

Justice for all? Access by ethnic groups to the English royal
courts in Ireland, 1252-1318

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Summary

The notion that all Gaelic people were immediately and *ipso facto* denied access to the royal courts in Ireland, upon the advent of the English in c.1169, has become so established in the national consciousness of Ireland that it is no longer questioned. This thesis questions this narrative of absolute ethnic discrimination in thirteenth- and early fourteenth-century English Ireland on the basis of a thorough re-examination of the Irish plea rolls. These records exist primarily in the form of nineteenth-century transcripts, the originals having been destroyed in the explosion in 1922. A forensic study of these records reveals a great deal of variation in how members of various ethnic groups who came before the royal courts in Ireland were treated. Specifically, the thesis demonstrates the existence of a large, and hitherto scarcely noticed, population of Gaels with regular and unimpeded access to English law, identifiable as Gaelic either through explicit ethnic labelling in the records or implicitly through their naming practices. This represents a primary contribution of the research.

To achieve a fuller understanding of the legal status of Gaels within English Ireland, the thesis compares their treatment to that of the English of Ireland and it also offers an in-depth examination of other 'Irish Sea Region' ethnicities. While the Englishmen are only included for reasons of comparison, the legal treatment of women, Ost-people, Welsh, Manx, Islanders, and Scots reveals that English Ireland was not a simple dichotomy between the English and the unfree.

Having established the legal status of these various groups in civil proceedings, the thesis proceeds to examine their treatment in criminal cases. The rules of law allowed for different treatment of peoples in criminal trials and civil proceedings. This was not limited to the fact that defendants could be hanged, but also it allowed seemingly-unfree people (and people of 'liminal' status) to enter court and indictments prosecuted crimes against the unfree. The thesis also offers an analysis of Gaelic (and other) clerics. Religious men and women are treated separately because the royal courts did likewise. Prelates, especially, received extraordinary privileges in civil and criminal cases. The English administration in Ireland permitted certain religious men to exact harsher labour services from their tenants (when compared to secular lords). The courts also acquiesced to prelates manipulating the legal system to disseise free Gaels. These last two factors are important for contextualising the actions of certain Gaelic prelates, which have been framed as benevolent and altruistic. The primary results of the thesis are that Gaelic men and women were free members of English Ireland, the society was cosmopolitan, the law was a system of remediation and not codified, and that despite increasing hostilities the people of English Ireland were never a dichotomy. Complexity defined the land.

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Abbreviations & conventions

AC	<i>Annála Connacht: the annals of Connacht</i> , ed. A. M. Freeman (Dublin, 1944)
<i>Admin. of Ireland</i>	H. G. Richardson and G. O. Sayles, <i>The administration of Ireland, 1172-1377</i> (Dublin, 1963)
<i>adscripticius/-a glebae</i>	‘tied to the dirt’; a legal status under Roman law for someone who could not leave a certain area of land without permission of his/her lord. Meaning not clear under thirteenth-century English law
AFM	<i>Annala rioghachta Eireann: annals of the kingdom of Ireland from the earliest period to the year 1616 by the Four Masters</i> , ed. John O’Donovan (3 rd ed., 7 vols, Dublin, 1990)
AH	<i>Analecta Hibernica</i>
ALC	<i>The Annals of Loch Cé: a chronicle of Irish affairs, 1014-1590</i> , ed. W. M. Hennessy (repr., 2 vols, Dublin, 1939)
amerce[v]/amercement[n]	fine by the court; lit. ‘mercy from the king to be allowed to pay a fine’
<i>Ann. Clon.</i>	<i>The Annals of Clonmacnoise: being annals of Ireland from the earliest period to a.d. 1408: translated into English a.d. 1627 by Conell Mageoghagan</i> , ed. Denis Murphy (repr., Dublin, 1993)
<i>Ann. Inis.</i>	<i>The Annals of Inisfallen</i> , ed. Seán Mac Airt (repr., Dublin, 1988)
<i>Ann. Ulster</i>	<i>Annála Uladh: annals of Ulster: from the earliest times to the year 1541</i> , eds W. M. Hennessy and Bartholomew MacCarthy (2 nd ed., 4 vols, Dublin, 1998)
annulled	[L. ‘ <i>divortiatum est</i> ’] sometimes called a ‘divorce’ in the historiography, but the term meant that the marriage was declared null and void
appurtenances	items of value related to a piece of property
assize	a particular type of case (e.g. novel disseisin) which was faster to prosecute than other writs; also the name for a the jury in these type of cases; originally a meeting with the king (Henry II of England) to draft legislation
attach	the viscount (‘sheriff’ q.v.) obtained surety from people to appear at court by pledges; if the attached person did not appear in court on the day assigned, the person and his/her sureties were amerced
attorney	representative of a person in court, could possibly have legal training
bailiff	personal assistant to a lord, or anyone’s personal representative in court; actions in court resembled an attorney’s
BBL	<i>The black book of Limerick</i> , ed. James MacCaffrey (Dublin, 1907)

betagh	[L. <i>betagius/-a</i>] its origin and meaning are disputed, but almost certainly from a Gaelic word. Used in the royal courts only in an economic sense, and not a legal status; it was not synonymous with <i>nativus/-a</i>
<i>Bracton</i>	G. E. Woodbrine and S. E. Thorne (eds), <i>Bracton de legibus et consuetudinibus Angliæ: Bracton on the laws and customs of England</i> (4 vols, London, 1977), (http://bracton.law.harvard.edu)
burgage	a property in an enfranchised borough, usually a house with a garden; the owner was a burgess
CAAR	Charles McNeill (ed.), <i>Calendar of Archbishop Alen's register, c.1172-1534</i> (Dublin, 1950)
<i>Cal. Doc. Scotland</i>	Joseph Bain (ed.), <i>The calendar of documents relating to Scotland, 1108-1509</i> (4 vols, Edinburgh, 1881-8)
<i>Cal. Ormond deeds</i>	Edmund Curtis (ed.), <i>The calendar of Ormond deeds</i> (6 vols, Dublin, 1932)
cantred	a large division of land
carucate	a division of land, c.120 medieval acres (1 medieval acre = c.2½ statute acres)
case	the court records call many cases ' <i>placita</i> ' (which some translate as 'pleas'), but to avoid confusion (plea q.v.), all court cases are called cases
CCD	M.J. McEnery and Raymond Refaussé (eds), <i>Christ Church deeds</i> (Dublin, 2001)
CCR	<i>Calendar of close rolls</i> (19 vols, London, 1900-38)
CDI	H. S. Sweetman (ed.), <i>Calendar of documents relating to Ireland</i> (5 vols, London, 1875-86)
CIRCLE	Peter Crooks (ed.), <i>A calendar of Irish chancery letters, c. 1244-1509</i> (chancery.tcd.ie)
CJRI	<i>Calendar of the justiciary rolls or proceedings in the court of the justiciar of Ireland</i> , ed. James Mills (2 vols, Dublin, 1905-14), i (1295-1303), ii (1305-7); ed. Herbert Wood, Albert Langman, and Margaret Griffith (Dublin, 1956), iii (1308-14)
Connolly, 'Irish material SC 8'	Philomena Connolly (ed.), 'Irish material in the class of Ancient Petitions (SC8) in the Public Record Office, London' in <i>AH</i> , no. 34 (1987), pp 1, 3-106
co.	county [L. <i>comitatus</i>]; the medieval English royal counties in Ireland were Connacht, Cork, Dublin, Kerry, Kildare (after 1297), Limerick, Louth, Meath (de Verdon half), Roscommon, Tipperary, and Waterford; Carlow was a county from 1306 until 1312; never a 'shire' [L. <i>schira</i>]
<i>coram rege</i>	'court before the king', since the king of England was not physically in Ireland during the period studied, it was not in Ireland
count	[L. <i>narratio</i>] the formal accusation made by the plaintiff in the writ, repeated in court before justice(s), except in assizes
CPR	<i>Calendar of patent rolls</i> , (10 vols, London, 1893-1913)

crannock	a measure of crops
Curtis, ‘Sheriffs’ accounts, Dungarvan’	Edmund Curtis, ‘Sheriffs’ account of the honor of Dungarvan, of Tweskard in Ulster, and of County Waterford, 1261-3’ in <i>PRIA</i> , xxxix (1929-31), pp 1-17
Curtis, ‘Sheriffs’ accounts, Tipperary’	Edmund Curtis, ‘Sheriffs’ account for Co. Tipperary, 1275-6’ in <i>PRIA</i> , xlii (1934-5), pp 65-95
<i>DAIKC</i>	G. O. Sayles (ed.), <i>Documents on the affairs of Ireland before the king’s council</i> (Dublin, 1979)
<i>de libertate probanda</i>	writ for a person falsely accused of being a <i>nativus/-a</i> , he/she sued the person claiming to be his/her lord
defendant	person being ‘sued’ by the plaintiff; not a contemporary term
<i>DGMR</i>	Philomena Connolly and Geoffrey Martin (eds), <i>The Dublin guild merchant roll, c.1190-1265</i> (Dublin, 1992)
disseisin	to deny or eject someone from their legally-held property, it could be the physical removal of the holder, his/her bailiff, or tenants; or it could be withholding the property after a lease ended
distrain[v]/distrain[n]	to seize goods from someone to encourage appearance in court or as part of damages awarded by the court
dower	lands given to a woman, by her husband or his family, on her wedding day or after his death. For lands held in military tenure: usually one-third (unless a different and specific amount of lands or rent was nominated ‘at the church door’ [on the wedding day]); for socage tenure: usually one-half
earl	[<i>L. comes</i>] count was the title used by the English in Ireland; during the period studied there was only the countship of Ultonia (Ulster), Walter and Richard de Burgh were called ‘ <i>le count de Ulvestre</i> ’ in the vernacular sources and ‘ <i>comes de Ultonia</i> ’ in the court records; to avoid confusion with the ‘count’ in a court case, <i>comes</i> is translated into the popular anachronism ‘earl’
<i>EHR</i>	<i>English Historical Review</i>
English courts	the royal courts in England
English Ireland	lands in Ireland under English control; lands within jurisdiction of royal courts
escheator	royal official who held lands of deceased tenants-in-chief until heirs came of age or lands forfeited by felony
esp.	especially
essoin	an excuse why a person was not in court on the assigned day (provided by a representative)
farmer	[<i>L. firmarius/-a</i>] a person who ‘leased’ land, had a legal right to the lands only during the contracted number of years, could not bring the assize of <i>novel disseisin</i> , had to use the slower writ of trespass (<i>breve transgressionis</i>) or writ of breaking a contract (<i>breve conventionis</i>)
[G.]	Gaelic/ <i>Gaedhilg</i>

Gaelic Ireland	lands controlled by Gaelic kings; English writs did not usually 'run' there
Gaelicism	Gaelic culture and blood; the state of being Gaelic
GWSMI	Peter Crooks (ed.), <i>Government, war and society in medieval Ireland: essays by Edmund Curtis, A.J. Otway-Ruthven and James Lydon</i> (Dublin, 2008)
Hist & mun docs	J. T. Gilbert (ed.), <i>Historic and municipal documents of Ireland, a.d. 1172-1320</i> (London, 1870)
HMINAUK	Paul Dryburgh and Brendan Smith (eds), <i>Handbook and select calendar of sources for medieval Ireland in the National Archives of the United Kingdom</i> (Dublin, 2005)
house	the court records call most houses <i>mesuagium</i> or <i>burgagium</i> , <i>mesuagia</i> are called 'houses' in the thesis, <i>burgagia</i> are called 'burgages', both of these terms usually included a garden and possibly a wall. <i>Domus</i> was rarely used in court records
IEMI	Paul Dryburgh and Brendan Smith (eds), <i>Inquisitions and extents of medieval Ireland</i> (List and index society, cccxx, Kew, Surry, 2007)
IEP	Philomena Connolly (ed.), <i>Irish exchequer payments, 1270-1446</i> (Dublin, 1998)
IHS	<i>Irish Historical Studies</i>
in chief	[L. <i>in capite</i>] holding lands directly from a lord, usually the king of England, and usually for military service; all lands were taken by the escheator after a tenant-in-chief's death even if some lands were held of a mesne lord
jn.	journal
JRSAI	<i>Journal of the Royal Society of Antiquaries of Ireland</i>
justice	[L. <i>justiciarius</i>] arbiter of English law, precursors to modern judges
justiciar	[L. <i>capitalis justiciarius</i>] the king of England's representative in Ireland (unless there was a <i>locum tenens</i> of the king in Ireland), the chief justice of the royal courts, head of the Irish council
justiciar's court	the court attached to the justiciar, it was similar to the <i>coram rege</i> in England, but cases from it could be reviewed by the Dublin Bench or in England (at the <i>coram rege</i> or a parliament), Irish parliaments occasionally met in the justiciar's court
[L.]	Latin
lib.	a liberty county, but not immune from royal jurisdiction; these were Carlow (except during 1306-12), Kildare (before 1297), Kilkenny, Meath (de Geneville half, also called 'Trim'), Ulster, and Wexford
<i>locum tenens</i>	'holding the place of' (sometimes translated as 'lieutenant' in the historiography), similar to a bailiff in court, could speak for that person and legally bind them (except the <i>locum tenens</i> of the king)
<i>maritagium</i>	lands or property given to a woman on her wedding day by her family; sometimes called a 'dowry' in the historiography

mesne	Intermediate, intervening
mort d'ancestor	an assize to determine if, after someone died, a person (who was not the closest heir) seized the former's lands; the rightful heir sued to inherit the lands
<i>Na Buirgéisí</i>	Gearóid Mac Niocaill (ed.), <i>Na Buirgéisí xii-xv aois</i> (2 vols, Dublin, 1964)
NAI	The National Archives of Ireland, Bishop St., Dublin 8
<i>narrator</i>	man hired to speak the arguments in court, appears in Dublin Bench and justiciar's court records, may have been used in other courts
<i>nativus/-a</i>	a person born unfree; not a slave
<i>NHI</i>	<i>A new history of Ireland</i> (9 vols, Oxford, 1976-2011)
novel disseisin	an assize to determine if a person recently lost seisin of his/her free tenement illegally
[O.]	Ost/Ostman/Ostwoman/Ost-people
Ost-people	Irish people descended partly from the Scandinavians who settled in Ireland after the 790s, and many intermarried with the Gaelic Irish. Most had Gaelicised naming practices
<i>Peritia</i>	<i>Peritia: Journal of the Medieval Academy of Ireland</i>
<i>Pipe roll of Cloyne</i>	Paul MacCotter and Kenneth Nicholls (eds), <i>The pipe roll of Cloyne: rotulus pipæ clonensis</i> (Cloyne, 1996)
plaintiff	person who purchased the writ and usually initiated the court case; not a contemporary term
plea	a claim in court, usually the defendant's answer to the count; plaintiff's response is called the 'counterplea'
<i>PRIA</i>	<i>Proceedings of the Royal Irish Academy</i>
PRO	Public Record Office, Kew, Surry, UK
<i>PROME</i>	<i>Parliamentary rolls of medieval England, 1275-1504</i> , ed. Chris Given-Wilson, (http://www.sd-editions.com/PROME/home.html)
quash	to end a case, usually by rule of law, the plaintiff had to purchase a different writ and wait for the next court session
<i>RBEK</i>	Gearóid Mac Niocaill (ed.), <i>The red book of the earls of Kildare</i> (Dublin, 1964)
<i>RBO</i>	Newport White (ed.), <i>The red book of Ormond: from the fourteenth-century original preserved at Kilkenny Castle, with missing portions supplied from the fifteenth-century transcript in the Bodleian Library</i> (Dublin, 1932)
<i>RDKPRI</i>	<i>Report of the deputy keeper of the public records and keeper of the state papers in Ireland</i>
<i>Register St John, Dublin</i>	Eric St John Brooks (ed.), <i>Register of the Hospital of St John the baptist without the new gate, Dublin</i> (Dublin, 1936)
repr.	reprinted

royal courts	the English royal courts in Ireland, i.e. the itinerant court, the justiciar's court, and the Dublin Bench
<i>Stat. Ire., John-Hen. V</i>	H.F. Berry (ed.), <i>Statutes and ordinances, and acts of the Parliament of Ireland: King John to Henry V</i> (Dublin, 1907)
[S.]	Scandinavian
seisin	legal, and usually physical, possession of lands or the rent from lands
seneschal	lead administrator of the liberties (even if it was in the hands of the king), reported to both the Dublin administration and the lord of the liberty for financial, judicial, and military purposes
<i>Scotus/-a</i>	term for Gaelic, English, or Continental Scots. The English in Ireland saw no legal difference between Gaelic Scots and other Scots
sheriff	[L. <i>vicecomes</i>] vicounts/viscounts were royal administrators of counties (royal and liberty); to avoid confusion, <i>vicecomes</i> has been translated into the popular anachronism 'sheriff', but this term was never used in a royal court in thirteenth- or early fourteenth-century English Ireland
<i>sine die</i>	'without a day', the person was released from appearing in court relating to that case; did not always mean the case was over, the plaintiff could revive the case in some rare circumstances
socage	lands held in exchange for monetary rent, no homage required, no military service was owed, and the tenant's heirs were not property of the lord of the lands
SS	Selden Society
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>
<i>utrum</i>	[literally 'whether'] an assize to determine whether a church or ecclesiastical benefice was a lay fee or <i>elemosina</i> (church lands which could not be touched any crown administrator, such as the escheator, during a vacancy)
[W.]	Welsh/ <i>Cymry</i>
Wallensis	a legally Welsh person or sometimes a surname
widow	the court records use the phrase ' <i>X que fuit uxor Y</i> ', and this almost always meant the former husband was dead (but not always, they could have been annulled ' <i>divortiatum est</i> '); for the sake of brevity this is translated to 'widow' unless other evidence shows the former husband was still alive at that time
writ	[L. <i>brevis</i>] a small piece of parchment with an order written on it; in relation to court cases, the plaintiff purchased a writ from the chancery which ordered the viscount ('sheriff' q.v.) to have the defendant(s) in court on a certain day to answer the charge
/	dual dating (1 Jan-25 Mar); spelling variations of names or places
/-	to indicate male or female, 2 nd and 1 st declensions of Latin (e.g. <i>Hibernicus/-a</i>), or vice versa (<i>Hibernica/-us</i>)
x	an uncertain date (e.g. 1230x50)

Ethnicity and English law in medieval Ireland

‘I unapologetically adopt the premise that in arguments *a silentio*, all assumptions about the existence of a particular practice or pattern are equally weak.’

-Paul Hyams¹

The historiography of the high medieval Ireland depicts a dichotomy between the ‘native Irish’ and the English.² Part of the argument for this supposed dichotomy is that only English people could use the English courts in Ireland. This alleged discrimination is peculiar because the oath of the justiciar of Ireland is well known: ‘that he shall render justice to *everyone* according to his lawful power, his legal knowledge, and the custom of the kingdom’.³ In direct contrast to the traditional narrative, this thesis demonstrates the variegated access to the royal courts in Ireland, the treatment of peoples by the courts, and what these two factors can tell us about the legal status of certain people of different ethnic origins and certain ethnic groups in English Ireland.⁴ These groups are Gaelic men, Englishwomen, Gaelic women, Ostwomen, Ost-people, Welsh, Manx, Islanders/Hebrideans, Scots, and Gaelic clerics. To evaluate their legal status I compare their treatment in court with each other, with the Englishmen of Ireland, and occasionally with the English of England. We should not, however, take any single case or judgment to be representative or proof of universal treatment of a group of people. Variations in treatment could occur within a single manor, so the idea that large groups of people were treated uniformly throughout Ireland and over hundreds of years is implausible.

After the advent of the English in Ireland *c.* 1169, there was a process of transferring English law and customs to Ireland. The period between the advent and the reign of King John has few surviving records. The itinerant courts in England did not keep ‘official’ court records until 1195.⁵ After 1199 a greater number of documents from Ireland

¹ P. R. Hyams, *Rancor & reconciliation in medieval England* (Ithaca, NY, 2003), p. 71.

² For the inappropriateness of ‘native Irish’, see *infra*, pp 9-14.

³ [My italics]: *CDI, 1171-1251*, no. 1977.

⁴ The ‘royal courts’ refers to the king of England’s courts in English Ireland. These were the itinerant court, the Dublin Bench (or common pleas bench), and the justiciar’s court (which was itinerant, resembled the *coram rege* in England, and occasionally heard Irish parliaments). The phrase ‘royal courts’ does not refer to the county courts – although they belonged to the king and sent the profits of those courts to the exchequer – or the exchequer court.

⁵ Final concords made before the justices and fines were recorded between 1176 and 1195: Paul Brand, “‘*Multis vigiliis excogitatam et inventam*’”: Henry II and the creation of the English common law’ in *Haskins Soc. Jn.*, ii (1990), pp 197-222, repr. in idem, *The making of the common law* (London, 1992), pp 77-102 at 83-5.

survives, but it is not until 1252 that any royal court records survive.⁶ The intervening years have subsequently received (perhaps too much) speculation. When the English first began to settle in Ireland the idea of an English common law was nascent. The Assize of Northampton – which established many of the common-law court practices – was not held until 1176.⁷ Paul Brand has effectively argued that the transmission of English law to Ireland precipitated the codification of English law.⁸ This thesis, however, examines ‘case law’ (mostly court judgments) and is not concerned with legislation. First we need to establish what the ‘law’ was. English law was not a book of court precedents or prescribed punishments. It was a system of remediation and investigation. While there were some established types of court cases, there was always a possibility for unique circumstances to appear in the courts. And court judgments were never uniform. The law was the amalgamation of local, mostly-English customs which coalesced during the mid-to-late twelfth century.⁹ The binding factor to the common law was the allowance of regional and local differences and the usage of local juries of free men (preferably knights) to determine the facts of a case, and usually, to decide the punishment.

In order to discern the actual legal status of individuals and groups, we need to study the application of the law. Empiricism is crucial. ‘Case law’ and ‘substantive law’ are usually used in present (twenty-first century) legal analyses, but they are equally effective for medieval legal studies. Using the ‘law in action’ methodology (‘case law’ to determine the ‘substantive law’) can augment our understanding thirteenth- and early fourteenth-century society in English Ireland. Anthony Musson provides a good theoretical framework for this. His ‘new approach to legal history’ utilises court decisions to elucidate the complexities of society in medieval England. Musson summarises his approach as analysing the ‘multi-dimensional character of the law and... the interaction of law and society.’¹⁰ He helped to shift the focus of legal studies from statutes and legislation to deciphering what the court judgments meant for ordinary medieval people. Musson is not

⁶ There are references to earlier court rolls (ante 1252), but we will probably never know when the royal courts in Ireland first began to keep written records.

⁷ D. C. Douglas and G. W. Greenaway (eds), *English historical documents* (5 vols, London, 1953-75), ii, 411-13.

⁸ Paul Brand, ‘Ireland and the literature of the early common law’ in *The Ir. Jurist*, xvi (1981), pp 95-113, repr. in *Making of the common law*, pp 445-63 at 446-7.

⁹ Brand, ‘*Multis vigiliis excogitatam*’, pp 79-80; Anthony Musson, *Medieval law in context: the growth of legal consciousness from Magna Carta to the Peasants’ Revolt* (Manchester, 2001), pp 9-18.

¹⁰ Anthony Musson, *Public order and law enforcement: the local administration of criminal justice, 1294-1350* (Woodbridge, 1996), p. 1. Recently, I found another work which uses similar methods. Professor Kim cites an older work for originating his methodology: Keechang Kim, *Aliens in medieval law: the origins of modern citizenship* (Cambridge, 2000), p. 18, n. 42.

the only legal historian to analyse the medieval courts and the application of English law in this manner. Paul Hyams provides a detailed study of the legal status of villeins (unfree people) in thirteenth-century England and emphasises the need for accuracy in the terminology used by historians about medieval people.¹¹ Hyams's work is rather important for this study. He determined the tests of legal freedom in the high medieval English courts. Applying these tests to Ireland, we can identify unfree people in English Ireland and differentiate them from any instances of ethnic discrimination. Many historians have mistaken legal, ethnic discrimination (and discriminatory rhetoric) in English Ireland as proof of socio-legal unfreedom.

This thesis is not concerned solely with Gaelic men. Women of many ethnic backgrounds were present and participated in royal court cases in English Ireland. To study them I relied on previous work from medieval England. Cordelia Beattie, Miriam Müller, and Matthew Stevens provide insightful studies on the legal status of medieval women which contrast the traditional, absolutist arguments (for 'rough and ready sexual equality' and for universal sexual discrimination in medieval England).¹² And Marjorie McIntosh introduces the medieval construct of a married woman *come femme sole* (treated like a single woman) who was allowed to own a business, make contracts, and sue court cases independently of her husband.¹³ We can apply these methodologies for determining the freedom of medieval women to evaluate the legal status of Gaelic women, Ostwomen, and Englishwomen in English Ireland.

Previous works

These theoretical paradigms lead into the 'state of the question'. The central research question of this thesis is: what was the legal status of people – identified as a certain ethnicity by their naming practices or by an ethnic label – in the royal courts? The amount of scholarship on this particular subject is jejune. Previous works have focused only on the English, only the Gaels, or only on the hostility between the English and Gaels. General histories and legal examinations left out women almost entirely. This thesis will, hopefully, begin to redress the androcentricity and oversimplification of ethnicity in the history of

¹¹ P. R. Hyams, *King, lords and peasants in medieval England: the common law of villeinage in the twelfth and thirteenth centuries* (Oxford, 1980). For more on Hyams's work and its application to this study, see Chapter One, *infra*, pp 25-6, 34-5.

¹² Cordelia Beattie and M. F. Stevens (eds), *Married women and the law in pre-modern Northwest Europe* (Woodbridge, 2013).

¹³ M. K. McIntosh, 'The benefits and drawbacks of *femme sole* status in England, 1300-1630' in *Jn. of British Studies*, xlv (2005), pp 410-38.

medieval English Ireland. The following works form the basis of our current understanding of ethnicity and English law in thirteenth-century English Ireland.

James Mills provided a great deal to the study of medieval English Ireland. He published calendars and précis of many records, the originals of which are now destroyed. His main contributions are the English calendars of the justiciar's court rolls.¹⁴ He also calendared rentals and extents of lands around Dublin. In the introductions to these he made various suggestions and observations. He believed that the labels 'Norman' and 'English' were interchangeable synonyms, and he proposed '*nativi*', '*betagii*', 'serf', 'cottier' [cottager], 'native servile tenant', and '*adscripticii glebae*' were similarly synonyms.¹⁵ He argued that *betagii* and *nativi* who only paid rent and owed no uncertain services were free (or almost free) by 1326.

Edmund Curtis wrote a survey on medieval Ireland which addressed the status of Gaels and Ost-people in the appendices.¹⁶ Curtis argued, *ex silentio*, that when the English first arrived in 1169 they immediately began to force free Gaels into bondage, and that the English crown tried to fight this phenomenon.¹⁷ Most subsequent historians have accepted the first half of this claim and have based their research upon this assumption. In the same paragraph in which Curtis argued for the depression of the free Gaels, he stated that all Gaels were 'betaghs' (L. *betagii*).¹⁸ He also studied the Ost-people and Welsh in Ireland in a few articles. His examination of the Welsh was confined to nobles, but it did demonstrate

¹⁴ *CJRI, 1295-1303; CJRI, 1305-7.*

¹⁵ James Mills, 'Notices of the manor of St Sepulchre, Dublin, in the fourteenth century' in *Jn. of the Royal Hist. and Arch. Ass. of Ire.*, 4th ser., ix, no. 78 (1889), pp 31-41 at 34; idem, 'Tenants and agriculture near Dublin in the fourteenth century' in *JRSAI*, 5th ser., i, no. 1 (1890), pp 54-63 at 54.

¹⁶ Edmund Curtis, *A history of medieval Ireland from 1086 to 1513* (2nd ed., London, 1938), pp 403-7, 417-21.

¹⁷ Professor Curtis contradicted his argument several times in his textbook. He noted that in the first years after the arrival of the English there were 'many native freeholders', and he stated that no Gaels were admitted to use the royal courts but then details the Gaels holding in chief of King John (which allowed access to the courts). He also argued that between 1270 and 1320 'betaghry' (the construct of being a *betagius/-a*) was 'dying out' and 'former serfs [sic]' had become free men: Curtis, *History of medieval Ireland*, pp 75, 76, 101-3, 233. Curtis's argument (for absolute and *ab initio* discrimination) is even more curious when we compare it to the vicontiel accounts translated by Curtis in the years before his textbook was published. In these accounts we find free Gaels standing as sureties, pledging for the appearance of people in court, receiving chattels of felons (usually reserved for royal sergeants), and other actions which only free and accepted people could do: Curtis, 'Sheriffs' accounts, Dungarvan', *passim*; idem, 'Sheriffs' accounts, Tipperary', *passim*.

¹⁸ Gearóid Mac Niocaill suggested that Curtis's understanding of the betaghs in English Ireland was flawed: Gearóid Mac Niocaill, 'The origins of the *betagh*' in *The Ir. Jurist*, i (1966), pp 292-8. Cf. Kenneth Nicholls did not agree that *biataigh* were the 'typical Irish commoner'. He thought there was no need to 'postulate a servile or semi-servile class as such' and that *biataigh* before 1169 were not *adscriptae glebae*: K. W. Nicholls, 'Anglo-French Ireland and after' in *Peritia*, i (1982), pp 370-402 at 378. For more on *betagii*, see Chapter One, *infra*, pp 30-6.

some of the ‘Irish Sea Region’ connections in the eleventh and twelfth centuries.¹⁹ In the first instance Curtis addressed the Ost-people (whom he called the ‘Ostmen’), he stressed their foreignness. He called them anything but Irish.²⁰ He also theorised that all of the Ost-people were ejected from the urban centres (Cork, Dublin, Limerick, Waterford, and Wexford) by the English and then spatially limited to the ‘cantreds of the Ostmen’. He made no distinction between the Ost-people of Dublin, Waterford, Tipperary, or Limerick.²¹ In his survey (written thirty years later) Curtis explicitly noted the variance in the treatment of Ost-people by the English (he examined them by county), removed the othering of the Ost-people (‘Irish-Ostmen’), and toned down his expulsion theory (‘they soon blended with the English’).²² A more pertinent argument for this thesis came from Henry G. Richardson’s review of Curtis’s monograph.²³ Richardson provided some exceptions to the legal/social status of Gaels described by Curtis, but he still spoke of the law from a predictive, theoretical viewpoint. A caveat in Richardson’s work, which has largely been overlooked (the exceptions are probably Nicholls and Smith), is that the traditional argument for Gaelic exclusion from the royal courts in Ireland was most likely a flawed perspective based on the more copious records from the end of the reign of Edward I of England (1295-1307).²⁴

Despite Curtis’s work, it is that of Annette Jocelyn Otway-Ruthven which provides the foundation of most historians’ understanding of the status of the Gaels in medieval English Ireland.²⁵ The title of her seminal article has caused numerous misconceptions.²⁶ Otway-Ruthven questioned the notion that Matthew Paris’s comment was a reference to the so-called ‘five bloods’, noted the variance in the status of betaghs, and theorised the

¹⁹ Edmund Curtis, ‘The fitz Rerys, Welsh lords of Cloghran, Co. Dublin’ in *Jn. of the Co. Louth Arch. Soc.*, v, no. 1 (1921), pp 13-17.

²⁰ ‘Teutonic in blood’, ‘Northmen’, ‘Danes’, ‘Norse’, ‘Norsemen of Ireland’, ‘undoubted Scandinavian origin’, ‘isolated communities’, ‘maintaining a racial distinctiveness’, ‘distinct and apart’, and ‘worthy of equal credence with the English’. But Curtis also said that the Ost-people were ‘tainted with that Celtic [sic] stain which the English always abominated’ and ‘were hard to distinguish from the rightless Irish [sic]’: Edmund Curtis, ‘The English and Ostmen in Ireland’ in *EHR*, xxiii, no. 90 (1908), pp 209-19, repr. in *GWSMI*, pp 287-96.

²¹ His argument for the expulsion of the Ost-people from the urban centres has been disproven by Emer Purcell: Emer Purcell, ‘The expulsion of the Ostmen, 1169-71: the documentary evidence’ in *Peritia*, xvii-xviii (2003-4), pp 276-94.

²² Curtis, *History of medieval Ireland*, pp 403-7.

²³ H. G. Richardson, ‘English institutions in medieval Ireland’ in *IHS*, i, no. 4 (1939), pp 382-92.

²⁴ Richardson, ‘English institutions’, p. 387; Nicholls, ‘Anglo-French Ireland’, p. 374; Brendan Smith, *Colonisation and conquest in medieval Ireland: the English in Louth, 1170-1330* (Cambridge, 1999), p. 75.

²⁵ A.J. Otway-Ruthven, ‘The native Irish and English law in medieval Ireland’ in *IHS*, vii, no. 25 (1950), pp 1-16, repr. in *GWSMI*, pp 141-52.

²⁶ Professor Otway-Ruthven was not the first historian to coin the phrase ‘native Irish’, but her work is still the most influential (despite its age). For the inappropriateness of the term ‘native Irish’, see *infra*, pp 9-14.

existence of free Gaels in English Ireland.²⁷ These were variances from earlier works. Paris was an English chronicler and he noted that Henry II of England took the allegiance of some Gaelic kings in 1171. Some historians thought that this comment was proof that there was a grant of access to the royal courts to ‘the five bloods’. Otway-Ruthven rightly found many flaws in this connection. Her article engaged with complexities which later historians ignored or discounted, but it also overgeneralised. She assumed that every single *Hibernicus/-a* was either unfree or denied access to the royal courts.²⁸ Many years later Professor Otway-Ruthven wrote a review of the relaunch of a journal (*The Irish Jurist*).²⁹ In this review she revealed that the motives behind the famous request for access to the royal courts for all *Hibernici* (c.1277) were probably efforts to stamp out Gaelic marriage practices, and that the clergy behind this movement were not as altruistic as others believed. She also was highly doubtful of Gearóid Mac Niocaill’s conclusion that all Gaels were made ‘villeins’ by the English in 1169.³⁰

Geoffrey Hand’s monograph is currently accepted as the seminal work on English law in thirteenth-century Ireland.³¹ Professor Hand concluded that:

if [Gaelic people] lived within the effective influence of the governors of the [English] lordship, they were treated as members of an unfree class not entitled to use the [English] king’s courts... Probably the most important [disability for free Gaels] was their inability to bring actions in the king’s courts, but it is another, often misunderstood, aspect of the problem that has done most to drag it into the domain of partisan history: the killing of [a Gaelic person] was no felony. It is not surprising to find that to say a man [or woman] was [a *Hibernicus/-a*] was a defamatory statement, actionable by plaintiff.³²

He went on to argue that ‘the general rule, where capacity to sue in the [English] king’s courts was concerned, was that any [Gael], of whatever consequence, was theoretically in the same position as a betagh.’³³ Hand, unfortunately, provided no substantive proof of this hypothesis, no detailed overview of court cases ranging from across English Ireland and over the centuries.³⁴ He cited no statute or mandate to the justices which established this ‘rule’. Hand then proceeded to repeat the accusations made in the so-called ‘remonstrance

²⁷ She was arguing against Curtis’s supposition that Henry II had made such a grant at Lismore in 1171: Curtis, *History of medieval Ireland*, p. 57. For more on the supposed grant to the ‘five bloods’, see Chapter One, *infra*, p. 76; Chapter Two, *infra*, pp 137-9; Chapter Three, *infra*, pp 163-4; Appendix Two, pp 301-3.

²⁸ Otway-Ruthven, ‘Native Irish’, p. 145.

²⁹ A.J. Otway-Ruthven, ‘Reviewed Work(s): *The Irish Jurist*’ in *IHS*, xvi, no. 61 (1968), pp 103-6.

³⁰ Mac Niocaill, ‘Origins of the *betagh*’, pp 297-8.

³¹ G. J. Hand, *English law in Ireland, 1290-1324* (Cambridge, 1967).

³² Hand, *English law*, p. 188.

³³ Hand, *English law*, p. 198.

³⁴ While Professor Hand’s monograph was supposedly concerned with 1290-1324, he widened his study on the status of Gaels to c.1200-c.1367.

of the Irish princes'.³⁵ He was rather uncritical of the petition, and his lack of analysis led subsequent historians to believe that Hand was 'proving' the petition to be honest and accurate.³⁶

Importantly, in subsequent scholarship was the work of Kenneth Nicholls.³⁷ In a review of three recently-published books (c.1982) about medieval Ireland, he revealed many previously-unknown facts about medieval English Ireland. His most relevant argument was that free Gaels who held free lands in English Ireland were tolerated by the English settlers and courts, and did not require grants of access to use the courts.³⁸ This was a huge turning point in the historiography, and Nicholls may have been the first scholar to argue for acceptance of the free Gaels.³⁹ Mr Nicholls also speculated that the traditional argument for discrimination was based on the more ample, later evidence and belied the legal and social realities of the early and mid-thirteenth century.⁴⁰

Seán Duffy noted the disregard for the connections between Ireland, the Isle of Man, the Hebrides, Scotland, and Wales and assuaged the situation. He studied the political interactions between Gaels and Ost-people, and between Ireland and the other regions. He also detailed many of the families that settled in Ireland between 1000 and 1300, and this work elucidates the variety of ethnicities, liminality of ethnic status, and the high level of intermarriage in medieval Ireland.⁴¹ At the same time, Brendan Smith and Ciarán Parker were conducting detailed analyses of counties Louth and Waterford, respectively. Both found free and accepted Gaels within the English territories holding free

³⁵ The 'remonstrance' was a petition from Domhnall Ó Néill to Pope John XXII in c.1317. Ó Néill claimed to be speaking for all Gaelic people and then presented numerous grievances committed by the English of Ireland. Many have taken this hyperbolic letter as concrete proof of the treatment of all Gaels in Ireland from 1169 to 1317.

³⁶ Gearóid Mac Niocaill, 'Contact of the Irish and the common law' in *Northern Irish Legal Quarterly*, xxiii, no. 1 (1972), pp 16-23 at 19; R. F. Frame, 'The immediate effect and interpretation of the 1331 ordinance *una et eadem lex*: some new evidence' in *The Ir. Jurist*, vii (1972), pp 109-14 at 109, n. 2; idem, 'Ireland after 1169', p. 118, n. 17; J. R. S. Phillips, 'The Irish remonstrance of 1317: an international perspective' in *IHS*, xxvii, no. 106 (1990), pp 112-29 at 119. Cf. James Lydon explicitly noted the hyperbolic nature of the so-called 'remonstrance': J. F. Lydon, 'Nation and race in medieval Ireland' in Simon Forde, Lesley Johnson, and A. V. Murray (eds), *Concepts of national identity in the Middle Ages* (Leeds, 1995), pp 103-24 at 105.

³⁷ Nicholls, 'Anglo-French Ireland'.

³⁸ Nicholls, 'Anglo-French Ireland', pp 371-6.

³⁹ For my use of the term 'acceptance', see *infra*, pp 10, 16-17. Cf. James Mills thought that *betagii* and *nativi* were almost free in 1326: Mills, 'Tenants and agriculture', p. 54.

⁴⁰ As noted above, Richardson made a similar comment: Richardson, 'English institutions', p. 387.

⁴¹ Seán Duffy, 'Ireland and the Irish Sea Region, 1014-1318' (unpublished PhD thesis, University of Dublin, 1993). Professor Duffy's extensive work (and the works of Emer Purcell and Ciarán Parker regarding Ost-people) is discussed specifically in Chapter Three, *infra*, p. 142, n. 6.

lands and participating in the English societies.⁴² And John Gillingham traced the history of ethnic revisionism in the study of medieval Ireland (relabelling the English as ‘Normans’ or ‘Anglo-Normans’).⁴³

Robin Frame is the most recent historian to address the idea of the intersection of legal status and ethnicity in medieval English Ireland. He noted the discoveries of Kenneth Nicholls, but then returned to the traditional argument for universal discrimination against the Gaels.⁴⁴ Frame’s main argument was that ‘[t]he [Gaels], including those who were personally free and might even be affluent, did not hold their lands in fee and inheritance, by titles defensible in the [English] king’s courts, or indeed in the courts of the great franchises’. He then claimed that ‘[t]hose classed as [*Hibernici*] did not hold office in central or local government, whether under the crown or under lords of liberties.’⁴⁵ He did include Gaelic women married to Englishmen, Scots, Welsh, and Lombards in his chapter, but speculated that they were legally ‘English’ (which he equated with being ‘not Irish’).

These previous works present two different narratives. Most present an oversimplified dichotomy in thirteenth- and fourteenth-century English Ireland (the dichotomy being English versus Gaelic people), while a few question the lack of nuance. The earlier historians drafted some conclusions, based entirely on speculation, to fill gaps in their research or evidence which subsequent historians took as facts. We must not repeat this error. This thesis rests its conclusions on empirical research and case studies. Below we shall learn that there were other legal categories beyond English and unfree people. There were free and accepted Gaels (men and women), and accepted and unaccepted Ost-people, Welsh, and Scots. These conclusions come from the court records and an understanding of how to read thirteenth- and fourteenth-century court rolls. This understanding is important as some historians have used case records without a complete

⁴² Ciarán Parker, ‘The politics and society of County Waterford in the thirteenth and fourteenth centuries’ (unpublished PhD thesis, University of Dublin, 1992), pp 134-41; Smith, *Colonisation and conquest*, p. 75.

⁴³ John Gillingham, ‘The English invasion of Ireland’ in B. Bradshaw, A. Hadfield, and W. Maley (eds), *Representing Ireland: literature and the origins of conflict, 1534-1660* (Cambridge, 1993), pp 24-42; idem, ‘A second tidal wave? The historiography of English colonization’ in J. M. Piskorski (ed.) *Historiographical approaches to medieval colonization of East Central Europe: a comparative analysis against the background of other European inter-ethnic colonization processes on the Middle Ages* (New York, 2002), pp 303-27; idem, ‘Normanizing the English invaders of Ireland’ in Huw Pryce and John Watts (eds), *Power and identity in the Middle Ages: essays in memory of Rees Davies* (Oxford, 2007), pp 85-97.

⁴⁴ R. F. Frame, ‘Ireland after 1169: barriers to acculturation on an “English” edge’ in K. J. Stringer and Andrew Jotischy (eds), *Norman expansion: connections, continuities and contrasts* (Farnham 2013), pp 115-41. See also, R. F. Frame, “‘Les Engleys néés en Irlande’: the English political identity in medieval Ireland’ in *TRHS*, 6th ser., iii (1993), pp 83-103.

⁴⁵ Frame, Ireland after 1169’, p. 119.

comprehension of what those meant (e.g. medieval warranting was not the same as a modern witness).⁴⁶

Terminology

As the previous summary has shown, most of the historiography of high medieval Ireland depicts a dichotomy between the ‘native Irish’ and the English.⁴⁷ The inappropriate label ‘native’ is not helpful since it casts doubt on the Irishness of the Ostmen, Ostwomen, and other non-Gaelic, Irish people.⁴⁸ More pertinent to this thesis, calling the Gaelic peoples ‘natives’ has led to the incorrect belief that all Gaelic people were *nativi* (naifs, i.e. born legally unfree).⁴⁹ The following chapters demonstrate with clear evidence that not *every* Gaelic person was a *nativus/-a* in English Ireland; however, the vexing, persistent *belief* that they were is the crux of the problem.⁵⁰ The solution is to apply to Paul Hyams’s markers of unfreedom to people in the royal courts in Ireland.⁵¹ Many historians of medieval Ireland have had great difficulty with differentiating unfree people (*L. nativi*) from ethnic labels and ethnic discrimination.⁵² This thesis explicitly identifies unfree people and explains the identifying factors (for free and unfree people) in the case records. This allows us to differentiate between unfree people being denied access to the royal courts as per English custom, and instances of free people being denied access based entirely on their ethnicity.

⁴⁶ Geoffrey Hand argued that Gaels called to warranty in the royal courts were unfree but allowed to speak so as to not injure their English lord. This was not the situation. For more, see Chapter One, *infra*, pp 60-4.

⁴⁷ Otway-Ruthven, ‘Native Irish’; Hand, *English law*, pp 187-210; Bryan Murphy, ‘The status of the native Irish after 1331’ in *The Ir. Jurist*, ii (1967), pp 116-28; Frame, ‘Ireland after 1169’, pp 118-19.

⁴⁸ Kenneth Nicholls also made the point that ‘Irish’ is not the sole property of the Gaelic peoples: “...the Irish,” meaning, of course, the Gaelic Irish’: Nicholls, ‘Anglo-French Ireland’, p. 379.

⁴⁹ Kenneth Nicholls and Paul MacCotter edited the *Pipe roll of Cloyne*, but while providing invaluable notes on the persons and places named, translated *nativus/nativi* as ‘native’/‘natives’: *Pipe rolls of Cloyne, passim*.

⁵⁰ While Nicholls clearly questioned the earlier situation, he proposed that all Gaels (except those enfranchised by royal charter) were denied access to the royal courts by 1250x1300: ‘Is it merely because of the greater availability of record sources in the second half of the [thirteenth] century that it is from this time on that the “exception of Irishry”, the exclusion of the free Gaelic Irish from legal rights under the common law placed them on par with aliens... intrudes itself more obviously on our notice?’: Nicholls, ‘Anglo-French Ireland’, p. 374. Mr Nicholls was mistaken on the legal status of ‘aliens’ under English law. The traditional argument was that ‘aliens’ were ‘outside the law’ after the loss of Normandy in 1204, but this hypothesis is much disputed now: Kim, *Aliens in medieval law*, pp 14-16 and n. 39. Brendan Smith commented that ‘some of the [Gaels] who remained among the English held their land by free tenure in the early years of the conquest and continued to do so into the fourteenth century’: Smith, *Colonisation and conquest*, p. 75.

⁵¹ Hyams, *King, lords and peasants*, pp 221-65.

⁵² Otway-Ruthven, ‘Native Irish’, pp 148-9; Hand, *English law*, p. 196; Nicholls, ‘Anglo-French Ireland’, p. 373; Smith, *Colonisation and conquest*, pp 78-9.

The historiography also has focused on the use of the plea *est Hibernicus/-a*, which according to many, insinuated that the plaintiff was not allowed to use the royal courts.⁵³ In 1905 James Mills argued that there was a dual use of the term *Hibernicus/-a* for a servile Gaelic person and for any Gaelic person:

The word *Hibernicus* has been usually printed so, because it is used on the rolls most often in a special technical sense. In early instruments of the [English] in Ireland *nativus* is ordinarily met in its then technical sense in English law. The use of the word *nativus* had by the time to which these rolls belong [1295-1303] almost entirely given way, in the language of the clerks of the courts, to *Hibernicus*. The full phrase sometimes appears as “Hibernicus et servilis conditionis.” In the hands of other scribes than the clerks of court, *nativus*, though occasionally met, tended to give way to the local term betagh, or its latinised equivalent *betagius*. But on the rolls the *nativi* or villeins [sic] of Irish manors are most frequently described by the term *Hibernici*. *Hibernicus* is, however, at the same time often used in its non-technical sense—an Irishman—without reference to his legal status... “Walterus (de Capella) hibernicus est de cognomina des Offyns, et ipse Walterus et pater suus fuerunt molendarii ipsius Johannis et patris sui apud Fersketh, set non hibernici predicti Johannis,” &c. Walter and his father were [Gaelic] Irishmen in the service of John, but they were not his villeins [sic]. Here *Hibernicus* is used in two distinct sense in the same sentence.⁵⁴

Mills noted that the original plea was *est nativus/-a*, but that over the course of the thirteenth century, the phrase changed to *est Hibernicus/-a et nativus/-a* and then into simply *est Hibernicus/-a*. I argue that Mills missed some later evidence for the continuing existence of unfree *nativi* and the simultaneous advent in the court records of legally-accepted ethnic discrimination (mostly against Gaels).⁵⁵ This latter phenomenon, which I refer to as unacceptance, has been observed but misunderstood. Free and ‘accepted’ Gaels are analysed and compared to free and unaccepted Gaels in several of the chapters below. I use the term ‘accepted’ to denote the legal difference between free Gaels who were denied access to the royal courts in civil cases and unfree people. The former could own land or a business, but occasionally could not sue a writ in the royal courts whereas the latter could not legally own anything in theory. This is an important distinction which others have overlooked. The free and accepted Gaels were not labelled so we cannot label them *Hibernici* today.

⁵³ Hand and Nicholls called this plea the ‘exception of Irishry’, but this is even more problematic. There is no evidence of a ‘law book’ from English Ireland. In the ‘law books’ from England, there are references to many *exceptiones*. An *exceptio* (objection) is sometimes translated as an ‘exception’ in legal guide books. This translation is ambiguous because of the modern usage of ‘exception’. An *exceptio* was a type of plea in court which objected (and hence the modern legal terminology ‘an objection’) to the other party’s argument, usually the count. Also, ‘Irishry’ does not appear until the fifteenth century.

⁵⁴ *CJRI, 1295-1303*, viii-ix. The term ‘villein’ was not used in the royal court records from English Ireland. Professor Otway-Ruthven found two instances, both well after the terminal date of this thesis (1341 and 1393), but these could have been scribal errors: Otway-Ruthven, ‘Native Irish’, pp 145-6, n. 21.

⁵⁵ Chapter One, *infra*, pp 73-89.

These problems lead into the final problem: the lack of recognition of other ethnicities in medieval English Ireland besides English and Gaelic, and the failure to acknowledge the particular problems for women in the courts. Historians have mentioned some of these other ethnicities and women, but not in most legal studies.⁵⁶ The reasoning for ignoring the other ethnicities in English Ireland does not concern our current study, but it should be addressed elsewhere.⁵⁷ The lack of focus on women's legal status is also problematic because women are ubiquitous in the surviving records. I have tried to make that obvious in the thesis. The importance of the multi-ethnic aspect of medieval English Ireland is also apparent in the thesis.

There were many types of Irish people in the thirteenth century. To label the Gaels as 'native Irish' blurs or negates the Irishness of Ost-people, Welsh, Manx, Islanders, and Scots born in Ireland before (and after) the advent of the English.⁵⁸ We do not have any surviving, personal diaries or testimonies from the various Irish people of that time, so we cannot delve into personal identity. The court records do not record personal identity beyond naming practices. Almost all of the records are written in the third person and in Latin. In this thesis I use broad terms for ethnicities, which is problematic. Based on court records it appears that most people at that time identified themselves by their extended family, their father (or sometimes mother), their place of birth, or membership of a large group (e.g. Meic Briain or les Poers). Many of the English of Ireland – as James Lydon noted – were occasionally called '*Hibernici*' or '*Hibernienses*' when they went to England or the Isle of Man.⁵⁹ Irishness was not always a cultural or descent marker used by the royal courts. It could be a geographic marker. Historians speak of ethnicities in surprising

⁵⁶ Geoffrey Hand, almost exactly as Edmund Curtis had done, appended Ostmen to the end of his study (neither offered comment on the Ostwomen). Both Curtis and Hand argued that Ost 'identity' had been almost obliterated by the end of the thirteenth century, and that the Ostmen of the cities and towns were fully accepted by the English as English. Curtis and Hand examined the 'rural' Ost-people and believed the latter were 'degraded' to the status of Gaels: Curtis, *History of medieval Ireland*, pp 403-7, 417-21; Hand, *English law*, pp 210-13. For Gillian Kenny's work, see Chapter Two, *infra*, p. 91, n. 1, p. 92, n. 5, p. 104, n. 70.

⁵⁷ We must be very careful in this pursuit. Professor Frame attempted to explain the 'Norman turn' in the historiography of medieval Ireland, but stumbled into an *ad hominem* attack on G. H. Orpen and A. J. Otway-Ruthven: Frame, 'Ireland after 1169', p. 116.

⁵⁸ The exceptions are Professor Duffy and Professor Lydon who noted the Ostmen (and Ostwomen) were 'indigenous', and Professor Duffy noted the existence of the Gaelic-Welsh of Ireland: Seán Duffy, 'Irishmen and Islesmen in the kingdoms of Dublin and Man, 1052-1171' in *Ériu*, xliii (1992), pp 93-133 at n. 135 and pp 131, 133; idem, 'The Welsh conquest of Ireland' in Emer Purcell, Paul MacCotter, Julianne Nyhan, and John Sheehan (eds), *Clerics, kings and vikings: essays on medieval Ireland in honour of Donnchadh Ó Corráin* (Dublin, 2015), pp 103-14; J. F. Lydon, 'Dublin in transition: from Ostman town to English borough' in Seán Duffy (ed.), *Medieval Dublin II: proceedings of the friends of medieval Dublin symposium 2000* (Dublin, 2001), pp 128-41 at 134.

⁵⁹ J. F. Lydon, 'The middle nation' in idem (ed.), *The English in medieval Ireland* (Dublin, 1984), pp 1-26, repr. in *GWSMI*, pp 332-52 at 338; for the Isle of Man, see George Broderick (ed.), *Cronica regum Mannie & Insularum: chronicles of the kings of Man and the Isles* (Douglas, 1979), pp 'f. 50r'.

terminology. Their references to ‘the native Irish’ define Irishness as solely Gaelicism, i.e. Gaelic culture and blood. This erases any peculiarities in thirteenth-century Gaelic culture(s). But, as is well known, no ethnicity in medieval Ireland was ‘pure’.⁶⁰

Intermarriage (and interethnic children born outside of marriage) was very common. The ethnic labels used in this thesis refer to people with cultural markers (e.g. naming practices) and they are examined alongside legal ethnicities and legal ethnic markers. But at no point do I wish to imply that anyone was ‘purely’ Gaelic, Ost, Welsh, English, or other. Most, however, were Irish.

Many historians prefer to call the English lands in Ireland a ‘colony’.⁶¹ Most historians use it without context, but Brandan Smith discussed colonial theory in his monograph.⁶² There is one aspect of colonial theory which we can add to his conception: linguistics of power. Historians of colonialism are right to point out the othering of ‘conquered’ peoples by colonists. Yet, historians of medieval Ireland still use the English terminology for the Gaels.⁶³ The English in medieval Ireland labelled many – but not all – Gaels as *Hibernici* (Irish) while the Gaels called themselves *Gáedhel* (Gaels). This is very problematic for the historiography, especially when the English of Ireland are occasionally called *Hibernici*. Readers cannot tell when a reference is to an Irish person from a geographic standpoint or to a Gaelic person.⁶⁴

This leads into the contemporary problem of seemingly-English people in England and English Ireland with the surname ‘Hibernicus’ or ‘le Ireys’. These ‘surnames’ were probably the same as the contemporary ‘surname’ le Waleis. Many have confused this

⁶⁰ For a DNA analysis, see Barra Ó Donnabháin and Benedikt Hallgrímsson, ‘Dublin: the biological identity of the Hiberno-Norse town’ in Duffy (ed.), *Medieval Dublin II*, pp 65-87. Robert Bartlett noted that medieval cultures were not based on blood: Robert Bartlett, *The making of Europe: conquest, colonization and cultural change, 950-1300* (London, 1993), pp 197-8. For an introduction to intermarriage, see Seán Duffy, ‘The problem of degeneracy’ in J. F. Lydon (ed.) *Law and disorder thirteenth-century Ireland: the Dublin parliament of 1297* (Dublin, 1997), pp 87-106 at 89-98. For more on intermarriage, see Chapter Two, *infra*, pp 119-31.

⁶¹ Curtis, *History of medieval Ireland*; Frame, *Colonial Ireland*; Smith, *Colonisation and conquest*, esp. pp 1-9.

⁶² Smith, *Colonisation and conquest*, pp 1-9.

⁶³ Colonists used the term ‘natives’ to imply ‘lazy, shiftless, cruel, playful, naive, dissolute, duplicitous, incapable of abstract thought, impulsive, etc.’: Jürgen Osterhammel, *Colonialism: a theoretical overview* (Princeton, NJ, 2002), p. 109. Cf. Gerald of Wales’s description of the Gaels: Robert Bartlett, *Gerald of Wales, 1145-1223* (Oxford, 1982), p. 159 ‘Irish laziness’ (lazy), p. 161 ‘amazed at sight of bread and cheese’ (naive), p. 163 ‘mutual slaughter’ (cruel). The notable exceptions are Kenneth Nicholls and occasionally James Lydon: Nicholls, ‘Anglo-French Ireland’, esp. p. 379; Lydon, ‘Middle nation’.

⁶⁴ Paul Brand rightly uses ‘Irish’ as a geographic marker. He writes of the Irishmen who went to England to study English law. These men had ‘English’ names, but without their full genealogy or DNA, we cannot state for certain that they were, or were not, Gaelic: Paul Brand, ‘Irish law students and lawyers in late medieval England’ in *IHS*, xxxii, no. 126 (2000), pp 161-73. Cf. many other historians use ‘Irish’ only for the Gaels, discounting the Irishness of the Ost-people and every other person born in Ireland: e.g. Otway-Ruthven, ‘Native Irish’.

‘surname’ to mean the person was Welsh (i.e. *Cymry*). But we have a great deal of evidence of Englishmen (and a famous Scot) called ‘le Wales’.⁶⁵ In England there was Walter Hibernia, who was an attorney in the *curia regis*, and Hugh le Ireys and John le Ireys appear to have been professional attorneys.⁶⁶ Thomas le Ireys de Shrawardine (Shropshire) loaned £16 to Richard de London from co. Meath.⁶⁷ In English Ireland there were several families named ‘Hibernicus’ or ‘le Ireys’. William le Ireys held lands in chief of the crown.⁶⁸ John de Fressingfield, itinerant justice, acknowledged that he owed Thomas le Ireys 40 marks during the itineration in 1305-6.⁶⁹ In Dundalk there was a Robert Hibernicus.⁷⁰ This final example is one of the instances when having the original court record might help. This calendar (NAI, KB 2/7) is an English translation, and so we must carefully guess what the original stated. The calendar reads ‘Robert, a Hibernicus of Dundalk’, but the original was quite possibly – as I rendered above – *Robertum Hibernicus de Dundalk*. The court case which involved Robert Hibernicus did not hinge on his ethnicity, so we will probably never know whether he was a free Gael or an Englishman with a geographic ‘surname’. There is also the problem of the ‘surname’ Betagh. Many seemingly-English people had this ‘surname’.⁷¹ Brendan Smith speculated that these people were formerly *betagii* who had been freed and enfranchised.⁷² There is no evidence for this theory, however.

There were also ‘English’ people with Gaelic names, and even more ‘Gaelic’ people with English names. Philip McArny and Maurice McArny [*G. Mac Fheardhomhnaigh?*] were labelled *mere Anglici* (pure Englishmen) by the custos’ court in 1313.⁷³ These men greatly confused Geoffrey Hand, but they may have been relatives of Bridin Makarne de Archenfield (Herefordshire) who was a member of the Dublin guild merchant.⁷⁴ Professor Otway-Ruthven was careful to note that there were probably ‘many [Gael] living among the English hiding under English names’.⁷⁵ We will never be able to

⁶⁵ It could also be used by someone from Wallonia or Valais: Chapter Three, *infra*, pp 143-4.

⁶⁶ David Crook (ed.), *Curia Regis Rolls of the reign of Henry III: preserved in the Public Record Office, vol. xx: 34 to 35 Henry III (1250)* (Woodbridge, 2006), nos 497, 705, 1059, 1291, 1304, 1422, 1497, 1682. For Walter Hibernia’s case (no. 705), Dr Crook changed the name from ‘Hibernia’ to ‘de Hibernia’.

⁶⁷ *HMINAUK*, p. 146 [PRO, C 241/35/205].

⁶⁸ *IEMI*, no. 100.

⁶⁹ NAI, RC 7/11, p. 213.

⁷⁰ NAI, KB 2/7, f. 59r.

⁷¹ NAI, RC 7/10, p. 119; *CJRI, 1305-7*, pp 391, 484, 490; *CJRI, 1308-14*, pp 151, 170, 211.

⁷² Smith, *Colonisation and conquest*, p. 78.

⁷³ NAI, KB 2/4, f. 176r. The custos was a temporary justiciar.

⁷⁴ Hand, *English law*, p. 196; *DGMR*, p. 69. Cf. Roynock Maccarne: Chapter One, *infra*, p. 43.

⁷⁵ Otway-Ruthven, ‘Native Irish’, p. 145.

quantify these Gaels, but we can detect some in the records, such as Richard Bray, Henry Bernard, William Durant, and John son of William. They sued John Fagan [G. *Ó Fechín?* or *Ó Fiacháin?*]⁷⁶ for half a carucate of land.⁷⁷ The four plaintiffs claimed to be the rightful owners because they were the cousins and heirs of William Fagan. John Fagan called Richard son of Richard Athelard to warranty his claim to the lands. In 1317 William fiz Ine [G. *Éanna?*] sued Robert son of Waleran for disseising the former's grandfather, Leghelinum le Monner [G. *Lochlainn*], of one house, one mill, and one acre in Lytel Milletoun, co. Tipperary.⁷⁸ No result was recorded.

There is also the problem of people with English names who were labelled *Hibernici*. Without any other information, we cannot definitively state that such people were of Gaelic ancestry or blood. Roger son of David, Master Nicholas de Mellifont, John son of Augustine de Ardachad, Henry Carnan, Adam le Keu senior de Kilwarny, William Motoun and several others were granted access to the royal courts.⁷⁹ If these people were of Gaelic descent, they had acculturated to English naming practices.

In order to differentiate between the ethnic references, geographic references, and the surname, I have either translated *Hibernicus/-a* to Gael when it was used as a legal, ethnic marker or, occasionally, left the Latin untranslated when the person's ethnicity was unclear. In instances when a person was labelled a *Hibernicus/-a*, but they did not have a Gaelic name, I have made an explicit comment to highlight the problems of identification and ethnicity. Over the course of the period studied (1252-1318) the usage of *Hibernicus/-a* in the royal courts changed. We can see that it occasionally becomes an attack on a person's freedom and ability to use the royal courts, and some of the other ethnicities in English Ireland use it as stepping-stone to gain – or maintain – their acceptance by the English.⁸⁰ At the same time, (possibly English) people named 'Hibernicus', 'le Ireys', and 'Betagh' were not disseised or denied access to the royal courts. I maintain this translation (*Hibernicus/-a* to Gael) because of the problem of defining 'Irishness' and because this thesis is concerned with ethnicity.

⁷⁶ 'Fagan' has been labelled 'Norman' by Edward MacLysaght and then left unchallenged by historians and others. I have found no basis for this assertion: Edward MacLysaght, *The surnames of Ireland* (6th ed., Dublin, 1991), p. 102. Cf. the *Oxford dictionary of family names* notes 'Fagan' as solely a Gaelic/Irish name: Patrick Hanks, Richard Coates, and Peter McClure (eds), *The Oxford dictionary of family names in Britain and Ireland* (4 vols, Oxford, 2016), ii, 862.

⁷⁷ NAI, RC 8/1, pp 59-60. The ability to plead in a royal court was the reserve of free people in English Ireland, so John Fagan was free and accepted.

⁷⁸ NAI, RC 7/12, p. 350. This was one of the very few times someone was called 'fitz' in the court records.

⁷⁹ *CPR 1292-1301*, pp 23, 57; *CIRCLE*, PR, 11 ED II, nos 26, 27.

⁸⁰ Chapter Three, *infra*, pp 148-53, 155-6, 161-4, 165, 170-2.

Finally, in regards to naming, the reader will notice that the Gaelic names from the English sources usually have a suggested rendering in Gaelic throughout the thesis. After consulting several experts on the medieval language *Goídelc/Gaedhilg* (Gaelic), I have presented the names in ‘early modern’ Gaelic.⁸¹ The consensus is that after 1200 there was a ‘standard’ spelling of Gaelic names. The royal court records contain some Gaelic names which are very rare (e.g. Neel Ocrofthelhyn). Most renderings are presented with a question mark to denote the very tentative nature of the suggestions. Names such as Domhnall – usually Anglicised and Latinised to *Dovenaldus* – are more certain, as are names of ‘magnate’ Gaels (e.g. Geoffrey Ó Fearghail).⁸² After the first reference to a Gaelic person, I continue to use the form given in the record source. This is due to the uncertainty in some of the renderings, and the fact that some of these people may have spelled their name as it is written in the record. As noted in the thesis, misspelling a person’s name in a writ was sufficient to have the writ quashed.⁸³ However, some English names have been standardised. ‘Reymundus’ and ‘Raymundus’ have been rendered as ‘Raymond’. The Latin surnames *de Rupe* and *de Rupeforti* have been rendered as de Roche and de Rochford, respectively.⁸⁴ *De Rupe* should be noted because the English spelled the Gaelic name *Ruad* as ‘Roth’ or ‘Roch’ in Latin, and it was clearly differentiated from *de Rupe*. In instances when the court record changed the spelling of a person’s name within one case or between cases, I have noted that because of the importance of spelling to a writ.⁸⁵

Throughout the thesis I have replaced a direct translation of a contemporary Latin phrase with a more idiomatic and substantial one. Those familiar with the historiography will be aware of the phrase ‘has English law’. This is a direct (and rather unhelpful) translation of *habet legem Anglicorum*. Many thirteenth- and fourteenth-century case records use this, or a similar, phrase, but English law was not tangible. One could not hold it. This phrase means that the court recognised that the person in question could sue in the English courts in Ireland (royal, county, or borough). Some historians refer to people who did not have access to English law, but this was not the reality. People who could not plead

⁸¹ Many thanks to Professors Seán Duffy, Damian McManus, and Eoin Mac Cárthaigh.

⁸² Ó Fearghail is examined in Chapter Four, *infra*, pp 203-6.

⁸³ Chapter Two, *infra*, pp 125-7; Chapter Five, *infra*, pp 254-7.

⁸⁴ Other names that have been standardised are familiar English forenames and the ‘surnames’ de Carew, de Prendergast, de Cauntetoun, de Longespée, and le/la Botiller. Patronymics and matronymics have not been ‘Frenched’. *Filius* and *filia* have been translated to ‘son of’ or ‘daughter of’. Any ‘fitz’ is from the record source unless referring to a person named in a secondary source. Some secondary works forced ‘fitz’ onto medieval records which used *filius/-a*.

⁸⁵ E.g. Emmeline de Longespée: Chapter Two, *infra*, p. 93.

or warranty in the royal courts could be, and were, prosecuted for crimes under English law. These people could also trade with English traders, use English coins, fight in the English army, and raise the hue and cry, which were all part of English law. Therefore, I have translated – in most cases – the phrase *habet legem Anglicorum* as ‘access to the royal courts’ to enunciate the effectual meaning of this phrase.⁸⁶

Grants of access

By 1209 the English were drafting charters to Gaels to protect the latter’s freedom and acceptance in the English lands in Ireland. Some have argued that the earliest known charter was an enfranchisement, while others have wagered that it was simply a confirmation of existing relationships and protections for ‘illegitimate’ Gaelic children of clerics.⁸⁷ Other records seem to confirm the second theory.⁸⁸ The idea that all Gaels were denied access to the royal courts in Ireland and were considered legally unfree has partially rested on the evidence of grants of access to the courts.⁸⁹ In several instances in the surviving court records, it becomes apparent that these grants of access were only effectual in certain areas and that the local English could easily ignore a royal grant.⁹⁰ But Gaels continued to purchase these grants from the Irish and English chanceries for decades after an ordinance was sent to Ireland ordering that all free Gaels were to be admitted to use the royal courts in Ireland.⁹¹ An overlooked aspect of these grants (part of their ineffectualness) is that some people had to purchase several grants. Maurice de Bree, clerk,

⁸⁶ For more on this, see Chapter Three, *infra*, pp 147-9.

⁸⁷ The charter does not survive, only a reference to it in a court case from 1299. Walter Ó Tuathail was accused of being unfree and presented a charter from William Marshal from 1208-9 [10 John]. The justiciar’s court did not make a ruling that day, but Walter appears to have been free and accepted (he served on a jury in the same court five days earlier and was summoned to later): *CJRI, 1295-1303*, pp 270, 271, 447. For the arguments that this record was an enfranchisement, see Otway-Ruthven, ‘Native Irish’, p. 144, n. 14; Hand, *English law*, p. 206; Frame, ‘Les Engleys’, pp 88-9, n. 23; *idem*, ‘Ireland after 1169’, pp 123-4. For the argument that it was a confirmation of existing rights, see Nicholls, ‘Anglo-French Ireland’, pp 375-6.

⁸⁸ A land grant to the son of the dean of Cloyne: *Pipe roll of Cloyne*, pp 84-5. Mr Nicholls noted that the charter of confirmation given to Meyler Ó Tuathail in 1228x55 was probably a protection (from an accusation of bastardy) for the son of the archbishop of Dublin: Nicholls, ‘Anglo-French Ireland’, p. 382. The record does not call Meyler’s father, Laurence, archbishop of Dublin, however: *CAAR*, pp 81-2.

⁸⁹ Otway-Ruthven, ‘Native Irish’, pp 143-5; Hand, *English law*, pp 205-10; Frame, ‘Ireland after 1169’, pp 121-4. Cf. Professor Frame, earlier, had well-founded doubts about the necessity of a charter/grant: Frame, ‘Les Engleys’, pp 87-9. The idea that all Gaels were denied access to the courts also relied on the attempt in 1277 to enfranchise all *Hibernici*. For more on that, see Chapter Five, *infra*, pp 276-7.

⁹⁰ See Thomas son of Gerald son of John, Chapter One, *infra*, pp 42, 84; the Ost-people of Waterford, Chapter Three, *infra*, pp 148-54; Maurice de Bree, Chapter Five, *infra*, pp 252-3.

⁹¹ Murphy, ‘Status of the native Irish’.

purchased at least two grants of access to the royal courts.⁹² He also came to the Dublin Bench in 1304 and had his grant from 1296 enrolled three times.⁹³ On the other hand Robert de Bree was provost of Dublin six months before he received his first grant of access to the courts.⁹⁴ This lends more weight to Mr Nicholls's conclusion that these grants and charters were not enfranchisements, but instead, extra security against false claims of servility. This was not an isolated incident. Numerous Gaels, such as King Eoghan Ó Madadháin, were free and accepted before receiving a grant of access to the courts.⁹⁵ Many more instances involving grants of access are examined below, but a final important feature should give some context to the situation. Some English people purchased these grants. Adam Benyt petitioned an English parliament for a charter of access to the royal courts in Ireland, and received one, in February 1304/5.⁹⁶ Robert Persone claimed that 'certain men of the land of Ireland' would not allow him to 'enjoy' English law because Persone was born in Ireland. No mention was made of the irony in this situation. The English chancery then determined that Persone's grandfather, Richard le Taillur, and all of his ancestors had originated in England and granted Persone access to all English courts.⁹⁷

Sources

The surviving records used in this thesis are mostly Latin calendars made by the Record Commission of Ireland. I could not consult the majority of the original court rolls because they were blown up on 30 June 1922 during the IRA's occupation of the Four Courts complex.⁹⁸ The deputy keeper's report on the public records of Ireland from 1928 provides valuable information about the *explosion*:

Out of the debris were picked calendars and indexes, and fragments of calendars and indexes; scattered pages of the Calendars to the Justiciary and other Rolls were found all over the building. The presence of *explosive substances* [i.e. the gelignite placed on the records by the IRA] rendered the work of salvage dangerous and the reality of the danger was proved by a miniature explosion which took place some

⁹² *CDI, 1285-92*, no. 677; *CDI, 1293-1301*, no. 19. For more on Maurice's cases, see Chapter Five, *infra*, pp 252-3.

⁹³ NAI, RC 7/10, pp 105, 168-9, 227-8.

⁹⁴ *CDI, 1285-92*, no. 598, p. 299; *CPR, 1281-92*, p. 380.

⁹⁵ Chapter One, *infra*, pp 29-30.

⁹⁶ *PROME*, Edward I, Roll 12, m. 15d (<http://www.sd-editions.com/AnaServer?PROME+79174+parlfra.anv>) (14 July 2017). For the context of Adam Benyt's case, see Chapter One, *infra*, p. 88.

⁹⁷ *CPR, 1301-1307*, p. 504. Some grants of access specify the recipient could only use the courts in Ireland, whereas others do not put any limit on the access. I hope to explore this further at some stage.

⁹⁸ Herbert Wood, 'The public records of Ireland before and after 1922' in *TRHS*, xiii (1930), pp 17-49 at 35-6; idem, 'The tragedy of the Irish public records' in *The Irish Genealogist*, i, no. 3 (1938), pp 67-71 at 71.

time afterwards in the Strong Room. The cleaning of those books and papers, impregnated as they were with the dust of masonry rubbish, occupied a considerable time, as great care had to be exercised to prevent further portions of the calendars and indexes from becoming detached [my italics].⁹⁹

The main group of calendars is the RC 7 series.¹⁰⁰ Originally comprised of nineteen volumes – which included one from the reign of Henry III, ten from that of Edward I, and eight from that of Edward II – six of the volumes from Edward II’s reign were destroyed, and now RC 7 only contains twelve sewn volumes and one collection of loose papers.¹⁰¹ The sewn volumes are collections of returns by individual RC clerks in the early 1820s and subsequently bound together. RC 7/13 is a box with four envelopes of returns (hence the class marks have an additional reference number). It mostly contains records from the reign of Edward II. Almost every section in all of the volumes begins with a cover page, which contains the number of pages of that section, and most name the clerk who made it and the date he submitted it to Richard Francis Sleater, the secretary of the ‘plea rolls’.

R. F. Sleater supervised and edited the work of the RC clerks. Although it was probably not unusual for the time, Sleater was able to secure positions for two of his relatives, John W. Sleater and Charles Sleater. Charles’s returns are satisfactory, but J. W. Sleater appears to have been a case of nepotism. His returns have a great deal of deletions and later additions of information, and his time sheets show that he missed several weeks with an illness.¹⁰² At least three of J. W. Sleater’s returns have duplicates made by other clerks placed after them. These ‘duplicates’ are better quality calendars with more information than J. W. Sleater’s version.

The other main source is the KB 2 series at the NAI. This includes twelve volumes of English calendars made between 1893 and 1922. These calendars are only of ‘justiciary’ court rolls (some are custos’ court rolls), and the first three volumes are rough drafts of the published calendar *CJRI, 1308-14*.¹⁰³ The reader will notice that they are cited as folios and not as pages. This is because the volumes in the KB series are only numbered on the recto side, and most folios have no writing on the verso. These English calendars have benefits and drawbacks. They include more information than the nineteenth-century RC calendars (e.g. names of jurors), which R. F. Sleater found ‘trifling’.¹⁰⁴ But the KB series

⁹⁹ 55th *RDKPRI*, p. 19.

¹⁰⁰ For details on the calendars, see Appendix One, *infra*, pp 287-99.

¹⁰¹ NAI, ‘Irish Record Commission: Records 1810-1830’ (unpublished guide in the reading room, NAI).

¹⁰² NAI, RC 16/30, f. 17r.

¹⁰³ NAI, KB 2/1-3; Appendix One, *infra*, pp 287-99. There does not appear to have been an effectual difference in the jurisdiction between a justiciar’s court and a custos’ court, but the rolls have different titles.

¹⁰⁴ NAI, RC 7/1, pp 5-10.

do not include the original Latin and the PROI clerks in c.1900 made some ‘interesting’ translations.¹⁰⁵ There is also a single English calendar of the itinerant court roll from 1305-6: JUS 33-4 Ed I. It was made at the same time and in the same fashion as the KB 2 series.

A third source, which is less reliable, is the RC 8 series. These are Latin calendars of ‘memoranda rolls’, but they include some royal court records. The RC 8 series was made by a slightly different group of clerks than the RC 7 series (some of the Sleaters worked on RC 8). Philomena Connolly commented on the problems in using the RC calendars at the NAI. She noted the variance in the quality of work between RC clerks, but she did not specify that there are sixteen RC series at NAI and each series was under the direction of a different supervisor from the others.¹⁰⁶ In the RC 8 series we find sorrowful quips, such as:

this roll consisting of 1166 articles I have reduced to 369—so 797 saved the [Records] Commission and have reduced also 186 pages the Abstract to 92—less than half—as I have valuable notes to add, which I lately found & an order to avoid any Inaccuracy going to the press. I request you will send it back to me (both Rough & fine) as soon as the gentlemen of the Committee have seen it—y[our]s Truly- John Conroy.¹⁰⁷

In other clerical notes in the RC 8 series, we find out that most of the lacunal ‘articles’ (exchequer court cases/records) involved ‘commons’ [commoners].¹⁰⁸ These clerical notes are not as copious in the RC 7 series, although R. F. Sleater could have ordered certain cases to have been omitted silently. There is only one editorial note I have found in the RC 7 series which confirms that entire cases were skipped (as opposed to the omission of certain details, such as the names of jurors). In RC 7/10, it reads: ‘M.21 contains no article of any importance’.¹⁰⁹ The clerk, W. Johnson, does not tell us how many court cases were on membrane 21. In other clerical notes the clerk tells us that a membrane was skipped because it was blank.¹¹⁰

There are two surviving, original court rolls, from the period 1252-1318, at the NAI. The ‘complete’ roll (KB 1/1) is from the court of Edmund le Botiller, custos of Ireland, for the year of 6 Edward II (Michaelmas 1312-Michaelmas 1313). At least one of

¹⁰⁵ See Robert Hibernicus de Dundalk: *supra*, p. 13.

¹⁰⁶ Philomena Connolly, *Medieval record sources* (Dublin, 2002), p. 54. Cf. Margaret Griffith did note this problem: Margaret Griffith, ‘The Irish Record Commission, 1810-30’ in *IHS*, vii, no. 25 (1950), pp 17-38 at 22.

¹⁰⁷ NAI, RC 8/1, no page number [before p. 1]. See also, *ibid.*, pp 42, 51, 57, 61, 66, 160; RC 8/2, p. 233

¹⁰⁸ NAI, RC 8/1, p. 42.

¹⁰⁹ NAI, RC 7/10, p. 479.

¹¹⁰ NAI, JUS 33-4 Ed I, f. 61r; KB 2/4, f. 91v; RC 7/6, p. 429; RC 7/8, no number [before p. 1], 17, 45, 267; RC 7/13/2/2, p. 1; RC 7/13/2/3, p. 1.

the original membranes, however, is now missing (m. 104). The missing membrane is calendared, only in English, in KB 2/4. This roll serves as a point of comparison to judge the accuracy of the RC 7 series. The major drawbacks are that it is rather late in comparison to the oldest record (1252) and that access to it is limited by the conservation staff at the NAI (my access was restricted to ten membranes). The other surviving original is not a complete roll (KB 1/2). It includes twenty unbound membranes of the custos roll from 11 Edward II (1317-18). It was purchased from a private collection in 1968.¹¹¹ Each of the twenty membranes is ‘preserved’ in a plastic folder and so ‘the roll’ is more accessible.

Thesis structure

The questions which this thesis addresses are varied. The primary concern is: what happened to particular people, identified as a certain ethnicity, in the royal courts in English Ireland? This is a difficult question to answer, in some circumstances, because the royal courts did not always label plaintiffs or defendants. I have carefully determined unlabelled people’s ethnicity, or at least ethnic heritage, based on their naming practices. In these instances I have been explicit in advising the reader that the person examined was not labelled, and the ethnic identification is possibly tenuous (although many unlabelled Gaels have rather obvious names).¹¹² And what do these court judgments tell us about the legal status of these different people? I think it is fairly safe to assert that when a person won a court case, we can identify them as free and accepted in English Ireland. The lacunae in the court records leaves open possibilities, but the justiciar’s court was explicit in the late-thirteenth century that having been answered previously in the county court was sufficient proof of freedom and access to the royal courts.¹¹³ This legal axiom is corroborated by other juries’ reports in the surviving court records. A third question concerns the impact of the findings on the current historiography. The evidence contradicting the traditional conclusions is dealt with on a case-by-case basis throughout the thesis and summarised in the conclusion.

The order and length of the chapters is intended to highlight some of the overlooked aspects of thirteenth- and early fourteenth-century society in English Ireland,

¹¹¹ Connolly, *Medieval record sources*, p. 25.

¹¹² E.g. Neel Ocrofthelwyn was not labelled in the itinerant court record, but his Gaelic heritage seems almost certain: Chapter One, *infra*, pp 48-9.

¹¹³ *CJRI*, 1295-1303, p. 59.

but it is also the result of the surviving court records. The number of cases which demonstrate the legal status of Gaelic men and women and Englishwomen greatly outnumbers cases touching the status of Scots. The lack of cases examining the legal status of Scots in English Ireland is probably indicative of their status. Unfreedom (or bondage/servility) is examined first and this is followed by the examination of free Gaelic men. These two topics were combined because most surviving cases of unfree people involved men. Unfreedom needs to be analysed first to establish markers of legal freedom. Women of several ethnicities (including unfree women) are examined separately from the Gaelic men because medieval women encountered more legal (and social) obstacles than most men, and these disabilities makes it more difficult to determine if a woman's legal problems were the result of her sex, ethnicity, or something else. Most of the other ethnicities in English Ireland are analysed together for comparisons to the status of English and Gaelic peoples and to highlight that the Irish people in the thirteenth century were more than just English and Gaels. Criminal cases are separated because the courts usually had separate sessions for criminal procedures and because people could be prosecuted for crimes even if they could not sue a 'civil' case (and others, occasionally, could be prosecuted even if the victim could not sue a civil case). 'Clerics', in a very broad sense of the word, are examined separately because they usually received a privileged status by the royal courts in criminal and civil cases.

Chapter One begins with a discussion of identifying unfree people in thirteenth-century English Ireland. Once we establish how to differentiate between free and unfree, we can then identify the free and accepted Gaels in the royal courts and the later phenomenon of exclusion of certain free people (not just Gaels). The chapter continues with an outline of instances when the free and accepted Gaels lost or gave away their free land. This was not simply a series of legal – from the royal courts' point of view – disseisins by the English in Ireland.

Chapter Two examines the intersection of sex and ethnicity in the royal courts. Gaelic women, just like Gaelic men, have been boxed into an artificial category of absolute exclusion from the royal courts. That was not the situation. As historians of medieval women have noted, there were many kinds of medieval women. This chapter is divided into single women, married women, and dowers, and it compares Gaelic, English, and Ostwomen in each section to determine if the treatment of certain women was based on their sex or their ethnicity.

Chapter Three examines the legal status of the other ethnicities which are usually

left out of studies of English law in medieval Ireland. Ost-people, Welsh, Scots, Manx, and Islanders/Hebrideans were all resident in English Ireland. Most were Irish in the sense that their ancestors were born in Ireland. These peoples were not universally accepted as free and equal members of English Ireland (except, possibly, the Welsh). What we can see in the court records is that most attempted to exploit the growing anti-Gaelic sentiment in order to cement their own acceptance and freedom.

Chapter Four analyses the various people in the criminal court records. These are examined separately because treatment in the criminal side of the royal courts was different. People who could not sue a civil writ could definitely be charged with a felony. We see the liminality of the label *Hibernicus/-a* in the treatment of homicides. There were also instances of Englishmen being hanged for killing a Gael. We see the economic power of some Gaels in the listing of their chattels. And we discover that petitions concerning treatment of criminals were not accurate or honest: Gaels were hanged for crimes and English people could pay fines to be released, and vice versa.

Chapter Five investigates the legal status of Gaelic clerics and questions the motivations for the attempted purchase of access to the royal courts for all *Hibernici* in 1277. There is the troubling occurrence of Gaelic clerics purchasing grants of access to the royal courts. It seems logical to assume that *ex officio* all clerics were admitted to purchase writs and plead in court, but that may not have been the legal reality. In criminal cases most clerics could claim the ‘benefit of clergy’. But apparently archbishops did not even have to answer a criminal charge and some of the ‘lower’ clerics could not refuse to invoke the ‘benefit’. Finally there is the evidence that the impetus behind David Mac Cearbhaill’s negotiations with Edward I in 1277 was not benevolent. Professor Otway-Ruthven was right to question his motives.

Appendices: Appendix One is a table of the surviving court records today. It has some details left out of Geoffrey Hand’s appendices in his monograph.¹¹⁴ Appendix Two offers transcriptions of select court cases. It includes the surviving cases which claim the supposed grant to the ‘five bloods’ and Maurice de Carew’s series of cases to seize the cantred of Foniertheragh, co. Cork.

¹¹⁴ Hand, *English law*, pp 226-48.

I

The legal status of Gaelic men in civil cases

The royal courts at the beginning of the period studied (c.1252) acknowledged a ‘class’ of free Gaelic men, who were not required to purchase grants of access to the courts from the kings of England, and were not molested with the plea of *est Hibernicus et natus* (‘he is a Gael and an unfree naif’: the ‘and’ being, I think, paramount).¹ Over the course of seventy-five years something changed within the structure of the royal courts in Ireland. English law in Ireland was no longer, if it ever was, an exact replica of the law in England, and the royal courts allowed some people in court to object to the ethnicity of the other party in the case. This development has been dated by previous historians to an earlier time than the evidence really supports; moreover, the restriction has been taken to apply only to Gaelic people.² The reality is that there was not *ab initio* a scheme to deny Gaels access to the royal courts nor was it true that only Gaels were discriminated against. The free Gaels held lands in English Ireland and were accepted members of that society, and some continued to be so even after the advent of the legally-accepted ethnic discrimination. We can differentiate the free and accepted (those allowed to use the royal courts in civil cases) from the unfree because the courts were careful to distinguish between free and unfree peoples. This chapter begins with a short section on the unfree in English Ireland and a comparison between the status of villeins in England and *nativi* in English Ireland. This is necessary in order to show how unfree people were identified by the royal courts and how free Gaelic men can be differentiated from them. This chapter also offers an analysis of the term ‘betagh’ (L. *betagius/-a*) and its relevance to someone’s legal status. Betaghs were a tenurial class, which apparently consisted of personally free and unfree people.³ A larger portion of the chapter details the free Gaelic men in English Ireland, some records of their landholding, how they can be identified in the surviving court records, and instances when they held recognised positions of power. The final section details how some of the free

¹ For the argument that the ‘*et*’ was necessary, see *infra*, pp 27-30.

² Many Ost-people were excluded: Chapter Three, *infra*, pp 148-54.

³ Manors in England had free and unfree people holding by ‘customary’ tenure. Free tenants on the manors were designated *liber* and ‘strangers’ (people not born on the manor) were assumed to be free. Strangers could hold *in bondagio* (by unfree tenure). So, the practice of free and unfree people holding lands *in betagio* conforms to the English custom: L. R. Poos and Lloyd Bonfield (eds), *Select cases in manorial courts, 1250-1550: property and family law* (SS, cxiv, London, 1998), nos 31, 171, 189. See also, Hyams, *Kings, lords*, pp 26-7.

Gaels lost their free lands and evaluates the instances of exclusion of seemingly-free Gaels, and then compares those instances with the later evidence of free and accepted Gaels.

Unfreedom and betaghs

In order to show the distinction between free Gaelic men and unfree people, we must first establish the contemporary definition of unfreedom. According to jurists, English law and society considered a ‘free’ person to be anyone who was not unfree.⁴ The social stratification of high medieval societies – beyond the classification of free and unfree – was not relevant to civil cases in the royal courts, usually.⁵ As stated above, the idea of the ‘common law’ in late twelfth- and early thirteenth-century England (and English Ireland) was nascent and constantly transforming to meet new circumstances. For example, at the beginning of Henry II’s reign, landholding and heritability were not codified rights, but subject to royal favour. Even lords and barons – some of whom were loyal to Henry’s cause and had fought for Empress Matilda – were denied their title or their heir was prevented from inheriting the lands and title.⁶ This phenomenon can be compared to the reigns of Kings John and Henry III who guaranteed the security of freeholdings and declared, several times, that English common law would be observed in Ireland.⁷ Previous historians have glossed over the wording of these mandates. The English kings never ordered the justiciar or the justices to administer justice *only* to English people. Mandates specify free people (L. ‘*libere tenentibus*’) or faithful people (L. ‘*fidelibus*’). King John’s register of writs, sent in November 1210, states: ‘we desire justice according to the customs of our realm of England to be shown to all in our realm of Ireland who complain of wrong-doing’.⁸ Other mandates particularly include Gaelic people in their remit, and in 1201 two inquisitions of lands in Limerick used juries of twelve *Hibernensium fidelium et legalium hominum* (‘faithful Gaels and law-worthy men’) and *videlicet legalium virorum totidem Hibernensium* (‘truly legal men [including] all of the Gaels [of those lands]’), respectively.⁹ It seems rather unlikely that every Gael in Limerick had received an

⁴ *Bracton*, ii, 29-30.

⁵ A notable exception was that farmers (people holding land by ‘lease’) could not sue with an assize of novel disseisin. For more on assizes, see *infra*, pp 48-51.

⁶ W. L. Warren, *Henry II* (London, 1973), pp 364-6. See also, Hyams, *Kings, lords*, pp 5-10.

⁷ *Stat. Ire., John-Hen. V*, pp 3-4, 21-4, 26-30, 33-6.

⁸ Elsa de Haas and G. D. G. Hall (eds), *Early registers of writs* (SS, lxxxvii, London, 1970), p. 1. For the date of November 1210, see Brand, ‘Ireland and the literature’, pp 450-6.

⁹ *BBL*, nos 23-4. ‘law-worthy’ means they were knowledgeable of the law and admitted to use the royal courts. One grant that specifies Gaelic people, ‘*ad instantiam Hibernensium, statuit et precepit leges Anglicanas teneri in Hibernia*’: *CPR, 1225-32*, p. 96. The juries in 1201 also included twelve Englishmen

individual grant of access to the royal courts. These men were probably admitted because they were free and had accepted the English presence in Limerick.

We are left with determining what made a man unfree in English Ireland.¹⁰ A comparison with contemporary England brings some relevant context for the system of English law, but that system was not uniform and cannot fill any lacunae in the Irish records. The English courts allowed for regional peculiarities. Also, the application of the common law in England varied greatly from the legal theory of jurists.¹¹ To the high medieval English courts (itinerant, Westminster Bench, and *coram rege*) the idea of unfree people was constantly changing, as were the terms used to describe the unfree. In England in the thirteenth century the usual label was *villanus/-a* (villein), which was not used in English Ireland.¹² One traditional ‘proof’ of villein status in England was the requirement of a heriot. A heriot, from a villein, was theoretically paid by the deceased villein and not his or her heir. Professor Hyams determined that this was not sufficient proof of villeinage as many free tenants had to pay a heriot on certain English manors by custom.¹³ And the same was true for English Ireland. Mary Lyons found that some free tenants paid heriots.¹⁴ Returning to England, villeins were considered by some to be the property of their lord, and therefore similar to his or her chattels. The lord could sell them. Lords could sue each other for seisin of a villein or rights to a villein. Villeins could be stolen, and recovered with an assize of novel disseisin. If two villeins from different manors married, then each lord could claim the children, and families would be broken apart. A villein could be

and twelve Ostmen. See also, ‘the statute of King John made with the common consent of all persons of Ireland’: *CPR, 1232-47*, p. 31.

¹⁰ Women are specifically analysed in Chapter Two, *infra*, pp 91-140.

¹¹ Paul Hyams noted that the author of *Bracton* argued that villeins could sue someone who was not their lord, but that the plea rolls in England do not confirm this: Hyams, *Kings, lords*, pp 89-124. One regional peculiarity was that Kent famously allowed for partible inheritance, as opposed to primogeniture for military tenants in the other English counties: Frederick Pollock and F. W. Maitland, *The history of English law before the time of Edward I* (2nd ed., 2 vols, Cambridge, 1968), ii, 271-3, 418-20. Variances in criminal cases are noted in Chapter Four, *infra*, pp 188-97, 203-11, 241-5.

¹² In the late eleventh and early twelfth centuries, the unfree were *homines*, *rustici*, and *servi*, but these labels fell out of use during the reign of Henry II: R. C. van Caenegem (ed.), *Royal writs in England from the Conquest to Glanvill* (SS, lxxvii, London, 1959), (*homines*) nos 103-7, 109-11; (*fugitivos*) nos 108, 112-13; (*fugitivos et nativos*) 114-22; (*rusticos*) pp 72, 83, 94-6 [from Pipe Rolls of Henry II]. Professor Van Caenegem also noted that during King Stephen’s reign ‘rank and file peasant tenants’ were of ‘English stock’. They were called *villani*, *Anglici*, *nativi*, or *rustici*; but the status of these men was not as depressed at that time as it was during the reigns of Henry III and Edward I: *ibid.*, p. 216, n. 2. The presentment of Englishry originated from the fact that *Anglici* were unfree in early twelfth-century England, for more, see Chapter Four, *infra*, pp 200-1. In Ireland *Anglici* were the term for English people, and some Ost-people with access to English law claimed to be *Anglici*: see Chapter Three, *infra*, pp 148-54.

¹³ Hyams, *Kings, lords*, pp 77-9. See also, Paul Brand (ed.), *The earliest English law reports* (4 vols, SS, cxi-cxii, cxxii-cxxiii, London, 1995-6, 2005-6), ii, no. 1287.2.

¹⁴ M.C. Lyons, ‘Manorial administration and the manorial economy in Ireland, 1200-1377’ (unpublished PhD thesis, University of Dublin, 1984), pp 265-6. Dr Lyons also found that cottagers were liable for heavier customary labour services than betaghs and the former were easier to disseise legally.

‘leased’, and if maltreated by the temporary lord, the original lord could sue for ‘waste’.¹⁵ The other ‘markers’ of villein-status were merchet and tallage. Merchet was the requirement that an unfree man gain the consent of his lord to marry his daughter or sister. However, in the north of England free men owed merchet.¹⁶ Tallage was extraordinary service or money taken by a lord which was *pro voluntate sua*, but before the 1220s there was little distinction between a ‘tallage’ exacted from villeins and an ‘aid’ from knights and freeholders.¹⁷ A final aspect, more relevant to English Ireland, was a claim in 1270 that unfree people (villeins in England) could ‘do nothing’ in court without their lord present.¹⁸

In the court records from thirteenth-century English Ireland unfree people are less prevalent than free people because in civil cases they were required to have their lord present in court, and the latter had to purchase the writ on behalf of the injured, unfree person.¹⁹ The only exception to this condition imposed on unfree people in court was the writ *de libertate probanda*.²⁰ This allowed a free person, accused of being unfree, to prove his/her freedom in court. This writ had to be heard by royal justices in a royal court, but the only surviving cases involving this writ are from 1289x90. Thomas Osafwran [G. Ó *Siochfhradha?*] sued Thomas son of Maurice for claiming Osafwran as unfree when he was a free man. Osafwran did not appear on the day and nothing else survives concerning him.²¹ John Odonnethy and Adam Odonnethy [G. Ó *Donnchadha?*] were labelled *nativi* in their writ *de libertate probanda* against Thomas son of Maurice. These plaintiffs did not appear either but the record in their cases states that ‘Donethuth Og Odonnethy and the others who brought a writ against Thomas son of Maurice are deficient in proving their freedom’.²² John and Adam Odonnethy had to provide pledges to prosecute their case. When they did not appear, they and their pledges were amerced. In a later entry we found

¹⁵ Hyams, *Kings, lords*, p. 10.

¹⁶ Hyams wrote: ‘freemen from Northumbria [sic] and elsewhere owed merchet *ipso nomine*’: Hyams, *Kings, lords*, p. 189.

¹⁷ Hyams, *Kings, lords*, p. 192.

¹⁸ W. H. Dunham, jr (ed.), *Casus placitorum, and reports of cases in the king’s courts (1272-8)* (SS, lxix, London, 1950), pp 80-1; Hyams, *Kings, lords*, p. 21. Professor Hyams found that villains could bring actions for personal injury against the king’s peace, *ibid.*, pp 136-7. Cf. *Hibernici* and injuries against the peace, Chapter Four, *infra*, pp 215-18.

¹⁹ The cases in this section involve people who were personally unfree, and not free men holding unfree lands. The latter was a growing ‘problem’ in the early fourteenth-century. In England it led to lords trying to reduce free men to villeins, and in English Ireland we cannot be certain because no manorial court rolls survive. In England it is easier to detect free people holding unfree lands as the manorial records state: ‘Johannes de Willemere liber’ and ‘Robertus Child liber’: Poos & Bonfield (eds), *Select cases in manorial courts*, nos 171, 189. Some English people could hold betagh lands in Ireland and remain free. For more on this, see David son of Nicholas Otrescan, *infra*, pp 33-4.

²⁰ For the wording of the writ, see de Haas & Hall (eds), *Early registers*, p. 11, no. 31.

²¹ NAI, RC 7/2, p. 143.

²² NAI, RC 7/2, p. 182.

who the ‘others’ were. Donnethud Oge [G. *Donnchadh Óg?*], Comdyn Cristin [G. *Comhdhan* ‘Cristin?’], Simon Gillenethaha [G. (*Mac?*) *Giolla Naithí?*], Donenald, Comdyns, Donenold Beg, and all of the family of Odunethy [G. *Ó Donnchadha?*], Doyngivyn le Feure [G. *Donnabhán?*], and Comdyn Bacath Odunethy [G. *Comhdhan Baccach Ó Donnchadha?*] had also sued Thomas son of Maurice. It appears these plaintiffs did appear on the day, but lost their case.²³ They were all amerced for false claim, which is interesting because in theory all of their chattels belonged to their lord and this would have injured him. In this same court roll was a writ *de nativo habendo*. William Obothethan [G. *Ó Buadhacháin?*] from co. Kerry was attached to respond to Richard Laundry and Margery, his wife, that William was their *nativus* and that he had run away without their permission.²⁴ Nothing else had survived from this case, but it does demonstrate the law in English Ireland resembled the law in England regarding *nativi*.

In *Casus Placitorum* several *narratores* and justices claimed that no unfree person could be answered in a royal court and that his or her lord had to sue for any injury.²⁵ We can see that this was the situation in several court cases. Stephen de Sarnisfeud sued David le Waleys in 1297 for beating the former’s *Hibernicus*, Dunghut M’tmoy [G. *Donnchadh Mac Maolmhuidh?*].²⁶ This ‘criminal’ action is one of the few examples which help explain the misunderstanding of some historians (not recognising the difference between excluding free Gaels and the normal treatment of the unfree).²⁷ In this one instance, possibly because the modern editor forgot to include it or possibly because the thirteenth-century clerk forgot to record it, the ‘*et nativus*’ was left out of the record.²⁸ The other possibility is that the clerk recorded this case as if it was a criminal case.²⁹ The lack of the proviso ‘*et nativus*’ is the most likely cause of the persistent, false belief – despite the efforts of Kenneth Nicholls to prove the contrary – that all Gaelic people were treated as *nativi*. In 1302 the ‘*et nativus*’ was still required for legal purposes. The prior of St Trinity,

²³ NAI, RC 7/2, p. 349. Cf. Paul Hyams noted that chapter 20 of ‘Magna Carta’ protected lords in these circumstances. Since the plaintiffs were deemed unfree, their chattels belonged to their lord. If the unfree were amerced, this damaged the lord who had just won the case. This would have offended the lords in England: Hyams, *King, lords*, p. 21.

²⁴ NAI, RC 7/2, p. 212.

²⁵ Dunham (ed.), *Casus placitorum*, pp 80-1.

²⁶ *CJRI, 1295-1303*, p. 162.

²⁷ Assault and battery was a civil case at the time. *Verberare* was the court term for beating, and it was commonly used in civil cases of assault in the phrase *insultum fecit forstallavit verbavit etc.* For more on assault in English Ireland, see Chapter Four, *infra*, pp 215-18.

²⁸ There is a small chance that Dunghut M’tmoy was personally free, but unaccepted by the royal courts, and de Sarnisfeud had taken avowry from M’tmoy. For more assaulting Gaels (free and unfree), see Chapter Four *infra*, pp 215-18.

²⁹ See the differences in recording *Hibernici* in criminal cases: Chapter Four, *infra*, pp 188-97.

Dublin, had William MacKilkeran [G. *Mac Giolla Chiaráin?*] summoned to the Dublin Bench to respond to a allegation of *est nativum suum* ('MacKilkeran is the prior's naif').³⁰ The jury determined that MacKilkeran's ancestors had been *nativi* of the priors of St Trinity, and the court ordered that William and all of his extended family (L. *sequela*) be officially labelled *Hibernici et nativi* and that the prior was to have seisin of them and their goods (L. '*rebus*').³¹ Other records show free (or semi-free) *Hibernici*. On the manor of Rathfeigh in 1322, the *Hibernici* owed an annual rent of one hen for their holding of twenty acres, and the betaghs owed a money rent and specified labour services.³² The extents from Corcomohide, co. Limerick, and Greencastle, lib. Ulster, give a clear indication that the *Hibernici* on those manors were free people.³³ This shows us that *Hibernicus/-a* and betagh were not synonyms in a manorial context.

The style of the court records facilitates the identification of unfree people. One of the most important cases for this examination is the record of David Goer. In 1261 he lost his house and its appurtenances – which were worth 2s. per year – in Killone, co. Limerick, after the court determined that David was a *Hibernicus et non de libero sanguine*.³⁴ David's lands were seized by the English administration simply because he was unfree, and from his experience we can see that unfree people were not allowed to remain in possession of free lands. The key term in the records is the '*et*'. In most instances the court took care to note that someone was *Hibernicus et nativus* (or *Hibernicus et non de libero sanguine*, etc.) to differentiate personally unfree from the free people. This practice is obvious in a case from the justiciar's court in 1295 when the English perpetrators – in an assize of novel disseisin – defended themselves by specifically calling the plaintiff '*Hibernicus and of servile condition*'.³⁵ Unexceptional writs, which followed the standard

³⁰ This, a writ of naifty (which included *de nativo habendo* and *de liberate probanda*), was the only time an unfree person was answerable in a civil case in the royal courts: Hyams, *Kings, lords*, pp 162-73.

³¹ NAI, RC 8/1, p. 228. The use of *rebus* as opposed to *catallis* is very unusual. Many thanks to Paul Brand for his comments on this case.

³² PRO, C 47/10/18/3; Lyons, 'Manorial administration', p. 265. Paul Hyams noted some instances when specific labour services made someone free (or at least he/she could sue in the English royal courts): Hyams, *Kings, lords*, pp 194-8.

³³ Lyons, 'Manorial administration', pp 218, 229. The extent of Corcomohide in 1331 named Thomas McKery [G. *Mac Fhiachra?* or *Mac Ciardha?*], Robert McKery, and Murchath McKechy [G. *Murchadh Mac Eochaidh?*] as jurors of the inquisition post mortem, the inquisition specifically stated that the Gaels in Corcomohide were free tenants (L. *quidam Hibernici qui libere tenent terram suam*), and Robert McKery was a free tenant and sergeant of the manor of Croom: *RBEK*, nos 127-8.

³⁴ Charles McNeill (ed.), 'Lord Chancellor Gerrard's notes of his report on Ireland: with extracts from original Irish records exhibited by him before the Privy Council in England, 1577-8' in *AH*, no. 2 (1931), pp 92-291 at 251-2. Here is one of the examples of someone with a non-Gaelic name being labelled an unfree *Hibernicus/-a*, which may mean the English in Ireland included other people besides Gaels as 'Irish'.

³⁵ *CJRI, 1295-1303*, p. 59.

formula, had ubiquitous usage of *et c̃* (et cetera), and almost every word was abbreviated in the original records. The court clerks would not have recorded any information which was unnecessary. The ‘*et nativus/-a*’ was not extraneous or redundant, but requisite. While some later records (such as Dunhut’s) seem to have dropped the ‘*et nativus/-a*’ the earlier records show that it was necessary to prove someone was unfree and not simply a Gael.³⁶

The most obvious example why the ‘*et*’ was necessary is the case of Eoghan Ó Madadháin. Eoghan was the king of Síol Anmchadha and in some later records he was described as a *Hibernicus* of Richard de Burgh, earl of Ulster. He first appears in the records as a free man, being called to warranty and using the court without any problems of access.³⁷ He then assisted William de Burgh – deputy justiciar in 1308, the earl of Ulster’s cousin, and *locum tenens* of the lord of Connacht – by bringing seventeen hobblers and forty-two foot soldiers to fight in Leinster.³⁸ In April 1308 Edmund le Botiller granted two villis in Lusmauth (Lusmagh?) to the same William de Burgh. In the grant Edmund stipulated that William was to assure that Eoghan Ó Madadháin would retain his lease within Lusmauth which had been made before the grant.³⁹ While holding a lease of land was not usually considered sufficient evidence of freedom and acceptance, leasers could sue for breach of contract and being answered in court was sufficient proof of freedom.⁴⁰ Also, lords of unfree people actively prevented the latter from obtaining even temporary possession of free lands. In 1320 Eoghan was granted, along with two of his brothers and his nephew, access to the royal courts at the request of the earl of Ulster.⁴¹ This is very peculiar because Ó Madadháin had enrolled court judgments which would have proved his freedom and acceptance.⁴² While Earl Richard regarded Eoghan as a noble – Richard granted Ó Madadháin the issues of Síol Anmchadha, which can be interpreted as recognition

³⁶ Although in 1381 a William Okelly was labelled a ‘*Hibernicus et nativus*’, so the phrase was still necessary: Eric St John Brooks (ed.), *The Irish cartularies of Llanthony Prima & Secunda* (Dublin, 1953), p. 301. While Dunghut was almost certainly unfree, in some later cases the court allowed free Gaels to be denied access to the court yet the Gaels were still socially free: *infra*, pp 73-89.

³⁷ NAI, RC 7/10, pp 111, 365, 459; RC 7/11, pp 33-4, 128, 233, 236, 258 [‘*Aulef Omadethan*’], 459; RC 8/2, pp 232, 246. Some of these cases are very interesting. Richard le Blake, *vicecomes* of Connacht, reported to the Dublin Bench that he could not attach Ó Madadháin because the latter was in the *marchia de Omanny* and *quia terra est in marchia in Omay & de Sybnakyth’ ubi serviens regis raro vel nunquam consuevit exercere officium non potest officium facere*. Le Blake was amerced for not fulfilling his duties as viscount: RC 7/10, p. 365; RC 7/11, p. 128.

³⁸ Philomena Connolly, ‘An account of military expenditure in Leinster in 1308’ in *AH*, no. 30 (1982), pp 1, 3-5 at 4 [‘*Johanni Omadidan*’].

³⁹ *Cal. Ormond deeds, 1172-1350*, nos 420-1.

⁴⁰ Paul Hyams noted that contracts (and especially concords made in court) could be interpreted by justices in England as proof of freedom: Hyams, *Kings, lords*, pp 145-51.

⁴¹ *CIRCLE*, PR, 13 Edward II, no. 93.

⁴² Cf. William le Teynturner of Artfinan was free and accepted because he had been answered in court before: Chapter Three, *infra*, pp 155-6.

of Eoghan's right to rule/possess that land – he was also referred to as a *Hibernicus* after receiving the grant of protection for his access to the courts.⁴³ There is also the record which states that the countess of Ulster had *Hybernienses liberos* (free Gaels) on her lands, which the ministers of the Irish council were trying to protect along with the *nativi*.⁴⁴ While the accepted Gaels analysed below were not called '*Hibernici liberi*', it is clear that the idea of free Gaels was contemporary to thirteenth-century English Ireland and unfree people were labelled in the royal courts following English custom.

The royal courts did not deal with tenurial status unless it definitely pertained to the case at hand. This means that when a plaintiff entered the court, the justices did not inquire into his or her labour services or if the lord of the manor called him or her 'cottager' or 'farmer'.⁴⁵ The court's only concern – if the issue was brought up – was if the plaintiff was personally free. This section addresses the status of betaghs in order to make clear the distinctions between *betagii*, *nativi*, and *Hibernici*.⁴⁶ There were many betaghs with English names. Some might jump to the conclusion that these betaghs were Gaels 'hiding' under English names, but there is also evidence of unfree English people in Ireland.⁴⁷ There were in addition Welsh betaghs. The rental of Lisronagh lists the betaghs of each manor. John Rys [W. *Rhys*] and Peter Walche were at Killmor and David Rys was at Gragehynery.⁴⁸ Another record specified that a certain group of betaghs were Gaelic. Thomas de St John granted to Martin Scadan the services of his Gaelic betaghs (L. *betagiorum suorum Hibernicorum*) to repay a debt to Scadan.⁴⁹ If only Gaelic people were betaghs, then *Hibernicorum* would not have been necessary. We should note that

⁴³ *IEMI*, no. 264. This record implies Ó Madadháin was a *Hibernicus*, but it never calls him one directly. It also says that he ruled the betaghs of Meelick by grant of the late earl. This was probably Earl William de Burgh since it is an inquisition into his lands. This English record also calls Ó Madadháin the 'king' of Síl Anmchadha, and it notes that he holds lands in fee.

⁴⁴ *DAIKC*, no. 7. This was a letter to the regency government in England while Edward I was away in 1273. The Irish ministers claimed that the countess of Ulster and her bailiffs heard great pleas contravening justice (L. *talia placita adiudicantibus reddere contradicens*). While this same record also states 'betagi [sic] seu nativi', we must remember that this was not a court case and so the clerk did not have to be as accurate in his terminology. No writ in the royal courts was quashed because the plaintiff was a *betagius/-a*.

⁴⁵ The exception being assizes, which required the plaintiff to hold in fee to win, which farmers (L. *firmaryi*) did not. For more on assizes, see *infra*, pp 48-51.

⁴⁶ For confusion of *nativi* with *betagii*, see Hand, *English law*, pp 194-8; Nicholls, 'Anglo-French Ireland', p. 373; Smith, *Colonisation and conquest*, pp 78-9. Cf. other historians noticed the nuance of 'betagh status': Otway-Ruthven, 'Native Irish', pp 145-7; Lyons, 'Manorial administration', pp 265-6. Edmund Curtis noted the various statuses of different betaghs, but then conflated *Hibernici* with villeins, betaghs, and *nativi*: Curtis, 'Rental of manor of Lisronagh', pp 65-77.

⁴⁷ The English *nativi* in Ireland: Chapter Four, *infra*, p. 243.

⁴⁸ Curtis, 'Rental of the manor of Lisronagh', pp 46-7. Also, one of the betaghs at Killmor was the widow of John le Walshe, but we cannot tell her ethnicity since she was not named. For an analysis of the legal status of *Wallenses*, see Chapter Three, *infra*, pp 160-7.

⁴⁹ NAI, RC 7/2, pp 255-6. Scadan was an Ost surname: Chapter Three, *infra*, pp 158-9.

attornment – the selling of one’s tenants’ labour services – was not a marker of unfreedom. Free English people could have their labour services sold by their lord.⁵⁰

Currently the most in-depth analysis of the status of the betaghs was that undertaken by Mary Lyons.⁵¹ Her investigation elucidated the nature of landholding in English Ireland by tracing the variegated examples of manor-specific peculiarities. Dr Lyons found several manors on which the betaghs did not owe any labour services and other manors where the services had been commuted into rent.⁵² A version of one record misled her to believe there were ‘betagh-burgesses’ at Kilmaclenine, who ‘gained freedom from the taint of betaghry’ only to be re-depressed into servile status.⁵³ The actual circumstances at Kilmaclenine were uncovered by Kenneth Nicholls and Paul MacCotter in their edition of the same record.⁵⁴ The burgesses of Kilmaclenine owed the bishop of Cloyne labour services in 1365, and not prior to the grant of ‘the law of Breteuil’ in 1251.⁵⁵ All but one of the burgesses, listed in 1365 as owing heavy labour services, had an English name. Professor Otway-Ruthven mistakenly presumed that all betaghs were ‘probably’ Gaelic and all burgesses were ‘probably’ English.⁵⁶ However, the few instances when betaghs were named prove otherwise.⁵⁷ We can see that in 1365 the ‘ordinances of Coole and Britway say’ (*L. constituta Coul et Brewhy dicunt*) that everyone who held lands *in betagio* (by betagh tenure) and had a plough must plough one acre at winter and one at spring, but that *all tenants*, no matter their tenurial or social status, had to provide three days of weeding in the summer or give the bishop 1½*d.*, and three days of reaping and gathering or give the bishop 3*d.*⁵⁸ The most interesting part of the ordinance was that

⁵⁰ E.g. Thomas de St John also granted the services of his English farmers to Martin Scadan: NAI, RC 7/2, pp 255-6.

⁵¹ Lyons, ‘Manorial administration’, pp 262-88.

⁵² Lyons, ‘Manorial administration’ pp 284-5. The betaghs at Maynooth owed no labour services: *RBEK*, p. 122. Cf. many legists believed this was a proof of freedom: Hyams, *Kings, lords*, pp 194-8.

⁵³ Lyons, ‘Manorial administration’, p. 281.

⁵⁴ *Pipe roll of Cloyne*, pp 34-7, 44-9, 82-3. Nicholls and MacCotter were able to date almost all of the material in the pipe roll which was undated in the calendar which Lyons used to make her claim.

⁵⁵ *Pipe roll of Cloyne*, pp 34-5.

⁵⁶ A.J. Otway-Ruthven, ‘The character of Norman settlement in Ireland’ in J. L. McCracken (ed.), *Historical studies v: papers read before the sixth conference of Irish historians* (London, 1965), pp 75-84, repr. in *GWSMI*, pp 263-74 at 270. As did Edmund Curtis: Curtis, ‘Rental of manor of Lisronagh’, pp 65-77.

Professor Curtis quoted a calendar of the pipe roll of Cloyne, which stated the ‘all of these burgesses are betaghs’, but he conflated that record with the previous entry in the roll, which was the 1251 grant of the laws of Breteuil to the burgesses of Kilmaclenine. These records are not from the same time. The former is undated and the latter specifies the protection of the burgesses from such treatment. The former also seems to refer to tenants of the bishop’s demesne at Kilmaclenine who had acquired burgages and were trying to emancipate themselves through holding free tenements: *Pipe roll of Cloyne*, p. 41; Curtis, ‘Rental of Lisronagh’, p. 68.

⁵⁷ For Gaelic burgesses, see *infra*, pp 40-3. For Welsh betaghs, see Chapter Three, *infra*, p. 166.

⁵⁸ *Pipe roll of Cloyne*, pp 70-3. We should note that it said ‘all who held by betagh tenure’ and not ‘all betaghs’.

everyone – including free tenants – owed the bishop a heriot and was to be fined if he or she had a hand mill.

An important case involving betaghs in the royal courts has been overlooked.⁵⁹ In the only surviving case which named a plaintiff or defendant as a ‘betagh’, the betaghs of Stachkillyn (Stackillen), co. Louth, sued William Bouer de Ardee in 1306.⁶⁰ The betaghs customarily held lands on the manor of Stachkillyn, but Gerald Tirel and other ministers of Ralph Pipard demised twenty acres to William Bouer for a term of years. Bouer then entered the twenty acres and took an additional four acres of meadow from the betaghs. The court ruled that the betaghs were quit of their rent for the lands held by Bouer and it awarded the betaghs 16s. which they had paid in rent for the three years since Stachkillyn had come into the hand of the king, and Bouer was amerced. The lands were newly acquired by King Edward I, but this action did not make the lands ancient/royal demesne or the betaghs *betagii regis*. Unfortunately for the betaghs, the jury also returned that the betaghs’ rent should be increased from 16d. per acre to 18d.⁶¹ This case is pertinent because villeins on the royal manors in England could no longer use the English royal courts by this year. They were – just as non-royal villeins – forced to use the manorial courts where they lived.⁶² This may indicate that the betaghs at Stachkillyn were free or semi-free. There is no surviving record of *nativi* being able to use the royal courts collectively.

Different types of records have confused some previous historians. The exchequer court did not follow the royal courts’ terminology. In a single memoranda roll, one Gaelic man was called different labels, but this is not problematic. Maurice Molcron [G. Ó Maoil Cróin?] was first called a ‘*betagius regis*’ (betagh of the king on the royal demesne), and then in a different record a *Hibernicus*.⁶³ Molcron was Gaelic and a *betagius regis*, but he does not appear to have been a *nativus*. He owned a house on the royal manor of Esker and

⁵⁹ Brendan Smith noticed it, but mistook betaghs for *Hibernici* and thought that unfree people could sue as a collective: Smith, *Colonisation and conquest*, pp 78-9. Also, the ability of unfree royal tenants to use the English royal courts ended c.1235: M. K. McIntosh, ‘The privileged villeins of the English ancient demesne’ in *Viator*, vii (1976), pp 295-328 at 319-20, 322-4.

⁶⁰ *CJRI*, 1305-7, pp 180-1.

⁶¹ A valuation of land by a *jurata* was very unusual. An *inquisitio* would normally report land values, such as in 1253 at Waterford: *infra*, p. 74. For more on the types of ‘juries’, see Chapter Four, *infra*, pp 179, 243-4. Paul Brand said that this case was extremely unusual and that only a royal debtor should have had his/her rent changed by an inquisition. Many thanks to Professor Brand for his advice on this case.

⁶² McIntosh, ‘Privileged villeins’, p. 311.

⁶³ NAI, RC 8/2, pp 482-3; EX 2/1, pp 193-4.

sold it.⁶⁴ The exchequer memorandum reports that he did not have any goods (L. *bona*) on the lands which could be taken to repay his rent in arrears and he had held more lands within the manor than he had reported and therefore owed even more rent. These terms – *Hibernicus/-a* and *betagius/-a* – were not synonyms. Eoghan Ó Madadháin was a *Hibernicus* and a king.⁶⁵ And the countess of Ulster had *Hybernienses liberos* (free Gaels) on her lands.⁶⁶ Other than the case from Stachkillyn, the royal courts rarely, if at all, used the term *betagius/-a* to describe any plaintiff or defendant.

The exchequer records used the term *betagius* and the most important occurrence has been cited by a few historians, but I will examine it fully here. David son of Nicholas Otrescan [G. *Ó Tíreacháin?*] complained to the exchequer court that John ‘Faugoner’ disseised the former of one-third of twenty-seven acres in the royal manor of Saggart. We should note that the record does not say that Otrescan sued ‘Faugoner’. It is a record of *monstravit*.⁶⁷ Otrescan claimed the lands were held by his father *in betagio de domino Edwardo* (by betagh tenure of Lord Edward) by demise of Lord Edward, and then by the former’s brother John for ‘uncertain services’ (L. *per servicia inde debita et consueta*) for ten years.⁶⁸ Otrescan described how he received the lands (after his brother John died, David entered and held the lands for three years) and claimed that ‘Faugoner’ had ejected him recently and illegally.⁶⁹ This resembles the wording of an assize of novel disseisin, but the record does not use the exact form of that writ. ‘Faugoner’ claimed the lands were held by his wife, Christina daughter of Nicholas Otrescan, who – according to ‘Faugoner’ – was seised of the lands before he ‘found’ (L. *invenit*) her, but he did not detail if she held them *in betagio*. An interesting part of this record is that the exchequer court specified that Nicholas Otrescan and his son John held the lands *in betagio* (and not that they were *betagii*), but that David was a *verus betagius* (true betagh). As some historians have noted,

⁶⁴ It was called a *domum* in the record. This was rare. Most houses were called a *mesuagium* to include the land the building was on and the legal appurtenances. But as this record mentioned, Molcron only rented the land. Molcron was not a party to a court case. There is no indication that he was fined for selling the house, so it appears it was his house. Perhaps the calenderer left out the ‘*suum*’. This was a memorandum in the exchequer because it touched the royal revenue: Hilary Jenkison and B. E. R. Formoy (eds), *Select cases in the exchequer of pleas* (SS, xlvi, London, 1931), pp lxxxviii-cxv.

⁶⁵ See also, Walter de Capella, Chapter Four *infra*, p. 217.

⁶⁶ See *supra*, n. 44.

⁶⁷ Writs of *monstravit* were orders to a royal administrator or defendant, to show to the justiciar (or king), why he or she was unjustly doing something.

⁶⁸ NAI, EX 1/1, m. 7 [transcribed in D. V. Craig, ‘The memoranda roll of the Irish exchequer for 3 Edward II’ (2 vols, unpublished PhD thesis, University of Dublin, 1984), ii, 49-50]. Dr Craig noted that the MS calls the Englishman ‘Faugon’.

⁶⁹ Cf. villeins in England could be punished by their lord for entering (L. *ingressus est*) villein lands without permission: Hyams, *Kings, lords*, pp 76-9; Poos & Bonfield (eds), *Select cases in manorial courts*, pp lxxvii-xcii.

the exchequer court decided that it was better to re-seise David with the lands instead of ‘Faugoner’ because, as an Englishman, ‘Faugoner’ could take his goods and leave the lands at Saggart at any time and Otrescan owed uncertain services to the king as a betagh.⁷⁰ The judgment matches the theoretical status of villeins in England, but as we have already learned, not all betaghs were personally unfree and many betaghs held by certain services or simply paid rent and owed no labour services. Even more pertinent to our study is that fact that the exchequer court declared that if ‘Faungoner’ held the lands, he could still leave. In England at that time a free man could hold villein lands *in villanagium* (by villein tenure), and if the free man wished, he could leave the villein lands at any time.⁷¹ So, this memorandum shows that the exchequer court regarded Otrescan as an unfree tenant on the royal manor and the exchequer court in this instance followed the English custom in regards to unfree tenements.

There is a final reference to ‘betaghs’ which warrants mention. In 1331 twenty-two ordinances supposedly from a Westminster parliament were sent to be observed in Ireland.⁷² The English parliaments were almost always informed of local politics and customs in English Ireland by petitions. These petitions were necessarily hyperbolic, but were not entirely fictional. Some of the fourteenth-century statutes and ordinances sent from England were intended to ease conflict between Gaelic people ‘at peace’ and the settlers. One of these ordinances has been labelled ‘*una et eadem lex*’, and it has been used to claim that all betaghs were ‘villeins’.⁷³ The surviving calendar states: ‘*Item quod una et eadem lex fiat tam Hibernicis quam Anglicis excepta servitute betagiorum penes dominos suos eodem modo quo usitatum est in Anglia de villanis* (also, that one and the same law be made for [all of] the Gaels as well as the English [of Ireland] except for the servile condition of the betaghs [who remain under] the power of their lords in the same manner as villeins in England).⁷⁴ This legislation did not, however, reflect legal practice.⁷⁵ We already know from manorial records that not all betaghs were unfree and some did not owe any labour services. If we expand our examination, we can place the contradictions between theory and practice in context. Medieval jurists could not agree on the

⁷⁰ Hand, *English law*, pp 195-6; Áine Foley, *The royal manors of medieval Co. Dublin* (Dublin, 2013), p. 143.

⁷¹ Hyams, *Kings, lords*, pp 26-7. This was based on *Bracton*, but Professor Hyams gave no reason to doubt it.

⁷² *Stat. Ire., John-Hen. V*, pp 322-9.

⁷³ *Stat. Ire., John-Hen. V*, pp 324-5; Murphy, ‘Status of the native Irish’, pp 116-28.

⁷⁴ *Stat. Ire., John-Hen. V*, p. 324.

⁷⁵ Professor Murphy noted that this legislation was ineffective and Gaelic people continued to purchase grants of access to the courts long afterwards: Murphy, ‘Status of the native Irish’, pp 122-6.

terminology to use for unfreedom, or even what unfreedom was. The author of *Bracton* (William Raleigh) argued that ‘*glebae ascripticii*’ were similar to ‘villein sokemen’ or free people holding lands in villein tenure. Raleigh’s ‘*ascripticii*’ were not personally unfree, only free people owing heavy (or uncertain) labour services at the lord’s will.⁷⁶ Others argued that ‘*ascriptisicii*’ were unfree and ‘bound to the soil’, and in France *servus glebae* was the equivalent of ‘serf’. ‘Bound to the soil’ is a very problematic term because, as Paul Hyams as shown, villeins were allowed to leave their villeinage.⁷⁷ While some villeins required their lord’s permission to leave, others left and became workers in towns. Raleigh also thought that the *ascripticius* or *colonus* was semi-free when compared to the *servus*, and he then confounded his readers by claiming that no man is a *servus* to everyone.⁷⁸ English legal historians have mitigated Raleigh’s contradictions by noting that, in the plea rolls, the term *ascripticius* was rarely – if at all – used. However, economic historians have already noted the levity of labour services owed by tenants in Ireland when compared to many in England, and the instances of *Hibernici* who were free tenants.⁷⁹ This brings up the problem of the term ‘semi-free’. This is used by historians of unfreedom to denote liminal people, such as ‘villein sokemen’, who defy legal definitions. The semi-free people are difficult to delineate because contemporaries did not label most of them (‘semi-free’ is not a contemporary term), but we can identify people who display elements of freedom and bondage in the surviving records. One final aspect to note is that Kenneth Nicholls found that the *biatach* class, the supposed betaghs, in Gaelic Fermanagh had ‘no implication of unfreedom or low status’.⁸⁰

The royal courts did not concern themselves with tenurial status, only freedom.⁸¹ The unfree people mentioned above were never labelled *betagii* and the betaghs were never labelled *nativi* in the royal courts.⁸² This leaves us with a few possibilities. One is

⁷⁶ Hyams, *Kings, lords*, pp 25-33. For the argument that *Bracton* (or *de legibus*) was written by William Raleigh, see Brand, ‘Ireland and the literature’, p. 447. Throughout this section the spelling of *ascripticii glebae* is varied based on the source which refers to the term. This is because the term was poorly defined and the various spellings may have contributed to the various meanings.

⁷⁷ Hyams, *Kings, lords*, pp 34-7.

⁷⁸ Hyams, *Kings, lords*, pp xix-xx, 26-7, 34-7.

⁷⁹ Lyons, ‘Manorial administration’, pp 218, 229.

⁸⁰ Nicholls, ‘Anglo-French Ireland’, p. 378.

⁸¹ Otrescan vs ‘Faungoner’ shows that someone’s personal status could trump tenure: *supra*, pp 33-4. Plaintiffs were not labelled *gavillarius/-a*, *firmarius/-a*, or *cotagius/-a* by the royal courts, but someone could lose an assize of novel disseisin if they were a farmer and did not hold the tenement in fee. For more on the assizes, see *infra*, pp 48-51.

⁸² One should be careful to note that the index in the published *Calendar of justiciary rolls* were written by James Mills, and that he misunderstood the differences between *nativus*, *betagius*, and *Hibernicus*, *CJRI*, 1295-1303, p. 576. The actual entries from the justiciar’s court do not call any betaghs *nativi*, or vice versa. The memoranda rolls use *betagii* for unfree and semi-free tenants at will.

that betaghs were not *nativi*. This is possible, as some betaghs were clearly free people, but others were semi-free at best. Another possibility, as one mid thirteenth-century papal letter claimed, is that all betaghs were ‘*adscripti glebe*’.⁸³ This theory creates more problems with the records. Urban IV did not specify what he meant by *adscripti glebe*, and we have just learned that contemporary scholars did not agree on its meaning. Also the free betaghs confound this conclusion. The answer appears to be our final possibility: that the status of betaghs was different, but not mutually exclusive, from naif status. This would mean that some betaghs were considered free, and that others were unfree.⁸⁴ Then the reason the courts never used betagh as a synonym for *nativus/-a* was because the two were distinct; *betagius/-a* for tenurial status and *nativus/-a* for legal status, which allowed for free people who held betagh lands or naifs holding free lands or cottages.⁸⁵ This would also align with the conclusions from manorial studies, which discovered that some betaghs could amass considerable land, money, chattels, and local political power.⁸⁶

When separating out free from unfree people we must be careful to distinguish servility from denial of access to the royal courts. These were not synonymous. While unfree people were denied access to the court, being denied access to the courts was not sufficient proof of unfreedom. Great care and diligence must be taken in the identification of people in the thirteenth- and fourteenth-century royal courts. Now that we know that all *Hibernici* were not *nativi* and that all *betagii* were not *nativi*, we can further address the usages of *Hibernici*. In civil cases *Hibernicus/-a* was not a label of naifty; it required the proviso of *et nativus/-a* or *et servilis conditionis*. While later records (in this study post 1294) reveal that some people in court believed they could object simply to someone’s ethnicity (*est Hibernicus/-a*), these pleas almost never worked.⁸⁷ At the end of the period studied (c.1318), and afterwards, defendants in court returned to the accusation of servility (*est servilis conditionis*). There were, however, multiple uses of the term *Hibernicus/-a*. In regards to victims of crimes, it does appear that some *Hibernici* were considered unfree.⁸⁸ But, in several records, English people born in Ireland were called *Hibernici* or *Hibernienses*.⁸⁹ Caution and accuracy are needed for determining anyone’s legal status in

⁸³ Richard Botiller (ed.), *Registrum prioratus omnium sanctorum juxta Dublin* (Dublin, 1845), p. 130.

⁸⁴ The manorial rolls from England make that very specification: John de Wellemere *liber*, held lands for his life only; afterwards, the lands were described as ‘customary’: Poos & Bonfield (eds), *Select cases in manorial courts*, no. 171.

⁸⁵ This did not apply to burgages, it seems: *infra*, pp 42-3.

⁸⁶ Lyons, ‘Manorial administration’, pp 286, 287-8, 295.

⁸⁷ See ‘Legal disseisins and land transfers’, *infra*, pp 73-89.

⁸⁸ Chapter Four, *infra*, pp 188-97.

⁸⁹ Lydon, ‘Middle nation’, p. 338.

medieval English Ireland.

Free Gaelic men in English Ireland

Returning to the beginning of the period studied (c.1252) we can see many free and accepted Gaelic people in the surviving records. These free Gaels have been largely ignored or overlooked because of the assumption that all Gaels required a grant of access to the royal courts to be considered free. Others have seen the free Gaels in the records and encountered cognitive dissonance, forming curious conclusions *ex silentio*. The current belief is best summarised by Kenneth Nicholls:

In between the two extremes [the Gaelic hostility towards the settlers and the acceptance by the settlers of the Uí Thuathail in Imaal] comes the status of the [Gaels] reduced to serfdom, the betaghs or *hibernici*, in the specialised sense of that word, and that of those free [Gaels] who remained in areas of superficial claim to their lands, which they retained only while their lords, for whatever reason, refrained from enfeoffing settlers.⁹⁰

Most historians have portrayed a dark picture of thirteenth-century English Ireland. Edmund Curtis assumed that every ‘knightly’ free tenant (by military tenure) and ‘simple’ free tenant (by socage tenure) was ‘of English blood’, but his assumption – simply based on its absolute nature – was wrong.⁹¹ The surviving records confirm this. At least three Gaels were knighted. In c.1250 Sir Adam O’Flanagan [G. *Ó Flannagáin*] witnessed a grant by John and Juliana Sanger.⁹² In 1282 Sir Donald de Grey [G. *Domhnall*] owed 14 marks to Sir William son of Warin.⁹³ There is also the well-known case of King John knighting Donnchadh Cairprech Ó Briain in 1210.⁹⁴

More ubiquitous are the records of Gaels holding free lands. Historians have probably overlooked the free and accepted Gaels because they were not harassed and rarely, therefore, appear in petitions. The free tenants at Duueth (Dowth) in 1253 included: Gillegmudi mac Regan [G. *Giolla Mochuda Mac Riagain?*], Gillecríst mac Regan [G. *Giolla Chríost Mac Riagain?*], and Gillecríst Olnuthy [G. *Giolla Chríost Ó*

⁹⁰ Nicholls, ‘Anglo-French Ireland’, p. 373. See also: Otway-Ruthven, ‘Native Irish’, pp 148-9, 150-1; Hand, *English law*, pp 196-8; Frame, ‘Ireland after 1169’, p 119.

⁹¹ Curtis, ‘Rental of Lisronagh’, p. 51. See also: Otway-Ruthven, ‘Character of Norman settlement’, p. 270. For the other (non-English) free tenants in Ireland, see Chapter Three, *infra*, pp 141-78.

⁹² *Cal. Ormond deeds, 1172-1350*, no. 108.

⁹³ PRO, SC 8/297/14804; Connolly, ‘Irish material SC 8’, p. 93.

⁹⁴ Seán Duffy, ‘King John’s expedition to Ireland, 1210: the evidence reconsidered’ in *IHS*, xxx, no. 117 (1996), pp 1-24 at 5.

nUltaigh?).⁹⁵ On Gerald de Prendergast's manor of Balacha (Ballyhay), Kenelech Erach [G. *Cennfháeladh?*] held a carucate of land in free burgage, and at Tiberneyvin (Tobernea), Konewore Oloughan [G. *Conchobhar Ó Leocháin?*] held one-and-a-half carucates.⁹⁶ In 1275 Reginald Olbren [G. *Ó Broin?*], Hannah Cathyl [G. *Áine Ó Cathail?*], Gylcrist Olbralan [G. *Giolla Chríost Ó Brollacháin?*], and Molkeran Olbrolan [G. *Maol Ciarán Ó Brollacháin?*] received the farm of the vill of Villa Kynath (Kennastown, Meath?) from Ralph Pipard for twenty years.⁹⁷ In 1287 William Odufthyr [G. *Ó Dubhthír?*] held a tuath of land in Yemrid, lib. Thomond; Rory de la Laundeperun [G. *Ruaidhrí?*] held 1¾ vills in Rathmolán, Lisduf, and Carrigodran, lib. Thomond; Roger Mailoc [G. *Ó Maolóig?*] held 'three quarter-virgates' in Ballykenwil, lib. Thomond; and Tirdelwaych Obren [G. *Toirdhealbhach Ó Briain?*] held a cantred and sixteen vills in Thomond in fee of Thomas de Clare.⁹⁸ In 1288 on the manor of Dunmor (lib. Kilkenny), Trynyn O Coveran [G. *Críonán Ó Comhdhain?*] held half a carucate in Coveran for 2s. 2d. and Tagyn O Connan [G. *Tadhgán Ó Canainn?*] was a free tenant but his holding was not specified.⁹⁹ Between 1230 and c.1286 there were numerous free Gaels holding lands in Wexford.¹⁰⁰

An extent from c.1305 lists a further thirteen Gaelic villagers at Seirkieran and names Oalnerauth McCorkeran [G. *Uallgarg Mac Corcráin?*] and Maygins McCorkeran [G. *Mathghamhain?*] as holding lands outside the village (L. *redditus forinsecus*).¹⁰¹ There is also a surviving extent from Imaal from c.1311. Among the list of free tenants are: Hugh Otothel [G. *Ó Tuathail?*], Morvuth Otothel [G. *Muircheartach?*], Folan Otothel [G. *Faolán?*], Baltor Otothel [Walter?], Meiler Otothel, Robert Otothel, and Donewuth McMalauthin [G. *Donnchadh Mac Maoilsheachlainn?*].¹⁰² At Cloncurry, co. Kildare, there was Walter McKelan [G. *Mac Caillín?*].¹⁰³ Adam Fagan [G. *Ó Fechín?*] held one house and ten acres at Folcheriston, co. Tipperary.¹⁰⁴ In 1326 David MacNebury [G. *Mac Conmidhe?*] held Tyllagh (Tallaght?). Nicholas Obrode [G. *Ó Bruaideadha?*], Stephen Olyng [G. *Ó Fhloinn?*], Stephen Obrode, and Elyas, Henry, and Isabella Howryn [G. *Ó*

⁹⁵ *IEMI*, no. 15.

⁹⁶ *IEMI*, nos 9, 10.

⁹⁷ *Cal. Ormond deeds, 1172-1350*, no. 191.

⁹⁸ *IEMI*, no. 65. For analysis of landholding terminology, such as a tuath, see Paul MacCotter, *Medieval Ireland: territorial, political and economic divisions* (Dublin, 2008), pp 17-25.

⁹⁹ *HMINAUK*, pp 252-3. One of the jurors on this inquisition was Thomas O Lennan [G. *Ó Leannáin?*]. For Gaelic jurors, see *infra*, pp 55-7.

¹⁰⁰ Billy Colfer, *Arrogant trespass: Anglo-Norman Wexford, 1169-1400* (Enniscorthy, 2002), pp 122-3.

¹⁰¹ *RBO*, p. 152.

¹⁰² *RBO*, p. 14.

¹⁰³ *RBO*, p. 30.

¹⁰⁴ *RBO*, p. 59. Adam Fagan was also one of the jurors on the extent of the manor of Moycarkey.

hOdhraín?] were tenants in Grangetown. And Geoffrey MacHethe [G. *Mac Aodha?*] held Balyscadan.¹⁰⁵

We also have land grants to Gaelic people. In 1262 Archbishop Fulk of Dublin sued Walter Dun [G. *Donn* or *Ó Duinn?*] and Vyanus Mol [G. *Eoghan Maol?*] for sixteen acres and thirty acres, respectively. The details of the case have not survived, but the record states that the archbishop and the two defendants made a concord in the itinerant court at Dublin.¹⁰⁶ The defendants recognised the archbishop's rights to the lands in question and in return he granted them the lands in fee for life and he required them to warranty any claim to the lands. While this may not appear to have been the best outcome for Dun and Mol, they had a court-supervised concord which recorded that they held the lands in fee and were required to warranty the claim.¹⁰⁷ Any one of these passed the legal test of freedom and acceptance in English Ireland. Their status was secure for life. In 1277 Thomas de Lega granted an acre and a half with a house in Corbally to Neyvin Offagnale [G. *Neamhain Ó Fionnghalaigh?*] to hold by socage tenure, and gave the latter semi-burgage status by placing a maximum amercement for any offence Neyvin or his heirs might commit.¹⁰⁸ Neyvin had a sealed and witnessed charter establishing his rights to free lands and was therefore accepted and free. In 1260 Peter Burunn sued to recover his burgage near the castle of Duncrothe, co. Cork, from John son of Adam.¹⁰⁹ John received possession from Gillemoy Camcos [G. *Giolla Mhuaidh?*], to whom Peter had granted the burgage while the latter was underage. This practice was usual for tenants who held in socage or burgage tenure, as their lord could not take possession of an heir's lands while the latter was underage.¹¹⁰ The case does not specify whether Gillemoy was a burgess or not, but the court's recognition of his ability to hold lands in trust seems to demonstrate his freedom. These records are significant in themselves. But perhaps more significant still is the inference we can draw from this – namely that there were many Gaels holding lands in free tenures who are invisible to us now because they never needed recourse to the royal

¹⁰⁵ CCD, no. 570.

¹⁰⁶ J. T. Gilbert (ed.), *Crede mihi: the most ancient register book of the archbishops of Dublin before the Reformation* (Dublin, 1897), no. 91; CAAR, pp 95-6.

¹⁰⁷ For more on warrantying, see *infra*, pp 60-4. For overbearing ecclesiastic lords, see Chapter Five, *infra*, pp 272-7.

¹⁰⁸ *Cal. Ormond deeds, 1172-1350*, no. 204. There is a reference to Neyvin Ofagnel holding land in another charter: *ibid.*, no. 207. Socage tenure was probably better than military tenure. Both were free tenures, but heirs of socage tenants did not belong to the lord as chattels.

¹⁰⁹ NAI, RC 7/1, p. 254.

¹¹⁰ Adam de Staunton recovered one carucate from Richard de la Hulle in Balinelath, whom had held Adam's lands while he was underage: NAI, RC 7/1, p. 254. For a dispute over whether homage given by a socage tenant granted custody of the heir to the lord, see Hand, *English law*, pp 178-86.

courts. The court records, by their nature, show us cases of injustice or unacceptance. When neighbours co-operated or a lord allowed an heir to inherit without question, there was no reason why a free Gael would have come before the courts. And it is safe to assume that the number of cases involving free Gaels in the court records represents only a fraction of total free Gaelic population.

There were also Gaelic citizens and burgesses. Free Gaels are visible in civic records sixty years before the surviving court rolls begin. A Gillefichin [G. *Giolla Fechín?*] witnessed grants to the Hospital of St John, Dublin, in 1190 and 1210.¹¹¹ In 1218 William de Hestam granted lands and common pasture adjacent to Holy Trinity (Christ Church, Dublin) to a Gillefintan [G. *Giolla Fiontan?*], probably the same person from the later merchant roll.¹¹² In co. Cork, Daniel, bishop of Cloyne, granted to the citizens of Cloyne, of whatever birth they might be (*L. cujuscunque nationis sint*), that they held their burgages of him by the ‘laws of Breteuil’.¹¹³ There were also Gaels who were free citizens of Dublin. These records indicate that once someone was a citizen, he or she was for life, whereas members of the guild seem occasionally to have been required to purchase an additional entrance to the guild.¹¹⁴ There are fewer Gaels among the free citizens list than the guild merchant list. This could be because the free citizens list is shorter, or it could have been harder for Gaels to become citizens than to become members of the guild. The list of free citizens of Dublin includes Gillefintan [G. *Giolla Fiontain*], Gillecrist who was with Ralph de Lamore [G. *Giolla Chríost*], Duning Piscator [G. *Dúinín?*], Eilias son of Ulgari [G. *Uallgarg?*], Bridinus Ruffus [G. *Brídín?*], Padinus Hibernicus Sutor [G. *Paidín?*], and Thomas Maloc de Nas [G. *Ó Maolóig?*].¹¹⁵ On the *Dublin guild merchant roll* we find:

Table 1: Gaels in the *Dublin guild merchant roll*

Athelward Obreine	Martin Obreine	Gerald Obreine	Bernard Berleg [?]	Mac Maris son of Ivor	Macarci	Gillefinen
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¹¹¹ *Register St John, Dublin*, nos 72, 92. This was not an isolated occurrence. Many Gaels witnessed grants and charters: e.g. *ibid.*, nos 186 [Roger Otir], 229 [John Ofolain], 241 [Robert Mackanefy], 245 [Gilbert Macrothegan], 397, 401 [Walter Fyn], 398-9 [Matthew Oclery], 417 [Robert Macconenont], 441 [M’Ubrenan, Kinad Ulunin], 443 [Thomas Ubrenan], 482 [Thomas MacHugh].

¹¹² *CCD*, no. 24. For Gaels on the guild merchant roll, see Table 1.

¹¹³ *Pipe roll of Cloyne*, pp 82-3.

¹¹⁴ Several names are repeated in the roll. Curiously, some are repeated almost immediately after themselves (Siward de Lymerik and Siwardus de Limeric are four names apart), and others are repeated one year apart (Rogerus Mackathel): *DGMR*, pp 44, 100.

¹¹⁵ *DGMR*, pp 113-16, 118.

Macarci Mac Gil...	Gillegundi	Bridin Kenniclove [?]	John Ogari	William Makewel	John son of Odard	Gillecomdi Manaht
Comdin Mac Scalle	Cotholf Figulus [?]	Douenaldus son of Thomas Ultah	Alan son of Gilleboien	Macari son of Reginald [?]	David Brun Oneivin	Padin Piscator
Douenald (1222-3)	William Gille (1223-4)	Roger Oen [?] (1224-5)	Thomas Maloth (1224-5)	Kevin Okeschon (1224-5)	Cunnig Forestarius (1225-6)	Andreas Colmuth (1225-6)
Gillefintan (1225-6)	William Murry (1225-6)	Richard Maloisel (1225-6)	William Coleman [?] (1226-7)	John Fin (1226-7)	Roger Brian [?] (1227-8)	Pagan Hibernicus de Connacht (1227-8)
William Duffard, molendarius (1227-8)	William Hibernicus (1227-8)	Malmathoc Oreni (1228-9)	Thomas Mac Robert (1229-30)	John Galgeil de Wexford (1229-30)	Iherwerch son of Kormoc (1230-1)	Patric sergeant of Ralph (1230-1)
Neivin de Connacht (1232-3)	David Gille de Kemmeis (1232-3)	Walter Brian (1233-4)	William son of Ulc (1233-4)	Kellach Mackeyvin (1233-4)	Godefrid Mac Gilli de Wexford (1233-4)	Ralph Kethel (1234-5)
Onel de Villa St John (1235-6)	Gilkogil de Villa St John (1235-6)	Martin Mac Tore (1236-7)	Keivin de Kilkenny (1236-7)	Gomdinus Mac Conan (1237-8)	Umfrid Oregon (1237-8)	Maccray Carnifex (1237-8)
Malroni Carnifex (1237-8)	Gillegomdi Mac Gilleroth (1237-8)	Philip Ogelath (1237-8)	Gillecris Swin [?] (1237-8)	William Hibernicus de Wexford (1237-8)	Kevan Karpentarius (1237-8)	John Hibernicus (1237-8)
Gillegomdi Russel [?] (1237-8)	Kellach Mac Keyvin (1237-8)	Maurice son of Gillegouer (1237-8)	Maurice Hibernicus (1237-8)	Gillecris Okellach, Carnifex (1237-8)	Kellach Mac Inidi, Carnifex (1237-8)	Candelanus (1237-8)
Richard Kene (1238-9)	Gillecris sergeant of Matthew (1238-9)	Matthew son of Gillefichin (1238-9)	Molroin O Keregan (1238-9)	Keivin de Wykinglo, Carpentarius (1238-9)	Edward O Gormok (1238-9)	Gillebride Piscator (1240-1)
William Makewel (1240-1)	Walter Obren (1242-3)	Martin Bridin de Wexford (1243-4)	Neivin de Helethe (1244-5)	Geoffrey Finberd [?] (1245-6)	Robert Fagan (1246-7)	Robert Nel de Arklow (1247-8)
Alan Onel (1248-9)	Andreas Mak Aldri de Wexford (1253-4)	Douenald son of Roger Blund [?] (1256-7)	Robert Douenald (1257-8)	Roger Mackathel (1258-60)	Robert Gillemychel (1261-2)	William Mael junior (1261-2)
Comdin Tabernarius (1261-2)	Philip Mackelter (1262-3)	Geoffrey Fynan (1263-4)	Philip Dovenol de Newport [?] (1263-4)	Martin son of Reginald Fyn de Knocfergus (1263-4)	Geoffrey Magdonechel (1263-4)	Mathyas Nel de Arklow (1264-5)

DGMR, pp 14-109

There are new problems now that we have identified free Gaelic merchants and citizens. It seems obvious that they could probably use the Dublin city court in the guildhall.¹¹⁶ But by 1275 there were at least three ‘guilds’ in Dublin: the *gilde mercature Hibernicorum* (guild merchant of Gaels), the *gilde mercature Anglicorum* (of English), and the *gilde mercature veniencium ultra mare* (of merchants coming from overseas).¹¹⁷ The first question is: which guild did other ethnicities (e.g. Ost-people and Welsh) join? And more pertinent to this chapter: could a Gael (or Anglicised Gael) join the guild of Englishmen? These different ‘guilds’ may have just been factions within a larger Dublin guild merchant because the list of members from the *DGMR* does not separate them into ethnicities.¹¹⁸

On 30 May 1284 Edward I granted Gerald son of John, *Hibernicus*, and his heirs access to the royal courts and protection from harassment (*L. ne... vexet*).¹¹⁹ In 1307, however, the justiciar, John Wogan, disseised Gerald’s son and heir, Thomas, of his burgages in Drogheda because Wogan claimed the latter to be a *Hibernicus*.¹²⁰ Thomas son of Gerald petitioned the Irish parliament to recover his tenements and the jury (in the parliament) determined that *by custom* all *Hibernici* who held a burgage in an enfranchised borough or city became a free burgess/citizen of that borough/city and a free person in English Ireland.¹²¹ This particular case is further examined below,¹²² but its immediate relevance is that the jury determined that throughout English Ireland any Gael who held a free burgage was to be protected by the royal courts (but was not an *Anglicus*).¹²³ Previous cases confirm the jury’s report. In 1286 John Boly [G. *Ó Baoighill?*] was listed as a burgess of New Ross.¹²⁴ In 1300 John de la Rokele (Rochelle) and Walter son of Mathew le Poer sued the entire borough of Clonmel, and the court listed every burgess and his or her holdings.¹²⁵ Roger Otoyk [G. *Ó Tuait?*], William Fagan [G. *Ó Fechín?*], William Boyk [G. *Ó Buadhaigh?*], Robert Boly [G. *Ó Baoighill?*], Henry Ker [G. *Ó Ciardha?*], John

¹¹⁶ A calendar of one membrane from the Dublin city court in the guildhall survives: NAI, RC 7/1, pp 334-5.

¹¹⁷ 36th *RDKPRI*, p. 29; *Na Buirgéisí*, ii, n. 95.

¹¹⁸ For a similar conclusion, see Lydon, ‘Dublin in transition’, p. 136.

¹¹⁹ PRO, C 66/103, m. 11 [calendared in *CDI, 1252-84*, no. 2228].

¹²⁰ *CJRI, 1305-7*, p. 352. Cf. Roger de New Castle, *infra*, p. 82; and Robert de Bree, *infra*, p. 69.

¹²¹ The custom in England was that a villein had to be in a borough or city for a year and a day to be customarily freed: Hyams, *Kings, lords*, pp 168-9.

¹²² *Infra*, p. 84.

¹²³ Cf. the claims that access to the royal courts made someone an *Anglicus/-a*: Chapter Three, *infra*, pp 148-54, 170.

¹²⁴ P. H. Hore (ed.), *The history of the town and county of Wexford: Old and New Ross* (London, 1900) [hereafter *History of Old and New Ross*], p. 156.

¹²⁵ NAI, RC 7/6, pp 77-8, 80-2; RC 7/7, pp 24-31, 165-7, 176-81; RC 7/8, p. 158.

Okyk/Okilt [G. *Ó Caoilte?*], Adam Ohany [G. *Ó hÉanaigh?*], Thomas Colyn [G. *Ó Coileáin?*], and John Fagan were listed as *homines et burgenses* of Clonmel. The court dismissed the case because the borough of Clonmel was held by Otto de Grandison in chief of Edward I by charter. Otto's seneschal, John de Ditton, presented two royal letters patent and a letter of protection for Otto which defended the burgesses from Rochelle and Poer's lawsuits, and the case was dismissed. With all of these Gaelic defendants in court, the royal justices could have easily profiled and disseised them as *Hibernici et nativi*, but they were left unmolested.¹²⁶ There is later evidence of Gaelic burgesses as well. In 1325 Roynock Maccarne [G. *Robhartach Mac Fheardhomhniagh?*] was recorded as a burgess of Wexford.¹²⁷ In 1329 Walter McGilmuri [G. *Mac Giolla Mhuire*], burgess of Drogheda, granted a burgage of land with its buildings in Dungarvan to Master Henry Goche [W. *Goch?* or G. *Mac Gaoite?*], Laurence O'Connair [G. *Ó Conchobair?*], and Andrew son of Laurence. This burgage was situated between the tenement of Heynuc Offath [G. *Adhnach Ó Fiaich?*] and the tenement of Walter Omalmoy [G. *Ó Maolmhuaidh?*].¹²⁸

Free Gaels in court

We can now move on to the instances of Gaels using the royal courts in English Ireland. Determining someone's freedom and acceptance in the courts is slightly easier than some historians have portrayed.¹²⁹ Unfree people could not use the courts *ipso facto* and so a lord would never sue his or her unfree tenants in the royal courts. Such an act was tantamount to manumission. If a third party attempted to sue an unfree person, the latter's lord immediately intervened to prevent the enfranchisement of his or her unfree tenant. Finally, as we have already discovered with David Goer, the royal courts did not allow unfree people to have seisin of free lands. Therefore, instances when Gaels were sued by people but won were clear examples of free and accepted Gaels in English Ireland. One of the earliest surviving court records is an assize of novel disseisin from the itinerant court in co. Kerry (1252). Thomas son of Thomas Cradoc [W. *Caradog*] accused nine men of novel disseisin, but the jury decided that this was a false claim and it allowed all nine men to remain in seisin of the disputed lands. The defendants included William Dun [G. *Donn* or

¹²⁶ Cf. David Goer, *supra*, p. 28.

¹²⁷ P. H. Hore (ed.), *The history of the town and county of Wexford: the town of Wexford, with a chapter on Taghmon, and a short notice of Harperstown, the ancient seat of the Hore family* (London, 1906) [hereafter *History of Wexford*], p. 106.

¹²⁸ *Cal. Ormond deeds, 1172-1350*, no. 605. Cf. Meic Giolla Mhuire of Waterford claimed to be Ost-people: Chapter Three, *infra*, pp 151-3.

¹²⁹ See *supra*, n. 90.

Ó Duinn?], Gillin Dun [G. *Giolla Eoin Ó Duinn?*], Gilbert Ofynan [G. *Ó Fionnáin?*], and Ragenild Omolkeran [G. *Raghnailt Ó Maoil Ciarán?*], who all bore Gaelic surnames.¹³⁰ This judgment cemented their free and accepted status. If they were accused of being unfree, they only had to ask for this court record to be read out in court.

In the same year in Limerick William Otewy accused Thomas Oregan/Orachan [G. *Ó Riagain*] of mort d'ancestor, and lost because William's father, Walter Otewy, never held the lands in fee. Thomas Oregan remained in seisin of the lands and William Otewy was amerced.¹³¹ William later appealed Thomas of raping his (William's) wife. On the day of the trial, Thomas appeared, and William immediately withdrew the claim. William was then fined 100s. for false claim.¹³² Clearly he hoped that Thomas would not appear and the appeal was a contemptuous reaction to the previous amercement. Thomas agreed to be the pledge for Otewy to pay the 100s. fine to repay the former's debt to Robert de Emly, bishop of Limerick. Thomas also agreed to grant a carucate of land to the bishop if he could not pay the 100s.¹³³ So, Thomas Oregan was a free and legally accepted member of English Ireland as he held free lands and was allowed to plead and pledge in the royal courts. He was not alone.

Martin de Clonthenre claimed twenty acres in co. Kerry against Gillyse Omonethy [G. *Giolla Íosa Ó Mainchín?*], but the jury determined Martin had no right to Gillyse's land.¹³⁴ Omonethy was left in peaceful possession and the court record was proof of freedom. In 1278 Maurice son of John Laweles brought an assize of novel disseisin against Malmorth Offerwil [G. *Maolmórda Ó Fearghail?*] for one house. The jury returned that by 'custody and friendship' (L. *custodia et amicitia*) Maurice, while underage, demised the house to Malmorth for his entire life, and therefore Malmorth should be left in seisin and Maurice should take nothing by that writ.¹³⁵ Geoffrey le Bret brought an assize of novel disseisin against Adam de St Bosco and Nicholas McScoly [G. *Mac Scolaidhe?*] for one house, two-thirds of two carucates, and 4d. in rent in Kylcloghyr. When Adam and

¹³⁰ NAI, RC 7/1, p. 143. A peculiar part of this case is that the first-named defendant, Michael son of Osbert, was later a pledge for the amercement (payment of the fine for the false claim) of Thomas son of Thomas Cradoc, Michael's accuser.

¹³¹ NAI, RC 7/1, pp 197-8. For more cases involving Thomas Oregan, see *infra*, pp 231, 266-7.

¹³² NAI, RC 7/1, p. 217. Cf. women appealing men for rape: Chapter Four, *infra*, pp 211-15.

¹³³ William Betham noted that Poncius son of John presented a Thomas O Regan to the church of Balylegh, co. Limerick, but this record is undated: NAI, M 2646, p. 105. The Thomas Oregan in the surviving court cases was never called a clerk. This Poncius son of John was probably the man who married Sauyna Iny McDonnewith: Chapter Two, *infra*, pp 99-100.

¹³⁴ NAI, RC 7/2, p. 227.

¹³⁵ NAI, RC 8/1, pp 53-4.

Nicholas appeared in court to answer the writ, Geoffrey immediately withdrew his case.¹³⁶ While we cannot tell how much of this tenement was held by Nicholas McScoly, we can see that he was free and accepted in the royal courts. In 1299 Richard le Carpenter and Elena, his wife, sued John Oglath [G. *Mac an Ógladigh?*], Master David de Berton, and Loffina, his wife, for one house in le Combe near Dublin. The jury returned that the plaintiffs had no right to the house, the defendants were left in seisin, and Richard and Elena were amerced.¹³⁷

Near the end of the period studied, Gaels were still being sued for lands and winning. John Thursteyn and Johanna, his wife, brought an assize of novel disseisin against Royry OKathothy [G. *Ruaidhrí Ó Cobhthaigh?*] and Alicia, his wife, Adam Odoneuyl [G. *Ó Domhnail?*], and John le Waleys for one house, five acres of meadow, and four acres of brush in Toullachoryn, co. Tipperary, in 1313. Royry, Alicia, and Adam were not found and therefore did not appear in court. The case proceeded against them by default. The jury then returned that John Thursteyn and Johanna were never in seisin of the house and lands so that they could be disseised. The plaintiffs were amerced and the defendants were given a *sine die*.¹³⁸ Also in 1313 a Simon (no surname) brought an assize of novel disseisin for 10s. rent in Tipperary against Henry Keen [G. *Ó Cian?*] and Philip Maccarewill [G. *Mac Cearbhail?*] but lost for making a false claim.¹³⁹ They were given a *sine die* and Simon was amerced. In the same court roll is the record of the assize of novel disseisin John son of Ralph brought against John son of William le Botiller, William le Botiller Roth [G. *Ruad?*], John Ognewe [G. *Ó Gnímh?*], and John O Cally [G. *Ó Cadhla?*] for one house and c.20 acres of various types of lands in co. Waterford. John O Cally was not found, but John le Botiller answered as his bailiff. The defendants said that the lands in question were not in Coylagh, as John son of Ralph said, but instead were in Coulagh. John son of Ralph said he could not deny the mistake and the defendants were given a *sine die*. John son of Ralph was amerced.¹⁴⁰

Some notable (magnate?) Gaels had no problems defending their rights to large areas of land, and they even had professional legal assistance. James de Ketyng brought an assize of novel disseisin against Dovenald McBren [G. *Domhnall Mac Briain*], Murewoth

¹³⁶ NAI, RC 7/8, p. 212.

¹³⁷ NAI, RC 7/7, p. 204.

¹³⁸ NAI, KB 2/4, ff 474r-5r.

¹³⁹ NAI, KB 2/4, f. 271r.

¹⁴⁰ NAI, KB 2/4, f. 198r. John son of William le Botiller had become part of Justiciar John Wogan's household in 1310: *CIRCLE*, PR 4 Ed II, no. 57.

McBren [G. *Murchadh Mac Briain*], and Tyrdelagh Garf McBren [G. *Toirdhealbhach Garbh Mac Briain*] for one house, five carucates of land, twenty acres of meadow, 300 acres of wood, and 500 acres of pasture.¹⁴¹ Dovenald came to court and Reginald McCotyr [O. *Mac Óttarr*] answered as bailiff for Murewoth and Tyrdelagh. Reginald was a professional *narrator*. Dovenald may have hired McCotyr for his co-defendants when they could not come to court (but there is no record of McCotyr being paid such as he was in other records).¹⁴² Dovenald replied to the writ as tenant and said that James was never seised of the house and lands. When the recognitors came to deliver their findings, James did not prosecute his writ. The Meic Briain were given a *sine die* and de Ketyng was amerced for false claim. Dovenald then had definitive proof of his freedom, but this judgment did not guarantee his rights to the house and lands forever.

Other cases of Gaels being sued show their freedom and acceptance. John Bythelan [G. *Ó Beolláin?*], William Odany [G. *Ó Duinn?*], John Orynan [G. *Ó Rianáin?*], along with other tenants were summoned to the Dublin Bench to recognise by what services they held their tenements in Sleafardagh and Moyeven, co. Tipperary, from Peter son of James de Bermingham, which Peter had granted to John de Fressingfield and Joan, his wife.¹⁴³ The Gaelic tenants were not called *betagii* or *nativi* and they were summoned to court to answer the writ. Speaking in court was reserved for free people. Henry O Doneghuth [G. *Ó Donnchadha?*] was attached to respond to Geoffrey de Morton, who sued along with the king, why Henry had not delivered the seventy-two crannocks of wheat (L. *bladi*) which he had issued (L. *libertati fuissent*) to Geoffrey for a debt recovered in the justiciar's court.¹⁴⁴ Henry admitted his failure and made fine with Geoffrey by £10. The good news for O Doneghuth was that being answered in the justiciar's court was a concrete proof of freedom, but he was probably more concerned with his business dealings. In co. Cork, Nicholas Gascoigne and Felicia, his wife, sued five men for Felicia's dower from her previous marriage to William Urgan. One of these men was John son of Nicholas Heyn [G. *Ó hEidhin?*], who held fourteen acres in Castellethan. Nicholas and Felicia only claimed a

¹⁴¹ NAI, KB 2/5, ff 85r-6r.

¹⁴² For more on Reginald McCotyr, see Chapter Three, *infra*, p. 157.

¹⁴³ NAI, RC 7/10, pp 612-13. This grant was probably in recompense for the abduction of the Joan's daughters. Philippa and Elizybeth were taken by William de Bermingham, archbishop of Tuam, Peter son of Meiler de Bermingham, and Richard his son: RC 7/10, p. 599. Joan was apparently the widow of Meiler son and heir of Peter son of Meiler de Bermingham, and her daughters may have been the family's heirs, so the men wanted control of their marriages: Paul Brand, 'A versatile legal administrator and more: the career of John de Fressingfield in England, Ireland and beyond' in Brendan Smith (ed.), *Ireland and English world in the late Middle Ages* (London, 2009), pp 44-54 at 48-9.

¹⁴⁴ NAI, RC 8/2, p. 42.

third of John's lands.¹⁴⁵ In Kildare, Stephen Tydemerse and Amabilia, his wife, sued Nicholas Ocochle [G. *Ó Coigligh?*] for one carucate in Ggritur and Labbrettaske in Omayl, Walter son of Murweth' Ocochle for half a carucate in Balimacorbery, Henry son of Murweth' Ocochle for one carucate in Balimacorbery, and Folan' Ocochle for three carucates in Lochtrun.¹⁴⁶ This was a case of dower, so we can probably assume that the couple were asking for one-third of each of these holdings. None of the defendants appeared so the court ordered that the lands in question be taken into the hand of the king. This did not mean that the Gaels lost these lands forever or all of their lands. It was an incentive to appear and plead their defence.

Gaels could be sued and lose, and still provide evidence of their freedom and acceptance. Alexander Doneth [G. *Ó Dúnadhaigh?*] granted some of the rent from his tenement in Typbercarny, Meath, to John Cosyn for twenty-four years to repay Cosyn a debt of £10. Doneth prevented Cosyn from collecting the rent in Typbercarny so Cosyn sued the former.¹⁴⁷ The court ruled that Doneth had disturbed Cosyn during the contracted period and awarded the latter the £10. Alexander Doneth was allowed to hold free lands, make 'leases' and contracts, and use the royal courts. Some cases for dower show us that Gaels were holding free lands.¹⁴⁸ If the widow plaintiffs won, the Gaelic defendant would still be left in possession of the remaining two-thirds of the tenement. John Trenedy and Margery, his wife, sued Almaric son of Adam Prodhome for one-third of three carucates in Delgyn (Strothir, co. Connacht). They also sued R' Griffin for a third of his lands and Molmoth Offrull [G. *Maolmhuadh Ó Fearghail?*] for a third of his lands in the same vill.¹⁴⁹ The record does not list the extents of the lands held by Griffin or Offrull. Since it was only one-third of their lands, even if John and Margery won (which was not recorded), Offrull would have maintained seisin of most of his lands. Joan widow of Robert de Ketyng sued Jordan Ketyng Falyagh [G. *Ó Faolchaidh?*] for her dower of one-third of the manor of Gortroth, co. Tipperary. Falyagh did not appear, and so one-third of the manor was taken into the hand of the king to encourage his appearance.¹⁵⁰ This did not mean that he lost his lands forever or even all of his lands. This case also demonstrates that a Gael possessed an entire manor.

¹⁴⁵ NAI, RC 7/13/3, p. 89.

¹⁴⁶ NAI, RC 7/7, p. 479.

¹⁴⁷ NAI, RC 7/12, p. 166. This was probably in co. Meath and not in lib. Meath. A Richard Doneth sued Geoffrey de Nugent for taking his goods, but then bought a licence to withdraw for a better writ: *infra*, p. 52.

¹⁴⁸ For the legal status of women in dower cases, see 'Dowers', Chapter Two, *infra*, pp 131-9.

¹⁴⁹ NAI, RC 8/1, p. 39.

¹⁵⁰ NAI, RC 7/12, p. 325.

These examples (among others in the surviving records) show that society in English Ireland tolerated free Gaelic people holding free lands in the English controlled areas, and that the royal courts did not make most judgments based on ethnic identity or heritage. We can tell that the defendants were all free because the plaintiffs did not raise the objection of naifty, and, as we saw above, unfree people were disseised by the royal courts for simply holding free lands.¹⁵¹ In one case there is definitive evidence that *Hibernicus* did not mean *nativus*, Maurice Scadan (possibly an Ostman) sued Thomas de St John and Gynenegyl Mac Clery [G. *Giolla na Naingeal Mac Clereigh?*], *Hibernicus ipsius Mauricii* (Maurice's Gaelic man), for a trespass.¹⁵² No lord sued his or her own unfree tenants. The very act manumitted the unfree. There are many cases which confirm that lords captured and imprisoned 'misbehaving' unfree tenants.¹⁵³ By suing Mac Clery, Scadan was confirming Mac Clery was a free man.

There were also many cases of Gaels suing people in the royal courts. There were many types of court cases, the specifics of which need not concern this current study. But it is pertinent that assizes were 'speedy' cases in which the defendant could not essoin him/herself and the plaintiff had to have an impeccable claim to the tenement. The latter had to hold the tenement in fee to win.¹⁵⁴ 'Farmers' (L. *firmarii*: temporary tenants with a 'lease') could not bring an assize. They had to use the writ of entry or writ of right, or sue for a trespass or breach of contract.¹⁵⁵ In 1260 Robert Duf [G. *Dubh* or *Ó Duibh?*] recovered six acres in Cloncrayth, co. Cork, from the abbot of Tractan and Maclachelin [G. *Mac Lochlainn*], a brother of the house, with an assize of novel disseisin.¹⁵⁶ At the same court session John Mortthath [G. *Ó Muircheartaigh?*] recovered a piece of land measuring five perches in length and one-and-a-half perches in width in Shendon from Margaret daughter of Geoffrey Drake, Richard Barfot, John de Loth, and William le Pastur.¹⁵⁷ In 1261 Neel Ocrofthelhyn [G. *Niall Ó Criomhthainn?*] recovered twenty acres from Hugh de Anton and Robert David in Gortenchauely, co. Limerick.¹⁵⁸ These Gaelic plaintiffs encountered no objections to their status or pleas of *est Hibernicus et nativus*. The

¹⁵¹ For an example of one *Hibernicus et nativus* (David Goer) losing his land, see *supra*, p. 28.

¹⁵² NAI, RC 8/2, p. 168. Scadan and de St John appear to be the same men from before: *supra*, pp 30-1.

¹⁵³ See Chapter Four, *infra*, pp 224-6.

¹⁵⁴ Cf. Robin Frame argued that 'the [Gaels], including those who were personally free and might even be affluent, did not hold their lands in fee and inheritance, by titles defensible in the king's courts': Frame, 'Ireland after 1169', p. 119.

¹⁵⁵ D. W. Sutherland, *The assize of novel disseisin* (Oxford, 1973), pp 12-13, 32-3, 135-7.

¹⁵⁶ NAI, RC 7/1, p. 243.

¹⁵⁷ NAI, RC 7/1, p. 241.

¹⁵⁸ NAI, RC 7/1, p. 361.

defendants were amerced – and possibly gaoled – for disseisin, and the Gaelic plaintiffs were re-seised of their free tenements. These men were not the last Gaels to win an assize without a grant of access to the royal courts. There were others.

Novel disseisin was not the only assize. The other most common assize for lay lands was mort d’ancestor. In 1290 Elena Scolog [G. *Ó Scolóig?*] and Agnes, her sister, recovered a house and five acres in Clonerkyllethan, co. Limerick, from Rys Clon. Their father, William Scolog, had held the house and lands freely and in fee.¹⁵⁹ In 1301 Richard Scolog recovered eight acres from John le Flemeng in Fanleostoun/Faulerstan, co. Cork, with an assize of mort d’ancestor. Richard’s father, Henry Scolog, had held the lands in fee. John le Flemeng claimed that Henry had not died seised of the lands so that Richard could use the assize of mort d’ancestor, but instead had enfeoffed Richard of the lands. The jury returned that Henry died seised of the lands and Richard was Henry’s closest heir.¹⁶⁰ Richard recovered seisin of the lands and was awarded 2s. in damages. This case alone was sufficient proof of Richard’s freedom, but he was also a defendant in a different case. He came to court and called Philip le Flemeng to warranty. Le Flemeng warrantied Richard Scolog and then the former called Philip Martel to warranty.¹⁶¹ Also a Richard Scologe witnessed a grant in Riban near Corbally, Kildare, along with John de Boneville and Arnold le Poer, knights, in 1305.¹⁶² In 1300 David Ohonere [G. *Ó Conchobair?*] brought an assize of mort d’ancestor against Nicholas son of Richard de Roche for one house and three carucates of lands in Cnockrathmolan, which Ohonere’s mother, Sibilla de Borard had held in fee. Nicholas came to court and said that his father, Richard de Roche, had died seised of the house and lands and that he, Nicholas, was underage. David could not deny the latter, and so the case was postponed until Nicholas was of full age.¹⁶³ Nicholas did not object to Ohonere’s ethnicity or freedom and he could have done so later, but this seems unlikely because he could have ended the case then. He did not. The case was only postponed until later. These assize cases are remarkable; not only because surviving judgments are rare, but also because the Gaelic plaintiffs were not accused of being unfree nor did they have to present grants of access to the courts. These Gaels were accepted as free members of the English society. These cases were truly exceptional, but are definitely

¹⁵⁹ NAI, RC 7/2, p. 425. *Ó Scolóig* and *Mac an Scolóig* were Gaelic surnames, not to be confused with *Scurlag* [Sherlock] an English surname.

¹⁶⁰ NAI, RC 7/9, pp 21-2. The RC clerks wrote that roll no. 59 (RC 7/9) was a counter-roll of no. 58 (RC 7/8), but the 7/9 version is more complete: RC 7/8, p. 364.

¹⁶¹ NAI, RC 7/9, pp 148-9 (duplicate on *ibid.*, pp 170-1).

¹⁶² CCD, no. 536. Cf. *supra*, n. 111. For more *Uí Scolóig*, see Chapter Two, *infra*, pp 103-4.

¹⁶³ NAI, RC 8/2, pp 55-6. Cf. some underage people could sue and be sued: Chapter Two, *infra*, pp 106-9.

not ‘exceptions that prove the rule’. Many (if not thousands) of free Gaels were accepted in English Ireland and were not disseised so that they needed to sue in a royal court and leave a record of their existence.

Some Gaels did not have to win their assize to prove their freedom and acceptance. Gilbert Obothy [G. *Ó Buadhaigh?*] brought an assize of novel disseisin against William de la More, and William made no defensive pleas (he made no objections to the writ, no accusations of servility, etc.).¹⁶⁴ Obothy then lost because he did not have the best claim to the lands in question, and not because he was unfree. The justices subsequently fined Gilbert for suing William out of avarice (L. *Gilbertus in misericordia pro falso clamore et avarus est*). Donehoth Ohonenan [G. *Donnchadh Ó hUamhnacháin?*] brought an assize of novel disseisin for twelve acres of arable against Philip le Enfaunt. The defendant made no objection to Ohonenan’s status and the assize proceeded. Ohonenan lost either because of a technical error in the writ or because he did not have the best claim to the lands (L. *quod non disseisivit sicut breve*), and not because he was unfree or barred from using the courts.¹⁶⁵

In 1252 Neivinus Mac Oel [G. *Neamhain Mac Fhoghail?*] brought an assize of novel disseisin against Patrick de Courcy, Geoffrey de Courcy, and Milo de Courcy for a carucate of land with appurtenances in Glynardale, co. Cork. Geoffrey did not appear and either the assize proceeded against him by default or Patrick answered as his bailiff. Patrick (and probably Milo) came to court and replied to the assize that Neivinus was a *Hibernicus et nativus*, and therefore they did not have to respond to the allegation. Neivinus replied that he was a *libero homo* (free man).¹⁶⁶ Many historians theorised that all free and accepted Gaels had to have a grant of access to the royal courts by the English or Irish chancery.¹⁶⁷ Neivinus’s case reveals that, in this instance at least, a free Gael did not need a grant of access to use the royal courts. The record is incomplete, but it appears that Patrick de Courcy responded to Neivinus’s counterplea with a plea of bastardy (de Courcy claimed that Neivinus’s father was an Ivor Poly who sired (L. *genuit*) Neivinus in adultery). Neivinus’s reply to this second plea does not survive, but he put himself on the

¹⁶⁴ NAI, RC 7/1, p. 185.

¹⁶⁵ NAI, RC 7/1, p. 194.

¹⁶⁶ NAI, RC 7/1, pp 144-5. This may have been the same Patrick de Courcy who was the son of Margaret daughter of Milo de Cogan: Paul Mc Cotter, ‘The Carews of Cork’ (unpublished MA thesis, National University of Ireland, 1994), p. 69.

¹⁶⁷ Otway-Ruthven, ‘Native Irish’, pp 150-1; Hand, *English law*, pp 199-200; Frame, ‘Ireland after 1169’, pp 121-2.

result of the assize.¹⁶⁸ The second round of pleading seems to indicate that Neivinus was a free man. The itinerant court ordered that this case was respited until the justiciar could rule on it. Since it was a plea of bastardy, a bishop should have been summoned to determine it, but this was not recorded. In the meantime, it appears, Patrick de Courcy convinced Neivinus to drop the case in return for a court-witnessed grant of the lands in question. When the court resumed, Neivinus withdrew his writ, and he and his pledges to prosecute were amerced (which was standard procedure). Then the court witnessed de Courcy's grant to Neivinus. Neivinus performed homage and service to de Courcy and was granted the carucate in fee to hold from de Courcy and his heirs forever for rent. Then there was a condition added to the end of the grant: that Neivinus and his heirs could not sell or grant away the lands without de Courcy's permission.¹⁶⁹

Neivinus Mac Oel's case may have been rare, but as we just learned, it was not the only instance when a free Gael was accepted. He did not have any grant of access to the royal courts and he did not need one (which was allowed extensively in the period studied). He defeated the *est Hibernicus et nativus* plea simply with the defence that he was a free man. He was almost certainly going to win the case which is why de Courcy made the deal with Neivinus. With the grant in the court roll, if anyone subsequently accused Neivinus of being unfree, he simply had to ask the court to 'search the rolls' or call Patrick to warranty. We cannot, however, tell how long his heirs maintained their freedom, acceptance, and landholding, assuming that he had heirs.

In 1301 Walter Otelley [G. Ó Ceallaigh?] sued Gerald Marshal, bishop of Limerick, with an assize of *utrum*.¹⁷⁰ Otelley claimed the advowson of the parson of the chapel of Dumgadmund in Limerick. He said that he had presented Simon son of John to the chapel, Simon had died, and Walter wished to present William Otwey to the position but the bishop prevented it.¹⁷¹ Bishop Marshal came to the court and claimed no rights to the presentment, so the court judged that the bishop should admit a fitting parson chosen by Walter Otelley. Otelley had recognised rights to the advowson and a court record to prove his freedom.

¹⁶⁸ It is probable that Ivor Poly was not Neivinus's father as the latter was named 'Mac Oel' and not 'Mac Ivor' or 'Poly'.

¹⁶⁹ This type of stipulation was probably usual before the statute of *Quia Emptores* in 1290, which protected the chief lords of fees.

¹⁷⁰ NAI, RC 7/8, pp 182-3.

¹⁷¹ This must have been a different William Otwey than the previous man. The assize of *utrum* was forty-nine years after Thomas Oregan's cases: *supra*, p. 44.

Free Gaels won ‘regular’ (non-assize) court cases, as well. In 1301 Adam son of John Crochan [G. *Ó Creacháin?*] sued Nicholas de Exeter for three acres and Nicholas Mangyng and Mabil, his wife, for eight acres in Kiltulagh’ and Moynedan, co. Connacht, which were Adam’s right and inheritance.¹⁷² The three defendants came to court and paid for a licence to return the lands to Adam son of John. The court granted him legal seisin of his lands. This was not Adam’s only case. He sued Fininum Ocurmok [G. *Fíngin Ó Cormaic?*] for six acres in Kylconlagh and Moynedan, co. Connacht, which Adam claimed Philip son of Odo de Barry illegally disseised from Adam’s grandfather, Adam Ochrogham [G. *Ó Creacháin?*].¹⁷³ The ‘sheriff’ (viscount) of Connacht was ordered to summon a jury of twelve law-worthy men from there and report to the Dublin Bench, but the return does not survive. In co. Limerick in 1261 Thomas Ocruchan [G. *Ó Cruacháin?*] sued Thomas le Fraunceys to warranty Ocruchan’s claim to a third of twenty-one acres in Dunrys, which the former held and claimed to hold by charter of Stephen father of Thomas le Fraunceys.¹⁷⁴ No result was recorded for that case either. But not every case needs a final judgment to demonstrate acceptance and freedom.¹⁷⁵ Matthew Ulcath [G. *Ulcath?*] sued Gilbert son of John and Desiderata, his wife, to return half of 160 acres of arable and five acres of meadow which was Matthew’s inheritance from his father, William Ulcath.¹⁷⁶ Desiderata was Matthew’s sister, and it appears she and Gilbert took Matthew’s share of the inheritance. Matthew was underage, so the case was held (*L. expectetur*) until he was of full age. This case does not need a judgment to show us the freedom and acceptance of the Ulcath family.

Richard Doneth [G. *Ó Dúnadhaigh?*] brought a writ *de averiis* (of goods taken) against Geoffrey de Nugent, and then came to court and paid for a licence to purchase a better writ.¹⁷⁷ This is not concrete proof of acceptance, but it is indicative of acceptance and a familiarity of court procedure. Doneth was aware – or had been warned by a friend – that there was a defect in his writ. Other Gaels with the same ‘surname’ were accepted. Alexander Doneth paid a fine to make a concord with Hugh de Freines in 1301.¹⁷⁸ As

¹⁷² NAI, RC 7/8, p. 131.

¹⁷³ NAI, RC 7/7, p. 219.

¹⁷⁴ NAI, RC 7/1, p. 375.

¹⁷⁵ Freedom did not always include acceptance, for more on ‘acceptance’ see ‘English law and ethnicity’, *supra*, pp 10, 16-17.

¹⁷⁶ NAI, RC 7/2, pp 370-1.

¹⁷⁷ NAI, RC 7/13/2/3, pp 36-7.

¹⁷⁸ *HMINAUK*, p. 67.

noted above, making a concord in a royal court was concrete proof of freedom and acceptance.¹⁷⁹

Some of the Meic Mhurchadha of Connacht were allowed to use the royal courts and held free lands.¹⁸⁰ In 1297 Maurice son of Luke Mcmurth [*G. Mac Murchadha*] sued Dionisius de Marisco for one house, two carucates, and two-thirds of a mill in Stathgonyl, co. Dublin(?). Mcmurth claimed that Dionisius had received the tenement from Maurice son of Augustin who, in turn, had received it from Augustin son of Roger (his father?) who had disseised Maurice's father, Luke.¹⁸¹ No result was recorded, but Maurice son of Luke appears as a pledge in the justiciar's court in the same year.¹⁸² He was also a juror in an inquisition for the escheator in 1301.¹⁸³ Maurice held lands from Aymer de Valence and from the archbishopric of Dublin.¹⁸⁴ In 1303 Geoffrey MacMurethid [*G. Mac Murchadha*] sued Nicholas Broun for one vill of land in Lysnegh', co. Connacht, and Henry Broun for half a vill in Achedhlachard (Ardrahan), co. Connacht.¹⁸⁵ In 1305 the same Geoffrey sued Meiler Broun for the half-vill which Geoffrey claimed from Henry Broun because the latter had called Meiler to warranty. In this case Geoffrey mentioned that he claimed the lands through his grandfather, Howell Macmorwyth'.¹⁸⁶ Earlier in 1304 Geoffrey added Robert de Cromhale (for one vill in Lysnegh and Glencregh, co. Connacht) to his older suit against Nicholas and Henry Broun. In this case we find out that Maurice son of Maurice, the former justiciar, had disseised Howell.¹⁸⁷ In a later case (1305) Geoffrey was more specific in his writ. There is no record of him purchasing a better writ (*L. melius breve*), so this may have been a different case completely (except that the lands in question are almost the same). Geoffrey sued Robert Cromale for half a vill in Lysnegh and Glencreg, John de Lyt for a quarter of a vill in the same, Nicholas Brun for a vill in Lysnythy except an eighth of it, and Philip Shortered for the eighth of Lysnythy. Geoffrey claimed that none of the defendants had entry to the lands except by Maurice son of Maurice who had disseised his

¹⁷⁹ *Supra*, p. 39. See also, Hyams, *Kings, lords*, pp 145-51.

¹⁸⁰ This was a different family than the Meic Mhurchadha of Uí Chennselaig, who were supposedly one of the 'five bloods'. For 'the five bloods', see *infra*, pp 75-6.

¹⁸¹ NAI, RC 7/5, pp 171, 106 (copy with less information). Stathgonyl could have been in a liberty; the marginalia stated 'Dublin'.

¹⁸² *CJRI, 1295-1303*, p. 166.

¹⁸³ *IEMI*, no. 105.

¹⁸⁴ Nicholls, 'Anglo-French Ireland, p. 382; Emmett O'Byrne, *War, politics and the Irish of Leinster, 1156-1606* (Dublin, 2003), p. 29.

¹⁸⁵ NAI, RC 8/1, pp 243-4 [*Galfridus Mac Murethid*].

¹⁸⁶ NAI, RC 7/10, p. 602 [*Galfridus Macmoreghid and Howellus Macmorwyth*].

¹⁸⁷ NAI, RC 7/10, p. 243 [*Galfridus Mcmourghuth and Howelo Mcmourghuth*].

grandfather, Howell.¹⁸⁸ The final entry involving this case is disappointing. A jury had been summoned to determine if Howel Macmorghd', grandfather of Geoffrey, had died seised of half of the vill of Achedlathard' and if Geoffrey was his rightful heir. But the jury was held for some unrecorded reason.¹⁸⁹ This was related to the earlier case of warranty between Geoffrey and Meiler Broun. We can see that Maurice Mac Murkud granted the lordship of the five vills held by Michael Kerdyf and 3*d.* rent in Lough Mask to his lord, John son of Thomas, in 1289.¹⁹⁰ If this Maurice Mac Murkud was the father of Geoffrey, then he may have had charters from the Geraldines to prove his cases. But the judgments do not survive. It seems almost certain that he was free and accepted, though.

Returning back to Gaels as defendants, we can see one more indicator that Gaels were allowed to use the courts: when plaintiffs came to a royal court and paid for permission to purchase a better writ. This action clearly shows that the plaintiff was not going to use the *est Hibernicus et nativus* plea (which would probably not work because someone would not sue the unfree, he/she would sue the lord of the unfree). Raymond son of Griffin brought a writ of entry against Philip son of John Ohymolan [G. Ó *Mothlacháin?*] for one house and two-and-a-half carucates in Balyboye, and then gave half a mark for a licence to purchase a better writ.¹⁹¹ And in the same court session, David son of Robert de Barry gave 40*d.* for a licence to purchase a better writ against Simon O Keregan [G. Ó *Ciaragáin?*] for twenty acres in Balykeregan.¹⁹² In 1303 Maurice son of Thomas sued Simon Ballach [G. *Mac an Bhallaigh?*] to return sixty acres of arable, thirty acres of wood, and twenty acres of pasture in co. Kerry because Ballach had not performed the required services for two years (a writ of *biennium jam cessavit*).¹⁹³ Ballach held the tenement of Maurice for certain services (probably rent and possibly labour such as carting) and had not 'preformed' the services for at least two years. This writ also meant that Maurice was not able to legally distraint Ballach to force the latter to pay rent, perform labour, or appear in Maurice's court.

In 1298 George de Roche claimed he did not have to answer an English attorney for an unfree Gaelic plaintiff. If George's claim was true, then the records of free Gaelic

¹⁸⁸ NAI, RC 7/10, p. 393 [*Galfridus Macmorghyth and Howelo Macmurueych*].

¹⁸⁹ NAI, RC 7/11, pp 425-6.

¹⁹⁰ *RBEK*, no. 51.

¹⁹¹ NAI, RC 7/9, p. 118. Cf. the same Raymond won an assize of novel disseisin against Cormok son of Belyth' Maccarthy for two vills in the same court session: *ibid.*, p. 158.

¹⁹² NAI, RC 7/9, p. 181.

¹⁹³ NAI, RC 8/1, p. 225.

people increase substantially.¹⁹⁴ The earlier essoin listings show many Gaelic people hired English attorneys. In 1252 Mary Olimrethan [G. *Ó Lonargáin?*] appointed Maurice de Escalles as her attorney against John son of Stephen for a writ of entry.¹⁹⁵ Donenold Occarran [G. *Domhnall Ó Cearáin?*] appointed Stephen son of Walter in a case against Geoffrey son of William Cauntum, and Gillebride Faber [G. *Giolla Bhríde*] put Adam le Arth against the same Geoffrey.¹⁹⁶ Gillefinan Otone [G. *Giolla Fínghin Ó Tuine?*] put Robert son of Laurence against Roger Horton for a writ of entry.¹⁹⁷ David Oherithan [G. *Ó hEarainrín?*] named Thomas son of John in a writ of dower against Tenan the widow of Henry Goth.¹⁹⁸ At least five Gaelic people in Limerick essoined themselves in the itinerant court for writs they had purchased, and they sent an English person to court as their attorney.¹⁹⁹ In 1290 Geoffrey Obrenan [G. *Ó Braonáin?*] nominated Thomas, clerk of Cashel, as his attorney in a case against the prior and convent of Athassel.²⁰⁰ The reception of these essoins may very well indicate the plaintiffs were free.

Jurors

Another proof of Gaels' freedom and acceptance is their presence on juries. The legists and surviving writs ordering the formation of juries agree that jurors had to be free and legally knowledgeable men of the locality.²⁰¹ In 1216 the bishop of Cloyne made an agreement with William de Barry that if either party claimed any *nativi* from the lands of the other, then a jury of twelve law-worthy Gaels (*L. legalium Hibernici*) would be summoned to determine who owned the *nativi*.²⁰² Gaels are visible on juries throughout the period studied. Table 2 presents an introductory survey of the surviving records:

¹⁹⁴ NAI, RC 7/5, pp 395-6.

¹⁹⁵ NAI, RC 7/1, p. 125.

¹⁹⁶ The type of case was not recorded in the calendar, only *de eodem* (meaning it was the same type of plea as the previously listed case). The previous case was 'torn': NAI, RC 7/1, p. 132.

¹⁹⁷ NAI, RC 7/1, p. 134.

¹⁹⁸ NAI, RC 7/1, p. 134.

¹⁹⁹ NAI, RC 7/1, p. 164 (Gilbert Obothy, Patrick Oduffaly, Simon Okonwel, Renath MacGorman, and (first name missing) Ocarwethan). Gilbert Obothy was probably the same man who lost his case: *supra*, p. 44.

²⁰⁰ NAI, RC 7/2, p. 141.

²⁰¹ *Bracton*, ii, 215-16, 313, iii, 201-2; iv, 42; Hand, *English law*, pp 54, 60 n. 1.

²⁰² *Pipe roll of Cloyne*, pp 76-9.

Table 2: Gaelic jurors

Year	Place	Names	Citation
1253	Wexford	Henry Galgeil [G. <i>Ó Gallghaodhail?</i>]	<i>IEMI</i> , no. 13
1257x63	Castle Kevin	Donohu, prior of the Rock by Glendalough [G. <i>Donnchadh</i>] Elias Othothel [G. <i>Ó Tuathail</i>] Simon Othoelle Molawelyne Macduulle/McDuille [G. <i>Maolchalainn Mac Dubhghail?</i>] Rubtus Oclouir/Oclonir [G. <i>Robhartach Ó Fhlannchadha?</i>] Molkalle Omaille [G. <i>Maol Cheallaigh Ó Máille?</i>] Padyne Regane [G. <i>Paidin Ó Riagain?</i>] Aleuane Obigannus/Aleuane Obigaunne [G. <i>Allamhain Ó Beacháin?</i>] Molleuchorothegane/Molleuch Orothegane [G. <i>Maolchaoich Ó Ruadhacháin?</i>] Molior/Molia' Omolegane [G. <i>Maolchiar? Ó Maolagáin?</i>]	<i>Hist & mun docs</i> , pp 150-1; CAAR, p. 110
1257x63	Swords	William Mackwithir/Macwithir [G. <i>Mac Fhearchair?</i>] Auelan Wrwogane [G. <i>Anluan Ó Ruadhagáin?</i>]	<i>Hist & mun docs</i> , pp 162-3; CAAR, p. 104
1276	Dublin	Roger Keyvyn [G. <i>Mac Giolla Chaoimhín?</i>]	<i>IEMI</i> , no. 30
1277	Wexford	Henry McKillth [G. <i>Mac Ceallaigh?</i>]	Hore (ed.), <i>History of Wexford</i> , p. 142
1287	Bunratty	Dermod Ol...gri Padyne Okersith [G. <i>Paidin Ó Ciarmhaic?</i>]	<i>IEMI</i> , no. 65
1288-9	Ballydowel, lib. Kilkenny	Camdyny O Schyvelan [G. <i>Comghán Ó Seibhleáin?</i>] Ralph O Regan [G. <i>Ó Riagain</i>] William O Donelan/Duflany [G. <i>Ó Dubhsláine?</i>]	<i>HMINAUK</i> , p. 242
1288	Dunmor	Thomas O Lennan [G. <i>Ó Leannáin?</i>]	<i>HMINAUK</i> , pp 252-3
1297	Cross-lands of Leighlin	John Ohyffyn [G. <i>Ó hÉimhín?</i>]	NAI, RC 7/5, pp 54-5
1299	Kildare	Walter Othothil	<i>CJRI, 1295-1303</i> , p. 270
1301	Tristeldermot	Walter Othothil Maurice Macmorth [G. <i>Mac Murchadha</i>]	<i>IEMI</i> , no. 105
1304	Kildare	Walter Duf [G. <i>Dubh</i>]	NAI, RC 7/10, pp 581-2
1305	Wexford	Gilbert Maccon [G. <i>Mac Cuinn?</i>]	Hore (ed.), <i>History of Wexford</i> , p. 168
1305x6	Kells, Kilkenny	John Maghery junior [G. <i>Mag Fhearadhaigh?</i>]	NAI, RC 7/11, pp 388-9
1306	Cork	Robert Molpatrick [G. <i>Ó Maoil Phádraig?</i>]	<i>CJRI, 1305-7</i> , p. 284

1307	Kilkenny	John Oharthyl [G. <i>Ó Cathail?</i>] David O Breyn [G. <i>Ó Broin?</i>] John Oloyn [G. <i>Ó Fhloinn?</i>] Luke Oloyn Tayg O Neel [G. <i>Tadhg Ó Néill</i>] John Og [G. <i>Óg</i>] Richard Oconelaugh [G. <i>Ó Conghalaigh?</i>] Phillip Oconesky [G. <i>Ó Conuisce?</i>]	<i>IEMI</i> , nos 145, 147, 151
1307	Wexford	John Oseda [G. <i>Ó Séaghdha?</i>] Henry Mackilyth [G. <i>Mac Ceallaigh?</i>]	<i>IEMI</i> , no. 136
1308	Meath	Reginald Heyne [G. <i>Ó hEidhin?</i>]	NAI, RC 7/13/2.3, p. 32
1311	Waterford	Michael Galgeyl/Galgeyll (bis) [G. <i>Ó Gallghaodhail?</i>]	<i>CJRI</i> , 1308-14, pp 184, 185
1311	Couredduff, Dublin	Reginald McWythyr [G. <i>Mac Fhearchair?</i>]	<i>RBO</i> , p. 25.
1313	Tristeldermot	Walter Otohill	<i>IEMI</i> , no. 178
1321	Moitenanagh	David Oregan [G. <i>Ó Riagain</i>] Patrick Odonnewort [G. <i>Ó Donnubhartaigh?</i>] Christy Oshayneghi [G. <i>Giolla Chríost Ó Seanchaidhe?</i>] Paddy le Carpenter [G. <i>Paidin?</i>]	<i>IEMI</i> , no. 196
1321	Kinsale	Nicholas Moyl [G. <i>Ó Maoileoin?</i>] Phillip Galgel [G. <i>Ó Gallghaodhail?</i>]	<i>IEMI</i> , no. 198
1321	Kerry	John Omakkes [G. <i>Ó Mac Cais?</i>]	<i>IEMI</i> , no. 203
1321	Connacht	Donatus Oheyne [G. <i>Ó hEidhin?</i>] Donatus Macgillekille [G. <i>Donnchadh Mac Giolla Chille?</i>]	<i>IEMI</i> , no. 204
1324	Kilkenny	Thomas Ocoryn [G. <i>Ó Cuirín?</i>] Thomas Lyan [G. <i>Ó Fhloinn?</i>] Thomas Omalgarf [G. <i>Ó Maoil Garbh?</i>]	<i>IEMI</i> , no. 234
1333	Lisronagh	Philip Okyll [G. <i>Ó Cuill?</i>] David O Manry [G. <i>Ó Maine?</i>] Gylkeran O Russyn [G. <i>Giolla Chiaráin Ó Ruisín?</i>] Thomas McCallon [G. <i>Mac Caillín?</i>] Richard O Russyn	Curtis, 'Rental of the manor of Lisronagh', p. 50

In June 1299 the escheator, Walter de la Hay, and justiciar, John Wogan, were ordered to investigate whether it would be 'to the king's damage' to allow Richard de Afton/Aston to alienate some of his lands held in chief of the king. De Afton/Aston wanted to make two grants to two different men. Walter de la Haye and the sheriff of Connacht reported that the grant was beneficial to the king. De la Haye formed two juries for his inquisition, one from Roscommon and one from *villa Hibernicorum* of Roscommon. The latter is a rather important aspect of English Ireland commonly misunderstood or completely overlooked. Edmund Curtis believed that the Ostmantown of Dublin – and similar cantreds near the other, royal urban centres – was an area to banish the Ost-people, so that they could be excluded from the English portion of the city. Emer Purcell has demonstrated that Ostmantown was not homogenous and that Ost-people were not

banished from the royal urban centres.²⁰³ The *villa Hibernicorum* was not an area to contain unfree Gaels. The jurors on the royal inquisition prove this. Robert Omugron [G. *Ó Mughróin?*], M' Murgan Macgillabrik/Macgillebriba [G. *Mac Muireagán Mac Giolla Bhrighdhe?*], Andrew O'Donelan [G. *Ó Domhnalláin?*], Donslewy O'Marten [G. *Donn Sléibhe Ó Martain?*], Eugenius Oclerick [G. *Ó Cléirigh?*], Odo O'Marten [G. *Aodh Ó Martain?*], Eago McMaly [G. *Eochaid Mac Máille?*] were free and accepted burgesses of English Ireland and served on a royal inquisition.²⁰⁴ There were also free Gaels in the borough of Roscommon. Philip Oconb' [G. *Ó Conbhuidhe?*], Anglinum McGillelander/Macgillawder [G. *Ainghle Mac Giolla Aindréis?*], and Nell Mac Sery [G. *Niall Mac Searraig?*] were on the jury in 1299. Later the 'sheriff' (viscount) of Roscommon formed one inquisition with all of the men just named.²⁰⁵ Other records demonstrate that sheriffs and royal sergeants were amerced for placing poor men on juries.²⁰⁶ Jurors summoned to the Dublin Bench from co. Tipperary had to hold at least 5s. (or sometimes more than 10s.) worth of land.²⁰⁷ These records of Gaelic jurors exhibit not only their acceptance as free men, but also their socio-economic standing as legally knowledgeable men and holders of significant amounts of land.

Pledges, attachers, mainpernors

The royal courts amerced and 'fined' many people. People were amerced for committing an illegal action, proven by losing a case. People made fine for trespasses and transgressions. The executors of the courts' decisions (*vicecomites*, sergeants, bailiffs, etc.) could be amerced for not fulfilling their assigned tasks, and jurors (from *juratae*, *inquisitiones*, *recognitiones*, etc.) were amerced for not appearing on a day or contradicting their earlier statements. Once anyone was amerced, they were required to find sureties or mainpernors to pay the amercement. Sureties were free people who had the financial ability to pay amercements. The free Gaels were pledges for plaintiffs to prosecute their writs. Gilbert son of Thomas de Clare brought an assize of novel disseisin against five men from co. Cork. The two parties pleaded and then the justiciar respited the case to consider the pleading. Gilbert de Clare then refused to prosecute the case, so he and his pledges, Cathel Olonan [G. *Cathal Ó Luanáin?*] and Adam MacConwyl [G. *Mac Conamhaoil?*],

²⁰³ For more on the supposed expulsion of Ost-people, see Chapter Three, *infra*, pp 142, n. 6, 156-9.

²⁰⁴ The names are composites from the surviving records: *CJRI*, 1295-1303, pp 268-9; *IEMI*, no. 100.

²⁰⁵ *CDI*, 1293-1301, no. 604; *IEMI*, no. 101.

²⁰⁶ 37th *RDKPRI*, p. 53; *CJRI*, 1295-1303, pp 407, 414.

²⁰⁷ *CJRI*, 1295-1303, pp 296, 298.

were amerced.²⁰⁸ Later Gilbert de Clare sued a list of people for rent from Balymacoly, co. Cork. He seemed to lose the case, but the record states that he failed to prosecute, so Gilbert and his pledges, Cathel Olanon and Nicholas ODonewill [G. *Ó Dúnghail?*], were amerced.²⁰⁹ J' the clerk required pledges in 1286 (no reason was listed), one of his pledges was J' MacGilmehede [G. *Mac Giolla Mhochuda?*].²¹⁰ Free Gaels were also mainpernors/sureties for jurors and executors to do their duty and for people amerced for other reasons. In 1297 Michael Ocochlan [G. *Ó Cochláin*] mainprised Walter Wallensis and John Russel de Lisnemoke to be jurors in a case from Limerick in the Dublin Bench.²¹¹ Maurice de Cauntetoun agreed to pay the royal debts of his father (£10) and required a pledge. Art Macmurrough [G. *Mac Murchadha*] agreed to guaranty that de Cauntetoun would pay his father's debts.²¹² In 1309 William de Monte, a Florentine banker based in co. Tipperary, sued Adam Hunte de Offath' and Adam Og de Kylmlog [G. *Óg*] to answer why they had not repaid de Monte a debt of 40s. The defendants did not appear. Hunte was attached by Adam Og and Robert Ketyng, and Og was attached by Hunte and Ketyng. The defendants and their attachers were amerced.²¹³

In 1306 eleven men from co. Cork were summoned to be jurors in the justiciar's court at Dublin. One of them was Robert Omolpatrick/Molpatrick [G. *Ó Maoil Phádraig*]. But more importantly, none of the jurors appeared, and they and their sureties were amerced. Many had been mainprised by free Gaels. David de Roche was mainprised by Gilkeran Oronan [G. *Giolla Ciaráin Ó Rónáin?*] and William Orayth [G. *Ó Riada?*]. Bernard was mainprised by Suthrighth McGillerey [G. *Sitriuc Mac Giolla Riabhaigh?*] and Robert McConwilly [G. *Mac Conghaile?*]. Henry son of Philip was mainprised by one of the other jurors, Robert Omolpatrick [G. *Ó Maoil Pátraic*], and John Dygyn. Simon son of Walter was mainprised by Robert McLywyr [G. *Mac Leathlobhair?*] and Robert McMaryn [G. *Mac Mearáin?*]. And Nicholas de Cantilupo was mainprised by Dunughuth O molawene [G. *Donnchadh Ó Maoileoin?*] and Robert de Kent. The juror Robert

²⁰⁸ *CJRI*, 1305-7, p. 365.

²⁰⁹ *CJRI*, 1305-7, pp 372-3.

²¹⁰ *CDI*, 1285-92, p. 104.

²¹¹ *NAI*, RC 7/5, p. 52. Michael could have been related to Maurice Coghlan, who received letters of protection from Edward I for serving in Scotland: *NAI*, RC 7/9, 178-9.

²¹² *CDI*, 1293-1301, p. 433. This de Cauntetoun was probably the same man who held the cantred of Fermoy from Maurice de Carew: *NAI*, RC 7/9, pp 77-9. David de Roche, in 1302, removed de Carew as mesne lord of Fermoy because de Carew had alienated the lordship of Fermoy to de Cauntetoun without a royal licence and the lordship was held by de Carew in chief of the crown: *CJRI*, 1295-1303, pp 383-5.

²¹³ *CJRI*, 1308-14, p. 136. For William de Monte's origins, see *CJRI*, 1295-1303, p. 310. He was earlier found among some Lombards: *ibid.*, p. 10.

Molpatrick was not listed as having been attached/mainprised.²¹⁴

Royal officials had mainpernors if accused of not fulfilling their duties. Richard de Penlyn and Alicia, his wife, recovered 40 marks against seven defendants in the custos' court. The chief sergeant of co. Limerick, Walter Maunsel, was ordered to distrain the defendants' lands and sell the crops. Maunsel had two sub-sergeants, Richard son of Richard and Thomas Corpry, and he assigned them to sell the distrained crops. The two sub-sergeants claimed they could not find buyers for the crops. The assignee of the plaintiffs claimed the sub-sergeants were lying, so Walter, Richard, and Thomas were summoned to the custos' court to answer the claim. Richard son of Richard was mainprised by Alexander Hervy and Philip Duffulach [G. *Ó Dublaioic?*].²¹⁵

Defendants in civil cases were required to find sureties to appear in court, as well. In 1313 the prior of the house of St Katherine, Waterford, sued Adam Ketyng de Gortnegrar and Robert Wodelok of a case of trespass. Neither of the defendants appeared on the day and so the defendants and their sureties were amerced. Ketyng was mainprised by Thomas Ocombay [G. *Ó Conbhuidhe?*] and Thomas OCathban [G. *Ó Cathbhairr?*]. Wodelok was mainprised by Douenald O Maccloy [G. *Domhnall Ó Mac Lughaidh?*] and Thomas O Maccloy.²¹⁶ James Rydale was a defendant in a case from Limerick, but he did not appear on the day. He was mainprised by Stephen Rydale and John O Hartyn [G. *Ó hArtáin?*].²¹⁷ And Durand son of Henry was mainprised by Mannyng Crok and Henry McCorraryth.²¹⁸

Warrantying

Geoffrey Hand argued – and convinced Kenneth Nicholls with this argument – that when a Gaelic man was called to warranty it did not adjudge the case as it would be injure the plaintiff or defendant who called the Gaelic man to warranty.²¹⁹ This reasoning meant that the many instances when Gaelic people were called to warranty in the royal courts were

²¹⁴ *CJRI*, 1305-7, p. 284.

²¹⁵ NAI, KB 2/4, ff 313r-17r. Philip Duffulach appears to have been a royal sergeant: *infra*, p. 70.

²¹⁶ NAI, KB 2/4, ff 448r-9r.

²¹⁷ NAI, KB 2/4, f. 232r.

²¹⁸ NAI, KB 2/5, ff 122r-3r. Mannyng Crok could be almost any of the ethnicities studied in this thesis.

²¹⁹ Hand, *English law*, p. 199; Nicholls, 'Anglo-French Ireland', p.375. Professor Hand mistook Bailey's exception to warrantying. Bailey was referring to lords of villeins in England who forced their way into a case to prevent a villein from alienating property or freeing themselves by being answered in court. The examples of free Gaels being called to warranty are instances of mesne lords or tenants in chief being called to speak in a royal court, a definition of freedom: S. J. Bailey, 'Warranties of land in the thirteenth century' in *The Cambridge Law Jn.*, viii, no. 3 (1944), pp 274-99; *ibid.*, ix, no. 1 (1945), pp 82-106.

not proof of their freedom or acceptance, but instead, an exception to their bondage which allowed them to speak in court as if they were free. There is a very large problem with this argument: it is completely wrong. When a person – Gaelic, English, or other – was called to warranty in a royal court, he/she had to possess free lands because if his/her warranty failed and the other party won, the warrantor had to compensate the warrantee.

In c.1277 William Lewelin sued Margeria Mansel for one-and-a-half carucates in le Rath, co. Dublin. Mansel called Rose Travers, Raymond de Val', and William le Waleys (the heirs of John Travers) to warranty the former's claim to the lands. The court ordered that Lewelin was to recover seisin of the lands against Mansel and that she would have lands of equal value from the three warrantors.²²⁰ Maurice de Carew sued Richard son of Henry le Deveneys with a writ of *precipe in capite*. Richard appeared and called Henry le Deveneys to warranty, who was present and immediately called Thomas le Deveneys to warranty. Thomas was also present and he called John de Carew to warranty. John asked for, and received, a licence to return the house and land in question to Maurice. The court ordered that Maurice would receive seisin of the house and lands, and that Richard son of Henry would receive lands of equal value from Henry, Henry would receive the same from Thomas, and Thomas would receive the same from John for the warranties.²²¹ The act of warranting was only for free men and women with free lands of at least equal value to the warranty.

Free Gaels were allowed to warranty. When we find Gaels warranting, that is ample proof of their freedom, acceptance by the English, and landholding. In 1252 Raymond son of Griffin sued Hugh Mac Murhot [*G. Mac Murchadha?*] to warranty Raymond's claim in court, which Hugh owed to Raymond by charter (which probably means that Hugh was Raymond's mesne lord or vice versa). Raymond did not appear and Hugh was given a *sine die*.²²² John son of Henry also called Hugh Mac Murhoth to warranty, and Hugh appeared and then called Raymond son of Griffin to warranty.²²³ Hugh was then called to appear when Raymond appeared, but did not. Hugh failed to appear three times, and then the assize continued without him. John son of Henry won the case, and Hugh was fined for unjustly holding lands and had to exchange lands to remunerate John. This means that Hugh was free and holding free lands, and that the instances when a Gaelic person was called to warranty proved he/she was free and held free lands.

²²⁰ NAI, RC 8/1, p. 56.

²²¹ NAI, RC 7/9, p. 46.

²²² NAI, RC 7/1, p. 124.

²²³ NAI, RC 7/1, p. 179.

In a slightly later case (1278) we can see that the English defendant thought he would not win against a Gael. Richard de la More sued Richard Duffe [G. *Ó Dubhthaigh?*] for two carucates of land in Rathode and Maurice de Crues and Alicia, his wife, for one carucate in the same vill. Maurice and Alicia came to court and called Richard Duffe to warranty. Richard Duffe warranted them, and then Richard de la More paid 20s. to make a concord with the defendants.²²⁴ While this is not definitive proof that the court was going to recognise the defendants' rights, it does suggest that de la More believed Duffe would win. Since the court allowed Richard Duffe to warranty Maurice and Alicia's claim, that is proof that he was recognised as a free man in English Ireland. Two years later a Richard Duf' sued Richard de Crues for eighty acres in county Dublin, claiming that his father, Philip Duf', was not of sound mind when he demised the lands to Philip son of Philip.²²⁵ The jury, however, returned that Philip Duf' was of sound mind when he granted the lands away, and so Richard Duf' was amerced for false claim. The important aspect to note is that this Richard was free and allowed to sue in court.

Maurice Gregory sued Alexander Otir [G. *Ó Tíre?*] to warranty Gregory's claim to half of one-fourth of a vill of land in Lisinegan, co. Connacht.²²⁶ Jordan de Cauntetoun sued four couples to warranty his claim to one house and one-and-a-half carucates in Balysalagh, co. Cork, which he held from them by charter. One of the couples was John Obrassyll [G. *Ó Breassail?*] and Nichola, his wife.²²⁷ On the day of the trial, the other three couples appeared, but John Obrassyll and Nichola did not.²²⁸ No result was recorded, but they were certainly amerced for non-appearance. The record states that they had already been distrained to appear on that day, but the surviving record does not list the account of their goods. Robert son of John summoned Gerald son of John Neel [G. *Ó Néill?*] to warranty the former's right to a part of one house, one mill, and one carucate of land in Brounry, co. Limerick, which Margareta, widow of John Neel, claimed as her dower against Robert. Gerald claimed that Margareta could not claim any dower out of those lands because they were given in free marriage to Cristiana and John Neel. Margareta claimed the lands were John's and therefore dowable.²²⁹ A jury was ordered to determine the case, but no judgment survives. The important part was that Gerald Neel was called to warranty and his warranty was allowed by the court and the defendant.

²²⁴ NAI, RC 8/1, p. 25.

²²⁵ NAI, RC 8/1, p. 112.

²²⁶ NAI, RC 7/7, p. 401.

²²⁷ NAI, RC 7/10, pp 468-9.

²²⁸ NAI, RC 7/11, p. 333.

²²⁹ NAI, RC 7/5, p. 297.

In 1300 Richard le Conifer sued Nicholas Uthlagh' [G. *Ultach?*] and Isolde, his wife, to warranty a charter of at least two acres of arable and four acres of meadow in Banford, co. Kildare.²³⁰ Le Conifer then came to the itinerant court and gave 40*d.* for a licence to concord with Nicholas and Isolde. In 1304 Hugh Purcel de Kylslene sued David Broun and Thomas son of Stephen Obrenan [G. *Ó Braonáin?*] to warranty Purcel's claim that Thomas Obrenan gave David Broun and Covina [G. *Céibhionn?*], his wife, and their heirs, twelve acres of arable, one-and-a-half acres of meadow, and five acres of moor in Balystulyth, co. Tipperary.²³¹ The case was held for some reason which was not recorded. It could have been a lack of jurors. That was a regular problem for the royal courts.

In 1305 the abbot of Wetheny (Abington) sued to be an additional plaintiff against Geoffrey son of John de Burgh for one house, one carucate, sixty acres of meadow and sixty acres of woods in Clonkyn, co. Limerick. The abbot claimed the Geoffrey had no entry to the tenements except through his father, who was demised the house and lands by Thomas Obothy [G. *Ó Buadhaigh?*] who had illegally disseised Brother Nicholas, the previous abbot of Wetheny. Geoffrey came to court and called John de Burgh (probably his father) to warranty. John warrantied Geoffrey and then called Thomas Obothy to warranty. The court ordered for Obothy to be in court on the octave of the feast of St Hilary.²³² No result survives, but Obothy's status seems certain.

Free Gaels also called other people to warranty the former's claims in court. William Haket sued Aneley Onel [G. *Ánle Ó Néill?*] for some lands in co. Tipperary. Onel called Archbishop David of Cashel to warranty.²³³ David Obethegan [G. *Ó Buadhacháin?*] called Risum son of Raymond Beket to warranty the former's right to half a carucate in Kyldarure, co. Cork.²³⁴ In 1261 Michael de Renneville, parson of the church of Glasmor (Clashmore), co. Waterford, brought an assize of *utrum* against Robert de Argentivem and Agnes, his wife, and Murkot Okupatan [G. *Murchadh Ó Cathcheirn?*] for the vill of Glasmor.²³⁵ All three defendants came and Murkot called Robert and Agnes to warranty.

²³⁰ NAI, RC 7/8, p. 98. The calendar is incomplete, the clerk left a note that he could not read a portion of the original roll, and there could have been a house (L. *mesuagium*) or something else listed along with the six acres of arable.

²³¹ NAI, RC 7/10, p. 271.

²³² NAI, RC 7/11, pp 32-3, 235-6. Perhaps Thomas was related to Gilbert Obothy: *supra*, p. 50.

²³³ NAI, RC 8/1, p. 107.

²³⁴ NAI, RC 7/7, pp 216-17.

²³⁵ NAI, RC 7/1, p. 344. Many years later, Henry de Argenteyn was called to warranty lands in Glasmor: RC 7/9, p. 271. Interestingly, the assize in 1260 was held in Limerick, and not Waterford, but the case was allowed to continue. Normally, cases had to be heard in the county where the disputed lands were located. Cf. RC 7/1, pp 291-2. Michael de Renneville had been an itinerant justice in 1247, thirteen years before this case: *CCD*, no. 57.

Robert was probably a relative of Henry son of Nigel de Argentine, who had made Murkot vicar of Glasmor sometime during the reign of Henry III.²³⁶ Robert and Agnes warrantied Murkot, and then the former, for everyone (*L. qui de toto*), called Thomas bishop of Lismore to warranty. Richard Wade sued William son of John Fyn [*G. Ó Fionn?*] for 22s. rent in Kilkenny in the liberty court. William called his father, John Fyn, to warranty, but the seneschal of Kilkenny did not (or would not) summon John Fyn to the liberty court because John did not hold any lands in Kilkenny which could be distrained to force his appearance. The Dublin Bench became involved in the case and sent a writ of *monstravit* to the seneschal of Kilkenny to forward the record of the entire proceedings so that the ‘king’ could be informed of the case.²³⁷

Attorneys, bailiffs, and others

Positions of power in the courts (e.g. attorneys, *narratores*) were still developing in thirteenth-century England, and were even more novel in English Ireland.²³⁸ In England the Common Bench created the term ‘general attorney’ for a professional and ‘common attorney’ for a non-professional.²³⁹ In English Ireland there were only a handful of ‘general attorneys’ and the term ‘common attorney’ does not appear to have been used.²⁴⁰ So it is likely that all of the other attorneys were ‘common attorneys’. The phrase from English Ireland resembles the process in England where a litigant was required to appear in person before a court official and name his/her attorney, the type of case, and the defendant.²⁴¹ The same writ could be listed several times in a roll as the defendants were allowed to miss the court date a particular number of times, depending on the type of writ, before they defaulted (unless it was an assize of novel disseisin).

In English Ireland an attorney would have spoken the language of the courts and had experience in English customs and the ‘common law’. Gaelic people in the royal courts in general clearly were acculturated members of the English society in high medieval

²³⁶ NAI, RC 7/10, pp 51-3 [*Muruhoth Ocustian*].

²³⁷ NAI, RC 7/11, p. 119. The king was probably only named to match the usual wording of the writ of *monstravit*. The case was probably sent to the Dublin Bench for judgment and not to Edward I. William’s father, John Fyn, was chief sergeant of co. Tipperary: *infra*, p. 70.

²³⁸ Paul Brand, *The origins of the English legal profession* (London, 1992), pp 33-69; *idem*, ‘The early history of the legal profession of the lordship of Ireland, 1250-1350’ in Daire Hogan and W.N. Osborough (eds), *Brehons, serjeants and attorneys: studies in the history of the Irish legal profession* (Dublin, 1990), pp 15-50, repr. in *Making of the common law*, pp 21-56.

²³⁹ Brand, *Origins*, pp 86-7.

²⁴⁰ Richard de Burgh had a ‘general attorney’, Robert son of David, in 1304: NAI, RC 7/11, pp 109-10.

²⁴¹ Brand, *Origins*, p. 89.

Ireland. There were also some Gaelic attorneys. Unfree people would have been denied access to the courts ipso facto and completely unable to represent a free, English person in court. In one writ of entry an essoin was filed by Bricius Ocohelan [G. *Breac Ó Cochláin?*] as the attorney for Leliath.²⁴² Richard Bricius Ocohelan (Bricius's son?) was a pledge to pay the amercement for novel disseisin committed by Richard son of Gilbert and Reginald Ofydehan [G. *Ó Fionnmhacáin?*]. Interestingly, Richard son of Gilbert and Reginald were pardoned the amercement because they were poor (L. *condonur qui pauper*).²⁴³ Bricius's essoin is the earliest (surviving) record of a Gaelic attorney in English Ireland, but not the only one. Richard Ooreduc [G. *Ó Ruairc?*] named John Shert Thec [G. *Sert Tech?*] in a writ of entry against Robert son of Philip.²⁴⁴ In 1285 Emmeline the widow of Hugh de Aston sent Hugh Oglawth and Adam Oglauth [G. *Mac an Ógladigh?*] as her attorneys to the Dublin Bench, and they were received by the Bench after confirmation of their suitability from Edward I.²⁴⁵ Adam Oglagh had been one of Richard de Burgh's attorneys in 1282, which may mean that the confirmation in 1285 was related to Emmeline and not the Gaels.²⁴⁶ In 1307 Ralph Faukot named John Scolog [G. *Ó Scolóig?*] as one of his attorneys in the justiciar's court.²⁴⁷ Henry O'Keley [G. *Ó Cadhla?*] was the attorney for Henry son of Robert against Elena Gregori and for the prior of Athassel against 'various persons of the name Leynath' in 1316.²⁴⁸

One case shows a peculiar aspect of English law. Philip de Kerdif and Matilda, his wife, sued Patrick Ondekron [G. *Ó hAnracháin?*] for one-third of a house, forty acres of arable, and 3s. 4d. rent in Lathbalyarti, co. Connacht. Philip and Matilda had separate attorneys and essoined themselves in this case. Philip was essoined by John Ondekron and

²⁴² NAI, RC 7/1, p. 130. A writ of entry was similar to an assize of novel disseisin, but the plaintiff did not have to claim to have been in possession of the lands. This writ was for instances which did not meet the requirements to use either the assize of novel disseisin or mort d'ancestor. Assizes were quick (as the defendant could not essoin himself/herself), but the writ of entry could take years to be heard by the royal courts (because the defendant could essoin himself/herself up to three times).

²⁴³ NAI, RC 7/1, p. 167. Cf. many Gaels were allowed to pledge for the appearance or good behaviour of criminals: Chapter Four, *infra*, pp 233-5.

²⁴⁴ NAI, RC 7/1, p. 134.

²⁴⁵ *CDI*, 1285-92, no. 62. Several Meic an Ógladigh appear as free people in English Ireland. John Oglath was a defendant, who won the case, in an assize of novel disseisin from le Combe, co. Dublin: NAI, RC 7/7, p. 204. Simon son of Adam Oglath granted 12d. rent to Patrick son of John de Herford, which Patrick owed to Simon: *Cal. Ormond deeds, 1172-1350*, no. 341. This may have been the same Simon Oglagh who held a house with curtilage and 4½ acres from the countess of Gloucester at Dunmor, and from whom Alan de Rudere held his house: *HMINAUK*, p. 254. And Philip Ogelath was on the Dublin guild merchant roll: *DGMR*, p. 72; Table 1, *supra*, pp 40-1.

²⁴⁶ *CDI*, 1252-84, no. 1933. This Adam Oglagh also appears to be the same man who was sued by Gillekeyvin Okelly for lands in co. Dublin: *infra*, pp 76-7.

²⁴⁷ *CJRI*, 1305-7, pp 375-6.

²⁴⁸ *CCD*, no. 547.

Matilda was essoined by William Freisel. John and Patrick Ondekron may have been related, but this was not the unusual part of the record. The peculiarity is that Philip and Matilda were also suing John Ondekron for a third of a house, forty acres, and 3s. 4d. rent in Lathbalyarti.²⁴⁹ John was the attorney for the plaintiffs and a defendant at the same time!

David Oherethan [G. *Ó hEarainrín?*] was free and well-known in the royal courts. During the same session at Kerry he brought a case of dower against Tenan (or Fenan?), widow of Henry Goch, and was called to warranty by Philip Brun, Margery the widow of Gilbert Brun, and Gubenot [G. *Goibniu?*] son of John Goch (the defendants in the dower case brought by Sarra, widow of Henry Goch).²⁵⁰ In the Dublin Bench in 1280 Edmund son of Henry de Roche sued Anna, the widow of John de Cogan, with a writ of dower. Edmund's court representative was John Obut [G. *Ó Buidhe?*].²⁵¹ Philip Odrey [G. *Ó Draoi?*] represented Henry Hog in a writ of *quare vi et armis* in the same Dublin Bench session.²⁵² English people would not have sent an unfree person as their attorney or court representative (bailiff) because their writ would have failed and then they would have been amerced. So, while we cannot tell if John Obut or Philip Odrey were trained as 'general' attorneys, we can say that they were free and allowed to participate in the royal courts.

One remarkable case shows us an even more surprising state of affairs. There was at least one Gaelic *narrator*. *Narratores* were professionals attached to the courts, familiar with the intricacies of pleading, they spoke the actual wording of the count and pleas for the parties, and could amass large sums for representing several wealthy clients. In 1305 we find Joshua son of Walter son of Andrew admitting in the itinerant court that he was bound to pay 100s. sterling to William Sully [G. *Ó Súilig?*], his *narrator*, for services rendered in court.²⁵³ If Joshua did not make the scheduled payments to Sully, the 'sheriff' (viscount) of Tipperary was to distrain the former to pay the latter. This William may be the same man who appeared in the justiciar's court around the same time. The latter William Sully was also called 'William de Suylly'.²⁵⁴ Several records indicate that Gaels adopted the practice of toponymics, and some possibly acculturated Gaels translated their names from 'Ó' to 'de'.²⁵⁵ There was a John de Suylly/de Silly, who was a coroner in

²⁴⁹ NAI, RC 7/7, p. 210.

²⁵⁰ NAI, RC 7/1, pp 135, 156-7.

²⁵¹ NAI, RC 7/2, p. 5.

²⁵² NAI, RC 7/2, p. 6. *Quare vi et armis* claimed that the defendant had committed an extra offence of stealing property by violent force with armed companions.

²⁵³ NAI, JUS 33-4 Ed I, f. 84r.

²⁵⁴ *CJRI*, 1305-7, pp 69, 78-9, 111, 151, 236, 475, 476, 483, 501.

²⁵⁵ Cf. Master Gilbert Omeledy/de Moyledey: Chapter Five, *infra*, p. 265.

Limerick, but his origins are less certain.²⁵⁶

English lords also hired Gaelic bailiffs for their manors. The court records contain actions resulting from the former bailiff's refusal or failure to return their *compotus* (account) after their term as bailiff had ended. These *compoti* contained the rents and fines collected for the manor, and any expenses paid out during the term as bailiff. Many of these bailiffs are named in Table 3.

Table 3: Gaelic manorial bailiffs

Year	Manor	Gaelic bailiff	Lord	Citation
1257x63	Archbishopric of Dublin ('sergeant of the country')	Elias O'Toole [G. <i>Ó Tuathail</i>]	Fulk de Sandford	CAAR, pp 110-11
1260	Tacmelyn (St. Mullins, Carlow)	Geoffrey Omaccus [G. <i>Ó Mac Cais?</i>]	William son of John son of David Abbeyneda	<i>Cal. Ormond Deeds, 1172-1350</i> , no. 130
1261	N/A	Neil [G. <i>Niall</i>]	Griffin le Brun	Curtis, 'Sheriffs' accounts, Dungarvan', p 6.
1295	Corkenoyd (Corcomohide), co. Limerick	Condoly Mackyngnery [G. <i>Condálach Mac an Airrí?</i>]	Emmeline de Longespée	NAI, RC 7/3, p. 357
before 1298	Lemkillecan/Lemgillothan, co. Cork	Neyvinus Odonagh [G. <i>Neamhain Ó Donnchadha</i>]	Thomas son of Philip	NAI, RC 7/5, p. 18
before 1298	Lemkillecan/Lemgillothan, co. Cork	Molok Omolkyny [G. <i>Maológ Ó Maoil Chaoine?</i>]	Thomas son of Philip	NAI, RC 7/5, pp 18, 66, 120, 193, 244, 298, 344, 345
before 1298	Balytannyth	Donenold Ohanly [G. <i>Domhnall Ó hÁinlighe?</i>]	Eustace le Poher	NAI, RC 7/5, pp 282, 294, 328, 342-3
1300	Athilmigh/Achmagh', co. Connacht	Murug Macrachnyld Macgillekenan [G. <i>Murchadh mac Raghnaill Mac Giolla Fhionnáin?</i>]	Eustace le Poher	NAI, RC 7/7, pp 187, 261
1301	Dunhill, co. Waterford	William O'Godan [G. <i>Ó Gaoithín?</i>]	Peter de Estaneye	NAI, RC 7/8, p. 117
1301	Dunhill, co. Waterford	William Ogodan [G. <i>Ó Gaoithín?</i>]	Eustace le Poer	NAI, RC 7/8, pp 117-18
1302-3	Mayngnoth (Maynooth), lib. Kildare	Thomas Donwuth [G. <i>Ó Donnchadha?</i>]	Emmeline de Longespée	NAI, RC 8/2, p. 221
c.1305	Earl of Ulster's lands in Tipperary ('sergeant of the earl')	Dofnold Okurk [G. <i>Domhnall Ó Cuirc</i>]	Richard de Burgh	NAI, JUS 33-4 Ed I, f. 69r

²⁵⁶ *CJRI*, 1305-7, pp 437, 518.

1305-6	All of Otto de Grandison's manors in co. Tipperary and 'Kylfylan' (Kilflyn, Limerick?)	William Faylagh [G. <i>Ó Failghe?</i>]	Otto de Grandison	NAI, RC 7/11, pp 80-1
before 1309	Derner (Darver), co. Louth	John Omighan [G. <i>Ó Miadhacháin?</i>]	Richard de Exeter	NAI, RC 7/13/2/3, p. 17
c.1309	Taghkilyn, co. Dublin	William Ocrounch [G. <i>Ó Cranait?</i>]	John de Coventre	NAI, RC 7/13/2/3, p. 34
1313	Inchacullyn, co. Cork	Robert Obrassyll [G. <i>Ó Breassail</i>]	Gilbert le Walys	NAI, KB 2/4, f. 518r
1317	Glanmannath, co. Cork	Michael Ocargan [G. <i>Ó Corragáin?</i>]	Michael de Coneton' [Cauntetoun?]	NAI, RC 7/12, p. 299
1317	Athcrosse, co. Cork	David Ocoscran [G. <i>Ó Coscraigh?</i>]	Michael de Coneton' [Cauntetoun?]	NAI, RC 7/12, p. 299
1340	Jordanstown	John Obothy [G. <i>Ó Buadhaigh?</i>]	Roger son of Gilbert	<i>Cal. Ormond Deeds, 1172-1350</i> , no. 740

There were other types of personal administrators for lords than bailiffs, and Gaels filled these positions, as well. Maurice O'Lorcan [G. *Ó Lorcáin*] was the keeper of the woods of Fennagh, lib. Carlow, for Roger Bigod. The former was paid 6*d.* per week, and then received an additional 6*d.* per week (total of 1*s.* per week).²⁵⁷ William Ogloerne [G. *Ó Gloiarn?*] was the receiver of Geoffrey Coterel in the liberty of Kilkenny when Walter de le Haye was escheator of Ireland (1285-1308).²⁵⁸ The surviving record is damaged and so we cannot tell the full extent of Ogloerne's position, but he was a type of financial bailiff for Coterel. Aymer de Valence's bailiffs at Odoogh, lib. Kilkenny, were Gilbert Omalegan [G. *Ó Maoil Áeducáin?*], sergeant of the town of Odoogh, and Maurice Odougyn [G. *Ó Dubhagáin?*], 'foreign sergeant' (sergeant of lands outside the town).²⁵⁹ Henry McMalynan [G. *Mac Maoilfhinnéin?*] was the sergeant of Nicholas de Wynleye. Nicholas sent McMalynan to the prioress of Lismullin's mill at Kylmartre to collect the former's wheat, but Walter Schylbras forestalled McMalynan and stole (L. *cepit*) de Wynleye's wheat.²⁶⁰ Luke de Rothe, cleric, and Nicholas Ohoiedan [G. *Ó hEidhin?*] were the receivers of the

²⁵⁷ James Mills, 'Accounts of the earl of Norfolk's estates in Ireland, 1279-1294' in *JRSAI*, 5th ser., ii, no. 1 (1892), pp 50-62 at 55; Hore (ed.), *History of Old and New Ross*, p. 143, n. 4.

²⁵⁸ Craig, 'Memoranda Roll', ii, no. c2218; *Admin. of Ireland*, p. 126. Receivers were financial bailiffs hired for a set term: Paul Brand, 'Merchants and their use of the action of account in thirteenth- and early fourteenth-century England' in Martin Allen and Matthew Davies (eds), *Medieval merchants and money: essays in honour of James L. Bolton* (London, 2016), pp 293-303. Many thanks to Professor Brand for his comments on this.

²⁵⁹ *IEMI*, no. 234.

²⁶⁰ NAI, RC 7/10, p. 377.

Hospital of St John in Jerusalem in Ireland. Brother Richard de Kyxeby, the prior, charged the two receivers, along with Trynotum Okathelan [G. *Tighearnach Ó Cathalain?*], with not returning their records from their time as receivers of the Hospital in co. Connacht and in the bishopric of Clonfert.²⁶¹ There was no explanation why Trynotum Okathelan was named along with Luke and Ohoiedan since the former was not a receiver. Molmurth' Othel [G. *Maolmórda Ó Tuathail*] was the constable of 'Tanelagh' (Tallaght?) in 1325-6. The Dublin exchequer ordered that Molmurth' be paid £7 4s. by the receivers from the manor of Swords for Molmurth''s fee for 20 January 1325/6 until 29 September 1326.²⁶²

Robin Frame argued that Gaelic men did not hold positions of power in the English administration in Ireland.²⁶³ Nevertheless, there are many records which show that Gaelic men could and did hold administrative positions in English Ireland. In 1242-3 the 'sheriff' (viscount) of Dublin was Simon Muridac [G. *Ó Muireadaigh?*].²⁶⁴ In 1245 the same Simon, it seems, was constable of Dublin Castle and had custody of the county of Dublin.²⁶⁵ In 1258 Peter Abraham [G. *Mac an Bhreitheamhan?*], mayor of Dublin, witnessed a charter by a Gaelic widow, who had a Gaelic former husband.²⁶⁶ Gilbert Abraham (or Master Gilbert MacAbraham) was a cleric from the bishopric of Cloyne with a university education, who was granted access to the royal courts in 1287.²⁶⁷ So, it is possible that Peter Abraham was the first Gaelic mayor of Dublin under English rule, or that he dropped the 'filius' from his name [Peter son of Abraham?]. In January 1289/90 Robert de Bree was already provost of Dublin six months before he received a grant of access to the royal courts.²⁶⁸ From 1279 to 1281 Hugh de Kent was the collector of the new

²⁶¹ NAI, RC 7/10, p. 566. We should note that the Latin was 'de Rothe' and not 'de Rupe'.

²⁶² NAI, RC 8/14, p. 842. Professor Frame mentioned 'Malmorth O'Toole [sic]' but then said that Molmurth' was castellan of a castle in Tallaght. The record does not state this. Frame also miscited it as 'RC 8/15, pp 215-16, 842': R. F. Frame, 'War and peace in the medieval lordship of Ireland' in J. F. Lydon (ed.), *The English in medieval Ireland* (Dublin, 1984), pp 118-41 at 128.

²⁶³ *Supra*, p. 8.

²⁶⁴ PRO, C 66/277/2 (transcribed in M. P. Sheehy, 'Unpublished medieval *notitiae* and *epistolae*' in *Collectanea Hibernica*, no. 6/7 (1963-4), pp 7-17 at 9).

²⁶⁵ *CDI, 1171-1251*, no. 2792; *CPR, 1232-47*, p. 467; Áine Foley, 'The sheriff of Dublin in the fourteenth century' in Seán Duffy (ed.), *Medieval Dublin XII: proceedings of the friends of medieval Dublin symposium 2010* (Dublin, 2012), pp 264-88 at 268, 279. Professor Seán Duffy postulated that Simon may have been a very-Gaelicised Ostman, but I will cautiously identify Muridac as Gaelic until further evidence surfaces. Many thanks to Seán Duffy for his comments on this record.

²⁶⁶ *CCD*, no. 88. Abraham was also the 'sheriff' (viscount) of Dublin: J. T. Gilbert (ed.), *Calendar of ancient records of Dublin in the possession of the municipal corporation of that city* (18 vols, Dublin, 1889-1922), i, 101. For Gaelic widows and English law, see Chapter Two, *infra*, pp 121-7.

²⁶⁷ *Pipe roll of Cloyne*, p. 242; 36th *RDKPRI*, p. 34; *CJRI, 1295-1303*, pp 94, 245-6. For more on Master Gilbert, see Chapter Five, *infra*, pp 260-1.

²⁶⁸ *CDI, 1285-92*, no. 598, p. 299; *CPR, 1281-92*, p. 380.

custom for the town of Galway, and identified as a burges and merchant of the town.²⁶⁹ On 25 March 1297 Hugh de Kent of Galway, *Hibernicus*, received a grant of access to the courts almost twenty years after working for the king.²⁷⁰ In 1301 the sheriff of Uriel (Louth) was Roger Roth [G. *Ruad?*].²⁷¹ ‘Roth’ was the Latin rendering of the Gaelic name *Ruad* in the court records, not to be confused with *de Rupe* (de Roche).²⁷²

There were a few Gaelic provosts of towns and sergeants of counties. Around 1260 Robert Mackanefy [G. *Mac Anmchaid*] was provost (L. *prepositus*) of Drogheda.²⁷³ In 1285-6 Donwch OHony [G. *Donnchadh Ó hUainidhe?*] was provost of the burgh of Old Ross, lib. Wexford, and Bricius the clerk [G. *Breac?*] was provost of the manor of Old Ross in 1286-7.²⁷⁴ In 1300 Richard Heyne [G. *Ó hEidhin?*] was one of the two bailiffs of the city of Cork.²⁷⁵ William Donneys [G. *Ó Donnchadha?*] was a ‘king’s sergeant’ in Wexford.²⁷⁶ The provost of Maynan, co. Kildare, was Crahyn McClyn/Maclyn [G. *Criomthann Mac Fhlainn?*] in the early fourteenth century.²⁷⁷ In 1302 John Okorkeran [G. *Ó Corcráin?*] was the sergeant of the cantred of Muscridonegan, co. Cork. He was responsible for bringing the jury of local free men to the justiciar’s court to determine guilt in pleas of the crown.²⁷⁸ In 1305, and probably before then, Philip Dufelath [G. *Ó Dublaoich?*] was responsible for summoning men to Dublin for juries from co. Tipperary. He also distrained people (individuals and the town of Cahir) to appear in various courts.²⁷⁹ He was later called a sergeant when it was recorded that he summoned men to be on inquisitions in Dublin.²⁸⁰ John Fyn/Fynne [G. *Ó Fionn?*] was the chief sergeant of co. Tipperary in the early fourteenth century. He answered for forfeited chattels,²⁸¹ was charged with trespasses while conducting his official duties,²⁸² and made deals and charters

²⁶⁹ 36th *RDKPRI*, pp 54, 73; *CDI, 1252-84*, p. 419; *CDI, 1285-1292*, no. 1; *CDI, 1302-7*, no. 692.

²⁷⁰ *CDI, 1293-1301*, no. 19. If this was Hugh de Kent’s son of the same name, then that would bring up many questions.

²⁷¹ *HMINAUK*, pp 66, 72, 76, 80, 85, 95, 106, 118, 120.

²⁷² E.g. Gillice Roth Orailly [G. *Giolla Íosa Ruad Ó Raghailigh*]; *NAI, RC 7/5*, p. 449; Donaldum Roth Macarthy [G. *Domhnall Ruad Mac Carthaig*]; *RC 7/9*, pp 119-20; Tathyg Roth [G. *Tadhg Ruad*]; *RC 7/13/3*, pp 122-3.

²⁷³ *Register St John, Dublin*, no. 241.

²⁷⁴ Hore (ed.), *History of Old and New Ross*, pp 153, 156-7.

²⁷⁵ *NAI, RC 7/8*, p. 51. Cf. Stephen Brendan was slain by the citizens of Cork: Chapter Four, *infra*, pp 186-7.

²⁷⁶ Hore (ed.), *History of Old and New Ross*, p. 165.

²⁷⁷ *NAI, RC 8/2*, pp 382, 462-3. These records are from 31-5 Edward I (1302-7).

²⁷⁸ *NAI, RC 7/8*, p. 48.

²⁷⁹ *NAI, JUS 33-4 Ed I*, f. 78r. He was probably the same man who mainprised Richard son of Richard: *supra*, p. 59.

²⁸⁰ *NAI, JUS 33-4 Ed I*, f. 56r [*Philip Dofnelach*].

²⁸¹ *CJRI, 1308-14*, p. 325.

²⁸² *NAI, RC 7/11*, pp 78-9. He is also mentioned in cases of felons escaping: *JUS 33-4 Ed I*, f. 102r.

with Englishmen.²⁸³ Robert Falyagh [G. *Ó Faolchaidh?*] was a ‘sergeant of the king’ in co. Tipperary around the same time as John Fyn.²⁸⁴ John Murgwygh [G. *Ó Murchadha?*] was the sergeant of the liberty of Kilkenny.²⁸⁵ Alexander Donethe [G. *Ó Dúnadhaigh?*] was a collector of the subsidy for the king in ‘county Meath in the part of Kells’.²⁸⁶ And Roger Omolton [G. *Ó Maoil Cuáin?*] was appointed to observe and inspect for false money in the market town of Corkbeg.²⁸⁷

There are also a few Gaelic men listed along with a ‘sheriff’ (viscount) or seneschal in cases of *replegari*, which was a writ to recover chattels taken by an administrator (or a lord) to entice a defendant to appear in court. These cases indicate that *vicecomites* and seneschals hired Gaelic men to serve as their deputies as part of their royal or franchisal retinue. In 1295 the master of the Knights Templar in Ireland brought a case of *quare averia sua ceperunt* (why have they taken his goods) against William de Valence, lord of Wexford, Gilbert Sotton, the seneschal, and James Omattus [G. *Ó Mac Cais?* or *Ó Maccus?*].²⁸⁸ The defendants appeared and swore that the master had died, and so they were given a *sine die*. The next year John son of John son of Henry, seneschal of Wexford, William Nivel, Maurice de Cauntetoun, another seneschal of Wexford, and Daniel Omathus [G. *Ó Máighiú?*] were sued by Gilbert de Sutton (probably the same man who was seneschal the year before) for *detencionis averiorum*.²⁸⁹ In 1302 James Omaccus [G. *Ó Maccus?*] – probably the same man from Wexford – was fined for seizing the goods of a man with no freehold in Dublin. He was gaoled, but released for promising to pay his fine of 40s. The record also mentions that he was the sergeant of Dublin, and he summoned and distrained men to appear before lay and clerical ‘panels’.²⁹⁰ Cradok O Clery [G. *Ó Cléirigh?*] worked for the custos of Wexford in 1308, holding seized goods which were to be sold to recover debts. O Clery was not given a title in the court record, but he was charged with holding goods seized by the custos indicating that the former probably was a liberty bailiff.²⁹¹ Lorcan Osefte [G. *Lorcán Ó Séaghdha?*] was one of five men who were given custody of a robber from co. Waterford in 1316. They were not given titles by the

²⁸³ NAI, RC 7/12, pp 192-3. He was called to warranty by his son: *supra*, pp 63-4.

²⁸⁴ *CJRI, 1308-14*, pp 121-2.

²⁸⁵ NAI, RC 7/12, p. 5.

²⁸⁶ NAI, RC 8/2, pp 352-3, 383 (copy). For more on Alexander Donethe, see Chapter Four, *infra*, p. 229.

²⁸⁷ *CJRI, 1295-1303*, p. 265.

²⁸⁸ NAI, RC 7/3, p. 355.

²⁸⁹ NAI, RC 7/3, pp 316-17. Gilbert de Sutton was also an assigned justice (itinerant justice appointed to hear only certain pleas) and ‘sheriff’ of Kildare in 1297: *CJRI, 1295-1303*, p. 175.

²⁹⁰ *CJRI, 1295-1303*, p. 394.

²⁹¹ *CJRI, 1308-14*, pp 18-19.

court. The record only mentions that the sheriff gave the robber to the chief sergeant of the county, who then delivered the robber to the five named men.²⁹² Osefte was probably a sub-sergeant of Waterford.

Douenald Ohaeleth [G. *Domhnall Ó hAmhalghaidh?*] accounted for the issues (rent, court revenue, etc.) from the royal manor of Okelly, co. Dublin, in 1252.²⁹³ In 1268 William Macaveny [G. *Mac Anmchaid?*], along with Robert de Donington, accounted for the borough of Drogheda on the side of Meath.²⁹⁴ In 1301-2 William Molroni [G. *Ó Maoil Ruanaidh?*] accounted for the former lands of Cristiana de Marisco at Killimen, co. Dublin.²⁹⁵ De Marisco had granted her Irish lands to the English crown, and so this probably means that Molroni was a royal bailiff or farmer. Molroni also accounted for the rent of the town of Killenien, co. Dublin.²⁹⁶ J' Omolkennis [G. *Ó Maoil Chináeith?*] rendered 25s. 4d. for three vills in co. Cork after they were amerced for the escape of Malim Moor Omolgrin [G. *Maolín Mór Ó Maolchróin?* or *Maoilriain?*].²⁹⁷ In 1291 John McCleran [G. *Mac Cléirchín?*] rendered the rent of Obrun, co. Dublin.²⁹⁸ John Otire/Othyr [G. *Ó Tíre?*] first appears in financial records in 1293. He accounted at the exchequer for the rent of Garuath, co. Dublin.²⁹⁹ Two years later he accounted for Balyhauley, Balyotir, Balycolgan, and Mondelu, co. Dublin.³⁰⁰ He also accounted for the entire manor of Balyhamund and rendered the rent from the *betagii* of Mundely.³⁰¹ In 1296 Otyre accounted for Balytir' (Balyotir?) and the issues from the woods of Glencree. In that year more Gaelic men accounted for lands in co. Dublin. Otire accounted for the woods of Glencree along with William MacGillmechalane [G. *Mac Giolla Mo Chalain?*].³⁰² Later in 1296 Richard Makyoghy [G. *Mac Eochadha?*] and Thomas Makedones [G. *Mac Aonghuis?*] accounted for Balycolgon, David MacKilcowil [G. *Mac Giolla Chomhghaill?*] accounted for rent of Monedelev, and John Othyr accounted for the woods of Glencree, perquisites of court of the woods, and rent of Baliothir.³⁰³ John Otyr was given a day in

²⁹² NAI, KB 2/8, f. 92r.

²⁹³ 35th RDKPRI, p. 43.

²⁹⁴ 35th RDKPRI, p. 50.

²⁹⁵ HMINAUK, p. 69. She had granted them to Edward I and Eleanor in 1280: Eric St John Brooks, 'The de Ridelesfords' in *JRSAI*, lxxxii, no. 1 (1952), pp 45-61 at 49; *IEMI*, nos 47-53.

²⁹⁶ HMINAUK, p. 84.

²⁹⁷ HMINAUK, p. 113.

²⁹⁸ CDI, 1285-92, p. 433.

²⁹⁹ CDI, 1293-1301, p. 13.

³⁰⁰ CDI, 1293-1301, pp 114-15.

³⁰¹ CDI, 1293-1301, p. 127.

³⁰² CDI, 1293-1301, pp 137, 139.

³⁰³ CDI, 1293-1301, p. 153.

1305 to be at the exchequer to submit his *comptus* and all collected money, but did not appear and was amerced.³⁰⁴ While most of these records did not give a title to the Gaelic administrators, they were probably called ‘bailiff of the king’ or ‘sergeant of the king’. These cases show that Gaelic men were admitted to hold official positions of power in the English administration, although there is no surviving record of a Gael as a baron of the exchequer.³⁰⁵ James Omaccus’s imprisonment was the standard procedure for any man (royal administrator or not) who illegally seized goods. We only know of most of these Gaelic administrators because of a court case or exchequer roll. Countless more existed without leaving a record.

Legal disseisins and land transfers

During the period studied (1252-1318) two large changes are noticeable in the court records: the invention – or possibly increase – of exclusion of some free Gaels (who had previously been accepted) from holding free lands, and subsequently, the invention of a series of various ethnic pleas (e.g. the ‘five lineages’ plea).³⁰⁶ These developments may have been related, but there is insufficient evidence to prove such a hypothesis. As noted above the oldest records are careful to note that unfree people were barred from suing in the royal courts (*est nativus/-a*). But at the end of the period studied, some parties in court complained that a plaintiff was simply Gaelic (*est Hibernicus/-a*).³⁰⁷ Without Yearbooks we cannot be absolutely sure that this development was not simply the result of court clerks (or RC clerks) leaving out the ‘*et nativus/-a*’ proviso of these pleas. If there was such an *exceptio* in civil cases, it did not end the exclusion of unfree people.³⁰⁸ *Nativi* were still barred from the royal courts in the fourteenth century, and were mentioned in

³⁰⁴ NAI, RC 8/2, p. 433.

³⁰⁵ ‘No [Gaelic man] would have had the faintest chance of such an office [i.e. baron of the exchequer in Ireland]’: Frame, ‘Ireland after 1169’, p. 121.

³⁰⁶ In the oldest recorded reference to the plea (1295), it was the ‘five lineages’ (*L. quinque progeniebus*). Later cases use ‘five bloods’ (*L. quinque sanguinibus*). This plea was used only three times in the surviving records (1295, 1298, and 1313) from the period studied, and I have included an additional, later case from 1332. The ‘five lineages’ plea has probably been given too much gravitas. It was not successful in any of these cases. It is examined in depth below because it was only used against women and one Welshman in the surviving records: Chapter Two, *infra*, pp 137-9; Chapter Three, *infra*, pp 163-4. For the full transcripts, see Appendix Two, *infra*, pp 300-2.

³⁰⁷ We should note that in no surviving case did the ethnic objection succeed. In some instances, the court ignored it and judged on the facts of the case, and in others, the plaintiff presented a charter of enfranchisement or turned out to be English: Hugh son of William and Benedict son of John de Drogheda, *infra*, p. 83-4; Dionisia widow of John de la Ryvere, Chapter Two, *infra*, p. 139.

³⁰⁸ See the Welsh betaghs: Chapter Three, *infra*, pp 166-7; and English *nativi*: Chapter Four, *infra*, p. 243.

inquisitions at least until the sixteenth century.³⁰⁹ The attempt to exclude free Gaels from the royal courts was different, and did not ‘reduce’ them to naifty. This effort to exclude the free Gaels probably led to the increase in purchases of grants of access to the courts, which ironically were not always useful.³¹⁰ We must remember that these grants of access were not manumissions. The king could not (or would not) free the unfree tenant of another lord.

Anti-Gaelic sentiment existed before 1290; it was not a recent invention. It only increased to the point that the royal courts considered denying access to some of the free and (formerly) accepted Gaels as a custom of English Ireland. We can see the legal custom’s origins in earlier records. In 1253 a Waterford jury reported to John son of Geoffrey, the justiciar, that seven Gaelic men holding in chief of Henry III should be legally disseised in order to place English tenants on the same lands. The jury believed that the Gaelic men’s rent was too low, and that English tenants would be to the benefit of the English king.³¹¹ They were Coremoc Maccrane [G. *Cormac Mac Bhroin?*], Kervel Okelechin [G. *Cearbhall Ó Céileacháin?*], Oreglehan [G. *Ó Roileacháin?*], Oculan [G. *Ó Cuilinn?*], Morchod Makermikan/Mackmegan [G. *Murchadh Mac Cormacáin?*], John Makermikan, and Cormoc Obrik [G. *Cormac Ó Bric*]. Some, but not all, of the Gaelic men were subsequently disseised; the rest paid higher rents.³¹² Their loss of the lands held in chief does not mean that they became *nativi* or that they were denied access to the royal courts. In 1280, men with the same ‘surnames’ appear to have been free and accepted in co. Waterford. A Maurice McKermegan [G. *Mac Cormacáin?*] was one of two men accounting for the mill of Dungarvan, and accounted by himself for the rent from Decies, but this does not tell us whether he held lands in fee in chief. In the same exchequer roll we find that John Brike [G. *Ó Bric*] and Richard O’Kelekan [G. *Ó Céileacháin?*] apparently could use the royal courts.³¹³ Also in 1253 Henry III sent a letter to the same justiciar (John son of Geoffrey) ordering an investigation of claims made in a petition to the king. Malmorth' Offorthiern' [G. *Maolmórda Ó Foirtcheirn?*] and Rothericus his brother [G. *Ruaidhrí or Robhartach?*] claimed that they and their ancestors had always been faithful and serving to the English crown since its acquisition of Ireland (L. *ad fidem et servicium nostrum et predecessorum nostrorum regum Anglie ad conquestum*). They also claimed

³⁰⁹ Otway-Ruthven, ‘Native Irish’, p. 147.

³¹⁰ See Maurice de Bree: Chapter Five, *infra*, pp 252-3; and Ost-people: Chapter Three, *infra*, pp 148-54.

³¹¹ *IEMI*, no. 13; *CDI*, 1252-84, no. 135 (Dryburgh and Smith noted some mistakes by Sweetman).

³¹² ‘Morechod Makymegan £7 15s. 0d. of the old increase, and 40d. of the new increase... lands formerly contained with the lands of Richard Makymegan’: Curtis, ‘Sheriffs’ accounts, Dungarvan’, p. 2.

³¹³ *CDI*, 1252-84, pp 360-1.

that they were being prohibited from selling their lands as the English in Ireland were allowed to do. Henry III ordered that if the brothers' claims were true, to allow them to sell their lands and other things.³¹⁴ Some historians have taken this letter to the justiciar as definitive proof that no Gael was free, that none had access to the royal courts, or could even sell his/her lands in English Ireland.³¹⁵ But we have already seen that this was not so, and that free Gaels sold their lands and chattels.³¹⁶ We can, however, learn much from this letter. There are many later references to free and accepted Gaels as 'faithful Gaels' or 'Gaels at peace', and that these Gaels could use the courts and were afforded the associated protections.³¹⁷ Perhaps those were the original stipulations to the free Gaels remaining on their lands in the new English Ireland (c.1171).

After the period studied, a statute (or ordinance as it was called), supposedly drafted at a Westminster parliament was sent to Ireland in 1331. One of the articles of this statute has been called '*una et eadem lex*' because that is the opening line of the article.³¹⁸ Its relevance here is that after it was enacted it was cited by a plaintiff and a defendant in regards to a 'bill' (L. *querela*: oral complaint instead of a chancery writ), and this pleading also reveals an aspect of legal acceptance. Walter Ultagh sued Thomas de Penkester for 10s. of silver, and the latter replied he would not respond *quia est Hibernicus*. Ultagh counterpleaded that in a parliament it had been decreed that *omnes Hibernici ad pacem regis existentes respondetur ad commune legem &c et dicit quod ipse ad pacem domini regis* ('all Hibernici at peace are to be responded to in court, and he was at peace').³¹⁹ De Penkester responded that the contract for the 10s. had been made before the summoning of that parliament, but the court agreed with Ultagh and granted him the 10s. and damages. Ultagh then declined to accept the damages. Ultagh's claim, and the court's acceptance of it, may explicate how so many Gaels without grants of access were allowed to use the royal courts. The phrase 'at peace' (L. *ubi fuit in pace domini regis*) was usually required in civil trespass and criminal pleading.³²⁰

³¹⁴ CCR, 1251-3, pp 458-9.

³¹⁵ Otway-Ruthven, 'Native Irish', p. 149; Hand, *English law*, p. 207. Professor Hand misrepresented this letter as 'proof' that Gaels could not plead in court, but this letter was not in relation to any court case.

³¹⁶ For free Gaels selling their free lands, see *infra*, pp 85, 87.

³¹⁷ For example, Walter Ultagh, *infra*, p. 75; the Meic Mhurchadha: Chapter Four, *infra*, pp 180-2.

³¹⁸ *Statutes, John-Henry V*, pp 324-5.

³¹⁹ NAI, M 2542, p. 204. This record is one of William Betham's notebooks. It does not give us the entire record, the date, or the specific court. It even switches from Latin to English in the middle of the record. But it may be reliable. Cf. the Cotton manuscript is highly dubious: *infra*, n. 321, 323.

³²⁰ For trespass cases, see Pollock & Maitland, *History of English law*, ii, 462-8; Alan Harding (ed.), *The roll of the Shropshire Eyre of 1256* (SS, xcvi, London, 1980), pp lxi-lxxiv. For criminal cases, see Chapter Four, *infra*, p. 183, n. 21.

The other development was the advent of the ‘five lineages/bloods’ plea. This plea in court claimed that five Gaelic families were specifically enfranchised, and that every other Gaelic person was to be denied access to the royal courts. From the surviving court records we do not know who these supposed five lineages were. But an early seventeenth-century record claims them to have been the Uí Néill of Ultonia, Uí Maoilsheachlainn of Meath, Uí Chonchobhair of Connacht, Uí Bhriain of Thomond, and Meic Mhurchadha of Leinster.³²¹ This record cites the ‘Archives of Dublin Castle’ as its source, and claims that the grant was in 1218. Professor Otway-Ruthven noted that this supposed grant did not match the contemporary political reality of Gaelic society in 1218.³²² Matthew Paris’s comment – which has been used to ‘confirm’ the five lineages grant – was regarding 1171 and Henry II’s trip to Ireland. Otway-Ruthven rightly pointed out that the modern source claims it was Henry III, and not Henry II, who granted access to the ‘five bloods’. This same modern source later claims it was Edward II, and not Henry III, who granted access to the ‘five lineages’ in 1309x10, which was fourteen years after the oldest surviving mention of the phrase in court.³²³ More importantly for this study the ‘five lineages’ plea was never cited by the royal courts, as this chapter has demonstrated, and was rarely used by a defendant. Several of the named ‘lineages’ had to purchase grants of access to the courts. Some Uí Néill were treated as unfree and others had to purchase access to the royal courts after the invention of the ‘five lineages/bloods’ plea.³²⁴ And as we learned above, more free and accepted Gaels were not members of the ‘five bloods’ than were. Several historians have noted that the Uí Thuathail and Uí Bhroin were accepted as free people.³²⁵

Moving from legal theory and legislation to substantive law, it is not difficult to detect growing discrimination against Gaels in the court records. In 1269 Gillekeyvin Okelly [G. *Giolla Chaoimhín Ó Ceallaigh*] sued several people to recover the vill of Okelly. William Jordan and Alicia, his wife, claimed that they held fifteen acres in Okelly

³²¹ British Library, Cotton MS Titus B XI, pt 1, f. 70r.

³²² Otway-Ruthven, ‘Native Irish’ pp 144-5.

³²³ British Library, Cotton MS Titus B XI, pt 2, f. 106v. It has the exact same problems as Professor Otway-Ruthven noted for the supposed earlier grant (with the additional problems that it conflicts with the earlier entry and defendants were already using the ‘five lineages’ plea in 1295 at the latest), and no mention of such a grant (from 1218 or 1309) survives in any other source (e.g. the Patent Rolls or Dublin City Archives).

³²⁴ In 1293 Richard and Walter Neel [G. *Ó Néill*] and in 1305 Richard and Piers Neel [G. *Ó Néill*], both were brothers, so they were almost certainly different Richards: *CDI, 1293-1301*, no. 19 (16 June 1293); *PROME*, ii, 341; *PRO, SC 8/258/12875*; *ibid.*, C 66/125, m. 11 (28 Feb. 1305). For one seemingly-unfree Ó Néill, see William Oneyll, *Hibernicus* of Otto de Grandison: Chapter Four, *infra*, p. 207.

³²⁵ Nicholls, ‘Anglo-French Ireland’, pp 373-4, 375-6, 382-3; O’Byrne, *War, politics, and the Irish*, pp 20, 25-7, 30-1. Cf. Professors Hand and Frame thought the Uí Thuathail were only accepted because of a charter from William Marshal: Hand, *English law*, p. 206; Frame, ‘Ireland after 1169’, pp 123-4.

as Alicia's dower.³²⁶ Gillekevin also sued William son of Donethoth for forty acres in Okelly, but no pleas or judgment were recorded.³²⁷ Adam Oglah [*G. Mac an Ógladigh?*] and Isolde, his wife, called the prior of the Hospital of St. Mary (Magdalen) of Duleek to warranty against Gillekeyvin's claims, but the essoin does not list the extent of the lands in question.³²⁸ This last case is interesting because the priors of St Mary, Duleek appear to have reduced some of the Uí Cheallaigh of Meath to unfree status in the mid-fourteenth century. Adam son of Robert Oglath (possibly the same man) sued Alexander Barbedor and Isolda, his wife, to warranty Oglath's claim to one house and thirty acres in Lothir (Lougher, Duleek, Meath?). The parties came to court and paid half a mark for a licence to concord.³²⁹ But the details of the agreement have not survived. In 1280 Donenald Okelli [*G. Domhnall*] sued to recover thirty acres from Alexander Barbedor and fifty-five acres from Alicia de Kerry in Lenure (Lougher?), which the former claimed his grandfather Muriartach [*G. Muircheartach*] Okelli had possessed.³³⁰ A viewing by recognitors was ordered and the parties were given 31 July to be back in Dublin to continue the case. Donenald also sued Walter le Jeofne de Dufleyt and Alicia, his wife, for fifty-five acres and Alicia de Kerry for fifty acres in Lonure of which Donenald's grandfather had died in seisin. Walter and Alicia de Kerry said they would not respond to the writ without Alexander 'Warbedon' [Barbedor?] and Isolda, his wife, named in the writ because the latter couple were coparceners.³³¹ This record is undated, so we cannot tell whether this case was before or after the previous one, but they were both in the Dublin Bench in 1280.

There are numerous surviving cases involving a party called 'William Okelly'. We cannot be certain if all of these cases concern the same man, though. The cases span over twenty years and each William Okelly is treated differently. In 1287 William Okelli junior held half a carucate in demesne from Walter le Ieovene de Duleek, Alicia, his wife, Alexander Barbedor, and Isolda, his wife. The two couples had granted the lordship (*L. dominicus*) of Okelli's lands, along with thirty acres which he used to hold from them, to

³²⁶ NAI, RC 7/1, p. 435. The marginal note states [*Dublinesis*], but this could have been in the liberty of Meath (which was occasionally called Trim). The defendants appear to have been from Duleek. The marginalia for all of the liberties was usually 'Dublin'.

³²⁷ This cannot be the same person as William son of Donald the Clerk from Newcastle Lyons, who bought access to the royal courts in 1292. Donethoth was not called 'le clericus' in the itinerant court record from 1269, and since his son William was sued, we must assume Donethoth was dead by that point, as this was not an assize of novel disseisin: NAI, RC 7/1, p. 435; *CDI*, 1285-92, no. 1096.

³²⁸ NAI, RC 7/1, pp 475-6. Cf. Adam Oglauth, attorney for Emmeline widow of Hugh de Aston: *supra*, p. 57.

³²⁹ NAI, RC 8/1, p. 49.

³³⁰ NAI, RC 7/1, p. 61; RC 7/2, pp 61-2.

³³¹ NAI, RC 8/1, pp 147-8 [*Dovenaldus Okelly*].

the monastery of St Mary, Duleek.³³² A William Okelly sued Walter the Southerne and Agnes, his wife, to warranty William's claim to one house in Drogheda on the side of Meath, which William held by charter. The parties came to court and William paid 40*d.* for a licence to concord and he received a chirograph.³³³ In 1306 a William O Kelly complained to the justiciar that the prior of the house of St Michael of Duleek and Brother Richard of the same house entered lands in Lougher after the Statute of Mortmain and appropriated the lands to the priory against the statute. O Kelly said that he then sued the prior and brother, on behalf of the king, for breaking the statute, and the latter imprisoned O Kelly and 'devastated' his goods in contempt of the king and to the damage of William. A jury determined that the prior and Brother Richard distrained and imprisoned William because he refused to submit to the custom called 'Tollebolle' and William's man had injured the prior's sergeant, and not because William had convinced the treasurer of Ireland to investigate the prior. The jury specified that the prior did relish imprisoning William because of the suit, though.³³⁴ The jury did not decide whether William was a *Hibernicus* or not, and did not rule on the legality of his imprisonment. In criminal cases, defendants were fined for imprisoning *Hibernici*.³³⁵ This William had a 'man' which indicates he had sufficient means and status to maintain a sergeant, and he was allowed to sue in the justiciar's court, which was a proof of freedom. But was the latter an exception because William was suing for the king? The next year a William de Okelly sued Gilmory Othel [G. *Giolla Mhuire Ó Tuathail?*] for taking the crop of two acres of wheat near Mellifont, which William had by demise from Johanna Craddock. William claimed that Othel did this at the instance of Thomas, abbot of Mellifont.³³⁶ While this William lost for false claim, he did not lose for being unfree or a *Hibernicus*. He was allowed to use the royal courts.³³⁷ In 1309 a William Okelly received letters of protection to carry 100 crannocks of corn to England. It seems the burgesses of Drogheda threatened Okelly as the

³³² St John Brooks (ed.), *Irish cartularies of Llanthony*, no. 34. Cf. Professor Smith thought that Okelli junior held these lands from Theobald de Verdon: Smith, *Colonisation and conquest*, p. 75. Isolda's mother was named Alicia. It could have been that Isolda was the heir and Alicia held a portion in dower, but the records do not confirm this: St John Brooks (ed.), *Irish cartularies of Llanthony*, no. 35.

³³³ NAI, RC 8/5, p. 1.

³³⁴ *CJRI*, 1305-7, pp 173-4.

³³⁵ Cf. imprisoning free people versus unfree: Chapter Four, *infra*, pp 224-6.

³³⁶ *CJRI*, 1305-7, p. 320. Abbot Thomas of Mellifont had other instances of attacking tenants: Chapter Five, *infra*, pp 269-70.

³³⁷ Several Gaels had 'de' added to their names in the English records. This was not indicative that this William was an Englishman. Cf. William Sully/de Suyly: *supra*, p. 66; and Master Gilbert Omeledy/de Moyledy: Chapter Five, *infra*, p. 265.

letters were directed to them specifically.³³⁸ We cannot tell whether all of these William Okellys were in fact the same man. This seems unlikely as some were allowed to use the royal courts without issue, making concords and receiving charters, while one was accused of being a *Hibernicus* and extra judicially imprisoned. There were accepted and free burgesses in Drogheda named Okelly, as we already learned, Gaelic burgesses were free and accepted members of English Ireland.³³⁹

The Uí Cheallaigh in Meath continued to prosecute for the lands, but by 1381 some had been officially labelled *Hibernici et nativi*, whereas other Uí Cheallaigh remained free people.³⁴⁰ In 1303 Philip Okelly from Meath owed debts to the queen of England.³⁴¹ He was named among a list of Englishmen who owed debts to the queen. Philip was probably the same man who was the bailiff of the abbot of Mellifont.³⁴² The Uí Cheallaigh of Meath were probably related to the Ó Ceallaigh lords of Brega who ruled before the advent of the English. Connell Mageoghean, writing in 1627, believed the ‘Okellis’ of ‘Moybrea’ had been reduced ‘to be mere churles’.³⁴³ But Congalagh O’Kelly was listed as the lord of Brega at his death in 1292, 120 years after the invasion of Meath.³⁴⁴ Other Uí Cheallaigh were free and accepted. Around 1300 Gurmyn Okely [G. *Gormán Ó Ceallaigh?*] held lands and a house in Tullow, lib. Carlow, next to Muroch’ iniin Ohardegan [G. *Muireacht inghean Uí hArgadáin?*] and Maurice Ocormoch’ [G. *Ó Cormaic?*].³⁴⁵ The Uí Cheallaigh of Clonfert held free lands, although Bishop Tomás Ó Ceallaigh tried to take their lands.³⁴⁶ Throughout the period studied, it appears disparate people attempted to disseise the Uí Cheallaigh and some even attempted to reduce them to naifty.

Starting in 1290, at the latest, Maurice de Carew began to sue almost every major

³³⁸ *CIRCLE*, CR, 3 Ed II, no. 26. He was called ‘Willelmus de Okelli’ in the treasurer of Ireland’s account: J. F. Lydon, ‘The enrolled account of Alexander Bicknor, treasurer of Ireland, 1308-14’ in *AH*, no. 30 (1982), pp 7-46 at 43. But then called ‘Willelmus Okelli’ in the same record: *ibid.*, p. 44.

³³⁹ Ralph Ó Ceallaigh, archbishop of Cashel (1346-61), was legally the son of William Kellei, burgess of Drogheda. Philomena Connolly found an early-modern source which claimed the archbishop was not the biological son of the burgess, but that did not change his legal parentage: B. H. Blacker, ‘Ó Ceallaigh, Ralph (d. 1361)’, rev. Philomena Connolly, in *Oxford DNB* (Oxford, 2004), (<http://www.oxforddnb.com/view/article/15305>) (22 Feb. 2017). For other Gaelic burgesses, see *supra*, pp 40-3.

³⁴⁰ St John Brooks (ed.), *Irish cartularies of Llanthony*, p. 301.

³⁴¹ NAI, RC 8/1, p. 289.

³⁴² Chapter Five, *infra*, pp 269-70.

³⁴³ *Ann. Clon.*, pp 124-5. Many thanks to Katharine Simms for providing me with this reference.

³⁴⁴ *AFM*, iii, 454-5.

³⁴⁵ *Register St John, Dublin*, nos 398-400.

³⁴⁶ Chapter Five, *infra*, pp 272-3.

landholder in the cantred of Foniertheragh, co. Cork.³⁴⁷ According to de Carew's suits, Diarmaid Mac Carthaig had disseised the former's grandfather, Robert de Carew, and then enfeoffed numerous English and Gaelic men.³⁴⁸ Maurice began by suing David de Prendergast and Dearbhorgaill Mac Carthaig's son, Gerald de Prendergast, for eighteen carucates in Catherath' (Caheragh), Cro (Croagh), and Insfade (Long Island). In the same writ Maurice also sued eight other men, which included five men with Gaelic names, for at least one carucate each.³⁴⁹ In the same court session, Maurice brought a similar writ as the first with the claims against all of the other defendants, but the claim against de Prendergast had been reduced to eighteen 'acres'.³⁵⁰ No result was recorded. Six years later (1296), Maurice claimed eighteen carucates against Geoffrey Ketyng, but Maurice left out all of the other defendants and the place name Cro.³⁵¹ This case was held to await a jury, and no later cases mention this writ or Ketyng. The claim to eighteen carucates indicates that these may have been the same lands held by Gerald de Prendergast, which brings up the question how de Carew could sue two people for the exact same lands at the same time. In January 1296/7 Maurice de Carew's case against de Prendergast and the others was still waiting a decision by the Dublin Bench.³⁵² At the Easter session of the Dublin Bench, one of the English defendants, Alexander de Bryddesale/Bridesale, did not appear, and his two carucates were taken into the hand of Edward I.³⁵³

Between January 1297 and September 1298 the defendants and the extents of the lands in question changed in Maurice de Carew's count, and so he must have acquired several new writs. Perhaps the first writ was defeated by inaccurate land measurements (quashed for false claim). We do know that in 1297 Gerald de Prendergast died and was

³⁴⁷ For Foniertheragh, see MacCotter, *Medieval Ireland*, pp 153, 260.

³⁴⁸ This may have been the same Diarmaid Mac Carthaig who held Glinshalwy in fee because those cantreds were adjacent to each other in west Cork.

³⁴⁹ NAI, RC 7/2, pp 252-3. All of the other lands were in 'Catherach' (Caheragh). The other defendants were Thomas son of Thomas for 3 carucates, Geoffrey de Carew for 2 carucates, Simon son of Robert le Flemeng for 2 carucates, Walter Ocothelan for 3 carucates, Alexander de Bryddesale for 2 carucates, Donenold Myathewan for 2 carucates, Donnethud Omathewan for 1 carucate, and Richard Omathewan for 2 carucates. For the naming of Gerald as David's son, see RC 7/1, p. 23. All of the following cases are transcribed in Appendix Two, *infra*, pp 302-8.

³⁵⁰ This may have been a mistranscription by the RC clerk: NAI, RC 7/2, p. 323. An additional defendant, Mathewen Omathewen, was added to this writ, and the sizes of the lands claimed changed (Maurice claimed 5 carucates from Donnethud Omathewan instead of 1 carucate).

³⁵¹ NAI, RC 7/3, p. 302.

³⁵² NAI, RC 7/5, p. 16. It was still respited at Easter 1298: *ibid.*, p. 56. Cf. the *coram rege* in England overturned its previous judgment when it discovered the victorious plaintiffs had sued two identical writs at once: G. O. Sayles (ed.), *Select cases in the court of king's bench under Edward I: vol. i* (SS, lv, London, 1936), pp 154-6.

³⁵³ NAI, RC 7/5, p. 64.

replaced by a John de Prendergast, who must have been Gerald's heir.³⁵⁴ Most of the surnames remained the same, but the forenames changed and the sizes of the tenements claimed were more specific. The original defendants could have died, and these new defendants could have been their sons. Since the lands are named as Catherath, Croo, and Inyffade, this was very likely the situation.³⁵⁵ Another interesting aspect of this writ is that we find out that Thomas son of Thomas was also called Thomas O Mahun [G. Ó *Mathghamhna?*], and that Geoffrey de Carew's portion was then held by Kene Emalroune [G. *Cian Ó Maoilriain?*]. Perhaps Maurice felt he could win by pointing out Thomas's ancestry, or perhaps Thomas objected to his name in a previous writ.³⁵⁶

The next year, the case was still undecided, but the writ was split into two. This could have been on account of a rule of law change (such as, a defendant received a royal protection), or because Maurice de Carew believed he could exploit the anti-Gaelic movement in his favour. John de Prendergast – who had replaced Gerald de Prendergast as the first defendant – was named in a separate writ from the Gaelic defendants, and Simon son of Robert le Flemeng had disappeared entirely.³⁵⁷ A year later the cases had been moved into the itinerant court and that court finally made a (surviving) decision. Maurice first recovered all of the lands he claimed against the Gaelic men, and then he lost his reduced claim against John de Prendergast of one house, four carucates, forty acres land, 180 acres of wood, and 240 acres of pasture.³⁵⁸ The record states that de Carew lost because he was never seised of the lands, which is peculiar because the same court decided that the Gaelic men disseised Maurice in regards to their lands in the same area. The juries' reports for these two judgments have not survived, but there seems to be an anti-Gaelic bias in these conflicting judgments.

Maurice de Carew then sued Maurice de Cauntetoun for lands in the same area. Perhaps John de Prendergast had sold them to de Cauntetoun.³⁵⁹ We can see that de Cauntetoun held the cantred of Fermoy from de Carew at this time.³⁶⁰ Earlier, in 1298, Maurice de Carew brought another writ in the Dublin Bench against more Gaelic defendants in the area, including two Meic Charthaig; although the disputed lands in this

³⁵⁴ NAI, RC 7/5, pp 410-11; RC 7/6, pp 108-9; *Ann. Inis.*, 1297.6.

³⁵⁵ NAI, RC 7/5, pp 410-11. Cf. Catherath', Cro, and Inyffade: *supra*, p. 79.

³⁵⁶ Cf. objecting to names in writs: Chapter Two, *infra*, pp 125-7; Chapter Five, *infra*, pp 254-7.

³⁵⁷ NAI, RC 7/6, pp 108-9.

³⁵⁸ NAI, RC 7/9, pp 18-19, 119-20 (better calendar); RC 7/8, p. 359 ('rough' copy of 7/9).

³⁵⁹ NAI, RC 7/9, p. 149; RC 7/8, p. 417 ('rough' copy).

³⁶⁰ NAI, RC 7/9, pp 77-9. For more on the de Carew lordship in co. Cork, see Mc Cotter, 'Carews of Cork', pp 31-139.

case were much smaller.³⁶¹ None of the defendants appeared on the day, and so all of these lands were taken into the king's hand. This was only to entice the defendants to appear and answer the writ. It was not a judgment for Maurice. Later, in the same eyre at Cork in which Maurice recovered against the Gaels but lost against the Englishman, he won this smaller claim, as well.³⁶² In this case the Gaelic defendants did not appear, but since they were with Domhnall Ruad Mac Carthaig, it may have been that they were 'marchers' and did not feel the need to defend their lands in the royal courts. By 1310 the Meic Charthaig had taken most of west Cork from Maurice de Carew.³⁶³

In January 1301/2 Roger de New Castle, *Hibernicus*, paid 10s. to the exchequer to have entry to his tenements at Swords.³⁶⁴ While it was usual for an unfree tenant to pay for entry into unfree lands, this record did not label Roger a *nativus* or state that the lands were *in nativitatibus*. Unfree betaghs, even on royal manors, would have accounted to the royal bailiff at the manorial court. There are numerous records of the rent of betagh tenants being paid to the exchequer by a royal bailiff or sergeant.³⁶⁵ This was probably a 'relief' (a payment paid by free tenants for entry to their inheritance). Roger then accounted on behalf of the escheator, Walter de la Hay, for the issues of the archbishopric of Dublin's lands during the same term.³⁶⁶ This almost certainly shows him to have been free and possibly a bailiff. Almost three weeks later de New Castle received a grant of access to the royal courts, from Edward I, for the service performed in Scotland by Roger's son John.³⁶⁷ This was probably the result of the growing anti-Gaelic sentiment at that time, and not an indicator of unfreedom, since he was previously a bailiff or sergeant of the escheator.

Earlier we learned of many Gaelic administrators for the English establishment in Ireland. One administrator was discriminated against in 1305 and removed from office. William de Balygaveran served as usher of the Dublin exchequer until John de Seleby petitioned Edward I at a Westminster parliament.³⁶⁸ John claimed he had been removed from the position and replaced by a *purus Hibernicus*. Edward I conferred with his council and *fidedigni* ('credible persons') from England and Ireland. They all agreed that William

³⁶¹ NAI, RC 7/6, pp 391-2, 573-4.

³⁶² NAI, RC 7/9, pp 119-20; RC 7/8, pp 409-10 ('rough' copy).

³⁶³ Mc Cotter, 'Carews of Cork', pp 82, 122-3, 134-7, 144-8.

³⁶⁴ *HMINAUK*, p. 69. He later paid an additional 20s. for entry to his tenement: *ibid.*, p. 86.

³⁶⁵ E.g. the rent of the *betagii* of Mondelu/Mundelay, Dublin, appears to have always been delivered by a bailiff or royal appointee: *CDI, 1293-1301*, pp 2, 13, 127.

³⁶⁶ *HMINAUK*, pp 77, 91.

³⁶⁷ PRO, SC 8/131/6515; *CDI, 1302-7*, no. 11. Peculiarly, the grant of access was only for Roger and indicates that his son, John, already had access. There was no explanation for this.

³⁶⁸ PRO, SC 8/218/10857; Connolly, 'Irish material SC 8', p. 70.

was a *purus Hibernicus* and reinstated John as usher of the exchequer.³⁶⁹ This is the only surviving instance that an administrator was removed from a position because of an ethnic label. It is peculiar because Edward I admitted that he personally appointed William de Balygaveran to the position because the former thought it was vacant. Since William did not have a Gaelic name, this could mean that he was falsely labelled a *Hibernicus*. Many English people were rebranded as *Hibernici*.³⁷⁰ There is also the problem that people from England were consulted to determine William's legal ethnicity in Ireland. Either William had spent some time in England or the input of the *fidedigni* was entirely speculation (and possibly in collusion with John de Seleby). The Gaelic administrators with Gaelic names did not experience any legal discrimination in the surviving records. We can tell that William de Balygaveran was not unfree nor was he accused of being a *nativus*.

In 1300 Hugh son of William brought an assize of novel disseisin against John Tebaud for half an acre of arable and the profits of a mill in Ferscheth, co. Cork. Tebaud said that he would not answer Hugh because the latter was a *Hibernicus*. Hugh said that did not bar him from access to the royal courts because his father, William, had enfeoffed him of the tenements and put him in full seisin.³⁷¹ Here we can see that the counterplea had changed from 1252 when Patrick de Courcy claimed Neivinus to have been a *nativus*, and the latter replied he was a free man.³⁷² Hugh son of William did not claim that he was a free man because that was not the issue. The problem was wholly his legal ethnicity. The jury returned that Hugh was never in seisin of the tenement, so he was amerced for false claim. They made no ruling on his status, but he appears to have been free and accepted. If the courts maintained the procedure they used in other cases, then Hugh was able to use the courts in the future. In several instances the royal courts determined someone was free and accepted because they had been answered in a court before, and Hugh had been answered in this case.³⁷³ Also it is important to the question of legal status within English Ireland that this case – along with several others – shows that the *est Hibernicus/-a* plea could be

³⁶⁹ PRO, SC 8/218/10858; *PROME*, Edward I, Roll 12, m. 15d (<http://www.sd-editions.com/AnaServer?PROME+79174+parlfra.anv>) (14 July 2017); Connolly, 'Irish material SC 8', p. 70. De Seleby's petition claims de Balygaveran was a '*puyr Irreis*', but the parliament's reply used the Latin '*purus Hibernicus*'. Cf. twenty-five years earlier (c.1280) the citizens of Cork assassinated Stephen Brendan, collector of the king's custom: Chapter Four, *infra*, pp 186-7.

³⁷⁰ *Infra*, pp 87-9.

³⁷¹ *CJRI, 1295-1303*, pp 336-7.

³⁷² *Supra*, pp 50-1.

³⁷³ See Walter Ó Tuathail: Introduction, *supra*, p. 16, n. 87; William le Teynturner, Maurice Macotere, and Henry Scot: Chapter Three, *infra*, pp 155-6, 170.

ignored, was not the deciding factor in court judgments, and was not labelled ‘peremptory’ by the court.³⁷⁴

In 1295 John Morice complained to the justiciar that Benedict son of John de Drogheda had forestalled Morice at Dundalk, co. Louth, and would have killed Morice if he had not given Benedict his horse worth 10 marks (L. *occidisse voluit nisi reddidisset equum suum*). Benedict replied that Morice gave him the horse freely to repay a debt. Morice countered this with an alleation that Benedict was not allowed to plead in court because he was a *Hibernicus* and not admitted to use the ‘free law’. Benedict then presented letters patent of Edward I granting Benedict and his children the right to use the royal courts in Ireland. John Morice then returned to his original *narratio* and put himself on the country. Before the jury determined the facts, Morice changed his accusation and admitted that certain malefactors had stolen the horse and Benedict had rescued it from them. Morice was then amerced for false claim.³⁷⁵ Interestingly, the court does not seem to have punished or amerced Benedict son of John for a false claim. This case was a large divergence from the common law in England. English lords were careful never sue to unfree people in the royal courts, and they would not allow others to sue their unfree tenants in a royal court. Usually, under English law, if a person was answered in court previously, that was proof of freedom in subsequent cases.³⁷⁶ John Morice was not Benedict son of John’s lord, nor did he claim Benedict to have been unfree. He claimed that the latter should be denied access to the royal courts because of his legal ethnicity (which was rather ironic since Morice sued him). But the term ‘free law’ as opposed to ‘the law’ or ‘English law’ may indicate that Morice believed the *est Hibernicus/-a* plea evolved from the *est nativus/-a* plea. At the same time, many Gaels were allowed to use the royal courts, so we should be careful not to conflate the label *Hibernicus/-a* with being Gaelic or of Gaelic descent or believe that all of the royal courts accepted the plea as legally valid.

We earlier learned that in 1307 an Irish parliament decreed that any *Hibernicus/-a* who owned a burgage in an enfranchised borough or city was free and accepted by

³⁷⁴ In only one case (in 1297) was the plea considered ‘peremptory’ but this appears to have been related to the fact that the defendant had made false claims against the plaintiff out of *odiosa* (hate). In almost every other surviving instance, the *est Hibernicus/-a* plea appears to have been dilatory at best (the judgment was not based on the plea. For the 1297 case, see Chapter Three, *infra*, pp 172-3. Cf. Geoffrey Hand portrayed the plea as always peremptory and absolutely enforced: Hand, *English law*, pp 199-200.

³⁷⁵ NAI, RC 7/4, p. 259; *CJRI, 1295-1303*, p. 82. The justiciar pardoned Morice’s amercement. No reason was given.

³⁷⁶ According to the jury, William le Teynturer of Ardfinan was free and allowed to use the justiciar’s court because he had previously brought a plea of *vetitum namium*, by bill, in the county court of Limerick, and from then on he had enjoyed that liberty (i.e. being answered in court).

custom.³⁷⁷ This, in fact, was not a change from previous practice. The Gaels of Clonmel, Dublin, Roscommon, and elsewhere were treated as free burgesses/citizens. Although urban records sometime contain anti-Gaelic sentiment, this was perhaps driven more by greed than by ethnic discrimination.³⁷⁸ The most pertinent example is the case which resulted from the justiciar disseising the son of an enfranchised Gael (Thomas son of Gerald son of John). The justiciar's action was legal under English law. The justiciar was not amerced for illegal disseisin because he thought Thomas son of Gerald was unfranchised (or perhaps unfree). But, as we learned earlier, the jury in the parliament reported that Thomas was enfranchised by custom and that his father's grant of access to the royal courts was excessive. There were other Gaelic citizens who purchased grants of access, just as Thomas's father had done, before the Irish parliament ruled on the Irish custom, which may indicate that even 'custom' was not well enforced. Around 1285 Richard Poding asked for access to the courts because he was a burges of the king in 'Thasagard' (Saggart).³⁷⁹ Robert de Bree, mentioned above as provost of Dublin in January 1289/90, was granted 'by special grace' access to the royal courts for his life in July 1290.³⁸⁰ Then on 26 June 1291 the grant was extended to his heirs and all of his progeny for perpetuity.³⁸¹ In the first grant, Edward I (or his clerk) specified that Robert de Bree was already a citizen of Dublin, and in the second Robert was a citizen and Edward's merchant (L. '*civi et mercatori nostro Dublinensis*').

Not all free Gaels 'lost' their lands. From the advent of the first English 'adventurers' in Ireland, we have an almost continuous record of Gaelic people granting lands away. Some Gaelic people transferred their lands to religious institutions. We can only speculate as to their motive. Before 1299 Richard son of Adam gave eighty acres in Kilmaclenine to Philip Macbalagh [G. *Mac an Bhallaigh?*] and his heirs for the rent of one rose yearly and the rent to the bishop of Cloyne (20s. 18d.).³⁸² As part of this charter, Richard son of Adam promised for himself and his heirs to warranty Macbalagh's rights to hold the lands freely and in hereditary fee. In 1299 David Macbalagh, Philip's heir,

³⁷⁷ Thomas son of Gerald son of John: *supra*, p. 42.

³⁷⁸ The most notable cases are the assassinations of Stephen Brendan in Cork and Thomas le Carpenter in Dublin, but there are also records of disseisin, such as Elena mother of John OMakan in Athassel, and false imprisonment, such as the case of Omachthy in Cashel: *infra*, pp 112, 186-7, 194, 224.

³⁷⁹ *DAIKC*, no. 45.

³⁸⁰ *CDI*, 1285-92, no. 748.

³⁸¹ *Hist & mun docs*, p. 541.

³⁸² *Pipe roll of Cloyne*, pp 116-19. On 28 June 1290 a Philip Makbaghely [G. *Mac Beaglaioich?*] received a grant of access to the royal courts from Edward I. The record does not state if he purchased it. We do not know where he was from or if he was related to the men from Kilmaclenine: *CDI*, 1285-92, no. 702. He could have been the Philip Mac Bathely who was the official of Cashel: *ibid.*, p. 99.

quitclaimed eighty acres in Kilmaclenine to Nicholas de Effingham, bishop of Cloyne, which David claimed to have purchased from Richard son of Adam Jordan.³⁸³ Then, in 1314, Edward II sent letters patent pardoning William de Barry for acquiring eighty acres in Kilmaclenine from Bishop Nicholas which David Macbauly had held from the bishop in chief.³⁸⁴ Other Gaels, just as some English people, quitclaimed their lands to the church to absolve debts. In 1263 Thomas O Regan [G. *Ó Riagain*], who won his court cases, repaid 22½ marks to Robert, bishop of Limerick, by granting the latter all of his lands, burgages, and tenements in Clonnawyll and Clonchenn.³⁸⁵ These tenements may have been the same which two plaintiffs claimed the Bishop Hubert had illegally disseised from the former and then demised to Thomas.³⁸⁶

A few Gaelic men were recognized as free members of the English society (held lands in fee), but did not produce a male heir. Their lands usually went in marriage with their daughter(s) to an English (or other settler) husband. We have already come across several ‘English’ descendants of Gaels, such as Henry de Argenteyn, Richard Bray, Henry Bernard, William Durant, and John son of William.³⁸⁷ Nicholls and MacCotter noted that around 1250 Domhnall Ó Longáin held Loughane in Bohillane, co. Cork, from Richard de Carew, and Ó Longáin gave Loughane and Sleveen with his daughter Raghnilda [G. *Raghnailt*] to Philip son of Tancard Cristofre before 1260.³⁸⁸ Diarmaid Mac Carthaig held the cantred of Glinshalewy, co. Cork, in fee.³⁸⁹ After his son Cormok [G. *Cormac*] died, his three daughters claimed all of his lands. Robert Cusyn and Rathenilda [G. *Raghnailt*] seized most of the lands, and then David de Prendergast and Dernorguyl [G. *Dearbhorgaill*] and Thomas de Kaninges and Edina [G. *Éadaoin*] sued Robert and Raghnilda for two-thirds of the cantred.³⁹⁰

Other records show that Gaels had formerly held free lands. We cannot tell whether they died without an heir or were legally disseised. Gyllese Ocone [G. *Giolla Íosa Ó*

³⁸³ *Pipe roll of Cloyne*, pp 118-19. The record does not call David Philip’s heir, but he probably was. Or Philip had granted the lands to David.

³⁸⁴ *Pipe roll of Cloyne*, pp 42-3.

³⁸⁵ *BBL*, pp 55-6. For his court victories, see *supra*, p. 44.

³⁸⁶ Chapter Five, *infra*, pp 267-8.

³⁸⁷ *Supra*, pp 13-14.

³⁸⁸ *Pipe roll of Cloyne*, pp 15, 178 [*Domhnall Uí Longáin*].

³⁸⁹ Dr MacCotter identified it as C35 (cantred no. 35) in his geographical study: MacCotter, *Medieval Ireland*, p. 154. He also found that Maurice de Carew claimed Glinshalwy, along with thirteen other cantreds, and recovered *dominium* over all fourteen in 1310: Mc Cotter, ‘Carews of Cork’, p. 80. Cf. Donald Rufus MacCarty [G. *Domhnall Ruad Mac Carthaig*] ‘lord’ of Desmond, asked Edward I in 1284 to be under the latter’s lordship. This may mean that not every Mac Carthaig was enfranchised: *CDI, 1252-84*, no. 2362.

³⁹⁰ *NAI, RC 7/1*, p. 246. For more on the Mac Carthaig women, see Chapter Two, *infra*, pp 122-4.

Tuine?] held all of the lands of Cloncouerthe, Gortnetrossi, Kilcurnan, and Garran Macrogeri from the bishopric of Limerick.³⁹¹ We can also see that many *nativi* were customarily attached to these lands, and so Ocone must have been lord over these *nativi* before he died/lost the lands. A man named Obragan [G. *Ó Bragáin?*] held a fishery (L. *piscaria*) from Adam de Ledewych. After Obragan died(?), de Ledewych granted the fishery to the Augustinian priory of St Mary of Kilbixy (Tristernagh) sometime between 1225 and 1250.³⁹² A man named Oculan [G. *Ó Cuileáin?*] held three carucates of wood and mountain in Desmond. After he died (post 1263), the lands were farmed to William de la Rochelle for seven years.³⁹³

Finally, others granted or quitclaimed their lands to an English layperson. Cecily daughter of Donald Oconnean [G. *Domhnall Ó Coinín?*] granted Richard Costard twenty-one acres and a stang of arable in Maymoch (Mayne, lib. Kilkenny) in exchange for 23 marks, a robe, 12*d.* annual rent to Cecily, and the rent due to the bishop of Ossory.³⁹⁴ In 1277 Agnes Odurne [G. *Ó Duirn*], probably the daughter of Conibyr Odyrne [G. *Conchobhar Ó Duirn*], quitclaimed twelve acres in Corbally, lib. Kildare, to Thomas de Lega the younger.³⁹⁵ The unusual part about this record is that there was no reason stated for the quitclaim. The related charters and grants from Corbally indicate that the English in the area allowed free Gaelic people to hold lands unmolested. Alexander son of Alexander Mol sold his rights to one hundred acres in Rathno (Rathnee?), co. Cork to Philip son of Gilbert.³⁹⁶ These grants and quitclaims would have been sufficient tests of free tenantry. These actions required that the Gaels held in fee and hereditarily, and that their claims to the lands were legitimate under English law.

These few examples (of the many instances) show us that for one reason or another some free Gaelic people relinquished their lands. We cannot tell whether these quitclaims caused the Gaelic people to lose their status in English society. Kenneth Nicholls believed that landholding brought customary recognition of freedom, but we have no evidence for

³⁹¹ *BBL*, no. 174.

³⁹² M. V. Clarke (ed.), *Register of the priory of the blessed virgin Mary at Tristernagh* (Dublin, 1941), p. 35. The record does not say that he died, only that he formerly held the fishery (L. *quam Obragan de me tenuit*).

³⁹³ PRO, SC 8/17/8666. Ciarán Parker thought this was the same man from the 1253 inquisition (and he could have been): *supra*, n. 309; Ciarán Parker, 'The internal frontier: the Irish in County Waterford in the later Middle Ages' in T. B. Barry, Robin Frame, and Katharine Simms (eds), *Colony and frontier in medieval Ireland* (London, 1995), pp 139-54 at 142.

³⁹⁴ *Cal. Ormond deeds, 1172-1350*, no. 252.

³⁹⁵ *Cal. Ormond deeds, 1172-1350*, no. 211, 218.

³⁹⁶ NAI, RC 7/1, p. 281. A Philip O Mol held the castle of Clonmeen of the bishop of Cloyne in 1364, and a David Mol was a burgess and juror at Kilmaclenine in 1365. Both were free men in co. Cork: *Pipe roll of Cloyne*, pp 34-5.

the contrary, the status of landless free Gaels who formerly held free lands. As the Faugoner-Otrescan case shows, tenurial status was not always synonymous with legal status.³⁹⁷

With the invention of anti-Gaelic legal discrimination came the advent of calling settlers (English, Welsh, and others) *Hibernici* to prevent them from suing. This was probably related to the earlier phenomenon of accusing free people of being unfree, as in the case of Neivinus Mac Oel. In 1281 John son of Nigel was claimed by Thomas de Clare to be the latter's *Hibernicus et nativus*. De Clare was not simply alleging John to be Gaelic, but also his runaway *nativus*. John son of Nigel then petitioned Edward I to intervene and investigate. The king appointed Ralph de Hengham, the famous justice, to inquire into John's legal ethnicity. The *inquisitio* determined that John was the great-grandson of Ralph Trumpe who was born at Lichfield and was an English citizen of that city.³⁹⁸ In later cases, we see that the allegation shifted from someone was a *nativus/-a* to he/she was simply a *Hibernicus/-a*. One instance seems to demonstrate not only anti-Gaelic sentiment within the law, but also a personal feud between some men from co. Kildare and John de Ponte, justice itinerant and prosecutor for the king. Gilbert le Palmer was brought before the justiciar to answer why he had seized the tenement of a *Hibernicus regis* after the death of the *Hibernicus*.³⁹⁹ Gilbert replied that the supposed *Hibernicus*, Philip Benyt, was not a *Hibernicus* and had been falsely accused of being one during an assize of novel disseisin. This assize had been in the previous justiciar's court and the court had determined Philip to be an Englishman. After Philip's death his son, Adam, was denied entry into his tenement by the same man from the first case. Adam won his case of *diem clausit extremum* in the chancery (court?), and gained seisin of the tenement. Adam then granted it in fee to Gilbert. John de Ponte then replied to Gilbert's claim that despite the two court judgments, Philip Benyt had been a *Hibernicus* of the name MacKenabbyth [*G. Mac Anmchaid?*] and born in the Leinster Mountains among the Uí Thuathail. Later Edward I sent a writ to John Wogan, justiciar, detailing that the defendant in the first assize had maliciously branded Philip Benyt as a '*Hibernicus* who used Gaelic law and customs' and had ejected Philip from his legal tenement. It also stated that the justiciar, John de Saunford, had determined Philip to be an 'Englishman who used English laws and customs' and then Philip recovered seisin. An Irish parliament granted seisin of the tenement to Gilbert and recognised the grant from Adam to Gilbert. This record ends with another inquiry, but

³⁹⁷ *Supra*, pp 33-4; Nicholls, 'Anglo-French Ireland', pp 375-6.

³⁹⁸ PRO, C 66/101, m. 8 (calendared in *CDI, 1252-84*, no. 1946).

³⁹⁹ *CJRI, 1295-1303*, pp 121-2.

eight years later it appears that Gilbert was confirmed in his rights to the lands after paying several fines to the crown for alienating lands held in chief without a licence.⁴⁰⁰ This ordeal appears to have been the result of two royal administrators working relentlessly to dispossess their rivals of a modest tenement, and exploiting and facilitating the anti-Gaelic movement in the process.

Another case answers some questions (and creates some new ones) about the nature of the *est Hibernicus/-a* plea. Simon de Cromhal sued Hugh Dunnyng for a trespass of maliciously calling Simon a *Hibernicus*, therefore defaming Simon throughout the barony of Duleek. Simon claimed that Hugh wanted to marry a certain girl, but Simon 'interfered' and then married her himself. In reaction, Hugh spread the rumour that Simon was a *Hibernicus*. The court agreed and granted Simon 40s. in damages and amerced Hugh.⁴⁰¹ Hugh then counter-sued Simon for pleading this same case in a church court. Hugh claimed he had delivered the king's writ of prohibition, but Simon continued to prosecute the case. Simon claimed he had stopped his case as soon as he received the writ of prohibition, and so the 'sheriff' (viscount) of Meath was ordered to form a jury to investigate. Earlier the same Simon had sued Geoffrey Wollebetere for the same trespass. The jury in this case determined Simon's father, Adam de Cromhal, 'dwelt' at Ardee and was regarded as an Englishman his entire life. This is an interesting distinction from John son of Nigel because the jury did not trace Simon's ancestry to England. Perhaps Adam de Cromhal was an Anglicised Gael. In this case Geoffrey de Wollebetere was sentenced to gaol.⁴⁰² Several historians took cases like this one to mean that when someone was accused of being a *Hibernicus/-a*, when he/she was not, it was peremptory, *odiosa* (out of hate), and defamatory, and the culprit was gaoled.⁴⁰³ This was not the law. Hugh Dunnyng was not gaoled. And many other examples show that claiming someone was a *Hibernicus/-a* was not *odiosa* and defamatory.⁴⁰⁴ These cases have been used to argue for absolute discrimination against the Gaels, but we have already learned that was never the situation.

⁴⁰⁰ *CJRI*, 1305-7, p. 97. Peculiarly, in February 1304/5, an Adam Benet of Ireland petitioned for access to the royal courts and received it. He was not called a *Hibernicus*, though: *PROME*, Edward I, Roll 12, m. 15d (<http://www.sd-editions.com/AnaServer?PROME+79174+parlfra.anv>) (14 July 2017).

⁴⁰¹ *CJRI*, 1308-14, pp 102-3.

⁴⁰² *CJRI*, 1308-14, p. 41.

⁴⁰³ Orpen noted that the plea was *est Hibernicus et servilis conditionis* and not simply *est Hibernicus*, but he still believed the plea was *odiosa*: G. H. Orpen, *Ireland under the Normans* (4 vols, Oxford, 1911-20, repr. in 1 vol., Dublin, 2005), p. 448; Curtis, 'Rental of the manor of Lisronagh', p. 74; Hand, *English law*, pp 188, 200. On the second instance, Professor Hand noted some cases when it was not *odiosa*, but he was still confused on the reasoning for gaoling in the other cases. One of Hand's three examples was not *odiosa*. The defendant was gaoled for assault: *CJRI*, 1295-1303, pp 453-4.

⁴⁰⁴ Dionisia widow of John de la Ryvere: Chapter Two, *infra*, p. 139; Henry Scot: Chapter Three, *infra*, p. 169.

Conclusion

In regards to the recognition of free Gaelic men by the royal courts, we can only speculate on events prior to 1252 as no court rolls survive from that period. There are no records to elucidate the ability of Gaels to sue for lands taken in the first decade of the English presence in Ireland, but many of these disseisins were probably considered acts of conquest and war. We do, however, have clear and irrefutable evidence that free Gaelic men existed, and that they were accepted as legal equals by English society from the mid-thirteenth until the early-fourteenth century. Clearly a significant group of Gaelic men were regarded as acceptable members of that society, and they did not have to hide their Gaelic ancestry under English names. They did not have to purchase grants of access to the royal courts, and they maintained some degree of their ancestral culture which allows us to identify them today. There were also Gaelic administrators. Not only were these men accepted members of the society, but they held positions of power over English people. Emmeline de Longespée was an ‘absentee’ landlord, and yet she trusted Gaelic men to collect her rents, run her manorial courts, and manage her affairs. Regular English people appointed Gaelic attorneys, called their Gaelic lords to warranty claims to land, and had Gaelic pledges for amercements. Gaelic jurors determined the fate of English parties in court. This behaviour contrasts starkly with the picture of ethnic hostility depicted by the historiography, the so-called ‘remonstrance of the Irish princes’ (c.1317), and other contemporary petitions. The advent of anti-Gaelic sentiment in the court records is a difficult phenomenon to trace. Historians have used literary sources to depict strong anti-Gaelic feelings from the mid-twelfth century, but perhaps this was a minority opinion. While we can see an increase in discrimination with the advent of the ethnic objection, there was never a time when every single person of Gaelic blood was denied access to the royal courts, and most of the free Gaels who were denied access do not appear to have been reduced to unfreedom. William de Balygaveran lost his position in the exchequer, but he was not subsequently made a *nativus* or *ascripticus glebae*. These court cases also depict only instances of harassed Gaels. The unmolested Gaels never had to sue and did not leave a record of their existence, so we can never quantify how many free and accepted Gaels were in English Ireland.

II

The role of ethnicity in the legal status of women

This thesis, so far, has focused on ‘free’ versus ‘unfree’, in which freedom was, mostly, defined as being answerable in the royal courts. One method used by the royal courts for identifying ‘the free’ was the possession of free tenements. Almost every unmarried, adult Englishwoman was answerable in the royal courts, and many Englishwomen – but definitely not all – possessed free lands. Much of the historiography of women in medieval Ireland has focused on marriage. This chapter discusses marriage, but it also includes a discussion of single women in thirteenth- and fourteenth-century English Ireland.¹ The narrative of institutional discrimination against women under a patriarchy and the absolute application of a legal construct called ‘coverture’ within English law are questioned. While thirteenth- and fourteenth-century society in English Ireland was a patriarchy (a government entirely of men), that society was not ruled by absolute misogyny. This chapter explores the extent of ‘freedom’ exercised by English, Gaelic, and Ostwomen, married and unmarried, in the royal courts. The Englishwomen are fully examined because they have been disregarded by legal historians, and are not simply included for a comparison. Englishness was an ethnicity just the same as the others in Ireland. Englishness may have been the standard or norm to thirteenth-century English people, but we must not maintain the implied narrative of Anglocentrism by avoiding an examination of English people in a study of ethnicities. This is especially true for Englishwomen as they were occasionally othered by the royal courts. In regards to Gaelic women, it appears that some were free and accepted while others were not, just as we discovered with the Gaelic men. The analysis of sex and ethnicity leads us into examining the effects of intercultural marriages on the wife and the pursuit of dower by widows of these marriages.

The traditional historiography of medieval society in England suggests that there was an expectation that women should marry, and that married women had no legal rights

¹ The notable exceptions being Gillian Kenny and Dianne Hall. Dr Kenny’s monograph is a useful introduction to the study of women in medieval Ireland. She identified many different categories which now need to be addressed in detail with original research using the surviving sources. Her work presented some cursory conclusions which further research will show to be wanting: Gillian Kenny, *Anglo-Irish and Gaelic women in Ireland, c.1170-1540* (Dublin, 2007), pp 13-51. Dr Hall’s monograph focused almost exclusively on the women of religious orders: Dianne Hall, *Women and the church in medieval Ireland c. 1140-1540* (Dublin, 2003). Dr Sparky Booker is in the progress of examining female plaintiffs in the secular and ecclesiastical courts in Ireland from c.1350 to c.1530.

or property.² Recently, however, several historians of medieval Englishwomen have explored the nuance of medieval society. A few outliers aside, the consensus among most legal historians today is that there was no universal, legal status of medieval women, and that their status was heavily dependent on other factors (such as their socio-economic standing, their marital status, and others).³ Bearing this in mind we should ask: how many of the cases examined below are exceptional and how many are indicative of greater freedom ('agency') enjoyed by women?⁴ Gillian Kenny, who is one of the very few historians to even address the legal status of women in thirteenth-century English Ireland, noted that there were some differences between English and Gaelic Ireland but for the most part argued that women were expected 'to be a mother'.⁵ The studies of English law in Ireland have glossed over women's legal status. Geoffrey Hand framed most Englishwomen in Ireland as tools to acquire lands, and Gaelic women as un-dowable and almost invisible beyond their quest for dowers.⁶ The analysis of the court records shows that the real legal status of women in medieval English Ireland was not uniform, but instead a struggle of jurisprudence with individual cases, which involved the jury's and justices' ideas of 'right and wrong' weighed against social and legal statuses and norms. The following chapter examines women's legal status in the royal courts and weighs the role of ethnicity in those proceedings.

² John Hudson noted that Milsom thought that heiresses 'transmitted' land, not inherited it: John Hudson, *Land, law, and lordship in Anglo-Norman England* (Oxford, 1994), p. 112, n. 19. Cf. Professor Hudson made a similarly sweeping claim that women inherited land, but did not hold it: John Hudson, *The formation of English common law: law and society in England from the Norman Conquest to Magna Carta* (London, 1996), pp 87-8.

³ A good introduction is: J. S. Loengard, 'Common law for Margery: separate but not equal' in L. E. Mitchell (ed.), *Women in medieval western European culture* (New York, 1999), pp 117-30. Miriam Müller argued that modern historians have placed the construct of coverture onto women which may have not existed in earlier times and places than previously thought. Dr Müller analysed customary courts, but I believe her conclusions can be applied to the royal courts because she was examining thirteenth-century society through the law. These practices were not confined to manors: Miriam Müller, 'Peasant women, agency and status in med-thirteenth- to late fourteenth-century England: some reconsiderations' in Beattie & Stevens (eds), *Married women and the law*, pp 91-114.

⁴ For the sake of consistency, I have used 'freedom' in this chapter as I have in the other chapters. Most historians of women use 'agency'. My usage of the former is not a challenge or comment on the usage of the latter.

⁵ Gillian Kenny, 'When two worlds collide: marriage and the law in medieval Ireland' in Beattie & Stevens (eds), *Married women and the law*, pp 53-70 at 53.

⁶ Hand, *English law*, pp 11-13, 177-86, 204-5. Cf. *supra*, n. 3. There is almost no historical work on women's legal status in medieval Ireland by legal specialists. An AHRC-funded project studying medieval Irish women and the law should address this: (www.womenhistorylaw.org.uk).

Naming practices

As with the other groups examined in this thesis, the study of medieval women presents problems with regards to naming practices and identification. These problems pertain to all women, and not just the Gaels. The names of some women in English Ireland were recorded inconsistently in some court cases. This is important because, as many legists noted, using an incorrect spelling of someone's name (even extending an abbreviation incorrectly, such as 'Robert' instead of 'Roger' when the original writ referred only to 'R') could – and most of the time did – lead to the quashing of a case.⁷ For some women their name in the court records appears to be determined by the type of court case (such as 'daughter of s.o.' in a case of inheritance, or 'widow of s.o.' in a case of dower). However, we should not jump to conclusions as the naming practices seem arbitrary in other instances, and the majority of women did not appear in the royal courts. This name-change phenomenon may be the result of upper-class women being named how they wished, or if relating to an inheritance or dower, by that relationship. The most obvious example is Emmeline de Longespée. She was the second wife of Maurice son of Maurice, justiciar of Ireland 1272-3.⁸ She purchased many writs, and her name changed volubly from 'Emmeline widow of Maurice son of Maurice' to 'Emmeline de Longespée'.⁹ She was even called 'Evelyna widow of Maurice son of Maurice' in one case without any technical objections.

Another aspect of naming, which shows the socio-legal value of mothers, is the mostly-overlooked practice of matronymics.¹⁰ It is already well-known that Theobald Butler II's son by his second wife, Rose de Verdon, was named John de Verdon, and that John inherited her lands as well as her surname.¹¹ But some men were known by a matronymic. Philip son of Eve, clerk, was alleged to have forestalled a man in Maynooth

⁷ *Bracton*, iii, 209-17; Sutherland, *Assize of novel disseisin*, pp 68-9. Cf. in a case involving the bishop of Derry in 1297 he noted that his name was misspelled, but the jury decided that was not true because the bishop was only known by 'Goffridus' to the independent (unconquered) Gaelic people in his diocese and the English people called him 'Geoffrey': Chapter Five, *infra*, pp 254-7.

⁸ St John Brooks, 'De Ridelesfords', pp 45-8, 51.

⁹ NAI, RC 7/2, pp 143-4, 147-8, 150-2; RC 7/3, pp 100-1, 122, 161, 190-1, 357; RC 7/5, pp 315, 350, 365, 447; RC 7/9, pp 271, 289, 298-9, 317, 417 [Evelyna], 462-3; RC 7/10, pp 165, 384-5; RC 7/11, pp 79-80, 90, 136-8, 149-51, 283, 389. She was actually called 'Emmeline who was the wife of Maurice son of Maurice' (*L. Emmeline que fuit uxor*), but we know that the former justiciar, Maurice son of Maurice, had died in 1287, and therefore, she was a widow.

¹⁰ There is at least one study of medieval matronymics: Deborah Anthony, 'In the name of the father: compulsion, tradition, and law in the lost history of women's surnames' in *The Jn. Jurisprudence*, xxv (2015), pp 59-95 at 69-75. Many thanks to Dr Sparky Booker for showing me this article.

¹¹ Smith, *Colonisation and conquest*, p. 93. Professor Smith also noted that Ralph Pipard was the son of Ralph son of Nicholas and Alice Pipard.

in 1290.¹² Henry son of Edithe was a defendant in a case of trespass.¹³ John son of Isabella was John de Hothum's attorney in the Yorkshire eyre of 1285.¹⁴ William son of Egidia, junior, was a party to several cases along with his mother, Egidia de Staunton.¹⁵ In an essoin the attorneys for Egidia were named as the 'guardians' of William son of Egidia because he was underage.¹⁶ There is no explanation why William was always called 'William son of Egidia junior', but he could have had an older brother also named William son of Egidia. At Limerick in 1318, David son of David 'fitz' Johanna recovered a house, 120 acres of arable, four acres of meadow, and 120 acres of pasture.¹⁷ It may be that 'fitz Johanna' had become a surname for David's family, or it could be that he was simply David son of David son of Johanna. These are just a few of the people with matronymics who appeared in court. An entire study could track the development and effects of matronymics in high medieval Ireland and Britain. But we can tell that many mothers were valued by the thirteenth-century society.

Single women

Free women, in England and English Ireland, could purchase writs, bring cases against anyone, speak in court, and warranty claims.¹⁸ Here we will examine women without husbands (and some married women who were semi-independent); remarried widows are examined below in the 'married women' section. I will begin by establishing the extent of freedom of single women in England and of Englishwomen in the royal courts, and then compare their freedom to the legal status of free and unfree Gaelic, single women.¹⁹ But

¹² NAI, RC 7/3, p. 126.

¹³ NAI, RC 7/13/2/1, p. 1.

¹⁴ Sayles (ed.), *Select cases, Ed I, vol. i*, pp 158-60. For John de Hothum's career and background, see J. R. S. Phillips, 'The mission of John de Hothum to Ireland, 1315-1316' in J. F. Lydon (ed.), *England and Ireland in the latter Middle Ages* (Dublin, 1981), pp 62-85.

¹⁵ NAI, KB 2/9, ff 76r, 77r, 80r, 81r; KB 2/10, f. 5r; KB 2/11, ff 11r-12r.

¹⁶ NAI, KB 2/10, f. 5r. This matches half of Pollock and Maitland's understanding of minors. They wrote that minors could not use attorneys in court and that minors could not be represented by guardians. Clearly, the justiciar's court allowed minors to use 'guardians' as attorneys in 1318: Pollock & Maitland, *History of English law*, ii, 440-1. Cf. Paul Brand mentioned that minors had to use guardians to sue in cases of dower: Paul Brand, 'Delay in the English common law courts (twelfth to fourteenth centuries)' in C. H. van Rhee (ed.), *The law's delay: essays on undue delay in civil litigation* (Antwerp, 2004), pp 31-45 at 42.

¹⁷ NAI, KB 2/10, f. 37r. The translator of RC roll 117 (KB 2/10), Herbert Wood, had originally written 'David son of David son of Johanna', but then marked it out and wrote 'David son of David fitz Johanna'. The original probably read 'Dav' fil' Dav' fil' Joha'. Johanna can also be rendered as Joan.

¹⁸ For England, see Pollock & Maitland, *History of English law*, ii, 437-8; Cordelia Beattie, *Medieval single women: the politics of social classification in late medieval England* (Oxford, 2007), pp 27-31. For English Ireland see *infra*, pp 95-106.

¹⁹ We should note that English was an ethnicity, as well, and so belongs in a thesis on ethnicities. I have not found any single women labelled as an 'Ostmannia'.

the Englishwomen are examined simply for context. The general disregard for women by legal historians of medieval Ireland means that there is no frame of reference for the legal status of medieval women in Ireland. In the surviving court records there were almost no women serving as justices, clerks, *narratores*, attorneys, jurors, bailiffs, or sergeants. There were, however, a few exceptions: at the itinerant court in Tipperary, William de Kadewally's attorney in a case of dower was his wife, Matilda.²⁰ She was also part of the suit, which they eventually won (the defendants came to the itinerant court and paid to make a concord). There were also female attorneys in England until at least the late-thirteenth century. Isabella de Brus was the attorney for Ivetta de Arches in three cases of land in Yorkshire.²¹ Ivetta was named as the defendant in all three cases, and Isabella asked to have – and got – the writs rescinded. In 1194 Sybil de Dinan was the attorney for her husband, Hugh de Plugenai, in a case reviewing the result of an assize of mort d'ancestor for the lands of Calestoun, Wiltshire. She might not have been able to sue on her own, but she could speak in court and present essoins.²² In 1256 in Shropshire Roger le Frauncey's attorney was his wife, Christine, in a plea of land against William de Clatere and in another plea of land against Gilbert de Frome, his wife Margeria, and others.²³

There were women receivers (financial bailiffs) who have been overlooked. Receivers were bailiffs of lords, hired for a set term (usually a year) to collect sums of money and then deliver them to the lord.²⁴ Elena was the *receptrix denariorum* for Isabel. After her term ended, Elena did not deliver her *compotus*, and so Isabel (and her husband) sued Elena (and her husband) to deliver the *compotus*.²⁵ Just as with Gaelic bailiffs, we only know of Elena's position of power because she did not return her *compotus*. There were perhaps other women bailiffs who existed but were not recorded in the court rolls because they accounted on time. William son of Roger Owen claimed Alice, wife of Walter de Kenley, was his *receptrix denariorum* for the manor of 'Donrenathg' [?] – among other things – but his case failed, and so we cannot be certain whether Alice had

²⁰ NAI, RC 7/1, pp 150-1.

²¹ D. M. Stenton (ed.), *Pleas before the King or His Justices, 1198-1212*, iv (SS, lxxxiv, London, 1967), no. 3127. Many thanks to Dr Emma Cavell for her assistance with these references and comments on the agency of women in England and the March of Wales.

²² Francis Palgrave (ed.), *Rotuli Curia Regis, vol. i* (London, 1835), p. 37.

²³ Harding (ed.), *Roll Shropshire Eyre*, no. 180. Cf. *ibid.*, no. 418: in a 'foreign plea' (from Hereford) Gilbert de Clatere also had the surname 'Godchep', and he and his wife did not appear. The lands were taken into the king's hands, and Christine appointed Roger as her attorney.

²⁴ Brand, 'Merchants and their use of the action of account'.

²⁵ NAI, RC 7/3, p. 108.

been a *receptrix*.²⁶ It is rather interesting that in both surviving instances of *receptrices*, the receiver was married but not called a ‘*come femme sole*’.

There are a few tests which demonstrate the freedom of (mostly) single Englishwomen in the royal courts. The defendant in an assize of mort d’ancestor called William son of Craddoc [W. *Caradog*] to warranty half a carucate in Tipperary, and William then called Matilda de Clohull to warranty the claim.²⁷ This was one of many instances which prove that women did not ‘transmit’ land, but held it. To warranty a claim, the warrantor had to possess free lands of equal value to the lands in question. We have already discovered that if the warranty failed, the warrantor’s lands were forfeited to the warrantee.²⁸ Also, to warranty a claim required a warrantor to speak in court as a pledge: an act only a free and upstanding person could do. Another important aspect of this record is that we cannot tell whether Matilda was married or single. As Miriam Müller posited, the freedom of some medieval married women has led some scholars to assume that those women were single when they were not ‘covered’.²⁹

Other women were called to warranty in court, and by being allowed to warranty someone they demonstrated their freedom and possession of free lands. William Kempe called Ida the wife of Peter Keting to warranty against Philip, bishop of Ardfert, in a case of land (*L. placitum terre*).³⁰ Kempe did not call Peter Keting to warranty. Peter did not ‘cover’ Ida in this instance. Reginald Obeulan [G. *Ó Beolláin?*] called Isabela and Joan, daughters of Roger May, to warranty his claim to seven acres which May had enfeoffed to Obeulan.³¹ Alice la Rus, wife of Henry de Penris, brought an assize of mort d’ancestor for nine acres against Stephen de Britann. Stephen called Margaret, abbess of Hogges, to warranty.³² These warrantors would have spoken in court to prove their warranty of the plaintiff or defendant. In most cases, their exact words do not survive, but we have evidence that they were heard in court and legally respected to some extent.

²⁶ NAI, RC 7/5, pp 46-7. It appears that William was the son of Roger Owen, son of the Roger Owen who married Aufrica, *infra*, pp 133-4. Warin Owen, William’s brother (?), was the attorney for Walter de Kenley: Foley, *Royal manors*, pp 136-7.

²⁷ NAI, RC 7/1, p. 152.

²⁸ Chapter One, *supra*, pp 60-4.

²⁹ Müller, ‘Peasant women’, p. 94. Cordelia Beattie noted that Dr Müller was examining customary court records, but I believe that Dr Müller’s findings can be applied to the royal courts, as well. Many thanks to Dr Beattie for her comments.

³⁰ NAI, RC 7/1, p. 226.

³¹ NAI, RC 7/1, p. 373. Reginald Obeulan lost because he said the seven acres were in Dergelnan, co. Limerick, and the jury said the lands were in a different carucate.

³² NAI, RC 7/1, p. 469. No result was recorded. For more instances of women being called to warranty, see RC 7/2, p. 142; RC 7/10, pp 22-4; KB 2/4, ff 588r-9r.

Another case of a single woman shows that she held lands before her marriage. Patrick Poch gave his daughter Sarra a house and half a carucate in Poghelestoun, co. Louth (the jury said this was ‘in order to marry’). Sarra held the house and lands independently for over eight years before she decided to get married.³³ After her husband, Richard de Howth, joined Robert de Verdon’s rebellion, Sarra’s house and lands were taken into the king’s hand as escheat for rising against the king.³⁴ A jury determined that Sarra should recover the house and lands, and that she had no part in the rebellion. The escheator had seized the tenement because, according to the jury, the couple held it during the marriage. The house and lands were then returned to Sarra as her property. Here we have proof of some aspects of the status of Englishwomen: they could inherit lands, some could choose to marry or remain single, and they were not always held responsible for their husband’s actions.³⁵ But we can also see that in this instance the courts considered that Sarra’s tenement was covered by Richard de Howth during the marriage (until he rebelled against the king).

Coverture supposedly meant that husbands held and controlled all tenements of their wives *jus uxoris*, but that was not always the law. John de Kerdyff brought an assize of novel disseisin against Henry Galbarry, Constance his wife, Peter de Lanney, Geoffrey de Lanney, and Julia his wife. Constance responded, first and alone, as tenant for one house, twenty-six acres of arable, four acres of meadow, and four acres of pasture.³⁶ Her actions break the ‘rule’ of coverture.³⁷ Constance was married and her surname – if she had one – was not recorded. Henry Galbarry (under the conception of coverture) should have responded that the house and lands were his *jus uxoris*, but he did not. Peter de Lanney responded for the remaining lands, fifty-two acres in total, and then he said that the lands and house were in a different vill than the one named in the writ.³⁸ John de Kerdyff then claimed that Constance held the lands, which she claimed, by right of dower of her former

³³ NAI, KB 2/4, ff 454r-5r.

³⁴ For the rebellion, see Smith, *Colonisation and conquest*, pp 97-101; *CJRI, 1308-14*, pp 237-9, 278.

³⁵ Cf. in 1311 Cecilia, wife of Thomas Toner, was convicted of ‘procuring and abetting’ her husband to kill Thomas le Lang. She was allowed to pay a fine of 20 marks to return to the peace and to keep her husband’s goods (he had abjured the land): *CJRI, 1308-14*, p. 232. See also the treatment of wives of ‘Scottish rebels’ in Britain in 1295-1307: C. J. Neville, ‘Widows of war: Edward I and the women of Scotland during the War of Independence’ in S. S. Walker (ed.), *Wife and widow in medieval England* (Ann Arbor, 1993), pp 109-39 at 112-14, 116-18, 120.

³⁶ She probably spoke in court. If she spoke through an attorney, this was not recorded. Usually, in English Ireland, if wives spoke through their attorney, this was recorded.

³⁷ Could this be because, as Dr Müller suggested, that historians have placed thirteenth-century women into an artificial category of ‘coverture’ because it makes our analysis and understanding easier? Müller, ‘Peasant women’, p. 94.

³⁸ NAI, RC 7/13/4, pp 32-3.

husband, Peter de Lanney (father of the co-defendant?), for her life only. John also claimed that Constance had demised her dower, for her life, to his father, John. From the ruling it appears that she only demised the lands then held by Peter de Lanney. Although Constance's new husband, Henry Galbarry, was named in the writ, he had no active part in the case and no one claimed he held any of the lands. The jury agreed with John de Kerdyff, and the justices ruled that once he was of age (he was then underage and in the custody of Guydo Cokerel) and returned from England, he could hold the lands which Peter de Lanney claimed for the life of Constance.³⁹ No mention was made of the lands Constance held, but we can probably assume that she was left in seisin. In this case she acted independently, almost as if she was not married, and she encountered no resistance from the court.

In 1309 a jury determined that Thomas de Handoun gave a house in co. Cork to Isabel the wife of Roger Deynile independently (*L. sole*), and not as the defendant alleged to Roger and Isabel conditionally (the term used for grants which required a couple to produce a child in order to keep the grant after one person had died).⁴⁰ There are several issues here. Clearly, Roger had died and the couple had not produced any living children. Since Isabel was not a party to the case, we can probably assume she had already demised the house, and Thomas de Handoun's heir thought he could claim it as escheat. The record does not specify who the plaintiff was and who the defendant was. From this case we see that a married woman still had freedom and could independently acquire and possess lands, and that some people – in this case a man – made false claims in court in order to dispossess other people (a common experience). We should also note that Isabel was not *come femme sole*.

Wives of 'sheriffs' (viscounts) also acted semi-independently. In 1301 Anastacia, wife of Henry le Waleis, sheriff of Limerick, paid 26s. 8d. into the exchequer for the arrears of his account as sheriff.⁴¹ She was alone, had travelled to Dublin with this money, and was allowed to interact with the exchequer clerks. Her record is not unique. Lucy, widow of Robert de Somerville, custos of Anyn, accounted for £70 rent from 1262 and

³⁹ Since the record states that John de Kerdyff spoke but then stated that he was in England, it could be that Constance did not actually speak in court. The record does not state if anyone had an attorney or *narrator*.

⁴⁰ '*jurata de consensu... si Thomas de Handoun dedit 1 mesuagium Rogero Deynile & Isabelle uxori ejus & heredibus ipsorum &c vel si idem Thomas dedit predictum mesuagium predictae Isabelle sole venit & dicit quod predictum mesuagium datum fuit predictae Isabelle sole &c*': NAI, RC 7/13/3, pp 32-3. The case was between Richard son of Richard de Wodeleye and Adam de Handoun. It seems likely that Isabel had sold the house and lands to Richard and that Adam claimed escheat under the rules of conditional grants. If this was true, then Adam lost as the grant was not conditional.

⁴¹ *HMINAUK*, p. 70

£210 in arrears from the manor.⁴² Other women had interactions with sheriffs and the courts, and these exchanges reveal aspects about some women's status. In 1313 the sheriff of Dublin was ordered to levy 30s. from Richard de Balydermot for a debt to Alice Derby. When the sheriff failed to distrain Richard of the full amount, the court, at Alice's request, ordered the sheriff to distrain Richard of all his lands and chattels (within the vicontiel jurisdiction).⁴³ Alice's case is one of several in which a royal court acted on a woman's request. This is an important detail which many historians of women have glossed over. Some requests were banal, but others were extraordinary. Synolde, the wife of Thomas le Botiller, knight, requested and received a pardon (and restoration of all goods seized) for John Cosyn.⁴⁴ He had committed several felonies, but those were not recorded. Johanna, the wife of Edmund le Botiller, requested for some men to be released from gaol without paying a fine, and the court conceded.⁴⁵ Synolde and Johanna were not party to any court cases. Their requests in court show that these women were present and active in court without being required to be there (i.e. they were not suing or being sued). This may show that some women were unofficially part of the court system.⁴⁶

Seemingly-single women's actions as defendants in civil cases show us their freedom in court. Matilda de Deneville claimed the jury had made a false return in a previous case, and that Roger Waspayl had declared the lands in question were in a different vill than in the writ. While the review jury returned that the first jury was correct, Matilda was still able to plead several cases and her protests against the first judgment were considered plausible.⁴⁷ One Gaelic woman was fully accepted by the royal courts and her experiences shed some light on all free single women's acceptance by the courts. Sauyna Iny McDonnewith [G. *Saidhbhín inghean Mhac Dhonnchadha*] was sued several times and allowed to directly dispute the writs, her words spoken in court were recorded and the plaintiffs had to refute them. In 1301 Reginald Brun and Anabilla Maunsel, his wife, sued Sauyna for Anabilla's dower from two acres in Grangye, co. Tipperary, and

⁴² 35th *RDKPRI*, p. 41.

⁴³ NAI, KB 2/4, f. 295r. This order probably meant that the issues from Richard de Balydermot's lands, which were currently in the king's hand, would have been forfeited for non-appearance. Many thanks to Paul Brand for his advice on this case.

⁴⁴ NAI, KB 2/8, f. 50r.

⁴⁵ NAI, KB 2/4, f. 364r.

⁴⁶ Cf. it took the leading men of Dundalk and many others to pardon Richard Cros for a homicide which happened as an act of self-defence (usually felony homicides were 'dismissed' when the defendant had acted in self-defence): NAI, KB 2/7, f. 15r. For dismissals for self-defence, see Chapter Four, *infra*, pp 197-9.

⁴⁷ The '&c' in the RC calendar most likely means she was heavily fined for making false claims in a writ resembling a case of *certiorari*: NAI, RC 7/1, p. 382.

they sued Laurence le Blund for Anabilla's dower from other lands.⁴⁸ Sauyna and Laurence called Geoffrey le Blund to warranty. He was present and immediately warrantied their rights to the lands in question. Geoffrey said that Reginald and Anabilla had no right to the lands because Anabilla, before she married Reginald, quitclaimed all of her rights to her dower from John le Blund, Geoffrey's brother, and then presented Anabilla's charter of quitclaim. At the end of Anabilla's charter she attached her seal and William Maunsel (her brother?) attached his seal. Reginald Brun and Anabilla then contested the charter claiming the seal was not Anabilla's. A jury was summoned to determine whether the charter was real or a forgery, but no judgment survives. Since Geoffrey le Blund warrantied Sauyna, however, she could not 'lose' the case because if the warranty failed, Geoffrey would have been obliged to give her lands of equal value.

In 1312 Poncius son of John brought an assize of novel disseisin against Sauyna and William son of Poncius for a house, eighty acres of arable, three acres of meadow, and thirty acres of pasture in co. Limerick. Sauyna was the widow of Poncius son of John (the plaintiff's grandfather) and his son, John, had demised to her the lands in question as her dower after Poncius's death.⁴⁹ She presented a 'writing' to the court to prove her claim. However, Poncius son of John (the grandson and plaintiff) was able to win on a technicality. John son of Poncius, the plaintiff's father (and Sauyna's son?), had died seized of the lands, and neither Sauyna nor the jury specified how this had happened. Poncius (the plaintiff) had entered the lands as the son and heir, and then Sauyna and William son of Poncius disseised him.⁵⁰ Poncius (grandson and plaintiff) won the case, but no objections were raised to Sauyna's ethnicity or her 'writing'. She was even allowed to object to the suitability of some of the jurors. In a later entry the justiciar's court recognised that Sauyna had free lands and chattels, and asked the sheriff to distrain them in regards to her amercement (but the sheriff could not because she had died).⁵¹

Not every woman experienced legal acceptance. There are examples of harassment of women through the courts, and in some of these cases the woman's sex may have been

⁴⁸ NAI, RC 7/8, pp 108-10 [*Sawthe Inyen McDonewyth*].

⁴⁹ It is very interesting that no mention was made of Poncius son of John (Sauyna's husband) in 1301. He must have been dead more than 11 years previous to the case in 1312, or he was not mentioned in the earlier case because it did not involve him. If the latter was true, then Sauyna defied 'coverture'. It seems Poncius son of John (Sauyna's husband) held the manor of Balylegh, co. Limerick, and the advowson of its church. Betham noted that Poncius presented Peter Omonihan and then Thomas O Regan to the church, but Betham gave no dates: NAI, M 2646, p. 105.

⁵⁰ The lands were in 'Cromyll': NAI, KB 2/4, ff 227r-9r, 308r-9r, 582r-3r [*Sauyna Inymacdonechuth, Sauyna Iny MacDonnewith, and Sauyna Inyun Donewyh*].

⁵¹ NAI, KB 2/4, ff 308r-9r, 582r-3r.

the main factor. Maurice son of Maurice as justiciar ordered that Aveline de Burgh, countess of Ulster, should be disseised of five castles in Ulster (and after an extent of her former husband's lands, be assigned a new dower) because she was a woman, and therefore, should not have possession of castles or hostages from Gaelic chiefs.⁵² This is one of the few examples of blatant misogyny in legal settings; other records are less clear regarding the person's intent.⁵³ Around the same time Isabel de Mortimer, widow of John son of Alan III, requested custody of, and received, strategic castles during wartime in the March of Wales.⁵⁴ Thirty years later Joan de Valence wielded considerable power as a single woman and lord of Wexford.⁵⁵

Any narrative of absolute misogyny in medieval society denies the existence of powerful or assertive medieval women and ignores the many court records which contradict it. Contemporaries were concerned with 'right' (*L. jus*) and fighting 'injustice' (*L. injuste*). This occasionally meant the justices and juries preferred and protected women in accordance with their perceptions of right and wrong. In January 1289/90 the itinerant court at Limerick heard a case between Emmeline de Longespée and Elias son of David le Jovevene. Emmeline claimed her former husband, Maurice son of Maurice, had held half a carucate in Ballysallagh, but the jury returned that he had possessed a house and a whole carucate there. The court then gave her a third of the house and carucate.⁵⁶ This is an extremely important result because the jurists (the authors of *Bracton* and *Glanvill*) claimed that if anyone made a mistake in her or his writ, whether she or he claimed the land was arable (*L. terra*) when it was woods (*L. boscum*) or if she or he claimed more or

⁵² *CDI*, 1252-84, no. 950; Katharine Simms, 'The O Hanlans, the O Neills and the Anglo-Normans in thirteenth-century Armagh' in *Seanchas Ardmacha: Jn. of the Armagh Diocesan Hist. Soc.*, ix, no. 1 (1978), pp 70-94 at 83.

⁵³ A problem with the claim that misogyny was increasing during the early fourteenth century is that there is no quantifiable way to prove this claim. The surviving records are not sufficient to substantiate this narrative. While some legal historians have noted that widows' rights to dower were increased and protected by the English courts in the late thirteenth century, none have mentioned that women were allowed to be attorneys and 'sheriffs' (*L. vicecomitisse*) in twelfth-century England. These were not related, but do show that women's status changed in unquantifiable fashions. Cf. the *sine viro* plea hindered some women and protected others: *infra*, p. 116.

⁵⁴ She received the castles of Shrawardine and Oswestry in 1272 and 1280, respectively: Emma Cavell, 'Intelligence and intrigue in the March of Wales: noblewomen and the fall of Llywelyn ap Gruffudd (1274-82)' in *Historical Research*, lxxxviii, no. 239 (2015), pp 1-19 at 4, 11; eadem, 'Aristocratic widows and the medieval Welsh frontier: the Shropshire evidence' in *TRHS*, 6th series, xvii (2007), pp 57-82 at 72-5. And other magnate Englishwomen received custody of castles, as well. Matilda de Lacy recovered custody of Windsor Castle in 1253: *CCR*, 1251-3, p. 444.

⁵⁵ *Infra*, pp 180-1.

⁵⁶ '*Jurata de consensu perciium inter Emelinam que fuit uxor Mauricii filii Mauricii & Eliam filiam David le Jovevene venit (recognitura si dictus M' junior die quo ipsam desponsavit vel unquam postea habuit feodum vel libere tenementum in 1/2 carrucatum in Balysallath ita quod ipsam unde dotare potuit) et dicit quod non, set habuit feodum & libere tenementum in 1 mesuagium & 1 carrucatum ibidem; judicium quod ipsa recuperet seisinam de 1/3 eorundem mesuagii & 1 carrucate*': NAI, RC 7/2, p. 150.

less land than was actually disseised, then the writ had to fail. But Emmeline's writ succeeded.⁵⁷ Although Emmeline did experience legal difficulties – such as when she sued Walter de Ivythorn for extensive lands in Kildare while he was under a royal protection against any lawsuits as long as he was in Scotland – these may not have been related to her sex.⁵⁸ While Emmeline was not a 'typical' widow (she was part of the magnate class and very litigious), her experience in this case was not exclusive to the upper class of free women.⁵⁹ It is important to note here that the majority of women's experiences were not recorded because they were not disseised, and therefore, did not need to purchase a writ.⁶⁰

Turning to unfree women, there are fewer surviving instances of unfree women in the royal courts in English Ireland than unfree men. It is apparent from the surviving records, however, that they were treated in a similar fashion to unfree men. Sadoua was the wife of Odo de Tyntagel and a *Hibernica* of Edmunda, wife of William le Poer. Edmunda and William claimed that Odo's son Eneas caused Sadoua to be slain, but the court was only concerned that Eneas had seized Sadoua's goods with a judgment from the ecclesiastical court of Gilbert Mac Abraham, official of Cloyne.⁶¹ The justiciar's court ruled that Eneas's judgment from the ecclesiastical court was invalid as the goods he seized were lay goods and not testamentary. We can probably assume that Sadoua was unfree, but the record does not explain or detail her status while she was married to Odo de Tyntagel. The record lists the extensive amount of goods which Sadoua possessed at her

⁵⁷ Professor Brand informed me that this could have been the result of Emmeline suing for a nominated dower, but then receiving her 'reasonable' dower. The surviving record, however, does not tell us if this was the situation. Many thanks to Paul Brand for his advice on this case.

⁵⁸ NAI, RC 8/1, p. 235. This was the only instance when she was called 'widow' (*L. vidua*), in every other court case, she was called 'Emmeline who was the wife' (*L. que fuit uxor*) or 'Emmeline de Longespée'. The phrase 'que fuit uxor' was preferred in the plea rolls (whereas 'vidua' is more common in memoranda rolls), and leads to some confusion as to whether the former husband had died or the marriage had been annulled.

⁵⁹ See the cases involving 'Dufcouly' wife of John son of Raymond, *infra*, pp 125-7.

⁶⁰ A quick look at the economic records confirms this. From the extent of the de Clare purparty of the burgh of the New Town of Jerpoint in May 1289, the burgesses of New Town included Denise Peris, who held a house and 6 acres for 12*d.* per year and suit of court and mill; Cristina 'fitz' Walter, who held 1½ houses and 9 acres of arable for 19*d.* yearly and suits; Juliana 'fitz' Arnold, who held 3 burgages and 20 acres of arable for 4*s.* with suit of court and mill; Roesia Longespée, who held 2 houses and 6 acres of arable for 8*d.* yearly and suit of court and mill; and Cristina Juvenis, who held 2 acres for 4*d.* yearly and suits. The tenants at will in 1288 included Roesia daughter of Richard Batyn, who held a cottage with curtilage and renders 3*d.* yearly; Agnes widow of Adam 'fitz' Ralph, who held a like property for the same; and the widow Malyn, who held a cottage with curtilage for 3*d.* per year: *HMINAUK*, pp 258-9, 261-2. See also, Lynda Conlon, 'Women in medieval Dublin: their legal rights and economic power' in Seán Duffy (ed.) *Medieval Dublin IV: proceedings of the friends of medieval Dublin symposium 2002* (Dublin, 2003), pp 172-92 at 172-7. For a similar (but more pessimistic) opinion concerning only dower, see J. S. Loengard, 'Rationabilis Dos: Magna Carta and the widow's "fair share" in the early thirteenth century' in S. S. Walker (ed.), *Wife and widow in medieval England* (Ann Arbor, 1993), pp 59-80 at 59.

⁶¹ *CJRI, 1295-1303*, pp 93-4. Her homicide may have been investigated elsewhere. For the courts' treatment of the homicide of Gaels, see Chapter Four, *infra*, pp 179-97; Gilbert Mac Abraham is discussed in Chapter Five, *infra*, pp 260-1.

death and stated that Odo had demised them to her. This appears to match the legal situation in England.⁶² An unfree tenant had acquired goods and the royal courts determined that these goods, therefore, legally belonged to the lord. The problem with this is that Sadoua had two ‘lords’: her husband and Edmunda. It is peculiar that Sadoua’s death was not investigated in this record, but it could be that this had already been handled in the county court. It is more important to this thesis to question why she was not ‘covered’ by Odo de Tyntagel as he appears to have been a free Englishman.⁶³

Now that we have some understanding of the status of Englishwomen and (seemingly) unfree Gaelic women, we have some reference material to compare to the level of acceptance of free Gaelic women. Some single, free Gaelic women – just as some free Gaelic men – held free lands and tenements on their own, but we only know of their existence because of a failed court case.⁶⁴ In 1260 Mariota, widow of William le Waleys, sued Rathenilda Oketfethe [G. *Raghnailt Ó Céadfadha?*] for the former’s dower of a third of one house in Kinsale, which Rathenilda held, and a third of a house held by Editha, widow of John Russel.⁶⁵ No result was recorded, but in a later entry, Mariota sued Rathenilda for one perch (L. *perticata*) of land in Kinsale and lost because William never held the lands in fee and therefore Mariota could not claim any dower from them.⁶⁶ This was not a technicality.⁶⁷ Mariota did not have any right to that land and she was trying to disseise Rathenilda of the latter’s legally held property, and the itinerant court protected Rathenilda.

Some single Gaelic women won court cases to recover their free lands and houses. In 1290 Elena and Agnes Scolog [G. *Ó Scolóig?*] recovered a house and five acres in co. Limerick from Rhys Clon. Their father, William Scolog, had been officially recognised as the rightful owner, and sometime between his death and the court case, Rys had taken their inheritance.⁶⁸ They, Elena and Agnes Scolog, also brought an assize of mort d’ancestor against William de Penlyn for thirty acres in co. Limerick. They admitted that they had

⁶² The ‘rule’ was not universally applied in England. There were many ‘exceptions’ (to the point that it may not have been a ‘rule’). Manor courts treated villeins just as the English royal courts treated free people and allowed villeins to have wills and villein heirs to inherit goods and lands: Hyams, *Kings, lords*, pp 66-79.

⁶³ How was Sadoua still a *Hibernica* (*et nativa?*) of Edmunda while married to a free man? Sadoua should have paid a fine to Edmunda upon her marriage and then been released from service (as was the custom in England). Cf. ethnically covered and uncovered women: *infra*, pp 118-31.

⁶⁴ For examples of Gaelic men defending their rights to free lands and houses, see Chapter One, *supra*, pp 43-54.

⁶⁵ NAI, RC 7/1, p. 257.

⁶⁶ NAI, RC 7/1, p. 288.

⁶⁷ For some technical objections involving women, see *infra*, pp 116-18.

⁶⁸ NAI, RC 7/2, p. 425.

purchased a defective writ with a technical error (L. *veniunt & recognoscunt se male breve suum impetrasse*). William was given a *sine die* and the women were amerced for false claim. The court then pardoned their amercement because they were underage. Later, William came to court, had Elena and Agnes's rights to the lands recorded in the court roll, and returned seisin of the lands to them.⁶⁹ The court did not compel William to 'do the right thing', officially. We cannot tell whether he felt it was the right thing to do, was compelled by someone else, or knew the women would win if they purchased a better writ; but we can tell that William and the court respected Elena and Agnes's right to the lands despite the technical error and their age.⁷⁰ Elena and Agnes's experiences were not an isolated case.

Agnes and Mabel Fagan [G. *Ó Fechín?*] were successful in their legal battles without husbands and never (in the surviving records) encountered legal disabilities for their sex or ethnicity. They recovered at least some of the lands that their father had alienated by claiming he was not of sound mind (L. *non fuit compos mentis*) when he made the grants.⁷¹ They recovered two acres in co. Tipperary from Richard Wanberd, but no result was recorded for their case against John le Spencer in the same vill.⁷² There is another assize of mort d'ancestor which may reveal a Gaelic woman recovering free lands – Julia, wife of Alexander Bercebneu, sued Geoffrey Chevre and others (L. '*alii*') for a burgage in Swords which her father, Walter Offyn [G. *Ó Fionn*], held – but just as in Agnes and Mabel Fagan's second case, no result was recorded.⁷³

We can tell some Gaelic women were free and held free lands because they sold their rights to these lands. In 1258 Slany [G. *Sláine*], widow of Gillepatrick [G. *Giolla Phádraig*] the butcher, granted lands in the suburbs of Dublin to Ralph the cook of Dublin for a rose annually to Slany and her heirs, and the rent owed to the chief lord (Christ Church).⁷⁴ Cecily daughter of Donald Oconnean [G. *Domhnall Ó Coinín?*] granted Richard Costard twenty-one acres and a stang of arable land in Kildare in exchange for 23 marks, a

⁶⁹ There was no marginal note, but the court was in Limerick: NAI, RC 7/2, p. 368.

⁷⁰ Gillian Kenny thought that women who had never married could not use the courts. The cases involving Elena and Agnes Scolog were just a small sample of the evidence against this hypothesis. Single women, including free and accepted Gaels, who had never married could use the royal courts without any problems: Gillian Kenny, 'The power of dower: the importance of dower in the lives of medieval women in Ireland' in Christine Meek and Catherine Lawless (eds), *Studies on medieval and early modern women: pawns or players?* (Dublin, 2003), pp 59- 74 at 68.

⁷¹ NAI, RC 7/10, pp 27, 164-5.

⁷² NAI, RC 7/10, p. 24.

⁷³ NAI, RC 8/1, p. 49. We should note that although Julia was named as 'Julia wife of Alexander', he was not actually part of the writ or the case.

⁷⁴ CCD, no. 88.

robe, 12*d.* annual rent to Cecily, and the rent due to the bishop of Ossory.⁷⁵ In 1277 Agnes Oduerne [G. *Ó Duirn?*], probably the daughter of Conibyr Odyrne [G. *Conchobhar Ó Duirn?*], quitclaimed twelve acres in Corbally to Thomas de Lega the younger.⁷⁶ Just as with the free Gaelic men, there was a large number of Gaelic women who sold their legally-recognised rights to lands. In some cases, such as Cecily's, the women had established a guaranteed income to support themselves for life, which prevented them from having to work the land themselves or worry about a bad harvest. There is no evidence which indicates that these Gaelic women lost their free status after they sold or quitclaimed their lands.

In 1290 Isolde, daughter of Safory Maleherke [G. *Séafraid Ó Maoil hErcc?*] and widow of Raymond Grymbald, brought an assize of mort d'ancestor against John Silly and Elena Silly for one house and seventy-two acres in co. Limerick. John and Elena then made a concord with Isolde, the details of which were surprisingly not recorded, and the former then gave the marriage of John son of John Silly to Philip Grymbald (a relative of Raymond?) for the latter's daughter, Dionisia.⁷⁷ This case does not disclose how or by what decent Isolde claimed the lands. It only shows us that a Gaelic woman, formerly married to an Englishman, had some recognised right to free lands, and sold it when she had the chance. If she had no claim or free status, John Silly and Elena Silly would have pleaded this and let the jury return a verdict.

If we look closely at the court records, we can see more evidence of free Gaelic women. Slane Inyn Bren [G. *Sláine inghean Uí Bhriain?*] was sued along with Geoffrey son of Raymond de Burgh and John son of Meiler de Burgh by Stephen le Poer and Margery, his wife, for Margery's dower in five villis in co. Tipperary.⁷⁸ Slane, Geoffrey, and John called Otto de Grandison to warranty, as he was the custodian of Raymond, son and heir of Meiler de Burgh (Margery's former husband). When Otto did not appear, Slane, Geoffrey, and John sued him for not warranting their claim that Margery's dower should come out of Raymond son of Meiler's lands.⁷⁹ Interestingly, when the plaintiffs were essoined against Otto, to warranty their rights, Slane did not continue to prosecute the writ. There was no mention of an amercement and she reappeared in the later records in

⁷⁵ *Cal. Ormond Deeds, 1172-1350*, no. 252. The lands were in Maymoch (Mayne, lib. Kilkenny).

⁷⁶ *Cal. Ormond Deeds, 1172-1350*, no. 211, 218.

⁷⁷ NAI, RC 7/2, p. 182.

⁷⁸ NAI, RC 7/10, pp 35-6.

⁷⁹ NAI, RC 7/10, pp 154-5; *CJRI, 1305-7*, pp 277 [*Slane Inyneren Obren*], 298-301 [*Slane Inynyuhren*].

regards to the case.⁸⁰ A few years later the cases had not been settled, but Slane by then had married Philip de Barry and he was added to the writs.⁸¹ Her pending court cases may have had no bearing on her decision to marry Philip; there is no proof of causality.⁸² There is no evidence that her ethnicity or sex affected the case, although she appears to have been in an English milieu. If Slane Inyn Bren had been unfree, Stephen le Poer and Margery would have been able to use the plea *est nativa*. One Gaelic woman was very accepted. Covina [G. *Céibhionn?*], widow of Dermot Macardi [G. *Diarmaid Mac Carthaig*], in the presence of Edward I nominated Robert le Despenser as her attorney for all cases in Ireland.⁸³ She must have been considered part of the magnate class (as Aoife daughter of Mac Murchadha was), but there are no surviving records of cases involving Covina or extents of her lands in Ireland (or England).

Since some Gaelic women worried about losing their freedom, they bought, or petitioned for, grants of access to the royal courts. Margaret de Lessan, along with six Gaelic men, received a ‘grant of special grace’ for herself and her legitimate children to use English law on 30 May 1284.⁸⁴ Isamaye and Matilda, *Hibernice* and daughters of Oragilig [G. *Ó Raghailigh*], received a grant from Edward I on 15 June 1290 that to use ‘English laws in Ireland’.⁸⁵ These grants are proof that these women feared *losing* their legal status, but are not proof that all Gaelic women were excluded from the royal courts.⁸⁶

Being underage

Some difficulties in court affected everyone. Being underage affected all people in English Ireland, but the issue was brought up in several cases involving women in ways which may indicate that young women tried to secure their landholdings before getting married.⁸⁷

Clarice daughter of William sued her sister Nesta for thirty-two acres and 16*d.* rent in co. Cork, but the case was suspended because both women were underage (*L. remansit*

⁸⁰ *CJRI*, 1305-7, p. 277.

⁸¹ NAI, RC 7/11, pp 51-2, 100-1, 134.

⁸² Cf. the experience of Aufrica, widow of John le Cordewaner, *infra*, pp 133-4.

⁸³ *CDI*, 1252-84, no. 1052.

⁸⁴ PRO, C 66/103, m. 11 [calendared in *CDI*, 1252-84, no. 2228].

⁸⁵ *CDI*, 1285-92, no. 685.

⁸⁶ It may be important that the first grant was for access to use ‘English law’ while the second grant was for access to use ‘English law in Ireland’.

⁸⁷ Many historians of medieval women have described married women as if the latter were underage and under the guardianship of their husband. For more on this see *infra*, pp 113-18.

capienda quod ipse sunt infra etatem).⁸⁸ Since the lands had not escheated to any mesne lord or the escheator, we can probably assume these lands were held in socage. But this does not answer how Nesta was in possession of the tenements and not a family member. Roger son of John the White sued Leticia daughter of John the White (his sister?) for a house in Cashel. The record stated that Roger was underage, but no objections were raised. Roger recovered the house from Leticia, and her amercement was pardoned because she was also underage (which was not mentioned in the *narratio* [count]).⁸⁹ The record does not explain how Leticia gained possession or denied it to Riger. Other cases of underage women were against people who were not their siblings. Mabilla, Felicia, and Nichola, daughters of John Ketyng, brought an assize of mort d'ancestor against Richard de Marisco for 4 marks rent in co. Tipperary. The writ listed that all three women were underage, but Richard did not appear.⁹⁰ When Richard appeared at a later court session, the women's age was not mentioned. The jury ruled that he had denied them seisin of the rent.⁹¹ Since the women were underage, it is unlikely that they held the rent through military tenure. These difficulties were not the exclusive experience of women; men were disseised, as well. We can tell that single, underage, and free Englishwomen suffered no legal impediment to recovering stolen property.⁹² When we compare these three cases to the other incidents of minors (as plaintiffs or defendants) in court, we can see that there was no 'rule' for their ability to sue. Some were denied access to the court, others had their cases suspended until they were of age, and some were allowed to use the court as any adult free person could.⁹³

Heirs of tenants of military tenure were subject to different treatment than socage tenants when they were underage. Meyler Othothil [G. Ó Tuathail] held in chief of the archbishopric of Dublin, and after Meyler's death, Archbishop Fulk sold the wardship and marriage of Agatha Othothil, Meyler's heir, to Adam de Wudeford for £20 per year.⁹⁴

⁸⁸ NAI, RC 7/1, p. 288.

⁸⁹ NAI, KB 2/4, ff 141r-2r.

⁹⁰ NAI, KB 2/4, f. 152r.

⁹¹ NAI, KB 2/4, f. 370r.

⁹² This included the chattels of single women. Richard le Waleys, knight, stole 8s. 4d. worth of goods from Johanna widow of Philip Broun at the castle of Clonamylethon, co. Tipperary. Richard was fined 4 marks for the trespass and was to be gaol for not appearing in court to hear the sentence. He was later pardoned the gaol sentence by the justiciar (no reason was listed): NAI, KB 2/9, ff 117r-18r.

⁹³ This phenomenon may have been caused by the tenure of the underage people. Perhaps people who held in socage could sue to recover and take possession of their lands while underage, but people who held in military tenure theoretically could not. Pollock and Maitland believed that minors were not barred from suing, but clearly this was not always in practice in English Ireland: Pollock & Maitland, *History of English law*, ii, 440-1.

⁹⁴ CAAR, p. 114. Meyler son of Laurence Othothel's grant from Archbishop Luke is in the same register: *ibid.*, pp 81-2.

Adam and Agatha disappear from the records after this purchase. While we cannot discern Agatha's freedom or life experiences from this record, we should compare it to similar cases of men. We can tell that she was treated the same as any English heir (male or female) of a military tenure. If Agatha's inheritance had been damaged by the archbishop's neglect or if any of her goods or lands had been stolen, the archbishop would have forfeited his rights to escheat during minority. Agatha would have had to have sued him under the writ of waste, but she almost certainly would have succeeded. The normal yields of her crops, however, would have been the property of the archbishopric until she came of age or was emancipated by a writ of waste.

Some historians of women frame the purchase of an heir's marriage as an experience only suffered by women.⁹⁵ While discrimination against women existed in many parts of the medieval society, the purchase of marriages of tenants in chief was not confined to female heirs. Walter de Burgh, later earl of Ulster, attained his age of majority in 1250; but King Henry III declared that although Walter could inherit his father's and brother's lands and castles, Walter's marriage remained the property of the crown.⁹⁶ Walter was legally an adult and a magnate in Ireland, but he had no choice in his marriage partner unless he purchased it for a lofty sum.⁹⁷ The marriage of heirs of non-magnates was reserved to certain people, as well. Richard de Valle sued John Oliver for marrying Richard's son William (the bride was not named) without a licence from Richard, and subsequently, William son of Richard was summoned to respond to the writ.⁹⁸ Here was a father suing his own son for marrying without permission. By contrast, some daughters were forced to marry against their will.⁹⁹ Due to incomplete sources, and the fact that the

⁹⁵ Kenny, *Anglo-Irish and Gaelic*, pp 23-6. Dr Kenny mentions male heirs in one paragraph, but never explicitly stated the obvious 'equality' of the sexes as exploited, underage tenants by knight tenure. Cf. Professor Walker was careful to note the system of wardship for military tenants was not concerned with the sex of a male or female heir: S. S. Walker, 'Widow and ward: the feudal law of child custody in medieval England' in S. M. Stuard (ed.), *Women in medieval society* (Philadelphia, 1989), pp 159-72. Professor Robert Bartlett rightly pointed out that 'heir' does not mean 'male', and 'heiress' is a modern construct: Robert Bartlett, 'The first female sovereigns in medieval Europe', James Lydon Lecture, Trinity College, Dublin (25 Apr. 2017).

⁹⁶ *CDI, 1171-1251*, no. 3050. The author of *Bracton* declared this illegal: *Bracton*, ii, 257. Interestingly, two years later (1252), Walter was called to warranty, but the court said he was underage: NAI, RC 7/1, p. 172.

⁹⁷ Cf. Margery de Burgh, widow of Theobald Butler III and Walter de Burgh's sister, paid 500 marks to choose her own second husband: *CDI, 1171-1251*, no. 3043. See also, S. S. Walker, 'Feudal constraint and free consent in the making of marriages in medieval England: widows in the king's gift' in *Historical Papers*, xiv, no. 1 (1979), pp 97-110.

⁹⁸ NAI, RC 7/1, pp 271-2.

⁹⁹ There are several records of forced marriages from fifteenth-century Ireland: Art Cosgrove, 'Marriage in medieval Ireland' in idem (ed.), *Marriage in Ireland* (Dublin, 1985), pp 25-50 at 43-6. There are no surviving ecclesiastical-court records from the period studied (1252-1318).

children's wishes were not usually recorded, we cannot speculate on the percentages of forced marriages or clandestine marriages for either sex.

Men were not the only ones who purchased – or seized as mesne lord – the marriage and custody of heirs of military tenants. Matilda la Botiller sued Geoffrey de la Hulle for seizing (*L. rapuit*) Peter, son and heir of John Quintyn, who was underage and in the custody of Matilda and William le Deveneys, from Philip le Flemingstoun, Kildare.¹⁰⁰ In another case relating to Peter Quintyn we see that he was treated as a chattel by the court, and that he 'belonged' to William Quintyn by demise from Philip le Fleming who in turn received custody of Peter from John Quintyn.¹⁰¹ Matilda la Botiller also sued William de Caversham for seizing (*L. rapuit*) William, son and heir of William Geydon, who was underage and whose custody and marriage belonged to Matilda and William le Deveneys.¹⁰² There was no judgment for the latter case, but we can see that the court took no issue with a woman treating a military-tenure heir as property.

Difficulties for single women

Some women encountered recalcitrant defendants – as did many male plaintiffs – who made legitimate or outrageous claims to avoid returning lands or rent. In 1298 Alice the widow of Henry son of Griffin de Roche sued George de Roche for her dower from ten carucates in co. Cork. George raised one objection to the case: that Alice's attorney, Simon son of Thomas, was the son of Thomas OKorran [G. *Ó Corráin*] and an unmixed *Hibernicus* (*L. purus Hibernicus*), and therefore, Simon could not be her attorney.¹⁰³ This phrase is odd because 'Simon son of Thomas' was not a Gaelic name and Simon clearly was accepted enough to be an attorney. It may also have been a dilatory tactic, as George did not claim that the writ was defective or that he did not have to respond to the writ. No judgment was recorded, and so, we do not know if the court determined Simon's legal ethnicity or if that mattered. We can compare this case with Leliath's writ of entry in 1252. Her attorney, Bricius Ocohelan [G. *Breac Ó Cochláin?*], was accepted by the itinerant

¹⁰⁰ NAI, RC 7/10, p. 8.

¹⁰¹ *CJRI*, 1305-7, p. 494.

¹⁰² NAI, RC 7/10, p. 50. William le Deveneys appeared for himself and Matilda (as her bailiff?) at the court case, but she was listed first and still claimed to be the partial owner of William son of William Geydon.

¹⁰³ NAI, RC 7/5, pp 395-6. For the change of pleas from claiming someone was unfree to simply Gaelic, see Chapter One, *supra*, pp 73-89. The lands were in 'Kyllochermoye', which I have not identified. Henry de Roche held a vill in Fermoy, but Liam Ó Buachalla could not identify these lands: Liam Ó Buachalla, 'An early fourteenth-century placename list from Anglo-Norman Cork' in *Dinnseachas*, ii, no. 2 (1966), pp 39-50 at 39, 42: NAI, RC 7/8, pp 81-2.

court without any recorded objections.¹⁰⁴ In 1285 Emmeline, widow of Hugh de Aston, sent Hugh Oglawth and Adam Oglauth [*G. Mac an Ógladigh?*] as her attorneys to the Dublin Bench.¹⁰⁵ Some may view George de Roche's claims as misogynistic, but obstinate opponents in court cases were not the exclusive experience of women. In fact women were also deceitful litigants, such as Mariota, widow of William le Waleys.

The nature of the court records distorts our understanding of some relationships. The court clerks did not think it was necessary to name the mother of most people in court – even if the case was related to inheritance – unless a claim was through her, or in a very few instances, if a half-sibling was involved in the case.¹⁰⁶ There are a few cases which demonstrate that we must be careful not to assume that the widow of a father was not the mother of the heir. Henry Neyroun, on his deathbed, told Nicholas son of Robert de Cloyne that if the former's wife, Johanna, behaved well towards Hugh, their son and heir, and their other children, and did not remarry; then Nicholas should allow her custody of Hugh and all of the couple's tenements.¹⁰⁷ As soon as Henry died, Nicholas son of Robert took the house and carucate in co. Cork, and demised them to Peter de la Montayne. Because Henry Neyroun held by socage tenure, Johanna was entitled to half of the house and carucate (even if she remarried). But no one made this claim. Hugh, the heir, brought an assize of novel disseisin against Peter de la Montayne and claimed that he, Hugh, had worked the fields and therefore had seisin. Peter claimed that Hugh was underage and only held by custody of a minor. The jury returned that custody belonged to Johanna because they were tenants by socage and she was the mother of Hugh.¹⁰⁸ Here we have an example of the contemporary perception. Johanna had not been a party to the case, but her rights were recognised by the jury and enforced by the court.

¹⁰⁴ NAI, RC 7/1, p. 130. The record was damaged and the RC clerk could not record Leliath's surname or the defendant's name.

¹⁰⁵ *CDI*, 1285-92, no. 62. See also Chapter One, *supra*, p. 65.

¹⁰⁶ Eva the wife of Richard Whitfot claimed that her brother, Nicholas le Cornwaleys's shops and rent in Shandon, co. Cork, should descend to her, and not their half-brother, Richard le Cornwaleys, because she and Nicholas had the same mother: NAI, RC 7/1, pp 264-5.

¹⁰⁷ English law did not forbid remarriage in order for a widow to receive her dower. Henry Neyroun appears to have been attempting to control his wife, Johanna. Cordelia Beattie noted men in England occasionally left a similar obstruction to dower in their wills: Beattie, *Medieval single women*, p. 24. Many boroughs in England passed ordinances to the same effect: Mary Bateson (ed.), *Borough customs, vol. ii* (SS, xxi, London, 1906), pp 102-30. Several legal historians have argued that men, under the common law (which did not include chartered boroughs), could not reduce their wife's dower except by nomination at the church door, which she had to subsequently accept (and which the English courts overruled by the early fourteenth century): Pollock & Maitland, *History of English law*, ii, 421-2; Charles Donahue Jr, 'What causes fundamental legal ideas? Marital property in England and France in the thirteenth century' in *Michigan Law Rev.*, lxxviii, no. 1 (1979), pp 59-88 at 76-77.

¹⁰⁸ NAI, KB 2/5, f. 527r.

A different case depicts the freedom of some widows and the difficulties caused by exercising their freedom. Margaret Lyfford inherited seven acres in co. Limerick. She then married Peter Engelson and had a son named Simon. After Peter died, Margaret gave her inheritance to William Connagh 'in order that he might marry her', and then he did.¹⁰⁹ Since Margaret had enfeoffed William, the lands were his completely (as her tenant?). William was sick and dying, and so he granted the lands to his son, John, and Margaret jointly. After William Connagh died, Margaret Lyfford became sick. Simon Engelson, seeing an opportunity to claim the lands by primogeniture, entered the lands and ejected John son of William Connagh (no mention was made of Margaret; either she had died or Simon allowed his sick mother to stay on the lands). The court ruled that based on the enfeoffments and grants, the lands were John son of William's and Simon had to pay the former 8s. in damages for disseisin.¹¹⁰ Margaret Lyfford chose, and was permitted, to disinherit her son from her earlier marriage for her subsequent husband.

Other cases highlight the difficulties newly-single women might have. Eva Lowys brought an assize of novel disseisin against Richard Holbe and Milo Lowys. Eva had married Richard's father, Robert Holbe, and after Robert died Richard ejected Eva from her house. Richard claimed in court that Geoffrey Lowys gave the house to Robert Holbe and his heirs, and that he, Richard, was Robert's son and heir. Eva claimed that her father, Geoffrey Lowys, gave the house to Robert and Eva together in free marriage. The jury returned that Eva was in good and peaceful seisin until Richard and Milo disseised her. The men were fined 10s. and gaoled. The record does not tell us if Eva was Richard's mother. Richard le Waleys, knight, then asked for the men to be pardoned the gaol term, and this was granted.¹¹¹ There is no further explanation as to why Richard le Waleys asked for the men to be spared from punishment. While Eva's problems were caused by family members, other women suffered disseisins from an institutional standpoint. A parliament in Dublin in 1300 determined that the five daughters of Adam de Staunton were to be awarded equal shares of his Irish and Welsh lands. Adam's widow, Johanna, had already received her dower and remarried. The problem for Johanna was that her inheritance was combined with Adam's and granted to her daughters.¹¹² No mention was made of her

¹⁰⁹ NAI, KB 2/9, ff 23r-4r. He was also called 'William Connaght'. He could have been [G. Ó Cúconnacht?] or 'de Connacht'. There is no evidence for either hypothesis.

¹¹⁰ The record states the damages were taxed by the jury at 7s. but then John son of William granted his damages of 8s. to the court clerks: NAI, KB 2/9, f. 24r.

¹¹¹ NAI, KB 2/9, ff 95r-6r.

¹¹² *CJRI, 1295-1303*, p. 306.

wishes for her inheritance or if she was allowed to keep it for her life. It appears she could not, as Margaret Lyfford had done, choose to deprive her daughters of her inheritance.

If we remember Johanna the widow of Henry Neyroun's experience when we examine other cases, it appears that many widows were the mothers of heirs. In a portion of cases of dower in relation to military tenants, the heir appeared and granted the dower to the widow.¹¹³ It seems logical that in these cases the widow was the mother of the heir, or maybe the heir knew the widow would win. Some historians have speculated that this practice was designed to ensure that the dower lands were not relabelled as the widow's inheritance.¹¹⁴ Another aspect from Johanna widow of Henry Neyroun's case was that Hugh was allowed to bring a case while he was underage. Hugh, obviously, was not a woman, but some historians claim that married women were treated as minors.¹¹⁵ We have already learned that minors – just as married women – were not universally barred from bringing cases or being answered in court.

Gaelic women also encountered legal and social difficulties. John OMakan [G. Ó Maicín?] purchased a house in Athassel, co. Tipperary, from Robert Melys. John had purchased the house for his mother, Elena, and then granted it to her and Milcenia and Cecilia de la War.¹¹⁶ After John died, Robert illegally entered the house (and presumably ejected the women). Milcenia and Cecilia removed Robert with the help of William de Hauerberge. Elena was not mentioned which probably means that she had died by this point, as well. Robert then brought an assize of novel disseisin against William with no mention of the women or their right to the house.¹¹⁷ We must be careful not to interpret the previous case as indicative of the 'average' experience of women in medieval Ireland. Most experiences were probably unrecorded because there was no need for a court case.¹¹⁸

Single women in medieval English Ireland were not a homogenous group, nor were they treated as such. Some women had extraordinary success in the royal courts. Others encountered obstinate opponents or occasionally blatant misogyny. The free Gaelic women had various experiences in the royal court, but in the surviving records, most seem to have

¹¹³ For example, NAI, RC 7/1, p. 123; RC 7/2, pp 221-2.

¹¹⁴ S. S. Walker, 'Litigation as personal quest: suing for dower in the royal courts, circa 1272-1350' in eadem (ed.), *Wife and widow*, pp 81-108.

¹¹⁵ Katharine Simms, 'Women in Norman Ireland' in Margaret MacCurtain and Donnacha Ó Curráin (eds), *Women in Irish Society* (Dublin, 1978), pp 14-25 at 14-15, 16-17 (this passage is quoted *infra*, p. 113).

¹¹⁶ Elena was not given a surname in the court record. She could have been any ethnicity. I assumed she was Gaelic because her son was. Perhaps she was related to Milcenia and Cecilia, but they were not designated with any relationship marker (such as 'sisters' or 'cousins').

¹¹⁷ NAI, KB 2/4, ff 382r-3r.

¹¹⁸ See *supra*, n. 58.

fared well enough to recover their stolen lands or defend their rights against deceitful plaintiffs. Even though the surviving cases involving unfree women are less numerous, it would seem that the status of unfree Gaelic women was almost exactly the same as unfree men's. On the other hand, there are several cases of family members or the English administration conspiring or co-ordinating to deprive women of their rights to lands and inheritance. These various cases demonstrate that numerous factors (besides sex or ethnicity) influenced the experiences of single women.

Married women

The current belief of the legal status of married women in medieval English Ireland can be summarised as:

The [English] lived under the system of English Common Law, with some minor local variations, and in its treatment of women this reflected what was standard practice over most of Western Europe. That is, when there were no surviving sons, a daughter could inherit her father's estate. When she married, a woman's property pass wholly into the hands of her husband, who became thereafter her *sole guardian*... Under a law which gave the husband complete control of his wife's property after marriage, match-making was very much a business proposition [my italics].¹¹⁹

Many married women in English Ireland were not erased by coverture during the period studied, as we saw earlier in Constance's case.¹²⁰ Historians of women in medieval England have studied the phenomenon of medieval women considered *come femme sole* (as if she was a single woman).¹²¹ The terms coverture and *come femme sole*, however, do not appear in the court records from English Ireland.¹²² Below we examine some instances of married women displaying large levels of autonomy. In English Ireland wives elected/hired their own attorneys, sometimes independently and separately from their husbands for the same case, and their assets were not immediately the property of the husband after the wedding day. A wife had to nominate her husband specifically to be her court representative.¹²³ On the other hand, some wives had to wait for their husband to die

¹¹⁹ Simms, 'Women in Norman Ireland', pp 14-15, 16-17.

¹²⁰ *Supra*, pp 97-8.

¹²¹ McIntosh, 'Benefits and drawbacks'; Beattie, *Medieval single women*, pp 24-31; eadem, 'Married women', pp 146-53.

¹²² It is entirely possible that these terms were in use in thirteenth-century English Ireland, and that all references to them have not survived in the records. If they were used, however, the construct of coverture was not universally applied. Historians of medieval women refer to this as 'there were no coverture police'. Many thanks to Cordelia Beattie for her remarks on this topic.

¹²³ E.g. NAI, RC 7/1, pp 131, 134, 151; *CJRI, 1295-1303*, p. 109.

to recover unlicensed alienations of lands (the existing records indicate that most widows subsequently did recover alienations along with damages), and this demonstrates that they were unable to stop their husband while he was alive.¹²⁴ The freedom of married women in medieval English Ireland is more visible in the records than has previously been suggested and ethnicity was, for the most part, only important in cases of dower and criminal proceedings.

The conception of medieval marriage regards wives as in effect ‘underage’, but as we learned above, underage people were not barred from using the royal courts *ipso facto*.¹²⁵ Another problem with the theory of ‘guardianship’ is demonstrated by the record of Katerine wife of John le Gront. In her will, Katerine donated twenty-three ‘legacies’ to various people or church organisations, as well as her rent in St Olaf’s parish and in ‘the land on the opposite side from the king’s way to the [river Liffey]’ to Christ Church. And finally she gave her chattels and immovables from *her* house to her husband, John le Gront.¹²⁶ The assumption has been that Katerine should only have had control over her personal chattels (clothes, but not livestock) during her life and that she would have required John le Gront’s permission to make a testament. She appears, however, to have had complete control over all of her properties and John le Gront was fortunate to receive what he did. Katerine’s record is highly unusual, but we cannot eliminate the possibility that other married women enjoyed a similar level of autonomy. Sometime before 1297 Agatha, while married to Adam de Praeres, granted to Robert Cor twelve acres in Magnescros, co. Louth. In 1297 Richard Bacon delivered her charter of the grant to John the Yonge, nephew (and heir?) of Robert Cor, for the twelve acres.¹²⁷ While the record states that Agatha made this grant while married to Adam (L. ‘*quam Agatha quondam uxor Ade de Praeres fecit*’), it makes no note of Adam’s involvement. Both of these women’s

¹²⁴ The defendant in one case claimed that husbands were entitled to their wives’ ‘goods’ immediately after the wife’s death (but that case did not concern chattels, it was about the custody of an heir who held in chief of the former wife). No result was recorded in that case, but in other instances examined below, we can see that chattels were not automatically given to the husband: *CJRI, 1305-7*, pp 388-9; *infra*, pp 114-15. Cf. Juliana Colle and ‘the wife of Couhirde’: *infra*, pp 114-15, 129.

¹²⁵ *Supra*, pp 106-9.

¹²⁶ *CCD*, no. 106. Jessica McMorrow noted that Jonet Cristore, wife of Geoffrey Fox, independently held her own goods and listed these in their (Jonet and Geoffrey’s) will, and found fourteen wives that held jointly with their husbands in fifteenth-century Dublin: Jessica McMorrow, ‘Women in medieval Dublin: an introduction’ in Duffy (ed.), *Medieval Dublin II*, pp 205-15 at 206-7. Cf. Professor Loengard believed that married women were not allowed to own any chattels: ‘any possessions a woman had when she married, no matter how she had acquired them, whether by purchase or gift or inheritance, or anything she acquired afterwards, immediately became the property of her husband, absolutely.’: Loengard, ‘Common law for Margery’, p. 122. See also, Pollock & Maitland, *History of English law*, ii, p. 405. Katharine Simms made a similar claim in regards to women in English Ireland: Simms, ‘Women in Norman Ireland’, pp 16-17.

¹²⁷ *NAI, RC 7/5*, p. 182.

experiences interrupt the traditional understanding of coverture. While their experiences could have been the result of their husbands allowing the women to have autonomy, it is equally – if not more – possible that the women were assertive.

Other women's experiences complicate the traditional understanding of the status of medieval women in different ways. Juliana Colle contracted Walter Reyth to marry her – contrary to the idea that the parents, or father, always forced a woman to marry – but after their marriage was annulled (for an unspecified reason) Walter refused to return the goods she gave him after they married.¹²⁸ This contradicts the conventional idea of coverture because Juliana gave her goods to Walter after the marriage (he 'received' them from her), and were not his property immediately upon marrying as traditionally assumed.¹²⁹ We can only speculate on her motivation, but her legal status once they separated was clear: she sued to recover her chattels, and won with damages.

There is one surviving record of a *femme sole* from English Ireland. In 1317 Richard Neel [G. Ó Néill?] and Lucy, his wife, sued Andrew de Auetoun, chaplain, for false detention of goods and wrongfully fining Lucy for marrying without a licence.¹³⁰ The latter would appear to be a merchet, but the record did not call it a 'merchet'.¹³¹ The fine for marrying without a licence was normally applied to female tenants in chief of the king.¹³² The case states that while Lucy was a *femme sole*, the chaplain gave her a licence to marry (so either she was unfree or held in chief of the chaplain). The record also states that Lucy owed the chaplain her husband's dues from her previous marriage. The description of the dues (to build the chapel of Emly and for the administration of goods and chattels) appears to be the kind of services owed under strict ecclesiastical tenures.¹³³ These tenures were sealed with charters and came with heavy physical labour services and high rents. Richard Neel and Lucy were successful against the chaplain because the latter

¹²⁸ *CJRI*, 1305-7, pp 383-4.

¹²⁹ Dr Simms was explicit that a wife's goods were immediately her husband's on the wedding day: *supra*, p. 113. Perhaps this phrasing was how the court clerk framed the legal transfer of ownership, but why did he not simply state that the goods were automatically transferred because of the marriage? The record implies that the transfer was at Juliana's will and not forced on her.

¹³⁰ NAI, KB 2/9, ff 119r-20r. The record calls her a 'femme sola'; this conflates Latin and *Angleise* [the vernacular]. There is no way to confirm whether this man was the same Richard Neel who petitioned for access to English law in 1293 or the one who petitioned in 1305: *supra*, p. 76, n. 322.

¹³¹ A merchet was the fine/fee paid to a lord for a woman to be allowed to marry. It was traditionally thought that, in England, only villein (unfree) women had to pay a merchet, but financial and manorial records have shown that some free women in England were required by custom or charter to pay a merchet: Searle, 'Seigneurial control of women's marriage: the antecedents and function of merchet in England' in *Past & Present*, no. 82 (1979), pp 3-43 at 14-18; Hyams, *Kings, lords*, p. 189.

¹³² Walker, 'Feudal constraint and free consent', pp 99, 104-8.

¹³³ For more on this, see Chapter Five, *infra*, pp 272-7. Heavily labour owed to a cleric did not mean the tenant was unfree.

had broken her grange and taken her wheat and corn when he could have distrained her other lands without breaking her building. Lucy's case involved an actual *femme sole*, and not a married woman *come femme sole*, but it also exhibits Lucy's ability to own property (a grange with wheat and corn, and other lands) while married.

In some cases a wife appears to have been treated as single, but there is not enough information to determine whether she was a *come femme sole* or the case involved trespasses or tort committed while she was single. John son of Richard and his wife, Isabel, brought an assize of novel disseisin against Henry Scot for five acres. The jury returned that Henry Scot had disseised Isabel.¹³⁴ The judgment could mean that Isabel held the lands independently (just as Isabel the wife of Roger Deynile did) or that Henry Scot had disseised Isabel before she married John son of Richard. It is apparent that the lands were hers despite being married and she was never designated a *come femme sole*.

As noted above, historians who have examined women in medieval English Ireland have framed the legal status of married women 'as if they were underage in the custody of a guardian' (the 'guardian' being the woman's husband).¹³⁵ This conclusion is based on their understanding of English law. Some have asserted that medieval married women were barred from bringing any action in the royal courts. This was not entirely correct. There was a bar against married women – which was not always enforced – that we can label the '*sine viro*' plea. This plea did not prevent married women from purchasing writs, speaking in court, or holding free lands independently of their husband. The *sine viro* plea was a technical objection to married women not naming their husband in the writ. This rule of law was supposedly based on the contemporary idea that a wife needed to consult her husband prior to purchasing a writ.

One of the instances in which the *sine viro* plea was used was by David Okentoly [G. Ó Cinnfaolaid?] and Cristofre le Parment against Mabel widow of Walter le Taverner. She claimed two houses in co. Cork as her dower, one from each man. But she did not name her current husband in her writ and the case failed.¹³⁶ We must not mistake this technical objection for a complete legal disability. If Mabel had named her current husband, her case probably would have proceeded. This does not mean that she could not sue or that her husband had to sue for her. The *sine viro* plea could work for women, as well. Henry son of Griffin de Roche sued nine people with an assize of mort d'ancestor.

¹³⁴ NAI, RC 7/8, p. 297.

¹³⁵ *Supra*, p. 113.

¹³⁶ NAI, RC 7/1, pp 256-7.

Two of the defendants, Sydon Fanyng and Mabil Haket, appeared and said that they would not respond without their husbands being named in the writ (*L. Sydon & Mabil dicunt quod habent viros sine quibus non possunt respondere de quibus non fit mencio in brevi*).¹³⁷ The court ruled that this was correct, quashed the writ, and amerced Henry son of Griffin for false claim. Interestingly, none of the other defendants had to defend their rights to the lands in question because of the technical objection by the women.

There are many instances which show the autonomy of wives. Henry Top and his wife, Joan, sued Adam de Stanley for the custody of forty acres in co. Louth, which Stephen de Ardath held of Joan by military service.¹³⁸ Henry had to be named to prevent a technical objection, but the record states that the lands were held from Joan alone by military service. This means that Joan held by military service. Walter de Secton and Gunnora, his wife, sued the abbot of 'Keyveresham' [Keynsham?] for 10 marks rent which was the inheritance of Gunnora that she held in chief of the king.¹³⁹ Joan's and Gunnora's tenure might seem rare due to the survival of records and the nature of court recording, but in many instances in the royal courts the lands in question were held by military tenure. Some historians state that medieval women could not give homage, but contemporary records indicate that medieval women held lands by military tenure.¹⁴⁰

Wives could name different attorneys than their husbands. David Urgan sued Agnes the widow of Walter Laundry with a writ of entry in 1252. In a roll of essoins and attorneys David placed William Duffum [*G. Ó Duibhghinn?*], a Gaelic man, as his attorney. Four entries later Elena, David Urgan's wife, presented her attorney, Adam Derk, in a writ of entry against the same Agnes.¹⁴¹ In 1261 Margaret wife of Roger Wallensis named Thomas son of William as her attorney against the prior of the Hospital of St Marie of Limerick and against John de Clonmel in two writs of dower.¹⁴² Roger was not a part of

¹³⁷ NAI, RC 7/1, p. 388. See also, Mabil wife of John Page and Swonilde, her sister, brought an assize of mort d'ancestor against Geoffrey de _____ for seventy-two acres which their father, Reginald le Fleming, held before he died. Geoffrey responded that Mabil and Swonilde had a sister, Alice, who had died, but that Alice had had a husband, William, who was still alive and not mentioned in the writ. The case was quashed and the plaintiffs were amerced for false claim: NAI, RC 7/1, p. 396.

¹³⁸ NAI, RC 7/3, p. 68.

¹³⁹ NAI, RC 7/1, p. 446. The case is from the Dublin Bench and there is no marginal note. The rent was from 'Cros' (which could be from almost any county). The couple withdrew their writ, and no reason was recorded. They may have settled with the abbot out of court.

¹⁴⁰ Donahue, 'What causes fundamental legal ideas', pp 75-6. Professor Donahue explicitly stated only men could give homage, then put in a footnote that women could give homage by the time of *Bracton* (1220x35). Cf. Pollock and Maitland explicitly noted the distinction: Pollock & Maitland, *History of English law*, i, 305-6.

¹⁴¹ NAI, RC 7/1, p. 127. Cf. Alice widow of Henry son of Griffin encountered problems with her attorney Simon son of Thomas: *supra*, p. 109.

¹⁴² NAI, RC 7/1, p. 367.

these essoins, but he was named in earlier references to Margaret's pursuit of dower (from an earlier marriage to Richard Gollard), and he was party to the final judgment when the couple recovered Margaret's dower.¹⁴³ The splitting of writs into separate essoins did not mean that there were two writs, which we can see from the judgment in Margaret and Roger's case.¹⁴⁴ While it is possible that these wives may not have been allowed to plead their cases entirely on their own, they could speak in court to present their attorneys.

There is a more pertinent case to the overlooked status of women in the royal courts: the '*sine uxore*' plea.¹⁴⁵ At the itinerant court in Cork in January 1259/60 Fulk de Haywode and Margery, his wife, sued Adam son of Alexander for half a carucate, which was Margery's *maritagium* from her previous marriage to Cadmor le Waleis [W. *Catmor*]. Adam replied that he had a wife, Athreth [G. *Áirithe?*], and would not respond to the writ without her named in it.¹⁴⁶ No result was recorded in this case, but at the same court session, the *sine uxore* plea won. William de Malvern summoned William de Barry to warranty the former's claim to twenty acres in co. Cork. William de Barry responded he would not answer the writ of warranty without his wife, Joan, named in the writ because the lands were her inheritance. The court agreed and gave de Barry a *sine die*.¹⁴⁷ In 1301 Felicia the widow of William Hamelyn sued William son of William Hamelyn for her dower in Smithstoun near Julianstoun, Meath.¹⁴⁸ William son of William replied that he did not have to respond without his wife, Cristiana, named in the writ since he and Cristiana were given the lands in question jointly by Robert Bernard. Felicia then paid 40*d.* for licence to acquire a better writ (to add Cristiana's name to the new writ?) indicating that she believed the *sine uxore* plea would defeat her case. The *sine uxore* plea exhibit that women's legal landholding was accepted by the royal courts but it also shows that people sued men for property claimed through the men's wives. While the only surviving records are of male defendants being protected by the plea, it may be possible that it was

¹⁴³ NAI, RC 7/1, pp 348-9, 356, 368-9, 394.

¹⁴⁴ Many thanks to Paul Brand for his comments on this topic.

¹⁴⁵ The author of *Bracton* recognised the validity of the '*sine uxore*' plea: *Bracton*, iv, 293, 330, 335. The *sine uxore* plea was accepted by the itinerant justices in Shropshire in 1256, and by the justices of the Westminster Bench in 1292: Harding (ed.), *Roll Shropshire Eyre*, no. 314; A. J. Horwood (ed.), *Year Books of the reign of King Edward the first, years xx and xxi* (London, 1866), p. 258.

¹⁴⁶ NAI, RC 7/1, p. 274. For another case with no judgment, see *ibid.*, pp 285-6. It is unlikely, but not impossible, that Athreth was a corruption of Æthelthryth because by the thirteenth century this name had been Latinised to 'Aldrida' in the court records, and 'frenched' (i.e. Anglicised) to 'Etheldreda' or 'Audrey' in other records: Julia Cresswell, *Bloomsbury dictionary of first names* (London, 2000), p. 32.

¹⁴⁷ NAI, RC 7/1, pp 278-9. The lands were part of the manor of Kilmeanok/Kilmehanok [Kilmonoge, Cork?]. The writ does not have a marginal note, but the court was being held in county Cork.

¹⁴⁸ NAI, RC 7/10, pp 75-6. Called 'Smythestoun juxta Julianestoun' in the record.

successful against a male plaintiff (similar to women whose writ failed for not naming their husband).

An Ostwoman married to Englishmen

One (presumably) Ostwoman was legally accepted in English Ireland, and she often appears to have contradicted the construct of coverture. Elena Macotyr [O. *Mac Óttarr*] owned tenements in Cashel. She was treated as a citizen of Cashel, but never designated as such in the records. She first appears in the record as a single woman claiming fifty acres in Cashel from the inheritance from her father, David, in 1295.¹⁴⁹ This was not the full extent of her inheritance; it was just a portion which the defendant (Walter son of David de Dermor) prevented her from inheriting. No result was recorded for the case, but this was not the last legal battle in which she engaged with a de Dermor man. Two years later she appears in the records holding a free tenement (of unspecified size) outside Cashel from Hugh Purcel and his wife, Eva.¹⁵⁰ It appears that Eva was previously married to Elena's father, David. Elena and her husband sued Hugh and Eva for wasting Elena's inheritance which Eva held in dower. The 'sheriff' (viscount) of Tipperary ruled that Thomas and Elena should recover £21 in damages from Hugh and Eva.¹⁵¹ Elena had several tenements around co. Tipperary. In another case, we learn that Elena inherited a freehold in Cashel of one house, almost one hundred acres of various types of land, and 10 marks rent.¹⁵²

At some point Elena had married Thomas le Bret. She did not take his surname, and in most of the surviving court cases, she was not called 'Elena wife of Thomas le Bret'.¹⁵³ She held the house and lands in Cashel for some time, and then rented them to Adam le Tanner and Edmund le Botiller.¹⁵⁴ Elena would later face Edmund le Botiller, her tenant, in court while he was custos of Ireland. After Elena enfeoffed Edmund, the archbishop of Cashel annulled Elena and Thomas le Bret's marriage for unspecified

¹⁴⁹ NAI, RC 7/3, p. 282 [*Elena filia David Mccotir*]. This was probably the same David MacKoter who purchased writs to sue in front of the 'justices assigned' (a type of itinerant court) in co. Tipperary in 1275: Curtis, 'Sheriffs' accounts, Tipperary', pp 67, 69, 70.

¹⁵⁰ NAI, RC 7/7, p. 70 [*Elenam Maccoker*]. Many years later, Elena and Thomas le Bret, her husband, sued Hugh Purcel, Eva his wife, and Ela widow of Eustace le Poer for novel disseisin, but the case was dismissed because Elena and Thomas had not purchased a writ: KB 2/4, f. 129r. Eustace le Poer was William de Dermor's lord. Elena was married to William at one point: *infra*, pp 119-20.

¹⁵¹ NAI, RC 7/10, p. 248. The *vicecomes* had been mandated to judge this case which had been sent to him from a royal court (L. *preceptum fuit vicecomiti quod assumptis secum custodibus placitorum corone regis in partibus de Offath*). But cases of dower were not 'pleas of the crown'.

¹⁵² NAI, KB 2/4, ff 142r-5r [*Elena Macotyr*]. The lands were 80 acres of arable, 5 acres of meadow, and 10 acres of brushwood; the source of the rent was not specified.

¹⁵³ She was called Elena wife of Thomas le Bret at least four times: NAI, RC 7/10, pp 248, 584; RC 8/2, p. 530; KB 2/4, f. 129r.

¹⁵⁴ Edmund was custos of Ireland in 1304-5 and 1312-14: *Admin. of Ireland*, p. 83.

reasons. She was then ‘adjudged’ (married) to William de Dermor.¹⁵⁵ We can tell that Elena married William de Dermor because she brought a writ of entry against Walter son of William de Dermor for lands alienated while Elena was married to William de Dermor in 1296.¹⁵⁶ The record does not state whether Walter was the son of Elena’s former husband, but it does state that the lands in question were fifty acres in Cashel which may or may not have been the same lands from Elena’s first recorded case (against Walter son of David de Dermor). We can tell that she had to wait until she was free from William de Dermor to recover the alienation. This conforms to the theory of coverture. Elena won the case in 1296, but never recovered the tenement. In 1302 Elena sued Walter son of William for not delivering seisin. The sheriff of Tipperary was then ordered to force Walter to put Elena in seisin of the fifty acres.¹⁵⁷ In 1296 and 1302 Elena appears alone in court and was called ‘Elena daughter of David MacCotir’.

In 1304 Walter son of William de Dermor brought an assize of novel disseisin against Thomas le Bret, Elena, his wife, and William de Dermor.¹⁵⁸ This case is peculiar because it states that Elena is once again married to Thomas le Bret, but William de Dermor was still alive. Clearly her marriage to William had been annulled and then remarried Thomas le Bret (or this was a different William, but if that was the situation he should have been named differently – such as William son of William de Dermor). Walter son of William de Dermor recovered a house and over 300 acres from the three defendants, but Thomas and Elena claimed that four of the recognitors were defendants in another case against Thomas and that the latter had ruled against him out of revenge for winning the earlier case. Elena and Thomas brought an appeal against the justice itinerant in charge, John de Ponte.¹⁵⁹ They claimed that the itinerant justices had not allowed the fifteen days minimum notification for an assize. Walter son of William appeared and claimed that, by custom, this was allowed. But when the justiciar learned the summons had been delivered on Saturday and the case was heard and decided on the next Tuesday, John de Ponte was summoned to answer why he had rushed the case. Eventually, after several summons to the justiciar’s court, John de Ponte answered that he allowed the case and the disputed recognitors to proceed by his will [‘voluntarily’ in the printed calendar for *voluntatis*]. This

¹⁵⁵ The record in KB 2/4 (from 1313) states that she was ‘adjudged’ to Dermor, but in another case (from 1296) she claimed that while married to William de Dermor, he alienated her lands. This may have been the same man who was the attorney for the archbishop of Cashel: NAI, RC 8/1, p. 107.

¹⁵⁶ NAI, RC 7/4, p. 454 [*Elena filia David MacCotir*]. This was the case from September 1296.

¹⁵⁷ NAI, RC 7/9, pp 251 (order to viscount), 336-7 (earlier record: Walter did not appear).

¹⁵⁸ NAI, RC 8/2, p. 350; *CJRI, 1305-7*, pp 137-8.

¹⁵⁹ For John de Ponte, see *Admin. of Ireland*, pp 142-5; Brand, ‘Early history of the legal profession’, pp 21-56. See also, John de Ponte’s attempt to relabel Philip Benyt as a *Hibernicus: supra*, p. 88.

review case does not end with a definitive judgment, but it appears that Thomas le Bret and Elena Macotyr did not have to surrender the house and lands to Walter son of William.

In 1313, Edmund le Botiller sued Elena Macotyr, Thomas le Bret, and other men for novel disseisin. The record states that after Elena was ‘adjudged’ to William de Dermor, his lord, Eustace le Poer, entered Elena’s lands in Cashel and seized the rents by distress.¹⁶⁰ Elena – along with Thomas le Bret (while she was married to William de Dermor) – then took seisin of the lands she had granted to Edmund le Botiller. The justices ruled that Elena had used Eustace le Poer to disseise Edmund le Botiller of the lands she had granted to the latter. She had to return seisin and pay damages to Edmund. We could take this to mean that Elena was a cunning landlady, just as many of the magnates were, and used Eustace to enforce her will; or that she was punished for the actions of Eustace which were out of her control. The former seems more likely as there was no mention that Eustace kept the rents for himself, and it appears that he delivered the rent to Elena. The records do not state how Elena and Thomas le Bret were remarried since William de Dermor was still alive in 1304. It is also peculiar that an assize of novel disseisin in 1313 mentions that Elena and Thomas’s marriage was annulled many years earlier when they were married at that time (1313). Finally, there is no mention of any sanction or punishment for Elena Macotyr and Thomas le Bret for remaining together after their annulment and while Elena was married to William de Dermor. However, earlier in that same court session (in 1313), three men had ‘quashed’ (they were given a *sine die*) an assize of novel disseisin by Thomas le Bret because he had been, and still was, excommunicated by the archbishop of Cashel.¹⁶¹ The record did not specify if this was related to Elena Macotyr and she was not named. Elena was not accused of being excommunicated in any surviving court records. Except for the fifty acres alienated by William de Dermor, Elena appears to have been uncovered while married, but was not *come femme sole*, and her ethnicity never led to any legal difficulties or accusations of unfreedom. She was never even called an Ostwoman.

Gaelic women married to Englishmen

Some historians have argued that ‘all Gaels were denied access to English law’, and subsequently that Gaelic women married to Englishmen were required to purchase access

¹⁶⁰ The record states that Eustace le Poer ‘maintained’ William de Dermor. I take this to mean that William was a retainer of Eustace: NAI, KB 2/4, f. 144r.

¹⁶¹ NAI, KB 2/4, f. 130r.

to English law if they wanted to be answerable in the royal courts.¹⁶² While there are many surviving cases which disprove this bald statement, there were a few instances when Gaelic women believed that purchasing access to the royal courts would be beneficial. Mariota, daughter of Macirehti [G. *Mac Oireachtaigh?*], was married to Ralph Bruges, *Anglicus*, but she (or they) believed that she needed to purchase access to the royal courts. Edward I granted her – and her children ‘legally begotten’ – access to the royal courts in 1285. Rose, daughter of Macmolisii [G. *Mac Maoil Íosa?*], was married to Peter de Repenteny and obtained a similar grant from the king on the same occasion as Mariota.¹⁶³ These grants are peculiar because under the supposed system of coverture, the English husbands of these Gaelic women would have sued for the latter and covered them from any claims of servility or denial of access to the courts. If coverture did not apply to ethnicity, then these grants were necessary and would prove that the other Gaelic women married to Englishmen were personally free and accepted.

Many Gaelic women who married Englishmen used the royal courts and inherited houses, lands, and rents. Diarmaid Mac Carthaig’s heirs were mentioned in Chapter One.¹⁶⁴ Mac Carthaig held the cantred of Glinshalewy, co. Cork, in fee. The cases do not mention it, but he probably held the cantred from Robert de Carew.¹⁶⁵ After Diarmaid’s son and heir, Cormac, died, his three daughters claimed the cantred. David de Prendergast married Dernorguyl [G. *Dearbhorgaill*], Thomas de Kaninges married Edina [G. *Éadaoin*], and Robert Cusyn married Rathenilda [G. *Raghnailt*]. We first encounter the three couples when David, Dernorguyl, Thomas, and Edina sued Robert and Rathenilda for two-thirds of the cantred, but no result was recorded.¹⁶⁶ The next entry in the roll is an assize of mort d’ancestor against the ‘community of Mac Timpan’ [G. *Mac an Tiompánaigh*] for half a carucate in Gortnaclohy, co. Cork, which Diarmaid Mac Carthaig had held.¹⁶⁷ The

¹⁶² Hand, *English law*, pp 204-5; Kenny, ‘When two worlds collide’, p. 67. Cf. Dr Simms noted that the so-called ‘remonstrance’ of 1317 claimed that Gaelic women were denied dower, but did not argue that this was the legal reality: Katharine Simms, ‘The legal position of Irishwomen in the later middle ages’ in *The Ir. Jurist*, x (1975), pp 96-111 at 106-7.

¹⁶³ *CDI*, 1285-92, no. 94. She was called Rose daughter of ‘Macinolisii’ in the calendar. Isamaya, wife of Bertram de Repenteny, had the archbishop of Armagh petition for her. Philip and Bertram may have been related: *infra*, pp 132-3.

¹⁶⁴ See Chapter One, *supra*, p. 86.

¹⁶⁵ Robert de Carew was ‘lord of Cork’ from 1216 until 1245. Paul MacCotter traced the sub-infeudation of co. Cork and found Robert’s grandson, Maurice, to have claimed and recovered lordship of fourteen cantreds in Cork, Kerry, and Limerick: Mc Cotter, ‘Carews of Cork’, pp 72, 75-81. Dr MacCotter also suggested that this Diarmaid Mac Carthaig was the son of Cormac Liathánach: *ibid.*, pp 140-4.

¹⁶⁶ NAI, RC 7/1, p. 246. This case may have been delayed until later, but the record does not state such. See *infra*, pp 122-4.

¹⁶⁷ NAI, RC 7/1, p. 247. Dr MacCotter noted that the ‘Brydeshale’ family were significant landholders in the cantred of Kerrycurrihy (which was the demesne of the city of Cork): Mc Cotter, ‘Carews of Cork’, p. 91.

plaintiffs were not listed because the ‘community’ called David de Brundeshal to warranty, who then appeared and called Thomas Crikke to warranty, and so the case was respited until Thomas appeared.

The next case only involved David and Dearbhorgaill, who sued Roger, Philip, and Alexander Uncle for 120 acres in Kilclon, co. Cork, and won against Philip and Alexander.¹⁶⁸ In the first recording of their case Dernorguyl was named ‘Edina’, but in every subsequent reference, she was called ‘Dern’. None of the defendants raised the technical objection against her (the name change), which could mean that the error appeared only in the court roll and not in the writ or the *narratio* (count). The plaintiffs claimed, and the court agreed, that David de Prendergast’s father, Gerald, had disseised the couple and then given the lands to Henry Uncle. This case is important because of the subsequent proceedings. Rathenilda and Robert Cusyn sued Laurence, bishop of Cork, for ninety acres in co. Cork.¹⁶⁹ Laurence claimed that he did not have to respond without Dernorguyl and Edina present and named in the writ. The jury determined that Dernorguyl and Edina had been born before Diarmaid’s marriage (their mother was not named), and Rathenilda and Robert recovered seisin.¹⁷⁰ There is then a curious remark in the court record. Having recovered seisin, Rathenilda and Robert then made a concord with Bishop Laurence. No further details were recorded, but the concord may have admitted that Dernorguyl and Edina were not *bastarde* and subsequently allowed the following cases. David and Dernorguyl returned to court to complain that Philip and Alexander Uncle had carried away all of the timber from the houses at Kilclon after losing the earlier case.¹⁷¹ The court agreed and fined Philip, but Alexander was acquitted because he was too young (*L. quietus quia infans*). David and Dernorguyl had won a case involving what was most likely a *maritagium* – because she and David held it jointly and her sisters were not involved – after the same court had ruled Dernorguyl a *bastarda*. Kenneth Nicholls believed the jury’s return was definitive, but the last case involving the three daughters of Diarmaid casts some doubt on this.¹⁷² David, Dernorguyl, Thomas, and Edina again sued Rathenilda and Robert for two-thirds of the cantred of Glinshalewy. The defendants claimed that the count was faulty (*L. assignatur error per eosdem Robertum et*

¹⁶⁸ NAI, RC 7/1, p. 251. Nothing was recorded regarding Roger, but David and Dearbhorgaill were not amerced for false claim against him.

¹⁶⁹ NAI, RC 7/1, p. 263.

¹⁷⁰ Their mother may have been ‘Covina’ [G. *Céibhionn?*], widow of ‘Dermot Macardi’, who in the presence of Edward I appointed Robert le Despenser as her attorney in Ireland: *CDI, 1252-84*, no. 1052.

¹⁷¹ NAI, RC 7/1, pp 272-3.

¹⁷² Nicholls, ‘Anglo-French Ireland’, p. 383.

Rathenildam) as Dernoguyl and Edina were born before their parents' marriage. The itinerant justices supposedly summoned the bishop of Emly, Gillebertus Ó Dubartaig, to decide the women's legitimacy, but nothing else is recorded in this regards ('&c'). The plaintiffs then argued (*L. dicunt in contrarium*) that when Alan de la Zouche was justiciar, he was not in Ireland to make a ruling; that Geoffrey de St John, bishop of Ferns, had died on itineration as justiciar;¹⁷³ that itinerant justice Hugh de Kingsbury could not rule without the other itinerant justices present; and finally that Lord Edward had mandated Stephen de Longespée, justiciar, and not the itinerant justices, to certify the pleading from the case (*L. 'certificandum loquela'*). As the case was awaiting Stephen's ruling, nothing was recorded, and no result has been found yet. But David and Dernorguyl's bill of *asportare post recupaverunt seisinam* shows the couple was still allowed to use the royal courts without issue after Dernorguyl and Edina were labelled illegitimate, and all the cases show that the ethnicity of the three Mac Carthaig heirs was not a factor in the royal courts. We can see that in the Trinity 1297 term of the Dublin Bench, Maurice de Carew sued Gerald son of Eustace de Cogan to render the customary services due from his free tenement in Glynsalwy.¹⁷⁴ De Cogan did not appear and Maurice added that the former's rent was in arrears.¹⁷⁵ The 'sheriff' (viscount) was ordered to attach de Cogan. We cannot trace how Gerald de Cogan received the tenement in Glinshalwy or how large it was. One of the Mac Carthaig couples could have sold their stake in the cantred to Gerald or his father, Eustace. One final record indicates that Dernoguyl did not suffer any legal disabilities. In c.1285 a man named Walter petitioned Edward I for an inquisition because 'Devorgil Prendergast' had sued Walter for eighty acres in Kilclonagh and won. The justice presiding over the case was Richard de Exeter who was married to Devorgil's daughter, and de Exeter had forced the jury to rule in his mother-in-law's favour.¹⁷⁶ It is interesting that Dernoguyl/Devorgil had taken de Prendergast's surname and that he was not mentioned in this record. The petition was specific that Richard de Exeter had married Devorgil's daughter and not David's daughter.¹⁷⁷

More than forty years later, non-noble Gaelic women also used the royal courts without issue, even after the increase of anti-Gaelic sentiment in the 1290s, noted above.

¹⁷³ '*Galfridus de Sancto Johannis quondam Fernensis epus tunc capitalis justiciarius dicti itineris obiit*'. This is the only reference I have found to Geoffrey having been justiciar. Richardson and Sayles only have him listed as an itinerant justice: *Admin. of Ireland*, pp 135-7.

¹⁷⁴ NAI, RC 7/5, pp 117, 189.

¹⁷⁵ NAI, RC 7/5, p. 239.

¹⁷⁶ PRO, SC 8/342/16145.

¹⁷⁷ As mentioned above, most court records only note the father: *supra*, p. 110.

Beginning in 1296 Maurice son of Robert de Carew and Dernergulla [G. *Dearbhorgaill*], his wife, sued and were sued for various lands.¹⁷⁸ In the oldest surviving case, the couple were sued by William son of Robert son of John for the manor of Conegh'. William had demised the manor to Maurice and Dernergulla to hold while the former was underage. He had reached full age, but they refused to return custody of his lands. Maurice and Dernergulla claimed the tenement was not a manor, but instead a vill and they only held one house and two carucates there.¹⁷⁹ No result was recorded. Shortly afterwards, Maurice and Dernergulla convinced King Edward I to have a different case from the Dublin Bench reviewed by the justiciar, John Wogan. In this case the couple were the plaintiffs. They claimed Dernergulla's dower was being withheld by William son of Walter Cod.¹⁸⁰ The record does not state the size of the dower, only that it was in Balyketwythe, Balyregan, Balytiraghty, and Balybrathyr, co. Cork.¹⁸¹ Then there is a problem in the records. One entry states that they claimed two carucates in Balyregan, but a different entry states it was only one carucate.¹⁸² The latter record lists the extents claimed for the other vill.¹⁸³ The surviving records do not reveal whether Maurice son of Robert and Dernergulla won (or lost) any of these cases, but Dernergulla was successful after Maurice's death. She claimed her dower out of his lands and his brother, John son of Robert de Carew, granted it to her.¹⁸⁴ He was then pardoned the amercement for not fighting the suit.

Another Gaelic woman was more fortunate in her surviving cases. Dufcouly [G. *Dubh Chobhlaigh*], wife of John son of Raymond, sued Hugh Maunsel, son of Dufcouly's earlier husband, Thomas Maunsel in 1303. The couple claimed that while married, Dufcouly and Thomas Maunsel made a *convencio* (legal agreement) concerning one house, one carucate of land, eighty acres of woods, and forty acres of pasture in co. Tipperary.¹⁸⁵ This disrupts the conception of coverture. Theoretically, husband and wife were one person ('one flesh') and one person could not make a *convencio* with him/herself. A year later (1304) the case was still pending, and no court judgment has survived. It appears that Dufcouly and John son of Raymond acquired these lands because in a later case, which

¹⁷⁸ This Maurice was the cousin of the 'lord of Cork'. I will refer to him as Maurice son of Robert to avoid confusion. For the family's genealogy, see Mc Cotter, 'Carews of Cork', appendix II.

¹⁷⁹ NAI, RC 7/5, p. 176.

¹⁸⁰ William was probably the same man sued by Gilbert Mac Abraham: Chapter Five, *infra*, pp 260-1.

¹⁸¹ NAI, RC 7/5, p. 380.

¹⁸² NAI, RC 7/5, pp 394-5, 445.

¹⁸³ 2 carucates in 'Balyketh et Wycha', 1 house and 2 carucates in Balytnaghty, 1 carucate in Balyrogan, and 1 house and 2½ carucates in Balyloghnechan: NAI, RC 7/5, p. 445.

¹⁸⁴ NAI, RC 8/5, p. 28 [one-third of 1 house and 1 carucate in Rathayth, co. Cork].

¹⁸⁵ NAI, RC 7/10, pp 192-3.

they won by default, they were holding similar lands in the exact same area ('Kilclon', Tipperary). In the second case Dufcoly and the other defendants were able to win because of a technicality. Hugh Maunsel, the plaintiff, had named Dufcoly as 'Duscoly' in the writ for an assize of novel disseisin. She and John were two of the four defendants, and they did not appear, but another defendant, Eustace le Poer, answered as the fourth defendant's bailiff.¹⁸⁶ The case was adjourned because the sheriff did not give the defendants fifteen days' notice (the standard minimum notice), and on the second hearing, the entire case was dismissed because Dufcoly's name was misspelled, which was later determined to be a chancery error and not that of the plaintiff – so his amercement for false claim was pardoned.¹⁸⁷ It is important to note here that no one answered for Dufcoly or John, but they were not amerced for default. Also, the jury did not report the facts of the case, so we cannot assume that the defendants were guilty, and the case was not resumed after the clerks admitted to the error.

In December 1305 the 'sheriff' (viscount) of Tipperary was ordered to distrain Dufcouly, John son of Raymond, and Hugh Maunsel for part of the damages they owed to Thomas Maunsel (£10), but the related case was not recorded.¹⁸⁸ The record does not state whether these were the same Maunsels from the earlier cases, but this Thomas Maunsel may have been a different man than Dufcouly's previous husband (the language in the earliest case implies that he had died, but does not confirm this).¹⁸⁹ A month later the sheriff had distrained Dufcouly and John son of Raymond of all their crops in the county, but he was continuously amerced for failing to exact the entirety of the damages awarded to Thomas Maunsel from Dufcouly, John son of Raymond, and Hugh Maunsel.¹⁹⁰

Around three years later Dufcouly, John son of Raymond, and the Maunsels were still involved with legal battles, and they began to accuse administrators of ineptitude. In the first record, which was significantly damaged, the sheriff was ordered to distrain Hugh son of Thomas Maunsel for the £100 the latter owed to 'Donscouly' and John son of Raymond (which they had recovered against him in court during the reign of Edward I).¹⁹¹

¹⁸⁶ *CJRI*, 1305-7, pp 43-4 [*Dufkouly*].

¹⁸⁷ If we compare this result with similar examples relating to the place names, we can see that the court procedure of exact spelling in a writ was upheld. However, this creates some confusion as no objections were raised in the case involving Emmeline de Longespée when she was called 'Evelyna'. For Emmeline's case see *supra*, p. 93, n. 9. For men claiming default for misspelled names, see Chapter Five, *infra*, pp 254-7.

¹⁸⁸ *CJRI*, 1305-7, pp 25, 163.

¹⁸⁹ Cf. the cases involving Elena Mac Óttarr imply that William de Dermor was dead until he appears in a later case as a co-defendant: *supra*, pp 119-21.

¹⁹⁰ *CJRI*, 1305-7, pp 194-5, 269, 319.

¹⁹¹ NAI, RC 7/13/2/2, p. 54.

This would appear to be the damages from the first recorded case (1303), but we cannot be certain. In a later case she is once again called ‘Donscouly’. This time the sheriff of Tipperary, Fulk de Fraxineto, was charged for not appearing in the Dublin Bench and for not distraining Hugh son of Thomas Maunsel the £100 the latter owed to ‘Donscouly’ and John son of Raymond.¹⁹² In the final case concerning ‘Donscouly’, she and John son of Raymond sued Fulk de Fraxineto, sheriff of Tipperary, for not distraining Hugh son of Thomas Maunsel.¹⁹³ These last three records not only show us that Dufcouly and John recovered £100 in the itinerant court at Cashel, but also, that despite defeating Hugh Maunsel in 1305 for calling her ‘Duscouly’ in the justiciar’s court, the Dublin Bench called her ‘Donscouly’ at least three times without issue!

Englishwomen married to Gaelic men

The phenomenon of Englishwomen married to Gaelic men has received less attention than the reverse (Gaelic women married to Englishmen) probably because it has been assumed that the Englishwomen were left to defend themselves under Gaelic law.¹⁹⁴ As we discovered in Chapter One there were many free Gaelic men in English Ireland, and some of these men married Englishwomen. The most famous instance was the Mac Giolla Mo Cholmóc family who became literally more English than Gaelic – by blood and custom – after successive generations married Englishwomen.¹⁹⁵ Another instance of acceptance was Stephen Bryan [G. *Ó Briain?*] of Dublin and his wife, Alice. They were summoned to respond to Henry de Kylbeworth to warranty his claim to one house in the city of Dublin, which they held. The two parties then made a court-supervised chirograph.¹⁹⁶ Stephen Breien (probably the same man) and Elena de Hereford granted a tenement on Highstreet in Dublin to Thomas Faucoun in 1330.¹⁹⁷ David Ohenere [G. *Ó hInneirghe?*] brought an assize of mort d’ancestor against Nicholas son of Richard de Roche for one house and three carucates which David’s mother, Sabilla de Borard, had held in fee.¹⁹⁸ Here we can

¹⁹² NAI, RC 7/13/2/3, p. 26.

¹⁹³ NAI, RC 7/13/3, pp 61-2.

¹⁹⁴ Dr Kenny argued that any couples which remained in the English areas required a grant of access for the Gaelic husband: Kenny, ‘Worlds collide’, pp 67-8.

¹⁹⁵ John son of Diarmaid married Clarice daughter of Gilbert son of Griffin. John son of John married Ralph de Pitchford’s daughter. Therefore Ralph son of John son of John son of Diarmaid was three-fourths English: James Mills, ‘The Norman settlement in Leinster. The cantreds near Dublin’ in *JRSAI*, 5th ser., iv, no. 2 (1894), pp 160-75 at 162-3; Frame, ‘Ireland after 1169’, pp 128-30.

¹⁹⁶ NAI, RC 7/11, p. 416.

¹⁹⁷ CCD, no. 579.

¹⁹⁸ NAI, RC 8/2, pp 55-6. Nicholas de Roche was underage, and so the case was held until he was of age.

see an Englishwoman holding lands in fee who was married to a Gaelic man, and their son was legally accepted.

A few surviving court cases involved a Gaelic man and his (definitely) English wife. John son of Simon, Agnes, his wife, Gillenence Omolunchel [G. *Giolla na Naomh Ó Maoil Mhíchil?*], and Eva, his wife, sued Thomas Frednauncel for a house and fourteen acres of land and Robert le Waleys for another house in Tralee, co. Kerry in 1296. The two houses and fourteen acres had belonged to Henry le Wowere (or Wafre), the two women's grandfather, and the two defendants had taken the inheritance upon Henry's death. In the first instance, Thomas and Robert did not appear to answer the writ. Usually the court would have taken the houses and lands into the king's hand to force the defendants to appear, but no such order was recorded. The case continued, but no judgment was ever recorded.¹⁹⁹ Eva appears to have been married to a free and accepted Gaelic man as no objections were raised to his status, but without the judgment we cannot be completely certain. In 1297 Richard Manneisin and Alice, his wife, sued John Ogary [G. *Ó Gadhra?*] and Clarice, his wife, with a writ of *biennium jam cessavit* (free tenants had not performed required services for two years).²⁰⁰ This case has no judgment, but shows the acceptance of Ogary and that Clarice did not suffer any legal disabilities for their marriage because the writ required the defendants to be free, accepted, and holding free lands by certain services. No one would sue a writ of *biennium* against an unfree tenant. One case has a judgment. Gerald le Blund, Mabel, his wife, Geoffrey le Blund, and John Ohogan [G. *Ó hUgáin?*] sued Theobald de Troye for sixty-one acres of various lands in Anachbeg (Annaghbeg, co. Tipperary?) which Richard de Troye had held. Richard was the father of Mabel and grandfather of Geoffrey and John. Clearly Richard had three daughters and the plaintiffs were claiming the lands as partible inheritance. More importantly one of Richard's daughters married a Gaelic man and their son was legally accepted. Theobald came to court and returned the lands to the plaintiffs.²⁰¹

Some Englishwomen married legally unaccepted Gaelic men. The itinerant court at Cork in 1301 presided over an assize of mort d'ancestor brought by Sarra the daughter of Henry le Blund, John Okoskry [G. *Ó Coscraigh?*], and Alice, his wife (who was also a daughter of Henry). They claimed that John le Bret, as mesne lord, took a house, forty

¹⁹⁹ The acres were probably arable, but the records do not specify: NAI, RC 7/4, pp 2 [2 house & 4 acres], 135 [2 houses & 14 acres], 197 [2 houses & 14 acres]. Gillenence was also called 'Gillecia' and 'Gillenena'. Simon de Campeleye, son of Alice la Wafere, sold nine acres in Corbally to Henry le Wafre. There is insufficient evidence to determine whether this was the same Henry: *CDI, 1285-92*, no. 1094.

²⁰⁰ NAI, RC 7/5, pp 148-9, 93 (poor copy).

²⁰¹ NAI, RC 7/2, p. 222 [50 acres arable, 3 acres meadow, and 8 acres woods].

acres of arable, five acres of moor, and fifteen acres of brush in *le Yoldeton* after Henry le Blund died because Sarra and Alice were underage. When John le Bret died Alexander Brysky seized the lands as John's rightful heir, and then gave possession to William le Poer. William then enfeoffed Philip de Staunton. The jury returned that John Okoskry was a *Hibernicus* and no one should respond to his writ (but no one accused him of being unfree). The justices then decided to grant half of Henry le White's house and lands to Sarra, and gave nothing to John Okoskry and Alice. William le Poer, Felicia, his wife, Alexander Brysky, and Philip de Staunton were amerced for disseisin of Sarra only.²⁰²

Similar to Hugh son of William's case, defendants could bring the *est Hibernicus* plea against Englishwomen, but then the jury and court would ignore it.²⁰³ Hawis widow of Reginald Conrach [G. *Ó Conrata?* or de Conrach?] brought an assize of novel disseisin against David de Baligaveran, Walter son of Reginald, David son of Simon, and Adam le Proude for thirty acres in Conrach. Walter could not be found, but the others appeared and claimed that they did not have to respond to Hawis's writ because Reginald had been a *Hibernicus* and that Walter Carpenter, Hawis's father, had granted the lands in 'tail male'. The jury found that while Reginald was alive, he and Hawis had brought a similar writ and it had failed, and then the couple subsequently sold all rights to the lands to David son of Simon. David was given a *sine die*, and Hawis was allowed to acquire a different writ.²⁰⁴ We must be careful here not to believe the defendants' plea; the jury did not confirm it. In fact it appears to have refuted the claim. If Reginald Conrach had been an unfree *Hibernicus*, then he and Hawis probably would not have been allowed to sell her rights to lands while he was alive. Hawis lost her case because of a 'real' objection, not a technical one. She had previously sold her rights to the thirty acres in Conrach.

A different case presents an argument that some seemingly-free medieval women were 'covered' by their unfree husband after his death. Brother Robert, prior of Toly, stole half a crannock of malt from 'the wife of Couhirde of Toly' [G. *Cúchoigríce?*]. Throughout the record the woman was only described as 'the wife of Couhirde'. She also faced another problem; Couhirde of Toly was classified by the court as an unfree *Hibernicus*.²⁰⁵ Brother Robert seized the malt as his own property (because all chattels of the unfree belonged, by English law, to the lord) within his *dominium*, and refused to

²⁰² NAI, RC 7/8, pp 283-4. Henry is called 'le White' in the first instance, then 'le Blund' in the second. Cf. Luke Brydyn and Auda, his wife, versus the abbot of St Thomas, Dublin: Chapter Five, *infra*, pp 274-5.

²⁰³ Chapter One, *supra*, p. 83.

²⁰⁴ NAI, RC 7/1, p. 199. 'Tail male' was a conditional grant to a couple which required the lands pass undivided to the oldest surviving male heir of the couple, or revert back to the grantor's family.

²⁰⁵ *CJRI*, 1295-1303, pp 203-4.

concede that the goods were the wife's. The record did not specify whether she was English or Gaelic, but since the prior refused to acknowledge the goods were hers, he probably could not dispute her freedom. The jury did not rule on whether the seizure of the malt was legal or not, so we cannot determine whether she recovered her goods. But the court brought a criminal proceeding against the prior for allegedly stealing from her and that indicates that she was not the prior's *nativa*.

The examples of Englishwomen married to Gaelic men are insufficient to declare a set rule for this form of intercultural marriage, but we can see that it was unique to English Ireland. In post-Conquest Wales an Englishwoman who married a Welsh man had to pay a 'Welsh tax' [W. *amobr*] after her husband died, and she remained legally 'Welsh' unless she subsequently married an Englishman.²⁰⁶ On the other hand, in Shropshire a seemingly-English woman and a Welshman had no problems using the itinerant court.²⁰⁷ The Englishwomen who married Gaelic men in English Ireland did not lose their legal status (Alice daughter of Henry le Blund was not considered a *Hibernica*), although some had difficulties recovering their dower.²⁰⁸

There is a final indicator of married women's status, which will only be briefly examined here, the transmissibility of their individual status to their children.²⁰⁹ Some children could be half-Gaelic and half-English without any problems. Anicia, wife of Nicholas le Forester, and Nicholas Okennolan [G. *Ó Caoindealbháin?*] were the heirs of William son of John fiz Hamund. Le Forester, Anicia, and Okennolan sued John Unger for one house and forty acres in Hobineston, lib. Trim. Unger did not object to Okennolan's ethnicity, but instead called Eva Hobin to warranty his claim.²¹⁰ But at the same time there is one example – which some historians have taken to be representative of every single Gael's experiences – of two Gaelic women married to two Englishmen who felt that patrilineal succession would not be sufficient to protect their children from anti-Gaelic sentiment.²¹¹ It is clear in the cases above that most wives of intercultural marriages did not lose their original, ethnic identity after marriage. The normal transmission of legal ethnic status was that men passed their status to their children and the mother's was ignored.²¹² In

²⁰⁶ M. F. Stevens, *Urban assimilation in post-conquest Wales: ethnicity, gender and economy in Ruthin, 1282-1348* (Cardiff, 2010), p. 197. Many thanks to Dr Stevens for telling me about this phenomenon.

²⁰⁷ Harding (ed.), *Roll Shropshire Eyre*, nos 388, 445.

²⁰⁸ *Supra*, pp 128-9.

²⁰⁹ A full analysis of this subject is outside the scope of this thesis. It requires its own study.

²¹⁰ NAI, RC 7/3, pp 417-18.

²¹¹ Mariota daughter of Macirehti and Rose daughter of Macmolisii: *supra*, pp 121-2.

²¹² Cf. the exceptional cases of matronymics: *supra*, pp 93-4.

1295, William le Teynturner proved that his mother (Olyna Macmackus [O. Óláif Mac Mackus], an Ostwoman) had ‘obtained’ Ost status for him after his father, an unfree Gaelic man (Thomas Omolyn [G. Ó Maoláin?]), died. William subsequently brought a case of *vetitum namium*.²¹³ The jury was clear in its judgment that bringing a case and being answered in court proved that a person was free (the person did not have to win the case).²¹⁴ In 1282 Simon Passelewe purchased access to the royal courts from Edward I. Simon’s mother was English and his father was Gaelic, but their names were not recorded.²¹⁵ We cannot tell the social status of Simon’s parents from this grant.

The same was not true for Gaelic mothers and English-magnate fathers. Richard de Burgh (d. 1243), William de Lacy, Robert de Carew, and many other magnates in the first century of English presence in Ireland were half-Gaelic, but no one in Ireland called them *Hibernici* or tried to deny them access to the royal courts.²¹⁶ Regular Englishmen had Gaelic mothers, as well. Gerald de la Roche was the son of Euine Inynclermoyghan [G. *Úna inghean Uí Chléireacháin?*].²¹⁷ Adam Mannyng was the son of Margery Murthy [G. *Ó Murchadha?*].²¹⁸ These Englishmen did not have to purchase their English status. The surviving records indicate that Englishwomen who married unfree or unaccepted Gaelic men were more likely to suffer personal disabilities and their children might need to purchase access to the royal courts. Most of the Gaelic wives of Englishmen, and their children, seem to have been accepted in English Ireland.

Dowers

One problem with discussing dowers is that in many cases, the record of dower cases depicts women as an economic tool of their husbands. While analysing these cases one must be careful not to turn the study of women’s status into an economic history or a history of the writ of dower and men. Instead, we must focus on the indicators of the

²¹³ *CJRI, 1295-1303*, pp 14, 59; Chapter Three, *infra*, pp 155-6. The writ of *vetitum namium* [prohibited distraint] was the demand for the return of chattels taken to distraint which were hidden from replevy or were on the list of prohibited items (e.g. oxen for the plough).

²¹⁴ See also Chapter One, *supra*, pp 50-1.

²¹⁵ *CDI, 1252-84*, no. 1910.

²¹⁶ Duffy, ‘Problem of degeneracy’, pp 91-2; Mc Cotter, ‘Carews of Cork’, pp 34-5, 37; Colin Veach and Freya Verstraten Veach, ‘William Gorm de Lacy: “chiefest champion in these parts of Europe”’ in Seán Duffy (ed.), *Princes, prelates and poets in medieval Ireland: essays in honour of Katharine Simms* (Dublin, 2013), pp 63-84. William is only called ‘Gorm’ in the sixteenth-century *Book of Fenagh*. No contemporary source calls him ‘Gorm’: *ibid.*, p. 81.

²¹⁷ NAI, KB 2/6 f. 8r.

²¹⁸ NAI, RC 7/11, pp 404-5.

women's status within the case records. Women could be plaintiffs or defendants in writs of dower. Perhaps it is important to note here that most dowers for widows were set by English custom at one-third of the husband's lands (in the thirteenth century a new custom allowed widows to claim one-third of the lands acquired during the marriage unless he specified 'at the church door' that she would receive less).²¹⁹ It is also important that the widower received the entirety of his wife's lands if they had one live-born child.²²⁰ There are several cases when a widow sued for dower which can reveal her legal and social status. In many cases in Ireland, an Englishwoman brought the writ of dower, the defendant appeared, and granted her seisin of her third of the lands and rent. These women must have had very good evidence, witnesses, high enough social status to be unquestionable in court, or the defendant was, similar to William de Penlyn, honest.²²¹

The Gaelic widows of English husbands were a diverse group. To make any sweeping generalisation on them would be unwise. The surviving court records suggest that the largest factor in whether or not a widow was socially or legally harassed was not her ethnicity, but her sex which might cause her problems.²²² There were a few women who were determined by the court to be unfree, and they most likely were. But there is also further evidence of anti-Gaelic sentiment and the reorganisation of court procedure from denying unfree people to attempting to deny free Gaels from the royal courts.

One record used for the traditional argument that all Gaels were denied access to the royal courts was the grant of access to one Gaelic woman. Isamaya, *Hibernica* and wife of Bertram de Rapenteny, *Anglicus*, had the archbishop of Armagh petition Edward I for a

²¹⁹ Joseph Biancalana, 'Widows at common law: the development of common law dower' in *The Ir. Jurist*, xxiii (1988), pp 255-329 at 285. Professor Biancalana found a few cases when widows successfully recovered the 'full' third overcoming the former husband's wishes to grant her less. Cf. the fourteenth-century evidence that the one-third dower was the *minimum* (not the maximum) a widow could recover under common law: Donahue, 'What causes fundamental legal ideas', pp 76-7.

²²⁰ Pollock & Maitland, *History of English law*, ii, 416-17. They went on to note that the 'courtesy' (a widower holding by the 'law of England') required a child to be born and that a witness heard it cry within the four walls of the house because witnesses had to be men and men were not allowed in the room during the birth. The 'cry within the four walls' test was in practice in English Ireland. Pollock and Maitland's reasoning appears to demonstrate a clear case of institutional misogyny, although there may have been cases when women were allowed to be on juries and be witnesses (just as they were allowed to be warrantors): *ibid.*, ii, 418. Dr Gwen Seabourne is currently analysing the 'four walls' test, and may disprove some of Pollock and Maitland's conclusions.

²²¹ Professor Walker thought similar cases from England were instances when the heir wanted the widow's rights recorded in the court rolls so that her heirs could not claim the lands as inheritance after her death. However, this would not explain the cases when the widow was the mother of the heir: Walker, 'Litigation as personal quest'. There is also the possibility that the heir feared his/her mother would grant away the inheritance during her lifetime, such as Margaret Lyfford did with her own lands: *supra*, pp 110-11.

²²² A third possibility could be that some women did not have the right political connections, or a retinue, to protect them from disseisin or legal harassment.

charter of access to English law.²²³ In his petition the archbishop told the parliament his reasoning for his request: *quia de consuetudine in Hibernia observatur quod mulieres Hybernice non recipiunt dotem post mortem maritorum suorum* ('because it is customary in Ireland for Gaelic women not to receive dower after the death of their husbands'). The parliament returned that should Isamaya survive Bertam de Rapenteny, then the archbishop could inform Edward I and the council would decide her fate. There are a few problems with this record. It was not the custom in Gaelic Ireland to provide a dower, and so the petition could be referring to 'Brehon Law' (laws of Gaelic Ireland). The archbishop's petition was not a court judgment from Ireland. The parliament did not make any ruling. And many other cases from English Ireland contradict the claim that Gaelic women were un-dowable.²²⁴ This record proves that Isamaya, or Archbishop Nicholas Mac Maoil Íosa, believed it beneficial to purchase access to the courts, but it does not prove that *all* Gaelic women were denied their dowers.

In some early cases (before the oldest surviving court roll) it appears that the Gaelic widows did not encounter any objections to their ethnicity. In 1205 'Regina' [*G. Raghnaill inghean Mhac Charthaig*] gave five marks so that she could have her dower out of the lands of Richard de Carew in Leinster.²²⁵ This distinction is interesting because de Carew held half of co. Cork in chief, and held his Leinster lands from the Marshals.²²⁶ It was normal for the crown to seize all of the lands of a tenant in chief (unless those were in an enfranchised borough), but the record from 1205 does not mention de Carew's Cork lands. Also, she was not called a *Hibernica* and there is no record of her being harassed. Before 1230 Aufrica [*G. Affraic*], widow of John le Cordewaner, held a dower in the manor of Ballymadun, co. Dublin – the record does not state whether it was a third of the entire manor or a portion of it. Aufrica won an assize of novel disseisin against Ralph and Henry de Trumbleville, and then King Henry III judged that she had not been disseised because the king had granted the manor to Ralph.²²⁷ Henry III subsequently ordered Richard de Burgh, justiciar, to investigate whether Aufrica should have to return the twenty marks in damages which she had received from Ralph de Trumbleville for disseisin, which de Burgh determined that she should.²²⁸ By January 1230/1 Aufrica had married Roger Owen, and

²²³ *PROME*, Edward I, Roll 3, m. 58 (<http://www.sd-editions.com/AnaServer?PROME+53087+parlfra anv>) (19 Apr. 2016); *CDI*, 1285-92, pp 251-2.

²²⁴ See *infra*, pp 133-6.

²²⁵ *CDI*, 1171-1251, no. 281. For her name, see *CJRI*, 1305-7, p. 373.

²²⁶ Mc Cotter, 'The Carews of Cork', pp 37-9.

²²⁷ *CDI*, 1171-1251, no. 1842.

²²⁸ *CDI*, 1171-1251, no. 1828, 1865.

they were able to recover her ‘corn’ from her lands and her dower in Ballymadun from the de Trubleviles.²²⁹ An inquisition in 1245 does not mention Aufrica holding her dower, but in 1263 (after her death), an inquisition determined that Aufrica’s dower lands should escheat to le Cordewaner’s heir.²³⁰ Roger and Aufrica held her dower in Ballymadun for at least twenty years with royal protection. In isolation it would appear the marriage protected Aufrica from being legally disseised.²³¹ It seems that Aufrica did not, at any part of the previous battle, suffer for her ethnicity. Her difficulties appear to have been entirely the result of her sex which may have required her to remarry for assistance and protection, or perhaps, she did not have the political connections to protect her from the de Trubleviles.

In 1252 Rahenilda [G. *Raghnailt*], widow of Henry son of Hubert, recovered rent and seisin of one-third of half of the *theodum* of Ohethan, co. Limerick, from Maurice son of Henry (the record is incomplete, and we cannot tell if Maurice was the son of Henry son of Hubert).²³² Henry essoined himself, and then appeared at the itinerant court in Waterford and fully agreed to return seisin of the sixth of Ohethan. He raised no objections and she was immediately granted seisin by the court. In Connacht, Henry le Botiller and Stohuf/Sathef [G. *Sadhbh?*],²³³ his wife, sued Muryardoch Oconchor [G. *Muireardach Ó Conchobair*], prior of Roscommon, for her dower from the twelve-and-a-half vills which were the free tenements of Ardguyll Okonchor [G. *Ardgal Ó Conchobair*], Stohuf’s former husband.²³⁴ In Henry and Stohuf’s case, we have an English lord who married a Gaelic woman who had previously married a Gaelic man.²³⁵ Le Botiller did not take issue with his

²²⁹ *CDI, 1171-1251*, no. 1899; *CCR, 1227-31*, p. 521. In 1231 it stated that Aufrica could have the corn which she had sown from the lands which she used to hold, which was a third of the lands which John le Cordewaner used to hold. The record does not specify whether John held the entire manor or not. For the career of Roger Owen, see Foley, *Royal manors*, pp 66-7. In 1251 Roger Owen and Aufrica held a third of two mills and a third of the entire ‘land’ (manor?): *IEMI*, no. 7.

²³⁰ James Mills and M. J. McEnery (eds), *Calendar of the Gormanston Register* (Dublin, 1916), pp 129-32.

²³¹ 18 January 1249/50, Fine Rolls of Henry III, roll C 60/47, no. 143, (http://www.finerollshenry3.org.uk/content/calendar/roll_047.html) (12 Nov. 2014). For Roger Owen’s career in the Dublin administration, see *Admin. of Ireland*, pp 40, 174, 230.

²³² NAI, RC 7/1, pp 123, 198. This was a very large area of land. Paul MacCotter argues that a *theodum* was based on the Gaelic tuath land division. These were not uniform, so we do not know exactly how big this dower portion was. For more on *theoda*/tuatha, see MacCotter, *Medieval Ireland*, pp 21-3.

²³³ The rendering was suggested by Mr Nicholls: K. W. Nicholls, ‘The Butlers of Aherlow and Owles’ in *Jn. of the Butler Soc.*, ii (1969), pp 123-8 at 126.

²³⁴ NAI, RC 7/1, pp 343, 408-9. This case is further examined in Chapter Five, *infra*, p. 249. Just as in the cases of Dearbhorgaill Mac Carthaig and Emmeline de Longespée, Stohuf was called ‘Sathef’ in a later entry with no objection from the prior; whereas Dufcouly wife of John son of Raymond defeated a writ because her name was misspelled: *supra*, pp 38-40. Cf. Robin Frame believed that the two spellings of Stohuf’s name meant she was actually two Gaelic women, and Henry le Botiller had married two different Gaelic women: Frame, ‘Ireland after 1169’, p. 120.

²³⁵ Henry was lord of Aherlow and Owles: Nicholls, ‘Butlers of Aherlow and Owles’, p. 126.

wife's previous marriage, and this may reflect a lack of ethnic hostility. Muryardoch made no objections to Stohuf's ethnicity and she was allowed to use the royal courts.

Nicholas de Naptoun and Lucia, his wife, were summoned to warranty Henry Top for one-third of two-thirds of a house, 140 acres of arable, and eight acres of meadow in Moricestoun, co. Louth. Sydonya widow of Simon Molunhop [G. *Ó Maolchalann?*] claimed this as her dower. The pleading was not recorded, but the court awarded Sydonya seisin of the tenement.²³⁶ The case record does not recount the pleading, but Sydonya clearly overcame any objections raised, if there were any. Up to this point no widows of Gaelic men had encountered any ethnic objections to receiving their dower.

One court record demonstrates how misogyny and anti-Gaelic sentiment could occasionally nonplus English law. Slany [G. *Sláine*] widow of Thomas son of Elias sued William son of Thomas (her son?) for a third of eleven houses, one carucate, and 105 acres in Rathboythe, Balyussyn, and Balydonegan, co. Kerry. William said he did not have to respond to the writ because Slany was not of free condition (i.e. that she was a *nativa*), and the jury returned that she was a *Hibernica et servilis conditionis* and that she could claim nothing. The court was not saying that simply because she was Gaelic she was denied access to the courts. It was saying that she was unfree and therefore could not use the courts. These were not the same thing. Later William returned to court and recognised that he had demised to Slany thirty-four acres in Rathcoythe and the pasture from all of his lands in Balyussin for the whole life of Slany. The court then recognised and confirmed this 'dower' grant.²³⁷ This contradicts its earlier ruling that she was *servilis conditionis*! If she truly was unfree, why did the court allow this grant? There is also the problem that this was clearly not a legal dower as it was not the one-third she asked for in her writ nor was it called a 'nominated dower' (as previously explained the husband named a specific dower 'at the church door' and the wife could not claim any more than the tenements explicitly stated at that formal grant). We can only assume that the justices decided that this meagre grant was superior to nothing, and ignored their previous ruling.

The other side of the coin, Englishwomen with Gaelic husbands, is more difficult to describe with certainty because in many cases the widow was simply listed by her forename and the name of her former husband. Many Gaelic women in medieval English Ireland had 'English' forenames. At this time we must cautiously assume the following

²³⁶ NAI, RC 7/5, p. 53.

²³⁷ NAI, RC 7/2, pp 161-2. This case is repeated on *ibid.*, pp 338-9 but without the later grant to Slany. This copy of the case gives the impression that Slany received nothing.

women were English, except in the case of Hawis Carpenter who we know was English. Leticia the widow of John Odrone [G. Ó Dróna?] sued Geoffrey de Brandewode for a third of a house and half a carucate in co. Dublin. Geoffrey replied, not that John had been a *Hibernicus* or unfree, but instead that Leticia had been an adulteress, moved in with her lover, Alexander de Bristol, while John was still alive, and had never reconciled the marriage before he died.²³⁸ The court adjourned so that a jury could investigate this claim.²³⁹ It is peculiar that the royal court did not send this verification to an ecclesiastical court (or the archbishop of Dublin) as this was usually the cognisance of the church. While the jury deliberated Geoffrey granted the entire dower to Leticia.²⁴⁰ He clearly saw that his plea was not going to be accepted and was most likely false. If Leticia encountered any more difficulty, she could ask the court to consult the record and prove her rights to the house and lands.

In 1301 Elena widow of Thomas Dardiz sued Robert de Cauntetoun for her dower of one-third of a house and forty-three acres in co. Cork. Robert appeared and claimed Thomas had been a *Hibernicus*, and Elena responded that Thomas had been an *Anglicus*. The jury determined Thomas had been a *Hibernicus*, and Elena recovered nothing.²⁴¹ There are at least two possibilities here: de Cauntetoun had convinced the jury to relabel Dardiz falsely as a *Hibernicus* or the courts had begun to accept the oft-repeated claim that all *Hibernici* were denied access to legal redress. There are six surviving cases of English people being deceitfully relabelled as *Hibernici*.²⁴² At the same time, repeated claims in court, from 1289 to 1301, that Gaels should be denied access to the royal courts even if they were free, had allowed *some* free Gaels to be denied access to the courts. The plea no longer required the proviso ‘*et nativus/-a*’, sometimes. Many English people thought it was sufficient simply to claim ‘*est Hibernicus/-a*’. But we should remember that Dufcouly’s and Sauyna Inymacdonechuth’s interactions with the courts were well after this case.²⁴³ These judgments present strong evidence for an argument that all Englishwomen married

²³⁸ NAI, RC 7/7, p. 79. For some aspects and history of the plea of forfeiture by adultery, see Paul Brand, “‘Deserving’ and ‘undeserving’ wives: earning and forfeiting dower in medieval England’ in *The Jn. of Legal Hist.*, xxii (2001), pp 1-20; Gwen Seaborne, ‘Copulative complexities: the exception of adultery in medieval dower actions’ in Matthew Dyson and David Ibbetson (eds), *Law and legal process: substantive law and procedure in English legal history* (Cambridge, 2013), pp 34-55.

²³⁹ NAI, RC 7/7, p. 220.

²⁴⁰ NAI, RC 7/7, p. 386.

²⁴¹ NAI, RC 7/8, pp 479-80. The lands were in ‘Balymathyr’.

²⁴² John son of Nigel, Philip Benyt, Simon de Cromhal: Chapter One, *supra*, pp 87-9. Adam Rauf, a man named Maurice (Limerick), Robert de Barry: Chapter Four, *infra*, pp 202-3. John Stakepol may be another instance: Chapter Four, *infra*, pp 189-90. There may be more cases which I have missed.

²⁴³ See also the record from 1381 when the Uí Cheallaigh were labelled ‘*nativi*’: St John Brooks (ed.), *Irish cartularies of Llanthony*, p. 301.

to Gaelic men were excluded from using the royal courts, but placing them in the context of other cases shows that the preceding cases involved unaccepted Gaelic husbands to Englishwomen. What happened when an Englishwoman married an accepted Gaelic man?

There were cases when women did recover dowers from the lands of their Gaelic husbands. In co. Louth Margery widow of Conochor Kerby [G. *Conchobhar Cairbaig?*] recovered forty acres from Henry Kenefeg.²⁴⁴ In Connacht Juliana widow of Donenold Macsolan [G. *Domhnall Mac Sochlacháin?*] sued William Hoese for the rent of one carucate.²⁴⁵ Unfortunately the cases did not record the ethnicity of the widows. We cannot tell whether they were Englishwomen or Gaelic women with English forenames. However, they did not have to defeat any *fuit Hibernicus* pleas concerning their former husbands, as Hawis Carpenter did.

Some Englishwomen (or at least women with English names) married to Englishmen encountered some legal difficulties in regards to ethnicity. In 1294 William Auncel and Mabel, his wife, sued Henry Fulley and Margery, his wife, for a third of twenty acres in Corrstown, co. Dublin, which John de Balingford, Mabel's previous husband, had held.²⁴⁶ Henry and Margery replied that they did not have to respond to the writ because Mabel was not one of 'the five lineages'.²⁴⁷ The justices of the Dublin Bench adjourned to let a jury decide, and nothing more from the case has survived. Geoffrey Hand took this as legal fact, and reported that only the 'five bloods [sic]' and prelates could bring a case in the royal courts.²⁴⁸ However, it is extremely important to remember that a plea was not law. It could be – and in some cases was – entirely contrived by the pleader with no legal precedent or royal mandate. William and Mabel's case is the oldest surviving reference to the 'five lineages', and cases involving Gaels in the years immediately before it do not even hint that such a grant existed. In 1298, the Dublin Bench ordered the 'sheriff' (viscount) of Kildare to make a jury of twelve men from the new vill of Leys which neither Geoffrey Chevere and Margery, his wife, nor John de Hothum (or anyone else) could manipulate.²⁴⁹ The jury was to discover whether, as a jury in co. Cork had determined, Margery was English and the daughter of Thomas le Whyte of Buttevant, co. Cork, as

²⁴⁴ NAI, RC 7/1, pp 425, 465. He was also called Conehor Berle in another copy of the writ, which may imply that he was a translator. Bérla meant speech or language: *eDIL* (<http://edil.qub.ac.uk/5638>) (5 Oct. 2015).

²⁴⁵ NAI, RC 7/1, p. 482. The lands were in 'Tedyronetti'.

²⁴⁶ NAI, RC 7/3, p. 450.

²⁴⁷ For the 'five lineages', see Chapter One, *supra*, pp 75-6; Appendix Two, pp 300-2.

²⁴⁸ Hand, *English law*, pp 205-6. 'Five bloods' was a later term which Professor Hand forced onto this case.

²⁴⁹ NAI, RC 7/5, p. 264. Cf. RC 7/1, p. 354. The record says the dower is in 'Tagwaretheston'.

Geoffrey and Margery said; or if Margery was a *Hibernica* of ‘Les Ocoans of Leys’ [G. *Uí Comhgáin*], as John de Hothum said. Geoffrey and Margery claimed one third of a house and forty acres as her dower. No result survives.

At this same time free Gaelic women started to encounter claims of denial to the royal courts. In 1297 William de Bermingham, archbishop of Tuam, claimed that since Joan Magelaghy [G. *Mac Giolla Eachaidh?*] was not ‘one of the five lineages’, he did not have to answer her count in court. William did not cite any charter or reason for the term ‘five lineages’, and since the case was given a day, we do not know whether his plea worked.²⁵⁰ The reason this case is important is that, unlike Mabel wife of William Auncel, Joan admitted to being Gaelic. In the earlier case there is no evidence that Mabel was Gaelic. Joan Magelaghy was married to John de Staunton, knight, and they claimed she was due two parts of the manor of ‘Anchethawyr’ (Aghagower) as her inheritance. She gave the history of succession to the manor. Marian [G. *Maol Muire Ó Lachtáin*], archbishop of Tuam, had enfeoffed Benyach Macgreatehy [G. *Baethghalach Mag Oireachtaigh?*]²⁵¹ of the two parts of Anchethawyr. After Benyach’s death, his son and heir, Adam, was taken into the king’s hand because he was underage and the archbishopric was vacant. After Thomas Okenwor [G. *Ó Conchobair*] was created archbishop of Tuam, he took homage from Adam son of Benyach and placed the latter in full seisin. Adam’s son Mathew, after reaching full-age, gave homage to Stephen de Fulbourne, archbishop of Tuam, and agreed to give suit at Stephen’s court. After Mathew died, Joan Magelaghy claimed the inheritance as sister and heir of Mathew. William de Bermingham then asked for proof of the original enfeoffment, and John de Staunton and Joan Magelaghy replied that the original charter from Archbishop Marian to Beynach was burned in a fire at Athlithan and they wanted to ‘wage law’ (bring their own witnesses) to prove the original enfeoffment. The archbishop then refused to let them verify the original grant because, he claimed, Joan was a *Hibernica*. If Joan’s counterplea was true, then this would be proof of the escheator holding heirs of Gaelic military tenants in the hand of the king which would imply governmental approval of this tenancy.

This was not the only instance William de Bermingham was involved in a legal dispute with a Gaelic woman. He sued Walter Casse and his wife, Edyna [G. *Éadaoin*], but the record does not specify the type of writ, the extent of lands (if it concerned lands), or even the pleas made in the case. A jury had been summoned to determine the facts of the

²⁵⁰ NAI, RC 7/5, pp 413-14. For more *dies datum est*, see RC 7/5, pp 288, 333, 412; RC 7/6, p. 96.

²⁵¹ Hubert Knox suggested ‘Benedict’ for Benyach: H. T. Knox, *The history of the County of Mayo to the close of the sixteenth century* (Dublin, 1908), pp 301-2.

pleas, but was suspended for lack of jurors.²⁵² We cannot even tell whether Walter Casse and Edyna or Archbishop William claimed that Edyna was an Ó Conchobair of Connacht. William de Bermingham attempted to deny Mór widow of Elias son of Richard her dower in Connacht.²⁵³ The case was placed under inquisition, and we cannot tell whether he used the ‘five lineages’ plea against her, as well. In fact, in the only surviving case that involved the ‘five lineages’ plea which reached a verdict, the plea was unsuccessful. On 17 June 1313 Dionisia widow of John de la Ryvere complained that Roger son of William withheld 100s., and Roger replied that Dionisia was a *Hibernica* and not of the ‘five bloods’. This is the oldest surviving instance of the phrase ‘five bloods’. The jury returned that she was English and she was awarded the 100s. and Roger was amerced.²⁵⁴ It is important to note here that he was not gaoled or amerced heavily for ‘defamation’, and Dionisia was not awarded damages. Geoffrey Hand alleged that accusing someone in court of being a *Hibernicus/-a* was defamatory.²⁵⁵

These last cases are not proof that all Gaels were denied access to the royal courts. Only one has a surviving judgment, and it only shows that the plea was contrived and false. When we remember the cases involving Dufcouly (1303-8) and Sauyna Inymacdonechuth (1312) we can place the ‘five lineages’ cases in context. The 1290s saw an increase of anti-Gaelic sentiment and it seeped into the royal courts. The customary nature of English law could have allowed the insidious claims that ‘all Gaels except the five lineages’ were denied access to transform from historical fiction to legal reality. But the surviving court records do not confirm this.

Conclusion

The court records show that a more nuanced approach must be taken with the study of medieval women. The free Gaelic women in English Ireland, just as the free Gaelic men, were mostly accepted members of English society. The surviving records show the freedom of married women (English, Ost, and Gaelic) was far greater than historians of women in medieval Ireland have depicted. But while ‘noble’ women were treated as vastly

²⁵² [Connacia] *Jurata inter Willelmum archiepiscopum Tuamensis & Walterum Casse & Edynam uxor ejus super eo si predicta Edyna sit de sanguine Oconeworh’ de Connacia remansit capienda pro defectu juratorum*: NAI, RC 7/10, pp 185.

²⁵³ NAI, RC 7/3, p. 87.

²⁵⁴ NAI, KB 2/4, f. 442r. This was first surviving instance the plea referred to ‘five bloods’. All previous records claimed the supposed grant was to the ‘five lineages’.

²⁵⁵ Hand, *English law*, p. 188.

superior to regular men, women in general were still not treated as equal to men of the same social class. There were no women itinerant justices or justiciars. Around the same time as a portion of the English in Ireland was attempting to disseise the free Gaelic men, a similar movement was attempting to disenfranchise the free Gaelic women. The anti-Gaelic sentiment more heavily affected Englishwomen formerly married to Gaelic men who discovered that they could not recover their dowers in court and that neighbours seized the opportunity to disseise these widows. The free Gaelic women who married Englishmen seem to have been accepted by the English society but their acceptance was not dependent on, or the result of, their English husbands. Contrary to the practice in England, unfree Gaelic women were not manumitted by marrying free Englishmen. The trouble for some widows began after the death of their husbands. Defendants would claim – occasionally honestly – that the Gaelic person was unfree or denied access to the royal courts, and therefore, the widow should lose her dower. There is insufficient evidence to say if more widows from interethnic marriages had to overcome obstinate defendants than English widows (such as Alice the widow of Henry son of Griffin de Roche). The evidence refutes the claim that no widow of an interethnic marriage could recover her dower in court and proves that some married women had independent tenements and chattels. With the numerous cases depicting legal discrimination against women, it is important to remember that most women did not have to sue because they were not disseised or harassed.

III

Irish Sea Region Ethnicities

The Gaels were not the only people born in medieval English Ireland who were not considered ‘English’.¹ An assortment of peoples fought (physically and legally) to maintain – or gain – acceptance, free status, and the ability to be heard in the royal courts. Andrea Ruddick recently examined political Englishness in fourteenth-century England (1272-1399).² We can compare some of her findings on the definition of political Englishness with the formation of legal ethnicities in English Ireland based on the royal court records. Dr Ruddick argued that *ius soli* (‘right by soil’: English by place of birth) turned into *ius sanguinis* (‘right by blood’: English by heredity) to deal with ‘overseas’ births during the Hundred Years’ War.³ She framed the contemporary perception of Englishness as almost codified, and that all English people had to be born in England to English parents to be ‘English’.⁴ Prior to the statute *De natis ultra* of 1351, however, many of the magnates in English Ireland maintained landholdings in England without any threat of disinheritance or loss of Englishness despite being born in Ireland.⁵ As we shall discover below, the groups examined in this chapter were treated differently by the royal courts – depending on internal relations (local acceptance or hostility) or external politics – and that the status of these groups changed over the period studied (1252-1318). The reason Englishness is an integral part of the examination of Ost-people, Welsh, Manx/Islanders, and Scots is because some of the former claimed to be English while others only claimed

¹ The people of Dublin, Wexford, Waterford, Cork, and Limerick have usually been called the ‘Ostmen’ because several records call them *Ostmanni*. Since the men are referred to, in modern works, as Ostmen – and not Ostman men – then the plural should be Ost-people to include Ostwomen.

² Andrea Ruddick, *English identity and political culture in the fourteenth century* (Cambridge, 2013), pp 100-82, 217-56.

³ Ruddick, *English identity*, pp 101-2.

⁴ Dr Ruddick mentioned the English in Ireland, but only examined them in regards to the 1297 provision about ‘degeneracy’. She did not disabuse the problem with her definition of Englishness (according to her definition, the *ius soli* of the English in Ireland should have made them ‘aliens’): Ruddick, *English identity*, pp 152-4. She did call them (the ‘English-in-Ireland’) an ‘anomalous’ group: *ibid.*, p. 27.

⁵ For example, the Butlers held in East Anglia, Yorkshire, Lancashire, Somerset, and Dorset: R. F. Frame, ‘King Henry III and Ireland: the shaping of a peripheral lordship’ in P. R. Coss and S. D. Lloyd (eds), *Thirteenth-Century England IV: proceedings of the Newcastle upon Tyne Conference 1991* (London, 1992), pp 179-202 at 182-3; *Calendar of Inquisitions Post Mortem... vol. ii, Edward I* (London, 1906), no. 608. This phenomenon, magnates born in Ireland being considered ‘English’, could mean that Ireland was considered part of England, or it could mean that *ius soli* was not applied in England before the Hundred Years’ War (cf. Hugh son of William Douglas: *infra*, n. 23). On the other hand, most of the English of Ireland – along with the Gaels of Ireland – who travelled to England were called *Hibernici* or *Hibernienses*, the very label used to attempt to disenfranchise some people in the royal courts in English Ireland.

to have access to the royal courts. This was, according to several juries, a very important distinction.

The historians who pioneered the field of Irish Sea studies and its relationship to English Ireland have made the following analysis possible. Seán Duffy, Ciarán Parker, and Emer Purcell have examined the Ostmen in English Ireland, and Professor Duffy has also laid the groundwork for studies of Scots and Welsh in English Ireland.⁶ This chapter will add to their work by examining the legal statuses of Ost-people, Welsh, Manx/Islanders, and Scots in English Ireland. The main focus of this analysis is to detect the legal differences between an English person (L. *Anglicus/-a*) and the non-Gaelic groups in the royal courts. Many historians have assumed that the polemics against *Hibernici* meant that all other ethnic groups in English Ireland were accepted as free members. Some even went so far as to claim that all non-Gaelic people were legally English.⁷ But that was not the legal reality. The ‘other’ groups had to fight to gain or maintain their acceptance by presenting charters, buying grants of access to the royal courts, or by presenting themselves in opposition to the Gaels.

Before we can examine the legal advantages and disadvantages of Ost, Welsh, Manx/Islander, and Scottish status, we must first discover how to correctly identify each group. Cases involving Ost-people sometimes refer to *Ostmannus/-a*, but such instances are few and far between.⁸ More frequently identification relies upon personal names, but we cannot assume that every Thorkill and Swein in thirteenth-century Dublin was an Ostman, that every William le Waleis was Welsh, or that every Edmund Scot was Scottish. There are several examples in the *Dublin guild merchant roll* (for example Turkildus de Abrussi and Swein de Kardif) which provide a stark reminder not to rely entirely on

⁶ For Ostmen, see Duffy, ‘Ireland and the Irish Sea Region’, esp. 32-47, 59-65; Parker, ‘Politics and society of County Waterford’, pp 173-87; idem, ‘The Ostmen in post-Norman Waterford’ in *Decies: Jn. of the Old Waterford Society*, xlix (1994), pp 29-37; Emer Purcell, ‘Land use in medieval Oxmantown’ in Duffy (ed.), *Medieval Dublin IV*, pp 193-228; eadem, ‘Expulsion of the Ostmen’, pp 276-94. For Welsh and Scots, see Seán Duffy, ‘The 1169 invasion as a turning-point in Irish-Welsh relations’ in Brendan Smith (ed.), *Britain and Ireland, 900-1300* (Cambridge, 1999), pp 98-113; idem, ‘The lords of Galloway, earls of Carrick, and the Bissets of the Glens: Scottish settlement in thirteenth-century Ulster’ in David Edwards (ed.), *Regions and rulers in Ireland, 1100-1650: essays for Kenneth Nicholls* (Dublin, 2004), pp 37-50; idem, ‘Welsh conquest’.

⁷ Most recently Robin Frame argued for a case of only two legal categories in English Ireland: English (which he also called ‘not Irish’) and ‘Irish’ (meaning only the Gaelic Irish): Frame, ‘Ireland after 1169’. Professor Frame overstated the legal reality (he believed that Ost-people, Scots, and Welsh were considered ‘English’), but he did mention a few of the instances when the Welsh used anti-Gaelic sentiment to promote their own cause. He also believed that all Ost-people were of a ‘privileged status’: *ibid.*, p. 123. Also notable are Geoffrey Hand and Edmund Curtis, who believed that ‘urban Ostmen’ were accepted and ‘rural Ostmen’ were not: Curtis, ‘English and Ostmen’, pp 287-96; Hand, *English law*, pp 210-12.

⁸ The instances when the label was used which relate to Ost-people’s status are examined *infra*, pp 146-54.

naming practices.⁹ Ost names are probably the most difficult to identify in the Irish Sea Region. A man named ‘Harald’ could just as easily have been Reginald Harold de Chester (Englishman) as he could have been Ímar mac Arailt (Ostman/Manx) or Óláfr Haraldsson (Norwegian).¹⁰ An Alexander Oter [G. *Ó Tíre?*, S. *Óttarson?*, or English: Otter?] was one of the defendants in a case brought by Adam le Waleys in the Dublin Bench in 1296. Oter held fourteen acres which le Waleys claimed was his inheritance.¹¹ There are several problems with identifying Alexander Oter as an Ostman: Alexander was not a ‘Mac Óttarr’ and he was not labelled an *Ostmannus* by the court. Also, the specific pleas from the case and the result were not recorded. This problem is not new to the study of Ost-people. Several historians have designated medieval people as Ost-people who were not labelled *Ostmanni* and who did not have an Ost ‘surname’.¹² Ciarán Parker, for example, thought that John son of Ralph Harald was an Ostman. Harald was listed among several men accused of waylaying David le Poer on a road in 1318,¹³ but John Harald, just as Reginald Harold de Chester, could have been an Englishman.¹⁴

Similar problems relate to identification of other groups. In regards to the Welsh in Ireland, first, we have to correctly identify and separate Welsh people from English with a seemingly-Welsh name.¹⁵ Craddoc le Waleys, *Anglicus*, was legally English, and so we must not assume that everyone with the surname ‘le Waleis’ was considered Welsh legally.¹⁶ (There was also William le Waleis in Scotland, nowadays remembered as ‘William Wallace’. His ancestors may have been from Shropshire, but there is no

⁹ *DGMR*, pp 2, 64. These and other ‘Scandinavian’ first names were present across contemporary England and Wales.

¹⁰ *DGMR*, p. 65. Ímar mac Arailt was king of Dublin (1038-46) and Óláfr Haraldsson was king of Norway (1066-93), and they are not in the *DGMR*. Edmund Curtis noted that ‘many Scandinavian-looking names came in also with the English, which cannot be reckoned Irish-Ostmen’: Curtis, *History of medieval Ireland*, p. 403. He also thought that the Harolds, who other historians have definitively labelled as Ost-people, were in fact English: idem, ‘The clan system among the English settlers in Ireland’ in *EHR*, xxv (1910), pp 116-20, repr. in *GWSMI*, pp 297-301 at 299.

¹¹ There was no marginal note, and I have not located these lands yet: NAI, RC 7/3, p. 308.

¹² Curtis, ‘English and Ostmen’, pp 289, 295 (Elicia daughter of Athelstan, Roger Anel, and Hamund Heraut); Parker, ‘Ostmen’, p. 36 (John Olayve of Ostmantown). Emer Purcell has already noted that everyone in the Ostmantown of Dublin was not in fact an Ostman or Ostwoman, although she identified Richard Gillemichael [G. *Giolla Michil*] as having an exclusively Ostman surname: Purcell, ‘Land use in medieval Oxmantown’, p. 202. Cf. Donn Mac Giolla-Michil, chief of Clann Conghaile: *AFM*, iii, 496-7.

¹³ NAI, RC 7/13/3, p. 81; Parker, ‘Ostmen’, p. 36. Dr Parker wrote that David le Poer was attacked at ‘Rathcormack’, but the record states ‘inter rathfornuh’ & _____’.

¹⁴ *DGMR*, p. 65.

¹⁵ Seán Duffy noted that contemporaries were acutely aware that the settlers in Ireland included (at least) two separate ethnicities: English and Welsh. He also noted some of the English who adopted ‘Welsh’ surnames based on an eponymous ancestor who lived in Wales: Duffy, ‘Welsh conquest’, pp 103-4, 107.

¹⁶ Craddoc le Waleys, the Englishman, was killed in 1303, his case in examined *infra*, p. 161. For a similar note on the name ‘le Waleis’, see Orpen, *Ireland*, pp 52-3, n. 8.

questioning his identity: Scottish.¹⁷) There were also dozens of people named le Walur, le Walon, or le Walen whose ancestors may have come from Wallonia (part of modern Belgium) or Valais (in modern Switzerland), but had become culturally – and possibly genetically – English by 1250.¹⁸ This group included Walter Wylens, *Anglicus*, who drowned at ‘Inuerchelle’ (Ennereilly) in the time of Archbishop Luke of Dublin (1230x55).¹⁹ The combination of English people with ‘Welsh’ surnames and the fact that many Welsh were answerable in the royal courts has perplexed some historians, and they interpreted this as signifying that all Welsh people in Ireland were considered ‘English’.²⁰ As we shall discover below, there were legally Welsh people in English Ireland – whom we can compare to the Ost-people who claimed to be *Anglici* and ‘Scots who used English law’ – and we can use these cases to test some of the traditional theories of the law in English Ireland.

The ability to detect Scots in the court records from English Ireland increases exponentially after the events of the 1290s and the subsequent wars between Scotland and England. In direct contrast to the other ethnicities examined in this thesis, the Scots were a case of allegiant ‘identity’. Most Scots were ‘Scots’ because of their liege status to the king of Scots; they were not a culturally homogenous group.²¹ Many historians of medieval Scotland have noted that Scots were not a single ethnicity in the thirteenth century.²² On the other hand, not all Scots gave their allegiance to the kings of Scots – especially after 1292 – but the English still regarded these Scots as Scots because they had been born in Scotland (*ius soli*) or because their parents were Scottish (*ius sanguinis*).²³ Their

¹⁷ A.H. Thomas (ed.), *Calendar of early mayor’s court rolls: preserved among the archives of the Corporation of the City of London at the guildhall, a.d. 1298-1307* (Cambridge, 1924), pp 69, n. 1; 220; 220, n. 2; G. W. S. Barrow, *Robert Bruce & the Community of the Realm of Scotland* (classic ed., Edinburgh, 2013), p. 107.

¹⁸ For a few people named ‘Walur’ or ‘Walon’, see NAI, RC 7/1, p. 178; RC 7/2, p. 45; RC 7/12, pp 44-7; KB 2/9, ff 100r-2r; *DGMR*, pp 18, 20, 34, 41.

¹⁹ CAAR, p. 111; F. J. Byrne, ‘Bishops, 1111-1534’ in *NHI*, ix, pp 264-332 at 309.

²⁰ Frame, ‘Ireland after 1169’, p. 121.

²¹ There were some Scots who did not give their allegiance to King John or King Robert I, but maintained their Scottish identity. This thesis is concerned with the treatment of Scots by the English courts in Ireland, and therefore does not examine the politics of Scotland between 1286 and 1329. For the history of Scotland during this period, see Barrow, *Robert Bruce*; idem, *The kingdom of the Scots: government, church and society from the eleventh to the fourteenth century* (2nd ed., Edinburgh, 2003); Michael Brown, *The wars of Scotland, 1214-1371* (Edinburgh, 2004).

²² Alexander Grant, ‘Scotland’s “Celtic fringe” in the late Middle Ages: the MacDonald lords of the Isles and the kingdom of Scotland’ in R. R. Davies (ed.), *The British Isles, 1100-1500: comparisons, contrasts and connections* (Edinburgh, 1988), pp 118-41 (although Grant calls the Gaels ‘Celts’ and conflates them with the Welsh [W. *Cymry*]); Barrow, *Kingdom of the Scots*, pp 332-3; Brown, *Wars of Scotland*, pp 8-9, 95-6.

²³ For example, Henry Scot (examined *infra*, pp 31-3) was ‘held for a Scot in [English Ireland] and uses English law’. Cf. Hugh son of William Douglas was born in England but arrested as a Scot in 1296: *Cal. doc. Scotland, 1272-1307*, p. 173. This was probably because William Douglas had seized (*L. rapuit*) Hugh’s

appearance in Irish legal records is probably a direct consequence of the souring of Anglo-Scottish relations in the 1290s.

A poignant example of the trouble caused by using a patrial surname as an ethnicity/identity marker is evident from the case involving Edmund Scot. Edmund was killed by Walter Josselyn and Thomas Josselyne, and they were charged with the death of an Englishman in the archbishop of Dublin's court.²⁴ The court clearly recognised that the victim was Edmund Scot, *Anglicus* (Englishman), just as in the case of Craddoc le Waleys, *Anglicus*. A royal inquisition investigated this case, and so the *Anglicus* label appears legally accepted. Also, in regards to naming problems, there were some 'Italians' who used the surname 'Scot'. Albert le Escot and John le Escot, merchants of Piacenza, received a licence to trade in Edward I's realms in 1294.²⁵

These few examples should serve as a reminder that using patrial surnames (such as Scot or le Waleis) is a hazardous method of identification, especially for thirteenth-century Ireland.²⁶ Many of the people identified in this chapter were given manifest ethnic labels by the English courts in Ireland – or in the case of the Scots: 'identity' labels – and so we can be certain that most of the test cases involved legally-identified people.

Ost-people

'Viking' and Scandinavian activities in Ireland, especially before 1014, are currently a fashionable topic of research.²⁷ Nevertheless, the descendants of the Scandinavian settlers – who intermarried with Gaels, semi-acculturated to Gaelic culture, and called themselves 'Ostmen' (S. *Austmenn*) after 1171 – have received only occasional examination, and they are still largely ignored by historians of medieval English Ireland.²⁸ There is also the problem that some want to rebrand the Ost-people (as 'Norse', 'foreigners', or anything

mother, Eleanor de Lovaine widow of Willaim de Ferrers, and then married her. William then joined William le Waleis's revolt: Barrow, *Robert Bruce*, p. 109.

²⁴ CAAR, p. 10.

²⁵ *Cal. Doc. Scotland, 1272-1307*, p. 163.

²⁶ Cf. Hibernicus and le Irrois, *supra*, pp 12-13.

²⁷ H. B. Clarke, Máire Ní Mhaonaigh, and Ragnall Ó Floinn (eds), *Ireland and Scandinavia in the Early Viking Age* (Dublin, 1998); Clare Downham, *Viking kings of Britain and Ireland: the dynasty of Ívarr to a.d. 1014* (Edinburgh, 2007); John Bradley, A. J. Fletcher, and Anngret Simms (eds), *Dublin in the medieval world: studies in honour of Howard B. Clarke* (Dublin, 2009); H. B. Clarke and Ruth Johnson (eds), *The Vikings in Ireland and beyond: before and after the Battle of Clontarf* (Dublin, 2015).

²⁸ For a nearly-complete listing of the historiography, see Crooks, 'A guide to recent work', p. 368; for the trouble with labelling the Ost-people with hybrid ethnic labels, see Clare Downham, "'Hiberno-Norwegians" and "Anglo-Danes": anachronistic ethnicities and Viking-Age England' in *Mediaeval Scandinavia*, xix (2009), pp 139-69.

except Irish) and deny the latter's Irishness and Gaelic blood and customs.²⁹ The Ost-people's Irishness does not depend upon their adoption of Gaelic customs and intermarriage. They were Irish because they lived in Ireland for almost 400 years before the advent of the English. They shared naming practices with the Gaels of Ireland and the rest of the Irish Sea Region. This cultural inclusion is apparent in the 'surnames' shared by Ost-people, Manx, Gaelic kings, and unfree *Hibernici et nativi*. This may have led English defendants in court to invoke the *est Hibernicus et nativus* plea against some accepted Ost-people. There is an important reason to specify 'accepted Ost-people', as some historians have noted, not all Ost-people had access to the English courts in Ireland.³⁰ Edmund Curtis noted that several Ost-people had to petition for access to English law but he believed that this was because the petitioners were rural; whereas all urban Ost-people were, by contrast, automatically 'English' by blood and common ancestry.³¹ Adrian Empey argued that the 'Old Norse [sic] were grafted into the new social order with the status of freemen [sic]', but then speculated that some Ost-people lost this status because of acculturation to Gaelic naming and linguistic practices. He did not detail how the Ost-people gained free and accepted status in the first place, or mention that the Ost-people were Gaelicised long before the advent of the English.³² Ciarán Parker believed that all Gaels were specifically denied access to royal courts without revealing how, while the Ost-people had to petition for access due to acculturation to Gaelic practices and ethnic confusion by the English settlers.³³

We begin the study of Ost-people with those who were threatened with disseisin and exclusion. This section has to rely mostly on other (non-royal court) records because these are the only surviving relevant sources for the legal and social status of Ost-people. The main problem addressed in this section is the belief that *all* (urban) Ost-people were accepted members of English Ireland and considered 'English'. There are several surviving records which indicate the Ost-people's status was far from secure or accepted. An inquisition from Limerick in 1224 stated there were no rents from *Ostmannis consuetis*

²⁹ Edmund Curtis acutely stressed that the people of Dublin, Waterford, Limerick, Wexford, and Cork were not Irish. He called them 'Teutonic in blood', 'Northmen', 'Danes', 'Norse', 'Norsemen of Ireland', 'undoubted Scandinavian origin', 'isolated communities', 'maintaining a racial distinctiveness', 'distinct and apart', and 'worthy of equal credence with the English'. On the other hand, Curtis also said that the Ost-people were 'tainted with that Celtic stain which the English always abominated' and 'were hard to distinguish from the rightless Irish': Curtis, 'English and Ostmen in Ireland'.

³⁰ Curtis, 'English and Ostmen in Ireland', pp 292-3.

³¹ Curtis, 'English and Ostmen in Ireland', p. 287.

³² C. A. Empey, 'County Waterford: 1200-1300' in William Nolan and T. P. Power (eds), *Waterford: history and society: interdisciplinary essays on the history of an Irish county* (Dublin, 1992), pp 131-46 at 138-9.

³³ Parker, 'Ostmen', pp 33-4.

libertatem ('customarily free Ost-people') implicitly suggesting that there were customarily unfree Ost-people too.³⁴ Another example, from around the same time, adds more evidence that there may have been customarily unaccepted Ost-people, as well. Sometime between 1213 and 1251 an outlaw (L. *weyviatus*) named Gylmhel Maclotan [O. *Giolla Micil Mac Loðinn?*], who the jury specified was an Ostman with access to the royal courts, was allowed to return to the peace of his lord, the archbishop of Dublin, after paying a monetary fine – Gylmhel's crime was not listed in the inquisition.

*De secundo articulo jurati et requisiti dicunt quod si aliqui weyviati in curia domini recepti fuerint in tenemento et inventi retinantur et liberantur [sic] ballivis domini archiepiscopi; et dicunt quod semper tempore Henrici et Luce liberati erant ballivis predictorum. Et weyviatus vocabatur Gylmhel Maclotan et fuit Estman et habuit legem Anglicorum; et quidam frater ejus nomine Galgekil posuit se in fugam pro eodem delicto. Et rediit ad pacem domini pro pecunia sua quam dicto archiepiscopo dedit coram magistro Hugone de Glindelache postea episcopo Ossoriensi et aliis ballivis eis adjunctis.*³⁵

(Of the second article, having sworn and being questioned, [the inquisitors] say that if anyone waived in the lord's court was received in the tenement, and found, [he/she] is kept and delivered to the lord archbishop's bailiffs; and they say that since the time Henry and Luke, [waived people] were delivered to the bailiffs of the said archbishops. And a waived man, called Gylmhel Maclotan, an Ostman, had access to the English courts; and his brother called Galgekil fled for the same offence. And he [Gylmhel] returned to the peace of the lord by giving his money to the archbishop in the presence of Master Hugh de Glindelache later bishop of Ossory and other bailiffs joined them.)

Gylmhel's brother, Galgekil, who was not recorded as having access to the royal courts, fled the area after the same offence. While it could be that the scribe simply left out that Galgekil had access, it is more likely that he was denied it. If both brothers had access, the record would have read: *fuerunt Estmanni et habuerunt legem Anglicorum*. However, the record of Gylmhel is a pertinent example of the status of Ost-people. The jury in c.1260 did not assume that all Ost-people were accepted in English Ireland; it specified that this one Ostman (Gylmhel) was unique. The clerk, unfortunately, did not record how Gylmhel obtained access to the royal courts, and whether or not Galgekil had access.

³⁴ K. W. Nicholls, 'Inquisitions of 1224 from the *Miscellanea of the Exchequer*' in *AH*, no. 27 (1972), pp 101-12 at 106.

³⁵ *Hist & mun docs*, p. 143; *CAAR*, p. 101 [*Sylmhel Maclotan* and *Salgekil*]. It was 'in the time of Archbishops Henry [of London, 1213-28] and Luke [of St Martin's, London, 1229-55]' and before the bishopric (of Ossory) of Hugh de Glendalough (1251): Byrne, 'Bishops, 1111-1534', pp 309, 317. The archbishop's court was not a royal court and had some variances from the latter, but the jury in this case was reporting to the Dublin administration, and was very clear that Galgekil/Salgekil was an Ostman without access to English law. It is rather surprising that Gylmhel was 'waived' as that was supposedly the term for outlawry of women; for more on 'waiving' see Chapter Four, *infra*, pp 208-10.

One man, whose name indicates he may have been an Ostman, was officially labelled a *Hibernicus*. Mac Chiteroc [O. *Mac Sitriuc/Mac Sigtryggr*] held royal demesne lands in co. Waterford. It appears he had died some time before 11 July 1236 and a royal mandate ordered that the lands formerly held by Mac Chiteroc were to be delivered to the treasurer of Ireland and converted to the king's profit.³⁶ Mac Chiteroc's record demonstrates that *Hibernici* could hold royal-demesne lands and may indicate that not all *Hibernici* were Gaelic.

A number of Ost-people had to purchase or petition for access to the royal courts – as certain Gaelic people did – and some evidence of this survives. These petitions are inherently full of rhetoric and should be used cautiously. In two of the extent petitions, the petitioners included several hundred Ost-people. Philip Macgothmond [O. *Mac Guðmundr*?] petitioned Edward I at the English parliament of Easter 1290 to be legally labelled an Ostman.³⁷ Philip claimed to be speaking on behalf of 400 Ost-people of Waterford. Interestingly, after this petition was granted, no one mentioned it in related petitions or court cases.³⁸ Also, Philip's petition was submitted seven years after Edward I had 'confirmed' Henry II's grant to the Ostmen of Waterford (1283).³⁹ Macgothmond's petition indicates that grants and confirmations from the crown required local support to be effective.

One of the reasons Macgothmond's petition is unique is because he specifically referred to himself as *Oustmannus et Anglicus domini regis*. The Latin phrasing in Philip's petition gives the impression that he called himself 'Philip Macgothmond, an Ostman and Englishman of the lord king'. This would conform to Geoffrey Hand's argument that all people with access to the royal courts were considered *Anglici*.⁴⁰ In the surviving court records, the usual practice was an English person would declare *sum Anglicus/-a* (Welsh people declared *sum Wallensis*) to show that he/she had access to the royal courts. However, grants of access to the courts normally adopted a different phraseology: the

³⁶ *CDI, 1171-1251*, no. 2336. This may have been the same man listed in the pipe roll from 14 John: Oliver Davies and D. B. Quinn (eds), 'The Irish pipe roll of 14 John, 1211-1212' in *Ulster Jn. of Arch.*, iv, supplement (1941), 1-76 at 50-1.

³⁷ *PROME*, Edward I, Roll 4, m. 1 (<http://www.sd-editions.com/AnaServer?PROME+56227+parlfra.anv>) (2 Dec. 2015).

³⁸ See the 1311 court case and 1316 petition, *infra*, pp 151-4.

³⁹ A transcript of this confirmation is available in J. J. A. Worsaae, *Minder om Danske og Nordmændene i England, Skotland og Irland* (Copenhagen, 1851), p. 444. For comments on Henry II's grant, see *infra*, pp 152-3.

⁴⁰ Hand, *English law*, p. 196. Cf. Professor Frame made a similar, but possibly more nuanced, argument: that people in English Ireland were classified as 'not-Irish', meaning, of course, not Gaelic Irish: Frame, 'Ireland after 1169', pp 120-1.

grantee is allowed to use the ‘laws and customs of the English in Ireland’ (*L. leges et consuetudines Anglorum in Hibernia*: access to the royal courts).⁴¹ The latter would indicate that even if someone was able to purchase access to the courts, that grant did not make them an English person (which conforms to Dr Ruddick’s definition of Englishness).⁴² The record of Thomas son of Gerald son of John demonstrated that at least one enfranchised Gael was not called an *Anglicus*, and Thomas did not claim to be one.⁴³ As we shall see below, access to the English courts in Ireland did not make Welsh or Scots people English. These inconsistencies – the ability of one group, the Ost-people, to claim to be, simultaneously, two ethnicities – should remind us that neither English law nor ethnic labels were codified or concrete in the thirteenth and early fourteenth centuries.

Returning to Philip’s petition, Macgothmond claimed *omnes de genere predicti Philippi Anglici et Ostmanni vestri sint* (all of Philip’s ancestors were your [Edward I’s] English people and Ost-people). Some have taken this phrasing to mean that the kings (and, therefore, through charters and mandates to royal justices, the royal courts) viewed all of the Ost-people as English.⁴⁴ But the existence of Philip’s petition demonstrates that the English of Waterford did not hold the Ost-people to be English or even have access to the local or royal courts. Macgothmond tried to amalgamate Ostness with Englishness in an effort to situate the Ost-people of Waterford in opposition to Gaelicism (that is Gaelic culture and identity). He claimed that his ‘kin [were] Englishmen and Ostmen, and not [Gael]’ and the king must protect Macgothmond, ‘lest an Englishman and Ostman be turned into [a *Hibernicus* (and therefore an *inimicus regis*)]’. In response Edward I agreed that Macgothmond might have a charter to be an Ostman, but the king made *no* recorded ruling on whether Macgothmond was an *Englishman*.

The next record – from the same parliament – confirms that local hostility (or at least lack of acceptance) against the Ost-people permeated into more than one location and varied in severity, and that the English courts in Ireland (city, county, and royal) did not regard all Ost-people as ‘English’. Maurice Macotere [O. *Mac Óttarr*], *Hibernicus*, petitioned Edward I for help, but, according to his petition, Maurice did not identify himself as a Gael. He, therefore, must have been officially labelled a *Hibernicus* by the

⁴¹ There were many variances of this phrase, but they all imply that the recipient would only have access to the royal courts, and we can probably assume that he or she would not be considered an English person because of the many examples, such as this grant and the case involving Henry Scot: *infra*, p. 170.

⁴² Ruddick, *English identity*, pp 100-6.

⁴³ Chapter One, *supra*, pp 42, 84.

⁴⁴ Curtis, ‘English and Ostmen’, pp 291-2; Parker, ‘Ostmen’, pp 33-4; Brian Hodkinson, ‘Viking Limerick and its hinterland’ in Clarke & Johnson (eds), *Vikings in Ireland*, pp 183-8 at 186.

English courts in Ireland. He began his petition by asking to be labelled an Ostman.⁴⁵ Maurice, similar to Philip Macgothmond, claimed to be speaking for ‘300’ Ost-people from his region of Ireland. Maurice already had royal letters patent which stated that since he and his ancestors had been taken as ‘pure English’ people in the past – by purchasing writs in the chancery and suing in the royal courts – that he and his descendants should have guaranteed access to the royal courts in Ireland now too.⁴⁶ An important aspect to note is that none of the letters patent or petitions to parliament grant anything to *all* Ost-people throughout Ireland. Also, the royal letters patent did not achieve the desired effect – just as we saw with the Ost-people of Waterford. The letters patent declared that having been previously answered in an English court (borough, county, or royal) made someone a *purus/-a Anglicus/-a*, but then stated that Maurice and his successors could have the liberties of the English in Ireland. The introduction stated that Maurice and his ancestors had been taken *tanquam puri Anglici in Hibernia* (as pure English people in Ireland) in the past. We should probably focus on the word *tanquam* (as) and conclude that being answerable in court made Maurice resemble an Englishman. These letters patent were dated 9 December 1289, and on 24 June 1290 Edward I sent new letters patent proclaiming that Maurice Makotere and Philip Makethemund were ‘pure Englishmen’ and their ancestors had been ‘pure Englishmen’.⁴⁷ Edward ordered that Makotere and Makethemund were to enjoy the liberties and customs of the English the same as any other English person. The rhetoric in these letters patent is peculiar. Ost-people were not regarded as ‘English’ during the reigns of John and Henry III, and they had not been treated as ‘English’ before 1290.⁴⁸ Later cases demonstrate that this order was not applied universally, if it ever was at all.⁴⁹ The phraseology also varies significantly from grants of access to the royal courts, which state that someone could use the ‘English laws in Ireland’.⁵⁰ One letter of ‘denization’ for people in England, however, did use the phrase ‘*purus Anglicus*’. Elias Daubeney received a grant to be ‘heard as an Englishman in all of the king’s courts in England’ (*ipse Elias de cetero in quibuscumque curiis suis Anglie audiatur ut Anglicus*), and that Edward I would regard him as an unmixed Englishman

⁴⁵ *PROME*, Edward I, Roll 4, m. 1 (<http://www.sd-editions.com/AnaServer?PROME+56227+parlfra.anv>) (2 Dec. 2015).

⁴⁶ *CIRCLE*, PR, 18 Edward I, no. 1.

⁴⁷ *CDI*, 1285-92, no. 700.

⁴⁸ *Supra*, pp 147-50.

⁴⁹ *Infra*, pp 151-4.

⁵⁰ E.g. *CDI*, 1285-92, nos 215, 685, 697, 702, 748, 851, 856, 876, 924, 1002, 1004, 1096.

(‘*quia dominus rex ipsum Elyam Anglicum purum tenet*’).⁵¹ This distinction may have had some social effect, but there is no substantive proof of a legal difference between being considered a ‘*purus/-a Anglicus/-a*’ and having access to the royal courts. The English of Ireland were not called *puri Anglici* though.

Other cases seem to support the theory that access to the courts did not make someone English. Henry Scot *claimed* to be an *Anglicus*, but the jury in 1297 determined that he was a *Scotus* who had access to the royal courts.⁵² The jury in Scot’s case may have based its decision on regional biases/custom; and developments in Anglo-Scottish relations may also have influenced its verdict. On the other hand, there is the legal language used in the case of Neivinus Mac Oel.⁵³ When faced with the allegation of being a *nativus*, Neivinus did not claim to be an *Anglicus* or a ‘*Hibernicus* with access to English laws’, but instead a *libero homo* (free man). These differences in legal, ethnic terminology may be the result of changes over time (1252 to 1297) or indicative of the difference between Anglo-Gaelic relations and Anglo-Scottish relations. These two petitions show that some Ost-people had not acculturated into English society in Ireland sufficiently to be considered English, that royal charters could not supersede local interests, at least in regards to who was ‘English’ in Ireland, and that acceptance or rejection of the Ost-people varied greatly throughout the English lands in Ireland. We should also remember that several juries and royal letters patent stated that being previously answered in the courts was sufficient proof of freedom and acceptance.⁵⁴

In the oft-cited case from 1311, Robert le Waleys told the justiciar’s court that John son of Yvor MacGillemorey [G. *Mac Giolla Mhuire*] was a *purus Hibernicus et non de libero sanguine* (an unmixed Hibernicus and not of free blood).⁵⁵ John son of John son of Robert le Poer answered for the king (as prosecutor of a felony) that the Meic Giolla Mhuire of Waterford were free in English Ireland because they had a charter from Henry II

⁵¹ The editors of the parliamentary rolls call this action a ‘denizenisation’: *PROME*, Edward I, Roll 10, m.1d (<http://www.sd-editions.com/AnaServer?PROME+75421+textfra.anv>) (18 Aug. 2017).

⁵² *CJRI, 1295-1303*, p. 158. For more on Henry Scot, see *infra*, pp 170-2. This is an important distinction which Professor Frame missed. He conflated Scot’s claim in court with a court judgment: Frame, ‘Ireland after 1169’, n. 25.

⁵³ For Neivinus Mac Oel, see Chapter One, *supra*, pp 50-1.

⁵⁴ Maurice Macotere: *supra*, pp 149-50; William le Teynturner: *infra*, pp 155; Henry Scot: *infra*, pp 170.

⁵⁵ Robert le Waleys is called a ‘clerk’ in the introduction to the *Facsimiles of national MSS of Ireland*, but he was not called a ‘*clericus*’ in the actual case record: J. T. Gilbert (ed.), *Facsimiles of national manuscripts of Ireland, part III* (London, 1879), p. vi, plate 7, appendix 3. See also, *CPR, 1281-1292*, p. 78; *CJRI, 1308-14*, pp 185-8; Curtis, ‘English and Ostmen’, pp 289-90; Hand, *English law*, pp 210-12; Parker, ‘Ostmen’, p. 34.

granting them access to the royal courts.⁵⁶ Paul Brand found a copy of the original grant from Henry II and argued that it only placed the Ostmen of Waterford under Henry's protection.⁵⁷ Professor Brand also noted that Edward I's confirmation of the charter (in 1283) confirmed privileges which the original did not grant. However, the wording in 1311 may demonstrate that Edward's clerks adapted the original's intent to meet the then current phraseology of the courts.⁵⁸ While Professor Brand is right that the grant from Henry II does not contain the phrase *legem Anglicorum*, it does state that the Ost-people of Waterford are to be protected in their possessions, from injury or molestation, and to be given justice without delay.⁵⁹ These are the fundamental elements of access to the royal courts. The jury in 1311, on the other hand, reported at length on John son of Yvor's ancestors and their interactions with Henry II. It noted that Henry II granted Gerald Macgillemorey protection of 'life and limb' (which does match the charter Professor Brand found), and that after defending the city of Waterford from the expelled Ostmen, Henry II granted to the Meic Giolla Mhuire and other Ostmen of Waterford access to the royal courts. The final part of the grant (which is in both the original and the jury's report from 1311) is important because several historians have overlooked the spatial limitation in the charter ('to the *Ostmannos* of the city and county of Waterford') and argued that the charter meant that *all* Ost-people in English Ireland had access to the royal courts.⁶⁰ Also, the claim by John le Poer is interesting because no one (in 1311 or in the historiography) mentioned that Philip Macgothmond and the '400' Ost-people of Waterford had received Ost status and access to the royal courts at an English parliament in 1290. In relation to the previous examination of whether Ost-people were considered *Anglici*, the jury's report from 1311 tells us that the Meic Giolla Mhuire of Waterford were put on juries and assizes

⁵⁶ '*antecessores de cognomine predicti Johannis filii Yuor Macgillemorey legem Anglicorum in Hibernia usque ad hunc diem habere et secundum ipsam legem iudicari et deduci debent et solent. Et unde dicit quod predictus dominus Henricus rex [filius imperatricis] per cartam suam a tempore primi conquestus Hibernie libertatem predictam omnibus de cognomina de Macgillemorey dedit et concessit quam quidem cartam dominus*': Gilbert (ed.), *Facsimiles of national MSS*, plate 7.

⁵⁷ Brand, 'Ireland and the literature', pp 449-50, n. 17. Cf. Henry III put the Ost-people of Waterford under his protection in 1234: *CDI, 1171-1251*, no. 2198.

⁵⁸ Professor Brand called this 'anachronistic': *CJRI, 1308-14*, p. 186; Brand, 'Ireland and the literature', p. 463. Cf. Edward I placed Maurice Coghlan under protection while the latter was in Scotland. Coghlan does not have any surviving grant of access to the courts (and no mention was made of one). Perhaps the letter of protection served as a grant of access, or he was free and accepted by custom: *NAI, RC 7/9*, pp 178-9.

⁵⁹ '*Et precipio quod vos possessiones suas custodiat et manuteneatis et protegatis sicut meas proprias ita quod eis nullam molestiam vel injuriam vel violentiam faciatis aut fieri permittatis et si quis super hoc in aliquo forisfecerit plenariam eis inde sine dilatione justiciam fieri faciatis*': Brand, 'Ireland and the literature', p. 463.

⁶⁰ Curtis, 'English and Ostmen', p. 289; Hand, *English law*, pp 210-11; Lydon, 'Middle nation', p. 341. Cf. Professor Curtis later noted the treatment of Ost-people was not universal and varied by location: Curtis, *History of medieval Ireland*, pp 403-7.

and that William Macgillemory was a free tenant, and not that the Ost-people were English.⁶¹ These four instances – Henry II’s charter, Edward I’s confirmation, the grant from a Westminster parliament, and the court decision in 1311 – give us an indication that the collective legal memory of the English in Ireland was not precise and that charters from Westminster were not worth much without local support.⁶²

We can directly compare the status of the Meic Giolla Mhuire of Waterford with the treatment of Cathal MacGillemory, *Hibernicus*, who was killed in co. Cork in 1260. A ‘viewing of the death’ (an inquisitional jury) investigated Cathal’s body/homicide, and found him to be a *Hibernicus* of Bernard de Cork, and subsequently, the court awarded Bernard *resolutio* (remuneration) from Cathal’s now-anonymous killer.⁶³ There were other Meic Giolla Mhuire who may have been unfree. Gilcrist McGylmoy [G. *Giolla Chríost Mac Giolla Mhuire*] and John McGilmoy were listed as betaghs at Bray in 1311.⁶⁴ Free Gaels also shared the surname. On the opposite side of the island, the Gaelic chiefs of Uí Derca Céin were the Meic Giolla Mhuire.⁶⁵ These men show us that historians cannot assume every person named Mac Giolla Mhuire in medieval Ireland was a free Ost-person. When we compare the wording of the jury’s verdict in 1311 regarding the slaying of John son of Yvor MacGillemory, with the petitions submitted by other Ost-people seeking access to the royal courts, it appears that the accepted Ost-people in English Ireland were only free by charter or custom, and that, as the thirteenth century ended, many of the customarily free Ost-people (L. ‘*Ostmannis consuetis libertatem*’) were being relabelled as *Hibernici* who could not use the royal courts.

A final indicator of legal discrimination against Ost-people comes from a petition by Arnold le Poer in 1316. He asked for a grant of access to the royal courts for Richard Makshiterute [O. *Mac Sitriuc?*] and Robert Osheth [G. *Ó Séaghda?*].⁶⁶ This record is problematic for two reasons. First, Makshiterute is not identified as an Ostman, and Osheth was not identified as a Gael or an Ostman either. But we then find that on 16 May 1316 Edward II granted Richard son of John Makeshiteruk, ‘*Custmannus*’ [Ostman], and Robert

⁶¹ ‘*poni consueuerunt in iuratis et assisis sicut Anglici Willelmus Macgillemory consanguineous predictis Johannis est liber tenens in isto comitatu et tenant omnes terras suas de domino rege in capite*’: Gilbert (ed.), *Facsimiles of national MSS*, appendix 3.

⁶² Michael Clanchy reached a similar conclusion about the ‘problems’ of customary law clashing with written legal parchments in thirteenth-century England: M.T. Clanchy, ‘Remembering the past and the good old law’ in *History*, lv, no. 184 (1970), pp 165-76 at 173-6.

⁶³ NAI, RC 7/1, p. 297. See also, Chapter Four, *infra*, p. 190.

⁶⁴ *RBO*, no. 10.

⁶⁵ *CDI, 1252-84*, no. 953; Orpen, *Ireland*, p. 502, n. 7.

⁶⁶ *DAKCI*, p. 81.

Osheth, *Hibernicus*, access to the courts.⁶⁷ Second, and probably more importantly, since the request came from Arnold le Poer – who was a magnate from Waterford – and since a Richard MacShiteruk from co. Waterford was granted a protection of peace in 1306, it is probably that the Richard recorded in 1316 was from co. Waterford.⁶⁸ We have already learned that the Ost-people of Waterford received access to the royal courts in 1283 and 1290, and that the first one was confirmed in 1311. If Makshiterute was an Ostman of Waterford, the grant of 1316 should not have been necessary (unless the multiple grants of access were again not recognised by local settlers in co. Waterford). This final grant probably shows us that the Ost-people were not as accepted by contemporaries as previous historians have portrayed. They definitely were not considered ‘English’ by blood and custom.

The treatment of the Ost-people of Waterford may be explained by non-legal sources. The story recounted by the jury in 1311 resembles the narrative from Giraldus Cambrensis’s *Expugnatio*. In the latter, the author tells his audience that the Ost-people of Waterford killed the custos of Waterford and then killed any English person they could find ‘without respect for sex or age’. But since the English held Raghenauld’s Tower, the Ost-people were driven out of the city and subsequently the status of the Ost-people of Waterford was degraded.⁶⁹ If the English of Waterford in 1311 believed this story was true, then it might explain ongoing, local discrimination against the Ost-people.

Before we examine unmolested Ost-people, we should remember the previous discussion of Ost names.⁷⁰ The name Omattus, Omachus, or Omaccus [G. *Ó Mac Cais?* or *Ó Maccus?*] which we encountered in the free Gaelic men section, could have been an instance when Gaels adopted ‘Scandinavian’ elements into their Gaelic surnames (in a similar manner to Mac Lochlainn or Mac Amhlaobh). The name ‘Maccus’ in Omaccus, however, may not have been Scandinavian at all. It could have been a corruption of Mac Cass. The name Omaccus first appears in 1260 in Tacmelyn (St. Mullins, Carlow) when

⁶⁷ Thomas Rymer, *Fædera, conventiones, litterae...* (3 vols, London, 1816), ii, pt 1, 290; *CPR, 1313-17*, p. 463.

⁶⁸ In the pardon, the name is cut off, but it is almost certainly spelled ‘MacShiteruk’ based on the other names in the record. This seems to have been related to the homicide of Maurice de Roche, but MacShiteruk’s grant of peace does not specify this: *CJRI, 1305-7*, p. 293. It is interesting that Makshiterute was at peace but did not have automatic access to the courts. Perhaps the grant was simply protection from any future objection and not proof of denial of access to the courts. Cf. the Walter Ultagh’s claim that *Hibernici* at peace could use the royal courts before 1331: Chapter One, *supra*, p. 75.

⁶⁹ Giraldus Cambrensis, *Expugnatio Hibernica: the Conquest of Ireland*, eds A. B. Scott and F. X. Martin (Dublin, 1978), pp 140-1. See also Orpen, *Ireland*, p. 126.

⁷⁰ Edmund Curtis also noticed the names ‘Harold’ and ‘Archbold’ were used by English families in Dublin: Curtis, ‘Clan system’, p. 299.

Geoffrey Omaccus was the bailiff of the manor.⁷¹ From the 1290s to 1300s there are several people named ‘Omaccus’ in the records from rural Wexford, and in all of the instances, they were treated as free and accepted members of the English society.⁷² Since there was no question of their status, contemporaries did not label the Uí Maccus as Gael, Ost, or Manx. My current theory is that the Uí Maccus were accepted Gaels in English Ireland, but it is possible they were accepted Ost-people.

There was another ‘Maccus’ surname in English Ireland, but this family was not related to the Uí Maccus. William le Teynturner of Ardfinnan [Ardfinnan] *claimed* to be a ‘MacMackus’ of Limerick.⁷³ While his mother, Olyva, may very well have been a Mac Mackus that did not mean that the rest of his claim was true (that all Ost-people in Limerick were free by custom).⁷⁴ William said that he was a ‘*Houstmannus*’ [Ostman] – specifically a MacMackus of the city of Limerick – of free condition, and that his ancestors had been answered in the royal and county courts. Before we examine his court case further, there is a technicality to note. According to the author of *Bracton*, when an unfree man married a free woman, the children were unfree.⁷⁵ Also, under the English patrilineal system, men usually inherited their ethnicity, culture, and surname from their father.⁷⁶ In William le Teynturner’s case, at least, English law in Ireland conformed to *Bracton*’s legal theories. William brought an assize of novel disseisin against Henry and John le Norreys and Robert Bordon for one house in Ardfinnan. Robert did not appear and was not found, and Henry and John le Norreys said they did not have to reply because William was a *purus Hibernicus* (an unmixed Gael) and of servile condition. The justices then asked Henry and John to specify their claim, and they said William’s father was Thomas Omolyn [G. *Ó Maoláin?*]. William asserted that all Meic Mackus of Limerick were answerable in the royal courts. The justices then asked the defendants for a counterplea, and they repeated that William was a servile *Hibernicus*, and if he was an Ostman, then he had never held the house in fee.⁷⁷ The jury returned that William did not inherit his mother’s Ost status, but that she ‘obtained’ (purchased?) it in Limerick for William after his father’s

⁷¹ *Cal. Ormond Deeds, 1172-1350*, no. 130.

⁷² NAI, RC 7/3, pp 316-17, 355; *CJRI, 1295-1303*, pp 392-4, 427; *CJRI, 1305-7*, pp 191, 267, 348; Chapter One, *supra*, p. 71. The letters ‘t’ and ‘c’ are often confused by modern readers of medieval parchments, and this name should almost certainly be rendered ‘Omaccus’. There is a slight chance the name was Omathus [G. *Ó Máighiú?*], which would probably reduce the chance it was an Ost name.

⁷³ *CJRI, 1295-1303*, p. 14.

⁷⁴ Cf. there appears to have been unfree Ost-people in Limerick in c.1224: *supra*, pp 146-7.

⁷⁵ ‘If they [the parents, an unfree father and free mother] are married or [the child is born in] a villein tenement, [the child is unfree]’, *Bracton*, ii, 30.

⁷⁶ The rare instances of matrilineal descent are examined in Chapter Two, *supra*, pp 93-4.

⁷⁷ *CJRI, 1295-1303*, p. 59.

death. His father, Thomas Omolyn, was labelled a *Hibernicus* by the jury, and, presumably, a *nativus*, as William's mother did not want to see William 'reduced to the servitude of his father'. (Remember that Henry and John le Norreys accused William of being a *Hibernicus et servilis conditionis*.) The wording in this case gives a clear indication that Thomas's servile status was not transmitted by marriage or coverture to his wife (William's mother), Olyva [O. *Ólæif* ?], although it appears she did not attempt to procure Ost status for William until her husband, Thomas, died.⁷⁸ From William's claim it appears that Olyva's surname was 'Mac Mackus', and that all Meic Mackus in co. Limerick were considered Ost-people. Not all Meic Giolla Mhuire were Ost,⁷⁹ and so it is possible that not all Meic Mackus were – at least by blood (William le Teynturner was half-Gaelic!), if not legally. The jury only stated that William was an Ostman and had been answered in the county court making him a free man. It made no ruling or statement on the condition of the Meic Mackus. It is important to note that the court did not award le Teynturner any damages for defamation or gaol the disseisors.⁸⁰

Finally, we will look at accepted Ost-people and where they lived. The focus of most studies has portrayed Ost-people as limited to five areas, namely the five urban centres of Dublin, Wexford, Waterford, Cork, and Limerick; those in Dublin have received the most attention.⁸¹ But some resided elsewhere beyond the five urban centres. Edmund Curtis noticed a petition from Maurice Macotere [O. *Mac Óttarr*] who lived in '*fine mundi*' [the end of the world], and the court records and parliamentary petitions give definitive proof that other Ost-people lived well outside of the 'cantreds of the Ostmen'.⁸² Elena Macotyrr, who we examined earlier, was fully accepted in English Ireland and was never called an Ostwoman in the surviving court records.⁸³ Her ability to occasionally defy coverture was exceptional, but she also defied the experiences of the Ost-people of Waterford. Elena was most likely from the city of Cashel as she had numerous holdings there and in the surrounding countryside. Perhaps Elena and the other Meic Óttarr of co. Tipperary were almost never labelled Ost-people because their English neighbours did not

⁷⁸ Cf. the cases of John Okoskry and Alice la Blund (his wife), and Elena widow of Thomas Dardiz: Chapter Two, *supra*, pp 128-9, 136.

⁷⁹ *Supra*, p. 153.

⁸⁰ Cf. de Cromhal vs Dunnyng: Chapter One, *supra*, pp 88-9; Dionisia vs Roger son of William: Chapter Two, *supra*, p. 139.

⁸¹ Emer Purcell disproved Curtis's 1171-expulsion theory, but some still repeat it: Purcell, 'Expulsion of the Ostmen'; Hodkinson, 'Viking Limerick', p. 186.

⁸² Curtis identified this as Cashel, but Hand argued this was 'Worldsend' in co. Cork: Curtis, 'English and Ostmen', p. 293; Hand, *English law*, p. 211, n. 3.

⁸³ Chapter Two, *supra*, pp 118-21.

harass them, or perhaps the Ost-people in co. Tipperary were not considered ‘Ost-people’, but instead, legally ‘English’ for some reason. But there is no proof for either hypothesis.

Elena Macotyrr was not the only Mac Óttarr of note in co. Tipperary. Roger Macoter sued Gilbert Ohnixi [G. *Ó hAincín?*], official of the archbishop of Cashel, and Archbishop David Mac Cearbhaill for bringing prohibited writs against Roger in ecclesiastical court.⁸⁴ Reginald MacCotyrr was an attorney for several men, a bailiff, a *narrator* (pleader), and sued and was sued for large areas of land around Tipperary.⁸⁵ This may have been the same man as Reginald son of Geoffrey MacOtir who Simon, Robert, and William Hey owed a debt to in 1318.⁸⁶ Interestingly, because of his recognised position of power within the royal courts, Reginald answered for Murewoth McBren [G. *Murchadh Mac Briain*] and Tyrdelagh Garf McBren [G. *Toirdhealbhach Garbh Mac Briain*], as their bailiff, when they did not appear in an assize of novel disseisin in 1313. The third defendant, Dovenald McBren [G. *Domhnall Mac Briain*], answered as tenant and won the case by default.⁸⁷ A Richard MacCotyrr was subviscount (*L. subvicecomes*) of Tipperary.⁸⁸ He may have been the same Richard MacCotyrr who was sued along with a Reginald MacCotyrr (probably the *narrator*) for sixty acres in Tipperary, but the plaintiff lost for false claim.⁸⁹ This Richard MacCotyrr was also an attorney for men from co. Tipperary, representing Roger de Tany in at least four different cases in 1313.⁹⁰ A Richard son of Reginald Makotir sued John Cavenam for one house in Cashel in 1317. John did not appear, and so the house was taken into the king’s hand by default.⁹¹ This did not mean Richard son of Reginald won, but it may indicate that he had a good claim to the house. This last man could have been a son of the *narrator*, and his name may indicate that Richard and Reginald were brothers. But there is no proof of this hypothesis. There were also some Meic Óttarr in co. Cork. Thomas MacOttir brought an assize of novel disseisin

⁸⁴ NAI, RC 7/1, pp 479-80. For more information on Mac Cearbhaill, see Chapter Five, *infra*, pp 275-7.

⁸⁵ NAI, KB 2/4, ff 145r, 149r, 477r, 480r-1r; *CJRI*, 1308-14, pp 7, 10, 120; Brand, ‘Profession in the lordship’, p. 50. Professor Brand cites KB 1/1, which is transcribed and translated in KB 2/4.

⁸⁶ NAI, KB 2/10, ff 54r-5r.

⁸⁷ NAI, KB 2/5, ff 85r-6r. It may be that these three men were part of the ‘Mac Brien’ [*Mac Briain*] lords of Coonagh and Aherlow as this assize involved 1 house, 5 carucates of land, 20 acres of meadow, 300 acres of wood, and 500 acres of pasture with the appurtenances in Kilmyghene, co. Limerick. For the ‘Mac Briens’, see Nicholls, ‘Anglo-French Ireland’, p. 382, n. 4. These three names appear first in a list of men pardoned for all trespasses in Cork in 1311: *CJRI*, 1308-14, p. 194. One of these trespasses was probably the slaying of Robert Newport and Stephen Ketyng c.1305: JUS 33-4 Ed I, f. 46r.

⁸⁸ *Register St John, Dublin*, no. 541.

⁸⁹ NAI, KB 2/4, ff 480r-1r.

⁹⁰ NAI, KB 2/4, f. 260r.

⁹¹ NAI, RC 7/12, p. 328. There is no indication that this was the same Richard from the 1313 case, or if he was the son of the pleader, Reginald. He could have been unrelated to both of the earlier Meic Óttarr.

against Hugh le Copyner for nine acres in Castlecour. Hugh did not appear and neither did any of the recognitors, and they were all amerced. Later Thomas paid for a licence to withdraw his writ.⁹²

The treasurer of Ireland claimed that Reginald le Macotere was convicted of usury before June 1273, and Edward I ordered the archbishop of Cashel (David Mac Cearbhaill) to deliver £400 which the latter had confiscated from Reginald.⁹³ Mac Cearbhaill later petitioned Edward I to suspend several royal proceedings during the Council of Lyons (1274). Specifically, in relation to the demand for £400, Mac Cearbhaill claimed that Reginald had been a citizen of Cashel and had died a ‘good Christian and made a [final] testament’. Mac Cearbhaill also claimed that he had repaid the £400 to Reginald – in the house of John Gisors, citizen of London – long before Reginald died.⁹⁴ The seizure of the goods of a dead usurer was within the jurisdiction of the royal courts (according to the author of *Glanvill*).⁹⁵ On the other hand, William de la Lude paid 1 mark to the Dublin Bench to drop a charge of usury in 1278, and that may have exempted his chattels from any forfeiture.⁹⁶ The records of Reginald le Macotere and of the ‘peaceful’ Ost-people of the liberty of Wexford led Edmund Curtis to believe that all Ost-people were pacific merchants whose wealth and piety were exploited and destroyed by the Gaelic ‘tribes’ and ‘Norman [sic] adventurers’.⁹⁷

⁹² *CJRI*, 1305-7, p. 440.

⁹³ *CDI*, 1252-84, no. 959. This was obviously a different man from the attorney because the former was dead by 1273 and the latter was active in the courts in 1313. There is no evidence that the two men were related.

⁹⁴ *DAIKC*, no. 8.

⁹⁵ Pollock and Maitland thought that the royal courts in England did not investigate or prosecute usury by living people: Pollock & Maitland, *History of English law*, i, 130. Gwen Seabourne found many instances when living people in England were prosecuted: Gwen Seabourne, *Royal regulation of loans and sales in medieval England: ‘monkish superstition and civil tyranny’* (Woodbridge, 2003), pp 30-69, 169-80.

⁹⁶ NAI, RC 8/1, p. 1.

⁹⁷ ‘As always in Ireland, the [English] crown’s intention was good, but its effective power feeble. The English incomers got the bit between their teeth from the first, and the Ostmen suffered no less from their lawlessness than did the [Gael]. [Ost-people] were a small people, wealthy and pacific, unable to retaliate in tribal raids... Nothing more of moment is told us of such Ostman [sic] landowners as these who, with their racial [sic] stubbornness, had planted themselves out in the troubled open country. In the constant wars of [Gaelic] clans and [English] adventurers, amid the universal decay of the English interest and the universal resurgence of the [Gaelic] tribes which distinguish the fourteenth and fifteenth centuries, such isolated communities must have failed to keep their footing... Again, Ostmen [and Ostwomen] began to grant or bequeath land extensively to churches. They possessed to the full that piety and passion for providing for their spiritual welfare which was always characteristic of the Norman race [sic].’: Curtis, ‘English and Ostmen’, pp 290, 295-6.

There was another Ost surname prevalent in the records of the royal courts and not limited to ‘the cantreds of the Ostmen’: Scadan.⁹⁸ Thomas de St John granted Martin Scadan – who was never called an Ostman – the services of the former’s Gaelic betaghs, English farmers, Reginald Scadan, and all of the free tenants of Kylloterganery, co. Tipperary, for Martin’s life to repay 17½ marks which Thomas still owed Martin.⁹⁹ Not only did Martin Scadan not suffer any disabilities for his name or origin, but he was also the lord of many Englishmen. The labels attached to Martin Scadan’s new tenants (‘Gaelic betaghs’ and ‘English farmers’) may indicate that he and Reginald Scadan were considered Ostmen. Martin Scadan held considerable tenements and lands in co. Tipperary beyond the grant from Thomas de St John. Isabel, the widow of John de Bruges, sued Martin for a third of 8 marks rent in 1297.¹⁰⁰ Alesia widow of Martin Scadan and her new husband, Richard le Bret, sued Thomas de St John and his wife, Nichola, for a third of Martin’s holdings in Scadanestoun, Kylknyng, and Moyganwre; and Alesia and Richard were successful recovering her dower against Richard de Valle for one acre in Scadanestoun.¹⁰¹ There is no evidence that ‘Scadanestoun’ (Scadan’s town) took its name from Martin Scadan, but his considerable holdings in it (2 houses, 1 mill, 7 carucates of land, 12 acres of meadow, 20 acres of woods, 120 acres of pasture, and 100s. rent) may indicate that he was at least related to the founder of the town. A Martin Scadan, possibly the same man from Tipperary, sued at least four men for a carucate and 708 acres of land with appurtenances in the Newerath, but no result was recorded.¹⁰² There was also a Thomas Scadan who killed William Duff in co. Limerick and had to abjure the realm to avoid severe punishment for homicide.¹⁰³ A Gerald son of Maurice Scadan was a juror on a grand assize concerning six acres in Grene, co. Limerick.¹⁰⁴ Adam Scadan of Moyeven, co. Tipperary failed to appear as a juror in the Dublin Bench in 1297.¹⁰⁵ Stephen and Richard Scadan (with two other men) disseised Thomas le Bret of more than two carucates of land

⁹⁸ Many thanks to Professor Seán Duffy for identifying this name for me. According to eDIL, it could mean ‘herring’ [G. *scatán*], (<http://edil.qub.ac.uk/36338>) (1 Dec. 2015); or it could be a Gaelicisation of a Scandinavian name.

⁹⁹ NAI, RC 7/2, pp 255-6. See also Chapter One, *supra*, pp 30-1, 48. Reginald Scadan was listed separately which may mean that he was not an English farmer or a free tenant.

¹⁰⁰ NAI, RC 7/5, pp 100, 161, 224 (in Inchedonny, co. Tipperary).

¹⁰¹ NAI, RC 7/13/2/2, pp 7 (vs Thomas de St John and Nichola), 9 (vs Richard de Valle for a third of 3 acres, so she recovered 1 acre).

¹⁰² NAI, RC 7/2, p. 12. The marginal note was for co. Dublin, which included modern co. Wicklow.

¹⁰³ NAI, RC 7/2, p. 264, see also Chapter Four, *infra*, p. 185.

¹⁰⁴ NAI, RC 7/1, p. 190.

¹⁰⁵ NAI, RC 7/5, pp 46, 78.

and 15s. rent in co. Tipperary.¹⁰⁶ There were also a few Scadans in Dublin, one of whom probably gave his/her name to Ballyscadan.¹⁰⁷

The status of the Ost-people in English Ireland has been portrayed as codified and definite with the more-Gaelicised members under attack from opportunistic Englishmen while other Ost-people were accepted as ‘English’.¹⁰⁸ The legal and social status of Ost-people was not the same across Ireland. Although Gaelic naming practices did not automatically ostracise someone in English Ireland, many Ost-people were treated as unfree or denied access to the royal courts – just as many Gaels were – because English settlers began to regard Ost-people as semi-free/unfranchised *Hibernici*. Aside from a few hundred Ost-people with charters or grants of access to the royal courts, the acceptance of Ost-people in English Ireland varied greatly, as did their acculturation to English or Gaelic customs, economic prosperity, and the ways by which they were identified. While some lived their entire lives unmolested, others with royal charters spent years fighting recreant accusations that they were ‘pure’ *Hibernici* – despite repeated mandates from England and, ironically, despite many settlers having some Gaelic blood and culture.

Welsh

The lack of noticeable legal differences between the treatment of legally-Welsh people and English people in English Ireland has led some historians to believe the former were considered legally ‘English’.¹⁰⁹ In the extant records, however, some people were labelled *Wallenses* (Welsh), even though the courts did not articulate any juridical variances from the being labelled ‘English’. So, why did they bother to make this distinction if there was no effectual difference? The vast gaps in the royal court records and the complete absence of manorial court records could mean that many indicative cases, which might explain the reasoning, have been lost. There were Welsh betaghs. Does this mean that there were Welsh *nativi*? Perhaps Dr Ruddick’s arguments regarding ‘denizens’ applied to the Welsh in English Ireland, despite the fact that they did not apply to Ost-people.¹¹⁰ It could be that there were social rather than legal ramifications associated with ethnic labelling, but the court records cannot answer this question. We can tell that in 1332 one jury considered that

¹⁰⁶ NAI, RC 7/12, pp 227-8.

¹⁰⁷ *CDI, 1171-1251*, nos. 836, 960, 1021, 1320, 1400, 1564, 1617, 1625, 1644, 1736, 1754, 2326, 3108; J. T. Gilbert (ed.), *Chartularies of St Mary’s Abbey, Dublin* (2 vols, Dublin, 1884), i, 188-9.

¹⁰⁸ Curtis, ‘English and Ostmen’; idem, *History of medieval Ireland*, pp 403-7; Hand, *English law*, pp 210-13; Empey, ‘County Waterford’, pp 138-9.

¹⁰⁹ Frame, ‘Ireland after 1169’, pp 120-1.

¹¹⁰ Ruddick, *English identity*, pp 105-6.

being Welsh qualified someone to be answerable in the royal courts, but that one decision cannot be taken as indicative of a universal acceptance of Welsh people as equals to the English in Ireland.

In a normal court record, after the *narratio* (count) citing the full names of the litigants and the reason for the case, the clerks referred to the plaintiff and defendant as ‘*idem/eadem* [forename]’ (or ‘*predictus/-a* [forename]’). If both the plaintiff and defendant had the same forename, the later references were to ‘*idem/eadem* [first initial surname]’, but not in one case. Maddoc le Waleis – who had a seemingly-Welsh forename [W. *Madog*] – brought a writ of novel disseisin, but then appeared and withdrew the writ. On the second reference, the court clerk did not call him *idem Maddoc*, but, instead, *le Waleis*.¹¹¹ This may have been a case of ethnic labelling.

A man with an English forename, Roger le Waleis, gives us a less obvious indication of his heritage. He and his wife, Margaret, brought at least five writs to recover her dower from her previous marriage. Roger’s name changed in the writs from Roger le Waleis to Roger Walensis, and then back to Roger le Waleis.¹¹² The fluidity of Roger’s ‘surname’ appears to indicate that it was not a surname, but instead an ethnic label devised by the court clerks. There was, however, no indication that this ethnic label caused the couple’s legal troubles or that it caused them to lose any of the cases.

In other cases the court record is clearer: the clerks appended an ethnic label to some men’s names, such as Craddoc le Waleys, *Anglicus*.¹¹³ James de Haverberge killed Craddoc in 1303, and three years later Haverberge received a ‘deed’ of pardon from Edward I for all felonies committed by the former. Subsequently in 1308, James had to petition the justiciar, John Wogan, to return all lands confiscated for the felony of killing an Englishman (Craddoc le Waleys). The jury returned that James should recover his confiscated lands as specified in Edward I’s ‘deed’. We can directly compare Craddoc’s death with that of Gillecass Wallensis’s a few years later. Gillecass [G. *Giollacais?*] was killed by three men who fled.¹¹⁴ The killing was deemed felonious despite Gillecass’s Gaelic name. The court labelled Gillecass a Welshman (L. *Wallensis*), but this appears to

¹¹¹ NAI, RC 7/1, p. 234.

¹¹² NAI, RC 7/1, pp 348-9, 356, 367, 368-9, 394.

¹¹³ *CJRI, 1308-14*, p. 27; NAI, M 2542, p. 321; Duffy, ‘Welsh conquest’, p. 110.

¹¹⁴ *CJRI, 1308-14*, p. 317. He was probably not the same man as the Gillecass who killed Richard Bernard in 1297 in Kildare, *CJRI, 1295-1303*, p. 188.

have had no negative effect as in English Ireland homicide of free Welsh people at peace, in the surviving records, was a felony.¹¹⁵

The Welsh faced the same predicament that was encountered by other non-English people who had access to the royal courts in English Ireland. Some Welsh had to defend their legal status against pernicious opponents. There are two important records which may show that ‘Wallenses’ were not considered ‘English’ in English Ireland. These date from either end of the period studied. The first record is from 1260, but it was not a court case. Adam Mathbretnil [G. *Mac Bretnach*] came to the itinerant court at Cork, and received a court judgment on his legal, ethnic status.¹¹⁶ The record is terse and we do not know if Adam lived in the city of Cork, the county, or somewhere else (although it is unlikely he would have been allowed to lodge a complaint in the court outside his home county). The record does not state whether Adam held land or a burgage, or if he was a free pauper. The record states: *Adam Mathbretnil dat domino E. pro inquisitione habenda utrum sit Walensis vel Hibernicus 40s que dicit quod Walensis est* (Adam Mathbretnil gives to Lord Edward, for an inquisition to determine whether he is Welsh or Gaelic, 40s. and [the inquisition] says that he is Welsh). The phraseology implies that Adam paid to obtain Welsh status. We assume that this meant he was subsequently able to hold free lands and purchase writs, but the record did not state this. Adam Mathbretnil was partially Gaelicised, at least in naming practices, and therefore, possibly in danger of being reclassified as a *Hibernicus et nativus*. It is important to remember here that in the same court (in 1260 at Cork) free Gaels were recognised by the court as having the right to purchase writs and hold free lands.¹¹⁷ Adam Mathbretnil, however, still felt it was worth the financial cost to purchase a royal recognition of his legal status. There is no other record of Adam Mathbretnil, and we cannot assume what the full effects, if any, of this recognition were. We can only see that there was a legal category of ‘Welsh’ in English Ireland, and that Adam Mathbretnil considered it advantageous to be labelled Welsh.

¹¹⁵ For example, Donat’ Ocurrin [G. *Donnchadh Ó Corráin*] was quit of a charge of felony homicide when the coroner revealed Thomas the Welshman [L. *Wallensis*] had abjured the king’s land (Ireland) and was therefore an outlaw: *CJRI, 1295-1303*, p. 45. Anyone could kill an outlaw who had technically abjured the land/realm (from inside a sanctuary, declared he/she was guilty of a felony and that he/she would immediately abjure), but had remained in Ireland. For more on felony homicides, see Chapter Four, *infra*, pp 179-203.

¹¹⁶ NAI, RC 7/1, pp 307-8.

¹¹⁷ E.g. Geoffrey de Carew called Robert Obothy [G. *Ó Buadaig?*] to warranty for half a carucate of land, and Robert appeared, warrantied Geoffrey, and called Gilbert MacGilleglas [G. *Mac Giolla Glais*] to warranty: NAI, RC 7/1, pp 277-8.

Due to the lack of the surviving records, we do not have any relevant court cases which specifically address Welsh status in civil cases between 1260 and 1332.¹¹⁸ The absence of such records may lead some to believe that the status of Welsh people was never questioned, but we cannot assume this. There are no cases from 1278 to 1282 to show if the conquest of Wales by Edward I had an impact on the Welsh in English Ireland. The treatment of the Scots in Ireland during Edward I's conquest might tempt us to believe the Welsh suffered similar treatment, but Anglo-Welsh and Anglo-Scottish relations were very different and this difference may have allowed the Welsh to live unmolested. Currently we cannot definitively establish the legal status of Welsh people in Ireland from 1278 to 1282.

The second example of Welsh status dates from the Dublin Bench in 1332 [Michaelmas 6 Edward III]. Richard son of Robert le Croucher brought an assize of novel disseisin against four English people for a house and fourteen acres of arable land. Two defendants claimed the tenement was a house, six acres of arable, one acre of meadow, and one acre of moor – which, if true, would quash the writ for false claim. Then one claimed that Richard son of Robert was a *Hibernicus et non de libero sanguine de quinque sanguinis et inhabilis respondere ante statutum* ('Gael, not of free blood of the five blood lines, and not fit to be answered in court before the statute').¹¹⁹ The defendant was referring to the parliamentary ordinance from 1331 which declared that Gaels and English people were to use 'one and the same law except betaghs who were to remain under the control of their lord'. In the court case Richard replied that his grandfather had been born in Wales, he (Richard) was Welsh and of the Welsh *gens*, and therefore free and not a *Hibernicus*. Two of the defendants, Nicholas son of Bertram Abbot and John son of Nicholas Abbot, claimed that only five 'bloods' of Gaels could use the royal courts, and then Richard son of Robert claimed that all Welsh people could use the courts in Ireland. We must not fall prey to believing either claim represented the law.¹²⁰ The jury determined that Richard was Welsh and not Gaelic. We are left to ponder several issues. We cannot tell whether Richard was Gaelicised or the defendants had invented the story as an excuse for their disseisin. And more importantly, we cannot tell why Richard was not officially described as a *Wallensis quod possit uti leges et libertatibus Anglorum in Hibernia*

¹¹⁸ There were numerous Welsh people in criminal cases during this time.

¹¹⁹ NAI, RC 8/17, pp 150-2; Appendix Two, *infra*, pp 300-2.

¹²⁰ Cf. the free Gaels: Chapter One, *supra*, pp 37-73.

(Welshman who can use the laws and liberties of the English in Ireland), just as some Ost-people and Scots were required to append to their ethnic labels.¹²¹

We cannot string these two examples from 1260 and from 1332 together to form a theory of continuous acceptance of Welsh people in English Ireland during the period studied. In the intervening years Wales was conquered. Sometime around 1290, someone(s) invented the supposed grant of access to the ‘five lineages’.¹²² There are no surviving instances when the ‘five lineages’ plea worked during the period studied.¹²³ But by 1331, the English government believed that it was customary to deny certain *Hibernici* access to the royal courts, and therefore, part of English law. Two of the defendants in Richard son of Robert’s case used this recently-invented plea. Richard son of Robert’s reply shows us that, similar to Philip Macgothmond in 1290, some Welsh people attempted to secure their legal position by distinguishing themselves from *Hibernici*. Adam Mathbretnil was not faced with any opponent. He simply felt it advantageous to have his ethnicity officially recognised by the royal courts, and paid handsomely for it. Since there are no other court cases of this nature, we cannot definitively state that *all* Welsh people were treated as free people. They certainly were not called ‘English’ even though – with less obvious reason – the *locum tenens justiciarii* in 1290, John de Sandford, may have considered the Ost-people to be ‘pure English’. These Welsh cases were heard in Cork and Dublin, not in a rural setting, and around times of increased anti-Gaelic sentiment.¹²⁴ The anti-Gaelic sentiment could be a reason the Welsh were answerable in court.

Seán Duffy has traced the landholding in co. Dublin of a cadet branch of the princes of Gwynedd.¹²⁵ This family, called the ‘Machanan’ [*Mac Cynan* from *W. ap Cynan*], were in Ireland before the advent of the English, and appear to have been accepted into the new ‘lordship’ without any difficulty – even while the princes of Gwynedd revolted against the English in Wales.¹²⁶ This acceptance of the Meic Cynan is surprising

¹²¹ Cf. the Ost-people of Waterford: *supra*, pp 148-54. Cf. Henry Scot was a ‘Scot who uses English laws’: *infra*, pp 170-2.

¹²² For the advent of the ‘five lineages’ plea (or sometimes called the plea of ‘the five bloods’), see Chapter One, *supra*, pp 75-6.

¹²³ There is a case from 1355 (28 Edward III) in which the ‘five bloods’ plea was also not successful because the plaintiff was an Ó Néill, but this was well after the 1331 ordinance ‘*una et eadem lex*’ which should have made the five lineages/bloods plea obsolete: Mills, ‘Tenants and agriculture near Dublin’, pp 59-60.

¹²⁴ In 1260 there may have been a rise in anti-Gaelic sentiment because of the Battle of Down and Finghin’s War, although there were ‘a great number of [Gael]s’ in the English army: Orpen, *Ireland*, pp 348-51, 417-21. There is a problem with this conclusion: the number of Gaels who were allowed to freely use the itinerant court in Cork in 1260: Chapter One, *supra*, pp 43-73. In 1332 the legal and political climate had changed noticeably. There are various records of anti-Gaelic sentiment at that time: Chapter One, *supra*, pp 73-89.

¹²⁵ Duffy, ‘1169 invasion as a turning-point’, pp 98-113; *idem*, ‘Welsh conquest’, pp 104-6.

¹²⁶ Duffy, ‘Ireland and the Irish Sea Region’, pp 89-90.

because of the political ramifications on the status of Scots, which are examined below.¹²⁷ Although the Meic Cynan were slightly Gaelicised – by blood (their mothers were Gaelic women) and culture (Gaelic naming practices) – the English in Ireland did not molest or disseise them. This contrasts starkly with the cases of the Waterford Ost-people and Adam Mathbretnil examined above.¹²⁸ The English in Ireland used political events in Britain and Gaelicisation as justification to disseise and molest many other people. However, the surviving entries involving the Meic Cynan in co. Dublin appears entirely perfunctory.¹²⁹ There is one curious case involving the Meic Cynan. William de Berdefeld sued John son of Ririth for 11 marks in arrears of the annual rent of 26s. 8d. for the manor of ‘Clowheran’.¹³⁰ William produced the charter which showed that John son of Ririth held Clogheran from William – and not in chief of the king – and then John paid William the overdue rent. This case is curious because, as Professor Duffy noted, the other records show that the Meic Cynan held Clogheran directly from the kings (in chief).¹³¹

With some understanding of legally Welsh people, we can investigate some of the more obscure cases. In 1313 Ralph Kerdyf [Cardiff] brought a writ of trespass and debt against John Oclounan [G. *Ó Cluanáin?*]. The ‘sheriff’ (viscount) of Tipperary could not find John and so his chattels were forfeited to the court: the normal procedure for non-appearance. The relevant part of the case was that Ralph Kerdyf mentioned in the writ that John Oclounan was also known as John le Waleys.¹³² The case record, however, does not reveal Oclounan/le Waleys’s legal ethnicity. He almost certainly was free because Kerdyf would not have sued an unfree person for a debt (the case would have failed). John could have adopted this name to prevent an accusation of unfreedom, or he could have been of ‘hybrid’ ethnicity (with a Gaelic father and Welsh mother?). Despite John’s alias, he was still legally known as ‘John Oclounan’; but if we compare John’s case to Adam Mathbretnil’s case, it could have helped the former socially to be known as a Welshman.¹³³

There were dozens, if not more, people named Bretnach.¹³⁴ Yet, in the surviving court records, none of these people encountered any difficulty which required them to use or receive an ethnic label. This is strange because Bretnach is Gaelic for ‘Briton’,

¹²⁷ *Infra*, pp 168-77.

¹²⁸ *Supra*, pp 148-54, 165-6.

¹²⁹ *CDI, 1171-1251*, nos. 673, 754, 830, 1059, 1198.

¹³⁰ NAI, RC 8/1, p. 204.

¹³¹ Duffy, ‘Welsh conquest’, pp 104-5.

¹³² NAI, KB 2/4, f. 395r.

¹³³ For MacBretnil, see *supra*, pp 161-2.

¹³⁴ There was also the surname ‘de Braygnock’ (now Brecknock, Wales) not to be confused with ‘Bretnach’.

specifically, in the thirteenth century, a Welsh person; and because by contrast Adam Mathbretnil [G. *Mac Bretnach*] was harassed, or at least concerned that he was about to be, for having a Gaelic name. On the other hand, some people in Ireland named ‘Albanach’ (Gaelic for a Scot) seem not to have been harassed.¹³⁵ Just as we encountered earlier with the Uí Maccus, there were other Ó/Ua ‘surnames’ in thirteenth-century Ireland which precipitate some ethnic confusion. David Obatekin [G. *Ó Beccán?*] and Keneweg Obakan [G. *Cynffig Ó Beccán?*] had ‘*Walenses*’ written next to their names in the *Dublin guild merchant roll*.¹³⁶ Someone wanted to specify that these men were Welsh, but the Guild had Gaelic members and all citizens of Dublin were recognised as free people in English Ireland.¹³⁷

In contrast to Adam Mathbretnil, there were other ‘Welshmen’ who appear to have had no difficulties with ethnic discrimination, but their names raise some questions. Fin de Haverford [G. *Finn*] was named in the *Dublin guild merchant roll* without any ethnic label. Was he, like the princes of Gwynedd, the product of a transmarine marriage? Or did his parents adopt local naming practices? There was a man, who we encountered in Chapter One, with a ‘Welsh’ name: David Goer [W. *Gŵyr*] of Limerick. He was labelled a *Hibernicus et nativus* and had his free tenement seized.¹³⁸ Despite the previous men’s appearance as ‘hybrids’ to modern readers, to contemporaries, these men’s ethnicity was certain. Legally David Goer was an unfree *Hibernicus*.

Is there a possibility that there were *Wallenses et nativi*? Since the court required ‘*et nativus/-a*’ for unfree Gaels, it could have encountered unfree non-Gaels.¹³⁹ While some historians, such as Robin Frame, suggest that the record of Adam Mathbretnil was indicative that *all* Welsh people were treated as ‘English’ in English Ireland, there were unfree or semi-free people with Welsh names who were not labelled *Hibernici*.¹⁴⁰ Several historians have concluded that since the 1331 ordinance (‘*una et eadem lex*’) stated that all Gaels and English were to have the same law excluding betaghs, that all betaghs were Gaels.¹⁴¹ However, financial records confirm that people with non-Gaelic names were

¹³⁵ *Infra*, p. 170. This could have been a sobriquet from a time he spent in Scotland.

¹³⁶ *DGMR*, p. 106; Duffy, ‘Welsh Conquest’, p. 110.

¹³⁷ See Chapter One, *supra*, pp 40-2.

¹³⁸ See Chapter One, *supra*, p. 28.

¹³⁹ For example, the English *nativi*: Chapter Four, *infra*, p. 243.

¹⁴⁰ Frame, ‘Ireland after 1169’, p. 121.

¹⁴¹ Otway-Ruthven, ‘Native Irish’, pp 145-8; Nicholls, ‘Anglo-French Ireland’, p. 373. For the differences between the legal designation *nativus/-a* and the economic label *betagius/-a*, see Chapter One, *supra*, pp 24-36.

betaghs. Seán Duffy found at least three betaghs with Welsh names, and there were surely many more.¹⁴² The rental of Lisronagh lists the betaghs of each manor. John Rys [W. *Rhys*] and Peter Walche were at Killmor and David Rys was at Gragehynery.¹⁴³

Professor Duffy found several Welsh names in the *Dublin guild merchant roll*.¹⁴⁴ One surname warrants some attention: Map Oel [W. *ap Hywel?*].¹⁴⁵ Thomas Map Oel was a near contemporary of Neivinus Mac Oel, who we examined in Chapter One. Neivin held a carucate in Glynardale, co. Cork and appears to have had no connection to Dublin, but the similarities of the clerk's rendering of the surnames requires some discussion. Could this Thomas Map Oel actually have been Thomas Mac Oel? Or conversely could Neivin's surname have been Map Oel? The latter is less plausible because of the pleadings from his court case: Neivin declared, not that he was a Welshman, but that he was a free man (L. '*libero homo*').¹⁴⁶ As many have assumed, and the case of Adam Machbretnil indicates, Welshmen in English Ireland only needed to be labelled a *Wallensis* to be considered free in the royal courts.

The Welsh presence in thirteenth- and fourteenth-century English Ireland is clear, but the legal status of these Welsh people is less certain. Presumably any Welshman who came to Ireland in the retinue of an English magnate was granted access to the royal courts, and possibly granted free lands. Many of these Welshmen may have been first cousins of the Englishmen named 'le Waleis' and many Welshwomen married these same Englishmen. However, as Seán Duffy noted, there were Welsh people in Ireland before 1167 and some of these people may have been classified as unfree after the conquest. We must be careful not to assume that every person named 'le/la Waleis' was Welsh and that every Welsh person had access to English laws and liberties (i.e. the royal courts). The most important aspect of the Welsh status was that in none of the surviving records was a Welsh person required to state that they had access to English laws in Ireland; they were simply Welsh.

¹⁴² Duffy, 'Welsh conquest', p. 112.

¹⁴³ Curtis, 'Rental of the manor of Lisronagh', pp 46-7. Also, one of the betaghs at Killmor was the widow of John le Walshe, but we cannot tell her ethnicity since she was not named.

¹⁴⁴ Duffy, 'Welsh conquest', pp 110-11.

¹⁴⁵ *DGMR*, p. 111. The 'M' added to *ap* ('Map') probably indicates some Gaelicisation.

¹⁴⁶ NAI, RC 7/1, pp 144-5. Cf. the Gael's claim in 1331 that all Gaels *ad pacem domini regis* were answerable in the royal courts: *supra*, p. 75.

Manx, Islanders, and Scots

This is not a political history, but the impact of British politics rippled through the English courts in Ireland from the 1290s. In marked contrast to the treatment of Welsh people, the status of Scots in the royal courts was directly tied to the political events in Britain. While Scots who adhered to Robert de Bruce became criminals in English Ireland, those who remained ‘loyal’ to Edward I and II were rewarded. Scottish Gaels, during the entire period studied, do not appear to have suffered any legal disabilities for their ethnic background. And the Irish Gaels who assisted the English war effort in Scotland gained a considerable amount of acceptance in English Ireland despite the rise of anti-Gaelic sentiment we saw in the 1290s.¹⁴⁷ The Manx and Islanders/Hebrideans barely appear in the court records perhaps for similar reasons. The political interactions between the Isle of Man, the Hebrides, England, Scotland, and Norway may have directly influenced the treatment of Manx and Islanders in English Ireland. The political histories portray amiable relations between the English crown and the Manx.¹⁴⁸ We cannot speculate if the favourable treatment of the kings of Man meant that all Manx were protected or accepted by the English in Ireland, but the lack of a legal ethnic label (*L. Mannensis*) in the surviving records may indicate acceptance. Finally, it is important to note that in regards to the Manx and Islanders, just as the Ost-people, had Gaelic and Scandinavian (and hybrid) naming practices and are subsequently difficult to differentiate from Ost-people.

The explicit labelling of Scots from the mid-1290s greatly assists our efforts in identifying Scots because Scots could have Gaelic or ‘English’ names, and are not otherwise readily distinguishable from other groups in Ireland. Without the court’s diligence in labelling Scots, we might have assumed that Macoline McCoffok and Moriortagh McKenedy were Irish Gaels, and Gilbert son of Peter and Robert son of Thomas were English.¹⁴⁹ At the same time, we must be very careful because, just as there were English people named ‘le/la Waleis’, there were English (and other) people named ‘le/la Scot’ who were neither subjects of the king of Scots nor born in Scotland.¹⁵⁰ Finally, there was a great deal of political change around the Irish Sea during the thirteenth century which had significant consequences for this analysis. Kings Alexander II and III of Scotland continued the westward expansion of their predecessors, and in 1266 Alexander

¹⁴⁷ Specifically see the loss of free lands and the invention of the five lineages plea: Chapter One, *supra*, pp 73-89.

¹⁴⁸ Rosemary Power, ‘The Isle of Man and the Kings of Norway: Magnús Barelegs and after’ in Duffy & Mytum (eds), *New history of the Isle of Man*, pp 27-57.

¹⁴⁹ NAI, KB 2/7, f. 32r.

¹⁵⁰ See the case involving Edmund Scot, *supra*, p. 145.

III seized the Isle of Man and the Hebrides.¹⁵¹ Nevertheless, the English, in England and in Ireland, continued to differentiate between Scots, Manx, and Hebrideans.

The Isle of Man and England had longstanding political interactions. King John of England attempted to buy the loyalty of King Ragnall (or Rögnvaldr) of Man in 1205, but Ragnall almost immediately courted alliances with Llywelyn ab Iorwerth of Gwynedd and William the Lion of Scotland.¹⁵² After John sent a fleet to ravage Man, Ragnall became a willing liege of the crown of England, and received lands in Ireland and protection from Dublin. From 1210 to 1266 the Manx territories and people were supposedly under the protection of England, in England and in Ireland, and the settlers in Ireland were ordered to protect the sovereignty of Man from ‘vikings’ (L. *vikini*) and from internal dissent within the kingdom of Man.¹⁵³ After the Isle of Man and the Hebrides fell under Scottish control in 1266, not everyone accepted Scottish rule.¹⁵⁴ In this section, we should remember that many Manx and Hebrideans did not identify themselves as Scottish and many fought against King Robert I of Scotland. Control of the island changed hands several times during the thirteenth and early fourteenth centuries, but the records do not reveal much about the ordinary people on the island. Some moved to Ireland. Seán Duffy noted that Trig de Man, Maurice le Maniske, Walter Man, Alicia Manske, Reginald de Mannia, and Adam Mananach held lands around Dublin.¹⁵⁵ There are not many more certain examples of Manx people in English Ireland. The Manx were descended from settlers from Scandinavia, Ireland, England, Wales, and Scotland; and without a Manx toponymic, we cannot easily differentiate the Manx in Ireland from other groups. The most important aspect of Manx status in English Ireland is that unlike almost every other group, there are no Manx petitions for grants of access to the royal courts or any surviving examples of Manx people being harassed or disseised. This could be entirely by chance of survival, however.

¹⁵¹ Brown, *Wars of Scotland*, pp 68-88; E. J. Cowan, ‘The last kings of Man, 1229-65’ in Duffy & Mytum (eds), *New history of the Isle of Man*, pp 97-117 at 108-11; Colm McNamee, ‘The Isle of Man under Scottish rule, 1266-1333’ in *ibid.*, pp 118-50 at 118-21.

¹⁵² Duffy, ‘Ireland and the Irish Sea’, p. 64; Ruth Costain-Russell, ‘The reigns of Guðröðr and Rögnvaldr, 1153-1229’ in Duffy & Mytum (eds), *New history of the Isle of Man*, pp 78-96 at 90-2.

¹⁵³ Duffy, ‘Ireland and the Irish Sea’, p. 65; Costain-Russell, ‘Reigns of Guðröðr and Rögnvaldr’, p. 92. The kings of Norway did not seem to mind this, despite Man being a territory of Norway.

¹⁵⁴ Duffy, ‘Ireland and the Irish Sea’, pp 163-6; McNamee, ‘Isle of Man’, pp 121-4, 129-30, 134-42.

¹⁵⁵ Duffy, ‘Ireland and the Irish Sea’, p. 61.

Scots, meanwhile, can mostly only be identified in the court records from 1297 when Henry Scot's case was recorded.¹⁵⁶ The exceptions are the Scottish magnates initially granted Irish lands during the reign of King John of England.¹⁵⁷ Does this mean that all Scots in Ireland were considered *Anglici* – or simply treated *tamquam Anglici* – by the courts before 1297? There are not any surviving court cases to answer this question. There are several people named 'Scot' in the surviving records before 1297, but their legal ethnicity was not recorded.¹⁵⁸ It probably was not considered important. We are left with asking: were all Scots at peace in English Ireland 'Scots who used English law' (just as Henry Scot was), or was that phrase an invention brought about by the Anglo-Scottish war? The treatment of Scots in English Ireland after 1296 indicates that political events in Britain were certainly the cause behind the sudden labelling of Scots in the court records and that there may have been no need to label Scots beforehand. However, when we put the Scots into context – by comparing them with Ost-people and Welsh examined above – then it would appear that they were always Scots with access to the royal courts and never *Anglici*.

There are a few dozen men on the *Dublin guild merchant roll* – which ends thirty years before the Anglo-Scottish war – with Scottish toponymics.¹⁵⁹ At least some of these men probably had toponymic surnames from an ancestor from Scotland and were considered 'English' by birth. Without any court cases involving these men we cannot form a definitive conclusion about the status of Scots in English Ireland before 1297, or even delineate who was considered Scottish and who was considered English. Some Scots in Ireland received the moniker *Albanach* in Gaelic and in English sources. There were three such men in the *Dublin guild merchant roll*.¹⁶⁰ And surprisingly, a juror from Ulster investigating if an Englishman had helped the Scots during the Bruce invasion was named 'Adam Albenagh'.¹⁶¹

The chronologically first and perhaps the most pertinent case to the study of the legal status of Scots in English Ireland is an assize of novel disseisin which Henry Scot

¹⁵⁶ For the 'Great Cause' and the political events involving Scotland in 1290-7, see Barrow, *Robert Bruce*, pp 52-116; Brown, *Wars of Scotland*, pp 157-86.

¹⁵⁷ Orpen, *Ireland*, p 204, 266-7, 303, 409-10; Duffy, 'Lords of Galloway', pp 38, 43-6.

¹⁵⁸ NAI, RC 7/1, pp 149, 331-2. Cf. Richard Scot of Ultonia [Ulster]: KB 2/7, f. 1r. The Scots of Cork: RC 7/5, pp 294, 342, 493; RC 7/8, p. 297; RC 7/11, pp 95-6.

¹⁵⁹ *DGMR*, pp 78, 79, 80, 104, 107. Seán Duffy noted the number of the occurrences of Scottish place names in the *DGMR*; Duffy 'Ireland and the Irish Sea', pp 93-4.

¹⁶⁰ *DGMR*, pp 80, 104, 107.

¹⁶¹ NAI, KB 2/12, ff 1r-3r.

brought against Laurence son of Henry Trynedyn in 1297.¹⁶² It is the only surviving case I have found which determines the legal status of regular Scots at peace in English Ireland. In the case Laurence Trynedyn replied to the count that Henry Scot was a *Hibernicus* and the son of Neuyn Ofothy [G. *Neamhain Ó Fogartaig?*]. Henry Scot replied that he was an *Anglicus*, ‘born of [in?] Scotland’, and that he, his father, and all of his ancestors had always used English laws.¹⁶³ The jurors returned that Henry Scot’s father was from Scotland, considered a Scot (L. *Scotus*) in Ireland, and had access to the royal courts. This distinction is extremely important since it indicates that access to the courts did not make someone an *Anglicus/-a*.

As we saw above, some Ost-people claimed to be English based on having access to the royal courts, and so did Henry Scot. In Scot’s case, the jury decided that Henry Scot had access to English laws, but was not an Englishman. If the records of the Ostmen, Macgothmond and Macotere, had been jury trials rather than parliamentary petitions, then they may have received similar replies. We must not rely entirely on possible comparisons with Ost-people, though. Could it be that Scots were treated in court just as the Welsh were? The lack of cases questioning Scots’ status may indicate that this was the situation, but, alternatively, the gaps in the court records may be the cause of this lacuna.

Another important aspect of Henry Scot’s case is that it has been cited many times as definitive proof that accusing someone in an English court of being a *Hibernicus* was a peremptory plea and considered defamatory if not true.¹⁶⁴ That is because in Henry Scot’s case, Laurence Trynedyn lost because he accused Scot of being a *Hibernicus* when the latter was not. The justices ruled this peremptory and gaoled Trynedyn for *odiosa* (‘making an untrue claim in court out of hate’). However, there are other cases in the court records after Henry Scot’s assize (20 August 1297) in which the justices did not rule the *est Hibernicus* plea as peremptory or *odiosa*.¹⁶⁵ The *odiosa* charge, therefore, implies that Laurence Trynedyn had accused Henry Scot maliciously before, similar to the case of William Norens, who was held for receiving the slayer of Geoffrey de Cogan, but was

¹⁶² *CJRI, 1295-1303*, p. 158.

¹⁶³ Obviously, all of Henry’s ancestors did not use English laws since English laws did not always exist.

¹⁶⁴ Orpen realised that the plea was *est Hibernicus et servilis conditionis* and not simply *est Hibernicus*, but he still believed it was *odiosa*: Orpen, *Ireland*, p. 448; Curtis, ‘Rental of the manor of Lisronagh’, p. 74; Hand conflated fines and gaol for trespasses with a punishment for the plea *est Hibernicus*, but in all of his examples the defendant was fined and gaoled for several factors within the plaintiff’s writ of trespass: Hand, *English law*, p. 200.

¹⁶⁵ For example, NAI, KB 2/4, f. 442r [17 June 1313]; RC 8/17, pp 150-2 [1332].

acquitted after the jury returned that Adam de Leg accused William Norens out of ‘perpetual hate’ (*L. imposuit ei istud perpetuum odium*).¹⁶⁶

Another overlooked aspect of Scot vs. Trynedyn, which adds to the theory that the *odiosa* charge arose because Trynedyn had made repeated, false claims in court, is that Trynedyn continued to sue Henry Scot for the five acres in co. Cork for several years after the assize. In the Michaelmas 1297 session of the Dublin Bench (a month after the assize), Laurence brought a writ of *quod reddat* against Henry Scot and claimed that Scot had held the five acres in ‘Katherconeghur’ (Caherconnor) by demise from Laurence and the terms of the agreement had ended.¹⁶⁷ (Most likely Laurence claimed he had granted the lands for a certain number of years to repay Henry for a debt.) No verdict was recorded, but we can assume that Laurence lost the case because two years later (Hilary term, 1298/9) he sued Scot again. This time, making no mention of the demission, Laurence claimed the five acres were his inheritance.¹⁶⁸ No judgment was recorded, again, but we can probably assume that Henry Scot brought up the *odiosa* charge from the assize in the justiciar’s court in both of the later cases.

As noted above, we cannot assume that everyone with the ‘surname’ Scot was considered a Scot legally. Matilda and Isabel Scot sued William de Barry and his son, Philip, for a house and two carucates in Fynnouere, co. Cork, which Tancard de Carew had disseised from Rysius Scot [*W. Rhys?*], their grandfather. This case had begun in 1303 at the latest, and was still being heard in 1305.¹⁶⁹ Philip son of William de Barry called the prior of St Mary de Ponte of Fermoy to warranty his claim to the house and lands. The verdicts do not survive, but it appears there was no accusation of the Scot women of being Scots (or at least Scottish ‘rebels’). They were almost certainly born in English Ireland since their grandfather had held lands in co. Cork.

Henry Scot’s case is one of the only two surviving examples I have found to demonstrate the legal status of Scots ‘at peace’ in civil cases in the royal courts in Ireland after 1296.¹⁷⁰ Scots who adhered to Robert de Bruce after 1306 were considered ‘rebels’ and ‘felons of the king’; those who pledged loyalty to Edward I and II of England fought against King John, William le Waleys (now called ‘Wallace’), or King Robert I of

¹⁶⁶ NAI, RC 7/1, p. 161. Cf. Chapter One, *supra*, pp 87-9; for an actual defamation case, see *CJRI*, 1305-7, p. 342.

¹⁶⁷ NAI, RC 7/5, p. 368.

¹⁶⁸ NAI, RC 7/5, p. 477.

¹⁶⁹ NAI, RC 7/11, pp 95-6.

¹⁷⁰ The other case concerned the Scottish merchants ‘loyal’ to Edward I: *infra*, pp 173-4.

Scotland (*L. rex Scotorum*: ‘king of the Scots’), and were issued letters of safe conduct were to be accepted in England and English Ireland.¹⁷¹ Many of the accepted Scots – and even some northern Englishmen – were suspected of being loyal to Robert de Bruce and were subsequently arrested and disseised of all property (or at least the English in Ireland claimed these men were suspected of being Bruce followers).¹⁷² Henry Scot was not the only ‘loyal’ Scot in English Ireland. John de Argyll and Donecanus McGoffry were encouraged to fight Robert de Bruce and granted lands and titles to aid their war against de Bruce.¹⁷³ The latter two, however, were politically-important men while the former was probably a small farmer who did not participate in politics or war.

In 1299 Edward I granted Hugh ‘Byset’ the authority to receive any ‘tenant from the islands of the kingdom of Scotland’ (except nobles and knights) into the king of England’s peace.¹⁷⁴ The record did not call the ‘tenants of the islands’ Scots, just as in another mandate examined below.¹⁷⁵ Professor Duffy traced the Bisset connections to Scotland and their advent in the Glens, but by 1299, they appear to have been considered legally fully English.¹⁷⁶ Hugh Bisset fought Edward de Bruce during the beginning of the Bruce invasion, but joined the Scots in 1319 and his lands in Ulster were seized.¹⁷⁷ We can see that during the Bruce invasion (1315-18) Edward II granted lands and remunerated expenses to Gaelic Scots and Hebrideans who fought against Edward de Bruce.¹⁷⁸ The status of ‘loyal’ Scots in English Ireland seems to contradict the rise of anti-Gaelicism in the 1290s. In fact, the Bruce invasion made acceptance of some Irish Gaels easier – specifically, those who fought for Edward I and II. There is a dispersed list of grants of

¹⁷¹ Robert de Bruce was called ‘Lord Robert de Brus, king of Scotland’ (*L. ‘Dominum Robertum de Brus, Regem Scotie’*) in the *Annals of Ireland*: Gilbert (ed.), *Chart. of St Mary’s*, ii, 352, 357, 360, 362.

¹⁷² For examples of this, see *infra*, pp 174-6.

¹⁷³ John of Argyll and Duncan McGoffrey are examined *infra*, pp 173-4. Professor Duffy found one exception, John MacSween of Knapdale [*G. Mac Suibne*], who opposed Robert de Bruce and asked Edward II for lands and support to fight de Bruce, but got none: Seán Duffy, ‘The Bruce Brothers and the Irish Sea World, 1306-29’ in *Cambridge Medieval Celtic Studies*, no. 21 (1991), pp 55-86 at 74. MacSween, however, did receive restoration of his lands in Knapdale, and possession of Arran, in 1309: Duffy, ‘Ireland and the Irish Sea’, p. 203.

¹⁷⁴ *CJRI, 1295-1303*, p. 218.

¹⁷⁵ See Áengus mac Domnaill, *infra*, p. 175.

¹⁷⁶ Duffy, ‘Ireland and the Irish Sea’, pp 247-54; *idem*, ‘Lords of Galloway’, pp 37-50. Professor Barrow believed that Hugh Bisset was a Scot, not pro-English, and more against the MacDougalls [*Meic Dubhghaill*] of Lorn than for Edward I: Barrow, *Robert Bruce*, pp 217-18.

¹⁷⁷ Duffy, ‘Ireland and the Irish Sea’, pp 202-3.

¹⁷⁸ Duffy, ‘Bruce brothers and the Irish Sea’, p. 75; *Cal. doc. Scotland, 1307-57*, nos 450, 479, 490.

money, lands, and pardons to hundreds of men who fought in Scotland or in Ireland against Edward de Bruce.¹⁷⁹

One Gael who benefited from the wars with Robert and Edward de Bruce was Donecanus McGoffry [G. *Donnchadh Mac Gofraid?*]. There is no record which identifies his origin, but Donecanus was closely linked with John de Argyll and may have been from Argyll.¹⁸⁰ Donecanus petitioned Edward II for a wardship to maintain his wife and children after he lost ‘his father and kindred’ fighting the Scots.¹⁸¹ Donecanus did not identify himself as a Scot (or Hebridean) in that, or any other surviving, record. John de Argyll made Donecanus custos of the Isle of Man, and then the latter captured a group of Scots sailing past the Isle in 1315.¹⁸² Afterwards Edward II made Donecanus constable of Newcastle Mackinegan from January 1317 until his death on c.15 May 1327.¹⁸³ Donecanus was considered a knight by the English, and was well paid.¹⁸⁴ He was appointed to defend Newcastle MacKinegan against the Bruce army in Ireland and the Irish Gaels of the Leinster Mountains. After Donecanus died, a Godfrey McGoffry (possibly Donecanus’s son) was named as one of the former’s executors.¹⁸⁵ Donecanus’s service to Edward II may have allowed his family to become full members of the English society in Ireland.

John de Argyll [G. *Eógan ‘Bacach’ Mac Dubhghaill*] was a Scottish magnate who Edward II summoned to parliament in 1313.¹⁸⁶ John was a cousin to John Comyn, whose assassination precipitated the crowning of Robert de Bruce, and subsequently John de Argyll became a close ally of the English and Edward II. After de Argyll’s defeat of Robert de Bruce at Dail Righ, the former appears in English records (from England and Ireland) receiving grants of money and supplies for the war effort.¹⁸⁷ John and his father, Alexander de Argyll, were in Ireland by 1309 and receiving substantial remuneration to

¹⁷⁹ NAI, KB 2/7, ff 2r, 4r; KB 2/8, ff 31r-2r, 36r-8r, 87r-8r; *CJRI, 1308-14*, pp 26-7, 115-16, 163, 208-9, 219, 289-90. See also, Hand, *English law*, pp 28-9; J. F. Lydon, *The lordship of Ireland in the Middle Ages* (2nd ed., Dublin, 2003), p. 105.

¹⁸⁰ For John of Argyll, see *infra*, p. 174.

¹⁸¹ *Cal. doc. Scotland, 1307-57*, no. 521; Duffy, ‘Bruce Brothers and the Irish Sea’, p. 75.

¹⁸² *IEP*, p. 228; McNeill (ed.), ‘Lord Chancellor Gerrard’s notes’, p. 261.

¹⁸³ *IEP*, pp 243, 247, 249, 252, 256, 260, 264, 267, 272, 273, 276, 279, 281, 284, 291, 294, 297, 301, 306, 307-8, 310, 314, 315. For his grant of Newcastle, see *ibid.*, p. 243; for his death, see *ibid.*, p. 325 (when his replacement was made constable of Newcastle MacKinegan).

¹⁸⁴ *IEP*, pp 247, 252, 273; R. E. Latham (ed.), *Calendar of Memoranda Rolls: Exchequer, Michaelmas 1326-Michaelmas 1327* (London, 1968), no.2153 (p. 308). John de Argyll was also called a knight in one record (but this may have been a mistranslation of *dominus* [lord]): *CJRI, 1308-14*, p. 167.

¹⁸⁵ *IEP*, p. 315.

¹⁸⁶ *Cal. doc. Scotland, 1307-57*, no. 303. For John de Argyll and the Mac Dubgail’s history in Scotland, see Barrow, *Robert Bruce*, pp 73-4, 202-34.

¹⁸⁷ *Cal. doc. Scotland, 1307-57*, nos 132, 191, 203, 355, 447, 450, 479, 490, 479, 636.

maintain a fighting force in Ireland. After Alexander died, John took sole custody of the army and led them to Scotland to fight for Edward II. The mayor and bailiffs of Drogheda were paid to sail John and the army to Scotland.¹⁸⁸ John de Argyll also received recognition by the English in Ireland; he was allowed to stand surety for two convicted felons in Dublin without having to pay any mainprise (a privilege reserved for magnates).¹⁸⁹ John de Argyll should be considered fully Scottish, but in all of the records, he was never labelled a Scot – perhaps due to his antithesis to Robert de Bruce and the ‘rebel’ Scots.

There is a strange record from c.13x16 December 1295. Before Edward I invaded Scotland, he supposedly ordered the ‘sheriff’ (viscount) of Kerry to prevent any goods or victuals from going to Scotland, to arrest anyone who broke the embargo, and to arrest any Scot the sheriff found and any person who helped the Scots.¹⁹⁰ This mandate is unusual because it only includes Kerry. It is also peculiar because a similar, but not identical, order went to all of the sheriffs in England on 16 October 1295.¹⁹¹ The orders in England mandated the seizure of lands of anyone of Scotland who remained in Scotland, and then to arrest any Scots in England.¹⁹² If the order to the sheriff of Kerry was genuine, then it shows us the crown’s fear of Scottish ‘rebels’ may have initially been greater in Ireland than in England. However, there is one large problem with the mandate: it is recorded because the custos of Ireland, Thomas son of Maurice, was listed as the witness, but he did not witness the writing of the mandate. We can probably assume that meant that the order was subsequently cancelled, but that does not mean that it was a complete fabrication. A problem is that the Irish mandate only mentions the sheriff of Kerry and does not mention any other county or liberty. The order to the sheriffs in England was specifically to the sheriffs of every English county, but the Irish order was only to the sheriff of Kerry. Although the solitariness of the Kerry order could be the result of the false witnessing attributed to the custos, and that the orders to the other sheriffs in Ireland have simply not survived.

¹⁸⁸ Lydon, ‘Enrolled account of Alexander Bicknor’, pp 35-7.

¹⁸⁹ *CJRI, 1308-14*, p. 219. John of Argyll also stood as surety for an Englishman convicted of homicide, but the latter was required to pay £20 for mainprise, John then pledged for the payment: *ibid.*, p. 167.

¹⁹⁰ *CJRI, 1295-1303*, p. 74.

¹⁹¹ *Cal. doc. Scotland, 1272-1307*, no. 718.

¹⁹² Joseph Stevenson (ed.), *Documents illustrative of the history of Scotland from the death of King Alexander the Third to the accession of Robert Bruce: MCCLXXXVI-MCCCVI; from originals and authentic copies in London, Paris, Brussels, Lille and Ghent* (2 vols, Edinburgh, 1870), ii, 22-3; *CCR, 1288-96*, p. 473; Barrow, *Robert Bruce*, p. 91; Neville, ‘Widows of war’, p. 113.

The mandate to the ‘sheriff’ of Kerry (assuming it was authentic) was not the first time a king of England embargoed some ‘Scots’ from English Ireland. Henry III, at the request of Alexander III of Scotland, mandated in 1256 that *Anegum filium Donenoldi vel aliquos alios malefactores regni Scotiae* (‘Áengus son of Domnaill or any other malefactors of the kingdom of Scotland’) were not to be received in Ireland for seven years.¹⁹³ This mandate shows several aspects of the fluidity of Irish Sea Region ‘identity’. Áengus mac Domnaill was a Hebridean and his lands were still theoretically under the sovereignty of the kingdom of Norway. Yet, while the record states clearly that Aengus was of the kingdom of Scotland, it does not go so far as to call him a ‘Scot’. The record also shows the co-operation between Henry III of England and Alexander III of Scotland, which probably means that most Scots were accepted in English Ireland at that time (1250s). Some historians, however, argued that Henry III wished to keep the Isle of Man and the Hebrides independent of Scotland.¹⁹⁴

Other mandates were less specific. In 1299 a merchant from Drogheda, Adam Vivian, who had been living in Scotland and selling his merchandise, returned to Ireland. He claimed to only sell his goods to people loyal to Edward I. When the Anglo-Scottish war began, Adam gathered his merchandise and Scottish wife, and fled back to English Ireland. When he landed in Ulster, the seneschal arrested Adam under a general precept to arrest *any* Scottish merchant. Adam was acquitted and released, but was only allowed to keep his goods after the jury returned that they were his and not someone else’s.¹⁹⁵

In 1306 Robert Joye, a merchant and citizen of Dublin, took goods to sell in Scotland. Upon his arrival in Ayr, the townspeople arrested Robert’s ship, goods, and sailors. In order to recover his losses, Robert petitioned the justiciar’s court to arrest any merchant from Ayr in Dublin or Drogheda.¹⁹⁶ The indiscriminate imprisonment of Scottish merchants led to a few problems for the Scots loyal (or claiming to be loyal) to Edward I. At least eleven Scots were arrested around co. Louth (Drogheda on the side of Meath and Dundalk), and then Edward I’s *locum tenens* of Scotland, Aymer de Valence, asked that they be investigated and released.¹⁹⁷ The jury, which included a Gael, Benedict Mackanfy [G. *Mac Anmchaid?*], cleared the Scots of any wrongdoing, but the latter’s goods were kept by the burgesses of Dundalk. These Scottish merchants provide a clear example of the

¹⁹³ Rymer, *Fædera*, i, pt 1, 336; Duffy, ‘Bruce Brothers and the Irish Sea’, pp 68-9.

¹⁹⁴ Cowan, ‘Last kings of Man’, pp 105-6.

¹⁹⁵ *CJRI*, 1295-1303, p. 229.

¹⁹⁶ *CJRI*, 1305-7, pp 226-8.

¹⁹⁷ *CJRI*, 1305-7, pp 279-80.

diversity of Scottish ‘identity’. Adam de Hibernia was probably the son of a man from Ireland, but we cannot tell whether his father was Gaelic or English. Robert son of Brounyng was probably of English ancestry, and Adam son of Bricius [G. *Breac?*] may have been Gaelic. There were at least a few Gaels named ‘Bricius’ in English Ireland.¹⁹⁸

James de Allylee was Edward I’s victualler of Carlisle, England. In 1306 de Allylee sent a ship to Green Castle in Ulster to purchase wine for the English war effort. William de Mandeville, seneschal of Ulster, arrested James’s sailors and ship.¹⁹⁹ The justiciar believed James’s men were not English, and so he ordered the men of Drogheda (in both Louth and Meath) to investigate whether James’s men were English or Scots, and to determine if they were loyal to Edward I. The inquisition returned that all three men on the ship were Englishmen from Carlisle and the justiciar mandated William de Mandeville to release the men and the ship immediately. The different outcomes in these two cases indicate that loyal ‘Scots’ could still be disseised of their goods during the Anglo-Scottish wars. In 1310 Edward II ordered that anyone in Ireland who ‘adhered to Robert de Bruce’ was to be arrested.²⁰⁰ The specificity of Edward II’s mandate may have been the result of Scottish aid to the English war effort, such as John de Argyll and Donecanus McGoffrey’s, which Edward did not want to lose. Or we could interpret the earlier mandates to arrest all Scots as indicative of a general state of panic within the English governments in England and Ireland.

The Scots in English Ireland are almost impossible to distinguish from other groups in Ireland before 1297 (except Scottish magnates). But the political events of 1295-6 and the Bruce invasion (1315-18) made most Scots in Ireland rather obvious. Loyalty to Edward I and II was paramount after 1295-6, but it did not guarantee protection from arrest, disseisin, or harassment. The treatment of other groups, such as the Ost-people and Welsh, may indicate that before 1296 Scots were answerable in the English courts in Ireland – as long as Anglo-Scottish relations were peaceful – but were never *Anglici*.

Conclusion

The treatment of some of the ‘ethnicities’ from the Irish Sea Region in English Ireland during 1252-1332 shows us the fluidity of English law in Ireland in practice. Royal

¹⁹⁸ NAI, RC 7/1, pp 130, 167; *DGMR*, p. 1.

¹⁹⁹ *CJRI*, 1305-7, p. 234.

²⁰⁰ J. F. Lydon, ‘The Bruce invasion of Ireland: an examination of some problems’ in Seán Duffy (ed.), *Robert the Bruce’s Irish wars: the invasions of Ireland, 1306-1329* (Stroud, 2001), pp 71-88 at 74; Rymer, *Fædera*, ii, pt 2, 122.

charters from England could not usually trump local biases and practices. Despite some similarities in treatment – such as being answerable in the royal courts – there were separate legal categories in English Ireland. There are unquantifiable possibilities for social ramifications of these legal markers. More importantly, the plea that the Ost-people, Welsh, and Scots were allowed to use the royal courts in Ireland because they were not *Hibernici* is rather problematic. We have already learned that not only could many Gaels – some of whom may have been labelled *Hibernici* – use the royal courts, but also that *omnes Hibernici ad pacem regis* could use the royal courts before the ‘*una et eadem lex*’ ordinance.²⁰¹ Without more details of the pleading there will never be any reliable source for why these litigants chose to distinguish themselves from the *Hibernici* instead of simply claiming to be *ad pacem regis* or *liber*. While the pleas from the Ost-people, Welsh, and Scots may reflect a popular, contemporary belief, they do not provide sufficient proof of substantial law. The Ost-people clearly were not universally accepted, and that may have precipitated their claims to be English. We should remember, however, that even the accepted Ost-people were *tamquam Anglici* and not actually English. This combined with the proviso that certain Scots could use the royal courts ipso facto may explicate the Welsh status in Ireland: similar to, but not legally, English. The political events in Britain present additional problems. The Anglo-Scottish wars and the Bruce invasion of Ireland allowed Scottish Gaels and some Irish Gaels to receive lands and money to fight Irish and Scottish ‘rebels’ of the kings of England. Yet, there are no surviving records ordering the arrest of Welsh ‘rebels’ in Ireland. The existence of Welsh betaghs in economic records may indicate that there were Welsh *nativi*, but betaghs could be personally free. The more important question to ask may be: were the ancestors of these Welsh people in Ireland before the advent of the English? Finally, it appears that Manx and Islanders were accepted to the extent that they were not labelled. There is an insufficient number of cases to form complete conclusions in regards to the Welsh, Scots, and Manx/Islanders (especially since the latter were not labelled at all). We must not take a handful of cases as representative of ‘the law’.

²⁰¹ Chapter One, *supra*, pp 34, 75.

IV

The effects of ethnicity during criminal cases

So far, we have almost entirely looked at evidence from civil cases. Here we will examine the position of Gaels in criminal proceedings and compare their treatment to the English and others. The three preceding chapters needed to be examined together because the royal courts treated people differently in civil cases than in criminal ones. Criminal cases, however, demonstrate important social and legal aspects of society in medieval English Ireland which the civil cases do not. People who could not sue a civil writ could bring a charge of theft or rape. But we must be mindful that reading criminal case records can make any society seem more violent than it actually is/was. Brendan Smith noted that '[n]o balanced assessment of any society can be made merely on the basis of its criminal records and in the context of medieval Ireland it is necessary to bear in mind that the sources conspire to emphasise the most negative aspects between the [Gaels] and the English.'¹ Another important aspect of criminal cases is that the prosecution at that time was not the exclusive onus of the government. The burden, mostly, fell to the victim or the victim's family, and the breaking of the 'king's peace' was prosecuted by an indictment conducted by an *inquisitio* (inquisition by mandate or *de cursu*) or *visus* (viewing by the coroner or men of the neighbourhood) 'jury' and brought to court by the 'sheriff' (viscount).² The criminal cases examined below focus on five types of cases (homicide, rape/*raptus*, wounding, theft, and false imprisonment) because these are some of the most numerous cases and they contain clear indicators of the status of the victim or perpetrator in many instances. Then there follows a section on terms for supposedly unfree people which suggests that these terms had multiple uses. The final portion of the chapter examines an unusual procedure of 'pardoning' and how a 'pardon' demonstrates the criminal's status, connections, wealth, and the government's idea of criminal justice. The latter is important because – as noted in Chapters One and Two – previous historians of the status of Gaels have taken claims from petitions as veracious without analysing the surviving court records in depth.

¹ Smith, *Colonisation and conquest*, p. 75.

² At no point during the period studied, did the courts of English Ireland call the viscounts (L. *vicecomites*) 'sheriffs'. The word 'sheriff' did not exist in England before c.1400: 'sheriff, n.', *OED online* (Oxford, 2017), (<http://www.oed.com/view/Entry/178002>) (19 July 2017).

Much of the historiography has repeated, almost without question, the specious claim that ‘to kill a [Gael] was not a felony’.³ As in the previous chapters, we shall soon see that the absolute and hyperbolic nature of this claim make it inherently untrue. The instances when it was a felony to kill a Gaelic person, however, were not identical. We cannot state that in every instance the Gaelic person was a free and accepted member of English Ireland. In a few instances the Gaels were from Gaelic Ireland and under the legal protection of an ‘order of safe conduct’ to parley with the justiciar. It could be possible – in some instances – that it was a felony to kill an unfree person in English Ireland because it was a felony to kill unfree people in England (even for a lord to kill his or her own vassal).⁴ But, occasionally, there was no criminal charge for homicide of the unfree or unaccepted in English Ireland.⁵ We should note that ‘murder’ was reserved specifically for covert homicides and that in the vast majority of courts cases the indictment was for an *interfectio* (homicide/slaying) – I refer to these cases as a homicide or slaying. And so, ‘murder’ will only be used in cases involving the legal term *murdra*.⁶ Perhaps it is better to examine the surviving instances when it was a felony to kill a Gael, and then the situation will be clearer.

Sometime before 15 November 1305, Henry McMorgh [G. *Mac Murchadha*] came to Ferns to meet with the justiciar, John Wogan. McMorgh came at Wogan’s ‘order’ (request?) and ‘under safe conduct’. John Hay of Athbolsy and Michael Myagh killed McMorgh, and the indictment jury claimed that they robbed him of his armour and clothing from his dead body. Myagh was hanged, but Hay was allowed to pay a fine of 70s. after the trial jury determined that Hay had not taken the armour and clothing.⁷ Around the same time – possibly the same day – Murcht [G. *Murchadh*] and Douenald Og McMurcht [G. *Domhnall Óg Mac Murchadha*] came to Ferns, as well. The record was damaged, but it appears that Moryerdagh More MacMourght [G. *Muireardach Mór Mac Murchadha*] met Murcht and Douenald Og in Ferns, then the latter were killed and

³ Otway-Ruthven, ‘Native Irish’, p. 150; Hand, *English law*, pp 201-4; Frame, ‘Ireland after 1169’, pp 118-19.

⁴ Hyams, *King, lords and peasants*, pp 135-7.

⁵ See Padok wife of Richard Kenn..., *infra*, p. 191.

⁶ For example, see the case of ‘a woman named Isabella’: *infra*, p. 210.

⁷ *CJRI*, 1305-7, p. 466. It is rather surprising that this incident merited almost no mention in the historiography of the Meic Mhurchadha: Orpen, *Ireland*, pp 440-60; R. F. Frame, ‘The justiciar and the murder of the MacMurroughs in 1282’ in *IHS*, xviii, no. 70 (1972), pp 223-30; idem, ‘English officials and Irish chiefs in the fourteenth century’ in *EHR*, xc, no. 357 (1975), pp 748-77; idem, ‘Two kings in Leinster: the crown and the MeicMhurchadha in the fourteenth century’ in Barry *et al.* (eds), *Colony and Frontier*, pp 155-75. I have only found two instances when the killings were noticed, and both have factual errors: Colfer, *Arrogant trespass*, p. 230 and O’Byrne, *War, politics and the Irish*, p. 64. For more see *infra*, n. 11.

Moryerdagh fled to the church of the abbey of St Mary of Ferns. Thomas Hay and William son of Andrew then ‘entered’ (broke into?) the church, dragged Moryerdagh outside, and killed him. We cannot tell the fate of Thomas Hay and William son of Andrew because the seneschal of Joan de Valence, lord of Wexford, demanded to try the accused in her liberty court as the abbey was her advowson.⁸ Thomas and William were then ‘delivered to the seneschal to do justice’.⁹ Another Englishman, William de Roche, was charged with aiding and abetting the killing of Murcht and Donald Og McMurcht. The jurors in this case reveal that Murcht and Donald hid in a house and William de Roche tried to protect them. It appears that many people in Ferns tried to kill the Meic Mhurchadha who ventured to meet John Wogan. We can tell that the justiciar’s court took the slayings very seriously as William de Roche was fined 70s. for not defending the Meic Mhurchadha, who appear to have been under de Roche’s protection.¹⁰ It is peculiar that Wogan should have been in the city to meet the Meic Mhurchadha on the day of the slayings, but he and his retinue could not stop the attacks. No other record of this incident at Ferns appears to have survived. The Gaelic annals, which refer to the killing of the Uí Chonchobhair Failghe by Peter de Bermingham in the same year, make no mention of the killing of the Meic Mhurchadha.¹¹ Perhaps the surprise assassination of the Uí Chonchobhair Failghe was recorded in the annals because de Bermingham was rewarded and the killing of the Meic Mhurchadha was not recorded because the slayers were punished.¹² The most important part of the Meic Mhurchadha cases is that the justiciar’s court charged at least four Englishmen with felony homicide of Gaels (one hanged for it) and one Englishman with aiding the felonies.

⁸ ‘Lord’, just as ‘heir’, is not a sexed term. This claim (the right to prosecute criminals because a church was her advowson) is very unusual. Unlike the claim to lordship by Agnes de Vesey in 1278, Joan de Valence’s claims were not opposed by the Irish council: *DAIKC*, no. 24.

⁹ *CJRI*, 1305-7, p. 466.

¹⁰ *CJRI*, 1305-7, pp 466-7. Cf. the slaying of Domhnall Got Mac Carthaig, *infra*, p. 182.

¹¹ *AC*, pp 206-7; *Ann. Clon.*, p. 260; *Ann. Ulster*, ii, 403. See also, *CJRI*, 1305-7, p. 82; Bernadette Williams (ed.), *The annals of Ireland by Friar John Clyn* (Dublin, 2007), pp 156-7; *IEP*, pp 182, 200; R. F. Frame, ‘Power and society in the lordship of Ireland, 1272-1377’ in *Past & Present*, no. 76 (1977), pp 3-33 at 28. Cf. Emmett O’Byrne conflated the felony homicides at Ferns with the famous surprise attack on the Uí Chonchobhair Failghe by Peter de Bermingham. The record of the attacks at Ferns does not state that they were on the same day, and specifically states that: ‘Moryerdagh did not come in the company of Murcht and Douenald, but that he was remaining as a man of peace in the liberty [of co. Wexford], and was slain in it.’ It is also extremely important to notice that Peter de Bermingham was paid and rewarded for killing the Uí Chonchobhair Failghe while the Englishmen who killed the Meic Mhurchadha were charged with felony homicide: O’Byrne, *War, politics and the Irish*, p. 64. Dr Colfer only mentioned the indictment, and not the hanging, for killing ‘Henry, Murrrough and Domhnall Óg’ (which was not a single indictment and the three victims were not together). Colfer blamed the killing of all three Meic Mhurchadha on ‘the Hay and Roche families’ and left out Moryerdagh More MacMourght: Colfer, *Arrogant trespass*, p. 230.

¹² De Bermingham brought the heads of his victims to the Irish council meeting and was then issued a payment of £100 (writ of liberate): *CJRI*, 1305-7, p. 82.

These cases raise a few issues. Some might theorise that these Meic Mhurchadha were protected under the supposed grant to the ‘five bloods’. As we have already seen, that ‘grant’ was a historical fiction which only in some later instances was accepted as legal custom after incessant claims in court. But the ‘five bloods’ were not protected ‘as of life and limb’. Many historians have examined the killings of a different group of Meic Mhurchadha in 1282, and so we do not need to recount the entire event here.¹³ The important part of the assassination of Art and Muirheartach Mac Murchadha in 1282 is that no Englishman was charged with felony homicide or hanged for it. There are other instances when Gaelic nobles were under royal protection. Domhnall Got Mac Carthaig was killed by the Geraldine lord, John son of Thomas of Shanid, in 1252 while Mac Carthaig was under royal protection.¹⁴ There was no mention of a punishment for John son of Thomas, but that does not mean he was not amerced. He clearly was not hanged, however, because he was killed at the Battle of Callan in 1261. Perhaps the court’s reaction in 1305 shows a change in government policy towards killing Gaelic nobles who were currently ‘at peace’, although – according to the Gaelic annals – the Englishman who killed Aodh Ó Conchobair in 1228 was hanged the next day.¹⁵

People, including Englishmen, were charged with killing Gaels, but were acquitted because the victim was later determined to have been a criminal. John Lemman, Richard Hervy, Thomas Godknavé, Richard Molaghlo, John England, and Adam Taloun were charged with killing Ralph Oh...egan, who was a ‘man’ of Maghoun McMaghoun [G. *Mathghamain Mac Mathghamhna*] and Conlyth McNeel [G. *Conlaodh Mac Néill?*]. The latter had received royal protection for themselves and their *Hibernici*, and these protections were confirmed with sealed letters patent. Ralph, however, was never called a *Hibernicus*. He was a ‘man’ of McMaghoun and McNeel. This was probably an important distinction. Many Englishmen were designated the ‘man’ of someone else (usually a lord).¹⁶ The court charged the six men with not only killing Ralph, but also disturbing the peace of the marches of Ardee by committing the slaying. The accused came to court and replied, not that Ralph was unfree or a *Hibernicus*, but instead that he was a common

¹³ See the list *supra*, n. 7.

¹⁴ Orpen, *Ireland*, p. 349. *The Annals of Inisfallen* call him ‘Domnall Cairbreac Mac Carraig’: *Ann. Inis*, p. 354.

¹⁵ Orpen, *Ireland*, pp 367-8. *The Annals of Clonmacnoise* date this to 1227 and the *Annals of Ulster* list it as 1228: *Ann. Clon*, pp 232-3; *Ann. Ulster*, ii, 278-9.

¹⁶ This perhaps implies homage had been given. For example, Meiler de Kendale became the ‘man and squire’ of Richard Taloun in 1307, and Richard promised to treat Meiler (and his heirs) as the former’s ‘man’ and give Meiler expenses and clothes of a squire: *CJRI, 1305-7*, p. 339. See also, Maurice de Carew sues for the death and wounding of his ‘men’ near Dublin: *infra*, pp 191-2.

robber and against the peace on the day that they slew him. The court agreed and all were acquitted.¹⁷ In a different case William Omurkyrthi and Patrick Omurkirthi [G. *Ó Muircheartaigh?*] were indicted for killing Thomas Otenyny [G. *Ó Tiománaidhe?*] while he was abjuring the land. This was no different than a normal slaying. If a person committed a felony and then fled to a church, he/she could admit his/her guilt to a coroner and abjure the land under safe conduct.¹⁸ As long as the abjurer stayed on the king's highway, he/she was protected. William and Patrick came to court and defended. The jury said that Otenyny had left the highway, and therefore, the accused had committed no felony. They were then acquitted.¹⁹ Jordan son of Peter was charged with killing Simon Ocormoc [G. *Ó Cormaic*] and robbing the latter of 2 horses (L. *affri*) and 5s. Jordan came to court and put himself on the country (submitted to the jury's verdict). The jury returned that Ocormoc was a robber taken with stolen goods, which included the two horses. They also said that Jordan did not take 5s. off of Ocormoc's body. The court then acquitted Jordan son of Peter.²⁰ This report is slightly problematical. Was it more important that Ocormoc was a robber or that Jordan did not steal anything off of his body after slaying him? Perhaps both contributed to Jordan's acquittal. These acquittals were standard procedure under English law and not related to anyone's ethnicity. Anyone deemed 'an outlaw', 'outside the peace', or 'at war with the king' was open to slaying without penalty.²¹

English people were charged with killing non-noble Gaels and then hanged after being convicted. John Bodenham – along with Robert McKydm' – was charged with killing Gilbert McCurryn [G. *Mac Corraidhín?*] and stealing multifarious things from Gilbert and the church of Kilpatrick (co. Louth). John and Robert put themselves on the country, and were found guilty. Both were hanged.²² This was an 'internal' case. In other words, whereas some of the Meic Mhurchadha were from Gaelic Ireland (and in English

¹⁷ *CJRI, 1308-14*, pp 170-1. One of the accused, Richard Molaghlo, was a juror in a different case during the same court session: *ibid.*, p. 169. Cf. peace was granted to Maghoun McMaghoun and his 'eraghto' (G. *oirecht?*) in the Irish patent roll: *CIRCLE*, PR, 4 Ed II, no. 112.

¹⁸ For more on the process of abjuration, see R. F. Hunnisett, *The medieval coroner* (Cambridge, 1961), pp 46-50.

¹⁹ *CJRI, 1295-1303*, p. 45. Cf. Donat Ocurrin [G. *Donnchadh Ó Corráin*] slew Thomas 'the Welshman' [Wallensis], but was acquitted after he put himself on the coroner of Ossory's record and it was revealed that Wallensis had also abjured the realm before the slaying: *ibid.*

²⁰ *CJRI, 1295-1303*, p. 63. Cf. Robert le Mouner: *infra*, p. 192.

²¹ Pollock & Maitland, *History of English law*, ii, 462-8, 478-9; *Bracton*, ii, 413; Harding (ed.), *Roll Shropshire Eyre*, nos 594, 603, 607, 622, 632, 769, 777. Hugh, baron of Naas, sued Walter le Enfaunt for forestalling and imprisoning Hugh while the baron was 'a man at peace' (L. *homo pacis*). This was a required part of the *narratio* (count): NAI, RC 7/1, pp 443-4.

²² NAI, KB 2/7, f. 16r.

Ireland under safe conduct to meet the justiciar) Gilbert McCurrin appears to have been a resident of co. Louth. At no point in the record did John Bodenham and Robert McKydm' raise any objection to the felony indictment on the grounds of Gilbert McCurrin being a criminal, an *inimicus regis* ('enemy of the king'), or even a *Hibernicus* – free or unfree.²³ This case is interesting for another reason: previous historians have mentioned it, but missed its significance. Professor Smith used the case to show the interethnic co-operation within English Ireland.²⁴ His argument is correct, but more importantly, this particular case shows that to kill a Gael from English Ireland *could* be a felony and that Englishmen hanged for it.

Other people were criminally charged with the death of a Gael, but no verdict survives. In 1252 Richard son of William son of Resus [W. *Rhys*] strangled Savine [G. *Saidhbhín*] with her own veil (L. *peplus*) because she claimed that he wanted to rape her. He immediately fled and was put in exigent.²⁵ If he never came to court, Richard would have been outlawed. Based on the reactions in other cases, we can probably assume that Savine was free and Richard feared hanging for committing a felony.²⁶ We cannot assume that Savine was a *Hibernica* or unfree. Usually in cases when people were indicted for killing *Hibernici* (free and unfree) they did not flee; the slayer(s) came to court and pleaded '*fuit Hibernicus/-a*'.²⁷ In rare cases, when the slayer did flee, the coroner reported that the victim was unfree and the court would invite the killer to return to the peace.²⁸ In 1280 Ronyn Okedy [G. *Rónán Ó Céadaigh?*] appears to have been convicted of the death of William Ogary [G. *Ó Gadhra?*], but the record does not state if it was a felony or list any punishment.²⁹ It does state that Okedy killed Ogary '*malitiose*' (evilly) which was unusual. Felony homicide (as opposed to accidental homicide) indictments tend to use '*nequiter*' (wickedly). In 1308 Richard son of Walter son of Alexander was accused – in the justiciar's court – of killing Dovenald McKyntyr [G. *Domhnall Mac an tSaoir?*]. John

²³ The killing of a *Hibernicus/-a* is examined *infra*, pp 188-97.

²⁴ Smith, *Colonisation and conquest*, p. 79. Cf. Geoffrey Hand tried to minimise this case's significance entirely: Hand, *English law*, p. 202, n. 5.

²⁵ NAI, RC 7/1, p. 162. Being put in exigent was the precursor to outlawry. In theory a perpetrator was put in exigent four times by the county court for not appearing to face the criminal charge before outlawry was proclaimed. That was not always the case in English Ireland. Several accused criminals were put in exigent and outlawed at the same time: *infra*, pp 202, 203, 209, 213, 241, 263.

²⁶ If she was a *Hibernica*, then the coroner probably would have mentioned it. Cf. Padok wife of 'Richard Kenn...': *infra*, p. 191.

²⁷ John Argid, *infra*, p. 189.

²⁸ Padok wife of Richard, *infra*, p. 191.

²⁹ *Similiter de morte Willelmi Ogary & Ade Brambaud interfecti dicit quod Ronyn Okedy malitiose [sic] predictum Willelmum interfecit & quod Adam Brambaud combustum fuit per igne super infortunium nemo culpabiliter &c*: NAI, RC 8/1, p. 77.

de Boneville, the 'king's seneschal of Kildare and Carlow', mainprised Richard until the next coming of the justiciar.³⁰ The act of mainprizing was the contemporary version of bail. The court determined that a certain number of sureties were required, probably based on the offence, to guaranty that the accused would appear in court when the justices or justiciar were ready to try the case. We do not know the fate of Richard son of Walter, but it appears he was charged with felony homicide. If he had been accused of killing a *nativus/-a*, then the case should have been tried in the county court. He could have been acquitted, though. John de Bonevill was slain shortly after this and that may have contributed to the delay in hearing the case. The indictments are good indicators that the slain Gaels were free, but not concrete proof.

Some people killed Gaels and then fled to a church, which was required to abjure the realm and escape hanging. In 1290 Thomas Scadan feloniously killed William Duff [G. *Ó Duibh?*], and then fled to the church of Rathjordan, co. Limerick.³¹ In William's case nothing more was recorded of Thomas, and we cannot tell if he abjured the land. We can tell that Thomas did not attempt to use the *est Hibernicus et nativus* plea. In other instances (examined in the killing a *Hibernicus/-a* section) the killer appeared in court and calmly claimed that he/she had committed no felony in slaying a *Hibernicus/-a*. Thomas Scadan did not do this, and we may be able to suppose that William Duff was a free and accepted Gael. Thomas Mor [G. *Mór?*] was killed by Walter Sterre in 1290. The viewing jury (L. *visus*) determined that Mor was killed feloniously by Sterre and that the latter had fled to the church of 'Druneclathyn'.³² There is no more to this record, and we cannot tell with absolute certainty whether Mor was Gaelic or English and what happened to Sterre. The lack of court verdicts or abjurations does not prevent us from supposing that these records indicate that the Gaelic victims were free and accepted. If it was no felony to kill any Gael, then all of these slayers would have come to court and defended.

We do not always need a conviction to tell the status of the victim. William McKys [G. *Mac Cesse* or *Mac Cais?*] and Richard Haket were charged with the death of John McCauffy [G. *Mac Cobhthaigh?*]. The jury returned that the defendants were not guilty.³³ This is important because the court did not rule that John McCauffy was unfree or a *Hibernicus*. This record makes it clear that it was a felony to kill John McCauffy. It may be that McCauffy's killers were later caught and convicted, and that that record did not

³⁰ *CJRI*, 1308-14, p. 48.

³¹ NAI, RC 7/2, p. 264.

³² NAI, RC 7/2, p. 283.

³³ *CJRI*, 1308-14, p. 240.

survive. Other cases are less clear. Adam de Cantilupe was indicted for a number of felonies and misconduct as a ‘sheriff’, although he was actually just the deputy (L. *locum tenens*) of his brother, Richard de Cantilupe, sheriff of Kerry. Included in the list of indictments against Adam is the record of the slaying of Adam’s man, John Ocoulegan [G. *Ó Cúlacháin?*], who was not designated a *Hibernicus*. Adam Franceis killed Ocoulegan, and then Adam de Cantilupe made Franceis find pledges to pay de Cantilupe a fine of 5 marks. De Cantilupe then amerced the pledges, as well.³⁴ The court did not seem interested in the slaying or the lack of a formal indictment. De Cantilupe made fine for all his felonies and trespasses by £33 6s. 8d., and the case was closed. Perhaps the homicide of Ocoulegan was prosecuted in a different court, or the fine paid by Franceis indicates that Ocoulegan was tacitly considered a *Hibernicus et nativus*.

Others were charged for killing Gaels but then secured a pardon. William Longus was indicted for killing David Folyng [G. *Ó Faoláin?*] in 1314, but was pardoned by the justiciar for the felony of breaking the king’s peace (he still had to stand to the homicide charge if anyone appealed him) by agreeing to serve in Scotland until the war was over.³⁵ John Carraghgon [G. *Mac Carrghamhna?*] was pardoned – at the instance of John de la Barre and after paying half a mark – for receiving the three men who feloniously slew Gillecass Wallensis and Kilkeleghyn [G. *Giolla Cheallacháin?*].³⁶ I have noted elsewhere that Gillecass Wallensis had a seemingly-Gaelic forename, but the important part of this record is that it was also a felony to kill Kilkeleghyn and that neither was called a *Hibernicus*. John de Shropshire petitioned Edward II for a pardon after the former killed Simon Ultauch [G. *Ultach?*] in the town of Boey, co. Cork, by accident.³⁷ These three pardons demonstrate that it was a felony to kill the Gaelic victims.

In 1278x81,³⁸ the mayor and community of the city of Cork petitioned Edward I to replace the collector of customs in the city because a ‘jury of twelve knights and legal men’ determined that Stephen Brendan [G. *Ó Breandáin?*] was a *Hibernicus* and that *Hibernica lingua* (Gaelic language/culture) was inimical to Edward I and the city of Cork.³⁹ They then asked for Edward to appoint any Lombard or Englishman to replace

³⁴ *CJRI, 1295-1303*, p. 22. Cf. Adam’s brother, Richard, was later indicted for a different list of felonies: *infra*, pp 206-7.

³⁵ NAI, KB 2/7, f. 2r.

³⁶ *CJRI, 1308-14*, p. 317.

³⁷ Connolly, ‘Irish material SC 8’, p. 25.

³⁸ Gearóid Mac Niocaill dated it to 1279x80: *Na Buirgeisi*, ii, 351.

³⁹ This was a clear exaggeration. As we have learned in many cases, Gaels were not universally antithetical to the English in Ireland or the crown of England, and there is no proof that Brendan was recalcitrant to the

Stephen Brendan.⁴⁰ In 1290 a petition to Edward I mentioned that ‘Stephen Brandan’ had received a grant of access to English law.⁴¹ Either the reference was to an older grant or it was to a different man because Stephen Brendan was killed while Robert de Ufford was justiciar (1276-81).⁴² In 1281 Nicholas Morin was pardoned for killing Stephen Brendan, John Longfeld, John More, Geoffrey le Long, Henry Harold, and William Wise.⁴³ In 1301 Martin Moryn was charged in the itinerant court with the felony homicide of Stephen Brendan in the city of Cork. Martin claimed the benefit of clergy and the bishop of Cork claimed him. Then the mayor of Cork, Adam Reyf, and the community of Cork presented a pardon to the court which forgave Richard de Leye, mayor of Cork, and the community of Cork for the death of Stephen Brendan from the time of Robert de Ufford, and the community claimed that Martin Moryn was one of their members.⁴⁴ It appears that Gaels with grants of access to the courts were treated in the same way as English people in regards to ‘life and limb’, which should reinforce the conclusion that the ‘five lineages’ were not ‘enfranchised’. In addition to Stephen Brendan, other ‘enfranchised’ Gaels were slain and the slayers were charged with felony homicide. Michael son of Simon Oclercham [G. Ó Cléireacháin?], at the instance of Walter de Burgh, was granted access to the royal courts on 29 May 1266 (50 Henry III).⁴⁵ In 1305 Mathew son of Michael Oclerehan was feloniously slain by William son of John le Waleys, Griffin son of David le Waleys, Henry son of Peter le Waleys, Richard son of Griffin le Waleys, Richard son of Richard son of Robert le Waleys, Thomas son of Richard le Waleys, and David son of John le Waleys. All of these seemingly-Welsh men fled and were outlawed.⁴⁶ These two cases appear to confirm the statement from juries that someone’s status at death (and not at birth) was the main factor in whether a homicide was a crime.⁴⁷ It is peculiar that in Stephen Brendan’s case the itinerant court at Cork was processing felony charges which were at least twenty years old in 1301.

English presence in Ireland. In fact, he appears to have been well acculturated and desirous of royal (English) largess. Cf. Alexander Donethe: *infra*, p. 229.

⁴⁰ *DAIKC*, no. 35; *Na Buirgeisi*, ii, n. 77.

⁴¹ *PROME*, Edward I, Roll 4, m. 1 (<http://www.sd-editions.com/AnaServer?PROME+56227+parlfra.anv>) (2 Dec. 2015); *CDI*, 1285-92, p. 306.

⁴² *Admin. of Ireland*, p. 81.

⁴³ *CIRCLE*, PR, 9 Ed I, no. 1.

⁴⁴ *NAI*, RC 7/8, pp 75-6.

⁴⁵ *NAI*, RC 7/11, pp 202-3; *JUS* 33-4 Ed I, ff 85r-6r.

⁴⁶ *NAI*, *JUS* 33-4 Ed I, f. 108r.

⁴⁷ See the case of John Airgid: *infra*, p. 189. Cf. Roger de Cauntetoun: *infra*, pp 195-6.

There were at least three types of Gaels whose lives were protected by the royal courts in English Ireland: magnates from Gaelic Ireland under royal protection, free and accepted Gaels, and Gaels who had acquired a grant of access to the royal courts. The records of the prosecutions for the slaying of these Gaels have been overlooked. These protected Gaels were not called *Hibernici* (except Stephen Brendan). Without any civil cases involving these Gaels, it is currently not possible to determine if this protection allowed all of them to bring a writ of entry or sue for a debt.⁴⁸ The narrative of ‘to kill a Gael was no felony’, however, can be safely retired; the society was more nuanced than that.

Killing a Hibernicus/-a

Much of the historiography which has mentioned the killing of a Gaelic person in English Ireland has focused on the cases involving the term *Hibernicus/-a*. As James Mills noted the label was heterogeneous.⁴⁹ Here we will explore the various punishments for killing a *Hibernicus/-a*, and use these cases to determine the legal statuses of various *Hibernici*. Traditionally, it was argued that to kill a *Hibernicus/-a* was not a felony, and that the English lord of the unfree *Hibernicus/-a* would receive remuneration for the death of the lord’s unfree tenant (because of the loss of labour services). In one of many cases involving an English lord, Stephen de Aqua complained that in May 1311 Clement Grymbaud killed Douenth OKynnedey [G. *Donnchadh Ó Cinnéide?*], faithful *Hibernicus* of Stephen, at Balenabeyg, and then stole £20 of Stephen’s goods from Douenth’s body afterwards.⁵⁰ Clement did not deny that he killed Douenth, but insisted that he did not seize or carry away any goods or chattels of the *Hibernicus*. The jury determined that Clement indeed stole a ‘falding’ (Irish cloak) and one ball of thread worth 14*d.* after he killed Douenth. The court ordered that Clement pay Stephen 5 marks 4*d.* for the homicide of a *Hibernicus* and 14*d.* for the stolen goods. Grymbaud should have been hanged for stealing more than 12*d.* worth of goods.⁵¹ Clement was a pauper, and so his amercement for the crime was pardoned and he was remanded into the custody of the marshal until he could find pledges to pay Stephen the £3 8s. 2*d.* In January 1312/13 John son of Thomas

⁴⁸ The enfranchised Gaels probably could sue civil writs. Simon son of Michael Oclereghan brought an assize of novel disseisin in the custos’ court in 1313, but lost because he was still in seisin of the lands on the day of the trial. He was almost certainly the brother of Mathew son of Michael: NAI, KB 2/4, ff 357r-8r.

⁴⁹ Introduction, *supra*, p. 10; *CJRI, 1295-1303*, viii-ix. Cf. the English *nativi*: *infra*, p. 242.

⁵⁰ NAI, KB 2/5, ff 100r-1r.

⁵¹ Cf. *infra*, pp 218-23.

‘complained’ (sued by oral testimony instead of a chancery writ) that in April 1302 David de Cogan came to Corkemoyth (Corcomohide), co. Limerick, robbed John’s faithful *Hibernici* of £113 6s. 8d. worth of livestock, killed John McKenery [G. *Mac an Airchinnigh?*], and ‘broke’ the houses on the manor.⁵² De Cogan at first claimed the *Hibernici* were outlaws and that he was pursuing them as felons, but then ‘withdrew’ from court and did not defend his claim. It is peculiar that de Cogan did not raise the 40s. rule concerning oral complaints. Edward I in 1297 had mandated that no one could sue by ‘bill’ (without a chancery writ) for more than 40s.⁵³ De Cogan was amerced for not defending and then the ‘sheriff’ of Cork was ordered to distrain the former to force his appearance in court to hear judgment. The justiciar’s court considered the suits of English lords, for the killing of their *Hibernici* (free and unfree), rather serious affairs. It appears that lords of villeins in England also sued for the death of their unfree tenants.⁵⁴ The insistence that the injured seemingly-unfree *Hibernici* were all ‘faithful’ may indicate that many criminals sought to label *Hibernici* as outlaws to excuse the criminal’s theft and homicides.⁵⁵

Other cases demonstrate that free but possibly unaccepted *Hibernici* received worse treatment. John son of Henry Mape killed John Argid [G. *Airgead* or *Mac Fheardorcha?*], was indicted, casually appeared in court, and replied that he did kill Argid but had committed no felony because Argid was a *Hibernicus* and not of free blood. The jury returned that ‘John Argid was a *Hibernicus* on the day he was killed’ and acquitted John son of Henry of the felony.⁵⁶ The jury’s phrasing is important because as we have seen in other cases the victim’s status on the day that he or she was killed was the most important factor in a homicide case: people’s status could change. Another case shows that some *Hibernici* without an English lord – who may have been free – were treated as less than *nativi*. Geoffrey son of Thomas Broun was charged with the death of John Stakepol, *Anglicus*, but the jury returned that John Stakepol had been a *Hibernicus* and was the son of Douenald Oglassewan [G. *Domhnall Ó Glasbháin?*].⁵⁷ The court then allowed Geoffrey son of Thomas to go quit without even an amercement. Four years later a jury reported that Raymond McEle Onolan [G. *mac Éile Ó Nualláin?*] had feloniously killed John Stakepol,

⁵² NAI, KB 2/4, ff 246r-7r. It does not record how many *Hibernici* were robbed. If there was only a few of them, then they were quite wealthy.

⁵³ *DAIKC*, no. 54. For more background on the rules of bills, see G. J. Hand, ‘Procedure without writ in the court of the justiciar of Ireland’ in *PRIA*, lxii (1961-3), pp 9-20.

⁵⁴ Hyams, *King, lords*, pp 136-7.

⁵⁵ Cf. criminals tried to relabel their English victims as ‘*Hibernici*’ to escape punishment; perhaps this added to the anti-Gaelic movement: *infra*, pp 201-3.

⁵⁶ NAI, KB 2/7, f. 25r.

⁵⁷ *CJRI*, 1305-7, p. 520.

Anglicus. Onolan had fled the scene and was outlawed. There is no way to determine if this was the same Stakepol, but it seems possible.⁵⁸ If these cases investigated the same slaying, then the justiciar's court was unable (at least in this instance) to detect corruption, conspiracy, and a false return by a jury.

Comparing some cases elucidates the problems with the variance of usages of the term *Hibernicus/-a*. One of the earliest cases shows us that the clerks were already dropping the '*et nativus/-a*' from the court record in criminal proceedings. In 1260 the coroner's viewing (L. *visus de morte*) reported that William Aubyn killed Malmethe daughter of Murtoth [G. *Maol Máith?* daughter of *Muircheartach?*], that she was a *Hibernica*, and that David de Barry, her lord, was to have payment for the death.⁵⁹ The court roll did not record the amount of the payment. But the resulting payment and the mention that she was a *Hibernica* of David de Barry indicate that she was unfree. At the same itinerant court session, the coroner's viewing reported that Cathel Mac Gillemury, *Hibernicus* of Bernard de Cork, had been slain.⁶⁰ As noted in Chapter Three, the killer was not named; the record only states that Bernard was to have payment (L. *resolucio*) for the slaying.⁶¹ We can detect that it was a crime to kill some *Hibernici* by comparing these records to others. In 1278 Adam de Borhumte, clerk, paid 1 mark (13s. 4d.) to the exchequer *pro pace habenda* (to have the king's peace) for the death of a certain *Hibernicus*.⁶² This clearly shows that the unnamed Gael was 'at peace' and the fluidity of the term *Hibernicus/-a*.⁶³ If the victim had been, just as Malmethe and Simon le Waleys, an unfree person, there would have been no need for the pardon of the felony. It is also important to note that exchequer records do not list the total of a fine, only the amount paid during that session. The mark was almost certainly a partial payment.⁶⁴ Adam de Borhumte's case and Malmethe's case complicate the study of the legal status of *Hibernici*. In Malmethe's case, she appears to have been unfree and an instance when it was not a felony to kill a *Hibernicus/-a*. In Adam's case, his unnamed victim appears to have been

⁵⁸ *CJRI*, 1308-14, pp 174-5. Cf. the slaying of Roger de Cauntetoun: *infra*, p. 195-6.

⁵⁹ NAI, RC 7/1, p. 296.

⁶⁰ NAI, RC 7/1, p. 297.

⁶¹ Chapter Three, *supra*, p. 153.

⁶² NAI, RC 8/1, p. 14.

⁶³ Free Gaels at peace were protected 'in life and limb' as were their goods. For life and limb, see the killing of the Meic Mhurchadha: *supra*, pp 180-2. For goods, see *infra*, pp 218-23. Cf. the comment in 1331 that 'all Gaels at peace were allowed to use the king's courts before the [ordinance *una et eadem lex*]': Chapter One, *supra*, p. 75.

⁶⁴ Adam de Karrik made four payments of 100s. and then a payment of 65s. for the death of J' de Sutton between October 1301 and July 1302: *HMINAUK*, pp 69, 83, 100, 108, 117. There could have been older payments which were not recorded in the published exchequer roll. We do not know the full extent of the fine.

free (or semi-free) and the latter's death was a crime. Yet both were called *Hibernici*.

H. G. Richardson wrote that the fine for killing an unfree *Hibernicus* – which he called ‘an Irishman not admitted to [use] English law’ – was set at 5 marks 40d. (70s.).⁶⁵ But he noted this immediately after entering the proviso that ‘no extensive investigation of the problem has been made, and, so far as printed material is available, this is mostly for the reign of Edward I. Any deductions we may draw are, therefore, subject to a good many reservations if we seek to apply them either to the earlier thirteenth century or to the later middle ages.’ Subsequent historians ignored Richardson's disclaimer and asserted his preliminary conclusion as fact.⁶⁶ We have already seen that before 1295 there was no set fine for killing a free or an unfree *Hibernicus/-a*. In 1313 Richard Duff killed Richard son of Malroni Ohogan [G. *Maol Ruanaidh Ó hÓgáin?*], a faithful *Hibernicus* of Edmund le Botiller. Edmund brought a writ of trespass against Duff, and the jury determined that Duff was guilty. He was fined 5 marks 4d. (67s.), and had to find a pledge for his payment. It is rather doubtful that the *resolucio* to a lord for the killing of his or her unfree *Hibernicus/-a* was set at a certain amount by the courts and then discontinued within a few years. No other fine in criminal cases was ‘set’ at a certain amount.

Similar to John son of Henry Mape, lords of unfree *Hibernici* sometimes escaped any corporal or financial punishment for killing their charges. In 1313 Philip le Waleys and Rose, his wife, were charged with the felonious homicide of Simon le Waleys. The indictment claimed that Philip killed Simon at Rose's instigation. Philip and Rose replied that they did not commit a felony because Simon was a *Hibernicus*. The jury returned that Simon was a *Hibernicus* of Philip, and therefore the couple were quit of the felony.⁶⁷ Before 1305 ‘Richard Kenn...’ slew his wife, Padok [G. *Padóg?*], and then fled. The coroner, Walter Stoktoun, reported that Padok was a *Hibernica*, and so Richard was not outlawed and all criminal charges were dropped. He did forfeit his chattels for his flight.⁶⁸ These two cases may not seem shocking, given the accepted historiography, but it was a great divergence from the common law in England. An English lord in England could not kill his or her own villeins and an Englishman could not kill his villein wife.⁶⁹ On the other hand, in some instances – just as in England – a lord could hold their unfree tenants in gaol

⁶⁵ Richardson, ‘English institutions’, p. 387, n. 2.

⁶⁶ Otway-Ruthven, ‘Native Irish’, p. 150; Hand, *English law*, p. 202.

⁶⁷ *CJRI, 1308-14*, p. 291.

⁶⁸ Richard's surname was not completely recorded in the calendar: NAI, JUS 33-4 Ed I, f. 156r.

⁶⁹ Hyams, *King, lords*, pp 135-7; M. T. Clanchy (ed.), *The roll and writ file of the Berkshire eyre of 1248* (SS, xc, London, 1973), nos 934, 945.

or stocks for non-felonious trespasses, and that was not a crime.⁷⁰

In contrast a case from 1306 reminds us that we must be careful to differentiate pleading from court judgments. Maurice de Carew sued several citizens of Dublin for killing his men when they stopped in Dublin on the way to fight in Scotland. The defendants claimed that English lords could only sue for the death of their *Hibernici*, and de Carew had not claimed his men to be *Hibernici*. This may indicate that Gaelic men who were called someone's 'man' were in fact free or at least not considered unfree.⁷¹ De Carew withdrew his writ and was amerced for not prosecuting.⁷² We must not take the defendants claim as legal fact. The court did not rule on this. We only know that Maurice de Carew believed he would not win his case or that he made an out-of-court settlement with the defendants. Lords of English people were allowed to sue on behalf of their tenants or retinue.⁷³ It is peculiar that the justiciar did not order the coroner to investigate the slaying of free people (since they were not unfree *Hibernici*) or the breaking of the peace.

There were also homicide cases involving seemingly-free Gaels who were deemed not at peace. This has probably caused some of the confusion regarding the status of Gaels. To kill an outlaw or someone at war with the king was not a crime.⁷⁴ William Taloun Irryelagh [G. *Oirghiallach?*] was charged that he robbed Philip McLyng [G. *Mac Fhlainn?*], *Hibernicus* of Henry Treharne, at Kilergy, co. Carlow, and that he killed Robert le Mouner, *Hibernicus*.⁷⁵ The record then changes the name of the accused to 'William Taloun'. 'Taloun' claimed that he was a sergeant of the king and that le Mouner was a wanted man at the time of the slaying. Taloun also claimed that he had a command from the 'sheriff' (viscount) to capture le Mouner, but the latter refused to be captured and 'put himself on guard against William'. So, Taloun struck le Mouner with an axe and the latter died. The jury reported that Taloun slew le Mouner, but that it was no felony because the latter was a 'pure' (L. *merus*) *Hibernicus*, a common robber, and that the whole country

⁷⁰ See the case of Eustace de Cogan and a certain *Hibernica*: *infra*, p. 238. Cf. John Thebuad held Walter de Capella, a free *Hibernicus*, in stocks and was not charged or penalised for it, *infra*, pp 216-17; and the case of Thomas de Sareffeld, *infra*, p. 225.

⁷¹ See Ralph Oh...egan: *supra*, pp 182-3.

⁷² *CJRI*, 1305-7, p. 198.

⁷³ *Bracton* wrote that a lord may sue for his/her retainers if 'a man has been slain, or seriously wounded and maimed, [or] robbed, imprisoned and chained, provided there is someone who sues [if] he cannot sue on his own behalf': *Bracton*, ii, 356. And the courts in England seem to have applied this idea: S. F. C. Milsom, *Studies in the history of the common law* (London, 1985), p. 16.

⁷⁴ The English itinerant court visited Shropshire in 1256. It referred to outlaws who had been beheaded by the local populace in the most quotidian manner: Harding (ed.), *Roll Shropshire Eyre*, nos 594, 603, 607, 622, 632, 769, 777.

⁷⁵ *CJRI*, 1308-14, p. 175. From 1306 until 1312, the liberty of Carlow was a royal county after Roger Bigod's surrender and regrant deal with Edward I.

was better for his death.⁷⁶ We can compare this homicide to the killing of ‘enemy’ *Hibernici*. This was part of the multivalence of the legal term *Hibernicus/-a*. In 1310 all *vicecomites* were ordered not to distraint Henry Haket for being in arrears of his vicontiel debts on account of his good service for killing *Hibernici* (L. ‘*pro bono servicio quod ibidem fecit interficiendo Hibernicos*’).⁷⁷ These were almost certainly *inimices regis* – Gaels from Gaelic Ireland who opposed English rule in their region of Ireland and raided English lands.

Other cases demonstrate that the slain *Hibernici* were not unfree. Meiler de Kendale, Michael de Kendale, and Adam Reynaud were charged that they with other malefactors ‘seditiously’ slew Dermot Ballagh McGorman [G. *Diarmaid Ballach Mac Gormáin*], Flan Ynym McGorman [G. *Flann inghean Mhac Gormáin?*], and Robert Offothyl [G. *Ó Fítheal?*], and robbed the latter of 20 cows, 3 horses (L. *affri*), and items worth 40s. The jurors reported that the three slain Gaels were *Hibernici* and had been tenants of John de Bonevill, who had recently been slain himself. After de Bonevill was killed the *Hibernici* went to Meiler de Kendale for protection because they feared de Bonevill’s slayers and Meiler had been knighted by their lord. De Kendale told them to gather their wives and households and move to his wastelands in co. Kildare. He – just as in the case of the Meic Mhurchadha – promised the *Hibernici* safe conduct to his lands. This is certainly why the court labelled the homicides as ‘seditious’ because after he had promised safe passage, de Kendale ordered the other accused men to follow the *Hibernici*, kill them, and bring back any chattels the *Hibernici* had.⁷⁸ Unfortunately the record was damaged when it was calendared, so we do not know what punishments were imposed on Michael de Kendale or Adam Reynaud. We can, however, tell that Meiler de Kendale was not hanged because he appears as a pledge to pay a fine in a later court case.⁷⁹ The slain were free in that they were not *adscripticii glebae* and had considerable chattels. This case is also one of the many examples of the problems with the term *Hibernicus/-a*. The Gaels were not called *nativi* and no one seemed to object to their freedom of movement, but as far as we know their slayers were not hanged despite stealing considerable goods.

Other homicides of Gaels were criminally charged and then paid for a royal pardon. This act demonstrates the victim’s free status. Adam de Borhumte, clerk, who we examined earlier, was indicted for the death of Adam MacGillepatrick [G. *Mac Giolla*

⁷⁶ *CJRI*, 1308-14, p. 176.

⁷⁷ Craig, ‘Memoranda Irish Ex’, ii, no. 1624.

⁷⁸ *CJRI*, 1308-14, pp 230-1.

⁷⁹ *CJRI*, 1308-14, p. 232.

Phádraig], *Hibernicus*. MacGillepatrick was probably the same *Hibernicus* from the earlier record. This was a criminal indictment, but Adam de Borhumte was allowed to pay 1 mark *pro pace habenda* (to return to the peace).⁸⁰ This payment was to the exchequer for breaking the king's peace, and was not a *resolutio* to a lord. MacGillepatrick's case appears to show that the legal term *Hibernicus/-a* could be applied to free people (or at least it was a felony to kill a *Hibernicus/-a* who was not a *nativus/-a* and at peace on the day he or she was killed).⁸¹ This problem is similar to the case above of the felonious slaying of the Meic Mhurchadha. It was a felony to kill them, but we cannot tell if they could use the royal courts in civil cases.

The royal courts and the Dublin administration considered the slaying of some *Hibernici* to be serious crimes. In 1282 Jordan Locard and Nicholas de Houcche, who were identified as justices of gaol delivery, were imprisoned in Dublin Castle for releasing Thomas le Kew from the same prison. Le Kew had killed Thomas le Carpenter, a *purus Hibernicus*.⁸² The record does not tell us why le Kew was released, but it appears to indicate that it was a felony to kill le Carpenter. It could be that he was a resident of the city of Dublin and fell under the protection of the citizens, although the qualifier '*purus*' would be problematical.⁸³ This record does tell us that the justiciar had imprisoned royal justices for allowing a homicide to be released from prison and that the slaying of a '*purus/-a Hibernicus/-a*' was sometimes considered a serious offence. In some cases the slayer of a *Hibernicus/-a* was hanged. In 1307 On Omadethan [G. *Eoin Ó Madadháin?*] slew a 'faithful *Hibernicus* named Ocassy' [G. *Ó Cathasaigh*] and stole twelve sheep and other goods to the value of 2s. Omadethan claimed he was not guilty and put himself on the country. The jury found him guilty and he was hanged.⁸⁴ Ocassy was clearly free (or semi-free) and accepted to the point of being protected in life, limb, and property. Also, Ocassy was not the *Hibernicus* of anyone. It appears to have simply been an ethnic label

⁸⁰ NAI, RC 8/1, p. 7. There is no way to determine the entire fine for the pardon. These payments were similar to Adam de Karrik's payments for his pardon: *supra*, p. 190, n. 61.

⁸¹ See '*Hybernienses liberos*': Chapter One, *supra*, p. 33.

⁸² *CDI*, 1252-84, no. 2113.

⁸³ *Purus* meant 'pure' in the sense of unmixed. Perhaps a *purus/-a Hibernicus/-a* was considered unacculturated to English society, but some of the people labelled '*puri*' seem to have been from the English lands in Ireland.

⁸⁴ *CJRI*, 1305-7, p. 516. This obviously was not Eoghan Ó Madadháin [the records call him 'Oghen O Madaden', never 'On'] who was alive in 1333: Chapter One, *supra*, pp 29-30.

and not a marker of unacceptance or naifty. Perhaps Ocassey would have been allowed to sue in the royal courts because he was ‘at peace’.⁸⁵

The various outcomes of court cases examining the homicide of a *Hibernicus/-a* indicate that in criminal cases *Hibernici* could be free, unfree, or worse. Without court judgments, differentiating the various statuses of the victims would be difficult. The ability of a knight to escape corporal punishment for seditiously slaying several seemingly-free *Hibernici* may indicate that the status of the perpetrator was almost equally a factor in criminal cases.⁸⁶ But that would not explain the case brought by Maurice de Carew. He was the lord of co. Cork, yet he withdrew from prosecuting a list of serious crimes. The records of homicides clearly demonstrate that it could be felony to kill a *Hibernicus/-a* and that the English law in Ireland varied greatly from the law in England. Most contemporary legists in England agreed that allowing a lord to kill his or her unfree tenants with impunity would damage the king’s peace.⁸⁷ Even more surprising is the acquittal of a husband who killed his wife. Since there is only one surviving case of this happening, we should avoid concluding that this situation was prevalent.

Hibernici of the king

One special group among the *Hibernici* were the ‘*Hibernici regis*’ (*Hibernici* of the king). Similar to every other group the punishment for killing a *Hibernicus/-a regis* was not set. William Sampson junior killed Hugh Mcregan [*G. Mac Riagain?*], *Hibernicus regis*, and was allowed to make fine with the king by paying half a mark (6s. 8d.). The court then pardoned the fine because Sampson was poor (*L. pauper*).⁸⁸ This was a rather small fine to begin with, but the subsequent pardon shows that perhaps the English crown was not as avaricious in its criminal justice proceedings as some historians have supposed.⁸⁹ By contrast David Torney was fined 78s. for killing a *Hibernicus* of Lord Edward.⁹⁰ This was during the ‘appanage’ of Lord Edward, and so this was akin to killing a *Hibernicus regis*.

⁸⁵ Cf. the claim in 1333 that all *Hibernici* at peace were allowed to use the royal courts before the ordinance ‘*una et eadem lex*’: *supra*, p. 75.

⁸⁶ Many thanks to Niall Ó Súilleabháin for his comments on this topic.

⁸⁷ Hyams, *Kings, lords*, pp 129-39.

⁸⁸ NAI, RC 8/1, p. 296 [repeated on p. 356].

⁸⁹ Hunnisett, *Medieval coroner*, p. 104; Anthony Musson and Edward Powell (eds), *Crime, law and society in the later Middle Ages* (Manchester, 2009), p. 150.

⁹⁰ Curtis, ‘Sheriffs’ accounts, Tipperary’, p. 70. Cf. Alexander Orothyn feloniously killed Milo le Graunt, and Margeria de Roche robbed a cloak from Milo’s body, but they were allowed to make fine by 60s. at the instance of David son of Alexander de Roche: *CJRI, 1308-14*, p. 292. Roger O Horwuth feloniously killed

Another case of homicide of a *Hibernicus regis* has been mentioned in studies of Anglicisation of Gaels and ‘degeneracy’ of the English.⁹¹ William son of Roger was charged with the felony homicide of Roger de Cauntetoun. William son of Roger came to court and said that ‘he could not commit a felony because Roger [was] a *Hibernicus* and not of free blood’. William also claimed de Cauntetoun to be an Ohedirscoll [G. Ó *hEidersceoil*] and not one of the de Cauntetouns. The jurors said that Roger de Cauntetoun was a *Hibernicus* of the name Ohedirscoll, had been held as a *Hibernicus* for his entire life, and therefore William should be acquitted of the felony. But since Roger Ohedirscoll had been a *Hibernicus regis*, William son of Roger was recommitted to gaol until he found pledges to pay his fine of 5 marks. Also, William’s chattels were forfeited to the crown for fleeing the scene after the homicide.⁹² It is unlikely that a ‘standard fine’ for killing a *Hibernicus regis* had increased from half a mark to 5 marks in a few years. It is more probable that the fine was based on the economic status of the slayer.⁹³

The records of slain tenants of the royal demesne also show us that they could own moveable property. William Oharthur [G. Ó *Fhearchair?*] was labelled a *betagius regis*, but this could be because the record was an exchequer memoranda and not a royal court record. He had been slain recently but the killer was not recorded. It was recorded that Oharthur had 7s. 6d. in goods (L. *bona*) and that Gregory son of John de Bree currently possessed them. The record continues to note that John de Colcester had 3s. 8d. of Oharthur’s goods, and John le Tannour de Cumba had three crannocks and two bushels of Oharthur’s barley. The exchequer then ordered for a writ of *levare* to be made to recover the goods from the three men.⁹⁴ While no criminal proceedings were mentioned, the record clearly states that Oharthur possessed considerable chattels. There is a possibility that since he was a *betagius regis*, the exchequer court was functioning as a manorial court, but this practice had supposedly ceased before this record (c.1300).

A final record demonstrates that a *betagius regis* could amass some considerable wealth. Clement Ocathyl [G. Ó *Cathail*] was killed at Crenauch and the ‘sheriff’ (viscount) of Dublin returned that the former had 4 cows with calves worth 16s., 1 ox worth 3s., 3 horses (L. *affri*) worth half a mark, 30 sheep worth 4d. each, 3 small ricks of oats

Maurice le Waleys, Englishman, but was allowed to make fine by 20s. at the instance of John de Billesburne, knight: *ibid.*, p. 270.

⁹¹ Hand, *English law*, p. 212, n. 2; Duffy, ‘Problem of degeneracy’, p. 97.

⁹² *CJRI*, 1308-14, pp 203-4.

⁹³ Cf. the case of Adam Rauf: *infra*, pp 201-2.

⁹⁴ NAI, RC 8/2, p. 478. The order for the writ of *levare* is next to de Bree’s name, but the ‘&c’ next to de Colcester and le Tannour’s names probably means similar writs were ordered for them.

containing 5 crannocks, 1 small rick of corn, beans, and barley containing 1 bushel of corn, 2 bushels of beans, and 2 bushels of barley, 1 rick of turf worth half a mark, 1 brass jar (*L. olla enema*) worth half a mark, and 1 chest worth 6d.⁹⁵ The record is also not a court record, and so does not deal with who killed Clement. It only states that four men, John le Archer, Richard Rikeman, Augustin Ocolan [*G. Ó Cuilinn*], and Umfred de Brothan, came to the exchequer and paid 10s. for a heriot to keep some of the goods, and that the remaining goods were in safe custody for ‘the shame’ (*L. pudorum*) of the killing of Ocathyl. It is unclear if the four men made a profit from this heriot, or if the goods they received were worth exactly 10s. The goods they had, however, were not the entirety of Ocathyl’s goods as two other men were charged criminally with possession of some of Ocathyl’s goods. Since they were ‘charged’ (*L. rectati*), we can probably assume that the exchequer sent the sheriff to recover the goods listed. Ocathyl was not called a *Hibernicus*, but as we learned in Chapter One, not all *Hibernici* were unfree, and some betaghs were free and others were semi-free.⁹⁶ Or Ocathyl could have been an unfree *nativus* but not designated one in the exchequer record.

The records of the slaying of *Hibernici regis* and *betagii regis* are problematic because the exchequer investigated the goods of slain *betagii regis* which could lead readers to confuse the legal differences between *nativi*, *Hibernici*, and *betagii*. It appears, however, that the exchequer did not investigate the slayings. Possibly more problematic is the case of Roger de Cauntetoun being rebranded as a *Hibernicus regis*. We will never know whether he really was an Ó hEidersceoil or another victim of ethnic re-labelling (such as Adam Rauf and a ‘man named Maurice’).⁹⁷

Killing an English or Welsh person

In contrast to the other chapters, I have saved the context and comparison with the status of English (and other) people until after we have explored the treatment of Gaels. There are, once again, differences between the evidence presented here and the current historiographical consensus. Previous works have focused solely on the slaying of Gaels without any comparison to other homicide cases.⁹⁸ Others have presumed that before the fourteenth century, to kill an English person was always a felony and that the royal courts

⁹⁵ NAI, RC 8/2, p. 314.

⁹⁶ Chapter One, *supra*, pp 24-36.

⁹⁷ Adam Rauf and ‘a man named Maurice’: *infra*, pp 201-2.

⁹⁸ Murphy, ‘Status of the native Irish’, pp 118-20; Frame, ‘Ireland after 1169’, pp 118-19.

only punished convicted killers with a summary execution.⁹⁹ One thing to note about one Englishman killing another was that it was sometimes excusable, in a similar manner to the slaying of Ralph the man of McMaghoun and McNeel. The court determined that Simon Maunsel slew Adam Hussee in self-defence in 1314, and Maunsel was recommitted to gaol to await grace.¹⁰⁰ The difference between the two cases is that Ralph's killers were probably allowed to leave immediately after the trial and Maunsel had to await a royal pardon, which he paid 20s. to receive. On the other hand there were earlier cases in which self-defence meant that the slayer was released immediately.¹⁰¹

Simon Maunsel was not the only slayer of English people to have been saved from hanging due to 'self-defence'. Other records show variances in the recording of cases, but the result is the same: the slayer is recommitted to gaol to await grace.¹⁰² Stephen O Mery [G. Ó Mearadhaigh?] killed Richard le Taillour in co. Meath and was charged with felony homicide. Stephen denied committing any felony and put himself on the country. The jury returned that O Mery had slain le Taillour, but that if the former had not killed the latter, le Taillour would have killed him. Therefore, the killing was in self-defence. O Mery was then pardoned for the felony charge.¹⁰³ It seems likely that O Mery was recommitted during the interim. O Mery was not a labelled a *Hibernicus*.

But in later cases – only one year later, in fact – the slayers were no longer recommitted to gaol. In 1316 John, the chaplain of Kenmoy (co. Cork), and Thomas Murthy [G. Ó Morda?] were accused of the felony homicide of Robert de Appelby. Murthy came to court and said that he was not guilty, and John claimed the benefit of clergy.¹⁰⁴ The jurors said that de Appleby and other followers of Gerald son of Maurice came to John the chaplain's house and robbed him, and then the hue and cry was raised. The 'men of the county' (*posse comitatus*?) pursued the robbers, but the latter refused to submit to arrest. Then the men of the county attacked the robbers and Thomas Murthy (called 'Morthy' in the second instance) struck de Appleby with an arrow and John the chaplain struck him with a sword. The jury then revealed that a parliament at Dublin had decreed that if 'idle men' wandered the country committing robberies and the hue and cry

⁹⁹ Otway-Ruthven, 'Native Irish', p. 150; Hand, *English law*, pp 201-4.

¹⁰⁰ *CJRI*, 1308-14, p. 320.

¹⁰¹ John son of Nicholas de Roche killed Henry son of Nicholas de Roche in self-defence, fled, and then was allowed to return to the peace without a royal pardon and have his chattels back. The last part was extremely extraordinary: *CJRI*, 1295-1303, p. 64.

¹⁰² For example: *CJRI*, 1308-14, pp 222, 231.

¹⁰³ NAI, KB 2/7, ff 29r-30r.

¹⁰⁴ For the 'benefit of clergy', see Chapter Five, *infra*, pp 262-7.

was raised, that any subsequent slaying during the pursuit was legal.¹⁰⁵ John the chaplain and Thomas Murthy were then fully pardoned without having to await the king's grace. These last two cases may show us the acceptance of O Mery and Murthy. They were not *Hibernici*. They were not recorded as unfree people. And if they had been unaccepted, it seems unlikely that they would have been forgiven for a homicide.

Gaels could also be pardoned for homicide of English people under certain circumstances. Thomas Omothel [G. *Ó Motla?*] was charged with the death of Walter Robyn. The jurors reported that the miller of the archbishop of Dublin's mill found thieves in the mill and out of fear, escaped to the nearby town of Taulagh (Tallaght?) to alert the townspeople. The miller persuaded all of the men in a tavern to accompany him back to the mill to stop the thieves. The group found no one, and headed back to Taulagh. On the road back, the archbishop's bailiff stopped one of the men, Thomas Omothel, and asked who he was. Since Thomas did not know the bailiff, he replied in kind. The two men started arguing, but two other men, Walter Robyn and Thomas le Lech, broke them apart. Robyn then broke Omothel's lance 'to avoid great danger'. Omothel stepped back, unsheathed his sword, and struck Robyn on the head killing him. After the jurors told this story to the court, Meiler de Kendal asked for Thomas Omothel to be pardoned, which he subsequently was.¹⁰⁶ This was not deemed self-defence, but it was considered acceptable to grant him a pardon without charging him a fine. If no one had procured a pardon for Omothel, he probably would have hanged.

The courts, or at least certain juries, could be sympathetic. William Okally [G. *Ó Cadhla?*] was 'lying in the embrace of a certain woman' when Richard Laudefey, out of jealousy, grabbed Okally by the feet and dragged him away from the woman. William returned, but Richard again dragged him away from the woman. To settle the dispute in the most civil fashion, the two men then picked up handfuls of dirt and threw them at each other. In one of the handfuls of dirt was a small stone and when the stone hit Laudefey, he drew his sword and severely wounded Okally. The latter immediately withdrew his sword and killed Laudefey. The jury said that Okally had no choice but to kill Laudefey for the latter would have killed him otherwise – the usual phraseology in judgments of self-defence. The court then asked the jury if Okally was of ill-fame. He was not. So, Okally

¹⁰⁵ NAI, KB 2/8, ff 15r-17r. The effects of the decree from the Dublin parliament were far-reaching. In 1323 Edward II (or his council) determined that these pardons were having a negative impact on English Ireland (from the crown's point of view) and banned them: *Stat. Ire., John-Hen. V*, p. 294.

¹⁰⁶ *CJRI, 1308-14*, pp 161-2. This was before Meiler de Kendale was charged with robbery and homicide. Perhaps Omothel was a 'man' of Meiler.

was recommitted to gaol to await judgment.¹⁰⁷ It is interesting that the justiciar could not decide on how to rule on this case. The jury had returned an unambiguous verdict and Okally was not suspected of any crimes.

English people were also killed accidentally. These occasions are when the *murdrum* fine and presentment of Englishry would have applied (before 1258), if those existed in Ireland. Professor Otway-Ruthven did not notice the view of frankpledge in English Ireland, and subsequently thought it was not enforced there.¹⁰⁸ But the ‘view of frankpledge’ was a lord’s franchise to amerce tenants. Frankpledge (or tithings) was related to presentment of Englishry and the *murdrum* fine.¹⁰⁹ She confounded the view of frankpledge with the tithing system and thought this was the only aspect of English law not transmitted to English Ireland, but presentment of Englishry and tithings were not universal in England.¹¹⁰ Villages in Ireland were amerced collectively for escape of prisoners.¹¹¹ Law enforcement in English Ireland was not ‘the responsibility of the kin and of the lord’. It appears that at no time during the period studied was the *murdrum* fine applied in English Ireland. Several cases demonstrate this. In 1252 two coroners’ viewings (*L. visus captus & juratam de morte*) determined that Robert son of Laurence and Adam son of Robert died when a caldron accidentally fell on their heads at Kilmehalloch and Sleclare, respectively.¹¹² In certain counties in England at that time these accidental deaths would have resulted in fines upon the villages, but there is no mention of a *murdrum* fine upon the Irish villages in the surviving records. The caldrons were taken as deodands, though. Not all accidental deaths were by inanimate objects. Gregory O Torran [G. Ó Toráin] was driving a cart to a moor in co. Kildare when he saw a young boy, Nicholas Lanloue, on the

¹⁰⁷ *CJRI*, 1308-14, p. 252. The woman was not named and we do not know what the relationship between her and the two men was. It is unlikely that she was a prostitute. The court record usually notes that.

¹⁰⁸ Otway-Ruthven, ‘Native Irish’, p. 149.

¹⁰⁹ Presentment of Englishry involved a homicide victim’s relatives (the number depending on the county’s custom) testifying in court that the victim was English, and therefore, no *murdrum* fine was to be applied to the vill. The *murdrum* fine was assessed on many English villages when they did not present a slayer to the court and the victim was a *Francus/-a* (Frank) or foreigner under royal protection. If the ethnicity of the victim was unknown, it was assumed the victim was a Frank. The fine was also assessed if a person died accidentally (by ‘misadventure’). Tithings were groups of ten men over the age of eleven who collectively paid amercements for crimes and trespasses by their members.

¹¹⁰ For example, Englishry was not presented in Shropshire: Harding (ed.), *Roll Shropshire Eyre*, no. 485. The Provisions of Oxford (1258) forbid the *murdrum* fine from being applied to cases of ‘misadventure’ (accidental slaying), but the itinerant justices in England applied it in the county of Sussex in 1262, but not in Surrey in 1263: Susan Stewart (ed.), *The 1263 Surrey eyre* (Surrey Rec. Soc., xl, Woking, 2006), lxxii. The tithing system did not exist north of the Trent: Musson, *Medieval law in context*, p. 90.

¹¹¹ For example, the vill of Cranystoun was amerced for allowing John Bigetoun escape the king’s prison in their area: *infra*, pp 202-3. Villages were also amerced for not producing slayers in court, the same as in England: NAI, JUS 33-4 Ed I, f. 35r.

¹¹² NAI, RC 7/1, p. 207.

road. He shouted for Nicholas's mother to move Nicholas out of the road, but the horses (*L. affri*) pulled the cart too fast down the hill and the cart crushed Nicholas to death.¹¹³ The coroner was ordered to answer to the exchequer for the value of the horses and the cart (9s. 6½d.). This was the usual procedure for deodands. We can probably assume that the coroner seized Gregory's cart and horses. Gregory did not have them as he fled the scene immediately after the accident. The jury determined that this was an accident, so he was allowed to return to the peace without having to buy a pardon. But his chattels (9s.) were forfeited for the flight. Without manorial court rolls, we cannot be certain of the frequency and breadth of the application of a tithing system in English Ireland, but there are a few records that prove it existed. In 1301 an inquisition revealed that four English lords in co. Cork had view of frankpledge.¹¹⁴

As I noted above in the section on the status of Welsh people, not every person named 'le Waleys' was considered Welsh. This was of course entirely for legal purposes. It does not tell us if such people were Anglicised Welsh or just English people with the surname 'le Waleys'. James Hareberge killed Craddoc le Waleys, *Anglicus*. To secure a pardon Hareberge fought for Edward I in Scotland. Hareberge claimed that he received a pardon on 28 July 32 Edward I (1304), and the jury in 1308 reported that 'James de Haverberge's' lands had been taken into the king's hand on the Thursday before Palm Sunday 31 Edward I (1303) for the slaying of Craddoc le Waleys and that he had received the subsequent pardon. The 'sheriff' (viscount) of Tipperary was ordered to restore de Hareberge's lands.¹¹⁵ Other cases show that the Welsh were not 'English' in cases of homicide. Dovenald Ogrefi [*G. Domhnall Ó Gradha?*] was charged with the death of Seycel 'the Welshman' [*L. Wallensis?*], Hywan the Welshman [*W. Ieuan?*], Howel the Welshman [*W. Hywel*], and John the Welshman. Ogrefi came to court, denied all of the charges, and put himself on the country. The jury said that he was guilty and Ogrefi was hanged. The court, in the same session, then charged Regnyl Okathlan [*G. Raghall Ó Cathláin?*] 'with the death of the said Welshmen'. The jurors reported that Okathlan also was guilty and he was hanged. The court had specified that the victims were Welsh and not English. This is interesting because the court regularly noted that liberties could not prosecute the homicide of an English person, but made no mention of Welsh people.¹¹⁶

¹¹³ *CJRI, 1308-14*, p. 319.

¹¹⁴ *CDI, 1293-1301*, no. 801.

¹¹⁵ *CJRI, 1308-14*, pp 26-7; NAI, M 2542, p. 321.

¹¹⁶ *CJRI, 1308-14*, pp 287-8. Investigations into lords/liberties prosecuting the death of an English person: *Hist & mun docs*, pp 141-66; *CJRI, 1295-1303*, pp 102-3, 203-4.

In Chapter One we examined Philip Benyt, Englishman, who others had endeavoured for years to have labelled a *Hibernicus*.¹¹⁷ Beneyt was not the only English person to experience this. Luke de Sewell and Luke Hert killed Adam Rauf, an Englishman from Drogheda on the side of Louth. The coroners of Drogheda on the side of Louth formed an inquisition to investigate the slaying. The jury returned that the slaying was not a felony because Adam Rauf was a *Hibernicus*, and had been considered a *Hibernicus* by the community of Drogheda since the first time he came to the town. Ten men from the coroners' jury were then indicted in the justiciar's court for making a false return. The jury from the justiciar's court said the coroners' viewing made the false oath to save de Sewell and Hert from the felony charge. The ten accused replied that they actually believed Rauf to have been a *Hibernicus* and did not make the false return out of malice. The jury in the justiciar's court agreed and the ten accused were given a *sine die*. But the two coroners of Drogheda, John de Tasagard and Richard Magnel, were charged for not enrolling the original jury's report in their coroner's rolls and for prosecuting de Sewell and Hert in their court, and were gaoled.¹¹⁸ The justiciar ruled that since Rauf was an Englishman, the case was outside of the jurisdiction of coroners. Luke de Sewell was later allowed to pay a fine of 100s. for the death of Adam Rauf, at the instance of John son of Richard de Burgh.¹¹⁹ Five months later de Sewell was charged with slaying Robert de Bruges, le Peteler/Pellipar ['skinner'] de Drogheda, and then, at the instance of John son of Richard de Burgh, received a free pardon.¹²⁰ No further mention was made of Luke Hert. It appears he was outlawed. His chattels were confiscated after killing Adam Rauf. Adam's case was not an isolated occurrence. After a man named Maurice was killed in the city of Limerick, Robert de Trim, coroner of Limerick, allowed the killer, Walter le Loung, to escape with his chattels and buried Maurice's body without a viewing. Le Loung claimed Maurice to have been a *Hibernicus*. The claim was that before Maurice was killed he had confessed to a priest that he was a *Hibernicus*. A jury investigated this and found that for all his life Maurice had been answered in courts (the city and county courts of Limerick), and was taken as an Englishman.¹²¹ The court determined that the claim was false and put Walter le Loung in exigent and outlawed him at the same time.¹²² The court then put Robert de Trim,

¹¹⁷ Chapter One, *supra*, p. 88.

¹¹⁸ *CJRI, 1308-14*, p. 168.

¹¹⁹ *CJRI, 1308-14*, p. 209.

¹²⁰ *CJRI, 1308-14*, pp 223, 240-1, 271.

¹²¹ *CJRI, 1305-7*, pp 516-17.

¹²² Putting someone in exigent and outlawry at the same time was unusual. For more, see *infra*, p. 209.

coroner, in gaol for allowing a felon to escape and burying a body without a proper viewing. He was released with a fine due to his ‘simplicity and ignorance’.¹²³

Another case hints that Adam Rauf’s and Maurice’s cases were part of a larger trend of false, legal identifications. Laurence Bigetoun killed Robert de Barry and then fled to the church of Ardpatrik, co. Limerick. John Bigetoun, Laurence’s brother, was also indicted for the slaying, but was caught and taken to the king’s prison in the village of Cranystoun. John Bigetoun, however, escaped from the prison and the village was amerced for failure to guard the prisoner. Both Bigetoun men were put in exigent and outlawed and their goods were confiscated for flight. Then the jury revealed that Roger de Lees, the coroner, had taken a bribe from Christiana Rath, John’s mother, so that the former would use all of his powers as coroner to convince the *visus de morte* that Robert de Barry had been a *Hibernicus* and therefore John Bigetoun had committed no felony.¹²⁴ Roger de Lees was then sent to gaol for ‘his falseness’. The cases of Adam Rauf and Robert de Barry raise some difficult questions. It is clear that sympathetic or collusive juries rebranded slain English people as *Hibernici* to save the killers, but we cannot discern the frequency or breadth of this phenomenon. It may be possible that slain *Hibernici* were rebranded as English to punish the slayer, but we have also seen that it could be a felony to kill a *Hibernicus/-a* and that could be excusable to kill an English person.

Status of the slayer

Not every homicide was treated the same. Sometimes the punishment (or lack thereof) was based on the status of the slayer and not the slain. In 1271 a Gaelic force, led by Geoffrey Ó Fearghail, killed Nicholas de Verdon, Sir John de Verdon, Sir Thomas de Chaumpayne, and many other men. Professor Otway-Ruthven said this was a ‘battle’ at ‘Annaly’.¹²⁵ The English administration did not view this as a ‘battle’, however. Geoffrey Offergoll [G. Ó Fearghail], Thomas Mackcernan [G. Mac Thighearnáin?], and Annaly Makmalice [G. Ánle Mac Maoil Íosa?], along with their ‘young’ (L. *secta*) were charged with the homicides of the de Verdons and their retinue.¹²⁶ None of the accused appeared in court,

¹²³ Cf. the imprisonment of two justices for the same action in regards to slaying a ‘*purus Hibernicus*’: *supra*, p. 194.

¹²⁴ *CJRI, 1308-14*, pp 308-9.

¹²⁵ A. J. Otway-Ruthven, *A history of medieval Ireland* (London, 1968), p. 200.

¹²⁶ NAI, RC 8/1, p. 83. See also Archbishop Nicholas Mac Maoil Íosa: Chapter Five, *infra*, p. 264. Cf. the usage of ‘*sequela*’: *infra*, pp 241-3. Geoffrey was called ‘Séafraid’ in the Gaelic annals: *ALC*, p. 490; *AC*, p. 158. Cf. Safory Maleherke: Chapter Two, *supra*, p. 105.

and they were subsequently put in exigent and outlawed. The royal courts did not perceive acts of war as under their legal jurisdiction, although they did not completely ignore wars and battles. A few years after this case, Edward I replied to a petition that ‘*Rex non potest emendare omnes transgressiones guerre. Et sic dictum est ei*’ (the king cannot make amends for all trespasses of war. And the petitioner has been told this).¹²⁷ Although earlier Henry III granted to all of the people (Gaelic and English) of co. Kerry that they could recover damages from ‘Fínghin’s War’ (L. *Guerre Fynyn*) by ransom or any other means as long as they were not part of the ‘society’ or part of the ‘same enemies of the king’.¹²⁸ We should note that Fínghin Mac Carthaig was not prosecuted by the courts for the war.¹²⁹

Ó Fearghail’s outlawry did not appear to hinder him too much, at least in the surviving records. For the next twenty years he only appears in the Gaelic sources, occasionally, in succession to his family’s chieftaincy and in opposition to the English.¹³⁰ He reappears in the English records in 1297 when he was legally defended by the brother of the men he killed in 1271: Theobald de Verdon! Theobald sued Stephen de Ledurch for seizing Ó Fearghail’s goods at Knocrath. De Verdon sued on Ó Fearghail’s behalf because he claimed the latter as his *Hibernicus*.¹³¹ De Ledurch responded that Ó Fearghail was a *Hibernicus* and felon, and so the former took one hundred cows and sixty pigs legally. These arguments appear to show the variations in the use of *Hibernicus/-a* in the court records. De Verdon could have sued for Ó Fearghail as the lord of an injured man. The law allowed lords to sue or appeal on behalf of their retainers or tenants for maiming, wounding, or robbery when the latter were indisposed.¹³² But there is no evidence that Ó Fearghail was convalescent at that time. The lack of Ó Fearghail as a party to the suit may

¹²⁷ PROME, Edward I, Roll 3, m. 56 (<http://www.sd-editions.com/AnaServer?PROME+53087+parlfra.anv>) (26 Oct. 2016); *CDI*, 1285-92, p. 250.

¹²⁸ NAI, RC 7/1, p. 359. For Fínghin Mac Carthaig’s war, see J. F. Lydon, ‘Land of war’ in *NHI*, ii, pp 240-74 at 251-2. Lydon wrote that Mac Carthaig was accompanied by thirteen ‘knights’, but Harris wrote ‘*regulos*’ [kings of small kingdoms] not ‘*milites*’: Charles McNeill (ed.), ‘Harris: collectanea de rebus Hibernicis’ in *AH*, no. 6 (1934), pp 248-450 at 278-9.

¹²⁹ A year earlier, a *visus de morte* reported that Robert Russel was killed by Fynyn Macarthy and a list of other men. This record does not mention the war (L. *guerra*) or any charges against Mac Carthaig: NAI, RC 7/1, pp 296-7. See also, J. V. Kelleher, ‘Mac Anmchaid, *Lebróir*’ in *Ériu*, 42 (1991), pp 55-9; Duffy, ‘Ireland and the Irish Sea Region’, pp 119-20. Many thanks to Professor Duffy for showing me Kelleher’s article.

¹³⁰ *ALC*, pp 490-1, 512-15; *AC*, pp 174-5, 194-5.

¹³¹ NAI, RC 7/5, p. 372. Since we know that Ó Fearghail was a chief, he clearly was not a *nativus*. This instances appears to be an example of avowry. There is proof that Gaelic people paid English lords for avowry. We can probably assume these lords legally and physically protected the Gaels, and that the Gaels were socially free. We cannot tell how widespread this practice was or any side-effects. In Ballygaveran, lib. Kilkenny, in 1306 Huet O Laythgan, Patrick Moltron, and Flory Hybernica de Joeliston paid 4*d.* each for avowry (*pro esse in advocacione domini*): *RBO*, pp 40-1.

¹³² *Bracton*, ii, 356; Milsom, *Studies*, p. 16. Cf. Maurice de Carew’s sued for his men but withdrew: *supra*, pp 191-2.

mean, however, that Ó Fearghail was deemed unaccepted, that part of his peace agreement with de Verdon included a stipulation that Theobald would be Geoffrey's attorney, or that Ó Fearghail simply did not want to involve himself in the royal courts. De Ledurch's claim implies that Ó Fearghail was from Gaelic Ireland, and most likely implies that Ó Fearghail was not considered servile by the English. If de Ledurch claimed that Ó Fearghail was unfree, the case would have hinged on the chattels being the legal property of de Verdon as lord.¹³³ Theobald, who claimed to have the 'power of parliament', said that Geoffrey Ó Fearghail had been granted the king's peace since the 'parliament of Tolochgarhvan' and that peace had been publically proclaimed. No result was recorded, but Ó Fearghail appears in other cases, seemingly 'at peace'.¹³⁴ Since Ó Fearghail was a chief, we cannot label him 'unfree'. He is one of many examples of free Gaels who may have not been allowed to sue a civil case in court. But he was protected 'of life and limb' and in his personal property from homicide and robbery.

Two years later, in 1299, Geoffrey Ó Fearghail killed John de la Mare while the latter was hunting.¹³⁵ In 1302, William de la Mare, John's son, appealed Geoffrey for the death of his father.¹³⁶ Just as in the previous cases involving Ó Fearghail, there is no surviving judgment. However, in 1306 – in a very similar fashion to Ó Fearghail's interaction with Theobald de Verdon – William de la Mare, the son of Ó Fearghail's victim, demised lands and tenements to Geoffrey Ó Fearghail for a term of years!¹³⁷ We should note that Ó Fearghail had been re-labelled a 'felon of the king' again by that point, which means that de la Mare was violating the mandate not to interact with any 'felons of the king'. The lease was recorded in the justiciar's court roll because the grant was a special request of Richard de Burgh, earl of Ulster, which allowed de la Mare to break the prohibition. We can tell that Ó Fearghail was not hanged, probably was not mutilated, and

¹³³ As we saw earlier with Stephen de Aqua and Douenth OKynnedey: *supra*, p. 188.

¹³⁴ Professor Frame claimed that de Verdon's counterplea was fact: 'The king had given Theobald de Verdon permission to parley with Geoffrey O'Farrell and admit him to the peace. The parley had been held and the peace granted. Stephen shortly afterwards found himself in difficulties with the royal justices for having attacked O'Farrell': Frame, 'War and peace', pp 137-8. Frame also conflated rent from the Uí Fheargail to the heirs of Theobald de Verdon II in 1332 with the de Verdon-Ó Fearghail relationship in 1271. This was partly because he simply recited the assumption of Professor Otway-Ruthven that 'these rents must already have been in existence in the time of Walter de Lacy [ante 1241]'. She did not provide any proof for this: A. J. Otway-Ruthven, 'The partition of de Verdon lands in Ireland in 1332' in *PRIA*, lxvi (1967-8), pp 401-45, 447-55 at 413.

¹³⁵ *ALC*, pp 520-2; *AC*, pp 200-1; *Ann. Clon.*, p. 258.

¹³⁶ *NAI*, RC 8/1, p. 197.

¹³⁷ *CJRI*, 1305-7, p. 235.

did not appear to suffer financially for killing these Englishmen.¹³⁸ Also the outlawry, as in the earlier instance, did not lead to Geoffrey's demise. He died in 1318, probably of natural causes.¹³⁹

Geoffrey Ó Fearghail's interactions show us something else (besides his ability to turn enemies into grantors of land). While he was labelled, in one instance, a *Hibernicus*, he was not a *Hibernicus et natus*. As the Gaelic sources noted he was the chief of Annaly [G. 'taisech muintiri hAngaile'].¹⁴⁰ He clearly was free in Gaelic Ireland, but his record of a lease witnessed in the justiciar's court was proof of his free status in English Ireland. As we saw with the writs of *de nativo habendo* and the work of Paul Hyams has shown, lords in English Ireland and in England fought to keep their unfree tenants out of the royal courts because use of the courts was sufficient proof of free status.¹⁴¹ The recorded lease is even more surprising since Ó Fearghail was outlawed at that time.¹⁴² Usually, only English magnates accomplished similar feats.

Another Gael associated with Theobald de Verdon was charged with crimes. Doneghuth O'railly [G. *Donnchadh Ó Raghailigh?*], 'a faithful man of Theobald de Verdon', supposedly stole cattle from Nicholas de Netterville and his betaghs, and subsequently O'railly was outlawed in the county court of Meath for not appearing to answer the charge. Nicholas's sons sued O'railly's English allies for rescuing distresses (O'railly's cows) taken by the former after the outlawry. During the count, the de Nettervilles alleged that O'railly had sent his men (not the same as the Englishmen in the case) to steal Nicholas's cows. Clearly, O'railly was of a high social status and free, but his summons to the county court may not be sufficient to say that he was accepted.¹⁴³ In the court case, it was revealed that O'railly had convinced the justiciar to broker a peace deal

¹³⁸ Paul Hyams noted a few cases in England when an aggrieved party became lord of the perpetrator, and the latter gave homage to the former. His note on the wording of grants ('saving faith to my other lords and especially for the keeping of the peace') should be applied to a study of English Ireland. Many surviving grants state: 'saving faith to our lord king'. This may indicate that many grants in English Ireland were, in fact, peace accords which no other record of the feud survives: Hyams, *Rancor & reconciliation*, pp 202-6.

¹³⁹ *ALC*, pp 596-7.

¹⁴⁰ *AC*, p. 174. Cf. Ó Madadháin was a king, a *Hibernicus*, and allowed to use the royal courts at the same time: Chapter One, *supra*, p. 29-30.

¹⁴¹ Hyams, *King, lords and peasants*, pp 145-57. See also, court judgments and jury reports: *supra*, pp 16 (n. 87), 155-6, 170, 202.

¹⁴² The inquisition in 1333 reported that nothing could be taken from Síol Anmchadha because it was 'under the power of Ó Madadháin', but in the same inquisition the jurors reported that Ó Madadháin held some of those lands in fee: *IEMI*, no. 264. Cf. the Uí Thuathail losing their lands held in fee for committing felonies: *infra*, pp 230-1.

¹⁴³ Cf. previous juries and courts determined that being answered as a defendant was proof of free and accepted status: Walter Ó Tuathail: Introduction, *supra*, p. 16, n. 87; William le Teynturner, Maurice Macotere, and Henry Scot: Chapter Three, *infra*, pp 155-6, 170; a man named Maurice, *supra*, p. 202.

and remit the outlawry. In front of two justices of the Dublin Bench, Orailly agreed to pay 5 marks to de Netterville for receiving sixty cows stolen from the latter. When the fine was 20s. in arrears, Nicholas sent his sons to collect a pledge for payment from Doneghuth. The de Nettervilles found Orailly's cows on Theobald de Verdon's lands and drove them towards Nicholas's manor. The 'shepherd' of the cows raised the hue and cry and many Englishmen went to stop the cattle raid (or distraint from the de Nettervilles' perspective). Men on both sides were wounded. The de Nettervilles sued the Englishmen from de Verdon's lands and the case revealed that Orailly was, despite being outlawed, still considered a 'faithful man' and repressor of felons in Meath.¹⁴⁴

Not every Gael who killed Englishmen escaped unharmed. Richard de Cantilupe, sheriff of Kerry, caught Thomas Obrochan [G. *Ó Bruacháin?*] after the latter killed Ralph de Cantilupe. Richard then caused the *membra* (arms and legs?) of Obrochan to be cut off. Richard was later indicted for this punishment.¹⁴⁵ It was deemed unacceptable by the courts. De Cantilupe escaped corporal punishment, though, by paying a very large fine (£66 13s. 4d.) for all of his felonies and trespasses. Other Gaels who killed Englishmen appear to have been semi-free. William Oneell [G. *Ó Néill*], along with other Gaels, killed Milo le Poer and then fled.¹⁴⁶ All of the alleged homicides were subsequently outlawed. William had considerable chattels (£27 3s. 4½d.) and those were supposed to be forfeited to the king, but they ended up in the possession of Otto de Grandison. This is peculiar because in a previous case three Englishmen were outlawed for burning the house of William Oneyll, *Hibernicus* of Otto de Grandison.¹⁴⁷ The court recognised that Oneyll owned a house, and charged the Englishmen for the arson. This may have been because of the general fear of arson at that time, but it appears that Oneyll's house was in a rural area. So there was no danger to other people's houses. Perhaps he was free but unaccepted (or possibly semi-free), and had paid de Grandison for avowry.¹⁴⁸ William Oneel had a pardon for all felonies up to that day of court, but no mention was made of Otto de Grandison.¹⁴⁹ The record does not tell us if William recovered his chattels from de Grandison after the

¹⁴⁴ *CJRI*, 1305-7, pp 175-7.

¹⁴⁵ *CJRI*, 1295-1303, pp 25-6. Cf. Adam de Cantilupe, Richard's brother, was also indicted for felonies: *supra*, pp 185-6.

¹⁴⁶ NAI, JUS 33-4 Ed I, ff 128r-31r.

¹⁴⁷ NAI, JUS 33-4 Ed I, ff 97r, 125r.

¹⁴⁸ See *supra*, n. 131.

¹⁴⁹ NAI, JUS 33-4 Ed I, f. 83r.

pardon. It only states that the former had possession but he also had to account for the value to the exchequer.¹⁵⁰

An earlier record raises a problem. Doneyld OCothyl [G. *Domhnall Ó Cathail?*] was ‘waived’ for the death of John Comyn.¹⁵¹ It has traditionally been assumed that only women and children were ‘waived’ instead of being ‘outlawed’ because women and children were not ‘in the law’.¹⁵² As with all absolute statements, we should question the veracity of this conclusion. How could women be outside the law and simultaneously hanged for robbery and homicide? The short answer is that they were not ‘outside the law’ in criminal matters. Women were charged with felonies the same as men, and hanged for the crimes the same as men. Cristiana Connagh’ feloniously killed Hammond nephew of Archbishop Stephen of Cashel. We cannot tell if she was captured and gaoled, or had fled, but the record of her pardon survives. On 6 May 1305 Edmund le Botiller, custos of Ireland, granted Cristiana a royal pardon and she subsequently had it enrolled in the court record.¹⁵³ Alice Inybrenan [G. *inghean Uí Braonáin*] was accused of being a common robber and spy, that she was present at the robbery of John de la Freyne, and robbed diverse goods worth £40. She came to court and said that she was not guilty. The jury said that she was guilty and suspected of other misdeeds, and then she was hanged.¹⁵⁴ Covyn Inykyl [G. *Caoimhinn inghean Uí Chathail?*] – along with Adam son of Ralph Trolee – was charged that she stole a heifer worth 2*s.* and did not appear to answer the charge. She was *outlawed*.¹⁵⁵ Sinniota wife of Thomas Gilbe broke the house of Gilbert de Nassch and stole various items worth 33*d.* She did not appear to answer the charge and was *outlawed*.¹⁵⁶ There are many other instances which demonstrate that women were almost always completely equal to men under the criminal law. We can also see that this was not a peculiarity to English Ireland; it also happened in England. During the Surrey eyre of 1263 several women were charged along with men for various crimes. When the accused did not

¹⁵⁰ Cf. Paul Hyams found that in England the chattels of a villein who committed a felony could not be given to his/her lord because lords would then fabricate felonies to confiscate the chattels of their unfree tenants: Hyams, *Kings, lords*, pp 131-2.

¹⁵¹ NAI, RC 8/1, p. 98.

¹⁵² F. W. Maitland, L. W. V. Harcourt, and W. C. Bolland (ed.), *Year books vol. v: the eyre of Kent of 6 & 7 Edward II: vol. i* (SS, xxiv, London, 1910), pp 106, 108; Hunnisett, *Medieval coroner*, p. 62. For evidence contradicting this claim, see *infra*, pp 207-9. Perhaps the record from Kent only pertained to Kent. It could have been a Kentish peculiarity similar to gavelkind.

¹⁵³ NAI, RC 7/11, p. 197.

¹⁵⁴ NAI, KB 2/8, f. 94r. Men were also accused of being spies. It was not peculiar to women. Philip Tancard was hanged for being a spy amongst the English and the Gaels: NAI, KB 2/8, f. 16r. Other Gaelic women were charged with being spies, but the jury determined that they were not: *CJRI, 1308-14*, p. 294.

¹⁵⁵ NAI, JUS 33-4 Ed I, f. 50r.

¹⁵⁶ NAI, JUS 33-4 Ed I, f. 166r.

appear, they were all equally outlawed and put in exigent.¹⁵⁷ In these cases, women were not waived, though, in others, women were. Neuoc Inyn Oconoyl [G. *Niamhóg inghean Uí Chonail?*] and six men were charged with killing Walter Sweyn, sergeant of the king, at the instance of Agnes widow of John Moyl. None appeared in court. The men were outlawed and the two women were waived.¹⁵⁸ So, we must decide whether the outlawed women were exceptional or signs of procedural changes in the royal courts.

If we assume that Doneyld OCothyl was waived because he was ‘outside’ the law, then there are still complications with this conclusion. The first problem is that Gaels from Gaelic Ireland were outlawed.¹⁵⁹ The second and much larger problem is that English lords were ‘waived’. John Russel, lord of Kylcronecop, was waived in co. Dublin at the appeal of John de Stanley for robbery.¹⁶⁰ Russel was subsequently put in exigent and outlawed, but that does not change the fact that he was waived. If an English lord could be waived, then waiving was not an indication that OCothyl was unfree or ‘outside the law’. The record does not call OCothyl a *nativus* or even a *Hibernicus*. The term ‘waived’ could have been used for personal appeals. Sane [G. *Sadhbh?*] widow of Peter le Granger appealed Thomas MacTraner [G. *Mac Thréinfhir*] and Eugelyn OCarran [G. *Uighilín Ó Cearnacháin?*] for the death of Peter. The record states that MacTraner and OCarran were ‘waived at the appeal of Sane... in co. Dublin’. They were, just as John Russel, subsequently put in exigent and outlawed.¹⁶¹ One of the inquisitions into the archbishopric of Dublin in c.1263 revealed that ‘no one waived by the king [Henry III] or the Lord Edward was received within the archbishop’s tenement [of Castlekevin]... [And] Englishmen were all waived for stealing nags [small horses] and cows and for killing Caym Otonyn’s daughter [G. *Caomh Ó Coinín?*]’.¹⁶² If we focus on the evidence, it appears to have been a mesne process before outlawry similar to exigence. Another historiographical problem is that traditionally exigence was assumed to be the mesne process before outlawry.¹⁶³ But in many surviving cases from the royal courts, defendants in criminal proceedings who did not appear were put in exigent and outlawed at the same time. This was not revolutionary. The same thing was happening in England in the

¹⁵⁷ *1263 Surrey eyre*, nos 709, 730.

¹⁵⁸ *CJRI, 1295-1303*, p. 187.

¹⁵⁹ For example, Geoffrey Ó Fearghaill: *supra*, pp 203-6.

¹⁶⁰ NAI, RC 8/1, p. 99.

¹⁶¹ NAI, RC 8/1, pp 98-9.

¹⁶² *Hist & mun docs*, pp 150-1; *CAAR*, p. 110 [in English]; Table 2, *supra*, pp 55-7. There were at least nine Gaels on that jury. See also Ostmen were waived in the archbishop’s court: *Hist & mun docs*, pp 143, 147.

¹⁶³ Hunnisett, *Medieval coroner*, pp 63-4.

thirteenth century.¹⁶⁴ Perhaps waiving replaced exigence as the mesne process before outlawry after the latter two were combined into a single event.

A Gael, whose full name has not survived ‘__merdon Mac Donehoth’, was charged with the death of Walter Wyart. Mac Donehoth appeared in court and put himself ‘on the law’.¹⁶⁵ This is important because Professor Hand wrote that a Gaelic defendant ‘apparently suffered only one disability: he could not be admitted to wager of law’.¹⁶⁶ But in this case, Mac Donehoth was a fully accepted member of English Ireland and allowed to use the procedure. He was, however, convicted of being culpable for Wyart’s death. No punishment was recorded, but most likely Mac Donehoth was hanged or allowed to pay a fine. We cannot conclude either happened without further evidence.¹⁶⁷

Women also killed Englishmen. The wording of one case tells us many aspects of different women’s legal status. A ‘woman named Isabel and her daughter’ were convicted of murdering Adam son of Robert and his brother. As I noted earlier ‘murder’ was a different charge from homicide. It implied covertness and planning. It was not the same as the *murdrum* fine, which meant that ‘Englishry’ had not been presented.¹⁶⁸ The seneschal of the prior of St Trinity heard the murder charge in the liberty court of the church. The court convicted both women. Isabel was hanged and her daughter was mutilated (her ear [L. *auricula*] was cut off). The seneschal, John, was called into the royal court to answer why he had mutilated the daughter. John responded that she was a *Hibernica*. The court decided that she was an *Anglica*. John the seneschal and the liberty court were attached to appear to be sentenced.¹⁶⁹ We do not know how John and the court were punished. This case does tell us that mutilation of *Hibernici* was a privilege which some liberty courts claimed.¹⁷⁰ And while the record did not name Isabel’s daughter, it did not name Adam son of Robert’s brother either. So, does that reflect on their status? This case brings up more

¹⁶⁴ For example, *1263 Surrey eyre*, nos 709, 730.

¹⁶⁵ NAI, RC 7/1, p. 212.

¹⁶⁶ Hand, *English law*, p. 201.

¹⁶⁷ Cf. Luke Brydyn and his wife, Auda, were sued by the abbot of St Thomas, Dublin, and offered to prove themselves by law. The abbot said that they were not allowed to defend themselves against his claim because Luke was a *purus Hibernicus*: Chapter Five, *infra*, pp 274-5.

¹⁶⁸ F. C. Hamil, ‘Presentment of Englishry and the murder fine’ in *Speculum*, xii, no. 3 (1937), pp 285-98.

¹⁶⁹ NAI, RC 8/1, p. 9. The published calendars of the justiciar’s court rolls occasionally use ‘murder’, but without the originals or Latin transcripts, we must assume these are mistranslations by the editors: e.g. *CJRI, 1295-1303*, p. 13.

¹⁷⁰ The royal courts mutilated one thief in the surviving records (1260). We cannot speculate on the frequency of its usage prior to the 1290s, but it does not appear in the abundant records from that time. See the case of Cath: *infra*, pp 237-8. There are a few records of people charged with mutilation. Twelve men from a town in co. Cork, caught Adam Cor, *Anglicus*, stealing a quarter of wheat from John le Flemeng, and supposedly cut both of his hands off for it. They were cleared of the charge: *CJRI, 1295-1303*, p. 62. See also, mutilation of Thomas Obrochan: *supra*, pp 206-7.

questions than it answers. I think we can assume that Isabel was not a *Hibernica* because she was never designated such. She was called a *femina*. But the record does not tell us why, if the daughter was guilty, she was not hanged with her mother. It does not tell us if the seneschal had to pay any damages to the daughter for the mutilation or if she had to answer for the murder to victims' family.

Isabel and her daughter were not the only women to kill Englishmen. Gilleban [G. *Giolla Bháin?*] killed her employer, Thomas Ore, and fled. We know that Gilleban was a woman, and Thomas was her employer, because she was labelled a '*famula*'. The coroner's viewing reported that Gilleban killed Thomas 'wickedly' (L. *nequiter*) at Kells and then fled.¹⁷¹ Susan Stuard has discussed the lack of analysis of the term '*famula*', and so we do not need to recount her examination here.¹⁷² She believed the term to denote an unfree woman. But this would have been unusual for English Ireland as the normal term deployed was *nativa*. Michael Postan framed the *famulus* as a hired labourer, who could be free or unfree.¹⁷³ Martin, *famulus* of Jordan de Kalne de Haverford, was admitted to the Dublin guild merchant in 1245-6.¹⁷⁴ So, *famuli* in English Ireland could be free people. The other curious part of the record is the final '&c'. We do not know whether Gilleban was outlawed, waived, or she abjured. This would have helped the earlier examination of men who were waived.

Other crimes

Rape/seizure

The crime of *raptus* cannot be ignored. It is prevalent throughout the court records. John Bellamy tried to frame the thirteenth-century changes to the definition of *raptus*, but he was criticised for degrading the subject to an appendix.¹⁷⁵ He focused on the Statutes of

¹⁷¹ NAI, RC 8/1, p. 74. She was not charged with 'petty treason' (L. *seditio*): Pollock & Maitland, *History of English law*, ii, 504, n. 2.

¹⁷² S. M. Stuard, 'Ancillary evidence for the decline of medieval slavery' in *Past & Present*, no. 149 (1995), pp 3-28 at 8-9.

¹⁷³ M. M. Postan, 'The famulus: the estate labourer in the XIIth and XIIIth centuries', *Econ. Hist. Rev. Supplements*, ii. (1954). Maitland translated '*famulus*' as 'son of'. Perhaps he conflated it with '*filius*': F. W. Maitland (ed.), *Select pleas in manorial courts and other seigneurial courts* (SS, ii, London, 1889), p. 182.

¹⁷⁴ *DGMR*, p. 84.

¹⁷⁵ J. G. Bellamy, *The criminal trial in later medieval England: felony before the courts from Edward I to the sixteenth century* (Stroud, 1998), pp 162-86. For one critique, see R. V. Turner, 'Reviews: the criminal trial in later medieval England' in *Speculum*, lxxvi, no. 1 (2001), pp 134-5.

Westminster and on whether ‘abduction’ was a crime before 1275.¹⁷⁶ The main aspects we should explore are what actions contemporaries defined as ‘rape’, how rapists were punished, and how victims were treated. Roy Hunnisett detailed the mesne process from post factum to the criminal prosecution of rape:

A raped woman, who wished to lodge an appeal, had not only to raise the hue and cry but also, if possible, to produce material signs of the offence—a flow of blood, or torn or blood-stained clothes. These signs had to be shown to the men of the neighbouring townships, the bailiff of the hundred and the coroners. They were important because they made it necessary for the appellee to find four or more sureties for his appearance at the eyre in the early thirteenth century and later disqualified him from bail, whereas he only had to find two sureties in the absence of such signs.¹⁷⁷

While the victim’s refusal to submit to this process did not immediately preclude indictment or prosecution, we should probably assume that without the victim presenting herself (or himself) for inspection to a group of strange men, she (or he) would have been suspected of fabricating the events.¹⁷⁸ We cannot explore the mesne process for indictment or appeal of rape in English Ireland because the surviving records do not detail it. We can, however, analyse the treatment of the accused and punishments of the convicted.

Nellyth [G. *Neilli?*] appealed a list of Gaelic men of rape *contra pacem regis*. She did not appear to prosecute her case and so the defendants, Morhoth Okenedy [G. *Murchadh Ó Cinnéide?*], Rinlef Okenedy [G. *Ruinbhilín Ó Cinnéide?*], Dermot Okenedi [G. *Diarmaid Ó Cinnéide?*], Inegos Mac Gillernath Mac Gorman [G. *Éigneach mac Giollariabaig Mac Gormáin?*], Pruhenach Okenedy [G. *Proinnach Ó Cinnéide?*], Karrath Broseny [G. *Carthach Ó Brosnacháin?*], Rothery Ofynan [G. *Ruaidhrí Ó Fionnáin?*], Conekor Oconyng Mac Gillisse [G. *Conchobhar ó Coinín Mac Giolla Íosa?*], and Moriardach Mac Tathek Okenedy [G. *Muircheartach mac Tadhg Ó Cinnéide?*] were all released *sine die*.¹⁷⁹ We must be extremely mindful of cases such as these. Many factors could have led to Nellyth’s nonappearance. Bellamy wagered that women who did not

¹⁷⁶ Bellamy asserted that ‘abduction’ was not a crime before 1275, but Professor Pugh noted that the Statute of Merton (1236) made ‘ravishment’ (*raptus* of an underage heir) a gaol-worthy offence: R. B. Pugh, *Imprisonment in medieval England* (Cambridge, 1968), p. 8-9. I do not use ‘abduction’ for *raptus* because the cases examined use a form of *rapere/raptus*, and usually the court used *abduxit* for carrying goods away: e.g. NAI, RC 7/10, pp 310-11. But there is the problem that *rapuit* was occasionally used for goods: ‘Andrew Martel *rapuit* a black horse from Walter Martel’: NAI, JUS 33-4 Ed I, f. 163r. And in later cases *abduxerit* was used for abduction: RC 7/10, p. 599; RC 7/11, pp 255-6, 279-80, 337-8.

¹⁷⁷ Hunnisett, *Medieval coroner*, p. 57.

¹⁷⁸ Historians have not mentioned any cases of medieval men being raped. However, Thomas de Northampton charged four people with raping and abducting (L. *rapuerunt & abduxerunt*) his grandson, John son of Richard son of Thomas: NAI, RC 7/11, pp 255-6.

¹⁷⁹ NAI, RC 7/1, p. 209.

prosecute had made an out-of-court settlement.¹⁸⁰ It is also possible that the men intimidated or physically prevented Nellyth from appearing in court.¹⁸¹ It is almost certain that Nellyth did not fabricate the appeal despite her failure to prosecute.

John Gaynard and his brother, William, were appealed by Synold de la Bere for raping her. They paid 20 marks to have the charges dismissed (L. '*faciunt finem pro visneto relaxando xx marcis*').¹⁸² The pleading in this case was not recorded. Nor do we know if Synold was awarded any damages. The 20 marks went entirely to the exchequer. In a case noted by Doctors Kenny and Foley, Richard Tyrel was charged with carrying off and raping Eve daughter of William and he could not deny the charge.¹⁸³ Tyrel did not, as Kenny and Foley suggest, give 100 marks to Eve or her father. He paid it to the exchequer to make fine for his breaking the peace. The exchequer then assigned the 100 marks into ten payments for royal debts. Tyrel did agree to arrange a marriage for Eve as compensation to her, and in return, she had to agree never to sue him for the rape.¹⁸⁴ With the large fine paid by Tyrel, the English administration does not appear to have taken any more interest in this case – especially since the court allowed Tyrel to block Eve from ever suing him for the rape.¹⁸⁵

In other instances, men tried to rape women, but failed. It did not always end well for the woman in those cases either. Savine [G. *Saidhbhín?*] was killed near Ardach, co. Kerry by Richard son of William son of Resus [W. *Rhys*]. He strangled her with her own veil (L. *peplum*) after she claimed that Richard wanted to rape her (L. '*clamavit cum ipsiam rapere voluit*').¹⁸⁶ He immediately fled the scene and was put in exigent. A man

¹⁸⁰ Bellamy, *Criminal trial*, p. 165.

¹⁸¹ Grannath the widow of Thomas Ohyrman claimed that men killed Thomas on the way to sue writs in court in Dublin. The jury ruled that this claim was not true (some historians missed the ruling): *CJRI*, 1305-7, pp 413-14. A man was killed by his opponents on his way to the Dublin Bench to sue for false appeal: *ibid.*, p. 491; Hand, *English law*, p. 62.

¹⁸² NAI, RC 8/1, p. 88. If Synold was the daughter of Peter de la Bere, then other men were charged with raping her, as well. Gillepat'k Mac Comproy, Karnel Mac Cummethe, and John Geyyard [the same man from the appeal?] were indicted, instead of privately appealed, for violently raping (L. *vi rapuit*) the daughter of Peter de la Bere. They did not appear in court, and were put in exigent and outlawed: NAI, RC 8/1, p. 87. For the phrase '*pro visneto relaxatio*', see *infra*, pp 242-5.

¹⁸³ Kenny, *Anglo-Irish and Gaelic women*, pp 42-3; Foley, *Royal manors*, p. 161. We should note that the surviving record does not call Eve's father 'William de London'. Dr Kenny and Dr Foley created this 'surname' by inventing the missing letters from the record. He is recorded as 'William de Lo...' and 'William de Loud...'.¹⁸⁴

¹⁸⁴ *CJRI*, 1308-14, pp 154-5.

¹⁸⁵ See also, Walter de Swyneshened paid £100 so that his cousins, William, junior, and Osbert le Bret, could return to Ireland and inherit the lands of their father, William le Bret, senior. It appears the two had gone overseas after they raped Agatha de Turvyle. There is no mention of restitution to Agatha: NAI, RC 7/3, pp 257-8.

¹⁸⁶ NAI, RC 7/1, p. 162.

whose full name has not survived killed Caterine Boy because she would not allow him to ‘know her carnally’ (L. *quod non permisit ipsum ipsam carnaliter novisse*). It is important to note that the phrase a man ‘carnally knew a woman against her will’ was the usual phraseology in rape cases.¹⁸⁷ He also immediately fled the scene and was put in exigent and outlawed.¹⁸⁸ The combining of exigence and outlawry is examined above.¹⁸⁹ Savine was probably a Gael, but we cannot definitively label Caterine Boy. She could have been an *Ó Buidhe* or de Bosco. The victims’ status appears to be the same though. Both killers fled the scene immediately because they knew the punishment for their crime was not dependent on the victim’s ethnic status.

In another case we encounter the problem of the contemporary definition of *raptus*. John son of William Becche was charged that he feloniously ‘raped’ Clarice wife of Laurence against her will. John’s father and brother were also charged in the same case for receiving John post factum. The three accused came to the court, and of grace, were allowed to make fine by 1 mark.¹⁹⁰ There are several possibilities why this fine was so small. One could be that John son of William only seized Clarice and did not sexually assault her. Similar cases survive.¹⁹¹ Another could be that since she was married the fine was less than normal because the court assumed she was not a virgin. This seems less likely because the courts in English Ireland did not mention virginity in *raptus* cases. The most likely possibility is that the fine was low because the pledge for the perpetrators to pay their fine also pledged that they would satisfy Clarice (remunerate her for the crime).

We can compare Clarice wife of Laurence’s case to that of Alice Walour’s case. Maurice de Bathe, James de Valle, Thomas de Nangle, Maurice McBaghely [G. *Mac Baothghalaigh?*], and Gilbert son of Thomas O Nolan [G. *Ó Nualláin*] were charged that they waylaid Alice on the highway between Ardmayle and Cashel, led her to ‘KilmcClegh’, and Maurice de Bathe raped her there.¹⁹² The five men were allowed to make fine by £40 (all of which went to the exchequer). This seems a more appropriate fine, but there is no record of damages to Alice or if the fine was so great because of the waylaying on the highway. But this record was extraordinary. In other rape cases (had carnal knowledge of the victim against her will), the rapists were allowed to make fines of

¹⁸⁷ For example, *CJRI, 1308-14*, pp 208, 276.

¹⁸⁸ NAI, RC 8/1, p. 97. His surname was ‘le Heywer’ [the Hayward].

¹⁸⁹ *Supra*, pp 184, 207-9.

¹⁹⁰ *CJRI, 1308-14*, p. 322.

¹⁹¹ See the cases of *rapuit* brought by Matilda la Botiller: Chapter Two, *supra*, pp 108-9.

¹⁹² *CJRI, 1308-14*, p. 302.

40s. and 10 marks.¹⁹³ The fine in Alice Walour's case may have been so high on account of the participation of five men instead of one, her social status, or because the rapists had the ability to pay the larger fine. Unfortunately, the court did not explicate how and why the fines were assessed at those amounts.

The terminology in a final case implies two women were raped, at least according to traditional constructs of medieval English law. Wasmayr Okenwan [G. Ó *Ciardhubháin?*] was charged with receiving Nicholas son of Griffin Ledyr, a common robber. The jurors said that Nicholas together with other malefactors came to Wasmayr's house and forcibly slept in his house with his wife and daughter against Wasmayr's will.¹⁹⁴ While this record lacks '*rapaverunt*' or '*noverunt carnaliter contra voluntate sua*', it does indicate that the malefactors forcibly slept with the women. It is peculiar that no charge of rape was raised, though, since the record is clear that these actions were against the will of Wasmayr. It takes no heed of whether the acts were against the will of the women or not, which was the usual concern of the court in cases of rape.¹⁹⁵ In 1305 David Drak was charged with raping the wife of William Warwyk (she was not named). The jurors said that Drak did 'rape' Warwyk's wife, but it was by her will and Drak wasted nothing of the goods of Warwyk. Drak was allowed to make fine (for breaking the peace?) by 40s.¹⁹⁶

Wounding

Wounding, assault, and maiming were regular occurrences in thirteenth- and fourteenth-century Ireland, as they were elsewhere. Injured people occasionally had to sue their attackers for damages. These cases show us freedom and unfreedom, acceptance, and some social aspects of that society. In 1278, Simon son of Arnold le Paum' [Paumer?] was attached to respond to Richard de Northampton of a complaint that Simon, against the peace, wounded Gillekeynu' Okosory [G. *Giolla Chaoimhín Ó Coscraigh?*], Richard's sergeant, at the Abbey of Mellifont.¹⁹⁷ Okosory was not a *Hibernicus*, and he was probably free since he was a sergeant. It is probable that Richard de Northampton sued for Okosory because he was too injured to appear in court. That was an acceptable reason for a lord to

¹⁹³ *CJRI, 1308-14*, pp 208, 276.

¹⁹⁴ *CJRI, 1308-14*, p. 216.

¹⁹⁵ For instance, Roger Colyn [G. Ó *Coileáin?*] and four other men were charged with feloniously carrying away Isolde la Hore against her will. The jurors returned that Isolde freely and of her own wish became the mistress of Roger and stayed with him. All of the accused were then acquitted: *CJRI, 1308-14*, p. 236.

¹⁹⁶ NAI, JUS 33-4 Ed I, f. 140r.

¹⁹⁷ NAI, RC 8/1, p. 55.

sue for an English retainer or tenant. A bit later, in 1302, the ‘sheriff’ (viscount) of Dublin was ordered to publicly proclaim – in his court and in every county court – that Walter Bole and Rotherath Madok [W. *Rhodri Madog?*] were to be attached on sight because they had not appeared in court. Bole and Madok had wounded John Brodre [G. *Ó Bruadair?*], *Hibernicus* of Richard le Poer, at Balymetagh. Bole and Madok were not found or captured, and they were ‘publicly’ outlawed.¹⁹⁸ This was also a private appeal, but it shows us several important facts. The court did not use the exigent process, but instead, sent the sheriff of Dublin around the English lands to find the defendants. We cannot assume these were identical cases. Okosory was not a *Hibernicus*, while Brodre was. Neither was called a *nativus*. And Richard de Northampton suing for Okosory does not prove that Okosory was denied access to the courts. Brodre may have been barred from bringing civil actions on his own.

In one exceptional case, Stephen de Sarnisfeud with his *Hibernicus*, Dunghut M’tmoy [G. *Donnchadh Mac Maolmhuidh?*], sued David le Waleys in 1297 for beating Dunghut.¹⁹⁹ Le Waleys came to court and did not deny the charge, but instead, claimed that he had sued M’tmoy in the court of John de Cogan when M’tmoy was the *Hibernicus* of Richard de Cogan. The record does not detail how the judgment from John de Cogan’s court allowed le Waleys to beat M’tmoy. It confirms, however, that *Hibernici* in English Ireland were allowed to use the manorial courts, just as villeins in England, for redress. It also shows that in this instance a seemingly-unfree person was allowed to use the royal courts along with his lord. Geoffrey Hand took this case to prove a ‘rule’, but no other case record of this nature survives.²⁰⁰ In the other case cited by Professor Hand in support of his argument that unfree *Hibernici* could join their lord and sue for trespass, Thomas Daundoun sued Adam le Feure, alone, for a trespass against Philip, Daundoun’s *Hibernicus*. Philip was not a party to the suit.²⁰¹ The result does not survive for this latter case. These two cases do not prove any rule of law, and when contextualised with other court records it is clear that some *Hibernici* could use the royal courts while others could not, and that people were indicted for wounding *Hibernici* and others were appealed for the same.

¹⁹⁸ NAI, RC 8/1, p. 227. This case used: ‘*Ideo publice utlagaria fuerunt*’. This was an unusual phrasing. The regular phrase was: ‘*ideo utlagaria fuerunt*’. The adverb *publice* probably means their outlawry was rather infamous and this assault was considered especially egregious.

¹⁹⁹ *CJRI, 1295-1303*, p. 162.

²⁰⁰ Hand, *English law*, p. 199. Hand may be right that M’tmoy was free but unaccepted, and had paid de Sarnisfeud for avowry. But there is no way to confirm this guess.

²⁰¹ NAI, KB 2/5, f. 102r. Hand miscited this as ‘J.R. 7 Edw. II (no. 105), m. 19’ which no longer existed when he wrote his monograph in 1967.

In a well-known case we can see the vacillation of the term *Hibernicus/-a*, but more importantly, the freedom and acceptance of some *Hibernici*.²⁰² The jury in the justiciar's court determined that Walter de Capella was a *Hibernicus* of the name Offyn [G. *Ó Fionn*], and that Walter and his father were millers of John Thebaud at Fersketh, co. Limerick – but not *Hibernici* of Thebaud. The last remark is crucial. In the other cases examined, it appears that unfree people are always listed with their lord in the surviving records (e.g. Douenth OKynned, *Hibernicus* of Stephen de Aqua). The jury in Walter de Capella's case then reported that an argument broke out between de Capella and 'a mistress of John' in which both threw insults and then threats, and then de Capella fled the scene. He stayed in Henry de Cogan's house for 40 days, but Thebaud found him there and put de Capella in stocks. After Walter escaped the stocks, Thebaud tore out his eyes. The court decided to gaol Thebaud, but he was later allowed to make fine by 100s. (to the exchequer) with the added clause that he maintain Walter de Capella with 'reasonable sustenance for life' which was worth 20s. per year.²⁰³ We should also note that John Thebaud had to place his lands as warranty that he would sustain de Capella. While the courts did not 'protect' Walter de Capella from being mutilated, they did recognise his freedom and acceptance and treat him the same as an Englishman who had suffered a similar fate.²⁰⁴

Not every instance of wounding was malicious or between enemies. William Bernard and John McCorcan [G. *Mac Corcáin?*] were 'fast friends' from the town of Newcastle de Lyons. One Sunday Bernard was playing ball with the men of the town and McCorcan was watching. The ball was struck towards McCorcan and he ran after the ball. Bernard chased after the ball, as well, and the two men collided. McCorcan happened to have a knife on him at the time, and it pierced Bernard in the leg. The jurors assessed that this wound was worth 5s. damages to Bernard and the court pardoned the amercement because the injury was not from malice and the men were friends.²⁰⁵ It is peculiar that since the two were 'fast friends', Bernard had to sue McCorcan. This case shows us that English people and Gaels could be friends, McCorcan was free and accepted, and that even unintentional wounds were penalised under the criminal law in English Ireland.

²⁰² Mills, 'preface' in *CJRI, 1295-1303*, viii-ix; Curtis, 'Rental of Lisronagh', p. 73; Hand, *English law*, p. 194.

²⁰³ *CJRI, 1295-1303*, pp 342-3. Cf. the rape of Eve daughter of William: *supra*, pp 212-13.

²⁰⁴ Maurice son of Laurence de India lost his left eye in an oyster accident in a tavern. The culprit was forced to pay him 100s. in damages: *CJRI, 1295-1303*, p. 334.

²⁰⁵ *CJRI, 1308-14*, p. 103; NAI, M 2542, p. 336.

Another case shows that the royal courts tolerated ‘self-help’ by free Gaels. Sowery O Donegan [G. *Somhairle Ó Donnagáin?*] was charged that he waylaid Henry O Leynan [G. *Ó Leannáin?*], a man of Richard le Poer, sheriff of Tipperary, and robbed O Leynan of a horse (*L. affrus*) worth 5s. O Donegan came to court and defended (denied the crime). The jurors reported that O Donegan saw O Leynan on the highway riding a horse which the latter had stolen from the former. So O Donegan threw O Leynan off the horse and led it away.²⁰⁶ O Donegan was given a free pardon (‘of grace’ and no fine recorded) for any criminal charge probably because he was recovering his own property. This case demonstrates that both Gaels were free and accepted and that Richard le Poer had Gaels in his employment. One case involved a supposed *Hibernicus* as the attacker and not as the victim. We learned in Chapter One that John Morice sued Benedict son of John de Drogheda for forestalling, attempted homicide, and theft of a horse.²⁰⁷ Benedict argued his defence in the justiciar’s court (Morice gave it freely to repay a debt) and Morice countered that no *Hibernicus* could speak in court, which we have learned was not the law. Benedict presented his grant to use the royal courts from Edward I and was then cleared of the charges.²⁰⁸ The previous cases tell us that Morice’s counterplea was unfounded, but that he thought he could convince the jury or the justiciar to enforce his contrived rule of law. It was not an isolated incident. Richard le Blake sued Adam le Blunt for wounding. Le Blunt came to court and said he did not have to respond because le Blake was a ‘*Hibernicus* of the progeny of Okegle from Adhmacart’ [G. *Ó Coigligh?*]. The jury determined that le Blake was an *Anglicus* of the progeny of William Cadel and born at Tyrmayl, and the court granted le Blake half a mark in damages.²⁰⁹ Le Blake’s case is interesting because William Cadel’s daughter was a mistress of a Gaelic man and charged with spying around the same time.²¹⁰ It appears that despite the Cadels becoming Gaelicised, the courts still regarded them as English.

Theft and house-breaking

Unlike the quagmire of punishments for killing Gaels, stealing from Gaels was treated much more uniformly and harshly. Dozens of English people were hanged for robbing

²⁰⁶ *CJRI, 1308-14*, p. 301.

²⁰⁷ NAI, RC 7/4, p. 259; *CJRI, 1295-1303*, p. 82.

²⁰⁸ This grant survives in PRO, C 66/103, m. 11 [calendared in *CDI, 1252-84*, no. 2228], when he was called ‘Benedict son of John de Armagh’.

²⁰⁹ NAI, RC 7/9, pp 492-3; *CJRI, 1295-1303*, pp 453-4.

²¹⁰ *CJRI, 1295-1303*, p. 368.

Gaels. This ‘little’ fact has been surprisingly ignored by previous historians. Perhaps thieves who were hanged lacked the capital and contacts to purchase a pardon which many killers seemed to have had. Many, but definitely not all, of those hanged had no chattels. This phenomenon does not mean that only poor people stole. Rich people stole, as well. We can begin with a disputable example and then move onto the concrete ones. John Neweman was accused of feloniously killing a ‘foreign merchant’. He absconded to the church of ‘Putherard’, co. Dublin, and abjured the realm. Neweman was also accused of stealing a horse worth 40s. from Coneghur O Kelly [G. *Conchobhar Ó Ceallaigh*]. Neweman came to court and denied the charges. The jury found him guilty and suspected him responsible of other misdeeds too, and so he was hanged. Neweman had no chattels and no free land.²¹¹ While Neweman was hanged for all of these felonies and for being ‘suspected’, his crimes show us the status of O Kelly and when placed in the context of the many other cases, the normality of free Gaels in English Ireland.²¹²

Other cases lack any ambiguity. Robert de Swyneshed stole a pig worth 2s. from John Oferwyll [G. *Ó Fearghail?*]. He did not appear and was outlawed.²¹³ Hamund Cocus stole fish from Gilbert OKinog [G. *Ó Cionaoith?*], by night, from OKinog’s nets and then did not appear to answer the charge. The sheriff of Tipperary was ordered to have Cocus in court. Five men were charged with robbing Gillecris O Gauosk of three horses (L. *affri*) worth 20s. and Irish cloth worth half a mark, and robbing Mahyn O Henan [G. *Mathghamhain Ó hÉanáin?*] of half a mark. One of the accused presented the record of his fine for these trespasses and was acquitted. The rest were probably hanged or paid a fine.²¹⁴ William McKillenan [G. *Mac Giolla Fhionnáin?*] stole a horse (L. *affrus*) worth 5s. from Roger Heyne [G. *Ó hEidhin?*], the same from Donhuth Ofylan [G. *Donnchadh Ó Faoláin?*], and a horse worth half a mark from Malathlyn Ocohyt [G. *Maolsheachlainn Ó Cobhthaigh?*].²¹⁵ McKillenan was found guilty and hanged. Griffin Wallensis took victuals and robbed Comdyn Gillare [G. *Comhdhan Ó Giolla Gheáirr?*], a man of Otto de Grandison, of one ‘faling’ (cloak) and one tunic worth 2s. Griffin was outlawed, but then returned the goods to Comdyn, who received his own goods without a licence from the court, so both men were amerced.²¹⁶ Maurice Ohologhan [G. *Ó hUallacáin?*] robbed Anyn

²¹¹ NAI, KB 2/8, f. 3r.

²¹² Cf. the Uí Cheallaigh of Meath: Chapter One, *supra*, pp 76-9.

²¹³ NAI, JUS 33-4 Ed I, f. 56r.

²¹⁴ NAI, JUS 33-4 Ed I, f. 118r.

²¹⁵ *CJRI*, 1308-14, p. 248.

²¹⁶ NAI, JUS 33-4 Ed I, f. 124r. Gillare was a ‘man’ of de Grandison, and not a *Hibernicus* of the latter. Cf. Willam Oneyll, *Hibernicus* of Otto: *infra*, p. 207.

Obryn [G. *Énán Ó Broin?*] of a horse worth 20s. Ohologhan came to court and defended, but the jury found him guilty. He was hanged.²¹⁷ Dermot Omavegr [G. *Diarmaid Ó Maingnéir?*] stole ‘woollen stuffs’ worth 3s. from Muriel Ivyenym [G. *inghean Uí hEinín?*] and was charged with being a common robber. Omavegr likewise came and defended, and similarly was found guilty and hanged.²¹⁸ Kradoc son of Robert le Waleys assaulted Derval daughter of Kennedy Obren [G. *Dearbháil* daughter of *Cinnéide Ó Briain?*] in the town of Lexnawe (Lixnaw), co. Kerry, and robbed her of £1 5s. 10d. worth of goods. Derval appealed le Waleys for the robbery and assault. He denied all of the charges, but the jury found him guilty of all. He was ordered to pay 30s. damages to Derval and made fine with the king by 6 marks for breaking the peace.²¹⁹ Eva Giffard stole the wool off of the sheep of Ivor Obrodir [G. *Ó Bruadair?*]. The record, surprisingly, did not list how much the wool was worth. In almost every other case of theft, the amount was listed because stealing goods worth less than 12d. was not a felony.²²⁰ She was then allowed to make fine by 40s. and finding pledges that she would behave well in the future. David Lugge was accused of robbing Donewyth de Russelysrath [G. *Donnchadh?*] by night of twenty sheep and clothes worth 20s., and the abbess of Hogges of livestock. Lugge appeared and said he was not guilty. The jury said he was guilty and suspected of other misdeeds, and was hanged.²²¹

David the miller was charged with wandering through rural Waterford, breaking dovecotes, that he broke the dovecote of John Gilyl [G. *Mac Giolla Íosa?*] and killed the latter’s doves to the value of 5s., and that he robbed a ‘strange woman’ in the city of Waterford of a cloak worth 5s. David came and defended. The jury said that he was guilty of all the charges and other robberies. He was hanged.²²² Also in Waterford, Philip le Whyte Cordyn robbed Maurice de Cauntetoun and his wife, Margery, of goods worth 10 marks and Mathew Obodan [G. *Ó Buadáin?*] of goods worth 40s. He avoided attachment and was ‘exacted as an outlaw’.²²³ The jury then revealed that Cordyn had been seized, but

²¹⁷ *CJRI*, 1308-14, p. 204.

²¹⁸ *CJRI*, 1308-14, p. 193.

²¹⁹ *CJRI*, 1295-1303, p. 53. Derval did not appear at the sentencing and was ordered to be imprisoned, but the justiciar pardoned this. She gave 15s. to Richard de Asseburne. He was probably her *narrator*. This means she lost money in the case. Her goods were worth 25s. 10d., she was awarded 30s. in total, and then she gave 15s. to de Asseburne. Her goods were given to Thomas son of Maurice and the 30s. were to recompense for her chattels.

²²⁰ *CJRI*, 1308-14, p. 180.

²²¹ NAI, KB 2/7, ff 47r-8r.

²²² *CJRI*, 1308-14, p. 183.

²²³ NAI, KB 2/8, f. 92r. Without the Latin original, we can only guess the meaning of this phrase. If ‘exacted’ means ‘put in exigent’, then the phraseology is confounded. Exigence was originally the mesne process

then escaped from custody. The more important aspect of this case is that robbing a Gael was a felony, and in both cases we see that many Gaels had noticeable chattels.

Roger de Fynglas stole diverse goods worth 100s. from two Gaelic men, John Otyr [G. *Ó Tíre?*] and Walter Ocolyn [G. *Ó Coileáin?*], at Werne, co. Dublin. De Fynglas was also charged with stealing ten cows from ‘Syaldawyn’ and receiving stolen goods in Fingal. He was convicted of the thefts and sentenced to hang, but a knight, Geoffrey de Tryvers, asked that de Fynglas be starved to death in Dublin Castle (which was granted by the justiciar).²²⁴ In a similar, but not exactly the same type of case, Richard Borhunt, who the court noted had an alias ‘Richard Bonseriaunt’, was charged with robbing John Murthawe [G. *Ó Muirheartaigh?*] of four horses (L. *affri*) and five cows and other goods to the value of 10 marks. Richard came to court, but refused to answer the charge (he denied the common law had authority over him). He was then sentenced to gaol ‘to the diet’.²²⁵ The authors of *Fleta* and *Britton* described the ‘diet’ (L. *dieta*) as a punishment when the accused was put almost naked on bare ground, and only given bread or water on alternate days.²²⁶ Borhunt disappears from the court record after this, so we do not know what became of him, but it was a felony to steal from John Murthawe.

John le Blount was caught in the act of stealing one horse (L. *affrus*), worth 4*d.* from a *Hibernicus*, Raymond de Cauntetoun. This *Hibernicus* appears to be, just as Walter de Capella, a free and accepted man in English Ireland because he was not the *Hibernicus* of anyone. Le Blount was found guilty and sent to gaol until, of grace, he was allowed to make fine for the crime with the stipulation that his pledges would return him to prison (or chase him out of the country) if le Blount committed any more.²²⁷ De Cauntetoun’s case is also extraordinary because stealing goods worth less than 12*d.* was normally a ‘petty’ trespass, but in contrast to earlier cases le Blount was not mutilated.²²⁸ The stipulations on his pledges could have been because le Blount was taken in the act of the theft and so there was no doubt of his guilt.

before outlawry. As we can see in many cases in this chapter, suspected criminals were simultaneously put in exigent and outlawed. But in no other case is a suspect ‘put in exigent as an outlaw’. The original probably stated: ‘put in exigent and outlawed’.

²²⁴ NAI, KB 2/8, f. 26r. There is a small chance that Otyr may have been an Englishman [Otter] or a Scandinavian [Óttarson], but Ocolyn was almost certainly Gaelic.

²²⁵ *CJRI, 1308-14*, pp 246-7. Cf. Stephen de Fenne refused to speak when he was charged with stealing 3 horses, and then he was hanged: *CJRI, 1295-1303*, p. 12.

²²⁶ Pugh, *Imprisonment*, p. 25.

²²⁷ *CJRI, 1308-14*, p. 196.

²²⁸ The mutilation of Catht: *infra*, pp 237-8.

Other cases show a lord suing for thefts from his *Hibernici*. It is probably safe to assume that these *Hibernici* were considered unfree – or unaccepted and under avowry – and therefore not allowed to use the royal courts. Richard Taloun sued Maurice son of William de Cauntetoun and Reginald de Cauntetoun for seizing the ‘cattle of Richard’ at Lysmethan, co. Carlow, and carrying the cattle away to Wexford. The case also names Dovenald son of Dovenald McMurth [G. *Domhnall* son of *Domhnall Mac Murchadha*] as assisting the theft, but Taloun did not sue McMurth in the writ. The jury reported that two *Hibernici* of Taloun, authorised by permission of Maurice, brought ‘his’ (Taloun’s) cattle to the land of Maurice for safe keeping because Taloun’s lands were being raided. Then Maurice and Reginald, ‘moved with anger against Richard’, seized the cattle and moved them to Maurice’s manor. Taloun’s *Hibernici*, Molok Oconleyn [G. *Maológ Ó Conalláin?*] and Regan Oconleyn [G. *Riagan Ó Conalláin?*], approached Maurice and asked for ‘their’ cattle back. He returned half and kept the other half for himself. The court then judged Maurice and Reginald had to pay Taloun for the value of the cows and committed them to gaol.²²⁹ The court record’s phrasing indicates that Molok Oconleyn and Regan Oconleyn were unfree or unaccepted because the writ alleges that the cows were Taloun’s, but the *narratio* at one point mentions that the cows were the property of the *Hibernici*. The final judgment for Taloun confirms this. Interestingly, Richard Taloun did sue Dovenald son of Dovenald McMurth for the same theft, but it is listed after the previous case. This may have been because McMurth did not appear to answer the charge, but in other cases, this was not the procedure. Normally, all defendants are named together and any who did not appear in court or send an attorney were ordered to be attached in the same case record.²³⁰ It could be that Taloun sued with two writs.²³¹ The previous case was not an isolated incident. Richard Taloun sued other de Cauntetoun men for stealing cows from his *Hibernici* at different manors.²³² Taloun also was charged with receiving William Onolan [G. *Ó Nualláin*] after the latter stole goods from William de Valence.²³³

In one case we can detect that it was a crime to steal from *Hibernici*. William McAlryth [G. *Mac Giolla Riabhaigh?*] was charged that he by night entered the house of

²²⁹ *CJRI, 1308-14*, p. 25. This appears to have been the same Richard Taloun whom Maurice de Cauntetoun killed during the latter’s rebellion: 39th *RDKPRI*, p. 31; *CJRI, 1308-14*, pp 159-60, 174-5 [Richard Taloun Iryelagh], 199-200. In 1307 Richard became the lord of Meiler de Kendale, who later killed and was indicted for killing *Hibernici* of John de Boneville: *CJRI, 1305-7*, pp 338-9.

²³⁰ For example, *CJRI, 1308-14*, pp 78-9. Cf. *CJRI, 1308-14*, p. 41.

²³¹ Cf. others could not sue two writs of novel disseisin at once: Sayles (ed.), *Select cases, Ed I, vol. i*, pp 153-6.

²³² *CJRI, 1308-14*, pp 19-21, 141-2.

²³³ NAI, RC 7/3, p. 128.

John McGillekeleghan [G. *Mac Giolla Ceallacáin?*], *Hibernicus* of Eneas Wogan, and robbed John of goods worth 1 mark, and that he stole goods from Alexander de Ferres, Raymond de Carew, and Henry le Whyte.²³⁴ While McAlryth was found not guilty, the important part is that the house and goods were McGillekeleghan's and not Wogan's. We cannot tell if John was unfree or just unaccepted, but it was a crime to steal from him.²³⁵ In 1305 Richard Deyncourt burnt the house of William ONeyll [G. *Ó Néill*], a *Hibernicus* of Otto de Grandison, at Moyssillagh, cantred Iffowyn, co. Tipperary, and then fled to his house in Oghtyrtyr (Upperthird), co. Waterford. He was 'received' there (not arrested upon arrival), and then went to the liberty of Kilkenny.²³⁶ The itinerant court appears to have taken this case rather seriously, but that could have been because of the arson and not the victim.

As noted in the section on homicides, not every criminal case requires a conviction to show the status of the victim. Adam Cyr' was attached and charged for burning the house (*L. combussit domum*) of Hugh Ocanean [G. *Ó Canannáin?*] in Dublin. Cyr' came to court and put himself on the country, and the jury said that he was not guilty.²³⁷ This judgment had no bearing on the fact that Ocanean was probably free and had a house in co. Dublin; or that it was destroyed by a fire. Ocanean was not the only Gael to have his or her house violated. Matilda la Waleys came to the house of Robok McGhut/Murghut [G. *Robhartach Mac Murchadha?*] in Newcastle de Olethan, co. Cork, and stole some cloth and clothing while the household slept. But they awoke during the theft and chased her. She dropped the stolen goods and hid between some houses in the town. Matilda was committed first to the provost's prison, and then transferred to the king's prison. She was later pardoned for breaking the king's peace because she did not get the stolen goods outside of Robok's house.²³⁸ The record states that the sheriff of Cork had taken the stolen goods with Matilda to the king's prison, and that she had to stand to the charge – of theft and possibly house-breaking – after the pardon. This means that Murghut and his household had to sue her privately to recover their stolen goods which she never even got out of Robok's house.²³⁹

²³⁴ *CJRI, 1308-14*, p. 287.

²³⁵ The phrase '*Hibernicus/-a* of [someone]' usually implied unfreedom, but this instance seems to show it could also be used for avowry.

²³⁶ NAI, JUS 33-4 Ed I, f. 125r.

²³⁷ NAI, RC 8/1, p. 67. As mentioned before, *domum* was rarely used in the court records.

²³⁸ *CJRI, 1308-14*, p. 196.

²³⁹ This was not always the situation in English Ireland. Whereas in England, a coroner was mocked by the court for returning stolen chattels to the victim, the justiciar's court in English Ireland looked for the victim

Orly [G. Órlaith] the wife of Henry the clerk of Senbaly and Mariot Kirkeby owned houses in co. Cork. Laurence Elyffeld and Philip son of Adam son of Simon were charged separately for breaking into both houses and stealing some goods. Elyffeld was convicted of stealing a cloak from Mariot's house and nothing else, so he was allowed to make fine by half a mark.²⁴⁰ But Philip son of Adam was convicted of all of the charges and hanged.²⁴¹ Orly may have been married, but the court record is clear that the goods were hers and the house was hers, and not her husband's. The royal court recognised that she was married, held independent property, and defended her from English criminals.

Imprisonment

False imprisonment of an English person was, in many cases, deemed *contra pacem regis* and therefore a crime. Robert de Cokerel sued Roger Bigod, earl of Norfolk (L. *comes Northfolcia*), for capturing and imprisoning de Cokerel *contra pacem regis* in lib. Carlow. Interestingly this case was ordered 'to remain to the judgment of the rules of the exchequer' (L. '*quod restat ad iudicium per canonem de scaccario*'), so we do not have a final ruling.²⁴² This probably evinces that de Cokerel was employed in the exchequer.²⁴³ De Cokerel was probably not from Carlow because if he had been, the case would have belonged to the liberty court.²⁴⁴ The crime was not limited to Englishmen or private appeals. Master Patrick, archdeacon of Cashel, was charged for the false imprisonment of a certain Englishwomen. He was allowed to pay a fine of 10 marks, and Archbishop David rendered the money to the exchequer for Patrick.²⁴⁵ Nicholas Bacon, chief sergeant of co. Dublin, imprisoned a man for debt and was gaoled for it. He had to pay a fine of 10 marks

to return the goods: Hunnisett, *Medieval coroner*, pp 52-3; NAI, KB 2/8, f. 39r (Isabel Ewyas, John Maunsel, and Donewith Hibernicus appeared in court after the hanging of Henry Wafroun, and asked for their stolen chattels back. The court returned them); *CJRI, 1295-1303*, p. 12 (Chattels taken in the hands of David OKyllobyn, which no one sued for: 2s. 12d.); *CJRI, 1308-14*, p. 325 (Let the price of the *affrus* be forfeited to the king because no other sues for it).

²⁴⁰ *CJRI, 1308-14*, p. 202.

²⁴¹ *CJRI, 1308-14*, p. 192.

²⁴² NAI, RC 7/2, pp 22, 28, 99.

²⁴³ Barons and clerks of the exchequer could sue civil cases in the exchequer court: Jenkison & Formoy (eds), *Select cases exchequer pleas*, pp xci-xcii

²⁴⁴ See Joan de Valence's insistence that she prosecute Thomas Hay and William son of Andrew in her court: *supra*, p. 181.

²⁴⁵ 35th *RDKPRI*, p. 43. Simon Latimer was indicted for imprisoning an Englishman whom he found stealing his oats, but the jury ruled that Latimer was not guilty: *CJRI, 1295-1303*, p. 10. Theobald de Verdon paid £20 fine to the king after he imprisoned two of his English servants (a chamberlain and a maid), who were suspected of stealing a ring: *CJRI, 1295-1303*, p. 314.

to be released from gaol and to recover his position as chief sergeant.²⁴⁶ Bacon's case does not appear to have been a felony, though. His gaoling and large fine seems to have been for 'misconduct by a royal administrator'. Geoffrey de Norragh was charged with 'incarcerating' Henry Colach and William Carpenter, *Anglici*, and allowed to make fine for a trespass by half a mark.²⁴⁷ These cases indicate that the fine was not set and the punishment for imprisoning people was based on more than the ethnicity of the victim.

A jury in co. Tipperary found that David Maunsel 'without reasonable cause' arrested Omachthy [G. Ó Moithide?], a *Hibernicus* of Edmund le Botiller, in the city of Cashel. Then when William Shorthales came to Maunsel and proved that Omachthy was the 'man' of Edmund le Botiller and asked for Omachthy to be released, Maunsel struck Schorthales in the neck. Schorthales was awarded 20s. in damages and Maunsel was committed to gaol.²⁴⁸ The same jury also reported that Maunsel arrested Omachthy in the market of Cashel because the former wanted the latter's 'falling' (cloak?), that Maunsel made the arrest under a false charge of theft, and that after he released Omachthy he kept the 'falling' as an attachment (assurance of appearance in court). The court then awarded 40s. damages to le Botiller for contempt to le Botiller and trespass against Omachthy. Since the award was to le Botiller and not to Omachthy, we may surmise that he was probably semi-free (at best) and unaccepted in the sense that he could not sue on his own.²⁴⁹ The *inquisitio* investigating the alleged arrest of Richard Moloch [G. Ó Maolóig?] and other *Hibernici* of John de Hastings was held because of a lack of jurors.²⁵⁰ These *Hibernici* were probably unfree, or at least, not allowed to sue in the royal courts.

A jury found that Thomas de Sareffeld captured a 'certain *Hibernicus*', who was a 'servant' (sergeant?) of Gerald de Staunton, Thomas's lord, cutting trees in the former's woods. De Sareffeld took the *Hibernicus* to his house and put the *Hibernicus* in the stocks for a day and a night. Thomas refused to release the *Hibernicus* even though the latter offered 'sufficient pledge'. The jury determined the *Hibernicus* suffered 2s. of damages from this imprisonment. The court awarded the damages directly to the *Hibernicus* and

²⁴⁶ *CJRI, 1295-1303*, pp 317-18; Hand, *English law*, p. 84.

²⁴⁷ NAI, JUS 33-4 Ed I, f. 118r.

²⁴⁸ *CJRI, 1305-7*, p. 56. The calendar calls Cashel a 'town', but it contained the cathedral church and was the seat of the archbishopric.

²⁴⁹ This record may mean that any damages awarded directly to a *Hibernicus/-a* are indicative of freedom. Cf. a 'certain *Hibernicus*', servant (sergeant?) of Gerald de Staunton: *infra*, p. 225.

²⁵⁰ NAI, RC 7/3, pp 64, 146.

amerced Thomas de Sareffeld.²⁵¹ In this case, Gerald de Staunton did not sue for the *Hibernicus*. This, when compared to the previous case, may indicate that the *Hibernicus* was free and accepted (and a sergeant [L. *serviens*], not a ‘servant’). The jury reported this incident while investigating a civil case between de Staunton and de Sareffeld. While we do not have the presumably-Gaelic man’s name, we can see that the damages were awarded directly to him and not to Gerald de Staunton. This shows that the *Hibernicus* was probably free (or semi-free). In other cases unfree people did not receive damages from the royal courts. But we cannot tell if he could sue a civil writ on his own.

A final case of false imprisonment involved a ‘merchant stranger’. Arnald Cassherel was seneschal and purveyor for the archbishop of Dublin in 1302. He accused four men, including Thomas de Cheddesworth, justice of the Dublin Bench, of finding Cassherel near the church of St Patrick, arresting him, and imprisoning him.²⁵² Cassherel’s foreignness was stressed by the defence. The accused said that they feared he would ‘fly beyond the king’s power’ (leave the king of England’s lands) with the archbishop’s goods. The jury determined that de Cheddesworth was not guilty, but that the rest had arrested Cassherel, taken him to the manor of St Sepulchre, and locked in a room for four days and then a larger room for five more days. The justices then inspected letters patent of the archbishop granting Cassherel ‘higher authority’ and determined that the Englishmen had no right to arrest or imprison Cassherel. The court awarded him £40 in damages, but no criminal charges (*contra pacem regis*) appear to have been raised against the defendants. Clearly many people in English Ireland believed they could arrest someone suspected of committing a crime or a trespass. This should not surprise us as many contemporary people were charged for not arresting fugitive felons.²⁵³ People, however, were not allowed to hold certain suspects in a private or makeshift prison, but instead, had to deliver the captured suspect to a royal bailiff or *vicecomes*.

²⁵¹ *CJRI, 1295-1303*, pp 333-4. This was probably the same man who pledged for Laurence Trynedyn to pay his fine of 20s. in 1297: *ibid.*, p. 158; Chapter Three, *supra*, pp 171-2. Cf. Paul Hyams found only one instance when the royal courts in England gave damages directly to an injured villein (Hyams wagered that the villein never in fact received these damages): Hyams, *Kings, lords*, pp 141-2.

²⁵² *CJRI, 1295-1303*, pp 398-9.

²⁵³ E.g. four vills in Kildare were amerced for not raising the hue and cry after William Cadel slew ‘many Englishmen’: *CJRI, 1295-1303*, p. 206.

Lords of unfree charged

There are some cases we can use to warily identify unfree people. Lords were charged for the crimes committed by their tenants at the former's command. This contrasts with the phenomenon of supposedly unfree people (betaghs) being allowed to use the royal courts as a collective in civil cases.²⁵⁴ Unfree people who committed felonies can and were charged in the royal courts. Being indicted was not a proof of freedom. However, in some criminal cases the lord of a group of supposedly unfree people was charged with a crime committed by his or her tenants. Perhaps, in these cases, it was because the court believed the crime was committed entirely at the lord's bidding or because the unfree tenants legally had no chattels to distrain. The royal courts took no issue with prosecuting large groups of criminals or individual unfree people, so these lords must have been charged because someone had indicted them of being the principal perpetrator.²⁵⁵

Henry son of Richard de Cogan was charged that he forced his Gaelic tenants to steal a cow from Maurice de Roche – against their will – and afterwards made them kill the cow and carry its carcass to his manor for de Cogan and his household to eat.²⁵⁶ The cow was worth more than 12*d.*, so he was at least charged with felony theft. But it also appears he had committed an unnamed crime of forcing his tenants to do certain, illegal actions against their will. He was allowed to make fine by half a mark, but his pledges to pay the fine had to guarantee that they would restore Henry de Cogan to prison if he committed any other 'misdeeds' or drive him out of the country, and that they would pay for the losses to any injured parties.²⁵⁷

Geoffrey son of Eustace was charged that he sent his 'serving men' along with *Hibernici* to burn, ravage, and rob the countryside in co. Kildare, and that he had 'art and part' of the robberies. John son of Eustace, probably Geoffrey's brother, was charged with receiving Hugh Og and Adok Duff [G. *Aodhach Ó Duibh?*], felons, who had committed some of the robberies and burnt the towns of Carnelwy and Sourdwestoun. No result survives for this case because Geoffrey and John were allowed to be mainprised by the

²⁵⁴ See the betaghs of Stachkillyn: Chapter One, *supra*, p. 32.

²⁵⁵ Cf. many auxiliaries to crimes were acquitted after the principal was acquitted: for example, *CJRI, 1295-1303*, pp 12, 184. See also, some auxiliaries were allowed to be mainprised because the principal was not yet convicted: *CJRI, 1305-7*, pp 478, 481, 492.

²⁵⁶ *CJRI, 1308-14*, p. 202.

²⁵⁷ This record shows that the stipulation that pledges would drive criminals out of the country was not limited to Gaels or the unfree.

oath of twelve men (a larger than normal number) until the justiciar called for the accused to be tried in his court.²⁵⁸

We can compare these two cases with the charges against Hugh Dantoun, knight, in 1314. He was accused of robbing numerous people of a list of chattels, and his lord, John de Sutton, was charged in the same case with abetting Dantoun to commit the robberies.²⁵⁹ In this case, Dantoun was listed first as the main culprit, and his lord was listed later as the instigator of the crimes. Both were later allowed to make fine for the robberies because they had served in the royal armies. But the pardon is not the pertinent part of this case. It appears that since Dantoun was free, he was charged first, and his lord, de Sutton, was charged secondarily. In the previous cases, it appears the unwilling culprits were not charged because the court surmised that the real criminal was their lord who ordered the crimes.

If this conclusion is correct, perhaps other records indicate that the culprits were free. Ralph Tralleie was charged that after Douenild Ocroudan [G. *Domhnall Ó Críodáin?*], William OKellan [G. *Ó Caoláin?*], and David Oteylan [G. *Ó Caoláin?*], his men (not *Hibernici*), stole from Raymond son of Milo de Roche, Tralleie received them. He was found not guilty.²⁶⁰ Based on the three previous cases, it would appear that the three Gaelic men were free and Tralleie was their lord in the same manner that free Englishmen – such as Hugh Dantoun – had lords. Since they were suspected of committing crimes, these three men could not use the civil arm of the courts. But if they returned to the king's peace, they might have been allowed to bring writs as freemen.

Other signs of socio-legal status from criminal cases

The criminal records can elucidate social aspects in English Ireland besides punishment of criminals. As noted in Chapter Two, women in medieval English Ireland were variegated and nuanced and not, as some historians have suggested, completely powerless and without legal rights.²⁶¹ One Gaelic woman defied all modern constructs of medieval women. Orly Enymc Breen [G. *Órlaith inghean Mhac Briain?*], probably from co. Cork, was listed

²⁵⁸ *CJRI, 1308-14*, p. 164. Hugh Og could have been the Hugh Óg Ó Tuathail who received lands from the earl of Kildare in 1318, and Adok Duff could have been the famous Aodhach Dubh Ó Tuathail who was executed for heresy in 1328: *RBEK, no. 139*; Gilbert (ed.), *Chart. of St Mary's*, ii 366. But neither was called an Ó Tuathail in the justiciar's court record.

²⁵⁹ *CJRI, 1308-14*, pp 324-5.

²⁶⁰ *CJRI, 1295-1303*, p. 11.

²⁶¹ Chapter Two, *supra*, pp 91-140.

among fifteen named men as receiving a full pardon for all trespasses, felonies, outlawries, and abjurations because she had fought in the army against Maurice de Cauntetoun during his war against the king and against the Gaels of the Leinster Mountains.²⁶² So, not only did she personally commit felonies, she also fought in two armies! She was not added as an auxiliary or accessory. Orly was in the middle of the group of men. The record does not describe how she fought – mounted or foot – or what type of armour she wore, but it is undeniable that Orly Enymc Breen fought in the royal army alongside men in the company of the justiciar, John Wogan.

One criminal case demonstrates that some Gaels could hold positions of socio-economic power. Maurice Wallensis, sergeant of Raymond OFoule [G. *Ó Foghladha?*], was charged with stealing five horses (L. *affri*).²⁶³ Nothing else was recorded, and so we do not know any more about OFoule, such as where his lands were and the extent of his lands. But we know that he, similar to Phelim Macarthy, had a free non-Gaelic follower.²⁶⁴ Other criminal records demonstrate that some Gaels held administrative positions in the government.²⁶⁵ John Murwygh [G. *Ó Murchadha?*] was a sergeant of the liberty of Kilkenny. He had committed several crimes, it appears, and subsequently made fine with the king for suit of peace and to recover his chattels.²⁶⁶ Adam son of Robert Betagh, Philip Drake, and Alexander Donethe [G. *Ó Dúmadhaigh?*], were the collectors of the subsidy in county Meath in the part of Kells. The three men were convicted of collecting 107s. 4d. (£5 7s. 4d.) for the subsidy and then not delivering it to the exchequer (L. *convicti fuerunt quod receperunt de dicti subsidio 107s 4d de quibus non satisfecerunt*).²⁶⁷ This conviction was sent to judgment for sentencing, but the specifics were not recorded. They did have mainpernors, presumably for the payment of the £5 7s. 4d. and an amercement, at least. Donethe was not the only Gaelic collector of customs. As we learned earlier, Stephen Brendon was killed by the people of Cork when he was made the collector of customs. Later, Richard le Carter and Richard de Welton were attached to answer Philip M'croy [G. *Mac Ruaid?*], Comdin Lowy [G. *Comhdhan Ó Laoidhigh?*], Reginald Moythan, Gillepatrik

²⁶² *CJRI, 1308-14*, p. 247. Orly was not the only Gaelic woman pardoned for felonies. Dufesse Ynynlynechan [G. *Dubh Easa inghean Uí Luingeachán?*] and Saynyn Ynynurik [G. *Saidhbhín inghean Uí Mhearadhaigh?*] were admitted to make fine for all trespasses and felonies except 'murder' [homicide?] and arson by 40s. at the instance of William son of Warin: *CJRI, 1308-14*, p. 262.

²⁶³ NAI, JUS 33-4 Ed I, f. 118r.

²⁶⁴ See Phelim Macarthy, *infra*, p. 240.

²⁶⁵ For the argument that no Gael held 'office in central or local government' in English Ireland: Frame, 'Ireland after 1169', p. 119. By 'office' Professor Frame meant a secular, administrative position, and not an ecclesiastic *officialis*.

²⁶⁶ NAI, KB 2/12, f. 5r.

²⁶⁷ NAI, RC 8/2, pp 352-3, 383 (copy).

Malaum [G. *Giolla Phádraig Ó Maoileoin?*], and Robert Lauchan, the collectors of the fifteenth awarded to Edward I in 1299. Le Carter and de Welton claimed to have paid their fifteenth to the ‘principal collector’, Richard son of Reginald, but it was later determined that they had not.²⁶⁸ The Gaelic sergeants and collectors of the fifteenth suffered no disability or attack on their ethnicity. These criminal records demonstrate that Gaels could hold positions of power within the English administration.

A few criminal records show us the acceptance of Gaels who wished for various reasons to assist the English presence in Ireland. Philip le Whyte Cordyn, as we learned earlier, was charged with robbery. He was captured by the ‘sheriff’ (viscount) of Waterford and delivered to the chief sergeant of the county. The sergeant then delivered Cordyn to Thomas Kilmelo, Stephen le Hore, John de la Chaumbre, Lorcan Osefte [G. *Lorcán Ó Séaghdha?*], and John Forester to have the former in court to answer the charges. Cordyn then escaped their custody. These men appear to have been sergeants (or sub-sergeants) of co. Waterford. The court ordered that the escape be judged upon them unless they had insufficient chattels to pay the fine (then it would be upon the chief sergeant).²⁶⁹ Fyn Odymsey [G. *Fionn Ó Díomasaigh*] was not only ‘at peace’, but he was also granted money and warhorses to fight certain, mostly-Gaelic groups. But this did not make Odymsey a mercenary. He was allowed to personally petition Edward I, and Edward ordered that the English in Ireland assist Odymsey in his fight with the Oconughors [G. *Uí Chonchobhair Failghe*], Odoying [G. *Ó Doinn?*], McKilfattricks [G. *Meic Ghiolla Phádraig?*], McYoughans [G. *Meic Eochagáin?*], and O Malmoy [G. *Ó Maolmhuidh?*].²⁷⁰ The king, or at least an Irish parliament in his name, recognised that Odymsey was free; this probably meant that he could sue a civil case. But Odymsey’s problems with the other Gaels seemed to have been outside the remit of the royal courts. Odymsey later returned to court with John son of Thomas and Peter de Bermingham, to petition for ‘head money’ of felons. John son of Thomas and Odymsey were awarded £40 and de Bermingham received £23. This was not entirely good news for Odymsey, however, because the court also attached a proviso that Odymsey had to provide hostages for good behaviour. It appears that Mcyoghgan had taken Dermicius Odymsey hostage, possibly in a raid by Mcyoghgan, and the Dublin administration feared Odymsey would form an alliance with Mcyoghgan to retrieve

²⁶⁸ *CJRI, 1295-1303*, p. 209.

²⁶⁹ NAI, KB 2/8, f. 92r.

²⁷⁰ *CJRI, 1305-7*, p. 215.

Dermicius. So it was decreed that Odymsi was to go ‘in the service of king against all felons in the company of the justiciar... as often as required’.²⁷¹

Some Gaels who did hold free lands in fee lost them because of criminal activity.²⁷² John de Saunford, archbishop of Dublin, granted the land of Glenfeil to Magnus Othel [G. *Maghnus Ó Tuathail*]. Richard son of Magnus was outlawed for felonies in co. Dublin, and so the justiciar, John Wogan, decided to disseize Othel and grant the lands to Murhuth Obren [G. *Murchadh Ó Broin*] in order to create ‘dissension’ between the Uí Thuathail and Uí Bhroin of the Leinster Mountains.²⁷³ At the same meeting of the justiciar’s court, the English administrators decided to grant the land of Kilfeith to Hugh Lawless for a term of 16 years. Richard de Bedeford had given the land to David MacKilcowill Othel, but the latter had been outlawed for felonies.²⁷⁴ This was not an anti-Gaelic phenomenon. Any English person who was convicted of a felony escheated their lands to their lord, who could then demise the lands to a new tenant.

Two records reveal another overlooked aspect of accepted Gaels. On 22 October 1319 Robert le Bailiff was pardoned for the death of John Redyng. The surprising part of the pardon is that it was given at the instance of Morghyth Obryn [G. *Murchadh Ó Broin*].²⁷⁵ Perhaps, with the land grant from earlier and after fighting the Uí Thuathail, Ó Broin was becoming a more accepted member of English Ireland. Earlier, in 1295, Douenild Roch Maccarch [G. *Domhnall Ruad Mac Carthaig*] secured a pardon for Raghenyld daughter of Donkuth Obren [G. *Ragnailt* daughter of *Donnchadh Ó Briain*] for all trespasses committed before a certain day.²⁷⁶ This was supervised by Thomas son of Maurice, as custos, after Thomas was forced to accept ‘dishonourable peace’ with Domhnall by William de Vescy in 1293.²⁷⁷ Clearly Thomas did not, or could not, hold a grudge against Mac Carthaig, who was free to use the Dublin Bench in 1300.²⁷⁸

²⁷¹ *CJRI*, 1305-7, pp 270-1. Cf. in 1315 the pardon to Achy Beg McMahon was in exchange for 30 cows, Achy agreeing to capture or kill Philip Oschethel, and Achy giving his wife and two sons as hostages for his good behaviour: NAI, KB 2/7, f. 17r.

²⁷² Gillecrist son of Germod and Walter O Brenan, Table 4, *infra*, p. 235.

²⁷³ *CJRI*, 1305-7, p. 354. See also, Lydon, ‘Enrolled account of Alexander Bicknor’, pp 29-30.

²⁷⁴ *CJRI*, 1305-7, p. 355.

²⁷⁵ *CIRCLE*, PR, 13 Ed II, no. 59; Hand, *English law*, p. 29, n. 2.

²⁷⁶ *CJRI*, 1295-1303, p. 11.

²⁷⁷ Frame, ‘War and peace’, pp 138-9.

²⁷⁸ Appendix 2, *infra*, pp 304-5.

Innocent Gaels charged out of malice

Other cases demonstrate that certain Gaels were accepted. To what extent we cannot be certain. They were protected from malicious prosecutions – and probably life and limb – but we cannot tell if all of them could bring a civil writ. Thomas Oregan, who we discovered in Chapter One, could sue in the royal courts. After Oregan successfully defended his landholding, the same plaintiff appealed him for rape. When Oregan appeared to defend, the plaintiff withdrew his appeal and was heavily amerced.²⁷⁹ William Deubeneye appealed Mac Cray Okanan [G. *Mac Craith Ó Canáin?*] of a felony which was not detailed. On the day of the trial, Deubeneye came to court and withdrew his writ. Okanan was given a *sine die* and Deubeneye and his pledges to prosecute were amerced 40s.²⁸⁰ Amercement for not prosecuting was standard procedure for almost any case involving English people, though. Dovenald son of Folany Obergith [G. *Domhnall son of Fualáin Ó hAimheirgin?*] was charged with receiving Avelath Obergith [G. *Amhlaoibh Ó hAimheirgin?*], who had killed the son of William le Peyntour and robbed him of three horses (L. *affri*). Dovenald came and defended, and the jurors said that he was not guilty and not suspected of any charges. The record is not clear, but most likely it was the jurors who discovered that Nicholas son of Alexander had falsely indicted (convinced the coroner to investigate) Dovenald. Nicholas then gave half a mark for a pardon.²⁸¹ Since Deubeneye withdrew the appeal before Okanan answered, we cannot tell if the latter was answerable in the royal courts. Obergith was charged by indictment in a ‘pleas of the crown’ session, and therefore his pleading probably did not count as ‘being answered’ previously in court. His case, however, does indicate that he was considered free and accepted.

Michael Ogrodyth/Obrodyth [G. *Ó Griada?*] was charged that he stole two sheep worth 2s. from Robert le Rede and in the same indictment Robert le Clerk of Donoyll was charged that he had stolen corn and a tunic. The accused came to court and defended. The jurors said both men were not guilty and not suspected of any misdeeds. Two of the jurors, Roger Taloun and Adam Broun, did not appear and were amerced. Then, unlike in the previous case, the court record states that the justices questioned the jury further on how the indictment was initiated. The jurors responded that Roger Taloun and Adam Broun were on the *inquisitio* and indicted Ogrodyth of malice and ill-will, lying about the latter

²⁷⁹ Chapter One, *supra*, p. 44.

²⁸⁰ NAI, RC 7/1, p. 160.

²⁸¹ *CJRI*, 1308-14, p. 229.

knowing well that he was not guilty. The justices ordered that Taloun and Broun be arrested.²⁸²

Richard son of Matthew Ayleward was charged that he received John Ballagh and his following, and Gillice O Sloyth [G. *Giolla Íosa Ó Sluaghaidh?*] was charged that he received John son of M. O Brodre [G. *Ó Bruadair?*], who was charged with numerous thefts. Both of the accused came and defended and the jury said they were not guilty. This time the justices ruled that since this same jury, at an earlier time (as an *inquisitio?*), had given solemn evidence against Richard and Gillice the entire jury was to be heavily amerced.²⁸³ It is clear from these three instances that presenting false evidence against Gaels in criminal proceedings was not tolerated and considered a crime in the early fourteenth century. This was during the height of the anti-Gaelic sentiment in civil proceedings.

Gaelic pledges

Gaels were allowed to stand as pledges for the good behaviour of pardoned ‘felons’. Felons needs to be marked because not all ‘felons’ were convicted of a crime; some were *inimici regis* from Gaelic Ireland and had not formally submitted to English rule (or had rebelled after giving submission). The important part is that rebels, English or Gaelic, who were admitted – or readmitted – to the king’s peace required pledges. In many instances these pledges were Gaels. Mag’ Okerwill [G. *Maghnus? Ó Cearbhaill*], Gilletyrny McMaghoun [G. *Giolla Tighearnaigh Mac Mathghamhna?*], and Nicholas Okerwill stood pledge for Maghoun McMahoun [G. *Mathghamhain Mac Mathghamhna*] to pay his fine of £10 for himself and his men from co. Louth; and Turdelagh Oraily [G. *Toirdhealbhadh Ó Raghailigh?*] and Cathel Irriellagh Oraily [G. *Cathal Oirghiallach Ó Raghailigh?*] stood pledge that Maghoun McKeygh Oraily [G. *Mathghamhain mac Aoidh Ó Raghailigh?*] would pay his fine of 10 marks for himself and his men of co. Meath.²⁸⁴ There are numerous Gaels who pledged for the good behaviour of pardoned criminals. Standing

²⁸² *CJRI, 1308-14*, p. 178. The assessment of the value of Robert le Rede’s sheep is suspicious. Normally sheep were worth between 6*d.* and 8*d.* in the court records: for example, *CJRI, 1308-14*, pp 254, 255, 260, 281, 284-5, 300.

²⁸³ *CJRI, 1308-14*, pp 281-2.

²⁸⁴ *CJRI, 1308-14*, p. 161. We should note that the two leaders, Maghoun McMahoun and Maghoun McKeygh Oraily, were labelled *Hibernici*, but the pledges were not. Since the leaders were recognised as leaders, they, obviously, were never regarded as unfree or *nativi*. This furthers the conclusion that *Hibernicus* was very fluid and elastic. Cf. the Irish patent roll grants a pardon to Maghoun McKeygh Oraylay and his ‘eraghto’ [G. *oirecht?*]: *CIRCLE*, PR, 4 Ed I, no. 113.

pledge for someone in court was, just as with warranting, only the prerogative of free and accepted peoples. One could not call an unfree or unaccepted person to pledge for good behaviour or payment of a fine; the pledge would have to be a person of ‘good character’ within the English society.²⁸⁵

These pardons were not reserved only for Gaelic chiefs. Numerous Gaels were pardoned for petty offenses, and appear to have been accepted – and possibly free – members of English Ireland. In these and other cases (some were charges against English people) we can see the free and accepted Gaels standing pledge for payment of a fine or for good behaviour. Robert Odonok [G. *Ó Donnchadha?*] from co. Limerick received five robbers, but was allowed to pay a fine of half a mark. His pledge was Nicholas Ocoghlan [G. *Ó Cochláin?*].²⁸⁶ Clement Shore stole a list of small items. He was allowed to make a fine by 20s. by the pledge of Nicholas O Doyryn [G. *Ó Deoráin?* or *Ó Dirín?*] and William Shore, but then the court determined he also needed pledges for his good behaviour. These pledges were William Roth le Botiller [G. *Ruad*], Nicholas O Doyrin, and William Sore.²⁸⁷ John son of Michael Galgeyl [G. *O Gallghadhail?*] was indicted for stealing sheep from a widow in co. Waterford. He was allowed to make fine by 1 mark by the pledge of Michael Galgeyl (his father?) and Simon O Kynna [G. *Ó Cionaoith?*].²⁸⁸ In 1325 Thomas and Douene O’Rawechan [G. *Duibhgenn Ó Reabhacháin?*] pledged to have John son of Gilbert le Poer in court on a certain day. They also pledged for the former sheriff of Waterford, John son of John le Poer.²⁸⁹ Nicholas Obrunen [G. *Ó Bra(o)ináin?*] was indicted by the coroner of Cros, co. Louth, for killing Richard Be with a knife. Eleven men, including Nicholas Obrunan senior, pledged for the accused to pay a fine of 100s. for the homicide. The court decided that despite the fine, the accused had to travel to Scotland and fight for Edward II until ‘the war [was] over’.²⁹⁰ Obrunen’s fine was larger than normal, but this was probably because of his economic ability. Historians of criminal law in medieval England believe that fines were based on the wealth of the guilty, which was

²⁸⁵ Many juries reported the reputation of the accused. Having a good reputation – or at least not a bad one – could be a sufficient cause for a pardon despite being found guilty of a crime; for example, Walter de St Albino: *CJRI, 1308-14*, p. 257. Douenald ODonwerty was arrested ‘on suspicion’. The jury determined he was ‘faithful’, and he was released: *CJRI, 1295-1303*, p. 36. In England coroners and sheriffs were amerced for attaching people by ‘poor’ pledges: Hunnisett, *Medieval coroner*, p. 59.

²⁸⁶ *CJRI, 1308-14*, p. 214.

²⁸⁷ *CJRI, 1308-14*, p. 229.

²⁸⁸ *CJRI, 1308-14*, p. 300.

²⁸⁹ 42nd RDKPRI, pp 28, 68; Parker, ‘Politics and society of County Waterford’, p. 166.

²⁹⁰ NAI, KB 2/7, f. 4r.

determined by an ‘affeerance’ (fair assessment).²⁹¹ This would indicate that Obrunen was not only free, but relatively wealthy. The Gaelic pledges for the pardoning of criminals demonstrate the Gaels freedom and acceptance in English Ireland.

Unfree or unaccepted?

In Chapter One we learned that unfree people did not legally own chattels. In theory if an unfree person was convicted of a crime, then all of their chattels would have immediately gone to their lord. But the crown determined that if the courts allowed this, lords would falsely accuse and convict their unfree tenants in order to confiscate all of the latter’s goods.²⁹² Professor Otway-Ruthven believed that the situation was different in English Ireland and argued that the goods of convicted unfree people went to their lord.²⁹³ The problem with her conclusion is that many *Hibernici* were convicted of crimes and their chattels were forfeited to the exchequer and not to any lord. I have yet to find an instance when a *Hibernicus/-a* (or Gael) was hanged and then the chattels went to an English lord. The records of Gaelic criminals with chattels elucidate aspects of medieval Irish society and the economic abilities of the Gaels within the English lands. Doneyld OCothyl, who we examined earlier, killed John Comyn. After OCothyl was waived, the court reported that he had 7s. 3d. in chattels and that Walter de Rochford would respond for them to the exchequer.²⁹⁴ After Thomas MacTraner and Eugelyn OCarran were outlawed and put in exigent, and the court reported that they had 41s. 4d. in chattels between them and that Hugh Tyrel, lord of Castleknock, would respond for them.²⁹⁵ The men given possession of the chattels of felons were not allowed to keep the value of the items. ‘Responding’ to the exchequer meant that the possessors had to sell (or purchase themselves) the items and then give the money to the exchequer. This process was different than giving the chattels to the lord of a felonious *Hibernicus/-a*. OCothyl, MacTraner, and OCarran were not the only Gaelic criminals with chattels, and some of them were designated as *Hibernici* with an English lord.

²⁹¹ Pollock & Maitland, *History of English law*, ii, 513-15; Musson & Powell (eds), *Crime, law and society*, p. 57 (concerns manorial court, but is contemporary).

²⁹² Hyams, *King, lords*, p. 132. Professor Hyams also noticed that many villeins in England had chattels and that manorial courts protected villeins and treated them in a similar manner as royal courts treated free people: *ibid.*, pp 66-79.

²⁹³ Otway-Ruthven, ‘Native Irish’, p. 148.

²⁹⁴ NAI, RC 8/1, p. 98.

²⁹⁵ NAI, RC 8/1, pp 98-9.

Table 4: chattels of Gaelic criminals

Gaelic Criminal	Crime	Chattels/Value	Source
Mahony Ocoskrey [G. <i>Mathghamain Ó Coscraigh?</i>]	Rape	16s. 4d.	NAI, RC 7/1, p. 208
Gillecrist son of Germod [G. <i>Giolla Chríost</i> son of <i>Diarmaid?</i>]	Fled scene	2 acres of oats [33d.], 1 cow [40d.], 1 crannock of corn [2s.]	NAI, RC 7/1, p. 208
Neivin de Benuris [G. <i>Neamhain?</i>]	Fled scene	6s.	NAI, RC 7/1, p. 215
Philip Oschethe [G. <i>Ó Séaghdha?</i>]	Thief (<i>L. latro</i>)	5s.	NAI, RC 7/2, p. 261
Dermot Odunethy [G. <i>Diarmaid Ó Dúnadhaigh?</i>]	Felon	37s.	<i>CDI</i> , 1285-92, p. 431
Flan Omalkana [G. <i>Flann Ó Maoil Cianaig?</i>]	N/A	183s. 8d.	<i>CDI</i> , 1285-92, p. 431
Ingen Maggorman [G. <i>inghean Mhac Gormáin?</i>]	N/A	49s.	<i>CDI</i> , 1285-92, p. 431
Richard Mactyry [G. <i>Mac Tíre?</i>]	Felon	28s.	<i>CDI</i> , 1285-92, p. 431
David Ofethe [G. <i>Ó Fait?</i>]	Theft	2 cows	<i>CJRI</i> , 1295-1303, p. 3
William Oneell [G. <i>Ó Néill</i>]	Homicide (English)	£27 3s. 4½d.	NAI, JUS 33-4 Ed I, ff 128r-31r
Laurence Offlyng [G. <i>Ó Fhloinn?</i>]	Homicide (English), receiver of felons	Not specified	<i>CJRI</i> , 1308-14, pp 196-7
Henry O Glasganal [G. <i>Ó Glasáin?</i>]	Homicide (English)	20s. 5d.	<i>CJRI</i> , 1308-14, p. 214
Michael Offynnan [G. <i>Ó Fionnáin?</i>]	Robber, of ill fame, fled scene	1 crannock of oats [3s.], 1 cow [5s.]	<i>CJRI</i> , 1308-14, p. 228
Tayg Occothy [G. <i>Tadhg Ó Tuathaigh?</i>]	Homicide (English)	17s. 8d.	<i>CJRI</i> , 1308-14, p. 228
Walter O Brenan [G. <i>Ó Braoináin?</i>]	Robber, of ill fame	1 croft of [crop] sown [6d.]	<i>CJRI</i> , 1308-14, p. 253
John Omolmorath [G. <i>Ó Maoil Moichéirghe?</i>]	Homicide (English), thief	10s.	<i>CJRI</i> , 1308-14, p. 259
Philip Oballan [G. <i>Ó Beolláin?</i>]	Thief	30d., a lance [2d.], an axe [1d.]	<i>CJRI</i> , 1308-14, p. 267

*This chart is introductory and representative, and definitely not exhaustive.

As noted in Chapter One, a lord would never sue his or her unfree tenant in the royal courts because answering their lord's charge made the unfree tenants legally free.²⁹⁶ Richard son of Robert Codde sued two of his tenants, Lochelinus Oskevyn [G. *Lochlainn Ó Scéacáin?*] and Donchud [surname ineligible] for rescuing, with force and arms, their

²⁹⁶ Chapter One, *supra*, p. 48.

goods from his legal distraint.²⁹⁷ The record unfortunately did not detail the two Gaelic men's goods or the extent of their lands, but it notes that they held lands from Richard. A different case shows that some *Hibernici* engaged in business arrangements and were not unfree. John Tyrel sued several men for wounding and imprisoning him and stealing £10 of his goods. The jury reported that Guido Cokerel married John Tyrel's mother and had a *Hibernicus* named Adam Gilnengill [G. *Mac Giolla an Gall?*] who 'remained' on Tyrel's mother's dower lands at Castleknock, co. Dublin. They reported that Cokerel 'held' the lands by right of his wife – whom they never named. Apparently, Adam Gilnengill did not pay his rent and so Cokerel ejected the former from the lands, and then demised them to John Tyrel. Tyrel made an agreement with William Gilnengill, Adam's brother and a *Hibernicus*, to cultivate the lands jointly. In the autumn Tyrel reaped only his half of the crops. William Gilnengill, 'through fear of John Tyrel', did not reap his portion of the crops, but instead asked Richard de Tuyt to assist him. Gilnengill became de Tuyt's 'man' (probably gave homage) demonstrating the former's freedom as an unfree person could not enter into such an arrangement. De Tuyt then sent his carts and a group of men to the lands at Castleknock, and took William Gilnengill's and John Tyrel's corn.²⁹⁸ We should also note that William and some of the other accused did not appear in court and were outlawed. But they later came and made fine by 6s. 8d. for the entire group. At no point was William Gilnengill the *Hibernicus* of John Tyrel, Guido Cokerel, or Richard de Tuyt.

Harsher treatment of Gaels?

Some historians have argued that Gaels were more harshly punished than others for crimes, while others frame the claim in a petition (that Gaels were allowed to buy pardons while English criminals were hanged) as an accurate statement. There is a contradiction here and also inaccuracy.²⁹⁹ Adam O Bronan [G. *Ó Braonáin?*], Donogh O Bronan, and Ralph Further were charged with being in the company of Robert de Verdon during his rebellion

²⁹⁷ NAI, RC 8/2, p. 216.

²⁹⁸ *CJRI, 1308-14*, pp 53-5.

²⁹⁹ For the harsher-punishment argument, see Murphy, 'Status of the native Irish', pp 127-8; Parker, 'politics and society in County Waterford', p. 334; Foley, *Royal manors*, p. 148. Cf. Anthony Musson noted that there are many problems with quantitative studies of 'crimes' in medieval England, which has a much more intact collection of surviving court rolls than Ireland: Musson, *Public order*, pp 208-10. For the hanging of Gaels, see *supra*, pp 179-223. The claim that Gaels could buy a pardon while English people were hanged is in a petition from 1316: *CCR, 1313-18*, pp 358-9. Otway-Ruthven analysed some of the claims in the petition, but did not mention the ethnic aspect: Otway-Ruthven, 'Native Irish', p. 151. She did, earlier, argue that Gaels could buy a pardon before the English were allowed to: *ibid.*, p. 150. Murphy did not believe the claim in the petition that Gaels paid for a pardon while Englishmen were hanged: Murphy, 'Status of the native Irish', pp 119-20. Hand believed the petition was accurate: Hand, *English law*, pp 204, 208-10.

against Edward II. The three men came to court and said they were not guilty. The jury said that Adam O Bronan and Donogh O Bronan were with Robert de Verdon and made ‘slight’ trespasses, taking geese and hens worth 2*s*.³⁰⁰ The two Gaelic men were allowed to make fine by 2 marks. The English defendant, Ralph Further, was judged guilty on all counts and deemed to be a common thief. He was hanged. Then a fourth man, Mody O Coryn [G. *Meadhbha Ó Coirín?*], was accused of receiving a stolen tunic from some of de Verdon’s men, but he was pardoned at the instance of John Plunket.³⁰¹ In a different case disproving the harsher-punishment hypothesis, John Oclery [G. *Ó Cléirigh*] was taken *in flagrante delicto* (caught in the act) while stealing sixteen ells of cloth from Adam Hudd. The latter pursued Oclery and helped assist his capture. So, the court ordered during the trial that Hudd should receive his goods back immediately. Oclery was recommitted to gaol to await judgment, but later he was granted a pardon of grace without paying a fine.³⁰² English thieves caught ‘red-handed’ were usually hanged.³⁰³ Alexander McKyrgyr [G. *Mac Ciaragáin?*] was caught with stolen goods worth 1*l**d*. He came to court and acknowledged that theft, but said he only did so out of hunger. He then put himself ‘wholly at the pleasure of the king and his court’. The court ordered that McKyrgyr be taken to Dublin Castle and that the sheriff of Dublin form a panel of ‘good men’ from the lands where McKyrgyr was born and to ‘enquire diligently of his life’.³⁰⁴ The panel must have reported that McKyrgyr’s story was true because he was allowed to make fine by half a mark.

The treatment of Gaelic criminals was not consistent. In some instances Gaelic criminals may have been treated differently than English ones. The itinerant court at Cork in 1260 tried Adam son of Catht, John Wallensis, and Catht [G. *Cacht?*], captured at Incheovenan, for theft. The jury found them all to be thieves (L. *latrones*).³⁰⁵ Adam and John Wallensis claimed to be clerics and an investigation found this to be true. They were delivered to the bishop (of Cork?). But Catht was not a cleric, and so, by the court judgment, had his right ear cut off (L. *Catht amisit auriculam dextram per iudicium*).³⁰⁶ Catht was probably convicted of being a ‘common thief’ (of ill fame). It might be important that the court did not call him a *Hibernicus*. Because of the missing records, we

³⁰⁰ Cf. the usual punishment for thefts: *supra*, pp 218-24.

³⁰¹ NAI, KB 2/7, ff 24r-5r.

³⁰² *CJRI*, 1308-14, p. 157. Cf. return of chattels: *supra*, p. 223, n. 239.

³⁰³ *CJRI*, 1295-1303, p. 31; *CJRI*, 1305-7, p. 161.

³⁰⁴ *CJRI*, 1308-14, pp 150-1.

³⁰⁵ NAI, RC 7/1, p. 300.

³⁰⁶ Cf. Thomas Obrochan: *supra*, p. 207.

cannot tell if this punishment was rare prior to 1260, but the later practice was to fine or hang the accused. In England thieves received the exact same punishment (ear cut off by court judgment) in 1255, and possibly later.³⁰⁷ This is peculiar because there are no records of English people being mutilated in the royal courts in Ireland. Fifty-two years later, Reginald Cut stole a pitchfork from Comdyn O Brochran [G. *Comhdhan Ó Bruacháin?*]. The jury said the pitchfork was only worth 6*d.* and no judgment against Cut was recorded.³⁰⁸ His chattels were forfeited, though.

Other records show that sometimes the punishment of thieves depended on the legal ethnicity of the thief. William de St Michael was charged that he had brought a suit (*L. placitum*) in the court of his lord, David de Barry, which charged an Englishman with theft. Interestingly, William de St Michael was charged by the itinerant court for bringing the lawsuit, and not David de Barry for hearing it. The normal procedure would be to prosecute the lord for usurping the king's jurisdiction. William admitted his fault and gave 20*s. pro visneto relaxandum* (to be released from the charge) for contravening the 'liberty' (rights and privileges) of Lord Edward by bringing a writ in a seigneurial court which belonged in Edward's court.³⁰⁹ More than thirty years later (1297) Thomas de Saresfeld complained that Eustace de Cogan caught and imprisoned a *Hibernica* for stealing goods worth 17*d.* from de Cogan's daughter, but then allowed the *Hibernica* to pay a fine and leave. De Saresfeld's problem was that he claimed to be lord over the area where this happened and wanted to hang the *Hibernica* for theft. He claimed to have gallows and the right to hang all *Hibernici* caught stealing in his lordship.³¹⁰ The court did not rule on whether de Saresfeld had this liberty. It found both de Cogan and de Saresfeld guilty of allowing a thief to 'escape' and hearing a case of escape, respectively, both of which did not belong to them – but the sentencing was recorded elsewhere.³¹¹

But in some instances, ethnicity was not raised. David de Barry de Moyele was charged with capturing Walter Oconnath [G. *Ó Connachtaig?*], who he caught and then liberated from the gaol of Adam de Barry at Olethan. David de Barry came to court and acknowledged that he held Walter for theft (*L. latrocinium*). The jury of the

³⁰⁷ PRO, JUST 1/872, m.35d. I first learned of this case from K. F. Duggan's tweet <https://twitter.com/KFDuggan/status/900400990867910656> (30 Aug. 2017). Cf. the case in London in 1321 a thief convicted of stealing chattels worth 6*d.* was sentenced to six days in gaol: Helen Cam (ed.), *Year Books of Edward II: Eyre of London, 14 Edward II, part 1* (SS, lxxxv, London, 1968), p. 85.

³⁰⁸ *CJRI, 1308-14*, p. 254.

³⁰⁹ NAI, RC 7/1, p. 304. This was during Edward's appanage (1254-72).

³¹⁰ *CJRI, 1295-1303*, p. 95.

³¹¹ Cf. Reginald Cut was relieved by the jury which ruled the pitchfork he had stolen was only worth 6*d.* and not 12*d.* as the indictment claimed: *CJRI, 1308-14*, p. 254.

neighbourhood (*L. visnetum*) said that David held Oconnath for theft and not for a felony.³¹² This implies that this was a lesser charge and he was either released on mainprise or amerced, but no sentence was recorded. The most pertinent part of this case is that Lord Edward's liberty was not mentioned in this case, and so it is possible that not every instance of releasing a thief was deemed *contra libertate domini Edwardi* and that not every Gaelic thief was deemed a *Hibernicus/-a*.

There are numerous pardons to criminals in English Ireland, some of which are examined closely below. But one aspect of a pardon to a Gaelic man is shocking. Laurence Offlyng [G. *Ó Fhloinn?*] was charged with the death of David de Maundevill, with robbing de Maundevill of livestock and goods worth 40s., and with receiving felons of the king. The jury reported that Laurence was guilty and 'an evildoer'. But instead of being publicly hanged, Offlyng was allowed to make fine for the felony and for return of all of his chattels by 5 marks by the pledge of John son of John le White Poer.³¹³ Having a pledge to make the payment of a fine was not unusual. The next part was. Le White Poer undertook to pledge that Offlyng would behave well in the future, and if not, the former would 'without delay' put out Offlyng's eyes and then bring him to the sheriff! Before we conclude that this punishment was due to Offlyng's ethnicity, we should compare it to the only other surviving instance it was used. Nicholas de Capella and Thomas son of Robert de Capella were charged with breaking into a house and stealing food worth 2s. and robbing a man of 15d. of silver. This was much less in value than the goods Offlyng stole and they did not kill anyone. They made fine by 20s. with three pledges to pay, and the pledges swore to 'utterly blind' the two Englishmen if they committed any more misdeeds.³¹⁴ Other Gaels were pardoned in the 'normal' fashion. William Duff Orayghly [G. *Duibh Ó Raghailigh?*] was charged with robbing David le White of 19 cows and 4 horses worth 6 marks and goods worth half a mark and that Orayghly stole sheep and goats from Raymond de Cauntetoun worth 1 mark. The jury said the Orayghly was not guilty, but was 'a customary stealer' of horses. He was allowed to make fine by 6 marks and his pledges to pay guaranteed that he would behave well in the future, and if not, they would bring him to the

³¹² NAI, RC 7/1, p. 305. This case was recorded in the itinerant court roll, but the membrane was headed '*Coram Walteri Rydeleford & Willelmi Cole*'. Perhaps it was a manorial court record which had been sown in as part of a *certiorari* case.

³¹³ *CJRI*, 1308-14, pp 196-7.

³¹⁴ *CJRI*, 1308-14, p. 215; Hand, *English law*, pp 177-8. Cf. pledges would drive criminals 'out of the country' if the latter reoffended: *supra*, p. 227.

king's prison or drive him out of the country, and then make good the losses of his victims.³¹⁵

Sequela & nativi

Paul Hyams noted that the term *sequela* is 'normally taken to apply only to the off-spring of the unfree'.³¹⁶ In a few surviving records, this was the situation. The register of writs sent to Ireland in c.1210 contains the phrase: '*nativos et fugitivos suos cum omnibus catallis suis et tota sequela sua*'.³¹⁷ In 1302 the prior of St Trinity, Dublin recovered seisin of William MacKilkeran, the prior's *nativus*, and all of the latter's 'sequela'.³¹⁸ This definition, however, was not the only usage of the term in the royal courts in English Ireland. In many instances the clerks refer to *sequela* of Englishmen. David de Roche was killed near Poiwan, co. Cork, c. 1260. De Roche and his *sequela* had come to the vill of Kerwel at Poiwan where they found Dermot O Dunely [G. *Diarmaid Ó Duinnshléibhe?*] and Lorcan' Okerwyl [G. *Lorcán Ó Cearbhail?*]. The latter fled for the woods, but were captured and bound by de Roche and his *sequela*. The record does not explain why they ran or why de Roche pursued them. Dermot's brother Neyvin [G. *Neamhain?*] then shot (L. *sagittavit*) and killed David de Roche, and was hanged for it.³¹⁹ In 1296 several de Barrys made a pact with Theobald le Botiller that the former would – with *tota sequela nostra* – keep the king's peace and cause no damage to le Botiller.³²⁰ In these instances it appears the term meant simply followers.

Englishmen were not alone in possessing *sequela*. Some Gaelic men also had English *sequela*! If this *sequela* was a group of legally unfree English people following a Gaelic leader, then that would be amazing. But these probably refer, just as with the Englishmen's *sequela*, simply followers. In 1260 Henry III sent a writ dated 2 July that he remitted the charges for all trespasses and offences made by Phelim Macarthy [G. *Feidhlimidh Mac Carthaig*] and all of his *sequela*, English as well as Gaelic.³²¹ Not only did Macarthy have English followers, but also they were labelled with a term usually reserved for unfree people. Around 1278 William le Gras, Oliver le Gras, Robert le Gras, and Peter son of John with their *sequela* 'disturbed' (L. *perturbabant*) the king's army and

³¹⁵ *CJRI, 1308-14*, p. 191.

³¹⁶ Hyams, *King, lords*, p. 13.

³¹⁷ De Haas & Hall (eds), *Early register of writs*, p. 11, n. 30.

³¹⁸ Chapter One, *supra*, pp 27-8.

³¹⁹ NAI, RC 7/1, p. 298.

³²⁰ *RBO*, no. 38.

³²¹ NAI, RC 7/1, p. 262.

thus the army was ‘confounded’ (L. *confundebatur*). William ‘and the others’ were then attached to appear at the scheduled parliament in Dublin to respond to the charge and the seneschal of Kilkenny was punished for concealing their act.³²² We cannot assume that ‘*sequela*’, in this case, meant unfree followers. That was not the situation earlier with Henry son of Richard de Cogan, whose followers were called ‘tenants’, or Geoffrey son of Eustace, whose followers were called ‘serving men’.³²³ In 1315 Richard de Tuyt, fourteen other named men, and an unspecified *sequela* went to the lands of William son of Richard McGochi [G. *Mac Eachaidh?*] and Henry McGochi and stole various animals and goods worth 40s., took the goods back to de Tuyt’s manor in the liberty of Trim, and then killed at least nine men (two Englishmen and seven Gaelic men).³²⁴ The defendants did not appear and were outlawed, but Richard de Tuyt appears in later records, and so he must have escaped corporal punishment.³²⁵

Sometimes ‘*sequela*’ was used for Gaels from Gaelic Ireland who had committed crimes in English Ireland. The abbots of Jerpoint and Kilcool, Milnest Archid’, Richard le Franceis de Munster, Philip Baron de Munster, Elena ynien Mac Donehoth de Lyñna, and Thomas son of David de Incherstheryth were charged with receiving Rykyn MacDonehoth [G. *Reabhacháin Mac Donnchadha?*], Henry MacDonehoth, and Walter MacDonehoth, felons and arsonists, with their *sequela*.³²⁶ The seven accused of receiving were attached and the three felons were put in exigent and outlawed. There is no proof that the three Gaelic men’s followers were unfree. In this case the term probably just means ‘followers of criminals whose names are not known’. There are ten other surviving criminal cases from 1278 which used ‘*sequela*’ for followers of Gaels from Gaelic Ireland who had committed crimes in English Ireland.³²⁷

Sequela was not the only term for unfree people in the criminal cases. Several criminal cases involving *nativi* demonstrate that the concept of freedom in English Ireland needs a complete reassessment. John Bet’ de Coulmene, William son of Philip de Achethawyl (later called William Odownyld), John his brother, Andrew Nall [G. *Ó Néill?*], Hugh the Whyte, and Robert Odownyld [G. *Ó Domhnaill?*] were charged with receiving

³²² NAI, RC 8/1, pp 81-2.

³²³ *Supra*, p. 227.

³²⁴ NAI, KB 2/7, ff 5r-7r.

³²⁵ De Tuyt was at the Battle of Faughart when Edward de Bruce was killed, this may have helped him escape punishment: Orpen, *Ireland*, pp 533-4.

³²⁶ NAI, RC 8/1, p. 81 [*Richard le Franceis de Momon, Philip Baron de Momon, and Elena ynien Mac Donehoth de Lyñna*]. A curved macron above a consonant usually meant an abbreviation for ‘er’ [Lynerna?], or Lyñna could be Linnanagh, lib. Wexford. Lanna seems unlikely because of the abbreviation mark.

³²⁷ NAI, RC 8/1, pp 15, 16, 18, 74-5.

the Uí Bhroin felons who were at war with the king. The jurors said that the accused, by their own will, gave food and drink to the Uí Bhroin in times of peace and war because the accused 'have not the power to punish the said felons'. The court asked if the accused raised the hue and cry against the Uí Bhroin, and the jury replied that they did not out of 'fear of death'. In a rare, but not entirely unique line of questioning, the court asked if the accused 'secretly warned the natives [L. *nativi*] of the country [co. Carlow] that the felons spend time with [the accused], by which warning the felons could haply have been taken or slain'. This seems to imply that *nativi* were charged with some involvement in 'law enforcement' or peace keeping. The jury replied 'no' and the accused were recommitted to gaol, but then the three Odownylds received a pardon by paying 1 mark.³²⁸

The next criminal 'case' was the record from the justiciar's court of a peace treaty, made by Richard de Exeter, justice of the Dublin Bench, with Maghoun McMaghoun and his men of co. Louth and Maghoun McKeygh Oraily and his men of co. Meath. It states that Maghoun McMaghoun offers £10 to the king for a full pardon for himself and his men of co. Louth, and that they would satisfy all *nativi* of their marches, *English* as well as Gaelic, for any complaints made by the *nativi* against McMaghoun and his men.³²⁹ This statement has gone unnoticed by previous historians and discomfits their construction of English Ireland. Many have theorised, for numerous reasons, that it was impossible for there to have been unfree English people in English Ireland.³³⁰ Perhaps it is time for a fresh appraisal of the society in medieval English Ireland.

Pardons & 'pro visneto relaxatio'

There is one particularly thorny issue which I have reserved for the end of this chapter: the 'fine' *pro visneto relaxatio* (for the jury of the neighbourhood to be released). According to Charles McNeill this fee was paid by either party in a suit to have the jury of the neighbourhood dismissed and for a jury from a larger area to be summoned. He stated that this was allowed because the party believed he or she would not get a fair trial with only

³²⁸ *CJRI, 1308-14*, pp 233-4. The liberty of Carlow was still a royal county at this time.

³²⁹ *CJRI, 1308-14*, p. 161.

³³⁰ 'The [English] settlers were all personally free and had no need to introduce servile tenants from England... the servile tenants of the new [English] manors were provided by the existing inhabitants, many of whom had been in exactly the same position before the conquest.': Otway-Ruthven, 'Native Irish', p. 145. See also Hand, *English law*, p. 188; Frame, 'Engleys néés en Irlande', pp 134-5, 139.

the local jurors.³³¹ McNeill did not state his source for this translation of the phrase or any case study to confirm the supposed effect. Edmund Curtis believed the phrase meant the payer was securing a ‘release from jury service’.³³² The legal sources from England do not address this phrase, but they do define *visnetum* (*vicinus*), *jurata*, and other terms. There were several types of ‘juries’. For criminal cases the indictment was brought by the *inquisitio*. A *visnetum* was the place where a crime or trespass had occurred, but it was also the jury which was formed from that place. Ralph Hunnisett, based on *Britton*, stated that no interested party could object to an *inquisitio* juror.³³³ For assizes the case was investigated by an *assisa*. In most civil and criminal cases – after the *visus* (‘viewing’; i.e. investigation), *narratio* (count), and defence – the verdict was reported by the *jurata*, and then the justices passed a judgment. The formation of civil investigative ‘juries’ was usually the responsibility of the ‘sheriff’ (viscount), and the coroner formed the criminal *inquisitio*. According to the author of *Bracton* a party could object to an individual juror in an assize after the pleading and viewing, but before the return of the jury. If a party felt the *jurata* made a false return (*L. juratores falsum fecerint sacramentum*), after the case ended, he or she could bring a writ of attaint.

This leaves some problems with our phrase ‘*pro visneto relaxatio*’. When it appears in the published records, the type of case is not recorded. The person who paid the amount is not labelled as plaintiff or defendant. But we can tell something very relevant to this thesis: that the people paying this fine were recognised as free members of English Ireland and allowed to use the royal courts. It mattered not whether these people were paying to be removed from jury service, paying to have a different jury, or paying to have an investigation against themselves dismissed. Any of these possibilities means that the courts recognised the payer’s freedom to use the courts. And we have a large number of Gaelic names purchasing the ‘fine’. William O Kody [G. *Ó Coibhdeanaigh?*] paid half a mark. Anneg MacSeyr [G. *Adhnach Mac Saoghair?*] paid 20s. Thomas son of Maurice and the ‘betaghs of Serreynach’ (Shanrahan?) paid 73s. 4d. Richard Macgorman [G. *Mac Gormáin?*] paid £13 16s. 4d. Simon O’Koyne [G. *Ó Cadhain?*] paid 5 marks. Philip Offouleth [G. *Ó Foghladha?*] paid 6 marks. Colin O’Dreynan [G. *Coilín Ó Draighneán?*] paid 10s. and Mathyn Ger O’Hany [G. *Maithghen Ó hÉanaigh?*] paid 2 marks. Fynyn MacCarthy [G. *Fínghin Mac Carthaig*] paid 66s. 8d. Peter McSchyteroc [G. *Mac*

³³¹ Charles McNeill, ‘Inhabitants of Louth in the thirteenth century’ in *Jn. of the Co. Louth Arch. Soc.*, v, no. 3 (1923), pp 189-92 at 189.

³³² Curtis, ‘Sheriffs’ accounts, Tipperary’, p. 89.

³³³ Hunnisett, *Medieval coroner*, p. 17.

Shitriuc?] paid 53s. 4d. the first time, and then 2 marks for the second. David and William McBathely [G. *Mac Baothghalaigh?*] paid 40s. And Hugh Oholetan [G. *Ó hUallacháin?*] paid 5 marks.³³⁴ The extreme variation in these ‘fines’ should be noted. When a *jurator* (juror for the trial) did not appear in court, the court records state: *et quidam de juratoribus summonitus non venit ideo in misericordia* (‘and a certain juror, of those summoned, did not come, he is amerced’). This amercement appears to have been set at half a mark, and so the *pro visneto relaxatio* ‘fines’ would appear to be for some other cause.

When we look at the unpublished memoranda records, there usually is an explanation for what this ‘fine’ is for. Anthony Musson noted that an accused felon in England could purchase a royal pardon at any time and present it to the court before the trial.³³⁵ If the records of *pro visneto relaxatio* are instances of pardons, then perhaps the different phraseology is just an Irish idiosyncrasy. In 1278 Comdin’ [G. *Comhdhan?*] chaplain of Kylfar was indicted for receiving a thief (L. *latron*’ [*latronis* or *latronum?*]), and then he gave half a mark *pro visneto relaxatio*. A coroner presented that Luke Clericus fled to the church of Ardee because Luke was scared of capturing his lord, Walter Okerwyl [G. *Ó Cearbhail*].³³⁶ The presentation also said that Okerwyl was a felon, and that the town of Ardee was charged with the custody of Luke Clericus. Ardee then made a fine with the court of £10 *pro visneto relaxatio et cetera*.³³⁷ These cases alone would indicate that people accused of lesser crimes could buy a pardon, but the phraseology differs too much from the pardons for military service. In the same memoranda roll there are more cases of *pro visneto relaxatio* which contradict almost every notion from the medieval legists and modern legal historians. Aldusa daughter of Gullefyngan Bray [G. *Giolla Fionnán Brígh?*] was charged with the death of her brother, but was then allowed to pay 40s. *pro visneto relaxatio*. Euffanci’ de Rup and Alexander de Roche were charged with seizing (L. *raptus*) Amicie daughter of Edward de Kallan and forestalling, and were allowed to pay £10 *pro visneto relaxando*. These records appear to prove that some people could buy a ‘pardon’ from the Dublin exchequer in the late thirteenth century. The indictments appear to have been dismissed outright after the fine was paid and no subsequent court case was held.

³³⁴ *CDI*, 1285-92, pp 431, 434, 437, 473, 479; Curtis, ‘Sheriff’s accounts for County Tipperary’, pp 67, 70, 72, 76.

³³⁵ Musson & Powell (eds), *Crime, law and society*, p. 184.

³³⁶ *Pro timore capcionis Walteri Okerwyl domini sui felonis fugit ad ecclesiam Athirde*. The RC clerk for this record did not record abbreviation marks. He wrote ‘Walt Okerwyl’. If it was ‘Waltero’, then Luke the clerk feared capture by his lord, and not the capture of his lord. But that makes less sense that the town would be fined for harbouring a clerk fleeing capture by a felon instead of a clerk shirking his duties to capture a felon.

³³⁷ NAI, RC 8/1, p. 18.

These records were from the Dublin administration (itinerant and justiciar's courts and the exchequer) and were not 'royal' pardons.³³⁸ We should note that this not a Gaelic liberty, as the famous petition would have us believe.³³⁹ This phenomenon was exploited by as many, if not more, English people as Gaelic people.³⁴⁰ While it raises a host of questions which may never be answered, it does show the legal status of the Gaelic people who were allowed to use it.

Conclusion

To those familiar with the traditional narratives about medieval English Ireland, learning that it was a felony to kill some Gaels and that there were English *nativi* will come as a shock. But this should be taken as a learning opportunity to encourage the questioning of long-held beliefs and to search for evidence to confirm or disprove assumptions. We should also note the substantial deviation from English law and custom in the practice of not punishing lords who killed their own unfree tenants, and the even more shocking, a man killing his own wife without reproach. To kill someone in England, free or not, still resulted in the slayer being hanged or paying a considerable fine based on their personal ability. The payment of fines for crimes in English Ireland almost matches the procedure in England, except for the unusual phrase '*pro visneto relaxando*'. If this was a fine to drop a criminal charge before the jury of the neighbourhood (L. *visnetum*) returned its verdict, then it did not break from English practice and custom (beyond the different phraseology). A more important factor that we have just learned is that the punishment for stealing from Gaels was usually equal to stealing from English people. This appears to be another overlooked area of the medieval society. Many have focused on the claim that it was no felony to kill a Gael, but missed the actual practice of hanging thieves. This shows us two important aspects of that society: Gaels had property and stealing from them was severely punished. Finally, the treatment of Geoffrey Ó Fearghail deserves more attention than I have been able to give it. He broke numerous laws, killed numerous people, and was rewarded with a land grant to placate him, it seems. His behaviour and the courts' reactions place him in the English magnate class. We should probably consider whether his extraordinary treatment was truly peculiar to his circumstances or if other Gaelic kings/lords received similar treatment but the records have not survived.

³³⁸ For a few 'royal' pardons in English Ireland, see *CIRCLE*, Henry III, no. 31; PR, 31 Ed I, nos 15, 86.

³³⁹ Rymer, *Fœdera*, ii, pt 1, 293-4; *CCR, 1313-18*, pp 358-9; Otway-Ruthven, 'Native Irish', p. 150; Hand, *English law*, p. 204.

³⁴⁰ I am currently conducting a survey of all of the surviving records which used the phrase.

V

The role of ethnicity in the legal status of clerics

The previous chapters discussed the varying treatment of different ethnic and social groups in English Ireland in both civil and criminal cases. These groups were defined by labels and constructs which the contemporary courts created, mostly. A final group – which according to the courts was supposedly distinct from all others – was the clerics. Men and women of religion appear in both civil and criminal cases. I have included in this group members of the church in Ireland who were legally regarded as ‘not secular’ (monks, friars, nuns, clerks, priests, officials, bishops, and archbishops). I used this category because the royal courts did not separate the religious from the secular clergy. In civil cases the cleric’s official title was sometimes given in the writ, but his or her claims were usually not dependent on ordination. And in criminal cases, normally, an accused cleric simply refused to answer the charge (by claiming the ‘benefit’) because he or she was a ‘clerk’.¹ The ‘benefit of clergy’ was the compromise reached by Henry II and the Church, which spared any ‘clerk’ from corporal punishment in cases of felony. The clerics who were accused of criminal offences could be monks, canons, abbots, or priors; the criminal record does not usually differentiate between the various strata within the Church.² The examination below begins with the treatment of clerics by the royal courts in both civil and criminal cases and then proceeds to an analysis of the treatment of ethnicities (specifically Gaels) by clerics in the same courts. The latter issue demonstrates the status of clerics and their legally-recognised relations with the laity. Part of this examination includes an evaluation on Archbishop David Mac Cearbhaill’s motives in his attempt to purchase access to the royal courts for ‘all’ *Hibernici* in 1277.

John Watt is the authority on the status of clerics in thirteenth-century Ireland, although most of his work focuses on the status of the Church as opposed to specific clerics. He simultaneously proposed that all Gaelic and English people were inherently inimical to each other and demonstrated – with his citations and examples – that they were

¹ I have yet to find a case of a religious woman accused of a felony, but that does not mean that none ever was charged. Refusing to speak in response to a criminal charge could lead to conviction by default, so the ‘benefit’ required the accused clerk to speak some words in court: *CJRI, 1295-1303*, p. 12. Cf. *ibid.*, p. 19.

² Except for prelates, it seems: Stephen Ó Brácaín, *infra*, p. 262.

not.³ His ‘two nations’ theory may seem quite myopic for its flippant use of anachronistic terminology and absolutist argumentation, but his work with the ecclesiastical records greatly facilitates any study of clerics or the church in thirteenth-century Ireland. We can, in a similar manner to Orpen’s *opus magnum*, utilise Watt’s research findings as a starting point for the current study.

The first things to establish is: what was the status of clerics in the secular courts in English Ireland? This may seem straightforward enough that all clerics were *ex officio* free and accepted members of the society, but there are, however, several problems with this assumption. The first is that – according to several legists – monks were in the same legal position as villeins: they endured a type of ‘civil death’.⁴ This meant that they could not legally own property, inherit property, sell property, or sue anyone for theft/disseisin. But monks were allowed some recognition. *Bracton* simply noted that an heir could bring an assize of mort d’ancestor after the heir’s ‘ancestor’ assumed the habit of religion or died on a pilgrimage.⁵ Legal practice in Ireland seems to confirm *Bracton*’s claim. In 1305 the justiciar’s court allowed an assize of mort d’ancestor to determine whether a man had been seised on the day ‘he assumed the habit of religion’ as if he had died that day.⁶ Yet, in 1260 the abbot of St Mary’s, Dublin, put Brother William Russel, monk, against Simon Onolan [G. Ó Nualláin] and John de Galmore, chaplains, in a case of land (*L. placitum terre*).⁷ And the abbot of Tracton, Cork, was essoined by his attorney, Brother Richard, a monk of the abbey, in a case of warranty.⁸ These cases were not anomalous, however, as records from England confirm this was normal procedure. Clement, prior of Bromholm, Norfolk, was allowed two attorneys in any and all cases, royal and seigneurial, due to his infirmity. His attorneys were John de Witton and Eborard de Witton, ‘his monks’ from Bromholm.⁹ This may indicate that, while monks could not legally own property, they were not subsequently barred from speaking or participating in the royal courts.¹⁰

³ J. A. Watt, ‘English law and the Irish church: the reign of Edward I’ in J. A. Watt, J. B. Morrall, and F. X. Martin (eds), *Medieval Studies presented to Aubrey Gwynn* (Dublin, 1961), 133-67; idem, *The church and the two nations in medieval Ireland* (Cambridge, 1970). Curiously, Watt hid the contradictory conclusion to his overall argument in his chapter on ‘English law’: Watt, ‘English law’, p. 162.

⁴ Pollock & Maitland, *History of English laws*, i, 433-4; Hyams, *Kings, lords, peasants*, pp 126-7.

⁵ *Bracton*, iii, 249-50.

⁶ *CJRI*, 1305-7, p. 37.

⁷ NAI, RC 7/1, p. 420. The record states ‘*Abbas sancte Marie juxta Dublinensem ponit fratrem Willelmum Russel monacum suum vel Simon Onolan & Johannes de Galmore capellanos de placito terre*’, but the ‘*vel*’ must surely be a mistranscription of ‘*versus*’.

⁸ NAI, RC 7/1, pp 404-5.

⁹ *CPR*, 1247-58, p. 512.

¹⁰ Many thanks to Professor Paul Brand for his advice on this topic.

In most instances monks and monasteries (or priories) were represented in court by their prior or abbot. In theory priors and abbots could only sue for their house, but it seems there were also instances of priors suing for personal property. In 1261 Henry le Botiller and Sathef [G. *Sadhbh?*], his wife, sued Muryardoch Oconchor [G. *Muireardach Ó Conchobair*], prior of Roscommon, for her dower.¹¹ Muryardoch appears to have been a brother of Ardguyll Okonchor [G. *Ardgal Ó Conchobair*],¹² Sathef's previous husband, and the former was preventing her from holding her dower lands.¹³ The prior claimed that Sathef did not marry 'Ardkyl' in the church of Arderehyn in the bishopric of Kilmacduagh, and that the inquisition into her claim belonged to an ecclesiastical court.¹⁴ The itinerant court agreed and the bishop of 'that place' [Maurice Ó Leaáin] was ordered to investigate and determine the validity of Sathef and Ardguyll's marriage (*L. mandatum est episcopo ejusdem loci quod super promissis inquirat*). No decision has survived, but more importantly, the pleading and the jury's return were not recorded. So, we cannot tell whether Muryardach was claiming the lands as his personal inheritance and property or claiming that Ardguyll had donated all the lands to the priory in his will. There is also a curious criminal case involving a monk. Richard le Smale was charged that he robbed a monk of Jerpoint Abbey of a horse worth 40s. The record specified that the horse belonged to the monk and not to the abbey. Richard was found not guilty, and so we cannot detect whether the court would have awarded damages to the monk or to the abbey.¹⁵ Nuns were similarly barred from owning personal property, and their convents or houses were either represented by their abbess/prioress or by monks or canons from a neighbouring, male religious house.¹⁶ Unlike monks, no nuns appear in the surviving court records (prioresses and abbesses do appear).

¹¹ Since Muryardach was holding extensive lands, he was probably the prior of the Augustinian canons in Roscommon. If he was the prior of the Dominican priory, then he was violating the Dominican code of not accepting lands, rents, or tithes: Colmán Ó Clabaigh, *The friars in Ireland, 1224-1540* (Dublin, 2012), pp 87-93. Muryardach died shortly after this case or was transferred because the *Annals of Connacht* record that Mael Iso Ó hAnainn was prior of Roscommon and Athleague when he died in 1266: *AC*, pp 146-7.

¹² Ardgall was the son of Coarb of Roscommon (Máel Isa Ó Conchobair?), and the former died in 1258: *AC*, pp 128-9.

¹³ *NAI*, RC 7/1, pp 343, 408-9. Kenneth Nicholls wagered that Muryardach was Ardguyll's brother and not his son, I see no reason to doubt this assertion: Nicholls, 'Butlers of Aherlow and Owles', p. 126.

¹⁴ The fact that Ardgall Ó Conchobair's name changed (from Ardguyll to Ardkyl) in the record is important and curious because the court and the parties did not seem to notice it. Cf. the cases involving Bishop Gofraid Mac Lochlainn: *infra*, pp 253-5.

¹⁵ *CJRI*, 1308-14, p. 175.

¹⁶ For instance, the house of St Mary's, Clonard, was represented in court by the canons of Durrow, Trim, and Clonard: S. M. Preston, 'The canons regular of St. Augustine in medieval Ireland: an overview' (2 vols, unpublished PhD thesis, University of Dublin, 1996), i, 61.

Almost every other type of cleric was allowed to use the royal courts, in theory. Throughout the surviving court records are men and women of religion, from prelates to chaplains to prioresses. Religious people were not shy about using the secular courts to their full advantage. Recently David Millon completed a study of thirteenth-century court cases involving ecclesiastics in England.¹⁷ He noted that before the end of Edward I's reign if the plaintiff was a cleric, the king normally sued for him or her. This was because Robert Grosseteste (1175-1253), bishop of Lincoln, attempted to bring canonical censure against any cleric who brought the writ of prohibition.¹⁸ The writ of prohibition was a mandate to any ecclesiastical judge, who owed fealty to the crown, to stop a case being heard in a church court which did not belong to that court. This was usually phrased as 'a debt which was not of matrimony or testamentary matters', but could also include any type of case which the crown believed belonged to secular jurisdiction. One of the earliest surviving records from English Ireland is the case of Brother Matthew, prior of Athassel, against Milo le Bret with a writ of prohibition.¹⁹ It is interesting that the prior avoided defending himself in an ecclesiastical court. Perhaps he felt he would lose and relied on the writ of prohibition to delay the case while le Bret sued a civil writ in the royal courts. In the same year there was also the case of Master Thomas de Wodeford, deacon of the cathedral church of Limerick, against the same Milo le Bret of a case of prohibition.²⁰ These records are *essoins* and so we do not know the full details of the cases, such as how le Bret had broken the prohibition or who won either case, but we can see that clerics in English Ireland were not afraid of canonical censure for using the writ of prohibition.

Later that year (but in the next regnal year) the prior of the hospital of St John of Kilkenny sued the abbot of Tintern for suing the former in an ecclesiastical court over the advowson of the churches of St 'Eyvinus' and St Mary of New Ross against the prohibition.²¹ Advowsons of churches were considered to be secular matters by English law and the papacy allowed this. In this case the 'sheriff' (viscount) of Dublin returned to the itinerant court that he had delivered the original writ to the seneschals of Wexford and Ross, but they had done nothing. The itinerant court then ordered the bishop of Ferns to

¹⁷ David Millon (ed.), *Select ecclesiastical cases from king's court, 1272-1307* (SS, cxxvi, London, 2009).

¹⁸ Millon (ed.), *Select ecclesiastical cases*, p. xxii.

¹⁹ NAI, RC 7/1, p. 238.

²⁰ NAI, RC 7/1, p. 261.

²¹ NAI, RC 7/1, p. 331.

sequester all of the ecclesiastical benefices of the abbot of Tintern and that the bishop would be responsible to answer for these to the exchequer in Dublin.²²

An even more surprising case is from c.1269. Thomas, bishop of Lismore, sued Ralph de Swyneshened [Swineshead] with the writ of prohibition.²³ Earlier cases show the same Ralph suing several people, including Bishop Thomas, with the writ of prohibition. Ralph first sued Walter, vicar of the church of Nodan, co. Tipperary, with the writ of prohibition for hearing a case concerning common pasture in the vicar's ecclesiastical court.²⁴ Ralph then sued Bishop Thomas and Master Walter le Kilkenny, Thomas's official, for hearing cases concerning lay fees in the bishop's ecclesiastical court.²⁵ The surprising factor is not Ralph's cases against these clerics; it is that Bishop Thomas responded with his own writ of prohibition. If the lands in question were *elemiosa* (church lands which could not be touched by any crown administrator, such as the escheator during a vacancy), then Bishop Thomas would not have been required to respond to the earlier writ of prohibition. Millon noted a designed loophole in the royal writ. It only ordered the church court to stop hearing a case if the case was secular. If the case was 'purely' ecclesiastical, then the church court could continue without delay.²⁶ These cases show that between 1252 and 1307 (the supposed time of Grosseteste's censure) the clerics in English Ireland did not fear any ecclesiastical censure for suing with the writ of prohibition in the secular courts, and that legal feuds between clerics and laypeople could cross the juridical boundaries.

After 1307 there is one final case of note concerning the writ of prohibition. Master Charles Donwyth' [G. Ó Donnchadha?] sued King Edward II and John de Patrickeschurch with the writ of prohibition.²⁷ Unfortunately this is also an essoin, and so we do not have all of the information. It is very surprising that this case exists, though. Most likely John de Patrickeschurch sued for the king which was the usual practice, but it is surprising that John (for the king) would sue Master Charles in a church court. The former was a clerk in

²² The record states: *vicecomes mandatum quod fecit retornum brevis originalis seneschalo [sic] libertatum Willelmi de Valencia de Weseford & Rogeri comiti marescallo de Ross qui nihil inde fecere*. But this must be a mistake. Surely the viscount sent the original writ to both seneschals, who were unlikely to be the same person.

²³ NAI, RC 7/1, p. 475.

²⁴ NAI, RC 7/1, pp 450-1.

²⁵ NAI, RC 7/1, p. 451.

²⁶ Millon (ed.), *Select ecclesiastical cases*, pp xxiii-xxvi.

²⁷ NAI, KB 2/4, f. 410r. John de Patrickeschurch was a clerk in the justiciar's court: *CJRI, 1295-1303*, p. 349; *CJRI, 1305-7*, pp 56, 129, 140, 154, 177, 178, 187, 190, 237, 274, 278, 298, 337, 362, 372, 377, 378, 379, 381, 384, 392-3, 396, 449, 450, 453.

the justiciar's court and he received numerous grants of money from damages won by parties in the court.²⁸ Master Charles then sued John de Patrickeschurch alone, without the king, for a trespass.²⁹ No other details survive from these cases.

Turning to the specific aspect of ethnicity, there are no surviving cases of Gaelic or Continental chaplains, priors, deacons, or bishops bringing a suit and then being denied access to the courts, but there are records of Gaelic clerics purchasing grants of access to the royal courts. The earliest surviving grant of access to the royal courts was to Maurice son of Alan, clerk, on 15 November 1285. The most interesting part of this grant was that Maurice was not called a *Hibernicus* (and, obviously, he did not have a Gaelic name).³⁰ It only mentions that Maurice had served Edward I 'faithfully and assiduously in divers counties in Ireland'. In 1290, in an instance which disrupts our entire understanding of thirteenth-century English law, a grant was made to Maurice de Bre, *clerico Hibernico*.³¹ This grant is very problematic because six years later Master Maurice de Bree was denied access to the exchequer court because he was a *Hibernicus*.³² Firstly the record does not call him a *Hibernicus et nativus*, so we can probably guess that he was being denied access based on his ethnicity and not on a claim of unfreedom. There are also the anecdotal references in the 1296 case record which display Maurice's freedom (such as making business deals and demising lands). We are then faced with the problem that Master Maurice did not present his grant from 1290 when he encountered the *est Hibernicus* plea in the exchequer court. In almost every other similar case an enfranchised Gael presented his or her grant of access to the royal courts, but Maurice de Bree made no mention of his grant.³³ The subsequent court case in the justiciar's court implied that Master Maurice approached the exchequer court c.20 September 1296 (Thursday, the vigil of the feast of St Matthew). After being 'repelled' he immediately went to Edward I in England, it seems, and secured a second grant of access to the royal courts.³⁴ Maurice's freedom of movement (to go to England) and his ability to plead in the justiciar's court indicate that he was in no

²⁸ NAI, KB 2/4, ff 290r-1r, 292r-3r, 596r-8r.

²⁹ NAI, KB 2/4, f. 410r.

³⁰ *CDI*, 1285-92, no. 165.

³¹ *CDI*, 1285-92, no. 677.

³² *CJRI*, 1295-1303, pp 116-17. It is rather unlikely that there were two clerks named Maurice de Bree and labelled *Hibernici* at the same time. If it was two different men, one would have been named slightly differently in the court records. Cf. Maurice de Carew and Maurice son of Robert de Carew: Chapter One, *supra*, pp 79-81; Chapter Two, *supra*, pp 124-5.

³³ Cf. Thomas son of Gerald son of John: Chapter One, *supra*, pp 42, 84.

³⁴ He received the grant on 10 October 1296 at Northallerton, Yorkshire. Twenty days seems to be a reasonable amount of time to reach Northallerton from Dublin: NAI, RC 7/5, pp 168-9 (duplicate roll and counter roll in *ibid.*, pp 105, 227-8).

way unfree. We find Master Maurice in later court cases without any problems in using the courts.³⁵ In a later case we learn that he was the parson of Fennor, co. Tipperary. If he was parson at the same time as his problem in the exchequer, why was he not enfranchised *ex officio*?

Other Gaelic clerics purchased grants of access to the courts. William son of Cormok [G. *Cormac*], clerk, received a grant for himself and his ‘posterity’.³⁶ And Thomas Omelalith [G. *Ó Maolalaidh?*], clerk and *Hibernicus*, received one for himself and his ‘lawfully-begotten children’.³⁷ Could it be that these men had been convinced by the chancery clerks that the former needed a grant (when, in fact, they did not)? Or could it be that every Gaelic chaplain and priest had to purchase a grant of access to the courts? The second possibility is rather unlikely because Gaelic clerics from Gaelic Ireland were allowed to use the courts without purchasing grants of access. Some of these clerics did encounter occasional problems, but they were not *prima facie* barred from suing in the royal courts. There is one reference which muddles the picture further. Richard de Northampton, bishop of Ferns, sued a list of men, including the seneschal and ‘sheriff’ (viscount) of the liberty of Wexford, for taking the goods of his Gaelic betaghs in the cross-lands of Wexford.³⁸ The bishop sued because he claimed his tenants to have been unfree, and so he had to sue as lord. The problem is that the first betagh was Gillekeyn le Clerk [G. *Giolla Chaoimhín?*]. Le Clerk could have been a surname, but other clerics were called ‘le clerk’.³⁹ The second problem is that the surnames of the other men included Omurthy, Ocarwyl, and Obryn, all of which were usually names of free people in English Ireland (unless they committed a felony).⁴⁰

John Watt focused a significant amount of his attention on analysing the review and approval system by the crown on the election of prelates.⁴¹ This system was important to the crown and to the papacy (which approved of its existence). But the system was only for prelates. The review process did not examine the suitability of everyone who wished to become a cleric. If all clerics were allowed to use the royal courts *ex officio*, then surely the Dublin administration would have wanted to control who became a cleric. There is no

³⁵ *CJRI, 1295-1303*, pp 219-20, 257.

³⁶ *CDI, 1285-92*, no. 851.

³⁷ *CDI, 1285-92*, no. 1002; *CPR, 1281-92*, p. 462.

³⁸ *CJRI, 1295-1303*, pp 254-5.

³⁹ See Stephen Oregan/Stephen le Clerk de Youghal: *infra*, pp 160-1.

⁴⁰ For Omurthy, see *supra*, pp 71, 131, 229; *infra*, p. 271; for Ocarwyl, see Chapter Four, *supra*, p. 233; for Obryn, see *supra*, pp 38, 219-20, 231, and Table 2.

⁴¹ Watt, *Church and two nations*, pp 52-84, 149-97.

record that the justiciar and Irish council even considered this. In fact, as Watt noted, the political polemic to bar Gaels from the bishoprics failed to receive support from the crown or from the people of English Ireland.⁴² Gaels were regularly sent to the king for approval and he subsequently gave it – although we should note that Watt left out the religious women. There is the record from 1296 when Edward I mandated the justiciar, John Wogan, to give royal assent to the abbess-elect of the convent of St Mary of Clonard, Gornilith daughter of Okerra [G. *Gormlaith* daughter of *Ó Ciardha*?]. Gornilith had been elected after the previous abbess, Derborgyll' [G. *Dearbhorgaill*], had resigned her position.⁴³ Edward II defended at least one Gaelic prelate. 'Malachy' [Maol Sechlainn Mac Áeda], bishop of Elphin, had been appointed by the pope to replace William de Bermingham as archbishop of Tuam after the latter's death. Edward II ordered that the temporalities be delivered to 'Malachy' in April 1313, but by June that year the justiciar, Edmund le Botiller, had not done so. Edward II then ordered the justiciar, the treasurer, and the barons of the exchequer to deliver the temporalities to Archbishop 'Malachy' and the issues from those lands since the first order had been given.⁴⁴

Once a cleric was established in a senior ecclesiastical position, there were few roadblocks from using the royal courts. The most noteworthy difficulty encountered by any Gaelic cleric was a one-time occurrence experienced by Gofraid Mac Lochlainn, bishop of Derry, in the late 1290s. In Michaelmas term 1297 'Geoffrey' (L. *Galfridus*), bishop of Derry, and Master Michael Ocachan [G. *Ó Catháin*?] were summoned to the Dublin Bench to respond to Richard de Burgh, 'earl' (count) of Ulster, of an allegation that they did not allow (a writ of *quare impedit*) the earl to present a fitting parson to the church of Drumcos, Meath, which was then vacant and belonged to the earl. Gofraid told the court that he would not respond to the writ because he was not called 'Geoffrey', and so twelve knights were to be summoned to determine Gofraid's name and to whom the presentation of Drumcos belonged. Master Michael claimed nothing and then the court determined that the archbishop of Armagh [Nicholas Mac Maoil Íosa] should admit a fitting parson to the church.⁴⁵ These orders do not appear to be contradictory to each other. The court did not state who was to choose the parson; only that the archbishop should admit a 'fitting' one.

⁴² Watt, 'English law and the Irish church', pp 137-8.

⁴³ NAI, RC 7/13/1, pp 5-6.

⁴⁴ NAI, KB 2/4, ff 416r-17r. On KB 2/4, f. 566r, there is a copy of the original mandate [1 April 1313] to deliver the temporalities. Curiously the letter was to John Wogan who was no longer justiciar at that time. Edward II stated that the papal letters notifying Edward of the appointment of 'Malachy' included wording 'prejudicial to the king and his royal crown', but that 'Malachy' before the king had personally renounced all and every prejudicial word.

⁴⁵ NAI, RC 7/5, pp 379-80.

This case was, apparently, given some gravitas by the Dublin administration because later in that session of the Dublin Bench, the chancellor of Ireland, Thomas Quantock, attested the attorneys for the earl of Ulster in the pending case. This essoin is also interesting because it reveals that there were more parties being sued by the earl. A Thomas Ocaruelan [G. Ó Cairealláin?] was recorded with Bishop Gofraid, and the bishop and Michael Ocachan (ironically called ‘Matthew’ in this instance) was recorded as a separate writ (L. ‘...versus Galfridum episcopum Derensis et Thomam Ocaruelan de placito quare impedit et versus eundem episcopum et Mathaeum Ocachan de eodem’).⁴⁶ In Trinity term 1298, the Dublin Bench recorded a similar case by Bishop Gofraid against the earl of Ulster (in which the bishop was called ‘Geoffrey’).⁴⁷ It is curious that the bishop would call himself ‘Geoffrey’ after objecting to the name earlier. While it records that the case was a writ of *quare impedit*, it does not state whether this writ was for the same church (Drumcos in Meath) or for a different church, or whether this was an essoin by either party or the case was delayed for a lack of jurors. The latter may have been the reason because the next record is from Hilary term 1298/9 and this respite does state that the original case (against the bishop for the presentation of Drumcos) was upheld (L. *ponitur in respectum*).⁴⁸

The original case was finally settled in that term, Hilary 1298/9. Bishop Gofraid and Master Michael were summoned to the Dublin Bench, and the bishop repeated his defence of false claim by the earl by ‘wrong name in the writ’. The bishop was using a dilatory plea as if it was peremptory (he refused to answer Richard’s count).⁴⁹ As we have seen several times in the other chapters the plea was not unusual, but the bishop’s usage of it was unusual.⁵⁰ Then Master Michael, whose defence was extended – or more fully recorded by the calenderer – in the later record, stated that ‘for a long time there was a parson in the church of Drumcos, and that church was annexed by his archdeaconry, but that he did not claim any patronage to the church and that he did not impede the earl from presenting a parson’.⁵¹ The jury then returned that Bishop Gofraid was called ‘Geoffrey’, was known by that name amongst the English of Ireland, was baptised as ‘Geoffrey’, and

⁴⁶ NAI, RC 7/5, p. 412.

⁴⁷ NAI, RC 7/5, p. 309.

⁴⁸ NAI, RC 7/5, p. 454.

⁴⁹ Many thanks to Paul Brand for his comments on peremptory pleas.

⁵⁰ For example, Robert son of John sued Madoc le Walleys for one house in Castelcorreth, co. Cork, with the writ of entry, and Madoc replied that Robert son of John had misspelled his own name in the writ. The writ was quashed: NAI, RC 7/8, p. 405. See also ‘naming practices’ and the case of Dufcouly wife of John son of Raymond: Chapter Two, *supra*, pp 125-7.

⁵¹ *Dictus M. dixit quod fuit persona diu est instituta in eadem ecclesia ut annexa suo archidiaconatui set nihil clamat in patronatu ejusdem ecclesie nec impedit dictum comitem.*

was only known as ‘Gofrid’ in Gaelic Ireland because those Gaels, *secundum modum Hibernicorum*, did not know how to say the name ‘Geoffrey’. The justices of the Bench ordered Gofraid to admit a fitting parson to the church of Drumcos, amerced him for impeding the earl of Ulster from presenting a parson, and assigned damages to the earl for the value of the church during the two years it took to resolve the court case (20 marks per year for two years).⁵²

Geoffrey Hand took this as a clear example of institutional bias against Gaelic culture.⁵³ While the jury’s assertion that ‘Gaels in their lands [i.e. in Gaelic Ireland] do not know how to say the name Geoffrey’ (L. ‘*set Hibernici nesciunt vocare ipsum in partibus suis*’) was clearly a prejudiced statement, it is not sufficient proof of institutional bias by the royal courts. In no other surviving case did the court enforce/allow such an exception to an objection. In fact, as we have seen, many Gaels were able to win court cases based on technicalities.⁵⁴ This instance was truly extraordinary. The only other case which resembles Gofraid’s experience was from London. Mannekin le Brumman, who was also called ‘John le Fleming’, said that ‘Mannekin’ was Flemish and ‘John’ was his English name. Mannekin had been charged with homicide but ‘John’ was acquitted, and a jury then determined that John was the same man as Mannekin.⁵⁵ In le Brumman/Flemming’s case the jury decided that it did not matter that Mannekin was also called John. But we should remember that this latter case was a criminal matter and that Mannekin was facing hanging, while Bishop Gofraid was simply fined for preventing the earl from presenting a parson to a church which was not the former’s or his church’s. There is one final record involving the earl of Ulster and Bishop Gofraid. Immediately after the judgment against the bishop and Master Michael, is the judgment for another case. In the judgment we find out that ‘Thomas Ocaruelan’ from earlier was Master Thomas Okerwelan, and that Bishop Gofraid and Master Thomas had prevent the earl from presenting a parson to the church of Camus in Meath. The record states ‘*precise ut supra*’ indicating that Bishop Gofraid made the same defence to this case, as well, and then lost.⁵⁶ The court did not record the value of this church or if they assigned similar damages to the earl.

Bishop Gofraid’s loss in this set of cases is unique, but it does demonstrate the acceptance of Gaelic prelates. Gofraid was allowed to plead in court, and lost the case. He

⁵² NAI, RC 7/5, p. 473.

⁵³ Hand, *English law*, p. 174.

⁵⁴ *Supra*, pp 116, 125-7.

⁵⁵ Cam (ed.), *Year Books of Edward II*, p. 80.

⁵⁶ NAI, RC 7/5, p. 474.

was not barred from using the courts in the future. We do not have the judgment from the bishop's case of *quare impedit* against the earl. He could have won and recovered some of the damages from the Drumcos case.⁵⁷ But that is an assumption. In 1306 Bishop Gofraid sued Henry [Mac in Chrossáin], bishop of Raphoe, for one house, ten carucates, and 1,000 acres of pasture using his real name (L. *Goffridus episcopus Dere*).⁵⁸ No result was recorded because no one responded to the writ.

While the previous series of cases involving Bishop Gofraid delved into his person, other cases seem more institutional. Many clerics sued for their church, house, or position which has led to the conflation of the person of the cleric with their church or house. Some attention has been given to the church in Ireland suing or petitioning to keep lands donated by Gaels before 1169.⁵⁹ But another phenomenon existed in the late thirteenth century. Clerics sued to recover lands disseised from their Gaelic predecessors. The unnamed abbot of Monasteranenagh sued Richard de Penris for 30 acres in Cloncollan which he claimed belonged to the church of St Mary of Monasteranenagh. The abbot claimed that Maurice son of Gerald senior had illegally disseised Donatus Omarton [G. *Donnchadh Ó Mártáin?*] while the latter was abbot of Monasteranenagh.⁶⁰ The defendant, Richard, then called John son of John to warranty his claims to the lands. No result was recorded.

Geoffrey Hand told his readers about another case of a 'Gaelic' prelate losing in court to further Hand's anti-Gaelic discrimination argument. Hand wrote that 'the bishop of Down [Nicholas le Blund], who claimed to have all but the four great pleas of the crown, surrendered the liberties claimed for ever when he was impleaded before [John] Wogan. He [Nicholas le Blund] was an Irishman [sic] and his successor later argued that the surrender had been made *per suam simplicitatem* and without the assent of the chapter'.⁶¹ As already noted, Hand was one of many historians who confused Irishness with Gaelicism.⁶² Hand was not acknowledging the Irishness of Nicholas le Blund or the 'Anglo-Irish' in general. He was claiming Nicholas le Blund to have been a Gael. Hand may not have intentionally changed le Blund's ethnicity; the former may have been confounded by the wording in a court case in 1297. The record states:

⁵⁷ Prelates were usually adept at pleading in the secular courts; Mac Lochlainn could have easily consulted his contacts and devised a different count for his *quare impedit* case against the earl. For prelates' litigiousness, see *infra*, pp 270-6.

⁵⁸ NAI, RC 7/11, pp 534-5.

⁵⁹ Watt, *Church and two nations*, pp 62-9.

⁶⁰ NAI, RC 7/3, pp 312-13.

⁶¹ Hand, *English law*, pp 114-15.

⁶² See Introduction, *supra*, pp 6-7, 9-14.

the bishop of Down... made ordinances in [his] diocese, in which is contained that clerks of English origin be not received in monasteries in [that] diocese... [and the bishop replies that] abbots, priors, and convents of his diocese may receive clerks of English origin whom they may wish, at their own risk, saving to him due visitation.⁶³

But since we know that Nicholas le Blund was an Englishman, we can see Hand's biases and revisionism.⁶⁴ Hand wanted to augment the conflict between the settlers and the Gaels of Gaelic Ireland. John Watt did not try to change le Blund's ethnicity, but did try to absolve le Blund of any wrongdoing.⁶⁵ The accusation by the justiciar's court against the bishop may have been based on the confederacy of the prelates of Ireland – Gaelic and English – in 1291. Most of the prelates in Ireland met under the co-ordination of Armagh and agreed to protect each other from any attempt to usurp the church's freedom and power. The record of their confederacy makes no mention of ethnicity or antithesis between English Ireland and Gaelic Ireland. It was concerned with secular encroachments on ecclesiastical power, in a similar manner to the papal decree of *clericis laicos*.⁶⁶

The importance of Nicholas le Blund's quitclaim is that he was English, not Gaelic, and that the court accepted the claim that le Blund was 'simple'. This was not an isolated case and the phrase was not a slant against Gaelicism. As we learned in Chapter Four, Robert de Trim, coroner of Limerick, was pardoned for his trespasses because of his incompetence ('simplicity and ignorance').⁶⁷ Le Blund's successor, Thomas Ketel, petitioned to recover the liberty to hear pleas of the crown – except treasure trove, forestalling, *raptu*, and arson – that Nicholas le Blund had quitclaimed to the crown in 1297.⁶⁸ Edward II ordered that a jury be formed to inquire *quo warranto* the previous

⁶³ *CJRI, 1295-1303*, pp 102-3.

⁶⁴ Byrne, 'Bishops, 1111-1534', p. 280; Watt, *Church and two nations*, p. 175. Hand cited *CJRI, 1308-14* for part of this episode, but if Hand had checked the index, he would have discovered that the editors listed the relevant court record under 'Le Blound, Nicholas, bishop of Down': *CJRI, 1308-14*, p. 334. Also the other records cited by Hand refer to the bishop as 'Nicholas, bishop of Down' and never call him a *Hibernicus*. There was no Gaelic bishop of Down named Nicholas.

⁶⁵ Watt, *Church and two nations*, p. 175.

⁶⁶ D. A. Chart (ed.), *The register of John Swayne, archbishop of Armagh and primate of Ireland, 1418-1439, with some entries of earlier and later archbishops* (Belfast, 1935), pp 3-4. For *clericis laicos*, see Rymer, *Fœdera*, i, pt 2, 836; Sophia Menache, *Clement V* (Cambridge, 1998), p. 58.

⁶⁷ Chapter Four, *supra*, pp 202-3.

⁶⁸ A number of historians have erroneously stated that there were four specific, reserved pleas of the crown in English Ireland. This was not true. The liberty of Ulster was allowed to hear all pleas of the crown except treasure trove, rape, arson, and 'forcible entry' in 1308: *CJRI, 1308-14*, p. 40. 'Forcible entry' is not on the list of pleas of the crown from England. In 1300 William de Bermingham, archbishop of Tuam, claimed to have the liberty to hear every plea except Gaels who killed English people, or Gaels who committed arson or rape: *CJRI, 1295-1303*, pp 316-17.

bishops had held pleas of the crown.⁶⁹ The jury reported that all of Bishop Thomas's predecessors had held pleas of the crown (except the four named exceptions) from time immemorial until Bishop Nicholas had surrendered them at the *quo warranto* suit of John Wogan. They then reported that Nicholas le Blund had surrendered the right to John Wogan out of fear of the 'disturbance' and to 'save [the] trouble and expenses' of defending the bishopric's liberty, and that this had been done without the assent of his chapter.⁷⁰

This was not the only victory for Thomas Ketel as bishop of Down. In 1313 he was able to recover extensive lands from the same Richard de Burgh, earl of Ulster, who had defeated Bishop Gofraid of Derry in 1299. Edward II and his council reviewed a case (from the justiciar's court?) between Bishop Thomas and Richard de Burgh concerning the town of Down and twenty-two carucates in Lecale and Ards. The previous court judgment had determined that neither Richard's father, Walter de Burgh, nor any of his ancestors were in seisin of the town and land in demesne and that the bishops of Down and the house of St Patrick of Down had held the town and lands in chief of the crown.⁷¹ These cases leave us with a few questions. Can we ascribe Thomas's victory to his ethnicity or were his successes in the courts a result of legal training or, quite possibly, of his claims in court being true? Inversely, could Bishop Gofraid have succeeded in court if he defended his rights to the presentation instead of employing the objection?

Other prelates had difficulties, as well. William de Bermingham, archbishop of Tuam, had to answer several writs of *quo warranto*. He was first investigated for holding the bishopric of Annaghdown. John de Ponte sued for the king and claimed that after the death of Thomas Omally [*Tomás Ó Mellaig*], Archbishop William seized Annaghdown.⁷² De Bermingham replied that Annaghdown was not a bishopric, but instead a parochial church; that certain '*reguli*' (kings of small kingdoms) intruded into Annaghdown and installed chaplains whom the *reguli* called 'bishops'; and that Annaghdown was the ancient (pre-conquest of Connacht) demesne of Tuam. He then detailed the succession of the previous bishops of Annaghdown. He claimed that 'Conoghor' [*Conn Ua Mellaig*?] intruded into the church with the help of Rotheric O Flatherty [*G. Ruaidrí Ó*

⁶⁹ They were asked: what manner of pleas the bishops of Down had before the surrender, by what title they claimed to have these pleas (was it from beyond legal memory or by other; if other, then how much was the hearing of pleas worth per year), and if it would 'damage the king' to allow the grant: NAI, KB 2/4, f. 562r.

⁷⁰ NAI, KB 2/4, f. 563r.

⁷¹ NAI, KB 2/4, ff 414r-15r.

⁷² NAI, RC 8/2, pp 9-10; *CJRI, 1295-1303*, pp 306-7.

Flaithbheartaigh], but the former renounced his title and surrendered his episcopal accoutrements to the then archbishop of Tuam. De Bermingham then claimed that Thomas Omally, with similar lay assistance, intruded into the church of Annaghdown after ‘Conoghor’ had surrendered the title and symbols of office. The archbishop made no mention of Murchadh Ó Flaithbheartaigh, who was bishop of Annaghdown from 1202 until 1241.⁷³ But de Bermingham did state that after Thomas Omally died, Archbishop ‘Florence’ [*Flann Mac Flainn*] successfully sued at the papal curia to unite Annaghdown back with Tuam. De Bermingham claimed that Archbishop Mac Flainn sued a Florence Omadedan [*G. Ó Madadháin*] for possession of Annaghdown, but it appears that the real contender for possession was Conchobar, a canon of Annaghdown.⁷⁴

John de Ponte then replied to Archbishop William’s pleas. De Ponte said that if any court judgment had been made, that it would have been written, but the archbishop had not provided any proof.⁷⁵ He then stated that there had always been a bishop at Annaghdown, and that after Ó Mellaig’s death, Flann Mac Flainn and Master William ‘Bagepuz’ [*Bacquepuis*] had conspired to occupy the bishopric. But if we check the records from 1252 we can see that Henry III was well aware of the case from the papal curia and consented to the unification of Annaghdown and Tuam.⁷⁶ In 1306 Archbishop William was again called to the justiciar’s court to show *quo warranto* he held the bishopric of Annaghdown, but this time the archbishop made no defence. The jury presented a more accurate history of the bishopric of Annaghdown and Edward I ordered that the escheator seize the temporalities until a new bishop was presented and had given fealty.⁷⁷ The details of these cases show that English and Gaelic prelates could expect to be scrutinised by the Dublin administration, and that most cases against the Gaelic prelates were almost certainly not related to their ethnicity, but instead, their significant property and power.

These institutional cases show the secular administration’s attitude towards prelates. What about other clerics? There is another record of a Gael receiving a grant of access to the royal courts which relates to clerics. In 1287 – at the instance of Robert, bishop of Bath and Wells – Gilbert MacAbram [*G. Mac an Bhreitheamhan*] and his children were enfranchised.⁷⁸ In the grant Gilbert was not designated a cleric, master, or

⁷³ Byrne, ‘Bishops, 1111-1534’, p. 322.

⁷⁴ Byrne, ‘Bishops, 1111-1534’, p. 322.

⁷⁵ Cf. Archbishop William did the same to Joan Magelaghy: *supra*, pp 137-8.

⁷⁶ *CDI*, 1252-84, nos 77, 274, 275.

⁷⁷ *CJRI*, 1305-7, pp 244-6.

⁷⁸ *CDI*, 1285-92, no. 311.

any other religious title, but this was probably the same Gilbert who was the official of the ecclesiastical court of Cloyne in 1297 and dean of Cloyne in 1299.⁷⁹ Does this mean that Gilbert purchased the grant before he was allowed to take the holy orders? This seems rather unlikely. A bar against Gaels taking holy orders would have caused a vociferous reaction from both Gaelic ecclesiastics and the papacy. English and Continental prelates and visitors did not acquiesce to attempts by the Dublin administration to bar Gaels from episcopacies.⁸⁰ So the need – if there was any – for Master Gilbert’s grant remains a mystery, though we can tell that he was accepted afterwards. In 1313 he was sued (with an assize of novel disseisin) by John son of Thomas de Hodynet for a freehold in Kappan near Kylbruyse, co. Cork. Interestingly, the case had previously been heard by Henry de Cogan and David le Blount, itinerant justices, but had been moved to the justiciar’s court in August 1313. Master Gilbert made two objections to the writ: that Raymond de la Montayne, tenant of the lands in question, was not named in the writ and that John son of Thomas de Hodynet was never in seisin of the rent. His pleading was allowed and the plaintiff, John, did not object to the person of Master Gilbert; John only refuted the objections. The recognitors (jurors) reported that John was in seisin of the rent of Kappan in Kylruysse, it was a freehold, and that Master Gilbert disseised John.⁸¹ We should note that the jury investigated the nature of Kappan. They reported it was a ‘hamlet’ in ‘Kyrlysse’ and then awarded damages to John son of Thomas. However, John had called the tenement ‘Kappan near Kylbruyse’ in the original writ, and Master Gilbert – if he had noticed the difference – could have objected to the incorrect spelling of the tenement in the writ.

There were other Gaelic clerics who do not have a record of enfranchisement and had no difficulties in using the royal courts. Stephen Oregan [G. Ó Riagain], clerk, sued John Don, Robert Mey, Richard Fox, Stephen le Jeofne, Elena Ryng, John Caane, and Adam Don for assault, castration, and imprisonment. The defendants came to court, denied committing the trespasses, and made no mention of Oregan’s status. The jury detailed the events leading up to the trespasses and it appears that Oregan broke many of the church’s rules (repeatedly had sex with John Don’s wife), but the court made no mention of any ecclesiastical censure.⁸² The court record then changed Oregan’s name to ‘Stephen le

⁷⁹ *CJRI, 1295-1303*, pp 93-4, 245-6; *Pipe roll of Cloyne*, p. 242.

⁸⁰ Watt, *Church and two nations*, pp 72-6. Cf. *ibid.*, p. 152, 96-7, 106.

⁸¹ NAI, KB 2/4, ff 509r-10r.

⁸² This was not unusual. There are other cases which should have brought ecclesiastical charges but nothing was recorded in the secular court record: e.g. Clement Ohamson, *infra*, pp 265-6. Cf. excommunicates being banned from using the secular court, *infra*, p. 266, n. 107.

Clerk'. The jury determined that John Don, Stephen le Jeofne, John Caane, and Adam Don had wounded Oregan and cut off his testicles, and that the other defendants had only come after the hue and cry was raised. So Oregan was awarded £20 in damages and amerced for false claim against the others, and the guilty were committed to gaol.⁸³ Seven days later John Don sued Stephen le Clerk of Youghal for 'wronging and beguiling' the former's wife (the jury said that she had 'consented lightly' in the first trial), removing Don's servants from his house, and destroying Don's goods in his house to the value of £100. Clearly John Don was angry that he had lost the first case, and it is probable that Don had purchased a release from gaol. Both men put themselves on the country and were allowed to choose the jurors for the second case. The jury returned that Stephen had 'destroyed' John's goods to the value of 24s. (which if this was only food and drink in John's house, then Stephen had spent considerable time there) and that Oregan stole 16s. worth of goods from the house.⁸⁴ Oregan was then committed to gaol for the trespass. These cases show that Oregan had no objections to his ethnicity and that his troubles were entirely the result of his actions. It is curious that the court did not summon the bishop to have Oregan degraded, but perhaps they felt he had suffered enough already.

Criminal matters

Before moving into the legally-accepted treatment of Gaels by the clergy we should examine the status of the clerics in criminal cases. A great deal of examination has been placed on the 'benefit of clergy', but there a few issues which need some additional analysis.⁸⁵ Firstly, the 'benefit' did not apply to all criminal charges, or even all felonies. The court was specific that the 'benefit' only applied to charges 'of life and limb' (criminal charges that could result in death or mutilation).⁸⁶ To be able to claim the 'benefit' a cleric had to meet certain guidelines. Certain inhabitants of monasteries – called *conversi* – were considered 'lay brothers' and were not clergyable.⁸⁷ A married cleric had to be tonsured and dressed in clerical robes (after 1298).⁸⁸ Gerald Sampson was charged with homicide

⁸³ *CJRI*, 1305-7, pp 376-7. Cf. Walter de Capella received 20s. per year for life: *supra*, pp 216-17.

⁸⁴ *CJRI*, 1305-7, p. 398.

⁸⁵ A good background and select cases are in Millon (ed.), *Select ecclesiastical cases*.

⁸⁶ Millon, *Select ecclesiastical cases*, pp cxvi-cxvii.

⁸⁷ A *conversus* of the abbey of May [Monasteranenagh?] set the mill on fire which subsequently killed the abbot. The *inquisitio* determined the *conversus* did this out of evil and hate for the abbot (*L. malo & odio abbatis*). He was not clergyable: NAI, RC 7/1, pp 207-8. For more on *conversi*, see Preston, 'Canons regular of St. Augustine', i, 103.

⁸⁸ Millon, *Select ecclesiastical cases*, pp cxvii-cxviii.

and theft, and was remitted to prison – after he claimed to be a cleric – because he did not know how to read and was not tonsured.⁸⁹ Hugh le Dekne was charged that he broke into chests in the church of St Brigid, co. Kildare, and took goods from them. He claimed the ‘benefit’ and was later allowed to make fine by 40s.⁹⁰ He probably made fine because if he was claimed by the ordinary, le Dekne probably would have been degraded (and then possibly sent back to the royal court for lay punishment). He may also have wished to avoid forfeiting all of his chattels as happened to most criminous clerks.⁹¹ In England if a clerk refused to answer a criminal charge by invoking the ‘benefit’, they were considered guilty. In English Ireland when one clerk refused to answer a charge – but was subsequently cleared by the jury – the court still ordered that all of his chattels were forfeit for ‘refusing the common law’.⁹² He was allowed to purchase his goods back for a fine of 5s. Anyone accused of a criminal act who refused to answer the charge was committed to gaol and ‘the diet’ until they recognised the court’s authority and answered the charge.⁹³ If the accused died in gaol, however, his/her property and chattels would have been inheritable by their heirs. Since the accused was not convicted, their goods were not forfeit. The procedure for refusing the common law did not apply to prelates, it seems. In 1295 Stephen Ó Brácaín, archbishop of Cashel, was charged with receiving Murchod Ocurk [G. *Murchadh Ó Cuirc*], a robber who slew Comdin Mark [G. *Comhdhan Marcach?*], the man of Geoffrey Ketyng, and robbed Comdin of several items. The *inquisitio* also claimed that the archbishop gave food and drink to other robbers and counselled them to ‘do evil’. Archbishop Stephen came to court and ‘on account of the privilege of holy church’ refused to answer any of the charges. The justiciar proceeded to order an investigation of the

⁸⁹ *CJRI, 1295-1303*, p. 13. The calendar states: ‘because said Gerald does not know letters (*nescit literaturam*), and has the sign of the crown he is remitted to prison’. But this must be a mistake by Mills. ‘Sign of the crown’ means tonsured, and if Gerald was tonsured, the court probably would have believed his claim to be a cleric. It would be important if no ordinary claimed him, but nothing was recorded in regards to that.

⁹⁰ *CJRI, 1295-1303*, p. 174.

⁹¹ C. R. Cheney, ‘The punishment of felonous clerks’ in *EHR*, li, no. 202 (1936), pp 215-36. The practice of allowing clerks to claim the benefit after violating a church is peculiar because felons could be dragged from any sanctuary for defiling the church: Hunnisett, *Medieval coroner*, p. 38. See the case from Kildare in 1298 when the seneschal of Toly, Roger de Galway, dragged a felon from sanctuary in a church because the crimes had been committed inside the church: *CJRI, 1295-1303*, pp 203-5. There are also numerous records which show that most ‘commoners’ who had a small number of valuables stored in chests in their local church. This phenomenon made churches targets for thieves: e.g. *CJRI, 1295-1303*, pp 12, 13, 44, 174, 189, 194.

⁹² *CJRI, 1295-1303*, p. 195.

⁹³ See the case of ‘Richard Borhunt’: Chapter Four, *supra*, p. 221.

charges and found Murchod to be a felon and robber, but that the archbishop never knowingly received the former nor gave him counsel.⁹⁴

Other archbishops were charged with criminal offenses, and occasionally a record of their experiences survives. Margareta daughter of John Albi [Albus?] appealed David [mac Ceallaigh Ó Giolla Pátraic], archbishop of Cashel, and Laurence Omonan [G. Ó *Mainchín*?] for the death of her father, John.⁹⁵ Margareta came to court and withdrew her appeal, and the court ordered that she be guarded (*L. custoditur*) and amerced. The amercement was later pardoned. We could guess at several possibilities why Margareta withdrew her appeal. It is probable that the archbishop paid her to cease her prosecution of the case or that she was threatened; it seems less probable that her appeal was not true.⁹⁶ But there is no evidence for any of these theories. It is somewhat puzzling that the court did not investigate her claim. In other cases, when the appellor withdrew the charge, the court still investigated the claim to make sure the defendant had not intimidated the plaintiff.⁹⁷

Aubrey Gwynn noted that Nicholas Mac Maoil Íosa was charged on 19 August 1284 with receiving his relatives and their associates after they ‘were present’ at the death of Nicholas de Verdon, John de Verdon, and other knights.⁹⁸ We have already seen the charges against the main perpetrators (Geoffrey Offergoll, Thomas Mackcernan, and Annaly Makmalice) in Chapter Four, and that they were put in exigent and outlawed.⁹⁹ But there is no evidence that Archbishop Nicholas was punished for the charge of receiving them. Gwynn stated that Nicholas did not deny receiving the homicides or even their guilt. We can compare the treatment of these three archbishops in criminal cases with the treatment of ‘lesser’ clergy. In 1301 the abbot of Tracton, co. Cork, was indicted and then fined £40 for receiving and protecting his nephew, Maurice Russel, after the latter raped an

⁹⁴ *CJRI, 1295-1303*, p. 59. It is important to note that Comdin Mark, who appears to have been Gaelic, was not a *Hibernicus* and the charges for his homicide were felonious. Cf. Chapter Four, *supra*, pp 188-97.

⁹⁵ NAI, RC 7/2, p. 102.

⁹⁶ Cf. the cases of Nellyth and Grannath in ‘Chapter Four’: *supra*, pp 212-13, 213, n. 181.

⁹⁷ E.g. Clemence, widow of William de Whitchurch, appealed seven monks, a brother, and the abbot of Combermere, England, for force, incitement, and collusion in the homicide of her husband. She did not prosecute her appeal, but the court investigated her charges anyway: Harding (ed.), *Roll Shropshire Eyre*, no. 742.

⁹⁸ Aubrey Gwynn, ‘Nicholas Mac Maol Íosa, Archbishop of Armagh (1272-1303)’ in John Ryan (ed.), *Féil-sgríbhinn Eóin Mhic Néill: essays and studies presented to Professor Eoin MacNeill* (repr., Dublin, 1995), pp 394-405 at 395. The charges are recorded in *CDI, 1252-84*, no. 2274.

⁹⁹ *Supra*, pp 203-4.

Englishwoman.¹⁰⁰ Raymond son of Robert de Carew and Gregory Ohassonath [G. Ó *Shasanaig?*] were charged with numerous thefts. Both men came to court and claimed the ‘benefit’ of clergy. As per the normal procedure they were investigated and in this instance they were found guilty. No ordinary came to claim them as clerics, but they were allowed to purchase pardons – Raymond paid 40s. and Gregory paid 20s.¹⁰¹ The record does not explain how these amounts were determined, but we might hazard a guess that they were based on the men’s ability to pay the fines. The amounts were not based on the value of the stolen goods and no mention was made of Ohassonath’s ethnicity.

There was one Gaelic cleric who was charged with homicide, but then cleared of the homicide and subsequent flight. Master Gilbert Omeledy [G. Ó *Maoiléidigh?*] was charged with the death of Henry Taff near Drogheda and then fled.¹⁰² Usually flight meant forfeiture of all chattels and property, but in this case both charges – homicide and flight – were acquitted. There was no explanation for this acquittal. In other cases innocent people were cleared of the criminal charge, but still lost their chattels for flight.¹⁰³ Not only was Master Gilbert cleared of the flight, but he also received preferential treatment by the justiciar’s court. The court investigated the ‘sheriff’ (viscount) of Dublin, the coroner of Duleek, the sergeant of Duleek, and several other Englishmen in connection with whom was holding all of Master Gilbert’s chattels and why these had not been returned.¹⁰⁴ It was later revealed that Nicholas Bakun, chief sergeant of Meath, was preventing the return of the chattels by refusing to summon the men holding Master Gilbert’s goods.¹⁰⁵

Other records are less clear, but show that criminal clerics could depend on prelates for assistance with the secular courts. Clement Ohamsori [G. Ó *hAnmhire* or Ó *hAinbhith?*] was labelled a ‘false preacher’ and was convicted of a trespass. The trespass was not listed, but it appears to have been a private, and not a felonious, charge. He was allowed to make fine by paying 5 marks and his surety was Stephen Ó Brácáin, archbishop of Cashel.¹⁰⁶ This is curious because Ohamsori was convicted in co. Uriel (Louth) and because he was

¹⁰⁰ NAI, RC 7/8, p. 73 (fine is listed as 40*d.* instead of £40); Gwynn and Hadcock, *Medieval religious houses in Ireland*, p. 143.

¹⁰¹ *CJRI, 1308-14*, pp 176-7.

¹⁰² *CJRI, 1295-1303*, pp 106-7. We should note that this was one of the several instances when a Gael’s name was confused by the English court clerk. His name switched from ‘Omeledy’ to ‘de Moyledy’ then back to ‘Omoledy’: *ibid.*, pp 106-7, 124-5. This example, among others, suggests that there may be many Gaels ‘hiding’ under seemingly-toponymic names in the English records.

¹⁰³ See the case of Gregory O Torran: Chapter Four, *supra*, pp 200-1.

¹⁰⁴ *CJRI, 1295-1303*, pp 106-7, 124-5, 145. Four years later (in 1301) Master Gilbert Omolodi was fined 40s. for a trespass in co. Uriel (Louth). This was probably the same man: *HMINAUK*, p. 110.

¹⁰⁵ He might have been the same man who was sergeant of co. Dublin: Chapter Four, *supra*, pp 224-5.

¹⁰⁶ 39th *RDKPRI*, p. 32.

called a ‘false preacher’. If the trespass was ‘false preaching’, then surely Ohamsori would not have been labelled as such after the fine. But if the charge was for something else, why was he not excommunicated for his ‘heresy’?¹⁰⁷ Master Patrick, archdeacon of Cashel, was charged for the false imprisonment of a certain Englishwomen. He was allowed to pay a fine of 10 marks, and Archbishop David Mac Cearbhaill rendered the money to the exchequer for Patrick.¹⁰⁸ This assistance seems more appropriate. Mac Cearbhaill was Patrick’s superior and responsible for the latter.

There is another factor to the status of clergy which has been overlooked by most historians. Clerics could not appeal each other and then proceed to a duel. As noted in Chapter Four, appeals were private ‘criminal’ charges. Duelling as a means of determining the ‘truth’ in the royal courts was less frequent than in twelfth-century England, but it existed in late thirteenth-century English Ireland. In 1279x80 Osbert Furlang appealed John Cass [*G. Mac Cais?*] of wounding, forestalling, and robbing the former on ‘Markertestrete’ in the town of Wexford. The first unusual aspect of this case is that it was tried in the Dublin Bench. Since Wexford had a charter of liberties, which included jurisdiction over this type of court case, it should have been heard in the guildhall of Wexford. But it was not, so Furlang and Cass were probably not burgesses of Wexford.¹⁰⁹ Furlang appealed Cass and described the trespass in full detail which matches the form from the registers of writs. Then Cass denied all of the charges. A jury was summoned to Dublin to determine the truth of the matter. On the assigned day Furlang repeated his appeal, but there were some slight changes. Instead of being wounded by an ‘Irish knife’ (*L. insultum dedit & ispum uno cum cultello Hybernico*), Furlang claimed that Cass wounded him with a battle-axe (*L. spartha*). The court did not appear to take issue with this variance in the pleading, which is somewhat perplexing. Then Cass declared that he would defend himself by his body. The justices ordered that a duel would be held in court and Furlang provided the names of four sureties.¹¹⁰ On the day of the duel both men appeared in court armed and so did Master Robert ...raund, official of the archdeacon of Dublin. Master Robert told the court that both men were clerks, tonsured, that this case

¹⁰⁷ Anyone who was excommunicated was not supposedly permitted in the royal courts. In some cases one party proved the other party was currently excommunicated and the cases were quashed or put on hold until the excommunication was lifted: e.g. NAI, KB 2/4, f. 130r. Cf. those falsely excommunicated could sue the offending cleric in the royal courts: NAI, RC 7/1, p. 325; RC 7/3, pp 103-4; KB 2/4, ff 596r-8r; *CJRI*, 1295-1303, pp 114-15; *CJRI* 1305-7, pp 450-1.

¹⁰⁸ 35th *RDKPRI*, p. 43.

¹⁰⁹ The record is also unusual because almost all of the pleading was recorded in the RC calendar. This was probably because of the outcome of the case.

¹¹⁰ John son of William, William de Rochford, David Furlang, and Philip Furlang.

belonged to the church court, and the men were not allowed to renounce the cleric privilege.¹¹¹ The Dublin Bench then ordered both men to be delivered to Master Robert and that the latter hold an inquest into the alleged forestall and robbery.

In other cases clerics were allowed to forgo their 'benefit'. Brother Robert Scallard, a monk of St Mary's Dublin, was charged with beating Cecilia wife of Richard the miller, who was pregnant, and because of said beating she delivered a dead son. Brother Robert came to court, denied the charges, and put himself on the country. He probably thought he could prove his innocence, but the jurors returned that he was guilty. Then the abbot of St Mary's, Dublin, and the attorney of the archbishop of Dublin came and demanded Brother Robert as a clerk. He was subsequently remitted to gaol and finally paid a fine of 5 marks.¹¹² The record does not explain whether the fine was to be released from gaol or to be delivered to the archbishop's gaol for purgation. According to Ralph Pugh clerics were allowed to plead their defence of a criminal charge and then claim the 'benefit or clergy' if they were convicted.¹¹³ But it does not appear to have been the accepted procedure in this instance.

Clerics' relationship with Gaelic people

The relationships between clerics and the Gaels in English Ireland are usually more visible than the relationships between lay people and the Gaels because of the nature of the surviving records. There is a hazard of believing that the clerics treated their Gaelic neighbours and tenants differently than secular lords because there are more surviving records involving clerics. But at the same time we cannot conclude that the lay people treated Gaels the same as the clerics did simply *ex silentio*. The surviving records depict two, nearly simultaneous phenomena: clerics trying to help Gaels become accepted members of English Ireland and clerics trying to legally disseise Gaels from holding free lands or claiming Gaels to be unfree. There was no uniform treatment of Gaels by the clerics.

At the itinerant court in Limerick in 1252 Thomas Oregan [G. Ó Riagain] successfully defended the writ of mort d'ancestor and the appeal of rape made by William

¹¹¹ *Et super hoc venit Magister Robertus [oblit]raund Officialis Archidecanus Dublinensis asserens ipsos ambos clericos esse & coronatos & petiit illos restitui sancte ecclesie ad standardum cuiuslibet recto in formam [oblit] affirmationis quod licet ipsi renunciarent privilegio cleri sicut non deberent libertas sancte ecclesie non renunciat requisitio si clerici fuereunt dicunt quod coronati: NAI, RC 7/2, pp 47-50.*

¹¹² *CJRI*, 1305-7, p. 478.

¹¹³ Pugh, *Imprisonment*, p. 48.

Otewy.¹¹⁴ At this same court session Thomas had to defend himself from other claims to his lands and tenements. William Brun claimed Oregon held one carucate with appurtenances in Clonanel which Hubert de Burgh, formerly bishop of Limerick, had disseised from Brun before the latter's death in 1250.¹¹⁵ Thomas came to court and asked for the jurors to make a viewing of the lands in question. The result of the viewing has not survived. Adam son of Robert Rufy, chaplain, sued the same Thomas Orgean for five burgages in Clonchevere which Adam claimed Bishop Hubert had disseised of the former, as well.¹¹⁶ No judgment survives, but the bishop may have 'enfranchised' Thomas Oregon by demising significant property to the latter sometime before 1250 (or, perhaps, protected Oregon's free and accepted status with a charter).¹¹⁷ Thomas Oregon clearly had a relationship with Hubert de Burgh as bishop of Limerick, and he also had one with the next bishop, Robert de Emly. After Oregon recovered 100s. from William Otewy for a false appeal of rape, Oregon agreed to use the money to repay his debt to Bishop Robert.¹¹⁸ At the same time, Robert de Emly, bishop of Limerick confirmed Thomas and his heirs' rights to the carucate in Clonannel.

Other Gaels amassed debts to clerics. John McCanefy [G. *Mac Anmchaid*] came to court and acknowledged that he owed 60s. to Hugh, the vicar of Donany.¹¹⁹ Robert Olennan [G. *Ó Leannáin?*] acknowledged that he would give 5s. to Richard Taloun for the abbot of Dowysky at the next feast of the purification of St Mary.¹²⁰ And Robert Oschethe [G. *Ó Séaghdha?*] – along with Peter de Rochefort – acknowledged that he owed the hospital of St John outside the new gate of Dublin £4.¹²¹ These examples are a sample of the surviving list of recorded debts to clerics or churches by Gaelic people. But what does this mean? English, Welsh, and Ost-people borrowed from, and loaned money to, clerics. These records certainly tell us that these Gaels had the reputation to be able to borrow significant amounts of money, and it may indicate that they were enterprising merchants. Also, since these were court records, it would appear they were able to use the courts. Certainly very few people would have loaned money to the legally unfree as the latter could not be sued to recover the debts.

¹¹⁴ Chapter One, *supra*, p. 44.

¹¹⁵ NAI, RC 7/1, p. 196.

¹¹⁶ NAI, RC 7/1, p. 196.

¹¹⁷ Cf. Maurice Ohessan, *Gillacomdach Machicallig, etc.: infra*, p. 269.

¹¹⁸ NAI, RC 7/1, p. 217.

¹¹⁹ NAI, RC 7/3, p. 248. John Mac Kanefy, possibly the same man, paid numerous fines for trespasses: *CDI*, 1285-92, pp 49, 96, 120, 137, 151, 165, 186, 220, 352, 394, 431, 499.

¹²⁰ NAI, RC 8/2, p. 546.

¹²¹ NAI, KB 2/9, f. 123r.

Clerics also pledged for Gaels charged with criminal offenses. Baloch Occothy [G. *Ballach Ó Cobhthaigh?*] was charged with receiving William and Tayg Occothy after the latter killed Geoffrey le Lange in co. Carlow. The homicides were convicted, but Baloch was allowed to make fine for the receiving at the instance of William the chaplain, vicar of Rathmore.¹²² Baloch may have been the sister of the slayers, but the record does not tell us. It may be important that before William the chaplain secured Baloch's pardon, he was allowed to keep William and Tayg Occothy's chattels (although he had to report to the exchequer for them later).

Several historians have claimed that 'only the king [of England] could enfranchise' the Gaels.¹²³ They base this assumption on a single court record from 1299 which details how William Marshal, lord of Leinster, enfranchised some Uí Thuathail of his lands in 1208x9, and this, it is claimed, was the exception to prove the 'rule'.¹²⁴ We have already seen the acceptance of the Uí Thuathail in civil and criminal cases.¹²⁵ This was not exceptional. The king could not emancipate unfree people who were not his direct tenants; that right was reserved to their lord, which was acknowledged in the famous ordinance *una et eadem lex: 'excepta servitute betagiorum penes dominos suos'* (except for the servile condition of the betaghs [who remain under] the power of their lords).¹²⁶ This phenomenon relates to clerics too because some clerics enfranchised their unfree or unaccepted Gaelic tenants.

Brother Hugh Ohessan [G. *Ó hOisín?*], abbot of Mellifont, granted his brother, Maurice, 'reasonable sustenance' for life from the abbey. This included food and drink worth 2*d.* every day and a robe worth 1 mark (or 1 mark) annually. Brother Hugh also enfranchised Maurice and stated that the latter should be treated as an Englishman. Finally the abbot leased a carucate in Graungegeth, which belonged to the abbey, to his brother for sixty years. Normally this would be qualified as simply Maurice Ohessan's claim in court, but the court allowed Maurice to fully use the royal courts and the judgement implies these

¹²² *CJRI, 1308-14*, pp 228-9. William and Tayg's mother, Fynyna, and her daughter, Isabella (their sister?), were charged with receiving the men and were convicted. Fynyna was sentenced to hang immediately and Isabella was recommitted to gaol until she gave birth, and then she was to be hanged (this was the 'benefit of the belly'): *ibid.*, p. 231.

¹²³ Otway-Ruthven, 'Native Irish', p. 144; Murphy, 'Status of native Irish', p. 117; Hand, *English law*, p. 206.

¹²⁴ *CJRI, 1295-1303*, p. 271; Hand, *English law*, p. 206; Frame, 'Ireland after 1169', pp 123-4.

¹²⁵ *Supra*, p. 16, n. 87.

¹²⁶ *Statutes, John-Henry V*, pp 324-8; Frame, 'Immediate effect', p. 109. See the lack of usage of the term 'betagius/-a' in the royal courts and the preference for 'nativus/-a': Chapter One, *supra*, pp 24-36.

claims to have been veracious.¹²⁷ Maurice's experiences appear to show a considerable amount of nepotism was tolerated by the convent at Mellifont as all of Abbot Hugh's actions were 'with the assent of his convent'. We know of Maurice's enfranchisement and the considerable gifts he received from the abbey (by way of his brother) because after Brother Hugh died, Brother Thomas Ohengan [G. *Ó hÉineacháin?*], the new abbot of Mellifont, ejected Maurice from the leased lands, seized his animals from the lands, captured and imprisoned Maurice, and destroyed his letters patent of enfranchisement and landholding. Maurice escaped from prison and sued Brother Thomas and Philip OKelly [G. *Ó Ceallaigh*]. Philip's involvement is very curious because, as we learned in Chapter One, the Uí Cheallaigh were fighting to maintain their status in the same area of Ireland at that time.¹²⁸ Philip was Brother Thomas's bailiff and the court treated him as any English bailiff.

The grant from Hugh to Maurice Ohessan was not the only instance of priors or prelates enfranchising their Gaelic tenants. In 1277 Simon O Mungan, son of the dean of Cloyne, held the vill of Ballybane in fee of the bishops of Cloyne.¹²⁹ Nicholas de Ros, prior of Kells, was probably an Englishman. He granted half a marcate of land in Ynchebritan, Kylllehan (Killylaughnane?), and 15 acres in Cnochynnoc to Gerald Onoel [G. *Ó Néill*].¹³⁰ The land in Ynchebritan had been formerly held by Philip Wallensis. Clearly there were instances, in direct opposition to the redistribution of Gaelic lands, in which Gaels received lands formerly held by settlers and in this instance the grant was from an Englishman. Brother Daniel [Ó Finn], bishop of Cloyne, confirmed the previous grants to Gillacomdach Machicallig [G. *Giolla Comdach Mac Ceallaigh?*], cleric, by Bishops David mac Ceallaigh Ó Giolla Pátraic (1237-8) and Ailinn Ó Súillebáin (1240-6). Gillacomdach held one carucate with appurtenances in Cooliney and he may have been related to the first grantor, Bishop David mac Ceallaigh.¹³¹

On 30 October 1280 Edward I ordered Robert de Ufford, justiciar, and all of the other royal administrators to protect Thomas son of David, William son of Clement, and

¹²⁷ *CJRI*, 1305-7, pp 321-3. The only ambiguity was that the new abbot, Ralph O'Hedian, did not confirm or deny that Maurice had a charter. The record states: 'and as to the writings, because Ralph does not know the form of the writings, nor what writings Maurice had, he grants that by oath of good men of those parts and of monks of his house, he will enquire of the truth fully, and he will make him new writings according to the form of his others, as by said inquisition may be certified, by the feast of Pentecost next; and if he does not do so, then a jury shall come in the octaves of Holy Trinity to make known in form aforesaid'.

¹²⁸ Chapter One, *supra*, pp 76-9.

¹²⁹ *Pipe roll of Cloyne*, pp 84-5.

¹³⁰ *Cal. Ormond deeds, 1172-1350*, no. 70.

¹³¹ *Pipe roll of Cloyne*, pp 120-3, 201.

the other relatives and friends of David Mac Cearbhaill, archbishop of Cashel, in the rights and liberties granted to them by Edward before he became king.¹³² The letters patent stated that this mandate was at the request of Archbishop David. It also appears from these letters that Lord Edward had granted access to the royal courts to the said ‘relatives and friends’ of the archbishop before 1272, but they were being harassed by the English of Ireland. On the same day (30 October 1280) Edward I ordered letters of protection for James O’Hagan and the sons of Orcan Yhogan [G. *Ócán Ó hÓcáin?*] at the instance of Mathghamhain Ó hÓcáin, bishop of Killaloe.¹³³ The Uí hÓcáin were not labelled as relatives of the bishop, though. In 1285 at least three Meic Mhaoil Íosa were granted access to the royal courts.¹³⁴ Some have argued that these grants – in a similar manner to the grant to Mac Cearbhaill’s relatives – were at the instance of Archbishop Nicholas of Armagh.¹³⁵ There is, however, no proof of this. The recipients (Rose daughter of Macmolisii, Christopher son of Donald Macmolisii, and Denis Conchowr Macmolisii) of the grants simply had the same ‘surname’ as the archbishop. This was not the first year of Nicholas’s primacy. He had been archbishop for fifteen years. There is no corroborating evidence that these Gaels were relatives of the archbishop.

Domhnall Ó Cennéitig – while he was bishop of Killaloe – disseised Robert Russel and Nobilicia, his wife, of the vill of Kynemoneth, co. Limerick. After Bishop Domhnall died, Robert and Nobilicia sued Master Matthew Ohogan [G. *Mathghamhain Ó hÓcáin*], the new bishop of Killaloe, for the vill with a writ of entry. Master Matthew called Maurice Okennedi to warranty the former’s claim to the lands, and we can probably assume that Maurice was related to Domhnall. Maurice was allowed to warranty Bishop Matthew’s claim to the lands, but the court determined that Bishop Domhnall had disseised Robert and Nobilicia of the vill. They were granted seisin of the lands, and nothing else was recorded.¹³⁶ There is no record of a grant or charter, such as Maurice Ohessan had, and so there is no proof of how Maurice Okennedi was allowed to use the courts. He could have been free and accepted from birth, through his relative (Bishop Domhnall), or by some other method. He was, more importantly, allowed to warranty an entire vill of land in the itinerant court.

¹³² *CDI, 1252-84*, no. 1747.

¹³³ *CDI, 1252-84*, no. 1749.

¹³⁴ *CDI, 1285-92*, nos 94, 153.

¹³⁵ Smith, *Colonisation and conquest*, p. 77.

¹³⁶ *NAI, RC 7/1*, pp 409-10.

Clerics against Gaels

Clerics also pursued Gaels in court for lands. The surviving records do not record the impetuses for these cases. It is possible that several survive by chance, or it is possible that clerics pursued Gaels in the royal courts because the former believed that Gaels could not defend their landholding under English law. Tomás mac Domhnaill Móir Ó Ceallaigh, bishop of Clonfert, sued many Gaels for lands. He began with suing Mokelly Mailenath [G. *Maol Cheallaigh Ó Maoileanaigh?*] for one carucate in Dromakethe, and Gillise Okelly [G. *Giolla Íosa Ó Ceallaigh*] and Sathof [G. *Sadhbh?*], his wife, for half a carucate in Kildores. The defendants called Maurice Ó Leaáin, bishop of Kilmacduagh, to warranty and put themselves on the grand assize. Bishop Tomás claimed that Bishop Maurice had defaulted on the warranty by essoining himself in court at Athenry instead of having a representative essoin his nominated attorney, David de Connacht. Bishop Maurice replied that he essoined himself because David de Connacht had died and therefore could no longer be the former's attorney.¹³⁷ Bishop Tomás also sued Christian Omurthy [G. *Ó Murchadha?*] for three carucates in Kylshembott. Omurthy called Tommaltach Ó Conchobair to warranty the former against Bishop Tomás.¹³⁸ No result survives for either case.¹³⁹ Tomás then sued Nemie Olorcan [G. *Ninnidh? Ó Lorcáin*] for two carucates in ten named places. This might mean that the record is defective and that the case was actually for more than two cantreds, but we cannot be certain. In the same writ Bishop Tomás sued Thomas Ocongely [G. *Ó Conghalaigh?*] for one carucate and forty acres in several named places, Favdach Omadethan [G. *Feadhach Ó Madadháin*] for one carucate in Corballybeg, and Clement Okormekam [G. *Ó Cormacáin?*] for one carucate in Eddergonelbeg.¹⁴⁰ Bishop Tomás claimed that these four Gaels had received possession of these lands from Cormac Ó Luimlín, Tomás's predecessor, but without assent from the chapter of Clonfert. Bishop Tomás also claimed that Cormac Ó Luimlín demised twenty acres in Ledgerk to Cathel Osconille [G. *Cathal Ó Scannail?*], who then gave the lands to John Delfyn, and that Ó Luimlín had done this without the consent of the chapter.¹⁴¹ It is possible that

¹³⁷ NAI, RC 7/1, p. 430. '*Dictus episcopus Clonfertensis dicit quod dictus episcopus Duacensis alias fecit defaultam apud Athenry eo quod se ipsum fecit essoniam & habuit attornatum scilicet David de Connaccia; dictus episcopus Duacensis dicit quod fecerat ipsum David attornatum suum qui ante terminum in fata decessit*'. Many thanks to Paul Brand for his advice on this case.

¹³⁸ NAI, RC 7/1, p. 398.

¹³⁹ Two essoins survive for Omurthy's case: NAI, RC 7/1, pp 339, 385.

¹⁴⁰ NAI, RC 7/1, pp 342-3. The lands were: (versus Olorcan) Lyretham Kogol Cloncurry – Drumynclonard Gortstop Cortul Gortgaven Fochergreneta Clonmacmiske & Lethegerkerdeta; and (versus Ocongely) Kathermeturre Balygas Gorckyrdonan Ottothena Gortyteneky & Letherach.

¹⁴¹ NAI, RC 7/1, p. 343.

Bishop Tomás won both of these cases because he won the final case with the same pleading – but no result was recorded for the previous two. Tomás sued Flays Ocormecan [G. *Flaitheamh Ó Cormacáin?*] for half a carucate and forty acres and John le Blund for one carucate which Bishop Cormac had demised to the defendants without the assent of the chapter. The court agreed and ordered that Bishop Tomás should recover seisin for his church.¹⁴² However, it may be more likely that Bishop Tomás failed in the previous two cases because no result was recorded. Perhaps his claims to those lands were fictitious.

Then, in the same court session, Thomas, abbot of St Kerani of Clonmacnoise (Seirkieran), sued Bishop Tomás for five-and-a-half carucates and forty acres and Philip Macynard [Macyvard = G. *Mac an bháird?*] for one-and-a-half carucates. The bishop and Macynard replied that Thomas was not the abbot of that place (L. *illius loci*), and he was not abbot when he purchased the writ to sue the defendants.¹⁴³ Abbot Thomas also sued John Dolfyn, probably the same man sued by Bishop Tomás, for one carucate in Glonmoylydum and Donechud Odonecada [G. *Donnchadh Ó Donnchadha?*] for lands in Karchin. The abbot of *Fonte Vivo* (Abbeymahon) sued Donenald Emythen [G. *Domhnall Ó Miadhacháin?*] for a house and four carucates in Ardoycherys and Donenald Donathen [G. *Domhnall Ó Donnabháin?*] for an unspecified amount of land.¹⁴⁴ Without any verdicts for these cases we cannot make any judgment on the acceptance of these Gaels, but we can perhaps see a tendency for ecclesiastics to attack the landholding of free Gaels.

The trend does not end there. Flann Mac Flainn, archbishop of Tuam, sued Matthew Magilleroth [G. *Mac Giolla Ruaid?*] and Thomas O'Makyn [G. *Ó Maicín?*] for the vill of Sclanpatrik, Kilbenon, Kilmitheny, and Thurlath, and a moiety of the vill of Odyn.¹⁴⁵ Magilleroth and O'Makyn appear to have been able to partially defend their rights to these extensive lands, as the itinerant justices delayed the case for consultation and then King Henry III became involved in the matter. We know of the case because he ordered the justices to proceed with the case using his earlier instructions. The difficulty was that Magilleroth and O'Makyn had called Rainaldo, archbishop of Armagh, to warranty their rights to the vills, but subsequently Ralph de Norwich, chancellor of Ireland, had ordered the court to not allow the warranty. When Henry III learned of this interference by Ralph,

¹⁴² NAI, RC 7/1, p. 344. The lands were: (versus Ocormecan) Dereclerethan Clonferd Gortethe Cortilenny Conethar Stemecurii; and (versus le Blund) Clonbury.

¹⁴³ NAI, RC 7/1, p. 478.

¹⁴⁴ For Emythen, see NAI, RC 7/3, pp 47, 130-1. For Donathen, see RC 7/3, pp 6, 94.

¹⁴⁵ *CDI*, 1252-84, no. 269. Could this Thomas O'Makyn have been a relative of John OMakan? Cf. Chapter Two, *supra*, p. 112.

he ordered the itinerant justices to allow the warranty and to disobey any countermandate from the chancellor.¹⁴⁶ Henry III may have protected the freedom and landholding of Magilleroth and O'Makyn.

Clerics not only tried to legally disseise Gaels of the latter's lands, but also tried to prevent Gaels from using the royal courts. We already learned in Chapter Two that William de Bermingham, archbishop of Tuam, attempted to deny several (seemingly) Gaelic women from pleading against him in a royal court. He supposedly prevented Joan Magelaghy from inheriting two-thirds of a manor in Connacht, denied Mór widow of Elias son of Richard her dower, and had an unknown type of case against Walter Casse and Edyna, his wife.¹⁴⁷ Unfortunately for this study, no judgment survives for any of these cases and we cannot tell if the archbishop was successful in denying these women access to the courts. His desire to disseise and deny women access to lands and to abuse his position of power is obvious, though.

A final and rather important case comes from 1313. Brother Ralph, abbot of St Thomas the Martyr, Dublin, sued Luke Brydyn and his wife, Auda, for 26s. which they owed to the abbey for wheat and oats given to the couple in December 1310. Luke and Auda replied that they had repaid the debt in full and offered to prove this by law. Brother Ralph said that Luke should not be allowed to prove his claim by law (bringing witnesses to swear a claim was true) because Luke was an 'unmixed' (*L. purus*) *Hibernicus*.¹⁴⁸ Brother Ralph asked for judgment based on this objection, but no judgment survives. This is rather problematic. Firstly, Auda was being sued, but then disappears from the pleading. Ralph did not claim that she was a *pura Hibernica*. Secondly, in relation to the 'common law', the abbot was breaking the 'rules'. The abbot did not claim that Luke was unfree, which would have prevented the former from suing the latter.¹⁴⁹ Brother Ralph was claiming that Luke was a free Gael, but somehow not fully accepted (allowed to use a certain method of proof) – the abbot wanted to force Luke and Auda to repay the loan twice. There is also the problem that a jury would probably investigate whether the couple had in fact repaid the loan. If they had, that would have been mentioned to the custos and he probably would have found in favour of the couple. As we learned in Chapter Four, Gaelic people were allowed to use the 'wager of law' procedure in the thirteenth

¹⁴⁶ *CDI*, 1252-84, no. 360.

¹⁴⁷ Chapter Two, *supra*, pp 138-9.

¹⁴⁸ *NAI*, KB 1/1, rot. 76v; KB 2/4, f. 484r. It is peculiar that the record calls Luke '*predictus Brydyn*' instead of '*predictus Lucas*'.

¹⁴⁹ Cases from England show that defendants simply pleaded to be villeins to have the case dismissed: Hyams, *Kings, lords*, pp 132-3.

century.¹⁵⁰ So without a judgment to confirm the abbot's pleading, it will have to remain an unsubstantiated claim in court. But the treatment of Gaels by the clergy is rather less ambiguous: they pursued Gaelic money and land in the royal courts with fervour.

Earlier it was shown that Andrew de Auetoun, chaplain and seneschal of the bishop of Emly, was sued by his tenant, Lucy, and her then husband, Richard Neel [G. *Ó Néill?*], for breaking the doors off of Lucy's grange when he could have distrained her legally.¹⁵¹ Andrew's overbearing methods were not unusual for ecclesiastical landlords. Maurice Mac Cearbhaill, archbishop of Cashel, sold the 'fruits' of the vicarage of the church of Ardmaill to Simon Sweyn for one year in 1308, but then sold the same fruits to Theobald de Wyk and disseised Simon of the income.¹⁵² Simon was awarded 12 marks in damages. One of the previous archbishops, David Mac Cearbhaill, behaved in a more ravenous manner towards his tenants. In 1279 Margaret la Blund petitioned Edward I for justice after Mac Cearbhaill killed her father and imprisoned her mother and grandfather afterwards. The latter were allegedly starved to death in the archbishop's prison for seeking justice after la Blund's father was killed. She also claimed that Mac Cearbhaill had killed six of her brothers and sister by denying them their inheritance (starved to death?) and that she, Margaret, had to cross the Irish Sea five times to petition the king for justice because the archbishop – through bribes and influence – controlled the courts in Ireland.¹⁵³ The le/la Blunds would appear to have been English tenants of the archbishopric, but their ethnicity provided no succour. Mac Cearbhaill also attacked his ecclesiastical tenants.

After the death of Archbishop David [*mac Ceallaigh Ó Giolla Pátraic*], Archbishop Mac Cearbhaill built the abbey of B.V.M. of the Rock of Cashel (Hore Abbey) near the Carmelite church of St Patrick of Cashel. Mac Cearbhaill wrote to his mother house (the Cistercian Mellifont Abbey in Louth) that the Benedictine monks in Cashel wished to remove him from the council of his church, and so he disseised the monks and granted all of their lands and chattels to his new Cistercian abbey. He then tried to force the hospital of St Nicholas to join with his new abbey. He went to St Nicholas, removed items including chests which contained their charters and records, and then forced the house to pay its normal custom for the poor to his new abbey.¹⁵⁴ Several years later the abbot of B.V.M. of Roche Cashel brought an assize of novel disseisin against numerous citizens

¹⁵⁰ *Supra*, pp 209-10.

¹⁵¹ Chapter Four, *supra*, pp 115-16.

¹⁵² NAI, KB 2/4, ff 392r-3r.

¹⁵³ McNeill, 'Harris', pp 313-14; Kenny, *Anglo-Irish and Gaelic women*, pp 41-2.

¹⁵⁴ NAI, KB 2/5, f. 42r.

from Cashel. The jury in the case said that the dean of the cathedral church of St Patrick and the citizens of Cashel – and never the archbishop of Cashel – were accustomed to receive and exact the custom for the poor from the city of Cashel. This verdict is peculiar because John, lord of Ireland, granted the church of St Patrick to Muirges Ua hÉnna, archbishop of Cashel, in 1192/3, and Henry III quitclaimed the ‘town’ [city] of Cashel to Marianus Ó Briain, archbishop of Cashel, in 1228.¹⁵⁵ These grants would appear to confirm that the archbishopric had control over the church and city, and therefore, also, the custom. The rest of the record was damaged, but the justices appear to have agreed with the jury’s verdict and fined the abbot of B.V.M. of Roche Cashel for false claim.¹⁵⁶

This was only one of many recorded interactions between Archbishop Mac Cearbhaill and the people of Ireland. There is the oft-cited incident from 1277 which historians have used to ‘prove’ every Gaelic person was denied free status and access to the English court system. Mac Cearbhaill and the bishops of Emly [David Ó Cossaig] and Killaloe [Mathghamain Ó hÓcáin] petitioned Edward I to grant access to the royal courts to every *Hibernicus/-a* in Ireland.¹⁵⁷ This petition was combined with the hyperbole of the so-called ‘remonstrance of the Irish princes’ to assert that all social classes of Gaelic people living under English rule were reduced to ‘villeinage’, in that they were denied any and all legal recourse.¹⁵⁸ However, after some reflection, Professor Otway-Ruthven saw past the rhetoric to discover the motive behind Mac Cearbhaill’s petitions.¹⁵⁹ At the time, she lacked sufficient evidence, but several court cases confirm her suspicion.

The previous cases reveal a previously hidden side of Mac Cearbhaill. His motives in pursuing access to the royal courts for all Gaelic people appears not to have been to provide them with protection from disseisin, but instead to force them to conform to his Continental ideals of marriage practice and to pay tithes to his churches and support his monasteries. Before Mac Cearbhaill disseised the monks and clerics near Cashel, he

¹⁵⁵ K. W. Nicholls, ‘A charter of John, lord of Ireland, in favour of Matthew Ua hÉnna, archbishop of Cashel’ in *Peritia*, ii, (1983), pp 267-76; Paul Dryburgh and Brendan Smith, ‘Calendar of documents relating to medieval Ireland in the series of Ancient Deeds in the National Archives of the United Kingdom’ in *AH*, no. 39 (2006), pp 1, 3-61 at 16-17.

¹⁵⁶ NAI, KB 2/5, f. 43r. The entire case is on *ibid.*, ff 35r-43r.

¹⁵⁷ A.J. Otway-Ruthven, ‘The request of the Irish for English law, 1277-80’ in *IHS*, vi, no. 24 (1949), pp 261-73; Aubrey Gwynn, ‘Edward I and the proposed purchase of English law for the Irish, c. 1276-80’ in *TRHS*, x (1960), pp 111-27; J. R. S. Phillips, ‘David MacCarwell and the proposal to purchase English law, c.1273-c.1280’ in *Peritia*, x (1996), pp 253-73.

¹⁵⁸ Hand, *English law*, pp 187-213, esp. 189, 193, 198, 201. Cf. Several historians have demonstrated that villeins were never denied access to legal redress, only the royal courts in England: Poos and Bonfield (eds), *Select cases in manorial courts*; Hyams, *Kings, lords*, pp 66-70. ‘*Villanus/-a*’ was not used in the royal courts in English Ireland: Introduction, *supra*, p. 10, n. 54; Chapter One, *supra*, p. 25.

¹⁵⁹ Otway-Ruthven, ‘Review: *The Irish Jurist*’, p. 104, n. 2.

brought several actions of debt against laypeople (English, Gaelic, and others) in ecclesiastical court violating the royal prohibition, and was fined.¹⁶⁰ He was not alone in his tactics, his predecessor, David mac Ceallaigh, took the lands of dozens of people.¹⁶¹ Mac Ceallaigh essoined himself and died shortly thereafter, and so all of his victims had to purchase new writs. The rolls for the intermediate years (1254-60) do not survive and we cannot tell the fate of the disseised people in regards to the court cases. Mac Ceallaigh probably exploited his position as archbishop to gain access to university-trained lawyers and to influence local men on the juries in these cases. But we do know that many Gaels were allowed access to the English courts, to hold lands in fee, and to hold positions of power in the secular administration. These facts combined with Mac Cearbhaill's behaviour towards his tenants and neighbours hints that his proposed 'grant' was not an act of charity as some have framed it.

Conclusion

The royal-court cases involving clerics demonstrate their high level of acceptance by the secular administration, their litigiousness in using the courts to secure their believed rights, and their susceptibility to commit crimes and trespasses against English, Gaelic, and the other peoples of Ireland. Some clerics used their office to enfranchise friends and relatives, while others used it to shield relatives from secular punishment. The ecclesiastical hierarchy could display almost equal amounts of benevolence to counter their avariciousness. There are also several peculiar cases which display inconsistencies and variances in the royal courts' behaviour towards, and acceptance of, the clerics. Why did Master Maurice de Bree not use his grant of access to the English courts in 1296? Other Gaels used the exchequer court with no problems. Were the other Gaelic clerics who purchased access to the English courts overly cautious, or was there an implicit requirement to buy a grant of access? We may never know. But the crimes and trespasses committed by David Mac Cearbhaill shed new light on the proposed 'grant' of access to the English courts for all *Hibernici* in 1277. It was clearly not necessary for some Gaels within English Ireland and instead may have been directed towards controlling the sexuality and resources of the Gaels of Gaelic Ireland.

¹⁶⁰ NAI, RC 7/1, pp 464-5, 472, 479-80.

¹⁶¹ NAI, RC 7/1, pp 119-22, 182.

Conclusion:

Beyond exclusion: ethnic interactions and the social complexity of English Ireland

‘it behoves us as historians to examine from time to time the largely unquestioned assumptions upon which our scholarly edifices are built’

-R. R. Davies¹

The most important conclusion to arise from this thesis is that the English settlers in Ireland did not depress all Gaelic people into bondage. On the contrary, although there is no way to quantify them precisely, it is safe to conclude that free Gaels comprised a significant portion of the population of English Ireland. These free Gaels adapted to and participated in the new legal framework introduced to Ireland in the century after the first coming of the English. What the fragmentary records of the royal courts reveal is the complex social make-up of thirteenth- and early fourteenth-century Ireland. Free Gaels married English, Ost-people, Welsh, and Scots. Between the different ethnic groups there was co-operation, rivalry, intercourse, cultural exchange, feud, war, love, rape, oppression, and enfranchisement. This is not to suggest that there is no evidence of ethnic discrimination. Rather my conclusion is that instances of ethnic discrimination in the court records are greatly outnumbered by the instances of acceptance of Gaelic and other peoples. We must avoid the problem of conflating grants of access to the royal courts as proof that *no* Gael could successfully sue a civil writ in an English court. We have overwhelming evidence to the contrary. Gaelic men and women could and did use the royal courts. There are also the false beliefs that denial of access to the royal courts made someone a *nativus/-a* and that anyone could kill a Gael without fear of being hanged. Such bald statements should be doubted for their absolute nature, but now we have concrete evidence to support such suspicions. Painting a picture with a broad brush may be faster, but without detail it loses beauty and perspicacity.

After reviewing the evidence from this thesis, perhaps it is time to ask some fundamental and difficult questions about epistemology and the writing of medieval history. Upon how many assumptions and *argumenti ex silentio* does our understanding

¹ R. R. Davies, ‘Lordship or colony?’ in J. F. Lydon (ed.), *The English in medieval Ireland* (Dublin, 1984), pp 142-60 at 142.

rely? G. H. Orpen, who is mostly remembered for his conclusions, had an exceptional ability to spot flaws in long-held beliefs. He traced the origins of false connections in genealogies in medieval Ireland, and discovered that the mottes around Ireland were not Danish mounds, but instead remnants of English motte-and-bailey castles.² John Gillingham, similarly, traced the history of ethnic revisionism of the people in medieval Ireland.³ Seán Duffy discovered that a letter supposedly sent during the Bruce invasion (called ‘*Cath Fhochairte Brighite*’) was a modern forgery which historians had accepted without question for eighty years.⁴ We should build upon their methodology and continue to interrogate previous historians’ conclusions with a relentless disinterest. This is clearly true since some historians still repeat the traditional assumptions decades after these conclusions have been soundly disproven. Esteem for a senior colleague should not prevent our criticism of any assumptions in his or her work. Pointing out a single mistake, whether it is an original supposition or simply a repetition of traditional ones, does not detract from someone’s contributions or erase their career. Improving our collective understanding will not destroy the work of one of the pillars of this field.

I began this thesis with a small introduction of legal unfreedom from England to compare to the records from English Ireland. This was necessary to differentiate between legally ‘free’ people (free and accepted) from others (unfree or unaccepted). We cannot, however, universally apply this methodology. As noted throughout the thesis, English law in Ireland was not an exact copy of the common law in England at that time. The ‘law books’ from England supposedly spell out the common law, but nowhere in the law books is the objection ‘*est Hibernicus/-a*’ or ‘*est Hibernicus/-a et nativus/-a*’. Yet we know that the latter was the law in English Ireland and that the crown was well aware of it. Where then do the findings from this thesis fit within the institution of medieval common law? It could be an example of regional variance, such as the lack of presentment of Englishry in Shropshire, or it could be the ‘English’ law in Ireland was not the common law. The former seems more likely as studies of legislation and general jurisprudence have shown the crown occasionally monitored the law in English Ireland and justices enforced certain

² Seán Duffy, ‘Historical revisit: Goddard Henry Orpen, *Ireland under the Normans, 1169-1333* (1911-20)’ in *IHS*, xxxii, no. 126 (2000), pp 246-59, repr. in Orpen, *Ireland*, pp xi-xxiv at xvi-xvii, xix; Orpen, *Ireland*, p. 336, n. 1.

³ Gillingham, ‘Normanizing the English invaders’.

⁴ Seán Duffy, ‘The Gaelic account of the Bruce invasion *Cath Fhochairte Brighite*: medieval romance or modern forgery?’ in *Seanchas Ardmhacha: Jn. of the Armagh Diocesan Hist. Soc.*, xiii, no. 1 (1988), pp 59-121.

English statutes and ordinances.⁵ On the other hand, Edward I, on several occasions, mandated that local custom be enforced in Ireland, and famously, Gaelic customs were drafted into legislation in English Ireland.⁶

There were, however, many similarities to the law in England. The writ of *naifty* (to recover/claim *nativi*) was one of the first English writs sent to Ireland.⁷ And the writ was used until at least the 1290s, if not later. Unfree people were a part of English Ireland just as they were in England, and it appears they had similar legal disabilities. Yet, we must not conflate their numbers. James Mills argued that *Hibernici et nativi* became simply *Hibernici*, but this conclusion overlooks some important details. It appears that unfree *Hibernici* were not explicitly differentiated from other *Hibernici* in criminal records (unless the former's lord was involved). The same was not true for civil records. This has caused numerous problems of interpretation. But now we know that the killing of *Hibernicus/-a* was sometimes treated as a felony; and likewise we know that not all *Hibernici* were barred from pleading in a civil case. These facts mean that not all *Hibernici* were *nativi*, especially since some English in Ireland were called *Hibernici*.

On the basis of this understanding of legal *naifty*, this thesis sought to determine and analyse examples of the many free and accepted Gaelic men and women in English Ireland. They probably represented a large portion of the population living within the jurisdiction of the royal courts in Ireland in the thirteenth century, and their existence demonstrates an acceptance of certain Gaelic people by the English in Ireland. This acceptance by the English evinces the Gaelic acquiescence to the advent and presence of the English in Ireland. Both of these are important because previous works have portrayed antithesis, animosity, and cultural unity among the ethnic groups, all of which clearly were not the situation everywhere in Ireland. Gaelic men were employed in various positions of power within English society. They were knights, bailiffs, jurors, attorneys, and warrantors. They decided the fates of English people. They held lands in hereditary fee, sued for disseisin, and won court cases. The free Gaels were called to warranty claims in

⁵ Hand, *English law*, pp 161-71; Brand, 'Ireland and the literature'; idem, 'Ralph de Hengham and the Irish Common Law' in *The Ir. Jurist*, xix (1984), pp 107-14, repr. in *Making of the common law*, pp 465-72; idem, 'The licensing of Mortmain alienations in the medieval lordship of Ireland' in *The Ir. Jurist*, xxi (1986), pp 125-44, repr. in *Making of the common law*, pp 267-86.

⁶ For some of Edward I's mandates to enforce local custom: *CJRI, 1305-7*, pp 19, 76-7. For Gaelic influence on Irish legislation in 1278: H. G. Richardson and G. O. Sayles, *The Irish Parliament in the Middle Ages* (Philadelphia, 1952), pp 291-3, esp. 292 ('*De Irreys udyfs*'). Gaelic influence on Irish legislation in 1310: *Stat. Ire., John-Hen. V*, pp 258-69, esp. 266-7 ('*chekun chief de graunt lygnage enprigne chastier ceaux de sun lygnage*').

⁷ Brand, 'Ireland and the literature', p. 448, n. 14.

court meaning that they held free lands of equal value within the English territories. They also granted lands away, sometimes in perpetuity and sometimes temporarily to repay a debt. They granted lands in exchange for rent casting themselves as mesne lords. Moreover, with the exception of Neel Ocrofthelhyn (described as a *liber homo*), most of the free Gaels were not labelled in civil cases, nor did they claim to be any legal category. Clearly, they were accepted as free members of English society in Ireland. How then should they be classified? Were they considered 'English', despite their Gaelic descent and the evidence of their names? Were they considered a distinct category: free Gaels (L. *Hibernici liberi*)? Or were they unlabelled ethnically (such as, 'free people' [L. *liberi*] or 'free men' [L. *homines liberi*])? For most of them, we will probably never know.

The intersections of sex and ethnicity within the law in English Ireland were manifold and they disrupt the traditional narratives. As in medieval England, women in English Ireland were subject to variegated treatment by the courts and society. Their social status and ability (or inability) to participate in the royal courts and in public life were not consistent. Single women could hold free lands, be landlords, conduct business, sue in court, commit felonies, steal from their own family, serve in armies, and be killed illegally for refusing to have sex with men. The freedom and acceptance of single women was a broad spectrum which we cannot reduce to any pithy statement. The greater freedom of some single women may have been the result of political connections, wealth, landholding, or something else entirely. A woman's status could change by marrying, but the degree of change was dependant on numerous factors: her social status, the man's social and legal status, the area they lived in, the year, and her personality. A magnate/royal Gaelic woman, married to a magnate Englishman, probably encountered little discrimination in English Ireland. The opposite, a magnate Englishwoman married to a Gaelic nobleman, may have endured more hardships, but the few examples make this a difficult situation to generalise. In Gaelic Ireland (or possibly in the march), Eleanor de Angulo, cousin of Walter de Burgh, married Aodh Buidhe Ó Néill. When Ó Néill attempted to leave her, de Burgh threatened the former.⁸ In contrast, John son of Diarmaid Mac Giolla Mo Cholmóc married Clarice, daughter of Gilbert son of Griffin, and there is no record of either being harassed. A lack of records, however, is not substantive proof. For non-noble women we have many more examples, but we must remember to be cautious with sweeping conclusions. It appears that in some circumstances a husband could ethnically cover his wife while married, but this did not protect or fetter her after his death. On the other hand there is the

⁸ Simms, 'Legal position of Irishwomen', p. 109; eadem, 'Women in Norman Ireland', pp 17-18.

phenomenon of Englishmen killing their Gaelic wives with impunity, which means the wife was not legally covered by her husband during the marriage. In the examples of Gaelic women recovering dowers, this phenomenon indicates that the women who did recover their dower were free and accepted previously and not because of their marriage. What is clear is that underage people were not barred from using the royal courts, neither were married women, and married women were not considered 'underage and in the custody of a guardian'.

In the royal court records we can usually identify people with an Ost, Scottish, or Welsh background, though this is not unproblematic since much relies on 'surnames'. This thesis has sought to integrate the analysis of these three groups, along with Manx and Islanders, within the overall consideration of society or ethnicity in thirteenth- and fourteenth-century English Ireland. As many historians have pleaded, there is still a need for more 'Irish Sea Region' (or 'British Isles') history. The connections and complexities are too recondite and fascinating to ignore. The identifiable cases from the royal courts elucidate the intricacy and cosmopolitanism of English Ireland, and demonstrate that the courts did not usually regard non-English people with access to the royal courts as 'English'. This was not a clerical error. This was an important distinction to the (English) people of English Ireland. Mandates and charters from the crown did not supersede local animosity to 'others'. The cases of English antithesis to Ost-people reveal that the royal administrators were not as powerful as previously thought (or as some petitions claimed), or possibly, that the royal justices did not enforce all of the royal mandates from England. While Edward I eventually called some of the Ost-people of Waterford his 'English people' these royal letters patent did not convince the English of Waterford to accept Edward's rhetoric. In contrast the Ost-people of Tipperary appear to have accepted to the point that they usually were not labelled anything. This does not mean that they were regarded as English, though. The Welsh in English Ireland, on the other hand, appear to have been fully accepted in the royal courts. Some were Anglicised to the point of being socially and legally English, but we cannot tell whether that was by blood (mothers and grandmothers were English) or by custom. While other Welsh people in Ireland remained 'Welsh'. The reasoning may have been entirely social as no legal effect of the label is discernible. Yet both groups (English with a Welsh name and Welsh) appear to have been fully accepted in the surviving court records even when Edward I was at war with the Welsh in Wales, although the lack of court rolls from 1278-82 could mask any effects on the Welsh in Ireland during the height of the conquest of Wales. This contrasts sharply

with the English attitude to Scots in England and in English Ireland after 1295. The few records from English Ireland seem to confirm that the English of Ireland arrested Scottish ‘rebels’ from 1296, and some people may have exploited the situation to disseise merchants. The explicit labelling of all of the examined groups from the ‘Irish Sea Region’ confirms that Englishness was guarded and contested, but was not required for access to the royal courts in English Ireland. Access to English courts did not make someone ‘English’.

We should note that the terminology used in civil cases in regards to Gaels, Ost-people, and others differs from the criminal records. The civil cases involving Gaelic men, Gaelic women, and the Irish Sea Region ethnicities demonstrate that unfreedom was not limited to Gaelic people, that being labelled a *Hibernicus/-a* was not tantamount to being designated a *nativus/-a*, that denial to the royal courts was not sufficient evidence of bondage, and that access to the royal courts did not make someone an English person (*Anglicus/-a*). The wider implications of these conclusions are that despite political events in Ireland, society remained diverse. Many factors probably led to the invention of legally acceptable discrimination, but the discrimination was not universal. It was spasmodic, regional, and not restricted to Gaels. While some may point to the wars of the Gaels of the Leinster Mountains as proof of an ethnic dichotomy or ethno-nationalism, this example overlooks the many Gaelic bailiffs and attorneys, Gaelic mothers, and lack of acceptance for Ost-people and others. The Bruce invasion also increased the frequency and number of Gaels serving in English armies, receiving pardons and land grants, and general co-operation between English and Gael against a common foe. All of this disrupts the traditional conception of society in thirteenth- and early fourteenth-century Ireland.

Criminal cases can leave the impression that medieval Ireland was a ‘land of war’, but the amount of violence in thirteenth- and fourteenth-century Ireland can never fully be quantified. Statistics of medieval crime are inherently dubious due to gaps in records and lack of reporting. What criminal cases can tell us, however, is quite interesting. The royal courts did prosecute English people for killing certain Gaels, which may demonstrate that a Gael’s social status was more important than his/her ethnicity. It was not a simple situation of ‘nobles’ versus ‘commoners’, though. Some Gaelic nobles were killed with impunity (and some assassins were rewarded), but the slayers of other nobles and non-nobles were hanged as felons. The only generalisation we can make is that the English administration and royal courts prosecuted the less-well connected people, but the sufficiently affluent or politically connected criminal could secure a pardon. This seems clear in the ignored cases

of English thieves who were hanged for stealing from Gaels and in lists of English and Gaels purchasing the pardon *pro visneto relaxando*. Comparing the summary execution of some Englishmen with the pardons of others indicates that the royal courts considered theft a more serious crime than homicide. The slayers of Gaels could escape the noose if they did not rob the corpse post factum, whereas as thieves usually hanged. Although no one hanged for it, the royal courts also did not tolerate the presentment of false evidence or indictments against Gaels. English people who endeavoured to deceitfully arraign and incriminate Gaels out of malice were gaoled and fined. The two most important results of the study of criminal cases seem to be: that killing or stealing from a Gael who probably could not sue a civil case was still a hangable offence and that there were English *nativi* in the marches, at least.

Clerics, or more specifically prelates, in English Ireland charged higher rents to all tenants on their lands and required heavier labour services compared to secular lords. A study is needed to determine if ethnicity had any role in this phenomenon. The court records tell us that English, Gaelic, and Continental prelates ‘usurped’ liberties from the crown of England (and Lord Edward in 1254-72) and had no hesitation in using the royal courts against tenants or neighbours. Bishops denied women their dowers. And Gaelic bishops had no ethnic solidarity with Gaelic tenants. Bishop Tomás Ó Ceallaigh appears to have attempted to legally dispossess members of his own family.⁹ The cases involving David Mac Cearbhaill indicate that he was not altruistic in his relations with other Gaels. Further down the ecclesiastical ladder, we might expect that Gaelic clerics were enfranchised *ex officio*, but that proved not to be the situation for every Gaelic cleric. On the other hand, Gaelic clerics enfeoffed their probably-illegitimate children with free lands. Kenneth Nicholls speculated that this was the impetus for the confirmations of the land grants and charters in the mid-thirteenth century.¹⁰ A final note about the proposed grant for all *Hibernici* in 1277 is that while the grant would have been for all *Hibernici* (except those from ‘Ulster’), it did not mean that all *Hibernici* were denied access prior to 1277. Simply because not every single Gael could use the royal courts is not sufficient evidence to state that no Gael could use them, and the court records confirm the fallaciousness of this assumption.

The previous works which analysed the legal status of Gaels have focused on the label *Hibernicus/-a*. The court records demonstrate that in civil cases *nativus/-a* was the

⁹ Chapter Five, *supra*, pp 272-3.

¹⁰ Nicholls, ‘Anglo-French Ireland’, p. 382. Cf. one possible misidentification by Nicholls: *supra*, p. 16, n. 88.

designation for unfree people, *betagius/-a* was not synonymous with *nativus/-a*, neither was *Hibernicus/-a et nativus/-a*, and some people labelled *Hibernici* could sue civil writs while others could not. Criminal records have caused a great deal of confusion because the royal courts occasionally prosecuted the death of a *Hibernicus/-a* as a felony, other times as a tort, and sometimes disregarded the act completely. Historians have focused on the latter two situations and overlooked the former which has distorted our understanding of society in medieval English Ireland. The problem with the criminal prosecution of homicides is that the courts did not label victims as *nativi*, but some of the slain were clearly regarded as unfree (or worse) by the royal courts. The mutability of the label *Hibernicus/-a* requires that historians take great care to differentiate between civil and criminal case records and other types of records, especially petitions.

All of these court records have shown that society in thirteenth- and early fourteenth-century English Ireland was far more nuanced and complex than previously portrayed. Moving forward there are numerous avenues to explore. The invention of the phrases '*merus/-a Anglicus/-a*', '*purus/-a Anglicus/-a*', and '*purus/-a Hibernicus/-a*' may indicate a cultural shift from simply land tenure as the marker of freedom or acceptance to acculturation (or assistance in warfare) as the marker of acceptance. This may be an overgeneralisation. Clearly the earliest free Gaels within the new English territories in Ireland either provided assistance in the English conquest of new lands or at least did not hinder it. But, as is well-known, decades after the English were established in the Irish provinces, some of the Gaels there began to raid lands and attack 'English' armies (English in that the armies supposedly served the crown's interests, and not in a constitutional sense). These labels of 'purity' seem to be in reaction to the advent of legally-recognised ethnic discrimination and the supposedly ethnic-based wars and violence. Many Gaels fought against the Gaels of the Leinster Mountains and the Gaels of Desmond, and many Englishmen had Gaelic mothers, so the definition of 'purity' may have been related to defending the English lands in Ireland. Previous works recognised the contemporary trouble of differentiating between 'faithful' people and *inimices regis*, which led to banning Gaelic hairstyles (at least for English people) in 1297 and more Gaelic cultural practices in the fourteenth century.¹¹ At the same time as the phrases '*purus/-a Hibernicus/-a*' and '*purus/-a Anglicus/-a*' were being implemented, free Gaels began to refer to themselves as '*Hibernici* at peace'. This may not have disturbed the phenomenon of 'purity'. Perhaps the 'purity' of the *puri Hibernici* was that they were supposedly 'at

¹¹ For 1297, see Duffy, 'Problem of degeneracy'. For the fourteenth century, see Frame, 'Power and society'.

war' with the English. This legal change in Ireland may have affected the legal and political language used in England. '*Purus/-a Anglicus/-a*' first appears in a petition by an Ostman in c.1290, but then is used in regards to an immigrant to England in 1295.¹² Was this – similar to Paul Brand's observation of English writs being transmitted to Ireland in 1210 initiating the codification of English law – an instance in which the 'common law' was shaped by events in English Ireland, and subsequently, this directly affected the politico-legal linguistics in England?

Another path to explore is the size of landholdings of free Gaels and the extent of power they could wield. This will be difficult to pursue. Several of the free Gaels only appear in a single court case, but if we can locate evidence of their existence in manorial extents (many of which survive in the National Library of Ireland and the PRO of the UK), then we might be able to determine more information about the spectrum of Gaelic acceptance beyond access to the royal courts. There may have been certain English magnates or prelates who preferred Gaelic tenants, or had to rely solely on them, due to Anglo-Gaelic warfare or because the lord was half-Gaelic him/herself. These are all suppositions. We must conduct the research to see if any of these hypotheses hold up. Do not repeat them without confirming the accuracy or veracity of them. Beyond landholding, the free Gaels also held numerous positions of power. This does not appear to have been limited to a place or time, but there may have been a maximum limit to the power allowed to them. The known royal justices in Ireland were mostly English. Many of them were sent from England for a term of years to serve as a justice and then they returned to England. But was there ever a Gaelic justice? The assumption is that the answer is simply no, but until recently the same was assumed about holding lands in hereditary fee. Richardson and Sayles, who contributed much to the history of medieval English Ireland, did not find a Gaelic justice or baron of the exchequer.¹³ That does not mean that their search was exhaustive and that we should give up any further investigation. There was at least one Welsh baron of the exchequer (Rory MacKavan [*W. Rhodri ap Cynan*]). There is also the possibility that a half-Gaelic man was a justice or baron of the exchequer (MacKavan was Gaelicised by blood and custom). We should try to identify the mothers of the administrators.

¹² Andrea Ruddick wagered that this immigrant, Elias Daubeny, was from Britany. The record does not specify where he was from, only that he was born overseas and was therefore an 'alien' (*alienigena est*): *PROME*, Edward I, Roll 10, m.1d (<http://www.sd-editions.com/AnaServer?PROME+75421+textfra.any>) (18 Aug. 2017); Ruddick, *English identity*, p. 105.

¹³ *Admin. of Ireland*.

Finally, in regards to the current understanding of the ‘law’ and ethnicity in thirteenth-century Ireland, there are two themes resultant from this study. Firstly, English law was not as prescriptive as previously thought or described. The royal courts were a temporary place to conduct regulated negotiations, and the court records elucidate interactions within that society. The records not only display the intricacy of English Ireland, but also of the court procedures. There was not an impetus for parties to tell the truth and only the truth. Parties were allowed to try out various pleas and counterpleas until one worked or all failed. We must remember the consequential difference between pleading and court judgments in our assessments of medieval Ireland. At the same time we must remember that precedent did not dictate the judgments by the justices. They could *pro voluntate sua* rule completely differently in two similar court cases. There is also the problem that legal facts may not have been reality. When a court ruled that someone was legally an *Anglicus/-a* that verdict was a legal fact, but that does not mean that the person was fully English by custom and blood. Due to the sporadic nature of the surviving records we do not know the outcome of many important cases or if certain judgments were exceptional or banal. This leads into the second theme: the complexity and volubility of acceptance by the royal courts and English society. It is clear that many of the free Gaels in the surviving records have been overlooked because historians have assumed that any and all free people in English Ireland were English. We must be mindful of confirmation bias and attempt to look at the records with a fresh perspective. Anglicised Gaelic names can, with careful diligence, be uncovered in the multifarious English records (which include more than just court records). Correspondence with England, charters, manorial extents, inquisitions, and many other types of records contain evidence of the free Gaels. But we must also remember that that society was more than just free and unfree Gaels and English people. The Ost-people, Welsh, Manx, Scots, and others of Ireland were part of the society and added their own positive and negative contributions. The diversity of medieval Ireland made it more profound.

Appendix One: Surviving court records

After the series of calamities over the centuries culminating with the wanton destruction of the Four Courts Complex on 30 June 1922, relatively few records of medieval Ireland survive.¹⁴⁸⁹ That being said, numerous records do survive, and the following table lists the royal court records from 1252-1318 and notes important details about each record. They range from two intact original rolls to various qualities of calendars. Before the main body of calendars were created, the Record Commission drafted some reports to the UK government about the quality and extent of surviving records at that time (1810-1820) and samples of calendars which the RC planned to create.¹⁴⁹⁰ These reports give us vital details about the originals and I have included the descriptions of the original rolls with the details of the surviving calendars. The original rolls were sewn at the head, making them ‘exchequer style’. This means that the individual parchments are called *rotuli*, but the Record Commission called them ‘membranes’. I have included the number of surviving ‘membranes’ for each record and type of court which made the record. The ‘description’ column details pertinent information about the source itself, and the ‘notes’ column provides information about the contents of the sources.

¹⁴⁸⁹ For the history of the destruction of the records from English Ireland, see Peter Crooks, ‘Reconstructing the Past: The Case of the Medieval Irish Chancery Rolls’, in N.M. Dawson and Felix Larkin (eds.), *Lawyers, the Law and History: Irish Legal History Society Discourses and Other Papers, 2006-2011* (Dublin, 2013), pp 281-309.

¹⁴⁹⁰ *The sixth, seventh, eighth, ninth, and tenth reports from the commissioners appointed by his majesty to execute the measures recommended in an address of the House of Commons, respecting the public records of Ireland, 1816-1820* (London, 1820), pp 79-90, 522-4.