

The Historical Journal, 63, 4 (2020), pp. 836–861 © Cambridge University Press 2019
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doi:10.1017/S0018246X19000529

THE REPRESENTATION OF FEMALE CLAIMANTS BEFORE THE TRUSTEES FOR THE IRISH FORFEITURES, 1700–1703*

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ABSTRACT. *This article examines the rate and nature of female representation before the board of trustees for the forfeited estates in Ireland, established by the Act of Resumption in 1700. The legislation was introduced by a discontented English parliament to nullify William III's grants of forfeited Irish land, which he awarded after victory over James II in the War of the Two Kings (1689–91). The act's remit extended well beyond the resumption of freehold land, incorporating real property, judgements, securities, obligations, debts, and goods and chattels forfeited by outlawed Jacobites. It was also retroactive, as all parties with a legitimate title to a property that predated 13 February 1689 were entitled to enter a claim. Using a printed list of 3,140 claims submitted to the trustees, this article analyses the commonality of female claimants, considers their economic, social, and marital status, and identifies the legal or equitable basis for their representation before the trustees. In doing so, it examines prenuptial and familial practices in post-Restoration Ireland, underlines the economic importance of marriage and inheritance as means of conveyance, and suggests that women's and female minors' successful claims provided a number of Catholic families with a lifeline in the early eighteenth century.*

As darkness fell on 10 August 1700, the doors to Chichester House, the old parliament building on Dublin's College Green, remained open. Inside, clerks worked by candlelight to a midnight deadline, as people came and went, depositing deeds, rent rolls, and sundry other papers. The Irish parliament was not in session; instead, the commotion was a result of legislation that had been passed

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* The author wishes to thank Professor Marian Lyons, Professor Mary O'Dowd, and Dr C. I. McGrath for reading and providing feedback on earlier drafts of this article. It is with sincere gratitude that the author also acknowledges the support of the Irish Research Council, as the provision of an IRC Postdoctoral Fellowship has made this research possible.

by the English parliament. Known shorthand as the Act of Resumption, it was designed to dismantle and remake the land settlement that resulted from the Protestant William III's victory over his Catholic uncle and father-in-law, James II, in the War of the Two Kings (1689–91) in Ireland. Despite initial assurances that estates forfeited by James's supporters would be used to offset the cost of a successful campaign, William awarded 656,807 Irish acres to his military commanders and personal favourites throughout the 1690s.¹ Unhappy with the king's actions and locked in a larger battle for political control, between 1698 and 1699 the English House of Commons moved to roll back the royal grants. Taking effect in 1700, the Act of Resumption nullified all but a handful of the king's awards and vested all identifiably forfeited property in a thirteen-man board of trustees.² Crucially, anyone with a title to all or part of a forfeited estate that predated 13 February 1689 (the date of William and Mary's accession) could submit a claim on or before the deadline of 10 August; those deemed valid then proceeded to a court of claims, to be adjudicated on by the trustees.³

The retroactive nature of the legislation and the complexity of the Irish land-based economy meant that the volume of submissions was considerable and not restricted to elite landowners. Registering claims represented a significant administrative task: over 3,000 claims were submitted, all of which were included in *A list of the claims*, a printed schedule of cases brought before the trustees between 1700 and 1703.⁴ The Act of Resumption, the *List*, and the records of the trustees form the basis of this article, which outlines the framework for the submission of claims and identifies the commonality of female claimants and the nature of their claims. This is a new departure and not just in respect of the Williamite confiscation; the absence of women from the historiography of early modern Irish land settlements was highlighted by 'An agenda for women's history in Ireland', co-authored by Margaret MacCurtain, Mary O'Dowd, and Maria Luddy and published in *Irish Historical Studies* in 1992. MacCurtain and O'Dowd's stimulating contemplation of the possibilities for research in an early modern context included the key observation that

¹ *Commons Journal (CJ)*, x, p. 445 (17 Oct. 1690); Historical Manuscripts Commission, House of Lords Manuscripts, new series, iv, p. 38. J. G. Simms incorrectly records this figure as 636,807 acres (J. G. Simms, *The Williamite confiscation in Ireland, 1690–1703* (London, 1956), p. 87).

² 11 & 12 Will. III, c. 2, ss. 1, 2.

³ 11 & 12 Will. III, c. 2, s. 11.

⁴ *A list of the claims as they are entred [sic] with the trustees at Chichester-House on College-Green Dublin, on or before the tenth of August, 1700* (Dublin, 1701). There are over thirty printed copies of the *List* extant in various repositories, with a range of manuscript adjudications and other additions made to many of them, including a number of additional claims. The copy used in this study is held by the National Library of Ireland (NLI, MS 3012) and includes the additional claims. A modern edition of the *List*, edited by C. I. McGrath and Frances Nolan, is forthcoming from the Irish Manuscripts Commission.

[w]omen appear in the sources for the Commonwealth land settlement, as well as in the subsequent Restoration and Williamite settlements. And it should be possible to document women's experiences in these settlements, to trace the extent to which they petitioned for help, their success rate as claimants and their distribution as land-owners at the end of the century.⁵

Notwithstanding the centrality of the land settlements in the history of early modern Ireland and despite clear evidence of women's involvement, the topic has remained on the shelf as successive generations of historians have filed by.⁶ The general implications of women's legal right to property has been afforded valuable consideration.⁷ However, no major scholarly study of women's involvement in the profoundly transformative redistribution of Irish acreage, property, and wealth across the sixteenth and seventeenth centuries has been published; nor has there been any attempt to conduct a statistical analysis of women's representation in the records of confiscation and plantation.

⁵ Margaret MacCurtain, Mary O'Dowd, and Maria Luddy, 'An agenda for women's history in Ireland', *Irish Historical Studies (IHS)*, 28 (1992), p. 10. O'Dowd's contribution to the historiography on women and gender in early modern Ireland is unparalleled. See, for example, 'Women and war in the 1640s', in Margaret MacCurtain and Mary O'Dowd, eds., *Women in early modern Ireland* (Edinburgh, 1991), pp. 91–111; Mary O'Dowd, *A history of women in Ireland* (Harlow, 2005); eadem, 'Women in Ulster, 1609–1800', in Liam Kennedy and Philip Ollerenshaw, eds., *Ulster since 1600: politics, economy and society* (Oxford, 2013), pp. 43–57; eadem, 'Marriage breakdown in Ireland, c. 1660–1857', in N. Howlin and K. Costello, eds., *Law and family in Ireland, 1800–1950* (London, 2017), pp. 7–23; eadem, 'Men, women and children in Ireland, 1500–1730', in Jane Ohlmeyer, ed., *Cambridge history of Ireland* (4 vols., Cambridge, 2018), II, pp. 337–63; eadem, 'Adolescent girlhood in eighteenth-century Ireland', in eadem and June Purvis, eds., *A history of the girl: formation, education and identity* (London, 2018).

⁶ While the land settlements have not received attention, there has been a significant amount of valuable work undertaken on women in early modern Ireland in recent years, although the late seventeenth/early eighteenth centuries have not received as much attention as other periods. From 2010, for example, see Naomi McAreevey, 'Re(-)membering women: Protestant women's victim testimonies during the Irish Rising of 1641', *Journal of the Northern Renaissance*, 2 (2010), pp. 72–92; M. L. Coolahan, *Women, writing and language in early modern Ireland* (Oxford, 2010); Rachel Wilson, *Élite women in ascendancy Ireland* (Woodbridge, 2015); Andrew Sneddon, *Witchcraft and magic in Ireland* (Basingstoke, 2015); Bernadette Cunningham, 'Nuns and their networks in early modern Galway', in Salvador Ryan and Clodagh Tait, eds., *Religion and politics in urban Ireland, c. 1500–c. 1750: essays in honour of Colm Lennon* (Dublin, 2016), pp. 156–72; Clodagh Tait, "'Good ladies and ill wives': Richard Boyle's female tenants and servants in Munster", in David Edwards and Colin Rynne, eds., *The colonial world of Richard Boyle, first earl of Cork* (Dublin, 2017); Bronagh McShane, 'Negotiating religious change and conflict: female religious communities in early modern Ireland, 1530–1641', *British Catholic History*, 33 (2017), pp. 357–82; eadem, 'Clerical wives in Tudor and early Stuart Ireland', in Sarah Covington, Valerie McGowan-Doyle, and Vincent Carey, eds., *Early modern Ireland: new sources, methods and perspectives* (Abingdon, 2019), pp. 64–78. There has also been an increased effort to place women's and gender history within broader historical narratives; for example, Jane Ohlmeyer, *Making Ireland English: the Irish aristocracy in the seventeenth century* (London, 2012).

⁷ Mary O'Dowd, 'Women and the Irish chancery court in the late sixteenth and early seventeenth centuries', *IHS*, 31 (1999), pp. 470–87; eadem, 'Women and law in early modern Ireland', in Christine Meek, ed., *Women and Renaissance in early modern Europe* (Dublin, 2000); eadem, *History of women*, pp. 73–113.

Instead, the concentration has remained on tracing the proportional change in landownership between the Catholic and Protestant elites.⁸ Of course, the issue of land and who owned it is exceptionally important in Irish history, but in focusing almost entirely on the ownership of freehold estates, a much wider and diverse cohort of property owners has been overlooked and an appreciation of marriage and family settlements as political, social, and economic catalysts in early modern Ireland has been impaired.

If the absence of women and the family from the historiography of Irish land settlements is surprising, their absence from existing scholarship on the Williamite confiscation is less so. While the settlements of the sixteenth and earlier seventeenth centuries have been analysed and debated in some detail, treatments of the last great episode of Irish land transfer have been fewer in number. Instead, the historiography of the 1690s is deeply concerned with the establishment of the ‘Protestant ascendancy’, with consideration given to the increasing regularity of the Irish parliament and legislative developments.⁹ There has also been a valuable emphasis on the Irish Catholic émigré population in Europe, including the ‘Wild Geese’ who took passage to the continent after the Jacobite defeat in 1691.¹⁰ In contrast, the experience of the Irish Catholics who remained in Ireland after the surrender at Limerick in 1691 has not proved as attractive an avenue of research. Treatments of the Williamite peace tactics and the articles of surrender fit within political and militaristic considerations of the war and focus on the drafting of the terms

⁸ See, for example, Simms, *Williamite confiscation*; K. S. Bottigheimer, *English money and Irish land: the adventurers in the Cromwellian settlement of Ireland* (Oxford, 1971); idem, ‘The Restoration land settlement in Ireland: a structural view of the land settlement’, *IHS*, 18 (1972), pp. 1–21; T. C. Barnard, ‘Plantations and policies in Cromwellian Ireland’, *Past and Present*, 61 (1973), pp. 31–69; idem, *English government and reform in Ireland* (Oxford, 2000); Kevin McKenny, ‘The Restoration land settlement in Ireland: a statistical interpretation’, in Coleman Dennehy, ed., *Restoration Ireland: always settling and never settled* (Aldershot, 2008), pp. 35–52.

⁹ For the development of the Irish parliament, see C. I. McGrath, *The making of the eighteenth-century Irish constitution: government, parliament and the revenue, 1692–1714* (Dublin, 2000), pp. 15–192; D. W. Hayton, *Ruling Ireland, 1685–1742: politics, politicians and parties* (Woodbridge, 2004), pp. 35–105; Patrick Walsh, *The making of the Irish Protestant ascendancy: the life of William Conolly, 1662–1729* (Woodbridge, 2011). For Poyning’s law, see James Kelly, *Poyning’s law and the making of law in Ireland, 1660–1800* (Dublin, 2007), pp. 48–156. For a comprehensive historiographical treatment of the penal laws, see James Kelly, ‘The historiography of the penal laws’, in John Bergin, Eoin Magennis, Lesa Ní Mhuinghaile, and Patrick Walsh, eds., *New perspectives on the penal laws (Eighteenth-Century Ireland (ECI), special issue no. 1*, Dublin, 2011), pp. 27–52.

¹⁰ See Nathalie Genet Rouffiac, ‘Jacobites in Paris and Saint Germain en Laye’, in Eveline Cruickshanks and Edward Corp, eds., *The Stuart court in exile and the Jacobites* (London, 1995), pp. 15–38; eadem, ‘The Irish Jacobite exile in France, 1692–1715’, in Toby Barnard and Jane Fenlon, eds., *The dukes of Ormonde, 1610–1745* (Woodbridge, 2000), pp. 195–210; Edward Corp, *A court in exile: the Stuarts in France, 1689–1718* (Cambridge, 2004), passim; Mary Ann Lyons, ‘“Digné de compassion”: female dependents of Irish Jacobite soldiers in France, c. 1692 – c. 1730’, *ECL*, 23 (2008), pp. 55–75.

themselves, rather than any consequences.¹¹ Eoin Kinsella's recent publication on Colonel John Browne has demonstrated the value of a different approach, using a case-study to tease out the complexities of war, confiscation, and Catholic survival in seventeenth- and early eighteenth-century Ireland.¹² On the land settlement itself, however, J. G. Simms's 1956 survey, *The Williamite confiscation in Ireland*, remains the foremost authority.¹³

Recent doctoral research has occasioned a greater understanding of women's experience and their role in the redistribution of land, property, and wealth in the Williamite confiscation.¹⁴ As MacCurtain and O'Dowd anticipated, it is possible to document the experiences of women and to trace the commonality of petitions submitted by or on behalf of women and female minors between 1690 and 1703. It is also possible to calculate the number of claims brought before the board of trustees between 1700 and 1703, either by or on behalf of women and female minors; to calculate the rate of success in those claims; and to glean some detail on the location of the estates they claimed or claimed off. In individual cases, the size and value of a woman's or female minor's estate may be ascertained or at least estimated and in a couple of cases it is even feasible to discern the kinds of houses they owned and most likely lived in. Mapping the distribution of women's landownership is more complicated, however; the nature of their entitlements and deficiencies found in certain of the records for the Williamite confiscation prohibit any concrete conception of the acreages in play.

I

There is greater value in reframing the proposition, principally by acknowledging that any investigation of women in the context of the Irish land settlements should not be overly concerned with their absolute ownership of land (known as

¹¹ See J. G. Simms, 'Williamite peace tactics, 1690–1691', *IHS*, 8 (1953), pp. 303–23; idem, *The Treaty of Limerick* (Dundalk, 1965); James McGuire, 'The Treaty of Limerick', in Bernadette Whelan, ed., *The last of the great wars: essays on the war of the three kings in Ireland* (Limerick, 1995), pp. 127–38; John Childs, *The Williamite wars in Ireland, 1688–1691* (London, 2007). Alan Smyth's doctoral work has considered the impact of the war from a different perspective: A. J. Smyth, 'The social and economic impact of the Williamite war on Ireland, 1689–1691' (Ph.D. thesis, Trinity College Dublin, 2013).

¹² Eoin Kinsella, *Catholic survival in Protestant Ireland, 1660–1711: Colonel John Browne, landownership and the articles of Limerick* (Woodbridge, 2017). See also Karen Harvey, *The Belleus of Mount Bellew: a Catholic gentry family in eighteenth-century Ireland* (Dublin, 1998); W. A. Maguire, 'The estate of Cú Chonnacht Maguire of Tempo: a case history from the Williamite land settlement', *IHS*, 27 (1990), pp. 130–44; Emma Lyons, 'Morristown Lattin: a case study of the Lattin and Mansfield families in County Kildare, c. 1660–1860' (Ph.D. thesis, University College Dublin, 2011).

¹³ Simms, *Williamite confiscation*.

¹⁴ Frances Nolan, "'Jacobite' women and the Williamite confiscation: the role of women and female minors in reclaiming compromised or forfeited property in Ireland, 1690–1703' (Ph.D. thesis, University College Dublin, 2016); eadem, "'The cat's paw': Helen Arthur, the Act of Resumption and *The popish pretenders to the forfeited estates in Ireland*", *IHS*, 42 (2018), pp. 225–43.

fee simple), but rather with the economic and social implications of property ownership. Women could and did inherit and own land in fee simple, but the primogenitary bent of early modern society and the strictures of common law meant that this form of freehold landownership was largely the preserve of elite men. Most of those outlawed during and after the War of the Two Kings possessed no real estate and the number of forfeiting landowners was relatively few. Of the 3,978 individuals included in the books of outlawries, only 457 were possessed of a landed estate. Of those 457, some 272 men forfeited estates and were not restored, while 185 were restored, either through the ratification of articles of surrender signed in Limerick and Galway in 1691, or through royal favour.¹⁵ By Simms's calculations, Catholic landownership lay somewhere around 22 per cent before the war began in 1688 and was reduced to 14 per cent by 1703, so the demographic swing occasioned by the Williamite episode was not profound.¹⁶ Kevin McKenny has argued that Simms was wide of the mark in his calculations on Catholic landownership in Restoration Ireland, placing the figure at 29 per cent.¹⁷ Whatever the percentage of acreages before the war, the forfeiture of landed estates in the wake of the Jacobite defeat provided a basis for the ascent of Protestant interests, albeit that the reduction in Catholic landownership fell short of expectations and was partly a consequence of the processes (or lack thereof) through which the settlement was achieved.

On the one hand, there was a failure to legislate for the forfeitures during the 1690s, a less-than-coherent and occasionally corrupt approach to the administration of the forfeited estates, and dissatisfaction in the English parliament over William's sizeable grants to personal favourites. On the other hand, while thousands of defeated Jacobites took passage to the continent,¹⁸ others proved resolute in confirming their inclusion under the articles of surrender, in securing pardons, in petitioning for some measure of redress, and in avoiding outlawry and forfeiture altogether.¹⁹ This contest at the top tier of society had significant repercussions for a vast and diverse band of property owners whose interests frequently took the form of legal and equitable encumbrances upon major Irish estates. At the very heart of this proprietary system were countless marriage and family settlements, dating back generations and incorporating

¹⁵ Appendices to the report of the commissioners of inquiry, 1699 (Book of outlawries), Trinity College Dublin (TCD), MS 744, fos. 1–187.

¹⁶ Simms, *Williamite confiscation*, p. 196. Simms's conclusions are based on a comparative analysis of the Books of Survey and Distribution, the appendices to the report of the commissioners appointed to inquire into the Irish forfeitures in 1699, and the records of the trustees for the sale of the forfeited estates.

¹⁷ McKenny, 'The Restoration land settlement', pp. 38–40.

¹⁸ There is some difference in the estimated number of Irish émigrés after the Jacobite defeat. See Rouffiac, 'The Irish Jacobite exile in France, 1692–1715', pp. 195–6; Kevin Danaher and J. G. Simms, *The Danish force in Ireland* (Dublin, 1962), p. 137.

¹⁹ The two books that deal with articlemen in the appendices to the commissioners' report contain 1,283 adjudications under the articles of surrender. TCD, MS 744, fos. 101–151v.

innumerable men and women. The hitherto dominant focus on freehold ownership has concealed this ever-evolving web of familial bonds and dependencies, in turn exaggerating the gendered separation of the early modern economy and reducing women's role as owners and conveyors of property.

Given the ascent of common law to a point of jurisdictional dominance and near-universal usage in seventeenth-century Ireland, along with the introduction of the Statute of Uses in 1635, scholarship on women and marriage in early modern England has clear implications for any Irish study. Much has been written on the legal aspects of marriage there, with Lawrence Stone, Lloyd Bonfield, and Sir John Habbakuk, among others, contributing to a substantial historiography of the strict settlement under common law.²⁰ However, this focus has been identified by Amy Erickson as problematic, since the primogenitary preoccupations of the strict settlement 'have come to be regarded as synonymous with early modern marriage settlements generally, serving to reinforce the idea of early modern England as an intensely patriarchal society in which women were largely victimized by the common law of marriage'.²¹ Erickson has done much to counteract this legacy, exploring the relative flexibility of separate settlements, exposing the disjuncture between the strictures of common law and the often circumventive machinations of common practice (facilitated by equity and ecclesiastical law), and examining the use of marriage settlements beyond the English aristocracy and gentry. Susan Staves and Anne Laurence, among others, have also examined the economic significance of marriage settlements and of female property rights and inheritance. This work has reimagined the centrality of women and of the family in the preservation and conveyance of material interests in early modern England/Britain.²²

As in England, women in Ireland were subject to common law coverture, meaning that their legal rights and obligations were subsumed by their husband and they were prevented from owning property and from making contracts. Under this system, spinsterhood and widowhood offered a greater level of freedom than marriage; a single woman, or *feme sole*, could own property in her own right and make contracts in her own name and a widow was entitled to dower, which consisted of one third of her husband's estate. Dower had a

²⁰ Lawrence Stone, *The family, sex and marriage in England, 1500–1800* (London, 1977); Lloyd Bonfield, *Marriage settlements, 1601–1740: the adoption of the strict settlement* (Cambridge, 1983); John Habbakuk, *Marriage, debt and the estates system: English landownership, 1650–1950* (Oxford, 1994).

²¹ A. L. Erickson, 'Common law versus common practice: the use of marriage settlements in early modern England', *Economic History Review*, 43 (1990), p. 21.

²² Erickson, 'Common law', pp. 21–39; eadem, *Women and property in early modern England* (London, 1993). See also Susan Staves, *Married women's separate property in England, 1660–1833* (Oxford, 1989); Margaret W. Ferguson, A. R. Buck, and Nancy E. Wright, *Women, property and the letter of the law in early modern England* (Toronto, ON, 2004); Anne Laurence, 'Women and the transmission of property: inheritance in the British Isles in the 17th century', *Dix-septième siècle*, 244 (2009), pp. 435–50.

long history, but the early modern period witnessed decline in its usage and an increase in the use of jointures across the British Isles. Jointure had developed historically as an enfeoffment of land to the joint use of a husband and wife, with a life interest provided for a woman in her widowhood.²³ However, following the introduction of the Statute of Uses (1534 in England and in 1635 in Ireland), which removed any form of equitable interest in land and only recognized common law title, jointure changed shape.²⁴ O'Dowd has observed that in the latter half of the seventeenth century 'jointure became a mathematical calculation based on the size of the woman's marriage portion', as it typically ensured provision of an annuity for the duration of a woman's widowhood.²⁵

The legal devices that emerged in England in the sixteenth century in order to circumvent the Statute of Uses, were more frequently employed in Ireland after the Restoration of Charles II in 1660. Significantly, the entail made a comeback and its new iteration was less restrictive on women's right to inherit freehold land. The increasingly sectarian nature of Irish society meant that including daughters in the entail of an estate, in the event that their brothers died without male heirs, 'facilitated the retention of the property within the religious denomination supported by the person who drew up the entail'.²⁶ An entail to daughters could take two forms: first, listing daughters successively by age and second, dividing the estate equally between daughters, as coparceners. The ways in which families of means conveyed property extended beyond the entail, not least because a very small percentage of the population owned freehold land and even those who did had obligations to provide for family members and to convey property that was not freehold. For those among the 'middling sorts', like tenant farmers and merchants, the last will and testament was important for dictating terms of inheritance, while the aristocracy and gentry increasingly relied on prenuptial settlements and deeds of trust to convey various entitlements. Marriage settlements were the result of much negotiation, typically between the prospective bride and groom's families, and were of critical importance in protecting the interests of a woman and her family. This was primarily because they outlined provisions for jointure and maintenance, but they also – crucially – established trusts for a woman's separate estate and allowed her to own chattels and to make a will. They also provided portions for any daughters and younger sons that resulted from the union.²⁷ Erickson's observation on the totality of the 'family settlement' in England therefore applies to the Irish context, where the 'strict settlement of

²³ Giles Jacob, *A new law dictionary* (London, 1729), 'Jointenants', 'Jointure of lands'.

²⁴ For the development of jointure in an English context, see, for example, Staves, *Married women's separate property*, pp. 97–103; Eileen Spring, *Law, land and family: aristocratic inheritance in England, 1300–1800* (Chapel Hill, NC, 1993), pp. 39–65.

²⁵ O'Dowd, *History of women*, p. 101.

²⁶ *Ibid.*, p. 84.

²⁷ *Ibid.*

the late seventeenth century could more accurately be described as a family settlement'.²⁸

II

The centrality of the family in the ownership and conveyance of land, property, and wealth in late seventeenth-century Ireland meant that marriage and inheritance were fundamental economic drivers, often underwritten by leasehold, copyhold, and other forms of property. Consequently, the Williamite confiscation impacted on a broad and diverse stratum of property owners and, in turn, was shaped by those individuals asserting their rights, a circumstance that was particularly evident in the fallout from the Act of Resumption. The legislation was introduced following a commission of inquiry's report in 1699, and was the result of the English parliament's displeasure with William III's grants of land to personal favourites and military commanders. Whereas the commission of inquiry was principally concerned with conveying to Westminster the number of freehold Irish acres that might be sold if William III's grants were resumed, its records and report to the English parliament did take account of the encumbered interests that fed off freehold estates. As a result, the Act of Resumption recognized the complexity of an Irish land-based economy that was built upon a plurality of propertied interests. The first two clauses of the act effected a conclusion of outlawry proceedings and an almost wholesale resumption of the grants awarded by William during the previous ten years.²⁹

The first clause stipulated that all real estate, real property, judgements, security interests, securities, obligations, debts, and goods and chattels belonging to or in trust for anyone who stood attainted for domestic or foreign high treason since 13 February 1689 be vested in a board of trustees. This clause included individuals who were attainted for high treason who died during the war, and those who were attainted for high treason on or before the last day of Trinity Term 1701.³⁰ The second clause nullified any grants of forfeited or forfeitable estates made by the king since 13 February 1689, including William's controversial award of James II's private estate to Elizabeth Villiers, countess of Orkney.³¹ Importantly, the act also stipulated that any person with a claim to an estate that predated 13 February 1689 was entitled to submit his or her case to the trustees on or before 10 August 1700, after which all eligible claims would be heard and adjudicated upon in a court of claims, presided over by the board of trustees.³² The thirteen-man board was

²⁸ Erickson, 'Common law', p. 23; O'Dowd, *History of women*, p. 84.

²⁹ Some of the king's grants were maintained. See 'An act for granting an aid to His Majesty by sale of the forfeited and other estates in Ireland, etc.', 11 & 12 Will. III, c. 2, ss. 55–6; Simms, *Williamite confiscation*, p. 115.

³⁰ 11 & 12 Will. III, c. 2, s. 1.

³¹ 11 & 12 Will. III, c. 2, s. 2.

³² 11 & 12 Will. III, c. 2, s. 11.

selected by ballot in the English House of Commons and convened for the first time on Monday, 3 June 1700, at Chichester House in Dublin. After the outset, it was expected that they would conclude their business by March 1702, but their remit was broad and their task considerable, so the final sale of an identifiably forfeited estate did not take place until the summer of 1703.³³

The Act of Resumption was the instrument by which the Williamite confiscation was dismantled and reconstructed and it is therefore unsurprising that the legacy of previous policy, failed legislation, and private transactions was reflected in its numerous clauses. The king's grantees were exempted from repayment of rents, issues, or profits accruing from their rescinded awards,³⁴ while purchasers of lands from grantees were discharged of purchase money that remained unpaid and compensated by a sum of £21,000, which was to be divided between them.³⁵ On the other side, the rights of those who fought for or otherwise supported James II in the war, but who had been adjudged within the articles of Limerick and Galway, were upheld.³⁶ Provisos were also included to protect the interests of individuals attached to a forfeiting proprietor and this was especially pertinent to women, several of whom secured entitlements under the act. This included Helen Browne, Viscountess Kenmare, and her children; Anne Bagnall and her children; Anne Fleming, Lady Slane; Elissa, Thomasine, and Catherine, the daughters of Sir Valentine Browne; Margaret, Elizabeth, and Catherine McCarthy, the three unmarried Clancarty daughters; and Dorothy Fitzpatrick, dowager baroness of Upper Ossory.³⁷ (While they were protected in their interests by the act, these women were still required to submit their claims to the trustees, as a formality.)

In most cases, these provisos represented the end of a protracted struggle to regain or maintain at least some part of a personal fortune or, alternatively, a compensatory and ameliorating award from the crown after the war. All of the women and female minors included had submitted petitions, or had them submitted on their behalf, for individual awards and for savings in different bills during the 1690s. In 1698, seventeen petitions submitted to the English parliament for a saving in a failed bill of resumption represented the interests of a female party in some way.³⁸ The act clearly impacted women (and other dependants) who were attached to outlawed men; who were themselves indicted or waived; who were adjudged within the articles of surrender; who were awarded grants or custodians by the king during the 1690s; or who possessed encumbered interests upon the forfeited estates. This latter group was extended considerably by the clause which ensured that any party with an interest in a forfeited estate that predated 13 February 1689 was entitled to register a

³³ 11 & 12 Will. III, c. 2, s. 22; Simms, *Williamite confiscation*, p. 150.

³⁴ 11 & 12 Will. III, c. 2, s. 3.

³⁵ 11 & 12 Will. III, c. 2, ss. 31, 32.

³⁶ 11 & 12 Will. III, c. 2, s. 2.

³⁷ 11 & 12 Will. III, c. 2, ss. 53, 54, 60, 61, 62.

³⁸ *CJ*, XII, 119–66 (19 Feb. – 19 Mar. 1698).

claim.³⁹ At the same time, these women and female minors represent only the tip of the iceberg. The Act of Resumption's impact was felt by hundreds of women and girls whose financial security was tied to a system that relied upon the conveyance of land, wealth, and property through various channels.

In fact, the possibility of women and children preserving the estates of any person who was or would be attained by the close of Trinity Term 1701 was addressed by the seventeenth clause in the act. It declared that any conveyances or assurances of real estate and property in Ireland made after 29 May 1686, for the use of the outlaw, 'or for the use of his wife, or any of his children or in trust for himself, his wife, or any of his children' were fraudulent.⁴⁰ The legislation's anticipation of these 'insurance' settlements, created by Catholics in fear of forfeiture, indicates that such practices were not uncommon. Indeed, a petition submitted to the English parliament in 1701 by John Trant on behalf of his mother Helen and his brothers and sisters challenged a suggestion that his father, the outlawed Sir Patrick, had made a settlement of his estate in Queen's County 'upon... foresight of the ensuing war'.⁴¹

At the same time, however, the importance of marriage as a legitimate means of conveying property was recognized within the same clause, which stipulated that conveyances 'made bona fide before marriage or in performance of any covenant, or agreement made and reduced into writing before marriage' were not to be invalidated by the act.⁴² Given the practice of assigning property in expectation of marriage, this exemption meant that a cache of female entitlements which were contracted after 29 May 1686 were potentially immune to resumption. In contrast, the stipulation that real property, encumbered security interests like mortgages, financial obligations such as debts and judgements for debts, and goods and chattels were forfeitable meant that numerous female-owned entitlements were compromised.⁴³ This effectively encouraged a landslide of claims by, on behalf of, or in connection with a woman or female minor who was affected by the forfeiture of an estate in which she possessed a material interest before 13 February 1689. These persons were often, but not always, possessed of a familial connection to a forfeited estate. Not surprisingly, female claimants at Chichester House were numerous and their claims were diverse.

III

The records of the trustees provide a valuable albeit imperfect framework through which both a qualitative and quantitative assessment of women's proprietorship and their participation in the marriage and family economy in

³⁹ 11 & 12 Will. III, c. 2, s. 11.

⁴⁰ 11 & 12 Will. III, c. 2, s. 17.

⁴¹ Bodleian Library, Oxford, Rawl. MS A. 253, fo. 162.

⁴² 11 & 12 Will. III, c. 2, s. 17.

⁴³ 11 & 12 Will. III, c. 2, s. 1.

Ireland can be achieved. The records of the trustees form part of the Annesley papers (held in the Public Record Office of Northern Ireland) and include minutes on the proceedings of the court of claims, notes on discoveries of forfeited estates, registrars' and secretaries' minutes, reports on claims entered, numerous valuations, a list of arrears, an abstract of encumbrances, and a rent roll for the forfeited estates.⁴⁴ Hereafter, the focus will be on those women and female minors who presented or were represented in the capacity of a claimant before the trustees. To begin, it must be acknowledged that hundreds of women crossed the threshold of Chichester House between 1700 and 1703 and that they did so in a variety of capacities: the records of the trust provide a valuable insight into the role of women as claimants, property owners, discoverers of forfeited estates, deponents in a court of law, conduits and safe keepers of important familial papers, and as witnesses and signatories to deeds. The minutes even account for the wage paid to Mary Moor, who earned £2 and then £6 a quarter to tend the fires and clean the decaying building.⁴⁵

The statistical breakdown of female claimants that follows is principally based upon information contained in *A list of the claims*.⁴⁶ A memorandum included in some editions of the *List* notes that some 3,093 claims were brought before the trustees, with the figure extending to over 3,600 when the number of separate interests included in single claims is computed (with one claim left blank, however, the total was 3,092).⁴⁷ It was also the case that certain individuals were permitted 'by a clause in the late act' to submit claims to the trust after the deadline on 10 August 1700, with 48 additional claims submitted; 31 before 1 September 1701 and a further 17 before 10 August 1702.⁴⁸ As a result, the actual number of claims submitted to the trust was 3,140. Of these claims, 1,861 (59 per cent) were allowed, either entirely or in part.⁴⁹ The printed list is enormously revealing, but it should be emphasized that it has limitations as well. It is a shorthand representation of claimants, the claims they entered, and the legal grounds upon which those claims were based. Any interpretation is complicated further by the fact that claimants often sought more than one entitlement within a single claim, and some entered multiple, repeat, or provisional claims. The records of the trust do much to fill in blanks, but they do not supply every detail or solve every problem. As a result, the figures presented hereafter are reliant on incomplete datasets.

⁴⁴ See R. C. Simington, 'Annesley collection', *Anal. Hib.*, 16 (1946), pp. 339, 341–73. Simington's report places the papers at over 7,800 pages, not including several unpaginated volumes in the collection.

⁴⁵ Public Record Office of Northern Ireland (PRONI), Annesley MS, II, fos. 3, 75, 162.

⁴⁶ *A list of the claims*.

⁴⁷ 'Memorandum', *A list of the claims* (NLI, MS 3012).

⁴⁸ Additional claims 3104–50.

⁴⁹ Simms, *Williamite confiscation*, p. 137.

Despite this, the *List* provides some useful insights into the way in which women and female minors were represented at Chichester House and the types of entitlements they sought.

As was common in legal records across the British Isles, the principal feature of all claims listed involving women, presenting with or without a male co-claimant, is the use of marital status as a primary descriptor. There is a converse tendency to list male claimants with their occupation or social status as the primary descriptor, and many are described as gentlemen or by trade or military rank.⁵⁰ These details allow for an insight into the nature of female entitlement and the position of women and female minors within the family, society, and the Irish economy at the end of the seventeenth century. In this context, it is important to recognize that the parties who presented before the board of trustees were from a relatively broad economic base; while the majority could afford legal representation, claimed valuable property, and were from ‘good’ families, it is clear that some sought property of lesser value and/or experienced reduced circumstances and this included a number of both men and women who were compelled to claim *in forma pauperis*.⁵¹ This speaks to Erickson’s observation on the historiography of early modern England, where ‘there has been a tendency to equate “wealth” or “property” with “land”’. She refutes this approach, stating that ‘virtually everyone owned property of some sort, even if it were “only” household goods or leasehold land’ and that ‘[a]ll types of property had value for an individual owner’.⁵² It is worth noting, too, that claimants came from all parts of the ethnic, political, and religious spectrum. A mixture of Gaelic Irish, Old English, New English, and English names populate the *List* and while the majority of claimants were adherents of the Catholic or established church, Protestant dissenters did appear.⁵³ The retroactive nature of the legislation, the protections that many Catholics could lay claim to, and the trustees’ adherence to the law meant that a Protestant had little recourse against a Catholic who could prove a valid title to an estate.

In examining the types of claims submitted by or on behalf of women and female minors, the first factor to consider is freehold land. Simms has noted that only 40 freehold estates, comprising 70,000 acres, were restored to former proprietors at Chichester House.⁵⁴ In 12 of those 40 cases, the claimant

⁵⁰ See O’Dowd, ‘Women and the Irish chancery court’, p. 472.

⁵¹ PRONI, Annesley MS, viii, fos. 75, 85, 170, 317; claim nos. 541, 1546, 2909, 3005; Jacob, *New law dictionary*, ‘Forma pauperis’. In order to claim as a pauper, proof had to be provided that an individual was worth less than £5. Counsel was then appointed by the trust.

⁵² Erickson, ‘Common law’, p. 23.

⁵³ For a Quaker petition, see claim no. 2795; for Huguenot petitions see claim nos. 1315, 1487, 1488. The status of Huguenots was complicated, as efforts were made to bring them into the established church, but some dissenting congregations remained. See Suzanne Lachenicht, ‘Differing perceptions of the refuge? Huguenots in Ireland and Great Britain and their attitudes towards the governments’ religious policy (1660–1710)’, in Anne Dunan-Page, ed., *The religious culture of the Huguenots, 1660–1750* (Aldershot, 2006), pp. 43–5.

⁵⁴ Simms, *Williamite confiscation*, p. 137.

had already been admitted under the articles of Limerick and Galway but they were required to submit a claim because an outlawed and forfeiting individual held ownership of the estate at some point after 1688.⁵⁵ Simms observes that claims at Chichester House quite often concerned ‘settlements made for the benefit of wives and children’ and through these efforts several estates ‘were...saved from outright forfeiture’.⁵⁶ Patrick Walsh has correctly qualified Simms’s observation by cautioning that ‘the nature of claims varied greatly, from claims of dower or marriage portions to claims for whole estates’.⁵⁷ The involvement of women in claiming freehold estates should not be overstated, but it is clear from the records of the trustees that they were involved in pursuing such titles. In acknowledging this fact, it is important to note that Simms’s calculation for the restoration of estates to former proprietors focused on owners dispossessed by outlawry and forfeiture and did not consider competing titles which predated 13 February 1689; in other words, claims that revived an old title to a freehold estate.

In all, women or female minors were involved in 63 claims for the restoration of an estate in fee. The nature and size of these estates varied widely and the adjudications from the trust were not overwhelmingly in the affirmative. Of the 63 claims for an estate in fee made by or on behalf of a female party, 31 were allowed either in whole or in part.⁵⁸ The 2 most significant claims for estates in fee were submitted by Agmondisham Vesey on behalf of his two daughters, Anne and Henrietta Vesey, who claimed as co-heiresses of their mother, Charlotte Sarsfield’s estate in counties Dublin and Kildare;⁵⁹ and by Robert Edgeworth and his wife Catherine, the only daughter of the outlawed Sir Edward Tyrrell and the sole heiress to his lands in Meath, Westmeath, Kildare, and King’s County.⁶⁰ Other claims for estates in fee which were based on a woman or a female minor’s title were more modest, but nonetheless met with success at Chichester House. Oftentimes, these claims were for titles to a part of a forfeited estate. Arthur French and his wife Sarah succeeded in securing an estate in fee ‘in her right’ for a castle at Cambo, as well as other lands in Roscommon and in Sligo.⁶¹ Alice Burke, widow of Richard Burke, was awarded 71 acres in the barony of Kilconnell in County Galway.⁶² The capacity of daughters to inherit their father’s estate as coparceners formed the basis of a handful of successful claims too. In one instance, John French, Christian French, John Bourke, Owen Madden, and Andrew Madden relied on common law coverture

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, p. 114.

⁵⁷ Walsh, *Irish Protestant ascendancy*, p. 51.

⁵⁸ Table 1.

⁵⁹ Claim nos. 1317, 1318, 2777; 1 Ann., c. 57 [private, Eng.]; 1 Ann., c. 25, s. 2 [private, Eng.].

⁶⁰ Claim no. 254.

⁶¹ Claim no. 2512.

⁶² Claim no. 1363.

to secure the inheritance of their wives, who were the daughters and co-heirs of Fergus Madden of County Galway.⁶³

More than most, the unsuccessful claim of coparceners Margaret and Mary Molloy demonstrates the wide net cast by the Act of Resumption, the significance of past circumstance in the resolution of claims at Chichester House, and the complex inter-relation of freehold landownership and property ownership in early modern Ireland. The sisters submitted a claim for an estate in fee in King's County, as co-heirs of their brother, Arthur.⁶⁴ Problematically, that estate was understood by the trustees to have been owned and thus forfeited by the outlawed Charles Geoghegan; this was because the women's grandfather, Charles Molloy, had settled the estate on Geoghegan in the 1660s. The sisters' counsel, Mr Forster, did not contest the settlement as a fact, but he did question its validity; in 1663, a court of claims established to implement the Restoration land settlement had awarded a decree of innocence to Charles Molloy because he was a lunatic 'and there was but two months between the date of ye decree and the date of ye deed'.⁶⁵

Catherine Kernon, a servant to the family in the 1660s, testified that Molloy was a lunatic at the time he made the deed, stating that he 'used to run about the fields and was not sensible of what he did and he would eat his excrement'. She also testified that she was in the house when he had made his will, which bequeathed his estate to Arthur Molloy, from whom Margaret and Mary had subsequently inherited; at that time, she claimed, he was 'sensible' of his actions.⁶⁶ The Molloy's claim was dismissed owing to two significant factors. The first was the deposition of John Coghlan, who served as Charles Molloy's attorney at the court of claims in 1663, and who claimed that his former client was 'not mad but...always a sober man' and that 'it was said in the claim [in 1663] that he was a madman the better to get a Decree of Innocency'.⁶⁷ The second impediment was evidence presented of a suit in the exchequer in 1683 between Anne O'Dempsey, Viscountess Clanmalier, and Margaret and Mary's mother, Barbara Molloy. In answer to the bill, Barbara had sworn that the 'deed [of settlement] was duly perfected and knows nothing of the will'.⁶⁸ Barbara's claim for her dower off the same estate in King's County was heard and allowed by the trustees.⁶⁹

⁶³ Claim no. 1389.

⁶⁴ 11 & 12 Will. III, c. 2, s. 11; claim no. 458.

⁶⁵ PRONI, Annesley MS, XII, fo. 75. L. J. Arnold makes reference to the Molloy case in 'The Irish court of claims of 1663', *IHS*, 24 (1985), p. 421.

⁶⁶ PRONI, Annesley MS, XII, fos. 76–8. The provision of a translator was a relatively common occurrence at Chichester House. See, for example, PRONI, Annesley MS, III, fos. 56, 148, 153, 172, 191; Annesley MS, XII, fo. 58; Annesley MS, X, fo. 168.

⁶⁷ PRONI, Annesley MS, XII, fo. 78.

⁶⁸ PRONI, Annesley MS, XII, fo. 79.

⁶⁹ Claim no. 456.

IV

The 63 claims for freehold estates submitted by or on behalf of women and female minors are significant in any understanding of the law and practice around landownership and conveyance in post-Restoration Ireland. As Barbara Molloy's claim for dower demonstrated, however, it was a complicated system. Claims for freehold estates represented only a small percentage (7.9 per cent) of the 799 claims that named or referenced a woman or female minor as a claimant, ward, testator, administrator, or executor.⁷⁰ Of those 799 claims, 486 (61 per cent) were allowed, either in whole or in part; 298 (37 per cent) were either disallowed or dismissed; 8 (1 per cent) claims were waived by the claimant; and 7 (1 per cent) were recorded as postponed. Women presented as co-claimants with a man or men, as sole claimants, as co-claimants with one or more other women, or as a guardian to minors. Female minors were typically represented by a male or female guardian or *prochein ami*. In percentage terms, claims involving women and female minors represented 25.4 per cent of all cases heard by the trustees. Some 323 claims (40 per cent) involved women claiming in their own right, either alone or with a female co-claimant, who was typically a sister. Women acted as sole guardians to minors in 39 cases (5 per cent). The remaining 437 (55 per cent) comprised claims in which women presented alongside a man or men, in which their interests were pursued by a male party, in which a man acted as an executor or administrator of a woman's estate, or in which a male party acted alone or with another, as guardian to a female minor.⁷¹ The most common instances of female representation to the board of trustees thus involved a male party or parties (Table 1).

Unsurprisingly, when a woman presented a claim alongside a man, it was most commonly her husband; otherwise it was a son, another male relative, or a trustee. In some cases, male administrators and executors presented a claim based on the title of an intestate woman or a female testator respectively. Of the cases involving male and female co-claimants, 273 (34 per cent) were identifiably married couples. These figures correspond to cases that involve married couples presenting alone or as a part of a larger group of claimants. It was common, for example, for sisters to claim portions or some other inheritable item together, with their respective husbands as co-claimants. In some instances, a married eldest daughter presented with her husband and her unmarried sisters.⁷² O'Dowd's study of early modern Irish chancery records notes that under common law '[a] man suing in right of his wife was legally obliged to sue jointly with her. It is possible, therefore, that some of these

⁷⁰ This does not include cases where women appeared as subscribing witnesses to deeds, or claims brought by male parties but founded upon marriage articles. All percentages provided hereafter are rounded to the nearest whole and are relative to 799 as total (100 per cent).

⁷¹ Table 1.

⁷² Ibid.

Table 1 *Breakdown of claims at Chichester House*

Breakdown of claims at Chichester House	Total	% of total	% female claims
Total claims	3,140	100%	
Total claims allowed	1,861	59%	
Total claims disallowed/dismissed/waived/postponed	1,280	41%	
Overall claims women/female minors	799	25%	100%
Total female claims allowed	486	15%	61%
Total female claims disallowed/dismissed	298	9%	37%
Total female claims waived	8	0.25%	1%
Total female claims postponed	7	0.22%	1%
Claims women alone/with another female	362	12%	45%
Widows/relicts/dowagers	203	6%	25%
Spinsters	12	0.38%	2%
Sole guardian	39	1%	5%
Unspecified status	108	3%	13%
Claims with a male co-claimant/guardian	437	14%	55%
Claims involving husband & wife	273	9%	34%
• <i>Claims that evidence remarriage</i> ^a	59	2%	7%
Other claims involving male co-claimants/guardian	164	5%	21%

Note: Percentages are rounded to the nearest whole except for returns <1%.

^a This is a sub-category of the 34 per cent of claims involving a husband and wife. Rates of remarriage were likely much higher, but the *List* does not always supply information to that affect.

“joint” suits were joint in name only and that the man rather than the woman initiated the bill’.⁷³ This was clearly the case in a number of claims presented at Chichester House, with husbands using coverture to secure valuable property for their own use.

A total of 362 (45 per cent) claims involved women who presented alone, with a female co-claimant, or as guardian to a child or children. The majority of such women had survived a husband, or husbands. The term ‘spinster’ was only used as a descriptor in 12 claims (2 per cent), although the number of unmarried women was clearly higher. In many cases, a woman was identified as a daughter and claimed a portion for herself, while clearly unmarried. The frequency of the words ‘widow’, ‘relict’, ‘dowager’, and ‘guardian’ in the list’s ‘claimant’ column demonstrate the effect of war on the male population. Of the 362 claims where women present alone, with a female co-claimant, or as a guardian, 180 claims involve women who are explicitly listed as a widow or a widow and relict; 11 include women who are listed solely as ‘relict of’; and 12 claims were by or on behalf of women described as dowagers. As such, 203 (25 per cent) of the claims submitted by women acting alone or with a female co-claimant were submitted by women described in some way as widowed.⁷⁴ There were other women who claimed alone, but who were recorded only by name without reference to their marital status. In several of those cases, it is clear that the women were widows. Owing to male intestacy, the appointment of women as administrators to a deceased man’s estate (typically their husband’s) estates was relatively frequent too, occurring 81 times. A female executor was named in 75 cases.⁷⁵

Claims entered with the trustees by, or on behalf of women and female minors, were often in satisfaction of marriage articles and the provisions outlined within them. Many such claims were seeking satisfaction of jointures, dowers, maintenances, and portions. In all, 102 (13 per cent) of the 799 claims involving women explicitly name jointure, 37 (5 per cent) name dower, with 11 (1 per cent) naming ‘thirds’ in satisfaction of dower or jointure. In 111 (14 per cent) cases, portions are detailed and maintenances sometimes accompany them.⁷⁶ Dower claims brought before the trustees were a slightly different proposition to those claims entered for jointure. As a common law provision, dower was generally understood to be one third of a man’s estate, apportioned to his wife after his death. As such, the lands which were designed for dower were still part of an outlawed man’s estate at the time of his outlawry, and were forfeited accordingly.⁷⁷ As a result, many of the women who claimed dower were not the widows of outlawed men, but individuals with a claim for

⁷³ O’Dowd, ‘Women and the Irish chancery court’, p. 472.

⁷⁴ Table 1.

⁷⁵ Contemporary usage was ‘administratrix’ and similarly ‘executrix’ for a female executor of a will.

⁷⁶ Table 2.

⁷⁷ Jacob, *New law dictionary*, ‘Dower’.

dower that predated the forfeiture of an estate. When women did seek dower from the estate of an outlawed husband, they met with failure.⁷⁸ By contrast, when women sought dower which had been prosecuted before the war and the forfeiture of an estate, typically their claim was allowed. Joan O'Keefe, for example, secured her dower from an estate in the barony of Duhallow in County Cork, which had been forfeited by the foreign treason of her son, Daniel. This was because she had prosecuted a writ of dower following her husband Daniel Snr's death and before her son's attainder.⁷⁹

The impact made by claims for jointure upon the realization of the forfeitures was more considerable than that made by common law dower partly because it was immune to the outlawry of the person from whose estate it derived, and partly because jointure had become more popular in seventeenth-century Ireland. Significantly, the printed *List* also contains numerous claims by women for estates for life or lives, or for estates or terms for years. While these entitlements are not specifically identified as such, it is likely that they were underpinned by marriage articles or were contracted to provide for a wife, widow, or daughter, by way of a separate settlement. The preponderance of such entitlements also suggests an economy in which women were active in securing and retaining leasehold or copyhold property beyond or supplementary to marriage and/or inheritance. The same inference may be drawn from the commonality of debts and mortgages claimed by women (Table 2).⁸⁰

Three distinct groups emerge from the claims which explicitly name an entitlement as a jointure; in the first, widows claimed jointures by themselves when their husbands predeceased them; in the second, women claimed their jointures alongside a male co-claimant, typically a second or third husband; and in the third group, women claimed a maintenance and their jointures while their husbands were living. The last cohort was relatively small and comprised women whose husbands were outlawed but who acted to ensure that their jointure was secured in the event of their husband's death. It is likely that the number of such women was low because many of them had emigrated to the continent and chose not to pursue entitlements.⁸¹ The most obvious reason for these types of claims was the outlawry of a man and the concomitant need for his wife to secure her maintenance while he remained living and her jointure when he eventually died. A number of women who secured provisos in the Act of Resumption counted among this group, including Lady Slane, Anne Bagnall, and Helen, Viscountess Kenmare. There were other women who had not had the benefit of a proviso, however, but who acted to secure their jointures while their outlawed and forfeiting husbands were still alive.

⁷⁸ See, for example, claim nos. 464, 693, 997.

⁷⁹ Claim no. 2213; TCD, MS 744, fo. 49b; TCD, MS 744, fo. 236b.

⁸⁰ See Table 2.

⁸¹ The number of those in France increased exponentially in 1692 and continued to swell until 1698. See Rouffiac, 'Jacobites in Paris', pp. 17–18.

Table 2 *Breakdown of claim type – women/female minors*

No.	Breakdown of claim types – women/female minors	Number claimed
1	Portions	111
2	Jointure	102
3	Debt	83
4	Mortgage	78
5	Residue of a term for years	64
6	Estate in fee	63
7	Estate for life/lives	59
8	Term for years	56
9	Dower	36
10	Penalty	37
11	Remainder of a term for years	30
12	Maintenance	28
13	Rent charge	25
14	Annuity	21
15	Term for life/lives	20
16	Estate in tail	19
17	Money (principal/unspecified)	15
18	Remainder in tail	14
19	Equity of redemption	13
20	Thirds	12
21	Arrears (annuity/rent)	4
22	Remainder in fee	2
	TOTAL	902^a

^a While the *List* includes 799 claims involving women and female minors as claimants, in some cases a single claim sought adjudication on more than one entitlement; this accounts for the higher total of 902.

Sybil Martin, wife of the outlawed Peter Martin, claimed her jointure lands in County Galway. The trustees ruled that she should be admitted to the jointure after her husband's death. Dame Catherine Arthur also met with success at the court of claims. She represented alongside her rebel husband Sir Daniel, and was awarded her jointure after his death.⁸²

There were a number of claims entered by married couples who sought the satisfaction of a woman's jointure from her previous marriage. The most recognizable of this cohort was Helen, dowager countess of Clanricarde, who successfully presented a claim for her jointure alongside her second husband, Colonel

⁸² Claim no. 1026.

Thomas Bourke, on the estate of John, Lord Bophin.⁸³ Others acted similarly, like Mary Fitzpatrick, who claimed alongside her husband Patrick for her jointure from her marriage with Nicholas Herbert. This was derived from the estate of the outlawed Terence Coghlan and was allowed by the trustees.⁸⁴ Similarly, Mary Nugent presented alongside her husband Pierce for a jointure out of the estate of John Egan in County Tipperary. She was entitled to this as the widow of Daniel Egan. Mary's case was postponed as a cautionary claim, which essentially meant that its success depended upon the ruling made in another claim.⁸⁵ Catherine Shea and her husband Henry successfully claimed a jointure which had been settled on Catherine by her previous marriage to Thomas Neale and was derived from lands in County Kilkenny.⁸⁶

For widows, the need to claim jointure and dower was self-evident. Of the 102 claims where jointure is explicitly named, 54 claims involve women presenting alone. Out of the 36 claims explicitly listing dower, 24 were made by lone women. And of the 12 claims seeking thirds, half were submitted by women presenting alone.⁸⁷ It is clear that some women who pursued their jointures were the widows of prominent Catholics and Jacobites, and in some instances had been attainted themselves. Cisely Barnewall, the widow of the outlawed Dominick, sought an estate for life for her jointure on his forfeited lands. This was subsequently allowed by the trustees.⁸⁸ Dame Mary Lynch, widow of the outlawed Sir Henry successfully claimed off his estate in County Mayo.⁸⁹ On the other hand, Honora Dempsey, widow of the outlawed and forfeiting James Dempsey, was unsuccessful in claiming her jointure off his former lands in County Kildare.⁹⁰ The value of women's and female minors' entitlements was evidenced by the fact that a number were indicted and/or waived for domestic and foreign treason during and after the war (women could not be outlawed because they were not considered to be within the law, but being declared *waviata* essentially meant the same thing and there was often no distinction made in the terminology used). Some of these women petitioned for a reversal of their 'outlawry' in the 1690s and some, like Frances Talbot, duchess of Tyrconnell, were successful in securing private acts effecting such a reversal.⁹¹ Three women who had been included under the articles of Limerick, namely Anne, Dowager Viscountess Dillon, Frances Grace, and Margaret Dunn, successfully claimed their jointures before the trustees.⁹²

⁸³ Claim no. 145.

⁸⁴ Claim no. 159.

⁸⁵ Claim no. 191.

⁸⁶ Claim no. 270.

⁸⁷ Table 2.

⁸⁸ Claim no. 751.

⁸⁹ Claim no. 446.

⁹⁰ Claim no. 940.

⁹¹ See Nolan, "Jacobite" women', pp. 274–6.

⁹² Claim nos. 81, 273, 419.

Evidence suggests that 73 claims involved female minors in some capacity. This figure is derived from claims using the terms ‘minor’, ‘infant’, ‘children’, ‘guardian’, ‘next friend’, and ‘*prochein ami*’.⁹³ Claims on behalf of minors often involved several children and these groups sought shared or separate entitlements.⁹⁴ This means that older sons may have claimed an estate in fee or an estate or remainder in tail, while daughters and younger sons claimed portions. In the absence of a son, an estate was sometimes divided equally among daughters, as coparceners. In terms of portions, male children were not necessarily given precedence over their sisters. Helen Arthur (née Cusack), for example, successfully claimed her jointure and an estate in fee and in tail for her eldest son John, but she also secured a portion of £300 and £20 annual maintenance to her eldest daughter Frances, while her younger children, James, Dymphna, William, and Richard, were awarded portions of £100 each and an annual maintenance of £10 apiece. This was in fulfilment of articles agreed in 1671, before her marriage to the outlawed and subsequently deceased, Robert Arthur, and of a lease and release of lands in Dublin and Louth in 1685.⁹⁵

The *List* indicates a multiplicity of arrangements where portions and maintenances were concerned and the Arthurs’ circumstance was just one of a number of approaches to family settlements; in some cases, a sum of money was to be divided amongst children with no indication as to the amount awarded to each, while in others, portions of equal value were awarded.⁹⁶ A number of claims specific to the award of portions and maintenances to daughters were graduated, decreasing in relation to a child’s situation within the family.⁹⁷ The children of Edward Roche of Cork were awarded different amounts, with Catherine receiving £400, Edmund £300, Mary £200, Anne and Margaret £150, and Maurice £100.⁹⁸ Margaret, Anne, and Grace Blanchville, the daughters of Edmund and Ursula Blanchville of Kilkenny, claimed their portions also, but were unsuccessful. Anne, married to Walter Kealy, sought £500; her older sister Margaret pursued the same sum; and the youngest, Grace, sought £300. The Blanchvilles’ claim was dismissed because they were advised that their father was within the Articles of Limerick and that they were secure in their entitlements, with no need to appear before the trustees. This proved to be bad advice, as the trustees sold the estate with no provision for the Blanchvilles’ portions and the three women were forced to petition the English House of

⁹³ Table 1.

⁹⁴ Claim nos. 500, 1158–61.

⁹⁵ Claim nos. 3111–18. See Nolan, “‘The cat’s paw’”.

⁹⁶ See, for example, claim nos. 67–8, 331, 358, 560, 615–16, 645–7. In cases where a sum was to be divided discretionally, it was often divided into graduated amounts, depending upon a child’s position in the family.

⁹⁷ This was consistent with other periods in early modern Ireland. See O’Dowd, *History of women*, p. 74.

⁹⁸ Claim no. 2375.

Commons for satisfaction in 1705, by which time they were ‘reduced to the utmost extremity of want and misery’.⁹⁹

The fact that Anne Kealy (née Blancheville) claimed alongside her husband and her unmarried sisters raises an interesting point about the age and circumstances of those who claimed portions before the trustee. Given the retrospective nature of the legislation, those who had been minors in the 1680s had comfortably reached their majority by the 1700s. A number of claims for portions comprised children who had married and who had not had the full satisfaction of their portion; single women, who pursued their portions in expectation of marriage or for security; and widowed women and married couples, who sought the satisfaction of portions which had evidently not been paid in full. This latter circumstance arose because a portion was rarely paid in its entirety on the occasion of a marriage, but in instalments over a number of years. As a result, a man might not have received his wife’s portion, even if they had been married for a considerable length of time. In some cases, he might never receive it and as a result, some widowed women were required to seek satisfaction. Sir John Morris and his wife, Ellen, claimed a portion of £600 which had been provided for by the will of Thomas, third Baron Cahir, in 1648, and which was to be derived from the estate of Theobald, fifth Baron Cahir. The Morris’s claim was disallowed by the trustees.¹⁰⁰ Thomas and Elizabeth Arthur met with more success in their claim for Elizabeth’s portion of £900, which was derived from the forfeited estate of Edward Rice Fitzjames in counties Kerry and Limerick.¹⁰¹

A considerable number of claims for portions and maintenances were made by or on behalf of a lone female too. These were either preferred by unmarried daughters or by women who had been widowed. In the claims of single women, who were not always described as spinsters, portions represented either an entitlement designed to secure a good match in marriage, or financial security in the event they did not marry. Bridget and Ellinor Nugent sought the satisfaction of their portions of £500 each, to be derived from the Roscommon estate of their outlawed uncle, Sir John Nugent, and contingent upon marriage articles agreed in 1675.¹⁰² Alice O’Neill, described as the daughter of Conn and Honora O’Neill, sought the award of a maintenance amounting to one fifth of £15 per annum and a portion of £100.¹⁰³ Conn O’Neill was a nephew of Charles Moore, Bridget Moore, and Elizabeth Belling, and it is unsurprising that Alice’s claim was entered alongside the claims of her unmarried grandaunt Bridget and her widowed grandaunt Elizabeth. The Moore sisters both sought their portions, with Bridget claiming £200 and Elizabeth £100, which was part

⁹⁹ Claim no. 1122; *CJ*, xv (5 Mar. 1705), p. 186.

¹⁰⁰ Claim no. 1387.

¹⁰¹ Claim no. 1786.

¹⁰² Claim nos. 67, 68.

¹⁰³ Claim no. 789.

of her original entitlement of £200. Alice's claim was allowed according to her father's will, while her aunts were both awarded savings in Lewis Moore's award.¹⁰⁴

V

Early modern Ireland was a patriarchal society, heavily reliant on the primogenitary transmission of large freehold estates from father to eldest son, or to the nearest male relative in the absence of a direct male heir. The Williamite confiscation most commonly resulted in disruption or upholding of male landownership because the preponderance of outlaws and forfeiting owners, claimants under the articles of surrender, grantees, and purchasers of lands, were men. At the same time, daughters could and did inherit freehold land and this was evidenced by the appearance of such claims before the trustees at Chichester House. Perhaps more significantly, a land-based economy did not depend upon landowners to turn a profit, and it is clear that the 457 landed estates initially forfeited by the Catholic elite were laden with leasehold and copyhold interests, while the lack of liquidity in land was further offset by mortgages and by the borrowing of money. This suggests that the Irish conception of property ownership closely resembled the English system, where the majority of land was occupied by someone other than the landowner.¹⁰⁵ By examining these records for evidence of the way in which people owned and conveyed not just freehold land, but leasehold, copyhold, and other property, it is possible to achieve some comprehension of the familial, local, and client networks that underpinned landownership and, in many ways, made the world go round. This is clearly evidenced by the Act of Resumption and by the records of the trustees for the forfeited estates and it is no surprise that the trust's time was so often taken up with issues subsidiary to freehold landownership.

The interests of women and female minors were well represented among those subsidiary claims because the Act of Resumption stipulated that titles to forfeited estates which predated 13 February 1689 were valid and extended protection to the conveyance of property through marriage.¹⁰⁶ The latter ensured that the provisions of marriage articles and family settlements contracted before 1686 were honoured and this, in turn, lifted the lid on a well-established property market that was heavily reliant upon leasehold and copyhold occupancy and other legal and equitable encumbrances. It makes clear that marriage in seventeenth-century Ireland was negotiated carefully by families, with due consideration given to the potential advantages for both sides. Provisions made for daughters, sisters, wives, and widows demonstrate that the needs of women were considered alongside those of their brothers and husbands. It may not always

¹⁰⁴ Claim nos. 790, 791.

¹⁰⁵ Erickson, 'Common law', p. 24 fn. 8.

¹⁰⁶ 11 & 12 Will. III, c. 2, ss. 11, 17.

have translated into practice, but there existed clear legal and cultural precedents for the provision of portions, maintenances, jointures, and dowers. In fact, evidence points to a system in which marriage articles acted as a partial check to common law coverture, and that the negotiation and realization of marriages in seventeenth-century Ireland came to resemble or replicate practices in England.¹⁰⁷ The relative prevalence of women who claimed mortgages and debts, too, indicates that their role in the Irish economy was far from one-dimensional and that their participation in equitable exchanges was essential.¹⁰⁸

Claims were entered regardless of religion, but it is clear that the claims of Catholic women and female minors took on a different significance in the context of the Williamite confiscation. The legally extractable nature of female entitlements meant that many individuals and families impacted by the forfeiture of an estate were offered hope by the Act of Resumption. A man might have lost his freehold estate, but his wife's jointure could reasonably be expected to secure a not insignificant part of those lands for her lifetime; a son might be outlawed and dispossessed, but his widowed mother could claim dower or thirds off his forfeited estate; and a father might have lost his estate, but his children could justifiably claim their portions. The *List* and the records of the trust thus reveal something material about the survival of Catholic families in the immediate aftermath of the confiscation and in the longer term. The importance of such entitlements was underlined by the fact that some women, or their representatives, continued to pursue jointures and portions in the years after the conclusion of the trust's commission in Dublin.

By and large, the provisions secured by or on behalf of women and female minors at Chichester House did not return elite Catholic families to prosperity. At the same time, a not insignificant number were offered a means to endure, to set their feet back on the ground, be it in Ireland, in Britain or on the continent. Much more work needs to be done on the adaptation and evolution of Catholic fortunes in the penal era, but the records of the trustees indicate that the role of women in the eighteenth-century system of Catholic property ownership, identified by Louis Cullen as significantly reliant on leasehold interests,¹⁰⁹ was important, and it is clear that marriage and family settlements underpinned this circumstance. Similarly, while the extent to which mercantilism elevated Catholic fortunes has been debated, it is worth observing that the often equitable nature of women's entitlements could be put to use in

¹⁰⁷ Erickson, 'Common law'; eadem, *Women and property*; eadem, 'Property and widowhood in England, 1600–1840', in Sandra Cavallo and Lyndan Warner, eds., *Widowhood in medieval and early modern Europe* (Harlow, 1999), pp. 145–63; Ferguson, Buck, and Wright, *Women, property and the letter of the law*; Susan Staves, 'Resentment or resignation? Dividing the spoils among daughters and younger sons', in eadem and John Brewer, eds., *Early modern conceptions of property* (London, 1996), pp. 194–220; eadem, *Married women's separate property*.

¹⁰⁸ See [Table 2](#).

¹⁰⁹ Louis Cullen, 'Catholics under the penal laws', *ECI*, 1 (1986), pp. 30–3.

trade and in the emerging world of investment. It is certain, too, that such entitlements were useful in the advancement of Irish families on the continent, allowing for the education and training that resulted in a career in the church or advantageous enlistment in one of the armies of Europe.¹¹⁰

¹¹⁰ For a succinct appraisal of the historiography on Catholic mercantilism and a consideration of Irish military service, entry into the priesthood and emergent professions, see Ian McBride, *Eighteenth-century Ireland: isle of slaves* (Dublin, 2009), pp. 126–31.