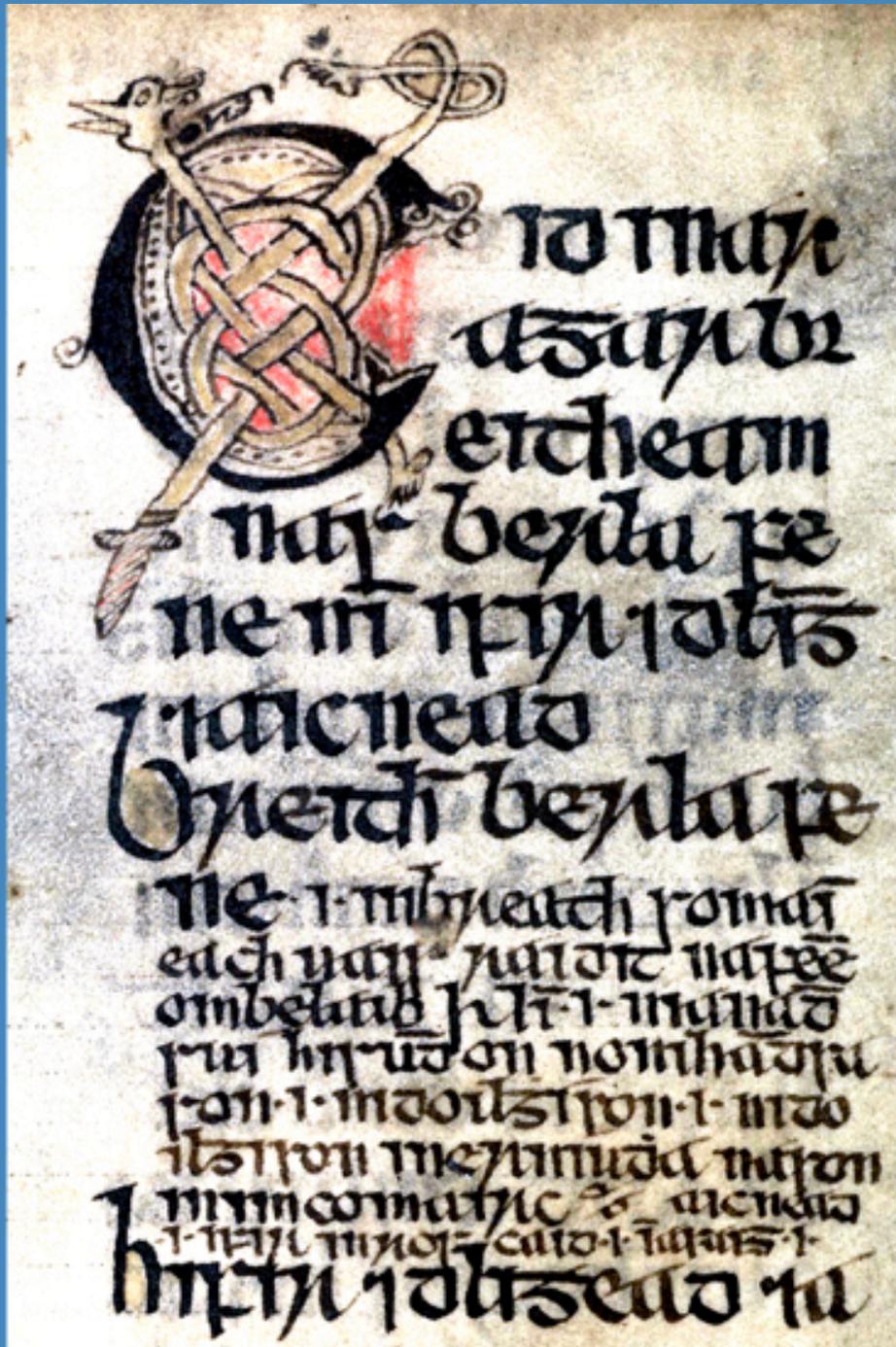


MEDIEVAL IRISH LAW



TEXT AND CONTEXT

Aspects of *athgabál aile*

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DISTRAINT is a well-known legal procedure in early Irish law, in large part thanks to Prof. Binchy (1973b *Distrain* in *Irish Law*, 1973a *A Text on the Forms of Distrain*) and d'Arbois de Jubainville (in particular de Jubainville 1895); both of them have worked on the different types of distrain. The latter include *athgabál aile* 'distrain with a two-day stay', a type of distrain not based on the nature of the claim involved but rather on the gender of the person who does the distraining, who is always female. *Athgabál aile* is a part of the lengthy tract named *Cethairślicht Athgabála* 'the four sections of distrain' which is the opening tract of the *Senchas Már*, if we exclude the Introduction, and occupies most of the first volume and half of the second volume of the *Ancient Laws of Ireland*, glosses and commentary included (*AL* I 64–304, II 2–130). It is clear that the compiler of the tract was confused by its title, as the legal principles he describes comprise not four, but rather five, sections of distrain. While he is trying to explain the title of the tract, he gives twenty-two reasons for that title (*AL* I 256–262), starting with:

Cair cid ara nepnar .iiii.slicht for aithgabail arindi as cetharda dodafet fodafera ciniud iar tuisti 7 cin iar cinud faill iar cin apad dligid iar faill 7 elud dligid iar napud 7 idnaidiu fiad fiadnaisib.

Question.—Why is distress termed four-fold? Because it is four things that happen to him, [the defendant], before a person takes it, i.e. birth after conception, and crime after birth, neglect after crime, notice of law after neglect, [to which are added], evasion of law after notice, and waiting before witnesses. (*CIH* 408.23–26, translation from *AL* I 257.22–27)

The next two reasons make slightly more sense:

Ocus arindhi it .iiii. athgabala gaibtir ann .i. duine 7 hiriu marbdili 7 beocethrae. Ocus fo bith it cetheora fodlai 7 cetheora aithgabala for cach ae for duiniu for duine for hirind for mairbdilib for beocethraib.

And because there are four kinds of distress taken, viz., man, and land, and dead chattels, and live chattels. And because there are four

divisions, and four [kinds of] distress for each, *viz.*, upon man, upon land, upon dead chattels, upon live chattels. (*CIH* 409.1–2, 5–7, translation from *AL I* 259.5–9)

These explanations would have been more convincing if there were any evidence in the main provisions of the legal tract of there being a division based on those kinds of considerations, but Binchy (1973b) has clearly shown that this is not the case. Binchy came to the conclusion that the reason for the title is that it refers to the original, older system of distraint, where there were only four sections, not five. The compiler identifies the same reason for the title as Binchy with his twentieth and twenty-first reasons:

Occus arinní robdur cethre uidhi robatar for furogru dlighe aon 7 tresi .u.te 7 .x.mu genmobi turbuidh. Occus forturudal. (cf. 1715.10) Occus arinni robui cetherslicht a fogra do athgabail. Occus ba aon gach athgabail. Ar ni fuilgend nech cin araile acht a cinadh fadeisin. 7 a fuil for aoin ba ain for urogru. A fuil for tresi. Ba trese for urogru. Acus a fuil for .u.ti ba .u.te fri urogra. 7 a fuil for .x.maid ba .x.mu for urogru.

And because there are four periods of notice of law: one day, and three days, five days, and ten days, besides exemption, and for hosting in a territory. And because there are four divisions of the notice of the distress: and every distress was of one day [anciently], for no one sustained the liability of another, but his own: but [now] that which has a stay of one day, had one day's notice, that which has three days' stay, had three days' notice, that which has five days' stay, had five days' notice, and that which has ten days' stay, had ten days' notice (*CIH* 413.29–30, 414.4–8, translation from *AL I* 263.5–15).

Both de Jubainville and Binchy have suggested that what is referred to as *tulathgabál* 'immediate distraint' was an older form of distraint which was later superseded by *athgabál iar fut* 'distraint with a stay', and that the former type of distraint was indeed 'of one day anciently' as the compiler says. De Jubainville made the case that these two systems were not originally a part of the same tract, but rather two separate tracts. Binchy, however, believes that this must be another example of the conservatism of the early Irish lawyers and of their unwillingness to leave out any part of the law. Rather, according to Binchy, the lawyers portrayed both earlier and later strata of the law as one unified and petrified system, so that the compiler produced a

single text seemingly explaining the present law, but in fact showing both the older and the more recent developments.

Binchy suggests that the later system with a stay must originally have been divided into four different sections, which dealt with stays of one, three, five or ten days respectively. The final stage of the development of distraint with a stay must necessarily have been the recognition of a certain legal capacity for women, which included the right to take *athgabál aile* ‘distrain with a two-day stay’, as this type of distraint constitutes a fifth ‘section’ which is not recognised in the title of the tract. According to Binchy (Binchy 1973b, 65), all of these legal developments must have been completed by, at the latest, the seventh century, and possibly even earlier.

Based on Binchy’s evidence, the fact that there is no ‘two-day stay’ in the *tulathgabál* part of the tract indicates that there were restraints on the legal capacity of women, and suggests that *athgabál iar fut* may be a later invention of the law, dating from a time in which their legal rights were less limited. He suggests that there were ‘two successive stages in the evolution’ of distraint, and that *tulathgabál* was the older type of distraint which had become obsolete by the time of compilation (Binchy 1973b, 56). McLeod, however, suggests that the lists that Binchy created in his article on women’s contractual capabilities in *Studies in Early Irish Law* (Binchy 1936, 207–234) do not show evidence from separate eras of early Irish law, but rather show examples of the general rule of women lacking contractual capacity versus the exceptions where women were capable of making contracts. He believes that Binchy was looking for evidence of the invention of women’s legal capacity, and hence he found it (McLeod 1992, 77). Prof. Kelly suggests that an argument favouring Binchy’s view is that ‘no case of *tulathgabál* involves distraint by a woman’ and that ‘it is possible, therefore, that *tulathgabál* goes back to a period when women were without even the limited legal capacity which they enjoyed in the seventh–eighth centuries’ (Kelly 1988, 179).

There are in total 314 cases recorded under *athgabál iar fut*, most of them belonging to either *athgabál oíne*, with its 103 cases, or *athgabál treise*, with its 110 cases. *Athgabál cóicthe* and *athgabál dechmaide* are almost equal to each other with 36 cases in the former and 32 cases in the latter. These correspond quite closely in number to

athgabál aile, with its 33 recorded cases. Binchy has tried to find a common factor to unite the cases in the different sections, but without any luck. The only uniting factor found is that most of the cases recorded under *athgabál aile* have to do with women's work or household articles, and the main connection is that it is the woman who does the distraining. However, the gender of the defendant does not matter, as the text says that:

Apad naile o mnai for mnai 7 o mnai for fer; mad fer acras for mnai,
is apad .u.thi f .x. maide forri.

There is a notice of two days for a woman on a woman and for a woman on a man. If it be a man who sues a woman, it is a notice of five or ten days upon her. (*CIH* 378.14–15; *AL* I 146.26–7; this and the following translations from *CIH* 378–380 are my own.)

The only available translations of the part of the tract dealing with *athgabál aile* are the one in *AL* and two later translations by de Jubainville in his *Études sur le Droit Celtique*. Binchy noted that even the latter translations 'have been rendered largely out of date' (Binchy 1973b, 26). For this reason I decided to examine the text in order to have a clear understanding of what is said. In this examination I also included the glosses and commentary. Although they may at times be an unreliable guide to the understanding of the laws, they were written within a linguistic tradition which is now lost, and hence their guesses can sometimes indicate connections between words which would not be immediately apparent to the modern student (Mac Eoin 1986, 35).

The text on *athgabál aile*, including glosses and commentary, runs for two and a half pages in *Corpus Iuris Hibernici* (*CIH* 378.14–380.31), with the equivalent text over four pages in the first volume of *AL*, as well as four pages of glosses and commentary (*AL* I 146.26–150.17, glosses and commentary on 152.4–156.4). As stated above, there are 33 recorded cases in this section of distraint. I have further divided these cases into four categories relating to their nature. By far the greatest category of these four is the one I have called 'women's work', which includes 26 out of the 33 cases. The second largest category is dealing with 'women in general' and has three cases, and the last two categories, 'work' and 'women's pets', have two cases each.

I would like to start by examining the category I have called ‘women in general’. These three cases are dealt with in the first paragraph of the relevant text in *Corpus Iuris Hibernici* (CIH 378.18–20; AL I 146.31–148.2). The rest of the cases follow in a separate paragraph (CIH 379.4–12; AL I 150.3–13).

The first section reads:

Athgabail aile do ingin im comorbus a mathar imifocul mna diaraile im dingbail mbantellaig ar ni bi i mbantellach s̄ co coirib 7 losat 7 criathar do cach mnai for araile.

Dstraint of two days for a daughter concerning the inheritance of her mother, concerning the evil word of a woman to another, concerning the removal of women’s legal entry, for there is no [going] into women’s legal entry but with sheep and a kneading-trough and a sieve for every woman upon the other (CIH 378.18–20; AL I 146.31–148.2).

The first case is particularly interesting as it deals with inheritance between women. Prof. Kelly takes this to mean that if a female heir has no sons, she may bequeath land to her daughter or daughters (Kelly 1997, 416). This is further confirmed by the glosses:

im cæm-orba uais a mathar. .i. cairig 7 crela .i. orba feirtsi. .i. orba cruib † sliasta a mathar.

i.e. concerning the noble family-inheritance of her mother, i.e. sheep and baskets, i.e. inheritance of the spindle, i.e. the inheritance of hand or thigh of her mother. (CIH 378.21–2; AL I 148.3–5)

Myles Dillon has argued that the ‘inheritance of hand or thigh’ is a type of land that a woman, or a man, has acquired independently, rather than as *fintiu* ‘kinland’, and is therefore free to dispose of almost any way he or she pleases (Dillon 1936, 152), except for the proportion that the kin has a right to in cases of sale or bequest (Kelly 1988, 100; Kelly 1997, 416–417). The amount that he or she is free to dispose of is one-third if the surplus arose from the productivity of his or her share of the kin-land, but two-thirds if it has come purely out of his or her own professional earnings (Kelly 1988, 100; 1997, 416–417). This is exemplified in the *Additamenta* in the eighth-century Book of Armagh, which describes how Cummen, a nun, bought an estate together with Brethán for the valuables which she would have

brought into her marriage as a dowry (Bieler 1979, 174–175; Kelly 1988, 417¹¹⁴).

Hence half of this heritage belongs absolutely to Cummen, in house, in man, until her chattels be paid to her, that is, three ounces of silver, and a can of silver, and a necklace with three ounces, and a circlet of gold (calculated) according to ancient measurements and ancient dimensions: the value of half an ounce in pigs and the value of half an ounce in sheep, and a garment worth half an ounce, all of these (calculated) according to ancient measurements (and given) on account of a marriage settlement. Cummen made a mantle which was sold to Éladach son of Mael-odar, lord of Cremthenn, for a brown horse. That horse was sold to Colmán of the Britons for a cumal of silver. That cumal went to the additional price of Óchter Achid (*i.e.* to make up or eke out the price) (Bieler 1979, 175).

Cummen was able to buy the latter half of the estate because of the sale of her own handiwork which, through the sale of the brown horse, accumulated into the value of the other half of the estate. This case implies that women were at least in theory, and probably also in practice, able to buy property and, according to the *athgabál aile*-text, also able to inherit property from their mothers.

The second case in this category of *athgabál aile*, ‘concerning the evil word of a woman to another’, deals with verbal injuries to a woman’s honour. The glosses indicate that we are dealing with a suit relating to

in drochfocul dobeir in ben ara cheili, ima lesainm † anfocul na bi furri
[...] .i. mifocul nad fiu fuirri.

the bad word the [one] woman inflicts upon another, concerning her nickname or the false attribution which she does not merit, [...] i.e. an evil word which she does not deserve. (*CIH* 378.22–24; *AL* I 148.5–8)

In a society where honour was so important, it is not surprising that a woman was entitled to distrain for this type of insult. There are numerous examples of the legal importance of honour in early Irish society. There is, for example, a full heptad setting out various insults to honour that give a woman grounds to obtain a divorce, in which she could still retain her *coibche* (Heptad LII, *AL* v 292.16–296.13). Two of the grounds are based on name-calling:

bean o toimsi a ceile gu-scel, ben for a fuirme a celi tincur naire co mbi namat fuirre.

a woman of whom her husband circulates a false story; a woman upon whom her husband gives circulation to a satire until she is laughed at (*AL* v 292.19–20).

The third case deals with another legal right of women, namely *tellach* ‘legal entry’. This section is glossed with further information concerning the correct manner in which a woman could perform legal entry. (These glosses give much the same information as that found in *Din Techtugud*.)

indligthech(?) berait isin ferann .i. mainipat cairig .i. uair lehan fuil ni dlegar(?) dona mnaib do breith do techtugud ferainn 3 cairig 7 lamtorad.

illegal is that which they bring onto the land, i.e. unless they be sheep, i.e. because there is nothing which it is necessary for the women to bring for taking possession of land by legal entry save sheep and handiwork (*CIH* 378.24–27; *AL* I 148.8–12).

Both the glosses on *athgabál aile* and the tract on *tellach* add that ‘if it be making entries, two sheep [should be brought] on the first occasion’ (*CIH* 378.27; *AL* I 148.12–13 cf. *AL* IV 8.17–18, cf. *CIH* 207.22) and the glosses on distraint further say that the sieve should be brought ‘the last time’ and ‘all her goods at the end of the 12 days’ (*CIH* 378.27–28; *AL* I 148.13–14; cf. *CIH* 208.10–11).

In *Din Techtugud*, Senchae gives a false judgement in which he says that ‘female entry is according to male entry’ (*AL* IV 14.29–30; cf. *CIH* 209.12), a judgement corrected by Bríg, the mythical female judge who appears whenever there is a judgement in the laws favouring women. Her correction cures blemishes that appeared on Senchae’s face as a result of his false judgement. Both Senchae and Bríg appear in the end of the text on *athgabál aile*, where it is said that the distraint with a two-day stay has been ‘judged by Bríg Briugad and Senchae Mac Ailella’ (*CIH* 380.14–15; *AL* I 150.14–16). The glosses state that ‘it was adjudged by Bríg Banbriugu, mother of Senchae, and by Bríg Breithem, his wife’ (*CIH* 380.23–24; *AL* I 154.27–29). According to Liam Breatnach, Bríg Breithem is the same figure as Bríg Ambue, to whom the tract *Bretha Bríge Ambue* is assigned

(Breatnach 2005, 175). The glosses seem to be confused about Bríg. She is described both as the daughter of Senchae (*CIH* 209.24, 1241.17, 1665.1) as well as his wife (*CIH* 380.23–24; 2019.29). However, in the context of this paper the important point is that the lawyers mention Bríg as their way of justifying an innovation in the laws, by making it appear to be based on an archaic ruling.

After the first paragraph of the Old Irish treatment of *athgabál aile*, there is a long commentary dealing with aspects of the procedure.

Nochan fuil .x.bir nesaim na nemnesaim imn (*sic for imin*) athgabail gabait na mna, ⁊ łchan fuil .x.bir cintaig na inbleogain, ⁊ łchan fo.x.lait muige na cricha anad na dithim doib, s̄ anad naile ⁊ apad naile ⁊ dithim cethramthan; ⁊ ben tuc toichid for fir ł for mnai and sin.

There is no difference between [distraint for] that which is indispensable or dispensable in the distraint that the women take, and there is no difference between [their distraint against] the guilty party or a surrogate, and neither space nor land remove [the need for] stay or delay in pound for them, but [they have] a stay of two days and a notice of two days and delay in pound of four days; and in this case a woman brought a suit against a man or on a woman. (*CIH* 378.29–32; *AL* I 148.15–19)

The commentary continues with an explanation of what seems to be a special case of distraint, where there are three separate notices of two days, making the period of notice a total of six days, and producing a total of twelve days for the full procedure. It concludes with a simple statement:

Sund iñ nochan fuil s̄ apad naili ⁊ anad naile ⁊ dithim cethraimthe, conid ocht la.

Here, however, there is nothing but a notice of two days and a stay of two days and a delay in pound of four days, so that it is eight days. (*CIH* 379.2–3; *AL* I 150.1–2)

It seems likely that the case with a total of eight days, which has been referred to on numerous occasions in the tract, is the regular procedure of *athgabál aile*. In *AL*, the text explicitly states that ‘[e]very distress of two days shall have its right upon four days; its delay in pound upon eight days’ (*AL* I 145.30–32 = 144.24–25). This means that there is a notice of two days, a stay of two days and a delay in pound

of four days, the double of the stay, which equals a total of eight days, and the period of forfeiture starts on the ninth day. The doubling of the stay during the delay in pound is relevant because it seems likely that the procedure in the original four sections of distraint was that the delay in pound was the same length as the stay, but the above quotation is the only place where it specifically says how long the delay in pound was. As the duration of the delay in pound for the other sections of distraint is nowhere specifically stated, it is much more likely that it was in fact the same length as the stay (which is in turn the same length as the period of notice). The lawyers were careful to note every time frame in the tracts, so they would have made a note of it if the duration was actually a different length of time, which is what has been done in the section on *athgabál aile*. This implies that the duration of the suit before the beginning of the forfeiture would be three, nine, fifteen and thirty days in the four original sections of distraint.

I have chosen to call the next category ‘women’s work’. It is the largest category, and includes 26 of the 33 cases. This category may be divided into two sub-categories; four of the cases deal with the completion and payment of a woman’s work, and the last 22 cases deal with the actual materials. The category starts with the four cases that deal with ‘the completion and payment of women’s work’ and continues with a long list of the different implements used by women in their handiwork.

Athgabail aile im log lamthoraid. Im duilchine. Im fobrithe im apartain mna diaraile.

Distraint of two days concerning the value of handiwork, concerning wages, concerning payment [for weaving after it is taken down from the loom], concerning the blessings of one woman on another [...].(CIH 379.4–5; AL I 150.3–4)

The glosses do not add much information on these four cases, but rather state the amount that a woman was entitled to for the different cases. ‘[C]oncerning wages’ has, for example, been glossed *.i. x.mad cacha dula* ‘i.e. a tenth of every article’ (CIH 379.14; AL I 152.5–6) and ‘concerning payment [for the weaving after it is taken down from the loom]’ has been glossed *.i. leth na fuba don mnai igi .i. fuba berrtha .i. luag fige* ‘i.e. half of the damage-payment to the female

weaver, i.e. payment of clipping, i.e. value of weaving' (*CIH* 379.14–15; *AL* I 152.6–7). The gloss on 'the blessings of a woman on another' contains more information than the other glosses:

.i. uii.*mad* lanbiata na mna na derna in *bennachad*, no na mna dia ngaibther .i. nembennachadh doni in ben ar aicdi na mna .ii. *annsaide*.

a seventh of the woman's full refection who did not fulfil the blessing of the woman for whom [distrain] is taken, i.e. in this case the woman does not make a blessing on the material of the other woman (*CIH* 379.15–16; *AL* I 152.7–9).

When entering a room, it was customary to bless people and the work they were doing. If a woman entered a room without giving a blessing on the woman working in the room, she gave a 'non-blessing' of the work, and the woman whose handiwork was not blessed was entitled to distrain on account of it.

The next 22 items make up the second sub-category in my categorisation of 'women's work', and they represent a list of the materials for which a woman is entitled to distrain:

Im cach na | adbur bis i feirtsib im fertais im snimaire im pesbolg im fethgeir. Im aiced fige uile im fleisc lin. Im cuicil. Im lugarmain. Im cloidem *corthaire*. Im abrus. Im *comopair* nabairse. Im corthair. Im aiste lamthoraid. Im iadag cona ecortaig im criol. Im crandbolg. Im rinde im chusail im snathait im snaithe liga. Im scaideirc focoisle ben araile.

Every raw material which is on spindles, the spindle, the spinning-stick, the wool-bag [at her feet], the weaver's reed, all equipment of weaving, the scutching-stick, the distaff, the spool-stick, the rod used for making fringes, the yarn, the equipment of the yarn-stuff, the border, the pattern of the handiwork, the wallet with its contents, the bag, the leather scoop, the tippet, the hoops (?), the needle, the lustrous thread, the mirror which a woman takes from another (*CIH* 379.5–11; *AL* I 150.4–11).

The first of these items, 'every raw material which is on spindles', has two glosses; the first on 'every material' and the second on 'which is on spindles'. Both of the glosses are concerned with the material in use but deal with different materials, the first being .i. *glaslin* 'the grey flax thread' (*CIH* 379.17; *AL* I 152.4) and the second being .i. *snath*

glasolla ‘the grey woollen thread’ (*CIH* 379.17; *AL* I 152.10). The glosses further add that the spindle is used *.i. lin* ‘for flax’ (*CIH* 379.17; *AL* I 152.10) and that the spinning stick is used ‘for wool’ *.i. olla*, but that the woman was also able to distract for ‘the bare spinning stick, i.e. of [the] woof’ *† in fertais loim .i. nindich* (*CIH* 379.17; *AL* I 152.11).

I believe that the treatment of the next item on the list shows that our glossator had a good knowledge of Latin as well as Irish. *Pesbolg* has been translated as ‘wool-bag’ in *AL*, and because of this ‘a bag for holding wool?’ is how the word has been translated in *DIL* (*DIL* 495, 183.w). The glosses explain that this is *imin bolg bis fo peis, fo traigid, asa cirann a abrus .i. in cirbolc* ‘the bag which is at the foot, at the foot, out of which she combs her yarn-spinning, i.e. the combing-bag’ (*CIH* 379.18; *AL* I 152.11–12). *AL* translates this as ‘the bag which she has at her “pes”, i.e. foot’, (*AL* I 153.16), and in the glossary to *AL* *pes* is treated as an Irish word (*AL* VI 603). However, I believe that the glossator tried to explain *pesbolg* by means of an ‘etymology’ involving the Latin noun *pes*.

Most of the rest of the glosses give the kind of information we might expect, such as that the weaver’s reed *dober feith ger dara figi* ‘brings a sharp sinew across her weaving’ (*CIH* 379.18–19; *AL* I 152.13–14) and that the scutching-stick is the stick *da flescthar in lin* ‘by which the flax is scutched’ (*CIH* 379.20; *AL* I 152.15). Some glosses are more complicated. An example is the gloss on the spool-stick ‘*lugarman*’: *luga garman, † lingua garman .i. in garman cen buiur (sic for biur) .i. cen fæabur* ‘smaller weaver’s beam or the “lingua garman”, i.e. the weaver’s beam without a point, i.e. without a sharp edge’ (*CIH* 379.21; *AL* I 152.16–17). Firstly, the word ‘spool-stick’, used in *AL*’s translation, is unknown to the Oxford English Dictionary and Wright’s English Dialect Dictionary, but must have been intended to be equated with ‘distaff’ or ‘spindle’ (Mac Eoin 1986, 34). Secondly, the noun *lúgarman*¹ consists of *lú* ‘small’ and *garman* ‘weaver’s beam’ which is exactly what the first part of the

¹ *CIH* 1902.37 gives a variant reading: *luthgarmain*, glossed in *CIH* 1903.10 as *.i. garma chenbair*, the first element is obviously a misspelling of *garmna*. Prof. Ní Dhonnchadha has suggested that the second element is a variant reading of the word meaning ‘headdress’.

gloss explains. The issue at hand is to figure out what the *lingua garman* is, which the ‘smaller weaver’s beam’ has been equated with. In a personal communication, Prof. Gearóid Mac Eoin has explained that he thinks that *lingua* was based on the term for the movable part of the flax clove called *teanga* ‘tongue’ in Irish. This is also the exact meaning of the Latin noun *lingua*. I believe that this is another example of the glossator’s knowledge of Latin, and the *lingua garman* is so-called because it happens to look like a small weaver’s beam, at least if it is to be equated with the distaff, and would, just like the tongue of the flax clove, be a movable part of the equipment.

The next category I would like to examine is the one that I have simply called ‘work’. In this category, the two cases for which a woman was entitled to distrain are *im tincur roe, tairec nairm* ‘concerning the contribution of a (battle-)field’ and ‘the supplying of a weapon’ (*CIH* 379.11–2; *AL* I 150.12). These cases do not necessarily seem like anything a woman would be concerned with, especially the latter of the two. They do, however, go hand in hand in the tract, and the glosses seem to unite them into a separate category by adding that these two cases are relevant in the time of battle. The former has been glossed:

im tinecor a coibdelaig isin re comraic .i. dia ferlesach gaibes.

i.e. concerning the supplying of her relative [with a weapon] in the time of battle. (*CIH* 379.33–34; cf. *AL* I 154.1, which omits the first part of this gloss)

and the latter:

arm comraic bis oca do gres .i. uaithi-se dia feichem .i. don coibdelach .ii. .i. ben in fir gaibis di-se. .i. im tiachtain le do cosnam a lesa do feichemain.

i.e. the weapon of battle which they always have, i.e. from her to her guardian, i.e. to the other relative, i.e. the wife of the man who takes [it?] from her, i.e. concerning the guardian coming with her to fight her legal action. (*CIH* 379. 34–36; cf. *AL* I 154.1–3, which omits the final gloss).

This ties in with the final sentence of the legal tract: *ar is im fir ban ciatoimargaet roe* ‘it is concerning the rectitude of women that the battle was first fought’ (*CIH* 379.12; *AL* I 150.13). The change of style

from a list consisting of *im*+item to a grandiose statement of a battle in this sentence suggests that this is possibly not an original part of the tract, and the ensuing gloss seems misplaced to me. The gloss, which is fourteen lines long in *CIH*, is a short story about how the two sons of Partholón married the two daughters of Partholón, and how the battle was first fought for the rectitude of women. Fer, one of the sons, did not receive the bride-price of Ám, one of the daughters, although it was his by law because her father was dead and this meant that Fer was the head of the kin (*CIH* 379.36–378.13; *AL* I 154.3–26). I do not see how this story is relevant in the *athgabál aile* tract.

I have named the final category ‘women’s pets’. I have left this to the end because of the uncertainty of the translation of the first of the two cases. The second is straightforward: *im oircne rigna* ‘concerning the lap dog of a queen’ (*CIH* 379.11; *AL* I 150.12) to which are added the the glosses *.i. i ndiaid orcan na rigna bis .i. mesan* ‘after the feet of the queen he is, i.e. the lap dog’ (*CIH* 379.32–33; *AL* I 152.34). The first of the cases, *im baircne cat ban*, is one I, as well as others looking at the text before me, have had problems with. *AL* translates it as ‘for the black and white cat’. This, however, cannot be the correct translation as there is nothing in the text itself (as opposed to the ensuing gloss) that can be made to mean ‘black’, it should rather be ‘concerning the white pet cat’, which could be the correct translation, but there are another three translations of the phrase that have to be taken into consideration.

Firstly, Prof. Fergus Kelly has suggested that the translation could be ‘concerning a small basket of women’s cats’, taking *báircne* to be a diminutive of *bárc* ‘boat, vessel, container’ instead of *baircne* meaning ‘pet cat’, and *ban* to be the genitive plural of *ben* ‘woman’ instead of the adjective *bán* ‘white’ (Kelly 1997, 122¹⁴²). The glossator explains the case as:

im bairc-nia: nia, tren, tucad a bairc bresail bric i mbit cait bronnfínna duba.

i.e. concerning the ship-warrior: a strong warrior was taken from Bairc Bresal Bric² in which there are black white-bellied cats. (*CIH* 379.31–32; *AL* I 152.32–34).

Secondly, Dr. Kevin Murray has, in his article ‘*Catslechta* and other medieval legal material relating to cats’, translated *im baircne cat ban* as ‘concerning a *baircne*, i.e. a cat for women’ (Murray 2007, 147), by adding *ed ón* after *baircne*, and taking the *o*-stem *cat* as the nominative singular instead of Prof. Kelly’s genitive plural. He bases this translation on extracts from *Catslechta* which discuss different types of cats such as *meoinne* and *breoinne*, from which he identifies *baircne* as another type of cat. He disagrees with Prof. Kelly’s translation ‘a basket of women’s cats’ because of the lack of the expected nasalisation after genitive plural *cat*. I am, however, not certain Dr. Murray is correct in his reason for disagreeing with Prof. Kelly, as there are multiple examples of the lack of initial mutations in the text. In the relevant paragraph (*CIH* 379.4–12; *AL* I 150.3–13), I have found only three occurrences of nasalisation, where, in fact, there should have been another three if Prof. Kelly’s translation is correct, or another two if Dr. Murray’s translation is correct. Similarly, I have found only one instance of lenition, where there should have been another nine, disregarding the lenition of initial *f* and *s* as these were not always written. With such a large amount of missing initial mutations, I do not believe this to be grounds enough for dismissing Prof. Kelly’s interpretation.

Thirdly, Prof. Máirín Ní Dhonnchadha suggested to me that given Dr. Murray’s identification of *baircne* as a type of cat, the phrase could be translated ‘a *baircne*-cat for women’. This would again mean that we are missing nasalisation, this time after the accusative singular of *cat*. This translation would produce alliteration in the text, and does not seem like an improbable solution.

To conclude, I have tried to shed a new light on the material dealt with in the *athgabál aile*-text, and to categorise the types of cases for which women were entitled to distrain. Unfortunately, it has not been possible to examine every case on this occasion, but I hope that the

² Prof. Ní Dhonnchadha has identified this as a place-name/monument, instead of the ‘ship of Bresal Breac’ of *AL*.

cases I have examined will have added to the existing knowledge on the legal rights of women in early Irish society.

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The image on the front cover appears courtesy of the National Library of Ireland. It is taken from manuscript G3 f 26vb.1–16 and shows the opening section of the law tract *Uraicecht Becc*. The editors wish to thank the Dublin Institute for Advanced Studies for facilitating its reproduction through Irish Script on Screen (www.isos.dias.ie), and Professor Neil McLeod for the following transcription (cf. *CIH* 2256.13–16) and translation:

CID I N-ARAGAR BREITHEAMNAS BERLA
CFENE NĪ I FIR 7 DLIGIUD 7 AICNEAD

BREITHEMNAS BERLA FENE .i. in breath somain-
each uais raidit na fene o mbelaib NĪ .i. ni anand sui
hi sund on no ni handsa son .i. ni doilgi son .i. ni
doilgi son in erniudha na son in imcomairc

HI FIR .i. i fir in roscaid 7 DLIGEAD .i. in [f]asaig 7
A[ICNEAD] .i. aicnead [...]

IN WHAT IS THE JURISPRUDENCE OF TRADITIONAL
IRISH LAW BASED? NOT DIFFICULT: IN TRUTH AND
ENTITLEMENT AND NATURE. THE JURISPRUDENCE OF
TRADITIONAL IRISH LAW, i.e. the precious noble
judgement that the Irish utter from their mouths. Not
difficult, i.e. because an expert does not fixate upon
that utterance [but fixes rather on its sense], or that is
not difficult, i.e. that is not hard, i.e. no harder is the
utterance of the explanation than the utterance of the
inquiry.

IN TRUTH, i.e. in the truth of a maxim. AND
ENTITLEMENT, i.e. of a precedent. AND NATURE i.e.
nature [...]