

IRISH HISTORICAL STUDIES

Vol. VI. No. 22

September 1948

Bishop Nicholas French and the second Ormond peace, 1648-9

Europe in the seventeenth century was a land of war and confusion because the great political problems raised by the religious disruption of the preceding century had not yet been solved. Chief among these was the problem of the relations between the Roman catholic church and a protestant state. The teaching of the pope's indirect power in temporal matters in any problem involving a breach of the moral order (*ratione peccati*) had been strongly re-stated by Bellarmine, and was the official attitude of the church. A protestant prince had committed a grave sin, that of heresy, and so it was the pope's right and duty to depose him and absolve his Catholic subjects from their allegiance. But this political theory was becoming impractical as the seventeenth century progressively demonstrated that Europe was permanently divided. As might be expected, juridical forms lagged behind the development of events; but by the middle of the century the Roman curia, while not prepared to give antecedent approval to a peace with protestants, might be said to be ready to acquiesce once it had been concluded, if the position and rights of the Catholic church could be assured.¹ Yet this assurance was, in the circumstances, almost impossible. The Catholic church could not rest satisfied with toleration as a sect, but demanded recognition as an organised society with a source of jurisdiction independent of the state. If this position caused constant

¹ This is clearly implied in *Zelo domus Dei* issued as a protest against the peace of Westphalia (*Bullarium Romanum*, t. vi, pt iii, p. 173).

difficulty in countries where the state church was Catholic, there seemed to be no possible solution in those where it was not.

Ireland also experienced this clash of loyalties. The year 1642 had seen the catholic confederates take arms 'for God, for king and country', aims almost irreconcilable in the circumstances of the time, and made more so by the arrival of Rinuccini as papal nuncio in 1645. It was clearly to the advantage of the confederacy to reach agreement with the king, but this could be done only by substantial concessions on both sides, and even before Rinuccini's arrival negotiations had failed because of lack of this spirit of compromise. His arrival ensured the rejection of the peace of 1646, but he had no substitute to offer, and a short-lived dictatorship yielded to a re-summoning of the general assembly, when the conflict of loyalties began again. The disasters of 1647 made an agreement with the king more desirable than ever. The lay lords of the confederacy looked on Inchiquin's defection from parliament as an obvious opportunity to strengthen their position, but, to the nuncio, agreement with him was something to be prevented by the intervention of the spiritual arm, if necessary. In this attitude he was supported by the Ulster confederates, for reasons in which political and religious considerations were commingled; by many, but not all, of the bishops (most of his supporters being either 'Old Irish'² or owing their appointments to him); and by most of the 'common people', who, however, counted for little in a decision and whose support was dictated more by reverence for his person than by political reasoning.³ Against him were ranged the Anglo-Irish lords, many of whom were genuinely mystified that a treaty between two sections of his majesty's subjects should be the concern of a foreigner,

² The distinction of 'Old Irish' and 'Anglo-Irish' was very clearly marked, but not quite complete. The mixed ancestry of e.g. Rory O'More, Inchiquin, Sarsfield, is evidence of the beginnings of fusion.

³ It is admittedly difficult to assess the sentiments of the 'common people'. Apart from the lawyers and clergy, and to some degree the men of property, the only people who might be said to be in any way articulate were the town-dwellers. Yet among these there is some evidence of pro-nuncio sympathies, especially in Galway at this time, where the 'common people' favoured the nuncio, though the men of substance, due mainly to Clanricarde influence, opposed him. The country-folk have, of course, left no record of their sentiments.

and to whom 'the safeguarding of ecclesiastical jurisdiction' probably recalled memories of their own imprisonment after the peace of 1646. Merchants and traders, who had suffered the uncertainties of war for seven years, were naturally anxious for peace. As well, there was a large number who could not grope their way through the theological and political confusion that had followed the nuncio's censures, to whom 'treason' was an ugly word, and who salved their loyalty to the church by the consideration that churchmen themselves were divided.

Bishop Nicholas French of Ferns occupied an unusual position in the dispute. He had always been a man of moderate character, a supporter of Rinuccini, but trusted by the Anglo-Irish, of whose stock he came, though he was not closely linked to any of the great families. Yet although he was loyal to the nuncio, a rift had been appearing between them since 1647, on the general question of relations of church and state, and specifically on the lawfulness of catholic and protestant making-common cause.^{3a} In 1648 he was sent as an envoy to the papal court, together with Nicholas Plunkett, to discover the wishes of the pope in the matter of peace with the king, and to seek a continuation of papal supplies to the confederacy. In his absence, the cessation of arms with Inchiquin had been arranged, the nuncio had censured all who had subscribed to it, and had fled to Galway. Ormond had landed as representative of the queen and prince of Wales, the king being a prisoner in the hands of the parliament, and although Rinuccini had insisted that it was utterly impossible to agree to any peace-terms unless the viceroy were a catholic, negotiations were proceeding at Kilkenny when the envoys returned from Rome. The nuncio expected that they would ignore the negotiations and set out for Galway, and that whatever news they brought might enable him to re-assert his position and regain control of the confederacy.

He had to face a disappointment, for the envoys, on landing at Waterford on 21 November 1648, set out at once for Kilkenny.⁴ Their mission had not produced the results expected, and news of the dissensions in Ireland, which had arrived when

^{3a} *Comment. Rinucc.*, ii. 700.

⁴ *Comment. Rinucc.*, iii. 659 (or possibly November 20; Philopater Irenaeus, *Vindiciae*, p. 165).

the negotiations in Rome had been completed, had further weakened the confederates' case there. Despite some difference of opinion as to the prudence of the nuncio's actions, there could be no doubt that he would have official support for them. Yet the bishop of Ferns was convinced that he should go, not to Galway, but to Kilkenny, where the civil government of the kingdom was in session. He believed that it was determined to reach agreement with Ormond. If he were to abandon it now, the cleavage between the catholic cause in Ireland and its lawful temporal ruler must be completed, and a peace concluded with Ormond in the name of catholics but neglecting fundamental issues which could not be ignored. The course events afterwards took shows that there was ample ground for such a fear.

On November 24 the envoys gave an account of their mission to the general assembly of the confederation.⁵ While a beginning had been made in the discussion of the religious terms of the peace-treaty, no one could be certain what attitude to adopt until the report of the envoys from Rome should have been heard. It was doubtful in the first place if the pope's consent could be gained at all; and granted that it could, it was doubtful what antecedent conditions would have to be accepted by Ormond in order to get papal approval. So far, business had been confined to submitting to Ormond for preliminary consideration the four points which the confederates had bound themselves by oath to observe in negotiations with the king. These were :

First, that the Roman Catholics should have free and public exercise of their religion throughout the kingdom, as they had enjoyed it in the reign of Henry VII or any Catholic king.

Second, that the secular clergy should enjoy all the jurisdictions, privileges and immunities which they had enjoyed at that time.

Third, that all laws passed against Catholics since 20 Henry VIII should be revoked.

Fourth, that church-livings and temporalities should be enjoyed by the Catholic clergy in all places which the confederates actually possessed or should recover from the enemy in Ireland, 'saving to the Roman Catholic laity their respective rights according to the laws of the land'.⁶

⁵ *Comment. Rinucc.*, iii. 660; cf. Sir Richard Blake to Sir Robuck Lynch, 25 Nov. 1648 (Gilbert, *Ir. confed.*, vii. 146–8, citing Carte Papers, xxii. 446).

⁶ Gilbert, *Ir. confed.*, vi. 290, citing Carte Papers, xxii. 247.

These points had been submitted to Ormond in October, and he in his turn had asked for time to consider them.⁷ In the meantime an event occurred which showed him even more clearly that the adhesion of the confederacy to the royal cause should not involve unlimited concessions to the catholics. Disaffection had broken out among the protestant soldiers of Inchiquin, who was forced to ask Ormond to come to Cork to deal with the situation.

Meanwhile many of the catholics at Kilkenny were doubtful if their proposals could win the approval of the pope. It was true they had emanated from Rinuccini and the bishops in 1647, but the situation had become very complex since then, and though there were some who felt that papal approval could not be expected in any case, and that it was best to waste no more time discussing it but proceed to negotiations,⁸ most of the Kilkenny assembly, while anxious for agreement with the king, were also anxious that this agreement should be sanctioned by the pope. The report of the envoys from Rome was, then, a matter of grave importance for the future of the negotiations. Their report was disappointing. Fundamentally, they had to admit, their mission had failed. Though it appears that they had received a final reply in Rome before definite news arrived of a complete break between Rinuccini and the confederacy,⁹ this reply had not been very encouraging. The pope had pointed out that, in the first place, before there should be question of supplying more money to the confederates, it was desirable that some account should be given of the considerable sums already sent by Massari, the dean of Fermo. Secondly, the pressure of foreign and domestic affairs on the papal treasury had left it so short of money that none could be made available for Ireland at the moment. Finally, as regards the religious terms of the peace with the king, the Apostolic See could not formally approve a treaty with a heretical prince.¹⁰

⁷ Gilbert, *Ir. confed.*, vi. 293-4, citing Carte Papers, xxii. 241.

⁸ Philopater Irenaeus, *Vindiciae*, p. 177; Plunkett MS (N.L.I. MS 345), p. 952.

⁹ Cf. the very definite statement in the letter of Sir Richard Blake to Sir Robuck Lynch, as above, with the vague generalizations adduced in support of the opposite view in *Comment. Rinucc.*, iii. 410).

¹⁰ Sir Richard Blake to Sir Robuck Lynch, as above; *Comment. Rinucc.*, iii. 409.

It is hard to decide what advice the envoys gave as to the sufficiency of the terms then under discussion. Sir Richard Blake is silent on the subject;¹¹ so is the bishop of Ferns in his 'Apologia',¹² though there are good reasons why, in this document, he should have omitted mention of any such advice, had he given it. The papal decision had been very vague: 'it was not the practice of the Holy See to give any positive approval of such a step, and that it had good hope that the petitioners and all the Irish Catholics would, in all they did, strive for the further progress and advantage of the Catholic religion'.¹³ In whatever form the envoys presented this decision, Sir Richard Bellings at any rate was convinced that the confederates were left free to negotiate a peace if suitable religious conditions could be obtained;¹⁴ and Philopater Irenaeus represents the envoys as saying definitely that religion should be no obstacle to the peace, as the terms offered were quite good enough to warrant an agreement, and that it should become possible to press for even better terms once the peace had been signed.¹⁵ Philopater can scarcely be considered a disinterested witness in this matter, but in spite of the respectful attitude the bishop of Ferns maintained towards the nuncio's censures,¹⁶ and the hope he still entertained of reconciling him with the confederacy,¹⁷ it seems fair to conclude that he at least allowed it to be inferred that the peace-terms under discussion could be said to have a good chance of approval at Rome. In any case, this report of the envoys had the effect of winning over many waverers, and though all kinds of rumours circulated at Kilkenny as to supposed terms on which the pope would approve, and supposed secret instructions the envoys had

¹¹ Sir Richard Blake to Sir Robuck Lynch, as above.

¹² Moran, *Spicil. Ossor.*, ii. 115 ff.

¹³ *Comment. Rinucc.*, iii. 409.

¹⁴ Bellings to Ormond, 26 Nov. 1648 (Gilbert, *Ir. confed.*, vii. 148–9, citing Carte Papers, xxii. 447).

¹⁵ Philopater Irenaeus, *Vindiciae*, pp. 166–7. 'Philopater' is, of course, the pseudonym of John Callaghan, and the *Vindiciae*, published in Paris in 1650, was a bitter attack on the nuncio and all his supporters. Cf. C. McNeill, *Publications of Irish interest published by Irish authors on the continent of Europe prior to the eighteenth century*, pp. 20–25.

¹⁶ Moran, *Spicil. Ossor.*, ii. 125.

¹⁷ *Comment. Rinucc.*, iii. 670.

received at Rome directed to securing the recall of the nuncio's censures, the general impression was that no objection might be expected in Rome if the peace-terms were favourable, even though there might be no antecedent approval.¹⁸

This frame of mind can have originated only with the bishop of Ferns, and almost certainly arises from the fact that he made some use of a letter from Cardinal Roma to the nuncio, of which he was the bearer.¹⁹ This letter, which took the nuncio to task rather severely for having resorted to censure, was obtained by the bishop when news had arrived in Rome of the disputes in Ireland, i.e. a few days after the envoys had received the reply of the pope concerning the peace-treaty. This news had been a severe blow to them, and Bishop French, disapproving of the nuncio's action, tried to get the opinion of some eminent figure in Rome to add weight to his own views on his return home. He approached the cardinal, who was inclined to agree with him and wrote to the nuncio pointing out that he had perhaps acted imprudently, and had possibly exceeded his mandate, and hinted that this might be the opinion of the pope. He suggested that it was in the nuncio's best interests to absolve those who had incurred his censures, and that there was no hope of papal subsidies until the dissensions had been healed.²⁰ This letter was handed to the envoys for transmission to the nuncio, but before being delivered it was shown to several persons in Kilkenny, confirming them in their belief that he had acted rashly, perhaps invalidly, in his resort to censure.²¹ The nuncio could make no reply until he received, on 12 December 1648, a letter from Cardinal Panzirolo, dated September 7, in which he was assured that he was left full discretion in the whole matter.²²

A careful comparison of these two letters shows no fundamental difference of attitude. Both made it clear that the nuncio is to choose his own way in dealing with the censures he has imposed, even though the one is inclined to take him to task for rashness at least, if not more, while the other assures him that his action is fully supported. The only possible conclusion is that a serious difference arose at Rome, between

¹⁸ Plunkett MS (N.L.I. MS 345), p. 960.

¹⁹ *Comment. Rinucc.*, iii. 686 ff.

²⁰ *Ibid.*, iii. 685.

²¹ Hutton, *Embassy Rinucc.*, p. 462.

²² *Comment. Rinucc.*, iii. 682.

the envoys and Luke Wadding on the one side, and the Roman court on the other. The former associated themselves with the confederacy's appeal against the censures, and received a very negative and hesitant reply from the pope—that they should have recourse to the nuncio and obey his commands.²³ Their actions on their return to Ireland show that they were not prepared to obey the nuncio to the extent of dividing the confederacy; but their getting the letter from Cardinal Roma seems to imply that they hoped Rinuccini might yet be persuaded to change his mind.

Partly because this letter was shown to a few individuals—in view of the vague rumours which were all that were in circulation it can hardly have been shown to more—partly because of what the envoys had said in their report to the assembly, and partly, no doubt, because of a certain amount of 'wishful thinking', it was generally accepted in Kilkenny that the censures were not approved in Rome, and when the nuncio received Cardinal Panzirolo's letter nobody believed him, finding support for their attitude in the fact that the official brief, authorising him to deal with the matter as he thought fit, never arrived in Ireland.²⁴ Whether it was sent or not, and, if it was, what became of it, are questions unsolved and apparently insoluble, but the fact that it did not arrive explains how it was confidently felt in Kilkenny that the nuncio was in a minority, not only in Ireland, but in Rome.

The bishop of Ferns, now committed to the task of seeing that the religious clauses in the forthcoming peace, which he was convinced was inevitable, should be as favourable as possible, began to organize the strongest possible support for the catholic demands. Two sources of great weakness were the disunion among the bishops and the hostility of Owen Roe O'Neill. On consultation with Massari, who was then in Kilkenny, French wrote to the nuncio on 25 November 1648, protesting his loyalty, and saying that he hoped very soon to see him in person and adduce reasons which might lead to a reconciliation.²⁵ He added that after long discussion with Massari he had decided

²³ *Comment. Rinucc.*, iii. 682.

²⁴ Hutton, *Embassy Rinucc.*, pp. 444–5; *Comment. Rinucc.*, iii. 682.

²⁵ *Comment. Rinucc.*, iii. 670. There is an obvious allusion to Cardinal Roma's letter.

to ask the nuncio to allow the bishops to attend the Kilkenny assembly in the interests of the catholic religion.²⁶ The following day he wrote to Bishop MacMahon of Clogher, again urging the need for unity, and asking him to use his admittedly great influence with Owen Roe and the nuncio.²⁷ The bishop made him no reply, and the nuncio's reply was not encouraging. He pointed out that one of his main reasons for refusing to allow the bishops to attend the Kilkenny assembly was his lack of information as to the mind of the pope on the religious issues, and that until he had received some information on this point he was not free to decide.²⁸ The envoys' reply to the nuncio, in a letter dated December 11, was to point out that for the moment they could not leave Kilkenny, as the peace negotiations were rapidly drawing to a conclusion. They enclosed for his consideration a number of reasons they had urged on Massari why all the bishops should be allowed to come to Kilkenny; that all the influential classes supported the peace, and a refusal on the part of the bishops to join in negotiations with the legally appointed deputy of the queen and prince of Wales would cost them their authority; that there had been no express papal prohibition of treating for peace with a heretic; that there was no alternative to Ormond, as O'Neill was reported to be negotiating with Jones, and so to join him meant a breach of the confederacy's oath of association and—a more practical consideration—it meant the end of any genuine catholicism among the Anglo-Irish. In the face of these facts, all that could be done, they thought, was to assemble all the bishops in Kilkenny to secure the most advantageous terms possible; as for those already there, they would do their best, but this was little compared with what might be done if the schism were healed.²⁹

In the circumstances, these were weighty considerations, but the bishops at Kilkenny were not prepared to wait for what effect they might produce. It had for some time been obvious that conclusion of the peace-negotiations could not be long delayed, and the important religious issue was not yet settled. They decided to use a papal brief which had been destined for

²⁶ *Ibid.*, iii. 671.

²⁷ *Ibid.*, iii. 690.

²⁸ *Ibid.*, iii. 671; cf. Hutton, *Embassy Rinucc.*, pp. 440-3.

²⁹ *Ibid.*, iii. 672-4.

the Irish bishops, and which had been brought from Rome by the envoys, as a means of bringing the bishops together. A letter was sent to the bishops, very probably to all,³⁰ on November 30, in which it was declared that this brief was of very great importance, and, seeing that the envoys had not been able to deliver it to the nuncio, they had handed it over to the Kilkenny bishops, who now, in virtue of its authority, commanded the others to come to Kilkenny to receive it.³¹ As the brief was a simple exhortation to avoid dissensions in the grave circumstances of the time, the interpretation it had received in Kilkenny was, to put it mildly, rather wide. The bishop of Ferns does not appear among the signatories of this letter, but there is no doubt he approved of it.³² The nuncio's reaction may be surmised from what he wrote on a copy he had received: '*Epistola episcoporum citatoria ob Breve Sanctissimi ut deciperent reliquos*'.³³ He immediately warned the bishops that they were under no obligation to obey the summons, and sent them copies of the brief in question, which he himself had just received from Rome. However, the archbishop of Cashel, with the bishops of Waterford and Emly, set out for Kilkenny, apparently before they had received the nuncio's communication. Emly changed his mind at the approaches to the city, and fled, but the other two joined the bishops already assembled there.

In the meantime, the nuncio had received Cardinal Panzirolo's letter, in which it was made known to him that the matter of the censures was being left entirely in his hands, and that the envoys knew this before leaving Rome. He wrote to them rather curtly on December 14, telling them of the news he had received, and saying that he trusted they had given this information to the assembly, but apparently doubting it, as he could not envisage prolonged opposition to himself in the face of such news.³⁴ This letter had done much to shake what confidence he still reposed in them, for we find him writing shortly afterwards to Cardinal Panzirolo: 'I thank God that the letter

³⁰ Cf. *Comment. Rinucc.*, iii. 667, with Moran, *Spicil. Ossor.*, ii. 118.

³¹ *Comment. Rinucc.* iii. 667–8.

³² It seems he was convinced that the bishops could be persuaded to see his point of view if they could be got to Kilkenny. Cf. Moran, *Spicil. Ossor.*, ii. 118.

³³ *Comment. Rinucc.*, iii. 668.

³⁴ *Ibid.*, iii. 675.

of your eminence of 7 September reached me safely, since as His Holiness has remitted to me wholly the affair of the interdict without appeal, I have succeeded in silencing to some degree this bishop of Ferns, who has industriously spread the report that His Holiness, the cardinal protector, and the court of Rome disapproved of my resolution'.³⁵ On the other hand, the letter written by the envoys on December 11 also made a considerable impression on him. With it he probably received, among other documents from Rome, the letter of Cardinal Roma, which at least showed him there were differences of opinion there.³⁶ His reply to French, dated December 18, reads as that of a frustrated and rather petulant man. He writes that his conscience and the honour of the Holy See will not allow him to grant their requests: he thinks it unnecessary to call the bishops together to receive the papal brief; conscience forbids him to call them together to take part in negotiations, and he emphasizes that in ecclesiastical matters his authority is still supreme. If however, he adds, the bishops have so turned against him that this consideration no longer weighs with them, Rinuccini offers to depute the archbishop of Cashel to preside over an episcopal meeting at Limerick, where they can discuss the religious issues. If this prove impossible, he must abstain from any positive approbation, and leave the whole matter to each man's conscience. He concludes by expressing a wish that the envoys could find some opportunity to pay him a visit, when a more satisfactory solution might perhaps be arranged.³⁷

By the time this letter reached Kilkenny the religious issue had become the subject of bitter dispute. Ormond, on his return from Munster, had sent his answer to the assembly on the morning of December 19. He had conceded the remission of all laws passed against free exercise of the catholic religion, but declared that this authority did not extend so far as the granting of churches or church-livings, or the settling of the question of ecclesiastical jurisdiction; but he gave assurance that the catholics should not be disturbed in the churches or church-livings they actually possessed, nor in the exercise of their

³⁵ Hutton, *Embassy Rinucc.*, p. 444.

³⁶ 'Accepi litteras Romanas missas a dominationibus vestris' (*Comment. Rinucc.*, iii. 676).

³⁷ *Ibid.*, iii. 676.

functions in them, until the king, on hearing their wishes expressed in parliament, should declare his pleasure.³⁸ This reply was received with mixed feelings by the confederates. It was entirely unacceptable to the bishops, as it left the fundamental issue of jurisdiction undecided, and made no provision for the restoration to catholic hands of the churches recently occupied by Inchiquin in Munster. Yet it must have been perfectly satisfactory to a large number of laymen, who did not want the question of ecclesiastical property too closely examined, and who had found themselves severely restrained during the last few years by the exercise of ecclesiastical jurisdiction.

Ormond on his part must have been afraid he had promised more than he could afford to grant. His king was the captive of a parliament which had just forced him to disown any royal commission to treat with the 'Irish rebels.'³⁹ His catholic supporters in England had been sadly thinned by the civil war, and his only hope of support, apart from the Irish catholics, was the Scotch covenanters, a hope Ormond meant to realize.⁴⁰ Inchiquin's protestant army was simmering with discontent at the prospect of a catholic restoration in Ireland. Taking all the circumstances into account, to have granted the church-livings and jurisdictions was madness from Ormond's point of view, and even the repeal of anti-catholic laws, while it might possibly gain the Irish, was certain to cost valuable support in England and Scotland.

The general assembly, on receipt of Ormond's reply, appointed a committee to debate it.⁴¹ The very constitution of the committee was sufficient to make it unacceptable in the eyes of the nuncio's party, for to the bishops' names were added those of thirteen laymen, and though they were, generally speaking, men of moderate views, it gave colour to the assertion that the lay-lords wished to assemble as many bishops as possible in Kilkenny, fearing a reaction in favour of the nuncio if they

³⁸ Gilbert, *Ir. confed.*, vii. 156, citing Carte Papers, xxiii. 35-6.

³⁹ Cf. *His Majesty's last letter to parliament*, London, 1648, p. 4; *Comment. Rinucc.*, iv. 33.

⁴⁰ Cox, *Hibernia Anglicana*, ii. 202; Carte, *Ormonde*, ii. 12-15.

⁴¹ Gilbert, *Ir. confed.*, vii. 154-5, citing Carte Papers, xxiii. 34.

were to proceed without the bishops, and knowing they could easily out-vote them all.⁴²

However, the committee came to the decision that Ormond's offer was unsatisfactory, and on the next day, December 20, it was authorized by the assembly to approach him directly, to reduce their differences to as small a compass as possible, and then to refer the matter back to the general body.⁴³ Probably as a sop to the bishops, it was added that there was to be no departure from the 'four points' laid down at the beginning, for strict adherence to these could leave no room for compromise. Matters were turning out as the nuncio had feared. The bishops were being given a merely consultative vote, and everything now depended on how strongly they could put their case, and what influence they could bring to bear on the vote of the assembly.

The committee, after a day's debate, approached Ormond at eight o'clock that evening, and submitted a draft to him, in which they asked for full freedom to practise their religion, the removal of all laws against it, and especially the oath of supremacy. With regard to church-livings and jurisdictions, they suggested that his authority extended so far as to assure that catholics should not be molested in the possession of the livings *and jurisdictions* they actually held, until his majesty, having fully considered their desires in a free parliament, should declare his pleasure.⁴⁴ This draft shows unmistakable signs of a compromise between the episcopal members of the committee and the lay majority. The episcopal point of view can be seen in the insistence on the question of jurisdiction, and in the insinuation that present possessions are to be looked on as a minimum, which may not be reduced but which may be amplified in the future; that of the laymen in the proposal that these points should not be finally decided in the treaty itself. Ormond's reply was given at ten o'clock the next morning. He declared that he was not certain what exactly was the difference between himself and the committee, and that he was afraid that his ignorance of technical terms in which to express

⁴² *Comment. Rinucc.*, iii. 669.

⁴³ Gilbert, *Ir. confed.*, vii. 156-7, citing Carte Papers, xxiii. 38.

⁴⁴ Gilbert, *Ir. confed.*, vii. 157-8, citing Carte Papers, xxiii. 40.

his meaning might be the cause of the difficulty.⁴⁵ Ormond was well aware of the fundamental point which was still at issue, and it is very probably a fair judgment to say that his reply was given in order to throw discredit on the clergy as squabbling over trifles, and to increase the impatience of many of the lay-members of the confederacy.

In this he succeeded. His answer was read to the assembly by Sir Richard Blake, and that body decided that too much time would be wasted in attempting to reduce the points of difference to writing, and asked Ormond, relying on his good faith, how much time he was prepared to give. There is a marked difference in tone between this communication and that of the previous day, and Ormond's reply came quickly. He again conceded perfect freedom to catholics as individuals, with the express stipulation that the oath of supremacy should not be demanded from them, 'but it is not hereby intended that anything in these concessions shall extend, *or be constructed to extend*, to the granting of church-livings or the exercise of jurisdiction, our authority not extending so far: yet we are authorized to give the said Roman catholics full assurance that they shall not be molested in the possession which they have at present of the churches and church-livings, or of the exercise of their religion *and respective functions* in them, until such time as his majesty, upon a full consideration of their desires in the said parliament, shall declare his further pleasure'.⁴⁶

As can be seen, he had merely repeated the offer which had been judged unsatisfactory on December 19, and though his concession of religious freedom to catholics as individuals was imperilled to a great extent by his evasion of the issue of jurisdiction, and though the whole question of ecclesiastical property was being left in a highly unsatisfactory position, the more extreme element among the laity was asserting itself. Yet the committee which had been appointed to debate his first reply was now asked to consider this one, to report wherein exactly it was unsatisfactory, and to suggest how it could be reconciled with the confederacy's oath of association.⁴⁷ Their reply, which was delivered to Ormond at three o'clock on December 22, asked

⁴⁵ Gilbert, *Ir. confed.*, vii. 159, citing Carte Papers, xxiii. 46.

⁴⁶ Gilbert, *Ir. confed.*, vii. 160, citing Carte Papers, xxiii. 45.

⁴⁷ Gilbert, *Ir. confed.*, vii. 163, citing Carte Papers, xxiii. 57

for assurance on two points: firstly, that the treaty give a guarantee of the exercise of *jurisdiction* as well as the possession of churches and church-livings in the areas under catholic control; and, secondly, that it be understood that any changes in the forthcoming parliament be in the nature of a further concession. In other words, the bishops also repeated their previous demands, but Ormond remained firm. He replied that any formal concession of jurisdiction must be looked on as an unwarranted extension of the articles of cessation with Inchiquin, which had avoided the use of the word *jurisdiction*, but had used the much less definite word *function* instead.⁴⁸ In view of the dissatisfaction in Inchiquin's protestant army, Ormond had clearly reached a point where only extraordinary circumstances could move him to further concessions.⁴⁹ The only possibilities now left seemed to be the acquiescence of the bishops or complete failure of the negotiations. The demagogues might bluster, but in the last resort the assembly as a whole would not agree without the consent of the bishops. To have broken with the pope's nuncio had been a serious step for them, and they could not now afford to forfeit their best justification for it, namely, that they had enjoyed episcopal support. Yet it was by now clear to everyone that the religious issue was the main cause of the delay in agreement, and the patience of the lay lords was wearing thin. Though Ormond's reply was again returned as unsatisfactory—the bishops winning this point—the laymen succeeded in having all further discussion of the subject referred to the general assembly, where lay influence was naturally dominant, and where, in addition, the vote could be more easily swayed by other than rational considerations.

Ormond now reminded the assembly that he could not be expected to commit himself to any particular point until they had given him some definite answer on the religious issue,⁵⁰ and in this he made shrewd use of their impatience. They replied that the point was reasonable, and that they would endeavour to give a definite reply by the next afternoon,

⁴⁸ Gilbert, *Ir. confed.*, vii. 164-5, citing Carte Papers, xxiii. 58. Cf. *Articles of cessation* printed in Gilbert, op. cit., vi. 236.

⁴⁹ Carte, *Ormonde*, ii. 46 ff.

⁵⁰ Ormond to Sir Richard Blake, Dec. 26 (Gilbert, op. cit., vii. 170).

December 27.⁵¹ Agreement still seemed to be impossible, and the dispute continued in the assembly all that evening, the next day, and was continuing for a third when news arrived which changed the whole situation. Inchiquin had received word of the 'Remonstrance of the Army' in England, and he immediately sent news to Kilkenny. This clear knowledge that the king's life was in immediate and deadly peril had a sobering effect, and forced on all the importance of reaching agreement as soon as possible.⁵² Very shortly after the news arrived in Kilkenny on the evening of December 28, the assembly handed a declaration to Ormond to the effect that 'upon consideration of his majesty's present condition . . . they have upon full debate unanimously agreed to accept of and rest satisfied with your excellency's answer to their first four propositions, with the clause of further reference to his majesty's gracious favours and further concessions'.⁵³

The laity had agreed in view of the urgency of the king's danger, but the bishops, while fully alive to the new situation, could not consent to abandon the issue of ecclesiastical jurisdiction.⁵⁴ Dispute continued in the assembly, and the next day in an attempt at self-justification a decree was passed which laid it down that though their oath bound them to seek for the 'four propositions', it bound them to do so only 'to the utmost of their power', and that it lay with the general assembly to decide when this stage had been reached. They judged that, in the present circumstances, it certainly had, and that they must consider themselves no longer bound to the letter of their oath, but must seek what terms they could.⁵⁵ This decision caused consternation among the bishops, but they felt they could not yield,⁵⁶ and they decided to hold a meeting of their own to see what could be done.⁵⁷ Some felt that there was no possibility of agreement, that they had already gone too far

⁵¹ Gilbert, *Ir. confed.*, vii. 167–8, citing Carte Papers, xxiii. 66.

⁵² Carte, *Ormonde*, ii. 49; iii. 600–602.

⁵³ Gilbert, *Ir. confed.*, vii. 171, citing Carte Papers, xxiii. 72.

⁵⁴ Cf. Carte, *Ormonde*, iii. 600.

⁵⁵ Gilbert, *Ir. Confed.*, vii. 172–3, citing Carte Papers, xxiii. 77.

⁵⁶ Cf. the letter of N. French to the nuncio, Dec. 30, *Comment. Rinucc.*, iii. 678.

⁵⁷ Walsh, *Irish remonstrance, first treatise*, pp. 614–5.

in concessions, and that the only course of action left was to throw in their lot with the nuncio. Again a heavy responsibility rested on the shoulders of Bishop French, who presided over the episcopal conference and whose advice was in substance accepted. To the waverers who spoke of abandoning the effort at this stage he pointed out the clauses of the peace of Westphalia, which had left ecclesiastical jurisdiction mutilated to a large extent, and which had also been opposed by a nuncio. Why, he asked, could not the Irish do what the Holy Roman emperor had done? ⁵⁸

His advice was accepted, but the conference of bishops still refused to subscribe to a treaty which did not give any assurance of ecclesiastical jurisdiction in accordance with their draft of December 21. Agreement was reached when it was learned that Ormond, in his anxiety for a settlement, was willing to let this wording stand; but he conceded the point very unwillingly, realizing that, though essential for the treaty, it contained the germs of much future trouble, and, if interpreted in the catholics' sense, conceded more than he had been authorized to give.⁵⁹ However, agreement had been reached on paper, and the final draft of the treaty was prepared in an atmosphere of cooperation and loyalty. Ormond consoled himself with the thought that the terms gave more in promises than in actualities,⁶⁰ while the catholics considered them better rather in hopes for the future than in what they actually gave. The treaty was formally agreed to on 17 January 1649, with much speech-making and good-will, and all felt united as the only remaining loyal subjects of an unhappy king.⁶¹

This agreement, at first sight generous in religious concessions, while it conceded to catholics freedom of individual conscience, contained no more than a vague promise in regard to the necessary church organization, and this had been included only because of the extraneous circumstance of the king's plight. Until this question was settled, the concessions to individual conscience left catholicism a tolerated sect and not an organized

⁵⁸ Walsh, *Irish remonstrance, first treatise*, pp. 614-5.

⁵⁹ Carte, *Ormonde*, iii. 600-3.

⁶⁰ Cf. his letter to Sir Charles Coote, in Carte, *Ormonde*, ii. 252.

⁶¹ Cf. speeches of Ormond and Sir Richard Blake, in Gilbert, *Ir. confed.*, vii. 180-4.

religion. It has been usual to refer to the treaty as favourable to the catholics,⁶² and in many respects it was, but if the question of ecclesiastical jurisdiction has been here stressed almost to the exclusion of everything else, it is because it was the only point really in dispute, on the settlement of which everything else depended, and which was not satisfactorily settled. Much depended on the future good-will of Ormond and the king, and, though this may not have been obvious to the bishops, Ormond would not, because he could not, do anything to meet their requests, even had he been far more favourably disposed than he was. Two churches in one state, especially when one of them claimed the source of its jurisdiction from without, was an unworkable concept in the seventeenth century, and as far as Ormond was concerned, the church was that whose head was the king. He had already gone beyond the limits of concession, and his future programme was to reduce, not to expand, what he had granted. In effect, then, this agreement settled nothing as to the future position of Irish catholicism.

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⁶² Cf. Moran in *Ossory Arch. Soc. Trans.*, ii. 361.