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In pursuit of a positive construction: Irish Catholics and the Williamite articles of surrender, 1690–1701[1]

EOIN KINSELLA

> In what manner would his Majesty have the Articles to be construed – According to a common and reasonable interpretation, or most amply and beneficially for the capitulators? *With justice but not favour*.[2]

Following the defeat of the Irish Jacobite army in 1691, for many Catholics the choice was stark: to go into exile on the Continent, or to remain in Ireland under the government of a victorious yet resentful Protestant minority. For some, however, emigration was impractical or unappealing. Furthermore, a considerable proportion of the Catholic elite of Ireland made a positive choice to remain in their native country. These men were determined to retain possession of their property and enjoy the rights promised to them by the articles of surrender. The fate of the exiles has long engaged the popular imagination and the interest of historians, yet few have explored the lives of the 'dastard gentry' who remained in Ireland.[3] The historiography of Catholic Ireland in the 1690s has been dominated by the articles of Limerick; understandably so given their status as end-point to the Williamite war, and the subsequent controversy regarding their confirmation by the Irish parliament.[4] One result of this focus on the Limerick

1 This paper was first presented to the 'Boundaries of the Law Roundtable', held at the University of Limerick in February 2008. I would like to thank the organisers and participants for their helpful comments. I am also grateful to Dr John Bergin and Dr Ivar McGrath for their advice and comments on earlier drafts of this article, and to Dr Pádraig Lenihan for drawing my attention to the parallels between the Irish articles of surrender and the articles of surrender signed at Namur (modern-day Belgium) in 1695.

2 Sir Richard Levinge to [?], 2 Mar. 1692 (National Archives of the United Kingdom (hereafter T.N.A.), SP 63/354, f. 43). Prior to the opening of hearings under the articles of Limerick and Galway in 1692, the Irish administration sought clarification from William III as to the interpretation to be applied to the articles.

3 One of the derogatory names applied to them by the exiles; see J.M. Flood, *The life of Chevalier Charles Wogan: an Irish soldier of fortune* (Dublin, 1922), p. 138.

4 J. G. Simms, *The Williamite confiscation in Ireland, 1690-1703* (London, 1956), pp. 45-66; idem, *The Treaty of Limerick* (Dundalk, 1961); idem, 'The original draft of the civil articles of

articles has been to obscure the importance of the other articles of surrender, both to their beneficiaries and to the settlement imposed on Ireland by the Williamite government. Articles of surrender were also signed at Drogheda, Waterford, Galway, Inis Boffin and Sligo.[5]

The principal advantage of the articles was protection from forfeiture of the estates of those who claimed their benefit. Claimants under the articles of Galway and Limerick were required to prove their eligibility in courts of claims, which sat in 1692, 1694 and from 1697 to 1699. The articles of Drogheda, Waterford, Sligo and Boffin were beyond the remit of these courts of claims, forcing those 'articlemen' (as those claiming the benefit of the terms were known) to solicit William III for royal pardons. Pardons were also sought for those whose claims to the articles of Galway and Limerick were not easily proved, a procedure that provoked controversy and caused the suspension of hearings under the articles of Galway in 1692.

Proving entitlement to the articles was merely the first step for the articlemen towards obtaining their benefit. Acts of the Irish and English parliaments gave legislative force to the articles of surrender. These acts were not drafted specifically to confirm the articles. It required intensive lobbying by the articlemen to have saving clauses inserted in several penal laws in order to ensure that the terms of surrender were honoured. It is one of the ironies of the Williamite era that some of the earliest penal laws were also the instruments used to secure the position of the articlemen. Even so, certain clauses of the articles of Galway and Limerick were abrogated by acts of the Irish and English parliaments.[6]

More than fifty years has passed since the publication of J.G. Simms' examination of the confiscation of Catholic lands during the Williamite era.[7] Though he dealt with the articles of surrender, Simms' focus lay mainly on the complex mechanisms of outlawry and attainder of Catholics during the Williamite war. He also analysed in detail the disagreements aroused in the English parliament over the disposal of Irish forfeited lands. An examination of the evidence relating to the pursuit by Irish Catholics of the full implementation of the articles of surrender, presented here, reveals not only the pressure the articlemen were under to secure a stable future for themselves and their families,

Limerick', *Irish Historical Studies* (hereafter *I.H.S.*), viii (1952), 37-44; idem, *Jacobite Ireland, 1685-91* (Dublin, 1969), pp. 240-68; Wouter Troost, 'William III and religious tolerance', in Bernadette Whelan (ed.), *The last of the great wars: essays on the war of the three kings in Ireland, 1688-91* (Limerick, 1995), pp. 39-54; idem, 'William III and the Treaty of Limerick (1691-97): a study of his Irish policy' (published PhD thesis, Leiden, 1983); J. I. McGuire, 'The Treaty of Limerick', in Whelan (ed.), *The last of the great wars*, pp. 127-38. See also Éamonn Ó Ciardha, *Ireland and the Jacobite cause, 1685-1766: a fatal attachment* (Dublin, 2002).

5 For the date of signature of the various articles, see Table 1. Throughout this essay reference is made to the articles of Boffin and to John Bourke, Baron Bophin, due to the usual spelling of the island's name and Bourke's own preference.

6 See Table 2 for details of the use of legislation to either confirm or abrogate the articles of surrender. Private acts to extend the benefit of articles to claimants (such as Lord Bophin's, discussed below) were a rarity.

7 Simms, *Williamite confiscation*.

but also their willingness to work within the legal boundaries of the Williamite settlement of Ireland.

I

One month to the day after the signing of the articles of Limerick a petition was presented in London on behalf of the articlemen of Waterford, asking the king to prevent them from being dispossessed of their estates.[8] After referral to the lords justices in Ireland in November 1691, no further record of this petition is found until March 1692. The appeal may well have been revived at this time because of William's ratification of the articles of Galway and Limerick in January 1692.[9] The March 1692 representations were then made in London by claimants under the articles of Waterford and Boffin to have these articles ratified, and to have their estates restored and protected from future forfeiture.[10] Due to the different response both petitions met with, it is necessary to examine them separately.

The Jacobite-held town of Waterford found itself in a precarious position at the end of July 1690. Defeat at the Boyne on 1 July led to the haphazard retreat of Jacobite forces, with little leadership or organisation evident. The majority of the retreating forces made their way to Limerick, leaving Waterford poorly defended and ill-equipped to withstand a siege. A desire for a negotiated settlement prevailed at this time among the Irish leadership, helped in no small measure by James II's reported parting speech to his privy council in the early morning of 2 July: '[I] do now resolve to shift for myself and so, gentlemen, must you'.[11] Jacobite losses at the Boyne were in fact relatively small.[12] However, the abiding impression in both the Williamite and Jacobite camps was that a fatal blow had been dealt to the Catholic cause, leading William to issue a declaration at Finglas on 7 July that gave the Jacobite leaders little hope for lenient treatment.[13] The day after the Boyne, Drogheda capitulated on what have been described as poor terms.[14] When the Williamite forces reached Waterford three weeks later the garrison there surrendered on the same terms as those signed at Drogheda.

The petitions of the Waterford articlemen were founded on article 3, which read: 'The Roman Catholic dwellers of the city shall not be molested in their

8 *Calendar of State Papers, Domestic Series* (hereafter *C.S.P. Dom.*), 1691-2, p. 3.

9 T.N.A., SP 63/354, ff. 15, 21-2; *C.S.P. Dom.*, 1691-2, p. 111.

10 *C.S.P. Dom.*, 1691-2, p. 180.

11 W. Griffyth, *Villare Hibernicum* (London, 1690), p. 24; George Story, *An impartial history of the wars in Ireland* (London, 1693), p. 89.

12 Pádraig Lenihan, *1690: battle of the Boyne* (Stroud, 2003), pp. 178-9; Simms, *Jacobite Ireland*, pp. 151-2. It is generally held that approximately 1,000 Jacobite soldiers were killed. Lenihan calculates that 2,000 Jacobite soldiers, including injured and deserters, were lost at the battle, out of a total of about 25,000.

13 Story, *Impartial history*, pp. 93-6; H.M.C., *Finch Mss*, ii, p. 346. William was principally advised in this matter by Irish Protestants, who were anxious that as few Catholics as possible should retain their estates. See National Library of Ireland (hereafter N.L.I.), MS 13653, ff. 1-4, 12-16, 19-20.

14 Lenihan, *Boyne*, p. 176.

properties.'[15] In comparison with similar articles subsequently negotiated, it was vaguely worded and offered uncertain protection, given its potential for varied interpretation. The articlemen claimed that article 3 protected their estates both real and personal, as well guaranteeing their freedom to trade and practise their professions. The Waterford petition of March 1692 was again referred to the Irish lords justices.[16] The articlemen pressed for a restoration to their real estate and free practice of their professions, in addition to a ratification of the articles. On 21 March, William Blathwayt wrote to the secretary of state (Daniel Finch, earl of Nottingham) that the king had no objection to the ratification of the articles of Waterford, Boffin, or Sligo. The Waterford petition ran into difficulty when the lord lieutenant's (Henry, Viscount Sydney) investigation of the articles threw up complications. Nottingham wrote to Blathwayt that there was 'a difficulty made about the import of the word "properties", which his Majesty by those articles promised to secure to them, whether it meant of their real estates, that is estates for life or inheritance, as well as personal'. Nottingham noted that the affair depended upon William's judgment as to what he had intended by the term 'properties' at the time the articles were signed. The word, Nottingham wrote, 'is certainly in common speech equally applicable to real as personal estates'. William's ruling was swift, and disappointing for the articlemen. 'Properties' was to apply only to personal estates, not to estates of life or inheritance.[17] Fortunately for the articlemen, this was not William's final decision. In March 1693 ratification of the articles of Waterford was ordered. Opposition seems to have been made again to a construction of the word 'properties' favourable to the articlemen, for ten days later William wrote to Sydney to reverse the ruling made a year earlier. He explained:

> The word property ought, according to the true meaning and signification thereof, to be construed to extend to both real and personal estates. Roman Catholics are therefore to enjoy the full benefit of the said article according to our said declaration; and you are to give order accordingly.[18]

The reason for William's *volte face* is unclear. Perhaps his presence in England in 1693 allowed the articlemen scope for more effective lobbying.

Sydney's response to this change of policy was dilatory. In a lengthy letter to Nottingham, he outlined the reasons for his opposition to the broad construction of the word 'properties' now ordered. According to Sir Richard Cox, who was present at the signing of the articles of Waterford, the initial draft of the articles sent into Waterford was returned by the garrison, which asked that the real estate of the inhabitants be explicitly protected. William blocked this attempt to broaden the scope of the articles. Following his threat to lay siege to the city, the

15 British Library (hereafter B.L.), Add. MS 38146, f. 194.

16 H.M.C., *Finch Mss*, iv, pp. 29-30; *C.S.P. Dom.*, 1691-2, p. 180.

17 H.M.C., *Finch Mss*, iv, pp. 35-6, 315, 329.

18 *C.S.P. Dom.*, 1693, pp. 62, 81-2.

original draft was signed.[19] Nottingham responded two weeks later, stating that the king had, with the privy council of England, fully considered the construction that was to be applied to the word 'properties'. He had thought it best 'not to restrain that word to a narrower construction than the just and legal import of it'. The decision of March 1693 was to stand.[20]

William's reversal of his own decree of the previous year amounted to a substantial victory for the Waterford articlemen. Despite the ambiguous wording of article 3, with its potential for a narrow and unfavourable construction, their real estate was now protected from forfeiture. The petitions of the Waterford claimants also made mention of the freedom to practise their professions, most likely a reference to the lawyers present in the city. This ambitious claim – the articles contained no provision for professions – was probably inspired by the success of the Galway and Limerick negotiators in securing such protection. It is no surprise that they were not gratified in this request. In spite of this rebuff the articles of Waterford, with a broad construction of the word 'properties', were fully implemented by June 1693.

Accompanying the petition from the Waterford articlemen in March 1692 was another from the articlemen of Boffin. Their articles were signed almost a month after the articles of Galway, which they closely resembled, but with specific provisions for the inhabitants of Boffin. Article 3 provided for the estates of the inhabitants to be protected from forfeiture and kept free from any quit or crown rents, while article 4 promised a general pardon. In addition to specifying that the governor and officers of the garrison were to enjoy their estates, article 3 specifically named Lord Athenry and Colonel John Kelly as beneficiaries. Article 10 gave an assurance that the articles would be ratified in the same manner as the articles of Galway.[21] William ordered the ratification of the articles of Boffin in April 1692.[22] Unlike the Waterford articles, no opposition appears to have been raised in the case of Boffin.

It was not until 1697 that Athenry and Kelly, the only Boffin claimants, pressed to have the benefit of these articles applied to them. In July, a draft Irish bill to confirm outlawries and attainders arising from the Williamite war was transmitted to England. The bill went through several further drafting stages before receiving the approval of the Irish parliament as 'An act to hinder the reversal of several outlawries and attainders, and to prevent the return of subjects of this kingdom who have gone into the dominions of the French King in

19 B.L., Add. MS 38146, ff. 194-5; *C.S.P. Dom.*, 1693, pp. 157-8. Contemporary sources support Cox's account; see Kevin Danaher and J.G. Simms (eds), *The Danish force in Ireland, 1690-1691* (Dublin, 1962), p. 65; Edward Berwick (ed.), *The Rawdon papers* (London, 1819), pp. 326-9; *A letter from an English officer … with what passed at the surrender of Waterford and Duncannon* (London, 1690).

20 *C.S.P. Dom.*, 1693, pp. 176-7.

21 Story, *Continuation*, pp. 194-6.

22 *C.S.P. Dom.*, 1691-2, p. 247.

Europe'.[23] The initial draft of the bill was transmitted to London on 12 July. The letter accompanying the transmission stated that 'the articles of Galway and Limerick only are mentioned, the others being looked upon as military articles, relating solely to the surrender of particular places'. This interpretation did not prevent the inclusion of a proviso in the draft for Athenry and Kelly, 'who are included by name in the articles granted at the surrender of Boffin'.[24] In spite of the extensive alterations made to this draft, Athenry's and Kelly's proviso survived in the approved bill. The clause for the two men reversed their outlawries and attainders, subject to confirmation by William.[25] This was duly granted in July 1698 in the form of a royal pardon.[26] At this point, Colonel Kelly's son, also named John, appeared on behalf of his father, who evidently died between the passing of the act and the granting of the pardon. Athenry and Kelly evidently retained agents in Dublin and London to secure their saving clause and William's pardon. Their success probably owed much to the fact that neither man had been dispossessed of his estate during the war. As a result, there were no Protestants in possession to raise objections.

The draft bill of July 1697 for confirming outlawries and attainders was also mooted as the mechanism for confirming the articles of Drogheda and Sligo. The articles of Drogheda were the first to be signed during the war and were identical to those of Waterford. The letter accompanying the draft bill made mention of the articles of Drogheda, specifically article 3. The lords justices wrote that it:

> provides that the Roman Catholic dwellers in the town should not be molested in their property. They have not hitherto been molested in the enjoyment of their real estates, although several of them have been outlawed. These outlawries will be confirmed by this bill, unless they are specified in the saving clause.[27]

The fact, revealed here, that the Drogheda articlemen had been left undisturbed in possession of their estates for seven years may explain why this appears to be the first mention of the articles since their signing. Without the necessity of pressing for the restoration of their estates, the articlemen may well have decided that seeking a ratification of the articles could have brought unwanted scrutiny of their situation. The lords justices of England ordered that the correspondence between the garrison at Drogheda and the Williamite forces during the negotiation of the articles should be laid before the English privy council.[28] For reasons

23 9 William III, c.5. See John Bergin, 'Irish legislative procedure after the Williamite revolution: the operation of Poynings' law, 1692-1705', 2 vols (PhD thesis, University College Dublin, 2005), ii, pp. 81-6, 164-6.

24 T.N.A., SP 63/359, ff. 66-8; *C.S.P. Dom.*, 1697, pp. 243-6. I have changed the spelling of Boffin here from the original to conform to the conventions used in this article.

25 *The statutes at large, passed in the parliaments held in Ireland*, 13 vols (Dublin, 1787), III, p. 367.

26 N.L.I., MS 40,901/6/2, 6; *C.S.P. Dom.*, 1698, p. 348.

27 *C.S.P. Dom.*, 1697, p. 244.

28 *Ibid.*, p. 262.

that are not apparent, the articlemen of Drogheda were not included in a saving clause in the bill as it passed the Irish parliament. The records of the Irish forfeiture inquiry commissioners, compiled in 1699, make no reference to any estate having been restored under the articles of Drogheda, while the lack of a saving clause does not appear to have discommoded the articlemen. No record has been found of any man seeking a pardon under these articles, suggesting that their outlawries were never prosecuted. Thus, whether by default or design, the articles of Drogheda were not abrogated.

A more complicated situation was created by the handling of the articles of Sligo, both by the Irish government and the sole claimant, Sir Henry Crofton. Crofton was born to a Protestant father, but it seems he was raised as a Catholic by his mother, a daughter of the O'Conor Don.[29] The Sligo articles, despite the king's willingness, were not ratified. On 8 July 1692, Crofton appeared before the court of claims, seeking the benefit of the articles of Galway. His application was rejected.[30] Nothing further is heard of Crofton's case until a supplementary letter was sent by the lords justices relating to the 1697 draft bill for confirming outlawries and attainders. Crofton knew that the original transmission did not include any reference to the articles of Sligo and appears to have lobbied the lords justices to redress the situation. Accordingly, the supplementary letter requested that provisos saving the estates of Patrick Sarsfield (senior) and Henry Crofton also be included. Crofton was said to be comprehended within the articles of Sligo, 'under which no other person claims anything'.[31] The surrender of the garrison at Sligo had been a protracted affair, stretching out over four weeks. The most recent and fullest study attributes this to a combination of the incompetency of Colonel John Michelburne, the Williamite commander, and clever delaying tactics by Sir Teague O'Regan, his Jacobite counterpart.[32] Article 16 declared: 'That the said Governor, officers and soldiers, garrison town and county of Sligo, shall have the benefit of all and singular other advantageous articles that Galway or any other got, in case it was surrendered', though Ginkel insisted that this was to apply only to those who were in Sligo at the time of its surrender.[33] The Sligo articles were already quite comprehensive, with this last article representing a clever piece of negotiation. The negotiations at Sligo took place three weeks after the surrender of Galway, with Crofton present – though the role Crofton played in the inclusion of article 16 must remain speculative. However, it is reasonable to assume he would have assisted O'Regan during the negotiations.

A saving clause for Crofton was duly included in the act to hinder the reversal of outlawries.[34] He was also granted a royal pardon on 10 July 1698, by reason of

29 Simms, *Williamite Confiscation*, p. 79.

30 Trinity College Dublin (hereafter T.C.D.), MS 744, f. 106.

31 *C.S.P. Dom.*, 1697, p. 263.

32 John Childs, *The Williamite Wars in Ireland, 1688-1691* (London, 2007), pp. 347-64.

33 W.G. Wood-Martin, *Sligo and the Enniskilleners, from 1688-1691* (Dublin, 1882), pp. 178-81.

34 9 William III, c.5, s.23.

his entitlement to both the articles of Galway and Sligo. According to the warrant for pardon, Crofton was within the articles of Galway because he was a captain of foot in the earl of Clanricarde's regiment and was present in Galway during that garrison's negotiations. Evidently, Crofton then broke with the majority of the Jacobite forces that left Galway for Limerick, preferring instead to rendezvous with O'Regan at Sligo – an unsurprising action given that his estate was largely in County Sligo. When the court of claims sat in 1692, the Sligo articles were not within its remit, leading Crofton to claim under the articles of Galway, as was his right. However, the king's counsel, arguing against the claimants, procured a witness to state that Crofton was a prisoner of war at the time, making him ineligible for the articles and leading the court to dismiss his appeal.[35] Crofton's status as the sole claimant to the Sligo agreement must have hampered any effort to have those articles ever considered by the various courts of claims. Once this anomaly was brought to light, his case was favourably received by the Irish and English privy councils in 1697 and no opposition was raised in the Irish parliament to his proviso.[36] Crofton's estate was listed by the inquiry commissioners as consisting of almost 1,200 profitable acres.[37]

Table 1: Numbers of Successful Claimants to Articles and Estates Restored by Articles

	Date of Signing	Number of Successful Claimants, 1692-4	Number of Successful Claimants, 1697-9	Number of Estates Restored
Drogheda	2 July 1690	None	None	None*
Waterford	25 July 1690	None	None	2*
Galway	21 July 1691	2	74	3*
Boffin	19 Aug. 1691	None	None	2*
Sligo	14 Sep. 1691**	None	None	1*
Limerick	3 Oct. 1691	478	709	156*

* These figures are not representative of the total number of estates *retained* by virtue of each set of articles.

** The Articles of Sligo were originally signed on 6 August 1691, abandoned and then re-signed, with additional concessions for the garrison, on 14 September 1691.

Table 1 shows the date of signing of each set of articles, along with figures relating to the number of claimants and estates restored by articles. The number

35 *C.S.P. Dom.*, 1698, pp. 347-8.

36 *Journals of the House of Commons of the Kingdom of Ireland* (hereafter *C.J. Ire.*) (4th series, London, 1796-1802), II, 212-18.

37 T.C.D., MS 744, ff. 77-100.

of estates restored shown in the table is liable to give a misleading picture of the importance of the articles to Catholic landownership in the 1690s. Many Catholic estates, particularly in the west and south-west of the country, were never confiscated by the Williamites before the war ended. As such, it was not necessary to have their estates restored, as they were still in possession. In addition, many of these articlemen were not outlawed, or never had their outlawries prosecuted, which meant that it was not necessary for them to submit their claim to articles for adjudication.[38] These two considerations account for the fact that the numbers of successful claimants and restored estates under the articles are quite low. In reality, many more Irish Catholics retained their estates by virtue of articles, but left no record of their ownership. An examination of the figures for the articles of Galway amply demonstrates this point. To date, 124 beneficiaries of these articles have been identified.[39] Almost 40% of these men were never declared within articles in the courts of claims, yet assumed their protection. It is more difficult to provide definite numbers for the articles of Drogheda, Waterford, Boffin and Sligo. In the case of Waterford five claimants can be identified, with the knowledge that there were more.[40] Two were restored, while the others may not have required this step. The articles of Boffin and Sligo make specific mention of several men (other than Athenry, Kelly and Crofton) of whom no further record is found. As discussed above, figures for the articles of Drogheda are impossible to quantify.

The articles of Drogheda, Waterford, Boffin and Sligo were fully implemented by the Williamite government in Ireland. The attempt by the Waterford articlemen to secure freedom to practise their professions was a *post facto* effort to append additional concessions to the original agreement. Their failure in this regard was typical of William's intention to treat the articlemen 'with justice, not favour'.[41] The achievement of the Waterford, Boffin and Sligo articlemen is all the more impressive when the Williamite government's treatment of the Limerick and Galway articles is considered, though these latter two were of course more important to the nature of the Williamite settlement.

Had the Waterford articlemen succeeded in securing a declaration providing protection for their professions, they would have faced a serious obstacle created by the passage through the English parliament in 1691 of an act to replace the oath of supremacy in Ireland. The act prohibited Catholics from practising the

38 See Simms, *Williamite confiscation*, pp. 21-44.

39 The number accepted previously was 78. Simms's calculations were based on the records of the forfeiture inquiry commissioners (Simms, *Williamite confiscation*, p. 72). Using the same source, I have identified 76. An additional 47 individuals have been identified through the Galway articlemen's quit rent petition of June 1693 (see below for discussion), while the addition of Lord Bophin brings the total to 124.

40 In the November 1691 and March 1692 Waterford petitions, five men are named: Richard Fitzgerald, Edward Fitzgerald, Thomas Wise, John Porter, Edward Browne 'and others' (*C.S.P. Dom.*, 1691-2, pp. 3, 180). Wise and Porter are listed in the inquiry commissioners' records as restored to their estates by virtue of the articles (T.C.D., MS 744, f. 91).

41 T.N.A., SP 63/354, f. 43; *C.S.P. Dom.*, 1691-2, p. 169.

law in Ireland and is well known, not least because it was also the mechanism whereby Catholics were excluded from both houses of the Irish parliament. However, its impact on the articlemen has not yet been fully elucidated. The articles of Galway and Limerick were explicit in their insistence that the articlemen should have the same freedom to practise the law as lawyers had enjoyed in the reign of Charles II. The 1691 oaths act was thus of direct relevance to the articlemen of Galway and Limerick. It will be helpful to briefly trace the passage of this act through the English parliament.

II

The introduction of bills in the English parliament in 1690–1, dealing with oaths to be taken in Ireland, may have owed something to the presence of a substantial Irish Protestant refugee lobby in London.[42] Certainly the introduction of new oaths for municipal officers and members of parliament was one of the first initiatives of the Williamite government in Dublin. The earliest official step in preparation for an Irish parliament after the surrender of Limerick appears to have been the journey of Sir Richard Reynell, lord chief justice of Ireland, to London in November 1691, carrying with him drafts of several bills.[43] Their provisions are unknown, but it is probable that one was intended to abrogate the oath of supremacy in Ireland and replace it with new ones. This at least is implicit in Nottingham's letter written the day after Reynell arrived in London, telling the Irish lords justices that their intention to do just this was unnecessary, given that a similar measure was already under consideration in the English parliament.[44]

Nottingham was referring to an English bill 'for the abrogating the oath of supremacy in Ireland and appointing new oaths' which was before parliament from October to December 1691.[45] As enacted, it stipulated that any person wishing to practise the law in Ireland had to take the new oath of supremacy, which Catholics could not swear because it required them to deny the spiritual authority of the Pope. In addition, qualified barristers had to make a declaration rejecting the doctrine of transubstantiation before being permitted to appear in court. Any Catholic reciting the declaration would have performed a *de facto* conversion to the Church of Ireland.[46] As with later penal legislation enacted in Ireland, the act included a saving clause for the beneficiaries of Limerick.[47] The

42 *The correspondence of Henry Hyde, earl of Clarendon*, ed. by S. W. Singer, 2 vols (London, 1828), II, pp. 239-60; Richard Caulfield (ed.), *Journal of the Very Rev. Rowland Davies* (London, 1857), pp. 17, 27, 60-61.

43 Narcissus Luttrell, *A brief historical relation of state affairs from September 1678 to April 1714,* 6 vols (Oxford, 1857), II, pp. 304-5 (entry for 13 November 1691).

44 H.M.C, *Finch Mss*, iii, p. 299.

45 3 William & Mary, c.2 [Eng]; *The Statutes of the realm, printed by command of his Majesty King George the third* (London, 1819), VI, pp. 254-7.

46 C. I. McGrath, 'The provisions for conversion in the penal laws, 1695-1750,' in Michael Brown, C. I. McGrath and T. P. Power (eds), *Converts and conversion in Ireland, 1650-1850* (Dublin, 2005), pp. 37-8.

47 3 William & Mary, c.2, s.9 [Eng]; *The articles of Limerick*, pp. 5-6.

passage of the bill, and in particular the Limerick saving clause, was not straightforward, prompting several disagreements between the two houses.

Compromise was reached after the commons persuaded the lords that, though they too wished to recognise the articles of Limerick, the concessions to Catholic lawyers proposed by the lords granted 'a greater privilege to such persons than they themselves, by the said articles, demanded or provided for'.[48] The argument proved persuasive. By 10 December the bill had been approved by both houses and received the royal assent two weeks later.[49] The ninth clause exempted lawyers and physicians comprehended in the articles of Limerick from the act's provisions.[50] No mention was made of the articles of Galway.

Table 2: Methods of Implementing the Articles

	Ratified under the Great Seal of England	Confirmed by Act of Parliament	Abrogated by Act of Parliament	Terms of Articles Fully Implemented[51]
Drogheda	No	No	No	Yes
Waterford	Yes	No	No	Yes
Galway	Yes	7 William III, c.5;[52] 9 William III, c.5[53]	3 William & Mary, c.2[54] [Eng.]	No
Boffin	Yes	9 William III, c.5	No	Yes
Sligo	No	9 William III, c.5	No	Yes
Limerick	Yes	3 William & Mary, c.2 [Eng.]; 7 William III, c.5; 9 William III, c.5	9 William III, c.2[55]	No

Shading in grey indicates that the articles were only partially confirmed by these acts.

48 *LJ*, xiv, p. 681.

49 *CJ*, x, pp. 580-1, 597; *LJ*, xiv, pp. 680-1, 702.

50 *Statutes of the realm*, VI, pp. 254-7.

51 It should be noted that the articles of Galway, Boffin, Sligo and Limerick included provisions relating to the freedom of Catholics to practise their religion. No attempt has been made here to discuss this issue which is deserving of a separate study.

52 An act for the better securing the government, by disarming papists (1695). Saving clause for the articlemen of Galway and Limerick at s.4.

53 An act to hinder the reversal of several outlawries and attainders, and to prevent the return of subjects of this kingdom who have gone into the dominions of the French King in Europe (1697). Saving clause for the articlemen of Galway and Limerick at s.1, and for the articlemen of Boffin and Sligo at s.18 and s.23 respectively.

54 An act for the abrogating the oath of supremacy in Ireland and appointing new oaths ([Eng.], 1691). Abrogation of the articles of Galway by the omission of a saving clause for lawyers. Saving clause for the articlemen of Limerick at s.9.

55 An Act for the confirmation of articles, made at the surrender of the city of Limerick (1697). Abrogated by the omission of an important clause from article 2.

The 1691 oaths act was not the only piece of legislation that touched on the articles of surrender. Table 2 shows how the articles of Drogheda, Waterford, Galway, Boffin, Sligo and Limerick were confirmed (fully or partially) and abrogated by various acts during the 1690s. A column for ratification under the great seal of England has been included, though the legal implications of ratification are unclear. This is best illustrated by the ratification of the complete articles of Limerick in 1692, while the 1697 act confirming the articles of Limerick omitted an important clause from article 2.

III

The articles of Galway were significantly more detailed than previous terms of surrender, reflecting the importance of the town to the Jacobite war effort, the pressure Ginkel was under to conclude the war that year and the presence of experienced lawyers among the Irish negotiators. The evidence that survives relating to the articlemen of Galway comfortably outstrips those of Drogheda, Waterford, Boffin and Sligo. It reveals the dedicated pursuit by the articlemen of the rights promised them by the terms of surrender. At times this pursuit caused the articlemen to band together to form a lobby group, of fluctuating membership, which achieved certain levels of success. Concurrently, claimants also petitioned for their individual rights as promised to them by the articles. During the 1690s, Arthur French, Denis Daly and John Bourke (first Baron Bophin and future ninth earl of Clanricarde) proved to be key figures in the pursuit of the articles of Galway.

Articles 8, 9, 12 and 13 were, from a Catholic perspective, the cornerstones of the articles of Galway. Article 8 secured a general pardon for the governor of Galway (Henry, Viscount Dillon), the office holders of Galway corporation and the freemen, natives and the inhabitants of the town. Crucially, the article covered all those who held office under the charter issued for Galway by James II.[56] Article 9 protected from forfeiture the estates all of those just mentioned, as well as the officers of the Irish army then in the town of Galway. Article 12 promised the Catholic lawyers present the freedom to practise their profession as they had done in the reign of Charles II. Article 13 extended the protection of article 9 to any officer of a regiment garrisoned in the town at the time of negotiation, even if he had not been within the town walls.[57] Article 9 was a vastly superior protection of personal and real estates to article 3 of the Waterford and Drogheda surrenders, while article 12 secured the protection for lawyers that had eluded the negotiators at Waterford.

56 For the *quo warranto* proceedings and reissuing of borough charters in Ireland under James II, see Simms, *Jacobite Ireland*, pp. 34-5; James McGuire, 'A lawyer in politics: the career of Sir Richard Nagle, c.1636-1699', in Howard Clarke and Judith Devlin (eds), *European Encounters* (Dublin, 2003), pp. 124-5; D. W. Hayton, *Ruling Ireland, 1685-1742: politics, politicians and parties* (Suffolk, 2004), pp. 14-15.

57 *The articles of Galway exactly printed from the letters patents* (Dublin, 1692), pp. 5-7.

In 1692, only three men claimed the benefit of the articles of Galway at the court of claims, with one refused.[58] A dispute arose that year regarding the interpretation of articles 8 and 9 of Galway, ensuring that no further claims were heard until 1697.

The force of article 12 was immediately tested by the passage of the 1691 oaths act. No mention was made of the articles of Galway in the act itself, nor do they appear to have entered into the debates over the bill in the commons or lords. According to a later petition, the reason for this omission was the simple mislaying of the copy of the articles then held in the office of the secretary of state.[59] Though this error seems an innocuous one, the immediate result was the effective abrogation of article 12. This act may have been the spur for the despatch of Denis Daly to London as agent to the Galway articlemen in December 1691, though he appears to have had no impact on the proceedings in the English parliament.[60] Daly was not the only agent of the articlemen in London at the time. The petitions of the articlemen of Boffin and Waterford imply the presence of lobbyists working on their behalf, while the articlemen of Limerick were represented by Edmund Malone, John Galwey and Adam Colclough in late 1691. Colonel Henry Luttrell and Sir Toby Butler (one of the negotiators of the articles of Limerick) were empowered to act jointly with Colclough, so were perhaps also in London at this time.[61] The November petition of the Waterford articlemen, and the employment of various agents, mainly lawyers, shows how rapidly Catholic energies and organisation were deployed from the military to the political arena in the aftermath of defeat.[62]

Daly almost certainly arrived in London too late to press the case of the Galway articlemen. His letter of introduction to the English government from Sir Charles Porter is dated 6 December.[63] Even if he had embarked for England that

58 Denis Daly (8 June 1692) and Patrick French (17 June 1692) were adjudged within articles (T.C.D., MS 744, ff. 108-9). Sir Henry Crofton's claim was rejected. See discussion of the articles of Sligo, above.

59 *The state of the case of Denis Daly, and Edmund Malone, Esqrs; and of a few other lawyers, of the town of Gallway, in the kingdom of Ireland* (Dublin, 1696); *C.S.P. Dom.*, 1695 & Addenda, 1689-95, p. 190; Colum Kenny, 'The exclusion of Catholics from the legal profession in Ireland', *I.H.S.*, xxv (1986-7), p. 351.

60 Denis Daly (c.1638-1721) was a justice of the common pleas during James II's reign. He was a controversial figure in the Jacobite parliament of 1689, where as a leader of the Catholic 'new interest' he was a vocal opponent to the repeal of the Act of Settlement. During the war, he corresponded with the Williamite forces and was arrested by Sarsfield in January 1691. However, he was soon released and played a prominent role in the surrender of Galway, leading Ginkel to write to the lords justices that 'Judge Daly has done good service' (H.M.C., *Fourth report*, appendix, p. 322).

61 Staffordshire Record Office, Strafford Family Collection, D641/2/K/2/4J-K. I am grateful to Dr John Bergin for these references.

62 For an examination of the activity of Irish Catholic lawyers (especially Colclough) and the development of Irish Catholic networks in England from the late seventeenth century onwards, see John Bergin's article in this volume, pp. 37-62.

63 T.N.A., SP 63/353, f. 101; *C.S.P. Dom.*, 1691-2, p. 25. The calendar of state papers notes that Porter's letter was addressed to Viscount Sidney, but later correspondence suggests that Nottingham was the intended recipient (*C.S.P. Dom.*, 1691-2, p. 251).

day, he could hardly have arrived in London before 10 December, the day that the oaths bill passed the lords and commons in its final form. The articles of Galway were thus abrogated by the English parliament.

The response of the Galway group was to lobby for a further English or Irish act of parliament to remedy the situation. A petition to the Irish lords justices and privy council from the claimants stated that it was to the 'utter ruin of themselves and their families' that they were excluded from the benefit of the articles.[64] Although it is unclear who actually delivered this petition and lobbied for its approval, it was transmitted to Nottingham with a positive recommendation from the Irish government.[65] The right of the Galway articlemen to practise the law was to be confirmed by a bill sent to England for approval in August 1692, entitled 'An Act enabling persons comprehended in the Articles of Galway to use certain professions and callings and for the better securing the Protestant creditors of Colonel John Browne'.[66] It has been argued that the desire of the lords justices to honour the Galway articles in full, coupled with the drafting and transmission of this bill, is proof of the immediate relief of the Galway lawyers.[67] However, this interpretation does not take account of a letter from Nottingham stating that the bill was not returned to the Irish council because it was inconsistent with an act passed in England, presumably that for implementing new oaths.[68] Bills were often not returned to Ireland when their provisions were assumed to have already been legislated for in England.[69] Subsequently, the Galway claimants hoped for relief through a clause in the act of indemnity then before the English parliament. The articlemen were again disappointed, as the proposed act of indemnity foundered.[70]

By 1696 the Galway lawyers had still to receive the benefit of article 12. A petition was presented in January of that year to the English house of commons by Denis Daly, Edmund Malone and several (unnamed) others, setting forth much the same claim as the previous petition of 1692.[71] Malone's appearance in support of this petition is one example of the resourceful and, strictly speaking, extra-legal processes some claimants embarked upon in order to attain the benefit of the articles – particularly those vulnerable to rejection through a narrow interpretation of the articles. Malone left Ireland in 1690 to avoid any association with the Jacobite forces, moving with his family to Wales. He successfully

64 T.N.A., SP 63/354, ff. 98-9; *C.S.P. Dom.*, 1695 & Addenda, 1689-95, p. 190.

65 T.N.A., SP 63/354, f. 97; *C.S.P. Dom.*, 1695 & Addenda, 1689-95, p. 190.

66 T.N.A., SP 66/B/13, f. 9; *C.S.P. Dom.*, 1695 & Addenda, 1689-95 p. 195.

67 Kenny, 'The exclusion of Catholics from the legal profession in Ireland', p. 351. Kenny's footnote to this point makes references to pp. 190 and 195 in *C.S.P. Dom.*, 1697, where *C.S.P. Dom.*, 1695 and Addenda, 1689-95 apparently is meant.

68 *C.S.P. Dom.*, 1691-2, p. 447.

69 J. I. McGuire, 'The Irish parliament of 1692', in Thomas Bartlett and David Hayton (eds), *Penal era and golden age: essays in Irish history, 1690-1800* (Belfast, 1979), pp. 1-31.

70 *C.S.P. Dom.*, 1691-2, pp. 301, 478, 492-3, 497.

71 *CJ*, xi, pp. 392-3; *The state of the case of Denis Daly and Edmund Malone, Esqrs.*

petitioned for a free pardon and the reversal of his outlawry, which had been prosecuted in his absence.[72] The pardon alone would not, however, have been sufficient to allow him to continue to practise the law. The 1696 petition suggests that Malone attempted to circumvent this handicap by claiming under the articles of Galway.

The commons referred the Galway lawyers' case to a committee already considering legislation designed to modify the 1691 oaths act. A counter-petition was subsequently presented by a Robert Johnson, 'on behalf of himself and the Protestants of Ireland', in an effort to undermine the Galway articlemen's efforts. Johnson alleged that the true intent of the Daly-Malone petition was 'to introduce great numbers of Irish papists into the free practice of the law in Ireland, and to repeal a statute made to prevent the dangers that might arise from such encouragement'. In February the committee reported that, prior to Johnson's petition, they had agreed a clause to provide relief to the articlemen. Johnson's representation caused them to reconsider and they requested more time to deliberate. The entire bill, including the articlemen's saving clause, was subsequently dropped.[73] There does not appear to have been any further effort to reverse the provisions of the 1691 oaths act as they related to the Galway lawyers.

A more successful appeal by the Galway articlemen had previously been presented to the Irish government in June 1693. Article 9 of the Galway surrender, which preserved the estates real and personal of all of the inhabitants of Galway, also provided that the inhabitants should be exempt from all crown and quit rents payable for the duration of the war.[74] The petition noted that the commissioners of the revenue had issued to the claimants (67 of whom are named by the petition) a demand for four and a half years' quit rent. Stating that the payment of such would 'render your petitioners' estates waste', a request was made that the demand be reduced to just one year's rent. After some discussion the privy council agreed to the petition and the offer of one year's quit rent.[75] The success of this appeal was due to its foundation on a strict interpretation of the articles, while the benefit allowed the articlemen was not in conflict with any acts of the Irish or English parliaments.

IV

One of the more interesting sub-plots that developed during the negotiation of the various articles of surrender was the case of the debt of Colonel John Browne. Browne was a distinctive figure. Born c.1638, he was a distinguished lawyer and

72 *C.S.P. Dom.*, 1691-2, pp. 10-11, 162, 177; H.M.C., *House of Lords Mss*, new series, IV (1699-1703), p. 28. This is probably the same Malone who was representing the Limerick articlemen in London in December 1691.

73 *CJ*, xi, pp. 417, 437; H.M.C., *House of Lords Mss*, new series, II, p. 123.

74 *The articles of Galway*, pp. 5-6.

75 National Archives of Ireland (hereafter N.A.I.), Wyche papers, 2/119, ff. 1-3.

prominent entrepreneur in Connacht, with salt mines and iron works in Mayo. During the Williamite war he was given the rank of colonel, but does not figure in any contemporary accounts of military engagements. His principal role during the war seems to have been to apply, with occasional reluctance, his considerable assets to the Jacobite war effort.[76] In the context of the articles of surrender, Browne is a unique figure – he is the only person who is named in two separate sets of articles of surrender and actually comprehended within no fewer than three sets of articles (Boffin, Galway and Limerick). His main importance to the Williamite settlement in Ireland arises from article 13 of Limerick. Browne was heavily indebted to several Protestant creditors whom he was in no position to repay following the war. Article 13 stated that:

> for preventing the ruin of the said John Browne, and for satisfaction of his creditors, at the instance of the Lord Lucan [Patrick Sarsfield]…it is agreed, that the said Lords Justices and the said Baron de Ginkel shall intercede with the King and parliament, to have the estates secured to Roman Catholics, by articles and capitulations in this kingdom, charged with, and equally liable to the payment of…the said debts.

The wording makes it clear that, although only representatives of the Limerick garrison were present at the signing of the articles of Limerick, all other Catholic estates preserved in Ireland by any articles of surrender were to be encumbered with Browne's debt.[77] This assumed an arbitrary power on the behalf of the Jacobite negotiators at Limerick over all Irish Catholic estates. The beneficiaries of articles agreed prior to 3 October 1691 were in fact no longer under Jacobite authority. They were not represented at Limerick, thus were unable to voice any objection to article 13. The Jacobite negotiators at Limerick, by agreeing to this clause, were speaking for Irish Catholics who were already under the control of the Williamite government. Presumably it suited both teams of negotiators to ignore this point, as both sides benefited from article 13. In addition, the Jacobite negotiators at Limerick represented King James's government in Ireland, and so could claim powers to negotiate for the Jacobite interest at large.[78]

No doubt the Galway articlemen were unhappy with the imposition of part of Browne's debt on their estates. The attempts of some of them to escape it can be traced through proceedings upon a bill sent to England to secure the money owed to Browne's Protestant creditors in 1695. A petition from these creditors to the lord deputy (Henry Capel) recited the attempts of some Galway articlemen to prevent the passage of the bill, presumably in order to delay or avoid payment of

76 Draft entry for John Browne (1638-?1712), *Dictionary of Irish Biography*, forthcoming. For Browne's reluctance to contribute to the Jacobite war effort, see Colonel Robert Fielding to Colonel John Browne, 26 Feb. 1690 (N.L.I., MS 40,899/2/15).

77 *The civil articles of Lymerick*, pp. 8-9.

78 This power was also implicit in the insistence of the Jacobite negotiators on including, in article 2, all of the garrisons then held in Catholic hands; the infamous missing clause of the 1697 act confirming the articles of Limerick.

any money.[79] The petitioners made reference to 'many debates and hearings' in 1692 before the lords justices and Sydney, then lord lieutenant, relating to the debt, before it was finally conceded by Catholic agents that article 13 applied to all Catholic articlemen. The agreement stated that a once-off payment from each such Catholic, to the value of one year's quit rent from their estates, should be made to the Protestant creditors. A bill to this effect was transmitted into England for approval in August 1692, and again in October 1695.

On 31 October the English privy council received two petitions against the bill. There were two distinct groups of Catholic lobbyists – one representing the 'articled men of Ireland' and another solely representing the articlemen of Galway.[80] On 7 November 1695 the petitions were referred to the attorney and solicitor general of England. The basis of the objections put forward by the two groups of petitioners was a certificate, signed by Ginkel on 10 February 1692, which stated:

> Whereas in the Articles of Limerick there is a provision made for a sum of money to be secured to Colonel John Browne and his creditors…I do declare that the said sum was to be secured on the estates of those managers of the Irish that were party to the said Articles of Limerick only and not on any other person whatsoever.[81]

A letter from Porter to Thomas Coningsby, a fellow former lord justice and co-signatory of the articles of Limerick, written in November 1695, casts doubt upon the accuracy of this document:

> There is some obstruction as I understand it on the behalf of Galway against Colonel John Browne's creditors' bill and this upon the mistake of a certificate made by General Ginkel. This is a popular bill for the Protestant creditors of Mr Browne, and I do assure your lordship this unhappy mistake of my Lord Athlone [Ginkel] if it should hinder the passing of Mr. Browne's bill may prevent the passing of his lordship's bill. And you cannot do anything more grateful than to assist the passing of this bill.[82]

The petition presented to Capel from the Protestant creditors asserted that Ginkel's certificate was either forged or 'had by surprise'. A lengthy report was sent to London from the Irish privy council on 15 November 1695, which may well have had something to do with the dropping of the petitions from the two groups in London opposing the bill.[83] The report stated that:

> Upon hearing their Majesties' counsel, the counsel for the creditors of Colonel John Browne, and counsel for the claimants of the Galway articles, on 17 June

79 T.N.A., SP 63/357, ff. 151-2. This was the second attempt to secure legislation securing the debts of Browne's Protestant creditors. The first was made in 1692, and is discussed above.

80 H.M.C., *Downshire Mss*, i, p. 574; T.N.A., PC 2/76, ff. 208-9.

81 T.N.A., SP 63/357, f. 152.

82 Public Record Office of Northern Ireland, D/638/18/58.

83 T.N.A., SP 63/357, ff. 149-54.

> 1692, in relation to the said Colonel John Browne's clause, it was settled by consent of most of the persons claiming under the articles of Galway that they should give the same security as the claimants of Limerick did…for satisfaction of Colonel John Browne's debt, and in pursuance thereof, as appears by several affidavits, the most considerable persons claiming under the articles of Galway signed an instrument to that purpose.[84]

Appended to the report were affidavits from Arthur French and Martin Blake, both beneficiaries of the articles of Galway.[85] These affidavits suggest a split among the Galway articlemen as to whether to oppose the bill, and the council's report significantly mentions the consent of *most* of the Galway articlemen. That there were representations against the bill from some Galway articlemen is not in doubt. However, the appearance of others in support of the petition of the Protestant creditors is compelling evidence for a split. French's and Martin's affidavits are almost identical in wording and were delivered on the same day, suggesting co-ordination on their part. They stated that about three years previously (i.e. sometime in 1692) several men of 'good estates' sent an instrument (probably that mentioned in the privy council's report) to Denis Daly, then agent for the Galway articlemen in England. He was instructed not to contest the article made for John Browne and informed that the articlemen consented to be encumbered with their proportion of his debt.[86] After all, in late 1692 the English council was considering the bill which would not only have relieved the lawyers of Galway, but also secured Browne's Protestant creditors. The combination of the two within a single bill must have inhibited the Galway claimants from contesting Browne's clause, for fear of jeopardising their own provision. Though the 1692 bill ultimately failed, the 1695 bill overcame the objections of the articlemen, was returned to the Irish parliament and received the royal assent on 7 December.[87]

The 1695 Browne bill did not have a clause providing relief for the lawyers of Galway, which could have cleared the way for the Galway articlemen to renege on their promise and actively oppose the bill. The affidavits of French and Blake make it clear that this course was not pursued by all articlemen. Indeed, the Irish house of commons extended a protection to French and Colonel Garret Moore to 'attend the passing of Colonel Browne's Bill'.[88] A possible explanation for the passivity of the articlemen may be found in the appearance of petitions from Denis Daly and Edmund Malone to the English privy council on 24 November 1695, just three weeks after the representations against Browne's bill by some Galway articlemen.[89] These petitions were the forerunners of the legislation considered in 1696 for relief of the Galway lawyers. It may have been feared that

84 T.N.A., SP 63/357, ff. 149-50; *C.S.P. Dom.*, 1695 & Addenda, 1689-95, pp. 101-2.

85 For their adjudications, see T.C.D., MS 744, ff. 122, 129.

86 T.N.A., SP 63/357, f. 154; *C.S.P. Dom.*, 1695 & Addenda, 1689-95, p. 102.

87 7 William III, c.2 (private).

88 *C.J. Ire.*, ii, 131.

89 T.N.A., PC 2/76, f. 213.

any obstruction by the Galway claimants to Browne's bill would have a detrimental impact on Daly's and Malone's appeals. French's and Blake's affidavits can be seen as an attempt to curry favour with the Irish and English administrations, while it is conceivable that the petitions of Daly and Malone were timed to coincide with the arrival of the affidavits.

V

Perhaps the most important issue on which the articlemen of Galway lobbied was the disputed interpretation of articles 8 and 9. The depositions taken before the forfeiture inquiry commissioners in 1699 attest to the large number of claimants to the articles who were not actually within the town at the time of the negotiations.[90] The wording of the articles did not require them to have been present, yet the clamour raised by Protestants against such judgments meant that claims under the articles of Galway were not heard in 1694. It was not until April 1697 that the controversy was addressed by the king. Following consultation with the English privy council, an order was made to the effect that the articles were to apply only to those who were actually within Galway town at the time of the negotiations.[91] William's decision marked a distinct shift from his earlier policy of encouraging a construction of the articles 'with justice'. By the new interpretation the benefit of article 9 was to apply only to those officers present in the garrison during the negotiations, thus nullifying article 13. The response of the articlemen was to rely once again on Denis Daly's lobbying in London, while Arthur French was despatched to the continent to solicit the king to rescind his declaration. French was in London, petitioning for a grant of lands to his son-in-law, James Farrell, from July to September 1697. He then secured a pass to travel to Holland, presumably in order to seek an audience with William.[92] While on the continent, French also sought the further assistance of Ginkel, who seemed well disposed to such requests.[93] London was awash with Irish agents at this time, actively lobbying against several Irish bills then under consideration, including one to confirm a modified version of the articles of Limerick, one for the banishment of Catholic bishops and regular clergy and another to prevent Protestants intermarrying with Catholics.[94] The Williamite authorities intercepted the correspondence of Daly and French, revealing the dual purpose of their presence in London. Remarkably, this does not seem to have adversely affected the personal petitions both men were pressing at Whitehall or to have led to restrictions on their movement. In French's case, it merely led the lords

90 N.L.I., Annesley Mss, xxiii, ff. 100-115.

91 T.N.A., PC 2/76, f. 623 (this entry seems to have been added at a later date, in a different hand); N.L.I., Annesley Mss, xxvii, f. 159; *C.S.P. Dom.*, 1697, pp. 144, 197.

92 *C.S.P. Dom.*, 1697, pp. 265, 270, 357.

93 Ginkel was always ready to intercede with William on behalf of claimants to the articles of Galway, particularly those with whom he had met before and during the negotiations (*C.S.P. Dom.*, 1697, pp. 265, 269-71, 341-2, 355, 357, 392); Simms, *Williamite confiscation*, p. 68.

94 *C.S.P. Dom.*, 1697, pp. 220-400, *passim*.

justices of England to observe that his efforts to undermine the decisions of the government to which he was appealing 'did not much recommend one who had private business of his own depending'.[95]

This mild censure aside, the combined efforts of Daly, French and Ginkel, who repeatedly pleaded the case of the Galway claimants, seem to have persuaded William that his declaration was unduly restrictive. Although there appears to have been no official attempt to countermand the declaration of April 1697, throughout 1698 and afterwards several claimants to the Galway articles were granted royal pardons, despite their absence from Galway town in the latter half of July 1691.[96] Lord Bophin was a prominent example.

John Bourke, the second son of William, seventh earl of Clanricarde, was called to sit in the Irish parliament of 1689 as Baron Bourke of Bophin.[97] He was colonel of a regiment of foot during the war and taken prisoner at the battle of Aughrim in July 1691.[98] This capture was to prove a considerable inconvenience to Bophin for the following decade, as it meant he was imprisoned in Dublin Castle during the Galway negotiations.[99] However, article 13 covered Lord Bophin, as part of his regiment was present in Galway and had acted as hostages in the Williamite camp during the negotiations.[100] Ginkel, according to witnesses and his own testimony, explicitly agreed that Bophin was to be comprehended within the article. Article 13 stipulated that all regimental officers were to submit to the governor of Galway within three weeks, a proviso that appears to have been based on Ginkel's belief that Bophin and other prisoners of war would be swiftly released following the signing of the articles. Nevertheless, Bophin remained in prison and could not make his submission to Henry Bellasis, the Williamite governor of Galway, within the specified time limit.[101] Arthur French travelled to Ginkel's camp at Limerick to investigate why Bophin, with the other prisoners of war, had not yet been released, thereby jeopardising their chances of coming under the protection of the Galway terms. Ginkel informed him that the matter had been taken out of his hands, the prisoners having been ordered to London. In mitigation, he promised to pursue their release as vigorously as

95 *Ibid*., 1697, pp. 392, 460.

96 B.L., Add MS 21136, f. 5; *C.S.P. Dom*., 1698, pp. 176-7, 345-6, 347-8, 358, 363; *ibid*., 1699-1700, pp. 103, 197.

97 G. E. Cockayne, *The complete peerage*, ed. by Vicary Gibbs, 14 vols (London, 1913), iii, p. 234. This is one of the few instances of the creation of a peerage by virtue of a summons to parliament.

98 According to F. G. James (*Lords of the ascendancy: the Irish House of Lords and its members, 1600-1800* (Dublin, 1995), p. 53), Bophin went into exile with James II after the war, returning later in the decade. The account here suggests that this was not the case.

99 *C.S.P. Dom*., 1693, p. 231.

100 'Hostages' were generally exchanged by both sides during surrender negotiations and were usually well treated by their hosts.

101 *Calendar of Treasury Books* (hereafter *C.T.B*.), xiv, 1698-9, pp. 336-7; *The case of John Burke … humbly offered to the consideration of the honourable the house of commons* (London, 1701).

possible.[102] French then travelled to England early in 1692 and met with Bophin twice, first at Chester where he was still in custody. At their second meeting, in London, Bophin had been released after Ginkel interceded with William.[103] Bophin returned to his estate where he joined his wife and nine children, having taken the oath of allegiance.[104]

The opening of hearings into the land forfeitures in Ireland after the passage of the act for confirming the articles of Limerick in 1697 forced Bophin to pursue his claim for the legal title to his estate. The provisions of this act confirmed the pardons and titles of those whose claims, under the respective articles agreed between 1690 and 1691, had been passed by 2 September 1699.[105] Bophin, for reasons that are not fully clear, had never pursued his adjudication under the articles. As a result, he was forced to bring his case before the judges. They in turn declared that according to their strict interpretation, pursuant to William's 1697 declaration, Bophin was not within the articles.[106] Bophin next petitioned William for a special pardon. His case was complicated by a previous grant of his lands to Joost van Keppel, earl of Albemarle, a favoured courtier of the king.[107] Accordingly, Bophin entered into a negotiation with Albemarle to be restored to his estates. It was at this time that the Catholic network based in Galway again came to the fore.

At some time in 1697 Bophin travelled to London to seek an audience with Albemarle, where it was agreed that in return for £7,500, Albemarle would use his influence with the king to have him send a letter to the lords justices directing that Bophin be adjudged within articles. Bophin simultaneously sought a letter from Ginkel to reinforce his claim. Both letters, from Ginkel and from William, directing the restoration of Bophin to his estate, were procured.[108] Alan Brodrick, solicitor-general for Ireland, argued that this was still insufficient to have Bophin comprised within articles.[109] John Methuen, lord chancellor of Ireland, informed Bophin that he had little chance of succeeding in his claim with letters alone and advised him to seek a private bill in the Irish parliament.[110] Two obstacles had hindered Bophin's case up to this point. The first was William's 1697 declaration limiting the scope of the articles. The second was his inability to produce a certificate of submission to the governor of Galway within three weeks of 26 July 1691.[111] Having succeeded in securing a private bill, transmitted to England by

102 Bodleian Library, Oxford (hereafter Bodl.), Carte MS 113, f. 368.

103 Ibid; N.L.I., Annesley Mss, xx, f. 2.

104 Bodl., Carte MS 113, ff. 373-4; N.L.I., Annesley Mss, xx, f. 2.

105 9 William III, c.2, s.9.

106 N.L.I., Annesley Mss, xx, f. 2; *The case of John Burke*.

107 Simms, *Williamite confiscation*, p. 70.

108 N.L.I., Annesley Mss, xxvii, ff. 161-3; Bodl., Carte MS 113, ff. 373-4; N.L.I., Annesley Mss, xx, f. 2; *C.S.P. Dom.*, 1698, pp. 176-7.

109 N.L.I., Annesley Mss, xxiii, f. 139; Simms, *Williamite confiscation*, p. 70.

110 N.L.I., Annesley Mss, xxiii, f. 145.

111 Bodl., Carte MS 113, ff. 382-3, 394. Galway was invested by the Williamite forces on 26 July.

the Irish privy council and returned with minor amendments from the English privy council, Bophin saw the proposed bill rejected by the house of commons on 17 January 1699.[112] In spite of this setback, Bophin resorted to the ultimate authority in Irish affairs, seeking and receiving a private act for reversing his outlawry in the English parliament. His estate was placed in the hands of trustees for the benefit of his children, with his two eldest sons to be raised as Protestants, a stipulation he had already agreed to during his negotiations with Albemarle.[113]

Bophin's attempt to secure his estate from forfeiture, a process that took more than a decade, was not typical of the Galway articlemen. However, his case was of great importance in that his circumstances in July 1691 were influential in both the negotiation and interpretation of the articles. He and Colonel Walter Burke were the inspiration for article 13, while the reopening of the court of claims for the articlemen in 1697 forced Bophin to lobby hard for William's declaration on the articles of Galway of that year to be ignored.

The evidence that survives from Bophin's case also offers insight into the activities of a Catholic elite following defeat in the Williamite war and the importance attached by both sides to the articles of Galway. Denis Daly and Arthur French, both beneficiaries of the articles, were instrumental in securing Bophin's estate. From the time of the surrender negotiations up to the passage of the private act, French consistently strove to bring Bophin's case to the attention of the Dublin and London administrations. Daly was no less important to Bophin's cause, representing him in negotiations with Thomas Brodrick, Albemarle's agent. Daly employed his own son James, described as of Gray's Inn in London, when unable to travel to England in person.[114] In the course of his agency for Bophin, Denis Daly adroitly enlisted the assistance of John Methuen, Thomas Coote, a justice of the common pleas, and Thomas Brodrick.[115] It may seem unusual that Protestant political support was lent to a Catholic appeal at this time, particularly in the light of the trenchantly anti-Catholic attitude of the 1695 Irish parliament.[116] However, it must be noted that the private activities of Protestant politicians during the 1690s were often diametrically opposed to government policy. In 1697 Methuen lamented this fact when he wrote that Irish politicians seemed 'earnest against the Papists upon account of the English interest, but often proposing to themselves other matters'.[117] One explanation offered for this anomaly is that Irish society was closely interlinked, with

112 B.L., Add. MS 9715, f. 28; T.N.A., PC 2/77, ff. 279, 282; *C.J. Ire.*, ii, p. 298.

113 1 Anne, c. 39 [Eng] (private); B.L., Add. MS 4761, f. 64; Simms, *Williamite confiscation*, p. 71.

114 N.L.I., Annesley Mss, xxiii, ff. 9, 39. For James, see H. A. C. Sturgess, *Register of admissions to the Honourable Society of Middle Temple*, 3 vols (London, 1949), i, p. 230.

115 N.L.I., Annesley Mss, xxiii, ff. 144-8.

116 C. I. McGrath, 'Securing the Protestant interest'; idem, *The making of the eighteenth-century Irish constitution*, pp. 73-117; Hayton, *Ruling Ireland*, pp. 52-62.

117 H.M.C., *Portland Mss*, iii, pp. 588-9.

Protestant families often tied to Catholics through marriage.[118] These links were further supplemented by frequent contact among professional classes during Charles II's reign, leading to the formation of working friendships and alliances. This type of co-operation often ignored religious divisions, as illustrated by Archbishop William King's letter of 1701 in support of a Catholic friend, where he declared it was 'the misfortune of men to be in parties, but I never thought that a reason to break friendship, where one did not do anything base or unworthy or particularly malicious'.[119] Further evidence of the importance of these close personal links may be added through the assertion by Sir Richard Cox in 1699 that 'there are not in Europe any Papists better affected to the English interest than the inhabitants of Galway'.[120] His statement was part of a longer speech made when he passed judgment on the claim of six men seeking the benefit of the Galway articles. The root of his claim may be directly traced to the peace faction in Galway responsible for the swift surrender of the town. Many of the Galway claimants were of this faction, and their adherence to legal avenues to pursue their claims, rather than participating in explicitly Jacobite activity, probably improved Protestant perceptions of their cause.

There were two further important considerations. Large sums of money smoothed the way for Bophin and were surely of importance in securing political support. His case came under considerable scrutiny from the forfeiture inquiry commissioners in 1699, due to the large amounts of money changing hands during negotiations and the ambiguity which surrounded the destination of this money.[121] In their report to the English parliament the commissioners included details of the deals that Bophin struck with Albemarle and his agents, confirming that at one point Albemarle was to receive £7,500, with a further £1,500 finding its way into the pockets of various agents. They concluded that this was the primary consideration that prompted the Irish house of commons to reject Bophin's private bill.[122] Equally important was Bophin's consent to have his two eldest sons educated as Protestants, thus securing his extensive estates to Protestants. His sons were duly enrolled at Eton College.[123] By doing so Bophin was taking heed of Protestant fears of a vibrant landowning Catholic class remaining in Ireland after Limerick. Catholics were of course also banned from employment in municipal and national government, as well as careers in the military. As such, Bophin's decision reflected a pragmatic attempt to ensure that

118 Thomas Doyle, 'Jacobitism, Catholicism and the Irish Protestant elite, 1700-1710', *Eighteenth Century Ireland*, xii (1997), 28-59.

119 T.C.D., MS 1489/1, f. 55; Doyle, 'Jacobitism, Catholicism and the Irish Protestant elite', p. 40.

120 B.L., Add MS 38153, f. 21.

121 N.L.I., Annesley Mss, xxiii, ff. 3, 6-7, 9-10, 13, 39, 47, 65, 109-10, 114, 137, 139, 145-8.

122 *The report of the commissioners appointed by parliament to enquire into the Irish forfeitures, delivered to the honourable house of commons the 15th of December, 1699* (London, 1700), pp. 13-14.

123 Bodl., Carte MS 113, ff. 363, 373-4, 385, 390, 397; N.L.I., Annesley Mss, xx, f 3, 10, 14; *C.T.B.*, xv, pp. 343, 375; Ibid., xvi, p. 405.

his estates would remain within his immediate family, while also providing employment opportunities for his eldest and the possibility of supplementary income for the family. Conformity did not always lead to total abandonment of fellow Catholics. Bophin himself never converted, nor did the remainder of his children. There is evidence to suggest that Bophin and his eldest son Michael, Lord Dunkellin and future tenth earl of Clanricarde, leased their estates to Catholics during the 1700s, contrary to the provisions of the existing penal laws.[124] Dunkellin also established a close relationship with Archbishop King. Bophin showed a willingness to embrace emerging political and social realities, adapting his personal principles to ensure the survival of his family as a social force into the eighteenth century. The family abandoned Jacobitism, secured its land through the conversion of the eldest children, yet secondary branches maintained their Catholicism. Bophin's willingness to educate his eldest sons as Protestants was crucial in garnering Protestant political support for his cause. With the backing of these politicians, and Ginkel's continued assistance, the likelihood of Bophin's restoration to his estate was greatly enhanced. The successful outcome of this case was a testament to the perseverance and skilful handling of a complicated legal process by Daly, French and Bophin.

VI

The articles of surrender which concluded the Williamite war in Ireland had a turbulent history in the 1690s; none more so than the articles of Galway, though the Limerick articles also did not emerge intact. The articles of Drogheda, Waterford, Sligo and Boffin were generally treated 'with justice, not favour'. Due to their less controversial wording, the articles of Galway never enjoyed the dubious distinction of a parliamentary confirmation; article 16 stated 'as to such parts [hereof] for which an act of parliament shall be found to be necessary we [William and Mary] shall recommend the same to be made good by parliament'. Though their right to bear arms received parliamentary confirmation, misfortune initially denied the Galway articlemen their right to continue to practise the law, with the Irish government's attempt to adhere to article 16 in this matter thwarted by the English privy council in 1692. The articles of Drogheda, Waterford, Sligo and Boffin were never seriously considered as candidates for parliamentary approval and the articlemen were not inclined to press for one, given the just treatment they received. In the pursuit of their goal, the articlemen proved to be adept at the art of political lobbying. Agents for each of the agreements were employed in Dublin and London to press for the implementation of specific articles, or to secure a positive interpretation of their wording. Protestant gentry and politicians were enlisted to plead on behalf of the articlemen in parliament, before the Irish and English privy councils and at the court of William III. While

124 Josiah Browne, *Reports of cases, upon appeals and writs of error, in the high court of parliament, from the year 1701 to the year 1779*, 7 vols (London, 1779-83), II, p. 588.

some may have been motivated by personal connections to assist their Catholic neighbours, others were handsomely paid for their services.

The efforts of the articlemen to ensure that the articles were fully honoured by the Williamite authorities did not end with the closure of the second court of claims in 1699. The passage through the English parliament of the act of resumption in 1700 forced the articlemen once more to employ lobbyists and agents in London, while the growing corpus of penal legislation passed by the Irish parliament from 1695 ensured that they maintained a vigilant eye on developments in both parliaments.[125] The pursuit of the articles provided the Catholic elite left in Ireland with a focus that far outweighed any thoughts of adherence to Jacobite ideology or efforts to bring about a restoration of the Stuart monarchy. The 1690s and early eighteenth century witnessed Catholic agents in Dublin, London and on the continent, actively seeking to influence or reverse the Irish government's policy, not to usurp its authority. Small victories were often won on behalf of individuals or small groups. The importance of these victories should not be underestimated. They provided initial grounds for optimism that Irish Catholics could continue to prosper in the eighteenth century, as they had done during the reign of Charles II. However, the imposition of increasingly restrictive penal laws aimed at the Catholic population as a whole not only demonstrates the limits of the articlemen's success, but also conferred on them a unique status in Irish society. The penal laws made the issue of conformity to the Church of Ireland a pressing concern for Catholics in the eighteenth century. While some articlemen may have conformed, it is certain that large numbers of their children did so to secure their families' lands and to pursue legal or political careers. The pressure on the articlemen to do so was less intense. They stood alone as possessors of immunities from several legal restrictions on Catholics, immunities that could not be bestowed upon their heirs and would expire with their generation. As late as December 1748, the obituary of Thady Dunne described him as a 'most upright and eminent agent and solicitor in chancery, a sincere friend, and endued with every virtue; he retained his memory and his senses to the last. [He] was one of the persons included in the Articles of Limerick, which benefit he enjoyed during his life.'[126]

125 *An impartial relation of the several arguments of Sir Stephen Rice, Sir Theobald Butler and Councellor Malone* (Dublin, 1704); Gregory Nolan to Colonel John Browne, 16 Jan., 3 Feb. 1700 (N.L.I., MS 40,902/6/11-12); *The case of all persons comprised in the articles or capitulations of the city of Waterford, fort and castle of Bophin, and the towns of Sligo and Drogheda in the kingdom of Ireland* ([London, 1700]). The English Short Title Catalogue dates the last item to 1691/2. This is certainly wrong; in his letter of 3 Feb. 1700, Gregory Nolan refers to a joint appeal between the agents for the articlemen of Waterford and Boffin.

126 John Brady, *Catholics and Catholicism in the eighteenth century press* (Maynooth, 1965), p. 77. Dunne was adjudicated within the articles of Limerick on 26 June 1699 (T.C.D., MS 744, f. 127).