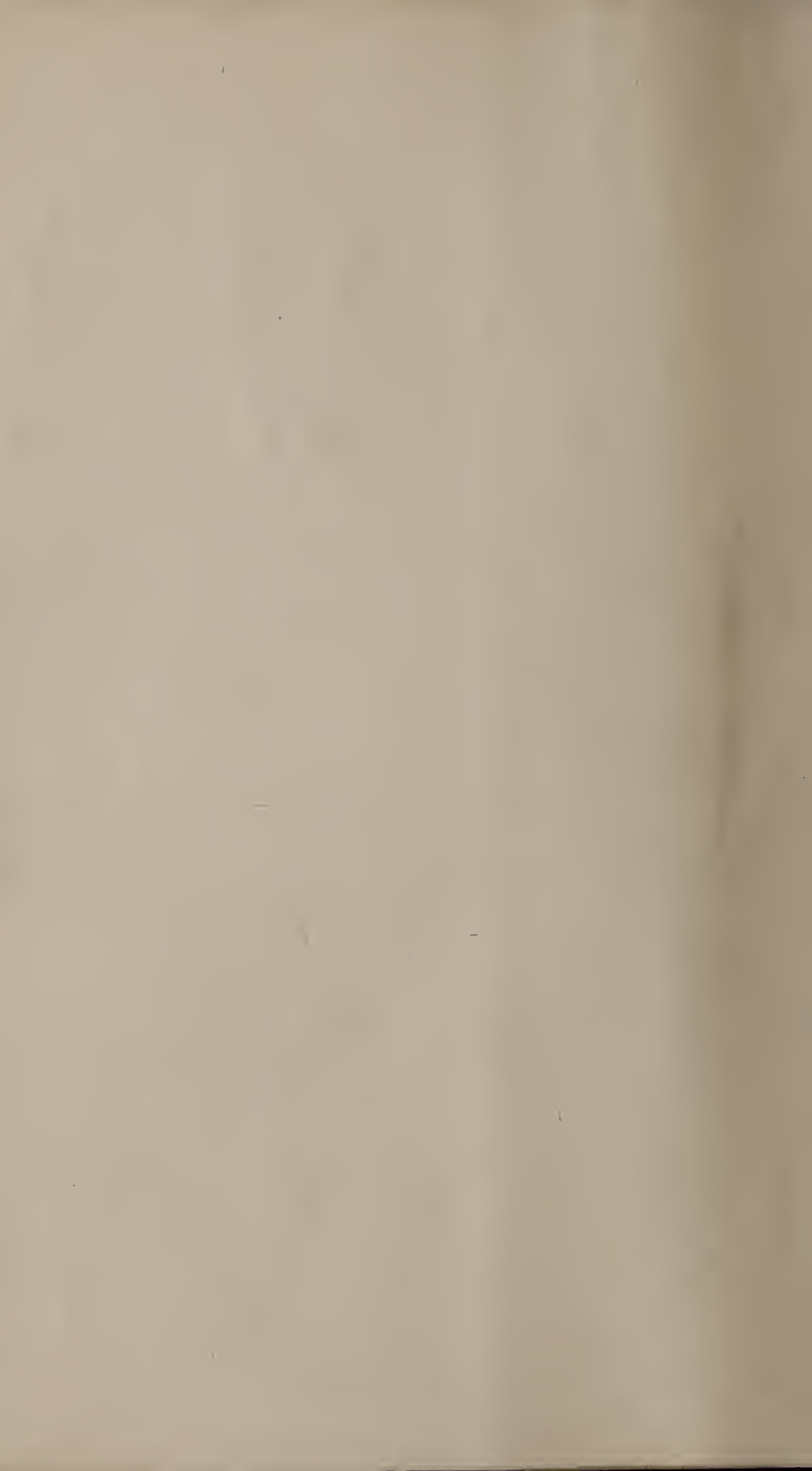


IRISH 1798 COLLECTION



Not in Kress

THE
C A S E
OF
I R E L A N D's
BEING BOUND BY
ACTS OF PARLIAMENT
MADE IN
E N G L A N D,
S T A T E D.

BY
WILLIAM MOLYNEUX, OF DUBLIN, ESQ.

ALSO,

A small Piece on the subject of Appeals to the Lords of England,
by the same Author,

NEVER BEFORE PUBLISHED.

TO WHICH ARE ADDED,

L E T T E R S
TO THE
M E N OF I R E L A N D,
BY
O W E N R O E O'N I A L.

D U B L I N: .

INTED IN THE YEAR M,DCC,LXXXII.

Editor's Advertisement.

THE present happy prospects opening to our view, seem to preclude the necessity of any publication that justifies the restoration of the constitution or commerce of this kingdom:—But as the following work was undertaken, when appearances were not so encouraging; and nearly compleated, before the flattery of expectation was gratified: The gentlemen, at whose instance it was begun, desired its completion, that Irishmen, being put in possession of the best arguments in support of their liberty, may always be as attentive to its preservation, as they have been virtuous and spirited in the obtaining it.

The CASE was written shortly after the *Revolution*; and altho' the rights of Ireland are there justly asserted from history, from law, from policy, and nature, yet such was the offence and jealousy it created in England, that a copy of it was burned there by the hands of the common hangman, previous to the Declaration of the 6th of George I.—In this Edition much pains have been taken in accurately translating the Latin Quotations into English, (which are printed in *Italic* characters) to render it perfectly level to every capacity.

The REASONS were written about the same time tho' not published till the present occasion.

The merit of O'NIAL's LETTERS is too well known to require any reasons being assigned for their republication:—They were the great stimulants to the spirit which pervades this kingdom, and their frequent perusal will preserve it:—The liberality of sentiment, beauty of composition, force of argument, and spirit of patriotism, thro' every page, will always endear them to the man of taste, and friend of his country.

☞ To promote the laudable intentions of this publication, and that it may be the more extensively circulated, a large impression has been printed, and the price reduced much below books of this size.

June, 1782.

TO THE

K I N G.

S I R,

THE expedition your Majesty undertook into England, to rescue these nations from arbitrary power, and those unjust invasions that were made on our religion, laws, rights and liberties, was an action in itself so great, and of such immense benefit to our distressed countries, that 'tis impossible to give it a representation so glorious as it deserves. Of all your Majesty's kingdoms, none was more sensible of the happy effects thereof, than your kingdom of Ireland, which from the depth of misery and despair, is raised by your Majesty to a prosperous and flourishing condition. And we presume most humbly to implore the continuance of your Majesty's graces to us, by protecting and defending those rights and liberties which we have enjoyed under the crown of England for above five hundred years, and which some of late do endeavour to violate. Your most excellent Majesty is the common indulgent father of all your countries; and has an equal regard to the birth-rights of all your children; and will not permit the eldest, because the strongest, to encroach on the possessions of the younger: Especially considering with what duty, loyalty, and filial obedience, we have ever behaved ourselves to your Majesty; insomuch, that I take leave to assert, that your Majesty has not in all your dominions a people more united and steady to your interests than the Protestants of Ireland; which has manifestly appeared in all our actions and parliamentary proceedings, since your Majesty's happy accession to the throne. To relieve the distressed, has ever been the peculiar character of your Majesty's glorious family. The United Provinces have found this in your famous ancestors; and all Europe has been sensible of this in your royal person. To this end more particularly you came into these kingdoms; as your Majesty has been pleased to declare: And as you have established the rights and liberties of England on a foundation that, we hope, can never be shaken; so we doubt not but your sacred Majesty will have a tender care of your poor subjects of Ireland, who are equally your subjects, as the rest of your people.

Pardon, I most humbly beseech your Majesty, my presumption, in appealing to you on this occasion: Nothing but the dignity and weight of the subject, can excuse my boldness herein; but if that be considered, it deserves the regard of the greatest Prince; 'tis no less than the rights and liberties of one of his kingdoms, on which their religion, their property, their all depends; and which they have enjoyed for five hundred years past. This, I think, I have clearly shewn in the following leaves; I am sure, if my management thereof, were suitable to the justice of our cause, our friends of England can no longer doubt it.

At your Majesty's feet therefore, I throw it; and with it the unworthy author thereof.

May it please your Majesty,

Your Majesty's most dutiful, loyal,

And obedient Subject and Servant,

WILLIAM MOLYNEUX.

P R E F A C E
T O T H E
R E A D E R.

I H A V E nothing to offer in this Preface, more than to let the Reader know, how unconcerned I am in any of those particular inducements, which might seem at this juncture to have occasioned the following discourse.

I have not any concern in wool, or the wool-trade. I am no wise interested in the forfeitures, or grants. I am not at all solicitous, whether the Bishop, or Society of Derry recover the land they contest about.

So that, I think, I am as free from any personal préjudice in this cause, as 'tis possible to expect any man should be, that has an estate and property in this kingdom, and who is a Member of Parliament therein. I hope therefore 'tis a public principle that has moved me to this undertaking: I am sure, I am not conscious to myself of any other intention.

I have heard it has been said, that perhaps I might run some hazard in attempting this argument; but I am not at all apprehensive of any such danger: We are in a miserable condition indeed, if we may not be allowed to complain, when we think we are hurt; and to give our reasons with all modesty and submission. But were it otherwise, it would not in the least affect, or discourage me in an attempt, where I think my cause good, and my country concerned, and where I am fully persuaded, the true interest of England is as deeply engaged, as the Protestant interest of Ireland.

The great and just council of England freely allows all addresses of this sort. To receive and hear grievances, is a great part of their business; and to redress them, is their chief glory. But this is not to be done, till they are laid before them, and fairly stated for their consideration.

This I have endeavoured in the following paper. What success it may have, I am not very solicitous about. I have done what I thought was my duty, and commit the event to God Almighty, and the wise council of England.

Dublin, Feb. 8,
1697-8.

W. MOLYNEUX.

[illegible]

I HAVE ever been so fully persuaded of the strict justice of the parliament of England, that I could never think that any of their proceedings, which might seem to have the least tendency to hardship on their neighbours, could arise from any thing but want of due information, and a right state of the business under their consideration. The want of which, in matters wherein another people are chiefly concerned, is no defect in the parliament of England, but is highly blameable in the persons whose affair is transacting, and who permit that illustrious body of senators to be misinformed, without giving them that light that might rectify them.

The consideration hereof has excited me to undertake this disquisition, which I do with all imaginable diffidence of my own performance; and with the most profound respect and deference to that

august senate. The present juncture of affairs, when the business of Ireland is under the consideration of both houses of the English parliament *, seems to require this from some person; and seeing all others silent, I venture to expose my own weakness, rather than be wanting at this time to my country. I might say indeed to mankind; for 'tis the cause of the whole race of Adam, that I argue: Liberty seems the inherent right of all mankind; and on whatsoever ground any one nation can challenge it to themselves, on the same reason may the rest of Adam's Children expect it.

If what I offer herein seems to carry any weight, in relation to my own poor country, I shall be abundantly happy in the attempt: But if after all, the great council of England resolve the contrary, I shall then believe myself to be in an error, and with the lowest submission ask pardon for my assurance. However, I humbly presume I shall not be hardly censured by them, for offering to lay before them a fair state of our case, by such information as I can procure; especially when at the same time I declare my intention of a submissive acquiescence in whatever they resolve for or against what I offer.

Subject of this Enquiry.

The subject, therefore, of our present disquisition shall be, **How FAR THE PARLIAMENT OF ENGLAND MAY THINK IT REASONABLE TO INTERMEDDLE WITH THE AFFAIRS OF IRELAND, AND BIND US BY LAWS MADE IN THEIR HOUSE.**

And seeing the right which England may pretend to, for binding us by their acts of parliament, can be founded only on the imaginary title of conquest or purchase, or on precedents and matters of record; we shall enquire into the following particulars.

First, How Ireland became a kingdom annexed to the crown of England. And here we shall at large give a faithful narrative of the first expedition of the Britons into this country, and King Henry the second's arrival here, such as our best historians give us.

Secondly, We shall enquire, whether this expedition, and the English settlement that afterwards followed thereon, can properly be called a conquest? Or whether any victories obtained by the English, in any succeeding ages in this kingdom, upon any rebellion may be call'd a conquest thereof?

Thirdly, Granting that it were a conquest, we shall enquire what title a conquest gives.

Fourthly, We shall enquire what concessions have been from time to time made to Ireland, to take off what even the most rigorous assertors of a conqueror's title do pretend to. And herein we shall shew by what degrees the English form of government, and the English statute laws, came to be received among us: And this shall appear, to be wholly by the consent of the people and parliament of Ireland.

Fifthly, We shall enquire into the precedents and opinions of the learned in the laws, relating to this matter, with observations thereon.

* *Bishop of Derry in the House of Lords, and prohibiting exportation of our woollen manufacture in the House of Commons.*

Sixthly, We shall consider the reasons and arguments that may be farther offered on one side and the other; and shall draw some general conclusions from the whole.

Britain's first expedition into Ireland.

As to the first, We shall find the history of first expedition of the English into Ireland, to be briefly thus: In the Reign of King Henry the Second, Dermot Fitzmurchard, commonly called Mac-Morrogh, prince of Leinster, who was a man cruel and oppressive, after many battles with other princes of Ireland, and being beaten and put to flight by them, applied for relief to King Henry the Second, who was then busied in Aquitaine; the King was not then in such circumstances as to afford him much help: However thus much he did for him: By letters patents he granted license to all his subjects throughout his dominions, to assist the said prince to recover his dominions. These letters patent are to be seen in † Giraldus Cambrensis, who was Historiographer and Secretary to King Hen. II. and accompanied him in his expedition into Ireland, and from him it is that we have this relation. The Irish prince brought these letters into England, and caused them to be read in the audience of many people; beating up, as it were, for volunteers and free adventurers into Ireland. At length, Richard Earl of Strigul (now Chepstow in Monmouthshire) son of Earl Gilbert, called Strongbow, agreed with him, to assist him in the recovery of his country, on condition that Dermot should give him his eldest daughter in marriage, and his kingdom of Leinster after his death. About the same time Robert Fitz-Stephen, Governor of Aberleesie in Wales, agreed likewise with Dermot to help him, on condition that he would grant to him and Maurice Fitzgerald in fee the city of Wexford, with two cantreds or hundreds of land near adjoining.

These adventurers afterwards went over, and were successful in treating with the Irish, and taking Wexford, Waterford, Dublin, and other Places. Whereupon Earl Richard Strongbow married Dermot's daughter, and according to compact, succeeded him in his kingdom.

Henry II. comes into Ireland.

A little after the descent of these adventurers, King Henry II. himself went into Ireland with an army, in Nov. 1172, and finding that his subjects of England had made a very good hand of their expedition, he obtained from Earl Richard Strongbow a surrender of Dublin, with the cantreds adjoining, and all the maritime towns and castles. But Strongbow and his heirs were to enjoy the residue of Dermot's principality.

Irish submit to him.

King Henry II. landed at Waterford from Milford in Pembroke-shire, and staying there some few days, (says Giraldus Cambrensis) Dermot, *King of Cork, came to him and freely swore fealty and subjection to the King of England.*

† *Giraldus Cambr. Hib. expug. lib. 1. c. 1.*

From thence he went to Lismore, and thence to Cashel, where Dunaldus, King of Limerick, *also made his submission to the King.* The like did all the Nobility and Princes in the south of Ireland.

Afterwards he marched to Dublin, and there the princes of the adjacent countries came to him, *and by professions of loyalty and subjection, obtained peace from the King.* Thus Cambrensis in his *Hibernia Expugnata*; and there he mentions the several princes that came in, viz. Mac-Shaghlin, King of Ophaly, O'Carrol, King of Uriel (now Lowth) O'Rourk, King of Meath, Rodrick O'Connor, King of Connaught, and Monarch as it were of the whole island, with divers others, *who by the most solemn ties of fealty and subjection bound themselves to the King, and, in the single person of Roderick, King of Connaught, as being monarch of the whole island, were all reduced to the state of subjects: Indeed there were few persons of rank or consequence in the island, who did not do homage to his Majesty as their liege Lord.*

The same relation we have from Roger Hoveden (*Annal. pars poster. fol. 301.*) About the kalends of November 1172, (saith he) King Henry II. of England, took shipping for Ireland at Milford, and landed at Waterford, *and there he was met by the Kings of Cork, Limerick, Ophaly, Meath, and almost all the great men of Ireland.* And a little afterwards, in the same place, speaking of King Henry the Second's being at Waterford, *In this place the king of England was met by all the Archbishops, Bishops, and Abbots of all Ireland, who received him to be King and Lord of Ireland, swearing allegiance to him and to his heirs, and that he should have the power of governing them for ever; and upon this they gave him their charters.* After the example of the Clergy, the Kings and Chiefs of Ireland, mentioned above, received Henry King of England, in like manner, to be Lord and King of Ireland, and became his subjects, and swore allegiance to him and his heirs against all others.

Matthew Paris likewise in his history, speaking of King Henry II. being in Ireland, saith, *the Archbishop and Bishops received him to be Lord and King, swore allegiance, and did him homage.*

John Brampton, Abbot of Jorna, in his *Historia Jornalensi*, page 1070, speaking of Henry II. hath these words, *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 his men, and did 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. After which, he returned into England in April following, viz. April 1173.

Ireland whether ever conquered.

I come now to enquire into our particular proposed, viz. Whether Ireland might be properly said to be conquered by King Henry II. or by any other Prince in any succeeding rebellion. And here we are to understand by conquest, an ACQUISITION OF A KINGDOM BY FORCE

OF ARMS, TO WHICH, FORCE LIKEWISE HAS BEEN OPPOSED. If we are to understand conquest in any other sense, I see not of what use it can be made against Ireland's being a free country. I know *conquestus* signifies a peaceable acquisition, as well as an hostile subjugating of an enemy. Vid. Spelman's Gloss. And in this sense William I. is called the Conqueror, and many of our Kings have used the epocha *after the conquest*. And so likewise Henry II. stiled himself Conqueror and Lord of Ireland: But that his conquest was no violent subjugation of this kingdom, is manifest from what foregoes: For here we have an intire and voluntary submission of all the ecclesiastical and civil states of Ireland, to King Henry II. without the least hostile stroke on any side; we hear not in any of the chronicles of any violence on either part, all was transacted with the greatest quiet, tranquillity, and freedom imaginable. I doubt not but the barbarous people of the island at that time were struck with fear and terror of King Henry II's powerful force which he brought with him; but still their easy and voluntary submissions exempt them from the consequents of an hostile conquest, whatever they are; where there is no opposition, such a conquest can take no place.

I have before taken notice of Henry II's using the stile of *Conqueror of Ireland*†. I presume no argument can be drawn from hence, for Ireland's being a conquered country; for we find that many of the Kings of England have used the æra of *post Conquestum*; Edward III. was the first that used it in England, and we frequently meet with *Henry the fourth since the conquest*, &c. as taking the Norman invasion of William I. for a conquest. But I believe the people of England would take it very ill to be thought a conquered nation, in the sense that some impose it on Ireland: And yet we find the same reason in one case as in the other, if the argument from the King's stile of Conqueror prevail. Nay, England may be said much more properly to be conquered by William I. than Ireland by Henry II. For we all know with what violence and opposition from Harold, King William obtained the kingdom, after a bloody battle nigh Hastings. Whereas Henry II. received not the least opposition in Ireland; all came in peaceably, and had large concessions made them of the like laws and liberties with the people of England, which they gladly accepted, as we shall see hereafter. But I am fully satisfied, that neither King William I. in his acquisition of England, or Henry II. in his conquest of Ireland, obtained the least title to what some would give to conquerors. Though for my own part, were they conquerors in a sense never so strict, I should enlarge their prerogative very little or nothing thereby, as shall appear more fully in the sequel of this discourse.

Another argument for Henry II's hostile conquest of Ireland is taken from the opposition which the natives of Ireland gave to the first adventurers, Fitz-Stephens, Fitz-Gerald, and Earl Strongbow, and the Battles they fought in assisting Mac-Morrough, Prince of Leinster, in the recovery of his principality.

'Tis certain there were some conflicts between them and the Irish, in which the latter were constantly beaten; but certainly the conquests obtained by those adventurers, who came over only by the

† Mr. Selden will not allow that ever H. II. used this stile, Tit. Hen. Par. 2. c. 5. sect 26.

King's license and permission, and not at all by his particular command (as is manifest from the words of the letters patents of license recited by Giraldus Cambrensis, Hib. Expug. page 760. Edit. Francof. 1603. Angl. Norm. Hiber. Camd.) can never be called the conquest of Henry II. especially considering that Henry II. himself does not appear to have any design of coming into Ireland, or obtaining the dominion thereof, when he gave to his subjects of England this license of assisting Mac-Morrogh. But I conceive rather the contrary appears, by the stipulations between Mac-Morrogh and the adventurers, and especially between him and Strongbow, who was to succeed him in his principality.

Suppressing rebellions, whether a conquest.

From what foregoes, I presume it appears that Ireland cannot properly be said so to be conquered by Henry the second, as to give the parliament of England any jurisdiction over us; it will much more easily appear, that the English victories in any succeeding rebellions in that kingdom, give no pretence to a conquest: if every suppression of a rebellion may be called a conquest, I know not what country will be excepted. The rebellions in England have been frequent: in the contests between the houses of York and Lancaster, one side or other must needs be rebellious. I am sure the commotions in King Charles the first's time, are stiled so by most historians. This pretence therefore of conquest from rebellions, has so little colour in it, that I shall not insist longer on it: I know conquest is an hateful word to English ears; and we have lately seen a book † undergo a severe censure, for offering to broach the doctrine of conquest in the free kingdom of England.

What title is obtained by conquest.

But, to take off all pretence from this title by conquest, I come in the third place to enquire, WHAT TITLE CONQUEST GIVES BY THE LAW OF NATURE AND REASON.

No title gained by an unjust conquest.

And in this particular I conceive, that if the aggressor or insulter invades a nation unjustly, he can never thereby have a right over the conquered: this I suppose will be readily granted by all men: if a villain with a pistol at my breast, makes me convey my estate to him, no one will say that this gives him any right: And yet just such a title as this has an unjust conqueror, who with a sword at my throat forces me into submission; that is, forces me to part with my natural estate, and birthright, of being governed only by laws to which I give my consent, and not by his will, or the will of any other.

What title by a just conquest.

Let us then suppose a just invader, one that has right on his side to attack a nation in an hostile manner; and that those who oppose him are in the wrong: let us then see what power he gets, and over whom.

† *Bishop of Salisbury's pastoral letter.*

None over the assisters in the conquest.

First, 'tis plain he gets by his conquest no power over those who conquered with him; they that fought on his side, whether as private soldiers or commanders, cannot suffer by the conquest, but must at least be as much freemen, as they were before: if any lost their freedom by the Norman conquest, (supposing King William the First had right to invade England) it was only the Saxons and Britains, and not the Normans, that conquered with him. In like manner supposing Henry II. had a right to invade this island, and that he had been opposed therein by the inhabitants, it was only the antient race of the Irish, that could suffer by this subjugation: the English and Britains, that came over and conquered with him, retained all the freedoms and immunities of free-born subjects; they nor their descendants could not in reason lose these, for being successful and victorious; for so, the state of both conquerors and conquered shall be equally slavish. Now 'tis manifest that the great body of the present people of Ireland, are the progeny of the English and Britains, that from time to time have come over into this kingdom; and there remains but a mere handful of the antient Irish at this day; I may say, not one in a thousand: so that if I, or any body else, claim the like freedoms with the natural born subjects of England, as being descended from them, it will be impossible to prove the contrary. I conclude therefore, that a just conqueror gets no power, but only over those who have actually assisted in that unjust force that is used against him.

None over the non-opposers.

And as those that joined with the conqueror in a just invasion, have lost no right by the conquest; so neither have those of the country who opposed him not: This seems so reasonable at first proposal, that it wants little proof. All that gives title in a just conquest, is the opposers using brutal force, and quitting the law of reason, and using the law of violence; whereby the conqueror is entitled to use him as a beast; that is, kill him, or enslave him.

Just conqueror intitled to the lives of the opposers.

Secondly, Let us consider what power that is, which a rightful conqueror has over the subdued opposers: And this we shall find extends little farther than over the lives of the conquered; I say, little farther than over their lives; for how far it extends to their estates, and that it extends not at all to deprive their posterity of the freedoms and immunities to which all mankind have a right, I shall shew presently. That the just conqueror has an absolute power over the lives and liberties of the conquered, appears from hence; because they conquered, by putting themselves in a state of war by using an unjust force, have thereby forfeited their lives. For quitting reason, (which is the rule between man and man) and using force (which is the way of beasts) they become liable to be destroyed by him against whom they use force, as any savage wild beast that is dangerous to his being.

And this is the case of rebels in a settled commonwealth, who forfeit their lives on this account. But as for forfeiting their estates, it depends on the municipal laws of the kingdom. But we are now enquiring what the consequence will be between two contesting nations.

Which brings me to consider how far a just conqueror has power over the posterity and estates of the conquered.

Just conqueror how far empowered over the posterity of the opposers.

As to the posterity, they not having joined or assisted in the forcible opposition of the conqueror's just arms, can lose no benefit thereby. It is unreasonable any man should be punished but for his own fault. Man being a free agent, is only answerable for his own demerits; and as it would be highly unjust to hang up the father for the son's offence, so the converse is equally unjust, that the son should suffer any inconvenience for the father's crime. A father hath not in himself a power over the life or liberty of his child, so that no act of his can possibly forfeit it. And though we find in the municipal laws of particular kingdoms, that the son loses the father's estate for the rebellion or other demerit of the father, yet this is consented and agreed to, for the public safety, and for deterring the subjects from certain enormous crimes that would be highly prejudicial to the commonwealth. And to such constitutions the subjects are bound to submit, having consented to them, tho' it may be unreasonable to put the like in execution between nation and nation in the state of nature: For in settled governments, property in estates is regulated, bounded and determined by the laws of the commonwealth, consented to by the people, so that in these, 'tis no injustice for the son to lose his patrimony for his father's rebellion or other demerit.

How far over their estates.

If therefore, the posterity of the conquered are not to suffer for the unjust opposition given to the victor by their ancestors, we shall find little place for any power of the conquerors over the estates of the subdued. The father by his miscarriages and violence can forfeit but his own life, he involves not his children in his guilt or destruction. His goods, which nature (that willeth the preservation of all mankind as far as possible) hath made to belong to his children to sustain them, do still continue to belong to his children. 'Tis true indeed, it usually happens that damage attends unjust force; and as far as the repair of this damage requires it, so far the rightful conqueror may invade the goods and estate of the conquered; but when this damage is made up, his title to the goods ceases, and the residue belongs to the wife and children of the subdued.

It may seem a strange doctrine, that any one should have a power over the life of another man, and not over his estate; but this we find every day, for tho' I may kill a thief that sets on me in the high way, yet I may not take away his money; for it is the brutal force the aggressor has used, that gives his adversary a right to take away his life, as a noxious creature. But it is only damage sustained, that gives title to another man's goods.

Practice of conquerors otherwise.

It must be confessed, that the practice of the world is otherwise, and we commonly see the conqueror (whether just or unjust) by the force he has over the conquered, compels them with a sword at their breast to stoop to his conditions, and submit to such a government as he pleases to afford them. But we enquire not now, what is the practice, but what right there is to do so. If it be said the conquered submit by their own consent: Then this allows consent necessary to give the conqueror a title to rule over them. But then we may enquire whether promises extorted by force without right, can be thought consent, and how far they are obligatory; and I humbly conceive they bind not at all. He that forces my horse from me, ought presently to restore him, and I have still a right to retake him: So he that has forced a promise from me, ought presently to restore it, that is, quit me of the obligation of it, or I may chuse whether I will perform it or not: For the law of nature obliges us only by the rules she prescribes, and therefore cannot oblige me by the violation of her rules; such is the extorting any thing from me by force.

From what has been said, I presume it pretty clearly appears, that an unjust conquest gives no title at all; that a just conquest gives power only over the lives and liberties of the actual opposers, but not over their posterity or estates, otherwise than as before is mentioned; and not at all over those that did not concur in the opposition.

They that desire a more full disquisition of this matter, may find it at large in an incomparable treatise concerning the TRUE ORIGINAL, EXTENT, AND END OF CIVIL GOVERNMENT, Chap. 16. This discourse is said to be written by my excellent friend, JOHN LOCKE, Esq; whether it be so or not, I know not; this I am sure, whoever is the author, the greatest genius in Christendom need not disown it.

But granting that all we have said in this matter is wrong, and granting that a conqueror, whether just or unjust, obtains an absolute arbitrary dominion over the persons, estates, lives, liberties and fortunes of all those whom he finds in the nation, their wives, posterity, &c. so as to make perpetual slaves of them and their generations to come.

Concessions granted by a conqueror, whether obligatory.

Let us next enquire whether concessions granted by such a victorious hero, do not bound the exorbitancy of his power, and whether he be not obliged strictly to observe these grants.

And here I believe no man of common sense or justice, will deny it; none that has ever considered the law of nature and nations, can possibly hesitate on this matter; the very proposing it, strikes the sense and common notions of all men so forcibly, that it needs no farther proof. I shall therefore insist no longer on it, but hasten to consider how far this is the case of Ireland: And that brings me naturally to the fourth particular proposed, viz. To shew by precedents, records, and history, what concessions and grants have been made from time to time to the people of Ireland, and by what steps the laws of England came to be introduced into this kingdom.

What concessions have been made from the crown of England to the kingdom of Ireland, by Henry II.

We are told by Matth. Paris, Historiographer to Henry III. that Henry II. a little before he left Ireland, in a public assembly and council of the Irish at Lismore, did cause the Irish to receive, and swear to be governed by the laws of England : * *King Henry, (saith he) before he left Ireland, called an assembly at Lismore, where the laws of England were cheerfully received by all, and confirmed with the solemnity of an oath.*

And not only thus, but if we may give credit to Sir Edward Coke, in the 4th Instit. cap. 1. and 76, and to the inscription to the Irish *Modus Tenendi Parliamentum*, it will clearly appear, that Henry II. did not only settle the Laws of England in Ireland, and the jurisdiction ecclesiastical there, by the voluntary acceptance and allowance of the nobility and clergy, but did likewise allow them the freedom of holding of parliaments in Ireland, as a separate and distinct kingdom from England ; and did then send them a *Modus* to direct them how to hold their parliaments there. The title of which *modus* runs thus :

Henry King of England, Conqueror and Lord of Ireland, &c. sends this form of holding parliaments to the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Justices, Viscounts, Mayors, Seneschals, Magistrates, and all his loyal subjects of Ireland.

Imprimis, the calling of parliament ought to be forty days before.

And so forth.

This *Modus* is said to have been sent into Ireland by Henry II. for a direction to hold their parliaments there. And the sense of it agrees for the most part with the *Modus Tenendi Parliam.* in England, said to have been allowed by William the Conqueror, when he obtained that kingdom ; where 'tis altered, 'tis only to fit it the better for the kingdom of Ireland.

I know very well the antiquity of this *Modus*, so said to be transmitted for Ireland by Henry II. is questioned by some learned antiquaries, particularly by Mr. Selden† and † Mr. Pryn, who deny also the English *Modus* as well as this. But on the other hand, my Lord Chief Justice Coke, in the 4th Instit. page 12 and 349, does strenuously assert them both. And the late Revd. and learned Dr. Dopping, Bishop of Meath, has published the Irish *Modus*, with a vindication of its antiquity and authority in the preface.

There seems to me but two objections of any moment raised by Mr. Pryn against these *Modi*. The one relates both to the English and Irish *Modus* ; the other chiefly strikes at the Irish. He says, the name parliament, so often found in these *Modi*, was not a name for the great council of England known so early as these *Modi* pretend to.

* *Vid. Matth. Paris, ad An. 1172. Vit. H. 2.*

† *Tit. Hon. Par. 2. c. 5. sect. 26. Edit. Lond. An. 1672.*

† *Against Coke's 4th Instit. c. 76.*

I confess I am not prepared to disprove this antiquary in this particular; but to me it seems reasonable enough to imagine that the name parliament, came in with William the Conqueror: 'Tis a word perfectly French, and I see no reason to doubt its coming in with the Normans. The other objection affects our Irish Modus, for he tells us, that Sheriffs were not established in Ireland in Henry II's times, when this Modus was pretended to be sent hither, yet we find the word Vicecomes therein. To this I can only answer, that Henry II. intending to establish in Ireland the English form of government, as the first, and chief step thereto, he sent them directions for holding of parliaments, designing afterwards by degrees and in due time to settle the other constitutions, agreeable to the model of England. If therefore, England had then Sheriffs, we need not wonder to find them named in the Irish Modus, tho' they were not as yet established amongst us, for they were designed to be appointed soon after, and before the Modus could be put regularly in execution; and accordingly we find them established in some counties of Ireland in King John's time.

This Irish Modus is said to have been in the custody of Sir Christopher Preston of Clane, in Ireland, Ann. 6 Hen. IV. and by Sir John Talbot, Lord Lieutenant of Ireland, under King Henry IV. It was exemplified by Inspeximus under the great seal of Ireland, and the exemplification was sometime in the hands of Mr. Hackwel of Lincoln's-Inn, and by him was communicated to Mr. Selden. The tenor of which exemplification runs thus:

Henry, by the grace of God, King of England and France, and Lord of Ireland, to all to whom these presents shall come, greeting. We have examined the tenor of several articles, (written in a parchment-roll found in the custody of Christopher Preston, Esq; at the time of his being lately arrested in the town of Clare by the Deputy of our trusty and beloved John Talbot of Halomshire, Knight, the Lieutenant of our lately acquired territory of Ireland, in our own presence, and before our council in the said territory, at the town of Trim, on the ninth day of January last past) in these words:

"The method of holding parliaments. Henry King of England, conqueror and Lord of Ireland, sends this form to the Archbishops, &c." as before in p. 16.

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

Now we have thought proper by the tenor of these presents to cause an exemplification to be made of the tenors of the aforesaid articles, by and with the consent of our above-named Lieutenant, and of our council named above, and have ordered these our letters patent to be made. Witness our aforesaid Lieutenant at Trim, on the 12th of January, in the sixth year of our reign. By the Lieutenant and Council.

Now we can hardly think it credible, (says the Bishop of Meath) that an exemplification could have been made so solemnly of it by King Henry IV. and that it should refer to a Modus transmitted into Ireland by King Henry II. and affirm that it was produced before the Lord Lieutenant and Council at Trim, if no such thing had been done: This were to call in question the truth of all former records and transactions, and make the exemplification contain an egregious falshood in the body of it.

The Revd. Bishop of Meath, in his fore-cited preface, does believe that he had obtained the very original record, said by my Lord Coke to have been in the hands of Sir Christopher Preston : It came to that learned prelate's hands amongst other papers and manuscripts of Sir William Domville's, late Attorney-General in this kingdom, who in his life-time, upon an occasional discourse with the Bishop concerning it, told him, that this record was bestowed on him (Sir William Domville) by Sir James Cuffe, late Deputy Vice-Treasurer of Ireland ; that Sir James found it among the papers of Sir Francis Aungier, Master of the Rolls in this kingdom ; and the present Earl of Longford (grandson to the said Sir Francis Aungier) told the Bishop, that his said grandfather had it out of the treasury of Waterford.

Whilst I write this, I have this very record now before me, from the hands of the said Bishop of Meath's son, my nephew, Samuel Dopping ; and I must confess it has a venerable antient appearance, but whether it be the true original record, I leave on the arguments produced for its credit by the said Bishop.

Parliaments very early in Ireland.

This I am sure of, that whether this be the very record transmitted hither by King Henry II. or not ; yet 'tis most certain from the unanimous concessions of all the fore-mentioned antiquaries, Coke, Selden, Pryn, &c. that we have had parliaments in Ireland very soon after the invasion of Henry II. For Pryn confesses that * King Henry II. after his conquest of Ireland, and the general voluntary submission, homages, and fealties of most of the Irish Kings, Prelates, Nobles, Cities and People, to him, as to their Sovereign Lord and King, Anno 1170, [it should be 1172] held therein a general council of the Clergy at Cashel, wherein he rectified many abuses in the Church, and established fundry ecclesiastical laws, agreeable to those in the Church of England : *Labouring by all means to reduce the state of that Church to the form of the English* ; to which the Irish clergy promised conformity, and to observe them for time to come, as † Giraldus Cambrensis, who was then in Ireland, and other ‡ Historians, relate : *And that in every particular the same observances might unite both kingdoms ; (that is England and Ireland,) they all every where, with perfect unanimity by common consent, and with equal chearfulness, submit to the King's pleasure ; every thing, therefore, being, settled in this manner, in an assembly held at Lismore, the laws of England were cheerfully accepted by all, and established with the solemnity of an oath,* says Mat. Paris.

Original Compact for Ireland.

Can any concession in the world be more plain and free than this ? We have heard of late much talk in England of an original compact between the King and people of England ; I am sure 'tis not possible

* *Against the 4th Inst. c. 76. p. 249.*

† *Topograph. Hibern. l. 3. c. 18. Hib. Expug. l. 11. c. 33, 34.*

‡ *Hoveden Annal. pars Post. p. 302. Brampton Chr. Col. 1071. Knighton de Even. Angl. c. c. 10. col. 2394, 2395. Pol. Virg. Hist. Angl. l. 13. Radul. de Diceto. Walsingham, &c.*

to shew a more fair original compact between a King and people, than this between Henry II. and the people of Ireland, 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.

From all which, it is manifest, that there were no laws imposed on the people of Ireland, by any authority of the parliament of England; nor any laws introduced into that kingdom by Henry II. but by the consent and allowance of the people of Ireland: For both the civil and ecclesiastical state were settled there, *Regiæ sublimitatis auctoritate*, solely by the King's authority, and their own good wills, as the Irish statute, 11. Eliz. c. 1. expresses it. And not only the laws of England, but the manner of holding parliaments in Ireland to make laws of their own (which is the foundation and bulwark of the people's liberties and properties) was directed and established there by Henry II. as if he were resolved that no other person or persons should be the founders of the government of Ireland, but himself and the consent of the people, who submitted themselves to him against all persons whatsoever.

Let us now see by what farther degrees the government of Ireland grew up conformable to that of England.

King John made King of Ireland.

About the twenty-third year of Henry 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. Soon after King John being then about twelve years of age, came into Ireland, from Milford to Waterford, as his father had formerly done. The Irish Nobility and Gentry immediately repaired to him; but being received by him and his retinue with some scorn and derision, by reason of their long rude beards, *which they wore* (says Giraldus Cambrensis, Hib. Expugn. Cap. 35.) *of great length and size, after the manner of their country*, they took such offence thereat, that they departed in much discontent; which was the occasion of the young King's staying so short a time in Ireland, as he did this his first time of being here.

By this Ireland made an absolute separate Kingdom.

And here, before we proceed any farther, we shall observe, that by this donation of the kingdom of Ireland to King John, Ireland was most eminently set apart again, as a separate and distinct kingdom by itself from the kingdom of England; and did so continue, until the kingdom of England descended and came unto King John, after the death of his brother Richard I. King of England, which was about twenty-two years after his being made King of Ireland; during which space of twenty-two years, both whilst his father Henry II. and his brother Richard I. were living and reigning; King John made divers grants and charters to his subjects of Ireland, which are yet in being in this kingdom; wherein he styles himself *Lord of Ireland*, (the constant stile till Henry VIII's time;) and in others, *Lord of Ireland, and Earl of Meritonis*. By which charters both the city of Dublin, and divers other corporations enjoy many privileges and franchises to

to this day. But after the said grant of the kingdom of Ireland to King John, neither his father Henry II. nor his brother Richard I. Kings of England, ever stiled themselves, during their lives, King or Lord of Ireland; for the dominion and regality of Ireland was wholly and separately vested in King John, being absolutely granted unto him without any reservation. And he being created King in the parliament at Oxford, under the stile and title of Lord of Ireland, enjoyed all manner of kingly jurisdiction, preheminence, and authority royal, belonging unto the imperial state and majesty of a King, as are the express words of the Irish Statute, 33 Henry VIII. c. 1. by which Statute the stile of *Lord* was changed to that of *King of Ireland*.

Let us then suppose that Richard I. King John's elder brother, had not died without issue, but that his progeny had sat on the throne of England, in a continued succession to this day: Let us suppose likewise the same of King John's progeny, in relation to the throne of Ireland; where then had been the subordination of Ireland to the parliament, or even to the King of England? Certainly no such thing could have been then pretended: Therefore if any such subordination there be, it must arise from something that followed after the descent of England to King John; for by that descent England might as properly be subordinate to Ireland, as the converse; Ireland being vested in the royal person of King John, two and twenty years before his accession to the crown of England, and being a more ancient kingdom than the kingdom of England. As the English orators in the council of Constance, An. 1417* confessed and alleged, as an argument in the contest between Henry Vth's Legates, and those of Charles VI. King of France, for precedence, *It is perfectly clear* (say they) † *according to Albert the Great, and Bartholomew, concerning the rights of states, that, the whole world being divided into three parts, Europe, Asia, and Africa, (for America was not then discovered): Europe is divided into four kingdoms, those of Rome, Constantinople, Ireland, (now transferred to the English) and Spain. Hence it follows, that the King of England, and his Kingdom, are amongst the most distinguished and ancient Kings and kingdoms of all Europe.* The antiquity and precedence of the King of England, was allowed him wholly on the account of his kingdom of Ireland.

Ireland in what sense annexed to England.

Perhaps it will be said, that this subordination of the kingdom of Ireland, to the kingdom of England, proceeds from Ireland's being annexed to, and as it were united with the imperial crown of England, by several acts of parliament both in England and Ireland, since king John's time. But how far this operates, I shall enquire more fully hereafter; I shall only at present observe, that I conceive little more is effected by these statutes, than that Ireland shall not be aliened or separated from the king of England, who cannot hereby dispose of it otherwise than in legal succession along with England; and that

* Selden's Tit. Hon. Par. 1. C. 8. Sect. 5. Usher, Archbishop of Armagh, of the religion of the ancient Irish, Cap. 11.

† A. P. Concil. Constant. Sess. 28. MS. in Bib. Reg. not. in the printed A. P.

whoever is king of England, is *ipso facto* King of Ireland, and the subjects of Ireland are obliged to obey him as their liege lord.

King John comes a second time into Ireland. The people submit to him.

To proceed therefore. After both crowns were united, on the death of Richard I. without issue, in the royal person of king John: He, about the twelfth year of his reign of England, went again into Ireland, viz. the twenty-eighth day of June, 1210; and Matth. Paris tells us, page 220, *After his arrival at the city of Dublin, there met him more than twenty petty Princes of that country, who struck with the greatest fear, did him homage, and swore allegiance. There also the King caused them to establish the laws and customs of England, appointing Viscounts, and other Magistrates, to govern the people of that kingdom according to the English laws.*

Concessions from Henry III.

His son King Henry III. came to the crown the 19th of October, 1216, and in November following he granted to Ireland a Magna Charta, dated at Bristol 12th November, the first year of his reign. 'Tis prefaced, THAT FOR THE HONOUR OF GOD, AND ADVANCEMENT OF HOLY CHURCH, BY THE ADVICE OF HIS COUNCIL OF ENGLAND, (whose names are particularly recited) he makes the following grant to Ireland; and then goes on exactly agreeable to the Magna Charta which he granted to England; only in ours we have *Civitas Dublin. & Aveniffee*, instead of *Civitas London, & Thamesis*, with other alterations of the like kind where needful. But ours is eight years older than that which he granted to England, it not being till the ninth year of his reign, and ours is the first year. This Magna Charta of Ireland concludes thus;—*Because we have not hitherto had a seal, we have caused the present Charter to be sealed with the seals of our venerable father, of Lord Walter, Legate of the Apostolic See, and of William Mareschall, Earl of Pembroke, our Governor, and Governor of our Kingdom. Witness all who are mentioned above, and many others. Given under the hand of the aforesaid Lord Legate, and William Mareschall, at Bristol, on the 12th day of November and first year of our reign.* An ancient copy of this Magna Charta of Ireland is to be found in the Red Book of Exchequer, Dublin.

In February following, in the first year likewise of his reign, by advice of all his faithful counsellors in England, to gratify the Irish (says † Pryn) for their eminent loyalty to his father and him, he granted them out of his special Grace, that they and their heirs for ever should enjoy the liberties granted by his father and himself to the realm of England; which he reduced into writing, and sent sealed thither under the seal of the Pope's Legate, and W. Earl Marshall, his Governor, because he had then no seal of his own. This, as I conceive, refers to the forementioned Magna Charta Hibernæ. The record as recited by Mr. Pryn, here follows:

§ *The King to the Archbishops, Bishops, Abbots, Earls, Barons, Esquires, and Freeholders, and all our faithful subjects settled in Ireland, greeting.*

† Pryn against the 4th Inst. c. 76, p. 250.

§ Pa. 1 Henry III. m. 13. intus.

Commending your loyalty to the King our father in the Lord, and that which we know, you will always shew to us; our will and pleasure is, that of our grace and favour to our kingdom of Ireland, you and your heirs for ever should enjoy in testimony of your unshaken and distinguished loyalty, the liberties granted to our kingdom of England by our father and ourself. Which liberties reduced to writing, with the common consent of our faithful subjects, we send to you sealed with the seals of our Lord Walter, Legate of the Apostolic See, and of our trusty Earl, William Mareschall, our Governor, and that of our kingdom, because we have as yet no seal; determined in process of time, with farther advice, to ratify the same liberties with our own seal. Given at Gloucester, the 6th of Feb.

Here we have a free grant of all the liberties of England to the people of Ireland. But we know the liberties of Englishmen are founded on that universal law of nature, that ought to prevail throughout the whole world, "of being governed only by such laws to which they give their own consent by their representatives in parliament."

Record out of Mr. Petyt of the antiquity of Parliaments in Ireland.

And here, before I proceed farther, I shall take notice, that in the late raised controversy, Whether the House of Commons were an essential part of Parliament, before the 49th year of Henry III. the learned Mr. Petyt, Keeper of the Records in the Tower, in his book on that subject, page 71, deduces his 9th argument from the comparison of the ancient Generale Concilium, or Parliament of Ireland, instanced An. 38 Henry III. with the Parliament in England, wherein the Citizens and Burgeses were; which was eleven years before the pretended beginning of the Commons in England.

For thus we find it in that Author.

"As great a right and privilege surely was and ought to be allowed to the English subjects, as to the Irish, before the 49th of Henry III. And if that be admitted, and that their (the Irish) Commune Concilium, or Parliament, had its platform from ours (the English) as I think will not be denied by any that have considered the history and records touching that land (Ireland), we shall find the ensuing records, Ann. 38 Henry III. clearly evince that the Citizens and Burgeses were then a part of their (the Irish) Great Council or Parliament.

Rot. 38 Henry III. in 4 Hibernie.

"That King being in partibus Transmarinis, and the Queen being left regent, she sends writs (or a letter) in the King's name, directed To the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Esquires, Freeman, Citizens and Burgeses of his territory of Ireland; We send Friar Nicholas of Saint Neotus, Friar of the Hospital of Saint John of Jerusalem in England, into Ireland, together with J. Fitz-Geoffery, the King's Justice, to give you to know the state of his land of Vascony, endangered by the hostile invasion of the King of Castile, who regardless of every law but that of force, attempts by violence to wrest from us, and from the sovereignty of the kingdom of England, our territory of Vascony. And therefore entreating all of you with the greatest earnestness and affection to support us and our just rights, which at present are entirely defenceless, with men and money to the utmost of your power, not forsaking us in

“ so great a danger. Which would turn to their everlasting honour ; concluding, that we and our heirs may have the justest obligations to you and your heirs, should you thus sympathize with us in these our straits. Witness the Queen, and R. Earl of Cornwall, at Windsor, 17th of Feb.” Thus far Mr. Petyt.

Here we have a letter from the Queen Regent to the parliament in Ireland, in an humble manner beseeching them for an aid of men and money against the king of Castile’s hostile invasion of Galcony ; from whence we may perceive that in those days, no more than at present, men and money could not be raised but by consent of parliament. I have been the more particular in transcribing this passage out of Mr. Petyt, to shew that we have as ancient and express an authority for our present constitution of parliaments in Ireland, as can be shewn in England. And I believe it will not be thought adviseable in these latter days, to break in upon old settled constitutions: no one knows how fatal the consequents of that may be.

Farther Concessions from Henry III.

To return, therefore, where we digressed. Henry III. about the twelfth year of his reign, did specially impower Richard de Burgh, then justice of Ireland, at a certain day and place, to summon all the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and Sheriffs of each county, and before them to cause to be read the charter of his father King John, whereunto his seal was appendant, whereby he had granted unto them the laws and customs of England, and unto which they swore obedience: And that he should cause the same laws to be observed and proclaimed in the several counties of Ireland, that so none presume to do contrary to the King’s command. The record I have taken out of Mr. Pryn*, in these words:

† *The King to his trusty and beloved Richard Deburg, his Justice of Ireland, greeting. We command and strictly charge you, that at a certain time and place, you cause to appear before you the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Esquires, Freeholders and Bailiffs of every county; and cause to be read before them the Charter of Lord John our father, to which his seal is annexed, and which he caused to be made and sworn to by the great men of Ireland, concerning the observing of the English laws and customs in Ireland. And command them on our behalf, that for the future they strictly hold and follow those laws and customs, which are contained in the aforesaid Charter. And cause the same to be proclaimed and observed in every county in Ireland. Witness ourself, at Westminster, the 8th of May, and 12th year of our reign.*

By what foregoes, I presume it plainly appears, that by three several establishments under the three first Kings of Ireland of the Norman race, “ The laws and liberties of the people of England were granted to the people of Ireland.” And that neither of these three Kings established those laws in Ireland by any power of the parliament of England, but by the free consent, allowance and acceptance of the people of Ireland.

* *Against Coke’s 4th Instit. p. 252.*

† *Claus. 12. Hen. III. in 8 de legibus & consuetudinibus observandis in Hibern.*

Recapitulation.

Henry II. first introduced the laws of England into Ireland, in a public assembly of the Irish at Lismore, and allowed them the freedom of parliaments to be held in Ireland, as they were held in England.

King John, at the request, and by the consent of the Irish, did appoint the laws of England to be of force in Ireland; and though he did not this till the twelfth year of his reign of England, yet he did it not as King of England, but as Lord of Ireland: For the crown of England came to him by descent from his brother Richard, who had no regal power in Ireland; and what his brother had not, could not descend to him.

Henry III. in the first year of his reign gave Ireland a Magna Charta; and in the twelfth year of his reign did provide, that all the laws of England should be observed in Ireland; and that the charter granted to the Irish by his father King John under his seal, when he was in that kingdom, should be kept inviolably.

And from the days of these three Kings have England and Ireland been both governed by the like forms of government under one and the same supreme head, the King of England; yet so, as both kingdoms remained separate and distinct in their several jurisdictions under that one head, as are the kingdoms of England and Scotland at this day, without any subordination of the one to the other †.

It were endless to mention all the records and precedents that might be quoted for the establishment of the laws of England in Ireland; I shall therefore enter no farther into that matter, but therein refer to Lord Chief Justice Coke, § Pryn, ‡ Reyly, * &c.

English laws established in Ireland; particularly the law of Parliament.

If now we enquire, What were those laws of England that became thus established in Ireland? Surely we must first reckon the great law of parliaments, which England so justly challenges, and all mankind have a right to. By the law of parliament, I mean that law whereby all laws receive their sanction, The free debates and consent of the people, by themselves, or their chosen representatives. That this was a main branch of the English law established in this kingdom, and the very foundation of our future legislature, appears manifest from parliaments being so early convoked in Ireland, as the forementioned precedents express.

Mr. Pryn acknowledges one in Henry II's time, (page 259. against the 4th Inst.) but makes a very false conclusion, that there appear no footsteps of a parliament afterwards, till the third year of Edward II. because the acts of that parliament are the first that are printed in our Irish Statute-book: For so we may argue the parliaments of England to be of later date than pretended, when we find the first printed acts in Keeble to be no older than the 9th of Henry III. whereas 'tis most certain, that parliaments have been held in England some ages before that.

† This Work was published before the Union between England and Scotland.
§ Fourth Inst. ‡ Against the 4th Inst. * Placita Parliamentaria.

Common Law.

After this great law of parliaments, we may reckon the common law of England, whether it relates to regulating and settling of property, and estates in goods or land, or to the judiciary and executive parts of the law, and the ministers and process thereof, or to criminal cases. These surely were all established in this country by the three first Kings of Ireland of the Norman race.

Statute Law.

Let us now consider the state of the Statute Laws of England under these three Kings, and their predecessors: For by the Irish voluntary submission to, and acceptance of the laws and government of England, we must repute them to have submitted themselves to these likewise; till a regular legislature was established amongst them, in pursuance of that submission and voluntary acceptance.

Statute Law of England from the Norman Conquest to Henry III.

And here we shall find, that in those times, viz. from the Norman conquest to Henry III's time inclusive, the Statute-Laws of England were very few and slender. 'Tis true, that before the 12th of Henry III. we find amongst the English Historians frequent mention of the laws of Edward the Confessor, William the Conqueror, Henry I. Hen. II. King John, and Henry III. All which are only charters, or several grants of liberties from the King: which nevertheless had the force of acts of parliament, and laid as great obligations both upon prince and people, as acts of parliament do at this day: Whereof we may read several proofs in the Princes Case, Coke's 8th Report. But these were only so many confirmations of each other, and all of them sanctions of the common laws and liberties of the people of England, long used and approved of through the whole land, and in the enjoyment of which they and their ancestors had been born and educated, as the words of the manuscript Chronicle of Litchfield express it.

Law of Edward the Confessor.

The Laws of Edward the Confessor, held in so great veneration in ancient times, and ratified and confirmed through the whole kingdom, had been formerly discovered and established in the reign of his grandfather, King Edgar. Nevertheless from death of that very King Edgar, until the coronation of the holy King Edward, which was 67 years, the aforesaid laws were buried and entirely disused. But after King Edward was raised to the throne of the realm, by the advice of the Barons of England, he revived that law which had been buried, and after its revival, he improved, adorned and confirmed it: and thus confirmed, it was called the law of King Edward the holy; not because he was the inventor of it, but because he improved and restored it †, as the said Litchfield Chronicle has it. These laws of Edward the Confessor were transcribed by Ingulphus Abbot of Croyland, under William the Conqueror, and are annexed to his History.

† Selden Not. & Specileg. ad eadm. page 171.

Of William the Conqueror.

The laws of William the Conqueror are but a confirmation of the laws of Edward the Confessor, with some small alterations, as the very letter of those laws themselves express it. * *This likewise we command, that all hold and observe the Laws of King Edward in all things, with those additions which we have established for the benefit of the English.*

Of Henry I.

The laws of Henry I. which are in the Red Book of the Exchequer, in the custody of the King's Remembrancer in England, are but a summary confirmation both of the laws of Edward the Confessor and William I. as the Charter itself expresses it, § *I restore you the law of King Edward along with those amendments which it received from my father by the advice of the Barons.*

Of Henry II.

The laws of Henry II. called Constitutiones Clarendoniæ, and the Assize of Clarendon in the 2d part of Coke's Inst. p. 6, are all but confirmations and vindications of the King's just prerogative against the usurpations of the Pope and Clergy: As we find at large in Chron. Gervasii. Doroborn. p. 1387. Edit. Lond. an. 1652.

Of King John.

The laws of King John, called the Great Charter of King John, granted in the 17th year of his reign, upon the agreement made between him and his Barons at Running-Mead, between Staines and Windsor, was but a confirmation of the laws of Edward the Confessor and Henry I. as Mat. Paris relates it. *In the 17th year of King John, the grandees came to the King, and requested that certain laws and liberties of King Edward, together with other liberties granted to them and to the kingdom and church of England, should be confirmed, as they are contained in writing in the Charter of King Henry I. †* The same Historian gives us also at large both *Charter of Liberties*, and *Charter of the Forest*, which are not extant in the rolls of those times, nor to be found in any till the 28th of Edward I. and that but by inspeximus.

Of Henry III.

The laws of Henry III. contained in Magna Charta and Charta de Foresta, both which are called *Great Charters of the liberties of England*, and were established about the 9th year of Henry III. are for the most part but declaratory of the common municipal laws of England, and that too no new declaration thereof; for King John in the 17th year of his reign had granted the like before, which was also called Magna Charta. ‡ And by the English statute 25 Edw. I. c. 1. it is enacted, That the Great Charter, and the Charter of the Forest be taken as the Common Law of England.

* *Leges W. I. Cap. 63. apud Selden in notis ad eadm. p. 192.*

§ *Vid. Selden ut supra.* † *Mat. Paris, ad an. 1215, pag. 253, &c*

‡ *Coke's Pref. to the second Inst.*

By what foregoes, I conceive it is very clear, that all the charters and grants of liberties from Edward the Confessor's time down to the 9th of Henry III. were but confirmations one of another, and all of them declarations, and confirmations of the Common Law of England. And by the several establishments, which we have formerly mentioned, of the laws of England to be of force in Ireland: First, in the 13th of Henry II. Secondly, in the 12th of King John. Thirdly, in the 12th of Henry III. All those laws and customs of England, which by those several charters were declared and confirmed to be the laws of England, were established to be of force in Ireland. And thus Ireland came to be governed by one and the same Common Law with England; and those laws continue as part of the municipal and fundamental laws of both kingdoms to this day.

English Statutes since the 9th Henry III. introduced in Ireland.

It now remains that we 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 whether all or any of them, and which, are in force here, and when and how they came to be so.

And the first precedent that occurs in our books, of acts of parliament in Ireland particularly mentioning and confirming special acts of parliament in England, is found in a marginal note of Sir Richard Bolton's, formerly Lord Chief Baron of the Exchequer in Ireland, affixed in his edition of the Irish Statutes to Stat. 10 Henry 7. Cap. 22. to this purport, That in 13 Edw. II. by parliament in this realm of Ireland the Statutes of Merton, made the 20th of Henry II. and the Statutes of Marlbridge, made the 52d of Henry III. the Statute of Westminster the first, made the 3d of Edward I. the Statute of Gloucester, made the 6th of Edward I. and the Statute of Westminster the second, made the 13th of Edward I. were all confirmed in this kingdom, and all other Statutes which were of force in England, were referred to be examined in the next parliament; and so many as were then allowed and published, to stand likewise for laws in this kingdom*. And in the 10th of Henry IV. it was enacted in this kingdom of Ireland, That the Statutes made in England should not be of force in this kingdom, unless they were allowed and published in this kingdom by parliament. And the like Statute was made again in the 29th of Henry VI. These Statutes are not to be found in the Rolls, nor any Parliament Roll of that time; but he (Sir Richard Bolton) had seen the same exemplified under the Great Seal, and the exemplification remaineth in the treasury of the city of Waterford. Thus far the note. If we consider the frequent troubles and distractions in Ireland, we shall not wonder that these, and many other Rolls and Records, have been lost in this kingdom: For from the third year of Edward II. which was Anno 1310, through the whole reigns of Edward III. Richard II. Henry IV. and Henry V. and so to the seventh year of Henry VI. Anno 1428, which is about 118 years, there are not any Parliament Rolls to be found†, yet certain it is, that divers parlia-

* *Vid. Lib. Rubr. Scaccar. Dubl.*

† *Annals of Ireland, at the end of Camden's Britan. Edit. 1637, page 196, 197, &c.*

ments were held in Ireland in those times. † The same may be said from Henry II's coming into Ireland, Anno 1172 to the third year of Edward II. Anno 1310, about 138 years.

Perhaps it may be said, that if there were such Statutes of Ireland as the said acts of the 10th of Henry IV. and the 29th of Henry VI. as they shew, that the parliaments of Ireland did think that English acts of parliament could not bind Ireland; yet they shew likewise, that even in those days the parliaments of England did claim this superiority; or else, to what purpose were the said acts made unless in denial of that claim?

All which I hope may be readily granted without any prejudice to the right of the Irish parliaments: There is nothing so common, as to have one man claim another man's right: And if bare pretence will give a title, no man is secure: And it will be yet worse, if when another so pretends, and I insist on my right, my just claim shall be turned to my prejudice, and to the disparagement of my title.

We know very well that many of the Judges of our Four Courts have been from time to time sent us out of England; and some of them may easily be supposed to come over hither prepossessed with an opinion of our parliaments being subordinate to that of England. Or at least, some of them may be scrupulous, and desirous of full security in this point; and on their account, and for their satisfaction, such acts as aforesaid, may be devised, and enacted in Ireland. But then, God forbid, that these acts should afterwards be laid hold of to a clear other intent than what they were framed for; and instead of declaring and securing our rights, should give an handle of contest, by shewing that our rights have been questioned of antient time.

In conclusion of all, if this superiority of the parliament of England have been doubted a great while ago, so it has been as great a while ago strenuously opposed, and absolutely denied by the parliaments of Ireland. And by the way, I shall take notice, that from whencesoever this ancient pretence of Ireland's subordination proceeded in those days, it did not arise from the parliament of England itself: For we have not one single instance of an English act of parliament expressly claiming this right of binding us: But we have several instances of Irish acts of parliament, expressly denying this subordination, as appears by what foregoes.

Afterwards by a statute made in Ireland the 18th of Henry VI. cap. 1. all the statutes made in England against the extortions and oppressions of purveyors, are enacted to be holden and kept in all points, and put in execution in this land of Ireland.

And in the 32d year of Henry VI. cap. 1. by a parliament in Ireland, 'tis enacted, That all the statutes made against provisors to the court of Rome, as well in England as in Ireland, be had and kept in force.

After this, in a parliament at Drogheda the 8th of Edward IV. cap. 1. it was ratified, That the English statute made against rape, made the 6th of Richard II. should be of force in Ireland from the 6th day of March last past: And that from henceforth the said act, and all other statutes and acts made by authority of parliament within

† *Ibid.* p. 160. *Pryn against the 4th Inst. chap. 76.*

the realm of England, be ratified and confirmed, and adjudged by the authority of this parliament in their force and strength, from the said sixth day of March. We shall hereafter have occasion of taking farther notice of this statute upon another account.

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

Lastly, in a parliament held at Drogheda the 10th of Henry VII. cap. 22. it is enacted, That all statutes late (that is, as the * learned in the laws expound it, before that time) made in England, concerning the common and public weal of the same, from henceforth be deemed effectual in law, and be accepted, used and executed within this land of Ireland in all points, &c.

† And in the 14th year of the same King's reign, in a parliament held at Tristram-Dermot, it was enacted, That all acts of parliament made in England for punishing customers, controllers, and searchers, for their misdemeanors; or for punishment of merchants or factors, be of force here in Ireland, provided they be first proclaimed at Dublin, Drogheda, and other market-towns.

Thus we see by what steps and degrees all the statutes which were made in England from the time of Magna Charta, to the 10th of Henry VII. which did concern the common public 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.

English Statutes declaratory of the Common Law in force in Ireland.

We shall next enquire, Whether there are not other acts of the English parliament, both before and since the 10th of Henry VII. which were and are of force in Ireland, though not allowed of by parliament in this kingdom. And we shall find, that by the opinion of our best lawyers, there are divers such; but then they are only such as are declaratory of the ancient common law of England, and not introductive of any new law: For these become of force by the first general establishment of the common laws of England in this kingdom, under Henry II. King John, and Henry III. and need no particular act of Ireland for their sanction.

English acts introductive of a new law, not of force in Ireland.

As to those English statutes since the 10th of Henry VII. that are introductive of a new law, it was never made a question whether they should bind Ireland, without being allowed in parliament here; till of very late years this doubt began to be moved; and how it has been carried on and promoted, shall appear more fully hereafter.

I say, till of very late years; for the ancient precedents which we have to the contrary, are very numerous. Amongst many, we shall mention the following particulars.

* *Coke's 4th Instit. Cap. 76. p. 351.*

† *Vid. Irish Stat.*

In the 21st of Henry VIII. an act was made in England making it felony in a servant that runneth away with his master's or mistress's goods. This act was not received in Ireland till it was enacted by a parliament held here in the 33d of Henry VIII. c. 5. sec. 1.

In the 21st of Henry VIII. c. 19. there was a law made in England, that all Lords might distrain on the lands of them holden, and make their avowry not naming the tenant, but the land. But this was not of force in Ireland till enacted here in the 33d of Henry VIII. c. 1. sec. 1.

An act was made in England, anno 31 Henry VIII. that joint-tenants and tenants in common should be compelled to make partition, as coparceners were compellable at common law. But this act was not received in Ireland till enacted here an. 33 Henry VIII. c. 10.

Anno 27th Henry VIII. c. 10. the statute for transferring uses into possession was made in England; but not admitted in Ireland till 10 Car. 1. sec. 2.

In like manner, the English statute 33d Henry VIII. c. 1. directing how lands and tenements may be disposed by Will, &c. was not of force in Ireland till 10 Car. 2. sec. 2.

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

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

So the English Act against Witchcraft and Sorcery made 5 Eliz. c. 16. And another Act against Forgery, 5th Eliz. c. 14. were neither of them in force in Ireland till the 28th of her reign, cap. 3 & 4.

The English Statute against Pirates was made the 28th of Henry VIII. c. 15. but not in Ireland till the 12th of King James, c. 2.

In England an Act was made the 27th of Eliz. c. 4. against fraudulent conveyances; but it was not in force in Ireland till enacted here the 10th of Charles, c. 3. sec. 2.

In the 15th year of King Charles I. in a parliament held at Dublin, there were six English Statutes made laws of this kingdom, with such alterations as best fitted them to the state thereof, viz.

21 Jac. c. 14. For pleading the general issue in intrusions brought by the King, by chap. 1. of the Irish statutes.

31 Eliz. c. 2. For abridging of proclamations on fines, by chap. 2.

2 and 3 Edw. 6. c. 8. Concerning offices before the escheator, by chap. 4.

31 Eliz. c. 1. Discontinuance of writs of error in the Exchequer Chamber, by chap. 5.

8 Eliz. c. 4. and 18 Eliz. c. 7. Concerning Clergy, by chap. 7.

24 Hen. 8. c. 5. Concerning killing a robber, by chap. 9.

There are six English statutes likewise passed in the time of K. Charles II. upon and soon after the restoration, some of which were not passed into laws in Ireland till a year, two, or three, afterwards: As will appear by consulting the statute books*.

* *Irish Stat.* 13 C. II. c. 2. 13 C. II. c. 3. 14 and 15 C. II. c. 1. 14 and 15 C. II. c. 19. 17 and 18 C. II. c. 3. 17 and 18 C. II. c. 11.

And in the first year of William and Mary, *ses. 2. c. 9.* an act passed in England declaring all attainders, and other acts made in the late pretended parliament under King James at Dublin, void: But was not enacted here in Ireland till the 7th year of King William, *c. 3.* And this was thought requisite to be done upon mature consideration thereon before the King and Council of England †, notwithstanding that the English act does particularly name Ireland, and was wholly designed for, and relates thereto.

The like may we find in several other statutes of England passed since his present Majesty's accession to the throne, which have afterwards been passed here in Ireland, with such alterations as make them practicable and agreeable to this kingdom. Such as are amongst others, the act for disarming papists. The act of recognition. The act for taking away Clergy from some offenders. The act for taking special bail in the country, &c. The act against clandestine mortgages. The act against cursing and swearing.

These, with many more, are to be found in our statute books in the several reigns of Henry VIII. Edward VI. Queen Elizabeth, King James, King Charles I. and II. and King William. But it is not to be found in any records in Ireland, that ever any act of parliament introductive of a new law made in England since the time of King John, was by the judgment of any court received for law, or put in execution in the realm of Ireland before the same was confirmed and assented to by parliament in Ireland.

And thus I presume we have pretty clearly made out our fourth enquiry forementioned; and shewn plainly the several steps by which the English form of government, and the English statute laws were received in this kingdom; and that this was wholly by the people's consent in parliament, to which we have had a very ancient right, and as full a right as our next neighbours can pretend to or challenge.

Objections answered.

I shall now consider the objections and difficulties that are moved on this head drawn from precedents, and passages in our law-books, that may seem to prove the contrary.

Objections from the Statute of Rape.

First 'tis urged, That in the Irish act concerning rape, passed anno 8 Edward IV. *c. 1.* 'tis expressed, that a doubt was conceived whether the English statute of the 6th of Richard II. *c. 6.* ought to be of force in Ireland without a confirmation thereof in the parliament of Ireland. Which shews (as some alledge) that even in those days it was held by some, that an act of parliament in England might bind Ireland before it be consented to in parliament here.

English Stat. 12 C. II. c. 12. 12 C. II. c. 3. 12 C. II. c. 14. 12 C. II. c. 24. 12 C. II. c. 33. 16 and 17 C. II. c. 5.

† For we had two several acts transmitted to us at different times, to this very purpose. One we rejected in the Lord Sydney's government, the other we passed under the Lord Capell.

But I conceive this gloss is raised merely for want of expressing the reason of the said doubt in the Irish statute of the 8th of Edward IV. c. 1. which we may reasonably judge was this. By the statute of Westminster the 2d. c. 34. a woman that eloped from her husband and lived with the adulterer, or a wife that being first ravished did afterwards consent, and lived with the ravisher, she should lose her dower. This statute of Westminster the 2d, was made of force in Ireland by an act passed here the 13th of Edward II. as we have seen before. Afterwards by the English statute of the 6th of Richard II. c. 6. there was a farther addition made to the said statute of Westminster the 2d, to this effect, that a maiden or wife being ravished, and afterwards consenting to the ravishers, as well the ravisher as she that was ravished shall be disabled to claim all inheritance or dower, after the death of her husband or ancestor.

On this account the doubt was here raised in Ireland in the 8th of Edward IV. c. 1. Whether this latter English statute of the 6th of Richard II. c. 6. were not in force in Ireland by virtue of the Irish statute of the 13th of Edward II. which confirmed the statute of Westminster the 2d. c. 34. And for settling this doubt the said statute of the 8th of Edward IV. c. 1. was passed in Ireland, and we find very good reason for the said doubt. For the English statute of the 6th of Richard II. c. 6. contained but a small addition to the statute of Westminster the 2d, c. 34. and we see that even this addition itself was judged not to be of force in Ireland till enacted here. For the said Irish statute of the 8th of Edward IV. c. 1. makes the said statute of the 6th of Richard II. c. 6. of force in Ireland only from the 6th of March then last past.

'Tis urged secondly, 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 all his Majesty's dominions, or by particularly naming of Ireland, are and shall be of force in this kingdom.

This being a doctrine first broached directly (as I conceive) by Will. Hussey, Lord Chief Justice of the King's Bench in England, in the first year of Henry VII. and of late revived by Lord Chief Justice Coke, and strongly urged, and much relied upon in these latter days; I shall take the liberty of enlarging thereon, though I venture thereby to swell this pamphlet to a size greater than I desire or designed.

Object. English Statutes comprehending Ireland by general Words.

First, therefore, as to such English statutes as seem to comprehend Ireland, and to bind it, under the general words of all his Majesty's dominions or subjects, whatever has been the opinion of private and particular lawyers in this point, I am sure the opinions of the Kings of England, and their Privy Council, have been otherwise: 'Tis well known since Poyning's act in Ireland, the 10th of Henry VII. no act can pass in our parliament here, till it be first assented to by the King and Privy Council of England, and transmitted hither under the broad seal of England: Now the King and his Privy Council there, have been so far from surmising that an act of parliament of England, mentioning only in general all the King's dominions, or subjects, should bind Ireland, that they have clearly shewn the contrary, by

frequently transmitting to Ireland, to be passed into laws here, English statutes, wherein the general words of all the King's dominions or subjects were contained; which would have been to no purpose, but merely *to do what was already done*, had Ireland been bound before by those English statutes.

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

Acts against appeals to Rome.

The act of parliament in England against appeals to Rome, 24 Henry VIII. c. 12. by express words extends to all his Majesty's dominions, yet the same was not in force, nor received in Ireland, till it was enacted by parliament there, the 28th of Henry VIII. c. 6.

Acts of First Fruits and Faculties.

In like manner the statutes made in England concerning First Fruits, 26 Henry VIII. c. 3. and the Act of Faculties, * 25 Henry VIII. c. 21. though each of them by express words comprize all his Majesty's subjects and dominions, were not received as laws in Ireland; till the former was enacted there, 28 Henry VIII. c. 4. and the latter the 28 Henry VIII. c. 19. and so the statute restoring to the crown all jurisdiction ecclesiastical made in England, anno 1 Eliz. c. 1. and therein giving power to erect an Ecclesiastical High-Commission-Court in England and Ireland, yet was not of force in Ireland till enacted there, anno 2 Eliz. c. 1. And though the said English act, in relation to erecting such an High-Commission-Court, was repealed, 17 Car. 1. c. 11. and the repeal confirmed the 13 Car. 2. c. 12. And the late Bill of rights, 1 W. and M. sess. 2. c. 2. in England has damned all such courts. Yet the act in Ireland 2 Eliz. c. 1. remains still in force here; and so it was lately declared here by the Lord High-Chancellor Porter, Lord Chief Justice Reynel, Lord Chief Baron Hely, Mr. Justice Cox, Mr. Justice Jeffreyson, in the case of Dr. Thomas Hacket, late Bishop of Down, who was deprived of the said bishopric by such a commission, for great enormities; the commissioners being Dr. Dopping late Bishop of Meath, Dr. King, the present Bishop of London-Derry, and Dr. Wiseman, late Bishop of Dromore.

By the same reason Scotland may be bound.

And truly I see no more reason for binding Ireland by the English laws under the general words of all his Majesty's dominions or subjects, than there is for binding Scotland by the same; for Scotland is as much his dominion, and Scots-men as much his subjects as Ireland and Irish-men: If it be said, that Scotland is an ancient separate and distinct kingdom from England; I say, so is Ireland: The difference is, Scotland continued separate from the Kings of England till of late years, and Ireland continued separate from England but a very little while in the person of King John, before the death of his father, and of his brother Richard I. without issue. But then 'tis to be considered, that there was a possibility, or even a probability, that Ireland

* Title in the English Statutes is, *No imposition shall be paid to the Bishop of Rome.*

might have continued separate from the crown of England, even to this very day, if Richard I. had left behind him a numerous progeny.

English Statutes naming Ireland.

Secondly, As to such English Statutes as particularly name Ireland, and are therefore said to be of force in this kingdom, tho' never enacted here; I shall consider only the more ancient precedents that are offered in confirmation of this doctrine: For as to those of later date, 'tis these we complain of, as bearing hard on the liberties of this country, and the rights of our parliaments, and therefore these ought not to be produced as arguments against us. I presume, if I can shew, that the ancient precedents that are produced, do not conclude against us; it will follow, that the modern instances given, ought not to conclude against us; that is to say plainly, these ought not to have been made as they are, as wanting foundation both from authority and reason.

The ancient precedents of English statutes, particularly naming Ireland, and said to be made in England with a design of binding Ireland, are chiefly these three:

1. *Statute of Ireland, 14 Henry III.*
2. *An ordinance for Ireland, 17 Edward I.*
3. And the act that all staple commodities passing out of England or Ireland, shall be carried to Calais, as long as the staple is at Calais, 2 Henry VI. c. 4. on which Hufsey delivered his opinion, as we shall see more fully hereafter.

These statutes, especially the two first, being made for Ireland, as their titles import, have given occasion to think, that the parliament of England have a right to make laws for Ireland, without the consent of their chosen representatives. But if we enquire farther into this matter, we shall find this conclusion not fairly deduced.

First, The *Statute of Ireland, 14 Hen. III.* 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 there used, and what was the common-law of England in that case. Whereupon Henry III. in this his certificate or rescript, which is called *Statute of Ireland*, meerly informs the justice what the law and custom was in England, viz. That the sisters ought to hold of the chief Lord, and not of the eldest sister. And the close of it commands, that the afore-said customs that be used within our realm of England in this case, be proclaimed throughout our dominion of Ireland, and be there observed. *Witness myself at Westminster, 9 Feb. An. Reg. 14.*

From whence 'tis manifest, that this *Statute of Ireland* was no more than a certificate of what the common law of England was in that case, which Ireland by the original compact was to be governed by. And shews no more, that therefore the parliament of England may bind Ireland, than it would have proved, that the common-wealth of Rome was subject to Greece, if, after Rome had received

the law of the Twelve Tables, they had sent to Greece to know what the law was, in some special case.

Ordinance for Ireland.

The statute called *Ordinance for Ireland*, made at Nottingham the 17th of Edward I. and to be found in Pulton's collection, page 76. Edit. Lond. 1670, was certainly never received, or of force, in Ireland. 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 land 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, at their own will and pleasure, needs no proof to those who have the least knowledge of this country. Nor does it appear by any inquisition, office, or other record, that any one ever forfeited on that account.

Moreover this *Ordinance for Ireland*, is really in itself no act of parliament, but merely an ordinance of the King and his Privy Council in England; which appears as well from the preamble to the said ordinance, as from this observation likewise, that King Edward I. held no parliament in the 17th year of his reign: Or if this were a parliament, this *Ordinance for Ireland*, is the only act thereof that is extant: But 'tis very improbable, that only this single ordinance should appear, if any such parliament were called together.

Staple Act.

Thirdly, As to the Staple-Act, 2 Henry VI. c. 4. which expressly names Ireland, and Hufley's opinion thereon. The case, as we find it in the year-books of Mich. 2 Ric. III. fol. 11. and Mich. 1 Hen. VII. fol. 3. is in short thus: The merchants of Waterford having shipped off some wool, and consigned it to Sluice in Flanders, the ship by stress of weather was put in at Calais, where Sir Thomas Thwaites, Treasurer of Calais, seized the said wool as forfeited, half to himself, and half to the King, by the said statute; hereupon a suit was commenced between the said merchants and the said treasurer, which was brought before all the Judges of England into the Exchequer Chamber: The merchants pleaded the King's licence to the citizens of Waterford and their successors, for carrying wool where they pleased; and the questions before the Judges were two, viz. Whether this Staple-act binds Ireland; and secondly, Whether the King could grant his licence contrary to the statute, and especially where the statute gives half the forfeiture to the discoverer.

The first point only relates to our present purpose; and herein we find the foresaid year-book of 2 Ric. III. fol. 12. to report it thus: *And there (in the Exchequer Chamber) they declared that in the kingdom of Ireland they have parliaments and courts in every respect as in England: And by their own parliament they make and change laws, and are not bound by statutes made in England; because they have not Knights of Parliament here, (and is not this an unanswerable reason?) but this is to be understood only concerning the affecting of lands and property in that kingdom: For their persons are the King's subjects; and as subjects they*

shall be bound, when out of that territory, not to do any thing contrary to the statutes (of England), like the inhabitants of Calais, Gascoign, Guienne, &c. whilst they were subjects. And they shall be obedient to the Admiralty of England as touching any thing committed on the high seas. And in like manner there shall be a writ of error from a judgment given in Ireland, to the King's Bench here in England.

I have verbatim transcribed this passage out of the foresaid year-book, that I might be sure to omit nothing that may give the objection its full weight. And all that I can answer to it, is this:

1. That when the foresaid case came a second time under the consideration of the Judges in the Exchequer Chamber in Mich. 1 Henr. VII. fol. 3. we find it reported thus: Husley the Chief Justice said, That the statutes made in England shall bind those of Ireland, which was not much gain-said by the other Judges, notwithstanding that some of them were of a contrary opinion the last term in his absence. How the presence and opinion of the Chief Justice came to influence them now, I leave the reader to judge.

2. That Brook in abridging this case of the first of Hen. VII. fol. 3. Title Parliament, Sec. 90. adds, *observe notwithstanding*, that Ireland is a kingdom by itself, and hath parliaments of its own; intimating thereby, that therefore Husley's opinion herein was unreasonable.

3. That 'tis manifest, if Husley mean by his words, That all acts of parliament in England shall bind Ireland, it is directly contrary to the Judges opinion in the second of Richard III. before recited; for within the land of Ireland, they are all positive, that the authority of the parliament of England will not affect us. They seem at the utmost reach to extend the jurisdiction of the English parliament over the subjects of Ireland, only in relation to their actions beyond seas, out of the realm of Ireland, as they are the King of England's subjects; but even this will appear unreasonable, when we consider, that by the same argumentation, Scotland itself may be bound by English laws, in relation to their foreign trade, as they are the King of England's subjects. The question is, Whether England and Ireland be two distinct kingdoms, and whether they have each their respective parliaments; neither of which will be denied by any man; and if so, there can be no subordination on either side, each is compleat in its own jurisdiction, and ought not to interfere with the other in any thing. If being the King of England's subjects, be a reason why we ought to submit to laws, (in relation to our trade abroad, in places where the parliament of England has no jurisdiction) which have not received our assent; the people of England will consider whether they also are not the King's subjects, and may therefore (by this way of reasoning) be bound by laws which the King may assign them without their assent, in relation to their actions abroad, or foreign trade: Or whether they had not been subjects to the King of France, had our Kings continued their possession of that country, and there kept the seat of the monarchy; and then, had France been stronger than England it might seem that the subjects of these kingdoms might have been bound by laws made at Paris, without their own consent.—But let this doctrine never be mentioned amongst the free-born subjects of these nations.

Thus I have done with the three principal instances that are usually brought against us, on the stress that is laid on English acts of parliament, particularly naming Ireland.

Members from Ireland in the parliament of England.

There have been other statutes or ordinances made in England for Ireland, which may reasonably be of force here, because they were made and assented to by our own representatives. Thus we find in the White-Book of the Exchequer in Dublin, in the 9th year of Edward I. a writ sent to his Chancellor of Ireland, wherein he mentions *Some statutes lately made at Lincoln, and some others afterward at York, by us with the consent of the Prelates, Earls, Barons, and Commons of our kingdom of Ireland.* These we may suppose were either statutes made at the request of the states of Ireland, to explain to them the common law of England; or if they were introductive of new laws, yet they might well be of force in Ireland, being enacted by the assent of our own representatives, the Lords Spiritual and Temporal, and Commons of Ireland; as the words aforementioned do shew: And indeed, these are instances so far from making against our claim, that I think nothing can be more plainly for us; for it manifestly shews, that the King and parliament of England would not enact laws to bind Ireland, without the concurrence of the representatives of this kingdom.

Formerly, when Ireland was but thinly peopled, and the English laws not fully current in all parts of the kingdom, 'tis probable that then they could not frequently assemble with conveniency or safety to make laws in their own parliaments at home; and therefore during the heats of rebellions, or confusion of the times, they were forced to enact laws in England. But then this was always by their proper representatives: For we find that in the reign of Edward III. (and by what foregoes, 'tis plain 'twas so in Edward I.'s time) Knights of the Shire, Citizens, and Burgeesses, were elected in the shires, cities, and boroughs of Ireland, to serve in parliament in England, and have so served accordingly. For amongst the records of the Tower of London, Rot. Claus. 50. Edw. 3. Parl. 2. Memb. 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 50th of Edward III. Memb. 19. on complaint to the King by John Draper, who was chosen Burgess of Corke by writ, and served in the parliament of England, and yet was denied his expences by some of the citizens, care was taken to re-imburse him.

If from these last mentioned records, it be concluded that the parliament of England may bind Ireland; it must also be allowed that the people of Ireland ought to have their representatives in the parliament of England.

This sending of representatives out of Ireland to the parliament in England, on some occasions, was found in process of time to be very troublesome and inconvenient; and this, we may presume, was the reason, that afterwards, when times were more settled, we fell again into our old track, and regular course of parliaments in our own country; and hereupon the laws afore-noted, were enacted,

establishing that no law made in the parliament of England, should be of force in Ireland, till it was allowed and published in parliament here.

Modern acts of the parliament of England, naming Ireland.

I have said before, p. 49. that I would only consider the more ancient precedents that are offered to prove, That acts of England particularly naming Ireland, should bind us in this kingdom; and indeed it were sufficient to stop here, for the reason above alledged. However I shall venture to come down lower, and to enquire into the modern precedents of English acts of parliament alledged against us: But still with this observation, that 'tis these we complain against as innovations, and therefore they ought not to be brought in argument against us.

I do therefore again assert, that before the year 1641, there was no statute made in England introductory of a new law that interfered with the right which the people of Ireland have to make laws for themselves, except only those which we have before mentioned, and which we have discussed at large, and submit to the readers judgment.

But in the year 1641, and afterwards in Cromwell's time, and since that, in King Charles II. and again very lately in King William's reign, some laws have been made in England to be of force in Ireland. But how this came to pass, we shall now enquire.

Acts in favour of Adventurers in 1641.

In the 17th year of King Charles I. which was in the year 1642, there were three or four acts of parliament made in England for encouraging Adventurers to raise money for the speedy suppression of the horrid rebellion which broke out in Ireland the 23d of October 1641. The titles of these acts we have in Pulton's Collection of Statutes: But with this remark, That they are made of no force by the Acts of Settlement and Explanation passed in King Charles II'd's time in the kingdom of Ireland. So that in these we are so far from finding precedents for England's parliament binding Ireland, that they plainly shew, that the parliament of Ireland may repeal an act passed in England, in relation to the affairs of Ireland. For 'tis very well known, that persons who were to have interests and titles in Ireland by virtue of those acts passed in England, are cut off by the Acts of Settlement and Explanation. And indeed there is all the reason in the world that it should be so, and that acts made in a kingdom by the legal representatives of the people, should take place of those made in another kingdom. But however, it will be said, that by those acts 'tis manifest that England did presume they had such a right to pass acts binding Ireland, or else they had ne'er done it. To which I answer, that considering the condition Ireland was in at that time, viz. under an horrid intestine rebellion, flaming in every corner of the kingdom; 'twas impossible to have a parliament of our own; yet it was absolutely necessary that something should be done towards suppressing the violences then raging amongst us: And the only means could then be practised, was for the parliament of England to interpose, and do something for our relief and safety; these were the best assurances could be had at that juncture; but when the storm was over, and the kingdom quieted, we see new measures were taken in a legal parliament of our own.

Acts in Cromwell's time.

As to what was done for Ireland in the parliament of England in Cromwell's time, besides the confusion and irregularity of all proceeding in those days, which hinders any of them to be brought into precedent in these times; we shall find also that then there were representatives sent out of this kingdom, who sat in the parliament of England, which then was only the House of Commons. We cannot therefore argue from hence, that England may bind us; for we see they allowed us representatives, without which, they rightly concluded, they could not make laws obligatory to us.

I come now to King Charles the 2d's time; and in it we shall find the following English statutes made, in which the kingdom of Ireland is concerned.

Cattle Act.

The first is an act against importing cattle from Ireland or other parts beyond seas. It was only temporary by 18 Ch. 2. c. 2. but made perpetual 20 Ch. 2. c. 7. and 32 Ch. 2. c. 2. This act, however prejudicial to the trade that was then carried on between Ireland and England, does not properly bind us, more than it does any other country of the world. When any thing is imported, and landed in England, it becomes immediately subject to the laws thereof, so that herein we cannot be said properly to be bound.

Tobacco Act.

Secondly, the acts against planting tobacco in England and Ireland, 12 Ch. 2. c. 34. and 15 Ch. 2. c. 7. and 22 and 23 Ch. 2. c. 26. &c. do positively bind Ireland. But there has never been an occasion of executing it here; for I have not heard that a rood of tobacco was ever planted in this kingdom. But however that takes not off the obligation of the law: 'tis only want of our consent, that I urge against that. I see no more reason for sending a force to trample down an acre of tobacco in Ireland by these statutes, than there would be for cutting down the woods of Shelela, were there an act made in England against our planting or having timber.

Navigation Act.

Thirdly, the act for encouraging shipping and navigation, by express name mentions and binds Ireland; and by the last clause in the act, obliges all ships belonging thereto importing any goods from our foreign plantations, to touch first at England.

Fourthly, the acts prohibiting the exportation of wool from Ireland, to any country except to England, do likewise strongly bind us, and by the 12 Car. 2. c. 32. it was made highly penal on us, and by the 14th of Car. 2. c. 18. 'tis made felony.*

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

To these three last acts, I must confess, I have nothing to urge, to take off their efficacy; name us they do most certainly, and bind us so, as we do not transgress them. But how rightfully they do this, is the matter in question. This I am sure of, that before these acts in King Charles the Second's time, (the eldest of which is not over thirty-seven years) there is not one positive full precedent to be met with in all the statute-book, of an English act binding the kingdom of Ireland. And on this account we may venture to assert, that these are at least innovations on us, as not being warranted by any former precedents.

And shall proceedings only of thirty-seven years standing, be urged against a nation, to deprive them of the 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.

English Acts binding Ireland since King William's Reign.

I am now arrived at our present days, under the happy government of his Majesty King WILLIAM the Third; and I am sorry to reflect, that since the late revolution in these kingdoms, when the subjects of England have more strenuously than ever asserted their own rights, and the liberty of parliaments, it has pleased them to bear harder on their poor neighbours, than has ever yet been done in many ages foregoing. I am sure what was then done by that wise and just body of senators, was perfectly out of good-will and kindness to us, under those miseries which our afflicted country of Ireland then suffered. But I fear some men have since that, made use of what was then done to other purposes than at first intended. Let us now see what that was, and consider the circumstances under which it was done.

In the year 1689, when most of the Protestant nobility, gentry, and clergy of Ireland, were driven out of that kingdom by the insolencies and barbarities of the Irish Papists, who were then in arms throughout the kingdom, and in all places of authority under King James, newly returned to them out of France; the only refuge we had to fly to was in England, where multitudes continued for many months, destitute of all manner of relief, but such as the charity of England afforded, which indeed was very munificent, and never to be forgotten.

Act for the Protestant Irish Clergy.

The Protestant Clergy of Ireland being thus banished from their benefices, many of them accepted such small ecclesiastical promotions in England, as the benevolence of well disposed persons presented them with. But this being directly contrary to a statute in this kingdom, in the 17 and 18 of Charles the Second, cap. 10. intituled, "An act for disabling of spiritual persons from holding benefices or other ecclesiastical dignities in England or Wales, and in Ireland at the same time." The Protestant Irish clergy thought they could not be too secure in avoiding the penalty of the last mentioned act, and therefore applied themselves to the Parliament of England, and obtained an

act in the first year of King William and Queen Mary, c. 29, intituled, "An act for the relief of the Protestant Irish clergy." And this was the first attempt that was made for binding Ireland by an act in England, since his Majesty's happy accession to the throne of these kingdoms.

Act against commerce with France.

Afterwards in the same year, and same session, chap. 34. there passed an act in England, prohibiting all trade and commerce with France, both from England and Ireland. This also binds Ireland, but was during the heat of the war in that kingdom, when 'twas impossible to have a regular Parliament therein, all being in the hands of the Irish Papists. Neither do we complain of it, as hindering us from corresponding with the King's enemies, for 'tis the duty of all good subjects to abstain from that. But as Scotland, though the King's subjects, claims an exemption from all laws but what they assent to in Parliament; so we think this our right also.

When the banished laity of Ireland observed the clergy thus careful to secure their properties, and provide for the worst as well as they could in that juncture, when no other means could be taken by a regular Parliament in Ireland; they thought it likewise adviseable for them to do something in relation to their concerns. And accordingly they obtained the Act for the better security and relief of their Majesties Protestant subjects of Ireland, 1 W. and M. ses. 2. c. 9. Wherein King James's Irish Parliament at Dublin, and all acts and attainders done by them, are declared void. 'Tis likewise thereby enacted, that no Protestant shall suffer any prejudice in his estate or office, by reason of his absence out of Ireland, since December 25, 1685; and that there should be a remittal of the King's quit-rent, from 25 December 1688, to the end of the war. Thus the laity thought themselves secure.

And we cannot wonder that during the heat of a bloody war in this kingdom, when it was impossible to secure our estates and properties by a regular Parliament of our own; we should have recourse to this means, as the only which then could be had. We concluded with ourselves that when we had obtained 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: For we well knew our own constitution under Poyning's law, that no act could pass in the Parliament of Ireland till approved of by the King and Privy Council of England. And we knew likewise, that all the Lords and others of his Majesty's Privy Council in England are members of the Lords or Commons House of parliament there. And that by obtaining their assent to acts of Parliament in favour of the Irish Protestants, they had in a manner pre-engaged their assent to the like bills when they should hereafter come before them as Privy Counsellors, in order to be regularly transmitted to the Parliament of Ireland, there to be passed into laws of that kingdom. But instead of all this, to meet with another construction of what was done herein, and to have it pleaded against us as a precedent of our submission, and absolute acquiescence in the jurif-

dition of the Parliaments of England over this kingdom, is what we complain of as an invasion (we humbly conceive) of that legislative right which our Parliament of Ireland, claims within this kingdom.

Act appointing new Oaths.

The next act passed in the parliament of England, binding Ireland, is that for abrogating the oath of supremacy in Ireland, and appointing other oaths, 3d and 4th William and Mary, c. 2. To this the parliament convened at Dublin, Anno 1692, under Lord Sydney, and that likewise, Anno, 1695, under Lord Capel, paid an entire obedience. And by this ('tis alledged) we have given up our right, if any we had, and have for ever acknowledged our subordination to the parliament of England. But let us a little consider the force of this argument.

I readily grant, that this and the other fore-mentioned acts in England since the Revolution, when they were made, were looked upon highly in our favour, and for our benefit; and to them as such, we have conformed ourselves. But then, in all justice and equity, our submission herein is to be deemed purely voluntary, and not at all proceeding from the right we conclude thereby in the legislators. If a man, who has no jurisdiction over me, command me to do a thing that is pleasing to me, and I do it; it will not thence follow, that thereby he obtains an authority over me, and that ever hereafter I must obey him of duty. If I voluntarily give my money to a man when I please, and think it convenient for me; this does not authorize him at any time to command my money from me when he pleases. If it be said, this allows subjects to obey only whilst 'tis convenient for them. I pray it may be considered, whether any men obey longer, unless they be forced to it; and whether they will not free themselves from this force as soon as they can. 'Tis impossible to hinder men from desiring to free themselves from uneasiness, 'tis a principle of nature, and cannot be eradicated. If submitting to an inconvenience be a less evil than endeavouring to throw it off, men will submit. But if the inconveniency grow upon them, and be greater than the hazard of getting rid of it, men will offer at putting it by, let the statesman or divine say what they can.

But I shall yet go a little further, and venture to assert, that the right of being subject only to such laws to which men give their own consent, is so inherent to all mankind, and founded on such immutable laws of nature and reason, that 'tis not to be aliened, or given up, by any body of men whatsoever: For the end of all government and laws being the public good of the commonwealth, in the peace, tranquillity and ease of every member therein; whatever act is contrary to this end, is in itself void, and of no effect: And therefore for a company of men to say, Let us unite ourselves into a society, and let us be absolutely governed by such laws, as such a legislator, without ever consulting us, shall devise for us; 'tis always to be understood, Provided we find them for our benefit: For to say, We will be governed by those laws, whether they be good or hurtful to us, is absurd in itself: For to what end do men join in society, but to avoid hurt, and the inconveniencies of the state of nature?

Moreover, I desire it may be considered, whether the general application of the chief part of the Irish Protestants, that were at that time in London, to the parliament at Westminster, for obtaining these laws, may not be taken for their consent, and on that account, and no other, these acts may acquire their binding force. I know very well, this cannot be looked upon as a regular and formal consent, such as might be requisite at another more favourable juncture: But yet it may be taken talis qualis, as far as their circumstances at that time would allow, till a more convenient opportunity might present itself.

I am sure, if some such considerations as these, may not plead for us, we are of all his Majesty's subjects the most unfortunate: The rights and liberties of the parliament of England have received the greatest corroborations since his Majesty's accession to the throne; and so have the rights of Scotland; but the rights of the people of Ireland, on the other hand, have received the greatest weakening under his reign, by our submission (as 'tis alledged) to these laws that have been made for us.

This certainly was not the design of his Majesty's glorious expedition into these kingdoms: That, we are told by himself, (whom we cannot possibly mistrust) was to assert the rights and liberties of these nations: and we do humbly presume that his Majesty will be graciously pleased to permit us to enjoy the benefits thereof.

The Opinions of the Lawyers thereon.

And thus I have done with the fourth article proposed. As to the fifth, viz. The opinions of the learned in the laws relating to this matter; 'tis in a great measure dispatched by what I have offered on the fourth head; I shall therefore be the more brief thereon. And I think indeed the only person of note that remains to be considered by us, is the Lord Chief Justice Coke, a name of great veneration with the gentlemen of the long robe, and therefore to be treated with all respect and deference.

In his seventh report in Calvin's case, he is proving that Ireland is a dominion separate and divided from England; for this he quotes many authorities † out of the year-books and reports; and amongst others, he has that which I have before mentioned, pag. 35. 2 R. 3. S. 12. which he transcribes in this manner, *The Irish have a parliament, and make laws, and our statutes do not bind them; because they do not send Knights to our parliament;* and then adds, in a parenthesis, (which is to be understood, unless they be specially named) *but their persons are the Kings subjects, in the same manner as the inhabitants of Calais, Gascoigne, and Guienne.* The first thing I shall observe hereon, is the very unfaithful and broken citation of this passage, as will manifestly appear by comparing it with the true transcript I have given thereof before, page 35. Were this all, 'twere in some measure pardonable. But what cannot be excused, is the unwarrantable position in his parenthesis, without the least colour or ground for it in his text. Herein he concludes downright magisterially, So it must be, this is my definitive sentence;

† 20 Hen. 6. 8. Pilkington's Case. 32 Hen. 6. 25. 20 Eliz. Dyer. 360. Flowd. Com. 360.

as if his plain assertion, without any other reason, ought to prevail; nay, even point-blank against the irrefragable reason of the book he quotes. I confess in another place of Calvin's Case, viz. fol. 17. b. he gives this assertion a colour of reason, by saying, That 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. How far conquest gives a title we have enquired before: But I would fain know what Lord Coke means by Judgment of Law: Whether he means the law of nature and reason, or of nations; or the civil laws of our commonwealths; in none of which senses, I conceive, will he, or any man, be ever able to make out his position.

Is the reason of England's parliament not binding Ireland, Because we do not send thither representatives? And is the efficacy of this reason taken off, by our being named in an English act? Why should sending representatives to parliament, bind those that send them? Meerly because thereby the consent of those that are bound is obtained, as far as those sort of meetings can possibly permit; which is the very foundation of the obligation of all laws. And is Ireland's being named in an English act of parliament, the least step towards obtaining the consent of the people of Ireland? If it be not, then certainly my Lord Coke's parenthesis is to no purpose. And 'tis a wonder to me, that so many men have run upon this vain imagination, meerly from the assertion of this Judge: For I challenge any man to shew me, that any one before him, or any one since, but from him, has vended this doctrine: And if the bare assertion of a Judge, shall bind a whole nation, and dissolve the rights and liberties thereof, we shall make their tongues very powerful, and constitute them greater law-givers than the greatest senates. I do not see why my denying it, should not be as authentic as his affirming it. 'Tis true, he was a great lawyer and a powerful Judge; but had no more authority to make a law, than I or any man else. But some will say, he was a learned Judge, and may be supposed to have reason for his position. Why then does he not give it us? And then what he asserts would prevail, not from the authority of the person, but from the force of the reason. The most learned in the laws have no more power to make or alter a constitution, than any other man; and their decisions shall no farther prevail, than supported by reason and equity. I conceive my Lord Chief Justice Coke applied himself so wholly to the study of the Common Laws of England, that he did not enquire far into the laws of nature and nations; if he had, certainly he could never have been guilty of such an erroneous slip; he would have seen demonstrably, that consent only gives human laws their force, and that therefore the reason in the case he quotes is unanswerable, *Because they do not send Knights to Parliament.* Moreover, the assertion of Coke in this point is directly contrary to the whole tenour of the case which he cites: For the very act of parliament, on which the debate of the Judges did arise, and which they deemed not to be of force in Ireland, particularly names Ireland. So that here again Lord Coke's error appears most plainly. For this I refer to the Report, as I have exactly delivered it before, page 35. By which it appears clearly to be the unanimous opinion of all the Judges then in the Exchequer Chamber: That within the land of Ire-

land, the parliaments of England have no jurisdiction, whatever they may have over the subjects of Ireland on the open seas: And the reason is given, *Because Ireland doth not send Knights to parliament in England.*

This assertion likewise is inconsistent with himself in other parts of his works. He tells us in his 4th Inst. pag. 349. That 'tis plain that not only King John (as all men allow) but Henry II. also, the father of King John, did ordain and command, at the instance of the Irish, that such laws as had been in England should be observed, and of force in Ireland. Hereby Ireland being of itself a distinct dominion, and no part of the kingdom of England, was to have parliaments holden there as in England. And in pag. 12, he tells us, That Henry II. sent a Modus into Ireland, directing them how to hold their parliaments. But to what end was all this, if Ireland nevertheless were subject to the parliament of England? The King and parliaments of these kingdoms are supreme legislators; if Ireland be subject to two (its own, and that of England) it has two supremes; 'tis not impossible, but they may enact different or contrary sanctions; which of these shall the people obey? He tells us in Calvin's case, fol. 17. b. That if a King hath a Christian kingdom by conquest, as Henry II. had Ireland, after King John had given to them, being under his obedience, and subjection, the laws of England for the government of that country, no succeeding King could alter the same without parliament. Which, by the way, seems directly contradictory to what he says concerning Ireland six lines below this last cited passage. So that we may observe my Lord Coke enormously stumbling at every turn in this point.

Opinions of other Judges, in favour of Ireland.

Thus I have done with this Reverend Judge; and, in him, with the only positive opinion against us. I shall now consider what our law-books offer in our favour on this point.

To this purpose we meet a case fully apposite, reported in the year-book of the 20th of Henry VI. fol. 8. between one John Pilkington and one A.

Pilkington's Case.

Pilkington brought a Scire Facias against A. to shew cause, why letters patents whereby the King had granted an office in Ireland to the said A. should not be repealed, since the said Pilkington had the same office granted to him by former letters patents of the same King to be occupied by himself or his deputy. Whereupon A. pleaded, that the land of Ireland, time out of memory, hath been a land separated and distinct from the land of England, and ruled and governed by the customs of the same land of Ireland. That the Lords of the same land, which are of the King's council, have used from time to time, in the absence of the King, to elect a Justice, who hath power to pardon and punish all felonies, &c. and to call a parliament, and by the advice of the Lords and Commonalty to make statutes. He alledged further, that a parliament was assembled, and that it was ordained by the said parliament, † that every man who had an office within the said land, before a certain day, shall occupy the said office by himself, otherwise, he should forfeit. He shewed that Pilkington

† This statute we may reckon, amongst the number of those that are lost during the long intervals of our Irish acts, noted before, to be about 112 Years.

ton occupied by a Deputy; and that therefore his office was void, and that the King had granted the said office to him the said A. Hereupon Pilkington demurred in law; and it was debated by the Judges, Yelverton, Fortescue, Portington, Markham, and Ascough, whether the said prescription in relation to the state and government of Ireland; be good or void in law. Yelverton and Portington held the prescription void: But Fortescue, Markham, and Ascough held the prescription good; and that the letters patent made to A. were good, and ought not to be repealed. And in this it was agreed by Fortescue and Portington, that if a tenth or fifteenth be granted by parliament in England, that shall not bind Ireland, although the King should send the same statute into Ireland under his great seal; except they in Ireland will in their parliament approve it; Because they have not any commandment by writ to come to the parliament of England: And this was not denied by Markham, Yelverton, or Ascough.

Merchants of Waterford's Case.

The Merchants of Waterford's Case, which I have observed before. p. 35. as reported in the year book of the 2d of Richard III. fol. 11, 12. is notorious on our behalf, but needs not be here repeated.

Prior of Lanthony's Case.

The Case of the Prior of Lanthony in Wales, mentioned by Mr. Pryn against the 4th Inst. ch. 76. p. 313. is usually cited against us. But I conceive 'tis so far from proving this, that 'tis very much in our behalf. The case was briefly thus: The Prior of Lanthony brought an action in the Common Pleas of Ireland against the Prior of Mollingar, for an arrear of an annuity, and judgment went against the Prior of Mollingar; hereon the Prior of Mollingar brought a Writ of Error in the King's-Bench of Ireland, and the judgment was affirmed. Then the Prior of Mollingar appealed to the parliament in Ireland held 5 Henry VI. before James Butler Earl of Ormond, and the parliament reversed both judgments. The Prior of Lanthony removed all into the King's-Bench in England; but the King's-Bench refused to intermeddle, as having no power over what had passed in the parliament of Ireland. Hereupon the Prior of Lanthony appealed to the Parliament of England. And it does not appear by the parliament roll * that any thing was done on this appeal; all that is entered being only the petition itself at the end of the Roll. Vid. Pryn against the 4th Inst. chap. 76. p. 313.

Now whether this be a precedent proving the subordination of our Irish parliament to that of England, I leave the reader to judge: To me it seems the clear contrary. For first we may observe, the King's-Bench in England absolutely disclaiming any cognizance of what had passed in the parliament of Ireland. And next we may observe, that nothing at all was done therein upon the appeal to the parliament of England: Certainly if the parliament of England had thought themselves to have a right to enquire into this matter, they had so done, one way or other, and not left the matter undetermined and in suspense.

* Rot. Parl. An. 8. Hen. VI. in ult.

Argument from acts of succession and recognition passed in Ireland.

It has ever been acknowledged that the kingdom of Ireland is inseparably annexed to the imperial crown of England. The obligation that our legislature lies under by Poynings Act, 10 Hen. VII. c. 4. makes this tie between the two kingdoms indissoluble. And we must ever own it our happiness to be thus annexed to England: And that the Kings and Queens of England are by undoubted right, ipso facto, Kings and Queens of Ireland. And from hence we may reasonably conclude, that if any acts of parliament made in England, should be of force in Ireland, before they are received there in parliament, they should be more especially such acts as relate to the succession and settlement of the crown, and recognition of the King's title thereto, and the power and jurisdiction of the King. And yet we find in the Irish statutes, 28 Henry VIII. c. 2. an Act for the Succession of the King and Queen Ann; and another, chap. 5. declaring the King to be supreme head of the church of Ireland; both which acts had formerly passed in the parliament of England. So likewise we find amongst the Irish statutes acts of recognition of the King's title to Ireland, in the reigns of Henry VIII. Queen Elizabeth, King James, King Charles II. King William and Queen Mary, by which it appears that Ireland, though annexed to the crown of England, has always been looked upon to be a kingdom compleat within itself, and to have all jurisdiction to an absolute kingdom belonging, and subordinate to no legislative authority on earth. Though 'tis to be noted, these English acts relating to the succession, and recognition of the King's title, do particularly name Ireland.

Ireland's State Ecclesiastical independent.

As the civil state of Ireland is thus absolute within itself, so likewise is our State Ecclesiastical: This is manifest by the canons and constitutions, and even by the articles of the Church of Ireland, which differ in some things from those of the Church of England. And in all the charters and grants of liberties and immunities to Ireland, we still find this, That Holy Church shall be free, &c. I would fain know what is meant here by the word free: Certainly if our church be free and absolute within itself, our state must be so likewise; for how our civil and ecclesiastical government is now interwoven, every body knows. But I will not enlarge on this head, it suffices only to hint it; I shall detain myself to our civil government.

Argument from a Record in Reyley.

Another argument against the parliament of England's jurisdiction over Ireland, I take from a record in Reyley's Placita Parliamentaria, page 569. to this effect: † In the 14th of Edward II. the King sent his letters patents to the Lord Justice of Ireland, letting him know, that he had been moved by his parliament at Westminster, that he would give order that the Irish natives of Ireland, might enjoy the laws of England concerning life and member, in as large and ample manner as the English of Ireland enjoyed the same. This therefore the King gives in commandment, and orders accordingly, by these his letters patents. From hence, I say, we may gather, that the parliament of England did not then take upon them to have any ju-

jurisdiction in Ireland, (for then they would have made a law for Ireland to this effect) but instead thereof, they apply to the King, that he would interpose his commands, and give directions that this great branch of the Common Law of England should be put in execution in Ireland indifferently to all the King's subjects there, pursuant to the original compact made with them on their first submission to the crown of England.

Objections drawn from a Writ of Error.

Let us now consider the great objection drawn from a Writ of Error's lying from the King's-Bench of England, on a judgment given in the King's-Bench in Ireland; which proves (as 'tis insisted on) that there is a subordination of Ireland to England; and that if an inferior court of judicature in England, can thus take cognizance of, and overrule the proceedings in the like court of Ireland; it will follow, that the supreme court of parliament in England may do the same, in relation to the proceedings of the court of parliament in Ireland.

It must be confessed that this has been the constant practice; and it seems to be the great thing that induced my Lord Coke to believe that an act of parliament in England, and mentioning or including Ireland, should bind here. The subordination of Ireland to England, he seems to infer from the subordination of the King's-Bench of Ireland, to the King's-Bench of England. But to this I answer:

1. That 'tis the opinion of several learned in the laws of Ireland, that this removal of a judgment from the King's Bench of Ireland, by Writ of Error, into the King's Bench of England, is founded on an act of parliament in Ireland, which is lost amongst a great number of other acts, which we want for the space of 130 years at one time, and 120 at another time, as we have noted before. But it being only a general tradition, that there was such an act of our parliament, we only offer it as a surmise, the statute itself does not appear.

2. Where a judgment in Ireland is removed, to be reversed in England, the Judges in England ought, and always do judge, according to the laws and customs of Ireland, and not according to the laws and customs of England, any otherwise than as these may be of force in Ireland; but if in any thing the two laws differ, the law of Ireland must prevail, and guide their judgment. And therefore in the case of one Kelly, removed to the King's Bench in England, in the beginning of King Charles I. one error was assigned that the *Præcipe* was of woods and underwoods, which is a manifest error, if brought in England; but the Judges finding the use to be otherwise in Ireland, judged it no error. So in Crook, Charles, fol. 511. *Mulcarry* vers. *Eyres*. Error was assigned, for that the declaration was of one hundred acres of bog, which is a word not known in England; but 'twas said, it was well enough understood in Ireland, and so adjudged no error.

From whence, I conceive, 'tis manifest, that the jurisdiction of the 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; but from some other reason, which we shall endeavour to make out.

3. We have before observed, that in the reign of King Henry III. Gerald Fitz Maurice, Lord Justice of Ireland, sent four Knights to know what was held for law in England in the case of Coparceners.

The occasion of which message (as before we have noted out of the King's Rescript) was, because the King's Justice of Ireland was ignorant what the law was. We may reasonably imagine that there were many messages of this kind; for in the infancy of the English government, it may well be supposed, that the Judges in Ireland were not so deeply versed in the laws of England: This occasioned messages to England, before judgment given in Ireland, to be informed of the law. And after decrees made, persons who thought themselves aggrieved by erroneous judgments, applied themselves to the King in England for redress. Thus it must be, that Writs of Error (unless they had their sanction in parliament) became in use. Complaints to the King by those that thought themselves injured, increased; and at last grew into custom, and obtained the force of law.

Perhaps it may be objected, that if the Judges of the King's Bench in England ought to regulate their judgment by the customs of Ireland, and not of England, it will follow, that this original which we assign of Writs of Error to England, is not right.

I answer, that this may be the primary original, and yet consist well enough with what we have before laid down: For though the Common Law of England was to be the Common Law of Ireland, and Ireland at the beginning of its English government might frequently send into England to be informed about it; yet this does not hinder, but Ireland, in a long process of time, may have some smaller customs and laws of its own, gradually but insensibly crept into practice, that may in some measure differ from the customs and practice of England; and where there is any such, the Judges of England must regulate their sentence accordingly, though the first rise of Writs of Error to England, may be as we have here suggested. In like manner, where the Statute-law of Ireland differs from that of England, the Judges of England will regulate their judgments by the Statute-law of Ireland: This is the constant practice, and notoriously known in Westminster-Hall: From which it appears, that removing a judgment from the King's Bench of Ireland, to the King's Bench of England, is but an Appeal to the King in his Bench of England, for his sense, judgment, or exposition of the laws of Ireland. But of this more hereafter.

4. When a Writ of Error is returned into the King's Bench of England, suit is made to the King only; the matter lies altogether before him; and the party complaining applies to no part of the political government of England for redress, but to the King of Ireland only, who is in England: That the King only is sued to, our law-books make plain. This court is called *the Court of our Lord the King, and the King's Court*, because the King used to sit there in person, as Lambard tells us; and every cause brought there, is said to be *before our Lord the King*, even at this very day, Coke 4 Inst. p. 72. Therefore if a writ be returnable *before us, wherever we shall be*, 'tis to be returned to the King's Bench. But if it be returnable *before our Judges at Westminster*, 'tis to be returned into the Common Pleas. This Court (as Glanvil and other ancients tell us) used to travel with the King, wherever he went. And Fleta, in describing this Court, says, *The King hath his own Court and his own Judges, before whom, and nowhere*

else, except before himself, &c. false judgments are to be returned and corrected. The King then (as Britton says) having supreme jurisdiction in his realm, to judge in all causes whatsoever; therefore it is, that erroneous judgments were brought to him out of Ireland. But this does not argue that Ireland is therefore subordinate to England; for the people of Ireland are the subjects of the King to whom they appeal. And 'tis not from the country where the court is held, but from the presence and authority of the King (to whom the people of Ireland have as good a title as the people of England) that the pre-eminence of the jurisdiction does flow. And I question not, but in former times, when these courts were first erected, and when the King exerted a greater power in judicature than he does now, and he used to sit in his own court, that if he had 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; for so certainly it must be, since the court travelled with the King. From hence it appears, that all the jurisdiction, that the King's Bench in England, has over the King's Bench in Ireland, arises only from the King's presence in the former. And the same may be said of the Chancery in England, if it will assume any power to control the Chancery in Ireland; because (as Lambard says, p. 69, 70.) the Chancery did follow the King, as the King's-Bench did; and that, as he tells us out of the Lord Chief Justice Scroope, the Chancery and the King's-Bench were once but one place. But if this be the ground of the jurisdiction of the King's-Bench in England over the King's-Bench in Ireland, (as I am fully persuaded it is) the parliament in England cannot from hence claim any right of jurisdiction in Ireland, because they claim a jurisdiction of their own; and their court is not the King's-court, in that proper and strict sense that the King's-Bench is.

But granting that the subordination of the King's-Bench in Ireland, to the King's-Bench in England, be rightly concluded from a Writ of Error out of the latter, lying on a judgment in the former; I see no reason from thence to conclude, that therefore the parliament of Ireland is subordinate to the parliament in England, unless we make any one sort of subordination, or in any one part of jurisdiction, to be a subordination in all points, and all parts of jurisdiction. The subjects of Ireland may appeal to the King in his Bench in England, for the expounding of the old common and statute law of Ireland; will it therefore follow that the parliament of England shall make new laws to bind the subjects in Ireland? I see no manner of consequence in it; unless we take expounding old laws, (or laws already made) in the King's-Bench, and making new laws in parliament, to be one and the same thing. I believe the best logician in Europe will hardly make a chain of syllogisms, that from such premises, will regularly induce such a conclusion.

To close this point, we find that a judgment of the King's-Bench in Ireland, may be removed by a Writ of Error to the parliament in Ireland: But the judgment of the parliament of Ireland was never questioned in the parliament of England. This appears from the Prior of Lanthony's case aforegoing.

Declaration in the Irish Act of Faculties.

I shall conclude this our fifth article with a memorable passage out of our Irish statutes, which seems to strengthen what we have delivered on the business of a Writ of Error, as well as the chief doctrine I drive at; and that is 28 Henry VIII. chap. 19. The Act of Faculties. This statute is a recital at large of the English Act of the 25 Henry VIII. c. 21. In the preamble of which English Act 'tis declared, "That this your Grace's realm recognizing no superior but your Grace, hath been and yet is free from any subjection to any man's laws, but only such as have been devised within this realm, for the wealth of the same, or to such others, as by sufferance of your Grace and your progenitors, the people of the realm have taken at their free liberties by their own consent; and have bound themselves by long use and custom to the observance of, &c."

This declaration, with the other clauses of the said English Act, is verbatim recited in the Irish Act of Faculties; and in the said Irish Act it is enacted, That the said English Act, and every thing and things therein contained, shall be established, affirmed, taken, obeyed and accepted within this land of Ireland as a good and perfect law, and shall be within the said land of the same force, effect, quality, condition, strength and virtue, to all purposes and intents, as it is within the realm of England; (if so, then the said clause declares our right of being bound only by laws to which we consent, as it does the right of the people of England) and that all subjects within the said land of Ireland, shall enjoy the profit and commodity thereof, in like manner as the King's subjects of the realm of England.

Farther reasons offered in behalf of Ireland.

I am now arrived at our sixth and last article proposed, viz. The reasons and arguments that may be farther offered on one side and the other in this debate.

England's title to Ireland by purchase.

I have before taken notice of the title England pretends over us from conquest: I have likewise enquired into the precedents on one side and the other, from acts of parliament, from records, and from reports of the learned in the laws. There remains another pretence or two for this subordination, to be considered; and one is founded on purchase.

'Tis said, that vast quantity of treasure, that from time to time has been spent by England in reducing the rebellions and carrying on the wars of Ireland, has given them a just title at least to the lands and inheritances of the rebels, and to the absolute disposal thereof in their parliament; and as particular examples of this, we are told of the great sums advanced by England for suppressing the rebellion of the Irish Papists in 1641, and opposing the late rebellion since King WILLIAM's accession to the throne.

To this I answer, That in a war there is all reason imaginable that the estates of the unjust opposers should go to repair the damage that is done. This I have briefly hinted before. But if we consider the

wars of Ireland we shall perceive they do not resemble the common case of wars between two foreign enemies; ours are rather rebellions, or intestine commotions; that is, the Irish Papists rising against the King and Protestants of Ireland; and then 'tis plain, that if these latter, by the assistance of their brethren of England, and their purse, do prove victorious, the people of England ought to be fully repaid: But then the manner of their payment, and in what way it shall be levied, ought to be left to the people of Ireland in parliament assembled: And so it was after the rebellion of 1641. The adventurer then were at vast charges, and there were several acts of parliament in England made for their re-imbursing, by disposing to them the rebels lands. But after all, it was thought reasonable that the parliament of Ireland should do this in their own way; and therefore the Acts of Settlement and Explanation, made all the former English acts of no force; or at least did very much alter them in many particulars, as we have noted before. In like manner we allow that England ought to be repaid all their expences in suppressing this late rebellion: All we desire is, that, in preservation of our own rights and liberties, we may do it in our own methods regularly in our own parliament: And if the re-imbursment be all that England stands upon, what availeth it whether it be done this way or that way, so it be done? We have an example of this in point between England and Holland in the glorious revolution under his present Majesty: Holland in assisting England expended 600,000*l.* and the English parliament fairly repaid them. It would have looked oddly for Holland to have insisted on disposing of Lord Powis's and other estates, by their own laws, to re-imburse themselves.

'Tis an ungenerous thing to vilify good offices, I am far from doing it, but with all possible gratitude acknowledge the mighty benefits Ireland has often received from England, in helping to suppress the rebellions of this country; to England's assistance our lives and fortunes are owing: But with all humble submission, I desire it may be considered, whether England did not at the same time propose the prevention of their own danger, that would necessarily have attended our ruin; if so, it was in some measure their own battles they fought, when they fought for Ireland; and a great part of their expence must be reckoned in their own defence.

Object. Ireland prejudicial to England's trade, therefore to be bound.

Another thing alleged against Ireland is this: If a foreign nation, as France or Spain for instance, prove prejudicial to England, in its trade, or any other way; England, if it be stronger, redresses itself by force of arms, or denouncing war; and why may not England, if Ireland lies cross their interests, restrain Ireland, and bind it by laws, and maintain these laws by force?

To this I answer: First, that it will hardly be instanced, that any nation ever declared war with another, merely for over-topping them in some signal advantage, which otherwise, or but for their endeavours, they might have reaped. War only is justifiable for injustice done, or violence offered, or rights detained. I cannot by the law of nations. quarrel with a man. because he, going before me in the road,

finds a piece of gold, which possibly, if he had not taken it up, I might have light upon and gotten. 'Tis true, we often see wars commenced on this account under-hand, and on emulation in trade and riches; but then this is never made the open pretence, some other colour it must receive, or else it would not look fair; which shews plainly, that this pretence of being prejudicial, or of reaping advantages which otherwise you might partake of, is not justifiable in itself. But granting that it were a good justification of a war with a foreign nation, it will make nothing in the case between England and Ireland; for if it did, why does it not operate in the same manner between England and Scotland, and consequently in like manner draw after it England's binding Scotland by their laws at Westminster: We are all the same King's subjects, the children of one common parent; and though we may have our distinct rights and inheritances absolutely within ourselves; yet we ought not, when these do chance a little to interfere to the prejudice of one or the other side, immediately to treat one another as enemies, fair amicable propositions should be proposed, and when these are not hearkened to, then it is time enough to be at enmity, and use force.

Object. Ireland a Colony.

The last thing I shall take notice of, that some raise against us, is, that Ireland is to be looked upon only as a colony from England: And therefore as the Roman colonies were subject to, and bound by, the laws made by the senate at Rome; so ought Ireland by those made by the great council at Westminster. Of all the objections raised against us, I take this to be the most extravagant; it seems not to have the least foundation or colour from reason or record: Does it not manifestly appear by the constitution of Ireland, that it is a compleat kingdom within itself? Do not the Kings of England bear the stile of Ireland amongst the rest of their kingdoms? Is this agreeable to the nature of a colony? Do they use the title of Kings of Virginia, New-England, or Maryland? Was not Ireland given by Henry II. in a parliament at Oxford to his son John, and made thereby an absolute kingdom, separate and wholly independent on England, till they both came united again in him, after the death of his brother Richard without issue? Have not multitudes of acts of parliament both in England and Ireland, declared Ireland a compleat Kingdom? Is not Ireland stiled in them all, the kingdom, or realm of Ireland? Do these names agree to a colony? Have we not a parliament, and courts of judicature? Do these things agree with a colony? This on all hands involves so many absurdities, that I think it deserves nothing more of our consideration.

These being the only remaining arguments that are sometimes mentioned against us, I now proceed to offer what I humbly conceive demonstrates the justice of our cause.

And herein I must beg the reader's patience, if now and then I am forced lightly to touch upon some particulars foregoing. I shall endeavour all I can to avoid prolix repetitions; but my subject requires that sometimes I just mention, or refer to, several notes before delivered.

First, therefore, I say, That Ireland should be bound by acts of parliament made in England, is against reason, and the common rights of all mankind.

Against the rights of Mankind.

All men are by nature in a state of equality, in respect of jurisdiction or dominion: This I take to be a principle in itself so evident, that it stands in need of little proof. It is not to be conceived, that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should be subordinate and subject one to another; these to this or that of the same kind. On this equality in nature is founded that right which all men claim, of being free from all subjection to positive laws, till by their own consent they give up their freedom, by entering into civil societies for the common benefit of all the members thereof.

Consent only gives law force.

And on this consent depends the obligation of all human laws; in-
somuch that without it, by the unanimous opinion of all jurists, no
sanctions are of any force. For this let us appeal, amongst many,
only to the judicious Mr. Hooker's Eccles. Polity, book 1. sect. 10.
Lond. Edit. 1676. Thus he;

“Howbeit, laws do not take their constraining force from the qua-
“lity of such as devise them, but from that power which doth give
“them the strength of laws. That which we speak before, concern-
“ing the power of government, must here be applied to the power of
“making laws whereby to govern, which power God hath over all;
“and by the natural law, whereunto he hath made all subject, the
“lawful power of making laws, to command whole politic societies of
“men, belongeth so properly unto the same entire societies, that for
“any Prince or Potentate, of what kind soever upon earth, to exer-
“cise the same of himself, and not either by express commission im-
“mediately and personally received from God, or else by authority
“derived at the first from their consent, upon whose persons they im-
“pose laws, it is no better than mere tyranny. Laws they are not
“therefore, which public approbation hath not made so: But ap-
“probation not only they give, who personally declare their assent
“by voice, sign, or act; but also when others do it in their names,
“by right originally, at the least, deprived from them: As in Parlia-
“ments, Councils, &c.”

Again, “Such men naturally have no full and perfect power to
“command whole politic multitudes of men; therefore utterly without
“our consent, we could in such sort be at no man's commandment
“living. And to be commanded we do consent, when that society
“whereof we are part, hath at any time before consented, without
“revoking the same after by the like universal agreement. Where-
“fore as any man's deed past is good, as long as himself continueth,
“so the act of a public society of men, done five hundred years since,
“standeth as theirs who presently are of the same societies, be-
“cause corporations are immortal; we were then alive in our pre-
“decessors, and they in their successors do still live. Laws therefore
“human of what kind soever, are available by consent, &c.”

And again, "But what matter the law of nations doth contain, I omit to search; the strength and virtue of that law is such, that no particular nation can lawfully prejudice the same by any their several laws and ordinances, more than a man by his private resolutions the law of the whole commonwealth or state wherein he liveth; for as civil law being the act of a whole body politic, doth therefore over-rule each civil part of the same body; so there is no reason that any one commonwealth of itself, should to the prejudice of another, annihilate that whereupon the whole world hath agreed."

To the same purpose may we find the universal agreement of all Civilians, Grotius, Puffendorf, Locke on Government, &c."

No one or more men, can by nature challenge any right, liberty or freedom, or any ease in his property, estate or conscience, which all other men have not an equally just claim to. Is England a free people? So ought France to be. Is Poland so? Turkey likewise, and all the Eastern dominions, ought to be so: And the same runs throughout the whole race of mankind,

Against the Common Law of England.

Secondly, 'Tis against the common laws of England, which are of force both in England and Ireland, by the original compact before hinted. It is declared by both houses of the parliament of England, 1 Jac. cap. 1. "That in the High Court of Parliament, all the whole body of the realm, and every particular member thereof, either in person, or by representation (upon their own free elections) are by the laws of this realm deemed to be personally present." Is this then the common law of England, and the birth-right of every free-born English subject? And shall we of this kingdom be denied it, by having laws imposed on us, where we are neither personally, nor representatively present? My Lord Coke in his 4th Inst. cap. 1. saith, "That all the Lords Spiritual and Temporal, and all the Commons of the whole realm, ought *of right* to be summoned to parliament, and none of them ought to be omitted." Hence it is called *General Council* in the Stat. of Westminster. 1. and *Common Council* because it is to comprehend all persons and estates in the whole kingdom. And this is the very reason given in the case of the Merchants of Waterford foregoing, why statutes made in England, should not bind them in Ireland, *because they have not Knights in Parliament here.* My Lord Hobbard in the case of Savage and Day, pronounced it for law, that whatever is against natural equity and reason, is against law; nay, if an act of parliament were made against natural equity and reason, that act was void. Whether it be not against equity and reason, that a kingdom regulated within itself, and having its own parliament, should be bound without their consent, by the parliament of another kingdom, I leave the reader to consider. My Lord Coke likewise in the first part of his Institutes, fol. 97. b. saith, *Nothing can have the force of law, that is contrary to reason.* And in the old *Modus Tenendi Parliamenta* of England, said to be writ about Edward the Confessor's time, and to have been confirmed and approved by William the Conqueror: It is expressly declared, That all the Lords Spiritual and Temporal, and the Knights, Citizens, and Burgeses ought to be summoned to parliament. The very same is in the *Modus* sent into Ire-

land by Henry II. And in King John's great Charter, dated 17 Johannis, 'tis granted in these words, *And in order to the holding of a Common Council of the kingdom for settling Aids and Knights services, we will cause the Archbishops, Bishops, Abbots, Earls, and greater Barons of the kingdom to be particularly summoned by our writ, and we will cause all others to be summoned in general by the Sheriffs.* All are to be summoned to parliament, the Nobility by special writs; the Commons by general writs to the Sheriffs. And is this the Common Law of England? Is this part of those *free customs* that were contained in the great Charter of the liberties of the people of England; and were so solemnly granted by Henry II. King John, and Henry III. to the people of Ireland, that they should enjoy and be governed by; and unto which they were sworn to be obedient; and shall they be of force only in England and not in Ireland? Shall Ireland receive these charters of liberties, and be no partakers of the freedoms therein contained? Or do these words signify in England one thing, and in Ireland no such thing? This is so repugnant to all natural reason and equity, that I hope no rational man will contest it: I am sure if it be so, there is an end of all speech amongst men; all compacts, agreements, and societies, are to no purpose.

Against the Statute Law both of England and Ireland.

3dly. It is against the statute laws both of England, and Ireland: This has been pretty fully discussed before; however I shall here again notice, that * in the 10th of Henry IV. It was enacted in Ireland, that statutes made in England should not be of force in Ireland, unless they were allowed and published by the parliament of Ireland. And the like statute was made the 29th of Henry VI. And in the 10th year of Henry VII. chap. 23. Irish statutes, the parliament which was held at Drogheda, before Sir Christopher Preston, Deputy to Jasper Duke of Bedford, Lieutenant of Ireland, was declared void, for this reason amongst others, That there was no general summons of the said parliament to all the shires, but only to four. And if acts of parliament made in Ireland shall not bind that people, because some counties were omitted: how much less shall either their persons or estates be bound by those acts made in England, whercat no one county, or person of that kingdom, is present? In the § 25th of Edward I. cap. 6. It was enacted by the parliament of England in these words, "Moreover from henceforth we shall take no manner of aid, taxes, or prizes, but by the common assent of the realm." And again in the Statute of Liberties, by the same King, cap. 1. *De Tallag. non concedend* it is enacted in these words. † "No tallage or aid shall be taken or levied by us, or our heirs, in our realm, without the good will and assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the land." The like liberties are specially confirmed to the clergy, ‡ the 14th of Edward III. And were these statutes, and all other statutes and acts of the parliament of England ratified, confirmed, and adjudged by several parliaments of Ireland to be of force within this realm: And shall the people of Ire-

* See before.

† Ibid. page 75.

§ Pulton's Col. Eng. Stat. Edit. 1670, page 63.

‡ Ibid. page 113.

land receive no benefit by those acts? Are those statutes of force in England only; and can they add no immunity or privilege to the kingdom of Ireland when they are received there? Can the King and parliament make acts in England to bind his subjects of Ireland without their consent; and can he make no acts in Ireland with their consent, whereby they may receive any privilege or immunity? This were to make the parliaments of Ireland wholly illusory, and of no effect. If this be reasonable doctrine, to what end was Poynings law in Ireland, † that makes all the statutes of England before that, in force in this kingdom? This might as well have been done, and again undone, when they please, by a single act of the English parliament. But let us not make thus light of constitutions of kingdoms, 'tis dangerous to those who do it, 'tis grievous to those that suffer it.

Moreover, had the King or his council of England, in the 10th year of Henry VII. in the least dreamt of this doctrine, to what end was all that strict provision made by Poynings Act, Irish Stat. cap. 4. That no act of parliament should pass in Ireland, before it was first certified by the chief Governour and Privy Council here, under the broad seal of this kingdom, to the King and his Privy Council in England, and received their approbation, and by them be remitted hither under the broad seal of England, here to be passed into a law? The design of this act, seems to be the prevention of any thing passing in the parliament of Ireland surreptitiously, to the prejudice of the King, or the English interest of Ireland. But this was a needless caution, if the King, and parliament of England, had power at any time to revoke or annul any such proceedings. Upon this act of Poynings, many and various acts have passed in Ireland, relating to the explanation, suspension, or farther corroboration thereof, in divers parliaments, both in Henry VIII's, Phil. and Mary's, and Q. Eliz. reigns; for which see the Irish Statutes ‡. All which shew that this doctrine was hardly so much as surmised in those days, however we come to have it raised in these latter times.

Against several concessions made to Ireland.

Fourthly, 'Tis against several Charters of Liberties granted unto the kingdom of Ireland: This likewise is clearly made out by what foregoes. I shall only add in this place, that in the Patent-roll of the 17 Rich. II. m. 34. *de Confirmatione*, there is a confirmation of several liberties and immunities granted unto the kingdom and people of Ireland by Edward III. The patent is somewhat long, but so much as concerns this particular, I shall render verbatim, as I have it transcribed from the Roll by Sir William Domville, Attorney General in Ireland during the whole reign of King Charles II. *The King, &c. greeting. We have considered the Letters Patents of Edward our grandfather, lately King of England, in these words: "Edward by the Grace of God, King of England, and France, and Lord of Ireland, to the Archbishops, Bishops, Abbots, Priors, our Ministers both of higher and of lower rank, and to all our faithful subjects of the land of Ireland to whom these presents shall come greeting.—We have thought it good that the following*

† 10 Hen. VII. c. 22. ‡ 28 H. VIII. c. 4. 28 H. VIII. c. 20. 3 & 4. Phil. & Mary, c. 4. 11 Eliz. ses. 2. c. 1. 11 Eliz. ses. 3. c. 8.

things be ordained and strictly observed, &c. to wit. First, we will and command, that our holy Irish Church have her own liberties and free customs unimpaired, and that she use and enjoy them without restraint. Item, We will and command that our business, and that of the land itself, especially the greatest and most difficult, be managed, explained, faithfully discussed, and also determined without the influence of fear, favour, hatred, or reward, IN COUNCILS, by our skilful Counsellors and Prelates, and Grandees, and some of the most discreet and upright men, to be convened for this purpose from the neighbourhood of the places where it shall happen that such Councils shall be held; and in PARLIAMENTS, by our said Counsellors and Prelates and Nobles, and others of the aforesaid land, as use requires, according to justice, law, custom and reason, &c. In Testimony whereof we have caused these our letters to be made patent. Witness ourself at Westminster, the 25th Day of October, in the 31st year of our reign in England, and 18th in France." Now we accounting the aforesaid appointments, ordinances and commands, and all and singular the things contained in the above recited letters, as being already established and right, do for ourse'ves and our heirs, to the utmost of our power, accept, approve, ratify and confirm the same, as the aforesaid letters do fully shew. In testimony whereof, witness the King at Westminster, on the 26th of June.

Inconsistent with the royalties of a kingdom.

Fifthly, It is inconsistent with the royalties and pre-eminence of a separate and distinct kingdom. That we are thus a distinct kingdom, has been clearly made out before. 'Tis plain, the Nobility of Ireland are an order of peers clearly distinct from the peccage of England, the privileges of the one extend not into the other kingdom; a Lord of Ireland may be arrested by his body in England, and so may a Lord of England in Ireland, whilst their persons remain sacred in their respective kingdoms: A Voyage Royal may be made into Ireland, as the Year-book, 11 Henry IV. 17. fol. 7. and Lord Coke tells us; and King John in the 12th year of his reign of England, made a Voyage Royal into Ireland; and all his tenants in chief, which did not attend him in that voyage, did pay him Escuage, at the rate of two marks for every Knight's fee; which was imposed upon the Prelates and Barons for the King's passage into Ireland, as appears by the Pipe-Roll, Scutag. 12th of King John in the Exchequer of England. Which shews that we are a complete kingdom within ourselves, and not little better than a province, as some are so extravagant as to assert; none of the properties of a Roman province agreeing in the least with our constitution. 'Tis resolved in Sir Richard Pembrough's Case in the 44th of Edward III. that Sir Richard might lawfully refuse the King, to serve him as his Deputy in Ireland, and that the King could not compel him thereto, for that were to banish him into another kingdom, which is against Magna Charta, chap. 29. Nay, even tho' Sir Richard had great tenures from the King, *for service done and to be done*, for that was said must be understood within the realm of England, Coke's 2d Inst. page 47. And in Pilkington's Case aforementioned, Fortescue declared, that the land of Ireland is and at all times hath been a dominion separate and divided from England. How then can the realms of England and Ireland, being distinct kingdoms and separate dominions, be imagined to have any su-

periority or jurisdiction the one over the other? 'Tis absurd to fancy that kingdoms are separate and distinct meerly from the geographical distinction of territories. Kingdoms become distinct by distinct jurisdictions, and authorities legislative and executive; and as *He is a King who has no King, so that is a kingdom which is not subject to another kingdom.* A kingdom can have no supreme; 'tis in itself supreme within itself, and must have all jurisdictions, authorities and pre-eminencies to the royal state of a kingdom belonging, or else 'tis none: And that Ireland has all these, is declared in the Irish Stat. 33 Henry VIII. c. 1. The chief of these most certainly is, the power of making and abrogating its own laws, and being bound only by such to which the community have given their consent.

Against the King's prerogative.

Sixthly, It is against the King's prerogative, that the parliament of England should have any co-ordinate power with him, to introduce new laws, or repeal old laws established in Ireland. By the constitution of Ireland under Poynings Act, the King's prerogative in the legislature is advanced to a much higher pitch than ever was challenged by the Kings in England, and the parliament of Ireland stands almost on the same bottom as the King does in England; I say almost on the same bottom, for the Irish parliament have not only a negative vote (as the King has in England) to whatever laws the King and his Privy Councils of both or either kingdom shall lay before them; but have also a liberty of proposing to the King and his Privy Council here, such laws as the parliament of Ireland think expedient to be passed. Which laws being thus proposed to the King, and put into form, and transmitted to the parliament here, according to Poynings Act, must be passed or rejected in the very words, even to a tittle, as they are laid before our parliament, we cannot alter the least iota. If therefore the legislature of Ireland stand on this foot, in relation to the King, and to the parliament of Ireland; and the parliament of England do remove it from this bottom, and assume it to themselves, where the King's prerogative is much narrower, and as it were reversed, (for there the King has only a negative vote) I humbly conceive 'tis an incroachment on the King's prerogative; But this I am sure, the parliament of England will be always very tender of, and his Majesty will be very loath to have such a precious jewel of his crown handled ruffly: The happiness of our constitutions depending on a right temperament between the King's and the people's rights.

Against the practice of former ages.

Seventhly, It is against the practice of all former ages. Wherein can it appear, that any statute made in England, was at any time since the reign of Henry III. allowed and put in practice in the realm of Ireland, without the authority of the parliament of Ireland. Is it not manifest by what foregoes, that from the twentieth of King Henry III. to the thirteenth of Edward II. and from thence to the eighteenth of Henry VI. and from thence to the thirty-second of Henry VI. and from thence to the eighth of Edward IV. and from thence to the tenth of Henry VII. there was special care taken to introduce the statutes of England, (such of them as were necessary or convenient for this king-

dom) by degrees, and always with allowance, and consent of the parliament and people of Ireland. And since the general allowance, of all the English acts and statutes in the 10th of Henry VII. there have several acts of parliament, which were made in England in the reigns of all the Kings from that time successively to this very day, been particularly received by parliament in Ireland, and so they become of force here, and not by reason of any general comprehensive words, as some men have lately fancied. For if by general comprehensive words the kingdom of Ireland could be bound by the acts of parliament of England, what needed all the former receptions in the parliament of Ireland, or what use will there be of the parliament of Ireland at any time? If the religion, lives, liberties, fortunes, and estates of the clergy, nobility and gentry of Ireland, may be disposed of, without their privity and consent, what benefit have they of any laws, liberties, or privileges granted unto them by the crown of England? I am loath to give their condition an hard name; but I have no other notion of slavery, but being bound by a law to which I do not consent.

Against the resolution of Judges.

Eighthly, 'Tis against several resolutions of the learned Judges, of former times, in the very point in question. This is manifest from what foregoes in the Case of the Merchants of Waterford, Pilkington's Case, Prior of Lanthony's Case, &c. But I shall not here enlarge farther thereon.

Destroys property.

Ninthly, The obligation of all laws having the same foundation, if one law may be imposed without consent, any other law whatever may be imposed on us without our consent. This will naturally introduce taxing us without our consent; and this as necessarily destroys our property. I have no other notion of property, but a power of disposing my goods as I please, and not as another shall command: Whatever another may rightfully take from me without my consent, I have certainly no property in. To tax me without consent, is little better, if at all, than downright robbing me. I am sure the great patriots of liberty and property, the free people of England, cannot think of such a thing, but with abhorrence.

Creates Confusion.

Lastly, The people of Ireland are left by this doctrine in the greatest confusion and uncertainty imaginable. We are certainly bound to obey the supreme authority over us; and yet hereby we are not permitted to know who or what the same is; whether the parliament of England, or that of Ireland, or both; and in what cases the one, and in what the other: Which uncertainty is or may be made a pretence at any time for disobedience. It is not impossible but the different legislatures we are subject to, may enact different, or contrary sanctions: Which of these must we obey?

Inconvenient to England to assume this power.

To conclude all, I think it highly inconvenient for England to assume this authority over the kingdom of Ireland: I believe there will need no great arguments to convince the wise assembly of English se-

nators, how inconvenient it may be to England, to do that which may make the Lords and People of Ireland think that they are not well used, and may drive them into discontent. The laws and liberties of England were granted above five hundred years ago to the people of Ireland, upon their submissions to the crown of England, with a design to make them easy to England, and to keep them in the allegiance of the King of England. How consistent it may be with true policy, to do that which the people of Ireland may think is an invasion of their rights and liberties, I do most humbly submit to the parliament of England to consider. They are men of great wisdom, honour, and justice : and know how to prevent all future inconveniencies. We have heard great outcries, and deservedly, on breaking the edict of Nantes, and other stipulations ; how far the breaking our constitution, which has been of five hundred years standing, exceeds that, I leave the world to judge. It may perhaps be urged, that 'tis convenient for the state of England, that the supreme council thereof should make their jurisdiction as large as they can. But with submission, I conceive that if this assumed power be not just, it cannot be convenient for the state. What Cicero says in his offices, *Nothing is profitable that is not upright*, is most certainly true. Nor do I think that 'tis anywise necessary to the good of England to assert this high jurisdiction over Ireland. For since the statutes of this kingdom are made with such caution and in such form, as is prescribed by Poynings Act, 10 Henry VII. and by the 3d and 4th of Philip and Mary, and whilst Ireland is in English hands, I do not see how 'tis possible for the parliament of Ireland to do any thing that can be in the least prejudicial to England. But on the other hand, if England assume a jurisdiction over Ireland, whereby they think their rights and liberties are taken away ; that their parliaments are rendered meerly nugatory, and that their lives and fortunes depend on the will of a legislature wherein they are not parties ; there may be ill consequences of this. Advancing the power of the parliament of England, by breaking the rights of another, may in time have ill effects.

The rights of parliament should be preserved sacred and inviolable, wherever they are found. This kind of government, once so universal all over Europe, is now almost vanished from amongst the nations thereof. Our King's dominions are the only supporters of this noble Gothic constitution, save only what little remains may be found thereof in Poland. We should not therefore make so light of that sort of legislature, and as it were abolish it in one kingdom of the three, wherein it appears ; but rather cherish and encourage it wherever we meet it.



The public may depend on the authenticity of the following small, but valuable piece of that great patriot, the Author of the foregoing CASE, which the Editor obtained thro' the means of the Rev. Mr. *Thos. Brooke Clarke*, from *William Johnson*, of this City, Esq; who copied it from the Original Manuscript in the hand-writing of the Author, written in the blank Leaves of one of his printed Cases, which he sent to the then Lord Bishop of Meath.

ORDER OF THE HOUSE OF LORDS IN ENGLAND.

DIE MARTIS, 24 Maij, 1698.

WHEREAS a Petition and Appeal was offered to the House on the 7th of January last, of the Society of the Governor and Assistants of London, of the new Plantation in Ulster, in the Kingdom of Ireland, against a Judgment given by the Lords Spiritual and Temporal of Ireland in Parliament there assembled, on the 24th day of September last, upon the Petition and Appeal of William, Lord Bishop of Derry, against the Decree or Order made in the said Cause in the Court of Chancery there: Whereupon a Committee was appointed, to consider of the proper Method of appealing from the Decrees made in the Court of Chancery in Ireland, and that pursuant to the Order of the said Committee, and a Letter sent to the Lords Justices of Ireland, by Order of this House: Several precedents have been transmitted by the Lords Justices to this House, copies whereof were ordered to be delivered to either side: After hearing counsel upon the Petition of the Society London, presented to this House the 20th of April last, praying that they might be heard, as to the jurisdiction of the House of Lords in Ireland, in receiving and judging Appeals from the Chancery there, as also counsel for the Bishop of Derry: After due consideration of the precedents, and of what was offered by Counsel thereupon. It is this day ordered, adjudged and declared, by the Lords Spiritual and Temporal in Parliament assembled, that the said Appeal by the Bishop of Derry, to the House of Lords in Ireland, from the Decree or Order of the Court of Chancery there made, in the cause wherein the said Bishop of Derry was Plaintiff, and the said Society of the Governor and Assistants London, of the New Plantation in Ulster, in Ireland were Defendants, was coram non judice, and that all the proceedings thereupon are null and void, and that the Court of Chancery in Ireland, ought to proceed in the said Cause, as if no such Appeal had been made to the House of Lords there, and if either of the said Parties do find themselves aggrieved by the said Decree or Order of Chancery, they are at liberty to pursue their proper Remedy by way of Appeal to this House.

Ordered, that the Lord Chancellor do write to the Lords Justices of Ireland, and send them this Order. MAL. JOHNSON, Cler. Parli.

REASONS against the foregoing ORDER, By WILLIAM MOLYNEUX, Esq.

1st. Because upon the conquest of Ireland by Henry the II^d. he introduced the laws of England in that Kingdom, and sent over the *Modus Tenendi Parliamentum in Terminis*, the same with that of England, in which record it is said that such things may be examined and corrected, *in Pleno Parlamento et non alibi*.

2dly. Because in the 20th year of King Henry the Third, it was provided that all laws and customs which are enjoyed in England, shall be also in Ireland, and that the land shall be subject thereunto and governed thereby *sicut Dominus Johannes Ker cum ultimo esset in Hibernia statuit et fieri mandavit et quod Brevia de communi jure quæ currunt in Anglia similiter currant in Hibernia*.

3dly. Because King Edward III. in the 29th year of his reign, ordained for the quiet and good government of the people in Ireland, that in all cases whatsoever, errors in judgment, in records, and proceedings in the courts of Ireland, shall be corrected and amended in parliament in Ireland.

4thly. Because it appears by other antient records, *quod terra Hiberniæ intra se omnes et omnimodas habet curias prout in Anglia*.

5thly. Because a conqueror by the laws of England and of nations, having power to introduce what laws he will in the conquered country, and King Henry II. pursuant to that power, having introduced the laws of England, and particularly that of holding parliaments in Ireland, the House of Lords in parliament in Ireland, may proceed to hear and determine judicially, such matters as shall be brought before them, in the same manner as the Lords in parliament in England.

6thly. Because pursuant to the many concessions made by King Henry II. King John, King Henry III. and other Kings of England. The Lords in parliament in Ireland, have proceeded to correct and amend errors in judgment and decrees in the courts of Ireland, (as appears by the several precedents certified over to your Lordships,) and their judgments never before this called in question, many of them being very irregular. It is therefore presumed to have been by a good and lawful jurisdiction, otherwise they would have been by our ancestors (who were zealous assertors of their rights) long before this called in question.

7thly. The order declaring the appeal was *coram non judice*, and null and void, will call all other judgments and decrees in question, under which many estates have been purchased, settled, and enjoyed, which will be of fatal consequence to many families, and create great discontent and dissatisfaction in that kingdom.

8thly. Because the declaring the said appeal to be *coram non judice*, and null and void, strikes at and tends to the destruction of the jurisdiction of this House, for Ireland having *omnes et omnimodas curias prout in Anglia*, must include the high court of parliament, and if their high court of parliament, being an exact picture of the high court of parliament in England, cannot judicially hear and determine appeals, writs of error, and impeachments, it may from thence be alleged that this here cannot.

9thly. Because this resolution strikes at and tends to abridge the King's prerogative in Ireland; all appeals and writs of error in parliament, being *coram rege in parlamento*, and therefore these words *coram non judice* takes from the King the judicial power which is given to him there.

10thly. Because the Peers of Ireland have little else left them beside their judicature, which if taken away, they will be of little esteem there, and many of the Peers of England have some of their titles of honour from that Kingdom.

11thly. Because it is the glory of the English laws, and the blessing attending Englishmen, that they have justice administered at their doors, and not to be drawn as formerly to Rome, by appeals which greatly impoverished the nation, and by this order, the people of Ireland must be drawn from Ireland hither, whensoever they receive any injustice from the Chancery there, by which means poor men must be trampled upon, not being able to come over to seek for justice.

12thly. The danger of altering, changing, or lessening a constitution, for above 500 years unshaken, or so much as called in question in any one thing, (the custom and usage of Courts being the law of Courts) may occasion the destruction of the whole, for the judicial power of the House of Peers in Ireland, in criminal causes by way of impeachment or otherwise, may by the same reason be called in question, as their judicature in civil causes, which will encourage evil disposed men, especially those in employment in that Kingdom, (who are generally very arbitrary) to act wickedly; and the better we preserve the constitution of Ireland and of those plantations dependant on England, the better we shall preserve our own—and they will be barriers to ours, to prevent any invasion of theirs, and since the Kings of England have in all times in matters relating to their revenue, their grants by letters patent, and their Ministers not only empowered the Parliament of Ireland to hear, correct, reform and amend them, but also acquiesced in their judgment, it ought not now to be questioned.

13thly. Because this taking away the jurisdiction of the Lords House in Ireland, may be a means to disquiet the Lords there, and disappoint the King's affairs.

14thly. Because the judicial power of the House of Peers in Ireland is in no respect altered by an act of parliament,—the statute of the 10th of Hen. 7. c. 4. called Poynings Law, only directs a new form of passing bills into laws, but alters nothing of the judicial power, and their argument of their having the interpretation of all laws by a judicial power being allowed them, will enable them to make the laws what they please, will as well hold against the jurisdiction of this House, which ought not to be suffered.



LETTERS
TO THE
MEN OF IRELAND.
BY

Owen Roe O'Nial.

(Originally published in the Year 1779.)

LETTERS

TO THE

MEN OF IRELAND.

LETTER FIRST.

IF ever there was a moment of time big with the very fate of any nation, the present is that moment to Ireland. If ever there was a moment when to interpose with the energy of soul and body, became every individual of the state, who has an understanding to perceive, an heart to feel, and an arm obedient to his will, the present is that moment to Ireland. Not presuming then upon my own wisdom, but thinking it now no presumption to offer my private opinion, and, in the name of the nation, to call upon others to give theirs in corruption or support, I take up the pen with the boldness of a freeman, nor shall I finally lay it down, till the object appears to me either attained or unattainable; till I see freedom established, or must lament its extinction, convinced that boldness will be not only unavailing to the state, but fatal to the individual. Sunk as is England, unhappy as Ireland has been ever since her connection with England, in this one respect, at least, each of them enjoys a portion both of dignity and happiness,—the liberty of the press, that censurate of the people, yet remains unviolated, for Juries yet are Judges. In their breasts lies that construction of malice which constitutes the illegality, as it does the guilt of words or of actions. We have the whole field of enquiry before us, and we may question the propriety of tolerating the existence of those powers, whose bare extent to question was once, I may say, admitted a blasphemy. The Magistrate is now beginning to be sensible, that the actions alone of men are his proper object, for they are unequivocal, objects of sense, and may be restrained or punished by the laws; but that opinions scorn his coercion, and, even where their tendency is dangerous, come not under his cognizance, till the action follows the opinion, and the law is actually infringed. He has besides learned from experience, that to punish the propaga-

tor of an opinion, is indirectly to own its truth, and its likelihood to make converts. Should, for instance, some visionary say to the world, that a great King imperial, born of an illustrious race, a race invited to the glorious task of confirming and establishing liberty in a country that more than once had risked its all for the obtaining of it, should he assert that he understood better the construction of a fly-trap than the law of nature and nations; that he had more the obstinacy of a mule than the perseverance of a man; more of the low mischievous cunning of a natural, than of the aspiring aim, the steady dignified wisdom of a philosopher; more of the insatiable rapaciousness and fullness of a tyrant, than the enlarged and well directed zeal, the glowing benevolence of a patriot King:—If, I say, some visionary, or some hireling scribbler, should tell us that such a creature existed, and bore the name of King, would a sensible loyalist be in wrath with the pretended portrait, or could the minister but smile? It is not in nature! would exclaim the former: The latter would calmly reply, we know it to be false. If then, my countrymen, I am absurd; contempt both from you and the minister will be my portion and my punishment. If what I offer be reason, it cannot be a libel. If, galled by the severity of truth, the minister would listen to the suggestions of an imprudent revenge, the sound of his first step will be a watch-word. Ye are MEN! I will not insult you by instruction.

There is a timidity in politics, as in every other art or science, which, like timidity in common life, stifles in conception all grandeur of design, robs resolution of its hue, enterprize of its pith, and must end in inaction, if not ignominy and remorse.

He who sets himself down, and weighs every possible accident that may thwart his design, and where much good is promised, allows himself to be terrified at every appearance of evil, such a man may live harmless in a solitude, but he has not virtue for society. Let him retire to a cell! he was not made for action,—he may be fainter by superstition, but a spirited reformer will expunge him from his calendar.

There is no occasion in which this timidity will be more evident than in times big with event, or on the eve of revolutions. It is in such cases often amiable, I was going to say respectable. It then behoves every man to weigh deeply before he decides. It behoves him to consult the sensibility of his heart-strings, before he takes a step that may rend the tenderest of them asunder. It behoves him to consider well the value of his object, and to compare the probability of attaining it with the danger of the experiment. A thousand things it behoves him to consider, and long, very long, must he be toiled in painful uncertainty, before even firmness can take courage, or decision can decide.

Let us then pause, weigh, and consider our situation, as well in ourselves as with respect to others. Let us consider the crisis. But when we have weighed and considered, the goal is before us: our part is firmness.

That the situation of Ireland is capable of improvement, that it is not exactly such as the warm imagination, the benevolent enthusiasm of a Plato, a More, or a Montesquieu, would have formed in his dreams of perfection and happiness, we have not a bankrupt trader, a half naked peasant, or a starving manufacturer would have the cou-

rage to assert. We have however reason to be satisfied with our bankruptcy, our nakedness, and our famine, since Manchester and Glasgow are satisfied with them; since the Lords of England are content, and the Commons have joined in declaring them constitutional and rightful. But they have not yet denied us the liberty of thinking. I propose then to enquire, as a matter of mere philosophic curiosity; first,—Whether in the present posture of affairs, it is probable that Ireland might recover her Independence? and secondly,—Is independence worth contending for?

It may seem odd, that I do not first consider the value of the object before I am at the trouble of enquiring into the probability of attaining it. But, besides that there are fewer persons with whom the latter can be a matter of doubt, it would be of little importance to enquire, whether a certain change would be advantageous, if the improbability of effecting it almost amounts to the impossible. Were I to institute an enquiry, whether it would be useful to man to have power over the elements, I believe I should be able to find few fellow adventurers in the speculation. But if I begin by enquiring if such power could possibly and easily be obtained, the very novelty of the subject might perhaps procure me a hearing.

Before I enter upon these questions, I must beg leave to premise, by way of lemma, or introductory argument, a principle upon which I intend to build much, and which I shall therefore beg leave particularly and minutely to discuss.

The principle is this,—that political bodies, whether sole or aggregate, whether composed of one person or a multitude, act uniformly from the narrowest kind of selfishness, and are totally incapable of a steady or uniform principle of generosity. The observation may be farther extended to individuals, (though no body politic) who from their situation have been under the necessity of acting more from political than moral motives. Morality is felt. Politics must be studied. The conscience of the man is natural. That of the politician artificial. The habit of reasoning only, is not favourable to feeling. The habit of being cunning is not favourable to strictness of principle. In general then we cannot expect politicians to be either generous or just. To see how collective bodies will be most likely to act towards each other, but little pains are necessary. All persons are sufficiently selfish, but few are in any degree generous. The affections of most people are as domestic as their charity, so celebrated by Swift. “They scarce ever travel abroad.” They end where they should begin—at home. Some however can feel for the little community to which they belong. A few for their country. But how many are they who are born for the universe? Shuffle these men into communities, and then will it be asked, if communities can be supposed capable of generosity? Can the majority be supposed either generous or just? Take the matter as between an individual of one nation, and the body of another nation, can it be supposed that the few attachments which he can have with a few of that other nation, to the majority of whom he must be at best very indifferent, will overcome the force of selfishness, and that he will divide his favours among a million, because he has a friendship for one? Even the generous are not displeased with gratitude, but here the obligation is scarce felt by an individual of the obliged, and the

merit is lost in the number of obligers. There will be few favours, and gratitude will scarce exist.—But will this individual be as little likely to injure as to serve a nation? I cannot think so. Selfishness is eternally in arms, while benevolence often sleeps on her post. In a thousand acts of injustice the individual will be sheltered and even applauded by the multitude of his associates. Fear of disgrace, which alone perhaps keeps him honest in private life, will make him dishonest in public. A palpable injustice will be lawful policy. Political villany will be love to his country. The honest man will often give up his private conscience to his sense of duty to the state. The same sacrifice will be pretended to by the villain. If such will be the probable line of conduct which an individual of one nation or community will observe towards another nation, what must one nation expect from another? “Are not the chances, nay the certainties, of coldness, unsteadiness, injustice, and inhumanity, encreased almost to infinity?” The unlearned in arithmetic would be astonished at the amount of the combination. The steps of nations have been ever planted in selfishness, marked with injustice, and may be traced in blood. Their monuments are desolation. Their glory is the stain of humanity—Let us compare facts with reasoning. They will confirm it to a miracle!—And first as to individuals, who have been politicians by necessity or choice.—Most Catholic Kings have they not been the encouragers of heresy? Has never Presbyter ruled with the pride of a self-created bishop? Did never reformer pull down the spiritual crown of the pope, that he himself might wear it as part of his own, or enjoy its power under lank hair or a night cap? God’s vicegerents upon earth have fomented rebellion against princes. Despots (those steady friends to the peace, good order, and subordination of society!) have in the dominions of others sown the seeds of anarchy; or, what seems much more unnatural, those whose mean ambition rendered them enemies to equality, and who could have wished freedom had but one neck, if they had held the sword, these men have planted, fostered, and protected Republicanism. Can Guatimozin* himself even in the generous ardour of his zeal and the fire of his consuming indignation, can he restrain a tear for the weakness of humanity, when he relates what I am obliged to add, that he whom no allurements could shake, no dangers could dismay, who brightened by difficulties and gained lustre from defeats, who refused the proffered sovereignty of his country, and treated with contempt the support and friendship of her enemies, who, rather than see her ruin, could have embraced with a great despair “Death—in the last ditch of his country,”—that he, even he, of ever glorious memory, in answer to the petitions of his new subjects, whom policy made it necessary to cultivate, could declare with the cold blood of an assassin, his deliberate intention of ruining the Irish woollen manufacture, that the English might profit by it—could declare, in effect, that he would wrest the morsel from the mouth of famine, to give another provocation to the sated appetite of gluttony? Can you believe this, my countrymen?—It is a fact, if there be truth in history, if the records of England be not all as false as some of them are disgraceful!—But heroes have been men; there have been individual villains in all ages. Nations will afford us a more

* *Guatimozin's Letters were published shortly before these.*

amiable prospect. They cannot, as one man have conspired the ruin of virtue and liberty! they cannot have been so corrupt as to bid defiance to shame! They cannot have been so foolish as to show an example of tyranny, that might one day be turned upon themselves!—

I grant there is a difference between nations and individuals. The difference is great. Individuals have been often and uniformly generous; nations never. Their uniform principle is policy, either real or supposed. Unless this is understood, their conduct will appear a chaos of inconsistency. But what will seem extraordinary is, that those nations who enjoyed most liberty themselves have been ever the greatest tyrants of others, and the provinces of a despotic King have generally been treated more kindly than those of free states*. The reason is, that in a free state, every man is in a degree one of the government, and few men in power like to part with it. Most are willing to abuse it. The proud cannot bear spirit in others, and there are more men of pride than of dignity. To a despotic King all his subjects are pretty equal, provided they pay him his taxes; and if his government is rather mild, the provinces will share it. The free citizen of a free state will hardly put his subjects in the province on a footing with himself, their Lord and Governor in his capital. Common interest, and even common calamity, unites the provinces subject to despotism. They have but one master to satisfy or guard against—opposition of interests disunites the Lords of a free state from their subjects in the province. These have as many masters as there are men in the superior state, and each would be satisfied, every individual would stalk in the mockery of fancied Majesty. Every individual would enjoy his revenues and his taxes; every individual would propose his laws and his restraints—and all restraints would be salutary. The cry of every individual is unconditional submission! and the subject nation has no hope but in the impotence or subjection of its masters.

But to facts.—Athens the brave, the civilized, the polite, the lettered and the wise, she who defended the liberties of Greece at Marathon and Salamis, how long was she the tyrant of Sicily, and how cruel was her tyranny!

The world has seen those who for their own country despised death and were suppliants for torture, † who in their own city “could brook the infernal devil as easily as a King,” even those has the world seen impose upon other nations a multitude of tyrants, each of them more insolent, more inhuman than a single one.

England sat by a tame unconcerned spectator while Corsica was sold by a republic, and deluged with blood by a monarchy. That same monarchy is now protecting the revolted colonies of England, whose tyranny forced them into a republic. She is protecting a republic the very contrast of herself in manners, opinions, religion, prejudices, and spirit, while those who took from a king ‡ their boast, that “they were free as their own thoughts,” and who have sacrificed kings themselves at the altar of freedom; they have driven Indians from their own woods, through zeal for civilization; christianity and justice have carried others into captivity, because their complexions darkened under a fiercer sun; and are now carrying fire, sword, and scalping-knife into the country of their brethren, because they thought

* *Hume.*† *Regulus.*‡ *Alfred.*

the leading-strings of an infant an incumbrance to a man;—because they could not be grateful to them for the retailed gifts of nature, be in love with poverty, and in raptures with slavery.

If honesty, an inbred steady principle of honesty, were to be expected from any nation, it might surely be looked for in one that was ignorant of the use of money; in a nation, three hundred of whose citizens, headed by a King, devoted themselves for their country, and repulsed the millions of Xerxes; in a nation where all the weakness of the woman and the mother fled at the name of traitor †, and he was no longer a son who was no longer a citizen. Yet the Spartans have had their Helotes, and the English HAVE THEIR IRISH! Were the blood-hounds or the barbed arrows of the Spartan more severe or more keen to the body, than are the insults of the Briton to the mind? Boys hunted the Helotes: THE IRISH ARE THE SCOFF OF FOOLS!

LETTER SECOND.

SUÆ quisque faber fortunæ est, is one of those truths which the experience of ages has handed down as a proverb.

What is true of every individual must be so of nations—"Their fortune must depend upon THEMSELVES."

It is a truth well worthy the deep consideration of Ireland—I have, in my former letter, endeavoured to convince her by reasoning, and an appeal to historical facts, of what she should long ere this have learned from experience,—that whatever justice or generosity exists among individuals, it is vain to look for it in the mutual intercourse of nations. Their principle is policy.

It is time for Ireland to take thought for herself.

That Ireland hath been, and is, subordinate to, and dependent on the imperial crown of Great Britain, and that the King's Majesty, with the consent of the Lords and Commons of Great Britain in Parliament, hath power to make laws to bind the people of Ireland*, is a truth too melancholy to admit contradiction. That it of right "ought" to be so, was reserved for the modesty and good sense of an English parliament to assert, and would therefore be a blunder in Irishmen to deny.

That no nation can by conquest, or by any other means, acquire a right of perpetual dominion over another; that no consent or contract, however express or solemn, can bind posterity to their injury; that no prescription or length of time can sanctify oppression; that little deference is due to names imposed by the oppressors upon the act of assuming rights unalienable in their nature, and only overborne by force, or overlooked by folly; these are propositions which I shall not attempt to enlarge upon. Time, with most minds, gives a sacredness

† *The mother of Pausanias.*

* 6 Geo. I. ch. 5.

to error : enquiry then bears the name of impiety : but the idols of one age are trampled under foot in another, and the prejudices which once required a Locke to remove, are in these days but themes to the schools.

I shall not then war with the dead ; nor shall I offend the delicacy of an English Judge, by doubting the propriety, or disputing the omnipotence of an English act of parliament. That would be “ to oppose my private Irish judgment to public English authority*.” And, in so plain a case, the opposition “ must be virulent and factious†.” Authority must be ever in the right ! The demand of MAGNA CHARTA was but a successful rebellion ; the Reformation was an impious defection from the church ; and the author of christianity was an heretic and a traitor ! Ireland then, by right, ought to be, nay more, for ever must be, subordinate to the sovereign legislative Parliament of Great Britain. I acknowledge it ! my reason is a strong one ; she thinks so herself ; and who dare deny the competency of her judgment ? She thinks herself formed by nature an humble attendant upon England. She crouches under what she calls necessity. Her loyalty dares not form a wish for the preservation of her crown in the house of Hanover, united with the separate independency of her own legislature : because she looks upon that wish as hopeless. The very thought, to her, seems madness ! the attempt, she apprehends, would be ruin !

I owe a deference to the general opinion, and shall submit to it ; yet as all sound judgment on this question, can only be built upon experience, it seems not unreasonable to enquire, were it but as matter of speculation, into the fate of other countries, which having been nearly in the same situation with Ireland, endeavoured to mend their condition. One advantage will certainly result from the enquiry, which cannot fail of proving acceptable to a people, who have hitherto appeared more delighted with their fears, than with any other feelings of the human heart. It will lead us, by the consideration of our superior resources, to estimate infallibly the quantum of national punishment, likely to be superadded to our present burdens, by our masters, the Parliament of Great Britain, for the efforts of this day, when their leisure and security shall permit them to turn their thoughts to us. In proportion to our superior power of resisting, will the means be of preventing, in future, the possibility of the operation of such a resistance.

A late respectable writer § has already enumerated the natural advantages of Ireland. It appears that she possesses within herself, or immediately within her reach, almost every advantage that nature or situation can give, or that is necessary to make a nation rich, great, and happy.

A climate of the finest temperature, a soil of most extraordinary fertility ; mines that encouragement might convert into sources of national industry and national superiority ; seas that teem with fish ; harbours numerous, safe, commodious, and well situated for commerce ; and, to conclude, a people with capacity for every thing, who want but leave to acquire habits of industry, as persevering as spirited.

* 6 George I. ch. 5.

† See Blackstone's Com. book 4. p. 50, Irish edit.
§ Guatimozin.

These are the natural advantages of Ireland. How few nations can boast so many and so great? Compare her rank and consequence in the world, with what these advantages might entitle her to.—Enquire then whence arises the difference, and thank England, if you can, for the generosity of her protection!

Are either the United Provinces, or Switzerland, to be compared to Ireland in natural advantages? I cannot think they are. The former is but one-third, the latter only one half her size. Ireland is an island, and such an one as I have described; rich in climate, soil, mines, and harbours. Switzerland is in the heart of the Continent, and is poor in all these,—the latter she cannot possess at all. The Dutch States are joined to the Continent; their shore is dangerous from its flats; does not afford them a single good harbour; and the frost binds up their commerce during a considerable part of the winter. I need not mention the fish which the lakes of Switzerland afford. The fisheries of Holland lie upon our coast. They enjoy more from their unchecked industry, than we from nature and the protection of England. The Dutch have no mines. The Swiss don't work theirs, except for their necessary instruments of war and agriculture. Neither Holland nor Switzerland produces corn for half their inhabitants. In the latter half the harvest produced by a stubborn soil is often destroyed by storms, and but part of the remainder is allowed by the climate to ripen.

The Swiss may be said to have neither commerce nor navigation; since the latter they have only on their lakes, the former is concerned wholly in necessities.

Of the timber of the Swiss I need not speak. They can have no navy, nor do they require one. As to Holland, the spongy produce of her marshes is useless in trade or navigation. Her navy must be purchased by industry. Ireland may be as industrious as Holland, but she requires it less. She may raise a navy at home, if she cannot with more advantage bring materials from abroad. The climate of Switzerland may make an hardy race of soldiers or husbandmen, but to a nation that would aim at more than a penurious existence, it cannot be a subject of envy. The climate of Holland, marshy in its soil, and intersected by so many stagnated canals, is not wholesome. Some of their towns are formed on the soil left by the stagnation of rivers. In others the solid foundations of the earth seemed to have forsaken them, and they laid new ones. The sea threatens to overwhelm them. They oppose it with mounds, which require a continual repair, and dream not of danger, though the failure of a bank would give them a second deluge.

Labour and industry are in Holland necessary.—They cannot otherwise exist. This, it is true, will keep them laborious and industrious. But what they are from necessity, other nations may be from nobler motives, and Ireland sets out from a point which in Holland it required the labour and industry of years to gain.

Holland must be a drudge, as she subsists on the wants of other nations, and these, we know, are mostly artificial. She is their factor and carrier. She may suffer from their caprice. She must languish in their ill-humour. Their industry, or even frugality, would starve her. Ireland is more independent. She can subsist by her internal re-

sources, though the world should refuse her either commerce or employment. She is rich in herself. Nature that made her an island, and gave her fertility, qualified her equally for absolute independence, and unlimited intercourse with other nations. She can subsist without other nations. She can trade with them to mutual advantage.

Such are the natural advantages of Holland and Switzerland, and such are they compared with Ireland. America I shall briefly consider hereafter. Each of the former is surrounded by powerful empires. Each of them was once oppressed by all the rigours of slavery. Each of them burst her shackles, and baffled the most inveterate attacks of enemies whose power seemed to approach them with the irresistibility of fate.

Holland, inferior to Ireland in every natural advantage, and equal to but a third of her in size, threw off the yoke of the most powerful Monarch then in Europe. The firmness and courage which she displayed will appear incredible to those who are unacquainted with the power of enthusiasm. The seven provinces we are speaking of surmounted every difficulty—they thought they could defend themselves. The ten other provinces, says Voltaire, would have a foreign Prince to protect them, and are in slavery to this day.

One Prince § to whom they applied for assistance, was himself engaged in civil wars, and yet tottered on his throne. The extreme caution of another †, in foreign enterprise, corresponded but ill with her magnanimity and resolution in domestic affairs; and from the reprimands she was daily giving to her House of Commons, for presuming to judge of the duty they were called to, she seemed little likely to tempt the wrath of a powerful tyrant or turn abettor of rebellion. The succours received by the States were accordingly for a long time feeble and clandestine. To obtain open assistance from Elizabeth required a longer struggle: and even the offer of their sovereignty. But before any assistance had been received by the States, they had gotten possession of what Doctor Johnson calls “the choice of Evil”—Their darling object liberty. The very women had formed regiments for the defence of their cities; and, rather than again fall under the hated tyranny of Spain, the dykes and sluices had been opened, and the very Peasants, says Hume, had been active in ruining their own fields by an inundation,—they preferred the mercy of the waters to that of tyrants.

These same people have since withstood the most formidable attacks of a Monarch who thought his power equal to universal empire. They have supported themselves with more than equal honour against the combined fleets of France and England. They have swept the channel of England, and their insults in the Thames have carried consternation to the capital.

In little more than half a century from the time, at which, unprepared as they must have been, they first ventured to take up arms against Spain in defence of their liberty, they beat one of their formidable Armadas *. They obliged it to take shelter in the Downs under the English flag. They retire for a reinforcement; they re-

§ Henry IV. of France.

† Queen Elizabeth.

* The Duke of Alva left the Low Countries in the year 1574.—They beat the Spanish Armada in 1639.

solve, that the fleet of England shall no longer protect their enemy; they return to the charge; and the Spanish navy in its flight received from them a blow which at this day, after near a century and an half, it has not fully recovered.—A few years more, assisted by a few more defeats, softened the obstinacy of Spain. She acknowledged the independence of the States †, and in twenty years after they protected her provinces against France ‡.

The Swiss, now that they are free, are more secure from attacks, than when they were dependant. They are defended by their mountains and the barrenness of their country, by their poverty, by their valour, and by the mutual jealousies of the neighbouring empires. A partition is not easily agreed upon, and none will consent to their becoming an accession to the power of another, if such an accession were practicable. But it must be confessed that of all the advantages I have mentioned, their valour alone, at the time they threw off the yoke, seemed most in their favour. The enemy had possession of their country. The balance of power was then less understood, or less attended to, and their poverty and commercial insignificance must have been feeble inducements to the protection of their neighbours. Accordingly they had to work out their own liberty, and above three centuries elapsed before the House of Austria acknowledged their independance *.

I believe there are few will deny that America has already established her independance. She would not come over and prostrate herself at the feet of England, so England, with the magnanimity of a conqueror, appointed ambassadors to her by act of Parliament. Upon England's condescending "to treat with armed rebels," they refused to treat with England. They had procured friends, and they preferred them to masters. For the situation of America in the beginning of the contest, hear her own unexaggerated description. "Without arms, ammunition, discipline, revenue, government, or ally, almost totally stripped of commerce, and in the weakness of youth, as it were, "with a staff and a sling only," she dared, "in the name of the Lord of Hosts," to engage a gigantic adversary, prepared at all points, boasting of his strength, and of whom even mighty warriors were greatly afraid."

When to this enumeration of difficulties, which, one is tempted to think, requires little addition, we subjoin the following; that these colonies were not more disunited by distance of place, than by difference of opinion, manners, spirit, religion and government; that they were so disunited in all these, that it seemed the dream of a dotard to think of connecting them in one interest, or of bringing them to co-operate, if they could be convinced that their interest was the same; that they were exposed to the navy and arms of England on their sea-

† *Treaty of Munster, 1648.*

‡ *Triple alliance in 1668.*

* *They took up arms in the year 1308.—Their independance was acknowledged in 1648, by the treaty of Munster, the same by which Spain acknowledged the independance of the United Provinces.*

It would be singular enough if the same period which establishes American independance, shall be found to have destroyed the usurpation of the British Parliament over the legislative rights of Ireland.

coasts, to the incursions of Indians (perhaps too justly enraged) on their rear, and, in some provinces, to the more dangerous insurrections of their domestic slaves, whose dispositions to revenge must have been expected to burst on their more immediate oppressors; when all these particulars, I say, are considered, besides those which America herself has enumerated, I think scarce any nation on the earth should absolutely despair.

Let us consider the present situation of Ireland.—I need scarce say that there is not an maritime power in Europe to which her alliance would not, in itself, be an object of emulation. What then would it appear to the enemies of England? If Ireland should ask their protection, would they require to be founded at a distance, or to be assailed by preparatory arguments and leading propositions? Would they they think it prudent to act as they did by America, to stand by, cool spectators of our struggle, till they judged how far we should be able to persevere or be likely to succeed? or, if they determined to assist Ireland, would they be obliged to have recourse to art in order to deceive a credulous minister, and to mask their intentions until they could declare them with safety? No, my countrymen: Distant propositions, preparatory arguments, negociation, art,—all these are to us unnecessary! Conviction has long been confirmed. Their resolution is already taken. Their arms are already in their hands. They have crossed the Atlantic for their own interest and for the humiliation of England. Will a few leagues terrify them when their scheme is so near arriving at almost unhoped for perfection? They were then at peace, yet they engaged in war. They are now at war will they not carry it on? The sole question with them at present must be this: Will they chuse to visit us as enemies or as friends? For visit us they probably will.—Will they attempt a conquest to which they are probably unequal; or will they chuse the easier road, and offer an alliance, which will have every real advantage to be expected from dominion, without the danger of an unsuccessful attempt, or the inconveniencies and hazards of the most successful execution? Will they not offer an alliance such as their good sense has been content with from America, and which they have thought worthy of supporting by a war with England? Such an alliance as, from its liberality, it will be the interest of the other European powers, at least, by a tacit acquiescence, to support. An alliance that will not contribute more to the weakening of an haughty adversary, and the disappointment of an insatiable monopolist, than to their own regal power, aggrandisement and glory.

And here, my countrymen, occurs an awful pause! What inducements hath British policy suffered to take root in the hearts of Irishmen, to enable them to resist such necessary and proffered protection? None, my friends! Loyalty, the fairest flower that can ornament the bosom of a Prince, finds in Ireland its happiest soil. Personal attachment to the King of Ireland, and his illustrious house, is the cord which binds us to our burden, and furnishes to a British people the occasion of loading us without bounds or mercy. Had we as little attachment to the House of Hanover as Scotland, or Manchester, we had long since in despair implored the protection of other powers, for so long as the “Parliament of Great Britain can bind us in all cases whatsoever,” the worst that could happen to us would be to change

our masters †. The word is not my own. It is by an English Judge and commentator directly applied to the situation of this kingdom and its subordination to England by right of conquest.

But has England learned nothing from her late experience in America? Will she for ever trust to our loyalty alone, and will our King for ever leave us at the mercy of a British Parliament? As to the English people, the power of God has been displayed to them in vain. They seem to have revived the age of miracles, and to have left the Egyptians at a distance. All that should have inspired them with awe, humility, and wisdom, seems but to have darkened their understandings and hardened their hearts! But let it be our duty, my countrymen, to consider the crisis, and profit of it! Let us adore that wonder-working God, who in the intoxication of our oppressors, has laid the foundation of our relief; and who, in the miscarriages of British tyranny beyond the Atlantic, has taught Irishmen the practicability of their own emancipation from the authority of an usurping English Parliament.

BUT WE ARE NEARER TO ENGLAND. I hear my countrymen lament it,—and often have I lamented it myself!—Yet, (indulge me, my countrymen, while I explain my paradox!) ON THAT VERY PROXIMITY DOES THE WEAL OF IRELAND DEPEND.

We are near to England; but we are near to assistance also. The Atlantic rolls not between us and England; but neither does it roll between us and her enemies. These enemies are on the way. Before the wind changes they are here. Our proximity to England is to us, in the present posture of affairs, what the distance of America was in the beginning of the contest, to her. The latter was a barrier against Britain; the former is a bridge for her foes. In this respect then we are equal to America. We have however an advantage from our proximity, which she never can derive from her distance. It is a PERPETUAL GUARANTEE against the oppression of any self-created protector. It is perpetual, because it depends not on the policy or caprice of kings or of nations. It is fixed in the nature of things.

America might have been ruined by the treachery of France, or she may yet fall by Congress, as England has done by a Parliament.

† It may be seen by Blackstone, b. I. p. 100. what an English lawyer thinks the necessary consequence of all dependance upon England! We are bound by every law she, in her wisdom or wantonness, thinks proper to prescribe. We shall soon, I suppose, be on a footing with those slaves of the Romans who were bound to the glebe, or soil.—England will think proper that we should not depart from the soil, but be transferred with it by deed, roll, or indenture. This will save us a multitude of disputes about our property, for we shall then, like the Roman slaves, become perfect THINGS, and cease to be PERSONS. The English prints will then afford entertainment to those who can relish it. If any of us are missing from our stalls or lumber-rooms, we shall be advertised for, and described, as “LOST, STRAYED, STOLEN, or MISLAID.”—We shall be taken damage feasant, (perhaps rider and all!) and if we happen to die of cold and hunger, in an open pound, it will be at the suit of the owner!—O Ireland! Ireland! Dost thou retain one spark of feeling, to make the oppression of thee a crime?

Let Ireland be subject to her own legislation only, and one might venture to say she is free for ever. Her situation and size fit her for that moderate degree of strength and power which is most likely to be permanent.

Let these things be weighed, and perhaps that man could not be acquitted of presumption who would venture to point out another spot upon the globe, to which Ireland should now wish to be removed.

From this proximity of England, I would deduce THIS TRUTH, which I wish to be engraven on the heart of every Irishman;—ENGLAND is the ONLY power that CAN either enslave us FARTHER, OR KEEP US AS WE ARE. And this is the important moment when our own firm constitutional resistance will derive additional support from the dread of her enemies, towards shaking off the shackles of an usurping English people.

But, unless we entertain for each other a mutual and general confidence, unless we lay aside all rancour of prejudice on account of distinctions either political or religious, or attempt such a relief from those shackles, would be only to solicit confusion.

There are, however, many instances of states differing very much in religion, and yet united in strict civil confederacy and union. Scarce six of the Cantons of Switzerland are Protestants, the seven remaining are Roman Catholics; and, what seems a little extraordinary, the greater number of the Roman Catholic Cantons are democratical, that of the Protestant Cantons aristocratical in their government. In the United Provinces the majority of the people are either Presbyterians or Roman Catholics, and though Presbyterianism is the established religion, yet the toleration or connivance which all sects meet with from the government, has produced a general moderation and peace, and, in its natural consequences, has added power, grandeur, and stability to the state. The state of Pennsylvania is equally various in its religion. The laws of this province are more liberal than the spirit of any other provinces. They give no preference to any sect. They tolerate all sects. All sects are therefore not only peaceable but content. Most of the other states of America, so firm in their union against England, are scarcely more opposite than they are inveterate in the several prejudices and opinions which they carried with them from Europe. In short, from all the facts we can collect, our uniform conclusion must be,—that that nation is most likely to be great, powerful, and happy, which finds political and civil moderation necessary to its very being. Where there are no sects or parties, I may venture to say there cannot be sense, science, liberty, or commerce. Where, from circumstances internal or external, different sects are nearly balanced in power, the laws must be moderate, and the spirit of the laws will become the spirit of the people. The nation will be in harmony within itself, and that moderation and good sense which will distinguish it in its internal government and policy, must characterise it in its conduct towards other nations.

It is very sensibly observed by a Roman Catholic Priest *, in a late Address to those of his own persuasion in Ireland, that “conquerors, (and, let me add, traders and politicians) are of no religion.” The

English established popery in Canada. The French entered into alliance with Presbyterians in North America; and, I dare say, would have done the same if their Deity had been the sun or a serpent, an onion or a monkey. The Dutch, it is said, tread upon the cross at Japan, and the English make alliances with Moors and with Indians.

The French are, perhaps, even in religion, as liberal a nation as any in Europe. I judge not of them by their creeds, confessions, or articles of belief: God forbid that I should judge by these alone of the hearts or understandings of any people upon earth, who have public creeds, confessions, or articles! These are not always formed by the wisest or most religious people of a nation. The wisest and most religious are generally better employed. I judge of the French nation by the general conduct of the people; and I believe it will be owned that they are more liberal to Englishmen, than Englishmen are to them. The absurdity of supposing that even conquerors would make violent alterations in private property, and involve themselves in the perplexed disputes and antiquated claims of families that have suffered by forfeiture, has been well exposed by the Reverend Divine just mentioned. Were the question indeed between two pretenders to the crown; the case might be different. He who succeeded must reinstate some of his adherents, and gratify others. This must be done at the expence of the opposite party. But a conqueror, who is not able to crush the subdued nation at a single effort, will think himself happy in prevailing upon the people to remain quiet as he found them. He will make no alteration which he can avoid; he will avoid every alteration which can disgust or displease. What then is to be expected from even a powerful protector, that offers independence to a nation so divided into parties that no one of them has power to crush the others, supported as they would be, by the nation that formerly enslaved them? I say that, in this case, we might expect such a moderation as would over-rule every petty distinction or jealousy, and would unite the nation by COMMUNITY OF INTEREST. To make an alteration in the established religion, or to deny to all denominations of Protestant Dissenters that toleration which they at present enjoy, would be the madness of folly. Those we speak of are neither fools nor madmen.

The Roman Catholics, might, with justice indeed, expect a more compleat toleration. But it would require peculiar delicacy to grant this without offending those Protestants who at present enjoy but a toleration themselves. The interference of Roman Catholic protectors, conscious of the prudence their situation required, must be of the most temperate kind. The alterations made would be gentle, gradual, and rather the effect of an insensible alteration of opinion and removal of prejudice, than an act of force or power in the state. — And, from the co-operation of all these causes, I am inclined to think there would naturally arise a mildness of government, and a benevolence of toleration which is unknown to the laws of any other country in Europe, and which enthusiasm itself has scarce dared to think consistent with the littleness of human nature.

But whatever may be the natural dignity and strength of Ireland, or whatever advantages she might derive from the present posture of affairs, there are some who cannot readily give up their attachment to

the people of England, or think themselves justified in resisting them in their present state of misfortune, while there are others who yet dread her power, and tremble at her name: To the former I shall speak more particularly hereafter ; and hope to shew, that we are not bound by any ties of duty, gratitude, or honour, to remain in subjection to the parliament of England.

At present I would address myself to the latter. — That the power of England is not yet an imagination I readily will own. — Great even yet is the power of England, and great is the memory of her glory ! but her glory lives but in memory, and the sinews of her power are withered. Exhausted and foiled by America, whom, in the hour of her insolence, she treated with a contempt that would have robbed victory of its honour, but has covered defeat with aggravated disgrace, returning reason can suggest but one consolation for her folly ; — that something yet remains for madness to squander, that there is yet a remnant which penury may save. The arbiters of empires may yet exist among nations ! the patroness of nations may yet be an hufwife !

There was a time when the World and the Roman Empire were synonymous terms.

There was a time too when the very name of Rome kept the Provinces in awe, tho' she could scarce have defended her walls. England has fallen by her own weight, which she wanted wisdom to balance. Those days are past in which her history went hand in hand with romance. France has struck terror into HER CONQUERERS, and has shaken the throne of HER King ! The English Channel has become a term of mockery. It has seen the Navy of England in its FLIGHT ! The navy of England has left her coasts to be insulted ! That the navy of England was able to secure the protection of a Port, has, to a sovereign of England, become a theme of congratulation !

While England thus protects herself need I ask what protection she is likely to afford to Ireland ? If we remain by her bad policy in our present impoverished state, can she protect us from the arms or insults of her enemies ?

Have we not men in arms already ? Men whom England, and the slaves of England, would long ere this have disarmed ; had they dared to do so ! Men whose spirit they now affect to approve, because they find their approbation is indifferent to them ! Men whose spirit must obtain a momentary protection, and to whom a very little time will render protection unnecessary ! Men who may yet teach England that the soil of their own country benumbs not their courage ; that it is not on the plains of Flanders or America alone that IRISHMEN can CONQUER !

The subject, my countrymen, has risen upon me. I have (I hope you will think unavoidably) been led into some details. My indignation, upon other occasions, I have found it difficult to repress. You will consider the design, and pardon any involuntary failure in the execution. But, before I take my leave for the present, allow me to ask one short question :

Shall we trust to other nations for a temporary protection, which (judging from human nature, and their particular line of conduct) I aver it to be equally their interest and their inclination to give, and the bounds of which, as I have endeavoured to prove, they cannot ex-

ceed; or, shall we depend to eternity on the generosity of a nation who has shewn herself as incapable of generosity as of justice, and whose folly has disabled her from performing the duties of either?—She thunders forth the mandates of her OMNIPOTENCE; but, is her providence so particular, so watchful, so active, and so benevolent, that we should leave to her more than the God of Nature demands for himself,—that we should leave agency to her, and address her but in prayer? Is the night of religious superstition passed away, and must that of political idolatry usurp the rightful vicissitude of day? Our night of both has been sufficiently long! But the sun of England, in whose meridian beams our feeble light was lost, is now set;—perhaps, for ever: and the Hesperian star of America, which set with England, for a time, is now risen, a Lucifer to light us into day. It has moved, till it is vertical in glory, and points to OUR POLITICAL SALVATION!

LETTER THIRD.

YOU have heard, my countrymen, the speech of the Minister! You have heard it, and I hope it has sunk deep into your hearts, and added fervour to that loyalty which is now the only cement of the empire, and which the consistency of Ministers has therefore laboured to destroy!

You must also before this have been acquainted with two political phenomena which this age has produced: Some of our Irish common-law Judges detest so much all English importations*, that they will not, on a constitutional question, admit a single construction that is liberal! But there is a second to which the first is as nothing. A CHANCELLOR of Ireland, an Englishman, entertains such a regard to the Irish LAWS (in their present state of purity) that he will not venture even to judge of them by equity and good conscience! Nay, where his Sovereign has been unguarded in approving of exertions not the most constitutional, he will correct his Sovereign though speaking from the Throne!

Left, however, so rare an instance of integrity should be offensive to the Minister, I would beg leave to offer for it a very simple apology.—His Lordship is keeper of the King's IRISH conscience.—He knows the heart of his gracious master, and that, if he erred, it was but in words!

But to return to the Speech, (from which it may be doubted if I have really digressed) I could wish, my Countrymen, that, by connecting those parts of it which are, accidentally, thrown at the greatest possible distance, you would collect its beginning and end, its sum and spirit. For there you will see that the trade and commerce of this kingdom are objects too “great and important” for an Irish parlia-

* See Lord Mansfield's decisions.

ment to deliberate on, till the general tranquillity is restored, and England can assist her, in the deliberation, by her Parliament and army ! But you will see, at the same time, that it would be very proper to give serious attention to the Protestant Charter Schools and the Linen Manufacture ; the regulation of these being wise, necessary, and above all, domestic :—They relate not, it is acknowledged, to your dearest interests ; but, to compensate for this defect, they “ will not impede your efforts ”—(as an attention to “ great and important objects ” might do)—by calling down upon your heads the injured omnipotence of ENGLAND.

Such, my Countrymen, is the marrow of this elaborate and truly ministerial production ! I should have passed it over, as I would do all productions that are intended to have as little meaning as possible, lest the meaning they have should be discovered to be a bad one. But amidst its laboured inconsistency, and in the conduct of its official supporters, there appears so much of the genuine spirit of English tyranny, of a tyranny that relents not at our loyalty nor our poverty, and pays a measured deference to our spirit, that I thought I could not chuse a more proper introduction to my proposed letter on the INDEPENDENCE of Ireland.

A sensible, and, I believe, a very honest Member of the English Parliament, (Sir Cecil Wray) after giving a description of our manners and situation, concludes with telling us, that “ he has little hopes of our RUIN being prevented.”

A late most able and spirited writer observes, that “ the constitution is now reduced to a state in which NO PUBLIC BENEFIT can be obtained but by the collective body of the people.” If this cannot be doubted, the question is only concerning the mode and object of the interposition.

If any public benefit can be obtained, or if our ruin can be prevented, it must, I think, be by one of these three measures :—By a UNION with England ; by ASSOCIATIONS to consume our own manufactures, and to learn the use of arms ; or by throwing off ALL DEPENDENCE upon the people and parliament of England, disclaiming all political connection with the latter but through our common Sovereign, and protecting for the future our separate rights as Irishmen and as men. These ultimately resolve themselves into the following question, “ Is independence worth contending for ? ” If any thing short of independence will prevent our ruin, or obtain such a public benefit as should content the collective body of the people, to aim at independence would be either villany or madness. I shall therefore consider each of these measures separately, and with perfect freedom. If the laws allow not such freedom, they must be sensible of their own weakness, and we should be equally so. To tolerate such laws is to solicit their farther corruption. If, in Ireland, and in the opinion of Irishmen, it is become treason to our Sovereign, to add to his dignity by making HIS PEOPLE free, I have lost all idea of loyalty, and as I have lived a traitor, a traitor I must die. If it is at present, in Ireland, and in the opinion of Irishmen, a public crime to think too well of one’s country, it will soon be scarcely possible to commit a crime in this country. Ireland will soon have neither government nor men !

The late Mr. Hume, in one of his political essays, I think, has said of Ireland, that "it is an enslaved nation, the individuals of which are free." If the individuals of a nation are free under the government, they must be very unreasonable individuals if they are not content; for the government is nothing to them but as it procures them this freedom. But I will not scruple to affirm that the observation is a contradiction in terms, and one of those contradictions, which are but too apt to mislead the inattentive, and to be abused by the designing. The individuals of Ireland compose the nation of Ireland. The nation is enslaved—yet the individuals that compose it, are perfectly free!

A body is composed of parts or particles; the whole has a certain quality (of slavery) yet not a single particle of that body has a portion of that quality! This seems mightily philosophic; and yet Hume was a materialist! I do not think, however, that he believed in an infallible church composed of fallible individuals!—That Ireland is enslaved, few who know its situation can doubt; but to those who do, the course of the subject will furnish proofs but too incontestable.—Her people then, as individuals, cannot be free.

As to the English constitution itself, (that boasted model of perfection and incorruptibility!) its modern history will, to most people, I believe, appear stricture sufficient.—If perfect, it could not have been corrupted.—If it did not admit mal-administration, it could not have been so ill administered.

The prophecy of Montesquieu is already fulfilled.—The legislative power of England is become more corrupt than the executive. Thro' that corruption the executive commands the legislative, and, in effect, they are one;—this is nearly the destruction of despotism! yet I allow that even forms are sometimes material—The Grand Seignior may take off the head of his subject—"but he cannot force him to drink wine!" Could he do every thing, his power would be intolerable.—An English King cannot tax his subjects without the consent of their Representatives, who must at the same tax themselves, nor can he take away the life of a single individual unless convicted by his Peers. But he can induce the Representative to untie the purse of the nation, and he may unsheath the sword of war, which may involve the half of his subjects in ruin, and expose the other half to the invading sword of the enemy.

When Sir William Blackstone, (B. i. 336.) after a formidable enumeration of the real powers of the King, through influence, the standing army, and the perpetual revenue, tells his countrymen, almost in so many words, that their chief dependance is on the personal character of their King: it is not entirely a compliment paid by the courtier; it is a truth extorted from the lawyer, and which the courtier would palliate*.

After the enumeration abovementioned, Sir William struck, as it should seem, by the terror of it, tells us how much, till half a dozen helpless possibilities shall happen, "it will be our especial duty, as good subjects and good Englishmen, to guard against its influence—and, above every thing, to hope that we may long, very long, continue to be governed by—our present Sovereign—who, in all his personal acts, has shewn such veneration for

If such be the government of England, what must we say of that of Ireland?—Montesquieu doubts whether a *slave* be capable of a single virtue. What then must be the virtue of a *nation* that is enslaved? Honour may support the individual, but the abjection of a nation is infamy indeed! When this abjection is once established, a virtuous, independant and spirited individual is, if I may be allowed the expression, one of the miracles of nature! Corruption in a dependant nation is the very malignity of corruption. In passing through a multitude, and through the servants of servants, instead of being filtered, it acquires successive contamination.

In this kingdom the power of chusing Representatives in Parliament, the only public and constitutional exertion of liberty in which the people are allowed to bear a part, is under English government, reduced to this:—It is the liberty of chusing the men who shall betray us, or act as mourners to the ceremony.—It is a gloomy picture, my countrymen, if that can be called a picture which is almost all a shade. In drawing it I have felt as variously as the man who retraces the character of a friend of whom the world thought meanly, because misfortune, that exposed his vices, cast a shade over his virtues.—The days of your misfortunes, my countrymen, have been out-numbered by the insults you have suffered!

But a change is at hand! “Every man will bring you a piece of money, and every one an ear-ring of gold.—Your latter end will be more blessed than your beginning!”

But how may these things be? By a UNION—by ASSOCIATIONS—or by INDEPENDENCE?—I feel the whole weight of the subject, and it is the consciousness that I am so far not unworthy of it, that urges me to undertake a question under which I should otherwise despair.

The author of the letter to the people of Ireland, which I lately mentioned, has on the subject of a Union thrown into a very few pages what might furnish an ordinary writer with matter for a volume; a few of them I shall repeat, since it is difficult to add to them. I may perhaps endeavour to illustrate some of them, and to this purpose I hope the observations just made, will somewhat contribute.—

The first leading and comprehensive observation upon a union, one indeed that makes all others appear almost unnecessary, is that by it we lose our own legislative assembly, and take the readiest means of destroying the only one that shall remain of the empire. Already, God knows, there is little occasion to add to the corruption of the British Parliament! Yet what must we expect, if we pour into it such another “uniform and potent body of corruption” as has flowed from Scotch Representatives!

We have now some slender ties upon the fears, at least, of our Parliament. We should then have none. Our present Absentees, “men as dependant on the Minister, as they are independant of the people,” are not more likely to be incorruptible than the deputies of Scotland. “Upon the ruins of (what remains to us of) national consequence and public sentiment, we should have a few individuals, insignificant

for our free constitution,—and will therefore never harbour a thought—detrimental to public liberty.”—Thus does public liberty depend upon the virtue of a King!

in England, ingrossing the powers of Ireland, jobbing away her interest, never reliding with her people, and, of course, ignorant of her condition, and unawed by her resentment."

That no representation could essentially serve Ireland, may be collected from this; that her number of deputies being necessarily small in proportion to those of England, even if not corrupted, they would be overpowered in every question between the two nations.—

The tyranny which England now indulges against Ireland, contrary to every principle of the constitution, she would then display in apparent conformity to it.—Even a union could not make her feel for Ireland as she does for her own most insignificant village.

We are by nature her rival, and, in some respects, I may even say, her superior. Our quóta, or proportion, of taxes must be fixed. Can any man then be so bigotted to the idea that political generosity exists, and exists in England, as to suppose she would encourage her rival much beyond what would enable her to pay that quóta of taxes? But, allowing England to be generous to us, at present, must she not soon hate us with as much cordiality and as much justice, as she now does Scotland? The conduct of the nation and her representatives would justify it.—Nations will not return good for evil, however usual that may be with individuals!—In this situation, is there a noble scheme in agitation for the improvement of manufactures, the opening of communications between different parts of this kingdom, the convenience or extension of trade—Is an inland Canal to be cut, a Colliery to be promoted, a Quay, a Mole, or Dock to be built,—is it wished to improve or put in a state of defence any of those harbours which open to the world, and have capacity to receive it—Immediately an host of petitions are opposed,—or the Minister is threatened with an insurrection—perhaps raised by himself—The scheme drops;—or it is procured by means the most disgraceful or most ruinous—Jobbing is seldom gratuitous—Compliments must be returned. The empire suffers. They suffer who receive justice as a favour. At any rate their spirit is destroyed, for they feel their dependence and their impotence.

When to this consideration, so sufficient in itself, we add a number of others and none of them inconsiderable; I think there are few who will see cause for a moment's hesitation.

Such are the incumbrances England would lay upon our infant commerce, a burthen supposed too heavy for the maturity of hers; such too is the vast encrease of absentee-interest in her deputies to England, and their connections; in our nobility, and all others possessed of large landed property; in the votaries of pleasure, who now spend part of the year in Dublin, but would then follow the legislature and the deity to London; while our manufacturers must be so far unemployed, agriculture, so intimately connected with manufacturers, must suffer; the tenantry must groan under rack rents and agents.—Such in consequence of the proceeding, would be the RUIN OF DUBLIN, without any very essential or comparative advantage to the other parts of this kingdom, all of which would be proportionally deserted, unemployed, or injured—Such as remitting of the revenues to England, with the supernumerary expences, making a great part of revenue; with a land-tax an entirely new one, and inseparable from an union, and all the

other indefinite and ruinous payments ; so that Ireland would be a country consisting of merchants, lawyers, revenue officers and peasants, annually remitting to England the produce of trade, land and revenue."

We come now to consider the effects of ASSOCIATIONS ; and here, though I should allow the writer so often quoted that all the advantages he expects, or all the nation has a right to demand, would accrue from them, if rigidly adhered to, yet I cannot help thinking that the Associations themselves will shortly melt away, unless they have a farther object than merely the freedom of TRADE, or what is generally called "the defence of our island." I mean not to depreciate Associations. They were a "measure of necessity," and they are now as necessary as ever. I mean not to depreciate the merit of those friends to their country, whose generous indignation and zeal first convinced her of their necessity. If there is a spirit now in Ireland, and if that spirit is likely to continue ; if Ireland is not sunk beneath hope,—it is due, under Heaven, to the spirit and abilities of those who first roused her from that sleep which seemed as the sleep of death. But I still must think that Associations are but a first step which should lead to the final one ; or, to express myself more clearly, that the object hitherto proposed by them being insufficient, that is, not aiming at the root of the disease, they will not only be unequal to its cure, but perhaps occasion a relapse that may be inveterate or mortal.

"FIRMNESS alone can save us." For the opinion England entertains of our firmness, consult the Speech of the Minister. Is it not temporizing and equivocal in every sentence ? Does it not applaud and condemn, flatter and insult us in a breath ?

Look to the government of England ! Look to her government over us. Look to our people suffering under both these ; then tell me who can, that while these exist our Associations can be lasting.

The same radical fault in our present constitution, which rendered Associations necessary, will, while it continues, defeat them. They will be sapped as the constitution was destroyed. The same power which renders abortive all barely "internal resolutions of individuals," will gradually undermine our "written covenants ;" and I do not think a single argument can be used to prove the necessity of these last, that will not demonstrate that even they will not bind—if the power of the English Parliament over this country shall continue.

In all the Associations there is a condition either expressed or necessarily implied. We associate, during the time that England shall continue her unjust, illiberal, and impolitic restrictions, &c. Were it otherwise, we should but imitate the conduct we condemn.

But who shall determine when England has ceased to be unjust, &c ? When she has taken off a sufficient number of those restrictions ? When the people of Ireland ought to be content for the present ; and should accept her promises for the future ? Who is to determine all these points ? Every individual for himself. Are the subscribers bound expressly to wait the decision and concurrence of the majority ? I believe there is no instance of it, and if there were, it would be nugatory. In all voluntary Associations, where there is not a power established to keep men to them, (which power, though formed upon the freest principles, must, to be effectual, be in a degree arbitrary,) the

Associators will judge how far the majority itself, whom they bound themselves to obey, adhered to the primitive intention of the Association or what they will call the spirit of the constitution. This spirit will be what every individual conceived it to be at first, conceives it now to be, on maturer reflection, or chuses to conceive it, for motives known to himself. Some may for a while be retained in the croud by indolence, by shame, or want of spirit; but when once a few break through the rules, and give their reasons with plausibility and boldness, especially if the multitude feel any inconvenience from their virtue, or those who draw off, gain any advantage by their secession,—the written covenant of all degenerates into the internal resolution of each individual.—How forcible that is we have heard powerfully explained! Kings who trusted too far to an oath of allegiance, in which the condition perhaps was not expressed, but is, of necessity implied, have found that they could do wrong, and their subjects redress it. If the people take not the hint, the wrong that is done they may be unable to redress.

The two ways by which we can enforce the covenant, will, I think, scarcely bear a close examination. We may “agree never to vote for, but ever against such persons as refuse to sign.” But when those who sign, may have plausible reasons for drawing off, and few can judge of their sincerity; and when those who are to judge are little more likely to be sincere than the men whose conduct they examined, and perhaps have imitated, what becomes of “the people’s balance in the (present) constitution;” or where, especially in the beginning of the period, is the great benefit of the Octennial Bill? Are we not again and again betrayed, and do we not again and again return our betrayers? None want their sufficient reasons for their conduct, whatever it is; nor do any want people to whom their reasons are sufficient. Where the GOVERNMENT is corrupt, ALL are too much alike.

The second method of enforcing the covenant will turn out as ineffectual. “We may publish the name of the draper and mercer who refuses the covenant, and persists to import, and we may agree never more to deal with him.” But drapers and mercers are of no country or party. The body of them will go with the croud, and leave the custom of the virtuous few to the virtuous mercer; a custom very edifying and very profitable to both parties! Suppose, however, what is not very probable, that we shall not be flattered out of our Associations by some paltry consideration; suppose that our Associations will stand the shock of authority, and the undermining of influence. Will England grant us the advantages of an Union unless we submit to the burthens? We shall probably excite her obstinacy; (for her obstinacy may be excited!) cordiality between the nations will be gradually diminished; our present government may be rendered still worse by obstruction, no scheme being on foot to improve it; the nation, uncertain of its interests, and unsteady in its wishes, will be exposed to its enemies at home and abroad; and it will either be teased into an union, attacked with advantage by foreign enemies, or driven, at a more unfavourable time, into an attempt at independence. If it appears then, that of the only three means by which the people can interpose to prevent their ruin, a union would be almost in every view ineligible, and that the most lasting Associations, while the power of the English Par-

liament over this country shall continue, will be far from affording us effectual and compleat relief; we are driven upon independence, as “a measure of necessity.” The alternate is legislative INDEPENDENCE or RUIN.

I might here, my countrymen, close the argument.—It is already compleat. If we can trace all our misfortunes, the destruction of our liberty and the failure of every public scheme, to the power of England and our unfortunate connection with her, we must throw off her power and abjure her connection, before we can either be free or happy.

Still, however, a few scruples may remain with some, and to enumerate a few of the advantages of legislative independence will not only shew its own intrinsic value, but evince still farther its superiority to all that can proceed from the most plausible Union, and all hitherto proposed from the most effectual association.

I begin with the first and most comprehensive advantage;—that, in effect, which will give rise to every other. Instead of being allied, or inseparably united to the interests of an old empire, tottering under a decay of nature, hurried on by her vices, we should enjoy in our own renewed constitution all the soundness, virtue, and vigour, of youth. That worst of all corruptions, introduced by the worst of all tyrannies—that of the corrupt Parliament of a superior and degenerate nation,—would be removed. The interest of the governors and of the people, now so opposite, would be reconciled. We should be our own governors, for the nation would be free to pursue her own interest under her sovereign, who would be more free to indulge her. Public spirit would shake off the despair of centuries. Public virtue would have an object, and private virtue, the virtue of the people, would at once be the spring, the effect, and the cement of the government.

I have endeavoured to shew that our peculiar situation, being divided internally by difference of religion, and being equally near to oppression and protection, must naturally produce a government of the very mildest form, and whose first and ruling principle must be toleration. How far this would contribute to the happiness, greatness, and stability of the state, as it would afford an asylum and encouragement to arts, industry, and virtue, let the former errors of France, the prudence and industry of Holland, and the great and amiable virtues of Pennsylvania, unfold and enforce unto the minds of all who have hearts to give fair play to their understandings!

A consequence of our legislative independence, and of the youth, wisdom, and moderation, of our government, would be our being unconcerned in the wars of any other nation, from which we reap much danger and loss, but no possible profit, no possible honour: and we should be neither tempted nor inclined to enter into any ourselves.

In every unhappy necessity of that kind, we should defend ourselves; we should be prepared to do so both by land and by sea, instead of being left exposed and defenceless by those who had brought us into danger, and being obliged to acknowledge as a favour the alms of our superior.

We should have a free and universal trade, unchecked by the mistaken jealousy, or real rivalry, of England. All parts of the nation would be equally attended to by a legislature that had an equal interest

in all parts, and that would be native, resident, uncorrupted, and unfettered. It is here to be remarked, that from the very nature of trade, which is an exchange of the superfluities of one nation for the wants of another, England is the last country on earth with whom Ireland can trade to advantage, and Ireland is the last country upon earth whose trade alone can be an object to England. The spirit of trade is a spirit of equality. It is equally inconsistent with a spirit of monopoly or revenue. Now the produce of England and Ireland is the same. There can be no trade between the nations that does not arise from the inferiority of industry or skill in one of them, and in trading with other nations they are rivals. The inferior nation must then be oppressed in exact proportion to her comparative advantages. Hence we may account for the freedom of Ireland under English government before trade was understood, and the laboured discouragement which her industry has invariably received since its progress in Europe.

Trade assumed a new face in Europe, from the discovery of the passage to the East Indies by the Cape of Good Hope. This happened in the reign of Henry VII. and in his reign, through the influence of his Viceroy, Sir Edward Poynings, Ireland gave up her independence by giving up the proposing of laws, which, in every free government, belongs to the people. They who give up one important right will see others usurped. Ireland then submitted to the trammels of England, and, as might be expected, she has not only worn them ever since, but they have been regularly and unconstitutionally increased.

The justice of England ended where her interest commenced. Her injustice will end but with her power.

From the independence of Ireland which will afford an object, scope, and field, for arts, industry, and genius, we shall not only secure the residence of our great men, who will find that residence both agreeable and necessary to their interest, but we shall acquire that name of which we are not barely deprived,—but which heightens the insolence and insults of our tyrants. England now shines with light borrowed from her satelite.

“There is a spirit in man as well as an understanding!” They are equally inspired by the Almighty; and he who suffers his spirit to degenerate, as much as if he allowed his understanding to be corrupted, dishonours his Creator by his disfiguring his image.

Has the Almighty stamped folly upon the forehead, or written coward upon the heart of an Irishman? Is he an ass, that he should crouch under every burden? or a stone, that he should be insensible to insult?—Are Englishmen gods, that we should worship them? Shines there a glory round them, before which the face of an Irishman should be hid?

Seldom, my countrymen, (and never in the feat of our slavery) have we met them upon equal terms;—but when we did, I trust we have not been disgraced!—Our unhappy exiles, victims to her policy, have proved that there is a day of retribution, of which the wisest are not aware. They have proved that those may avenge their country whom their country has proscribed, or whom the policy of its tyrants has rendered it unable to support.

If they themselves think us inferior to them as men, whence is it that they restrain our industry, by the usurpation of their parliament? And whence is it that our industry has sometimes overcome all restraints? Whence is it that they deceived us into an inequitable exchange of a manufacture in which we excelled, for one of which we were totally ignorant; and when we acquired superiority in the new one, robbed us of the poor produce of that inequitable bargain?

Whence is it that they thought they must suffer from our freedom, and robbed us of *MAGNA CHARTA*, the common gift of nature, confirmed to us by our King?—Whence is it that they support their usurpations by violating every principle of the constitution, trying us twice for the same offence, and depriving us of trial “by our country and our peers?”† Whence is it that they think our industry can thrive under every restraint, and that they not only load us with pensions to their hirelings, but hand us over to the plunder of their needy Lords, and despicable adventurers?—When all these questions are answered, I will ask another:—By what tie of gratitude or honour, are we bound to remain subject to the people of England?—

Yes, my Countrymen, we owe them all the gratitude which injuries and insults can inspire! They know our force; and their art has been exhausted to make us appear contemptible both to others and to ourselves.

Are we not chronicled in all English “Abstracts of the Times,” as blunderers and blockheads? Do we ever appear upon their stage but to divert their mightinesses, by absurdity, and to tickle their hot vanity by self-complacent comparison? Have we courage? It is the courage of a brute. Sense? It is the slightly half-considering sense of a madman. Generosity or feeling? They are untinged or unrestrained by a single principle of morality.

The *Gentleman*, that character which marks the man, and which is stamped with the uniform and universal currency of ages and of nations—that character has never yet been attributed to an Irishman! Meanness submits to the imputation. Good-humour keeps up the jest. Its authors, however, are half-disposed to believe it (they have too much reason in our poverty of spirit!) and the etiquette of the stage and of jocularities is as established and as absolute as the court of a VICEROY. Those who have not dignity at home must expect contempt abroad.—Ye, who have travelled, say, which of you had the courage to announce yourselves as Irishmen!

But, we need not be surprised at the insults received by those whose passiveness seems to court them. Other nations meet the same fate from English justice and generosity. They allow not gallantry to a foe; and for *rival* they have scarce in their language another name than that of *natural enemy*. Let us appeal to the same brief chronicle—the stage of each country. We shall there see, that if the French sometimes throw into an English character a few oddities and excentricities, if they make him extravagant, or *outré*, in his love of liberty and contempt of authority, they still give him the superior qualities that command the admiration of the understanding and the enthusiasm of the heart. The English never introduce a Frenchman,

† For offences against the *Woollen Act*, 10 and 11 William III. see a commentary on this extraordinary act in the letters of *Causidicus*.

but to flatter the spleen of their pride, to entertain their galleries, or to heighten the brutal prejudices of their mob. They ornament his mind with every thing that is ludicrous in vanity, mean in cowardice, and truckling in avarice, and on his person and dress they exhaust caricature.—The French give the English all the firmness, spirit, and dignity of the man. The English confer upon the French all the meanness, mischief, and mimicry of a monkey.

If then, my countrymen, we have the feelings of men, and will not be insulted as slaves, if we aim at having a rank, a character, a name in the world, let us re-assume them in the face of the world! Who are they that shall oppose us?—Is it our sovereign? It cannot be! He knows his interest; he remembers that we are LOYAL; he remembers that WE ALSO ARE HIS PEOPLE.—Is it the People or the Parliament of England? They dare not.—The prophecies of those generous individuals, who cried out against the excesses of the nation, will at length have gained some credit by their completion. If they should not—but I cannot make a supposition that would be absurd and unnatural!

Shall we sacrifice our own great interests, the great interests of posterity, the first-born, the gifted, of every age, of every art, of every science, at the altar of that idol, England? Shall we aim at an unmerited, an unprofitable, a ruinous generosity,—or shall we, by taking care of OURSELVES at present, make it POSSIBLE for us one day to be generous to others—even to her who never was just to us? Shall we continue the slaves of a sinking nation, and, as such, infected to the very heart with her vices, but incapable of her virtues,—or shall we, by one nobler effort, throw off the dead weight upon our virtue and happiness, and encourage every seed of greatness, which so long has lain unvegetating under a load of fertility, or which every wind has waisted to the soil of our oppressors? Could we, by joining England in her struggle with misfortune, prolong her hour of liberty and virtue, the world might gain by a friendship which no nation ever yet has exhibited, and we should be justified. But her fullness of time is come. We cannot prevent her sinking. Shall we allow her to grasp us in her dying convulsion, and pull us with her to the bottom? When her very breath is pestilence, her touch is death, shall we, with the absurdity of a Turk, refuse to change her atmosphere for a purer, and cling to disease and to corruption, as if folly were virtue, presumption piety? We shall not, my countrymen! Our eyes are opened, our spirit is risen, and our representatives have caught a portion of the flame! They no longer can be satisfied with “TEMPORISING EXPEDIENTS!” They will strike at the root of the disease; not attempting to skin and flim the ulcerous part, will they leave the nation still a prey to the rankness of corruption! Their opportunity is glorious, and their prudence will embrace it! They will not leave the PEOPLE to consider THEIR OWN DIGNITY, nor lay up for themselves the vain and mortifying regret, of being unable to govern those whom they wanted spirit to lead.

TARQUIN having murdered the father and brother of the first BRUTUS, took him into his care, and, in kindness to his inoffensive simplicity, or in pity to his folly, seized for his use, the lands and revenues of his family. BRUTUS was the standing jest of the Court. Boys,

dunces, dotards, aimed their dull, pointless shafts at him. If he allowed himself a retort, its finesse gave surprize, but excited no suspicion. It was the bolt of a fool shot by accident. He repressed his indignation, and bade his mighty soul lie still: the time was yet unripe. At length accident gave the word. The dagger of Lucretia produced that effect, which poetic fancy has given to the spear of Ithuriel. The fool started into a hero! His smothered indignation burst forth like a torrent. The tyrants had scarce time to be amazed. They were swept from their seats; and A NATION OF SLAVES BECAME A NATION OF HEROES!

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