
THE ORMONDE ATTAINDERS.

(See Vol. I. *New Series*, pp. 76-80.)

I observe, in Mr. Hall's article on this subject, the following passage :—

“In 1791, however, the House of Irish Lords arrived at the important decision that no Act of an English Parliament could be held to affect an Irish dignity—a conclusion which was sufficiently obvious” (p. 79).

Why “sufficiently obvious”? Mr. Hall had himself, just before, explained that the 6th Earl of Ormonde could not be succeeded by his brother Thomas as 7th Earl, because “the latter had also been attainted in the first Parliament of the reign” (p. 77), which he, when he petitioned for a restoration of the dignity, described as “the Parliament holden at *Westminster*” (Ib.). Why, then, when James 2nd Duke of Ormonde was attainted on the 21st of June, 1715, in the same manner, by an “Act of an English Parliament,” is it “sufficiently obvious” that such Act could not have the effect which it had, on Mr. Hall's own shewing, two centuries and-a-half before? I do not in any way question the facts. I only ask for some explanation of what, as it stands, is a strange *non sequitur*.¹

¹ Since the above was written, I have noted that James, 5th Earl, and his brother and heir) “Sir John de Ormonde” had been also attainted by an Act of the *Irish* Parliament holden at Dublin in 2 Ed. IV., which Act was repealed, also by the *Irish* Parliament, but not till 16 Ed. IV., whereas John, according to Mr. Hall, was “*straightway* pardoned and restored in blood by Edward.” The *English* attainder (1 Ed. IV.) was earlier than the *Irish*, and it was for the avoidance of *the former*, on a legal quibble, that “Thomas Ormonde alias Botiller” (whom it included) petitioned in 12 Ed. IV. (Rot. Parl., 12 Ed. IV., n. 26) with success. The whole matter is involved in some obscurity and ought to be carefully worked out.

I next ask, on what ground does Mr. Hall speak of James, the grandson of "Lord" Theobald Butler, as "2nd Earl of Carrick"? Mr. Hewlett has devoted a note to the subject, in which he rightly challenges this title, and observes that it "does not appear to have been borne by the grantee or by his son."¹ That this was so in the case of the grantee I had myself established in my essay on "The Earldoms of Ormonde,"² and as to his son, he appears simply as James, son and heir of Edmund le Botteller, in a grant of 1321-2 (15 Ed. II.), as Sir James le Botiller of Ireland, in an indenture of Easter 1327 (1 Ed. III.),³ and, still as Sir James le Botiller of Ireland, was created Earl of Ormonde in the following year. So too, in the chronicle of Llanthony, we read that Eleanor de Bohun—

"fuit prima desponsata domino Jacobo le Butyler Hybernie, quem dominus rex supradictus postea fecit Comitem de Urmond."⁴

Nor can I find him anywhere recognised as Earl of Carrick.⁵ Indeed, a right to that Earldom of Carrick would have given the Butlers that precedence over the Earls of Kildare, as Premier Earls, which they certainly never possessed. On the other hand, I recently noticed a casual mention of this title, somewhat later on, in the Patent Rolls, where it figures after that of Ormond:—

"Rex concessit Jacobo Comiti d'Ormond *et de Car. yk omnia,*" etc., etc.⁶

I also note that the seventh Earl is stated by Mr. Hall to have been "created Lord *Rochford* in the Peerage of England." I, too, held that Nicholas and Courthorpe are perhaps wrong in styling his Barony "Ormonde," as the style in his writ was the same as in that directed to his great grandson, who was admittedly Lord *Rochford*. At the same time, although I believe the two Baronies to have been one and the same, it is right to state that the Earl sat in the house as "Le Sire d'*Ormond*," or as "Dominus de *Ormond*," and not as Lord *Rochford*.

Lastly, I observe that, according to Mr. Hall, the first Marquis—

"Was fortunate enough to realize a most substantial equivalent for the hereditary butlerage (*sic*) of his family in Ireland in the shape of a sum of £216,000, voted by Parliament in 1811—as a compensation for the resumption of the grant of Edward I.

That grant had been made to Lord Theobald Butler, an attached servant of the Crown during the stress of Longshank's Scotch campaigns.

It is surely one of the romances of the Peerage that the enormous capital represented by the *Prisage* (*sic*) should have been once lost, and then regained by marriage, etc. etc."

In the matter of Imposts, Mr. Hall possesses such exceptional knowledge, that I am loth to question his *dicta*, yet when I find him using, as here, "butlerage" and "prizage" as synonymous, I cannot but remember how severely he has criticized me for having once done so myself.⁷

¹ Notes on Dignities in the Peerage of Scotland, p. 23.

² Foster's *Collectanea Genealogica*, i, 85.

³ Calendar of Bodleian Charters, p. 57.

⁴ Mon. Ang. (1661) ii, 68 b.

⁵ Carte rather unscrupulously asserts (*Introduction to Life of Duke of Ormonde*, p. xxix) that Edmund "accordingly was so styled all his life, and his son after him, till he was created Earl of Ormonde, when the ancient title of Carrick began to be disused." This statement has been, of course, blindly followed by the Peerage writers.

⁶ Pat. 41 Ed. III, m. 10, p. 2. [I find this is recognised as the solitary instance by Carte (p. xxx) on the authority of Roberts (Ulster), while Lynch (*Feudal Dignities*, p. 83) makes a somewhat misleading use of it.]

⁷ See *The Antiquary*, vi, 230-231.

It was then Mr. Hall's contention that the two are essentially different, that "*prizage* represented a tax in *kind*," while *butlerage* was "a percentage, to whatever value, in *specie*."¹ The latter, according to him, was "paid by aliens alone, who consequently paid no prizage." Therefore, "butlerage" was not brought into existence till 1303,² when it was introduced, *quoad* the aliens, as a pecuniary "commutation" for the prizage.³ And Mr. Hall adds that "the real butler and butlerage . . . only date from Edward III."

The fact is that, though rarely understood, there were vested in the family of Butler two distinct things, neither of which involved the other. These were: (1) the hereditary Butlership of Ireland, originating, it is probable, in a grant of John, though said to date from Henry II.; (2) the Prisage of Wines "per totam Hiberniam," originating, according to Mr. Hall, in a grant of Edward I. It is on the latter that confusion prevails. John, in his charters to Dublin (1192 and 1200), reserves to himself (or rather to his "*ballivus*" on his behalf), as Lord of Ireland, the Prisage of Wines, in terms, which from their detail and their very early date, are, as I have had occasion to point out to Mr. Hall, of considerable interest and importance. The "*ballivus*" is empowered to take ("*ad opus meum*") "*duo dolia vini, quecunque voluerit in navi; unum, scilicet, ante malum, aliud retro malum, pro xl solidis; unum pro xx solidis et aliud pro xx solidis.*"⁴

Lynch, anxious to carry back the grant of the Prisage, assumes the "*ballivus*" to have been Theobald Walter himself, and the Prisage to have been for his own benefit, whereas it is distinctly stated, in the charters, to have been for the *King's*. Carte goes further, relying upon Roberts, a 17th century Ulster, who professed to have seen the Patent, granting the Prisage to Theobald. When, and with what *habendum*, it was really granted, is made somewhat doubtful by the repeated re-grants. For instance, in 1290, Theobald Butler, the son of the Theobald who died in 1285, petitioned the crown for the prizage "which his father and ancestors enjoyed,"⁵ whereupon the escheator reports that his "father died seized of this franchise, but he knows not by what warrant,"⁶ yet in 1310, the well known Edmund Le Botiller appears in possession, as if himself (not "Lord Theobald Butler") the first grantee.⁷

That it was descendible to his son would appear to be proved by the remarkable document given in Rymer (*Fœdera*, iv., 269) from the Close Rolls (*Claus.* 1 Edw. III, p^t. 1, m. 1)—headed "*Pro Buticulariis Hiberniæ de feodo consueto*" (1327). This recognises the right of James (afterwards 1st Earl of Ormond), as son and heir of Edmund Le Botiller, to inherit the Prisage of Wines, in the following terms:—

"*Quod cum Prisa Vinorum in Hibernia (unde Cognomen suum gerit, et Ipse et Antecessores sui, de tempore quo non extat memoria, gerebant) ad ipsum Jacobum [Le Botiller]pertineat.*"

Here, it will be seen on careful examination, the two distinct matters are already skilfully confused. James and his ancestors derived their

¹ *Ib.*² *Ib.* 63.³*Ib.* 230.⁴ Gilbert's *Municipal Documents of Ireland*, pp. 53, 58.⁵ *Calendar of Documents relating to Ireland* (1285-1292), p. 315.⁶ *Ib.*⁷ *Idem* dolium captum fuit ad prisam domini regis, et ad hoc signatum, et curiatum uit apud Wikinglo, ad opus Edmundi Le Botiller, cui dominus rex prisam vinorum oncessit per totam Hiberniam."—Gilbert's *Municipal Documents*, p. 291.

surname from the Butlership, *not* from the Prisage, their connection with which, by this mis-statement, he endeavoured to antedate. In the Petition as above of 1290 the confusion would seem to have been only inchoate.

How are we to reconcile this recognition of James' right, as his father's heir, to the Prisage, with Mr. Hall's contention that it had been resumed by the Crown (p. 79), but was "regained by a marriage" (p. 80) *i.e.* by James' marriage to Eleanor de Bohun, when "he obtained a fresh 'grant' of the Prisage," (Ib.)? This is another point to be cleared up.

The language in which this document defines the Prisage is also worth notice. It is the right of taking—

"unum dolium vini ante malum et unum aliud retro, pro quadraginta solidis mercatoribus quorum vina illa fuerint solvendis."

This, it will be seen, faithfully reproduces the description in John's charter, and accurately corresponds with Baron Clark's definition in the case quoted by Mr. Hall.¹ The persistence of this rate, therefore, dates at least from the twelfth century.

Lastly, it is contended, apparently with justice, that the commutation, of 1811, for "the hereditary butlerage" (as Mr. Hall terms it), that is "for the resumption of the grant of" *Prisage*, did not, and could not, deprive the Butlers of their hereditary *Butlership* of Ireland.

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