

## THE CONSTITUTION OF THE ISLE OF MAN.

### I. *The Trumpet Blowers.*

**I**F the ancient Land Tenure of the Isle of Man is buried in obscurity, its old-time constitution is as the lost cities of the plain. Of the symmetrical structure that the care and wisdom of our heroic ancestors built up, not one stone has been left upon another. The rude hands of the historians of Mann have torn down the grand ruins to erect a monstrous edifice of their own, and a locust-like horde of antiquarians and archaeologists have obliterated every landmark and sign-post with reams of notes and queries and miles of inanities on foolscap.

The plain historical facts have been thrust aside in order that alien sojourners in Mann might spend their energy on creating a history reaching back into ages bounded only by their own perfervid imaginations.

By these persons the civilization of Mann has been constantly held up to the admiration of succeeding generations as the oldest in the world.

The Bishopric of Sodor and Mann was founded, it would appear, about the same date as the Bishopric of Rome.

The Deemsters of Mann were swollen with 'breast laws' whilst Attila the Hun was trampling on the Western Empire.

And the freeholders of Mann were electing their legislators and executive by universal manhood suffrage, when the rest of the uncivilized world were cutting one another's throats at the bidding of bloodthirsty and absolute tyrants.

To this school nothing is too fantastic, nothing smacks of exaggeration that would advance their pet theories.

And to them every one is a heretic, a vandal, or a philistine, who does not applaud to the echo a description of the antiquity of the laws, government, and constitution of Mann in terms that would be exaggerated if applied to the Empire of China.

### II. *The Critics.*

Another, and much smaller, school holds and expounds very different views.

It excels in sarcasm and bitter invective.

The school of antiquity, which is supreme amongst the unthinking masses, is assailed with a close, an unending, and a destructive criticism.

Its individual and most prominent members are singled out for an attack which spares neither their scholastic pretensions nor their personal characteristics.

Their facts are disproved, their figures derided, their authorities overthrown, and the whole of their elaborately constructed theories are held up to public hatred, contempt, and ridicule.

In the eyes of these critics there is no history of Mann worthy the name.

If it ever had any laws, they belonged to some other country.

Its constitution was in no wise remarkable, and was simply a base imitation of those of its powerful neighbours.

Its bishopric was a product of the twelfth century, and its legislature took its origin in the sixteenth.

Nay its very language was borrowed from Ireland, and is remarkable only for its corruption.

Does an archaeologist discover a Runic Cross on which a pious ancestor of his had carved his name in Oghams?

The school of modernity is ready with irrefragable proof that the stone was graved not twelve centuries, but twelve years, ago, and is not in Oghams, but illiterate English.

Does an enthusiastic antiquary discover and reverently restore to its tower the ancient monastery bell which summoned the Cistercian monks to the funeral of the Good King Olave, murdered in A.D. 1142?

An irreverent critic, with the aid of a stepladder and some sand-paper, is prompt in a public exposure of the fact that the bell was cast in the year 1800, and never had any other use than the profane one of marking the watch on board the good ship 'Lady Isabella,' cast away on the rocky coast of Mann within living memory.

### III. *The Man in the Street.*

The bewildered inquirer after truth, watching this unedifying conflict, and despairing of a barren search, might well exclaim with the disillusioned Roman governor, 'What is truth?' And yet there are landmarks which cannot be obliterated, there are survivals of usage and custom which cannot be concealed, there are authentic records untampered with, a careful study of which ought surely to throw a beam of light, though it be but a feeble one, on the past—it may be—the mighty past. Let us examine into some of these, and see what can be gathered from them illuminative of the early political constitution of Mann.

#### IV. *The Vikings.*

Whilst Charlemagne was on the throne of the Western Empire, there was pouring from the confines of Norway a great invasion, which lasted till the middle of the ninth century, and resulted in the erection of Norwegian kingdoms in Ireland, and the establishment of Norse sway over Orkney, Shetland, the Hebrides and Mann. Indeed Mann and the Southern Hebrides—the Sodorenses (*Suðr-eyjar*)—were the very kernel of the Norwegian settlement in these parts of Europe.

It is probable that at a very early period from the time of the first coming of the Vikings the Island fell under the rule of a race of chieftains or kings, whose rule lasted from about the middle of the ninth to the middle of the thirteenth century, and during these 400 years Scandinavian customs and institutions bit so deeply into the life of the nation that to this day they are to be found embedded at the root of its legislative, judicial, and social system.

One of the most striking characteristics of Norse—as of all Teutonic rule—was the annual assembly of the freemen of the nation at a hill or mound in some central place in the open air, where the laws were proclaimed, legal disputes decided, and the various elective officials appointed.

Another very characteristic institution was the division of the land into a certain number of administrative districts more or less equal in size or population, and the subdivision of these again into an equal number of smaller districts, by the freeborn inhabitants of which the legislators were chosen.

Again at the annual assembly, a body of legislators chosen by their fellows from amongst the chieftains or priest-lords of each administrative district, who formed, as it were, an executive committee of the *Alþingi* for legislative and judicial purposes, occupied the mound itself, accompanied by their assessors, under the presidency of a person chosen for his knowledge and skill in the laws and customs of the country.

Bearing these facts in mind we turn to an examination into the institution known in Mann as Tynwald.

#### V. *Tynwald.*

Alone in the countries once under the sway of the all-conquering Norsemen, the Ancient Tynwald (N. *þing-völlr* = Parliament field) is still in full life and vigour in Mann.

That meetings of the people were held at Tynwald in the days

of the Norse sway we know from a passage in the Chronicle of Mann under date A.D. 1237.

The passage runs as follows :—

‘On the 25th day of the month of October, the third after the arrival of the sons of Nel, a meeting was held of all the people of Man at Tynwald.’

This place is also mentioned, in an entry under date 14th February 1228, as the site of a great battle between the two kings who laid claim to Man, and who fought one with forces from the Northside, and the other from the Southside.

Every year on July 5 (O.S. June 24, the Feast of the Nativity of St. John the Baptist, which was superimposed by the early Christians upon the older pagan festival on Midsummer day), the twenty-four Keys, along with the King's Governor, the Bishop of Sodor and Mann, and the members of the Legislative Council, assemble on Tynwald Hill near the village of St. Johns in the parish of German, and there the Statutes passed during the preceding session of the Legislature are proclaimed or ‘promulgated’ to the assembled people.

A Manx Statute or ‘Act of Tynwald,’ it may be remarked, though passed by the Legislature and assented to by the Crown, has no force as law till it has been thus promulgated in ancient form on Tynwald Hill.

St. Johns is situated midway betwixt Douglas and Peel in a valley which runs across the middle of the Island from sea to sea, and a stone's throw from the steep ascent of Slieu Whallian, (‘the Hill of the Courts’), which frowns upon the valley from the south.

The Tynwald Hill is an artificially made mound about 12 feet high and about 256 feet in circumference at its base.

It is perfectly round, and tapers to the summit, which is flat and about 16 feet 9 inches in diameter.

From the base to the summit terrace there are three terraces each about 3 feet in height and measuring in width 12 feet, 9 feet and 6 feet respectively.

Round the base, and separating it from the fair ground, is an earthen wall, where formerly stood a circle of huge upright stones, some of which were still standing in the latter part of the eighteenth century.

Within then living memory these standing stones had been surmounted by others placed transversely, somewhat after the fashion of the circle at Stonehenge, a similarity which led a foolish observer of that day to build up a weird theory of their astronomical significance; it being the fashion at that time to credit our bar-

barous ancestors with a profound knowledge of the movements of the astral bodies.

The proceedings follow the order prescribed at a Tynwald held in the early years of the fifteenth century when the Deemsters and the twenty-four Keys, in answer to Sir John Stanley II (then King of Mann), gave evidence of the custom of old time 'how you' (the King of Man) 'shall be governed at Your Tynwald.'

The description itself is very obscure in parts, but certain outstanding features may be noted as agreeable to the unbroken practice followed to this day.

And first we note that it was an assembly of all the Commons of Mann.

Next that it was held in the open air and that certain officials and 'the worthiest of the land' occupied positions upon a mound ringed for seats.

And thirdly that its purpose was to proclaim the laws to the people.

So far we have an institution unquestionably similar to the customary Moot or Thing of the Norsemen of early days.

But it is equally unquestionable that such a custom was not confined to Scandinavians.

What, then, are the further incidents of this impressive ceremony?

Upon the top of the mound sits the King's representative with his visage to the east, the sword of Mann before him, 'holden with the point upward.'

On his left hand, upon a chair of equal state, in a position equally elevated, sits the Bishop of Sodor and Mann.

Grouped around the Governor and the Bishop (the representatives of the State and of the Church) are the members of the Legislative Council, consisting of the Clerk of the Rolls, who takes the minutes of the proceedings and keeps the records of the official acts, the Attorney-General (whose office requires no explanation), the Receiver-General whose duties, once so important (for he collected and accounted for all the revenues), are now non-existent, and with them are the Archdeacon of Mann and the Bishop's Vicar-General.

In front of the chair of state, and occupying a position usually midway between the Governor and Bishop and Council, and the twenty-four Keys, stand the two Deemsters of Mann, the repositories of the Common Law, one of whom proclaims to the assembled people in a loud voice a *resumé* of all the Statutes enacted by the Legislature in the preceding session, and beside him the Chief Coroner (or Sheriff) repeats his words in the Manx language.

On the three lower rings of the mound sit the twenty-four members of the House of Keys, the assent and signatures of thirteen

of whom are essential to the validity of every Bill before it can become an Act.

Interspersed with the Keys sit the Captains and the Vicars of the seventeen parishes into which the Island is divided.

And there are other officials present to whom no reference need be made, as their offices are creations of comparatively late times.

A pathway about 366 feet long and about 48 feet wide leads from the mound due east to the Chapel of St. John the Baptist, where the first part of the ceremony is held, and this path is, in accordance with custom, strewn with green rushes.

On the flat fair ground, outside the mound, pathway and chapel, the people stand and listen to the promulgation of the laws, and indulge in feasting and fairing in the numerous booths erected all around.

Tynwald day being a general holiday, it has ever been the custom for all Manx men to assemble at Tynwald, a custom now, alas, dying out.

After divine service in the chapel, a procession is formed in the following order:—

Four Sergeants of Police.  
 Four High Bailiffs.  
 Seventeen Captains of the Parishes.  
 Sumner-General.  
 Clergy in file.  
 Mayor of Douglas.  
 Twenty-four Members of the House of Keys.  
 Members of Legislative Council.  
 Lord Bishop.  
 Sword Bearer.  
 Lieutenant-Governor.

On arrival at the hill the Deemster calls upon the Chief Coroner (the Coroner of Glanfaba Sheading) to fence the Court.

This he does in ancient form as follows:—

‘I do fence this Court in the name of our Sovereign Lord the King, and I do charge that no person do quarrel, brawl or make any disturbance, and that all persons do answer to their names when called. I charge this audience to witness that this Court is fenced; I charge this audience to witness that this Court is fenced; I charge this whole audience to witness that this Court is fenced.’

Then the Coroner delivers up his wand of office to the Governor, and the other Coroners, one for each of the six sheadings, follow suit, and the Governor delivers them to the succeeding Coroners, who kneel while receiving them, and are sworn in by the Deemster.

Then follows the promulgation as before described, and after the laws are promulgated the Deemster calls for three cheers for the King and the procession reforms to the chapel.

A short sitting of the Tynwald Court is then held, the Keys sitting in the apse, and the Governor and the Bishop and the other members of the Legislative Council who form the upper house of the Legislature, sitting in the chancel.

Now let us turn to Iceland, the Iceland of the tenth to the twelfth centuries after Christ, whose ancient legislature and courts, modelled upon those of the mother country by the fugitives from King Harold Fairhair's centralizing rule, are so graphically and so minutely described in the Sagas.

#### VI. *The Icelandic Lögrétta.*

On a wild and desolate spot to the north-east of *Reykjar-vík*, the Icelanders held their national *Alþingi*.

On the banks of a frightful precipice stood the lawmount (N. *Lög-berg*) with a mystic doom-ring of huge volcanic stones fixed in the earth.

The field or plain in which the *Alþingi* was held was called the *Þing-völlr*, and the sitting lasted for sixteen days commencing at Midsummer.

It was regarded as disreputable for a freeman not to attend it, and people of all classes pitched their booths on the Thingvalla plain on such occasions.

Chieftains were accompanied by retainers, litigants by witnesses and compurgators.

Tradesmen also came to exchange goods, and there was no lack of stalls for sale of provisions.

Here there also assembled the *Lögrétta*, or judicial and legislative committee or *Alþingi*, who occupied the *Lög-berg* within the *Dóm-hringr* (= Doom-ring).

The ancient *Lögrétta* of Iceland was composed of 144 members, or 145, if we include the *Lög-sögumaðr* (speaker or promulgator of the law), who sat at the top of the hill of laws, and presided over its deliberations.

Of these persons, thirty-six, the mystic 'thrice twelve, who were to judge in all cases,' composed the *Lögrétta* proper.

They were originally elected annually from amongst the *Goðar* or Pontiff chieftains of the *Goðorð*.

The *Goðorð* was a land division corresponding to the *Hreppr* (or parish) of Christian times, and was a district looking to the *Höfuð-hof*, or Head Temple, as its ecclesiastical and civil centre.

There were, in Iceland, three of these *Goðorð* in every Thing (*Sóknar-þing*), and three Things in each of the four *Fjórðungr* (or Quarters) into which the Island was divided.

As each *Goðorð* returned a member to the *Lögretta* it follows that the correct number of *Lögretta-mennr* (logretta-men) was, as we have seen, thirty-six.

But, as time went on, the north quarter of the Island acquired another Thing, with three *Goðorð* to each of whom a member was allotted, and as, to balance this disparity, three more members were given to each of the other Quarters, the full number of the *Lögretta-mennr* became forty-eight or, with the *Lög-sögumaðr*, forty-nine.

Each *Lögretta-maðr* had two expert assessors to advise him on points of law and practice, one of whom sat on the bench, or terrace, above him, and the other on the terrace below, thus filling up the three rows of the mound.

These assessors raised the actual number of persons sitting on the mound, along with the speaker of the laws, to the number formerly mentioned of 145.

After the introduction of Christianity the two bishops sat with the *Lög-sögumaðr* and appear to have exercised a considerable influence on public affairs.

As Iceland was a republic, the *Lög-sögumaðr* was the only official of Government, and even his powers were limited to the days on and after midsummer day that the *Alþingi* lasted in session.

## VII. *The Comparison.*

When one bears accurately in mind what is known of the origin, composition, and mode of election of the Icelandic *Lögretta*, the Manx Tynwald Court begins to emerge into a clearer light.

This Island was, and indeed in popular language and for judicial purposes still is, divided, not into four quarters as in Iceland, but into two districts of almost equal area known as the Northside and the Southside.

The distinctions between these two districts and the inhabitants of each are curiously illustrated in the Manx Statute Book.

The ancient tradition as to their division betwixt the two races, the Northmen and the Manx, is related in the Chronicle (see article on Manx Land Tenure, L. Q. R. for April, 1906, at p. 142).

In the earliest book of the spiritual laws the distinction between the widow's right in the Southside and the Northside is referred to.

In the customary laws dated 1577 is a curious provision having reference to the presenting by the Enquest jury of any thief

dwelling in the Southside who may be received by any one dwelling on the Northside.

The jurisdictions of the two Deemsters and of the term Courts of Common Law, again, are regulated for the Northside and Southside by Statute.

Each of these districts is divided into three sub-districts known as sheadings (*Sheðungr*, *N. Settuungr*, or sixth part).

Each sheading, with an exception, is divided into three smaller districts now called parishes.

So far the analogy is exact.

True it is that one of the six sheadings contains only two parishes, probably from want of space to form another, but so, as we have seen, the north quarter in Iceland contained four Things, whilst the others contained only three.

And as in Iceland, for all purposes of the law, each quarter was treated as containing three things only and as all returning thirty-six members (although, to correct the practical inequality, members were added to the quota of each other quarter to make them equal in voting powers, but the actual forty-eight was treated as a legal thirty-six)—so in Mann, following out the analogy, we find that, although of the three northern sheadings one had only two parishes, and, consequently, the Northside would only return eight *Goðar* to Tynwald, to correct the inequality the Southside was deprived of one member, and returned eight also, and so we get the total number of sixteen.

Here it may be objected that the true number of the Keys was then, as now, twenty-four.

But why?

The before-mentioned declaration of customary law made by the Deemsters and Keys in the early years of the fifteenth century tells us why.

The Kingdom of Mann under the Norse rule was originally extended over the Southern Hebrides (*N. Suðr-eyjar*, *L. Sodorenses*, *E. Sodor*), from which were returned eight members to the Tynwald in Mann, the seat of government, and with the sixteen members from Mann itself, made up the number to twenty-four.

To quote from the Declaration:—

‘Alsoe we give for law, that there was never xxiiij Keys in Certainty, since they were first that were called Taxiaxi those were xxiiij free Houlders, viz:—viiij in the Out Isles, and xvj in your Land of Mann, and that was in King Orreys days: but since they have not been in Certainty. But if a strange point had come the which the Lieutennant will have reserved to the Tynwald twice in the Yeaere, and by Leave of the Lieutennant the Deemster there

to call of the best to his Councell in that Point as he thinketh to give Judgment by. And without the Lords Will none of the 24 Keys to be.'

Although the last clause in the above passage has a most suspicious appearance, there is no reason to doubt the authenticity of the record otherwise. Putting aside the interesting, if somewhat exasperating, questions which arise out of this much debated declaration, with its comical travesty of the Gaelic translation of the Norse word 'Keys,' we may now assume that, so far, we have found the original constituents of the Tynwald Court to be almost identical with the Icelandic *Lögretta*.

The question, however, now arises, where in the Manx ceremony are to be found the assessors of the *Lögrétta-mennt*, and who were they?

#### VIII. *The Assessors.*

Of the persons who are summoned to sit on Tynwald Hill, the Governor and the Bishop present no difficulty.

It is further submitted to be abundantly clear that the members of the Legislative Council are, as their titles imply, simply the officers of the respective households of the heads of the State and of the Church.

The Clerk of the Rolls who kept and entered up the records of the King's Court (as he still does), the Receiver-General who collected his revenues, the Attorney-General who pleaded his causes, and watched his interests in the Law Courts, are obviously of the Lord's household.

Indeed, all these officials actually lodged in the Lord's residence at Castle Rushen till comparatively recent times, as we learn from the minute regulations specifying the number of pots of beer and pieces of candle each was to be allotted from the Castle Buttery or stores.

The Archdeacon, or Bishop's eye, the Vicar-General, or Bishop's legal adviser, are equally obviously of the Bishop's household.

The Deemsters who now sit and vote with the Council are not, strictly speaking, members of the Council at all.

In early days they did not sit with the Lord and his officers, but on a seat placed apart from them, and facing the Keys, and to this date they append their signatures to Statutes and Resolutions of Tynwald in a separate place apart from the signatures of the members of the Council and from those of the Keys.

Moreover, to this day, the preamble of a Manx Act of Tynwald

(or Statute) runs:—‘Be it enacted by the King’s etc., etc., by and with the advice and consent of the Lieutenant-Governor, Council, *Deemsters*, and Keys, in Tynwald assembled, etc., etc.’

We will discuss the interesting question of the position of *Deemster* anon, but in the meantime we return to the assessors, who they are, and whether they are still to be traced in the archaic ceremony which takes place on each recurrent July 5.

To answer this question we must call to mind, who also are summoned to Tynwald, take part in the procession, and sit upon Tynwald Hill.

The High Bailiffs of the four market towns, the Mayor of Douglas, and the four sergeants of police we need not discuss.

Their offices were created in and since the year 1777; the Coroners and Sumner-General have a reason to be there and specified duties to perform, as may be gathered from the ancient records.

There remain to be accounted for the seventeen Vicars and seventeen Captains of the parishes.

The Vicars, of course, took their origin after Christianity was introduced into the Island, probably in the latter part of the tenth century, and would be considered to represent the chief priest of each parish.

Their knowledge of law and the prestige attaching to the priesthood would to some extent invest them with the legal attributes of the *Goðar*.

The Captains are now considered to be and are appointed as Captains of parish militia, but they have always had certain rights such as the summoning of a parish meeting and the general administration of civil affairs in their parishes, till comparatively recent times, which demonstrates their origin to have been not exclusively of a military nature.

Now why do they accompany the Keys into the Mound and sit with them on the three terraces?

There is no known reason or tradition to account for their presence; they never appear except on Tynwald Day; and they have now no public duties to perform other than those usually discharged by clergymen and captains of the parish militia.

Nevertheless, they alone of all other functionaries are summoned to attend.

They have always been so summoned and their offices have been in existence beyond legal memory.

In a ceremony of which the details were traditionary in the year 1417, and which has been kept up annually ever since, we must suppose that there was not only a reason for their presence, but

that it was a reason connected with the very constitution of the Court.

That Court we have reconstituted on the Icelandic model in every particular but one.

The sixteen Keys of Mann should by our analogy have had thirty-two assessors to advise them, sitting interspersed with them on the hill.

The existence of every other person who now sits on the mound having been otherwise explained, does not inductive reasoning lead us to the conclusion that the thirty-four Vicars and Captains must be the old-time assessors of the sixteen Keys of Mann?

True, there are seventeen and not sixteen of each, but so, as we have seen, there should have been seventeen Keys, and the explanation of the apparent disparity (drawn from our Icelandic parallel), is equally applicable to the case in hand.

It is submitted, therefore, as a conclusion *prima facie* justified that the Vicars and Captains are the assessors of ancient times, two for each Key or Thingsman, the priests as experts in law, and the captains of parishes as officials versed in the administration of military and civil affairs for each *Goðorð* (or parish).

#### IX. *The reassertion of Tradition.*

The whole number of the Tynwald in ancient days then would be seventy-two, or exactly half as many as the Icelandic *Lögretta*.

Of course the difficulty at once arises that since the division of the Kingdom of Mann and the Isles, the eight out Islanders being lost, the Keys should, if our hypothesis be correct, consist only of sixteen members.

But it must be remembered that it was distinctly contrary to the Scandinavian theory of law to have any number of judges or legislators who did not compose twelve or multiples of twelve.

Again, we learn from the answer of the Keys (above quoted), that since the days of the Scandinavian Kings who died out shortly after the separation of Mann and the Southern Hebrides, the number of the Keys 'had not been in certainty,' as we should expect.

And the practice was very loose from that time onwards, sometimes twenty-four, sometimes thirty-six, and sometimes an undefined number meeting at Tynwald.

We may therefore assume, with some degree of confidence, that it was in accordance with the firmly rooted tradition of the twenty-four that the ancient number reasserted its supremacy—all trace of

the original composition having been either lost or ignored—and the full twenty-four came to be looked upon and finally were established as the legal number of the Keys for Mann, as they had formerly been for Mann and the Sudreyar. We now pass to the composition of the House of Keys itself.

### X. *The Keys.*

Every one has heard of the House of Keys; some people know they are composed of twenty-four elected representatives of the people of the Isle of Man, and compose the Lower House—the House of Commons—of the Manx Legislature.

Few but Manxmen however are aware that prior to the year 1866, when the constitution was reformed on a democratic basis, the Keys were self-elected and held their seats till death, resignation, bankruptcy, gross misconduct, or loss of the qualifying landed estate.

The method of election prior to 1866 when a vacancy occurred, was for the House itself to select two persons from amongst the larger landowners of the Island, i. e. those possessing a quarterland, or intack property of an equal value, generally from the same sheading as then lacked a member, and to present both names to the Governor to choose from.

The person who had received the highest number of votes was placed first in order, and generally chosen by the Governor, unless for some special reason he preferred the other.

But apparently he was not compelled to choose either, and the constitution made no provision for a case where he refused the names submitted, a case which however cannot be found to have ever happened.

This method was undoubtedly ancient, no tradition of any other method having survived in the year 1792 when the English Commissioners (headed by Mr. Grant, afterwards Sir William Grant, Master of the Rolls) held their inquiry into the constitution, government, laws, customs, and finances of the Island.

It may be further remarked that the ownership of land was so important an ingredient in a legislator that if a member parted with his landed estate, his seat could be declared vacant.

Now what do these peculiarities suggest as to the origin of the Keys as a body?

And first, what is the meaning of the term Keys?

There can, I apprehend, be little doubt but that the learned Gudbrand Vigfusson was correct in suggesting that it is simply

a corruption of a Scandinavian word, formed from the verb *Kjósa*, meaning 'to choose, or elect.'

The title Keys then meant 'the chosen' or 'elected ones.'

The next question is why the Keys were self-elected, held their office for life, and consisted exclusively of the larger landowners, so many for each sheading.

Turning back to the former part of the paper, it will be recollected that we traced the undoubted similarity between the Icelandic *Lögretta* and the Tynwald Court, so far as the latter consists of the House of Keys, and those who accompany them to the Hill of Laws.

The *Lögretta*, as we have seen, was composed of *Goðar* or priest-lords chosen by their fellows, one for each parish or *Goðorð*.

Originally chosen annually by the freemen of Iceland, but re-elected time and again according to the conservative Teutonic spirit, it is fairly clear that the annual election of the *Goðar* became more and more a matter of form, till in effect the office of *Lögretta-maðr*, like the office of *Lög-sögumaðr*, was held for life.

Still the right of removal if the qualification was lost, or if there had been a decree of outlawry against, or other misconduct had been proved in the case of, an individual *Lögretta-maðr* continued to exist.

By a similar course of events we arrive at the self-elected, life holding, Keys. Their qualifications and the circumstances rendering them liable to removal are sufficient, *prima facie* at all events, to identify them with the original *Goðar*, the priest-lords or chief landowners in a *Goðorð* (or parish), who were alone qualified to act as Keys or *Lögretta-mennur*.

#### XI. *The Keys as a legislative body.*

As far as can be gathered from the headings to the various statutes, ordinances and declarations comprised in the first volume of the Acts of the Manx Legislature, commencing with a written compact between the Commissioners of the then King of Mann and the Deemsters and Keys, dated the 18th January, 1417/1418, the Keys gradually began to lose, and as gradually regained, their powers and privileges and their ancient number of twenty-four.

The instrument above referred to is expressed to be an Indenture made between Thurstan de Tydesley and another, Commissioners of Lord John de Stanley Lord of Mann and the Isles, of the one part, and the Deemster of Mann and the twenty-four Keys of Mann, of the other part.

The object of the Indenture is, in effect, to abolish the 'liberties,' by compelling the Barons (or owners of the Baronies), in certain cases, to deliver up to the King's Justice malefactors who had committed a felony or treason and had fled for protection into their territories, under the heaviest penalties in the event of refusal.

Subjects of the King of Mann were also forbidden to go into the territories of the Barons for purposes of delay under like penalties.

This was a very important act of state affecting the lives and liberties of the whole population and their amenability to the King's justice.

It put an end, we may well suppose, to the right claimed by every Manxman who had committed a heinous crime to fly for safety to a friendly Baron, place himself under the former's protection, and defy the King's ministers of the law.

Having regard to the fact that the Island had then lately been conquered by the King of England, and granted by him as a feudatory kingship to Sir John Stanley (see article on Manx Land Tenure in *LAW QUARTERLY REVIEW* for April 1906, at page 158), it is a proof of the vitality of the old constitution and laws at that period, that Sir John did not venture to suppress these lawless privileges by an act of power, but deemed it expedient to enter into a solemn compact with his subjects, being, as it were, mutual high contracting parties.

It is also strong evidence of the power and representative nature of the Keys that they assumed, and were regarded by the King's Commissioners as possessing, the power to enter into such a far-reaching treaty on behalf of the people of the Island.

It was, indeed, in so far as it altered the law or custom, equivalent to an act of Legislature.

As time went on, however, and the Stanleys consolidated their power, the privileges of the Keys began to be seriously affected.

In the Declaration above recited, the Keys are expressed to state that 'without the Lord's will none of the twenty-four Keys to be.'

This is so obsequiously worded, as to give the impression (an impression sharpened into a certainty by the critical school) that the Keys had no right to existence at all unless the King so willed it.

The suspicious character of this clause we have already touched upon.

Even if we grant that it is not a later interpolation, however, the Keys probably meant only to refer to the King's power to choose, out of the names submitted, the person who should act as a Key.

This power, as we have seen, was admittedly unrestricted even in modern times, and the practice was followed up to the date the self-elected House came to an end, 1866.

Furthermore, even assuming that the declaration applied to the Keys as a body, and not to individuals, it is an extraordinary instance of the survival of ancient custom to recollect that to this day, if the Keys have once adjourned *sine die*, they cannot meet together again for the transaction of business till formally summoned by the Governor's precept, which he is under no constitutional obligation to issue.

This prerogative power was disputed by the Keys since they became an elected body with great acrimony and on several occasions, but it has been found to be so firmly established that it is now always deemed prudent to adjourn to a fixed date so as to prevent the Governor stopping the Keys meeting together by refusing to issue a precept, a course pursued by a former Governor on one occasion for many months.

It is therefore literally correct to state that 'without the Lord's (or Lord's Governor's) will none of the Keys to be,' in the sense that they cannot exercise any legislative function unless the Governor chooses to call them together.

From the year 1417 to the year 1645 the assumption of the legislative power by the Kings of Mann, acting by themselves or through their officers, become more pronounced.

Numerous ordinances made in this manner are to be found in the Statute-book, and with these are bound up a curious medley of reports of legal proceedings for treason, military and household orders, fiscal regulations, ecclesiastical rules, and declarations of the common law by the Deemsters and Keys.

It is, however, generally allowed amongst lawyers that these ordinances, where not supported by the signatures of the Keys, are of no force in law as legislative acts, but only if and so far as they declared or are assumed to declare what the common law and practice of the Island was at the time.

Some of these ordinances are now allowed to be law through having been in so long use as to have become incorporated in the common law.

By a similar process, some provisions of the Statute of Frauds, an Act of the Imperial Parliament, although of no binding force in this Island as an act of Legislature, are now taken to have become incorporated with the Manx Common Law.

Other ordinances never were acquiesced in and would not now be accounted as having had the force of law, as for example, an ordinance made by the Lord's Officers in 1583 (section 6) declaring

in effect that the inhabitants of the Island were but tenants of the Lord, and that their lands were his.

This situation was put an end to by the Earl of Derby (then King of Mann) in an attempt to destroy the hereditary rights of the owners of quarterlands by affecting to grant leases of such lands for three lives or twenty-one years, which led to an assertion by the Keys of their ancient position and privileges, the Earl, presumably to gain his object, acquiescing.

In the year 1645, an Act was passed bearing the following heading:—

‘ AT THE TYNWALD COURT

holden at St Johns Chappell in the parish of Kirk German in the Isle of Man, the xxiiij day of June, in the year of our Lord 1645 before the Right Honourable James Earle of Derby Lord of the said Isle, John Greenhalgh Esquire, Governor of the said Isle, with the rest of the Lords Councill there Ewan Christian Esquire and John Cannell Gentleman Deemsters there with the *Representative Body of the said Countrey vitz:—the xxiiij Keyes of the said Isle* whose names are subscribed, it is ordered enacted and ordained as followeth:—’

This Statute, it may be remarked in passing, in effect declared and confirmed the hereditary rights of the owners of quarterlands according to the then well understood custom of descent, a custom bearing the most obvious marks of similarity to the Udal law of descent (see article on Manx Land Tenure, L. Q. R., April 1906, page 146).

Since the day of the passing of that Statute the Keys have numbered twenty-four, and their legislative powers as the representatives of the inhabitants have been regularly exercised along with the Legislative Council, and the King or Lord of Mann, who altogether form the Manx Parliament.

## XII. *The Constituencies.*

We return to the Constituencies—the sheadings and parishes of the Isle of Man, to represent which the Keys are chosen.

We must again resort to the Sagas for our analogies.

The unit of Icelandic politics was the homestead with its franklin (*Bonði*) owner; its primal organization the hundred moot (*Þing*); its tie the *Goðorð*, or chieftainship.

The chief (*Goði*) who has led a band of kinsmen and dependents to the new land, taken a claim there, and parcelled it out freely among them, naturally becomes their leader, presiding as priest at the Temple feasts, or sacrifices in heathen times, acting as president and speaker of their *Þing*, and as their responsible representative towards the neighbouring chiefs and their clients.

He was not a feudal lord, nor a local sheriff, for any franklin could change his *Goðorð* when he would, and the rights of judgment by peers were in full use; moreover the office could be quitted, sold, divided, or pledged by the possessor.

A *Goðorð*, which as we have seen was a district looking to the *Höfuð-hof* as its civil and ecclesiastical centre, became identified after the introduction of Christianity with the *Hreppr* or parish, which also had as its centre the parish church, corresponding to the Hof God, or head temple, as distinguished from the lesser temples, or, as we now term them, the chapels of ease.

A *Hreppr* was to be a track of country containing not less than twenty land owners.

After Christianity had taken firm root, the *Goðar* ceased, of course, to exercise the priestly functions, but their importance and influence remained otherwise unimpaired for a long time.

Their unique position as chief landowners in the *Goðorð* and probably as head of the whole clan who occupied that district, and their hereditary claims, tended to preserve their exclusive rights to election as members of the *Lögretta*, formerly based upon their possession of the semi-sacred attributes of the priesthood.

The practical inconveniences of an annual election coupled with the fact that such elections when in full operation were largely a matter of form, since the same persons were usually chosen to continue in office from year to year, in time caused the right of election to become by common assent more or less in abeyance.

Whilst the strong sense of individual liberty, the force of a highly organized opinion, and above all the deeply rooted, almost slavish, regard for precedent and traditional law and custom, for long prevented any ill results arising from this form of government, nominally republican, but really (as in the case of ancient Rome) the rule of an aristocracy chosen from a rigidly exclusive caste.

In truth, it was the disastrous policy of the later Bishops of Iceland, whose constant efforts to set one ruling family against the other caused the weakening and eventual destruction of the *Goðar*, that brought down on the devoted Icelanders all the evils they eventually suffered from.

Returning to Mann, we find that the circumstances while differing in form were very similar in substance.

The attributes of the Keys or chosen ones, so far as usage or tradition remains, irresistibly point, as we have seen, to their identification with the *Goðar* who formed the *Lögretta* of the Icelandic Parliament.

Whilst the strongly rooted idea of their originally elective

character cropped up from time to time when entire ignorance of their early constitution reigned.

As an instance, occurring so late as the year 1581, we find it recorded in the Insular *Liber Cancellarii* that, a commission having been directed by the Earl of Derby, the then Lord of the Island, to the officers spiritual and temporal and the twenty-four Keys, on their proceeding under the Commission Bishop Merick objected—

‘that if the 24 and the rest be called together for the establishing a law to stand in force and bind his successors and the whole country, and not to decide a controversy, then he is of opinion that the 24 should be elected by the whole consent of the community, viz:—of every Sheading a number to say for and represent the rest.’

The record further states that ‘Wm Christian and Hugh Holland Archdeacon made challenge as well to some of the spirituality as to part of the 24 elders,’ and that the twenty-four say that, ‘for establishing a law the country ought to give its consent for the choosing of the said twenty-four, etc.,’ and so the Commission was stayed till his Lordship’s pleasure be known.

Each parish was and still is divided on the Manorial Rolls into a certain number of landholdings bearing names of an unmistakably Norse origin.

These land divisions have been commonly called Treens, a name of unknown origin and meaning.

Each Treen contains within itself a number seldom, if ever, exceeding, but often less than, four enclosed farms called quarterlands.

These comprise the whole of the best arable land of the Island, and have existed, it is said, within their present boundaries and of their present acreage with trifling exceptions from time immemorial.

The annual rent payable to the Lord is assessed and paid in respect of the quarterlands according to a valuation in full force in the year 1511, the date of the earliest entries on the Rolls which have come down to us.

On each of the Treens, whose boundaries often coincide with some natural division, such as a river, a glen, or a ridge, it is commonly supposed that a chapel called a Treen Chapel existed, and is still frequently found in ruins.

Minute investigations are proceeding as to the authenticity of this belief, and it will be interesting to note the results.

The whole subject is obscure, and, so far, the most plausible theory bearing on the Treens is that advanced by the Rev. John Quine, the Vicar of Lonan, who surmises that the land divisions known as the Treens are the ancient estates of the old-time Free-

holders, the persons referred to in the declaration of 1422 as Taxiaxi from whom the Keys were chosen.

The Treen Chapels, whose existence he appears to admit, he regards as the chapels kept up by the freeholders after the fashion of lords of the manor in England.

The similarity in the names of the persons holding land in each parish, as for example, the Corletts in Ballaugh or the Christians in Bride, or the Wattersons in Rushen, he uses to adumbrate his theory that each parish or district contained a clan of the same name and blood as the local chieftain.

If this theory be correct, and it bears a most plausible appearance, the last link in our analogy is established.

We find our priest-lords or *Goðar* in the owners of the Treens, each of which, of an average number of ten to each parish, had its temple looking to the mother temple, which would be served by the principal *Goði*, the chosen one, or Key, for the *Goðorð*.

These inferior *Goðar*, then, would represent the constituencies of early times, though their choice would no doubt be influenced to some extent by their clansmen, the tenants of the quarterlands, and the cultivators of the communal strips, or *rigs*, or *penny-worths*, within the quarterland.

### XIII. *Tynwald as a Court of Law.*

It will be recollected that the *Lögrétta* in Iceland combined the functions of a deliberative and legislative assembly with those of a supreme court, but the executive and deliberative were separated from the judicial attributes.

It would appear that in Iceland the judicial attributes of the *Lögrétta* were distributed among four courts representing the four quarters of the Island, and before these quarter courts all suits brought before the All Thing relating to those quarters had to be pleaded.

The judges in these courts were named by the *Goðar* as before, and they themselves all sat in the Court of Laws. Up to the time this arrangement was adopted each priesthood had possessed a court of its own, and after that time continued to possess it, but only as a private court, something like that of a lord of the manor in England.

Prior to the year 1886 before mentioned, the House of Keys, strange as it may appear, constituted the supreme Court of Appeal in all civil cases in this Island, and to its adjudication were brought appeals from all petty juries, and traverse (or appeal) juries, as they were and are still termed.

From the decision of the House lay an appeal only to the King in Council, or, formerly, to the Lord Proprietor of the Island.

Up to the year 1800 or thereabouts, the Keys also formed a component part of the Court of 'General Gaol Delivery,' as the Supreme Court of Criminal Jurisdiction was and is still called.

The function of the Keys in this court was to watch the proceedings before the petty jury, and, if appealed to against the verdict of the former, they exercised a power of reversing it on the ground that they (i. e. the lower jury) had 'passed contrary to their oaths and the evidence,' and as an accompaniment of a decree of reversal, the petty jury were presented to the Governor to be fined, and in some cases declared incapable of ever acting in a similar capacity again.

#### XIV. *Thing Courts and Sheading Courts.*

Returning again to our Icelandic model, we find that in each Thing a court was also held, probably after the meeting of Thingmen.

For the administration of justice a circle called the *Dóm-hringr* (doom-ring) was formed with hazel twigs or with upright stones, to which were attached cords called *vé-bönd* (the consecrated or sacred cords).

Within this circle sat the judges, the people standing on the outside, and in the middle stood the *Blót-steinn*, a huge stone with sharp ridge, on which the backs of criminals condemned to death were broken.

Each of the three *Goðar* of the Thing summoned two assessors or doomsmen to sit with him within the forensic circle, which thus formed a court of justice composed of three judges and thirty-six jurymen<sup>1</sup>.

On this Island, in addition to the Keys, there were courts held at the time of each of the four legal terms called up to a very late date 'Sheading Courts.'

In these courts the cases arising in each of the six sheadings were called over and submitted to the arbitrament of juries drawn from the particular sheading, who heard the cases and delivered their verdicts upon them in the presence of the lord and his officers, but acting by the advice and direction of the Deemster in whose jurisdiction the case arose.

In the year 1422 the existence of the Six Sheadings Courts was expressly referred to in the form of outlawry as 'Your Six Courts for your six sheadings.'

In the year 1577 it was declared as a customary law that all persons who bore *6d.* rent to the Lord ought to make their

<sup>1</sup> Egils Saga.

appearance at every court held within the sheading wherein they dwelt.

Each Sheading Court had a Moar, amongst whose duties were to prove the calling of the person to be outlawed, and who had the sheading jury in charge.

At the present time the Moars are the persons who collect the Lord's Rent from the landowners in the parishes, and there is one for each parish. They are chosen annually in rotation from the owners of the quarterlands, of which we have already spoken.

The three Moars of each Sheading therefore may very well be identified with the three *Goðar* of the Thing Courts in Iceland, who would summon to their aid thirty-six doomsmen to judge in the cases arising in the Sheading (or Thing) Courts.

The Jurys in Mann, however, cannot be traced in any number exceeding twelve, being 'four Honest men from every parish,' as referred to in the Memorandum inserted in the Statute-book under date 1577.

We may here note by the way that in the same court, and very often on the same day, the Baron or Seneschal Courts were held, and deeds affecting the lands in the Island were submitted for confirmation, but it need hardly to be pointed out that these courts in their later development differed in every fundamental from the Sheadings Courts proper, and were a creation of feudal times, overlaying a more ancient and interesting ceremony that I touched upon in a previous paper (*Manx Land Tenure, L. Q. R.*, for April, 1906, page 151).

There are no traditional sites of the doom-rings in the Sheadings of this Island, but stone circles undoubtedly still exist and are surrounded by upright stones, some of very large size.

In the centre of some of the rings are to be found traces of a gravelled substance formed of small white stones which have proved a source of mystification to the antiquary.

The circles themselves, as is usual in such cases, are supposed to have some connexion with the Druids, but they quite certainly have nothing whatever to do with Druidical worship.

Their identification with the doom-rings of the Scandinavians would, it is submitted, present less difficulties than those which occur to the mind of the inquirer when any other explanation of their presence and original use is elaborated.

The existence of barrows sometimes found outside the ring would be easily explained, since it is quite certain that the astute Scandinavian legislators would seek to identify their *Dóm-bringr* with some place already sacred to the original Celtic inhabitants who formed the bulk of the commonalty.

XV. *The Deemster.*

In Iceland the *Lög-sögumaðr*, who presided on the *Lög-berg*, declared the law in case of dispute and pronounced the decrees of the Court.

He was the supreme magistrate of the Republic, he was elected for three years, and, according to received notions, by the full suffrages of his fellow citizens.

He chiefly exercised his authority at *Alþingi*; out of that he seems to have possessed little or no powers.

The office was, however, regarded as of the highest dignity.

From 930 to 1364 the office was held in Iceland by thirty-nine individuals, giving an average term of office of a little over eight years.

The laws being handed down by oral tradition for nearly two centuries, the title of law-saying man was very appropriate, for he had to recite and expound the laws to the assembled people at the *Alþingi*.

When a case was decided he had to pronounce the decision, which was regarded as a precedent.

To this day, in Mann, the first Deemster alone takes the principal part upon the Tynwald Hill, and his duty it is to read to the people assembled at the Thing all Statutes, now merely abstracted, which have been passed by the Legislature since the preceding promulgation.

In old times, as we learn from the Statute-book, he and his brother Deemster, sometimes with the assistance of the twenty-four Keys, declared the law on any disputed point, and the answers so given were recorded in the Exchequer file and were and are regarded as authoritative.

This presents the closest possible parallel to the functions of the *Lög-sögumaðr*.

True it is that in this Island there are two Deemsters. This clearly arises from the fact that the Island for some time was divided between two rival kings, and tradition is strong that it was divided between two different races.

There is evidence that from time to time two Tynwalds were held, one at St. Johns for the Southside, and the other possibly at Cronk Urleigh in Michael for the Northside.

From time immemorial the jurisdiction of the Deemsters has been divided, the first or Southern Deemster taking the Southside and sitting alternatively at Douglas and Castletown, and the second or Northern Deemster taking the Northside and sitting alternatively at Ramsey and Peel and occasionally at Michael.

When the two sides became united under the one king and met in Tynwald, the Southern Deemster sat as speaker of the law, but with the assistance and advice of his brother Deemster.

It may here be remarked that the term Deemster is probably derived from the word *Dóm-staurr*, i. e. one who stands outside and pronounces an opinion on a case.

The position occupied by the Deemsters in the Court may perhaps support this derivation.

It would appear that the King of Mann and his officers who occupied the top of the hill, sat there, not so much as an integral part of the Court, but rather to lend its judgments the sanction of the executive authority, much as the King of England attended by his household used to sit in the *Curia Regis*, or the Earl of Orkney and his suite at the Orkney Thing.

#### XVI. *General Conclusion.*

Having now dealt with the Tynwald as a legislature and as a court of law; with the Keys, their composition and election; the constituencies; the Legislative Council; and the Deemsters; the conclusions at which we have arrived may be compared with those of Dr. Vigfusson, the learned Icelandic scholar.

He says :—

‘The Manx Tynwald and the Icelandic All Moot correspond in each particular point. The Tinwald answers to the Icelandic *Þing-völlr*; the Tynwald Hill to the Icelandic *Lög-berg* or *Lög-brekkka*, the House of Keys to the Icelandic *Lögrétta* (Court); the chapel to the temple of heathen days.

The 24th of June procession answers to the Icelandic *Lög-bergis-ganga* (procession to the law rock) or *Dóma-út-færsla* (the opening of the courts), on the first Saturday of every Session, the distance between hill and Court being about 140 yards in each case. The path being fenced in like the Court and hill, and used for this solemn procession when the judges and officers go to and fro between them, would answer to the Icelandic *Þing-völlr-traðkr* (Tynwald enclosure or lane). The Manx Deemsters (*Dóm-stjórar*, *deem-steerers*) answer to the Icelandic law-man or speaker . . . The Keys answer to the bench of Godes.

The hill and the temple were the two holy spots, not the Court . . . In days of old, hill and Court were, as it were, twins. Discussions, enactments, laws and decision of law points took place in the Court; but anything partaking of proclamation, declaration, publication, was done from the hill.

The Court in early days was no doubt held within the *temenos* of a temple, as the Keys still sit in the Southern transept of the chapel of St. Johns <sup>1</sup>.

<sup>1</sup> Moore's Place Names, 1906 ed., pp. 189, 190.

We have it here admitted by a dispassionate and fully qualified critic, himself an Icelander, that the antiquity of the Manx Tynwald and its point-by-point similarity to the ancient Icelandic institution are confirmed by research.

The Icelandic *Alþingi* came to an end; the Norwegian and Swedish moots lost their continuity of existence; and in no other country, civilized or uncivilized, has there existed for over 1,000 years a free and independent legislature truly representative of the country, whose assent to all new laws, or alterations of old ones, was required to be given in solemn form.

We may therefore say with truth that the Manx Legislature is the oldest in the world.

R. D. FARRANT.