

Parliament and the Common law. The Parliament are Directed from a principle within them, they proceed according to those fundamental Rules and Maxims, upon Observance whereof the publick safety and being of the Government depends. For the law of Parliament, which as the Lord Coke saith, is ab omnibus Inquirenda but a paucis notae, is a law Unlimited, and it is not fit to be known how far a Parliament can go. In former Ages where cases of supposed treason were brought from inferior courts to the Parliament, for a Resolution whether they were treason or No: The Parliament Declarations as to those were sent to inferior Courts for a Directory, that toties quoties the like case fell out, they might proceed Accordingly. But since (1 R. 4 cap. 10) all such before Declared treasons in Parliament went away: And no treason was to be adjudged otherwise than according to the statute of 25 Ed. 3 containing this clause that if any other case supposed treason which is not above specified shall happen before any Justices, the Justices shall tarry without going to Judgment of the treason till the cause be shewed and Declared before the King and his parliament whether it ought to be Judged treason or other felony. It hath been doubted whether Parliamentary Declarations of treason do full found a Jurisdiction to inferior Courts, of Judging so in parallel case John Russell Duke of Buckingham (Works Vol. 2 observ. on the statute of treasons) is of opinion that however Enormous the cases shall happen to be, the Judges are never to go beyond the bare letters of the Statute, but leave all to the safer Judgment of the Parliament. And what ever be in this in the General, there is an Express provision in the Act Attainting the Earl of Stafford, that it should be no precedent to any Judge what so ever.

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## Sect. 2.

What Crimes are tried before the house of Lords in Parliament.

Peers of England and Scotland, that is Temporal Lords, at the Union, and Peers of Great Britain created since, and the Successors to their Dignities (Magna Charta cap. 29 junct. Artic. 23 of the Union) must, upon Judgments of high treason or felony or Misprision of either be tried in Parliament by the house of Peers; at whose Desire his Majesty grants a Commission to one of their Number (Commonly the Lord Chancellor) to be Lord high Stewart, who presides in the trial. Lord Holmer try. 10. 35 R. 4 cap. 2 52. 1 Eliz. cap. 1 34. 5 Eliz. cap. 1 519. cap. 11 55. 13 Eliz. cap. 2 511. 18 Eliz. cap. 1 53. 23 Eliz. cap. 1 514. 27 Eliz. cap. 2 511. 33 R. 8 cap. 23 53. 1 Jac. 1 cap. 12 55. 3 Jac. 1 cap. 4 526. 13 14 Car. 2 cap. 18 55. 7 A. cap. 4 555. A Queen Consort and Queen Dowager whether she continues sole after the Kings death, or take a second Husband, be she a peer or Commoner be she 2 Just. 50. And all Peers by birth, whether single or Married, to peers or Commoners, are intituled to trial as Noblemen 20 R. 6 cap. 9. But a Lady Ennobled by Marriage, forfeits her dignity and the privilege of such a trial by the Peers, if she Marry a Commoner; the not if she Marry a Nobleman of an inferior degree, all Degrees in Nobility being pards in the Matter of trial. Peers of Ireland or other foreign peers and the eldest sons of the British Nobility are tried as Commoners and have no right to trial by their peers. But a peer of Ireland cannot for treason Committed there be arraigned and put to trial in England where the Custom is to Attaint a peer in Parliament, and not by his peers, Gulston pag 129.

Bishops out of Parliament must be tried as Commoners before the ordinary Court of Justices; but they may in Parliament be tried by the whole house of Peers. Golden Judicials in Parliament 41 and there are Divers Presidents of the trial of Bishops, their