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THE WILLIAMITE FORFEITURES

1690 - 1703

By J. G. Simms, M.A.

July 1954.

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THE WILLIAMS' HERITAGE

1890 - 1905

By F. C. Jones, M. A.

This thesis submitted for the degree of Doctor  
of Philosophy at the University of Dublin

15 October 1952

Preface

The object of this thesis is to establish the facts of the Williamite forfeitures and, in particular, to resolve the statistical uncertainties to which Butler drew attention in his Confession in Irish History.

THE WILLIAMITE FORFEITURES

1690 - 1703

By J. G. Simms, M. A.

A thesis submitted for the degree of Doctor  
in Philosophy of the University of Dublin

Sources which have not previously been used include the correspondence to the report of the inquiry commission of 1857 (N.S.P., MS. 1. 1, 3) and the Annals of the Library of Ireland, of which 15 October 1952 the National Library of Ireland. The books of Survey and Distribution and other records of the Quit Rent Office, which are now in the Public Record Office of Ireland, have also been of great value. I have pleasure in acknowledging the ready assistance which I have received from the staffs of the Public Record Office and the various libraries which I have used. I am particularly indebted to Dr R. C. Sington, who has at all times been ready to make available his collection of the Quit Rent Office records.

The thesis has been prepared at the

## Preface

The object of this thesis is to establish the facts of the Williamite forfeitures and, in particular, to resolve the statistical uncertainties to which Butler drew attention in his Confiscation in Irish history. The forfeitures have hitherto received very cursory treatment from historians, who have for the most part limited their accounts to a summary of somewhat puzzling statistics. The thesis attempts to fill out the narrative and to describe the fortunes of various Jacobite families as they were affected by outlawry, the articles of Limerick, pardon or otherwise.

Sources which have not previously been used include the accompaniments to the report of the inquiry commission of 1699 (T.C.D., MS N. 1. 3) and the Annesley manuscripts, of which microfilms are in the National Library of Ireland. The books of Survey and Distribution and other records of the Quit Rent Office, which are now in the Public Record Office of Ireland, have also been of great value. I have pleasure in acknowledging the ready assistance which I have received from the staffs of the Public Record Office and the various libraries which I have used. I am particularly indebted to Dr R. C. Simington, who has at all times been ready to make available his unrivalled knowledge of the Quit Rent Office documents.

The thesis has not been submitted as an exercise

for a degree at any other university. It is entirely my own work and I have not received any assistance in writing it, apart from the suggestions and comments of my supervisor, Professor T. W. Moody, to whom I am much indebted.

The particulars of the sources referred to are given in the bibliography:

Annesley MSS

Manuscripts of the Annesley

Castlesman (microfilm in H.L.M.S. since relate to the volumes listed in the descriptive catalogue (Annesley MSS 559-64).

Clarke corr.

Correspondence of George Clarke

(T.C.D., MSS K. 8. 1-13). References relate to volume and letter numbers.

Commissioners' report

The report of the commissioners

appointed by parliament to inquire into the Irish forfeitures.

Correspondence

Correspondence van Willem

van Nass Willem Bentinck, III.

H.L.M.S. n.s.

Notes of Lord's manuscript.

Story, History

Story, A true and impartial

Story, Continuation

Story, A continuation of the

in) history of the wars of Ireland

Dates are given in the old style, except that the year has been treated as beginning on January 1.

## Abbreviations

The abbreviations used in the footnotes are for the most part taken from the list in Irish Historical Studies, iv. 6-33. The following additional abbreviations have been used (fuller particulars of the works referred to are given in the bibliography):

- Annesley MSS                      Manuscripts of the Annesley collection, Castlewellan (microfilms in N.L.I.). References relate to the volumes listed in the descriptive catalogue (Anal. Hib. xvi. 359-64).
- Clarke corr.                      Correspondence of George Clarke (T.C.D., MSS K. 5. 1-13). References relate to volume and letter numbers.
- Commissioners' report      The report of the commissioners appointed by parliament to inquire into the Irish forfeitures.
- Correspondentie              Correspondentie van Willem III en van Hans Willem Bentinck, iii.
- H.L.MSS, n.s.                  House of lords manuscripts, new series.
- Story, History                  Story, A true and impartial history.
- Story, Continuation      Story, A continuation of the impartial history of the wars of Ireland.

Dates are given in the old style, except that the year has been treated as beginning on January 1.



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## CHAPTER I

## Introductory

The Williamite forfeitures were the last of the series of confiscations which in the course of a century and a half changed the ownership of the greater part of Ireland. Their history covers the thirteen years between the battle of the Boyne and the final disposal of the forfeited estates. It consists of a complex of forfeitures and restorations, grants and resumptions. In the course of these proceedings most of the catholics who still owned land ran the gauntlet in some form or other. Some succeeded in recovering or preserving their estates, whether under the articles of Limerick or otherwise. Some lost their lands irrevocably. After 1703 there were no more confiscations on the wholesale scale of the sixteenth and seventeenth centuries. Stability had at last been reached, and the stage was set for the period of the penal laws and the supremacy of the 'protestant nation'.

In the history of these confiscations 1641 makes a natural dividing line. Before 1641 they were directed against those who adhered to the old Gaelic civilisation; after that date religion formed the primary line of cleavage. The earlier confiscations, from the seizure of Leix and Offaly to the Ulster plantation, marked the successive

reduction of more or less independent territories, and their settlement with English or Scottish grantees. The lesser expropriations carried out by James I in Leitrim, Longford, Wexford and elsewhere were not technically forfeitures. They were based, not on any charge of rebellion, but on the legalistic revival of old crown titles. They resulted in a number of landowners being deprived of a great part of their property. In these confiscations almost all the victims were the Gaelic Irish. The old English (with some exceptions, notably the Desmonds who had 'gone Irish') continued to hold their lands. In spite of religious differences they allied themselves with the protestant government of England rather than with the catholic chieftains of Ireland.

From 1641 the situation changed. Parliamentarians made no distinction between Normans of the pale and Gaels of the south and west. Fingall and Gormanston, no less than MacCarthy and O'Dempsey, were Irish papists. The same description served for catholic descendants of Elizabethan settlers, Bagenals, Brownes or Colcloughs. The Cromwellian settlement was frankly on a religious basis. All catholics, except the very few who proved their 'constant good affection', forfeited their lands. Although Ormond and a limited number of other protestants also forfeited, the general rule was that 'protestant land' was excluded from the settlement.

From 1641 to 1703 two wars and three settlements formed different phases of one continuous process, the struggle between catholic and protestant for the land of Ireland. Of the three settlements the Cromwellian was the most drastic and the least complicated. It has been described in some detail by Prendergast<sup>1</sup>. It involved the expropriation of virtually all the catholic land-owners east and south of the Shannon, and the division of most of Connacht and Clare between the transplanted catholics and the original proprietors. The Restoration and Williamite settlements were considerably more complicated. They involved the resolution of conflicting interests and the individual decision of a great number of claims. Neither settlement has been the subject of a full-scale independent study. Very diverse views have been expressed about the general results of both settlements and the subject has remained one of the vexed questions of Irish history.

## II

All accounts of these settlements have suffered from the want of a firm statistical basis. Estimates of the area held by catholics and protestants in 1641 and 1688 have varied so widely that it has been impossible to assess with any degree of certainty the combined effect

1. Prendergast, The Cromwellian settlement of Ireland.

of the Cromwellian and Restoration settlements, or to understand the strength and attitude of the rival groups during the different phases of the struggle. An assessment of the 1688 position is an essential part of the background against which the extent and effect of the Williamite forfeitures must be judged.

Those writers who have treated of the period have not failed to realise the importance of statistics. We have been supplied with an abundance of figures relating to the ownership of land at the various critical dates. The trouble has been that no two sets of figures agree and that there has been no objective standard by which to judge between different estimates. The problem has been discussed in considerable detail by Butler. His conclusion is that 'in certain cases, notably as to the extent of the confiscations under Cromwell and William of Orange, and as to the exact state of landed property in Ireland after the Acts of Settlement and Explanation,<sup>2</sup> there is still a field open to research'.

The first attempt to analyse the territorial statistics of the Cromwellian and Restoration settlements was made by Petty. In his Political anatomy of Ireland, written in 1672, he calculated that in 1641 catholics held about two-thirds of the profitable land (which he

2. Butler, Confiscation, p. vii.

estimated at seven and a half million Irish acres), and that as a result of the Restoration settlement they held rather less than one-third.<sup>3</sup> Later on, in his Treatise of Ireland, he observed that in 1683 Irish catholics had about half the area which they had held in 1641.<sup>4</sup>

Petty's estimate for 1641 was challenged in an elaborate paper read to the Royal Irish Academy in 1862 by W. H. Hardinge. Hardinge estimated that eleven-twentieths of Ireland was forfeited in the course of the Cromwellian settlement, 'a proportion much less than what has historically and otherwise been reputed as the result of the unhappy disturbances of 1641'.<sup>5</sup> Hardinge's estimate of the forfeited land was based, somewhat erratically, on the Down survey. His figure for unforfeited land was obtained by deducting the forfeited area from the total as given by the Ordnance survey. He made no allowance for Petty's under-measurement and thus assigned too small a proportion to the forfeited land. On the basis of the Down survey measurements the forfeited land would on Hardinge's figures (which include church lands) work out at rather more than sixty per cent of the total.

There is a wide variety of estimates for the proportion of land held by catholics under the Restoration settlement.

3. Petty, Economic writings, i.135-7.

4. Ibid., ii. 598.

5. R.I.A. Trans., antiquities, xxiv. 35.

Petty made an elaborate calculation of the areas assigned to 'innocent papists,' 'letterees and nominees', and other categories in arriving at his estimate that little less than one-third of the total profitable land had been recovered by catholics.<sup>6</sup> The author of the State of the papist and protestant proprietaries by similar calculations gave catholics between a third and a fourth of the profitable area.<sup>7</sup> Richard Cox put the catholic share at a fourth of the whole,<sup>8</sup> and Richard Lawrence put it at about a fifth.<sup>9</sup> Butler discussed the problem in considerable detail and suggested, with some hesitation, that 'at the accession of James II only at the outside one-seventh or ~~one~~ one-eighth of the total area of the island remained in the possession of catholics'.<sup>10</sup>

Butler's thesis raises points which are fundamental for a study of the Williamite forfeitures. Without knowing the situation in 1688 it is impossible to assess the relative impact of the forfeitures or the extent of catholic ownership of land at the beginning of the eighteenth century. But, apart from these considerations, Butler's argument is of particular relevance because it

6. Petty, Economic writings, i. 135-7.

7. Published 1689.

8. Aphorisms relating to the kingdom of Ireland, 1689.

9. Lawrence, Interest of Ireland, 1682.

10. Butler, Confiscation, p. 202.

is almost entirely founded on the report which the commission of inquiry into the Williamite forfeitures presented in 1699.

The report, on which all accounts of the Williamite forfeitures are based, contains a series of statistics giving the number of persons outlawed and excepted from outlawry, and the area of land forfeited and restored. As it will frequently be necessary to refer to one or other of these sets of figures, it is convenient to summarise them at this stage:

A. Individuals

Outlawed (a) in England	57	
(b) in Ireland	<u>3,921</u>	3,978
Adjudged within articles of Limerick or Galway		1,283
Pardoned by royal favour		65

B. Area (expressed in terms of profitable Irish acres)

Forfeited and not restored		752,953
Forfeited and restored -		
(a) by articles		233,106
(b) by royal favour		<u>74,733</u>
Total forfeited area		1,060,792

11

Butler's argument is that as all the catholics sided with James the estates of all were forfeited, except for



minors and persons who submitted in time or were acquitted  
<sup>12</sup>  
 by partial juries. The total forfeited area of 1,060, 792  
 acres represents on Petty's basis one-seventh of the pro-  
 fitable land. Butler's estimate of one-seventh as the  
 maximum catholic share would thus leave no margin for the  
 estates of minors and others who avoided forfeiture. It  
 is evident that Butler was not altogether satisfied with  
 his argument and there is considerable variation in the  
 estimates which he makes in the course of his analysis.  
<sup>13</sup>  
 His final conclusion, after allowing a margin for unfor-  
 feited land, presupposes a figure of some 1,200,000 pro-  
 fitable Irish acres as the total catholic holding in 1688.  
 This on Petty's basis would be rather less than one-sixth  
<sup>14</sup>  
 of the profitable area.

Butler, in common with other writers on the subject,  
 confined his attention to the published report of the  
 inquiry commission. That report provided a summary, in  
 several respects misleading, of the full record presented  
 by the commissioners to the English parliament. The full  
 record was contained in nine books. The report itself was  
 presented as the tenth book and was designed to serve as  
 an index to the other nine, in addition to giving a gen-  
 eral account of the proceedings of the commission. Two

12. Butler, Confiscation, p. 202.

13. Ibid., pp. 214 and 230. See also notes on pp. 220-1.

14. Ibid., p. 232. Butler's figures are discussed in my  
 article 'Land owned by catholics in Ireland in 1688'  
 (I.H.S., vii. 180-90).

sets of the nine books have survived. One is the house of lords copy, of which parts have been published together with an abstract of the remainder.<sup>15</sup> The other, which is in Trinity College, Dublin, is believed to have been the set given to William Lowndes, then secretary of the treasury.<sup>16</sup> The first of the nine books contains the names of those outlawed, the second gives particulars of the forfeited estates with the names of their owners and the areas confiscated or restored, the third and fourth give the names of those adjudged within the articles of Limerick or Galway, the fifth is the 'book of pardons and reversals'. The remaining books deal with grants, encumbrances, debts and James's 'private estate'.

The nine books are an invaluable source for the Williamite forfeitures, and it is surprising that no historian has hitherto made use of them. The individual books will later be the subject of separate discussion in some detail. At this stage it is sufficient to say that the full record corrects in a number of important particulars the standard account of the forfeitures, which is based on the figures in the published report.

It has hitherto been generally assumed that the 3,978 persons outlawed were all landowners, who between them owned the 1,060,792 acres forfeited; that the 1,283

15. H.L.MSS, n.s., iv. 17-39.

16. T.C.D., MS N. 1. 3.

persons admitted to the articles between them owned 233,106 acres; and that the sixty-five persons pardoned owned 74,733 acres. The full record shows that the total area forfeited (including that subsequently restored) comprised the estates of only 457 persons; that the area restored under the articles consisted of 161 estates; and that twenty-four estates were restored by royal favour. **T**he great majority of those outlawed were not landowners. Most of those admitted to the articles were never outlawed. Their estates, which covered a great part of Connacht, were therefore not included in the return of land forfeited and restored. Several of those pardoned had no landed property; the estates of others had not been seized and were therefore not included in the return. Reference will be made in later chapters to a number of notable estates omitted from the record.

It is clear that a substantial part of the land owned by catholics in 1688 was not included in the figures given by the inquiry commissioners. Butler's whole analysis was based on the assumption that the commissioners' report covered almost all the land in catholic ownership. In the light of the particulars recorded in the nine books that assumption is not sustainable, and it is necessary to find some other basis on which to estimate the area owned by catholics in 1688.

## III

Fortunately such a basis is available in the Quit Rent Office set of the books of Survey and Distribution. The set, which has been described in detail by Dr R. C. Simington in his introduction to the volume for county Roscommon, covers, townland by townland and parish by parish, all the land forfeited by Cromwell together with much of the adjacent unforfeited land measured along with it. The left-hand pages show the proprietors of 1641 with the names and areas of the lands which they held. The right-hand pages show the names of those to whom the lands were assigned at the Restoration settlement. Decrees of the Court of Grace (1684-8) are entered at the side of the Restoration assignments. Sales by the trustees for the Williamite forfeitures are entered in the extreme right-hand columns. Thus, as Dr Simington has pointed out, the proprietorship of Irish land at three different dates can be seen on a single line. Various sets of the books of Survey and Distribution were used as the official land records from Charles II's reign onwards. The statistics compiled by the inquiry commission of 1699 are directly taken from them. A set of the books is included in the Annesley manuscripts and is evidently the set

17. Books of Survey and Distribution, i., introduction,  
p. 20.

used by Francis Annesley, who was both a member of the inquiry commission and a trustee for the sale of the forfeited estates.<sup>18</sup>

The saying that the basis of political history is the relation of groups of men to plots of ground applies with particular force to seventeenth-century Ireland. The Survey and Distribution books, with their detailed and comprehensive record of that relation, illuminate more clearly than any generalised description the complexities of the Restoration settlement. Turning their pages we get an immediate presentation of how the settlement actually worked, and of how unequally it affected different types of catholic families.

Thus in the Meath book the left-hand pages show the old Norman families in possession of four-fifths of the county in 1641. The Restoration assignments on the right-hand pages show that less than half these lands were recovered. Fingall was restored in full, and Gormanston recovered everything except for a few lands assigned to Petty. Less prominent families, such as Baths and Cusacks, lost the greater part of their former holdings. Some names, such as Delafield, Missett and Sherlock dropped out altogether.

In areas where the Gaelic Irish were strongest in 1641 the proportion recovered at the Restoration was considerably smaller. Thus in Tipperary the O'Dwyers and O'Glissanes lost all their 1641 possessions; in their place such

18. For an account of these MSS see Anal. Hib., xvi. 339-73.

names as Prittie and Purefoy appear in the Restoration columns. In contrast, Butlers, Everards and Purcells recovered a great part of their former holdings. The Sligo book tells the same story: Taafe was restored; O'Gara and O'Connor Sligo lost everything.

In general, the books show that the old English of the pale recovered almost half their former holdings, while with the conspicuous exception of Clancarty the Gaelic Irish of Leinster and Munster were to a great extent eliminated. Considerable parts of Connacht and Clare continued to be catholic strongholds.

Complete accuracy cannot be claimed for the measurements recorded in the books. These were taken from the Down survey for most of Ireland and from the Strafford survey for Clare, Galway, Roscommon and Mayo. The general tendency of these surveys was to underestimate the area. Petty believed that Ireland contained about eighteen million statute acres. <sup>19</sup> The Ordnance survey figure is more than twenty million. With considerable fluctuations in the accuracy of the measurement of individual lands this deficiency of rather more than ten per cent governs the figures for all the counties, whether measured by the Down or the Strafford survey.

Another feature of the books is the division of land into profitable and unprofitable, which was made on a very arbitrary basis. In the area covered by the Down

19. Petty, Economic writings, ii. 558.

survey a comparatively small fraction of the land was classed as unprofitable, chiefly bog. In the Strafford survey a common practice was to decide that poor mountain land should be regarded as half or quarter profitable; the rest was shown as unprofitable.

In spite of these deficiencies the books of Survey and Distribution provide a remarkably complete record of the ownership of Irish land. The inaccuracies are no greater than we should expect from the primitive nature of the instruments employed.<sup>20</sup> There is no reason to suppose that they affect the relative proportion of lands held respectively by catholics and protestants.

By compiling lists of the areas assigned to each of the old families reinstated under the Restoration settlement or the later Commission of Grace, it is possible to make an estimate of the total area restored to catholics. The sorting out of owners into catholic and protestant is facilitated by the numerous references to religious denomination which the books of Survey and Distribution contain. There is also ample material in the records of the period for checking the religious affiliations of individual families. With very few (and clearly designated) exceptions, those who forfeited after 1641 and, still more so, those who followed James in 1688 were

20. Goblet, La transformation de la géographie politique de l'Irlande, i. 337-42, discusses the technical reasons for the inaccuracies of the survey.

catholics. Between 1641 and 1688 there were some defections from the catholic ranks, such as Wesley of Dangan and Fitzpatrick of Castletown. They were, however, comparatively few, and were more than offset by catholic purchases of land.

The Survey and Distribution books show the assignments made under the Restoration settlement. They do not show the purchases which catholics made on a considerable scale in the latter part of Charles II's reign and under James II. Particulars of a number of these purchases are available in the records of the Williamite forfeitures. The most notable of the estates thus acquired was that of Sir Patrick Trant, who among other purchases bought the large Clanmaliere estates in Leix and Offaly from Arlington, to whom they were granted at the Restoration. Tyrconnell also acquired the greater part of his estate by purchase.

Analysis of the Survey and Distribution books, read with the records of the Williamite forfeitures, shows that in 1688 catholics owned between a fourth and a fifth of the country. The number of catholic owners was rather more than thirteen hundred. Their holding of profitable land, some 1,700,000 Irish acres, works out at  
<sup>21</sup>  
 forty per cent above Butler's estimate.

21. The figures do not include the 'private estate' granted to James as duke of York. An account of this estate is given in chapter vi, infra.



## IV

The position created by the Restoration settlement was unstable and satisfied none of the parties. Catholics, encouraged by the Breda declaration to hope for full reinstatement, were sorely disappointed with the share assigned to them. Ormond's policy of favouring the old English at the expense of the Gaelic Irish perpetuated the differences which had split the ranks of the Kilkenny confederacy. Even among the old English many failed altogether to recover their possessions; others were only partially reinstated. Many of those who succeeded in establishing claims experienced great difficulty in getting actual possession of the lands assigned to them. Petty's contentions with McGillicuddy and Fitzgerald of Ticroghan are typical of numerous disputes which arose between Cromwellian settlers and returning Catholics. The unequal operation of the settlement was to have much influence on the proceedings of the patriot parliament of 1689 and on the attitudes of rival Jacobite parties after the Boyne.

Protestant opinion was no less dissatisfied with the Restoration settlement. Cromwellians showed a natural resentment at having to surrender portions of their holdings to former proprietors whom they continued to regard as conquered rebels. The Protestant attitude is summarised in a contemporary pamphlet: '--- the victors not being permitted to enjoy what they had justly won by the sword, while the Irish were restored to what they had as truly

forfeited by their cruel disloyalty, by which partial piece of justice the victors were indeed subdued and the conquered were in the conclusion victors'.<sup>22</sup>

Petty, who was absolved from surrendering any part of his possessions, took a rather different view, and deprecated the desire of 'some furious spirits' that the Irish should rebel again that they might be put to the sword. He thought that the English had played for heavy stakes and had won a gamester's right to their estates.<sup>23</sup> With the accession of James, Petty's chief concern was for the preservation of the settlement.

Petty's writings provide an illuminating commentary on the development of the situation up to the eve of the Revolution. His Political anatomy, in addition to its summary of settlement statistics, gives some account of the state of public opinion in the Ireland of 1672, with its people 'all in factions and parties, English and Irish, protestants and papists'. Petty remarked that 'the differences between the old Irish and old English papists is (sic) asleep now because they have a common enemy'. He himself thought that the real distinction was between those 'vested and divested' of the lands which catholics had owned in 1641. He observed, however, that

22. State of the protestant and papist proprietries.

23. Petty, Economic writings, i. ~~154~~154.

'the Irish vested by restoration seem rather to take part with the divested'.<sup>24</sup> Those Irish who had been restored to their estates 'almost by miracle' would, he thought, be careful in future not to 'engage any more upon a frivolous, impious undertaking'.<sup>25</sup>

From the beginning of James's reign the maintenance of the settlement became a recurring theme in the correspondence of Petty and his friend and kinsman, Sir Robert Southwell.<sup>k</sup> By August 1685 Petty found his Kerry troubles eclipsed by concern for the whole Irish settlement. Southwell anxiously inquired whether Petty had any particular reasons to believe the settlement in danger, and asked whether he could 'discover any new marks that the government is fond of a new scramble or to be pestered with some years' tinkering to frame a new settlement and put all trade, improvement and exchange in the meantime to a stand'.<sup>26</sup> In the correspondence the settlement is constantly referred to as 'the ship', and there is much discussion of waves and storms and of the need for dry-docking and caulking.<sup>27</sup>

Agitation against the settlement was stimulated by the reissue, in 1685, of Bishop Nicholas French's Narrative of the sale and settlement of Ireland. The correspondence contains several references to this book

24. Petty, Economic writings, i. 167.

25. Ibid., i. 170.

26. Petty-Southwell correspondence, p. 140.

27. Ibid., pp. 200-2, 266-7, etc.

to which Southwell urged **P**etty to write a reply, as he  
 eventually did.<sup>28</sup> In the summer of 1686 Petty had an  
 interview with Tyrconnell, which he thus described in  
 a letter to Southwell: 'He pressed me to speak of the  
 settlement. I told him there were things in it against  
 the light of nature and the current equity of the world,  
 but whether it was worth the breaking I doubted'.<sup>29</sup>  
 Southwell<sup>h</sup> took comfort from the fact that 'the great man'  
 had been heard to say that 'his own fortune was settled  
 by the acts and that his majesty has no thought of part-  
 ing with a foot of his estate in that country'.<sup>30</sup> Petty  
 next went to Windsor, where he had 'private and ample  
 conference' with the king, who told him 'expressly and  
 voluntarily'<sup>31</sup> that he would not break the settlement.

A leading part in the agitation against the settle-  
 ment was taken by Richard Nagle, writer of the 'Coventry  
 letter'. Petty, however, did not give up hope and con-  
 tinued his efforts to influence Tyrconnell. In March  
 1687 he wrote to Southwell: 'I have given many notes  
 to Thom Sheridan at my lord Tyrconnell's importunity,  
 who pretends to write the history of Ireland. To what a good  
 pass had I brought matters to with that great man till

28. Petty-Southwell correspondence, pp. 149, 155-7, 273.

29. *Ibid.*, p. 215.

30. *Ibid.*, p. 213.

31. *Ibid.*, p. 234. The Windsor visit was in Sept. 1686.

Dick Nagle came over'. Southwell in acknowledging a copy of the Coventry letter varied the usual metaphor with the observation that the settlement 'like Saint Sebastian is stuck full of arrows'.<sup>33</sup>

Petty's last work was the Treatise of Ireland, presented to James in September 1687. The treatise refers to protestant apprehensions, reflected in a drastic fall in land values and in the beginnings of a migration to England. Petty estimated that between 1683 and 1687 rents had fallen from three shillings and sixpence to two shillings and sixpence an acre, and sale prices from fourteen to ten years' purchase. The direct cause of this decline was, he believed, the fear that the settlement would be reversed. Petty himself considered that the apprehension of the protestants was excessive and that it was possible to find a satisfactory solution of the problem. '--- my own fears concerning the settlement are, and ever were, that the same was not better grounded upon the accounts'.<sup>34</sup> His somewhat naive proposal was to set up a court consisting of 'five of the most ancient, substantial, upright and experienced catholic gentlemen of Ireland' to answer such knotty questions as 'what persons adjudged innocent by the Court of Claims Anno 1663 were more nocent than those which the said court did

32. Petty-Southwell correspondence, p. 259.

33. Ibid., p. 264.

34. Petty, Economic writings, ii. 597.

judge to be nocent'. Those catholics who had been reinstated were to be treated in the same way as the adventurers and to surrender a third of their holdings to meet the claims of those still unsatisfied and to compensate any protestants who might be ejected from the lands assigned to them.<sup>35</sup> Petty also referred to the apprehension of protestants that 'by partialities in judicature they are like to lose their estates without reprisals'. This apprehension also was, he considered, exaggerated. Only five ejectment suits had been brought in 1687, 'whereas five hundred have been talked of and which probably will amount to thirty'.<sup>36</sup> Petty's proposals, and in particular his transplantation scheme, were curiously remote from the realities of the situation, but the treatise is of value as giving an account of the position in Ireland before the English revolution brought about an open breach between catholic and protestant.

From the entries in the books of Survey and Distribution the relative strength of the rival groups of landed proprietors, catholic and protestant, may be summarised as follows:

Protestants held almost the whole of Ulster and four-fifths of Leinster and Munster (excluding Clare). They also held the whole of Leitrim and nearly all Sligo. Catholics held nearly half the land beyond the Shannon.

35. Petty, Economic writings, ii. 581-2.

36. Ibid., ii. 602.

In the rest of Ireland, although the total area which they held was small, catholic proprietors included a number of magnates who exerted great local influence and, after James's accession, were the cause of considerable apprehension to protestants. The greatest of these was Lord Clancarty, who owned nearly the whole barony of Muskerry. Lord Antrim represented a catholic stronghold in Ulster. Lords Slane, Galmoy, Mountgarret and others had considerable estates in Leinster. Sir Valentine Browne, whom James later created Lord Kenmare, had a large part of Kerry.

Although the catholics were decidedly the weaker side, they were gaining in strength, partly by the gradual recovery of lost land, partly by new purchases. Except in the north, they had a strong enough nucleus of great landowners to enable them to take advantage of the political situation created by the accession of James. At the same time, there were a large number of expropriated persons pressing impatiently for the complete reversal of the settlement. They are referred to in a contemporary account as 'the old proprietors who evermore haunt and live about those lands whereof they were dispossessed, and cannot<sup>37</sup> forbear to hope and reckon a day of repossession'.

37. R. Southwell, *Some general hints of Ireland*, 1684 (B.M., Eg. MS 917, f. 88).

The course of the Williamite forfeitures was chequered and confused. There were several changes of policy, and much of what was done was later undone. In particular the situation was complicated by the restoration, under articles or pardons, of forfeited land and by the parliamentary resumption of William's grants. The story falls into three main sections.

Firstly, there is the period of the war of 1689-91, during which forfeiture policy played an important part in the strategy of both sides. It was of particular significance in the negotiations which went on almost continuously during the last year of the war and which culminated in the treaty of Limerick. The relation between the land question and the conduct of the war is the subject of further discussion in the following chapter.

The second section covers the period up to 1699, when the English parliament appointed a commission to inquire into the administration of the Irish forfeitures. The commissioners reviewed the entire proceedings of the crown in relation to the forfeitures from 1690 onwards. Different sections of their report dealt with outlawries, adjudications under the articles, pardons and royal grants. Most of these proceedings overlapped. Estates were forfeited and granted away; subsequently the owners were admitted to articles or contrived to secure pardons. Grantees received assignments which they had to hand



back, or of which they failed to obtain possession. Catholics originally spared were subsequently informed against and put on trial. Chronological treatment is impracticable, and the scheme adopted by the inquiry commissioners has been followed. Different sections of the inquiry report are dealt with in turn in chapters III-VI. The report gives a very summary account of the processes of outlawry and of admission to the articles. It throws little light on the nature and chronology of the proceedings, or on the various ways in which individuals were affected by them. Some attempt has been made to fill in the picture from the scattered evidence available.

The concluding chapters cover the third and final section, the period from the Resumption Act of 1700 to the completion of the trustees' sales in 1703. The English parliament, strongly objecting to the large grants which William had made to Bentinck, Keppel and other favourites, resumed all but a small fraction of the Irish forfeitures and <sup>ordered</sup> them to be vested in trustees. The trustees' administration involved the hearing of numerous claims preferred by interested parties, both catholic and protestant, and the sale of the resumed estates.

## CHAPTER II

## The war and the land, 1689-91

To James and William the Irish land question was a subsidiary matter; to their Irish supporters it was of major importance. From the beginning of the conflict it was recognised by both sides that the ownership of the land of Ireland was at stake. A virtual monopoly of the land would be the reward of complete victory for either side. In a negotiated peace religious liberty and the land would be the subjects of the hardest bargaining.

The repeal of the Acts of Settlement and Explanation had been pressed upon the reluctant James ever since his accession. The flight of the protestants and their adherence to William made an immediate issue of the question. Louis (or his secretariat) had a much clearer idea than James of the importance which the problem had for Irish catholics. The first letter which he sent to d'Avaux in Ireland gave a simplified version of the Restoration settlement and urged that James should be persuaded, firstly, to return to catholics the regicides' estates which had been granted to him, and secondly, to forfeit the property of disloyal protestants and grant it to catholics. Louis recognised that it might not suit James to resume the property of all protestants and thus alienate

protestant feeling both in England and in Ireland.<sup>1</sup>

D'Avaux gives a detailed account of the negotiations which led up to the Repeal and Attainder Acts of 1689. His letters show the steady opposition maintained by James to measures which were certain to arouse hostility in England. The most was made of loyal protestants and of catholics who had purchased from protestant grantees.<sup>2</sup> According to d'Avaux James threatened to dissolve parliament if certain catholics were not left in possession of their purchases, and several members countered with the threat that if they did not get satisfaction they would not follow James to the war.<sup>3</sup>

The acts as finally passed provided the basis for little short of a complete catholic reconquest of Ireland. Heirs of 1641 proprietors were to recover their ancestors' estates in full, and bona fide purchasers were to be reprimed by the forfeiture of property held by persons who had joined or abetted the rebels. James himself was to be reprimed with the estates held in 1641 by Lord Kingston.

The Act of Repeal provided for the appointment of commissioners of claims, and this seems to have given James the last word. Almost immediately a proclamation was issued that there would be no court of claims for

1. *Negoc. d'Avaux en Irl.*, pp. 31-2.
2. *Ibid.*, pp. 34-5, 56-7, 63, 111, 129.
3. *Ibid.*, p. 192.

the present, 'lest some should neglect the public safety upon pretence of attending their private concerns'<sup>4</sup>. It is doubtful whether a regular court of claims was ever established. King has an appendix which professes to contain copies of orders for the restoration of estates. But only one instance is given, that of Ballyshannon, county Kildare. An order was passed by the governor of the county in May 1690, at the close of the Jacobite regime, to the effect that Luke Fitzgerald had proved before him that his ancestors were possessed in 1641 of the mansion house of Ballyshannon. The new holder, Francis Annesley, was therefore directed to hand over possession of the house.<sup>5</sup>

It is evident that there were also numerous instances of informal seizure of the property of those protestants who had fled. In July 1689 the revenue commissioners issued orders for action to be taken against persons who had seized land on the pretext that the owner was absent in rebellion. Such lands were to be taken over by the lord lieutenant of the county pending further orders.<sup>6</sup> The revenue commissioners seem to have leased out some estates forfeited by the Act of Attainder, but the practice was later stopped on the ground that 'several officers on pretence of taking lands forfeited by the late Act of Attainder do follow the commissioners of revenue now in

4. Proclamation of 30 July 1689 (H.M.C., Ormonde MSS, ii.407).  
 5. King, State of the protestants, app. 24.  
 6. Nugent papers (N.L.I., MS 3302).

their circuit and thereby neglect to attend their commands'.<sup>7</sup> Ormond's correspondence refers to complaints that some of his tenants were compelled to pay rent to former proprietors on the strength of the Jacobite<sup>8</sup> legislation.

The evidence indicates that James and his government were by no means anxious to implement the Acts of Repeal and Attainder and tried as far as possible to restrain the natural eagerness of their dispossessed supporters. Little progress had been made for the formal transfer of land to the 1641 proprietors when the Jacobite defeat at the Boyne put any territorial reconquest out of the question. After that the catholics' only hope was to save as much as possible of their existing estates and liberties.

On the Williamite side also the importance of the land question was recognised from the first. Very diverse views were held on the subject, and the influence of different pressure groups can be traced in the development of the political side of William's campaign right up to the conclusion of the treaty of Limerick. The same diversity of views is traceable through the maze of forfeitures, pardons, grants and resumptions which constitutes the history of the Williamite forfeitures.

7. Proclamation of 25 Apr. 1690 (H.M.C., Ormonde MSS, ii. 436).
8. Ormond to Valentine Smyth, 2 Sept. 1690 (N.L.I., Ormonde MSS, clvi. 45).

The political side of William's war was a compromise. A policy of unconditional surrender would, if successful, yield a handsome dividend in the form of confiscations with which to pay for the campaign and reward deserving friends and helpers. On the other hand it was of over-riding importance to William to finish his Irish war as soon as possible and switch his forces to the continent. That object might be frustrated if the Irish were driven by desperation to prolong the struggle. At the same time William had no lack of Irish protestants to advise him that clemency to catholics would be a great mistake, and that the only safeguard for the English interest lay in depriving the Irish of their remaining lands.

The political side of the war has received less attention than the military. It is significant as marking out the divergent lines of force which determined the form of the treaty of Limerick and the way in which it was implemented. The military need for ending the war quickly on almost any terms was met by opposing thrusts from the Anglo-Irish, anxious to add as many acres as possible to the protestant interest, and from the English parliament, which wished to defray as much as possible of the heavy cost of the war from the proceeds of forfeited estates.

The partisans of varying points of view carried on

a lively warfare by memorandum and pamphlet from the beginning of 1689. The 'Documents on the reduction of Ireland' in the Royal Irish Academy contain a paper endorsed 'Difficulty of reducing Ireland, given to the prince, 1689'. This took the view that, as the English had seven million Irish acres and the Irish had only two million, it was not worth spinning out a war for the sake of confiscating the two million at the risk of ruining the seven million. The writer expressed himself in favour of a declaration guaranteeing their estates and religion to Irish freeholders. He recommended that the general sent over to reduce the country should be accompanied by commissioners empowered to treat with the Irish or any section of them.<sup>9</sup>

On 9 January 1689 the lords and gentlemen of Ireland presented William with a paper recommending that he should summon the catholics to surrender on a promise that they should enjoy their existing estates and 'be connived at in the private exercise of their religion by secular priests only'. Those who did not surrender within a time-limit should be proceeded against with the utmost severity. William was asked to lose no time in sending over sufficient force to reduce the obstinate.<sup>10</sup>

9. R.I.A., MS 24. G. 1, p. 1.

10. H.M.C. rep. 12, app. vi.184.

On February 22 William issued a declaration which was generally in line with these proposals. It called on the Irish catholics to surrender on the promise that they should keep their estates and continue to enjoy all the favour of the private exercise of their religion that the law allowed; an early session of the Irish parliament was ~~also~~ promised in which further indulgence to catholics would be proposed. The declaration added that the estates of those who did not submit by April 10 would be forfeited and distributed to those who assisted William in reducing Ireland to its due obedience. This declaration had practically no effect and it became clear that Ireland could not be reduced without the use of force.

The idea, evidently suggested by the precedent of 1642, that the land could be made to pay for the reduction of Ireland was early put forward by Richard Cox, later lord chancellor. He is said to have presented each member of the convention parliament with a copy of his 'Aphorisms relating to the kingdom of Ireland', in which he made the point that the estates of the Irish were sufficient to defray the expense of reducing them to their duty. He estimated that such estates amounted to a fourth of the country and were worth £3,000,000. The suggestion found favour with the English parliament and clauses applying the forfeitures to the cost of the war formed

11. H.M.C. rep. 12, app. vi. 164-5.

12. Ware, History of the writers of Ireland, p. 209.



part of various abortive attainder bills.

In the summer of 1689 the 'English nobility and gentry of Ireland' apparently suspected that William's terms were going to be too easy, and submitted a manifesto urging that the leading rebels should be excepted from pardon, on the ground that Ireland would always be rebellious as long as considerable properties remained in the hands of the Irish. This manifesto was answered by a pamphlet which made the accurate forecast that if the leaders were excepted from pardon they would prevent their followers from submitting, with the result that William's forces would have to remain in the field all winter.<sup>13</sup> This pamphlet was followed by another, which argued that some sort of declaration was necessary not to make the 'whole Irish nation' desperate, but that the chief and most notorious rebels should be excepted and their estates applied to the relief of protestants. The writer suggested that a distinction should be drawn between the Irish leaders. Clancarty and Antrim should on no account be pardoned. The pardoning of influential but less intransigent opponents, such as Brittas, Clancarde and Nettervill, might be useful and cause internal<sup>14</sup> jealousy. Cox at one stage suggested that a distinction might be drawn between the Irish and the old English,

13. Reasons for his majesty's issuing a general pardon to the rebels of Ireland.

14. A declaration for Ireland or no declaration?

which would have the advantage of making it clear to  
 the world that the quarrel was national and not religious. 15

It is a nice question how far the passing of the  
 Jacobite Acts of Repeal and Attainder influenced William-<sup>ite</sup>  
 policy. Forfeiting the estates of unsuccessful 'rebels'  
 was in any case part of the routine of Irish history;  
 in particular the parallel between 1641 and 1688 was in  
 everyone's mind. Even if no Jacobite parliament had  
 met, it seems certain that there would have been just  
 as keen a demand for Irish forfeitures. Strengthening  
 the protestant interest and financing an expensive war  
 by the confiscation of opponents' lands were primary  
 objectives for Williamites as they had been for parl-  
 iamentarians; the desire for retaliation was a second-  
 ary consideration. In any case, the acts were only the  
 last of a series of transactions, all of which pro-  
 testants considered to merit retribution.

King's State of the protestants makes a great deal  
 of both acts and has, via Macaulay, given the impression  
 that they loomed very large in the scheme of things.  
 From other sources it appears that the acts were taken  
 calmly enough. The 'breaking of the settlement' had long  
 been apprehended and cannot have come as much of a shock.  
 There are several allusions to both acts in the pamphlets  
 of the time, but there is little mention of them in the  
 State Papers or other official records. The numerous

Irish witnesses who appeared before the English house of lords from June to August 1689 to give evidence on the policy to be adopted for reducing Ireland and on the English attainder bill are not recorded as mentioning either act.<sup>16</sup>

Some use was made of the acts to strengthen the arguments of the more thorough-going section of William's supporters. Thus, while the repeal bill was still being debated in Dublin, a speaker urged the English commons to follow James's example and raise supplies by the seizure of Irish estates.<sup>17</sup> James's example was, however, only cited as a reinforcement of proposals that had been brought before the English commons some time before the Dublin parliament was convened. A Dublin news-letter, reporting with comparative coolness the passing of the Act of Repeal, remarked that its thirty provisions would very soon serve as a good precedent for the English.<sup>18</sup> A note of 1690 contains a suggestion of Dr Gorges, formerly Henry Cromwell's secretary and then Schomberg's, to turn the Irish Act of Attainder on themselves; each provision was to be used 'vice versa' against the Irish.<sup>19</sup>

But references of this sort are not very conspicuous,

16. H.M.C. rep. 12, app. vi. 137-44 and 229-35.

17. Grey, Debates of the house of commons, ix. 348.

18. R.I.A., MS 24. G. 2, p. 11.

19. Ibid., p. 2.

and the legislation of the Dublin parliament seems to have counted for little in comparison with the much greater issues involved in the war as a whole. The two acts must have contributed to the general stiffening of the protestant attitude against any settlement with the catholics; they do not, however, seem to have been taken into special consideration in the framing of William's policy.

Just before William left for Ireland one of Rawdon's correspondents wrote that the privy council were very busy about drawing up a declaration to be sent along with the king, and that there was no doubt that the Irish would come in on terms. He could only hope that the terms would not be too kind. <sup>20</sup> The question of terms is repeatedly referred to in the papers and correspondence of Southwell, who accompanied William as principal secretary of state for Ireland. On the first page of the memorandum which Southwell drew up immediately after his appointment is the note: 'About a declaration of pardon and how far to extend or contract it'. In the margin is the further note: 'To prepare some heads <sup>21</sup> herein as being a matter of great weight and consequence'. After William's victory at the Boyne Southwell took the view that the Irish cause was hopelessly lost: '--- we are told that, as the bulk of the nation were already

20. D. Golbourne to Sir A. Rawdon, 31 May 1690 (Rawdon papers, p. 325).

21. B.M., Add. MS 19,670, f. 2.

sick of the war and their brass imaginary coin made only valuable by the magic of their priests, so now the body of the people are fled wherever their fears or inclination send them, and that it is possible King James may fling up all to some of their nobility, who may retire to a few places of strength and there capitulate in the best manner they can. In the present prospect they seem to be a miserable people for having rejected his majesty's gracious proposal of 22 February 1689. His progress since he landed has been so quick that he hath issued no declaration nor overtures, and if he conquers the rest as this which is past they are all at mercy. Doubtless there will be sufficient to pay all arrears of the army and the present charge of the expedition, and England will not have cause to repent of the care and expense they were at<sup>22</sup>.

William directed Southwell to consult the committee of protestants who had taken provisional charge of Dublin. The question put to them was 'What is fit to be done for drawing in and protecting the Irish now in arms against their sacred majesties, King William and Queen Mary?' The committee's report maintained a significant silence about the Jacobite nobility and gentry but recommended that a free pardon should be given to those members of the lower orders who surrendered and gave up their arms; such pardon was to extend even to those who had committed murder or

arson, as any exceptions would be a deterrent to sub-  
<sup>23</sup>mission. On the basis of this report Southwell's  
 staff drew up a declaration, the scheme of which was  
 'to invite in all of the meaner sort, as farmers or  
 those who have some personal estate in house, goods or  
 cattle, but not to (be) meddling with the landed men  
 until it appears into what posture they throw themselves  
 and into what corners they retire'. Southwell expected  
 that this would bring in 'the body of men which make  
 the bulk of the nation and that the rest will after-  
<sup>24</sup>wards look the more abject'.

This was the well-known declaration of Finglas, in  
 which a sharp distinction was drawn between the Jacobite  
 leaders and their followers. The declaration offered  
 protection to common soldiers who submitted and surrend-  
 ered their arms; protection, which afforded security  
 from arbitrary molestation but no guarantee of estates,  
 was likewise offered to non-combatant gentry in the  
 Williamite quarters who submitted. But as for the  
 'desperate leaders', as William was now in a position  
 to make them sensible of their errors they were to be  
 left to the event of war, unless by great and manifest  
 demonstrations they convinced him that they were deserv-  
 ing of his mercy, which could never be refused to the

23. T.C.D., MS I. 6. 11, p. 57.

24. Southwell to Nottingham, 6 July 1690 (H.M.C., Finch  
 MSS, ii. 346).

truly penitent. The declaration resulted in a limited number of submissions on the part of the elderly and unwarlike, but , in the words of a subsequent proclamation, it did not produce 'those effects of gratitude and obedience from several of our rebellious subjects which we justly expected'<sup>26</sup>.

Contemporary accounts, both Williamite and Jacobite, are agreed that the uncompromising character of the terms offered served to stiffen the Irish at a time when their defeat at the Boyne and James's flight must have made their position appear desperate. Story, the Williamite chaplain, observed that many of the Irish officers complained that the declaration was too narrow and that their exclusion from its terms obliged them to stick together as their only means of self-preservation. Story, while doubting whether the offer of terms would have prevailed over Irish obstinacy, ventured the opinion that William himself would have preferred a more generous declaration but was obliged to consider the views of the English interest in Ireland.<sup>27</sup>

Bishop Burnet's comments ran on much the same lines: 'It was hoped that the fullness of the pardon of the commons might have separated them from the gentry, and that by this means they would be so forsaken that they

25. London Gazette, 3-10 July 1690.

26. Proclamation of 25 July 1690 (Mullenau, Journal of the three months royal campaign, p. 17).

27. Story, Continuation, p. 27.

would accept of such terms as should be offered them. The king had intended to make the pardon more comprehensive, hoping to bring the war soon to an end, but the English in Ireland opposed this. They thought the present opportunity was not to be let go of breaking the great Irish families, upon whom the inferior sort would always depend. And in compliance with them the indemnity now offered was so limited that it had no effect; for the priests, who governed the Irish with a very blind and absolute authority, prevailed with them to try their fortunes still'.<sup>28</sup>

The Jacobite author of 'A light to the blind' came to a similar conclusion:

'But the estated gentlemen the prince excluded from his mercy. This was a foolish edict, and the first of this kind, I believe, that ever had been. For commonly a prince entering into a country in order to conquer it doth in the first place encourage the principal persons to submit unto him. And when these are gained the rest do follow in course. I suppose the prince of Orange was persuaded to go against reason in favour of his great officers, who would have the Irish catholic lords of land to be rejected from all expectation of recovering their estates, because the said officers were sure in their own conceits that the Irish army would be overcome

28. Burnet, History of his own time, iv. 99.



at last, and because then they might have those lands  
<sup>29</sup>  
 by the prince's grant'.

The explanation for the uncompromising policy of Finglas is no doubt that William's appreciation of the situation after the Boyne was very much the same as James's, that all was over for the Jacobites. It is very doubtful whether William was personally in favour of a more liberal policy at that stage. There is a story that the declaration of Finglas was drafted by Richard Cox, who was a member of Southwell's staff, and that William accepted the draft in its entirety with the remark that Mr Cox had exactly hit his own  
<sup>30</sup>  
 mind.

The unexpected resistance of Limerick made William change his tactics, and a marked change of policy appears from the autumn of 1690. The new policy consisted in an attempt to divide the Irish leaders, driving a wedge between the influential minority who held estates under the Act of Settlement and the majority who had failed to recover their lands at the Restoration. A vested interest in the Restoration settlement, the maintenance of which depended on a Williamite victory, had been acquired both by those who had wholly or partly recovered their ancestral estates, and also by the 'new interest' - such

29. H.M.C. rep. 10, app. v. 137.

30. Ware, History of the writers of Ireland, p. 210.

catholics as Denis Daly who had bought land which had been granted to protestants. Charles O'Kelly, the author of 'The destruction of Cyprus', was highly critical of the latter class: 'These were men of new interest, so called because they had purchased from usurpers the inheritance of their <sup>own</sup> countrymen'. He observed that 'as these lands were restored to the old proprietors by the repeal of the settlement the covet<sup>ing</sup>~~ing~~ purchasers, preferring their private gains to the general interest of religion and country, were for submitting to a government which they very well knew would never allow that decree'.<sup>31</sup>

An important part in the handling of the new policy was played by Bentinck, William's chief Dutch adviser. Bentinck's letters contain numerous references to the negotiations and to Grady, the intermediary. Grady was John Grady of 'Cobray', county Clare. He is referred to as Counsellor Grady and seems to have been a barrister of the Inner Temple. He first comes into the picture at the end of July 1690, shortly before William began his siege of Limerick. He seems to have been sent out of Limerick by the Irish peace party to see what terms could be obtained from William for the landed Jacobites. He presented himself at William's camp at Goldenbridge and then seems to have been sent to England, where he was interviewed by Bentinck who decided that his

31. O'Kelly, Macariae excidium, p. 71.

services could be used for further negotiations with  
<sup>32</sup>  
 the Irish.

In October 1690 Bentinck wrote to Ginkel, the commander of William's forces in Ireland, that he had sent Grady over to Ireland and that it would be advantageous to press forward the negotiations as much as possible. <sup>33</sup> In November he wrote again, asking what had become of Grady and suggesting the use of other <sup>34</sup> intermediaries as the matter could not be neglected. In December he hoped that Grady would be believed and would succeed; he told Ginkel that he might allow Grady <sup>35</sup> to make his terms more favourable. In the same month Bentinck wrote again, asking impatiently for the result of Grady's mission and pointing out that if the Irish were to be brought to terms it was important not to make them desperate; Ginkel could well promise them more favourable and more general conditions. What Bentinck feared was that William's army might be locked up in Ireland for the next campaigning season, which would be 'disastrous considering the state of affairs

32. Clarke corr., i. 78. Grady's departure from Limerick is also referred to in a letter from the Marquis d'Albeville to Tyrconnell, 27 Oct. 1690 (H.M.C., Finch MSS, ii. 478). Cobray may be a corruption of Capparoo, where Grady's held land.

33. Correspondentie, p. 188.

34. Ibid., p. 191.

35. Ibid., 196.

in the Netherlands'. A few days later he wrote that William was so persuaded of the need to use his arms elsewhere that if things could be finished in Ireland he would probably agree to give a general pardon, with the exception of certain individuals; as Grady had brought proposals from the other side which amounted to more or less the same thing, Ginkel was asked to send him back to the enemy with authority to treat on these lines. By January 1691 Bentinck had further relaxed the terms and wrote that it would be better to do without all the confiscations than to be deprived of the troops for the next season's campaigning on the continent. Early in December William himself had written to Ginkel urging that the pace of the war should be stepped up in Sligo and Kerry as, if the rebels were not pressed, it was very doubtful whether they would submit to such terms as he was at that stage willing to grant them. Ginkel answered that the rebels would be reduced all the sooner if William were ready to make some concessions; he evidently thought that William was still trying to drive too hard a bargain.

The state of the negotiations at the end of 1690 is described in a memorandum given to d'Avaux by a

36. Correspondentie, pp. 197-8.

37. Ibid., p. 199.

38. Ibid., pp. 201-2.

39. Ibid., p. 192.

40. Ibid., p. 194.

follower of Baldearg O'Donnell. The object of the memorandum was to inquire whether French help would be forthcoming to enable O'Donnell~~is~~ to carry on in the event of Ginkel's terms being accepted by the old English. The terms were said to include an undertaking that all who held estates in 1684 should be restored, with the exception of Lords Clancarty and Antrim. This version tallies with Bentinck's reference to the exception of certain individuals from the general pardon. The agreement was to be guaranteed by the pope, the emperor and the king of Spain. The memorandum stated that these terms were attractive to the old English but stoutly opposed by the old Irish, who had regained little by the Restoration settlement and still hoped to recover<sup>41</sup> what they had had in 1641 or even earlier.

O'Kelly's references to the negotiations give the impression that there was a considerable body of opinion in favour of making terms. One reason which he gave for the Irish determination to resist was their lack of trust in the English, 'who infringed so often<sup>42</sup> the public faith'. From the Williamite side Story corroborates this, saying that, although William himself was punctual in his observance of the declaration of Finglas, some of his officers were apt to neglect the king's honour when it stood in conflict with their

41. Negoc. d'Avaux en Irl., pp. 738-9.

42. O'Kelly, Macariae excidium, pp. 58 and 102-4.

own profit and advantage.

The same point is brought out in a letter written by a Williamite observer in December 1690. He was of opinion that, if the Williamites had behaved with more lenity, the Irish, from what they themselves had said, would have submitted; they thought, however, that public faith had not been kept with them, and were particularly put off by the conduct of Douglas's army, which had 'traversed the country like the plague of Athens, paying no regard to declaration or protection'<sup>44</sup>.

Light is also thrown on these proceedings by a letter in which Sarsfield referred to negotiations which the prince of Orange had been conducting with Judge Daly, Lord Riverston and others who had promised to deliver up to him the strongest of the Irish posts. Sarsfield's military activities in the winter of 1690-1 were largely directed to countering this move on William's part.<sup>45</sup>

At this stage the Irish resistance movement was too strong for the peace party. In January 1691 Grady reported to Ginkel that he could no longer go into the Irish quarters or even send letters there except at grave risk. He therefore advised that Ginkel should make a public

43. Story, History, pp. 93-4.

44. Mr T. to his brother, 13 Dec. 1690 (T.C.D., MS I. 6. 10, p. 131).

45. Sarsfield to Mountcashel, 24 Feb. 1691 (Irish Sword, i.24)

declaration of William's terms. Towards the end of January Ginkel went to Dublin to consult the lords justices. He and they wrote jointly to Sidney, saying that Grady's business was still in suspense, but that they still hoped the Irish would have sufficient sense of their own interest to submit; their hopes were, however, endangered by William's premature order to disband some of his Irish regiments and by the report of Tyr-<sup>47</sup>connell's return from France.

The result of their discussions was Ginkel's declaration of 4 February 1691, which announced that their majesties had no desire to oppress their catholic subjects by persecuting them in their religion or ruining them in their estates and fortunes, and that they had therefore authorised Ginkel to grant reasonable terms<sup>48</sup> to all who would submit. This declaration was much too indefinite to produce results; it was intended as a preliminary feeler. As Coningsby, one of the lords justices, put it, it was not thought proper to grant a general amnesty in the name of the government till the temper of the Irish had been tried by Ginkel's declaration, which gave them 'all the hopes imaginable' and yet did not commit the king to anything. In spite of this somewhat cynical approach Coningsby evidently realised the

46. Ginkel to Coningsby, 13 Jan. 1691 (H.M.C. rep. 4, app., p. 318).

47. Cal. S.P. dom., 1690-1, pp. 230-1.

48. Dublin Intelligence, 3 - 10 Feb. 1691

advantages of concluding an immediate settlement on liberal terms. In the same letter he wrote: 'You know how little inclinable I am to show any favour to the Irish, but --- I cannot help wishing the war were over on any terms'.<sup>49</sup>

There was no response to Ginkel's declaration, and the negotiations seem to have hung fire until May 1691 when the question of terms was again raised by Bentinck. He wrote to Ginkel that if the Irish thought of surrendering, as there was some ground for hoping, he should not hesitate to give them quite favourable terms as nothing could be more helpful than to see the end of the war in Ireland.<sup>50</sup> Ginkel accordingly went up again to Dublin to consult the lords justices. The latter drafted a proclamation offering to all who surrendered pardon and restoration of their estates, and promising catholics such freedom to exercise their religion as they enjoyed in the reign of Charles II. The draft, which was prepared at the end of May 1691, provided the basis on which the articles of Limerick were later drawn up. A point of interest is that the draft proposed to name a specific year of Charles's reign for determining the privileges of catholics. Sending the draft to Sidney, Porter, the other lord justice, wrote

49. Coningsby to Nottingham, 17 Feb. 1691 (Cal. S.P. dom., 1690-1, p. 265).

50. Correspondentie, p. 236.



that it was absolutely necessary to end the Irish war that summer and that the terms proposed provided the most likely means of achieving that end. He realised that the declaration would be severely censured; the Anglo-Irish would be offended that the Irish were not quite beggared, and Sidney could well judge what the commons would say when they saw the lands gone which they had designed for the payment of the army. The official letter sent to Nottingham made it clear that the declaration was drafted in the light of Bentinck's instructions, but that the lords justices were themselves convinced that all the forfeited estates in Ireland were not worth one-tenth of the expense and hazard of another summer's war. The letter emphasised that less generous terms would be useless: 'Had that declaration published after the Boyne been more extensive, there had now been nothing to do'. It is significant that the secretaries of state in England should be informed in such an indirect way of the high policy adopted for winding up the war in Ireland.

Ginkel waited for a psychological moment and on 7 July 1691, shortly after the capture of Athlone, issued a proclamation in the name of the lords justices. In its final form the proclamation was considerably more elaborate than the original draft. It offered pardon to any officer or soldier of the Jacobite army who

The Williamite forfeitures, 1690-1703

A thesis submitted for the degree of Ph. D.

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Abstract

The thesis traces the history of the forfeitures from their inception after the Boyne to the completion of the trustees' sales in 1703. The part played by forfeiture policy during the war of 1689-91, and the processes of outlawry, adjudications under the articles of Limerick and Galway, and pardons are dealt with in successive chapters. William's grants and their resumption by the English parliament are then described, followed by an account of the proceedings of the trustees appointed under the Act of Resumption.

The thesis attempts to solve the problems about the ownership of Irish land before and after the war of 1689-91, which are discussed in Butler's Confiscation in Irish history. Those problems largely turn on the figures contained in the published report of the forfeitures inquiry commission of 1699. The thesis suggests that Butler's difficulties can be resolved by reference to the accompaniments to that report, which contain much detailed information about the forfeitures and

have not hitherto been used as a source. A copy of the accompaniments is in Trinity College, Dublin (MS N. 1. 3). The Books of Survey and Distribution and the Annesley manuscripts have also been drawn on in an attempt to establish the statistical framework of land ownership in Ireland at the end of the seventeenth century.

The results suggest that catholics owned considerably more land both in 1688 and in 1703 than Butler estimated. In particular, the full record indicates that the articles of Limerick and Galway were of much more importance in preserving catholic property than appears from the published report of the inquiry commissioners. The attempt has also been made to build up the narrative of the forfeitures from the scattered evidence available, and in particular to describe how the articles were implemented in respect of Jacobite landowners.

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within three weeks surrendered a fort or garrison, or brought in his regiment or troop or any considerable part of it. Similarly pardon was offered to such citizens of Limerick or Galway as proved instrumental in bringing about the surrender of either town. Those who thus earned pardon would be restored to the possession of any estates which they might have forfeited for treason. Jacobites were entreated to remember 'the quiet and blessed security which they enjoyed under the English government and the vast difference between that and the tyranny of France'.

The immediate effect on the Irish was inconsiderable; that on the Anglo-Irish was much more pronounced. Indignant protests were made that the terms were far too favourable and that Ginkel must have offered them without authority. The proceedings were wonderfully confused; there were two versions of the proclamation and much doubt as to which had been issued. No publication was made in the official Dublin Intelligence. It was alleged that the draft proclamation had been unanimously rejected by the Irish privy council and that protestants were not even allowed to see a copy of the final version. The lords justices seem to have tried to disclaim responsibility in an effort to save themselves from the protestant indignation of which they had been forewarned. In the second version assurances

were given to catholics who apprehended that they might be persecuted for practising their religion. The proclamation asserted that such apprehensions were groundless, as William and Mary had shown the world an example of religious tolerance 'in the ease and quiet enjoyed not only by the Roman catholics of Ireland but of England'. For their further assurance, however, it was declared that as soon as possible an Irish parliament would be summoned and such additional measures taken as would preserve catholics who submitted from any disturbance on account of their religion. The proclamation did not include a guarantee of the privileges<sup>52</sup> enjoyed by catholics in the reign of Charles II. A well-known letter from the chevalier Wogan to Swift states that just before Aughrim William offered to the Irish catholics 'the free exercise of their religion, half the churches of the kingdom, half the employments civil and military too, if they pleased, and even the<sup>53</sup> moiety of their ancient properties'. There appears to be no contemporary record of any such offer and Wogan may have been drawing on a confused recollection of the terms of the July proclamation.

When, after their victory at Aughrim, the Williamite forces approached Galway, Ginkel sent a trumpeter

52. T.C.D., MS I. 6. 10, pp. 149-51.

53. Wogan to Swift, 27 Feb. 1733 (Swift, Works, ed.

W. Scott, xvii. 450-1). The passage forms part of a long disquisition which, for reasons of space, is omitted from Ball's edition (Correspondence of Swift, iv. 390).

with a copy of the July proclamation to Lord Dillon, the governor, offering the same terms if Galway were surrendered before it became necessary to use artillery. The first answer was that Galway would be defended to the last, but next day the governor asked for a safe-conduct for emissaries who were to negotiate a capitulation. Bargaining went on for a whole day and night with the emissaries frequently returning to consult their principals. The articles of capitulation, signed on 21 July 1691, guaranteed their estates both to the garrison and to the mayor, aldermen, freemen and inhabitants of the town.<sup>54</sup> The articles were the subject of protestant censure and Bentinck wrote to Ginkel that the English thought he had given Galway unnecessarily favourable terms.<sup>55</sup> Ginkel's own view, even after Galway had surrendered, was that it was best to finish the war by giving the Irish a free pardon, and that one month of war would cost more than all the forfeitures were worth.<sup>56</sup>

A contemporary memorandum analyses from the official view-point the reasons for the protestant clamour against the proclamation of July 7 and the Galway articles. The writer suggested that one reason was that every 'gentleman of Ireland' expected a share of his catholic

54. A particular relation of the surrender of Galway.

55. Correspondentie, p. 249.

56. Ginkel to Coningsby, 24 July 1691 (H.M.C. rep. 4, app., p. 322).

neighbour's lands. He asked whether these gentlemen really wanted the war to go on for another year; whether they thought Ireland the ne plus ultra of the confederacy; and whether they did not know that a great part of the confederacy consisted of catholic princes. He apprehended that if Limerick were not taken during August the rainy season would set in. 'And then', he added, 'we know what will be the effect; for to be baffled now means another year, and there needs little explanation to know what force outwards is necessary to blockade twenty thousand men in a double city'.<sup>57</sup>

From the beginning of the final siege of Limerick the question of granting terms was under discussion among the Williamites. On August 1, two months before the capitulation, Coningsby wrote to Ginkel from Dublin, impressing on him the need for ending the war that summer and saying that if it could not be ended by force it should be ended by treaty: 'People generally here are averse to give the Irish any manner of conditions; but it is because they do not, as they ought, consider the misery of this country and less understand the circumstances of affairs abroad. But, my lord, if your lordship finds any inclination in the enemy to make an end of the war<sup>by</sup> that way and thinks that my being with you may contribute anything towards it, at a minute's summons, though I come alone, I will

be ready to attend you. I am not only more concerned than ordinary upon the account of our master, but have abundant uneasiness for fear the year being so far spent should by the cursed weather thás country is subject to hinder you, my lord, from finishing this work you have so gloriously begun and with such strange expedition carried on'.<sup>58</sup>

In the second week of August it was reported to Ginkel that the Irish were inclined to accept the terms offered in the proclamation, but had 'surmises of the parliament not making it good'; they had all agreed and signed a paper and taken the sacrament upon it that they would act only in accordance with a unanimous decision.<sup>59</sup>

Tyrconnell died in the middle of August, and a few days later Porter wrote to George Clarke, William's secretary at war for Ireland, that he thought this would mean the end of hostilities, as it was 'Tyrconnell's influence which held the French and Irish together. He referred to negotiations with Henry Luttrell, which he thought would produce a difference of opinion among the Irish: 'which together with good terms and the more dreadful persuasion of your army and cannon will necessarily draw on a speedy submission'.<sup>60</sup>

58. Clarke corr., x. 804.

59. Captain Peter Poore to Major Malcolm Hamilton, 8 Aug. 1691 (Clarke corr., x. 846).

60. Porter to Clarke, 19 Aug. 1691 (Clarke corr., x.875).



The submission was by no means speedy, and Ginkel's anxiety must have markedly increased as weeks passed by ~~with~~ without any intimation that the Irish were ready to come to terms. On September 16 Ginkel repeated the offer of the July proclamation and announced that it would hold good for another eight days.<sup>61</sup> On the eighth day, that is September 23, the Irish at last responded and the first meeting between Sarsfield and Ginkel took place. Ginkel had already received a letter from William authorising him to promise Sarsfield a reward if the negotiations were successfully concluded - a curious side-light which illustrates William's own anxiety for an Irish settlement and his recognition that Sarsfield was the key figure.<sup>62</sup> The offer of an Irish estate had no attractions for Sarsfield, but he asked for the privilege of sending back some cargoes of wine and other goods from France on the return voyage of the ships which transported the Irish troops. Ginkel fixed the quota at three hundred tons, and we hear later of two of Sarsfield's cargoes being seized by the customs but released on William's orders.<sup>63</sup>

The terms proposed by the Irish included a general indemnity and the restoration of all the estates held

61. Story, Continuation, p. 221.

62. Clarke corr., xii. 1010.

63. Cal. treas. papers, 1697-1702, p. 114; P.R.I. rep. D.K. 57, p. 484; Cal. S.P. dom., 1693, p. 5.

in 1688. They also asked for freedom of worship and an undertaking that there should be no discrimination against catholics in respect of employment or residence. 64 These terms were much too stiff for Ginkel, who replied that it was not in his power to grant them and that there was no advantage in his promising what the law would not allow him to make good. 65 Eventually the Irish came to terms and articles were signed, on 3 October 1691, which guaranteed their estates to those members of the garrison of Limerick and of the various forces still holding out in the west who submitted to William. Whether the articles also included those under the protection of the Irish was subsequently to be the subject of much controversy. Catholics were to enjoy such privileges in the exercise of their religion as were consistent with the laws of Ireland or as they enjoyed in the reign of Charles II. The articles concluded with a peculiar clause in favour of one of the Irish negotiators, Colonel John Browne of Westport. Browne claimed that the goods he had earmarked for the repayment of his protestant creditors had been commandeered by Tyrconnell and Sarsfield. The articles provided for the levy of a cess on each restored estate towards the payment of these debts. The provision no doubt enlisted

64. Story, Continuation, p. 230.

65. Clarke corr. xii. 1038.

the  
~~the~~ active support of Browne himself, but must have  
 been less attractive to the other Irish concerned; in  
 fact they later protested that Browne had procured the  
 provision by sinister and indirect means.<sup>66</sup> It was the  
 first part of the treaty to be ratified.<sup>67</sup>

The terms of the Limerick articles were strongly  
 criticised from both the Irish and the Anglo-Irish sides.  
 The Jacobite author of 'A light to the blind' commented  
 that the Irish commissioners agreed too easily with  
 Ginkel. They should have insisted on the right of all  
 catholics to the free exercise of their religion, their  
 temporal liberties and the restoration of the estates  
 which they held in the reign of Charles II. In partic-  
 ular he criticised the exclusion from the articles of  
 those catholics of the pale who stayed at home after  
 the Boyne and submitted to William, and also of those  
 who had been killed or taken prisoner.<sup>68</sup> O'Kelly also  
 blamed the negotiators and observed that the articles  
 were not so warily drawn but that room was left for  
 captious exceptions, neither was there any article  
 made assuring true worship.<sup>69</sup>

On the other hand the Dublin protestants were quick  
 to denounce the favourable character of the terms grant-  
 ed to the Irish. Archbishop Marsh was aghast at the

66. Cal. S.P. dom., 1693, p. 443.

67. Commons' jn., Ire., ii. 137 (7 Dec. 1695).

68. H.M.C. rep. 10, app. v. 175.

69. O'Kelly, Macariae excidium, p. 156.

unhappy conditions that (he knew not how or why) had been granted to a rebellious people that were not able to defend themselves.<sup>70</sup> A contemporary versifier summed up the protestant attitude:

'Hard fate that still attends our Irish war,  
 the conquerers lose, the conquered gainers are;  
 Their pen's the symbol of our sword's defeat,<sup>71</sup>  
 We fight like heroes but like fools we treat'.

In fact Ginkel had bargained shrewdly. The whole course of the negotiations shows that from August 1690, when William raised the first siege of Limerick, the rapid conclusion of the war on a negotiated basis was a more pressing objective for Williamites than for Jacobites, and that William's advisers were in favour of a liberal settlement if that would secure the immediate ending of the Irish campaign. The initiative for peace continually came from the Williamite side, and although a minority of the Irish were in favour of responding to Ginkel's approaches they were never able to prevail against the determination of the majority until the reverses at Athlone and Aughrim changed the military situation.

The negotiations carried on during the final year of the war had the effect of making the Williamite settlement much more of a compromise than it would

70. Marsh, 'Diary' (Irish ecclesiastical journal, v.148).

71. The British Muse --- to which is added A smart poem on the generous articles of Limerick and Galway.

have been if the Irish had given up the struggle immediately after the Boyne. Apart from the estates restored or preserved to those Jacobites who came within the terms of the articles, a number of pardons were given to those who had taken part in the negotiations or had submitted to the Williamite authorities.

## CHAPTER III

## Outlawries

The inquiry commissioners of 1699 reported that fifty-seven persons had been outlawed in England on account of the Irish rebellion, and that 3,921 had been<sup>1</sup> outlawed in Ireland. Numerous historians have quoted these figures, but no fuller account has been given of the proceedings.

The offence of high treason included levying war against the king in his realm, adhering to his enemies and giving them aid and comfort in the realm or elsewhere. On attainder of treason the blood of the offender was corrupted. He was liable to be hanged, drawn and quartered and to forfeit his lands and goods to the<sup>2</sup> king. Attainder could be either by act of parliament (in which case no evidence<sup>was</sup> necessary) or by judicial process. In the latter case a bill of indictment was first found by a jury and a writ of 'capias' issued to the sheriff for the arrest of the accused and his production in court. If the accused was produced he was

1. Commissioners' report, pp. 9-10. In fact, 3,921 is the total of the names recorded, including the fifty-seven outlawed in England.

2. Jacob, New law-dictionary, article on Treason. The death penalty does not seem to have been inflicted on any of those who supported the Jacobite cause in 1690-1.

either bound over for further appearance or put on trial before a judge and jury. If after two writs of *capias* the sheriff returned '*non est inventus*', a writ of '*exigent*' was issued which directed the sheriff to have the name of the accused called out on five successive county-court days, charging him to appear on pain of outlawry. If he did not appear by the last time of calling, he was said to be '*quinquies exactas*' and was declared an outlaw. Such outlawry involved '*attainder by process*, otherwise termed *attainder by default* or *outlawry*'. The majority of the Jacobites were outlawed in this way. Outlawry involved losing the benefits of a subject. The outlaw was liable to forfeit his goods and chattels and was incapable of suing in court. Outlawry was in any case a consequence of *attainder* for treason. The terms '*outlawed*' and '*attainted*' were both applied to the forfeiting Jacobites, without apparent distinction. <sup>3</sup>

Although a number of *attainder* bills in connection with the Jacobite war reached various stages in the English parliament, no act of *attainder* was passed. Instead, treason proceedings were taken against a large number of individuals by judicial process. The original case records of these proceedings were preserved in the iron

3. Jacob, New law-dictionary, articles on *Attainder*, *Attainted*, *Capias*, *Exigent*, *Indictment* and *Outlawry*. The English act of 1696 (7 and 8 Will. III, c. 3), which introduced certain regulations favourable to the accused in treason cases did not apply to Ireland.

chest of the court of king's bench in Dublin. They were destroyed when the record office was blown up in 1922. It is, however, possible to piece together a considerable amount of information about the proceedings from the forfeiture records, the State Papers and other sources. This information throws much light on the scope, distribution and timing of the Williamite outlawries. It also serves to correct some inferences which historians have drawn from the figures cited in the inquiry commissioners' report.

The commissioners stated that the names of all the persons outlawed, with their descriptions and the counties in which they were outlawed, appeared in the first of the nine books which contained the full record of the commission's investigations and were presented to the English parliament at the same time as the report.<sup>5</sup> The first book - the Book of Outlawries - is in three sections showing, respectively, those outlawed in England, those outlawed in Ireland for high treason committed there, and those outlawed for foreign treason. It will be convenient to examine these three sections separately.

4. P.R.I. rep. D.K. 17, app., p. 13.

5. Commissioners' report, pp. 9-10. T.C.D., MS M.I.3, ff. 1-70, contains a copy of the Book of Outlawries.



## II

Outlawries in England. The published manuscripts of the house of lords give in full the names of the fifty-seven persons who were outlawed in England. They were not, as Froude presumed, absentee Irish landlords. The list includes the duke of Berwick, Lords Melfort and Powys, and a number of English and Scottish Jacobites who had no connection with Ireland other than having gone there with James. The remaining names are those of Irish Jacobites, Tyrconnell, Antrim, Sir Patrick Trant and a number of others, most of whom are well-known, although there are several minor figures whom it is surprising to find in such a select list. The outlawry proceedings were held in England at a time when Dublin and the Irish courts were still under the control of James. The list contains all but two of the names proposed for inclusion in the attainder bill which was introduced in the English commons in June 1689, while the Irish parliament in Dublin was engaged in passing a similar, but much more comprehensive, measure. Discussions between lords and commons about the names to be included held up the English bill until August 1689, when it was killed by the prorogation of parliament. It was the first of the seven abortive attainder bills which were brought to

6. H.L.MSS, n.s., iv. 17; Froude, Ire., i. 245.

7. Commons' jn., x. 193.

varying stages of maturity in the first two of William's English parliaments. It was the only one to have such a limited character. The bill as sent up by the commons contained only twenty names; the lords struck out seven of them and in their place proposed four others, including Tyrconnell, Antrim and Richard Hamilton.<sup>8</sup>

It seems clear that the limited scope of this first bill was due to the fact that the Williamites still hoped that the Irish would capitulate without a fight. The inquiries which the lords held during the summer of 1689 on the state of Ireland contain frequent references to the belief that Tyrconnell was inclined to make terms.<sup>9</sup> A pamphlet of September, 1689, put the case for confining proceedings to a limited number of individuals. The writer thought that the readiest method of reducing Ireland was for William to make a further declaration offering such terms as would not make the Irish desperate, but that the chief and most notorious of the rebels should be excepted; the lords and gentlemen of Ireland had provided the privy council with a list of these.<sup>10</sup>

When it became evident that Schomberg's arrival was not going to make the Irish capitulate, English policy changed and subsequent attainder bills were much more

8. H.M.C. rep. 12, app. vi. 228.

9. Ibid., app. vi. 137-44.

10. Declaration or no declaration?

comprehensive in character. The later bills were designed to attain all those in rebellion in Ireland; the controversies which they excited related less to the comprehensiveness of the attainders than to the use to be made of the forfeited estates. As successive attainder bills failed to become law the action taken against the adherents of James was restricted to judicial proceedings. These proceedings, however wholesale and summary they might be, were considerably less thorough than an inclusive attainder act, such as the Cromwellian act of 1657,<sup>11</sup> would have been.

The first reference to judicial proceedings which we have is an address presented to William by the English commons in August 1689, on the prorogation day. The address asked him to issue a commission 'of oyer and terminer for the indicting of such persons as are or have been in rebellion in Ireland or elsewhere in order to their speedy conviction'.<sup>12</sup> Next we find from Luttrell's diary that in October bills were found at the sessions house in the Old Bailey against a number of catholics 'for being in arms with King James'. Luttrell evidently considered the case of importance as he gives the names of fifty-three of those indicted, all of whom are included in the list of fifty-seven<sup>13</sup> recorded by the inquiry commissioners.

11. Firth and Rait, Acts and Ordinances of the inter-regnum, ii. 1250-2.

12. Commons' jn., x. 269.

13. Luttrell, Brief historical relation, 1. 593-4.

The indictment included over thirty names in addition to those proposed for inclusion in the attainder bill; they were no doubt taken from the list supplied by the lords and gentlemen of Ireland. They included such prominent Jacobite peers as Clancarty, Galmoy, Gormanston and Limerick. Other well-known figures were Sir Richard Nagle and Sir Stephen Rice. Indictment was followed by further proceedings in the English court of king's bench. As those indicted were away in Ireland with James, it is to be presumed that writs of exigent were issued and that names were called out on the prescribed five occasions. We get references to the outlawry proceedings in the Irish inquisition records and in sundry petitions. The inquisition held in Kerry on Sir Valentine Browne records that he was outlawed on the eve of St Valentine's day, 1690, at the Guildhall, London.<sup>14</sup> A petition submitted by Simon Luttrell's wife mentions that Tyrconnell was outlawed at the king's bench in England on 'Monday next before the feast of St Valentine in the first year of their majesties' reign'.<sup>15</sup> The inquisitions on Dudley Bagenal and Lord Bellew of Duleek give 12 and 18 February 1690 as the dates of outlawry. The record of these English proceedings was transmitted to Ireland in November 1690 when William's courts were

14. P.R.O.I., Transcripts of exchequer inquisitions.

15. P.R.O.I., Wyche papers, petition book, pp. 29-30.

established in Dublin. All the subsequent judicial proceedings took place in Ireland.

### III

High treason in Ireland. The lists of those indicted and outlawed for high treason in Ireland contain 2,603 names, assigned to twenty counties as well as to the cities of Dublin, Cork, Waterford and Kilkenny and the town of Drogheda. The twelve counties for which there are no lists include Clare, Limerick and the counties of Connacht; a small number of persons from those counties are included in the Dublin city lists. Tipperary also does not figure, as it had its own palatinate court under Ormond's authority, which failed to send in a return to the commissioners.

The arrangement of the lists corresponds closely with that of the bills of indictment which are summarised in the seventeenth report of the deputy keeper of the Irish public records; this throws considerable light on the chronology of the proceedings. The summary gives the year and law term for most of the bills. It shows that the indictments began in the Michaelmas term of 1690 and that the great majority of them took place before the end of the war. Thus the statement starts with three bills for Meath, dated Michaelmas 1690; almost

16. P.R.O.I., Wyche papers, petition book, pp. 29-30.

17. P.R.I. rep. D.K. 17, app., p. 16.

the last item is a fourth bill for the same county, dated Easter 1693. The statement for domestic treason given<sup>in</sup> the Book of Outlawries similarly starts with three lists for Meath, containing in all 203 names; on the last folio of the statement is a fourth list for Meath, containing a single name. The inquisitions summarised by the Irish records commissioners also support the inference that the great majority of the proceedings for high treason in Ireland were concluded by the summer of 1691. This accounts for the fact that the lists are confined to the area over which William had jurisdiction at that time and do not include the counties beyond the Shannon.

In the majority of cases the proceedings seem to have been conducted in the absence of those indicted. Their summary character is illustrated by the records<sup>18</sup> of the Dunboyne peerage case. Thus a writ of exigent was issued by the court of king's bench in November 1690 against James Butler of Dunboyne. The sheriff of Meath was to cause the writ to be execut~~ing~~ed from hustings to hustings 'till according to the law and custom of Ireland he be outlawed if he do not appear, and if he appear he be produced to answer for treason whereof he is indicted'. The sheriff replied that on 16 April 1691 at a hustings held at Galtrim Lord Gormanston and the other defendants were called out a fifth time and, not

appearing, were named by judgment of the coroner as outlawed. The exchequer inquisitions for Meath give a number of names of persons declared to have been outlawed at Galtrim on 16 April 1691. 11 May 1691 was the date of many of the Dublin outlawries. Similar field-days seem to have been held at other places during the summer of that year. There is a good deal of variation between the county lists. Apart from Dublin city, which was supplied with victims from a wide catchment-area, the highest return was that from Westmeath, with 304 names. It was closely followed by county Cork, with 297. ~~It was closely~~ Queen's County has only twenty-one names; Longford and King's County do not figure at all.

There is much duplication. Thus Tyrconnell appears in twelve lists for high treason in Ireland, and many other names are shown several times over. It appears that juries liked to show their patriotism by indicting leading Jacobites whether they were connected with the county or not. A county Cork list starts off with Tyrconnell and the earl of Limerick, neither of whom owned property in the county. The Lond<sup>on</sup>erry list includes Lords Galmoy, Gormanston, Bellew and other prominent persons described as 'lately of Pennyburn mill'. This was the scene of a successful sally during the siege, and the indictment proceedings seem primarily to have been intended as a parting thrust from the defenders of Derry. All those named were the subject of outlawry proceedings

in their own counties and the Derry indictments had no practical effect.

The usual charges were those of having held military or civil office under James since 10 April 1689, the date mentioned in William's first declaration. In framing the indictments use seems to have been made of James's army list, as appears from a petition of Folliott Sherrigley to the Irish commons in which he refers to the service which he rendered 'in securing the muster rolls and books of entry of the Irish army after the rout at the Boyne, whereby the commanding officers who served in the Irish army were known and outlawed'<sup>19</sup>. But the outlawries were not confined to those who held military or civil office. Leslie quotes a series of questions proposed by the Dublin grand jury and answered by the judges on 21 November 1690. Among these were the following:

'Whether popish freeholders, who raised and maintained soldiers in their houses for their sons or others, that submitted to their majesties' declaration (of Finglas), took protection and did not violate the same, ought to be indicted for their former abetting of the rebellion?

Yes.

Whether an old proprietor that entered into possession of the late acts (of repeal and attainder) ought to be indicted or not? Yes.

19. Commons' jn. Ire., ii. 126 (29 Nov. 1695).



Whether popish freeholders, electors of parliament men, etc. who signed indentures of their election to the sheriffs and have committed no other crimes ought to be indicted of treason? <sup>20</sup> Yes!

A large proportion of those who were summarily outlawed consisted of persons who were in fact absent as active adherents of James. But equally summary treatment was given to quite a number of the elderly or unwarlike who took protection and remained in the English quarters. The records provide numerous examples of the very rough justice meted out in such cases. Thus from a petition presented to the English commons in 1701 it appears that Richard Fagan of Feltrim had responded to William's original declaration by resigning his commission in James's army and retiring quietly to his home, where in August 1690 some rapparees killed him for submitting to William. After his death he was outlawed by a Williamite court in Dublin for non-appearance and his estate was forfeited. <sup>21</sup> The English parliament was sufficiently moved by this story to grant his brother a <sup>22</sup> hundred pounds a year out of the forfeited estate. The same set of petitions contains a complaint from Michael Chamberlain that, although he had submitted on the declaration of Finglas and got his appearance registered

20. Leslie, Answer to --- the State of the protestants, pp. 26-8.

21. Annesley MSS, xx. 95.

22. 1 Anne, c. 47 (private act).

by the lord mayor, he was thrown into prison. While in prison he was indicted of high treason, 'and by a proceeding altogether new and unheard of before' the sheriff who had him in custody returned him 'non est inventus'; whereupon he was outlawed and his estate seized.<sup>23</sup> Parliament refused to take any action in his case, which may have been due to the fact that he was one of James's judges. Another case was that of Peter Nottingham, an old man of eighty-seven, who was indicted of high treason. 'Having by chance notice thereof he surrendered himself in order to his trial, and prayed that in regard to his great age he might be speedily either tried or bailed, but both were refused to him; he was thrown into a gaol and there continued in a most lamentable and necessitous condition without very necessities of life, and whilst there under the strictest confinement was outlawed for high treason without ever<sup>24</sup> being brought to answer for himself'.

Although most of the proceedings seem to have been of a summary character, we have records of quite a number of persons who presented themselves before the judges and were bound over to appear for trial at some future date. In April 1692 the lords justices reported that the court of king's bench would be full of 'notices

23. Annesley MSS, xx. 153.

24. Ibid., xx. 68.

and applications of those who were under protection and being indicted of high treason had appeared on the *capias* and exigent and so prevented their outlawry; before the reduction of Limerick it was thought fit to use these people with great tenderness'. As further instructions had not come from England the king's counsel had refrained from prosecuting them.<sup>25</sup>

The policy decided upon for such cases appears to have been one of masterly inactivity. When a fresh set of lords justices arrived in 1697, they found that, as for some years a stop had been put to indicting and outlawing, 'a great part of the papists' were either indicted and not yet tried or not yet indicted though liable to be so. Notices were therefore given to those who had been indicted and had from term to term appeared on recognisances to be ready to stand their trial.<sup>26</sup> Most of these were still untried in 1699, when the inquiry commissioners took a number of statements on the subject. Thus William Cook of Painstown told them that he was indicted in county Carlow at Michaelmas 1690, and bound over to appear at the king's bench in Dublin; he had since been summoned to attend the court at regular intervals, but had not yet been either tried or discharged. Patrick Wall was similarly indicted in 1690 and

25. Cal. S.P. dom., 1695 (addenda), p. 184.

26. Cal. S.P. dom., 1699-1700, p. 402.

continued to appear at the king's bench for several years; he succeeded in obtaining a trial at Carlow summer assizes in 1699, at which he was acquitted. Pierce Bryan of Queen's County appeared for <sup>erty-</sup> ~~thirt~~ three successive terms at the king's bench without being either tried or discharged.<sup>27</sup> The crown clerk of Tipperary supplied the inquiry commissioners with a list of sixty-six persons indicted for high treason in April 1691 and not since tried or outlawed.<sup>28</sup>

Virtually all those who remained unconvicted in 1699 appear to have escaped outlawry altogether. The inquiry commissioners had hopes of adding to the forfeitures by convictions being obtained in fresh or outstanding cases. The storm caused by the Act of Resumption seems to have been sufficient to put this out of the question. In their first report the trustees admitted that there was no prospect of fresh forfeitures as juries were determined to acquit in spite of the evidence.<sup>29</sup> In 1700 Methuen, the chancellor, summed up the situation by saying that 'everybody of sense sees that any future prosecutions, against whosoever they are, will have very little effect'.<sup>30</sup>

The records indicate that almost all the sentences

27. Annesley MSS, xxiii. 54-5.

28. Ibid., xxvii. 113-4.

29. H.L.MSS, n.s., iv. 208.

30. Cal. S.P. dom., 1700-2, p. 102.

of outlawry for high treason in Ireland were passed before the end of the war. Extremely few of the dates of outlawry given in the inquisitions are later than 1691. Those who succeeded in obtaining bail or avoiding indictment at that time were in nearly all cases able to escape actual outlawry, although they had to endure a good deal of trouble and anxiety. The last name in the Dublin city lists of outlawry for high treason in Ireland is Nicholas French of Abbert, county Galway. From a petition which he preferred it appears that he had brought a suit in 1693 against Denny Muschamp, who had retaliated by getting him indicted at Kilmainham 'in a time of peace when none were indicted'. French's story was accepted and a pardon granted. A bill of indictment was returned from Kerry at Michaelmas 1692. This corresponds to the Kerry list which is given on the last folio of the statement for high treason in Ireland in the Book of Outlawries and forms almost the last item of the statement. It contains only three names. The list does not include the Knight of Kerry, who had fought at the Boyne but did not come within the articles of Limerick. Proceedings were started against him, but the jury threw out the case.

The lull in proceedings for domestic high treason lasted from the surrender of Limerick till the end of

31. Cal. S.P. dom., 1698, pp. 243-4.  
 32. T.C.D., MS N. 1. 3, f. 48; William Brewster to Sir William Trumbull, 24 Nov. 1696 (H.M.C., Downshire MSS, i. 711).

1697. In the following two years there seems to have been a considerable amount of activity in prosecuting persons in Connacht who were neither indicted nor protected by articles, and also in bringing to trial persons who had been indicted in the English quarters during the war and had ever since remained on recognisances. The calendars of State Papers contain a number of petitions from those adversely affected by such proceedings. This renewal of activity does not seem to have met with William's approval; we find some cases in which he asked why prosecutions were being revived.<sup>33</sup>

Remarkably few results were achieved by this renewal of treason proceedings. The principal field for fresh action was in Connacht where there had been no indictments at all for high treason in Ireland. Some twenty Connacht names were included in the Dublin city lists of outlawry, but there remained a large number of Connacht landowners neither indicted nor protected by the articles of Limerick or Galway. This had been pointed out by the lords justices soon after the conclusion of the war in a letter in which they referred to those concerned in the rebellion and not comprised in any articles; 'living remote in Connacht, where the enemy's quarters were, they have not yet been prosecuted'.<sup>34</sup>

33. Cal. S.P. dom., 1699-1700, pp. 292, 323.

34. Ibid., 1695 (addenda), pp. 184-5.

Connacht, however, was still enough of a catholic stronghold to protect those who were prosecuted for domestic treason. The majority of the jurymen were catholics who refused to indict their co-religionists. The inquiry commissioners complained bitterly that Connacht seemed scarcely reduced to his majesty's obedience, protestant freeholders not being more than one in fifty and the juries being composed of articlemen<sup>35</sup> who acquitted those presented for trial. One of their witnesses deposed that he had been on the jury at the last Galway assizes when nearly forty persons were prosecuted for their part in the rebellion. Seven of the jurors were catholics and two were converts. They acquitted all the prisoners except one against whom the evidence was overwhelming. That case was ingeniously met by one of the jurors withdrawing with the result that the trial could not proceed and the prisoner was bound over.<sup>36</sup> Another witness referring to the same case opined that such jurors would not find the prisoner guilty, for they 'did not look upon it to be treason to be in arms and fight against protestants for King James'.<sup>37</sup>

It is perhaps more remarkable that so many of those who had been continued on bail in various counties of

35. Commissioners' report, p. 24.

36. Annesley MSS, xxiii. 138.

37. Ibid., xxiii. 123.

Leinster and Munster eventually avoided conviction, either by acquittal or by lapse of the proceedings. The ~~in~~ inquiry commissioners recorded their impression that protestant freeholders 'through length of time or by contracting new friendships with the Irish but chiefly through a general dislike of the disposal of the forfeitures' were reluctant to find any persons guilty of the late rebellion. There was, of course, a strong section of protestant opinion which maintained that the Irish had been much too leniently treated at the capitulation of Limerick, and which was anxious to deprive as many catholics as possible of their property. In 1695 the Irish commons expressed the view that 'the papists, who are equally guilty of the rebellion with those that are already outlawed, and not included in any articles or agreement or pardoned, be outlawed or attainted by act of parliament, and that those who have appeared or shall appear upon the exigents may be put upon their trials', But enthusiasm must have been considerably lessened by distaste for William's grants to Bentinck and Keppel, and by the apprehension that the English parliament was going to resume such grants as the Anglo-Irish had received. Furthermore, forfeitures incurred several years after the end of the

38. Commissioners' report, p. 23.

39. Commons' jn. Ire., ii. 144 (13 Dec. 1695).



war would have endangered vested interests acquired by protestants in the form of leases, mortgages and purchases. Considerable anxiety was expressed by the Irish commons during the debate on the bill for confirming the outlawries, and a committee was appointed to consider methods of preserving to protestants such rights and interests as might be affected by the bill.<sup>40</sup>

The 'new-found friendship with the Irish' is illustrated by a number of cases in which applicants for pardon offered evidence that they were on good terms with their protestant neighbours. The relations between country gentlemen of different religions seem often to have been better than one would have supposed from the corporate actions of the Irish parliament. An example of a catholic who escaped conviction as a result of the representations of his protestant neighbours was Thady Quin of Adare. The story is given in a lengthy report submitted by the attorney-general in 1699<sup>ix</sup>. In February 1698 Thady Quin was adjudged not to be within the articles of Limerick. This led to several attempts being made to indict him for high treason. Proceedings were brought in three counties. In two the jury returned a verdict of 'ignoramus'; he was indicted in a third county, but admitted to bail by the court of

40. Commons' jn. Ire., ii. 167 (12 Aug. 1697).

king's bench. Thereupon 'the high sheriff, grand jury and others of the protestant gentry and clergy of the county of Limerick' preferred an address to the chief justice that Thady had not plundered or oppressed any Englishman or protestant, but had done his best to protect his protestant neighbours during the Jacobite regime. As a result of these representations the case against him was withdrawn.<sup>41</sup>

The virtual restriction of effective proceedings for domestic treason to the period of the war and to the English quarters enabled a large number of catholics in Connacht and Clare to retain their property without being adjudged within the articles of Limerick or Galway. The number of those on the hither side of the Shannon who escaped outlawry without the protection of the articles was much smaller, but still appreciable.

#### IV

Foreign treason. The foreign treason lists given in the Book of Outlawries are for all counties except Meath and Tipperary and contain 1,261 names. More than a hundred of these had ~~h~~already appeared in the lists for high treason in Ireland, and a good many others are returned for more than one county. Most of the proceedings for foreign treason appear to have taken place in 1696. In February of that year commissions of inquiry

41. Dunraven, Memorials of Adare, pp. 181-5.

were issued for every county and county borough except  
 Tipperary.<sup>42</sup> Inquisitions were then taken and returns  
 made of those held to be concerned in treason beyond  
 the seas. We have a record of the inquisition held in  
 Drogheda on 27 March 1696 by which Bartholomew Gernon  
 and fifteen others were found to have withdrawn alleg-  
 iance from the king and the late queen and to have levied  
 war against them on 20 February 1693 with other persons  
 numbering about ten thousand, some of whom were subjects  
 of the king of France, with the object of invading  
 Ireland.<sup>43</sup> The inquisitions were followed by writs of  
 exigent and the calling out of those named. Sentences of  
 outlawry were passed on those who did not appear at the  
 third time of calling. From a copy of the writ of exigent  
 sent by the clerk of the crown to the sheriff of Waterford  
 on 12 June 1696 we find that Balthazar Sherlock, Walter  
 Galway and others were found by inquisition to have aided  
 and abetted the king of France, and that after having been  
 called out in three successive months and not appearing  
 they were declared outlawed.<sup>44</sup> About a third of the names w  
 were returned from Connacht and Clare. Evidently juries  
 could more easily be persuaded to find <sup>a</sup> against those who  
 had actually left the country, few of whom had any landed

42. P.R.I. rep. D.K. 17, app., p. 16.

43. N.L.I., Report on Verdon papers (MS 3297).

44. P.R.O.I., transcripts. Three callings seem to have suf-  
 ficed for foreign treason, as compared with five for  
 domestic treason.

property to forfeit. Conspicuous among those outlawed for foreign treason who had estates to lose were Lord Mountleinster in Galway and Walter Bourke and Henry O'Neill in Mayo.

Here again we find some examples of extremely rough justice. The first name on the Dublin city list of outlawries for foreign treason is that of Jane Levallin, spinster. In 1689 Jane was an orphan three years old; on the outbreak of the war her grandfather sent her over to France. During her absence she was outlawed for high treason 'supposed to be committed by her in parts beyond the seas'<sup>45</sup>. Her case was put before the English commons during the debate on the resumption bill, but rejected.<sup>46</sup> She then engaged the services of Dr Davenant, the well-known tory pamphleteer. This resulted in the passage of a private act for the reversal of her outlawry and the restoration of her forfeited estate.<sup>47</sup> Dr Davenant's services were not cheap. He was summoned by the English lords to explain why he had taken a bond of a thousand pounds from Jane to get her bill through the house of lords; 'the question being put whether it was a crime in the doctor it passed in the negative'.<sup>48</sup> Another hard case was that of Mary

45. Annesley MSS, xx. 60.

46. Commons' jn., xiii. 309.

47, 1 Anne, c. 56.

48. Luttrell, Brief historical relation, v. 175.

vernon, who was sent to France as <sup>a</sup> consumptive girl  
 of thirteen and had remained there with relations as  
 her father had died. During her absence she was out-  
 49  
 lawed for foreign treason. In her case also a priv-  
 ate act was passed for reversal of the outlawry and  
 50  
 restoration of the estate.

Sir Lawrence Esmonde was sent to France for educ-  
 ation in 1689, when he was twelve years old. He return-  
 ed in 1692 with a pass, and found that he had been in-  
 dicted for high treason alleged to have been committed  
 in Ireland. Queen Mary ordered the prosecution to be  
 stayed and he was left in peace till 1699, when a sec-  
 ond indictment was brought against him on the ground  
 51  
 that he had acted as an officer in France. William  
 gave orders that the prosecution should not be proceed-  
 ed with, but meanwhile the trustees for the Irish for-  
 52  
 feitures had interested themselves in the case. Accord-  
 ingly William thought that nothing could be done but to  
 tell the trustees the circumstances and inform them of  
 the orders which the queen had previously passed in  
 53  
 Esmonde's favour. The trustees persisted, but the

49. Annesley MSS, xx. 162.

50. 1 Anne, c. 61.

51. Cal. S.P. dom., 1699-1700, pp. 292-3.

52. Ibid., 1700-2, pp. 87-9.

53. Ibid., p. 173.

proceedings were terminated by one of the jurors withdrawing with the result that no verdict could be given.<sup>54</sup> By that time the period prescribed by the Act of Resumption for treason proceedings had elapsed. The large Esmonde estate thus escaped forfeiture.

## v

A number of historians from Ranke and Froude to Curtis have presumed that the figure of nearly four thousand outlawries related to landowners.<sup>55</sup> Butler has discussed this question in some detail. His conclusion is that as the total number of catholic landowners in Ireland could hardly have exceeded thirteen hundred<sup>56</sup> the outlawed persons were certainly not all landowners. The disparity between the total number of outlawries and the number of outlawed landlords is strikingly brought out by the second of the books accompanying the inquiry commissioners' report. This book - the Book of Forfeitures - gives particulars of the estates forfeited, including those restored under articles and by royal favour. The total number of estates recorded is only 457.

Examination of the lists of outlawries shows that the names fall into a number of categories. Besides landowners there are younger sons, tenants, traders

54. Annesley MSS, iv. 199.

55. Ranke, History of England, v. 207; Froude, Ire., i. 245; Curtis, Ire., p. 275.

56. Butler, Confiscation, p. 220.

and representatives of a variety of other occupations. There are many cases in which several members of one family were outlawed. Thus the Westmeath lists show four members of the family of Fox of Moyvore outlawed for high treason in Ireland and a fifth member of the same family outlawed for foreign treason. Many of those whom the lists describe as gentlemen are given addresses on other men's estates. Some of these were leaseholders, others were representatives of old families who had been dispossessed. The lists also contain a number of persons described as merchants and yeomen. There are quite a few artisans, and a Cork list contains some boatmen. A considerable number of priests are included; among them are the catholic archbishops of Armagh and Tuam.

In considering why so many landless persons should have been outlawed it must be taken into account that the penalties of outlawry were not restricted to the forfeiture of freehold property. Unexpired leases, mortgage claims and personal property were all the subject of inquisition proceedings. Some of the inquisitions take account of such minor items as bolsters and pewter dishes. The order given to the bailiff of Kilkenny in 1694 for the seizure of outlawed persons' property includes such articles as blankets, rugs and 'two French hats'. Another item is a hundred barrels

of beer from the Irish college.

We do not hear of death sentences being passed on any of those included in the outlawry lists. In a letter of 1693 instructions were given to the lord lieutenant that there were to be no executions without the queen's special order.<sup>58</sup> The 'act to hinder the reversal of outlawries' contained a provision which maintained the king's power of pardoning 'so as to save the life only of an outlawed person'.<sup>59</sup>

The hasty and irregular character of many of the outlawry proceedings was a source of considerable anxiety to those who had received grants or taken leases of the forfeited estates. A number of outlawries were reversed by pardons and others were challenged on legal points. The legality of outlawry after death was a particular point on which disputes arose. The opinion of the celebrated Sir Bartholomew Shower was obtained on the illegality of the indictment brought against Sir Valentine Browne, Lord Kenmare, after his death, which took place in August 1690.<sup>60</sup> A warrant was issued for the reversal of the outlawry on this ground, but it was then discovered that he had already been outlawed in England. William refused to permit the reversal of the English sentence.<sup>61</sup> The outlawry of Richard Fagan

57. P.R.O.I., Haydock papers.

58. Ibid., Wyche papers, 1st series, i. 73.

59. 9 Will. III (Ire.), c. 5, s. 21.

60. Cal. S.P. dom., 1694-5, p. 4.

61. Cal. treas. bks., x. 1417.



of Feltrim was challenged in the courts on the same ground, but the judges confirmed its validity.<sup>62</sup>

In transmitting the bill for confirming outlawries and attainders the lords justices explained that legislation of this character was absolutely necessary, as no outlawry was free from errors which were sufficient to reverse it and defeat the crown's title. In particular the law had been interpreted as permitting the attainder of those who had died in rebellion, but many such attainders had recently been challenged.<sup>63</sup> The bill provided for attainder in such cases on a finding by inquisition that the deceased had died or been killed in rebellion. A certain number of such findings are given in the inquisition proceedings. Many of those concerned were already included in the outlawry lists, but a few additional forfeitures were obtained by this means. In its original form the bill caused anxiety to protestants who feared that their interests might be adversely affected by it. Their protests led to an amendment to the effect that the provision for the attainder of those who had died in rebellion applied only to catholics, and that the rights of protestants who had inherited or purchased the property of such catholics should not be liable to forfeiture.<sup>64</sup> Protestants also expressed their objection to another

62. Cal. S.P. dom., 1694-5, p. 38.

63. Ibid., 1697, pp. 243-4.

64. 9 Will. III (Ire.), c. 5, ss. 3 and 4.

clause of the bill by which reversions of entailed estates were to be forfeited. This provision was accordingly made the subject ~~the~~<sup>65</sup> of a separate bill, which was rejected nem. con. Protestants who had purchased or lent money on reversions were naturally opposed to legislation of this nature. The inclusion of a similar provision in the English Act of Resumption was one of the reasons for its unpopularity in Irish protestant circles.

The inquiry commissioners reported that the forfeited estates amounted to 1,061,000 profitable acres (about one-seventh of the total profitable area of Ireland), of which 308,000 had been restored under the articles of Limerick and Galway or by royal favour. The figures were taken from the very confused accounts of the various bodies entrusted with the administration of the forfeitures during the preceding nine years. They failed to take into account certain estates which were subsequently seized by the trustees. Certain other estates of which forfeiting persons were believed to be freeholders were found on investigation to be leasehold property. The statistics of the forfeited estates will be considered in more detail at a later stage when the transactions of the trustees are examined. The

65. Commons' jn. Ire., ii. 176 (25 Aug. 1697).

66. Chapters IX-XI, infra.

effects upon the forfeitures of the articles and the pardons respectively will be considered in the two following chapters.

The articles of Limerick called for a pledge to surrender the arms and accoutrements of the Irish army and to accept the conditions of the articles. The articles provided that the Irish army should be disbanded and that the soldiers should be sent to France. The articles also provided that the estates of the Irish nobility and gentry should be forfeited and that the lands should be divided among the British soldiers. The articles were signed by the Irish army on 3rd September 1691. The articles were a result of the military setbacks of the Irish army during the Williamite War in Ireland. The articles were a humiliating defeat for the Irish army and for the Jacobite cause. The articles provided for the surrender of the Irish army to the British and for the disbanding of the army. The articles also provided for the pardon of the Irish army and for the return of the Irish army to their homes. The articles were a result of the military setbacks of the Irish army during the Williamite War in Ireland. The articles were a humiliating defeat for the Irish army and for the Jacobite cause. The articles provided for the surrender of the Irish army to the British and for the disbanding of the army. The articles also provided for the pardon of the Irish army and for the return of the Irish army to their homes.

As the articles contained the major check to the prospects of military and political success in Ireland, it is necessary to examine in some detail how they were implemented.

## CHAPTER IV

## The articles of Limerick and Galway

The articles of Limerick failed to secure to catholics the religious safeguards for which they had hoped as the chief reward of their stubborn resistance. But the second article, with the corresponding provision in the articles of Galway, did have the effect of restoring their estates to a considerable number of catholic landowners. Still more were secured in the possession of estates which lay in the Irish quarters and had not been forfeited. Under the articles a number of the outlawries were reversed and pardon guaranteed to those who had not been outlawed by the end of the war. The scheme of the articles provided the officers of the Irish army with the alternatives of going to France and forfeiting their estates, or of staying at home and securing the possession of their estates by submission to William. Sarsfield and Lord Galmoy were the most prominent of those who elected to go to France. The majority of those who owned land remained in Ireland.

As the articles constituted the major check to the processes of outlawry and forfeiture, it is necessary to examine in some detail how they were implemented

and what effect they had on the land question. The inquiry commissioners were supplied with lists of the adjudications under the articles. These lists, which give particulars of 1,283 claims, comprise the third and fourth of the nine books which accompanied the report of the commission. They provide our only substantial source of information on the subject, although they can be supplemented by a number of scattered references to individual~~s~~ cases. The lists give the name and address of each claimant, the articles (Limerick or Galway) under which the claim was made, the verdict and the date of the order. The most striking characteristic of the lists is the high proportion of claims allowed. In fifteen cases the claimants were adjudged not to be within the articles; one case was endorsed as still in dispute; the remaining claims were all admitted, a few of the entries being duplicated.

The successful claimants included representatives of almost all the leading Jacobite families. There were twelve peers - Antrim, Clanricarde, Dillon, Dunboyne, Dunsany, Fitzwilliam of Merrion, Gormanston, Iveagh, Kingsland, Louth, Mountgarret and Westmeath. The families of the pale were well represented with twenty-eight Fitzgeralds, twenty-two Nugents and lesser

numbers of other well-known names. The 141 claimants from county Galway included representatives of most of the 'tribes', Blakes, Lynches, Frenches and others. Claims were by no means restricted to the old English. Numerous MacNamaras and O'Briens from Clare appear in the lists. There are several Kellys from Connacht and Reillys from Cavan. Other representatives of well-known Gaelic families were Donough and Cornelius McGillicuddy of the Reeks and Morgan Kavanagh of Borris. Almost all the claimants seem to have been catholics, although the pressure of the penal laws caused a great many of them to conform to the established church in the course of the eighteenth century. A protestant exception was Sir Thomas Crosby of Ballyheigue, who sat in the Dublin parliament of 1689 and was one of those outlawed in England.

The inquiry commissioners reported that 233,106 acres were restored to the persons who were adjudged within the articles.<sup>2</sup> As in the case of other statistics given in the report this is misleading, and does not mean that the figure quoted represented the total area owned by the successful claimants. The second of the books accompanying the report - the Book of Forfeitures - gives the names of the persons, grouped by baronies, to whom the 233,106 acres were restored. The area

2. Commissioners' report, p. 12.

represents only 161 estates, almost entirely situated in Leinster and Munster. These estates were entered in the records as forfeited and later restored under the articles.<sup>3</sup> There were, however, a number of estates which were never forfeited, either because their owners were not outlawed or because their lands were in the Irish quarters and so were out of reach of the Williamite authorities during the war. The greater part of the land belonging to persons adjudged within the articles fell into these categories and so was not entered in the Book of Forfeitures.

The divergence is particularly marked in the case of county Galway, for which the inquiry commissioners showed only two thousand acres as restored under the articles. From comparison with the books of Survey and Distribution it appears that the total area owned by the 'articlemen' of Galway was rather over 100,000 acres. A few of these articlemen, such as Sir Walter Blake of Menlough, were outlawed in Dublin in the summer of 1691, but were never deprived of their estates. The majority of the Galway articlemen were never outlawed at all. A similar divergence is found in Mayo

3. T.C.D., MS N. 1. 3, ff. 71-160.

where the area shown as restored is between five and six thousand acres. The greater part of this belonged to Sir Henry Lynch, who went to France and forfeited his estate. At a later stage it was restored to his son, Sir Roebuck, who was adjudged within the articles of Limerick.<sup>4</sup> The Mayo estates of Lord Dillon are not shown, although Theobald, the seventh viscount, was outlawed in Dublin during the summer of 1691. He was killed at Aughrim and succeeded by his son Henry, who was one of the signatories of the articles of Galway. Their Westmeath property is recorded in the Book of Forfeitures as having been forfeited and then restored under the articles. The much larger Mayo property was not included, presumably because the authorities were not able to get hold of it until the end of the war when it was in the possession of Henry who was never outlawed and was entitled to the benefit of articles. The estate of Colonel John Browne of Westport, a signatory of the ~~treaty~~ articles of Limerick, was in any case not included in the record as he was never outlawed.

A puzzling omission is that of Lord Antrim, who was outlawed in England in 1690. There seems no reason why his estate should not have been seized before the end of the war. In fact, the citizens of Derry made

4. Annesley MSS, ix. 254.



an offer in May 1691 to take a joint lease of it, and part of the estate was actually leased to William Conolly as agent for the city.<sup>5</sup> A possible explanation is that Antrim was one of the first claimants to be adjudged within the articles - the date of his adjudication was 2 May 1692 - and that the lengthy business of drawing up an inquisition for his enormous estate had not been concluded by then. His name does not occur in the transcripts of county Antrim inquisitions for William's reign. Antrim's case was the subject of controversy and further reference will be made to it.

From comparison of the adjudications with the entries in the books of Survey and Distribution it appears that the area which the commissioners recorded as restored under the articles - 233,106 acres of profitable land - represented less than half the land owned by articlemen, and that the total area restored or protected by the articles was more than 500,000 profitable acres.

## II

In view of the importance attached to the articles in the controversial politics of the day and of the effect which the adjudications had on the land question, it is proposed to give as full an account as possible

5. Cal. S.P. dom., 1690-1, pp. 361 and 497.

of the proceedings, having regard to the limited nature of the available record.

William showed a commendable anxiety to implement the articles as quickly as possible. Early in January 1692 a letter from the lords justices mentioned that the king had directed the council to proceed to the examination of persons claiming the benefit of the articles of Limerick. In the same letter they said that to prevent dissatisfaction they had already restored their estates to about sixty persons who seemed to be undoubtedly entitled to the benefit of the articles; if subsequent examination showed that any of these were not so entitled they could easily be dispossessed. On 11 January 1692 a proclamation was issued in Dublin calling on those concerned to prefer their claims. A later proclamation prescribed that each claimant under the articles of Limerick or Galway should produce three witnesses, one of whom was to be a protestant; it was explained that the latter requirement was quite reasonable, as several protestants had remained in Limerick and Galway throughout the war. The first hearing took place on 6 April 1692. No adjudications, however, were given till April 20, when Sir Patrick Barnwell and Thomas Peppard

6. Cal. S.P. dom., 1695 (addenda), p. 174.

7. Dublin Intelligence, 26 Mar. - 2 Apr. 1692.

8. Ibid., 2 - 9 Apr. 1692.

were declared within the articles of Limerick. Claimants considered the conditions imposed to be unduly onerous. A statement of catholic grievances, submitted in 1693, protested <sup>against</sup> ~~about~~ the stipulation about witnesses and also against the demand that successful claimants should enter into recognisances of a thousand pounds each before being given back their estates. Articlemen were further aggrieved by an order of December 1692, under which many of them were imprisoned for three weeks.

The third of the books accompanying the report of the inquiry commissioners contains the adjudications given in 1692 and 1694. Authority was given in 1693 to Sidney as lord lieutenant to hear claims with his council, but he does not seem to have acted on it. There was a gap in the hearings until fresh authority was given to a new set of lords justices in April 1694. The book records 491 claims, of which seven were rejected and one is endorsed 'still in dispute'. One claimant was adjudged within the articles of both Limerick and Galway, and another adjudged not to be within the articles of Galway. The rest of the claims recorded in the book relate exclusively to the Limerick articles. Adjudications under the articles of Galway were held up on account of a disputed interpretation of those

9. Cal. S.P. dom., 1693, pp. 443-5.

articles which will form the subject of further discussion.

The Public Record Office of Ireland has a series of lists showing claims put down for hearing on certain dates in 1694.<sup>10</sup> A similar series for other dates in the same year is preserved in the National Library of Ireland.<sup>11</sup> The lists consist of the claimants' names and addresses, evidently in the hand of a clerk, and notes which are in another hand, possibly that of William Palmer, the deputy clerk of the council, who kept the minutes.

The notes show that the principal point at issue in disputed cases was whether the claimant had ever 'taken protection' from the Williamite authorities. The second article of Limerick contained a proviso excluding from benefit those who had taken protection (e.g. by voluntary surrender under the terms of the declaration of Finglas, which offered a guarantee of life and personal property but not of real estate). This proviso was attributed to the initiative of Richard Cox, who was convinced that many persons had taken protection from the Williamite authorities after the Boyne and had subsequently gone over to the Irish quarters. He wrote to this effect to the lords justices at the

10. P.R.O.I., Wyche papers, 1st series, iii. 1-2 and 2nd series, 106-18.

11. N.L.I., MS 174.

time of the negotiations for the surrender of Limerick and succeeded in getting such persons excluded from the articles.<sup>12</sup> The notes on the 1694 claims contain a number of references to this question of protection. Thus in the list of cases fixed for 14 July 1694 against the name of James Barrett of Curraghaneily there is a note 'second sitting after Michaelmas to prove protection'. In the list for November 19 James Barrett is again shown with the note 'proved in protection' and the order 'not within'. A considerable number of names are marked 'non app.' and no verdict is recorded, although in some cases the verdict would certainly have been against the claimant. Thus in the list for 18 June 1694 the names of George Darcy of Plattin and John Archer of Riverstown are endorsed 'took protection', while that of James Hackett of Ballytown is endorsed 'in France'. In a number of cases the king's counsel appears to have made unsuccessful attempts to prove that claimants had taken protection. A note against the name of Richard Reddy of Kilmurry records that a fortnight was given to the king's counsel to prove that he had taken protection. Similar notes were made against the names of John Purcell of Crumlin, Thomas Nevill of Rathmore and several others who are shown in the book of adjudications as coming within the articles.

12. Ware, History of the writers of Ireland, p. 213.

We have a considerably fuller record of one of the claims. This is the case of Edmond Blanchfield of Blanchfieldstown, who is shown in the book of adjudications as adjudged within the articles of Limerick on 27 November 1694, with the further endorsement 'still in dispute'. The Wyche papers contain notes of the evidence recorded in the case - the only example of such evidence which we have. The court heard a number of witnesses, including one who gave his evidence in Irish through an interpreter. From the depositions it appears that immediately after the declaration of Finglas, while William was still at Finglas, a friend of Blanchfield's obtained a protection for him and sent it to him. Before it arrived Blanchfield had already left his home near Kilkenny and had gone off to county Cork. When the protection was forwarded to him he sent it back to a neighbour, asking him to use it to save Blanchfield's stock from the depredations of William's army. The protection was actually so used by the neighbour and by Blanchfield's seventeen years old daughter, who had remained to guard her home. The court found that Blanchfield had proved himself to have been on the relevant date in that part of county Cork which was in the Irish quarters. A note was made that he was adjudged within the articles unless the king's counsel could prove that he had taken protection. On the evidence recorded it is somewhat

surprising that the court should have had any hesitation about deciding against the claim. The case was the subject of dispute and had not been decided at the time of the inquiry commission of 1699.

In 1701 the matter came before the trustees, and the discussion which then took place throws further light on the proceedings. Palmer, the deputy clerk of the privy council, was called on to give evidence. He read out the minutes of the case, from which it appeared that six members of the court had found for Blanchfield and three against him. Palmer maintained that he must have received orders to enter the claimant as adjudged within the articles or he would not have done so; when the court was divided in opinion the minutes and the rule passed on them were always read out. However, no certificate had been issued to Blanchfield. From Palmer's evidence it appears that Sir Cyril Wyche, one of the lords justices who had found against the claimant, declared that he would never sign the certificate. In 1697 Blanchfield had preferred an appeal to William, praying that the lords justices should be ordered to certify his adjudication. When this appeal was referred to Ireland a note was added to the original record that one of the lords justices had been against the adjudication and another for it. In 1698 William had ordered a fresh

hearing of the case. There were various postponements, but it appears that Blanchfield was again adjudged within the articles; the decision, however, was not given till 13 September 1699, a few days after the last day allowed by the act for the confirmation of the articles of Limerick. Blanchfield again applied to William, who ordered that he should be allowed to refer to the minutes taken at the council board and to the orders passed on them. William, in fact, seems to have done his best for Blanchfield without being able to make his intervention effective as against the authorities on the spot. Unluckily for Blanchfield, Wyche, who had been the adverse lord justice, was again seized of the case as chairman of the trustees. The trustees' finding was that there was no adjudication entitling Blanchfield to the benefit of the articles. His estate was accordingly forfeited and sold.<sup>14</sup>

The question of defining the Irish quarters was raised in the case of Peter Trant of Dingle, whose name occurs in the list of claims put down for 29 November 1694. The case was endorsed 'respitt. whether Dingle was in the Irish quarters'. The case was decided in favour of the claimant and less than a month later he was adjudged within the articles. A curious objection was raised to the claim of Sir James Cotter that he had infringed the articles by resuming possession of his



estate without authority. The matter was referred to Cox, on whose report Cotter was admitted to the benefit of the articles. Representations against this decision were made to the English commons, and the matter was discussed in a report presented by a committee in 1694.<sup>15</sup> Cotter remained in possession of his estate. The fate of his unfortunate son, who was hanged for rape in 1719,<sup>16</sup> is referred to at some length by Froude. Another case about which representations were made to the English commons was that of Lord Antrim. It appears that Antrim was established on a hill outside ~~the~~ Limerick and was not in the town at the time of the capitulation. Protests were made to the commons against the decision by which his occupying the hill with a few men surrounded by a small ditch was 'adjudged to be a good garrison!'<sup>17</sup> Antrim's case was later the subject of discussion when the Irish parliament ratified the articles of Limerick without the 'omitted clause', a vexed question which will be examined in some detail.

The first series of adjudications, in which the tribunal consisted of the lords justices and privy council, continued until the end of 1694. After that there was a break of almost three years during which no claims under the articles were heard. The delay

15. Commons' jn., xi. 56.

16. Froude, Ire., i. 479-82.

17. Commons' jn., x. 830.

seems to have been due to the controversy over the ratification of the articles by the Irish parliament. The adjudications did not legally depend on any act of parliament. There was, however, much controversy over the interpretation of the articles, and in particular over the omitted clause, which extended them to persons under the protection of the Irish in certain counties. Capel, who became lord deputy in 1695, was violently anti-Irish and the hold-up in the adjudications may be attributed to his influence. The treaty of Limerick was thoroughly disliked by a considerable section of protestant opinion. This point of view was frankly expressed in a letter written by Bonnell, the Irish accountant-general, to Harley immediately after the conclusion of the war: 'Had the Irish been totally reduced by the loss of all their estates, this country would have been looked on by the English as a secure place and many would have flocked here'<sup>18</sup>. Capel drew round him a party of the noisier protestants, who were particularly bitter against Porter, the lord chancellor. Porter had been one of the signatories of the articles, and as a lord justice in 1692 and as chancellor in that year and in 1694 was prominently associated with the adjudications. He was accused of showing undue favour to catholics, and was described by one of his opponents

18. H.M.C. rep. 14, app. ii. 479.

as a danger to the country. William appears to have been personally in favour of a liberal interpretation of the articles. After Porter's death he is said to have regretted the loss of a good chancellor and to have opined that 'the root of animosity against him was for little else than his supporting the articles of Limerick',<sup>20</sup>

The Irish parliamentary proceedings for the ratification of the articles were largely concerned with the omitted clause, which will be the subject of discussion in the following section. The act as passed ratified the second article of Limerick as applying only to (a) the inhabitants of Limerick and of the other garrisons which were in Irish possession on 3 October 1691, and (b) the Irish officers and soldiers then in arms who were not prisoners of war and had not at any time previously enjoyed the protection of the Williamite authorities for themselves or their families or goods.

The act conferred pardon on all persons already adjudged<sup>21</sup> or to be adjudged within the second or third articles.

After the passing of this act hearings began again before a new tribunal consisting of nine judges, three each from the courts of king's bench, exchequer and common pleas. The fourth of the books accompanying the inquiry commissioners' report contains particulars of

19. H.M.C., Buccleuch MSS, ii. 425-6.

20. Southwell to Cox, 26 Dec. 1696 (Ware, History of the writers of Ireland, p. 218).

21. 9 Will. III, c. 2. The third article referred to merchants who were abroad at the time of the capitulation but returned within eight months.

the 791 adjudications given by the judges between 27 October 1697 and 1 September 1699. The latter was the final date prescribed by the act for admitting claimants to the benefit of the articles. Eight claims were rejected by the judges and the rest allowed. The inquiry commissioners made several criticisms of the court of claims constituted by the judges. They commented that in many cases the articles were 'expounded too beneficially', and that claimants received their adjudications before the expiry of the prescribed period of fourteen days. They apprehended that a great many persons had thus been restored to estates that 'upon a review would be found to belong to his majesty'. They also remarked that more adjudications were given since the commencement of the inquiry commission than had previously been given since the articles were drawn up. <sup>22</sup> The last point is not far short of the truth. The list of adjudications shows that about six hundred claims were decided between 1 June and 1 September 1699. On the latter date - the last day available for admitting claimants - seventy-five claims were allowed.

Cox, who was one of the judges concerned, emphatically repudiated the charges made by the commissioners: 'What is but common justice they may call favouring

22. Commissioners' report, p. 13.

the Irish and a lessening of the forfeitures, and we cannot help that. We got nothing but trouble and censure by that court of claims, and if the justice we administered there will distinguish us and preserve us from the destroying angel when he comes to punish the oppressions and perjuries, notorious and public, committed against the claimants it is all the reward we desire or expect'. The commissioners had criticised the court for hearing nearly a hundred cases in a day at short notice. Cox explained that some busybodies in Kilkenny had indicted some poor tradesmen, which had caused a panic in the counties of the west and brought several hundred claimants up to Dublin. The judges found that many of them had no landed property and, after consulting the government, told them that the authorities had no intention of troubling landless men and that they might go home. The claimants, however, protested that indictments might at any time be brought against them unless they had adjudications. The court therefore gave adjudications to a total of 3-400 landless claimants on the evidence of one or two witnesses in each case. Landowners were usually required to produce  
 23  
 three or four witnesses.

Reference to some individual cases may help to show how far the judges succeeded in keeping a course between

laxity and undue severity.

One of the unsuccessful claimants was Thady Quin of Adare. He was proved to have ~~between~~ been within the walls of Limerick at the time of the capitulation. However the 'king's managers' (counsel for the crown) produced evidence that in 1690, during the first siege of Limerick, he had been in the Williamite quarters in the company of several protestant gentlemen. It was thus inferred that he had taken protection and was thereby excluded from the benefit of the articles. <sup>24</sup> As already mentioned, the authorities were later induced to drop the outlawry proceedings in his case.

Charles Geoghegan of Moycashel, another unsuccessful claimant, got the Emperor to intercede on his behalf with William, who called for a report on the case. From this report Geoghegan appears to have claimed that on 3 October 1691 he was colonel of an infantry regiment in the garrison of Ennis, and that he had never taken protection from the Williamite authorities. Against this the king's managers produced several witnesses 'both protestant and papist of a fair and good reputation', including some officers of the late Irish army, who deposed that Geoghegan had taken protection after the Boyne and that his regiment had been disbanded. Evidence was given that after the first siege

24. Dunraven, Memorials of Adare, p. 181.

of Limerick had been raised Geoghegan had gathered together ' a huge number of loose, idle persons, commonly called rapparees, in no way concerned in the army, and had infested and laid waste as much as in him lay the country, so that he was pursued even by the Irish army and fled from them'. It was also deposed that Ennis was never a garrison and that no part of the Irish army was ever kept there apart from some few wounded and sick who lay there for the recovery of their health. Geoghegan was allowed time to produce evidence to rebut these charges. Among his witnesses was Lord Dillon, who could only depose that he had heard that Geoghegan had been in arms but had not actually met him. The case was given a number of hearings, and the judges took several days to read their notes and consider their verdict, which was given unanimously against the claim. The emperor's intercession seems to have been made after the expiry of the period prescribed for the admission of claims, and the lords justices strongly advised against the reopening of the case.<sup>25</sup> The decision was upheld and Geoghegan's estate was subsequently sold by the trustees.

A number of the claims adjudged in 1699 seem to have been preferred earlier and allowed to remain dormant. The list of claims put down for hearing on 12 July 1694 contains six names marked 'non app.', all of which ap-

25. Lords justices to William Blaythwayt, 25 Oct. 1699 (B.M., Add. MS 9,716, pp. 98-9).

appear in the adjudications of 1699. The inference is that the claimants were left undisturbed and took no steps to prosecute their claims until they were alarmed into further proceedings by the activity associated with the forfeitures inquiry and by the time-limit fixed by the act for the confirmation of the articles.

The claims of David Nagle of Carrigacunna and Pierce Nagle of Annakisky were put down for hearing on 19 November 1694. Against each an endorsement was made that further time was given to the king's counsel to prove the claimant in protection and that the cases were adjourned until the second sitting after Christmas.<sup>27</sup> No sittings are recorded after that Christmas and thereafter the privy council ceased to be the tribunal for hearing claims. The next we hear of these two cases is in 1699, when David Nagle was adjudged within the articles of Limerick and Pierce Nagle's claim was disallowed. Thomas Broderick told the inquiry commissioners that David Nagle had taken protection and then had gone over to the enemy. Broderick had made it his business 'without the prospect or expectation of a penny ~~reward~~ profit' to send witnesses to Dublin to prove the protection. He had refused

26. N.L.I., MS 174.

27. P.R.O.I., Wyche papers, 2nd series, 115.



Nagle's offer of half his estate if he would 'surcease prosecution and only be passive in the matter'. Broderick added that when<sup>28</sup> heard that the credit of some of the crown witnesses was impaired by Nagle's evidence he wrote to the crown solicitor offering to send up further witnesses who would put the matter past dispute. The court was divided on the question of allowing further evidence. It finally refused to do so and admitted Nagle to the benefit of the articles. A more sinister story was told to the commissioners by a witness named James Walsh. This was to the effect that David Nagle had assigned his estate to Lord Chief Justice Pyne and that his lordship had admitted as much to the witness and even shown him the deeds. The commissioners tried to carry their investigation of the case further by summoning Nagle himself. They were, however, informed that Nagle declined to appear and had expressed his opinion of the summons in highly derogatory language.<sup>30</sup>

The case of Thady Mulloony of Gurtinally, county Clare was included in the list of claims to be heard on 14 November 1694 and was endorsed 'speak with the managers tomorrow'. The case was not decided until 11 July 1699, when Thady Mulloony was adjudged within the articles.

28. Annesley MSS, xxiii. 66.

29. Ibid., xxiii. 75.

30. Ibid., xxiii. 88.

Most of the claims heard by the judges seem to have been admitted without much ado. The record naturally tends to be fuller in the few cases over which disputes arose. From the material available we get the general impression that the proceedings were reasonably fair and that in contested cases sufficient opportunity was given to claimants to bring evidence in support of their claims.

### III

The controversies which arose over the articles of Limerick centred to a remarkable degree on the celebrated 'omitted clause', which brought within the scope of the second article all those that were under the protection of the Irish in the counties of Limerick, Cork, Clare, Kerry and Mayo. Both Murray and Butler give accounts of the omission of the clause. There is, however, a good deal of material to which they have not referred and which brings fresh information to bear on the question. The story is peculiar. Its reconstruction admits us in some degree to the inner councils of William and his advisers and throws some light on their attitude to Irish problems. At the same time a number of points remain obscure and there is much that is enigmatic about the whole proceedings.

31. Murray, Revolutionary Ireland and its settlement, pp. 239-40; Butler, Confiscation, pp. 222-6.

A prominent part in the drafting of the articles was taken by George Clarke, who was secretary at war for Ireland and acted as Ginkel's civil adviser. In his autobiography, written in 1720, Clarke referred in some detail to the question of the omitted clause. On 27 September 1691 the Irish had sent to Ginkel the terms which they proposed for the capitulation.<sup>32</sup> Clarke says that 'these being very large it was thought better to send them a draft of the terms we would grant them than to retrench and alter theirs'. On September 28 Sarsfield came to Ginkel's camp to discuss the draft. He was accompanied by Sir Toby Butler and others. Clarke goes on to say that the first question which Sir Toby asked was what was meant by the title 'Articles granted by Lieutenant-General Ginkel, commander-in-chief of their majesties' forces, to all pæersons now in the city of Limerick or in the Irish army, that is in the counties of Clare, Kerry, Cork and Mayo and other garrisons that are in their possession'. Clarke answered that they meant to grant terms to those who were in a condition to offer opposition. Sarsfield then said that he would 'lay his bones in these old walls rather than not take care of those who stick by them all along'. The second article was therefore construed to extend to all those under the protection of the Irish in the counties referred to.

32. Diary of the siege and surrender of Limerick, p. 16.

Clarke pointed out that he had made particular mention of the matter as the words, though at first agreed to, were omitted by mistake in transcribing the copy of the articles which was signed; the mistake was not found out until the following day when Ginkel's son had already left for England with the 'original or a copy to be laid before their majesties'. Clarke added the following comment: 'This occasioned a great deal of trouble, for when we came to England M. Ginkel, Major-General Talmash and I gave certificates or depositions of what passed ~~and~~ that which was left out by mistake was granted to the Irish under the broad seal of England and, as I take it, by act of parliament in Ireland. For I sent over the very original draft of the articles from which the signed copy was made to Lord Chancellor Porter in order to satisfy the parliament there, where many were averse from doing the Irish that piece of justice and aspersed Lord Coningsby, who was one of the justices that signed the articles, as if by his means the broad seal had been obtained to give the Irish a favour that was never intended them at the time of the treaty; whereas in reality it was the first thing insisted upon by them and agreed to by us; ~~and~~ further I have reason to believe that if it had not been for that lord (i.e. Coningsby) the general's son had been sent for back and the words that were left out inserted'.

Clarke's recollection was, of course, at fault as regards the Irish parliament ratifying the omitted clause. He may have confused the act of 1697, which ratified the second article of Limerick without that clause, with the proceedings of 1695, when an attempt was made in the Irish commons to impeach Porter - an attack which was largely directed against Porter's policy of implementing the articles in a liberal manner. Clarke had presumably sent over the draft of the articles in 1695 to assist Porter in his defence. The latter successfully justified his conduct and the commons re-<sup>34</sup>solved that his explanation was satisfactory.

From another collection of Clarke's papers it is possible to trace how the form of the articles was changed during the various stages of the negotiations. The collection includes a paper in Clarke's writing which he endorsed as follows: '28 September 1691. Explanation of the articles. Memorandum. This is the original minute of what was settled by the General Ginkel and the commissioners from Limerick who were empowered<sup>35</sup> to treat about the surrender of the city'. Murray re-<sup>36</sup>produces most of the document, but for some reason dates it 28 August 1691. The explanation extended the benefit of the first article (which in drafting became

34. Commons' jn. Ire., ii. 109 (25 Oct. 1695).

35. B.M., Eg. MS 2,618, ff. 165-6.

36. Murray, Revolutionary Ireland and its settlement, pp. 237-9.

the second) to all that were under the protection of the Irish in the counties of Clare, Kerry, Cork and Mayo.

In the same collection there is another paper, which according to an endorsement in Clarke's hand is the original draft of the articles. Clarke's endorsement adds that in transcribing the fair copy which was actually signed Payzant, the clerk, left out the words 'and all such as are under their protection in the said counties! The draft is in a clerk's hand with interlineations, which Clarke says in his endorsement are in the hand of Sir Toby Butler. The clerk's draft is in accordance with the terms settled on September 28 and includes the words 'and all such as are under their protection'.<sup>37</sup> From internal evidence it may be inferred that the clerk's draft was written on September 28, and that the clause was a settled part of the agreement several days before the lords justices arrived on October 1. This becomes a relevant matter in considering the account which Coningsby later gave of his recollection of the drafting of the articles.

The draft is in the form of articles granted by Ginkel, and contains an undertaking by Ginkel that they would be ratified within forty-eight hours by the

37. B.M., Eg. MS 2.618, ff 161-3. The text is given in my article 'The original draft of the civil articles of Limerick, 1691' (I.H.S., viii. 37-44).

lords justices. It appears that on September 29 the French and Irish insisted that the lords justices should sign the articles at the same time as the other sign-<sup>38</sup>atories. To this may be attributed an~~x~~ addition to the heading of the draft in Clarke's hand coupling the lords justices with Ginkel, and a further addition in Butler's hand of the names Porter and Coningsby. The last paragraph is crossed out and a paragraph added in Clarke's hand that the lords justices and Ginkel would jointly undertake to get their majesties to ratify the articles. The heading was completely changed in the final version, but the draft of the articles themselves, as amended by Sir Toby Butler, was incorporated ~~for~~ word for word, with the exception of the omitted clause. Oddly enough, the draft does not include the provision for the debts of Colonel John Browne, which seems to have been incorporated at the last minute. There are various other additions; thus the county of Limerick was added to the four counties named in the draft. The lords justices arrived on the evening of October 1 and the following day was spent in prolonged discussion. The Irish officers are said to have stayed with the lords justices and Ginkel until midnight, 'by which time all the difficulties which arose in settling the articles being agreed they were<sup>39</sup> concluded and ordered to be fair drawn for signature'.

38. Diary of the siege and surrender of Limerick, p. 17.

39. Ibid.

The articles were signed on October 3 and the Williamite forces occupied the Irish town on October 4. The next development is described in a statement given to the inquiry commissioners in 1699 by Sir Donough O'Brien, who had apparently contrived to remain in county Clare throughout the war without taking either side. He was in Limerick at the time of the negotiations, and told the commissioners that he first saw the text of the articles when the Irish town had been surrendered and the English town was still held by the garrison. He was then in the company of Sir Stephen Rice and Sir Toby Butler when a copy of the articles was read out. Sir Donough expressed the view that the terms did not comprise the inhabitants of the five counties. Sir Toby Butler replied that this was impossible and, taking the rough draft out of his pocket, said that the inhabitants of the five counties were included in the draft terms. Sir Toby then went off to Ginkel and the lords justices and later reported that they had assured him that the omission was a mistake and would be rectified. Sir Toby seems to have asked Clarke for an attested copy of the original draft. The lords justices did not approve of this and the papers contain an order of 7 October 1691, written in Clarke's hand and signed by Porter and Coningsby, directing Clarke not to give out 'foul drafts' of the articles or show to anyone



copies of letters which the lords justices had written on the subject either before or after the articles were signed.<sup>41</sup> Clarke sent a copy of this order to Sir Toby; he added that as the lords justices and the general had already sent to the king for leave to rectify the omission they thought it inconsistent with the respect they owed to his majesty to give an attested copy of the articles before they received the king's answer.<sup>42</sup>

In 1697 Coningsby gave his version to the English lords justices. He said that when he and Porter reached Limerick they found that ~~R~~inkel and the Irish had drawn up a 'long scroll' which the lords justices did not like. So Coningsby himself and George Clarke sat up all night over a fresh draft, which formed the text of the articles which were actually signed. This redraft presumably altered the preamble. As we have seen, the body of the articles remained in substantially the same form as in the draft which was prepared before the lords justices arrived. The record does not contain Coningsby's own opinion on the subject of the omitted clause. He said, however, that when the question was first brought up in the privy council it met with opposition, until at last it was agreed upon at the cabinet and the king then de-<sup>43</sup>clared his pleasure in council that it should pass. The

41. B.M., Eg. MS 2,618, f. 169.

42. Ibid., f. 168.

43. Cal. S.P. dom., 1697, p. 270.

decision was incorporated in letters patent of 24 February 1692, which ordered the omitted clause to be added to the second article; it was stated that the words had been carelessly omitted by the writer and that the omission was discovered after the articles had been signed but before the town was surrendered.<sup>44</sup>

Three conclusions can reasonably be drawn from this evidence:

- (1) that the Irish attached much importance to the clause;
- (2) that the clause was incorporated in the terms drawn up before the arrival of the lords justices, remained in the final draft and was omitted from the final copy which was actually signed;
- (3) that there was a section of English opinion which from the first was opposed to the restoration of the omitted words.

This leads on to the question whether the omission was accidental or was the result of secretarial sabotage. The latter suggestion finds some support in the fact that Nottingham never received the first letter which Porter wrote to him about 'the mistake in the copy of the capitulation!'<sup>45</sup>

It might have been expected that the question of the omitted clause would have been treated as finally

44. Story, Continuation, pp. 255-6.

45. Nottingham to Porter, 24 Oct. 1691 (Cal. S.P. dom., 1690-1, p. 551).

settled by the letters patent which ordered the insertion of the missing words. The clause, however, was to be the subject of prolonged controversy. It was next referred to in an address presented to William by the English commons in March 1693: 'And as to the additional article which opens so wide a passage to the Irish papists to come in and repossess themselves of the estates which they forfeited by their rebellion, we most humbly beseech your majesty that the articles of Limerick with the said addition may be laid before your commons in parliament, that the manner of obtaining the same may be inquired into; to the end that it may appear by what means the articles were so enlarged and to what value the estates thereby claimed do amount'<sup>46</sup>. A report presented to the English commons in 1694 by a committee referred to claims made 'by virtue of the additional article, said to be agreed to but omitted in the perfected articles'. The committee estimated that at least half the claims fell within this category, and inquired what would be the effect of allowing the additional article.<sup>47</sup>

The dispute over the clause intensified when the bill for ~~x~~ confirming the articles was passing between Ireland and England under the provisions of Poyning's law. The trend of the correspondence between the

46. Commons' jn., x. 843.

47. Ibid., xi. 56.

authorities concerned was that on the merits the additional clause ought to be included, but that if it was included the Irish parliament would object and throw the bill out altogether. The objection raised by some of the Irish lords to the omission of the clause seems to have taken the authorities by surprise; in a number of letters the view was expressed that public opinion seemed to have become so favourable to the catholics that the clause might after all have been included.

The bill came over from Ireland with the clause omitted. Shrewsbury wrote to Blaythwayt that he had deferred sending the bill to the king until the omission was cleared up. He expressed the view that without the clause the bill might 'possibly not so exactly agree with all that was promised under the great seal as his majesty's strict justice would incline him to wish'. On the other hand, Shrewsbury added, if an addition was made to the bill in accordance with the amendment of the articles it might prove very prejudicial to the king's interest. The general opinion was that if the clause were included the bill would be thrown out. Even if it passed, the estates of many notorious offenders would be covered, and nothing would be more certain to alter the 'good disposition of the gentlemen of Ireland'.<sup>48</sup> The same day Shrewsbury wrote to Methuen, the Irish chancellor, that the English council

had held up the bill as they had received no explanation of the omission of the clause and had been informed from Ireland that the bill was entirely in accordance with the articles as passed under the great seal.<sup>49</sup> Methuen made the disingenuous reply that the words were overlooked in the draft of the bill; as the point was never mentioned in the Irish council he had seen no reason to refer to it in transmitting the bill to England, although he was very well aware of the omission. He expressed the opinion that the bill would be more acceptable without the clause, but that if it was put in out of regard to the king's honour he thought that the bill would pass<sup>50</sup> the Irish parliament.

Winchester, one of the lords justices, wrote to Shrewsbury that he thought the additional words were as much part of the second article as any, if they had been inserted at first, but he questioned how they were obtained. He opined that the king knew best how far his honour was engaged.<sup>51</sup> Galway, the other lord justice, told Shrewsbury that he had always understood that the additional article was objected to both by parliament and by the English privy council. He thought that if the clause were included much confiscated land and even estates granted by the king would be disputed. If, however, it

49. H.M.C., Buccleuch MSS, ii. 509-10.

50. Ibid., ii. 518.

51. Ibid., ii. 517.

was thought that the honour of the king was engaged, he would do his best to get the bill through parliament with the additional clause.<sup>52</sup>

The English lords justices decided that the matter should be referred to William, who was in Holland, saying that the clause had apparently been omitted from ~~the~~ apprehension that the bill would not pass if it were included; protestants in Ireland having a general dislike of the powerful position in which catholics had been left in the five counties concerned and throughout Connacht.<sup>53</sup> Shrewsbury later wrote to Lord Galway that the point had been judged 'too tender' to determine without the direction of the king, who best knew how he had been prevailed upon to add the disputed words and how far his honour ~~was~~<sup>54</sup> engaged.

Meanwhile the debates on the bill for the confirmation of outlawries appeared to point to a body of opinion more favourable to the catholic position than the authorities had expected. Galway wrote to Shrewsbury that since that debate he could no longer trust

52. H.M.C., Buccleuch MSS, ii. 517. The record of forfeitures and grants does not support this opinion so far as Mayo and Clare are concerned. Possibly Galway

thought that claims might be made that parts of Cork were under the protection of the Irish at the conclusion of the war. Much land in that county had been the subject of forfeitures and grants.

53. Cal. S.P. dom., 1697, p. 271.

54. H.M.C., Buccleuch MSS, ii. 532.

his judgment; he now thought that the additional clause might facilitate the passage of the articles bill instead of hindering it. He was convinced that the bill would pass in whatever form the king decided.<sup>55</sup> A formal letter to the same effect was sent a week later by the lords justices to Shrewsbury, saying that they found opinion in Ireland so much more favourable to the catholics than they had expected that perhaps the bill would encounter no difficulty even if the additional clause<sup>56</sup> were inserted.

William, however, had already directed that the bill should be approved without the additional clause, and this was to prove decisive.<sup>57</sup> There was a considerable party in the Irish lords, including Bishop King of Derry, which was not in favour of omitting the clause. The house, on the motion of Lord Orrery, resolved to ask the lords justices what reasons they had given for transmitting the bill to England without the additional words. The lords justices replied that such a request was unprecedented; they would only say that they did not transmit the bill until they had laid before the king all the difficulties involved - this was hardly an accurate version - and that it was his majesty's pleasure that the bill should be passed as it was. By a narrow

55. H.M.C., Buccleuch MSS, ii. 536-7.

56. Cal. S.P. dom., 1697, p. 331.

57. ibid., p. 325.

majority the house resolved that the answer~~e~~ was satisfactory and that the bill should pass into law. Seven temporal peers and seven bishops protested against this decision on the grounds, inter alia, that the bill omitted the material words 'and all such as are under their protection in the said counties', which had been declared by royal letters patent to be part of the second article. The protesters added that several persons who had been adjudged within the articles would now be barred. They considered that as the omitted words were of such importance and had been confirmed by the king after solemn debate in council they should not have been omitted without express reason. This protest caused much surprise in England. Shrewsbury wrote to Methuen that nothing was more surprising than to see an Irish house of parliament making difficulties over a bill because it was not sufficiently favourable to catholics; that bishops should lead the opposition was 'wonderful to the last degree'.

It is certainly remarkable that <sup>so many members of</sup> an exclusively protestant house of lords should have expressed such views. Winchester attributed to Lord Drogheda a leading part in the opposition and suggested that he was associated with the duke of Ormond, whose proxy he held. This suggests that the opposition was directed

58. Lords' jn. Ire., i. 633-7.

59. H.M.C., Buccleuch MSS, ii. 567.

60. Ibid., ii. 557 and 583.



against the whig clique which had been predominant in the Irish administration since Capel's regime. It was also remarked that several of the temporal lords concerned were new converts who retained some sympathy with their former co-religionists. Three of those who signed the protest against the articles bill fell within this category. King's attitude is summed up in a letter which he wrote to Southwell in December 1697, explaining why he had voted against a bill for the disarming of catholics: 'I did observe men of no religion, nay that scoffed at all religion, very eager for this bill, and I thought that it was hard that such should impose upon men that had some, though an ill one, and to put it into the power of such men to ruin men merely for having conscience I could not consent to'.

The bill for confirmation of the articles of Limerick received the royal assent in September 1697. In the following month the English privy council seems to have tried to work the omitted clause into a bill for preserving the king's person. Winchester wrote to Shrewsbury that he regretted that the council should have added to the bill a clause to save Lord Antrim and other catholics from incurring any loss as a result of the ~~bill~~ act for the confirmation of the articles of Limerick. Winchester thought that the inclusion of the

clause might harm the security bill. Actually that bill was thrown out by the lords, apparently because of the oath which its terms imposed upon catholics.<sup>63</sup>

William seems to have shown a considerable degree of weakness in agreeing to the omission of the disputed clause. The matter had been thoroughly gone into soon after the capitulation, and he had at that time formally agreed in council to the incorporation of the missing words. The case seems to have been put up to him in 1697 to decide on the question of how far his personal honour was involved. It is surprising that he should have thought it consistent with his honour to agree to the clause being left out of the bill.

It is extremely difficult to determine what was the practical effect of the omission. From a letter of Vernon's it appears that the omission of the clause was believed to affect Lord Antrim in particular.<sup>64</sup> It will be remembered that Antrim's camp outside Limerick had been treated as a garrison for the purposes of the adjudication. If that interpretation was maintained he would be unaffected by the omission of the clause; it was not disputed that garrisons were entitled to the benefit of the articles. Objection had, however, already been taken to the finding that Antrim's camp constituted

62. H.M.C., Buccleuch MSS, ii. 568.

63. Lords' jn. Ire., i. 664-5.

64. Cal. S.P. dom., 1697, p. 268.

a garrison. The omitted clause may have been his second line of defence. In any case Antrim's adjudication was not affected.

While the bill was under discussion Cox expressed the view that if the additional clause were not included all the Irish in Kerry and in the quarters of the Irish in the counties of Cork, Limerick and Mayo might forfeit the estates which they had hitherto held under the authority of the clause. On the other hand the lords justices and council of Ireland wrote about the same time that the bill confirmed the second article in the sense in which it had been understood so far and submitted to by the Irish in the claims already decided. As the council were responsible for all the adjudications given up to that time they should have been in a position to know the facts. The statement that no regard had been paid to the omitted clause in the claims already decided seems to be at variance with the house of lords protest, which stated that several persons had been adjudged within the articles who would now be barred. Cox's view could be reconciled with that of the lords justices and council on the supposition ~~that~~ that a number of persons had been continued in the possession of their estates on the strength of the additional clause without being formally adjudged within

65. H.M.C. rep. 14, app. ii. 586.

66. Cal. S.P. dom., 1697, p. 245.

the articles.

On the whole, the evidence seems to show that this was the position. On the other hand in the case of Edmond Blanchfield, referred to above, it appears that the court was ready to admit the claim on the strength of Blanchfield having been in that part of county Cork which was in the Irish quarters. He appears from the evidence to have been a civilian, and the ruling must presumably have been given on the ground that he qualified under the additional clause. That clause was not the subject of dispute in the case, which turned solely on the question whether Blanchfield had ever taken protection from William.

It has already been mentioned that adjudications were held up for almost three years from the end of 1694, while discussion proceeded on the question of the bill for the confirmation of the articles. In the meanwhile a large number of claims had mounted up. In April 1697 the clerk of the privy council submitted a demand to be paid for copying out 1,150 claims and 400 rules. A possible explanation of the varying accounts, therefore, would be that a number of persons had claimed under the disputed clause and that these claims were kept pending. If they were not outlawed they would remain in possession of their estates.

In October 1697, after the bill for the confirmation of the articles had passed into law, Methuen wrote to Shrewsbury that he had deliberately omitted the additional clause from the bill as it was obnoxious to protestants; but that it was still in the king's power to make the clause good as much as if it had been included in the bill. <sup>68</sup> What significance is to be attached to Methuen's suggestion? Are we to conclude that there was a tacit agreement not to launch prosecutions against those who had up till then been left undisturbed on the strength of the additional clause? Certainly there was no spate of fresh forfeitures after 1697 in the areas concerned, ~~not~~ do we hear of prosecutions in those areas. The Connacht prosecutions of 1699, on the failure of which the inquiry commissioners commented, seem all to have taken place in Galway, which was not one of the five counties mentioned in the second article of Limerick.

The problem primarily relates to Mayo and Clare. Little of Cork and Limerick remained under Irish control by the end of the war, and the Williamite forces had made considerable inroads into Kerry. There were a large number of catholic landowners in Mayo and Clare who neither forfeited nor were adjudged within the articles. In Mayo the number of articlemen was remarkably

68. H.M.C., Buccleuch MSS, ii. 562.

small. Up to 1697 there were only seven claims adjudged from the county. Six of the claimants can be identified as military officers who would not come under the protection clause. If those who would have qualified under that clause were in practice not deprived of their estates, one would expect all those who forfeited in Mayo and Clare to have been killed or taken prisoner or else to have gone to France. We have not the material to be specific about the first two categories, but it is of some significance that more than nine-tenths of the area forfeited in either county belonged to persons who were outlawed for foreign treason. Presumably all these went to France.

From a comparison of the adjudications with the forfeited estates no adjudications appear to have been reversed as a result of the omission of the clause. It is also significant that, although a number of protests were made from time to time by catholics that the articles were being infringed in various ways, the omitted clause does not specifically figure in any of them. This raises the presumption that catholics were less severely affected by the omission than might have been expected from the arguments brought forward in the course of the controversy.

Taking the evidence as a whole, it is perhaps possible to infer that William's government, having appeased the more militant protestants by omitting the disputed clause,

was not anxious to take action which could be represented abroad, and particularly at the court of the emperor, as a clear breach of faith.

#### IV

Seventy-eight claims were admitted under the articles of Galway. The records of a number of these cases throw light on the events which led up to the surrender and, in particular, on the negotiations which Ginkel conducted with leading persons of Galway town and county. Ginkel himself shows up well. He seems to have adopted a generous attitude towards those with whom he negotiated, and in later years proved ready to intervene with William on their behalf. The record brings out the importance which the negotiated surrender of Galway had for the Williamite cause.

William's inclination was apparently to recognise the assistance which he had received from the Galway men by a liberal interpretation of the articles, and by certain additional favours shown to particular persons who had been prominent in the negotiations. There was, however, a considerable section of protestant opinion which was opposed to any leniency being shown. To this section may be attributed the restricted interpretation placed upon the terms of the articles, and the criticism of what were regarded as unduly liberal methods of adjudication.

Adjudications under the articles of Galway did not begin until the end of 1697. A petition from Sir Walter Blake and others states that the petitioners were comprehended within the articles of Galway and had preferred claims to the council board but that the claims had been postponed.<sup>69</sup> The delay seems to have been due to a dispute over the wording of the eighth and ninth articles, which guaranteed pardon and the enjoyment of their estates to the garrison and to the mayor, sheriffs, aldermen, burgesses, freemen and inhabitants of Galway. It was objected that the articles did not include those freemen and inhabitants who were not actually in the town at the time of the capitulation. The case was referred to William, who on 23 April 1697 - the reason for the inordinate delay does not appear - decided at a meeting of his privy council that the articles were to be construed as extending only to those who were in the town when it surrendered.<sup>70</sup> This ruling caused considerable alarm among the claimants. Lord Galway wrote to Shrewsbury that catholics were collecting money to send a deputation to William and to his allies, the catholic princes, to get the explanation of the Galway articles changed, and to quash the bills for the confirmation of outlawries and for the ratification of the articles

69. P.R.O.I., Wyche papers, 2nd series, 119.

70. Annesley MSS, xxvii. 159.



of Limerick. Lord Galway expressed the hope that if the deputation presented itself William would assure it that all promises would be honoured. <sup>71</sup> Shrewsbury replied that he hoped the deputation would have no effect on the king, as his royal word would be made good, although not in the sense given to it by the applicants. He thought that even if the catholic princes intervened they would be <sup>72</sup> too late to be effective.

In August 1697 Arthur French, who was mayor of Galway at the time of the capitulation, went over to the continent to enlist Ginkel's support against the restrictive interpretation of the articles. Ginkel wrote to Blaythwayt, ~~winke~~ William's secretary, that the drafting of the eighth and ninth articles had given him particular trouble, and that it was a long time before he could bring himself to agree to them. He was induced to do so by the consideration that prolonging the siege would have put him in a difficult position, as he would have had to use his heavy artillery for a further eight to ten days to make a breach in the walls. He had therefore agreed to the wording proposed and had also given particular assurances to four or five of the citizens who were not then in Galway; one of these was Judge Daly's brother, to whom he had given <sup>73</sup> a protection to keep him from going off to Limerick.

71. H.M.C., Buccleuch MSS, ii. 485.

72. *Ibid.*, ii. 489.

73. Annesley MSS, xxvii. 153.

The inquiry commissioners seem to have directed particular attention to showing that William's interpretation of the Galway articles was not strictly kept, and that various claims had been improperly admitted. They recorded evidence that Robert Dillon of Clonbrock had been seen in Ire-Connacht during the siege, and that bribery was used to suppress the evidence that Dillon was not actually in the town of Galway. Robert Dillon's son Luke frankly admitted that Palmer, the registrar of the court, had demanded £86, which his father had succeeded in beating down to £66. 6s. Luke expressed the opinion that his father had incurred nearly £1,500 in charges and expenses in connection with his claim. The adjudication was not disturbed and we find the family, which had by then conformed, in receipt of a peerage at the end of the eighteenth century.

Robert Shaw, the town clerk of Galway, told the commissioners that after the articles had been signed the gates were opened to admit Charles Daly of Carrownekelly, Oliver Martin of Tulira and others who were all adjudged within the articles. Arthur French, the then mayor, corroborated this statement, but explained that these were persons to whom Ginkel had given assurances when the articles were being drawn up. French said that they

74. Annesley MSS, xxiii. 22.

75. Ibid., xxiii. 210.

76. Ibid., xxiii. 103.

were in Ginkel's camp during the negotiations but had entered the town before it was handed over. Ginkel's letter to Blaythwayt was actually produced in evidence in the case of Oliver Martin, whose case is marked 'within the articles nisi', dated 8 July 1699. Although the adjudication is not recorded as having been confirmed, Martin's estate is shown in the Book of Forfeitures as restored under the articles. He was evidently of considerable service during the negotiations. It appears that the service was remembered at the time of the anti-popery acts, in the second of which it was provided that the estate of Oliver Martin might be inherited by <sup>77</sup>prômo-geniture. Arthur French also admitted that just before the surrender of the town he entered the names of Robert Dillon and Richard Martin in the roll of freemen with the intention of bringing them within the terms of the <sup>78</sup>articles, but that they were never actually sworn.

The thirteenth article provided that officers belonging to any of the regiments in Galway who were ~~not~~ themselves present should have the benefit of the articles, provided that they submitted to the governor of Galway within three weeks. The terms of this article were invoked to support the claim of Lord Bophin, Clancricarde's brother. Bophin, who was colonel of an infantry regiment, was taken prisoner at Aughrim. The regiment formed part of the garrison of Galway, and Ginkel

77. 8 Anne, c. 3, s. 39.

78. Annesley MSS, xxiii. 112.

expressly agreed that Bophin should be entitled to the benefit of the articles. Ginkel actually wrote to William asking that Bophin, who had been taken over to England, should be released. He was not however released in time to make his submission within the prescribed three weeks. At the end of the war he returned to Ireland, took the oath of allegiance and was allowed to remain for several years in the peaceful enjoyment of his estate. About 1697 he heard that the court of claims had expressed the opinion that his case did not come within the articles. He therefore applied to Ginkel, who confirmed that he had promised that Bophin should be included. A king's letter was therefore sent to the lords justices on 2 April 1698 asking them to inform the court of claims that Bophin was 'particularly intended and declared to be comprised and comprehended within the said articles'. In spite of this support Bophin's troubles were not over. The solicitor-general gave his opinion that the terms of the king's letter were not sufficient warrant for the court of claims to find Bophin within the articles. Methuen, the chancellor, told the inquiry commissioners that he did not think that the lords justices had ever communicated the king's letter to the judges. Methuen himself had advised Bophin that he had no prospect of succeeding in his claim.

79. Annesley MSS, xx. 1-10.

80. Ibid., xxvii. 161-3.

81. Ibid., xxiii. 139.

82. Ibid., xxiii. 144.

Bophin decided not to prosecute his claim under the articles , but to ask for pardon. Here his chief difficulty was that his estate had been granted to Albemarle, who was in the powerful position of king's favourite. It was arranged that a bill should be introduced in the Irish parliament to reverse Bophin's outlawry and to enable him to raise £9,000 on his estate. The money was ostensibly intended for the payment of debts, but evidence was given that £7,500 was to be paid to Albemarle, leaving £1,500 as pickings for those who had been intermediaries in the negotiations. <sup>83</sup> The Irish parliament disliked the proposal and rejected the bill nem. con. <sup>84</sup> Finally Bophin prevailed on the English parliament to pass a private act reversing his outlawry and putting the estate in the hands of trustees for the benefit of his children. The terms of the act required him to pay £25,000 and <sup>85</sup> to bring his children up as protestants.

The impression given by these cases is that many of the Galway landowners were primarily interested in a negotiated capitulation which would secure to them the

83. Commissioners' report, pp. 11-12.

84. Commons' jn. Ire., ii. 298 (17 Jan. 1699).

85. 1 Anne, c. ~~29~~. The trustees reported that only £10,185 had been paid by 25 June 1703 and that the balance was to be paid within a year (H.L.MSS, n.s., v.250). The balance was not paid in time and there was talk of forfeiting the estate. Eventually a further act (7 Anne, c.29) was passed, extending the time for payment.

estates which they held under the Act of Settlement. The repeal of that act by the 1689 parliament had been a severe shock to them. Denis Daly, one of James's judges, had taken a leading part in the opposition to the repeal. He also took a prominent part in the negotiations with Ginkel for the surrender of Galway. The record of his pardon relates that, by a promise made under the hand of Ginkel at his majesty's camp near Galway on 26 July 1691, he was to enjoy his estate to him and his heirs without forfeitures 'as the protestants of Ireland enjoyed theirs'.<sup>86</sup> The story of the surrender of Galway bears out the suspicions of d'Avaux, who had informed Louis in October 1689 that he was extremely anxious about Galway, as there were many catholic malcontents there who had been deprived of their<sup>87</sup> property by the legislation of the Dublin parliament.

Ginkel and William's government generally seem to have tried to honour the understanding reached with the Galway landowners. They were, however, subject to considerable pressure from those of the Anglo-Irish who were not in official positions and do not seem to have appreciated the advantage which the surrender of Galway gave to the Williamite forces. Many of the witnesses who appeared before the inquiry commission criticised the admission to the articles of those who were evidently not besieged within the walls of Galway but engaged from outside in active

86. H.L.MSS, n.s., iv. 30.

87. Négoc. d'Avaux en Irl., p. 533.

negotiations with Ginkel.

The controversy over the Galway articles is well brought out in a speech made by Cox, who was one of the judges, at the hearing of six claims under the articles. Five of the claimants, Patrick Blake of Kiltullagh, Richard Blake of Ardfry, Walter Blake of Drum, Robert French of Tulla and George Staunton of Galway were aldermen or burgesses of Galway, but had been out in the country while the town was invested by Ginkel. They came by permission to Ginkel's camp, and assisted in arranging the capitulation and in drawing up the articles. Ginkel then told them to go into the town and assured them that they would get the benefit of the articles. The sixth claimant was Sir John Kirwan, a former mayor of Galway who had sent Ginkel a message that he need not wait for his heavy artillery as the town would capitulate at the first appearance of his army. Kirwan was imprisoned in the town on suspicion of corresponding with Ginkel. He contrived to escape and 'went off in his own ship and, not daring to trust himself in Limerick and not knowing where else to go, he put the evil day off as far as possible and went to France'. When Ginkel heard the story he promised that if Kirwan returned within six months he would be included in the articles. William confirmed the promise and Kirwan duly returned and presented a petition for pardon. An endorsement was made on the petition that no pardon was necessary as Kirwan was entitled to the

benefit of the articles. He accordingly remained in undisturbed possession of his estate until the case came up for adjudication.

After the six claims were heard the first judge to speak gave his opinion against admitting the claimants to the benefit of the articles. His objection was evidently based on William's decision that the articles did not apply to freemen and inhabitants of Galway who were not in the town at the time of the capitulation. Cox spoke next and argued that the intention had been to exclude only 'titular freemen and mere natives who were not inhabitants of Galway', whereas these claimants had houses in the town. He used considerable eloquence on their behalf and stressed the point that they had received specific assurances from Ginkel. A note at the end of the speech records that the rest of the court was won over by Cox's plea. The names of the six claimants are entered in the list of adjudications as admitted to the articles on 31 August 1699.



## CHAPTER V

## Pardons and reversals

In addition to the land restored under the articles of Limerick and Galway a considerable area was restored by royal pardon to forfeiting persons who were not included in the articles. Among those pardoned were representatives of several celebrated families. A number of the pardons are also of interest as illustrating various aspects of the war of 1689-91.

The report of the inquiry commissioners stated that the reversals of outlawry were of two kinds; the first related to persons adjudged within the articles, the second were the result of royal letters or orders. There were sixty-five of the second kind, all of which appeared in the fifth of the books accompanying the report; the estates restored to those thus pardoned contained 74,733 acres, particulars of which were set out in the second book of the accompaniments. These statistics are peculiarly confused. The fifth book - the Book of Pardons and Reversals - is given in full in the published manuscripts of the house of lords. It is

1. Commissioners' report, p. 13.

2. H.L.MSS, n.s., iv. 28-32.

in two sections, the first containing twenty-eight pardons, the second containing thirty-seven 'reversals by special warrant'. The two together should thus give the total of sixty-five reversals to which the report refers.

The actual figure, however, is less. Eleven of the thirty-seven reversals also appear in the list of pardons. Several of those included in the list of pardons were not outlawed and the question of reversal did not arise in their case. A number of those who were pardoned or had their outlawries reversed were not landed proprietors. In some cases it is specifically stated that the person in question had no real estate and, for greater caution, undertook to reconvey to the crown any estate to which he might subsequently become entitled. In fact it appears from the Book of Fore<sup>f</sup>feitures that the area of 74,733 acres which was restored by royal favour belonged, not to sixty-five, but to only twenty-four persons. There is therefore considerable divergence between the facts and the account given by Froude, who says that 'sixty-five great Irish proprietors, whom the articles could not be made to cover, were reinstated by special favour from the crown'<sup>3</sup>.

Several of those restored by royal favour were persons who had submitted after the Boyne on the terms offered by the declaration of Finglas. That declaration

3. Froude, Ire., i. 245. Curtis, Ire., p. 276, follows Froude's version.

held out no promise that those who submitted would be allowed to keep their land. But later developments, and in particular the guarantees given under the articles of Limerick and Galway, made it appear unreasonable to maintain so uncompromising an attitude towards all those who had submitted at an early stage, while those who had kept up a troublesome and stubborn opposition were allowed to remain in possession of their estates.

This point of view was expressed by Bonnell, the Irish accountant-general, shortly after the capitulation of Limerick. Remarking on the fact that a considerable number of the Irish were enabled to keep their estates under the articles, he observed that others, who had submitted after the Boyne and had since remained peaceful, were outlawed and had lost their estates: 'This is such a wondrous inequality that it can hardly be that even a settlement should be founded on it. ---- What will these men hereafter say for losing their estates now for adhering to King James while he was among them and submitting to King William as soon as King James left them, when yet they see so many others enjoy their estates who stood out above a year longer?'<sup>4</sup> A similar view was expressed by the Jacobite, Bevil Higgons: 'Those Irish who were the most forward to fling themselves

4. James Bonnell to Robert Harley, 3 Nov. 1691 (H.M.C., rep. 14, app. ii. 479-80).

into the English protection as soon as they had an opportunity have fared the worst and lost their estates, only for submitting to the civil authority. Whereas others, who held out to the very last and were the occasion of shedding ~~xx~~ much blood by a prolongation of the war, are all indemnified by articles. By this example posterity will be instructed to hope for more safety and better quarter by a desperate resistance than an early submission<sup>5</sup>.

Candidates for pardon were selected in a somewhat arbitrary manner, and by no means all those who submitted after the Boyne succeeded in recovering their estates. One of the successful applicants was Richard Talbot of Malahide, who submitted to William on 9 July 1690 at Finglas. He had accepted the post of auditor-general under James, but represented that he had only done so to recompense himself for the loss of the Malahide customs, a hereditary perquisite of which he had been deprived. Oliver Grace, who had been chief remembrancer under James, submitted on 10 July 1690. He was indicted in the Michaelmas term of that year, but not outlawed; on his surrender to the sheriffs he was admitted to bail and obtained the queen's order for

5. Quoted by Ralph, History of England, ii. 307.

6. Cal. S.P. dom., 1693, p. 9. The warrant for Talbot's pardon was transcribed by Harris, Collectanea, x. 211.

the stay of further proceedings.

Several members of the 1689 parliament appear in the list of those pardoned. Matthew Hore of Shandon, county Waterford, claimed to have opposed the bill for the repeal of the Act of Settlement.<sup>8</sup> John Galway claimed that he had been elected by the votes of the protestants of Cork and had never voted against them or their interests.<sup>9</sup> Robert Longfield represented that he 'having been a member of the late pretended parliament at Dublin did not intermeddle in, or give any vote for, the repeal of the Acts of Settlement and Explanation'. He was clerk of the quit-rents and immediately after the Boyne had delivered<sup>10</sup> over the papers of his office and submitted. Longfield's pardon was the subject of a complaint to the English commons that he was 'a protestant turned papist' and 'being under no articles but what he made for himself came over to England and returned with some letter or order to reverse his outlawry'.<sup>11</sup> The Book of Pardons records the observation that Longfield's pardon was obtained by the king's favour without any merit appearing.

Charles White of Leixlip owed his pardon to the intervention of the emperor, although it is not clear

7. Cal. S.P. dom., 1696, p. 40.

8. Ibid., 1693, p. 129.

9. Ibid., 1691-2, p. 189.

10. Warrant of pardon, 5 Aug. 1692, Harris, Collectanea, x. 8.

11. Commons' jn., x. 830.

how the latter came to be interested in the case. The lords justices took umbrage at not being consulted before the issue of the warrant for the reversal of White's outlawry. They also took exception to the emperor's<sup>12</sup> intervention on the ground that this might encourage others to make application to foreign princes, which might tend to 'public inconvenience'. However, they later withdrew their objections on a report from the solicitor-general that White, as governor of Kildare and a member of James's privy council, had been very kind to protestants.<sup>13</sup> White lost no time in making his submission. There is still extant a letter from his wife, written the day after the Boyne, in which she asks for protection and explains that her husband would himself have written 'but that he is very ill<sup>14</sup> with the gout in his hands and feet'.

Pardon was also given to a number of persons who were irregularly outlawed. Thus Luke, earl of Fingall, was included in the list of outlawries although he had died several years before the war. His son Peter was a minor and had not been in Ireland during the war. Lord Baltimore's pardon was given on the ground that 'he was never in the rebellion nor for many years in Ireland'. Several other cases are recorded in the

12. Cal. S.P. dom., 1694-5, p. 102.

13. Ibid., p. 135.

14. Mrs White to Lord Drogheda, 2 July 1690 (R.I.A., MS 24. G. 3, p. 40).

Book of Pardons and Reversals of persons who were outlawed by mistake although they were not in Ireland during the war.

Lord Cahir's pardon was granted on the ground that he had complied with the original declaration which William had made in February 1689, promising pardon and the enjoyment of their estates to those who submitted by April of that year. Cahir had accordingly given up his commission in James's army and retired into private life within the time prescribed. Unfortunately for him his private business took him to Cork where he was involved in the siege, taken prisoner and committed to the tower of London. It was then proposed to send him to France under a scheme for the exchange of prisoners. He explained his position and was permitted to remain a subject of William and Mary.<sup>15</sup>

The lists of pardons and reversals include two earls of Tyrone. Richard Power, the first earl, defended Waterford and after its surrender proceeded to Cork, where he was taken prisoner. He was sent to the Tower and died soon afterwards. His outlawry was reversed to save the title of his son John, who was brought up as a protestant and took William's side. John, the second earl, died in 1693. The next heir was his brother James, who was pardoned on the ground that his father had forced him to remain in Waterford

during the siege and that after the surrender of the town he had not followed his father to Cork, but had gone off to William's camp, submitted and received a promise of pardon.<sup>16</sup> The third earl died in 1704 and the next heir, John Power of Monylargy, petitioned the Irish parliament for a reversal of his outlawry. His petition was not granted although he had offered to bring up his son as a protestant and had produced certificates to show that, as mayor of Limerick during the siege, he had been conspicuous for his kindly treatment of the protestants in the city.<sup>17</sup>

Lord Bellew of Duleek was in the garrison of Limerick at the time of the capitulation and was thus entitled to the benefit of the articles. He was, however, in bad health and was advised on medical grounds to go to France. He received Ginkel's permission to do so. Some months later, when his health was restored, he called on Ginkel in Brussels and obtained a certificate which eventually enabled him to secure a pardon.<sup>18</sup> Unfortunately his estate had already been granted to Sidney, and the inquiry commissioners noted that the pardon was not granted until Bellew had promised to waive his claim to £3,000 mesne profits.

16. Cal. S.P. dom., 1697, p. 122.

17. The humble petition of John Power esq., commonly called Lord Power.

18. Warrant, dated 18 Mar. 1697, in Harris, Collectanea, x. 263.



Another Bellew mentioned in the Book of Pardons and Reversals was John Bellew of Barmeath, county Louth. The note against his name relates that he was outlawed by his own consent to prevent the enemy having any suspicion of the services he was doing for their majesties in the Irish quarters; he was pardoned in pursuance of a promise previously made to him by the government. The story behind this was given to the inquiry commissioners by a witness who told them that in May 1691 Porter had sent Bellew into Connacht with instructions to 'do some considerable service', promising that if he should be outlawed in his absence it would be reversed and he should have the king's pardon. Presumably the considerable service was to prepare the way for a negotiated conclusion of hostilities on the lines of the proclamation of July 1691. Porter later told the witness that he had been well satisfied with Bellew's performance, and that the outlawry had been deliberately proceeded with to avoid any suspicion that Bellew was engaged on William's service in the enemy's quarters. The ruse was less successful than appears from this account, as the suspicions of the Irish were in fact aroused and Bellew was 'clapped into prison where he remained till

19. Annesley MSS, xxiii. 100.

the battle of Aughrim'. Lord Kinsale, Clancarty's brother, was also imprisoned by the Irish. During the first siege of Limerick he had tried to cross over into William's camp with the object of submitting. Later he managed to escape and took the oath of fidelity to William in July 1691.

Richard Martin, the great-grandfather of 'Humanity Dick', obtained a warrant of pardon on the grounds that he had submitted on the terms of the proclamation of July 1691 and had brought over a considerable portion of his troop with their horses and arms, and also that during the war he had protected the protestants from ruin. He went to England to make direct application for the pardon and this seems to have given offence to the Irish government. Capel referred back the case on the ground that the warrant had been issued without any inquiry having been made in Ireland. The attorney-general observed that Martin was 'one of those many persons in Connacht who were not indicted nor outlawed, though as guilty of the late rebellion as others who were outlawed'. The decision to pardon Martin was upheld and Shrewsbury wrote back to Capel that he should proceed with the case. The inquiry commissioners gave

20. Cal. S.P. dom., 1693, p. 133.

21. Ibid., 1691-2, p. 141.

22. Ibid., 1694-5, p. 410.

23. Ibid., pp. 506-7.

24. Ibid., 1695, p. 17.

some attention to the proceedings. The former high sheriff for county Galway told them that on the day before the English army arrived Galway Richard Martin had come to him 'with seven men on serviceable horses' and had asked in consternation what he should do, as the Irish would certainly hang him if they found him. The sheriff accordingly took him to Ginkel.<sup>25</sup> When his claim to pardon was being examined Martin produced documents signed by Ginkel, and also a certificate signed by Colonel Richard Coote that he was constantly in the general's tent before Galway while the articles were being drawn up and that he was of material service in the negotiations.<sup>26</sup>

A curious sequel was the issue of letters patent in 1698, granting manorial rights to Richard Martin in respect of his estate of Clare, county Galway. The Irish commons protested vigorously. An address was presented to the lords justices to the effect that the commons, 'being sensible of the many inconveniencies which do, and may, happen to this kingdom by the grant of manors and other royalties and privileges to papists', prayed for the cancellation of the letters patent.<sup>27</sup> The lords justices reported the case to England saying that, as Martin's estate was 'an entire tract of land of about

25. Annesley MSS, xxiii. 23.

26. Cal. S.P. dom., 1694-5, p. 507.

27. Commons' jn. Ire., ii. 299 (17 Jan. 1699).

thirty miles extent in a remote part of the province of Connacht, inhabited for the most part, if not wholly, by papists', it was apprehended that the creation of a manor might be a hindrance to the levying of crown dues and an obstruction of justice so far as protestants were concerned. The commons had framed heads of a bill for dissolving all manors in the hands of catholics, but the bill had not been returned from England. They had therefore presented an address against Martin's grant as being 'the most dangerous by reason of its great extent and its situation in a remote part of the kingdom on the sea-coast, which in case of a foreign war would give the inhabitants an opportunity of correspond-<sup>28</sup>ing more securely with his majesty's enemies'. It does not appear that the English government paid any attention to these protests, and several successive Martins were lords of the manor of Clare.

The inquiry commissioners expressed the opinion that many of the pardons had been obtained by giving gratifications to persons who had abused the royal compassion. They found, however, that when they came to examine the question they met with difficulties 'too great to be overcome', as most of the transactions had taken place in private and with persons outside Ireland. They therefore contented themselves with recording a few

28. Lords Winchester and Galway to Vernon, 4 Mar. 1699 (P.R.O.I., Phillips' MSS, Irish correspondence and king's letters, 1697-1782, p. 78).

particular cases in which they were satisfied that gratifications had been given.<sup>29</sup>

Several of the entries recorded in the Book of Pardons and Reversals mention the name of Margaret Uniack, an intimate of Sidney's. Sir John Morris of Knockagh is noted as having paid £500 to her and her uncle. She is said to have received £100 from Harvey Morris and £200 from John Kerdiff. The list of reversals includes the name of Thomas Uniack of Youghal, who sat in the 1689 parliament and appears to have been the lady's father. The evidence recorded by the commissioners contains a number of allegations that pardons were obtained by bribery. Richard Martin was said to have complained of the heavy expense of preferring his application in England, and Robert Longfield was said to have remarked that his pardon cost him 'his hat full of guineas'.<sup>30</sup>

## II

The policy of granting pardons was the subject of criticism from both the English and the Irish parliaments. The English commons presented an address to the king in March 1693, in which among other grievances reference was made to the reversal of outlawries against 'several rebels' in Ireland not within

29. Commissioners' report, pp. 10-11.

30. Annesley MSS, xxiii. 37 and 102.

the articles of Limerick, 'to the great discontent of  
 subjects  
 your protestants there'. The commons demanded that no  
 outlawries in Ireland should be reversed or pardons  
 31  
 granted except on the advice of parliament. The Irish  
 commons resolved in 1695 that the 'countenance and  
 favour' shown to catholics were among the causes re-  
 sponsible for the miseries of Ireland. They directed  
 the crown clerk to lay before the house a statement of  
 all outlawries reversed together with an account of  
 32  
 the authority by which the reversals had been ordered.

In 1697 the Irish parliament passed an act 'to  
 hinder the reversal of several outlawries and attaind-  
 33  
 ers'. The act provided that, notwithstanding any pardon,  
 no outlawry or attainder should be reversed after  
 27 July 1697, except in accordance with the articles of  
 Limerick and Galway. The act also provided for the  
 attainder of catholics found to have 'died in rebellion'.  
 A limited number of named individuals were excepted  
 from the provisions of the act. They included Lord  
 Athenry and Lieutenant-colonel John Kelly of Skryne,  
 who were comprised in the articles of Bophin, concluded  
 in August 1691 when the garrison of the island sur-  
 rendered on terms to the Williamites. Another of those

31. Commons' jn., x. 842.

32. Commons' jn. Ire., ii. 69 (23 Sept. 1695).

33. 9 Will. III, c. 5.

exempted from the provisions of the act was Henry Crofton of Longford, county Sligo, who was comprised in the articles of Sligo. Crofton came of a protestant family but seems to have been brought up as a catholic by his mother, who was a daughter of O'Connor Don. He was high sheriff for county Sligo in 1687 and sat in the 1689 parliament. One of his sons was the celebrated General Henry Crofton of Spain.<sup>34</sup> A saving clause was also provided for Nicholas Taafe, second earl of Carlingford, who was killed at the Boyne. The clause was included for the benefit of his brother Francis, the third earl, who was a general in the emperor's service and had taken no part in the Irish war.

The name of Patrick Sarsfield also occurs in the list of exemptions. This was not the earl of Lucan,<sup>35</sup> as Butler has supposed, but his father, Patrick Sarsfield the elder, who had died in May 1690. It was surmised that the outlawry recorded in his name was really intended for his more famous son. If it were not reversed it might prejudice his grandchild Charlotte,<sup>36</sup> who was the illegitimate grand-daughter of Charles II. The Sarsfield estate was claimed on Charlotte's behalf, firstly against Patrick the younger who took possession

34. Crofton, Crofton memoirs, pp. 134-6.

35. Butler, Confiscation, p. 228.

36. Cal. S.P. dom., 1697, p. 263. William Sarsfield, elder brother of the earl of Lucan, married Mary, daughter of Charles II and Lucy Walter and sister of Monmouth.

of it after his brother's death, and secondly against the crown which seized it as a forfeiture. Charlotte gained a vigorous advocate by her marriage to Agmondisham Vespy, son of the archbishop of Tuam. Vesey's claim was later rejected by the trustees, but he succeeded in obtaining an English act of parliament which allowed him to buy the estate from the trustees at a low valuation.<sup>37</sup>

A clause in favour of Edward Geoghegan of Castletown, Westmeath, represents an attempt to do justice to an unfortunate victim of the war. Geoghegan had held no office, military or civil, under James. He took protection from the Williamite authorities after the Boyne and lived peacefully at home until he was fallen on by a party of Captain Poyntz's soldiers, by whom he was shot through the body, stripped of all his substance, and both he and his family most barbarously used'.<sup>38</sup> As a result of this treatment he took refuge in the Irish quarters and was on that account outlawed. He obtained a pardon in 1696 but the order was frustrated by Wolsely, who had been one of the most active of William's commanders and had received a grant of Geoghegan's estate. The case became part of the Porter-Capel feud, Porter taking Geoghegan's side and Capel taking Wolsely's.<sup>39</sup>

37. 1 Anne, c. 57 (private acts). An account of the case is given in chapter x, *infra*.

38. Warrant in Harris, *Collectanea*, x. 304.

39. Capel to Shrewsbury, 4 Dec. 1695 (*H.M.C., Buccleuch MSS*, ii. 272); Porter to Vernon, 28 Aug. 1696 (*Cal. S.P. dom.*, 1696, p. 365).



Wolsely succeeded in holding up the pardon on the ground that it referred to Geoghegan as 'gentleman', whereas he had been styled esquire in the outlawry record. One of Wolsely's allies represented to Shrewsbury that, although Geoghegan had been 'used severely enough', the officer commanding the party had 'certain intelligence of Geoghegan's constant entertaining the rapparees and giving them notice from time to time of our men's marching, and that at the time when he fell on him sixteen rapparees were in his house; this was not denied, but it was said that he entertained them from fear, not out of any love'<sup>40</sup>. Geoghegan had still not received his pardon when the Act of Resumption was passed in 1700; the act contained a saving clause in his favour. Shortly afterwards a fresh pardon was issued; the warrant gave Geoghegan the proper style of esquire and recorded that Wolsely's executors had no ground of objection to urge against the reversal of the outlawry.<sup>41</sup>

The Irish act deprived the king of the power to pardon persons who had been actually outlawed and were not the subject of a saving clause. Pardons, however, could still be given to persons who had not been outlawed, and the list includes a certain number

40. Thomas Broderick to Shrewsbury, 4 Dec. 1695 (H.M.C., Buccleuch MSS, ii. 272-3).

41. Harris, Collectanea, x. 304.

of pardons of this class which were given after 1697. Thus George Browne of the Neale and his son John were pardoned in June 1698. Neither had been indicted or outlawed, although George had been sheriff of Mayo<sup>42</sup> and John had been taken prisoner at Derry. Other pardons given after 1697 were those in favour of Martin Blake of Moyne, who had been imprisoned by the Irish<sup>43</sup> for corresponding with William's army, and Francis ~~W~~ Forster of Rathorpe, who had brought over part of his troop in accordance with the terms of the proclamation of 7 July 1691.<sup>44</sup>

42. Harris, *Collectanea*, x. 286; Complete baronetage, ii. 419.

43. Cal. S.P. dom., 1698, p. 244.

44. H.L.MSS, n.s., iv. 30.

## CHAPTER VI

## Royal grants

For the greater part of William's reign he and his English commons were engaged in a prolonged struggle for the right to dispose of the forfeited Irish lands. The contest, although it was regarded by both parties as of particular importance, was only part of the larger campaign for political control which was fought out between king and parliament. Its course was marked by the same ups and downs as the larger issue. At the outset William was subjected to continuous parliamentary pressure on the Irish land question. In the middle of his reign, while the Junto kept parliament under control, William had matters very much his own way, and took the opportunity to make grants of Irish lands on the grand scale to a number of his favourites and advisers. From 1699 parliament gained the upper hand. The Act of Resumption constituted a humiliating set-back for the king and an assertion of parliamentary authority in a field in which the royal prerogative had appeared to be firmly established. The attitude of the commons seems to have been determined primarily by financial considerations, but xenophobia and dislike of courtiers

were also important factors.

The first attainder bill, which had reached an advanced stage of development when parliament was prorogued in the summer of 1689, involved only a small number of named individuals, whose estates were to be applied to the relief of Irish protestants. Six subsequent bills, which attained varying stages of development between the autumn of 1689 and the summer of 1694, provided for the attainder of Irish Jacobites generally and for the application of their estates, or the greater part of them, to meeting the expenses of the reduction of Ireland. In the autumn of 1690 the committee of ways and means estimated that a million pounds could thus be raised.<sup>1</sup> The same figure recurs periodically in later estimates. When the fourth attainder bill was in the committee stage the court party succeeded in carrying a clause which reserved part of the Irish forfeitures for the king's disposal. This clause was, however,<sup>2</sup> thrown out on the second reading, and the bill as sent to the lords provided that the forfeited estates should be applied 'towards the charge of the present war'.<sup>3</sup>

A foreign observer remarked that the object of the commons was to prevent courtiers securing grants for themselves and to ensure that gratifications were not given to

1. Commons' jn., x. 445.

2. Ibid., x. 512.

3. Ibid., x. 524.

4  
 foreigners. The lords were still engaged in discussing this bill when William requested parliament to adjourn, at the same time giving his well-known pledge: 'I do likewise think it proper to assure you that I shall not make any grant of the forfeited lands in England or Ireland till there be another opportunity of settling that matter in parliament in such manner as shall be thought most expedient'.<sup>5</sup>

William's pledge was given in circumstances of acute financial stringency. The Irish war had been prolonged beyond his expectation and was costing a great deal of money. In particular, the problem of paying the troops presented difficulties. Godolphin, as first lord treasurer, advised William in February 1691 that the army should receive a quarter of its arrears in cash and three-quarters in debentures secured on the Irish forfeitures: 'What better or more public use can be made of those lands than to satisfy the arrears of that army which brought them under the subjection of England?'<sup>6</sup> William replied that the proposal suited him provided that a proportion<sup>7</sup> of the land was left to be disposed of by himself. Shortly afterwards Godolphin wrote that enough cash had been sent to meet four months' arrears of pay: 'For the remainder of their arrears there are very few of them

4. F. Bonnet to Brandenburg court, 31 Oct. 1690, quoted in Ranke, History of England, v. 204.

5. King's speech to lords, 5 Jan. 1691 (Cobbett's parliamentary history, v. 652-3).

6. Cal. S.P. dom., 1690-1, pp. 242-3.

7. Correspondentie, p. 211.

that will not be very glad to take assignments of debentures on the forfeited lands, so that I hope you will find that the army will be pretty well enabled to go cheerfully into the campaign'. The debentures were duly issued. Later, with the granting away of the lands on which they were secured, they became a drug on the market. Finally, they formed an important part of the complicated financial arrangements of the Act of Resumption and were bought up by speculators who used them to purchase lands from the trustees.

There was to be acute controversy over the question whether William had, or had not, broken his pledge. His defenders maintained that the king could not be held to his promise after the following session of parliament, which lasted from 22 October 1691 to 24 February 1692, Against this it was urged that the question was continually being raised in one form or another, and that William could not have supposed that parliament had allowed its case to lapse by default. It would probably be fair to say that there was no clear breach of the actual pledge, but that William was not prepared to go beyond the bare letter of his undertaking and showed considerable adroitness in using his prerogative to adjourn and prorogue parliament in such a way as to

8. Cal. S.P. dom., 1690-1, p. 328.

9. Jus regium puts the case for William; Davenant, Discourse upon grants and resumptions, puts the commons' case.

prevent the passage of various bills relating to the Irish forfeitures. As time passed and parliament still failed to secure the passage of legislation on the subject, William's confidence grew and his Irish grants became larger and more numerous. He is certainly open to the criticism that the army was fobbed off with unsecured debentures and that the bills for its transport to Ireland remained unpaid, while enormous areas of Irish land were being granted to favoured individuals. As Davenant put it: 'No doubt it has heretofore been injurious to the reputation of a prince to be urged by clamorous debts, to suffer many thousands of miserable persons to want what is their due, to have his troops unpaid and his seamen in vast arrears'<sup>10</sup>.

Between the giving of the pledge in January 1691 and the conclusion of the following session of parliament in February 1692 only one warrant was issued for the grant of Irish land, and the case could plausibly be excluded from the terms of the pledge. The warrant, issued in April 1691, was for the grant of letters patent to Sidney in respect of the forfeited estates of Lord Bellew and Dudley Bagenal. To forestall criticism the warrant stated that the lands had previously been granted to Sir John Trevor and others in trust for Sidney, although such trust had not been specifically

10. Davenant, Discourse upon grants and resumptions, p.401.

11  
 expressed. This seems to have been the case. In the summer of 1690 Southwell wrote to Nottingham that the king had ordered him to draw up a grant of the forfeited estates of Bellew and Bagenal to Sir John Trevor and two others, whom he presumed to be but trustees.<sup>12</sup> It thus appears that Sidney, whom William had known and liked at the Hague, had lost no time in putting in his claim for Irish land.

In December 1691 orders were passed that Henry Luttrell should be given a 'custodiam' of his brother Simon's estate.<sup>13</sup> This order followed with significant promptness upon a promise made by Ginkel at the time of the surrender of Limerick. It appears, however, from a petition of Henry Luttrell that shortly after the order was passed in his favour a general order was passed countermanding the granting of custodiams.<sup>14</sup> The latter order seems to have been due to parliamentary criticism, although William could no doubt have maintained that the recipient of a custodiam held his land on a care and maintenance basis and acquired no prescriptive rights. At a later stage Henry was given, first a custodiam, and then an outright grant of Simon's estate.

During the winter session of 1691-2 another Irish

11. Cal. S.P. dom., 1690-1, p. 341.

12. H.M.C., Finch MSS, ii. 445.

13. Cal. S.P. dom., 1691-2, p. 28.

14. Ibid., p. 156.



forfeitures bill passed the commons. This prescribed that the forfeited estates should be applied 'to the use of the war'. A clause reserved a third part of the forfeitures for disposal by their majesties 'to such military officers and soldiers who actually served in the wars in Ireland in person since 13 February 1689, and to no other person whatsoever'.<sup>15</sup> This met the claims of William's military commanders, but excluded mere courtiers and such civil advisers as Bentinck. The grants to Sidney and to Henry Luttrell came under consideration during the passage of the bill. An odd clause was passed directing that Sidney should surrender before 1 May 1692 the estates which had been granted to him, but providing that he might within six months be given other lands of equal value.<sup>16</sup> Apparently the object was to assert the authority of parliament without incurring the odium of depriving Sidney of all his Irish expectations. At the same time the house rejected a clause which provided that, if Simon Luttrell did not submit in accordance with the articles of Limerick, any grant made by the crown to Henry should be good in law.<sup>17</sup>

This bill met the fate of its immediate predecessor. Before it had passed the lords William first adjourned and then prorogued parliament, with the result that all pending legislation lapsed. Five days after the

15. Commons' jn., x. 664.

16. Ibid., x. 659.

17. Ibid., x. 663.

adjournment a warrant was issued granting the forfeited estates of Lords Limerick and Slane to Ginkel, who by common consent had the strongest claim on the royal bounty.<sup>18</sup> Two days later a much more controversial warrant was issued. It was passed in favour of Henry Guy, secretary of the treasury, and two others, and granted them in trust the estates of the late King James.<sup>19</sup> This was the first stage of the notorious grant of the 'private estate' to William's mistress, Elizabeth Villiers, later Countess of Orkney. As the most controversial of William's grants it will be reserved for more detailed treatment hereafter.

The winter sessions of 1692-3 gave further opportunity to the commons to consider the question of the Irish forfeitures, and much time was devoted to hearing evidence about the mismanagement and corruption of the forfeiture commissioners. The general theme was that the army remained unpaid while civil servants embezzled the proceeds of the forfeitures and great men applied for grants. The commons presented a lengthy address to the king on Irish grievances, which included the following request: 'And forasmuch as the reducing of Ireland hath been of great expense to this kingdom we beseech that according to the promise your majesty

18. Cal. S.P. dom., 1691-2, p. 158.

19. Ibid., p. 164.

hath been pleased to give us no grant may be made of the forfeited lands in Ireland till there be an opportunity of settling that matter in parliament in such manner as shall be thought most expedient'. William replied that he would always have great consideration of what came from the house of commons and would take great care that what was amiss should be remedied. He did not, however, consider this guarded statement as binding him to continue his previous pledge. Parliament was adjourned in March 1693 and during the following months a number of three-year custodiams were granted. The recipients included Henry de Ruvigny (Viscount Galway), Lieutenant-general Talmash and Rudolph Kien, page of the bed-chamber.

The Irish forfeitures were the subject of discussion and of further abortive bills during the parliamentary sessions of 1693-4 and 1694-5. These bills made even less progress than their predecessors. During the following three years, broadly speaking, the whig ministers had the commons under control, and William was in a strong enough position to make grants of the Irish forfeitures on his own lines without effective interference from the parliamentary opposition.

20. Commons' jn., x. 843.

21. Ibid., x. 848.

22. Cal. S.P. dom., 1693, pp. 113 and 198.

## II

The sixth of the books accompanying the inquiry commissioners' report was the Book of Grants, which contained particulars of the seventy-six grants and custodiams then in force. <sup>23</sup> These were recorded as amounting to 656,807 acres, almost nine-tenths of the area forfeited and not restored to the original proprietors. In a number of instances two or three successive grants were made to the same individual. Some of the grants were of house property or forfeited debts. Only forty-four individuals were recorded as having received grants of land.

Outstanding among the grants were those in favour of Viscount Woodstock, Bentinck's son, and of Keppel, earl of Albemarle. Woodstock was granted Clancarty's estate, recorded as amounting to 135,820 acres. In 1695 the gentry of county Cork had offered to make a joint purchase of the estate for £60,000. <sup>24</sup> The proposition was laid before William by Shrewsbury, who wrote back to Ireland that the king 'relishes very well what you propose about Lord Clancarty's estate and is abundantly convinced much more is offered than <sup>25</sup> ever he shall make of it in the method it is in'.

Unfortunately for the gentlemen of Cork their project

23. H.L. MSS, n.s., iv. 32-8.

24. H.M.C., Buccleuch MSS, ii. 264.

25. Ibid., ii. 282.

got no further. About the same time the English commons protested vigorously against the grants which had been made in Denbighshire to Bentinck, now earl of Portland. There was strong talk of an act of resumption and William, bowing before the storm, made a conciliatory reply: 'I have a kindness for my lord Portland which he has deserved of me by long and faithful services, but I should not have given him these lands if I had imagined the house of commons could have been concerned; I will therefore recall the grant and find some other way of showing my favour to him'<sup>26</sup>. The next mention we get of the disposal of Clancarty's estate is in a letter of 1697 from Blaythwayt to Lowndes, secretary of the treasury, conveying the king's orders that a warrant should be prepared for the grant of the estate to Portland.<sup>27</sup> The warrant was issued accordingly, but shortly afterwards was replaced by another warrant granting the land to Woodstock, Portland's son and heir.<sup>28</sup> Presumably William hoped that less attention would be attracted if the grant was made, not to Portland himself, but to his less conspicuous son. Objections had already been made in Ireland to the grant. One of the lords justices reported that Francis Annesley was preparing to make an issue of the forfeitures with particular reference to

26. Cobbett's parliamentary history, v. 978-86.

27. Cal. treas. bks., x. 86.

28. Cal. S.P. dom., 1697, pp. 371 and 463.

the grant of Clancarty's estate to Portland. Joost Keppel, earl of Albemarle, who had ousted Portland from the first place among William's favourites, was recorded as receiving a grant of 108,633 acres from the Irish forfeitures. This area included the estates of Lord Clare and a number of other forfeiting proprietors.<sup>30</sup>

The grants were expressed in terms of profitable Irish acres according to the Down survey and considerable areas of unprofitable land were thrown in. The estimate of their monetary value was markedly low in comparison with the acreage. The gross value of Clancarty's estate was noted in Woodstock's grant as £7,156 per annum subject to charges of £1,513 payable during the lives of the Ladies Clancarty and Fingall. The gross figure works out at a little over a shilling per annum for each profitable acre. Albemarle's grant was designed to bring in an income of only £2,000 per annum. The estates assigned to him were thus estimated as yielding an average net income of between four and five pence for each profitable acre.

Under the management of the trustees the rental of Clancarty's estate was £7,535, and on this basis Woodstock's grant seems to have been valued reasonably enough.<sup>31</sup> Albemarle's grant seems to have been grossly undervalued. Particular criticism was directed against

29. H.M.C., Buccleuch MSS, ii. 522.

30. Cal. treas. bks., xi. 437-41 and xii. 321-7.

31. Annesley MSS, xxxiii. 44.

the valuation of Lord Clare's estate in county Clare, which was the most important of those given to Albemarle. The gross value of the estate, which consisted of over 30,000 profitable acres, was returned at £1,082<sup>32</sup> per annum and the clear value at only £300 per annum. A syndicate, which included the revenue collector of Ennis, bought the whole estate from Albemarle for £2,500, of which £300 was alleged to have been retained by Thomas Broderick as chief intermediary. A witness told the inquiry commissioners that he would go before the English parliament to acquaint them with the undervaluation made by the 'king's collector', and to tell them that McDonnell, another of the syndicate, had been a captain of dragoons in James's army and had had 'his sword ready to kill King William at the Boyne'<sup>33</sup>. The criticism was borne out by the sums subsequently realised by the trustees, who let the estate at £2,146 per annum and succeeded in extracting a further £10,000 as purchase price from the syndicate.<sup>34</sup>

The case of the English commons largely depended on the charge that William had been grossly deceived by his servants in Ireland about the value of his grants. The

32. Cal. treas. bks., xii. 321.

33. Annesley MSS., xxiii. 92.

34. Ibid., xxxi<sup>f</sup>. 12; Ir. rec. comm. rep., 1821-5, pp. 353-4.

inquiry commissioners maintained that the traffic in forfeited estates had principally operated to the advantage of middlemen who had cheated both William and the grantees and made fortunes by 'fishing in these forfeitures'. Their report sums up the situation in the following terms: 'Indeed the whole management has been so intricate as it were designed to be kept a mystery; which has proved sufficiently advantageous to these men, though much to his majesty's detriment, who by this means has been deceived in the value of his grants and in many cases has given much more than he intended'.<sup>35</sup>

The enormous grants made to Bentinck and Keppel and the lesser, but still very substantial, grants made to Zuylestein and other foreigners greatly accentuated the xenophobia and dislike of courtiers which were in any case habitual with the landed gentry. From the beginning of 1698 we find frequent complaints in the English commons and threats of an act of resumption. Similar sentiments among the Anglo-Irish are illustrated by a story which Bishop King has about the grant made to the marquis of Puissar. The deaf archbishop of Armagh, catching only the last syllable of Puissar's name, remarked: 'What, has the Czar of Muscovy gotten a grant of forfeitures? 'Tis very strange, he has not been a week in England and must he come in for a grant? Must we



provide for all foreigners?'

Other foreigners among the grantees were de Ruvigny, Viscount Galway, and Ginkel, earl of Athlone, who received respectively 36,148 acres and 26,480 acres.

Galway was a Huguenot of distinction who left France not long after the revocation of the edict of Nantes. He entered William's service and played a leading part in the concluding stages of the Irish war, forfeiting his French estates as a result. After the war he became commander-in-chief in Ireland and subsequently a lord justice. In 1692 he wrote to William, reminding him of a promise that he should get something of ~~the~~ order of £25,000 in compensation for what he had lost in France. He asked for Sir Patrick Trant's estate and suggested that he might be made 'keeper' of it if William was not prepared to make an outright grant. <sup>37</sup>

The suggestion was approved and a custodiam of Sir Patrick' Trant's estate was given to Galway for three years. <sup>38</sup> At the expiry of the period the lands were granted to him to hold 'as freely as Sir Patrick Trant held them before his forfeiture thereof'. <sup>39</sup> Ginkel had made

an even greater contribution to the Williamite cause and was considered to have fairly earned his grant of Irish land. It was confirmed by an act of the Irish parliament. <sup>40</sup> An important constitutional point thus

36. King to Southwell, 12 Jan. 1698 (T.C.D., MS N.3.1, p. 157). The allusion is to Peter the Great's visit.

37. Cal. S.P. dom., 1691-2, pp. 550-1.

38. Ibid., 1693, pp. 112-3.

39. Ibid., 1696, p. 182.

40. Commons' Jn. Ire., ii. 135 (7 Dec. 1695).

arose when the grant was set aside by the English Act of Resumption. Ginkel's was the only grant to be confirmed in this way, although several other grantees attempted to get similar acts passed for their greater security. Several bills were prepared but not brought before the Irish parliament.

Sixty per cent of the area granted out of the Irish forfeitures was divided among seven foreigners. The remainder of the grants were shared by thirty-seven individuals, of whom several had distinguished themselves in the Irish war and others were office-holders in the Irish government. Others again were protestant relatives of forfeiting proprietors; thus Charles, earl of Abercorn, who had turned protestant, was given the forfeited estate of his catholic brother Claud.

Among the grants given for war services were those made to Baker and Roche, the reward of services rendered during the siege of Derry. Both grants were maintained by a saving clause in the Act of Resumption. John Baker, son of Henry Baker who died during the siege as governor of the city, was granted the estate of Nicholas Gernon in county Louth. He was unfortunate in his grant, as another member of the Gernon family succeeded in establishing a deed under which the estate was settled on him. Baker petitioned the commons for relief but does not seem to have obtained redress at the time. After the winding up

of the trust a private act was passed for recompensing John Baker and his family, and some years later a further act was passed for their relief.<sup>42</sup> Roche was granted the estate of James Everard in county Waterford and a number of ferries in various parts of Ireland.<sup>43</sup> This was the reward of his enterprise in swimming up the Foyle, carrying a message from Kirk to the garrison, and again returning in the same way to Kirk's camp. Kirk had offered a reward of three thousand guineas for the feat and the grant seems to have been made in lieu of cash payment. Roche complained that the ferries had brought him no gain but endless trouble. William accordingly ordered that he should receive a further grant of lands in Cork and Meath.<sup>44</sup> This grant had not passed the great seal when the Act of Resumption became law. The trustees therefore held that it was not covered by the saving clause and treated the lands as vested in themselves. Roche succeeded in obtaining a private act by which he was to receive £3,269. 7. 7 out of the proceeds of the forfeited estates. He got only one-third of the amount in cash and a subsequent act assigned the balance in debentures.<sup>45</sup>

Gustavus Hamilton, who defended Enniskillen, received a grant of 3,482 acres. The inquiry commissioners

42. 2 and 3 Anne, c. 48 and 6 Anne, c. 19.

43. Cal. S.P. dom., 1694-5, p. 177.

44. Cal. treas. bks., xv. 213.

45. Commons' jn., xiv. 251; Cal. treas. bks., xxiii, part 2 p. 318. The acts were 2 and 3 Anne, c. 45 and 6 Anne, c. 27.

noted that the grant was made for his 'great and early services in the war in Ireland and for his wading in the Shannon and storming the town of Athlone at the head of the English grenadiers'. Another Enniskillen man who received a grant was James Corry, who was given the Fermanagh estate of Cuconnacht Maguire. There was considerable controversy over this grant. The commissioners remarked that it was given on the grounds that his house had been burned and that he had at his own expense supplied the garrison of Enniskillen with provisions and materials worth £3,000: 'But inquiring into the merits of this gentleman it appeared to us that he gave no assistance to the men of Enniskillen, and that in the town of Enniskillen he publicly declared he hoped to see all those hanged that took up arms for the prince of Orange, and his house was burned by the said garrison'<sup>46</sup>.

Among the grantees were Prendergast and de la Rue, who were implicated in the conspiracy to assassinate William in 1696 and turned king's evidence. Both grants were protected by a saving clause in the Act of Resumption. Prendergast, who was an Irish Jacobite, gave Bentinck the first information of the plot and later repeated the story to William. His information led to the arrest of the conspirators and his evidence to their conviction. He received a grant of the estate of Roger

O'Shaghnessy of Gort. Conforming to the established church, he became a baronet and a member of parliament and finally died of wounds received at Malplaquet. His grandson became the first Viscount Gort. The O'Shaghnessys disputed the grant on the ground that part of the property had been settled on Roger O'Shaghnessy's younger brother. The latter and his heirs succeeded in retaining possession of the disputed land for many years. When the case came before a jury in 1731, Prendergast's son asked for a transfer on the ground that he 'could not expect any equality or indifferency from any jury to be returned in county Galway by reason of the influence that the family of O'Shaghnessy held in that county'.<sup>48</sup> The transfer was refused and the jury found in O'Shaghnessy's favour. In 1755 the litigation was still going on and the Irish commons resolved to 'proceed against all such as shall promote, encourage or assist in carrying on the said suits, as persons endeavouring to lessen the protestant interest of this kingdom'.<sup>49</sup> De la Rue was granted a number of scattered lands, making a total of 3,900 acres. He seems to have been a rather seedy French adventurer. He did not live long to enjoy his grant, as he was killed in a gambling brawl in a London coffee-house in 1701.<sup>50</sup> The trustees

47. Cal. S.P. dom., 1697, p. 129.

48. Parliamentary cases, 1730-5, nos 212-13.

49. Commons' jn. Ire., v. 285 (11 Dec. 1755).

50. Luttrell, Brief historical relation, iv. 211.

subsequently discovered that most of the land granted to him had never come into his possession. Part was protected by the articles of Limerick; part was affected by the loss of ~~the~~<sup>51</sup> minutes containing particulars of the inquisitions.

One of the largest items in the Book of Grants was 77,291 acres granted in 1696 for a thousand years to the earl of Bellamont. Bellamont was Richard Coote, who had from the first been a vigorous supporter of William and had held the post of treasurer and receiver-general to Queen Mary. He was later governor of New York where he was involved in some unhappy negotiations with Captain Kidd,<sup>52</sup> the celebrated pirate. His grant consisted of the Kenmare estate, but was not so valuable as might be supposed. The patent was for a grant of all the estates of Sir Valentine Browne, commonly called Lord Kenmare, and of his son Sir Nicholas, except for the lead mines on Ross Island, for a thousand years at a peppercorn rent. The grant, however, was conditional on Bellamont forthwith making over the estate to trustees who were to pay him £1,000 a year, the surplus going to the crown; the trustees were to manage the estate under<sup>53</sup> the orders of the Irish government. Difficulties at once arose over the payment of the income. The estate

51. H.L.MSS, n.s., iv. 211.

52. Macaulay, History of England, iii. 702-6.

53. Cal. treas. bks., xi. 95.

had been leased by the revenue authorities in Ireland to Francis Burton for £1,000 a year (which turned out to have been reduced to £774), and Queen Mary had ordered £400 a year to be paid from the proceeds to the wife of Sir Nicholas Browne.<sup>54</sup> In 1697 a warrant was issued to the lords justices to pay Bellamont £2,000 in cash on the ground that the estate was so encumbered that he was not able to receive his annual income from it.<sup>55</sup> Burton's lease expired in 1699, and a royal warrant was issued in that year to the lords justices that the estate should be leased for not more than twenty-one years at the best rent obtainable; the surplus income, after satisfying the claims of Bellamont and Lady Kenmare,<sup>56</sup> was to go to the crown. The inquiry commissioners observed that the lords justices had disregarded the terms of the warrant and had leased the estate for sixty-one years to two members of the Irish parliament, Blennerhasset and Rogers,<sup>57</sup> for at least £1,000 less than its true value.

The commissioners recorded a number of particulars about this estate which are of interest as showing its history in a period less fully covered than the eighteenth century by the published Kenmare manuscripts.

Among the letters included in the Annesley manuscripts

54. Cal. treas. bks., xiv. 297.  
 55. Cal. S.P. dom., 1697, p. 159.  
 56. Cal. treas. bks., xiv. 297.  
 57. Commissioners' report, pp. 26-7.

is one dated 8 May 1699 from the revenue commissioners, recommending that the Kerry portion of the estate should be leased to Blennerhassett and Rogers for sixty-one years at an annual rent of £1,300.<sup>58</sup> Francis Burton, the previous lessee, had succeeded in getting the court of exchequer to reduce his rent to £774, but his lease was subject to the condition that he should spend £2,000 on building barracks at Limerick for 'fourteen hundred common men and a proportionable number of officers'.<sup>59</sup> The Hospital estate in county Limerick had been 'possessed since 1692 by Melchior Levallin and John White under pretence of portions to their respective wives'. Their wives were Elizabeth and Celina, daughters of Captain Thomas Browne of Hospital and sisters of Lady Kenmare. The revenue commissioners recommended that the Hospital estate should be leased to Rogers for £750, 'an increase of £300 over what Levallin and White owned to have made thereof out of their accounts'.<sup>60</sup> A witness gave the inquiry commissioners a series of figures which suggested a much higher rental value for the Kerry lands. His information included a detailed rental of the parishes of Molahiffe and Kilnanare, giving the names of the tenants and the rent paid by each, amounting in all to £500. He also gave a somewhat more general statement for

58. Annesley MSS, xxvii. 170.

59. Cal. S.P. dom., 1693, p. 227.

60. Annesley MSS, xxvii. 170.



other parts of the Kerry estate. His figure for the annual value of the whole Kerry estate was £2,153.<sup>61</sup> The estimate of the inquiry commissioners that the Browne estates had been leased for a thousand pounds less than their true value does not seem to have been much of an exaggeration. The leases in favour of Blennerhassett and Rogers amounted to £2,~~00~~<sup>050</sup>, taking the Kerry and Limerick lands together. The trustees' rentrolls amounted to £2,096 for the Kerry portion and to £892 for the Limerick portion.<sup>62</sup> Twenty years later the rents seem to have been appreciably higher. From the Kenmare manuscripts it appears that the lands in the parishes of Molahiffe and Kilnanare, which had been valued at £500 a year in 1699, were worth some £735 in 1722. About the latter date the Limerick lands were estimated to be worth ten shillings a year 'one with another', which would mean a rental of £1,310 on the Limerick estate as recorded<sup>63</sup> in the books of Survey and Distribution.

61. Annesley MSS, xxiii. 76-7.

62. Ibid., xxxiii. 217-27.

63. Kenmare MSS, pp. 169-70. The Kerry rentals c. 1722 cannot be exactly compared with the earlier figures as tenancies were differently grouped. One of the rentals in the Kenmare MSS is for Molahiffe manor, which consisted of lands in Molahiffe and Kilnanare parishes plus a few lands in Aghlish parish, which have been excluded. The published rentals do not cover the whole Kerry estate; they omit lands in baronies other than Magunihy.

## III

The most controversial of William's grants was that made to his mistress, Elizabeth Villiers, who was given the 'private estate'. This estate was granted to the duke of York (who later became James II) by section 194 of the Act of Settlement. It represented the equivalent, after the various Restoration 'reprisals', of the lands granted under the Cromwellian settlement to the regicides. Petty had estimated its area at 120,000 acres, but by William's reign it was considerably less. Some lands had been disposed of by James to Tyrconnell and others; some were granted on paper only and James had never succeeded in getting possession of them. Particulars of the estate were recorded, not in the Book of Grants, but in the ninth of the books accompanying the inquiry commissioners' report. The lands thus shown amounted to 95,649 acres spread over sixteen counties. The gross income was estimated at almost £26,000 per annum. James had charged the estate with £3,000 per annum during the lives of two of his mistresses, Arabella Churchill and Susannah Bellasis. William scrupulously honoured the commitment. The rest of the revenue was available for Elizabeth Villiers, whose income would be further increased after the death of James's mistresses. There has been considerable criticism of the valuation which the inquiry commissioners put upon this grant. It will be reviewed in more detail in the course of the discussion of their report.

Elizabeth Villiers had come to the Hague as maid of honour to Mary. She was no beauty; according to Swift she 'squinted like a dragon'. But she seems to have been extremely intelligent and a good conversationalist. She became something of an Egeria to William. Her political abilities are exemplified in some persuasive letters which she wrote to Shrewsbury, urging him to take office in William's government.<sup>64</sup> In later life she struck up a firm friendship with Swift, whose correspondence contains several of her letters. He described her as the wisest woman he ever saw, and observed that her advice had for many years been followed in the most important affairs of state. He qualified his eulogy with the comment that she spelled like 'like a Wapping wench'.<sup>65</sup>

There was a general air of mystery about ~~the~~ disposal of the private estate, and there are numerous indications of opposition from various quarters to its grant to Elizabeth Villiers. The first warrant directed that the estate should be put into the hands of Henry Guy, secretary of the treasury, for conveyance in such manner as the king might direct.<sup>66</sup> Shortly after the issue Guy wrote to the Irish chancellor that the private estate was not to be conveyed in the manner directed,

64. H.M.C., Buccleuch MSS, ii. 57-8.

65. Swift, Prose works, ii. 383 and 392; Correspondence of Jonathan Swift, ii. 409 and v. 301.

66. Cal. S.P. dom., 1691-2, p. 164.

and that the seal was not to be affixed to the document until further orders.<sup>67</sup> Guy appears to have had scruples about his trust and to have apprehended that parliament might make awkward inquiries. As Guy was himself a member of parliament he would be obliged to give an answer on the spot; if no member of parliament was concerned in the trust time might be gained before an answer need be given.<sup>68</sup> Guy's scruples were temporarily overcome, but in the following year he and his fellow trustees obtained leave to resign their trust to 'Mr Topham, who has the reputation of an honest man and is one ----- whom the persons concerned think they may rely on'.<sup>69</sup>

Elizabeth Villiers's name did not appear in the orders until after the queen's death. Even then care was taken to draw as little attention as possible to the dimensions of the grant. A warrant was issued granting to Elizabeth Villiers, spinster, the town and lands of Knockingen, containing 135 acres, together with all castles, manors and towns in which James, duke of York, had any estate of inheritance in Ireland on 5 February 1685.<sup>70</sup> Two of the Irish lords justices, Wyche and Duncombe, refused to execute the warrant and the transfer was not effected until Capel took over

67. Cal. treas. bks., ix. 1642.

68. Cal. S.P. dom., 1691-2, p. 405.

69. Godolphin to William, 18 Aug. 1693 (Cal. S.P. dom., 1693, p. 275).

70. Cal. S.P. dom., 1694-5, p. 441.

as lord deputy. Capel wrote to Shrewsbury that his former colleagues had refused to transfer the estate from Topham to Elizabeth Villiers, although they had transferred it from Guy to Topham, well knowing for whom it was in trust: 'I am told they value themselves now in refusing to pass this grant, which has caused the more notice to be taken of it, and indeed some im-<sup>71</sup>pressions against it'. Wyche's attitude is of interest in view of his later position as trustee for the forfeited estates.

There was considerable <sup>doubt</sup> about the legal position of the estate. In 1695 the Irish law officers expressed the opinion that it was not crown property: '--- after the duke of York's accession to the crown that estate was never put in charge in the exchequer, but managed and kept as a private and particular estate, so as no title yet appeareth on record in the crown to those lands'<sup>72</sup>. It could not properly be regarded as a forfeited estate as James was not attainted. William appears to have assumed that he was entitled to take it over from James in the same way as he took over the crown, and for the same reason, that James had surrendered his rights by departure. Elizabeth Villiers seems to have been anxious to strengthen her legal position. Sir Richard Levinge, in the course of an opinion given in 1695,

71. H.M.C., Buccleuch MSS, ii. 187.

72. Ibid., ii. 188.

observed that she had sufficient grounds for pressing for an act of parliament declaring the private estate to have been vested in the crown at the time of her grant.<sup>73</sup> There are indications that Anne considered that she had an interest in her father's estate and was by no means satisfied that it should have been granted to Elizabeth Villiers. When the bill for the confirmation of outlawries was before the Irish parliament in 1697, Winchester wrote to Shrewsbury that Drogheda and a great many of the bishops were 'possessed with a notion that the princess was mightily against this bill and that this bill would confirm my lady Orkney's grant'.<sup>74</sup> After Anne's accession there seems to have been a general expectation that parliament would grant her the private estate,<sup>75</sup> 'that being her proper inheritance'. When Elizabeth Villiers was advised to have her title secured by an Irish act, William was reluctant to have the matter ventilated in this way but consented to the preparation of a bill if it was thought necessary.<sup>76</sup> The Irish chancellor reported that there was particular hostility in parliament to any bill for the confirmation of the grant and no such measure was actually brought forward.<sup>77</sup>

73. H.M.C., Buccleuch MSS, ii. 189.

74. Ibid., ii. 534. E. Villiers married Lord George Hamilton in Nov. 1695. Soon after he was made earl of Orkney.

75. Bishop King to Southwell, 28 Mar. 1702 (B.M., Eg. MS 917, f. 183).

76. H.M.C., Buccleuch MSS, ii. 187.

77. Ibid., ii. 482.

This grant was the chief point of contention between the inquiry commissioners in 1699. It aroused bitter controversy in the parliamentary debates which followed on the commission's report. It has since been cited on various occasions as an example of royal profligacy. Karl Marx referred to it as exemplifying the private moral character of 'this bourgeois hero', William the third.<sup>78</sup> Froude referred to it as the 'worst case' among William's grants, and made the curious comment that the lady's sole claims to consideration were that her father had been knight marshal of Charles II's household and that her mother had been governess to the princesses.<sup>79</sup> Macaulay called it an unfortunate grant and took a good deal of trouble to explain it away.<sup>80</sup>

The controversy which took place over the inclusion of the grant in the report of the inquiry <sup>m</sup>commission is discussed in the following chapter.

78. Marx, Capital, ii. 801.

79. Froude, Ire., i. 247.

80. Macaulay, History of England, iii. 716-17.

## CHAPTER VII

## The inquiry commission of 1699

William's third English parliament, which had been kept in fair control by the Junto of whig ministers, became markedly more troublesome after the treaty of Ryswick was concluded in September 1697. The coming of peace left members free to concentrate on the deplorable state of the national finances and on the various factors which were thought to be responsible for it.

Considerable time was devoted to the discussion of William's land grants. A report on a commons debate of December 1697 refers to a speech of Jack Howe, at this time a violent tory, who spoke of the 'unreasonable grants in Ireland' which had been made 'contrary to the king's proviso'. Howe proposed a general act of resumption, saying that if ever there was cause for such a bill it was then, 'which seemed to relish<sup>1</sup> very well with many people'. In February 1698 leave was given by the commons to bring in a bill for 'vacating' all grants of estates or other interests forfeited in Ireland since 13 February 1689 and for appropriating<sup>2</sup> them to the use of the public. Commenting on the

1. James Sloane to Sir Joseph Williamson, 21 Dec. 1697 (Cal. S.P. dom., 1697, p. 522).

2. Commons' jn., xii. 50.



proceedings an observer remarked that the 'current ran so strong that there was no opposing it, and consequently little was said on the court side'. The opposition proposed to raise a large sum of money either by selling the estates to the highest bidder or by obliging the holders to pay a certain number of years' purchase. Stress was laid on the point that the commons had previously addressed the king on the subject of the Irish forfeitures and had received 'very gracious answers' from him.<sup>3</sup> The tactic employed by the court party was to play for time by carrying the scrutiny even further and obtaining leave to introduce bills vacating all grants made by Charles II and James II.<sup>4</sup> During the session particular grants made by William came under examination and the house demanded details of the lands given to Albemarle, Puissar and others.<sup>5</sup> Montague, who was first lord treasurer, incurred severe criticism for having himself received a grant of debts due to Tyrconnell, Sir Patrick Trant and others.<sup>6</sup>

Towards the close of the session the administration seem to have thought that some compromise was desirable. To a tory proposal that there should be a tax of five years' purchase on grants Montague replied that some

3. R. Yard to Williamson, 8 Feb. 1698 (Cal. S.P. dom., 1698, pp. 77-8).

4. Commons' jn., xii. 90.

5. Ibid., xii. 106.

6. Cal. S.P. dom., 1698, p. 94.

such way of raising money might be adopted and that the grantees could be recompensed by having their grants confirmed by act of parliament.<sup>7</sup> A bill on these lines was prepared by Lowndes, the secretary of the treasury, who suggested that £5-600,000 might be raised by the measure, and that the grantees would have no real grievance as parliamentary ratification of the grants would appreciate the value of their estates.<sup>8</sup> The bill, however, had only reached the committee stage when parliament was first adjourned and then dissolved.

The next parliament was even more truculent. Tories and 'malcontent whigs' formed an alliance against the ministerial whigs. The line of cleavage was between the court party and the opposition, or country party; the latter was in a majority in the commons and in a minority in the lords. It was thus only possible for the majority party in the commons to push through anti-court legislation by making the fullest use of its control of the purse-strings. Towards the close of the session a clause was 'tacked'on to the supply bill empowering seven commissioners to take account of the Irish forfeitures.<sup>9</sup> Tacking was a device used to push through a measure distasteful to the lords or the crown by coupling it with a bill for the grant of indispensable financial aid. It

7. Cal. S.P. dom., 1698, p. 184.

8. Ibid., p. 242.

9. Commons' jn., xii. 651.

was again employed in the following year to carry the Act of Resumption. The most celebrated of the tacks was that employed to carry the Test Act of 1704.

There was much controversy over the tacking clause. Burnet commented that 'in the debates a great alienation discovered itself in many from the king and his government, which had a very ill effect upon all things ~~at~~<sup>10</sup> both at home and abroad'. The lords did their best to resist the clause. They appear to have countered with a compromise proposal that the grantees should pay four years' purchase and have their grants confirmed by parliament.<sup>11</sup> The commons rejected the proposal and insisted on their original bill, which then passed the lords with nine peers protesting. These peers, some of whom were tory and some whig, took their stand on the ground that the clause for inquiry into the forfeitures was foreign to the supply bill and would more appropriately have been the subject of an independent bill: 'The tacking of a clause of that nature is contrary to the ancient method of proceedings in parliament --- and highly prejudicial to the privileges of the peers and the prerogative of the crown'.<sup>12</sup>

10. Burnet, History of his own time, iv. 399.

11. Luttrell, Brief historical relation, iv. 509.

12. Lords' jn., xvi. 453.

## II

The method adopted for choosing the inquiry commissioners was to have lists of seven names 'put into glasses by way of balloting'. The commissioners selected were Lord Drogheda, John Trenchard and five members of the Irish commons, Francis Annesley, Sir Francis Brewster, James Hamilton of Tullymore, Henry Langford and Sir Richard Levinge.<sup>13</sup> Six of the commissioners were thus members of the Irish parliament, and Trenchard, as a graduate of Trinity College, Dublin, had some acquaintance with the country. The Irish commissioners had all been in conflict with the administration at one time or another. They appear to have been selected by the opposition in the expectation that they would produce a report which would whole-heartedly condemn the official handling of the Irish forfeitures. Trenchard, a whig writer of extreme views, had recently come into prominence with a pamphlet A short history of standing armies in England, which had been largely responsible for the drastic reduction of William's armed forces. He, in particular, could be relied on to produce a report which would be highly unpalatable to the court.

In the event the commissioners formed an ill-assorted team and after much wrangling and disputation split into majority and minority groups. Annesley, Hamilton,

13. Commons' jn., xii. 657.

Langford and Trenchard formed the majority. Drogheda, Brewster and Levinge formed a dissenting minority. Several modern historians have referred to the majority as tories and to the minority as whigs.<sup>14</sup> There is no evidence for this classification, which seems to spring from Archdeacon Coxe.<sup>15</sup> In fact, the majority seems to have consisted of two tories and two whigs, and the minority of two tories and one whig.<sup>16</sup> Trenchard, who took a leading part in the drafting of the majority report, was a violent whig. Levinge, one of the signatories of the minority protest, was a consistent tory. He had been speaker of the Irish commons and solicitor-general till 1695, when he was replaced in the former capacity by Robert Rochfort and in the latter by Alan Broderick, both prominent whigs. He was on the worst terms with Capel, the whig lord deputy.<sup>17</sup> In Anne's reign he took a prominent part on the tory side in Irish politics. It is curious that he should have been selected as a member of the inquiry commission as he had personal grounds for opposing a strong report. He

14. Turberville, The house of lords in the reign of William III, p. 202; Feiling, History of the tory party, 1640-1714, p. 337.

15. Private and original correspondence of ---- Shrewsbury, pp. 602-3.

16. Majority - tories, Annesley and Langford; whigs, Trenchard and Hamilton. Minority - tories, Drogheda and Levinge; whig, Brewster. D.N.B. has articles on Trenchard, Drogheda, Levinge and Brewster.

17. Cal. S.P. dom., 1695, p. 119.

had purchased from Albemarle for the moderate sum of £1,000 over 1,500 acres in Westmeath, the forfeited estate of Walter Tuite.<sup>18</sup>

All the evidence indicates that the line of cleavage was pro- and anti-court, not whig and tory. Feeling ran high. The majority commissioners neglected no opportunity to discredit the government's administration of the forfeitures and to paint a lurid picture of neglect, corruption, favouritism and partiality to papists. The dissenting minority did their best to obstruct the designs of the majority. Ralph summed up the position thus: 'Of these commissioners, which were seven in all and all presumed to be anti-courtiers, four were disposed to put every circumstance to the torture with a view to inflame the report, and three were for the court under the pretence of candour and moderation'.<sup>19</sup>

In the ballot the highest number of votes had been given to Francis Annesley, who sat for Downpatrick in the Irish commons. He belonged to the well-known family, of which Lord Anglesey was the most prominent seventeenth-century representative. His son became Lord Annesley of Castlewellan. A considerable part of what we know about the transactions of the inquiry commissioners and, in a much greater degree, of the trustees under the Act of Resumption is derived from

18. Ir. rec. comm. rep., 1821-5, p. 379.

19. Ralph, History of England, ii. 833.

the Annesley manuscripts, copies of the proceedings taken by Francis Annesley and preserved at Castlewellan. The manuscripts, to which numerous references have already been made, include a book of the depositions taken by the inquiry commissioners in 1699 and a book of letters written and received by them in the same year. <sup>20</sup> Annesley was a barrister of the Inner Temple and one of Bishop King's counsel in his case against the Irish Society. Langford, another of the inquiry commissioners, was also one of the bishop's counsel in the same case. King and Annesley became very friendly, and a considerable number of their letters to ~~one~~ <sup>another</sup> have been preserved in King's correspondence. Soon after Annesley was briefed in the case King wrote to him to say how pleased he was to have found someone on whose 'skill, prudence and integrity' he <sup>21</sup> could so entirely depend. Annesley was also a friend of Southwell, who was a close friend and regular correspondent of King's. Soon after the appointment of the inquiry commission Southwell wrote to King: 'I hope our worthy friend Mr Annesley is in safety with you. <sup>22</sup> I know not a better man'.

King's attitude to the inquiry is of interest. He had disapproved of the methods adopted for the disposal

20. Annesley MSS, xxiii and xxvii. The descriptive catalogue (Anal. Hib., xvi. 359-64) wrongly describes the latter volume as trustees' letters, 1699.

21. King to Annesley, 28 Oct. 1697 (T.C.D., MS N.3.1, p.115).

22. Southwell to King, 30 May 1699 (T.C.D., King MSS).

of the forfeited lands. His letters contain a number of derogatory references to courtiers, and in the previous year he had written to Annesley that 'the Irish lands go everywhere but where they should'<sup>23</sup>. To another correspondent he observed that a violent faction 'have gotten all the forfeitures of Ireland into their hands and they manage them, and by them all that have interest in them, as best serves their private advantage; this makes good men jealous of them'<sup>24</sup>. Nevertheless King was opposed to the inquiry, partly because it had been ordered by the English parliament, but chiefly because much of the land granted by the crown had since been sold by the grantees to Irishmen. King made the following comments: 'The design of the commission is to break all our legal securities to gratify England, which will use the forfeitures so as to do as much mischief in Ireland as they can, and if they either sell them by cant or make them a fund to raise a sum of money they will take away all the ready money in Ireland and we shall not recover in twenty years ---- The commissioners are under a dilemma. If they do execute it (i.e. their commission) faithfully they hurt the kingdom (of Ireland) by giving a handle to destroy our propriety and carry away our money, and if they do not the roguery of the late managers will not appear

23. King to Annesley, 16 July 1698 (T.C.D., MS N.3.1, p. 248).

24. King to Clifford, 14 Dec. 1697 (Ibid., p. 139).



and they will be rivetted in their places. The last consideration has ill-nature on its side and therefore I believe will prevail'.<sup>25</sup>

The Irish objection to an English parliamentary inquiry was certainly associated with the controversy stirred up by Molyneux's famous treatise, The case of Ireland's being bound by acts of parliament in England stated, which had been published in the previous years and had been greeted with enthusiasm in Ireland and indignation in England. The inquiry into the Irish forfeitures, and even more so the Act of Resumption, made it clear how little respect the English parliament had for Anglo-Irish assertions of constitutional independence. The theory that Ireland was subject to the king, but not to the parliament, of England was not easily reconciled with the new position brought about by the revolution of 1688, which established parliament, and not the king, as the ultimate authority in England. The action taken by the English parliament in respect of the Irish forfeitures is a particularly good example of the manner in which parliament's control of the king involved the exercise of its authority over Irish affairs.

When the commissioners reached Ireland they met with a hostile reception from the Irish administration, who naturally attorned to the king and resented an

25. King to Southwell, 15 June 1699 (N.L.I., MS 2055).

inquiry which was a direct attack both on the crown and on their <sup>own</sup> management of the forfeitures. Methuen, the Irish chancellor, wrote to Vernon, the secretary of state: 'Our new commissioners are come and I find, what I believed, that they will carry the execution of their commission very high and endeavour in their reports not only to make the grants more considerable in value, thereby to engage the house to proceed in that matter, but also to insert in their report such things, not directly within the direction of the clause, as may furnish ample matter for reflection on the king's ministers who have served him both in England and Ireland'.<sup>26</sup>

Friction began with the reluctance of the lords justices to allow the commissioners to hold their proceedings in Chichester House, the parliament building.<sup>27</sup> This point was conceded but further wrangling took place about the supply of official information. A number of the letters written by the commissioners consist of reproaches to officials for their failure to comply with requests for information. The language of some of these letters shows how strained relations were. Thus a letter to the revenue commissioners begins: 'You thought fit to appoint Mr White to attend us with a parcel of very confused books relating to the forfeitures, with a promise that he should apply himself

26. Cal. S.P. dom., 1699-1700, pp. 223-4.

27. Ibid., p. 224.

thereto until we should have those estates laid before us in some better order than we found therein; but instead of his application to that work he has been so employed in other matters that we have hitherto lain under great disappointments and delays, which the nature of our business will no longer permit of'. A letter to Palmer, deputy clerk of the council, is in a similar vein: 'We cannot forbear taking notice that your delays are greater than we have ever met with from any other public offic<sup>er</sup>~~ixi~~! Palmer for his part complained: 'I am attacked every way, these commissioners of forfeitures reporting strange things that the grants are to be re-assumed without regard to purchasers. It will be a barbarous case and will undo half the protestants here, amongst the rest myself; but we hope other things from an English parliament and, though we expect to have three years' value laid upon them, part surely will be on the grantee and part on the purchaser'.<sup>28</sup><sup>29</sup><sup>30</sup>

Palmer's personal anxiety related to his purchase of 679 acres, the estate of Dominick Barnwall, which had been granted to Sidney.<sup>31</sup> His letter brings out what was to be an important factor in determining the attitude of Irish protestants to the Act of Resumption. Some of

28. Annesley MSS, xxvii. 22.

29. Ibid., xxvii. 41.

30. Palmer to Vernon, 9 June 1699 (Cal. S.P. dom., 1699-1700, pp. 222-3).

31. Ir. rec. comm. rep., 1821-5, p. 378.

the grantees, notably the earls of Albemarle, Athlone and Romney (Keppel, Ginkel and Sidney) had sold their grants to Irish purchasers, in many cases at bargain prices.<sup>32</sup> The purchasers, who included a number of the leading protestant gentry, were naturally hostile to any attack on their vested interests. They agitated vigorously against the Act of Resumption and were influential enough to get it substantially modified in their favour.

The commissioners spent June and July 1699 in Dublin, taking evidence and attempting to investigate the voluminous and confused records of the forfeitures administration. Most of August and September was taken up with a tour which went as far afield as Waterford, Cork and Galway. At one time or another all the members except Drogheda took part in this tour, in which sworn evidence was taken from a large number of witnesses, who included forfeiting proprietors, articlemen and recipients of pardon, as well as leading protestant gentry.<sup>33</sup>

When the commissioners returned to Dublin in the autumn their time was principally occupied with the violent controversies associated with the drafting of their report. The leader of the dissenting minority was

32. Commissioners' report, pp. 24-5.

33. Annesley MSS, xxvii contains the depositions recorded by the commissioners.

Drogheda. Although he had been a vigorous critic of the government in the Irish parliament of 1697-8, he did not forget that in the preceding year he had been a lord justice and therefore in close association with the crown. When he learned that he had been appointed to the inquiry commission he protested that the news came to him as a 'mighty surprise', and wrote to Vernon: 'I assure you I never did so much as hear any such matter was in agitation. If I had, I would have used all means to have prevented myself from being one'. He found himself in an unpleasant dilemma; he did not wish to disoblige the king, and yet was afraid of the consequences if he refused to accept the parliament's commission. He asked Vernon to explain matters to William and communicate the latter's wishes.<sup>34</sup> It was of considerable advantage to the court party that the commission should include a member with Drogheda's outlook, and it may be presumed that he was encouraged to accept the appointment. Bishop King observed that Drogheda had refused to come in at first but had since agreed: 'It looks ~~hard~~ low for a man lately in the government to act in such a commission'.<sup>35</sup>

A lively description of the dissensions which took place between the commissioners was subsequently given to the commons when five of the commissioners and

34. Cal. S.P. dom., 1699-1700, pp. 163-4.

35. King to Southwell, 15 June 1699 (N.L.I., MS 2055).

Hooper, their secretary, were called to the bar of the house and cross-examined.<sup>36</sup> The controversy centred on whether the report should include the grant of the private estate to Elizabeth Villiers, by now Lady Orkney. Drogheda is said to have declared that it would be flying in the king's face to report the grant. Trenchard rejoined that one might as well say that the whole commission was flying in the king's face. There was much argument whether Trenchard had said that the report would signify nothing if it did not include the grant, and whether he had called it a villainous grant. Trenchard's own version was that he might have said it was an extravagant grant, an unreasonable grant, an unconscionable grant; 'but that I used the word villainous I positively deny; it is a word I don't use in my ordinary conversation, a word that never comes out of the mouth of a gentleman, and is false'.<sup>37</sup>

The argument against mentioning the grant was that the commission was appointed by the act to inquire into estates forfeited since 13 February 1689, when William and Mary officially began their reign. Even if James was held to have forfeited his estate by abdication

36. History and proceedings of the house of commons, iii. 109-22. The account there given forms the basis of this and the following three paragraphs.

37. *Ibid.*, p. 121.

such forfeiture would have taken place before the date prescribed. This was countered with the argument that by coming to Ireland on 15 March 1689 James had committed treason against William and Mary, an argument which overlooked the fact that no attainder proceedings had been taken <sup>against</sup> James. Eventually it was decided by the majority that the grant should be brought into the report on the not very convincing ground that some of Lady Orkney's lessees were forfeiting persons.

At one stage the commission was equally divided, Trenchard, Annesley and Langford pressing for the inclusion of the grant, Drogheda, Brewster and Levinge opposing it. The casting vote was that of Hamilton of Tullymore, a county Down landowner of whig antecedents who had taken a leading part in the attempt to impeach Porter and Coningsby in 1693.<sup>38</sup> Hamilton decided that, although Lord Orkney was his relative and friend, it was too late in the day to consider omitting the grant from the report. For five months the commissioners had given the impression that they were 'peremptory for reporting the estate', and two of the dissenters, Brewster and Levinge, had taken part in the examination of witnesses about the valuation of the grant. Hamilton is said to have declared: 'We have made so great a noise

38. Hamilton was brother-in-law of Mordaunt, later earl of Peterborough. There are references to his acting as confidential courier for Shrewsbury and Capel (H.M.C., Buccleuch MSS, ii. 117). His son became Lord Clanbrassil.

about this estate by examining so many people to the value and sending for the rentrolls of it that it is now the public discourse that it will be reported and I know the world must needs say we are bribed and corrupted if we do it not'.<sup>39</sup>

Trenchard was ill and conducted the controversy from his bed. The dissenting commissioners came to his room and offered to sign the report as it stood, if the references to the private estate were omitted. The majority group insisted on its inclusion. When the report was laid before Drogheda for signature he wrote on it that he and his fellow-dissenters agreed to it with the exception of eight or nine paragraphs, and in particular of the paragraph which referred to the private estate. This endorsement was signed by himself, Brewster and Levinge.<sup>40</sup> The majority objected that it was improper for three of the commissioners to protest against the rest. They accordingly tore out the sheet which contained the minority's endorsement, and submitted the report with four signatures only.<sup>41</sup> The three dissenters sent a letter to the English chancellor, explaining the circumstances of their refusal to sign the report and protesting against the conduct of the majority.<sup>42</sup>

39. History and proceedings of the house of commons, iii. 120.

40. Cal. S.P. dom., 1699-1700, p. 305.

41. Commons' jn., xii. 66.

42. H.L.MSS, n.s., iv. 14-15.



Drogheda kept Vernon in close touch with these proceedings and asked him to let the king know he had endeavoured to serve him to the best of his power.<sup>43</sup> He had gone through a very unpleasant experience: 'I would rather dig for my living than endure for six months longer that which I have for the six months past'.<sup>44</sup> Drogheda had the gratification of hearing that William was not dissatisfied with what he had done. He decided that it would be safer to stay in Ireland, as he did not know what men of 'turbulent and restless spirits'<sup>45</sup> might do if he came over to London. His caution was justified by the fate of Levinge, whom the commons committed to the tower on the ground that he had spread baseless and scandalous reports about the four majority commissioners. He was alleged to have repeated to Methuen, the Irish chancellor, the conversation which was said to have taken place among the commissioners to the effect that the private estate was 'a villainous grant and would reflect more than any other'.<sup>46</sup>

Bishop King commented on the dispute with his customary sense and worldly wisdom: 'I think when all is done the scheme was foolishly contrived, for what had the dissenting commissioners ado to write letters

43. Cal. S.P. dom., 1699-1700, p. 275.

44. Ibid., p. 306.

45. Ibid., p. 326.

46. Commons' jn., xiii. 124-5.

or take notice of a report they would not sign? --- It had been time enough for them to have appeared when called for and then given their reasons with seeming unwillingness. Their party in the house should have contrived to have them called to give an account of their not signing and, if they could not have carried it that it should be so, they had no business to move any further, for to be sure they could carry nothing. I heard three of their reasons. First, the private estate was not forfeited, but merged in the crown and so not within their commission, which they ought not to stretch beyond the letter, being in re odiosa. Secondly, that the estates were over-valued, and the ground of the valuation was not sufficient to venture their credit on before the parliament. Thirdly, that the reflections (i.e. of bribery and corruption) were grounded on affidavits, which are no sufficient bottom on which to represent a man of estate and figure ill to the house of commons; for there is no man but must be made black enough by affidavits. These seem to be not altogether unreasonable, but to bring in private talk and conversation that pass in heat of discourse or freedom of time is a breach on humane society and abominable'.<sup>47</sup>

King may here be suspected of a certain amount of diplomacy. He was anxious to enlist Annesley's support

47. King to Annesley, 18 Feb. 1700 (T.C.D., MS N.3. 2a, pp. 127-8).

in securing for the church the 'impropriate tithes' which had belonged to forfeiting persons. He succeeded in his object and the established church derived considerable benefit from the resumption proceedings.

### III

On 15 December 1699 Annesley presented to the English commons the full record of the commission's investigations. This, as already mentioned, consisted of nine books of statistical matter together with a report which, Annesley explained, was 'an index to all the rest of the books'. All seven commissioners had signed the first eight books. The ninth book, the Book of the private estate, and the report itself were signed by the four majority commissioners. Annesley referred to the difference of opinion which had divided the commission, apologised for the belated submission of the report, and expressed the hope that if anything were said to the prejudice of the commissioners they would be given a hearing which, he was certain, would enable them to satisfy the house. He then withdrew and the report, the memorial of the dissenting minority, a letter which the minority had sent to the speaker, and the contents of the torn sheet were all read out. The house did not take long to make up its mind. A resolution was passed nem. con. on the same day that a bill should be brought in to apply to the use of the public all the forfeited estates and

interests in Ireland and all grants which had been made since 13 February 1689.<sup>48</sup>

In April 1700, after the resumption bill had gone to the lords, the commons ordered the report of the four majority commissioners to be printed together with the commons' address of 1693 (in which William had been asked not to make any grant of the Irish forfeitures until parliament had an opportunity of discussing the subject) and 'his majesty's gracious reply'.<sup>49</sup> The report attracted wide attention and appeared in several editions, some published in London and some in Dublin. It has been used as the principal source for all accounts of the Williamite forfeitures and the statistics which it contains have been reproduced by many historians, with some very misleading results. At the same time the report has been subjected to much criticism, and the consensus of opinion is that its authors were guilty of a considerable degree of prejudice and exaggeration.

The report consisted of eighty-nine paragraphs, some of them extremely brief. The first ten were of

48. Commons' jn., xiii. 65-6. On the following day Annesley presented a similar set of books to the lords. That set has been preserved and portions of it have been published (H.L.MSS, n.s., iv. 17-39). A third set seems to have been presented to the king (Cal. S.P. dom., 1699-1700, p. 305). The T.C.D. set of the nine books is said to have belonged to Lowndes, secretary of the treasury (T.C.D., MS N.1.3).

49. Commons' jn., xiii. 318-19.

an introductory nature and complained of the irregular manner in which the forfeitures had been managed. This was primarily attributed to the frequent changes in the system of administration. The forfeitures had been in charge of five different sets of commissioners since 1690, with the result that 'no commissioners, if they were disposed to it, have been able to take any steady view of the forfeitures and digest them into method'<sup>50</sup>. The dissenting minority took exception to this criticism, but there is no doubt of its truth. There had been continual complaint of the way in which the forfeitures were managed. Brewster, one of the minority, had himself in 1693 laid before the English commons a paper in which he described the forfeitures administration in the most scathing terms, stating that there was extensive embezzlement and mismanagement and that the estates were generally let out at not more than a quarter of their value to favourites or men of straw.<sup>51</sup> In the State Papers and elsewhere there are frequent references to the unsatisfactory state of the forfeitures and to the mutual animosities which existed between the various forfeitures commissions and the permanent revenue establishment. Thus Capel in 1695 reported to the English treasury that the books of the forfeitures commissioners were in disorder, their duties neglected, and their main object the collection of their own salaries<sup>52</sup>.

50. Commissioners' report, p. 9.

51. Commons' jn., x. 826-7.

52. Cal. treas. papers, 1597-1696, p. 453.

The body of the report consisted of a summary of the statistical material contained in the first eight books of the accompaniments. This was interspersed with comments on particular points, instances of alleged bribery, criticism of the adjudications under the articles, and observations on the grants. The statistical summary has provided historians with a convenient set of figures, which appeared to give a more clear-cut and factual account of the Williamite forfeitures than was available for any of the other Irish confiscations. The misleading character of the figures has been discussed in some detail in preceding chapters. It was, in the main, due to the fact that the commissioners incorporated in their record, without digestion or classification, the complete lists of outlawries, adjudications, pardons and reversals which were supplied to them by the Irish court officials.<sup>53</sup> The totals of the several lists were cited in the report without it being made clear that the number of landed proprietors in each category was only a fraction of the whole.

The compilation of the second book - the Book of Forfeitures - was the major contribution made by the commissioners to their task of taking account of the Irish forfeitures.<sup>54</sup> This book sets out on double pages

53. These lists are contained in Nos 1, 3, 4 and 5 of the books accompanying the report.

54. T.C.D., MS N. 1. 3, ff. 71-100.

the estates forfeited in the several baronies of each county, with an estimate of their value. The left-hand pages show estates forfeited and not restored; the right-hand pages show estates forfeited but later restored to their owners either under the articles or by royal favour. The names of all the forfeiting proprietors in each barony are given, but individual estates are not clearly differentiated. In almost all cases the left-hand pages give a single figure for the total area forfeited in a barony, so that it is rarely possible to deduce from the statement the area forfeited by a particular person. The right-hand pages give separate figures for the areas restored under the Limerick articles, the Galway articles or by royal favour. There are a number of instances in which only one estate in a barony was restored under one or other of these categories. In such cases it is possible to ascertain the area restored to a particular person.

The most remarkable feature of the book is the small number of estates recorded. The left-hand pages give a total of 272 persons whose estates, amounting to 752,953 profitable acres, were forfeited and not restored. The annual rent of such estates was estimated at £135,794; their total value, at thirteen years'

55. The area forfeited by individuals can be ascertained from the trustees' rent-rolls, contained in Annesley MSS, xxxiii.

purchase for fee-simple and six years' purchase for a life-interest, was estimated at £1,699,344. The right-hand pages show:

- (a) 161 persons restored under the articles to an area of 233,106 acres, of a yearly rent of £55,763 and a valuation of £724,923;
- (b) 24 persons restored by royal favour to an area of 74,733 acres, of a yearly rent of £20,066 and a valuation of £260,863.

The valuation was made on a rough and ready basis. A particular figure was taken for the rental value of all lands in one barony; it ranged from fifteen shillings for a profitable acre in the barony of Rathdown, county Dublin, to sixpence in the baronies of Iveragh and Dunkerron, county Kerry. The average rental of all the estates recorded in the book is just under four shillings an acre.

From the total amount of £1,699,344, which the commissioners estimated as the value of the unrestored estates, the encumbrances had to be deducted. These were shown in the seventh book of the accompaniments at a net figure of £161,937<sup>56</sup>. The report, therefore, led to the conclusion that a million and a half pounds could be realised by the sale of the forfeitures proper, apart from the proceeds of the private estate, which were estimated at £337,943. As previous estimates had



been of the order of a million pounds, the result of the commissioners' investigations was highly satisfactory to the majority party in the commons and greatly strengthened the demand for the resumption of the royal grants.

#### IV

The principal criticisms which have been brought against the report are, firstly, that it was improper to have referred to the private estate, which was not within the commissioners' terms of reference, and, secondly, that the commissioners grossly over-estimated the value both of the forfeitures proper and of the private estate.

The question of the private estate was the chief subject of controversy both among the commissioners themselves and in the subsequent commons debate. The majority commissioners frankly admitted that the private estate did not strictly fall within their terms of reference. The final paragraph of the report introduces the subject in the following words: 'We shall now conclude by laying before your honours another grant of a considerable value, which we are apprehensive does not fall within the letter of our inquiry. But since the benefit of some forfeited leases or holdings are therein granted we chose rather to lay the whole grant before you than be thought deficient in executing any part of our duty or what might be expected from us'.<sup>57</sup>

This argument was not very convincing. Drogheda had lost no time in rebutting it: 'Some of the commissioners say that they have a power to return the value of that grant, Mrs Villiers having granted to her all forfeited leases on that estate. But that does not empower them to make any return of the whole'<sup>58</sup>.

Oddly enough, contemporary historians make little comment on the question. Burnet, with episcopal discretion, does not refer to the grant at all. Others simply repeat the figures given in the report. Possibly the subject was thought dangerous for a commentator. Macaulay discussed the topic with his customary eloquence. He admitted that it was 'an unfortunate grant, which could not be brought to light without much mischief and much scandal'. But his censure was chiefly directed against the majority commissioners for 'usurping functions which did not belong to them for the purpose of insulting the sovereign and exasperating the nation'. His argument was based on the supposition that the private was part of the 'old hereditary domain of the crown', and that the commissioners had as little to do with it as with 'the seignorage on tin in the duchy of Cornwall or with the church patronage in the duchy of Lancaster'<sup>59</sup>. He evidently did not realise that the

58. Drogheda to Vernon, 26 Oct. 1699 (Cal. S.P. dom., 1699-1700, p. 275).

59. Macaulay, History of England, iii. 716.

estate was a personal grant made to James under the Act of Settlement. The same argument has been used by Turberville: 'It should be noticed that the reference to the Countess of Orkney's estate was a piece of gross effrontery, as her lands were part of the crown property'.<sup>60</sup> As we have already seen, William's title to the estate was by no means clear.

It would probably be fair to say that the grant was not within the strict letter, but was within the spirit, of the mandate given to the inquiry commissioners. The private estate, no less than the forfeitures proper, became available for grant as a result of the successful termination of the Irish war; it must have seemed pedantic to exclude it from consideration on the ground that James had not forfeited it by attainder. William, with reluctance, had agreed to a bill being brought before the Irish parliament for the confirmation of the grant to Elizabeth Villiers.<sup>61</sup> Although the bill was in fact not introduced, this was an admission that the grant was not of ordinary crown property. It had been the subject of much criticism, in which Drógheda himself had taken a leading part. In area it was next to the grants made to Woodstock and Albemarle; in value it was the largest grant of all.

60. Turberville, The house of lords in the reign of William III, p. 203.

61. H.M.C., Buccleuch MSS, ii. 187.

There is no doubt that the commissioners considerably over-estimated the value both of the forfeited estates proper and of the private estate. All seven commissioners shared the responsibility for the valuation of the forfeitures; only the four majority commissioners signed the Book of the private estate. In both cases the valuation was made by taking a single figure for the rental value of land in a barony, and multiplying this figure by the number of profitable acres forfeited or forming part of the private estate. The barony figure given in the Book of the private estate was in all cases the same as that given in the Book of forfeitures. The annual value thus obtained was multiplied by thirteen (or by six in the few cases which were treated as life-interests only) to give the capital value. The rental value per acre for a barony was somewhat arbitrarily fixed. The record of depositions in the Annesley manuscripts gives some of the evidence on which the valuation seems to have been based. Most of it consisted of bare statements without supporting detail. Only for the Kenmare estate were detailed particulars given.

The commissioners' valuations were to be put to the test when the estates subsequently came under the trustees. After adjustment has been made for the estates excepted in the Act of Resumption and for those taken out of the trust by subsequent acts, the figures for

rents, and still more for sales, contained in the trustees' records fall far below the estimates made by the inquiry commissioners. This may partly be due to other factors, such as the restrictions imposed on the Irish wool trade. Political uncertainty about the security of title obtainable for the forfeited estates of Jacobites, and the concerted hostility of Irish protestants to the resumption proceedings must have also depressed the rents and sale-prices of the forfeited estates. But when all these considerations are allowed for it seems certain that the commissioners' estimate erred on the side of optimism.

The annual value of the forfeited estates, as estimated by the commissioners, worked out at three shillings and eight pence an acre; that of the private estate at five shillings and fourpence. The higher figure for the private estate was due to the fact that a great part of it lay in Kildare, Meath, Tipperary and other counties where land values were comparatively high. The figures for the forfeited estates proper was depressed by the low values adopted for lands in Kerry, west Cork and elsewhere. The average of three shillings and eightpence, which does not appear unduly high, masked a very wide variation, ranging from fifteen shillings an acre in part of county Dublin to sixpence in parts of Kerry. The forfeitures in Kildare were valued at nearly eight shillings an acre; in Meath the

figure was just under seven shillings. The commissioners' average figure of three shillings and eightpence a profitable acre compares closely enough with other estimates of approximately the same period. King, writing in 1685, estimated that an acre of good land in most parts of Ireland was worth about four shillings a year.<sup>62</sup> Petty in 1687 put the total rental value of Irish land at £1,200,000, which would work out at a little over three shillings a profitable acre.<sup>63</sup> Swift estimated in 1724 that yearly rents 'since they have been of late so enormously raised and screwed up' amounted to about £2,000,000, or rather more than five shillings a profitable acre.<sup>64</sup>

The trustees' rent-roll amounted to about £92,600 for the forfeitures proper, a considerable decline from the figure of £135,000 given in the commissioners' report.<sup>65</sup> Although several estates were excluded from the operation of the Act of Resumption, this was counterbalanced by the increase of revenue brought in by additional forfeitures, such as the estate of Grace of Courtstown. Analysis of the rents received in

62. King, 'A discourse concerning the bogs and loughs of Ireland' (Philosophical transactions of the Royal Society, xv. 955).

63. Petty, Economic writings, ii. 558.

64. Swift, Works, vi. 188.

65. The trustees' accounts show £107,623 as the rent in 1701-2 for all the property, including the private estate (H.L.MSS, n.s., v. 134).

particular baronies shows that in many cases the basic figure adopted by the commissioners was considerably higher than the rent per acre which was actually obtained. The private estate was valued in the report at £25,996 per annum. The trustees' rent-roll for the estate shows a figure of £15,014.<sup>66</sup> Even so, the grant was outrageously large and it is not surprising that it should have excited indignation.

The difference between the estimated value of ~~it~~ the forfeited estates and the amount actually realised was even greater in respect of the sale proceeds than it had proved in respect of annual rents. In itself the figure of thirteen years' purchase appears to have been a reasonable enough basis for the valuation of free-hold property. Many estates were actually sold by the trustees on this basis and some were sold at fourteen or fourteen and a half years' purchase. Thirteen years' purchase was the basis adopted in the act for the relief of protestant purchasers.<sup>67</sup> The commissioners, however, had valued at thirteen years' purchase a number of estates in which the forfeiting proprietor had only a life-interest. Dudley Bagenal's was one of these, although the commissioners had noted in the Book of Encumbrances that the estate was settled on the son after his father's death. In several cases

66. Annesley MSS, xxxiii.89.

67. 1 Anne, c. 26.

estates recorded as freehold property turned out to be leasehold, The encumbrances were also considerably greater than the commissioners had allowed for.

Difficulties arise in making a direct comparison between the capital value as estimated by the commissioners and the actual sum realised by the sale of the forfeited estates. A further analysis of the financial results will be given in the account of the trustees' transactions. But the following summary will indicate the gap between promise and performance:

(1) Net valuation as estimated by inquiry commissioners

	Irish	Sterling <sup>68</sup>
Forfeited estates	£1,537,407	£1,281,173
Private estate	319,943	266,619
Total	1,857,350	1,547,792

(2) Amount realised by trustees (sterling)

Forfeited estates	505,541	
Private estate	218,960	69
Total	724,501	70

68. The Irish pound in 1699 was worth only sixteen shillings and eightpence sterling (Report of public accounts commissioners, 11 Mar. 1704, N.L.I., MS 1541).

69. The figure for the sale proceeds of the private estate is derived from the Book of sales of the private, Annesley MSS, xxxii, *ad finem*.

70. The figure is taken from the trustees' final report (H.L.MSS, n.s., v. 246).



The commissioners were sensible that their valuation was open to criticism. In their report they observed that the forfeited estates were computed according to present values, 'were they now to be set without any regard to beneficial leases made before the forfeitures'. They argued, however, that much of the land classed as unprofitable in the surveys had become profitable, 'and many of them as good as any lands in the kingdom'. Such lands, they thought, would go far to make up the deficiency caused by the low rates of existing leases. The balance was to be made up by taking into account the value of woods and of lands liable to forfeiture but not recorded. In referring to the private estate they observed that almost all the old leases would have terminated by 1701.<sup>71</sup>

Their expectations were by no means realised, and there is much force in Burnet's comment: 'They did readily believe everything that was offered to them that tended to inflame the report, as they suppressed all that was laid before them that contradicted their design of representing the value of the grants as very high, and of showing how undeserving those were who had obtained them; there was so much truth in the main of this that no complaint of their proceedings could be hearkened to; and indeed all the methods

71. Commissioners' report, pp. 22 and 28.

that were taken to disgrace the report had quite the contrary effect; they represented the confiscated estates to be such that out of the sale of them a million and a half might be raised; so this specious proposition for discharging so great a part of the public debt took with the house; the hatred into which the favourites were fallen, among whom and their creatures the grants were chiefly distributed, made the motion go the quicker. All the opposition that was made in the whole progress of the matter was looked on as courting the men in favour'.<sup>72</sup>

It is remarkable that Burnet, as a supporter of William, should have so frankly admitted the indefensibility of the grants. He was clearly right in emphasising the political importance of the high valuation placed on the forfeited estates. If the commons had been informed that the net proceeds of the forfeitures proper would amount to little more than £500,000, the case for resumption would have appeared a great deal weaker.

72. Burnet, History of his own time, iv. 426.

## CHAPTER VIII

## The Act of Resumption

The bill for the resumption of the forfeitures raised a first-class constitutional issue. It made a direct attack on William's policy, and challenged both his conception of the royal prerogative and his personal choice of the principal grantees. The attack was made by a majority in the commons and resisted by the ministry with the support of a majority in the lords. The king was known to be actively engaged in opposition to the measure.

On the second reading a motion was proposed that the commons should consider in committee a clause reserving to the king a proportion of the forfeitures. Vernon observed that the king was 'strangely bent upon having a clause for reserving one-third to his own disposal, though everybody that would make any judgment of the house told him what would be the consequences of it'. Vernon himself proposed the motion and was supported by Coningsby and others, but they were 'pretty well rapped over the fingers'<sup>1</sup>. Harley later recorded that William offered to dismiss Somers in return for £200,000 worth of the Irish forfeitures:

1. Vernon to Shrewsbury, 18 Jan. 1700 (Letters illustrative of the reign of William III, ~~pp~~<sup>pp</sup> ii. 411-12).

'This was offered and pressed very much, but I would never enter into that negotiation or give any encouragement to it'<sup>2</sup>.

The clause was negatived without a division, and the house resolved that the grants of forfeited and other estates in Ireland had been 'the occasion of contracting great debts upon the nation and bringing heavy taxes upon the people', and that the passing of the grants was 'highly reflecting on the king's honour'. An address embodying these resolutions was presented to the king.<sup>3</sup> The commons did not relish his reply that he was not only led by inclination but thought himself obliged in justice to reward those who had served him well, and particularly in the reduction of Ireland, out of the estates forfeited to him by the rebellion there.<sup>4</sup>

Once again the device of tacking was employed to force the measure through the lords; with this object the bill was coupled with a bill for the taxation of land in England.<sup>5</sup> The lords sent the bill back with certain amendments, including a provision that the disposal of the lands should be effected by royal letters patent. The amendments were summarily rejected

2. Harley, Autobiographical fragment, 25 Sept. 1707 (H.M.C. rep. 15, app. iv. 452).

3. Commons' jn., xiii. 130.

4. Ibid., xiii. 228.

5. Ibid., xiii. 164.

by the commons on the ground that the lords had no right to alter a money bill.<sup>6</sup> The lords at first refused to yield. They admitted that resumption was necessary on account of the large debt due to the army and other creditors. They could not, however, consent to the lands being disposed of by the commons, as it was the undoubted right of the crown to be the 'disposer of all bounties'.<sup>7</sup>

It is of interest that the lords should have admitted the principle of resumption and confined their challenge to comparatively minor points. This must largely have been due to Davenant's Discourse upon grants and resumptions, which had made a well-timed appearance in October 1699, just before the inquiry commissioners presented their report. It was an able statement, fortified with many historical precedents, which asserted the traditional right of the English people to resume grants made to royal favourites, particularly when the favourites were foreigners. Its theme was immediately evident in the title, 'A discourse upon grants and resumptions, showing how our ancestors have proceeded with such ministers as have procured to themselves grants of the crown revenue, and that the forfeited estates ought to be applied towards the payment of the public debts'. The grants made to Piers

6. Commons' jn., xiii. 318.

7. Ibid., xiii. 320.

Gaveston by Edward II were cited as a parallel to those made by William to Bentinck and Keppel. Contemporary commentators made little attempt to defend William's grants, and those who opposed the resumption bill concentrated their attention on the exaggerations of the inquiry commissioners and on secondary features of the bill. Even Burnet, who was always a staunch Williamite, conceded that some of the grants had 'not been made on good and reasonable considerations, so that they could hardly be excused, much less justified'<sup>8</sup>.

A constitutional crisis was narrowly avoided. The situation was saved by the more prudent of William's supporters in the lords, who realised the dangers of a position in which king and lords were combined in opposition to a money bill sent up by the commons. Burnet gives an interesting account of his own attitude: 'Many in the house of lords that in all other things were very firm to the king were for passing this bill notwithstanding the king's earnestness against it, since they apprehended the ill consequences that were like to follow if it were lost. I was one of these and the king was much displeased with me for it. I said I would venture his displeasure rather than please him in what I feared would be the ruin of his government'<sup>9</sup>. Finally Lord Jersey, who was Elizabeth

8. Burnet, History of his own time, iv. 430.

9. Ibid., iv. 428.

Villiers's brother, is said to have prevailed upon William to tell his friends in the lords to give up their opposition to the bill. William accordingly sent a private message by Albemarle, as a result of which the lords passed the bill without amendment.

A graphic account of the crisis was given by Lord Dartmouth in his commentary on Burnet's history:

'While the bill was in suspense the whole city of London was in an uproar. Westminster was so thronged that it was with great difficulty anybody got into either house. I heard the king was come to the Cockpit and had sent for the crown with a resolution to dissolve us immediately, which I communicated to the earl of Shaftesbury who ran full speed with it to the house of commons, upon which they adjourned in great haste. Next morning the earls of Jersey and Albemarle told me that the king was convinced of the danger in rejecting the bill; but their present difficulty was that they could not prevail with their people either to join us or keep away'. The problem of liquidating the opposition was finally solved: 'The archbishop backing out his brethren and the other lords dropping out by degrees was full as comical a scene as that the night before had been tragical'.

10. Burnet, History of his own time, iv. 429.

11. Private and original correspondence of -- Shrewsbury, p. 609.

12. Burnet, History of his own time, iv. 428.

13. Ralph, History of England, ii. 853.

Evelyn noted in his diary that the dispute had turned out 'to the great triumph of the commons and country party but high regret of the court and those to whom the king had given large grants in Ireland'<sup>14</sup>. Burnet observed that the king 'became sullen upon all this and upon the many incivilities that are apt to fall in upon debates of this nature'<sup>15</sup>. The proceedings were in the highest degree mortifying to William, who did not trouble to conceal the fact. He wrote to Lord Galway, one of the deprived grantees: 'You may judge what vexation all their extraordinary proceedings gave me and, I assure you, your being deprived of what I gave you with such pleasure was not the least of my griefs ----- There have been so many intrigues this last session that without having been on the spot and well-informed of everything it cannot be conceived'<sup>16</sup>. William was, however, sufficiently master of his feelings to receive the newly appointed trustees<sup>17</sup> and to wish them a good voyage to Ireland.

The contest which took place over the resumption bill provided material for the first of Swift's political writings. A discourse of the contests and dissensions between the nobles and the commons in Athens

14. Evelyn, Diary, iii. 151.

15. Burnet, History of his own time, iv. 431.

16. William to Galway, 11 May 1700 (Tindal, History of England, iii. 401-2).

17. Luttrell, Brief historical relation, iv. 640.



and Rome, with the consequences this had upon both those states appeared in 1701. It is an elaborate attempt to show that the classical pattern of government consisted in a due balance of power between king, lords and commons: 'Some reflections upon the late public proceedings among us and that variety of factions, into which we<sup>are</sup> still so intricately engaged, gave occasion to this discourse'<sup>18</sup>. Swift, who was at this time still a whig, concluded that the commons had over-reached itself and that the majority party had been 'authors of a new and wonderful thing in England, which is for a house of commons to lose the universal favour of the members they represent'. He referred to 'the aversion of the people against the late proceedings of the commons' and to a general<sup>19</sup> feeling that William had been hardly used. Such sentiments seem to have been more prevalent among Irish protestants than in England.

## II

The preamble of the Act of Resumption referred to the Irish Jacobites as rebels and traitors, who 'by the blessing of God and the very great expense of your majesty's English subjects' had been reduced to their due obedience to the crown of England; it declared that it was highly reasonable to apply the

18. Swift, Prose works, i. 262.

19. Ibid., i. 269.

estates of such rebels and traitors to the relief of the English taxpayer.

The act vested in trustees the estates of all those convicted or attainted of high treason between 13 February 1689, when William and Mary began their reign, and the last day of Trinity term 1701, thus leaving a specified period for the trial of the still unconvicted Jacobites to whom the inquiry commissioners had referred in their report. The time-limit was fixed with the benevolent object that the Jacobites might 'be in some reasonable time quieted from the terror and apprehension of prosecution and that industry may be encouraged in Ireland'.<sup>20</sup> As we have already seen, the commissioners' expectations of further convictions and forfeitures were to be disappointed.

To the estates of those actually convicted were added those of all persons found by inquisition to have died or been killed in rebellion since 13 February 1689. The outlawry of the dead was a controversial matter which had frequently been debated. The lords made it one of their objections to the resumption bill, and expressed the view that they could not 'apprehend that by any law of this land or by any rule of reason or justice any person ought to be outlawed after death,

20. 11 and 12 Will. III, c. 2, ss. 1 and 10.

since it is condemning a man unheard'.<sup>21</sup> The principle, however, had already received legal sanction in the Irish act of 1697, which provided that catholics who within two years were found by inquisition to have died in rebellion should be deemed convicted and attainted<sup>22</sup> of high treason. A number of the estates actually forfeited belonged to those who had died 'in rebellion'.

The act also specifically vested in the trustees all the estates and interests in Ireland of which James was seized at the time of his accession. This disposed of the contention that the private estate formed no part of the forfeitures. All grants both of the forfeitures and of James's estate were declared null and void.<sup>23</sup>

Provision was made to preserve the rights of persons whose interest in forfeited land was prior to 13 February 1689. Such persons were to enter claims before 10 August 1700; the trustees were to hear and decide the claims by March 1701.<sup>24</sup> These claims, which took up much of the trustees' time, included settlements made for the benefit of wives and children. An appreciable number of such claims were allowed and the Kenmare and several other estates were in this way

21. Commons' jn., xiii. 320.

22. 9 Will. III, c. 5, s. 2.

23. 11 and 12 Will. III, c. 2, s. 2.

24. Ibid., c. 2, ss. 4 and 11.

saved from outright forfeiture. The mere fact that an estate was entailed was to be no bar, if there was not a specific deed of settlement in favour of the claimant; such estates were declared to be vested in the trustees to be absolutely sold and disposed of.<sup>25</sup>

It was specifically provided that nothing in the act should prejudice the interest of any person who had been adjudged as entitled to the articles of Limerick or Galway: 'For composing the minds' of all those concerned every such adjudication was confirmed.<sup>26</sup>

The Act of Resumption did not contain any provision particularly directed against those catholics who were still in possession of their estates. It did, however, result in a fresh scrutiny of Irish land by the trustees, who were given wide powers of investigation and whose own reputation largely depended on the financial results of their administration. As they interpreted the act to cover all land to which any outlawed person had a claim at any time since 1689, they were able to forfeit a certain number of additional estates. Thus John Grace of Courtstown, who was adjudged within the articles of Limerick and remained in possession of the family estate until 1701, was deprived of it on the ground that his elder brother Oliver, who was outlawed, had survived their father's death by nine days.

25. 11 and 12 Will. III, c. 2, s. 1.

26. Ibid., c. 2, s. 5.

Although Oliver was in France and never took possession of the estate, his title for those nine days was regarded as sufficient warrant for the trustees to take over the property.<sup>27</sup> Even when claims were successful, those concerned were put to considerable trouble and expense in prosecuting them before the trustees, who in many instances took several hearings over a single claim.

The amounts realised by the trustees were to be appropriated to 'officers' arrears, debts for transport service and clothing, debts and interest on tallies, orders, tickets and exchange bills and no other use whatever', except for payments made to the inquiry commissioners and for the trustees' own expenses. £1,000 each was granted to the four majority commissioners and to Drogheda for the great services performed by them. With a pointed variation of expression Brewster and Levinge were awarded £500 each in consideration of their expenses.<sup>28</sup> The commons appear to have thought it prudent not to exasperate the lords unnecessarily by cutting Drogheda's remuneration.

A limited number of William's grants were maintained. They included those made to Leslie, Baker and Roche as rewards for exploits in the Irish war, and also the grants made to Prendergast and de la Rue 'for timely

27. Grace, Memoirs of the family of Grace, p. 44.

28. 11 and 12 Will. III, c. 2, ss. 41-2.

discovery of a wicked and traitorous conspiracy to  
 assassinate his majesty's sacred person'. The grant  
 given to Sir Charles Porter's children was saved by  
 a small majority. Surprisingly enough, saving clauses  
 were passed in favour of the dependants of some leading  
 Jacobites. The beneficiaries included the wives and  
 children of Lord Kenmare and Dudley Bagenal and the  
 daughters of the first Lord Kenmare. Provision was  
 made to secure a jointure to Lady Slane 'by virtue  
 of marriage articles which could not be executed by  
 settlement as Lord Slane was a minor'.

The act contained several clauses in favour of the  
 established church, whose interests were closely  
 watched during the progress of the bill by two of the  
 Irish bishops. The trustees were to convey all forfeit-  
 ed rectories and tithes to the bishop's nominees for  
 the rebuilding and repairing of churches and for the  
 augmentation of small livings. A very considerable  
 number of 'impropriations' - church property which had  
 passed into lay hands - had belonged to forfeiting  
 persons and were now to be disposed of under the Act  
 of Resumption. Their restoration to the church was  
 an object for which Bishop King had been working. His

29. 11 and 12 Will. III, c. 2, ss. 55-6.

30. Ibid., s. 58; Commons' jn., xiii. 293.

31. Ibid., ss. 53-4 and 60.

32. E. Burrige to King, 23 Mar. 1700 (T.C.D., King MSS).

33. 11 and 12 Will. III, c.2, s. 47.

legal advisers, Langford and Annesley, seem to have helped in getting this provision included in the bill. In a letter to King Langford wrote: 'Annesley and I will do whatever lies in our power to get the forfeited impropriations restored to the church again. If my lord of Canterbury and other bishops were writ to about this matter it might contribute very much to obtaining it'.<sup>34</sup>

Less success attended another cause in which King was interested, that of Derry. In August 1689, just after the raising of the siege, William had written to the governors of Derry, assuring the officers, soldiers and inhabitants that he would take a fitting opportunity to recompense their sufferings and services.<sup>35</sup> But nothing was done except to make an individual grant to governor Baker's son. The citizens accordingly petitioned parliament for redress, representing that half the houses in Derry were destroyed during the siege and that their losses amounted to £30,000.<sup>36</sup> King was a strong supporter of their case and represented it to Southwell: 'If merit be considered or hearty goodwill well rewarded, the volunteers that defended this town and Inniskilling deserve their pay as well as any of the established troops'.<sup>37</sup> The first of the

34. Langford to King, 16 Nov. 1699 (T.C.D., King MSS).

35. A short view of the faithful services performed by his majesty's forces who defended the city of L'derry.

36. The Derry complaint.

37. King to Southwell, 14 Nov. 1699 (T.C.D., MS N.3.2a, p. 90).

amendments offered to the resumption bill provided that payment should be made to the inhabitants of Derry. But the commons were not in a conciliatory mood and rejected this amendment as well as a number of other amendments in favour of individual claimants.<sup>38</sup>

Among the rejected amendments was a clause saving the articles of Waterford, Bophân, Sligo and Drogheda, which had surrendered on terms in the course of the war.<sup>39</sup> There is considerable obscurity about the conditions on which Waterford capitulated. Story's version is that on 22 July 1690 William called on Waterford to surrender, offering the same terms as he had given to Drogheda, namely a safe-conduct for the garrison to the nearest town held by the Irish. The Waterford garrison found these conditions unacceptable and 'proposed some of their own, which were that they might enjoy their estates, the liberty of their religion and safe convoy to the next garrison'. William refused and brought forward his heavy cannon, whereupon<sup>40</sup> the garrison surrendered on the Drogheda terms. According to the official version, given in the London Gazette, the terms which William offered to Waterford were that the garrison should march out quietly and that the citizens should enjoy their houses, goods and trade. In reply to this offer the garrison made

38. Commons' jn., xiii. 291.

39. Ibid., p. 292.

40. Story, History, p. 109.



'several extravagant demands, which would have been answered with a sudden attack but that his majesty had compassion on the protestant families'. Finally, the garrison accepted the Drogheda terms with the additional privilege of keeping their arms; some few officers remained behind and asked for protection.<sup>41</sup>

In March 1692 Thomas Wyse, John Porter and other catholic inhabitants of Waterford sent a petition to William, representing that under the articles granted to the town they were not to be deprived of their property, which included their estates and businesses; they had not had the benefit of the articles as their lands and businesses had been taken from them. They asked that the Waterford articles should be confirmed under the great seal of England.<sup>42</sup> The petition was referred to the lord lieutenant and a year later, in March 1693, a warrant was issued which directed that the third article of Waterford should be confirmed; the lord lieutenant was informed that the property referred to in that article included both real and personal estate.<sup>43</sup> The lord lieutenant replied that it had been understood that the articles of Waterford did not apply to real estate, and that several estates belonging to Waterford citizens had been seized. He quoted Cox

41. London Gazette, 28 - 31 July 1690.

42. Cal. S.P. dom., 1691-2, p. 180.

43. Ibid., 1693, pp. 62 and 81.

as saying that the king had refused to include real estate in the terms given to Waterford.<sup>44</sup> There is no trace of the order finally passed, but in the records compiled by the inquiry commissioners in 1699 the estates restored<sup>under</sup> articles include those of Thomas Wyse and John Porter with the note that the restorations were under the articles of Waterford. Neither Wyse nor Porter appears in the outlawry lists and their estates appear to have been restored to them after informal seizure. They do not seem to have suffered as a result of the refusal of parliament to provide for the Waterford articles in the resumption bill. Wyse was mayor of Waterford in 1690; he was the direct ancestor of Sir Thomas Wyse.

Pardons had already been granted to Lord Athenry, Colonel John Kelly of Skryne and Henry Crofton, the only claimants under the articles of Bophin and Sligo. They were therefore unaffected by parliament's refusal to include those articles in the bill. The case of the Drogheda articles is obscure. In 1697 the lords justices reported that the third article of Drogheda provided that the catholic inhabitants of the town should not be molested in their property, and that they had not so far been deprived of their real estate, although several of them had been outlawed.<sup>45</sup> The inquiry

44. Cal. S.P. dom., 1693, p. 157.

45. Ibid., 1697, p. 244.

commissioners' records do not show any estates restored under the articles of Drogheda, presumably because the estates in question had not been seized.

### III

The thirteen trustees were chosen by ballot, a process which kept the commons up till six in the morning.<sup>46</sup> Annesley once more headed the poll. All the four majority commissioners figured in the list, which also included James Hooper who had been secretary of the inquiry commission.<sup>47</sup> Hooper was a barrister of the Middle Temple who had been a manager of the land bank, the tory (and unsuccessful) reply to the bank of England.<sup>48</sup>

The most distinguished of those appointed was Sir Cyril Wyche, a former president of the Royal Society, who had been secretary to three Irish lords lieutenant, had been an Irish lord justice in 1694-5, and had then been ambassador at Constantinople. He married a niece of Evelyn, who referred to him as a noble and learned gentleman.<sup>49</sup> He functioned in practice as chairman of the trustees. From what we have of his correspondence his colleagues appear to have regarded him with great

46. Luttrell, Brief historical relation, iv. 628.

47. Commons' jn., xiii. 307.

48. Settlement of the land bank.

49. Evelyn, Diary, iii. 146.

affection and respect. The trustees were a much more harmonious team than the inquiry commissioners had been.

Another member of the Royal Society among the trustees was Sir Henry Sheres. He was distinguished for his work on the Tangier mole, which he both built and demolished. Pepys found him 'a good ingenious man, but do talk a little too much of his travels'<sup>51</sup>. He was suspected of Jacobite sympathies and was twice under arrest, in 1690 and again in 1696. His most recent assignment had been in connection with Dover harbour, on which he reported to the commons in February 1700,<sup>52</sup> while the resumption bill was still before the house. As an experienced engineer he was put in charge of the survey of a number of the forfeited estates.

The only other trustee of any distinction was John Cary, a Bristol merchant who had written a number of essays on ~~the~~ different aspects of trade. He had also written a reply to Molyneux's Case of Ireland's being bound.

The trust is of interest as a constitutional experiment. It was in effect a parliamentary agency, appointed for the exercise of executive and judicial functions which had hitherto been restricted to persons

50. P.R.O.I. acquired a collection of Wyche's correspondence and official papers in 1930 (P.R.I. rep.D.K.57,p.7).

51. Pepys, Diary, p. 557.

52. Commons' jn., xiii. 201.

appointed by the crown. For the purpose of hearing claims the trustees were to be a court of record; they might commit to prison persons who refused to appear before them, and they were empowered to fine officers who did not obey their instructions. They were to manage the estates, collect rents and conduct sales.<sup>53</sup> The commons clearly regarded the trustees as their agents and periodically called on them to submit reports and send representatives to be examined in person on their proceedings. The commons entertained a large number of petitions in respect of the forfeitures and obtained reports on them from the trustees. Many of these petitions were granted by private acts of parliament, the passing of which formed a great part of the business of 1702. The lords appear to have been anxious to show that the trustees were not merely a commons' agency. Representatives of the trustees were more than once summoned to appear before the lords. The appointment of trustees by parliament proved a sterile line of development. Cabinet government was to be a less cumbrous device for securing parliamentary control over executive action.

54

Each trustee was to be paid £1,500 a year. He was required to take an oath that he would not directly or indirectly take any fee or reward, except as provided

53. 11 and 12 Will. III, c. 2, ss. 7, 15, 22 and 27.

54. Ibid., s. 43.

by the act, or purchase any of the forfeited estates.  
 The trustees appear to have conducted themselves with  
 reasonable honesty. The only complaint which seems  
 to have been made against them related to the expenses  
 allowed to those trustees who attended sessions of the  
 English parliament.<sup>56</sup> Methuen observed that the trustees  
 were 'entertained extremely great by those who have  
 pretensions before them',<sup>57</sup> but the vigilance of their  
 opponents was unable to produce any serious charge of  
 corruption. After the trust was wound up the commons  
 resolved that the trustees had in all respects dis-  
 charged their duty with great integrity and fidelity.<sup>58</sup>

55. 11 and 12 Will. III, c.2, s. 7.

56. Report of public accounts committee, 11 Mar. 1704  
 (N.L.I., MS 1541).

57. Methuen to Vernon, 2 Jan. 1701 (Cal. S.P. dom.,  
 1700-2, p. 189).

58. Commons' jn., xiv. 387.

## CHAPTER IX

## The trustees' proceedings

The trustees began their task in June 1700. The Act of Resumption prescribed that they should hear all claims to the forfeited estates by 25 March 1701, and complete the sale of the lands by 25 March 1702. In the event the hearing of the claims took considerably longer than was expected, and supplementary legislation had to be passed to extend both these periods. As a result the trust continued to operate for a little over three years. The date finally fixed for the completion of the sales was 24 June 1703, after which the trustees were within forty days to hand over their records to the Irish revenue commissioners.

In the Annesley manuscripts we have first-hand evidence of the day-to-day work of the trustees. There are eleven volumes of minutes of various kinds, which between them cover most of the period during which the trust was in operation. These are supplemented by a number of reports on petitions and claims. There are very elaborate financial records, which include complete rent-rolls and lists of sales. The journal of accounts for the three years runs to 824 pages.<sup>1</sup>

1. See descriptive catalogue (Anal. Hib., xvi. 359-64).

The chief impression created is of the enormous labour involved in administering and selling the forfeited estates, and of the assiduity with which the trustees appear to have conducted their business. All the trustees present in Dublin seem to have attended the meetings, which were held almost daily and began at eight in the morning. In addition, particular functions were allotted to individual trustees as their special responsibility. At the outset directions were given to two of them, Baggs and Fellowes, to draw up a scheme of fees. Annesley and Trenchard were directed to draw up a scheme for taking charge of the estates and compiling rent-rolls. Cary was to look after discoveries and, as a businessman, to deal with printing and stationery. Sir Henry Sheres, as an engineer, took charge of the survey.<sup>2</sup> A large staff of receivers and collectors for the various counties was appointed in addition to the administrative staff at Chichester House, which was the headquarters of the trust. The trustees made it their business to keep the establishment up to the mark. Thus a minute records that the trustees have observed a want of diligence in several clerks, and order each clerk to get a weekly certificate of his 'worthy performance' from the head of his office and lay it before the board each Saturday morning.<sup>3</sup> Annesley

2. Annesley MSS, ii. 8, 10 and 72.

3. Ibid., iv. 2.



complained to King of the burden which the trust had laid upon him: 'I own ingeniously to your lordship that the last three years of my life have made me fifteen <sup>elder</sup> years, than I should otherwise have been<sup>4</sup>'.

There was at first much friction between the trustees and the Dublin government. The latter naturally resented the arrival of an independent set of administrators deriving their powers from an act of parliament which was regarded as an insult to the crown and an unwarranted interference with the rights of property. To begin with, the trustees seem to have adopted a high-handed attitude and to have shown a considerable want of tact. Wyche, an elder statesman who had not been associated with the controversies of the 1699 inquiry, did not come over until the other trustees had been at work for over a month. In his absence a somewhat pugnacious tone seems to have been set by Annesley and Trenchard. One of the first disputes concerned the right of the revenue commissioners to collect quit-rents from the forfeited estates. The style of the trustees' correspondence was decidedly truculent, but eventually the dispute was compromised by Methuen, the chancellor. Methuen himself came into conflict with the trustees, who objected to legal proceedings being taken to 'traverse' inquisitions by which individuals had been found to have died in rebellion: '--- they came and insisted and argued the

4. Annesley to King, 12 Sept. 1702 (T.C.D., King MSS).

point before a great audience, and I gave openly the reasons why I thought the trustees were in the wrong to expect any cessation or stop of the justice and law of Ireland in this matter, and why I neither could nor would comply with them. I am pretty confident that the trustees were so desirous of an occasion to make an attack that they took hold of a very wrong one and gave me a great advantage, as I hear some of the wisest of them do in secret acknowledge<sup>5</sup>. A sensation was caused when the trustees committed the under-sheriff of Dublin to custody for contempt of their authority. The under-sheriff applied to the king's bench, which ordered his release. Undeterred the trustees immediately re-arrested him, and Methuen again felt called upon to intervene<sup>6</sup>. Finally the under-sheriff apologised to the trustees, who then ordered his discharge<sup>7</sup>.

The trustees made strenuous, and fruitless, efforts to obtain convictions against various persons who had so far escaped outlawry. The inquiry report had referred to the possibility of further forfeitures, and the trustees seem to have been anxious to justify the forecast before the expiry of the period prescribed in the Act of Resumption for treason proceedings. Their hopes

5. Methuen to Vernon, 22 June, 7 and 10 July 1700 (Cal. S.P. dom., 1700-2, pp. 70-1 and 84-6).

6. Same to same, 23 Nov. 1700 (Cal. S.P. dom., 1700-2, p. 151).

7. Annesley MSS, ii. 194.

were fed by informers, of whom the most notorious was Patrick Hurley. Hurley was an extraordinary adventurer, who had travelled Europe under the style of Count of Mountcallan. He held various posts in Ireland under the Jacobite regime, and then went to France, where he was accused of embezzling the funds of Colonel Gordon O'Neill's regiment. Returning to Ireland he soon got into further trouble. When the trustees assumed office he was in custody on a charge of having staged a sham robbery, for which he had put in a claim for £1,500 compensation. He at once wrote to the trustees, offering to prove that Sir Donough O'Brien had taken part in 'the late rebellion'. He charged Sir Donough with having commanded a troop of horse in James's service since February 1689, with having been a sheriff under James and with having sent messages to France after the war suggesting schemes for the invasion of Ireland. Sir Donough, who was a protestant, had remained in county Cãare throughout the war. He had accepted the office of sheriff from James and had raised a troop of twenty men, but his explanation was that his protestant neighbours had importuned him to do so for the suppression of rapparees. Various correspondents kept him in touch with Hurley's activities. One reported that Hurley was boasting that the trustees had promised him £15,000 if Sir Donough's estate were forfeited. Another wrote that Hurley had

brought two witnesses over from France who had laid information against Sir Donough before one of the Dublin judges. The attorney-general advised that Sir Donough should come up to Dublin and justify himself to the government. The lords justices had no liking for these proceedings; Hurley was an unsavoury character, and Sir Donough 'a man of very considerable fortune, interest and figure'. They consulted the privy council, which considered that the law should take its course. Sir Donough came up to Dublin to stand his trial, but the case seems to have faded out - no doubt because the proceedings were protracted until the end of Trinity term 1701, after which there were to be no more treason proceedings arising from the war. Meanwhile Hurley was tried and convicted for perjury and for conspiring to defraud the catholics of Clare of the sum which he had claimed as compensation for the alleged robbery.<sup>8</sup>

The trustees pressed for prosecution in a number of other cases, but met with very little response. The lords justices told them that as the object of

8. The trial and conviction of Patrick Hurley. The case against Sir Donough O'Brien is summarised in the lords justices' letter to Vernon, 7 Dec. 1700 (Cal. S.P. dom., 1700-2, p. 159). There are a number of letters on the subject in Lord Inchiquin's possession (N.L.I., Ainsworth report on Inchiquin papers).

such prosecutions was not to punish traitors but to produce additional forfeitures the trustees had better issue instructions themselves and pay the cost of the prosecutions. A certain number of cases were brought to trial, which seem to have met with a uniform lack of success. In their first report to parliament the trustees admitted that no value could be put on additional forfeitures: 'Thirty-two persons active in the late rebellion and now resident in France, that were possessed of estates in this kingdom, were lately indicted in the city of Dublin upon the statute of foreign treason, and a grand jury of as equal and indifferent men as could be found were empanelled, and the evidence against most of them, as appeared by the examinations laid before us, was clear and positive; yet they were all acquitted'. Dislike of the trustees seems to have created sympathy for the accused, even among members of the Dublin government.

## II

The disfavour with which the trustees were regarded by Irish protestants was largely due to the financial consequences which the Act of Resumption had for those protestants who had bought or leased land from William's grantees. The protestants had represented their case while the resumption bill was before parliament, and

9. Methuen to Vernon, 4 Aug. 1700 (Cal. S.P. dom., 1700-2, pp. 102-3).

10. H.L.MSS, n.s., iv. 208.

had drawn attention to the considerable sums laid out by 'judges, great men in the law and others encouraged by their example' in buying lands from the grantees. They were confident that the English parliament 'will not resume forfeitures when men of English blood and religion are to suffer so much by it; they will not suffer an inquisition to go into that country which will set every man at variance with his neighbour and turn many thousands of protestant families out of their habitations'<sup>11</sup>.

This appeal met with a qualified response. A clause was included in the bill providing that 'whereas some may have unwarily purchased from or under several grantees or otherwise, which practice ought not to be countenanced, yet that they may have some relief any consideration unpaid is released and all securities for payment discharged'. In addition, £21,000 was allotted as compensation to be divided proportionately among purchasers who should prove before 10 August 1700 that they had made actual payments to the grantees. Another clause enjoined the grantees to repay the money they had received and declared that the purchasers might take legal action to recover the amount.<sup>12</sup>

When the claims were lodged it was found that

11. The case of the forfeitures in Ireland fairly stated, with the reasons that induced the protestants there to purchase them.

12. 11 and 12 Will. III, c. 2, ss. 31, 32 and 34.

about a hundred purchasers had between them paid nearly £60,000 to Albemarle, Athlone, Romney and some other grantees. The purchasers included many of the leading protestants, among them Lord Chief Justice Pyne, Baron Donnellan and Alan Broderick, the solicitor-general. The largest purchaser was William Conolly, later speaker of the Irish commons. Other well-known figures included Bartholomew Van Homrigh, Vanessa's father, and Dr Thomas Molyneux, brother of the more distinguished William. As a group they were known as the protestant purchasers, although they actually included two cath-<sup>13</sup>olics, Walter Delamare and Mark Baggot.

The protestant purchasers regarded £21,000 as very poor compensation for an investment of £60,000; they do not seem to have thought much of their chances of recovering the balance from the grantees. In any case they did not wish to lose the lands which they had secured at advantageous prices and on which they claimed that they had already spent considerable sums for improvements. Accordingly they began an agitation, in which the leading part was taken by Conolly. A circular letter signed by Conolly and forty-two others, including Lords Abercorn, Inchiquin and Meath, was sent to the nobility and gentry of each county, asking them to submit petitions to the king against the Act of

Resumption. Enclosed with each letter was a form of address to the king from his 'loyal and faithful subjects the protestants of Ireland, lying under such oppressions by means of the late Act of Resumption and of the execution thereof' that they apprehended the ruin of all the protestants of Ireland. The burden of their complaint was that the catholics were the only beneficiaries of the act, and that the purchases and improvements made by the protestants were lost. The addresses were to be signed and returned to Conolly or to his colleague, Marmaduke Coghill.<sup>14</sup>

The national remonstrance, as it was called, seems to have received limited support. The general run of protestants had no wish to fall foul of the English commons, who were certain to resent an appeal to the king against an act which had notoriously been passed by parliament in defiance of court opposition. The dean of Derry wrote to his bishop that the grand jury of both city and county had refused to support the address.<sup>15</sup> Southwell expressed relief that King and his fellow-bishops had taken no part in the address, which was likely to meet with a hostile reception in England.<sup>16</sup> A contemporary pamphlet set out in parallel columns the address actually presented and a burlesque upon it. The latter took the form of a representation to the

14. B.M., Eg. MS 917, f. 179.

15. Dean Bolton to King, 25 Jan. 1702 (T.C.D., King MSS).

16. Southwell to King, 12 Feb. 1702 (Ibid.).



commons, in which it was asserted that the chief claim of those who had bought from the grantees at three or four years' purchase was that they were protestants and had acted 'agreeable to the known and established practice of purchasers in the kingdom, which is to regard the bargain more than the title'<sup>17</sup>.

The most effective criticism of the address was made in a pamphlet, of which the argument is apparent in the title - A letter from a soldier to the commons of England occasioned by an address now carrying on by the protestants in Ireland in order to take away the fund appropriated for the payment of the arrears of the army. This pamphlet has a curious paragraph entitled 'Account of Prince Conolly': 'He is one whom fortune in a frolicsome mood has raised from the lowest of the people to make him equal in estate with the peers of the realm. When his majesty obtained his glorious victory at the Boyne, this man could not reckon so many pounds of his own as he does thousands now. His yearly expenses have from that time exceeded his visible acquisitions; his manner of living was so profuse that he got followers and was called Prince Conolly ---- - The discreet and upright gazed at this glittering meteor and admired from what undiscovered mine he had raised so much riches. But now the mystic knot is untied; the commissioners for ~~xx~~ inquiry into

17. The several addresses of some Irish folks to the king and the house of commons.

the forfeitures opened the scene and the trustees set him in a true light'.

Conolly's rise from obscurity has always been a puzzle. It cannot be ascribed only to his trafficking in the forfeited estates, although he certainly made a great deal of money out of them. He was sufficiently prominent by 1689 to be included in the Jacobite Act of Attainder. We next hear of him in 1691, when he is referred to as agent for the mayor, commonalty and citizens of Londonderry in connection with a lease of Lord Antrim's forfeited estate.<sup>18</sup> In 1692 he was a member of the Irish commons for Donegal borough. In that year he also appears as agent for the farming of Sir Patrick Trant's forfeited estate; he complained that as a result of prejudice he was forced to bid unnecessarily high for it.<sup>19</sup> The report of the inquiry commissioners refers to him as having gone into partnership with Thomas Broderick; between them they 'took vast quantities of lands and in great measure governed the cants (few daring to bid against them); they acted in partnership from 1695 and let afterwards to under-tenants at greater rents'.<sup>20</sup> Conolly also became agent to Albemarle and admitted taking money for himself from purchasers of

18. Cal. S.P. dom., 1690-1, p. 497.

19. P.R.O.I., Wyche papers, petition book, p. 26.

20. Commissioners' report, p. 26.

Albemarle's grants. On his own account he bought between eight and nine thousand acres from Albemarle, for which he claimed to have paid £3,000. It was thus greatly to his interest to get the Act of Resumption modified in favour of the protestant purchasers. He was also on bad terms with the trustees who had made strenuous, but unsuccessful, efforts to prove that he had abetted a fraudulent claim.<sup>22</sup>

When William received the addresses he passed most of them on to the commons, who were highly indignant and sent for Lord Abercorn as one of the most conspicuous supporters of the remonstrance. Abercorn assured the house that he would be very ready to give an account of any paper he had signed if his signature were pointed out to him. As the king had astutely withheld the copy which Abercorn had signed, the commons could only dismiss him and proceed to a general censure of the addresses and their signatories: 'What stuck very much in their stomachs was that the addresses were made to the king and not to themselves'.<sup>23</sup>

Nevertheless the agitation was not without results. A further act was passed which allowed the purchasers to buy the lands from the trustees at thirteen times the annual rent and, in addition to their share of the £21,000 previously allotted, gave them credit for one-third of what they had paid to the grantees. This in

21. Annesley MSS, iv. 28 and xxiii. 134.

22. Ibid., iv. 23-59.

23. Bishop of Clogher to King, 17 Feb. 1702 (T.C.D. King MSS).

effect credited them with two-thirds of their outlay, but in several cases their original bargains had been so favourable that they still had very considerable sums to pay to the trustees.<sup>24</sup>

The claims of those protestants who had taken leases from the grantees were met by an act which allowed them compensation for expenditure incurred on 'real and lasting improvements'.<sup>25</sup> The lessees of the private estate were also allowed compensation for the fines which they had paid to Lady Orkney for the renewal of their leases.<sup>26</sup> This legislation, which was passed in the spring of 1702, put an end to the open campaign of the Irish protestants against the Act of Resumption. Their hostility continued, and some months later the trustees complained that the notion was 'industriously spread about' in Ireland that the adjudications of the trustees and the titles of lands sold by them were subject to re-examination by the Irish courts.<sup>27</sup>

### III

The English commons exercised close supervision over the management of the forfeited estates. The first

24. 1 Anne, c. 26.

25. 1 Anne, c. 58 (private act).

26. 1 Anne, c. 66 (private act).

27. Commons' jn., xiv. 64.

report of the trustees was submitted to them in February 1701. It was somewhat pessimistic in tone, referring to the difficulty of raising rents and to the currency of the view that purchasers of the forfeited estates might be exposed to litigation on the ground that the Act of Resumption did not vest in the trustees more than the forfeiting person had himself been entitled to. The trustees apprehended that purchasers might be put off on this account. They were also 'not insensible that in so large a trust, ungrateful to so many,'<sup>28</sup> there might be some misrepresentation of their activities.

On receipt of the report the commons sent for two of the trustees. Annesley and Baggs went over and were questioned on the report. They presented the commons with a map of Ireland showing where the forfeited estates lay, together with the areas and the instructions given for survey. The map and instructions were bound with the sessional papers; had they survived, they would have been of the highest interest.<sup>29</sup> At the same time Annesley and Sheres were sent for by the lords, who were anxious to show that they, no less than the commons, had an interest in the proceedings.<sup>30</sup>

Annesley, Baggs and Sheres were also required by the commons to report on the numerous petitions of those aggrieved by the Act of Resumption. The petitioners

28. H.L.MSS, n.s., iv. 206-11.

29. Commons' jn., xiii. 516-17.

30. H.L.MSS, n.s., iv. 212.

included unsuccessful claimants, deprived grantees and persons who had lost estates because they or their relatives had been outlawed. A collection of the petitions together with the reports has been preserved in the Annesley manuscripts.<sup>31</sup> Some of the cases will be referred to later in connection with the private acts of parliament by which a number of the grievances were in some degree redressed.

The commons seem to have been somewhat critical of the delay in the disposal of claims and of the trustees' inability to give an exact account of the rents which they had received from the forfeited estates. Annesley wrote to Wyche: 'I hope care is taken to put the claims in a general method for being determined within the time limited, and what will make a great clamour against ~~us~~ us next session is our not being able to give an exact rent-roll of the whole estates with the real values thereof; therefore whatever is done let it be taken care of, and whoever among your receivers is remiss therein let him be forthwith removed and others put in their places'.<sup>32</sup>

In January 1702 the commons ordered two of the trustees to attend them with the following information:

- (1) a copy of the rent-roll of the forfeited estates;
- (2) a valuation of all claims allowed;

31. Annesley MSS, xx.

32. Annesley to Wyche, 5 June 1701 (P.R.O.I., Wyche papers, 2nd series, 136).

- (3) a valuation of all claims admitted but not decided;
- (4) accounts of all money received and due;
- (5) accounts of the expenses of administering the act;
- (6) a table of fees.<sup>33</sup>

Annesley and Hooper came over with the required information and several additional records. They were cross-examined and explained that their rent-roll of £105,000 would have been thirty per cent higher but for the fact that the trustees were empowered only to grant one-year leases which were unattractive to tenants. The commons resolved that notwithstanding the 'complaints and clamours' which had been made against the trustees the complaints appeared groundless.<sup>34</sup> In a letter to Wyche Annesley referred to the 'heavy charge' laid against the trustees, and remarked that he was able to give 'a pretty good answer' to it. He made the significant point that William's death had weakened the position of those who were opposed to the Act of Resumption:

'They now will vouchsafe to take notice of a trustee,<sup>35</sup> for the king's death has altered all their measures'.

The first session of Anne's reign, March to May 1702, was remarkable for the number of private acts passed in connection with the Irish forfeitures. Forty such acts were passed for the relief of various classes

33. Commons' jn., xiii. 656.

34. Ibid., xiii. 765.

35. Annesley to Wyche, 19 Mar. 1702 (P.R.O.I., Wyche papers, 1st series, 248).

of persons injured by the Act of Resumption or by the proceedings of the trustees. They included creditors who had failed to lodge claims in time, claimants debarred on technical grounds and certain grantees whom the commons, on reconsideration, decided to reinstate. The statute book gives the bare titles of the acts. The full text is given in the Annesley manuscripts.<sup>36</sup> Most of the acts contained a provision that the lands concerned should be sold only to protestants and restricted the right of catholics to inherit them. The standard formula governing inheritance was taken from a recent English act,<sup>37</sup> and prescribed that 'if any person educated in the popish religion or professing the same and being under the age of eighteen years shall not within six months after he or she attain the age of eighteen take the oaths of allegiance and supremacy and subscribe the declaration and continue to be a protestant' such person should be incapable of inheriting the property. It thus appears that the restriction applied only to those heirs who were under eighteen at the date of the passing of the act, and that, in cases in which individuals asked for special legislation, the favour was coupled with a proviso to ensure that the younger generation should become protestant. In nearly all the private acts it was provided that

36. Annesley MSS, xxii.

37. 11 and 12 Will. III, c. 4.



impropriate tithes should not be restored with the rest of the property, but be vested in the bishop for church purposes. This provision represented a substantial gain to the established church at the expense of the former owners.

Of the forty private acts seventeen contained clauses in favour of catholics. Some of these were in favour of persons adjudged within the articles of Limerick who had been deprived of their lands on the ground that the title had vested in a forfeiting person at some period since February 1689. A case of this kind was that of Nugent of Donore. At the beginning of the war the entailed estate of Donore was held by James Nugent, who died in 1690, and was outlawed after his death, when the property was already in the possession of his brother Thomas. Both Thomas and Thomas's son, Edward, were adjudged within the articles of Limerick and successively held the estate until 1700, when the trustees seized it on the ground that James had been outlawed. Edward represented to the commons that, had it not been for the Act of Resumption, he would have had a good title to the estate by virtue of the articles of Limerick, and that the trustees' interpretation of the act amounted to a breach of the articles. The private act passed in his favour restored the estate, but contained the usual proviso restricting its inheritance by a catholic. A clause provided that nothing in the act

should be construed to compel Edward Nugent himself to take the oaths or subscribe the declaration, or to hinder him from enjoying the land by reason of not doing so. He himself might remain a catholic landlord, but his heir (who was not born until after the act was passed) was required to conform or lose the estate.<sup>38</sup> The convert rolls show that the heir duly conformed in 1734.

A similar case was that of Eustace of Yeomanstown. When the war ended this family consisted of three brothers, Maurice, Thomas and James. Maurice was in France, but was one of four officers 'beyond the seas' who were permitted by the fourth article of Limerick to have the benefit of the articles if they returned to Ireland within eight months. Maurice Eustace took advantage of the provision, recovered his estate and remained in possession of it until 1697, when he died without issue. Thomas, the second brother, who was outlawed and not included in the articles, died in 1692. James, the youngest brother, who was included in the articles, succeeded to the estate and remained in possession until 1700, when the trustees seized it on the ground that an interest in the entailed estate had been vested in the outlawed Thomas. An act was

38. Annesley MSS, xx. 107 and xxii. 197. The act is 1 Anne, c. 52.

passed, which restored the estate to James on the usual conditions.<sup>39</sup>

Henry Luttrell represented that the king's title to Luttrellstown had ceased on Simon's death in 1698. Henry himself had been included in the articles of Limerick and, apart from Ginkel's promise to him and William's grant of the estate, became entitled to it when Simon died issueless. Under the provisions of the Act of Resumption William's grant was set aside and the trustees asserted their right to the estate; Henry was advised that he must make out a claim under a deed of settlement. He lodged a claim, but rather than 'subject the same to any nice or strict construction' which the trustees might place upon the wording of the act he asked parliament to legislate in his favour. He referred to his great sufferings in the Irish army, incurred because he 'never was thought a friend or promoter of the French interest but of the English interest'. He also stated that he had prevailed on 8,000 of the Irish not to go to France after the surrender of Limerick, and that he himself had since attended William on every campaign in Flanders at his own expense.<sup>40</sup> A private act was passed in his favour, which contained the usual clauses

39. Annesley MSS, xx. 199 and xxii. 98. The act is 1 Anne, c. 57.

40. Annesley MSS, xx. 47. Another copy of the petition is in Bodl. Rawl. MS, A. 253 (Anal. Hib., i. 79).

restricting inheritance by a catholic and excluding<sup>41</sup> the inappropriate tithes. Henry Luttrell remained a catholic, but his heir conformed to the established church.

Lawrence Fitzgerald of Cloninge, county Kildare, had submitted on the terms of the proclamation of 7 July 1691, but had nevertheless forfeited his estate. John Maps<sup>42</sup> of Rochestown was outlawed at the age of ten for high treason supposed to have been committed when he was seven. A private act was passed permitting both these outlawries to be reversed. In these particular cases there was no bar against inheritance by catholics.<sup>42</sup> The same act contained a provision in favour of Thomas Plunkett of Portmarnock. His elder brother William had died in March 1691, in his twentieth year. William had with reluctance become a member of the militia under the Jacobite regime, and on that account had been indicted of high treason in the autumn of 1690. After his death the case came up and he was outlawed for non-appearance. The estate was accordingly seized and granted away. Thomas, the younger brother, who had escaped outlawry, compounded with the grantee and obtained possession of the property, which he retained until the arrival of the

41. Annesley MSS, xxii. 140. Act is 1 Anne, c. 26.

42. Annesley MSS, xxii. 186. Act is 1 Anne, c. 74.

trustees. The clause in Thomas's favour contained the usual restriction on inheritance by a catholic. The restriction, however, appears not to have been enforced, as in 1778 the name of Thomas Plunkett of Portmarnock occurs in a list of catholic noblemen and gentlemen to whom the Catholic Committee resolved to send letters.<sup>44</sup>

Lords Cahir, Carlingford and Kingston, who had been pardoned and whose outlawries had been reversed in the Dublin court, were subsequently discovered to have also been outlawed in the palatinate court of Tipperary. That court had made no return of its outlawries to the inquiry commissioners in 1699, and neither they nor the outlawed persons seem to have known of the proceedings. When the trustees discovered them they laid claim to the estates. An act was passed which permitted the reversals of these Tipperary outlawries, but at the same time excluded the impropriations and restricted inheritance by catholics.<sup>45</sup> The latter provision was apparently not enforced in Cahir's case. The ninth Lord Cahir, who was born in 1711, was one of the great catholic landowners in the latter part of the eighteenth century. The third earl of Carlingford died in 1704 and was succeeded by his nephew, who was already of age and was therefore not debarred by his religion from holding the estate. The earldom, but not the

43. Annesley MSS, xx. 93.

44. Archiv. Hib., ix. 33.

45. Annesley MSS, xxii. 131. Act is 1 Anne, c. 38.

Taafe viscountcy, became extinct when he died issueless in 1738. The estate then became the subject of dispute between the sixth Viscount Taafe, who was a catholic, and a protestant relative. The land was ordered to be sold and the proceeds divided between the claimants, one-third going to Taafe.<sup>46</sup> John King, who later became the third Lord Kingston, had incurred the opprobrium of the protestant community by marrying an Irish wife and turning catholic. He took the Jacobite side in the war and sat in the 1689 parliament. After the war he asked for pardon, to which exception was taken on the ground that his two sons were in France, being educated as catholics. It was suggested that the pardon should be made conditional on his sons being brought to England and educated as protestants: '----Otherwise it may prove of ill consequence to the public and be strengthening to the popish interest, which by this means will have a man of quality to lead them and, if he recovers his brother's estate, will be very formidable in Connacht, where they are generally Irish papists'.<sup>47</sup> Kingston decided to comply, and the pardon was granted after it was ascertained that the elder son had

46. The disposal of the Taafe estate was regulated by 15 Geo.II, c. 49. See D.N.B., article on Nicholas, sixth Viscount Taafe. He was of age when 1 Anne, c. 38 was passed.

47. Capel to Shrewsbury, 24 Sept. 1694 (Cal. S.P. dom., 1694-5, p. 344).

arrived in England and had been~~x~~ placed in a suitably  
<sup>48</sup> protestant environment. Kingston himself conformed  
 and took his seat in the Irish lords, but the author-  
 ities long continued to exercise themselves over the  
 beliefs of his family. Twenty years later Archbishop  
 King was moved to remonstrate in the following terms:  
 'I ought not to conceal from your lordship that it is  
 much observed that your family is altogether papists,  
 and that you live as much after the old Irish manner  
<sup>49</sup> as the merest Irishman in the kingdom'.

The first of these private acts was that passed  
 in favour of Tyrconnell's widow, the former Frances  
 Jennings, sister of the duchess of Marlborough. She  
 had been outlawed and was thus debarred from claiming  
 her jointure from Tyrconnell's forfeited estate. In  
 1693 a warrant had been issued to stop proceedings  
 against her, but the Irish lords justices protested  
 that she had been so remarkable in acting against their  
 majesties and the protestant interest that everyone's  
 eye was watching her case. They assured Queen Mary  
 that Lady Tyrconnell had acted, not with the duty of  
 a wife to her husband, but with the malice of an open  
 enemy, provoking her husband on all occasions against  
<sup>50</sup> the protestants of Ireland. Their representation

48. Cal. S.P. dom., 1694-5, p. 410.

49. King to Kingston, 9 June 1722 (T.C.D., MS N.3.7, p. 128).

50. Cal. S.P. dom., 1693, pp. 357-8.

proved effective, and a further warrant was issued<sup>51</sup> directing them to proceed with the indictment. With Anne's accession and the predominance of the Marlborough interest, Lady Tyrconnell was in a strong position. The act passed in her favour eluded the vigilance of the Irish bishops, who lobbied indefatigably for the exclusion of tithes from all estates restored by private acts: 'My lady Tyrconnell's bill was hurried with such unusual expedition through both houses, both whigs and tories striving who could favour it most, that we could not overtake it with our saving in either house; this it is to be the sister of a favourite; indeed I do not know any bill this session<sup>52</sup> that has passed so very quietly and unanimously'.

Acts were also passed in favour of several of the minor grantees who had been deprived by the Act of Resumption. Among these was William Spenser, the poet's grandson, who had been granted the estate forfeited by his catholic cousin, Hugolin. William Spenser had become a protestant and had assisted the Williamite<sup>53</sup> cause by acting as a guide to Ginkel. Provision was also made to restore a custodiam to the widow and

51. Cal. S.P. dom., 1693, p. 388.

52. Bishop of Clogher to bishop of Ossory, 2 Apr. 1702 (T.C.D., King MSS). The act is 1 Anne, c. 1; the text is in Annesley MSS, xxii. 55.

53. Annesley MSS, xx. 183 and xxii. 153. Act is 1 Anne, c. 63.

54. Annesley MSS, xi. 55 and xxii. 203. Act is 1 Anne, c. 62.  
55. Ibid., xxii. 19. Act is 1 Anne, c. 15.



children of Manus O'Brien, who had given the Williamite army information (on which it did not act quickly enough) of Sarsfield's plan to attack the guns at Ballyneety.<sup>54</sup> Thomas Keightley, one of the Irish revenue commissioners, had been given a ninety-nine year lease of numerous lands as a provision for his daughter, who was a ward of Queen Mary. This grant<sup>55</sup> also was restored.

Robert Edgeworth, Maria's great-uncle, succeeded in obtaining an act which put him in possession of the estate of his father-in-law, Sir Edward Tyrrell. Tyrrell died in 1690, shortly after being taken prisoner at Cork; in the following year he was outlawed and his estate seized. Robert Edgeworth, who seems to have been something of an adventurer, married Tyrrell's daughter and heiress and persuaded her to turn protestant. Thereafter he devoted his energies to the attempt to recover her estate. He met with no success, and represented to parliament that he had been continually thwarted by Rochfort, the Irish attorney-general, and his friend Baron Donnellan, both of whom were anxious to secure it for themselves. This consideration seems to have recommended him to the trustees, who reported that Edgeworth had rendered considerable service in the reduction of Ireland and that he and his wife had a

54. Annesley MSS, xx. 88 and xxii. 223. Act is 1 Anne, c. 62.

55. Ibid., xxii. 19. Act is 1 Anne, c. 18.

large family of small children and were objects of compassion. An act was passed directing the trustees to convey the estate, which was valued at £1,500 per annum, to Robert Edgeworth and Catherine his wife.<sup>56</sup>

In the majority of cases the reports of the trustees were favourable to petitioners. The private acts reduced to an appreciable extent the area vested in the trustees. This provided them with a welcome opportunity of explaining away the difference between the financial results forecast in the inquiry commissioners' report and those actually realised by the sale of the forfeited estates.

The restrictions which these private acts placed on the purchase and inheritance of lands by catholics were modelled on those which had been imposed by an English act of 1700 in respect of lands in England and Wales.<sup>57</sup> The restriction on purchase foreshadowed the first of the popery acts, passed by the Irish parliament in 1703. In 1708 the English parliament complained that the restrictions had been evaded, and that a great part of the estates taken out of the trust by private acts had been purchased by or on behalf of catholics. Advantage was therefore taken of the need to pass a supplemental act for the Clanricarde estate to provide that protestants might make discoveries of lands which had thus come into the possession of catholics.<sup>58</sup>

56. Annesley MSS, xx.80 and xxii.79. Act is 1 Anne, c.49.

57. 11 and 12 Will. III, c.4.

58. 7 Anne. c.29.

## IV

The survey of the forfeited estates formed an important part of the trustees' proceedings. Nearly all the lands vested in the trust had been involved in the Cromwellian confiscation and were recorded in the books of Survey and Distribution, together with the areas assigned to them on the basis of the Down survey. These areas were in all cases used in the forfeiture proceedings until after the passing of the Act of Resumption in 1700. The areas specified in William's grants correspond with those recorded in the Survey and Distribution books and the statistics in the inquiry commissioners' report are on the same basis.

There was, however, a general opinion that the official records underestimated the areas set out in the Restoration settlement, and in particular that much of the land shown as unprofitable was not correctly classified. Thus the committee which reported on the forfeitures to the English commons in 1694 said that the forfeited area was calculated on the survey returns, 'when in truth each parcel of land contains considerably more than what it is surveyed at, besides all the unprofitable land thrown in'. The inquiry commissioners in 1699 commented: 'From our observations much of the lands called unprofitable in the surveys (excluding

those in Kerry which we account as nothing) are now profitable, and many as good as any in the kingdom'.<sup>60</sup>

In 1701, after the trustees' surveys had begun, Annesley observed that land which had been unprofitable when the Down survey was made was now 'the most valuable part of the kingdom', and that the area of the forfeited lands according to the trustees' survey would greatly exceed that 'returned in the ancient survey'.<sup>61</sup> Annesley made the same point to the English commons in 1702, saying that 'the acres on survey are considerably more than the old proprietors knew them to be or are returned in the Civil, Down or Strafford surveys'.<sup>62</sup>

The scheme for the general survey of the lands vested in the trust was drawn up by Sir Henry Sheres, together with instructions to the surveyors. Robert Clements was appointed director-general of the survey; under him were four directors and a number of surveyors. Later the staff was increased by the appointment of a 'chief protractor' with seven protractors under him.<sup>63</sup> A great part of the forfeited lands was surveyed by the trustees. The maps thus made were collected into twenty-three volumes which remained in the Irish records until their destruction in 1922. A certain number of tracings<sup>64</sup>

60. Commissioners' report, p. 22.

61. Annesley to Simon Harcourt, 25 Aug. 1701 (N.L.I.; Ormonde MSS, clvii. 153).

62. Commons' jn., xiii. 764.

63. Annesley MSS, ii. 72 and v. f. 72.

64. Ir. rec. comm. rep., 1816-20, pp. 334-52.

of the trustees' surveys were preserved in the Quit Rent Office and there are also some in the British Museum. They are to a scale of forty perches to an inch, double that of most of the Down survey ~~xxx~~ parish maps. The Quit Rent Office also superimposed the outlines of the Down and trustees' surveys on six-inch sheets of the Ordnance survey. In a number of instances the areas of the trustees' surveys are recorded on this superimposition, which was made in connection with land purchase proceedings.

For all lands surveyed by the trustees the areas so obtained were taken as the basis for the conveyances, as well as for the upset price, which was generally fixed on the acreage. Thus the areas shown in the trustees' conveyances frequently differ from those recorded in the books of Survey and Distribution. Difficulties therefore arise in comparing the total area sold by the trustees with that restored under the articles or otherwise. In the Quit Rent Office set of the books of Survey and Distribution the seventh column shows the areas allotted under the Restoration settlement, based on the Down or Strafford surveys. For lands sold by the trustees the area given in the conveyance is usually shown in the ninth column. In many cases the two figures correspond, sometimes because the land was not surveyed by the trustees, sometimes because the trustees' survey tallied with the former

survey. But in many other cases the trustees' figure differs from that of the Restoration settlement. The difference is often due to a change of boundaries or to subdivisions as a result of which only part of the former holding was forfeited. The tracings superimposed on the Ordnance survey show many examples of variation between the boundaries of the Down survey and of the trustees' survey. In a significant number of cases different results were obtained by the two sets of surveyors in measuring the same piece of land, the higher and more accurate figure usually being that of the trustees' survey. A direct comparison can be made for townlands of which the boundary has remained approximately the same until modern times. A few examples are shown in the following table:

			Area (in Irish acres)		
County	Barony	Townland	Down	Trustees	Ordnance
Cork	Muskerry	Rathcullen	124	140	139
King's	Philips-	Bally-			
	town	drohit	227	234	238
Meath	Skreen	Riverstown	519	553	563

In some cases the difference is due to the trustees' survey treating as profitable land which had previously been classed as unprofitable. Thus Monilea, county Westmeath, which was shown in the Down survey as

452 acres profitable and 213 unprofitable was returned by the trustees' surveyors as 665 profitable acres. This procedure was the subject of loud complaint from those affected: 'The management of their surveyors shows in what sense their unprofitable acres are very good land. There is a gentleman in town who tells us that when they were surveying the land which he held they took in a bog of which he never made one shilling, that contained ten times as many acres as his land did. Land, it seems, that is good for nothing is very good land to increase their number of acres; but I fear that land whereon nothing but fairies tread will raise only fairy money'.<sup>65</sup>

A fresh survey was clearly desirable. Apart from the inaccuracy of the Down and Strafford surveys, the Restoration settlement resulted in a great many subdivisions of former holdings. There also seem to have been a number of disputes over encroachments and the removal of landmarks.<sup>66</sup> The surveys thus provided a fresh basis on which the trustees' sales and conveyances could go forward. The only account of the trustees' surveys is that of Hardinge, who discussed the subject in the course of a paper which he read to the Royal Irish Academy in 1864.<sup>67</sup> He referred to the surveys in

65. Jus regium, p. 51.

66. Annesley MSS, iii. 54 and iv. 119.

67. Hardinge, 'A concluding memoir on ----- surveys in Ireland from 1688 to 1864' (R.I.A. trans., antiquities, xxiv. 265-315).

the following terms: 'In the case of the lands sold there was an evident necessity for admeasurement and mapping. Yet it is by no means certain that the trustees did so in all instances. The maps subsisting of this section of the forfeited lands, and there is no sufficient reason to conclude that any of them have been lost, represent but a portion of the forfeitures'. Hardinge inferred that for lands forfeited in 1641 the trustees relied on certified tracings from the Down survey maps and that only in the case of lands not so forfeited did the trustees have surveys made. This inference is certainly incorrect. Very little of the land comprised in the Williamite forfeitures had remained unforfeited in 1641, and the surviving copies of the trustees' surveys are almost all of lands included in the Down survey. Hardinge does not seem to have examined the volumes of trustees' surveys which were then in the record office. He cited one particular case, that of Corrstown in the parish of Drumcar, county Louth. He observed that the bounds, outlines and figures of the Down survey and the trustees' survey accurately pictured one and the same townland, but that the former survey showed the area as ~~155~~ 155 acres and the latter ~~as~~ showed it as 179 acres. He thus concluded that the trustees would have gained considerably if they had extended the scope of their survey.



The example given was unfortunate. Corrstown was church land in 1641 and again assigned to the church at the Restoration. It was not included in the Williamite forfeitures, and there is no reason to suppose that it was ever surveyed by the trustees. The tracing superimposed on the Ordnance survey shows the Down survey but shows no trustees' survey of the townland. It is possible that Hardinge mistakenly referred to a private survey of the land, which may very well have shown 179 acres as against the 155 of the Down survey. The Ordnance survey equivalent is 182 Irish acres. Such surveys by private persons were very common; we have an example in the Adams rental.<sup>69</sup>

It is not easy to make a general comparison of the trustees' figures with those of the Down survey. In many cases there is a marked difference between the two sets, the trustees' figures almost always being the higher. The difference, however, is not uniform and for several of the larger estates there is not a great deal of variation between the Down survey and the trustees' survey. Thus for the majority of the townlands of the Slane estate the two sets correspond, either exactly or very closely. Galmoy's Wexford property is shown in the book of Survey and Distribution by a single figure of 5,015 acres. The trustees survey divided it up into a number of sections, which totalled 4,931 acres.

69. Anal. Hib., x. 260-1.

The two sets of figures for Clancarty's estate in county Cork are extremely difficult to compare, and it is evident that there was a great deal of redistribution of subordinate holdings between 1641 and 1688. But there is remarkably little difference between the total area of the whole estate as given by the Down and the trustees' surveys. Very little of Lord Clare's estate was surveyed by the trustees. The largest variation between the figures of the books of Survey and Distribution and those of the trustees' surveys appears in James's private estate, which consisted of scattered lands and had been the subject of numerous disputes and encroachments. The variation is greatest in the case of counties covered by the Strafford survey, but comparatively little survey work was done for the trustees in those counties.

On the whole the difference between the two sets of figures does not appear to be more than five per cent, although for some individual estates it is considerably more. In calculating the area sold by the trustees the figures in their conveyances have been used, in spite of the fact that those figures were in part based on a different standard from that previously used for the statistics of the forfeitures. This gives the impression that a somewhat larger proportion of Jacobite land was sold by the trustees than was actually the case. The discrepancy, however, is too small to affect the general assessment of the Williamite forfeitures.

## CHAPTER X

## The hearing of claims

One of the most urgent and complicated of the tasks of the trustees was the hearing of claims. The Act of Resumption prescribed that any person who claimed to have had an interest in a forfeited estate before 13 February 1689 must enter his claim by 10 August 1700. Each claim was to be written on parchment and to be supported by three or more credible witnesses. The trustees were to finish hearing the claims before 25 March 1701, a limit which it was subsequently found necessary to extend. Successful claimants were to receive certificates, which thereafter were never to be 'impleaded, voided or called in question'<sup>1</sup>.

Altogether 3,140 claims of various kinds were submitted. 3,093 of these are set out in A list of the claims as they are entered with the trustees at Chichester House, published in 1701, of which there are several copies extant. In this book each entry contains the names of the claimant and the forfeiting proprietor, an abstract of the claim and particulars of the lands affected. The decisions are not printed, but a copy of

1. 11 and 12 Will. III, c. 2, ss. 11-16.

the book, now in the Public Record Office of Ireland, was annotated by Monck-Mason, who entered each decision <sup>rr</sup> ~~for~~ the filed records and also added particulars of the forty-seven claims which were admitted too late for publication in the printed lists. One of the copies in the National Library of Ireland originally belonged to a trustee, John Cary, who himself made brief marginal notes of the decision given in each case. Cary's notes generally correspond with Monck-Mason's, although the latter contain a number of additional particulars.

In addition to the List of claims we have a detailed record of many of the hearings. The Annesley manuscripts include six volumes of the 'register's minute books', which record the day-to-day hearings of the cases, together with the arguments of counsel on either side and the decisions of the court.<sup>2</sup> Unfortunately, this record does not carry the proceedings beyond the end of 1701, when many of the claims were still undecided. Those decisions which are recorded tally with Monck-Mason's<sup>2</sup> notes. Incomplete as it is, the record shows the volume of work which the hearing of claims imposed on the trustees. The minute books which have survived contain between them more than two thousand pages. They show that many of the claims extended over several hearings and were complicated by various forms of legal

2. Annesley MSS, viii - xii and xiv. Vol xiii was not available for micro-filming.

ingenuity. In their first report to parliament the trustees said that although they heard claims on four days in each week they had decided only eight hundred by February 1701. They began their task by hearing claims in numerical order, but subsequently found it more convenient to take together all the claims relating to a single estate.<sup>3</sup>

The hearings, which seem to have been attended by all the trustees present in Dublin, began in August 1700 and continued for over two years. Sir Stephen Rice and Sir Toby Butler were foremost among the catholic lawyers who appeared; the second article of Limerick enabled them to continue their practice. The most notable of the other lawyers concerned was John Asgill, who had just scandalised the English public with a tract which asserted that man might be translated into eternal life without passing through death. He came over to Ireland with the express purpose of appearing in cases before the trustees and built up a large practice.<sup>4</sup> He subsequently invested heavily in forfeited lands, with unfortunate results. The most notable of his purchases was that of a life-interest in the estate of Lord Kenmare, one of whose daughters he married.

The notes in the copies of the List of claims

3. H.L.MSS, n.s., iv. 208.

4. Luttrell, Brief historical relation, iv. 656 and v.352.

show that out of 3,140 claims entered 1,861 were allowed in whole or in part. The number of successful claims is less significant than this statement suggests. The claims varied widely in character. Lessors, lessees, widows claiming their dowers and daughters their portions are all represented among the claimants. More than half the claims allowed were made by protestants who had financial interests of various kinds in the forfeited estates. Thus the duke of Ormend entered omnibus claims to save his rights to the title of numerous lands leased to persons whom he considered liable to forfeiture. Many of these were dismissed as cautionary, but others were allowed.<sup>5</sup> Similar claims were entered by other members of the protestant nobility in respect of lands leased to catholic tenants. Many bishops and clergy of the established church entered claims for church lands or dues. Some claimants made a separate claim for each transaction which they wished to prove; the number of claims is therefore much greater than the number of claimants or of the forfeiting persons concerned.

Only in a minority of cases were estates claimed by the next heir of a forfeiting person under a marriage contract or deed of settlement. The mere fact that an estate was entailed was not sufficient to establish

6

a claim. A number of the claims preferred by heirs were successful, but there were some conspicuous cases in which such claims failed and the estates were sold outright. Thus John Grace failed to make out his claim to the Courtstown estate. His witnesses had deposed that there was a deed of settlement drawn up in Dublin under the personal direction of Clancarty as trustee. This was contradicted by the evidence of Clancarty's sister, nephew and coachman, who stated that Clancarty was in London on the relevant date.<sup>7</sup>

There has been much misunderstanding about the extent to which forfeited estates were restored as a result of successful claims before the trustees. This misunderstanding is largely due to the analysis made by Hardinge in the paper which he read to the Royal Irish Academy in 1864. Hardinge stated that decrees in favour of 377 individuals had been registered by the trustees, and that of the lands mentioned in these decrees the area was recorded for 655 'denominations', amounting to 97,853 acres. For 1,965 denominations no area was recorded, but Hardinge assumed that by a sum in simple proportion their acreage could be approximately assessed at 293,559 acres.

6. 11 and 12 Will. III, c. 2, s. 1.

7. Commons' jn., xiii. 865.

He thus arrived at a total of 391,412 acres, which he described as having been restored to 'innocent persons' by the trustees.<sup>8</sup> The names of these 'innocent persons' are given seriatim by Hardinge; they are, in fact, the names of those who succeeded in establishing claims before the trustees. Butler has rightly criticised Hardinge's interpretation on the ground that the majority of the names in Hardinge's list of so-called innocents were clearly those of protestants, including such supporters of William as Ormond and several bishops of the established church. Butler also criticised Hardinge's estimate of the area of the lands concerned.<sup>9</sup> It is clear from the List of claims that most of the claims were not for the restoration of forfeited estates but for mortgages, debts, leases and other interests.

To add to the confusion, Hardinge has attempted to justify his figures by comparing them with those of the inquiry commission of 1699. That commission's figures, as already stated, were:

8. R.I.A. Trans., antiquities, xxiv. 279.
9. Butler, Confiscation, p. 229.



	Acres
Forfeited and not restored	752,953
Forfeited but restored	
(a) under articles	233,106
(b) by pardons	<u>74,733</u>
	<u>307,839</u>
Total	1,060,792

Hardinge's figures were:

Sold and conveyed by trustees	716,374
Restored by trustees to 'innocents'	<u>391,412</u>
Total	1,107,786

Hardinge pointed out that his total came within 46,995 acres of the total reported by the commissioners: 'I consider that this result demonstrates as well the integrity of my digests, compiled from the records, as the accuracy of the principles of approximation adopted and satisfactorily settles the question of the extent of the forfeitures of 1688'. This could only mean that he believed that all the estates already restored under articles or by pardons again came under review by the trustees, and that the 391,412 acres which he estimated to have been restored by the trustees to 'innocent persons' included the area which the inquiry commissioners had already reported as restored under articles or by pardons. This is, of course,

wildly misleading. By far the greater part of the land previously restored by articles or pardons remained outside the trustees' authority. The trustees did assert their right to a limited number of estates which had been restored to an heir; they did so on the ground that such estates had been owned since 1688 by a forfeiting person who was not himself covered by articles or pardon. The area in this category was only a small proportion of the total area which had been restored. The list of successful claimants contains comparatively few names of persons who had already been restored.

The extent to which successful claims enabled the families of former owners to recover their estates was much more limited than Hardinge's analysis suggests. Comparison of the decisions with the entries in the books of Survey and Distribution indicates that some forty freehold estates, with a total area of about 70,000 profitable acres, were restored by the trustees to the families which previously owned them. In twelve cases, involving an area of some 28,000 acres, the claimants themselves had been adjudged within the articles of Limerick or Galway but were obliged to claim because forfeiting persons had had a title to the lands at some after 1688. Apart from the immediate restorations, there were fifteen cases in which the claim was allowed after the death of the forfeiting proprietor, whose life-

interest was thereupon sold by the trustees. The estates of which the life-interest only was sold amounted to some 95,000 acres, the greater part of which was represented by the Kenmare estate. Although the families which thus preserved their estates were not numerous, they included some well-known names. Lords Gormanston and Trimleston were among those who recovered their lands immediately; their titles remained under attainder and were accorded to them only by courtesy. Sir Nicholas Browne's son, Valentine, and Dudley Bagenal's son, Walter, were among the heirs who established claims to reversions on the death of their forfeiting fathers.

Anthony Preston, ~~and~~<sup>11</sup> called Lord Viscount Gormanston', and his wife were allowed a claim on the Gormanston estates by deeds of 1684. The seventh viscount died in Limerick in March 1691 and was outlawed in Meath a month after his death. The next heir was his nephew Jenico, who was adjudged within the articles of Limerick and started proceedings for the recovery of the estate from Richard Coote, to whom it had been leased by the crown. Coote had been granted the manor of Gormanston under the Cromwellian settlement, but had been robbed of his prize when a decree of innocency was given to the seventh viscount. He made determined

11. Claim 786. The trustees' decree, dated 27 Aug. 1701, has been preserved, vide N.L.I., MS 3299 (report on Gormanston papers).

efforts to resist this second attempt to dislodge him, and obstructed the execution of the decree passed by the court in Gormanston's favour. The Gormanston family records contain complaints by Jenico of the beating of bailiffs and of other obstruction offered by Coote. They also contain an account of the disbursements which Jenico had to make in the course of the proceedings, including an item of £12. 6. 11 for two dinners given to juries at the Crown in Fishamble Street.<sup>12</sup> As a counterblast to the legal proceedings Coote asked the Irish commons to include in a current bill of 1695 a clause enabling him to keep the Gormans-<sup>13</sup>ton estate. His petition was rejected.

Jenico died in 1697 and was succeeded by his brother Anthony, who had also been adjudged within the articles of Limerick. He too had to deal with Coote, who took the case to the English lords. The lords upheld the decree of the Irish court and ordered that the estate should be given to Lord Gormanston.<sup>14</sup> Under the provisions of the Act of Resumption Anthony had to put in a claim for the estate, although it had already been restored to him. It would otherwise have been forfeited on the ground that it had since February 1689 been for some time in the possession of the seventh viscount,

12. N.L.I., MS 3299.

13. Commons' jn. Ire., ii. 143 (13 Dec. 1695).

14. Luttrell, Brief historical relation, iv. 361.

a forfeiting person. The trustees seem to have made no difficulty about allowing the claim. Two other claims to the same lands and under the same deeds were allowed to Nicholas and Robert Preston, who seem to have been younger brothers and to have lodged claims as a precautionary measure.<sup>15</sup>

The claim of John Barnwell, 'called Lord Trimleston', was allowed to a remainder in tail of the estate forfeited by Mathias, the tenth Lord Trimleston. The claim was proved by deeds of 1686, made in connection with marriage articles.<sup>16</sup> Mathias was in Limerick at the time of the capitulation, and was one of the hostages given by the Irish in the mutual interchange which took place during the negotiations.<sup>17</sup> He had been outlawed in Dublin during the summer of 1691, and did not take advantage of the articles but went off to France. In 1692 he was killed fighting in Low Germany. The estate was granted to Sidney, but by 1695 it had been recovered by John, Mathias's brother and heir.<sup>18</sup>

John, who appears to have been sent to France for his education and who was only twelve at the end of the war, was indicted but not actually outlawed. In 1697 he appears as indicted of foreign treason in a list of persons who 'stand indicted of treason and have surrendered themselves on the exigent or first process and

15. Claims 953 and 1870.

16. Claim 1331.

17. H.M.C. rep. 10, app. v. 166.

18. Cal. treas. bks., x. 987.

are bound by recognisances to appear in the court of  
king's bench'.<sup>19</sup> In 1699 it was proposed to press for  
his conviction and outlawry on the report of an in-  
former named Geary. Lord Galway wrote to Vernon that  
he had not been in favour of the decision to proceed  
further against Trimleston, but that he had been  
reluctant to disagree with Bolton, the other lord  
justice, who had pressed for prosecution: 'I shall  
be sorry if poor Lord Trimleston loses his property  
through my acquiescence. Supposing he was an ensign  
in King James's guards, as Geary declares, I do not  
think his guilt is so great that he should lose his  
property on that account; for he was a mere child,  
for whom his relatives had procured this commission  
to give him wherewithal to live at the college'.<sup>20</sup> No  
further action seems to have been taken until the  
trustees came over. The informer, Geary, then approach-  
ed them with a list of witnesses to prove that 'John  
Barnwell, commonly called Lord Trimleston, was concerned  
in the late rebellion'. The trustees sent the depositions  
to the attorney-general, intimating that they  
thought it proper to proceed with the prosecution. The  
lords justices passed orders accordingly, but nothing  
seems to have resulted.<sup>21</sup>

19. Cal. S.P. dom., 1697, pp. 499-501.

20. Ibid., 1699-1700, p. 168.

21. Annesley MSS, ii. 15 and 21; Cal. S.P. dom., 1700-2,  
p. 148.

Among the successful claimants was Thomas Dongan, second earl of Limerick, who established a claim to the estate of his brother William. In Charles II's reign Thomas Dongan had been in command of the Irish regiment in the service of France. Charles offered him a pension of £500 a year to leave the French service, and appointed him to be, first, deputy governor of Tangier, and then governor of New York. He held the latter appointment until about 1687, and seems to have been successful in pacifying the Iroquois and in developing the town of New York. He remained in America until 1691, when he returned to England to find that his brother had been outlawed and had gone to France with James.<sup>22</sup>

Hearing that his brother's estate was to be granted to Ginkel, Dongan asked Queen Mary to give him time to make out a claim to the reversion in the event of his brother's dying without leaving a son. He was given six weeks to make out his claim, and Ginkel's grant was held up for that time.<sup>23</sup> He failed to produce his proofs within the allotted time and the estate was accordingly given to Ginkel, who sold it to a number of 'protestant purchasers'. Dongan then decided to go back to America. At the end of 1693 he was granted 'a vessel called the Margaret, a prize of 160 tons burthen', on the ground that he had spent the greater part of his estate on

22. For an account of Dongan see Studies, xxiii. 489-501. The author says that Dongan failed to recover the estate.

23. Cal. treas. papers, 1557-1696, p. 191.

defending New York against the French and that he had been 'defeated of his brother's estate in Ireland'. He had asked for the ship as he was determined to go and live on a small estate he had in America.<sup>24</sup>

William earl of Limerick died in 1698; his only son had been killed at the Boyne. Thomas, as the heir, returned to Europe to see what could be done to revive his claim. The Act of Resumption contained a provision that, in view of the great services rendered to England by Thomas Dongan and of the sums due to him for arrears of pension and the expenses of fighting against the French and Indians of Canada, he should be given £8,000 out of the proceeds of his brother's estate, unless he preferred to claim the estate.<sup>25</sup> Dongan elected to claim the estate, but was tardy in making his claim. He appeared before the trustees on 15 August 1701, a year after the last prescribed, and asked them to accept a claim. The trustees pointed out that they had no power to do so.<sup>26</sup> Dongan then submitted a petition to the English commons, asking for an extension of the time allowed for entering his claim. He represented that he had known of a settlement made by his brother but that the deed had been mislaid during the war. Despairing of being able to find it he had got a clause included

24. Cal. treas. papers, 1557-1696, p. 332.

25. 11 and 12 Will. III, c. 2, s. 53.

26. Annesley MSS, iv. 305.



in the Act of Resumption giving him £8,000 instead. The deed was found in December 1700, but by then the statutory period for lodging claims was over.<sup>27</sup>

This petition was strongly opposed by Henry Westenra and others, who had paid Ginkel over £8,000 for his grant of Lord Limerick's estate. They objected to Dongan being allowed to claim 'on pretence of some never before heard of deed'. In any case they considered themselves entitled to a share of the money they had paid to Ginkel. The trustees reported that there was no reason to doubt the bona fides of Dongan's claim and that he had always 'preserved the character of a man of honour'. They thought, however, that Westenra and the other purchasers were entitled to receive a third of their money.<sup>28</sup> A private act was passed allowing Dongan to claim. By this time the share recoverable by the protestant~~x~~ purchasers had gone up to two-thirds. It was therefore provided that Dongan should pay them this proportion. He was also deprived of the impropriate rectories and tithes which formed part of the estate.<sup>29</sup>

The claim was allowed, but his failure to find the missing deeds in time had cost Thomas Dongan dear. He complained bitterly to the lord lieutenant of the heavy

27. Annesley MSS, xx. 116.

28. Ibid., xx. 164.

29. Ibid., xxii. 5. Act is 1 Anne, c. 40.

expense of paying the protestant purchasers, of the loss of his tithes and glebelands worth £6-700 a year, and of the severity of the trustees who had kept the rents they had received from the estate and had left him to pay the interest charges which had accrued during the period of their management.<sup>30</sup> In 1704 he petitioned the queen for a monetary grant to make up for his American expenditure and the arrears of his pension and also to help him to clear his Irish estate, which was much encumbered on account of his brother's attainder. A minute was recorded on the petition that the lord treasurer was to speak to Ormond on the case, but it does not appear that anything substantial<sup>31</sup> resulted. Castletown was still part of the Dongan estate during the trustees' administration. Dongan seems to have sold it to Conolly some time before the registration of deeds began in 1708.

A successful claim was made by Thomas Fitzgerald, knight of Glin. His father had been killed in 1689 during the siege of Derry at the battle of Windmill hill. An inquisition was held on his estate in 1696, at which it was found that by a deed of settlement he<sup>32</sup> was only tenant for life. His widow was therefore left in undisturbed possession of the estate, which was

30. Cal. S.P. dom., 1703-4, pp. 162-3.

31. Cal. treas. bks., xix. 35.

32. Harris, Collectanea, x. 277.

accordingly not included in the return made by the inquiry commissioners in 1699. The trustees continued this arrangement and subsequently allowed the son's claim.

A case about which we have information from various sources and which illustrates the difficulties faced by claimants was that of Mark Baggot of Mountarran, county Carlow. Mark was adjudged within the articles of Limerick; his father John was adjudged not to be within the articles. At the inquisition held on the forfeited estate the Baggots produced a deed which settled the property on Mark after his father's death. The jury refused to accept the deed and held that the estate was vested outright in the father. It was then granted  
33  
to Albemarle. Mark proceeded to negotiate for the purchase of the estate, which extended to more than 3,000 acres. Albemarle's agents seem to have been satisfied of the validity of the deed of settlement, and the lands were disposed of to Mark for the modest sum of £300. With the passing of the Act of Resumption the estate became vested in the trustees, and Mark accordingly lodged his claim before them. Before it came up for hearing his father had died; the admission of the claim would thus mean the immediate restoration of the property to Mark.

The case was strongly contested. Evidently considerable local feeling against Mark Baggot had been worked up among the Carlow protestants, as appears from a representation made to Ormond by the high sheriff, grand jury and other protestant gentry. The duke was requested to 'obstruct and discountenance Mark Baggot, a violent papist, son of John Baggot late of Mountarran in this county, from returning to reside or have his abode among us; the said Mark having been titular high sheriff of this county in 1689 and acted as such with that insufferable pride, rigour and insolence towards the protestants here as will never be forgotten. Wherefore, as his neighbourhood will be unwelcome to all, so will it bring a terror and heartburning to the poorer sort especially, for whose sake as well as our own we make this our humble request to your grace'.

The objections seem to have centred on Mountarran, which was not part of the freehold property granted to Albemarle, but was held on long lease by the Baggots from Ormond. When John Baggot was outlawed and his estate forfeited, Ormond, quite irregularly, gave a fresh lease of Mountarran to Richard Wolsely, the son of Brigadier William Wolsely who had played a prominent part in the war. Richard Wolsely was determined not to give the house up to Mark Baggot, and this seems

to have been the primary cause of opposition to the latter's claim.

Mark Baggot had an ally in Bishop King, with whom he had struck up a friendship based on a common interest in mathematics and portable barometers. A considerable number of Baggot's letters are to be found in King's correspondence. Several of them deal with his claim, and the correspondence makes it clear that King recommended Baggot to the favourable consideration of the trustees. In one of his letters Baggot laid his case before King in the following terms: 'The gentleman who lives in my house in the country to which I hope to be restored by the trustees, being fond beyond measure of the improvements made by my father and expecting no compliance from me in letting him continue tenant, uses all his interest and power to hinder and delay the allowance of my claim. Among other artifices he has been very industrious, not immediately by himself but by his friends, to give an ill character of me to some of the trustees, but particularly to Sir Henry Sheres, as if I had been a cruel and ill-natured violent person in the late juncture; which by good fortune understanding, I took the freedom of ~~mentioning~~ making use of your lordship's name to Sir Henry and told him your lordship knew me before, in and since the late troubles and could give some account of my actions and behaviour in that time. Sir Henry expressed

great honour and esteem for your lordship, and told me that your lordship's account alone would satisfy him, and that he would be glad to find that I had not deserved the character he had of me. Which occasions my begging the favour of a line from your lordship with one enclosed to Sir Henry Sheres, as soon as your lordship conveniently can, for the objection made on the clause in my deed is not yet over. It is to be argued next week and your lordship's letter before it comes on would be very seasonable'.<sup>35</sup>

When the claim came up for hearing it was first suggested that the settlement had not been made for valuable consideration, but Baggot was able to show that it formed part of a marriage contract under which his wife brought him an estate of £150 a year.<sup>36</sup> It was next contended that there was a 'razure' in the deed which made it void, but the court held that the razure had been made before the deed was executed.<sup>37</sup> Finally it was argued that the settlement was voluntary and revocable, and a wealth of legal precedents was adduced to show that this ought to be a bar to the claim. Against this Baggot was able to show that the deed was revocable only with the consent of his wife's trustees. The court took a week to consider the point

35. Baggot to King, 30 Jan. 1701 (T.C.D., King MSS).

36. Annesley MSS, x. 165.

37. Ibid., x. 224-8.

and then gave judgment in favour of the claimant,  
 both for the freehold estate and for the lease of  
 38  
 Mountarran.

As a result of the decision Baggot got possession  
 of the freehold estate, but his return to Mountarran  
 was still resisted by Wolsely. Baggot offered to  
 allow Wolsely to remain until the end of the tenancy  
 year and to buy his stock. The trustees thereupon  
 ordered that Wolsely should on that date give possess-  
 ion to Baggot, failing which Baggot would be put in  
 39  
 possession by a sheriff's order. The next move was  
 made by Cox, who by then was lord chief justice as  
 well as one of Ormond's trustees. Cox represented  
 that Ormond would be obliged to repay to Wolsely  
 £1,100, the premium for his lease of Mountarran. The  
 duke, who was heavily embarrassed, was quite unable  
 to pay this sum. Baggot told the duke that he would  
 pay the amount himself if, in place of his existing  
 lease for three lives, he were granted a fresh lease  
 on the same terms as had been given to Wolsely, a lease  
 40  
 for lives renewable for ever. More than a year later  
 Wolsely was still in possession and Cox told the trustees  
 that the duke had received no rent from him for two  
 41  
 years. Baggot seems never to have recovered possession

38. Annesley MSS, xi. 392-5 and xii. 53.

39. Ibid., iv. 152.

40. Baggot to King, 24 May 1701 (T.C.D., King MSS).

41. Annesley MSS, v. 167.

of Mountarran. In a 1705 list of catholics entitled  
to carry arms he is shown as late of Mountarran.<sup>42</sup>

A complicated and contested set of claims related to the Sarsfield estate. A substantial collection of documents bearing on the case has been preserved in the Vesey-Sarsfield papers, acquired by the Public Record Office of Ireland since 1922.<sup>43</sup> William Sarsfield, Patrick's ~~younger~~ elder brother, married Mary, the daughter of Charles II and Lucy Walter. In consideration of the marriage the king put William in immediate possession of his ancestral estate of Lucan, in which a Cromwellian, Sir Theophilus Jones, had a life-interest. Jones was reprised with 'concealed lands' elsewhere to compensate him for being dispossessed of Lucan. William and Mary Sarsfield had a son, Charles, and a daughter, Charlotte. William died in 1675. By his will the estate was left, first to his son Charles, and failing him to his brother Patrick. Charlotte was to get only a portion of £1,000 and an annuity of fifty pounds. When the boy Charles died in 1683, Patrick proved the will in the prerogative court of Armagh and took possession of the estate. William Sarsfield's widow had by this time remarried, her second husband being an English civil servant named Fanshaw.

42. H.M.C., Ormonde MSS, ii. 475.

43. For a report on the documents see P.R.I. rep. D.K. 56, pp. 342-96.



She and her husband alleged that the will was a forgery and started legal proceedings against Patrick. The proceedings had made little headway by 1689, when Fanshaw was included in the attainder act passed by the Irish parliament. He, not unnaturally, attributed his attainder to Patrick's influence.<sup>44</sup>

After the Boyne the estate was seized by the Williamite commissioners of forfeitures as Patrick's property. A number of representations were made to William's government on behalf of Charlotte Sarsfield, and in 1696 a warrant was issued directing that she should be put in possession of the manor of Lucan. The warrant recited that Patrick had taken advantage of her infancy and of her absence in England to get possession of the estate, and that he had wrongfully detained it until he was expelled by the king's arms.<sup>45</sup> When Charlotte appeared to be securely in possession of the property she received, and accepted, an offer of marriage from Agmondisham Vesey, son of the archbishop of Tuam. The Act of Resumption came as a rude shock to Vesey. The trustees seized the estate, and Vesey's only remedy was to lodge claims on behalf of himself and his daughters; Charlotte herself had meanwhile died. vesey's curiously worded claim was for

44. Cal. treas. papers, 1697-1702, p. 563.

45. Cal. S.P. dom., 1696, p. 156.

'an estate for life by the courtesy of England'. The implication was that, as the crown had reprised Jones for his dispossession, Lucan was virtually crown property settled on Mary Sarsfield and her descendants on account of their royal blood. Vesey's daughters were shown as claiming as co-heirs of Charlotte.<sup>46</sup>

The case before the trustees turned on the validity of William Sarsfield's will. The original was not forthcoming. Patrick was said to have taken it out of the prerogative court and to have handed it to his sisters, who brought it with them to France. A copy was obtained from the prerogative office and exhibited to the trustees together with Patrick's receipt for the original. One of the witnesses to the will also appeared and testified to the accuracy of the copy. The trustees held that the estate had been left to Patrick by the terms of William's will, and that it had not descended to the claimants. The claims were therefore disallowed.<sup>47</sup> From the record there seems no reason to suppose that the will was a forgery or that the trustees' decision was wrong. It naturally displeased the Veseys. The archbishop, writing to his son, expressed his indignation at the trustees' judgment 'in affirmance of a will unproved'. In the same letter he observed: 'Your children that can

46. Claims 1316-17.

47. Annesley MSS, iii. 17 and xiv. 68-71.

just speak are taught to say they love the trustees because they must love their enemies!<sup>48</sup> A contemporary dialogue makes Trenchard, thinly disguised as Truncheon, remark that the trustees intend to divest Vesey and his children of their estate 'on a pretence of a will which does not appear and which we have great reason to believe was a forgery from the beginning'.<sup>49</sup> Vesey contrived to get a private act passed in England by which he obtained possession of the estate on payment of three times the rent at which the trustees had let it in 1702.<sup>50</sup>

A claim which was later to have important repercussions was that lodged by Maurice Annesley in respect of the estate of Christopher Sherlock. Maurice was a cousin of Francis Annesley; by a natural piece of patronage the trustees had appointed him receiver for county Kildare. The estate forfeited by Christopher Sherlock was charged with portions for his sisters Hester and Mary and with legacies to his younger brothers. Maurice Annesley's story was that the widowed mother of these children appealed to him to lease the estate from the forfeiture commissioners, and also persuaded him to act as guardian of the minors. He alleged that he had spent considerable sums for the

48. Archbp. of Tuam to Ag. Vesey, 18 Sept. 1702 (P.R.O.I., Sarsfield-Vesey collection).

49. Secret history of the trust.

50. Annesley MSS, xxii. 99. Act is 1 Anne, c. 57.

maintenance and education of the children and had also provided the daughters with their portions. The claim allowed by the trustees for these disbursements came to more than the value of the estate, possession of which was accordingly handed over to Annesley; the reversion only was sold by the trustees. The legal proceedings which were subsequently brought by Hester Sherlock against Annesley led to a clash between the Irish and English lords, which had important constitutional consequences. Hester Sherlock, losing her case in the exchequer court, took it to the Irish lords, who upheld her claim. Annesley then applied to the English lords, who denied the appellate jurisdiction of the Irish lords and ordered that the estate should be handed over to Annesley.<sup>51</sup> After a battle royal the issue was for the time being decided by the Declaratory Act of 1719, which remained an Irish grievance until the time of Grattan's parliament.

It is not easy to determine the equity or inequity of the trustees' decisions. The protestant pamphlets of the time took the line that the claims of protestants were unfairly disallowed and those of catholics undeservedly admitted. Apart from the improbability of any great favouritism having been shown towards catholics, the record indicates that most of the

51. The case of Maurice Annesley; Parliamentary cases, 1715-20, Nos 136-7.

protestant claims for mortgages or leases were admitted, and that more than half the claims for the recovery of estates under deeds of settlement were unsuccessful. It was natural that unsuccessful claimants should charge the trustees with prejudice and unfairness. They were not directly charged with corruption, and the vigilant hostility of the Irish protestants would certainly have detected any cases of laxity.

A charge was levied against Maurice Annesley of having taken a hundred guineas to secure Francis Annesley's support for a claim lodged by Lewis Moore of Ballyna. Moore's affidavit denying the allegation was taken at the Kildare assizes and sold as a penny broadsheet. Colonel Charles Moore of Ballyna had been outlawed in the summer of 1691 and had then been killed at Aughrim. His brother Lewis, an ancestor of the More-O'Ferrall family, was not outlawed and successfully claimed under a deed of settlement.<sup>52</sup> Maurice Annesley's relations with Thomas Dongan were also equivocal. From a subsequent lawsuit it appears that in return for a promise to recommend Dongan's case in England Annesley obtained a lease of land on very favourable terms. The deed, in Annesley's 'own handwriting and very artfully drawn', recited that Dongan made the lease in

52. Claim 151; Secret history of the trust; Mr Moore of Ballyna's deposition.

consideration of 'special affection to the said  
 53  
 Annesley for many services done'.

Sir Henry Sheres attributed the protestant criticism to the 'new and unknown practice' introduced by the trustees, who did not consider the distinction of protestant and papist to be any part of the question, with the result that a 'protestant knave was sure not  
 54  
 to succeed against an injured papist'. King observed that many catholics had succeeded in establishing claims before the trustees which would not have been allowed by a jury: 'Yet in the method in which the matter was put I do not see how it could have been avoided. The relief they had was by deeds, supposed forged, and swearing, and it was observable that where these would help they seldom failed to carry their claims; but some were so unlucky that there was no room for these in their cases, as when fines and records were against them. Also when it came to a nice point of law, as several times happened, I do not find they had any favour; and I doubt the most innocent and righteous claims were often defeated and the unjust  
 55  
 allowed'. King's verdict is probably as near the truth as we are likely to get.

53. The case of Thomas, earl of Limerick ---- versus Maurice Annesley, respondent.

54. B.M., Eg. MS 917, f. 169.

55. King to Southwell, 28 Mar. 1702 (B.M., Eg. MS 917, f. 183).

## CHAPTER XI

## The selling of the forfeited estates, 1702-3

The Act of Resumption provided that the trustees should begin to sell the forfeited lands at any time after 10 November 1700 and complete the sales by 25 March 1702. The selling was to be by cant, or auction, of which notice was to be given fourteen days in advance. The purchase money might be paid in the form of debentures (paper which had been issued in lieu of payment to army officers, clothiers and owners of transport ships), malt tickets (tickets for a million pound lottery issued in 1697 and secured by a duty on malt) or exchequer bills. All of these were to be accepted 'as freely as if they were sterling'. The trustees were, however, authorised to demand enough cash to meet their own outgoings. All receipts over and above the trustees' expenses were to be appropriated to officers' arrears, to debts due for transport and clothing, or to meeting the principal and interest on debentures, malt tickets and the other ~~tickets~~ forms of paper which sustained the precarious fabric of Williamite finance. The trustees were unable to keep to the time-table. Claims took much longer to decide than

1. 11 and 12 Will. III, c. 2, ss. 22, 40 and 41.

had been expected, and the passing of supplementary legislation to appease the Irish protestants caused further delay.

The act for the relief of the protestant purchasers of the forfeited estates in Ireland, passed in the spring of 1702, gave to those who had purchased lands from Albemarle, Athlone, Romney and other grantees the privilege of buying in their purchases at thirteen times the annual rent, provided that they did so by 25 March 1703. They were also allowed an abatement of one-third of the original purchase price in addition to the £21,000 previously allotted for their relief.<sup>2</sup> Most of the purchasers took advantage of the act, and the trustees were thereby enabled to begin their sales. Altogether they disposed of about 80,000 profitable acres to fifty 'protestant purchasers'. This area included the greater part of the estates of Lords Clare and Slane in addition to a number of smaller properties.

The auctions of the remaining lands vested in the trust began in October 1702. The notices offering the several estates for sale have been preserved in the Book of Postings and sales, a compilation of the printed bills giving particulars of each estate. A copy in the National Library of Ireland supplements the printed particulars with manuscript entries of the purchasers'



names, the price paid for each lot and the date of sale. The book thus throws considerable light on the chequered progress of the sales. The method adopted for the auctions was to put up each forfeited estate in lots. Advance notices were issued, giving the date of auction together with particulars of each lot, its area, rental value and in most cases the upset price. Usually the annual value is shown in two columns, one giving the actual rent, the other giving the real value as estimated by the trustees. The latter figure was often considerably higher than the former; there were many cases of old leases at low rents, sometimes in favour of relatives of the forfeiting proprietor. From the 'real value' at about fourteen years' purchase deductions were made for mortgages, dowers or long leases to give the net upset price. This price was in most cases realised but seldom exceeded. There were a number of cases in which the bargain was struck at a figure well below the upset price. Reference will later be made to the drastic reductions made at the conclusion of the proceedings when the Hollow Sword Blades company took over a great quantity of undisposed land. Most of the purchases were made in the form of debentures which seem to have been secured at a considerable discount by the bidders.

The first estate put up to auction was that of Colonel John Barrett. The estate, which lay in the

barony of Barretts, county Cork, consisted of more than 11,000 profitable acres, of an annual value of about half a crown an acre. The date of the auction was 20 October 1702, but no satisfactory bid seems to have been received until December 10, when one-third of the estate was disposed of to Sir John Mead and Nicholas Colthurst, both of whom had prior claims on the property. The remaining two-thirds was still undisposed of at the end of the year. Rather better fortune attended the sale of the next estate, that of Edmond Barry, consisting of 1,500 acres in the barony of Barrymore, county Cork, of a rental value of about three shillings and sixpence an acre. The estate was advertised for auction on 22 October 1702 and by November 17 had been sold to six purchasers, four from Cork, one from Kilkenny and one from Dublin. The price represented fourteen times the annual value with a deduction for the widow's jointure. Clancarty's enormous estate in county Cork was then put up to auction on a number of dates between 24 October 1702 and 16 February 1703. The results must have been highly disappointing to the trustees. By the latter date only one-sixth of the property had been sold.

In December 1702 two of the trustees presented the English commons with a memorial dilating on the difficulties of selling the forfeited lands. Their chief

complaint was of the current belief that the adjudications of the trustees and the titles conveyed by them would be subject to re-examination by the Irish courts. Prospective bidders were also put off by the apprehension that each lot might be held liable for the whole quit-rent with which the original estate was charged. For those who bought lots from Clancarty's estate such an interpretation might be disastrous.<sup>3</sup>

In January 1703 the same trustees presented a second memorial to the commons, stating that since the sales began in the previous October less than £40,000 worth of land had been sold; there was little competition, there being 'few or no second bidders'. The trustees thought that there was not enough purchasing power in Ireland and said that few of the English debenture holders had put in an appearance; apparently they preferred interest in England to land in Ireland.

The commons' immediate response to the last suggestion was a resolution to provide for the stoppage of interest on debentures.<sup>4</sup> Protests were soon forthcoming from the debenture holders. The army officers maintained that without interest the debentures could not be disposed of at 'any tolerable discount', and that they

3. Commons' jn., xiv. 64.

4. Ibid., xiv. 113.

themselves could not 'with such broken sums as were coming to them' buy lands in Ireland where they had no connections or friends. The shipowners complained that they had not received principal or interest on their debentures for over nine years. The clothiers protested that without interest their debentures would not be saleable for more than half their nominal value.<sup>5</sup>

The protests were effective and the act for advancing the sale of the forfeited estates, passed in February 1703, contained no clause for the stoppage of interest. The act gave power to the trustees to apportion the liability for quit-rent. It also provided for the payment of the purchase money in instalments, one-third before 24 June 1703, one-third by 25 December 1703 and the remainder by 24 June 1704.<sup>6</sup> A subsequent act gave a further extension of six months 'by reason of the present scarcity of money in Ireland'.<sup>7</sup>

Most of the remaining property was offered for sale between March and May 1703, but in spite of the recent concessions there was little improvement in the rate of disposal. Few properties were sold for more than the upset price and the greater part of the land remained undisposed of. James's private estate attracted a good many bidders, mostly country gentlemen who owned other

5. Commons' jn., xiv. 172.

6. 1 Anne, st. 2, c.18.

7. 2 and 3 Anne, c. 19.

land in the neighbourhood. Three-quarters of the private estate was sold to some 170 purchasers; the rest was taken over by the Hollow Blades. On the other hand, only one quarter of Clancarty's estate and none of Sir Patrick Trant's could be disposed of by auction. These estates consisted of large, continuous blocks of territory. They must have seemed a less attractive proposition for the individual purchaser than the private estate, which consisted of comparatively small lots scattered among the holdings of established protestant gentry.

In April 1703 King, by now archbishop of Dublin, wrote to Annesley: 'I hear from several hands that the forfeitures go off at great rates and the addressers (i.e. the promoters of the remonstrance against the Act of Resumption) the great buyers, which will stop their mouths for ever; for how can they allege it an ill title on which they venture so much'<sup>8</sup>. Conolly was one of the principal purchasers; Marmaduke Coghill and some other promoters of the remonstrance were also purchasers, but on a comparatively small scale. But King, who was in England at the time, had been given rather too optimistic an account of the auctions. By the end of May 1703 the greater part of the lands put up to auction were still undisposed of.

8. King to Annesley, 6 Apr. 1703 (T.C.D., MS N. 3. 2b, p. 188).

It was unfortunate for the trustees that the sale of the forfeited estates should have taken place at a time when the economic position of Irish protestants was severely affected by the restrictions imposed in 1698 and 1699 on the export of woollen goods. King, writing in 1702, commented that Irish land values had fallen as fast as they had previously risen. He attributed the decline to the 'Woollen Bill', the lowering of the Irish rate of exchange, the stoppage of foreign trade and the proceedings of the trustees. Dislike of the resumption proceedings, lack of confidence in the trustees' ability to convey a good title, and the hope of picking up bargains at the close of the auctions were also factors which must have been responsible for the poor demand for forfeited lands. The possibility of a Jacobite restoration and the consequent revival of claims by forfeiting proprietors provided additional reasons for caution.

## II

The trustees, faced with the necessity of winding up their proceedings by 24 June 1703, adopted the expedient of transferring the unsold lands to an English company. Such a solution had already been the subject of considerable discussion. The Act of Resumption contained a provision that the forfeited estates might be purchased by a corporation, notwithstanding the Statute of Mortmain. This policy was strongly

9. King to Southwell, 28 Mar. 1702 (B.M., Eg. MS 917, f.183).  
10. 11 and 12 Will. III, c. 2, s. 23.

advocated in a pamphlet which appeared in 1701, An argument proving that it is more to the interest of the government and nation of England that the forfeited estates in Ireland be purchased by an incorporated company than by single purchasers. Some interesting points were made, and the pamphlet illustrates the English dislike of the colonial nationalism which had developed in Ireland under Molyneux's influence. The writer apprehended that individual purchasers would, 'by becoming proprietors and inhabitants of Ireland, be immediately engaged on the side of Ireland's national interest as separate or opposed to that of England'. On the other hand, a company with its headquarters in England could be counted on as an unfailing upholder of the English government. The argument was supported by the example of the Londonderry company, 'the only mean under God whereby Ireland was preserved from being completely swallowed up by the late rebellion before other help could be ready'. Anxiety was also expressed that, if the lands were offered for individual purchase, they might be bought by catholics. The Act of Resumption contained no provision to bar catholics from buying. In April, <sup>1701</sup> Sheres, in a letter to Wyche, observed that he and Annesley thought that catholics would outbid protestants for the forfeited estates, and especially so in Connacht

to enable them to keep their hold in that province.

It was not until 1702 that catholics were debarred  
from buying the forfeited estates.<sup>12</sup>

In May 1701 a petition was presented to the English commons by officers, clothiers and others in possession of debentures and other government paper. They offered to become joint purchasers of the forfeited estates and, as an earnest of their intentions, deposited paper of the face value of £260,000. Leave was given to introduce a bill for the formation of a corporation for purchasing the forfeited estates in Ireland. It received its first reading in June 1701,<sup>13</sup> but does not seem to have got beyond that stage. In March 1702 Annesley wrote to Wyche that he had been in hopes that the trustees would soon have had their 'quietus' by the wholesale conveyance of the forfeitures to a corporation. He was, however, afraid that the bill would not pass and that the trustees would be directed to auction the lands to individuals from  
1 October 1702.<sup>14</sup>

When it became clear that much of the land put up to auction would remain unsold, it was apparently decided to bring in an existing company to take over the balance. The chosen instrument was the 'Governor

11. P.R.O.I., Wyche papers, 2nd series, 137.

12. 1 Anne, c. 26, s. 14.

13. Commons' jn., xiii. 586 and 601.

14. P.R.O.I., Wyche papers, 1st series, 248.



and company for making hollow sword blades in England'. Tindal says that the company was acting on behalf of London merchants, who chose this particular corporation because its charter allowed it to purchase land freely. It had been incorporated in 1691 to establish the manufacture in Cumberland of swords for the use of the army in the French war. The right of purchasing land had been included in its charter with the object of enabling it to build mills on the banks of rivers and to provide accommodation for a large number of sword-makers imported from Germany. The company had not prospered and the sword cutlers were quite ready to dispose of their charter to the London merchants.<sup>15</sup>

The Hollow Blades company bought almost half of the land of which the outright title was conveyed by the trustees. Their purchases amounted to more than 250,000 profitable acres, spread over twenty-two counties. They included the greater part of the estates of Lords Clancarty and Galmoy and the whole estate of Sir Patrick Trant, in addition to many lesser properties. The net amount paid by the company for their purchases was £208,867. The majority of the lands thus acquired were included in an omnibus transaction by which property valued at some £170,000 was knocked down to the company for £97,000 on 23 June 1703, the day before the trust came to an end.

15. Tindal, History of England, iii. 607-8.

In spite of the favourable rates at which the company's lands had been acquired the venture did not prosper. Opinion in Ireland seems to have been antagonistic to it. In October 1703 the company represented to the Irish parliament that it proposed to lend money at six per cent on the security of Irish land, provided<sup>d</sup> that it could be indemnified from the Statute of Mortmain. It asked for legislation to enable it to take conveyances of lands in Ireland (i.e. lands other than those which it had bought from the trustees under the Act of Resumption, which specifically excluded the Statute of Mortmain). No action was taken on this petition, apart from laying it on the table.<sup>16</sup> It has been suggested that the Irish parliament, knowing that the company had purchased the forfeited lands at very low rates, was unwilling that it should extend its purchases lest it should become too powerful an influence in Ireland.<sup>17</sup> The company then applied to the government in England asking for permission to lend money on the security of the forfeited estates to persons who had not completed the payment of the purchase money. It had been advised that the mortmain provision of the Act of Resumption applied only to the conveyances which

16. Commons' jn. Ire., ii. 331 (9 Oct. 1703).

17. Anderson, Historical and chronological deduction of the origin of commerce, ii. 192.

the company had itself obtained from the trustees. <sup>18</sup>  
 This petition also seems to have met with no success.

A series of suits was instituted against the company in respect of several of the forfeited estates which it had purchased. In 1708 it represented to the English commons that a number of suits had already started and that others were threatened which would affect a great part of the company's property. It had been induced to purchase the forfeited estates in the belief that the trustees' conveyances would give 'sufficient, absolute and indisputable title'. The company was barred from making any other defence as it had not got the old title deeds, 'such being generally secreted or kept from the said trustees and the purchasers under them by the forfeiting persons or their agents'. <sup>19</sup> An act was passed in the company's favour which fixed a time-limit of two years for the institution of further suits. The act recited that the title of the company derived from the trustees had been called in question and that several judgments had been given against the company in Ireland, one of which had been upheld in the queen's bench <sup>20</sup> court in England and also in the house of lords.

18. State Papers, dom., 14 Feb. 1704, quoted by Scott, Constitution and finance of ---companies to 1720, iii. 438.

19. 'The case of the governor and company for making hollow sword blades', quoted by Relton, Account of fire insurance companies, pp. 126-9.

20. 6 Anne, c. 61.

Notwithstanding the protection given by this act, the company decided to sell<sup>1</sup>out. A notice was inserted in the London Gazette that the company's Irish estates were to be sold for one-third cash and two-thirds by such payments as might best suit the purchasers.<sup>21</sup> From the registered deeds which record the disposal of the company's estates it does not appear that they were seriously affected by lawsuits. Portions of the property were disposed of to various Irish purchasers. These included Dr Richard Steevens, who bought over two thousand acres in King's County which later became part of the endowment of Steevens's Hospital,<sup>22</sup> Dublin. The bulk of the property was sold for £133,333. 6. 8 to Francis Edwards, a London merchant<sup>23</sup> and a member of the Hollow Blades company. Edwards left his property to an unmarried daughter who gradually disposed of it. In 1729 Miss Edwards was drawing £7,000 a year in rents, but the estate was greatly reduced by sales in the course of the next fifteen years.<sup>24</sup>

After the winding up of its Irish land enterprise the Hollow Blades company passed into the control of the directors of the South Sea company and went in for

21. London Gazette, 24 - 28 Feb., 1709.

22. Regd. deed 716, 15 June 1709; Kirkpatrick, History of Steevens' Hospital, p. 17.

23. Regd. deeds 5,355 and 8,230, 8 July 1714 and 7 July 1716. The agreement to sell was made in 1711. The deeds were held up on account of litigation between Edwards and the company.

24. Prior, List of absentees, p. 3.

speculative banking. It was thus involved in the burst-  
~~ing~~ ing of the South Sea Bubble and went into liquid-  
 ation in 1720.<sup>25</sup> The association of the Hollow Blades  
 with Ireland was too brief for this experiment in  
 company ownership to have had any real significance.  
 It cannot be compared to the story of the Londonderry  
 company. There is no reason to regret the rapid dis-  
 integration of the enormous estates acquired by a  
 mushroom concern which seems to have had no other  
 object than the financial exploitation of the situat-  
 ion created by the Act of Resumption and the sale of  
 the forfeited estates.

### III

The deeds of sale passed by the trustees were pre-  
 served in the Dublin rolls office. They were destroyed  
 in 1922, but an abstract, published in 1825 by the  
 Irish records commission, gives particulars in each  
 case of the purchaser, the townlands and area purchased,  
 the price and the forfeiting proprietor.<sup>26</sup> The abstract  
 summarises the conveyances passed in favour of about  
 five hundred persons, but many of these conveyances  
 relate to mortgages, tithes, leases, life-interests,  
 etc. Analysis of the abstract shows that 360 persons  
 made outright purchases of 568,000 profitable acres, the  
 estates of 179 forfeiting proprietors, including  
 James's private estate. The names of the forfeiting

25. Scott, Constitution --of --- companies to 1720, iii.440.  
 26. Ir. rec. comm. rep., 1821-5, pp. 348-96.

proprietors and the purchasers, together with the areas transferred, are given in Appendix A.

The great majority of the purchasers represented families already established in Ireland before 1688. They included a number of persons prominent in Irish public life, who thus acquired a corporate interest in the maintenance of the Williamite settlement, although their individual purchases were not very large. Some seventy of the purchasers were members of the Irish commons in one or both of the parliaments which immediately preceded and followed the trustees' tenure of Chichester House. There were four peers, including Lord Abercorn who bought in for £700 the heavily encumbered estates of his uncle Claud.

The list of purchasers included two archbishops, two bishops and a number of lesser clergy of the established church. One of the last-named category was Benjamin Pratt, fellow and later provost of Trinity College, Dublin, who bought part of James's estate in Meath. Most of the clerical purchases represented private investments. King, however, who had by this time become archbishop of Dublin, bought on behalf of the see but at his own expense the lands of Seatown, which had originally belonged to the archbishops of Dublin but had passed into the possession of a family called Russell. The then archbishop

had got a grant of the land at the Restoration, but Bartholomew Russell, who had obtained a decree of innocency, succeeded in recovering possession when the case was heard 'before popish judges' in 1687. Russell was later outlawed and the land was granted by William to the archbishop. When this grant was annulled by the Act of Resumption the archbishop entered a claim before the trustees. The claim was not allowed and a petition to the English commons<sup>27</sup> was equally unsuccessful. King subsequently got a refund of his money as a result of an act passed by<sup>28</sup> the English parliament.

Several of the purchasers were members of families prominent in the Irish life of the eighteenth century. Brigadier Henry Conyngham, who bought Slane Castle, was the father of the first Lord Conyngham. The title then passed to Henry Conyngham's grandson who was also grandson of Francis Burton who had bought a large part of Lord Clare's estate. The family was thus doubly endowed with Williamite forfeitures. James Agar of Kilkenny, who bought much of Galmoy's estate, was the grandfather of Archbishop Agar. Other notable purchasers were Francis Bernard, Sir Matthew Deane and Percy Freke, ancestors respectively of Lords Bandon, Muskerry and Carbery.

27. Annesley MSS, xx. 90.

28. 4 and 5 Anne, c. 13.

Apart from the Hollow Blades very few of the purchasers came from England. The most important of those who did was John Asgill, who bought 15,000 acres outright as well a life-interest in the Kenmare and Bagenal estates. Asgill soon got into difficulties over the payment of the various family allowances with which the Kenmare estate was charged. He was obliged to hand over the Hospital estate in county Limerick to Melchior Levallin, the brother-in-law of Lady Kenmare. Other creditors took proceedings against him and he was eventually declared a bankrupt.<sup>29</sup> Another English purchaser was Sir William Scawen, a London merchant who bought the Galway portion of the private estate with the debentures which he had received as<sup>30</sup> payment for clothing Colonel Churchill's regiment.

It is evident that the forfeited estates had little attraction for English buyers. Investors were doubtless discouraged by the adventurers' experience of the Restoration settlement and by fear of a second Stuart restoration. The Williamite forfeitures did not result in a fresh wave of settlers; they consolidated the position of the settlers already established. Apart from the short-lived enterprise of the Hollow Blades the general effect of the trustees' sales was to break up a number of great estates and to distribute them among a

29. Parliamentary cases, 1730-5, Nos 59 and 139.

30. Annesley MSS, xliii has particulars of the cancelled debentures.



comparatively large number of individuals. This was particularly the case with the private estate, which was divided among 170 purchasers. There were twenty-seven buyers of Tyrconnell's estate, and sixteen of Slane's.

#### IV

The trustees made their final report to parliament on 29 November 1703. The greater part of the report consisted of a financial statement which showed the gross and net proceeds of the sales. An appendix gave particulars of the receipts and expenditure of the trustees, together with a statement of payments made to individuals under acts of parliament. The accounts were expressed in English currency. Comparison with the estimates made by the inquiry commissioners in 1699 (which were in Irish currency) is complicated by variations in the rate of exchange. The Irish pound, which was worth only sixteen shillings and eightpence sterling in 1699, had appreciated to eighteen shillings and sixpence in 1703. Even so, the net proceeds realised by the trustees, £724,501 sterling, were far below the inquiry commissioners' estimate, the sterling equivalent of which amounted to £1,547,792.<sup>31</sup>

31. H.L.MSS, n.s., v. 246 gives the net proceeds of the trustees' sales. For the sterling equivalent of the inquiry commissioners' estimates see p. 221, supra.

When the report was presented two-thirds of the net proceeds had already been paid (£59,729 in cash and the rest in debentures and other forms of paper). The balance consisted of instalments which were to be paid by the end of the following year. The expenses of the trust, which amounted to some £110,000, were approximately balanced by the rents and fees realised in the course of the administration.

The trustees, to account for the discrepancy between the original estimate and the actual realisation, calculated that there was a loss of £1,100,000 due to

- (a) the exemptions contained in the Act of Resumption;
- (b) the act for the relief of the protestant purchasers;
- (c) the various private acts;
- (d) the claims allowed by the trustees themselves.

They concluded their report thus: 'We are sensible our sincere and hearty endeavours to serve the public have created us many enemies in that kingdom, who to serve private ends have cast reproach and dishonour upon us and our proceedings. But we hope their many and causeless aspersions will make no impression to our disadvantage till they charge us with some misbehaviour in particular, when we doubt not but so to acquit ourselves and vindicate our proceedings as to win your approbation'.

The commons ordered that the trustees' report and statement of accounts, together with the report made by the inquiry commissioners in 1699 and its accompaniments, should be referred to the public accounts commissioners; the latter were to report 'how they find the fact and what observations arise from the said books and reports'.<sup>33</sup> The public accounts commissioners presented their report to the commons on 11 March 1704. It included a detailed, but somewhat disingenuous, comparison of the inquiry commissioners' estimates with the amounts actually realised by the trustees. The comparison was made between (a) the gross value estimated by the inquiry commissioners, before deducting encumbrances, and (b) the ~~gross~~ proceeds realised by the trustees plus the amounts taken out of the trust by claims and acts of parliament. The comparison showed that the inquiry commissioners in 1699 had actually underestimated the gross value of the forfeited estates by £300,000. This method of treatment sidetracked the criticism that the forfeited estates were heavily encumbered and that their net value was much less than had been estimated. The sterling equivalent of the encumbrances returned by the inquiry commissioners was £129,550. The amount allowed by the trustees to successful claimants, including mortgages, jointures, life-interests and reversions, was £570,584. This did not include a number

33. Commons' jn., xiv. 253.

of mortgages and other charges on the estates which were excluded from the trust by acts of parliament. The value of such estates was estimated at £630,384, a figure which was inflated by the high valuation given to them by the trustees. Thus the Sarsfield estate, granted to Vesey, was valued by the trustees at eighteen years' purchase. Most of Luttrell's estate was valued on the same high basis. The forfeited parts of the Clanricarde estate, which the trustees had let for £6,200, were valued at nearly £10,000 a year. The earl of Limerick's estate, which the trustees actually let for £2,432, was given an annual value of £3,500 for the purposes of the estimate.<sup>34</sup>

The public accounts commissioners concluded their report with the following observations: 'The trustees represent to us that they might have set the lands better if liberty had been given them (which by a memorial presented to the house on 25 February 1702 they desired) to have let them by lease for a term of years, and consequently they would have sold better; and that the disallowing papists from renting or purchasing the forfeited lands (which was thought

34. H.L.MSS, n.s., v. 143-9, gives the valuation of excluded estates. The rentals of the Clanricarde and Limerick estates are taken from Annesley MSS, xxxiii. 20, 56 and 138.

necessary for the strengthening and supporting the English interest and the protestant religion in Ireland) have lessened the value of the estates both in the rents and the sales'.<sup>35</sup> The English commons resolved that the trustees had in all respects discharged their duty with great integrity and fidelity to the satisfaction of the house and the advantage of the public.<sup>36</sup>

The Irish commons vented their general dissatisfaction by expelling Annesley on the ground that the inquiry report of 1699 had contained unwarranted reflections on the protestants of Ireland.<sup>37</sup> They did not venture on open criticism of the English parliament or of the Act of Resumption. As Edward Southwell put it: '--- everybody spoke with the greatest deference to England, declaring that they did not hereby intend to reflect on what had passed, though the act had been very severe; but they could not but do themselves right on one of their own country and body when they had been so traduced'. Southwell himself voted against Annesley's expulsion, which he regretted 'as he is a gentleman of very fair character who has often been useful to this country (i.e. Ireland)

35. Report from the commissioners for taking, examining and stating the public accounts, 11 Mar. 1704 (N.L.I. MS 1541).

36. Commons' jn., xiv. 387.

37. Commons' jn. Ire., ii. 321 (28 Sept. 1703).

and because such heats do not easily stop where they  
 are intended'.<sup>38</sup>

Some years later the Irish commons returned to the subject with more courage and presented an address in which they complained of the 'heavy pressures' under which they groaned 'owing to the insincere and oppressive actings of the late trustees'. After touching on the 'unnecessary and unwarrantable severities by the trustees used towards the protestants of this kingdom when at the same time the papists found favour from them', they concentrated on the particular charge that the trustees had returned large amounts as due for collection which had either been paid or were never due. In certain cases tenants shown in arrears were in possession of receipts. Maurice Annesley, one of the trustees' 'receivers and favourites' had collected £461 for which he had given receipts, and yet the amount was returned by the trustees as in arrear. In other cases persons were returned as owing rent for lands of which they never were tenants. The trustees had returned £112,569 as due for payment, and over three hundred informations or suits had been brought in an attempt to collect the amount. The result had been that the amount recovered was hardly enough

38. Edward Southwell to Godolphin, 25 Sept. and 2 Oct. 1703; same to Nottingham, 3 Oct. 1703 (Cal. S.P. dom., 1703-4, pp. 131-2, 140-1, 143).

to pay for the proceedings. The queen was requested to have the case laid before the British parliament; the lord lieutenant was asked to deprive Maurice Annesley of his commission of the peace.<sup>39</sup> No reply appears to have been given to this address, and it may be suspected of considerable exaggeration.

39. Commons' jn. Ire., ii. 533 (14 Aug. 1707).

## CHAPTER XII

## Conclusion

The winding up of the trust in 1703 marked the concluding stage of the Williamite forfeitures. During their protracted course the proprietorship of a considerable part of Ireland had been subjected to a bewildering series of changes. The succession of custodians, grants, restorations and sales of grants, which characterised the period from 1690 to 1699, was followed in 1700 by the drastic expropriation of private interests imposed by the Act of Resumption. The trustees' administration entailed a further period of uncertainty; during the lengthy process of claims and private legislation the eventual ownership of much land remained in doubt. These changes must have caused considerable harm to the economy of the country. In particular, we have many references to the wholesale cutting of timber by occupiers anxious to extract the maximum of profit from what might prove to be the temporary tenure of the lands assigned to them.

With the conclusion of the trustees' proceedings stability was at last reached. For the next three-quarters of a century the penal code was to be the predominant influence in Irish life. During that period



the proportion of land in catholic ownership was steadily reduced, but the process was one of attrition and not of violent change. It was partly due to the actual operation of the popery laws, and in particular to the system by which catholics could part with land but~~k~~, except by subterfuge, could make no new acquisitions. But the principal factor which reduced the catholic holding was the conforming of landowners to the established church.

The protestant community, which had viewed the resumption proceedings with extreme disfavour, was now chiefly concerned to maintain the resulting settlement, and to resist any compromise with dispossessed Jacobites. Addresses were presented by the Irish commons to successive sovereigns representing the fatal consequences of reversing the outlawries of any of those attainted for the rebellions of 1641 and 1688<sup>1</sup>. The first of these addresses was provoked by the pardon given by Anne to Lord Slane as a reward for his military services. The reaction of the Irish protestants was thus described by King: 'The reversal of my lord Slane's outlawry makes a mighty noise through this kingdom; for aught I can remember the destroying of our woollen manufactory did not

1. Commons' jn. Ire., ii. 609-10 (20 June 1709); iii. 169 (7 Dec. 1717); iii. 451 (5 Mar. 1727); iii. 553 (19 Mar. 1728); iv. 195 (17 Dec. 1735).

cause so universal a consternation'. The alarm diminished when it became known that the pardon did not imply the restoration of Slane's forfeited estate. Similar panic was caused by the attempt of Clancarty's son to procure the reversal of his father's outlawry. Archbishop Boulter supported the case of those who had purchased the forfeited Clancarty estate. He observed that 'as probably two-thirds of the estates of protestants here were popish forfeitures originally the uneasiness is universal, since they think if the attainder of any family be reversed now another family may at another time obtain the same favour, and another at another season; so that no possessor of such forfeited estate can tell how long he or his may continue in the quiet enjoyment of what they have bought under English acts of parliament'. Boulter's recommendation prevailed and Clancarty's outlawry remained unreversed. The Irish commons also noted with disapproval the attempts of former owners to bring suits for the recovery of lands 'forfeited by the horrid rebellion of 1688'. They resolved that any attempt to disturb the protestant purchasers would be 'of dangerous

2. King to Swift, 12 Mar. 1709 (Ball, Correspondence of Jonathan Swift, i. 140-1).

3. Boulter to bishop of London and duke of Newcastle, 9 Feb. 1736 (Letters--by--Hugh Boulter, ii. 119-20).

consequence to his majesty's person and government, the succession in his royal house and highly pre-judicial to the protestant interest in this kingdom'.<sup>4</sup> Replies were given to the commons' addresses that the king would effectively discourage applications for the reversal of outlawries in any case that might affect the interest of protestants.<sup>5</sup> No estates were restored by pardon after 1703, nor does it appear that any substantial loss was caused to protestant purchasers as a result of lawsuits brought by representatives of the former proprietors.

## II

Widely differing estimates have been made of the area left in catholic ownership at the close of the Williamite settlement. Butler concluded that on the most generous estimate this area could not have exceeded 500,000 profitable Irish acres. This conclusion followed from his assumption that the area covered by the inquiry commissioners' report represented all, or nearly all, the land owned by catholics at the outbreak of the war. Butler's figure represents one-fifteenth of the total profitable area as the catholic share. There is, however, some confusion in his account. In one passage he allows for a proportional

4. Commons' jn. Ire., iv. 333 (18 Feb. 1740).

5. Ibid., iii. 563 (29 Apr. 1728) and iv. 205 ( 24 Feb. 1736).

addition of unprofitable land; in another passage he makes no such allowance and concludes that 'when the court of claims set up by the Resumption Act had done its work it is doubtful whether as much as one-twentieth of the soil of Ireland remained in the hands of catholics'. Bonn gave a considerably higher figure, but it is by no means clear by what arithmetical process he arrived at it. The relevant passage is as follows: 'From the third of Ireland which the catholics still possessed a further third was taken so that now little more than one-sixth of Ireland remained in catholic hands. This sixth was predominantly in the ~~west~~ wild unfertile region of the west, of which the possession was ensured to the Irish through the treaty of Limerick'. Curtis put the figure somewhat lower, reckoning that by 1700 catholics had the freehold of about one-eighth of the country.

In the preceding chapters the attempt has been made to establish the statistical framework of the Williamite settlement. The books of Survey and Distribution, read with the accompaniments to the inquiry commissioners' report and the records of the trustees, have been taken as providing a reasonably firm basis on which to estimate the area held by catholics at the

6. Butler, Confiscation, pp. 232 and 237. Beckett, Hist. of Ireland, p. 104, puts the catholic share at one-fifteenth of the total; he apparently follows Butler.  
 7. Bonn, Die englische Kolonisation, ii. 158.  
 8. Curtis, Ire., p. 276.

outbreak of the war, the areas preserved by articles, pardons and claims, and the area sold or otherwise transferred to protestant ownership. These estimates indicate that the catholic share of the profitable land had declined from twenty-two per cent in 1688 to fourteen per cent in 1703. The latter figure lies between the estimates of Bonn and Curtis and is considerably higher than Butler's. Almost half the area which remained in catholic ownership in 1703 was held by persons adjudged within the articles of Limerick or Galway; the effect of the articles was much greater than appears from the figures given in the inquiry commissioners' report. Pardons and successful claims accounted for a further fifth. The balance was held by persons whose trials were dropped or ended in acquittal or against whom no proceedings were taken. Appendix B contains an analysis of the Williamite settlement, which in the main summarises the figures established in the preceding chapters. The figures are given for profitable land, as this formed the basis for the inquiry commissioners' report and the trustees' proceedings. The following summary shows that similar results are obtained when unprofitable land is also taken into account. The Survey and Distribution figured for 1641 are added to complete the picture:

	Irish acres (000's)			
	Prof.	Unprof.	Total	Per cent
1641	4,797	1,662	6,459	59
1688	1,705	651	2,356	22
1703	1,088	517	1,605	14.

The progressive deterioration of the catholic position is illustrated by the maps at Appendix C, which show by counties the situation in 1641, 1688 and 1703.<sup>9</sup>

In 1641 catholics held at least three-quarters of the land in Meath, Westmeath, Tipperary, Galway and Mayo. In fifteen other counties they held more than half the land. Northwest Ulster was the chief protestant stronghold; elsewhere catholics held either a majority or a substantial minority of the land.

In 1688 the position was very different. Only in Galway did catholics hold the greater part of the land. In Antrim, five counties of Leinster, two of Munster and two of Connacht they held from a quarter to a half. Elsewhere their holdings were less than a quarter. In eight counties of Ulster their holdings amounted to less than five per cent. After the

9. The estimate of 1677 contained in the R.I.A. set of the books of Survey and Distribution (10,868,949 acres) has been taken as the total area for calculating percentages. Lawrence, Interest of Ireland, p. 48, gave the same figure in 1682 as 'returned by the last survey of Ireland'. The maps are based on the figures for profitable and unprofitable land taken together. Percentages have been calculated with reference to the county areas based on Petty's map of Ireland (Geographical description of Ireland).

Williamite forfeitures catholics still held between a quarter and half of the land in Galway and Mayo. Elsewhere their holdings exceeded twenty-five per cent only in Antrim, accounted for by Lord Antrim's vast estate; in Carlow, where the Bagenal and some other considerable estates remained unforfeited; and in Dublin, where there were a good many articlemen. The change-over was most marked in Cork, where catholics lost more than two-thirds of the area which they had held in 1688. This was principally due to the forfeiture of the Clancarty estate. The MacCarthys were by far the greatest sufferers from the Williamite confiscation. Between them they lost 163,000 profitable acres in Cork and Kerry, or just over one-third of the total area sold by the trustees. Next to Clancarty's the largest of the forfeited estates was Sir Patrick Trant's, consisting of 43,000 profitable acres in King's and Queen's Counties, Kerry, Kildare and Limerick. After these the largest forfeitures were the estates of Lords Clare, Galmoy and Slane. In Connacht the chief change was brought about by the act which vested the Clanricarde estate in trustees for the benefit of the protestant children of Lord Clanricarde and his brother Bophin. The protestant cause gained greatly from the disposition of the property which settled the greater part of it on Lords Galway and Bophin, who were respectively killed and captured at Aughrim, at the expense of the eighth earl of

Clanricarde, who was adjudged within the articles of Limerick. Seven-eighths of the area lost to catholics in county Galway was represented by the Clanricarde estate, and only one-eighth by actual forfeitures.

The reduction of the catholic share from fourteen per cent in 1703 to the five per cent, which was<sup>10</sup> Arthur Young's estimate in 1776, was largely due to the conforming of landowners to the established church. The convert rolls contain the names of a great many representatives of those catholic families which had by various means succeeded in retaining their property after 1688. The conforming of numerous Blakes, Frenches and Lynches effectively reduced the catholic predominance in Connacht. The protestant interest in that province was strongly reinforced when Browne of Westport conformed in 1729 and Martin<sup>11</sup> of Ballynahinch in 1737. By the end of the penal period the ranks of landed catholics were sadly depleted. Even so, the catholic petition of 1777 was headed by the signatures of six peers - Dillon and Gormanston, whose ancestors were within the articles of Limerick; Fingall and Cahir, whose ancestors had been pardoned; Kenmare (a Jacobite creation) and Trimleston, who held their estates as a result of

10. Young, A tour in Ireland, ii, part 2, 44.

11. The rolls have been almost entirely destroyed. B.M., Eg. MS 77 contains a number of names of converts. A copy of it is in N.L.I. (MS 405).



claims allowed by the trustees. Other signatories included Sir Patrick Bellew, Robert Butler of Ballyraggett and Thomas Kavanagh of Borris, all of whose estates were held under the articles of Limerick.<sup>12</sup>

## II

The Williamite settlement was a compromise. The resistance offered by the Irish for fifteen months after the Boyne and William's anxiety to get rid of the distracting Irish war were responsible for the comparatively favourable terms given by the articles of Limerick and Galway. Those articles were in practice kept in so far as they related to the forfeiture of estates. Claimants were freely admitted to the benefit of the articles, and those admitted either recovered their estates or were secured from the threat of further forfeitures. The policy adopted at Limerick was extended to include the pardon of a limited number of individuals who could not claim the benefit of the articles. With the conclusion of the war William's government showed no anxiety to take further proceedings against catholics who remained in Ireland, and had not already been outlawed. This official apathy met with the strong disapproval of Irish protestants. The omission of the celebrated 'protection clause' from the ratification of the Limerick articles was an attempt on William's part to appease the more violent protestants, who had

12. Curry, An historical and critical review, ii. 293.

consistently pressed for the complete dispossession of catholics. The omission of the clause was not, however, followed by a fresh wave of confiscations. The principal victims of the Williamite forfeitures were, firstly, those catholics of the pale who were so ill-advised as to submit immediately after the Boyne; secondly, those who were killed or taken prisoner or were in France when Limerick capitulated; thirdly, those who like Sarsfield and Galmoy preferred fighting in France to staying at home under a Williamite administration.

The comparative mildness of William's forfeiture policy was to a great extent offset by the penal laws, and in particular those of 1704 and 1709 which imposed serious disabilities on the catholic holders of landed property. Under the crushing pressure of the penal laws the owners of a great part of the lands secured to catholics by articles or otherwise conformed to the established church. Although continuity of ownership was thus maintained, the conformists were quickly assimilated and formed an almost indistinguishable part of the protestant ascendancy. During the greater part of the eighteenth century the minority who retained both their faith and their lands were subjected to constant anxiety and remained completely isolated from Irish public life.

The Williamite forfeitures reinforced the territorial predominance which protestants had enjoyed since the Cromwellian settlement and which had been maintained, although in a diminished form, after the Restoration. But the area forfeited by catholics between 1688 and 1703 was <sup>o</sup>proportionately much less than that which they had lost as a result of the combined effect of the Cromwellian and Restoration settlements. In 1688 catholics had little more than one-third of the land which they had held in 1641. In 1703 they still had nearly two-thirds of the land which they had held in 1688. More than half the land which thus escaped forfeiture passed out of catholic ownership in the next three-quarters of a century. The acts of 1778 and 1782, which respectively allowed catholics to take 999 years leases and to purchase freeholds, marked the turn of the tide. The catholic recovery resulting from this legislation was very gradual, but became more marked with the passing of the Encumbered Estates Act of 1852. The real revolution in land ownership came with the successive land acts and, in particular, with Wyndham's act of 1903. Since 1922 further redistribution has continued on a considerable scale in both parts

of Ireland. The first half of the twentieth century destroyed the whole pattern of land ownership created by the successive confiscations of the seventeenth century. It may be reckoned that in the latter half of the eighteenth century some five thousand protestant landlords owned nearly the whole of Ireland. By the middle of the twentieth century they had been replaced by more than 300,000, mainly catholic, farmers - nearly all of them buying their holdings by instalments from the land commissioners. The prolonged dominance of the protestant oligarchy had ended. Ireland had become a country of peasant proprietors.

The main sources for statistics are the following:

1. The Quit Rent Office set up by the Board of Survey and Distribution, which records holdings of land under the Restoration settlement as well as sales by the trustees for the Williamite forfeitures. The areas of the Restoration assignments are based on the Down survey measurements for all counties except Clare, Galway, Mayo and Roscommon, where they are taken from the Stafford survey. The figures are subject to the limitations associated with these surveys and fall short of the Ordnance Survey figures by ten to fifteen per cent.

## Critical notes on the bibliography

### I. Primary sources

In spite of the destruction of the Irish records in 1922, a substantial body of record material is available for reconstructing the statistical outlines of the Williamite settlement, i.e. the numbers of persons and the areas of land affected by outlawries, articles, pardons, grants, claims and sales. Much less information is available for the narrative of the proceedings, which has had to be built up from scattered references in correspondence, State Papers, pamphlets and other contemporary writings.

The main sources for statistics are the following:

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2. The report of the inquiry commission of 1699, with its accompaniments. The latter (copy in T.C.D., MS N. 1. 3) are a particularly valuable source, containing the names of all the individuals outlawed or admitted to articles or pardons, together with statistics of estates forfeited and restored, and particulars of William's grants.
3. The Annesley manuscripts (microfilms in N.L.I.), which contain complete records of the trustees' rentals and sales in addition to a large volume of material relating to the trustees' proceedings. They include a number of private acts of parliament, the text of which is not otherwise available.
4. The printed lists of the claims heard by the trustees, with their decisions entered in manuscript (P.R.O.I. copy).
5. The book of postings and sales of the forfeited estates, 1703.
6. The abstract of the trustees' conveyances (Ir. rec. comm. rep., 1821-5, pp. 348-96).

This material has been used to establish figures for the changes in the ownership of land between 1688 and 1703.

For the narrative of the Williamite settlement the following are the principal sources which have been used:

1. Calendar of state papers, domestic series, 1689-1704, for references to general policy and individual cases. In particular, the papers include many references to

petitions relating to pardons and the grant of forfeited estates.

2. The journals of the English and Irish commons, which are valuable for the political aspects. Burnet's History of his own time is a useful supplementary source for this side of the story.

3. Japikse's edition of William and Bentinck's correspondence, which throws much light on Williamite diplomacy during the war of 1689-91 and the development of policy in relation to the forfeiture of Jacobite estates.

4. Publications of the Historical Manuscripts Commission. The most useful of these are the Buccleuch manuscripts, which include a number of letters to and from Shrewsbury about the ratification of the articles of Limerick and other Irish matters.

5. Sir Robert Southwell's papers in the British Museum and Trinity College, Dublin, which contain contemporary comments on the proceedings as well as particulars of individual cases.

6. Bishop (later Archbishop) King's correspondence in Trinity College, Dublin. King's comments on the proceedings connected with the articles of Limerick and the resumption of the forfeited estates are of interest. In addition he was personally concerned with certain specific issues, on which his correspondence provides useful evidence.

7. The Annesley manuscripts, which in addition~~ix~~ to statistical material contain correspondence of the inquiry commission and minutes of the trustees' proceedings.

## II. Secondary material

The Williamite forfeitures have received little attention from historians. General histories of the period refer to them either briefly or not at all. The few writers who have specialised on the subject of Irish confiscations have not been very happy in their investigation of the Williamite records. Much of what they have added to the standard account is erroneous.

The following are the principal writers (excluding contemporary or nearly contemporary writers) who have treated of the Williamite forfeitures either as specialists or as general historians:

### SPECIALISTS

#### 1. W.H.Hardinge

Hardinge was the only writer who attempted to use archival material in the investigation of the Williamite forfeitures. He was keeper of the Irish landed estates record office, and made a courageous, but not very scientific, effort to use the records of that office for a detailed examination of the Cromwellian, Restoration and Williamite settlements. The principal results of his researches were embodied in two papers which he



read to the Royal Irish Academy in 1862 and 1864.<sup>1</sup>

Hardinge gave the following description of his investigation of the Williamite forfeitures, which formed the subject of the greater part of his second paper:

'---- upon examination of the existing materials relating to the forfeitures consequent upon the revolution of 1688 --- it became apparent that they were devoid of evidence showing at a glance the extent of the forfeited lands, the number of acres granted away by King William, the number restored to innocent ancient proprietors, the number sold, and the amount of money produced and paid into the treasury; and in the absence of these essential particulars any truthful compilation on the subject of the present narrative was out of the question. To supply this evidence from the series of grants, the decrees of innocence and restoration, and the deeds of bargain and sale of the lands disposed of to the purchasing public was a work of great labour and required in addition much patience and some skill. Undeterred by these considerations, I pursued a steady course through each page and folio of a number of ponderous volumes of the interesting records referred to, and from them I extracted and methodised, townland by townland, such digests as enable me now with satisfaction and confidence to submit the result to the Academy!'

1. R.I.A. Trans., antiquities, xxiv. 3-118 and 265-315.  
2. Ibid., xxiv. 265.

This somewhat grandiose account of his work was hardly justified by the results presented.

In his discussion Hardinge made little reference to the inquiry commissioners' report, merely mentioning that it 'gives a brief resumé of the evidence collected by the commissioners exhibiting the extent and value of the forfeited lands'<sup>3</sup>. He gave considerably more space to the Act of Resumption and the proceedings of the trustees. His researches into William's grants and the claims heard by the trustees were summarised in two appendices. Appendix A detailed fifty-nine grants<sup>4</sup>, of a total area of 504,593 Irish acres. In each case the name of the grantee, the date of the grant and the county were shown, but the areas comprised in individual grants were not given. The names of grantees were in some cases repeated and the number of separate beneficiaries was only forty-eight. The statement cannot be reconciled with the Book of Grants, which formed part of the full record of the inquiry commissioners. The latter detailed seventy-six grants of a total area of 656,807 Irish acres. Here also a number of grantees' names were repeated, and certain grants were in respect of forfeited debts or house property. Only forty-four separate beneficiaries received grants of forfeited land, the area

3. R.I.A. Trans., xxiv, antiquities, 276.

4. Ibid., pp. 291-3.

granted to each being shown in the statement. The most notable difference between Hardinge's appendix and the Book of Grants is that the former included James's private estate and the latter did not. In spite of this the total area given by Hardinge is very much less than that given by the commissioners. This is the more surprising as Hardinge's list contained several names not recorded in the Book of Grants. The strangest of these was that of Captain Richard Martin, who was a catholic Jacobite. Hardinge seems to have mistaken for a grant of forfeited land the patent for manorial rights in respect of Martin's own estate.<sup>6</sup> Hardinge also recorded a grant of land in Kerry as having been made to Henry Petty in 1695. Henry Petty is not shown in the Book of Grants and Hardinge apparently included his name on the strength of a warrant for the reduction of quit-rent on the Petty estate.<sup>7</sup> His list also includes a grant to the bishop of Ossory, dated 1701. As this was subsequent to the Act of Resumption it could not have related to forfeited land. It is clear that Hardinge's statement is defective, and that his figure of 504,593 acres (which is quoted by several later writers) must be regarded with suspicion.

5. H.L.MSS, n.s., iv. 32-8.

6. Vide pp. 152-3, supra.

7. Cal. S.P. dom., 1695, p. 62.

Hardinge's Appendix B is described as a precis from the 'calendar of lands restored to innocent proprietors, exhibiting the names of innocents, dates of decrees and counties in which the lands lay'<sup>8</sup>. The so-called innocents were the successful claimants before the trustees. Most of them were not innocent catholics, but protestants who had financial interests of various kinds in the forfeited estates. Hardinge's account of the proceedings, which is hopelessly misconceived, has been discussed in chapter x above.<sup>9</sup> His account of the trustees' surveys, which was no less defective, has been discussed in chapter ix.<sup>10</sup>

Hardinge was in charge of original records now destroyed, and realised that analysis of the records could throw much light on the Williamite forfeitures. It is therefore unfortunate that his exposition should have been so naive and that so little confidence can be placed in his results. Apart from Butler, later writers have treated his statistics with greater respect than they deserve. In particular, his figures for the areas comprised in William's grants and the claims allowed by the trustees have been repeated by several writers as if they were authoritative.

8. R.I.A. Trans., antiquities, xxiv. 294.

9. Pp. 284-7, supra.

10. Pp. 276-8, supra.

2. M.J.Bonn

Bonn assigned to the Williamite forfeitures only six of the seven hundred pages of his Die englische Kolonisation in Irland (1906).<sup>11</sup> His treatment of the subject shows considerable industry but not much critical sense. He consulted the inquiry commissioners' and trustees' reports, the statute book and some of the contemporary pamphlets. His statistics were taken partly from the inquiry commissioners' report and partly from Hardinge. He did not subject Hardinge's figures to the scrutiny which Butler was later to give to them. An example of his somewhat ingenuous methods is the synthesis which he made of the discrepant figures given by the commissioners and by Hardinge for the number of William's grants: 'Since the Boyne William had made seventy-six grants of land, of which fifty-nine, comprising some 504,593 acres, had fallen to his favourites'.<sup>12</sup> Hardinge's confusion of 'innocents' with those who had preferred claims before the trustees formed the basis of Bonn's version, which attributed to the trustees the function of deciding who were innocent as well as who had legal claims on the forfeited estates: 'Every occupier who wished to prove his innocence had to justify himself before the commission (i.e. the trustees), which functioned as a

11. Bonn, Die englische Kolonisation, ii. 153-8.

12. ~~opxxe~~ Ibid., ii. 155.

court. A similar obligation lay upon the other interested persons who set up claims as leaseholders, creditors or otherwise entitled'. He quoted Hardinge's figures for the area restored by the trustees to 'innocents'. He does not seem to have considered how many of the successful claimants named by Hardinge were not innocent catholics but protestants who had established financial and other claims.

Bonn also confused the hearing of claims before the trustees with treason proceedings in the criminal courts. He quoted a passage from the first report of the trustees about juries refusing to convict as if it referred to the hearing of claims before the trustees themselves. He realised, as Hardinge apparently did not, that adjudications under the articles of Limerick were specifically confirmed by the Act of Resumption. He pointed out that persons thus protected were not obliged to present claims before the trustees. It does not seem to have occurred to him that this conflicted with Hardinge's calculations, which treated the total forfeited area as either restored by the trustees to innocents or sold.

Bonn drew attention to the dislike felt by Irish protestants for the Act of Resumption. He referred to the £21,000 allotted by the act for the compensation

13. Bonn, Die englische Kolonisation, ii. 157.

14. Ibid.

15. Ibid., ii. 157-8.

of those who had made bona fide purchases from the grantees. He does not seem to have seen the subsequent<sup>b</sup> act which gave a further rebate to the purchasers and allowed them to buy in their purchases at a valuation. He observed that the majority of the purchasers from the trustees were Irish - presumably he meant persons already settled in Ireland - though a few English purchasers also came forward. His final conclusion was that 'from the third of Ireland which catholics still possessed a further third was taken, so that now little more than a sixth of Ireland remained in catholic hands'<sup>16</sup>. His arithmetic has gone somewhat astray, but he apparently arrived at his figures by deducting Hardinge's estimate of the area sold by the trustees from Petty's estimate of the area recovered by catholics at the Restoration.

Although Bonn's account has some points of interest, it cannot be regarded as satisfactory. He took his material from discrepant sources without apparent awareness of the discrepancies. In particular, his use of Hardinge's figures served to obscure rather than illuminate his account of the forfeitures.

### 3. R.H.Murray

Murray's Revolutionary Ireland and its settlement (1911) gives a detailed, but confused, account of the Jacobite

16. Bonn, Die englische Kolonisation, ii. 158.

war and its aftermath. He consulted manuscripts in the British Museum and in Trinity College, Dublin, State Papers and pamphlets. He thus collected a volume of interesting information and his footnotes contain many valuable references. But his narrative is ill-arranged and is marred by mistakes. He devoted remarkably little space to the forfeitures and on this subject added nothing of value to the work of his predecessors. Though he consulted other manuscripts in Trinity College, Dublin, he appears to have overlooked the copy of the books appended to the inquiry commissioners' report.<sup>17</sup> Most of his material was drawn from such secondary sources as Froude and Bonn, without reference to the original authorities cited by them. In several respects he introduced misconceptions of his own.

Murray's first reference to the forfeitures quoted the figures of the 1699 commission report for outlawries, restorations and grants. He gave no source for the information and the passage, which is taken almost verbatim from Froude, is inserted in his narrative of the events of 1691-2. The account suggests that the statistics were compiled by a 'court of claims' established immediately after the war to reverse the consequences<sup>18</sup> of the Jacobite repeal of the Act of Settlement. The same statistics (without any suggestion that they had already been cited) form the basis of a later passage

17. T.C.D., MS N. 1. 3.

18. Murray, Revolutionary Ireland, p. 242.



in which the forfeitures are referred to in their proper context, that of the English parliamentary proceedings of 1699. Murray wrote as if the object of the commission of 1699 was to inquire into the proceedings of the Irish commons - an odd misconception: 'Having condemned the published reflections of an Irish member of parliament (Molyneux), the English house proceeded to investigate the doings of his house'<sup>19</sup>. He cited Hardinge's figure of 504,593 acres for the area of the grants, but stated that they had been made by 'the court of claims'<sup>20</sup>. He gave very cursory treatment to the Act of Resumption, although he represented it as creating 'almost as great a revolution in real property in Ireland as did either the Cromwellian or the Caroline settlements'<sup>21</sup>. He quoted Hardinge's figures of 391,412 and 716,374 acres for the areas restored to former proprietors and sold by the trustees. It does not seem to have occurred to him that these transactions were on a much smaller scale than the Cromwellian and Restoration settlements. He made no reference to Hardinge's paper but took the figures from Bonn.

Murray made considerable use of George Clarke's papers about the omitted clause in the second article of Limerick. Attention had already been drawn to these

19. Murray, Revolutionary Ireland, p. 328.

20. *Ibid.*, p. 329.

21. *Ibid.*, p. 330.

by J.T.Gilbert, who reproduced several extracts from them in his Jacobite narrative (1892). Murray commented that the documents made it clear that the omission was accidental and that no fraud was intended. He apparently assumed that part of the estates were restored by virtue of the omitted clause: 'The articles of Limerick, especially when the omitted portion of the second clause was added, reduced this estimate (i.e. of 1,100,000 acres of forfeited land) by quite one-fourth'.<sup>22</sup> It does not appear that he considered the effect of the Irish act of 1697, which ratified the articles without the omitted clause.

Murray's account of the forfeitures is scrappy, confused and in many <sup>respects</sup> misconceived. His bibliography cites a number of pamphlets and other contemporary documents relating to the forfeitures and to the attitude of Irish protestants to their resumption. But he seems to have made little use of this material, and his treatment of the subject is considerably less informative and intelligible than that of Bonn.

#### 4. W.F.T.Butler

Butler's Confiscation in Irish history (1917) contains a critical, but somewhat inconclusive, discussion of the problems connected with the Williamite forfeitures. He formed the opinion that 'when one comes to examine the various printed accounts there is scarcely any

22. Murray, Revolutionary Ireland, p. 242.

set of transactions in our history as to which it is so difficult to arrive at the exact facts'.<sup>23</sup> As the quotation indicates, he did not examine the original records. His material is drawn from the inquiry commissioners' report, the relevant acts of parliament and Hardinge's paper.

His discussion of the subject~~ent~~ centred on the difficulties presented by the statistics of the commissioners' report. He was apparently not aware of the accompaniments to the report, which would have supplied<sup>p</sup> him with material for resolving many of his difficulties. The chief of these related to the question whether the area returned by the commissioners as forfeited represented all, or nearly all, the land owned by catholics in 1688. His general trend was towards such a conclusion, although there are several passages in which he refers to the difficulty of accepting the commissioners' figures as representing the total area held by catholics.<sup>24</sup> Butler also devoted considerable space to a criticism of Hardinge's estimate of 391,412 acres restored to 'innocents'. He correctly deduced that Hardinge's list was really one of claimants to various interests in the forfeited estates.<sup>25</sup> It is clear that he had not referred to

23. Butler, Confiscation, p. 219.

24. Vide pp. 6-8, supra.

25. Butler, op. cit., pp. 229-30.

the List of claims, which would have completely proved his point.

Butler's analysis led him to the conclusion that a much smaller fraction of Ireland remained in catholic ownership in 1703 than had previously been estimated.<sup>26</sup> His whole treatment of the Williamite forfeitures is very tentative and he continually refers to the need for further research into the problems which they present. His analysis suffers throughout from the supposition that the figures returned by the inquiry commissioners represented all, or nearly all, the area held by catholics, and in particular that the figure for estates forfeited and restored under articles represented the entire area held by persons admitted to the articles. He was thus led to conclude that catholics held a much smaller proportion of Ireland in 1688 and 1703 than was estimated by previous writers or than is indicated by the available records.

#### GENERAL HISTORIANS

##### 1. T.Leland

Leland's History of Ireland from the invasion of Henry II (1773) was for its time a remarkable work, distinguished both by freedom from partisanship and by its use of original sources. Unfortunately

<sup>26</sup>. Butler's estimates of the catholic holding in 1703 are referred to at pp. 336-7 supra.

it ended with the surrender of Limerick in 1691 and made only a few references to the question of forfeitures as it arose during the course of the war. For his narrative of the war Leland used the Clarke correspondence as well as the accounts of Story and other contemporaries. He brought out more clearly than most of his successors the difference of opinion between the protestant settlers, whose private interest it was that 'rebels should be exterminated rather than reconciled', and Ginkel, whose policy it was to combine a vigorous prosecution of the war with 'the indulgence due to those who might be inclined to submission'.<sup>27</sup> His account of the declaration of Finglas stressed the shortcomings of William's policy and its effect in stiffening the resistance of the Irish.<sup>28</sup>

## 2. F. Plowden

Plowden's Historical review of the state of Ireland (1803) is written from the point of view of a moderate catholic who was in favour of the union. Much of his material is based on Clare's speech, for which he expressed a high regard. On the subject of the Williamite forfeitures he quoted the following extract from Clare, which is of interest as showing the version current at the end of the eighteenth

27. Leland, History of Ireland, iii. 590.

28. Ibid., iii. 573-4.

century: 'After the expulsion of James from the throne of England the old inhabitants made a final effort for the recovery of their ancient power, in which they were once more defeated by an English army; and the slender relics of Irish possession became the subject of fresh confiscation. From the report made by the commissioners appointed by the parliament of England in 1698 (sic) it appears that the Irish subjects outlawed for the rebellion of 1688 amounted to 3,978 and that their Irish possessions, as far as could be computed, were of the annual value of £211,623, comprising 1,060,792 acres. This fund was sold under the authority of an English act of parliament to defray the expenses incurred by England in reducing the rebels of 1688; and the sale introduced into Ireland a new set of adventurers'. This account is of interest as quoting with accuracy certain figures of the commissioners' report, but omitting to give figures for the area restored under articles or pardons. The notion that a fresh set of adventurers came over to buy the Williamite forfeitures is also of interest.

Plowden gave in an appendix what he termed the report of the inquiry commissioners. It is a brief, one-page summary, which gives the number of those

outlawed, the total area forfeited and details of William's grants. The summary added that some of the forfeited land was restored to the old proprietors by virtue of the articles of Limerick and Galway and 'by his majesty's favour and the reversal of outlawries and royal pardons obtained chiefly by gratifications to such persons as had abused his majesty's royal bounty and commission'. No figures are quoted for the area restored.<sup>30</sup>

He referred to the 'imperious ascendancy' of the English parliament in passing the Act of Resumption. He made the point that 'the interference of the English parliament with these concerns of Ireland was unwarranted whilst Ireland had an independent parliament of her own. ---Ireland on this occasion was doomed to suffer on both sides; on one from the extravagant grants of the forfeited lands to court favourites in lieu of applying them to the discharge of the national encumbrances, on the other by the usurpation and encroachment of the English parliament over the independent sovereignty of Ireland. The rights of Ireland were wholly lost in the heat of the contest between the court and the country party!<sup>31</sup> Plowden's point of view was that of Molyneux; the ideal was union with England, but if Ireland was to have a separate parliament let it be independent.

30. Plowden, Hist. rev. Ire., i, app. pp. 214-5.

31. Ibid., i. 206-7.

3. T.B.Macaulay

References to the forfeitures in Macaulay's History of England from the accession of James II (1848-61)<sup>x</sup> are confined to the parliamentary dispute which culminated in the Act of Resumption. He gives a spirited and highly critical account of the inquiry commissioners' report and of the resumption proceedings. But he allowed himself to deplore that William had divided between Bentinck and Keppel 'an extent of country larger than Hertfordshire'. He was particularly indignant at the inclusion in the report of the grant to Lady Orkney of the private estate, which he erroneously considered to be a 'portion of the old crown property in Ireland'.<sup>32</sup>

4. L.von Ranke

Ranke dealt comparatively <sup>briefly</sup> with the Williamite forfeitures in his Englische Geschichte vornehmlich in 16 und 17 Jahrhundert (1859-68), an English translation of which appeared in 1875. On some points, however, he is fuller than any other historian. In particular, his extracts from Bonnet's letters to the Brandenburg court contain some interesting comments on the wrangling between William and his English commons about the disposal of the Irish forfeitures.<sup>33</sup> Ranke's eye for detail is exemplified by his story

32. Macaulay, History of England, iii. 713-29.

33. Ranke, History of England, vi. 144-74.



of Lord Antrim's claim under the articles of Limerick,<sup>34</sup> the source being the English commons' journals. He also consulted the Dublin archives and noted that he had inspected the original patent for the grant to Ginkel.<sup>35</sup> He referred to the figures in the inquiry commissioners' report and treated in some detail the tension between king and parliament during the passage of the resumption bill. Referring to the restoration of estates under the articles of Limerick he commented that William was induced to spare the smitten foe by apprehension of a general war: 'For at no price could he leave the catholics so dissatisfied as to tempt the French king to make a descent among them'.<sup>36</sup>

##### 5. J.A.Froude

Froude's English in Ireland in the eighteenth century (1872-4) contains extensive extracts from the inquiry commissioners' report. The anti-catholic and anti-court sentiments expressed in the report were congenial to Froude and he made the most of such material. His statistics were wholly taken from the report and he does not seem to have known of Hardinge's paper. He used the parliamentary journals and the

34. Ranke, History of England, v.215.

35. Ibid., v. 205.

36. Ibid., v. 216.

State Papers for his account of the Irish legislation for the confirmation of articles and outlawries and of the proceedings in the English parliament which led up to the Act of Resumption. His attitude to the confirmation of the articles of Limerick was as might be expected. He referred to the omitted clause as 'the obnoxious clause from the second Limerick article, which if sustained would have left the rebellion unpunished'<sup>37</sup>. He noted that the Irish commons 'passed the articles deprived of the features which had been surreptitiously introduced into them'. The bishops who opposed the terms of the bill were described as high-flying and Jacobites at heart who 'looked on the catholics as their natural friends'<sup>38</sup>. A similar vein of prejudice runs through Froude's paraphrase of the commissioners' report. The court of claims was described as 'admitting shoals of catholics under the articles of Limerick who had no business there'<sup>39</sup>. The recipients of pardons were 'sixty-five great Irish proprietors whom the articles could not be made to cover'<sup>40</sup>. His brief account of the trustees' proceedings was taken from Harris, whom he quoted as

37. Froude, *W Ire.*, i. 244.

38. *Ibid.*, i. 282.

39. *Ibid.*, i. 300.

40. *Ibid.*, i. 245.

saying that they displayed 'manifest partiality in favour of papists, it being a maxim among all who favoured King James's interest to serve the professors of that religion whose estates were confiscated for their adherence to him'.<sup>41</sup>

Froude's account of the forfeitures has the same energy and prejudice that characterise the rest of the book. He made vigorous use of the main sources, but did not enter into any detailed research.

#### 6. W.E.H. Lecky

Lecky's Irish history originally appeared as part of his History of England in the eighteenth century (1878-90). He made practically no mention of the Williamite forfeitures. He referred to the abortive English attainder bill of 1689 and criticised Macaulay for laying so much emphasis on the Jacobite act, while failing altogether to mention the simultaneous, though much more restricted, English bill. Apart from this, Lecky merely stated that 'the great confiscations that followed the revolution completed the ruin of the old race'.<sup>42</sup> He made no reference to the inquiry commission of 1699 or to the resumption proceedings which followed it, although he took the commissioners' figure of 300,000 acres for the area restored under articles and pardons.<sup>43</sup> In a subsequent

41. Froude, Ire., i. 308. The quotation is from Harris, William III, p. 494.

42. Lecky, Ire., i. 134.

43. Ibid., i. 151.

passage he referred briefly to William's grants without mentioning their resumption.<sup>44</sup> Lecky's almost complete silence on the Williamite forfeitures is in striking contrast to Froude's eloquence.

#### 7. W.K.Sullivan

Sullivan's 'From the treaty of Limerick to the establishment of legislative independence', which appeared in Two centuries of Irish history (1888), was chiefly notable for its use of Hardinge's paper. Sullivan adopted Hardinge's statistics without comment or criticism. For the rest, his account was based on Froude with a final summing up taken from Clare's speech on the union, which he quoted to the effect that three sets of English adventurers had taken possession of the whole property of the country with confiscation as their common title.<sup>45</sup>

#### 8. E.Curtis

Curtis's History of Ireland (1936) gives a brief, and not very satisfactory, account of the forfeitures, based on Froude and Hardinge with the introduction of some fresh misconceptions. His version of the outlawry proceedings is as follows: 'A court of claims was set up at Chichester House in Dublin under which some 4,000 landowners were attainted and there were forfeited to the crown lands amounting to 1,100,000

44. Lecky, Ire., i. 198.

45. O'Brien, Ir. hist., 1691-1870, pp. 10-15.

plantation acres'. The notion that attainders were effected by a court of claims is odd; the reference to Chichester House seems to indicate a confusion with the claims heard there by the trustees after the passing of the Act of Resumption. There are some errors in Curtis's account of the treaty of Limerick. He stated that its terms covered the garrisons of Galway and Waterford, and he included Galway in the list of counties cited in the omitted clause. Sir Henry Capel is referred to as having been deputy from 1695 to 1700. In fact he was Lord Capel at the time of his appointment and died in 1696. It is not clear what Curtis had in mind when he wrote: 'William endeavoured, as he had promised, to reduce the number of attainders, but on this point was finally defeated by the intractable English parliament, which now shared the sovereignty with the crown'.<sup>47</sup> If this is a reference to the Act of Resumption, it shows a serious misconception of the points at issue between William and his English parliament. Curtis adopted Hardinge's figures for land restored to 'innocent papists' and for the area sold by the trustees. He apparently took no account of Butler's criticisms of Hardinge. Curtis added that it was reckoned (by whom he did

46. Curtis, Ire., pp. 275-6.

47. Ibid., p. 277.

not say) that by 1700 catholics had the freehold of about one-eighth of Ireland, a proportion which was to be greatly reduced by the conforming of landowners in the next thirty to forty years.

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Name of Person	County	Value
Abercorn, Claud, earl of	Tyrone	10,000
Archer, Henry	Kilkenny	500
Archer, Patrick	Wexford	500
Arthur, Francis	Clare	500
Arthur, Nicholas	Clare	500
Baggot, John	Limerick	500
Beginal, Dudley	Carlow	500
Balfie, Robert	Down	500
Barnwell, Dominick	Down	500
Barnwell, Matthew	Down	500
Barrett, John	Down	10,000
Barry, Edmund	Down	1,000
Barry, John	Down	500
Bellew, Thomas	Down	100
Birford, Ignatius	Down	1,200
Blanchfield, Edmund	Wick	2,000
Boylan, Edward	Wick	500
Brereton, John	Queen's Co.	500
Brittas, Theobald, Lord	Limerick	1,000

## APPENDIX A

## Summary of trustees' sales, 1702-3

The summary is based on the abstract of conveyances given in Ir. rec. comm. rep., 1821-5, pp. 348-96. The areas are expressed in profitable Irish acres. The figures relate to outright sales of land.

## 1. FORFEITED ESTATES SOLD

<u>Name of forfeiting owner</u>	<u>County</u>	<u>Area</u>
Abercorn, Claud, earl of	Tyrone	9,681
Archer, Henry	Kilkenny	140
Archer, Patrick	Meath	370
Arthur, Francis	Clare	174
Arthur, Nicholas	Clare	440
Baggot, John	Limerick	727
Bagenal, Dudley	Carlow	403
Balfe, Robert	Meath	121
Barnwell, Dominick	Meath	1,029
Barnwell, Matthew	Meath	526
Barrett, John	Cork	11,570
Barry, Edmond	Cork	1,681
Barry, John	Cork	481
Bellew, Thomas	Meath	189
Birford, Ignatius	Meath	1,250
Blanchfield, Edmund	Kilkenny	2,893
Boyton, Edward	Roscommon	282
Brereton, John	Queen's Co.	835
Brittas, Theobald, Lord	Limerick	1,142



Browne, Andrew	Mayo	120
Browne, James	Mayo	940
Bryan, Walter	Kilkenny	493
	Queen's Co.	398
Bolger, James	Kilkenny	85
Burke, Thomas	Galway	138
	Mayo	938
Burke, Ulick	Galway	35
Burke, Walter	Mayo	5,899
Burke, William	Galway	441
Byrne, Barnaby	Meath	703
Byrne, Charles	Carlow	150
Carthy, Daniel M'Fin	Kerry	1,965
Cawell, John	Wexford	326
	Wicklow	45
Chamberlain, Michael	Dublin	112
	Meath	278
Cheevers, Christopher	Louth	582
Cheevers, Edward (Lord Mountleinster)	Galway	1,415
Clancarty, Donogh, earl of	Cork	139,732
	Kerry	8,880
Clare, Daniel, Viscount	Clare	30,180
Clinton, Thomas	Louth	925
Coghlan, Terence	King's Co.	3,169
Comyn, John	Clare	137
Connell, Maurice	Dublin	207

Coppinger, Thomas	Cork	158
Coppinger, Walter	Cork	2,557
Creagh, William	Clare	113
Crump, Adam	Meath	364
Crump, Richard	Dublin	100
Dalton, Henry	Westmeath	400
Dalton, John	Westmeath	455
Daly, Teige	Galway	213
Darcy, Nicholas	Louth	1,054
	Meath	2,289
	Westmeath	3,628
Dempsey, James	Kildare	800
Dillon, Christopher	Roscommon	1,169
Dillon, Garrett	Roscommon	292
	Westmeath	326
Dillon, Gerald	Mayo	2,840
	Roscommon	825
	Westmeath	1,042
Dowdall, Henry	Meath	687
Dowdall, Sir Luke	Meath	1,157
Driscoll, Cornelius	Cork	332
Egan, Thomas	Kildare	231
Etchingham, John	Wexford	919
Eustace, Alexander	Kildare	618
Eustace, Lawrence	Kildare	361
Eustace, Sir Maurice	Dublin	261
	Kildare	2,442

Everard, Sir John	Tipperary	1,743
Everard, Patrick	Longford	52
	Roscommon	241
Evers, Christopher	Meath	269
Fagan, Richard	Dublin	1,429
	Meath	919
	Sligo	2,507
Farrell, Fergus	Longford	244
Farrell, Iriel	Galway	308
	Roscommon	97
Fitzgerald, Edward	Kilkenny	1,685
Fitzgerald, James	Limerick	900
Fitzgerald, Sir John	Limerick	2,068
Fitzmaurice, James	Kerry	1,300
Fitzpatrick, Dermot	Clare	254
Fleming, Thomas	Louth	176
Flynn, Feighry	Roscommon	3,440
Gallway, Arthur	Cork	56
Gallway, Edmond	Cork	723
Gallway, Edward	Cork	4,122
Gallway, Walter	Cork	1,418
	Waterford	282
Galmoy, Piers, Viscount	Kilkenny	11,356
	Wexford	4,931
Geoghegan, Charles	King's Co.	2,816
Geoghegan, Edward	Westmeath	780
Gilligan, James	Wexford	500

Goold, Ignatius	Cork	1,070
Goold, John	Kerry	210
Grace, John	Kilkenny	651
Grace, Richard	Clare	75
Kelly, Lawrence	Kilkenny	424
	King's Co.	1,185
Grace, Robert	Kilkenny	7,406
Lacy, Thomas	King's Co.	216
Graham, Richard	Queen's Co.	137
Hackett, James	Dublin	487
Lawless, Walter	Meath	101
Hoare, Martin	Waterford	5,046
Hovendon, Robert	Armagh	818
Hussey, Thomas	Meath	447
James, The late King	Carlow	768
Leather, Edward	Cork	11,479
MacCarthy, Charles of Ardsleah	Dublin	4,531
	Down	558
MacCarthy, Charles of Carrigmore	Galway	5,830
	Kildare	8,749
MacCarthy, Charles of Fonadrossa	Kilkenny	4,149
	King's Co.	1,001
MacCarthy, Justin	Limerick	14,486
MacCarthy, Tolan	L'derry	80
Magennis, Mariah	Meath	12,083
Manlana, Joseph	Roscommon	3,996
Magee, Patrick	Tipperary	10,051
	Waterford	15

James, The late King (cont.)	Westmeath	9,021
	<u>Wexford</u>	<u>533</u>
	<u>Total</u>	<u>87,330</u>
Keating, William	Meath	330
Kelly, Lawrence	Galway	161
	Roscommon	157
Kigan, Murtagh	Westmeath	87
Lacy, Thomas	Roscommon	342
Lally, James	Galway	812
Larkan, John	Kilkenny	202
Lawless, Walter	Kilkenny	181
Leigh, Francis	Kildare	4,505
Leicester, Thomas	King's Co.	1,781
Lovelock, Dominick	Galway	102
Lyne, John	Kerry	652
Lowther, Edmund	Meath	64
MacCarthy, Charles of Ardnaclugg	Cork	848
MacCarthy, Charles of Carrignavar	Cork	366
MacCarthy, Charles of Toonadrooma	Cork	1,008
MacCarthy, Justin	Cork	4,109
MacCarthy, Teige	Cork	3,753
Magennis, Murtagh	Armagh	352
MacNamara, Donogh	Clare	140
Magee, Patrick	Cavan	132

Magrath, Redmond	Clare	172
Malony, Dan	Clare	176
Martin, Peter	Galway	2,805
Mathews, Patrick	Monaghan	120
Meagher, Thady	Tipperary	226
Moore, Ambrose	Kerry	254
Morris, Edmund	Queen's Co.	14
Mulledy, Sir Anthony	Meath	2,569
Mulledy, Redmond	Westmeath	4,341
Murrough, Andrew	Cork	501
Nagle, Pierce	Cork	1,579
Nagle, Sir Richard	Cork	3,557
Nangle, Robert	Westmeath	932
Nangle, Walter	Meath	668
Nihill, David	Clare	238
Nottingham, Peter	Dublin	1,026
Ryan, Martin	Meath	63
Nottingham, Robert	Dublin	95
Nugent, Christopher	Roscommon	1,549
	Westmeath	588
Nugent, Sir John	Meath	932
Quarlock, Christopher	Roscommon	1,980
Quincy, Nicholas	Westmeath	4,231
O'Brien, Donogh	Clare	40
O'Brien, Teige	Clare	88
O'Connor, Charles	Roscommon	175
O'Connor, Roger	Roscommon	326

O'Hara, John	Down	160
O'Keefe, Daniel	Cork	8,488
O'Neile, Henry	Mayo	3,688
O'Neile, Sir Neile	Antrim	7,134
O'Neile, Toole	Down	30
Peppard, Christopher	Louth	16
Plunkett, Edward	Meath	202
Plunkett, Thomas	Meath	473
Power, James	Clare	65
Reilly, Hugh	Cavan	140
Rice, Edward	Kerry	170
	Limerick	551
Ronan, Nicholas	Cork	222
Russell, Bartholomew	Dublin	524
Ryan, Charles	Kilkenny	968
Ryan, John	Clare	1,005
Ryan, Martin	Clare	50
Sarsfield, Dominick	Cork	2,497
Sarsfield, Patrick	Dublin	1,348
	Kildare	5,263
Sheile, Denis	Westmeath	96
Sherlock, Christopher	Kildare	846
Skiddy, Nicholas	Kerry	1,250
Skiddy, Thomas	Kerry	252

Tyconnell, Richard, Earl of	Dublin	1,992
	Kildare	2,701
	Louth	300
	Meath	2,000

Slane, Christopher, Lord	Cavan	1,236
	Louth	1,123
	Meath	9,614
	Monaghan	104
	Roscommon	457
Strange, Abraham	Wexford	140
Sutton, John	Kildare	148
Sutton, Thomas	Dublin	171
Sweetman, Edward	Dublin	132
Talbot, George	Roscommon	1,025
Talbot, James	Dublin	140
	Galway	225
Talbot, William	Louth	234
Talbot, Sir William	Meath	139
	Wicklow	1,530
Trant, Sir Patrick	Dublin	116
	Kerry	18,091
	Kildare	1,448
	King's Co.	10,359
	Limerick	1,242
	Queen's Co.	12,022
Tuite, Walter	Westmeath	1,521
Tuite, William	Galway	648
Tully, Matthew	Galway	198
Tyrconnell, Richard, earl of	Dublin	1,992
	Kildare	3,781
	Louth	339
	Meath	3,605



Tyrrell, Peter	Westmeath	530
Wadden, John	Mayo	292
Walsh, Robert	Kilkenny	1,675
Warren, John	Carlow	200
White, Nicholas	Clare	66
	Wexford	90
White, Patrick	Wexford	30
Wray, Sir Drury	Limerick	83

## 2. ESTATES PURCHASED

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Abercorn, James, earl of	Tyrone	8,982
Adams, Randall	Westmeath	455
Adams, Randolph	Westmeath	194
Agar, James	Kilkenny	3,776
Allen, John	Dublin	229
Anderson, Arthur	Kilkenny	322
Anderson, James	Antrim	732
	Down	558
	Kildare	257
	Kilkenny dare	36
Annesley, Francis	Kilkenny	161
Armstrong, Charles	Kildare	225

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Asgill, John	Cork	6,538
	Kildare	2,961
	King's Co.	1,269
	Louth	873
	Meath	2,058
	Tipperary	131
	Wexford	326
	Westmeath	856
Ashe, Thomas	Kildare	800
Ashurst, Sir William	Roscommon	298
Atkins, Robert	Cork	310
Baker, Thomas	Dublin	107
Baker, William	Tipperary	29
Baldwin, Henry	Cork	720
Baldwin, Richard	Dublin	60
	Meath	204
Bamber, Richard	Meath	517
Barry, James	Meath	330
Barton, William	Dublin	776
	Louth	98
Bayly, John	Cork	472
Bayly, Thomas	Westmeath	113
Beauchamp, John	Carlow	379
Bellew, Thomas	Dublin	198
Bellingham, Thomas	Louth	55
Bernard, Francis	Cork	3,195

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Betsworth, Peter	Cork	200
Bingham, Sir Henry	Mayo	3,043
Blackburn, Andrew	Roscommon	103
Blessington, Lord	Kildare	737
Bligh, Thomas	Meath	2,993
Bonning, John	Longford	244
	Westmeath	30
Boyse, Nathaniel	King's Co.	581
	Wexford	245
Branthwat, John	Cork	1,190
Broderick, Alan	Cork	340
Browne, Richard	Cork	538
Browne, Robert	Kildare	266
Budden, Joseph	Dublin	256
Burgh, Richard	Tipperary	795
Burke, John	Galway	441
Burton, Benjamin	Limerick	1,627
Burton, Francis et al.	Clare	30,180
Bury, Anthony	Louth	27
Bury, John	Limerick	453
Bushe, Amyas	Queen's Co.	14
Bushe, Arthur	Kilkenny	1,646
Bustead, Michael	Cork	489
Butler, Brinsley	Meath	316
Butler, John	Tipperary	28

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Caddell, Richard	Antrim	261
Cadogan, Henry	Meath	72
Cairnes, William	Dublin	132
	Meath	473
	Roscommon	1,549
	Wexford	790
Campbell, Charles	Antrim	824
	Cavan	1,236
	Dublin	59
	Louth	41
	Meath	966
Card, Samuel	Kildare	500
	Meath	111
	Westmeath	1,135
Carleton, Christopher	Dublin	468
Carleton, John	Tipperary	49
Carpenter, George	Kilkenny	1,068
Carter, Thomas	Dublin	12
	Limerick	5
	Meath	2,157
Chaigneau, Lewis	Dublin	213
Clayton, John	Dublin	167
Cockerell, William	Cork	976
Coghill, Marmaduke	Dublin	222
	Kilkenny	140
Colley, Henry	Kildare	52

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Colthurst, Nicholas	Cork	1,375
Conolly, William	Meath	998
Dawson, Ebraine	Roscommon	2,182
Dawson, James	Westmeath	4,819
	Wexford	629
Connor, Daniel	Cork	1,311
Connor, Thomas	Kerry	652
Conyngham, Henry	Meath	1,838
Cooke, John	Tipperary	481
Cooke, Richard	Dublin	171
Cosgrave, Edward	Kerry	170
	Limerick	551
Cox, Sir Richard	Cork	381
Des Vignoles, Charles	Kilkenny	453
Craige, Robert	Tipperary	1,067
Crawford, Thomas	Kilkenny	202
Crow, Edward	Galway	502
Cuppaidge, Faustin	Meath	54
Curtis, Robert	Kildare	1,593
Down and Downer, Edward	Louth	11
Bishop of	Meath	172
Cusack, John	Clare	825
Dalyell, Thomas	Kildare	2,871
Damer, Joseph	Tipperary	103
D'Arabine, Bartholomew	Westmeath	654
Daunt, Thomas	Cork	99

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Davis, Henry	Dublin	473
	Kildare	669
Dawson, Ephraim	Westmeath	1,333
Dawson, James	Dublin	53
	Kildare	252
	Limerick	809
	Tipperary	82
Deane, Joseph	Cork	222
Deane, Sir Matthew	Cork	1,080
	Limerick	76
Des Blosset, Solomon	Dublin	7
	Meath	551
Despard, William	Queen's Co.	398
Des Vignoles, Charles	Kildare	251
Dillon, Sir John	Meath	1,509
Dixon, Abraham	Cork	2,240
Domvile, Sir Thomas	Dublin	140
Dopping, Anthony	Westmeath	160
Dopping, Samuel	Meath	1,798
Down and Connor, Edward, bishop of	Dublin	338
Drisdall, Griffith	Kilkenny	7
Drury, John	Meath	143
Dubay, Lewis	Kilkenny	139
Dunscomb, William	Cork	240

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Eccles, John	Dublin	63
Echlin, Robert	Dublin	955
Gibson, Daniel	Kildare	97
Edge, Timothy	Dublin	81
Edgeworth, Robert	Westmeath	776
Elsmere, Josiah	Kildare	49
Erberry, Mathias	Cork	237
Evans, George	Cork	66
Grady, Edward	Limerick	94
Eyre, John	Galway	213
Falkner, Daniel	Kildare	87
Farthing, Robert	Cork	1,074
Fitzmaurice, William	Limerick	2,068
Fitzpatrick, Richard	Kildare	303
Hall, William	Queen's Co.	835
Forbes, Arthur	Meath	95
Ford, Edward	Dublin	573
	Meath	523
Forrest, Daniel	Dublin	73
Forster, John	Dublin	595
Fortescue, William	Monaghan	120
Francklyn, Joseph	Cork	310
Freke, Piercey	Cork	2,847
Garstin, John	Meath	37
Garstin, Norman	Monaghan	104
Gaynor, Mrs Vere	Westmeath	172

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Geoghegan, Terence	Clare	172
	Westmeath	20
Gibbons, Samuel	Meath	282
Gibbons, William	Dublin	127
Gore, Ralph	Kilkenny	21
Gore, William	Roscommon	175
Gorges, Richard	Meath	852
Gower, Henry	Tipperary	119
Graham, Edmund	Dublin	150
Graham, John	Louth	998
	Meath	1,652
Green, Abraham	Limerick	564
Gumbleton, Richard	Cork	828
Gunning, Bryan	Roscommon	457
Hall, William	Dublin	28
Hamilton, Gustavus	Roscommon	339
Hamilton, James	Meath	63
	Tyrone	389
Hamilton, William	Down	30
Hampson, Charles	Westmeath	11
Harman, Wentworth	Kildare	302
Harrison, William	Waterford	282
Hatch, Nicholas	Meath	40
Hewetson, William	Kildare	231



<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Higgins, Bryan	Mayo	2,840
	Roscommon	825
	Westmeath	1,042
Hingston, James	Cork	353
Hoare, Edward	Cork	1,987
Hodder, John	Cork	132
Hodder, Thomas	Cork	594
Hollow Blades	Antrim	3,763
Hughes, John	Armagh	352
	Clare	219
Hull, Isaac Frederick	Cork	130,944
Hunt, John	Down	160
Hutchinson, Hugh	Dublin	618
Ingoldby, Richard	Galway	1,777
Irwin, Henry	Kerry	32,202
Ivers, John	Kildare	3,318
Jackson, Daniel	Kilkenny	17,922
Jackson, Samuel	King's Co.	18,223
Jacob, Matthew	Limerick	6,585
Johnson, Catherine	L'derry	80
Johnson, George	Louth	1,054
Johnston, James	Mayo	3,307
Johnston, Robert	Meath	1,725
Jones, George	Queen's Co.	12,159
Jones, Lewis	Roscommon	63
Jones, Richard	Sligo	2,133

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Hollow Blades (cont.)	Tipperary	4,616
Kelley, Thomas	Waterford	5,046
Kellett, Richard	Westmeath	2,372
Kelly, Brian	<u>Wexford</u>	<u>5,071</u>
Kelly, Joseph	<u>Total</u>	<u>253,709</u>
Holmes, Peter	King's Co.	177
Holroid, Isaac	Meath	447
Howth, Lord	Dublin	4
Hughes, John	Kildare	549
Lambe, William	Westmeath	579
Hull, Dame Frances	Cork	125
Hunt, John	Limerick	178
Hutchinson, Hugh	Cork	1,418
Ingoldsby, Richard	Kildare	403
Irwin, Henry	Sligo	374
Ivers, John	Clare	395
Jackson, Daniel	Dublin	96
Jackson, Samuel	Dublin	180
Jacob, Matthew	Tipperary	464
Johnson, Catherine	Carlow	144
Johnson, George	Armagh	818
Johnston, James	Longford	52
Johnston, Robert	Cavan	132
Jones, George	Westmeath	63
Jones, Lewis	Dublin	112
Jones, Richard	Meath	116

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Judkin, Joseph	Tipperary	226
Keightley, Thomas	Kildare	1,357
Kellett, Richard	Tipperary	100
Kelly, Brian	Galway	161
Kelly, Joseph	Kilkenny	115
Kent, John	Kilkenny	98
Kiernan, James	Dublin	263
King, Robert	Tyrone	310
King, Archbp. William	Dublin	524
Lambe, William	Meath	80
Langford, Sir Arthur	Antrim	982
	Meath	2,095
Langrish, John	Kilkenny	239
Lapp, John	Waterford	15
Leagh, John	Meath	30
	Westmeath	598
Leeds, Michael	Dublin	76
Levinge, Sir Richard	Louth	339
	Westmeath	1,610
Lewis, James	Galway	308
Lewis, Richard	Tipperary	253
Lloyd, Andrew	Kildare	110
	Meath	655
Lloyd, Richard	Kildare	410
	Roscommon	772
Loftus, Henry	Wexford	30

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Low, Samuel	Meath	27
Lowe, David	Tipperary	948
Lowther, George	Meath	323
Ludlow, Stephen	Cork	7,594
	Meath	468
Luther, Henry	Cork	192
	Tipperary	260
Maddock, Joseph	Kildare	436
Magan, Thomas	Westmeath	1,362
Mahon, Bartholomew	Roscommon	179
Mainwaring, William	Kilkenny	456
Mansell, Thomas	Limerick	144
Marriott, Joseph	Kildare	76
Marsh, Jeremiah	Kilkenny	105
Mason, Robert	Galway	138
Massy, Samuel	Roscommon	342
Mathews, Humphrey	Wicklow	45
Meade, Benjamin	Dublin	93
Meade, Sir John	Cork	3,674
	Tipperary	45
Meares, John	Westmeath	149
Meares, Lewis	Westmeath	454
Meredith, Arthur	Meath	1,070
Minchin, William	Tipperary	225
Mitchell, Joseph	Roscommon	3,343
Moland, Joseph	Kildare	335

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Molyneux, Thomas	Dublin	236
	Meath	189
Montgomery, Alexander	Meath	364
	Roscommon	3,465
	Tipperary	537
Moore, Elinor	Cork	101
Moore, John	Cork	143
Moore, William	Mayo	3,688
Morris, Abraham	Cork	2,174
Morrison, John	Cork	68
Mountjoy, Lord	Dublin	4
Murphy, Patience	Cork	976
Napper, James	Meath	56
Neale, Benjamin	Wexford	90
Newenham, John	Cork	743
Newenham, Thomas	Cork	553
Newstead, Richard	Westmeath	891
Newton, John	Louth	539
O'Brien, Sir Donough	Clare	614
Ogle, Henry	Louth	7
	Meath	494
Ormsby, John	Roscommon	817
Osborne, Henry	Meath	223
Ossory, John , bishop of	Kilkenny	174
Pacey, John	Dublin	422
Pakenham, Robert	Meath	195
	Westmeath	3,781

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Page, John	Meath	305
Paine, William	Meath	156
Palmer, William	Meath	697
Partington, Peter,	Meath	270
Paul, Jeffery	Kildare	1,464
Pearson, Matthew	Kildare	211
Peppard, Jacob	Kildare	65
	Meath	89
Perry, John	Tipperary	637
Persse, Henry	Galway	593
Philipps, Chichester	Westmeath	580
Philipps, Richard	Cork	47
Piercey, Henry	Dublin	14
Piers, Honoria, Lady	Westmeath	30
Piers, William	Westmeath	249
Pike, John	Tipperary	84
Piper, Stephen	Meath	334
Pollard, Walter	Westmeath	35
Ponsonby, William	Kilkenny	281
Powell, Richard	Limerick	255
Pratt, Benjamin	Meath	439
Preston, John	Meath	85
Price, Nicholas	Wexford	288
Putland, Thomas	Cork	4,597
Pyne, Sir Richard	Cork	1,964
Pyper, John	Tipperary	57
Ram, Abel	Meath	96

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Rathwell, John	Meath	169
Riggs, Edward	Cork	2,859
Riggs, Stephen	Dublin	505
Rigmaiden, Robert	Meath	233
Riley, Edward	Meath	585
Robinson, Sir William	Carlow	150
Roch, Edmond	Louth	407
Rochfort, Robert	Cork	2,557
Rochfort, Robert	Dublin	421
Rochfort, Robert	Meath	314
Rochfort, Robert	Westmeath	922
Rogers, George	Cork	1,087
Rogers, Robert	Cork	345
Rogers, William	Dublin	60
Rogerson, Sir John	Dublin	205
Rogerson, Sir John	Kildare	365
Rogerson, Sir John	Westmeath	173
Rolls, Samuel	Cork	122
Roth, Abraham	Kilkenny	550
Rotton, John	Dublin	104
Ryan, Morgan	Clare	122
St. George, Henry	Roscommon	94
St. George, Richard	Kilkenny	142
St. John, Thomas	Clare	176
St. Leger, John	Cork	251
Sandford, Henry	Roscommon	97

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Scawen, Sir William	Galway	4,729
Schuldham, Edmund	Clare	88
Shaw, Robert	Galway	1,156
Shaw, William	Antrim	572
Sheares, Humphrey	Cork	1,245
Sheppard, Anthony	Westmeath	70
Sherigley, Follriott	Dublin	428
Sherlock, William	Kildare	812
Shields, Michael	Meath	179
Shinton, Richard	Meath	330
Singleton, Edward	Meath	2,672
Sisson, Thomas	Westmeath	271
Smith, Ralph	Westmeath	159
Smith, Robert	Westmeath	23
Smith, Thomas, bishop of Limerick	Limerick	867
Smith, William	Cork	280
Somerville, Thomas	Meath	1,066
Southwell, Sir Thomas	Limerick	29
Spread, John	Cork	223
Spread, William	Cork	132
Stafford, Edmund	Meath	687
Steele, Lawrence	Kildare	607
Stephens, Walter	Carlow	166
Stepney, Thomas	Limerick	182
Sterne, Robert	Cork	692



<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Stewart, Robert	Wicklow	1,530
Stewart, William	Westmeath	639
Stratford, Edward	Tipperary	16
Swan, Edward	Dublin	20
Sweet, Stephen	Cork	2,515
Waxman, Robert	Clare	65
Waxman, William	Dublin	95
Walker, James	Kilkenny	2,913
Taylor, William	Limerick	1,813
Taylor, Thomas	Meath	232
Temple, Robert	Westmeath	727
Tigh, Richard	Carlow	79
Tilson, Thomas	King's Co.	277
Trench, Frederick	Galway	198
Trench, James	Cork	450
Trench, John	Galway	2,805
Weldon, Walter	Roscommon	97
Tuam, John, archbp. of	Mayo	1,839
Tuke, Samuel	Roscommon	830
Westland, William	Westmeath	79
Twigg, Robert	Limerick	435
Vance, Patrick	Westmeath	134
Van Homrigh, Bartholomew	Cork	1,143
Walley, Thomas	Kildare	573
Vaughan, Hector	Clare	319
Vesey, Agmondisham	Dublin	1,348
	Kildare	5,263

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Vincent, John	Limerick	330
Wade, Charles	Meath	825
Wade, John	Dublin	100
	Meath	2,326
Wakeham, Richard	Cork	99
Wakeham, Robert	Cork	476
Wakeham, William	Cork	42
Walker, James	Roscommon	326
Waller, Edward	Dublin	47
	Limerick	113
Waller, Robert	Meath	132
Wallis, Thomas	Cork	971
Ware, Thomas	Cork	615
Warren, Wallis	Cork	570
Way, Thomas	Kilkenny	99
Webb, William	Limerick	91
Weldon, Walter	Carlow	200
Wesley, Garrett	Kildare	125
	Meath	248
Westland, William	Meath	14
Westropp, Mountiford	Limerick	260
Westropp, Robert	Clare	238
Westropp, Thomas	Limerick	176
Whaley, Thomas	Meath	100
White, John	Limerick	1,034
	Tipperary	668

<u>Name of purchaser</u>	<u>County</u>	<u>Area</u>
Whitwell, Nathaniel	Meath	95
Widdenham, Henry	Limerick	413
Wilkinson, William	Kilkenny	606
Wilson, Edward	Galway	310
Wilton, George	Cavan	140
Wolseley, Richard	Carlow	403
Wood, John	Westmeath	93
Worth, Edward	Kilkenny	363
Wybarrow, Richard	Kildare	49
Young, James	Westmeath	65

### 3. TOTALS OF AREAS CONVEYED BY TRUSTEES

<u>County</u>	<u>Area</u>
Antrim	7,134
Armagh	1,170
Carlow	1,521
Cavan	1,508
Clare	33,413
Cork	202,289
Down	748
Dublin	12,671
Galway	13,331
Kerry	33,024
Kildare	29,192
Kilkenny	32,308
King's Co,	20,527

(Totals of areas conveyed by trustees, cont.)

<u>County</u>	<u>Area</u>
Limerick	21,199
Londonderry	80
Longford	296
Louth	4,449
Mayo	14,717
Meath	41,844
Monaghan	224
Queen's Co.	13,406
Roscommon	16,353
Sligo	2,507
Tipperary	12,020
Tyrone	9,681
Waterford	5,343
Westmeath	27,878
Wexford	7,469
<u>Wicklow</u>	<u>1,575</u>
Total	567,877

## APPENDIX B

## Abstract of the Williamite settlement

	Acres	%
	(000's)	
1. Area held by the catholics of Ire- land in 1688	1705	22
2. Area transferred from catholic to protestant ownership between 1688 and 1703		
(a) Sold by trustees	481	
(b) Left unsold by trustees	2	
(c) Grants excluded from Act of Resumption	31	
(d) Owned by families which became protestant by 1703 (including Clanricarde)	<u>103</u>	8
3. Area remaining in catholic ownership in 1703		
(a) Under articles	525	
(b) Under pardons	88	
(c) Allowed by trustees to successful claimants	137	
(d) Owned by persons acquitted or not proceeded against	<u>338</u>	14
	1088	

The analysis is based on the entries in the books

of Survey and Distribution, supplemented where necessary by the forfeiture records. The areas refer to profitable land and are given in Irish acres. Petty's figure of 7,500,000 acres for the total profitable area has been taken as the basis for the calculation of percentages. King James's private estate has not been included in the statement. The area shown as allowed to successful claimants is exclusive of cases in which the claimant was also adjudged within articles or in receipt of pardon.

The inquiry commissioners of 1699 reported that 753,000 acres had been forfeited and not restored. Their figures were subjected to a number of adjustments when the trustees took over the administration. The total, however, can be reconciled with the above analysis

as follows:	Acres (000's)
Put up to sale by trustees	483
Allowed to successful catholic claimants	137
Secured by special acts of parliament to families which had become protestant by 1703	1 82
Excluded from Act of Resumption	31
Balance (leasehold or not liable to forfeiture)	<u>26</u>
	753

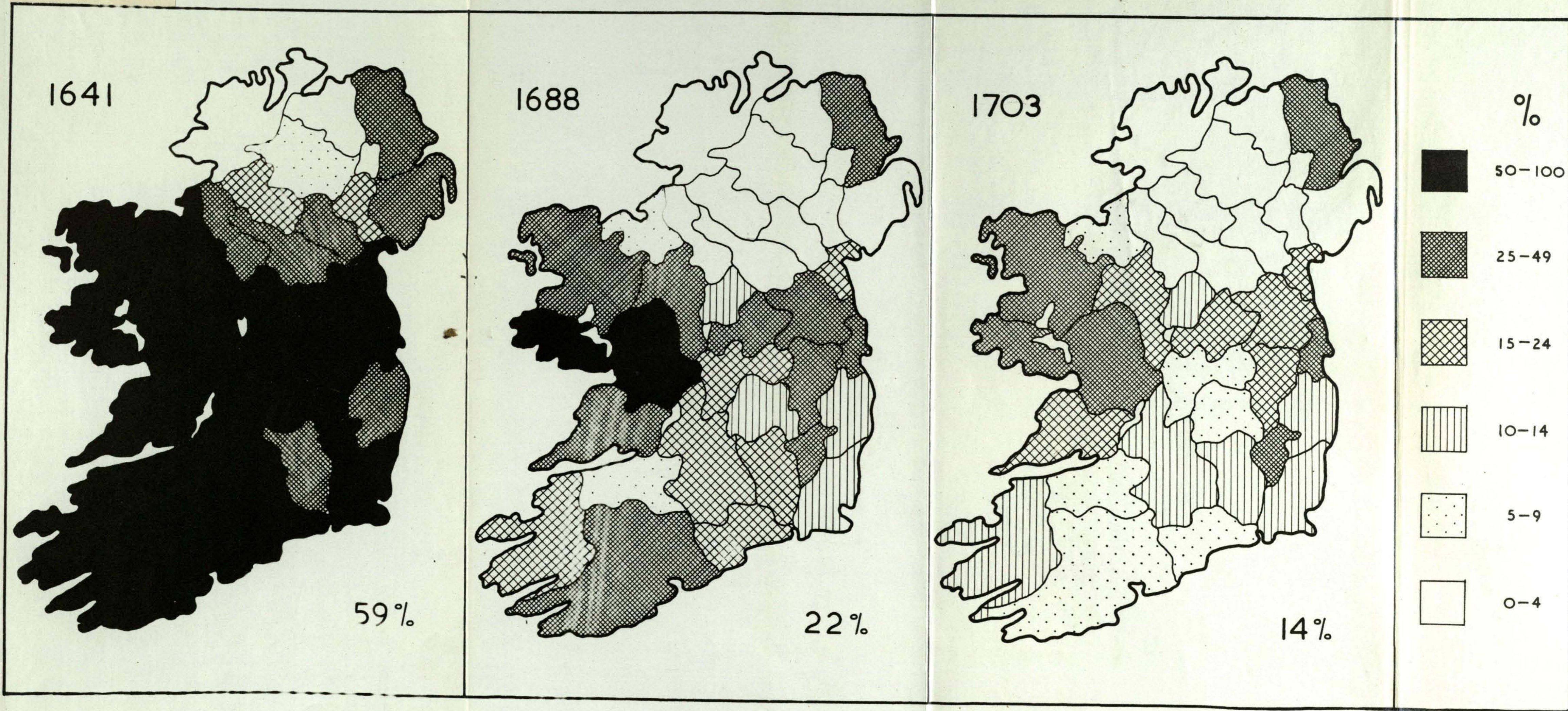
The inquiry commissioners' figure for estates forfeited but restored under articles (233,000 acres) is

1. The difference between this figure and that given in item 2 (d) of the analysis is accounted for by the estates of Lords Tyrone and Ikerrin.

less than half the total area held by persons admitted to articles. In the majority of such cases the estates had not been seized by the end of the war. They were therefore not entered in the forfeiture records.

PROPORTION OF LAND HELD BY CATHOLICS.

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