

When did removal on sick-maintenance cease?

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[1] Compensation for non-deliberate injury: fine, nursing, substitute

[1A] *Bretha Crólige* (c AD 670, Ireland) § 19: Any wound which entails **finés** [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

[2] *Dingbáil*: removal of the victim

[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: *Ferrdar a notrusa uile acht a ferg; folongar othrus eitgid, ni folungur ferg* ‘All their sick-maintenances are provided, **save [those] resulting from anger.** Sick-maintenance of [unintentional injury inflicted through] wantonness (*ētged*) 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 *Críth Gablach*: ‘It is impleaded with **full díre 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*).’

[4F] *Bretha Étgid* CIH 1066.16-23: *Cis lir fodla ēitged? .Nī. A .iii. Comraite, anfot, torba, espa.* How many categories of *ētged* are there? Not difficult. Four: **intention, negligence, utility, folly.**

[4G] *Bretha Étgid* AL III 220-1, 226-7: *Bla susta aith* ‘the exemption [in case] of [injury by] a **flail** in a kiln’, *bla slisen saíri* ‘the exemption [in case] of a **chip in carpentry.**’

[4H] Cf Heptad VIII, AL v 156-7: There are ... seven reboundings that shed blood, **which incur not debts** [*fíachu* ‘fines’] **nor sick-maintenance**: the rebounding of a **chip** (*slisne*) from the chopping of fire-wood, or **of carpentry** (*saírsi*); 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 [*cach n-ēcmacht co slān cuibse* ‘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** (*cetmuintir 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 díre** ... § 6: **Half the díre 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 Íarraith* 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 **díre** 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:

dining, lodging with a lay person	40 days on bread & water	p 163 <i>Hibernenses</i> 22
dining with pregnant servant or her spouse	40 days on bread & water	p 163 <i>Hibernenses</i> 24
dining with pregnant servant or her spouse	20 days on bread & water	p 163 <i>Hibernenses</i> 25
dining or lodging with lay persons	40 days on bread & water	p 219 <i>Bigotian</i> 7
dining with lay persons	40 nights on bread & water	p 260 <i>Old Irish</i> 3
conversing with laymen	—	p 235 <i>Bigotian</i> 3(4)*

**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 LX, *CIH* 1223.6-7 (cf 53.6-7, 19-21 etc): *Atat .uii. fola[ch] ad[a] andsom folongad[ar] la Fēne: folach righ, folach briugad, folach filed, folach saoir, folach gobann, folach fir gaoith, folach druinigh[e], ar is écan nech rogaba a mama tara n-eis arnacon thesba tuillem 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 *dīre* [honour-price]—half his *dīre* 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 refectations** 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 *B[retha] 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.

[9C] Table 2:

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

4. nursing wounds: commentaries	5. body-fine: commentaries
lower bandage wound	6 <i>séts</i>
upper bandage wound	7 <i>séts</i>
<i>crólige cumaile</i> = general bed-wound	12 <i>séts</i>
deadly bed-wound	18 <i>séts</i>

[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:

- [1] *Forata .iiii. uingi a n-othar caec[thig]isi.*
 [2] *Ocht n-uingi a n-othar .xx.it aidhc[h]e; a meth co ceann .uii. n-aidhthe .x.*
 [3] *Di cumail a n-othar mis.*
- [1] Further, **four ounces** for nursing of a **fortnight**.
 [2] **Eight ounces** for nursing of **20 nights**; its **default** at the end of **17 nights**.
 [3] **Two cumals** for sick-maintenance of a **month**.

[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 díre*** is paid [as an additional penalty].

* Binchy: [honour-price]

[10D] Table 3:

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

[11] APPENDIX

Cáin Phátraic – individual texts.

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

[11A] CIH 1022.3-8: *Cethri huinge a n-othar caoic[thig]is .i. ar gradh Feni rofera[dh] an inindraig .ui.s. and sin, 7* freaccra do c[h]uid a lega 7* do c[h]oirpdirí na cneide na cethri huinge, uair cethraimthe cuid a lega o gradhaibh Fene. Ocht n-uinge a n-othar .xx.it aidhche: crolige cumaille rofera[dh] arin mboaire is tairi, 7* freaccra do c[h]uid a lega 7* do c[h]oirpdirí na cneide. Di cumail a n-othar mis: crolige .b.(= báis) rofera[dh] arin ocaire 7* freaccra do c[h]uid a lega 7* do c[h]oirpdirí na cneide in da cumail.*

Four ounces for sick-maintenance of a fortnight. i.e. the six-*sét* 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]is .i. Cidh beg in cned a chanas (CIH chanaid), o dleister urrannus othrusa indte, is é airt rethus smacht in metha[:] coruici lancoirpdirí na cneide comraiti[:] cona ferthain tria comraite, uair is comraiti 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.

[11C] CIH 1538.12-15: *Forata .iiii. uingi a n-othar caec[thig]isi. Ocht n-uingi a n-othar .xx.it aidhc[h]e; a meth co ceann .uii. n-aidhthe .x. Caté in meth sin? .i. crolig[e] cu(i)maile ro-fera[dh] aran mboaire as taire and, 7* freccra do c[h]uiti leaga 7* do c[h]oirpdirí na cneide.*

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.