

A Declaration of Mr. David Ienkins now Prisoner in the Tower of London, one of his Majesty's Judges in Wales, for Trials, Murthers, Felonies and all other capitall crimes that they ough only to be by Juries and not otherwi#e unle##e it be by Act of Parliament.

The common Law of this Land is, that every free man is #ubject to a tryall by a bill of Attainder in Parliament wherein his Maje#tie and both hou#es mu#t nece##arily concur, for that tryall and attainder is an Act of Parliament to which all men are #ubject to.

No man #hall otherwi#e be de#troyed, &c. but by the lawfull judgement of his Peers, or by the common law of the Land; Peers to Noble men are Noble men, peers to the Commons, are Knights, Gentlemen, &c.¹ Judgement of peers refers to peers, tho#e words of the Law the land, refers to the Commons, the Law of the land is for the tryall of the life of a free Commoner, by Indictment, pre#entment of good and lawfull men where the deed is done, or by writ originall of the common law, all this is declared in Magna Churta c. 29. and by the 25. Ed. 3. c. 4. 28. Ed. 3. c. 3. 37. Ed. 3. c. 8. 42. Ed. 3. c. 3. If the Lords will try any man by an Ordinance, they de#troy that excellent Act of Magna Charta, and all tho#e other good lawes.

Sir Simon de Bereford a free Commoner of England was condemned by the Lords to death by an Ordinance, which after the Lords better con#idering the matter, that they might be acquitted of that #entence, became #uters to the King, that what they had #o done in future time might not be drawn into pre#iddent; becau#e that which they had #o don was again#t the Law,² with this agrees the pructice and u#age of all times in this land, all the free Commoners of this Kingdome, have alwaies been t#yed and acquitted or condemned in capitall cau#es by luters of their equalls.

An Ordinance bindeth not in law at all,³ and but pro tempore, as the two hou#es now affirme, a mans-life cannot be tried by that which is not binding, and to continue for all times, for a life lo#t cannot be re#tored.

1 a Mag. Char. chap. 29. 2. part. in#. fol. 28. 29. 46. 48. 49. 50. compo#ed by Sir Ed. Cooke and publi#hed by the Order of the Hou#e of Commons in May, 1641.

2 Rhot. par. 2. roule 4. Ed. 3. Num. 2. part. inw. page 50. with this agrees Sir John Lees ca#e, Ror. Par. 41. E 3. Num. 22. 23. 2. in#. fol. 50.

3 See 4. part. in#. fol 23 48. 292, 2. part in#. f. 47, 48.

By an act of Parliament of the 1. and 2. of Philip and Mary chapter 10. It is enacted that all tryalls for Treason hereafter to be had, shall be according to the course of the Common law.

If the crime charged upon any be Treason against the two houses (against the Parliament it cannot be, for there is no Parliament without the King) that is no Treason in law, as appears by 25. Ed. 3. chap. 2. 11. R. 2, ch. 3. 1. Hen. 4 ch. 10, 1. and 2. Philip and Mary. chap. 10.

An act of Parliament to make any a Judge where he is party, is a void act,⁴ for none can be a Judge and party in the same cause, and therefore the house of peers being a party touching the crime charged upon any man, whom they would try by an Ordinance for Treason against both houses, cannot be a Judge.

By the petition of right,⁵ if any man receive death he ought to suffer the same according to the lawes of the Land established, and not otherwise, but an Ordinance of the Lords is no established law.

The Protestation, the Vow and Covenant, the solemn League and Covenant, the Declarations of both Houses, had made and published since this unnatural Warre, are amongst other things sworn and set downe to be for the maintenance of the Lawes, the people of this Land ought to enjoy the benefit of their Birth-right the law of the land, and making good of the said protestation, Vow and Covenant, League and Covenant and Declarations, otherwise Truth must be said and will be said, that there is brought in a new arbitrary and Tyrannicall government.

If the Lords have taken one mans life by an ordinance, they are not bound to take any more, & the cause differs in cause any appeal be made from a tryall by ordinance to a tryall at common law, which was not done by that man whose life was taken away by an ordinance.

The Lords ought to remember, that his Majesty and his progenitors have made them a house of Peers, they are trusted to counsel him in peace⁶ and defend him in warre, his Majesty in Parliament is to consult and treat with his Peers and with his Counsel at law, Judges, his Sergeants, Attorney, and Solicitor, and masters of the chancery, the Lords and that counsel by the respective writs of summons to Parliament are to give Counsel,⁷ the House of Commons by their writ to performe and consent.

In the House of Lords, the Court of Parliament onely is, for they onely examine upon oath,⁸ with them, the King in person sits, and by them there erroneous judgments⁹ (upon a petition to his Majesty for obtaining of a writ of error) by the advice of the Judges are reversed, or affirmed, &c. the Lords are to remember that their eminency and grandure, is preserved by the lawes, if they leave all to will and dishonour their King, and make nothing of the Lawes, they will make nothing of themselves in the end.

4 Dr. Bonams case 8. part of Cook. reports.

5 Petition of Right 3. Car, reges.

6 Nevells case 8. part Cooks reports.

7 4 part. in titi. fol. 4. 9.

8 1. Hen 7. f. 20.

9 14. Ed. 3. c. 5.

And therefore, it is well worth your observation what was said by Mr. Iohn Pym a member of the house of Commons in speech against the Earle of Strafford in the beginning of the Parliament, which speech is published by the express order of the house of Commons, the words are these. The law is that which puts a difference betwixt good and evill, betwixt just and unjust if you take away the law, all things will fall into a confusion every man will become a law unto himself, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a law, and Envy will become a law, covetousness & ambition will become laws, and what dictates what directions such laws will produce, may easily be discerned,¹⁰ &c. They that love this Common wealth as things now stand, will use all means to procure an act of oblivion, a generall pardon from his Majesty the Soldiers their Arrears, and tender conscience a just and reasonable satisfaction, else we all must perish first or last.

God preserve his Majesty and the laws wherein their Lordships and the whole Kingdome are concerned. 17 Ma. 1647.

David Jenkins Prisoner in the Tower of London.

10 See 1, part. book de cl. pag 140. 163.