

A declaration of Mr. David Ienkins now prisoner in the Tower of London, one of His Maiesties iudges in Wales, for trials, murthers, felonies and all other capitall crimes that they ough: [sic] only to be by juries and not otherwise unlesse it be by Act of Parliament.

Jenkins, David, 1582-1663.

1647

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THE common Law of this Land is, that every free man is subject to a tryall by a bill of Attainder in Parliament wherein his Majetie and both houes mut necessarily concur, for that tryall and attainder is an Act of Parliament to which all men are subject to.

No man hall otherwie be detroyed, &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. Judgement of peers refers to peers, thoe 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, preentment 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 detroy that excellent Act of Magna Charta, and all thoe other good lawes.

Sir Simon de Beresford a free Commoner of England was condemned by the Lords to death by an Ordinance, which after the Lords better conidering 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 preident; becaue that which they had o don was againt the Law, with this agrees the pructice and uage of all

a Mag. Char.
chap. 29. 2.
part. int. fol.
28. 29. 46. 48.
49. 50.
compoed by Sir
Ed. Cooke and
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Rhot. par. 2.
roule 4. Ed. 3.
Num. 2. part.
inw. page 50.
with this agrees
Sir John Lees
cae, Ror. Par.
41. E 3. Num.
22. 23. 2. int.
fol. 50.

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See 4. part. int.
fol 23 48. 292,
2. part int. f.
47, 48.

An Ordinance bindeth not in law at all, and but pro tempore, as the two houes now affirme, a mans-life cannot be tried by that which is not binding, and to continue for all times, for a life lot cannot be retored.

By an act of Parliament of the 1. and 2. of Philip and Mary chapter 10. It is inacted that all tryalls for Treaon hereafter to be had, hall be according to the coure of the Com-mon law.

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

Dr. Bonams cae
8. part of Cook.
reports.

An act of Parliament to make any a Judge where he is party, is a yoid act, for none can be a Judge and party in the ame caue, and therefore the houe of peers being a party touching the crime clarged upon any man, whom they would try by an Ordinance for Treaon againt both houes, cannot be a Judge.

Petition of
Right 3. Car,
reges.

By the petition of right, if any man deeive death he ought to uffer the ame according to the lawes of the Land established, and not otherwie, but an Ordina●ce of the Lords is no established law.

The Protetation, the Vow and Covenant, the olemn League and Covenant, the Declarations of both Houes, had made and publihed ince this unnatuarrll Warre, are amongst other things worne and et downe to be for the maintenance of the Lawes, the people of this Land ought to injoy the benifit of their Birth-right the law of the land, and making good of the aid protetation, Vow and Covenant, League and Covenant and Declarations, otherwie Truth mut be aid and will be aid, 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 cae differs in cae any appeale be made from a tryall by ordinance to a tryall at common law, which was not done by that man whoe life was taken away by an ordinance.

Nevels cae 8.
part Cooks
reports.

The Lords ought to remember, that his Majety and his progenitors have made them a houe of Peers, they are truted to counell him in peace and defend him in warre, his Majety in Parliament is to conult and treat with his Peers and with his Counell at law, Iudges, his Sergeants, Atturney, and Solicetor, and maters of the chancery, the Lords and that counell by the repective writs of ummons to Parliament are to give Counell, the Houe of Commons by their writ to performe and conent.

4 part. inti. fol.
4. 9.

In the Houe of Lords, the Court of Parliament onely is, for they onely examine upon oath, with them, the King in peron its, and by them there erroneous judgments (upon a petition to his Majetie for obtaining of a writ of error) by the advice of the Iudges are revered, or affirmed, &c. the Lords are to remember that their eminency and grandure, is preerved by the lawes, if they leave all to will and dihonour their King, and make nothing of the Lawes, they will make nothing of themelves in the end.

1. Hen 7. f. 20.
14. Ed. 3. c. 5.

And therefore, it is well worth your obervation what was aid by Mr. Iohn Pym a member of the houe of Commons in peech againt rhe Earle of Strafford in the beginning of the Parliament, which peech is publihed by the expree order of the houe of Commons, the words are thee. The law is that which puts a difference

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betwixt good and evill, betwixt jut and unjut if you take away the law, all things will fal into a confuion every man will become a law unto himelf, which in the depraved condition of humane nature mut needs produce many great enormities: Lut will become a law, and Envie will become a law, coveteounee & ambition will become lawes, and what dictates what deriions uch lawes will produce, may eaily be dicerned,&c. They that love this Common wealth as things now tand, will ue all meanes to procure an act of oblivion, a generall pardon from his Majetie the Souldiers their Arrears, and tender concience a jut and reasonable atisfaction, ele we all mut perih firt or lat.

God preerve his Majetie and the lawes wherein their Lordhips and the whole Kingdome are concerned. 17 Ma. 1647. David Ienkins Prisoner in the Tower of London.

See 1, part.
book deel. pag
140. 163.