

**A DISSERTATION SHEWING THAT THE
HOUSE OF LORDS, IN CASES OF
JUDICATURE, ARE BOUND BY THE
SAME RULES OF EVIDENCE THAT ARE
OBSERVED BY ALL OTHER COURTS**

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A Dissertation Shewing That the House of Lords, in Cases of Judicature, Are Bound by the Same Rules of Evidence That Are Observed by All Other Courts by Edward Christian

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EDWARD CHRISTIAN

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The Second Edition.

WITH
OBSERVATIONS
UPON
THE SUBJECTS OF LAW
WHICH HAVE ARISEN IN THE
Bill of Pains and Penalties
AT PRESENT PENDING AGAINST
THE QUEEN OF ENGLAND.

BY
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1820.

PREFACE.

THE following Dissertation was written more than twenty-eight years ago: and the Author trusts that the Observations he has subjoined upon the subjects of Law connected with the present Bill of Pains and Penalties will be thought equally true, and well-founded, as far as they are applicable to every species of Trial, which can be brought before the High Court of Parliament, even twenty-eight years after the present time.

He has that perfect confidence in the justice and wisdom of the Two Houses of Parliament, and also in the sound sterling sense of the People of England, that he cannot entertain a doubt, but, when the reasons for the final

(iv)

conclusion of the present momentous subject
(whatever it may be) are fairly and fully
communicated to the world, it will be received
with the general approbation of the Public.

Field Court, Gray's Inn,
Nov. 1, 1820.

A

DISSERTATION,

Sc. Sc.

IN a Pamphlet, which I published in the course of last winter (viz. in 1791), containing the result of my inquiries concerning the effect of a dissolution of Parliament upon an unfinished Impeachment, the following observations were introduced*.

“ Since

* The first time I appeared before the Public as a writer upon Law, was in the year 1791; when I published a Pamphlet with the title of “An Examination of Precedents and Principles, by which it appears that the Impeachment of Warren Hastings, Esq. is abated by the dissolution of Parliament.”

I had, at the first, the modesty not to prefix my name to it; but finding that the authorities were approved by Lord Thurlow and the leading Lawyers of the day, I was induced to declare myself the author.

It was answered by the Hon. Spencer Perceval, then at the Bar. Mr. Pitt, the Prime Minister, adopted Mr. Perceval's side of the question: but how far the Profession adhered to my doctrine, will amply appear from the following paragraphs, which were published with this Treatise in 1792.

The important question, whether an impeachment was determined by a dissolution of Parliament after having undergone a discussion for three days in the House of Commons, was decided in the negative; the numbers being 143 and 30: and

B

it

“ Since the commencement of the present Impeachment, a monstrous doctrine has been urged, which, if established, would arm the House of Lords with a despotic power, and might eventually
 prove

it must ever be considered as a most remarkable occurrence in the Legal history of this country, that in the minority were the votes of his Honour the Master of the Rolls, the Attorney and Solicitor General, six King's Counsel, one Serjeant, and several other Barristers of distinguished eminence.

When the same question was agitated in the House of Lords, it was again decided in the same manner; the numbers being there 66 and 16; and the Lord Chancellor, and the Lord Chief Justice of the King's Bench, voted in the minority. Previous to any public investigation of this question, the author of this Dissertation was induced to collect and examine the authorities upon the subject, and to publish as his decided opinion, that an impeachment was terminated by a dissolution of Parliament*.

From the strenuous support which this side of the question received from the most learned part of the Profession of the Law, and from an attentive consideration of all that great abilities and industry have produced on the other, he must ever look back at that opinion with pride and satisfaction. But for the conclusion which we Professional men were obliged to draw from an unprejudiced examination of the subject, we
 have

* Vide an Examination of Precedents and Principles, by Ed. Christian. 2d edition.

At that time the Master of the Rolls was Sir Richard Pepper Arden; the Attorney and Solicitor General, Sir Archibald Macdonald and Sir John Scott; the Chancellor, Lord Thurlow; Lord Chief Justice of the King's Bench, Lord Kenyon.

prove fatal to our liberty and constitution; which is, that they are not bound, like inferior courts, by the rigid and inflexible rules of evidence, but may admit, at their discretion, any species of information which they may think necessary for the investigation of truth.

“ But I trust that the Lords will always have wisdom and virtue to reject such pernicious propositions, and will remember, that, in their character of judges, it is their province *ius dicere*, and not *ius dare*†.

“ The rules of evidence, likes the rules of morality, are presumed to be founded, in the best sense possible,

have been treated with a degree of obloquy unparalleled in the history of England. We have even been charged with waging war against the liberties and constitution of the country. We may have been mistaken; but the principle, which directed us to that conclusion, is fixed, I trust, upon too solid a foundation in our minds, ever to be shaken by the *civium ardor prava jubentium*.

† “ This may be thought to be expressed with an unbecoming vehemence. It is a doctrine which I have frequently been obliged to reprobate among the circle of my friends; and I introduce it here, to enforce that universal principle, that the spirit and substance of English liberty consist in the strict adherence to rules and the letter of the Law; and the more we introduce of arbitrary discretion, the more we shall approximate to the detestable maxims of the Eastern Governments.”

possible, in reason and wisdom matured and confirmed by the experience of ages; and in all criminal proceedings, both in the highest and lowest courts, whether at the Quarter Sessions, or in the High Court of Parliament, and in the Court of the Lord High Steward, they are, and ought to be, precisely the same.

“ And my Lord Coke solemnly cautions Parliaments * ‘ to leave all causes to be measured by the golden and streight metwand of the Law, and not by the uncertain and crooked cord of discretion.’

“ But though each of the two Houses of Parliament may do many acts, from which there is no remedy or appeal, yet I trust that they will always have such a conscientious regard to the extent of their privileges and jurisdiction, that they will never adopt the maxim, That they can do no wrong, because they can do wrong with impunity.”

Some time subsequent to the publication of that Pamphlet, I was surprized to hear that a Gentleman of the first celebrity for talents in this country had declared, in the House of Commons, ‘ he could not suffer

* Inst. 41.