much of §1 of *De operibus Dei* (ibid., 3) in order to rationalise and to traditionalise the *accessus* schema in accordance with biblical cosmology while copying the rest of *De operibus Dei*. As a fourth-hand adaptation of the biblical text, [19] exemplifies the diversity and depth of medieval Irish

intellectual activity, and how early Irish law was harmonised with both the secular and biblical historiographic tradition. Another important source is the *Collectio Canonum Hibernensis*, a Latin collection of canon laws from Irish synods and other authorities, which itself often cites many biblical incidents as examples of and support to its regulations (Wasserschleben 1874); and from which a number of legal brocards ([40]) are drawn and rendered into rhetorical Irish (Ó Corráin, Breatnach, and Breen 1984, 416–418).

One can only be certain that [74] is not directly based on the Bible, since this early modern Irish piece mentions the name Longinus of the soldier who pierced Christ's side. This name is not attested in the Gospels. It was probably derived from Greek *λόγχη* ('spear') and was introduced to the West through the Apocryphal Gospel of Nicodemus (Dumville 1973, 305–309). This apocryphal text had certainly been known in Ireland since the eighth century, as themes derived from it appear in the poems attributed to Blathmac son of Cú Brettan (Carney 1964, 16-23). The tradition of Longinus is also reflected in many Irish texts, including translations of the Gospel itself (Dooley 1997). Another intriguing piece, [34], represents a confluence of biblical accounts, apocryphal legends, Irish learned tradition (such as *Sex Aetates Mundi*) and native literature, though its immediate precedent or prototype, if ever existed, remains to be discovered (Rodway 2010, 13). The biblical 'fabula' has been greatly expanded in [34] and may be regarded as forming a new 'fabula'.

None of these biblical narratives, except perhaps [34], presents a different 'fabula' from the Bible, their ultimate source, though the 'stories' of some have undergone considerable adaptation in the course of being put into the service of the law tracts. On the 'text' level they show intimate relationship to the Scripture and religious writing in general, and on the 'fabula' or even 'story' level they are highly loyal to their Scriptural prototypes.

4.4.3.

On the other hand, it seems evident that some narratives originated within the legal tradition on the basic 'fabula' level; in other words, they were specially created for the sake of the law tract. These usually concentrate on legal actions and procedures that bear out the institutions discussed in the tracts, and involve figures unknown or less frequently encountered outside the legal context. Since such narratives are not referring to 'fabulae' that the reader could know from other sources, it is necessary that they provide a detailed account rather than a minimal reference. An often-quoted case is [25], which provides an aetiology for the type of distraint which requires a five-day period of stay (*anad*). It is related that when two men invited Sencha mac Ailello to arbitrate their dispute, Sencha determined that the period of stay should be five days, because the only witness's name was Cóicthe ('Five Days').[73] The whole story sounds suspiciously fortuitous, and we should most likely regard it as a pure legal invention (Stacey 2005, 70; Qiu 2013a, 125). Likewise, [22], which comes from the canonical part of the same tract and tells the aetiology of another type of distraint, may be of legal origin. A deliberate pun between *ráth* 'a type of surety' and *ráith* 'enclosure' in [1], which is central to the narrative, makes it unlikely that the narrative had an origin independent of the law text where it is found, though it mentions characters such as Eógan mac Durthacht who also appear in narratives outside the legal realm. As discussed above, episodes (c), (d) and (e) of [21] focus exclusively on legal actions and their consequences, and some of the main protagonists are only attested in this very narrative, suggesting that this too is an *ad hoc* invention of the jurists; the same can be said of [5], [6] and [7]. None of these 'fabulae' is attested outside the law tracts.

4.4.4.

[73] See the examination of this formation by Greene (1971).

The ‘fabulae’ from legal narratives can certainly be adopted into non-legal texts as well. A Middle Irish poem exalting a 5th-century Leinster king Crimthann mac Énnai is, apocryphally, ascribed to Dubthach maccu Lugair (van Hamel 1917). Stanza 25 of the poem reads (in the Rawlinson B 502 copy): *Dubthach mo ainm-se mac Huí Lugair láidir lántruit/ me ruc in breith etir Láigaire is dreich Pátraic* ‘Dubthach is my name, son of the seed of the strong, full-battle Lugair/ it is me who gave the judgment between Lóegaire and the face of Patrick’. This can only refer to the famous episode of Dubthach’s divinely illuminated judgment found in [17]. As Kim McCone indicates, the text of [17] has been inspired by some earlier Patrician legends, especially that of the contention between St. Patrick and King Lóegaire as told by Muirchú (McCone 1986a, 24–25; Bieler 1979, 84–98), and has absorbed some text from the canonical part of *Córus Bésgnai* ([28]) (Carey 1994, 24). As indicated above, other tracts in *Senchas Már* mention St. Patrick’s revision of Irish law, which is also recounted in [17] (L. Breatnach 2011). There are eleven legal narratives that involve St. Patrick, all centring on his role as the national legislator (see 3.3.2).[74] In the canonical stratum of *Senchas Már*, *Cáin Ḟuithirbe* and *Bretha Nemed*, the basic ‘fabula’ of St. Patrick reviewing native Irish law in collaboration with the king, the nobles and the native learned class had already taken shape. The central personae of this ‘fabula’ include St. Patrick, Lóegaire mac Néill,[75] and Dubthach;[76] the crucial event is Patrick’s review of the native law, for which the trio of verbs ‘establishes’, ‘forbids’ and ‘binds together’ (*suidigidir*, *ar-gair*, and *con-rig* in their respective verbal forms) recur throughout these narratives as the three major operations St. Patrick performed on the native law. [17] is later in date than the canonical tracts. It puts the episode of Dubthach’s judgment in a central place which foreshadows St. Patrick’s legal reform and justifies the stance adopted in

[74] [9], [10], [12], [17], [20], [28], [38], [46], [56], [81], and [83].
[75] [10], [28], [38], [56] and [83].
[76] [28] and [56].

the reform. However, this dramatic episode is unique to [17], having no precedent elsewhere, and it is overwhelmingly legal, striking at the heart of the problem that occupied the early Irish jurists, namely, how to reconcile native Irish law with the teaching of Christianity, likened to the Patriarchs' 'law of nature' (*recht aicnid*) and the Mosaic 'law of scripture' (*recht litre*) respectively (Carey 1990). It is better treated as a fresh 'fabula' which imposes a setting which represents a historically anachronistic combination of circumstance and protagonists (Binchy 1975b, 21–23). Here, although there is no parallel text, the uniqueness of the legal narrative renders it evident that the 'fabula' travelled from law to poetry.

In the post-Norman centuries the intellectual centres in Ireland gradually shifted from monasteries to hereditary learned families, who, like their predecessors, had expertise across multiple disciplines, showing a particular combination of interest in native law and bardic poetry (Simms 1990). Their studies of early laws sometimes permitted elements from legal texts to infiltrate their bardic compositions (Ní Dhonnchadha 1989); and the legal narratives can also afford evidence for this. The Tyrone lay poet Giolla Brighde Mac Con Midhe composed a poem before 1243 for the Lord of Orior (Williams 1980, 301; Ó Doibhlin 2000, 403–408). He adroitly rendered part of the *Bretha Nemed Dédenach* canonical text ([55]) into a *deibhidhe* account in order to parallel the deed of Athairne in the law to his endeavour to restore his patron's honour which had been disdained by an unjust satire (Williams 1980, 122–125). The 'text' of Giolla Brighde's poem is certainly not the same as that of *Bretha Nemed Dédenach*, but the 'fabula' has been kept intact. The 'fabula' of [55] does not appear in any other texts, and I am inclined to believe that *Bretha Nemed Dédenach* was Giolla Brighde's source. It is interesting to observe, from this case and [69], that ancient legal narratives were not only fully understood, but dextrously reworked into poetry for contemporary purposes, down to the 17th

century.

4.5. Legal narratives and the Ulster Cycle

The protean nature of narrative is not only reflected in its contextual adaptation, but also in the intertextual cohesion displayed across a profuse array of texts. Indeed, such cohesion exists to various extents in every textual culture. On a simpler plane, reference and cross-reference, imitation and synchronisation link one text to another; on a larger scale, however, a number of texts can agree on a setting of a particular time, a core group of narrative personnel, and a geographical focus to create an immanent narrative universe (Poppe 2008, 12). Such a narrative universe is both the cause and the result of a literary cycle: a setting shared by a number of narratives defines a literary cycle, and narratives are identified as belonging to the cycle or join the cycle by cultivating 'fabulae' that conform to the setting. By contrast with the concept of 'fabula', a cycle dispenses with the requirement of common narrative incidents, and the time span and geographical focus is sufficiently broad to accommodate a multiplicity of narratives. However, a cycle has a core cast of characters who feature prominently or are frequently referred to in its constituent narratives, and it establishes a hierarchy of temporal-local order by which all constituent narratives are to be accepted, located and evaluated by their distance from the temporal and local hub of the cycle.

Although cyclical concerns were already present in the intertextuality of medieval Irish narratives,[77] the division of them into 'cycles' is mostly a modern phenomenon (Poppe 1999a; Poppe 2008). To demarcate the boundaries and to

[77] Apart from the categorization as manifested in the tale-lists (Mac Cana 1980; Poppe 1999a), two terms show the cyclical concerns of late medieval Irish *literati*: *fíanaigheacht* for stories related to Finn and his *fían*, and *rudhraigheacht* for what we call the Ulster Cycle today, named after the purported High King and ancestor of the Dál nAraidi, Rudraige mac Sittride, whose name was likely reconstructed from some toponyms such as Trácht Rudraigi (Ó hUiginn 1993, 34; Baumgarten 1990).

pick out the core elements of each cycle, however, proves to be a thorny business. So far, only two cycles (which are also the two already recognised before modern times) are more or less universally acknowledged as viable: the Ulster Cycle and the Finn Cycle. The Ulster Cycle centres on an assemblage of personae interrelated by kinship, marriage, alliance and rivalry. Its constituent narratives tell of events happening in a timeframe that can only be understood with reference to the climax of the Ulster Cycle, namely the battle for the prized bull of Cooley as recounted in *Táin Bó Cúailnge*; therefore narratives were characterised as prequels (*rémscéla*) or sequels to the *Táin*, or were developed to account for the phases of the heroes' biographies (Hillers 1994, 101). The places of happenings vary, and lengthy itineraries are often described with copious geographical detail; but the axis of all activities is doubtless the acclaimed seat of the Ulster king, Emain Macha, in which countless feasts were held and numerous feats were performed. The whole Ulster Cycle unfolds in a political scheme that posits an Ulster much larger that the region east of the Bann attested for the historical period: this larger Ulster is hostile toward the Connachta, and at times toward the Laigin and the men of Munster as well. In a word, the universe that the Ulster Cycle narratives collaborate to create is accepted by all the narratives as the premise of their 'fabulae'. Though individual narratives may disagree in details, the intertextual cohesion within the Ulster Cycle is strikingly high.

The question we pose now is, are there any legal narrative that can be said to belong to the Ulster Cycle? If yes, to what extent do these legal narratives share the same intertextual cohesion that is exhibited by other narratives in the cycle?

4.5.1.

As many as 45 out of the 112 narratives in my collection mention figures or events from the Ulster Cycle. But these present a very different picture from what we are familiar with in the non-legal sources. As already noted, the centre

of gravity of the Ulster Cycle is the band of heroes gathering around Conchobar mac Nessa in Emain Macha, and the cycle culminates in *Táin Bó Cúailgne* which is not only the longest and most comprehensive piece in the cycle but also scaffolds the grid of coordinates in reference to which other narratives are located. While the core figures of the Ulster Cycle, such as Cú Chulainn, Conchobar mac Nessa and Aillil mac Mágach, make frequent appearance in the legal narratives, reference to the central tale *Táin Bó Cúailgne* is conspicuously absent. I am aware of only one item in my list which mentions the *Táin*: this is [106], a gloss in *Gúbretha Caratniad*, probably drawn from another Old Irish text. This is, however, in Thurneysen's words, 'eine besonderbare Notiz' (Thurneysen 1925, 338). It alludes to *Cath Bó Cúailgne*, which seems to be equated to the *Táin*, or to the great battle towards the conclusion of the story. Yet the figure Fergus Lethderg whom [106] mentions is nowhere to be found in the Ulster Cycle; he was rather among the sons of the pre-Milesian settler Nemed according to the pseudo-historical doctrine recorded in *Lebor Gabála* (Macalister 1937, 3:126). Given that by the time [106] was written down Recension I of the *Táin* had probably already come into being, it is hard to imagine that [106] represents a genuine tradition. Indeed, John Kelleher has suggested that the similar rarity of reference to the *Táin* in *Sanas Cormaic* may result from the relatively late success of the *Táin* in gaining popularity after Recension I was produced in the 9th century (Kelleher 1971, 122–127; Ó Riain 1994). It is debatable as to why *Sanas Cormaic*, a glossary dedicated to explaining difficult lexemes, lacks interest in tales such as the *Táin*, the status and prestige of which has been emphasised by texts such as the Middle Irish tale-lists. The number of prose narratives contained in *Sanas Cormaic* and those referred to in it, as do the majority of the entries in this glossary, concern the lives and deeds of the *filid*, such as *Immacallam in dá Thúarad* from which many entries quote. However, it is definitely striking that even in legal texts dated to the late Middle Irish or early

Modern Irish period, accounts of the *Táin* or other longer, better-known Ulster sagas are still scarce.

On the other hand, correspondences between legal narratives and some relatively peripheral Ulster Cycle sagas from non-legal sources are attested. Apart from the four legal narratives that contain Ulster Cycle 'fabulae' ([63], [16], [73], [101]) already accounted for in 4.4, there is a reference to the saga of Cú Roí in [44]. The reference occurs in a gloss appended to a lexical example in the OGSM, and it generally conforms to *Aided Chon Roí* and other independent accounts of a heroic expedition involving Cú Roí (Best 1905; Thurneysen 1913). [76] mentions Noíndiu, grandson of Dáire mac Dedad, and his death after giving judgments on his mother, and thus alludes to a piece found in the genealogies in the Book of Leinster (TCD MS 1339) and Oxford Rawlinson B 502 (M. A. O'Brien 1962, 189), but also independently in TCD MS 1318 (the Yellow Book of Lecan) (Abbott and Gwynn 1921, 106; Thurneysen 1936a).[78] There may also be a faint echo of the contest between Conall Cernach and Lóegaire Búadach, as exemplified in *Fled Bricrenn* (Henderson 1899), in [60]; or at least, the well-known rivalry between these two heroes prompted a glossator to identify the 'two men' in [25] as Conall and Lóegaire.

The hero *par excellence* of the Ulster Cycle, Cú Chulainn, also features in [90], a story about the invention of the pattern on his shield. This is not known from other sources, but the author intentionally tried to find a place for the narrative within the framework of the Ulster Cycle by stating that it happened when Cú Chulainn was returning to Ulster from his learning from Scáthach (Dillon 1932, 54), therefore locating it in a firm temporal-local relationship to other Ulster Cycle stories. However, [90] also mentions another teacher of Cú Chulainn with the name Búanann, the identity of whom seems obscure.[79]

[78] The story of the three persons who spoke immediately after they were born is also preserved in the Book of Leinster, 126a-b (Best 1967, ll. 14586-14660), however with the text breaking off and thus missing the part about Noíndiu.

[79] A quatrain in the Book of Leinster version of the *Táin* mentions: *Mad dá mmámar alla anall/*

Another piece ([65]) centres on a sword which was said to have been once owned by Cú Chulainn. In general, Cú Chulainn's characteristics and biography as described in the legal narratives are in keeping with the Ulster Cycle stories, and the intertextual cohesion is strong, if not very detailed. The same could probably be said about the only reference to Medb of Crúachu ([111]) that she was a woman 'who takes hostages'. Athairne's epithet 'the Miser', as explained in [61], tallies well with the depiction of him in some Ulster Cycle stories, especially *Talland Étair* (Ó Dónaill 2005).

However, when we go further into other legal narratives, unfamiliar names crop up in connection with familiar stories, like that of Fergus Lethderg associated with the *Táin* (or a similar text). An example is [4], where a late Middle Irish commentary concerning the violation of maidens includes the statement that Eithne daughter of Cú Chulainn hated Eógan mac Durthacht. Taken in conjunction with the second half of [4], which classes Eithne's hatred together with Gráinne's hatred for Finn, the role of Eithne daughter of Cú Chulainn is suspiciously reminiscent of that of Deirdre in the well-known *Longes mac nUislenn* (Hull 1949a, 51). But again, nothing about this daughter of Cú Chulainn's is known in the Ulster Cycle. Her namesake emerges in two copies of [13]; however, the mention of Eithne here seems to be completely out of place since it precedes a quotation from the metrical *Dindṡenchas* which derives the placename Achall from an Achall daughter of Coirpre Nia Fer, who died there in grief for her brother Erc who took part in the slaying of Cú Chulainn in *Brislech Mór Maige Muirthemni* (Gwynn 1991, vol. I, 46-47; Kimpton 2009). While two copies of [13] logically add a prose comment that the quotation was a lament by

ac Scáthaig búadaig búanand (C. O'Rahilly 1967, 95) translated by the editor as 'when we were yonder with Scáthach the victorious' (ibid., 231), obviously circumvening the word *búanand*. This quatrain is not found in the earlier Recension I. CormY 104 suggests that this is the name of a woman or goddess who is the patron of the *fían* (Meyer 1912, 11), and such is the meaning given by the *DIL*. But is it possible that this is merely an epithet compounded from *búan* and *finn*, namely 'ever-fair' in the Book of Leinster *Táin*, which was misinterpreted by the author of [90] as a personal name (perhaps under the influence of the tradition as reflected in CormY 104)?

Achall, two others somehow attribute this lament to Eithne daughter of Cú Chulainn, who should have no place in such a context.

4.5.2.

The three kings Conchobar mac Nessa, Eógan mac Durthacht and Eochu mac Luchta[80] assume active juridical roles in legal narratives, while they seldom took part in legal business in the Ulster Cycle sagas. A tract was given the title 'the judgments of Eógan mac Durthacht', according to the information of a list in the Pseudo-historical Prologue to the SM, but no text belonging to it has yet been securely identified (L. Breatnach 2005a, 182). Eógan is said to have been involved, though not as a judge, in a case ([1]) in which an enclosure was forfeited to him (see Chapter 5). Fragments of the law tract that was ascribed to the Munster king Eochu mac Luchta do survive in citation and include a narrative [72] which tells about an inheritance case concerning Eochu.

Conchobar mac Nessa is as omnipresent in legal narratives as in the Ulster Cycle proper. In fact, he seems to be an emblematic figure, mention of whom suffices to invoke the immanent Ulster narrative universe. He is said to have given verdicts on several occasions: [5] on a disputed entry into land, [25] concerning a type of distraint, [60] concerning a warrior's homicide, [88] on the mutual damage caused by two livestock owners, and in [108] 'the judgments of Conchobar' rank among the verdicts of other legendary judges. It is worth noticing that in at least two of these narratives ([25] and [88]), Conchobar did not adjudicate alone but together with Sencha mac Ailello, while [108] celebrates Sencha as the chief adjudicator in a list of prominent Irish judges that contains Conchobar. The roles of Sencha mac Ailello in Ulster Cycle sagas as well as in legal narratives has been thoroughly analysed by Kaarina Hollo (2007). After considering four extra instances in the dossier of legal narratives depicting

[80] This king ruled over North Munster but participated in several of the Ulster Cycle stories as alliance to Medb and Ailill, see [72].

Sencha ([21], [48], [107] and [108]),[81] I fully agree with Hollo's conclusion in the article:

> [t]he Senchae of the Ulster Cycle tales is a skilled keeper of peace and royal spokesman, but never a judge; that of the *Bretha Nemed* texts is similarly intimately connected to the figure of the king, and, in later anecdotes, does act as a judge. The Senchae of the *Senchas Már* judges, but in a markedly inept or haphazard way which elicits the help of Brís. (ibid., 180)

The depiction of Conchobar delivering verdicts with guidance from legal experts comes in line not only with legendary accounts of Irish kingship, but also with the legal and political realities of medieval Ireland: in theory, a king was required to have the basic attributes of a judge and at least rudimentary knowledge of the laws, which were essential for him to ensure the wellbeing and loyalty of his *túath* (Gerriets 1988). There are other narratives that feature Conchobar as one of the major parties in legal issues, and most of these are in accord with his role as the king of the Ulaid and the primary freeman in his kingdom. For instance, in [71] and [107], though the exact situations have not been elaborated by the narratives, the murders of Conchobar's protégés were clearly deemed to constitute violation of Conchobar's own honour, entitling him to compensation. The right of giving legal protection (*snádud*) in early Irish law can be granted by any freeman to another person of equal or lower rank, and it extends to the whole precinct of his possession (Kelly 1988, 140–141). In [107], Conchobar was compensated for the killing of one of the warriors in his royal court, who was not necessarily his protégé but was slain in his house over which he exerts right of protection. The violation of this protection (*maigen dígona*) not only entailed the payment of Conchobar's honour price, but was also tantamount

[81] Sencha appears in the later gloss and commentary of [21] and [48], and the attribution of part of [107] to his judgment in *Sanas Cormaic* (B, La and M) is certainly secondary. [108] only states that Sencha 'has adviced' (*ro-airlistar*) a rule, though he is listed as a leading judge.

to ‘the disgrace of Emain Macha’ (*imdergad Emna Macha*). When a man from Ulaid was captured by the sons of Máta of Connacht, the compensation, we read in [39], was paid to Conchobar, supposedly because he was the head of the *túath*. One of the versions of [53] states that Fergus mac Roích used to be the king of Ulaid before his exile, and that his entitlement to a third of the fine paid to his *gilla*, presumably the *trían tobaig* paid to the lord by an unfree client (Binchy 1941, l. 85 and note; Kelly 1988, 126; L. Breatnach 2013), was not revoked automatically, with the result that ‘each man of the Ulaid pays to him besides Conchobar’ (*gu n-aurra cach duine di Ulltaib i leth ris ginmothā Conchobar*), i.e. besides the incumbent king who also enjoyed this entitlement. The most significant of the judgments pronounced by Conchobar in his capacity as king was his abolition of the poets’ monopoly of judicial matters in response to his people’s complaint, as recounted in the Pseudo-historical Prologue to the SM ([18]).

4.5.3.

Another salient characteristic of the legal narratives that touch upon the Ulster Cycle universe is their focus on the activities of the *filid* ‘poet-scholars’ (L. Breatnach 2010, 231). Liam Breatnach has made a distinction between the academic lawyers and the practising lawyers: the former were certainly more responsible for the writing or compiling of the laws, a number of which were written in poetic diction, and this category includes some of the known *filid* (L. Breatnach 1990, 4–5; Carey 1994, 12); while the later could be *brithemain* ‘judges’ or *aigni* ‘advocates’ (L. Breatnach 1990). The higher ranks of practising lawyers are said to have possessed *filedacht* or the *breth filed* (L. Breatnach 1990, 7; Mac Cana 1970), but it is more likely that this statement refers to the evaluation of poetic compositions and knowledge of laws concerning *filid*, rather

than to the jurist being an accomplished *fili* himself. Except for the *ollam filed*,[82] the highest grade of poet-scholar who was learned in every secular art including law (L. Breatnach 1990, 4; Kelly 1988, 48),[83] the status tracts provide little evidence of *filid* of lower grades having legal knowledge or participating in legal activities, although their curriculum covered some legal texts.[84] The precise extent to which *ollamain filed* were involved in legal activities is still unclear, though we know that *Bretha Nemed* was produced with the participation of a *fili* (L. Breatnach 1984). In their highest grades *filid* and practising lawyers were knowledgeable in each other's arts, and the titles of *fili* and *brithem* could both at times be attained by the same individual, at any rate in the post-Norman era,[85] when the old social structure had been disrupted and the learned families started to merge many of the professions (Mac Cana 1974; Simms 1990). Perhaps the *ollamain filed*, learned in all aspects of traditional knowledge (*senchas*), were mainly engaged with academic activities as well as consulted in legislation, legal procedure and judicature; while the *brithemain*, as more specialised functionaries, carried out the actual adjudication.

Most of the Ulster protagonists in the legal narratives are, however, at the same time excellent *filid*, legislators, judges, legal scholars and litigants. They

[82] He might be the same as the *suí cacha bérlai ollamann* 'sage of every language of an *ollam*' who is seated at the back court with the king and the bishop (Kelly 1986, 76–77).
[83] In *Uraicecht na Ríar*, however, the glossator confined the *ollam*'s legal expertise to that which pertains to poetry alone (L. Breatnach 1987, 102), thus his jurisdiction extends to only part of that of the higher ranks of lawyers as listed in *Uraicecht Becc* (L. Breatnach 1990, 7).
[84] For instance, *Bretha Nemed* in the fourth year of the twelve-year education programme for the poets (*MV* II, §18= *IT* 3.1, 36). A commentary (*CIH* 1106.4-9) confirms that *Senchas Már*, *Bretha Nemed* and two obscure tracts *Áe Cana* and *Áe Cermna* are among the 'canon' (*canóin*) that an aspiring *fili* must study for three years, although it is not clear whether these were learned as legal principles or examples *par excellence* of Old Irish diction and poetics.
[85] See the chart of pre-Norman learned persons from annalistic evidence in Richter (1996), where no one possessed both titles of *fili* and *breithem* at the same time. A prominent ecclesiastical scholar before the Norman conquest and Church Reformation, however, is Gilla in Choimded úa Cormaic, who flourished between the later 10th century and the first half of the 11th century, and was well versed in law, poetry and history alike, as evinced from works ascribed to him (P. Smith 1994; Ó Corráin 1998, 186–187). In the post-Norman eras, there are quite a few annalistic references to individuals renowned for their knowledge in both law and poetry, e.g. Muiris hua Gibillan (ALochCé 1328.12), Giolla Íosa mac Aedhagáin (AFM 1436), An Cosnamach mac Fergail mhic Donnchada Dhuibh Mhic Aodhagáin (ALochCé 1529), Aodh mac Baothghalaigh Mhic Fhlannchada (AFM 1575, who was also a wine-dealer), etc.

established rules through judgments in high-flown poetic speech; masters exchanged legal dialogue in *roscada* with pupils. These figures include Néide, Amairgen, Athairne, Ferchertne, and Fachtna son of Sencha mac Ailello. Many of these names also appear at the end of the aspirant poet-scholars' curriculum as exemplary figures who have achieved the highest degree of training (Thurneysen 1891, 65-66): one might suppose that they are regarded as the legally capable *ollamain filed*.[86] Numerous passages of the *Bretha Nemed* tracts are attributed to them, and they are active in many narratives in these tracts ([61], [62], [79] etc.) as well as in two other tracts mainly concerned with the poetic class, *Uraicecht na Ríar* ([30]) and 'a tract on praise and satire' ([99]). They are enumerated, in addition, in two lists of legendary lawyers with brief accounts of their deeds ([80] and [108]).[87] The predominance of *filid* in legal narratives is not confined to the laws regulating the poetic class or those originating from the so-called poetico-legal school (Binchy 1955a), but covers many other judicial matters in various law tracts. Thus we find Amairgen being said to have served as surety on behalf of his son Conall ([1]); Fachtna delivering a judgment concerning three cows ([44]) and another on vicarious liability ([48]); Athairne adjudging on behalf of his servant who was wounded on an errand to Connacht ([59]), etc.

According to the tradition, as recounted in [18], the *filid* used to be in charge of all juridical matters to the exclusion of others; after the 'colloquy of two sages', however, the people of Ireland complained about the obscurity of the *filid*'s legal language and objected to their monopoly of law. Conchobar mac Nessa accordingly rescinded the *filid*'s power and restricted their jurisdiction to matters related to their own trade. The situations before and after Conchobar's reform remind one curiously of the contrast between the omnipotence of the *filid*

[86] This is certainly true for Néide and Ferchertne, since they are described in *Immacallam in Dá Thúarad* as *ollam*s (Meyer 1905), but no such title (or even that of *fili*) is awarded to Sencha mac Ailello in the Ulster Cycle.
[87] A Middle Irish poem was later compiled on the basis on these and other materials (P. Smith 1994).

which eclipses the authority of the *brithemain* in legal narratives, and their limited legal involvement in actual practice. Certainly, we are not to take the account of [18] as historically accurate, but there might be some truth behind it. As Binchy opines, the *brithemain* might have been an offshoot from the *filid*, and might have taken over the latter's power in giving verdicts. Binchy further suggests that a vestige of the undifferentiated state when the judicial power lay solely with the *filid* can still be seen in texts produced by the so-called poetico-legal school (Binchy 1958). But by using the term 'poetico-legal school', Binchy is referring mainly to the stylistic and thematic features in some law texts that may imply expertise and interest of their composers in *filedacht*. The legal provisions themselves, nevertheless, do not render sufficient proof that all grades of *filid* were, or had been, involved with judicial matters, especially with judging cases.

The prominence accorded to the *filid* in legal narratives cannot, accordingly, be taken as reflecting memory of a time when *filid* still monopolised judicature. It seems to me that this prominence can be accounted for on other grounds. It is not hard to imagine that whereas the audience of the literary sagas were mainly nobles who favoured heroic deeds, the professional readers of the laws preferred anecdotes of their learned peers, these in the case of Ulster Cycle being the *filid* since *brithemain* are seldom depicted in the cycle. Another reason, perhaps not insignificant, is that a *brithem* was regarded in some texts as belonging only to the *dóernemed* 'base *nemed*' and in others were excluded from the privileged class of *nemed* altogether (Kelly 1988, 10). The status of *brithemain* as a class was therefore lower than that of the class of *filid*, who were considered *nemed* or *sóernemed* and enjoyed a series of privileges.

Whereas Cú Chulainn and Conchobar mac Nessa find their accustomed celebrity in the legal narratives and retain most of their characteristics and social roles, the legendary *filid* in early Irish law texts are endowed with much higher

publicity and a broader range of capacities, not only by comparison with their roles in the Ulster Cycle, but also by comparison with *filid* in real life. The medieval jurists took these erudite poet-judges as their intellectual forefathers, who were not just *filid* but idealised legal personae well educated and seasoned in all legal matters, and models for all subsequent secular learned men to emulate.

4.5.4.

If the exalted images of the Ulster *filid* in the legal narratives can be understood as the jurists' encomium of their own trade, it is more difficult to evaluate some other lesser known figures who were connected to personages from the Ulster Cycle. For instance, a title *Bretha Bríge Ambue* 'Judgments of Bríg the Propertiless' is mentioned in [17]. According to Liam Breatnach, this title may refer generally to a series of judgements attributed to this mythical personage rather than to any particular text (L. Breatnach 2005a, 175). This Bríg Ambue, whose epithet means 'cowless, propertiless' (McCone 1986b, 11), is said to be Blaí Briugu's wife in [6], and her name is also mentioned in [80], but she did not leave any trace in the non-legal Ulster Cycle tales. Instead, we find a Bríg Brethach ('of judgment') wife of Celtchar mac Uthechair, with whom Blaí was compelled to sleep thereby triggering the whole tragic story of *Aided Blaí Briugud 7 Conganchnis 7 Celtchair maic Uithechair* (Meyer 1906b, 24–32). There is also a Bríg Briugu ('hospitaller') in [6] and [22], who was assumed by the glossators to be either Sencha mac Ailello's mother, his wife, or his daughter, and in one gloss is identified as Bríg Brethach.[88] As Kim McCone has argued, the name Bríg was highly changeable, and the various Brígs are but aspects of a single prototypal figure (McCone 1990, 162–163), with the three epithets representing the three social functions of learning, hospitality and warfare.[89] The

[88] *CIH* 1860.34.
[89] This point has been made by Katharine Simms in an unpublished lecture, for which I wish to thank Dr. Simms for her kindness in sending me a copy of the text.

king of Connacht, Caíar, who suffered from the satire by Néide, is attested in only [30] and [79], and in texts drawing upon these such as *Sanas Cormaic* (Meyer 1912, 58–60) and *MV* III (Thurneysen 1891, 97). Both persons are supposed to have lived in the time of the Ulster Cycle, if we are to trust the account of *Immacallam in dá Thúarad* that the contest between Néide and Ferchertne took place in the time of Conchobar mac Nessa (Meyer 1905). But despite the information we possessed about pre-Christian Crúachu kingship, the total silence in other sources about this king is still a powerful argument against his existence outside the legal texts.

Of course, the possibility cannot be ruled out that these unfamiliar figures and 'fabulae' are taken from Ulster Cycle tales originating outside a legal context, which unfortunately are lost. But the 'fabulae' of at least some legal narratives probably did stem from legal circles, and the strange names were nothing but jurists' creations. [92] and [93], relating two judgments by Sencha mac Ailello concerning respectively the abduction by Conchobar's jester Cotreibe of the girl Taidell, and a certain Indua's right to inheritance, are so thoroughly juridical in perspective that the exact identities of the otherwise unattested protagonists become irrelevant. The name Cotreibe is very rare, if otherwise attested at all, in the corpus of medieval Irish texts. If Indua is the same name as Indui (or Innui), the latter appears in the genealogy of Ciarraige as Indui mac Firbb (M. A. O'Brien 1962, 298) and several times in the Túatha Dé Danann genealogy in the *Lebor Gabála*,[90] though none of these persons, historical or fictional, matches the Indua of [93] in terms of time and lineage. These could be replaced by any other names found in the Ulster Cycle without compromising the points of the narratives. If we refrain from assuming that an unattested name belongs to a lost text, or is the result of an etymologising effort to provide an eponym, it appears that the jurists have borrowed (as is probably the case of Fergus Lethderg in

[90] cf. Macalister (1939, 98, 127, 129, 191).

[106]) or invented the unfamiliar name (or pseudo-name) instead of using better attested ones. The reason for doing this is not yet clear. However, even in such cases, the narratives are always connected to the learned tradition (*senchas*) through other better known names or events in the narrative (see 6.4.2 for further details).

4.5.5.

A final point I wish to explore with relevance to the Ulster Cycle is a special juxtaposition of the Ulaid and the Féni in some *Senchas Már* tracts. Ulaid is a general term covering on the one hand a historical region much reduced at the time of the composition of law tracts from its full scale as depicted in the Ulster Cycle stories, and on the other its inhabitants, especially Dál Fiathach and Dál nAraidi (F. J. Byrne 1987, 106–108). Thus in [26], the dispute arising from the blinding of an eye of the king of Tara, Congal Cáech from the Cruithni (d. 637), was settled through a co-judgment by the Ulaid and the Féni, the latter term in this particular historical context obviously referring to the Uí Néill.[91] However, we also find some narratives that not only use the term Ulaid to designate some Ulster Cycle personae, but also place these Ulaid in opposition to the Féni. These include [5], [7], [21], and, with some doubt, [102].[92] In all these texts, explicit designation of protagonists as belonging to the Ulaid or the Féni occurs only in glosses and commentary, though the doctrine was definitely current no later than the 8th century, when the 'Saga of Fergus mac Léti' in [21] was composed (Binchy 1952, 44–45): this states that the Féni, the Ulaid and the Gáileóin or

[91] See Kelly and Charles-Edwards (1983, 133–134), also cf. the account of the late narrative *Cath Maige Roth* (Marstrander 1911, 234). There are some not insignificant differences between *Cath Maige Roth* and the *Bechbretha* account (Borsje 2007, 22–23). Another version states that an eye of Congal first became squinted (*cláen*) from bee-sting and later completely blinded (*cáech*) by Suibne Menn, another Uí Néill dynast who was later slain by Congal (Lehmann 1964, 10–11).
[92] In two cases Binchy suggests that the manuscript spelling *fine temrach* (*CIH* 2128.18, 20) should be emended to *Féni Temrach*, but this emendation may be mistaken, since in the second case *o fine temrach* is unlikely to be a mistake for *o Fénib Temrach*. But this narrative indeed mentions the Ulaid, and alludes to the killing of Cormac Cond Loinges and the violation of his *gessa*, which probably derive from an early version of *Bruiden Da Choca* (Toner 2007).

Laigin were the three chief races (*cenéla*) in Ireland.

The collective term Féni has the social sense of 'ordinary freemen' in most of the law tracts (Binchy 1941, 88–89). Such a meaning is attested in texts not only from the *Senchas Már* School, but also from the *Nemed* School (Kelly 1988, 242-246), and from other sources as well. We have first and foremost the prepositional phrase *la Féniu* (often contracted as *lā* in manuscripts) 'in the opinion of the Féni', which has become a way of saying 'according to native Irish law' in the law tracts, presumably as opposed to canon law.[93] The phrase *fer Féne* 'a man of the Féni', used of one who corroborates the testimony of an under-aged *fer midboth* in *Críth Gablach*, clearly means a man with free status;[94] and *Míadṡlechta* ([31]) claims that the highest type of king (*tríath*) who rules over the whole Ireland 'has bound the lands of the *Fir Féne*'.[95] The term *gráda Féne* in *Críth Gablach*, though in some cases it includes the rank of king, and in others it does not,[96] apparently does not distinguish between other ranks of freemen. And in SM 31 *Bretha Cairdi*, the ordinary type of treaty between kingdoms (*túatha*) is called *cairde Féne* 'treaty of freemen',[97] denoting not any specific population group but all the freemen, regardless of rank, who have independent honour-prices to be compensated in case of violation in another kingdom or by persons from another kingdom. One should also mention a set of maxims in *Sanas Cormaic*, allegedly cited from *Senchas Már*, though I cannot yet identify the source. The text in the Yellow Book of Lecan reads: *a gránib gach tomas, ó Fénib gach foruss, a máinib gach mess, a dírib cuirp duine, cidhat*

[93] e.g. *CIH* 15.5 (SM 9 *Heptads*); 778.25 (*Críth Gablach*); 988.6 (*Di Astud Chor*); 1114.18 (*Bretha Nemed Dédenach*).
[94] *CIH* 777.29, see McLeod (1982) for this passage.
[95] *Pace* D. O'Brien (1932, 182) who takes the account of Conchobar mac Nessa securing the land of Fir Féne as meaning that the Ulaid subjugated Conn Cétchathach's people, the context actually states that Conchobar here is an example of a *tríath*, a king who acquires the submission of the whole of Ireland (L. Breatnach 1986b, 183).
[96] *CIH* 777.19 which seems to include the king (= *grád túaithe*?) while another copy (*CIH* 568.10-11) says that the seven grades of Féni are subject to the king of a *túath.*
[97] *CIH* 792.7-8, with the gloss: *.i. cairde doni cairde iter na Fēineibh* 'i.e. an alliance which a treaty between the freemen makes'.

ili fuile, rohairdiged ness ‘every measurement [is established] by grains,[98] every legal principle [stems] from the Féni, every appraisement [is measured] by wealth, a man [is measured by] *díre*s of his body, though wounds are many, a lump has been raised’ (Meyer 1912, 84). The sense of *Féni* here seems to be again ‘all freemen’.

The narrower meaning of *Féni* is found more regularly in texts from the so-called *Nemed* school (Kelly 1988, 246), which often treat *Féni* as a category of freemen distinct not only from the clergy (*eclaisi*), but also from the lords (*flatha*) and the poets (*filid*).[99] The *Nemed* school gives priority to the *nemed* classes, and develops its legal paradigm beginning with the rights and duties of these classes and moving down the ranks. This contrasts with the perspective of other law tracts that begin their discussion at the lowest level of ordinary freemen and move upwards (e.g. *Críth Gablach*), or model their rules on the presumption of an ordinary freeman (*bóaire*) (e.g. SM 2 *Di Chethairślicht Athgabálae*). It seems to me that this approach has resulted in the need to refer to those unspecified freemen, separate from the three ‘noble *nemed*s’ (*sóernemed*),[100] collectively as *Féni*. The exact grades and social functions of freemen covered by this usage of *Féni* are determined by the category with which the term is contrasted. For instance, *fuigell Féne* ‘the arbitration of the laymen (as opposed to that of the Church)’ covers the legal activities of the lords and possibly also of the secular *filid*;[101] while *bélra Féne* ‘the language of native Irish law’ is distinguished from

[98] cf. the measurement of wound by sizes of grains in *Bretha Déin Chécht* (Binchy 1966).
[99] e.g. *CIH* 1113.40, 1115.24 (*Bretha Nemed Dédenach*).
[100] *CIH* 2225.7 (*Bretha Nemed Toísech*): *Ni túath cin tri saornemthib samuidter, eclais flaith file* ‘no *túath* is established without three noble *nemed*s, the clergyman, the lord and the poet’ (Kelly 1988, 9, n. 61), but see the beginning of the same tract (2211.2-3), where four noble *nemed*s are listed, adding *ecna* ‘ecclesiastical scholars not in order’. The mentioning of *Féni* in 2211.3 may be a scribal addition influenced by copies of *Uraicecht Becc* (L. Breatnach 1989a, 25) which include *Féni* among the noble *nemed*s, e.g. 1593.6 (*Uraicecht Becc*), but this does not make sense at all; and since *Uraicecht Becc* derived much of its content from the two *Bretha Nemed* tracts, Kelly argues that *Féni* was not present in this part of the original text of *Uraicecht Becc* (Kelly 1988, 9, n. 61).
[101] *CIH* 2226.13 (*Bretha Nemed Toísech*): *fillfit flaithi foltaib fír fri eclais, ar is ruidles la cach riucht, tárfaidir gáu, ar-foilgither fuigell Féine* ‘lords will bend, because of [its] assets of truth, to the church, for it is totally immune from claim by any person; falsehood will be spurned, the

bélra filedachta and *belra légind*.[102] *CIH* 885.40-886.2 ([48]) is part of the OGSM (L. Breatnach 2005a, 338) which has a strong textual and stylistic tie with the Munster *Nemed* school (Qiu 2013b, 103), and it is probably under such influence that it distinguishes sureties from the ranks of *flaith, láth gaile* 'warrior', *Féni* and *file*. The more restricted usage is probably a secondary development to suit the specialised perspective of the *Nemed* school, while the unspecified sense of 'freemen' is the primary meaning of *Féni* accepted by other law tracts.

In [21], *Féni* apparently takes on an ethno-political meaning strongly reminiscent of the usage in [26]. It seems that [21] has projected the 7th-century political opposition between the Ulaid and the Uí Néill back into the legendary epoch of Irish history, represented by their grand ancestor kings Fergus mac Léti and Conn Cétchathach respectively, though such a projection may involve anachronism: these two kings lived more than a century apart if we trust the traditional synchronisation.[103] Another effort to juxtapose the ancestors of Uí Néill with the Ulster Cycle personae can be seen in [42], where Túathal Techtmar, grandfather of Conn Cétchathach, was said to have passed judgment together with Sencha mac Ailello. [102] regards the seven Maines as Féni of Tara, or as *fine Temro* 'kindred of Tara', both titles dislocating the seven Maines from their native Connachta to the symbolic seat of kingship of the Uí Néill.[104] On the other hand, [7] avoids anachronism by portraying Connachta figures in the Ulster Cycle sagas as Féni: it assigns Anlúan mac Mágach, the brother of Cet mac Mágach whose head is on display in the climactic scene of *Scéla Muicce Meic*

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arbitration of the laymen will be eclipsed' (normalisation and translation by Liam Breatnach in a lecture entitled 'The law of the church in *Bretha Nemed Toísech*' at a one-day law conference in honour of Professor Fergus Kelly on the occasion of his retirement, 28 June 2014); also cf. *CIH* 366.33 (SM 2 *Di Chethairshlicht Athgabálae*), *a fuigiull Fēne* gl. *do rēir fuigill in fēnechais.*

[102] *CIH* 2331.3, 15-16 (*Uraicecht Becc*), see Mac Cana (1970).

[103] See Ó hUiginn (1993, 36–37) and the regnal list of *Lebor Gabála* (Macalister 1942, 5:332).

[104] Tara had been since time immemorial a political and religious centre, but it was in the 7th century that it started to be a symbolic site of the political authority of a small group of Uí Néill dynasties (Bheathnach 1996) and became tantamount to the high-kingship of Ireland (F. J. Byrne 1987, 53).

Dá Thó (Thurneysen 1951, 16), to the Féni. The Ulaid are represented by Conchobar mac Nessa, Conall Cernach and Cormac Conn Loinges. Since *Féni* as an ethnonym is not attested in Ulster Cycle sagas,[105] we may assume that the use of *Féni* to denote the Connachta in the Ulster Cycle in [5], [7] and [102] is due to the influence of [21] and ultimately to [26]. The 7th-century reality has been projected back into the legendary past.

In this allegorical past, the Féni always get the upper hand in land disputes: land forfeited to Fergus mac Léti reverted to the descendents of Conn ([21]); property occupied by an Ulsterman was claimed back by Nin mac Mágach ([5]); the Ulaid woman Seithir, who married a Féni man, procured life-interest in a patch of the Ulaid's kin-land ([7]); and by piling up soil against the Ulaid, the Féni (or, the kindred of Tara according to the manuscript reading) stopped them from encroaching and gained the right to avenge their kinsmen within the Ulaid's territory ([102]) (McLeod 2013a). *Senchas Már* may have been compiled under the auspices of the Uí Néill in the second half of the 7th century (L. Breatnach 2011), and the paradigm of Ulaid vs. Féni adopted by these narratives is, in Francis John Byrne's words, 'not to be taken as ethnographically exact, but represents the viewpoint of a jurist working in the Uí Néill sphere of influence' (F. J. Byrne 1987, 106). But there might be a bit more involved than the contention for hegemony over territory. All these legal narratives that have the Ulaid vs. Féni scheme also concern other legal disputes across boundaries, such as homicide by the son of an outsider (*deorad*), the correct procedure of legal entry across a border, and entitlement of provision in another kingdom. The division of Ireland between Ulaid, Féni and Laigin not only reflects the political reality of the 7th century from an Uí Néill perspective, but also provides a

[105] Although Cecile O'Rahilly has printed two capitalised *Féne* in her edition of the *Táin Bó Cúalgne*, Recension 1 (C. O'Rahilly 1976, 7, 36), these should be read as the genitive of *fían* 'warrior-band' rather than a proper name. An exception might be a reference in the Old Irish version of 'The Explusion of the Déssi', to a people called *Féni* who were distinguished from the Déssi proper and the Fothairt, and were said to inhabit Fid Már, an unidentified place perhaps within the territory of Osraige (Meyer 1901a, 132).

convenient schema for discussing inter-kingdom legal problems.

4.6. Summary

It has been demonstrated in this chapter that a few narratives have textual precedents outside the law tracts; some others, especially those concerning biblical or apocryphal figures or events, derived their ‘fabulae’ from non-legal texts. There are also cases that legal narratives provided for the texts or ‘fabulae’ in non-legal materials such as *Sanas Cormaic* or bardic poetry.

However, for the majority of the legal narratives, we can establish neither textual nor thematic correspondence to texts outside the law tracts. The degree of independence of legal narratives from stories circulating in the non-legal environent is all the more salient when we focus on the relationship between the legal narratives that take on the Ulster Cycle setting, and the Ulster Cycle tales from non-legal sources. The fact that the Ulster Cycle sagas were important and widely appreciated in medieval Ireland can be gathered from the large number of manuscripts witnesses of these sagas, from the tale-lists, from the numerous versions and recensions and perhaps also folklore adaptations of them, and from allusions to them throughout the literature. In the legal narratives, however, we encounter surprisingly few references to the better-known Ulster Cycle tales, while many of the ‘fabulae’ in these legal narratives are not attested elsewhere, despite being clearly located in the Ulster Cycle world, usually through employing some famous *dramatis personae* from the Ulster Cycle.

The explanation for this can be twofold. Non-legal narratives that had been copied into law tracts, or had informed the legal narratives of their ‘fabulae’, may have been lost, as may be true in the case of *Echtrae Fergusa maic Léiti*, of the Old Irish version of which no more than a title remains outside the law tracts. Or else the legal narratives were created specially for their legal contexts, as we see in the ‘fabula’ of St. Patrick’s reformation of Irish law. We may also need to take

into consideration, as suggested in 4.5.3, that the target readers of the law tracts were generally well versed in poetic and legal matters, and consequently such taste may be reflected in the legal narratives in the form of a focus on the lives and deeds of the *filid* and legendary judges rather than on the heroic sagas. Despite their ingenuity in inventing new 'fabulae', it must be pointed out that the jurists never lost sight of the larger literary and historical tradition.

The narratives in early Irish law tracts, therefore, share the same tradition with narratives from non-legal sources on various levels (textual, thematic and cyclical setting). Moreover, the legal narratives present so many distinctive features and unique stories, that including this corpus into the study of early Irish literature will certainly enrich our knowledge of the subject – and, indeed, will help us define 'early Irish literature' more precisely. In order to fully understand the legal narratives, their compositional concerns and legal dimensions must be addressed. In the next chapter we will investigate how the legal dimension of a narrative influences its composition and interpretation.

Chapter 5: Legal narratives and early Irish law: two case studies

5.1. Introduction

Many of the narratives found in *CIH* unsurprisingly deal with legal problems, despite the existence of other types as has been shown in 3.3.1-4. How these narratives actually serve to demonstrate the legal points with which the tracts are concerned is the main subject of this chapter. However, the discussion here cannot cover all of the legally significant narratives, nor could any of its conclusions be generalised for all of them. Although the study of early Irish law has been thriving in recent years, there are still many blind spots in our understanding of the fine details of the subject. The sheer extent of the law tracts, and the fragmentary state in which many of them are preserved, obstruct a thorough understanding of the institutions. Our knowledge depends heavily on continuing progress in editing and analysing the relevant law tracts, of which only about twenty-two to date have been critically edited and translated, and fewer still sufficiently interpreted and analysed.[106] Most of the longer law tracts, or those that contain the most legally oriented narratives, such as *Bretha Étgid*, *Bretha Nemed Dédenach*, *Di Chethairślicht Athgabálae* and *Din Techtugud*, have not yet been satisfactorily edited. Moreover, some narratives do not supply enough information to afford a comparison to the rules as detailed in the law tracts proper. As a result, and in order to keep the discussion within reasonable limits, this chapter selects only two individual case studies in which in-depth analysis of some of the disparate aspects of early Irish law may be possible.

[106] I write here with reference to the list of law texts in Appendix 1 of Kelly (1988, 264-283).

5.2. Case Study I: [5]

The first to be considered is [5], which consists of the opening part of the canonical text of SM 11 *Din Techtugud* (hereafter DT) and accompanying glosses and commentary. The copies of [5] have been described in Chapter 2, and the text has been critically edited and translated in Appendix 2, providing the basis for the following analysis. The line numbers given below refer to the lines of the canonical text as divided in my edition.

5.2.1 *Din Techtugud* and the normal procedure of legal entry

Thomas Charles-Edwards has dedicated a chapter in his masterly *Early Irish and Welsh Kinship* to the Irish institution of legal entry (*tellach*) (Charles-Edwards 1993, 259–273), the details of which need not be repeated here. In short, he describes *tellach* as a ritualistic procedure by which the claimant asserts his claim to the ownership of a property against the occupant. The claimant enters the property and retreats from it three times, each time with a specific and increasing number of horses and witnesses, and performs certain actions. The defendant can bring the case to arbitration at certain points in time, but if he stays reticent, the ownership of the claimant will be established after the whole procedure has been carried out. In light of the narrative [5] and relevant sections of the tract of which it forms part, I wish to revisit Charles-Edwards's arguments and to evaluate the relationship between the narrative and the legal institution.

The canonical part of the short tract DT itself has a specific design which is worth outlining. In the only complete copy (TCD MS 1433, *olim* E 3.5, p. 6b-8b; *CIH* 205.23-213.37), it can be divided into three parts. The first part starts with

[5]; this is followed by a heptad listing the seven properties that are not subject to distraint and legal entry; then there are [6] and [7]. The middle part, beginning with *Doidin ara fesser bésu tellaig* 'Doidin thou shouldst know the customs of legal entry', describes the procedure for a normal freeman. After this comes the third part: rules regarding a fenced property, regarding how a vagrant performs entry, and a concluding enumeration of the three occasions in which right is claimed improperly: unlawful distraint, unlawful entry and battle without oral contract. If it is truly complete, the tract opens with the situation of making legal entry across borders, emphasising that starting from the middle entry is incorrect. Then it gives rules concerning female entry, pointing out that it is wrong to apply male procedure to female cases. After this the normal procedure of male entry is depicted, and the tract concludes with special cases involving fenced land and vagrants, and a warning to the judges against illegal practices. In other words, DT shows a marked concern for women's legal rights, special circumstances and wrong practices. At the time of the tract's composition, there seems to have been a demand for clarifying the correct performance in various circumstances and notably with respect to female subjects. The nature of the change in social life and attitudes that triggered such a demand for clarifying an apparently archaic legal procedure can only be conjectured. Perhaps legal entry had gone into oblivion or had been superseded by other institutions, or women's participation was called for in a changed atmosphere, as suggested by Charles-Edwards.[107] I shall leave this question to future research. Emphasis on exceptions and special cases is found in some other *Senchas Már* law tracts, e.g. SM 33 *Bretha Crólige* (Charles-Edwards 1999a, 31); and tracts such as SM 2 *Di Chethairṡlicht Athgabálae* (hereafter DCA), SM 7 *Cáin Lánamna* and SM 12 *Tosach Bésgnai* all allocate some passages to institutions and procedures specifically designed for women.

[107] Charles-Edwards thinks that *bantellach* was an innovation resulted from the growing awareness of women's legal rights in the 7th century (1993, 268).

The first four lines of the versified canonical text do not mention details of person, place and event. But the use of the perfect and preterite tenses in lines 1 and 3 (and possibly 4) suggests that they are describing a particular incident that supposedly happened in the past rather than abstractly laying out a timeless legal principle. Moreover, the prose narrative in the glosses shows close correspondence not only with these four lines but also with lines 5-6, so that we can regard the narrative as the story lying behind the poem, or at least as an example bearing out the legal situation with which the poem deals. The disputed property has been exacted by the claimant, we are told, through legal entry into a land in the territory of another kingdom.

At this point I wish to pause to consider the meaning of *comaccomol* in line 3 (the manuscript forms are *comacomol* and *comacomal*). Binchy emends this word to *comcomal* and translates it as 'joining', and the form is later quoted by Calvert Watkins in support of his theory of an archaic trisyllabic cadence in Old Irish poetry (Binchy 1960, 86; Watkins 1963, 221). But the curious doubling of the preverb **com* (**com-ad-com-la-*) indicates that this is not an inherited formation. Indeed most of the examples given in *DIL,* including its earliest usage in the glosses, point to this word's actually being a Latinate calque on *coniunctio,* perhaps based on *accomol* (**ad-com-la-*) which has the meaning of 'junction'.[108] *DIL* s.v. *comaccomol* (b) correctly points out that it is used as the equivalent of the Latin grammatical term *coniunctio* 'conjunction' in the native grammatical tradition,[109] as shown by examples from the Old Irish period.[110] Later texts have

[108] *Accomol* (anglicised as *uggool*) is indeed attested as a placename element in the sense of 'a junction, or connecting piece of land', see Ó Máille (1953).

[109] e.g. Sg. 75b.5: *.i. olní comacomol .que inge mad etarscartha* 'because *que* is not a conjunction unless it be separated', etc.; and in *Auraicept na nÉces* as well (Calder 1917, 183, l. 2668), see *DIL* s.v. *comaccomol* (b) and *Thes.* II,132. There is another Irish calque for *coniunctio* in the linguistic sense, however, namely *comhfhocal*, as one finds in *Auraicept na nÉces* (Calder 1917, 24, l. 321).

[110] With the exception of a citation from the commentary to *Amra Coluim Cille*, which was possibly compiled in the 11th century (Herbert 1989). But as I have shown elsewhere (Qiu 2013b), this compilation of commentary contains extensive materials from Old Irish sources such as

a generalised meaning ‘joining, union’, as shown in *DIL* s.v. *comaccomol* (a). But Latin *coniunctio* can have another meaning in the legal realm. In Roman law, it denotes ‘an institution of several heirs for the same estate or of several legitees for the same thing in common. The estate (or legacy) became common property of the *coheredes* (or *collegatarii*)’(Berger 1953, s.v. coniunctio). In Irish glosses, moreover, *coheredes* is often glossed *comarbai*.[111] Therefore the Irish kin-land (*fintiu*) before its distribution to kinsmen is similar to the undivided property in *coniunctio*: it is to be divided among all the qualified co-heirs (*comarbai, coheredes*) by arrangement, who include not merely sons of the deceased; and one member’s failure in inheriting will result in other members’ benefit (Charles-Edwards 1993, 61–73; Kelly 1988, 100–101; Kelly 1997, 402–403, 412–415).[112] The same principle of accrual to the other co-heirs should one of them fails to inherit applies to Roman *coniunctio* (Zimmermann 1984, 236-251). Does this imply that the composer of the original poem may have had a certain degree of knowledge of Roman law?[113]

I am accordingly inclined to see *comaccomol* in the poem as a rendering of Latin *coniunctio*, denoting, however, not the state of co-inheritance but the kin-land to be divided among the co-heirs. Such an interpretation will fit the scenario given by the prose narrative, where Nin crossed the border into the territory of the Ulaid, and found a piece of his ancestral kin-land now lying in the territory of the Ulaid. Since the land had been occupied by an Ulsterman, it was yet to be divided among Nin’s kindred at the time of this incident, in this resembling the Roman *coniunctio*. It is not necessarily a ‘joining’ of Nin’s property at both sides of the border, as Binchy’s translation indicates, but surely a recovery of kin-land, called *comaccomol* in the sense of an undivided *fintiu*. Such an interpretation, if

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Bretha Nemed. Therefore the citation where *comacomol* appears may derive from Old Irish sources as well.

[111] e.g. *it sib atā chomarpi Abracham* gl. *heredes*, Wb. 19 c 20, *Thes.* I, 625.

[112] However, once the *coniunctio* has been divided, the heirs have full rights to their property, whereas there are heavy restrictions on the disposal of *fintiu* by the Irish *comarbai*.

[113] See Osborough (1990) for other instances.

correct, forms an exception, if not a contradiction, to the trisyllabic cadence proposed by Watkin (1963), but we will leave this metrical problem to future studies.

From the fifth line on the poem clarifies the correct procedure of legal entry. We should interpret this together with the middle section of DT (*CIH* 210.25-35), where more detailed rules are given. The first entry involves entering the territory over the boundary mounds which in the earliest times were also ancestral burials (Charles-Edwards 1993, 261–263, O'Brien and Bhreatnach 2013), and holding two horses in restraint in the company of one witness.[114] The claimant goes only as far as the edge of the property (*le(a)th [s]āersealba*, 'by the side of the free properties',[115] and *co hor in feraind* 'to the edge of the land' in the late long commentary translated in Appendix 2[116]). Then he waits for an interval of ten days[117] 'which is not entitled to possession'. Ten days after the first entry is the middle entry: if one starts from the middle entry, namely taking four horses into the land and unyoking them to graze there, accompanied by two witnesses, the procedure is not correctly followed; but the poem does not say what will be the consequence. After another ten days the claimant can perform the last entry with eight unharnessed horses, going as far as the house on the farmland.[118] By then an instant judgment (*tulfuigell*) has to be made, if the defendant submits the dispute to a judge. If he does not, the claimant gets full possession of the property by advancing into the house and performing the rituals: spending the night, kindling the fire, dwelling in and tending the cattle.[119] It is

[114] *CIH* 210.25, cf. 1861.16, 21.
[115] *CIH* 210.25, cf. 1861.16. Binchy in *CIH* has taken it as *lethsāer selba*, and this is also the basis of the translation ('half-free properties') in AL iv. 19. However, the glossator in TCD MS 1336 has pointed out that this could mean 'by the edge of the free property': *no i llethor selba, .i. i lleitheocuir in feruinn*, *CIH* 1861.18-19. The tract actually is always talking about free property, see *.iiii. heich ailius scurtair sāer sealba*, *CIH* 210.27-28. I think *leth* here is the independent dat. sg. meaning 'at the side, at the edge', and was misunderstood by the scribe and glossators when the independent dative had ceased to be used productively in Irish.
[116] *CIH* 205.28.
[117] *CIH* 210.27.
[118] *CIH* 210.30.
[119] *CIH* 210.33-34.

after the twice ten days period that the entry is 'long and thick', namely a firmly established act that 'preserves possession'.

In another place, however, the canonical tract stipulates the number of days after which the entry is complete to be thirty,[120] not twenty. As Charles-Edwards has noticed (1993, 270), in the OGSM in TCD MS 1337 (*CIH* 909.29-910.14) as well as in the Early Modern Irish long commentary in TCD MS 1433 (*CIH* 205.25-206.10), ten more days are required after a notice and before the first entry, making the total numbers of days thirty. But there is a significant difference between the OGSM and the long commentary, namely that OGSM has the claimant giving notice to the occupant only once, ten days before the first entry; and the occupant is to make a formal recognition of the start of the procedure:

> *Cair, caidi a tēchta-side? nī hannsa, fer lais mbī a thīr conruidther do ellaig, as-boinn*[121] *dliged dō fīad fīadnuib innruicib. 'Rombia(d)-sa dliged (do fiad fianuib innracaib rombid-sa dliged)*[122] *lat im āini isa tīr.' 'Rodbia cert lium-sa', olse.*[123]
> A question: what is the legal right [of making entry into property]? Not difficult, the man who has the land which has been arranged for entry, you [i.e. the claimant] announce ownership to him [i.e. the occupant] in the presence of competent witnesses: 'I shall have entitlement with you [i.e. through your denial] concerning the driving of animals into the land [i.e. I can now start the *tellach* procedure].' 'You shall have justice with me.' he says.[124]

In contrast, the long commentary requires the claimant to put forward a notice before every entry. He also has to give notice during each of the three ten-day periods, but the commentator does not seem to be sure when these notices are given. This vagueness suggests innovation, or more likely, conjecture regarding a

[120] *i tēora deachmadaib dliged*, *CIH* 210.12.
[121] Reading *ad-boind*.
[122] Dittography.
[123] *CIH* 909.32-34.
[124] The verbal exchange is a notable characteristic of Irish law, see Stacey (2011).

procedure that was no longer practised. I believe that the advance notice, the oral exchange in the presence of witnesses and the ten days' period before the first entry belong to the original scheme, which would thus have comprised at least thirty days from the notice to the third entry and the final establishment of ownership.

However, if the claimant has known before he started that the occupant has refused to acknowledge his claim, the advance notice and its ten-day period can be omitted, and the first entry can be directly carried out, making the total number of days twenty. This is corroborated by the glossator to *Heptads* §23:

> *Tait .uii. tellaige lā nād erenaither cidbe indola: Tealluch for fer nād [d]aim ceart na dligid do duine…*
> gloss:*… .i. techtugud do breith a bfearund in fīr na damund cert um cindti na dliged um ēcinnte do duine. Masa cinnte leis cona dēmtha dliged dō, nochan ēigin dō apad do tabairt uimi acht a crod uile do breith ind fo cētōir.*[125]
> There are seven entries in Irish law that are not compensated for, whoever makes them: An entry upon a man who does not acknowledge justice or entitlement to anyone…
> gloss: … i.e. to carry out an entry in the land of the person who does not recognise justice to a definite amount or entitlement to an indefinite amount to anyone. If he [i.e. the claimant] is certain that entitlement would not be acknowledged to him, it is not compulsory for him to give a notice concerning it, but to bring all his herds there in the first instance.

The claimant's knowledge of the attitude of the defendant, therefore, is the key factor that determines whether the whole procedure of legal entry by a freeman takes up twenty days or thirty.

5.2.2 The prose narrative of Nin

We shall now turn to the information presented by the prose narrative about Nin. Of the protagonist Nin mac Mágach or Ninne mac Mátach little is known.

[125] *CIH* 22.23-30, cf. 1054.14-15, 1837.3-6, 1895.4-9.

Roland Smith has discussed the person Nin or Nine (R. Smith 1932, 66–67). The glosses explain this person as the father of Doidin,[126] who is addressed in the middle section of the canonical DT. In TCD MS 1337 (*CIH* 909.29-30) we have Nine, a wise man (*fer gāeth*) of the Ulaid and father of Doidin, and in the prose narrative there are two references to *Nin* (nom.) and *Nine* (acc.); whereas in TCD MS 1336 (*CIH* 1861.12-13) his name was Nin, while the name in the prose narrative is consistently *Ninne*. And his son is referred to in an appendix to the Pseudo-historical Prologue to the SM ([80]) as *Doidin mac Nin* (*CIH* 1654.35). We cannot ascertain that the father of Doidin is the same person as Nin(e) in the prose narrative, since in the prose the Nin(e) is reported to be from the Féni rather than from the Ulaid, though he had a friend or relative[127] among the Ulaid. The name also occurs in the short excerpts in the glosses to DCA, translated later in this chapter, where it is written *Nin mac Madach* (*CIH* 881.37) and *Nin macc Madhuch* (*CIH* 1665.20); it should be noted that the scribes show no tendency to write *d* for OIr. *t* or *g* in either manuscript. *Nin(n)e* is unknown as a word, but *Nin* may mean 'ash tree' or the Ogam letter N; and Mágach is a form (gen. of Mágu) better attested than Mátach, a patronym which almost exclusively relates to a specific set of Connacht brothers in the Ulster Cycle (cf. Ailill mac Mágach). Again, this surname links him to those Connacht heroes and therefore to the Féni rather than to the Ulaid (see 4.3.5). Accordingly, I have used the form Nin mac Mágach throughout for convenience (cf. Thurneysen 1921, 92). The confusion in Nin's name and identity in the prose commentary in [5] and in the glosses to the canonical text in the Middle section of DT implies that this personage may be a unique invention unknown outside this immediate context.

From the prose narrative it can be gathered that some time beforehand a piece of the Féni's kin-land had been occupied by the Ulaid. When Nin went there with

[126] Not, as Smith suggests, his mother or father, see L. Breatnach (2005a, 364).
[127] *Cara*, for the semantic range of this word see Meid (2002).

two other horsemen, they unharnessed their horses to graze. In normal circumstances, what they did is trespass, and they should pay the fine (*fíach faithche*).

Following Robin Stacey's insightful dichotomy that both distraint and legal entry perform what is normal in household routine (in the case of entry: returning home, spending the night in the dwelling, kindling fire on the hearth, etc.) within a ritual frame that proclaims the abnormality of the event (Stacey 2007, 31–32), we can further outline a threefold paradigm. The possessor of the land performs his daily activity; when an outsider does the same thing, he becomes an unlawful intruder in trespass[128] or a cattle-raiding thief; if, however, a claimant who is not the incumbent intends to assert his ownership, the same action carried out by him is a ritualised performance which triggers a special procedure, as is shown here:

action/ by	owner	others	claimant
entry into land, unyoking, kindling the hearth etc.	domestic routine	human-trespass (*duinechin, fothlae, tothlae* etc.)	legal entry (*tellach*)
impounding and driving the cattle away	pastoral routine	theft/ raid (*gat/táin*)	distraint (*athgabál*)

In the prose story, Nin is on the point of being fined for trespass, had the occupant, who is imprudently honest, not told him and his companions that this land used to belong to Nin's kindred. Obviously he thinks Nin and his men are coming to perform a legal entry to reclaim the land, and his anxiety would have been due to his sense of insecure ownership on the Ulaid's part. The exact reason

[128] For instance, if a host has failed to ensure that his guests unyoke their horse on his own land, and the horses graze on his neighbour's property, he is liable for *fothlae* and must pay the fine for *duinechaithig* 'human-trespass'. See *CIH* 194.7-14 (Kelly 1997, 139–140).

for this state of affairs we can only conjecture: perhaps the land had been forcibly taken from the Féni and the *rudrad* (prescriptive acquisition of title to property by possessing it for a length of time) had not yet come into effect (Kelly 1988, 109); or it may have been pledged to the Ulaid, but new circumstances required its return. At first, before realising their potential entitlement, Nin and his men apologised for their unyoking: 'No bestowal to us is greater, if we should obtain the unyoking of our horses here, (however) it was not to seek a share in it.' But they were fully aware of the similarity between their grazing and legal entry, so that when a proper legal incentive became known, these legal opportunists immediately re-interpreted their action as a claim of land. Nin grasped his chance and turned himself from a trespasser into a claimant, making his inadvertent entrance a step of legal entry. The intention of the intruder is crucial, as we see, in distinguishing the action of a claimant from that of a trespasser.[129]

However, Nin has acted against the correct procedure in two respects. Firstly, he had three horses instead of two as required in the first entry (*dā each a lāim leath [s]āersealba*) and two witnesses instead of one (*fīadnaise indric*)[130]. Even if we allow that one of Nin's companions served as a surety,[131] the number of horses is still wrong. The prescription on wrong number appears in *Heptads* §24:

> *Tait .uii. tellaige lā asrenaiter cidbe indila: … tellach co n-āirim ētēchta.*[132]
> There are seven entries in Irish law that are liable to payment (of fine) whoever makes them: … an entry with incorrect numbers.
> glosses:
> *.i .comāirem indligthech .i. ba tar ēis na n-ech no imurcraid d'echuib.*[133]
> i.e. unlawful number, i.e. cows instead of the horses or excessive number of horses.
> *.i. techtuda (bh)re hāirem indligthech ruc and .i. trī heich in cētfecht.*[134]

[129] *Pace* Charles-Edwards (1993, 265).
[130] *CIH* 210.15, cf. 1861.16, 1861.21.
[131] In *Heptads* §23, *CIH* 23.10, cf. 905.28, 1895.22, one of the seven instances in entry that are not liable to penalty is: '*tellach la naidm 7 rāith 7 fīadnuse*' 'an entry with a binding surety and a paying-surety and a witness'
[132] *CIH* 23.26, 24.1, cf. 1054.26-27, 1895.32-34.
[133] *CIH* 24.4.

i.e. an entry with unlawful number that he brought there, i.e. three horses in the first time.

Secondly, Nin unharnessed the horses on the first entry, which was not supposed to be performed until the second time. In the first entry he should have the horse in his hand, and in the middle entry he should come with four horses and release them in the land. Thus the poem says: 'If it be [i.e. starts] from the middle entry, the entry for possession is not true [i.e. legally correct]'. Unless the ritual has been performed exactly, the claim would not have the legal effect.

So far, we would deem that Nin's activity did not constitute an effective claim, and therefore remained a trespass. The last part of DT has prepared for such a circumstance, declaring that:

> *It ē fēich faithche fir tellaig indligaig: clithear sēt slāindte forgu na nuile, dīgu sēt somaine la cosnam co ndeithbīre fir bes a haī grīan.*[135]
> These are the 'fines of a green' of the man of unlawful entry: the 'sheltering *sét*'[136] which they say to be the choice of all, the worst *sét* of profit in contending with the justifiable right of the man whose land it may be.

If Nin has no lawful claim to the land, or has performed the wrong procedure, he would be liable to *fíach faithche*, the fine one pays for his intentional trespass into other's property.[137] However, from this point onward the narrative diverges from the topics covered by DT and enters a realm where we have no evidence from the canonical text to support our interpretation of the incidents.

When Nin and the men converted their unyoking of horses into a claim of

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[134] *CIH* 1896.8.
[135] *CIH* 213.15-17, cf. 910.29-34.
[136] This seems to mean *séts* paid in the form of young bull, heifer, cows and plough-ox, see CormY 209 (Meyer 1912, 19).
[137] *Fíach faithche* is not mentioned in *Bretha Comaithchesa*, the tract mainly dealing with liabilities between neighbours and trespasses. The worth of *fíach faithche* according to *Din Techtugud* is a *sét*, equivalent to a three-year-old dry heifer (*samaisc*) or half a milch cow, which is also the fine for human-trespass into a unfenced pasture during the summer months (*CIH* 67.36-40). However, the relationship between *fíach faithche* and the usual fine for human-trespass in *Bretha Comaithchesa* remains unclear to me; perhaps the former is a special fine linked with wrongful entry.

ownership, the incumbent expelled their horses by force. They submitted the case to the king of the Ulaid, Conchobar mac Nessa, who sentenced the occupant to pay the penalty of 'unlawful entry' (*ecoir étechta*), corresponding to the abovementioned *tellach indligthech* which incurs a fine for trespass. The text states that Conchobar exacted the property for Nin, 'in that way as from entry'. It is surprising, considering the rules detailed above, that it was the occupant instead of Nin who was fined, and that the claim to land was sustained by the king. The decisive factor, then, should be the eviction of the claimants and their horses.

Under normal circumstances, the claimant would have expected to perform his legal ritual and to leave the land in peace: the entries are not about physically occupying the land, but symbolically manifesting the claim to title of ownership. The claimant has immunity to enter and carry out the procedure, and the defendant has several days to consider whether or not to submit the case to a judge. Rights are balanced on both sides. In any case, the defendant should not interrupt the ritual and expel the claimant by force. *Din Techtugud* itself does not mention eviction by the occupant, and we cannot know what penalty is involved. But a story on the origin of Lough Neagh affords an interesting comparison to the narrative on Nin.

This story is attested both independently (entitled *Aided Echach maic Maireda*) and in the *Dindṡenchas*. According to the most recent editor of *Aided Echach maic Maireda*, this text probably derived from an earlier version of an integrated text of the *Dindṡenchas* incorporating both prose and poetry (de Vries 2012, 12–14; Ó Concheanainn 1981), and I will therefore base the discussion of the story on the *Dindṡenchas* accounts. It is told that two eloping lovers, Echu son of Mairid and Ébliu daughter of Guaire, chanced to enter the land of Óengus Mac ind Óc, namely Bruig na Bóinne, unleashed their horses to graze, and settled there. Óengus attempted to drive them out by killing all their cattle on the first

night. But the recalcitrant intruders refused to leave, so Óengus killed their horses on the second night, and threatened to kill their household on the third. Echu protested by saying that without horses they could not move with their belongings, so Óengus gave them a magical horse that carried all the loads at once. Its urine created a well, the eruption of which inundated the plain where Echu had subsequently settled and became Loch nEchach (Lough Neagh).[138]

At first sight, this story affords a striking parallel to [5]. Both mention entering a piece of land with horses and unyoking them, and both involve violent eviction in a dispute over ownership and a sort of compensation of the value of the expelled horses (in Óengus's case, the supernatural horse took over the burden of all the horses he killed[139]). Eóin Mac Néill accordingly suggests its connection with the institution of legal entry (MacNeill 1929, 120–121), but Ranke de Vries is no doubt correct in pointing out that this story is more relevant to the institution of *rudrad* (usucaption) than to legal entry (de Vries 2012, 152–154).

De Vries has listed several reasons for viewing the legal scenario of the story as *rudrad*. On the one hand, there are

> 'problems with identifying the procedure in our text as *tellach*: there is no question of Echu producing sureties or witnesses, nor of crossing the boundary mound, nor of withdrawing, and Óengus does not wait five days to submit to arbitration.' (ibid., 154)

On the other hand, the shortest type of *rudrad* requires an occupation period of only one day, which, she argues, is exactly the time within which Óengus took action to protest. Moreover, a law passage containing Old Irish citations claims *fogal* 'attack, assault' to be among the 'keys' (*eochra*) that resolve/open up (*ar-oslaicet*) the short-termed usucaption (*rudrad becc*),[140] leading de Vries to

[138] 'Tuag Inbir ocus Loch n-Echach' (Stokes 1894, 152–153; Gwynn 1991, vol. IV, 64-69).
[139] Although Óengus bade Echu to send it back before it urinates in the *Dindṡenchas* (Gwynn 1991, vol. IV, 66).
[140] *CIH* 749.27-38, cf. 756.8-11 and 1376.22-24.

conclude that Óengus was entitled to kill the horses (ibid.). Although I believe that de Vries has made the right conclusion about the significance of *rudrad* in this story, her analysis needs some more clarification.

It may not be reasonable to expect to find every required element of a legal procedure represented in a narrative, especially when the story is not found in a legal context. In any case, the prose story of [5] does not mention crossing the *fert* either, nor is there reference to the waiting period before submitting the dispute to Conchobar. It is better to approach this problem by drawing a distinction between *tellach* and *rudrad*. Both are directed towards establishing one's ownership, but in different ways. *Tellach* 'legal entry' is performed with the intention of asserting one's ownership right against the possessor; it accordingly presupposes that the property should be manifestly in the possession of someone else, and that the presence of the claimant on the property aims at symbolically challenging the legal title of the possessor rather than physically taking the possession. As we have seen above in the OGSM passage (*CIH* 909.32-34), it is essential that the current incumbent has announced his exclusive title to others before the procedure of *tellach* can start. *Rudrad*, by contrast, requires an uninterrupted possession of property, and the presence of the incumbent must not be contested for the period of occupancy, so that if the claim of the person who intends *rudrad* is denied, the calculation of the length of *rudrad* is interrupted and reset. *Tellach* is performed by an alleged owner (*Eigentümer*) against a possessor (*Besitzer*), while *rudrad* is performed by the possessor against any alleged owner. The former is characterised by a manifest conflict of rights, whereas the latter is validated by the absence of such a conflict. The difference and relationship between the two can be observed in one of the 'keys' that resolve *rudrad becc* mentioned above: for a possessor in the process of completing his *rudrad becc*, the alleged owner can adopt *ecor*, literally 'putting-in' (in other words *tellach*) against him. And as I have postulated above, the

Ulsterman in [5] was perhaps anxious about his ownership of the land perhaps precisely because he was waiting for the fulfilment of his *rudrad* period.

But in these two cases, who is the possessor, and who is the owner? The *prima facie* evidence of possession of a tract of land in medieval Ireland comprised presumably the same signs by which a claimant in the final step of *tellach* exhibits his claim, namely, grazing cattle, dwelling in a house, building up a fence, kindling fire at night, etc. It is normally impossible for anyone else to sustain a *rudrad* on a property already possessed or occupied, but there are situations such as encroaching on the land of one's neighbour, or taking advantage of the brief absence of the rightful possessor from the site. In such cases, the owner or rightful possessor (such as a tenant) can resort to certain methods to stop the intruder from settling, such as assaulting, proclaiming by words, shouting, distraining, or breaking up the fences, in the presence of witnesses (Kelly 1997, 434). On the other hand, in the absence of any signs of existing possession, the burden of proof shifts to the person who claims such pre-existing rights. A passage on *rudrad* that contains some Old Irish excerpts lists the types of proof that can be employed in establishing the pre-existing right to the land against the long-termed *rudrad* (*rudrad mór*), including old written records (*senscrībinn deódha eclasa nō tūaithe*), upright historians (*sencaidhe indrice*), shared memory of two boundaries (*comcuimne dā crīch*), the ogham in the stone (*int ogum isin gollān*), (testimony of) living sureties (*beorāth beonadma*), evidence of residence for three generations of the family (*trīar dia aicme*) in the poems, etc.[141] If the rightful owner has not been vigilant and remains silent about the possessing for long enough, however, he will lose the title after a certain period. The law texts are not altogether clear about which kind of possession will grant the title to the possessor after several generations, after one year, after one month and even after one day, and it remains highly

[141] *CIH* 748.35-749.12, also cf. Carey (1992).

speculative in defining the nature of Echu and Ébliu's action as a '*rudrad* of one day', as de Vries does. It seems plausible to me, that the length of possession required by law depends on how well the land is tended, i.e. whether there are *prima facie* signs of construction and cultivation; or whether on the other hand there are signs of desertion (by an *esert* 'absentee') or of wilderness. Also important are the means by which the land is acquired by the possessor, i.e. whether by physical occupation, by contractual transaction, or by the allocation of kin-land.

In the prose part of [5], it is stated twice that before they were informed of the history of the property, Nin and his fellow horsemen were on their way to visit a friend and were not seeking to take possession there ('it was not to seek a share in it'). Only after the possessor showed up and revealed that Nin had a potential ownership did Nin start to contest for the title. At this stage, he can only have recourse to *tellach*, and the Ulaid possessor cannot use violence to expel him and his companions. On the other hand, the aim of settling on the part of Echu and Ébliu is quite explicit (as they eventually settled at the site of Loch nEchach). Though the texts do not tell us whether there was *prima facie* evidence of Óengus's title in Bruig na Bóinne, it is not impossible that since Óengus lived in a *síd*, there was no visible sign of (mortal) residence and farming on the surface. Moreover, Echu's action was not symbolic but the band were physically 'squatting' on the land, and by building their own shelters and spending the night there (Gwynn 1991, vol. IV, 64) they established themselves, however briefly, as possessor. In this case their occupation was intended as a *rudrad*, but it never came into effect due to Óengus's rapid opposition.

It remains to be seen what the nature and consequence of Óengus's action towards Echu and his people are. Óengus firstly verbally warned the intruders to leave and killed all their cattle. When night came, he uttered a wailing (*úall*) and slew their horses. What Óengus did was mostly in line with the strategies that the

owner can adopt according to the law text.[142] The proprietor is entitled to verbally protest the illegitimacy (*inndīlsi .i. ō brīathraib*), to expel the intruders (*carta .i. innile in fir .ii. as*), to various types of shouting and wailing (*īacht .i. a tenn-gairm; cnet .i. a tenn-écaine; curríne .i. a tenn-agallam*) and to assault (*fogal*), which is indeed glossed with *.i. gona 7 marbad do dēnam ris* 'i.e. to do wounding and killing to him' and *.i. forloscad* 'i.e. arson (perhaps to the possessor's construction)' (*CIH* 756.9). *Fūasnadh* 'disturbing, raising an outcry against a contract' is there also explained as *.i. fogail .i. comscaile a ailedh fīadh fīadhnaib* 'i.e. assault, i.e. tearing apart of his fences in the presence of witnesses'. Moreover, the proprietor is entitled to *foglūasacht .i. in fir .ii. de, nō a rādh 'dodēn fogail'* 'setting to move, i.e. of the other man away, or his saying "I will do assault"'. It seems that Óengus's action was legitimate, if the other party was indeed claiming *rudrad becc* of the land. But since in [5] what the Ulsterman did to Nin and his companions is of a different nature, that being of the possessor's assault on the alleged proprietor who was performing *tellach*, the story of the origin of Loch nEchach does not really help us determine the legal consequence of the expelling of horses in [5].

De Vries (2012, 153 n. 419) refers to other stories that depict the contention between the incumbent and the claimant who performed legal entry or an action that embodies some elements of that procedure, but it is difficult to meaningfully check them against the law. All these three: Muirchú's depiction of the conflict between Dáire and St. Patrick over the site which later became Armagh (Bieler 1979, 108–110), the story of the exile of Conall Corc (Hull 1947, 899; F. J. Byrne 1987, 194; Bhreathnach 1996, 71–72) and the beginning of *Cath Maige Mucrama* (O Daly 1975, 39) involve releasing the horses to graze as a symbolic action claiming ownership, but little more can be gathered besides this legal ritual. A further parallel has been suggested by Neil McLeod in his plenary

[142] *CIH* 749.27-38, cf. 756.8-11 and 1376.22-24.

lecture ‘Irish law and the wars of the Túatha Dé Danann’ at the XIV International Celtic Congress (1st Aug. 2011). According to McLeod, the three landings on Ireland by the sons of Míl actually represent the three entries required in DT to take possession. During the last landing, the Túatha Dé created a storm to prevent the Gaels from taking Ireland, by which the Túatha Dé automatically lost the case and surrendered Ireland to the Gaels. McLeod argues that this was exactly the same reason why the Ulaid occupant lost his land in the lawsuit in [5]. However, even when it seems logical that driving out the claimant during performance of *tellach* is illegal, without direct proof from legal provisions, we do not know for sure what would be the punishment if the claimant is expelled during the entry: the value of the horses, the disputed land, or both?

By contrast with the other verses in the first part of DT, Nin’s name is not mentioned explicitly in the canonical text of [5], but only given by the OGSM. The verdict in the final section of the prose narrative appears to fall beyond the coverage of the canonical text. On the other hand, details from the narrative (a kin-land across the borders, starting from the middle entry) coincide with the poem. It is hard to ascertain, therefore, whether Nin’s story was the original narrative behind the poem, or was introduced later from another tradition due to its similarity to the topic of the poem, perhaps inspired by the Nine (or Nin) who figures in the middle section of canonical DT.

5.2.3 Comparison with [21]

It is noteworthy that the canonical text of DT is mostly composed in rimeless verse.[143] The first part of DT is thus distinct in form from the majority of the *Senchas Már*, but similar to [21], where two rimeless verses, complemented also by a prose narrative in OGSM, open the tract SM 2 *Di Chethairṡlicht Athgabálae*

[143] For a list of tracts that contain such *roscad* passages in *Senchas Már* see Breatnach (2010, 224).

(hereafter DCA).[144] Besides structural and stylistic resemblance, the OGSM texts of both [5] and [21] concern the entangled legal relationship existing for generations between the Ulaid and the Féni, and both texts reach verdicts in favour of the Féni (see 4.5.5). Why Nin's ancestors had forfeited the land to the Ulaid in [5] is not explained, but we can reasonably suspect that a complicated cause like that narrated in [21] lies behind the succinct narrative.

Copies of [5] and [21] have also borrowed texts from each other. There is a reference to [5] in the OGSM part of [21], found in two manuscript copies:

> *Inber nInbine da rēr seo .i. Nin mac Madach, is é docūaid for turus co roscuir a eocha isin tīr gur cartad as hē, gurba hē fochunn fūaidertha in tíri fo tūaidh…*[145]
> 'Inber nInbine [or Inber nAilbine] according to this: i.e. Nin mac Mágach, it is he who went on a journey so that he unharnessed his horses into the land until he was driven out, so it was a cause of "impugning the right (*fúaitriud*) of land"[146] in the north'.

This gloss is added to explain the line *Asa ngabtha ilbenna* 'From which many horned beasts were taken' in the second verse in the canonical text of [21]; however, in the extant copies of the verse there is no headword referring to Inber nInbine, nor is this placename found in copies of [5]. The placename Inber nInbine is not attested elsewhere, yet a place called Inber nAilbine occurs in the Harley 432 version of the prose narrative of [21][147] as one of the three things worth seven *cumal*s paid to Fergus mac Léti as compensation for Eochu Bélbuide's death; and this place is located at the mouth of the Delvin River northwest of Balbriggan.[148] The corresponding placename in the TCD MS 1337

[144] Neil McLeod has demonstrated that the first paragraph of DCA was written in rimeless verse, though perhaps of a less regular pattern than the second paragraph (McLeod 2011a).
[145] *CIH* 881.36-38. Cf. 1665.20-23: *Innber nInbine nō nDaillbine da rēr-so .i. Nin macc Madhuch as ē dochūaidh for turus cu roscuir a eochu isin tīr, gur cartadh as é, curba hē fochunn fūaidurthu in tīre fo thūaidh.*
[146] For the usage cf. *Tochmarc Étaíne*: *do luid Ealcmar arabarach do* ***faedredh*** *a feraind don Mac Óc* (Bergin and Best 1938, 146).
[147] *CIH* 354.3; 355.1.
[148] Ailbine = R. Delvin. Also in Ó Riain et al. (2003, 30). It is also known through the tragic story

copy of [21] (*CIH* 882.20) is *Níth*, possibly River Dee in Mag Muirthemne (*Onom.* s.v. Nith). O'Brien suggests that equating this land to the Delvin estuary in the prose narrative may have been inspired by the word *ilbenna* in the canonical verse of DCA (cited by Binchy (1952, 40)). Meanwhile, the placename *Níth* is mentioned in a gloss to the phrases *7 tīr .uii. cumal, tīr Cuinn .C.coraig* 'and land worth seven *cumal*s, the land of Conn Cétchorach'. The name Inber nAilbine in the prose narrative may have prompted the glossator working on the line *Asa ngabtha ilbenna* in *CIH* 1665.20-23 to add the name (in the form of *Inber nDaillbine*, as it is called in later time) as an alternative to the unfamiliar Inber nInbine. At any rate, although the glossator has apparently imported information from [5], the headword Inber nInbine remains unidentified and is not part of [5].[149]

In the Harley 432 copy of [21], there is a passage (*CIH* 355.34-41), written in late Middle Irish and translated by McLeod (2011a, 27–28), that also shows undisputed borrowing from [5]:

> *Rocuindigsit Fēin*[150] *īar sin ēiric a cumaili 7 taisic a tīri; ūair .uii. xx.it blīadan robuī tīr fēine fo Ultu, re rē Fergusa 7 re rē Concobair 7 re rē Coirpri nGnāthchar, 7 nīr damad dliged do Fēinib atūaid co haimsir Coirpri Gnāthcor; no nīr gab rī itir ar Ultaib ō Fergus co Coirpri Gnāthcor, 7 rob ūad-sein dēitin dligid do Asal mac Cuinn fēindid; aitech fortha rīg Temrach ēiside, 7 roscuirister a eochu isin Innbir nAilbine; tānic Mugh mac Nūadat, aithech fortha Coirpri Gnāthcoir, 7 rucuirestar as īat, 7 atbert: 'in uime roscuiris t'ech and so ara tabairt ūaib fechtt nail?' 'in ūainn tucad dāno?' ar se.*
>
> 'After that the Féni asked for an *éraic*-fine for their slave woman and the restoration of their land; for it was 140 years that the land of the Féni had been under [the rule of] the Ulaid during the time of Fergus, and during the time of Conchobar, and during the time of Coirpre Gnáthchor, and law has not been ceded to the Féni from the North [= by the Ulaid] until the time of Coirpre Gnáthchor; or no king at all reigned over the Ulaid from [the time

about women living undersea recorded in *Tochmarc Emire* (Meyer 1901b, 243–244) and in the *Dindṡenchas* (Gwynn 1991, vol. 2, 26-34).

[149] A further possibility, suggested by Prof. Carey to me, is that the form should be read as Inber Ninbine, and seen as being associated with the name of Nin.

[150] Reading *Fēni*, see *CIH* 355.g.

of] Fergus until Coirpre Gnáthchor, and it was by him [that there was] a recognition of entitlement to Asal son of Conn, a warrior of the king's household,[151] and he was the 'substitute churl' of the king of Tara, and he unyoked his horses in Inber nAilbine; Mug son of Núadu came, [and he was] the 'substitute churl' of Coirpre Gnáthchor, and he drove them out, and he said: "is it the reason that you unyoked your horse here because it was taken from you on a previous occasion?" "Is it from us that it was taken then?" he said.'[152]

This passage is not found in other copies of [21], and the mention of Inber nAilbine, as we have seen above, is distinctive of the Harley 432 copy. The passage bears many marks of being a composite work, not only drawing from the OGSM in several spots (McLeod 2011a, 27), but also obviously from [5]. This passage and [5] contain dialogues of similar import. The climax of the narratives is the disclosure by the occupant that the land once belonged to the Féni, but this is realised very differently in the two narratives. In [5], the Féni inadvertently entered the field and unharnessed their horses, but did not understand the legal significance of their action until they were told; by contrast, Asal went into the land with a strong intention to recover the estate. It thus seems quite implausible when we read that Asal asks: 'Is it from us that it was taken?' as if he had been unaware of the fact, not to mention that Asal mac Cuinn had to live for 140 years in order to see through the whole dispute.

The glossator who wrote this passage obviously made use of Nin's story as a model to account for the return of land to the Féni. As McLeod has argued, Asal took three cows with him in his distraint, because one *cumal* (=3 cows) was the *éraic* for the female slave Dorn. But I find it difficult to agree with McLeod that the distraint was a substitute for legal entry.[153] Besides the compensation for their

[151] He presumably held the office of *féinnid* that is mentioned in *Críth Gablach*: a functionary situated in the north side of the king's hall guarding the doorway (Binchy 1941, 23).
[152] I have made some minor adjustments to McLeod's translation.
[153]McLeod (2011a, 13, 23), where he suggests the compensation for Dorn's death is the value of the land.

kinswoman, the Féni also requested the return of their land (worth 7 *cumal*s[154]); if the distraint was for the restitution for Dorn, it could not be at the same time a claim for land.[155] The return of land is mentioned in the canonical verse of [21] (*Taisic a tír immurgu/ fo selba Cuind comorbae* 'The land, however, reverted to the estates of Conn's heirs' (Binchy 1952, 46)). Yet, perhaps because the topic is not the concern of DCA, how it was levied has not been explained: the glossator has therefore inserted a narrative about legal entry into [21], imitating [5], to describe the process. But he had probably forgotten that land belonging to Conn Cétchorach, as specified in DT, cannot be claimed through entry.[156]

Another suggestion of the intimate relationship between the glosses of the two tracts DCA and DT comes from the content of *CIH* 1663.20-1666.41, which contains two versions of glosses to the first line of [21]. Among extensive glosses we find citations from [6], another narrative from *Din Techtugud* that immediately follows [5]. The reason for this is the reference in [6] to the blister (*ferb*) raised on Sencha's face when he delivered a wrong judgment on the 'female entry'. 'Blister' is another meaning of the word *ferb* which appears in the first verse of [21], where it means 'milch cow'. The glossators to DCA, preoccupied by the task of explaining this difficult word, quoted from [6] passages concerning Sencha's blister to exemplify its meanings and usages (Qiu 2013b).

DT also shows intertextual relationship with DCA and especially with [21]. While it may be coincidental that the female protagonist Sithir in [7] was glossed as the daughter of Fergus mac Léti,[157] it is definitely worth noting that the

[154] *CIH* 881.38-40: *.i. trī secht cumala rocinnsed atarru a turbrod cairdi, conid inn rucad in tīr for .uii. cumalaib dīb.* 'i.e. thrice seven *cumal*s they have determined among them as a punishment to their violation of treaty, so it is then that the land was given as seven *cumal*s from them', also cf. *CIH* 1665.21-23.
[155] As acknowledged by McLeod himself (ibid., 14).
[156] *CIH* 210.34-35, cf. McLeod (2011a, 13).
[157] *CIH* 909.14, 1861.6-7.

canonical text of DT specifically exempts land belonging to Conn Cétchorach from legal entry.[158] The rare name itself, appearing otherwise only in [21], implies that the text of DT here is either referring back to the 'fabula' which was later embodied into [21], or otherwise [21] has borrowed this name from DT. Whatever the significance of these correspondences, the two institutions of distraint and legal entry are similar in their ritual nature and progressive procedure, and the parallelism is explicitly discussed in the canonical text of DT.[159] A shared authorship for DT and DCA is far from being proven by these shreds of evidence from the opening parts of the two tracts, but the similarities between the tracts and between the institutions are undeniable. The two tracts not only show strong intertextual links in the stratum of glosses, but possibly in the canonical layer as well.

5.3. Case Study II: [1]

The copies and content of [1] have been briefly introduced in Chapter 2, and a translation of three passages that contain this narrative can be found in Appendix 2. In this section we shall examine the legal significances of this narrative in detail. [1] belongs to a law tract which organises miscellaneous legal topics in groups of seven items, entitled *Sechtae* in the text, but usually called *Heptads* in English, which is the ninth tract of *Senchas Már*. On the whole *Heptads* (including glosses and commentary) contains only this one narrative in its one complete copy and several other partial copies (L. Breatnach 2005a, 291–292). [1] immediately follows Heptad §65 (according to the numbering of *AL*) and is intended as an aetiological explanation of the institution of *ráth* 'paying-surety', of which seven subtypes are listed in the Heptad §65 proper.

[158] *CIH* 201.34-35.
[159] *CIH* 206.27-28, 207.1-4.

This heptad (*CIH* 61.8-11) reads:

> *Tait .uii. rātha la Féniu deiligt(h)ar ina mbēscna amail dlegda slān 7 uide 7 īardaig. Rāith fēchemnes. rāith ambui. rāith airnisi. rāith forngarta fine. rāith fūasluictar coraib. rāith īar cūl. rāith forsaigi fine.*
> 'There are seven [types of] paying sureties in Irish law that are differentiated in their customs as to how they are entitled to compensation and fixed period and restitutions: a surety of indebtedness, a property-less surety, a bound surety, a surety commanded by kin, a surety who is released from contracts, a back surety, and a permanent surety of a kindred.'

After this the canonical text (*CIH* 62.29-34) goes on to discuss the entitlement to compensations to a paying-surety, before embarking on [1]:

> *Ar is do suigiu rosuide*[160] *slān ngill īar fut, rosaid a slān-side co ruice urlann cumaili, ar is ē dligis dairt i muin cach ōensēoit do neoch ruicer as airlisi, dlidid trī .s. i muin cach ōen.s. do neoch rocar a crīch tre .uii.uir; imm-āna īar suidiu cōeca uidhche,* [161] *ōtha saidhe doslī trī .s.u cachu .x.maidhi co ruice urlann cumaile co ndīabul aithgena neich iscomren cīabu mēid cīabu laiget.*
> 'For it is to him [i.e. the surety] that a compensation of pledge has been set (?) in the full extent, [that] his compensation has reached as far as the equivalent of a *cumal*, for it is he who is entitled to a yearling heifer in addition to every single *sét* of which may be carried out of the area around his farmhouse; he is entitled to three *sét*s in addition to every single *sét* of which may be carried from [his] territory through without;[162] he waits after that for fifty nights, from that on he earns three *sét* for each ten days as far as the equivalent of a *cumal* with double restitution for anything that he pays, however big or small.'

The institution of paying-surety (*ráth*) has been comprehensively dealt with in Thurneysen's *Die Bürgschaft im irischen Recht* (Thurneysen 1928a, 35–56), and in Robin Stacey's *The Road to Judgment* (1994, chap. 2). These two authors

[160] Reading *ro-suidiged?*
[161] cf. the commentary *CIH* 957.23-30, and *SM* 39 *Bésgnae Ráithe*: *ni dlig fēichem acht apad .u.ti amal cach cintach grāid Fēine* 'the debtor has only a notice period of five days as every liable person of the freemen' (*CIH* 790.14-15) (Thurneysen 1928a, 52–53).
[162] According to the gloss (*CIH* 62.40) this means that the surety's property has been taken across the border into another *túath*.

mainly base their descriptions of the institution on the tract *Berrad Airechta* (hereafter BA).[163] Though Thurneysen has also investigated the seven types of sureties listed in *Heptads* §65 and briefly remarked on the narrative [1] (1928a, 1, 51–54), he does not comment on the text *CIH* 62.29-34, which I intend to look into in this section in light of the comparable text of BA and of [1].

The *ráth* surety, along with the *naidm* surety and the *aitire* surety, is appointed at the binding of a contract to ensure the performance of contractual duty. Early Irish law has evolved a highly sophisticated system of the binding, adjusting and rescinding of contracts, relying heavily upon the employment of sureties, pledges and ritualised procedures (such as distraint and legal entry discussed in the previous case study) to enforce the performance of contractual duties. The main function of a *ráth*, usually translated as a 'paying-surety', is to financially guarantee that the principal he stands for will fulfil the contractual duty. If the principal defaults, the paying-surety has to fulfil the principal's contractual duty, usually in the form of paying to the creditor from his own assets. Our concern here, however, is confined to the immediate context of [1]. So what is this context?

5.3.1. The legal context of [1]

Heptads §65 enumerates seven types of paying-sureties that are distinguished by their entitlements to compensation (*slán*), fixed periods of legal action (*uide*) and restitution (*īardach*). The first type is *ráth féchemnais* 'surety of indebtedness'. A glossator in *CIH* 2027.18-22 states that this is 'a surety who undertakes both suretyship and indebtedness; he is alike surety and debtor', and the creditor is free to levy directly from the surety of indebtedness even if the debtor has not shunned his duty. In modern legal terminology he has a joint liability to the debt with the debtor, in contrast to the ancillary liability of an

[163] Edited and translated into German in Thurneysen (1928a, 6–32) and translated into English in Stacey (1986). The division and numbering of sections in these two works will be followed here.

ordinary surety (or ‘guarantor’). But in the opinion of Thurneysen, such an explanation is not supported by any other text, and he equates the ‘surety of indebtedness’ with the normal paying-surety who is a legally capable freeman (1928a, 51). Binchy, however, regards this surety as equivalent to the Welsh *mach cynnogyn* and Germanic *Selbstbürge* (Binchy 1976, 21, n. 16), namely one that puts himself under the control of the creditor and repays the debt through his own labour (Walters 1986, 102), which unfortunately does not seem to be what is meant in the gloss. A *ráth ambue*, literally ‘cow-less surety’ (McCone 1991, 41–42), is probably one without sufficient property to pay the creditor in case the debtor defaults, or even an outlander (*deorad*) who does not enjoy independent legal status in the kingdom. A *ráth airnaise* ‘bound surety’ is explained in the commentary as one who guarantees the debt only up to a fixed limit, conceivably a portion of the debt (Kelly 1988b, 169, n. 90). The fixed amount stipulated in the contract of suretyship seems to be called *certaithgein* ‘exact restitution’ (*CIH* 789.26-27). The unsaid premise here is that unless specially arranged at the binding of suretyship, the paying-surety takes responsibility for the full debt.

The limit of the responsibility he can assume, with or without such special agreement, is posed by §72 of BA to be a third of the surety’s property (Thurneysen 1928a, 41): *tēit for rāith cāich dīdiu a fochoimlich trīan a selbae; is ē as tūalaing rāthe for cach rēd, intī dod-rōnai nō las-mbí a sē(i)t dīa sētaib indī tēite fora rāith* ‘He undertakes suretyship for everyone, then, [for an amount up to] that which a third of his possessions can support; the one who is capable of [undertaking] *ráth*-suretyship for every [type of] thing is the one who can do it, or [in other words] he who has goods among his possession for which he undertakes *ráth*-suretyship’ (*CIH* 598.7-8; Thurneysen 1928a, 26; Stacey 1986, 224). Otherwise, the slightly later tract *Críth Gablach* prescribes the amount of guarantee to be within the surety’s honour-price, a limit which, according to Binchy, if not dictated by the schematism which prevails in the tract, may

represent a later precaution against unwise suretyship (Binchy 1941, 103). Indeed from the evidence of *Críth Gablach* itself, a *bóaire* ‘cow-freeman’ has as his honour price five *séts*, whereas the property threshold to his rank requires at least twelve cows = 24 *séts* (McLeod 1987, 87–88) aside from a considerable size of land and farmhouse and plough horses (ibid., 6-7). In such a case a *bóaire*’s property significantly exceeds his honour-price.

‘A surety commanded by kin’ (Kelly 1988, 169, n.89) and ‘a permanent surety of a kindred’ are probably both working at the request of the kin for a kinsman, the former *ad hoc*, the latter in a long-term role (Thurneysen 1928a, 53–54). ‘A surety who is released from contracts’ is doubtless one who is released from the suretyship and therefore from the paying duty before he was claimed against by the creditor. The last one, ‘a back surety’, comes in support of a *cétráth* ‘chief surety’ (*CIH* 61.17-18). Presumably the situation that the chief surety’s guarantee is not sufficient to cover the whole sum of debt may arise from either the limit of contractual agreement (as in the case of a ‘bound surety’), the limit of his honour-price, or that of his possessions; but a commentary appended to this heptad (*CIH* 2027.22-29) and another to *SM* 39 *Bésgnae Ráithe* (*CIH* 790.20-25) only reckon the situation when the amount of debt surpasses the chief surety’s honour-price. These two commentaries claim that once the back surety joins, he guarantees for (up to?) one third of the debt regardless of how much the debt surpasses the chief surety’s capacity.

A long commentary (*CIH* 61.20-62.28) appended to this heptad turns to a hair-splitting calculation of the components that add up to the sum of a cow, a compensation to be paid to the paying-surety for his ‘disturbance’ (*imlód*) at the hand of the enforcing creditor (BA §69-71); and the ensuing canonical text (*CIH* 62.29-34) regulates the compensation of pledge to the ordinary surety and the relevant fixed period. Apart from these and [1] itself which claims to deal with *ráth iar cúl* but possibly more with *ráth airnaise* (see below), none of the

different compensations, fixed periods or restitutions for these seven types of paying-surety is further clarified in either the canonical text or its glosses and commentary.

According to BA, the paying-surety does not give the pledge to the creditor at the binding of the contract, but he promises he will be ready to surrender it once the debtor defaults (BA §76b-77). If that happens, the creditor usually adopts the procedure of distraint (*athgabál*) against the surety, and as in all distraint cases, the surety can offer a pledge after the creditor issues a notice (*apad*), to express his willingness to pay and to delay the actual driving away of his cattle (Kelly 1988, 178). If the debtor comes forward at this stage to pay off his debt, the case falls into the situation described by *CIH* 62.29-34, and the debtor is liable to a compensation of pledge (*slán gill*) together with a double restitution of whatever cost has been incurred to the surety. For every single *sét* of the surety's property that is given for pledge, the debtor compensates, with the addition of a yearling heifer, which is worth 1/3 of a *sét* and thus represents the interest of the pledge. However, if the pledge is given out across the border – which will definitely increase the cost and risk of paying and recovering – a surplus of three *sét*s is required for every single *sét* that is paid, amounting to a fourfold restitution. Once the pledge is given, the surety will wait for the debtor to turn up and pay the compensation above; but a penalty accumulates at the rate of an extra three *sét*s for each ten days that the surety is waiting. The waiting period is fifty nights. According to a commentary (*CIH* 957.23-30), out of these fifty days ten days are given for the creditor to notify the surety, and ten days for the surety to notify the debtor, and for the remaining thirty days the creditor refrains from further action (*tri .x.mada na turbadha*), during which time this penalty is presumably imposed. The total sum of the penalty, as well as the total sum of the compensation of the pledge, is limited to one *cumal* = 6 *sét*s, a considerable amount given that the surety's property has not suffered real loss apart from the pledge he has

surrendered. Most parts of this calculation, as identified by Liam Breatnach (2005a, 305), are borrowed from SM 39 *Bésgnae Ráithe*, and finds parallel in *Heptads* §36 (*CIH* 33.25-35-18) and in SM 23 *Bretha im Ḟuillemu Gell*, the latter a tract dedicated to the stipulation of sums of interest derived from items given as pledge.

Should the debtor fail to answer to this, or should the surety not submit any pledge at the creditor's notice, the procedure enters the next stage. BA §69-71 talks about two situations. For the sake of clarity I quote the text from *CIH* 597.34-598.6:

> §69: *Cair, co bī slān na rāithi-so. Ataat dī slāna do rāith huidhib dligid. Cadeat-side? slān naurslicthe indise cen a dīrech, 7 slān naurslicthi īar ndīrech, īar nēric son don rāith tar cend fēichemon.*
> §70: *Mād ic urslucuth indisi ria ndīriuch tíí fēichem, asren fadēsin 7 a colainn fēich 7 a smachta rīasiu asria rāth tara cenn; 7 asren bōin do rāith inna imlōth 7 in naurslucud a indisi; Ar at sē laa dēac immen olrath rāth; mīach cach lāithe do didiu tar hēisiisim lōg, bō do samlāith; is ed is[s]lān nurslicthi indise in so.*
> §71: *Os[s]lān nurslictho īar ndīriuch. caide son? mā 'scomrae rāth tar cend, co ndecomrastar a indes airi, lōgh a enech īarna míad. is ed i slān, 7 gert 7 indoth 7 fuillim 7 colainn fēich.*

The first one (§70) is 'at the opening of the milking enclosure [but] before the stripping' (*ic urslucuth indisi ria ndīriuch*) (Thurneysen 1928a, 25; Stacey 1986, 223), i.e. before the surety pays the debt itself on behalf of the debtor. The text does not explain what it means by 'opening of the enclosure' (Thurneysen 1928a, 45; Stacey 1994, 40), but taken in conjunction with *CIH* 62.29-34 above, it may denote that distraint of the surety's cattle has already been performed, and at the liquidation of his debt by the debtor himself, the cattle have been resumed by the surety, though there has been a 'disturbance' (*imlód*). This disturbance is to be compensated by the debtor at the price of a cow = 2 *séts*. This, of course, is added on top of what has been stipulated for the fifty-day period mentioned above if the surety has given a pledge. If the surety has ignored the creditor's

notice and his cattle thereafter suffer impounding, the law grants him only this 2 *séts* as compensation.

BA §71 advances to a further stage, when the debtor still defaults on his debt and his surety has paid on his behalf. Then the compensation will be the body of the debt (*colann féich*), the surety's honour-price, together with by-products and the calves in case of cattle, and the interest of the principal debt (Stacey 1986, 223–224).[164] A crux here is whether to understand the manuscript *fuillim* (*CIH* 598.6) as *fuillem* 'interest [from the surety's property during its absence]' or as a misspelt *fuilled* 'filling up', the latter translated 'Verdopplung' by Thurneysen (Thurneysen 1928a, 26; Stacey 1986, 232, n. 89). Judging from the entry for *fuilled* in *DIL*, a certain degree of confusion between *fuillem* and *fuilled* is common in legal texts, as both denote some kind of additional gains on top of the original amount, although the meaning of 'doubling' for *fuilled*, usually 'remedy to damage' in the legal context (McLeod 1992, 172–173), is not attested in examples outside the legal texts, and all the interpretations of legal examples as 'doubling' can ultimately be traced back to Thurneysen. Thurneysen's reading of this word as *fuilled* and translating it as 'doubling' is, as shown in his note on BA §71, dependant on his rendering of the same word in SM 6 *Cáin Aicillne*, edited by himself (Thurneysen 1923). In *Cáin Aicillne*, Thurneysen derives the definition of *fuilled* as 'doubling' from the glosses, especially in §25 and §40 where *fuilliud* is glossed *in dīablad* (*CIH* 1788.28, 1797.1). However, in another copy, it is *fuillem* that has been glossed as *dīablad* in §25 (*CIH* 487.4), and the canonical text §40 has *fuillem* instead of *fuilled* (*CIH* 492.16), which Thurneysen emends to *fuilled*. *Cáin Aicillne* §25 provides for the client's complete ownership of the fief at the lord's death; and all debts and demands, including *fuilled* and *fuillem*, thereafter expire. §40 claims that fief must be returned if the clientship contract is nullified, and if the fief is not returned, the lord is entitled to *slān 7*

[164] This seems to apply to chattels other than cattle that have been paid to the creditor, and of course does not necassiryly occur in every case.

fuilliud 7 meath 7 somaīne fuillema (*CIH* 1796.37-1797.1). Thurneysen is correct in insisting that §40 should have *fuilled* and probably also right in interpreting this as 'doubling', in light of a commentary from *Bretha Étgid* which grants similar compensation to the creditor (*CIH* 333.22-25, discussed below), but this does not constitute a strong argument for emending the *fuillem* in BA §71 to *fuilled*, especially considering that BA §71 does not deal with relationship between the creditor and the debtor, but between the paying-surety and the debtor. I will pursue this distinction later in connection with the narrative itself.

We may utilise a passage from *Bretha Nemed Dédenach* (*CIH* 1122.27-31) as comparison. I also include the translation by Robin Stacey as follows:

> *Slānadh soráthusa sluinnter īar néiric in ndaghlāithibh dlighidh; Dleghar fīach, fodhbaither cosmhailsi máir, [is] (n)etaim cūigedh colla fēich fedhair fri mís. máraighidh saoghlonna. soilbhech beithech la lógh niomsaotha im airchenn eallamh, no séd i muin araile ar lá go noidhche, go tresi do sédaibh la lōgh n-enech neallamh fir bes a séd serbthar.*
> 'The indemnifying of a good *ráth*-suretyship, let it be declared [as having been completed] after [the] payment [of compensation] in the good days of law. A debt is owing, let the equivalent of the large amount (i.e. the principal of the debt) be obtained; a fifth of the principal of the debt is the *etaim*, let it be calculated at a month. A sage exalts. A cow in good milk with the price for disturbance [is given] for a speedy resolution, or [one] *sét* in addition to another [is given] for [every] day and night until three days [worth] of *séoit* [have been given], along with the ready honor-price of the man whose property is led astray.'(Stacey 1994, 41)

The 'price of disturbance' (*lóg n-imsáetha*) of one cow we have already met above in BA §70, under the name of *imlód*. Supposedly this also occurs before the surety pays off the debt from his own property. The three-day period during which one *sét* is paid for each day is apparently a similar mechanism to the waiting period during which three *sét*s are paid for each ten days as stated in *CIH* 62.29-34 above, and there is a similar upper limit to such a quickly escalating penalty; but this seems to apply after the surety has paid the debt. The slower-

growing payment called *etaim* is designed to continue for the longer term were the debtor still to default after three days; and this interest (Lat. *usura*), as clarified by the *Collectio Canonum Hibernensis* (Wasserschleben 1874, 123, XXXIV.5) and as pointed out by Stacey (1994, 42), is worth a fifth part of the debt and is paid for every month of one year. The canon law provision basically follows the line of the *Bretha Nemed Dédenach* passage, only that the canon law deems the charging of interest optional, and it does not mention the honour-price and seems to say that the 'price of disturbance' is still to be paid at this stage. No doubling is mentioned. If we insist on reading *fuillem* 'interest' in BA §71 instead of following Thurneysen's emedation to *fuilled* 'filling up the damage, doubling(?)' the rules laid out in BA §71 and in the passage from *Bretha Nemed Dédenach* differ only in the amount of interest after the debt is liquidated by the surety.

5.3.2. An analysis of [1]

It is time to look at [1] within this legal context. This narrative is first and foremost an etymological explanation of the word *ráth* by means of a similar word *ráith* 'an earthen rampart, a fortified enclosure'. The *DIL* is not certain about the gender and stem of these two words, but the *LEIA* (R.9) and Thurneysen (1928a, 1) argue that the former is an ā-stem and the latter is an i-stem, although the etymologies of both are still unclear. According to the narrative, the custom of *ráth*-surety was established after Amairgen provided a *ráith*-enclosure (glossed *baile* 'settlement') as a guarantee for Conall Echlúath (literally 'Horse-swift', equated by a glossator to Conall Cernach, son of Amairgen mac Eccit), against Eogan mac Durthacht, in an unspecified transaction or payment. It is significant that the sum of his suretyship is fixed before the default takes place: by doing this Amairgen becomes a *ráth airnaise* 'bound surety', and a single enclosure is the 'exact restitution' (*certaithgein*), or

exact amount of his guarantee by which his responsibility is limited. We do not know about the value of an enclosure, but Amairgen's guarantee surely does not exceed his total possessions, which amount to four or seven such enclosures as variously stated in two copies of the canonical text (*CIH* 1854.17 and 63.9 respectively).[165]

Amairgen's status as a bound surety is confirmed by the commentary from *CIH* 1854.27-34 which asks 'what is the reason for paying the exact restitution here for Conall, for the offence of his son, without paying by him the full amount which has been due by the son?' and among the answers states 'or since he was a "bound surety", and he has stipulated a stipulation that he will only pay the exact restitution'. The commentary from *CIH* 97.21-24 brings forth another solution, suggesting that 'he is exempt from surrogate's liability (*cin inmleguin*), or it is concerning his paying-suretyship that he was already proceeded against, and the paying-surety pays only the exact restitution of anything for which he has come until he himself absconds'. The contrast between a surrogate (*inmlegon*), who is a close kin to the debtor and is liable to all the debt the debtor incurs, and a paying-surety is borne out more clearly in a passage from *Bretha Étgid* (*CIH* 301.31-302.3):

> *Cach cin co cintach.i. cēin bes cintach i crīch, noco dlegar inbleogan brāthar nā rātha d'acra, acht toichid air fēin fo aicned a grāid 7 athgabāil do gabāil de, 7 foigelt 7 bleith 7 lobad do dul ina cenn.*
> *māna fuil i crīch itir hēe, no cē nabeith māna fuilit .s. aici, mā rolēicister ēlod, a rogha don fēichemain toicheda in inbleoghan brāthar nō rātha aiceres, 7 cidpe dīb acras is leis a rogha; acht mās ē a rogha inbleogan rātha, nocon īctar acht mad certaithgin. Cid fodera cach ūair is ē a rogha inbleogan .b. d'acra co nēctar in uilidataid uile rīs, 7 cach ūair is ē a rogha inbleogan rātha cona īctar acht mad certaithgin? is ē fāth fodera: inbleogan rātha, nocor gabustar-saide do lāim acht mad īc no tobach, 7 cōir cenco hīcad acht mad certaithgin nō co rolēicea fēin ēlod. Inbleogan brāthar immurgu, nocor gabustar-said hē do lāim itir īc no tobach ach*

[165] There seems to be a confusion between the Roman numeral .*iiii.* in the former copy and .uii in the latter copy due to the minims. But it is difficult to say which is in the original.

amail rosoisaid chuici īar cēimennaib, 7 cōir cīa noīcad in uilidetaid uile, ūair dīablad cintaig is sī aithgin inbleogain.

Every offence with the culprit, i.e. as long as the culprit is in the territory, it is not legal to proceed against his kin-surrogate or surety-surrogate, but to sue himself according to his grade and to take a distraint from him, and [the expenses of] grazing and tending at the pound and gradual forfeiture to go on top of it.

If he is not in the territory, or though he would be in the territory he does not have the *sét*s, if he absconds, the suing party has the choice whether to sue the kin-surrogate or surety-surrogate, and whichever of these he sues, the choice is his; but if the surety-surrogate is his choice to sue, only the exact restitution (*certaithgein*) is paid. What is the reason that each time the kin-surrogate is his choice, the full amount is paid to him, and each time the surety-surrogate is his choice, only the exact restitution is paid? This is the reason: the surety-surrogate, he only undertook [the fixed amount of] paying or levying, and it is lawful that he should pay only the exact restitution until he himself absconds. The kin-surrogate, however, he did not undertake at all either paying or levying, but as it [liability] would apply to him according to the degrees [of his relationship to the culprit], it is lawful though he should pay the full amount, since the 'restitution of surrogate' [for him] is double that of the culprit.[166]

The two persons in this passage, the 'kin-surrogate' (*inmlegon bráthar*) and the 'surety-surrogate' (*inmlegon ráithe*), no doubt correspond to the *inmlegon* and *ráth* in *CIH* 97.21-24. The duties assigned to them respectively, and the reasoning, are also similar in the two texts. The duty of *inmlegon*, originally meaning 'milking out into', is usually taken by a member of the debtor's kin-group, but he might also be a *ráth*-surety, especially in the context of a distraint being carried out by the creditor (Kelly 1988, 179–180). However, there is a major difference between the two kinds of surrogate: the kin-surrogate appears to bear full liability for the debt under the Irish custom of *cin comocuis* (ibid., 13), while the paying-surety only guarantees for a liability not exceeding his capacity (honour-price or value of property) or, if specified in the suretyship contract, the exact sum agreed therein (*certaithgein*), though these may actually suffice for the

[166] Partially translated by Thurneysen (1928a, 39).

full amount of the debt. The glossator hopes to stress, that despite being Conall Cernach's father, Amairgen was not acting as a kin-surrogate but as a 'bound surety'. The glossator gives two other reasons in *CIH* 1854.14-36: that Amairgen was from the grade of high-ranked nobles (*grád sechtae*, i.e. the grade of persons whose honour-price exceeds seven *cumal*s, see Thurneysen (1926, 72–73)) who were exempt from the duty of surrogate; and that everyone at that time was legally not a kin member to one another. The second is obviously conjectural, but the first is supported by Heptads §34:

> *Tait .uii. n-aithre lā nād īcat cinta a mac cid ūadaib rocindet: rī 7 esbog 7 fear fris roscara a cond 7 fear roscara frisin domun 7 fear dobeir fine a freitech fuidir 7 file 7 cū glas.*
> There are seven [kinds] of fathers in Irish law who do not pay for the offence of their sons though it is from them that they have descended: king and bishop, and a man from whom his reason has separated, and a man who has separated himself from the world and a man whom his kindred has renounced as a *fuidir*, a poet-scholar, and a *cú glas*.

These are the persons, according to the glosses, that are exempt from the kin-surrogatory liability and immune from any contractual or delictual liabilities incurred by their sons (*CIH* 31.15-18). As Amairgein mac Eccit is purportedly a *fili* of the Ulaid (Best et al. 1967, vol. 2, ll. 13565-13617), he is among the ranks that are exempt from kin-surrogatory liability. This, however, does not prevent him from undertaking a 'bound suretyship' on a willing basis.

The canonical text explicitly states as well that Amairgen was the first who provided a 'back surety' (*ráth íar cúl*) of entitlement in Ireland. As explained above, the 'back surety' supplements the suretyship when the chief surety (*cétráth*) cannot guarantee the whole debt due to the limit of his property or honour-price, and he guarantees for a fixed amount of one third of the debt. However, neither the canonical text nor the glosses and commentary in [1] provides any meaningful information in regard to who was the chief surety or how much was the total debt. Another major difficulty is encountered when

Amairgen is taken to be a back surety, namely that as a back surety he is not entitled to a double compensation of the payment of debt plus the fine and his honour-price, but only a single restitution for the one-third of the debt which he guarantees for, and one-third of honour-price in proportion to the liability he takes. This is stipulated in a commentary appended to this heptad (*CIH* 2027.27), where it is said 'though he [i.e. the debtor] absconds from the back surety, he [i.e. the back surety] is only entitled to the restitution and one-third of his honour-price' (*cīa leigter ēlōd cūlrāithe, nī dlig acht aithgin 7 trīan n-eneclainne*). Such an entitlement is manifestly at odds with the canonical text, which emphasises the doubling of the debt as compensation to the paying surety, also recognised by the commentary just referred to.

Later on, Conall absconded from the debt, and Amairgen had to pay on his behalf. The default therefore has advanced into the stage regulated by BA §71 and the *Bretha Nemed Dédenach* passage quoted above, namely that the principal debt has been paid by the paying-surety, and the legal relationship between the creditor and the debtor has ceased. This is called an 'extinction according to each entitlement' (*noebath cach dliguth*) in BA §55 (Thurneysen 1928a, 18; Stacey 1986, 219), and thereafter the debt exists only between the paying-surety and his principal. [1] lists the compensation (*slán ráithe*) the principal is obliged to pay the surety under such a circumstance; and since the amount of guarantee was fixed to be an enclosure (*ráith*), the calculation has been simplified in units of enclosures. The canonical text tells us that three enclosures were to be paid: one is the restoration (*taisecc*) of the guarantee forfeited in his stead, and two others ('an enclosures on top of an enclosure'), one of which is a doubling (*díablad*) of the forfeited amount. All glosses of this passage unanimously agree that the remaining single enclosure is paid as his honour-price,[167] so we have the count of

[167] *CIH* 97.20-21, 1854.23, 2027.31.

restoration of what the surety has paid (his exact restitution in this case), a doubling of that, and the surety's honour-price. The coincidence, that Amairgen's exact restitution is set here to be equal to his honour-price, is more probably the result of the narrative's simplification combined with the word-play, than genuine reflection of the limit imposed by *Críth Gablach* on the amount of suretyship. For convenience of comparison, I draw a paradigm of the compensations a paying-surety receives after he cleared off the debt for the debtor against the creditor:

BA §71	***Bretha Nemed Dédenach***	**[1]**
the debt or *certaithgein*	what the surety has paid	the *certaithgein*
surety's honour-price	surety's honour-price	surety's honour-price
A milch cow for disturbance before the debt is paid on the debtor's behalf	A milch cow for disturbance before the debt is paid on the debtor's behalf	N/A
After the debt is paid on the debtor's behalf, by-products and calves=1/3 of the principal of the debt if paid in cattle, and other forms of interest (*fuillem*)	After the debt is paid on the debtor's behalf, three *séts* for three days, and *etaim*=1/5 of the principal of the debt afterwards each month (for a year according to the canon law)	After the debt is paid on the debtor's behalf, doubling of the debt

It should be noted that *Bretha Nemed Dédenach* prescribes a cumulative interest finally reaching to over twice the principal debt, which will financially deter the debtor from further delay, while in [1] and BA the payment does not grow with the passage of time. On the other hand, the payment by the surety to the creditor on behalf of the debtor is treated in the same way as a forfeited

pledge in BA and *Bretha Nemed Dédenach*, that is to say, as an item which the surety forfeits on behalf of the debtor and the profit and increase of which, during its absence from the surety's possession, should be reimbursed to the surety. The treatment of [1], at the same time, indicates that the payment by the surety to the creditor on behalf of the debtor transfers the right of demanding the payment of the original debt from the creditor to the paying-surety, and no interest is involved. Here we may have spotted a divergence between two very different lines of legal reasoning among the law schools. It is hard to estimate which method would have been more effective in real life: a cumulative one, or a heavy lump sum at the outset, considering that the debtor has already absconded from the creditor and probably has left no property for distraint or for other methods of enforcement at the time such compensation is required.

This distinction is further embodied in a commentary to *Bretha Étgid*. The commentary addresses this canonical line:

> *Faill dō do fēichemnaib lēcud a nāraig do derug dara cenn.*
> 'Moreover, it is negligence for the parties to allow their [contractual] bonds to be stripped for them' (*CIH* 333.1).

The long commentary deals meticulously with the various circumstances when the creditor seeks the performance ('*Leistung*') of duty ('*Schuld*') from the debtor or the surety, and the liabilities ('*Haftungen*')[168] arising from wrongful proceeding or delinquency. Among these circumstances two are especially relevant to the present topic. I juxtapose them here:

> *Mā dochūaid in fēichem toicheda d'acra arin mbidbaid ina uidi īce cōir, 7 rolēic in bidba ēlōd, 7 robo cindti leis cor dlecht na fēich de in ūair-sin, is .u.s. ūaid 7 eneclann 7 dīablad fīach 7 cumal .uii.maid marbtha māna targus dliged.* (*CIH* 333.22-25)
> *Mā dochūaidh in trebairi d'acra arin mbidbaid ina uidi īce cōir, 7 rolēic in*

[168] For the exact meanings of these legal terms see Walters (1986, 94–97).

bidba ēlōd, 7 cindti leis cor dlecht na fēich in ūair-sin de, is .u.s. ūaid 7 eneclann, 7 na fēich risi roibī d'īc dara cenn; 7 nocon [ḟ]uil dīablad fīach, ūair nocon ē cuinges. (*CIH* 333.34-37)[169]

If the creditor proceeded against the debtor in his correct time of payment, and the debtor absconded, and he was sure that he was entitled to the debt from him at that time, five *séts* are due from him [i.e. the debtor] and honour-price and double debt and a *cumal* of [i.e. equal to] one-seventh of [the compensation to] death[170] if entitlement has not been forthcoming.

If the surety proceeded against the debtor in his correct time of payment, and the debtor absconded, and he was sure that he was entitled to the debt from him at that time, it is [due to him] five *séts* and honour-price, and the debt for which he was to pay on his [i.e. the debtor's] behalf, and there is not double debt, since it is not he who sues.

This commentary may in fact reveal some of the hidden aspects of the earlier texts that we have referred to. It clarifies, firstly, that the doubling of debt is a punitive fine asserted only by the creditor on an absconding debtor; but by paying on the debtor's behalf, the surety does not replace the creditor in the contract ('since it is not he who sues') and cannot exert the doubling fine on the absconding debtor. Though it fails to mention the interest accrued to the surety's payment during the time of the debtor's default, the second passage agrees with BA and *Bretha Nemed Dédenach* in granting the surety a restitution of the body of the fine or *certaithgein* (including the 5 *séts* fine at failing to pay at the stipulated time) that he has paid, and the surety's honour-price. Again, sharing the perspective of BA and *Bretha Nemed Dédenach*, this commentary indicates that the original duty has expired, and the surety is not allowed the same amount of restitution as the creditor enjoys if the latter goes charging the absconding debtor by himself. On the other hand, in another *Bretha Étgid* commentary that we have visited above (*CIH* 301.31-302.3), the kin-surrogate (*inmlegon bráthar*) takes on unlimited responsibility for the absconding debtor, and is therefore granted a doubling of debt as compensation; in other words, he takes over the

[169] Translated in Thurneysen (1928a, 39, 46).

[170] This *cumal*, confirmed by other parts of the commentary as well as by *CIH* 366.21-23, is to cover the creditor's food cost during his proceeding against the debtor.

original duty and now enjoys the same status as the creditor. The crucial distinction here may be that a paying surety's liability is limited by his legal capacity measured in honour-price or assets, unlike the kin-surrogate who assumes unlimited responsibility and therefore enjoys a more privileged status of substituting for the creditor in the original contract.

This doubling fine for the creditor, according to Thurneysen (1928a, 39), may have only been generalised in the later era from some special circumstances found in the canonical law texts, including 1) when one fails to pay the food-rent to the lord;[171] 2) when a *nemed* person fails to respond by giving pledge when he is proceeded against by fasting;[172] and 3) when a debtor absconds from fulfilling the rest of the debt after distraint has been taken from his property.[173] However, the last circumstance seems to include all cases of distraint, and distraint is one of the ordinary means that a creditor adopts to proceed against the debtor and the paying-surety alike. Moreover, [1], also from the canonical text of the *Senchas Már*, does not limit the application of doubling fine to any special type of debt. This poses a question: is the doubling fine really an exceptional rule valid only under these special circumstances (though to be sure not very limited, given the regularity of distraint), or are these circumstances merely examples of a widely applicable doubling fine, at least among the *Senchas Már* tracts? Is there a condition common to these circumstances and [1] under which the doubling fine applies?

I believe that in fact there is. The canonical text of SM 2a *Di Choimét Dligthech* (*CIH* 1727.21) makes it clear that the doubling is imposed on the action of absconding (*élúd*) (*ar us d[īablad] fri hélō[d]* 'for it is a doubling upon the absconding'). This is supported by SM 2 *Di Chethairṡlicht Athgabálae* (*CIH* 365.27), where the *nemed*-person who fails to reply to a fasting, in circumstance

[171] *CIH* 488.13-14 (SM 6 *Cáin Aicillne*), also see above.
[172] *CIH* 366.16-17 (SM 2 *Di Chethairṡlicht Athgabálae*).
[173] *CIH* 1750.20-21 (SM 2a *Di Choimét Dligthech*); also see 1727.21, where a debtor's property is subject to distraint of twice the amount if he absconds before the distraint.

2) in the previous paragraph, is regarded as ‘absconding from all’ (*ēlūthach na n-uile*), although physically he remains in his residence. And this is certainly true in [1], where the absconding is stressed. Further evidence, though of a later date, comes from the commentary in the aforementioned *CIH* 333.1-334.24 (*Bretha Étgid*). The commentator envisages various cases in which the creditor may proceed at the rightful or wrongful time, knowingly or negligently, against the surety or against the debtor, when the debtor submits or when he absconds. If the creditor proceeds at the rightful time, he is entitled to his debt and a five *séts* fine, the latter for failing to deliver the debt to him voluntarily at the stipulated time. If he proceeds at the wrong time, the creditor forfeits his claim to the debt, and is fined five *séts*. If the creditor knowingly commits the wrong proceeding, his honour-price is forfeited; if he does so unknowingly, the honour-price is not forfeited. The fine of five *séts*, to judge from this commentary, is universally imposed in cases both of the debtor’s unpunctual payment, and of the creditor’s wrongful proceeding. The honour-price is charged in case of intentional breach of good practice by either party. But the doubling fine only occurs when the debtor or the surety has absconded (*ro-léic élúd*), apparently a more serious offence, which means that he is either unable to liquidate the debt, or is maliciously hiding his property or himself from the proceeding creditor. To put it more plainly, the five *séts* fine is the recompense for the cost of proceeding or for delinquency, the honour-price for intentional procedural malpractice, while the doubling fine is the punishment for final insolvency or for malicious evasion. The three fines can be imposed side by side, as is also shown in the case of the *nemed*-person who fails to reply to a fasting (*CIH* 365.25, 366.22).

I am inclined to believe that the doubling fine was already a regular rule for absconding from all kinds of debt in the canonical layer of *Senchas Már*. The doubling fine, however, is due to the creditor, so when Amairgen was granted this fine, he apparently assumed the status of the creditor, and therefore was not

entitled to interest as stipulated in BA and *Bretha Nemed Dédenach*.

All fines and restitutions that are compensated in case of wrongful proceeding or of delinquency are collectively called *éraic* (gen. *éirce*) in the above cited *Bretha Étgid* commentary, a term usually denoting the compensation to the wounding of the body alongside the honour-price. Such a sense of *éraic* is also to be understood in a gloss in [1] where it says ‘Conall, who is the first person that has nobly paid the full amount of *éraic*-fine on account of his [i.e. Amairgen’s] suretyship on him in this island’ (*CIH* 1854.21). The full compensation package (*lánad éirce*) measured by [1], therefore, is to be understood as follows: after liquidating on behalf of the debtor, the paying-surety acquires right of subrogation and steps into the shoes of the original creditor to proceed against the debtor. When the debtor Conall had absconded, a fine of doubling is accreted to the restitution of Amairgen’s payment to Eógan, and the compensation of Amairgen’s honour-price. This fine of doubling is not granted to the paying-surety in BA, *Bretha Nemed Dédenach* and the commentary to *Bretha Étgid*, but to the creditor in the last of these, and in some other *Senchas Már* tracts; however, in the case that the paying-surety gets right of subrogation, the entitlement to doubling fine is transferred to him together with the right to demand the debt.

How well, then, is [1] in line with its immediate legal context, and with early Irish law in general? First and foremost, like many other legal narratives, [1] does not present full details of the case but stresses only those points to which the jurist wishes to call attention to, and it has sacrificed numerical exactitude for the sake of the etymological pun between *ráth* and *ráith*: all calculation has been simplified in units of enclosures, and the five *séts* fine and other minor compensations seem to be omitted in the process. Secondly, despite claiming that Amairgen acted as *ráth iar cúl*, [1] does not provide further detail of this but instead shows that he was a *ráth airnaise*, another type from the heptad. Thirdly,

the ‘custom’ that [1] claims as central to this case that a doubling fine should be paid has parallels in other law tracts, but under different circumstances, and [1] appears to differ from other law tracts in regarding the rights of the creditor to have been transferred to the surety after the latter has paid on the debtor’s behalf.

5.4. Summary

Anything general about the legal aspect of the legal narratives, at this stage, cannot yet be drawn from merely two case studies, which themselves cannot claim to be exhaustive in consulting relevant sources. The two studies in this chapter, however, offer interesting examples of how jurists incorporated legal points into a concrete narrative setting of persons and incidents. Both narratives emphasise some aspects of the institutions at the price of omitting others, and both care more about the outcome of the verdict than the cause of dispute. The two narratives are both from the *Senchas Már*; it would be very helpful to look into narratives from law texts from other schools, but regrettably this task cannot be undertaken within the limits of this thesis.

Chapter 6: Conclusion: the traditionalisation of early Irish law

6.1. Introduction

In the previous chapters, I have examined the various aspects of early Irish lawbooks and legal narratives. The richness of discourse types in the lawbooks coexists with the paucity of curial and administrative documents relating to actual cases. Narratives occur in a much higher frequency and with more variety of textual functions in early Irish law texts than in other legal traditions. These legal narratives have an intimate textual and thematic relationship with early Irish literature as a whole, though they do show distinct features not found outside the law texts. And, to judge from the admittedly limited evidence afforded by the in-depth case study of two longer narratives, they do not always exactly match the legal usages that they purportedly illustrate.

It is time that we return to the questions with which we began. What is the intellectual background of the jurists? How was law produced in medieval Ireland? What is the purpose of writing legal narratives in lawbooks?

6.2. The intellectual background of medieval Irish jurists

The issue of the intellectual background of medieval Irish jurists can be approached from several directions. One can certainly examine the evidence afforded by annals and other historical records for the titles of renowned jurists and accounts of scribes known to have been involved in the transmission of legal texts. To some extent, descriptions from sagas and wisdom literature can cast important side-lights on the subject. Scholarly literature taking this external approach has been reviewed in 4.3.4 and 4.5.3. Alternatively, one can look into

the law texts themselves to see the constitutive elements of medieval Irish legal writing, and to attempt to determine what intellectual background could have contributed to these elements. This will be discussed later in this chapter. A third approach, which is the most relevant to the topic of this thesis, is to look for traces of different branches of learning within the legal narratives themselves.

The legal narratives alone have already demonstrated a very broad range of learning. The jurists were familiar with the prose narrative literature, especially with the Ulster Cycle (see 4.5) and the stories surrounding the life of Cormac mac Airt ([14], [64], [66]-[70], [103] among others), and actively participated in constructing their own accounts as well. [13], [78] and [103] testify to their acquaintance with the *Dindṡenchas* tradition on the legendary origins of toponyms. They were acquainted with hagiographical texts, especially those about St. Patrick, and also betrayed a detailed knowledge of biblical accounts and even canon law collections (see 4.3.1). Several narratives ([18], [23], [35], [47], [80], [98], [100]) utilise personages or incidents from the synthetic historical scheme that culminates in the late 11th century *Lebor Gabála Érenn* (Carey 1994b); though none of these except for [18] seem to be dated to the Old Irish period,[174] they bespeak the jurists' interest in the contemporary historiographical fashion. Concern with contemporary historical events is also apparent in [26], which fossilises a unique political situation within a short interval of the 7th century; and in [82], which connects the national crisis of the Norman invasion, and its allerged support by the Papacy, to the mischief of some local churls. A certain knowledge of Livy's *History of Rome,* whatever the immediate source, is visible in the story of the founding of the Twelve Tables ([33]), and I have argued that a Roman Law concept may lie behind an unusual calque in [5]. Well-founded education in Latinate *grammatica* is not only detectable from the

[174] The canonical part of [98], though belonging to the Old Irish *Bretha Nemed*, mentions only a name *Luigne* which cannot be securely identified as the son of Éremón in the synthetic historical scheme.

exegetical technique, *accessus* schema and grammatical interest pervasive in many narratives, but is also directly apparent from the narratives' sharing of text with *Auraicept na nÉces* ([14] and perhaps [82]). In a previous study (Qiu 2013b), I point out that in versions of OGSM, the accretion of glosses and commentary, mostly concerning grammatical and poetic topics, is guided by the interests of the jurists working in the Middle Irish period; and that the resulting copy of law text is strongly grammatical- and poetic-oriented, even to the extent that these interests eclipse its original legal significance. The poetic merits of the Irish jurists, needless to say, are self-evident in the skilfully versified narratives such as [6], [21], [57], [58] and [69], but even apart from this the jurists were well trained in poetic matters, as is evinced by citations from metrical tracts ([29]) that were part of the aspiring poets' education.

Such a wide range of knowledge sketches a versatile community, the members of which would have received an education from ecclesiastical establishments in the pre-Norman era, and later from secular learned families (McCone 1989). Each individual jurist's actual educational background, however, may well be much more limited and dissimilar to one another (see 1.5.1). We can take a slightly different approach to interpreting these pieces of evidence, not from the unity of identity (or self-identity) of the persons who produced these texts, but from the unity of the textual tradition in medieval Ireland. Is it better to speak of an intellectual heritage as a whole, against the background of which individual learned men studied certain – or when possible, all – aspects, and of which law tracts were merely products that bear more socio-legal significance than others, rather than to think of law tracts as exclusively made and commentated for legal purposes by specially trained lawyers, many of whom extended their expertise further afield into other subjects? Is it better to visualise a multivalent but integrated textual tradition, than to conceive a unified caste of learned men (and very occasionally, women (Clancy 1996))?

I believe that it is. The broad scope of topics in law tracts and in other medieval Irish texts surely attests to the erudition and mobility of the literati, but it is in the first instance evidence of a literate tradition that cherished and encouraged conscious interconnection between all aspects of the textual culture. In this chapter, I wish to conceive early Irish law tracts not as collections of legal rules and principles, but as texts that were objects of writing and reading practices in an era when such practices were the privilege of the literate few; and I wish to see what textual strategies and techniques these texts, including but not limited to narratives, have employed to accommodate themselves into the larger unity of the learned tradition.

6.3. The nature of *senchas* and traditionalisation

Senchas, the term for the learned tradition in medieval Ireland, i.e. the intellectual heritage that I speak of, cannot be easily equated with any single modern discipline. Boundaries between genres under the rubric of this term are fluid (Simms 1998). What we today distinguish as distinct branches of intellectual activities – law, history, grammar, toponymy and literature – overlapped considerably with each other in medieval Ireland (F. J. Byrne 1974, 138, 150). As Gregory Toner (2005) has argued, there is no simple basis for allocating many medieval Irish texts to the pigeon holes of literature or history, and it is precarious to impose modern conceptions of 'history' on the medieval art of handling the past. Erich Poppe has also shown that the medieval concept of '*historia*', in the light of which most of the *senchas* was constructed, was not one concerned with 'historicity' in the positivist sense. According to Poppe, *historia* was a textual genre which formed part of a collective and interpretative *memoria* of the past by the creation of chronologically and intertextually related accounts (Poppe 2008, 48–56). Based on the Latinate grammarian tradition, especially on

the works of Isidore of Seville, early medieval historiography was regarded as a branch of grammatical study, ‘because whatever is worthy of remembrance is committed to writing’ (*Etymologiae* 1.41.2): hence history means the study of historical texts rather than of the past itself, and the question of truth and falsehood relates to the logical coherence of the text and the reliability of its sources, rather than to some independently verifiable fact (Toner 2000a; Toner 2005). Though Isidore does distinguish between *historia*, ‘true deeds that have happened’, and *argumentum* ‘things that, even if they have not happened, nevertheless could happen’ (*Etymologiae*, 1.44.5), the difference lies in that there is a trustworthy ancient source for the former, such as the Bible, Dares the Phrygian, or Herodotus (*Etymologiae* 1.42). Again, it is the authoritative textual tradition that determines what has or has not truly happened.

In the famous Latin colophon to the *Táin* in the Book of Leinster (Ó Néill 1999, 269) and the M-scribe’s colophon to *Serglige Con Culainn* in *Lebor na hUidre* (Bergin and Best 1992, l. 4034–4040), the scribes in fact do not dispute the texts’ antiquity and authority, and they acknowledge that ‘certain things’ as described in the two narratives truly appeared to the people of the past, though these were no more than ‘deceptions of demons’ and do not fulfil the logical possibility required by Isidore. In other word, what is distrusted in these texts is the consistency between the phenomena and reality, but the scribes had no doubt that the phenomena took place when ‘the diabolical power was great before the Faith’ (*ba mór in cumachta demnach ria cretim*) (Bergin and Best 1992, l. 4035). The Irish literati recognised that what had happened was irretrievably lost, and the art of *historia* was not about recovering the facts of the remote past, which is inaccessible to mortals but can only be revealed by divine force or, as in a famous topos in Irish literature, by those who had witnessed the event and had lived long enough (or had been brought back from death) to relate it (Carey 1984; Carey 2002; Nagy 2007, 18–19). Again, this is analogous to (or can be traced

back to) Isidore, who stresses that the ancients insisted that only eye-witness accounts were proper *historia* since 'what is seen is revealed without falsehood' (*Etymologiae*, 1.41.2). The only exception to this agnosticism of historical reality is perhaps the contemporary records in the annals, where reports by eye-witnesses are possible and can (with some caution against the inherent partiality) be accepted as reasonably faithful reflections of the reality. But these reports occupy only a relatively small part of all the accounts of the past, written as *historia*, in the Irish tradition, and formally they cannot be separated from the non-contemporary records, which are susceptible to the construction of *memoria* from a textual, rather than empirical, perspective (McCarthy 1998), for instance the saga-derived entries in the annals (Mac Eoin 1989, 183).

We can take two points from the discussion above: firstly, regardless of its ultimate oral or written origin, *senchas* is a textual tradition and thus is subject to the formative and interpretative principles of the medieval discipline that covers all the texts, namely *grammatica*; secondly, *senchas*'s accounts of the past do not guarantee historicity as we understand the concept today, as *senchas* is concerned with textual authority rather than empirical verity. These two points apply to legal narratives. If neither of the conflicting versions of the origin of *Bretha Étgid* ([13] and [14]) can be shown to be false because of inherent improbability, they are allowed to stand side by side as two equally valid variants (Toner 2000a, 11). The legend of St. Patrick revising native law after the conversion of Irish,[175] quite possibly a creation by the *Senchas Már* compiler(s) on the model of earlier or contemporary hagiographical writings, certainly falls short of the linguistic test as historically true; nonetheless, it is not inherently illogical or improbable, and it tallies well with the mainstream Patrician accounts as recorded by Muirchú and other hagiographers, so it was soon widely accepted as part of the *senchas*.

The so-called 'mimetic' approach to the narratives, taking the information

[175] Referred to in [9], [10], [12], [17], [20], [28], [35], [38], [46], [56], [75], [81], and [83].

provided by medieval texts more or less literally (Ó Cathasaigh 1984), is nowadays largely jettisoned from studies in early Irish texts. Many texts which purport to be historiography can be shown to be in fact allegorical or didactic tales, invented in a later era to comment on contemporary circumstances, following the methodology of Ó Corráin, Herbert and others (Ó Corráin 1978; Ó Coileáin 1981; Herbert 1989; Carey 1989) that seek for significant correspondences between text and reality in the time of composition.[176] Toner observes that 'much of the didactic force of early Irish texts derives from the contemporary belief in their historicity' (Toner 2000a, 20). However, the phrase 'contemporary belief in their historicity' can easily mislead, if taken to mean that medieval readers or audiences of these texts unsuspectingly accepted the authors' statements at face value: we must remember that the readers and authors, especially in the case of legal texts, were often from the same professional circle and knew their trades well. On the other hand, the Irish literati had spent so much effort in synchronising and harmonising the various accounts about the national past, that it is unlikely that the medieval audience perceived these texts only as allegorical fables, not to mention that the authenticating and evidential functions (Toner 2005) of these accounts cannot be explained if they were merely whimsical imagining of the past. As we have seen, positivist historicity was not a primary concern for the majority of texts, even for those that we today often presumptively relegate to the category of historiography. So it is neither belief nor disbelief in the texts' historicity that matters for the social and intellectual force of the texts. But if the accounts of the past offered by *senchas* are neither ancient nor historically accurate, how did they acquire their authority and

[176] Meanwhile, one should not forget that the texts' meanings are not restricted to the immediate 'historical needs' they may have addressed, as has been pointed out in Ralph O'Connor's excellent new study of the literary aspects and textual strategies of *Togail Bruidne Da Derga* (O'Connor 2013, 6; also Sims-Williams 1994). Dumville's critique on this allegorical method is worth bearing in mind as well: 'such generalisation [of this method] is intolerable in principle, given the diverse nature of medieval Gaelic scholarly tradition, and dangerous in practice in as much as successful demonstration requires (what is rarely pursued) the elimination of all but one time and place as possible points of origin of such as text.' (Dumville 1995, 395)

prestige so as to certify and direct the present?

I think that a text's authority and prestige stem from its quality of being part of a tradition ('traditionality'). This tradition, in the Irish context *senchas*, does not necessarily have to be historically verifiable and stable. Recent anthropological studies of other cultures have suggested that we should stop regarding 'tradition' as a fixed set of texts or customs. One should instead focus on the ongoing process of 'traditionalisation', a process which systematically links texts (and other cultural artifacts) to a conceived meaningful past, a collective memory acknowledged by members of the community as valid guidance of their self-recognition and their lives (Bauman and Briggs 1992; Bauman 2001). The quality of being traditional ('traditionality') is a notion of social function rather than of temporal relation (Hymes 1975): in other words, tradition is not about recovering the past as fully and as loyally as possible as it was, but about how one society thinks of and organises the present in terms of the past. The social past is not identical to the temporal past, for the incidents described in the former may actually have happened in the temporal past, as in most of the cases in modern societies; or they can be modelled on the temporal present, as in the overtly allegorical tale of the sons of Echu Mugmédon (Joynt 1910; Ó Corráin 1987b; Herbert 1992); or they can be located nowhere in real history (a 'uchronia' (Hastrup 1992), such as many of the Ulster Cycle tales). In the more specific context of daily language and textual activities, 'the traditional past is evoked not merely as part of a general dialogue with the past, but as part of an attempt to provide authority for one's own narrative performance and interpretation by supporting or contributing to a community's sense of what is "traditional" (Mould 2005, 257)'. The past is not an inorganic, fossilised fact waiting to be discovered but is a dynamic creation meaningfully tied to the present with a distinctive element of social groundedness and force (Bauman 1992, 141).

The same can be said about *senchas*, including law texts, in general: what makes a text part of a tradition is not its historical veracity, but its intertextuality, both in form and content, with other texts accepted as traditional. In other words, *senchas* should be understood not as a fixed set of texts, but as the dynamic intertextuality among an indefinite number of texts, and the authority of law texts derives from their affinity with other texts in the corpusOnce constructed as traditional, texts acquire their functional authority independent from their actual provenance and historicity.

The key concept here, 'intertextuality', calls, as Hugh Fogarty observes, for an indication of what I understand the term to mean, since the word's usage has been somewhat muddled in its various applications since it was invented by the poststructuralist Julia Kristeva (Fogarty 2014). In the medieval context with which this study is concerned, intertextuality is identified by the sharing, exchange and interdependence of words, figures, themes, *fabulae* and temporal-local settings, as well as of discourse type and manuscript layouts, as we shall see in the following; but intertextuality itself in this study denotes more than just a collective description of such textual relationships: it is a conscious construction laden with the ideology of medieval European textual culture, and can be termed, in the words of Neil Wright, as 'the way in which early medieval writers' medium and message could be informed by and interact with other texts which they had read, texts which would, for the most part, also have been familiar to their audience' (Wright 1995, vii). Such a specialised understanding of 'intertextuality' in regard to medieval Irish texts, though perhaps deviating from the original poststructuralist concept as formulated by Kristeva, is validated by scholars in this field such as Donnchadh Ó Corráin (1990), Clodagh Downey (2004) and more recently Hugh Fogarty (2014).

Excellent studies on the intertextuality between literary texts (Ó hUiginn 2014), between literature and annals (Mac Eoin 1989), between literature and

law (Stacey 2005; L. Breatnach 2010), and between vernacular and Latin writings (McCone 1989; Ó Corráin, Breatnach, and Breen 1984) have been fruitfully carried out, though these do not sufficiently recognise the importance of intertextuality in the traditionalisation of texts. What, then, are the means by which intertextuality was built for law texts and all other branches of the learned tradition? How did the law texts become part of *senchas*?

6.4. Traditionalisation by modes of discourse

The law texts are first and foremost traditionalised by sharing modes of discourse with other texts in *senchas*. Early Irish law texts exhibit a highly variegated range of registers, compared to most modern laws (see 1.1). A distinction of registers has been made by Prof. Charles-Edwards in his review of *CIH*, between archaic *fénechas*,[177] plain prose and standard Old Irish textbook prose which originates from Latin learning (Charles-Edwards 1980, 146 ff.). But as the assumption that certain linguistic and stylistic features[178] are diagnostic of native and oral provenances has gradually dropped out of fashion,[179] the division proposed by Liam Breatnach between prose, syllabic rhyming verse and *roscad* (L. Breatnach 1991) in medieval Irish texts in general has become more accepted. All three registers coexist in the law texts (L. Breatnach 2005a, 370). In terms of mode of discourse, however, I suggest another categorisation: provision, exposition and narration.

6.4.1.

[177] Charles-Edwards' usage of this word extends well beyond the actual passages which were labelled by early Irish jurists as *fénechas*, and the standard as to what passages could be assigned as *fénechas* seems to differ between law schools (Stacey 2007, 189–197).
[178] Such as Bergin's law constructions (Bergin 1938), non-rhyming verse, and second-person jussive use of subjunctive, etc.
[179] See L. Breatnach (1984) for the ecclesiastical origin for some *roscada*, Ní Dhomhnaill (1974) and L. Breatnach (1989b) for the late provenance of some syllabic non-rhyming verses, and Binchy (1979) and Joseph Eska (2007) for arguments against Bergin's Law as a genuine feature of 'Archaic Irish'.

Most modern law texts consist solely of provisions, which are either *apodictic*, making unconditional statements, or *casuistic*, comprising a hypothetical protasis of condition and an apodosis of legal consequence. These two types are also predominant in the provisions of early Irish law (see 1.1 and 1.3.4). Provisions are characteristic of, but not confined to, law texts in the strict sense. Texts laying out the rights and duties of kingdoms and kings, such as *Lebor na Cert* (Dillon 1962) and 'A Poem on Airgialla' (O Daly 1952), include a large number of provisions, but these are seldom regarded as laws but rather as historical documents like the charters because the undertakers of duties and rights in them are usually specific persons or kingdoms. Penitentials and wisdom texts, the compilation of which was closely related to the production of secular law texts (Gerriets 1991; Kelly 1976, xviii–xix), contain provisions or didactic injunctions that are similar to provisions; and the *geis* in early Irish literature, though usually applying only to a specified individual, is generally embodied in the form of provision and has a social and cosmological dimension (Sjöblom 1998; Charles-Edwards 1999b). This typically legal discourse provides intertextuality between law and some other types of texts, but it is on the two other modes of discourse more widely attested in other branches of the textual tradition that I would like to focus in what follows.

6.4.2.

I shall start with narration. The abundance of narratives in early Irish law texts may strike modern jurists as outlandish. Yet it will seem less exotic if we keep in mind that narration is the primary discourse of *senchas*: much of early Irish literature, historiography, onomastic lore and hagiography is written in prose or verse narrative. In stark contrast to the timeless, universal provision, narration is inherently temporal and individual (see 1.3.3), and thus particularly suitable for documenting cultural memory. When narration is employed in law texts, it

affirms that the law texts are not merely collections of norms, but also the product and memory of the *longue durée* of Irish history. Moreover, narration in law texts is not isolated from the writing practice in other *senchas* texts. Narratives originating outside the law lost none of their style and appeal when adopted into legal contexts; and many narratives of legal origin relate their stories so skilfully and dramatically that they can claim to be literature in every sense of the word. Rhetorical devices employed by literary works are ubiquitous in the legal narratives, such as the 'narrative openers' identified by Proinsias Mac Cana (1996) [180] or the use of prosimetrum to carry out various textual functions. [181] Narratives appear at the same nodal points in law texts as in genealogy, glossaries and the *Dindṡenchas*: they arise in response to questions of origin, supply contextual information, or exemplify concepts and words (see Chapter 3). Regardless of their ultimate origins, the legal narratives were written and functioned in much the same way as narratives elsewhere in *senchas*.

While the mode of narration renders possible the formal assimilation of law texts to other branches of *senchas*, the contents of the legal narratives construct the temporal-personal relationships and thereby connect law texts to the tradition as a whole at various points. I have discussed the variety of possible relationships between legal narratives and early Irish literature in detail in Chapter 4, but a few more examples here will help illustrate the process of traditionalisation. Two textually related *accessus* narratives (see 3.3.1) in [35] which propose to explain the situation of the making of law tracts may serve to show how traditionalisation works independent from claims of historicity, even for medieval readers.

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[180] V-second order, e.g. *trī meic robatar ac Meidbh banbriugu… CIH* 106.39 ([2]). Also *Nin mac Māgach di Fénib luid…*; *nominativus pendens*: e.g. *Aimirgin Rāthach, laisī mbatar .uii. rātha CIH* 63.8-9 ([5]). As for the third 'opener', involving use of temporal adverbials, the semantic environment of legal narratives determines that it is relatively rare, e.g. at the beginning of the perhaps once-independent episode in the saga of Fergus mac Léti: *fecht nāen ann īar sin luid Fergus… CIH* 355.4 ([21]), as well as in the middle of [43]: *cin ree iarom*. The same temporal adverbial is also used in a different version of [63] which is recorded independently, but not in [63] itself (see 4.4) which does not stand at the beginning of a passage.

[181] cf. Mac Cana (1989) and Toner (2005). In law texts e.g. *CIH* 687.37-688.20 ([35], evidential verse); 1120.16-30 ([63], *Situationgedichte*), 1587.18-34 ([79], evidential verse).

The prologue to *Cáin Ḟuithirbe*[182] appears to contain some historical truth taken from the canonical text (Binchy 1958, 52–54; L. Breatnach 1986a), and we can trust its statement that the time of its composition was during Finguine mac Cathail Chon-cen-máthair's reign, namely from 678 to 695. But the appealing historical value is, in Binchy's words, certainly 'spoiled' (Binchy 1958, 52) by the additional assertion that the tract 'was afterwards shown to St. Patrick after [his] coming' and was subject to the saint's extensive revision.[183] Clearly, historicity was not the concern here. The medieval authors' purpose is rather to link their texts with significant moments in the collective memory, in this case represented by the legal reforming legend pervasively invoked in the *Senchas Már*. Though *Cáin Ḟuithirbe* does not belong to that collection, it is deliberately linked to *Senchas Már* not only by employing the Patrician legend, but perhaps also by stating that the knowledge needed to compose this tract was obtained by learning outside of Munster, in the related prologue of *Anfuigell* more explicitly pointed out as 'to the North' (*isin tuaisceart*, *CIH* 979.26). *Cáin Ḟuithirbe* was composed by some obscure authors convened under the authority of a local king in the late 7th century, but it managed to become traditional, and perhaps national, by portraying itself as having been made in the reign of a powerful King of Munster and approved by St. Patrick as *Senchas Már* was. Moreover, the prologue also makes reference to the example of Christ tolerating pre-Christian laws to support St. Patrick's preservation of some rules, and addresses the Irishmen as descendents of Míl. Besides showing erudition in many threads of learning, the prologue effectively provides multiple recognised cultural clues (Stacey 2005, 75) to liaise with the learned tradition and to render itself part of it, and the number and prominence of such cultural clues in a text contains are far more important than their harmonious organisation.

[182] *CIH* 687.37-688.20.
[183] This is probably influenced by the account in the canonical text of Patrick's conversion (*CIH* 776.39-777.5).

The Middle Irish introduction to *Anfuigell*[184] was clearly modelled upon the prologue to *Cáin Ḟuithirbe*. The *accessus* to *Anfuigell* gives Cummaín, who was well trained in Latin learning but did not quite qualify in native law, as the author, perhaps intending Cumméne Foto. Cumméne Foto was a renowned *sapiens*,[185] but he died in 662, more than a decade before the start of the reign of Finguine (678-695) which is claimed in the *accessus* (Binchy 1958, 52) as the time of composition. Meanwhile, all other elements were copied from the *Cáin Ḟuithirbe* prologue, including the eponymous placename *Mag Fuithirbe*. Such coincidence of time, place and cause in the making of two law tracts is unnatural, and any well-informed reader in medieval Ireland would not have hesitated to dismiss the historicity of the information in the *Anfuigell* prologue. Again, what matters to the writer of this prologue is becoming part of the tradition, and *Anfuigell* indeed partakes in the authority of *Cáin Ḟuithirbe* by appropriating its *accessus*, as well as by attributing the authorship to the long deceased Cumméne Foto (if it is really he who is intended): a Munster figure prominent in both secular and ecclesiastical literary contexts.

Some personages in legal narratives indeed lived in the historical period, such as Cenn Fáelad, Congal Cáech or probably Dallán Forgaill, but they always appear in connection with certain master narratives as recognised by *senchas*. Cenn Fáelad's lineage (of the royal family of Cenél nEógain) and his obituary (679) are consistently documented in the genealogies and the annals, and his fame as a prime scholar (*sapiens*) and his career in the unimportant monasteries of Túaim Drecain and Daire Luráin is probably historically authentic (McCone 1989, 66). However, the central theme in the longer narratives about Cenn Fáelad, as shared by [14], *Auraicept na nÉces* (Calder 1917, 6–7) and the long version of *Cath Maige Roth* (O'Donovan 1842, 278–284) is that Cenn Fáelad lost his 'brain

[184] *CIH* 979.23-26.
[185] He was however depicted less favourably in saga literature, e.g. *Comrac Líadain 7 Cuirithir* (Meyer 1902), *Tromdám Guaire* (Joynt 1931) and *Mac Dá Cherda and Cummaine Foda* (O'Keeffe 1911).

of forgetfulness' in the battle of Mag Roth and was transported to Túaim Drecain for recuperation, where he combined the teaching of three schools. This theme is not present in the contemporary annalistic records and is probably a later accretion to the tradition, using Cenn Fáelad as a prototypal learned figure and the three schools as allegory to the components of the Irish intellectualism (Mac Cana 1970b; McCone 1989, 65; Tristram 1990b). The theme is overtly more symbolic than historical, not to mention that it is medically unfounded (O'Donovan 1842, 283); but by the Middle Irish period when the abovementioned longer narratives were written, it had acquired a canonical status and later compositions that wished to be traditionalised had to subscribe to it. The prestige of both *Auraicept na nÉces* and *Cath Maige Roth*[186] may have helped further propagate the doctrine, and we see how a tradition dynamically evolved and reasserted itself. Likewise, it would have been exceptional if a bee had actually blinded an eye of Congal Cáech as stated in [26] (Kelly and Charles-Edwards 1983, 121), but the short version of *Cath Maige Roth* records a similar story about the loss of Congal's eye and its legal consequences (Marstrander 1911, 234). There are some significant differences between this and [26] (Borsje 2007, 22–23), and the related tale *Fled Dúin na nGéd* states that an eye of Congal first became squinted (*cláen*) from a bee-sting in childhood and was later completely blinded (*cáech*) by Suibne Menn (Lehmann 1964, 10–11). Narratives grew around the historical core of the battle of Mag Roth (Mac Eoin 1989, 166–168), and formed in themselves an intertextually linked 'cycle'. However, the other narrative elements are not equally historical but are sometimes anachronistic or even counterfactual. The battle of Mag Roth marked a turn in the politics of the North of Ireland in the 7th century (F. J. Byrne 1987, 113–114) and forms a key point of the collective memory, but what is remembered of it is mostly fiction. This fiction, however, carries all the weight of an authoritative

[186] This tale is included in the List A of the tale-lists edited by Proinsias Mac Cana (1980, 43) and presumably was well-known in the 10th century (Toner 2000b).

tradition through the dissemination of influential texts that adhere to this fiction, because the learned culture in medieval Europe was strongly text-oriented[187] and the present was defined through referring to the textual past.

Other recurring nodal points in the legal narratives studied in this thesis include Old Testament events, the Milesian conquest of Ireland, the law reformation of St. Patrick after converting the Irish, the Ulster Cycle era (see 4.5), and the life of Cormac mac Airt (Ó Cathasaigh 1977). Even when unfamiliar names and events show up in the narratives, these are almost always connected back to the important nodal points by reference to better known personages and incidents. For instance, an Ulster king called Cernodon who appears in no other sources, and is unlikely to fit in the already crowded regnal list of Ulster (cf. M. A. O'Brien 1962, 277–284), is mentioned as having been coeval with Morann ([89]). And the anecdote about Athairne's pre-natal thirst for ale ([61]) doubtless reflects his exacting manner reinforced by poetic power, as depicted in other narratives about him.[188] In 4.5.4 I have also examined some of the unattested or less known figures in legal narratives who are nevertheless linked to the Ulster Cycle world by reference to famous protagonists from that cycle, especially Conchobar mac Nessa.

Each of the nodal points that interconnect specific times, places, incidents and persons highlights a particular ethos, or marks a momentous turning point of Irish history. Though such ethos and turning point may not have reflected themselves in the legal provisions surrounding them, they nevertheless add to the significance of the provisions as being tightly bound with, or even having deeply influenced, the vicissitudes of the Irish in the formation of their present. The process of traditionalisation is not one that seeks historical facts but one that

[187] As remarked by Mary Carruthers, 'in considering medieval views of textual authority, one needs always to keep in mind that *auctores* were, first of all, texts, not people' (Carruthers 1990, 190).
[188] Cf. *Talland Étair* (Ó Dónaill 2005) and s.v. *greth* in *Sanas Cormaic* (Meyer 1912, 57; another version trans. in Carey and Koch 2003, 65–66).

constructs collective memory and self-identity. By linking to the nodal points, narratives advance the claim that law texts are part of the cultural construction of *senchas*.

6.4.3.

Exposition organises the provisions and offers critical analyses of their words and meanings, rather than directly stipulating a rule. Expository passages scaffold a framework in which provisions can be presented, and connect general provisions to more detailed ones, or provisions to narratives. Through exposition the provisions are objectified as texts and disposed according to the ideology of *grammatica*, which embraced all arts and disciplines that were based on texts (Irvine 1994, 6). Thomas Charles-Edwards has shown that three stylistic features characteristic of legal exposition are rooted in the Latin grammatical culture, namely etymology, enumeration and classroom dialogue (Charles-Edwards 1980, 147). Enumeration and classroom dialogue are ubiquitous in the law tracts. Apart from the etymological analysis by dissecting word into smaller units, illustrated for example with instances from *Bretha Comaithchesa* by Charles-Edwards in the aforementioned article, one finds clear signs of the so called ‘etymological aetiology’ based on the philosophy of Isidore (Baumgarten 1990; Baumgarten 2004), and on the principle of *enarratio* in medieval *grammatica* as well. In [25], for instance, the period of five-day stay in distraint is explained as originating from the name of a woman Cóicthe (literally ‘Five Days’) who was involved in the first case that demands for such a period. The judge’s name Sen mac Áigi ‘senior son of fixed period’ in [21]; and the name of the first female-slave in Ireland, Mugdorn ingen Moga ‘slave-fist daughter of male-slave’ ([27]), are also manifest examples of this type.

There are more terms and techniques for which the Irish legal expositions are indebted to the *grammatica* tradition. In addition to the use of *accessus*

mentioned in 3.3.1, expository markers derived from the *grammatica* tradition are staple ingredients of Irish law texts, and of course of legal narratives, such as *.i.* and *amal*, *cair* and *ní hansa* (Baumgarten 1992), *cid ara n-eperr*, *arailiu*, *óndí* and their variants (Russell 1988, 22), *quasi* (Russell 2005), *desimrecht*, etc., and their Latin archetypes (Ó Corráin 1998, 193). These markers are by no means limited to legal texts only, but are part of a shared textual culture and have been used extensively in other types of Irish texts. Besides, several law texts actually engage in meta-theoretical discussion on *grammatica* and other arts, or deploy grammatical analytic terms to illustrate their content. For instance, *CIH* 342.40-344.11 ([19]) tries to explain the order of *locc*, *persa* and *aimsir* used in the *accessus* from the perspective of biblical cosmology, thereby connecting the law text with exegesis. What follows (*CIH* 343.12-22) is an interesting description of the twelve winds and their colours, evidently adapted from a prose version of *Saltair na Rann* (Carey 1986b). The wind-diagram is rooted in classical geography, as is present in Isidore's *Etymologiae* (13.11); but the doctrine here is also interwoven with Christian spirituality and indigenous topography (Carey 1985; Obrist 1997; Siewers 2005, 41–49). One should not be surprised at such a richness of grammatical thoughts and materials in the law, after all, if we are to believe in the statement in the Middle Irish tract *Urchuillti Bretheman* (*CIH* 2103.20-22) that judges are to be learned in the details of *Auraicept na nÉces* as well as in law tracts (Ahlqvist 2013, 233).

The influence of grammatical study is more salient in the opening part of *Cóic Conara Fuigill* (*CIH* 1027.25-31, part of [54]) which enumerates the key grammatical concepts needed for analysing the parts of the 'paths' (*conara*), such as *fid 7 deach, rēim 7 forbaidh, alt 7 indsci 7 etargairi* 'letter and foot, declension and accent, syllable and gender and inflection' (Poppe 1999b, 204). These 'seven things according to which Gaelic is measured' are important grammatical tools employed extensively in *Auraicept na nÉces*. They were

already in existence in the canonical part of the *Auraicept* (Ahlqvist 1982, 50) and are elaborated as to their meanings and particularities in 'The Book of Ferchertne' (Calder 1917, 54 ff.). Moreover, according to *MV* I, any student of poetry aspiring to become a *fili* has to master exactly these same elements of language (Thurneysen 1891, 6), as a learned *fili* is distinguished from a bard by formal education which involves such grammatical training. A copy of *Uraicecht Becc* (*CIH* 2255.1-2256.12) engages with a prolonged discussion of basic Latin and Irish grammar elements before the canonical law text itself begins; this introductory matter utilises the triad *bunad 7 inne 7 airbert* 'basis and essence and application' to expose the meaning and usage of words. These three meta-theoretical concepts can again be found among the teachings of the *Auraicept*, though perhaps not in the canonical part (Calder 1917, 54–55); and they have been applied to examination of the word *étgid* in *Bretha Étgid* (*CIH* 251.4-14) (Russell 1988, 23) and of the word *senchas* in the commentary to SM 1 *Introduction* (*CIH* 344.28-31) as well. Another paradigm of *ainm* (name), *indaithmech* (analysis) and *érchoíliud* (definition) is used in examining the word *ferb* (*CIH* 1664.5 ff., [44]) (Qiu 2013b, 104).

These features are of course not limited to law texts. Scholars have shown the fundamental role of *grammatica* in the formation of Irish textual tradition, which stretches far beyond the simply linguistic context.[189] By participating in the same discursive and interpretative framework with other texts, law texts not only share terms but also freely exchange information and perspectives with other constituents of *senchas*: it is little wonder that one finds such a wide spectrum of approaches in law texts, including grammatical, historical, poetic and theological contents, and a similar opulence of legal perspective in literature, historiography and the *Dindṡenchas*.[190] Here, as in other parts of Europe,

[189] cf. Baumgarten (1983); M. T. Davies (1996); Poppe (1999c); Burnyeat (2007); Russell (2008a).
[190] cf. Charles-Edwards (1978); Ó Cathasaigh (2005a); L. Breatnach (2010a); Archan (2012a).

grammatica provides the protocol for a text to be interpreted and evaluated by other texts, genres and discourses, producing a culture that was explicitly intertextual (Irvine 1994, 15). The share of expository mode and *grammatica* protocol between law and the rest of *senchas* provides an intertextuality through which law texts are accepted as traditional and authoritative.

6.5. Traditionalisation by page layout

One final aspect that plays an important role in the traditionalisation of early Irish law is the physical structure of the texts. In the late Middle Ages, the canonical laws compiled in the 7th and 8th centuries had indeed become archaic and had been consecrated as cultural monuments steeped in ancient wisdom. But this did not happen automatically with the passage of time; rather, the law texts were canonised by the accretion of glosses and commentary around them. In his paper on the texts and transmissions of Irish law, Fergus Kelly scrutinises various types of page arrangement of Irish law texts as found in manuscripts from the late Middle Ages (Kelly 2002). As Martin Irvine has argued, glosses and commentary of any kind shift a text from a simple signifying vehicle to an object of analytical discourse, and create a hierarchy which promotes the canonical text to an authoritative status (Irvine 1994, 390–391). It is the glosses and commentary that constitute the canonical texts as the fountain of authority and invite them into a dialogue between the past and the present in order to update them for a changed social reality. The mise-en-page renders this dialogue visible, and develops an intellectual depth which places the canonical texts and the scholia together in a traditional constellation.

The selection and arrangement of texts in a manuscript have played a part in reenforcing the traditional status of texts and revealing their connection to each other. Máire Ní Mhaonaigh's incisive remark is also pertinent at this point, that

the

> ‘recording of earlier texts takes the form of an active ongoing dialogue with the work of previous generations. Their [i.e. the learned class’s] placing of particular narratives adjacent to one another on the manuscript page was an act of textual interpretation.’ (Ní Mhaonaigh 2006, 35)

We have briefly visited the location of some prose narratives concerning prehistoric Leinster kingship in different manuscripts in 4.1. The principle of arranging law tracts in miscellaneous manuscripts, however, remains largely unknown due to the lack of study. Although most of the manuscripts that record legal texts are composite volumes rebound in the recent centuries, and therefore the organising principles of the whole manuscript often become obscure, the immediate manuscript contexts of some law tracts do show intertextual links that reveal both the meaning of the tracts in the eyes of the scribes and the position of the tracts in the learned tradition. Here it is proper to briefly examine a law tract as an example of the physical contexts of legal texts in miscellaneous manuscripts.

Uraicecht Becc, a tract on the status of various social grades, have five extant copies, four of which have been included in the *CIH* (L. Breatnach 2005a, 315). The manuscript contexts of these copies present an interesting case. In two manuscripts (RIA MS 23 P 12 (Book of Ballymote), pp. 335a-348b[191], and TCD MS 1432, *olim* E 3.3, pp. 19a33-21b1[192]), *Uraicecht Becc* was found in close proximity to *Auraicept na nÉces*: in 23 P 12, *Auraicept na nÉces* is followed by three verses concerning the quality of poetic compositions and their entitlements, and then (after a 16th-century note of the passing of the book) by *Uraicecht Becc* (RIA MS Cat. 1646-1647); in MS 1432, the two tracts are separated by a copy of *Uraicecht na Ríar* and some verses and commentary on the poetic art.[193] It is obvious that these tracts were regarded as a genre: not only that they share the

[191] *CIH* 1590.1-1618.40.
[192] Not included in *CIH* though noticed in *CIH* p.xxii.
[193] The catalogue by Abbott and Gwynn (1921, 307) is not comprehensive, so I consulted the on-line catalogue provided by the *Irish Scripts On Screen* project (http://www.isos.dias.ie), last retrieved: 28 Nov. 14.

title of *auraicept/uraicecht,* formed on the basis of Lat. *acceptus*, which refers to the primary materials assigned to the students to be recited (Burnyeat 2007, 191-192; Ahlqvist 2013), but that they all deal, *in parte* or *in toto*, with matters concerning the poetic grades and their arts as well. In the copy NLI MS G 3, 26a-45d,[194] *Uraicecht Becc* is preceded by several lamenting verses for kings and followed by a metrical glossary (NLI MS Cat., Fasc. I. 26). This copy of *Uraicecht Becc* somehow contains a copy of the law tract on court procedures, *Cóic Conara Fuigill*. The copy in TCD MS 1318, *olim* H 2.16 (the Yellow Book of Lecan) cols. 920-938 is preceded by two stories of famous poets and a curious poem on the taboo (*geis*) of beard (Abbott and Gwynn 1921, 108-109). The last one copy, TCD MS 1337, *olim* H 3.18, pp.88a-111b[195], occupies a section by itself in this composite manuscript, and does not seem to have scribal or thematic connection with other sections (Abbott and Gwynn, 145). There is another text[196] which derived from *Uraicecht Becc* and *MV* II (L. Breatnach 2005a, 25), and this text in the manuscript (TCD MS 1308, *olim* H 2.15a, 78a-84a) is preceded by *Immacallam in Dá Thúarad* (Abbott and Gwynn, 91). The manuscript contexts of these texts are far more variegated and complicated than the first two copies discussed above; nevertheless, it is indicated by these manuscript arrangements that *Uraicecht Becc* was either read and understood in a poetic context, or together with other *auraicept/uraicecht* texts, despite the fact that this tract covers grades of many other professions besides that of the poets. The dialogue was conducted not only between chronological layers of the texts, but also between different branches of the learned tradition, as well as between the readers/scribes and the authors of texts.

Despite the gradual eclipse of the importance of canonical texts and the rising proportion of commentary in later manuscript copies (Kelly 2002, Charles-

[194] *CIH* 2255.1-2282.27.
[195] *CIH* 634.1-655.23.
[196] *CIH* 549.19-558.25.

Edwards 2014), the dialogue lived on: as we saw in Chapter 3, Old Irish texts are still being cited between the lines in a court pleading composed perhaps in the 16th century,[197] which may have witnessed the final stage of native Irish legal writing; and these texts are also clearly marked, paraphrased and interpreted in light of contemporary circumstances (see 3.3). Though no longer taking up a considerable portion of the page layout, the venerated ancient texts are still conversing with the present. By incorporating early texts and enshrining them as authoritative and binding, the pleading itself becomes a continuation of the textual tradition and shares its authority.

6.6. Final remarks

Narratives are an integral part of early Irish legal writing. Even within the strict definition articulated by modern narratology, there are at least 112 narratives in the full sense extant from all strata of early Irish law tracts. They serve various immediate purposes in the contexts, and some of them describe cases and thus bear legal significance. However, I have tried to argue in this thesis that the primary function of narratives as a whole in the law tracts is that of traditionalisation. The Irish learned tradition is a collective memory, an archive of texts from the past and about the past of the Irish people and the world they knew. Most of the texts in this archive are written in the form of narrative, as this is the most natural mode of discourse for recording cultural memories. Therefore both in content (as discussed in Chapter 4) and in form (as in Chapter 6) the composition of narratives in the law tracts, together with the employment of grammatical techniques and other means, actively associates law texts with the wider learned tradition which is collaboratively built up by various genres of texts. By merging into this tradition, early Irish law acquires its authority to

[197] *CIH* 2204.1-2208.19.

regulate the present, and at the same time contributes a legal perspective to other branches of the tradition. It is constantly reaffirmed, renewed and extended as new texts joined the *senchas*. I believe that this is the secret of the longevity and vigour of the Irish legal tradition that thrived for more than a millennium.

Much more work, of course, needs be done on this subject. Firstly, there are very probably still unidentified narratives lurking in the *CIH* or other unpublished manuscripts. Secondly, of the 112 collected narratives, 87 are now fully translated in this thesis or in other publications, and 17 others have been partially translated. Translating the rest of the texts, let alone providing a critical edition for all of the 112 items, would be a challenging, though surely rewarding, task. Thirdly, none of the narratives can be fully understood without considering the manuscript and legal contexts. Given the amazing variety and importance of legal narratives, even for a short narrative such as [44], a study of its manuscript environment and intertextual relationship with other texts, such as I have undertaken elsewhere (Qiu 2013b), will yield fruitful and inspiring results. In this thesis just two case studies on the legal significances of the narratives have been conducted. Though some narratives, such as [21] and [26], have been carefully studied, the majority of the law texts in *CIH* have not yet been critically visited by scholars. The amount of work in assessing the legal narratives is therefore a daunting one. But narratives from *Din Techtugud* ([5], [6] and [7]) and the so-called *Stories from the law-tracts* ([84]-[98]) will be interesting and complicated enough to serve as a starting point. Further investigation, moreover, needs to be done of the interaction between law texts and medieval *grammatica*, which requires another long-term project of collecting sporadic materials from throughout the law texts. These appealing avenues of development, hopefully, will be pursued elsewhere in the future.

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Appendix 1: Texts and translations of some narratives as listed and numbered in Chapter 2

The page and line numbers, *CIH* texts and translations are given here following the guidelines as described in 2.1.2. The Irish texts are given in italics and the translation in roman. Capital letters as printed in the *CIH* have been preserved. The relationship of the glosses to the canonical text is indicated by lower case letters in alphabetical order. In cases that contain both excerpts of canonical text and later comments, I use the bold type to mark out the canonical texts where they can be distinguished. Other exceptional cases in which I deviate from the said guidelines, such as places where normalisation of Old Irish texts, or division of lines for verses has been done, will be indicated.

[1]:

63.7-64.5:

CAN ROSUIDIU BĒSCNA RĀTHA LĀ? Ō DOCERR RĀITH AIMAIRGIN. AR IS ĒISIDE CĪADORAT RĀITH ĪAR CŪL DLIGID A N-ĒIRE. AIMIRGIN RĀTHACH. LAISĪ MBATAR .UII. RĀTHA DOBERT ĀEN A RĀITH TAR CEND CONAILL ACHLŪAITH. CO NDICIR DO EOGAN MAC DURTHACHT CONID CONULL CĪADOESCOMRAIR SLĀN RĀITHE ISIN INDSE-SO. NOCHIS ED SLĀN ASCOMRAIR DĪ RĀITH FOR RĀITH LA TAISIC A RĀITHE. CONI[D] DE GAIBTAR DĪABLAD NAITHGENA NĒICH ASCOMRENUR. FO COIBNE FRISS AMAIL BES.

Whence was the custom of *ráth*-surety in Irish law established?[198] Since the *ráith* (enclosure) of Amairgen was forfeited. For it is he who first provided 'back surety' of entitlement in Ireland: Amairgen 'of *ráth*-surety/ of enclosures', who had seven enclosures. He gave one as *ráth*-surety on behalf of Conall Echlúath.[199] And it was forfeited[200] to Eógan mac Durthacht, so that it is Conall who has first paid a compensation of surety in this island. And such is the compensation that he has paid to him[201]: an enclosure on top of an enclosure together with the restoration of his enclosure. So that it is from this that a doubling of restitution are taken for anything that is paid [by the surety], in proportion to it, as it should be.

97.18-24:

Aimhirghein dochūaidh re lāmhaibh Eoguin meic Durrthacht im baili dar ceann Conaill a meic 7 rolēicc Conall ēlōdh Eoghain imme 7 roīc Aimhirghein hē cen ēlōdh 7 in tan tīc Conall re dliged īcad baile aithgena 7 baile dīabalta 7 baile eneclainne re hAmhairghin. Cid fodera cen a īc d'Amhairghin in uilidhetu amach .i. Is ē fāth fodera sāer ar cinaidh inbleghuin hē nō is imma rāthaighes cheana rohagrad hē 7 nochon īcann rāith act ceartaithgein in nēich risī ndeachaidh nō go rolēicce fēin ēlūdh.

'[It was] Amairgen who guaranteed Eógan mac Durthacht with a settlement [i.e. the enclosure] on behalf of Conall his son, and Conall absconded from Eógan concerning it, and Amairgen paid it without absconding. And when Conall came [to submit himself] to the law, a settlement of restitution and a settlement of doubling and a settlement of honour-price were paid to Amairgen. Why did Armairgen not pay it out in the whole amount? i.e. this is the reason why, [because] he is exempt from surrogate's liability, or it is concerning his paying-

[198] Reading *ro-suidiged*; see *CIH* 906.36 *rosaigiged*, 1854.14 *ROSUIGED*.
[199] cf. *Echluaidhi CIH* 1854.18; *Echluaith* 2027.35.
[200] cf. *CIH* 1854.18 *co ndocerr.*
[201] Reading *dó*, See *CIH* 1854.14-36 below.

suretyship that he was already proceeded against, and the *ráth*-surety pays only the exact restitution of anything which he has guaranteed until he himself absconds.'

1854.14-36 (canonical text in capital letter or bold):

CAN ROSUIGED BĒSGNA RĀTHA LA FĒINE Ō DOCERR RĀTH AIMIRGIN .i. dorochuir a rāith, a (m)baile, ō Aimirgín, ***ar is ēiside cēdorad rāth īar cūl dligid i ndĒiriu***

Aimirgin rāthach, las mbatur .iiii. rātha, dobert aon a rāth tar cenn Chonuill Echlūaidhi *.i. Conall Cernnach,* ***co ndocerr do Eogan mac Durtachta*** *.i. co rotuitestar é .i. conado dorach in baile-sin, ūair is re lāim dochūaid-sim tar cenn a mic,* ***cona[d] Conall cītaescomrair slān rāithe isin innsi-seo*** *.i. conid hē Conall .c.duine ro-ūasal-comerinithur lānad nēirce tar cenn a rāthuchuis air isinn innsi-seo.* ***Nocas ed slān iscomrair dō rāith for rāith la taisic a rāithe*** *.i. rāith enecluinne 7 rāith dīabulta, fo[r] rāith aithgena atait-seic.* ***Conid [d]e gabur dīablad naithgena cīabu mēitt cīabu laighet*** *.i. conid de-sin gabur dīablad naithgena in nēich ro-ūasal-comeirnestar Aimirgín amach tar cenn Conuill d'īc ris dō do Conuill* ***Fo coibne fris amuil bes*** *.i. amuil bes an aithgin curub amluid bes in dīabla Cid fodera certtaithgin d'īc sunn do Conull i cinuidh a mic cin an uilliattaid rodlecht do macc do īcc dó. is ē in fāth: grādh flātha int athuir 7 is [s]āer ar chinuid inbleogain Cidh fodera, ūair rob fer fine do Aimirgin a mac, nach dīablad roīcustar amach 7 cethurdiabla d'īcc ris? is ē in fāth fodera: grād .uii.a roba saor ar cinuid inbleogain; nō dā nocha beredh [nech][202] cin a cēili isin aimsir-sin acht rob fer anfine cach nech dib a lleth re cēile; nō ōbus rāith urnuisi é, 7 achtugud roachtuigh nach īcfa acht certaithgin; nō dō is a nemuide cintaid tāinicc sē adhuigh in troscthi, 7 cindti co lēicfed cintach ēlōdh, 7 rogabhadh aithgin ūad, 7 innī roba cinnti do īc do cintach īar*

[202] Inserted according to *CIH* 1854. o.

lēicsin ēlōigh.

Whence was the custom of *ráth*-surety in Irish law established? Since the *ráith* (enclosure) of Amairgen was forfeited. i.e. his enclosure, his settlement, was forfeited from Amairgen. **For it is he who first provided 'back surety' for entitlement in Ireland: Amairgen 'of *ráth*-surety/ of enclosures', who had four enclosures. He gave one as *ráth*-surety on behalf of Conall Echlúath.** i.e. Conall Cernach, **And it was forfeited to Eógan mac Durthacht,** i.e. it was forfeited, i.e. it is to him that that settlement has become forfeit,[203] because it is on [his] behalf that he went on behalf of his son, **so that it is Conall who has first paid a compensation of surety in this island**, i.e. so that it is he, Conall, who is the first person that has nobly paid the full amount of *éraic*-fine on account of his suretyship on him in this island. **And such is the compensation that he has paid to him: an enclosure on top of an enclosure together with the restoration of his enclosure.** i.e. an enclosure for honour-price, an enclosure of doubling, on top of an enclosure of restitution are these. **So that it is because of this that a doubling of restitution is taken, however large or small,** i.e. so that it is because of that that a doubling of restitution is taken of that which Amairgen has nobly paid away on behalf of Conall, to pay it to him [i.e. Eógan] by him [i.e. Amairgen] with regard to Conall. **In proportion to it as it should be.** i.e. as the restitution is so that the doubling should be thus. What is the reason for paying the exact restitution here for Conall, for the offence of his son, without paying by him the full amount which has been due by the son? This is the reason: the father is from the grades of lords, and he is free from surrogatory liability. What is the reason, when his son was a kinsman to Amairgen, that he did not pay out the double amount and the fourfold to be paid to him? This is the reason: the 'sevenfold rank'[204] is immune from surrogate's duty, or indeed, no one used to

[203] Reading *conid dó doroth* according to *CIH* 1854. j, k.
[204] i.e. persons whose honour-price amounts to seven *cumal*s, *inter alia* kings and bishops, see Thurneysen (1926, 72–73).

bear the liability of another at that time, but every one of them was a man from outside the kindred towards each other; or since he was a ‘bound surety’ [i.e. a surety who guarantees for a limited amount], and he has stipulated a stipulation that he will only pay the exact restitution; or then it is outside of (i.e. before?) the fixed time of payment that he has come on the night of fasting, and it was certain that the debtor would have absconded, and what [amount of] restitution was taken from him, that was the fixed amount to be paid by the debtor after he absconded.

[2]:

106.39-107.3:

Trī meic robatar ac Meidbh banbriugu .i. Fir 7 Firsiu Fīachna Find 7 marbh Meadhbh 7 roroindset na dā mac eile tall in dībadh 7 robhī in Fīachna Find i namhsaine amuigh 7 rochuindichset in dīas robhī thall aithle a ronna 7 fīach gaitte gan aithghein ūathaib ann ūair tuccadh daibh hē nō fīach gaite gu naithghein ūair is taīsce rogatsat hē ina tuccadh daibh hē.

Three sons that Medb the woman-hospitaller had, i.e. Fir and Firsiu [and] Fiachna the Fair. And Medb died, and the two other sons divided then the inheritance, and Fiachna the Fair was away in military service. And the two who were there sought the rest of his share; and a fine of theft without restitution from them then, if it was granted to them; or a fine of theft with restitution, because it is sooner that they have stolen it, if it was not granted to them.

1546.11-19:

Bretha for techt Meadhba *.i. trī mic robatar ac Meidb .i. Fir 7 Firrseo 7 Fīachna Finn; banbriuga do hUltaib in Meadhb, 7 is é robo sineo díb in Fīachna, 7 robrond ní dia nairilliudh i teagh noīgheadh. doteachaidh-sim īarum Fīachna Find fón raind, ūair is é brāthir fororcongraiset fair congbāil in comorbais;* ***co***

luidh būaidhir for randa *.i. comusc forna ranna rob dír and ar tūs.* ***dia tēchta ōen la hilliu*** *.i. is and robo lán do āen imaille fris'n aile mādh rotēchtar.* ***mādh īar cumman cath dogēna*** *.i. mādh īarna comradh d'Fír 7 d'Firrseo frisindulaing amail roráidhsem.*

The judgments upon the property of Medb, i.e. Medb had three sons, i.e. Fir and Firrseo and Fiachna the Fair, this Medb was a woman-hospitaller of the Ulaid, and Fiachna was the oldest of them, and he spent something from their deserved share on a guest house. Fiachna the Fair came afterwards concerning the share, because he was the brother on whom they enjoined the holding of the patrimony. **And disturbance went upon the shares**, i.e. confusion on the shares which were there at the beginning. **If one is justified with another**, i.e. it is then it was full for one together with another if it was justified. **If it is after an alliance that he will wage a battle**, i.e. if it is after his conversing to Fir and Firrseo that he suffered as we said.

[9]:

226.31-36:

ARROGART PĀDRAIC INNA HINDSA-SO[a] ARNACON RABAD LA FIRU ĒIRIND I FLAITH IN RĪG LĀEGAIRE MAC NĒILL[b] DO CACH FLAITH[c] 7 DO CACH EACLAIS ARIDT ANFOLTAIG AND SO UILE[d]

a: rourgairister Pātraic na airnaile-seo is indsa nō is annsa .i. na trī deirgmīrenn co ba dī

b: .i. is ann rourgairestar īat

c: .i. is doīb rourgairedh

d: .i. ar is drochfoltach na harnaili-so uili

Patrick has forbidden [these abuses], so that they should not by practised by the men of Ireland, in the reign of King Lóegaire mac Néill, to every lord and to

every ecclesiastic;[205] for all these are delinquent remiss.

a: Patrick has forbidden these parts which are most difficult. i.e. the three 'red-portions' twice.

b: it is then he forbade them.

c: it is to them it was forbidden.

d: because all these parts are remiss.

[10]:

237.35-238.3:

NĪ TOCHTA IM FĪR FEAR FOICHLIDE[b] CORAB DO NOUD NEMDRONG[a] CO ROSUIDISDAR PĀDRAIG FĪR FER NĒIRIND[c] A NŌSAIB FLATHA[d] A COMCĒTFADAIB EACALSA[e].

a: .i. noco toinge do neoch conad ar fīrindi bit na fir bis ar fochal-cāe, ar clāenconair, co rasurdraicaigea imat fīr naīm .i. in fīr Dē.

b: .i. nī dechais do naill i n[d]īaid in fir bis for focal-cāe.

c: .i. can rosuidigustar Pātraic na fīra-sa do gleo fear nĒireand.

d: .i. Lāegaire 7 Corc 7 Dāire

e: .i. Pātraic 7 Benēoin 7 Cairrnech

No oaths are to be sworn along with the oath of a paid man until it be by the proclamation of the holy crowd, until Patrick has established the ordeal of Ireland according to the conventions of lords in agreement[206] with the church.

a: it is not to be sworn by anyone that the men who are on a 'payment path'[207]. on a crooked path, are telling the truth, until the multitude of holy oaths proclaims it, i.e. an ordeal of God.

b: i.e. you are not to go to an oath after the man who is on a 'payment path'.

[205] To this point the text is translated in L. Breatnach (2011, 35).
[206] *Comchétfad* is a calque based on Latin *consensus.*
[207] *Foichlide* is here interpreted 'etymologically' as *fochal-cae*.

c: i.e. whence has Patrick established these truths for the juridical decision of the people of Ireland?

d: i.e. Lóegaire and Corc and Dáire

e: i.e. Patrick and Benignus and Cairnech.

[12]:

240.21-28:

AR DOIMARNA PĀTRAIG NA TĪASDAIS NA COMDĪRI-SEO TARANĪ DORUIRMISEAM[a] A FĪR NAICNID[b] 7 COIBSE[c] 7 SCREBTRA[d] A NDUL GAN NĪ IS MŌ AR AT Ē COMDĪRE[e] AND SO ROSUIGEASTAR PĀTRAIC A NŌS FER NĒRINN ĪAR CRĒIDEAM .U.S. CONAIMEAS IN CACH DĪRE DO SUND LA HAITHGIN[f].

a: .i. arnā digdis na nēiche-sea adā cutrumus dīri daranī ro-reim-rāidsemar romaind, darna .u.s.aib.

b: .i. na fer fīren

c: .i. na crēisen

d: .i. naīm, in fir lēigind

e: .i. na nēichi a tā cutruma dīre

f: .i. da tecait dā bā; is ē nī ro-caīn-aimsiged nō rocotaimsiged in dīre cach nēich dīb-sin re tāeb naithgena.

For Patrick has commanded that these equal compensation should not go over what we have enumerated, according to the truth of nature and of conscience and of Scripture, they should go no further, because these are the equal compensation that Patrick has established according to the convention of the people of Ireland after the Faith: five *séts* have been adjudged in each of the compensation by him in this case with restitution.

a: i.e. for these things for which is equal compensation should not go over what

we have said before, over five *séts*.

b: i.e. of the righteous men.

c: i.e. of the believers.

d: i.e. holy, of the *fer légind.*

e: i.e. the things in which there is equal compensation.

f: i.e. which are equivalent to two cows; that is the thing that has been well pleaded or fixed in the compensation of everything of them together with restitution.

[19]:

688.20-29:

Cidh comad loc roaisnēdeadh ar tūs itir? nī, ord airic cruthaighte na ndūl, ar is talam 7 neam dorōnadh ar tūs; aimser suidighthi isin luc thānaisi, ar is nemcorpda in aimser; 7 persa isi[n][208] *tres luc, ūair is ō curp 7 o nemcorp roairis persu; in .iiii.ramad fo deoid, ūair nī frith remtēchtus romaind dona finibh fuine, filius opus. nō issed f[odera]*[209] *loc ar tūs, ūair dē mairt dorōnadh talam 7 muir; 7 aimser isin luc tānaisi, [ūair]*[210] *dē cētaīn tucad grīan 7 ēsca for rith, 7 is fria-side rīagailtir aimser; persa immorro isin tres luc, ar is dīa aīne dorighnedh Adham 7 anmanna in talman arceana; fāth airc dō fo deoid, ar is dīa sathairn robennacht Dīa na dūili 7 tucadh Adham d'follamnacht orro.*

Why is it that 'place' was mentioned first of all? Not difficult, the order of finding of the creating of elements, since it is the earth and the heaven that were made at first; 'time' was placed in the second place, since time is incorporeal; and 'person' in the third place, since a person consists of body and non-body;[211] [cause] in the fourth [place] at last, for prior testimony is not found before us by

[208] See *CIH* 688 k: 'sic, n-stroke omitted'.
[209] See *CIH* 688 m.
[210] See *CIH* 688 n.
[211] Reading *do-airis*, the Middle Irish non-deponent development of *do-airissedar*, as in the *Leabhar Breac* copy of *Félire Óengusso* (Stokes 1905, 2).

the kinsmen of… (?) the philosopher (*philosophus* etymologised as *filius opus*?).[212] Or it is this which causes 'place' [to be mentioned] at first, since the earth and the sea were made on Tuesday; and 'time' in the second place, because the sun and the moon were set in course on Wednesday, and it is according to them that time is regulated; 'person', then, in the third place, for Adam and the animals of the earth besides were created on Friday; 'cause of finding' then at last, for God blessed the Creation on Saturday and Adam was placed to rule over them.

[24]:

380.15-22:

Is īar sund rolātha[213] *ōena*[214] *tar aile, ar itbath fīr Fēne māna tīstais treisi, ar nī aircsenad nēch a dliged nach [a]*[215] *urdliged nach a gaīs nach [a] saīdbre cīa beith dō īar cūl. la ruirthiu aīne 7 taulbretha Ailella maic Matach conid tāinic Coirpre Gnāthchor nād rodamair nach ndliged nād beith for uīn acht a beith for .iii., 7 .u.thi 7 dēchmaid ara tīsad a fīr cāch a inbuidib breithe. Isī athgabāil .iii. cīataragba i nĒri i meth slōigid Ailella maic Matach.*

It is after this that [distraint of staying of] one day has been placed[216] in addition to [distraint of staying of] two days, for the truth of the Féni would have perished unless [distraints of staying of] three days arrived, for no one would strive for his entitlement or his surrogatory entitlement (?) or his wisdom or his wealth, though it would be supporting him (?) with the speedy-runnings of [distraint of staying

[212] cf. *CIH* 343.2: *dona fiib de rer na fellsam* 'in this manner (?) according to the philosophers'.
[213] Rec. *rolaad*, according to *CIH* 1903.21?
[214] Short for *athgabál oíne*, the same applies to *aile*, *treisi* which are the abbreviation for *athgabál aile*, *athgabál treisse* respectively, cf. *CIH* 377.9, 380.15, etc. The full meaning of such phrases may be *athgabál anta aidche oíne* 'distraint of staying of one night', rather than *athgabál anta die oíne* 'distraint of staying of one day' etc, as *día* is perhaps masculine (*LEIA*, s.v. *día*), and so is *lá*. For the formation of these words for periods of time, see Binchy (1941, 29, l. 167) and Greene (1971). In my translation, however, I use the more conventional '[distraint of staying of] one day' etc.
[215] For this and the following inserted *a* see *CIH* 1903.23.
[216] The translation here follows *CIH* 1903.21 *roláadh*.

of] one day and the hasty judgments of Ailill mac Mátach, until Coirpre Gnáthchor came to it,[217] who has not approved any of the entitlement which would not be on the [distraint of staying of] one day unless it be on the [distraint of staying of] three or five or ten days, so that the truth of everyone may come from the periods of judgment. The first distraint of [staying of] three days ever taken in Ireland is for the failure in hosting of Ailill mac Mátach.

[25]:

406.26-407.2 (excluding glosses):

Cid fris n-āragar aithgabāil cūicthe in dūl is gnāthu do grēs oldas cach athgabāil. Fo bīth na rōe fechtae iter dīs i Maig [I]nis[218] *ō tāinic co tabairt a nairm doaib acht fīadna namā dofeisid ben occaib i maigin na rōe 7 guidsius im anad forru. Asbert mād mo chēile nobeth and atētad anad foraib noainfaind-se al andalai naī acht is andsa dondnī doboing is hē a les anas anfait-se*[219] *ol suide immanad dī in rōe acht nī fetatar cīabad airet aracurthe co fuigled Conchubur imbi 7 Senchae. Co nimchomarcair Senchae cīa ainm inna mnā-so. Cūicthi olsi mo ainm-si imanad in roī ol Sencha i nanmaim inna mnā co cūicthi is de atā adbath fīr Fēini manipad cūicthi isī Brīg inso fil for Cūicti.*

By what is the distraint [of staying] of five days bound? Since it is always more frequent than every [other type of] distraint. Because of the combat fought between two persons in Mag Inis. When they came to put their weapons to each other, except pnly for witness, a woman who was seated by them in the place of the contention, and she prayed to them for a delay upon them. She said, 'if it were my husband who was here, he would attain a waiting period from you.' 'I would wait,' said one of the two, 'but it is difficult to the one who pursues [the

[217] But cf. *CIH* 1903.25 *GO TĀINIC* 'until C. G. came'.
[218] See L. Breatnach (2011, 26, n. 79).
[219] Middle Irish of the 1st. sg. fut.

debt]. It is [for the interest of] his cause that he waits.' 'I will stay.' said the other one. The contention then was delayed, but they did not know what would be the extended length, so that it was submitted to Conchobar concerning it and Sencha. And Sencha questioned (?) what the name of this woman is. 'Cóicthe (five days),' she said, 'is my name.' 'Let the contention be delayed,' said Sencha, 'according to the name of the woman until the fifth day.' It is because of this it is [settled]. The truth of Féni would have perished unless it be of five days. It is Bríg here that is [taken] as Cóicthe.

[35]:

687.37-688.20:

Loc do liubar-sa Fuithrime Cormaic; 7 aimser dō aimser Findgaine meic Cāe cin māthair no meic Con cen māthair; 7 persa dō Amairgin mac Amalgaid mac Maīl Rūain do Dēisibh, co nebradar fir Muman ris dul d'foglaim Fēinechais, 7 adubairt-sium na raghad co tugad lōgh aire; 7 is ē lōg rocumdaigh in elada do dēnum īar tīachtain amuig; fir Muman do comāentugud ris uimpi; 7 is sī in elada-sin dā lebar .x. na Fuithrimi do dēnam; 7 adrubradar-sum doaāentagfitis da dēnum acht co fāghfatis āenmagh ara tuillfedis, 7 āenloch asa tibritis a sāith ēisc 7 uisq, 7 āencaill asa tibridis a sāith connaigh 7 cāelaigh, 7 āenslīabh asa tibritis a sāith fīdhaigh 7 tuighedh; 7 noco frīth sin ach Magh Fuithrime; 7 Cormac robo[ī] rīghi air; 7 adubairt Cormac nā lēicfedh dōib é gan lōgh, 7 iss ē lōgh rochuindigh air: in elada do ainmniug ūad fēin .i. Fuithrime Cormaic hī ō sin amach .i. ōn magh; 7 Loch Lēin ainm in locha; 7 in Mangairt ainm na cuilledh; 7 Conn Tuirc ainm int slēibhe; co tāinig Amargin mac Amalgaidh meic Maīl Rūain dona Dēisibh cucud 7 co tuc glūnsnāithi filed .f. ; conad amal sin dorīnedh in dā lebur .x. na Fuitrime; 7 rotaisbenad in grēs-sin īar sin do Pātraic īar taidecht; ro bennaidh 7 roāentaig 7 rocomlīn a canōin a esbaid eile, 7 roscris a chlāen 7 a forbann rechta uile 7 a glōr geintlighi, ūair nīr cuir as acht forbann

rachta uili no glōr geindtligi, ūair rofulaing Crīst mōr do recht rouairbai rēime, amail asbert in fili:

rocum[220] *dōib Pātraic prīmdha*
dliged is racht rorīgh[d]a
dodh siladh is do termonn trebh
do cinedh mearlonn Mīleadh
(I)nīr dichair don reacht rēimi
acht forbann no glōr gintligi
fis na nāem is nert na rīgh
clāen roscris, ceart rocomlīn.

The place of [the making of] this book is Fuithrime (or Fuithirbe) Cormaic; and the time is the time of Finguine son of Cae-cen-máthair or son of Cú-cen-máthair; and the person [responsible] for it is Amairgen son of Amalgaid son of Máel Ruain from the Déssi, and the people of Mumu told him to go to study *fénechas,* and he said he will not go until the price for it was given. And such is the price that he achieved, namely to produdce the composition after coming from outside, and the people of Mumu to agree with him concerning it; and that is the craft, namely to make the twelve books of Fuithrime; and they said they would agree to make it, provided they would receive a plain on which there would be room for them, and a lake out of which they would bring their fill of fish and water, and a wood out of which they would bring their fill of firewood and twigs, and a mountain out of which they would bring their fill of timber and thatch and the only such place which could be found was the plain of Fuithrime, and it was Cormac who had the kingship over it (i.e. the plain); and Cormac said that he will not release it to them without a price, and such is the price that he sought for it: to name the craft after himself, that is, it is Fuithrime of Cormac ever since

[220] Reading *ruc-sium?*

then, that is, from the plain; and Loch Léin is the name of the lake, and In Mangairt the name of the wood, and Cenn Tuirc the name of the mountain.[221] And Amairgen son of Amalgaid son of Máel Ruain from the Déssi came to them and he put the 'thread of poetry'[222] under it. And it is in this manner that the twelve books of Fuithrime were made; and that artistic work was afterwards shown to Patrick after [his] coming; and he blessed and combined and fulfilled its canon in other deficiency, and he wiped out its perverted parts and all their excessive rules and their gentile utterance, because he did not put them out except for all excessive rules or gentile utterance, since Christ had suffered to remain a great part of the rule that existed[223] before him, as the poet said:

Preeminent Patrick composed[224] for them,
very kingly entitlement and rule,
for (?) sowing [the faith] and for sanctuary of settlements,
for the wild and fierce race of Míl.
He did not banish from the rule before him,
save for the excessive or the gentile utterance;
wisdom of the saints and strength of the kings,
he obliterated the crooked, he fulfilled the correct.

[36]:

725.14-19:

Comrag Coluim fri hĀedh: Eochaid Dallān do .x. mesraib romidhair a rosaigh dia coibdealach asa hūaidh eneclann. .i. Eochaid Dallān, as é romesemhnaighistar a .x. measrachaib an airit roinnsaither eneclann do lucht an ūadh ina coibdealachus .i. x. mesra usci, 7 in .x.madh mesar mesar an lomadh 7

[221] For the location of these placenames see Ó Coileáin (1989, 26), where he points out that Mag Ḟuithirbe is located at the Muckross Desmense of present day.
[222] Reading *filed* as *filedachta?*
[223] Perhaps a form of *for-tá*?
[224] Perhaps based on the late formation *cummaid* of *con-ben*?

in .x.madh fer fer na hacra. no noī mesra uisce 7 mesar uis uiri; is ed-sin rosaigh eniclann an fili dia coibdelchaib co nonbur.

[There was] an encounter [between] Colum Cille and Áed: Eochaid Dallán has measured [his poem] with ten metres that [his] honour-price [which derives] from his composition reached his kinsmen. i.e. Eochaid Dallán, it is he who has estimated in ten metres, the extent to which [payment of] honour-price to the people of poetic art is extended to his kindred, i.e. ten metres of water, and the tenth metre is a 'metre of bareness', and the tenth man is a man of lawsuit. Or nine metres of water and a metre of man's strength;[225] it is that that the honour-price of the poet has reached his kinsmen until the ninth person.

956.14-17:

Eochu Dallān daillēigis do .x. mesraib romidair ar rosaigh dia coibdelachus asa hūadh eneclann .i. iss ē airet roindsaighther eneclann do lucht na húadh 'na coibdelachaib corigi .x.nebar da bhuil ar aird, no gorigi mōrseiser dona tīarmoraib;

Eochu Dallán the blind poet has measured with ten metres, because [his] honour-price [which derives] from his composition reached to his kindred. That is, the extent that the honour-price to the people of poetic art is extended to his kindred until the tenth person if he is of the nobles, or until the seventh man [if he is] from the followers (?).

1113.4-5:

Comhrac Coloim fria[226] *hĀodh, Eoch[aidh Dallān]*[227] *do dhēich mesraibh ro mhiodair ar ro saigh dia choibdealchaibh, as a úadh*[228] *eineclann.*

[There was] an encounter [between] Colum Cille and Áed: Eochaid Dallán has

[225] Lat. *vis virī?*
[226] Reading *fri.*
[227] Words between this pair of brackets are supplied from O'Curry's transcript, see *CIH* 1111.a.
[228] Reading *úaidh.*

measured [the event] with ten metres, because [his] honour-price [which derives] from his composition reached to his kindred.

[41]:

847.8-11:

Et adubairt Crīst: mā tā duine glan agaib, būailed sē cloch uirri-siud, 7 rosāer sē an bean ō nach roibe; 7 ō sin anūas nī dligenn cairtech cair do cur a naigid cairthaigh aile; 7 der in l`eginn: qrimenosus qrimenosom acusaire non potest .i. beth glan gan locht dodligfi duine ag tuba uilc fri 'raile.

And Christ said: if there is an innocent person among you, let him throw a stone at her, and he freed the woman since there was no one; and from then on a guilty person is not entitled to lay inquiry into the face of another guilty person; and the written law says: a criminal cannot accuse another criminal. i.e. being innocent without fault is what a person ought to be when reproaching the fault of another.

1924.1, 7-9:

mar adeir: creminosus criminosum acusore non potest. .i. beth gan locht dodligfī duine ag tuba uilc;

7 amail adubhairt Crīst risin mnaī Cannanda: mā tā duine glān aguibh, būailit sé cloch uirthi-siut; 7 mar nach fūair, do tsaor sé in ben.

And it says: a criminal cannot accuse another criminal. i.e. if he is innocent without fault, the man will be entitled to reproach the fault.

And as Christ said to the Canaanite woman: if there is an innocent person among you, let him throw a stone at her, and as he did not find [anyone], he freed the woman.

[42]:

877.16-28:

Tūathal Tēchtmar rocachain in roscad-sa ocin līcc ōga narrnocht Sencha mac Aililla in tan fogellsatt Ulaid um tīr .xxx.aid cumal do breith leo ar aonboin i naimsir nauna māire dothāinig; conīachtatar dō comarbai in tīri īar dain in tír-sin, 7 fogellsad Tūathal Tēchtmar nimbi; 7 nība hurusa lais a breth co tāinic a hUltaib Sencha, co cachain in roscad-so: mād tú do līagh 7rl-; in tan dī contoil Tuathal, co gūala in guth do dcins[229]*:*

In comtail Tūathal Tēchtmar ferat fod fuiglet fosaigthe forsuighthi for nauna nadmaim nibadh ae breth berdda do cilur etha sceo blecht di trentecht dibath .i. beis mairb uili a morfesiur mani dhernad in bo a mbethaid.

Cilar etha sceo blechta .i. rocudrumaidhset breithemain iter ith 7 mblicht .i. ni desruithe leo mblicht na bō for eleangar anmain in mōrfeisir oldās ith in tīre mōir īar dain cīa folō son sochaide; in mbō dī romes frisa tīr-sin sin mōrseser(?) robethaiged fria mblichd.

Túathal Techtmar has chanted this *roscad* on the flagstone at which Sencha mac Ailello was found,[230] when the Ulaid submitted a pledge concerning a land worth 30 *cumal*s to be adjudged with them [in exchange] for one cow at a time of great famine which has come to them;[231] the heirs of the land then sought that land afterwards, and they submitted the case [to] Túathal Techtmar concerning it; and it was not easy for him to adjudge until Sencha came from the Ulaid, and he chanted this *roscad*: 'if it is you ... (?)';[232] and then when Túathal slept, he heard the voice to him speaking:... (here follows the *roscad*)... i.e. all the seven persons would be dead if the cow had not kept them alive.

A vessel (?)[233] of corn and milk, that is, the judges balanced corn with milk, that is, they do not consider the milk of a cow[234] which sustained[235] the soul of seven

[229] For *dicens*, see *CIH* 877.f.
[230] Reading *oca n-arnecht*?
[231] Reading *doda-ánaic*?
[232] This corresponds to the *roscad* above: *ma tú do lia laidhib no laebhaib… CIH* 877.12 ff.
[233] Reading *cilorn*?
[234] Reading *boin*?

men inferior to grain of a large land afterwards though the latter would sustain a host. The cow, therefore, has been evaluated against that land of the seven men who have been brought to life by her milk.

[46]:

884.1- 9:

O rusuigigestar Pātraic 7 maithi fer nĒirenn in dligid-sa, is īarom conaimdetar cīa tucht dombibsat a dliged do cach fohich friu .i. clocc 7 salm d'eclais, gell do flathaib, trefoclad do filedaib, aithgabāil do Fēinib, amail asbeir: dofēd athgabāil cach tobach inge mā tobach do nemthib 7rl-. Dofét trōscad a tobach-side 7rl-. Intī islaī nād ōige rēr do trōscud 7rl- Iss ed cōir troiscthe lā ārach forsan arag 7rl-

Os in athgabāil, cīa dia rogabad hi tosach lā? nī, rogabad di andligiud 7 di anfēnechus cāich do ēlōth a chirt 7 a choir, 7 do timargain cāich do coruib bēl, ōre ais ned rohuic Pātraic astad cāich ina coraib bēl.

Since Patrick and the nobles of the men of Ireland have settled this law, it is then that they regulated in what manner they will enforce the entitlement from everyone who violates them. i.e. bell and psalm [book] for the church, pledge (or perhaps reads *gíall*, hostage?) for the nobles, *trefocal* for the poets, and distraint for the commoners, as it says: 'distraint precedes every levying except for levying by the *nemed* class, etc.';[236] 'fasting precedes levying against them etc.'; 'he who absconds without fulfilling the demand of the fasting etc.'; 'it is lawful to restrain every fasting on the nobles', etc.[237]

As for distraint, why was it first taken in Irish law? Not difficult, it was taken

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[235] A spurious formation of *fo-loing*.

[236] But see a passage supposedly cited from *Di Chethairślicht Athgabálae*: *Dofēt aurfōcra cach nathgabāla lā inge mā do nemthib no mā for nemthib* 'notice precedes distraint according to Irish law except by the *nemed* class or upon the *nemed* class' (*CIH* 365.5-6 and other copies).

[237] cf. the relevant passage from *Di Chethairślicht Athgabálae* (*CIH* 366.16-17, 367.6-7). The citation in [46] may be slightly corrupted.

because of the illegality and the *fénechas*-violating [behaviour] of each one in defaulting his right and his duty, and in order to compel everyone to [hold on to] contracts, because what Patrick has adjudged is that everyone is to be held onto his contracts.

[48]:

1578.16-19

Sencha mac Aillella rorāid and so fri Conchubar īar ngabāil athgabāla do Bla Briugaid do Rumanda 7 dia athair īar rēic in tīri ō Buaiss co Bōind, 7 dorat .uii. rātha a taissic a lōighi: Celtair ō filedaib 7 Ainli ō rīgaib 7 Bla Briugu ō briugudaib.

Sencha mac Ailello said this to Conchobar after the taking of distraint by Blaí the Hospitaller from Rumen (?) and from his father after the selling of the land from [the river] Bush to [the] Boyne, and he provided seven sureties to restore his property: Celtar from among poets,i and Ainli from among kings, and Blaí Briugu from among hospitallers.

[49]:

888.24-26

lōg mberrtha, .i. tōcht tria lethtōeb co rolīna a thond a bēolu in demis .i. ara lethad, 7 caep carna do loairc co forlouige[238] *iarn na scine; is as rogabad trā in muc bertha, asind(n)ī muic immaberthe la Concobur īarna berrath fo .c.ōir, amail imaberthe molt foilcdi lia mnaī do mnaib Uladh īar folcad di-si.*

The price of hair-cutting, i.e. a portion [of meat] through one side of it until its skin may fill in the mouth of a pair of scissors, that is, for its width, and a lump of flesh from the thigh so that it may cover the iron [blade] of the knife; it is

[238] Rec. *forloinge.*

thence that the ‘pig of hair-cutting’was taken, from that pig which used to be paid (?) by Conchobar at once after his hair was cut, as ‘a ram of washing’ used to be paid (?) by his wife to the women of Ulaid after washing [was given] to her.

[53]:

1027.13-18:

rīgh mōrtūaithe robuī ac Fergus 7rl-; slān co trīan giolla Fergusa, ūair frithaige robuī aigi, amail docūaidh frithaige a cenn an giolla, docūaidh a cend cota Fergusa; 7 is as-sin is follus frithaige do dul a cend cota Fergusa amail téit a cenn cota an duine fén; 7 leth risin cintac gebhus greim frithaige brīathar ri gnīm, 7 obus a leth re inbleogan, nōco geibend greim frithaige .b. ré gnīm.

Fergus had kingship[239] of a large *túath* etc. The *gilla* of Fergus is exempt up to a third, because he had a counterplea, as the counterplea went against the *gilla*, it went against Fergus’s share; and it is thence that it is clear that the counterplea goes against the share of Fergus as it goes against the share of the man himself; and half for the criminal who takes the effect of the counterplea of words before deed, and if it is a half for the surrogate surety, he does not take the effect of the counterplea of words before deed.

2145.33-39:

Rī mōrtūaithe robuī ag Fergus ria techt sīar, 7 gid tīar nobid, na lāmtha a bēin ūada gu n-aurra cach duine di Ulltaib i leth ris ginmothā Conchabar; 7 frithaigi robuī ‘gon gilla, 7 slān co trīan hē fēin 7 slān co trīan cach fodail eneclainni dlegait a cind 7 a coibdelaig as; 7 is a[s] sin as follus go tēit frithaige i cenn cota na cend 7 na coibdelach amail tēit a cenn cota in duine fēin. Nonbor dlegar do dēnam nōis dligthig .i. rī 7 fili 7 briugu 7 espag 7 fer lēigind 7 ollum 7 aigne 7

[239] Reading *righe*?

aire forgill 7 aircindech.

Fergus had kingship[240] of a large *túath* before going west, and though it is in the west that he used to be, its removal used not to be dared from him so that each man of the Ulaid pays towards him besides Conchobar, and the *gilla* had a counterplea, that he himself was exempt with the third, and exempt as far as a third is every division of honour-price, which his head and relatives are entitled to out if it; and it is thence that is clear that the counterplea goes against the share of the heads and the kins, as it goes against the share of a person himself. Nine persons are required to fulfil the legal convention, i.e. king and poet and hospitaller and bishop and *fer léigind* and *ollam* and advocate and *aire forgill* and erenagh.

[55]:

1111.1-11

Normalisation and translation of 1111.1-5 by Liam Breatnach:[241]

Modarn mór uisce/ brígach forfaílid/ Fosaid for-tét a nert/ Maraid íartach n-aithenaig/ braite bratas/ Aithirne athmochta/ molad Modairne/ laid ar-a – chai[n] [242] */ ní h-airget finn foichmen/ for-rét for a ndrúba sal/ sceó de dochóem[n]acht/ do-aisic a dath/ dia aír antar/ aiged cach airgit/ acht co ngúairiu glantar.*

Modarn, great among waters/ powerful, very joyous/ its strength firmly aids./ It retains restitution for dishonour/ of plunder which/ very powerful Aithirne plunders./ Praising of the Modarn/ [is] a poem which he makes./ It does not tarnish fine silver./ It rides onto their dwellings of filth/ and of ignobility./ It recovers its colour/ if it be blemished by satire/ the face of every silver/ provided it be polished with a bristle.

[240] Reading *righe*?
[241] At the DIAS seminar, Oct. 2014.
[242] Emended from *CIH* 1111.3 *aracuir*.

The following translation of the rest of the passage is of my own:

La sodhain ad-chumaing an abhann ina tuinn amhail ro bhaoi rīamh. 7 an ro bhāidh uile nīcon rug cidh liagh ná cuagh ná lūagh fástruaille cloidimh lē, acht for fǽguib for tír, 7 nocha raibhe sechtmhadh fuithribhe othá sin go ruige muir do neoch forsa ndeachaidh ar nar fǽgaib frais do nemhannuibh inde, no ní d'īasg, no murthoradh bá maith do thoisgidh; 7 asé an moladh do nigh aoir ann sin; 7 as aon ann sin dia mbaoi dosum Athairne áilghesach.

With that the river in its tide returns to be as it was before. And all what it has drowned it did not bring even a spoon or goblet or the equivalent of an empty swordsheath with it, but it left them on the ground, and it was not a seventh of an arable land to anything on which it has come,[243] from that until the sea, on which it did not leave an abundance of wealth[244] of pearls, or any fish, or sea-produce which was good for food; and it is the praise that washes away the satire then, and that is one [reason] why he was called Athairne the Importunate.

[56]:

1111.12-18

in Chāin Einech so thrá doruirmhisiom, do rónadh la rīoghuibh, 7 filedhoibh Éreann ó thosach domhain, ro naomhadh 7 ro nuaidhighedh la Pādraicc mac Calpruinn 7 la Dubhthach macu Lughair an file in aimsir Laogaire meic Néill, 7 im-deisidh la fearaibh Ēreann a beith gan dīol gan diobhadh go brāth, cidh idir chrīochaibh imdergaibh airm imba díles do chāch colann a chéle do ghuin. niba dīles a aighidh do aoir; amhail asbeir i mbainbhrethaibh Uin meic Aimh.

This *Cáin Enech* then that we have mentioned[245], it was made by the kings and

[243] i.e. the Modarn had come over a vast tract of land.
[244] Reading *indib*?
[245] Reading *do-ruirmisem*, cf. L. Breatnach (1987, 58).

the poets of Ireland since the beginning of the world; it was sanctified and it was renewed by Patrick son of Calpurnius and by Dubthach maccu Lugair the poet in the time of Lóegaire son of Níall, and it was agreed upon by the people of Ireland that it should be without discharging [and] without extinction until Doomsday, even between mutually hostile territories, where it would be legitimate for anyone to wound the body of another, it would not be legitimate to satirise his face, as it says in the white judgments of On mac Aim.

[57]:

1112.13-17

as ī an aor go ndath molta, amuil ro gabh:

caimper iomgona im comhlaidh a thighe

imsging imbī conair cham

faochain do ceil lermhuighe lind

as goin do dhealg droighin flann.

It is the satire with a hue of praise, as it was:

A champion of wounding by the doorway of his house,

a sleeping-chamber into which there is wont to be a crooked way

of a periwinkle, which the water of a sea plain conceals;

it is a gory wounding with the spike of a sloe.

[58]:

1112.18-23:

As é an moladh go ndath aoire, amhuil dorighne Aithirne:

Dubh Dhūanach

dubh dhruth chongbhalach cūanach.

focheird crand mbūarach

la gach funghaire solus

sreathaight(h)er eich fo dubhrothuibh dorus.

This is the praise with a hue of satire, as Athairne composed [it]:

Dúanach the Dark,

dark and wantonous, supporting and full of troops,

who places the bar of spancels,[246]

by each bright daybreak,

horses are arranged under dark wheels by the doorway.

[64]:

1123.3-11

Fergus Tuile rí ua Līatháin, no Fergus file a fīan-ainm. Fort-roirgeall Fergus fer fria dorair daingen; Dechraighis Cormarc ua Cuinn cétchathaigh. con-aicert īar bfíorfásaighibh; Fergus file tuile fíor lásuidhe, aiccedh chles, cuach deoghbhaire, esgra márchuarta, minister gráidh uasail, srīan techtaire. carpad sguiress túath, carpad beireas būaidh aonaigh, arm aracleith tūatha, claidhemh, cletine, cathbharr, calg déd, ro híochta uile aigdhibh airchenna iarna mbrúdh, bidh sáor ar chios gach cionaidh acht a cionaidh fadheisin, nad aircheil fria gnúisi, airfide, ara biatha, ara gealla túatha, tsolamh damh aithgin cirt cathchú go naóndán duitsi.

Fergus Tuile,[247] king of the Uí Líatháin, or Fergus the Poet as his warrior-name. Fergus had invoked a man to testify with respect to his hard conflict. Cormac ua Cuinn Cétchathaig made the distinction, he reached the decision according to the true learned texts; Fergus the Poet, abundance of truth with him, instruments of feats, a goblet of a cupbearer, a vessel of a great banquet hall, a minister of noble grade, a dagger of a messenger, a chariot which a *túath* unyokes, a chariot that

[246] Or otherwise: ‘she places the pole in morning’.
[247] Literally ‘of abundance’.

brings victory of the assembly, a weapon that wards off the *túath*s, a sword, a small light javelin, a helmet, an ivory-hilted sword, all [of these] have been paid to the prominent faces after their destruction, he is free from tribute of crime except for his own crime, which does not take away from his face, (?), so that he may feed, so that he may fore-pledge the *túath*s, a speedy ox as restitution of right, a battle-hound with nine skills to you.

[67]:

1144.7-19. The line division here follows that of *CIH*:

Fīthal Fīrgaoth mac Aongusa maic Muiredaig maic Reth asbert an breith-so īar coll shūla Cormaic, curab inn dorochair descert mBreagh a ndīlsi do Chormac 7 dia sīl. mar ader:

nīs deilbh in Dīa trūaill-[248]

nacat sainnriud sāraigthe

fogal fri Dīa ndilghedac

manab tīre tū[a]rgabar

nīr īca cid fīrmedhach[a]

fosaighther tīr nAongusa[b]

foruair sār for sochaidi[c]

eochraib āithrib aithighe

olc aithle do sochaidi[d]

suthain raod rān rīghaneim

a torchuir leath mBreaghmaige[e]

noch ō forfuich senadhamh

adbathadar mārdūili[f]

a: *i. māna gabtar tīr isan ēiric, nīs turgeb na cinta, cidh fīrmedhach seachus forra. ōir ni bera gae.*

[248] I have omitted the speculative expansion in *CIH* 1144.9 *truaill*ige.

b: *.i. fosaighther Aongus cona tīr a ndaoraigillnecht, no fasaighther Aongus uma thír 7rl-.*

c: *.i. Aongus 7 a brāithri.*

d: *adhon d'Aongus*.

e: *.i. a leth a ndaor.a.*[249]

f: *adhon adbathadar tresin iumurbus uile toradh Parrthus ar Adhamh. atbathadar ar Aongus a tīre.*

[It was] Fíthal the Truly Wise, son of Óengus son of Muiredach son of Reth, who said this judgment after the wounding of Cormac's eye, so that it was in compensation for it that southern Brega fell into the possession of Cormac and his progeny. As he says:

God did not shape the defilements,[250]
for they are special violations (?)
[It is] an offence to the lawful God
unless the compensation is exacted
he cannot heal though he be a true doctor[a]
The land of Óengus is fixed [as recompense?][b]
he has caused an insult upon many[c]
fierceness with sharp spear-edges[251]
evil is the consequence to many[d]
an everlasting thing, conspicuous is the kingly blemish
in compensation for which half of the Brega plain fell forfeit[e]
for since old Adam has offended
the great creation has perished.

a: i.e. unless the land is taken for compensation, it will not take away (?) the

[249] i.e. *daoraigillnecht*.
[250] Reading *drúailnidiu.*
[251] Reading *eochraib áithib*.

crimes, though it be a true doctor who declares[252] upon them, because he would not give falsehood.

b: i.e. Óengus is established with his land in base-clientship, or Óengus maintains concerning his land etc.

c: i.e. Óengus and his brothers.

d: i.e. of Óengus.

e: i.e. half of it into base-clientship.

f: i.e. all the fruit of paradise died (i.e. were forfeit) through the Transgression as a punishment for Adam, his lands died as a punishment for Óengus.

[68]:

1176.9-15:

Comhad ē Cormac hua Cuind adereth ag fīachugud Luigdech mic rīgh Connacht: 'amail atā aithgin in cach nī dībh-so sīs,' ar sē, 'is amlaid atā aithgin m'ingine dam-sa 7 aithgin m'eneclainni re tāebh.' no comadh é Coirpri Liphichar macc Cormaic adereth hē ag sāerad a comdalta .i. 'amail na fuil acht certaithgin in cach nī dīb-so,' ar se, 'is amlaid na fuil acht certaithgin t'ingine duit-si cin dīre cen eneclainn.'

And it was Cormac ua Cuinn who uttered it while seeking compensation from Lugaid son of the King of Connacht: 'as there is restitution in each of these things below,' he said, 'therefore there is restitution for my daughter to me and restitution for my honour-price besides.' or it was Coirpre Lifechar who uttered as he was freeing his foster brother, i.e. 'as there is only an exact restitution in each of these things,' he said, 'therefore there is only an exact restitution for your daughter to you without compensation without honour-price.'

[69]:

[252] Reading *seches*?

1244.18-1245.16. I have divided the lines below in accordance to the pattern of linking alliteration and on semantic grounds:

CLADAIR FIRT,

FUIRMIGTHER LIA,

LIGAIRNE LAIGEN[a]*,*

ŪAS DINNAIB[b]*.*

DORENAR .X. S.AIB[c]*.*

SEAGUR COMLĀITHRE

GOA TRĪ TAR MUIR[d]

TUILE FEIRGI[e]

FĪACAIL CON GLAS[f]

CŌ[253] *MŌR*

MUNA LIA LEASUGUD

LUIGDEACH LUIGE[g]*.*

LUGAID LĀTH GAILE[h]*.*

GŌBĒL[i]*. GLOND*[j]

LAIS BAIL[k]*. LAIS COMBAIL*[l]*.*

CĪASA TROGUIN ART

ĀENFEAR AIRMDEARG[m]*.*

AR IS FĪADU EIRGEMAIN

FĪADO INNOMIN IN TĪR[n]*.*

a. roclaidheabh a feart 7 rofuirmeadh a līa, a ainm, Ligairne Laigen; trī muirchairthe tuc Mac Con lais tairis: Bēine, Olcān, Ligairne.

b. .i. ūas tulchaib Laighin no ūas aibhindib Laighin robaī a māerighecht.

c. .i. innsaiter deich sēoit ann dā tecait seacht mbā 7 samaisc .i. u. bā mōra and .i. (rec. 7) u. samaisc, a tabairt-sein ar dā mbūaibh 7 ar samaisc; na .u. bā

[253] Reading *GÓ.*

riu conid seacht mbā 7 samaisc, corpdīre lūathmurchairti sin.

d. .i. innsaigter cuma -lāithrighudh a chinadh fair co rohathchuire hē tar trī tondaib mara.

e. .i. iumat feirge no līnaid[254] *feirge*

f. .i. in cū fīaclach gabair tar glas na fairrge

g. .i. as mōr in gāe māna leanad cinta leasuighthi do Lughaidh lāechda nō do Lughaidh do Chorca Luighde.

h. .i. robo cluthcarthanach lais gail do dēnam.

i. .i. gó adbal ō bēlaibh.

j. .i. donī glona mōra

k. .i. as lais an maith-sin do bith aici.

l. .i. as lais innī comarthnaighther ē mā thā olc.

m. .i. cē rodeargad-sum ag roguin inn Āenfir darbudh ainm Art.

n. .i. ar is fīadu a rogēnair duine Mac Con a cind ar tīre madia ruca fīrbreith orainn, nō as fīadu adrogēanmair-ne Mac Con madia rucam breith, no as fīadu as indomain duinn Mac Con madia ruca gūbreith oirnd.

is ē fochan na breithe-seo .i. Mac Con do dul a mBreatnaib īar mbrisiud catha Cind Adhbrat fair īarsin mbreith ruc Oilill Ōluim eaturu 7 a mac um Ibar Mac nAingcis, ait a raibhe Fear hĪ mac Eogabuil; co tāinic a timgaire do taighecht a Breathnaibh a nĒirind, cor fastatar Breatnaig acu hē fa dāigh in chatha rofūacra forra ō Saxaib; 7 ni frith ō Lugaid anad co tactha a rogha do trī cūradaib Brethnaib lais a nĒirind, 7 tucad dō-sam sin 7 ronaidhme, co rocuireadh cath ferbfearta leo for Saxaib .i. deismirecht fair:

Cath fear ferta rofearadh,/ maith le Breatnaib do bunad,/ Mac Can ca…[255] *da cūradh./ fri tol rostarla treabur .i. tarla naidm and. tāinic īarum a nĒirind, 7 tuc lais na trī cūraidh-sin a nĒirind .i. Béine Brit a Connachtaib 7 Olcān Imglinde a*

[254] *unadh* in O'Curry transcript, *CIH* 1144.o.
[255] A few letters illegible.

Mumain 7 Ligairne Laigen a Laignib; 7 bristear lais cath Muigi Mucrime for Art mac Cuind co torcair Art and, co rogab Lugaid rīg nĒirind; 7 baī Ligirne ag dēnum fogla a Laignib co romarbsut Laigin hē, con and ruc Ceasárr druī in mbreath-so .i. cladair feart.

Let a grave be dug,
let a stone be placed,
of Ligairne of the Laigin[a],
above prominent peaks[b].
Ten *séts*[c] are compensated,
[recompense of] accompliceship is sought,
as far as[256] their three [waves?] across the sea[d257]
full tides of anger[e].
Tooth of a *cú glas*[f].
[It is] a great wrong,
unless recompense would follow
the oath of Lugaid[g].
Lugaid the warrior of feats[h].
False-mouth[i], of great deeds[j],
he has profit[k], he has fellow members[l].
Though he is an unfortunate one,
Art 'the lone one' of red armour[m],
since it is in his presence…
… the land[n] (?).

[256] Reading *coa*.
[257] For the practice of outlawing the culprit adrift on the sea see M. E. Byrne (1932); but the usually description is 'nine waves', e.g. a commentary that follows this passage immediately: *masa murchuirthe, as a cur tar nai tonnaib mara amach.*… 'if he be a *murchuirthe*, it is to put him out across nine waves of sea…'; for other occurrence in the legal corpus see Kelly (1997, 569–570); also [48] the attempted drowning of Morann (*CIH* 916.8; *IT* 3.1, 189). The Milesians was said to have retreated nine waves from Ireland to give the Túatha Dé Danann time to mobilise their force in the *Lebor Gabála* tradition (Macalister 1942, 5:36).

a. his grave has been dug and his stone has been placed, his name was Ligairne of the Laigin, it is three *muirchuirthe* that Mac Con brought with him across the sea: Béinne, Olcán, Ligairne.

b. his stewardship was over the peaks of Leinster or over the pleasant [places].

c. one seeks ten *séts* in that case, which are equivalent to seven cows and a three-year old dry heifer, i.e. five fully-grown cows there and five three-year old dry heifers, the latter are to be taken as equal to two cows and one three-year old dry heifer; add the five cows to them so that it makes seven cows and a heifer, that is the body-price of a swift *muirchuirthe*.

d. it demands that the similar-placement of his crime [is] upon him, so that he is cast across three waves of the sea.

e. abundance of anger or the filling of anger.

f. the hound with teeth who is taken over the blue of the sea.

g. the falsehood is great unless the payments of recompense adhere to the heroic Lugaid or to Lugaid from Corcu Loígde.

h. he regarded practising martial art as cherishing his fame.

i. a great falsehood from the lips.

j. he does great deeds.

k. the good luck which he has is his.

l. It is with him the situation that it is shown if there is evil.

m. though he was reddened at the great wound of the ‘lone one’, whose name was Art.

n. For it is in his presence that Mac Con was born to us at the end of our land (?) if he delivers true judgment on us; or it is in his presence of Mac Con that we were reborn (?) if he delivers judgment, or it is in his presence…(?)

This is the cause of this judgment. i.e. Mac Con went to the Britons after defeat in the battle of Cenn Ebrat, after that judgment that Ailill Ólomm delivered

between him and his son concerning ‘the Yew of the Disputing sons’, a place where Fer Í mac Eogabail was; until he was summoned to come from the Britons to Ireland, so that the Britons detained him with them, because of the battle that was declared against them by the Saxons; and staying was not obtained from Lugaid until his choice of three British champions with him into Ireland was given [him], and that was given to him, and it was bound in contract, so that the battle of ‘the men of grave’ was waged by them against the Saxons, i.e. an example of it:

The battle of men of graves was fought,
The Britons thought it fine to lay the basis.
Mac Con, heroic one (?)[258] of heroes,
willingly a security has come. i.e. a binding surety came there.

He came afterwards into Ireland, and he brought with him those three champions into Ireland, i.e. Béinne the Briton into Connacht, Olcán Imglinde into Munster and Ligairne of the Laigin into Leinster; and he won the battle of Mag Mucrama against Art mac Cuinn and he killed Art there, and Lugaid took the kingship of Ireland; and Ligairne was plundering in Leinster until the Leinstermen killed him, and it is in that situation Cesarn the Druid delivered this judgment, i.e. let a grave be dug.

[70]:

1295.2-7:

7 mar ader: biru de .uii. cumala di ór oiblech, 7 biru de .x. mbū bīata daghflatha, 7 biru dhe cethri .x. daghban di aindrib di altram arnacon scartar tīr a Modh Ruith. .i. amail dorōna a cinadh Ceallaig mic Cormaic, 7 iss ed fil ann uile .i. trī .uii. cumala do Cormac ana eneclainn 7 trī .uii. cumala dia macaib 7 .uii. cumala a colannēiric Mogh Ruith.

[258] Perhaps the illegible word is *caurata*?

As it says: I adjudge on account of it seven *cumal*s of sparkling gold, and I adjudge on account of it ten cows which provide food for the good lords, and I adjudge on account of it forty good women from the maidens from fosterage so that the land would not be separated from Mug Ruith. i.e. as was done in compensation for the offence of Cellach son of Cormac, and this is all that is there, i.e. thrice seven *cumal*s to Cormac for his honour-price and thrice seven *cumal*s to his sons and seven *cumal*s for body-price of Mug Ruith.

[72]:

1302.29-31:

mar ader, ar dobertadar sethar a māthar a ndībad fadheisin 7 dībad a māthar d'Eochaid mac Luchta, 7 is ime nā tugad a ndībad-so do macaib (i)Ūgaini fo bīth ba fingalach íat eturru fein [a]muabat sīgech no mā sīgech[a]

as it says: for the sisters of his mother gave their own inheritance and the inheritance of their mother to Eochu mac Luchta. And it is because of this that their inheritance was not given to the sons of Úgaine, because they were kin-slaying, [a]whether they were not peaceable [i.e. they were warriors] or whether they were peaceable[a].[259]

[73]:

1302.32-36:

7 geoguin Cū Culainn a mac a nanfōt .i. māas d'Ulltaib īad maraon, is inndīlsech a richt dīlsi gin caomachtain fastaighithi, 7 lethcoirpdīre ann, 7 an lethcoirpdīre do breith do Concopur; cid fodera a breith dō? is ē an fāth: fingalach Cū Culainn, 7 nochan dlig fingalach cuit don coirpdīre, 7 is é coibhdelach is nesa do Concobar ūair adeir brāthair a māthar, 7 ni fuil- fin(n)e athar ac Con

[259] [a]--[a]: *rec. innabat sídech no bat sídech*?

Culainn.

and Cú Chulainn slayed his son in inadvertence, i.e. if they are both from the Ulaid, it is an non-outlaw in the guise of an outlaw without the power of detaining, and half body-fine for it, and the half body-fine was adjudged to Conchobar. Why was it adjudged to him? This is the reason: Cú Chulainn was a kin-slaying person, and kin-slayers are not entitled to the share of body-fine, and Conchobar is the nearest kin to him because as it says [he was] the brother of his mother, and Cú Chulainn does not have a paternal kindred.

[74]:

1305.34-37:

7 domaith Crīst fēin do Loinginus guin a taoibh 7 scoltad a chraide īar ndēnam aithrige; ōir nī agrann Dīa in pecach, 7 nī cuimnigann an Dīabal é, ó dhonīter fāisitiugh 7 lōrgnīm ann, ōir dā nagra, nī recha āonduine do cined daona ar neim, ōir nī fuil dībh duine nach dēin pecad.

Christ himself has forgiven Longinus for wounding his side and splitting his heart after doing penance, because God does not prosecute the sinful one, and the Devil does not remember it, if confession and atonement are done there, because if he prosecutes, not a single person from the human race will go to heaven, because there is not one of them who does not sin.

[77]:

1431.32-36:

Robaī turcomrag fer nĒrenn a Slīab Fūait nō Cuilt a Maighi Brēgh .i. a nespuic 7 a nollamain 7 a flaithi 7 a filidi 7 a suīthi 7 a senōiri, 7 romesamhnaigh isin dāil-sin maigen sēt do gach grādh iter grādh ecailsi 7 tūaithi, 7 roscrībad ag feraib Ērenn a cās mōr mōr na sean aní-so, 7 isí-so ēisidhe .i. bōaire laīch

innraic mes a dhīgona .i. romeisamhnaiged maigen dígona cach grādh.

There was an assembly of the men of Ireland at Slíab Fúait or Slíab Cuilt in the plain of Brega, i.e. their bishops and their *ollam*s and their lords and their sages and their elders, and they have determined in that meeting, the 'precinct of *sét*s' for each grade of both the grades of clergy and laity, and this was written by the men of Ireland into 'the great affair of the ancients'[260], and this is it: a law-abiding *bóaire* of the laity, [such is] the measurement of his protection, i.e. the precinct [under a householder's] protection has been determined for each grade.

[78]:

1510.20-23:

Imchim, .i. ēlōdh, ut est conade asberar: tres cétcath ina hinnsi-si bidh im imcim aitiri rīgh rofertha, .i. imchēimniugud nō i nēlōdh aitiruis do lecan arin rí roferadh hé.

Imcim, .i. sārugh, ut est ar us Conall cita-roimching aitiri rí .lā. isin indsi-so .i. rosaighi no rosāraighi.

Imchim, that is evasion, so that it is from it that it is said: one of the first three battles in this island that were fought because of the evasion of the *aitire* surety of the king. i.e. it was fought to allow for the circumventing or evasion of *aitire*-ship from the king.

Imcim, that is offence, so that it is Conall who first circumvented the *aitire* of the king by Irish law in this island. i.e. he sought or he offended.

[79]:

1587.18-34. The line division is that of *CIH*:

Sāeth lium bās Caīar rī Crūachna

7 Nēide fer co neim

[260] An etymological explanation of the title *Senchas Már*, see L. Breatnach (2005a, 309).

iman sgin narbo fīu scripul

conach eagar ina heim.

Grādh tuc ben Chaīar do Nēide, 7 isī rourail ēir glāim dīceand do dēnam dó imin sgin tucad ō rīg Alban dó.

I grieve the death of Caíar, king of Crúachan,

and Néide the man with venom;

for the knife which was not worth a *screpul*,

and there is not an inlaid decoration in its shaft.

The wife of Caíar gave love to Néide, and it is she who induced [Néide] to make a satire of *glám dícenn* to him concerning the knife that was given to him by the king of Alba.

[99]:

2118.9-12:

amail dorigne Aithirni do taīsecaib Luigne. Ūair adeir conid sesca sogen suibestar .i. trī .xx.it bō find nōderg, 7 anaīr dorigni Aithirni do cethrur ar .xx. do taīsechaibh Luigni, 7 dā bā 7 samaisc lōg na hanaīre ō cach āenduine conid trī .xxx[261]*.it bō samlaid.*

As Aithairne did to the leaders of Luigne. Because it says that it is sixty well-bred [cattle] which has been determined,[262] that is, thrice twenty white cows with red ears, and Athairne composed an *anaír* to twenty-four persons to the leaders of Luigne, and two cows and one three-year old dry heifer as the price of *anaír* from each person so that it is thrice twenty cows in this manner.

[100]:

2127.6-18. I have divided the lines of the verse according to the version of this verse in the poem LXXV in *Lebor Gabála Érenn* vol.5 (Macalister 1942, 5:118):

[261] Reading .xx. to keep the calculation correct?
[262] Reading *suidigestar*?

CĪASA CĒTBREATH ruccud i nĒirind? ocus cīa .c.naruc? ocus cīa dus rucc? .nī. Ēber mac Mīled ocus Ērimon gabsat Indber Fēile, 7 ni edatar in rabe duine a nĒirinn. Luid dī Ēber cona muintir issin sléib do seilg 7 marbaid dí oss déc. Boí Ēremon hi fos cona muintir ic dēnum aitreibe 7 irgnama bīd. ISberait muinter Ēbir fri muintir Érimoin nis bíad ní don fíadach romarbsat, ūair nīrbo sōethar dóib. Foruigellsad breith Amairgein meic Mīled. is sī inso in breath rucc.

Airrióc fogni concomlai contuairce do hendéice gabaid éccis moillid munus conrai contóescai conlaid sech lais contabar contúet iar mórching (?) conram conai connernen congam confor conair mairind nad dergair fogni tech domnaig.

Fir .c.guinid classach

Fir fenta lethe

Fir con cés.

Fir īarnmuinel

conscara contafaind cossa.

Inathar fir fa déoid.

aei la fīallach nurgadach.

Tar la tīr a tarrustar.

IS í-sin .c.na breath ruccad ind hĒirinn. FINIT.

What is the first judgment passed in Ireland? And who adjuged it in the first place? and to whom did he give it? Not difficult. It was Éber son of Míl and Érimón who landed at Inber Féile, and they did not know whether there was anyone in Ireland. Éber then went with his folk into the mountain for hunting and they kill twelve deer. Érimón stayed back with his folk, making abode and preparing food. The folk of Éber say to the folk of Érimón that they shall have nothing from the wild animal that they have killed, since it has not been a work by them. They submitted the case to the judgment of Amairgen son of Míl. This

below is the judgment he passed:

'...[the *roscad*]

A deer to the man of the first wounding,

A half to the man of flaying,

A steak to the man of hound,

The back of neck to the man of iron,

Legs to the hunting dog that tears together.

The inward parts to the man coming after,

The liver with a band of ferocious[263] warriors,

The belly with the land in which it came to a stop.'[264]

That is the first judgment passed in Ireland, Finit.

[102]:

L. Breatnach (2005a, 465):

Urbach nUlad .i. būain úire a nadaig Ulad nō bach brissed .i. brissid na huire a n-adaig Ulad .i. gach huir dob ail cairde chatha (?) ō Ulltaib, is sed do-gnīthea huir do tochailt re n-agaid 7 geis d'Ulltaib dul tairsib sin nō gomad hē int ar erraig.

2128.18-25:

INd ūair donīthea cairde (.i. síd) etar Ulltu 7 fine Temrach is amlaid dognīth hí. Cormac Connloingis mac Concobair ō Ulltaib d'fācbail re cairde amuich ocus na .uii. Main[i][265] ō fine[266] Temrach re dīgail greissi a ciníuil; is slān do cech duine isin chrīch a mbīathad co ceann mīs acht na robīata óenla no ōenaidhchi īarsin mís; 7 da mbíata, iss a cin fair co ccann mís aile; 7 robīathastar īat re rē mís no nómaide reme, 7 nír bīath īat assa haithle-sim duine assa roissid cin a

[263] Reading *n-airchótech*.
[264] Reading *do-airessedar*.
[265] According to *CIH* 2128.h.
[266] Binchy suggests the reading *Féine* here, according *CIH* 2128.g, but see above 4.5.5.

dūalgus a bīd, 7 da mbíata, roba digaib cech dēiginach diaraile. FNAIT.

The destruction of the Ulaid, that is, 'breaking of soil' against the Ulaid or *bach* is 'breaking', i.e. breaking of the soil against the Ulaid. That is, whenever they desire the war treaty (or armstice) from the Ulaid, this is what was done, piling up the soil in front of the Ulaid and it was a *geis* for the Ulaid to go over them or perhaps it would be the ploughing in spring.

When the treaty (i.e. peace) was made between the Ulaid and the kindred of Tara, it is in this manner that it was made: to leave out Cormac Connloingis son of Conchobar of the Ulaid according to the treaty, and the seven Maines from the Féni of Tara to avenge the attack of their kindred; everyone in the territory is entitled to feed them until the end of a month, but he is not to feed a day or a night after a month; and if he feeds, he is to answer for their crime until the end of next month. And they have been fed for a month or nine days before it, and anyone from whom liability would come [to the host] because of feeding him, they are not to be fed afterwards. And if he were fed, the principle that 'whoever is last in line removes respobsibility from anyone else' applies. *Finit*.

[104]:

2145.8-14:

Briugu do Ultaib seo, 7 i richt briugad do Connachtaib romarbad ē. gona indīlsech[267] *in dīlsig ē, ar is etargaire coitcend na mbriugad do grēs in cach crīch a mbit. Cid fodera dāno nach lethfīach ann deiseig, ūair is a richt deoraid romarbad hē. Gona edh is cōir ann: lucht nembēscna īat uile, 7 is dīles doib-seig cach crīch a mbit resin rē-sin i mbit inti, gunad amal urrad cach dīb i leth re cēile; nō dāno cena is a richt briugaid .ii. di Ultu romarbad hē.*

This is a hospitaller from the Ulaid, and in mistake for a hospitaller from

[267] *a richt* inserted on the left margin.

Connacht he was killed, so that it was a non-outlaw in the guise of an outlaw, since the common legal status of hospitallers is always recognised[268] in each territory where they are. Why then is it not half fine in this case on that account? Because he is killed in mistake for a *deorad*. So that that is what is correct in this case: they are all *lucht nembéscna* (people not liable to customary duties?) and they have immunity in every territory in which they are for the time during which they are in it, so that each of them is as an *urrad* towards each other. Or else he was killed in mistake for another hospitaller from the Ulaid.

[107]:

2217.36-2218.3:

The first part of this text has been normalised and translated by Liam Breatnach, and offered to me in personal communication:

Comad ferg fóebar fri halchaing;

arm fosaigter fo chosaib

fri fót n-elgnaise airchor

eter ildelba eter marbad miditer,

cinip do chond chréchtnaigtheo comruiter.

Ar má ro bíth ellai uchtchain Adabar mac Delbaíth

Let a warrior keep a weapon on a rack; arms which are kept under legs are adjudged as [a case of] premeditated deliberate injury by shots, amongst the many forms of killing, even though they be not kept [there] for the purpose of causing injury.

For since fair-chested Adabur son of Delbáeth has been slain in an unforeseen way,…

My own normalisation and translation of the rest of the passage:

[268] In Dr. Carey's opinion, perhaps this should be read as *is etar-gnaide coitcenn na mbriugud.*

Dligfither dó díablad fíalgnuisi cona chúradaibh Concobair

mó ailib imdergad Emna Macha,

ad-midiur de:

secht cachta cichsite crisu

secht moga moaigfite mórgnímu mugsaine

secht manda .i. cumala[269] *óir forloiscthi*[270]

fri fíalgnuisi cona chúradaib Concobair.

It shall be granted to him doubling of the noble face of Conchobar with his champions,

greater than physical defects is the disgrace of Emain Macha.

I adjudge therefore:

seven female slaves who will plait girdles,

seven male slaves who will increase great services of slavery.

seven *mann*, i.e. *cumal*s, of refined gold,

for the noble face of Conchobar with his champions.

[269] *.i. cumala*, obviously a gloss on *manda*, is omitted in CormY 877 (Meyer 1912, 74), where the entry equates a *mand* with an *ungae*.
[270] *CIH* 2217.41 *forloisgedh*, CormY 877 *forloscthi* (Meyer 1912, 74).

Appendix 2: A critical edition of [5] and translation of relevant passages

I. Manuscripts

There are three manuscripts that contain this text:

TCD MS 1433, *olim* E 3.5 (E), p 6b, *CIH* 205.22-206.26: canonical text in rimeless verse with late glosses and commentary; the *AL* edition, vol. 4, pp. 2-33, is based on this copy.

TCD MS 1337, *olim* H 3.18 (A), p. 384b, *CIH* 907.36-908.14 and TCD MS 1336, *olim* H 3.17 (B), col. 311-2, *CIH* 1859.6-15: these are excerpts from the same tract with mostly OIr. glosses (part of the 'Old Irish Glosses of *Senchas Már*', henceforth OGSM).

Besides, two lines from the Old Irish text with gloss is found in a 'digest' under the title *do techtugh banda 7 ferrdha sīsana* 'On female and male legal entry hereafter' in TCD MS 1336, col. 539, *CIH* 2019.16-18. This is given the siglum C in the edition.

Moreover, there is a reference to the narrative included in [21], preserved in two copies (*CIH* 881.36-38 and *CIH* 1665.20-23).

The canonical law text in verse has been reconstructed by D. A. Binchy (Watkins 1963, 221) as supporting evidence for Watkins's theory of the survival of Indo-European metrics in Irish tradition. Binchy's reconstruction, however, lacks detailed textual apparatus and his reconstruction is not totally accurate, as will be seen in my edition. The prose narrative on Nin has been briefly examined by Neil McLeod, who points out that a passage in Fergus mac Léti's saga may be based on this story (McLeod 2011a, 27–8), and it has been normalised and

translated by David Stifter (2006, 297–298). In Chapter 5 I have discussed this text in detail, and in this appendix I provide a critical edition of the verse and also of the prose narrative, corroborated by the evidence from the glosses.

Below I will first edit the metrical canonical text from SM 11 *Din Techtugud* (DT) by lines, together with the accompanying glosses; then the prose narrative concerning Nin in the commentaries of A and B. I will also translate the long commentary in E.

II. Language and date

That the poem can at least be dated to the Old Irish period, which would be assumed in any case given the arguments for a seventh-century compilation date of *Senchas Már* (L. Breatnach 2011), is apparent from the linguistic features of the text: retention of *to-* in the first word *Tocombachtaib* E (Thurneysen 1946, 533; Kelly 1975, 67–69) and strong inflection in the same word *Docombachta* A (contrasting with the Middle Irish univerbated form *toibgit* in the gloss), independent dative *saerteallug* E, and also enclitic *-ch* in *ba-ch* A (Binchy 1960, 86).

The prose narrative belongs to the OGSM composed in the late Old Irish period. The narrative itself is short and does not have diagnostic features of an Old Irish date, though some of its forms conform to the linguistic traits in the late Old Irish period. For instance, the use of absolute preterite in narrative: *luid, scoirset* A, *bert-side* B (for OIr. *birt-side*), correct use of deponent verb *ni fetatar-som* A, genitive structure with the copula *ba ceniuil doaib* B.

The long commentary in E has some features of late Middle Irish or of Early Modern Irish: e.g. use of independent pronouns where Old Irish would employ infixed pronouns: *doberad e, muna tincear e*; non-deponent form *co finna*; confusion of unstressed vowels: *beireas, tincear, a forba na .x.m. medonaighi*; preposition *re* < Old Irish *fri*; *ginco* < Old Irish *cenco*, confusion between lenited

d and lenited *g* in *degeanach*, *techtadhugh*, etc. This commentary was written in space preserved for it between two lines of canonical text,[271] and therefore probably was not composed by the scribe of the text but was part of the exemplar he copied from.

III. Comparison between copies and editorial policy

The text of the poem as preserved in E is often inferior to that in A and B, when comparison is possible, e.g. the ending of *tocombachtaib* E against *docombachta* A, *[]ocombachta* B; *bactair* E against *bach tar* A; *modaigh* E against *o modaib* A. However, E sometimes offers better readings, e.g. *aitheam* E against *aithe* A; *dechmad* E against *.x.maduib* A. And E has correctly modernised *cénramar* to *cíanramar*, whereas A mistakenly took it to be a compound of *cenn*. The reading of C, in the limited instance of only two lines, adheres very well to the Old Irish forms.

The glosses can tell more. As noted above, the glosses in A and B were mostly finished in the Old Irish period as part of the OGSM. The gloss by the first glossator of E to the line *ní fír tellach tuinidi* seems to derive from a version similar to the gloss in A and B, but adding *tar clad* E from the OGSM gloss to the line *tellach tar fertai céttellach* as appearing in A. The same gloss occurs in C to these two lines, but C has *tar ard* instead of *tar clad*, perhaps a reinterpretation in light of *fertai* 'burial mounds'. The second scholiast in E evidently had a copy of OGSM at hand, since he has at several points added glosses from OGSM similar to those found in A and B: he copied *comhcairdi* as the gloss to *comacomol*; to *mad on teallug medonach* E, he took from OGSM the gloss which was attached to the next line in AB; and the OGSM gloss to *tellach tar fertai* has again been copied into E, presumably by a later scholiast. These suggest that the later scribes of E had access to and made use of glosses from the

[271] I have consulted MS 1433 pp.6-7 in physical form.

OGSM.

With regard to the prose which is only preserved in A and B, neither of these can have copied from each other, for not only is the protagonist's name presented very differently, but they also contain two independent errors *beridh ar* A and *beiri bur* B. While A generally has older spellings than B (*luid, fetatar* A vs. *luig, fhedutar* B etc.), B occasionally preserves earlier forms, such as the correct OIr. gen. *ba ceniuil*.

Since none of these copies can be regarded as a *codex optimus*, and it is evident that the original text long antedates the extant manuscripts, I will collate the extant copies and normalise the poem to standard Old Irish so far as the evidence allows. This normalised text will be used to test the metrical regularity proposed by Watkins (1963, 218 ff.), namely a heptasyllabic line with a trisyllabic cadence throughout, a structure which can be observed in most of the lines as they appear in the manuscripts. As will be seen, that metrical rule does not apply evenly to all lines in this poem; and my preliminary research into verses in [6] and [7] suggests less adherence to that rule there as well.

For the poem, the restored texts will be presented first in bold Roman, followed by diplomatic transcription of variants from MSS in small normal typeface, and then by translation. The glosses will be presented with reference to their places in the canonical text by means by means of lower case letters in alphabetical order; translation of glosses then follow The readings of the variant copies is from my consultation of the TCD manuscripts and their photostats, and supplying Binchy's notes in *CIH* in the footnotes. The canonical text in E was written in large script, and is printed in *CIH* in capital letters: for these I use lower case instead. The line division is based on metrical criteria (such as alliteration and the tri-syllabic cadence, as long as these are available) as well as on semantic caesura, and generally agrees with Binchy's division in Watkins (1963). In the normalised text, hyphens are supplied to divide preverbal particles

from the stressed syllable of the verb proper, the nasalisation marker *n* from the initial vowel of the nasalised word, and a word from its enclitic; and length marks are supplied. Glosses by different scribes in E, added beneath the line or in the margin, are placed in a separate line from the main gloss, and this will be mirrored in the layout of the translation. Since this is a metrical text no other punctuation is added in the normalisation. The translation, however, is punctuated according to normal English usage. Square brackets mark extra editorial explanations or notes necessary for understanding the texts.

For the prose narrative, I will first present the normalised text in bold typeface, followed by the diplomatic texts of the two copies transcribed from photostats of the manuscripts and checked against Binchy's edition in *CIH*, in small normal typeface. A translation is supplied. The long commentary by the scribe of the text in E is also transcribed from the photostats of manuscript and translated on account of its importance for understanding the institution of legal entry in Chapter 5. No attempt has been made to normalise this commentary. For these prose texts, punctuation is supplied both in the Irish texts and in the translations, and personal names have been capitalised. Hyphens, length marks and square brackets are used in the normalised prose narrative as in the poem. Parentheses indicate suggested editorial deletion.

IV. An edition of the poem in [5]

1. The canonical text:

Tocom-bachta[a] selba[b] sóertellug[c] **1**

ó modaib marc mrogsaite[d]

bach tar crícha comaccomol[e]

áithem gaibes tuinidi[f]

mad ón tellug medónach[g] **5**

ní fír tellach tuinidi[h]

tellach tar fertai[i] **céttellach**[j]

ed nád téchta tuinidi[k]

tellach dá dechmad cénramar[l]

ed fo-choislea tuinidi[m] **10**

E tocombachtaib sealb saerteall- modaigh mairc mbrugsaite bactair cricha comacomol aitheam gaibeas tuinighe mad on teall- medonach ni fir teall- tuinighe teallach tar arta .c. teall- adh na techta tuinige teallach da dechmad cianramar. ad docoislead tuinide

A docombachta selba saortell*ach* 7rl- bach t*ar* c*r*icha comaco*m*al aithe gaibes .t. ni fir tell*ach* .t. tell*ach* tar f*er*t.t. da.x.maduib cennram*ar*

B ocombachta selbu saor tell- tell*ach* tar ferta .c.tell*ach* ni f*ir* tell*ach* tuinidhe

C ni firtellach tuinidi .t. tar ferta .c.t.

Properties have been exacted through noble-entry,

through the deeds of horses which advanced [into the land],

and kin-land was across the borders,

most swiftly he takes possession.

If it be from the middle entry,

the entry for possession is not true.

An entry over a [boundary burial] mound[j] is the first entry,

an interval which is not entitled to possession;

an entry of twice ten days is long and thick,

an interval that deprives possession.

2. Glosses:

[a] .i. doroeip*echt*a . B

[b] .i.[272] B

[c] . is toich no is luath toibgit na so fir a feran*n* t*r*esin te*cht*ug*ud* so sis do brith and. E

.i. dlighthech- .i. is toich no islua…ith toibgit na sofir a f*er*unn tresi*n* t*echt*ug*ud* so sis. B

[d] .i. is tre gni*m*rad anech firenaigthir doibsiu*m* he E

.i. in eich foscoithseat*ar* biuc isin tir iar na scur. A

[e] .i.seichim no i*n*dsaigim conaccomailt*er* a feran*n* doib sium amlaid sin.

.i. bat*ar* leis riam na cricha,[273]

.i. co*mh*c*air*di[274]. E

.i. comc*air*di. A

[f] .i. is aithiu aem is luaithiu gabus nech tuinidi in fearai*n*d on techtug*ud* medonach i*n*a on .c.techtug*ud.* E

.i. is aithe no obainde i*nn*as in tell*ug* taisech A

[g] .i. noch*an* leis i*n* fer ber*e*s te*cht*ug*ud*a isin fer*ann* da .c. te*cht*ug*ud* tuinidhe i*n* f*er*uin*n ar* ai a .c.te*cht*aig*the acht ar*uch cirt nama i *m*bid maro*m*be is maith ma*n*u be anaid de$_a$cma 7 is laiso*m* tui*n*idhe .i. suidhiu.[275] E

[h] .i. noco leis in fer b*er*us te*cht*ug*ud* isin ferand t*ar* clad in ferai*n*d da te*cht*ug*ud* tuinide in fearai*n*d ar ai i*n* ..te*cht*ug*ud* . m*un*a tabr*a* in tell*ach* .ii. E

. i. noga laisin f*er* b*er*is techtug*ud* isi*n* f*er*ann da .c. t*echtug*ud tuinithe in f*er*ain*n* ar ai a .c. t*echt*aidthi *acht* aruch na*m*ma i mbid ma rombe is maith

[272] No gloss supplied.
[273] added below the line be the second glossator (scribe of the text)
[274] added on the left margin above the first letter B, by the second glossator.
[275] By the second glossator on left margin with reference mark in A of MEDONACH

m*an*abe anaid dechma 7 is laisomh tuinidhi i suidiu. A

.i. noch*an* leisin f*er* b*er*es t*echt*ug*ud* isin ferunn tuinide in feruinn arai a.c. t*echt*aighthi arin .c.x.muidh munu tab*ra* in tell*ach* .ii. B

[i] .i. t*ar* clad no c*ar*but i tell*ug* tire ci*n* furfoc*r*a.[276] E

[j] .i. t*ar* clad no carbad i tell*ug* tiri cin furfoc*r*a . A

.i. noch*an* leisin f*er* beris te*cht*ug*ud* isin feron*n* t*ar* ard in ferain*n* tuinigh in f*er*ain*n* ar ai a .c. te*cht*ug*ud* arin .c.x.m*aide* mana tabhra in tell*ach* aile. C

[k] .i. dlig*ed* na te*cht*and tuinidi i*n* ferai*n*d dosomsin. E

[l] .i. in techg*ud* b*er*us i*n*d a aithle i*n* da .x.mad cian remur .i. i*n* .x.mad medonach 7 i*n* .x. mad deidenach.

.i. cian atathar occo a remur.[277] E

.i. caiti in cendr$_a$imad doib .i. acomlaine doib ar na tesbaid ni do*n*ahaib .x.madaib sin. A

[m] .i. is dlig*ed* foxlas tuinidi in ferai*n*d dosom sin. E

Translation:

[a] have been broken (?)[278] B

[b] [blank] B

[c] i.e. it is naturally right or it is quickly that the good men exact their territory through bringing this entry as described below into it. E

legal [i.e. through legal entry?], it is naturally right or it is quickly that the good men exact their territory through this entry as described below. B

[d] i.e. it is through the deeds of their horses that it is verified for them. E

i.e. the horses that departed[279] for a brief while into the land after being unharnessed. A

[276] By the second glossator under the line.
[277] Added under cian by the first glossator.
[278] It seems to be the pret. pass. 3sg. *tópacht* used in the sense of active, plus a late augment *ro*. See *DIL* s.v. *do-boing*.
[279] Reading *fo-scoichsetar*.

[e] i.e. I declare or advance that his property is joined to them in that manner.

i.e. the properties formerly belonged to him.

i.e. mutual peace pact. E

i.e. mutual peace pact. A

[f] i.e. it is quicker indeed, it is faster that each one gets the possession of the property from the middle entry than from the first entry. E

i.e. it is quicker or swifter than the first entry. A

[g] i.e. possession of the property does not belong to the man who carries out entries into the property by first entry, on account of his first entry, but only a guarantee of right in which it will be; if it shall have been[280], that is good, if it be not, he stays until the end of the tenth day and the possession is his then. E

[h] i.e. possession of the land does not belong to the man who carries out entry into the property across the ditch of the property by entry, on account of his first entry if he does not carry out the second entry. E

i.e. possession of the land does not belong to the man who carries out entry into the property by first entry, on account of his first entry, but only a guarantee in which it will be; if it shall have been, that is good, if it be not, he stays until the end of the tenth day and the possession is his then. A

i.e. possession of the land does not belong to the man who carries out entry into the property on account of his first entry for the first ten days if he does not carry out the second entry. B

[i] i.e. across a ditch, or a wagon in entry of land without forewarning. E

[j] i.e. across the ditch, or a wagon in entry of land without forewarning. A

i.e. the possession of the land does not belong to the man who carries out entry into the property across the height of the property, on account of his first entry for the first ten days if he does not carry out the second entry. C

[280] See *GOI* §530. Here the meaning is that the occupant of the land yields to his claim and the case is closed.

[k] i.e. that is a entitlement[281] that does not justify possession of the property to him. E

[l] i.e. the entry he brings into it after the two ten-day periods is long and thick, i.e. the middle ten days and the last ten days.

i.e. long its thickness is with him. E

i.e. what is '*cendraimad*'[282] to them? i.e. to fulfil it by them so that nothing of those ten days is wanting. A

[m] i.e. it is entitlement which transfers the possession of the property to him. E

3. Textual notes for the poem:

1 The *–ib* in *CIH* 205.22 *Tocombachtaib* is a scribal error, probably resulting from a contamination by the *-b* ending of the following word *sealb*. The verb is the pret. pass. of *do-boing* with the perfective *-com-* augment (*GOI* §344-5). A and B both have the plural verb in accordance with plural *selba*, against the singular reading *sealb* E. Although such a reading would make this line too long for the ideal heptasyllabic form, without further evidence I hesitate to emend it to the singular **tocom-bacht selb* in order to meet the meter assumed by Watkins. E has also the earlier form of preverb *to-* superior to *do-* in A. The meaning of *tocom-bachta* here is rather 'have been exacted as a claim to legal entitlement' than 'have been recovered' with the sense of completion of action as in the translation by Binchy.

Sóertell- with the suspension mark in all the MSS, seems to be best interpreted, syntactically, as the independent dative *sóetellug*. Though often regarded as a sign of archaic language, independent dative still occurs in the 9th century *Amra Senáin* (L. Breatnach 1989b, 19), and in fixed phrases even in

[281] The glossator has understood *ad* 'law, custom', which is a rare word and is often glossed as *dliged*, cf. CormY 93: *adhnacul, .i. ad dliged*…(Meyer 1912, 10).
[282] Probably a corruption or wrong extension of *cénnramar*?

Middle Irish.

2 *Marc* (o-stem masc.) ‘horse’, figures most frequently in poetic diction, its gen. pl. *marc* is emended from the gen. sg. *mairc* in E and A, since it governs the plural verb *mrogsaite*, which is substantiated by the gloss *in eich foscoithseatar* ‘the horses that departed’ and the story that Nin had multiple horses with him.

Mrogsaite is the relative form of pret. 3 pl. of *mrogaid*, the intransitive sense of which is ‘move forward, advance’. Binchy (Watkins 1963, 221) apparently took it as *mrogsait*+suffixed pronoun *i*, however, the 3 sg. masc. or neut. suffixed pronoun after 3 pl. in *-it* is exclusively *-it* (*GOI* §431; L. Breatnach 1977, 79, 81). The scribe of E, writing in the late medieval period, employed the common transitional spelling *mbr-* to represent the original *mr-*, which is guaranteed by the complex alliteration *marc mrogsaite* (Sproule 1987).

3 *ba-ch* ‘and it was’, see Binchy (1960, 86). The phrase *seichim no indsaigim* ‘I declare or I advance’ usually glosses enclitic *-ch* ‘and’ in the law tracts, for instance *CIH* 208.14 *bach for fine a forcomal*, gl. *.i. saigim no indsaigim conad…* (DT), 209.29-30 *bach be degabail cindis*, gl. *.i. seichim no indsaigim conad…*(DT), and *Bach rí temro* gl. *.i. seichim no indsaigim conad a rige tulach naibind* (*Bechbretha*, Kelly and Charles-Edwards 1983, 68).

For the exact meaning of *comaccomol* see 5.2.1.

The manuscript form *comacomol* is tetrasyllabic instead of trisyllabic, and thus was emended to *comcomol* by Binchy (Watkins 1963, 221). However, *comaccomol* < **com-ad-com-la* (Pedersen 1913, 509–510) is a solidly attested word. If *comaccomol* is indeed the word, the metre requires us to count it as trisyllabic *comaccoml* without the epenthetic vowel resulting from anaptyxis. This feature (and indeed, this very word) has been regarded by scholars as being highly archaic (Lindeman 1984, 57–58), since the anaptyxis in Irish took place,

according to Kim McCone, around 550 to 650 (McCone 1996, 127). James Carney has noted similar examples of tetrasyllabic words (*faeburamnass* and *otharlige*) occurring where metrical considerations appear to call for trisyllables, and in his view 'archaic' Irish *faebur* and *othar* should be treated as monosyllabic, as some of their cognates in Welsh that have been exempt from the epenthetic vowel until today (Carney 1979, 426–427). Fergus Kelly also argues that in the 7th century poem *Tiughraind Bhécáin*, metrics guarantees *domun* to be scanned as a monosyllabic **domn* (Kelly 1975, 66–67).

While admitting that these words are *treated* as free of the secondary vowel developing from anaptyxis, we should ask, as John Carey points out, whether such phenomena are historical or merely stylistic (Carey 2002, 83). If they are historical, we have to ascribe the poem to a date prior to 650; if they are stylistic, namely used in the poetic diction to meet special necessities, then they cannot be checked against the historical development of the actual epenthetic vowel as a dating criterion. A strong argument in favour of the unhistorical nature of these seemingly pre-anaptyxis words is that the practice of reducing the epenthetic vowel in these 'archaic' verses is not consistent. Carey in the above cited article has noticed that while in a poem *olldomuin* at a disyllabic cadence is supposed to be read as *olldomn*, the metre has ensured that *febul* cannot be reduced back to *febl*, and *credail*< Lat. *credulus* cannot have originally had a monosyllabic form (ibid.). In the Leinster genealogical poems which Carney believes to date from c. 600 and to have another archaic feature of maintaining the vowels lost in syncope, one should expect monosyllabic *domn*, but in the poem '*fácaib domun dílecta/ dúr sab slóig Carmuin/…*', *domun* has to be disyllabic to satisfy the 7-syllable length required of the line (Carney 1971, 57, 61).

It seems to me, therefore, that the reduction of epenthetic vowels, or of unstress vowels between consonants which can produce epenthetic vowels, in the metrical scanning of some 'archaic' verses, is likely a stylistic device employed

in the verse cadence to trim a word into the syllabic frame required by metres. It is not a secure criterion for dating a poem to the pre-anaptyxis or pre-syncope period.

4 The reading *aitheam* E and the glosses are the basis of Binchy's normalisation of *áithem* and his interpretation as 'over-swift' in Watkins (1963, 221). The translation is however somewhat misleading, as the OIr. superlative is not used for merely heightened emphasis (*GOI* §366). I suggest we should either follow *aitheam* E in understanding the superlative form with an omitted copula in poetic diction, namely [*is*] *áithem gaibes tuinidi* 'most swiftly he takes possession';[283] or take *aithe* A, as the Middle Irish spelling of independent dat. sg. *áithi* of the abstract noun *áithe*, to be that of the exemplar, giving a meaning of 'with swiftness he takes possession'. In light of the glosses which unanimously reflect the former explanation, and of the inclination to replace superlative with comparative forms in Middle Irish, I would suggest that *áithem* is primary.

Although the use of perfect and preterite tenses in line 1 and 3 naturally encourages the view that the verb in this line, which continues the narrative, is in a past tense as well, namely *gabas* (rel. pret. 3 sg.) instead of *gaibes* (rel. pres. 3. sg.), I hesitate to adopt the former form in light of *gaibeas* E, *gaibes* A, both of which show a palatalised *b*. It remains, however, possible that the preterite form was in the original.

7 *Fert* (o-stem neut. sg.) according to *DIL* is later than iā-stem *fertai*. The readings in *arta* E, *ferta* B denote either a long plural of the neuter word *ferta* or the feminine form *fertai*. According to Charles-Edwards, however, the iā-stem *fertai* could be a collective word designating 'the burials in one mound surrounded by a ditch' (Charles-Edwards 1976, 83; Binchy 1955b, 83). Again, if

[283] This is the normal construction with adverbial forms of comparison, see *GOI* §383.

here we follow the majority of manuscripts and *DIL* in restoring Old Irish *fertai*, the line will be octosyllabic.

In later glosses, after the sacred significance of the mounds was forgotten, *fert* was regarded as a synonym of *clad* 'boundary ditch'.[284] And *carpat* 'chariot, wagon' referred to in the gloss must be indicating the vehicle from which the horses are later unyoked.

8 Binchy (Watkins 1963, 221) has altered *ad* E to *ed* 'interval'. The *DIL* headword *ad* 'law, custom' is conventionally, as in the gloss n here, equated with and glossed as *dliged*, and is usually written *ed* (later *ead*), especially in later texts.[285] Instances of the spelling *ad*, on the contrary, are rare, e.g. *adh itir gach da bunchur* (*CIH* 66.27); *ma tait tall iat adh risi…* (*CIH* 68.35). Though its derivative (or genitive? see *LEIA*, s.v. *ad*) *ada* 'fitting, suitable' is widely attested, the instances given by *DIL* of the spelling *ad* itself are scarce and doubtful. Among the few examples in *DIL*, the *ad* in *no ad deligthi dliged* (*CIH* 1028.36) should clearly read *as*: 'or the word *dliged* is from *deligthi*' (Thurneysen 1926, 28); and the *ad* in *Bretha Crólige* §52 is better explained as *ed* 'a period' (Binchy 1938, 42, 72). The word here, taken in context, may as well be interpreted, following Binchy, as *ed* 'space, interval'.

9 *da dechmad* E is gen. dual 'of two ten-days' of the o-/ā-stem *dechmad*, while *da dechmaduib* A seems to be an independent dat. pl. of *dechmad* without the dat. pl. form of *da*: this is probably an innovation on A's part, or an expansion of the *.*ii.* in the exemplar at a later point. But the reading of E obviously makes better sense here.

The vocalism in *cennramar* A and its gloss *cendraimad* points to a form *cén*,

[284] But for the possible structure of a *fert* enclosed by ditch and bank rather than a simple 'mound', see Charles-Edwards (1993, 260, n. 2).
[285] e.g. in the commentary to *Uraicecht Becc*: *eadh .i. dliged…ead dligead/ fil na mberla na filed/ ed dligead, dlig gan acht/ is ed mideas filidecht, CIH* 2256.7-9.

linguistically older than the classical Old Irish *cían* (as in E *cíanramar*). Long *é* had split into *ía* probably in the early 8th century (*GOI* §53), and that the glossator in A who worked in the Old Irish period has already failed to understand it (taking it to be an obscure *cendramad*) suggests that *cénramar* is a genuine archaic feature of the 7th century.

10 *docoislead* E is problematic. The *DIL* entry for *do-coisli* 'escapes, migrates' = *to-coislea* < **to-com-sel-* gives another reliable example from *Bechbretha*: *beich to-choislet* 'bees which escape' (Kelly and Charles-Edwards 1983, 74–75). The underlying root is **sel-* (Pedersen 1913, 621–622) and the glossator in E gives another derivative of this root, namely *foxlas*, relative 3 sg. pres. of the univerbated form of *fo-coislea*<**fo-com-sel-*, in the gloss *.i. is dliged foxlas tuinidi…* 'i.e. it is lawful that he takes away the possession…' . It is noteworthy that in *Bechbretha*, *beich to-choislet* 'bees that abscond' is glossed by one glossator as *.i. beich foxlaid amach* 'bees that they take away' and by another *.i. na beich foxlaither o neoch* 'the bees which are taken away from anyone' (Kelly and Charles-Edwards 1983, 74-75, with minor change in translation by me). There, the clause with intransitive *to-coislea* is similarly interpreted with a sentence with transitive *fo-coislea*.

In this line the verb *docoislead* is transitive, cf. the syntax of line 8 above. It is still hard to see how to reconcile the known meaning of *to-coislea* with the context here. Thurneysen suggests once that *to-coislea* can be used transitively and appears to mean the same as *fo-coislea* (Thurneysen 1912, 78), but he does not provide examples to support this claim. It is highly possible that he had this line 10 in mind and interpreted the word according to the gloss. Citations from *DIL* s.v. *do-coisli* do not offer new evidence either.

Very tentatively, I emend this word to *fo-choislea* 'which takes away'. It is difficult to explain how the preverb *fo-* could have been mistaken for *to-/do-* in

the process of copying, and the *Bechbretha* evidence of *to-choislea* glossed with forms of *fo-coislea* may be suggestive that the original word in this line was indeed *to-choislea* with a transitive usage unknown from other texts. But so far as the syntax and the meaning are concerned, this emendation is the most economic one at present. The *–ead* ending can be the result of modernisation, and the absence of alliteration between *fo-choislea* and *tuinidi* is permissible as alliteration is not regular in this poem.

V. Normalisation and translation of the prose narrative:

Nin mac Mágach[286] di Ḟénib luid fo thúaid i crích n-Ulad triur marcach do ṡaigid charat ann; 7 scoirsit a n-echu i tír ba cheníuil[287] dóib riam, napo cuindchid[288] cota ann co n-epert int-í ba a[289] thír friu: 'Berid bar n-echu asin tír! ' As-bert didiu in dias boíe la Nin: 'Ní mó dán duinn, cía ad-cotam scor ar n-ech sunn, napo ar chuindchid cota ann.' 'Ní airassa són, robo lib-si ríam, ní biat ann éim aire.' Ní fetatar co sin ara mba[290] leo riam a tír, ní leicset a n-echu as, cartaid didiu int-í ba a thír a n-echu as ar écin. Fo-gellsat íarum imbi Conchobur mac Nessa 7 birt-side dóib fíach n-ecoir étechtai forsin n-í cartas a n-echu asin tír 7 chomlóg inni[291] cartas as, 7 do-combaig selba dóib i cumma-sin di thellug.

Nin m*a*c magach do feinib luid fo tuaid a c*r*ich nuladh t*r*iur marcach do saigid carad an*n*; scoirset o n-eocho a tir ba chenel doib riam, ni*m*ba do cuin*n*ce cot*a* hin*n*[292] co neper intí ba thir f*r*iu: 'beridh ar[293] neocha asin tir!' isbe*r*t dī in dias bui la Nine: 'ni mó dan duin*n* ciacotu*m*[294] scor ar

[286] I follow the reading of A of this name. The *fada* is inserted on the assumption that this is the same as the patronym in Cet mac Mágach.
[287] For this genitive construction see *GOI* §250.3.
[288] cuin*n*ce A and chuinche B are both later than classical OIr. *cuindchid.*
[289] The MSS *ba=bá= ba a*, a genitival construction, see *GOI* §507 c.
[290] For the explicative conjunction *ara-n-* see *GOI* §898.
[291] A's omission of *cartas a n-echu asin tír 7 chomlóg inni* is probably homoeoteleuton.
[292] In *CIH* Binchy suggests *(h)immurgu*, but compare *ind* B. In the following footnotes 'Binchy', unless otherwise indicated, refers to Binchy's notes in *CIH*.
[293] Binchy suggests *bar*, see B

n-eoch sun*n* nab ar cuin*n*chi chota an*n*.' 'Ni hurusa son, rob lib-si ria*m*, ni biad an*ad* (?)[295] em aire.' Ni fetat*ar*-som co sin armba leo riam a thir; ni lecset a n-eochu as. Cartaid dī inti ba thir a n-eochu as ar ecin; fogellsat immi iarum Concubar mac Nesa, 7 isbert-side doib fiach ecair etechta forsani cartus as, 7 documb*aig* (?) selb doib a chomai-sin di tellug. **A**

Ninne mac matech d'fenib luig fo tuaidh a c*r*ich nulud triur marcach do saig*id* carut, 7 scoirset a neocha i tir ba ceniuil doaib riam, nabo chuinche chota ind co neip*er*t inti ba tir: 'b*ei*ri[296] bu*r* neoch*u* asin tir!' asb*er*t dī in dias baoi la Ninne: 'ni mo dan duine[297] ci adchotam scor ar neoch sunn, nabu ar cuinche coda and.' 'Ni hurasa son, roba lib-si riam, ni biad and eimh aire.' Ni ḟedut*ar* co si*n*n armad leo riam a tir; ni leicset a neoch*u* as; carta didiu inti ba tir a n-eochu as ar eicin; fogellsat iarum imbi conchobur m*ac* nesa 7 b*er*t-side fiach ecair etechta forsanti cartus a n-eocha asin tir 7 comlogh inní cartas as, 7 dochombi selb*a* doib a come-sin di tell*u*ch. **B**

Translation:

Nin mac Mágach of the Féni went northwards into the territory of the Ulaid, being one of three horsemen, to visit a friend there, and they unharnessed their horses on the land that formerly belonged to their kindred, and it was not a request of a share in it, and he who owned the land said to them: 'remove your horses from the land!' The two men accompanying Nin then said: 'No bestowal to us is greater, although we obtain the unyoking of our horses here, it was not to seek a share in it.' 'That is not easy, it formerly belonged to you, on account of that they will not remain there indeed.' They did not know until then that the land formerly belonged to them; [and] they did not let their horses out, [and] then the one who owned the land expelled their horses by force. They submitted [the dispute] then to Conchobar mac Nessa concerning it, and he adjudged that the one who expelled their horses out of the land was liable for the fine of 'unlawful putting-in [i.e. entry]', and [the fine is of] the same value as what he expelled, and he exacted possessions for them in that way as from entry.

VI. The long commentary in E (*CIH* 205.25-206.10), paragraphs divided by

[294] Read *cia ad-cotam* as Binchy suggests.
[295] Binchy is not certain about the expansion *an-*.
[296] Binchy suggests *beirid*.
[297] Binchy suggests *duin-ne*.

me:

.i. Cid fir b*er*eas in techtadhugh is aml*aid* dob*er*ad *ē* abad tēora .x.madh do tab*air*t i*m*an feran*n* abad ca*ch* lāe do tabair[t] i*m*e re rē na .c.x.maidhe *no* co*m*adh asi*n* .c.lō 7 isan lō dēgea*n*ach 7 isi*n* lō medōnach
7 mu*nar* tincead hē risi*n* rē si*n* is dul do anund do hor in f*er*ai*n*d 7 dā each ina lāi*m* 7 fīad*nais*e lais a forba na .c.x.*m*aide 7 robad cōir dlig*id* do a forba cuici isi*n* .c.x.maid 7 a ni*n*dit*echt* na .x.maid*e* medō*n*chi 7 b*eth* do thall re lā co naithci
7 muna ti*n*ce*ar* é. an*n*si*n* is dul dō amach re rē na .x.maide medō*n*chi 7 roba cōir dlig*id* dō a fo*r*ba .u.chi isi*n* .x.m. medō*n*aigh 7 abad dó da*no* láe *ar*in mbidbaidh re rē na .x.m. medō*n*aige *nō* co*m*ad isi*n* .c.lō 7 isi*n* lō medō*n*ach 7 isi*n* lō dēigeanach
7 mu*n*a ti*n*cear é. dul dō anun*n* a fo*r*ba na .x.m. medō*n*aighi 7 a ni*n*dat*echt* na .x.m. dēigenaighe co t*r*īa*n* in f*er*ai*n*d 7 .iiii. heich leis 7 dā fīad*nais*e abad dō ca*ch* lāe re rē na .x.m. medō*n*aigi *nō* co*m*ad isi*n* .c. lō 7 isi*n* lō medō*n*ach 7 isi*n* lō dēgeanach 7 mu*n*a tince*ar* é is dul do amach 7 abad do *ar* mbidb*aid* ca*ch* lāe amuigh re rē na .x.m. dēighanaighi
7 mu*n*a tincear he is dul dō anund a forba na .x.m. dēigea*n*aigi coruige l*eth* an f*er*ain*n* 7 .uiii. neich leis 7 t*r*ī fīad*nais*e leis 7 a l*eth* do g*r*ādaib fl*atha* 7 a l*eth* do g*r*ādaib Fē*in*e
7 muna damt*ar* dlig*ed* dó re n(d)[298]ul an(d)[299]un*n* noco ni*n*dl*igthech* dō ginco ti amach no co fin*n*a in leis *nō* na*ch* leis 7 damad cin*n*te leis na demta dlig*ed* dō re ndul andund noco ni*n*ddl*igthech* dō ginco tuca abad *acht* te*cht* do br*eith* in*n* fo .c.ōir

Translation:

If it is men that carry out the entry, it is thus that they do so, [namely] to give a notice of thrice ten days concerning the property, to give a notice each day concerning it during the first ten days, or perhaps on the first day and on the last day and on the middle day.

And if it [the claim] has not been satisfied by that time, he should go thither to the edge of the property and two horses in his hand and a witness with him at the end of the first ten days, and it would be proper that entitlement [is granted] to

[298] d with p.d. above.
[299] d with p.d. above.

him, at the end of the five days[300] in the first ten days and at the beginning[301] of the middle ten days; and he should be there for a day and a night.

And if it is not satisfied then, he should go out for the duration of the middle ten days, and let it be lawful entitlement to him, at the end of five days in the middle ten days; and he should put a notice each day on the defendant during the middle ten days, or perhaps on the first day and on the middle day and on the last day.

And if it is not satisfied, he should go thither at the end of the middle ten days and at the beginning of the last ten days as far as a third of the property and four horses with him and two witnesses; and he should put a notice each day during the middle ten days, or perhaps on the first day and on the middle day and on the last day[302].

And if it is not satisfied, he should go out and put a notice on the defendant each day out there during the last ten days; and if it is not satisfied, he should go thither at the end of the last ten days as far as a half of the property and eight horses with him and three[303] witnesses with him, a half from the grades of the lords and half from the grades of the Féni.

And if his right is not granted to him before going thither [into the property], it is not unlawful for him to refrain from going out until he finds out whether it is his or it is not his; and if he is certain that the right will not be granted to him before he goes thither, it is not unlawful for him to refrain from giving notice but to carry out entry there in the first instance.

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[300] Reading *cuiced*.
[301] Reading *inotacht.*
[302] This last sentence dittographic?
[303] Probably the number here is intended to be four, so as to have 'half from lords and half from commons' However, the canonical text has clearly 'three male witnesses' in this situation, but they are all from the grades of the normal freeman (Féni) (*Treige ferfiadan lat do gradaib feine*, *CIH* 210.30-31), perhaps there referring to all freemen including the lords. The four persons and the half-lord half-Féni rules are probably late innovations, when the commentator thought that since the number of horses doubles on each consecutive entry (2, 4, 8), the number of witnesses doubles as well, giving 1, 2, 4 in the three entries.