

The Acts of James II's Irish parliament of 1689. Ed., JOHN BERGIN AND ANDREW LYALL [Dublin: Irish Manuscripts Commission, 2016. Lx + 263 pp. Hardback €35.00. ISBN 978-1-906865-49-8.]

James II's Irish parliament met for just over two months, between 7 May and 18 July 1689. As the editors of this collection explain (pp. liv-lviii), its proceedings were subject to formal *damnatio memoriae* in the 1690s, so that there is no clear official record of its acts or proceedings.

The editors have assembled and collated from several printed and manuscript sources the titles of 35 Acts of the 1689 parliament, and texts of 25 of them. They have provided a full introduction to the texts and previous attempts to edit them and to the contexts and contents of the Acts, an elaborate and careful editorial apparatus, and thorough indexes of persons, places and subjects. They and the publisher are to be congratulated on the high quality of the product.

It is clear that this valuable source edition should be held by all libraries which want to maintain serious Irish history holdings, and probably also by libraries which aim to have full source holdings in relation late to 17th century British political history. It is also, commendably, cheap enough to be worth buying by individual academics interested in the period.

It is perhaps less immediately obvious why this edition of the acts of an extremely short-lived regime should be of interest to lawyers (and, hence, legal historians). The text of the statutes contains 168 pages. Of this, 13 pages (No. 2) are an 'Act of Supply', a taxing statute, largely consisting of lists of the county contributions and commissioners, which may give an indication both of James's prominent supporters, and of the perceived wealth of different Irish localities in 1689. 79 pages (No. 30) are an Act of Attainder against supposed Williamites listed *inter alia* by county: certainly of interest to political and religious historians, as the editors comment (p. xlii), as probably providing a list of prominent Irish Protestants as of the act's date.

29 pages (No. 4) are an intervention into the tangled Irish land title and forfeitures question of the period, by repealing the 'Acts of Settlement' of 1662-65 and restoring land titles as they stood in 1641, and another two statutes make consequential provision thereon. This was obviously abortive, given the fate of the regime. But it is clear from some of the post-1691 Irish appeals in the English House of Lords (reported in Colles and Brown) that self-help takings during 1688-91, in the belief that these Acts were applicable, did additionally complicate what was already a complex problem.

The *legal* interest in these 122 pages is probably either relatively marginal (the tax and attainder acts) or very specifically Irish (the Irish land title forfeitures and settlements). There is, nonetheless, some legal interest there.

The 'Act of Supply' is a land tax on the English parliamentary 'quota' model. Such taxes had been used in Ireland in the Interregnum, but the Restoration Irish parliament in 1661-62 had replaced this with hereditary grants to the Crown of the customs, excises, and a hearth tax in lieu of the feudal revenue. This tax regime was so lucrative that no Irish parliament had in fact sat since 1666. This Irish example is thus of some interest to the history of tax law.

The repeal of the 'Acts of Settlement' by its mere length (60 sections) illustrates the complexity of the problems involved; though ss. 39-58 are special provisions for and against individual proprietors and claimants, presumably produced by lobbying during passage of the Act. The supplementary Acts No. 22, ratifying settlements and wills made by persons out of possession (pp.76-78), and No. 26, penalising waste of the lands to be restored to old proprietors (of which the editors have not found a text), illustrate the failure of the main Act to address all the issues it raised.

Also mildly interesting is the list in s. 19 of the principal Act of property rights which are not to accidentally vest in the Crown: "lands, tenements, hereditaments, or chattels real, right, title, service, chiefry, use, trust, condition, fee, rent-charge, mortgage, right of redemption of mortgages, recognizance, judgment, extent, right of action, right of entry, statute, or any other estate, of what nature or kind soever." This *omnium gatherum* seems to be a list of all the possible non-appurtenant property rights in land which could exist, as understood by the draftsman. Hence, although it was already pretty clear before this date that the equity of redemption, and the beneficiary's interest

under a trust of land, were understood to be property rights in land, this provides a little additional evidence of the point.

The Act of Attainder is, as the editors comment (p. xliii), remarkable for drawing distinct liability lines between (1) actual participants in the ‘rebellion’ of the Williamites, (2) people who had left Ireland since William’s 5 Nov 1688 landing in England, who were taken to be *ipso facto* adherent to William, (3) people who had previously left Ireland, who were given a deadline to return, (4) permanent residents in England, who could display loyalty to James without returning to Ireland but would otherwise be attainted, and (5) people who were living outside Ireland for reasons of age or ill health. It is remarkable that the last category, though not attainted, nonetheless forfeit their Irish estates to the Crown unless they return to Ireland. If this Act tells us something about Jacobite legal concepts of treason, it would be that they were extraordinarily wide. However, it seems more likely that the complex liability lines are a pretence, to *give the impression* that the Irish parliament has identified real treasons, in what is in reality merely an arbitrary list of political or religious enemies.

This Act too had supplementary statutes. No. 18 specifically repeals a title to land and jurisdiction by letters patent and statute in James Duke of Ormonde, who is also attainted in the Act of Attainder. The reason for the separate Act seems to be to abolish a palatinate which had been granted to Ormonde and reunite the territory with County Tipperary, rather than merely vesting the palatine jurisdiction in the Crown. No. 24 is “An Act for forfeiting and vesting in his Majesty the goods of absentees”, focussing particularly on personalty. As the editors point out (p. xxvi-xxvii) the purpose of this Act was partly to regularise extra-legal seizures which had already taken place and make those who had seized moveables in this way account to the Crown. Again the definition clause (s. 1) is mildly interesting for the legal conception shown: “goods and chattels, stock, corn in ground, debts, and arrears of rent, and other chattles, and personal estates”.

A number of the other Acts amount, in effect, to political manifestos of the constitutional views of the Irish Jacobites. A second group represent specifically *Irish* and, or, Catholic interests. A related group ‘reform’ aspects of the Anglican church in Ireland so as to weaken it. A third group appear to be ‘technical’ law reforms, generally adapting existing English legislation. At the end of the book are listed five acts (nos. 31-35) which the editors identify as local or private acts, but of which they have been unable to find texts.

There are four ‘constitutional’ texts. The Act of Recognition of the King’s title (No. 1) is a much more elaborate manifesto than the equivalent Williamite Irish Act of 1692 (4 Will & Mar c. 1 (Ir.)). The Act of Liberty of Conscience (No. 3) abolishes the anti-Catholic, Anglican establishment, and related laws. The Act for annulling all patents of office for life or during good behaviour (no. 11) sacks all the judges and other ‘secure’ officers and sets up appointments *durante bene placito* as a matter of principle. The Act for Martial Law (No. 25), rather than (as the Williamite regime did) putting military law on a statutory footing, ‘declares’ that it exists by inseparable prerogative. The Act ‘to enable the King to lay duty upon imports’ authorises the King to vary customs duties at will. All these should be of interest to historians of the constitution.

The ‘Irish’ and ‘Catholic’ Acts could start with the Act of Liberty of Conscience mentioned above. More specific are the Act for taking off the incapacities of natives (No. 5) removing discrimination against ‘native’ Irish; the Act for repealing the official commemoration of the 1641 rising (No. 9); the Act declaring that the Parliament of England cannot bind that of Ireland, and abolishing writs of error and equity appeals from Ireland to England (No. 10); the Act concerning Tithes, which provided for Catholics to pay their tithes to Catholic, not Anglican, priests (No. 13), and the supplementary provision (No. 15) making equivalent provision where tithes were impropriated to dioceses, prebends and so on; the Act prohibiting the importation of English, Scots or Welsh coal (No. 21); and the Navigation Act (No. 29). This last appears to attempt to approximate the English Navigation Acts, but removing the aspects of these which discriminated against Irish ports and shipping. *Perhaps* falling into this class, though the editors found no text, is No. 19, for the encouragement of immigration to Ireland; the editors report that James had to fight against an original intention to restrict this Act to encouraging *French* immigration (p. xxvii).

The Anglican church ‘reforms’ are No. 8, to repeal an Act to make provision for ministers; No. 10, to replace the special rules for tithing of cattle in Ulster with regular tithe law; and No. 16, to repeal a prior act which allowed for unification of small parishes. All of these, while presented as ‘reforms,’ would in practice weaken the finances of the Anglican church and hence its ability to compete with the Catholics.

These two classes of statutes could perhaps pose legal issues in relation to the legal techniques adopted in drafting them, though not, as far as I can see, particularly interesting ones.

The ‘technical’ law reforms, on the other hand, are as potentially interesting to lawyers as the ‘constitutional’ Acts are. The editors were able to find texts for four of them. No. 6 continued and made permanent two Acts of the 1665-66 parliament against to reduce delays in debt enforcement, originally introduced as temporary: a common feature of early modern legislation in England as well as Ireland. No. 7 was itself such a temporary Act, here removing benefit of clergy from cattle-lifting and crop theft: this was in line with the general trend of English penal legislation at the time to increase capital penalties *in terrorem* by removing benefit of clergy, but did not have an exact model. No. 12 penalised counterfeiting of foreign coin, introducing for Ireland an English Act of 1555 (p. xxxii). No. 17, ‘An Act for the relief and release of poore distressed prisoners for debt’ was based on the English Acts of 1670 and 1678 (pp. xxxii-iii), and was what later came to be called an ‘Insolvent Debtors Act’ for debtors who as non-traders were not covered by bankruptcy law.

They were unable to find texts for three, but they were able to discuss the probable content on the basis of 1678 Irish government drafts and post-1691 legislation (pp. xxxiii, xxxvi-xxxvii). No. 20, Statute of Frauds, was probably based on the English Statute of 1677, imposing formalities in relation to land transfer and related matters. No. 23, for recovery of wages, probably related to the English interpretation of the JPs’ jurisdiction under the Statute of Artificers 1563 as authorising summary orders for payment of the wages of farm labourers, whose scope was debated in the English courts at this period. No. 28, on intestates’ estates, was probably based on the English Statute of Distributions 1670.

All in all, then, this edition shines a valuable light on an obscure corner of the late seventeenth century history of legislation.

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