When did removal on sick-maintenance cease?

Neil McLeod


[1A] *Bretha Crólige* (c AD 670, Ireland) § 19: Any wound which entails fines [wergild] and nursing fee does not entitle [the injured [party] to payment of the leech by the man who commits the injury unless it [the leech’s fee] make a gap in the fines of wergild. § 60: ... a pledge for proper maintenance (folug), a pledge for service [to be supplied in the invalid’s stead], a pledge for restoration after cure ...—Binchy *Ériu* XII


[2A] *Bretha Crólige* § 6: Moreover there has been laid down under pain of penalties the bringing away (*dingbáil*) of [every person who has received a] wound which entitles him to nursing ...

[2B] *Bretha Crólige* § 58: a man who is fit for nursing is to be maintained after the ninth day ...

[2C] *Bretha Crólige* § 41: no bloodshed involving sick-maintenance entails removal [of the invalid to be nursed] until the tenth day; for if he be sick unto death he is not entitled to sick-maintenance ...

[2D] *Bretha Crólige* § 59: *He* [the invalid] is sought out with [i.e. in the presence of] three lords: a lord who is over him, a worthy lord of acknowledgement for attendance ..., a lord of testimony for testifying. § 58: ... *He is carried on* [the shoulders of] men according to the meed of his worth; if he be a noble chariot warrior [it = the chariot—Greene 1972] is brought along with him.

[3] *Críth Gablach*: cessation of *dingbáil* ‘removal’

[3A] The [practice of] sick-maintenance is not extant at the present time, but [rather] the cost of his proper care [is paid] to everyone according to his status, including the physician’s fee and drink and feeding and the price of [any] lasting blemish, visible defect [or] loss of limb, but each one of the grades of a kingdom is (= was) commonly entitled to it under the system of sick-maintenance. (My translation *Ériu* LIX 35; Binchy, 1941, ll. 47-51)
[4] Did dingbáil cease because of a new distinction between intention and negligence?

[4A] Binchy Ériu XII 124: ‘In all early systems a wrongful act is something purely objective, no account whatever being taken of the state of mind from which it proceeds. It is judged entirely from the external standard; and whether it be the outcome of malice, culpable negligence, or mere accident, the penalty is always the same. The distinctions between wilful and negligent, malicious and unintentional, belong to a comparatively later and more developed stage of jurisprudence. There is no trace of them in the text of B[retha Crólige], nor indeed in any of the earlier tracts.’

[4B] Binchy Ériu XII 89: ‘All their sick-maintenances are provided, save [those] resulting from anger. Sick-maintenance of [unintentional injury inflicted through] wantonness (étged) is borne, [but that which results from] anger is not borne.’

[4C] Binchy Ériu XII 124: ‘this ... makes othrus the exception rather than the rule, for the vast majority of injuries would come under the heading of wilful wrong.’

[4D] Moller, ‘Injuries among 15-29 year old males’: ‘Overwhelmingly, the injuries presenting to emergency departments are not intentional.’

[4E] Cf Binchy Ériu XII 82-3: ‘an interpolation dealing with othrus... most of it is based on ancient materials’ inserted in Crith Gablach: ‘It is impelled with full dire and honour-price, even though he [the victim] have been made an invalid (?) through wantonness [i.e. not wilfully] (cid tre ed(n)ged rot (= rop ?) othar).’


[4H] Cf Heptad VIII, AL V 156-7: There are ... seven reboundings that shed blood, which incur not debts [fiachu ‘fines’] nor sick-maintenance: the rebounding of a chip (slisme) from the chopping of fire-wood, or of carpentry (saíri); the rebounding of a piece from a flesh-fork; the rebounding of a branch backwards; the rebounding of a flail (suiste, susta) from the ground; the rebounding from horses’s shoes; the rebounding in a forge; the rebounding of a stone off another. Every powerlessness to be safe on declaration [each n-écmacht co slán cuibs] ‘everything over which one does not have power entails immunity of conscience’.

[5] Exceptions: (i) those who spurn the law

[5A] Bretha Crólige § 16: three persons who are not entitled to nursing: a man who evades [his obligations to] kindred, a man who evades [his obligations to] lord, a man who evades [his obligations to] church ... § 43: a man who refuses [hospitality to] every class of person, a man who is false to his honour, a man who steals everybody’s property ... § 44: a woman who cares not with whom she may sleep, a woman who robs everybody, a sorceress who trafficks in charms.
[6] Exceptions: (ii) for the benefit of the victim/victim’s kin

[6A] WOMEN: Passage on exceptions to removal (CIH 1242.16-18) in Binchy, Ériu xii at 87: ‘Neither lawful first wife (cetmuinter dligteach), nor maiden before the age of choice, nor king, nor royal poet, nor abbot, nor bishop, nor noble grade, nor ‘exile of faith’, nor senior, nor antiquary (sencha) [judge?], nor watchdog.’

[6B] Bretha Crólige § 17: Any class of persons who is debarred (aircoillte) from being brought away on maintenance and is entitled in Irish law to his nursing fee is paid dire ... § 6: Half the dire for the nursing wound of every man [is due] to his wife.

[6C] Bretha Crólige § 30: Half the refection of every man on sick-maintenance is due to his wife. § 36: Every woman who goes on sick-maintenance is entitled to half the number of retainers proper to her husband ...

[6D] Commentary to Cáin Êarrai the CIH 1770.3: Cadiad aimsira thogha? Ní. A cinn a cethre mbliadna dec do ingin. ‘What are the ages of choice? Not difficult. At the end of fourteen years for a girl’.

[6E] Bretha Crólige § 52: From [the ages of] seven to ten years they are maintained on a soft fare of fosterage ... From the [age of] ten years on every boy and every girl are maintained on [i.e. according to the standard of] sick-maintenance for men ...

[6F] INFANTS: Bretha Crólige § 7 (see also § 52): Every wound of sanctity or infancy after baptism is paid for by equal dire with the church grades up to the end of seven years ... § 6 Moreover there has been laid down under pain of penalties the bringing away of every [person who has received a] wound which entitles him to nursing and of every boy in fosterage ...

[6G] Bretha Crólige § 29: There are three persons in the territory whom their women-folk accompany on sick-maintenance: ... the mother of every child at the breast.

[6H] CLERICS: Bretha Crólige § 21: The sick-maintenance of every church[man] entails [his conveyance to] a high sanctuary with authority and rule for his protection, together with the proper refection which the rank [of the injured man] merits.

[6I] Table 1: Irish Penitentials – clerics discouraged from lodging or dining with lay people:

<table>
<thead>
<tr>
<th>Dining, lodging with a lay person</th>
<th>40 days on bread &amp; water</th>
<th>p 163 Hibernenses 22</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dining with pregnant servant or her spouse</td>
<td>40 days on bread &amp; water</td>
<td>p 163 Hibernenses 24</td>
</tr>
<tr>
<td>Dining with pregnant servant or her spouse</td>
<td>20 days on bread &amp; water</td>
<td>p 163 Hibernenses 25</td>
</tr>
<tr>
<td>Dining or lodging with lay persons</td>
<td>40 days on bread &amp; water</td>
<td>p 219 Bigotian 7</td>
</tr>
<tr>
<td>Dining with lay persons</td>
<td>40 nights on bread &amp; water</td>
<td>p 260 Old Irish 3</td>
</tr>
<tr>
<td>Conversing with laymen</td>
<td>—</td>
<td>p 235 Bigotian 3(4)*</td>
</tr>
</tbody>
</table>

*Bigotian Penitential 3(4): In the same book abbot Anthony has said: ‘As fish die if they tarry on dry land, so also monks staying long away from their cells or conversing with men of the world lapse from their vocation for a retired life.’ (40 days is the same penance that the Bigotian [ii (1)1 at p 219] and Old Irish [ii 12 at p 263] penitentials prescribe for a priest who ejaculates while kissing and fondling a woman.)
[7] Exceptions: (iii) for the benefit of the defendant

[7A] Heptad LXX, *CfH* 1223.6-7 (cf 53.6-7, 19-21 etc): *Atat* *uiii. fola[ch]* *ad[a] andsom folongad[ar]* la Fêne: *folach righ, folach briugad, folach filed, folach saoir, folach gobann, folach fir gaioth, folach druiniigh[æ], ar is écan nech rogaba a mama tara n-eis arnacon thesba tuilem caich dhib ina tigh.

There are seven maintenances which are most difficult to provide [of those] which are maintained in Irish law: maintenance of a *king*, maintenance of a *hospitaller*, maintenance of a *poet*, maintenance of a *wright*, maintenance of a *smith*, maintenance of a *man of learning*, maintenance of an *embroideress*; for it is necessary that someone should undertake their duties after their departure lest the earnings of each of them be lacking in his house.

[8] The choice lay with those for whom the exception was created

[8A] *Bretha Crólige* § 17: Every condition of person is entitled to his nursing in Irish law. Any class of person who is debarred (*aircoillte*) from being brought away on maintenance and is entitled in Irish law to his nursing fee is paid *díre* [honour-price]–half his *díre* to his family or *he may be maintained by the kindred* [of him] who injures him, even though *he be debarred* (*aircuillte*) [from sick-maintenance]. Hence is [said] in Irish law: the debtor shall choose.

[8B] *Bretha Crólige* § 31: There is also in Irish law a *woman who is entitled to have three judges to estimate her maintenance: a judge who is knowledgeable about refections and a judge of the language of the law, and a judge of mutual custom (?). A woman of profitable handicraft (*ben lamtoruid*) is she who is entitled to these three for the estimation of her maintenance.

[8C] *Bretha Crólige* § 54: There are [certain] persons debarred from sick-maintenance in Irish law, who are not entitled to [*na(n)d alet* ‘who don’t ask for’] maintenance but rather to a fee for them according to the decision of a judge: a *household pet, a lord’s cherished ones, a poet’s son, a bōaire’s favourites (?), a queen’s son*.

[9] Economics: benefit of removal vs. the value of the fee

[9A] *Bretha Déin Chécht* § 23: Attendance on a sick man, if there is failure [to provide it], it (the penalty) advances to a *cow for every night that he* [the wounded man] *is entitled to it* ... Thereafter it (the penalty) *extends to the exact amount of the body-price (colainderce)’*—Binchy 1966, 37.

[9B] ‘It is not surprising, therefore, that the *basic payment* in *Bretha C[rólige] § 2, which replaces medical care for a crólige mbáis*, should also be *equal to the body-fine* for that particular injury.’—McLeod Ériu LIX 33.
Table 2:

<table>
<thead>
<tr>
<th>1. nursing wounds:</th>
<th>2. body-fine:</th>
<th>3. body-fine:</th>
</tr>
</thead>
<tbody>
<tr>
<td>OIr. tracts</td>
<td>Senchas Már</td>
<td>Cáin Adomnáin § 44</td>
</tr>
<tr>
<td>bandage wound</td>
<td>6 sét</td>
<td>7 sét</td>
</tr>
<tr>
<td>general bed-wound</td>
<td>7 sét</td>
<td>1 cumal of [12?] sét</td>
</tr>
<tr>
<td>deadly bed-wound</td>
<td>[maim = 18 sét]</td>
<td>½ killing [= 18 sét]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. nursing wounds:</th>
<th>5. body-fine:</th>
</tr>
</thead>
<tbody>
<tr>
<td>commentaries</td>
<td>commentaries</td>
</tr>
<tr>
<td>lower bandage wound</td>
<td>6 sét</td>
</tr>
<tr>
<td>upper bandage wound</td>
<td>7 sét</td>
</tr>
<tr>
<td>crólige cumaile = general bed-wound</td>
<td>12 sét</td>
</tr>
<tr>
<td>deadly bed-wound</td>
<td>18 sét</td>
</tr>
</tbody>
</table>

[10] The early date of the 12 sét body-fine and nursing fee

[10A] Cáin Phátraic (AD 734)—composite text from CIH 1022.3-7 and .28; 1538.12-15:

[2] Ocht n-uingi a n-othar .xx.it aidhc[h]e; a meth co ceann .uii. n-aidhthe .x.

[1] Further, four ounces for nursing of a fortnight.

[10B] Cf Gúbretha Caratniad § 27: ‘I declared the non-removal of an injured man on the ninth day ... since a master physician stated that he would be dead after a month.’—McLeod, Ériu LIX 27.

[10C] Bretha Crólige § 18: [When] any man who is entitled to sick-maintenance in Irish law [formally] demands that he be removed, and there is refusal [by the injurer] to remove him, one-third of the dire* is paid [as an additional penalty].

* Binchy: [honor-price]

[10D] Table 3:

<table>
<thead>
<tr>
<th>6. nursing period: Cáin Phátraic</th>
<th>7. default (adds 1/3): Cáin Phátraic</th>
<th>8. body-fine: Cáin Phátraic</th>
</tr>
</thead>
<tbody>
<tr>
<td>[bandage wound] fortnight</td>
<td>4 oz = 8 sét</td>
<td>6 sét</td>
</tr>
<tr>
<td>[general bed-wound] 20 nights</td>
<td>8 oz = 16 sét</td>
<td>[1 cumal of] 12 sét</td>
</tr>
<tr>
<td>[deadly bed-wound] 30 nights</td>
<td>2 cumals = [24 sét]</td>
<td>18 sét</td>
</tr>
</tbody>
</table>

Cáin Phátraic – individual texts.

(See Breatnach Companion to CIH 220 § 3 for the identification of the Old Irish fragments of Cáin Phátraic.)


Four ounces for sick-maintenance of a fortnight. i.e. the six-sért bandage wound has been inflicted upon the commoner grades in that case. And the four ounces satisfies the doctor’s fee and the body-fine. Because the doctor’s fee is one-quarter for the commoner grades. Eight ounces for sick-maintenance of twenty nights: a general bed-wound has been inflicted upon the upper bóaire. And [the eight ounces] satisfy the doctor’s fee and the body-fine for the injury. Two cumals for sick-maintenance of a month: a deadly bed-wound has been inflicted upon the ócaire. And the two cumals satisfy the doctor’s fee and the body-fine for the injury.

[11B] CIH 1022.28-31: Forta .iii. uinge a n-othar caoic[thig]ís .i. Cidh beg in cned a chanas (CIH chanaid), o deleist urranus othrusa indte, is é airet rethus smacht in methá[;] coruici lancoirpdíre na cneide comrait[;] cona ferthain tria comraitte, uair is comraitte in follugud.

Four ounces for sick-maintenance of a fortnight. i.e. although the injury that he describes be small, when an allotted portion of sick-maintenance is due for it, this is the extent to which the penalty for default [of nursing] accumulates: until it reaches the full body-fine for an intentional injury, so that it is [treated if it were] an infliction as a result of intention, since the default is deliberate.


Further, four ounces for nursing of a fortnight. Eight ounces for nursing of 20 nights; its default at the end of 17 nights. What is that default? i.e. a general bed-wound has been inflicted on the upper bóaire in that case, and [the eight ounces] discharge the doctor’s fee and the body-fine appropriate to the injury.