

## I.

NOTES AND QUERIES ON THE CUSTOM OF GAVELKIND IN KENT, IRELAND, WALES, AND SCOTLAND. BY ÆNEAS J. G. MACKAY, LL.D., Q.C., F.S.A. SCOT., SHERIFF OF FIFE AND KINROSS.

The present paper is an attempt to treat a problem in the Ancient or Archaic Law of the British Isles. I have called it "Notes and Queries on the Custom of Gavelkind," and the queries will be more important than the notes. Gavelkind is admittedly an unsolved problem. The philological history of the word, as well as the legal history of the custom, is either keenly contested or abandoned as insoluble. Even if insoluble, it will be found to present some interesting points of anti-quarian investigation beyond the main query involved. That query is whether Gavelkind is a Celtic or Teutonic custom, or one of those customs called, for want of a better word, Aryan, existing in the wide family of races which included both Celts and Teutons, Greeks and Romans, and, indeed, the ancestors of almost all European and some Asiatic nations.

I do not propose to enter here, save incidentally, on the wider ethnological inquiry, but to limit the present Notes to Gavelkind, as it has existed or still exists under that name within the British Isles.

Although the same, or a similar, custom very probably existed in and beyond the continent of Europe, the name Gavelkind, with certain special incidents of the custom, appears to have been confined to Great Britain and Ireland.

The problem of Gavelkind has one apparent advantage over other problems in Ancient Law, that we can study it in several survivals, one of which, the Gavelkind of Kent, still exists.<sup>1</sup> But this perhaps increases rather than diminishes its difficulty. For it is natural, and usually safer, to argue from the known to the less known, and, therefore, to assume the Kentish Gavelkind, as it still exists, to be the normal form from which the other varieties, Irish, Welsh, and Scottish, were derived, or by which

<sup>1</sup> *Robinson on Gavelkind*, 5th edition, by Charles J. Elton, Q.C., and Herbert J. H. Mackay, LL B., Barrister-at-Law. London: Butterworth & Co., 1897.

they must be interpreted. But we are here dealing with a question of prehistoric times, the origin of a custom which existed before history or law was written, and it must be remembered that all so-called survivals are not merely survivals, but survivals with modifications and accretions which obscure the original form of the ancient custom. For this purpose the older forms of the custom in Ireland, Wales, and in Kent, not as it now exists, but as it was at the earliest period, are more important.

*Gavelkind* may be described with sufficient exactness for the present purpose, yet with sufficient generality to cover all its known varieties in the British Isles, as a custom by which several persons succeed to the possession of land on the death of one, although the succession may have and probably did originally take place on other events than death. But as it ultimately assumed the concrete form by which it is now known, it necessarily implied the two ideas of partition and succession in consequence of a death. So understood, it is the opposite of the custom called Primogeniture, from its most usual case, by which the first-born son, if there were sons, succeeded on his father's death to his rights in land, to the exclusion of all the other children. As land and its uses are in almost all stages of civilisation the most coveted kind of property, the custom which regulates its succession is one of the most characteristic reflections of the condition of society, and one of the most important legal institutions. It does not easily change. If it changes, it is either in consequence of a revolution, or by the gradual modification and transmutation of all things to which even customs yield. A partition or distribution of the right to possess and use certain lands between a larger or smaller group, but always a plurality of persons, a tribe, a sept or clan, a family, a village or township, seems very generally to have preceded both the right of exclusive ownership and the custom of succession by primogeniture. Within the British Isles three varieties are known by the same name of *Gavelkind*, the Irish, the Welsh, and the Kentish. In Scotland the traces of this mode of succession are slender and indirect, though it has been sometimes stated, and it is not improbable, that it at one time prevailed amongst the Scottish Gael.

The periods during which there is authentic evidence of the three varieties of Gavelkind deserve special notice. The Irish can be observed from the date of some of the earliest Irish laws, the most ancient parts of which have been dated in the 5th and 6th centuries, but may be some centuries later, down to the reign of James I., when it was abolished by one of the decisions of the English judges reported by Sir John Davis. The Welsh can be also traced back to the earliest laws of Wales, which, as we now have them, are of the 10th or 11th centuries. It was modified by a statute of Edward I., but existed down to the statute of Henry VIII., by which it was abrogated. The Kentish can be observed from before the Norman Conquest down to the present day, and still exists, though its extent has been restricted through disgavelling acts, and its form has been much modified. The presumption in Kent is still in favour of it, and it has been thought worth while to reprint last year the standard legal work on the subject by Robinson. A custom which has thus existed from before the dawn of history to the present day has proved its tenacity, but is not unlikely to have undergone variations to preserve its life. In Ireland and Wales it was admittedly a very ancient Celtic custom prior to written laws. In Kent alone it is matter of controversy whether it was of Celtic, Roman, or Anglo-Saxon, which would there mean Jutish, origin.

The difference between the three varieties may be thus stated.

The *Irish* Gavelkind was a very complicated, and not yet fully understood, method of succession to and partition of the land held under this custom on the death of the holder, who was not an owner, but a possessor for life, and probably originally only for a term of years, on the expiry of which, apart from death, a redistribution took place. It did not apply to the land of the kings and chiefs, which passed by the custom of *Tanistry*<sup>1</sup> to the eldest and worthiest of the kin. But it applied to most of the holdings of the members of the tribe or sept, and probably, at one time, to most of the land in Ireland not held by

<sup>1</sup> As to Tanistry, see Spenser's *View of the State of Ireland*, Dublin, 1633; Sir John Davis's *Reports of Cases of Law in the King's Courts in Ireland*, Dublin, 1615, folio, in French; translated into English, Dublin, 1762, 8vo.

chiefs or kings. It is, however, a mistake to suppose that even in very early times there was not separate and private ownership of land, in the case of members of the tribe, which was not subject to the custom of Gavelkind, as is clearly shown by many passages in the Brehon laws.<sup>1</sup> When the death occurred of a *Gavelkind* possessor, his land subject to the custom did not pass to his children or to his nearest of kin, but reverted to the sept to which he belonged, and a new partition or redistribution was made, not only of his land, but of the whole land of the sept held by *Gavelkind* possessors. At the date of the abolition of the custom in the beginning of the 17th century,<sup>2</sup> this redistribution was made by the chief, apparently at his pleasure, but with some regard to what Sir John Davis, who has preserved the most exact account we have of it at this period, calls the "antiquity" of the claimants. "The inferior tenancies," he says, "were partible among all the males of the sept, both bastards and legitimate, and after partition made, if any one of the sept died, his portion was not divided among his sons, but the chief of the sept made a new division of all the lands belonging to that sept, and gave every one his part, according to his antiquity." Whether "antiquity" here means seniority in age, or nearer relationship to a common ancestor, does not appear. This custom, as it existed at the date of its abolition, had, by process of time, very much altered from its form as recorded in the Brehon law, probably originally compiled in the 6th century, but by frequent glosses and commentaries greatly altered before it assumed the form in which we now have it even in the earliest MSS. This earliest form of the custom, as described in these laws, is so complex and difficult to understand, that some persons are disposed to believe it to have been a fiction or invention of the Brehons. But the invention of such an elaborate system, which is quite clearly stated in words, however difficult their interpretation to us at the distance of so many centuries, would be a more difficult hypothesis than the fact of its actual existence at a remote stage of tribal society. According to the text of the Brehon law, the partition of the land was amongst seventeen members of the sept, who were divided into four classes or groups.

<sup>1</sup> *The Senchus Mor, Ancient Laws of Ireland.*

<sup>2</sup> *The Case of Gavelkind, Davis's Reports.*

These were the *Geilfine*,<sup>1</sup> which had five members, and meant, according to Mr Whitley Stokes, the Hand group from the five fingers of the hand. The *Deirbhfine* (the true), the *Iarfine* (the after), and the *Indfine* (the end or final) groups, each consisting of four members. It would also appear certain that the *Geilfine* was the youngest or junior group, and the *Indfine* the most remote from it. But, apart from these points, there is the greatest controversy between those who have studied the subject as to the mode of division. Even the different editors of the Brehon laws differ from each other. The view taken by Dr Joyce, one of the commissioners under whose auspices these laws have been published, and who is well known for his sound Celtic scholarship, may be given not as certainly correct, but as the most easily understood. "If any one of the groups," he says, "fell short of its full number, through death or otherwise, those of the group that remained had still the whole of the property of that group. If any property was left to the organisation it went to the *Geilfine* solely. If any group became extinct, its property was divided amongst the other groups, according to rules very distinctly laid down in the law. Thus, if the *Geilfine* became extinct,  $\frac{1}{6}$ ths of its property went to the *Deirbhfine*,  $\frac{2}{6}$ ths to the *Iarfine*, and  $\frac{1}{6}$ th to the *Indfine*. If the *Deirbhfine* became extinct,  $\frac{1}{6}$ ths went to the *Geilfine*,  $\frac{2}{6}$ ths to the *Iarfine*, and  $\frac{1}{6}$ th to the *Indfine*; and there are similar rules to meet the extinction of each of the other groups.

"The several groups might contain less, but could not contain more, than the numbers given above. Suppose, then, that all the groups were full, and that a new member was born into the *Geilfine*. In this case the oldest of the *Geilfine* passed into the *Deirbhfine*; the oldest of the *Deirbhfine* into the *Iarfine*; the oldest of the *Iarfine* into the *Indfine*; and the oldest of the *Indfine* passed out of the organisation altogether, and became an ordinary unattached member of the tribe." Both this form of Gavelkind, which may be taken to be the oldest known, and

<sup>1</sup> The chief passages in the Irish laws, as to these divisions, are of the divisions of the tribe. *Ancient Laws*, 1879, iv. pp. 284-295; i. p. 260, n.; iii. p. 331 *et seq.* *The Book of Aicill*. The late Mr Richey's *Introduction*, iv. p. xlix, gives his own view and that of other modern writers as to the Irish custom of succession; and also references to other passages in the *Ancient Laws* where these divisions are alluded to.

that which it had assumed prior to its abolition in the beginning of the 17th century, as described by Sir John Davis, are no doubt very different from the equal division amongst sons which we are accustomed to associate with the Gavelkind of Kent. Still they resemble it in being a common law or custom of succession which necessarily implied partition amongst males, and excluded the will of the last possessor. The abolition of this custom by the English judges proceeded upon a well-known principle of English law, that a custom will not be sustained by the courts, however general, if deemed unreasonable by the judges. Irish Gavelkind was held unreasonable by the judges of James I. in Ireland upon four grounds: (1) the mode of partition which made rights of property uncertain and hindered improvement, (2) the constant shifting of the possessors and the exclusion of women from any right of inheritance, (3) the admission of bastards to share along with legitimate children, and (4) the non-existence of the widow's dower.

The *Welsh* Gavelkind was much simpler. Its earliest known form is to be found in the Ancient Laws of Wales,<sup>1</sup> and also in some Extents or Surveys of Welsh land<sup>2</sup> of the time of Edward II. Land subject to this custom was divided equally amongst the sons legitimate or bastard, and their male descendants, taking their parents' share, but females were excluded, and the widows had no dower. The right to a share descended to the fourth degree<sup>3</sup> of the kin, and the shares were equalised in each degree; but where any member of a nearer degree existed the more remote were excluded. For some purposes, as for paying fines for slaughter and other injuries, the ninth degree of kin was recognised, and probably at an earlier date had also a right to share the land as correlative to their obligation to pay the fine. Three and its multiple nine were favourite numerals with the ancient Cymry, which four was not, and the reduction to four may probably have been due to some extraneous influence hostile to the custom, and desiring to

<sup>1</sup> *Ancient Laws and Institutes of Wales*, revised edition, 1841, i. pp. 167-178, Venedotian Code; i. pp. 542-548, Dimetian Code; i. pp. 760-762, Gwentian Code.

<sup>2</sup> Seebohm, Frederic, *The Tribal System in Wales*, 1895, pp. 31, 33, 73-78, and Documents in Appendices B and C.

<sup>3</sup> But at an earlier date, probably to the ninth degree, Seebohm, p. 78 *et seq.*

limit, though not strong enough to abolish it. The share of sons was called *welc* or *gwelc*, from a word signifying a bed. The smaller shares of remote descendants was called *gafael* or *gavel*, which came to mean a distinct measure or share of land.<sup>1</sup> This without doubt is the origin of the Welsh gavelkind, which had nothing to do with the Anglo-Saxon *gafol* (tribute or payment),<sup>2</sup> or with any payment or render for the land held under the custom, but referred to its being a system of partition. Edward I., by the Statutum Walliae (12 Edward I.), preserved partition as the rule of succession, but altered its mode by excluding bastards, admitting females failing males, and introducing dower. The points so altered were the very points which the judges of James I. held unreasonable in Ireland three centuries later. The custom when modified became practically a partition amongst sons, and failing sons daughters, differing little from the gavelkind of Kent. Henry VIII. abolished the custom altogether by the statute Henry VIII. c. 26, secs. 96 and 128, and declared that succession to land in Wales was to follow the common law of England, which was the rule of primogeniture. It appears, therefore, that gavelkind was modified in Wales in 1284, and abolished in 1544, and was abolished in Ireland in 1606. It does not seem probable that the name for either the Welsh or Irish custom should have been borrowed from Kent, especially as there are Irish and Welsh words, as we shall see presently, from which gavelkind may be derived, and which represent much more exactly its real character than the Anglo-Saxon *gafol*, which it is supposed to represent. Lambarde, in his *Perambulation of Kent*,<sup>3</sup> first published in 1576, shortly after the statute of Henry VIII., expressly says not that the Welsh term was borrowed from the Kentish, but that the "*Welshmen, who but now lately lost this custom, do in their language call this discount Gwele, and in their Latin lectus progenies et gavella of their own word Gefeille, which signified twins or such as be born together, because they do all inherit together.*"

<sup>1</sup> *Glossary to Ancient Laws, sub voce* "Gavael," and Seebohm, pp. 31-33.

<sup>2</sup> Glossary in Dr Reinhold Schmidt, *Die Gesetze die Angel-Sachsen*, Leipzig, 1858, in which it may be noted the word *gafolkinde* does not occur amongst his long list of citations from the Anglo-Saxon laws.

<sup>3</sup> *Perambulation of Kent*, reprint of 1826, p. 475.

The *Kentish* Gavelkind was, at the earliest period to which we can trace it on record, shortly before the Norman Conquest, and still remains, a division of the land held under the custom on the death of the possessor, equally amongst the sons or their representatives, and failing sons amongst the daughters or their representatives, and so in the case of males and females in other degrees. It also recognised a right of dower of the widow in one-half of the land instead of one-third, which became the common law rule. In these points it did not much differ from common Socage tenure, although it will be seen presently it did in others, and it avoided the points which the English Judges in Ireland declared unreasonable. Is it not possible that this may have been because the Anglo-Saxons while retaining the name, had modified a custom already prevailing amongst the Celts, when they occupied the Kentish Kingdom?

From the above statement of the three varieties of Gavelkind, it appears that the Irish is the most ancient, and the Welsh, even in its oldest form known, a less ancient, but still ancient, species of the same or similar Celtic custom, derived from a time when both races lived in tribal societies. The admission of bastards proves both customs were pre-Christian. This is not inconsistent with, indeed probably means, that they were children of a union, sanctioned by Celtic usage though not by the Church. It has been remarked by Mr Willis Bund<sup>1</sup> that many of the earliest Welsh Saints were illegitimate.

The Kentish custom of Gavelkind may have been only a form of an equal division of land amongst the nearest kin which seems to have obtained amongst many races and in many places before Feudalism introduced Primogeniture, and in particular in the tenure called Socage in England in its oldest form as well as in the allodial tenures of the Teutons, of which the Udal tenure the Scandinavians brought to Orkney and Shetland is an example. But it may also have been a broken down or more recent and modified form of the Celtic Gavelkind derived from the Britons of Kent, but modified by the successive conquests of the Romans, the Jutes, and the Normans. It deserves note in this connection, that amongst the Bretons of Brittany, who were not conquered

<sup>1</sup> Willis Bund, *The Church of Wales*, 1897.



by the Teutons, but only by the Norsemen, an equal division of land amongst sons prevailed until abolished by an Ordinance of Geoffrey, Earl of Richmond and Duke of Brittany, in right of his wife in the year 1180, and was abolished then only in the fees of nobles.<sup>1</sup>

The question of the origin of the word *Gavelkind* must next engage our attention.

In Celtic, Irish, and Welsh the meaning of the two parts of the word, singly or in combination, presents little difficulty. *Gavel* is the Irish *Gabhal* and the Welsh *Gafael*, which means a share or division of land. *Kind* is Irish *Cine*, Scotch Gaelic *Cinneadh* or *Cinne*, and Welsh *Cenedl* derived from a root *Cinn*, to grow or increase, and meaning the increase or growth of a family by successive generations until it became a clan. The Anglo-Saxon *Cynn*, from which English *Kin*, is of course the same, but though a congener, cannot be the root of the Celtic *Cine*. The Celtic *Cine* denoted, apparently, a smaller group than *fine* meaning a tribe, as that word in its turn denoted a smaller group than *tuath*, a country or district and the people inhabiting it, who might be divided into several tribes and many septs or clans. So the combination *Gavelkind* would mean the sharing or division of the land amongst the sept or clan. We know it did mean this in Ireland, though in Wales and Scotland the use of the combined word was rare. The root of *Gabhal*, is a verb, meaning to take, but some of its derivatives early acquired the meaning of things which divided or branched out from a common source or root as *Gabhal*, or *Gobhal*,<sup>2</sup> the Scotch Celtic form meaning a fork. This word was specially applied amongst the ancient Celts to the post or forked tree which supported the roofs of their wooden huts;<sup>3</sup> *Gavelock*, a pronged spear or pike, which passed into the mediæval military vocabulary; *Gobhloc* is still used in Irish for the fork of wood with which

<sup>1</sup> Favin, *Theatre d'Honneur*, i. p. 906. Barrington, *Observations on the Statutes*, p. 123.

<sup>2</sup> *Gabhal* and *Gobhal* answer to different dialects or stages of Celtic. This connection has been doubted, but good Irish scholars derive both from the verb *gabh* (to take). Joyce, *Irish Place Names*, 1st Ser., p. 510.

<sup>3</sup> The Roof-tree was a common toast in the Highlands of Scotland, Burt's *Letters*, ii. 40; Carr's *Caledonian Sketches*, p. 405; and in Wales the first toast "after dinner in a Welsh mansion is 'the Chief Beam of the House.'" Clark's *Travels*, ii., sect. ii., p. 501, Note.

boys snare birds; *Gaveleger*, also used in that military vocabulary, though more rarely, for the quartermaster who laid out the divisions of a camp;<sup>1</sup> *Gable*, the division wall between two houses; and *Gaff*, the hook or cleek used for taking salmon out of the water. The most ordinary meaning of *Gabhal* in modern Gaelic is a tack or lease of a piece of land taken for rent, or the instrument by which it is taken, an equivalent to the Anglo-Saxon word Holding. A cognate word *Gabhalla* means spoil or things taken in war.

It is only when we come to *Kentish Gavelkind* that there is serious doubt or dispute as to the meaning of the word. Three etymologies were suggested by the older English Lawyers. Coke and others took the view that it meant "give to all children (kynd)," which was said to be taken "from the Dutch," meaning German. This was a fanciful derivation of an age before etymology had become a science. It was inapplicable to a custom which did not give the land to all, but only to male children. Others derived it from the Anglo-Saxon *Gafol*, tribute in the sense of rent or render, a word apparently cognate with the mediæval Latin *Gabellum*, and French *Gabelle*, in the sense of rent or tax. This was, and is the common English opinion. A few, but till lately a very few, lawyers, chiefly those who knew the Welsh custom, accepted the Celtic derivation from *Gavel*, a share or portion of land.

Lambarde in his *Perambulation of Kent*, written in 1576, who ought to have been the best authority as a Kentish man, and the earliest writer on the custom, states all three derivations without expressing a decided preference for any. The controversy was brought to an issue by two writers in the end of the 17th century. Mr Somner in his *Treatise on Gavelkind*,<sup>2</sup> published in 1660, argued with much learning derived from old Kentish documents in favour of the derivation from *Gafol* in the sense of rent or render, and as a consequence for the Teutonic origin. Mr Silas Taylor in 1663 stated the case in favour of the derivation from *Gavel*, a share or holding of land divided amongst the kin, and consequently for the Celtic origin.<sup>3</sup> He continued until recently an almost

<sup>1</sup> *Monro's History of Mackay's Expedition.*

<sup>2</sup> *A Treatise on Gavelkind*, by William Somner, London, 1660.

<sup>3</sup> *The History of Gavelkind*, by Silas Taylor, London, 1663.

solitary dissenter from Somner's orthodox view. That view is accepted by Mr Charles Elton, the Editor of the 5th Edition of *Robinson on Gavelkind*, published in 1897, as it had been by Robinson himself. It is also apparently accepted by Messrs Pollock and Maitland in their recent learned *History of English Law*<sup>1</sup> though they do not profess to have re-examined the question, and rather shrink from touching any legal custom or institution which may possibly be Celtic. It has been adopted by the Editors of the *New English Dictionary*, to one of the sub-editors of which, Mr Craigie, I am indebted for an acute criticism of this paper. On the other hand, Sir Henry Maine<sup>2</sup> and Mr Herbert Lewis<sup>3</sup> favour the Celtic origin, and so to a certain extent does Mr Seebohm.<sup>4</sup> But the question is not one to be settled by the authority of any name, and it must be admitted that there are difficulties on both sides. The upholders of the Teutonic or Anglo-Saxon origin have never explained how if the Kentish *Gavelkind* was merely a tenure of land for rent or render of agricultural services instead of feudal services and a mere variety of common Socage, it retained the distinct name of *Gavelkind*, and special incidents to be presently noticed, in Kent and a few other places, or how it is that no such name is to be found amongst the Teutons of the Continent. Nor has any satisfactory meaning been found for the second half of the word according to this view. For why should the custom be called a kind or species of *gafol*.

The chief difficulty upon the other side appears to be what Darwin, when the geological evidence was silent or adverse to his Theory of Evolution, called, in *The Origin of Species*, the defect of the record over a long period of time. No one knows much of the condition of the Celtic tribes which occupied Kent prior to the Roman Conquest. Yet

<sup>1</sup> The name "seems to tell us that the chief characteristic of that tenure is or has been the payment or *Gafol* of rent as distinguished from the performance of military service on the one hand, and of agricultural labour on the other;" Pollock and Maitland, *History of English Law*, 1895, i. p. 164. But it will be shown presently that this was not its distinguishing characteristic.

<sup>2</sup> *Lectures on the Early History of Institutions*, 1875, pp. 186-9.

<sup>3</sup> *The Ancient Laws of Wales*, 1889, pp. 459-490.

<sup>4</sup> *The Tribal System in Wales*, 1835, and *The English Village Community*, 1884, p. 352.

it seems at least to be now established by the evidence of the British coinage that they had made some progress on the road towards civilisation, especially as regards the cultivation of land. It is difficult, therefore, to suppose that they had no rules with regard to the tenure of land, though what these rules were is unknown, and can only be inferred from those we find existing at a much later date amongst their kindred tribes who took refuge in Wales, and such an inference is by no means always safe. Another difficulty which affords indeed the strongest argument in favour of the Teutonic origin is that the word *Gafol*, which is at least similar in sound to *Gavel*, undoubtedly existed and was frequently used in connection with the Kentish land customs. Indeed, it may be granted that this word became early associated in the minds of English lawyers with *Gavelkind* tenure. But it does not appear that they were associated with *Gavelkind* tenure alone. Thus *gafol-corn*, *gafol penny*, *gafol malt*, *gafol honey*, *gafol swine*, and other similar compounds, were cases in which the rent or return from the use of land was paid by the species of thing so associated with the word *Gafol*, and such compounds frequently occur in the tract called "*Rectitudines singularum personarum*," Schmidt, *Gesetze die Angel-Sachsen*, p. 371 *et seq.*, which is not in any way confined to Kentish customs. *Gafol* in short was equivalent to the Latin *census* and the French *gabelle*. It deserves remark that the form *Gafolkind* does not, so far as I am aware, occur in the Anglo-Saxon Laws or Charters, though it may be set off against this that *Gabhail Cine*, though given in O'Reilly's *Dictionary*, has not yet been found in the Old Irish Laws. No doubt it is true that when lands were held in *Gavelkind*, the services to the Lord were not feudal but agricultural, or for a certain small payment, but this shows only that *Gavelkind* had existed before Norman feudalism, but does not decide the question whether its origin was Anglo-Saxon or Celtic. As soon as a coinage was introduced it may be deemed certain that payments in money would be substituted in certain cases for payments in kind as the return for the use of land. And it is well established that the Celtic Kings or Chiefs of Kent had a coinage. So too the existence of superiors to whom such payments would be made was certainly not only pre-Norman but also pre-Saxon.

As gavelkind was the general custom of Celtic Ireland down to James I. and of Wales down to Henry VIII. we should expect to find traces of it in Scotland, of whose Celtic population part came from Ireland and another part was of the same Cymric race as the Welsh. But such traces are few and indirect. This may partly be accounted for by the fact that the Celtic Law of Scotland was never written or codified as the Laws of Ireland and Wales were, and that as a consequence its legal customs were less able to resist the dominating influence of Feudalism and its custom of Primogeniture. This is not the only custom which has been submerged. The whole body of Celtic custom in Scotland was either overlaid or swept aside by Roman Canon or Feudal Law so that only the scantiest fragments survived. Still we should expect that the custom by which the men of its septs or clans, other than the chiefs, held or succeeded to the lands they possessed would not be entirely lost.

The words of which Gavelkind is or may be composed are both known in Scottish Gaelic, but the compound seems to be unknown or of very rare use. Mr Alexander Carmichael, the best living authority on such a point, informs me that he thinks he has once or twice heard the word *Gavel Cinne* in the Northern Islands, but is uncertain what was the precise meaning attached to it.

*Gabhail* or *Gavel* in Gaelic<sup>1</sup> means :—

- (1) The share of work performed by oxen at one yoking.
- (2) Spoil taken in war.
- (3) A farm.
- (4) A lease or tack by which a farm is held, which is its ordinary meaning in modern Gaelic.

The possibly allied word *Gobhal* means a fork, and Professor Mackinnon writes to me, "*Gobhal* is with us restricted much to rafters forming an angle, the fork of the human body, and a gully in a landscape." The Highland Society's Dictionary gives "a prop, post or pillar, a house supporter, a forked supporter," and is still used in this sense—*Gobhal* in Argyle and *Gabhal* in Perthshire Gaelic.

<sup>1</sup> Highland Society's Dictionary, *sub voce*.

The word *Cavil* means (1) a pole or staff.<sup>1</sup> (2) a lot.<sup>2</sup> (3) the share of anything and specially land for which lots are cast.<sup>3</sup> It is common in Scottish dialects, but as it is found both in districts mainly Celtic, and in districts mainly Teutonic as Northumberland, or Scandinavian as on the north-east coast of Scotland, it is uncertain from which it is derived, the more that there is a Scandinavian root "Gafte" as well as the Celtic "Gavael," and good scholars prefer the Scandinavian origin.

Similar uses of both *Gabhal* and *Gobhal* are to be found in Ireland and Wales, and there is little reason to doubt that the Irish *Gavel* as in Gavelkind and the Scotch Celtic *Gabhal* are the same.

*Kind* again may of course be, as argued by the advocates of the Teutonic origin of Kentish Gavelkind, merely the word for a sort or kind of thing, but it is more probably "kind" in the sense of "kin" or family, from which the adjectives *kind* and *kindly* are derived. I have already pointed out the difficulty of attributing the derivatives of a common Aryan root to any one branch of the Aryan family. But as in Ireland and Wales *kind* was undoubtedly of Celtic origin, so it probably was in Celtic Scotland. The word "*Cinneadh*"<sup>4</sup> from the root *Cinn*, to grow or increase, meaning a sept or clan, as the increase or descendants of common ancestors, became by the suppression of the *dh* *Cinne* or *Kin*. The older use probably was to sound the *d* as in the Welsh equivalent *cedd*, and this may survive in *kind* in the sense of *kin*.

And here a very ingenious conjecture of Mr Herbert Lewis in his work on *The Ancient Laws of Wales* comes to hand, and may perhaps be carried a step further than he has done out of the region of the conjectural into that of the probable. His attention had been drawn to the references in Jameson's Dictionary under the head of "Kindly Tenants," afterwards called Rentallers when their names came to be entered in the Lord's Rental, which constituted their title without any Tack or Lease. These Rentallers were similar to English Copyholders. They were at one time undoubtedly numerous, though they have now

<sup>1</sup> *Christ's Kirk on the Green*, stanza 7.

<sup>2</sup> *Bellenden's Chronicle*. Douglas' *Virgil*, 112, 55.

<sup>3</sup> *Burgh Laws*, c. 59.

<sup>4</sup> Highland Society Dictionary.

disappeared except in the case of the King's Kindly Tenants of Lochmaben<sup>1</sup> and the Tenants by Booking of the Abbey of Paisley. They are almost the only, if not the only representatives of ancient customary tenure in Scotland which evaded the thorough-going adoption of Feudal tenures and were the survivals of a very ancient condition of society.

Stair says "A Rental is," by which he means is equivalent to, "a Tack set to Kindly Tenants which are the successors of the ancient possessors or those who are received by the Heritor with the like privilege as if they were the ancient possessors. *Such Tacks are understood to comprehend more kindness and friendship in the tenant to his master than other tenants,*<sup>2</sup> and therefore the Rentaller may not assign them nor introduce a sub-tenant unless the rental expressly bear that power, but must himself remain on the ground as a *Colonus* the same being in his own labourage, and albeit after the expiry of the rentals their successors have no right to maintain them in possession, but frequently of favour they are continued, and pay grassum at the renovation of their Rentals."<sup>3</sup> In this passage Stair probably, in so far as he denies the right of the rentaller and treats his possession as matter of favour only to be renewed by paying a grassum and likens his rental right to a tack, fell into the same mistake as the old English Lawyers who considered Copyholders as little more than tenants at will, whose right proceeded from the Lord's grant and not from ancient possession. But we may be pretty certain that originally they were more than this, viz., the ancient possessors who had rights of possession prior to the existence of feudal laws. Sir Thomas Craig,<sup>4</sup> who wrote before Stair, expressly mentions that while the customs differed and the practice in his time was for the Lords to

<sup>1</sup> The following are examples of entries with reference to the Kindly Tenants of Loch-Maben :—

24th Nov. 1726, M. 15195. The right of the Kindly Tenants of Loch-Maben was found to be such a right of property in the lands that they could not be removed and might dispose their rights to extraneous persons.

But 4th July 1781, M. 10310. Rentallers of Seaton on the Morton estate were held incapable of granting an infestment to a third party by way of heritable security. The case of Loch-Maben was treated as an exception, *Irving and Jopp v. Collins*, 4th Feb. 1795. M. 10316.

<sup>2</sup> Observe, Stair does not say 'of the Master to the Tenant.'

<sup>3</sup> *Institutes*, 29, 15 and 16.

<sup>4</sup> *Diagesis*, 45, 19 and 93, 24.

limit Rentals to liferents, yet in the Bishopric of Glasgow and Abbey of Paisley lands they were hereditary, and only in those under the Lords *in occidentalibus partibus Scotia* for life. This seems to imply that they were hereditary as a general rule in the West of Scotland, a district in which the Celtic race lingered longer than in the East. The above view of the original character of the Kindly Tenant is confirmed by an Act of Queen Mary, 1563, c. 12. "That na kyndlie lauchful possessor, tenent occupyer of any of the saidis Kirk landis be removit fra thair Kyndlie roum, steding, or possession be the allegit feuaris or takaris of the same in lang takkis," and Jameson observes, "A man is said *to have a kindlie* to a farm or possession which his ancestors have held and which he has himself long possessed! Sixty or seventy years ago if one took a farm over the head of another who was said *to have a kindlie to it*, it was recognised as unjust as if he had been the real proprietor." There are many examples of these kindly tenants as formerly existing in the parts of Scotland which remained longest Celtic. A few may suffice. "His kind and friends of Clan Chattan began to call to mind how James, Earl of Murray, had casten them out of their kindly possessions whilk past memory of man their predecessors and they had kept for a small duty, but for their faithful service" (*Spalding's History of the Troubles*, vol. i., p. 3). So there is noted in the Book called *Balfour's Practicks*<sup>1</sup> the case of *the Kindly Tenants in St Mungo's rental*, the ancient rental of the See of Glasgow, which decided that the widow had the liferent by privilege of St Mungo's widow. This probably refers to a right introduced in favour of the widow by the Church which had not previously existed. In another case of the King's Rentallers it was held that "the bairns aucht to be rentalit." This seems to imply a right of the children to succeed. Both cases undoubtedly refer to Celtic districts.

Mr Lewis saw the importance of such passages as suggesting the Celtic origin of kindly tenancy, but he attributed<sup>2</sup> the deriva-

<sup>1</sup> *Balfour's Practicks*, our best, indeed almost only, record of decisions prior to the institution of the Court of Session, was probably not written, as assumed by its editor, Goodall, by Sir James Balfour of Pittendriech, but it is an authentic and valuable book. See article "Who wrote *Balfour's Practicks*?" by Æ. J. G. Mackay, *Scottish Antiquary*, July 1898.

<sup>2</sup> *The Ancient Laws of Wales*, p. 476.



tion of the word "kindly" to the Celtic "*cynydd*, meaning increase." Is it not rather derived from the *kin* of the same clan, who were the original possessors of such tenancies? If so, we have in Scotland in these kindly tenancies a broken-down fragment still surviving in one or two places of the original possession by the members of a sept or clan. It is some confirmation of this view that in an assize of William the Lion<sup>1</sup> a *nativus* is described as a *kind born bondsman*. Now a *nativus* is the Scotch equivalent for a villein or serf,<sup>2</sup> and several passages in Craig prove that these villein possessors of small holdings were favourably considered, and could not be evicted without cause. They were undoubtedly in Celtic districts the ancient Celtic possessors who had fallen into the condition of serfs. The mode of succession to these kindly tenancies or to the holdings of the *nativi* is unfortunately not clearly stated in any record I have observed, for it would probably be too much to infer from the single case of the King's Rentallers above cited from *Balfour's Practicks* that the general rule was that the whole of the children inherited. This is indeed not likely to have been the case in the very small holdings of the serfs, who had little more than a hut or cottage, a garden, and perhaps grass for a cow, but it might have been the case in the older and larger possessions of the members of the clan before they lost their original freedom.

There are some other fragments of Celtic custom which deserve notice as pointing indirectly to the possession of land and its distribution amongst members of the same kin or clan.

The fine or compensation payable for slaughter to the kin of the person killed by the kin of the slayer within certain degrees, as in the old laws of Galloway and the law of Clan Macduff in Fife and also apparently in the West Highlands, is one example. Such a liability must have been at least originally correlative to a right of the same degree of kin, and this probably was a right of possession of lands in the same neighbourhood which were distributed between the kin within certain degrees.

Another such fragment which has endured down to quite recent times is the custom of the common holdings of village communities in

<sup>1</sup> *Acts Parl. Scot.*, I.

<sup>2</sup> See *Act Parl.*, 1578, revised ed., p. 111.

the West Highlands and Islands so well described by Mr Alexander Carmichael in *Shene's Celtic Scotland*.<sup>1</sup> According to this custom, which undoubtedly prevailed over a much larger portion of Scotland than the out of the way places where it now lingers and was also at one time well known in Ireland, the arable land which had not become private property was redistributed by lot in order to equalise the shares at fixed intervals, usually, it is said, three years, amongst the members of the village community. Such shares were called runrig, where they lay side by side, or rundale where they were divided, according to the situation and quality of the land, into more distant patches. The village community was undoubtedly originally and long continued of one kin and name. It must be noted, however, that runrig or rundale appears to be a Scandinavian as well as a Celtic custom. Possibly the very names runrig and rundale are evidence of the blending of two kindred customs where there was a mixed Celtic and Norse population: *Run* is the Celtic or Gaelic *roinn*, meaning a 'division or share, while *Rig* and *Dale* are Scandinavian or Teutonic words for the ridges or larger divisions into which the land was divided. *Run* has no connection with the verb to move quickly, which is the source of the modern sheep-run. The repetition of the same idea of division by a Celtic and Teutonic word, as in Run-dale, is quite in consonance with a common mode of forming place names.

Still, while all these relics of customs taken together afford evidence of (1) common holdings amongst the kin or township, and (2) of a partition or sharing amongst the persons entitled to share, they fail to give the desiderated word or thing, *Gavelkind*, to express a rule of succession amongst male descendants. The Authors of a recent able work on the Clan Donald<sup>2</sup> have indeed asserted, as several earlier writers did, that Gavelkind was common and well known in the Scottish Highlands. But when the instances given are examined they turn out to be cases of the division of land amongst sons by the Chiefs, and generally by Will or Deed. This is quite different from Gavelkind, which was a division by Custom, not by Will or Deed, and applied to land not held by the Chief. Such a division (rather) resembles on a small scale

<sup>1</sup> Skene, *Celtic Scotland*, iii.

<sup>2</sup> *History of the Clan Donald*, 1898.

the partition made by Charlemagne and other monarchs amongst their sons.

It is no doubt possible that such partitions may have been influenced by a custom of division existing in other classes of society. But neither monarchs nor chiefs were bound by the custom.

Some of the incidents of the Kentish Gavelkind, apart from its main provision of partition amongst male heirs, deserve special attention in this inquiry.

(1) When the tenant in Gavelkind was attainted of felony, the King took all his goods in escheat, but the heir (which included heirs) was inheritable to all his lands and tenements which he held in Gavelkind in fee and heritage, and held them by the same services and customs as his ancestors. The Kentish saying:—

The father to the bough and the son to the plough,

or, as others read, "lowe," is quoted in support of this.<sup>1</sup>

Now such a limitation of forfeiture or escheat was contrary not only to Norman law but also to Saxon.<sup>2</sup> But it was quite consonant with a tribal Celtic custom such as the Celtic Gavelkind, by which the land belonged to the tribe, sept, or clan, and the individual was only a temporary possessor whose right of possession was partible amongst the kin on his death or forfeiture which was deemed equivalent to death, but could not fairly be taken from them unless they were participant in his felony.

(2) When the Kentish Gavelkind lands were divided according to the oldest form of the custom recorded, the hearth or fire of the homestead called *The Covert of the Astre*,<sup>3</sup> which was taken as representative of the homestead itself, and a portion of ground round it, went to the

<sup>1</sup> Lambarde, *Perambulation of Kent*, p. 516.

<sup>2</sup> Kemble's *Anglo-Saxon*, i. p. 250.

<sup>3</sup> The derivation of *Astre* is obscure. But whether it is connected with Latin *Atrium*, or Old French *Aistre*, or old High German *Astrib*, modern German *Estrich* (a farmstead), it meant practically the hearth and home, the original homestead of the family. (Lewis's *Ancient Law of Wales*, p. 480.)

youngest child and was not divisible amongst the others.<sup>1</sup> Such a prerogative right of the youngest born is analogous to the custom called Borough-English, where the whole lands went to the youngest. Grimm has given many instances of this custom on the Continent, to which Mr Elton has added others, showing that it existed not only in almost every European race, but beyond the bounds of Europe. A well-known passage in Glanville copied in the Regiam Majestatem appears to show that by the earliest Scottish as well as English customary tenure, where there was no proof of a custom of partition, sometimes the eldest but sometimes also the youngest child was preferred. The origin of this custom so strange to modern ideas has given rise to many conjectures, as that the youngest was deemed the least able to maintain himself or was the unemancipated child remaining in the family when the elders had been provided for, or that in some primitive heathen religion the youngest born had to celebrate and carry on the family rites at the ancestral hearth. Whatever its origin, it was undoubtedly even in Saxon times a custom of remote antiquity. It has been proved that the name Borough-English is accidental<sup>2</sup> and does not show its Anglian origin, and indeed it is in the Saxon or Southern districts and not in the Midland and Northern or Anglian portions that it is chiefly found. What is of most importance for the present purpose is to note that the nearest parallel to this right to the *Astre*, in the old Kentish Gavelkind custom, is the Welsh rule by which the youngest took the "tyddin" or "dwelling place"<sup>3</sup> as an exception to the general rule of equal division. Does it not seem probable that when the same name was given to the general custom, and the same exception recognised, the two customs, Welsh and Kentish, were descended from a common original? If so, no one contends that Welsh Gavelkind was not Celtic.

<sup>1</sup> Lambarde, *Perambulation of Kent*, pp. 507 and 519.

<sup>2</sup> Pollock and Maitland, *History of the Law of England*, ii. p. 277. The local circumstances of Nottingham so late as 1327, when a French Burgh stood side by side with an English Borough, led, according to these authors, to a special case being made a general name. Certainly the custom of Burgh-English obtained when there was no proper Burgh. See *Robinson on Gavelkind*, Index, *sub voce*.

<sup>3</sup> Herbert Lewis, p. 479, quotes the passages *Leges Walliac*, i. 544, Dimetian Code, i. 760, and Gwentian Code, ii. 688.

Some remarks of Mr Seebohm in his scholarly work on "The Tribal System in Wales," though somewhat speculative, add an interest to this part of the subject. "The hearth (aelwyd or aylwyt)," he says, "was the centre of the house, and it was sometimes metaphorically used for the household," and "The hearth, moreover, was the symbol of family ownership and inheritance. The right of the son on succession was to uncover the hearth of his father or ancestor. The legal term for the recovery by an ejected son of his patrimony was *dadenhedd* or the uncovering again of the parental hearth. The term was a graphic one. The fire back stone set up against the central pillar of the hut supporting the roof (*pent an uaenhead*, fire stone) was a memorial or witness of land and homestead (*tir a thyle*), because it bore the mark of the kindred upon it."<sup>1</sup>

\* \* \* \* \*

"The evidence of folklore might lead us further to recognise important religious superstitions connected with the hearths. But even without this the practice of the son or grandson or great grandson returning perhaps from exile to claim the paternal homestead by uncovering again the ancestral hearth . . . emphasise for us the importance of the Cymric hearth as the form of the rights of kindred."<sup>2</sup>

(3) It was an incident of Gavelkind that the heir could alienate when he attained his fifteenth year, which was the age of majority as distinguished from twenty-one, the age of the Norman custom, and became the Common Law of England so definitely that by a fiction all persons under it are called infants. Fifteen, or the completed fourteenth year, was also the Welsh, Irish and Scottish age for the termination of guardianship and the attainment of independence, as it was also on the Roman Law, which probably derived it from a Celtic original. But as it was also the rule in some Teutonic customs, and amongst these in Anglo-Saxon Socage tenure, it is not possible to draw any safe inference whether this indicates a Celtic origin for Gavelkind. All that can be said is that it indicates an early origin for that custom, as the postponement of the age of majority to twenty-one was undoubtedly of later date.

<sup>1</sup> *Leges Walliae*, ii. 561, ii. 667.

<sup>2</sup> *The Tribal System in Wales*, p. 84.

The early age of majority in Scottish Law has always been a puzzle. It has sometimes been thought to have been derived from the Roman Law, but perhaps a common Celtic origin for both is more probable, though, no doubt, the Scottish rules, with reference to pupils and tutors, were borrowed at a later stage from the Roman Law.

(4) The most important incident of *Gavelkind* was the form of distress or execution called *Gavelet*. This is so closely associated with it in nomenclature, that it must have been a part of the original custom. The description of it in the Kentish Customal is:—

“If any tenant in Gavelkind retain his rent and his services of the tenement which he holdeth of his Lord, let the Lord seek by the award of his Court from three weeks to three weeks to find some distress upon that tenement, until the fourth Court, always with witnesses. And if, within that time, he can find no distress in that tenement, whereby he may have justice of his tenant, then, at the fourth Court, let it be awarded *that he shall take that tenement into his hand in the name of a distress; as if it were an ox or a cow*, and let him keep it a year and a day in his hand without manuring it, within which time if the tenant come and pay his arrearages, and make reasonable amends for the withholding, then let him have and enjoy his tenement, as his ancestors and he before held it, and if he do not come before the year and the day past, then let the Lord go to the next County Court with the witnesses of his own Court and pronounce then this process to have further witness, and by the award of his Court after that County Court holden, he shall enter and manure in the lands and tenements as in his demesnes. And if the tenant come afterward and will relieve his tenements and hold them as he did before, let him make agreement with the Lord, according as it is anciently said—

‘Let him nine times pay, and nine times repay and five pounds for the weir (fine) ere he become holder.’”<sup>1</sup>

The last paragraph is obscure and possibly corrupt. But the main point is that the above description exactly tallies with an ancient Celtic mode of attaching lands for non-payment of debt, which was modelled after the Celtic form of distress against cattle. By this form

<sup>1</sup> Lambarde, p. 499.

of distress the possession of the land could be attached, but only after many formalities, and in security, for there was always a right of redemption. The word *Gabhail* was the name given to this form of distress both in Wales and Ireland. In England it had not been confined to Kent, for the privilege of Gavelet was confirmed to the citizens of London in 1316 by the statute *De Gaveleto*. It was copied in Norman Law by the Writ called *Cessavit*.<sup>1</sup>

In Ireland the word for distress *Ath-Gabhail*=the retaking of property, and the law regarding it, is one of the most voluminous parts of the *Senchus Mor*, the ancient code attributed to St Patrick.<sup>2</sup> It was in Ireland, too, originally applied to cattle, but the possession of land might become the subject of such distress.<sup>3</sup>

In Wales there was also a form of distress called *Gafael*, which was applicable to the recovery of the dues or services of *Breyr* Land, which answered to Gavelkind, and the holder of such land was called *Gavylaug-ur*=gavel-man.<sup>4</sup>

No reasonable explanation of *Gavelet* as a Saxon word has ever been given, but its analogy to the above forms of distress in Celtic Ireland and Wales is striking.

(5) It is of minor importance, yet deserves notice, that Dower when it did attach to the *Gavelkind* land of Kent was different from the Norman Dower. It gave the widow one-half instead of one-third of the income of the land, and it was forfeited by remarriage, which was not the case according to the Norman custom. Dower was chiefly due to the initiative of the Church, always exercised in favour of marriage, and it is a possible conjecture, though no more than a conjecture, that when Christianity, derived from the Roman Mission, took possession of Kent, in Saxon times it may have introduced Dower in a form somewhat different from the later Norman Law.

(6) There remains one further point, small in itself, yet which

<sup>1</sup> *Statute of Gloucester*, 6 Edward I., c. 4. *Statute of Westminster*, II., 13 Edward I., c. 21.

<sup>2</sup> *Ancient Laws of Ireland*, i. pp. 48 and 65, &c.

<sup>3</sup> *Ancient Laws of Ireland*, i. p. 259.

<sup>4</sup> Herbert Lewis, *Ancient Laws of Wales*, p. 168.

presents at least a curious coincidence and favours the Celtic origin of Gavelkind. The Men of Kent, the holders of Gavelkind land, claimed a right to fight in the van of the feudal army of England.<sup>1</sup> So did the men of Urchinfield in Hereford on the Welsh border, whose Gavelkind custom was undoubtedly Celtic. So in Scotland did the men of Fife, where this was one of the privileges granted to Macduff, the Celtic Chief, as a compensation for submitting to Malcolm Canmore. May there not have been, though history is silent, a similar concession in Kent also, and as the Celts of Fife were allowed to maintain the old custom or law of Clan Macduff, may the Britons of Kent not have been allowed to retain the custom of Gavelkind?

Such a concession to the pride of the Celts was an easily granted boon by their future masters, the astute Saxons.

The following may be stated tentatively as the heads of the argument as it now stands in favour of the Celtic origin of Kentish Gavelkind :—

I. Kent is a part of England which, even after the Anglo-Saxon settlement, retained the Celtic name. The Cantii were the Celtic inhabitants in Roman times, and Canterbury and Kent, as well as the adjoining London, prove to this day that the Teutonic conquerors did not succeed as they did in Sussex, Wessex, and Essex in imposing their nomenclature on this part of England. It was the most civilised part of Celtic Britain, and it seems quite possible that some of its local customs, as well as its place names, survived its conquest by the Jutes.

II. Very little is really known of Hengist and Horsa and the circumstances of their conquest of Kent, but it is admitted that the number of the Jutes were few. Kent seems to "have been won by a single battle" is all that one of the soundest English Historians, Bishop Stubbs,<sup>2</sup> can say about it.

III. The Romanised British Inhabitants of Kent, when the Anglo-Saxons settled there, were far from Barbarians. They had already a form of monarchical constitution, an advanced agriculture, and a current, though debased, coinage. It seems certain that they must have had, whether we can recover it or not, customs as to the holding and

<sup>1</sup> *Robinson on Gavelkind*, p. 229.

<sup>2</sup> *Constitutional History of England*, i. p. 60.



the succession to land. Is it not possible that these customs may have been similar to the customs which survived so much longer amongst the Celts of Wales and Ireland?

IV. It is according to Anglo-Saxon tradition that the Teutonic race was summoned by Vortigern to protect his subjects against their own barbarous kin of the North, the Picts. The marriage of Vortigern to Rowena, the daughter of Hengist, a part of the legend, may possibly represent or imply the acceptance of certain British customs.

V. In the Domesday of Kent the class of villeins supposed to represent the Gavelkind tenants is very numerous, 6597, while the class called *Socmanni* are only 44. They had the privilege of alienation of their land at the age of fifteen, without consent of the Lord, which seems to identify them with the holders in Gavelkind. It would seem singular if Gavelkind was no more than a form of Socage that the villeins holding under it should be contrasted with the *Socmanni*.

VI. The philological argument is clearer than the historical, which must be admitted to have gaps, and to be largely conjectural in the absence of historical records earlier than the Anglo-Saxon Charters and Laws.

VII. The word Gavelkind is good Celtic for partition of the land amongst the kin, which is the leading note of the custom whether in Ireland, Wales or Kent. It is not good Anglo-Saxon for anything characteristic of a special custom. Though *Gafol* was used frequently in Kent for rent in money or kind the word *Gafolkind* is not used for the custom of *Gavelkind*, nor is the word *Gafol* or the tenure, which it came to denote, in any way limited to Kent.

VIII. The incidents of Kentish *Gavelkind* in matters so important as (a) the right of the youngest child to the homestead of the family, (b) the age of majority, (c) the power of alienation, (d) the form of distress or execution, and (e) the limitation of forfeiture for felony, find striking analogies or illustrations in the Ancient Celtic Customs of Wales and Ireland.

The hypothesis, for it does not pretend to be a conclusion, submitted, is that Kentish Gavelkind may be a custom originally Celtic modified possibly during the Roman occupation, but in any event by the Saxon

and Norman conquests of Kent many centuries before the similar customs of the Welsh and Irish were at first modified and afterwards abolished by the English conquerors of the last remnants of the original Celtic population of the British Isles. The Kentish may have survived longest because the natives, a Saxon population with Norman overlords, were favourites of the English kings, while Welsh and Irish Celts were treated as aliens.