

Select documents

VI. THE REQUEST OF THE IRISH FOR ENGLISH LAW, 1277–80

INTRODUCTION

The request of the Irish for English law under Edward I is an episode which has always puzzled historians. The motives, indeed, are clear enough: the desire to be answered in the courts of common law;¹ to be able to sell their land more easily than Irish law allowed;^{1a} to hold their lands ‘in fee and inheritance’, with the resulting security of tenure; to obtain dower for their widows;² to have their persons and property protected by the harsher penalties of the common law.³ Individuals seem to have obtained charters of English liberty without difficulty, but it was apparently necessary to have recourse to the king himself, which entailed delays and additional expense, and the assumption that no Irishman was entitled to the common law unless he could produce a charter must have been a constant irritant. The problem has been not one of motive but that of the precise composition of the group described as ‘all the Irish of Ireland’ which, late in 1276 or in 1277, offered to pay a large sum of money in return for a comprehensive grant of English law. Orpen thought they were the Irish of the Wicklow mountains, perhaps acting in concert with those of some neighbouring districts;⁴ the late Professor Curtis very acutely suggested that a request ‘backed by so large a sum,

¹ See *Cal. justic. rolls Ire.*, passim.

^{1a} *Cal. doc. Ire.*, 1252–84, no. 164.

² *Cal. justic. rolls Ire.*, 1295–1303, pp. 121–3, and cf. p. 336; *Cal. doc. Ire.*, 1285–92, no. 558.

³ *Stat. Ire., John–Hen. V*, pp. 210–11: ‘the killing of Englishmen and of Irishmen requires different modes of punishment’.

⁴ Orpen, *Normans*, iv. 22. Powicke, *Henry, III and the lord Edward*, p. 665, accepts this view.

and so seriously considered by the king, must surely have been made by a much larger section of the Irish, possibly all Munster and Leinster, if not agents acting for all Ireland'.⁵ In fact, the documents printed below show that the whole movement was closely connected with the higher clergy of the province of Cashel, who would appear to have been in communication with all the Irish except those of Ulster.⁶ These documents, of which no. I has never been printed, while the first half of no. II has only appeared in a calendared form, make it possible to fill in gaps in the story as known to earlier writers, though much must still remain conjectural.

Our knowledge of what appear to have been protracted negotiations begins with a letter of 1277 or late 1276 (5 Edward I) from the justiciar, Robert de Offord, to the king, in which he says that the Irish offer 7,000 marks for a grant from the king of the common laws of the English.⁷ The king's reply to this does not appear, but it apparently instructed the justiciar to seek a higher sum, for the next document in the series, no. I below, which appears to be a memorandum for a messenger sent from Ireland to the king and council, states that 'the Irish of Ireland offer 8,000 marks to have free law without the Irish of Ulster', and further that the archbishop of Cashel has taken great sums from the Irish of Ireland to obtain for them free law at the court.⁸ The answer to this must be the letter which refers to the offer of 8,000 marks, and goes on to say that the king has fully deliberated with his council, and that it seems meet to them that a grant of English laws should be made 'because the laws which the Irish use are detestable to God and so contrary to all law that they ought not to be called laws', but that the common consent of the people, or at least of the well-disposed prelates and magnates, must first be obtained. They are to be consulted, and the justiciar is to agree with the Irish for a higher fine in money, and for a certain

⁵ Curtis, *Med. Ire.* (1st ed.), p. 174.

⁶ See below, p. 267.

⁷ *Cal. doc. Ire., 1252-84*, no. 1400. This undated letter was in a bundle dated 5 Edward I.

⁸ P.R.O., Chancery miscellanea, 10/13/18. See below, p. 267.

number of foot-soldiers for one occasion.⁹ It was at this point, I think, probably late in 1277, that there was held the parliament whose decisions have survived only in an undated fragment.¹⁰ But this body evaded the issue by declaring that nothing could be decided since the great lords were absent from the country, or under age and in wardship, though it added that in some respects the lot of the Irish was hard, and should be amended at a convenient time and place.

It is clear that the initiative in this matter had come from David MacCarwell, the archbishop of Cashel, and we may suppose that further negotiations, of which no trace has so far been found, followed. Then in 1280 we find the archbishop of Cashel in England, accompanied by the bishops of Killaloe and Emly, and the abbot of Holy Cross, Peter Ó Conaing.¹¹ It seems on the whole most probable that their business was that preserved for us in document no. II below, which is apparently a note of representations made by them to the king and council, though it may belong to a rather earlier stage and contain proposals made to the council in Ireland. All the Irish now offered to the king the sum of 10,000 marks to have 'common law which the English have and use in Ireland and to be treated as these English are treated, alive and dead, in body and in real and personal property'. Payment was to be guaranteed by David, archbishop of Cashel, Mayou (or Matthew), bishop of

⁹ *Cal. doc. Ire., 1252-84*, no. 1406; text printed in *Foedera*, I, ii, p. 540, and Prynne, *Vindication* iii. 1218-19. The letter must belong to 1277, since in Prynne's time it was in a bundle dated 5 Edward I. I owe this reference to the kindness of Mr H. G. Richardson. It should be observed that at this time Edward was faced by very similar problems in Wales. The latest discussion of the conflict of laws in Wales is in Powicke, *Henry III and the lord Edward*, ch. xv.

¹⁰ Printed by H. G. Richardson and G. O. Sayles, 'The Irish parliaments of Edward I', in *R.I.A. Proc.*, vol. xxxviii, sect. C, no. 6, pp. 142-3. The editors assigned this parliament to 1280 on the grounds that it must have been held shortly before the writ of 10 June 1280 (see below, (p. 264), but it seems to have been held in obedience to the king's letter just quoted. A parliament was held at Kildare and Kilkenny, apparently in 1276-7 (5 Edward I); *Cal. doc. Ire., 1252-84*, no. 1389.

¹¹ *Cal. doc. Ire., 1252-84*, nos 1654, 1682, 1748, 1754, 1755, 1822, 1888; *Cal. justic. rolls Ire., 1295-1303*, p. 135.

Killaloe, and David, bishop of Emly,^{11a} who were present, and who undertook to find five other bishops of the province of Cashel to guarantee it with them on the security of all the temporalities of their sees. Payment was to be completed within a term of five years from the next Michaelmas, and Irishmen of 'the community of the Irish tongue' who did not wish to come to the common law within this term were to purchase it separately afterwards if they wished. The prelates undertook to apply ecclesiastical sanctions to those who would not come to the common law, to persuade the other archbishops and bishops of Ireland to do the same, and to endeavour to obtain papal confirmation.¹² These negotiations must, I think, be assigned to a date immediately before the writ of 10 June 1280, in which the king, stating that he was unwilling to comply with the request of the Irish for the common law without the consent of the magnates and others, ordered them to meet before September 8, to debate whether or not the grant could be made without prejudice to themselves, their liberties and customs. They were to report fully to the king and were not to omit to do so on account of the absence of any of their peers, or of persons under age and in wardship. The king would then, after full discussion, do what seemed best to himself and his council.¹³ Unfortunately we have no further record of the matter, but the decision was evidently unfavourable to the Irish.

The incident becomes much more intelligible in the light of the documents connecting it with the archbishop of Cashel. Clearly the whole affair was due to the initiative of the clergy of the province of Cashel, or more probably of the archbishop himself, and the absence from the scheme, at any rate in its first stages, of the Irish of Ulster is easily explained when we remember that it was only in Ulster that there were at this date really large areas where Irish law held undisputed sway, and that the lords of the liberty of Ulster seem on the whole to have maintained friendly relations with the Irish.

^{11a} David MacCarwell, archbishop of Cashel 1251–89; Matthew O'Hogain, bishop of Killaloe 1268–81; David O'Cusby [?], bishop of Emly, 1275–c. 11 June 1281.

¹² Lambeth, Carew MSS, vol. 619, no. 207; Bodl., MS Rawlinson B 484, f. 17. See below, pp. 267–8.

¹³ *Cal. doc. Ire., 1252–84*, no. 1681.

No further demand for a general enfranchisement seems to have been made by the Irish. Negotiations may have continued after 1280, but, if so, no trace of them seems to have survived. It is probable enough that with the death of two of the leading figures, the bishops of Killaloe and Emly, in 1281, the whole matter was allowed to drop, for there is nothing to suggest that the support of the other bishops had actually been obtained. It is possible also that the proposal may have broken down over the question of the security offered for the payment, for 10,000 marks (£6,666 13s. 4d., representing an immensely larger sum, perhaps £200,000 or more, in modern money) was a very large sum, and the money income of the average Irish bishopric was small.¹⁴ There does not seem to have been any consistent opposition to grants of English liberties to the free Irish, and by the reign of Edward II both the Anglo-Irish magnates and the 'middling people of Ireland' were petitioning that the justiciar should have power to admit to English law all Irishmen who desired it.¹⁵ As for the king himself, his whole attitude towards the contemporary problem of two laws in Wales^{15a} strongly suggests that he would have approved of the proposal. It was stated *c.* 1290 that the king in his great council in London had declared that all who demanded a grant of English laws should have it,^{15b} and it is possible that this was the final answer to the bishops in 1280.

Of the documents printed below, no. 1 is taken from the miscellanea of the chancery in the Public Record Office, London. It has no heading or date, but internal evidence shows clearly that it cannot be later than the autumn of 1278, for it refers to the liberty of Kildare as still in the king's hand, and this liberty, which seems to have been taken into the king's hand in 1276, was restored to its lord in November 1278,¹⁶ while its relation

¹⁴ Some idea of the general level may be obtained from the escheator's accounts of bishoprics summarised in the calendars of Pipe Rolls in *P.R.I.Rep.D.K.*, *passim*.

¹⁵ P.R.O., Ancient Petitions 5944 and 8820, cited by H. G. Richardson, 'English institutions in medieval Ireland' in *I.H.S.*, i. 390-91.

^{15a} See Powicke, as above.

^{15b} *Cal. doc. Ire.*, 1285-92, p. 525 (grant of English law to Hugh Kent).

¹⁶ *P.R.I.Rep.D.K.*, 36, p. 37; *Cal. doc. Ire.*, 1252-84, no. 1503.

to the whole series of documents described above shows that it must be assigned to 1277. The whole document is to be printed by Mr H. G. Richardson in a forthcoming volume for the Irish Manuscripts Commission, and for this reason only those paragraphs which refer to the demand for English law are printed here.

Document no. II has been taken from two distinct sources, the Carew MSS at Lambeth¹⁷ and the Rawlinson MSS in the Bodleian library.¹⁸ A comparison of photostats shows that these two documents were originally adjacent membranes of a single roll. Not only have they been written by a single hand, but the stitch holes that survive at the bottom of the Carew MS and the top of the Rawlinson MS exactly correspond to each other. It is impossible to be certain whether these were the only two membranes, as the bottom of the Rawlinson MS may have been trimmed when the volume was bound, and there may formerly have been stitch holes there too. The two membranes as we have them do, however, seem to be complete in themselves.

In printing these documents contractions have been silently expanded. In the Rawlinson MS some letters at the beginning of each line have been hidden by the binding; but the reading is quite clear in every case and has been supplied in brackets. A few words in this MS are illegible, and these have been shown by dots.

I am much indebted to the kind collaboration of Professor E. J. Arnould, who has checked the French text from the photostats, and who is primarily responsible for the translation.

JOCELYN OTWAY-RUTHVEN

¹⁷ Carew MSS, vol 619, no. 207 This was calendared in *Cal. Carew MSS, Miscellaneous*, p. 464. It is printed here by kind permission of his grace the archbishop of Canterbury.

¹⁸ MS Rawlinson B 484, f. 17r This was printed by Mr Charles McNeill in *Anal. Hib.*, no. 1, pp. 134–5, and is reprinted here by kind permission of the authorities of the Bodleian library. This MS was Ware's vol. lxx.

TEXT

I

[P.R.O., Chancery miscellanea, 10/13/18.]

.....
Les Irreis de Irlande ke ofrent viii mile mars a paer en deus ans kil pussent aver franche ley sanz les Ireis de Ulwister et a dunc serreient tuiz les cors al rei.
.....

Ke lercevesque de Cassele as mis tutes les mesons de religion de la lange Englesch' del ordre de Citels en la subieccion de la meson de Melliflunt u trestuiz sunt Irreis et sunt v mesons et ceo ad il purchace del chapitle de Citels et ad tolu de autres mesons ke sunt a en sa province grant partie de lur tenemenz at et approprie a mesuns Iresches, et ad pris des Irreis de Irlande grant avoir de purchacer les a la curt pur aver franche lei, et fet a remembrer kil ad fet un enfant Irreis de xxii anz evesque de Corc pur hunir les Engleis.
..... ..

II

[Lambeth, Carew MSS, vol. 619, no. 207]

Pur oster la mauueise ley e la desauenance ke est en la terre de Irlande endroit de Iresche lange, pur la ley deu maintenir e nostre seignor le rey e ses heirs a remenant leaument seruir e a crestre la dignitee de la corune, toz les Ireys dounent a nostre seignor le rey pur auer commune ley la quele Engleis vnt e vsent en Irlande e pur estre issint menez com tels Engleis sont menez vyfs e morz de cors e de moeble e nonmoeble dis mile mars par la pleuine Dauid le erceueske de Cassel, Mayou eueske de Kildolo, e Dauid eueske de Ymlach, ke presenz sont e les quels meinpernent auer autres cink eueskes del prouince de Cassel a perfere meimes la pleuine sur totes les temporancez le auantdit erceueske e les set eueskes auant notez a paier lauandit auoyr a terme de cink anz le terme encomencant a la Seint Michel ke vendra a vn an. E si akun Ireys seit de la communautee de Iresche launge ke a lauandite ley ne voile venir dedenz le terme auantdit, il la commune ley de nouel luy purchace si auer la voet. E tels ke auer la voelent pur eus e pur lur enfanz e totes lur issues perdurablement la puissent ioyr e par la dignitee de la corune estre maintenu, ia purceo le erceueske e les eueskes auantdiz perfront la paye pleinement com auant est dit de dis mile mars. E de ceo les prelaz auantdiz se mettent en Deu e en la discrecion nostre seignor le rey e de son conseil ke il ordeinent ke la ley seit estable e ceus ke siwent la bosogne seient maintenuz e defenduz par le real poer nomement com il le sunt pur le honur Deu e sauuacion des ames e le prou le rey.

[Bodl., MS Rawlinson B 484, f. 17r.]

(Es)tre ceo, les auantdiz prelaz meinpernent pur eus e pur toz les autres lur freres prelaz del (pro)uince de Cassel ke toz les Ireis ke ceste

ley ne voelent receiure e tenir hors de eglise mettront, lur persones escomegeront, e toz ceus ke o eus commun aueront, ou les meintendront ou con(s)eil ou poer lur doront a lauandite ley refuser e la pees de la terre desturber, e lur (t)erres entrediront e toz les chapeleins ke messe lur chanteront suspendront e lur benefices toudront, sauf les prelaz, e freres prechurs e menurs e autres ke lur precheront de meymes la ley tenir. E le eueske del auandite prouince ki ke il seit ke soeffre ke prestre lur chaunte messe ou sepulture lur doune en seinte eglise lauandit erce(u)eske suspendra de son office apres ceo ke il les auera treis fiez amoneste solum canun. E si les auandiz eueskes apres tel amonestement fet sicom ceo est auandit ne voelent al erceueske obeir, il voet e graunte pur le commun prou de tote la terre ke nostre seignor le rey apres ke lauandit erceueske les auera escomegez e eus demorez quarante iourz en la sentence preigne lur temporancez en sa mein ci la ke obeir voelent e la sentence auandite fere e garder, e ke la moitee des issues de temporancez remeigne . aumone nostre seignor le rey, e lautre moitee si luy plect seit alluee pur resp [?ple]uine del auer le quel il durront pur auer la commune ley. E prient nostre seignor le rey ke la justice de Irelande mette vn gardein de part nostre seignor le rey, e le erceueske de Cassel vn autre par le conseil de prelaz, les quels oue luy leaument traueileront pur sauuer meymes les biens ke il ne seient besilez ne en mauueis vs turnez.

Estre ceo leaumente promettent lauandit erceueske e ses deus freres eueskes ke oue luy sont kil mettront leal poer ke toz les autres erceueskes e eueskes de Irelande par leyde e le conseil nostre seignor le rey tendront meymes les sentences en lur prouinces e eueschees. E si il ne les voelent tenir les prelaz auandiz promettent en bone fey ke par le conseil e leyde nostre seignor le rey purchaceront en lur despenses del apostoil tant com en eus est ou estre poet ke il par destresce de seinte eglise face les auandites sentences tenir ci la ke ceus ke . . . ley sont tenir la voelent. E si nostre seignor le rey e son conseil veye ke il puissent autre conseil mettre a lauandite ley tenir prestz sont de fere ke sache Deu totpussant ceo dyent saunz feyntise de queor e de corage ke lur voluntee est ke leautee pees e veritee feussent en la terre e sur ceo front escomeger toz icels de quele nacion ke il seient ke la pees nostre seignor le rey e lauandite ley desturberont, e purchaceront del apostoil sur ceo conferment.

TRANSLATION

I

The Irish of Ireland, that they offer eight thousand marks to be paid in two years that they may have free law without the Irish of Ulster, and then all their bodies would belong to the king.

..... .
That the archbishop of Cashel has put all the religious houses of the English tongue of the order of Citeaux in subjection to the house of Mellifont, where all are Irish, and there are five houses, and this he has

obtained from the chapter of Citeaux, and he has deprived other houses which are in his province of a great part of their tenements and has appropriated these to Irish houses, and he has taken a great sum from the Irish of Ireland to obtain free law for them at the court, and be it remembered that he has made an Irish boy of twenty-two years bishop of Cork to shame the English.

II

In order to put an end to the evil law and the disaffection which is in the land of Ireland concerning the Irish tongue, to maintain the law of God and to serve our lord the king and his heirs loyally for ever and to enhance the dignity of the crown, all the Irish give our lord the king, in order to have the common law which the English have and use in Ireland and to be treated as such Englishmen are treated, alive or dead, in body and in real and personal property, ten thousand marks by the pledge of David archbishop of Cashel, Matthew bishop of Killaloe, and David bishop of Emly, who are present and who guarantee to have five other bishops of the province of Cashel to take the same pledge on all the temporalities of the aforesaid archbishop and the seven bishops afore noted to pay the aforesaid sum within the term of five years, the term commencing at Michaelmas next year. And if there be any Irishman of the community of the Irish tongue who will not come to the aforesaid law within the aforesaid term, he shall purchase himself the common law anew if he will have it. And so that those who will have it for themselves and for their children and for all their issue lastingly may enjoy it and be maintained by the dignity of the crown, the archbishop and the aforesaid bishops will pay the full sum of ten thousand marks as is aforesaid. And in this the aforesaid prelates put themselves in God and in the discretion of our lord the king and of his council that they will ordain that the law be upheld and those who sue the matter may be maintained and defended by the royal power, that is, as they are, for the honour of God and the salvation of souls and the king's advantage.

Moreover, the aforesaid prelates guarantee for themselves and for all their brothers, the other prelates of the province of Cashel, that they will expel from the church all the Irish who will not receive and hold this law, they will excommunicate their persons and all those who have anything in common with them or maintain them or give them council or means to refuse the aforesaid law and disturb the peace of the land, and they will interdict their lands and suspend and deprive of their benefices all chaplains who sing mass for them, except the prelates and friars preachers and minors and others who will preach to them to hold the same law. And if a bishop of the aforesaid province, whoever he be, suffer a priest to sing mass for them or give them burial in holy church, the aforesaid archbishop will suspend him from his office after he has admonished him three times according to the canon law. And if the aforesaid bishops after such admonishment made as is aforesaid will not obey the archbishop, he wills and grants for the common advantage of

the whole land that after the aforesaid archbishop has excommunicated them and they have remained under the sentence for forty days our lord the king may take their temporalities into his hand until they are willing to obey and to observe and keep the aforesaid sentence, and that half the issues of the temporalities remain as alms to our lord the king, and the other half, if it please him, be allowed (? in relief of) the pledge of the sum which they will give to have the common law. And they ask our lord the king that the justiciar of Ireland appoint a keeper on behalf of our lord the king, and the archbishop of Cashel another by the counsel of prelates, who will work loyally with him to save the same goods that they be not embezzled nor turned to evil use.

Moreover the said archbishop and his two brother bishops who are with him loyally promise that they will exert loyal power that all the other archbishops and bishops of Ireland may hold the same sentences in their provinces and bishoprics by the aid and council of our lord the king. And if they will not hold them the aforesaid prelates promise in good faith that by the aid and counsel of our lord the king they will obtain at their expense from the pope, as much as in them is or can be, that he by distress of holy church make the aforesaid sentences to be held until those who are (? outside the) law will hold it. And if our lord the king and his council see that they can apply other counsel to uphold the aforesaid law they are ready to do so, that Almighty God may know they say this without dissimulation of heart or mind, that their will is that loyalty peace and truth should be in the land, and therefore they will excommunicate all those of whatever nation they be who disturb the peace of our lord the king and the aforesaid law, and they will obtain confirmation of this from the pope.

VII. SHARMAN CRAWFORD ON THE REPEAL QUESTION, 1847

THE writer of the following letter, William Sharman Crawford, had been led from a policy of unionism to acquiescence in O'Connell's repeal policy soon after the first agitation of it in 1830. He subsequently abandoned repeal for the less comprehensive home-government scheme of federalism—the establishment in Dublin of a local government and legislature, subordinate to the imperial parliament, to administer purely Irish concerns. At this time (1847), he was again turning towards repeal as the best solution of the problem of satisfactorily governing Ireland. His letter was elicited by the announcement that William Smith O'Brien intended heading a