

**A STATUTE OF THE FORTIETH YEAR OF
KING EDWARD III., ENACTED IN A
PARLIAMENT HELD
IN KILKENNY, A. D. 1367, BEFORE
LIONEL DUKE OF CLARENCE, LORD
LIEUTENANT OF IRELAND**

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A Statute of the Fortieth Year of King Edward III., Enacted in a Parliament Held in Kilkenny, A. D. 1367, before Lionel Duke of Clarence, Lord Lieutenant of Ireland by James Hardiman

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JAMES HARDIMAN

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A STATUTE

OF THE

FORTIETH YEAR OF KING EDWARD III.,

ENACTED IN A PARLIAMENT HELD IN KILKENNY, A. D. 1367.

BEFORE

LIONEL DUKE OF CLARENCE,

LORD LIEUTENANT OF IRELAND.

NOW FIRST PRINTED

FROM A MANUSCRIPT IN THE LIBRARY OF HIS GRACE THE ARCHBISHOP OF CANTERBURY,
LAMBETH;

WITH A TRANSLATION AND NOTES.

BY

JAMES HARDIMAN, M. R. I. A.

— *Vetus et veritas vestigia.* —

DUBLIN :
FOR THE IRISH ARCHÆOLOGICAL SOCIETY.

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INTRODUCTION.



According to Mr. Gibbon, "the laws of a nation form the most instructive portion of its history^a." But, in this respect, the history of Ireland presents a blank; for the laws of this "ancient nation," though sufficiently voluminous, do not form any portion of its published history. Although the Irish, "from the very beginning of time^b," had been governed and regulated by the code celebrated under the name of the "Brehon law," yet the particulars of that code are as little known, at the present day, as if it had never existed^c. Even the laws of the Anglo-Irish Parliaments of the Pale,

^a Decline and Fall, ch. 44.

^b Hume, A. D., 1172.

^c The Brehon laws are known only by name. Their contents remain undisclosed, for the only attempts hitherto made to develop them, were those of Vallancey, in his "Collectanea," vol. i., and they are scarcely deserving of notice. The originals are scattered through various libraries and repositories in Ireland, England, and the Continent of Europe; but the greatest portion is supposed to be preserved in Trinity

College, Dublin: and the heads of that establishment would confer a considerable benefit on the history and literature of Ireland, if they would procure those venerable fragments of its laws to be properly translated and published. A favourable opportunity now presents itself for doing so, in the person of our learned associate, Mr. O'Donovan; whose extensive knowledge of the ancient language, topography, and history of his native land, points him out as eminently qualified for that national work.

Pale, enacted since the arrival of the English in the twelfth century, are also almost wholly unknown. The few Acts passed previous to the seventeenth century, which appear in our Statute Book, bear but a very inadequate proportion to the number which still remain wrapt in the mouldering parchments on which they have been originally recorded^d. It is not, therefore, boldness or presumption to say, that those writers who have hitherto treated of the affairs of Ireland, were in a state of positive, though not invincible, ignorance of the sources from which only they could have drawn "the most instructive portion" of their labours. Satisfied with describing the outward movements of the social machine, they neglected, or rather were unacquainted with the internal influence which caused and regulated those

Until the contents of the Brehon laws, and our native annals shall be published, the history of Ireland must remain imperfect.

^d From an enumeration made by the writer, some years ago, of the Irish Acts of Parliament yet remaining on record, unprinted (for which see "Reports of the Commissioners on the Public Records of Ireland," fol., London, 1820, p. 353), Mr. Lynch, in his treatise on the Prescriptive Baronies of Ireland, fol., London, 1835, was enabled to show, that the Irish "Statute Rolls contained 1263 Statutes *never yet published*, while the printed Statutes contain only about 347 Acts." It must, however, be admitted, with Sir John Davies, that "we find in the Parliament rolls of that time, an extraordinary number of private bills and petitions answered and ordered in Parliament, containing such mean and ordinary mat-

ters, as, but for want of other business, were not fit to be handled in so high a court." Although the Ordinances of councils are here evidently confounded with the Statutes and proceedings of Parliament, yet all are equally important for the purposes of history; and while they remain, as they do at present, inaccessible to the historian, it will be vain to attempt, and folly to expect, any thing like an adequate civil history of this country. To view this in a clearer light, the reader is referred to the "General Account of the necessary Materials for a History of England," by Thomas Carte, A. D., 1744, printed in Nichols's *Literary Anecdotes*, vol. ii. p. 484: and to Harris's "Essay on the Improvement of the History of Ireland," in *Hibernica*, i. 257; which Essay was suggested by the foregoing curious paper of Carte.

those movements. Events they have narrated with sufficient accuracy as to time, place, and circumstances; but not so the causes to which those events might have been traced. They are involved in obscurity; and in this point of view, our otherwise elaborate annals are mainly defective. Hence the acknowledged inferiority of the civil history of Ireland, when compared with that of England, or with those of most other nations of Europe.

But leaving the Brehon laws to those more capable of giving them due consideration, and of elucidating their contents, the few observations considered necessary here, must be confined to the Parliaments of the Pale; and particularly to the memorable assembly, which enacted the laws now first published under the title of the *STATUTE OF KILKENNY*. With respect to the antiquity of these Parliaments, much difference of opinion has existed. Many able writers, among whom Sir John Davies, Attorney General for Ireland in the time of James I., may be considered the principal, have altogether denied their early existence. Others, and particularly our learned associate Doctor Mason, in an excellent treatise on the subject, have assigned their origin to the time of Henry II., even as far back as A. D. 1172; and in support of that opinion, various ancient records and testimonies of high authority have been adduced. Others again have assumed their antiquity on another ground, namely, that as the right to a Parliament was inherent in the Anglo-Saxon people, a right inalienable and indestructible, it must, therefore, be presumed to have been exercised from the first moment of their settlement in Ireland. Whatever that "inherent right" may be, or however

* *Essay on the Antiquity and Constitution of Parliament in Ireland*, by Henry Joseph Monk Mason, LL. D., and M. R. I. A., Dublin, 8vo. 1820. The research and reasoning displayed in this able Essay entitle it to a conspicuous place among the legal and antiquarian treatises connected with the history of Ireland.

ever ingenious the previous reasoning, still the most general, and seemingly the best founded opinion is, that the first convention in Ireland, deserving the name of a Parliament, was that held at Kilkenny, under Sir John Wogan, Lord Justice, in A. D. 1295.

Sir John Davies, in his celebrated speech before the Lord Deputy, A. D. 1613, states, that the Parliament convened at Kilkenny, in A. D. 1367, in which the following Statute was passed, was the most famous that until then had been holden in this kingdom. He moreover asserts, that this and all the other Parliaments to his own time, were summoned upon special and particular occasions, and not for the general settlement of the kingdom; and that the Parliament of A. D. 1613, was the first general representation of the people. But for this assertion he has been censured, as distorting the truth in order to flatter the vanity of James I., who wished to be considered as the legislator of Ireland, and the father of its constitution. Subsequent writers have not hesitated to assert that the Parliament held under Lord Strafford, A. D. 1635, was the first which had any pretensions to the character of a national convention, on account of its having members in it sent up from all the provinces^f. But it is not intended here to venture further into this subject:

“ Non nostrum inter eos tantas componere lites.”

The reader is therefore referred to Doctor Mason's treatise, where he will find this *vexata questio*, and other points of interest as well to the legal antiquary, as to the general historian of Ireland, discussed with considerable learning and ability.

During the interval between the arrival of Henry II. in Ireland, and the expedition of Edward Bruce, A. D. 1315, the native lords had

^f See Mr. Hyde Hall's useful Analysis of the Down Survey, in Shaw Mason's Statistical Account, or Parochial Survey of Ireland, vol. ii. p. xiii.

had been, in general, obedient to English rule. They were frequently found arrayed on the side of the government against its enemies, and often received rewards and marks of distinction for their promptitude and bravery in its cause. But the haughty and impolitic proceedings of Edward I., and the unrestrained licentiousness of the colonists, soon alienated the minds of those unsubdued and yet powerful chieftains. Driven to extremities by repeated injury and insult, they hailed the arrival of Bruce as a signal of national delivery, and eagerly flocked to his standard. Although the bold attempt of that invader was frustrated at the memorable battle of Dundalk, yet the Irish were far from being subdued, or even intimidated. On the contrary, they seemed to have acquired new confidence in their strength, and to have profited, to that extent at least, by the short sojourn of Bruce in Ireland. The result was, several successful attacks on the English of the Pale, and on the colonists in the more distant parts of the kingdom.

The latter, apprehensive of the eventual loss of their possessions, generally conciliated the natives, by intermarriages and other alliances. They gradually renounced their allegiance to the state, and finally adopted the laws, language, and manners of their former enemies. During these proceedings an occurrence took place which had considerable influence on the subsequent affairs of the country. William Burke, Earl of Ulster and Lord of Connaught, descended from one of the most considerable of the original settlers in Ireland, was slain in Ulster, by his English attendants, leaving an only daughter to inherit his vast possessions. This daughter afterwards married Lionel Duke of Clarence, second son of King Edward III.; but that prince never inherited the possessions to which he became entitled by his marriage: for the next male heirs of the deceased earl seized upon his extensive territories in Connaught, which they divided among themselves according to the laws of the Irish, and afterwards retained

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