ART. VIII.—Enquiry into the Origin of the Mercheta Mulierum.

BY JOHN ANDERSON, Esq. W. S. & F.S.A.S.

In a Letter to Dr Hibbert, Secretary.

Edinburgh, 13th December 1825.

My Dear Sir,—In the course of an investigation into some old papers this last summer, I found a charter from a feudal superior to his vassal, giving a variety of lands,—"cum curis et earum exitibus, et amertiamentis, herezeldis, bluidvitis, et mulierum merchetis, liberoque introitu et exitu." The charter is dated 13th June 1598; and is now handed for your inspection.

You are aware that the origin of this singular grant is ascribed to a law of Evenus, King of Scotland, by which the Lord acquired a right to the person of his female vassal on her becoming a bride; and that it is said the privilege existed till the reign of Malcolm III. "Loci dominus primam libandi pudicitiam potestatem habet." This fable is to be traced to the credulous theories of our earlier historians (a); for the pretended Evenus does not occur in the lists of the Dalriadic Kings. Nevertheless, as the subject is curious, I shall be glad if you can get any member, at the next meeting of the Antiquarian Society, to offer remarks on its rise and progress. Meantime, I presume to give what has occurred to myself, from the perusal of different authors.

But I may first advert very briefly to the several particulars with which the merchet stands allied. You are aware that, besides the quality of the estate, the tenendas of a feudal charter bore an anxious enumeration of the appurtenances, privileges, and jurisdiction conveyed with the lands (b). Many of these appear to us redundant, synonymous, and even meaningless terms. They were the necessary results of a policy which enforced, with the most rigid exactitude, the relative duties of superior and vassal. As the latter paid homage for his possession, his infant in orphanage was the care of his lord. When the superior was deprived of his tenant by death, he drew an heriot for the return of the lands to himself; and a fine of renewal or relief when he restored them to the heir. From the principle of power over the person, as well as estate of the minor follower, arose the casualty of the maritagium, or marriage fine. The clause under consideration presents the superior divesting himself of some of his extensive privileges. The first words of style are "cum curis et earum exitibus." Here the heritable jurisdiction inherent in the proprietor is delegated in an inferior manner (c). By the "exits" are meant the fines and dues payable within the boundaries of that jurisdiction. The "amertiamentis" have clearly reference to a similar origin. "Herezeldis" (d) imply the heriot of the Saxons; mortuary dues to the seignior on the death of his military dependents—not on the entry of their heirs, as has been erroneously imagined. In the Quon. Attch., herezeld is defined to be the best awer, or beast of his cattle, provided the husbandman possessed an oxgate of land. "Bloodwytes," says Mr Ross, are the fines imposed in petty riots where blood is drawn; wyte being still, in the Saxon tongue, expressive of a penalty.

I now come to the singular conveyance more immediately the object of our attention. "Mulierum mercetis, liberoque introitu et exitu," are the concluding words of the sentence before us. Of the derivation of the term, much has been written.

(a) H. Boethii Hist. Scotorum, lib. iii.


VOL. III.—PART. I. H
ENQUIRY INTO THE ORIGIN OF THE MERCHETA MULIERUM.

“Mere’h fille, femme, femelle, en distinction de Mab et Gwas, filis et garçon—plur. Merchet, duquel on fait le verbe Mercheta, courir après les filles (e). Merces en Latin ne ressemble pas mal à notre merc’h: et l’on a donné les filles en recompense du service des garçons, ce qui parait par l’histoire sauree ou les filles de Laban sont la recompense des travaux de Jacob. Merch, filia, nata, foemina, mulier (f). Merchel, jeune fille (Gallois). Merchet, belle fille, fille d’une autre lit (Bas Breton). Merchett, femmes (Bas Breton) (g).

Mercet, according to Selden, signifies mark a horse, (h) (implying the obscene signification of equitare); According to Whitaker and Coke, the Merchet of Howel Dha, the daughterhood, cethe or fine for marriage of a daughter (i). Marchet (marchetum) consuetudo pecuniaria in mancipiomm filiabus maritandis (j). The books of the Majesty mention the “merchet of women” as forming a part of the acknowledged law of the land. In the 4th Book, cap. 31, this passage occurs:

(k) 1. Sciendum est, quod secundum assisam terrae Scotiae, quse-cunque mulier fuerit, sive nobilis, sive serva, sive merceanaria, marcheta sua erit una juvenca, vel 3 solidi, et rectum servientis 3 denarii.
2. Et si filia liberi sit, et non domini villas, marcheta sua erit una vacca vel 6 solidi, et rectum servientis 6 denarii.
3. Item, marcheta filiae Thanil Ogetharii, 2 vaccae vel 12 solidi, et rectum servientis 12 denarii.
4. Item, marcheta filiae Comitis, est Regin, 12 vaccae.

And in the Leges Burgorum, cap 19, we read:—

(g) Balot, Dict. Celtique.
(h) See also Cowel’s Law Dictionary, voce Marshall.
(i) Hist. of Manchester, vol. i. p. 365, and Coke on Littleton, p. 140.
(j) Bract. Lib. II. tit. i. cap. 8, num. 2. (k) iv. cap. 31.

Sciendum est, quod in burgo non debet audiri bludewite, stingis dint, marcheta, herrezeld, nec aliud de similibus (l).

Du Cange (m) inclines to the Scottish fable respecting the rise of the custom; and adds, that it prevailed not only there, but in Wales, England, France, and Fiedmont; likewise in the isle of Guernsey (n).

Among the Germans, Reit-schoos vulgo inter epurcas voces numeratur, quasi res nomen ab equitatione venerea accepent (o); the explanation given by Wachter being “Hinc totum com—positum nihil aliud significat quam tributum, quod olim apud Scotos et Gallos, et nune etiam in quibusdam locis apud Anglo-Glos et Germanos, penditur dominis pro jure et licentia nubendi di, quoque a scriptoribus Latino- Barbaris modestissime vo—catur maritagnium, a marito-cunnium ab uxore quae Islandis Kona—et marcheta a filia, quae Cambri merch. Idque tribu— tum Anglis dictur maiden-rent, velut census puellaris.”

(p) In France, the word by which the duty was denominated was Cullage or Cullage. Spelman (q) refers it primarily to Scotland, and gives its grossest signification.

Beaumont and Fletcher have made it the subject of a comedy (r).

Arm. They have a custom
     In this most beastly country,—cut upon’t.

Edw. Let’s hear it first.

(1) Skene’s Annotation is:—“Hujusmodi privilegia et immunitates pertinent ad barones, et non ad burgenses; nisi jur baronum et vicicentum habent ad concussum, et Edinburgh, Lanark, Perth, et Strirling.”
(m) Glossarium, tom. i. p. 385.
(n) So does Cowel’s Dictionary.
(p) See also Bayk’s Dict. iii. Sexta iv. rem. H.
(r) Beaumont and Fletcher’s Works, p. 88. 

H 2
60 ENQUIRY INTO THE ORIGIN OF THE MERCHETA MULIERUM.

Arn.

That when a maid is contracted
And ready for the tye o' th' Church, the Governour,
He that commands in chief, must have her maidenhead,
Or ransom it for money at his pleasure.

The books of the feus also speak of the Mercheta Mulierum
In the manors of Thurgarton and Horsepool—Co. Nottingham,
(s) every naif, or she-villain, that took a husband, or committed
fornication, paid marchett for redemption of her blood, five shillings
and fourpence; and the daughter of a cottager paid half a mar-
chett. Certain lands in the county of Flint are held of the King
by services and by ammobragium, which extended to five shillings
when it happened. Blount (t) gives the following definition
of Ammobragium:—A pecuniary acknowledgment paid to the
" King by the tenants—or vassals to their lord—for liberty of
" marrying or not marrying."

Something equivalent to the Marchetum of the Scots was the
Amobyr of the Welsh; among the Saxons the Lyre-wite, Le-
er-wite, or Legergeldum, composed of two Saxon words implying
concubere and mulcta. The Amobyr, or rather Gobr-merch,
or Gwabr-merched, was a British custom of great antiquity, paid
either for violating the chastity of a virgin, or for the marriage
of a vassal (u); and signifies the price of a virgin. (v)

But neither of these penalties—though often assimilated—
were precisely of the nature of the Merchet. On the contrary,
the Lyrewite (w) seems to have been a power, competent to
lords of manors, of punishing offenders in adultery or fornication,
and to have been exigible from virgins; the Merchet from girls
actually married, or about to be so. In Ellis's edition of Brand's
Popular Antiquities (x) occurs the following entry:—

(1) Blount's Antient Tenures by Beckwith, p. 262.
(1) p. 258. (u) Blount.
(2) Amobyr, merces feminarum, precium virginitatis. Davies' Welsh Dict. "Gopr,

"I found the subsequent clause in a curious MS. in the Cotton Library, Vitell. E.
"5, entitled, 'Excerpta ex quodam antiquo registro Prioris de Tynemouth remanente
"apud comitem Northumbriae, de Baronis et Feodis, Rentale de Tynemouth, sectum
"A. D. 1378. Omnes Tenentes de Tynemouth, cum constigerit, solvent Lyrewite
"filebuss vel ancillis suis, et ejus Merchet pro filiabus suis marianidus."

This quotation manifests the distinction, but leaves the oc-
currence of the custom in obscurity.

Seeing in this way that such a privilege as the Merchet was ac-
corded to the overlord, the question which suggested itself to
me was this: Was this a right to the person of the female vassal?
or was it merely a casualty payable to the superior on her mar-
rriage, similar to that which was exigible from the male tenant on
his entering into the same state, or becoming enfeoffed in his
property at majority? The views I have taken do not solve the
query; but I may be allowed to state them.

It seems noways contrary to the spirit of the feudal institu-
tions, in their degenerated state, to suppose that, at a very remote
period, a power over the person of his ward was conferred on the
superior. Does not the history of mankind at large teach us,
that it is by tardy and progressive steps woman takes her proper
place in society, and exercises a dominion over the rougher sex?
The Amobyr, or Gobr-merch of the Welsh, as it means "the
"price of a virgin," (y) is clearly indicative of a ransom from
some established custom, and has been erroneously confounded
with the Merchetum. It was established, it is said, as a preserva-
tive against lewdness. But that is anticipating the question; for
when it was paid as a fine, society had advanced to the stage
wherein crimes and usages are computed for money. On that
point I shall speak hereafter. In the meantime I may remark
(if we give any credence to ancient authors) that the Welsh never
had very delicate notions respecting the female sex. Geraldus
Cambrensis tells us that, in that country, hardly any one ever mar-
rried formerly without previous cohabitation; nor is this practice

(y) Beckwith's Blount, p. 259.
entirely discontinued. Who has not heard of the bundling still customary among the Welsh peasantry? This leads me to an opinion which I have entertained from inspecting the writers on this subject, that, as the feudal system did not become corrupted till its founders had been thoroughly amalgamated with the inhabitants of the conquered territory, and adopted many of their consuetudes, so an exaction like the Mercheta mulierum is most likely to have originated from Celtic principles engrafted on feudal ones. I cannot bring myself to believe that the Merchet sprung from the founders of feudality. If the germs of that institution are to be traced to the Teutonic conquerors of Rome, whilst yet in their woods, we must reject the idea of slavery over the mind or the body, since the power of the chief, or civil magistrate was extremely limited.  

The relative degrees of estimation in which women stood with the Gothic and Celtic tribes leads me still further to the conclusion, that the custom in question arose from the latter people; and I find a supporter in Mr Chalmers, for he derives the term Merched from the British tongue. Among the northern nations of Europe, the female sex were, from the beginning, courted and honoured. They possessed that influence which they will ever retain while the heart is responsive to the touch of love, and whilst they are treated as equal and intelligent beings. Polygamy was unknown at least rarely practised. Aristotle tells us that the Celts, upon the contrary, despised women.  

Adultery was rare among the Germans, though they lay promiscuously together. Among the Welsh it appears to have repeatedly occurred; for their laws have frequent mention of the penalties against the offending parties. For defiling the prince’s bed, the delinquent was to pay a rod of pure gold, of the thickness of the finger of a ploughman who has ploughed nine years, and in length from the ground to the prince’s mouth when sitting. Some authorities add the culprit was fined in a gold cup and cover as broad as his Majesty’s face! —The Germanic nations punished with sanguinary rigour the sin of the female, whilst the ancient Britons checked by fines, but not by death, the repetition of the crime. The recompense to a virgin who had been deflowered, is a proof that they rather considered the calamity in a jocular light. On stating that she was deserted by her lover, it was ordered by the court that she should lay hold of the tail of a bull of three years old, introduced through a wicker door, well shaven and greased. Two men were to goad the beast; and, if she could by dint of strength retain the bull, she was to have him in lieu of satisfaction; if not, she became the laughing-stock of the spectators.  

Lord Hailes has written an Essay on the Mercheta, in which is manifested the profound and elaborate learning for which this eminent lawyer is so justly celebrated. Yet has he left its real history as much involved in doubt as he found it. He considers Merchetum or Merchet to have two significations,—1st, The fine exigible by a lord when the unmarried daughter of his villain was debauched. 2dly, To imply the composition payable on her marriage; and in this view Mr Astle has concurred. But the question still remains, how did a tax...
A thraldom so universal, and embracing every woman without vassal or slave, were alike amenable to this degrading vassalage. The daughter of an earl, the maid of noble birth, and the serf—proves that no class of female society were exempt from it. The latter in the capricious conceit of the church. That the former merchet and the jus prima noctis: and, if his Lordship be correct in his authorities, existed in France in the fifteenth century. A Dutch author, to whom he refers, Van Loon, derives this jus prima noctis from a very singular source. In the 4th counsel of Carthage, held anno 398, it was ordained that all new married persons, out of respect for the sacerdotal benediction, adem nocte in virginitate permaneant. This species of continency, as it aggrandized the priesthood, was prolonged by them to three nights, in imitation of Tobitas; but, about the twelfth century, a redemption of the obligation was permitted—and the abatement in the rigour of the canon is to be ascribed to the view which the common sense of mankind will take of all such usurpations. There was this difference between the merchet and the jus prima noctis, that the former originated in the brutal power of a tyrannical aristocracy—the latter in the capricious conceit of the church.

The merchetum is said not to have been payable within a borough. Its occurrence, nevertheless, in the Regiam Majestatem proves that no class of female society were exempt from it. The daughter of an earl, the maid of noble birth, and the servant or slave, were alike amenable to this degrading vassalage. A thraldom so universal, and embracing every woman without distinction, necessarily arose from some other source than the mere acknowledgment of a superior on the wedding day. Its roots strike deeper than we can now discern, and indicate a disgusting origin. For otherwise, it is evident, that the marcheta of a filia libera was the double of that of a mulier nobilis (oo)? that the daughter of a thane paid four times as much as a woman nobly born? Or, if it was a mere villain fine, as Bracton says, how happened it that not only villasina paid it, but even those in England, who held their land in free socage (pp)? A free woman surely owed service to no one; and yet we find her taxed to an extraordinary degree. Till those difficulties be solved, we may ascribe to the merchetum the character of a more extravagant prerogative than our antiquaries are willing to allow (qq); and, the more justly, since seignorial rights not unfavourable to the ideas of Skene are known yet to linger in Europe and America (rr). Lord Hailes has made us acquainted with an ingenious German method of enriching the treasury. The little despots there effect this by imposing fines on celibacy—for this good reason, says Hailes, vol. i. p. 392.

The Governor of Sark is deemed at this day to have le droit de cuissage. Mr W. Y. a Scotsman, proprietor of a lordship in Lower Canada, told another of my friends, who chanced to be present while my informant Montreal) said to me: "The Governor of Sark is deemed at this day to have "le droit de cuissage," even those in England, who held their land in free socage (pp)?

Mr Hay, in a letter to me on this subject, says: "The Governor of Sark is deemed at this day to have "the right of pudendo, that he would not, in his minority, to render those services which a military age bound him in; but why these overlords should have laid their tyrannical bonds on woman, I cannot imagine, unless indeed, by supposing (as was the case) that in barbarous periods the gentler sex are mere domestic drudges, or instruments of sensual gratification! With all his endeavours to disprove the usage, as handed down by Boece, Lord Hailes is compelled to admit that there anciently prevailed, in many countries of Europe, a custom often allied, and with apparent justice, to the merchetum. It was termed jus prima noctis: and, if his Lordship be correct in his authorities, existed in France in the fifteenth century. A Dutch author, to whom he refers, Van Loon, derives this jus prima noctis from a very singular source. In the 4th counsel of Carthage, held anno 398, it was ordained that all new married persons, out of respect for the sacerdotal benediction, adem nocte in virginitate permaneant. This species of continency, as it aggrandized the priesthood, was prolonged by them to three nights, in imitation of Tobitas; but, about the twelfth century, a redemption of the obligation was permitted—and the abatement in the rigour of the canon is to be ascribed to the view which the common sense of mankind will take of all such usurpations. There was this difference between the merchet and the jus prima noctis, that the former originated in the brutal power of a tyrannical aristocracy—the latter in the capricious conceit of the church.

The merchetum is said not to have been payable within a borough. Its occurrence, nevertheless, in the Regiam Majestatem proves that no class of female society were exempt from it. The daughter of an earl, the maid of noble birth, and the servant or slave, were alike amenable to this degrading vassalage. A thraldom so universal, and embracing every woman without
distinction, necessarily arose from some other source than the mere acknowledgment of a superior on the wedding day. Its roots strike deeper than we can now discern, and indicate a disgusting origin. For otherwise, "whence comes it to pass that "the marcheta of a filia libera was the double of that of a mulier "nobilis (oo)? that the daughter of a thane paid four times as much as a woman nobly born?" Or, if it was a mere villain fine, as Bracton says, how happened it that not only villasina paid it, but even those in England, who held their land in free socage (pp)? A free woman surely owed service to no one; and yet we find her taxed to an extraordinary degree. Till those difficulties be solved, we may ascribe to the merchetum the character of a more extravagant prerogative than our antiquaries are willing to allow (qq); and, the more justly, since seignorial rights not unfavourable to the ideas of Skene are known yet to linger in Europe and America (rr). Lord Hailes has made us acquainted with an ingenious German method of enriching the treasury. The little despots there effect this by imposing fines on celibacy—for this good reason, "that

64 ENQUIRY INTO THE ORIGIN OF THE MERCHETA MULIERUM.
“bachelors deprived their lord either of pleasure or profit, and were, therefore, justly punished.”

Struck by the evident relation of the mercheta to the regulations of the Welsh legislator, Howel Dha, the historian of Manchester has admitted its British, and consequently Celtic origin. (ss) He fancied that, in the antiquity of the British tenures, he beheld the establishment of feuds prior even to the epoch of the Norman conquest. Yet, as he concedes the point (tt), that the Cæthos or Villains, who formed the only other rank distinct from the nobles among the British people, were in reality slaves, the concession is tantamount to proof that the custom in question was not an ingredient of feudality. For no stronger line of distinction between the Gothic and Celtic tribes can be observed than that the one were freemen, and the other wretched dependants on the will of their lord. Did our time allow of it, we might hesitate to subscribe to the learned historian’s fanciful introduction of feuds. It possesses the merit of ingenuity—we can scarce confidently add, of authenticity. Some similarity to the harsher features of feudal policy may be traced in the earlier British institutions; but the bond of union which gave life and vigour to that system found no responsive echo among the Celtic reguli, who eyed with distrust the motions of their neighbours, and enfeebled the general welfare by the contracted policy of mutual separation (uu).

Some writers have confounded the heriot with the merchet. From the chartulary of Kelso, it is clear there was a decided difference (xx); so, in like manner, the relief has been improperly co-mingled with the heriot. There cannot be a wider distinction. The hered, or mortuary, was due to the seignior on the demise of a vassal, and was paid out of the goods of the deceased possessor of the lands; it was in reality the same with the herezeld of the

\textit{Scoots (yy).—} whilst the relief was paid by the heir out of his own purse, the heriot was the lord’s sasine of the entire estate on the death of the possessor; and the relief was the acknowledgment from the property, as the homage was from the person, for the superior’s reconvencement of the whole to the heir. The heriot was payable at all events; the relief only in case of taking up the lands in succession. (zz)

In studying this question, a very prominent fact has presented itself, which has been overlooked by previous writers, and which I am at a loss, after a minute inquiry, how to account for. It is this:—That all charters whatever, of a remote period, granted in favour of female crown, and other vassals, and even of convents of nuns, bear to be, ‘cum herzeldis et merchetis mulierum.’ This is observable even in the case of inferiors inments of favour of women; and the clause is contained in the charters of dowry of our Scottish Queens, and other personages of distinction. I insert an instance in point, for which I am indebted to Robert Pitcairn, Esquire, W. S., F.S.S.A. (a)

\textit{The only principle I can suggest for an extension of the custom in favour of the softer sex, is this:—} That being unable to

(a) See Duncane, tom. iii. cosce Heresoble.


(a) [Jac. II. circa 1451, Lib. IV. Reg. Mag. Sig. No. 327.] Chf. of Cond. of an Indenture made at the Burgh of Aberdene, Feb. & 1447, “ betuix a worschipful lady, 

\textit{Cristinne of Stratoun of that ilke, on ye ta part, and Alex. Frog, his sonny, and Marione, “ his spouse, on ye thyg part,” in which she had “ act, & to form layyne in his pure “ wadowbed” to the saide Alex,” &c. and “ to ye lenger leuer of ym, al and sindy “ his landis of Stratoun and Stratounhall, with lefe and ful power to big and mak ane “ mylne within ye samyn landis, and for to wyn colis and stanis within ye saide landia “ hir landis of Stratoun and Stratounhall, with lefe and ful power to big and mak ane “ mylne within ye samyn landis, and for to wyn colis and stanis within ye saide landia “ to ye saide lady bludwite and merchete, for ye terme of yntune yer fra Witsunday next “ folowande ye date of yr present endenturis,” paying yearly 26 markis, (6s. 8d.) &c.

\(66\) ENQUIRY INTO THE ORIGIN OF THE \textit{MERCHETA MULIERUM.} 67

\(67\) ENQUIRY INTO THE ORIGIN OF THE \textit{MERCHETA MULIERUM.}
ENQUIRY INTO THE ORIGIN OF THE MERCHETA MULIERUM.

perform military services, and consequently esteemed unfit to receive the military tenures, they were absolutely precluded from any inheritance till the utter extinction of the males (b). Hence it became requisite for them, when they did succeed, to covenant for the insertion of these returns, so that they might at least exact their equivalent in money, if unable to accept of the tenures themselves.

Thus much on the ordinary appearance of the merchet in a feudal charter. It is not always to be found in the same words.

In a charter of confirmation (c) by James III. (dated at Edinburgh, January 31, 1476, a. 7. 17.) of a feu-charter granted by Johannes de Ila (elsewhere styled de Insula et de Insulis) de minus Insularum, dilecto nostro nativo migero et alumpno (foster brother ?), Johanni Davidsonse filio quondam Gilberti Davidsounne, of the lands of Grenaul, in the Earldom of Carrick, and shire of Are, dated, apud Ila, Augt. 20. 1476, the clause in question is thus introduced:—

"Cum curiis et curiarum exitibus et earundem eschaetis, cum averagiis et carriagiis, cum bludewitis et herezeldis, AC MULIERUM ESCHAETIS." Here we have the exits and escheats of courts, the bloodwits and herezelds, as well as escheats of women. After the most anxious investigation, I am convinced this is a difference more in sound than sense; and that escheat and merchet imply one and the same penalty, payable alike to all superiors, whether laymen or churchmen. Thus, in a process anent Kirktoun of Arbuthnot (in the possession of the Viscount Arbuthnot) before the synod of Perth, upon the 3d of the ides of April, A. D. 1206, between William, Bishop of St Andrews, and Duncan of Arbuthnot, Isaac Benein " depones, that in the time of Osbert Oller, who took on the Jerusalem Cross for an expedition to the Holy Land, he farmed the King's revenue, due by the said Osbert to the Bishop;" and whilst he possessed these lands, he received nothing out of the same, unless a moiety of a Bloodwicks, and of the Mercheta Mulierum—the other moiety "being due to the Bishop."

It has been suggested to me by a friend well qualified to judge, that the word "mulier" is hostile to the sentiments I have entertained of this custom of the Mercheta. He contends that, had it been of so gross a nature as Skene supposes, the expression would have been, "merchetis virginius," or "puellarum;" and, if intended for all the sex, "feminarum or femellarum." With great submission, there is nothing in the objection. Mulier undoubtedly signifies one that is not a maid:—

"Ultoe' gudens mulier marito."—Hox.

And muneratus filius, being a son lawfully begotten, is decisive of the "point." But "mulier" is likewise expressive of "woman herself;" and when it is considered that this fine was due, not by a virgin uncontracted, but by a female entering on the married state, there was not a better term to designate it by. It was a tax imposed solely for marriage; and to have continued the use of an expression such as "puella," where the individual was the affianced bride of another, would have been nonsense. Having married, though consummation had not followed, the female was raised into the more elevated rank of "woman," and, as such, was entitled to an appellation which had reference to her future, rather than her past situation.

These views may not be conclusive; and I submit them with the deference which should accompany a novel or fanciful theory.

I now come to the second stage in the history of society. In their barbarous state, mankind pursue revenge or gratification like brutes. When they advance in the scale of civilization, they see a necessity for abating somewhat in the rigour of the former, or

(b) Whittaker, Manchester, vol. i. p. 266.
the keenness of the latter. Hence, in polished communities, the civil magistrate becomes the organ of punishment, and reason the check on passion. But, in the intermediate passage from their original barbarity, crimes or peculiar privileges are compensated by money or cattle. Such was the case with the Germans. (d) With ourselves, an assestment was paid as the price of blood (e); and such has been the practice with most modern nations (f).

The appearance of the mercheta mulierum in the Regiam Majestatem is indicative of this improvement in society, (g); because, if we allow the rite to have been so gross in its infancy, the taking of a fine in lieu of it evinces that its rudeness had begun to be seen and estimated. According to the custom of the manor of Dinover (h), in Caermarthen, every tenant, on the marriage of his daughter, paid ten shillings to the lord, which, in the British tongue, is called Gwahr Merched, i.e. the maid's fee (i). In the manor of Builth, in Radnorshire, each vassal paid a noble to the lord, at the marriage of his daughter, for quitting of the custom of marcheta (k). These instances noways militate against the supposed cruelty of the custom in its early stage. On the contrary, they are proofs it had assumed a milder character.

But the quotation from the books of the Majesty, with which I set out, has clearly reference to a previous chapter respecting the relief payable by a female vassal. From it, it would appear that the superior was bound to see his follower married; and thence, it naturally occurred, might not the merchetum in the subsequent passage of the same work be the very relief due for ensuring this marriage? Since no female could enter into that compact without the lord's approbation (l). The idea is plausible; but

why distinguish so carefully between the case of a male and female tenant? Why not let the word escheat or marriage, or whatever term the casualty bore, stand for either sex? If a peculiarity did not attach to the one class more than to the other, the penalty or gratuity was already sufficiently marked, and required no additional emblem to denote it. The answer is evident: There must have been some singular demand exigible by the superior from his female ward on her assuming her lands into her own guidance, or on her marriage, the true origin of which is now totally lost to us. We must not reason, as antiquaries, on ancient feelings by modern ones. No truth can be clearer than that man, in his savage state, compels woman to undergo the most debasing servitude, and scarcely ranks her above the brute creation. The Mahomedan creed denies their existence of soul; and the benefit of clergy was not extended to them in England till the days of William and Mary (m).

At no very remote period, the fair were inadmissible as witnesses in Scotland, even in a civil suit. I will conclude by an example which, I think, is tantamount to proof of the harsher features of the Merchet. The tenure of Borough English (n) is a part of the municipal law of the land. By it a younger son was brought to succeed, to the exclusion of the eldest or heir. The reason given for this inversion of the ordinary rules of succession has been this: The eldest son was obliged to follow his leader to the wars; and it became therefore necessary to provide for the younger, as the prop who was to continue the family. All very likely; but, if I am not mistaken in saying it was a Saxon custom, was it not contrary to their usages as a feudal people? If the feudal system originated with the Teutonic nations, surely it could not have been unknown to the

---

(d) Tacit.
(e) Erskine's Institutes, p. 869.
(f) L'Esprit des Lois, lib. xxx. cap. xix.
(g) See the Theory of Hoyard, Anciennes Lois des Francois, tom. i. p. 559.
(i) Reeve's Cyclopedia, vol. xxii.
(k) Cowell's Law Dict. voce Maiden-Rents.
(l) Gilbert's Law of Tenures, p. 23.

---

(m) Kames' Sketches, vol. ii. p. 49.
Saxons, who were of the same stem, and must be supposed to have had the same internal government. Instead of being built on an inversion of the rules of succession, I consider it, therefore, more probable that the tenure of Borough English originated in a desire to evade the consequences of the landlord's privilege of lying with his tenant's wife; for, as the eldest son would be born under an imputation of illegitimacy, the youngest, to whom no stain could attach, would be called to the succession. Something analogous to Borough English, I believe, prevailed among the Norwegians; but till it be made out that this tenure was of Norwegian extraction, I humbly think we must adhere to the definition above given, which has been coincided in by many writers.

A word before I close, upon the opinion respecting the Mercheta expressed by Dr John M'Pherson (o). He saw the folly of attributing its introduction to Evenus, the fabled cotemporary of Augustus Caesar; but he has devoted several pages to overthrow what may be done in as many words; and with a singular gravity exclaims, 'It is impossible to prove that any considerable division of Caledonia was governed by a single Monarch in the Augustan age.' He is speaking of the Scots; for every one knows that the Caledonians or Picts were only united under one sovereign towards the fifth century; and, as for the Scots, they did not effect a permanent settlement in this country till the fourth age, perhaps not till A.D. 503 (p). Evenus and Augustus being cotemporaries (supposing such a man as the former to have reigned at some period over the Scots in Scotland) is out of the question. But the most important conjecture stated by the learned Doctor is to follow: 'Were it true (says he) that the case was otherwise, it is not credible that the Scots would have granted so extravagant a prerogative to their king; or so uncommon a privilege to their nobility;' and his argument is built on their supposed repugnance, as a brave people, to so ignominious a custom. The Doctor has been led away by his own feelings as a modern Scot. He should have remembered that his countrymen did not at first grant this extravagant prerogative. It was the consequence attendant on the usurpations of the nobility, when they had violated the original nature of feudal services. These were at first designed for the protection of the vassal, and the honour of the lord. They degenerated into slavish and tyrannical penalties. No where were the usurpations of the nobles more exorbitant or oppressive than in Scotland (p). A continued submission to these checked every aspiration after freedom; and, I doubt not, imparted the cautious and respectful deference to power which has been observed among the national characteristics. This feeling blended into one house the two bodies who should have formed distinct branches in our legislature; and deprived the commons of that liberty of speech to which England is greatly indebted. National freedom we have enjoyed; but little, I am afraid, in past ages, of individual liberty. The slavery of feudal customs is however swept away; legislative enactments have broken their authority; and this country, so long oppressed, has tasted the sweets of the change.

The subject has swelled to a greater extent than I at first anticipated. You will receive my observations, I trust, with indulgence, they being intended more to draw out others, than as affording a satisfactory elucidation of this interesting question.

(o) Critical Dissertations on Ancient Caledonians, p. 174-5.

“to their nobility;” and his argument is built on their supposed repugnance, as a brave people, to so ignominious a custom. The Doctor has been led away by his own feelings as a modern Scot. He should have remembered that his countrymen did not at first grant this extravagant prerogative. It was the consequence attendant on the usurpations of the nobility, when they had violated the original nature of feudal services. These were at first designed for the protection of the vassal, and the honour of the lord. They degenerated into slavish and tyrannical penalties. No where were the usurpations of the nobles more exorbitant or oppressive than in Scotland (p). A continued submission to these checked every aspiration after freedom; and, I doubt not, imparted the cautious and respectful deference to power which has been observed among the national characteristics. This feeling blended into one house the two bodies who should have formed distinct branches in our legislature; and deprived the commons of that liberty of speech to which England is greatly indebted. National freedom we have enjoyed; but little, I am afraid, in past ages, of individual liberty. The slavery of feudal customs is however swept away; legislative enactments have broken their authority; and this country, so long oppressed, has tasted the sweets of the change.

The subject has swelled to a greater extent than I at first anticipated. You will receive my observations, I trust, with indulgence, they being intended more to draw out others, than as affording a satisfactory elucidation of this interesting question.

(p) Historical Law Tracts, vol. i. tract 6. Robertson’s State of Europe, Notes, p. 298.