

THOMAS PETER ELLIS
WELSH TRIBAL LAW
AND CUSTOM
IN THE MIDDLE AGES

IN 2 VOLUMES

VOLUME I

DEDICATED TO THE MEMORY OF

HYWEL DDA

WHO RULED IN WALES A THOUSAND YEARS AGO

AND WHO TO THIS DAY

PERSONIFIES TO HIS PEOPLE

LAW AND JUSTICE

PREFACE

'THE history of Great Britain rises on a rock-bed of Celtic institutions and customs. . . . They (i. e. surveys, &c. relating to Wales) elucidate the working of the tribal system more completely than any other documents of European history.' (Sir Paul Vinogradoff, F.B.A., D.C.L., Corpus Professor of Jurisprudence in the University of Oxford : preface to the Survey of the Honour of Denbigh, 1334.)

'Au point de vue intellectuel, les Lois sont le plus grand titre de gloire des Gallois. L'éminent jurisconsulte allemand, Ferd. Walter, constate qu'à ce point de vue les Gallois ont laissé bien loin derrière eux les autres peuples du moyen âge (Das alte Wales, p. 354). Elles prouvent chez eux une singulière précision, une grande subtilité d'esprit, et une singulière aptitude à la spéculation philosophique.' (J. Loth, Professeur au Collège de France, in Les Mabinogion du Livre Rouge de Hergest.)

'Die Ausbildung des Rechts auf der Grundlage der Gesetze Howels geschah jedoch weit mehr durch die Rechtswissenschaft, welche sich rein aus sich zu einer Blüthe entwickelte, wie bei keinem anderen Volke des Mittelalters vorkommt.' (Professor Ferdinand Walter, University of Bonn, in Das alte Wales.)

§ 1. THE pages that follow contain an attempt at explaining the social and legal system under which the Welsh people lived in the last three or four centuries of indigenous rule.

Such studies of that system as have hitherto been published have been confined, very largely, to explanations of the tribal organization and of the tenure of the land, with incidental references only to other important branches of the law. Many of these studies appear to have been coloured by the use of the so-called Triads of Dyfnwal Moelmud, admittedly a compilation of the sixteenth or seventeenth century, which have been regarded as embodying survivals of the most ancient tradition.

§ 2. A comparison of the Triads with the older Laws can leave scarcely any room for doubt that the former enshrine little beyond a Utopian scheme of society, built round a small amount of genuine fact.

The only safe rule to follow, in using the Triads, is to accept nothing contained in them which is not independently corroborated by the more ancient Laws.

That rule has been followed invariably in this work, with the result that, in many cases, conclusions at variance with those often accepted as to the Welsh tribal system have been arrived at. Whether those conclusions are right or wrong, the present writer would expressly guard himself against being understood as asserting that no other system, or no system with different characteristics, existed in times prior to the beginning of the tenth century.

§ 3. All that has been attempted here has been to take the existing ancient authorities as they stand, and to explain the social and legal system portrayed therein with-

out theorizing unduly as to what may have preceded it and out of which it may have developed.

That has been the primary object of these studies—to portray from the documents we possess what seems to have been the system of government, society, and law in Wales from roughly A. D. 900 to A. D. 1300.

An attempt has been made to explain the whole of the law ; not merely the law of the land or the tribe, but the law of crime, civil liabilities, social connexions, procedure, and the multifarious ramifications of a well-developed system of jurisprudence.

§ 4. In doing so, many references of a comparative nature are made to other more or less contemporary provisions of law ; to Brehonic, Anglo-Saxon, Scots, Germanic, and, at times, to Roman Law. Such references can, in the nature of things, be only partial. All points of resemblance or differentiation cannot possibly be touched upon ; all references, even in regard to particular points, cannot be massed together with any hope of retaining the work within modest dimensions.

Sufficient use, however, has been made of such references to support the conclusions that the Welsh Laws are, in the main, identical with, or similar to, the laws under which the major portion of the extra-Roman populations of Western Europe lived in the period following on the collapse of the Roman Empire, and that the Welsh Laws contain perhaps the most complete picture of that law which the Latin jurists spoke of as the ' Jus Gentium '.

§ 5. The author owes gratitude to many for the help he has received. He would particularly thank Professor J. E. Lloyd, D.Litt., Bangor, who has made many suggestions of value in reading the proofs ; Mr. J. G. Edwards, M.A., Fellow of Jesus College, Oxford ; Sir Vincent Evans, D.Litt. ; Professor E. A. Lewis, D.Litt., Aberystwyth ; Mr. Ballinger, M.A., Mr. Davies, Miss Hall, and Dr. de Verres of the National Library of Wales ; Principal J. H. Davies, M.A., U.C.,

Wales ; the Rev. Canon Fisher, M.A., Cefn Rectory, St. Asaph ; Mr. Edward Owen, Wrexham ; Mr. R. C. B. Whitaker, All Souls, Oxford ; and Mr. G. P. Jones, M.A., Coniston (who was good enough to allow the author to see a valuable manuscript monograph on the pedigrees of Rhos and Rhufuniog), for the assistance each has rendered in different ways. He would also express his acknowledgements to those in charge of the Bodleian Library, the Meyrick Library (Jesus College, Oxford), the Codrington Library (All Souls, Oxford), and the National Library of Wales for the use of books, manuscripts, &c., and for the kindly assistance of the staffs connected therewith. Also to the Delegates of the Clarendon Press for undertaking a publication of this magnitude, and to all employées of that institution who have had anything to do with the transference of the manuscript into print.

Finally, he would express his deep sense of obligation to the late Sir Paul Vinogradoff, D.C.L., whose encouragement to all labouring in the field, so eminently his own, cannot be over-estimated, for his kindness in perusing the first draft of the manuscript, and for his advice and suggestions, which led to a revision or restatement of some of the conclusions arrived at ; and to the members of the Board of Celtic Studies of the University of Wales, for their generous assistance in making a grant in aid towards the publication.

§ 6. To attempt to give a complete bibliography of all the works consulted or referred to would be impossible ; but reference must be made to some of the most important ones, namely :

- Anson, Sir W. R., Principles of the English Law of Contract.
 Archaeologia Cambrensis.
 Austin, J., Lectures on Jurisprudence.
 Buckle, H. T., History of Civilization in England.
 Commissioners' Series : Acts of the Scotch Parliament ; The
 Ancient Laws of Ireland ; Thorpe's Ancient Laws and
 Institutes of England ; The Record of Carnarvon.

De Coulanges, Fustel, Origin of Property in Law.
 Domesday Book.
 Dunn, Lewis, Heraldic Visitations of Wales.
 Edwards, Sir O. M., Wales.
 Ellis, Sir H., General Introduction to Domesday Book.
 Ellis, T. P., The First Extent of Bromfield and Yale.
 Evans, Gwynogfryn, The Black Book of Llandaff and other texts.
 Evans, T., Glossary of Welsh Mediaeval Law.
 Fraser, Sir J. G., Folk-Lore in the Old Testament ; Totemism and Exogamy ; The Golden Bough.
 Geffeken, H., Lex Salica.
 Gildas, Works.
 Giraldus Cambrensis, Itinerary and Description of Wales.
 Guest, Lady Charlotte, The Mabinogion.
 Hessels and Kern, Lex Salica.
 Holland, T. E., The Elements of Jurisprudence.
 Houldsworth, Professor, History of English Law.
 Jubainville, Artois de, La Famille Celtique.
 La Revue Celtique.
 Lewis, Professor E. A., The Boroughs of Snowdonia.
 Lewis, Hubert, Ancient Laws of Wales.
 Lhwyd, Edward, Parochalia.
 Liebermann, E., Gesetze der Angelsachsen and other works.
 Lloyd, Professor J. E., History of Wales to the Edwardian Conquest.
 Llyfr Goch Asaph, Index to.
 Lohr, Prof. J., Les Mabinogion.
 Maine, Sir Henry, Ancient Law ; Early Institutions ; and Early Law and Custom.
 Maitland, F. W., History of English Law.
 M'Lennan, E., Primitive Marriage.
 Mommsen, Professor, Corpus Juris Civilis.
 Monuments, Ancient, of Wales and Monmouthshire.
 Myfyrian Archaeology, The.
 Nennius, History of the Britons.
 Owen, Aneurin, The Ancient Laws and Institutes of Wales.
 Palmer, A. N., and Owen, E., Ancient Tenures in North Wales.
 Peniarth MSS.
 Pennant, T., Tours in Wales.
 Pertz, G. H., Monumenta Germaniae Historica.
 Phillpots, Miss B. S., Kindred and Clan in the Middle Ages and After.
 Pollock, Sir F., and Maitland, F. W., History of English Law.
 Rees, Professor W., South Wales and the Marches.
 Rhys and Brynmor-Jones, The Welsh People.
 Robinson, Professor, History of Scotland.
 Ruthin Court Rolls.
 Sachsenspiegel, The.
 Sandars, T. C., The Code of Justinian.

Seebohm, Dr. F., The English Village Community ; The Tribal System in Wales ; and Tribal Custom in Anglo-Saxon Law.
 Skene, Professor, The Four Ancient Books of Wales.
 Stone, Gilbert, Wales.
 Strachan-Davidson, J. R., Problems of the Roman Criminal Law.
 Sullivan, Dr. W. K., Manners and Customs.
 Transactions of the Cymmrodorion Society.
 Vinogradoff, Sir Paul, Outlines of Historical Jurisprudence and The Growth of the Manor.
 Vinogradoff, Sir Paul, and Morgan, The Survey of Denbigh.
 Wade-Evans, T., Mediaeval Welsh Law.
 Walter, Prof. F., Das alte Wales.
 Williams, John, The Records of Denbigh and its Lordship.
 Willis-Bund, J., The Black Book of St. David's.
 Y Cymmrodor.

To these works, and to many others, the author is indebted in varying degrees. The extra cost involved in printing must be the excuse for the omission of detailed foot-notes quoting individual references.

§ 7. In conclusion, the author would simply say he has no theories to propound ; he has endeavoured to confine himself to ascertainable facts, and to arrange those facts in an intelligible sequence, in the hope that, in doing so, he might contribute, in some small degree, to a better knowledge of the story of the land and race to which it is his privilege to belong.

He lays no claim to having arrived at any final and definitive conclusion on any point ; and on many matters it is possible that his opinions are wrong or incomplete. If, however, the method of approaching and handling the 'ancient' laws of Wales, as an organic whole, and the endeavour to show that they are comparable in many particulars to other contemporary systems, will tend towards the study of the history of Wales in a true perspective, the writer will be well content, and will feel that the studies of twenty years have not been entirely unprofitable.

T. P. E.

LLYS MYNACH,
 DOLGELLEY,
 MERIONETH.

CONTENTS

VOLUME I

PREFACE	v
INTRODUCTORY	i
PART I. THE SOCIAL STRUCTURE	13
I. Introductory	15
II. Classes in Welsh Society	18
III. The Kingship in Welsh Law	21
IV. The Royal Entourage	30
V. The Bonheddigion or Freemen. Definition in the Laws	40
VI. The Bonheddigion. Explanations of their tribal and kindred organization	44
VII. The Bonheddigion. The 'Cenedl' in the Laws	63
VIII. The Bonheddigion. The alleged officers of the 'Cenedl'	73
IX. The Bonheddigion. The 'Gwely' and 'Gafael' in the Laws	84
X. The Bonheddigion. Kin responsibility according to degrees of affinity	88
XI. The Bonheddigion. The tribe in other contem- porary laws	94
XII. The Bonheddigion. The Clans in the Surveys	103
XIII. The Unfree	158
XIV. The Privileges of the Free and the Unfree	174
XV. The Loss and Acquisition of Status	178
XVI. Men neither Free nor Unfree	191
XVII. The Church and the Bards	193

PART II. THE LAND	201
I. The Conception of Tenure	203
II. The Territorial Organization in Wales	212
III. The Law of 'Priodolder'	215
IV. The Land-holding Units	224
V. Partition and Collateral Succession	229
VI. 'Tir Cynnyf'	246
VII. Inheritance	248
VIII. The Power of Alienation	251
IX. Land-suits	258
X. 'Gwarchadu' or Occupation Fees	263
XI. The Bond-Lands	265
 PART III. RENDERS AND SERVICES	 273
I. Introductory	275
II. 'Ebediw' and 'Cynhasedd'	277
III. Food Levies	284
IV. 'Cylch'	305
V. Liability to Build and Repair	318
VI. Portage	326
VII. Mill duties	330
VIII. Boon and Harvest works	333
IX. Military Service	336
X. Miscellaneous Renders and Services	342
 PART IV. THE LAW OF PERSONS.	 353
I. The Worth of Men and Things	355
II. The Law relating to Children	382
III. The Law relating to Women	386
IV. The Law of Affiliation	440

VOLUME II

PART V. THE LAW OF CIVIL OBLIGATIONS	I
I. The Formalities of Bargaining	3
II. The Subject-matter of Agreements	24
III. Responsibility for Acts of Animals	37
IV. Miscellaneous Provisions	48
V. The Game Laws	52
VI. Co-tillage	57
 PART VI. THE LAW OF CRIMES AND TORTS.	 65
I. Introductory	67
II. The Law of Punishment	70
III. 'Saraad' or Insult	79
IV. 'Galanas' or Homicide	90
V. Theft and Surreption	145
VI. Fire or Arson	164
VII. The Law of Accessories	171
VIII. Other Offences	179
IX. Prevention of Crime	188
 PART VII. THE COURTS AND JUDICIARY	 193
I. Introductory	195
II. The Ecclesiastical Courts	197
III. The Courts of the 'Maerdref' and the 'Cymwd'	203
IV. The Royal Supreme Court	208
V. The Raith of Country	211
VI. Courts in Early English Law and in Roman Law	213
VII. The Training and Remuneration of Judges	220
VIII. The Challenge of Judges	224
IX. Advocacy	233

PART VIII. PRE-CURIAL SURVIVALS	237
I. The Law of Distress in Ireland	239
II. The Law of Distress in Wales	245
III. The Law of Distress in the Germanic and other Codes	257
IV. The Law of Boundaries	260
PART IX. THE LAW OF PROCEDURE	267
I. The Enforcement of Jurisdiction	269
II. The Law of Proof. Raith and Evidence	301
III. The Law of Pleadings	339
IV. Judgement and Execution	407
PART X.	
Appendices I to XIII	415
Glossary of Welsh Terms	436
INDEX	443
LIST OF SUBSCRIBERS	457
MAPS	<i>at end</i>

INTRODUCTORY

I. *Pre-codification Period.*

§ 1. In the earliest periods of European history the declaration as to what the law was did not take the form of codification or of legislation. Most communities had one or more 'sapientes', whose duty it was to preserve and ascertain the customary law of the community. Such exposition took the form, sometimes of something akin to 'edicts', sometimes of the application of ascertained rules of custom to a particular set of facts submitted, by way of arbitration, to the 'sapientes', sometimes of lectures to aspirants to legal knowledge.

These expositions were frequently preserved in rhythmical or poetical form, and in Wales especially in proverbial or Triadic phrases. They grew, in course of time, into a considerable body of quasi-sacred law or precedent available for subsequent codification when the time for codification arrived.

§ 2. Codification began in Europe in the fifth century. The Welsh codified law dates from a period long after codification had begun in the Western World.

2. *Early Codifications in Western Europe.*

§ 1. Codification of custom in Western Europe, in early times, appears to have been due largely to two influences.

The first of these was the growing power of kingship. Wherever we turn we find that codification is associated with the name of a person who increased the power of the Crown. This is the case, for example, in Wales, for Hywel Dda claimed to be and was the King of all Cymru, and it would seem that one of the objects of codification was to strengthen the power of the King by making law a derivative from him.

The second influence was the power of the Church, which, almost invariably in agreement with the King, aimed at bringing into harmony some of the provisions of Roman Law and tribal custom with the precepts of orthodox Christianity.

§ 2. Rome, prior to the Christian era, though it possessed a number of what may be termed statutory enactments, had nothing which can be described properly as a Code. Whatever the origins of the XII Tables may be, they did not form a Code. They consisted of a few customary rules, which acquired a considerable degree of sanctity, of which all later developments of the law, by means of the Pretorian Edicts and the opinions of the juris-consults, professed to be merely explanatory.

The first great codification of the Roman Law was the Theodosian Code (A. D. 438), which professedly aimed at the harmonizing of that law with Christianity; the Code being a collection of the constitutions of the Emperors from the time of Constantine, based on the prior compilations of Gregorian (A. D. 306) and Hermogenian (A. D. 365). This Code was expanded in and superseded by the Codes of Justinian (A. D. 529).

The example of the Roman Empire was followed by codification elsewhere. Some codifications may have been merely coincident exemplars of a common general tendency.

§ 3. The Salic Law was promulgated about A. D. 481. In its earliest form the christianizing tendency is absent from it, but at the middle and at the end of the sixth century it was reformed by Childibert I and Childibert II so as to agree with Christian teaching.

§ 4. The Irish redaction of the *Senchus Mór* is asserted to be the earliest attempt to codify the extra-Roman Laws in Europe.

It claims to be a compilation of the Ancient Laws of Ireland, hitherto preserved in adjudications and poetry, as modified by the influence of St. Patrick; the laws themselves being represented as having a Mosaic origin, tempered by the law of nature.

The compilation purports to have been made by one Dubhthach and eight others, who examined the poetry of Erin, and what therein was not in opposition to the Scriptures was confirmed as law by the Church in a special assembly convened by St. Patrick.

The earliest date assigned by any scholars to the *Senchus*

Mór is between A. D. 438-41; other authorities place it as centuries later, at least so far as its present form is concerned.

Whatever may be the actual date of the text, there seems no reason to doubt the tradition, enshrined in the *Senchus Mór*, that, soon after the introduction of Christianity, there was a conscious attempt by the clerics to harmonize Irish custom with Christian precepts.

In addition to the *Senchus Mór*, the Brehon tracts contain a number of other treatises. The Book of Aicill professes to be 'legislative', but the remainder, like the *Corus Bescna*, are, like the collections in the second volume of the Welsh Laws, a series of dicta, covering in time many centuries, of persons skilled in the law, partly made as pronouncements without sanction to enforce, partly as educational texts used in institutes for the study of law.

§ 5. The Laws of the Ostrogoths and the Burgundians, the latter under Gundebald, were codified about A. D. 500, and those of the Visigoths about A. D. 506, to which additions were made in the seventh century.

The influence of the Church thereon is profound. For example, the last-mentioned was an abridgement of the Theodosian Code for use among the Visigoths issued on the advice of the bishops and nobles.

At very much the same time the customs of other Teutonic tribes were codified.

§ 6. In England there was never any codification; but many laws, amending custom in some particular or other, were promulgated by different monarchs.

In many of these the influence of the Church is manifest.

In the first laws, those of Æthelbert (A. D. 597-616), it is stated that they were prepared under the advice of St. Augustine. They were followed later in Kent by the Laws of Hlothaire and Etric (A. D. 673-86), and the Laws of Wihtraed (A. D. 690-725).

The last-mentioned particularly illustrate Church influence. It is said that the deliberative convention, which drafted the laws, contained the Archbishop of Britain and the Bishop of Rochester, and 'every degree of the church of that province spoke in unison with the obedient people'.

These laws are mainly concerned with the regulation of morals and Church principles, the enfranchisement of slaves, and the suppression of paganism.

In Wessex, the Laws of Ine (A. D. 688-725) were issued 'with the counsel of Cenred, my father, and of Hedda, my bishop, and of Eorcenwold, my bishop, . . . and also with a large assembly of God's servants'.

The Laws of Ælfred (A. D. 871-901) commence with the Ten Commandments and a summary of Exodus, cc. 21, 22, and 23, followed by the King's own Dooms, many of which are concerned with semi-religious matters. Throughout, the conscious attempt to harmonize Christianity and tribal custom is obvious.

The promulgators of the Laws of King Edmund (A. D. 940-6) also included archbishops and bishops, and even the *Judicia Civitatis Lundoniae* were sanctioned as an ordinance by the participation of the bishops.

Much the same may be said of all the other fragments of Anglo-Saxon Laws prior to the Conquest. They were not codes, but amendments of existing custom effected, to a considerable extent, under the inspiration of the Church.

With the rise of the Normans, Europe entered on a new period, in which a new conception of legislation, as distinct from codification of custom, arose. With that change we have nothing to do here.

§ 7. The importance of the references given to some of the Anglo-Saxon Laws lies, not in the fact that clerics partook in their promulgation, but in the fact that they were one of the motive powers behind such redaction as took place, and in the fact that the conscious object in amending custom at all was, very largely, to bring custom into conformity with the teachings of the Church.

3. *Codification in Wales.*

§ 1. Welsh tradition ascribes the first codification of Cymric Law to one Dyfnwal Moelmud. Who Dyfnwal Moelmud was, when he lived, and what he did in the way of codification is, and apparently must remain, an insoluble problem.

The tradition ascribing to him some codification is

centuries anterior to the spurious Triads named after him. It is possible it contains some echo of an attempt to bring Cymric custom into line with the movement inaugurated by the Theodosian Code. The force of the tradition is so strong that, perhaps, it is unsafe to say there was no attempt at codifying before the time of Hywel Dda; but to assert such codification as a fact, and to assign a date and an author to it, is unwarranted.

§ 2. The Laws of Hywel Dda, a codification of custom, not a new legislation, were redacted in the first half of the tenth century.

The earliest manuscripts, however, of any part of these laws which have survived are of the twelfth or thirteenth centuries.

We do not possess the Laws of Hywel in their original form. What we do possess are many manuscripts, containing what seem to be excerpts from the original Codes made by practising lawyers up to the twelfth and thirteenth centuries, together with some early comments and Triads, from which, in 1841, Mr. Aneurin Owen attempted to reconstruct the original Codes, commonly known as the Venedotian, Dimetian, and Gwentian Codes. In addition, we have a number of notes, in the nature of commentaries, made between the twelfth and fifteenth centuries by lawyers or clerics. The reconstructed Codes occupy the first volume of Mr. Owen's *Ancient Laws and Institutes of Wales*, and the commentaries the second.

§ 3. The study of Welsh legal custom has suffered greatly by the inclusion in the second volume of the so-called Triads of Dyfnwal Moelmud. The temptation to refer to them and to interpret the older laws in their light has been succumbed to by many writers, whose conclusions are thereby somewhat vitiated. To no one more than to Prof. J. E. Lloyd (Bangor) is the debt due for the relegation of these spurious Triads to their proper place.

§ 4. The reconstructed Codes describe how the redaction by Hywel Dda was made.

The preface to the Venedotian Code tells us that Hywel Dda summoned to him six men from each 'cymwd' in

Wales, four of them laics and two clerks. This body, assembled at the White House on the Taf and numbering about a thousand men, 'with mutual counsel and deliberation examined the ancient laws, some of which they suffered to continue unaltered, some they amended, and others they abrogated entirely, and some new laws they enacted'.

The sanctioning authority to the compilation was the King. Another passage in this Code, forming a preface to the Book of Proof, after a like recitation, proceeds to say that the laws were submitted to the Pope for his ratification.

The preface to the Dimetian Code states that the assembly consisted of six men from each 'cymwd', and all the crozier-bearing clergy. At the end of their deliberations, which no doubt served as a means of ascertaining the local customs of each 'cymwd', the actual codification was entrusted to Blegywryd, a skilled lawyer, and twelve of the wisest laics. Their function was to form and write the laws; and to guard against anything opposed to the law of the Church or the law of the Emperor, a striking echo of the survival of the idea of the universality of Roman Law. This Code also refers to the Papal ratification of the laws.

The preface to the Gwentian Code is somewhat similar; and each Code reproduces a malediction pronounced on all who should break the laws.

Subsequent to this codification there were some minor alterations effected by Bleddyn of Powys (A. D. 1060-75), and by the Lord Rhys (A. D. 1155-97), in the matter of appraisement of worths; but, except for these and a few changes wrought by Llywelyn ap Iorwerth and Dafydd ap Llywelyn, the Laws of Hywel Dda remained almost unaltered until the changes brought about by the Statute of Rhuddlan. Indeed, many of their provisions continued in force until the days of the Tudors.¹

§ 5. The redaction of the laws in Wales was due, therefore, to some extent, to the influence of the Church, and the codification was part of a general movement taking place throughout Europe, consciously adjusting custom to the exigencies of a triumphant and militant Catholicism.

¹ V. C. 2, 214; D. C. 338; G. C. 620.

The Codes reproduce custom existing at the time, subject to some modifications; and they became the fixed authority, the Law of the Book, to which appeal could be made in cases of dispute as to what custom was.

4. *The Welsh Codes not immutable.*

§ 1. We must not, however, forget that, though this collection attained to a degree of almost reverent adoration and passionate attachment, such as no other Code, not claiming divine origin, appears to have attained to, and was the standard of law in Wales for many centuries, it was not an immutable Code. It was not altered, except in some minor points, by anything in the nature of legislation, but the laws themselves recognized that they could be overridden in one of two ways.

§ 2. The law allowed the Codes to be overridden by the proof of contrary custom, provided such contrary custom was equitable, or, as it is put, provided it followed the law or had been recognized by judicial precedent. In fact it became a common matter of pleading that parties must declare whether they appealed to the Law of Hywel Dda or some other custom, e.g. the custom of Bleddyn, and according to that declaration the case stood or fell.¹

§ 3. In addition, we have the advanced practice permitted of contracting outside the law. We shall see constantly provisions for the exercise of this power in cases where the law laid down that certain compensation must be paid for certain acts causing damage, &c.; or where by law definite liabilities, like the payment of 'amobyr', were placed on definite persons. In such a case a contract, reducing or altering the compensation or shifting the liability or the like, was valid; and, to use the frequent expression of the laws, 'contract nullifies the law'.

§ 4. It is, therefore, a mistake to imagine, because there were few and unimportant legislative alterations, that the laws were rigid and incapable of expansion. They recognized fully that custom was fluid, and contained in itself machinery for adapting itself, by means of consensus and precedent, to changed and changing conditions.

¹ e.g. D. C. 586; XI. 412.

