

II.—*An Account of the Manor of Kilmoon, and the Copyhold Tenure existing there.* By Murrrough O'Brien, Esq.

[Read 21st May, 1878.]

It is generally supposed that there are no copyhold lands in Ireland, though at one time they were not altogether unknown. The only mention of their existence in modern times, that I have found, is in *Vance and Ferguson's Tenure and Prosperity of Ireland*, which says :

"The copyhold tenure so prevalent in England has not been known to exist in Ireland, unless in some exceptional cases, such as the manor of Kilmoon, or Primatestown, in the County of Meath, where it is said to be found."

It is, I believe, certain that these are now the only copyhold lands in Ireland, and as this tenure will cease to exist in Ireland by the sale, under the Irish Church Act, of the lands in the manor of Kilmoon, some account of the manor may be of interest to the Statistical Society.

The records of the manor consist of : (1) rolls containing the proceedings at the manor courts ; (2) books containing copies of these and earlier rolls, accounts of the customs of the manor, cases and opinions of counsel on questions raised by the lord of the manor or copyholders ; (3) correspondence, with other cases and opinions.

The general constitution of the manor in its earlier days may be thus described. The Primate was lord of the manor by grant from the Crown ; the steward or seneschal was his representative or agent. In compliance with the grant, courts leet, being the King's court, with jurisdiction of public matters, were to be held at Easter and Michaelmas, and courts baron, for matters more directly affecting the manor, were to be held at least once in three years. Other officers of the manor were bailiff, constable, overseers, and applotters of the common, appraisers of distresses, and pound-keeper. They were paid by assessment on the tenants. At the courts presided over by the steward nothing could be done without a jury of copyholders, who made presentments, assessed the value of land, appointed officers, and decided questions of title between copyholders. The tenants held their land subject to a small quit-rent, and a fine on every change of tenant, whether this occurred by inheritance or purchase. They could not alienate, or let their land for more than a year and a day, without leave.

The admission of new tenants was thus managed. At a court-baron the jury presented that A. B., a customary tenant, was dead, and that C. D. was his rightful heir. C. D. then surrendered his land to the steward, who regranted it to him on payment of a fine. The proceedings of the court were enrolled, and a copy, given to the tenant, was his title. A prominent merit of the system in early times was the simple transfer of the copyhold estate at local courts having a local registry.

In England the customs connected with copyholds are of various kinds: each manor had its own, and it differed from others in the amount of the fine, time of its payment, and other particulars. Fines

are of two kinds—certain or arbitrary. By a decision in the reign of Charles II., arbitrary fines were limited to two years' improved value. The Kilmoon copyholds may be classed with those described in the Copyhold Commissioners' Reports, as subject to "fines arbitrary and quit-rents."

In the records is "An Abstract of the Customs of the Lord Primate's Manor of Kilmoon, translated from the Original Roll, which is in Latin, by Gorges E. Howard, 14th September, 1761," and which is as follows:—

"1st. It is an ancient manor, and, time immemorial, belonged to the Archbishops of Ardmagh, in right of their archbishopricks or see.

"2nd. All tenants are to be admitted by copy of court roll to all their lands, and shall receive their copies by the rod from the lord or his seneschal, yielding all homage, fealty, and reasonable fines.

"3rd. No tenant of the manor shall alien, sell, or otherwise dispose of his land without leave of the lord or his seneschal, under pain of forfeiture of said lands; also no tenant shall demise or set any of his said lands for longer than a year and a day without leave of the lord, under the pain aforesaid.

"4th. The lands of Kilmoon, Primatestown, Irishtown, Rath, and Ballyhack, are within the said manor, except the parcel of land in Kilmoon called Cusack's Land.

"5th. The rents are payable 1st of May and 1st of November, and the other duties at the Feast of the Nativity yearly."

The account goes on to say that: (1) Before a court is held, the seneschal issues a precept to his bailiff to summon the tenants and residents of the manor, also twenty-four honest and lawful men for a jury. There are usually fourteen days between date of the precept and the court. The jury should be summoned by the bailiff at least six days before the day on which the court is to be held. (2) To this precept the bailiff is to annex his return in writing, in two lists—one of the tenants and inhabitants, the other of the jury. (3) Defaulters are to be fined. (4) If any of the officers of the manor be dead or removed, new ones are to be presented and sworn in. (5) Enquiry and presentment are to be made of all nuisances, malfeasances, and nonfeasances—such as having dunghills at their doors, not repairing their holdings and fences, trespass on neighbours, encroaching on the commons, putting beasts not their own property thereon, or geese without leave of the overseer, or more than the due proportion of cattle.

At a court held before James McCann, the seneschal, on 15th September, 1761, bailiff, constable, two overseers, applotters, and appraisers, and a pound-keeper were presented and sworn in. £6 for building a pound, £1 to buy a loose jockey coat, and 3s. for a coloured walking stick for the bailiff, were levied by presentment on the inhabitants of the manor.

There were sixteen copyholders about this time; but almost the entire manor was in the hands of one tenant, as it has been ever since.

Trespass on or surcharge of the common was considered a very grave offence, and, at the instance of any commoner, the seneschal might call a court, the proceedings at which are thus described. After the court and jury are met, the seneschal is to give his charge, and to direct them to make enquiry, among other things, of pur-

prestures, to wit, enclosures or encroachments, or misfeasances on the common. Then the bailiff is to make proclamation, and repeat after the seneschal as follows:—"If any man can inform this court or inquest of any treasons, felonies, bloodsheds, nuisances, encroachments, or any other thing enquirable at this copyhold court, let him come into this court and he shall be heard." The jury having heard the matter, present the name of the offender, and a sum of money as a pain for surcharging.

In compliance with the conditions of the grant, courts leet and courts baron should have been held at stated times; but this was not done. There is no record whatever of courts leet having been held. One tenant held nearly the whole manor: it was not worth while holding courts for the admission of the smaller tenants; and in consequence the custom of the manor became doubtful.

In 1728 no court had been held for twenty years. Courts baron were held in 1733, 1737, 1758, 1760, and 1763.

Nearly all the proceedings were in relation to the principal holding. This was occupied, previous to 1665, by Patrick Barnwell, who, with his son Simon, was attainted for treason, having been concerned in the rebellion of 1641. It is said that the Barnwells seized the records of the manor, and claimed an estate of inheritance in fee simple. A bill was filed in Chancery against them by the Primate, and the lands were shown to be of copyhold tenure, but the records were not restored.

In 1665 the Primate granted Barnwell's copyhold to Dr. Robert Gorges, in whose family it has since been. During the Gorges' tenure, questions of various kinds were raised, such as what the amount of fine should be—whether two years' quit rent or two years' improved value—whether the infrequency with which courts had been held prejudiced the lord's right—whether a surrender was necessary for settling the copyhold or for making leases.

From counsel's advice and the proceedings of the court, it appeared that a fine of two years' value was payable on every transfer or devolution. Upon a descent the estate is in the heir before admittance; if a surrender is not made and the fine paid, an ejectment or an action for the money might be brought. No transfer of the legal estate could be made without surrender and admission of the new tenant or trustee. Leases were invalid unless made by licence. As to the irregularities of the court, counsel advised that it would be a perilous experiment to dispute any fines or rights usually received. One instance occurred of a fine being paid within six months of a previous one, when the tenant recently admitted made a settlement of the copyhold.

About the year 1700 the annual value of part of the manor, now let to the occupiers for over £2,000 a year, was estimated at £300.

The manor courts continued to be held with great irregularity until the Copyhold Act of 1841 permitted grants of land to be made out of court. The functions of the jury had by degrees become of less importance. The value, for the purpose of fines, was settled by a bargain between the lord and the copyholder. The rents and fines of the smaller tenants were collected irregularly or not at all.

By the Copyhold Act of 1841, no grant could be made of the common without the consent of the "homage" or jury of copyholders. This was an important condition to the Kilmoon copyholders, who have still an excellent common forty acres in extent.

The last court was held in the manor in 1832; and the last acts of the jury were levying £3 to pay the bailiff's salary, and presenting one Thomas Coyle for encroaching on the common by building a forge. For this offence he was amerced £1, and ordered to lay the forge waste. The order, however, was not complied with.

There is still an overseer of the commons, who is paid by the permission of the other copyholders to graze an additional beast on the common. They, however, complain that he does not perform his duty, and allows "the whole country" to run on the common. But that there is no custom to warrant his dismissal, he would probably have been relieved of his duty and emolument long ago. The bailiff, with his wide jockey coat and coloured walking stick, is gone, and the pound, in ruins, no longer needs the services of a keeper. Fealty, whatever it may have been, and however shown, seems to have been an institution preserved until very recent times. For in a bill of costs furnished to a tenant on his admission in 1854, one of the items is—"Pardoning fealty, 2s." On this occasion the tenant paid arrears of rent for seventy-five years, from 1779 to 1854, a very noteworthy example of the docility of copyholders. His quit rent was 6d. a year, and the fine on admission, 14s. The expenses attendant on surrender and re-admission, as appears by a bill of costs furnished, amounted to £11 11s. 4d., or almost sixteen times the amount payable to the lord of the manor (exclusive of the arrears unpaid during seventy-four years). (*See p. 237.*)

This presents one aspect of the hardships and inconveniences which were found to accompany the copyhold tenure in later times.

In England these inconveniences were found so great, and were so generally admitted, that, by the Copyhold Act of 1852, enfranchisement was made compulsory. The principle of compulsion had been propounded some years before, a committee of the House of Commons having strongly condemned the tenure in 1838.

As an instance of the compulsory abolition of a tenure esteemed contrary to the general welfare of the state, the history of the measure is of interest. A very small class was interested in preserving it and even of the lawyers it was said:—

"The conveyancer has long had a thorough hatred of copyhold law, which he only partially understood, and which in many respects conflicted with all the learning he had mastered as to freeholds."

In 1839 a select committee reported that—

"The tenure was ill-adapted to the wants of the day, and was a blot on the juridical system of the country: that the peculiarities and incidents of copyholds were highly inconvenient to the owners of land, and prejudicial to the general interests of the state; that, by the nature of the copyholder's tenure, some of the most valuable portions of the soil were distributed between the lord and the copyholder, so as to be of little value to either; thus the lord cannot cut the timber growing on the land without the consent of the tenant, nor can the tenant cut it without the licence of the lord; the lord cannot open and work a mine without the consent

of the tenant, nor can the tenant do so without the licence of the lord. . . . Where the fine payable to the lord is arbitrary (that is based on the improved value), it operates as a tax upon the capital of the tenant, and is a direct check upon improvements."

Further,

"that the abolition of this tenure would not only be a great public benefit, but should be made, if possible, a national object."

The secretary of the Copyhold Commission, appointed by the Act of 1841, speaks thus of arbitrary fines :—

"These fines are undoubtedly the most objectionable feature of the tenure. . . . This fine is determined by the value of the land upon the death of the tenant or its alienation, or sometimes its mortgage in his lifetime; and, in some of the northern counties, a further fine is payable on the death of the lord. It is obvious, under these circumstances, that the enjoyment of the land and its free alienation is thus greatly hindered and embarrassed. Under what disadvantages does the tenant labour if he improves his land!"

Treating of the inconvenience of copyhold law, he says :—

"With respect to copyholds, nothing is certain. Custom is the life of copyholds, and these customs are contained in the court rolls of the particular manors. Moreover, they are construed by the steward of the manor, who, to say nothing of his being an interested party, is more liable to error than the Judges at Westminster. Nothing can be more unsatisfactory than to have a large portion of the real property of this country governed by customs which vary with each particular manor—to have a multitude of small parcels of land scattered throughout the country, each regulated by its own crotchets, which are construed by its own judges."

Lord Cranworth said to the House of Lords, that if they had heard that some parts of the law relating to copyholds existed in Madagascar, they would have thanked God that no such barbarity existed in England.

The tenure presents some similarity to that by renewable leases, in its being kept alive by the payment of fines, and to the tenant-right system, in the divided ownership between the lord and the tenant. It cannot, however, be considered as a development of either of these, or as the stock from which either of them has been derived. Its infrequency in Ireland, and existence only under the see of Armagh, indicates rather that it was an importation from England.

Its origin is explained by Blackstone and others, as arising from the encroachments on their lords, through neglect or indulgence, of a class of occupiers who were in a state of the utmost servitude—belonging to the lord as if they were cattle. This has the appearance of a fanciful explanation, and is, I think, opposed to later and more trustworthy history, from which I rather judge that it was the lords who encroached on the occupiers. The hardships endured at the hands of their lords by poor copyholders was a subject of frequent enquiry. Acts of Parliament were passed, and decisions made limiting the powers of the lord; so it would seem that he, and not the occupier, was the aggressor.

The practice of keeping the records on rolls, though not common, appears to be a survival from very remote times, and is indicative of the antiquity of the copyhold tenure. As connect-

ing it with those very early institutions and tenures to which attention has been drawn of late years by Sir Henry Maine and others, the following points may be noticed. (1) The importance attached to custom; (2) the co-existence of manors with different institutions and customs independent of each other; (3) the functions and importance of the homage or jury of copyholders, and the inability of the lord to act without their consent; (4) the existence of commons, and the importance attached to them.

Though the tenure was found so oppressive in England, it was it was not so at Kilmoon. There the tenants seem to have had a good bargain of their lands. Their tenure was not understood; their payments and duties were irregularly required of them, and often evaded. The larger tenant became an absentee proprietor with numerous sub-tenants, paying a quit-rent and occasional fines to the Primate. The smaller ones were far better off than their neighbours on adjoining properties, who held from year to year at full rents; and, in addition, they had a common of excellent land, the value of which was not taken into account in estimating their fines. Under the provisions of the Irish Church Act, the tenants have the opportunity of purchasing the fee of their holdings; and this ancient and interesting tenure will shortly have ceased to exist in Ireland.

BILL OF COSTS ON ADMISSION OF TENANT.

KILMOON MANOR.		24th August, 1854.
THOMAS COYLE.		£ s. d.
Special court, ... ..		2 2 0
Surrender, ... ..		0 6 8
Enrolling, ... ..		0 15 0
Stamp and parchment, ... ..		1 1 0
Admission, ... ..		0 6 0
Enrolling, ... ..		0 15 8
Stamp and parchment, ... ..		1 1 0
Pardoning fealty, ... ..		0 2 0
Copy surrender for tenant, ... ..		0 15 0
Stamp and parchment, ... ..		1 1 0
Copy admission for tenant, ... ..		0 15 0
Stamp and parchment, ... ..		1 1 0
Bailiff and attending, ... ..		1 0 0
Sundry expenses, ... ..		0 10 0
		£11 11 4
75 Years' rent, from 1779 to 1854, at 6d. per annum, . . . . .		1 17 6
Fine, ... ..		0 14 0
		14 2 10

Received the above, this 24th August, 1854.

..... Steward of the said manor.