

The law tract on legal entry, *Din Techtugud*, does not only discuss the regular procedure of legal entry, but it also deals with correct procedure in case of a woman laying claim to a property. The text explains that the procedure was slightly different for women than what it was for men, and the correct procedure of *bantellach* is dealt with in three separate paragraphs of *DT*. These paragraphs have been partly translated by Binchy in Watkins' article in *Celtica* 6, and fully translated in an unpublished translation by Dr. Graham Isaac, which is the version I will be dealing with in this paper.

The early Irish lawyers dealt with the legal capacity of women by illustrating the principles in a series of legendary leading cases. The first leading case is regarding a woman named *Cíannacht*. This paragraph explains the details of the procedure of legal entry for women:

'*Cíannacht* has enforced a claim on distant lands.

It was two ewes that she placed there.

She passed the boundary mound on her first entry,
and her forced entry was against the kin.

She remains there according to *féinechas*,
for eight days of waiting.

Testimony of women on her first entry,
who do not sell their virginity.

On the fourth day there is arbitration,
that is lawful procedure in every entry by women.

She came then from her territory
with double the number, (and) again,
(with) a kneading-through, a riddle, a baking-(?utensil):

a visit which she enforces through her joint surety,
with the statement of men of superior testimonies.

It is then that there is arbitration
through which due legal process is to answer her.

Four days is the first rightful (period of arbitration),
two days is the second,
a speedy verdict is the third.¹

¹ translation by Graham Isaac. From *CIH* 207.22-208.20. Binchy's translation of the first eight lines reads: '*Cíannacht* has recovered distant lands, she placed two ewes there, she came over the mound-fence as the first entry, and her seizure was against the *fine*. She afterwards remained according to the *Féinechus*, to the end of eight days of waiting, with women witness on the occasion of the first entry, who do not sell their virginity.' (Watkins, 227.)

This paragraph shows how *bantellach* differs from the regular *tellach*, or *ferthellach*, 'male legal entry', which the previous speaker has dealt with. It is clear that the land holding Cíannacht claimed ownership of was held by her own kinsmen, as the paragraph states that 'her forced entry was against the kin'. This could imply that the kin in possession of the land suspected that Cíannacht would want to claim it, but that they did not believe that she was entitled to it. The H. 3.18. commentary states that her *braithri*² had possession of the property. If this is to be understood as her brothers enjoying the ownership of the property in question, it would be a situation in which a woman would not be able to claim entitlement to land because she had a living brother. *DIL s.v. bráthair* gives the meaning as both '(a) brother' and '(b) kinsman, cousin; fellow member of the same kindred', and if we understand the word to be translated as kinsmen instead of brothers it would mean that Cíannacht was not claiming the land of her brothers, but rather someone in her kin group, someone she was related to. In order to have a legal claim to the land she would necessarily need to be in the same kin group as the possessors of the land, but she would not be able to voice a legal claim against her own brothers. That she was claiming land from her kin, and not her brothers, is supported by the E. 3.5. glossator who states that Cíannacht had been living among the Féni, but that she wanted to claim land among the Ulstermen.³ If the glossator is correct, this must mean that her father's kin was originally from Ulster for her to have a legal claim to possession of land there. If this is the case, her brothers would probably also have lived among the Féni and thus not had ownership of land in Ulster, unless their father had children with multiple women from different parts of the country, and the brothers had been living in the same part of the country as their father. If that is the case, the father would again still have had sons, and Cíannacht would therefore not had had any claim to the land because a woman was not entitled to inherit, or have the ownership, of land if her father had a living son. Thus, it has to have been her kinsmen, and not her brothers, who Cíannacht claimed land from. Charles-Edwards suggests that this could be a change in the laws, or a case in which brothers 'may have been entitled, but not obliged to grant such life-interest'.⁴

The procedure outlined in the paragraph explains that Cíannacht crossed the burial mound when she entered the land she claimed ownership of, in the same manner that it should be done in the case of men, but instead of bringing two horses with her as the men did, she brought two ewes, i.e. instead of bringing studs, she brought a female animal, representing her femininity. While

² *CIH 908.40-1: Cianmbruighe .i. is cian mor rombatar lia braithri riam.*

³ *CIH 207.26-7: .i. cian mor rombatar cin foghurrud, no as ar fot uathi rombaiter* (note by Binchy: *rombui tir O'Don*) .i. *o fenibh co hulta.*

⁴ *EIWK*, 268-9.

horses were associated with men, ewes were associated with women. She also had to bring female witnesses, or as the text says; she needed the 'testimony of women on her first entry'. These women were not just any women, but women of virtuous character, women 'who do not sell their virginity'. This is one of the few cases where female testimony was seen as necessary; following the general rule of the early Irish law of women being considered *báeth*, 'legally incompetent' or 'senseless', women were normally not allowed to act as witnesses. A witness would normally support his or her testimony by an oath. A *bannoil*, 'female oath', was generally regarded as invalid, but in certain cases a female oath was regarded acceptable, and sometimes even necessary, by law. These instances would normally have to do with a woman's reproductive cycle, such as if her husband is brought away on sick-maintenance, an extra penalty for the 'barring of procreation'⁵ could be given if the sick-maintenance happened during a period in which there was a possibility of conceiving a child, and thus the wife would have to give an oath stating that the sick-maintenance was happening at a time of the reproductive cycle in which she was fertile.⁶

As well as having to bring ewes instead of horses, and a female witness of virtuous character instead of a male witness, there was also a difference in the length of the waiting periods before the case could go to arbitration. While the men could submit the case to arbitration five days after the first entry, it was four days in the case of *Cíannacht*. As her kinsmen did not want to submit the case to arbitration, she entered the land again after eight days. This is a doubling of the waiting period before the case could be submitted to arbitration, just as it was in the case of men, i.e. for men there was the possibility of submitting the case five days after the first entry, and the *tellach medónach* could happen after ten days if the defendant had not agreed to submit the case to arbitration. As the first period before the possibility of arbitration was shorter than it was for the men, so was the whole waiting period before the *tellach medónach*, i.e. eight days for women instead of the ten days for men. For the middle entry, *Cíannacht* entered 'with double the number'. This would presumably mean that she brought four ewes and double the amount of female witnesses though the paragraph does not specify the numbers of either. As the number of witnesses is nowhere specified for any of the entries, it is difficult to say the exact number. However it is possible to speculate because of the evidence of male legal entry. In the first paragraph on *ferthellach*, the man brought two horses and one witness on the first occasion, and four horses and two witnesses on the second occasion. If one is to follow the same increase in number, this would mean that *Cíannacht* brought four ewes and two female witnesses on her middle entry, but this is not a certain conclusion.

⁵ *airiada comperta*

⁶ *GEIL*, 131. For more on female evidence, see *GEIL*, 207-8.

Based on the second last line in this paragraph, it is evident that the second waiting period for arbitration is two days, i.e. half the time of the first period. It does not state the length of time before the final entry, but based on the evidence from the opening poem, the waiting period before the final entry, *tellach déidenach*, would happen eight days after the middle entry, i.e. sixteen days after the first entry. The lines 'she came from her territory, with double the numbers, (and) again', would suggest that on her final entry, there was again a doubling of the ewes, and possibly also the witnesses, although based on the paragraphs on *ferthellach*, it is more likely to be a doubling of the ewes, but only an increase of one witness from the middle entry, i.e. eight ewes and three witnesses. The text suggests that this witness was possibly a man: 'a visit which she enforces though her joint surety, with the statement of men of superior testimonies'. To symbolise her rightful ownership of the property, she was to bring a kneading-through, a riddle and some sort of a baking-utensil. Just as the ewes represent her femininity, so do the female implements show that she is a woman who is making a home on the property. After the third entry a 'speedy verdict' was the third rightful period of arbitration for *Cíannacht*, just as it was for *ferthellach* in the first paragraph. There is no mention of *Cíannacht*'s kinsmen after the fourth line of the paragraph, which makes it clear that they never agreed to submit the case to arbitration, thus *Cíannacht* was deemed the rightful owner of the disputed property because of the lack of willingness to resolve the dispute.

Some speculation is necessary if one wants to form a full picture of how the procedure of legal entry worked, both for men and for women. However, there is a commentary⁷ written by the scribe of the text in the E. 3.5 version, i.e. the full version of *DT*. It gives more details regarding the numbers of ewes and witnesses, but it also speculates on the length of time that a woman were to spend at the property for each entry, and also on the amount of notices she were to give. It starts by stating that: ⁸

i.e. every time the men give notice is a notice of thrice ten days, it is a notice of thrice four days when the women give [it] and the equivalent of the horses the men bring, the women bring of ewes⁹

Hence, the commentator states that when a man enters the land holding he is claiming ownership to, his waiting period, i.e. from the beginning of the first entry to the possible legal ownership of the estate, is to be a total of thirty days, while for a woman it is to be a total of twelve days. This is

⁷ See Appendix 2 for the full commentary.

⁸ *CIH* 207.30-32: *Cach uair is abad teora ndechmad doberaid na fir is abad teora cethramad doberaid na mna, 7 cutruma d'echaib doberaid na fir 7 do cairuib doberaid na mna*

⁹ my own translation.

disagreeing with the previous evidence which states that it is twenty days for a man and sixteen days for a woman.¹⁰ Charles-Edwards does, however, pose a possible explanation for this. The commentary to the first poem on *ferthellach* in the E. 3.5. version,¹¹ and in the H. 3.18. material,¹² seems to have added one step to the procedure. While in the opening poem on *ferthellach*, and also in the poem on *Cíannacht*, the first step of the procedure is the first entry over the grave-mound. The commentary, on the other hand, explains that the first step is a preliminary notice, and that the first entry only happens if there is no response to the preliminary notice after a certain period of time. Thus, there would indeed be three waiting periods of ten days for men, which means that they could gain ownership of the property after a total of thirty days. This does not, however, explain how women would gain legal possession of the property after a period of 'thrice four days', i.e. twelve days. In the poem on *Cíannacht*'s claim to ownership, there was a waiting period of eight days between the first and second entry, and based on the evidence from the *ferthellach*, it is supposed that the second waiting period was the same, hence if the defendant did not submit the case to arbitration, she would gain ownership after sixteen days. However, it is possible that the commentator has thought of the second waiting period of the *tellach medónach* as a doubling of the time after which the case could be submitted to arbitration (which was two days), making the full second period four days, which equals a total of twelve days before the possible ownership of the disputed property. Since this does not explain how it could be twelve days after the extra waiting period had been added, this could then suggest that there had been a bigger change than the commentary first shows; that not only had the preliminary notice been added to the procedure, but the waiting periods for *bantellach* had also been shortened to three periods of four days, i.e. a woman could then gain possession after twelve days. If Charles-Edwards is correct in believing a change to have happened, the commentary to the poem on *Cíannacht* could give more information on the changes. The commentary continues to explain how the procedure is to happen:¹³

'Every time it is women who bring the legal entry it is a notice of thrice four days they give the defendant then, and it is thus they give [it], i.e. they give a notice to the defendant

¹⁰ *EIWK*, 266, table 5.1.

¹¹ *CIH* 205.25-206.10. According to Charles-Edwards, the commentary is 'Early Modern Irish, no earlier than the thirteenth century.' *EIWK*, 270.

¹² *CIH* 907.36-910.36. According to Charles-Edwards, the H. 3.18. material is 'ninth-century'. *EIWK*, 270.

¹³ *CIH* 207.33-6: *cach uair is mna beraid in techtugud is abadh teora ceathramad doberad arin mbidbaid amn, 7 is amlaid doberad .i. abadh do tabairt doib arin mbidbaid cach lae re re na ceathraimthe, l dó ceana comad isin .c.lo 7 isin lo medhonach 7 isan lo degeanach*

every day during the time of the four days or indeed it could be levied on the first day and on the middle day and on the final day.'¹⁴

The commentary supports Charles-Edwards in that there are three notices that have to be given, though the commentator seems unsure of exactly how often these notices are to be given. Since the clause 'i.e. they give a notice to the defendant every day during the time of the four days or indeed it could be levied on the first day and on the middle day and on the final day' is repeated three times during the commentary, i.e. before the explanation of the procedure of each of the entries, I take the notices on 'the first day and on the middle day and on the final day' to mean the first day of each of the three notice periods, not to mean the first, middle, and final day of each notice period, which is implausible as the notice periods are four days each according to this commentator. This is supported by the continuation of the commentary:¹⁵

'She goes out in the end of the first four days, and at the beginning of the middle four days, over the boundary mound of the land and [she brings] two ewes with her and a female witness with her, and she remains there for a day and a night.'¹⁶

From the information we have from the tract, this is clearly an explanation of the first entry. That she sets forth at the 'end of the first four days and at the beginning of the middle four days', supports that this is to be explained as one entry only, the *céttellach*, i.e. that the end of the first four days and the beginning of the middle four days are in fact the same day. The final part of this section gives information which has not been given in the poem on *Cíannacht*; that she is to remain on the property for a day and a night. This could either be an invention by the commentator, or it could be a new development of *tellach*, just as the preliminary notice seems to have been. The commentator has described a similar addition to the procedure of *ferthellach*, in which he says that the man performing the legal procedure should 'remain there for a day and a night'¹⁷ during his entry at the end of the first ten days and the beginning of the middle ten days, i.e. the *céttellach*.

The commentary on *Cíannacht* explains the further process; that if she is not responded to after spending the day and night at the land holding, she is to return home, and wait for the middle four days.¹⁸ After this, the second occurrence of the clause '[a]nd she gives notice every day to the

¹⁴ my own translation.

¹⁵ *CIH* 207.36-8: *dul di amach a forba na ceathramtan tuisige ⁊ a ninditecht na ceathraimthe .m. (=medónach) tar fart (=feart) in feraind, ⁊ da cairigh le ⁊ banfiadnaise le, ⁊ beth di ann re la co naitchi*

¹⁶ my own translation.

¹⁷ my own translation. *CIH* 205.30-1: *⁊ beth do thall re la co naitchi*

¹⁸ *CIH* 207.38-208.1: *⁊ muna tincar hi, dul dia thigh ⁊ beth di ann re re na ceathraimthe .m.*

defendant during the time of the middle four days, or it could be on the first day and on the middle day and on the final day'¹⁹ appears, before the explanation of the *tellach medónach*:²⁰

'And she goes out there then up to a third of the land and [she brings] four sheep with her and two female witnesses, and she remains there for a day and a night'²¹

According to the commentator, there is not only a steady progression of the amount of animals and witnesses she is to bring, which in this case is four sheep and two female witnesses, but there is also a steady progression of how far into the land she is to go for each entry. During the middle entry she is to go as far as a third of the land. This leads to question how far she was to go on the first entry. The only part of the land mentioned in the commentary regarding Cíannacht's *céttellach* is that she was to enter over the *fert*, but it is not stated how far into the land she was to go. If she was only supposed to enter just over the *fert*, is that also where she was expected to remain for 'a day and a night'?

The procedure of the final entry is given in the final section of the commentary:²²

'She goes out as far as half the land and [she brings] eight ewes with her and three female witnesses, and she remains there for a day and a night. If right is ceded to her then, they are to make a law concerning the land and if right is not ceded to her, it is safe for her though she should not come, but she [is to] bring all her cattle over at the end of the thrice four days. And although it ought to be fixed before going over that right was not ceded to her, though right had not been brought to anyone, or the law concerning legal entry, but she is to go over there with her cattle and her household forthwith.'²³

Hence, on her final entry, Cíannacht is to go as far as half the land,²⁴ with eight ewes and three female witnesses. The procedure of the final entry is one in which the poem itself gives more information than the commentary. While the commentary only mentions how far into the land she is to go and that she is to spend a day and a night at the land holding she is laying claim to, the poem

¹⁹ CIH 208.1-3: *7 abadh do tabairt cach le arin mbidbaid re re na ceathraimthe .m., no comad asin .c.lo 7 isin lo medonach 7 isin lo deiganach*

²⁰ CIH 208.3-4: *7 dul di amach ann sin co trian in feraind, 7 .iiii. cairig le da banfiadnaise, 7 beth di ann-side re la co naidchi*

²¹ my own translation.

²² CIH 208.7-13: *dul di amach coruige leth in feraind, 7 .u.iii. cairig le 7 tri banfiadnaise, 7 bet di ann re la co naidche; ma damar dlígéd di ann-seig, is dlígéd do denam doib 'mun ferann; 7 muna damar dlígéd di, islan di ginco ti s a crod uili do breith in anuind a forba na teora ceathramad; 7 gemad re ndul anund bud chindte na demta dlígéd di, ginco tuca dlígéd do deach l dlígéd techtaighte ime s dul anund do cona crodh 7 cona muinntir fo .c.oir.*

²³ My own translation.

²⁴ I suspect this means the middle of the land holding.

gives a lot more information on what she is to do while she is there. The poem adds that she is to bring a kneading-trough, a riddle and some sort of unknown baking utensil to demonstrate her possession. These household implements symbolise that she is settling down on the territory as the mistress of the house. Charles-Edwards explains the symbolism household implements thus: 'As the man looked after the livestock at the house, so Cíannacht baked bread: a characteristic domestic activity for each sex is transformed into a symbolic act, the mark of possession, *tuinide*!'²⁵

In the second paragraph on *bantellach* we encounter two mythological judges who also appeared in the text on distraint; Senchae and Bríg.²⁶ The paragraph reads:²⁷

'Senchae judged in his first judgement
(that) female entry is according to male entry,
so that blisters were caused
on his cheeks after false judgements.
The justice of Bríg healed him by just judgements.
It is she who prescribed female entry (correctly),
so that the blisters were overthrown
on his cheeks after just judgements.'²⁸

The mythological judge Senchae proclaims a false judgement (*cilbreth*), stating that the procedures legal entry for men and women were the same. As this was incorrect, blisters appeared on his face. Fair judgements were very important in the early Irish society, in which honour was a matter of highest importance. In the case of a lord proclaiming an unjust judgement against his client, the client is entitled to leave his lord without any further penalties, penalties which would have been quite heavy had the lord proclaimed a just judgement.²⁹ However, the case of Senchae's unjust judgement in the case of *bantellach* made a physical disfigurement appear on his face. This disfigurement disappeared as soon as the mythological female judge Bríg proclaimed the just judgement: that *bantellach* differed from *ferthellach*. The paragraph in question does not describe

²⁵ *EIWK*, 266.

²⁶ For more information on Senchae and Bríg, see *CCIH*, 367, and *CCIH*, 175 for information on *Bretha Bríge Ambue*. These mythological judges also appear in one the commentary on Cíannacht from H. 3.18., esp. *CIH* 908.26-34.

²⁷ *CIH* 209.12-23, normalised by Graham Isaac. This paragraph is also found in *GEIL*, 358.

²⁸ translation by Graham Isaac. Binchy's translation reads: 'Senchae judged it in his first judgement, woman possession-taking as man possession-taking, so that blisters were suffered, on his cheeks after (having passed) wrong judgements, The truth of Bríg cured him, it was she who estimated female entry, so that the blisters were concealed, on his cheeks after the true judgements (were passed).' (Watkins, 228.)

²⁹ *GEIL*, 27.

the exact measures of Bríg's just judgement, but it is clearly understood that the case of Cíannacht describes the correct procedures of *bantellach*.

The third of the paragraphs regarding women's legal entry discusses Seithir and her fate in claiming her kin-land.³⁰

'Seithir entered properties
which her kin-leader, her race, legally possessed,
and she was a woman who stemmed from a bifurcation.
She was a ruler of a territory long in contract.
She would not live according to the customs of a slave,
nor of a vagrant of the road.
Her forced entry was approved by the kin,
because it was a habitation of return.'³¹

In this case it is clear that Seithir did not need to go through more than the first step of the procedure of *tellach*. Her kin agreed to her claim as soon as she laid claim to the property, and hence there was no need to follow through with the final two entries. This leading case informs us on a very specific reason for a woman to claim ownership of her kin-land. The paragraph does not focus on the procedure of *bantellach* the way it was explained in detail in the paragraph on Cíannacht, but the focus is now on the relationship between Seithir and her kin. She was a woman 'who stemmed from a bifurcation': she was originally a woman whose kin came from one province, i.e. the province in which the *fintiu* was located, but that she had lived in a different province for most of her life, and now she had decided to return to her original birthplace. Both the H. 3.18. glossator³² and the E. 3.5. glossator³³ state that she had been living among the Féni, where her mother came from, but that she wanted to return to the Ulstermen, where her father was from. Because someone else from her kin enjoyed the ownership of the property when she returned to her father's lands, Seithir started the ritualistic act of entering into her kin-land across the boundary mound, but as her claim was approved by her kin she did not need to finish the ritual. This is the

³⁰ *CIH* 209.22-31, normalised by Isaac.

³¹ translation by Graham Isaac. Binchy's translation reads: 'Seithir made entry on the lands, which her 'head' [and] her race possessed, and she was a woman who sprang from two forks, she was the ruler of a territory long enduring in contract, she would not exist according to the customs of a slave, nor would she exist according to a 'chariot of the road', (her?) seizure was spoken free by her *fine*, because it was a habitation of (entailing) return.' (Watkins, 235.)

³² *CIH* 909.18-9: *Bach mbe degabail .c. .i. di ultaib a athuir 7 do fenib a mathair.*

³³ *CIH* 209.34-210.1: *iss de a athair d'ulthaib 7 a mathair do feinib temrach.*

main difference between the paragraph on *Cíannacht* and the paragraph on *Seithir*. While the person who was in control of the property to which *Cíannacht* laid claim did not agree to the validity of her claim, but neither agreed to arbitration, *Cíannacht* eventually gained possession of the property. *Seithir*'s kin agreed to her claim and hence she gained possession straight away.³⁴ The implication of these women receiving their *fintiu* is that they would only have life-interest in the property, the same way a female heir, *banchomarbae*, was only entitled to life-interest in her property before it would revert back to her father's kin. The reason is that if a woman was allowed to keep the property in her new, married kin, the *fintiu* would be alienated from the original kin. In a society where the kin-land was so important for the everyday life where most people were farmers, alienating property was clearly not ideal, and there were strict rules on how much of the property could be alienated.³⁵ In the case of *Seithir* it is clear that this is a 'habitation of return', which means that the land would have to be given back to the defendants upon her death, since they were a part of her kin which would have a claim to the kin-land. The only possibility a *banchomarbae*, and other women such as *Cíannacht* and *Seithir*,³⁶ had to give property as an inheritance to their sons³⁷ was the *orbae niad*, 'the inheritance of a sister's son'.³⁸ It is thus the paternal kin group of the women which allows the sons the inheritance, not the women themselves.

In this paper I have tried to show how the early Irish lawyers dealt with women claiming ownership to land. Unfortunately I did not have the opportunity to discuss the full text and how it dealt with the procedure of men's legal entry, but I have tried to explain how it differed for men and women through the evidence I have discussed on *bantellach*. I have shown how the procedure worked for women, and I have also dealt with some of the reasons for a woman to claim land based on the leading cases in *DT*. Based on the suggestion of change in the procedure of *ferthellach* by Prof. Charles-Edwards and the evidence in the E. 3.5. commentary on *Cíannacht*, I have argued how I believe the changes in the procedure to have occurred in the case of *bantellach*. Any corrections or further suggestions are welcome.

³⁴ As in the case of *Cíannacht* (see discussion above), the commentary of H. 3.18. also claims that it was *Seithir*'s *braithri* who were in possession of the property. Unless *bráthair* in this instance, as in the case of *Cíannacht*, is to be translated 'kinsman' it would be a legal impossibility that either of the women were claiming ownership of the land, as a woman was not entitled to land as long as she had a living brother.

³⁵ see footnote in the chapter on the *banchomarbae* for information on bequeathing property other than the *fintiu*, e.g. property bought from the exertions of one's one successful farming, or from professional earnings.

³⁶ it is nowhere stated that *Cíannacht* and *Seithir* were in fact female heirs, but they are likely to have been female heirs based on their successful claims to their kin-land.

³⁷ or daughters. Cf. previous chapter on *athgabál aile*, that a woman could distraint goods 'concerning the inheritance of her mother'.

³⁸ *EIF*, 418.