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Vincit -veritas

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THE

CASE

John OF Rotton

IRELAND's

Being Bound by

Acts of Parliament

IN

ENGLAND,

Stated.

BY

William Molyneux,

of *Dublin*, Esq;

Dublin, Printed by *Joseph Ray*, and are to be Sold at his Shop in *Skinner-Row*. MDCXCVIII.

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Rare Small
JN
1409
.M69
1693

This is the original edition
published in the authors
lifetime, It is very rare.
there is but one Copy of
it in the British Museum.
where it is highly prized.
in consequence of so many
Authors of historical fame
having had to journey there
to read this book & take
Extracts from it. Very few
Copies of it indeed were saved
from the hands of the Irish
parliamentary hangmen

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TO THE

KING.

SIR,

THE Expedition Your MAJESTY Undertook into *England*, to Reſcue theſe Nations from Arbitrary Power, and thoſe Unjuſt Invaſions that were made

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on our Religion, Laws, Rights and Liberties, was an Action in it Self so *Great*, and of such Immense Benefit to our Distressed Countries, that 'tis Impossible to give it a Representation so *Glorious* as it Deserves. Of all Your Majesty's Kingdoms, none was more Sensible of the Happy Effects thereof, than Your *Kingdom of Ireland*, which from the Depth of Misery and Despair, is Raised by your Majesty to a Prosperous and Flourishing Condition. And we presume most humbly to Implore the Continuance of Your Majesty's Graces to us, by Protecting

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&ting and Defending thoſe *Rights* and *Liberties* which we have Enjoy'd under the Crown of *England* for above Five Hundred Years, and which ſome of late do Endeavour to Violate. Your moſt Excellent Majeſty is the *Common Indulgent Father* of all your Countries; and have an *Equal* Regard to the *Birth-Rights* of all Your *Children*; and will not permit the *Eldeſt*, becauſe the *Strongeſt*, to Encroach on the Poſſeſſions of the *Younger*: Eſpecially conſidering with what Duty, Loyalty, and Filial Obedience, we have ever behav'd our ſelves to Your Majeſty:

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Insomuch that I take leave to Assert, That Your Majesty has not in all Your Dominions a People more *United* and *Steady* to Your Interests, than the *Protestants of Ireland*: Which has manifestly Appear'd in all our Actions and Parliamentary Proceedings, since Your Majesty's Happy Accession to the Throne. To Relieve the Distress'd, has ever been the Peculiar *Character* of Your Majesty's *Glorious Family*. The *United Provinces* have found this in Your *Famous Ancestors*: And all *Europe* has been Sensible of this in Your *Royal Person*. To this End more particularly

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larly You came into these Kingdoms, as Your Majesty has been pleas'd to Declare: And as You have Establish'd the *Rights and Liberties of England* on a Foundation that, we hope, can *never be shaken*; So we doubt not but Your Sacred Majesty will have a Tender Care of Your Poor *Subjects of Ireland*, who are *Equally* Your Subjects, as the rest of Your People.

Pardon, I most Humbly beseech Your Majesty, my Presumption, in Appealing to You on this Occasion: Nothing but the *Dignity* and *Weight* of the Subject, can

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Excuſe my Boldneſs herein; But if That be Conſider'd, it Deſerves the Regard of the *Greateſt Prince*; 'Tis no leſs than the *Rights* and *Liberties* of one of His Kingdoms, on which their Religion, their Property, their *All* Depends; and which they have Enjoyed for Five Hundred Years paſt. This, I think, I have clearly ſhewn in the following Leaves: I am ſure, if my *Management* thereof, were ſuitable to the *Juſtice* of our Cauſe, our *Friends* of *England* can no longer Doubt it.

At Your Majeſty's Feet therefore, I throw it; and with it the Unworthy Author thereof,

(*May it pleaſe Your Majeſty*)

Your Majeſty's

Moſt Dutiful, Loyal,

and Obedient

Subject and Servant,

William Molyneux.

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PREFACE

TO THE

READER.

I *Have nothing to Offer in this Preface, more than to let the Reader know, how* Unconcern'd *I am in any of thoſe Particular Inducements, which might* ſeem

at

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at this Juncture to have Occasi-on'd the following Discourse.

I have not any Concern in Wooll, *or the* Wooll-Trade. *I am no wise Interested in the* Forfeitures, *or* Grants. *I am not at all Solicitous, whether the* Bishop, *or* Society *of* Derry *Recover the Land they Contest about.*

So that, I think, I am as Free *from any* Personal Prejudice *in this Cause, as 'tis possible to Expect any Man should be, that has an* Estate *and* Property *in this Kingdom, and who is a* Member of Parliament *therein. I hope therefore 'tis a* Publick

lick Principle *that has mov'd me to this Undertaking : I am ſure, I am not Conſcious to my Self of any other Intention.*

I have heard it has been ſaid, That perhaps I might run ſome Hazard *in Attempting this Argument; But I am not at all Apprehenſive of any ſuch Danger : We are in a Miſerable Condition indeed, if we may not be Allow'd to* Complain, *when we think we are Hurt; and to give our Reaſons with all* Modeſty *and* Submiſſion. *But were it otherwiſe, it would not in the leaſt Affect, or Diſcourage me in an Attempt, where I think my Cauſe Good, and my Country*

Con-

Concern'd, and where I am fully perſwaded, the True Intereſt *of* England *is as Deeply Engaged, as the* Proteſtant Intereſt *of* Ireland.

The Great and Juſt Council *of* England *freely Allows all Addreſſes of this ſort To* Receive *and Hear* Grievances, *is a great part of their Buſineſs; and to* Redreſs *them, is their Chief* Glory. *But this is not to be done, till they are laid before them, and fairly Stated for their Conſideration.*

This I have endeavour'd in the following Paper. What Succeſs it may have, I am not very ſollici-

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ſolicitous about. I have Done what I thought was my Duty, and Commit the Event to GOD Almighty, *and the* Wiſe Council of England.

Dublin, Febr. 8. $\frac{7}{8}$ 1698.

W. MOLYNEUX.

The

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The CASE OF IRELAND's Being Bound by Acts of Parliament IN ENGLAND, STATED.

Introduction, and Occasion of this Disquisition.

I HAVE ever been so fully perswaded of the strict Justice of the Parliament of *England*, that I could never think that any of Their Proceedings, which might seem to have the least Tendency to Hardship on their Neighbours, could arise from any thing but want of Due Information, and a right State of the

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Buſineſs under their Conſideration. The want of which, in Matters wherein another People are chiefly Concern'd, is no Defect in the Parliament of *England*, but is highly Blameable in the Perſons whoſe Affair is Tranſacting, and who permit that Illuſtrious Body of Senators to be Miſ-inform'd, without giving them that Light that might Rectifie them.

I could never Imagine that thoſe Great *Aſſertors* of their *Own Liberties* and *Rights*, could ever think of making the leaſt Breach in the *Rights* and *Liberties* of *their Neighbours*, unleſs they thought that they had *Right* ſo to do; and this they might well ſurmiſe, if their Neighbours quietly ſee their Incloſures Invaded, without *Expoſtulating* the Matter at leaſt, and ſhewing Reaſons, why they may think that Hardſhips are put upon them therein.

The Conſideration hereof has Excited me to undertake this Diſquiſition, which I do with all Imaginable Diffidence of my own Performance, and with the moſt profound

found Respect and Deference to that August Senate. The present Juncture of Affairs, when the Business of *Ireland* is under the Consideration of both Houses of the English Parliament*, seems to require this from some Person; and seeing all Others silent, I venture to Expose my own Weakness, rather than be wanting at this time *to my Country.* I might say indeed *to Mankind*; for 'tis the Cause of the whole Race of *Adam*, that I Argue: *Liberty* seems the Inherent Right of all *Mankind*; and on whatsoever Ground any one Nation can Challenge it to themselves, on the same Reason may the Rest of *Adam*'s Children Expect it.

* Bishop of *Derry* in the House of Lords, and Prohibiting Exportation of our Woollen Manufacture in the House of Commons.

If what I Offer herein seems to carry any Weight, in relation to my own Poor Country, I shall be abundantly happy in the Attempt: But if after all, the Great Council of *England* Resolve the contrary, I shall then believe my self to be in an Error, and with the lowest Submission ask Pardon for my Assurance. However, I humbly presume I shall not be hardly Censur'd

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by them, for offering to lay before them a fair State of our Caſe, by ſuch Information as I can procure; eſpecially when at the ſame time I declare my Intention of a Submiſſive Acquieſcence in whatever they Reſolve for or againſt what I Offer.

Subject of this Enquiry.

The Subject therefore of our preſent Diſquiſition ſhall be, *How far the Parliament of* England *may think it Reaſonable to intermeddle with the Affairs of* Ireland, *and Bind us up by Laws made in their Houſe.*

And ſeeing the *Right* which *England* may pretend to, for Binding us by their Acts of Parliament, can be founded only on the *Imaginary Title of Conqueſt* or *Purchaſe*, or on *Precedents* and *Matters of Record*; We ſhall Enquire into the following Particulars.

(1.) *Firſt*, How *Ireland* became a Kingdom *Annex'd* to the Crown of *England*. And here we ſhall at large give a faithful Narrative of the *Firſt Expedition of the Britains* into this Country, and King *Henry*

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Henry the Second's Arrival here, ſuch as our beſt Hiſtorians give us.

(2.) *Secondly*, We ſhall Enquire, Whether this Expedition, and the Engliſh Settlement that afterwards follow'd thereon, can properly be call'd a *Conqueſt*? Or whether any Victories obtain'd by the Engliſh, in any ſucceeding Ages in this Kingdom, upon any *Rebellion*, may be call'd a *Conqueſt* thereof?

(3.) *Thirdly*, Granting that it were a *Conqueſt*, we ſhall Enquire what *Title* a Conqueſt gives.

(4.) *Fourthly*, We ſhall Enquire what *Conceſſions* have been from time to time made to *Ireland*, to take off what even the moſt Rigorous Aſſertors of a Conquerour's Title do pretend to. And herein we ſhall ſhew by what Degrees the Engliſh Form of Government, and the Engliſh Statute-Laws, came to be received among us: And this ſhall appear, to be wholly by the *Conſent* of the People and Parliament of *Ireland*.

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(5.) *Fifthly*, We ſhall Enquire into the Precedents and Opinions of the Learned in the Laws, relating to this Matter, with Obſervations thereon.

(6.) *Sixthly*, We ſhall Conſider the Reaſons and Arguments that may be farther Offered on one ſide and t'other; and ſhall Draw ſome General Concluſions from the Whole.

Britain's firſt Expedition into *Ireland.*

As to the Firſt, We ſhall find the Hiſtory of the Firſt Expedition of the *Engliſh* into *Ireland*, to be briefly thus: In the Reign of King *Henry* the Second, *Dermot Fitzmurchard*, commonly called *Mac-Morrogh*, Prince of *Leinſter*, who was a Man Cruel and Oppreſſive, after many Battels with other Princes of *Ireland*, and being Beaten and put to Flight by them, Apply'd for Relief to King *Henry* the Second, who was then buſied in *Aquitain*; the King was not then in ſuch Circumſtances as to afford him much Help: However thus much he did for him,

By

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By Letters Patents he granted Licenſe to all his Subjects throughout his Dominions, to Aſſiſt the ſaid Prince to Recover his Dominions. Theſe Letters Patents are to be ſeen in * *Giraldus Cambrenſis*, who was Hiſtoriographer and Secretary to King *Hen.* II. and Accompanied him in his Expedition into *Ireland*, and from him it is that we have this Relation. The *Iriſh Prince* brought theſe Letters into *England*, and cauſed them to be Read in the Audience of many People; Beating up, as it were, for Voluntiers and free Adventurers into *Ireland*. At length, *Richard* Earl of *Strigul* (now *Chepſtow* in *Monmouthſhire*) Son of Earl *Gilbert*, call'd *Strongbow*, Agreed with him, to Aſſiſt him in the Recovery of his Country, on Condition that *Dermot* ſhould give him his Eldeſt Daughter in Marriage, and his Kingdom of *Leinſter* after his Death. About the ſame time *Robert Fitz-Stephen*, Governour of *Aberlefie* in *Wales*, Agreed likewiſe with *Dermot* to help him, on Condition that he would grant to him and *Maurice Fitzgerald* in Fee

* *Giraldus Cambr. Hib. Expug.* Lib C. 1₂

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the City of *Wexford*, with two Cantreds or Hundreds of Land near adjoyning.

These Adventurers afterwards went over, and were successful in Treating with the *Irish*, and Taking *Wexford*, *Waterford*, *Dublin*, and other Places. Whereupon Earl *Richard Strongbow* married *Dermot*'s Daughter, and according to Compact, succeeded him in his Kingdom.

Hen. II. comes into *Ireland.*

A little after the Descent of these Adventurers, King *Henry* II. himself went into *Ireland* with an Army, in *November* 1172. and finding that his Subjects of *England* had made a very good hand of their Expedition, he obtain'd from Earl *Richard Strongbow* a Surrender of *Dublin*, with the Cantreds adjoyning, and all the Maritime Towns and Castles. But *Strongbow* and his Heirs were to Enjoy the Residue of *Dermot*'s Principality.

Irish submit to him.

King *Hen.* II. Landed at *Waterford* from *Milford* in *Pembrookshire*, and staying there some few days, (says

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(ſays *Giraldus Cambrenſis*) *Rex Corcagienſis Dormitius advenit ei, & tam Subjectionis vinculo quam fidelitatis Sacramento Regi Anglorum ſe ſponte ſubmiſit. He freely ſwore Fealty and Subjection to the King of England.*

From thence he went to *Liſmore*, and thence to *Caſhel*, where *Dunaldus* King of *Lymerick*, *ſe quoque fidelem Regi exhibuit.* The like did all the Nobility and Princes in the South of *Ireland.*

Afterwards he marched to *Dublin*, and there the Princes of the Adjacent Countries came to him, *& ſub Fidelitatis & Subjectionis obtentu a Rege Pacem impetrabant.* Thus *Cambrenſis* in his *Hibernia Expugnata*; and there he mentions the ſeveral Princes that came in, vizt. *Macſhaghlin* King of *Ophaly*, *O Carrol* King of *Uriel* (now *Lowth*) *O Rourk* King of *Meath*, *Rotherick O Connor* King of *Connaught*, and *Monarch* as it were of the whole Iſland, with divers others, *qui firmiſſimis fidelitatis & ſubjectionis vinculis Domino Regi innodarunt & in ſingu-*

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ſingulari Rotherico Conactiæ Principe tanquam Inſulæ Monarchâ ſubditi redduntur univerſi, nec alicujus fere in Inſula vel nominis vel ominis erat qui Regiæ Majeſtati & Debitam Domino Reverentiam, non exhiberet.

The ſame Relation we have from *Roger Hoveden* (Annal. parſ poſter. fol. 301.) About the Kalends of *November* 1172. (ſaith he) King *Henry* II. of *England*, took Shipping for *Ireland* at *Milford*, and Landed at *Waterford*, *& ibi venerunt ad eum Rex Corcagienſis*, *Rex de Lymerick*, *Rex de Oxenie*, *Rex Midiæ*, *& fere omnes Hiberniæ Potentes.* And a little afterwards in the ſame place ſpeaking of King *Henry* the Second's being at *Waterford*, *ibidem venerunt ad Regem Angliæ omnes Archiepiſcopi, Epiſcopi, & Abbates totius Hiberniæ, & receperunt eum in Regem & Dominum Hiberniæ jurantes ei & heredibus ſuis Fidelitatem & Regnandi ſuper eos Poteſtatem in perpetuum & inde Dederunt ei Chartas ſuas. Exemplo autem Clericorum predicti Reges & Principes Hiberniæ receperunt ſimili modo Henricum Regem Angliæ in*

Domi-

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Dominum & Regem Hiberniæ, & ſui devenerunt, & ei & Heredibus ſuis Fidelitatem contra omnes Juraverunt.

Matthew Paris likewiſe in his Hiſtory ſpeaking of King *Hen.* II. being in *Ireland*, ſaith, *Archiepiſcopi & Epiſcopi ipſum in Regem & Dominum receperunt, & ei Fidelitatem & Homagium Juraverunt.*

John Brampton Abbot of *Fornal* [redacted] in his *Hiſtoria Fornalenſi*, pag. 1070. ſpeaking of *Hen.* II. hath theſe words, *Recepit ab unoquoque Archiepiſcopo & Epiſcopo Hiberniæ Literas cum Sigillis ſuis in modum Chartæ pendentibus, Regnum Hiberniæ ſibi & Hæredibus ſuis Confirmantes, & Teſtimonium perhibentes ipſos in Hibernia eum & Heredes ſuos ſibi in Reges & Dominos in perpetuum Conſtituiſſe.* All the *Archbiſhops*, *Biſhops*, and *Abbots* of *Ireland* came to the King of *England*, and Received him for King and Lord of *Ireland*, ſwearing Fealty to him and his Heirs for ever. The Kings alſo and Princes of *Ireland*, did in like manner Receive *Henry* King

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King of *England*, for Lord of *Ireland*, and became his Men, and did him Homage, and ſwore Fealty to him and his Heirs againſt all Men. And he received Letters from them with their Seals pendent in manner of Charters, confirming the Kingdom of *Ireland* to him and his Heirs; and Teſtifying, that they in *Ireland* had Ordain'd him and his Heirs to be their King and Lord of *Ireland* for ever. After which, he return'd into *England* in *April* following, *vizt. April* 1173.

Ireland whether ever Conquer'd.

I come now to Enquire into our Second Particular propoſed, *Viz.* Whether *Ireland* might be properly ſaid to be *Conquer*'d by King *Henry* the Second, or by any other Prince in any ſucceeding Rebellion. And here we are to underſtand by *Conqueſt*, an *Acquiſition of a Kingdom by Force of Arms, to which, Force likewiſe has been Oppoſed*, if we are to underſtand Conqueſt in any other ſenſe, I ſee not of what Uſe it can be made againſt *Irelands* being a Free Country. I know *Conqueſtus* ſignifies a Peaceable Acquiſition, as well as an Hoſtile Subju-

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Subjugating of an Enemy. *Vid. Spelman's Glos.* And in this sense *William* the First is call'd the *Conquerour*, and many of our Kings have used the Epocha *post Conquestum.* And so likewise *Henry* the Second stiled himself *Conquestor & Dominus Hiberniæ*; but that His Conquest was no violent Subjugation of this Kingdom, is manifest from what foregoes: For here we have an Intire and Voluntary Submission of all the Ecclesiastical and Civil States of *Ireland*, to King *Henry* II. without the least Hostile Stroke on any side; We hear not in any of the Chronicles of any Violence on either Part, all was Transacted with the greatest Quiet, Tranquility, and Freedom, imaginable. I doubt not but the Barbarous People of the Island at that time were struck with Fear and Terror of King *Hen.* II's Powerful Force which he brought with him; but still their Easie and Voluntary Submissions Exempts them from the Consequents of an *Hostile Conquest*, whatever they are; where there is no Opposition, *such a Conquest* can take no place.

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I have before taken Notice of *Henry* the II's uſing the Stile of *Conqueſtor Hiberniæ* *; I preſume no Argument can be drawn from hence, for *Ireland*'s being a Conquer'd Country; for we find that many of the Kings of *England* have uſed the Æra of *poſt Conqueſtum*; *Edward* the Third was the firſt that uſed it in *England*, and we frequently meet with *Henricus poſt Conqueſtum Quartus*, &c. as taking the *Norman* Invaſion of *William* the Firſt, for a *Conqueſt*. But I believe the People of *England* would take it very ill to be thought a *Conquer'd Nation*, in the ſenſe that ſome impoſe it on *Ireland*: And yet we find the ſame Reaſon in one Caſe, as in t'other, if the Argument from the King's Stile of *Conqueſtor* prevail. Nay, *England* may be ſaid much more properly to be *Conquer*'d by *William* the Firſt, than *Ireland* by *Henry* the Second: For we all know with what Violence and Oppoſition from *Harrold*, K. *William* obtain'd the Kingdom, after a Bloody Battel nigh *Haſtings*. Whereas *Henry* the

* Mr. *Selden* will not allow that ever *H.*2. uſed this Stile. *Tit. Hon. Par.*2. C.5. *Sect.*26.

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the Second receiv'd not the leaſt Oppoſition in *Ireland*, all came in Peaceably, and had large Conceſſions made them of the like Laws and Liberties with the People of *England*, which they gladly Accepted, as we ſhall ſee hereafter. But I am fully ſatisfy'd, that neither King *William* the Firſt, in his Acquiſition of *England*, or *Henry* II. in his Acqueſt of *Ireland*, obtain'd the leaſt Title to what ſome would give to *Conquerours*. Tho' for my own part, were they *Conquerours* in a ſenſe never ſo ſtrict, I ſhould enlarge their Prerogative very little or nothing thereby, as ſhall appear more fully in the Sequel of this Diſcourſe.

Another Argument for *Henry* the Second's *Hoſtile Conqueſt* of *Ireland* is taken ftom the Oppoſition which the Natives of *Ireland* gave to the firſt Adventurers, *Fitz-Stephens*, *Fitzgerald*, and *Earl Strongbow*, and the Battles they tought in aſſiſting *Mac-Morogh* Prince of *Leinſter*, in the Recovery of his Principality.

'Tis'

'Tis certain there were ſome Conflicts between them and the *Iriſh*, in which the Latter were conſtantly beaten; but certainly the Conqueſts obtain'd by thoſe Adventurers, who came over only by the King's *Licenſe* and *Permiſſion*, and not at all by his particular *Command* (as is manifeſt from the words of the Letters Patents of Licenſe recited by *Giraldus Cambrenſis*, *Hib. Expug.* pag. 760. *Edit. Francof.* 1603. *Angl. Norm. Hiber. Camd.*) can never be call'd the Conqueſt of *Henry* the Second, eſpecially conſidering that *Henry* the Second himſelf does not appear to have any Deſign of Coming into *Ireland*, or Obtaining the Dominion thereof, when he gave to his Subjects of *England* this Licenſe of Aſſiſting *Mac-Morrogh*. But I conceive rather the contrary appears, by the Stipulations between *Mac-Morrogh* and the Adventurers, and eſpecially between him and *Strongbow*, who was to ſucceed him in his Principality.

From

From what foregoes, I presume it Appears that *Ireland* cannot properly be said *so to be Conquer'd* by *Henry* the Second, as to give the Parliament of *England* any Jurisdiction over us; it will much more easily Appear, that the *English Victories* in any succeeding *Rebellions* in that Kingdom, give no *Pretence* to a *Conquest:* If every Suppression of a Rebellion may be call'd a *Conquest*, I know not what Country will be excepted. The Rebellions in *England* have been frequent; in the Contests between the Houses of *York* and *Lancaster*, one side or other must needs be Rebellious. I am sure the Commotions in King *Charles* the First's time, are stiled so by most Historians. This Pretence therefore of *Conquest* from *Rebellions*, has so little Colour in it, that I shall not insist longer on it: I know *Conquest* is an hateful word to English Ears, and we have lately seen a Book * undergo a severe Censure, for offering to broach the *Doctrine of Conquest* in the *Free Kingdom* of *England*.

Suppressing Rebellions, whether a Conquest.

* Bishop of *Salisbury*'s Pastoral Letter.

What Title is obtain'd by Conqueſt.

But, to take off all Pretence from this Title by *Conqueſt*, I come in the third Place to enquire, *What Title Conqueſt gives by the Law of Nature and Reaſon.*

No Title gain'd by an Unjuſt Conqueſt.

And in this particular I conceive, that if the Aggreſſor or Inſulter invades a Nation *Unjuſtly*, he can never thereby have a Right over the Conquered: This I ſuppoſe will be readily granted by all men: If a Villain with a Piſtol at my Breſt, makes me convey my Eſtate to him, no one will ſay that this gives him any Right; And yet juſt ſuch a Title as this has an *Unjuſt* Conquerour, who with a Sword at my Throat forces me into Submiſſion; that is, forces me to part with my *Natural Eſtate*, and Birthright, of being govern'd only by Laws to which I give my *Conſent*, and not by his Will, or the Will of any other.

What Title by a Juſt Conqueſt.

Let us then ſuppoſe a *Juſt* Invader, one that has *Right* on his ſide to Attack a Nation in an Hoſtile manner; and that thoſe who oppoſe

oppoſe him are in the *Wrong*: Let us then ſee what Power he gets, and over whom.

None over the Aſſiſters in the Conqueſt.

Firſt, 'Tis plain he gets by his Conqueſt no Power over thoſe who *Conquered with him*; they that fought on his ſide, whether as private Soldiers or Commanders, cannot ſuffer by the Conqueſt, but muſt at leaſt be as much Freemen, as they were before: If any loſt their Freedom by the *Norman Conqueſt*, (ſuppoſing King *William* the Firſt had *Right* to Invade *England*) it was only the *Saxons* and *Britains*, and not the *Normans* that Conquered with him. In like manner ſuppoſing *Hen.*II. had *Right* to Invade this Iſland, and that he had been oppoſed therein by the Inhabitants, it was only the *Antient Race* of the *Iriſh*, that could ſuffer by this Subjugation; the *Engliſh* and *Britains*, that came over and Conquered with him, retain'd all the Freedoms and Immunities of *Free-born* Subjects; they nor their Deſcendants could not in reaſon loſe theſe, for being Succeſsful and Victorious; for ſo, the ſtate of

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Conquerours and *Conquered* ſhall be equally *Slaviſh*. Now 'tis manifeſt that the great Body of the preſent People of *Ireland*, are the Progeny of the *Engliſh* and *Britains*, that from time to time have come over into this Kingdom; and there remains but a meer handful of the Antient *Iriſh* at this day; I may ſay, not one in a thouſand: So that if I, or any body elſe, claim the like Freedoms with the Natural Born *Subjects of England*, as being Deſcended from them, it will be impoſſible to prove the contrary. I conclude therefore, That a *Juſt Conquerour* gets no Power, but only over thoſe who have *Actually Aſſiſted* in that *Unjuſt* Force that is uſed againſt him.

None over the Non-Oppoſers

And as thoſe that joyned with the Conquerour in a Juſt Invaſion, have loſt no Right by the Conqueſt; ſo neither have thoſe of the Country who *Oppos'd him not*: This ſeems ſo reaſonable at firſt Propoſal, that it wants little Proof. All that gives Title in a *Juſt* Conqueſt, is the *Oppoſers* uſing *Brutal Force*, and quitting the Law of Reaſon,

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Reaſon, and uſing the Law of Violence; whereby the Conquerour is entitled to uſe him as a *Beaſt*; that is, Kill him, or Enſlave him.

Juſt Conquerour intitled to the Lives of the Oppoſers.

Secondly, Let us conſider what Power that is, which a *Rightful Conquerour* has over the Subdued *Oppoſers*: And this we ſhall find extends little farther than over the *Lives* of the *Conquer'd*; I ſay, *little farther* than over their Lives; for how far it extends to their *Eſtates*, and that it extends not at all to Deprive their *Poſterity* of the *Freedoms* and *Immunities* to which all *Mankind* have a *Right*, I ſhall ſhew preſently. That the *Juſt Conquerour* has an Abſolute Power over the *Lives* and *Liberties* of the Conquer'd, appears from hence, Becauſe the Conquer'd, by putting themſelves in a *State of War* by uſing an Unjuſt Force, have thereby *forfeited* their *Lives*. For quitting *Reaſon*, (which is the Rule between Man and Man) and uſing *Force* (which is the way of *Beaſts*) they become liable to be deſtroy'd by him againſt whom they uſe *Force*, as any ſavage wild *Beaſt*

that is Dangerous to his Being.

And this is the Case of *Rebels* in a settled Commonwealth, who forfeit their Lives on this Account. But as for forfeiting their Estates, it depends on the Municipal Laws of the Kingdom. But we are now Enquiring what the Consequents will be between two Contesting Nations.

Which brings me to Consider how far a Just Conquerour has Power over the *Posterity* and *Estates* of the Conquer'd.

Just Conquerour how far impower'd over the Posterity of the Opposers.

As to the *Posterity*, they not having Joyn'd or Assisted in the *Forcible Opposition* of the Conquerours *Just* Arms, can lose no Benefit thereby. 'Tis unreasonable any Man should be punish'd but for his own fault. Man being a free Agent, is only Answerable for his own Demerits; and as it would be highly Unjust to Hang up the Father for the Sons Offence, so the Converse is equally Unjust, that the Son shou'd suffer any Inconvenience for the Fathers Crime.

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A Father hath not in himself a power over the Life or Liberty of his Child; so that no Act of his can possibly forfeit it. And tho we find in the Municipal Laws of particular Kingdoms, that the Son loses the Fathers Estate for the Rebellion or other Demerit of the Father, yet this is Consented and Agreed to, for the Publick Safety, and for deterring the Subjects from certain Enormous Crimes that would be highly prejudicial to the Commonwealth. And to such Constitutions the Subjects are bound to submit, having consented to them, tho' it may be unreasonable to put the like in Execution between *Nation* and *Nation* in the *State of Nature*: For in Settled Governments, Property in Estates is Regulated, Bounded and Determined by the Laws of the Commonwealth, consented to by the People, so that in these, 'tis no Injustice for the Son to lose his Patrimony for his Fathers Rebellion or other Demerit.

How far over their Eſtates.

If therefore the *Poſterity* of the Conquer'd are not to ſuffer for the Unjuſt *Oppoſition* given to the Victor by their *Anceſtors*, we ſhall find little place for any Power of the Conquerours over the *Eſtates* of the Subdued. The *Father* by his Miſcarriages and Violence can forfeit but his own Life, he involves not his *Children* in his Guilt or Deſtruction. His *Goods*, which *Nature* (that willeth the Preſervation of all *Mankind* as far as poſſible) hath made to belong to his *Children* to ſuſtain them, do ſtill continue to belong to his *Children*. 'Tis true indeed, it uſually happens that *Damage* attends Unjuſt Force; and as far as the *Repair* of this *Damage* requires it, ſo far the Rightful Conquerour may invade the *Goods* and *Eſtate* of the Conquer'd; but when this Damage is made up, his Title to the Goods ceaſes, and the Reſidue belongs to the *Wife* and *Children* of the Subdued.

It may ſeem a ſtrange Doctrine, that any one ſhould have a Power over the *Life* of another Man, and not

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not over his *Eſtate*; but this we find every day, for tho' I may *Kill* a Thief that ſets on me in the High-way, yet I may not *take away his Money*; for 'tis the *Brutal Force* the Aggreſſor has uſed, that gives his Adverſary a Right to take away his *Life*, as a noxious Creature. But 'tis only *Damage ſuſtain'd*, that gives Title to another Mans *Goods*.

Practiſe of Conquerors otherwiſe.

It muſt be confeſs'd that the Practice of the World is otherwiſe, and we commonly ſee the Conqueror (whether *Juſt* or *Unjuſt*) by the Force he has over the Conquer'd, compels them with a Sword at their Breſt to ſtoop to his Conditions, and ſubmit to ſuch a Government as he pleaſes to Afford them. But we Enquire not now, what is the *Practice*, but what *Right there is to do ſo.* If it be ſaid the Conquer'd ſubmit by their own *Conſent*: Then this allows *Conſent* neceſſary to give the Conquerour a Title to Rule over them. But then we may Enquire whether Promiſes Extorted by *Force* without *Right*, can be thought *Conſent*, and how far they

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are *Obligatory*; And I humbly conceive they *Bind not at all.* He that *forces* my Horſe from me, ought preſently to *Reſtore* him, and I have ſtill a *Right* to retake him : So he that has *forced* a Promiſe from me, ought preſently to *Reſtore* it, that is, quit me of the *Obligation* of it, or I may chuſe whether I will perform it or not: For the *Law of Nature* obliges us only by the *Rules* ſhe preſcribes, and therefore cannot oblige me by the *Violation* of her Rules; ſuch is the Extorting any thing from me by *Force.*

From what has been ſaid, I preſume it pretty clearly appears that an *Unjuſt* Conqueſt gives *no Title* at all; That a *Juſt* Conqueſt gives Power only over the *Lives* and *Liberties* of the *Actual Oppoſers*, but not over their *Poſterity* or *Eſtates*, otherwiſe than as before is mentioned; and not at all over thoſe that did *not Concur* in the Oppoſition.

They that deſire a more full Diſquiſition of this Matter, may find it at large in an Incomparable *Treatiſe* concerning the *True Original*,

Extent

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Extent and End of Civil Government, Chap. 16. This Diſcourſe is ſaid to be written by my Excellent Friend, *JOHN LOCKE*, Eſq; Whether it be ſo or not, I know not; This I am ſure, whoever is the Author, the Greateſt Genius in *Chriſtendom* need not diſown it.

But granting that all we have ſaid in this Matter is *Wrong*, and granting that a Conquerour, whether *Juſt* or *Unjuſt*, obtains an *Abſolute* Arbitrary *Dominion* over the Perſons, Eſtates, Lives, Liberties and Fortunes of all thoſe whom he finds in the Nation, their Wives, Poſterity, *&c.* ſo as to make perpetual *Slaves* of them and their Generations to come; Let us next Enquire whether *Conceſſions* granted by ſuch a Victorious *Hero*, do not bound the Exorbitancy of his Power, and whether he be not Obliged ſtrictly to Obſerve theſe Grants.

Conceſſions granted by a Conquerour, whether Obligatory.

And here I believe no Man of Common Senſe or Juſtice, will Deny it; None that has ever Conſider'd the Law of Nature and

and Nations, can poſſibly heſitate on this matter; the very Propoſing it, ſtrikes the Senſe and Common Notions of all Men ſo forcibly, that it needs no farther proof. I ſhall therefore inſiſt no longer on it, but haſten to conſider how far this is the Caſe of *Ireland*: And that brings me naturally to the fourth Particular propos'd, *vizt.* To ſhew by Precedents, Records, and Hiſtory, what Conceſſions and Grants have been made from time to time to the People of *Ireland*, and by what ſteps the Laws of *England* came to be introduced into this Kingdom.

What Conceſſions have been made from the Crown of *England* to the Kingdom of *Ireland.*

By *Henry II.*

We are told by *Matth. Paris*, Hiſtoriographer to *Hen.* III. that *Henry* the Second, a little before he left *Ireland*, in a Publick Aſſembly and Council of the *Iriſh* at *Liſmore*, did cauſe the *Iriſh* to Receive, and ſwear to be Govern'd by the Laws of *England*: *Rex Henricus* (ſaith he) *antequam ex Hibernia Rediret apud Liſmore Concilium Congregavit ubi Leges Angliæ ſunt ab omnibus gratanter receptæ, & Juratoriâ cautione preſtitâ Confirmatæ*, Vid. Matth. Paris, ad An. 1172. Vit. H. 2. And

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And not only thus, but if we may give Credit to Sir *Edward Cook*, in the 4th Inſtit. Cap. 1. and 76. and to the Inſcription to the *Iriſh Modus Tenendi Parliamentum*, it will clearly Appear, that *Henry* the Second did not only ſettle the the Laws of *England* in *Ireland*, and the Juriſdiction Eccleſiaſtical there, by the *Voluntary Acceptance* and *Allowance* of the Nobility and Clergy, but did likewiſe Allow them the Freedom of *Holding of Parliaments* in *Ireland*, as a ſeparate and diſtinct Kingdom from *England*; and did then ſend them a *Modus* to Direct them how to Hold their Parliaments there. The Title of which *Modus* runs thus:

Iriſh *Modus Tenendi Parliamentum.*

" *Henricus Rex Angliæ Con-*
" *queſtor & Dominus Hiber-*
" *niæ*, &c. *Mittit hanc formam*
" *Archiepiſcopis, Epiſcopis,*
" *Abbatibus, Prioribus, Co-*
" *mitibus, Baronibus, Juſti-*
" *ciariis, Vicecomitibus, Ma-*
" *joribus, Præpoſitis, Miniſtris*
" *& omnibus Fidelibus ſuis*
" *Terræ Hiberniæ Tenendi*
" *Parliamentum.* *In*

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In primis Summonitio Parliamenti præcedere debet per Quadraginta Dies.

And ſo forth.

This *Modus* is ſaid to have been ſent into *Ireland* by *Hen.* II. for a Direction to Hold their Parliaments there. And the ſenſe of it agrees for the moſt part with the *Modus Tenendi Parl.* in *England*, ſaid to have been Allowed by *William* the *Conquerour*; when he obtain'd that Kingdom; where 'tis alter'd, 'tis only to fit it the better for the Kingdom of *Ireland*.

I know very well the Antiquity of this *Modus*, ſo ſaid to be Tranſmitted for *Ireland* by *Hen.* II. is queſtion'd by ſome Learned Antiquaries, particularly by Mr. *Selden* (*a*) and (*b*) Mr. *Pryn*, who deny alſo the Engliſh *Modus* as well as this. But on the other hand, my Lord Chief Juſtice *Cook*, in the 4th Inſtit. pag. 12. and 349. does ſtrenuouſly Aſſert them both. And the late Reverend and Learned Dr. *Dopping* Biſhop

(*a*) *Tit. Hon. Par.* 2. C. 5. *Sect.* 26. *Edit. Lond. An.* 1672

(*b*) Againſt *Cook's* 4th *Inſtit.* C. 76.

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ſhop of *Meath*, has Publiſhed the *Iriſh Modus*, with a Vindication of its Antiquity and Authority in the Preface.

There ſeems to me but two Objecttions of any Moment raiſed by Mr. *Pryn* againſt theſe *Modi*. The One relates both to the *Engliſh* and *Iriſh Modus*; the other chiefly ſtrikes at the *Iriſh*. He ſays the Name *Parliament*, ſo often found in theſe *Modi*, was not a name for the great Council of *England* known ſo early as theſe *Modi* Pretend to. I confeſs I am not prepared to Diſprove this Antiquary in this Particular: But to me it ſeems reaſonable enough to Imagine that the Name *Parliament*, came in with *William* the *Conqueror*: 'Tis a Word perfectly French, and I ſee no reaſon to doubt it's Coming in with the *Normans*. The other Objection affects our *Iriſh Modus*, for he tells us, That *Sheriffs* were not eſtabliſh'd in *Ireland* in *Henry* II's. time, when this *Modus* was pretended to be ſent hither, yet we find the Word *Vicecomes* therein. To this I can only Anſwer, That *Hen.* II. intend-

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intending to Eſtabliſh in *Ireland* the Engliſh form of Government, as the firſt, and Chief ſtep thereto, he ſent them Directions for Holding of Parliaments, Deſigning afterwards by degrees and in due time to ſettle the other Conſtitutions, agreable to the Model of *England*. If therefore *England* had then *Sheriffs*, we need not wonder to find them named in the *Iriſh Modus*, tho they were not as yet eſtabliſh'd amongſt us, for they were deſigned to be appointed ſoon after, and before the *Modus* could be put regularly in execution; and accordingly we find them eſtabliſh'd in ſome Counties of *Ireland* in *King Johns* Time.

This *Iriſh Modus* is ſaid to have been in the Cuſtody of Sir *Chriſtopher Preſton* of *Clane* in *Ireland*, *An.* 6. *Hen.* 4. and by Sir *John Talbot* Lord Lieutenant of *Ireland*, under King *Hen.*4. It was Exemplified by *Inſpeximus* under the great Seal of *Ireland*, and the Exemplification was ſometimes in the Hands of Mr. *Hackwel of Lincolns* Inn, and by him was Communicated to Mr. *Selden*. The Tenor of which Exemplification runs thus. *Henricus*

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Henricus Dei Gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ, *omnibus ad quos preſentes Literæ pervenerint ſalutem Inſpeximus Tenorem Diverſorum Articulorum in quodam Rotulo Pergameneo Scriptorum cum* Chriſtophero Preſton, *Milite Tempore Arreſtationis ſuæ apud Villam de* Clare, *per Deputatum Dilecti & Fidelis noſtri Johannis Talbot de* Halomſhire *Chivaler locum noſtrum Tenentis Terræ noſtræ Hiberniæ nuper factæ inventorum ac coram nobis & Concilio noſtro in eadem terræ noſtra apud Villam de* Trim. *Nono die Januarii ultimo præteriti in hæc verba,*

" *Modus Tenendi Parliamenta*
" *Henricus Rex Angliæ Con-*
" *queſtor & Dominus Hiber-*
" *nia, Mittit hanc formam Ar-*
" *chiepiſcopis*, &c. and ſo as before, " *Et omnibus Fideli-*
" *bus ſuis Terræ Hiberniæ*
" *Tenendi Parliamentum Im-*
" *primis Summonitio*, &c. and

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then follows the *Modus*, agreeable in moſt things with that of *England*, only fitted to *Ireland*. Then the Exemplification concludes:

Nos autem tenores Articulorum prædictorum de Aſſenſu præfati Locum tenentis & Concilii prædicti tenore præſentium duximus Exemplificandum & has Literas noſtras fieri fecimus Patentes. Teſte Præfato Locum noſtrum tenente apud Trim. 12 *die Januarii Anno Regni noſtri ſexto.*

Per ipſum Locum tenentem & Concilium.

Now we can hardly think it credible (ſays the Biſhop of *Meath*) that an *Exemplification* could have been made ſo ſolemnly of it by King *Henry* the Fourth, and that it ſhould refer to a *Modus* tranſmitted into *Ireland* by King *Henry* II. and Affirm that it was produced before the Lord Lieutenant and Council at *Trym*, if no ſuch thing had been Done: This were to call in queſtion the Truth of all former Records

cords and Tranſactions, and make the Exemplification contain an Egregious Falſhood in the body of it.

The Reverend Biſhop of *Meath*, in his fore-cited Preface does believe that he had obtain'd the very Original Record, ſaid by my Lord *Cook* to have been in the Hands of Sir *Chriſtopher Preſton*: It came to that Learned Prelates Hands amongſt other Papers and Manuſcripts of Sir *William Domviles*, late Attorney General in this Kingdom, who in his Life-time, upon an occaſional Diſcourſe with the Biſhop concerning It, told him that this Record was beſtow'd on him (Sir *W. Domvile*) by Sir *James Cuffe*, late Deputy Vice-Treaſurer of *Ireland*, that Sir *James* found it among the Papers of Sir *Francis Aungier*, Maſter of the Rolls in this Kingdom; and the preſent Earl of *Longford* (Grandſon to the ſaid Sir *Francis Aungier*) told the Biſhop, that his ſaid Grandfather had it out of the Treaſury of *Waterford*.

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Whilſt I write this, I have this very Record now before me, from the Hands of the ſaid Biſhop of *Meath*'s Son, my Nephew, *Samuel Dopping*; and I muſt confeſs it has a Venerable Antient Appearance, but whether it be the True Original Record, I leave on the Arguments produced for its Credit by the ſaid Biſhop.

Parliaments very early in *Ireland*.

This I am ſure of, That whether this be the very Record Tranſmitted hither by King *Henry* the Second, or not; yet 'tis moſt certain from the Unanimous Conceſſions of all the fore-mentioned Antiquaries, *Cook*, *Selden*, *Pryn*, &c. That we have had Parliaments in *Ireland* very ſoon after the Invaſion of *Henry* II. For *Pryn* confeſſes that (a) King *Hen.* II. After his Conqueſt of *Ireland*, and the General Voluntary Submiſſion, Homages, and Fealties of moſt of the *Iriſh* Kings, Prelates, Nobles, Cities and People, to him, as to their Sovereign Lord and King, *Anno* 1170, (it ſhould be 1172.) held therein a General Council of the Clergy at

(a) Againſt the 4th Inſt. c. 76. p. 249.

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at *Caſhel*, wherein he Rectify'd many Abuſes in the Church, and Eſtabliſh'd ſundry Eccleſiaſtical Laws, agreeable to thoſe in the Church of *England*; *Eccleſiæ illius ſtatum ad Anglicanæ Eccleſiæ formam Redigere Modis omnibus elaborando*; To which the *Iriſh* Clergy promis'd Conformity, and to obſerve them for time to come, as (*a*) *Giraldus Cambrenſis*, who was then in *Ireland*, and other (*b*) Hiſtorians, relate: *Et ut in ſingulis Obſervatio ſimilis Regnum Colligaret utrumque* (that is *England* and *Ireland*) *paſſim omnes unanimi voluntate communi Aſſenſu, Pari deſiderio Regis imperio ſe ſubjiciunt, omnibus igitur hoc modo Conſummatis, in Concilio habito apud Liſmore Leges Angliæ ab omnibus ſunt gratantur receptæ, & juratoriâ cautione præſtitâ Confirmatæ*, ſays *Math. Paris.*

(*a*) *Togograph Hibern.* l. 3. c. 18. *Hib. Expug.* l. 11. c. 33. 34.
(b) *Hoveden Annal pars poſt.* p. 302. *Brampton. Chr.* *Col.* 1071. *Knighton de Even. Angl.* l. c. c. 10 col. 2394, 2395. *Pol. Virg. Hiſt. Angl.* l. 13 *Radul. de Diceto. Walſingham*, &c.

Can any Conceſſion in the World be more plain and free than this? We have heard of late much Talk in *England* of an *Original Compact* between the King and *People* of *England*; I am ſure 'tis not poſſible to ſhew a more fair *Origi-*

Original Compact for *Ireland.*

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nal Compact between a *King* and *People*, than this between *Henry* the Second, and the *People* of *Ireland*, *That they ſhould Enjoy the like Liberties and Immunities, and be Govern'd by the ſame Mild Laws, both Civil and Eccleſiaſtical, as the People of England.*

From all which, It is manifeſt that there were no Laws impoſed on the People of *Ireland*, by any Authority of the Parliament of *England*; nor any Laws introduced into that Kingdom by *Henry* the Second, but by the *Conſent* and *Allowance* of the People of *Ireland*: For both the Civil and Eccleſiaſtical State were ſettled there *Regiæ ſublimitatis Authoritate*, ſolely by the Kings Authority, *and their own good Wills*, as the *Iriſh* Statute, 11 *Eliz.* c. 1. expreſſes it. And not only the *Laws* of *England*, but the manner of *Holding Parliaments* in *Ireland* to make Laws of their own (which is the *Foundation* and *Bulwark* of the Peoples *Liberties* and *Properties*) was Directed and Eſtabliſhed there by *Henry* the Second, as if he were Reſolved

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that no other Perſon or Perſons ſhould be the Founders of the Government of *Ireland*, but himſelf, and the *Conſent* of the People, who ſubmitted themſelves to him againſt all Perſons whatſoever.

Let us now ſee by what farther Degrees the Government of *Ireland* grew up Conformable to that of *England*.

King *John* made King of *Ireland*.

About the Twenty-third year of *Henry* the Second, (which was within Five years after his Return from *Ireland*) he Created his younger Son *John*, *King of Ireland*, at a Parliament held at *Oxford*. Soon after, *King John*, being then about Twelve years of Age, came into *Ireland* from *Milford* to *Waterford*, as his Father had formerly done. The *Iriſh* Nobility and Gentry immediately Repaired to Him; but being Received by him and his Retinue with ſome Scorn and Deriſion, by reaſon of their long rude Beards, *quas more Patrio grandes habebant & prolixas*, (ſays *Giraldus Cambrenſis*, *Hib. Expug. Cap.* 35.) they took ſuch Offence

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thereat, that they departed in much Diſcontent; which was the occaſion of the young Kings ſtaying ſo ſhort a time in *Ireland* as he did this his firſt time of being here.

By this *Ireland* made an Abſolute Separate Kingdom.

And here, before we proceed any farther, we ſhall obſerve, That by this Donation of the *Kingdom* of *Ireland* to King *John*, *Ireland* was moſt eminently ſet apart again, as a *Separate* and *Diſtinct Kingdom* by it ſelf from the Kingdom of *England*, and did ſo continue, until the Kingdom of *England* Deſcended and came unto *King John*, after the Death of his Brother *Richard* the Firſt, King of *England*, which was about Twenty two years after his being made King of *Ireland*; during which ſpace of Twenty two years, both whilſt his Father *Henry* the Second, and his Brother *Richard* the Firſt, were Living and Reigning, King *John* made divers Grants and Charters to his Subjects of *Ireland*, which are yet in being in this Kingdom; wherein he ſtiles himſelf *Dominus Hiberniæ*, (the conſtant Stile till *Henry* the Eighth's time)

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time) and in others, *Dominus Hibernicæ & Comes Meritoniæ.* By which Charters both the City of *Dublin*, and divers other Corporations enjoy many Priviledges and Franchiſes to this Day. But after the ſaid Grant of the Kingdom of *Ireland* to King *John*, neither his Father *Henry* II. nor his Brother King *Richard* I. Kings of *England*, ever ſtiled themſelves, during their Lives, *King* or *Lord* of *Ireland*; for the *Dominion* and *Regality* of *Ireland* was wholly and ſeparately veſted in K. *John*, being abſolutely Granted unto him without any Reſervation. And he being Created King in the Parliament at *Oxford*, under the Stile and Title of *Lord of Ireland*, Enjoy'd all manner of *Kingly Juriſdiction*, *Prehemineńce*, and *Authority Royal*, belonging unto the *Imperial State* and *Majeſty of a King*, as are the expreſs Words of the *Iriſh* Statute, 33 *Hen.* VIII. c. 1. by which Statute the Stile of *Dominus* was changed to that of *Rex Hiberniæ.*

Let us then ſuppoſe that *Richard* the Firſt, King *John*'s Elder Bro-

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Brother, had not died without Iſſue, but that his Progeny had ſat on the Throne of *England*, in a Continued Succeſſion to this Day: Let us ſuppoſe likewiſe the ſame of King *John*'s Progeny, in relation to the Throne of *Ireland*; where then had been the *Subordination* of *Ireland* to the *Parliament*, or even to the *King* of *England*? Certainly no ſuch thing could have been then pretended: Therefore if any ſuch *Subordination* there be, it muſt ariſe from ſomething that followed *after* the Deſcent of *England* to King *John*; for by that *Deſcent*, *England* might as properly be *Subordinate* to *Ireland*, as the converſe; *Ireland* being veſted in the Royal Perſon of King *John*, Two and Twenty years before his Acceſſion to the Crown of *England*, and being a more *Antient Kingdom* than the Kingdom of *England*; As the Engliſh Orators in the Council of *Conſtance*, Anno 1417. (a) Confeſs'd and Alledged, as an Argument in the Conteſt between *Henry* the Fifth's Legates, and thoſe of *Charles* the Sixth King of *France*, for *Precedence*: *Satis Conſtat* (ſay they)

(a) *Seldens Tit. Hon Par.* 1. *C.* 8 *Sect* 5. *Uſher* Archbiſhop of *Armagh*, of the Religion of the Antient *Iriſh*, *Cap.* 11.

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they) (b) *ſecundum Albertum Magnum & Bartholomeum de Proprietatibus Rerum, quod toto Mundo in tres partes Diviſo, ſcilicet in Europam, Aſiam & Africam* (for *America* was not then Diſcovered) *Europa in quatuor Dividitur Regna ſcilicet, Primum Romanum, Secundum Conſtantinopolitanum, Tertium Regnum* Hiberniæ (*quod jam tranſlatum eſt in Anglos*) *& Quartum Regnum Hiſpaniæ. Ex quo patet, quod Rex Angliæ & Regnum ſuum ſunt de Eminentioribus Antiquioribus Regibus & Regnis totius Europæ.* The *Antiquiy* and *Precedence* of the King of *England*, was allow'd him wholly on the Account of his Kingdom of *Ireland.*

(b) *Act. Concil. Conſtant. Seſ* 28 *M.S. in Eſb. Reg.* not in the Printed Acts.

Ireland in what ſence Annex'd to *England.*

Perhaps it will be ſaid, That this *Subordination* of the Kingdom of *Ireland*, to the Kingdom of *England*, proceeds from *Ireland*'s being Annex'd to, and as it were united with the Imperial Crown of *England*, by ſeveral Acts of Parliament both in *England* and *Ireland*, ſince King *Johns* time. But how farr this Operates, I ſhall Enquire more fully hereafter; I ſhall only at preſent Obſerve, that I conceive little

more

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more is Effected by theſe Statutes Than that *Ireland* ſhall not be *Alien'd* or *Separated* from the King of *England*, who cannot hereby diſpoſe of it otherwiſe than in *Legal Succeſſion* along with *England*; and that whoever is King of *England*, is *ipſo facto King of Ireland*, and the Subjects of *Ireland* are oblig'd to Obey him as their Liege Lord.

King *John* comes a ſecond time into *Ireland*.

The People ſubmit to him

To proceed therefore. After both Crowns were united, on the Death of *Richard* the Firſt without Iſſue, in the Royal Perſon of King *John*: He, about the Twelfth Year of his Reign of *England*, went again into *Ireland*, *viz.* the Twenty Eighth day of *June*, 1210. and *Math. Paris* tell us, pag. 220. *Cum Veniſſet ad Dublinenſem Civitatem Occurrerunt ei ibidem plus quam 20 Reguli illius Regionis qui omnes Timore maximo preterriti homagium ei & Fidelitatem fecerunt. Fecit quoque Rex ibidem*, Conſtruere Leges & Conſuetudines Anglicanas, *ponens Vicecomites alioſque Miniſtros, qui populum Regni illius* juxta Leges Anglicanas Judicarent.

His

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His Son King *Henry* the Third came to the Crown the Nineteenth of *October* 1216. and in *November* following he Granted to *Ireland* a *Magna Charta*, Dated at *Briſtol* 12 *November*, the Firſt Year of his Reign. 'Tis Prefaced, *that for the Honour of God, and Advancement of Holy Church, by the Advice of his Council of England*, (whoſe names are particularly recited) He makes the following *Grant to Ireland*; And then goes on Exactly Agreeable to the *Magna Charta* which he granted to *England*; only in ours we have *Civitas Dublin*,& *Avenliffee*, inſtead of *Civitas London*,and *Thameſis*,with other Alterations of the like kind where Needful. But ours is Eight years older than that which he granted to *England*, it not being till the Ninth Year of his Reign, and ours is the Firſt Year. This *Magna Charta* of *Ireland* Concludes thus, *Quia vero ſigillum nondum Habuimus preſentem Cartam Sigillis Venerabilis Patris noſtri Domini Gualt. Apoſt. Sedis Legati & Willelmi Mareſchalli Comitis Pembrooke Rectoris noſtri & Regni noſtri facimus Sigillari. Teſtibus omnibus prænominatis & alijs Multis Dat per Manus Prædictorum Domini*

Conceſſions from *Hen. III.*

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Domini Legati & Willelmi Mareſcalli. Apud Briſtol Duodecimo die Novembr. Regni noſtri Anno Primo. An Antient Coppy of this *Magna Charta of Ireland* is to be found in the *Red Book* of the *Exchequer Dublin.*

In *February* following in the Firſt Year likewiſe of his Reign, by Advice of all his Faithful Counſellors in *England* to gratify the *Iriſh* (ſays (a) *Pryn*) for their eminent Loyalty to his Father and Him, he granted them out of his *Special Grace*, that they and their Heirs for ever ſhould enjoy the *Liberties* granted by his Father and Himſelf to the Realm of *England*; which he Reduced into Writing, and ſent Seal'd thither under the Seal of the Popes Legat, and W. Earl Marſhal his Governour, becauſe he had then no Seal of his own. This as I conceive Refers to the forementiond *Magna Charta Hiberniæ*, The Record as Recited by Mr. *Pryn*, here follows.

(a) *Pryn* againſt the 4th Inſt. c. 76. p. 250.

F Rex

" Rex Archiepiſcopis, Epiſ- *Pa. 1. H. III.*
" copis, Abbatibus, Comiti- *m. 13. intus.*
" bus, Baronibus, Militibus
" & Libere Tenentibus, &
" omnibus Fidelibus ſuis per
" Hiberniam Conſtitutis, Sa-
" lutem: Fidelitatem veſtram
" in Domino Commendantes
" quam Domino Patri noſtro
" ſemper Exhibuiſtis & nobis
" eſtis diebus noſtris Exhibi-
" turi: Volumus quod in
" ſignum Fidelitatis veſtræ,
" tam præclaræ, tam Inſignis
" Libertatibus Regno noſtro
" Angliæ a Patre noſtro & no-
" bis Conceſſis, de gratia no-
" ſtra & Dono in Regno no-
" ſtro Hiberniæ gaudeatis vos
" & veſtri Hæredes in perpe-
" tuum. Quas Diſtincte
" in Scriptum Reductas de
" Communi Conſilio omni-
" um Fidelium noſtrorum vo-
" bis Mittimus Signatas Si-
" gillis Domini noſtri G. Apo-
" ſtolicæ Sedis Legati & Fi-
" delis noſtri Com. W. Ma-
" reſc. Rectoris noſtri & Reg-
" ni noſtri quia Sigillum non-

" dum

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" dum habuimus, eaſdem
" proceſſu temporis de Majori
" Conſilio proprio Sigillo Sig-
" naturi.

Teſte apud Glouc. 6 Februar.

Here we have a free Grant of all the *Liberties of England* to the *People of Ireland.* But we know the *Liberties* of Engliſhmen are Founded on that Univerſal *Law of Nature* that ought to prevail throughout the whole World, *of being Govern'd only by ſuch Laws to which they give their own Conſent by their Repreſentatives in Parliament.*

Record out of Mr. *Petyt.* of the Antiquity of Parliaments in *Ireland.*

And here, before I proceed farther, I ſhall take Notice, That in the late Raiſed Controverſie, *Whether the Houſe of Commons were an Eſſential part of Parliament*, before the 49th year of *Henry* the Third; The Learned Mr. *Petyt*, Keeper of the Records in the *Tower*, in his Book on that Subject, pag. 71. Deduces his 9th Argument *From the Compariſon of the Antient* Generale Concilium, *or* Parliament of *Ire-*

land

land, inſtanced An. 38 *Hen.* III. *with the Parliament in England, wherein the* Citizens *and* Burgeſſes *were ; which was Eleven years before the pretended beginning of the Commons in England.*

For thus we find it in that Author.

" As great a Right and Privilege " ſurely was and ought to be al- " low'd to the *Engliſh* Subjects, as " to the *Iriſh*, before the 49th of " *Hen.* III. And if that be admit- " ted, and that their (the *Iriſh*) " *Commune Concilium*, or Parliament, " had its Platform from ours (the " Engliſh) as I think will not be " Deny'd by any that have conſi- " der'd the Hiſtory and Records " touching that Land *(Ireland)* we " ſhall find the enſuing Records, " *Ann.* 38 *Hen.* III. clearly evince " that the Citizens and Burgeſſes " were then a part of their (the " *Iriſh*) Great Council or Parlia- " ment.

" That King being in *partibus* *Rot.* 38 *H.III,* " *Tranſmarinis*, and the Queen being *in* 4. *Hibernia* " left Regent, ſhe ſends Writs (or a

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" Letter) in the Kings Name, di-
" rected *Archiepiſcopis, Epiſcopis,*
" *Abbatibus, Prioribus, Comitibus,*
" *Baronibus, Militibus, Liberis Ho-*
" *minibus,* Civibus & Burgenſi-
" bus, *Terræ ſuæ Hiberniæ* ; tell-
" ing them that, *Mittimus Fratrem*
" *Nicholaum de Sancto Neoto, Fratrem*
" *Hoſpitii Sancti Johannis Jeruſa-*
" *lem in Anglia ad partes Hiberniæ*
" *ad exponendum vobis* (together
" with *J. Fitz-Geoffery* the Kings
" Juſtice) the State of his Land of
" *Vaſcony,* endanger'd by the Ho-
" ſtile Invaſion of the King of *Ca-*
" *ſtile, qui nullo Jure ſed potentia*
" *ſua Confiſus Terram noſtram Vaſ-*
" *coniæ per ipſius Fortitudinem,*
" *a manibus noſtris Auferre & a Do-*
" *minio Regni Angliæ ſegregare Pro-*
" *ponit.* And therefore *univerſita-*
" *tem Veſtram Quanta poſſumus Af-*
" *fectione Rogantes quatenus nos*
" *& jura noſtra totaliter indefenſa*
" *non deſerentes nobis in tanto peri-*
" *culo quantumcunque poteritis de*
" Gente & Pecunia *ſubveniatis* ;
" which would turn to their Ever-
" laſting Honour ; concluding,
" *His noſtris Auguſtiis taliter Compa-*
" *tientes, quod nos & Heræ des no-*
" *ſtri*

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" *ſtri vobis & Hæredibus veſtris ſu-*
" *mus non immerito Obligati. Te-*
" *ſte Regina, & R. Comite Cornubiæ,*
" *apud* Windeſor, 17 *die Februar.*

Per Reginam.

Thus far Mr. *Petyt.*

Here we have a Letter from the Queen Regent to the *Parliament* in *Ireland*, in an humble manner beſeeching them for an Aid of *Men* and *Money* againſt the King of *Caſtiles* Hoſtile Invaſion of *Gaſcony*; from whence we may perceive that in thoſe days, no more than at preſent, *Men* and *Money* could not be Rais'd but by *Conſent of Parliament.* I have been the more particular in Tranſcribing this Paſſage out of Mr. *Petyt*, to ſhew that we have as Antient and Expreſs an Authority for our preſent Conſtitution of Parliaments in *Ireland*, as can be ſhewn in *England.* And I believe it will not be thought Adviſeable in theſe latter Days, to break in upon *Old Settled Conſtitutions*: No

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one knows how fatal the Conſequents of that may be.

Farther Conceſſions from *Hen. III.*

To return therefore where we Digreſs'd. *Henry* the Third, about the Twelfth year of his Reign, did ſpecially Impower *Richard de Burgh*, then *Juſtice* of *Ireland*, at a certain day and place, to ſummon all the Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, Knights, Freeholders and Sheriffs of each County, and before them to cauſe to be Read the Charter of his Father King *John*, whereunto his Seal was Appendant, whereby he had granted unto them the *Laws* and *Cuſtoms* of *England*, and unto which they ſwore Obedience: And that he ſhould cauſe the ſame Laws to be obſerved and Proclaimed in the ſeveral Counties of *Ireland*, that ſo none preſume to do contrary to the Kings Command. The Record I have taken out of Mr. (*a*) *Pryn*, in theſe words:

(*b*) Againſt *Cook's* 4th Inſtit. p. 252.

Clauſ. 12 H. III in 8 de Legibus & Conſuetudinibus Obſervandis in Hibern.

" Rex Dilecto & Fideli ſuo
" Richardo de Burgo Juſtic'
" ſuo Hibern. Salutem. Man-
" damus vobis firmiter præ-
" cipientes

" cipientes quatenus certo die
" & Loco faciatis venire co-
" ram vobis Archiepiſcopos
" Epiſcopos · Abbates Priores
" Comites & Barones Milites
" & libere Tenentes & Balli-
" vos ſingulorum Comitatum
" & coram eis Publice legi
" faciatis Chartam Domini J.
" Regis Patris noſtri cui Si-
" gillum ſuum appenſum eſt
" quam fieri fecit & jurari a
" Magnatibus Hibern. de Le-
" gibus & Conſuetudinis An-
" gliæ Obſervandis in Hiber-
" nia. Et præcipiatis eis ex
" parte noſtra quod Leges il-
" las & Conſuetudines in
" Charta prædicta contentas
" de cætero firmiter teneant &
" obſervent & hoc idem per
" ſingulos Commitatus Hi-
" berniæ clamari faciatis &
" teneri prohibentes firmiter
" ex parte noſtra & ſuper foris
" facturam noſtram nequis
" contra hoc Mandatum no-
" ſtrum venire præſumat, &c.
" *Teſte Me ipſo Apud Weſtm'* 8
" *die Maii An. Reg. noſtri* 12.

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By what foregoes, I preſume it plainly appears, that by three ſeveral Eſtabliſhments under the three firſt Kings of *Ireland* of the *Norman Race*, the *Laws and Liberties of the People of England, were granted to the People of Ireland.* And that neither of theſe three Kings Eſtabliſhed thoſe Laws in *Ireland* by any *Power* of the *Parliament* of *England*, but by the free *Conſent*, *Allowance* and *Acceptance* of the *People* of *Ireland.*

Recapitulation.

*Hen.*II. firſt introduced the Laws of *England* into *Ireland*, in a Publick Aſſembly of the *Iriſh* at *Liſmore*, and Allowed them the *Freedom* of *Parliaments* to be held in *Ireland*, as they were held in *England.*

King *John* at the *Requeſt*, and by the *Conſent* of the *Iriſh*, did appoint the Laws of *England* to be of Force in *Ireland*; and tho' he did not this till the Twelfth year of his Reign of *England*, yet he did it not as *King of England*, but as *Lord* of *Ireland:* For the Crown of *England* came to him by *Deſcent* from

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from his Brother *Richard*, who had *no Regal Power* in *Ireland*; and what his Brother had not, could not descend to him.

Henry the Third in the first year of his Reign gave *Ireland* a *Magna Charta*; and in the Twelfth year of his Reign did provide, That all the Laws of *England* should be observ'd in *Ireland*; and that the Charter granted to the *Irish* by his Father King *John* under his Seal, when he was in that Kingdom, should be kept inviolably.

And from the Days of these Three Kings, have *England* and *Ireland* been both Govern'd by the like Forms of Government under one and the same Supreme Head, *the King of England*; yet so, as both Kingdoms remain'd Separate and Distinct in their several Jurisdictions under that *One Head*, as are the Kingdoms of *England* and *Scotland* at this day, without any *Subordination* of the One to the Other.

It were endless to mention all

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Records and Precedents that might be quoted for the Eſtabliſhment of the Laws of *England* in *Ireland*; I ſhall therefore enter no farther into that Matter, but therein refer to Lord Chief Juſtice *Cook*, (a) *Pryn*, (b) *Reyly*, (c) *&c.*

(a) *Fourth Inſtit.*
(b) Againſt the 4th Inſtit.
(c) *Placita Parliamentaria.*

English Laws Eſtabliſhed in *Ireland.*

If now we Enquire, *What were thoſe Laws of England that became thus Eſtabliſhed in Ireland?* Surely we muſt firſt reckon the Great *Law of Parliaments*, which *England* ſo juſtly Challenges, and all *Mankind* have a *Right* to. By the *Law of Parliament*, I mean that Law whereby all Laws receive their Sanction, *The Free Debates and Conſent of the People, by Themſelves, or their Choſen Repreſentatives.* That this was a main Branch of the Engliſh Law Eſtabliſhed in this Kingdom, and the very Foundation of our Future Legiſlature, appears manifeſt from Parliaments being ſo early convok'd in *Ireland*, as the fore-mention'd Precedents expreſs.

Law of Parliament.

Mr. *Pryn* acknowledges one in *Hen.*II's time, (*pag.*259. againſt the 4th *Inſtit.*) but makes a very falſe Conclu-

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Concluſion, that there appears no Footſteps of a Parliament afterwards, till the third year of *Edward* the Second, becauſe the Acts of that Parliament are the firſt that are Printed in our Iriſh Statute-Book: For ſo we may argue the Parliaments of *England* to be of later Date than pretended, when we find the firſt Printed Acts in *Keeble* to be no older than the 9th of *Hen.* III. Whereas 'tis moſt certain, that Parliaments have been held in *England* ſome Ages before that.

Common Law.

After this *Great Law of Parliaments*, we may reckon the *Common Law* of *England*, whether it relates to Regulating and Setling of *Property*, and Eſtates in Goods or Land, or to the *Judiciary* and *Executive* parts of the Law, and the Miniſters and Proceſs thereof, or to *Criminal* Caſes. Theſe ſurely were all Eſtabliſh'd in this Country, by the three firſt Kings of *Ireland* of the *Norman* Race.

Statute Law.

Let us now conſider the ſtate of the *Statute Laws* of *England* under theſe

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theſe three Kings, and their Predeceſſors: For by the Iriſh Voluntary Submiſſion to, and Acceptance of the Laws and Government of *England*, we muſt repute them to have ſubmitted themſelves to theſe likewiſe; till a Regular Legiſlature was Eſtabliſh'd amongſt them, in purſuance of that Submiſmiſſion and Voluntary Acceptance.

Statute-Law of *England* from the Norman Conqueſt to *Hen. III.*

And here we ſhall find, that in thoſe Times, *viz.* from the *Norman* Conqueſt to *Henry* the Third's time incluſive, the Statute-Laws of *England* were very few and ſlender. 'Tis true, that before the 12th of *Hen.* III. we find amongſt the Engliſh Hiſtorians frequent mention of the Laws of *Edward the Confeſſor*, *William the Conquerour*, *Hen.* I. *Hen.* II. *King John*, and *Hen.* III. All which are only *Charters*, or ſeveral Grants of *Liberties* from the King; which nevertheleſs had the force of Acts of Parliament, and laid as great Obligations both upon Prince and People, as Acts of Parliament do at this day: Whereof we may read ſeveral Proofs in the *Princes Caſe*, *Cook*'s 8th *Report*. But theſe were only

only ſo many *Confirmations* of each other, and all of them *Sanctions of the Common Laws* and *Liberties* of the People of *England*, *ab Antiquo Uſitatæ & comprobatæ per totam terram & in quibus ipſi & eorum Patres nati & nutriti ſunt*, as the words of the Manuſcript *Chronicle of Litchfield* expreſs it.

Law of *Edward* the Confeſſor.

The Laws of *Edward the Confeſſor*, held in ſo great Veneration in Antient Times, *& per univerſum Regnum corroboratæ & confirmatæ, prius inventæ & Conſtitutæ fuerunt Tempore Regis Edgari Avi ſui. Verum tamen poſt mortem ipſius Regis* Edgari, *uſque ad Coronationem Sancti Regis* Edwardi (which was 67 years) *prædictæ Leges Sopitæ ſunt & penitus intermiſſæ. Sed poſtquam Rex* Edwardus *in Regno ſublimatus fuit Conſilio Baronum Angliæ Legem illam ſopitam Excitavit, Excitam Reparavit, Reparatam Decoravit, Decoratam Confirmavit ; & confirmatæ vocantur* Lex Sancti Regis Edwardi, *non quod* ipſe primus eam ad inveniſſet ; ſed quod Reparavit, Reſtituitque, (*a*) as the ſaid *Litchfield* Chronicle has it. Theſe Laws of

(a) *Selden Note & ſpecileg. ad eadmerum*, pag. 171

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of *Edward the Confeſſor* were tranſcribed by *Ingulphus Abbot of Croyland* under *William the Conqueror*, and are annexed to his Hiſtory.

Of *Wil.* Conq.

The Laws of *William the Conqueror* are but *a Confirmation* of the Laws of *Edward the Confeſſor*, with ſome ſmall *alterations*, as the very Letter of thoſe Laws themſelves expreſs it. (*b*) *Hoc quoque præcipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus Rebus adauctis his quas conſtituimus ad Utilitatem Anglorum.*

(b) *Leges W.* 1. *Cap.* 63. *apud Selden in notis ad eadmerum p.* 192.

Of *Hen. I.*

The Laws of *Henry* I. which are in the *Red Book of the Exchequer*, in the cuſtody of the Kings *Remembrancer* in *England*, are but a ſummary confirmation both of the Laws of *Edward the Confeſſor* and *William the Firſt*, as the Charter it ſelf expreſſes it, (*c*) *Lagam Regis* Edwardi *vobis Reddo cum illis emendationibus quibus Pater meus emendavit Conſilio Baronum ſuorum.*

(c) *Vid. Selden ut ſupra.*

Of *Hen II.*

The Laws of *Henry* II. called *Conſtitutiones Clarendoniæ*, and the *Aſſize of Clarendon* in the 2*d* part of *Cooks*

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Cooks Inſt. p. 6. are all but confirmations and vindications of the King's juſt Prerogative againſt the Uſurpations of the Pope and Clergy: As we find at large in *Chron. Gervaſii. Doroborn* p. 1387. Edit. Lond. an. 1652.

The Laws of *King John*, called *The Great Charter of King John*, granted in the 17*th* Year of his Reign, upon the Agreement made between him and his Barons at *Running-Mead* between *Staines* and *Windſor*, was but a *Confirmation* of the Laws of *Edward the Confeſſor* and *Henry the Firſt*, as (*d*) *Mat. Paris* relates it. *Anno Regis* Johannis 17. *venientes ad Regem magnates petierunt quaſdam Libertates & Leges Regis* Edwardi *cum aliis libertatibus ſibi & Regno Angliæ & Eccleſiæ Anglicanæ conceſſis confirmari prout in Charta Regis* Hen I. *aſcriptæ continentur.* The ſame Hiſtorian gives us alſo at large both *Charta Libertatum*, and *Charta de Foreſta*, which are not extant in the Rolls of thoſe times, nor to be found in any till the 28*th* of *Edward* I. and that but by *inſpeximus.*

of K. *John.*

(d) *Mat. Paris ad an.* 1215. *pag.* 253, *&c.*

The

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Of *Hen. III.* The Laws of *Henry* III. contain'd in *Magna Charta* and *Charta de Foreſta*, both which are called *Magnæ Chartæ Libertatis Angliæ*, and were eſtabliſh'd about the 9*th* Year of *Henry* III. are for the moſt part but *declaratory* of the common municipal Laws of *England*, and that too no *new* declaration thereof; for King *John* in the 17*th* year of his Reign had granted the like before, which was alſo call'd *Magna Charta*.

(a) *Cook's* Pref. to the 2d *Inſt.* (*a*) And by the Engliſh Statute 25 *Ed.* 1. *c.* 1. it is Enacted, That the *Great Charter*, and the *Charter of the Forreſt* be taken as the *Common Law of England.*

By what foregoes, I conceive, it is very clear, That all the *Charters* and *Grants of Liberties* from *Edward the Confeſſor's* time down to the 9*th* of *Henry the Third* were but *Confirmations* one of another, and all of them *Declarations*, and Confirmations of the *Common Law of England.* And by the ſeveral Eſtabliſhments, which we have formerly mention'd, of the Laws of *England* to be of force in *Ireland*:

Firſt

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First, in the 13*th* of *Henry* II. Secondly in the 12*th* of King *John*. Thirdly, in the 12*th* of *Henry* III. All those Laws and Customs of *England*, which by those several Charters were *Declared* and *Confirmed* to be the Laws of *England*, were establish'd to be of *force* in *Ireland*. And thus *Ireland* came to be govern'd by one and the same *Common Law* with *England*; and those Laws continue as part of the municipal and fundamental Laws of both Kingdoms to this day.

Engl. Statutes since the 9th. *Hen.III.* introduced in *Ireland.*

It now remains that we enquire, How the *Statute Laws* and *Acts of Parliament* made in *England since* the 9*th* of *Henry the Third* came to be of force in *Ireland*; And whether all or any of them, and which, are in force here, and when and how they came to be so.

And the first Precedent that occurs in our Books, of Acts of Parliament in *Ireland* particularly mentioning and confirming special Acts of Parliament in *England*, is found in a Marginal Note of Sir *Richard Bolton*'s formerly Lord Chief Baron of

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of the *Exchequer* in *Ireland*, affixed in his Edition of the *Iriſh Statutes* to Stat. 10 *Hen.* 7. *Cap.* 22. to this purport, That in 13 *Edw.* II. *by Parliament in this Realm of* Ireland *the Statutes of* Merton, *made the* 20th of *Hen.* II. *and the Statutes of* Marlbridge, *made the* 52 *of* Henry *the Third*; *The Statute of* Weſtminſter *the Firſt*, *made the* 3*d of* Edward *the Firſt*; *The Statute of* Glouceſter, *made the* 6*th of* Edward *the Firſt*; *And the Statute of* Weſtminſter *the Second*, *made the* 13*th of* Edward *the Firſt*, *were all confirm'd in this Kingdom*, *and all other Statutes which were of force in* England, *were referr'd to be Examin'd in the next Parliament*; *and ſo many as were then Allow'd and Publiſh'd, to ſtand likewiſe for Laws in this Kingdom.* *And in the* 10*th of* Henry *the Fourth*, *it was Enacted in this Kingdom of* Ireland, That the Statutes made in England ſhould not be of force in this Kingdom, unleſs they were Allow'd and Publiſh'd in this Kingdom by Parliament. *And the like Statute was made again in the* 29*th of* Henry *the Sixth*. *Theſe Statutes are not to be found in the* Rolls,

Statutes of *Merton*. *Marlebr*. *Weſtm*. *Glouceſt*.

Vid. Lib. Rubr. Scaccar. Dubl.

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Rolls, nor any Parliament Roll *of that time; but he* (Sir Richard Bolton) *had ſeen the ſame Exemplify'd under the Great Seal, and the* Exemplification *remaineth in the Treaſury of the City of* Waterford. Thus far the Note. If we conſider the frequent Troubles and Diſtractions in *Ireland*, we ſhall not wonder that theſe, and many other Rolls and Records, have been loſt in this Kingdom: For from the third year of *Edward* the Second, which was *Anno* 1310. through the whole Reigns of *Edward* III. *Richard* II. *Henry* IV. and *Henry* V. and ſo to the Seventh year of *Henry* the Sixth, *Anno* 1428. which is about 118 years, there are not any *Parliament Rolls* to be found, (*a*) yet certain it is, that divers Parliaments were held in *Ireland* in thoſe times. (*b*) The ſame may be ſaid from *Henry* the Second's coming into *Ireland*, *Anno* 1172. to the third year of *Edward* the Second, *Anno* 1310. about 138 years.

(*a*) Annals of *Ireland*, at the End of *Camden's Britan.* Edit. 1637. page 196, 197, *&c.*

(*b*) *Ibid.* p. 160. *Pryn* againſt the 4th Inſtit. Chap. 76.

Perhaps it may be ſaid, That if there were ſuch Statutes of *Ireland* as the ſaid Acts of the 10th of

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Henry the Fourth, and the 29th of *Henry* the Sixth; As they ſhew, that the Parliaments of *Ireland* did think that Engliſh Acts of Parliament could not bind *Ireland*; yet they ſhew likewiſe, that even in thoſe days the Parliaments of *England* did claim this Superiority; or elſe, to what purpoſe were the ſaid Acts made, unleſs in denial of that Claim?

All which I hope may be readily granted without any prejudice to the Right of the Iriſh Parliaments: There is nothing ſo common, as to have one Man claim another Mans Right: And if bare *Pretence* will give a *Title*, no Man is ſecure: And it will be yet worſe, if when another ſo *Pretends*, and I inſiſt on *my Right*, my Juſt Claim ſhall be turn'd to my Prejudice, and to the Diſparagement of my Title.

We know very well that many of the Judges of our Four Courts have been from time to time ſent us out of *England*; and ſome of them may eaſily be ſuppoſed to come

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come over hither *Prepoſſeſs'd* with an Opinion of our Parliaments being ſubordinate to that of *England*. Or at leaſt, ſome of them may be *Scrupulous*, and deſirous of full *Security* in this Point; and on their Account, and for their Satisfaction, ſuch Acts as aforeſaid, may be deviſed, and Enacted in *Ireland*. But then, God forbid, that theſe Acts ſhould afterwards be laid hold of to a clear other intent than what they were framed for; and inſtead of Declaring and Securing our Rights, ſhould give an Handle of Conteſt, by ſhewing that our Rights have been queſtion'd of Antient Time.

In concluſion of all, If this *Superiority* of the Parliament of *England* have been *Doubted* a great while ago, ſo it has been as great a while ago Strenuouſly *Oppoſed*, and Abſolutely *Denied* by the Parliaments of *Ireland*. And by the way, I ſhall take Notice, That from whenceſoever this Antient *Pretence* of *Ireland*'s *Subordination* proceeded in thoſe days, it did not ariſe from the *Parliament* of *Eng-*

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land it ſelf: For we have not one ſingle Inſtance of an Engliſh Act of Parliament *Expreſly Claiming* this Right of Binding us: But we have ſeveral Inſtances of Iriſh Acts of Parliament, *Expreſly Denying* this *Subordination*, as appears by what foregoes.

Afterwards by a Statute made in *Ireland* the 18th of *Hen.* VI. *Cap.* 1. All the Statutes made in *England* againſt the *Extortions* and *Oppreſſions* of *Purveyors*, are Enacted to be *holden and kept in all Points, and put in Execution in this Land of Ireland.*

And in the 32d year of *Henry* the Sixth, *Cap.*1. by a Parliament in *Ireland*, 'tis Enacted, *That all the Statutes made againſt* Proviſors *to the Court of* Rome, *as well in* England *as in* Ireland, *be had and kept in force.*

After this, in a Parliament at *Drogheda* the 8th of *Edward* IV. *cap.*1. it was Ratify'd, That the *Engliſh* Statute againſt *Rape*, made the 6th of *Richard* the Second, ſhould

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ſhould be of Force in *Ireland* from the 6th day of *March* laſt paſt: *And that from henceforth the ſaid Act, and all other Statutes and Acts made by Authority of Parliament within the Realm of* England, *be Ratify'd and Confirm'd, and Adjudged by the Authority of this Parliament in their Force and Strength, from the ſaid ſixth day of March.* We ſhall hereafter have occaſion of taking farther Notice of this Statute upon another Account.

Laſtly, In a Parliament held at *Drogheda* the 10th of *Henry* the Seventh, *cap.*22. it is Enacted, *That all Statutes* late (that is, as the (*a*) Learned in the Laws expound it, *before that time*) *made in* England, *concerning the Common and Publique Weal of the ſame, from henceforth be Deem'd effectual in Law, and be Accepted, Uſed and Executed within this Land of Ireland in all Points,* &c.

All Engliſh Statutes before the 10th of *Hen. VII.* in force in *Ireland.*

(*a*) *Cook's* 4th Inſtit. *Cap.*76. P.351.

(*b*) And in the 14th year of the ſame Kings Reign, in a Parliament held at *Triſtle-Dermot*, it was Enacted, That all Acts of Parliament

(*b*) *Vid.* Iriſh Stat.

made in *England* for Punishing *Customers*, *Controulers*, and *Searchers*, for their Misdemeanors; or for Punishment of *Merchants* or *Factors*, be of Force here in *Ireland*, *Provided* they be first Proclaim'd at *Dublin*, *Drogheda*, and other Market-Towns.

Thus we see by what Steps and Degrees all the Statutes which were made in *England* from the time of *Magna Charta*, to the 10th of *Henry* the Seventh, which did concern the Common Publick Weal, were Receiv'd, Confirm'd, Allow'd, and Authoriz'd to be of Force in *Ireland*; all which was done by *Assent* of the *Lords Spiritual* and *Temporal*, and the *Commons* in the *Parliament of Ireland* Assembled, and *no Otherwise*.

English Statutes Declaratory of the Common Law in force in *Ireland*.

We shall next Enquire, Whether there are not other Acts of the English Parliament, both *before* and *since* the 10th of *Henry* the Seventh, which *were* and *are* of Force in *Ireland*, tho' not Allow'd of by Parliament in this Kingdom. And we shall find, That by the Opini-

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on of our beſt Lawyers, *there are divers ſuch*; but then they are only ſuch as are *Declaratory* of the *Antient Common Law* of *England*, and not *introductive* of any *New Law*: For theſe become of Force by the firſt *General Eſtabliſhment* of the *Common Laws* of *England* in this Kingdom, under *Henry* the Second, King *John*, and *Henry* the Third; and need no particular Act of *Ireland* for their Sanction.

Engliſh Acts introductive of a New Law, not of force in *Ireland*.

As to thoſe Engliſh Statutes ſince the 10th of *Henry* the Seventh, that are *Introductive* of a *New* Law, it was never made a Queſtion whether they ſhould Bind *Ireland*, without being Allow'd in Parliament here; till of very late years this Doubt began to be moved; and how it has been Carried on and Promoted, ſhall Appear more fully hereafter.

I ſay, *Till of very late years*; for the *Antient* Precedents which we have to the contrary, are very numerous. Amongſt many, we ſhall mention the following Particulars.

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In the 21th of *Henry* the 8th an Act was made in *England* making it Felony in a Servant that runneth away with his Masters or Mistresses Goods. This Act was not receiv'd in *Ireland* till it was Enacted by a Parliament held here in the 33d of *Henry* the 8th. c. 5. Sef. 1.

In the 21*th* of *Henry* VIII. c. 19. there was a Law made in *England*, That all Lords might Distrain on the Lands of them holden, and make their Avowry not naming the Tenant, but the Land. But this was not of force in *Ireland* till Enacted here in the 33*d* of *Henry* VIII. C. 1. Sef. 1.

An Act was made in *England*, *anno* 31. *Henry* VIII. That Joint-Tenents and Tenents in Common should be compelled to make Partition, as Coparceners were compellable at Common Law. But this Act was not Receiv'd in *Ireland* till Enacted here *An.* 33. *Henry* VIII. c. 10.

Anno 27. *Henry* VIII. c. 10. The Statute for Transferring Uſes into Poſſeſſion was made in *England*; but not admitted in *Ireland* till 10. *Car.* 1. Sef. 2.

In like manner, the Engliſh Statute 33. *Henry* VIII. c. 1. directing how Lands and Tenements may be diſpos'd by Will, *&c.* was not of force in *Ireland* till 10. *Car.* 2. Sef. 2.

The Act of Uniformity of Common Prayer and Adminiſtration of the Sacraments was made in *England* the 1ſt. of *Eliz.* c. 2. but was not eſtabliſh'd in *Ireland* till the 2*d.* of *Eliz.* c. 2. And ſo that of *England* 14. *Car.* 2. c. 14. was not receiv'd in *Ireland* till 17. & 18. *Car.* 2 c. 6.

The Statute againſt Wilful Perjury made in *England* 5. *Eliz.* c. 9. was not Enacted in *Ireland* till 28 *Eliz.* c. 1.

So the Engliſh Act againſt Witchcraft and Sorcery made 5 *Eliz.* c. 16.

And

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And another Act againſt Forgery 5 *Eliz.* c. 14. were neither of them in force in *Ireland* till the 28*th* of Her Reign, Cap. 3 and 4.

The Engliſh Statutes againſt Pirates was made the 28th of *Hen.* 8. c. 15. but not in *Ireland* till the 12th of King *James*, c. 2.

In *England* an Act was made the 27th of *Eliz.* c. 4 againſt Fraudulent Conveyances; but it was not in force in *Ireland* till Enacted here the 10th of *Charles*, c. 3. Seſ. 2.

In the 15th year of King *Charles* the 1ſt. in a Parliament held at *Dublin* there were Six Engliſh Statutes made Laws of this Kingdom, with ſuch Alterations as beſt fitted them to the State thereof, *viz.*

21 *Jac.* c. 14. For pleading the General Iſſue in Intruſions brought by the King, by Chap. 1. of the Iriſh Statutes.

31 *Eliz.* c. 2. For Abridging of Proclamations on Fines, by Chap. 2.

2 and

2 and 3 *Edw.* 6. c. 8. Concerning Offices before the Eſcheator, by Chap. 4.

31 *Eliz.* c. 1. Diſcontinuance of Writs of Error in the Exchequer Chamber, by Chap. 5.

8 *Eliz.* c.4. and 18 *Eliz.* c.7. concerning Clergy, by Chap. 7.

24 *Hen.* 8. c. 5. Concerning Killing a Robber, by Chap. 9.

There are Six Engliſh Statutes likewiſe paſſed in the time of King *Charles* the 2d. upon and ſoon after the Reſtoration, ſome of which were not paſſed into Laws in *Ireland* till a year, two or three, afterwards: As will appear by conſulting the Statute Books. (*a*)

(*a*) Iriſh Stat.
13 *C.* 2. *c.* 2.
13 *C.* 2. *c.* 3.
14 & 15 *C.* 2. *c.* 1.
14 & 15 *C.* 2. *c.* 19.
17 & 18 *C.* 2. *c.* 3.
17. & 18 *C.* 2. *c.* 11.
Engliſh Stat.
12 *C.* 2. *c.* 12.
12 *C.* 2. *c.* 3.
12 *C.* 2. *c.* 14.
12 *C.* 2. *c.* 24.
12 *C.* 2. *c.* 33.
16 & 17 *C.* 2. *c.* 5.

And in the Firſt year of *William* and *Mary*, Seſ. 2. c.9. an Act paſſed in *England* declaring all *Attainders and other Acts made in the late pretended Parliament under King* James *at* Dublin *void*: But was not Enacted here in *Ireland* till the 7th year of K. *William* c.3. And this was thought requiſite to be done upon mature conſideration thereon before the

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the King and Council of *England*,* notwithſtanding that the Engliſh Act does *particularly name Ireland*, and was wholly deſign'd for, and relates thereto.

*For we had two ſeveral Acts tranſmitted to us at different times, to this very purpoſe. One we rejected in the Lord *Sydneys* Government, t'other we paſs'd under the Lord *Capell*.

The like may we find in ſeveral other Statutes of *England* paſſed ſince his preſent Majeſties Acceſſion to the Throne, which have afterwards been paſſed here in *Ireland*, with ſuch Alterations as make them practicable and agreeable to this Kingdom. Such as are amongſt others, the Act for *Diſarming Papiſts*. The Act of *Recognition*. The Act for taking away *Clergie* from ſome Offenders. The Act for taking *Special Bail* in the Country, &c. The Act againſt *Clandeſtine Mortgages*. The Act againſt *Curſing and Swearing*.

Theſe, with many more, are to to be found in our Statute Books in the ſeveral Reigns of *Henry* the 8th. *Edward* the 6th. Queen *Elizabeth*, King *James*, King *Charles* the 1ſt and 2d. and King *William*. But it is not to be found in any Records

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Records in *Ireland*, that ever any Act of Parliament introductive of a new Law made in *England* ſince the time of King *John*, was by the judgment of any Court received for Law, or put in Execution in the Realm of *Ireland* before the ſame was Confirmed and Aſſented to by Parliament in *Ireland*.

And thus I preſume we have pretty clearly made out our *Fourth Enquiry* forementioned: and ſhewn plainly *the ſeveral ſteps by which the Engliſh form of Government, and the* Engliſh Statute Laws *were received in this Kingdom*; and that this was wholly by the *Peoples conſent in Parliament*, to which we have had a very *antient Right*, and as full a Right as our next Neighbours can pretend to or challenge.

I ſhall now conſider the Objections and Difficulties that are moved on this Head drawn from Precedents, and Paſſages in our Law-Books that may ſeem to prove the contrary.

Objections Anſwer'd.

First

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Objection from the Stat. of Rape.

Firſt 'tis urg'd, That in the Iriſh *Act concerning Rape* paſſed *anno* 8 *Edward* 4, c. 1. 'tis expreſſed, That a Doubt was conceiv'd whether the Engliſh Statute of the 6th of *Richard* the 2d. c. 6. ought to be of force in *Ireland* without a Confirmation thereof in the Parliament of *Ireland*. Which ſhews (as ſome alledg) that even in thoſe days it was held by ſome, That an Act of of Parliament in *England* might bind *Ireland* before it be conſented to in Parliament here.

But I concieve this Gloſs is rais'd meerly for want of Expreſſing the Reaſon of the ſaid Doubt in the Iriſh Statute of the 8th of *Edward* the 4th. c. 1. which we may reaſonably judge was this. By the Statute of *Weſtminſter* the 2d. c. 34. a Woman that eloped from her Husband and lived with the Adulterer, or a Wife that being firſt Raviſh'd did afterwards conſent, and lived with the Raviſher, ſhe ſhould looſe her Dower. This Statute of *Weſtminſter* the 2d, was made of force in *Ireland* by an Act paſſed here the

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the 13th of *Edward* the 2d, as we have ſeen before, pag. 68, 69. Afterwards by the Engliſh Statute of the 6th of *Rich.* the 2d. c.6, there was a farther addition made to the ſaid Statute of *Weſtminſter* the 2d. to this effect, That a Maiden or Wife being Raviſhed, and afterwards conſenting to the Raviſhers, as well the Raviſher as ſhe that was Raviſhed ſhall be diſabled to claim all Inheritance or Dower after the death of her Husband or Anceſtor.

On this account the Doubt was here raiſed in *Ireland* in the 8th of *Edward* the 4th. c. 1. Whether this latter Engliſh Statute of the 6th of *Richard* the 2d. c. 6. were not in force in *Ireland* by virtue of the Iriſh Statute of the 13th of *Edward* the 2d. which confirmed the Statute of *Weſtminſter* the 2d. c. 34. And for ſetling this Doubt the ſaid Statute of the 8th of *Edward* the 4th c. 1. was paſſed in *Ireland*, and we find very good reaſon for the ſaid Doubt. For the Engliſh Statute of the 6th of *Richard* the 2d. c. 6. contained but a ſmall addition

to

to the Statute of *Weſtminſter* the 2d c. 34. and we ſee that even this addition it ſelf was judged not to be of force in *Ireland* till Enacted here. For the ſaid Iriſh Statute of the 8th of *Edward* the 4th. c. 1. makes the ſaid Statute of the 6th of *Rich.* 2d. *c.* 6. of Force in *Ireland* only from the 6th of *March*, then laſt paſt.

'Tis urg'd ſecondly, That tho' perhaps ſuch Acts of Parliament in *England* which do not *Name Ireland*, ſhall not be conſtrued to Bind *Ireland*, yet all ſuch Engliſh Statutes as *mention Ireland*, either by the *General Words* of *all his Majeſty's Dominions*, or by *particularly Naming* of *Ireland*, are and ſhall be of Force in this Kingdom.

This being a Doctrine firſt broach'd Directly (as I conceive) by *Will. Huſſey*, Lord Chief Juſtice of the Kings Bench in *England*, in the firſt year of *Henry* the Seventh, and of late Revived by the Lord Chief Juſtice *Cook*, and ſtrongly urged, and much rely'd upon in theſe latter Days ; I ſhall take the Liberty of Enlarging thereon, tho'

I

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I venture thereby to ſwell this Pamphlet to a ſize greater than I deſire or deſign'd.

Object. Engliſh Statutes comprehending *Ireland* by general Words.

Firſt therefore, As to ſuch Engliſh Statutes as ſeem to comprehend *Ireland*, and to Bind it, under the *General Words of all his Majeſty's Dominions* or *Subjects*, whatever has been the Opinion of Private and Particular Lawyers in this Point, I am ſure the Opinions of the Kings of *England*, and their Privy Council, have been otherwiſe: 'Tis well known ſince *Poyning*'s Act in *Ireland*, the 10th of *Henry* the Seventh, no Act can paſs in our Parliament here, till it be firſt Aſſented to by the King and Privy Council of *England*, and Tranſmitted hither under the Broad Seal of *England*: Now the King and his Privy Council there, have been ſo far from ſurmiſing that an Act of Parliament of *England*, mentioning only in General *All the Kings Dominions*, or *Subjects*, ſhould Bind *Ireland*, that they have clearly ſhewn the contrary, by frequently Tranſmitting to *Ireland*, to be paſs'd into Laws here, Engliſh Sta-

tutes, wherein the *General Words of all the Kings Dominions* or *Subjects* were contain'd; which would have been to no purpoſe, but meerly *Actum Agere*, had *Ireland* been Bound *before* by thoſe Engliſh Statutes.

Of this I ſhall give the following Examples, amongſt many others.

Act againſt Appeals to *Rome.*

The Act of Parliament in *England* againſt *Appeals to Rome*, 24 *Hen.* 8. c. 12. by expreſs words extends to all his Majeſties Dominions, yet the ſame was not in force, nor receiv'd in *Ireland*, till it was Enacted by Parliament there, the 28th of *Hen.*8. c.6.

Acts of Firſt Fruits and Faculties.

In like manner the Statutes made in *England* concerning *Firſt Fruits*, 26 *Hen.*8.c.3. and the Act of *Faculties*, (a) 25 *Hen.*8. c. 21. though each of them by expreſs words comprize *All his Majeſties Subjects and Dominions*, were not receiv'd as Laws in *Ireland*, till the former was Enacted there, 28 *H.*8.c.4. and the latter the 28 *Hen.*8. c. 19. and ſo the

(a) Title in the Engliſh Statutes is, *No Impoſition ſhall be paid to the Biſhop of* Rome.

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the Statute Reſtoring to the Crown all Juriſdiction Eccleſiaſtical made in *England*, *Anno* 1 *Eliz.* c. 1. and therein giving Power to Erect an Eccleſiaſtical *High-Commiſſion-Court* in *England* and *Ireland*, yet was not of Force in *Ireland* till Enacted there, *Anno* 2 *Eliz.* c. 1. And tho' the ſaid Engliſh Act, in relation to Erecting ſuch an High-Commiſſion Court, was Repeal'd 17 *Car.* 1. c. 11. and the Repeal confirm'd the 13 *Car.* 2. c. 12 And the late Bill of Rights, 1 *W.* and *M. Seſ.* 2. c. 2. in *England*, has damn'd all ſuch Courts. Yet the Act in *Ireland* 2 *Eliz.* c. 1. remains ſtill in force here; and ſo it was lately declar'd here by the Lord High-Chancellour *Porter*, Lord Chief Juſtice *Reynel*, Lord Chief Baron *Hely*, Mr. Juſtice *Cox*, Mr. Juſtice *Jeffreyſon*, in the Caſe of Dr. *Thomas Hacket*, late Biſhop of *Down*, who was depriv'd of the ſaid Biſhoprick by ſuch a Commiſſion, for great Enormities; the Commiſſioners being Dr. *Dopping* late Biſhop of *Meath*, Dr. *King*, the preſent Biſhop of *London-Derry*, and Dr. *Wiſeman*, late Biſhop of *Dromore*.

High-Commiſſion-Court.

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By the ſame Reaſon *Scotland* may be bound.

And truly I ſee no more Reaſon for Binding *Ireland* by the Engliſh Laws under the *General Words of all his Majeſties Dominions or Subjects*, than there is for Binding *Scotland* by the ſame; for *Scotland* is as much his *Dominion*, and *Scotsmen* as much his *Subjects* as *Ireland* and *Iriſh-men*: If it be ſaid, That *Scotland* is an Antient *Separate* and *Diſtinct* Kingdom from *England*; I ſay, So is *Ireland*: The Difference is, *Scotland* continued *ſeparate* from the Kings of *England* till of *late years*, and *Ireland* continued *ſeparate* from *England* but a very *little while* in the Perſon of King *John*, before the Death of his Father, and of his Brother *Richard* the Firſt, without iſſue. But then 'tis to be conſidered, that there was a *Poſſibility*, or even a *Probability*, that *Ireland* might have continued *ſeparate* from the Crown of *England*, even to this very day, if *Richard* the Firſt had left behind him a Numerous Progeny.

Second-

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Secondly, As to ſuch Engliſh Statutes as particularly *Name Ireland*, and are therefore ſaid to be of Force in this Kingdom, tho' never Enacted here; I ſhall conſider only the more *Antient Precedents* that are offered in Confirmation of this Doctrine: For as to thoſe of *later Date*, 'tis theſe we complain of, as bearing hard on the *Liberties* of this Country, and the *Rights* of our Parliaments, and therefore *theſe* ought not to be produced as Arguments againſt us. I preſume, if I can ſhew, that the *Antient* Precedents that are produced, *do not conclude* againſt us; it will follow that the *Modern* Inſtances given, *ought not to conclude* againſt us; that is to ſay plainly, Theſe *ought* not to have been made as they are, as wanting Foundation both from Authority and Reaſon.

Engliſh Statutes naming *Ireland*.

The *Antient* Precedents of Engliſh Statutes, particularly *Naming Ireland*, and ſaid to be made in *England* with a Deſign of Binding *Ireland*, are chiefly theſe three:

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1. *Statutum Hiberniæ*, 14 *H.* 3.

2. *Ordinatio pro Statu Hiberniæ*, 17 Edw. 1.

3. And the Act that all *Staple* Commodities paſſing out of *England* or *Ireland*, ſhall be carried to *Callis*, as long as the *Staple* is at *Callis*, 2 *Hen.* 6. c. 4. on which *Huſſey* delivered his Opinion, as we ſhall ſee more fully hereafter.

Theſe Statutes, eſpecially the two firſt, being made for *Ireland*, as their Titles import, have given occaſion to think, that the Parliament of *England* have a *Right* to make Laws for *Ireland*, without the *Conſent* of their Choſen *Repreſentatives*. But if we Enquire farther into this matter, we ſhall find this Concluſion not fairly Deduced.

Firſt, The *Statutum Hiberniæ*, 14 *Hen.* 3. as 'tis to be found in the Collection of Engliſh Statutes, is plainly thus: The Judges in *Ireland* ..... concei-

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conceiving a Doubt concerning Inheritances devolved to Sisters or Coheirs, *viz.* Whether the younger Sisters ought to hold of the Eldest Sister, and do Homage unto her for their Portions, or of the Chief Lord, and do Homage unto him; therefore *Girald Fitz Maurice*, the then Lord Justice of *Ireland*, dispatcht four Knights to the King in *England*, to bring a Certificate from thence of the *Practice* there used, and what was the *Common-Law* of *England* in that *Case*. Whereupon *Hen.*3. in this his Certificate or Rescript, which is called *Statutum Hiberniæ*, meerly informs the Justice what the *Law* and *Custom* was in *England*, *viz.* That the Sisters ought to hold of the Chief Lord, and not of the Eldest Sister. And the close of it commands, that *the foresaid Customs that be used within our Realm of* England *in this Case, be Proclaimed throughout our Dominion of* Ireland, *and be there observ'd. Teste meipso apud* Westminst. 9. Feb. *An. Reg.* 14.

From whence 'tis manifest, that this *Statutum Hiberniæ* was no

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more than a Certificate of what the *common Law of England* was in that Caſe, which *Ireland* by the *Original Compact* was to be governed by. And ſhews no more, that therefore the Parliament of *England* may bind *Ireland*, than it would have proved, that the Common Wealth of *Rome* was ſubject to *Greece*, if, after *Rome* had received the Law of the *Twelve Tables*, they had ſent to *Greece* to know what the Law was, in ſome Special Caſe.

Ordinatio pro Statu Hiberniæ.

The Statute call'd *Ordinatio pro Statu Hiberniæ*, made at *Nottingham* the 17th of *Edward* the Firſt, and to be found in *Pultons* Collection *pag.* 76. *Edit. Lond.* 1670. was certainly never Received, or of Force, in *Ireland*. This is Manifeſt from the very firſt Article of that Ordnance, which Prohibits the *Juſtice of Ireland or others the Kings Officers, there to Purchaſe Land in that Kingdom, or within their reſpective Baliwicks without the Kings Licence, on pain of Forfeitures.* But that this has ever been Otherwiſe, and that the Lords Juſtices, and other Offi-

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cers here have Purchas'd Lands in *Ireland*, at their own Will and Pleasure, needs no Proof to thoſe who have the leaſt knowledge of this Country. Nor does it appear by any Inquiſition, Office, or other Record, that any one ever Forfeited on that Account.

Moreover this *Ordinatio pro Statu Hiberniæ*, is really in it ſelf *No Act of Parliament*, but meerly an Ordinance of the *King* and his *Privy Council* in *England*; which appears as well from the Preamble to the ſaid Ordinance, as from this Obſervation likewiſe, That King *Edward* the Firſt held no Parliament in the 17th year of his Reign: Or if this were a Parliament, this *Ordinatio pro Statu Hiberniæ*, is the *only Act* thereof that is Extant: But 'tis very improbable, that only this *ſingle Ordinance* ſhould Appear, if any ſuch Parliament were call'd together.

Thirdly, As to the *Staple-Act*, 2 *Hen.*6. c.4. which expreſly names *Ireland*, and *Huſſey*'s Opinion thereon. The Caſe, as we find it in the Year-

Staple-Act.]

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Merchants of *Waterford*'s Case.

Year-Books of *Mich.* 2 *Rich.* 3. fol. 11. and *Mich.* 1 *Hen.* 7. fol. 3. is in ſhort thus: The Merchants of *Waterford* having Ship'd off ſome Wooll, and conſign'd it to *Sluice* in *Flanders*, the Ship by ſtreſs of Weather was put in at *Callis*, where Sir *Thomas Thwaits*, Treaſurer of *Callis*, ſeized the ſaid Wooll as forfeited, half to himſelf, and half to the King, by the ſaid Statute; hereupon a Suit was commenced between the ſaid Merchants and the ſaid Treaſurer, which was brought before all the Judges of *England* into the *Exchequer* Chamber: The Merchants pleaded the King's *Licenſe* to the Citizens of *Waterford* and their Succeſſors, for carrying Wooll where they pleaſed; and the Queſtions before the Judges were two, Viz. *Whether this Staple-Act Binds Ireland*; And Secondly, *Whether the King could grant his* Licenſe *contrary to the Statute, and eſpecially where the Statute gives half the Forfeiture to the Diſcoverer.*

The firſt Point only relates to our preſent purpoſe; and herein we find the foreſaid Year-Book of 2 *Rich.*

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*Rich.*3. fol.12. to Report it thus: *Et ibi* (in the Exchequer Chamber) *quoad Primam Queſtionem Dicebant quod Terr. Hibern. inter ſe habent Parliament. & omnimodo Cur. prout in Angl. & per Idem Parliamentum faciunt Leges & Mutant Leges & non Obligantur per Statuta in Anglia, quia non hic habent Milites Parliamenti* (and is not that an unanſwerable Reaſon?) *ſed hoc intelligitur de terris & rebus in terris illis tantum efficiendo; ſed Perſonæ eorum ſunt Subject. Regis & tanquam Subjecti erunt Obligati ad aliquam rem extra Terram illam faciend. contra Statut. ſicut habitantes in Caleſia, Gaſcoignie, Guien, &c. dum fuere Subjecti; & Obedientes erunt ſub Admiral. Angl. de re fact. ſuper Altum Mare; & ſimilit. Brev. de Errore de Judicio reddit. in Hibern. in Banco Reg. hic in Angl.*

I have *verbatim* tranſcribed this Paſſage out of the foreſaid Year-Book, that I might be ſure to omit nothing that may give the Objection its full weight. And all that I can anſwer to it, is this:

1. That

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1. That when the foresaid Case came a second time under the Consideration of the Judges in the *Exchequer* Chamber in *Mich.* 1 *Hen.* 7. fol. 3. we find it Reported thus: *Hussey the Chief Justice said, That the Statutes made in* England *shall bind those of* Ireland, *which was not much gain-said by the other Judges, notwithstanding that some of them were of* a contrary Opinion *the last Term in his Absence.* How the Presence and Opinion of the Chief Justice came to influence them now, I leave the Reader to judge.

2. That *Brook* in Abridging this Case of the first of *Hen.* 7. fol. 3. Title *Parliament*, Sec. 90. adds, *Tamen Nota, That Ireland is a Kingdom by it self, and hath Parliaments of its own*; intimating thereby, That therefore *Hussey's Opinion* herein was *Unreasonable.*

3. That 'tis manifest, if *Hussey* mean by his words, That *All* Acts of Parliament in *England* shall bind *Ireland*, it is directly contrary to the

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the Judges Opinion in the ſecond of *Richard* the Third, before recited; for *within* the Land of *Ireland*, they are all poſitive, That the Authority of the Parliament of *England* will not Affect us. They ſeem at the utmoſt reach to extend the Juriſdiction of the Engliſh Parliament over the Subejcts of *Ireland*, *only* in relation to their Actions beyond Seas, out of the Realm of *Ireland*, as they are the *King of England's Subjects*; but *even This* will Appear Unreaſonable, when we conſider, that by the ſame Argumentation, *Scotland* it ſelf may be bound by Engliſh Laws, in relation to their Foreign Trade, as they are the *King of Englands Subjects*. The Queſtion is, Whether *England* and *Ireland* be two Diſtinct Kingdoms, and whether they have each their Reſpective Parliaments; neither of which will be deny'd by any Man: And if ſo, there can be no Subordination on either ſide, each is compleat in its own Juriſdiction, and ought not to interfere with t'other in any thing. If *being the King of England's Subjects*, be a Reaſon why

we

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we ought to ſubmit to Laws, (in relation to our Trade abroad, in places where the Parliament of *England* has no Juriſdiction) *which have not receiv'd our Aſſent*; the People of *England* will conſider whether they alſo are not the King's Subjects, and may therefore (by this way of Reaſoning) be bound by Laws which the King may Aſſign them without their Aſſent, in relation to their Actions *Abroad*, or Foreign Trade: Or whether they had not been Subjects to the *King of France*, had our Kings continu'd their Poſſeſſion of that Country, and there kept the Seat of the Monarchy; and then, had *France* been ſtronger than *England*, it might ſeem that the Subjects of theſe Kingdoms might have been bound by Laws made at *Paris*, without their own Conſent. But let this Doctrine never be mention'd amongſt the *Free-born* Subjects of theſe Nations.

Thus I have done with the *Three Principal* Inſtances that are uſually brought againſt us, on the Streſs that is laid on Engliſh Acts of Parlia-

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Parliament, particularly *Naming Ireland.*

There have been other Statutes or Ordinances made in *England* for *Ireland*, which may reaſonably be of force here, becauſe they were made and Aſſented to by our own Repreſentatives. Thus we find in the *White Book* of the Exchequer in *Dublin*, in the 9th year of *Edward* the Firſt, a Writ ſent to his Chancellour of *Ireland*, wherein he mentions *Quædam Statuta per nos de Aſſenſu Prelatorum Comitum Baronum & Communitates Regni noſtri Hiberniæ, nuper apud Lincoln & quædam alia Statuta poſtmodum apud Eborum facta.* Theſe we may ſuppoſe were either Statutes made at the Requeſt of the States of *Ireland*, to *Explain* to them the *Common Law of England*; or if they were introductive of *New Laws*, yet they might well be of force in *Ireland*, being Enacted by the Aſſent of our own Repreſentatives, The Lords Spiritual and Temporal, and Commons of *Ireland*; as the Words afore-mention'd do ſhew: And indeed, theſe are Inſtances ſo far from

Members from *Ireland* in the Parliament of *England.*

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from making *againſt* our Claim, that I think nothing can be more plainly *for* us; for it manifeſtly ſhews, that the King and Parliament of *England* would not Enact Laws to Bind *Ireland*, without the *Concurrence* of the Repreſentatives of this Kingdom.

Formerly, When *Ireland* was but thinly Peopled, and the Engliſh Laws not fully currant in all parts of the Kingdom, 'tis probable that then they could not frequently Aſſemble with conveniency or ſafety to make Laws in their own Parliaments at home; and therefore during the Heats of Rebellions, or Confuſion of the Times, they were forced to Enact Laws in *England*. But then this was always by their proper *Repreſentatives*: For we find that in the Reign of *Edward* the Third, (and by what foregoes, 'tis plain 'twas ſo in *Edward* the Firſt's Time) Knights of the Shire, Citizens, and Burgeſſes, were Elected in the Shires, Cities and Burroughs of *Ireland*, to ſerve in Parliament in *England*, and have ſo ſerved accordingly. For amongſt the

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the Records of the *Tower* of *London*, *Rot. Clauſ.* 50. *Edw.* 3. *Parl.* 2. Membr. 23. We find a Writ from the King at *Weſtminſter*, directed to *James Butler*, Lord Juſtice of *Ireland*, and to *R.* Archbiſhop of *Dublin*, his Chancellour, requiring them to iſſue Writs under the Great Seal of *Ireland*, to the ſeveral Counties, Cities and Burroughs, for ſatisfying the Expences of the Men of that Land, *who laſt came over to ſerve in Parliament in England.* And in another Roll the 50th of *Edw.* III. Membr. 19. On Complaint to the King by *John Draper*, who was Choſen Burgeſs of *Cork* by Writ, and ſerved in the Parliament of *England*, and yet was deny'd his Expences by ſome of the Citizens, Care was taken to re-imburſe him.

If from theſe laſt mention'd Records, it be concluded that the Parliament of *England* may *Bind Ireland*; it muſt alſo be Allow'd that the People of *Ireland* ought to have their *Repreſentatives* in the Parliament of *England*. And this, I believe we ſhould be willing enough

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to embrace; but this is an Happiness we can hardly hope for.

This ſending of Repreſentatives out of *Ireland* to the Parliament in *England*, on ſome occaſions, was found in proceſs of time to be very Troubleſome and Inconvenient; and this, we may preſume, was the Reaſon, that afterwards, when Times were more ſettled, we fell again into our old Track, and regular courſe of Parliaments in our own Country: and hereupon the Laws afore-noted, pag. 64. were Enacted, Eſtabliſhing that *no Law made in the Parliament of England, ſhould be of force in Ireland, till it was Allow'd and Publiſh'd in Parliament here.*

Modern Acts of the Parliament of *England*, naming *Ireland*.

I have ſaid before, pag. 85. that I would only conſider the *more Antient Precedents* that are offered to prove, That Acts of *England particularly Naming Ireland*, ſhould bind us in this Kingdom; and indeed it were ſufficient to ſtop here, for the Reaſon above alledged. However, I ſhall venture to come down lower, and to enquire into the *Modern* Prece-

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Precedents of Engliſh Acts of Parliament alledged againſt us: But ſtill with this Obſervation, That 'tis theſe we *Complain againſt* as Innovations, and therefore they *ought* not to be brought in Argument againſt us.

I do therefore again aſſert, that before the Year 1641. there was no Statute made in *England* introductory of a *New Law* that interfered with the Right which the People of *Ireland* have to make Laws for themſelves, except only thoſe which we have before mentioned, and which we have diſcuſs'd at large, and ſubmit to the Readers Judgment.

But in the Year 1641. and afterwards in *Cromwel*'s time, and ſince that, in King *Charles* II. and again very lately in King *William*'s Reign, ſome Laws have been made in *England* to be of *Force* in *Ireland*. But how this came to paſs, we ſhall now Enquire.

In the 17th Year of K. *Charles* I. which was in the Year 1642. there

Acts in favour of Adventurers in 1641.

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were three or four Acts of Parliament made in *England* for incouraging *Adventurers* to raiſe Money for the ſpeedy ſuppreſſion of the Horrid Rebellion which broke out in *Ireland* the 23*d* of *October* 1641. The Titles of theſe Acts we have in *Pulton's Collection of Statutes*: But with this Remark, *That they are made of no Force by the Acts of Settlement and Explanation* paſſed in King *Charles* II's. time in the Kingdom of *Ireland*. So that in theſe we are ſo *far* from finding Precedents for *England*'s Parliament binding *Ireland*, that they plainly ſhew, that the Parliament of *Ireland* may *Repeal* an Act paſſed in *England*, in relation to the Affairs of *Ireland*. For 'tis very well known, that Perſons who were to have Intereſts and Titles in *Ireland* by virtue of thoſe Acts paſſed in *England*, are cut off by the *Acts of Settlement and Explanation*. And indeed there is all the Reaſon in the World that it ſhould be ſo, and that Acts made in a Kingdom by the Legal Repreſentatives of the People, ſhould take place of thoſe made in another Kingdom. But however, it will be ſaid,

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ſaid, that by thoſe Acts 'tis manifeſt that *England* did preſume they had ſuch a *Right* to paſs Acts binding *Ireland*, or elſe they had ne'er done it. To which I anſwer, That conſidering the condition *Ireland* was in at that time, *viz.* under an horrid *Inteſtine Rebellion*, flaming in every corner of the Kingdom; 'twas impoſſible to have a Parliament of our own; yet it was abſolutely neceſſary that ſomething ſhould be done towards ſuppreſſing the Violences then raging amongſt us: And the only means could then be practiſed, was for the Parliament of *England* to interpoſe, and do ſomething for our Relief and Safety; theſe were the beſt Aſſurances could be had at that juncture: But when the Storm was over, and the Kingdom quieted, we ſee new Meaſures were taken in a Legal Parliament of our own,

As to what was done for *Ireland* in the Parliament of *England* in *Cromwel*'s time, beſides the Confuſion and Irregularity of all Proceeding in thoſe days, which hinders any of them to be brought in- Acts in *Cromwels* time.

to Precedent in theſe times; We ſhall find alſo that then there were *Repreſentatives* ſent out of this Kingdom, who ſate in the Parliament of *England*, which then was *only* the *Houſe of Commons*. We cannot therefore argue from hence, that *England* may bind us; for we ſee they allow'd us *Repreſentatives*, without which, they rightly concluded, they could not make Laws *Obligatory* to us.

I come now to King *Charles* the 2ds time: And in it we ſhall find the following Engliſh Statutes made, in which the Kingdom of *Ireland* is concerned.

Cattle Act. The firſt is an *Act againſt Importing Cattle from* Ireland *or other Parts beyond Seas.* It was only temporary by 18 *Ch.* 2. c. 2. but made perpetual 20 *Ch.* 2. c. 7. and 32 *Ch.* 2. c. 2. This Act, however prejudicial to the Trade that was then carried on between *Ireland* and *England*, does not *properly Bind us*, more than it does any other Country of the World. When any thing is Imported, and Landed in

England,

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England, it becomes immediately ſubject to the Laws thereof, ſo that herein we cannot be ſaid *properly* to be *bound*.

Secondly, The Acts againſt Planting *Tobacco* in *England* and *Ireland*, 12 *Ch.* 2. c. 34. and 15 *Ch.* 2. c. 7. and 22 and 23 *Ch.* 2. c. 26, *&c.* do *poſitively Bind Ireland*. But there has never been an Occaſion of Executing it here; for I have not heard that a Rood of Tobacco was ever Planted in this Kingdom. But however that takes not off the *Obligation* of the Law: 'Tis only want of our Conſent, that I urge againſt that. I ſee no more Reaſon for ſending a Force to Trample down an Acre of *Tobacco* in *Ireland* by theſe Statutes, than there would be for Cutting down the Woods of *Shelela*, were there an Act made in *England* againſt our Planting or Having *Timber*. Tobacco Act.

Thirdly, The *Act for Encouraging Shipping and Navigation*, *by expreſs name* Mentions and Binds *Ireland*; and by the laſt Clauſe in the Act, Obliges all Ships belonging thereto Navigation Act.

importing any Goods from our Foreign Plantations, to touch first at *England*.

Note, Exporting Wooll from *Ireland*, is made penal by the Irish Stat. 13 *Hen.* 8. c. 2. 28 *Hen.* 8. c. 17. But both these Statutes are obsolete: The like may we observe of the 11 Eliz. c. 10. & 13 El. c. 4.

Fourthly, The Acts Prohibiting the Exportation of Wooll from *Ireland*, to any Country except to *England*, do likewise *strongly Bind us*, and by the 12 *Car.* 2. c. 32. it was made highly penal on us, and by the 14th of *Car.* 2. c. 18. 'tis made Felony.

To these three last Acts, I must confess, I have nothing to urge, to take off their Efficacy; *Name* us they do most certainly, and *Bind* us so, as we do not transgress them. But how *Rightfully* they do this, is the matter in Question. This I am sure of, that before these Acts in King *Charles* the Second's Time, (the Eldest of which is not over Thirty-Seven years) *there is not one positive full Precedent to be met with in all the Statute-Book, of an English Act Binding the Kingdom of Ireland.* And on this Account we may venture to assert, That these are at least *Innovations* on us, as not being warranted by any former Precedents. And

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And ſhall *Proceedings only of Thirty-Seven Years ſtanding*, be urg'd againſt a Nation, to Deprive them of the *Rights* and *Liberties* which they Enjoy'd for Five Hundred Years before, and which were Invaded without and againſt their *Conſent*, and from that day to this have been conſtantly complain'd of? Let any Engliſh Heart that ſtands ſo *Juſtly* in Vindication of his own *Rights* and *Liberties*, anſwer this Queſtion, and I have done.

I am now arriv'd at our Preſent Days, under the Happy Government of His Majeſty King *WILLIAM* the Third; and I am ſorry to reflect, That ſince the late Revolution in theſe Kingdoms, when the Subjects of *England* have more ſtrenuouſly than ever Aſſerted their own *Rights*, and the *Liberty* of Parliaments, it has pleaſed them to bear harder on their Poor Neighbours, than has ever yet been done in many Ages foregoing. I am ſure what was then done by that Wiſe and Juſt Body of Sena-

Engliſh Acts Binding *Ireland* ſince King *William's* Reign.

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tors, was perfectly out of Good Will and Kindneſs to us, under thoſe Miſeries which our Afflicted Country of *Ireland* then ſuffered. But I fear ſome Men have ſince that, made uſe of what was then done, to other Purpoſes than at firſt intended. Let us now ſee what that was, and conſider the Circumſtances under which it was done.

In the year 1689. when moſt of the Proteſtant Nobility, Gentry, and Clergy of *Ireland*, were driven out of that Kingdom by the Inſolencies and Barbarities of the *Iriſh Papiſts*, who were then in Arms throughout the Kingdom, and in all Places of Authority under King *James*, newly Return'd to them out of *France*; the only Refuge we had to fly to was in *England*, where Multitudes continued for many Months, deſtitute of all manner of Relief, but ſuch as the Charity of *England* afforded, which indeed was very *Munificent, and never to be forgotten.*

The

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The Protestant Clergy of *Ireland* being thus Banish'd from their Benefices, many of them Accepted such small Ecclesiastical Promotions in *England*, as the Benevolence of well dispos'd Persons presented them with. But this being directly contrary to a Statute in this Kingdom, in the 17 and 18 of *Charles* the Second, *Cap.*10. Intituled, *An Act for Disabling of Spiritual Persons from holding Benefices or other Ecclesiastical Dignities in England or Wales, and in Ireland at the same time.* The Protestant Irish Clergy thought they could not be too secure in avoiding the Penalty of the last mention'd Act, and therefore Apply'd themselves to the Parliament of *England*, and obtain'd an Act in the first year of King *William* and Queen *Mary*, c. 29. Intituled, *An Act for the Relief of the Protestant Irish Clergy.* And this was the first Attempt that was made for *Binding Ireland* by an Act in *England*, since his Majesty's Happy Accession to the Throne of these Kingdoms.

Act for the Protestant Irish Clergy.

After-

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Act againſt Commerce with *France*.

Afterwards in the ſame year, and ſame Seſſion, Chap. 34. there paſs'd an Act in *England*, *Prohibiting all Trade and Commerce with France*, both from *England* and *Ireland*. This alſo binds *Ireland*, but was during the Heat of the War in that Kingdom, when 'twas impoſſible to have a regular Parliament therein, all being in the hands of the Iriſh Papiſts. Neither do we complain of it, as hindring us from correſponding with the King's Enemies, for 'tis the Duty of all Good Subjects to abſtain from that. But as *Scotland*, tho' the King's Subjects, Claims an Exemption from all Laws but what they Aſſent to in Parliament; ſo we think this our Right alſo.

When the Baniſh'd Laity of *Ireland* obſerv'd the Clergy thus careful to ſecure their Properties, and provide for the worſt as well as they could in that Juncture, when no other means could be taken by a Regular Parliament in *Ireland*; they thought it likewiſe adviſeable for them to do ſomething in relation to their Concerns. And accordingly

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cordingly they obtain'd the *Act for the better Security and Relief, of their Majesties Protestant Subjects of Ireland*, 1 W. *and* M. *Sess.* 2. *c.* 9. Wherein King *James*'s *Irish Parliament* at *Dublin*, and all *Acts* and *Attainders* done by them, are declared *void*. 'Tis likewise thereby Enacted, that no Protestant shall suffer any Prejudice in his Estate or Office, by reason of his absence out of *Ireland*, since *December* 25. 1685. and that there should be a Remittal of the Kings Quit-Rent, from 25 *December* 1688. to the end of the War. Thus the Laity thought themselves secure.

Act for Security of the Protestants of *Ireland*.

And we cannot wonder that during the Heat of a Bloody War in this Kingdom, when it was impossible to Secure our Estates and Properties by a Regular Parliament of our own; we should have recourse to this Means, as the only which then could be had. We concluded with our selves, that when we had obtained these Acts from the Parliament in *England*, we had gon a great way in securing the like Acts to be passed in a regular Parliament in *Ireland*, whenever it should

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ſhould pleaſe God to re-eſtabliſh us in our own Country: For we well knew our own Conſtitution under *Poynings Law*, That no Act could Paſs in the Parliament of *Ireland* till approved of by the King and Privy Council of *England*. And we knew likewiſe, That all the Lords and others of his Majeſties Privy Council in *England* are Members of the Lords or Commons Houſe of Parliament there. And that by obtaining their Aſſent to Acts of Parliament in Favour of the Iriſh Proteſtants, they had in a manner pre-engaged their Aſſent to the like Bills when they ſhould hereafter come before them as Privy Councellors, in order to be regularly Tranſmitted to the Parliament of *Ireland*, there to be paſſed into Laws of that Kingdom. But inſtead of all this, to meet with another Conſtruction of what was done herein, and to have it pleaded againſt us as a Precedent of our Submiſſion, and abſolute Acquieſcence in the Juriſdiction of the Parliaments of *England* over this Kingdom, is what we complain of as an Invaſion (we humbly conceive)

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ceive) of that *Legiſlative Right* which our Parliament of *Ireland*, claims within this Kingdom.

The next Act paſs'd in the Parliament of *England*, Binding *Ireland*, is that for *Abrogating the Oath of Supremacy in Ireland, and Appointing other Oaths*, 3 and 4 *William* and *Mary*, c.2. To this the Parliament convened at *Dublin*, *Anno* 1692. under Lord *Sydney*, and that likewiſe *Anno* 1695. under Lord *Capel*, paid an intire Obedience. And by this ('tis alledged) we have *given up our Right*, if any we had, and have for ever acknowledged our *Subordination to the Parliament of England*. But let us a little conſider the force of this Argument. Act appointing New Oaths

I readily grant, that this and the other fore-mentioned Acts in *England* ſince the Revolution, when they were made, were look'd upon highly in our Favour, and for our Benefit; and to them as *ſuch*, we have conform'd our Selves. But then, in all Juſtice and Equity, our Submiſſion herein is to be deem'd *purely voluntary*, and not at all proceeding

ceeding from the *Right* we conclude thereby in the Legiſlators. If a Man, who has *no Juriſdiction* over me, *command* me to do a thing that is *pleaſing* to me, and I do it; it will not thence follow, that thereby he obtains an *Authority* over me, and that ever hereafter I muſt Obey him of *Duty*. If I *voluntarily* give my Money to a Man when *I pleaſe*, and think it *convenient* for me; this does not Authorize him at any time to *command* my Money from me when *he pleaſes*. If it be ſaid, this allows Subjects to Obey only whileſt 'tis *convenient* for them. I pray it may be conſidered, whether any Men Obey *longer*, unleſs they be *forced* to it; and whether they will not *free* themſelves from this *Force* as ſoon as they can. 'Tis impoſſible to hinder Men from deſiring to *free* themſelves from *Uneaſineſs*, 'tis a Principle of Nature, and cannot be eradicated. If Submitting to an Inconvenience be a *leſs* Evil than endeavouring to Throw it off, Men will Submit. But if the Inconvenience grow upon them, and be *greater* than the hazard of getting rid

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rid of it, Men will Offer at puting it by, let the Stateſman or Divine ſay what they can.

But I ſhall yet go a little further, and venture to Aſſert, That the Right of being ſubject *Only* to ſuch Laws to which Men give their *own Conſent*, is ſo inherent to all Mankind, and founded on ſuch Immutable Laws of Nature and Reaſon, that 'tis not to be *Alien'd*, or *Given up*, by any Body of Men whatſoever: For the End of all Government and Laws being the Publick Good of the Commonwealth, in the Peace, Tranquility and Eaſe of every Member therein; whatſoever Act is contrary to this End, is in it ſelf void, and of no effect: And therefore for a Company of Men to ſay, *Let us Unite our ſelves into a Society, and let us be abſolutely Govern'd by ſuch Laws, as ſuch a Legiſlator, without ever Conſulting us, ſhall deviſe for us*; 'tis always to be underſtood, *Provided we find them for our Benefit*: For to ſay, We will be Govern'd by thoſe Laws, *whether they be Good or Hurtful to us*, is abſurd in it ſelf: For to what End

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do Men joyn in Society, but to avoid Hurt, and the Inconveniencies of the State of Nature?

Moreover, I desire it may be considered, whether the General Application of the Chief part of the Irish Protestants, that were at that time in *London*, to the Parliament at *Westminster*, for obtaining these Laws, may not be taken for their *Consent*, and on that Account, and no other, these Acts may acquire their *Binding Force*. I know very well, this cannot be look'd upon as a Regular and Formal *Consent*, such as might be requisite at another more favourable Juncture: But yet it may be taken *talis qualis*, as far as their Circumstances at that time would allow, till a more convenient Opportunity might present it self.

I am sure, if some such Considerations as these, may not plead for us, we are of all his Majesties Subjects the most Unfortunate: The *Rights* and *Liberties* of the Parliament of *England* have received the greatest Corroborations since

ſince his Majeſties Acceſſion to the Throne; and ſo have the *Rights* of *Scotland*; but the *Rights* of the People of *Ireland*, on the other hand, have received the greateſt Weakening under his Reign, by our Submiſſion (as 'tis alledg'd) to theſe Laws that have been made for us.

This certainly was not the Deſign of his Majeſty's Glorious Expedition into theſe Kingdoms; That, we are told by Himſelf, (whom we cannot poſſibly miſtruſt) was to Aſſert the Rights and Liberties of theſe Nations; and we do humbly preſume that his Majeſty will be graciouſly pleaſed to permit us to Enjoy the Benefits thereof.

The Opinions of the Lawyers thereon.

And thus I have done with the *Fourth Article* propoſed. As to the *Fifth*, viz. *The Opinions of the Learned in the Laws relating to this Matter*; 'tis in a great meaſure diſpatch'd by what I have offered on the Fourth Head; I ſhall therefore be the more brief thereon. And I think indeed the only Perſon of Note that remains to be conſidered

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Lord Chief Juſtice *Cook*'s Opinion Diſcuſs'd.

by us, is the Lord Chief Juſtice *Cook*, a Name of great Veneration with the Gentlemen of the Long Robe, and therefore to be treated with all Reſpect and Deference.

In his Seventh Report in *Calvin*'s Caſe, he is proving that *Ireland* is a Dominion Separate and Divided from *England*; for this he quotes many Authorities (*a*) out of the Year-Books and Reports; and amongſt others, he has that which I have before mention'd, pag. 91. 2 *R.* 3. f. 12. which he Tranſcribes in this manner, *Hibernia habet Parliamentum, & faciunt Leges*, & noſtra Statuta non ligant eos, *quia non mittunt Milites ad Parliamentum*; and then adds, in a Parentheſis, (*which is to be underſtood, unleſs they be ſpecially named*) *ſed Perſonæ eorum ſunt ſubjecti Regis ſicut inhabitantes in Caleſia, Gaſconia, & Guyan.* The firſt thing I ſhall obſerve hereon, is the very *unfaithful* and *broken* Citation of this Paſſage, as will manifeſtly appear by comparing it with the true Tranſcript I have given thereof before, pag. 91. Were this all, 'twere in ſome meaſure par-

(*a*) 20 *H.* 6. 8. *Pilkington*'s Caſe. 32 *H.* 6. 25. 20 *Eliz. Dyer.* 360. *Flowd. Com.* 360.

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pardonable. But what cannot be excuſed, is the Unwarrantable Poſition in his Parentheſis, without the leaſt colour or ground for it in his Text. Herein he concludes down right Magiſterially, *So it muſt be, this is my Definitive Sentence*; as if his *Plain Aſſertion*, without any *other Reaſon*, ought to prevail; nay, even point blank againſt the irrefragable Reaſon of the Book he quotes. I confeſs in another place of *Calvin*'s Caſe, *viz.* fol. 17. b. he gives this Aſſertion a Colour of Reaſon, by ſaying, *That tho' Ireland be a Diſtinct Dominion from England, yet the Title thereof being by* Conqueſt, *the ſame by Judgment of Law might by Expreſs Words be bound by the Parliaments of England.* How far *Conqueſt* gives a Title, we have Enquired before: But I would fain know what Lord *Cook* means by *Judgment of Law:* Whether he means the *Law of Nature* and *Reaſon*, or of *Nations*; or the *Civil Laws* of our *Commonwealths*; in none of which Senſes, I conceive, will he, or any Man, be ever able to make out his Poſition.

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Is the Reaſon of *England*'s Parliament not Binding *Ireland*, *Becauſe we do not ſend thither Repreſentatives?* And is the Efficacy of this Reaſon taken off, by *our being Named* in an Engliſh Act? Why ſhould ſending Repreſentatives to Parliament, Bind thoſe that ſend them? Meerly becauſe thereby the *Conſent* of thoſe that are Bound, is obtain'd, as far as thoſe ſort of Meetings can poſſibly permit; which is the very *Foundation* of the *Obligation* of all Laws. And is *Ireland*'s *being Named* in an Engliſh Act of Parliament, the leaſt ſtep towards obtaining the *Conſent* of the *People of Ireland?* If it be not, then certainly my Lord *Cook*'s Parentheſis is to no purpoſe. And 'tis a wonder to me, that ſo many Men have run upon this vain Imagination, meerly from the Aſſertion of this Judge: For I challenge any Man to ſhew me, that any one *before* him, or any one *ſince*, but *from him*, has vended this *Doctrine*: And if the *bare Aſſertion* of a Judge, ſhall Bind a *whole Nation*, and Diſ-

ſolve

ſolve the *Rights* and *Liberties* thereof, We ſhall make their Tongues very powerful, and conſtitute them greater Lawgivers than the greateſt Senates. I do not ſee why my *Denying* it, ſhould not be as *Authentick* as his *Affirming* it. 'Tis true, He was a great Lawyer and a powerful Judge; but had no more Authority to *make a Law*, than I or any Man elſe. But ſome will ſay, He was a Learned Judge, and may be ſuppoſed to have *Reaſon* for his Poſition. Why then does he not give it us? And then what he Aſſerts would Prevail, not from the *Authority of the Perſon*, but from the *Force of the Reaſon*. The moſt Learned in the Laws have no more power to make or alter a Conſtitution, than any other Man; And their Deciſions ſhall no farther prevail, than ſupported by Reaſon and Equity. I conceive my Ld. Ch. Juſtice *Cooke* apply'd himſelf ſo wholly to the Study of the *Common Laws* of *England*, that he did not enquire far into the *Laws of Nature* and *Nations*; if he had, certainly he could never have been Guilty of ſuch an Erroneous Slip;

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He would have ſeen demonſtrably, that *Conſent only* gives Humane Laws their Force, and that therefore the Reaſon in the Caſe he quotes is unanſwerable, *Quia non mittunt Milites ad Parliamentum.* Moreover, the Aſſertion of *Cooke* in this point is directly contrary to the whole tenour of the Caſe which he cites: For the very Act of Parliament on which the Debate of the Judges did ariſe, and which they deemed not to be of Force in *Ireland*, particularly names *Ireland.* So that here again Ld. *Cooke*'s Error appears moſt plainly. For this I refer to the Report, as I have exactly delivered it before pag. 90, 91. By which it appears clearly to be the unanimous Opinion of all the Judges then in the *Exchequer Chamber*: That *within the Land of Ireland*, the Parliaments of *England* have no Juriſdiction, whatever they may have over the Subjects of *Ireland* on the *open Seas*: And the reaſon is given, *Quia Hibernia non mittit Milites ad Parliamentum in Angliâ.*

This

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This Aſſertion likewiſe is inconſiſtent with himſelf in other parts of his Works. He tells us in his 4th. Inſt. pag. 349. *That 'tis plain that not only King* John *(as all Men allow) but* Henry *the Second alſo, the Father of King* John, *did Ordain and Command, at the Inſtance of the Iriſh, That ſuch Laws as had been in* England *ſhould be Obſerv'd and of Force in* Ireland. *Hereby* Ireland *being of it ſelf a diſtinct Dominion, and no part of the Kingdom of* England, *was to have Parliaments holden there as in* England. And in pag. 12. he tells us, *That* Henry *the Second ſent a Modus into* Ireland, *directing them how to hold their Parliaments.* But to what end was all this, if *Ireland* nevertheleſs were ſubject to the Parliament of *England?* The King and Parliaments of theſe Kingdoms are the ſupream Legiſlators; If *Ireland* be ſubject to Two (its Own, and that of *England*) it has *Two Supreams*; 'tis not impoſſible, but they may Enact *different or contrary* Sanctions; which of theſe ſhall the People Obey? He tells us in *Calvin*'s Caſe

fol.

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fol. 17. b. *That if a King hath a Chriſtian Kingdom* by Conqueſt, *as* Henry *the Second had* Ireland, *after King* John *had given to them, being under his Obedience, and Subjection, the Laws of* England *for the Government of that Country, no ſucceeding King could alter the ſame without Parliament.* Which, by the way, ſeems directly contradictory to what he ſays concerning *Ireland* ſix lines below this laſt cited paſſage. So that we may obſerve my Lord *Cook* enormouſly ſtumbling at every turn in this Point.

Opinions of other Judges, in Favour of *Ireland.*

Thus I have done with this Reverend Judge; and, in him, with the only *Poſitive Opinion againſt us.* I ſhall now conſider what our Law-Books offer in our *Favour* on this Point.

To this purpoſe we meet a Caſe fully appoſite, reported in the Year-Book of the 20th of *Henry* the 6th, fol. 8. between one *John Pilkington* and one *A.*

Pilkintons Caſe.

Pilkington brought a *Scire Facias* againſt *A.* to ſhew Cauſe, why Letters

ters Patents whereby the King had granted an Office in *Ireland* to the ſaid *A.* ſhould not be repeal'd, ſince the ſaid *Pilkington* had the ſame Office granted to him by former Letters Patents of the ſame King to be occupied by himſelf or his Deputy. Whereupon *A.* pleaded, That the Land of *Ireland*, time out of Memory, hath been a Land ſeparated and diſtinct from the Land of *England*, and Ruled and Governed by the Cuſtoms of the ſame Land of *Ireland*. That the Lords of the ſame Land, which are of the King's Council, have uſed from time to time, in the abſence of the King, to Elect a *Juſtice*, who hath Power to Pardon and Puniſh all Felons, &c. and to call a Parliament, and by the Advice of the Lords and Commonalty to make Statutes. He alledged further, That a Parliament was Aſſembled, and that it was Ordain'd by the ſaid Parliament, (*a*) That every Man who had an Office within the ſaid Land, before a certain day, ſhall occupy the ſaid Office by himſelf, otherwiſe, he ſhould forfeit. He ſhew'd that *Pilkington* Occupied by a Deputy;

(*a*) This Statute we may reckon amongſt the number of thoſe that are loſt during the long Intervals of our Iriſh Acts, noted before page 65. to be about 118 Years.

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puty; and that therefore his Office was void, and that the King had granted the ſaid Office to him the ſaid *A.* Hereupon *Pilkington* Demurr'd in Law; and it was debated by the Judges, *Yelverton*, *Forteſcue*, *Portington*, *Markham*, and *Aſcough*, whether the ſaid Preſcription in relation to the State and Government of *Ireland*, be *good* or *void* in Law. *Yelverton* and *Portington* held the Preſcription *void*. But *Forteſcue*, *Markham*, and *Aſcough* held the Preſcription *good*; and that the Letters Patents made to *A.* were good, and ought not to be Repeal'd. And in this it was agreed by *Forteſcue* and *Portington*, That if a Tenth or Fifteenth be granted by Parliament in *England*, that ſhall not Bind *Ireland*, althongh the King ſhould ſend the ſame Statute into *Ireland* under his Great Seal; Except they in *Ireland* will in their Parliament Approve it; *Becauſe they have not any Commandment by Writ to come to the Parliament of England:* And this was not Denied by *Markham*, *Yelverton*, or *Aſcough*.

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The *Merchants of Waterford's Case* which I have obſerved before, pag. 90. as Reported in the Year Book of the 2d. of *Richard* the 3d. fol. 11, 12, is notorious on our behalf, but needs not be here repeated.

Merchants of *Waterfords* Caſe.

The Caſe of the Prior of *Lanthony* in *Wales*, mentioned by Mr. *Pryn* againſt the 4th Inſt. ch. 76. p. 313. is uſually cited *againſt* us. But I conceive 'tis ſo far from proving this, that 'tis very much in our Behalf. The Caſe was briefly thus. The Prior of *Lanthony* brought an Action in the *Com. Pleas* of *Ireland* againſt the of Prior *Mollingar*, for an Arrear of an Annuity, and Judgment went againſt the Prior of *Mollingar*; hereon the Prior of *Mollingar* brought a Writ of Error in the *King's Bench* of *Ireland*, and the Judgment was affirmed. Then the Prior of *Mollingar* Appeal'd to the Parliament in *Ireland* held 15 *Hen.* 6. before *James Butler* Earl of *Ormond*, and the Parliament Revers'd both Judgments. The Prior of *Lanthony* removed all into the *King's Bench* in *England*; but the *King's*

Prior of *Lanthonys* Caſe.

Bench

Bench refuſed to intermeddle, *as having no Power over what had paſs'd in the Parliament of Ireland.* Hereupon the Prior of *Lanthony* Appeal'd to the Parliament of *England.* And it does not appear by the Parliament Roll (*a*) that any thing was done on this Appeal; all that is Entred being only the Petition it ſelf at the end of the Roll. *Vid. Pryn* againſt the 4th Inſtit. chap. 76. p. 313.

(*a*) *Rot. Parl. An.* 8. *H.* 6. *in ult.*

Now whether this be a Precedent proving the Subordination of our Iriſh Parliament to that of *England*, I leave the Reader to judge. To me it ſeems the *clear contrary.* For firſt we may obſerve, the *King's Bench* in *England* abſolutely diſclaiming any Cogniſance of what had paſſed in the Parliament of *Ireland.* And next we may obſerve, That nothing at all was done therein upon the Appeal to the Parliament of *England*: Certainly if the Parliament of *England* had thought themſelves to have a Right to Enquire into this Matter, they had ſo done, one way or t'other, and not left the Matter Undetermin'd and in Suſpence.

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It has ever been acknowledged that the Kingdom of *Ireland* is inteparably annex'd to the Imperial Crown of *England*. The Obligation that our Legiſlature lies under by *Poyning*'s *Act*, 10 *H.*7. c. 4. makes this Tye between the two Kingdoms indiſſoluble. And we muſt ever own it our Happineſs to be thus Annex'd to *England*: And that the Kings and Queens of *England* are by undoubted Right, *ipſo facto* Kings and Queens of *Ireland*. And from hence we may reaſonably conclude, that if any Acts of Parliament made in *England*, ſhould be of force in *Ireland*, before they are Received there in Parliament, they ſhould be more eſpecially ſuch Acts as relate to the *Succeſſion* and *Settlement of the Crown*, and *Recognition* of the Kings Title thereto, and the *Power* and *Juriſdiction* of the King. And yet we find in the Iriſh Statutes, 28 *Hen.* VIII. c. 2. *An Act for the Succeſſion of the King and Queen Ann*; and another, Chap. 5. declaring the King to be *Supream Head of the Church of Ireland*; both which Acts had formerly

Argument from Acts of Succeſſion and Recognition paſs'd in *Ireland*.

paſs'd

paſs'd in the Parliament of *England*. So likewiſe we find amongſt the Iriſh Statutes *Acts of Recognition of the Kings Title to Ireland*, in the Reigns of *Henry* the Eighth, Queen *Elizabeth*, King *James*, King *Charles* the Second, King *William* and Queen *Mary*. By which it appears that *Ireland*, tho' Annex'd to the Crown of *England*, has always been look'd upon to be *a Kingdom Compleat within it ſelf*, and to have all Juriſdiction to an *Abſolute* Kingdom belonging, and Subordinate to no Legiſlative Authority on Earth. Tho', 'tis to be Noted, theſe Engliſh Acts relating to the Succeſſion, and Recognition of the Kings Title, do particularly Name *Ireland*.

Ireland's State Eccleſiaſtical *Independent.*

As the *Civil* State of *Ireland* is thus *Abſolute* within it ſelf, ſo likewiſe is our State *Eccleſiaſtical*: This is manifeſt by the *Canons* and *Conſtitutions*, and even by the *Articles* of the *Church of Ireland*, which differ in ſome things from thoſe of the *Church of England*. And in all the Charters and Grants of Liberties and Immunities to *Ireland*,

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Ireland, we ſtill find this, That *Holy Church ſhall be Free*, &c. I would fain know what is meant here by the word *Free*: Certainly if our *Church* be *Free* and Abſolute within it ſelf, our *State* muſt be ſo likewiſe; for how our *Civil* and *Eccleſiaſtical* Government is now interwoven, every body knows. But I will not enlarge on this head, it ſuffices only to hint it; I ſhall detain my ſelf to our *Civil Government*.

Another Argument againſt the Parliament of *England*'s Juriſdiction over *Ireland*, I take from a Record in *Reyley*'s *Placita Parliamentaria*, pag. 569. to this effect: (*a*) In the 14th of *Edward* the Second, the King ſent his Letters Patents to the Lord Juſtice of *Ireland*, leting him know, That he had been moved by his *Parliament* at *Weſtminſter*, that he would give Order that the *Iriſh Natives* of *Ireland*, might enjoy the *Laws of England* concerning *Life* and *Member*, in as large and ample manner as the *Engliſh* of *Ireland* enjoy'd the ſame. Thus therefore the King gives in Com-

Argument from a Record in *Reyley*.

(a) 14 *Ed.* 2. *Par.* 2. *Memb.* 21 *Int.*

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mandment, and orders accordingly, by these his Letters Patents. From hence, I say, we may gather, That the Parliament of *England* did not then take upon them to have any *Jurisdiction* in *Ireland*, (for then they would have made a Law for *Ireland* to this Effect) but instead thereof, they Apply to the *King*, that he would interpose his Commands, and give Directions that this great Branch of the *Common Law* of *England* should be put in Execution in *Ireland* indifferently to all the Kings Subjects there, *pursuant* to the *Original Compact* made with them on their first Submission to the Crown of *England*.

Argument from a Record in Rolls.

Objection drawn from a Writ of Error.

Let us now consider the great Objection drawn from a *Writ of Error*'s lying from the *Kings Bench* of *England*, on a Judgment given in the *Kings Bench* in *Ireland*; which proves (as 'tis insisted on) that there is a *Subordination* of *Ireland* to *England*; and that if an *Inferiour* Court of Judicature in *England*, can thus take cognizance of, and over-rule the Proceedings in the like Court of *Ireland*; it will follow,

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follow, that the *Supream* Court of Parliament in *England* may do the ſame, in relation to the Proceedings of the Court of Parliament in *Ireland*.

It muſt be confeſs'd that this has been the conſtant Practice; and it ſeems to be the great thing that induced my Lord *Cook* to believe that an Act of Parliament in *England*, and mentioning or Including *Ireland*, ſhould Bind here. The Subordination of *Ireland* to *England*, he ſeems to infer from the Subordination of the *Kings Bench* of *Ireland*, to the *Kings Bench* of *England*. But to this I anſwer:

1. That 'tis the Opinion of ſeveral Learned in the Laws of *Ireland*, That this Removal of a Judgment from the *Kings Bench* of *Ireland*, by *Writ of Error*, into the *Kings Bench* of *England*, is founded on an Act of Parliament in *Ireland*, which is loſt amongſt a great number of other Acts, which we want for the ſpace of 130 years at one time, and of 120 at another time, as we have noted before,

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pag. 65. But it being only a *General Tradition*, that there was such an Act of our Parliament, we only offer it as a *Surmise*, the Statute it self does not appear.

2. Where a Judgment in *Ireland* is Removed, to be Revers'd in *England*, the Judges in *England* ought, and always do judge, according to the *Laws* and *Customs* of *Ireland*, and not according to the Laws and Customs of *England*, any otherwise than as these may be of Force in *Ireland*; but if in any thing the two Laws differ, the Law of *Ireland* must prevail, and guide their Judgment. And therefore in the Case of one *Kelly*, Removed to the *Kings Bench* in *England*, in the beginning of King *Charles* the First, one Error was assigned that the *Præcipe* was of *Woods* and *Underwoods*, which is a manifest Error, if brought in *England*; but the Judges finding the Use to be *Otherwise* in *Ireland*, judged it *No Error*. So in *Crook*, *Charles*, fol. 511. *Mulcarty* vers. *Eyres*. Error was assigned for that the Declaration was of one hundred

Acres

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Acres of *Bogg*, which is a word not known in *England*; but 'twas ſaid, It was well enough underſtood in *Ireland*, and ſo adjudged *No Error*.

From whence, I conceive, 'tis manifeſt, that the Juriſdiction of the Kings Bench in *England*, over a Judgment in the Kings Bench of *Ireland*, does not proceed from any Subordination of one Kingdom to the other; but from ſome other Reaſon, which we ſhall endeavour to make out.

3. We have before obſerved, That in the Reign of K. *Henry* the Third, *Gerald Fitz-Maurice*, Lord Juſtice of *Ireland*, ſent four Knights to know what was held for Law in *England* in the Caſe of *Coparceners*. The Occaſion of which Meſſage (as before we have noted out of the Kings Reſcript) was, becauſe the Kings Juſtice of *Ireland* was ignorant what the Law was. We may reaſonably imagine that there were many Meſſages of this kind; for in the Infancy of the Engliſh Government, it may well be ſup-

poſed, that the Judges in *Ireland* were not ſo deeply verſed in the Laws of *England:* This occaſioned Meſſages to *England*, *Before* Judgment given in *Ireland*, to be inform'd of the Law. And *After* Decrees made, Perſons who thought themſelves aggrieved by *Erroneous* Judgments, apply'd themſelves to the King in *England* for Redreſs. Thus it muſt be, that Writs of Error (unleſs they had their Sanction in Parliament) became in uſe. Complaints to the King by thoſe that thought themſelves injur'd, increaſed; and at laſt grew into Cuſtom, and obtain'd the Force of Law.

Perhaps it may be Objected, That if the Judges of the Kings Bench in *England* ought to Regulate their Judgment by the Cuſtoms of *Ireland*, and not of *England*, it will follow, that this Original which we aſſign of Writs of Error to *England*, is not right.

I Anſwer, That this may be the *Primary Original*, and yet conſiſt well enough with what we have before

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before laid down: For tho' the Common Law of *England* was to be the Common Law of *Ireland*, and *Ireland* at the beginning of its Engliſh Government might frequently ſend into *England* to be inform'd about it; yet this does not hinder, but *Ireland*, in a long Proceſs of Time, may have ſome ſmaller Cuſtoms and Laws of its own, gradually but inſenſibly crept into Practice, that may in ſome meaſure differ from the Cuſtoms and Practice of *England*; and where there is any ſuch, the Judges of *England* muſt regulate their Sentence accordingly, tho' the firſt Riſe of Writs of Error to *England*, may be as we have here ſuggeſted. In like manner, where the Statute-Law of *Ireland* differs from that of *England*, the Judges of *England* will regulate their Judgments by the Statute-law of *Ireland*: This is the conſtant Practice, and notoriouſly known in *Weſtminſter-Hall*: From which it appears, that removing a Judgment from the Kings Bench of *Ireland*, to the Kings Bench of *England*, is but an Appeal to the King in his Bench

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of *England*, for his Senſe, Judgement, or Expoſition of the Laws of *Ireland*. But of this more hereafter.

4. When a *Writ of Error* is Returned into the Kings Bench of *England*, Suit is made to the *King only*; The Matter lies *altogether before Him*; and the Party complaining applies to *No Part* of the Political Government of *England* for Redreſs, but to the *King of Ireland only*, who is in *England:* That the *King only* is ſued to, our Law-Books make Plain. This Court is call'd *Curia Domini Regis*, and *Aula Regia*, becauſe the King uſed to ſit there in Perſon, as *Lambard* tells us; And every Cauſe brought there, is ſaid to be *coram Domino Rege*, even at this very day, *Cooke* 4 Inſt. p.72. Therefore if a Writ be returnable *coram nobis ubicunque fuerimus*, 'tis to be Return'd to the *Kings Bench.* But if it be Returnable *coram Juſticiariis noſtris apud Weſtm.* 'tis to be Return'd into the *Common Pleas.* This Court (as *Glanvil* and other Antients tells us) uſed to Travel with the King, where-

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where-ever he went. And *Fleta*, in deſcribing this Court, ſays, *Habet Rex Curiam ſuam & Juſticiarios ſuos, coram quibus, & non alibi niſi coram ſemet ipſo*, &c. *falſa Judicia & Errores revertuntur & Corriguntur.* The King then (as *Britton* ſays) having Supream Juriſdiction in his Realm, to judge in all Cauſes whatſoever; therefore it is, that *Erroneous Judgments* were brought to him out of *Ireland*. But this does not argue that *Ireland* is therefore *Subordinate to England*; for the People of *Ireland* are the *Subjects* of the King to whom they Appeal. And 'tis not from the *Country* where the Court is held, but from the *Preſence* and *Authority* of the King (to whom the People of *Ireland* have as good a Title as the People of *England*) that the *Præeminence of the Juriſdiction* does flow, And I queſtion not, but in former times, when theſe Courts were firſt Erected, and when the King Exerted a greater Power in Judicature than he does now, and he uſed to ſit in his own Court, that if he had Travell'd into *Ireland*, and the Court had follow'd him

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him thither ; Erroneous Judgments might have been removed *from England* before him *into his Court in Ireland* ; for ſo certainly it muſt be, ſince the Court Travell'd with the King. From hence it appears, that all the Juriſdiction, that the Kings Bench in *England*, has over the Kings Bench in *Ireland*, ariſes *only* from the *Kings Preſence* in the former. And the ſame may be ſaid of the *Chancery* in *England*, if it will aſſume any Power to Controul the *Chancery* in *Ireland* ; becauſe (as *Lambard* ſays, p.69,70.) The Chancery did follow the *King*, as the Kings Bench did ; and that, as he tells us out of the Lord Chief Juſtice *Scroope*, the *Chancery* and the *Kings Bench* were once but one Place. But if this be the ground of the Juriſdiction of the Kings Bench in *England* over the Kings Bench in *Ireland*, (as I am fully perſwaded it is) the Parliament in *England* cannot from hence claim any Right of Juriſdiction in *Ireland*, becauſe they claim *a Juriſdiction of their own* ; and their Court is not the *Kings Court*, in that *proper* and *ſtrict* ſence that the *Kings Bench* is.

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But granting that the *Subordination* of the *Kings Bench* in *Ireland*, to the *Kings Bench* in *England*, be rightly concluded from a *Writ of Error* out of the *latter*, lying on a Judgment in the *former*. I ſee no Reaſon from thence to conclude, that therefore the Parliament of *Ireland* is *Subordinate* to the Parliament in *England*, unleſs we make any *one ſort* of Subordination, or in any *one part* of Juriſdiction, to be a Subordination in *all Points*, and all parts of Juriſdiction. The Subjects of *Ireland* may Appeal to the King in his Bench in *England*, for the *Expounding* of the *Old* common and Statute-Law of *Ireland*; will it therefore follow that the Parliament of *England* ſhall make *New Laws* to bind the Subjects in *Ireland*? I ſee no manner of Conſequence in it; unleſs we take *Expounding Old Laws*, (or *Laws already made*) *in the Kings Bench*, and *making New Laws in Parliament*, to be *one* and the *ſame thing*. I believe the beſt Logician in *Europe* will hardly make a Chain of *Syllogiſms*, that from ſuch *Premiſes*, will

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will regularly induce ſuch a *Concluſion.*

To cloſe this Point, We find that a Judgment of the Kings Bench in *Ireland*, may be Removed by a Writ of Error to the Parliament in *Ireland*: But the Judgment of the Parliament of *Ireland* was never queſtion'd in the Parliament of *England.* This Appears from the *Prior of Lanthony*'s Caſe aforegoing.

Declaration in the Iriſh Act of Faculties.

I ſhall conclude this our Fifth Article with a memorable Paſſage out of our Iriſh Statutes, which ſeems to ſtrengthen what we have delivered on the Buſineſs of a *Writ of Error*, as well as the chief Doctrine I drive at; and that is 28 *H.* VIII. Chap. 19. *The Act of Faculties.* This Statute is a Recital at large of the Engliſh Act of the 25 *Hen.* VIII. c. 21. In the Preamble of which Engliſh Act 'tis Declared, *That this Your Graces Realm Recognizing no Superiour but Your Grace, hath been and yet is free from any Subjection to any Mans Laws, but only ſuch as have been Deviſed within*

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in this Realm, for the Wealth of the same, or to such others, as by Sufferance of Your Grace and Your Progenitors, the People of the Realm have taken at their Free Liberties by their own Consent; and have bound themselves by long Use and Custom to the Observance of, &c.

This Declaration, with the other Clauses of the said English Act, is *verbatim* recited in the Irish *Act of Faculties*; and in the said Irish Act it is Enacted, *That the said English Act, and every thing and things therein contained, shall be Established, Affirmed, Taken, Obey'd and Accepted within this Land of Ireland as a good and perfect Law, and shall be within the said Land of the same Force, Effect, Quality, Condition, Strength and Vertue, to all Purposes and Intents, as it is within the Realm of* England; (if so, then the said Clause declares our *Right* of being bound only by Laws to which we *Consent*, as it does the *Right of the People of* England) *And that all Subjects within the said Land of* Ireland, *shall enjoy the Profit and Commodity thereof, in like manner*

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as the Kings Subjects of the Realm of England.

Farther Reasons offered in behalf of Ireland.

I am now Arrived at our Sixth and Last Article Propoſed, *viz.* The *Reaſons and Arguments that may be be farther Offered on one ſide and t'other in this Debate.*

England's Title to *Ireland* by Purchaſe.

I have before taken notice of the Title *England* pretends over us from *Conqueſt*: I have likewiſe enquired into the *Precedents* on one ſide and t'other, from *Acts of Parliament*, from *Records*, and from *Reports* of the Learned in the Laws. There remains another Pretence or two for this *Subordination*, to be Conſidered; and one is founded on *Purchaſe*.

'Tis ſaid, That vaſt Quantity of Treaſure, that from time to time has been ſpent by *England* in Reducing the Rebellions and carrying on the Wars of *Ireland*, has given them a juſt *Title* at leaſt to the *Lands* and *Inheritances* of the Rebels, and to the abſolute Diſpoſal thereof in their Parliament; And as particular Examples of this,

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we are told of the great Sums Advanced by *England* for ſuppreſsing the Rebellion of the Iriſh Papiſts in 41. and Oppoſing the late Rebellion ſince King *WILLIAM*'s Acceſſion to the Throne.

To this I Anſwer, That in a War there is all Reaſon imaginable that the Eſtates of the Unjuſt Oppoſers ſhould go to repair the the Damage that is done. This I have briefly hinted before. But if we conſider the Wars of *Ireland*, we ſhall perceive they do not reſemble the common Caſe of Wars between two Foreign Enemies; Ours are rather Rebellions, or *Inteſtine Commotions*; that is, The *Iriſh Papiſts* riſing againſt the *King* and *Proteſtants* of *Ireland*; and then 'tis plain, that if theſe Latter, by the Aſſiſtance of their Brethren of *England*, and their Purſe, do prove Victorious, the People of *England* ought to be fully Repaid: But then the manner of their Payment, and in what way it ſhall be Levied, ought to be left to the People of *Ireland* in Parliament Aſſembled: And ſo it was after the

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the Rebellion of 41. The *Adventurers* then were at vaſt Charges, and there were ſeveral Acts of Parliament in *England* made for their Re-imburſing, by diſpoſing to them the Rebels Lands. But after all, it was thought Reaſonable that the Parliament of *Ireland* ſhould do this in their own way; and therefore the *Acts of Settlement* and *Explanation*, made all the former Engliſh Acts of *No Force*; or at leaſt did very much *Alter* them in many Particulars, as we have Noted before. In like manner we allow that *England* ought to be repaid all their Expences in ſupreſſing this late Rebellion: All we deſire is, That, in Preſervation of our own Rights and Liberties, we may do it in our own Methods regularly in our own Parliament: And if the Re-imburſement be all that *England* ſtands upon, what availeth it whether it be done this way or that way, ſo it be done? We have an Example of this in Point between *England* and *Holland* in the Glorious Revolution under His Preſent Majeſty: *Holland* in Aſſiſting *England* Expended 600000 Pounds,

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Pounds, and the Engliſh Parliament fairly repay'd them: It would have look'd oddly for *Holland* to have inſiſted on Diſpoſing of Lord *Powis's* and other Eſtates, by their own Laws, to re-imburſe themſelves.

'Tis an Ungenerous thing to villifie good Offices, I am far from doing it, but with all poſſible Gratitude Acknowledge the Mighty Benefits *Ireland* has often receiv'd from *England*, in helping to ſuppreſs the Rebellions of this Country; To *England's* Charitable Aſſiſtance our Lives and Fortunes are owing: But with all humble Submiſſion, I deſire it may be conſidered, whether *England* did not at the ſame time propoſe the *Prevention of their own Danger*, that would neceſſarily have attended our Ruine; if ſo, 'twas in ſome meaſure their *own Battels* they fought, when they fought for *Ireland*; and a great part of their Expence muſt be reckon'd in their *own Defence.*

Another thing alledged againſt *Ireland* is this; If a Foreign Na-

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Object. *Ireland* prejudicial to *England*'s Trade, therefore to be Bound.

tion, as *France* or *Spain* for inſtance, prove prejudicial to *England*, in its Trade, or any other way; *England*, if it be ſtronger, redreſſes it ſelf by Force of Arms, or Denouncing War; and why may not *England*, if *Ireland* lies croſs their Intereſts, reſtrain *Ireland*, and bind it by Laws, and maintain theſe Laws by Force?

To this I anſwer: Firſt, That it will hardly be inſtanced, that any Nation ever Declared War with another, meerly for over-topping them in ſome ſignal Advantage, which otherwiſe, or but for their Endeavours, they might have reaped. *War* only is Juſtifiable for *Injuſtice* done, or *Violence* offer'd, or *Rights* detain'd. I cannot by the Law of Nations, quarrel with a Man, becauſe he, going before me in the Road, finds a Piece of Gold, which poſſibly, if he had not taken it up, I might have light upon and gotten. 'Tis true, we often ſee Wars commenced on this Account *under-hand*, and on Emulation in Trade and Riches; but then this is never made the *Open Pre-*

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tence, ſome other *Colour* it muſt receive, or elſe it would not look *fair*; which ſhews plainly, that this Pretence of *being Prejudicial*, or of reaping Advantages which otherwiſe you might partake of, is not *Juſtifiable* in it ſelf. But granting that it were a good Juſtification of a War with a *Foreign* Nation, it will make nothing in the Caſe between *England* and *Ireland*; for if it did, why does it not operate in the ſame manner between *England* and *Scotland*, and conſequently in like manner draw after it *England*'s binding *Scotland* by their Laws at *Weſtminſter*: We are all the *ſame* Kings Subjects, the Children of one *Common Parent*; and tho' we may have our *Diſtinct* Rights and Inheritances abſolutely within our ſelves; yet we ought not, when theſe do chance a little to interfere to the prejudice of one or t'other ſide, immediately to treat one another as Enemies; fair Amicable Propoſitions ſhould be propoſed, and when theſe are not hearkened to, then 'tis time enough to be at Enmity, and uſe Force.

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Object. *Ireland a Colony.*

The laſt thing I ſhall take Notice of, that ſome raiſe againſt us, is, That *Ireland* is to be look'd upon only as a *Colony* from *England*: And therefore as the *Roman Colonies* were ſubject to, and bound by, the Laws made by the *Senate* at *Rome*; ſo ought *Ireland* by thoſe made by the *Great Council* at *Weſtminſter*. Of all the Objections raiſed againſt us, I take this to be the moſt Extravagant; it ſeems not to have the leaſt *Foundation* or *Colour* from *Reaſon* or *Record:* Does it not manifeſtly appear by the *Conſtitution* of *Ireland*, that 'tis a *Compleat Kingdom* within it ſelf? Do not the Kings of *England* bear the *Stile of Ireland* amongſt the reſt of their Kingdoms? Is this Agreeable to the nature of a *Colony*? Do they uſe the Title of Kings of *Virginia*, *New-England*, or *Mary-Land*? Was not *Ireland* given by *Henry* the Second in a Parliament at *Oxford* to his Son *John*, and made thereby an *Abſolute Kingdom*, *ſeparate* and wholly *Independent* on *England*, till they both came United again in him, after the Death

Death of his Brother *Richard* without Iſſue? Have not multitudes of Acts of Parliament both in *England* and *Ireland*, declared *Ireland a Compleat Kingdom*? Is not *Ireland* ſtiled in them All, the *Kingdom*, or *Realm* of *Ireland*? Do theſe *Names* agree to a *Colony*? Have we not a Parliament, and Courts of Judicature? Do theſe *things* agree with a *Colony*? This on all hands involves ſo many Abſurdities, that I think it deſerves nothing more of our Conſideration.

Theſe being the only remaining Arguments that are ſometimes mention'd *Againſt us*, I now proceed to offer what I humbly conceive *Demonſtrates* the Juſtice of our Cauſe.

And herein I muſt beg the Reader's Patience, if now and then I am forced lightly to touch upon ſome Particulars foregoing. I ſhall Endeavour all I can to avoid prolix Repetitions; but my Subject requires that ſometimes I juſt mention, or refer to, ſeveral Notes before deliver ed.

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First therefore, I ſay, *That* Ireland *ſhould be Bound by Acts of Parliament made in* England, *is againſt Reaſon, and the Common Rights of all Mankind.*

Againſt the Rights of Mankind.

All Men are by Nature in a ſtate of Equality, in reſpect of Juriſdiction or Dominion: This I take to be a Principle in it ſelf ſo evident, that it ſtands in need of little Proof. 'Tis not to be conceiv'd, that Creatures of the ſame Species and Rank, promiſcuouſly born to all the ſame Advantages of Nature, and the uſe of the ſame Faculties, ſhould be Subordinate and Subject one to another; Theſe to this or that of the ſame Kind. On this Equality in Nature is founded that Right which all Men claim, of being free from all Subjection to Poſitive Laws, till by their own *Conſent* they give up their Freedom, by entring into Civil Societies for the common Benefit of all the Members thereof. And on this *Conſent* depends the *Obligation* of all *Humane Laws*; inſomuch that without it, by the Unanimous Opinion of all

Conſent only gives Law force.

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all *Juriſts*, no Sanctions are of any *Force*. For this let us Appeal, amongſt many, only to the *Judicious* Mr. *Hooker*'s *Eccleſ. Polity*, Book 1. Sec. 10. *Lond.* Edit. 1676. Thus He.

Howbeit, Laws do not take their Conſtraining force from the Quality of ſuch as Deviſe them, but from that Power which doth give them the ſtrength of Laws. That which we ſpake before, concerning the Power of Government, muſt here be applied to the Power of making Laws whereby to Govern, which Power God hath over All; and by the Natural Law, whereunto he hath made all ſubject, the Lawful Power of making Laws, to command whole Politick Societies of Men, belongeth ſo properly unto the ſame entire Societies, that for any Prince or Potentate, of what kind ſoever upon Earth, to exerciſe the ſame of himſelf, and not either by expreſs Commiſſion *immediately and perſonally receiv'd from God,* or elſe by Authority derived at the firſt from their *Conſent*, upon whoſe Perſons they impoſe Laws, *it is no better than meer Tyranny. Laws they are not therefore, which* Publick Ap-

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probation *hath not made ſo:* But Approbation not only they Give, who Perſonally declare their *Aſſent by Voice, Sign, or Act; but alſo when others do it in their Names*, by Right Originally, at the leaſt, derived from them: *As in Parliaments, Councils*, &c.

Again, *Sith Men Naturally have no full and perfect Power to command whole Politick Multitudes of Men; therefore utterly without our Conſent, we could in ſuch ſort be at no Mans Commandment living. And to be commanded we do conſent, when that Society whereof we are part, hath at any time before conſented, without revoking the ſame after by the like Univerſal Agreement. Wherefore as any Mans Deed paſt is good, as long as himſelf continueth, ſo the Act of a Publick Society of Men, done five hundred years ſithence, ſtandeth as theirs who preſently are of the ſame Societies, becauſe Corporations are Immortal; we were then alive in our Predeceſſors, and they in their Succeſſors do ſtill live. Laws therefore Humane of what kind ſoever, are available by Conſent*, &c.

And

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And again, *But what matter the Law of Nations doth contain, I omit to ſearch; the ſtrength and vertue of that Law is ſuch, that no particular Nation can lawfully prejudice the ſame by any their ſeveral Laws and Ordinances, more then a Man by his Private Reſolutions the Law of the whole Commonwealth or State wherein he liveth; for as Civil Law being the Act of a whole Body Politick, doth therefore over-rule each Civil part of the ſame Body; ſo there is no Reaſon that any one Commonwealth of it ſelf, ſhould to the Prejudice of another, annihilate that whereupon the whole World hath Agreed.*

To the ſame purpoſe may we find the Univerſal Agreement of all Civilians, *Grotius*, *Puffendorf*, *Lock's Treat. Government*, &c.

No one or more Men, can by *Nature* challenge any *Right*, *Liberty* or *Freedom*, or any Eaſe in his *Property*, *Eſtate* or *Conſcience*, which all other Men have not an *Equally Juſt Claim to.* Is *England* a *Free* People? So ought *France* to be. Is *Poland* ſo? *Turky* likewiſe, and all the

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the *Eaſtern Dominions*, *ought* to be ſo : And the ſame runs throughout the whole *Race of Mankind*.

Againſt the Common Law of *England*.

Secondly, 'Tis againſt the Common Laws of *England*, which are of Force both in *England* and *Ireland*, by the *Original Compact* before hinted. It is Declared by both Houſes of the Parliament of *England*, 1 *Jac.* cap. 1. *That in the High Court of Parliament, all the whole Body of the Realm, and every particular Member thereof, either in Perſon, or by Repreſentation (upon their own Free Elections) are* by the Laws of this Realm *deem'd to be Perſonally preſent.* Is this then the common Law of *England*, and the Birthright of every Free-born Engliſh Subject ? And ſhall we of this Kingdom be deny'd it, by having Laws impoſed on us, where we are neither Perſonally, nor Repreſentatively preſent ? My Lord *Cooke* in his 4th Inſt. cap. 1. ſaith, That *all the Lords Spiritual and Temporal, and all the Commons of the whole Realm, ought* ex Debito Juſticiæ *to be Summon'd to Parliament, and none of them ought to be Omitted.* Hence it

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it is call'd *Generale Concilium* in the Stat. of *Weſtminſt.* 1. and *Commune Concilium*, becauſe it is to comprehend all Perſons and Eſtates in the whole Kingdom. And this is the very Reaſon given in the Caſe of the *Merchants of Waterford* foregoing, why Statutes made in *England*, ſhould not bind them in *Ireland*, *Quia non habent Milites hic in Parliamento*; Becauſe they have no *Repreſentatives* in the Parliament of *England*. My Lord *Hobbard* in the Caſe of *Savage* and *Day*, pronounced it for Law, That whatever is againſt Natural Equity and Reaſon, is againſt Law; Nay, if an Act of Parliament were made againſt Natural Equity and Reaſon, that Act was void. Whether it be not againſt Equity and Reaſon, that a Kingdom regulated within it ſelf, and having its own Parliament, ſhould be Bound *without their Conſent*, by the Parliament of another Kingdom, I leave the Reader to conſider. My Lord *Cooke* likewiſe in the firſt Part of his Inſtitutes, fol. 97. b. ſaith, *Nihil quod eſt contra Rationem eſt Licitum.* And in the old *Modus Tenendi Parliamenta* of

England,

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England, ſaid to be writ about *Edward the Confeſſor*'s time, and to have been Confirmed and Approved by *William the Conqueror*: It is expreſly declared, That all the *Lords Spiritual and Temporal, and the Knights, Citizens, and Burgeſſes ought to be* ſummoned to Parliament. The very ſame is in the *Modus* ſent into *Ireland* by *Henry* the 2d. And in *King John's Great Charter* dated 17. *Johannis*, 'tis granted in theſe words, *Et ad habend. Commune Concilium Regni de Auxiliis & Scutagiis Aſſidendis, Submoneri faciemus Archiepiſcopos, Epiſcopos, Abbates, Comites, & Majores Barones, Regni Sigillatim per Literas Noſtras, & faciemus* ſubmoneri in generali per *Vicecomites* omnes alios, &c. *Math. Paris ad An.* 17. *Johann.* All are to be Summoned to Parliament, the *Nobility* by ſpecial Writts; the *Commons* by general Writts to the Sheriffs. And is this the *Common Law* of *England*? Is this part of thoſe *Liberæ Conſuetudines*, that were contained in the Great *Charter* of the *Liberties* of the People of *England*; And were ſo ſolemnly granted by *Henry* II.

King

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King *John*, and *Henry* the 3d, to the *People of Ireland*, that they ſhou'd Enjoy and be Govern d by; and unto which they were Sworn to be Obedient; And ſhall they be of Force *only in England*, and not in *Ireland?* Shall *Ireland* Receive theſe *Charters of Liberties*, and be no Partakers of the *Freedoms* therein contained? Or do theſe words ſignifie in *England one thing*, and in *Ireland no ſuch* thing? This is ſo repugnant to all Natural Reaſon and Equity, that I hope no Rational Man will Conteſt it: I am ſure if it be ſo, there's an end of all Speech amongſt Men; All Compacts, Agreements, and Societies, are to no purpoſe.

3. It is againſt the Statute Laws both of *England*, and *Ireland*: this has been pretty fully diſuſs'd before; however I ſhall here again take notice, That (*a*) in the 10. of *Henry* the 4th it was Enacted in *Ireland*, that Statutes made in *England* ſhould not be of Force in *Ireland*, unleſs they were Allowed and Publiſhed by the Parliament of *Ireland*. And the like Statute was made the 29th of

Againſt the Statute Law both of *England* and *Ireland*.

(*a*) See before pag. 65.

of *Henry* the 6th. And in the 10th Year of *Henry* the 7th. Chap. 23 Iriſh Statutes, The Parliament which was held at *Drogheda*, before Sir *Chriſtopher Preſton*, Deputy to *Jaſpar Duke of Bedford*, Lieutenant of *Ireland*, was declared Void, for this Reaſon amongſt others, *That there was no General Summons of the ſaid Parliament to all the Shires, but only to Four.* And if Acts of Parliament made in *Ireland* ſhall not Bind that People, becauſe ſome Counties were omitted: how much leſs ſhall either their Perſons or Eſtates be Bound by thoſe Acts *made in England*, whereat no one County, or Perſon of that Kingdom is preſent? In the (*b*) 25th of *Edward* the 1ſt. Cap. 6. It was Enacted by the Parliament of *England* in theſe Words, *Moreover from henceforth we ſhall take no manner of Aid, Taxes, or Prizes, but by the Common Aſſent of the Realm.* (*c*) And again in the *Statute of Liberties*, by the ſame King, Cap. 1. *De* Tallag. non *Concedend.* it is Enacted in theſe Words. *No Tallage or Aid ſhall be Taken or Levy'd by Us, or Our Heirs, in Our Realm, without the*

(*b*) Pultons Col. *Eng.* Stats. Edit. 1670. pag. 63.

(*c*.) *ibid.* page 75.

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the Good Will and Aſſent of Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Freemen of the Land. The like Liberties are ſpecially Confirm'd to the Clergy, (*d*) the 14th of *Edward* the 3d. And were theſe Statutes, and all other Statutes and Acts of the Parliament of *England* Ratified, Confirmed, and Adjudged by ſeveral Parliaments of *Ireland* to be of Force within this Realm: And ſhall the People of *Ireland* receive no Benefit by thoſe Acts? Are thoſe Statutes of Force in *England* only; And can they add no Immunity or Priviledge to the Kingdom of *Ireland*, when they are received there? Can the King and Parliament make Acts in *England* to Bind his Subjects of *Ireland without their Conſent*; And can he make no Acts in *Ireland with their Conſent*, whereby they may receive any Priviledge or Immunity? This were to make the *Parliaments of Ireland wholly Illuſory, and of no Effect.* If this be Reaſonable Doctrine, To what end was *Poyning*'s Law in *Ireland*, (*e*) that makes all the Statutes of *England* before that, in Force in this Kingdom;

(*d*) *ibid.* page 113.

(*e*) 10 *H.* 7. c. 22

dom? This might as well have been done, and again undone, when they pleaſe, by a ſingle Act of the Engliſh-Parliament. But let us not make thus light of Conſtitutions of Kingdoms, 'tis *Dangerous* to thoſe who *do it*, 'tis *Grievous* to thoſe that *ſuffer it*.

Moreover, Had the King or his Council of *England*, in the 10th year of *Hen.* VII. in the leaſt dreamt of this Doctrine, to what end was all that ſtrict Proviſion made by *Poyning*'s *Act*, Iriſh Stat. cap. 4. That no Act of Parliament ſhould paſs in *Ireland*, before it was firſt Certified by the Chief Governour and Privy Council here, under the Broad Seal of this Kingdom, to the King and his Privy Council in *England*, and received their Approbation, and by them be remitted hither under the Broad Seal of *England*, here to be paſs'd into a Law? The deſign of this Act, ſeems to be the Prevention of any thing paſſing in the Parliament of *Ireland Surreptitiouſly*, to the *Prejudice* of the *King*, or the *Engliſh Intereſt* of *Ireland*. But this was a needleſs

needleſs Caution, if the King, and Parliament of *England*, had Power at any time to revoke or annul any ſuch Proceedings. Upon this *Act* of *Poynings*, many and various Acts have paſs'd in *Ireland*, relating to the Explanation, Suſpenſion, or farther Corroboration thereof, in divers Parliaments, both in *Henry* the Eighth's, *Phil.* & *Mary*'s, and Q. *Eliz.* Reigns; for which ſee the Iriſh Statutes. (*a*) All which ſhew that this *Doctrine* was hardly ſo much as *Surmiſed in thoſe Days*, however we come to have it raiſed in theſe *Latter Times*.

(*a*) 28 H 8. c. 4.
28 H. 8. c. 20.
3 & 4 Ph. & M. c. 4.
11 Eliz. Seſ. 2. c. 1.
11 Eliz. Seſ. 3. c. 8.

Againſt ſeveral Conceſſions made to *Ireland*.

Fourthly, 'Tis againſt ſeveral *Charters of Liberties* Granted unto the Kingdom of *Ireland*: This likewiſe is clearly made out by what foregoes. I ſhall only add in this place, That in the Patent-Roll of the 17 *Rich.* 2. m. 34. *de Confirmatione*, There is a Confirmation of ſeveral *Liberties* and *Immunities* granted unto the Kingdom and People of *Ireland* by *Edw.* III. The Patent is ſomewhat long, but ſo much as concerns this Particular, I ſhall render *verbatim*, as I have it

M Tranſcri-

Transcribed from the Roll by Sir *William Domvile*, Attorny General in *Ireland* during the whole Reign of King *Charles* II. *Rex omnibus, &c. Salutem : Inſpeximus Literas Patentes Domini Edwardi nuper Regis Angliæ, Avi noſtri fact. in hæc verba :* Edwardus *Dei Gra. Rex Angliæ & Franciæ, & Dominus Hiberniæ, Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Miniſtris noſtris tam Majoribus quam Minoribus, & quibuſcunque aliis de Terra noſtra Hiberniæ fidelibus noſtris ad quos Præſentes Literæ pervenerint, Salutem : Quia, &c. Nos hæc quæ ſequuntur* Ordinanda *Duximus & firmiter obſervanda, &c. Imprimis, vizt. Volumus & Præcipimus quod Sancta Hibernicana Eccleſia ſuas Libertates & Liberas Conſuetudines illeſas habeat, & eis Libere gaudeat & Utatur. Item volumus & præcipimus quod noſtra & ipſius Terræ Negotia preſertim Majora & Ardua in Conſiliis per Peritos Conſiliaros noſtros ac Prælatos & Magnates & quoſdam de Diſcretioribus & Probioribus Hominibus de partibus vicinis ubi ipſa Concilia teneri Contigerit propter hoc evocandos, in Parliamentis vero per ipſos Conciliaros*

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ros noſtros ac Prælatos & Proceres alioſque de terra predicta prout Mos Exegit ſecundum Juſticiam Legem Conſuetudinem & Rationem tractentur deducantur & fideliter timore favore odio aut prætio poſt poſitis diſcutiantur ac etiam terminentur, &c. In Cujus Rei Teſtimonium has Literas noſtras fieri fecimus Patentes Teſte meipſo Apud Weſtminſt. 25 die Octob. Anno Regni noſtris Angliæ 31, Regni vero Franciæ 18. Nos autem Ordinationes Voluntates & Præcepta Prædicta ac omnia alia & ſingula in Litteris prædictis Contenta Rata Habentes & Grata Ea pro nobis & Hæredibus noſtris quantum in nobis eſt Acceptamus, Approbamus, Ratificamus, & Confirmamus prout Literæ prædictæ rationabiliter teſtanter. In Cujus, &c. Teſt. Reg. apud Weſtminſt. 26 die Junii.

Fifthly, It is inconſiſtent with the *Royalties* and *Præeminence* of a *Separate* and *Diſtinct Kingdom*. That we are thus a *Diſtinct Kingdom*, has been clearly made out before. 'Tis plain, the Nobility of *Ireland* are an Order of Peers clearly Diſtinct from the Peerage of *England*, the

Inconſiſtent with the Royalties of a Kingdom.

Priviledges of the one, extend not into the other Kingdom; a Lord of *Ireland* may be Arrested by his Body in *England*, and so may a Lord of *England* in *Ireland*, whilst their Persons remain Sacred in their respective Kingdoms: A *Voyage Royal* may be made into *Ireland*, as the Year-Book, 11 *Hen.*4.17.fol.7. and Lord *Cook* tells us; and King *John* in the 12th year of his Reign of *England*, made a *Voyage Royal* into *Ireland*; and all his Tenants in Chief, which did not attend him in that Voyage, did pay him *Escuage*, at the Rate of Two Marks for every *Knights Fee*; which was imposed *super Prælatis & Baronibus pro Passagio Regis in Hibernia*, as appears by the Pipe-Roll, Scutag. 12 *Johannis Regis in Scaccario Angl.* Which shews that we are a *Compleat Kingdom* within our selves, and not little better than a *Province*, as some are so Extravagant as to Assert; none of the Properties of a *Roman Province* agreeing in the least with our Constitution. 'Tis Resolved in Sir *Richard Pembrough*'s Case in the 44th of *Edw.* III. That Sir *Richard* might lawfully refuse the

the King, to ſerve him as his *Deputy in Ireland*, and that the King could not *Compel* him thereto, for that were to *Baniſh him into another Kingdom*, which is againſt *Magna Charta*, Chap.29. Nay, even tho' Sir *Richard* had great Tenures from the King, *pro ſervitio Impenſo & Impendendo*, for that was ſaid muſt be underſtood *within the Realm of England*, *Cooks* 2d Inſt.pag.47. And in *Pilkington*'s Caſe aforemention'd, *Forteſcue* declared, That the Land of *Ireland* is and at all times hath been a *Dominion Separate and Divided from England*. How then can the Realms of *England* and *Ireland*, being *Diſtinct Kingdoms* and *Separate Dominions*, be imagin'd to have any *Superiority* or *Juriſdiction* the one over the other. 'Tis abſurd to fancy that Kingdoms are *Separate* and *Diſtinct* meerly from the *Geographical Diſtinction of Territories*. Kingdoms become *Diſtinct* by *Diſtinct Juriſdictions*, and *Authorities Legiſlative* and *Executive*; and as *Rex eſt qui Regem non habet*, ſo *Regnum eſt quod alio non Subjicitur Regno*: A Kingdom can have no *Supream*; 'tis in it ſelf Supream with-

in it ſelf, and muſt have all Juriſdictions, Authorities and Præeminencies to the Royal State of a Kingdom belonging, or elſe 'tis none: And that *Ireland* has all theſe, is declared in the Iriſh Stat. 33 *Hen.* VIII. c. 1. The chief of theſe moſt certainly is, the *Power of Making and Abrogating its own Laws*, and being bound only by ſuch to which the *Community* have given their *Conſent*.

Againſt the Kings Prerogative.

Sixthly, It is *againſt the Kings Prerogative*, that the Parliament of *England* ſhould have any Co-ordinate Power with Him, to introduce New Laws, or Repeal Old Laws Eſtabliſhed in *Ireland*. By the Conſtitution of *Ireland* under *Poyning*'s *Act*, the King's Prerogative in the Legiſlature is advanced to a much higher Pitch than ever was Challenged by the Kings in *England*, and the Parliament of *Ireland* ſtands almoſt on the ſame bottom as the King does in *England*; I ſay *almoſt* on the ſame Bottom; for the Iriſh Parliament have not only a *Negative Vote* (as the King has in *England*) to whatever Laws the King

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and his Privy Councils of both or either Kingdom, ſhall lay before them; but have alſo a Liberty of *Propoſing* to the King and his Privy Council here, ſuch Laws as the Parliament of *Ireland* think expedient to be paſs'd. Which Laws being thus Propoſed to the King, and put into form, and Tranſmitted to the Parliament here, according to *Poyning*'s *Act*, muſt be Paſs'd or Rejected in the *very Words*, even to a *Tittle*, as they are laid before our Parliament, we cannot alter the leaſt *Iota*. If therefore the *Legiſlature* of *Ireland* ſtand on this Foot, in relation to the King, and to the Parliament of *Ireland*; and the Parliament of *England* do Remove it from this Bottom, and Aſſume it to themſelves, where the Kings Prerogative is much *Narrower*, and as it were *Reverſed*, (for there the King has only a *Negative Vote*) I humbly conceive 'tis an *Incroachment* on the Kings *Prerogative*: But this I am ſure, the Parliament of *England* will be always very Tender of, and His Majeſty will be very loth to have ſuch a Precious Jewel of his Crown handled ruſly.

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The Happineſs of our Conſtitutions depending on a Right Temperament between the *Kings* and the *Peoples Rights*.

Againſt the Practice of former Ages.

Seventhly, It is *againſt the Practice of all former Ages*. Wherein can it appear, that any Statute made in *England*, was at any time ſince the Reign of *Henry* the Third, allowed and put in practice in the Realm of *Ireland*, without the *Authority* of the *Parliament* of *Ireland*. Is it not manifeſt by what foregoes, that from the Twentieth of King *Henry* the Third, to the Thirteenth of *Edward* the Second, and from thence to the Eighteenth of *Henry* the Sixth, and from thence, to the Thirty-Second of *Henry* the Sixth, and from thence, to the Eighth of *Edward* the Fourth, and from thence, to the Tenth of *Henry* the ſeventh, there was ſpecial care taken to Introduce the Statutes of *England*, (ſuch of them as were neceſſary or convenient for this Kingdom) by degrees, and always with *Allowance*, and *Conſent* of the *Parliament* and *People* of *Ireland*. And ſince the *General Allowance*, of all the

the Engliſh Acts and Statutes in the Tenth of *Henry* the Seventh, there have ſeveral Acts of Parliament, which were made in *England* in the Reigns of all the Kings from that Time, Succeſſively to this very Day, been particularly Receiv'd by Parliament in *Ireland*, and ſo they become of force here, and not by reaſon of any *General Comprehenſive* words, as ſome Men have lately fancied. For if by *General Comprehenſive Words*, the Kingdom of *Ireland* could be bound by the Acts of Parliament of *England*, what needed all the former *Receptions* in the Parliament of *Ireland*, or what *uſe will there be of the Parliament of Ireland at any time?* If the Religion, Lives, Liberties, Fortunes, and Eſtates of the Clergy, Nobility, and Gentry of *Ireland*, may be diſpos'd of, without their *Privity* and *Conſent*, what Benefit have they of any Laws, Liberties, or Priviledges granted unto them by the Crown of *England?* I am loth to give their Condition an *hard Name*; but I have no other Notion of *Slavery*, *but being Bound by a Law to which I do not Conſent.*

Eighth-

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Againſt the Reſolution of Judges.

Eighthly, 'Tis againſt ſeveral *Reſolutions* of the *Learned Judges*, of former times in the very Point in Queſtion. This is manifeſt from what foregoes in the Caſe of the *Merchants of Waterford*, *Pilkington's* Caſe, Prior of *Lanthony's* Caſe, *&c.* But I ſhall not here inlarge farther thereon.

Deſtroys Property.

Ninthly, The Obligation of all Laws having the ſame Foundation, if *One* Law may be Impoſed *without Conſent*, any *Other* Law whatever, may be Impoſed on us *Without our Conſent*. This will naturally introduce *Taxing us without our Conſent*; and this as neceſſarily deſtroys our *Property*. I have no other Notion of *Property*, but a *Power of Diſpoſing my Goods as I pleaſe*, and not as another ſhall Command: Whatever another may *Rightfully* take from me *without my Conſent*, I have certainly no *Property* in. To *Tax* me without Conſent, is little better, if at all, than *down-right Robbing me*. I am ſure the Great Patriots of Liberty and Property, the Free People

ple of *England*, cannot think of ſuch a thing, but with Abhorrence.

Laſtly, The People of *Ireland* are left by this Doctrine in the Greateſt *Confuſion* and *Uncertainty* Imaginable. We are certainly bound to Obey the *Supream Authority* over us; and yet hereby we are not permitted to know *Who* or *What* the ſame is; whether the *Parliament of England*, or *that of Ireland*, or *Both*; And in what Caſes the *One*, and in what the *Other*: Which *Uncertainty* is or may be made a Pretence at any time for *Diſobedience*. It is not impoſſible but the Different Legiſlatures we are ſubject to, may Enact Different, or Contrary Sanctions: Which of theſe muſt we obey?

Creates Confuſion.

To conclude all, I think it highly *Inconvenient* for *England* to *Aſſume* this *Authority* over the Kingdom of *Ireland*: I believe there will need no great Arguments to convince the Wiſe Aſſembly of Engliſh Senators, how *inconvenient* it may be to *England*, to do that which may make

Inconvenient to *England* to Aſſume this Power.

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make the *Lords* and *People of Ireland* think that they are not *Well Used*, and may drive them into *Discontent*. The *Laws* and *Liberties of England* were granted above five hundred years ago to the People of *Ireland*, upon their Submissions to the Crown of *England*, with a Design to make them *Easie* to *England*, and to keep them in the Allegiance of the King of *England*. How Consistent it may be with True Policy, to do that which the People of *Ireland* may think is an *Invasion* of their Rights and Liberties, I do most humbly submit to the Parliament of *England* to Consider. They are Men of *Great Wisdom*, *Honour*, and *Justice*: and know how to prevent all future *Inconveniencies*. We have heard Great Out-cries, and deservedly, on Breaking the *Edict of Nantes*, and other Stipulations; How far the Breaking our Constitution, which has been of Five Hundred years standing, exceeds that, I leave the World to judge. It may perhaps be urg'd, That 'tis *convenient* for the State of *England*, that the *Supream Council* thereof should make their Jurisdiction

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ction as *Large* as they can. But with Submiſſion, I conceive that if this *Aſſumed Power* be not *Juſt*, it cannot be *convenient* for the State. What *Cicero* ſays in his *Offices*, *Nihil eſt Utile, niſi idem ſit Honeſtum*, is moſt certainly true. Nor do I think, that 'tis any wiſe *neceſſary* to the *Good* of *England* to *Aſſert* this High Juriſdiction over *Ireland*. For ſince the Statutes of this Kingdom are made with ſuch *Caution*, and in ſuch *Form*, as is preſcribed by *Poyning's Act* 10 *H.7.* and by the 3d and 4th of *Phil.* and *Mar.* and whileſt *Ireland* is in *Engliſh hands*, I do not ſee how 'tis poſſible for the Parliament of *Ireland* to do any thing that can be in the leaſt *prejudicial* to *England*. But on the other hand, If *England aſſume* a *Juriſdiction* over *Ireland*, whereby they think their *Rights* and *Liberties* are *taken away*; *That their Parliaments are rendred meerly nugatory*, and that their Lives and Fortunes Depend on the Will of a *Legiſlature* wherein they are *not Parties*; there may be ill Conſequences of this. *Advancing* the Power of the Parliament of *England*, by

breaking

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breaking the *Rights* of an *other*, may in time have ill Effects.

The *Rights of Parliament* ſhould be preſerved *Sacred* and *Inviolable*, wherever they are found. This kind of Government, once ſo *Univerſal* all over *Europe*, is now almoſt *Vaniſhed* from amongſt the Nations thereof. Our Kings Dominions are the only Supporters of this noble *Gothick Conſtitution*, ſave only what little remains may be found thereof in *Poland*. We ſhould not therefor e make ſo light of that ſort of Legiſlature, and as it were Aboliſh it in One Kingdom of the Three, wherein it appears; but rather Cheriſh and Encourage it wherever we meet it.

FINIS.

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THE

CASE

John OF Rotton

IRELAND's

Being Bound by

Acts of Parliament

IN

ENGLAND,

Stated.

BY

William Molyneux,

of *Dublin*, Esq;

Dublin, Printed by *Joseph Ray*, and are to be Sold at his Shop in *Skinner-Row*. MDCXCVIII.

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