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In answer to

**BOOK,**

WRITTEN

By WILLIAM MOLYNEUX of *Dublin*, Esq;

INTITULED,

*The Case of Irelands being bound by Acts  
of Parliament in England, stated.*

By JOHN CARY Merchant in *Bristol*.

*Nolumus Leges Anglicanas mutari.*

L O N D O N :

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To the Right Honourable,

*John, Lord Somers,*  
Baron of *EVEHAM,*

And

Lord High Chancellor of  
*ENGLAND.*

**I** *Humbly make bold to Present Your Lordship with this little Tract, being an Answer to a Book, Entituled, The Case of Ireland's being bound by Acts of Parliament in England stated, Written by William Molyneux, of Dublin,*  
A 2 *Esquire.*

## Dedication.

*Esquire. The Reason which induced me to intermeddle in a thing so much out of my Profession, as Matters of Law are, was, that I had formerly, amongst other things, discours'd on the State of Ireland, in my Essay on Trade, and offer'd it as my Opinion, That except that Kingdom was bound up more strictly by Laws made in England, it would soon destroy our Woollen Manufactory here: Wherefore I propos'd to reduce it (with respect to its Trade) to the state of our other Plantations and Settlements Abroad, which I supposed the only Means we had left to help our selves, and to*  
*render*

## The Dedication.

*render Ireland more useful to this Kingdom. This I humbly presented to the King's Most Excellent Majesty, and also to the Honourable the Commons of England then sitting in Parliament; which I presumed to do, because I thought I had Faithfully and Impartially discoursed on the Subjects I undertook, at least I knew I had endeavour'd to do so; and supposing that Book might give some beginning to the Bill for Encouraging the Woollen Manufactures in England, and restraining the Exportation of the Woollen Manufactures from Ireland,*  
*I*

## Dedication.

I found my self obliged to consider the Arguments which might be brought against Ireland's being bound by Statute Laws made in England. What Success that Bill will have, I know not, but I very much fear, if something of that nature be not done, we shall soon loose that part of our Woollen Manufacture now left; which will tend to the Ruining our Poor, the Lessening the Value of the Lands of England, and depriving us of a great Number of People, who will be necessitated to leave this Kingdom, and go over to Ireland, to follow their Employments there; and  
all

## The Dedication

all this without rendring the Gentlemen of Ireland any sort of Advantage, that may not be made up to them another way.

This, I humbly, conceive may be done, and Ireland encouraged on another Manufacture, no way Detrimental to the Interest of England, and carried on by such Methods, as may become profitable to both Kingdoms: Till this be done, I very much fear, both will be uneasie; I humbly beg your Lordship's Pardon for my Presumption; and that you will be pleased to accept what I here offer, as from a Person who truly Honours your Lordship; and so much the more,  
be-

Dedication.

because you have always Asserted  
the Rights and Powers of Par-  
liaments. I am with all Dutiful  
respect,

Right Honourable,  
Your Lordship's most Humble  
and most Obedient Servant,

JOHN CARY.

A

A VINDICATION of the  
Parliament of England's  
Power to Bind Ireland by  
their Statute-Laws, in An-  
swer to a Book, written by  
William Molyneux, of  
Dublin, Esq.

S I R,

**Y**OUR Book Entituled, *The  
Case of Ireland's being Bound  
by Acts of Parliament in Eng-  
land, Stated*, I have seen, and  
read over with some thought;  
and because I cannot agree with you in  
your Opinion, I design this as an Answer,  
to shew you the reason why I differ from  
you.

But before I proceed farther, I shall pre-  
mise and grant with you, That *Ireland*  
hath long had a Parliament; and I am apt  
to think that your mistake arises from this,  
that you Build too much on the Name, not  
considering the Power that Parliament Le-

B gally

indications,

gan. . . . : For this is no more then our Foreign Plantations, and great Corporations in *England* have; in the former, the Governours represent the King, the great Men or Council the Lords, and the Commons are represented by such as they elect, and send from their several Districts: In the latter, these three Estates are likewise Represented by the Mayor, Aldermen, and Common Council of the several Cities or Corporations; these make Laws for their better Order and Government, yet all subservient to the great Council or Parliament of this Nation; from whose Jurisdiction those Priviledges do not in the least set them free, but they pay a due Obedience to their Laws, especially those made with an Intention to bind them.

The Dispute now between you and me is, *Whither Ireland can be Bound by our English Acts of Parliament?* This you deny, and I affirm; I will therefore proceed to enquire into your Arguments.

And because I intend as much Brevity as possible I can, I will pass by all that in your Book, which I apprehend doth not concern the Matter in Dispute. Your Stile is good, and your Language like a Gentleman; but with this fault, that under that, you sometimes endeavour to cloud your Design, and represent it to the Reader quite

. . . Parliament,

quite different from your own Intention.

Page 4. You tell us, *That the Subject of your present Disquisition shall be, how far the Parliament of England may think it reasonable to intermeddle with the Affairs of Ireland, and bind you up by Laws made in their House.* This you might have informed your self from our Statute-Books, which begin with the Laws of *Henry III.* about Five hundred years since; and you will find, that in that King's Reign, and ever since, in the Reigns of his Successors, the Parliament of *England* have thought it reasonable to Bind up *Ireland* by Laws made here, so often as they saw there was occasion; and no doubt they did the same, or at least had Power so to do, in the Reigns of *Henry II. Richard I. and King John*, who all preceded King *Henry III.* and Reigned after *Ireland* came under the English Government. Now, were that all the Question in Dispute, I could soon answer you, that what the Parliaments of *England* did Five hundred years past, and have done ever since, the present Parliaments think reasonable to suppose themselves impowered to do, because they make Precedents of former times their Rule and Government; so that 'tis not the Will, but the Power of the Parliament of *England* in this Matter,

4 *indication,*  
 that *Dispute*; and this appears more plainly in your next Paragraph, where you call it a *pretended Right, founded only on the imaginary Title of Conquest, or Purchase, or on Precedents, and Matters of Record.*

I do not think it very material for me to consider, on which of these *imaginary Titles*, as you call them, they *pretend* to this Power, the Question will not turn on that; 'tis enough, if I assert and prove, that the Parliaments of *England* did exercise this Power, ever since *Ireland* hath been under the *English* Government; and I think it will lye on you to prove, that either they did not, and then to show when they first Usurp'd it, or that it was an Usurpation from the Beginning; therefore your first, second, and third general Heads, seeming to be of no great Moment in this Dispute, I shall say the less to them; your fourth, fifth, and sixth, seem more to relate to the matter before us.

Under the first of these, speaking of *Henry II.* you say, *Page 11, and 12. That 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 of England for Lord of Ireland, and*  
*became*

*The Parliament,* 5  
*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 ordained him and his Heirs to be their King and Lord of Ireland for ever. This was Anno 1173. Now, either this Resignation they made to him was Absolute or Limited, if the latter, I conceive it must be exprest in those Charters you mention, and it had very much concerned your Argument to have got them perused, (if any there are) and to have shewed, how far the Parliaments of *England* have broke through those Original Compacts.*

And herein, I think I have granted as much as you desire in your second Head; it seems to me all one as to the present Case, whether *Henry II.* be considered, *Page 13. as Conquestor Hiberniæ, or as Dominus Hiberniæ,* I shall draw no Arguments from either, a Submission you have acknowledged. You say, *Page 15. That all came in peaceably, and had large Concessions made them, of the like Laws and Liberties with the People of England;* here again it would have been necessary for you to have produced some of those Concessions, that you might have made it appear to the Parli-

ment of *England*, what they were ; not that I do make any Demur to the freedom of the People of *Ireland*, I take them to be so, both in their Lives, Liberties, and Properties, as much , and as far, as any People in *England* ; and I take them to be the more so, because they are subject to an English Parliament, and so have all the Priviledges of an English People, which the Subjects of *Scotland* have not ; I take every Subject of the Kingdom of *England* to be Born Free, and to carry this Charter of his Freedom about him, let him remove where he will, within the Dominions of *England* ; and that he cannot be divested thereof, but by the Laws of this Land, made by his Representatives in Parliament, in the Election whereof, he either hath, or may have a Voice, if he qualifies himself as those Laws doe direct. This I willingly grant, because I would not be thought to argue against the Liberty and Property of English Men, wherever they are settled : But still, I think it had been necessary for you to have produced a Transcript of those Concessions ; for either they were made, or they were not ; if they were, you live in a Kingdom, whose Interest it was to preserve them, and they must give great light into the present Controversy ; if none appears, how do you know what those

those Concessions were ? I insist the more on this, because you say, they had Concessions, of the like Laws, and Liberties, with the People of *England* ; now whether by this you mean, the same Laws and Liberties, or such as were very like them, I am in the dark ; if the latter, they must be either more, or less ; they cannot be more, for I take the People of *England* to be as free as any People in the Universe ; if they were less, then I grant you more than you desire ; for I take the People of *Ireland*, to stand on the same footing with the People of *England*, and yet I am afraid you are not content ; therefore I should gladly see a Transcript of those Concessions, because I am apt to think we differ in this ; I say they were to be subject to all the Laws of *England* in general, you exempt them from the Statute-Laws ; but I expect to find you fuller on this, in your Fourth Particular.

As to your third Particular, *What Title Conquest gives by the Laws of Nature and Reason*, Page 18. I shall say little to it, supposing it hath no relation to this Controversy ; for I do grant, that the People of *Ireland* are a free People, and that they are, as you say, Page 20. *The Progeny of the English and Britains, that from time to time went over into that Kingdom.* I add, who



before they went hence were subject to the Statute Laws of *England*; and then the Question will be, what were those Concessions that discharged them, from rendering Obedience to the Legislative Power of this Kingdom.

This brings me to your Fourth Particular, pag. 28. *What Concessions and Grants have been from time to time made to the People of Ireland?* But the latter part of that Particular, pag. 5. *By what Degrees the English Form of Government, and the English Statute Laws came to be received in Ireland;* which you say, *was wholly owing to the Consent of the People and Parliament of Ireland,* I deny, and you are to prove; and I conceive, this cannot better be done, than by producing some Concessions or Grants, whereby they are discharged by the Legislative Power of *England*, from the Obedience they owed, and always paid, to the Statute Laws of this Kingdom, before they removed into *Ireland*.

And now we are arrived at the true State of the Controversy; you suppose, that the People of *Ireland* cannot pay Obedience to the Statute Laws of this Kingdom, except they subject themselves to a State of Bondage; and I believe they ought to do it, especially, when those Laws are designed to bind them, and that this consists with

with the State of Liberty and Freedom; I will therefore examine what you say on this Fourth Particular.

The First Precedent you produce, is only an Account, that *Matth. Paris*, Historiographer to King *Henry III.* gives, (who, by the way, please to note, wrote above Sixty Years after King *Henry II.* took Possession of *Ireland*) 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 governed by the Laws of *England*, pag. 28. I desire to know, whether the Statute Laws were then part of the Laws of *England*? If they were, (which I suppose you will not deny, for you confess Parliaments to be before that time, pag. 39.) then please to inform me, Whether the People of *Ireland* consented to the making those Laws? If not, by your own Argument, here is the Slavery, which you so much fear and exclaim against through your whole Book, introduced on them in the original Contract, for he saith, that the King caused them to receive, and swear to be governed by the Laws of *England*.

But in your next Precedent, you seem to qualify the Severity of that King's Orders, by what *Sir Edward Cook* says, viz. *That he settled the Laws of England in Ireland, by*  
the

*the voluntary Acceptance and Allowance of the Nobility and Clergy, pag. 29. And he did likewise allow them the Freedom of holding Parliaments in Ireland, as a separate and distinct Kingdom from England.* Please to note, that Sir Edward Cook wrote about Five Hundred Years after King Henry II. went into Ireland, and about Four Hundred and Fifty after Matt. Paris wrote, and you would now bring his Opinion against the constant Practice of the Parliaments of England, for Five Hundred Years; Besides you say, p. 80, and 116. *That Sir Edward Cooke was of Opinion, that Ireland was to be governed by the Statute Laws made in England, where it was specially named therein; and in the last of these Pages you exclaim against him for this his Opinion.* I shall not examine your Quotations, whether they agree with the Originals or no, my Profession being not the Law, I am not furnish'd with those Books, nor do I think it much to the purpose what Sir Edward Cook saith in this matter; yet I must take notice, that you pen the Words,  *Holding of Parliaments in Ireland, in a different Character from the following Sentence, As a separate and distinct Kingdom from England, which gives me reason to suppose, the last was added by your self, as your Paraphrase on what Sir Edward Cook said;* I would endeavour

your

your to find out the Original, did the Decision of this Controversy depend upon Sir Edward Cook's Opinion.

Sir Edward Cook, in this Case, should have given a Transcript of that Grant, and you should have transcribed it, as you do afterwards, the *Modus* how to hold their Parliaments, pag. 29. and yet then, there would have arose this Question, Whether the Kings of England can legally exempt their English and British Subjects (for so you call the People of Ireland, pag. 20.) from their Obedience to the Legislative Power of this Kingdom, by any Charters or Grants whatsoever; I am sure I never heard of any such Precedent, but on the contrary, it is charged as a Crime on the late King James, in an Act made *Primo G. & M. Cap. 2. That he assumed and exercised a Power of dispensing with, and suspending of Laws, and the Execution of Laws, without Consent of Parliament.*

But here I see you will raise this Objection against my manner of expressing my self, and say, That when Grants are made by a King to any Country that doth submit it self to his Authority, all Persons who shall afterwards settle themselves therein, though before subject to other Laws, are now Locally to be governed by that Form of Government which he Establish'd in that Country;

try;

try ; therefore the People of *England*, when they settled *Ireland*, were to be governed by the Laws granted to *Ireland* ; to this I answer, That the Constitution of the Government to which this Submission is made, ought specially to be considered ; and then there will arise this 2d Question, Whether a Submission made to the K. of *England*, doth not include a Submission to the Legislative Authority of *England* ? I am apt to think it does, and I believe it will appear by what follows in this Discourse, that the Parliaments of *England* have ever been of the same Opinion ; But be this how it will, *Ireland* you allow submitted it self on the Terms of being governed by the Laws of *England*, so this Objection seems rather to be formal, than material, as to the Subject we are upon.

This *Modus*, you say, pag. 30. *For the most part agrees with the Modus tenendi Parl' in England*, which is a loose Argument ; for you know, that one Word in a Grant, may alter the whole Sence, and we both agree, that the Parliament of *Ireland* may make Laws, but the Question is, whether *Ireland* is not bound by the Statute Laws of *England*, as all our Plantations are ?

Yet after all, you confess, pag. 30. *That this very Modus, though strenuously asserted by Sir Edward Cook, is disputed by Mr. Selden and Mr. Pryn, two learned Antiquaries,*

*ries*, will you then bring it as an Argument against the constant Practice of the Parliament of *England*, for Five Hundred Years past ? But grant it had not been disputed at all, I do not see what it will make for your purpose.

*One Reason*, you say, *why Mr. Pryn doubts this Modus to be sent over by King Henry the Second, is, because there were no Sheriffs established in Ireland in Henry the Second's Time*, pag. 31. *Yet the Word Vicecomes is in it ; all you answer is*, pag. 32. *That perhaps the King intended to constitute Sheriffs ; and yet, the first you find establish'd there, were in the Days of King John*, which was about Fifty Years after ; and you say, pag. 30. *That where this Form was altered from the Modus tenendi Parl' in England, 'tis only to fit it the better for the Kingdom of Ireland ; if so, 'tis strange the Word Vicecomes had not been left out, seeing there was then no such Officer in Ireland.*

But pag. 36. you are pleased to allow, that there is reason to doubt the certainty of this Record, unless we will depend on the Credit of the Bishop of *Meath* ; therefore you return to your former Argument, *viz.* that there were Parliaments early in the Kingdom of *Ireland* ; which may be probable ; but whether the Parliament of *England* then lost their Power there, is the thing

thing I dispute, and you do not prove. You say, pag. 36, 37. *That Henry the Second held a General Council of the Clergy at Cashal, wherein he rectified many Abuses in the Church, and established sundry Ecclesiastical Laws, agreeable to those in the Church of England; this in England we call a Convocation, not a Parliament.*

You say, pag. 37. *Pari desiderio Regis Imperio se subjiciunt, omnibus igitur hoc modo consummatis, in Consilio habito apud Lismore Leges Anglicæ ab omnibus sunt grantantur receptæ, & juratoriâ cautione præstitâ confirmatæ, saith Matth. Paris; from hence you infer, pag. 38. That they should enjoy the like Liberties and Immunities, and be governed by the same mild Laws, both Civil and Ecclesiastical, as the People of England; and I see no Reason to the contrary; all we differ in is, whether they were thereby discharged from being subject to the Statute Laws made in England; this seems contrary to the Judgment of the Parliament in Henry the Third's Days, to whom Matth. Paris was Historiographer; else, certainly they would not have made Laws to bind Ireland, as I shall by and by show they did.*

You proceed pag. 38. thus, *From all which it is manifest, that there were no Laws imposed upon the People of Ireland, by any Authority*

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*Authority of the Parliament of England; nor any Laws introduced into that Kingdom by King Henry the Second, but by the Consent and Allowance of the People of Ireland; and the Reason you give for it is this; For both the Civil and Ecclesiastical State were settled there, Regiæ sublimatis autoritate; Solely by the King's Authority, and their own good Wills, as the Irish Statute 11 Eliz. Cap. 1. expresses it. What the Irish Statutes express, I think hath no great Weight in this Debate; the Question is, by what Power the People of Ireland (for so I will now call them) threw off that Subjection, they once owed to the Legislative Power of England? If they think their bare Denial is enough, to warrant them free from such a Subjection, the People of England may expect the like on the same Argument; if because they are not present at our Elections, I will answer that in the following Discourse.*

We proceed now to pag. 39. *To see to what farther Degrees the Government of Ireland grew up conformable to that of England, which are your own Words; you say, that about the twenty third year of Henry II. (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; and from this you would infer,*

infer, Page 40. *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; but you do not set forth that Grant, and our Statute-Books are not so old; this had been necessary for many reasons; you say, Page 40. That by this Donation King John made divers Grants and Charters to his Subjects of Ireland; does this alone shew a Regal Authority? and might it not have been done by a Lord-Deputy, still subject to the Crown of England? Pray let me ask you, was he at his return to England (which you say was a little after his first going over) received here by his Father as a Brother-King? and did he take Precedence of his elder Brother Richard? 'Tis much this young King had not punished his Subjects of Ireland, for being angry at his deriding their long Beards, at which, you say, they took such Offence, that they departed in much Discontent; I say 'tis much he had not punished their Undutifulness, but rather chose to come away in a Pet, and thereby to abdicate his new Kingdom; for you do not shew, that he left the Administration of the Government with any one else: All that can be said in his Defence is, that he was young, about Twelve Years old, pag. 39*  
 † and

and perhaps the obstinate Humour, which the Barons of *England* afterwards found in him, might grow up with him, and become an Infirmity of Age; and during King *John's* being in *England*, did the Kingdom of *Ireland* govern its self? For if his Father, King *Henry* the Second, sent over any other to succeed him, all your Argument is lost.

But after all, I find his granting Charters is not of such moment, as to prove him a King; for this he did to the City of *Bristol*, whilst he was Earl of *Moreton*, (which I believe was long after the time you mention) and I find by the exemplification of that Charter, that his Son, King *Henry* the Third, in his *Inspeximus*, confirms it, as granted by his Father, King *John*, when he was Earl of *Moreton*, without mentioning that he was then also King of *Ireland*; and Princes do not use to abate any thing of their Titles, especially when they are of so great Importance as this. No body doth believe, that King *John*, whilst Earl of *Moreton*, had such a Royal Authority in *Bristol*, as to discharge it from an obediencial Subjection to the Legislative Power of *England*.

The Statute *Primo G. & M. Cap. 9. ff. 2.* saith, *Ireland is annexed and united to the Imperial Crown of England, as well by the*  
 C Laws

*A Vindication of*

*Laws of this Kingdom, as those of Ireland;* and I am sure, there is a great deal of difference between being part of the Imperial Crown of *England*, as *Wales* is, and a separate Kingdom, as *Scotland* is; I find likewise that *Henry* the Third never wrote himself more than Lord of *Ireland*, and 'tis strange, if *Ireland* was established a separate Kingdom in *John* Earl of *Moreton*, and his Heirs, that the Title had not been continued in his Son; and how comes it to pass, that we have ever since been at the Charge of supporting that Kingdom with our Treasure, without keeping a separate Account of our Expences laid out on it, which doubtless we should have done, had we thought it a separate Kingdom?

But to proceed; on searching *Sir Richard Baker's Chronicle*, I cannot find that he takes any Notice of King *Henry* II's sending over his Son *John* about the Twenty Third Year of his Reign, as you say Page 39. which 'tis much he should omit, seeing it was on so memorable an Occasion as his being made King of a separate Kingdom by his Father, in a Parliament at *Oxford*; but he saith, *that in the Thirty First Year of his Reign, he sent his Son John over to Ireland, to be Governour there;* and afterwards, in the Reign of *Richard* I. (Son to *Henry* II. and

*the Parliament, &c.*

and Brother to this *John*) he, speaking of the great Kindnesses shewed by the said King *Richard* I. to his Brother *John*, hath these Words, *To whom he made appear, how much the Bounty of a Brother was better than the Hardnesses of a Father;* and afterwards, he names the several Earldoms which he conferred on him, *viz. Cornwall, Dorset, Somerset, Nottingham, Darby, and Lancaster;* then treating of Affairs in *England*, during the King's Absence on his Voyage to the *Holy Land*, saith, *he left William Longshamp, Bishop of Ely, in chief Place of Authority, at which his Brother was disgusted,* whom he calls there, *Duke John;* and in another Place he says, *that the King after his Return from the Holy Land, took from him all the great Possessions he had given him, and afterwards the said John submitted himself to the King his Brother.*

Now, does this agree with the Honour and Dignity of a King, who had a separate Kingdom? or were the Grants of those several Earldoms from his Brother, which you see were liable to be taken away again at the King's Pleasure, to be accounted a greater Largess, than the Bounty of his Father, if he had made him King of a separate Kingdom, and settled it in Parliament, as you affirm? Besides, if any such thing was done by *Henry* II. in the Twenty Third

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Year of his Reign, it appears, if *Baker* be in the right, that that Grant was recalled, for he saith plainly, that *he sent him over in his One and Thirtieth Year, to be Governor of Ireland. How* indeed saith, *to be Lord of Ireland*; but neither of them mention any thing of what was done in the Parliament at *Oxford*. Well, suppose it to be, *Dominus Hiberniae*, on which Word you seem to build so much, pag. 40, 41. Is this Title any thing greater than *Lord Lieutenant*, or *Lord Justice*, which hath, for ought I can perceive, been used ever since? Does a Title granted in a Patent from the King, discharge any Persons, or the Places they govern, from Obedience to the Legislative Authority of *England*? If it doth, I should think That granted by *Henry IV.* to *Sir John Talbot* would go a great way in it, which you give us, pag. 33. in these Words, *Dilecti & fidelis nostri Johannis Talbot, de Hallom shire Chevaler, locum nostrum tenentis terræ nostræ Hiberniæ*, which you interpret, pag. 32. *Lord Lieutenant of Ireland*, and it is not to be doubted, but *Henry IV.* thought he had not divested himself of his Regal Authority in *Ireland* thereby; for though we do not find any Statutes made in his Reign to bind that Kingdom, yet we do in the Reign of his Son *Henry V.* and those Kings who succeed-

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*The Parliament, &c.*

ed him; if then, *John*, Earl of *Moreton*, was never created King of *Ireland*, nor That made a separate Kingdom in the Parliament at *Oxon* (as you alledge, but do not prove) then all your Arguments drawn thence, pag. 41, 42, 43, 44. beginning with this Paragraph, *Let us then suppose that, &c.* fall to the Ground.

As for its being annexed to the Imperial Crown of *England* by several Acts of Parliament both here and there, which you mention pag. 43. I do agree to the Reason you give for it, pag. 44. as one, viz. *That it should not be alienated or separated from the Kings of England*; But I hope you will not draw any Inference from this, that *Ireland* therefore is not subject to our Legislative Power; it seems to me a greater Argument that it is, and those Acts made in *Ireland*, look like an Acknowledgement of it, seeing the Members there, knew the Opinion of the Parliament of *England*, by their continued Practice of making Laws to bind it.

I am the longer on this Subject of *Henry* the Seconds making his Son *John* King of *Ireland*, and That a separate Kingdom, because I find you insist upon it, as a thing unquestionable, through your whole Book, and I am willing to clear it here, to prevent often Repetitions.

I will proceed with you to King *John's* going over into *Ireland*, after he became King of *England*, pag. 44. for which you quote *Mat. Paris*, who saith, *Cum venisset ad Dublinensem civitatem occurrerunt ei ibidem plusquam 20 Regul' illius Regionis, qui omnes timore maximo præteriti, Homagium ei & fidelitatem fecerunt. Fecit quoque Rex ibidem, construere Leges & Consuetudines Anglicanas, ponens Vice comes, aliosque ministros, qui populum Regni illius juxta Leges Anglicanas judicarent.* This you know was long after that *Amicable Concession*, or *Original Compact*, you mention, pag. 37. to be made between *Henry II.* and the People of *Ireland*, and long after the same King *John* was made King of *Ireland* by his Father; and yet your Author says, *fecit quoque Rex ibidem, &c.* which I English thus, He appointed Officers to govern them by the English Laws, wherein he caused them to be instructed; So that here is a second original Compact, if you will call it so, *viz.* That they must be govern'd by the English Laws and Customs; and now I think we are agreed the Matter, *viz.* That they were to be govern'd by the English Laws.

Let us see then where we differ; for I am very willing to part Friends with a Gentleman of your Parts, your Fault is, that

that you would willingly make more from things then was ever intended by them.

Page 45. You proceed to speak of a *Magna Charta*, granted by *Henry III.* to *Ireland*, dated at *Bristol* the 12th of *November*, in the first year of his *Reign*, which, you say, is agreeable to the *Magna Charta* granted to *England*; I have not seen it, nor have you set it forth, so I can say nothing to its Contents; I will only ask you whither it doth discharge *Ireland* from being subject to the Legislative Power of *England*, which is the matter in hand; and if it does, whether it was confirmed by *Parliament*; I will not differ with you whose Seals were put to it, whether the King's own, or the venerable Persons you there mention; if it doth not discharge from Obedience to Laws made by the *Parliament of England*, and was not confirmed by them, I examine no farther.

And I do not remember I ever heard of a *Parliament* held at *Bristol*, nor doth this seem to be one, because you say, *it was by advice of his Council of England, whose Names are particularly recited*, which I therefore take to be the *Privy Council*, in opposition to the great *Council* or *Parliament of England*; and the rather, because I find this was the usual Form of granting Char-



ters in those days : I shall only Note, that *this* (you say) *was eight years older than that which he granted to England.*

Page 46. You set forth another Charter, sent them by the said King in February following, the Substance whereof you give us Page 47. *Volumus quod in Signum fidelitatis vestrae tam praeclarae tam insignis libertatibus Regno nostro Angliae à Patre nostro & nobis concessis de gratia nostra & dono in Regno nostro Hiberniae Gaudiatis vos & vestri Heredes in Perpetuum.* This was made by advice of his Common Council, and Sealed with their Seals, as it follows in the same Page; *Quas distincte in Scriptum reductas de communi Concilio omnium fidelium nostrorum vobis mittimus, signatas sigillis Domini nostri, G. Apostolicae sedis Legati, & fidelis nostri Com. W. Maresc. Rectoris nostri & Regni nostri, quia sigillum nondum habuimus, easdem processu temporis de majori Concilio proprio sigillo signaturi.*

*Teste apud Glouc. 6 Febr.*

So that here you see, there is a difference between the *Communi Concilio*, and the *Majori Concilio*; but neither do you set forth, nor can I guess what those Liberties were, being before our *Magna Charta of England*, as you confess, p. 45. and does appear by  
our

our Statute-Books; the latter being made the Ninth Year of his Reign, and this, you say, in the First. But I cannot allow of your Paraphrase on it, p. 48. *Here we have a free Grant, of all the Liberties of England, to the People of Ireland;* I differ with you in this, because the Grant you mention doth not say, they shall enjoy all the Liberties of English Men, but all those Liberties which had been granted by his Father and himself to his Kingdom of *England*; what those were you do not set forth, and it can have no Reference to our *Magna Charta*; besides, it seems strange he should, *ex mero motu*, then grant those Priviledges to *Ireland*, which, if I mistake not, cost *England* afterwards a great deal of trouble, to bring him to acknowledge to be their right.

But be this as it will, I do not see how it signifies much to the question in hand, except it be allowed, that the King by Charter can discharge the Subjects of *England* from Obedience to the Legislative Power.

Nor can I see what use you make of the Record produced from Mr. *Petit*, p. 49 & 50. except it be to shew, that the Citizens and Burghers of *England*, were a part of the Parliament of *England*, time out of mind; if this be the design, I have no reason to differ from you; nor shall I dissent  
from

from you in this, that the Parliament of *Ireland*, hath in times past (but how long I know not) and still doth, raise Money on the Subject there, p. 51. But yet this doth not prove, that *Ireland* is free from the Jurisdiction of the Parliament of *England*; nor can any measures be taken from this Quotation, either to prove that there was a Parliament in *Ireland* at that time, or the Powers it had, being, as you confess, only a Letter from the Queen in her Necessities, and you do not tell us what was done thereon.

Your next Record is in the 12th of *Henry III.* p. 52, 53. directed to *Richard de Bourgh*, then Justice of *Ireland*, to assemble the Archbishops, Bishops, &c. *Et coram eis publice legi faciatis Chartam Domini J. Regis Patris nostri cui sigillum suum appensum est quam fieri fecit & Jurari à Magnatibus Hibern. de legibus & consuetudinis Angliæ observandis in Hibernia & precipiatis eis ex parte nostra quod leges illas & consuetudines in Charta prædicta contentas de cætero firmiter teneant & observent & hoc idem per singulos comitatus Hiberniæ clamari faciatis & teneri prohibentes firmiter ex parte nostra & super foris facturam nostram nequis contra hoc mandatum nostrum venire præsumat, &c. p. 53. Here is no mention made of their making Laws themselves, but that they shall*

shall be governed by the Laws made in *England*; nor do I find by any Record you produce, that that Assembly, or any other, had power to refuse the Laws transmitted to them from time to time out of *England*; So that all these Records, and the Proceedings thereon, confirm my Opinion, that you are in the wrong; and I am apt to question, whether Originally the Parliaments of *Ireland* had Power to make Laws, but only to Receive and Obey those sent from *England*; it doth not appear they had, by any thing you have yet produced, and then the People of *Ireland* will be little beholding to you for the pains you have taken; Though I perceive you draw a strange Inference, p. 55. That from the days of the three Kings (*viz.* *Henry II.* *King John*, and *Henry III.*) *England* and *Ireland* have been both governed by the like Forms of Government, under one and the same supream head, the King of *England*; yet so, as that both Kingdoms remained separate and distinct in their several Jurisdictions.

You say, p. 56. That you will mention no more precedents, nor enter no farther into that matter; and herein, I think you do well, except they will make more for you, then those you have quoted already; though if one would take for Law the Descants you

you make on them, they would seem to infer more then they do ; (which, as I have before hinted, seems to be your fault throughout your whole Book) But Charters and Grants do best explain themselves.

You say, pag. 56. *If we now inquire what were those Laws of England that became thus established in Ireland? Surely we must first reckon the great Law of Parliaments; which you explain after thus, The free Debate and Consent of the People, by themselves, or their chosen Representatives; I should be glad to see this totidem Verbis in the Charters, which would seem plainer to me, than to be governed by your Glosses; however, it not being my Design to inquire, by what Steps the Parliament of Ireland grew up to what it now is, but to defend the Jurisdiction of the Parliament of England over Ireland, I shall enquire no farther into that matter; and this, after all you have said, seems plain from the Actions of those very Times; for the same King Henry III. who best knew what Priviledges he had granted, in the Fourteenth Year of his Reign, made a Law to bind Ireland, called, Statutum Hiberniæ, which past at Westminster the 9th of February, 1229, which is about the same time he empower'd Richard de Burgh to summon together the People*

People of Ireland, pag. 52. which you would have to be a Parliament, but I much doubt it; Note, that this was Twelve Years after the Two great Charters from Bristol and Gloucester, pag. 45, and 47.

And here methinks you seem to differ from what you had said before, pag. 29. *That Henry II. did not only settle the Laws of England in Ireland, &c. but did likewise allow them the Freedom of holding Parliaments in Ireland, as a separate and distinct Kingdom from England, for which you quoted Sir Edward Cooke; and pag. 56. you said, Mr. Pryn acknowledges One, (viz. a Parliament in Ireland) in Henry II's Time; and now, pag. 58. you say, Till a regular Legislature was established among them, and this is after the Three First Kings, viz. Henry II. Richard I. and King John; so that here you grant, there was no Parliament settled in Ireland till Henry III's Days, and yet you allow, pag. 58. that till that time Ireland was governed by the Statute Laws of England; your Words are, (speaking of the Statute Laws of England) we must repute them to have submitted to these likewise; if so, then all the Grants of Henry II. Richard I. and King John, did not discharge the People of Ireland from being governed by the Statute Laws of England; Pray then, when and how came they to be*  
dis-

discharged? I think now the *Onus probandi* lies plainly on your Side; the Charters of *Henry III.* before recited, do not discharge them; nor doth that of King *John*, but rather bind them faster; the Words are, pag. 53. *Coram eis publice legi faciatis Chartam, &c. & precipiatis eis ex parte nostra quod Leges illas & consuetudines in Charta predicta contentas de cetero firmiter teneant & observent;* So that by your own Arguments it doth appear, that the People of *Ireland* are bound to obey the Statutes made in the Parliament of *England*, except you can produce something later to discharge them; and then what becomes of your *Modus tenendi Parliament'* so much talk'd of before in *Henry II's* Days? and herein we are again agreed.

You proceed pag. 58. and say, *That the Statutes of England, from the Norman Conquest to Henry III's Time, were very few, and slender, only Charters, or several Grants of Liberties from the King; which nevertheless had the Force of Acts of Parliament, &c.* The shortness of an Act of Parliament does not, I hope, make it less a Law, I wish they could have kept to those short Forms still; but that which makes an Act of Parliament is, the Consent of the People given at the making of it; if this were wanting, the Grants and Charters you mention

tion could be no Laws; which Right the People of *England* pretend to, by an original Contract, beyond any Books, &c. and as old as the Common Law of *England*; whereas you seem to infer, that our Statute Laws were only Charters, or Grants from the King, till *Henry III's* Days; which I think is an Opinion very disadvantageous to the Liberties of the People of *England*, for which I judge they will give you no thanks, except you likewise allow, those Charters and Grants were made with their Consent, and so were only Declaratory, and then no matter what Form they were made in, or by what name you call them, if that essential part of a Law, *viz.* the Peoples Consent was not wanting: I cannot believe there was ever any time, when the Liberties of the People of *England* depended on the Bounty of the King.

And so I proceed to p. 63. where you say, *you will enquire, how the Statute-Laws and Acts of Parliament made in England since the 9th of Henry III. came to be of force in Ireland; and this, you conclude, p. 64. proceeded from their being allowed of, and confirmed in the several Parliaments there, and that without this Allowance, they had not been Obligatory in Ireland; for this you produce the Irish Statutes of 10 Henry VII. 10 Henry IV. and 29 Henry VI.* the

*A Vindication of*

the first you say allows of several Acts made in *England*, to be Laws binding in *Ireland*; the two last prohibit any Statute made in *England*, from being in force in the Kingdom of *Ireland*, unless they were allow'd and published by the Parliament of *Ireland*; but yet these Statutes you say, p.64 and 65, are not to be found in the Rolls, nor any Parliament Roll of that time, but we must depend on the Evidence of Sir Richard Bolton, formerly Lord Chief Baron of the Exchequer in *Ireland*, who, you say, had seen the same exemplified under the Great Seal: If I grant this, I think I do you a great Favour; otherwise I may be apt to call in Question, whether you had any Parliaments in *Ireland* in those days; you grant before, that you had none till Henry III. and I do not find, by what you have written, when that Constitution first began; and now you say, you have no Parliament Rolls of Henry IVth. Vth. & VIIth. But you say, Sir Richard Bolton had seen an Exemplification, which remaineth in the Treasury of Waterford; sure 'tis a slender Argument; but because the stress of the Matter doth not lye on this, I will for once grant it you on the bare Testimony of Sir Richard Bolton; and would you infer from this, that the Statute Laws of *England* are of no Force in *Ireland*, till they

*the Parliament, &c.*

they are allowed by the Parliament there? Pray Sir, how came your Parliament to assume such a Power, as to dispute the Authority of the Parliament of *England* over them? What, if all our Corporations in *England*, and Plantations in *America* should do the same, who have all Grants and Charters from the King, would this be sufficient to free them from the Government of the Parliament? if not, how comes *Ireland* to be set free by an Act of its own? No, Sir; English Statutes receive no Force or Sanction from Acts of Parliament made in *Ireland*.

You raise a fair Objection against yourself, pag. 65, 66. viz. That the very mentioning these Acts of Parliament in *Ireland* to prohibit English Acts of Parliament from binding that Kingdom, does show, that even in those days, the Parliaments in *England* did claim this Superiority; but you do not so fully answer it, pag. 66. by saying, There is nothing so common as to have one Man claim another Man's Right; and if bare Pretence will give a Title, no Man is secure; for it appears, this is no Pretence or bare Claim, but a Power the Parliament of *England* once had, and you do not tell us when they lost it.

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You say, P. 67. *This Superiority of the Parliament of England hath been doubted a great while ago, and a great while strenuously oppos'd, and absolutely denied by the Parliament of Ireland: Pray, where was this strenuously oppos'd, and in what manner? Did the Parliament of Ireland ever enter any publick Protest against this Superiority, or did the Kingdom of Ireland ever deny Obedience to the Acts of Parliament made here, with intention to bind them? No certainly, I never heard that any of them were rejected, but they have still been received, and then what need had the Parliament of England to enquire farther into this matter? But you say, P. 68. That we have not one single Instance of an English Act of Parliament expressly claiming this Right of binding us. What do you infer from thence? I know not one single Instance of an Act of Parliament, that the King of England shall have a Negative Voice, no, it is his Prerogative, and therefore needed not an Act of Parliament; nor is there any more need of it for the other.*

P. 68, 69, 70. You go on to show, how the Parliament of Ireland accepted, and allowed several Acts made in England; (I take them to be Statutes not designed to bind Ireland, but it matters not much, and therefore I will not be at the pains to peruse them)

*the Parliament, &c.*

them) and from hence you draw this Conclusion, p. 70. *Thus you see, by what steps and degrees all the Statutes which were made in England, from the time of Magna Charta to the Tenth of Henry the VIIth, which did concern the Common Publick Weal, were received, confirmed, allowed, and authorized 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: A very pretty way of Arguing, viz. That because the Parliament of Ireland did allow of all the Statutes made in England to be good in Ireland, therefore they had not been so without such Allowance; who do you think is convinced by this Argument besides your self? Certainly an indifferent Man would rather have drawn this Conclusion from it, viz. That the Parliament of Ireland look'd upon themselves obliged to allow of, and pay Obedience to the Laws made by the Parliament of England.*

From p. 70, to 77. you proceed to show, how and at what time, several English Statutes were allowed of in the Parliament of Ireland: To this I can say no more than I have done before, only I shall observe what you say, p. 70, 71. *That by the Opinion of your best Lawyers, there are divers, both before, and since the 10th of Henry the*

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*VIIIth, which were, and are of force in Ireland, though not allowed of by that Parliament; and the reason you give for it is, p. 71. That they are Declaratory of the ancient Common Law of England, and not Introductive of any new Law. Do you think, Sir, this to be the only reason why those Laws are of Force in Ireland? Suppose Laws had been made to the same purpose in the Parliament of Scotland, would they therefore have been pleadable in Ireland? If not, let me ask you, Why should the Laws made by the Parliament of England, have more force in Ireland, than those made in Scotland? There can be no other reason given for it, but this, That Ireland is subject to the Jurisdiction of the Parliament of England, but is not subject to the Jurisdiction of the Parliament of Scotland. Had you told us what Acts of Parliament these were, we might have judged whether they were Declaratory, or no; but since you have omitted that, I think the Answer I have given sufficient.*

*P. 77. You proceed, to consider the Objections and Difficulties that are moved against this your Proposition, that the English Laws become passable in Ireland only by the Consent of the People and Parliament thereof; these, you say, arise from Precedents and Passages in your own Law Books,*

*The Parliament, &c.*

*Books, that seem to prove the contrary; which shews, that as Cocksure as you are in this Particular, it hath been disputed, and doubted by your own Lawyers, and in your own Parliaments too, if I take the matter right.*

*The first you mention is in p. 78. you say, That in the Irish Act concerning Rape, passed Anno 8 Edvardi 4. 'tis expressed, that a doubt was conceived, whether the English Statute of the Sixth of Richard the Second, Chap. 6. ought to be of Force in Ireland, without the Confirmation thereof in the Parliament of Ireland; all the use I shall make of this is, that your Parliaments then doubted this thing.*

*Your second Objection is, p. 80. That though 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 his Majesty's Dominions; or by particularly naming of Ireland, are and shall be of force in this Kingdom. These are your Words, and This, you say, was a Doctrine first broached directly, by William Huffy, Lord Chief Justice of the King's Bench in England, in the First Year of Henry VIIIth, and of late revived by the Lord Chief Justice Cooke. Pray, Sir, do you speak in earnest? Was this Doctrine never broach'd*

before the Reign of *Henry* the VIIth? What think you of the several Acts of Parliament made in the several Kings Reigns since *Henry* the Third, down to *Henry* the Seventh, in some whereof they mention *Ireland*, in others they do not, do you not believe those several Parliaments thought there was some difference in those Acts? But when the Lord Chief Justice *Hussy*, and Sir *Edward Cook*, after him, both Persons of great Station in the Law, broach'd this Opinion, what was done in the Parliament of *Ireland* thereon? Did they ever by any publick Act declare these Oracles of the Law to be in the wrong? I do not find by any thing you say that they did, and do believe, you would not have let such an Argument have lain asleep, if you could have brought it; therefore I conclude they did not; but on the contrary it doth appear, that all Laws of that Nature have ever since been observed, and obeyed in *Ireland*, and many of them of much later Dates; and now I wonder you should come to dispute it by your private Opinion, One hundred and fifty Years after the Death of *Hussy*, when in all this time the Body of *Ireland* hath not undertaken it.

But I will examine your Arguments against this; The first is, *That the King and his Privy-Council in England, have often*  
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*transmitted into Ireland, to be passed into Laws there. English Statutes, wherein the general Words, [Of all His Majesty's Dominions, or Subjects,] were comprehended; from whence you conclude, that they were of a contrary Opinion, p. 81, 82. Suppose this to be so, the most you can conclude from it is, that it obliquely shews the King and Privy-Councils Opinion; and doth not the Parliaments passing such Acts, as well shew the Opinion of the Legislative Power of England? But what if the King and Privy-Council of England do (as you say) actum agere, shall this make the Parliaments Intentions, in making those Laws void? No certainly, no more than the Parliament of Ireland's confirming them, shall prove they were not binding before; for whither the Parliament of Ireland accept or refuse those Laws, that are made by the Parliament of England, with intention to bind Ireland, they are never the more or less binding there.*

P. 84. You proceed and tell us, *You see no more reason for binding Ireland, by the English Laws under the general Words, [Of all His Majesty's Dominions, or Subjects] than there is for binding Scotland by the same.* Truly, Sir, I believe you; else I should wonder to have seen you taking so much Pains: But because I am of a different Opini-  
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on, let me consider this Matter with you ;  
*Ireland* is by several Laws made both in this Kingdom, and in that, annexed and joined to the Imperial Crown of *England* ; but *Scotland*, tho' it has been often sought for, never yet obtained that favour.

*Ireland* you confess submitted it self to King *Henry* the Second, and thereby became at first annexed to the Crown of *England* ; one of the Terms of which Submission was, That it should be govern'd by the English Laws ; whereas *Scotland* was united to it in the Person of King *James*, and since that by its voluntary Recognition of King *William* and Queen *Mary*, still keeping its own Laws, and leaving a possibility of its becoming a separate Kingdom again, which *Ireland* never can be.

The People of *Ireland*, I mean the English and Britains, which you say p. 20. are a Thousand for One of the antient Irish, were once subject to the Legislative Power of *England* ; which the People of *Scotland* never were, but always a separate Kingdom.

The People in *Ireland* have all the Privileges of English Men, and thereby under the easiest Government in *Europe* ; which the People in *Scotland* have not whilst they remain in that Kingdom.

The People in *Ireland* are governed by the

the Common Laws of *England*, one part whereof is, That those Laws may be enlarged, abridged, or altered by the Parliament of *England* ; but the People in *Scotland* are, and ever were, governed by their own Laws.

*Ireland* is mentioned in several of our Statutes, as part of the Kingdom of *England*, and joined with *Wales* as a dependant thereon, which *Scotland* never was thought to be ; viz. 27 *Edward* III. Sess. 2. in the Preamble of that Statute are these Words, Sect. 2. For the Damage which hath notoriously come as well to us and the Great Men, as to the People of our Realm of *England*, and of our Lands of *Wales* and *Ireland*. Cap. 1. it goes on, First that the Staple of Wools, &c. within our said Realm and Lands : Cap. 2. Item to replenish the said Realm and Lands with Money and Plate, &c. Cap. 3. Item we Will and Grant that all Merchants, &c. through our Realm and Lands. Cap. 4. Item for as much as no Staple can be profitable for us and for our Realm and Lands. Cap. 7. Item We Will and Grant that no Licence or Priviledge to make Passage by English-men, Irish-men, or Welch-men, of Wools, &c. out of the same Realm and Lands, &c. Cap. 10. Sect. 2. We Will and Establish, that one Weight, one Measure, and one Yard, be through all the Land, &c. Here *Ireland* is com-

comprehended under these words, *throughout all the Land*, which I suppose will, without Objection, be admitted to be the Kingdom of *England*; if *Ireland* is not comprehended under those general Words, then *Wales* is not, and then one Weight and Measure was appointed for *England*, and another permitted to be in *Wales*; but if *Wales* is comprehended under them, then *Ireland* is also: And this you may know, by considering what Weights and Measures are settled in *Ireland*, and when. Cap. 11. *Item, We have Ordained and Established, That all Merchants, &c. that do bring Wines, &c. to the Staples, Cities, &c. within our said Realm and Lands.* Cap. 12. *Item, no Merchant, &c. shall carry out of our Realm of England, Wools, Leather, &c.* Here *Ireland* is again comprehended under the general Words, our *Realm of England*, or else *Wales* is not, and the purport of the Act shows that; for can it be thought, that the People of *Wales* and *Ireland*, had Liberty to export Wools, Leather, &c. into Foreign Parts, when this was denied to the People of *England*? Cap. 13. *Item, We Will and Grant, That if any Merchant, Privy, or Stranger, be Robbed of his Goods upon the Sea, and the Goods so Robbed come into any Parts within our Realm or Lands,* Cap. 14. *Item, We have Ordained, That all*  
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*Merchants, Privy, or Strangers, may safely carry and bring within our said Realm and Lands, Plate of Silver, &c. and in the next Sect. Provided always, that no Money have common course within our said Realm and Lands, but the Money of Gold and Silver of our Coin.* So in Cap. 17. the Words *Realm and Lands* are thrice expressed, as comprehending *England, Wales* and *Ireland*: By all which it appears to me, That in those Days there was no thoughts of *Ireland's* being a separate Kingdom, or making Laws for themselves (any other than By-Laws.) But they were supposed to be part of the Kingdom of *England*, and under the Jurisdiction of the Legislative Power thereof; and yet this was long after the pretended Grant of *Henry II.* to his Son *John* to be King of *Ireland*, as a separate Kingdom; which does confirm me in what I have said before, that what is now call'd the Parliament of *Ireland*, was formerly no more than a Summoning the Great Men of the Kingdom together, and commanding them to obey the Laws made in *England*, as you have it in the Writ sent over by King *Henry* the Third to *Richard du Burgh*, mentioned before, which is transcribed by you, P. 53. *Coram eis publice legi faciatis, &c.*

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The Parliament of *England*, in those days, was very careful of their Power, and did not easily part with their Jurisdiction; they presently put in their Claim, so soon as the Kings of *England* got any footing, either by Conquest or Submission. In the Statutes made at *Westminster*, 27 September, the 11th of *Edward III.* Anno 1337. I find Laws made to bind *Scotland*, cap. 1, 2, & 4. are repealed, so I cannot see their Contents: But cap. 3. runs thus; *Item, It is accorded and established, That no Merchant, &c. shall bring, &c. into the said Lands of England, Ireland, Wales and Scotland, within the King's Power.* And cap. 5. runs thus, *Item, it is accorded, That all the Clothworkers of strange Lands, &c. which will come into England, Ireland, Wales, or Scotland.* I do not find any Acts of this nature, made either before that time or after, which put me upon perusing the Histories and Chronicles of *England* about that time: *How saith, That Anno Regni 5 Ed. 3. 1331. Edward Baliol (who was Son to John Baliol sometime King of Scotland) was by the Assistance of the said King Edward crowned King of Scots; but afterward he resigned it to the said King Edward of England, and remained under his Protection many years after. Baker saith, That, to hold a good Correspondence with the King of England hereafter, he doth him*  
homage

*homage for his Realm of Scotland.* And no doubt, had *Scotland* still continued so, the gilded flourishes of a separate Kingdom, would not have tempted the Parliament of *England*, to have parted with their Authority, of making Laws to govern it; and can it be thought, they should so easily let *Ireland* slip? it doth not appear so by any Act of their own; and for the Acts of others, they can be no Precedents against them.

But to proceed: There are yet other Reasons why *Ireland*, should be more bound by the Statute-Laws of *England*, than *Scotland*: *Ireland* hath been always accounted so much a part of the Imperial Crown of this Kingdom, that on the late Revolution, when the Crown of *England* was settled on the then Prince and Princess of *Orange*, Stat. primo Guil. & Mar. cap. 2. They are declared King and Queen of *Ireland*, as well as *England*; and by that Recognition they had been so, though the Parliament of *Ireland* had opposed it; whereas the Case was not the same with *Scotland*: The Rights and Priviledges of the People of *Ireland* were also settled by the same Statute, equal to those of the People of *England*; But the Rights and Priviledges of the People of *Scotland* were not. Nor was this Recognition made in their Names, they took their  
own

own time to do it, and to settle the Rights and Priviledges of their own Kingdom as they pleased, being a separate Kingdom, without dependance on the Kingdom of *England*. I wonder you hang so much in this Paragraph, on *Ireland's* being a separate Kingdom in the Person of King *John*; no Man of Sence, who had examined that matter, would make any dependance thereon, and such I take you to be; therefore it looks as if you had a mind to betray and give up the Cause, did I not think you a Gentleman of greater sincerity; you had certainly found a better Argument in your original Contract, could you have made it out.

Page 85. You proceed to take into consideration, such English Statutes as particularly name *Ireland*; and these you divide, into *Ancient Precedents* and *Modern Instances*; and conclude, That if the former do not make against you, the latter are only Usurpations made upon you.

I think this fully answer'd before: But I will take your own way, and follow the Thred of your own Arguments, though I think you spin it too long.

*The Ancient Precedents of English Statutes designing to bind Ireland, you say, are, first Statutum Hiberniæ, 14 Hen. 3. Secondly, Ordinatio pro Statu Hiberniæ, 17 Edm. 1. Third-*

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*Thirdly, An Act concerning Staples, 2 Hen. 6. pag. 85, & 86.*

And are these all? What think you of the Statute of Merchants, made at *Westminster* 13 *Edm. 1. Anno 1258*? wherein are these words, *Seck. 35. This Ordinance and Act, the King willeth to be observed from henceforth through his Realm of England and Ireland.* What think you of the Statutes made at *Westminster* 11 *Edm. 3. Anno 1337.* which I recited before, where *cap. 3.* all Foreign Clothes are prohibited to be brought into *Ireland*: and *cap. 5.* Clothworkers are invited to settle in *Ireland*, and are encouraged thereto by Franchises promised them? What think you of the Statute of the Staple, mentioned before, made 27 *Edm. 3. Anno 1353*? In the Preamble of which Statute *Ireland* is mentioned, and *cap. 1.* bears this Title, *Where the Staple for England, Wales and Ireland shall be kept, whether Merchandizes of the Staple shall be carried, and what Customs shall be paid for them.* Which Chapter shews, That the Parliament of *England* had Power of raising Money, by laying Customs on Commodities in *Ireland*.

At this Sessions were made Twenty eight Acts, or Chapters, call them which you will, and all point at *Ireland*.

But

But I cannot pass by this last Statute of 27 *Edw. 3.* without making observation on its Preamble, which I here give you *verbatim*; Edward by the Grace of God, &c. To our Sheriffs, Mayors, Bayliffs, Ministers, and other our faithful People, to whom these present Letters shall come, greeting. Whereas good deliberation had with the Prelates, Dukes, Earls, Barons, and great Men of the Counties, that is to say, of every County one for all the County, and of the Commons of our Cities, and Boroughs of our Realm of England, summoned to our great Council holden at Westminster the Monday next after the Feast of St. Matthew the Apostle, the 27th Year of our Reign of England, and of France the 14th; For the damage that hath notoriously come, as well to us and to our great Men, as to our People of our Realm of England, and of our Lands of Wales and Ireland, because that the Staple of Woolls, Leather, and Wool-fells of our said Realm and Land, have been holden out of our said Realm and Lands, and also for the great Profits which should come to the said Realm and Lands, if the Staple were holden within the same, and not elsewhere: to the Honour of God, and in Relief of our Realm and Lands aforesaid, and to eschew the Perils that might happen of the contrary in time to come, by the Counsel and common Consent of the said Prelates, Dukes, Earls, and

and Barons, Knights and Commons aforesaid, we have ordained and established the things under written.— Here the King is called King of England and France, without mentioning Ireland; but we find the Laws made in that Sessions, to be binding to his Lands of Wales and Ireland, as I have before observed. The King also takes notice of the Summons sent to the Prelates, Dukes, Earls, Barons, and great Men of the Counties, and Commons of Cities and Boroughs of his Realm of England, summoned to his great Council holden at Westminster, &c. without mentioning any thing of Ireland, though it was bound by the Laws made in that Sessions. By all which it doth appear to me, That Ireland was lookt on in those days, as an Appendix to the Kingdom of England, all one as Wales; and yet the Laws of that Sessions were received in Ireland: Why did not the Parliament of Ireland (if there was then any) make an early Protestation against this irregular Proceeding, and condemn it as an Encroachment on their Priviledges? which had been much better, then for you to undertake this Task three hundred and fifty years after.

But to proceed: What think you of the Statute made at Westminster 34 *Edw. 3.* Anno 1360? the Preamble is, *These be the things which our Lord the King, the Prelates, Lords,*

E and

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*and Commons have ordained in this present Parliament holden at Westminster the Sunday next before the Feast of the Conversion of St. Paul, to be holden and openly published through the Realm: and yet the Title of cap. 17. is, Merchandize may be carried into, and brought out of Ireland. By which it appears, That the Parliament of England made Laws to regulate the Trade of Ireland in those early days, and that the Bill relating to the Woollen Manufactures, now depending before the present Parliament, is not a Modern Instance of that Power: Cap. 18. of that Sessions hath this Title, They which have Lands in Ireland, may carry their Goods thither, and bring them again. From both which I make this observation, That the Preamble saith, These are to be holden and published openly thorough the Realm; and the 17th and 18th Chapters shew, that Ireland is part of that Realm.*

*In the 4th of Henry 5. cap. 6. an Act was made, but is now Ob, so I find nothing but its Title in the Statute Book, which is this, If any Archbishop, Bishop, &c. of Ireland, Rebel to the King, shall make collation of a Benefice to any Irish-man, or bring any Irish-man to the Parliament to discover the Counsel of English-men to Rebels, his Temporalities shall be seized until he hath made Fine to the King. By which it doth appear, That*

*the Parliament, &c.*

41

That the Parliament of *England*, took notice there was a Parliament in *Ireland*, and made Laws to bind that Parliament.

All these Statutes bound *Ireland*, and doubtless many more there are, had I time to look after them, but I mention these, because they come within the compass of your *old Precedents*, being before the Second of *Henry 6.*

But before I speak to your *old Precedents*, give me leave to mention one Statute more, *viz. 1 Hen. 6. cap. 3.* which, though I do not produce as a Precedent binding *Ireland*, yet it will serve to show, what opinion the Parliament of *England* had of *Ireland* in those days: the words are these, *Forasmuch as divers Manslaughters, Murders, &c. and divers other Offences now late have been done in divers Counties of the Realm of England, by People born in the County of Ireland, repairing to the Town of Oxford, &c.* I will make no Paraphrase on them, they are easie to be understood by any English Reader; and this is a Modern Statute, in respect to the time of *Henry II.* when you say *Ireland* was made a separate Kingdom, and settled by him on his Son *John*, in a Parliament at *Oxon*, whereas this Parliament calls it a County.

Well then, let us see what you say against these *Ancient Precedents* you have

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pro-

produced, before we come to the *Modern Instances*, as you call them.

*These Statutes*, you say, pag. 86. especially the two first, (meaning *Statutum Hiberniæ*, and *Ordinatio pro Statu Hiberniæ*) being made for Ireland, as their titles import, have given occasion to think, that the Parliament of England have right to make Laws for Ireland, without the consent of their chosen Representatives. Surely every Body, I think, is of that Judgment, that hath lookt into the matter; no, you dissent from it, and for this gives several Reasons.

The first is pag. 86, 87, 88. which I am obliged here to transcribe, *The Statutum Hiberniæ* 14 Hen. 3. as 'tis to be found in the *Collection of English Statutes*, is plainly thus: *The Judges in Ireland 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 Gerald Fitz-Maurice, the then Lord Justice of Ireland, dispatched four Knights to the King in England, to bring a Certificate from thence of the practice used there, and what was the Common Law of England in that Case; whereupon Henry III. in this his Certificate or Rescript, which is called Statutum Hiberniæ, merely informs the Justice what the Law and*  
*Custom*

*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 observed. Teste meipso apud Westminst. 9 Febr. An. Reg. 14.* From whence you infer, *That this Statute was no more then 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 do you really speak your Thoughts herein? Was it ever customary for the Judges to send to the King to expound Law to them; and for the King by Certificates, to direct them what they should give for Law? I thought their Business had been to declare the Law impartially between the King and his Subjects; and that, if they doubted in any Points of the Common Law, their Custom had been to advise one with another, or with some other Learned Council in the Law. Is it to be thought the King knew Law better than his Judges? I would not have you insist on this, for the Honour of the Long Robe in Ireland.

But, Sir, there is more in this, then perhaps at first you think; for either this is a Statute Law, and our Books call it so, therefore in your favour I will believe it so, or

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else the King had in those days an Absolute Power and Authority to impose on Ireland what Laws he thought fit: For, in the close of that Statute, 'tis said, *Therefore we command you, That you cause the foresaid Customs that be used within our Realm of England in this case, to be proclaimed throughout our Dominion of Ireland, and to be straitly kept and observed.* If all our Acts of Parliament, which declare the Common Law of England, shall be called Certificates, pray what will become of *Magna Charta, Charta Foresta,* and most of our old Laws, which were generally Declarations of what was the Common Law of this Kingdom, and what were the Rights and Liberties of the Subjects, before the making of them.

I come now to your second *old Precedent,* the Statute called *Ordinatio pro Statu Hibernie,* made at Nottingham 17 Edw. I. Anno 1288. *This,* you say pag. 88. *was certainly never received or of force in Ireland:* And you further say, *That this is manifest from the very first Article of that Ordinance which prohibits the Justice of Ireland, or others the King's Officers, there to purchase Lands in that Kingdom, or within their respective Bailiwicks, without the King's Licence, on pain of Forfeitures.* But, *that this has ever been otherwise, and that the Lords Justices and other Officers here, have purchased Lands in Ireland,*

*the Parliament, &c.* 55

Ireland, *at their own Will and Pleasure, needs no proof to those who have the least knowledge of this Country.*

Is this a fair Argument against the Validity of a Statute, That it hath not had due obedience rendred to it? If this be Law, I am afraid many of our late good Statutes have run the same fate; but I never knew till now, That the Peoples Obedience was an Essential part in a Statute; I thought, the Consent of King, Lords, and Commons, given to it in Parliament, had been enough. But we will not let this Matter fall without further examining into your Argument: That Statute consists of eight Chapters, let us see which of those Chapters have not been received and obeyed; you only mention the first, *viz. That the Lords Justices of Ireland, and other Officers, have purchased Lands in Ireland at their own Will and Pleasure,* as you recite it pag. 88. But the words in the Statute are these, *That the Justices of Ireland, nor any other Officers of ours of the same Realm, so long as they are in our Service there, shall purchase any Land or Tenement within the List or Bound of their Bailiwicks without our special Licence.* Which makes a great Alteration in the Matter; for they might purchase Lands or Tenements, both before, and after they were in their Offices.



But we will take the Words as you give them; how does it appear that this Law was not observed? You say, p. 89. *It does not appear by any Inquisition, Office, or Record, that any one ever forfeited on that account.* It may be so, perhaps it was never broke, and then there was no need of an Inquisition; or the King might grant Licence, as that Law does direct, to his Justices and other Officers, to purchase Lands during their being in their Offices; or they might purchase them without the List or Bounds of their Bailiwicks; and then the Terms of the Law were complied with: But I am apt to think you will carry this farther, and say, That in later Years the Justices of *Ireland*, and other the King's Officers, have not taken notice of this Law; perhaps so, and what would you draw from this? How many old Laws have we in *England*, that are obsolete and disregarded by Time; which though they fitted the Circumstances of the Times they were made in, yet are not proper for our Days? Witness the Statutes against going Arm'd; the Statutes about Bows and Arrows; and many others, which were, and still remain Statutes, till repealed, though perhaps 'twill be thought hard to put them in Execution, without giving publick Notice thereof sometime before to the Subject.

ject. But after all, how do you know, but that these Officers, you last mentioned, may have Licences from the King, to purchase Lands, though I think it not at all to the matter, whether they have, or no.

But to proceed; That Statute, as I said before, consists of Eight Chapters, you have taken notice only of the First, therefore we will come to the next Chapter of that Statute; The Title is, *In what Case only Purveyance may be made in Ireland.* Is that observed in *Ireland*, or do the Justices or other the King's Officers, by colour of their Offices, take Victuals, or any other things, of any Person against his Will, contrary to that Chapter? The Third Chapter is about *Transporting Merchandizes out of Ireland.* Do the Justices, or any of the King's Ministers, by colour of their Offices, Arrest the Ships, or other Goods of the People of *Ireland*? The Fourth settles *The Fees of a Bill of Grace*: The Fifth settles *The Marshal's Fee in Ireland.* Perhaps you will say these Officers take more than their Fees, therefore the Statute is no Act of Parliament. Very probable they do, that is a general Distemper, where Offices have Fees annexed to them, and yet it may be an Act of Parliament still. The Sixth Chapter, its Title is, *In what Cases the Justices of Ireland*  
may

*may grant Pardon of Felony, and where not.*  
 The Title of the Seventh Chapter is, *By what Seal Writs in Ireland shall be Sealed.*  
 The Eighth and last is, *Adjournment of Assizes in Ireland.* Are these Parts of the Statute observed in Ireland, or no? I ask you this, because if any one part is received, the whole is received: Obedience given to any part of this Law, acknowledges the Jurisdiction of the Law-makers; and you insist only on the First Chapter, as if the rest were no part of the Law.

That *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.* I have already given you my Definition, what an Act of Parliament is, and if this be no more than an Order of the King and his Privy-Council, I must be of your Mind: Let us therefore enquire farther into this matter; you say it appears to be no otherwise, *as well from the Preamble of the said Ordinance, as from the Observation likewise.* I assure you, if this Proof hath not more weight in it than the other, I shall think it an Act of Parliament still: Let us therefore see what the Preamble is, which I find to be this, *Edward by the Grace of God, King of England, Lord of Ireland, Duke of Aquitain, to all those who shall see or hear these Letters,*  
*doth*

*doth send Salutation: Know you, That for the Amendment of the Government of our Realm of Ireland, and for the Peace and Tranquillity of our People of the same Land, at Nottingham, the Octaves of St. Martin, in the Seventeenth Year of our Reign, by the assent of our Council there being, the points hereafter mentioned be made and agreed upon, to the intent that they may be firmly observed in the same Realm.* Where please to note, that the Words are not, by assent of our Privy-Council, but of our Council; by which name the Parliament of England is often called.

It would be endless to give an account of the different Stiles, under which Acts of Parliament past in those Days; sometimes in the Name of the King only; sometimes of the King and Great Men; sometimes of the King and his Council; sometimes of the King and his Common Council; and sometimes of neither; as he, who will be at the trouble to inspect our Statute Books may see; I will give some Instances instead of many; The great Charters are only in the King's Name, *Henry, by the Grace of God, King of England, &c.* and so, *Edward, by the Grace of God, King of England, &c.* The Statute, in the Twentieth of Henry III. made at Merton, hath this Preamble, *It was provided in the Court of our Sovereign Lord the King,*

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*King, holden at Merton on Wednesday the morrow after the Feast of St. Vincent, the Twentieth Year of the Reign of King Henry, the Son of King John, before William Archbishop of Canterbury, and other his Bishops and Suffragans, and before the greater part of the Earls and Barons of England, there being assembled for the Coronation of the said King, and Helianor the Queen, about which they were all called; where it was treated for the Commonwealth of the Realm upon the Articles under-written. Thus it was provided and granted, as well of the aforesaid Archbishop, Bishops, Earls and Barons, as of the King himself and others. By which it appears that in those Days, when the Great Men (who were the Barons or Freeholders of England) were called together, they made Laws, and did not so much regard the Stile, as that they were made by a general Consent.*

*The Statute 51 Henry 3. Sect. 1. begins thus, The King to whom all these Presents shall come, greeting; We have seen certain Ordinances, &c. Stat. 5. of the same Year begins thus, The King commandeth, that all manner of Bailiffs, Sheriffs, &c. Stat. 6. of the same Year begins thus, If a Baker or a Brewer be Convict, because he hath not, &c. The Preamble of the Statutes 52 Henry 3. made at Marlbridge, 18. November, 1267.*

runs

*runs thus, In the Year of Grace, One thousand two hundred sixty seven, the Fifty-second Year of the Reign of King Henry, Son of King John, in the Utas of St. Martin, the said King providing for the better Estate of this Realm of England, and for the more speedy Ministration of Justice, as belongeth to the Office of a King, the more discreet Men of the Realm being called together, as well of the Higher as of the Lower Estate. It was provided, agreed, and ordained, That whereas the Realm of England of late had been disquieted with manifold Troubles and Dissentions; for Reformation whereof Statutes and Laws be right necessary, whereby the Peace and Tranquility of the People must be observed; wherein the King intending to devise convenient Remedy, hath made these Acts, Ordinances, and Statutes underwritten, which he willetth for ever to be observed firmly and inviolably of all his Subjects, as well High as Low.*

*The Preamble to the Statutes made the Third of Edward I. runs thus, These be the Acts of King Edward, Son to King Henry, made at Westminster at his Parliament General after his Coronation, on the Monday of Easter Utas, the Third Year of his Reign, by his Council, and by the Assent of Archbishops, Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm, being thither*

*Sum-*

Summon'd, because our Lord the King had great Zeal and Desire to redress the State of the Realm in such things as required Amendment, for the Common Profit of Holy Church and of the Realm; and because the State of Holy Church hath been evilly kept, &c. the King hath Ordained and Established these Acts under-written, which he intendeth to be necessary and profitable to the whole Realm.

The Preamble to the Statute made the Fourth of Edward the First, call'd the Statute of Bigamy, runs thus; In the Presence of certain Reverend Fathers, Bishops of England, and others of the King's Council, the Constitutions under-written were recited, and after heard and published before the King and his Council: Forasmuch as all the King's Council, as well Justices as others, did agree that they should be put in Writing for a perpetual Memory, and that they should be stedfastly observed.

The Preamble to the Statutes made at Gloucester, 6 Edm. I. runs thus; For the great Mischiefs, Damages and Disherisons, that the People of the Realm of England have heretofore suffer'd through default of the Law, that fail'd in divers Cases within the same Realm; Our Sovereign Lord the King, for the amendment of the Land, &c. hath provided and established these Acts under-written,

ten, willing and commanding, that from henceforth they be firmly observed within this Realm.

The Preamble of the Statute of Westminster made the 13th. of Edward I. runs thus; Whereas of late our Lord the King in the Quinzim of St. John Baptist, the Sixth Year of his Reign, calling together the Prelates, Earls, Barons, and his Council, at Gloucester, and considering that divers of this Realm, &c. ordain'd certain Statutes right necessary and profitable for his Realm, whereby the People of England and Ireland, being Subjects unto his Power, have obtain'd more speedy Justice, &c. Our Lord the King in his Parliament, after the Feast of Easter, holden the 13th. Year of his Reign, at Westminster, caused many Oppressions of the People, and Defaults of the Laws, for the accomplishment of the said Statutes of Gloucester to be rehearsed, and thereupon did provide certain Acts, as shall appear here following. Here I cannot but observe, That the King and Parliament of England thought Ireland a part of this Realm, and subject to their Legislative Power; and that it was concerned in the Statutes of Gloucester before-mentioned, though not named therein: Now whose Judgement shall we take, the King and Parliament who lived in those Days, or yours, Four hundred Years afterwards?

I shall only mention one more, which is in the 21 *Edward I.* we find there a Statute made, *De iis qui ponendi sunt in Assisis*, and at the end thereof I find this, Sect. 6. *Rex, &c. quia ad communem utilitatem populi nostri & Regni, de communi Concilio ejusdem Regni Statuerimus, &c.*

Now all these are accounted Statutes, or Acts of Parliament, and so called in the Books; which shows, that it is not the Name but the *Modus* of passing them, which is the essential part of a Statute Law: Besides, if you please to peruse your own Quotations, p. 48, and 49. you there acknowledge the Parliament to be called *Generale Concilium, Commune Concilium, Great Council or Parliament.*

I now come to your last Argument against this Statute, p. 89. *That King Edward I. held no Parliament in the 17th Year of his Reign.* This seems very doubtful even to your self; for it follows, *If this were a Parliament, this Ordinatio pro Statu Hiberniæ is the only Act thereof that is extant; and may not that be? Henry III. granted the Magna Charta in the Ninth Year of his Reign, you allow this to be a Statute, or Act of Parliament, and yet we do not find any other Law past that Year; and but one single Act in his Fourteenth Year; One in the Ninth of Edward I. and*  
many

many other Instances may be made of this nature.

But after all, I do not see how the stress of the Matter lies on this Foundation; suppose this to be no Act of Parliament, as you say, what then? shall we want *Antient Precedents* which name *Ireland*? What think you of the *Statute of Merchants*, which I have mentioned before, 13 *Edw. I.* this was made before that of the Seventeenth Year, which you so much contend about, and *Ireland* is expressly named in that Statute. The Sum is this, you say it is not a Statute, I say it is, and the Books call it so: I have also given my Reasons why I think it so, not that I think it material to our Debate, but because, if Statutes should be rejected for the Reasons you reject this, I fear a great part of our old Acts of Parliament, and even *Magna Charta* it self must be expunged out of the Statute Book.

I come now to your third *Antient Precedent*, the Staple Act, made in the Second of *Henry VI. Cap. 4.* This is expired, so I find only the Title in the Statute Book, which is this: *All Merchandizes of the Staple passing out of England, Wales, and Ireland, shall be carried to Calice, as long as the Staple is at Calice.* The Reason you give, why this Law doth not bind *Ireland*, is ground-

ed on the Opinion of the Judges of *England*, whereof you give this account, p.90. That by the Year Book of the Second of *Richard III.* it doth appear, that the Merchants of *Waterford* having Ship'd off some Wool, and consign'd it to *Sluce* in *Flanders*, the Ship by stress of Weather put into *Calice*, and Sir *Thomas Thwaits*, Treasurer there, seized the said Wool as forfeited, whereupon a Suit was commenced between the said Merchants and him, which was brought before all the Judges of *England* into the *Exchequer-Chamber*; where the Questions were two, one of which was, *Whither this Staple Act binds Ireland?* (I have Abbreviated what you Write, but I think I have done it fairly;) to which the Judges gave this Answer, p. 91. *Quod terra Hibernia inter se habent Parliament, & omni modo Cur prout in Angl. & per Idem Parliament faciunt Leges, & mutant Leges, & non obligantur per Statuta in Anglia, quia non hic habent Milites Parliamenti, &c.* But in p. 92. you confess from the Year Books of *1 Henry 7.* That when the aforesaid Case came a second time under the Consideration of the Judges in the *Exchequer-Chamber*, we find it Reported thus; *Hussy the Chief Justice said, That the Statutes made in England shall Bind those of Ireland, which was not*

*not much gainsaid by the other Judges, notwithstanding that some of them were of a contrary Opinion the last Term in his Absence.* What a strange Argument is this! The Judges, say you, gave their Opinion; who were those Judges? You name only *Hussy*, and he was against it: But you say all the Judges of *England* in the former Term; it could not be all, because *Hussy* was not there, and afterwards he gave his Opinion quite contrary. And as you confess, p. 92. all the Judges submitted to it; so that here is the Judges Opinion at one time, against their Opinion at another; and will you bring this to overthrow the Authority of the Legislative Power of *England*.

But suppose *Hussy* and the rest of the Judges had agreed with the first Opinion, what would you draw from this? Have the Judges Power to question the Parliament in the Exercise of their Legislative Authority? I know they are often advised with in the making of an Act, but when it is once past, I presume their business is to give their Judgments according to it, or to Explain it where the Sence is doubtful; but not to go against the express Words of an Act, much less to question the Parliaments Power to make it.

Your second Argument against this Statute's binding *Ireland*, is a Note in a Book made by *Brook* in Abridging this Case, *That Ireland is a Kingdom of it self, and hath Parliaments of its own*, p. 92. Certainly you have very light Thoughts of Parliaments, if you think that Notes in Books should abridge their Power.

The third is a Comment of your own on the whole, p. 93. wherein you draw a Comparison of *Ireland* with *Scotland*, and conclude, *That by the same Argumentation Scotland it self may be bound by English Laws*. I confess I would gladly pay a great Respect to your Person, but I would not willingly be drawn aside by your Opinion, which I should be, if I were thereby persuaded that the Parliament of *England* have no more Power to make Laws to bind *Ireland*, than they have to bind *Scotland*; since it does appear, that they have done it from the first time of our Statutes being extant, and long before it can be rationally concluded there was a Parliament there: And yet I do not think they can make Laws to bind *Scotland*, because they themselves never pretended to any such Power, save in the Case aforementioned, that ever I heard of. *England* and *Ireland* are not two distinct Kingdoms, as *England* and *Scotland* are: *Ireland* is a Kingdom dependant on,  
and

and annexed to the Imperial Crown of *England*, and the Parliament of *Ireland* is likewise subordinate to the Parliament of *England*, therefore the Laws made by the latter will bind the former: This I hope I have prov'd, notwithstanding what you say, *That the contrary will be denied by no Man*.

As to what you say in relation to *France*, pag. 94. *Whether on this way of reasoning, the People of England had not been subject to the King of France, had our Kings continued the Possession of that Country, and there kept the Seat of the Monarchy*. I answer, No; for those two Kingdoms had not been united as *England* and *Ireland* are, but as *England* and *Scotland*: However, you will find, That it was provided against by a Statute made 14 *Edw. 3. Anno 1340*. All I find of it in *Keeble* is this, (not being printed at large) *By a Statute it was ordained, That the Realm of England, and the People thereof, shall not be subject to the King or Kingdom of France*.

But you say, pag. 94. *That the Statute Laws of England have not received your Assent*; and you argue thence, *That 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, &c.* I shall have occasion

to speak to this hereafter, so I shall for the present wave it here.

And now I find you have done with your three *Ancient Precedents*, the last of which was in the Second of *Henry VI.* and I have cited to you several other Statutes, made before that time, which do undoubtedly bind *Ireland*, being intended by the Parliament so to do, which I suppose you never saw, or would not cite, because you had nothing to say against them.

I shall next follow you to your *Modern Instances*, which you likewise call *Modern Precedents*, pag. 98, & 99. And here you 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 you have before-mentioned.*

Is this really so? What think you of those I have before cited? I am very unwilling to swell this Answer, but I find my self obliged to follow, wherever you will lead, even to 41.

Well then, besides them, What think you of these several Statutes under-mentioned? viz.

32 *Hen.8. cap. 24.* Whereby the Knights of *St. John of Jerusalem* in *Ireland* were dissolved.

1 *Edw.*

1 *Edw. 6. cap. 1.* Whereby the Sacrament is directed to be administred in both Kinds unto the People in *Ireland.*

1 *Edw. 6. cap. 2.* Entituled an Act for Election of Bishops, wherein *Ireland* is named.

1 *Eliz. cap. 1.* Whereby the Queen hath power given her to assign over to any Person power to exercise Ecclesiastical Authority in *Ireland.*

8 *Eliz. cap. 3.* Against exporting of Sheep from *Ireland.*

I think all these Laws bound *Ireland.* But what you mean by *Introductory of a new Law, or Interfering with the Right which the People of Ireland have to make Laws for themselves*, I shall not labour to understand; these seem to be nice Quibbles: All I proposed was, That the Parliament of *England* have, and always had, power to bind *Ireland* by their Statutes, which you have denied, and I hope I have proved.

And now I am come with you to 41, where you end your Assertion, and acknowledge, *That in that Year, and since, some Laws have been made in England to be of force in Ireland*; I take your own words, p. 99.

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These Acts, you say, are of 17 Car. 1. you do not name the Chapters, but they are 33, 34, 35, 37. which, being expired, are not to be found in the Statute-Book any more, save the Titles; therefore I must apply my self to what you say of them, p. 100. *The Titles, say you, 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 the Second's time in the Kingdom of Ireland.* And having gained this Advantage against the Parliament of *England*, you make use of it to the utmost; and presently conclude, *That they plainly shew, that the Parliament of Ireland may Repeal an Act passed in England in relation to the Affairs of Ireland.* Sure I cannot think so; for if the Parliament of *Ireland* can Repeal any one Act made by the Parliament of *England*, they may Repeal all they make, which cannot be, except they have a Jurisdiction above them. For the Power which any one Body or Society of Men hath, to Repeal Laws made by another Body or Society, must proceed from a Superiority that Body or Society hath over the other whose Laws it doth Repeal: So that then (if what you say be true) it follows, *That the Parliament of Ireland is Superior to the Parliament of England; and then*

then *we have brought our Hogs to a fair Market*; instead of the Parliament of *England's* making Laws to bind *Ireland*, the Parliament of *Ireland* may make Laws to bind *England*, and likewise Repeal those Laws they have already made.

You Gentlemen of *Ireland* are angry, That we will not give you leave to carry away our Trade, and therefore you now undertake to prove, That your Parliament can Repeal the Laws our Parliament makes. 'Tis very pretty truly; but I hope you will not put this your Power in Execution, and Repeal our Act of Navigation, or our Plantation Acts, and particularly that Act wherein is the Clause against landing Tobacco in *Ireland*: This I am fond of for a certain reason, therefore I beg your favour for it. We will part with our Woollen Bill, provided you will spare us the Acts already made: It will be a great loss to the Kingdom of *England*, if you should Repeal the Acts against planting Tobacco in *Ireland*, 'twould very much prejudice our Settlements in *Virginia*; a Trade, which besides the great Revenues it brings to the Crown, (whereof you pay a part) does likewise encourage our Navigation, expends our Manufactures, and employs our Poor; so that all Persons, from the King to the Beggar, reap advantage by it; I hope, I say, you will

will spare us these Acts; tho', I can't believe you would, did it lye in your power to take them from us; therefore I will pull up my Spirits, and enquire whether you have this Power you pretend to. The quotation you make is from *Pulton*; I have perused him, but he goes no farther then 4 *Car. 1.* and I can meet with no Body who hath seen any later Edition; therefore I suppose you must mean *Keeble*; if so, you have left out a great part of the Remark: For there I find it to be thus; *An Act for reducing the Rebels in Ireland to their Obedience to his Majesty, and the Crown of England, EXP. See an Act for the Settlement of Ireland, passed in that Kingdom Anno 14 Car. 2. 1662. by which this, and the following Acts concerning Ireland, are, besides their Expiration, of no force.*

Methinks I find my Spirits revived, it is not so bad as you represented it; *Keeble* saith the Act is *expired*, and then that is the reason why 'tis of no force: Every Body that understands Parliaments, knows that none of their Acts can remain in force longer then they intended them. But now I think of it, I was to blame to be so much disturbed; For what if *Pulton* had said so? Hath *Pulton* liberty to bound the Power of the Parliaments of *England* by Notes he shall print in his Statute Book? 'Twas my  
ex-

extraordinary love for Parliaments, not the weight of your Argument, that cast me down at first.

Perhaps, Sir, you may think this way of arguing favours of Levity; I confess it does; but you may please likewise to consider, That some People are not to be beat out of their groundless Fancies, but by ridiculing them: Would any prudent Man have thus wrested the Sence of this Note, and then brought it as an Argument against the Authority of the Parliament of *England*? Surely by leaving out [EXP] you expected to have catcht Butterflies: I suspect your candidness in those other Quotations wherewith your Book abounds, (tho' many of them to little purpose) by your insincerity in this.

And having thus got over this *Goliath* Argument of yours against the Power of our English Parliaments, I am the less careful to give Answer to the Objection you raise your self pag. 101. viz. *It will be said, That by those Acts 'tis manifest that England did presume they had such a right to pass Acts binding to Ireland, or else they had never done it.* I confess I am of that opinion; only I will not call it a *Presumption*; I think it the just right of the Parliament of *England* to exercise a Legislative Power over the Kingdom of *Ireland*. And what Answer do  
you

you give to this Objection of your own framing? why truly, *The deplorable Condition of Ireland at that time, made it impossible for them to have a Parliament of their own: and it being absolutely necessary that something should be done toward the suppressing the Violences then raging among them, the only means could then be practised, was for the Parliament of England to interpose, and do something for their Relief and Safety.*

Was this the true Reason? Pray what could you expect from the Parliament of England, if Ireland was a separate Kingdom, and they had not Power to make Laws to bind it? The Laws they made could then be of no more Service to them, then if they had been framed in the Parliament of Scotland, besides the danger of such a Precedent. But now I think of it, you were not afraid of that danger, the Parliament of England had made Laws for you five hundred years before; and therefore what they did at that time, was not (as you say) to Interpose, but to put in execution a Legislative Authority they had over you.

As to what past in Cromwell's days, p. 101, 102. I shall say little to it; 'tis not of much moment one way or the other.

And

And now I am come with you to King Charles the Second's days, and in it you say there were several Statutes made to bind Ireland, pag. 102.

The first you mention is, *An Act against importing Cattle from Ireland, or other Parts beyond the Seas, 18 Car. 2. cap. 2. made perpetual by two Acts in the same Reign. These, you say, do not bind Ireland: and I say so too; therefore I wonder you mention them.*

The next you quote are, *The Acts against planting Tobacco in England and Ireland, 12 Car. 2. cap. 34. 15 Car. 2. cap. 7. 22 & 23 Car. 2. cap. 26. these you say do positively bind Ireland, pag. 103. But you suggest, That as there was no need of making them, because no Tobacco was ever planted in Ireland, (which perhaps there might have been, if those Laws had not been made) so you imply, they are of no force in Ireland now made; for you see no more reason for sending of Force to trample down an Acre of Tobacco in Ireland by those Statutes, then there would be for cutting down the Woods of Shelala, were there an Act made in England against your planting or having Timber. Truly, Sir, I am of the same opinion; for if the Parliament of England had made a Law against planting and having Timber in Ireland, I do not see how you could have avoided*

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voided putting it in execution, any more than you could this: And here we are once more agreed.

The next you mention is the Navigation Act, pag. 103. (by which, I suppose, you mean the before-mentioned Act 22 & 23 Car. 2.) also the two Acts against exporting of Wool, 12 Car. 2. cap. 32. and 14 Car. 2. cap. 18. pag. 104. These you confess do bind Ireland, and have received due obedience, but what right the Parliament of England had to make these Statutes you very much question: you take them to be Innovations on you, as not being warranted by former Precedents; for that you say before these Acts, (*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 Books, of an English Act binding the Kingdom of Ireland, pag. 104. Thence you argue, p. 105. *Shall Proceedings only of Thirty seven years standing, be urged against a Nation, to deprive them of their Rights and Liberties which they enjoyed for Five hundred years before, and which were invaded without and against their Consent, and from that day to this have been constantly complained of? Let any English Heart that stands so justly in vindication of his own Rights and Liberties, answer this Question, and I have done.*

Well

*the Parliament, &c.* 77

Well Sir, I think now we are like to bring the Matter to a short Issue, provided you will stand to what you say: for I confess I must agree with you in this so reasonable a Challenge, *viz.* That if no positive full Precedent can be produced of above Thirty seven years standing, whereby the Parliament of England have made Laws to bind Ireland, I think what they have lately done in that Matter to be an Invasion on your Rights and Liberties.

And here, I believe I state the question much in your favour; for in your Appeal to any English Heart that stands for his own Rights and Liberties, you say, *that these Invasions have been constantly complained of from that day to this*; which, should I put you on the proof of, I am afraid you would be at a great loss to do it. Pray, who made the Complaints? and to whom? for it must be done by your Parliament of Ireland, to the Parliament of England, else it cannot be supposed to be a Regular Complaint.

But we will take it as I state it, and thereby put the *Onus probandi* on my self, That the Parliament of England did make positive full Laws to bind Ireland before the days of Charles the Second, my work then is to produce them; and because I will be fair with you in this Combat, I shall wave the three Statutes you have before excepted against,

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against, (whether justly or not, I leave to the Reader on what I have said before) *viz. Statutum Hibernie, Ordinatio pro Statu Hibernie, and the Staple Act 2 Hen. 6.* These three, to please you, shall be dismiss the Ring.

Come then, let us begin; What think you of the *Statute of Merchants 13 Edw. 1. Anno 1258*, which is Four hundred and forty years since, wherein (as I have said before) *Ireland* is mentioned, and bound? I hope you will allow this to be positive and full; and then I have only these two things to prove, first, That there is such a Statute; and for this I refer you to *Keeble*. Secondly, That it is acknowledged here to be a Law; and this the constant practice of the Kingdom of *England* puts out of doubt, it being accounted one of our best Securities in matters of Dealing; and a Statute being made 21 *Jac. 1.* which, among other things makes it Felony without Benefit of the Clergy, to acknowledge a Statute in the name of another Person not privy or consenting to it, also to procure it to be done: I have known two Persons convicted thereon in this City, for acknowledging the above Statute of Merchants, and receive Sentence accordingly.

Now, Sir, I hope you will yield you are in the wrong.

But

*the Parliament, &c.* 81

But because by the Testimony of two or three Witnesses every thing ought to be tried, I will give you another, *viz.* that of 11 *Edw. 3. Anno 1337.* mentioned before, which is 360 years since, wherein *Ireland* is also mentioned, and positively bound.

I will add a third, which I have likewise mentioned before, *viz.* the *Statute Staple 27 Edw. 3. Anno 1353.* which is Three hundred and forty years since: in the first Chapter whereof, *the Staple Towns are settled for Ireland*, and in almost every Chapter, *Ireland* is mentioned under some name or other, and positively bound.

I could produce many more, but having had occasion to mention them before, I will not swell my Answer by repetition.

I hope now, Sir, I have fully proved all I undertook, and you proposed; and that you will acknowledge your self to be in an error, and give up the Cause, for I am weary of following as you lead, because I am forced thus to repeat the same things again. But I must go on to the end of your Book; perhaps you have something more material to offer then I have yet seen.

But before I proceed, I will mention one Statute made in the Reign of King *Charles the Second*, which you omit, and I will put you in mind of, 'twas in his Twelfth year, *cap. 7.* The Title (which is all I find of it in the Statute Book) is, *An Act for restoring*

*storing unto James Marquess of Ormond all his Honours, Mannors, Lands, and Tenements in Ireland, whereof he was in possession on the 23d day of October 1641. or at any time since; which being as it were a private Act, is not printed at large. Now I am apt to think that the Marquess of Ormond thought the Parliament of England had a Legislative Power over Ireland, else he was very much to blame to be at the Charge and Trouble of getting this Act past: And do you think that a Person of his Honour and Interest in Ireland, had any design to betray and give up the Liberties thereof?*

I come now with you to the Reign of his present Majesty; which you call a happy Government; and I think that we in *England* have just cause to call it so too, and to bless God for it, as I doubt not but we do: But I am sure 'tis more especially happy to the Protestant Interest in *Ireland*, else I fear their Lands had had other Owners before this time, though, perhaps under a former Reign, the Powers of an Irish Parliament might have been asserted, in order to clip the Wings of the Parliament of *England*, till both had been levelled to the despotick power of the Prince.

But however, as happy as this Government is, I find you have something to say against it: The Parliament in this happy Reign

Reign have made Laws to bind *Ireland*, which is a thing you complain of, and more especially, *because it was done at a time, when the Subjects of England, have more strenuously then ever asserted their own Rights, and the Liberty of Parliaments,* pag. 105.

Why then, Sir, you have no reason to complain, for this was one way by which they asserted their own Rights, and the Liberty of Parliaments, though this was not the only way: They asserted it likewise in an Act made *Anno 1 Gul. & Mar. cap. 2.* intituled, *An Act declaring the Rights and Liberties of the Subjects, and settling the Succession of the Crown.* And in an Act made *Anno 6 Gul. & Mar. cap. 2.* intituled, *An Act for the frequent meeting and calling of Parliaments.* But as great Asserters as they were of the Liberty of Parliaments, I do not see one word mentioned in that Act, relating to the Parliament of *Ireland*; from whence I infer, That they thought there was but one Parliament for all those Kingdoms, Lands, and Countries which were annexed to the Imperial Crown of *England*, else certainly that Parliament, which thought they had Power to make Laws to bind *Ireland*, and who you confess *made them out of good will and kindness to you, under those Miseries that Ireland then suffer'd,* pag. 106. would have taken some care for that King-

dom, in a Matter of such Weight, even for many of those Reasons whereon that Statute is grounded, had they not thought *Ireland* subject to their own Legislative Power.

But let us come to the Statutes which you mention to be made in this Reign, wherein *Ireland* is named.

The first is pag. 107. An Act made 1 Gul. & Mar. cap. 29. intituled, *An Act for Relief of the Protestant Irish Clergy*. This, you say, was obtained by the distressed Protestant Clergy of *Ireland*, who were driven into *England*, and by accepting Ecclesiastical Promotions here, had forfeited those they had before in *Ireland*, by a Statute in that Kingdom 17 & 18 Car. 2. To free themselves from the Penalty of this Act, they thought it necessary to procure the fore-mentioned Statute, which the Parliament of *England*, I perceive, kindly granted them; and they thought it sufficient to continue them their Rights to their Promotions in *Ireland*, notwithstanding that Irish Act. So that here you see in Fact the Opinion of the Clergy of *Ireland*, touching the Powers in dispute between us, notwithstanding any Gloss you may think fit to put on it.

But now the Act is before me, let us see what were the Thoughts of the Parliament of *England* when they made that Law, whether

ther they thought it would be so precarious, as to be in the discretion of the Parliament of *Ireland* to allow it; because you seem to infer that it was so, pag. 107. when you say, *The Protestant Irish Clergy thought they could not be too secure in avoiding the Penalty of the Irish Act, and therefore applied themselves to the Parliament of England, and obtained this Act*. No sure, the Parliament thought it binding, else it had argued Levity in them, to make a Law which they thought they wanted Power to see put in Execution. But let the Law it self speak the Sence of the Legislators: I must be forced to transcribe the words of the Statute, which are these, *That no Ecclesiastical Person, of what dignity or degree soever, promoted or beneficed in the Kingdom of Ireland, and who hath been enforced to forsake the said Kingdom, or hath so done for fear of the Irish Rebels, and being of the Protestant Religion, who are or shall be presented, promoted, collated, instituted, or inducted to any Church or Benefice with Cure, or without Cure, or to any Ecclesiastical Promotion whatsoever in the Kingdom of England, shall thereby, or by acceptance thereof, lose any Ecclesiastical Benefice or Promotion in the said Kingdom of Ireland; but that he, and every of them, be continued and enabled still to hold and enjoy his Benefice and Promotion in the said Kingdom*

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*of Ireland, of what dignity or degree soever the same was.* You see here, the Parliament takes no notice of any Law made in *Ireland*, and consequently of no Parliament there, at least, which should stand in the way of their Authority. 'Tis true, there follows these words, *Any Law, Statute, or Canon notwithstanding*, I hope you do not take this to be meant of Laws, Statutes, and Canons made in *Ireland*; 'tis not probable it should; but if you will have it so, then you see that the Parliament of *England* thought this Law strong enough to command Obedience in *Ireland*, although contradictory to the Laws made by the Parliament there.

The next Statute you mention is, pag. 108. cap. 34. of the same Sessions, intituled, *An Act for prohibiting all Trade and Commerce with France.* By this you say *Ireland* is bound. However, you have found a Salvo for this also; 'Twas, say you, *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.* What then? should the Parliament of *England* therefore assume a Power which did not belong to them? why did they not make Laws to bind *Flanders*, where the War was hotter than in *Ireland*, and the Subjects of the King of *Spain* under the Irregular Oppression of the French King? But had not the Parliament

ment of *England* exercised this Power before? you your self say they had in *Charles* the Second's days, p. 102. So then, this was not the Reason, though you are pleased to shadow it over with this Vail, it was, because they thought *Ireland* to be under their Jurisdiction, and that this Act would be necessary for the Publick Weal of the Kingdom of *England*, and the Lands belonging to it.

But mistrusting the weight of this Reason, you proceed, and say pag. 108. *Neither do we complain of it, as hindring us from corresponding with the King's Enemies, for it is the duty of all good Subjects to abstain from that.* What then? are Statute Laws such Cobweb things, as to be binding only when no Complaints are made against them? This is a worse Reason than the other; I admit the Protestant Gentlemen of *Ireland* to be good Subjects; but what if some ill Men amongst you should have complained of this Law, and broke through it for their private advantage, had it not force enough to have caused it's Penalties to be put in Execution against them? Surely the Parliament thought it had, else they did ill to name *Ireland* in the Body of that Statute; and their Reason for it doubtless was, That they thought *Ireland* subject to their Authority, as a Kingdom depending on *England*, which



they did not take *Scotland* to be, else in all probability they would have extended that Act thither also. 'Twas not out of love to the French King that they left *Scotland* out.

Please to note, That this Law likewise binds *Fersey, Garnsey, Alderney, Sark, and Isle of Man*; the last was once a Kingdom of it self, separate from *England*, and in the hands of the *Scots*, and of the *Norwegians*.

The next you mention is, pag. 109. An Act made 1 Gul. & Mar. Sess. 2. cap. 9. intitled, *An Act for the better Security and Relief of his Majesty's Protestant Subjects of Ireland*. And what say you to this? Why, pag. 108. you tell us, *That the banished Laity of Ireland, observing 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 advisable for them to do something in Relation to their Concerns. And accordingly they obtained this Act.* Very careful indeed they were, to apply themselves for Paper Laws to the Parliament of *England*, if they thought they had no Power to make them. A Man would have supposed, that the Parliament of *Ireland*, in their first Sessions after the Reduction of that Kingdom, would have deprived the Clergy-men concerned in procuring the other Act of all their Ecclesiastical Preferments in *Ireland*, for the wrong

wrong step they made, because 'twas they began the Dance for the Laity, who only followed their Example.

And here you have the Opinion of the Laity of *Ireland*, as you had before that of the Clergy; and by your Writing I suppose you were one of them.

But you still harp on the same String, 'twas because you could have no *Regular Parliament* in *Ireland*; though I perceive you had a farther drift in obtaining this Act, then the Clergy had in procuring the other; for you proceed, p. 109. *We concluded with our selves, that when we had obtain'd these Acts from the Parliament in England, we had gone a great way in securing the like Acts to be passed in a Regular Parliament in Ireland, whenever it should please God to Re-establish us in our own Country.* Was this really your Reason? Why then did not you set it forth in your Petition to the Parliament of *England*, and endeavour with them to have got it mentioned in their Act, which might also have been a *salvo* to the Priviledge of the Parliament of *Ireland* hereafter? But I cannot think it was so, because you very well knew by a long Experience, that Acts of Parliament made in *England*, wanted not the Authority of the Parliament of *Ireland* to confirm them, and consequently you needed it not in this:  
Nor

Nor was there any reason to fear this Act's being pleaded against you as a Precedent of your Submission, and absolute acquiescence in the Jurisdiction of the Parliaments of *England* over the Kingdom of *Ireland*, which you complain of p. 110. for I should take the Authority of the Parliament of *England* to be very young, if it depended thereon.

But now you have done with this Act, give me leave to take it up: You say, *That therein King James his Irish Parliament at Dublin, and all Acts and Attainders done by them, are declared void, p. 109.* I find then, that King James had a Parliament in *Ireland*, which Parliament must be lawfully Asssembled, if *Ireland* is a separate Kingdom, and not subject to the Statute-Laws of *England*: For, though he had abdicated the Kingdom of *England*, and that it was so declared by the Parliament here, who had settled the Crown on King *William* and Queen *Mary*; yet supposing *Ireland* to be a separate Kingdom, that Declaration would no more have reached it, than it did *Scotland*, till the same was done by the Parliament there: Hence then it follows, either that you did tacitely confess *Ireland* to be no separate Kingdom, or that the Parliament of *England* had Power to declare void an Irish Parliament, and all  
Acts

Acts and Attainders done by them; for you say, *That you obtained this Act for your better Security and Relief.* Please to consider whether I am not in the right as to this Matter.

The next Act you mention is, p. 111. viz. *An Act for Abrogating the Oath of Supremacy in Ireland, and appointing other Oaths, 3. & 4. Gul. & Mar.* This you say binds *Ireland*, and to this and the forementioned Acts, you say, you conformed yourselves, *because they were in your Favour, and you hope that a voluntary Submission to the Commands of another who hath no Jurisdiction over you (as you suppose the Parliament of England hath not) because they are pleasing to you, shall give him no Authority to command you ever after as he pleases, p. 112.* If this were the Case, I confess you have reason on your side, but seeing it is not, but that the Parliament of *England* hath made Laws to bind *Ireland* ever since it was united to the Imperial Crown thereof, I hope the Obedience you paid to these Statutes, shall not be called a *Voluntary Submission*, which you have Power to throw off when you please, except you are of Opinion with what follows, viz. *That Subjects ought not to obey longer than they see it convenient for them, unless they be forced to it, which Force they are to free themselves from*  
as

*as soon as they can*: I am apt to think the Parliament of *England* will not like this Principle, and I do not see how the Parliament of *Ireland* can neither; for if this be allowed, *pari ratione*, you may throw off their Jurisdiction also when you please.

But I will return to this last Act, which you say, p. III. was made 3 & 4 Gul. & Mar. It hath slipt my Collection, so I can observe nothing from it, save what you say your self, viz. *That the Parliament convened at Dublin, Anno 1692. under Lord Sidney, and that likewise Anno 1695, under Lord Caple, paid an entire Obedience to it.* From whence I conclude, that those two Parliaments thought it their Duty so to do, else it would seem very imprudent in them, because they could not but conclude, that it would be interpreted an Acknowledgment of the Jurisdiction of the Parliament of *England* over them; not that I urge it against them for a Precedent in favour of the Parliament of *England*, 'twill imply a weakness in their Authority if they wanted it, which they do not by your own Confession; for you say, p. 64. *That several English Acts of Parliament were allowed in the Parliament of Ireland held 10 Hen. 7. tho' I think that allowance utterly unnecessary, and rather an Incroachment on the Jurisdiction of the Parliament of England.*

But

But why did the Parliament of *England*, Anno 3 & 4 Gul. & Mar. make this Law, at a time when the Parliament of *Ireland* was so near sitting, which you say was Anno 1692? Truly, though I cannot give their Reasons for it, and it will not be good Manners for me to ask them, yet I will adventure my Thought, which is, That they knew they had Power to make it, and that the Parliament of *Ireland*, whenever they met, was bound to pay Obedience to it.

And now it comes into my mind, let me ask you Gentlemen of *Ireland* this Question; Did you think King *William* and Queen *Mary* King and Queen of *Ireland*, before the Calling of that Parliament, or did you not? if you did not, how came that Parliament to meet by Vertue of their Writs? For if *Ireland* be an Independant Kingdom, the Declaration of the Parliament of *England* (as I said before) was nothing to you; but if you did, it must be by Vertue of the Act of Recognition made in the Parliament of *England*; if so, then that Act also reached *Ireland*, though you do not mention it; and then it follows, that here is a *New Original Compact*, whereby *Ireland* is become a *Dependant* on the Kingdom of *England*, and your Parliament on the Parliament thereof.

I do

I do not see how you will get over this Argument, though there is no need to make use of it in favour of the Parliament of *England*; yet I may with much more Reason draw this Conclusion from hence, then you can from the supposed Donation of King *Henry II.* to his Son *John*, that *Ireland* was then made a separate Kingdom.

But I go forwards; *p. 113.* you come to your Arguments drawn from the Liberty of the People, and tell us, *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 alienated, or given up, by any Body of Men whatsoever.* I confess my self intirely of this Opinion, and I cannot think the People of *Ireland* ought to be deprived of that, which I would not lose my self, much less can I Argue for it: So that you see, I am no Friend to Slavery, or any thing that looks like it; when I cannot defend my Argument without subjecting *Ireland* to this State, I will give up the Gantlet.

But let us rightly distinguish in this Matter; and since we agree in the main, let us consider what you mean by giving Consent to a Law: This, I presume, must be done, either by a Man's self, or by his chosen Representative; if so, then we will consider

sider how far this will affect the People of *Ireland*, with respect to the Matter we are now upon: For I believe you will grant, that if a Man denies or neglects to qualifie himself for such an Election, or if qualified refuses to be present thereat, or removes himself at such a distance that he cannot if he would, this Man is not denied his Consent, nor is his Liberty broken in upon, though he be afterwards bound up by Laws made by a Parliament, in the Election of whose Members he actually gave no Vote; the Laws governing Elections being made by a common Consent, though they may seem to affect some Persons severely, yet being thought convenient for the whole Community, ought to be submitted to: And as for the other two things, being Acts of a Man's own, his Choice is supposed to go along with them; If this be not allowed, there never was any Election free. For suppose I will not make my self a Freeholder for a County, Citizen or Burges for a Corporation, must the Laws already made be Cancelled to gratify my Humour? Or suppose that I go on a Voyage to Sea, or settle my self in the Plantations Abroad, shall not I be bound by the Statute-Laws of *England*, because I was not actually present at the Election of the Members that made them? If this be admitted, few Men will care

care to be there. 'Tis a pleasant way of Arguing, till it comes to be closely applied: Now there is no English Subject in *Ireland*, but may put himself, if he please, under one of these Qualifications, that is, he is capacitated to do it as he is an Englishman, and this is what his Ancestors did before him, to whose Privileges he succeeds, and must not expect, that new Itinerant Courts of Parliament shall be erected to follow him, where-ever he thinks fit to remove: If this be allowed to the Gentlemen of *Ireland*, why should it be denied to those who settled in our Plantations in *America*, they all removed out of *England* on the same Principles of advancing their own private Fortunes; and what a Jumble of Laws should we then have? Not but that I think it highly reasonable, they should all have power to make private Laws, for the better governing their several Colonies; and this they do, by Representatives chosen by themselves, which in the *Lesser Plantations* they call *Assemblies*, but in *Ireland* a *Parliament*; which *Assemblies*, and the Laws they make, ought still to be in Submission to the Superior Power of the Parliament of *England*.

But if I do not mistake, you have somewhere own'd that *Ireland* did once send Representatives to the Parliament of *England*:

I must

I must turn back, and I find it in p. 95. where you say, *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.* And you go on to shew from the White Book in the *Exchequer* in *Dublin*, the form of a Writ sent by King *Edward I.* to his Chancellor of *Ireland*, wherein he mentions, *Quedam Statuta per nos de assensu Prelatorum Comitum Baronum & Communitatis Regni nostri Hiberniæ, nuper apud Lincoln & quedam alia Statuta post modum apud Eborum facta.* These you suppose to be Statutes made, either at the Request of the States of *Ireland*, or by the Assent of your own Representatives, the Lords Spiritual and Temporal and Commons of *Ireland*; and from this you Argue, p. 96. *That the King and Parliament of England would not Enact Laws to bind Ireland, without the Concurrence of the Representatives of this Kingdom.*

Well, Sir, put what Sence you please on it, this shews plainly that you then came to *England* for your Laws, and that the Parliament of *England* had a Legislative Jurisdiction over you in those early days; so that all makes the worse for your Argument: How then came you to be free from it? For either you cast off the Parliament

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*of England*, or the Parliament of *England* cast off you; 'tis not the latter, for the Parliament is still careful for your Welfare, and makes good Laws for your better Government; and I see no Power you had to cast them off, except you will at the same time say, you are not English-Men, which I hope you will not; but I find you are like froward Children, who will not eat their Bread and Butter unless it be Sugar'd; nothing will please you, unless the Parliament of *England* will resign their Legislative Authority, which they shall never have my Consent to, except I see better Reasons for it than any you have yet produced.

But you proceed, p. 96. *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 forc'd to Enact Laws in England.* Truly 'tis a very probable Story you tell us; I take *Bevis of Southampton*, or *Guy of Warwick*, to be altogether as probable. Come let us examine it; In the former part of your Book you lay it down as undeniable, That *Henry II.* in the Parliament at *Oxford*, made a Donation of *Ireland* to his Son *John*,

*John*, as a separate Kingdom; and as such Parliaments were there settled (I must confess I think 'tis all of a piece) now, you tell us, that because the People of *Ireland* could not Assemble with *Conveniency and Safety*, to make Laws, during the *Heats of Rebellions and Confusions of Times* there, they came to *England* to make them here; just like the Birds, that remove at their Pleasure from colder Climates, to make their Nests in Warmer. But you prove nothing of this, nor is it at all likely: Pray when were these Heats of Rebellions? not in the Days of *Henry II.* for you say, p. 8. that *Anno 1172*, *Ireland* was quietly surrendered to him by *Richard Strongbow* at *Dublin*; afterwards, p. 30. you say, he settled a *modus tenendi Parliam.* p. 39. you say, that five Years after his return from thence, he created his Younger Son, *John*, King of *Ireland*, who went thither, and that the *Irish Nobility and Gentry* immediately repaired to him: 'Tis true, you say there was some *Difference* between them about their *long rude Beards*, but I hope you will not call that a *Rebellion*: p. 40. you imply to us, that King *John* made another Voyage thither, which *How* and *Baker* say was the *31 Hen. 2.* being eight Years after: You proceed also and tell us, That King *John* govern'd them *Two and twenty Years* du-

ring the Lives of his Father *Henry II.* and his Brother *Richard I.* in which time he made them divers Grants and Charters; so that hitherto all was well in *Ireland*: p.44. you say, That on the Death of King *Richard I.* King *John*, in the Twelfth Year of his Reign, went again into *Ireland*, Anno 1210, and then it was that *Mat. Paris* saith the 20 *Reguli* came to him to *Dublin*, and did him Homage: p. 45. you say, That *Henry III.* came to the Crown Anno 1216, and the same Year sent over the Charter from *Bristol* the 12th of *November*: And in p. 46. you say, He sent them another in the *February* following from *Gloucester*: p. 52. you say, That *Henry III.* in the Twelfth Year of his Reign, sent over a Writ to *Hugo de Burgh* to Summon the *States of Ireland*. In all this time we hear nothing of *Wars, Tumults, Heats, or Rebellions*, but quite contrary: For p. 49, and 50. you set forth a Writ (which you have from *Mr. Petit*) or rather a Letter written by King *Henry III's* Queen, Anno 38. of his Reign, wherein she desires his Subjects of *Ireland* to assist the King with Men and Money, to defend his Land of *Vascony*, which was then Invaded by the King of *Castile*: Thus far I quote you from your own Book, and now you tell us, p. 96. That the People of *Ireland* could not Assemble

semble with conveniency, to make Laws at Home, by reason of *Heats of Rebellions, or Confusion of Times*; and that this caused them to come to *England* to do it, as appears by the Writ you mention, p. 95. which was in the Ninth Year of *Edward I.* who succeeded his Father *Henry III.* Really Sir, you have given me so much trouble to run over your Book again, to shew how inconsistent you are in your Discourse about this Matter, that I could almost be angry with you: But I am willing to take this pains, not to convince you that you are in an Error, I imagine that will be labour lost; a Gentleman of your Parts must needs know it already; but to make it plain, lest any Body else should be drawn aside by what you write.

Well then, on the Credit of this Writ I will grant you, that *Ireland* came to *England* for Laws in the Ninth of *Edward I.* And then I hope you will not oppose this *Ancient Precedent*, because it is of your own producing.

But to get clear of this you tell us, p. 96. That these Laws were made by your own Representatives: And to prove that this was so in the Reign of *Edward III.* (for you say 'its plain 'twas so in *Edward I.'s* time) you tell us, *There were Knights, Citizens, and Burgeses elected in the Shires, Cities, and Burroughs of Ireland, to serve in Parliament*

*in England, and so served accordingly. And to prove this you tell us, p. 97. That amongst 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 Chancellor, requiring them to issue Writs under the Great Seal of Ireland, to the several Counties, Cities, and Boroughs, 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 50 Edw. 3. Memb. 19. on complaint to the King by John Draper, who was chosen Burges of Cork by Writ, and served in the Parliament of England, and yet was denied his Expences by some of the Citizens, care was taken to reimburse him. Pray what use will you make of these Records? to prove that the Kingdom of Ireland is not subject to the Legislative Power of the Parliament of England? I think you have brought the Matter home, and have mistaken the side; for instead of proving that it is not, you have proved positively that it is; and particularly that from the Ninth of Edward the First, to the Fiftieth of Edward the Third, the Representatives of Ireland came over to sit in the Parliament of England, and how long before, or how long after they did so, I cannot tell. The Writ you mention of Edward I. hath*

hath reference to Statutes made before that time at *Lincoln* and *York*, which I judge must be in the Days of *Henry II. Richard I.* or *King John*, because I do not find that any Parliament was held in either of these Places, from the beginning of our Statute-Books; and then where is your separate Kingdom of *Ireland* under *King John*? And why have you so often asserted, That there was never any Law made in *England* to bind *Ireland*, till the Modern Instances you mention? Pray what means all the Clamour you have made against our late Kings, and the Parliaments of *England*, for infringing your Liberties, and breaking through the very design of settling Communities, and putting you in a worse Condition than you were in the state of Nature? You are very much beholding to the ingenious *Mr. Lock*, for the fineness of your Argument, about the State of Conquest, &c. in the former part of your Book, which I do not at all blame you for, because I think no Man can handle a Subject smoothly, whereon he hath treated, that doth not follow his Copy; but I blame you for not applying those excellent Arguments more fitly.

But to return to the Matter; P. 58. You confessed, there was no Parliament in *Ireland* before *King Henry III.*'s time, and you have not any where shewn, that it



was settled there during his Reign; and now you acknowledge that *Ireland* sent Representatives to sit in the Parliament of *England* in the Reigns of *Edward I. Edw. II. and Edward III.* his Successors, where Laws were made to bind it. Pray then, why do you exclaim against their putting this Power in Execution still? To this you say, p. 97. *It must be allowed that the People of Ireland ought to have their Representatives in the Parliament of England. And this you believe they would be willing enough to embrace, but this is a Happiness you cannot hope for.* I have before told you that you are represented there already; but you are willing some Representatives should come over from *Ireland* to sit there, you say they did so once, and you are willing they should do it again; pray why did you not continue that great *Happiness* you now so much prize? To this you Answer, p. 98. *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.* I cannot but observe what a *Hodge-podge* you would make by the wrong Inferences you endeavour to draw from every thing, only because you would cloud the Truth; you allow you once sent Representatives to the Parliament here, but you would now have this to be *only upon some occasions*: I hope it was not on

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*occasion of Wars and Tumults* during the prosperous Reigns of *Edw. I. and Edw. III.* If it was, you do not tell us what Wars and Tumults they were: 'Tis much that *Edward III.* who extended his Arms to *France and Scotland,* could not keep in quiet his *County of Ireland,* as it is called in the Statute 1 *Hen. 6.* quoted before; and now you tell us the Reason why it was then called so, *viz.* because they formerly sent Representatives to serve in Parliament here. If this was not the Reason why they sent them *only on some occasions* (and you give no other) then, I am apt to think, either that they sent none at all, or that they sent them to every Parliament; for I can't believe, that Laws were made in *England* and in *Ireland* at the same time, by two Parliaments that stood on equal footing one with the other: This is not probable; for what if their Laws should clash, the Parliament of *England* would not submit to have their Laws repealed by the Parliament of *Ireland*; that were unjust, because the same Power that made them was not at the repealing of them: *Ireland* had Representatives in the Parliament of *England,* but *England* had not in the Parliament of *Ireland*: Nor is it probable, That the Parliament of *Ireland* would have stooped to the Parliament of *England,* if they had any colourable Argument of their side; for you

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see how loath they are to do it now, though they have none at all; at least, you, who have undertaken this Contest in their favour, have produced none; but you have fairly quitted the Field, and confest, That *Ireland* did formerly, for 100 years together, send their Representatives to the Parliament of *England*.

Well then, to return to this *Happiness*, why did not *Ireland* continue it? You tell us, pag. 98. They found it *very troublesome and inconvenient*. What makes you then to desire it again? I do not see how it will be less *troublesome* now; and I assure you, it will be attended with as many *inconveniencies*, if not to you in *Ireland*, yet to us in *England*; and I hope you will consider your Neighbours inconveniencies, as well as your own.

But as *inconvenient and troublesome* as it is, you are willing to have this *Happiness* restored. Here the nature of the Argument is altered; for now it is not, Whether the Parliament of *England* have Power to make Laws to bind *Ireland*, and whether what they have done in that Matter for 500 years past, hath been done *de jure*; but whether *Ireland* shall be restored to its former Priviledges of sending Representatives to sit in the Parliament of *England*? I confest, I have no Authority to treat with you about this

this Affair; it is reserved for a higher Power to determine.

But suppose you are denied to have this *Happiness* restored, the question then will be, Whether you have any wrong done you? If I was to be Judge, I should give it against you: For, seeing you have given up your Rights so many hundred years since, and submitted your selves to your English Representatives, without sending any from *Ireland*, I do not see how you can insist on it now: And in this I believe you have *Neighbours Fair*; for I doubt not, there are many Corporations, both in *England* and *Wales*, who either did send more Members to Parliament in former days, or might have done it, had not the Charge or Trouble put them on seeking to be excused. Particularly, I observe a Clause to this purpose in the Charter granted to the City of *Bristol* by King *Edward III.* when he made it a County, whereof I have before me an English Copy, which runs thus; *And moreover, we have granted for us and our Heirs to the said Burgeses and their Heirs and Successors for ever, that the said Town of Bristol, by any means shall not be charged to send to the Parliament of Us or our Heirs, but only two Men, as heretofore hath been accustomed; the which two Men, as well Knights of the County of Bristol, as Burgeses of the Town and Borough*

*rough of Bristol, for the same Town and Borough shall be bound to make answer.* Which shews, that this was then granted as a favour to that City, at their request, to avoid the trouble and charge of sending two Knights, as well as two Burgeses, to represent them in Parliament, which if they would now retrieve, they cannot. And this was about the same time that you say, *Ireland* being discouraged by the Troubles and Inconveniences that attended it, forbore to send Representatives to sit in Parliament in *England*.

But whatever was the Reason that made them do this, I cannot agree with what you say pag. 98. *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:* Pray what Regular Course of Parliaments do you mean? you have not yet proved that you ever had any, but rather confessed the contrary; you say you sent Representatives to sit in the Parliament of *England*, But what then? Does it therefore follow that you might leave that off, and set up Parliaments of your own at your pleasure? No sure; you might quit your Privileges of being part of the Parliament of *England*, but it doth not therefore follow, that you had Power to establish a Parliament in *Ireland*, independent on the Parliament of *England*; no more then if the People

ple of *Cornwal*, being unwilling to put themselves to the trouble of attending the Parliament at *Westminster*, should therefore without farther warrant, erect one of their own nearer home, and then expect it should be clothed with full Power, and be Superiour to that of *Westminster*, with relation to what concerns the County of *Cornwal*: For to talk of your *Old Track and Regular course of Parliaments*, after what you have said on this Matter, is a Jest, and deserves no answer.

We are now come to your fifth Particular, pag. 115. *The Opinions of the Learned in the Laws relating to this Matter.* The first you mention is the Lord Chief Justice *Cook's* in his Seventh Report in *Calvin's Case*, pag. 116. and he is against you: But you blame him for his unfaithful broken Citations, (which I agree with you to be an ill way of deceiving a Reader into a good opinion of an Argument, but must tell you, that you have been too frequently guilty of the same Fault in this Book) yet I cannot see how the Lord Chief Justice *Cook* hath been unfaithful in this his Citation, for I take the whole sence of the Transcript you mention, to be included therein: You say, That after he had declared *Ireland* to be a Dominion separate and divided from *England*, for which he quotes out of the *Year-Books* the Case of the Merchants of *Waterford*, and the proceedings thereon, which you have mentioned

pag. 91. He concludes, *Nostra Statuta non ligant eos, &c.* yet with this Parenthesis (which is to be understood unless they be especially named) What you say against this his Opinion, p. 117. That it is down-right Magisterial, and point blank against the irrefragable Reason of the Book he quotes, I think will appear to be very severe, if the Point he was then upon be considered; which was this, as I find it in his Abridgment, pag. 271. R. C. by his Guardian bringeth an Assize, the Defendants say the Plaintiff ought not to be answered, *quia est Aliigena, natus 5. Novemb. An. Dom. Regis Angliae, &c. tertio, apud E. infra Regnum Scotiae, ac infra ligeanciam Domini Regis Regni sui S. ac extra ligeanciam Regni sui Angl.* Here, the Debate being about a Post natus in Scotland, Sir Edward Cook brought the Quotation you mention, for the sake of the last words thereof, *sed personae eorum sunt subjecti Regis sicut Inhabitantes in Caesaria, Gasconia & Guyan*: who had been ever accounted Denizens; and makes the Note you mention, viz. (which is to be understood unless they be especially named) on the other part of that quotation, *Nostra Statuta non ligant, &c.* because he would not be thought of Opinion with the former Judges, *Et non obligantur per Statuta in Anglia*, which you mention pag. 91. And this having no relation to the Case he was then upon, he thought it needless to give the Reasons for this his dissent

sent in Opinion from them, which makes you call him Magisterial, &c.

But afterwards, pag. 117. you say, that in another place of the same Report he gives this colour of Reason for his former Assertion, *That though 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.* From this you would raise an Argument, p. 118. between the Opinion given by the Judges in the Exchequer Chamber, pag. 91. and the now Opinion of the L. Chief Justice Cook: But I shall leave you to reconcile those venerable Judges, and proceed to my own Argument, because I think I have already spoken to every thing you therein mention; only I can't but stand amazed at your — what shall I call it! in this Assertion, pag. 118. *I challenge any Man to shew me, that any one before him, or any one since, but from him, hath vended this Doctrine*: when your self had told us before, pag. 92. *That the Lord Chief Justice Hussy, and the other Judges were of the same Opinion, when the Case of the Merchants of Waterford (which is the same you now quote) was argued the second time in the Exchequer Chamber*: And in pag. 80. you tell us, *This was a Doctrine first broached directly by Will. Hussy Lord Chief Justice of the King's Bench in England, in the first year of Henry*

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Henry VII. and of late revived by the Lord Chief Justice Cook. I wonder how you can make such bold Challenges, which need no farther trouble then perusing your own Book, to answer. I hope I have now vindicated my Lord Chief Justice Cook, whose Name, you say, pag. 116. is of great veneration with the Gentlemen of the Long Robe; if so, I may likewise hope, they will give me thanks for doing it, so many years after his death.

The next Case you mention is that of *Pilkinton*, 20 Hen. 6. pag. 122. This you say is for you: It is too long to transcribe, but the Substance of it is this; There were Letters Patents granted by the King to *A.* for an Office in *Ireland*, formerly granted to *P.* by the same King's Letters Patents; whereupon *P.* brings a *Scire Facias* against *A.* to shew cause why his Letters Patents should not be repealed: *A.* pleads, That *Ireland* had time out of mind been a Land separate and distinct from *England*, was govern'd by its own Customs, had a Parliament, and made Statutes, and by one of those Statutes *P.* had forfeited his Office: Hereupon *P.* demur'd in Law, and it was debated by five of the Judges of *England*, who differ'd in their Opinions about it. Well, what will you infer from this? doth any one doubt whether *Ireland* hath a Parliament, and Customs among themselves that govern them? Did the

*the Parliament, &c.*

the Jurisdiction of the Parliament of *England* come any way to be called in question here? if not, 'tis nothing to our Matter. Yes, you say, pag. 124. Two of the Judges said, That if a Tenth or a Fifteenth be granted the King by the Parliament of *England*, that shall not bind *Ireland*, &c. Perhaps it may not; 'tis according as the Act is worded; we see our ordinary Acts for raising Taxes are not extended to *Ireland*: But doth this show that the Parliament of *England* hath not Power to make Laws which shall bind *Ireland*? Besides, suppose two Judges of five had positively said they could not, was their Opinion to be taken against that of the Parliament of *England*, shewn by their constant practice for Five hundred years? I profess I cannot see how this Case, reaches the Matter we are upon.

As to the Merchants of *Waterford's* Case, pag. 125. it hath been spoken to before, so I shall pass it by now.

The next is the Prior of *Lanthonies* in *Wales*, 5 Hen. 6. This you say is for you, pag. 125. I think 'tis not; but it lyes on me to give my Reasons, therefore I will abbreviate it; *The Prior of Lanthony brought an Action in the Common Pleas of Ireland against the Prior of Mollingar; Judgment went against the Prior of M. who brought a Writ of Error in the King's Bench of Ireland,*

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where the Judgment was affirmed: He then appeals to the Parliament of Ireland, who revers'd both Judgments. The Prior of L. removes all into the King's Bench in England, but the King's Bench refused to intermeddle, having no Power over what had passed in the Parliament of Ireland, he then appealed to the Parliament of England, where, you say, it doth not appear by the Parliament Roll that any thing was done on this Appeal, save receiving the Petition. Well, what would you draw from this? I think it proves nothing to our Matter; if it doth, the Conclusion must be against you: For it appears by this quotation, That the Prior of L. two hundred and seventy years since, thought that an Appeal lay from the Parliament of Ireland to the Parliament of England: and it doth likewise appear, That the Parliament of England received his Petition: But as to your Inference against the Power of the Parliament of England, because nothing was done therein, it may as well be concluded, That they cannot judge Appeals brought before them by a Writ of Error out of the King's Bench of England, because many times no Proceedings follow thereon, which every Body knows may be let fall after the Petition is received, at the Pleasure of the Parties concerned.

As

*the Parliament, &c.* 115

As to what you say of the Civil and Ecclesiastical State of Ireland, p. 127, 128, 129. I think I have given a full Answer to it already, so shall not repeat: I will only add, That 'tis a wrong method, to draw Arguments against the Power of the Parliament of England, from Acts made by the Parliament of Ireland: No doubt the Titles of those Kings and Queens you mention, had been good to Ireland, though not recognized in the Parliament there. And as for the Church of Ireland, its subjection to the Parliament of England, doth not at all show that Holy Church is not free; for the Freedom there mentioned, doth not imply an exemption from the Parliaments Power, no more then the Grants and Charters made to the Church of England, discharge her from the like Subjection; and yet she is declared free by Magna Charta: and I hope you do not believe, that the Kings of England gave greater Immunities to the Church of Ireland, then they did to the Church of England.

The next Case you mention is, pag. 129. 14 Edw. 2. The Parliament at Westminster you say moved the King, 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 enjoyed the same. Whence you conclude,

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p. 130. *That the Parliament of England did not take upon them to have any Jurisdiction in Ireland, for then they would have made a Law for Ireland to this effect.* A strange Inference! Is it not known that they did make Laws to bind Ireland long before Edward the Second's time? You your self confess, p. 96. *That Ireland sent Representatives to sit in Parliament here in the Reign of Edward the First.* Besides the Quibble you make on the word [*moved*] which is only a mannerly Expression used by your Author between the King and his Parliament; suppose he had said they *represented* it to the King, had this altered the matter? But you say, *They made no Law to this effect themselves*; pray what need was there of a new Law, when you have so often told us before, *That by the original Compact settled in Ireland, on their first Submission to the Kings of England, they were to be governed by the Laws of England, whereof this was part?* In your former Case of Coparceners, p. 87. you say, *The Justice of Ireland dispatch'd four Knights to the King in England to bring a Certificate what was the Common Law of England in that Case*; here the Parliament of England signify to the King what was the Rights of the Irish Natives of Ireland; all the difference is, the former might not be stated before, and therefore required an Act; but this you

*The Parliament, &c.* 117

you say was, and therefore required none.

But still methinks there is something more under this Head; *The Parliament*, say you, *moved the King, that the Irish Natives of Ireland might enjoy, &c.* which shews, they had a Jurisdiction there, else they would never have concerned themselves, where they thought they had nothing to do: It likewise shews that the original Compact above-mentioned, was made with their advice and consent, otherwise, why should they concern themselves to see it put in Execution?

I come now to your next Case, pag. 130. viz. *A Writ of Error's lying from the King's Bench of England, on a Judgment given in the King's Bench in Ireland; from whence, you say, it is insisted on, that there is a subordination of the Parliament of Ireland, to the Parliament of England, pag. 131. This you acknowledge to have been the Constant practice:* But you say, first, *This is grounded on an Act of Parliament made in Ireland, which, it seems, is also unluckily lost,* How then do you know there was such an Act? and if you do not know it, how come you to offer your bare Surmises as Arguments against the Power of the Parliament of England? But secondly, you say, *on those Removals by Writs of Error, the Judges in England always judge according to the Laws and*

*Customs of Ireland.* You mention several Cases, wherein the Errors assigned were *words used in Ireland, but not in England*; What is all this to the purpose? if things are called by one name in *Yorkshire*, and another in *Cornwall*, shall they not pass in *Yorkshire* by the names used there, and in *Cornwall* by the names whereby they are commonly called there? The Conclusion you draw from hence, pag. 133. seems to me very strange, viz. *Hence 'tis manifest that the Jurisdictions of the King's Bench in England, over a Judgment in the King's Bench of Ireland, does not proceed from any Subordination of one Kingdom to the other.* Pray, from whence is this made manifest to any Body else besides your self? Does it appear, that because Writs of Error have been brought from the *King's Bench in England*, on Judgments given in the *King's Bench in Ireland*, that therefore Writs of Error do not lye from the one Bench to the other? and if they do, does not this show a Subordination of the one Court to the other? and consequently of the one Kingdom to the other? But you say, *This Subordination of the Court of King's Bench in Ireland, doth not proceed from a Subordination of the Kingdom, but from some other reason, which you will endeavour to make out.* I am sure your third Reason, pag. 133, 134. viz. *the Case of Coparceners*

*parceners* cannot be it; I have spoken to it before, all I shall now add is, That you must not bring Arguments against the Power of the Parliament of *England*, drawn from *reasonable Imaginations*, as you call them: I cannot *imagine* what *Reasons* you can offer from *the Stories* you tell there, either against the Authority of the *King's Bench*, or more especially against that of the Parliament of *England*.

All that follows, p. 134, 135. is only *perhaps*, and *it may be*, which I am not bound to answer, but with the same stile, *perhaps*, and *it may not be*: What you alledge of certainty is, *That Writs of Error have lain from the King's Bench of England to the King's Bench of Ireland time out of mind*; which seems to me proof enough for it: and if you have no better Argument against the Jurisdiction of that Court then this, I am afraid you will lose your Labour with any English Reader.

But you proceed to your fourth Reason, pag. 136. and tell us, *That when a Writ of Error is returned into the King's Bench of England, suit is made to the King only; the Matter lyes 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 King in England.* Also p. 137. you say, *For the*



*People of Ireland are the Subjects of the King to whom they Appeal.* And after that, you proceed thus, *I question not but in former times, when these Courts were first erected, &c. that if the King had travelled into Ireland, and the Court had followed him thither, erroneous Judgments might have been removed from England, before him into his Court in Ireland.* What strange Suppositions are here! have you ever seen any Precedent of this Nature? If yea, why did you not produce it? if no, why did you suppose it? But admit you had produc'd such a Precedent, what would it have signified, more than to have prov'd, that the Judges of *England* going over with the King into *Ireland*, do become there the Supream Court of Judicature? How will your Judges in *Ireland* take this at your Hands? Whether it be so or no, I will not undertake to confute you: But as to your former Arguments, *That Writs of Error lie before the King, not the Court; and Application is made to the King of Ireland, who is in England;* they are pretty ludicrous Distinctions, and if allowed, I cannot see why the Judges of *England* may not extend their Jurisdictions to *Scotland* on the same Arguments: I have so much Honour for them, that as I was willing to grant it them in *Ireland*, as full as you pleased, so I shall be loth to argue against extending their Power

Power to *Scotland* also, if they can find any Precedents to warrant it: If this be Law, I think they have been asleep in the Four last Reigns; 'tis true, they were Reigns of Trouble, but now we have Peace, they will have time to look into that Matter, on this Hint you have given them; I perceive you are fully perswaded of it, if they are as easily perswaded too, the Business is done: But I believe the Judges of the *King's-Bench* in *England*, will not call Causes before them out of *Scotland*, because the *King of England is King of Scotland*, on your Opinion that they may do it, be you as fully perswaded of this Matter as you will.

But whither are we going from our Argument? I undertook to prove, *That the Parliament of England can rightfully make Laws to bind Ireland*, and you have put me upon proving, *That the King's-Bench in England hath a Jurisdiction over the King's-Bench in Ireland*: I confess you have made this Task easie to me; for, besides the weakness of your Arguments to the contrary, you grant it, p. 139. but you do it with great Caution, and desire that no Advantage may be taken thereby, to prove *the Parliament of Ireland Subordinate to the Parliament of England*; this I think you need not have feared, for I know no Body would ever have raised it as an Argument against

against you, or will use it now you have brought it. The Parliament of *England's* Power over *Ireland* was long before the Dates of the Writs of Error you mention, *which were all in the Days of King Charles I.* 'Tis true, you imply there were some much earlier; but all we have said of this Matter seems to me but Labour lost, and nothing to the Argument we are upon; nor can I conclude with you, p. 140. from the *Prior of Lanthony's Case*, that the Judgement of the Parliament of *Ireland*, was never questioned in the Parliament of *England*; that very Case seems to me to show the contrary, which I leave to the Reader to judge.

As for the English Act of Parliament, p. 140, 141. made the 25th of *Henry VIII.* I cannot see what use you make of that neither, against the Jurisdiction of the Parliament that made it. You say, *It was received in Ireland, and confirmed in Parliament there, by the Act of Faculties made the 28th Year of the same King's Reign:* It may be so, and what then? All I can say to it is, that we have trifled a long time on things spoken to before, therefore let us proceed to something new, if you have it to offer. I very well know, Sir, that it becomes me to treat you with Respect, both as you are a Gentleman and a Stranger to me; but I cannot but admire at the Pains you

you take, of quoting so many Cases, and then applying them so ill; I confess I can hardly pardon you this Fault: Your Book seems to be written by different Hands; I am afraid this latter part is added without your consent, by such as design'd Mischief to you, or the Matter you are handling.

P. 142. You come to your Sixth Article proposed, *viz. The Reasons and Arguments that may be farther offer'd on one Side and t'other in this Debate.*

The First is *Conquest*; the Second *Purchase*, by sundry Expences to reduce Rebellions, and carry on Wars in *Ireland*, both formerly and of late; the Third is *Strength and Power*, which you say *England* makes use of to make Laws for securing its Trade from *Ireland*, and maintaining those Laws when made; these you descant on, p. 142, 143, 144, 145, 146, 147. but I am tired, and shall not give my self the Trouble to consider, what Reasons may arise from these, or any of them, for the Parliament of *England's* putting this their Power in Execution: I never proposed either of them as a reason from whence it sprung, which is the Argument we are upon.

The last thing you mention, is, *Ireland's* being look'd on as a *Colony from England*, p. 148, 149. and therefore subject to its  
Laws:

Laws: This you think a very extravagant Opinion; I am sure none of the Arguments you there bring against it make it appear to be so; however, I shall not wander again upon this Subject, having, as I hope, sufficiently proved, That the Parliament of *England* hath made Laws to bind *Ireland*, ever since it hath been in our Possession. You say your self, p. 39. That *the Parliament at Oxford in King Henry II's days, made the King's Son John King thereof;* which shews they had then a power over it, and it doth not appear by their Actions since, that they ever gave it up; and can the Authority of the Parliament of *England* over *Ireland* be better set forth, than by laying they settled the Sovereignty over it in whom they pleased: 'Tis true you do not prove it, nor is it at all probable, yet the Argument is good against your self, to shew they had then a power to do it.

As for the remaining part of your Book, from p. 149. to the end, where you endeavour to set forth *Reasons drawn from the Justness of your Cause, why the Parliament of England should not put this Power in Execution,* (which they have had and exercised from the beginning over *Ireland*) it doth not become me to give Answer to it: The great Wisdom of the Nation knows when 'tis convenient for them to do it, and when

when not, they have not made me Arbitrator in that Affair, but are themselves the proper Judges. However, I hope I may adventure to say, I have proved in the foregoing Discourse, *That it is not against the Rights of Mankind, nor against the Common Law of England, nor against the Statute-Law of England, nor against the several Concessions made to Ireland, nor is it inconsistent with the Regalities of a Kingdom* (depending on *England* as *Ireland* doth,) *nor against the King's Prerogative, nor the Practice of former Ages, nor the Resolution of the Judges, and that it doth not destroy Property, nor create Confusion;* These are the Heads you again repeat, but have been answer'd already.

Therefore on what hath been said, I cannot conclude with you, *That the exercise of this Legislative Power over Ireland, which you call Assumed in your last Pages, 171, 172, 173, 174. will be any ways inconvenient for the Kingdom of England;* but seeing you are pleased to submit this to the *Wise Assembly of English Senators,* I humbly leave it to them also, whether, on the Reasons you have offered, they will desist for the future. But I cannot admit of your Comparison with the *breaking of the Edict of Nants by the French King;* it does not appear to me, you were ever exempted from their

their Jurisdiction; nor can I believe the Gentlemen of *Ireland* will be drawn aside by your Clamours, to call this an *Invasion on their Rights and Liberties*, or be perswaded thereby to shake off their Allegiance to the King of England, which you groundlessly suggest. No doubt the Parliament of *Ireland* is a Prudent Assembly, and know well enough how to make Laws for the Interest of that Kingdom, which therefore you think cannot be in the least prejudicial to this. Yet you see *Poyning's Act*, 10 Hen. 7. which you mention, p. 173. is still kept on foot, as a light to their feet; perhaps if this good Guide was laid aside, they might be apt to stray, which I do not find the Crown of *England* willing to give up; much less do I believe that the Parliament of *England* will surrender their Antient undoubted Power to make Laws to bind that Kingdom. However, let not my Opinion discourage your humble Application to them, which will be a better way than disputing their Power.

And thus I have made an Essay at answering your Book, which boldly strikes at the Power of our *English Parliaments*, a Constitution I much honour, and though they do not stand in need of such weak Pens as mine, yet I have made use of my *Sling and Stone*, till a better *Champion* undertakes their Cause;

Cause; I have only engaged you with your own Weapons, and thrown back those Darts on your self, which you cast at them: I confess my own weakness to handle a Controverse of this nature; which I had never undertaken, had I not thought the weakness of your Arguments had given me an Incouragement. It is reported of the Son of *Craesus*, though Dumb before, yet when he saw his Father like to be slain, his dutiful Affection being stronger then the Cords that bound his Tongue, cryed out, *Noli occidere Patrem*. You complain often in this Discourse, of the breaking in on the Liberties of *Ireland*, for which I see no reason, and I hope it will not appear so to indifferent Men, when the thing is rightly considered. I have given you my Thoughts on this Subject, but whether they will make a better Impression on you, then your Arguments have made on me, I cannot foresee; therefore shall leave what hath been said on both sides, to be scan'd by the Judicious Reader.

Bristol, June 16.  
1698.

*John Cary.*

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