

do Judge Capital Crimes Coke 3 Inst. 31. Pulton de jure  
 1488. 6. Felton Judicators in Parliament 136. For the Clergy  
 having over held it Unsuitable to their Character, agitars  
 causam sanguinis, upon which Protested in the times  
 of Popery they set up for an Independence on the Kings  
 courts, and theyd to Excuse them selves from appear-  
 ance therat; the Bishops (the they do vote and judge  
 upon Bills of Attainder when the house proceeds as a  
 part of the Legislative Body) do in the trial of Capital  
 Crimes when the house Acteth as a Court of Judicator  
 always withdraw when Judgements are given in obedien-  
 ce to the Canons; but often with a Provisors Protestat-  
 ion, that their absence should not prejudice their Right  
 to be present in Parliament Hawkins pl. Pr. lib. 2. cap.  
 44 § 8. But the Lords Spiritual and Temporal con-  
 sidering Misdomanors, Felton ibid. 136. 147. Felton ibid.  
 tells us, that the King may be present if he please at  
 the parties Answer in Capital cases, and a Judgement given  
 pro et contra. But that he was never present at other  
 times of proceeding; nor at any Answer for Misdoman-  
 ours. At the trial of the Earl of Stafford, the King by  
 himself within a private Closet where he saw and  
 heard all that pass without being seen. Mr. Rushworth  
 in his Introduction to that trial acquaints us with  
 different Reasons then assigned for his Majesties  
 so Doing, as that some held it for a received practice  
 in such cases; others, that it was to prevent some  
 Constructions of a Design to Overawe or Interrupt  
 the Courts of Justice; And a third fort attributed the  
 Reason of it to the Kings being unwilling  
 to be necessary to the process till it came to his party,  
 and yet Desirous to see if any Arguour Violence or  
 Unjustie happened. The Judges of both kinds  
 had are present at the trial, to give their advi-

in any Difficult Matters of law that shall be proposed  
 to them, and Allowed to sit, but not to be Covered till they get  
 leave from the Lords, which they ordinarily do. After the Lords  
 have taken their seats, and proclamation for silence Made  
 in the Kings Name, his Majesties Commission to the  
 Lord high steward is read &c.

In this trial all speeches are Directed to the Lords in  
 General; they being all Judges therein, and the Lord high  
 steward not the sole Judge, but as Chairman of the Court.  
 Tho' these Lords cannot (as both houses may upon Bills  
 of Attainder) Determine new cases of treason not Determined  
 to be treason by positive Statute; they proceed in an  
 Extraordinary Manner as both Judges and triors, according  
 to the law and usage of Parliament, without being tied to  
 the Niceties of form observed in the courts of Justice  
 Below. Persons Impeached before them for high treason  
 Inferring Corruption of Blood or Misprision there of,  
 seem not to have the privilege of Making their Defence,  
 by Counsel, and producing witnesses upon Oath to Vouch it;  
 and not to be Convicted Unless they Confess, but by two  
 lawful witnesses to the same overt Act, or one witness to  
 one overt Act, and another witness to Ans their overt  
 Act of the same treason; nor to be prosecuted for any such  
 treason except Attempting to Assassinate the sovereigns  
 Unless an indictment be found against them by a  
 Grand jury within three Years after Commission of the  
 Crime, W. 3 cap. 3 § 12. The house may be adjourned  
 as often as there is occasion, Even after Evidence is  
 given or begun to be given and the Evidence may be taken  
 by Parcels, Lord Doleman try. 53. Hawkins pl. Pr.  
 lib. 2 chap. 44 § 22. When points of Difficulty occur,  
 the Lord Retires out of court, and the Lord high steward  
 and goes along with them to Consult together in  
 private. Where they may call the Judges to assist them