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L A W,

Resolved and Adjudged in the King's Courts  
in IRELAND.

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Collected and Digested by

Sir J O H N D A V I E S, Knight,  
The King's Attorney-General in that Kingdom.

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Now first Translated into *English*.

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D U B L I N:

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Trin. 2. Jacobi.

## The Case of mixed Money.

QUEEN *Elizabeth* in order to pay the royal army which was maintained in this kingdom for several years, to suppress the rebellion of *Tyrone*, caused a great quantity of *mixed money*, with the usual stamp of the arms of the crown, and inscription of her royal stile, to be coin'd in the tower of *London*, and transmitted this money into this kingdom, with a proclamation, bearing date 24. *May*, in the 43d. year of her reign, by which her majesty declared and established this *mixed money*, immediately after the said proclamation, to be the lawful and current money of this kingdom of *Ireland*, and expressly commanded that this money should be so used, accepted and reputed by all her subjects and others, using any traffick, or commerce within this kingdom; and that if any person or persons should refuse to receive this *mixed money* according to the denomination or valuation thereof, *viz.* shillings for shillings, sixpenny pieces for sixpenny pieces, &c. being tendered for payment of any wages, fees, stipends, debts, &c. they should be punished as contemners of her royal prerogative and commandment. And to the intent that this *mixed money* should have the better course and circulation, it was further declared by the same proclamation, that after the 10th day of *June* immediately following, all other money which had

had been current within this kingdom, before the said proclamation, should be cried down and annulled and esteemed as bullion, and not as lawful and current money of this kingdom.

In *April*, before this proclamation was published, when the pure coin of *England* was current within this kingdom, one *Brett* of *Drogheda*, merchant, having bought certain wares of one *Gilbert* in *London*, became bound to the said *Gilbert* in a obligation of 200 *l.* on condition that he should pay to the said *Gilbert*, his executors, or assigns, 100 *l. sterling, current and lawful money of England*, at the tomb of earl *Strongbow* in *Christ-Church, Dublin*, at a certain day to come; at which day and place, *Brett* made a tender of the 100 *l.* in the mixed money of the new standard, in performance of the condition of the obligation; and whether this tender was sufficient to save the forfeiture of the obligation, or whether the said *Brett* should now, upon the change or alteration of money within this kingdom, be compelled to pay the said one hundred pound, in other or better coin than in the mixed money, according to the rate and valuation of it, at the time of the tender, was the question at the council table, where the said *Gilbert*, who was a merchant of *London*, exhibited his petition against the said *Brett*, for the speedy recovery of his debt aforesaid.

And, inasmuch as this case related to the kingdom in general, and was also of great importance in consideration and reason of state, Sir *George Carew*, then lord deputy and also treasurer, required the chief judges, (being of the

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privy council) to confer on and consider this case, and to return to him their resolution touching it; who upon conference and consideration on all the points of the said proclamation, resolved that the tender of the one hundred pounds in the mixed money, at the day and place aforesaid, was good and sufficient in the law, to save the forfeiture of the said obligation, and that *Brett* should not be obliged at any time after, to pay other money, in discharge of the debt, than this mixed money, according to the rate and valuation that it had, at the time of the tender; and this resolution was certified by them to the lord-deputy, and the certificate entered in the council book. And in this case divers points were considered and resolved.

Necessity of  
money, *Lock*  
of coin.  
*Cotton* 4.

First, it was considered, that in every commonwealth, it is necessary to have a certain standard of money. For no commonwealth can subsist without contracts, and no contracts without equality, and no equality in contracts without money. For although in the first societies of the world, permutation of one thing for another was used, yet that was soon found cumbersome, and the transportation and division of things was found difficult and impossible; and therefore money was invented, as well for the facility of commerce, as to reduce contracts to an equality. *Cum non facile concurrebat, ut cum tu haberes quod ego desiderarem, ego invicem haberem quod tu accipere velles, electa materia est, cujus publica & perpetua estimatio difficultatibus permutationem subveniret. Paul. lib. i. ff. de contrahendis empt.* and therefore money is said by *Bodin* to be *mensura publica,*

publica; & Budelius lib. 1. de re nummariâ, ca. 3. saith *Moneta est justum medium & mensura rerum commutabilium, nam per medium monetæ fit omnium rerum, quæ in mundo sunt, conveniens & justa æstimatio.* And to this purpose Keble saith, 12 H. 7. 23. b. that every thing ought to be valued *per argent*, by which word *argent*, he meaneth money coined. And the great utility of a certain standard of money and of measures is well expressed by *Budelius* in this verse,

*Una fides, pondus, mensura, moneta sit una,  
Et status illæsus totius orbis erit.*

Secondly, it was resolved, that it appertaineth only to the king of *England*, to make or coin money within his dominions; so that no other person can do it without special license or commandment of the king; and if any person presume to do it of his own head, it is treason against the person of the king by the common law; and this appears by the stat. of 25 Ed. 3. c. 2. (which is only a declaration of the common law,) and by *Glanvil*, *Britton* and *Brañon*, before that statute, *Stamford fol. 2. and 3.* and in the case of mines, *Plowd. 316. a.* this point is expressed more clearly, where it is said, that the king shall have mines of gold and silver; for if a subject had them, he by law could not coin such metals, nor stamp a print or value upon them, for it appertaineth to the king only to put a value upon coin, and make the price of the quantity, and to put a print to it; which being done the coin is current; and if a subject doth this it is high treason at common law, as

King's prerogative in making or coining money.  
2 Ro. ab. 166.  
1 Co. 146.  
5 Co. 114.  
1 H. H. P. C. 188.

appears, 23 *Aff. p.* 2. and it is high treason to the king, because he hath the sole power of making money, &c.

Things essential to the legitimization of money.

And in this book three things are expressed, which are requisite to the making of lawful money, *viz.* the authority of the prince, the stamp and the value. But upon the consideration of the case in question, it was observed, that six things or circumstances ought to concur, to make lawful and current money, *viz.* 1. Weight. 2. Fineness. 3. Impression. 4. Denomination. 5. Authority of the prince. 6. \* Proclamation. For every piece of money ought to have a certain proportion of weight or poise, and a certain proportion of purity or fineness, which is called alloy; also every piece ought to have a certain form of impression, which may be knowable and distinguishable; for as wax is not a seal without a stamp, so metal is not money without an impression: *Et moneta dicitur a monendo, quia impressione nos monet, cujus sit moneta. Cujus imago est hæc? Cæsaris: date Cæsari quæ sunt Cæsaris.* Also every piece of money ought to have a denomination or valuation for how much it shall be accepted or paid, as for a penny, a groat or a shilling; and all this ought to be by authority and commandment of the prince, for otherwise the money is not lawful; and it ought to be published by the proclamation of the prince, for before that, the money is not current.

These circumstances appear in the ancient ordinances made by the king for the coinage of money, as well in this kingdom as in *England*, which are to be found in the tower of *London* there,

\* But see  
H. H. P. C.  
196. that pro-  
clamation is  
not always  
necessary.

there, and in the castle of *Dublin* here.

Also the indentures between the king and the masters of the mint prescribe the proportion of weight, fineness, and alloy, the impression or inscription, the name and the value. See the stat. 2 *Hen. 6. c. 12.* where mention is made of these indentures; see also *Wad.'s case, 5 Co. 114. b.* that the king by his proclamation may make any coin lawful money of *England*; *a fortiori*, he may, by his proclamation only, establish the standard of money coined by his authority within his own dominions.

And that the king by his prerogative may also put a price or valuation on all coins, appears by a remarkable case, 21 *Ed. 3. 60. b.* In the time of *Will. the conqueror*; the abbot of *St. Edmundsbury* complained to the king in parliament, that whereas he was exempted from the jurisdiction of the ordinary by divers antient charters, the bishop of *Norwich* had visited his house, contrary to those charters of exemption; upon which it was granted and ordained in parliament, that if from thenceforward, the bishop of *Norwich* or any of his successors should go against the aforesaid exemption; they should pay to the king or his heirs, thirty *talents* or *besaunts*. Afterwards in the time of *Ed. 3.* the bishop of *Norwich* visited the house again, against the ordinance aforesaid, and this contempt being found in the *King's-bench*, a *scire facias* issued against the bishop to shew why he should not pay to the king the thirty *talents* or *besaunts*; and upon an insufficient plea pleaded by the bishop, the court awarded that they should recover the *talents* or *besaunts*, and that it should be interpreted by the king himself.

self of what value they should be; more or less; by which it is manifest that where talents or befaunts, or such other pieces, or quantities of gold or silver are of uncertain value (for *Budellius* saith that *talenta sunt varia, & pondera sunt, potius quam numismata*) the king hath a power to put a certain value upon them, according to the rule well known to the civilians, *Moneta estimationem dat, qui cudendi potestatem habet.* And in this point the common law of *England* agrees well with the rules of the civil law, *Jus cudendæ monetae ad solum Principem, hoc est, Imperatorem, de jure pertinet. Monetandi jus Principum ossibus inhæret. Jus monetae comprehenditur in regalibus, quæ nunquam a regio sceptro abdicantur.*

Yet by antient charters, this priviledge or prerogative hath been communicated to some subjects in *England*. As to the archbishop of *Canterbury* by charter of king *Albelstan*, *Lamb. peramb. Kant. fol. 291.* The archbishop of *York* and bishop of *Durham* had mines and power of coining money, as appears by the statute of 14 *Hen. 8. c. 12.* and the dean of *St. Martin's le-grand* had the same privilege; as is manifest from the stat. of 19 *Ed. 4. c. 1.* and this right of coining money hath been granted to several great personages in *France* heretofore, as *Choppinus* relates, *lib. de dominio Franc. fol. 217. a.* And this prerogative at this day is imparted too generally to all the inferior princes and states of *Germany* by grant or permission of the emperor; for it is a law of the empire *Jus cudendæ monetae, nisi cui ad Imperatore concessum fuerit, nemo usurpat.*

Thirdly,

Thirdly, it was resolved that as the king by his prerogative may make money of what matter and form he pleaseth, and establish the standard of it, so may he change his money in substance and impression, and enhance or debase the value of it; or entirely decry and annul it, so that it shall be but bullion at his pleasure. And note, that bullion, which in *Latin* is called *Bullio, est moneta defensa & prohibita, quæ videlicet usu caret.*

King's prerogative in changing the standard of coin. 1 H. H. P. C: 192.

And that the king hath used this prerogative in *England*, appears by several notorious changes of money, made in the time of several kings since the *Norman* conquest, *Anno 26 Hen. 2. Monetâ veteri reprobata, nova successit. Matt. Paris hist. mag. fol. 35. a. Anno 7. Job.* a new money was coined, at which time the first *Sterling* money was coined, according to the opinion of *Cambden*, where he speaketh of *Sterling-castle* in *Scotland*, *fol. 700. b. Anno 32 Hen. 3.* the king was obliged to make new money, *cum moneta Angliæ circumcidebatur à circumcisis Judæis*; as *Matt. Paris* saith, *fol. 703. a. Anno 7 Ed. 1.* the standard of money was renewed, when the sterling penny was established to contain *vicesimam partem unciæ*, as appears by the old *magna charta*, in the ordinance called *compositio mensurarum*, where it is ordained, *quod viginti denarii faciant unciam. Anno 29 Ed. 1.* when the money called pollards was cried down, a new sterling money was also coined; see *6 Ed. 6. Dyer 82. b. & lib. rubr. Scacc. Dubl. part 2. fol. 1. b.* After this new monies were made, *9 Ed. 3.* and *13 Hen. 4.* and *5 Ed. 4.* and *19 Hen. 7.* and *36 Hen. 8.* and lastly *E 4* *2 Eliz.*

2 *Eliz.* when all mixed and base money was cried down and the standard of pure silver established, which continues to this day, of which *Bodin* maketh honourable mention, *libro 6 de republicâ, cap. 3.*

Without act  
of parliament. And it seems these changes of money in *Eng-land* were made by the authority of the king without parliament; altho' several acts of parliament have been made for the ordering of exchange, and to prohibit the exportation of money made and ordained by the king, and the importation and utterance of foreign and false money, under certain pains and penalties of which some were capital and some pecuniary. And several ordinances of the king made without the parliament are called statutes, as *statutum de monetâ magnum, & statutum de monetâ parvum*, which are called statutes, because the ordinance of the king with proclamation in such case hath the force of an act of parliament.

King's prerogative in enhancing or debasing the value of coin in *England.*  
1 *H. H. P.*  
*C. 192.*

And as the king hath used to change the standard of his money, to wit, the form and the substance, so hath he used by his prerogative to enhance or debase the value of it, notwithstanding that the form and substance continueth as it was before. And this was done, 5 *Ed. 4.* as appears by the book of 9 *Ed. 4.* 49. where *Danby* saith, that a noble was better then, than it was *anno 20* of that king, by 20 *d.* in each noble. And king *Hen. 8.* by special commission dated 24 *July, anno 18.* of his reign, authorised cardinal *Wolfey*, with the advice of other of the privy council, to put a value on all the moneys of *England*, from time to time, according to the rates and values of the monies of foreign nations,

tions, which were then too much enhanced; especially by the emperor and the king of France, as is expressed in the said commission. See also 6 and 7 *Ed. 6. Dyer* 82 and 83. several cases on the debasement of money.

And it is to be observed that between the 36 of *Hen. 8.* when several sorts of debased money were coined in *England*, and 2 *Eliz.* when the pure standard of silver money was established, there were three notorious falls or cry-downs of base monies published by proclamation; the first, 9 *July, 5 Ed. 6.* the second, 17 *August*, the same year, as is mentioned, *Dyer* 83. a. the third, 28 *Sep. 2 Eliz.*

And as the king hath always used to make And in *Ire-*  
and change the money of *England*, he hath *land.*  
also used the same prerogative in *Ireland* ever since the 12th year of king *John*, when the first standard of *English* money was established in this kingdom, as is recorded by *Matt. Paris, magn. hist. 220. b.* where it is said that this king being in *Ireland*, *constituit ibidem leges & consuetudines Anglicanas, ponens ibidem Vicecomites, aliosque ministros, qui populum regni illius juxta leges Anglicanas judicarent. Præfecit autem ibidem Johannem de Gray Episcopum Norwicensem Justitiarium, qui denarium terræ illius ad pondus numismatis Angliæ fecerat publicari, & tam obulum quam quadrantem rotundum fieri præcepit: jussit quoque Rex, ut illius monetæ usus tam in Anglia quam in Hibernia communis ab omnibus haberetur, & utriusque regni denarius in thesauris suis indifferenter poneretur.*

By which it appeareth that the standard of money in *England* and in *Ireland* was equal at  
first

first, and that the *English* money was not a fourth part better in value than the *Irish*, as it hath been since the time of *Ed. 4.* for before that, as there was one and the same standard of money in both kingdoms, so always when the money was changed in *England*, it was also changed in *Ireland*; as in the year 1279, viz. 7 *Ed. 1.* when that king established new money in *England*, as is shewn before, there was likewise a change of money in *Ireland*, as is observed in the annals of this kingdom, published by *Cambden* in his *Britannia*, where it is said, that in the year 1279, *Dominus Robertus de Ufford Justiciarius Hiberniæ intravit Angliam, & constituit loco fratrem Robertum de Fulbourne Episcopum Waterford, cujus tempore mutata est moneta.* So 29 *Ed. 1.* when by special ordinance of the king the *pollards* and *crockards* were decried and annulled, the same ordinance was transmitted into this kingdom, and enrolled in the *Exchequer* here, as is found in *lib. rubr. scacc. part 2. fol. 2. b.* Also in the annals aforesaid it is observed in the same year, *numisma Pollardarum prohibetur in Angliâ & Hiberniâ.*

And as the standard of the monies was equal, so the mints and coinage in this kingdom were ordered and governed in the same manner as in *England*, as appears by the account of *Donat* and *Andrew de Sperdsholst* assay masters in *Dublin*, 9 and 10 *Ed. 1. in archivis Castri, Dublin*, and in *lib. rubr. scacc. bic part 2. fol. 1.* and in *rot. parl. in castro Dublin*, 12 *Ed. 4. c. 60.* See also several ordinances there touching the mint and monies, 7 *Ed. 4. c. 9.* 10 *Ed. 4. c. 4.* 16 *Ed. 4. c. 2.* 19 *Ed. 4. c. 1.* 1 *R. 3. c. 7.*

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But the first difference and inequality between the standard of *English* and *Irish* monies, is found in 5 *Ed* 4. for then it was declared in parliament here, that the *noble* made in the time of *Ed* 3. *Rich* 2. *Hen* 4. *Hen* 5. and *Hen* 6. should be from that time forth current in this kingdom for 10 s. and so of the *demy-noble*, and all other coins according to the same rate, see *Rot. parl.* 5 *Ed* 4. c. 40. and 11 *Ed* 4. c. 6. and 15 *Ed* 4. c. 5. in the Roll's-office in the Castle of *Dublin*. After which time the money made in *Ireland* or for *Ireland*, was always less in value than the money of *England*, and the usual proportion of the difference was the fourth part only, *viz.* the *Irish* shilling was only 9 d. *English*. See the proclamation aforesaid, dated the 24 of *May*, 43 *Eliz.* enrolled in the *Chancery* here, where the queen makes mention of this difference made by her progenitors between the standard of money made for this kingdom, and the money of *England*. And note, that, that which is called the standard of money in this case, is the same which is called by the *French* *pied de money*, by *Bodin* *pes monetarum*, as if the prince there *pedem figat*, having established the weight and purity of money in a certain proportion, which should not be transgressed by the moneyers.

And so it is manifest, that the kings of *England* have always had and exercised this prerogative of coining and changing the form, and when they found it expedient of enhancing and abasing the value of money within their dominions: and this prerogative is allowed and approved not only by the common law, but also  
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Different standards in *England* and *Ireland*.

by the rules of the imperial law. *Budelius de re numaria, libr. 1. c. 5. Princeps ad arbitrium suum, irrequisito assensu subditorum, valorem monetæ constituere potest, quia populus, quantum ad hoc, omnem potestatem & jurisdictionem in Principem seu Imperatorem transfuisse dicitur.* And a little after in the same chapter, although some doctors are of opinion, *Principem sine assensu populi monetam mutare non posse*, yet he concludes, *Si princeps consuevisset mutare monetam auctoritate propria, sine consensu populi, a tempore, cujus initii memoria non existit, tunc libere imposterum eum hoc facere posse. L. hoc jure Paragr. ductus aquæ. ff. de aqua quotid. &c.* and *Covarruvias, libro de collatione veterum numismatum, cap. de mutatione monetæ*, saith *Princeps potest mutare monetam ratione publicæ utilitatis, viz. tempore belli, vel si alias utile populo sit futurum, ita etiam, ut ex corio fieri possit:* and it is observed by *Molineus, libro de mutatione monetæ, cap. 100.* that the state of *Rome* in the first punick war, when *Hannibal* had possession of a great part of *Italy*, and all their treasure was exhausted, enhanced base money to a great value, for the payment of their armies, and yet the justice of that state was then famous throughout the world. But *nihil est magis justum, quam quod necessarium*; by which it appears that the mixed money was made by queen *Eliz.* on a just and honourable cause.

*Sterling money what, and from whence so called.*

Fourthly, it was resolved that the said mixed money having the impression and the inscription of the queen of *England*, and being proclaimed for lawful and current money within this kingdom of *Ireland*, ought to be taken  
and

and accepted for *sterling* money; and on consideration of this point, the name and the nature of *sterling* money were enquired and discovered. As to the name of *sterling*, some doctors of the civil law being deceived by the erroneous report of *Polydore Virgil*, have conceived that this *English* money was called *sterling*, because the form of a *stare*, the diminutive of which is *sterling*, was imprinted or stamped upon it, and therefore, *Covarruvius*, *lib. de collatione veterum numismatum*, c. 2. *sterling* (saith he) *est argenteus nummus Anglicus ex vicefima sexta parte unciae, nam viginti sex nummi argentei sterlingi, pendebant unciam, Autore Polydore Virgilio, in hist. Anglicâ, lib. 16. dictus autem est hic nummus, ut idem author tradit, sterling, quod sturnus avis Anglice a sterling, in altere parte nummi esset impressa.* To the same purpose *Choppinus de dominio Franc. lib. 2. tit. 7.* hath this note, *Cæterum Errico 3. Britanniae rege, primum percussa est nunc usitatissima sterlingorum moneta, ab effigie sturni sic dicta, anno 1249.* These doctors being strangers, were, it seems, misinformed by *Polydore Virgil*, who was also an alien and a stranger; but our *Linwood* also (who made his gloss on the provincial constitutions of *England*, in the time of *Hen. 6.*) *tit. de testam. C. Item, quia, verbo Centum solidos,* saith, *sterling nomen erat argenteae monetae, & habebat similitudinem denarii usualis, hoc salvo, quod in unâ quartâ habebat effigiem avis, quæ vocatur sturnus, Anglice, sterling.*

Others have been of opinion, that this *English* money had the name of *sterling*, because the first money of this standard, was coined in the castle of  
Ster-

*Sterling in Scotland by king Ed. 1. but this is also an erroneous opinion, as is noted by Camden in Scotia, pag. 700. where speaking of Sterlings-castle, he saith that Quidam monetam probam Angliæ quæ sterling money dicitur, hinc denominatam volunt, frustra sunt; a Germanis enim, quos Angli Esterlingos ab orientali situ vocarunt, facta est appellatio, quos Johannes Rex ad argentum in suam puritatem redigendum, primus evocavit, & ejusmodi nummi, Esterlingi, in antiquis scripturis semper reperiuntur.*

And this latter opinion without doubt, is the better and more probable, by the judgment of all the most learned antiquarians of England. For in all the antient statutes which make mention of this money, it is called *Esterling*; as 9 Ed. 3. c. 2. &c. *no false money counterfeit esterling shall be imported into our realm*; and the same year c. 3. *no esterling half-penny or farthing shall be molten to make vessel, &c.* and 25 Ed. 3. c. 13. *the money of gold and silver which is now current, shall not be impaired in weight or allay, but shall be put in the antient state as in the esterling*; and Matt. Paris magn. hist. fol. 403. where he expresses the form of the obligation made by the clergy of England to the pope's bankers resident in London, makes mention of this money by the name of *esterling*. *Noveritis nos recipisse ab A. and B. &c. centum uncias bonorum & legalium esterlingorum, tresdecim solidis & quatuor sterlingis pro qualibet unciâ computatis.* And the same author fol. 710. saith, *eodem tempore moneta Esterlingorum propter sui materiam desiderabilem, detestabili circumcissione cæpit deteriorari & corrumpi.* And  
fol.

fol. 575. *Commitissa de Biarde venit ad Regem cum 60 militibus, ducta cupidine Esterlingorum, quibus noverat Regem Angliæ abundare, & accepit a Rege qualibet die pro stipendio tresdecim libras Esterlingorum, &c.* And *Hovenden* in *Rich. 1. f. 377. b.* makes mention of this money in these words, *videns igitur Galfridus Eboracensis electus, quod nisi mediante pecuniâ amorem Regis fratris nullatenus habere possit, promisit ei tria milia librarum Sterlingorum pro amore ejus habendo*; and this was before the time of king *John*; from whence it seems, that the time when this money was first coined is uncertain; for some say that it was made by *Osbright* a king of the *Saxon* race 160 years before the *Norman* conquest. And so as *Nummus* is called from *Numa*, who was the first king who made money in *Rome*, so *sterling* is called from the *Esterlings* who first made the money of this standard in *England*, by a *Metonymia*, substituting the name of the inventor for the thing invented, as *Ceres pro frumento, Bacchus pro vino, &c.*

And it is to be observed that the *Esterlings* were the first founders of the four principal cities of *Ireland*, viz. *Dublin, Waterford, Cork* and *Limerick*, and of the other maritime towns in this kingdom, and were the sole maintainers of traffick and commerce, which was utterly neglected by the *Irish*: these cities and towns were under the protection of king *Edgar* and *Edward* the confessor before the *Norman* conquest: and these *Esterlings* in the antient records of this kingdom are called *Ostmanni*. And therefore, when *Hen. 2.* upon the first  
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conquest, thought it better to people these cities and towns with *English* colonies taken from *Bristol, Chester, &c.* he assigned to these *Ostmen* certain proportion of land next adjoining to each of these cities, which portion is called in the records of antient times, *Cantreda Ostmanorum*. And all this was observed on the name of *Sterling*.

For the nature or substance of this money, first it was observed, that the coin which was properly called the *sterling* was the *denier* or silver penny, as appears in the ordinance called *Compositio mensurarum* made in the time of *Ed. 1.* where it is said, *Denarius Angliæ, qui nominator sterlingus, rotundus, sine tonsura, ponderabit triginta & duo grana in medio spicæ, &c.* and every other coin or piece of silver was measured by the *sterling* penny, as the groat contained the value of four *sterlings*, and the half groat the value of two *sterlings*, 25 *Ed. 3. c. 6.* and the shilling consisted of twelve *sterlings*, *Linwood de testamentis C. item quia, verb. Centum solidos*; and the *mark* consisted of 13 s. and four *sterlings*, as before is shewn from *Matt. Paris* and the *maile* (half-penny) was the half of a *sterling*, and the farthing the fourth part of a *sterling*. See an ordinance without date in the *magna charta* printed by *Tottel, anno 1556. fol. 167.* and in *Rastall's* old abridgment, money 52. *quia multorum Regum temporibus provisum fuit, quod propter pauperes, denarius argenti, viz. Sterlingus, divideretur in obulum & quadrantem, ex parte domini Regis precipitur, quod quicumque recusaverit obulum vel quadrantem debitam habentem formam, capiatur.* See 6 and 7 *Ed. 6.*  
Dyer

*Dyer* 82. in the case of *pollards*, where it appears that a *sterling* and a *denier* were the same; for there it is said that two *pollards* passed for one *sterling*, and accordingly two \* *sterlings* were paid for one *denier*. And indeed in antient time, every sort of money made of the several metals of which money was usually coined, was properly called a *denarius*; and therefore the *French* and *Italians* speak properly, when they call all money *deniers* and *denarii*, for coins (*nummi*) were either copper, silver or gold; each silver one was worth ten of copper, and so was called a *denier*; and each gold one was worth ten of silver, and in this respect these were likewise *deniers*. And the antient proportion of gold to silver was as ten to one; and this proportion, as it seems, *David* observed in the treasure of gold and silver which he prepared for the building of the temple; for the text says, *Chron. cap. 22. ver. 14. That he provided for that purpose 100,000 talents of gold, and 1,000,000 talents of silver.* So the first and proper *sterling* coin was a *denier*.

\*.So in the original; but qu. whether it should not be *pollards*.

And for the substance of this *denier* or *sterling* penny in weight and purity: as to the weight, it was at first the twentieth part of an ounce, viz. an ounce was cut into twenty *sterling deniers* and no more; see the *Compositio mensurarum* made in the time of *Ed. 1. in veteri libro de magnâ chartâ, fol. 113. b.* and in *Rastal's* old abridgment, *tit. weights and measures, 4.* where it is said, that *viginti denarii faciunt unciam, & duodecim uncie faciunt libram*; and so it was until 9 *Ed. 3.* at which time the ounce

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of silver was cut into 26 pence. *Annal. de Rob. de Avesbury M. S.* See several ordinances touching the new *sterling* money, made 9 *Ed. 3. Rastal, money 345.* And such proportion was continued until 2 *Hen. 6.* when the ounce of silver made 32 pence ; and this appears by the stat. of 2 *Hen. 6. c. 13.* and also by *Linwood de testamentis, cap. Item quia, verb: cent. solid. bic solidus* (saith he) *sumitur pro duodecim denariis Anglicanis; horum 26 ponderabant unciam, cum tamen jam 32 denarii vix faciant unciam.* And this gloss was wrote in the beginning of the reign of *Hen. 6.* as it is mentioned in the preface to his book. This standard was continued until the 5 *Ed. 4.* and then the ounce of silver made 40 pence ; 9 *Ed. 4. 49. a.* and 12 *Ed. 4. c. 60. in Rot. parl. Dublin.* And this continued until 36 *Hen. 8.* when the king prepared for his journey to *Bullogne* ; and then an ounce of silver was cut into 60 pence, and that standard remains to this day ; and so the *sterling* penny which was at first the twentieth part of an ounce, is now the sixtieth part of an ounce ; and by consequence, the antient *sterling* penny contained as much silver as is contained in the three-penny piece that is now current.

And as to the purity of this *sterling* money  
 18 s. 5  $\frac{1}{2}$  d. of the purest silver was contained  
 in each pound, and each pound of *sterling* money had 1 s. 6  $\frac{1}{2}$  d. allay of copper, and no more ; and of this allay of *sterling* money, the ordinances or statutes of 25 *Ed. 3. c. 13.* and 2 *Hen. 6. c. 13.* make mention. But this is well known to all moneyers, and is contained  
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in all the indentures<sup>p</sup> made between the king and the masters of the mint:

Then the *sterling* money being of such weight and fineness, the doubt, *primâ facie*, was, how this mixed money should be said to be *sterling*. And for the clearing of this doubt; it was said, that in each common piece of money, there is *bonitas intrinseca*, & *bonitas extrinseca*: *intrinseca consistit in prætiositate materiæ & pondere, viz. fineness and weight; extrinseca bonitas consistit in valuatione seu denominatione, & in formâ seu charactere. Budel. de re nummariâ, lib. II. cap. 7.* and this *bonitas extrinseca* which is called *estimatio sive valor impositivus, est formalis & essentialis monetæ*; and this form giveth name and being to money; for without such form, the most precious and pure métal that can be, is not money; and therefore, *Molinæus; lib. de mutat. Monetæ, saith, non materia naturalis corporis monetæ, sed valor impositivus est forma & substantia monetæ, quæ non est corpus physicum sed artificiale; as Aristotle saith, Ethic. lib. 5. and so Polit. lib. 1. he saith to this effect, That money was first signed and imprinted with a certain character, to the intent; that the people might accept it on the credit of the prince or state who publishes it, without examination or trial of the weight or purity. And to this purpose Molinæus hath this rule, Q. 99. de jure non refert sive plus, sive minus argenti insit, modo publica proba, & legitima moneta sit. Et Baldus l. singulari, saith, in pecunia potius attenditur usus & cursus quam materia. And Seneca lib. 5. de beneficiis, Æs alienum habere dicitur, & qui aureos debet, & qui coram formâ publicâ percussus;* and it was said that the king

Whether the mixed money should be deemed *sterling*.

hath the same prerogative to give value to base metal by his impression or character, as he hath to give estimation to a mean person by imparting the character of honour to him; *sic fiet viro quem Rex honorare desiderat.*

And so it was concluded that after the *Esterlings*, by command of the king of *England*, had made this pure *English* money, which from the name of the makers was called *esterling* or *sterling* money, the standard of which hath been always the most fixed and unchanged in all the world, (which hath been a great honour to our nation, for in all other kingdoms and states, the standards of their money are more unsteady and variable,) all money coined by the authority of the king of *England*, and having his character and impression, not only in *England*, but also in *Scotland* and *Ireland*, hath been *sterling* money, and so called, reputed and taken by all people, whether the matter of it were mixed or pure: and this appears by the ordinance which is called *statutum de moneta magnum*, by which all money is prohibited, only the money of *England*, of *Ireland* and of *Scotland*, which was properly the *sterling* money. And therefore *Freberus*, *lib. de re nummariâ*, where he enumerates the different money of different nations; *sterlingi*, saith he, *habentur in Anglia, Scotia & Hibernia.* And *Bodin*, *lib. 6. de republ. c. 3.* speaking of the money of *Scotland*; in *Scotland*, saith he, are two pounds, (*livers*) very different; one of *esterlings*, the other customary. And certainly the usual *Scottish* pound (*liver*) is like the *French livre*, and the pound (*livre*) *esterling* current there,  
is

is that of *England*. And that base or mixed money may be current for *sterling*, appears by the said case of *pollards*, *Dyer* 82. *b.* where it is said, *quod currebat quedam moneta in Anglia loco sterlingi quæ vocabatur pollards, viz, duo pollardi pro uno sterlingo.*

Fifthly, it was resolved, that although this mixed money was made to be current within this kingdom of *Ireland* only, yet it may well be said, current and lawful money of *England*, for two causes. 1. Because this kingdom is only a member of the imperial crown of *England*; and this appears 3 *Hen.* 7. 10. *a.* where a question was propounded to the justices by *Hobart*, attorney-general, *Si quis sciens monetam ad similitudinem monetæ Regis Angliæ contrafactam, talem monetam in Angliam extra Hiberniam deferat, si sit proditio necne: Et dixerunt quod Hibernia est quasi Membrum Angliæ, Et ibidem legibus Angliæ utuntur, Et autoritate Regia faciunt Monetam.* And to this purpose it is recited in the statute of faculties, enacted in this kingdom, 28 *Hen.* 8. *c.* 19. *That this the king's land of Ireland is a member appendant, and rightfully belongeth to the imperial crown of the realm of England, and united unto the same.* And in the act of 33 *Hen.* 8. *c.* 1. by which the stile and title of king of *Ireland* was given to *Hen.* 8. his heirs and successors, it is moreover enacted, that the king shall enjoy that stile and title, and all other royal pre-eminences, prerogatives and dignities, *as united and annexed to the imperial crown of the realm of England.*

*Irish money*  
lawful money  
of *England.*

2. It is called lawful money of *England*, in respect to the place of coinage, which was in *England*, viz. in the tower of *London*. For although in antient times the king had several mints in this kingdom, as he had in *England*, yet since the commencement of the reign of queen *Elizabeth*, all the mints have been reduced to one place, viz. the tower of *London*, and this was done upon good reason of state, to prevent the falsification of money. And therefore, before the *Norman* conquest, all money was coined in monasteries; for it was presumed that in such places no falsity or corruption would be found. And this agrees with the prudence of the *Roman* state, which had but one mint for all *Italy*, and that was in the temple of *Juno* at *Rome*, who for this cause was called *Juno moneta*: and for this purpose, the emperor *Charlemain* made a law in these words, viz. *de falsis monetis, quia in diversis locis contra justitiam fiunt, volumus, ut in nullo alio loco moneta, nisi in palatio nostro, fiat.* *Choppinus de Domino Franciæ, 217. a.* Yet in 28 *Ed. 1.* this prudent king, for the facility of exchange, caused several mints to be established in several towns in *England*; one in the tower of *London* with thirty furnaces, another at *Canterbury* with eight furnaces, another at *Kingston upon Hull* with four furnaces, another at *Newcastle upon Tyne* with two furnaces, another at *Bristol* with four furnaces, and another at *Exeter* with four furnaces. *Treatat. de monetâ Angliæ*, made in the time of *Ed. 1.* which I found in the library of Sir *Robert Cotton*, which was the book of lord *Burleigh*, late lord high-treasurer of *England*. See also the close rolls of

of 29 *Ed. 1.* in the tower of *London*. And this appears also by the inscription of divers antient coins, on which are expressed the names of the cities where they were coined, according to a verse made in the time of *Ed. 1.* and taken by *Stow* out of *Robert le Brun*, an antient manuscript,

*Edward did smite round penny, half-penny,  
farthing.*

And then followed,

*On the king's side, was his head and his name  
written,  
On the cross side, the city where it was smitten.*

And this same king having established a mint at *Dublin* with four furnaces, and having constituted *Alexander Norman* of *Lusk*, master of the mint there, as appears in several records in the archives of the castle of *Dublin*, afterwards, viz. 32 *Ed. 1.* when he had altered the form of the coin, he caused divers stamps consisting of two parts, of which the one contained the pile, and the other the cross, to be transmitted to the treasurer of this kingdom, as is recorded in the red book of the *Exchequer* here, in this manner, *Magister Gulielmus de Wimundham custos Cambiorum domini Regis in Anglia, de precepto venerabilis Patris Bathon. & Wellensis Episcopi, Thesaurarij ejusdem domini Regis, misit domino Gulielmo de Esenden thesaurario in Hibernia, viginti quatuor pecias cuneorum, pro moneta ibidem facienda, viz. tres pilas cum sex crucellis pro denarijs, tres pilas cum sex crucellis pro obolis,*

*Et duas pilas cum quatuor crucellis pro ferlingis, per Johannem le minor, Thomas Dowle, Et Johannem de Shordich clericos de societate operariorum Et monetariorum London, per eosdem ad monetam prædictam operandam Et monetandam.* And there it is likewise mentioned, before what witnesses the said stamps were delivered: for *Caneus monetæ tanquam sigillum regni custodiri debet*, as it is said in the treatise *de moneta Angliæ* before mentioned; and the reason is, because to counterfeit the one or the other is high treason.

And at this time there was but one mint in *Ireland*, to wit, at *Dublin*; but long afterwards, viz. 3 *Ed. 4.* a mint was established at *Waterford*, another at *Trim*, and another at *Galway*; *Rot. Parl. 3 Ed. 4. in Castro Dublin.* And 12. *Ed. 4. Rot. Parl. ibid.* it is ordained, that the masters of the mint in *Ireland* should make in the castles of *Dublin* and *Trim*, and in the town of *Drogheda*, five sorts of coin, the groat, the half-groat, the penny, half-penny and farthing; by which it is manifest that in former times, there were five several mints in *Ireland*, in the several towns aforesaid. But all these were discontinued in the time of *Ed. 6.* so that since the reign of that king, all the money made in *Ireland*, hath been coined in *England*; and therefore this mixed money coined in the tower of *London*, may be properly called current and lawful money of *England*.

If an obligee refuseth a tender at the time and place in mixed money (viz. un-

Sixthly and lastly, it was resolved, that although at the time of the contract and obligation made in the present case, pure money of gold and silver was current within this kingdom, where the place of payment was assigned; yet the

the mixed money being established in this kingdom before the day of payment, may well be tendered in discharge of the said obligation, and the obligee is bound to accept it; and if he refuses it, and waits until the money be changed again, the obligor is not bound to pay other money of better substance, but it is sufficient if he be always ready to pay the mixed money according to the rate for which they were current at the time of the tender. And this point was resolved on consideration of two circumstances, *viz.* the time and the place of the payment; for the time is future, *viz.* *that if the said Brett shall pay or cause to be paid 100l. sterling, current money, &c.* and therefore such money shall be paid as shall be current at such future time; so that the time of payment, and not the time of the contract shall be regarded.

Also, the future time is intended by the words *current money*, for a thing which is passed is not *in cursu*; and therefore all the doctors who write *de re nummaria*, agree in this rule, *Verba currentis monetæ tempus solutionis designant.* And to this purpose are several cases ruled in our books. 6 and 7 *Ed. 6. Dyer 81. b.* After the fall and embasement of money, 5 *Ed. 6.* debt was brought against the executors of lessee for years, for rent in arrear for two years, ending *Mich. 2 Ed. 6.* at which time the shilling (which at the time of the action brought, was cried down to 6*d.*) was current for 12*d.* the defendants pleaded a tender of the rent on the days when it became due, *in peciis monetæ Angliæ vocat. shillings, qualibet pecia vocat. shilling, ad tunc solubili pro 12d.* and that neither  
the

der the pure standard) the obligor shall not be bound to pay better money afterwards.

the plaintiff nor any other for him was ready to receive it, &c. and concluded that they are still ready to pay the arrears *in dictis peciis vocat.* shillings, *secundum ratam*, &c. on this plea, although the plaintiff demurred, yet he was content to take the money at the rate aforesaid, without costs or damages. To the same purpose is the case of *pollards* adjudged, 29 *Ed. 1.* and reported by *Dyer 82. b.* where in debt on an obligation for payment of 24*l.* at two several days, the defendant pleads that at the days limited for payment of the debt in demand, *currebat quædam moneta quæ vocabatur pollards, loco sterlingi*, &c. and that the defendant at the first day of payment tendered the moiety of the debt in the money called *pollards*, which the plaintiff refused, and that he is still ready, &c. and offered it in court, which is not denied by the plaintiff; *Ideo concessum est*, that he recover one moiety in *pollards*, and the other in *pure sterling money*. See 9 *Ed. 4.* 49. *a.* a remarkable case on the change of money, where it is said, that if a man in an action of debt demands 40*l.* it shall be intended money, which is current at the time of the writ purchased. And there a case in the time of *Ed. 1.* is put, which is directly to this purpose. In debt brought upon a deed for thirty quarters of barley, price 20*l.* it was found for the plaintiff, and the jury was charged to enquire of the price at the time of the payment, and it was said that at the time of the payment, a quarter was at 12*s.* but at the time of the making of the deed, it was only at 3*s.* and the plaintiff recovered 18*l.* for the corn according to the price of it at the time of the pay-

payment. To this purpose also, *Linwood* hath a notable gloss on the constitution of *Simon Mepham*, lib. 3. de testamentis cap. Item quia. For where the constitution is such *pro publicatione testamenti pauperis, cujus inventarium bonorum non excedit centum solidos sterlingorum, nihil penitus exigatur*, he maketh this gloss, *hic solidus sumitur pro duodecim denarijs Anglicanis, &c. Sed quæro*, saith he, *numquid circa hos centum solidos debeat considerari valor in moneta jam currente, vel valor sterlingorum qui currebant tempore statuti*, and there he resolveth, *quod ubi dispositio surgit ex statuto, ut hic, licet moneta sit diminuta in valore, tamen debet considerari respectu monetæ novæ currentis, & non respectu antiquæ. Nam mutata moneta, mutari videtur statutum, ut scilicet intellegatur de nova, & non de veteri*; see *Regist. 50. a. and 54. b.* where the king issues his writ, to be certified of the value of a church; the words of the writ are *Secundum taxationem decimæ jam currentis*. And *31 Ed. 3. Fitz. H. Annuity 28.* an annuity was granted to *I. S.* until he was promoted by the grantor to a sufficient benefice; *I. S.* brings a writ of annuity against the grantor, who pleads that he had tendered to the plaintiff a sufficient benefice; and there issue was taken on the value of the benefice at the time of the tender.

But it was said that, although in contracts, these words *currentis monetæ* shall relate to the time of the payment; yet in wills, they shall relate to the time of making the will; for the bequest is in the present tense, *I give and bequeath*, &c. and therefore legacies shall be paid in such money as is current at the time of the making

making the testament, or according to the rate thereof. It was also said, that if a man hath 1000 *l.* of pure silver in marriage with his wife, and afterwards they are divorced *causa præcontractus*, by which the wife is to receive her portion: or if a man recovers by an erroneous judgment 100 *l.* in debt, and hath execution in pure silver money, and afterwards the judgment is reversed, so that he is to be restored to all that he hath lost, although base money be established in the mean time, restitution shall be in such money as was current at the time of the marriage, and at the time of the recovery. But these latter cases were not resolved.

And as to the circumstance of place, it was resolved, that although the contract was made in *London*, yet the place of payment being appointed in *Dublin*, of necessity the obligor must make his tender in the mixed money at the time of the payment; for all other money was cried down and made bullion by the proclamation aforesaid, and this money only established; so that if the obligee had refused this mixed money, he had committed a contempt, for which he might be punished. Also the judges are not bound to take notice of any money that is not current by proclamation. And therefore *Prisot* saith, 34 *Hen. 6. c. 2. a. we are not apprized of 6 *l.* Flemish, as we are of 100 nobles;* and therefore in all contracts of merchants, *consuetudo & statuta loci in quem est destinata solutio, respicienda sunt. Budelius de re nummaria, lib. 2. c. 21.* And it was said, that if at this day the law should be taken, as it was taken in the time of *Ed. 1.* that upon judgment in debt given in *England*, on a *testatum* that the

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defendant hath nothing in *England*, but that he hath goods and lands in *Ireland*; a writ of execution shall be awarded to the chief-justice or deputy of *Ireland*, to levy the debt there, (which writ is found in *Registro brev. jud. 43. b.*) the sum in such case shall be levied according to the rate of *Irish* money, and not of *English* money, and in such coin as shall be current in this kingdom, at the time of the execution.

And according to this resolution, several other cases on the same point were afterwards ruled and adjudged in the several courts of record in *Dublin*.

