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THE
C A S E

Of Several of
His Majesties Subjects in Ireland,

Commonly called

Protectees,

Most humbly Offer'd to the
Consideration of BOTH

Houses of Parliament.

I Have, for several Sessions late past, observ'd, That when the Parliament had taken into Consideration the Affairs of *Ireland*; there have been great Numbers of Petitions given in, by the *Roman Catholics* of that Kingdom, setting forth their respective Cases in Reference to the Matter

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then under Debate: And I have as often wonder'd to find no Application made on the behalf of those of that Kingdom commonly called *Protectees*, I have had the Opportunity to hear much of the Various Complaints of their several Classes there; and upon the whole it appear'd to me, that those called *Protectees*, as well, in Relation to their Behaviour during the War, as to the Extent and Method of their Suffering since then; have had much the severest Treatment of any concern'd in that Kingdom.

Having this Notion of the Measure, these poor People have met with; and being of Judgment, that it is the Duty of the meanest Member of a Society, as far as he may with due Deference towards the publick, and a convenient Regard to Himself, to remove, in Ease of his Neighbour, the Oppressors Hand; I had long since adventur'd thus to have laid their Case before this most Honourable Assembly, but that I was still in hopes some One more fully possess'd of the Matter, and more qualify'd for the Undertaking, would, before now, have taken this Office upon Him. These

(3)

These Considerations had still withheld me, but that now, that the Parliament Commissioners are upon the Point of making a general Report of all the *Irish* Forfeitures; it seems more than probable, that this may lead to an immediate and final Settlement of that Kingdom; and that once done, a Reprieve after Execution is over, may be as useful as any Remonstrance on the Behalf of these People.

Having thus set forth the Reason, or rather the Necessity that has induced me so far to forget my own Insufficiency, as to become an Advocate before so Great an Assembly, I crave leave, as an Apology for Addressing this Case to both Houses of Parliament, to observe, That the Justice of a Nation is often Arraign'd, as well for Wrongs done thro' want of Information, as for those done, or suffered thro' Passion, Interest or Prejudice; and that therefore as *Amicus Curie*, as a true Honourer of this Supream Court, and as One who wishes, as is ever Intended, all its Determinations founded in the strictest Justice; I thought it my Duty at this Juncture to lay this Case before both Houses.

(4)

I shall now proceed to a General, and plain Account of the Condition and Behaviour of these Persons during the War; and of the Prosecutions, and Seizures since then against them.

They consist partly of such as were meer Country Gentlemen; some, living upon their own Estates; some, upon their Farms, or other Ways of Industry; some of them, being Professors of the Law, were, during the Reign of King *James* in *England*, advanc'd to the Bench, and the rest of that Profession practic'd in the Courts there, and continued in their said Stations and Practice, during King *James* his Abode in *Ireland*: Some likewise, whilst King *James* was in *England*, were made Deputy-Lieutenants, Justices of the Peace, Collectors and other Officers of Revenue; and continued in the said Posts and Stations, or other the like Civil Employments whilst King *James* was in *Ireland*; some of them, being chosen by their Country, did, in hopes of being able, in some Measure, to quell, or mitigate the Heats, and Violences of others, as evidently appear'd by their Behaviour.

(5)

haviour when there, serve in the Parliament held there; and all, and every of them, excepting about four or five, are such as were in no Military Station or Service, or ever struck stroke in the Cause.

These persons thus Qualify'd, as to their Behaviour, and taking Encouragment from his Majesties several Gracious Declarations, and Proclamations, graciously tendering his Royal Clemency and Protection to such, as should be the more early in their Obedience, Resolv'd, not to embark themselves in the Cause; and as a clear Evidence of these their Intentions, they continu'd in their Respective Places of Residence, or as near it, as they could contrive to be in any security with their Families, till such time, as his Majesty's Troops approach'd so near as to be in a condition to preserve them. And so, in the course of his Majesty's March, they sued for his Royal Protection; and, having obtain'd the same, continued, during the two Sieges of *Lymrick*, and ever since, in the most dutiful Behaviour and Obedience towards his Majesty's Government; and such of them as liv'd within the Reach

(6)

Reach and Power of such Garrisons as held out, and consequently could not be so early in their Obedience, did in like manner, upon the first approach of his Majesty's Troops into that Country, sue for Protection; and ever since liv'd Peaceably and Dutyfully under his Majesty's Government.

This, upon the best Information I could have, and as I am perswaded, will upon a fair Enquiry appear, is a true general Account of the Behaviour of those called *Protectees* in that Kingdom.

Their Condition standing thus, they found themselves secure and happy under his Majesty's Royal Protection, whilst he continu'd in Person there; but upon his Majesty's Return into *England*, the Scene was soon shifted, and their Days of Tryal came on a pace; for as soon as the Forms of Judicature were restor'd, a manner of proceeding altogether New, Quick, and Comprehensive was set on foot; Lists were brought in from every Parish of all the *Catholicks*, without any Distinction who had resided there, during K. James,

(7)

James, his stay in that Country. Indictments of High Treason of course, and by the lump, exhibited against them; and of course, as in many Cases may appear, found too.

This furious Inquisition having thus far gone on, without Rub, or Obstacle; the like Spirit of Diligence and Dispatch appear'd in what was to follow. Writs were issu'd out to the Sheriffs, and care taken, that one, and the same Return should be made thro'out the Kingdom; for altho' all these Persons, who had thus taken Sanctuary under the Wings of the Government, were then notoriously known to be, and daily seen, at their respective usual places of Residence, except a few who, to prevent any further Jealousy of their Behaviour, had obtain'd the Lords Justice's Passes to come for *England*; having first given two or three thousand Pounds sufficient Bail to be forthcoming, when requir'd; yet *Non est inventus in Balliva*, &c. was the certain Return upon every Writ: And this even in Cases where the persons under Prosecution were then actually upon some Civil Process, or other Cause in custody of the Sheriff, who made the Return.

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This was an expedient Thought necessary to dispatch the Proceſs, and the ſooner to bring theſe Perſons to the Condition of being altogether at mercy; and conſequently, it came ſoon to this Iſſue: For in a very few Months, after they had been thus taken into his Ma- jeſty's Royal Protection, they were all, in this manner, to the number of ſome thouſands, at- tainted of High Treason; their Eſtates, whe- ther *Leafehold*, or *Freehold*, ſeized; and all this at a time, when they had late abided the utmoſt Ravage of a licencious Soldiery; and had no- thing, that ſtood above ground, left them.

In this diſtreſſed Condition, without Houſe or Home, have they ever ſince ſtruggled with their Wants; and ſuch of them only happy, as are gone to their long Reſt with their Fa- thers: Nor can they, or their Poſterity ever Intertain any hope of Relief, if their Expec- tations, upon this Juncture, from ſo Gracious a King, and ſo Wiſe, and ſo Juſt a Parlia- ment, ſhall be intirely diſappointed.

It may be a neceſſary mark of that Duty owing to the King here to obſerve, who are they

(9)

they, who promoted and ſet on foot theſe extraordinary Ways of Violence; for it is as evident, that the King did not give order for ſuch proceedings, as it is, that they were not carry'd on for his Honour or Service. It will perhaps, upon a full Enquiry, appear, there were ſeveral Setts and Forms of Men principally concern'd in the upholding theſe Proſecutions; Some animated by paſſion and prejudice of long ſtanding, grounded on ſome ſtruggle a- bout Intereſt, and difference in matter of Re- ligion: Some ſick of their Condition at home, and deſirous from an Engliſh broken Fortune, to become Wealthy Rulers, and Lords in *Ireland*; ſome who hop'd to have for asking, and others, who deſign'd to buy of them for next to nothing: Some push'd on by a Re- ſentment of late Injuries; and all in fine uni- ted to purſue the Chace, and to divide the Spoil amongſt 'em. And as a clear Evi- dence, that no part of this Reproach is level- led at his Maſteſty's Perſon: It is further to be obſerv'd, that ſome few of theſe thus attain- ed Gentlemen, who had the Means left of laying their Caſe before his Maſteſty, were reſ- cu'd from the common Plunder, and admitted

(10)

to reverse their Outlawrys: And, without all peradventure, his Royal Clemency had extended to as many more as were equally Innocent, if He had been in like manner apprized of their Case and Condition; and how far they are answerable to the King, and to this great Tribunal, whose province it was to lay the Condition of his People in a full light before Him; and who, on the contrary, have employed their Interest and Authority to block up all the Avenues to his Grace and Favour; and have made use of his Name, and the Trust sometimes repos'd in them to carry on their Oppression and Avarice, is not for me to Judge.

It now occurs to me, that I have often heard some well Meaning, and Worthy Gentlemen Object, why such as were only in the civil Magistracy, &c: which, considering the force that was upon them, could not be avoided; and consequently could be no Crime, why such, when they found themselves indicted, did not appear and take their Tryal? To which may be Answer'd:

In the First place, that some of them (as be-

(11)

before hinted) were come for *England*; and being under very high Bail, to appear when called for, and having a *Pass* from the Government, upon such Bail given, to go into *England*, were in no Apprehension of being charg'd with such Capital Crime without some previous and publick Notice given; and these were outlaw'd some Years before they had heard of any Prosecution against them, and an Act of Parliament passed there in Confirmation of all Outlawrys, whereby his Majesty was depriv'd of the Power of giving Order for Reversal of such Outlawrys.

Secondly, it was so contriv'd, that very few of those, who continued in *Ireland*, could (probably speaking) have any Notice of their being prosecuted, till they were actually outlaw'd; for that the Indictment and Process was, for the most part, set on foot, and carried on, in some Country remote from the place of Residence of the Person prosecuted; and they being then, by Order of the Government, under pain of Imprisonment, and other Penalties requir'd not to stir above Five Miles.

(12)

Miles from Home, they were depriv'd of the Opportunity of discovering such Proceedings, till 'twas too late to prevent them.

Lastly, as to such of them, as had Notice of an Indictment of High Treason exhibited against them; it is to be consider'd, how little Reason they had so far to rely upon their Innocence or early Return to their Duty, as to put their Lives in Predicament, when they found they were to be tryed by Persons newly exasperated against them; when they daily saw, contrary to all Law and Practice, Indictments of High Treason exhibited and found against persons, who had long layn in their peaceable Graves, and were past the making any Defence in this World; when every day furnish'd Instances of the like Bills for High Treason committed in *Ireland*, during the War, found against meer Children, against persons who had not been there in some Time before, or since the War; and even against some who had never been in that Kingdom; besides Indictments, beyond Number, found for Treason committed upon the 13th of *February*, 1688. being the very Day

(13)

Day of their Majesty's Accession to the Crown; and of which, it was altogether impossible to have had Notice in *Ireland*, in some Days after these Treasons are laid. These, and a great Variety of the like Effects of the Resolution then, by some, taken to root out that unfortunate Remnant were sufficient, perhaps, to deter a wiser, and more hardy People from putting their Lives in Hazard.

It may here appear proper enough, to say somewhat of such Acts and Compliances as, in former Civil Wars, have been deem'd not Treasonable; but I would not seem too apt to plunge out of my Depth, and therefore must not undertake a Topic I know so little of: I am withal not to forget, that I have taken the Liberty to address this Treatise to an Assembly consisting of the Greatest and Wisest Men; and that, if I can say enough to put them on Discussion of the matter, it will be much more prevalent than any thing I can urge to support it: I shall therefore, as to this, think it sufficient to observe, That in all our Civil Wars, the Wisdom of our Great Council has been such, as not to have inhand'd these small
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(14)

and (if I may so say) natural Acts of Compliance into Treason. There has ever been much allow'd to humane Nature, and the Principle of Self-preservation; when Men, and their Families are fallen under a Force not to be resisted. The Civil Magistracy is an Institution meerly for the Welfare and Support of Society, to be a Barryer between the Weak and the Strong; and at all Times, as much as may be, to preserve Peace and Order; and, in the Times of Trouble and Tumult, has been found as useful towards these Ends, or rather more than in the Times of Peace, and rightful Administration; and therefore in all Ages the Magistrate, and civil Officer of what kind soever have been indulg'd: And thus it has fared with some in *Ireland*, even at the time now Treated of; for there were a great many Protestant Inhabitants, as well as Catholicks, who were forc'd to subsist Troops, and pay Taxes and Subsidys; and likewise several Protestants in Posts and Stations, from the highest to the lowest, as Privy-Counsellors, Judges, Commissioners, and other inferior Officers of Revenue, and some, even Officers in the Army; and yet upon a Charitable Supposition, that they

(15)

they acted in those Posts and Stations in their own Preservation, and they having as soon as they could resorted to his Majesty for Protection, they were receiv'd into Grace and Favour, and no Prosecution set up against them; and it being a notorious Truth, that the Catholick *Protectees* submitted as early as their Protestant Neighbours, that they were, whilst the other party prevail'd, under a greater Necessity of Compliance; for that any Hesitation or Lukewarmness, was deem'd altogether unpardonable in them, and that they have ever since behav'd themselves as dutifully; it seems very unequitable, that the Measure they have met with should be so very different.

I can not omit here to specify their Majesty's Royal Declaration of the 22d of February, 1688, whereby a full and free Enjoyment of their respective Estates, &c. is graciously offer'd to all such, as, upon Notice of His Royal Pleasure therein, should lay down their Arms, and retire to their respective places of abode. It must be granted, That if these *Protectees* had been actually in Arms, and had, on Notice of this Proclamation, surrender'd their

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(16)

Commissions, and return'd to their usual and respective Ways of Living, and places of Abode; that they had thereby, whatever payments of Taxes or other unavoidable Acts of Compliance they had been guilty of, been within the exprels Letter of this Declaration; and it seems to me as clear, that such as never took up Arms, but continued in their before usual Stations, and at their usual places of Abode, are comprehended within the Scope and meaning of it: For otherwise, their having not been once in Arms against the Government, is that, which excludes them His Majesties tender'd Grace and Clemency; which must certainly appear an harsh and absurd Construction: And it is here to be observ'd, that this Declaration doth not require their thus quitting their Arms, and retireing within any prefix'd Time, but upon Notice; and whoever considers the Strictness and Embargoes then of each side used, to shut out all Intelligence must admit it very probable, that few or none of those, then residing in *Ireland*, had ever heard of this Declaration, till the Time of the near Approach of His Majesties Troops; and then it was, that these Gentlemen

(17)

lemen humbly sued to be receiv'd into Protection, and have liv'd sufficiently retir'd ever since.

I wish these hardships here pointed at, and the many more not enumerated, were justly to be look'd upon, as the meer effects of the first Heat and Resentment of Men upon the Close of the War: For there are many persons in Authority there good natur'd and forgiving enough, to have been weary, before now, of adding to the number of the Afflicted; but it will, perhaps, appear these Hardships (as to some especially) are grounded upon the more lasting Foundation of Lands and Tenements; if it be consider'd, that so lately as the very last Vacation, or near thereabouts, a new Prosecution was set up all over the Kingdom; and in one County, above one hundred Persons Indicted of High Treason, as committed during the late Troubles, and some who were Indicted about three Years since, and who resolv'd to stand Tryal have been, every Term since then, continu'd upon Bail; and tho' they have each Term press'd for a Tryal, yet hitherto neither Discharg'd, nor Try'd, but continu'd

(18)

tinu'd on, under the innumerable Inconveniences, and Scandal of so high an Accusation.

I shall here, as in other places, shun all Aggravation, and only say, that this surprising Scrutiny, after 8 or 9 Years perfect Peace and dutiful Behaviour, does in Consequence, and in point of Interest, affect a great many besides the Persons themselves thus charg'd: For others finding them, for such a number of Years unmolested, were under no apprehension of their being still in hazard of such publick Charge, and frankly enter'd into Commerce, Marriages, and Dealings of all kinds with them; and have now only a parcel of wretched Criminals to trust to.

It is to be presum'd, that these are Persons, who, in the begining, had no visible Fortunes, and were therefore overlook'd in the Herd: But if since they have been too Industrious, or, by a fourtune over Favorable, any thing is devolv'd upon them, they may thank themselves, or their too kind Stars for what has follow'd.

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It is here to be fear'd, that some, who Preside of the other side the Channel, remain yet too much tainted with the Examples they have seen in their Youth of Foreign Confiscations; that, by being not enough acquainted with our more happy Constitution, they are apt some times to carry things to too high a Pitch, and that now and then they forget, they are in the Service of a truly Great Master, who has too many Royal Virtues to want Sentiments of Pity for His People; and who is too gracious a Prince to delight in Oppression, or to suffer it, when he knows it, in his Substitutes.

I may now truly say for my Self, that I have spun out this Discourse to a Bulk much beyond what I propos'd, occasion'd chiefly thro' a Want of Method, and a Disuse of Undertakings of the Kind; I must therefore hasten to a Close; and if, by any thing I have herein offer'd, I become Accessary to their being so far taken into Consideration, as that some regard may, at the last, be had to their quiet Behaviour, during the War, and early Submission afterwards; I shall think my Time happily imploy'd.

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(20)

There are Sufferers of other Kinds there, whose Case and Circumstances, if fully understood, might, perhaps, before so Just, so Equal, and so Fatherly a Tribunal, render them deserving of some Marks of a favourable Distinction from the more obstinate, and long persisting: But their Case being beside my purpose, I shall only slightly take Notice, That there are of these some Young Women of Quality, and meer Orphans, who, upon solemn Marriage Settlements long before this Revolution, had suitable Fortunes secur'd on the Father's Estate; but it being done by the usual *Proviso*, that the Father should have Power by his last Will, &c. to charge the Estate with so much for the Daughters of that Marriage, and the Father being outlaw'd and consequently the last will set aside, tho' of no use or necessity here, than to apporcion what each Daughter was to have had of such a Sum in the whole ascertain'd by the Settlement; yet by the Father's falling under such a Legal Disability, tho' outlaw'd after Death, or in *England*, at a time when it was impossible for him so much as to have heard of any Prosecution; these Young Women are expos'd to the

(21)

the lowest Wants, and to, almost, a Necessity of being forc'd upon the vilest Courses.

There are of these others, whose Fathers happen'd to be of King *James* his Menial Servants, and consequently the more oblig'd not to abandon their Master in his adverse Fortune; and altho' the Paternal Estate is in some, or most of these Cases secur'd to the Mother, and Children after the Fathers Death; yet, in the mean time, they are both left destitute of any means of Subsistence.

There are some, who never bore Arms in *Ireland*, but retir'd soon into *France*; and pass'd their Time in an absolute Privacy there, without any Dependance upon, or Relation to the late King *James*; and yet, by Outlawrys, and Attainders, incur'd in their absence, they, and their numerous Families, without any sort of Provision, are for ever excluded.

Lastly, there are of these some Eminent Persons, who now, and heretofore, have deserv'd well of the Crown of *England*, who being plac'd in Foreign Governments by *K. Charles the Second*,

(22)

Second, continued, notwithstanding the late Revolution in the faithful Discharge of their Duty, and effectually imploy'd their Fortune and Credit in support of the English Rights and Sovereignty abroad; and being now return'd home, find themselves incumber'd with empty Titles, and what else they were to have deriv'd from their Ancestors, swallow'd up in the common gulf of Forfeitures, and no sort of Support, or Provision left for them.

It is here again to his Glory to be noted, that such of these, as had Friends in Credit enough, to lay their Case before his Majesty, had the effects of his usual Bounty and Clemency; and, it is not to be doubted, but that, upon a fair and equal Representation, his Clemency would extend to all the rest, and outgo all his Royal Predecessors: And not only in their Reigns, but during the Oppressions of the late Civill Wars; the Widows, and Orphans of the then reputed Offenders were so provided for, as not to fall into too low and abject a Condition; and even such of the Delinquents themselves (as then term'd) who stay'd at home, were so far consider'd as that they,

(23)

they, and their Posterity were, upon a general Rule set up, reprized in one Province, in some proportion to what they had lost in another.

I cannot fear to be so misunderstood, as from this Relation of what was then done to intend any reflection upon the best of Governments; I mention this Christian Moderation practic'd in the worst of Times, from thence only to insinuate how much more may be hop'd for from so excellent a Constitution; how conformable it may be found to the practice of the like good English Kings, and Parliaments heretofore to set up Rules, and Qualifications by which to censure Men and Actions, by which so far to distinguish the Time, and the Behaviour of Men, as to propound some Measure of Punishment upon which such, as by their being unactive in the War, or early Repentance and Return to their Duty, or other moving Circumstances may have qualify'd themselves for some Degree of Mercy, may atone to the publick for their Offences.

Having thus far taken the Liberty to point at some moderate Expedients, I hope I may

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without Offence humbly offer to Consideration, that those, who were then in that Kingdom of what Judgment or Inclination soever, were upon the Principle of Self-preservation, under an apparent Necessity of submitting to the then prevailing Power; that the then late King was in Person there, at the Head of such Troops as could enforce their Obedience; that how clearly soever the great Turn of those Times was grounded upon right Reason and Religion, yet there were numbers of wise, good and learned Men even in *England*, where, by the King's having withdrawn himself, the Matter seem'd less doubtful, who remain'd for some time unresolv'd as to their Duty upon that Conjunction. They are often the more lasting, that are the more slowly Receiv'd Impressions; and they, who took time and pains to convince themselves of their Obligation to submit upon this great Occasion, will, perhaps, prove as faithful as they who more readily apprehended their Duty, and assented to what was done. I shall not, tho' I mean all possible Deference towards the present Establishment, presume to dwell upon this Argument, for fear of being thought (beyond my Inten-

(25)

Intention) to make other use of it than in Mitigation only; and if upon what is here humbly offer'd, and what more may occur to so Great and Wise an Assembly, in extenuation of their Faults, they shall nevertheless be adjudg'd unworthy any favourable Compromise; I think, I may so far denounce against them, (as that, in Addition to their own) the Sins of their Fathers are upon them, and that their Kingdom is not of this World.

F I N I S.
