inheritance was catched I know not how, it is called Borough English, and by the name may seem to be brought in by some cynical odd Angle that meant to cross the world, and yet in a way not contrary to all reason: for where nature affords least help, the wisdom of men hath used to be most careful of supply; and thus the youngest became preferred before the elder in the course of descent of inheritance according to this custom. There is no further monument of the antiquity hereof that I have met with than the name itself, which importeth that it sprang up whilsts as yet the names of Angles and Saxons held in common cognizance; and might arise first from the grant of the lords to their tenants, and so by continuance become usual. And by this means also might arise the custom of copyholds of this nature, so frequent, especially in those eastern parts of this island where the Angles settled, and from whom that part had the name of the East Angles.”

Blackstone, after citing the reason assigned for the custom by Littleton, and referring to its supposed origin from the custom of certain manors as stated by the editor of Modern Reports,—says he cannot learn that ever this custom prevailed in England, though it certainly did in Scotland, (under the name of Mercheta or Marcheta) till abolished by Malcolm III; 10 adding that, according to Father Duhalde, this custom of descent to the youngest son also prevails among the Tartar tribes; and that amongst many other northern nations it was the custom for all the sons but one to migrate from the father, which one became his heir. 11 “So that possibly this custom, wherever it prevails, may be the remnant of that pastoral state of our British and German ancestors, which Caesar and Tacitus describe.” 12

Robinson says, “Concerning the cause and original of this custom there are two several conjectures.” 13

First, the supposed right of the lord on the marriage of his villein tenant, “and particularly in the northern counties, who it seems drew this barbarous usage from their neighbours the Scots, among whom, by a law of their King Evenus III, 14 ‘Rex, ante nuptias sponsarum nobiliun, nobiles plebeiarum praebabant pudicitiam,’ which continued to be the practice till

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Malcolm III, 'Uxor is precibus, dedisse furtur, ut primum nova nuptae noctem, quae proceribus per gradus quosdam lege Eveni debeatur, sponsus dimidiat argenti marci redimere possit: quam pensionem abhuc Marchetas
mulierum vocant; a term as well known to our law, for a fine due to the lord on the marriage of a son or daughter of his villein.' But Robinson says he believes on inquiry it will be found that the custom of Borough English does not particularly obtain in those manors where such fine is paid; and this reason, though perhaps sufficient to exclude the eldest, would only if taken in its full force convey the inheritance to the second son as the next worthy, and not to the youngest; and he inclines to the reason given by Littleton, that the youngest son, after the death of his parents, is least able to help himself, and most likely to be left destitute of any other support: and therefore the custom provided for his maintenance by casting the inheritance upon him; considering in what places this custom prevails, which are for the most part, either ancient boroughs or copyhold manors. In the former was exercised the little trade that was anciently in the kingdom, and tradesmen would find it most for their own ease and the benefit of their sons, as they severally grew up, to send them out into the world, advanced with a portion of goods, thereby enabling them to acquire their living by art and industry: and for this purpose the old law was very indulgent to the son of a burgess, supposing him to be of age, "Cum denarios discrete sciverit suere, panos ultere, et alia negotia similia paterna exercere." But as the youngest son was most likely to be left unadvanced at the death of his father, the custom prudently directed the descent of the real estate (generally little more than the father's house) where it was most wanted. But as it might happen that the youngest son was, in his father's life-time, placed out in as advantageous a way as the rest, the custom of most boroughs gave a power unknown to the common law, of devising the tenements by will.

"In copyhold manors the demesnes were generally divided among the tenants in very small parcels, holden on arbitrary

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16 Co. Litt. 117 b., cap. 110 a, Brad. lib. iii, f. 26.
fines, large rents, and hard services, so as to be little more beneficial than leases at rack-rents; and the elder sons at a proper age either applied themselves to husbandry, or in those manors where all the demesnes were not already parcelled out, might obtain estates on the same hard terms; and the small advantage of their father's tenement was left to descend to the youngest son, the only, though a mean support of his infancy.” 19

Among the supporters of the fancied origin of this custom, in the supposed right of the lord on the marriage of his villein tenant, is the learned antiquary, Dr. Plot. 20 Blount, also, in the original edition of his ‘Fragmenta Antiquitatis or Jocular Anuera,’ in a note on Berkholt, Suffolk, (where there was a custom, that when the tenants would marry their daughters, they used to give to the lord for license so to do two ores, 21 which were worth thirty-two pence), says, “this fine for the tenants marrying their daughters was without doubt in lieu of the mercheta mulierum.” 22

Blount’s last intelligent editor, however, in a note to “Ammobragium” (of which hereafter), says, “I believe there never was any European nation (in the periods this custom is pretended to exist)23 so barbarous as to admit it,” and Dr. Whitaker, the learned historian of Lancashire, says that the “Mercheta (of the Scottish feuds in particular) is certainly British. This term is apparently nothing more than the merch-ed of Howel Dha, the daughterhood or the fine for the marriage of a daughter.” 24 But I apprehend that at this period it is hardly necessary to attempt any refutation of that theory; although the subject is curious, and has given occasion to some learned dissertations, amongst which I will refer to a very elaborate essay “of the law of Evenus and the Mercheta Mulierum” by Sir David Dalrymple, Bart., Lord Hailes, appended to his Annals of Scotland, wherein he not only treats Evenus and his supposed law as fabulous and scandalous, but he expresses strong doubts of the authenticity of the laws

20 Plots Nat. Hist. of Staff., cap. viii, sec. 20.
21 An Anglo-Saxon coin, of which there were two sorts, the larger containing 20 peningas, which, according to Lye, would be about 60 pence, and the other 16 peningas, about 48 pence.
22 Blount by Beckwith, p. 483.
23 ib., pp. 474-5.
24 Whitaker's Manchester, lib. i, cap. 8, sec. 3, p. 265.
of Malcolm III, by which the supposed law of Evenus is said to have been abrogated.

The notion of the prevalence of such a custom may be attributed to a vulgar error, arising from the fact of a fine called "Mercheta," having been payable in some manors to the lord on the marriage of his villein’s daughter to a freeman, or to any person out of the lordship, the reason of which was, that as the villeins with all their progeny were the lord’s property, and belonged to the soil, if the villein’s daughter was married to a freeman, or to the serf of another lord, the lord of the manor to which she belonged was entitled to a fine, as compensation for the loss he would sustain of the woman and her issue, as if he had lost a heifer or a brood mare. This fine was generally a mark, or half a mark, hence the term mercheta, and it is very evident that the vulgar mind, always accessible to the marvellous, might easily understand this customary payment on such an occasion, as composition for a gross and indecent custom which I am happy to believe existed only in imagination. And this was the opinion of Mr. Astle, in his Essay on the Tenures and Customs of Great Tey, Essex, in the "Archaeologia," vol. xii, p. 36.

Those who are curious to follow up this subject should read Sir David Dalrymple’s Essay, and they may also see a very interesting paper on the same subject, by M. J. J. Raepsaet, entitled, "Recherches sur l’origine et la nature des Droits connus anciennement sous les noms de droits des premières nuits, de markette, d’afforage, marcheta, maritagium et burnede," 8vo, Gand, 1817.

M. Raepsaet agrees with Lord Hailes in treating the supposed law of Evenus as fabulous, and in questioning that of Malcolm III. And he considers the mercheta as an indemnity to the lord for the alienation of his female serf; and after tracing the droit des premières nuits to a fine paid to the clergy, for breach of an injunction of the fourth council of Carthage, (Can. 13,) held in the year 398, he concludes:—

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26 There is a copy in the library of the Society of Antiquaries, Q. 3-15.
27 Abolished, 1469.
"Voilà donc l'histoire de l'origine, du progrès et de l'abolition d'un droit spirituel, que le défaut de critique avait fait provenir d'un droit fabuleux et révoltant, et avoir confondu avec un droit d'indéfini dû à un propriétaire pour l'aliénation d'une filie serf. Ce n'est pas le seul que la prévention et l'ignorance ont attribué à des causes illégitimes, et qu'une critique sage et impartiale retrouve, en remontant à la source, fondée sur de plus justes titres."

In Wales, and on the Shropshire border, a similar custom to the mercheta existed under the name of annabyr or annabyr. It existed in the honour of Clun, formerly belonging to the Earls of Arundel, and is mentioned in Cunningham's Law Dictionary, and also in Jacob and Tomlinus, as "Premium virginatis domino solvendum," referring to "L. Ecl. Gul. Howeli Dha Regis Walliae." This custom was released to his tenants by Henry, Earl of Arundel, anno 3 and 4 Philip and Mary, by the name of the custom of annabyr and chevage." 28

If the reference given by these writers be to the "Cyfreithieu Hywel Dda ac craill, sen leges Walliae ecclesiasticæ et civiles, by Gul. Wotton, s.t.p. adjuvante Mose Gul. a.m. r.s. soc. fo. 1730," that authority does not justify the above definition; but I find in the glossary to that work, "Anobr contracte pro Anwobr ab Am (of) et Gwobr (a maid or virgin) Dicitur de pecunia que vel pro maritandis puellis, vel pro pudicitia violata Domino pendebatur. In libro consulari Arvonensi, appellatur "Amobjagium." Vid. Dav. Dict. in voce. Dicitur etiam Gobr merch." 29

In the manor of Buellid, in Radnorshire, a noble paid by every tenant at the marriage of a daughter, is called maiden rent. Vide Cowell in voce.

Annabyr was in fact the same as mercheta, a fine payable to the lord on the marriage of his nieph, or a penalty for the violation of her chastity.

The reasons assigned by Littleton, Blackstone, and Robinson are all virtually the same; all resting upon the disadvantage of position of the youngest son; and they are all equally unsatisfactory, for they are grounded upon the supposition that the youngest son alone is unsettled in life, or left with his

28 I cannot think that the terms of this charter will justify the above definition, but hitherto with success.
29 I have made considerable efforts to find the charter, but without success.
father at his decease, in which case alone the custom would have an appearance of justice; and they overlook the very constant occurrence of one or more of the elder sons being set forward in life during their father's life time, leaving several at home; and the not infrequent case of a father dying early, and leaving all his sons young and equally helpless and unprovided for; in which cases it would seem to be most inconsistent with justice and equity, as well as most inconvenient to the family of the deceased tenant, that the inheritance should go to the youngest son in preference to his brothers, as unprovided, and except by a few years more or less of age, not more able to help themselves than he is.

It seems to me, therefore, that the real cause of the origin of the custom of Borough English has not yet been ascertained; and although venturing to differ from such learned authorities as I have cited, I propose to give my own views on the subject. I am by no means so confident as to say, or to think, that I have discovered the sure and very cause and reason of this singular custom, and I submit what I have to say as to its origin, with very sincere deference to the opinions of those who are much better qualified to decide upon questions of legal and antiquarian research.

With these preliminary observations, I beg to say that I consider the custom of Borough English took its rise from the period when copyhold lands were held really and substantially, and not, as now, nominally "at the will of the lord," when the lord's will uniformly exercised, made the custom of the manor, and was not, as now, controlled by the custom. And in no instance was the lord's will so likely to be exercised as in determining which of his tenant's family, on the decease of the tenant, should succeed to the tenement held by the lord's will.

The custom of Borough English is in fact to be accounted for in the same manner as the various other customs which exist in different manors. In some manors the lands descend

29 "If the villein behaved himself well, was industrious, and faithful in his returns, he often continued in the possession of the lands, and even when he died his children were frequently permitted to succeed him. This, however, depended upon the pleasure of the lord; and if the lord consented that some of the posterity of the deceased tenant should again occupy the lands, it was for him to select the individual. Hence the variety of customs as to descents." Watkins' Cop. vol. ii, p. 210
to the eldest son, in others to all the sons equally, as in Gavelkind. "Custom of some manor is, that if the tenant dies seized of five acres or less, then the youngest son ought to inherit, but if above, then all the sons, as in Gavelkind, ought to inherit it." 30 "Custom of some manor is, that the youngest son, or youngest daughter of the first wife, being married a virgin, ought to inherit." 31 In other manors, the sons and daughters inherit equally, as at Wareham in Dorsetshire. 32 In others the eldest daughter alone succeeds to the inheritance if there be no sons, as at Yardley in Herefordshire. 33

As great a variance exists in different manors as to the wife's dower. In some the wife is entitled to the whole of her husband's copyhold lands for her life, as at Cuckfield, Ditcheling, and Rottingdean; in others to a moiety, in others to a third as at common law, and in some manors she is not entitled to any dower or freebench in respect of the copyhold lands of her husband, as at Rotherfield: and I have been informed of one manor where daughters are preferred in respect of inheritance to sons. 34 Thus it is, I think, owing to the caprice of the several ancient lords, that these different manorial customs have arisen and been established.

This opinion is in accordance with those of Sir Martin Wright, in his introduction to the Law of Tenures,35 and Mr. Watkins, in a note on Chief Baron Gilbert's work on Tenures.

And as to the reasons which would induce the lord to prefer the youngest son to succeed the father in the inheritance of the tenements held of his manor, we may suppose that the barons and lords being liable to furnish certain numbers of men for military service, in many instances, took care to secure the elder sons of their tenants as military retainers; and that the villegage or copyhold lands, being generally held by agricultural services, were left to the younger sons or youngest son to cultivate, and render the services due to the lord for the land. And another reason may be attributed to the avarice, or love of patronage of the lords, for as the lord was entitled to the wardship of his infant tenants, which allowed the infant only a decent maintenance during his minority, (all

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30 Kitchin, p. 203.
34 Vidal, vol. ii, p. 441.
35 Wright on Tenures, p. 221.
the surplus profits going to the profit of the guardian) the lord had a direct interest in long minorities, and therefore might have willed that the youngest son should be the heir.

It is true that the lord would not frequently trouble himself with such small matters, but there was generally some retainer of the lord, or uncle or near relative of the minor, who begged the wardship of the lord; who in exercise of his patronage, and in imitation of greater men, granted the wardship of his infant tenant to his own dependant, as he himself would have asked and gladly received a more important wardship from the king or his own superior lord.

A very remarkable instance of the exercise of the lord's will, as respects the descent of lands holden of him, is extant in a charter of that very remarkable man, Simon de Montfort; a name historically connected with this county and the town of Lewes (to whom this nation is more indebted than is generally known or acknowledged), dated in 39th Henry III (A.D. 1255), whereby, as a great favour to his burgesses of Leicester, at their earnest supplication, for the benefit of the town, and with the full assent of all the burgesses, the earl granted to them that thenceforward the eldest son should be the heir of his father instead of the youngest, as was then the custom of the town. This charter is more remarkable as it was the act of a subject by his own will altering the local law of inheritance, without any legislative authority or even royal sanction; and that sixty-five years subsequent to the period of legal prescription.

To revert to the name of the custom, my opinion is that it originated with the Norman lords, who imposed this custom as a peculiar mark of servitude on their English vassals, which their Norman followers, who were accustomed to the law of primogeniture as attached to freeholdings, would not submit to; hence the distinction of tenures at Nottingham, of Burgh Engloys, and Burgh Frauncy's, which although not now known in that town, are kept in remembrance by the two parts of the town having been not long since distinguished as the English borough and the French borough. It is worthy of observation, as corroborative of this view of the subject, that the Earls of Warren and Surrey, who soon after the Conquest possessed the barony and rape of Lewes, where the custom of Borough English is almost universal as regards copyholds,
possessed also Reigate, Dorking, Betchworth, and Kennington in Surrey, and Stamford in Lincolnshire; in all which places we still find the same custom prevailing.

To show that the customary descent to the youngest son was not unknown to the Norman and Flemish followers of William, as a peculiarity of servitude or villeinage (although Robinson says they were unacquainted with it in their own country, and Blackstone was obliged to go so far away as to the Tartar tribes for any similar custom) I can, thanks to the improved facilities of international communication, and to the general desire among enlightened nations to receive and impart knowledge, refer to the ‘Coutumes locales du Baillage d’Amiens,’ by M. Bouthors, Greffier en chef de la Cour d’appel d’Amiens, &c., published by the Société des Antiquaires de Picardie, where we find that the same customary descent to the youngest son prevails in that province of France, and in Artois, under the name of Maineté,36 viz, in the Seigneuries of Gouy et Bavaineourt, Rettembes, Croy, Lignieres, Warlus, Rezencourt, Brontelle, Hornoy, Selincourt, Adinfer, Blairville, Wancour, Guémappes, Hebuterne, Pays de Callicue, Temporel du Chapitre, d’Arras, and Rassery.

M. Bouthors, in a letter to me, says, that in the environs of Arras and of Douai the law of Maineté was the general custom. In Ponthieu and Vivier it was the exception.

M. Bouthors also says that it is found likewise in Flanders, under the name of Madelstaed;37 and Ducange tells us it prevailed among families at Hochstet in Suabia. “Quametiam locum habuisse in familia Hochstatala Auctor est Ludovicus Guicciardinus in Deser. Belgii.”38

But I must not forget that this paper was to relate to the custom of Borough English as prevailing in the county of Sussex, and hitherto I have said but little as to that county. I will only defer advertsing to it more particularly by stating that in this kingdom the custom is much more extensive than would be generally supposed. In Cornwall I have found one manor subject to the custom; in Derbyshire, the town of Derby; in Devonshire, two manors; in Essex, eight manors;

36 Moins né—Moins âgé.
37 Merlin Repertoire de Jurisprudence, ou mot Maineté.
38 This I take to be Hoogstraat. I cannot, however, find any such passage in Guicciardini’s Belgii, 2 cobs. 1660, Amsterdam, 1650.
in Glamorganshire, one manor; in Gloucestershire, the city of Gloucester, where it governs the descent of freeholds; in Hampshire, nine manors; in Herefordshire, four manors; in Hertfordshire, one manor; in Huntingdonshire, three manors; in Kent, one manor; in Leicestershire, one manor; in Lincolnshire, the borough of Stamford; in Middlesex, sixteen manors; in Monmouthshire, one manor; in Norfolk, twelve manors; in Northamptonshire, one manor.

In the town of Nottingham, this customary mode of descent is now unknown, but it exists at Scrooby and Southwell, and in three other manors; in Shropshire, three manors; in Staffordshire, part of the borough of Stafford and two manors are subject to the custom. In Suffolk I have found thirty manors; in Surrey, twenty-eight manors; in Sussex, one hundred and forty manors; and in Warwickshire, two manors; in which the custom of Borough English is the law of descent.

It is worthy of notice that this custom is found to prevail more extensively in the counties anciently called Suffolk, Southrey, and Southsex, than in any other part of the kingdom.

From the preface to Nelson's 'Lex Maneriorum' I extract the following passage relating to Wadhurst in Sussex:—

"It is true some of these customs are very strange, such as that which was mentioned by Chief Justice Anderson, which he knew in the manor of Wadhurst, in Sussex, where he tells us there are two sorts of copyhold tenures, 'Sokeland' and 'bondland.' And the custom is, that if the tenant was first admitted to sokeland, and afterwards to bondland, and died seised of both, his heir-at-law should inherit both; and if he was first admitted to bondland then his youngest son should inherit both; but if he was admitted to both at the same time then his eldest son should inherit both."

From John Hopper, Esq., of Lewes, to whose liberal kindness I am indebted for a communication of forty of the following list of Borough English manors in Sussex, I have also received a very curious extract from the customs of the manor of Framfield, as settled by a decree of the Court of Chancery, dated 4th July, 4 James I.

30 Kemp v. Carter, I Leon, 55.
31 Sokeland is evidently freeland as contrasted with bond land, which was held by servile tenure, and this distinction is very significant as to the origin of the custom.
That if any man or woman be first admitted tenant of any of the 'Assert Lands,' and die seized of Assert lands and bondlands, then the custom is, that the eldest son be admitted for heir to all; and if he or she have no son then the eldest daughter likewise. And if the said tenant, be it man or woman, be first admitted to bondland (that is to say) yardland, the youngest son or youngest daughter shall be likewise admitted for heir to all his customary lands; and the like course is to be observed for brothers, sisters, uncles, aunts, and cousins, if there be neither son nor daughter.

The custom of Maresfield is also similar to that of Framfield; and in Warbleton, assert land descends to the eldest son, while other copyhold lands of the manor go to the youngest.

In the manor of Bosham there are three sorts of land, called respectively Forrep land, Board land, and Cot land.

At Rotherfield there are also three sorts of land, called respectively Farthing land, Cotman land, and Assert land. As to Assert land the eldest son is heir, and the wife is not entitled to dower; but as to Farthing lands and Cotman lands, the youngest son is heir, and the wife is entitled to dower during chaste widowhood; but a difference exists between Farthing land and Cotman land, in respect of the descent to daughters if there be no sons, as the custom is that Farthing lands descend to the youngest daughter, and Cotman lands are divided among all the daughters.

I annex a list of all the manors and places in the county of Sussex that I have been able to collect in which the custom of descent to the youngest son exists, with the names of the

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41 Assert or assart (Fr. essarter), to grub up or clear land of bushes, &c., and fit it for tillage. Assart was anciently used for a parcel of land assarted or cleared of wood. (Blount's Law Dictionary.)
42 Per Mr. Hoper.
43 Per R. Bray, Esq. (steward).
44 Dallaway, R. of Chichester, p. 88.
45 Forrep land means the same land as is elsewhere called sook or soc, and assart; it is doubtless land taken from the forest, as distinguished from the old yard lands or cultivated lands. W. D. Cooper, Esq., F.R.A.
46 Board lands or bord lands—the lands which lords keep in their hands for the maintenance of their table—and the bordarii were such as held those lands which we now call demesne lands. (Bract. lib. iv, tract 3. Antiq. de Purveyance, f. 49.)
47 Cotland—Coth setlthandum hic intelligo cotae sedem, et proeli quid piem ad eandem pertinent. (Spelman.)
possessors mentioned in Domesday, and the present owners, as far as I have been able to ascertain them, the particulars of the customs, and the authorities; which list, although far from perfect, and doubtless containing many inaccuracies, will I hope be found useful.

I cannot conclude this imperfect paper without expressing my thanks to the stewards of manors, and other professional gentlemen, for the liberal kindness and attention which has been given to my inquiries, and for the readiness with which they have furnished the information required. To John Hoper, Esq.; P. H. Gell, Esq.; J. E. Fullager, Esq.; and W. P. Kell, Esq., of Lewes; Robert Young, Esq., of Battle; Messrs. Freeland, Raper, and Johnson, of Chichester; H. G. Brydone, Esq., and Messrs. Blagden and Upton, of Petworth; Thomas Johnson, Esq., of Midhurst; S. Waller, Esq., of Cuckfield; Frederick Cooper, Esq., of Arundel; E. N. Dawes, Esq., of Rye; Richard Ednunds, Esq., of Worthing; C. J. Longcroft, Esq., of Havant; H. R. Homfray, Esq.; R. Bray Esq.; and J. Maberley Esq., of London, I have to return my thanks in an especial manner for the valuable assistance and information they have so kindly and disinterestedly given me; nor must I omit to mention that I have received important assistance from that excellent antiquary and most energetic member of this society, W. Durrant Cooper, Esq., F.S.A., to whom also I desire to express my most sincere acknowledgments.

I do not profess to have given a perfect list of all the manors in this county in which the custom prevails, as I have reason to believe there are many others, and I should be much indebted for any further information respecting the nature, extent, origin, and history of the custom, with which any of the members of the Sussex Archaeological Society may be so good as to favour me.

Eltham, Kent.