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Catholic inheritance under the penal laws in Ireland

RICHARD FITZPATRICK*
Maynooth University

ABSTRACT. *Recent decades have witnessed a continued interest among historians in Ireland's eighteenth-century penal laws. Earlier broad surveys of the laws and their impact have given way to case studies that have highlighted the varied experiences of individual families, with many focusing on the strategies, whether legal or otherwise, that were utilised in attempts to circumvent these restrictions. Despite these advances, however, our understanding of the laws remains incomplete. This is particularly the case in relation to the gavelling clause within the 1704 popery act. This was one of Ireland's most infamous penal laws, yet it remains one of the least studied and least understood set of restrictions against Catholics. It is clear that the restrictions it placed on the sole inheritance of land could be circumvented in certain instances, but how exactly this was achieved without suffering prosecution requires further study. This article will advance our understanding of the gavelling clause through an in-depth examination of the law and its interpretation by Irish courts, which in turn will highlight the avenues that were open to Catholics in their attempts to either neutralise or evade the restrictions and other related legal provisions. This will demonstrate how successful circumvention did not depend on breaking the law per se, but instead relied upon loopholes in the law itself.*

The constraints placed on Catholics by the 1704 and 1709 popery acts were the most wide-ranging and invasive of those arising from Ireland's penal laws. Chief among these restrictions was the infamous gavelling clause, which dictated that estates of inheritance were to be subdivided between all sons unless the eldest converted to the established church and became sole heir.[1] Although many Catholic landowners ultimately chose the path of conversion, a minority of estates remained in the possession of a single Catholic heir in contravention of the law.[2] How this feat

* *Department of History, Maynooth University, richard.fitzpatrick@mu.ie*

[1] In the absence of male issue, an estate would be divided equally between the daughters of a Catholic landowner or, failing this, other collateral kindred: 'An act to prevent the further growth of Popery', 2 Anne, c. 6, s. 10 (1703[/4]) in *The statutes at large, passed in the parliaments held in Ireland: from the third year of Edward the Second, A.D. 1310 to the twenty sixth year of George III, A.D. 1786* (20 vols, Dublin, 1786–1801), iv, 19 (hereafter cited as *Stat. Ire.*); Charles Ivar McGrath, 'The provisions for conversion in the penal laws, 1695–1750' in Michael Brown, Charles Ivar McGrath and Thomas P. Power (eds), *Converts and conversion in Ireland, 1650–1850* (Dublin, 2005), pp 41–2.

[2] The fear of subdivision was the guiding factor behind conformity in certain cases, but it appears in many other instances that conversion was motivated by an appreciation that it opened up avenues of advancement and material benefits for individuals and their families: Louis Cullen, 'Catholics under the Penal Laws' in *Eighteenth-Century Ireland / Iris an dá*

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could be accomplished without suffering prosecution requires further study. This article will highlight several avenues that were open to Catholics in their attempts to circumvent inheritance restrictions. This in turn will show how successful circumvention did not depend on breaking the law per se, but instead relied upon loopholes in the law itself.

The historiography of the penal laws dates back to the early 1800s, but serious scholarly debate and analysis did not emerge until Maureen Wall highlighted the fact that penal legislation had little effect on economic matters pertaining to trade and commerce.[3] Indeed, Wall argued that an unintended consequence of the penal laws was the growth of a wealthy urban Catholic middle class.[4] Wall's publications appeared at a point when the perspective of Catholic nationalism was steadily losing its ascendancy in Irish historiography.[5] Within Catholic ecclesiastical history a challenge to the prevailing late nineteenth- and early twentieth-century interpretation of the church under the penal laws also emerged. John Brady and P. J. Cornish dealt a 'devastating blow' to the traditional depiction of the eighteenth century as an era of intense, enduring persecution by claiming that the worst of the religious repression was over by 1730, and that the Catholic church possessed a functioning episcopacy and sufficient clergy by that date. The authors removed the emphasis on the penal laws as an attempt to destroy the Catholic church and instead viewed them as an effort by the Protestant minority to maintain their control over property, power and privilege.[6]

chultúr, i (1986), p. 27; S. J. Connolly, *Religion, law and power: the making of Protestant Ireland, 1660–1760* (Oxford, 1992), p. 308; Ian McBride, *Eighteenth-century Ireland: the isle of slaves* (Dublin, 2009), pp 234–6.

[3] For the previous interpretations of the penal laws, particularly from a nationalistic perspective, see: Patrick O'Kelly, *History of Ireland since the expulsion of James II* (Dublin, 1855), pp 16, 18; Martin Haverty, *The history of Ireland: ancient and modern* (Dublin, 1860), pp 674–84; P. W. Joyce, *A concise history of Ireland* (New York, 1903), pp 386–7; William P. Burke, *History of Clonmel* (Waterford, 1907, repr. Clonmel, 2010), p. 150; Seamus McManus, *The story of the Irish race: a popular history of Ireland* (New York, 1921), p. 398. For an assessment, see: James Kelly, 'The historiography of the Penal laws' in John Bergin, Eoin Magennis, Lesa Ní Mhunghaile and Patrick Walsh (eds), *New perspectives on the penal laws* (Dublin, 2011), pp 27–45.

[4] Maureen Wall, 'The rise of a Catholic middle class in eighteenth-century Ireland' in *I.H.S.*, xi, no. 42 (Sept. 1958), pp 91–115; eadem, *The penal laws, 1691–1760* (Dundalk, 1961); eadem, 'Catholics in economic life' in L. M. Cullen (ed.), *The formation of the Irish economy* (Cork, 1968), pp 37–51. See also: Cullen, 'Catholics under the Penal Laws', pp 23–36; idem, 'Catholic social classes under the penal law' in Thomas P. Power and Kevin Whelan (eds), *Endurance and emergence: Catholics in Ireland in the eighteenth century* (Dublin, 1990) pp 57–84.

[5] On Catholics and trade, see also: David Dickson, 'Catholics and trade in eighteenth-century Ireland: an old debate revisited' in Power & Whelan (eds), *Endurance & emergence*, pp 85–100; Eamon O'Flaherty, 'An urban community and the penal laws: Limerick, 1690–1830' in Bergin *et al.* (eds), *New perspectives on the penal laws*, p. 206; Kelly, 'The historiography of the penal laws', pp 38–9.

[6] Kelly, 'The historiography of the penal laws', pp 46–7; John Brady and P. J. Corish, 'The church under the penal code' in P. J. Corish (ed.), *A history of Irish Catholicism, volume iv* (Dublin, 1971), pp 1–88; Patrick J. Corish, *The Catholic community in the seventeenth and eighteenth centuries* (Dublin, 1981), pp 73–81. See also: Eoin Magennis (ed.), 'Select document: "The present state of Ireland", 1749' in *I.H.S.*, xxxvi, no. 144 (Nov. 2009), pp 594–5.

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Over the ensuing decades, historians such as S. J. Connolly, James Kelly and Ian McBride have added to our understanding of the penal laws by providing further analysis of the reasoning behind their introduction, subsequent enforcement and place within a wider European context.[7] However, despite the continued interest in the topic among historians, Kelly has observed that our current understanding of the laws remains 'incomplete'.[8] This is particularly the case in relation to the gavelling clause within the 1704 popery act. Fortunately, the issue of Catholic inheritance has begun to receive greater attention from historians. Philip Walsh's recent study of the Blakes of Ballyglunin in County Galway argued that the claims of younger sons and the subdivision of their estate could be avoided through the use of strict family settlements, and fines and recoveries.[9] This article will help to further clarify and advance our understanding of the issue through an examination of family settlements and entails established on Catholic estates before 21 September 1703, and their importance in relation to the circumvention of inheritance restrictions. Furthermore, the exact conditions under which estates of inheritance could be divided forcefully or lost to discovery proceedings remains unclear. This article will show how such estates were safe from discovery except under very specific conditions, while subdivision was only possible if an entitled relative pressed a claim in court. This latter point is important, as it serves to highlight the role played by family cohesion if an estate was to remain in the possession of a single Catholic heir. Conversion was the most common route by which a family could negate the penal laws. The assistance that converts could in turn offer to their Catholic relatives who continued to face restrictions is an additional area open to further study.[10] The role of convert relatives will be shown to have been central to frustrating inheritance restrictions regarding Catholic minors. Taken together, these different considerations will add to our understanding of the strategies and legal loopholes that were open to Catholics in their efforts to retain their estates under a single male heir.

I

Following the end of the 'War of the Two Kings' in 1691, Ireland's ruling Protestant minority sought to maintain their control over the island and its largely

[7] McBride, *Eighteenth-century Ireland*, pp 195–245; James Kelly, 'Sustaining a confessional state: the Irish parliament and Catholicism' in D. W. Hayton, James Kelly and John Bergin (eds), *The eighteenth-century composite state: representative institutions in Ireland and Europe, 1689–1800* (Basingstoke, 2010), pp 44–63; Connolly, *Religion, law and power*, pp 263–313; idem, *Divided kingdom: Ireland, 1630–1800* (Oxford, 2008), pp 198–203, 250–9. For the framing and subsequent interpretation of the penal laws, particularly the 1704 and 1709 popery acts, see: J. G. Simms, 'The making of a penal law (2 Anne, c.6), 1703–4' in *I.H.S.*, xii, no. 46 (Oct. 1960), pp 105–18; W. N. Osborough, 'Catholics, land and the popery acts of Anne' in Power & Whelan (eds), *Endurance & emergence*, pp 21–56.

[8] Kelly, 'The historiography of the penal laws', p. 52.

[9] Philip Walsh, 'The Blakes of Ballyglunin: Catholic merchants and landowners of Galway town and county in the seventeenth and eighteenth centuries' (Ph.D. thesis, University College Dublin, 2017), pp 123–4, 129–30, 136–7, 203.

[10] Thomas P. Power, 'Converts' in Power & Whelan (eds), *Endurance & emergence*, pp 101–3.

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Catholic population. Central to achieving this goal was the need to safeguard their monopoly over the land, as wealth, prestige and political power depended upon access to this within a predominantly agrarian society.[11] Hence, in 1704, the Irish parliament passed 'An act to prevent the further growth of popery' which prohibited Catholics from purchasing land and from acquiring leaseholds above thirty-one years, while the gavelling clause within the same act sought to secure the status quo in landownership by necessitating either the conformity of the eldest Catholic heir or the fragmentation of the family estate. Taken together, the laws restricting the ability of Catholics to enjoy, inherit and purchase land constituted, as W. N. Osborough has observed, 'a formidable legal edifice'.[12] These restrictions were to have significant consequences, with Catholic landownership falling from approximately 14 per cent of the national total in 1703 to roughly 5 per cent by 1776.[13] However, this is not to say that successful evasion of the laws by Catholics did not occur, and to help further elucidate this point, the following discussion examines the different legal loopholes and strategies that could be exploited when it came to inheritance.

The 1704 popery act was quite clear on the subject of partible inheritance among the heirs of a Catholic landowner. Clause ten of the act, the 'gavelling clause', stated:

> That all lands, tenements, or hereditaments, whereof any papist now is, or hereafter shall be, seized in fee-simple or fee-tail, shall from henceforth, so long as any papist shall be seized of or intituled to the same in fee-simple or fee-tail, be of the nature of gavelkind … and be inherited by, all and every the sons of such papist any way inheritable to such estate, share and share alike.[14]

There is, however, an absence of published work on the gavelling clause and on the role played by family settlements and entails created before 21 September 1703 in assisting some Catholics to circumvent inheritance restrictions.[15] The power of these settlements to nullify inheritance restrictions was derived from the presumption under common law that any agreement deemed to have been within the limits of the law at the time of its making was to be considered valid and to hold 'dominion' over any subsequent act or law unless 'expressly mentioned'.[16] This presumption under common law, a 'natural Justice', had been upheld by courts since the Elizabethan period at least and still applied to estates entailed before inheritance restrictions were introduced against Catholics in 1704.[17] An entail was a form of

[11] McBride, *Eighteenth-century Ireland*, p. 240.

[12] Osborough, 'Catholics, land and the popery acts of Anne', p. 23.

[13] J. G. Simms, *The Williamite confiscation in Ireland, 1690–1703* (London, 1956), p. 160.

[14] 2 Anne, c. 6, s. 10 (1703[/4]) in *Stat. Ire.,* iv, 19; Eileen Spring, *Law, land & family: aristocratic inheritance in England, 1300–1800* (London, 1993), p. 84.

[15] The significance of these settlements has only been referred to briefly by: Osborough, 'Catholics, land and the popery acts of Anne', p. 35; idem, *Studies in Irish legal history* (Dublin, 1999), p. 224; Charles Chenevix Trench, *Grace's card: Irish Catholic landlords, 1690–1800* (Dublin, 1997), p. 63.

[16] G. E. Howard, *Several special cases on the laws against the further growth of popery in Ireland* (Dublin, 1775), pp 55, 116–7.

[17] Ibid., p. 115; Thomas Jones, *The reports of several special cases adjudged in the Courts of King's Bench and Common Pleas … in the reign of King Charles II* (London, 1729), pp

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trust established (via strict settlement) to prevent property from being sold, devised by will or otherwise alienated by the holder, and instead caused it to pass automatically to an heir predetermined by the settlement. Landed property (held in fee simple) was commonly settled by the owner on his eldest son for life, with the remainder (future interest) going to the heirs male of his body in fee tail. The lands were then said to be held in fee tail or fee tail male.[18]

The example of Dr Thomas Fogarty of Garranroe in County Tipperary highlights how this benefitted Catholics when it came to sole inheritance after 1704. Following the death of his elder brother Timothy without issue in 1747, Fogarty sought legal counsel as to whether he was legally entitled to inherit the entire Garranroe estate as a Catholic who had two younger brothers, all of whom 'were always papists or persons professing ye popish religion'. His legal counsel was of the opinion that because his grandfather Teige Fogarty had entailed the estate in 1697, Fogarty was after his brother's death 'lawfully and rightfully seised of and instituted unto an estate in tayle male'. After reciting the gavelling clause from the 1704 popery act, the opinion concluded by stating that 'the intention of ye sd. Act was not to have a retrospect so as to avoid remainders limited by former settlements but was only to pr[e]vent limitations by future settlements or wills'.[19] The act did not expressly mention that previous settlements were to come under newly imposed limitations. Indeed, confusion existed after the law was passed concerning 'what time that clause, or part of the said act, was to take effect'.[20] In 1709 it was clarified that restrictions regarding settlements came into operation on the first day of the session of parliament during which the 1704 act was passed (21 September 1703). This, it was later claimed, restored the 'ancient dominion' of previous settlements by making the law remedial rather than retrospective. The entitled party 'therefore, might have exercised this dominion, as he might if the 2d of Anne had not taken place'.[21] As a result, based on the 1697 entail, Fogarty was legally entitled to inherit the entire family estate as a Catholic, despite the fact that he had two younger brothers.

As has been seen, the 1709 popery act invalidated settlements created by Catholics from 21 September 1703 onwards that sought to evade inheritance restrictions. Added to this, the act nullified any fine or recovery levied or suffered

108–09; William Leonard, *The third part of the reports of severall excellent action grounded on statute after claim is made cases of law, … in the time of the late Queen Elizabeth* (London, 1686), p. 92; Richard Hutton, *The reports of that reverend and learned judge Sir Richard Hutton, Knight sometimes one of the judges of the common pleas, … in the several reigns of King James and King Charles* (London, 1862), p. 22.

[18] J. C. W. Wylie, *Irish land law* (3rd ed., Dublin, 2005), p. 179; Andrew Lyall, *Land law in Ireland* (Dublin, 1994), pp 12–13; Lloyd Bonfield, *Marriage settlements, 1601–1740: the adoption of the strict settlement* (Cambridge, 1983), pp 8–9; A. W. B. Simpson, *Legal theory and legal history: essays on the common law* (London, 1987), pp 146–8, 153; Zouheir Jamoussi, *Primogeniture and entail in England: a survey of their history and representation in literature* (Cambridge, 1999), pp 15–16; Frederick Pollock, *The land laws* (3rd ed., London, 1896), pp 111–12; Eileen Spring, 'The settlement of land in nineteenth-century England' in *American Journal of Legal History*, viii, no. 3 (Jul. 1964), pp 210–11; eadem, *Law, land & family*, pp 124–30, 187–92.

[19] 'Dr Thos Fogerty's Case', 20 Feb. 1747[/8] (N.L.I., Fogarty family papers, G.O. MS 171, pp 203–4: microfilm, p8304).

[20] Howard, *Several special cases against popery*, p. 55.

[21] Ibid., pp 116–7; 'An act for explaining and amending an act intituled, an act to prevent the further growth of popery', 8 Anne, c. 3, s. 9 (1709) in *Stat. Ire.,* iv, 194–5.

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between 1 January and 24 March 1704 that sought to bar Protestants from inheriting a Catholic estate. This was because many Catholics who held their estates in fee tail had levied fines and suffered recoveries before the 1704 popery act came into operation 'in order to bar all remainders that were then vested, or afterwards might vest, in any Protestants'. Catholic landowners had also created new settlements and entails whereby it was expressly the intention that estates might never 'come to any English-man or Protestant, or any that should turn Protestant, and qualify themselves according to the intent, purpose, and encouragement' of the 1704 popery act.[22] As such, the 1709 popery act was retrospective in nature and declared these settlements and legal procedures null and void, while any future examples that equally sought to limit or influence the inheritance of any estate, in contravention of both acts, were also to be deemed invalid.[23]

It was not illegal for a Catholic to make a settlement or levy a fine and suffer a recovery so long as they did not impede inheritance as specified under the penal laws. However, on the Blake of Ballyglunin estate in County Galway, it has been argued that settlements and fines and recoveries that contravened the law did still occur and avoided being invalided simply because it was unlikely to be proven in court that their intent was to evade these different acts.[24] Granted, many families did settle their estates after 1704 and escaped legal challenges by entitled relatives. This was the case in relation to a family settlement drawn up in 1714 by Dr Fogarty's neighbour, Major George Mathew of Thurles. Mathew set out the descent of the estate by acknowledging his two sons, George the younger and the 'half blood' Justin, with remainders going to their future male issue, and successive relatives and their children. There was the possibility that the validity of the settlement could have been challenged by Justin Mathew after his father's death in 1725. However, Justin did not press a claim and his elder brother, George the younger, entered into possession of the family estate. George the younger outlived his half-brother and thereafter the settlement remained within the limits of the law because George had just one son, George the youngest. George the youngest also converted in 1740 in order to inherit the estate of his Protestant great-grand-uncle, 'Grand' George Mathew of Thomastown. George the youngest's lack of issue at the time of his own death in 1760 meant his estate passed, per the 1714 settlement, to his cousin, Thomas Mathew of Annefield, who was also a convert. Therefore, it was good fortune and strategic conversion that permitted the settlement to remain in operation and avoid any legal challenges.[25] Nevertheless, in other instances where an entitled party pressed a claim to an estate, courts did distinguish in cases between settlements and deeds that were lawful or void based on whether or not they acted contrary to the 1704 and 1709 popery acts. This is evident in the cases of *Burke v. Morgan* (1717), *Reddy v. Reddy* (1739) and *Talbot v. Talbot* (1755).[26]

[22] 8 Anne, c. 3, s. 6 (1709) in *Stat. Ire.,* iv, 193; 'Dr Thos Fogerty's Case', 1747[/8], p. 204; *Commons' jn. Ire.* (1796 ed.), ii, p. clxvi; Power, 'Converts', pp 108–9; Osborough, 'Catholics, land and the popery acts of Anne', p. 35.

[23] 8 Anne, c. 3, s. 6 (1709) in *Stat. Ire.,* iv, 193.

[24] Walsh, 'The Blakes of Ballyglunin', p. 129. See also: Power, 'Converts', p. 108.

[25] Mathew family settlement, 11 Mar. 1713[/14] (N.A.I., M 5302); the Mathew properties (Tipperary County Library, Thurles (hereafter T.C.L.T.), Papers of Rev. Father Walter G. Skehan, typescript copy, vol. lxvi, pp 52–3); Thomas P. Power, *Land, politics and society in eighteenth-century Tipperary* (Oxford, 1993), pp 110–11.

[26] Howard, *Several special cases against popery*, pp 81–4, 102–117; Alexander Wood Renton (ed.) *The English reports: House of Lords* (11 vols, London, 1901), ii, 734–7.

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On the Blake of Ballyglunin estate after 1704, the use of entails, and fines and recoveries to limit the inheritance of the estate to a specific male heir would, without doubt, have been declared null and void if brought before a court.[27] That the settlements and deeds the Blakes entered into were not invalid stemmed from the fact they could depend on a family settlement and entail set up prior to 21 September 1703. Thus, upon his marriage in 1691, Martin Blake Fitz Peter settled his estate in tail male, thereby becoming tenant-for-life in equity. When his eldest son Edmond Blake Fitz Martin (the tenant-in-tail) married in 1724, it was agreed that upon his reaching twenty-one years of age a common recovery would be suffered in order to better guarantee the articles in his marriage agreement.[28] However, a common recovery did not take place. If it had, this would have barred (broken) the entail and reverted the lands to being held in fee simple.[29] Dr Thomas Fogarty undertook the same procedure once he came into possession of the family estate at Garranroe, and his legal counsel pointed out the consequences of this as: 'he has thereby barred not only his own issue but all the subsequent remainders limited by ye. sd. Settlement [of 1697] and is become tena[nt] in fee simple of the sd. lands & prmisses [*sic*] and that the same will be lyable to any judgement entered agst. ye. sd. Thomas Fogarty'.[30] Therefore, if the Blakes suffered a common recovery and subsequently resettled the estate, this new entail would have been void under the terms of the 1704 and 1709 popery acts. Instead, the Ballyglunin estate, now held in fee simple, would 'descend in gavel-kind' following the demise of Martin Blake Fitz Peter.[31]

A possible alternative open to the Blakes was a fine, the uses of which were various and complex, and 'might be applied and directed to give efficacy to an infinite variety of movements, in the vast and intricate machine of a voluminous family settlement'.[32] The particular purpose or uses of the fine would be stated in deeds

[27] Howard, *Several special cases against popery*, pp 81–4, 102–117; Wood Renton (ed.) *The English reports: House of Lords*, ii, 734–7.

[28] Marriage settlement between Martin Blake and Margaret French, 28 Nov. 1691 (N.A.I., Blake papers, M 6931/46); marriage settlement between Edmond Blake and Mary French, 27 Mar. 1724 (ibid., M 6931/64(a&b)).

[29] Richard Burn, *A new law dictionary: intended for general use, as well as for gentlemen of the profession. By Richard Burn, LL.D. late chancellor of the diocese of Carlisle. And continued to the present time by John Burn, Esq. his son, one of His Majesty's justices of the peace for the counties of Westmorland and Cumberland* (Dublin, 1792), p. 600; Josiah W. Smith, 'A succinct view of the operation of fines and recoveries: chapter II: of the operation of recoveries' in *The Jurist*, ix, no. 468 (27 Dec. 1845), pp 502–05.

[30] 'Dr Thos Fogerty's Case', p. 204; Burn, *A new law dictionary*, p. 600.

[31] Howard, *Several special cases against popery*, pp 291–2.

[32] The basic definition of a fine of land was 'a final agreement or conveyance upon record, for the settling and securing of lands and tenements': William Blackstone, *Commentaries on the laws of England, in four books. By Sir William Blackstone, Knt. one of the justices of his majesty's court of common pleas. And with notes and additions by Edward Christian, esq. barrister at law, and professor of the laws of England in the University of Cambridge* (12th ed., London, 1793–5), ii, 361–2; 'Fine' in T. E. Tomlins, *The law-dictionary: explaining the rise, progress, and present state of the British law: defining and interpreting the terms or words of art, and comprising also copious information on the subjects of trade and government* (4th ed., 2 vols, London, 1835), i, s.v.; Burn, *A new law dictionary*, p. 598. See also: William Cruise, *An essay on the nature and operation of fines and recoveries* (3rd ed., 2 vols, London, 1794), i, *passim*.

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either before (to lead) or after (to declare) it was levied in court.[33] Thus, in 1726 Martin Blake Fitz Peter settled his entailed estate via deeds of lease and release 'pursuant to his original marriage articles in 1691 … on himself for life, remainder to [his eldest son] Edmd. & his Issue male remainder to his Second son & so on, whereby he made himself ten[an]t. for life at law'. This meant that the 1726 settlement was still operating under the authority and within the confines of the earlier 1691 example, which had stated that the entail was to be guaranteed in 'a legal manner of supporting without [waste to be?][34] specified to the first, second, third and all other the sons … the elder … always preferred before the younger'.[35] A Talbot of Wexford settlement from 1704 also employed deeds of lease and release to reaffirm a strict settlement agreed before 21 September 1703, but the surviving case report does not state whether a fine was levied.[36] In relation to the Blakes of Ballyglunin, the 1726 deeds of lease and release may, therefore, have been deemed a sufficient 'legal manner of supporting' the settlement, or if a fine was thought necessary, this likely involved levying a single fine *sur cognizance de droit come ceo, &c.* or a double fine *sur done grant et render*.[37] Whatever the case may have been, it is clear that the Blakes's 'dominion over the estate had been preserved, as far as the limitations in the [1691] Articles had extended, notwithstanding the subsequent law of the 2d Anne'.[38] Furthermore, upon the marriage of Edmond Blake's son and heir in 1751, the family once again elected not to break the entail. Instead, the parties involved in the marriage entered into bonds worth several times the bride's dowry in order to

[33] Unless subjected to the direction of other deeds (deeds of lease and release for example), the fine conveyed an absolute estate without limitations (i.e. in fee simple) to the cognizee. Therefore, if such uses were not declared, a fine would have a similar operation to a common recovery, and 'these assurances could not be made to answer the purpose of family settlements': Blackstone, *Commentaries on the laws of England,* ii, 362.

[34] Manuscript damaged.

[35] Marriage settlement of M. Blake and M. French, 28 Nov. 1691 (N.A.I., Blake papers, M 6931/46); marriage settlement of E. Blake and M. French, 27 Mar. 1724 (ibid., M 6931/64 (a&b)); deed of release between Martin Blake 1st part, Edmond and Martin Blake Junior of the 2nd part and John French and Francis Coghlan 3rd part, 13 Aug. 1726 (ibid., M 6931/65); booklet containing notes of deeds affecting the Blake of Ballyglunin estate, 1658–1771 (ibid., M 6935/65, ff 13–4); 'The situation relative to the estate of Martin Blake of Ballyglunin', 26 July 1773 (ibid., M 6935/66, f. 5); memorial of deeds of lease and release between Martin Blake 1st part, Edmond and Martin Blake Junior 2nd part and John French and Francis Coghlan 3rd part, 12–13 Aug. 1726 [registered 10 Mar. 1726[/7]] (Registry of Deeds, Dublin (hereafter R.D.), lii, 372–3, no. 349161); Walsh, 'The Blakes of Ballyglunin', p. 129.

[36] Howard, *Several special cases against popery*, pp 102–4, 116–7.

[37] The particular purposes and effects of these different fines are too various and complex to discuss here, and the reader is best served by consulting: 'Fine' in Tomlins, *The law-dictionary,* i, s.v.; 'Fine' in idem, *The law dictionary, defining and interpreting the terms or words of art, and explaining the rise, progress, and present state of the English law* (London, 1810), s.v.; Francis Bayley, *A treatise on fines and recoveries* (London, 1828), pp 8–9, 17–18; Blackstone, *Commentaries on the laws of England,* ii, 362; Josiah W. Smith, 'A succinct view of the operation of fines and recoveries: chapter I: on fines' in *The Jurist*, ix, nos 465–7 (6–20 Dec. 1845), pp 472–5, 482–4, 491–3.

[38] Howard, *Several special cases against popery*, pp 116–17.

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guarantee the new marriage articles, and 'to secure the paym[en]t. of sd. bonds … [Edmond Blake] levyed [*sic*] fines' on portions of his estate.[39]

The consequence of retaining the 1691 entail can be seen in 1768, when it was rumoured that a son of Edmond Blake's deceased brother was about to file a bill under the gavelling clause in order to acquire a share of the estate. This created great alarm within the family, but a friend pointed out, quite rightly, that the attempt to gavel would be impossible due to the 1691 settlement and entail. Therefore, another individual, 'deemed very knowledgeable in law', advised the Blakes to prove the handwriting of the witnesses and parties involved in the various settlements and deeds affecting the estate dating back to 1691.[40]

The attempt to gavel the Ballyglunin estate eventually turned out to be a hoax, but, enraged by the whole event, Edmond Blake fumed in relation to his nephew: 'I will show the chap he has no right and I will cut him short of any chance of remainder he might have [vis-à-vis the entail], little as his chance is'.[41] Although the recovery was technically unnecessary, since Blake's son and heir Martin had male issue to succeed him, out of a sense of anger Edmond levied a fine and suffered a recovery of his entire estate in 1768, thereby barring the entail and reverting the lands to fee simple. This, of course, also exposed the estate to possible claims under the gavelling clause following the death of Edmond Blake in 1771.[42] His successor Martin was aware of this fact and he later recalled the steps that were taken to try and prevent any claims by either of his younger brothers:

> My brothers Robert & Jack will never attempt to gavel, if they should, my fines, that I levied [in 1772], will help to bar them after 5 years [non-claim]. The lease that my father gave me of his lands [in 1765] will bar them, of the profit rent during the term, the annuities they signed to will help bar them, & the bonds of £6,000 passed by my father on my marriage [in 1751] will bar them. There is no danger they will have children, as my brother Jack took his Book oath before my wife & me that he would never marry [and Robert was a priest].[43]

Although no deeds survive to help explain the purpose of the fines levied by Blake following his father's death, they would have been void under the 1709 popery act if they sought to hinder the gavelling of the estate. However, the annuities, lease and bonds may have proven effective, given that they were agreed prior to the breaking of the entail in 1768. Even if this was not the case, the mere prospect of contesting their validity in court may have been sufficiently off-putting to forestall any claims by the brothers.[44]

[39] Marriage settlement between Martin Blake and Bridget Joyce, 30 Oct. 1751 (N.A.I, Blake papers, M 6933/16/18); the situation relative to the estate of M. Blake, 26 July 1773 (ibid., M 6935/66, ff 7–8).

[40] The situation relative to the estate of M. Blake, 26 July 1773 (ibid., M 6935/66, ff 8, 14–21).

[41] Ibid., ff 8–9.

[42] Hugh Fenning (ed.), 'Documents of Irish interest in the "Fondo Missioni" of the Vatican Archives' in *Archiv. Hib.*, xlix (1995), p. 35.

[43] The situation relative to the estate of M. Blake, 26 July 1773 (N.A.I., M 6935/66, ff 10–16).

[44] Osborough, 'Catholics, land and the popery acts of Anne', pp 23, 35; Connolly, *Religion, law and power*, p. 308.

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As a result, the argument that the Blakes utilised strict family settlements and fines and recoveries to circumvent inheritance restrictions was correct but requires further nuance. The importance of a settlement and entail established before 21 September 1703, and the fact that a later settlement relied upon these for its validity, provides further clarity as to the full implications of the law and how it related to Catholic estates. If their 1691 family settlement had not remained in operation, any attempt by the Blakes to frustrate the gavelling clause between 1704 and 1768 would have been declared null and void if brought before a court. The legality of the family's attempts to frustrate the gavelling of the estate after 1768 is unclear; however, the fact remains that no successful claims were ever registered against the estate.

It is also important to highlight that even when a family had in place a strict settlement pre-dating the 1704 popery act, this did not always mean that their estate was protected from inheritance restrictions. This was likely the case in relation to the Tipperary estate of Major George Mathew's son-in-law, Lieutenant John Ryan of Inch. The 1692 will of Ryan's father, Daniel, stated that once his wife passed away, the entire estate was to pass to his eldest son, John. After the latter's death, the estate was to descend 'in fee tail … to ye use and behoof of heirs male of the body of the said John Ryan lawfully to be begotten'.[45] However, the wording of the will may have been an issue, because nowhere was it stated that John Ryan's eldest son was to be preferred over all others.[46] One could argue, therefore, that the settlement made provisions for the gavelling of the Inch estate. A further problem faced by the Ryans was the fact that the entail related to just the lands owned by Daniel Ryan at the time of his passing in 1692. This represented under a third of the 2,940 plantation acres that constituted the Inch estate upon John Ryan's death in 1724, for the latter had purchased the majority of the estate on 18 March 1704, a week before Catholics were prohibited from purchasing land.[47] The 1692 settlement made John Ryan tenant-for-life, powerless to break the entail until his eldest, as yet unborn, son (the tenant-in-tail) came of age and agreed to a common recovery. This meant John Ryan did not have legal authority in March 1704 to break the existing entail and make a new all-inclusive settlement of his estate.[48] Furthermore, as noted previously, the later 1709 popery act clarified that all settlements drawn up

[45] Will of Daniel Ryan of Inch, 22 Apr. 1692 (T.C.L.T., Ryan papers, microfilm TL/F/21).

[46] The case of *Butler v. Butler* (1773) observed that a Catholic estate held partially in tail was open to subdivision. However, no precise information on the wording and terms of the family settlement affecting the particular estate were given in the case report: Howard, *Several special cases against popery*, pp 270–5; 2 Anne, c. 6, s. 6 (1703[/4]) in *Stat. Ire.*, iv, 17; attested copy of exemplification of common recovery suffered by Daniel Ryan of lands in Co. Tipperary, Hilary term 1738 (U.C.C., Boole Library, Grehan family papers, BL/EP/G MS 175/2).

[47] Deed of sale of the manor of Coolkill, Nicolas Purcell, Loughmoe, Co. Tipperary and Sir Stephen Rice, Dublin 1st part; John Ryan of Inch 2nd part, 18 Mar. 1703[/4] (U.C.C., Boole Library, Ryan of Inch collection, BL/EP/R MS 778).

[48] Josiah Brown, *Reports of cases, upon appeals and writs of errors, in the High Court of Parliament; from the year 1701, to the year 1779* (8 vols, London, 1779), ii, 263; H. J. Habakkuk, 'Marriage settlements in the eighteenth century' in *Transactions of the Royal Historical Society*, xxxii (1950), pp 15–17; Barbara English and John Saville, 'Family settlement and the "rise of great estates"' in *Economic History Review*, new series, xxxiii, no. 4 (Nov. 1980), pp 556–8; Spring, 'The settlement of land in nineteenth-century England', p. 212; Burn, *A new law dictionary*, p. 598; William Cruise, *A digest of the laws of England respecting real property* (2nd ed., 7 vols, London, 1818), iv, 408.

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from 21 September 1703 onwards that sought to 'elude' inheritance restrictions within the original popery act were to be deemed 'null, void, and of none effect'.[49] Any new settlement and entail seeking to limit the inheritance of the Inch estate would have fallen under this definition.

II

Earlier scholars have suggested that the reason why the Ryans ultimately escaped inheritance restrictions after 1724 was that John Ryan had left a single heir, Daniel (b. 1714).[50] However, the family papers reveal that Ryan had a total of four sons, which dramatically changes how conditions on the estate should be viewed.[51] John Ryan's death, therefore, represented the first instance where there was a danger that the Inch estate would not survive intact. In order to inherit the entire landed estate, the only solution left open by the authorities was for Daniel Ryan to gain 'the positive merit and quality of being a Protestant' through conversion to the established church.[52] Moreover, although he was survived by his wife Frances (née Mathew), John Ryan's children were legally regarded as orphans following his death. As a result, the family also had to contend with their guardianship and education as specified under the law. A clause in the 1704 popery act stipulated that 'no person of the popish religion shall or may be guardian unto, or have the tuition or custody' of any child under twenty-one years of age. Therefore, the family were legally obliged to have a Protestant relative appointed as guardian who was 'fit to have the education of such child'. This individual was then required to 'use his utmost care to educate and bring up such child or minor in the Protestant religion'. In theory, this would lead, at the very latest, to the child's conversion within a year of reaching twenty-one years of age.[53] The concern the Ryans faced was that the court-appointed guardian or guardians would actively educate the children as Protestants.[54] It is interesting to note, however, that there is no evidence to suggest

[49] 8 Anne, c. 3, s. 9 (1709) in *Stat. Ire.,* iv, 194–5; Osborough, 'Catholics, land and the popery acts of Anne', p. 35.

[50] Power, *Land, politics and society in Tipperary*, p. 108; Philip D. Vigors (ed.), 'County Tipperary' in *Journal of the Association for the Preservation of the Memorials of the Dead in Ireland*, v, no. 1, part 2 (1901), p. 106.

[51] John Ryan's sons were Daniel, George, John and Andrew. His daughters were Frances (m. John Purcell, *c*.1733) and Margaret (m. William Carroll, *c*.1738): rent roll of Daniel Ryan's estate and accounts kept by William Carroll, 1735–8 (U.C.C., Boole Library, Ryan collection, MS 173, f. 7); executors' account, 12 Jan. 1729[/30] (ibid., MS 367); *Finn's Leinster Journal*, 5 Apr. 1775.

[52] Howard, *Several special cases against popery*, pp 271–2.

[53] Different court judgements provide different ages for the conversion of a Catholic heir: either within six months of reaching eighteen years of age (*Butler v. Butler* 1773) or by the time he reached twenty-two years of age (*Lessee of Burk v. Blake* 1716 & *Burke v. Morgan* 1717). In this particular instance, it appears the latter age is applicable: Howard, *Several special cases against popery*, p. 272; Andrew Lyall (ed.), *Irish Exchequer reports: reports of cases in the Courts of Exchequer and Chancery in Ireland, 1716–1734* (Selden Society, lxxxii, London, 2009), pp lxxv, 9–10; 2 Anne, c. 6, ss 7, 12 (1703[/4]) in *Stat. Ire.,* iv, 18, 20–1.

[54] For example: Brown, *Reports of cases, upon appeals and writs of errors*, ii, 179–83; Hubert Gallwey, *The Wall family in Ireland, 1170–1970: 800-year history of a distinguished Norman family* (2nd ed., Dublin, 2011), pp 108–9.

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that Daniel Ryan's younger siblings were placed under the guardianship of a Protestant. On the contrary, in 1737, Ryan's two youngest brothers were sent to France to be educated, in contravention of the law, while they were still underage.[55] Simply put, this would not have been possible if the children had been under the guardianship of a Protestant or the supervision of the Irish courts. It must be concluded, therefore, that the younger children were not registered as orphans with the Court of Chancery.[56] Nevertheless, the Ryans and their allies were still faced with the far more problematic issue of the guardianship of the eldest heir to the estate. Because the family likely sought to avoid Daniel Ryan's conversion if possible, they required a relative acting as guardian who was sympathetic towards his Catholic relatives and willing to mislead the authorities.

A suitable candidate emerged in Howard Egan of Annameadle, a 'kinsman' to the Ryans and convert to the established church since January 1710.[57] The date of his conversion automatically raises questions over its authenticity, coming as it did less than six months after a parliamentary act closed many loopholes exploited by Catholics in earlier penal legislation.[58] Howard Egan's case was by no means exceptional, and fits within a broader trend of increased conversions among Catholics during this period. In most cases it was less a matter of spiritual salvation that motivated conformity than an appreciation that conversion opened up avenues of advancement and material benefits for individuals and their families.[59] After his conversion in 1710 for instance, Egan purchased over 2,000 acres of land.[60] His 1737 will further supports the view that his conversion had more

[55] Rent roll and accounts kept by W. Carroll, 1735–8 (U.C.C., Boole Library, Ryan collection, MS 173, f. 5); 'An act to restrain foreign education', 7 Will. III, c. 4 (1695) in *Stat. Ireland,* iii, 254–6.

[56] See below, pp 246–7.

[57] What stand out about the decision to trust Howard Egan with such an important matter are the very obscure familial links that existed between the families. John Ryan of Inch's (d. 1724) first cousin, Philip Fogarty of Curraheen and Ballinlonty, married Alice Flood of Rathcannon, County Tipperary. Howard Egan's sister was married to another Flood of Rathcannon. Therefore, the closest association that could have existed between the two men was that Howard Egan's niece was married to John Ryan's first cousin: Howard Egan to Frances Ryan, 21 Mar. 1723[/4] (U.C.C., Boole Library, Ryan collection, MS 345); Howard Egan to Frances Ryan, 23 May 1724 (ibid., MS 349); will of Howard Egan of Anameadle, 4 June 1737 (ibid., MS 39); the Fogartys of Ballinlonty (T.C.L.T., Fogarty papers, typescript copy, xxix, p. 10); Martin Callanan 'History of the barony of Eliogarty' (N.L.I., Callanan MS, microfilm, p4546), p. 641; Eileen O'Byrne (ed.), *The convert rolls* (I.M.C., Dublin, 1981), p. 89.

[58] Osborough, 'Catholics, land and the popery acts of Anne', p. 26.

[59] Although less frequent, genuine instances of religious conversion are now beginning to receive more attention from historians: Michael Brown, Charles Ivar McGrath and Thomas P. Power, 'Introduction' in idem (eds), *Converts & conversion in Ireland, 1650–1850*, p. 12; Power, 'Converts', pp 102, 110–11; Cullen, 'Catholics under the Penal Laws', p. 27; McBride, *Eighteenth-century Ireland*, pp 234–6.

[60] Memorial of deeds of lease and release of the lands of Blane, Co. Tipperary, Daniel Carroll, late of Blane, to Howard Egan, 14–15 Feb. 1714[/5] [reg. 19 Mar. 1714[/5]] (R.D., xiii, 394, no. 6113); memorial of deeds of lease and release of the lands of Sheragh, Co. Tipperary, Cormack McEgan and Anthony Carroll of the 1st part and Howard Egan of the 2nd part, 22–3 May 1722 [reg. 30 May 1722] (ibid., xxxiii, 426–7, no. 20783); Dermot F. Gleeson, *The last lords of Ormond – Cromwellian plantation, prelude and aftermath in the countries of the three O'Kennedies* (2nd ed., Nenagh, 2001), pp 230–1.

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practical than spiritual roots or, at the very least, it shows family concerns taking priority over religious and legal considerations in this instance. As his children had predeceased him, Egan bequeathed his estate to his extended family, many of whom were clearly Catholics. For example, about a third of his lands were left to the eldest son of his brother-in-law, Captain Daniel Carroll, who left for France in 1691 and returned to Ireland in *c*.1730.[61] Carroll himself received Egan's 'silver mounted gun & best silver mounted pistols which cost 48 guineas', while his 'other silver mounted, screwed barrel pistols' went to his 'cozen, Daniel Ryan of Inch'.[62] Without the required certificate of conformity and licences to carry arms, these bequests were technically illegal under the terms of different restrictions passed against Catholics in 1695 and 1704.[63] Therefore, Egan's words and actions indicate that he had few reservations when it came to undermining the penal laws in his family's favour. It is in this context that his decision to assist the Ryans must be understood.[64]

Documentary evidence concerning Howard Egan's guardianship of Daniel Ryan is limited, and what survives comes from a copy of an account drawn up by Egan in late 1731.[65] Based on evidence from the guardianship of another minor, Egan would have petitioned the Court of Chancery in Dublin to put himself forward as Daniel Ryan's guardian in 1724.[66] He would have needed to convince the court he was the nearest Protestant relative 'fit' to direct Ryan's education.[67] To help demonstrate this, Egan could have pointed out that his two sons, Charles and Terence, had both received a preliminary English education in Tipperary before being enrolled in Trinity College Dublin in November 1723.[68] The court would have sought a similar education for Daniel Ryan, thereby helping to allay any reservations over entrusting him to Egan. This was significant since the lord chancellor of Ireland held the power 'To appoint a relation, or other person guardian, as he

[61] Will of H. Egan, 4 June 1737 (U.C.C., Boole Library, Ryan collection, MS 39); abstract of the lord justices, Dublin Castle, to Dorset, n.d. (P.R.O.N.I., T3019/67), available at P.R.O.N.I. eCatalogue (http://apps.proni.gov.uk/DCAL_PRONI_eCatNI_IE/ResultDetails.aspx) (13 Feb. 2019); abstract of a copy of the petition of Daniel Carroll, n.d. (ibid., T3019/68), available at P.R.O.N.I. eCatalogue (http://apps.proni.gov.uk/DCAL_PRONI_eCatNI_IE/ResultDetails.aspx) (13 Feb. 2019).

[62] Will of H. Egan, 4 June 1737 (U.C.C., Boole Library, Ryan collection, MS 39).

[63] 'An act for the better securing the government, by disarming papists', 7 Will. III, c. 5 (1695) in *Stat. Ire.,* iii, 260–7; 2 Anne, c. 6, s. 7 (1703[/4]) in ibid., iv, 17–18.

[64] Will of H. Egan, 4 June 1737 (U.C.C., Boole Library, Ryan collection, MS 39); H. Egan to F. Ryan, 25 Oct. 1725 (ibid., MS 359). Extracts from Egan's will can be found in: will of Howard Egan of Anameadle, County Tipperary (T.C.L.T., Skehan papers, typescript copy, lxv, pp 103–5); will of Howard Egan, 4 June 1737 (N.L.I., Papers of Dr Martin Callanan, MS 11,422(8a)). See also: Kevin Whelan, *The tree of liberty: radicalism, Catholicism and the construction of Irish identity, 1760–1830* (Cork, 1996), p. 6; Cullen, 'Catholics under the penal laws', pp 27–8.

[65] Copy of account by Howard Egan Esq. as guardian to Daniel Ryan, 24 Feb. 1731[/2] (U.C.C., Boole Library, Ryan collection, MS 368).

[66] Letter of guardianship issued by the Court of Chancery concerning the younger children of Henry Sandford of Castlerea, County Roscommon, 15 May 1771 (N.L.I., Pakenham-Mahon papers, MS 48,355/61).

[67] 2 Anne, c. 6, s. 4 (1703[/4]) in *Stat. Ire.,* iv, 16.

[68] George Dames Burtchaell and Thomas Ulick Sadleir (eds), *Alumni Dublinenses: a register of the students, graduates, professors and provosts of Trinity College in the University of Dublin, 1593–1860* (Dublin, 1935), pp 259–60.

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might judge would best execute the office, and was the most likely person to educate the infant in the Protestant religion; for otherwise, the true intent of the act would easily be evaded'.[69] The Ryans and their allies would have been particularly aware of the significance of this, as the brother-in-law of widow Frances Ryan, James Cotter Junior of County Cork, was made the ward of a Protestant named William Netterville, who later entrusted Cotter's education to John Galway, 'a noted Papist'.[70] In 1707, a parliamentary committee investigated the case and condemned the actions of the different parties involved, going so far as to order that the heads of a bill be created to explain and amend the provisions for guardianships under the 1704 popery act.[71] The subsequent bill was ultimately rejected by the house, yet Galway was taken into custody by the sergeant-at-arms and Netterville apparently risked losing a bond he had offered to the courts as security for his conduct as guardian.[72] Parliament further resolved because of the case that it was the 'indispensable Duty of Protestant Guardians to take the Persons of their Wards out of the Custody of their Popish Relations'.[73] It was essential, therefore, that Howard Egan was seen by the courts to be a guardian willing to prevent the Ryan family from influencing the education of the heir to Inch estate.[74]

Once appointed guardian, Howard Egan had to deal with several considerations. He was not in a position to send Daniel Ryan to the continent to receive a Catholic education. Although this was illegal since 1695, other wealthy Catholic families continued to do so during the eighteenth century.[75] This was the case for Ryan's youngest brothers, 'the two boys' John and Andrew, who were sent to France in late 1737.[76] Due to the guardianship, however, Daniel's movements were under much more official scrutiny than those of other Catholic children. The example of Ryan's cousin, the heiress Elizabeth Mathew of Thomastown, highlights that a child's guardian was legally compelled 'every Michaelmass [*sic*] term and as often as required by the Court upon oath' to justify 'disbursements as should be at for or on accnt. of the said minor'.[77] The penalties for contravening the law could be severe. In 1704 it was enacted that any parent or guardian who could not present a child to the court within two months or 'give good proof that the said child is resident somewhere within the Kingdom of England or Scotland' would be penalised through forfeiture of all their goods, annuities and

[69] Brown, *Reports of cases, upon appeals and writs of errors*, ii, 183.
[70] *Commons' Jn. Ire*., ii, p. clxvi.
[71] Ibid., p. 522; Transcripts of Cotter family papers by Rev. George E. Cotter, *c*.1878 (N.L.I., MS 711, ff 129–31); William Hogan and Liam Ó Buachalla, 'The letters and papers of James Cotter, Junior, 1689–1720' in *Journal of the Cork Historical and Archaeological Society*, lxviii (Jan.–Dec. 1963), pp 67–8.
[72] *Commons' Jn. Ire*., ii, 526, 536, 544, 546, 550–2.
[73] Ibid., p. 526.
[74] Connolly, *Religion, law and power*, p. 309.
[75] 7 Will. III, c. 4 (1695) in *Stat. Ire.,* iii, 254–6; Emma Lyons, 'Morristown Lattin: a case study of the Lattin and Mansfield families in County Kildare, *c*.1600–1860' (Ph.D. thesis, University College Dublin, 2011), pp 252–68; Karen Harvey, *The Bellews of Mount Bellew: a Catholic gentry family in eighteenth-century Ireland* (Dublin, 1998), p. 92.
[76] Rent roll and accounts kept by W. Carroll, 1735–8 (U.C.C., Boole Library, Ryan collection, MS 173, f. 5).
[77] Recognizance of Charles O'Hara, Kean O'Hara and Loftus Jones, appointing Charles O'Hara (the elder) as the legal guardian of Elizabeth Mathew, 7 March 1737[/8] (N.L.I., O'Hara papers, MS 36,389/1).

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property.[78] In Tipperary there was the option of the Erasmus Smith school set up during the 1680s, followed by a Kilkenny grammar school, both offering a classical education designed to 'fit their scholars for the university, if desired'.[79] The university in question was Trinity College Dublin, but there is no evidence to suggest that Daniel Ryan attended any of these institutions, and it must be concluded that he was schooled at Inch by private tutors. The cost of his upkeep would support this view, being £60 from 1725 to 1727, and thereafter £30 per annum. This may not appear a large sum of money, but these costs were always double those incurred by his siblings, while the price of a 'respectable life' for a young gentleman attending university in Dublin at this time was calculated at £50 per annum.[80]

Leaving aside the question of where he was educated, the more important issue was to what extent Daniel Ryan's education, as legally specified, equated to his instruction in the Protestant religion. The 1704 popery act made it clear that the main goal regarding the heirs of deceased Catholics was their education 'in the communion of the Church of Ireland as by law established', followed by their future conversion. For his part, Egan was 'required to use his utmost care to educate and bring up such child or minor in the Protestant religion' while under the direction of the Court of Chancery.[81] To what extent the court guided Ryan's religious education, and the degree to which Egan's definition of 'utmost care' covered this, are both unknown. What is clear, however, is that Daniel Ryan did not convert on coming of age.

To appreciate how the Ryans and Egan accomplished this feat without suffering prosecution requires an understanding of what the law did and did not state concerning the matter of inheritance by a Catholic. As observed previously, the main goal behind the 1704 act as regards orphaned minors was their education under a Protestant guardian and future conversion. If the guardian disobeyed this instruction, he could face a financial penalty and the granting of the guardianship to another court-appointed individual. However, once a Catholic child came of age and chose not to convert, no immediate legal punishment was specified, except for the future subdivision of the estate between all Catholic sons or, failing this, all daughters or other collateral kindred of a Catholic landowner.[82] This differed from the infamous discovery clause in the 1709 popery act, which stated that a Protestant discoverer could 'prefer one or more bill or bills in her Majesty's high court of Chancery, or Chancery of the Exchequer, against any person or persons' involved in purchasing or concealing an interest in land acquired by a Catholic in contradiction of the 1704 act.[83] Thus, if a Catholic purchased land or a leasehold above

[78] 7 Will. III, c. 4 (1695) in *Stat. Ire.,* iii, 255; 2 Anne, c. 6, s. 2 (1703[/4]) in *Stat. Ire.*, iv, 15–16.

[79] David Hannigan, 'The University of Dublin, 1685–1750: a study of matriculation records' (M.A. thesis, Saint Patrick's College, Maynooth, 1995), p. 33.

[80] The cost of Daniel Ryan's education and upkeep reflects that of other children from landowning backgrounds during this period: ibid., p. 59; executors' account, 12 Jan. 1729[/30] (U.C.C., Boole Library, Ryan collection, MS 367); accounts relating to the diet & upkeep of the children of Henry Flower of Durrow, County Laois, 1728–30 (N.L.I., Flower papers, MS 11,470/6); William Jackson to Eleanor O'Hara, 6 May 1720 (N.L.I., O'Hara papers, MS 20,278); Toby Barnard, *Improving Ireland? Projectors, prophets and profiteers, 1641–1786* (Dublin, 2008), p. 147.

[81] 2 Anne, c. 6, s. 4 (1703[/4]) in *Stat. Ire.,* iv, 15–16.

[82] For clarification of this point, see the discussion below, pp 238–40.

[83] 8 Anne, c. 3, s. 30 (1709) in *Stat. Ireland,* iv, 194–5.

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thirty-one years after 1704, a Protestant could file a bill of discovery in court and receive the forfeited interest in the land. In contrast, if a Catholic heir failed to convert once he came of age, there was no legal avenue open to Protestant discoverers by which he could be prosecuted and dispossessed. In reality, the law sought the appointment of 'the most likely' Protestant to educate the child in the Protestant religion, 'otherwise the true intent of the act would easily be evaded'.[84] By 'true intent' it was meant the wilful choice by the child to convert 'as the Act was only meant as an encouragement for persons to renounce popery'.[85]

The discussion highlights the lack of a legal obligation for a Catholic orphan to convert once they came of age and indicates that they could still inherit an estate as a Catholic. However, some variations of opinion remain concerning what additional legal restrictions a Catholic, orphaned or otherwise, faced once they became entitled to an inheritance. Based on clause seven of the 1704 act, Nial Osborough has claimed that any Catholic who took property by devise, descent or gift etcetera had six months in which to conform to the established church. Failing that, for the rest of his life or until he should change his mind, the interest passed to the nearest Protestant relative.[86] Commenting on the same clause several years later, Andrew Lyall mirrored Osborough's reading but acknowledged how this provision contradicts the gavelling clause within the same act.[87] An additional interpretation of clause seven has observed that if a Catholic did not enter into any inheritance to which they were entitled within six months, then it passed to the nearest Protestant relation until such time as the former should conform.[88] In this instance, the obligation to conform within six months after entitlement is absent. This stems from the fact that printed versions of the law failed to state directly this requirement: 'no papist, or person professing the popish religion, who shall not within six months after he and she shall become intituled to enter, or to take, or have the profits by descent'.[89] However, an abridged version of the clause published in 1718 makes it clear that conformity, rather than simply entering into an inheritance, was the requirement faced by a Catholic heir: 'no Papist shall take the Profits by Descent, or by virtue of any Devise, Gift, Remainder, or Trust, who shall not become Protestant within six months after he shall become intituled to enter, or take by Descent'.[90] Furthermore, the interpretations provided by previous historians have overlooked the key feature of the clause: the fact that this restriction only applied to an inheritance that came to a Catholic from a Protestant via descent, gift or devise.[91] Essentially, the intention of the clause was to ensure

[84] Brown, *Reports of cases, upon appeals and writs of errors*, ii, 183.

[85] Lyall (ed.), *Irish Exchequer reports*, lxxv, 10; *The English reports*, ii, 734; Josiah Brown, *Reports of cases, upon appeals and writs of errors, in the High Court of Parliament*, ed. T. E. Tomlins (8 vols, 2nd ed., London, 1803), viii, 437.

[86] Osborough, 'Catholics, land and the popery acts of Anne', p. 24.

[87] Andrew Lyall, 'The Irish House of Lords as a judicial body, 1783–1800' in *Irish Jurist*, xxviii/xxx (1993/1995), p. 354, note 193; idem (ed.), *Irish Exchequer reports*, lxxv, cxxxiv.

[88] Power, 'Converts', p. 107; McGrath, 'The provisions for conversion in the penal laws, 1695–1750', p. 41.

[89] 2 Anne, c. 6, s. 7 (1703[/4]) in *Stat. Ire.,* iv, 17.

[90] Edward Hunt, *An abridgment of all the statutes in Ireland, in the reigns of Queen Anne, and King George. In force and use* (Dublin, 1718), p. 182.

[91] In line with this interpretation, counsel in the case of *Butler v. Butler* (1773) pointed out that clause seven 'refers to Papists getting new acquired estates which had belonged to Protestants, and admits of a construction and consideration diametrically opposite to the

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that Protestant-held land did not pass to a Catholic. The pertinent section of the clause reads as follows:

> no papist, or person professing the popish religion, who shall not [become a Protestant][92] within six months after he and she shall become intituled to enter, or to take, or have the profits by descent, or by vertue of any devise or gift, or of any remainder already limited, or at any time hereafter to be limited, or by vertue of any trust of any lands, tenements, or hereditaments, whereof any protestant now is, or hereafter shall be, seized in fee simple absolute, or fee-tail, or in such manner that after his death, or the death of him and his wife, the freehold is to come immediately to his son or sons, or issue in tail.[93]

If not yet of age, this heir was to be placed under the guardianship of a Protestant and would be compelled to convert within six months of reaching eighteen if he was to inherit. Thereafter, until this requirement was satisfied, the inheritance passed to the nearest Protestant relative.[94] Therefore, if the heir to a Catholic chose not to conform once they became entitled to their inheritance, it can be concluded that the sole remaining obstacle he faced concerning inheritance was the gavelling or division of the estate with his younger male siblings. But, as will be seen, this too proved less than effective in reality.

III

As has been highlighted, the wording of the 1692 Ryan family settlement meant it was unlikely that approximately 920 acres of the Inch estate were protected from being gavelled. Furthermore, the remainder of the estate, at least 2,020 acres, was undoubtedly open to subdivision if any of John Ryan's younger sons decided to break ranks and register a claim as was their legal right. The manner in which John Ryan sought to address the question of inheritance is quite revealing. His 1724 will stated that his 'reall and personall Estate of what nature or kind' were to be divided 'amongst my Wife and Children as they my Executors shall think fit'.[95] As can be seen, Ryan did not set out the descent of his estate, nor did he identify any of his children by name. Instead, he invested his executors, including Howard Egan and Major George Mathew, with ample power to tackle future developments as they saw fit. The wording of the will provided the family and executors

gavelling clause, which relates to taking away part of an old Popish inheritance': Howard, *Several special cases against popery*, p. 269 n.

[92] Hunt, *An abridgment of all the statutes in Ireland*, p. 182.

[93] Perhaps a reason why this clause has been misinterpreted is that the annotations/marginal notes that accompany the 1765 and 1786 printed versions of the law exclude references to Protestant estates: 2 Anne, c. 6, s. 7 (1703[/4]) in *Stat. Ire.,* iv, 17; *The statutes at large, passed in the Parliaments held in Ireland: from the third year of Edward the Second, A.D. 1310, to the first year of George the Third, A.D. 1761* (8 vols, Dublin, 1765), iv, 17. See also the cases of *Stone v. Rice* (1720), *Dillon v. Dillon* (1772) and *Farrell v. Crosbie* (1773): Howard, *Several special cases against popery*, pp 71–2, 236, 243, 256–8.

[94] 2 Anne, c. 6, s. 7 (1703[/4]) in *Stat. Ire.,* iv, 17–18.

[95] Will of John Ryan of Inch, 2 Mar. 1723[/4] (T.C.L.T., Ryan papers, TL/F/21).

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with leeway when it came to dealing with inheritance restrictions, while any outside observer would not be led to believe that the intention of the will was to circumvent these restrictions. This permitted the will 'to pass muster' in front of the Irish Prerogative Court as it bore on its face 'no trace of conflict with the philosophy of the gavelling clause'.[96]

John Ryan further added the stipulation in his will that should any of 'my Children' not be 'satisfyed' with the share or proportion appointed for him or her, then 'such Child as disagreeing shall be cut off from haveing any share of my reall or personall Estate'.[97] Once again, this provision left room for interpretation. On the one hand, it could be viewed as an attempt by Ryan to guard against the same kind of dispute that that had arisen within the family following the death of his father in 1692. Under the terms of her late husband's will, the widow Frances Ryan (née Raggett) was to receive a life interest in the Inch estate. A clause in the will, however, stated that if Frances remarried, then she 'shall ipso facto stand and remain deprived of ye estate for the term of her life'.[98] John Ryan would later claim that his mother did indeed remarry, and this led to a drawn out and acrimonious legal dispute.[99] In 1724, John Ryan's widow was to benefit from a share in his personal assets (£500). This type of legacy was uncommon in Ireland during this period and went 'over and above' what was expected of him.[100] It could be argued, therefore, that the threat of disinheritance in Ryan's will sought to prevent any future dissent among his six children over their mother's share of his estate.

On the other hand, the wording of John Ryan's will had a second application within the context of the penal laws. This warning to his children can be understood through the later will of his heir, Daniel, who found himself in a similar position regarding inheritance and his sons. In 1767, Daniel Ryan settled legacies on his two younger sons provided they did not 'sue disturb or molest' their eldest brother 'for any other or future fortune estate or interest'.[101] If a claim was pressed against

[96] Osborough, 'Catholics, land and the popery acts of Anne', p. 25; Sir Arthur Vicars (ed.), *Index to the prerogative wills of Ireland, 1536–1810* (Dublin, 1897), p. 411.

[97] Will of John Ryan, 2 Mar. 1723[/4] (T.C.L.T., Ryan papers, TL/F/21).

[98] Will of D. Ryan, 22 Apr. 1692 (ibid.).

[99] Draft petition by John Ryan to Sir John Meade of the Regal and Liberties of County Tipperary, 1699 (U.C.C., Boole Library, Ryan collection, MS 8); plaintiff's brief in the case Pierce Purcell lessee of John Ryan v. Frances Ryan, *c*.1702 (ibid., MS 9); copy answer by Frances Ryan to a bill of complaint lodged by John Ryan, 11 Apr. 1702 (ibid., MS 10).

[100] Executors' account, 12 Jan. 1729[/30] (ibid., MS 367); will of John Ryan, 2 Mar. 1723[/4] (T.C.L.T., Ryan papers, TL/F/21); Deborah Wilson, *Women, marriage and property in wealthy landed families in Ireland, 1750–1850* (Manchester, 2008), p. 154.

[101] The oldest surviving example of Daniel Ryan's will is a probate copy made in 1773. The clerk appears to have made an error when copying the will, because it is dated 22 Aug. 1757. However, most of the information contained in the will supports a later date. For example, Ryan referred to his daughters Frances Woulfe and Margaret Harrold, whose marriages did not occur until 1759. Furthermore, in September 1767 Daniel Ryan's will was referred to in family correspondence as being 'lately made'. Therefore, the correct date of the will was 22 Aug. 1767, a month before Ryan passed away: probate copy of the will of Daniel Ryan of Inch, 22 Aug. 1757 [1767] (probate 4 Nov. 1773) (U.C.C., Boole Library, Ryan collection, MS 23); copy will of Daniel Ryan, 1757 [1767] (U.C.C., Boole Library, Grehan papers, MS 175/3); Walter Woulfe to George Ryan, 20 Sept. 1767 (N.L.I., Mansfield papers, MS 9630); Vigors (ed.), 'County Tipperary', p. 106; Vicars (ed.), *Index to the prerogative wills of Ireland*, p. 410; *Faulkner's Dublin Journal*, 7 Nov. 1767; *Belfast News Letter*, 10 Nov. 1767.

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their brother, the penalty was the repayment with interest of the legacies and any money advanced to his younger sons during his lifetime. However, such disabilities in no way barred a younger son's legal right to his share of an estate under the gavelling clause. A sense of loyalty, followed by the added burden of family disharmony and protracted, expensive legal proceedings may have been off-putting enough to forestall claims in many instances.[102] Furthermore, younger sons were also set up in suitable professions, usually abroad, in order to guarantee their livelihoods and economic independence. Thus, on 12 February 1737, Daniel Ryan's brother George (d. 1761) was apprenticed to Edward Fitzgerald of Waterford (d. 1737), a merchant who had had business dealings with their father, and by 1741 he was based in Puerto de Santa Maria near Cadiz in Spain. Costs were also accrued in December 1737 'on Shipping' John and Andrew Ryan from Waterford to France to continue their education.[103] In both instances Daniel Ryan was investing in his siblings' futures abroad, which meant they were less likely to return home and make a claim on the Inch estate.

John Ryan remained in France and received a commission in the army.[104] His younger brother Andrew, on the other hand, had returned to Ireland by 1743.[105] It could be imagined that if his existence had been brought to light in court, there was the possibility of his share of the Inch estate being lost to a Protestant discoverer. However, this was not possible under the penal laws except in one discernible instance. This was a law passed in 1746 whereby any Irish Catholic in the service of France or Spain after 8 October 1745 could, through discovery proceedings brought against them, lose 'any real or personal estate of what nature or kind soever, or … any property, benefit, estate, or interest whatsoever in, to, upon, or out of the same by descent'.[106] The 1746 act continued by stating that any estate or

[102] Osborough, 'Catholics, land and the popery acts of Anne', pp 23, 35; Connolly, *Religion, law and power*, p. 308. See also: Walsh, 'The Blakes of Ballyglunin', p. 196.

[103] Edward Fitzgerald was the youngest brother of the prominent London-based merchant George Fitzgerald the elder (d. 1744): Daniel Ryan's account with Justin McCarthy, 1738–56 (U.C.C., Boole Library, Ryan collection, MS 198, f. 3); rent roll and accounts kept by W. Carroll, 1735–8 (ibid., MS 173, ff 3, 5); typescript copy of the marriage articles between Jorge Ryan y Mathew and Maria Ryan y Armelin, Apr. 1746 (Cardinal Tomás Ó Fiaich Memorial Library and Archive, Armagh, Irish Overseas Archive); Kevin Whelan, 'The Catholic community in eighteenth-century County Wexford' in Power & Whelan (eds), *Endurance & emergence*, pp 135–6; Jan Parmentier, 'The Irish connection: the Irish merchant community in Ostend and Bruges during the late seventeenth and eighteenth centuries' in *Eighteenth-Century Ireland / Iris an dá chultúr*, xx (2005), pp 46–7; Jacob M. Price, *France and the Chesapeake: a history of the French tobacco monopoly, 1674–1791, and of its relationship to the British and American tobacco trades* (2 vols, Ann Abor, 1973), i, 558–64; George Fitzgerald to Xaviera Walsh, 27 May 1738 (private collection; my thanks to John Bergin for supplying a transcript of this source).

[104] A return of prisoners of Buckley's, Clare's and Berwick's regiments confined in the Citadell of Hull, 6 Nov. 1746 (T.N.A., SP 36/89/1, f. 38); list of 148 prisoners in the French service, held at Hull, to be delivered to Captain De Cosne, Nov. 1746 (ibid., SP 36/89/3, f. 106).

[105] Ledger kept by Daniel and John Ryan, 1742–73 (U.C.C., Boole Library, Ryan collection, MS 174, f. 2).

[106] 'An act for the more effectual preventing his majesty's subjects from entering into foreign service, and for publishing an act of the seventh year of King William the Third, intituled, an act to prevent foreign education', 19 Geo. II, c. 7 s. 1 (1746) in *Stat. Ire.,* vi, 744–5; McGrath, 'The provisions for conversion, 1695–1750', p. 56.

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inheritance that 'shall belong, or which should or would, in case this act had not been made, have belonged, or in any manner come to such person, shall and may be sued for at law or by bill in equity for discovery'. Furthermore, in the case of *Radford v. Butler* (1769) it was stated that 'all estates to which such persons should at any time be entitled, are given to any Protestant discoverer'.[107] Apart from this, no example or case that permitted the discovery of lands due to a younger son under the gavelling clause has been located.

Thomas O'Neill and Charles Chenevix Trench appear to be the only authors to have made direct reference to the inheritance of Catholic estates held in fee being exempted from discovery.[108] Furthermore, in 1774 it was observed that 'there is nothing so much wanting to strike effectually at the root of Popery, as to have a bill brought into Parliament, giving the benefit of such lands to any Protestant discoverer, as younger brothers of any Popish family do not possess themselves of and enjoy the benefit under the gavel act'.[109] This comment clearly alludes to the fact that estates liable to subdivision under the 1704 act could not be lost to discovery. The reason why discovery proceedings could not be brought against younger sons (except in the case of foreign service) can be understood from the legal distinction between descent and purchase, the two modes of acquiring property: 'a title by descent is vested in a man by the single operation of the law, and by purchase his own act or agreement … by conveyance for money or other consideration'.[110] The gavelling of an estate was triggered by descent and the operation of law, while discovery proceedings stemmed from a purchase of an illegal interest in property by a Catholic. Granted, a devise or gift of an interest in land was to be considered a purchase under the penal laws, but whether or not it was to be considered a discoverable interest depended on a number of factors. For example, if a Catholic, seized in fee, devised his lands to another Catholic, 'the devise is not discoverable, but the lands gavel notwithstanding the devise, and as in the case of Papist estates'. If a Catholic with lands held by lease above thirty-one years devised the same to a Catholic, then that interest was probably open to discovery.[111] Therefore, except in instances of foreign service, Protestant discoverers had no *locus standi* in relation to estates held in fee that were liable to subdivision.[112] The law simply stated that such estates should be shared and shared alike among all Catholic heirs. As a result, apart from the 1746 act regarding foreign service, the only way for estate to be subdivided was if an entitled relative personally filed a claim in court.

[107] 19 Geo. II, c. 7 s. 1 (1746) in *Stat. Ire.,* vi, 744; Howard, *Several special cases against popery*, p. 182; Osborough, 'Catholics, land and the popery acts of Anne', p. 39.

[108] O'Neill, 'Discoverers and discoveries', p. 3; Chenevix Trench, *Grace's card*, p. 65; Howard, *Several special cases against popery*, p. 243. My thanks also to S. J. Connolly for his views on this topic.

[109] John Brady (ed.), *Catholics and Catholicism in the eighteenth-century press* (Maynooth, 1965), p. 161.

[110] Ibid., p. 160; Leonard Shelford, *The real property statutes passed in the reigns of William IV and Victoria; including prescription, limitations of actions, abolition of fines & c. and judgements & c. & c. With copious notes, and forms of deeds* (4th ed., London, 1842), p. 438.

[111] Howard, *Several special cases against popery*, pp 71–2, 76, 243, 262–5; Osborough, 'Catholics, land and the popery acts of Anne', p. 29.

[112] Chenevix Trench, *Grace's card*, p. 65.

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What the previous discussion highlights is that the main threat to the sole inheritance of an estate by a Catholic was from his younger brothers (or their children in turn).[113] Although several instances are known, the gavelling of an estate was a relatively rare event, and S. J. Connolly has observed that 'social pressures and a sense of family loyalty seem in many cases to have ensured that younger sons simply refrained from asserting their claims under the Act'.[114] Financial inducements in the way of portions to younger sons must also be added to this list: a destitute and jealous younger brother was undoubtedly something a family sought to avoid at all costs. Therefore, the wills of John and Daniel Ryan both made provisions for their younger sons with the provisos of disinheritance or repayment respectively should the children dispute the inheritance of the Inch estate. However, it is doubtful whether these restrictions would have stood up under legal scrutiny if a son did press a claim, simply because the bequests sought to limit the estate's inheritance in contradiction of the 1704 and 1709 popery acts.

Finally, the example of Daniel Ryan's younger brother John adds an additional, albeit unforeseen, way of preventing a possible claim under the gavelling clause. At the time the Irish parliament passed the 1746 act regarding foreign service, Lieutenant John Ryan (later captain) of Bulkeley's regiment of foot was sitting in prison in Hull in Yorkshire following his capture during the failed Jacobite invasion of Scotland. Alongside him were his two cousins, Cadets Francis and George Mathew of Annfield near 'ye Rag' (Bouladuff).[115] Based on the act, John Ryan's share of the Inch estate, equating to several hundred acres, was open to discovery.[116] However, Ryan and over 100 other captured individuals were later pardoned in July 1747 on condition of their permanent banishment 'out of this our Realm'.[117] Therefore, apart from securing the Inch estate from discovery proceedings under the 1746 act, John Ryan's pardon and the conditions attached to it would have prevented him from returning to Ireland to register his claim to part of the Inch estate.[118]

[113] Walsh, 'The Blakes of Ballyglunin', p. 131; L. M. Cullen, *The emergence of modern Ireland, 1600–1900* (London, 1981), p. 196.

[114] Osborough, 'Catholics, land and the popery acts of Anne', p. 35; David Dickson, *Old world colony: Cork and South Munster, 1630–1830* (Cork, 2005), p. 273; Daniel Owen-Madden, *Revelations of Ireland in the past generation* (Dublin, 1848), pp 170–3; Connolly, *Religion, law and power*, p. 308.

[115] Francis Mathew is said to have been George Mathew's first cousin. John Ryan and his cousins were captured on-board the *Louis XV* on 28 November 1745 off Montrose. The two Mathews were later discharged, but there is no record of them having been pardoned: a return of prisoners of Buckley's, Clare's and Berwick's regiments, 6 Nov. 1746 (T.N.A., SP 36/89/1, f. 38); list of prisoners in the French service, Nov. 1746 (ibid., SP 36/89/3, f. 106); Maurice J. Bric, 'The Whiteboy movement, 1760–1780' in William Nolan and Thomas G. McGrath (eds), *Tipperary: history & society: interdisciplinary essays on the history of an Irish county* (Dublin, 1985), p. 448 n.; *Scots Magazine* (Nov. 1745), p. 541; G. B. Seton and J. B. Arnot (eds), *The prisoners of the 45* (3 vols, Scottish History Society, 3rd series, xiii-xv, Edinburgh, 1928–9), i, 85–6; iii, 14, 294.

[116] A year previously, Thomas Mathew (later of Thomastown – converted 1755) had inherited the Annfield estate as a Catholic. Due to his brother George's service in the French army, the Annfield estate was also open to discovery proceedings under the 1746 act: 19 Geo. II, c. 7 s. 1 (1746) in *Stat. Ireland,* vi, 744; Howard, *Several special cases against popery*, p. 182; Osborough, 'Catholics, land and the popery acts of Anne', p. 39.

[117] Seton and Arnot (eds), *The prisoners of the 45,* i, 29, 40; iii, 294.

[118] For the dating of valid pardons cf. 19 Geo. II, c. 7 s. 4 (1746) in *Stat. Ire.,* vi, 745; McGrath, 'The provisions for conversion, 1695–1750', p. 56.

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Despite the many precautions taken by the Ryans concerning inheritance, a younger son did eventually register a claim on the Inch estate under the gavelling act. In 1778, Daniel Ryan's eldest son and successor John died without issue. His next brother, the 'immediate heir', George Ryan (d. 1805) resided in Peru at the time and his return was uncertain. However, their youngest brother, Denis MulRyan (d. 1802), a captain in the Austrian service, was the first to arrive in Ireland to act as an executor of his brother's will. Notwithstanding the restrictions set out in his father's will, Denis filed a bill in the Court of Chancery on 28 October 1778 'under an act of Queen Anne, commonly called the Gavel Act', whereby he sought to have half of the Inch estate decreed to him as was his right. This came just three days before such a claim would have become impossible under the 1778 Catholic relief act.[119] Despite his military rank in the Imperial army, the prospect of Denis MulRyan's marriage into a respectable family in Austria or Germany was deemed impossible, 'being in the Army, being a foreigner & having no settlement to make on children'. His income at the time was apparently as little as £50, and so insecurity over his future prospects and the allure of a share in a landed estate, worth £1,368 per year, may have proved too great an opportunity to pass over.[120] Also, for many years there had been 'a long silence' from George Ryan in Peru, making the family doubt if he was still alive. If George did not return after a period of time, Denis would become heir to the estate.[121] If, on the other hand, George did return to Ireland, Denis's pending bill in Chancery provided him with a bargaining chip through which to improve his finances. By August 1780, George Ryan had arrived in Ireland. Thereafter, Denis offered to relinquish his claim for an annuity of £100, and for 'family peace and amity' his elder brother accepted.[122] This did not sour relations between the brothers: George Ryan felt for his brother over his limited prospects, and their affection was such that Denis MulRyan invited George to live in Ghent where 'we could take a House, live comfortably and I believe be happy together'.[123]

IV

In contrast to discovery proceedings related to illegal purchases of land and leaseholds, there was no legal mechanism by which to punish younger sons for not claiming their share of a family estate. Excluding family settlements and entails created before 21 September 1703, this meant that the most important factor in frustrating partible inheritance was family and sibling loyalty underpinned by

[119] 'An act for the relief of his majesty's subjects of this kingdom professing the popish religion', 18 Geo. III, c. 41 (1778) in *Stat. Ire.,* xi, 301.

[120] Denis MulRyan to George Ryan, 18 Dec. 1782 (U.C.C., Boole Library, Ryan collection, MS 469); ledger kept by George and Daniel Ryan, 1778–1811 (ibid., MS 175, f. 2); Power, *Land, politics and society in Tipperary*, p. 88.

[121] Guillermo Thompson to Jorge Ryan, 4 Sept. 1778 (U.C.C., Boole Library, Ryan collection, MS 374/88).

[122] Deed of annuity for £100 from George Ryan to Denis Ryan, 4 Aug. 1780 (ibid., MS 14); statement of title to the lands of Rossmult (N.A.I., M 5306/7).

[123] D. MulRyan to G. Ryan, 18 Dec. 1782 (U.C.C., Boole Library, Ryan collection, MS 469).

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tradition and a sense of kinship.[124] The ability of Catholics to nullify inheritance restrictions through strict family settlements and entails has also been seen to be dependent on several factors; the most important of these was the settlement of an estate before 21 September 1703. The capacity to create valid settlements after this date required that they did not seek to limit the inheritance of an estate in contravention of the 1704 and 1709 popery acts. Or, if this was attempted, it was of paramount importance that a settlement operated under the authority and within the confines of an example set up prior to the introduction of restrictions, as in the case of the Blakes of Ballyglunin. However, in every instance, successful circumvention of the gavelling clause was contingent on the wording of these settlements and the strict adherence to their limitations. Otherwise, there was a strong probability that a settlement would be declared null and void if it was challenged in court.

Of course, not every family could depend on the luxury of a settlement and entail established before 21 September 1703. Consequently, families were faced with educating and providing for younger sons in the hope they would refrain from pressing a claim to a family estate as was their legal right. In the case of the Ryans of Inch, an added difficulty was contending with the guardianship of minors. The collusion of a Protestant relative was central to success in this regard, both in the guardianship/education of the elder son and the concealment of the other children from the authorities. The reason for not registering these children with the courts is open to debate. One argument is that their concealment was used to give the impression that there was only a single heir to inherit the estate. However, as has been shown, once the guardianship of Daniel Ryan concluded and he failed to convert, the only legal punishment specified was the subdivision of the estate between all male heirs. Within this context, the concealment of Ryan's younger siblings was once again unnecessary, because the possibility of gavelling the estate would only arise if his brothers pressed their claims in court

Why, then, were the younger Ryan children apparently concealed from the authorities? The children continued to reside at Inch House for almost a decade after their father's death, and following the passing of their mother in *c.*1733, Daniel Ryan's siblings spent several years living nearby with the estate's agent, William Carroll.[125] This meant that the authorities and courts were either not as strict on the guardianship of younger Catholic children,[126] or that the Ryans depended on the collusion or wilful blindness of the surrounding Protestant population. In either case it is clear that the law was not being fully enforced. It can be concluded that the younger children were kept outside the courts to help guard against two specific possibilities: that their education would be placed under a less obliging Protestant, and to ensure that when the time came they could be married, apprenticed or sent abroad to pursue their educations and careers without the knowledge or interference of the authorities. Secrecy in the latter instance was of paramount importance, because the family could face heavy penalties if the

[124] For a discussion of the overall importance of kinship in the affairs of the Ryans of Inch between 1724 and 1756, see: Richard John Fitzpatrick, 'The Ryans of Inch and their world: a Catholic gentry family from dispossession to integration, *c.*1650–1831' (Ph.D. thesis, Maynooth University, 2018), pp 100–44.

[125] William Carroll married Daniel Ryan's youngest sister Margaret in *c.*1738: rent roll and accounts kept by W. Carroll, 1735–8 (U.C.C., Boole Library, Ryan collection, MS 173).

[126] Hogan and Ó Buachalla, 'The letters and papers of James Cotter', p. 95.

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authorities suspected that the children were overseas without permission. Therefore, when one considers the reasons why the younger Ryan children were not registered with the courts, the most logical explanation centres on the family's long-term strategy of ensuring that the Inch estate would not be diminished through claims under the gavelling clause.

With the benefit of hindsight one could go too far and dismiss the penal laws as a threat to Catholics. This would be unwise, as fears among Catholics, whether real or imaginary, did exist and clearly occupied the thoughts of landowners. In relation to Catholic estates of inheritance, it has been shown that the greatest issue encountered by a family was not the threat presented by some faceless Protestant, but instead from a younger son or his children. Therefore, in this instance, the psychological impact of the penal laws was deeply personal and stemmed from a family's uncertainty over whether or not an entitled relative would break rank and file a claim in court. In this sense Catholics inhabited 'a world of contingency', as they could only plan for, but never ensure against, such a claim being pressed. Moreover, even where a valid settlement and entail existed, fear, if not outright panic, could ensue over the mere rumour of a relative pressing a claim to an estate.[127] One can also imagine that Daniel Ryan experienced several sleepless nights during the period between the passing of the 1746 foreign service act and his brother John's pardon over a year later. In addition to these intermittent periods of heightened tensions and fear, every aspect of estate management by Catholics had to take into consideration the possible repercussions under the penal laws.[128] The financial cost alone in seeking legal opinions must have been considerable over several generations of a family, while many families did fall foul of the laws in court. A major reason for this was not due to the strict and efficient enforcement of the laws in most cases, but rather the fact that the laws themselves appeared comprehensive in theory, yet in practice were ambiguous on many issues and required countless court cases and precedents to iron out their actual extent and meaning.[129] Nevertheless, as this article has shown, several loopholes and grey areas remained within the laws in relation to inheritance, and this permitted some Catholic families to retain their estates under a single heir in contravention of the law.

[127] The situation relative to the estate of M. Blake, 26 July 1773 (N.A.I., Blake papers, M 6935/66, ff 14–18).
[128] Harvey, *The Bellews of Mount Bellew*, p. 15.
[129] Osborough, 'Catholics, land and the popery acts of Anne', pp 28–9.

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