

Select documents

X. THE ORIGINAL DRAFT OF THE CIVIL ARTICLES OF LIMERICK, 1691

The document printed below ¹ is included in a collection of about a hundred manuscripts which the British Museum acquired in 1884 from the family of Leyborne-Popham of Littlecote, Wilts ². Rather more than half of these manuscripts were handed down by Sir William Clarke ³ to his son George. The rest, six of which are connected with the articles of Limerick, were added by George Clarke who, among other appointments, was secretary at war for Ireland in 1690-1. He came over to Ireland with William and remained on as civil adviser to Ginkel. In that capacity he was actively concerned in the negotiations which took place before the capitulation of Limerick.

George Clarke left the bulk of his papers to Worcester College, Oxford. A number, including the document now under consideration, remained with his executor, the principal of Brasenose College. They subsequently came into the possession of the latter's nephew, the Rev. Robert Leyborne, from whom they descended to the Leyborne-Popham family ⁴. Most of George Clarke's Irish correspondence is in Trinity College, Dublin ⁵.

¹ B.M., Eg. MS 2618, ff. 161-3. The collection has been micro-filmed for N.L.I. (P 758). The text may be compared with the final version of the articles as given in Curtis and McDowell, *Irish historical documents*, pp. 171-5.

² *B.M. cat. of additions to MSS, 1882-7*, pp. 338-46.

³ Secretary to General Monk, secretary at war under Charles II, ob. 1666. The well-known Clarke papers are called after him.

⁴ *H.M.C., Leyborne-Popham MSS*, introduction, pp. 10-11. The H.M.C. report, published in 1899, relates to the MSS remaining with the family after the B.M. purchase.

⁵ See N. B. White, *George Clarke's Irish correspondence (Anal. Hib., x. 247-9)*.

The original manuscript consists of three folios. On the back of the wrapper, in Clarke's own hand, is the following memorandum :

This is the original draft of the articles of Limerick in Ireland, which were signed 3 October 1691. But in transcribing the fair copy, which was actually signed, Mr Payzant my clerk, in whose hand the body of the articles are written, left out in the second article these words, viz. 'And all such as are under their protection in those counties'. This was not known till the day after, when Sir Theobald Butler and another of the commissioners from the city of Limerick came to me; but the mistake could not be corrected at that time because General Ginkel's son was actually gone upon his journey to England with the articles as signed. Afterwards the Irish had the advantage given them of this omission, by a broad seal and an act of parliament; and indeed it was but just, for those words, viz., 'all such as are under their protection etc.' were agreed upon to be part of the articles at the very first meeting with the commissioners from the city. The words interlined are in Sir Theobald Butler's hand.

Clarke again referred to the vexed question of the omitted clause in his autobiography, written in 1720. He there says that Ginkel had objected to the first proposals which the Irish had put forward for the capitulation of Limerick, and had sent them a draft of the terms which he was ready to grant. On 28 September 1691 Sarsfield, Butler and others came over to Ginkel's camp to discuss this draft. Butler immediately asked what was meant by the preamble, the wording of which was as in the document below and not as in the final version of the articles. Clarke answered that they meant to grant terms to those who were in a position to offer opposition. Sarsfield then said that he 'would lay his bones in these old walls rather than not take care of those who stuck by them all along'. The second article was accordingly construed to extend to all who were under the protection of the Irish in the counties referred to.

Clarke goes on to say that Ginkel, Talmash and he himself on their return to England gave evidence on the point, and 'that which was left out by mistake was granted to the Irish under the broad seal of England and, as I take it, by act of parliament in Ireland.'⁶ He was, of course, wrong in supposing that the Irish parliament restored the omitted clause. The Irish act of 1697 was deliberately worded so as to exclude

⁶ *H.M.C., Leyborne-Popham MSS*, p. 280.

from the articles those civilians in the five counties who were under the protection of the Irish. The document, however, makes it quite clear that the clause formed part of the original text.

Apart from the question of the omitted clause, the document is of interest as showing how the wording of the articles was amended and developed during the course of the negotiations. Some of the alterations are in Clarke's own hand; the rest are in a single hand, which Clarke states to be that of Sir Theobald Butler. From internal evidence the greater part of the document seems to have been written on September 28, when the Irish had their discussion with Ginkel and before the arrival of the lords justices, who did not appear until October 1. The original wording of the preamble shows that it was intended that the articles should be granted by Ginkel to the inhabitants of Limerick and to the Irish army. The last clause of the original version was an undertaking by Ginkel that the lords justices would sign and ratify the articles within forty-eight hours and that the king and queen would ratify them in an unspecified number of months. However, on September 29 the French and Irish are said to have insisted that the lords justices should sign the articles at the same time as Ginkel⁷. They were evidently apprehensive that the terms offered by the general in the field might be repudiated by the civil authority. The point was met by the amendments which introduced the lords justices into the preamble and associated them with Ginkel in the undertaking that the king and queen would ratify the articles.

It may be observed that the final version of the preamble differs from the draft in giving the names of the Irish leaders and in expressing the articles as agreed upon between them and the Williamite representatives in consideration of the surrender of the city. In the draft the preamble is much briefer and more unilateral in phrasing.

An addition to the second article extends the terms to Irish commissioned officers who were in the Williamite area, provided that they were not prisoners of war and had not taken protection, i.e. had not submitted to the Williamite authorities. This proviso is attributed to Richard Cox, later lord chancellor, who was convinced that there were many who had submitted after

⁷ *Diary of the siege and surrender of Limerick*, p. 17.

the Boyne but had subsequently rejoined the Irish forces. He is said to have written to this effect to the lords justices at the time of the negotiations and to have succeeded in getting such persons excluded from the articles⁸. The story receives some support from the fact that the clause appears in the document as an addition to the original text. The point was to prove of considerable importance in the course of the adjudication of claims under the articles. Several claims were rejected on the ground that the applicants had 'taken protection'.

In their original form the terms barred the claims of heirs to the forfeited estates of those who had died before the conclusion of the war. This part of the second article is struck out in the document, and the final text contains no such provision. In the event such claims were admitted only if the claimant proved his title by a specific deed of settlement. A certain number of those adjudged within the articles thus failed to recover their family estates.

The draft does not contain the provision in favour of absent merchants which forms the third article of the final version. Their claim was apparently the subject of discussion, as appears from the note in Butler's hand, 'merchants to stand'. The provision in the fifth article that the reversal of outlawries should be gratis except for the writing-clerks' fees was an amendment of practical importance. The sixth article of the final version, which indemnified both sides against civil suits for acts committed during the war, was originally limited to civil and military officers in respect of their official actions. This restriction would inevitably have led to much litigation.

Egerton MS 2618, in the British Museum, also contains the following items which relate to the Limerick negotiations :

- (i) original minute of what was settled by General Ginkel and the commissioners from Limerick, 28 September 1691;
- (ii) letter from the lords justices to Clarke, ordering him not to 'deliver any foul drafts' of the articles, 7 October 1691;
- (iii) copy of letter from Clarke to Sir Theobald Butler, n.d.;
- (iv) letter from Major-general Wauchope to Clarke, enclosing the reasons given by the French general for the capitulation of Limerick, 18 October 1691;

⁸ Ware, *Writers of Ireland*, ed. Harris, i. 213.

- (v) copy of letter from Lord Lucan to Ginkel releasing the latter from the obligation to provide transport for the Irish forces, 8 December 1691.

In the transcript that follows, additions to the original text are shown in square brackets, those in Butler's hand in roman type, those in Clarke's hand in italics. Words deleted are given in the foot-notes. The spelling, punctuation, and capitalisation are printed as in the original.

J. G. SIMMS

Articles Granted by [*The Right Honourable* Sir Charles Porter Knt and Mr Thomas Coningsby *the Lords Justices of Ireland and*] Lieutenant Generall Ginckell Commander in Chief of Their Majesties Forces, To all Persons now in the City of Lymerick and in the Irish Army, that is in the Counties of Clare, Kerry, Corke and Mayow, and other Garrisons, that are in their Possession, this day of October 1691 in the Third year of Their Majesties' Reigne.

1. The Roman Catholicks of this Kingdome, shall enjoy such Priviledges, in the exercise of their Religion, as are consistent with the laws of Ireland [or] as they [did enjoy]⁹ in the Reigne of King Charles the Second, And Their Majesties as soon as their affairs will permit them to summon a Parliament in this Kingdome, will endeavour to procure the said Roman Catholicks such further security in that particular as may preserve them from any disturbance upon the Account of their said Religion.

2. All the Inhabitants or Residents of Lymerick or any other Garrison now in the possession of the Irish, and all Officers and soldiers now in Arms under any Commission of King James or those authorised by him to grant the same, in the Severall Counties of Lymerick, Clare, Kerry, Cork, and Mayow, and all such as are under their Protection in the said Counties [and all such commissioned officers who are in their Majestys' quarters, and who are not in protection nor prisoners of war] who shall returne to and submit to their Majesties' obedience, and their and every of their Heirs, shall hold, possess and Enjoy all and every their Estates of Freehold and Inheritance, and all their Rights Titles and interests, Priviledges and Immunities, which they and every or any of them held, Enjoyed or were rightfully and Lawfully entitled to in the Reigne of King Charles the 2d; and shall be put in Possession by order of the Government of such of them as are in the King's hands or the hands of his Tenants without being put to any suite or trouble

⁹ Substituted for the original 'had'.

therein, and all such Estates shall be freed and discharged from all arrears of Crown Rents, Quit Rents and other publick Charges incurred and become due since [Michaelmas]¹⁰ 1688 to the day of the date hereof, and all Persons comprehended in this Article shall have hold and enjoy all their Goods and Chattels real and Personal to them or any of them belonging and remaining either in their own hands, or the hands of any Person or Persons whatsoever in trust for, or for the use of them or any of them. And all and every the said Persons of what Profession [trade] or calling soever they be, shall and may use exercise and practise their severall Professions, Trades and Callings, as freely as they did use, exercise and enjoy the same in the Reigne of King Charles the Second. Provided that nothing in the Article contained, be construed to Extend to or restore any forfeiting person now out of the Kingdome, [except what are hereafter comprised].¹¹ Provided also that no Person whatsoever shall have or enjoy the benefit of this Article that shall neglect or Refuse to take the oath of Allegiance, made by Act of Parliament in England in the First year of the Reigne of their Present Majesties [when thereunto required].
[merchants to stand]

The following officers vizt ¹²

now belonging to the Regiments, in the aforesaid Garrisons and Quarters of the Irish Army, who are beyond the seas, and sent thither upon affairs of their respective Regiments or the Army in Generall, shall have the Benefit and Advantage of the Second Article, provided they return hither within the Space of Eight months from the date of these Presents, and Submit to their Majesties' Government and take the above-mentioned oath.

That all and Singular the said Persons comprized in the 2d and 3d Articles shall have a General Pardon of all attainders, outlawries, Treasons, misprisions of Treasons, Premunires, Felonies, Trespasses and other Crimes and misdemeanours whatsoever, by them or any of them committed since the beginning of the Reigne of King James the Second ¹³ and if any of them are attainted by Parliament, the Lords Justices and Generall will use their best Endeavour to get the same repealed by Parliament [and the outlawries to be reversed gratis with but writing clerkes' fees].

¹⁰ Substituted for the original 'Christmas'.

¹¹ Substituted for 'or any Person within it, who claims any right to the Estate of any one now dead, who forfeited and was attainted further than to restore them to such Estate as they were in possession of in their own right before the said forfeiture'.

¹² Space is left for the insertion of officers' names. This was originally styled the third article; the number was deleted when it was decided to provide for absent merchants.

¹³ The words 'at their Majesties' Expence' are deleted.

No Person or Persons whatsoever, [comprized in the foregoing articles]¹⁴ shall be sued, molested or impleaded at the Suit of any Party or Partys whatsoever,—for any Trespass by them committed, or for any, Arms, Horses, money, Goods, Chattels—merchandizes or Provisions whatsoever by them seized or taken [dureing the time of the warr]¹⁵ and no Person or Persons whatsoever in the Second or Third Articles comprized shall be sued, impleaded or made accountable for the Rents or mean Rates of any Lands Tenements or Houses by him [or them] received or enjoyed in this Kingdome, Since the beginning of the present Warr to the day of the date hereof nor for any waste or trespass by [him or them]¹⁶ committed in any such Lands, Tenements or houses And it is also agreed that this Article shall be mutuall and reciprocal on both sides.

Every Nobleman and Gentleman, comprized in the said Second or Third Articles shall have Liberty to ride with a Sword and Case of Pistols, if they think fit, and keep a gun in their Houses for the Defence of the Same or for fowling.

The Inhabitants and Residents in the City of Lymerick and other Garrisons shall be permitted to remove their Goods, Chattels and Provisions out of the same without being viewed and searched or paying any manner of Dutys, and shall not be compelled to leave the houses or lodgings they now have therein for the Space of Six weeks, next ensuing the date hereof.

The oath to be administered to such Roman Catholicks as submit to their Majesties' Government shall be the oath abovesaid and no other.

The¹⁷ General and Lords Justices do promise and undertake, that their Majesties will use their utmost endeavours that all these Articles, shall be ratified and confirmed in Parliament.

And they so Likewise promise to use their utmost Endeavour, that all Persons comprehended in the abovementioned Articles, shall be protected and defended from all Arrests and executions for Debt or Damage, for the space of [eight]¹⁸ months next ensuing the Date hereof.

No Person or Persons who shall at any time hereafter break these

¹⁴ The following words are deleted: 'comprized in the foregoing Articles, and who have been officers Civil or Military, or reputed Officers Civil or Military nor any Persons acting under them'. The words 'protestant or papist' in Butler's hand are also deleted. This article was greatly expanded in the final version.

¹⁵ Substituted for 'upon the Account or pretence of their said offices and Employments or for the use of the publick, or upon that pretence'.

¹⁶ Substituted for 'him'.

¹⁷ The word 'last' is written in the margin in Clarke's hand. The article is repeated in a modified form at the end of the document.

¹⁸ Substituted for 'six'.

Articles, or any of them, shall thereby make or cause any other Person or Persons to forfeit or loose the Benefit of the same.

*[Lastly the Lords justices and Generall doe undertake that their Majesties will Ratify these Articles, within the space of three months or sooner, and use their utmost Endeavours that all these same shall be ratifyed and confirmed in Parliament].*¹⁹

¹⁹ Substituted for 'The said Generall Ginckell does undertake that the said Lords Justices, will signe and ratify these Articles, within the space of Fortyeight hours, and that their Majesties will ratify the same within the space of months or sooner if possible'. The period of three months was extended to eight months in the final version. The document contains nothing corresponding to the final clause relating to the debts of Colonel John Browne.