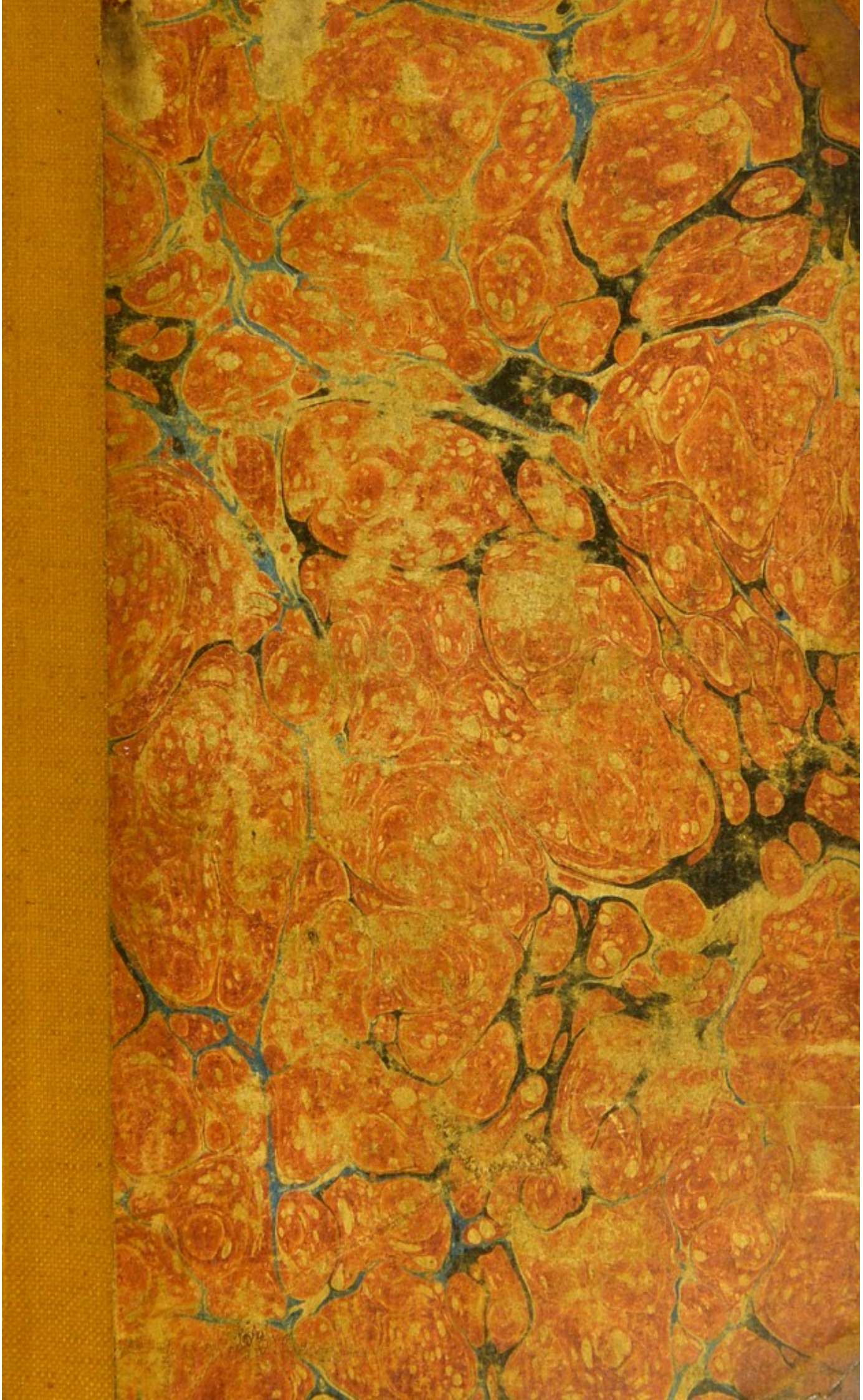
A justification of the right of every well educated physician of fair character and mature age, residing within the jurisdiction of the College of Physicians of London, to be admitted a fellow of that corporation, if found competent, upon examination, in learning and skill : together with an account of the proceedings of those licentiates who lately attempted to establish that right; including the pleadings of the counsel, and the opinions of the judges, as taken in short-hand by Mr. Gurney / by Christopher Stanger, M. D. Gresham professor of physic, and physician to the Foundling Hospital.



compliments.

A

JUSTIFICATION

OF

THE RIGHT OF EVERY WELL EDUCATED

PHYSICIAN

OF FAIR CHARACTER AND MATURE AGE,

RESIDING WITHIN THE JURISDICTION OF

THE COLLEGE OF PHYSICIANS OF LONDON,

TO BE ADMITTED A FELLOW OF THAT CORPORATION,

IF FOUND COMPETENT, UPON EXAMINATION, IN LEARNING AND SKILL.

TOGETHER WITH AN ACCOUNT OF THE

PROCEEDINGS OF THOSE LICENTIATES

WHO LATELY ATTEMPTED TO ESTABLISH THAT RIGHT;

INCLUDING

THE PLEADINGS OF THE COUNSEL,

AND THE OPINIONS OF THE JUDGES,

AS TAKEN IN SHORT-HAND BY MR. GURNEY.

BY

CHRISTOPHER STANGER, M. D.

GRESHAM PROFESSOR OF PHYSIC, AND PHYSICIAN TO THE FOUNDLING HOSPITAL.

Ἀνδρῶν γὰρ σωφρόνων μέν ἐστιν, εἰ μὴ ἀδικοῖντο, ἡσυχάζειν· ἀγαθῶν δὲ, ἀδικουμένους ἐκ μὲν εἰρήνης πολεμεῖν.

THUCYDIDES, LIB. I. C. 120.

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1798.

PREFATORY ADDRESS

TO THE

LICENTIATES

ENGAGED IN THE LATE CONTEST WITH THE COLLEGE OF PHYSICIANS OF LONDON.

GENTLEMEN,

YOU have been engaged in an honourable attempt to establish the right of every well educated physician, of unimpeached character, competent learning and skill, and mature age, residing within the jurisdiction of the college of physicians, to be admitted a member of that corporation. This right was originally obtained by your predecessors, whose claims were precisely similar to your own, and was granted to them on the specific conditions upon which your claim is founded. It was conferred on them and their successors for ever, by charter, and confirmed to them by repeated acts of parliament. The franchise was long amicably enjoyed by them in conjunction with the very class of physicians which now deprive

you of it. The judicial opinion of Lord Mansfield, repeated and recorded, in which the able judges who were his colleagues in the court of King's Bench concurred, confirmed with the weightiest authority this right, after it had been demonstrated, upon the fullest investigation, by the clearest proofs.

Under the sanction of these decisive proofs and conclusive authorities, clearly stated and authenticated, you respectfully claimed of the college an amicable extension of the fellowship, to such of your body as they themselves should ascertain to be within the express description of fitness, pointed out by the charter, repeated in the act of parliament, and explicitly described by Lord Mansfield, as giving a legal title to incorporation.

The college had not even the liberality to reply to this just and respectful application.

After this contumelious treatment, you consulted three eminent counsel, in order to be assured whether, notwithstanding the strong evidence of your right, and the apparently

rently incontestible authority of the court of King's Bench in your favour, any concealed obstacle could be brought forward to evade or defeat the attainment of legal redress.

They unanimously, and in the strongest terms, confirmed the legality of your claim, and were decisively of opinion that there could be no legal bar to its establishment. Thus assured, you appointed a member of your body to stand forward, and bring the question to a decision, under the direction of counsel, at the joint expence of those who had the liberality to vindicate the rights of the profession.

After much delay, and after having been defeated upon the first application, on account of what was considered by the court an informality in procedure, a decision has been obtained in the court of King's Bench. However astonishing it may appear, after the proofs and authorities which have been asserted to exist, and which it is conceived are proved in the sequel both to exist and govern this case, that decision is fatal to your claim.

It has been decided that a physician, whatever his talents, education, attainments, and character may be, even a Sydenham or a Boerhaave, has no right to an examination of his qualifications for incorporation into the college of physicians, unless he has obtained a doctor's degree at Oxford or Cambridge, or unless (after he has completed his thirty-sixth year, and been seven years a licentiate) he be proposed through the favour of a fellow on one particular day in the year, at a comitia majora, and be also approved by a majority of the fellows present.

It has been determined, that the adventitious circumstance of local study, even in the most inadequate medical schools in Europe, gives not only a prior right, but, a right, which operates virtually as an exclusive privilege to be examined for the fellowship.

This decision is also final in law, with regard to the general right. From the stage of the process in which it was given, it even precludes an appeal to the House of Lords.

Lords. There remains, however, a tribunal which can take cognizance of the justice of your pretensions, of the equity, and even the legality of the grounds of this decision. That tribunal is the public, and you have sufficient confidence in the goodness of your cause to submit the whole merits to its judgment. The public cannot indeed redress the actual grievance, but it can do justice to the pretensions and efforts of a body, who have stood forward and persevered at considerable expence, and with considerable exertion, to vindicate the claims of their predecessors, to emancipate themselves, and to establish the rights of posterity, and the true interests and dignity of their profession.

This is a cause which demands public attention. It involves the immediate interests and dignity of a great majority of the physicians of this vast metropolis and its vicinity, and implicates the respectability of nearly all the physicians in Great Britain and its dominions. The decision impeaches the title of this numerous and important body, to the fair honours of their profession. It tends to depreciate the first, and in fact, the

only

only schools of physic in Europe. It deprives the community of the corporate services of the great body of those who are qualified to discharge them as members of the college. It virtually disfranchises a great majority of those who are eligible, and possessed of an inchoate right of admission into a corporation under a charter and act of parliament. It overturns the legal doctrines and opinions of Lord Mansfield, and of the able judges who filled the bench with him, and shakes the stability of precedent, the solid basis of law. These are circumstances which strongly interest the community; which claim the peculiar attention of the physician, the lawyer, and the legislator; and which forcibly called upon you to lay before the public the whole of this important contest.

It has devolved on me to try the issue of this question, in which the claims of an individual are of little importance. Had personal merit been considered, I am sensible that many of our body have much higher pretensions. I feel however, I hope, an honourable elevation in having been actively

engaged

engaged in such a cause, and with such co-adjutors. While the faculty of London retain a sense of their own dignity, your exertions will not be forgotten.

I have, with your approbation, prefixed a justification of the right for which we have been contending, to an account of our proceedings, and added notes, of considerable extent, to the pleadings of the counsel and opinions of the judges; the latter are accurately printed from an eminent short-hand writer's reports. What I have written has extended much beyond my original intention, from a desire of omitting nothing which might elucidate or corroborate our claim. The work has in consequence been considerably enlarged, and the arguments and illustrations may probably, in some parts, appear redundant. The able and elaborate work of Dr. Ferris upon the subject, to which I am much indebted, as well as the pleadings of our eminent counsel, in a great measure precluded the necessity of farther argument; but an ardent desire of confirming the justice of our cause would not suffer me to

remain

remain silent, or to restrain my pen where is was perhaps unnecessary to expatiate. I confide, however, in your candour for excusing whatever may be thought either superfluous or deficient, as well as the delay in publication, which has been occasioned by various avocations.

I cannot conclude without expressing a firm reliance, that though we have failed in establishing our claim in a court of law, we shall succeed in convincing every candid mind which shall investigate the subject of the equity of our title. I hope we shall yet see that claim actually established by the just concession of the college, or the wisdom of the legislature. Till that period arrives, I trust we shall secure all the advantages of the fellowship by an association which shall surpass the college in numbers, utility, and power. In a country enlightened and equitable as ours, the rights and interests of an important profession must be finally established, if pursued with firmness and perseverance. In all events, I shall ever remain firmly convinced, that the rights of the physicians

sicians of London are founded on the immutable principles of justice, are supported by the soundest maxims of law, are confirmed by the weightiest authorities, and warranted by the truest expediency.

I am, Gentlemen,

With great esteem,

Your obedient Servant,

CHRISTOPHER STANGER.

Lamb's Conduit Street,
May 6, 1798.

A

JUSTIFICATION

OF THE

RIGHTS OF THE LICENTIATES,

&c.

A CORPORATE monopoly in a liberal and ſcientific profeſſion, which depreciates the great body of that profeſſion, without the ſlighteſt evidence of their inferiority or diſqualification, would ſcarcely be ſuppoſed to exiſt at the cloſe of the eighteenth century, in the enlightened metropolis of Great Britain. But, extraordinary and diſgraceful as it is, a great majority of the phyſicians of London, equal in talents, education, acquirements, ſkill, and conduct, to any body of the faculty in Europe, are only tolerated and licenſed to practiſe under the authority and controul of a narrow corporation. The College of Phyſicians, originally founded for the moſt beneficent and liberal purpoſes, for the ſecurity of the public, and the advantage of the faculty of phyſic, by reſtraining illiterate and unprincipled practitioners,

and by diſtinguiſhing and rewarding ſkilful and upright phyſicians, is now in the poſſeſſion of an inconſiderable and intereſted party. A few individuals, entitled fellows, who have graduated in Oxford and Cambridge, where their profeſſion cannot be learned, have aſſumed the right of confining admiſſion to their own claſs, or of extending it arbitrarily to ſuch of the faculty only, who have obtained their degrees elſewhere, as intereſt or partiality may induce them. The great body of phyſicians of London, though poſſeſſed of every claim, which ability, acquirements, and character can give, who have ſtudied and graduated in the beſt medical univerſities in Europe, are excluded and degraded under the appellation of licentiates.

It is the object of this treatiſe to prove, that every well educated phyſician, of unimpeached character, reſiding within the juriſdiction of the college, is entitled, independently of local ſtudy and local graduation, to be examined for admiſſion into the fellowſhip of the college; and if found competent in character, learning, and ſkill, entitled alſo to be incorporated.

This will be attempted to be eſtabliſhed in equity, in law, and in expediency, after a previous ſtatement of the immediate benefits of admiſſion, and the indirect and prejudicial conſequences of exclusion.

excluſion. In equity, by a comparative ſtatement of the claims of the licentiates and fellows. In law, by the ſtrict letter and obvious meaning of the charter and acts of parliament relating to the college; by the original incorporation; by the early and long continued uſage; and by all the authorities on the ſubject, prior to the late deciſion. In expediency, by the advantages, which would accrue to the corporation, the profeſſion, and the community.

It will be ſhewn, that two bye-laws, which have been alledged to extenuate the injuſtice of the college, and alleviate the injury ſuffered by the licentiates, are an aggravation of both. That one of them, under which admiſſion has been conceded through favour, is partial, arbitrary, and unjuſt: calculated to depreciate thoſe admitted under it, to divide, depreſs, and impoveriſh the great body of licentiates, and to exalt and enrich the fellows. That the other bye-law is inadequate and rigorous, and apparently only intended, as it has hitherto been employed, to deceive.

It will be finally ſhewn, that the licentiates have it in their power, by uniting and forming a ſociety of their own, to retaliate the wrongs they ſuffer, and redreſs their grievances, to eclipſe, if not extinguiſh the college.

The very able, elaborate, and concluſive arguments of the counſel for the claimant, might well be relied on to eſtabliſh the juſtice of the demands of the licentiates. But the writer of this addreſs is impelled by motives which he cannot reſiſt, to expatiate upon this ſubject. After having dedicated many years in the beſt ſchools of phyſic, to the ſtudy of a laborious and expenſive profeſſion, it is ſcarcely poſſible not to feel the injury of being debarred its fair advantages. On ſeeing others of ſuperior pretenſions, and the higheſt qualifications, deprived of a juſt privilege, by a party, many of whom have neither had the means nor the powers of attaining equal acquirements; it is impoſſible not to feel indignation. From the oſtenſible ſituation in which the writer has been placed, his inquiries on the ſubject have been extended, his conviction of the juſtice of the cauſe conſequently confirmed, and his zeal to eſtabliſh the right animated. He has been led to inveſtigate the queſtion with attention, and to diſcuſs it with thoſe, who were moſt competent to judge of the legality, the equity, and the expediency of the claim, all which have been uniformly corroborated, both by inquiry and diſcuſſion. The conviction of its juſtice has not been ſhaken by the objections of the able counſel employed to oppoſe, nor even by the opinions of the learned judges, who decided againſt it. He remains firmly convinced, that

both

both the letter and ſpirit of the charter and act of parliament, the original incorporation, the early uſage, the intereſts of the community, all unite to give as clear a title to what the licentiates demand, as ever was brought forward to a corporate right, in a court of law.

It may perhaps be thought preſumptuous to impeach the deciſion of men of great legal weight. But the contrary opinion of men of at leaſt equal authority would alone juſtify the meaſure, and refute the imputation. Beſides, where the ground of equity, on which a deciſion is founded, is explained, every man of common underſtanding can judge of its rectitude. To expound the true meaning of perplexed and complicated ſtatutes, and to develope the real points of analogy betwixt the multifarious and intricate caſes, which conſtitute common law, and queſtions to be decided by them, require the diſcernment of an experienced lawyer. But the principles of equity, when ſet forth, on which both ſtatutes are enacted and caſes are decided; and the relation of the former, and the analogy of the latter, with points determined by them, when ſtated, are level to common ſenſe. The expediency alſo of deciſions may, in many inſtances, be better underſtood by the perſons they affect, than by thoſe who deliver them. It will ſcarcely be diſputed that a phy-

ſician

ſician is more competent to decide what influence a monopoly, or an extenſion of privileges, in a medical corporation, will have, both upon the profeſſion and the community, than a lawyer. There may alſo be caſes where political apprehenſions, where opinions formerly given, though not judicially, where hereditary partiality imbibed in infancy and long inculcated, where predilection for the ſeats of education *, preference for thoſe to whoſe ſkill health is confided, pardonable biaſes when they do not prejudice the rights of others, may imperceptibly warp the beſt intentioned men, when they venture to decide legal claims upon the fallacious ground of conſtructive expediency. The ableſt men are ſometimes betrayed into error, and the moſt upright miſled, when partialities combine with prepoſſeſſions to influence their judgment.

When we are unwillingly impelled by a conviction of right, and an obligation of duty, to arraign

* It is very remarkable, and perhaps unfortunate, that one of the judges, who preſided on this trial, had been employed when a counſel to ſanction the very bye-laws, which were contended againſt by the licentiates; and that the father of another of thoſe judges was preſident of the college when they were made.

Three of the ſame judges were graduates of the univerſities, whoſe excluſive privileges were contended againſt.

arraign a deciſion of men of unimpeached integrity, and of great ability and ſuperior learning, it affords an apology to others, and a ſatiſfaction to ourſelves, that our opinion is ſupported by the higheſt authorities, which can be reſorted to on the ſubject. That ſatisfaction is heightened when peculiar circumſtances are diſcoverable, which might obſcure the views of ſuch high characters, on a particular ſubject, on which we are endeavouring to invalidate their determination, without any imputation againſt their integrity. Beſides the motives of preference, which it has been alledged might influence the Court of King's Bench in favour of the college, a deceptive bye-law was brought forward, which profeſſed to extend the right of admiſſion, under certain reſtrictions, to the licentiates. It was under the impreſſion that the right of incorporation was in fact extended to them, and that the bye-law requiring previous graduation at Oxford and Cambridge, illegal when ſtanding alone, was qualified and legalized by this pretended ſource of admiſſion, that the court ſuſtained the bye-laws taken together. They could not ſuſpect the good faith of ſuch a grave body as the College; much leſs believe them capable of ſuch duplicity, as to advance a bye-law in a court of juſtice, as a mere pretext to deceive. They not only conceived

ceived that it was to be honeſtly and fairly adhered to, but apparently hoped that it might be relaxed. This bye-law, as will be ſhewn, is totally inadequate to the rights of the licentiates, and by no means reconciles the deciſion with the real juſtice of the caſe: but it certainly does, when coupled with other circumſtances, in ſome meaſure account for, and render it leſs exceptionable.

Previous to any argument to eſtabliſh the equitable claim of the licentiates, and to prove that both the letter and ſpirit of the charter and act of Parliament are deciſive in their favour; that the original incorporation, the early and long continued uſage, and the undiſputed joint poſſeſſion demonſtrate their right; that the opinions of the court, in their favour, on the former trials, are ſtrictly in point; and that a liberal conſtruction and enlarged expediency, accord with law and equity to re-eſtabliſh their privileges; it may be proper to ſtate the motives which have induced the licentiates, engaged in the conteſt, to endeavour to regain them. Such a ſtatement will obviate erroneous notions, hazarded by ſuperficial obſervers, that the diſputed object is of inconſiderable importance. It will refute the intereſted objections, under the ſame pretext, of thoſe who endeavoured to damp the

zeal

zeal of the licentiates who ſtood forward; and the prudential ones of thoſe, who wiſhed to excuſe a paſſive acquieſcence in a degrading excluſion, by pretending to undervalue what they were conſcious of being under a profeſſional obligation to contend for. It will alſo ſupply an anſwer to many ſuppoſitions of the ſame nature, which fell from both the bar and the bench.

The College of Phyſicians is an inſtitution which derives dignity from the importance of its objects, which are, the ſafety of the public; the advancement of the ſcience of phyſic; and the guardianſhip and promotion of the honour and intereſts of the profeſſion. It becomes venerable from its antiquity, having been eſtabliſhed nearly three centuries, by a charter confirmed by act of Parliament, during which period its privileges have been repeatedly extended by the legiſlature. It derives celebrity from the many eminent phyſicians, who have been its members, and luſtre from the dignity of their ſtations, as they have always filled and now enjoy the moſt honourable and lucrative profeſſional appointments in this kingdom. The college poſſeſſes a noble edifice for its meetings: A medical library, which it has the means of rendering the firſt in Europe. It enjoys, within itſelf, degrees of rank to diſtinguiſh

and

and reward merit; lectureſhips and literary appointments to excite emulation, and afford an honourable field for the diſplay of genius and learning; and the diſpoſal of gratuities to remunerate exertion. It eſtabliſhes an advantageous intercourſe betwixt riſing merit and mature experience, and enables the deſerving aſpirer to obtain the friendſhip and profit by the good offices of his ſeniors, who are the beſt judges of his claims, and the moſt able to promote his intereſts. It raiſes its members to rank and precedency in the profeſſion, and conſequently, elevates them in the eſtimation of the public, and facilitates their ſucceſs.

Theſe direct advantages, which the college confer upon its members, are too important to the intereſts of a phyſician to be paſſively relinquiſhed. But when, under the intereſted management of a party, all their indirect conſequences are conſidered, their influence in promoting the fellows, and depreſſing the licentiates, will be found ſo powerful, that it becomes an obligation of private intereſt, as well as of profeſſional honour, to regain, if poſſible, the right of admiſſion. From the operation of the college monopoly, a prejudice is diffuſed that its members, if not the only real phyſicians in London, are, at leaſt, greatly ſuperior in education, learning, and ſkill, as well

as

as rank, to thoſe whom they only tolerate. This is by no means an extraordinary deluſion, when countenanced and inſinuated, by a body, who, actuated by a corporate ſpirit and intereſted zeal, unite with collegiate power and rank, with diſtinctions, titles, and ceremonies, the ſymbols of ſuperiority, the actual poſſeſſion of the moſt dignified and lucrative appointments. This prejudice, however unfounded, is too ſpecious not to miſlead a great part of the public, too beneficial to the fellows not to be encouraged by them, and too flattering not to deceive even themſelves. This prepoſſeſſion neceſſarily leads to the aſſumption of that ſimulated ſuperiority, which promotes the deluſion; and the habit of oſtentation not unfrequently betrays the actor into a notion of the actual exiſtence of the rank he attempts to diſplay. The college monopoly has thus the ſtrongeſt tendency, and frequently the effect, of inflating the fellows with arrogance, and of humiliating and depreſſing the licentiates, of exciting mutual jealouſies, of raiſing an obſtacle to all bonds of friendſhip, and even to a liberal and ſocial intercourſe.

In addition to the vulgar grounds of prejudice, apothecaries, who have ſo much influence on the ſucceſs of phyſicians, have peculiar motives for preferring

preferring members of the college. They themſelves form a corporation, and corporate bodies ſympathize with each other. The charter of the apothecaries was obtained with the concurrence and by the joint intereſt of the college, to which it ſecures great authority and controul. The two corporations have always been intimately connected, and the apothecaries accuſtomed to conſider the fellows of the college as their ſuperiors and patrons. Beſides, the natural pride of man unwillingly allows priority of rank, where pretenſions are of a ſimilar nature, if the line of diſtinction is faintly drawn; more eſpecially, where the admiſſion implies ſuperiority in learning, judgment, and ſkill. Apothecaries naturally prefer thoſe who confer, and who can extend to them, the privilege of acting as phyſicians, to a ſubordinate claſs, only practiſing by permiſſion, whom they are encouraged to conſider as ſcarcely raiſed above themſelves. There can be no doubt that men of diſcernment and candour, and particularly apothecaries of that deſcription, who are acquainted with the licentiates, do juſtice to their merits, and rank them with the ableſt of the profeſſion. But however numerous the exceptions, the multitude will always be influenced by names, appearances, pretenſions, and faſhion. Independently of their real power and advantages, the oſtenſible

oſtenſible and aſſumed ſuperiority of the fellows operates forcibly and extenſively to the prejudice of the licentiates.

The preference ariſing from this unjuſt prepoſſeſſion, is not the only unfair advantage derived from their monopoly. In conſequence of a community of intereſts, a combination of influence, and uniformity of ſyſtem, they have alſo got poſſeſſion of the moſt lucrative and dignified appointments and ſituations in the profeſſion; which they transfer, tranſmit, and perpetuate, in their own party. For this their powers are nearly as infallible, as their conduct is invariably directed by the corporate intereſt. Their dominion in medical appointments is ſo extenſive, that they can generally decide the conteſts of licentiates for thoſe inferior ſituations, which fellows decline, in favour of the candidate they patronize. The ſucceſs of a licentiate, however ſuperior his merit, againſt another ſupported by the college, is very rare; againſt a fellow, almoſt without example. But if they ſhould even fail in obtaining for a member of the college any appointment, which is conteſted, they can aſſociate the ſucceſsful oponent, and transfer his power and credit to their own party, if intereſt inclines them. The ſame corporate ſpirit and common intereſt, which cement the fellows in obtaining for each other

public

public appointments, render them equally zealous in advancing each other, in private practice, in preference to the licentiates. If they do not abſolutely enter into an engagement to recommend each other excluſively on conſultations, as ſubſtitutes, as ſucceſſors, in every ſituation of advantage, their attachment to the corporate intereſt has all the force of a bond.

It is ſcarcely conceivable what influence a public body, endowed with power, poſſeſſed of wealth, elevated by popular prepoſſeſſion, and united by intereſt, has, to promote their joint and individual intereſts. Their power and profits are equally concentrated. What the individual loſes or declines, the corporation preſerves. The licentiate is carefully excluded. After the fruitleſs toils and diſappointed expectations of many years, he ſtill ſees a new ſucceſſion of younger fellows exalted above him, by college influence. No wonder while he has to ſtruggle againſt ſo powerful and zealous a combination, if his advancement be ſlow, and his deſert unrewarded. No wonder if the fellow be raiſed into diſtinction and affluence, while the licentiate is depreſſed by neglect, or even pines in indigence. There can be no doubt that ſome of the licentiates enjoy a beneficial practice, and that many fill reſpectable and even profitable ſituations. The fellows are too

few

few to engroſs every thing. Extraordinary talents, exertions, connections, or fortune, ſometimes advance licentiates to advantageous appointments and lucrative practice, in oppoſition to college influence. But the exceptions only confirm the grievance. It is manifeſt that the college, as now conſtituted, is a partial ſource of rank, power, and gain to the fellows, and a grievous cauſe of oppreſſion, degradation, and poverty to the licentiates.

Having ſhewn the powerful motives, which the licentiates have to emancipate themſelves from the college yoke, and regain admiſſion, it may be proper to give a general deſcription of both the fellows and licentiates, as diſtinct claſſes of phyſicians. Many, who are but little acquainted with the contending parties, may wiſh to be informed of their comparative merits and equitable pretenſions; how far they are reſpectively qualified to diſcharge the duties of a profeſſional corporate truſt; and entitled to ſhare in thoſe advantages, which the legiſlature has conferred upon all competent phyſicians, previous to a diſcuſſion of their legal right to them.

The fellows are a body conſiſting at preſent of forty-four phyſicians, forty of whom have graduated at Oxford or Cambridge, and four have been

been admitted, through favour, out of the claſs of licentiates; rather more than half of theſe only, reſide in London. Thoſe phyſicians who graduate in the Engliſh univerſities, are, frequently, men of ſufficient hereditary fortune to purſue ſuch ornamental ſtudies, and reſide in ſuch faſhionable ſeminaries as are moſt agreeable to their inclinations, and flattering to their vanity, and where pleaſure, ambition, and contingent advantages allure them. After the preliminary education of public or private ſchools, they, for the moſt part, without any previous ſtudy of pharmacy, anatomy, or any branch of medicine, immediately remove to the univerſity. Many of them go there, without any fixed future deſtination, for improvement in polite literature and general knowledge, and to obtain the degree of batchelor in arts, previous to the choice of a profeſſion. They are then induced to prefer the profeſſion of phyſic, after a prudential comparative view of its advantages, or from ſome promiſing expectancy, as may beſt ſuit their inclinations and intereſts. Many, no doubt, go with an original deſtination for the faculty of medicine, under an impreſſion, that the opportunities of general inſtruction, the chance of forming profitable connections, the proſpect of procuring valuable fellowſhips, and the privilege of future admiſſion into the college of phyſicians, may more than compenſate the deficient

ficient opportunities of acquiring medical knowledge, and the protracted period of arriving at a doctor's degree. After they have been admitted of ſome college in one of theſe univerſities, eleven years muſt elapſe before that degree can be obtained. The previous degrees of bachelor in arts, maſter of arts, and bachelor in phyſic, muſt alſo be conferred on them, before they can be created doctors in phyſic.

Such a period for ſtudy and ſo many honours ſeem to imply conſiderable literary and medical attainments, and theſe, in many inſtances, are undoubtedly, attained. The period of actual reſidence may be, however, and generally is, abridged to leſs than one third of the nominal time, and to a ſhorter period than the licentiates uſually reſide in approved medical ſchools. Though examinations, preliminary to each of the above-mentioned degrees, are required, they alſo may be, and often are, in a great meaſure, eluded. With the aid of preparatory ſchemes, containing technical and formal anſwers, which are very commonly uſed, very little real knowledge is requiſite to perform them.

The opportunities of improvement in Oxford and Cambridge in languages, in abſtract ſciences, and polite literature, are conſiderable, and phyſi-

cians educated in either of thoſe univerſities, are frequently accompliſhed ſcholars. But the preſumptive claims of ſuch phyſicians to a medical inſtitution, eſtabliſhed by the legiſlature for the incorporation of every competent phyſician, without limitation to the graduates of thoſe univerſities, muſt depend on their means of improvement as ſchools of phyſic.

What then are their reſources for medical inſtruction? Are they ſo pre-eminently ſuperior as to ſuperſede intirely the pretenſions of phyſicians educated in every other univerſity? They are, in every branch of the art, totally inadequate, and comparatively contemptible. Bodies for diſſection and anatomical demonſtration can only be procured from London, at an expence and with difficulties, which almoſt preclude the ſtudy of anatomy. There are ſcarcely any opportunities for inveſtigating the ſymptoms of diſeaſes, and obſerving the effects of medicines. There are but few, if any, clinical lectures for explaining them. There are no lectures for teaching the theory or the practice of phyſic. There are no libraries or collections of importance appertaining peculiarly to the profeſſion; no ſocieties for diſcuſſing ſubjects, which relate to it. There are not ſtudents to excite the exertions of the profeſſors, or to animate and improve each other.

So

So totally inadequate are the means of medical improvement, that ſcarcely more than one ſtudent graduates in phyſic, annually, in either of the Engliſh univerſities. There are indeed profeſſors endowed with ſalaries, men of learning and talents. Some of them alſo give lectures on collateral branches, calculated to give general notions of the ſubjects they treat of; but by no means adapted to medical ſtudents. Their lectures, even on theſe acceſſary ſciences, muſt neceſſarily be accommodated to the ſuperficial views of their auditors, ſtudents of general literature, whoſe purſuits will not allow them to penetrate into ſciences, with which their intereſts are only remotely connected. Were their lectures adapted to medical ſtudents, they would probably be only attended by a ſolitary candidate for the doctoral honours and advantages. The graduates in medicine, at Oxford and Cambridge, are therefore reduced to the neceſſity of acquiring their profeſſional knowledge, for which their own univerſities do not afford the means, in real medical ſchools. They are obliged to make the knowledge of their profeſſion ſubſidiary to thoſe collateral and ornamental branches, which they have an opportunity of acquiring; and thus, what ought to be their principal object of purſuit is poſtponed, and becomes only the acceſſary. Notwithſtanding the

eſſential deficiency of their early education, and while they remain in the Engliſh univerſities, by ſuperadding the inſtruction of real medical ſchools, many of them become eminently learned and ſkilful phyſicians, as well as accompliſhed ſcholars. Their right to participate in the higheſt profeſſional honours is not diſputed. But that they ſhould monopolize them excluſively, becauſe they have graduated where their profeſſion cannot be learned, is repugnant to equity and common ſenſe.

The licentiates are a claſs, amounting at preſent to one hundred and ten phyſicians, who have had nearly ſimilar educations with all thoſe in the Britiſh dominions, the few from Oxford and Cambridge only excepted. Their hereditary fortunes are, in general, leſs conſiderable than thoſe of the fellows. Their love of eaſe, or predilection for elegant purſuits remotely connected with the knowledge and duties of their profeſſion, cannot be ſo eaſily indulged. They cannot ſo conveniently prolong their reſidence in the moſt expenſive and diſſipated ſchools, where a knowledge of medicine cannot be acquired; nor protract the period of determining on their profeſſion, and of deriving emolument from their exertions, to procure adventitious honours. They are, however, with few

exceptions,

exceptions, men of ſufficient fortune to obtain all the important advantages of education. They are early placed in the beſt ſchools, where they commonly remain till they have acquired that elementary knowledge of languages and ſciences, which enables them to proſecute their various profeſſional ſtudies, and often to become eminently diſtinguiſhed for general learning. They are afterwards uſually placed with an apothecary, for inſtruction in pharmacy; a ſituation not ſo flattering to vanity, nor ſo favourable for polite accompliſhments, as a college, but highly advantageous and neceſſary for the preliminary inſtruction of a phyſician. They learn there to diſtinguiſh, ſelect, and preſerve, and alſo to prepare and compound, thoſe materials, with which they are chiefly to accompliſh all that future learning and ſkill can enable them, in curing or alleviating diſeaſe. An accurate knowledge of medicines, the primary and indiſpenſible part of the education of every practitioner of phyſic, can only be obtained by actually preparing them. The pupil of an apothecary is early habituated, not only to diſtinguiſh and prepare, but alſo to obſerve the quantities and proportions adminiſtered, and the operation and powers of remedies. In addition to theſe important advantages, and that of learning pharmaceutic chymiſtry, the ſituation generally admits of much

reading,

reading, frequently of anatomical inſtruction, and ſometimes of attending lectures.

The real ſtudents in medicine, after having thus acquired the elements of medical knowledge, proceed to thoſe ſchools, which ſupply the beſt opportunities of further inſtruction in their profeſſion. They ſelect univerſities and ſeminaries, where medicine flouriſhes, regardleſs of antiquity of eſtabliſhments, local prejudices, oſtentatious diſtinctions, titular honours, or aſſumed privileges. They purſue their inquiries where they are not clogged by unprofitable reſtrictions, and idle formalities and ceremonies, the ſuperſtitious and exploded uſages of dark ages, ſtill retained in Oxford and Cambridge, which conſume time, enhance expence, and abridge improvement. They proſecute their reſearches where diſeaſe ſupplies its martyrs for inveſtigating its cauſes and its cure; and death its victims, to inſtruct the future guardian of health to arreſt its fatal progreſs. They ſtudy where experienced and celebrated profeſſors, large and well regulated hoſpitals, extenſive and choice collections of natural productions and artificial preparations appertaining to medicine, and where copious and acceſſible medical libraries offer the fulleſt means of inſtruction: where ſocieties for diſcuſſing profeſſional ſubjects ſtimulate inquiry and promote communi-

cation;

cation; where the thronged claſs calls forth all the powers of the teacher, and emulation animates the ſcholar *.

But though medicine, which includes ſo many branches of ſcience, engages their chief attention, they muſt of neceſſity learn the dead languages, natural hiſtory and natural philoſophy, and are ſeldom entirely unacquainted with the more abſtruſe ſciences, polite literature, and modern languages. Theſe, however, they cultivate as ſubordinate to the more immediate branches of their profeſſion, and they generally find, and frequently avail themſelves of the moſt ample means of inſtruction in them, where medicine is at the ſame time beſt taught. Wherever the beſt opportunities of inſtruction are preſented, they in general purſue it, without being confined to any ſchool or any country †. If a genuine medical education, in the purſuit of which the accompliſhments of the ſcholar and the gentleman are not neglected, can complete the phyſician, the licentiates are indiſputably intitled to rank with the higheſt claſs of the profeſſion, either at home or abroad. For their

* Edinburgh enjoys all theſe advantages, and is annually attended by more medical ſtudents, than have ſtudied either at Oxford or Cambridge during any two centuries ſince their foundation.

† Many of the licentiates, after having accompliſhed their degree at home, have ſtudied in foreign ſchools, where there are excellent opportunities of medical improvement.

their moral conduct, there is every ſecurity, which reſpectable connections and the conſequent advantages of good example, and the early initiation of good principles can produce, ſtrengthened by habits of induſtry, liberal purſuits, and ſociety, and the dependence of future ſucceſs upon irreproachable character. From men animated by ſuch inducements, improved by ſuch culture, and reſtrained by ſuch obligations, much undoubtedly might be expected. Experience will be found to confirm what their advantages promiſe, that no body of phyſicians contains a greater proportion of members diſtinguiſhed by highly cultivated talents, active and uſeful exertions, valuable publications and diſcoveries, and upright and honourable conduct, than the excluded licentiates. They do not reſt their equitable claims to ſhare the profeſſional honours of their country, impartially provided by the legiſlature for every competent phyſician, on preſumptive grounds of merit, though it is indiſputable that they poſſeſs thoſe, which give the ſtrongeſt claims. In addition to theſe grounds, they appeal to experience whether they have not always been as able, active, and efficient in improving every branch of their profeſſion, and in practiſing it ſucceſsfully and beneficially for the community as the graduates of Oxford and Cambridge. They alſo appeal to experience, whether thoſe of their body, who

have obtained that admiſſion into the college, through favour, which they were entitled to by right, have not diſcharged the duties and truſts of the corporation with equal ability and integrity. When their education, their talents, their acquirements, are conſidered; when their labours, diſcoveries, and publications, their private worth and public ſervices are eſtimated; when their comparative merits are weighed; when it is admitted that they have the ſame pretenſions as nearly all the phyſicians in the kingdom, and that they actually form the great body of the faculty in the metropolis; can any candid, any equitable, any honourable man, deny their right, in point of juſtice, to be admiſſible into a medical corporation? into an inſtitution, the only objects of which are, to ſecure the public from illiterate and unprincipled impoſtors in phyſic, and to promote the honour and intereſt of learned, upright, and able phyſicians?

Under what equitable pretence can the few graduates from Oxford and Cambridge, ſcarcely ſufficient to perform the neceſſary duties of the college, monopolize ſuch an inſtitution in a free and enlightened country? How can they juſtify the libel, implied by rejection, upon the education of nearly every Britiſh phyſician? upon every

every real medical univerſity? How palliate the rejection, with all its humiliating and injurious conſequences, of ſuch a body as the licentiates, who with all the preſumptive proofs of fitneſs, which the almoſt uniform education of their profeſſion ſupplies; challenge and ſolicit any equal teſts of learning and ſkill that can be eſtabliſhed?

Oxford and Cambridge are ſeminaries, where men of the moſt exalted genius and profound erudition, where the wiſeſt and beſt men that ever honoured this or any country have been educated. But of all the ſciences, perhaps medicine alone has never flouriſhed in either. It is ſcarcely known that medicine is taught in them even in this country, and unknown upon the continent that ſuch ſchools of phyſic exiſt. Can there be a more deciſive proof of their inſignificancy, than that, in general, not more than one or two doctors in phyſic graduate annually at either, even notwithſtanding the temptation of their indirect and contingent beneficial conſequences.

Were they as celebrated as they are obſcure, as medical ſchools; were there no others, which afford adequate opportunities of inſtruction exiſting; there would, even then, be only the ſame

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plea for excluding thoſe from the college, who had not been educated in them, that there is now for rejecting thoſe, whoſe education has been confined to theſe univerſities. But the means of medical improvement are ſo inconſiderable, that there probably never was a member of the college, whoſe education was ſo confined.

At the period when the charter was originally granted, Italy was the chief ſeat of medical inſtruction. France, Holland, and Germany, have been ſucceſſively diſtinguiſhed by the moſt celebrated medical ſchools, as Scotland is at preſent. But in the viciſſitudes of revolving centuries, the Engliſh univerſities have never emerged from obſcurity as the theatres of medicine. It is, however, from Oxford and Cambridge, that the college candidates aſſume their title to ſhare in the monopoly, whilſt it is in the ſchools of the licentiates that they learn their profeſſion. Medical ſcience muſt be courted where ſhe reſides: with Boerhaave, in Holland; in Germany, with Haller; or, with Cullen, at Edinburgh. Let the metropolis of England and the college of London concentrate her rays from every quarter of the globe, and not be confined to the glimmerings of ſchools, where medicine is unknown. Suppoſe the univerſities of Oxford and Cambridge ſhould ceaſe to teach phyſic; be entirely deſerted by medical

medical ſtudents; or be totally aboliſhed as public ſeminaries; muſt the college of phyſicians and the ſtate of medicine in the metropolis depend on their caprice; decline with their decay; and the college be annihilated by their extinction? Could the legiſlature ever intend, or, at this period, give its ſanction to ſuch an abſurdity?

It is melancholy to obſerve, how frequently inſtitutions, founded in virtue and wiſdom, and confided to men, whoſe education, abilities, and ſituation in ſociety, impoſe on them the ſtrongeſt obligations to diſcharge their truſt with integrity and fidelity; it is lamentable to reflect, how often they are narrowed by jealouſy and avarice, and perverted by ſelfiſhneſs, ſo as even to counteract diametrically their original and manifeſt intention, and, from ſources of beneficence and utility, to be converted into inſtruments of injuſtice and oppreſſion.

As a pretext to extenuate their conduct, the graduates of Oxford and Cambridge boaſt of ſuperior knowledge of the dead languages, and in the preliminary and ornamental branches of education. Are then the vehicle and embelliſhment of medical knowledge of more importance to a phyſician than the ſcience and practice of medicine? Is there not the ſame probability that

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the licentiates excel in the latter, as that the fellows are ſuperior in the former?

Admit their pretenſions in the dead languages, can it be aſſerted that the licentiates are not ſufficiently acquainted with theſe for the purpoſes of medical learning? Do they not undergo repeated examinations, on various ſubjects, in the Latin language; and do they not challenge any teſts of knowledge of the Greek, which the fellows will undertake?

If it be conceded that the fellows may boaſt a more critical knowledge of the dead languages, an aſſumption, which can only be allowed with many exceptions, it will ſcarcely be queſtioned that the licentiates are more converſant in the modern*; in which medical information has for ſometime been chiefly conveyed, and to which, in future, it is likely to be principally confined.

How ridiculous for men of acknowledged erudition to be ſcrupulouſly balancing their ſeparate acquirements and pretenſions, which muſt vary in each, as genius, opportunity, or inclination have directed.

* The period, which muſt elapſe before the degree of doctor in medicine can be obtained in the Engliſh univerſities, is an obſtacle to ſtudying in foreign ſchools.

directed. Medicine is connected with ſo many branches of knowledge, that the ſhortneſs of life and imbecillity of human efforts are unequal to their attainment.

The greateſt names in which the profeſſion can glory, are monuments, at the ſame time, of knowledge and ignorance, of wiſdom and error. Hippocrates lamented the brevity of life, the extent of art, the tranſientneſs of opportunity, and the fallacy of experience. Boerhaave adopted as his motto *, "ſimplicity is the ſymbol of truth;" and Cullen with equal modeſty, "to be free from folly "is the beginning of wiſdom †." And ſhall a few individuals, with vain preſumption, monopolize a public ſcientific inſtitution, under a diſputed claim of ſuperior knowledge in collateral and ſubordinate branches, which, if conceded, renders it probable that they are inferior in the fundamental and eſſential departments of their profeſſion? The queſtion is not whether the graduate of Cambridge excels in mathematics, of Oxford in polite literature, or of Edinburgh in the theory and practice of phyſic? it is whether the candidate for admiſſion into the college, is competently learned and ſkilful in phyſic?

Without

* Simplicitas ſigillum veritatis.

† Initium ſapientiæ ſtultitia caruiſſe.

Without then diſputing their ſeparate advantages, and their reſpective attainments, there can be no doubt that both claſſes are highly cultivated, and that neither is intitled to arrogate ſuperiority, much leſs to deprive the other of thoſe equal rights, which, if not reſtricted by law, ought, in equity, to be extended to every well educated and well qualified phyſician.

It has alſo been alledged, in juſtification of the monopoly, that it is difficult to aſcertain the ſufficiency of a candidate for a medical college, without an adequate knowledge both of his previous opportunities of improvement, and alſo of his attainments and conduct. It is aſſerted, that graduation in the Engliſh univerſities, is a preſumptive proof of fitneſs, both in learning and morals; and that phyſicians who graduate elſewhere, having no fixed plan of education, do not poſſeſs the ſame preliminary recommendation. Leaving out of the conſideration the total inadequacy of Oxford and Cambridge as ſchools of phyſic; admitting that a degree from either is intitled to all the weight that a preſumptive proof, drawn from local ſtudy and graduation, can have; ought it as ſuch to be excluſively intitled to attention? While nearly all the phyſicians in the kingdom, and dominions of Great Britain, are induced to ſtudy and graduate in other univerſities;

ſities; are there not preſumptive proofs beſides, which may intitle a candidate to have his qualifications even examined? Is it not juſt that corroborating evidence of ſufficiency in any profeſſion ſhould be deduced from the actual period of the candidate's ſtudies; and from his efficient opportunities of improvement, in that art or ſcience of which he claims the privileges, independently of local reſidence? The licentiates ſtudy in public ſeminaries, where their application, improvement, and moral conduct are obſerved, both by their teachers and cotemporary ſtudents; and where their reſpective characters are well known. Their diplomas are certificates, and evidence of their probity, as well as learning.

If the mere time required to attain a doctor's degree in Oxford or Cambridge be a reaſon why men, who have obtained theirs in other univerſities, in a ſhorter period, ſhould not be admitted, immediately after graduating, to equal privileges; cannot an additional period for improvement and probation, and to equalize the pretenſions of the latter in this reſpect, be added to that they have previouſly paſſed, and given certificates of, in approved medical ſchools?

Where actual teſts of competency can be reſorted to, preſumptive and acceſſary proofs may be

be in a great meaſure diſpenſed with: but the licentiates do not object to every candidate being obliged to prove that he has ſtudied an adequate time, in good medical ſchools, and received from thence certificates of probity and learning.

It has indeed been objected to their claim, that there are phyſicians, who have purchaſed degrees without having ever ſtudied in any univerſity. Such degrees are undoubtedly intitled to very little reſpect, and, affording no preſumptive proof of fitneſs, might juſtify, if not the rejection of perſons claiming to be examined for admiſſion under them, the ſtricteſt application of the real teſts, and an extended period of probation. But thoſe, who have procured ſuch nominal degrees are only exceptions, which cannot prejudice the rights of the great body of well educated phyſicians: of phyſicians who have ſtudied longer, in the beſt medical ſchools, than the graduates of Oxford or Cambridge have, in general, either ſtudied medicine, or reſided in thoſe univerſities. The licentiates are as zealous as the fellows can be, that ſtrict precaution ſhould be obſerved in the admiſſion of members. They wiſh that undoubted teſts of ability and learning ſhould be indiſpenſibly required. They do not object to reſtrictions exacting a certain period of ſtudy in approved medical ſchools, and a mature period of life to

be attained before admiſſion into the college. Whatever impartial regulations, wiſdom can dictate and juſtice ſanction, they approve. But they contend that, as far as is conſiſtent with the intereſts of the college, the rights of phyſicians ought to be impartially admitted.

It has been ſhewn that the phyſicians of Oxford and Cambridge are few in number, ſcarcely ſufficient to perform the neceſſary duties of the college and keep up the ſucceſſion*: that thoſe univerſities are totally inadequate to a medical education, and therefore cannot entitle their graduates to any preference, much leſs to an excluſive monopoly of a medical corporation inſtituted for public purpoſes. It has been ſhewn that the licentiates are a numerous body, of the ſame claſs, ſimilarly educated, and poſſeſſed of the ſame pretenſions with nearly all the phyſicians† in Great Britain, Ireland, and the Britiſh dominions: that they, in general, have had the beſt medical education which can be obtained, either at home or abroad, and are in fact learned, ſkilful, and upright phyſicians. It has alſo been ſhewn,

* The number of offices, with duties annexed, almoſt equals the number of efficient members.

† The number of phyſicians who have graduated at Oxford and Cambridge, and who are not members of the college, is very inconſiderable.

ſhewn, that every objection againſt them, whether real, or even only alledged, may be obviated by regulations * which, with the actual teſts of examination, would amply ſecure the intereſts and dignity of the college, and allow their right of admiſſion on equitable terms. Having eſtabliſhed theſe premiſes, it is manifeſt that the equitable right of every phyſician of mature age to be examined, who has had an adequate medical education, without regard to local ſtudy or local graduation, is incontrovertible. His right to be afterwards admitted a member of the college, if found competent, is alſo equally indiſputable. It remains to be conſidered, whether the right ſo eſtabliſhed in equity is barred in law.

In order to eſtabliſh the legal right of the licentiates to have their qualifications for admiſſion into the college of phyſicians examined, it is important to premiſe ſome rules of law, with regard to the conſtruction of charters and ſtatutes, and

* A candidate might be required to have attained his thirtieth year; to have employed ſeven years in the ſtudy of phyſic in approved ſchools; to have graduated in a reſpectable univerſity, where previous reſidence and teſts of learning and probity are required. But with ſuch preſumptive claims he ought to be admitted by right to examination: and if approved, admitted by right to incorporation, on having completed his year of probation as a candidate.

and reſpecting the evidence, which ought to govern deciſions both on individual and corporate rights.

As legal axioms, the following are perhaps ſufficiently obvious: but it is neceſſary to ſtate them as premiſes of a concluſion, which invalidates the deciſion of a court of juſtice.

Conſiſtency, ſtability, and ſecurity require, that the letter of legiſlative acts ſhould ſtrictly and rigidly govern the deciſions of courts of law, in caſes where the intention of the legiſlature is clearly expreſſed.

Where the language of an act is not explicit, with regard to any point under deciſion, the true legal meaning, when it can be clearly deduced from the context, is equally binding.

Where the intention of the legiſlature is doubtful, with regard to any litigated point under deciſion, the court ought to conſtrue it liberally, for the benefit of the community.

Where the intention of a party, who obtained a parliamentary grant, can be aſcertained, it is a ſtrong evidence of the intention of the legiſlature with regard to that party.

Where

Where uſage is reſorted to, in order to illuſtrate the nature and extent of a grant, the uſage of thoſe who obtained it, of their cotemporaries, and immediate ſucceſſors, is moſt deciſive.

Where parties have fully and unconditionally, during a long period, and jointly and equally enjoyed the ſame privileges, under one common grant, it is a mutual conceſſion and ſtrong evidence that they are equally intitled.

When a court of law, after full and repeated hearings, deliberately, repeatedly, and without diſſent, lays down the law, with regard to the real points at iſſue between two parties; and when theſe opinions are legally reported, they conſtitute a high legal authority; though the deciſion upon the caſe might turn upon errors in the proceedings, or upon circumſtances foreign to its real merits.

Where the letter and ſpirit of a grant, illuſtrated by the original intent, uſage, and joint poſſeſſion of the parties, cannot be made obvious to the bench, and former opinions are got rid of as not being abſolute deciſions in point; when judges aſſume from neceſſity or choice, the province of legiſlators, and regulate what is to be law, on grounds

grounds of expediency, their views ought to be liberal and comprehenſive, and their determinations, made for the many not for the few, ought to extend, not abridge, the privileges of the community.

Theſe are rules, with regard to the deciſion of caſes, which may be conſidered as eſtabliſhed legal maxims.

The following poſitions, reſpecting the nature of corporations, and their rights and duties, are, it may be preſumed, equally indiſputable.

An aggregate corporation is a politic body, conſiſting of ſeveral individuals, united together for public purpoſes, and their own advantage; inveſted with privileges and immunities, and bound by duties according to its charter and acts of Parliament concerning it.

A corporation is bound to act up to the deſign for which it was inſtituted.

Perpetual ſucceſſion is an inherent right, and a main end, of every corporate body.

Every corporation is bound to admit all, who are eligible under the letter, and true meaning

and

and intent of its charter, and of acts of parliament concerning it.

Corporations may make bye-laws for the regulation of their proceedings, but they cannot change the nature of the ſucceſſion, and give themſelves a new mode of exiſtence. They cannot ſuperadd qualifications for admiſſion not required by their charter and acts of parliament concerning them. They cannot narrow the number of the eligible.

It is taken for granted that the above poſitions, as well as thoſe, which precede them, reſpecting the rules of evidence and the grounds of deciſions, are ſettled, indiſputable legal maxims, which ought to govern courts of law in their determination of cauſes reſpecting corporate rights.

We ſhall next proceed to prove, by deciſive evidence, that the letter and ſpirit of the charter, which originally incorporated the phyſicians of London, and of the act of parliament which confirmed it, clearly demonſtrate, that the crown and the legiſlature did thereby grant and convey, in perpetuity, to every competent phyſician, the right of being admitted a member of the corporation, if found, upon examination, poſſeſſed of the qualifications required by the charter and act of parliament.

parliament. It will alſo be ſhewn, that all prior and ſubſequent ſtatutes and charters, whether completed or only intended, confirm this to have been the manifeſt intention of the crown and of parliament.

The firſt ſtatute which has been diſcovered relative to practitioners in phyſic, was enacted in the ninth year of the reign of Henry V. The preamble, after reciting the miſchiefs ariſing from illiterate practiſers, ſtates, that " if no man " practiſed therein but al only connynge men " and approved ſufficiently, y learned in art, " filoſofye, and fiſyk, *as it is kept in othur londes and* " *roialmes*, ther ſhuld many man that dyeth for " defaute of helpe, lyve, and no man periſh by " unconnyng." The petition goes on to pray, that no perſon be allowed to practiſe phyſic " bot he have long time y uſed the ſcoles of fiſyk, " *within ſome univerſitee*, and be graduated in the " ſame." In this firſt act of the legiſlature is found the ſame juſt and impartial ſpirit, which pervades all ſubſequent acts, relative to the profeſſion. Every phyſician, who had employed his time, and labour, and money, in ſtudying his profeſſion, where it was properly taught, who had *uſed the ſchools of phyſic and graduated*, was, without limitation to particular univerſities, entitled to all the privileges of his profeſſion. The wiſe regulations

gulations of other realms are referred to, from which the ſuperiority of their ſchools of phyſic, at that period, and the conſequent higher eſtimation, in which thoſe, who had graduated abroad, were held, might be inferred, if not eſtabliſhed by ample teſtimony.

The next ſtatute, reſpecting phyſicians, was enacted in the third year of the reign of Henry VIII. After enumerating the ignorant and dangerous perſons who practiſed phyſic, with "great "infamy to the faculty, and the grievous hurt, "damage, and deſtruction of many of the king's "liege people," it enacts, "that no perſon within "the City of London, nor within ſeven miles of "the ſame, take upon him to exerciſe and occupy "as a phyſician or ſurgeon, except he be firſt "examined, approved, and admitted by the "Biſhop of London, or by the Dean of Paul's, "for the time being, calling to him, or them, "four doctors of phyſic; and for ſurgery, other "expert perſons in that faculty, and for the firſt "examination, ſuch as they ſhall think con-"venient, and afterward, alway *four of them that* "*have been ſo approved.*" Here again we find no partial limitation. All thoſe, who practiſed as phyſicians, within the preſcribed juriſdiction, were equally ſubject to be examined; and ſuch, as were approved, were equally intitled not only to practiſe,

tiſe, but they might alſo perform the higher duty of examining and deciding upon the qualifications of others. This act remained in force ſeven years, during which period, every phyſician legally practiſing in London, and within ſeven miles round it, muſt neceſſarily have been examined and approved. Such approved and legal phyſicians formed an incomplete politic body, poſſeſſed of the excluſive right of practiſing, and jointly with the Biſhop of London, or Dean of Paul's, the power of examining others, and of admitting them, if competent, both to practiſe and examine. This ſtatute was ſufficient for confining the practice of the metropolis and its environs to ſuch as were duly qualified. It contained the ſame proviſion for examination, by four approved examiners or cenſors, afterwards adopted in the ſubſequent charter, and alſo the power of impoſing a penalty on ſuch as practiſed without their approbation. It thus provided for the main end of the legiſlature, the ſafety of the community, in a ſimilar manner. The charter was modelled upon this ſtatute, and adopted its proviſions with regard to the public. It only enlarged them with reſpect to phyſicians, and muſt be conſidered as a continuation and extenſion of this act. The additional privileges conferred by the charter were granted chiefly for the benefit of thoſe, who obtained it, and of their ſucceſſors, for the intereſt and dignity of the faculty of phyſic.

They

They hitherto only poſſeſſed the right of practiſing, and together with the Biſhop of London or Dean of Paul's, the power of keeping up a ſucceſſion of legal practitioners. But they enjoyed no other legal franchiſe. They had no officers legally conſtituted, no common ſeal, no power of holding property as a body, of ſuing and being ſued, or making binding regulations, which are incident to corporations.

A charter was therefore petitioned for by ſix phyſicians named in the petition, under the patronage of Cardinal Wolſey, then Chancellor of England, who is alſo therein named as a petitioner. The ſix petitioning phyſicians muſt neceſſarily have been legally authorized to exerciſe their profeſſion. It alſo cannot be doubted that their application, which was to obtain honours and privileges for all of their own body, who were duly qualified, was made with the concurrence, and ſupported by the influence of thoſe legal phyſicians, who were to ſhare equally with the petitioners in the benefits of the grant. Keeping in view then that the petitioners for the charter were members of a body conſtituted by a prior ſtatute; that every member of that body had an intereſt and equal title to what was applied for, and muſt have exerted a joint influence to obtain it; that it was granted by the ſame king, and

under

under the patronage of the ſame miniſter, during whoſe reſpective reign and influence the prior ſtatute had been enacted; that it contained ſimilar proviſions for the public, and additional ones chiefly for the profeſſion. With theſe illuſtrative facts before us, let us now conſider the words and intent of the charter itſelf, with regard to the perſons incorporated, and the deſcription of perſons intended to keep up the ſucceſſion and perpetuate the corporation.

The charter of the college of phyſicians was granted by Henry VIII. in the tenth year of his reign. It ſets forth: "That in order to re-"ſtrain the temerity of wicked men, who prac-"tiſe phyſic from avaricious motives, to the "great detriment of the ignorant and credulous; "therefore, partly in imitation of *well regulated* "*ſtates in Italy, and many other countries.*"

We find here in the preamble of the charter, as before in the ſtatute of the ninth of Henry V. a convincing proof of the high eſtimation in which the regulations of foreign countries, with regard to medicine, were held by the crown, as well as by the parliament. This affords a ſtrong preſumption, that the privileges of phyſicians in England were, as under the former acts of parliament, to be extended to ſuch as had

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ſtudied and graduated in countries where medicine flouriſhed; and of which the wiſe regulations, with regard to it, influenced the crown and the legiſlature to imitate them.

The charter goes on to ſtate, that, " partly in " compliance with the petition of the grave and " learned men, John Chambre, Thomas Linacre, " Ferdinand de Victoria, the king's phyſicians; " and of Nicholas Halſewell, John Francis, and " Robert Yaxley, phyſicians, the king eſtabliſhes, " *collegium perpetuum doctorum & gravium virorum,* " *(a perpetual college of ſedate and learned men)* " who may publicly practiſe phyſic in our City " of London, and its ſuburbs, within ſeven miles " in circumference." This is the conciſe, yet definite and comprehenſive deſcription of thoſe phyſicians, who were to conſtitute the corporate body. Integrity and learning were the only requiſites. Having pointed out the qualifications, the charter proceeds to ſtate the duties of the members: " whoſe care it will be, as we hope, " as well out of regard to their own honour, as to " public utility, to diſcourage by their own ex- " ample and authority, the ignorance and raſhneſs " of thoſe crafty people, whom we have made " mention of, and to puniſh them, both by our " laws lately made public, and by decrees to be " eſtabliſhed by the college itſelf." The ſame

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legal phyſicians, who had given teſts of their gravity and learning, and had acted under the prior ſtatute, here referred to, were to accompliſh the ſame objects, within the ſame juriſdiction, by the ſame and ſimilar means only. The charter goes on to ſtate: "In order that theſe ends may "be more readily accompliſhed, we grant to the "aforeſaid John Chambre, Thomas Linacre, &c. "phyſicians, *quod ipſi omneſque homines ejuſdem fa-* "*cultatis de & in civitate predicta ſint in re & nomine* "*unum corpus & comunitas perpetua ſive collegium per-* "*petuum.*" *(That they, and all men of the ſame faculty, of and in the aforeſaid city, be in fact and in name one body and perpetual commonalty, or perpetual college.)* Need there a comment? Can dulneſs miſtake, or caſuiſtry evade? Can language and intention be more explicit? A charter is granted to ſix perſons therein named, that they and all other men of the ſame faculty ſhall conſtitute one body and perpetual corporation. Can it be a queſtion, whether men of the ſame faculty, with the qualifications required by the charter in the higheſt degree, in the preciſe ſituation with reſpect to claims of thoſe who obtained it, are legally entitled to the corporate franchiſes? Their right, under the expreſs terms and letter of the charter, is too clear to require to be illuſtrated by additional facts, or enforced by further arguments.

The

The charter, having pointed out its objects, the qualifications and general duties of the members of the college, the perſons of whom it ſhould then, and for ever afterwards conſiſt, proceeds to eſtabliſh the officers it ſhall have and their duties, and the farther privileges it ſhall enjoy. "The "college ſhall have power to elect annually, for "ever, out of their own body, one diſcreet and "ſkilled in the faculty of medicine, to be pre-"ſident of the ſaid college; to ſuperviſe, regulate, "and govern, for the year, the ſaid college or "commonalty, and all men of the ſame faculty, "and their affairs." The power, here conferred on the preſident, extends not only to the corporators, but to all men of the ſame faculty. The charter wiſely provides, that thoſe, who are incapable of becoming members, or who refuſe to be incorporated, ſhall not be exempted from its juriſdiction. Otherwiſe, the very evils, it was granted to ſuppreſs, would be ſanctioned by it.

The power of perpetual ſucceſſion, of having a common ſeal, of purchaſing lands, of ſuing and being ſued, are next conceded; and the charter goes on to grant: "that the college may hold "lawful aſſemblies among themſelves, and make "ſtatutes and regulations for the *wholeſome govern-*"*ment, ſurperviſing and correction* of the ſaid college "or commonalty, and of all men exerciſing the

"ſame

" ſame faculty in the ſaid city, and within ſeven " miles round the ſame." The power of making bye-laws of regulation is inherent in all corporations. It is here expreſsly granted, with the reſtriction of their being ſalutary, which enforces a condition to be always preſumed in law. But can a bye-law, which changes the nature of the ſucceſſion, which diſinherits the legitimate ſucceſſors, which ſhuts out a majority of the eligible, which ſubverts the conſtitution of the corporation, which endangers its extinction, be conſidered, in contemplation of law, as a mere regulation*? If it could be ſo ſtrained and perverted, could prejudice diſtort it into a ſalutary regulation?

The next clauſe of the charter grants to the college: " that no one ſhould exerciſe the ſaid " faculty in the ſaid city, or ſeven miles round it, " unleſs admitted to this privilege by the ſaid " preſident and commonalty, or their ſucceſſors, " for the time being, by letters of the preſident " and college, given under their common ſeal." It is manifeſt from the clauſes, authorizing the preſident to ſuperviſe the college and all men of the ſame faculty; empowering the college to make

* The bye-law confining the right of examination for admiſſion, into the claſs of candidates and ſubſequent incorporation, to the graduates of Oxford and Cambridge, is attended with all theſe evils.

make bye-laws for their own body and all others of the ſame faculty; and from this laſt recited clauſe, enabling them to puniſh all, who practiſed medicine without their permiſſion; that there were perſons, in the contemplation of the charter, who might be allowed to practiſe without being entitled to be admitted members. The juriſdiction of the college extended to all who practiſed medicine in any line or degree; whether as phyſicians, as ſurgeons, or apothecaries; as oculiſts, or partial practiſers in any branch of the profeſſion. It is evident that the metropolis muſt always have contained a numerous body, who would not come within the deſcription and meaning of the charter as eligible for admiſſion, and who might, notwithſtanding, be permitted to practiſe under the ſuperintendence and controul of the college. It is, in fact, proved from their own annals, that ſuch perſons were ſo permitted. But can a power of excluding ſuch as are incompetent in education or learning, or unfit, from the partial and inferior lines of the profeſſion they have choſen, authorize the rejection of thoſe, who have *long time uſed the ſchools of phyſic, and graduated in the ſame*, as required by the ſtatute of Henry V? of thoſe of the ſame deſcription, who were admitted *both to practiſe and examine* under the ſtatute of Henry VIII? of thoſe who poſſeſs the *learning and diſcretion* required by the charter, and *are groundedly learned and*

deeply ſtudied in phyſic, as required by the confirmatory act of parliament? If this be juſtifiable, the power of thoſe, in poſſeſſion of the college, of admitting others is perfectly arbitrary. They could alſo at pleaſure, and with comparative propriety, exclude the very deſcription of phyſicians they now admit. The dictates of reaſon, the rules of equity, the maxims of law, would, in this caſe, be perfectly nugatory, as applied to the conſtruction of this charter.

After conceding the power of puniſhing all, who practiſe phyſic without their permiſſion, the charter directs and grants: " that the college " ſhould annually elect four members, who ſhould " have the ſuperviſal, examination, correction, " and government of all the phyſicians of the ſaid " city, and of all other phyſicians, who ſhould in " any manner exerciſe the faculty of phyſic with- " in ſeven miles round; and the power of puniſh- " ing the ſaid phyſicians for their delinquencies " in unſkilfully exerciſing that faculty. They " were likewiſe to have the ſuperintendence and " examination of all ſorts of medicines, and of " the preſcriptions for them, of the ſaid phyſicians, " whenever it might be neceſſary for the public " advantage, ſo that delinquents in practice might " be puniſhed by fines, impriſonment, and by " other reaſonable methods." It appears that the preſident

preſident and cenſors were the ſole executive officers of the corporation inveſted with power by the charter. The preſident was to ſuperviſe and regulate the affairs of the college and of the faculty. The cenſors were to ſuperintend and regulate the practice of phyſic; to inveſtigate medicines and their adminiſtration; and to examine the qualifications of phyſicians. There is no ſpecific mode of examination pointed out, but the power and duty of examining are clearly veſted in the cenſors. In order to perpetuate the ſucceſſion, they are bound to examine thoſe, who have the preſumptive claims of the original members, a degree from a reſpectable univerſity, after having uſed the ſchools of phyſic. The college is alſo bound to admit thoſe, who, on examination, are found to poſſeſs the qualifications required by the charter. Otherwiſe, the college might be annihilated, or converted into an inſtrument, in the hands of any party in poſſeſſion, to depreſs the very perſons it was intended to encourage, and even to tolerate quacks and impoſtors. The charter laſtly exempts the members of the college from being ſummoned to aſſizes, ſerving on juries, and inqueſts.

The objects of the charter are, expreſsly, the ſafety of the public, and, obviouſly, the intereſt and dignity of the corporators.

The perſons originally incorporated were the ſix petitioners, and all other men of the ſame faculty, including, beyond all doubt, all legal phyſicians, who had been approved under the prior ſtatute.

The qualifications for incorporation are, explicitly, learning and moral character.

The officers conſtituted by the charter are a preſident and four cenſors; the former to ſuperviſe and regulate the affairs of the college and faculty; the latter to ſuperintend and regulate whatever relates to practice. The cenſors are to examine, and though the deſcription of perſons to be examined for incorporation, the mode of examination, or the form of admiſſion, be not expreſsly mentioned, it is inconteſtible that the college was to be perpetuated by the ſame deſcription of perſons, as thoſe originally incorporated, who poſſeſs the qualifications required by the charter.

As all who practiſe phyſic are under the controul of the cenſors, they are authorized to examine and allow perſons to practiſe, who are only competent in particular branches, or in inferior ſituations of the profeſſion, or who decline incorporation. But this by no means implies a power

of

of refuſing to examine, for admiſſion, ſuch as come within the terms and meaning of the charter.

The college are alſo empowered to make ſalutary bye-laws and regulations. But was it ever contended in law that ſuch a power, incident to every corporation, can authorize the exiſting members to change the nature of the ſucceſſion, or to confine it arbitrarily?

The letter and ſpirit of this charter, with reſpect to the ſucceſſion, are ſo obvious, that no doubt can exiſt as to the intention of thoſe, who obtained it, or of the crown, which granted it. That, however, which cannot be made clearer in point of meaning, by argument or illuſtration, may be confirmed by repetition, and corroborated by higher authority.

About four years after it was originally granted, the charter was confirmed, and the privileges of the college were extended by act of parliament. Hence ariſes an accumulation of evidence to aſcertain the intent of all the parties concerned in the charter and ſtatute, which can rarely concur.

During the interval between granting the former and enacting the latter, an ample opportunity was afforded for obſerving the operation of the charter,

charter, and rectifying, in the new act, what was wrong, and ſupplying what appeared deficient. The ſtatute was applied for by the ſame individuals, who had petitioned for the charter, was enacted under the ſame king, who had granted it, and under the influence of the ſame miniſter, who had jointly petitioned for it.

Let us now proceed to aſcertain whether the ſame parties, ſo prepared by obſervation and experience, altered, by the authority of parliament, the qualifications for incorporation, or changed the nature of the ſucceſſion; whether admiſſion was to be confined to the graduates of Oxford or Cambridge, not mentioned in the charter; or whether the college was inveſted with a right of admitting or rejecting arbitrarily.

The ſtatute, which confirmed the charter, intitled, "the privileges and authority of phyſicians "in London," was enacted in the fourteenth and fifteenth of Henry VIII. and begins as follows:—"In the moſt humble wiſe ſheweth "unto your Highneſs, your true and faithfull "ſubjects and liegemen, John Chambre, Thomas "Linacre, Fernandus de Victoria, your phyſi-"cians; and Nicholas Halſewell, John Fraunces, "and Robert Yaxley, and *all oder men of the ſame* "*faculte within the citty of London and ſeaven myles* "*about*. That where your Highneſs by your "moſt

" moſt gracious letters patents, bearing date " Weſtminſter the twentie third day of Septem- " ber, the tenth yeare of your moſt noble reigne, " for the comonwealth of this your realme in due " exerciſing and practiſing of the faculte of phy- " ſicke, and the good miniſtration of medicyns to " be had, have incorporate and made of *us and of* " *our companye* aforeſaid, *one body and perpetual* " *cōialtie or fellowſhipp of the facultee of phiſicke, and* " *to have perpetuall ſucceſſion.*" That the members of the college underſtood the right of incorporation to be extended by the charter to all competent phyſicians, and that it was in fact ſo extended, is here affirmed by themſelves. The petitioners aſſert, and their petition is embodied in the ſtatute, that the charter did incorporate them and all others of the ſame faculty, in whoſe names, as well as their own, they apply for a confirmation of it, and an extenſion of privileges.—Can there be in any caſe more concluſive evidence?

The ſtatute proceeds—" to have perpetuall ſuc- " ceſſion and comon ſeale, and to choſe yearely " a preſident of the ſame fellowſhipp and comon- " altie, to overſee, rule, and governe the ſaid fel- " lowſhipp and commonaltie, and all men of the " ſame facultie, with divers oder liberties and pri- " vileges." If all phyſicians, found duly qualified under the act of the third of Henry VIII. were incorporated

corporated by the charter, as has been demonſtrated, and their preſident was to overſee and govern the ſaid corporate body, and all men of the ſame faculty; it is an evident inference, that all men of the ſame faculty, not corporators, muſt mean thoſe not duly qualified, and thoſe, who refuſed incorporation. The ſtatute recapitulates the charter, and then proceeds. "And forſomoch that the "making of the ſaid corporation is meritorious "and very good for the comonwealth of this your "realme. It is therefore expedient and neceſſarie "to provide that *noe perſon of the ſaid polityke body* "*and comonaltie aforeſaid* bee ſuffered to exerciſe "and practyſe phyſick but oonly theſe perſons "that be *profound, ſad, and diſcreete, groundly* "*learned and deeply ſtudied in phyſyke.*" The charter decreed that a *perpetual* college ſhould be inſtituted of *learned and ſedate* men, and granted that the petitioners, therein named, and *all men of the ſame faculty* of and in the aforeſaid city, be, in fact and in name, one body and perpetual commonalty or perpetual college. Four years afterwards, the very ſame petitioners, who obtained the charter, in conjunction with all other learned and ſedate phyſicians, who had been incorporated, petition for and obtain an act of parliament confirming the charter and extending their privileges. Their petition, which is incorporated and forms part of the act, prays what? That the

qualifications

qualifications for admiſſion ſhall be changed? That a candidate ſhall have graduated at Oxford or Cambridge, to be entitled to have his fitneſs for incorporation examined? The framers of this act, the faculty of phyſic in London, and the legiſlature of England, had more enlarged, more liberal, and wiſer views. They did not cramp the growth of a riſing inſtitution, to which they had given birth, by repreſſing thoſe, who might beſt accompliſh its purpoſes, and conſequently be beſt entitled to its advantages. They did not ſow the ſeeds of decay and diſſolution in a ſyſtem, which they meant ſhould ſurvive and flouriſh for great and public purpoſes, by rendering it dependent on the fluctuating ſtate and uncertain duration of any other precarious politic body. They did not interdict their legitimate ſucceſſors, men, who might poſſeſs every title under which they themſelves claimed, obtained, and enjoyed the privileges both of the charter and act of parliament. They could not foreſee that the college would, at a future period, ſo far deviate from their liberal plan, as to depreciate and oppreſs the great body of phyſicians which the charter and ſtatute were granted to protect. Nor does it appear that they could have taken any precautions, beyond what they have done, which would have availed to ſecure to the

faculty,

faculty, and conſequently to the community, the advantages of their inſtitution.

The charter, on their petition, granted and conveyed, in perpetuity, the right of incorporation to learned and ſedate phyſicians. The ſtatute enacted, that no perſon of the ſaid politic body, ſhould practiſe phyſic but thoſe that were profound, ſad and diſcreet, groundly learned and deeply ſtudied in phyſic. The qualifications for incorporation are expreſſed more at large in the ſtatute than in the charter, but are virtually the ſame. They relate ſolely to the fitneſs of the perſon, and have no reference to the ſchools, in which he acquired that fitneſs. The phyſicians who obtained, and the crown and parliament which granted the charter, and enacted the ſtatute, had as little ſuſpicion that the right of admiſſion would ever be confined to the graduates of Oxford and Cambridge, as to thoſe of Aberdeen and St. Andrew's. The ſtatute having ſtated the qualifications requiſite in thoſe, who practiſed phyſic as members of the politic body and commonalty, goes on—" In conſidera-
" tion whereof, and for the further authoriſeing
" of the ſame letters patents, and alſoe enlarge-
" ing of further articles for the ſaid comon-
" wealth to be had and made, pleaſeth it your
" Highneſs,

" Highneſs, with the aſſent of your lords ſpiritual " and temporal, and the comons in this preſent " parliament aſſembled, to enacte, ordeyne, and " eſtabliſh, that the ſaid corporation of the ſaid " comonaltie, and fellowſhipp of the facultie " of phyſyke aforeſaid, and all and every graunt, " articles, and other thing conteyned and ſpe- " cified in the ſaid letters patents, bee approved, " granted, ratified and confirmed in this preſent " parliament, and cleerely authoriſed and ad- " mitted by the ſame good, lawfull, and avayle- " able to your ſaid bodie corporate, and their " ſucceſſors for ever, in as *ample and large manner* " *as may be taken, thought and conſtrued, by the ſame.*" Language cannot ſupply more forcible terms to ſecure in perpetuity to the faculty of phyſic in London, the privileges the charter conveyed.

If we are to give credit to the charter, the petitioners prayed and the crown granted, " that " they themſelves, and all men of the ſame " faculty, (meaning all legally qualified under " the prior ſtatute) of and in the aforeſaid city, " be in fact and in name one body and perpetual " commonalty or perpetual college." If we are to believe the ſtatute, the very ſame petitioners, jointly with all men of the ſame faculty who had been incorporated, again prayed and parliament enacted, " that noe perſon of the ſaid

" politic

" politic body and commonalty be ſuffered to " exerciſe and practiſe phyſic, but only theſe " perſons that be *profound, ſad, and diſcreet, groundly* " *learned and deeply ſtudied in phyſic*;" which is equivalent to enacting, that all poſſeſſed of theſe requiſites ſhall be allowed to practiſe as members of the politic body and commonalty. The ſtatute then enacts, that every privilege conveyed by the charter ſhall be ratified and confirmed, and be available to your ſaid body corporate and their ſucceſſors for ever, in as ample and large a manner as may be taken, thought, and conſtrued by the ſame. Can the excluſion of the great majority of their ſucceſſors, with almoſt every imaginable claim, be compatible with a large and liberal conſtruction of the ſame? Reaſon revolts at a poſition ſo monſtrous.

After confirming the charter the ſtatute proceeds: " And that it pleaſe your Highneſs, " with the aſſent of your ſaid lords ſpiritual and " temporal in this your preſent parliament aſſem- " bled, furtherlie to enact, ordeyne, and ſtabliſhe, " that the ſixe perſons before ſaid, in your ſaid " moſt gracious letters patents named as prin- " cipalles, and firſt named of the ſaid comonaltie " and fellowſhipp, chooſyng to them twoo moo " of the ſaid comonaltie, from hence forward be " called and clepyd electys." This enactment,

not

not contained in the charter, proves that the corporation did conſiſt of more perſons than the ſix original petitioners, and that all the members came under the ſame deſcription of commons and fellows, and were equally eligible to the higheſt ſituations in the college. The ſtatute adds—" And that the ſame Electys yearly choſe " one of them to bee preſident of the ſaid comon- " alty, and as oft as any of the rowmes and " places of the ſame electys ſhall fortune to be " voyd, by death or otherwiſe, then the ſur- " vivours of the ſaid electys, within thirtie or " fortie dayes next after the death of them or " any of them, ſhall choſe, name, and admitt one " or moo, as need ſhall require, of the moſt " *cunyng and expert men of and in the ſaid facultie* " in London, to ſupply the ſaid roome and num- " ber of eight perſons." The faculty in London is here ſynonymous with the commonalty and fellowſhip, which proves that the cunning and expert men of the faculty, who choſe it, were then, and were intended in future, to be fellows and commons, and eligible to be choſen elects. The ſtatute proceeds—" So that hee or they, " that ſhall be ſo choſen, bee firſt by the ſaid " ſuperviſors ſtraytly examined, after a forme " deviſed by the ſaid electys, and alſo by the ſaid " ſuperviſors approved." This clauſe confirms by implication what had been eſtabliſhed by the charter,

charter, that the ſupervifors or cenſors were the ſole legal examiners of qualifications for partial or ſubordinate practice, within the juriſdiction of the college; and alſo for incorporation, as well as for the ſuperior order of elects conſtituted by the ſtatute. This is farther confirmed by the next clauſe, which veſts in the preſident and elects, the power of examining and permitting to practiſe, perſons reſiding without the immediate juriſdiction of the corporation. "And where that "in dyoceſys of England out of London, it is not "light to fynde alway men liable to ſufficiauntly "examyne, after the ſtatute, ſuch as ſhall be "admitted to exerciſe phyſicke in them; that "it may be enacted in this preſent parliament, "that noo perſon from hensforth be ſuffered to "exercyſe or practyſe in phyſicke, through Eng-"land, untill ſuch time that he bee examined at "London by the ſaid preſident and three of the "ſaid electys." The cenſors were to examine all who practiſed phyſic within London and ſeven miles round; and the preſident and elects all beyond thoſe limits. The ſtatute concludes, "and to have from the ſaid preſident or electys "letters teſtimonials of theire approveing and "examination, except he be a graduat of Oxford "or Cantebrygge, which hath accompliſhed all "thing for his fourme without any grace." This is the only mention to be found of theſe univer-

ſities,

ſities, either in the charter or ſtatute, and confirms the whole of the former argument, that their graduates were to enjoy no exemption, privilege, or preference within the college and its immediate juriſdiction. A ſpecific privilege is conferred on the graduates of thoſe univerſities, who practiſe without the juriſdiction of the corporation, which proves they were to have none within it *. This has been decided repeatedly, and ſolemnly determined by the opinion of all the judges.

There is then, ſuch a maſs of direct, indiſputable evidence in the charter and ſtatute; the letter of both is ſo explicit and poſitive; the context ſo accordant and demonſtrative; the ſpecific privilege to the graduates of Oxford and Cambridge ſo deciſive a negation of any other, that it would be difficult for the ingenuity of a lawyer to deviſe any evidence, which could be added to that, which already exiſts, to enforce the conſtruction contended for. It is demonſtrable, that under the ſtrict legal conſtruction, independently of the large and liberal conſtruction, that every phyſician, reſiding within the juriſdiction of the college, of good education and fair character, is entitled to have his qualifications examined

* *Admiſſio unius excluſio alterius.* That the admiſſion of a particular privilege precludes any other peculiar privilege not mentioned, is one of the commoneſt maxims in law.

amined by the cenſors, and that, if found competent, he has alſo a right to be admitted a member of the college.

The true conſtruction of the charter and act have been illuſtrated by the ſtatutes which preceded them. However ſuperfluous it may appear, we ſhall add in confirmation ſome quotations and remarks on them, from the ſubſequent acts; which all combine to prove that, which has already been demonſtrated, perhaps too much at length.

Eighteen years after the ſtatute confirming the charter, an act was paſſed in the thirty-ſecond year of the reign of Henry VIII. intitled an act "for Phyſicians and their Privileges." It begins—"In moſt humble wiſe ſheweth unto "your Majeſty your true and faithful ſubjects "and liege men, the preſident of the corporation "of the commonalty and fellowſhip of the ſcience "and faculty of phyſic, in your city of London, "and the commons and fellows of the ſame;" and proceeds to pray, "In conſideration of divers "inconveniencies, they and the ſucceſſors of "every of them, ſhall be diſcharged from keeping watch and ward, and that they ſhall not be "choſen conſtable, or to any other office in the "ſaid city or ſuburbs." It alſo prays, "that "the preſident, commons, and fellows, and their "ſucceſſors,

" ſucceſſors, may yearly, at ſuch time as they " ſhall think meet, elect and chuſe four perſons " of the ſaid commons and fellows, of the *beſt* " *learned, wiſeſt and moſt diſcreet*, ſuch as they " ſhall think convenient, and have *experience in* " *the ſaid faculty of phyſic*; to ſearch apothecaries " drugs and wares." It is manifeſt from theſe paſſages, that eighteen years after the charter, the college and legiſlature conſidered commons and fellows as ſynonimous. It is alſo clear, that all the members were to be equally exempted from burthens, and eligible to offices, on the ground of merit alone, and that there was no claſs of phyſicians excluded the college ſimilar to that of the preſent licentiates, or they would have been expreſsly exempted under their diſtinctive deſcription, from the burthens of watch and ward and ſerving conſtable. That no ſuch claſs of phyſicians, who practiſed generally, then exiſted, is further demonſtrated by the laſt clauſe in this act: " And " forasmuch as the ſcience of phyſick doth com- " prehend, include, and contain the knowledge of " ſurgery, as a ſpecial member and part of the " ſame, be it enacted, That any of the ſaid com- " pany or fellowſhip of phyſicians, being able, " choſen, and admitted by the ſaid preſident and " fellowſhip of phyſicians, may, from time to " time, as well within the city of London, as elſe- " where within this realm, practiſe and exerciſe

" the ſaid ſcience of phyſic in all and every its " members and parts; any act, ſtatute, or provi- " ſion to the contrary notwithſtanding." If a claſs of phyſicians as fully entitled to practiſe as fellows had then exiſted, as practitioners under a general licenſe, the privilege of practiſing the inferior branches of the profeſſion would undoubtedly have been extended to them, under their diſtinct appellation or deſcription.

Thirty-five years after the charter, in the firſt year of the reign of Queen Mary, an act paſſed confirming the ſtatute of the fourteenth of Henry VIII. and conſequently confirming the charter, and alſo enlarging the privileges of the college. After ſtating, " that it was enacted that a cer- " tayne graunte by letters patentes of incorpora- " tion made and graunted by our ſaid late king " to the *phiſitions of London* and all clauſes and " articles conteined in the ſame graunte ſhould " be approved, ratified, and confirmed by the " ſame parliament. For the conſideration there- " of, be it enacted by authoritie of this preſent " parliament, that the ſaid ſtatute or act of " parliament, with every article and clauſe " therein conteyned, ſhall from henceforth ſtand " and continue ſtill in full ſtrengthe, force and " effect, any acte, ſtatute, lawe, cuſtome, or any " other thing made, had, or uſed to the con- " trarye,

" trarye, in any wiſe notwithſtanding. And " for the better reformation of divers enormities " happening to the commonwealth by the evil " uſing and undue adminiſtration of phyſicke, " and for the enlarging of further articles for " the better execution of the things conteyned " in the ſaid graunt enacted; Be it therefore " now enacted, " that the gaolers of all the gaols " in London and its precincts, except the Tower " of London, ſhould keep all perſons committed " by the college in cuſtody." It alſo enlarges their powers of ſearching apothecaries ſhops.

This act, in ſpeaking of the corporation, employs the ſame incluſive general deſcription of the phyſicians of London, and the faculty of phyſic, employed in all former acts. After thirty-five years experience, it confirms all the privileges conveyed by the charter and ſtatute, and adds new ones. This proves that the original qualifications and title to incorporation had been hitherto found adequate; were approved by the college, and confirmed by the legiſlature.

In the following reign, that of Queen Elizabeth, a charter was granted, entitled, " for Anatomies," granting to the college the additional privilege of having annually for diſſection three or four

human bodies, of ſuch as had been condemned and executed for felony. A new privilege is hereby conveyed, and a further opportunity afforded, of making ſalutary alterations; but no change is made in the ſucceſſion.

Two charters were granted ſubſequently to this, by King James I. and King Charles II. They were neither of them, however, confirmed by parliament, and are of no legal validity. They may notwithſtanding be referred to in order to aſcertain the ſituation and views of the college, when they were reſpectively granted, and the conſtruction the members put upon the original charter, with regard to the ſucceſſion and the intereſt of the faculty.

The charter of James begins by recapitulating the motives which led King Henry, by the example of *foreign well governed ſtates and kingdomes* to grant the charter, ſtating, " And likewiſe " duly conſidering that by the rejecting of thoſe " illiterate and unſkilfull practiſers, thoſe that " were *learned, grave, and profound practiſers* in " that facultie, ſhould receive more *bountiful re-* " *ward*, and alſoe the *induſtrious ſtudents* of that " profeſſion would be the *better encouraged in their* " *ſtudies and endeavours*."

This

This completely aſcertains that the college, ninety-five years after they were incorporated, conſidered their privileges as having been granted for the encouragement and reward of the faculty, as well as for the ſecurity of the public. This charter proceeds to enumerate the privileges formerly conceded; confirms them; enlarges the powers of the cenſors to puniſh delinquents in practice, and to ſearch for and deſtroy bad drugs, and puniſh the venders. It authorizes them to elect a regiſter; to adminiſter an oath to their officers; to remove them; to take recognizances to his majeſty's uſe; to purchaſe lands, and to be exempt from bearing arms. It concludes by the King's promiſing his aſſent to an act, confirming this charter, in the next parliament.

In this comprehenſive and elaborate charter, all the former privileges of the college are confirmed. The claims of competent phyſicians to all the benefits of the corporation are more clearly and forcibly expreſſed. Whatever it concedes is for the benefit of the community and the college, without reſtriction or preference, except on the general ground of merit.

The charter of King Charles II. was granted one hundred and fifty-ſix years after the original charter. It begins by enumerating the motives which

which induced Henry VIII. to grant the firſt charter, and "likewiſe duely conſidering that "by the rejecting of thoſe illiterate and un- "ſkilfull practiſers, thoſe that were *learned, grave,* "*and profound practiſers* in that facultie, and "alſoe the *induſtrious ſtudents* of that profeſſion, "would bee the better *incouraged and inabled* "in theire *ſtudies* and *endeavours*." Could theſe two charters poſſibly mean by learned, grave, and profound practiſers, the few who had ſtudied in Oxford and Cambridge; ſchools notoriouſly deficient in medical education, and by the induſtrious ſtudents in that profeſſion, two or three individuals reſiding there, with ſcarce any opportunity of medical improvement? At this late period it was clearly underſtood, that admiſſion was an incitement and reward to the upright and ſkilful phyſician, and excluſion a mark of inferiority and a diſcredit. This charter, after confirming whatever had been granted before, ordains that there ſhall be forty fellows. This would have changed the ſucceſſion with reſpect to the number of members, but not to their qualifications. The ſame general grounds of eligibility were confirmed. No preference is given to thoſe, who had been educated at Oxford and Cambridge. By the nomination of phyſicians who had not been ſo educated, among the firſt forty fellows named in this charter, a direct proof is given that no preference was intended.

tended. The charter proceeds to point out the manner of chuſing fellows, to fill vacancies, out of " the moſt *learned and able perſons ſkilled and ex-* " *perienced* in the ſaid facultie of phyſicke, *then of* " *the commonalty*, or members of the ſaid colledge " and corporation." Merit is the ſole ground of preference. It grants that none ſhall be allowed to practiſe without being permitted by the college; but it is clear that ſuch permiſſion relates, as in the original charter, only to perſons not eligible, or not deſirous to be of the commonalty. The cenſors are to " ſuperviſe and correct all and ſingular " phyſitians and practiſers, apothecaries, and " druggiſts." The ſame exceptions are made with regard to practiſers out of the diſtrict of the college, as in the confirmatory ſtatute of Henry VIII. They are to be examined by the preſident and elects inſtead of the cenſors: and the graduates of Oxford and Cambridge are to be allowed to practiſe beyond the limits of the corporation, without examination: which proves, deciſively, that they were to have no ſeparate privileges within the immediate juriſdiction of the College. Nothing farther material to the ſubject occurs in this elaborate charter, which is the laſt public act that can throw any light on the ſubject.

It has been ſhewn by the ſtatute of the ninth of Henry V. that all thoſe who had *ſtudied and graduated*

duated in ſome univerſity, after having uſed the ſchools of phyſic, were legally entitled to practiſe; the only privilege which that act conferred. It has been ſhewn by the ſtatute of the third of Henry VIII. that every phyſician, who had been *examined, approved, and admitted* by the Biſhop of London, or Dean of Paul's, and *four approved phyſicians*, might not only practiſe, but *aſſiſt in examining and approving others*; the only additional privilege conferred by this ſubſequent act.

It has been proved that the original charter, granted ſeven years later, was obtained on the petition of ſix phyſicians, who, in order to practiſe legally, muſt have been approved and authorized under the preceding act: that *all other phyſicians*, who had been equally *approved and authorized*, had equal claims and intereſts, and muſt have united with the actual petitioners to obtain an increaſe of privileges: and that the charter was diſtinctly and expreſsly granted to the *petitioners therein named, and to all other legal phyſicians*, who were conſequently entitled to all the corporate franchiſes, in addition to the privileges they before enjoyed under the above-mentioned ſtatutes. It was next proved, that the privileges conveyed by the charter, were confirmed by act of parliament five years afterwards: that this act was applied for by the

ſix

ſix original petitioners for the charter, and all men of the ſaid faculty: that the elects were to be choſen out of the moſt *cunning and expert men*, of and in the ſaid faculty of London: that the original qualifications of *gravity and learning* were repeated and enforced by additional words of the ſame import, in the confirmatory ſtatute; which words compriſe an explicit and definite deſcription of the perſons who were, for ever afterwards to be incorporated and to perpetuate the community.

It was next ſhewn from the act of the thirty-ſecond of Henry VIII. that commons and fellows had equal privileges, and by ſtrong implication, that no *claſs of phyſicians competent to general practice*, then exiſted, who were, notwithſtanding their competency, excluded the college: that the act of Mary and charter of Queen Elizabeth, enlarging the powers of the college, after *ample experience*, made no alteration in the *qualifications for admiſſion:* that the intended charters of king James and Charles, demonſtrate that it was underſtood by the college and the crown, that the original charter and all former privileges had been granted, not only for the ſafety of the public, but for the *encouragement of ſtudents, and the reward of meritorious phyſicians*, and that they did not mean to change the title to incorporation.

Having

Having demonſtrated that the right of admiſſion, on giving the teſts required by the charter, is extended to every competent phyſician within the juriſdiction of the college, by the expreſs words and clear meaning of the charter and act of parliament, illuſtrated and confirmed by all prior and ſubſequent acts relating to the faculty of London; we ſhall now proceed to eſtabliſh the ſame right by the evident intention of thoſe, who framed, and obtained the charter and ſtatute, and by the early and long continued uſage of the corporation.

Dr. John Chambre, the firſt member named in the charter, graduated at Padua. He was not even incorporated at Oxford until twelve years after the charter had been granted, and ſeven years after the ſtatute confirming it, had been enacted *.

Dr. Ferdinand de Victoria was a foreign phyſician, and was not incorporated at Oxford until more than a year after he had been conſtituted a member of the college by the letters patent †. Linacre, the third perſon mentioned in the charter,

* Impartial enquiry into the legal conſtitution of the College of Phyſicians, 1753, p. 91.

† Matthias Conſpect. Hiſt. Medicor. Chronol. § 339.

ter, and one of the moſt eminent literary characters of his age, ſtudied and graduated in Italy, and was only incorporated at Oxford after his return *. His panegyriſts, even in the college, have lamented that England did not afford him the means of inſtruction, whilſt Italy abounded in able inſtructors, and arts and ſciences flouriſhed there †. The three petitioners and corporators firſt named, both in the charter and confirmatory ſtatute, were all foreign graduates. Two of them had not been even incorporated at Oxford or Cambridge, when the letters patent were granted, which demonſtrates that a degree from the Engliſh Univerſities was not required for original incorporation into the college of phyſicians. They were alſo, all three, phyſicians to the king; a ſtriking proof that a foreign medical education was then in the higheſt eſtimation. The ſuperiority of medical ſchools in Italy and France, at that period, is proved by the teſtimony of all cotemporary and ſubſequent writers on the ſubject; and it is highly probable, that all who could afford the expence of a foreign education, availed themſelves of it; and that beſides the king's phyſicians, a majority of thoſe, firſt conſtituted members of the college, and, for a long period afterwards,

* Wood's Athenæ Oxoniens. v. i. p. 20.

† Sir G. Baker's Harveian Oration, p. 5. Dr. Warren's Harv. Oration, p. 3.

wards, admitted, were alſo foreign graduates*. It is manifeſt that the three firſt-named petitioners and corporators, in both the charter and ſtatute, who were at the ſame time the king's phyſicians, muſt have aſſiſted in planning both, and muſt have had a leading influence in obtaining them. It is alſo clear, that they could not intend to exclude, in future, phyſicians of their own deſcription, without any intimation of ſuch intention in the charter or act. It is equally obvious, that the crown could not mean to ſhut out foreign graduates, whom alone it employed, without any mention of ſuch deſign in the grant. That, which is clear by obvious inference, is eſtabliſhed in fact, by both the expreſs declaration of the crown and enactment of parliament, and by the actual incorporation of foreign graduates. The crown declares in the charter, that it grants the letters patent to three phyſicians (who are aſcertained to have been foreign graduates) and all other men of the ſame faculty, many of whom had undoubtedly taken their degree abroad, and to their ſucceſſors. The ſame foreign graduates, incorporated by the charter, aſſert, five years after they obtained it, in their petition for further privileges, that the charter was granted to them and all

* Until the year 1720, when Edinburgh began to flouriſh as a ſchool of phyſic, there had been no opportunity of obtaining an adequate medical education in Great Britain.

all other men of the ſame faculty, and their ſucceſſors. Parliament confirmed what had been granted by the crown; and enacted what was petitioned for by the above-named foreign graduates and their aſſociates. This ſufficiently proves the original intention of the petitioners, of the crown, and of parliament; and evinces that it was the early uſage of the college to admit every competent phyſician, without requiring prior ſtudy, or even incorporation, in the Engliſh univerſities.

The college aſſert in their affidavits, that by a bye-law, made in 1555, not extant, the practiſers of phyſic in London were divided into three claſſes, Fellows, Candidates, and Licentiates *. The firſt, members; the ſecond, eligible to be incorporated after a year's probation; the laſt, intitled to practiſe only. This proves that, during thirty-ſix years, no ſuch diſtinction exiſted as applied to phyſicians, who practiſed generally. But it is manifeſt that this diviſion, when adopted, was not made with a view to confine admiſſion to the graduates of Oxford and Cambridge, or to exclude any competent phyſician; for the college ſtate alſo, in their own affidavits, another bye-law, made in 1582, twenty-ſeven years poſterior to the bye-

* Dr. Giſborne's affidavit in the late trial, as Preſident of the Coll. of Phyſicians, ſworn Jan. 23, 1797.

bye-law dividing the faculty into three claſſes, requiring that no one ſhould be admitted into the claſs of candidates, unleſs he had firſt been, during one year, a licentiate *. It is manifeſt from hence, that the ſituation of licentiate was, in 1582, a preliminary ſtep to incorporation; which, the graduates of Oxford and Cambridge, as well as the graduates of every other univerſity, were obliged to paſs. It is clear then, that ſixty-two years after the charter, the uſage was impartial with regard to the incorporation of competent phyſicians.

It is proved by the college liſts of their members, that a claſs exiſted in 1575, intitled Strangers †. From this general diſtinction, as well as from their names, there can be no doubt that they were foreigners. As the college had always admitted natives, who had graduated abroad, without any ſuch diſtinction, and continued the uſage, this denomination could only apply to foreigners. This ſhews, that not only perſons, who had graduated abroad, but that the natives alſo of foreign countries, were at this period admitted; which was agreeable to the original incorporation. Dr. Ferdinand de Victoria was a foreigner, as

* Affidavit of John Roberts, Gent. as attorney on the late trial for the Coll. of Phyſic. ſworn 5th April, 1796.

† Maitland's Hiſtory of London, b. ii. p. 929.

as has been ſtated. A further proof, though ſuperfluous, may be advanced, which eſtabliſhes, beyond contradiction, that perſons who had graduated abroad were admitted, without even incorporation, in the Engliſh univerſities. A complaint was made to the privy council in 1575, that perſons who had graduated abroad, becauſe they would avoid the oath of ſupremacy, had been on their return admitted members of the college, *without any oath miniſtered unto them* *. No objection whatever was made to their competency, on account of the inſufficiency of a foreign degree. This complaint applies ſolely to the admiſſion of papiſts, and ſuch as would avoid the oath of ſupremacy. According to an affidavit of the college †, a bye-law had been made in 1637, enacting, that no perſon ſhould be admitted a member unleſs he had previouſly obtained a degree, without diſpenſation, in one of the Engliſh univerſities ‡. But it is manifeſt that this bye-law had been either repealed, or was not enforced, for Sir John Micklethwaite, who graduated at Padua, was admitted a fellow of the college in 1643, ſix years after the aſſerted enactment of this bye-law, and more

* Maitland's Hiſtory of London, b. ii. p. 929.

† Affidavit of John Roberts.

‡ It would appear from Dr. Winterton's letter in the next page, that this bye-law was enacted in conſequence of remonſtrances from the Univerſities, which applied only to illiterate practitioners.

more than one hundred and twenty years after the charter had been granted, without having been previouſly even incorporated in either of the Engliſh univerſities *.

The uſage of incorporation in the Engliſh univerſities, after having graduated abroad, obtained prior to the charter, but although rendered unneceſſary, was not ſuperſeded by it †. A degree of incorporation could be obtained without giving any teſts, at a trifling expence, and with little trouble ‡. It was neither required by the charter nor ſtatute, nor by the uſage of the college, during a very long period after its inſtitution; but it was a ſource of emolument and a mark of reſpect to the Engliſh univerſities, and, though no teſt of merit, was probably conſidered as a ſanction by foreigners, and perhaps by all who obtained it, as an honorary diſtinction. The admiſſion of Sir John

* Wood's Faſti. v. 2.

† Andrew Alazard, who had previouſly graduated at Montpelier, went to Oxford in 1504, to obtain a degree of incorporation. Wood's Hiſt. Univer. Oxon. p. 239.

‡ Dr. Winterton, in a letter to Dr. Foxe, preſident of the college of phyſicians, dated 1635, ſtates, "I have obſerved "and grieved to ſee ſometimes a miniſter, ſometimes a ſerv- "ing man, ſometimes an apothecary, admitted to a licence to "practiſe in phyſic, or to be *incorporated to a degree* without "giving any public teſtimony of his learning and ſkill in the "profeſſion: and that incorporation was, in an inſtance, ob- "tained by a little ſum of money." Goodall's Roy. Coll. of Phyſ. p. 443.

John Micklethwaite proves, however, that it was not indiſpenſibly required by the college, ſo late as near the middle of the ſeventeenth century.

It is only from the year 1674, when King Charles the Second ſent a mandatory letter to the college, commanding that they ſhould not admit any perſon who had not either previouſly ſtudied in Oxford or Cambridge, or been incorporated in one of theſe univerſities, that the uſage of prior incorporation was rigorouſly exacted. The real cauſe of this mandate, as of the prior complaint in 1575, was undoubtedly to keep out papiſts and diſaffected perſons; and was not intended to diſqualify phyſicians, who graduated in foreign univerſities. Though this command had no legal authority, it was ſubmitted to by the college, and firſt gave riſe to the claſs of licentiates as it at preſent exiſts. Licences had been granted, before this period, to partial and inferior practitioners. Competent phyſicians, wherever educated, who could give the uſual teſts and were deſirous of incorporation, had been hitherto admitted, ſometimes with, and frequently without, prior incorporation in the Engliſh univerſities. In conſequence of the king's mandate, it was, however, rigidly required, and three years afterwards, in 1677, the claſs of licentiates was mentioned for the firſt time in the pharmacopoeia

of the college, a circumſtance which clearly points out when this body originated.

The facility of obtaining incorporation, in Oxford or Cambridge, led the faculty to acquieſce in it, though an illegal reſtraint. The moſt diſtinguiſhed members of the college, during the continuance of the uſage, were foreign graduates, who ſubmitted to be incorporated by the Engliſh univerſities *. This illegal incroachment, on the rights of the faculty, was ſoon followed by an illiberal and unjuſt abuſe of the power eſtabliſhed under it; and the college has been embroiled almoſt ever ſince in contention and litigation. In 1688 the college incurred the cenſure of Lord Chancellor Jeffries, on account of their oppreſſive conduct; and a few years afterwards, a complaint was made to Lord Chancellor Somers and the Judges, by ſeveral fellows of the college, "that "a prevailing party of the college had combined "together in a fraudulent and ſurreptitious man-"ner, and made illegal ſtatutes and bye-laws."

About the beginning of this century, amidſt other arbitrary proceedings, many phyſicians were excluded who were fully intitled to admiſſion. In 1702, thirteen fellows, including ſome of the moſt eminent

* Mead, Akenſide, and Sloane, were ſo admitted.

eminent members, remonſtrated with the college on the injuſtice and illiberality of their bye-laws. They accuſed them, "by narrowing their bottom, "of keeping many worthy practitioners of phyſic "in the city, from entering into their ſociety, "whereby their debts increaſed without proſpect "of remedy, and their body diminiſhed without "hopes of repair." It was not, however, till about the year 1721, that the arbitrary and ſelfiſh ſpirit of the predominant party of fellows, led them to prevail on the Engliſh univerſities, not to incorporate phyſicians with foreign degrees any longer; by which ſurreptitious proceeding, the great body of phyſicians in London were indirectly debarred admittance. As a bye-law exiſted, requiring ſuch incorporation, which had been acquieſced under ſome time, and which the college would not repeal, the fellows thus ſupplied themſelves with a pretext for rejecting thoſe, who could not give a nugatory teſt, which they themſelves had firſt illegally eſtabliſhed, and afterwards unfairly deprived foreign graduates of the poſſibility of obtaining. The beſt educated, and moſt numerous claſs of phyſicians, poſſeſſing the ſame title which, till the time of King Charles's mandate, had been deemed ſufficient without incorporation in the Engliſh univerſities, and afterwards with it, were thus firſt generally excluded.

But from the time the great body of the faculty in London were thus excluded, by being denied incorporation at Oxford and Cambridge, they have been repeatedly contending for admiſſion. The college itſelf has manifeſted its conſciouſneſs of the injuſtice and illegality of excluding the licentiates, by a variety of temporizing expedients, and palliating meaſures, and even by determining to give up the monopoly, and reſtore the general right. In 1721, after having influenced the Engliſh univerſities to withhold degrees of incorporation, the college eſtabliſhed a claſs of honorary fellows. They acknowledge, in the bye-law made for this purpoſe, that nothing is more reaſonable, than that thoſe, who are an ornament to the profeſſion, ſhould be inveſted with its honours. This proves their own conſciouſneſs of the claims of learned and ſkilful phyſicians, wherever educated, even at the period they deprived them of the right to which they allow their title. Notwithſtanding this confeſſion, this ſubſtituted honorary admiſſion was by no means intended to be the reward of merit. It was to be purchaſed by the payment of one hundred pounds, in addition to the ſums uſually paid by ordinary members. The college admitted the right of every competent phyſician in words, while they withheld it in fact, or obliged thoſe, to whom they thus partially extended this honorary fellowſhip, to purchaſe a nominal

nominal honour, converted by its venality into an actual diſgrace *.

About the middle of this century the ſentiments of candour, liberality, and juſtice, which, if baniſhed from low corporations, ought to diſtinguiſh a college of enlightened men, for a time reſumed their proper aſcendency. It was regularly propoſed " to bring in all ſuch foreign gra- " duates as were properly qualified, on terms " both honourable and beneficial to the college " itſelf. It is aſſerted, that the plan was well " received by ſeveral of the leading people in the " college; that it was agreed to in two comitia, " but that in the third it was rejected, as was " ſuppoſed, through the influence of the Engliſh " univerſities †." The enacting this in two meetings ſufficiently evinces the ſtrong ſenſe the college then entertained of the injuſtice done to thoſe competent phyſicians, who were excluded, and renders it highly probable, that if then left to

* Many other inſtances might be adduced of the avarice as well as injuſtice of the college. The expence of a licence, originally four pounds, has, at one time, been ſeventy, and is now fifty pounds. At one period, the licentiates were burthened with an annual tax: they pay even at preſent, for their mere licence to practiſe, as much as the fellows do for all the advantages of incorporation.

† Letter from a Phyſician in Town to a Friend in the Country, 1753, p. 18.

to their own feelings, they would have followed the dictates of juſtice, and redreſſed the grievance. This liberal diſpoſition was, however, ſucceeded, in the predominant party at leaſt, by a more rigorous ſpirit of oppreſſion. In 1752, two years after this propoſition for admitting foreign graduates, a bye-law was made, profeſſing to explain the intention of a prior bye-law *, reſpecting candidates: but, under this pretext, poſitively enacting, for the firſt time †, that no perſon who was not a doctor of phyſic, of either Oxford or Cambridge, was to be admitted a fellow. The very enactment of this bye-law, at this late period, for confining admiſſion to the graduates of the Engliſh univerſities, is a proof that ſuch limitation was not before eſtabliſhed, either by the charter or the uſage. As the Engliſh univerſities refuſed, at this period, to incorporate foreign graduates, and that, in compliance with the requeſt of the college, this laſt bye-law excluded, in fact, though by a colluſive agreement, and under an evaſive pretext, all who had not ſtudied, as well as graduated, in one of thoſe univerſities. The licentiates, who had long before felt and complained of the oppreſſive conduct of the college, were, by this

* This prior bye-law only required incorporation in one of the Engliſh univerſities.

† If the alleged bye-law of 1637 was finally confirmed and enacted, it appears never to have been enforced.

this further groſs infringement of their privileges, inſtigated to remonſtrate.—On the 30th of September, 1750, they preſented a memorial, and requeſted a conference with the college, which being refuſed, they ſent a ſtatement of their grievances: "that they were not permitted to aſſiſt or "vote at the comitia, or to fill any offices of truſt; "that they were governed by laws, in the making "of which they had no influence; obliged to pay "an annual tax, without being admiſſible to any "benefits, and that they were liable to mulcts and "fines *." Inſtead of redreſſing their grievances, the college added inſult to injury, by a humiliating alteration in the mode of ſummoning the licentiates to the college.

It was not, however, till 1765, that the incroaching ſpirit of monopoly and oppreſſion, encouraged by ſucceſs, emboldened the college to publiſh a bye-law, enacting, that no one ſhould be admitted into the order of candidates, who had not been created doctor of phyſic in the univerſity of Oxford or Cambridge, after having accompliſhed all things preſcribed by their ſtatutes, without diſpenſation. The licentiates were after this under the neceſſity of either ſubmitting to be intirely

* Letter from a Phyſician in Town to his Friend in the Country, 1753, p. 22—35.

tirely deprived of the right of incorporation, and to the oppreſſive and contumelious conduct of the college, or to endeavour to redreſs their grievances by an appeal to the courts of law. The repeated law ſuits, which the injuſtice of the college towards the licentiates has occaſioned, will be noticed in a ſubſequent part of this treatiſe.

About the ſame period, however, that this indefenſible bye-law was publiſhed, denying the right of examination for the fellowſhip to all but thoſe, who had in a great meaſure loſt, as medical ſtudents, in thoſe inadequate ſchools of phyſic, the beſt period of their lives for acquiring a knowledge of their profeſſion, the ſyſtem of admiſſion, through favour, was alſo eſtabliſhed. This ſyſtem, upon whatever principle it might have been profeſſedly adopted, is calculated to divide the licentiates, to render them ſubſervient, and to increaſe the emoluments and authority of the fellows. Beſides being ſo radically objectionable, it has been gradually narrowed, and rendered more capricious and arbitrary, by repeated reſtrictions. It was firſt enacted, about the year 1765, that any perſon who had ſtudied four years in any univerſity, and taken a degree in medicine, and ſhould appear worthy of the *peculiar favour* of the college, and had been three years a licentiate; that ſuch perſon

perſon might be elected into the order of candidates, provided he had twenty ſuffrages in his favour.

Under this bye-law, even incorporation in the Engliſh univerſities was to be diſpenſed with, which proves that uſage to be conſidered by the fellows themſelves as intirely arbitrary. Very ſhortly afterwards, in 1768, after Lord Mansfield had reprobated the narrowneſs of their bye-laws, and adviſed the college to amend them, as, in ſtating his opinions, will afterwards appear, they affected to meliorate the terms of admitting licentiates. In the alterations of the ſtatutes propoſed by a committee of the college, it was recommended to allow a fellow of the college to propoſe any phyſician of thirty years of age, to be examined for the fellowſhip, who had graduated, after having ſtudied phyſic three years in any univerſity: provided that either the univerſity of Oxford or Cambridge, had by eſpecial favour, dignified him with the degree of doctor of phyſic. It appears from this propoſed bye-law, that an arrangement ſubſiſted between the college and the Engliſh univerſities, by which, degrees of incorporation, or honorary degrees, could be either withheld or extended, as theſe parties privately agreed, without regard to their public duties. The propoſal implies, that the college could prevail

vail upon theſe univerſities to grant the honorary degree, which the bye-law required, by the ſame influence which, a few years before, had induced them to withhold incorporation. It has been ſtated, that in 1750 it had been agreed, in two comitia, to admit foreign graduates on fair and honourable terms, and that the college had been prevailed upon, by the Engliſh univerſities, to abandon this fair and honourable intention. Soon afterwards a compromiſe was entered into with the college of phyſicians, by one of the Engliſh univerſities, "that, for the future, manda-" mus degrees ſhould be given to none but ſuch " as ſhould be recommended by the college; and " that ſuch as the college, or any twelve fellows " recommended, ſhould never be refuſed on pay-" ment of the uſual fees*." This agreement, in conjunction with the above-mentioned propoſed bye-law, is a ſtrong evidence of a colluſive underſtanding between theſe parties. It is a proof alſo, that the Engliſh univerſities and the fellows of the college have combined to exclude thoſe from the college, who graduate elſewhere.

About the year 1771, after Lord Mansfield had again condemned the bye-laws, and cenſured the conduct of the college, a bye-law was made, by

* Letter from a Phyſician in Town, &c. p. 20.

by which the preſident was allowed, if he choſe, to recommend, annually, two licentiates of ten years ſtanding, who, if approved by a majority of the comitia minora, were to be propoſed for election at the comitia majora, and if approved, by a majority, at the comitia majora, they were to be admitted members, without further examination. This privilege of the preſident has been ſince narrowed, firſt to that of propoſing one licentiate annually, and afterwards biennially. It has not been exerciſed during ſome years, and probably will not be revived, till the college are either reduced to the neceſſity of admitting licentiates in order to preſerve the ſucceſſion, for which the graduates in medicine of Oxford and Cambridge are ſcarcely ſufficient; or until the college be again admoniſhed by an authority which has power and inclination to enforce that juſtice it recommends. The evils of this bye-law will be pointed out afterwards. It is cited here to prove the temporizing and diſingenuous conduct of the college, and that they exerciſe an arbitrary power of admitting, either through purchaſe, favour, or fear, without regard to the Engliſh univerſities, or to any conſiſtent uſage or principle; and that ſince the licentiates have been generally excluded, it has been the frequent uſage to admit ſuch of them as might either ſuit the inclination, or promote the intereſt, of the college. About the ſame period in which this bye-law of admiſſion, on

the

the recommendation of the preſident, was made, another was enacted, more conſiſtent with the duty of the college, the rights of the licentiates, and the advice of Lord Mansfield, as it profeſſes to admit on the ground of merit. It ſtates, that any fellow may propoſe a licentiate, of ſeven years ſtanding, who had completed his thirty-ſixth year, to be examined for admiſſion, with other unreaſonable reſtrictions, which might render its obſtacles inſurmountable, even if the bye-law was not in fact withheld*. It is clear from hence, that it would be the uſage to admit the licentiates at this period, on the ground of merit, if the college adhered to their own laws.

It has been proved, that at leaſt three of the ſix original petitioners and corporators were not graduates of either Oxford or Cambridge, when incorporated. It has been rendered highly probable, that a majority of the original members, and of thoſe admitted for many years after the charter and act of parliament, were alſo foreign graduates. It has been ſhewn, that the diſtinction of claſſes did not exiſt till thirty-ſix years after the charter, and that in 1582, ſixty years after that grant, it was neceſſary to paſs through

* The ſhameful manner in which it has been withheld from the licentiates, after it had ſerved the purpoſe of miſleading the Court of King's Bench on the late trial, will be afterwards pointed out.

through the order of licentiates, to become a fellow. It has been proved, that foreign graduates were admitted, one hundred and twenty years ſubſequent to the charter, without even incorporation in the Engliſh univerſities; that ſuch incorporation was neither required by the charter nor ſtatute, nor by the long continued uſage; and that it was firſt rigidly exacted in conſequence of an arbitrary mandate of the crown; that it was an illegal and nugatory teſt, and only acquieſced under from the facility with which it was obtained; and that it has been as arbitrarily diſpenſed with as it was illegally adopted by the college. It has been ſhewn, that, ſince the licentiates have been indirectly excluded by the Engliſh univerſities refuſing incorporation, they have been contending againſt the monopoly; and that the college has acknowledged their right by repeatedly making partial bye-laws for their admiſſion. It has been demonſtrated then, that the original, early, and long-continued uſage, is completely in favour of the right of the licentiates; that this uſage was, till within a recent period, virtually in their favour, with the impoſition of a trifling fine for a nominal degree to the Engliſh univerſities; and that the right has alſo been always admitted by the uſage and bye-laws of the college, until the preſent period, but under a variety of arbitrary, fluctuating, and illegal reſtrictions.

We

We ſhall next proceed to eſtabliſh, by the higheſt legal authorities, that the graduates of Oxford and Cambridge are entitled to no excluſive or partial privilege within the juriſdiction of the college; and that every Britiſh phyſician, of good education, fair character, and competent learning, reſiding within that juriſdiction, has a legal right to be examined, and if approved, to be admitted a member.

In 1602, Sir John Popham, Lord Chief Juſtice, gave it as his opinion, "that no man, though "never ſo learned a phyſician or doctor, may "practiſe in London, or within ſeven miles, with-"out the college licence *."

In 1607, the Lord Chancellor, Lord Chief Juſtice, Lord Chief Baron, and four more of the judges, were aſſembled, by order of the King, "to examine and conſider of the charters, ſta-"tutes and laws, made for the government of "the college of phyſicians in London, and of "the practiſers of phyſic there."

In anſwer to a queſtion "whether graduates "of Oxford and Cambridge may practiſe in "London, or ſeven miles compaſs of the ſame, "without

* Goodall's Roy. Coll. of Phyſ. p. 345.

" without licence under the college ſeal?" All reſolved, that " no graduate that is not admitted " and licenced by the preſident and college of phy- " ſicians, under their common ſeal *, could prac- " tiſe in London, or within ſeven miles compaſs " of the ſame."

In anſwer to a queſtion, " whether ſuch gra- " duates are not ſubject to the examination, " without which there were never any admitted, " and without which the admiſſion † cannot be " approved; becauſe every graduate is not ab- " ſolutely good *ipſo facto*?"

It was reſolved by all, " that all that practiſed " or ſhould practiſe phyſic, either in London or " within the compaſs of ſeven miles of the ſame, " muſt ſubmit themſelves to the examination of " the preſident and college, if they be required " thereunto by their authority, notwithſtanding " any licence, allowance, or privilege, given them " in Oxford or Cambridge, either by their degree " or otherwiſe ‡."

Deciſions,

* It appears that the judges conſidered being licenced under the common ſeal of the college, as equivalent to being admitted a member.

† Theſe queries relate to the admiſſion of the graduates of Oxford and Cambridge, and muſt include in their ſignification the right of being admitted a corporator.

‡ Goodall's Roy. Coll. of Phyſ. p. 277.

Deciſions, determining the ſame point, have been given in the caſes of Dr. Bonham *, Dr. Levet †, and Dr. Weſt ‡.

Theſe authorities prove that the graduates of Oxford and Cambridge have no exemptions or privileges, within the immediate juriſdiction of the college, under the charter and acts of parliament.

In the caſe of Dr. Letch, which was argued in the Court of King's Bench, in 1767, who claimed to be admitted a fellow of the college, the following opinions were delivered by Lord Mansfield §:

" This court has juriſdiction over corporate " bodies."

" Where a party, who has a *right*, has *no other* " ſpecific legal remedy, the court will aſſiſt him " by iſſuing a writ of mandamus."

" There can be as little doubt that the college " are *obliged*, in conformity to the truſt and con- " fidence placed in them, to *admit all* that are *fit*, " and

* Coke's Rep. f. p. 586.

† Lord Raymond's Rep. v. i. p. 472.

‡ Lucas's Rep. b. x. Mod. Rep. p. 353.

§ Rex *v.* Dr. Aſkew Bur. Rep. v. iv. p. 2186, and the following.

" and to reject all that are *unfit*. Their conduct " in the exerciſe of the truſt (of examining) ought " to be *fair*, *candid*, and *unprejudiced:* not *arbi-* " *trary*, *capricious*, or *biaſſed:* much leſs warped by " *reſentment* or *perſonal diſlike*."

After deciding againſt Dr. Letch's claim, who had not been, in fact, approved on examination by a majority of the cenſors, Lord Mansfield concluded with a recommendation to the college to ſettle all other matters *amongſt themſelves* without recourſe to law: at the ſame time intimating to them a caution againſt *narrowing* their grounds of admiſſion ſo much, that if even a *Boerhaave* ſhould be reſident here, he could not be admitted into their fellowſhip. Lord Mansfield in the caſe of Dr. Letch, the firſt that came before him reſpecting the college of phyſicians, clearly eſtabliſhed, as far as his opinion can eſtabliſh any point, the right of every competent phyſician reſiding within the college juriſdiction, to be admitted a member. After aſſerting the competency of the court to decide on the proceedings of corporate bodies; and that the court would grant a mandamus, where a right without any other legal remedy was ſhewn; he added, that the college are obliged, in conformity with their truſt, to admit into the fellowſhip, for of that he was ſpeaking, all that are fit; and that

the examinations, for this purpoſe, muſt be fair and impartial. Having thus clearly ſtated his opinion with reſpect to the duty of admitting; and forſeeing that to diſpute the right of competent phyſicians to be incorporated would occaſion litigation, animoſity, expence, and diſcredit to the profeſſion, Lord Mansfield candidly adviſed the college to open their doors to all that were duly qualified, even to foreigners.

Mr. Juſtice Yates ſaid, that " if Dr. Letch had " laid a *ſufficient ground* for his preſent application, " and ſhewn the court that he had a right *to be a* " *member* of the college, the court ought to grant " him a *mandamus* to enable him to *obtain that right* " if he had no other legal method of coming at " it." Mr. Juſtice Yates was of opinion, " that " Dr. Letch might have applied more properly " for a mandamus to obtain a licence," as it was clear that he had not been approved by the cenſors, but added, " that had he ſhewn a right," which right, it is evident from the context, the learned judge was of opinion depended on competency, independent of local graduation, or of the arbitrary power of the college; in that caſe, " the " court ought to grant him a mandamus."

Mr. Juſtice Aſton obſerved, " that by the 14th " and 15th Henry VIII. ch. v. it is enacted, that the

" the *ſix* perſons named in the letters patent, as " principals, and firſt named of the ſaid com- " monalty and fellowſhip, chooſing to them *two* " *more of the ſaid commonalty*, be called *elects*; and " that the ſame elects yearly chooſe one of them " to be preſident of the ſaid commonalty; and " as oft as any of the rooms and places of the " ſame elects ſhall fortune to be void by death " or otherwiſe; then the ſurvivors of the ſame " elects ſhall chooſe, name, and admit, one or " more, as need ſhall require, of the moſt cun- " ning and expert men of and in the ſaid fa- " culty *in London*, to ſupply the ſaid room and " number of eight perſons: ſo that he or they " that ſhall be ſo choſen be firſt by the ſaid ſu- " perviſors ſtrictly examined, after a form deviſed " by the ſaid elects; and alſo by the ſaid ſuper- " viſors approved. This ſhews that the *makers* " of the act of parliament looked upon thoſe of " the faculty who *reſided in London*, to be *members* " of the college."

Mr. Juſtice Aſton added, " If the perſon ex- " amined by them had been approved, propoſed, " and *elected*, then, indeed, a mandamus would " lie: and ſo it would if the college ſhould *refuſe* " to examine the candidate at all. When he " ſhall become properly qualified, he may be

" again examined; and being found ſo, upon " ſuch ſecond examination, may be propoſed, " elected, and admitted in the due and regular " manner." Judge Aſton, after confirming all that Lord Mansfield had laid down, went farther in maintaining the privileges of the licentiates, for he aſſerted, that the makers of the act looked upon the faculty of London, meaning ſuch legal phyſicians as had been examined and approved, to be actual members of the college. This opinion correſponds with what appears to have been the conſtruction of the Judges in 1607.

" November 20, 1767, a motion was made for " a rule upon Dr. Aſkew the preſident, and the " four then cenſors of the college, to ſhew cauſe " why an information, in nature of a *quo warranto*, " ſhould not be granted againſt them, to ſhew by " what authority they acted as cenſors of the col- " lege of phyſicians. The objection was, that " whereas the election ought to be by the *whole* " body, theſe gentlemen had been *elected* only by " a *ſelect* body; namely, by the fellows, excluſive " of the licentiates, though the licentiates *de-* " *manded admittance*; which was refuſed to them " by the fellows, on pretence of their having no " buſineſs there upon that occaſion *."

Lord

* Bur. Rep. v. iv. p. 2195.

Lord Mansfield delivered his opinion very much at length, and moſt deciſively in favour of the legal right, under the charter, of ſuch phyſicians, as reſided within the juriſdiction of the college, to be examined, and if approved, to be afterwards admitted members, though he could not ſuſtain the right, which the licentiates then claimed, of being eſtabliſhed as actual members, under their mere licence to practiſe. After taking notice of the conſequence of the contending parties, and the reſpect due to them, Lord Mansfield proceeded—" The permiſſion of " theſe licentiates *to practiſe* is not diſputed. But " I doubt whether this *permiſſion to practiſe*, and " theſe letters teſtimonial, can amount to an ad- " miſſion into the *fellowſhip* of the corporation or " college.

" Nothing can make a man a *fellow* of the " college without the *act of the college*. The firſt " act to be done by them is their judging of the " qualifications of the candidate. The admiſſion " into the fellowſhip is an act ſubſequent to that. " The main end of the incorporation was, to keep " up the ſucceſſion: and it was to be kept up by " the admiſſion of fellows after examination. " The power of examining, and admitting after " examination, was not an arbitrary power, but " a *power coupled with a truſt*; they are *bound* to

" admit

" admit every perſon whom upon examination
" they think to be *fit* to be admitted, within the
" deſcription of the charter, and the act of par-
" liament which confirms it. The *perſon* who
" comes within that deſcription has a *right* to be
" admitted into the *fellowſhip:* he has a claim to
" ſeveral exemptions, privileges, and advantages,
" attendant upon admiſſion into the fellowſhip.
" And not only the candidate himſelf, if found
" fit, has a perſonal right, but the *public* has alſo
" a *right to his ſervice*; and that not only as a
" phyſician, but *as a cenſor*, as an *elect*, as an *officer*
" in the offices, to which he will upon admiſſion
" become eligible."

Having eſtabliſhed the right of every competent phyſician, in theſe forcible and explicit terms, his lordſhip, after ſome preliminary remarks, added, " Theſe obſervations convince me, that
" the charter had an idea that *ſome* perſons *might*
" *practiſe by licence* under their ſeal, who were *not*
" fellows of the college. Then let us ſee how
" the uſage was. In 1555, they muſt have had
" a probationary licence, before admiſſion into
" the college. Afterwards it was to be a proba-
" tion for four years before admiſſion. The col-
" lege might grant ſuch probationary licences,
" with ſome reaſon, and agreeably to their in-
" ſtitution. This ſhews that *ſome* licences were

" granted

" granted to perſons *not* fellows of the college.
" The 3d Henry VIII. c. 11. takes away all
" former privileges: and ſays, that no perſon
" within *London*, or ſeven miles of it, ſhall exer-
" ciſe as a phyſician, except he be firſt examined,
" approved, and admitted by the Biſhop of Lon-
" don, or by the Dean of St. Paul's, calling to
" them four doctors of phyſic: and the charter
" and ſtatute confirming it have left every thing
" at large to the college, no way confined or re-
" ſtrained but by the *fitneſs* of the objects. In
" 1561, a *partial* licence was granted to an
" oculiſt: a perſon may be fit to practiſe in *one*
" branch who is *not* fit to practiſe in *another*.
" Licences have alſo been granted to *women*: and
" that may not be unreaſonable in particular
" caſes; as, for inſtance, ſuch as Mrs. Stevens's
" medicine for the ſtone. *Partial* licences have
" been given for above two hundred years. Of
" late years, indeed, *general* licences have been
" uſual; and the perſons applying for them have
" been examined, though not meant to be *mem-*
" *bers* of the corporation or college. In 1581,
" notice is taken of three claſſes: fellows, candi-
" dates, and licentiates: and from that time, they
" have given licences to practiſe. The licences
" probably took their riſe from that illegal bye-
" law, (now at an end) which reſtrained the
" number of fellows to twenty. This was ar-

" bitrary

" bitrary and unjuſtifiable: they were obliged to
" admit all ſuch as came within the terms of their
" charter. Yet it is probable that the practice
" of licencing was in conſequence of their having
" made it:" *namely, that illegal bye-law.* After
ſtating, that if the licentiates have a right to
be fellows, the licence does not make them ſo
in fact; Lord Mansfield proceeds, " If my
" brothers ſhould concur with me, the college,
" as now conſtituted, is at preſent to be con-
" ſidered as the body corporate. I have a great
" reſpect for this learned body; and, if they ſhould
" think proper to hearken to my advice, I would
" wiſh them to conſider whether this may not be
" a proper opportunity for them to *review* their
" ſtatutes. And I would recommend it to them
" to take the beſt advice in doing it; and to
" attend to the deſign and intention of the crown
" and parliament in their inſtitution. I ſee a
" ſource of great diſpute and litigation in them
" as they now ſtand: there has not, as it ſhould
" ſeem, been due conſideration had of the charter,
" or legal advice taken in forming them.

" The ſtatute of the fourteenth and fifteenth of
" Henry VIII. ch. v. after reciting the charter,
" mentions it to be expedient and neceſſary to
" provide, that no perſon of the ſaid politic-body
" and commonalty aforeſaid, be ſuffered to ex-

" erciſe

" erciſe and practiſe phyſic, but only thoſe per-
" ſons that be profound, ſad, and diſcreet, ground-
" edly learned, and deeply ſtudied in phyſic.

" I do not ſay, that *no* man can be a licentiate,
" who is not perfectly and completely qualified
" to be a *fellow* of the college. Many perſons of
" no great ſkill or eminence have been licenced:
" and there ſeem to be fewer checks, guards, and
" reſtrictions, upon granting licences, than upon
" the choice of fellows. Yet it has been ſaid,
" that there are many amongſt the licentiates,
" who would do honour to the college, or any
" ſociety of which they ſhould be members, by
" their ſkill and learning, as well as other valuable
" and amiable qualities; and that the college
" themſelves, as well as every body elſe, are ſen-
" ſible that this is in fact true and undeniable.
" If this be ſo, how can any bye-laws which
" *exclude the poſſibility* of admitting *ſuch* perſons
" into the college, ſtand with the truſt *repoſed in*
" *them*, of admitting *all that are fit?* If their bye-
" laws interfere with their exerciſing their own
" judgment, or prevent them from receiving into
" their body, perſons known or thought by them
" to be really fit and qualified; ſuch bye-laws
" require regulation. Such of them, indeed, as
" only require a proper education, and a ſufficient
" degree of ſkill and qualification, may be ſtill
" retained.

" retained. I do not chooſe to ſpeak more par-
" ticularly: but I recommend it to thoſe, who
" are now likely to be eſtabliſhed the maſters of
" the college, to take good advice upon the points
" I have been hinting to them."

Lord Mansfield afterwards added, " I reſt my
" opinion upon this ground; that their preſent
" application to the court is under an inſtrument
" which ſhews that they are not *now* fellows of
" the college, nor *admitted* into the corporation.
" I think that every perſon of proper education,
" requiſite learning and ſkill, and poſſeſſed of all
" other due qualifications, is *entitled* to have a
" *licence:* and I think that he ought, if he deſires
" it, to be *admitted into the college*."

This great judge had, in the firſt caſe that came before him reſpecting the college, ſeen the narrowneſs and injuſtice of the bye-laws of excluſion. With that liberality and benevolence, which generally accompanies great minds, he was deſirous to prevent the evils of further litigation, which he foreſaw would be the inevitable conſequence of withholding the right of admiſſion into the college from perſons properly qualified. With that conciliatory view, and to obtain ſubſtantial juſtice founded on poſitive law, for a profeſſion he reſpected, Lord Mansfield ſtated, in the ſtrongeſt terms,

terms, that the college, in conformity to the truſt and confidence placed in them by the crown and the public, are obliged to admit all that are fit: that thoſe, who are qualified, have a right to be members, and the public a right to their ſervices in that capacity. After this ſtrong declaration, he recommended to them to accommodate their diſputes, and amend their bye-laws. No attention, it appears, had been paid to this candid and ſalutary advice prior to the ſubſequent trial, juſt ſtated; when the queſtion was again repeatedly argued by the moſt eminent counſel then at the bar. Lord Mansfield, thus fully informed by theſe repeated diſcuſſions, and intimately acquainted by his own reſearches * with the whole ſubject, in order to enforce the liberal views he had at firſt adopted, delivered the elaborate, perſpicacious, and concluſive opinion which has been ſo fully ſtated. He again urged on the ſecond trial, the ſacred obligation of the truſt; the right of every fit perſon to be admitted into the fellowſhip; the claims of the community upon fit perſons in the offices of the corporation. He ſtated the ancient uſage of granting partial licences to inferior practitioners in medicine, and deduced the modern uſage of granting general licences from an illegal bye-law reſtraining the number of fellows; and

* Lord Mansfield remarked, that he had read all the bye-laws of the college.

and after repeating the obligation of admitting all that are qualified, again adviſed them to attend to his admonition. This comprehenſive opinion contains all the main points of the caſe; the equity, the law, and the uſage reſpecting it; and appears as full, as clear, and as convincing, as any opinion ever delivered by that great judge.

Mr. Juſtice Yates obſerved, that "the preſent "application is not for a mandamus to admit the "licentiates: but is grounded on the denial of "their right to vote, as being members: it ſup-"poſes them to have been already admitted." He afterwards added, "I give no opinion how it "might be upon a mandamus;" when Lord Mansfield obſerved, "*That* muſt depend upon the "particular caſes of the perſons applying for ſuch "mandamus, as they might be reſpectively cir-"cumſtanced." He had already repeatedly ſtated the requiſite circumſtances to be, competent education, learning, and character.

Mr. Juſtice Aſton agreed, that "the *reſtraining* "*the number* of fellows to twenty, was *illegal*; and "he thought that the diſtinction between fellows "and licentiates had taken its riſe from the re-"ſtriction of the number of fellows. He thought "that in grants of this kind, the conſtruction ought "to be made in a *liberal* manner, and this grant in-

cludes,

" cludes, *omnes* homines ejuſdem facultatis de & in
" civitate prædicta; and the application to parlia-
" ment for the act of the fourteenth and fifteenth
" of Henry VIII. ch. v. to confirm the charter, is
" made by the ſix perſons particularly named in it;
" *and all other men of the ſame faculty* within the city
" of London, and ſeven miles about. All the acts
" of parliament made in pari materia ſhould be
" taken, he ſaid, together; and the conſtruction
" has been uniform, till the time of Queen *Mary*.
" Till then there was no diſtinction of major and
" minor, amongſt theſe phyſicians. It ſeemed to
" him that the idea was, that all perſons duly
" qualified, who took teſtimonials under the col-
" legeſeal, were to be of the community. And
" this was ſufficient to continue the ſucceſſion
" and perpetuate it."

November 17, 1768, the Court of King's Bench was moved, on behalf of Dr. Archer and Dr. Fothergill, for writs of mandamus to oblige the college to admit theſe two licentiates. But the court was of opinion, that they could not claim a right of admiſſion under the charter, on the foundation of a licence which they had *accepted under a bye-law*, upon a ſuppoſition that the bye-law was a bad one; ſo that the return was allowed upon *that* objection to their claim, and the intended queſtion remained unſettled.

Lord

Lord Mansfield again reminded the college of their duty. He ſaid "the college will now con-"ſider whether they will truſt to a return upon "*theſe* bye-laws or mend them."

January 29, 1770, new rules were moved in favour of Dr. Archer and Dr. Fothergill, which were argued in April, 1771. On this occaſion Lord Mansfield remained of opinion, that the licentiates could not ſet up their licence, accepted *under* a bye-law, as the foundation of a right to be admitted under the charter. The court concurred in this opinion, and thought that the queſtion only came round to the ſame point as before, and had been determined in effect upon the former application. Lord Mansfield again cenſured the bye-laws, and renewed his queſtion, "whether "they would think it adviſeable to truſt to a "return upon their preſent bye-laws; or whe-"ther they would not conſider about mending "them?"

It is obvious that Dr. Fothergill and Dr. Archer perſiſted in founding their claim to admiſſion on the college licence, after the court had decided that it was an inſufficient title. They alſo perſiſted in this error after the court had unequivocally pointed out, that they would grant a mandamus to oblige the college to examine a phyſician

of

of fair character and good education, who claimed under the charter, and alſo to compel the college to admit him, if competent, into the fellowſhip. Lord Mansfield expreſsly ſaid, that a mandamus to admit muſt depend upon the particular circumſtances of the perſons applying. There can be no doubt, that both Dr. Archer and Dr. Fothergill poſſeſſed the education, character, learning, and ſkill, which Lord Mansfield and the court had previouſly pointed out as the only requiſite circumſtances. But it appears that neither they nor any of their colleagues, in conſequence of the jealouſy and animoſity which prevailed in the college, would riſk a ſecond examination for admiſſion into the fellowſhip, which they were ſo ſtrongly encouraged to demand, and which, if applied for, would undoubtedly have been enforced by the Judges, who then filled the Court of King's Bench. Their application, under the charter, adopted by the licentiates in the late conteſt, though not ſuſtained by the preſent Court of King's Bench, would, if it had fortunately been made at that time, have eſtabliſhed for ever the right of every competent phyſician, within the college juriſdiction, to be admitted a fellow of the college of phyſicians.

It has been eſtabliſhed by the unanimous opinion of the Judges in 1607, and by ſeveral legal

deciſions,

deciſions, that the graduates in phyſic, of Oxford and Cambridge, poſſeſs no legal privilege within the immediate juriſdiction of the college, but thoſe, to which the graduates of other univerſities are equally entitled.

It has been proved, that Lord Mansfield was deciſively of opinion, that the college are bound to examine, fairly and impartially, every phyſician of proper education, reſiding within the boundary of the college, and claiming to be examined; and to admit all that are fit, in learning, ſkill, and morals. It has been ſhewn, that Mr. Juſtice Yates was alſo of opinion, that the college were bound to examine and admit phyſicians poſſeſſing theſe competent claims; and that Judge Aſton conſidered every competent phyſician, reſiding in London and within ſeven miles of it, entitled to be admitted a corporator; and that he was alſo of opinion that the licence, or letters teſtimonial alone, conveyed a right to all the corporate privileges.

Having eſtabliſhed the right of the licentiates by the higheſt legal authorities, we ſhall next endeavour to prove the expediency of admitting and eſtabliſhing that legal right.

The obligation, which courts of law are under to interpret ſtatutes and deciſions liberally for the

the benefit of the community, where the conſtruction is doubtful, is too obvious to require a comment, or to be enforced by any authorities which might be cited.

The expediency of extending admiſſion into the college to every duly qualified phyſician, within its immediate juriſdiction, or the propriety of confining it to the few who graduate at Oxford and Cambridge, and to ſuch others only, as they arbitrarily ſelect, muſt depend upon the comparative advantages, which would reſult to the community and the profeſſion, from theſe different modes of continuing the ſucceſſion. In order to determine their ſeparate merits, their reſpective influence in promoting or impeding the objects, and in ſecuring the perpetuity, of the corporation, muſt be conſidered. The primary end of the college of phyſicians is the ſafety of the community. The further objects for which it was eſtabliſhed, are the improvement of the ſcience, and the advancement of the dignity and intereſts of the faculty of phyſic. Theſe, beſides their intrinſic importance, are, in effect, principal means of accompliſhing the public ſecurity.

It is obvious that the completion of theſe objects, as far as they can be attained by the college, muſt chiefly depend upon the ability, integrity,

and exertion of phyſicians within its juriſdiction. Whatever ſyſtem, with reſpect to admiſſion, will beſt promote theſe, is undoubtedly moſt expedient.

The progreſs of any claſs of men in knowledge and ſkill muſt materially depend on the inducements to acquire them. The active and uſeful employment of their abilities in the exerciſe of their profeſſion, muſt equally depend upon the incentives to exertion, and the motives to good conduct. By making education, learning, profeſſional ſkill, and probity, the ſole grounds of incorporation, thoſe qualifications in the faculty, which can alone accompliſh the ends of the college, would be infinitely promoted. Theſe grounds would be juſt, liberal, and comprehenſive, as they regard claimants; inexhauſtible as they reſpect the ſupply of candidates; infallible in promoting thoſe attainments and perfections on which the utility of the inſtitution depends. As long as enquiry, knowledge, and virtue, are encouraged and rewarded in any profeſſion, men of learning, ſkill, and integrity, will abound in it, and an eſtabliſhment, ſupplied from ſuch a ſtock, muſt flouriſh. Admiſſion into the college would be an indiſputable mark of theſe eſtimable qualities, were they the only requiſites. The perſon incorporated would be aſſociated with men of diſtinguiſhed character,

talents,

talents, and attainments, and be alſo placed in the moſt advantageous ſituation for arriving at the higheſt honours and emoluments of his profeſſion. Every phyſician, who is actuated by honourable ambition, if eligible, muſt neceſſarily aſpire to be received into ſuch a ſociety, and muſt conſequently endeavour to attain that ſum of merit, however great, which would entitle him to that promotion. If admitted, he muſt alſo be deſirous to ſecure the approbation of a body ſo reſpectable, and on which his advancement would ſo materially depend. He muſt wiſh to fill with credit the rank he would thereby obtain, and endeavour to qualify himſelf for the higheſt ſituations in the profeſſion, to which he might afterwards aſpire. Can it then be doubted that extending admiſſion to every competent phyſician would increaſe the motives to exertion, ſtrengthen the ſecurities of virtue in the faculty, and thereby promote the ſafety of the public?

The expediency of ſuch an extenſion, in order to advance the ſcience of phyſic, is ſupported by all the arguments which recommend it as promoting the public ſafety. Whatever augments the means and gives activity to the powers by which knowledge is advanced, whatever ſecures good conduct in any collective body, muſt promote the ſucceſs of their inveſtigations and pur-

ſuits. The great ſources of improvement in any inſtitution, for the promotion of ſcience, are the talents, learning, and energy of its members. By aſſociating men with theſe productive qualities in a ſcientific body, emulation is kindled, their powers animated, and their efforts directed to the improvement of that profeſſion to which they are attached. The acceſſary inſtruments of art and ſcience will be naturally provided, and inveſtigation, diſcovery, and improvement, will be the neceſſary reſult. The utility of the college in promoting medicine muſt infallibly be increaſed by the acceſſion of thoſe whoſe talents can extend the boundaries of medical knowledge, and who, by becoming members, would be ſtrongly and permanently incited to exert their abilities.

The dignity and intereſts of the faculty can only be promoted by increaſing their public eſtimation, and by adding to the advantages attached to the profeſſion. Theſe will always depend principally on the public utility of the faculty. The ſervices they render the community muſt be, in a great meaſure, proportioned to the incentives phyſicians have to excel, and to exert their talents. The power of conferring rewards, and the impartial diſtribution of them, are then the principal means by which the college can accompliſh all the ends of the inſtitution. How

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can that power and impartiality be beſt promoted? By ſelecting and uniting all the talents and influence of the profeſſion, on the broad and ſolid foundation of merit? Or by forming an inconſiderable party on the narrow and precarious ſcheme of local graduation and intereſted choice?

By incorporating all the phyſicians in and near the metropolis, entitled from education, learning, and character, the college would embrace all the claims, unite all the merits, and concentrate all the power of the profeſſion. It would by the ſame meaſure poſſeſs the beſt means of appreciating, and the ſtrongeſt motives to reward their merits impartially. By conſtituting their body on this juſt and liberal baſis, an equitable conduct would be promoted in all their corporate proceedings, and juſtice predominate in rewarding merit; the only principle in any ſociety which can produce the full efforts of its members, and conſequently its higheſt utility, intereſts, and dignity.

What advantages can poſſibly ariſe from narrowing admiſſion into a college of phyſicians to the graduates of two univerſities, and ſuch as thoſe graduates arbitrarily chuſe? The formation of ſuch a body is fundamentally narrow and unjuſt. Its internal proceedings and external influence muſt both be vitiated by this radical defect. An unfair

preference

preference given to particular ſchools tends to depreciate and prejudice all others. This partial ſyſtem is conſequently pernicious, as it reſpects the means of inſtruction. As it regards ſtudents and candidates, it is prejudicial, by ſubſtituting adventitious diſtinctions for difficult acquirements and efficient abilities, and thereby diminiſhing induſtry, and repreſſing merit. This contracted reſtriction is not leſs hoſtile to the college itſelf, by depriving it of the talents and ſervices of thoſe who would conſtitute its ſtrength and dignity; and by extinguiſhing emulation in the few admitted. A partial ſyſtem of ſucceſſion in a ſociety, which exalts a party and depreſſes a profeſſion, inevitably produces feuds and litigation, by which the efficacy of the body muſt be deſtroyed, its views miſled from meaſures conducive to public good and its own honour, to intereſted contrivances for perpetuating precarious and aſſumed power. Its revenues will be waſted in ſupporting the monopoly. In conſequence of the jealouſy, animoſity, and contention, betwixt a party who engroſs a public inſtitution, and a profeſſion, who contend againſt that aſſumption as an uſurpation of their right, the purſuits and reſources of the latter, as well as of the former, are perverted. Diſtinctions and rewards, which, when impartially conferred, are the ſources of merit and utility, are ſacrificed to the ſelfiſh intereſts and ruinous aggrandizement of a party, which extinguiſh emulation, and thus

deſtroy

deſtroy what they were eſtabliſhed to promote. The public ſafety, the improvement of medicine, the intereſts of the faculty, muſt be inevitably neglected and prejudiced by a corporation of phyſicians, while the ſyſtem of admitting members is partial, and oppreſſive.

The advantages of extending admiſſion on the ground of merit, and the baneful effects of partial reſtriction, thus evident from reaſon, are confirmed by experience. During a long period after the inſtitution of the college, every phyſician of competent learning and ſkill was incorporated. While this juſt ſyſtem prevailed, the college faithfully diſcharged their duty, and accompliſhed, in a great meaſure, the ends for which they were eſtabliſhed. They exerted themſelves with zeal and ſucceſs in detecting, puniſhing, and ſuppreſſing quacks and impoſtors *. Literary meetings were held by the members, for the communication and improvement of medical knowledge. An enthuſiaſtic attachment to the inſtitution prevailed, which could only ariſe from a conviction of its utility. The celebrated Linacre bequeathed his houſe to the college †. Dr. Caldwall and Lord Lumley

* Goodall's Hiſtorical Account of the College proceedings againſt Empirics.

† For this and the following donations, ſee the epiſtle dedicatory to Goodall's Hiſtorical Account of the College proceedings againſt Empirics.

Lumley founded a lectureſhip on ſurgery, with a liberal annual ſtipend. Dr. Goulſton left an endowment for a pathological lecture. The immortal Harvey * bequeathed his paternal eſtate to the college. Dr. Hamey obtained for, and gave it conſiderable donations. The Marquis of Dorcheſter, a nobleman of diſtinguiſhed literary attainments, entered into the fellowſhip, made a liberal donation, and bequeathed his valuable library to the college. Dr. Croone eſtabliſhed and endowed a lectureſhip on muſcular motion †. While the ſource of admiſſion was pure, the inſtitution was uſeful and flouriſhing. Quackery was ſuppreſſed, ability diſtinguiſhed, medicine improved, the faculty united, and the corporation enriched.

What has been the ſituation of the college ſince the fellowſhip has been confined to the graduates of Oxford and Cambridge, and the few they have permitted to ſhare in it? The moſt illiterate and unprincipled quacks and impoſtors have perpetrated their deſtructive practices without the ſlighteſt reſtraint or oppoſition, and in perfect

* The diſcovery of the circulation of the blood was firſt made known in his lectures at the college, as Lumleian lecturer. See Goodall's Hiſtorical Account of the College proceedings againſt Empirics.

† Dictionaire Hiſtorique de la Medicine, H. J. T. Eloy.

perfect contempt of the college. They purſue their flagitious plans more ſecurely than if the college did not exiſt, as probably if that juriſdiction were aboliſhed, the laws might be employed to reſtrain and puniſh them, or the legiſlature might provide a new remedy. It may perhaps be alleged, that from change of circumſtances, neglect and diſuſe, the powers of coercion, with which the college are inveſted, are become obſolete and inefficient. If this be the caſe, it may afford ſome excuſe for declining legal proſecutions. But if their legal coercive powers be extinguiſhed, is it not more peculiarly incumbent on them to exert the actual means they retain, in order to fulfil their truſt, and to accompliſh the attainable benefits they owe the public and the profeſſion? Becauſe they cannot puniſh delinquents by fines and impriſonment, is a body with ſuch reſources to be inert to every uſeful purpoſe, and active only to promote their partial intereſts? As the appointed guardians of the public ſafety, and the intereſts of the faculty, it may at leaſt be expected that they ſhould endeavour to detect and expoſe the frauds and artifices of thoſe deſtructive impoſtors, whom they cannot prohibit, and that they ſhould diſtinguiſh with the moſt ſtriking marks of honour they can beſtow, thoſe who deſerve the confidence of the public, from thoſe who cheat and abuſe it. As

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the natural protectors of the ſcience of phyſic, with conſiderable endowments and revenues for its promotion, derived entirely from the faculty, it may ſurely be preſumed that they endeavour to improve the different branches of medicine. We are undoubtedly warranted to expect in a college of phyſicians, with wealth and talents and profitable lectureſhips, the means of extending and propagating medical knowledge; a comprehenſive and acceſſible library; a muſeum ſtored with natural curioſities and artificial preparations appertaining to medicine; a laboratory for experiments. We conclude as a matter of courſe, that they hold literary meetings for the communication of facts and interchange of opinions; that they have an extenſive and well regulated correſpondence for collecting, and plans for digeſting and promulgating important facts and diſcoveries. We expect to hear of papers read, of books publiſhed, of medals and prizes conferred. It would not be unreaſonable to preſume that ſome precautionary meaſures might be adopted for the early aſcertainment, prevention, and cure of prevalent and extraordinary diſeaſes; ſome plans of medical police for pointing out and obviating the various noxious cauſes, which, under different forms, frequently call for the ſalutary interference of a body ſet apart to watch over the public health.

Theſe

Theſe expectations are intirely diſappointed. We look in vain for any thing uſeful or public ſpirited in this corporation. No efforts are made to detect impoſtors or expoſe frauds; inſtead of diſtinguiſhing competent phyſicians, they are degraded by being merely permitted to practiſe under a licence, originally intended and frequently given to apothecaries and dentiſts, to partial and inferior practiſers. The college have indeed a library, given in the early and uſeful period of their inſtitution, to which, however, few additions have been ſince made, and which is not equal to thoſe of many individuals. They have no muſeum; what was a laboratory has been long converted into a kitchen. They hold no literary meetings, maintain no correſpondence, read no papers, beſtow no prizes. They have edited one book *, and publiſhed three volumes of eſſays †, in three centuries. Even to theſe feeble exertions they were goaded by the ſuperior exertions of the licentiates.

To what then do their corporate acts amount? They examine and admit to all the collegiate advantages the few doctors in phyſic, if competent, who

* Harvey's Works.

† Medical Tranſactions, a great proportion of the papers contained in which, were furniſhed by perſons, who were not members of the college.

who offer themſelves, after having graduated in Oxford or Cambridge, though theſe can be ſcarcely conſidered as medical ſchools. They exact eſſentially the ſame qualifications, and an equal fine, from all other phyſicians, for a licence, which degrades them; and they reject them as members, though adorned with all that education and induſtry can beſtow. They annually read an oration, and a few lectures which cannot be diſpenſed with, without forfeiting the ſalaries for compenſating theſe lectures. They occaſionally inſpect apothecaries drugs, and examine and licence houſes for the reception of inſane perſons*. Such have long been, and are at preſent, the ſervices of the college of phyſicians to the community, to medicine, and the faculty, under the ſyſtem of partial admiſſion. Can it be ſuppoſed that this body could poſſibly, under any change of conſtitution, diſcharge their corporate duties with leſs benefit to the community, or greater prejudice to the ſcience and profeſſion?

Can it be imagined that their ſupineneſs and noxious influence will not be, in ſome meaſure, corrected by an enlarged and equitable ſyſtem of admiſſion, and an acceſſion of members with aſcertained learning, ſkill, and probity?

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* For theſe licences, as well as for thoſe to practiſe, they impoſe a heavy fine.

By extending admiſſion to all duly qualified, the college would unite all the able phyſicians in the metropolis of Great Britain; and direct their efforts to promote the welfare of the public, and the true intereſts and dignity of the profeſſion. By that wiſe meaſure all partial and unjuſt diſtinctions, and the painful and odious paſſions they excite, would be extinguiſhed, and merit and virtue be juſtly encouraged and rewarded.

A liberal intercourſe, freed from arrogance and ſervility, would be eſtabliſhed between members of the ſame profeſſion, and of equal pretenſions. The deſire of meriting mutual eſteem, and an honourable emulation to excel, would be kindled. An efficacious cenſorial influence, a powerful promoter of honour and virtue, would be eſtabliſhed. It would then be diſgraceful not to be incorporated, and every member would have the ſtrongeſt inducements to diſtinguiſh himſelf. The incitements, emoluments, and diſtinctions which the college enjoys within itſelf, would be impartially extended to all; and the more numerous and valuable appointments it might command, would become the juſt rewards of merit. There would be ſcarcely a medical appointment within the metropolis, which the college, ſtrengthened by ſuch an acceſſion, might not diſpoſe of. The

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dangerous nuiſances and ruinous practices in medicine, which have been long accumulating in this immenſe town, might then be, in ſome degree corrected, if not intirely ſuppreſſed. Credulity and deluſion might be awakened from their miſplaced and fatal confidence. If illiterate and unprincipled impoſtors cannot be legally ſuppreſſed, the college would, by incorporating the learned and upright phyſician, conſpicuouſly point out thoſe who have eſtabliſhed their abilities by adequate teſts, and whoſe probity is aſcertained by their being aſſociated, and ſecured by their being under the obſervance and controul of men of integrity and honour. The beſt practicable means would be employed to diſcredit impoſtors and to accompliſh this main end of the charter. By an impartial extenſion of the franchiſe, "the encouraging induſtrious ſtudents, and the enabling "thoſe that are learned, grave, and profound, to "receive more bountiful reward *," would be effectually promoted: a ſpirit of enquiry and communication would be excited, and knowledge accumulated and diffuſed. By the acceſſion of all that are qualified, the offices of the college would acquire an importance and ſplendor proportionate to the dignity of a corporate aſſociation of the phyſicians of the metropolis of Great Britain. Its

* See the charters of Charles II. and James I. Goodall's Hiſtory of the College of Phyſicians.

Its preſident would be at the head of all the able and diſtinguiſhed phyſicians in the firſt city in the world. Its elects would be the ſuperiors of all, who are eminent, in the faculty of phyſic in London and its environs, inſtead of having precedence in a body ſcarcely more numerous, in efficient members, than themſelves. Its cenſors, inſtead of being reduced to confine the benefit of their truſt to a few, would extend ſimilar examinations, for equal benefits, to all who are juſtly entitled.

The fine for a mere licence to practiſe, now complained of as a heavy penalty, and, from its exceſs, as an arbitrary and illegal impoſition, would be cheerfully paid if compenſated by the valuable privileges of incorporation. The revenues, which have been unprofitably conſumed, would be uſefully expended. The collegiate meetings, inſtead of aſſembling with inconvenience and difficulty the few indiſpenſibly requiſite, would be numerouſly attended. The ſtatutes which have been ſtudiouſly contrived to depreciate and irritate a numerous and valuable body of men, and to prop up a tottering monopoly, would be rendered liberal, juſt, and beneficent. The lectures, now almoſt deſerted, would be animated by numerous and enlightened audiences. The mouldering library would be employed and augmented. The ſpacious halls of the college, where vacuity and ſilence are now rarely interrupted,

rupted, would be enlivened by literary meetings, and become the inſtructive and uſeful theatre of communication. The cold reſerve of aſſumed importance, and the ſuſpicious ſolicitude of ſlighted merit, would be converted into frank and amicable intercourſe. The publications of the college, amounting to three volumes in three hundred years, might then be increaſed to an annual volume.

It is manifeſt then that expediency, both with regard to the public welfare, and the intereſts of medicine and of the faculty, enforces the admiſſion of every duly qualified phyſician, which has been ſo fully eſtabliſhed, by equity and law, as a clear right. That right and that expediency being thus confirmed on every ground which can aſcertain it, or bind the judgment in deciding upon it; the unfavourable deciſion of the Court of King's Bench, on the late trial, remains to be accounted for.

It has been already noticed that extraordinary circumſtances exiſted with reſpect to the judges *, which might imperceptibly bias able men with the pureſt intentions. But two bye-laws, which have been alſo before-mentioned, were pleaded by the college, which appeared to extend admiſſion to the licentiates:

* See page 6, of this Treatiſe.

licentiates: the one as a matter of right, on the ground of qualification, the other through favour, on the recommendation of the preſident. The college inſiſted by their counſel, that the licentiates were by no means excluded; that the apparent rigour of the bye-law of reſtriction was relaxed and qualified by theſe two modes of admiſſion*. The judges being of opinion that theſe bye-laws for admiſſion did qualify the reſtriction, which would have been otherwiſe illegal, ſuſtained the ſtatutes of the college for incorporation, taken together. Deceived by the confidence they placed in this apparently grave body, they could not be led to ſuſpect that the alleged bye-laws, for admiſſion, were not to be fairly extended to the licentiates, agreeably to the ſolemn pledge given by the college in firſt enacting, and afterwards reſting upon them their claim to a favourable deciſion. Upon the firſt hearing of this trial in the Court of King's Bench, April 23, 1796, Mr. Juſtice Lawrence ſpeaking of the bye-law for admitting licentiates on the ground of qualification, ſaid, "where is the difficulty of a gentle-"man's getting ſome one fellow of the college to "*propoſe* him? Do you imagine if they think "Dr. Stanger, or any other phyſician, is a fit "perſon

* See the ſpeeches of the counſel for the college, taken by Gurney, in the ſubſequent part of this volume.

" perſon, that they *will not propoſe him?*" Mr. Juſtice Groſe added, " Why ſhould not this ſuppoſed " duty be as honourably and as well executed by " *them* as in our profeſſion?" Lord Kenyon, ſpeaking of the confidence that might be repoſed in the college with regard to their honourable adherence to this bye-law, emphatically mentioned as a guarantee of their integrity: " There is Dr. Heberden, who is on the brink " of another world to receive the reward of his " conſummate virtues; but where is there a more " reſpectable name*?" The Court of King's Bench could not imagine the college could poſſibly betray ſo ſolemn an engagement. The judges could ſtill leſs ſuppoſe that, after they ſhould have ſuſtained the bye-laws, expreſsly becauſe they extended admiſſibility to the licentiates, their judgment, ſo founded and explained, would be contemptuouſly neglected, and the power they had thus conditionally granted, be ſo groſsly abuſed. Relying upon the good faith of the college, the court did not perhaps fully conſider the difficulty under which the licentiates would labour in attempting to obtain redreſs, by any future legal proceſs, when the right of admiſſion was changed from the ſolid ground of the charter, to the deluſive and precarious tenure of an evaſive bye-law.

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* See Gurney's Report in the ſubſequent part of this Volume.

We ſhall now proceed to ſhew that the firſt of theſe bye-laws is rigorous, unreaſonable, and inadequate, if adhered to, and that it is, in fact, withheld: that the ſecond is more prejudicial to the licentiates than if they were totally excluded, and that this, as well as the former, has been for ſome time withheld.

After Lord Mansfield had, during the lawſuits, between the fellows and licentiates, in which he preſided, four times warned the college of the narrowneſs and illegality of their bye-laws reſpecting admiſſion; and as often urged, in the ſtrongeſt terms, that every well educated phyſician, of adequate learning and character, ought to be admitted into the fellowſhip; the following bye-laws were framed with reluctance. They enacted, "that any licentiate, "of *ſeven* years ſtanding, who had completed his "*thirty-ſixth* year, may be propoſed, by a *fellow*, "to be examined on *one* particular day alone in "the year; that if a *majority* of the fellows then "preſent conſent, he may be examined at the "*three greater aſſemblies* of the college, and if ap-"proved by a *majority at each*, he may be pro-"poſed at the *next* greater aſſembly to be admit-"ted a member; that if *then* likewiſe approved "by a majority of thoſe preſent, he may be ad-"mitted into the college, as ſoon as *convenient*;

 "provided

" provided neither any law of the land, nor " any *bye-law* of the college, render him in- " eligible *."

To demonſtrate the hardſhip of this bye-law, it is only neceſſary to contraſt it with the terms on which the graduates of Oxford and Cambridge are incorporated. They may apply for examination immediately after arriving at a doctor's degree †; without a previous licence; without being firſt propoſed; and upon any day in the year. The whole of their examinations may take place on one day, and if approved by the cenſors, they may be admitted candidates on the following ‡, and fellows a year afterwards. They are examined at the leſſer meetings, by the preſident and four cenſors, who are bound by oath, after taking the ſacrament, to diſcharge their truſt conſcientiouſly; and engaged, in honour, to conceal the deficiency of the perſon examined, ſhould he be found not duly qualified. The licentiate, after having obtained a doctor's degree,

* Affidavit of John Roberts, gentleman, attorney for the college, ſworn April 5, 1796.

† Provided they have completed their 26th year, before which period of life other phyſicians cannot obtain a licence.

‡ The two candidates mentioned in the college liſt this year were examined, for the firſt time, on the 29th of September, and admitted candidates the next day.

degree, and given the ſame eſſential teſts of learning and ſkill, for a licence to practiſe, as are required for the fellowſhip, muſt wait ſeven years, however late in life he may have graduated or been licenced, and until he has completed his thirty-ſixth year, however early he may have accompliſhed his degree and licence, before he is eligible to be propoſed to be examined for incorporation. He muſt prevail on one of a ſmall body, averſe to his claims, to propoſe him. That propoſal can take place on one day only in the year. If propoſed, and allowed to be examined, he muſt remain twelve months in a ſtate of anxiety and ſuſpenſe, and be expoſed to three additional ballots, before he can be eligible to be admitted on one particular day alſo, in the year, under this bye-law, if no other prohibit. Can this be juſtified? If licentiates, in general, graduate earlier in life than the protracted terms of Oxford and Cambridge allow, and it be reaſonable that they ſhould not be conſtituted fellows, when younger than the doctors of thoſe univerſities; ought not that period, when the latter uſually graduate, which is from twenty-five to thirty, to be adopted, in order to equalize the pretenſions of the former on the ground of age? If it be proper that the licentiates ſhould alſo remain ſome time in a probationary ſtate, to equalize the time employed by them in the actual ſtudy of their profeſſion, with that required for accompliſh-

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ing a doctor's degree in the Engliſh univerſities, ought not a period to be deemed ſufficient, which, added to that employed in approved medical ſchools, would equal the term required for an Oxford or Cambridge degree, and which might be from three to five years? But why ſhould the licentiate be propoſed if the graduate of Oxford and Cambridge be not? Why limited to apply on one day in the year alone? Why ſhould his admiſſion to be examined be ſubmitted to a ballot? Why examined before or by the whole college? His examinations, why protracted a whole year? Why ſhould the ballot for his final admiſſion be reſtricted to one day? Can any candid or liberal mind approve of ſuch partial and accumulated delays and obſtacles?

But even theſe barriers were not thought ſufficient, ſhould the licentiates ever ſurmount the impediments againſt arriving at examination under this bye-law. The eſtabliſhed mode of examining, on all the different branches of medicine, in the Latin language, which had been deemed ſufficient both for the licence and fellowſhip, ſince the inſtitution of the college, was, with the enactment of this bye-law, for the firſt time altered. A new teſt, of little importance as a proof of medical ſkill, but which might be rendered an extremely difficult obſtacle againſt perſons whom the fellows might wiſh to reject, was inſidiouſly

ſuperadded.

ſuperadded. The candidate for the fellowſhip, who had already given all the teſts for his licence, hitherto required for incorporation, and who conſequently could not be, with any regard to conſiſtency, rejected as deficient in thoſe qualifications in which he had been before approved, might, after the adoption of this artifice, be required to tranſlate from the Greek into Latin, and alſo to expound and comment, in the Latin language, upon any parts of the voluminous and difficult works of Hippocrates, Aretæus, and Galen. With even theſe barriers, this bye-law was never promulgated by the college, until extorted from them as a plea to juſtify their conduct, and to obtain a favourable deciſion in the late conteſt. It had been however diſcovered, and Dr. Sims, a licentiate, within the preciſe deſcription of the bye-law, having prevailed upon a fellow to propoſe him, determined to apply under it. Repeated ſolicitations to decline his intention, and menaces of ſuch a ſevere examination as ſcarce any man could paſs, and declarations from the fellows that no licentiate would ever be admitted under it, were all employed to deter him from the application. He however perſiſted, and was propoſed by Dr. Burgeſs. What was the reſult? The college refuſed to enter into a ballot on the propoſition, though made within the direct terms of their bye-law, under a pretence that the propoſal

propoſal was not ſeconded, which is not required, which, neither Dr. Sims nor Dr. Burgeſs could poſſibly forſee, and which the fellows well knew, and Lord Kenyon has ſince declared, ought not to have been required *.

After this diſingenuous evaſion, the bye-law laid dormant till it could ſerve the purpoſe for which alone we muſt conclude it was made. During the late trial, notwithſtanding this bye-law had been thus withheld, it was brought forward in the affidavits of the college †, and urged by their counſel ‡ as a main ground, on which they claimed a deciſion in favour of that body.—With what fatal conſequence to the claims of the licentiates will appear from Lord Kenyon's own words in the deciſion. In ſpeaking of the opinions of Lord Mansfield and the learned judges, who preſided on the former trials, Lord Kenyon ſaid, " the principal ground on which it was ſaid " in 4 Burr. 2199, that the bye-laws of the " college were *bad*, was, that they interfered with " their exerciſing their own judgment, and pre- " vented them from receiving into their body " perſons known or thought by them to be really " fit

* See Lord Kenyon's deciſion, Gurney's Report.

† Durnford and Eaſt's Reports, vol. vii. p. 285.

‡ See Gurney's Report of the pleadings of the counſel for the college.

" fit and qualified; and if I had found *that ob-*
" *jection* exiſted in *this caſe*, I ſhould have thought
" it *fatal**." In ſpeaking of the bye-law reſtricting examination for incorporation to the doctors of Oxford and Cambridge, Lord Kenyon added, " Then the queſtion is, whether this is a reaſon-
" able bye-law that requires a degree to be taken
" at one of our univerſities, which in general is
" ſuppoſed to be conferred as a reward of talents
" and learning. If indeed this had been a *ſine*
" *qua non*, and it had operated to a *total excluſion*
" of every *other mode* of gaining acceſs to the
" college, it would have been a *bad bye-law:* but
" theſe bye-laws point out *other modes* of gaining
" admiſſion into the college. If Dr. Stanger has
" all thoſe requiſites that qualify a perſon for
" that high ſtation, any one of the fellows *may*
" *now propoſe him:* he *may apply* to the honourable
" feelings of the college, to the very ſame tribunal
" to which this mandamus (if it were granted)
" would refer him †." This opinion is more fully ſtated, and more ſtrongly expreſſed in Gurney's report of Lord Kenyon's ſpeech, " if," ſaid the Lord Chief Juſtice, in ſpeaking of the bye-law of excluſion, " it had *controlled* the parties
" who are to form their judgment, and taken
" from them all *power* of deciſion upon candidates,
" it

* Durnford and Eaſt's Reports, vol. vii. p. 287.

† Ibid. vol. vii. p. 288.

" it would have had that *ſeed of death* in it, which " Lord Mansfield found in that bye-law which " he *decided to be bad.* But this is not ſo. Here " every perſon has a *right* to addreſs himſelf to " the *honourable feelings* of thoſe breaſts to which " Dr. Stanger muſt at laſt have addreſſed himſelf, " if this mandamus went. If they find him to " be poſſeſſed of all the requiſites of *medical learn-* " *ing and moral character*, he will addreſs as power- " ful arguments to thoſe gentlemen, every in- " dividual of whom *is called upon* to exerciſe his " opinion upon the ſubject. He is not to wait " to be *ſeconded. The bye-law does not require that.* " If any one *propoſes* him, the queſtion is ſubmitted " to a majority. It goes then to that tribunal " which I hope and believe is the *ſanctuary of* " *honour and good faith*, and he may as well ad- " dreſs himſelf to them *now* as if this mandamus " went *."

Immediately after the bye-laws of the college had been thus ſuſtained when taken together, the bad qualified and legalized by the good: while this ſolemn charge was recent, it was taken under conſideration, by moſt of the licentiates engaged in the conteſt, whether they ought to avail themſelves of this bye-law, thus ſtrongly ſecured to them. It was almoſt unanimouſly agreed,

* Gurney's Report.

agreed, that the bye-law was ſo unreaſonable and unjuſt, that it ought not to be ſubmitted to. Dr. Wells, however, one of thoſe licentiates, though ſenſible of its great illiberality, determined to apply under it, if no other licentiate would; conceiving, that though the college might impoſe unreaſonable conditions, a perſon who ſubmitted to them, might go into the college with honour, and that the bye-law might be amended in future.

He was propoſed at the firſt comitia majora, ſubſequent to the trial, by Dr. Pitcairn, and to obviate all pretence for the objection made on the former application, this propoſal was ſeconded by Dr. Baillie. Will it be credited? The previous queſtion was propoſed and carried: namely, that Dr. Pitcairn's propoſal of Dr. Wells ſhould not be ſubmitted to a ballot. A bye-law which had been juſt before brought forward in the affidavits of the college, and urged by their counſel as a ſtrong plea for their ſucceſs: on which the Lord Chief Juſtice had founded a deciſion in their favour, and aſſerted that they were bound to abide by; a bye-law thus ſacredly ſecured was intirely withheld!

What will the Chief Juſtice now ſay of this *ſanctuary of honour and good faith?* Will his learned colleagues

colleagues now repeat their queries, which imply an implicit confidence in the honourable adherence of the college to this bye-law? How will the Court of King's Bench redreſs the licentiates, who reſted their claim on the general right conveyed by the charter, but which can now be only purſued through the maze of a pretended privilege, of which they cannot avail themſelves? A ſubterfuge which almoſt defies the power of law to render it available?

It will be of courſe expected, that in conſiſtency with their former conduct, a pretext for this almoſt incredible proceeding was alleged. The college did not deviate in this caſe from the former precedent, either in their duplicity in making it, or in the futility of their excuſe. In the caſe of Dr. Sims they alleged, that the propoſal was not ſeconded: in the caſe of Dr. Wells, that they had not received ſufficient notice. Neither ſeconding nor previous notice are required by the bye-law. Yet the propoſal of Dr. Wells, to diſappoint all evaſion, was ſeconded; and as if to falſify the ſecond pretext of the college, notice, though ſuperfluous, had been regularly given them by Dr. Wells, of his intention. He announced it by letter to the preſident, who happened to be then in the country, eight days before the comitia majora. He alſo authorized the beadle of the college,

college, five days before the general meeting of the college, to inform the fellows of the intention to propoſe him *. Twenty-three fellows were actually preſent, nearly all that could poſſibly have been collected.

A licentiate within the preciſe terms of the bye-law, more advanced in age, and of longer ſtanding as a licentiate than are required by it, a phyſician to St. Thomas's hoſpital, a fellow of the Royal Society, propoſed by a fellow of the college of high ſtanding, and that propoſal ſeconded by another of the firſt reſpectability, was not even allowed a ballot to determine whether he might be permitted to have his qualifications examined!

The bye-law of admiſſion through favour enacts, that the *preſident* may *once in two years*, and not oftner, propoſe a licentiate for admiſſion into the fellowſhip, who has been *ten years licenſed*, and previouſly approved by a majority at the preceding *comitia minora*, or leſſer aſſembly, on one particular day *alone* in the year; and that, if he be then

* The intention of Dr. Wells had been made known to ſome of the fellows much earlier: can it be ſuppoſed that a meaſure ſo important to the college would not have been communicated by them to their colleagues, when there was no obligation to conceal it?

then approved by a majority, he may afterwards be admitted into the fellowſhip. This bye-law, as has been aſſerted, is precarious and inefficient, calculated to divide and degrade the licentiates, and to aggrandize the fellows; and is more prejudicial to the former than total excluſion.

It is intirely inadequate, as only one phyſician, who has been ten years licenſed, out of a body conſiſting, at preſent, of one hundred and ten and rapidly augmenting, can be even propoſed in two years: ſo that a period of two hundred and twenty years would be required for incorporating a number equal to that of the preſent licentiates. But inconſiderable as the chance of being propoſed is, while the privilege can be ſo ſeldom exerciſed, that chance muſt alſo depend on a variety of contingencies. The fellows muſt be ſatisfied with the conduct of the licentiates as a body, or they will limit this privilege ſtill farther*, revoke the law, or enact a diſqualifying ſtatute, as they have repeatedly done after having held out modes of admiſſion. A majority of the elects muſt approve of this bye-law, or they will appoint a preſident, who will not propoſe under it as they have done at preſent. The preſident is under no obligation to exerciſe his privilege, and if he declines

* When this bye-law was firſt enacted, it entitled the preſident to propoſe a licentiate annually.

clines no other fellow can propoſe. No licentiate has been propoſed under this bye-law during upwards of four years, and almoſt certainly never will, whilſt either the preſent preſident remains in office, or while the elects who appointed him, have power to chuſe his ſucceſſor, or any of them have influence to obtain that ſituation. The perſon propoſed muſt gain a majority of votes out of an adverſe party of his profeſſional competitors, many of whom are hoſtile to the incorporation of licentiates on any ground, and ſeveral ſpecifically oppoſe their admiſſion through favour. Some of thoſe who have been thus let into the college have procured admittance with great difficulty, and by a bare majority.

Every licentiate, who may have even ſpent the beſt part of his life in humble expectation and conciliating ſubſerviency, muſt feel how liable he is to be rejected under this precarious mode of admiſſion. The acceſſion of a few perſonal enemies to the party who oppoſe the incorporation of licentiates indiſcriminately, or the defection of a few of thoſe who coldly permit it, muſt deſtroy his hopes, depreciate his character, and add unappeaſable reſentment to the painful feeling of unmerited diſgrace. Many of the ſenior licentiates have been, and were the ſyſtem to be renewed, muſt neceſſarily be paſſed by, in order

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to exalt younger men above them, who are their moſt immediate competitors. How mortifying the preference! how humiliating in the decline of an uſeful and honourable life, when eſtimation and reſpect are almoſt the only enjoyments, when precedence and diſtinction may have been earned by long and meritorious exertions, to be marked out as unworthy of profeſſional rank! How degrading and painful to be ſtigmatized, in the language of the bye-laws, as of the number of thoſe that are intirely unfit, not ſufficiently learned, and only permitted to practiſe ſo long as they behave well! Will the licentiates ſubmit to and countenance a ſyſtem ſo injurious and diſgraceful?

However uncertain and difficult the being propoſed by the preſident, and elected by the fellows, the terms of being admitted through favour are not leſs depreciating, nor the treatment afterwards leſs humiliating. The perſon who thus enters the college muſt go in, while the bye-laws for examination profeſs to require teſts from phyſicians who are regularly admitted, in addition to thoſe the licentiate, patronized by the preſident, has undergone: whilſt a bye-law exiſts which profeſſes to open a door for him on the ground of merit. Will the licentiate deſcend from his claim of right, and ſubmit to be taken into the college in a way which conveys even the moſt

remote

remote inſinuation of inferiority? Under the preſent ſyſtem, though a few licentiates have been allowed to enter the college, they are conſidered by ſeveral as intruders, permitted to mix with the fellows, but ſcarcely to aſſociate. They find one party their opponents, and the other their patrons. The former treat them with cold neglect, the latter with civil condeſcenſion.

But in proportion as this mode of admiſſion is injurious and degrading to the licentiates, it is flattering and beneficial to the fellows. Though for the preſent laid aſide, by the party which now predominates, it is the only ſcheme of extending the franchiſe to phyſicians, who have not graduated at Oxford or Cambridge, which could at once gratify the ambition of the fellows, promote their intereſts, and prop their monopoly. By this contrivance they reconcile the patient ſufferance of their aſſumed ſuperiority, and obtain the adulatory attention of thoſe who hope to profit by their favour. They ſecure alſo the more valuable prerogative of being excluſively called into conſultation by thoſe who cultivate their patronage. By this plan they divide and govern. Should the party be deficient in the number required for filling the neceſſary offices, and performing the indiſpenſible duties of the

college, and the inferiority of Oxford and Cambridge as ſchools of phyſic is ſuch, that, notwithſtanding the benefits of the monopoly, they can ſcarcely ſupply the members requiſite, the ready and convenient licentiates can make up the deficiency. They can tranſact the buſineſs of the fellows without ſharing in their power, and aſſemble at their board without partaking their feſtivity. Should a licentiate be dignified by office, formidable from influence, or conſpicuous from merit, the fellows can take advantage of his power and credit, and transfer him to their own party. The total excluſion of the licentiates might unite them to aboliſh the monopoly, or to take advantage of their ſuperior numbers, talents, and influence, to counteract its evils, retaliate the injuries they ſuffer, and promote the intereſts and dignity of their own body. It might deprive thoſe in power of the homage paid for their patronage, and merit might determine the recommending a phyſician in conſultation, independently of college influence. Supported by his colleagues, a licentiate might be a candidate for any profeſſional appointment, in oppoſition to a fellow, with the probability of ſucceſs. Reduced to its ſcanty ſupply from Oxford and Cambridge, the college might dwindle into total inſignificancy, or probably be extinguiſhed.

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This indirect mode of admittance, through favour, beſides inflating thoſe, who can grant the privileges of incorporation, with arrogance, and abaſing thoſe who court their patronage, inevitably excites jealouſy and animoſity in the claimants and competitors. Can the ſenior, who is rejected, ſee without indignation his younger rival raiſed above him, and himſelf marked out as unworthy of promotion? Can thoſe who are contending for the ſame object, and ſtruggling to ſupplant each other by ſubſervient accommodation and artful intrigue, live on terms of amity? Can the independent man, who ſcorns to ſolicit what he has a right to demand, obſerve the ſubmiſſion and pliancy, which prolong his ſubjection, without diſdain? Even ſelfiſh minds, which can reconcile diſingenuous accommodation as a prudential ſcheme of intereſt, cannot ſuffer the diſapprobation they are conſcious of meriting from thoſe who maintain a manly independence, without recriminating reſentment. Acrimonious and odious paſſions are thus engendered and fomented by the partial admiſſion of licentiates through favour, and aggravate the evils of general excluſion.

While the monopoly is prolonged, let not the licentiates ſanction and increaſe the evil by their endeavours to ſhare it. Let them no longer aid in ſupporting by voluntary abaſement a combina-

tion which depreſſes their own body, nor create diſputes and wound their feelings by an injurious and diſgraceful competition. Without their adulation the college would loſe its incenſe, without their conciliatory offerings, to purchaſe favour, it would be deprived of much of its emoluments, without their ſupply it would loſe the ſource of its moſt active members *, and perhaps, in a ſhort period, its exiſtence.

It is obvious then that, although general excluſion be a grievance, partial admiſſion, through favour, is an inſulting aggravation infinitely more pernicious and diſgraceful, and that both honour and intereſt powerfully engage the licentiates to ſubmit no longer to enter the college on ſuch humiliating terms.

It has been ſhewn, that the college poſſeſſes within itſelf, and confers, immediately, on its members, important advantages: that the excluſive poſſeſſion of its privileges, by a party, enables them to obtain and monopolize an undue proportion of the honours and emoluments attached to the profeſſion: that the great body of phyſicians in the metropolis are, in fact, and muſt inevitably be

* The licentiates, who have been admitted through favour, though only ſix in number, have probably publiſhed more than all the other exiſting members.

be depreciated and oppreſſed by a college of phyſicians inveſted with conſiderable powers, if partially conſtituted.

It has been ſhewn, that the college is almoſt excluſively in the poſſeſſion, and intirely under the controul of thoſe phyſicians who have graduated at Oxford or Cambridge, who form an inconſiderable proportion of the phyſicians within the college juriſdiction. It has alſo been ſhewn that theſe univerſities are deficient in the means of medical inſtruction, nearly deſerted by medical ſtudents, and can therefore convey no preſumptive claims of profeſſional ſuperiority: that the phyſicians educated in other ſchools, form the great body of phyſicians in the metropolis: that they, in general, avail themſelves of the beſt ſources of profeſſional improvement which either their own or any other country can ſupply, and are inconteſtibly equal in education and merit to any body of phyſicians in the world.

It has been proved, that both the letter and ſpirit of the charter and act of parliament confirming it, extend the right of admiſſion to every duly qualified phyſician, without regard to local ſtudy or local graduation, and that every act of the crown and legiſlature, relative to phyſicians

and

and the college, illuſtrates and confirms this obvious conſtruction.

It has been demonſtrated, that it was the original and long continued uſage to incorporate every competent phyſician within the college juriſdiction, who claimed the franchiſe.

It has been ſhewn, that the preference given to the univerſities of Oxford and Cambridge, was introduced by requiring a nominal degree of incorporation only, from either, which could be cheaply purchaſed without teſts or reſidence: that this reſtraint was illegal, and only ſubmitted to from the facility of being incorporated in the Engliſh univerſities.

It has been alſo ſhewn, that the college have, even to the preſent period, allowed the competency, and acknowledged the right of phyſicians to be admitted, who had not graduated in the Engliſh univerſities, by a variety of contrivances to extend the franchiſe, in appearance, though, in reality, to introduce ſuch only as might ſerve their intereſt, and ſupport their power.

It has been evinced, that all the legal authorities on the ſubject, prior to the late deciſion in the Court of King's Bench, were clearly in favour of extending

extending admiſſion to all who are competent in education, learning, and character.

The expediency of ſuch extenſion has been made manifeſt, by the advantages which, it has been ſhewn, would reſult from thence to the community, to the ſcience, and the faculty of phyſic.

It has alſo been rendered obvious, that the bye-law for admitting licentiates, of ſeven years ſtanding, is unreaſonable, and in fact withheld; and that the bye-law for admiſſion, through favour, is precarious, degrading, and prejudicial, and as well as the former, at preſent unavailing.

It has finally been made evident, that the pretenſions of both parties might be reconciled, the true intent of the charter adhered to, and the real dignity, intereſts, and utility of the college ſecured, by confining examination for the fellowſhip to phyſicians of mature age and irreproachable character, who had ſtudied an adequate period in approved medical ſchools; and by reſtraining incorporation to phyſicians of competent learning and ſkill.

On all theſe grounds it appears manifeſt, that both the licentiates, and every phyſician of adequate

quate education, fair character, and mature age, reſiding in London, or within ſeven miles of it, is entitled to an examination of his qualifications for the fellowſhip, and on having given the requiſite teſts of character, learning, and ſkill, that he has alſo a right to be admitted a fellow of the college of phyſicians.

It has been decided otherwiſe.

The arguments advanced on the trial by the eminent counſel employed by both parties, and the deciſion of the learned judges, as delivered at length by each of them, are now ſubmitted to the public.

This prefatory diſcuſſion and juſtification of the right of the licentiates, has been extended much beyond the writer's original intention. It has been written under a firm conviction of their right to the fellowſhip, and to all the conſequent advantages of their profeſſion, an indignant feeling of the diſadvantages they ſuffer, and an ardent zeal to anſwer every objection to their claim, and to animate them to eſtabliſh it. He cannot conclude without reminding the licentiates and the phyſicians of London, that though legally diſfranchiſed, they have numbers, talents, learning, the dignity and intereſts of the profeſſion, and the

wiſhes

wiſhes of every friend to both, in their favour: that they may yet apply to the legiſlature with confidence in the juſtice of their cauſe, and in the impartiality and rectitude of that tribunal: to the legiſlature whoſe duty and wiſdom conſiſt in enacting juſt and equal laws, and in abrogating or amending ſuch as are partial and oppreſſive: which can admit no bias in its legiſlative acts for Oxford and Cambridge, or for Edinburgh and Glaſgow.

Until a new charter can be obtained, or the privileges of the exiſting charter be impartially extended, the phyſicians of London are called upon, by the ſtrongeſt motives of honour and intereſt, to unite their powers, by eſtabliſhing a ſociety which may accompliſh the important but abandoned objects for which the college was inſtituted, and for which alone it ought to exiſt. They are urged to conſtitute a ſociety which may redreſs their grievances, reward merit, improve medicine, advance the faculty, and promote the public welfare. With ſuch motives, as impel them, ſuch means as they poſſeſs, and ſuch principles as they cannot but adopt, a ſociety may be formed, which would attain theſe ends; which would reſtore the phyſicians of the metropolis of this great and enlightened country to thoſe honours and advantages to which reaſon

and

and juſtice entitle them. The phyſicians of London, if united, would ſoon diſpel the deluſive prepoſſeſſion ariſing from corporate diſtinctions, and throw from its narrow baſe, the power ſupported by corporate combination. They can undeceive the public by their writings. They can eclipſe the college by their publications. They can juſtly retaliate upon the aggreſſors, and excluſively recommend each other on conſultations. They can ſupport the members of their own body in all conteſts with the fellows. They can ſtrengthen and perpetuate their ſociety, by admitting all phyſicians who have given proper teſts, and confer on them the honour of aſſociating with a diſtinguiſhed literary body, and of ſharing all its advantages on equal terms.

An active aſſociation, founded on ſuch liberal grounds, would be aſpired to by every candidate for fair fame, and every friend to the real dignity of the profeſſion. A torpid corporation, inert, if not impotent, to enforce the impoſition of a ſtigma of inferiority and dependence, and the exaction of a heavy penalty, would be ſoon deſerted, and probably annihilated.

The period is arrived when the phyſicians of London muſt determine, whether they will voluntarily remain in a degrading ſubordinate ſtate,

ſtigmatized

ſtigmatized by the humiliating epithet of licenced practiſers, and continue to encourage a party to exalt and enrich themſelves by depreſſing and impoveriſhing the profeſſion. They muſt finally decide whether they will ſubmit to theſe evils or eſtabliſh a ſociety, which ſhall transfer to the profeſſion at large, the ſuperiority and power the college has ſo long abuſed; which ſhall elevate the faculty of London above the party denominated fellows, and convince the world that they are the learned and upright phyſicians whom the charter of the college was granted to incorporate, and who, as Lord Mansfield obſerved, would do honour to any ſociety.

AN

ACCOUNT

OF THE

PROCEEDINGS OF THE LICENTIATES,

IN THEIR LATE

ATTEMPT TO ESTABLISH THE RIGHT

OF BEING ADMITTED

FELLOWS OF THE COLLEGE OF PHYSICIANS.

FROM the year 1767 to 1771 the licentiates had made repeated efforts to eſtabliſh, by law, the right of being incorporated into the college of phyſicians. They had failed in all theſe attempts, from perſiſting to claim admiſſion, by virtue of their licence, inſtead of claiming, under the charter and act of parliament; to have their qualifications for the fellowſhip examined.

Soon after the laſt of theſe trials, that of Dr. Fothergill, the college enacted the bye-law, under which they profeſs to admit licentiates of ſeven years ſtanding, and the bye-law for admiſſion on the

the recommendation of the preſident. During twenty-ſeven years, which have ſince elapſed, the firſt of theſe bye-laws has been intirely withheld *, and only ſix licentiates have been admitted under the latter. The licentiates, however, harraſſed by their defeats, and deprived of ſome of their moſt powerful aſſociates, diſunited and deluded by the hopes of admiſſion through favour †, acquieſced under the ſyſtem eſtabliſhed in 1771 till the year 1793. Many of them had long complained of the grievance of general excluſion, the inadequacy of the above-mentioned bye-laws, and the bad faith of the college. But about this period ſome of the licentiates, ſtrongly impreſſed with the extreme hardſhip, injuſtice, and public and profeſſional impolicy of the ſyſtem of incorporation, which prevailed, again inveſtigated the ſubject. They found that the franchiſe was as clearly conveyed by the charter and act of parliament to every competent phyſician, within the college juriſdiction, as language could convey it. They alſo found that it had been ſo extended by the original and long continued uſage: that Lord Mansfield, and the able judges, who were his colleagues, were deciſively of opinion that it ought to be ſo extended,

* See p. 139, of this Work.

† The preſident had the privilege of propoſing a licentiate annually when the bye-law was firſt enacted, which encouraged the hopes of many who wiſhed to be ſo admitted.

tended, and that Lord Mansfield had pointed out a mode of application, which muſt, under his adjudication, have infallibly led to that extenſion. Encouraged by ſuch evidence and ſuch authority, they immediately exerted themſelves to reanimate the licentiates to vindicate their right in the mode ſo pointed out. After ſeveral previous meetings, and much inveſtigation and diſcuſſion, a general meeting of the licentiates was held to determine upon the meaſures which ought to be purſued to eſtabliſh their right. It was then unanimouſly determined, that an addreſs ſhould be drawn up, ſtating briefly the grounds on which the licentiates were entitled to be incorporated, and requeſting that admiſſion might be amicably extended to them. On the 26th of June, the following addreſs, which had been previouſly drawn up and approved, and ſigned by fourteen licentiates, was preſented to the preſident of the college by Dr. Cooke, Dr. Wells, and Dr. Stanger, appointed a committee for that purpoſe. It was ſent to each of the fellows, previouſly to the firſt comitia majora, which enſued after it had been preſented to the college.

To the Preſident and Fellows of the College of Phyſicians of London;

GENTLEMEN,

WE, whoſe names are ſubſcribed, licentiates of the college of phyſicians of London, conceiving ourſelves unjuſtly deprived of thoſe profeſſional honours and privileges to which we are entitled, and perſuaded that every phyſician of irreproachable character and of competent learning has a legal right to be admitted a fellow of the college, ſubmit to your diſpaſſionate conſideration the following grounds of this conviction.

In the beginning of the ſixteenth century, when learning had made but little progreſs in this country, and medicine was chiefly practiſed by ignorant empirics, the phyſicians of London were incorporated into a college or community, by a charter from Henry VIII. The object of the grant, as declared by the charter, was to provide for the ſafety of the ſubjects of the realm, by reſtraining the audacity of thoſe wicked men, who practiſe medicine more from avaricious motives than from any good intention, to the great injury of the illiterate and credulous multitude. With this view, partly in imitation of well regulated ſtates in Italy and many other countries, and partly

partly in compliance with the prayer of John Chambre, Thomas Linacre, Fernando de Victoria, the king's phyſicians, of Nicholas Halſewell, John Francis, and Robert Yaxley, phyſicians, and of Cardinal Wolſey, a perpetual college of diſcreet and learned men was eſtabliſhed, conſiſting of the above-named ſix phyſicians, and *all other men of the ſame faculty*, reſiding in London. The members of this body were authorized to exerciſe their profeſſion in London and its neighbourhood, and at the ſame time were ſtrictly required to prevent every other perſon from practiſing medicine, either in that city or within ſeven miles round it, unleſs he had been admitted to do this by the college; and in order that this injunction might be carried fully into effect, they were inveſted with powers to puniſh the diſobedient.

It is evident then, that neither the graduates of Oxford and Cambridge, nor thoſe of any other univerſity, were to derive any partial advantages from the charter; but on the contrary, that *all* diſcreet and learned phyſicians, reſiding in London at the time it was granted, were indiſcriminately admiſſible into the college, and that the perpetuity of the body was to be preſerved by the reception of *every* phyſician of the ſame deſcription, who ſhould ever practiſe medicine in London, or its vicinity, and ſhould claim to be a

member.

member. Can it be ſuppoſed, that Henry VIII. while he declared that the good of his ſubjects at large was the object of his grant, in reality meant to benefit only a few, to the prejudice of many; or, that he thought phyſicians of learning and good morals were to be found, excluſively, among the graduates of Oxford and Cambridge, though the only phyſicians he himſelf employed had taken their degrees abroad? Can it be for a moment imagined, that the principal phyſicians who obtained the charter, all of them foreign graduates, could intend, that none under the like circumſtances ſhould ever after have a right to claim admiſſion into the college; or, that if either their ſovereign or themſelves had entertained ſuch a deſign, this would not have been expreſsly declared?

But had any obſcurity exiſted in the language of the charter, with reſpect to the deſcription of perſons to be admitted into the college, or had experience diſcovered, that the qualifications required by it were inadequate to the attainment of the object of the grant, ample opportunities were afterwards afforded of explaining what was doubtful, of amending what was wrong, and of ſupplying whatever had been found wanting. Four years after the date of the charter, while the ſovereign who beſtowed, and the ſix phyſicians

who obtained it, were ſtill living, an act of parliament was paſſed, in conſequence of a petition from the ſame phyſicians, confirming the old, and conveying new privileges to the college. No change, however, was made by it in the requiſites for admiſſion. Various other acts of parliament, of a ſtill later date, relating to the college, are to be found in our ſtatute books, but all of them are ſilent reſpecting the admiſſion of members. Nor does there occur any new article upon this head, in the charters granted to the college by James I. and Charles II. We have therefore the fulleſt evidence, that the only qualifications for admiſſion into that body required by the charter of Henry VIII. were learning and good character, and that the various parliaments which confirmed that charter, and the different ſovereigns who granted others, all concurred in regarding thoſe qualifications as ſufficient. The college, indeed, for many years after their incorporation, did not demand any other. Not to accumulate proofs of this point, we ſhall only mention, firſt, that it appears from Seymour, in his Survey of London, that in 1575, fifty-ſeven years after the grant of the charter, the college conſiſted chiefly of perſons who had graduated abroad: ſecondly, that one of the ancient ſtatutes of the college expreſsly relates to the admiſſion of foreign graduates: the ſtatute is, "Quoniam multi huc confluunt, &c. idcirco

"ſtatuimus

" ſtatuimus, ut, quicunque vel in *collegii ſocietatem*,
" vel in *candidatorum* ordinem, vel in permiſſorum
" numerum admittetur, ſi doctoratus gradum *apud*
" *exteros* ſuſceperit, is, admiſſionis tempore, duplo
" plus ſolvat, &c. quam illi ſolvere ſolent, qui *in*
" *noſtris academiis* doctores creantur:" and laſtly, that the following ſtatute reſpecting the form of examining *fellows* and *candidates* was made by the college in 1647, and was not repealed till 1736: " Si doctoris gradum in aliquâ *noſtrarum* acade-
" miarum ſuſceperit, honoris cauſâ ſedeat de-
" center examinandus, ne quid indignum pati a
" noſtrâ examinationum formâ mater academia
" videatur;" a regulation which clearly implies that foreign graduates might alſo be examined as candidates for a fellowſhip.

Should it be objected to what has here been advanced, that thoſe phyſicians who had taken degrees abroad, were obliged, before they were received into the college, to be incorporated to a degree at Oxford or Cambridge, we would in reply maintain, that this practice was not adopted, till ſome time after the foundation of the college, and that the bye-law which gave riſe to it was illegal. But how was incorporation in medicine at the Engliſh univerſities formerly obtained? On this point, Dr. Winterton furniſhes ample in-

 formation.

formation. In a letter to Dr. Foxe, prefident of the college of phyficians of London, dated fo lately as in 1635, he writes, "I have obferved "and grieved to fee, fometimes a minifter, fome- "times a ferving-man, fometimes an apothecary, "admitted to a licence to practife in phyfic, or "to be *incorporated to a degree*, without giving "any public teftimony of his learning and fkill in "the profeffion;" and in another part of the fame letter he fays, that *incorporation* was "in an "inftant obtained by a little fum of money." Such an incorporation could furely furnifh no proof of the learning or character of a candidate for admiffion into the college; and the only motive for requiring it, feems to have been a defire in the members to increafe the emoluments of the univerfities, where many of themfelves had been educated.

The act of parliament paffed in the fourteenth year of Henry VIII. ratifying the charter of the college, indeed grants *one* privilege to thofe phyficians, who had taken their degrees at Oxford or Cambridge, without any grace; namely, that of practifing medicine in any part of the kingdom, except London, without being fubject to an examination before the college. But this very grant confirms our claim, for fince a particular

privilege

privilege is ſpecified in the act, it is clear the legiſlature intended that thoſe graduates ſhould derive no other from it.

It may be ſaid, however, that although neither the crown, nor the legiſlature, has conferred any privilege upon the graduates of Oxford and Cambridge, with reſpect to admiſſion into the college, ſtill the members of the college themſelves have a right to make a diſtinction in this reſpect, in favour of thoſe graduates, by virtue of the power to frame bye-laws which their charter confers upon them. To this we anſwer, that it is an eſtabliſhed maxim in law, that the power in corporations to make bye-laws extends only to matters of regulation. They can create no new rights, nor take away any of thoſe which are conveyed by the charter of incorporation. They can change neither the object of the inſtitution, nor the nature of the ſucceſſion. Every candidate included in the meaning of a corporate grant, and poſſeſſing the qualifications required by it, of whatever nature they may be, has an undoubted right to an examination of his claim, which, if it prove ſatisfactory, muſt be admitted.

The arguments we have urged we ſhall now ſupport by the authority of men, long converſant in

in the interpretation of ancient records, of the moſt profound knowledge of the laws of our country, and above all ſuſpicion of prejudice or partiality; of men, not giving their opinions caſually or lightly, but ſolemnly delivering them in their high characters as judges, upon a ſubject they had maturely conſidered.

In the caſe of the licentiates againſt the cenſors of the college (Burrow's Reports, Vol. IV.) Lord Mansfield delivered the following opinions:

" The main end of the incorporation was to " keep up the ſucceſſion, and it was to be kept " up by the admiſſion of fellows after examina- " tion. *The power of examining*, and admitting " after examination, was not an arbitrary power, " but *a power coupled with a truſt*. They are *bound* " to admit *every perſon* whom on *examination* they " think *fit* to be admitted, within the deſcription " of the charter, and the act of parliament which " confirms it. The perſon who comes within " that deſcription has a *right* to be admitted into " the *fellowſhip*. He has a claim to ſeveral ex- " emptions, privileges and advantages attendant " upon admiſſion into the fellowſhip; and not " only the candidate himſelf, if found fit, has a " perſonal right, but the *public* has alſo *a right to*

" *his*

" *his ſervice*, and that not only as a phyſician, but
" as *a cenſor*, as *an elect*, as *an officer* in the offices,
" to which on admiſſion he will become eligible."

" The charter and ſtatute have left every thing
" at large to the college, no way confined or re-
" ſtrained but by the *fitneſs* of the objects."

" I think that every perſon of proper education
" and requiſite learning and ſkill, and poſſeſſed of
" all other due qualifications, is entitled to have
" a licence, and I think he ought, if he deſires it,
" to be *admitted into the college*."

" It has been ſaid, that there are many among
" the licentiates who would do honour to the
" college by their ſkill and learning, as well as
" other valuable and amiable qualities, and that
" the college themſelves, as well as every body
" elſe, are ſenſible that this is in fact true and
" undeniable. If this be ſo, how can any *bye-laws*
" which exclude the poſſibility of admitting ſuch
" perſons, ſtand with the *truſt repoſed in them of*
" *admitting all that are fit*."

In the trial of Dr. Letch, Mr. Juſtice Aſton, after quoting part of the act of parliament of the fourteenth of Henry VIII. which confirms the charter, ſaid; " This ſhews that the makers of

" the

" the act looked upon thoſe of the faculty reſiding " in London to be members of the college." He added, that if the college ſhould refuſe to examine a candidate, a mandamus would lie. It was alſo his opinion, that in grants of this kind, the conſtruction ought to be made in a liberal manner.

Mr. Juſtice Yates in the courſe of the trial of the licentiates againſt the cenſors, expreſſed himſelf thus: " A good deal has been ſaid about *long* " *uſage*. But uſage only applies when the *con-* " *ſtruction is doubtful*. Here the conſtruction is " *not doubtful*. If it were, then indeed uſage for " two hundred years might have weight."

It appears then fully eſtabliſhed by the declared object of the charter, the deſcription of perſons firſt incorporated, the uſage of the college for a conſiderable time after their incorporation, and the opinions delivered by Lord Mansfield and Mr. Juſtice Aſton, with the concurrence of the other judges who ſat with them on the bench, that the college are *bound* to examine every reſpectable phyſician who deſires to be received into their body, and, if found poſſeſſed of requiſite learning and ſkill, *that they are under both a legal and moral obligation to admit him a member of the community*. But if the right of admiſſion belongs to *every* reſpectable phyſician of competent knowledge,

ledge, *we* certainly cannot, conſiſtently either with our honour or our intereſt, tamely ſubmit to be excluded. Our opportunities of acquiring the knowledge of our profeſſion have been equal to thoſe of the beſt educated phyſicians in this kingdom. In the choice of univerſities we have been determined by the celebrity of the teachers; and wherever ſuperior means of improvement were afforded, either at home or abroad, many of us have availed ourſelves of them. If our talents therefore be not inferior, the proportion of perſons of conſiderable medical learning and ſkill among us, muſt be equal to that which exiſts in any other body of phyſicians. We appeal then to the candour and juſtice of the college, whether, if we even poſſeſſed no *legal* title to what we claim, when our number, education, acquirements, and conduct are conſidered, it be not reaſonable that we ſhould participate in the diſtinctions and advantages of an inſtitution, eſtabliſhed by the legiſlature for *the public good, and the advancement of our profeſſion.*

The college cannot feel more ſtrongly than we do the neceſſity of being cautious with reſpect to the members they admit, or be more anxious that unimpeached morals and competent learning ſhould be the teſts of eligibility. Nor ſhould we object to any other regulations that might ſecure the utility and dignity of the inſtitution, provided they

they were impartially extended to every candidate before, and to every member after admiſſion. But we cannot reſt ſatisfied with the preſent mode of introducing licentiates through favour; becauſe it implies, on our part, a defect of right, and inferiority of qualification; becauſe it is precarious, and ſubjects many of our body to be contemptuouſly paſſed by, and conſequently to be depreciated in their characters, and wounded in their feelings; becauſe it encourages ſervility towards the college, and competition and animoſity among ourſelves; and finally, becauſe it expoſes us, even after admiſſion into the community, to be conſidered, by ſome at leaſt, as intruders, who owe to the bounty of patronage, what ought to be the reward of merit.

At this period, when ignorant and unprincipled empirics ſo greatly infeſt the capital, and when, perhaps, the ſevere meaſures once exerciſed, with reſpect to ſuch men, are no longer practicable, does it not become the eſpecial duty of the college to draw the ſtrongeſt poſſible line of diſtinction between the upright and ſkilful phyſician, whoſe intereſt the legiſlature deſigned to promote, and the daring impoſtor it meant to reſtrain and to puniſh?

This application ariſes from no haſty project, or reſtleſs ſpirit of innovation. It is meant to advance a claim, which, we are well warranted to believe,

believe, is founded both in law and in equity, a claim repeatedly urged by our predeceſſors, who, we are convinced, only failed in their attempts to eſtabliſh it from the injudicious meaſures they purſued.

We conclude this addreſs, by acquainting you, that ſeveral of our number, againſt whom no objection can be made in reſpect of morals or conduct, are deſirous to ſubmit to your deciſion, their claim, as men of learning and ſkill in their profeſſion, to be members of the college; and by requeſting to know, whether, upon application being made by any ſuch perſon for an examination, previouſly to his being a candidate for a fellowſhip, you will admit him to the ſame trials, which the graduates from Oxford and Cambridge in like caſes undergo; and whether, if his learning, and ſkill, and character be approved, you will receive him into the college, upon the ſame terms, and in the ſame manner, as if he had graduated at either of thoſe univerſities.

John Cooke.
W. C. Wells.
Chriſtopher Stanger.
Edward Fryer.
Alexander Crichton.
James Sims.
John Aikin.
Samuel Ferris.
Sayer Walker.
William Woodville.
John Relph.
John Hemming.
Lawrence Nihell.
William Hamilton.

To this addreſs the college gave no anſwer. The licentiates finding that nothing could be obtained from the equity of the corporation, determined to recover their privileges, if poſſible, by legal redreſs.

The opinions of Mr. Law, Mr. Chambre, and Mr. Chriſtian, were taken: Whether a licentiate had a legal right to examination for admiſſion into the fellowſhip? They all agreed that he had a legal right. It was then unanimouſly determined, that Dr. Stanger ſhould apply to be examined for admiſſion into the fellowſhip, under the direction of the above-mentioned counſel. By their advice Dr. Stanger waited upon the preſident and regiſter of the college, December 26, 1795, and requeſted to be informed, if there were any bye-laws, regulating the mode of application for examination, ſubſequent to thoſe publiſhed in 1765. They both declined giving any information on the ſubject. Dr. Stanger waited on the preſident, December 28, to deſire that he might be examined at the enſuing comitia minora, for admiſſion into the order of candidates, and ſubſequently, into that of fellows. The preſident obſerved, that the claimant was not eligible; but informed him when the comitia would be held, and Dr. Stanger declared his intention of renewing his application there. Dr. Stanger immediately

diately waited on the fellows, and left a card at each of their houſes purſuant to the uſage, requeſting their approbation of his being examined for admiſſion into the claſs of candidates. On the firſt of January, 1796, Dr. Stanger attended at the comitia minora; applied to be examined, and was told, by the preſident at the board, that his requeſt could not be complied with. January 26, Dr. Stanger made an affidavit in the Court of King's Bench, that the college had refuſed to admit him to examination. January 27, Mr. Chambre moved in the Court of King's Bench for a rule upon the preſident and fellows of the college, for them to ſhew cauſe "why they would "not admit Dr. Stanger to examination, to be "admitted into the claſs of candidates: an order "eſtabliſhed by the bye-laws of the college, "through which thoſe are to paſs who are admitted into the corporation, and which examination is confined by a bye-law (which Mr. "Chambre ſaid he conceived to be illegal) to the "graduates of Oxford and Cambridge." Lord Kenyon obſerved, "I remember Lord Mansfield "ſaid ſomething on this ſubject in the caſe of "Dr. Fothergill." Mr. Chambre replied, "Dr. "Fothergill founded his claim to admiſſion under "the licence, which claim was not admitted. "Dr. Stanger is alſo a licentiate, but does not "claim under that title, but under the general

"right

" right to be admitted." Mr. Juſtice Lawrence obſerved, " that the right was not confined to the " graduates of Oxford and Cambridge, but ex- " tended to licentiates of a certain ſtanding." Mr. Chambre replied, " not extended as a matter " of right, but ſpeciali gratia, as a matter of fa- " vour." The rule was then granted. February 3, Mr. Warren moved in the King's Bench, that the rule ſhould be enlarged to the fourth day of the next term, which was granted. It was ordered at the ſame time, that all affidavits to ſhew cauſe, ſhould be filed a week before the term. Sir George Baker, preſident of the college, and Mr. Roberts, attorney for that corporation, ſwore to ſeparate affidavits on the 4th of April *. On the 23d of April the counſel for the college were heard as follows.

* As the material facts and ſtatements in the affidavits of both parties are included in the different ſpeeches of the counſel, they are omitted here.

THE

THE KING,

VERSUS

THE PRESIDENT AND COLLEGE OF PHYSICIANS.

COPY from Mr. Gurney's short-hand Notes of the Argument in the Court of King's Bench, April 23, 1796.

MR. ERSKINE,

" I AM to ſhew your Lordſhip cauſe againſt this rule. I cannot be unmindful of the indulgence of the court, and I have endeavoured as much as I am able, and I hope with ſucceſs, to bring this matter within a narrower compaſs than perhaps I ſhould have been able to accompliſh if I had gone on at the time when I was firſt called upon *.

not

" It may be neceſſary for your Lordſhip particularly to attend to the wording of this rule. It is a rule to ſhew cauſe why a mandamus ſhould

* The 16th of April was the day appointed for ſhewing cauſe, but the counſel had not an opportunity of being heard on the ſubject before the 23d.

not iſſue, directed to the College of Phyſicians, to admit Chriſtopher Stanger, Doctor of Phyſic, not to examination generally, but to examination for admiſſion into the claſs or order of candidates * for election into the ſociety or fellowſhip of the ſaid college.

" Your Lordſhip therefore obſerves, that this rule does not call upon the court to iſſue a mandamus generally, that this gentleman may be examined at once, and in conſequence of that examination, may, if found fit, become a member of this learned body; but building his application upon the recognition of certain notorious bye-laws of this college, of having an order of candidates previous to admiſſion, he deſires that a mandamus may iſſue to examine him for admiſſion into the claſs or order of candidates for election into the ſociety or fellowſhip of the ſaid college.

" 1783,

" This application of Doctor Stanger is founded upon his affidavit, which ſtates, that " he ſtudied " the art of phyſic at Edinburgh, and other " places, for ſeveral years; that he had a degree " of Doctor of Phyſic conferred upon him in

* The ſituation of a candidate is a probationary ſtate, of a year's duration, previous to election into the fellowſhip, which the licentiates allow to be a reaſonable regulation.

" 1783, by the Univerſity of Edinburgh, and " that he went abroad to obtain further im- " provement in the art and practice of phyſic, " in the univerſities and other places of ſtudy, " in France, Italy, and Germany, where he con- " tinued for many years." Here Doctor Stanger does not wholly rely upon his ability and knowledge, but he relies alſo upon the education under which that ability has been acquired. If ability alone without education, (and it may exiſt perhaps without any education,) under bodies inſtituted for the purpoſes of learning were ſufficient, it would be quite unneceſſary for the Doctor to have held forth theſe things in his affidavit; for he ſtates not merely his degree from the Univerſity at Edinburgh, but his ſtudies at various other places.

" Doctor Stanger then ſtates, which is a very important feature in this cauſe, that he is a licentiate of this college, and was admitted a licentiate in the year 1789, by the College of Phyſicians, againſt which he moves. He further goes on to ſtate, that being deſirous to become a member or fellow of the college, he applied firſt, perſonally, to Sir George Baker, the preſident; but he obſerved that he was not qualified to be a candidate for the college, becauſe he had not taken his doctor's degree at either of the two

univerſities of Oxford or Cambridge; as in fact he has not. Then he requeſted to be informed at what time the comitia minora would ſit, in order that he might have an opportunity of making his claim there. He ſtates that under a bye-law of the college, he applied perſonally to every member of the college for his approbation. Then he ſets forth in his affidavit that he waited upon the college regularly aſſembled, and that he was informed he could not be admitted; and then he ſets forth that he believes the reaſon why he was not admitted, in conformity with what he was informed by Sir George Baker, was in conſequence of a bye-law of the college, ſet forth in words, and to the effect following, as he ſtates it: "Nemo in candidatorum ordinem admittatur "niſi qui in omnia Britannorum jura natus ſit, et "niſi qui in academiâ vel Oxonienſi vel Can-"tabrigienſi Medicinæ Doctor creatus fuerit, "idque poſtquam omnia in ſtatutis utriuſvis "academiæ preſcripta compleverit, ſine diſpen-"ſatione vel gratiâ inſolitâ."

"Now he is not quite correct in this bye-law, but it will be ſeen what it is expreſsly in Sir George Baker's affidavit; for this firſt clauſe, "Nemo in candidatorum ordinem admittatur "niſi qui in omnia Britanorum jura natus ſit:" is no longer part of the bye-law of the college.

Subſequently

Subſequently to the time when the caſe of Dr. Fothergill was before the court, theſe ſtatutes were re-conſidered, in ſome reſpects amended, and that clauſe in particular has been left out.

" I now refer your Lordſhip to the affidavit of Sir George Baker, who ſets forth the ſtatute under which this gentleman's claim to examination is reſiſted. He ſets it forth in theſe words, he ſays " that by a ſtatute or bye-law of the ſaid " college, now and at the ſeveral times aforeſaid " in full force and effect, it is provided, that no " perſon ſhall be admitted into the order of candidates in the ſaid college or commonalty, " unleſs he be created a Doctor of Phyſic in the " univerſity of Oxford or Cambridge, after having " performed all things required by the ſaid univerſity without diſpenſation, or having obtained " ſuch degree in the Univerſity of Dublin, he " produces letters teſtimonial, not only of his " having performed all the exerciſes required in " that univerſity without diſpenſation, but alſo of " his incorporation into one of the univerſities " of Oxford or Cambridge."

" Sir George Baker alſo ſwears, that Doctor Stanger, the gentleman applying to the Court, " in obedience to a ſtatute of the ſaid college " on that behalf, did, in the preſence of this

 " deponent,

" deponent, previouſly to his being admitted a " licentiate, give his faith, or promiſe, that he " would obſerve the ſtatutes of the ſaid college, " or readily pay the fines impoſed on him for his " diſobedience thereof*, and that he would in " the practice of phyſic do all things in his " power to promote the honour of the college " and the benefit of the public." And he ſtates alſo, that when he was admitted a licentiate, he was aſked what he was a candidate for, whether a candidate to be admitted a fellow of the college, or a candidate to be a licentiate only; " Doctor Chriſtopher Stanger appeared at the " board, and being aſked by this deponent what " he deſired of the preſident and cenſors, he an- " ſwered, to be examined as a licentiate, and he " was examined accordingly; and that being " further aſked, whether he deſired any thing " more, he anſwered in the negative †."

" The

* The licentiates allow that they agreed to ſubmit to all legal bye-laws, or pay the fines. But they aſſert, that there is no bye-law which prohibits them from applying for admiſſion into the college: that ſuch a bye-law, if it really exiſted, would be illegal, and conſequently not obligatory; and that if actually exiſting and legal, they only render themſelves liable to the mulct by breaking it. A fine was never demanded of Doctor Fothergill, or Doctor Stanger, and the other licentiates who have endeavoured to eſtabliſh what they conſidered as their legal right.

† When Doctor Stanger applied for a licence, he had not examined

" The queſtion, therefore, as it ſtrikes me upon this affidavit, is this: Whether Doctor Stanger who applies for examination, has a right, notwithſtanding this bye-law of the college, which diſqualifies him for that examination, to the mandamus which he prays; and he can have that mandamus but in two characters, either as one of the public, having no previous connection with this learned body at all, but having ſtudied phyſic, and having a degree of Doctor of Phyſic, he ſhould perhaps have applied not merely to be a licentiate in the firſt inſtance, but have applied at once, without having paſſed through the order of licentiate at all, to be examined not merely as he requeſted originally to be a licentiate, but have requeſted an examination to be at once a fellow of the college: or not claiming as a ſtranger, he means to advance one ſtep further, and to build his application upon the character that he now holds as a licentiate, under the admiſſion of the College of Phyſicians in the year 1789; whether that advances his claim, or whether, on the contrary, it is not an abſolute eſtopel to his claim, even if it could have exiſted in his ordinary capacity of a ſubject of this realm *.

" Perhaps

examined the charter and act of Parliament, and the other evidence which convinced him that he had a legal right to be examined for the fellowſhip.

* The licentiates, founding their claim entirely upon the charter

" Perhaps if we, who adviſe the college, had been diſpoſed, we ſhould have ſhewn no cauſe at all againſt this rule; we might have ſaid, that the act of Parliament which confirms the charter of the College of Phyſicians, is a private act; that they have not diſcloſed at all the conſtitution of this corporation by their affidavit; that the charter was not therefore before the court, and there is no foundation in conſequence for your Lordſhip to iſſue the mandamus prayed; but we thought it more for the intereſt of the college, and more for their honour, more eſpecially as the nature of their inſtitution is perfectly well known to the court, becauſe it is already upon the records of the court, in conſequence of former proceedings here; we thought it was better for them to file the affidavits, which they have filed, upon which we conceive that they muſt clearly be diſcharged from this rule.

" We have ſet forth in our affidavit as much of this charter as is neceſſary for the conſideration of the court. Your Lordſhip will find a copy of

charter, and act of Parliament confirming it, only ſtate the licence as an evidence of their fitneſs to be examined, at a period ſubſequent to its being obtained, for admiſſion into an inſtitution where learning, ſkill, and probity, are the only legal requiſites; which requiſites the licence atteſts they poſſeſſed when it was granted.

the

the whole of it, if neceſſary, in the fifth volume of Sir James Burrow's Reports, page 2745, which compared with the charter, left with us, appears to be correct. The part neceſſary for your Lordſhip's conſideration will be, firſt the original act of incorporation; it is in theſe words: "Memoratis doctoribus Johanni Cham-" ber, Thomæ Linacre, Fernando de Victoria, " medicis noſtris, Nicholai Halſewell, Johanni " Franciſco, et Roberto Yaxley medicis, con-" ceſſimus quod ipſi omneſque homines ejuſdem " facultatis." Your Lordſhip will attend to theſe words: "De et in civitate prædicta ſint in re et " nomine unum corpus et communitas perpetua " ſive collegium perpetuum."

"Your Lordſhip ſees that theſe ſix perſons are incorporated, and it ſays, that they "omneſque " homines ejuſdem facultatis;" and then, when it comes to give them the power of making ordinances and bye-laws, the ſame words are again introduced: "Et quod prædictus præſidens " collegium ſive communitas et eorum ſucceſſores " congregationes licitas et honeſtas de ſeipſis ac " ſtatuta et ordinationes pro ſalubri gubernatione " ſuperviſu et correctione collegii ſeu commu-" nitatis prædictæ et omnium hominum eandem facultatem in dicta civitate."

" Now I would not have recourſe to any argument where things have been eſtabliſhed in judgment, where a conſtruction has already been put upon this charter by the ſolemn judgment of this court; I ſhall certainly not think that that judgment is likely to be at all altered by any thing your Lordſhip will hear to-day at the bar, nor to be advanced by any argument of mine in ſupport of it, and therefore I will refer your Lordſhip to Sir James Burrow, for the conſtruction which the court put upon this moſt material part of the charter, which your Lordſhip will find to be this: That when it incorporated thoſe ſix perſons, et omnes homines ejuſdem facultatis, it did not incorporate every man who was a practiſer of phyſic; but on the contrary it was plain, from the ſubſequent part of the charter, that there were to be perſons whom the college ſhould admit to the practice of phyſic who were not members of the corporation.

" In the fourth volume of Sir James Burrow, page 2196, Lord Mansfield ſays, " It appears " from the charter and the act of parliament, " that the charter had an idea of perſons who " might practiſe phyſic in London, and yet not " be fellows of the college. The preſident was " to overlook not only the college, but alſo " *omnes homines ejuſdem facultatis*; ſo when the

" college

" college or corporation were to make bye-
" laws, theſe bye-laws were to relate not only to
" the fellows, but to all others practiſing phyſic
" within London, or ſeven miles of it. The
" reſtraint from practiſing phyſic is thus ex-
" preſſed: 'Niſi ad hoc admiſſus ſit, by letters
" teſtimonial under their common ſeal.' Now
" what does this 'ad hoc' mean?—It muſt
" mean, 'ad exercendum facultatem medicinæ
" admiſſus ſit,' and this is agreeable to the words
" uſed in 3 Henry VIII, cap. 11, concerning
" admiſſions by the Biſhop of London, and Dean
" of St. Pauls. The ſuperviſal of the cenſors is
" expreſſed to include not only the phyſicians
" of London, but omnes etiam qui per ſeptem
" milliaria in circuitu ejuſdem medicinam exer-
" cent. The ſame obſervation holds as to pun-
" iſhments. This muſt regard thoſe who had a
" right to practiſe in London, and within ſeven
" miles of it, and were not fellows of the college.
" Theſe obſervations convince me that the char-
" ter had an idea, 'that ſome perſons might
" practiſe by licenſe under their ſeal, who were
" not fellows of the college *."

" Your

* This opinion, as it was qualified by that great judge, undoubtedly cannot be conteſted. But becauſe Lord Mansfield admitted the reaſonableneſs of granting licences to partial practiſers, and venders of empirical medicines, is it to be inferred, that

" Your Lordſhip knows, that in the caſe of Doctor Aſkew, and Doctor Fothergill, it was contended that there was no ſuch thing as a licentiate, as diſconnected with the fellowſhip of the college, but that the moment a man became a licentiate, in conſequence of letters teſtimonial, and the diploma given by the College of Phyſicians, that he was at once a fellow of the college *, that the charter meant to incorporate all the phyſicians who have the regular degree of doctors, and therefore that the moment the College of Phyſicians had called this gentleman to be a licentate, he had a right at once not to be admitted, but to be conſidered as a fellow of the College of Phyſicians; that your Lordſhip ſees is over-ruled, ſo that there are two claſſes; there are the licentiates, and there are the fellows of the college.

" I ſhall not argue before the court concerning the right of the college to make bye-laws, not only

that he meant alſo, that phyſicians who had received the beſt educations, and who would do honour the college, or any other ſociety, by their ſkill and learning, were not entitled to incorporation? The reverſe is manifeſt.

* It was from perſiſting in this erroneous ground of claim, during the time that Lord Mansfield preſided in the Court of King's Bench, that the licentiates, in all probability, are not now fellows.

only becauſe it is incident to every corporation, but becauſe in the caſe of this corporation it is expreſsly laid down by this court, in page 2196, in the fourth volume of Burrow:—" In Doctor " Letch's caſe, the reaſons for his rejection being " called for, the anſwer was, ' that they judged " him to be unfit,' and as the legiſlature have " veſted the judgment in the comitia majora, " and there was no pretence, or ground to pre- " tend, that they had acted corruptly, arbitrarily, " or capriciouſly, that anſwer was eſteemed a " ſufficient one. And they have power, not only " by their charter, but by the law of the land, to " make fit and reaſonable bye-laws." There is another judgment of the court which indeed I might have aſſumed to be the law, independantly of that judgment.

" My Lord Mansfield then goes on to ſtate what I have already mentioned to the court, with regard to there being a diſtinct order of licentiates from the fellows of the college. It is alſo laid down by the court, that " the judgment " and direction of determining upon this ſkill, " ability, and ſufficiency, to exerciſe and prac- " tiſe this profeſſion, is truſted to the College " of Phyſicians; and this court will not take " from them nor interrupt them in the due

" and

" and proper exerciſe of it;" that is in page 2188 *.

" It is very much relied upon in publications connected with this controverſy †, that Lord Mansfield ſays in the page following, 2189, " If " they ſhould refuſe to examine the candidate at " all, the court would oblige them to do it." If they refuſe to examine the candidate who has that criterion of fitneſs, which they by their bye-law had made a proper criterion ‡, and they were then to refuſe an examination, no doubt the court would compel them to it. But the queſtion is whether the court would put this conſtruction upon the charter of the College of Phyſicians, that they muſt examine every man who offers himſelf to examination, whatever may have been his rank in ſociety, whatever may have been his mode of education, whatever may be the probability of his being a man fit to undergo that

* This poſition is indiſputable; but is it to be inferred from thence, that they have alſo a right of confining the education of thoſe, who might claim the public honours of the medical profeſſion in the metropolis of Great Britain, to the moſt inconſiderable medical ſchools in Europe?

† Alluding to the able work of Dr. Ferris, in vindication of the rights of the licentiates.

‡ Lord Mansfield repeatedly aſſerted, that ſkill, learning, and character, were the only requiſite criteria of fitneſs.

examination

examination with effect, whatever might be the conſequence to the intereſt of learning, and the advantage of the ſcience of medicine, that ſuch a perſon ſhould be a member of the College of Phyſicians? It is to be contended to-day, that a perſon has that right, for I will ſhew that they can contend nothing ſhort of that propoſition.

" Do they mean to ſay that the college may not make bye-laws reſpecting, for inſtance, the times when they will examine? May they not make bye-laws with regard, generally, to the ſort of perſons that they will examine, in conſidering who is fit to be examined, which it is admitted, by my Lord Mansfield, belongs to them? Have they not a right to lay down certain criteria of fitneſs, independently of, and precedent to the particular examination of the individual? Is it meant to be ſaid, that a perſon who may have acquired learning, and we all know that there are perſons who acquire learning, and great learning too, without having gone through any viſible courſe of education? Is it to be contended, that the college, the moment they admit a fitneſs for the practice of phyſic, has given a perſon a right to the higher ſtation of coming within the college to judge of the qualifications of others, which it was admitted by the Court of King's Bench, is a diſtinct claſs by the charter? Is it to be contended,

that

that the college are bound to ſit and take the examination of every perſon, no matter whether he has had any viſible education or not, no matter from his rank in life, whether, if he had learning, it is fitting to admit him to that ſituation, or are they not allowed to lay down ſome general criteria of fitneſs*? I apprehend there can be but one anſwer given to that queſtion. They can; and the Court of King's Bench has ſaid ſo.

"Then the queſtion before the court is now reduced to this: if they have a right, as from the nature of their inſtitution they muſt have, to make general bye-laws to prevent the admiſſion to examination, and to the order of candidates of perſons by no means fit to become members of their body, is the bye-law, which in this inſtance they have made, conſiſtent with their charter? That is the queſtion. Whether this be a reaſonable exerciſe of their diſcretion, whether this bye-law be reaſonable and be conſiſtent, of courſe, as being reaſonable with the letter of the charter, with the act of parliament confirming it, with the ſpirit of the inſtitution,

* The licentiates do not contend that the college is bound to examine every man who offers himſelf. They only inſiſt that the college is bound to examine every phyſician of good character, whoſe education affords a reaſonable preſumption that he can give ſuch teſts of learning and ſkill as the charter requires, and ſuch as have been thought ſufficient from the origin of the inſtitution.

inſtitution, and with all the authorities upon the ſubject?

" I underſtand that it is to be ſtrongly preſſed upon the court, that here is an abſolute unqualified excluſion of perſons, who may be poſſeſſed of the higheſt order of qualifications: that it is an excluſion of perſons, who not only may be poſſeſſed of great talents, but who have received educations in public ſeminaries of learning, where there are, perhaps, excellent means of advancing in this and in every other ſcience; that there is an abſolute excluſion of all thoſe perſons, unleſs they have ſtudied and taken their degrees in one of the two Engliſh univerſities.

" Now that will be found not to be ſo, for though there is indeed this bye-law, which is ſtated in Sir George Baker's affidavit, and which I muſt ſupport, and which I am bound to ſhew is reaſonable; and therefore this gentleman could not, conſiſtently with that bye-law, have the examination which he prays a mandamus to have. Yet, ſubſequently to the time when Dr. Fothergill's caſe was before the court, there was a reviſion of the ſtatutes of this learned body, who took the very beſt and the moſt eminent advice which this kingdom could furniſh them; *ſome of theſe perſons*

ſons I ſhall certainly not name to day *; but I can ſtate, that they conſulted my Lord Camden, Mr. Yorke, Mr. Dunning, and they, under the auſpices of thoſe honourable and learned perſons, under the perfect knowledge of Lord Mansfield †, who knew thoſe ſtatutes as well as I do at preſent, who have read them from my brief; they made two bye-laws."

Lord *Kenyon*. " In what year."

Mr. *Erſkine*. " In the year 1767—in which there is a power given for any fellow at the ordinary comitia majora, after Michaelmas, to propoſe a licentiate of ſeven years ſtanding, who is thirty-ſix years of age, for examination, who, if approved of by the majority of the fellows then preſent, is to be examined at the three next comitias, and then, if approved, to be admitted a candidate, though he has not ſtudied at either of the Engliſh univerſities.

" Your

* This could only allude to ſome judge then on the bench.

† The author of theſe notes can aſſert, from undoubted authority, that Lord Mansfield repeatedly declared that the two bye-laws made under the auſpices of the honourable perſons named and alluded to, were by no means adequate to his ideas when he ſaid the bye-laws required regulation, and recommended to the college to take good advice. See Burrow's Reports, Vol. IV. p. 2199.

" Your Lordſhip will obſerve, that Dr. Stanger could not have this mandamus under this bye-law, and therefore I admit, I muſt ſupport the bye-law Sir George Baker ſets forth in his affidavit, becauſe no perſon, except he be of one univerſity or the other, can poſſibly be examined, but upon the propoſition of one of the fellows, that he ſhould be examined; and upon the propoſition of one of the fellows, if he be a licentiate of ſeven years ſtanding, and thirty-ſix years of age, *though he has not that qualification, which is required in the bye-law ſet forth in Sir George Baker's affidavit, yet this door is open to him.* And can it be ſuppoſed, or will any gentleman ſtand up and ſay, it is conſiſtent with probability, that a man of eminent learning and high qualifications, who, notwithſtanding he has not had that ſpecies of education which I will ſhew from the time of the charter to this day, has been conſtantly adopted; yet, if he be a perſon who has undoubtedly qualifications for it, is it to be ſuppoſed that there is not one fellow of the whole college who would propoſe ſuch a perſon * ? Some of the moſt learned and eminent men of Great Britain have been, under ſimilar circumſtances, as I will ſhew your Lordſhip,

* Admit there be, what would it avail the perſon propoſed if the college will not proceed to a ballot, which they have refuſed to do in the caſes of Dr. Sims and Dr. Wells?

Lordſhip, adopted and approved of by the college.

" In the bye-law, which I have juſt ſtated, any one fellow may propoſe the examination of an individual, though ſuch individual could not, according to the ordinary bye-laws of the college, be admitted to examination; but to leave the door open, and to prevent the obſervations that were made in the caſe of Dr. Fothergill, and under the auſpices of the moſt learned men of the profeſſion, this bye-law was made; therefore, I think, I have gone the length of ſhewing, that the preſent bye-laws can be attended with no poſſible inconvenience. The court will recollect, that at this time, and for many years paſt, the character of a phyſician has been different in England from that of any other nation under heaven. Your Lordſhip perfectly well knows, that in moſt other countries, the practice of phyſic is in a very low ſtate to what it is in this country; every man knows, that for centuries paſt, the phyſicians of this country have not only been eminently uſeful to mankind by the adminiſtration of that ſcience, which is ſo material for human life and exiſtence, but that they have been the moſt eminently learned perſons that have conferred dignity upon ſociety, vaſtly beyond the bounds of their own particular profeſſion; and that has principally

ariſen

riſen from the care the college has taken in framing their bye-laws * from the beginning of heir inſtitution, and your Lordſhips will find, hat, though thoſe ancient bye-laws were repealed in 1765, that a new body of bye-laws were made."

Lord *Kenyon*. "They were made, I believe, in 1767."

Mr. *Erſkine*. "They were begun in 1765—Lord Mansfield is made to ſay in the report, that even the great Boerhaave might have been excluded from being a fellow of the college; on hat account, that bye-law which Dr. Stanger ſuppoſed to be now a part of the bye-laws, is no longer a bye-law of the college, that has properly been expunged, in order to ſatisfy every thing hat fell from the court upon that occaſion †, and particularly

* The moſt diſtinguiſhed phyſicians that have conferred dignity upon their profeſſion and their country, have been ſtigmatiſed, and either totally excluded the college by their bye-laws, or obliged to purchaſe additional degrees before admiſſion, or induced to accept as a boon, what no merits, without a degree om Oxford or Cambridge, could entitle them to.

† When Lord Mansfield obſerved that the bye-laws were ſo narrow, as not even to admit a Boerhaave, he alluded to the greatneſs of the phyſician, not to the adventitious circumſtance his birth. The annulling that bye-law which expreſsly excluded

particularly becauſe ſome of the original members of the college were foreigners. Linacre was a foreigner, but though he might have fallen within that branch of the bye-laws which was repealed, yet he was a member of the univerſity; and Eraſmus, when ſpeaking of the barbarous latinity of England in thoſe days, expreſsly by name excepts Linacre, who was the friend of Eraſmus; there is a lecturer in phyſic at Merton College, founded by Linacre, and, I believe, a ſimilar inſtitution in Cambridge alſo.

" What I will next ſhew to your Lordſhip, and I ſhall not delay the court long, is this: that thoſe bye-laws which were made in 1765, which were afterwards relaxed a little in the manner I have ſtated, ſubſequently to that period, and ſubſequently to all the deciſions of the court in the caſe of Dr. Fothergill, that theſe are built upon the moſt ancient ſtatutes and bye-laws of the college; and ſurely, if there be nothing upon the face of this charter, or that can be collected from the conſtruction that ought to be given to it, or from the ſtatute with which it ſhould be conſtrued; if there is nothing in theſe bye-laws themſelves repugnant to the letter of the charter, I have a right to ſay, the court always looks with

excluded foreigners, whilſt they retained others which excluded both foreigners and natives, unleſs graduates of Oxford and Cambridge, was a mere ſubterfuge.

great

great reſpect to a venerable and ancient uſage *. How can a court look with more ſatisfaction in giving judgment upon the meaning and conſtruction of any inſtitution, than by ſeeing how their predeceſſors have conſidered it, and how it has been adopted and conſidered by all the nation, from its firſt inſtitution to this very time?

" I find a ſtatute of the college ſo long ago as the year 1606, which, after a preamble, ſtating, that obſcure perſons had paſſed over to foreign univerſities, where they arrived quicker at their degrees than more learned perſons at home, it proceeds to enact, that they muſt have been ſeven years Maſters of Arts, either in our univerſities, or partly in our univerſity, and partly in foreign univerſities; and here your Lordſhip ſees that this learned body at this time conceived, that under their bye-laws, they had a right to adopt and to direct a ſpecific mode of education, and that unleſs that ſpecific mode of education had been followed, there ſhould be no examination at all, no admiſſion to the order of candidates; and all the bye-laws of the college exclude from the examination, and from the order of candidates, perſons

* The aſſumption of the graduates of Oxford and Cambridge has neither ancient nor uninterrupted uſage to ſanction it, for except when additional degrees could be cheaply purchaſed at theſe univerſities, it was never ſubmitted to.

ſons who do not ſtand in the ſituation that is pointed out by the different bye-laws made by the college *.

" In 1637, we find a ſimilar propoſition made by the preſident."

Lord *Kenyon*. " Are theſe bye-laws divided into chapters and ſections?"

Mr. *Erſkine*. " Yes, in a book of annals—this is in the month of April, 1637. Mr. Roberts, the ſolicitor for the college, ſwears all theſe annals that I am now ſpeaking of were repealed. In the year 1765 a new body of bye-laws was made, and then that body of bye-laws, ſo made in 1765, was relaxed again, and they now ſtand upon the footing of Sir George Baker's affidavit, with the two diſpenſations which I mentioned before; they muſt have gone through all their exerciſes and diſpenſations in the univerſity, without grace, by this bye-law in the year 1637 †. And in the year

* It has never been denied that the college might require teſts of ſufficient education; but contended only that theſe teſts ought to be admitted *from every* reſpectable ſchool of phyſic, either at home or abroad, where there are adequate opportunities of medical improvement.

† Six years after the aſſerted enactment of this bye-law, Sir John Micklethwaite was admitted a fellow of the college, without having previouſly ſtudied, or having been even incorporated into either of the Engliſh univerſities.

year 1674, we find a letter, which, I think, will be material for the attention of the court, it is directed to the college of phyſicians, from Charles II. I do not mean to contend, that the king can, in camera, or with the aſſiſtance of any council, except the council I am now addreſſing, the king having undoubtedly delegated all his authority to the judges, I do not mean to contend, that the king can by his letter, preſcribe to the college of phyſicians any thing contrary to their charter, but if there be nothing inconſiſtent with their charter, when directed by the king as a public inſtrument; to be entered upon the regiſters of the college, and accordingly entered and acquieſced under; as a command coming from the king in this public manner, certainly it deſerves the attention and conſideration of the court. The letter dated the 12th of February, 1674, to the preſident and fellows of the royal college of phyſicians, directing them, "not to admit any perſon "whatever as a fellow of the college, that has "not had his education in either of the univerſi-"ties of Oxford or Cambridge, having been by "them afterwards examined and approved of "according to their ſtatutes*." And then it is ſtated, that this was acquieſced under, and entered

* "Or that is not incorporated and licenced there, having "firſt taken the oaths of allegiance and ſupremacy;" this part of the letter, which points out that its object was to keep out papiſts

ed upon the regiſters according to the king's command.

" If your Lordſhip conſiders how many perſons have an intereſt in contending for what Dr. Stanger is to day contending; when your Lordſhip recollects that ſome of the greateſt men that England ever bred, or that England ever ſaw in medicine, have been under the ſame circumſtances as Dr. Stanger; when it is known, that before the year 1765, when perſons did not ſtand qualified under this letter of the king, and under theſe ſubſequent bye-laws, which go on exactly in the ſame ſtrain up to 1765, it was, of courſe, for the college to recommend to the univerſities to give a mandate, and then they paſſed a ſort of diſpenſation to admit thoſe perſons: Sloane, Mead, Pringle, Akenſide, were ſo admitted; and it is to be known alſo, that the great Sydenham, whoſe works undoubtedly are of the higheſt authority in phyſic, was only a licentiate, not having, I take for granted, had the opportunity of being within the rules of the college, he never was a fellow of the college *.

" The

papiſts and diſaffected perſons, proves alſo, that education in the Engliſh univerſities was not required. Beſides, ſuch a requiſition would have been illegal.

* This is an argument againſt the claims of the licentiates, deduced from the exceſs of injuſtice they have hitherto ſuffered.

Becauſe

" The caſe then I lay before the court is this—I have ſtated the words of the incorporation—I have ſtated the judgment of the court concerning the true conſtruction of that charter of incorporation—that the licentiates are ſeparate from the fellows—that the fellows are to ſuperintend and to regulate all practiſing phyſicians—and that it was intended that there ſhould be practiſing phyſicians, who were not, of courſe, to be incorporated into the fellowſhip of the college. I have ſhewn, not merely that it was incident to the corporation to make bye-laws, for that the law of the land entitles me to aſſume, but I have ſhewn that that conſtruction was put upon the charter in the caſes that were before the court ſome years ago.

" I have ſhewn your Lordſhip alſo, that this can be no diſadvantage to the public—none of theſe bye-laws apply to licentiates—none of theſe bye-laws are in the way of a man's practiſing in his profeſſion—none of theſe bye-laws ſhut up from the exerciſe of a calling which is undoubtedly extremely material to the public, any man who has ability to practiſe it; becauſe, whatever may

becauſe the brighteſt ornaments of their order and of their profeſſion have been deprived of their due honours and juſt rights, without redreſs, are their ſucceſſors for ever tamely to ſubmit to the ſame hardſhips?

may be the education of a perſon, if he is fit to undergo that ſpecies of examination which has been adopted by the college in the caſe of licentiates, he may be a practiſer in London, though he has never ſeen either of the univerſities; and I will only aſk my friends, by-and-by, to explain to your Lordſhips how it is conſiſtent, with reaſon or common ſenſe, to ſay that the public can ſuffer, or this learned profeſſion be affected in its dignity or advantages, if no perſon ſhould have an opportunity to force himſelf into their college, unleſs he comes within the ſcope of their bye-laws, ſanctioned from all antiquity, and comes within the ſenſe of theſe bye-laws, although no door is ſhut againſt them at all; but that any one fellow of the college may, notwithſtanding that ſtatute, propoſe them for examination, et cætera. It is not eaſy to conceive, that a man can be entitled to ſo much favour, becauſe of his eminent qualifications, as that he can ſuperſede all the rules and proviſions of the country, and yet ſhall not be able to find one perſon within the walls of a college, conſiſting of near a hundred members*, to propoſe him, although ſuch a man would add dignity and luſtre to the college.

"It

* The reſident members are about one-fourth of this number, and very few of theſe could be prevailed upon even to propoſe a licentiate.

" It is true, that nature no wand then does put forth ſuch things as we have ſtated, in ſome of the publications of this country, men whoſe minds, I admit, require no culture, except ſuch as their own energies are capable of conducting; I admit that there are perſons who were never taught at the ſchools, that can teach the ſchools what they never knew, and extend the bounds of ſcience and knowledge. If Newton had never ſeen Trinity College, and had only had a common mathematical education, I have little doubt that he would equally have diſcovered the laws of gravitation. I know alſo, that an acquaintance with the languages of the ancient world, and a critical knowledge of books that have been compoſed by the moſt eminent perſons in the ancient world, have been moſt juſtly eſtimated by all mankind as the foundation of taſte, and ſcience, and poetry, yet Shakeſpeare, who never knew them, has ſoared out of ſight of all the reſt.

" To bring it nearer our own time, John Hunter, with the education of a common mechanic, yet by his reſearches into the univerſal economy of animal nature, not only extended the bounds of anatomy and of ſurgery, but he drew up the curtain to the contemplation of the ſtupendous works of God. It may be ſaid I am

uſing

uſing arguments againſt myſelf; not at all; the inſtitutions of mankind are made for the common occurrences of the world, and not for thoſe phenomena. Will any man ſay that, generally ſpeaking, the ſciences do not throw light upon one another? Will any man ſay that a very learned education, an acquaintance with the languages of antiquity, an acquaintance with all the branches of philoſophy and human learning, do not only enable a man more particularly to be ſkilful in this ſcience, which is ſo connected with all nature, that it does not give him that port and dignity in the world, which adds luſtre to a profeſſion that always has conferred honour upon Engliſh ſociety*.

" But it may be ſaid, what of all this! is learning no where to be acquired but in the two univerſities of England? why then do the gentlemen mean to admit that the college have a right to inſiſt upon a univerſity education? If they admit that they have a right to make bye-laws, with an antecedent criterion of fitneſs; then the queſtion comes to where I mean to confine it:

* The licentiates are fully ſenſible of the neceſſity of a learned education, and of the importance of the dead languages, and of the ſciences which may throw light on their profeſſion; and they inſiſt, that they have cultivated them, with as much ardour and ſucceſs as the fellows of the college, or any body of men in the profeſſion.

it: if they have not a right, they muſt be obliged to examine every man, and a hackney-coachman, who may buy a degree for five pounds at Edinburgh, I mean at Aberdeen; if a man has a diploma of doctor of phyſic, whether from Edinburgh, Saint Andrews, or Aberdeen, where it is admitted they are ſold cheap, that man may immediately ſay, I inſiſt upon being examined, or I will have a mandamus, and the whole time of the college of phyſicians is to be ſpent in examining every man who chooſes to force himſelf upon them for examination*.

" But it will be ſaid, no doubt, may not the ſciences be equally well taught in other univerſities? Is there a better ſchool for phyſic any where than at Edinburgh? Perhaps not; to which I anſwer, that nobody prevents the univerſity of Edinburgh from ſending into this country, and they are not very chary—there are a ſufficient number of us come undoubtedly in all arts, ſciences, and profeſſions, that the public may receive every benefit from our northern learning,

* The licentiates, as has been repeatedly ſtated, do not contend this. But is there no medium betwixt admitting men with degrees, purchaſed without previous ſtudy and examination, or with degrees obtained from two univerſities alone, where they cannot learn their profeſſion?

learning, the door of phyſic is not ſhut againſt any gentleman; let him come from Aberdeen or Glaſgow, he may practiſe phyſic. Would he be greater than Sydenham, who was only a licentiate? Is a man deprived of any one advantage becauſe he is not a member of this particular college*?

" If your Lordſhip by your judgment (which I am perſuaded you will not do) ſhould repeal the privileges, which the law of this country has ſuffered the univerſities to maintain for ages paſt, as they regard this profeſſion; why ſhould you reſpect them as they regard the other learned profeſſions? Why ſhould you reſpect them as to the church? Why ſhould you reſpect them as to the law? and they are reſpected in both†. Before

* Is it ſufficient that the door of practice is not ſhut, if the road to emolument and preferment be obſtructed? The Scotch univerſities have the privilege of conferring degrees, which, when conferred after adequate reſidence and teſts of competency, ought, by the Act of Union, to entitle their graduates to the advantages eſtabliſhed by the legiſlature, for the benefit of the profeſſion, in the united kingdoms.

† Theſe privileges in the church and law are founded on grounds totally inapplicable to phyſicians. Engliſh divinity, and Engliſh law, are peculiar to the country, and are not taught in foreign univerſities. Beſides, theſe privileges only advance, but do not give an excluſive right of promotion to the higheſt dignities either in the church or the law.

Before we paſs cenſure upon the univerſities, and hold them lightly, we ought to look at the original inſtitutions of the univerſities; it may be true, that in academies and other ſeminaries, equal learning may be acquired as in them; but if there had not been theſe endowments for learned men at the revival of letters in Europe, will any man ſay, that letters would have arrived at that ſtate which they are now, in this country?

"Another thing which deſerves great attention, is, that they are not only the ſeminaries where learning is acquired, but where the muniments of it are preſerved; and if your Lordſhip ſhould repeal all theſe privileges, I would aſk this, Who will ſtudy there? Your Lordſhip knows, that from the change in the value of money, and of property, and looking at the ſmall endowments which were made for the more ſimple ages; and when we conſider what a univerſity life is, notwithſtanding the little diſſipations that may render it more pleaſurable than formerly, who will live that ſort of life, if there is to be no privilege conferred by the degree he is to get? There is nobody will do it; and then perhaps, in another age, we may look at theſe univerſities only as venerable ruins; or perhaps, according to the ideas of modern times, we may ſee them filled with

with looms for manufacturers, or ſtables for horſes *.

" You will have a mandamus moved for next term to the Biſhop of London, to admit a man of good morals, and who is acquainted with divinity, to ordination. Your Lordſhips may prepare yourſelves for ſuch mandamuſes. I know perſons of eminent learning, of excellent accompliſhments, of great humanity, of exemplary benevolence of life, whom that moſt eminent prelate, eminent for learning, and every virtue, I ſpeak of the Biſhop of London, has refuſed, becauſe of a general rule that he and others have laid down, not to admit to ordination perſons who have not been educated at one or other of the univerſities; for the purpoſe of keeping up thoſe inſtitutions, and giving them dignity and effect; well knowing, that men would not ſhut themſelves up in thoſe places, unleſs certain privileges were conferred on thoſe that do ſo.

" Is it not ſo alſo in the law, your Lordſhips will have applications from Lincoln's Inn, from perſons

* Reſpect for old eſtabliſhments is very natural; but it would become a blind and bigotted partiality, if it led men to ſacrifice, to it, better opportunities of improvement in any profeſſion. In one ſo material to the health and lives of the community as phyſic, it would be criminal to be influenced by ſuch a motive.

ſons who have not been admitted till after five years; I do not know that I may not be diſbarred, for I was called to the bar, after three years, not having as my friend, humorouſly amuſing me yeſterday, obſerved, not having undoubtedly ſtudied at the univerſity of Cambridge*, but going there, as I had a right to do, to exerciſe a privilege, which my particular ſituation in this country by the law of the land entitled me to; I had an honorary degree, and had a right to demand my admiſſion to the bar, and I do not know whether I may not be diſbarred, unleſs I ſhould be put in the fortunate ſituation which your Lordſhip obſerved to-day, in another caſe, that the ſtatute of limitation may have run upon me.

" Will any man ſay that theſe things are attended with any inconvenience to the public? They are not at all, for in the firſt place, if the gentleman who propoſes himſelf to examination, has ſtudied at either of the Engliſh univerſities, then this does not apply; if he has not ſtudied

* Would it be reaſonable that Mr. Erſkine ſhould be interdicted the higheſt ſituations in the law, for which his ſplendid talents ſo eminently qualify him, or that the country ſhould be debarred the advantage of his powers in thoſe ſituations, becauſe he has not *ſtudied* at Oxford or Cambridge? Would it be a ſatisfactory reaſon for his excluſion, that he had the full privilege of practiſing at the bar?

ſtudied at either of the univerſities, and can find one fellow in the college, who knows any thing of him, and thinks him a fit perſon to be propoſed, then this bye-law does not ſtand in his way—The Preſident himſelf, every alternate year, has a right of offering a candidate for the reception of the college.

" Not to trouble the court with any further obſervations, I conceive that really this application is ſeeking to innovate. I have no doubt, that this gentleman, Dr. Stanger, is a learned man, and the whole matter ſeems to have been conducted with candour and liberality; there is no charge made againſt the college; it is not whiſpered that they have acted from caprice, or that there is any thing which can entitle them to ſay, that they have not acted bona fide; ſo that it is reduced to this queſtion, whether this bye-law, ſet forth in Sir George Baker's affidavit, *coupled as it is with the other two diſpenſing bye-laws** paſſed at the ſame time, is not conſiſtent with the letter and ſpirit of the charter?

Mr. *Gibbs*. " I am to trouble your Lordſhips on the ſame ſide with Mr. Erſkine, in oppoſition to this

* For the inefficiency and hardſhips, as well as the withholding of theſe bye-laws, ſee p. 131, and the following pages of this Work.

this rule which Doctor Stanger has obtained from the court, calling upon the college of phyſicians to ſhew cauſe, why he ſhould not be admitted to be examined to be received into the rank of candidate, and afterwards made a fellow of the college. It is an application that is certainly perfectly new in its form, and the queſtion therefore is—

Lord *Kenyon*. " Is the form of this rule adapted to any particular ſtatute of the college?"

Mr. *Gibbs*. " I do not know, I do not perceive any that is ſet out."

Lord *Kenyon*. " Upon what ground do you aſk for this particular thing?"

Mr. *Law*. " Prior to any of the ſtatutes ſtated to your Lordſhip, there did exiſt an arrangement in the college, which we do not object to, ſuch as divided them into licentiates."

Lord *Kenyon*. " You deſire a ſpecific thing to be done, you muſt ſhew your right to that ſpecific thing—I want to know whether from the charter or ſome bye-law, which you admit to be a legal bye-law, this ſpecific preparatory ſtep is to be taken?"

Mr. *Chambre.* " Yes, the affidavit ſtates that, ' The deponent was informed, and believes, that ' the commonalty of the ſaid college or corpora- ' tion, conſiſts of thoſe who are actually called ' and admitted as fellows of the ſaid college, and ' that by ſome or one of the bye-laws or ſtatutes ' made by the ſaid college, it is required that no ' one, except certain deſcriptions of perſons ' (which deſcriptions do not apply to this depo- ' nent) ſhall be admitted to the order of fellows ' of the ſaid college, who hath not been of the ' order or claſs of candidates of the ſaid college ' for one whole year, and that previouſly to ad- ' miſſion into the ſaid order or claſs of candidates, ' thoſe, who require to be ſo admitted, ſhall be ' examined at three different meetings of the co- ' mitia minora, or the comitia majora of the ſaid ' college, which examinations this deponent be- ' lieves are of the ſame, or nearly of the ſame nature, ' with thoſe to which this deponent hath already ' ſubmitted,' the rule applies to this ſtatement."

Lord *Kenyon.* " Does the affidavit of Sir George Baker ſtate, that there does exiſt ſuch a bye-law?"

Mr. *Chambre.* " It is not denied."

Mr. *Gibbs.* " Sir George Baker ſays nothing about that bye-law. I was ſtating to your Lord-

ſhip,

ſhip, that this is an application, to the court, to grant a mandamus to the college of phyſicians, to admit Dr. Stanger to be examined, in order that he may be afterwards admitted into the order of candidates; and having been admitted into the order of candidates, that he may be afterwards admitted, if found fit, into the order of fellows of the college, for that muſt be the ultimate object of this mandamus: if the ultimate object of it is not to put Dr. Stanger in poſſeſſion of the place of a fellow of the college, there can be no ground whatever for this application.

" Now it certainly is an application perfectly new in its form, and I believe perfectly new in its principle; and, in order to ſee upon what ground it is built, we muſt look upon the affidavits which have been made by Dr. Stanger, and thoſe which have been made in anſwer to them, but particularly at Dr. Stanger's. Dr. Stanger, ſtates to your Lordſhip, that in 1783, he took his doctor's degree at Edinburgh (I underſtand that a previous probation of three years is required at Edinburgh, but none is required at Aberdeen); that in 1789, having gone through three examinations at the comitia minora, he received a licence to practiſe; then, he ſtates, that he is a profeſſor of phyſic in Greſham College, that he is phyſician to the Foundling Hoſpital, and that he has

has applied to be admitted one of the fellows of the college, and has been refuſed. And he ſtates, that he believes he has been refuſed on account of a bye-law, the words of which are theſe, '(Nemo in candidatorum ordinem admittatur, 'niſi qui in omnia Britannorum jura natus ſit) et 'niſi qui in Academia vel Oxonienſi vel Canta-'brigienſi medicinæ doctor creatus fuerit idque 'poſtquam omnia in ſtatutis utriuſvis academiæ 'præſcripta compleverit ſine diſpenſatione vel 'gratia inſolita.' The firſt clauſe, being repealed, is no part of the bye-law—'this order or bye-'law, if any ſuch exiſts, this deponent humbly 'conceives is againſt law, and contrary to the 'intention of the charter and the acts of parlia-'ment.'

"Your Lordſhip will perceive immediately when I ſtate, that this is the whole ſubſtance of Dr. Stanger's bye-law, that his zeal to ſhew that this bye-law was unlawful, blinds his eyes to another very neceſſary ſtep for him to take, namely, to ſhew that ſuppoſing no ſuch bye-law exiſted, he had a right to be admitted a fellow of the college. The objection made in this caſe is to the legality of this bye-law; for will any man tell me that Dr. Stanger, by ſhewing that this bye-law is illegal, ſuppoſing it to be ſo, which I by no means admit, for I contend it is perfectly legal;

will

will any man contend, that by ſhewing this bye-law to be illegal, unleſs he ſhews that he had a right to be admitted if the bye-law had never paſſed, that he can entitle himſelf to this mandamus?

" Dr. Stanger's argument is this, here exiſts a ſociety of men—here is a bye-law which excludes certain perſons from being admitted into this ſociety, this bye-law is illegal; I am among the number excluded, and therefore have a right to be admitted. I cannot put the argument more ſtrongly, than that Dr. Stanger in his affidavit ſhews no title to be admitted into this ſociety, if the bye-law did not exiſt: it is true, he ſhews that he is excluded by the bye-law, and his argument is, becauſe I am excluded by the bye-law, therefore I am entitled to be admitted."

Mr. *Juſtice Lawrence*. " Does not the affidavit ſtate the conſtitution of the college; is there nothing of that ſort?"

Mr. *Gibbs*. " Not one ſyllable, and therefore I wiſh to know, to what I am to addreſs myſelf."

Mr. *Chambre*. " I conceive it is not neceſſary in this ſtage of the buſineſs; the act of parliament

ment and the charter are in the printed ſtatutes."

Mr. *Juſtice Lawrence.* "The act turns out to be a private act, of that this court cannot take notice."

Mr. *Chambre.* "In the caſe of Dr. Fothergill, the firſt mandamus which iſſued was quaſhed, becauſe the court thought that it ought to have been ſtated in the writ; another writ was applied for upon affidavit, an office copy of which affidavit I have in my hand, juſt as general as the former, not ſtating one word of the ſtatute; and if ever that objection was to be taken, ſurely that was the time to make that objection. Why are the affidavits to be ſtuffed with that which the court cannot be ignorant of, with a charter which has been ſtated in ſo many caſes?"

Lord *Kenyon.* "We cannot take notice of a private act of parliament."

Mr. *Chambre.* "Certainly not, when it comes into a regular judicial form; when your Lordſhip comes to conſider of the writ, you expect that legal information, but in applications made in the way in which we are now applying to the court, your Lordſhip takes notice of many things

which

which are not legal evidence. How is parole evidence, evidence of the contents of a charter, and yet, in ſuch applications, is not that ſtated every day?"

Lord *Kenyon*. "You always ſtate that there is a charter ſo and ſo."

Mr. *Chambre*. "We refer generally to the charter and act of parliament."

Lord *Kenyon*. "But have you here referred generally to theſe?"

Mr. *Chambre*. "Yes—but if there is any defect in our affidavit, it is ſupplied by the affidavits on the part of the defendants, which have been opened and ſtated; for their affidavits do ſtate the charter and act of parliament."

Mr. *Erſkine*. "No—they do not."

Mr. *Chambre*. "They ſtate ſufficient."

Mr. *Chriſtian*. "They have ſtated the material part of the charter in their affidavit, and then they follow that, and ſay, that this was confirmed by the act of parliament."

Mr.

Mr. *Dampier.* " It ſtates the incorporation and power of making bye-laws, and that there was an act of parliament confirming that."

Mr. *Chambre.* " In the affidavit upon which the rule was obtained, the reference is quite general. In Dr. Fothergill's caſe there was merely a general reference to the act, without ſtating one word of the contents of the act or of the charter, and this too after the writ had been quaſhed, for the very objection that the writ did not contain a ſtatement of the charter, or of the act of parliament."

Mr. *Juſtice Lawrence.* " Is it not always uſual when a perſon applies for a mandamus to an office, to ſtate his title to that office?"

Mr. *Law.* " We contend, that the excluſion contained in that bye-law is not a legal one. We ſubmit, that enough of the charter and act, which is ſtated generally to be confirmatory of the charter, is ſtated."

Lord *Kenyon.* " Does the affidavit ſay what the body conſiſts of, whether of preſident, fellows, and ſo forth?"

Mr.

Mr. *Law*. " No—It ſtates the grant—that it granted to ſix perſons by name, et omnes homines, of the ſame faculty, that they ſhould be in fact and in name one body, and perpetual commonalty, or perpetual college of phyſicians."

Mr. *Juſtice Lawrence*. " How does it appear from thence, that there is ſuch an order as an order of candidates, and that Dr. Stanger is entitled to be examined and admitted into that order."

Mr. *Law*. " It is ſtated, that there exiſts ſuch an order as candidates; which may be, and we do not deny it to be a reaſonable regulation, that perſons ſhall be ſo many years in a probationary ſtate before they ſhall be admitted as fellows."

Mr. *Chambre*. " The order of candidates does not conſiſt with the charter, but with the bye-law. We have ſtated, that it does exiſt, and that we are willing to comply with the order of the bye-law."

Lord *Kenyon*. " Surely you ought to have ſtated the conſtituent part of the corporation into which you applied to be admitted; you always ſtate in quo warrantos, the number of burgeſſes, and ſo on. There is an obſervation made on your behalf,

behalf, if the caſe had not been decided as it was, in Sir James Burrow, if all the perſons practiſing phyſic had been incorporated. In my Lord Manſfield's and Mr. Juſtice Yates's opinion, that argument could not be ſupported, the others doubted: then what kind of corporation is diſcloſed to the court?"

Mr. *Law.* "We diſcloſe all the words of the grant which conſtitute the corporation."

Lord *Kenyon.* "You diſcloſe it from Sir James Burrow's report."

Mr. *Law.* "No—from the words of the charter."

Mr. *Chriſtian.* "They ſtate in their affidavit, that the charter by Henry the VIII. granted to the ſix firſt perſons, and to all men of the ſame faculty in London, to be a body corporate; it is under that, that we make this application to the court. Their affidavit goes on and ſtates, that there is a preſident, &c. for the government of the ſaid college; then it goes on to ſtate—that all this was confirmed by an act of parliament; and the very firſt bye-law that they ſtate in their affidavit, ſtates the three claſſes of fellows, candidates, and licentiates."

Lord

Lord *Kenyon.* " The bye-law could not make a corporation."

Mr. *Erſkine.* " I expreſsly ſtated to the court, that theſe ancient bye-laws, which are only ſtated by way of evidence of uſage, are all repealed."

Mr. *Law.* " There is another in 1765, which is re-enacted, and takes notice of the order of candidates."

Lord *Kenyon.* " We muſt know preciſely what materials there are before the court to ſhew the conſtitution of this body, and the grounds upon which you aſk to be admitted into ſome ſituation in the body."

Mr. *Law.* " It is laid before the court on both ſides, the court look into it without conſidering whether it comes from one ſide or the other; we have laid the whole that we could lay before the court. The words of the grant, which I ſhall not trouble your Lordſhip by repeating—the grant to the ſix fellows incorporated by name, and all men of the ſame faculty reſiding in London, who were an inchoate corporate body, entitled to be admitted, theſe are the perſons upon whom the corporate right is conferred; and nothing material to the incorporation is ſtated in the charter.

We

We have nothing to do with the order of elects—we have nothing to do with the cenſors, but only with the capacity of perſons to be elected to become members of that corporation, and we advert to the order of candidates which ſubſiſts by bye-laws. The original bye-laws for conſtituting that order are, I ſuppoſe, loſt, but other bye-laws ſince made, refer to that as an exiſting order in the community, and we pray to be admitted into that order, recognizing the propriety and fitneſs of that order, &c.—all that is before the court, and I conceive, therefore, enough is before the court."

Lord *Kenyon*. "I do not want it to be argued on your ſide; but to ſee what the materials are upon which you ground your application."

Mr. *Law*. "I ſo underſtood your Lordſhip—and what I have ſtated is before the court."

Mr. *Gibbs*. "Then thoſe parts of the charter that are ſtated in our affidavits are before the court; it being likewiſe before the court that there are certain bye-laws pointing out that none but a certain deſcription of perſons ſhall be admitted as candidates, and that thoſe perſons when admitted, ſhall be examined at the comitia minora—I am juſt hinting how many difficulties lie

ie in the way of the gentlemen who are to argue on the other ſide from their defective information; but it being the beſt they have, we cannot expect any other—but from the preſent ſtate of information that is before the court, it does not appear to be any part of the original conſtitution that theſe examinations ſhould be had, by this or that particular body of men—it is no part of the original conſtitution, that theſe examinations ſhould be had at this comitia minora *, which are not

* This is an error of Mr. Gibbs, of which the counſel for the licentiates appear not to have been ſufficiently aware. The order of cenſors, of whom, together with the preſident, the comitia minora conſiſt, are conſtituted by the charter, and the power of examining phyſicians reſiding within the college juriſdiction, is peculiarly veſted in them. The charter, after ſtating that no one ſhall practiſe without letters teſtimonial under the college ſeal, adds: Preterea volumus & concedimus quod per prædentem & collegium, prædictæ communitatis pro tempore exiſtentes & eorum ſucceſſores in perpetuum quatuor ſingulis annis per ipſos eligantur qui habeant ſuperviſum & *ſcrutinium* correctionem & gubernationem *omnium & ſingulorum dictæ civitatis medicorum*, medicinam in eadem civitate, ac aliorum medicorum forinſecorum quorumcunque facultatem illam medicinæ aliquo modo frequentantium & utentium infra eandem civitatem & ſuburbia ejuſdem ſive intra ſeptem milliaria in circuitu ejuſdem civitatis. It is confirmed (at leaſt by obvious implication) by the act of parliament confirming the charter, that the cenſors alone were to examine the candidates within the immediate juriſdiction of the college; for the ſtatute enacts, that phyſicians, reſiding without that juriſdiction, were to be examined by the preſident and three of the elects, and that the elects themſelves were to be examined, for their offices, by the cenſors.

not the greater aſſemblies of the ſociety, but which are a delegation—here is a bye-law made, ſtating, that none ſhall be received into the order of candidates, but thoſe who are doctors of the univerſities of Oxford or Cambridge: we hold out a certain mode of examination to thoſe who are doctors of the univerſities of Oxford or Cambridge. Why that is a part of the ſame ſyſtem of bye-laws, and if they diſpute one part of this bye-law, which ſays what perſons ſhall be admitted into the order of candidates, they ſhall not ſtand to the other parts of the bye-laws, which direct, that the examination of thoſe perſons, who are pointed out by their former bye-law, ſhall be at a comitia minora.

" Doctor Stanger comes here and ſtates upon his affidavit, that he tendered himſelf at the comitia minora to be a candidate, to be examined for this office. What right had he to tender himſelf to be examined by this comitia minora? Becauſe he fell within thoſe bye-laws? Becauſe he was one of that deſcription of perſons, who by the bye-laws may be examined at the comitia minora? But if he meant to derive his right from a higher fountain—if he meant to reſt upon the original inſtitution of this ſociety, he ſhould then have applied, not under thoſe bye-laws, but to that power which exiſted originally under the charter,

namely,

namely, the great aſſembly of the phyſicians, the body at large; and not to this body, which derives its authority only from that greater body, to which none have a right to apply for examination but thoſe who come under the deſcription of that bye-law, which conſtitutes the ſecond ſet of people; I throw this out as an objection, that rather aroſe out of what your Lordſhip ſuggeſted juſt now, than what I had preconcerted in my own mind to ſtate to the court; but it ſeems to me to be a ſtumbling block that it is utterly impoſſible to get over.

" To return to the manner in which I was arguing this before—we looked into the affidavits—"

Lord *Kenyon*. " At preſent I feel a weight in that objection, which I am not able to relieve my own mind from, I confeſs. The examination in general, under the charter (ſuppoſing this to be an examination) is to be by the body at large*; the body at large have made a bye-law, in which they

* The body at large are diveſted of the power of examining, by the appointment of cenſors, whom the college are obliged to elect annually, and in whom that power is legally, and with reſpect to phyſicians reſiding in London, and within ſeven miles of it, excluſively veſted.

they think it ſufficient to remit the examination to the comitia minora, provided the parties that come there come with other qualifications—that they had received degrees from either of the two univerſities; then they commit the examination to the comitia minora. Now Dr. Stanger has applied to that ſelect body, who are entruſted to examine under certain circumſtances; he not being in the circumſtances in which the power of delegation is committed to that comitia minora, what ground does he lay before the court, to ſay that he has been refuſed, ſo as to entitle him to come here to apply for a mandamus?

" Suppoſing they had ſaid by their bye-law, that a body compoſed of doctors from Cambridge, ſhould examine thoſe from Oxford, and vice verſa, in order that there might be no partiality; why if a party came here to complain that he had not been properly admitted, that his pretenſions had not been heard, he ought to ſhew that he had applied to the body ſo conſtituted; this gentleman has not ſhewn that."

Mr. *Law*. " Upon this part of the caſe it ſeems to me, that Dr. Stanger having made the previous application that he did, to Sir George Baker, the preſident, to know what bye-laws are in force, for there is no promulgation of them,

to

to which he could conveniently have acceſs; being refuſed all information upon that ſubject, and adverting to ſome bye-laws, and a perſon by admitting the validity of ſome bye-laws, by no means admits the validity of all other bye-laws the corporation may make relative to the ſame or a ſimilar ſubject; he applies to the preſident to know what bye-laws there are upon the ſubject; he is refuſed all information."

Lord *Kenyon*. "The general ſource of the information he is to obtain, is open to all the world; the act is upon the records of parliament, the charter upon the roll of the records at the Tower; therefore that which is the baſis of the application, is open to every body who will go to the proper ſources for it."

Mr. *Law*. "The act or charter does not direct any thing reſpecting the mode of examination."

Lord *Kenyon*. "That is what the objection grounds itſelf upon, that there is for any thing which appears to the contrary, no bye-law that requires the examination."

Mr. *Law*. "Yes; but I ſubmit that theſe bye-laws reſpecting examination are univerſal, for

all perſons to go firſt of all to the comitia minora. The body have delegated the primary examination in the firſt inſtance to the cenſors and preſident, and by this application we admit the validity of ſuch a bye-law; but does your Lordſhip think that by the admiſſion of the validity of ſuch a bye-law, which confines the examination in the firſt inſtance to four cenſors and the preſident, that we admit the validity of all other bye-laws connected with the ſubject, which reſtrain the admiſſion to perſons only who have obtained degrees in the two Engliſh univerſities? In the year 1582, a bye-law, the oldeſt laid before your Lordſhip, recognizes that as a ſtate and condition then exiſting, knowing there are ſome bye-laws, but knowing it imperfectly, he applies to the preſident, in candour, to know what other bye-laws there are, and poſſeſſing a diſpoſition to conform to every one that is legal; he conforms to thoſe exiſting prior to the year 1765, and it appears that theſe bye-laws exiſt as to the examination at this moment; he applies to the proper perſon, the preſident; he ſtates for what he wiſhes to be examined, and they turn him round, becauſe he does not apply to the comitia majora, or to the body corporately aſſembled; it ſeems to me, he admits only that the college had made a good bye-law upon the ſubject, confining the preliminary examination to the cenſors, and that

is the extent, I conceive, of the argument to be drawn from this application."

Mr. *Chambre*. "This application is made to your Lordſhip, upon the ſuppoſition, that by the charter and the act of parliament, Dr. Stanger, if duly qualified for the exerciſe of his profeſſion, and as to learning and morals, is duly qualified to be a fellow. Dr. Stanger admits the college have a right to examine, and that they have a right to delegate the exerciſe of that power of examination to a ſelect body of themſelves*; he learns, and ſo he ſtates to the court, that by a bye-law they have ſo done; and he ſtates, that he has applied to that ſelect body, thereby confirming that bye-law."

Lord *Kenyon*. "There is a little inaccuracy in that ſtatement, becauſe they have not told him that the examination of every candidate is committed to the comitia minora; but they have told him, that candidates qualified ſo and ſo, ſhall be examined in ſuch a manner; but they do not ſtate that they have delegated to the comitia minora, the examination of perſons otherwiſe circumſtanced."

Mr.

* See note, p. 223.

Mr. *Chambre.* "I conceive the miſtake ariſes from conſidering all this as one bye-law."

Lord *Kenyon.* "I really do not conſider it ſo, they ſay who ſhall be candidates, and who ſhall be examined ſo and ſo—They require a preliminary qualification, firſt as to candidates that they are to be members of the univerſities of Oxford or Cambridge, and that they have a right to make regulations how that claſs of men ſhould be examined; then they ſay they ſhall be examined ſo and ſo."

Mr. *Chambre.* "The bye-law which relates to the preſent application to the court, is to be found in our affidavit; it is ſtated as a general regulation, that all perſons previous to their admiſſion as fellows, ſhall be firſt admitted into the claſs of candidates, and previous to that admiſſion ſhall undergo three examinations in the manner ſtated; that is the whole that appears to the court of that bye-law. With reſpect to the excluſion of all who have not graduated at Oxford or at Cambridge, that ariſes from another bye-law, ſet out by the perſons againſt whom we apply in their affidavit. Dr. Stanger muſt take the bye-law in the whole, either it is a good or a bad bye-law; if he applies under the bye-law, he

he muſt admit the validity of that bye-law in toto; but if there are two diſtinct bye-laws, ſurely it is competent for Dr. Stanger to ſay, I admit the legality of your orders reſpecting the mode of examination, but I deny the authority of that ſeparate bye-law, by which you exclude all but doctors of the univerſities of England."

Mr. *Law.* "Here is a diſtinct bye-law*, in which no mention is made of the univerſities, but it reſpects all perſons applying to be admitted into the claſs of candidates."

Mr. *Chriſtian.* "The ſtatutes with reſpect to examination, and with reſpect to the qualification of candidates, are perfectly diſtinct; both the comitia majora and the comitia minora repreſent the whole community."

Lord *Kenyon.* "It is one of a body of bye-laws; they ſat down to make regulations, they thought that they had a right to make a diſcrimination between thoſe candidates from the univerſities of Oxford and Cambridge, and thoſe who came from other places of education; thinking ſo, they make a body of bye-laws adapted to that aſſumed power; you endeavour to ſap that aſſumed

* Mr. Law, on ſaying this, handed up to the bench a copy of the 14th chapter of the bye-laws de examinatione & admiſſionum forma.

aſſumed power; then can you garble the bye-laws, and ſay you will take this and reject that? It ſeems to me we are bound to take theſe bye-laws they have made, ſuppoſing they have a power to make that regulation reſpecting candidates; I confeſs I cannot poſſibly anſwer the objection."

Mr. *Chriſtian.* "We founded ourſelves upon the words of the charter as confirmed by the act; there may be ſome bye-laws void, the reſt may be valid. We admit the reaſonableneſs of that ſtatute which divides the members into different claſſes; we admit any bye-law which preſcribes the mode of examination and admiſſion. But there is a bye-law which ſays you cannot be examined, though we ſay we have a right to admiſſion under the charter, and deſire to be examined by any bye-law or mode you have. But under the charter, we, being a graduate in a univerſity, have the ſame right as a graduate from Cambridge."

Lord *Kenyon.* "Here ſtands the objection—When you apply for a mandamus, you muſt ſhew that injuſtice has been done to you, when you made the application to the proper place in which juſtice ought to be done to you. You come here, not grounded upon an application made

made to the body at large, but you ſtate an appli-
cation to the comitia minora, and that they refuſe
you. In all caſes for mandamus, you muſt apply
to the party firſt, and have your claim rejected
by them. Now in order to ſhew that the refuſal
by the comitia minora, was a refuſal which
enabled you to come to a court of juſtice, you
muſt ſhew that the comitia minora had a right
to examine, and that they are wrong in rejecting
the prayer you made to them to examine you.
I do not ſee how you have done that at all, the
ſubject has been exhauſted, as far as I can exhauſt
it, by the obſervations I made; I wiſhed the
learned counſel to clear it up. It is ſaid, the
power of examining is delegated by this body
to the comitia minora; when they ſat down to
make this bye-law, among other things, they
thought they had a right to require, that perſons
who came to them to be admitted members of
their body, ſhould be doctors of phyſic of one or
other of the Engliſh univerſities. Having aſſumed
that power, they enact that in one of the bye-
laws. They go on in the ſequel to aſſume an
ill-aſſumed power if you pleaſe, though I am not
ſatisfied of that at preſent; but if you aſſume that
it was an ill-aſſumed power, ſhall you reſt yourſelf
upon other particular bye-laws requiring an ex-
amination, adapted to that power which you wiſh
to deſtroy; and ſhall you ſay that that is the ex-

amination

amination which you elect? I do not ſee how you can poſſibly make that out—I do not ſee how you can reject one bye-law and take another; that is contrary to every idea of common ſenſe."

Mr. *Erſkine*. "So it is ſaid expreſsly in the Fifth Volume of Burrow's Reports."

Mr. *Juſtice Groſe*. "You do not apply under any clauſe in the charter, but under ſome ſuppoſed power given by the bye-law. Their anſwer is—that you have not complied with the terms of this bye-law which theſe perſons have made, under whoſe bye-law you now claim."

Mr. *Law*. "If the bye-laws are to be conſidered as *one body*, and *all* to be conſtrued together, to be ſure we have not applied but under that particular one; if we apply to the comitia majora, they will turn upon us and ſay, you agreed to comply with the ſtatute."

Lord *Kenyon*. "It is quite *premature* to ſay any thing upon the *great queſtion*; I do not know but it is a reaſonable bye-law. At Scotland or Leyden, a diploma is to be purchaſed for five guineas; and I believe, in the univerſities in the Low Countries, it is to be purchaſed for a very ſmall ſum; and if perſons are to come with theſe diplomas,

diplomas, what is to become of this very learned and reſpectable body? There is an infinite deal of learning in this reſpectable body *."

Mr. *Law*. "If we do not come fully up to the higheſt ſtandard of literature, we do not require it."

Lord *Kenyon*. "The legiſlature empowered to grant diſpenſations, ſay they ſhould have this and the other degree of the univerſity; that a nobleman's chaplain ſhould be entitled ſo and ſo; in ſome caſes, that ſhall ſtand in the ſtead of it; batchelors in divinity, and batchelors in law, ſhould be entitled ſo and ſo; they admit that a degree in the univerſity ſhould ſupercede, as Mr. Erſkine has ſaid, certain other qualifications; they need not eat ſo many commons, becauſe they are ſuppoſed to have law; and if they have made good uſe of their time, no doubt they have laid the very beſt of all foundations for all kinds of ſcience and general learning."

Mr. *Law*. "We do not object to the univerſity qualification, we only ſay that it ſhould not be *excluſive*."

Lord

* After his Lordſhip's declaration, that it would be premature to ſay any thing upon the great queſtion, theſe and the ſubſequent objections to the claim of the licentiates appear ill timed.

Lord *Kenyon.* " What do you ſay as to what Mr. Erſkine has ſtated, which is the rule the phyſicians have laid down for themſelves *, it does them great honour, and it is a pity it ſhould be departed from, that they ſhould come from the univerſity; the great probability is, that in thoſe places inſtituted for the purpoſes of religion and learning, due care has been taken to inculcate good principles, good morals, and learning; all human inſtitutions to be ſure are fallible."

Mr. *Law.* " With reſpect to holy orders, it is, that they ſhall be devoting themſelves to that particular ſtudy, and not employ themſelves in ſecular purſuits; there are many other reaſons of policy which apply to admiſſion in *holy orders*, which do not bear upon the profeſſions merely of *ſcience*."

Lord *Kenyon.* " Such orders are made now in the profeſſion of the law †."

Mr.

* If the Lord Chief Juſtice conſiders the doctors in phyſic of Oxford and Cambridge, excluſively, as the phyſicians of London, the rule may appear a good one for themſelves: but if they form only an inconſiderable branch of the faculty of London, it is partial and oppreſſive.

† There is no rule that the graduates of Oxford and Cambridge ſhould have an excluſive right of being admitted to the bar, and the higheſt offices of the law, or his Lordſhip would not have filled the diſtinguiſhed ſituation he now enjoys.

Mr. *Juſtice Lawrence.* " Where is the difficulty of a gentleman's getting ſome one fellow of the college to propoſe him?"

Mr. *Law.* " There has been no perſon admitted—there have been many trials, but nobody has ever got through that wicket, nor ever will."

Mr. *Juſtice Lawrence.* " Do you imagine if they think Dr. Stanger, or any other phyſician, is a fit perſon, that they will not propoſe him?"

Lord *Kenyon.* " There is a wicket of that kind but in our own profeſſion—for, as I underſtand, all the four inns of court have for ſometime inſiſted, that one of their body ſhall propoſe a gentleman to be called to the bar, and that precaution has been attended with extremely good conſequences. I am ſorry from what one hears, that it has not been quite a ſufficient guard now and then, through a little inadvertence or miſinformation; but certainly it is attended with good conſequences."

Mr. *Law.* " That is a delegation of the power of enquiry to one whoſe ſpecial buſineſs it is, and I believe every gentleman upon whom that delegation falls, diſcharges his duty properly, and makes that enquiry."

Mr.

Mr. *Juſtice Groſe.* " But why ſhould not this ſuppoſed duty be as honourably and as well executed by them as in our profeſſion?"

Lord *Kenyon.* " There is Dr. Heberden, who is on the brink of another world, to receive the reward of his conſummate virtues; but where is there a more reſpectable name?"

Mr. *Law.* " Certainly ſo—but the application ſhould be made to every one of the fellows."

Mr. *Juſtice Groſe.* " Mr. Law, had not you better adviſe your client whether this bye-law is not as reaſonable as poſſibly can be?"

Mr. *Law.* " Being of opinion, that, as a law of *excluſion*, it is not a *good bye-law*; I *cannot adviſe him* this."

Mr. *Juſtice Groſe.* " I do not aſk your opinion, but there are as ſtrong grounds that it is a reaſonable bye-law as can be *."

Mr. *Law.* " We only wiſh to be admitted to diſcuſs it."

Mr.

* This is a pretty ſtrong declaration from a judge, pending a trial, upon the main queſtion with reſpect to which Lord Kenyon had, juſt before, ſaid it was quite premature to ſay any thing.

Mr. *Juſtice Lawrence.* "When you bring it properly before the court it will be diſcuſſed."

Rule diſcharged.

Soon after the determination of the Court of King's Bench to diſcharge the rule, requiring the college to ſhew cauſe why they would not admit Dr. Stanger to examination, on account of his application having been made to the comitia minora, or cenſors board, inſtead of the comitia majora, or college aſſembled*; a meeting of the licentiates, engaged in the conteſt, was held to take under conſideration their future proceedings. They unanimouſly reſolved to proſecute their claim notwithſtanding the unfavourable diſpoſition which had appeared in the court. It was determined however to engage additional counſel, whoſe high ſtanding and rank might add weight to the very able and reſpectable lawyers the licentiates had already employed. Mr. Adair, King's ſerjeant, was engaged, and the Attorney General, and Mr. Grant, one of the Welſh judges, applied to. The *two* latter declined undertaking the cauſe, on account of their avocations in the Court of Chancery. On the 19th of May 1796, a conſultation was held by Mr. Serjeant Adair, Mr.

* This, if the power of examining be veſted in the comitia minora, by the charter, muſt have been an erroneous ground of diſcharge. See p. 223.

Mr. Law, Mr. Chambre, and Mr. Chriſtian, when it was determined that Dr. Stanger ſhould apply to the next comitia majora to be admitted a member of the college, offering to ſubmit to ſuch examinations, and to give the college ſuch ſatiſfaction concerning his qualifications and fitneſs as they might reaſonably require. May 23, Dr. Stanger called upon the preſident of the college, and firſt read, and afterwards delivered to him a note, declaring his intention of applying to the college at their next comitia majora, to be admitted a member of the corporation. Dr. Stanger left a ſimilar note with the regiſter of the college. June 25, the day on which the firſt comitia majora ſubſequent to theſe notices were held, Dr. Stanger attended at the college, and ſent to that body, corporately aſſembled, by their beadle, a note addreſſed to the preſident and college of phyſicians, requeſting the honour of an interview. After a ſhort interval he was called in, and deſired to addreſs himſelf to the preſident. Dr. Stanger then ſaid, he held a paper in his hand which contained the purport for which he waited upon the college, which paper he begged might be read, or that he might be allowed to read it.

The preſident deſired Dr. Stanger to read the paper, which was accordingly done. It was drawn up by the counſel, and expreſſed in the following terms.

To

To the Preſident and College or Commonalty of the Faculty of Phyſic in London, Corporately aſſembled.

GENTLEMEN,

"I beg leave to inform you, that being a doctor "of phyſic, publicly and legally exerciſing the fa- "culty of phyſic in the City of London, and poſ- "ſeſſing the qualifications required by law, and "by the charter and acts of parliament, incorpo- "rating, confirming, and relating to the corpora- "tion of the preſident and college or commonalty "of the faculty of phyſic in London, for becoming "a member of the ſaid corporation; I tender my- "ſelf to you the preſident and college or com- "monalty of the faculty of phyſic in London, to be "admitted a member of the ſaid corporation, and "do reſpectfully require of you to be by you ad- "mitted ſuch member, hereby offering and ſub- "mitting myſelf to be previouſly examined by you, "or as you ſhall direct, and to give you ſuch infor- "mation and ſatisfaction as you ſhall reaſonably "require, concerning my qualifications and fitneſs "to be admitted a member of the ſaid corpora- "tion."

Dr. Stanger, after having read this application, delivered it to the preſident, and was deſired to withdraw. After a ſhort interval, being again called in, the preſident ſaid he was deſired by the

college to inform Dr. Stanger, the college were of opinion that he was not entitled to what he demanded. November 19, Dr. Stanger made an affidavit that he had been refuſed admiſſion into the fellowſhip of the college by the comitia majora. November 26, Mr. Serjeant Adair moved in the Court of King's Bench for a rule upon the college, to ſhew cauſe, why a writ of mandamus ſhould not iſſue commanding them to examine Dr. Stanger, as to his fitneſs to be admitted into the corporation, as a member thereof. Lord Kenyon, after having conſulted with the other judges, ſaid they knew ſufficient of the cauſe to grant the rule. January 23, 1797, Dr. Giſborne, then preſident of the college, made an affidavit in anſwer to Dr. Stanger's *. This was the firſt day of term, which had been appointed for the college to ſhew cauſe, but their counſel had not an opportunity of being heard before the 9th of February. The term being then far advanced, the court ordered that the rule for ſhewing cauſe ſhould be enlarged till the fifth day of the ſubſequent term. May 8, being the fifth day of the following term, the parties attended, but the cauſe was not heard before the 11th, when the counſel for the college were at length permitted to proceed, and ſhewed cauſe againſt the rule as follows:

THE

* The material parts of both theſe affidavits are included in the pleadings of the counſel.

THE KING,

VERSUS

HE PRESIDENT AND COLLEGE OF PHYSICIANS.

COPY from Mr. Gurney's short-hand Notes of the Argument in the Court of King's Bench, May 11, 1797.

MR. ERSKINE,

" I AM to ſhew your Lordſhip cauſe againſt his rule made upon the preſident and college of hyſicians on the application of Dr. Stanger, to hew cauſe why a writ of mandamus ſhould not ſſue, commanding them to examine Dr. Stanger s to his qualifications and fitneſs to be admitted nto the corporation as a member or fellow hereof.

" This application is made upon the affidavit f Dr. Stanger, which begins by ſtating an act of arliament that paſſed in the third year of the eign of Henry the VIII. which is an act for appointing phyſicians and ſurgeons, by which it was enacted—' That no perſon within the City of London, nor within ſeven miles of the ſame, ſhall take upon him to exerciſe and occupy as

'a phyſician or ſurgeon, except he be firſt ex-
'amined, approved, and admitted in the manner
'ſtated by that ſtatute*.' He then ſets forth the letters patent and charter of incorporation, by the ſame king, which I ſhall have occaſion to refer to in the courſe of what I have to ſtate, when I proceed to ſhew cauſe.

"He then ſtates it is provided by the charter of incorporation, that no perſon of the ſaid politic body and commonalty ſhall be ſuffered to exerciſe and practiſe phyſic, but only thoſe perſons who are groundly learned and deeply ſtudied in phyſic, and that thoſe perſons, (who are the original perſons incorporated) and the ſurvivors of the elect body, within the time limited for choice, ſhould chooſe and admit one or more, as need ſhould require, of the moſt cunning and expert men of the ſaid faculty in London, to ſupply the ſaid room and number of eight perſons originally incorporated, ſo that he or they that ſhould be ſo choſen, ſhould be firſt by the ſaid ſurvivors† ſtrictly

* "Namely, by the Biſhop of London or Dean of Pauls, calling to him, for the firſt examination, ſuch as he ſhall think convenient; and afterward, always four of them that have been ſo approved." See p. 41 of this book.

† The act of parliament confirming the charter which firſt created the elects, enacts, that they ſhall be examined by the ſuperviſors, meaning the cenſors, and not by the ſurvivors of their own body. See Goodall's Hiſtory of the Royal College of Phyſicians, p. 11.

ſtrictly examined, after a form deviſed by the ſaid elects; and alſo by the ſame ſurvivors approved. And it was thereby alſo enacted, that no perſon ſhould from thenceforth be ſuffered to exerciſe or practiſe in phyſic through England, until ſuch time as ſuch examination and admiſſion have taken place.

" Dr. Stanger then ſtates—that he had ſtudied the art of phyſic at Edinburgh, and many other places for ſeveral years; and in the month of June, 1783, he obtained the degree of doctor of phyſic at Edinburgh, after a reſidence there of upwards of three years. He then ſtates, that after he had taken his degree of doctor of phyſic in Edinburgh, he had travelled and ſtudied in different univerſities and places of ſtudy in France, Italy, and Germany. That in the year 1789, he applied to the college of the faculty of phyſic in London, and obtained from them the uſual licence and authority for practiſing phyſic under this act and charter of incorporation. He then ſtates, that having ſuch degree of doctor of phyſic conferred upon him, as before ſtated in his affidavit, he did upon the 23d of June, laſt, (1796) wait upon Sir George Baker, then preſident of the college, and applied to him in theſe words: 'Dr. Stanger requeſts that Sir George Baker will inform him on what day and at what hour

' the

'the next comitia majora, or general meeting, is 'to be held; that Sir George informed him, that 'the ſaid college would hold their comitia ma- 'jora on the Saturday then next following.' And he ſtates his attending at that time, and that the following application was laid before the preſident and college:

GENTLEMEN,

'I beg leave to inform you, that being a 'doctor of phyſic, publicly and legally exerciſing 'the faculty of phyſic in the City of London, 'and poſſeſſing the qualifications required by 'law, and by the charter and by acts of par- 'liament, incorporating, confirming, and relating 'to the corporation of the preſident and college 'or commonalty of phyſic in London, for be- 'coming a member of the ſaid corporation; I 'tender myſelf to you, the preſident and college 'or commonalty of the faculty of phyſic in 'London, to be admitted a member of the ſaid 'corporation; and do reſpectfully require of you 'to be by you admitted ſuch member, hereby 'offering and ſubmitting myſelf to be previouſly 'examined by you, or as you ſhall direct, and 'to give you ſuch information and ſatisfaction as 'you ſhall reaſonably require, concerning my 'qualifications and fitneſs to be admitted a mem- 'ber of the ſaid corporation.'

"He

" He ſays, that after this paper had been read, he again preſented it to the preſident, he was deſired to withdraw, and was informed by the preſident that the college were of opinion, that he was not entitled to what he deſired. Upon which Dr. Stanger ſtates, that he withdrew. He ſays he is informed that the cauſe of this anſwer, which he received, was a bye-law, or pretended bye-law of this commonalty or college, under which it is pretended, that he is not entitled to have the effect of the ſaid application, as not having been created a doctor of phyſic in the univerſity of Oxford or Cambridge; after having performed all things required by the ſaid univerſity without diſpenſation, or not having obtained ſuch degree in the univerſity of Dublin, and produced letters teſtimonial, not only of his having performed all the exerciſes required in that univerſity, without diſpenſation, but alſo of his incorporation into one of the univerſities of Oxford or Cambridge. And this deponent humbly conceives and ſubmits to this court, that ſuch bye-law, if it exiſts, is illegal and repugnant to the charter and act of parliament, under which the ſaid college or commonalty have been conſtituted, and now exiſt.

" I ſhall paſs over for the preſent any obſervation upon this concluding part of the affidavit.

I am

I am perſuaded that Dr. Stanger cannot but know, that this bye-law does not exiſt in the manner he ſtates it, unqualified by other bye-laws, and that it is not by virtue of this bye-law only; though I ſhould think if it had been under that bye-law only, that it would be a perfectly ſatisfactory anſwer; but yet, that it is not under this bye-law that the rejection of this gentleman has taken place.

" Before I make any obſervations upon this caſe, it will be more regular for me to bring before your Lordſhip the anſwer which is given by the college of phyſicians, that the court may have the facts before them previous to any arguments which may ariſe upon them. Cauſe is ſhewn upon the affidavit of Dr. Giſborne, who is now preſident of the college; and he ſets forth (which I ſhall paſs over for the preſent) the charter of incorporation by king Henry the VIII. He then ſtates, that it appears by the annals of the college, in which the proceedings are entered and contained, that for the ſpace of two hundred years and upwards, laſt paſt, all perſons exerciſing the ſaid faculty of phyſic in the City of London, and within ſeven miles round the ſame, have been, and ſtill are divided into three claſſes or orders: one claſs conſiſting of the members of the ſaid college or commonalty, for the time being, who

were

were called fellows of the ſaid college. Another claſs conſiſting of ſuch perſons as had been, or ſhould be, deſirous of becoming of the ſaid college or commonalty, and had been, or ſhould be, approved of by the preſident and cenſors of the ſaid college or commonalty, to be candidates for election into the ſociety or fellowſhip of the ſaid college or commonalty, who were then, and were to be from thenceforth called candidates.

" This ſecond claſs the doctor ſeems to have been acquainted with in his former application to this court; for his application was not at once to be admitted, or to be examined, but to be admitted into the order of candidates. And it appeared, that in order to entitle himſelf to be admitted into the order of candidates, he had applied himſelf to the comitia minora, who by the laws of the college, are to examine him for the purpoſe of admitting him into the order of candidates for the fellowſhip.—It appeared, that by the bye-laws of the college, be they good or bad, the comitia minora had no juriſdiction whatever to examine any body who apply to be put into the order of candidates, unleſs they fall within the bye-laws that ſpeak of the privileges of the univerſity; and, therefore, your Lordſhips diſcharged that other rule, becauſe whatever might be the merits of the caſe, Dr. Stanger could

not

not apply to be admitted into the order of candidates, founding himſelf upon an application to the comitia minora, who had no juriſdiction but under laws which he was not willing to recognize; he, therefore, comes now in a more general form, and ſays, he deſires to be examined.

" The third claſs, as ſtated by Dr. Giſborne in his affidavit, are perſons who are licenſed and admitted to exerciſe the practice of phyſic. They are *common licentiates*, the nature of which we are all acquainted with. The doctor then goes on to ſay, that perſons ſo licenſed by the ſaid college or commonalty to practiſe phyſic in the city of London, and within ſeven miles round the ſame; have at all times been, and ſtill are, enabled thereby to practiſe phyſic as fully in all reſpects, as the fellows or members of the ſaid college, and that the public have and receive the ſame advantage and benefit from the practice of ſuch perſons, as if they were admitted by the ſaid college or commonalty as members or fellows of the ſame.

" This undoubtedly is a very material part of the affidavit, and a very material part of the conſtitution of this corporation; that Dr. Stanger who ſtates his learning in phyſic, and who will ſtate by and by at great length, no doubt, by

my

my learned friends on the other ſide, the right which the public have to derive, all the advantage which can be derived, from perſons of learning who practiſe phyſic; that Dr. Stanger is at preſent in the complete poſſeſſion of all that the college can grant upon this ſubject, and that his being a fellow, would not entitle him to any other privilege of that ſort.

" Dr. Giſborne then goes on to ſtate a bye-law of 1637, by which, he ſays, it was enacted and ordained, that no perſon ſhould be admitted into the ſaid college, either as a fellow or a candidate, unleſs he had performed all his exerciſes and diſputations in one of our univerſities, without diſpenſation.

" The affidavit then goes on to ſtate, that it appears by the books of annals, that Charles the Second, by a Letter addreſſed to the ſaid college, dated February 12, 1674-5, ſtates, that his Majeſty had been informed, that there were ſeveral pretended phyſicians, and doctors graduated in univerſities beyond the ſeas, who by indirect means endeavoured to be received in the ſaid college as honorary fellows, without incorporation into either of our univerſities, did direct the ſaid college not to admit any perſon whatſoever

ſoever as a fellow, and to enjoy the privileges of the ſaid college, that had not had his education in either of the univerſities of Oxford or Cambridge, kept his act for his degree of doctor of phyſic, done his exerciſe accordingly, *or that was not incorporated or licenſed there*, having firſt taken the oaths of allegiance and ſupremacy, having been, by the ſaid college, examined and approved according to their ſtatutes; and which direction the college, on February 25, 1674, agreed to obſerve, in obedience to the letter of the king ſo ſignified.

" He then ſtates another bye-law—That no perſon ſhall be admitted into the order or claſs of candidates, unleſs he ſhall have been created a doctor of phyſic in the univerſity either of Oxford or Cambridge, after having performed all things preſcribed by the ſtatutes of the ſame reſpectively, without favour or diſpenſation, or unleſs he ſhall have obtained the like degree in the univerſity of Dublin, having performed all the exerciſes required by the laſt-mentioned univerſity, without favour or diſpenſation."

Mr. *Juſtice Lawrence.* " What is the date of that?"

Mr

Mr. *Erſkine*. "The date of it is not given in our affidavit*. Your Lordſhip will take it that this laſt ſtatute which I have read, which ſtill is in exiſtence, and which is qualified by others I am about to ſtate, was the laſt in exiſtence at the time when the caſes of the King *v.* Dr. Aſkew and Dr. Fothergill, and thoſe other caſes came before the Court of King's Bench, as reported in Sir James Burrow; ſince that time your Lordſhip will find that other bye-laws have been introduced, greatly qualifying thoſe previous bye-laws, and as I have been given to underſtand, framed under the advice, and with the aſſiſtance of ſome of the moſt eminent and learned perſons in this kingdom, in the profeſſion of the law. And it is provided by this bye-law (which has taken place ſince) 'that if any perſon ſhall be a licen-'tiate for ſeven years, and ſhall have attained 'thirty-ſix years of age, it ſhall be lawful for any 'one of the fellows of the ſaid college or com-'monalty, in the ordinary comitia majora or 'greater meetings of the ſame, to be holden 'on the day next after the feaſt of St. Michael, 'to propoſe him to be examined, and if the 'major part of the fellows of the ſaid college or 'commonalty then preſent, ſhall conſent thereto, 'the

* This bye-law, which firſt abſolutely excluded phyſicians who had not been educated in the Engliſh univerſities, is of very modern date. See p. 86, of this Book.

'the perſon ſo propoſed may be examined by 'the preſident, or vice-preſident and cenſors of 'the ſaid college or commonalty, in the three 'following ordinary comitia majora, or greater 'meetings of the ſaid college or commonalty, 'according to the form, in and by the ſtatutes or 'bye-laws of the ſaid college or commonalty 'preſcribed. And if ſuch perſon ſhall be ap-'proved by the major part of the fellows of the 'ſaid college or commonalty preſent, in ſuch 'comitia majora reſpectively, he may be propoſed 'by the preſident or vice-preſident to the ordi-'nary comitia majora then next following, to be 'admitted into the claſs or order of fellows of 'the ſaid college or commonalty.'

Mr. *Juſtice Aſhhurſt*. "When was this bye-law made?"

Mr. *Erſkine*. "The date of it is not given in our affidavit, but it is ſince the time that theſe motions were in the court*; 'and if the greater 'part of the fellows of the ſaid college or com-'monalty then preſent, in ſuch comitia majora laſt-'mentioned, conſent thereto, he may be admitted 'as ſoon as he conveniently can; provided neither 'the law of the land, nor any ſtatute of the ſaid 'college,

* It was not made before Lord Mansfield had urged the college four times to amend their bye-laws.

college, ſhall render him unfit for ſuch ſitua-
tion.'

" Your Lordſhip obſerves then, that by the
aſt bye-law which I have juſt now ſtated, though
man had never ſeen either of the univerſities,
et if he can find out of the whole college of
hyſicians, any one perſon who is a fellow of the
ollege, to uſher him in for an examination; he
s notwithſtanding the other ſtatute, of which this
tatute, your Lordſhip obſerves, is a great qua-
ification, entitled to undergo the ceremonies
vhich the college has thought fit to preſcribe:
nd which I will ſhew your Lordſhip, by and by,
t has, and it cannot be denied that it has, a right
o preſcribe for its own government; he may be
dmitted. That is not all—It is ſtated by another
atute or bye-law, which is ſtill ſubſequent to
he one I have ſtated juſt now—' It is provided,
that it may be lawful for the preſident of the
ſaid college, once in every other year, at the or-
dinary comitia minora, or leſſer meeting thereof,
to be holden in the month of June, to propoſe
any one of the licentiates, who ſhall be of ten
years ſtanding, to be admitted into the order or
claſs of fellows of the ſaid college or com-
monalty *.'

Mr.

* For the unreaſonableneſs and difficulty of gaining admiſ-
on under theſe bye-laws, ſee p. 131, of this Work.

Mr. *Juſtice Aſhhurſt*. " Are there no dates?"

Mr. *Dampier*. " This is about the year 1778, and the other is, I believe, about the ſame time."

Mr. *Erſkine*. " I will ſhew your Lordſhip preſently, that the date will not be very material; becauſe it will appear clearly, that all theſe bye-laws were in force at the time when Dr. Stanger made his preſent application; and that all the ſtatutes, which I have ſtated to your Lordſhip, had exiſtence before the time of the ſeveral arguments in this court; in all the caſes of the college of phyſicians, except the two laſt, the one that I have ſtated, and the one that I am now ſtating*: 'It may be lawful for the 'preſident of the ſaid college or commonalty, 'once in every other year, at the ordinary comitia 'minora, or leſſer meeting thereof, to be holden 'in the month of June, to propoſe any one of the 'licentiates, who ſhall be of ten years ſtanding, to 'be admitted into the order or claſs of fellows of 'the ſaid college or commonalty, who if the 'major part of the ſaid comitia minora by their 'ſuffrages to be taken by ballot ſhall conſent 'thereto,

* Theſe two were the only bye-laws inquired after, and if they were made, as Mr. Dampier obſerved, about the year 1778, the college and their counſel had taken ſeven years in contriving and enacting them, after the laſt exhortation of Lord Mansfield, in 1771.

'' thereto, may be propoſed by the preſident at
'' the ordinary comitia majora, or greater meeting
'' of the ſaid college, to be holden on the day
'' after the nativity of St. John the Baptiſt, to be
'' elected a fellow, and if the major part of the
'' fellows then preſent, ſhall conſent thereto by
'' ballot, he may be immediately admitted.'

" It is then ſtated by Dr. Giſborne, and this is the laſt part of the affidavit, that I need trouble the court with; ' that Dr. Chriſtopher '' Stanger, in obedience to a ſtatute, ordinance, or '' bye-law of the ſaid college or commonalty, '' then and now in full force and effect, did pre- '' viouſly to his being admitted a licentiate, give '' his faith or promiſe to the ſaid preſident and col- '' lege or commonalty, that he would obſerve the '' ſtatutes of the ſaid college or commonalty, or '' readily pay the fines to be impoſed upon him '' for his diſobedience thereof.' I take for granted, that it is not meant to be contended; indeed I ſhould imagine that the very application to the court ſhews it is not meant to be contended; that being a licentiate conſtitutes the party, ſo being a licentiate, a fellow of the college; or that it neceſſarily entitles him upon an examination by the college to become a fellow, as contradiſtinguiſhed from any man not a licentiate. I

could rather wiſh that I knew in this ſtage of the buſineſs, whether that was to be contended or not."

Mr. *Serjeant Adair*. " Certainly not."

Mr. *Erſkine*. " Then your Lordſhip will obſerve that it is clearly admitted now, and indeed after hearing the authorities, which I ſhall refer to, it could not be diſputed, that there is a difference between the governing part of this corporation, as there muſt in common ſenſe be, and thoſe who conſtitute the governed. The object of the charter of incorporation is obvious, the profeſſion of phyſic is of vaſt importance to the public; it was neceſſary that it ſhould not be exerciſed by unſkilful perſons; it was, therefore, thought proper by the legiſlature, and by his Majeſty attending in his legiſlative capacity to the intereſt of the country, to protect the public againſt ſuch ignorant and unſkilful practitioners; it therefore erected this learned body into a corporation for that purpoſe. Dr. Linacre, the friend of the great Eraſmus, and others were appointed the firſt members of the college, and they were to continue themſelves, from time to time; and the object was—'et quod eadem com-'munitas ſive collegium, ſingulis annis in perpe-'tuum,

'tuum, eligere poſſint et facere de communitate 'illa aliquem providum virum et in facultate 'medicinæ expertum in præſidentem ejuſdem 'collegii, ſive communitatis ad ſupervidendum 'recognoſcendum et gubernandum, pro illo anno, 'collegium ſive communitatem prædictam et 'omnes homines ejuſdem facultatis.'

" My Lord Mansfield and Mr. Juſtice Yates, ſaid theſe words, which I have laſt read, demonſtrated that thoſe perſons, who were the governing part of the corporation, were not only to make bye-laws and regulations for the government of thoſe perſons who are to be the practiſers of phyſic; that they are not only to make laws to govern themſelves, but alſo all men of the ſame faculty of phyſic; which ſhews, that the licentiates, they were authorized to appoint, were a different body of men; and in the ſame manner they are allowed to make bye-laws. I am now reading from Sir James Burrows, which I compared the other day with the affidavit of my friend the Serjeant; they are to make bye-laws, 'pro ſalubri gubernatione ſuperviſu et correctione 'collegii ſeu communitatis prædictæ et omnium 'hominum eandem facultatem in dicta civitate 'exercentium.' So that the bye-laws they are to make are not only for the governing of the

college of phyſicians, but of all the perſons of the ſame profeſſion, as ſtated in the other part of the charter.

" Though Sir James Burrows ſaid, and very truly, in his report, that it would require a volume to give a full and particular detail of this long conteſt between the fellows and the licentiates, which was litigated with great ſpirit and eagerneſs; yet I am humbly of opinion, and I think I ſhall juſtify that opinion to the court, before I have ſpoken for any conſiderable length of time, that there never was in judgment before this court (whatever may be your Lordſhip's ultimate determination upon the ſubject) a ſhorter or a plainer propoſition; and that there never was any matter which lies involved in charter and ſtatutes, which comes more, to uſe a common phraſe, into a nut-ſhell. It is not denied, that the college of phyſicians have a power of making bye-laws for the due exerciſe of the authority, veſted in them by the ſtatute and by the charter; it is not denied that they have the ſole power of examining who is fit. It is admitted, that your Lordſhips never can know the principles upon which they decide upon the fitneſs or the unfitneſs; whether they ſhall conſider the learned languages to be neceſſary either

for

for a licentiate or for a fellow, in order to prevent the profeſſion's degenerating in that learning which ſhould accompany ſuch a profeſſion. Whatever other ſciences they may acquire ſuch a competence in, as connected with that philoſophy of nature which is abſolutely neceſſary for the due underſtanding of the diſeaſes of the human body, and of the cures neceſſary to be performed upon them; your Lordſhips are neither acquainted with nor can poſſibly, by the juriſdiction you have, know. Theſe powers are given to them abſolutely; if they are corruptly exerciſed, you will puniſh by information thoſe who corruptly abuſe the truſt repoſed in them; but as your Lordſhip's predeceſſor ſaid in this court, unleſs they are corruptly abuſed in the exerciſe, you cannot examine the propriety of the exerciſe of them, you cannot nor will not inveſtigate the principles of the exerciſe of them; and, therefore, it is admitted to me, that a licentiate is not a fellow; that he may be fit for a licentiate, and may not be fit for a fellow; that the college may adjudge him to be fit for a licentiate, but, upon principles which your Lordſhip cannot inveſtigate, may deny that he is fit to be a fellow, and that they have a right to make bye-laws and ordinances for the due regulation of ſuch an important juriſdiction, as the determination of the fitneſs for the one

ſituation

ſituation or the other, which you alſo cannot ſcrutinize or inveſtigate*.

" Then what are we aſſembled here upon; why upon this grave and notable queſtion—Whether the bye-laws which I have read to your Lordſhip, taken altogether as one body; *thoſe that are ſubſequent, qualifying, reſtraining, and modifying thoſe that are antecedent? Whether all theſe taken together conſtitute a reaſonable body of bye-laws, within the meaning of the charter*, granted by the king, and confirmed by an act of the legiſlature? or, Whether theſe bye-laws ſhut out any perſons who had a right by ſome privilege inherent in them as Britiſh ſubjects, under this charter, and this act of parliament, from becoming members of this grave and learned body.

" The firſt thing I could advert to, is this—That we are not here upon a qualification to be a licentiate or practiſer of phyſic; and that no one

* Although the judges cannot inveſtigate the grounds upon which examiners, in a learned profeſſion, determine that a candidate poſſeſſes, or does not poſſeſs that portion of learning and ſkill, which qualifies him for the ſituation he claims in it, they can certainly determine under what circumſtances he ought to be admitted to a trial of his qualifications; otherwiſe the college might require, as an antecedent criterion of fitneſs, that a candidate ſhould have been educated among the Hottentots, or ſpeak the language of Otaheite.

one of the bye-laws, which may be reaſonable as applied to fellowſhips, but which your Lordſhip might not think reaſonable as applied to licentiates, have any application to the latter claſs of men; the college of phyſicians have not thought it neceſſary, they have not thought it wiſe, to apply them to the latter claſs of men, for the ordinary practice of phyſic. I wiſh the learned Serjeant to underſtand, I do not mean to admit that if they had thought the extending of theſe bye-laws to thoſe, who even were to have the character of licentiate only, would have been beneficial to the exerciſe of that learned profeſſion, and that in their honeſt judgment, the application of theſe rules, even to the body of licentiates, would have been likewiſe ſalutary in the due exerciſe of their authority. I am by no means prepared to admit, that they might not have extended that ſtatute even to licentiates; but, I ſay, they have not done ſo, and it is eaſy to ſee why they have not; a licentiate is a perſon who by his experience in medicine, is to act in that profeſſion in this metropolis, and within the circuit of ſeven miles round it; the college of phyſicians thought, that though undoubtedly phyſic is a learned profeſſion, and requires, as moſt unqueſtionably it does, a knowledge of the ancient tongues, for much better reaſons, perhaps, than any other

learned

learned profeſſions require it, becauſe the greateſt profeſſors of the art of phyſic, lived in thoſe countries, and in thoſe times which have left no language behind them, but what is to be found in the records and monuments of learning in thoſe tongues that are loſt; but ſtill, in the ordinary profeſſion of phyſic, if a man has a good character, if he has ſtudied in the various ways by which learning may be acquired without that regularity of ſyſtem, and going through the eſtabliſhed places for learning in this kingdom; namely, the univerſities; it was thought to be drawing the cord too tight by the college, to render that neceſſary for the character of a licentiate; therefore any man, let him have ſtudied phyſic where he will, or not have ſtudied it at all, if he has by the acuteneſs of the faculties God has given him, ſo far acquired a knowledge of the thing, that when he preſents himſelf to the college, he appears to be qualified for the exerciſe of every branch of the profeſſion, he may practiſe as completely as the preſident of the college himſelf*.

And

* The learned counſel has been miſinformed. Thoſe who are examined for a licence, muſt have ſtudied, and reſided two years in the univerſity in which they graduated, and have completed their 26th year, before they can be admitted to examination under the preſent bye-laws. Pending the late trial, a phyſician who had ſtudied three years in Edinburgh, was refuſed

And give me leave to add, meaning no ſort of diſreſpect to Dr. Stanger, who I take for granted s an eminently learned man: and, therefore, who could certainly bring himſelf within the meaning of theſe two bye-laws; let me remind Dr. Stanger, hat ſuch men as Sydenham were in the ſituation hat he conſiders it an excluſion to be admitted to; et me remind him, that ſome of the greateſt men that this country has ſeen, as profeſſors of phyſic, have been admitted into the college of phyſicians, bowing to the bye-laws, which he will not acknowledge, and receiving the right to practiſe phyſic, upon being recommended by one of the fellows, which Dr. Stanger, I ſuppoſe, thinks himſelf ſuperior to aſking, by his coming to ſupport his claim by your Lordſhip's authority: Dr. Hugh Smith ſo practiſed under this bye-law, Dr. Fordyce ſo practiſed; a gentleman whom I am ſtill better acquainted with, a more eminent perſon, I believe, will be found not to exiſt any where, a man whom I greatly reſpect, and have long known,

efuſed examination for a licence, becauſe he had not reſided wo years in the univerſity where he had graduated.

It is well known that the examinations of the licentiates, re exactly ſimilar to thoſe the fellows undergo, with the xception of the examination in Greek, which was only dopted to deter the licentiates from applying under the bye-aw, profeſſing to entitle them when of ſeven years ſtanding, o be examined for the fellowſhip, and upon which very little treſs is laid, when the claimant has graduated at Oxford or Cambridge.

known, Dr. Carmichal Smith, ſo practiſed, and ſo practiſes*.

" I apprehend I might put a flat bar to the application altogether, upon a ſhort point, but I am not deſired to do ſo; at the ſame time I will take your Lordſhip's opinion upon it. This gentleman ſtates, that in the year 1789, he applied to be a licentiate, and that when he took upon himſelf the character of a licentiate, in conſequence of an application to the college, he made oath, that he would obſerve all the ſtatutes and bye-laws of the college: now does that mean, I will obey all the ſtatutes and bye-laws that are palatable to me, or that I may chooſe to think legal? The court expreſsly ſaid, in Dr. Letch's caſe, that a man ſhould not become a licentiate, and then practiſe a cheat upon the college. I do not mean to ſay any thing offenſive of Dr. Stanger; he will underſtand that I am uſing the words of Lord Mansfield—' They ' are perſons who ſet up a title directly contrary to ' the ſenſe in which their licence is given to ' them, and received by them; they cannot avail ' themſelves

* Undoubtedly the immortal Sydenham, and many other moſt diſtinguiſhed phyſicians have, (to the diſgrace of the college) been excluded, but no man was ever admitted on the propoſition of a fellow, under the bye-law alluded to. The phyſicians mentioned by Mr. Erſkine, were admitted under the recommendation of the preſident, ſpeciali gratia.

themſelves of their inſtrument in this way, it would be a cheat upon the college.' I admit there is a difference between the two caſes, becauſe Dr. Letch ſaid, I am a licentiate, and therefore have a right to be a fellow *.

" My friend, Mr. Serjeant Adair, gives up that power, and ſays, I do not come here becauſe I am a licentiate, but I come here as I might come had I not been a licentiate; if I was a tooth-drawer in Fetter Lane, I might come and demand examination; for that is the propoſition my friend muſt make out. But in what manner did the court put this in the caſe of Dr. Letch? They put it by way of eſtopel, and ſee whether that eſtopel does not apply here. They could not ſay to Dr. Letch, if being a licentiate does entitle you by law to be a fellow of the college: ſir, you put a cheat upon the college, for it is not a cheat upon

* Lord Mansfield's meaning is here miſconſtrued. His expreſs words are, 'They (the licentiates) are perſons who ſet up a title directly contrary to the *ſenſe* in which their licence is given *to* them, and received *by* them. They cannot avail themſelves of their inſtrument in *this* way: it would be a *cheat* upon the college.' Burrow's Reports, b. iv. p. 2198. Lord Mansfield here expreſsly ſays, 'That to claim the fellowſhip by virtue of the licence, was to put a cheat upon the college.' Inſtead of imputing a breach of engagement to the licentiates, on account of their attempts to aboliſh the illegal bye-laws of the college, he encouraged them to proceed, by pointing out to them the very mode which the licentiates have adopted.

upon the college to accept from them a particular ſituation, and then ſo aſk of them all that the law by that character gives you. If, when you became a licentiate, you took the oath, Dr. Stanger took, to obey the bye-laws and ſtatutes of the college; though it may be true, according to your argument, that you are by the ſtatutes of the college and the charter, properly underſtood, entitled to be a fellow, yet it does not lie in your mouth to ſay it, becauſe you ſhall not practiſe a cheat upon the college, by advancing upon the character that they have given you, a concluſion which was not intended, when that character was given you. Now, though I have no anxiety upon this part of the caſe, and rather indeed have been directed to paſs it by; yet let us ſee whether it be poſſible to avoid the inevitable concluſion of it in application to this caſe. This gentleman ſays, I do not build upon the character of licentiate, and therefore you cannot apply the argument of eſtopel put upon Dr. Letch. My anſwer is: I can apply it, becauſe the eſtopel in Dr. Letch's caſe was his ſubſcription to the ſtatutes of the college, upon his being admitted a licentiate *. So has Dr. Stanger agreed, upon his oath, to abide by all the ſtatutes which he now comes

* Dr. Letch had not ſubſcribed the bye-laws of the college, nor been admitted a licentiate. See his caſe, Bur. Rep. b. 4. p. 2186.

comes before your L ordſhip to impugn. He conſents to be bound by the ſtatutes of that corporation of which he is become a member; he admits that theſe bye-laws are wiſe and wholeſome; it is true, he does not ſay that in his rule or by his counſel, but he does ſay it to the college; for in the preamble to the paper he read to Sir George Baker, he ſays, that having ſtudied phyſic, taken his degree, and being a licentiate, he deſires to be admitted; and in order to entitle himſelf to be admitted, he calls upon them to admit him to examination; therefore, I ſay, that ſuppoſing my friend could make it out that a mere ſtranger might come here to agitate the queſtion, which my friend ſeeks to agitate, as if this gentleman was a ſtranger; for ſuch is the form of the rule; he could not be permitted to agitate it as a licentiate of the college, becauſe, though the eſtopel in Dr. Letch's caſe differed from this caſe in this reſpect, that Dr. Letch claimed the character of a fellow as the neceſſary conſequence of the character of a licentiate; yet the anſwer the court gave was: that he was eſtopped from going upon that legal conſequence, ſuppoſing it a legal conſequence, that you ſhould be a fellow becauſe you are a licentiate. We will not allow you to plead, that one is the conſequence of the other. Why would they not allow him to plead that one was the conſequence

of

of the other? Becauſe he had eſtopped himſelf by the oath he had taken as a licentiate *.

" Now, with regard to the merits of the caſe, Mr. Serjeant Adair muſt here conſider Dr. Stanger as a mere ſtranger; I have already, and I meant it candidly and fairly. I have done juſtice to this gentleman, who, I have no doubt, is a learned man, and a perſon of honour and character in his profeſſion; I am not inſtructed to make any inſinuation to the contrary, and your Lordſhip may be very ſure I ſhall feel no inclination of that ſort myſelf; but Mr. Serjeant Adair diſrobes his client of all the reſpect that belongs to him. He comes here, having ſtudied at Edinburgh, where I believe as much learning is to be acquired as any where. I wiſh other univerſities in Scotland would take care not to give teſtimonials of that learning, which they are as capable of infuſing as any inſtitutions in the world.

I wiſh

* Mr. Erſkine appears to have been led to this erroneous concluſion, by ſuppoſing that Lord Mansfield had uſed the expreſſion, of putting a cheat upon the college in the caſe of Dr. Letch; and from ſuppoſing that the engagement to obſerve the bye-laws, was conſidered by the judges as an eſtopel to a licentiate's claim to the fellowſhip, in both of which ſuppoſitions he was miſtaken. Dr. Letch was not a licentiate when he applied to be admitted a fellow; and in the trials ſubſequent to his, the engagement was never alluded to by the bench as an eſtopel.

I wiſh they would take care not to give teſtimonials of the learning of perſons, which has not been obtained under their own eye, and their own juriſdiction, and then we ſhould not hear reflections of the ſort, which we ſometimes do hear, of any abuſe of thoſe noble inſtitutions. Mr. Serjeant Adair comes here and diſrobes Dr. Stanger of all the character that belongs to him; he does not come here as a man that has ſtudied at Edinburgh and encircled the globe in order to obtain learning; he does not claim any thing for him as profeſſor of Greſham College; as being an uſeful phyſician, I have no doubt, of the Founding Hoſpital. No—but as I ſtated before, according to the ground upon which this claim is made, all the tooth-drawers or bottle-conjurers to be found in London, all the vagabonds that can be vomited out of the allies and corners of this town, may come and make a riot at the door of the college of phyſicians, and demand examination. My friend ſhakes his head at this. I ſhould be glad to know what is to prevent them? I know a juſtice of peace would diſperſe them; but I want to know what is to prevent any man demanding examination upon the footing of this rule, as applied to any man who will ſay that he is fit. My friend ſays he does not come here as a licentiate; there is no antecedent.

" Then

" Then the queſtion is this; and I fancy I may ſoon relieve your Lordſhip from hearing me any longer; I admit it to be the duty of the college to examine all that are fit. Then, have they a right to judge of the manner in which they ſhall ſet about that examination? Have they a right to make a bye-law which ſhall prevent frivolous and uſeleſs examinations? If they have a right to judge of fitneſs, have they not a right to point out certain modes of education by which that fitneſs is generally to be acquired?

" When I had the honour to addreſs myſelf laſt to your Lordſhip, I certainly admitted, as I admit again, that nature every now and then, for reaſons that are inſcrutable, without ſtudy, and without thoſe preparations by which learning is alone to be acquired, ſends into the world characters ſo extraordinary, that they outſtrip all that diligence is capable of acquiring. But then I add to that obſervation, that the inſtitutions of mankind are not made for theſe extraordinary phenomena, they are made for the ordinary regulation of human affairs, and for man in his ordinary ſtate. Lord Mansfield is ſuppoſed to have thrown out, that he diſliked the bye-laws as they now ſtand. Nothing like it. The bye-law that Lord Mansfield glanced at, when he ſaid they might have excluded a Boerhaave, was a

bye-law

bye-law which then exiſted, that a man muſt be a Briton by birth. Lord Mansfield thought that was not a reaſonable bye-law, at leaſt, he makes uſe of this expreſſion. After having ſtated that a Boerhaave might have been excluded, he ſays, ‘ If their bye-laws interfere with their exerciſing ‘ their own judgment, or prevent them from re- ‘ ceiving into their body perſons known, or ‘ thought by them to be really fit and qualified, ‘ ſuch bye-laws require regulation; ſuch of them ‘ indeed as only require a proper education, and, ‘ a ſufficient degree of ſkill and qualification, may ‘ be ſtill retained.’

“ Now, what is the bye-law in queſtion? There are eſtabliſhments of learning in this country, the univerſities, which your Lordſhips very well know, cannot be kept up unleſs ſome ſort of privileges are conferred upon them. I ſhould be glad to know who would devote himſelf to the diſcipline of a college? Who would ſhut himſelf up within thoſe walls, and devote his youth to the ſevere examinations which take place at the univerſities, with reſpect to thoſe who really go there for the purpoſe of learning? I admit there are many others, men of high rank and quality, that may be let looſe from that ſort of diſcipline; but it would not be fair to the univerſity, to ſay,

that there is not a wholeſome diſcipline there. No man would go to theſe ſeminaries if he did not derive advantage from them; and he does derive advantage in all learned profeſſions.

" If he does not derive advantage in the ſtudy of the law, he derives the advantage of being entitled to be called to the bar at an earlier period. In the church, perſons are not ordained at all, by moſt of the biſhops, unleſs of one or other of the univerſities. Would a mandamus go to the Biſhop of London if he refuſed ordination to a perſon who ſet forth his learning, but had not been at either of the univerſities, and was therefore rejected? But have the college of phyſicians done that? No; they have done no more than this—if you have been at the univerſity, and have acquired a degree and teſtimonials, without diſpenſation, we preſume that you are learned from the place from whence you came, and the diſcipline you have been engaged in, and we examine you at once; but if you have not, *do we reject you? No; but we require that you ſhould be introduced for examination by ſome one of the fellows of the college, and then we will examine you* *. Is it conſiſtent with common ſenſe to ſay, that there is any thing unreaſonable in that?

" I ſhall

* See. p. 139 of this Work.

" I ſhall be replied to, no doubt, here, by ſome of the learned benchers of the ſocieties of the law. I have the honour to be in that ſituation myſelf. I ſhould be extremely ſorry, and, I am perſuaded, my learned friends would be equally ſo, in the exerciſe of a juriſdiction, very much reſembling this juriſdiction, to be impeached to day. I profeſs here, publicly, that I ſhould not only be ſorry, but very much alarmed, if, in the ſituation I ſtand in, as a bencher of one of the inns of court, I was capable of aſſenting to, or enforcing a regulation, which I conceived to be unreaſonable; but I have joined with all others in this regulation; a much ſeverer regulation it is than that of the college of phyſicians, becauſe it applies to all perſons, whereas theirs does not apply to perſons who come from the learned univerſities *, and bring their teſtimonials from thence; but we, who ought to be acquainted with the rules and principles of juſtice, and who ſhould carry along with us ſome knowledge of the

* The freedom of a few, from this regulation, is the only circumſtance which renders it a grievance to the great body of phyſicians. If all were to be propoſed, no one could complain: but as the college is now conſtituted, phyſicians who have not been educated in the Engliſh univerſities can only be propoſed by thoſe who have, (or the few they have admitted through favour) and who are, in general, averſe to their admiſſion, and have an intereſt in declining to propoſe them.

the policy of law, have made ſuch a rule; and, if we have acted illegally, we have very little apology. Your Lordſhips have the ſame authority aſſembled in your judicial capacity, as judges over our voluntary ſocieties, as you have over a college by mandamus. I apprehend, if a perſon were to apply to your Lordſhips, and ſay, I have been rejected at Lincoln's Inn. Why? Becauſe I could find nobody who would give in my name to the benchers to be called to the bar. You would reject ſuch petition with indignation; you would ſay, that thoſe learned bodies who have a juriſdiction exactly ſimilar, only, that it is directed and referred to a different profeſſion in the regulation, and in the learning and integrity of the members of which, the public have a ſimilar intereſt, inaſmuch as they exerciſe a profeſſion very important in every view of it; your Lordſhips would ſay, that he ought not to be admitted, who could not find one perſon to propoſe him as fit to be examined; (and that is all that we are here contending for) becauſe if a man can find any one fellow of the college to propoſe him, he may be admitted, provided they think him fit.

" Now I will conſent to the learned Serjeant making this rule abſolute, if he can prove that this bye-law is unreaſonable; for we are here upon the reaſonableneſs of the bye-law. I read

that

that part of the charter which gives them authority to make bye-laws, and I defy the wit or imagination of man to put another queſtion upon the court here, than—Whether this claſs of bye-laws, *taken altogether*, be unreaſonable? I conſent to the rule being made abſolute, if any one of my friends, or all of them together, can, in their imagination; I do not appeal to any experience they can bring; but if they can in their imaginations, however fertile they may be, figure to themſelves an inconvenience that may ariſe from them. They may ſay, Oh, there may be a conſpiracy which may exclude a virtuous and enlightened man! Setting aſide the main improbability, that *members of a learned body could league themſelves in a conſpiracy ſo baſe and ſo ſcandalous, as to refuſe to examine a man propoſed to them by one of their own order, under their own laws* *, from a profeſſional jealouſy †, leſt they ſhould be eclipſed by that perſon. As the licentiates can practiſe, as well as members of the college, all rivalry is at an end, as they cannot exclude any perſon, who is fit, from the practice of phyſic.

" Then are they not truſted with the determination of what is fit? Can your Lordſhips examine

* The eloquent advocate little thought that his clients would deſerve the opprobrium he ſo juſtly attached to ſuch conduct.

† Or from any other illiberal motive, inconſiſtent with their plighted engagement, might have been added.

amine the principles upon which they decide? Can you look at the evidence of the learning produced to them? Can you examine the theſis which a learned phyſician chooſes to give in? Can you look at his grammar? Can you look at his Latin or Greek? Can you examine his ſkill in any of the branches of phyſic? Why, if he is as learned as Æſculapius, theſe perſons undoubtedly, by a majority, could reject him as unfit, and then there is an end of it, even if he could carry the point before the court to day. And yet what is the argument, that, when bowing to the great learning and ability of Lord Mansfield upon that occaſion, when the college having no other end and object in the world; and what other end and object can they have, than the regulation of a profeſſion, which I will ſay—and let Dr. Stanger take part of the honour if he pleaſes; a profeſſion which not only preſerves the health of our relations and friends, and gives greater ſecurity to human life, but which I ſay, alſo gives us a claſs of men who are an ornament to ſociety and to this country, with a knowledge of the languages and the various branches of philoſophy, which gives that inſight into nature and its works which are acquired in the learned inſtitutions, which now are to be broken down, and all ſort of perſons are to be ſuffered to do—What? Not to practiſe phyſic, for they practiſe it already, but they

are to be let in for the purpoſe of governing one of the wiſeſt and the moſt learned bodies; of governing men who, one and all of them, almoſt, are deeply ſkilled in every thing that learning and ſcience have brought forth in any age; and yet, forſooth, it is to be conſidered, as if the charter and acts of parliament were likely to ſuffer, becauſe a man has kept his learning ſo much to himſelf, that nobody could ever find it out, ſo as to be able to think it was wiſe or decent to propoſe him; or elſe, that he is ſuch a phenomenon in human ſhape, that there muſt be a conſpiracy among them to keep him out, leſt he ſhould eclipſe them all. I am ſure Dr. Stanger does not wiſh to repreſent himſelf as ſuch a perſon; but I am certain that if Dr. Stanger would have applied to the college, as men of the firſt learning in every age have applied to it, he would have been admitted.

" We are upon a charter which has exiſted for above two hundred years, the words of which will bear the conſtruction, and no man can refuſe them the conſtruction which we put upon them. It is admitted that the licentiates are a body created by the college, and ſubordinate to them. That they are not becauſe licentiates entitled to be fellows, but there reſts an examination in the college before they lift them

up

up to that ſituation. Then look at the uſage; your Lordſhips did ſo in the caſe of Liverpool; your Lordſhips have done ſo in all the caſes of that deſcription; you have ſaid, that whenever the words of any inſtitution will bear it, you muſt go back, as near as you can, to the time when that inſtitution was created. This is not an inſtitution for the purpoſe of collecting together ſome low vulgar corporation, extremely likely to miſunderſtand the law, and not leſs likely to abuſe it, though they underſtood it; your Lordſhips will not be apt ſo to ſuppoſe concerning this learned body, leſs ſtill would you expect, that in the reign of Charles the Second it ſhould be made a ſort of charge upon the college; that they had departed from their own inſtitution; that they had ſuffered perſons not educated in the ſeminaries of learning, to come into their degree; and that therefore, a letter, which I take to be a grave piece of evidence for your Lordſhips conſideration, though not as legal evidence, that the King's Majeſty, ſitting in Council, adviſed by thoſe in whom the law truſts, and who are generally perſons the moſt eminent for learning, and who could have no intereſt in adviſing the king to iſſue a command which was not only beyond his juriſdiction, but contrary to law and the ordinances of the ſtate; but your Lordſhips find, the King ſends a letter to the college,

college, and there is a regular entry in the books of the college, paying a reſpect and obedience to this letter*.

" Your Lordſhip finds, from that time, a long liſt of the moſt eminent perſons, not qualified according to the rigorous letter of the former bye-laws, but coming in by courteſy and comity, before there was this bye-law made; and at laſt, when the caſes of Dr. Letch and Dr. Fothergill came before the court, when that bye-law ſtood which required a perſon to be a Briton by birth, when ſome obſervations fell from Lord Mansfield, which deſerved the greateſt attention and conſideration; the college of phyſicians had a meeting, they conſulted Mr. Yorke, my Lord Camden then Mr. Pratt; and the ſtatutes were made which I read to your Lordſhip upon a former occaſion.

" Theſe ſtatutes were drawn up by a perſon, highly eminent, as your Lordſhip knows, for all learning, and for every virtue, whom I do not name, only becauſe of his near relation to one of your

* That letter did not abſolutely require education in the Engliſh univerſities, incorporation in either of them was ſufficient. If the college merited reproach for having admitted ſome uneducated perſons, what do they merit for excluding the beſt educated phyſicians within their juriſdiction?

your Lordſhips now upon the bench*. Under theſe circumſtances, and particularly as I was heard before, I will not trouble your Lordſhip any further.—I conceive there is no other queſtion here at all before the court, than whether the bye-laws are reaſonable or unreaſonable? That this gentleman claims not as a licentiate, but as any indifferent perſon. My propoſition is, that it is reaſonable the college ſhould ſay, if you are of the univerſities we will examine you at once; if not of the univerſities, we do not refuſe to examine you, but we conſider it reaſonable to point out the mode in which that examination ſhould go forward, otherwiſe we muſt examine all the world, and we conceive that the regulation which we have impoſed, in order to prevent frivolous examinations, is not inconſiſtent with the reaſonable exerciſe of diſcretion; and which, therefore, is warranted by the charter, and which entitles us to make theſe ſtatutes."

Mr. *Gibbs*. "I am alſo of counſel in this caſe, for the college of phyſicians, who reſiſt this rule; and to thoſe topics which my learned Friend has ſo clearly, acutely, and eloquently treated, it is impoſſible for me to add any thing. I ſhall trouble

* He meant Dr. Lawrence, preſident of the college when theſe bye-laws were made, and father to Mr. Juſtice Lawrence, one of the judges of their legality.

trouble your Lordſhip, very ſhortly, with ſtating only what I take to be the points in iſſue between us, upon what Dr. Stanger, who applies for this rule, muſt found his claim, if it be founded on any thing; and I ſhall ſhortly ſtate, what anſwer we have to give to that claim. Your Lordſhip will not ſuppoſe me to deſert any of thoſe topics, which my friend has ſo ably inſiſted upon, becauſe I omit them, I omit them becauſe I am ſenſible I can add nothing to what he has ſaid—What is it Dr. Stanger aſks of your Lordſhips? It is not, that he may be admitted to all the privileges of practiſing phyſic in London; but that he may be received among thoſe who are to govern the practiſers of it.

" There are two queſtions, as it ſeems to me, which ariſe in this caſe.

" Firſt, Whether Dr. Stanger has any title to what he aſks, independent of the bye-law? And,

" Secondly, Whether, ſuppoſing he had that title, it be not reſtrained by the bye-laws? Theſe two queſtions are, your Lordſhip ſees, perfectly independent of each other; for though this bye-law were notoriouſly bad upon the face of it, and though if it were good, and Dr. Stanger had any other title, this bye-law might break in upon that title;

title; yet though the bye-law be bad, it does not follow from thence that Dr. Stanger has a title to what he aſks; he muſt ſhew a title which would give him a right to what he claims, ſuppoſing this bye-law never had been made.

" I ſhall take the caſe firſt independent of the bye-law—I ſubmit with great deference to the court, that upon the true conſtruction of the charter and the ſtatutes, as explained by the uſage, there are two different deſcriptions of men, raiſed by this charter confirmed by the ſtatutes; there are, firſt, fellows, who are to form the body corporate; there are, next, the licentiates, who are a ſeparate body from the fellows, and who are to be licenſed by the fellows to practiſe; we are not intereſted in mooting the queſtion at preſent, Whether a licentiate be, or be not, abſolutely entitled to an examination, and to a conſequent admiſſion if he be found fit for the practice of phyſic? Perhaps he may; Dr. Stanger has applied for, and he has received that licence; no queſtion, therefore, ariſes upon that part of the caſe.

" With reſpect to the fellows, the queſtion is a very different one, and I humbly inſiſt before your Lordſhips, that thoſe who are candidates for the fellowſhip of the college, are eligible to be elected by the fellows; that there is a diſcretion repoſed

repoſed in the fellows by the charter, and by the ſtatute explained by the uſage, as to how many they will receive into their body, and whom they will receive; a diſcretion to be exerciſed honeſtly, as every diſcretion is, where it is repoſed by the law in any ſet of men; and for the diſhoneſt or corrupt exerciſe of which, the college, or thoſe, who may ſo diſhoneſtly or corruptly exerciſe it, are puniſhable; but ſtill there is a diſcretion repoſed in them, and in the exerciſe of that diſcretion, I ſubmit they cannot be controlled, unleſs it can be ſhewn that they have acted corruptly. I ſhall contend this upon the words of the charter, ſupported by the ſtatute, confirmed and explained by the uſage.

" By the words of the charter it is declared, that the ſix perſons therein named; the words are, ' quæ quo facilius rite peragi poſſint memoratis ' doctoribus,' then they are mentioned, ' medicis ' conceſſimus quod ipſi omneſque homines ejuſ- ' dem facultatis de et in civitate prædicta ſint in ' re et nomine unum corpus et communitas per- ' petua ſive collegium perpetuum;' this is the part upon which my friends found their argument. In a ſubſequent part of the charter, your Lordſhip will ſee theſe words, ' conceſſimus ' etiam eiſdem præſidenti et collegio ſeu commu- ' nitati et ſucceſſoribus ſuis, quod, nemo in dicta ' civitate aut per ſeptem milliaria in circuitu

' ejuſdem

'ejuſdem exerceat dictam facultatem, niſi ad hoc 'per dictum præſidentem et communitatem ſeu 'ſucceſſores eorum qui pro tempore fuerint ad-'miſſus ſit per ejuſdem præſidentis et collegii 'literas ſigillo ſuo communi ſigillatas;' and ſo on.

"In the ſecond act of parliament, the fourteenth and fifteenth of Henry VIII, which is ſtated by the learned gentlemen (though the whole of it is not ſtated by their affidavit) there is a deſcription given of thoſe men who ſhall be licenſed to practiſe phyſic—'That no perſon of 'the ſaid politic body and commonalty aforeſaid 'be ſuffered to exerciſe and practiſe phyſic, but 'only thoſe perſons that be profound, ſad, and 'diſcreet, groundly learned, and deeply ſtudied 'in phyſic.' Here is one deſcription applied to all the perſons to whom this charter, or theſe ſtatutes, are applicable; all the fellows, as well as licentiates, are to be profound, ſad, and diſcreet, groundly learned, and deeply ſtudied in phyſic. *There are no diſtinctions between the qualification neceſſary for the members of the college, and thoſe to whom the members of the college may grant licences to practiſe phyſic; all are to be equally learned**. I am now, your Lordſhip ſees, upon the point, that

* If this be the true conſtruction, how can the college juſtify having granted licences to partial and inferior practitioners, to oculiſts, to women?

hat there are preſcribed and deſignated by the aw, two ſets of men, one of whom are the cor- oration, the other are thoſe to whom the cor- oration may grant licences to practiſe phyſic, nd to all of them this deſcription of learning equally applies.

" Your Lordſhips ſee at once, that if they vere all entitled to be of one claſs, there could e no reaſon whatever for creating two claſſes by he ſtatute; if all are to be fellows, all will be icenſers, and there will be none to be licenſed; nd therefore, although perhaps ſome verbal ar- ument may be raiſed by my learned friends pon ſome parts of the ſtatute, which ſay, that heſe ſix, and the other men practiſing phyſic, hall be a body corporate; yet I humbly inſiſt efore your Lordſhip, that looking to that word vith the reſt of the charter, and other parts of he ſtatute which apply to the ſame ſubject; it evident that thoſe who granted that charter, nd thoſe who enacted that ſtatute, looked to a ody of men all of them poſſeſſed (I do not mean f the ſame degree of learning exactly) but poſ- eſſed of that degree which was *ſufficient by the atute to entitle them to either quality*; and that here were to be thoſe two diſtinct bodies of en, all of whom were to have this qualification; ne were to be the corporation, to be fellows, the

other

other were to be the body, whom the fellows were to licenſe*.

" Then what is become of the argument upon which my friend is to build his claim, that they are entitled to be fellows. They ſay Dr. Stanger is entitled to be a fellow, becauſe he ſwears himſelf to be a man, profound, ſad, diſcreet, groundly learned, and deeply ſtudied in phyſic; why that is the deſcription of all the men to whom licences are to be granted; and if that gives him a title to be admitted into the college, then it was perfectly nugatory in thoſe that paſſed this charter, and thoſe ſtatutes, to ſay they ſhould licenſe other perſons; becauſe by this argument there would be none but themſelves: it could not be their intention, when they point out that there ſhould be two deſcriptions of men, that they ſhould be all blended into one, and that the latter

* If it were admitted that two claſſes are created by the charter and ſtatute, the members of each of which muſt be poſſeſſed of all the qualifications requiſite for either; and that the mode, by which the ſucceſſion was intended to be kept up, is ſo obſcure, that a diſcretionary power of admitting members may be preſumed to be veſted in the exiſting corporators, does it follow that ſuch diſcretion is intirely arbitrary? Ought it not to be governed by principles conſiſtent with the intent and nature of the grant, and the utility and permanency of the inſtitution? Is not a corporation exerciſing ſuch diſcretion, legally controllable, if it deviates groſsly from theſe eſſential principles?

latter deſcription of men would be perfectly uſeleſs, becauſe, whenever they pleaſed, they might become of the former deſcription*.

" Hitherto I have been arguing only upon the words of the ſtatute, that there are two different deſcriptions of men pointed out by it; I think the contrary cannot be contended upon the words of the ſtatute; but if I wanted any addition to my argument, I have the deciſion of this court upon it—this court determined in the caſe of the King, *v.* Dr. Aſkew, and in Dr. Fothergill's caſe, that there were two deſcriptions of men, that the fellows and licentiates were different bodies of men; if ſo, it is impoſſible not only that the licentiates ſhould claim ipſo facto, as licentiates, to be fellows, but that it can be contended that all thoſe who are qualified to be licentiates, are qualified alſo to be fellows, and that is what they muſt contend, if they contend any thing upon the words of the ſtatute, becauſe the words of the ſtatute require the ſame qualification for licentiates—that they ſhall be groundly learned, and deeply ſtudied in phyſic.

" I have

* It is obvious that the perſons who might be allowed to practiſe, without being intitled to incorporation, were partial and inferior practiſers. See p. 49—102.

" I have not only the words of the charter, and this deciſion of the court of King's Bench, but I have the recognition of Dr. Stanger himſelf, that there is this diviſion of perſons pointed out by the ſtatute; he having himſelf been admitted as a licentiate, having accepted that licence under which he has practiſed for the laſt ſeven or eight years, pointing him out at his own requeſt as a man who was entitled—not to be a fellow of the college, but entitled to practiſe phyſic on account of the learning that he had acquired in the profeſſion which he exerciſed—I diſpute not that learning; I agree in all the commendations which Mr. Erſkine has beſtowed upon Dr. Stanger, and which I dare ſay he deſerves, but I deſire that he may not in conſequence of theſe qualifications which entitle him to be admitted to one thing, be admitted to another; I admit they entitle him to practiſe phyſic, but I contend they do not give him a right to be a fellow, not only are the words of the ſtatute, the judgment of the court of King's Bench, the recognition of Dr. Stanger himſelf, but there is a uſage of more than two hundred years, in ſupport of that conſtruction which I put upon the charter. Your Lordſhip ſees I am inſiſting now, that the fellows are eligible by the fellows, that it is in the diſcretion of the fellows

lows to ſay whom and how many they will chooſe. There is nothing in the charter which points out any particular qualification which ſhould entitle a man to be a fellow; the qualification in the charter goes to thoſe who ſhall be licenſed as well as fellows; there is, therefore, no diſtinguiſhing qualification pointed out to be a fellow, it is not pointed out of what number the college ſhould conſiſt; and, therefore, I contend it is diſcretionary in them, to ſay of whom, and of what number it ſhall conſiſt*.

" Now what has been the practice? Dr. Giſborne ſwears—that after a perſon has been in the claſs or order of candidates for one year, and has in all things conformed to the ſtatutes of the ſaid college or commonalty, he may be propoſed by the preſident of the college or commonalty, to the ordinary greater meeting of the ſaid college or community, to be admitted a fellow, and if approved by the majority of fellows then preſent, he

* Were that the caſe, the licentiates admitted, ſpeciali gratia, if a majority, might keep out the graduates of the Engliſh univerſities; " *but it is not an arbitrary power, but a* " *power coupled with a truſt; they are bound to admit every perſon* " *whom upon examination they think fit to be admitted, within the* " *deſcription of the charter, and the act of parliament which con-* " *firms it.*"—Lord Mansfield, ſee p. 101.

he may be admitted. Can there poſſibly be a plainer deſcription of an election than this? He cannot be admitted, unleſs he is approved of by the majority.—Is there any inſtance in which a man has ever thruſt himſelf upon the college by any pretenſions whatever, and obliged them to admit him to this office (which Dr. Stanger now claims to be admitted to) without the approbation of the majority of the fellows, which is an election? Then I have the words of the ſtatute, I have the judgment of the King's Bench, I have the recognition of Dr. Stanger, I have the uſage of more than two hundred years, that there are two ſeparate bodies in this college. I have the uſage of more than two hundred years to prove, that there are two ſeparate bodies of men in the contemplation of this charter, one the members of the corporation, the other that ſet of men whom the corporation are to licence, and that thoſe who are members of the college, have never from the time of paſſing this charter to the preſent time, been thruſt upon the college without the conſent and approbation of the majority of the college, which is an election*.

" This

* Dr. Stanger did not claim to be admitted without an election, but by an election, provided he gave all the teſts of fitneſs, which the charter and act of parliament, or the legal regulations of the college, require.

" This uſage would, I ſhould conceive, if the words of the charter were doubtful, be concluſive upon your Lordſhips, in your conſtruction of it; now it is impoſſible to ſay that the words of the charter are clear upon the ſubject; it is impoſſible to ſay, that there are not theſe two bodies of men, the fellows and the licentiates; it is impoſſible to ſay, that the charter points out any diſtinction as to qualification between the fellows and the licentiates; it is impoſſible to ſay, that the charter clearly deſignates who ſhall be fellows, and who ſhall upon application be admitted as of right into the fellowſhip; to ſay no more of it, the matter at leaſt remains in great ambiguity, in great doubt. Then your Lordſhips will conſtrue this charter, as you have always conſtrued ancient charters; you will look to the uſage; you will ſee whether ſuch a right as is now contended for, has ever with ſucceſs been contended for heretofore; you will look at the manner in which fellows have heretofore been admitted; that is the rule by which the court always conducts itſelf in conſtruing ancient charters. Then you will ſee that no man has ever been admitted to this right, in the way in which Dr. Stanger claims it, but that the college have always exerciſed a diſcretion, and if they have a right to exerciſe a diſcretion, as to whom they will or will not admit, then they are in the preciſe caſe

of

of a corporation conſiſting of an indefinite body, without any particular qualification, that entitles a certain deſcription of men to be received into that body; conſequently thoſe that apply are eligible into this body, as they are into any other indefinite corporation, they cannot be elected without having a certain qualification; having that qualification, it is in the diſcretion of the college, whether they will or not admit them.

" In what a ſituation would this college be, if it were otherwiſe, if every man, for I defy them to find a diſtinction in the charter, between the qualification between a fellow and a licentiate. If every man practiſing phyſic within London, and ſeven miles round it, was entitled to be admitted into this college, and to be one of the governors of it, does your Lordſhip think that the firſt object with thoſe, who now with ſo much credit to themſelves, and ſo much benefit to the public, remain fellows of this ſociety, would not be to get out of it*? Would any of the benefits of this inſtitution remain to the public, if this conſtruction were put upon the charter? And

* Mr. Gibbs maintains that the ſame requiſites of character, learning, and ſkill, are neceſſary for a licence that are neceſſary for the fellowſhip, and yet concludes, that the actual fellows of the college would be degraded by the admiſſion of licentiates, with attainments equal to their own, provided theſe attainments were not acquired at Oxford or Cambridge.

And if the words of the charter do not neceſſarily bind your Lordſhips to ſuch a conſtruction; if there is the ſmalleſt degree of doubt upon it; and if there has been a uſage ſupporting the conſtruction, which I humbly conceive is the true one, I am ſure your Lordſhips will feel yourſelves bound to go with that uſage.

" Your Lordſhip perceives that I have been arguing this, now wholly independent, of the bye-law; I have been conſidering whether if no ſuch bye-law had ever paſſed, Dr. Stanger, ſuppoſing him to be a man groundly learned, and deeply ſtudied in phyſic (which I allow him to be) could make out a title to be admitted into this ſociety; but ſuppoſing for a moment that Dr. Stanger could make out a title to admiſſion into this college, if it were not for theſe bye-laws (which I ſhall never admit till I hear the court ſay ſo) What are theſe bye-laws?

" The firſt is, that no perſon ſhall be admitted into the order or claſs of fellows of the ſaid college or commonalty, unleſs he ſhall have been a candidate for a year. Is it unreaſonable that before a man be admitted to ſuch an important truſt; to be one of the governors of this college, that he ſhould have propoſed himſelf as a candidate for a year, in order that the ſociety may have

have ſome time to make enquiries concerning him. If that be a good bye-law, the preſent application muſt fall to the ground, becauſe the preſent application is not, that he ſhould be admitted into the order of candidates, but that he ſhould be admitted immediately to examination*. And your Lordſhip cannot direct this rule to go, without deciding, that if he be found in the words of the ſtatute, groundly learned, and deeply ſtudied in phyſic, he muſt be admitted; now ſuppoſing this bye-law to be good, Dr. Stanger's application ſhould have been, that we place him upon the order of candidates; but he deſires that he may be immediately examined, whether he may not be admitted into the college.

" I am leſs ſolicitous upon this ſubject, feeling ſo ſtrongly as I do upon the merits, and I agree with my learned friend, Mr. Erſkine, whom I follow in ſaying, that it is more deſirable, perhaps, for all parties, that the main point ſhould be decided, than that they ſhould be turned round upon an application of this ſort; except on this account, that your Lordſhip could hardly grant this rule, as it is now prayed, without

* Examination for the fellowſhip precedes admiſſion into the claſs of candidates, a probationary ſtate, which the licentiates never objected to. Dr. Stanger's firſt application was to be examined for admiſſion into the order of candidates. See p. 173.

out deciding that that bye-law, in ſhort, that every one of thoſe bye-laws, are bad."

Mr. *Juſtice Lawrence.* "It ſeems to me to amount only to this; that a perſon who is qualified to become a candidate, cannot by this bye-law become a candidate."

Lord *Kenyon.* "We do not admit attornies, unleſs their names have been for a term put up outſide of the door."

Mr. *Serjeant Adair.* "Nobody doubts the propriety of that."

Mr. *Gibbs.* "Then I come to the other queſtion—Whether this be or not a reaſonable bye-law; if it be not a reaſonable bye-law, and if Dr. Stanger had upon the general ground the right he contends for, the ſubmiſſion to the regulation, from the time of Henry VIII. almoſt to the preſent time, demonſtrates that, without this bye-law, men of this deſcription have no right to be admitted.

"If we go back ſo far as the reign of Henry the VIII. we find, that in the act of the third of Henry VIII. which my friends have ſet forth in their affidavit; though they have not ſet forth that part, it is enacted, that no perſon ſhall practiſe

tiſe as a phyſician in London, or within ſeven miles, until he have been examined, according to a form therein-mentioned and preſcribed. And it is declared, that that act, or any thing therein contained, ſhall not be prejudicial to the univerſities of Oxford and Cambridge. And in the fourteenth and fifteenth of Henry VIII. it is enacted—That no perſon from thenceforth ſhould be ſuffered to exerciſe or practiſe phyſic through England, until ſuch time as he ſhould be examined at London by the preſident of the ſaid college, and three of the elects thereof, and have from them letters teſtimonial of their approbation, unleſs a graduate of Oxford or Cambridge, who has accompliſhed all things for his form, without any grace. We have no document upon the ſubject from that period, till the time of Charles II.

" Then your Lordſhip comes to the letter of Charles II. in which the king reproves them for having admitted people who were not graduates of the univerſities of Oxford or Cambridge, and directs them for the future not to elect any who were not ſuch; and they accede to that direction*. Either this was or was not a good regulation of theirs. If it was a good regulation, then

* This mandate was ſent to ſecure the adminiſtration of the oaths of allegiance and ſupremacy to ſuch as might be admitted fellows.

then this is a good bye-law. If it was not a good regulation, ſo as to reſtrain inchoate rights, it is moſt ſtrong and concluſive evidence that there had always been the conſtruction put upon the charter which I have had the honour of putting upon it to day; namely, that it was wholly diſcretionary in the body whom they would admit into it, and that they might lay down rules for regulating the diſcretion repoſed in them. It appears to me, that the facts I am now ſtating, ſtrongly ſupport this argument, that from the time of Henry VIII. down to the preſent period, it has been conſidered as diſcretionary in the college to admit whom they pleaſe; and Charles II. your Lordſhip ſees, reproves them for having exerciſed that diſcretion improperly; for admitting into their body any but doctors of the univerſity of Oxford or Cambridge. *There is nothing in the charter about doctors of the univerſity of Oxford or Cambridge* *, but he reproves them for having done it, which muſt be a reproof of them for having improperly exerciſed the diſcretion which he ſuppoſes repoſed in them."

Lord *Kenyon*. " One cannot rely much upon that letter. You know, that prior to the revolution,

* This proves, inconteſtibly, that the graduates of theſe univerſities (if not ſuperior to all other ſchools of phyſic) are neither entitled in equity, law, or expediency, to any preference but ſuch as their individual merit gives.

volution, letters were ſent which were not very agreeable to the conſtitution."

Mr. *Gibbs*. "And certainly we know that a ſubſequent time came, when all theſe abuſes, when all theſe grievances, were corrected. I will argue therefore more ſtrongly from that which your Lordſhip has now thrown out. We know how quick-ſighted they were in ſubſequent times to correct thoſe grievances.

"There are two ways of conſidering that letter; it may have been an unlawful exerciſe of a prerogative which the king arrogated to himſelf; it may, on the other hand, have been a prudent and wiſe reprobation of the conduct of the phyſicians, for having improperly exerciſed the diſcretion repoſed in them; it may have been either the one or the other; but let us ſee by the ſubſequent practice what it was taken to be at that time. If this had been an illegal exerciſe of the prerogative of the crown, in calling upon the college of phyſicians to do that which by their charter he had no right to call upon them to do; what would have been the caſe after the revolution? The reſt of the gentlemen practiſing phyſic within London, or ſeven miles, would have ſaid—Now we can have redreſs; we can be relieved from thoſe reſtraints which were illegally impoſed upon

upon us; we can now, notwithſtanding that letter of the king, get admiſſion into the college if we are entitled to it. What then has been the practice from that time to the preſent? There has not a ſingle man forced himſelf into this ſociety, and many would have been found that would have done it if they could. This affords a very ſtrong inference in ſupport of the doctrine I am now contending for; that the college have a diſcretion to elect whom they pleaſe, and I ſay it is inconſiſtent with the idea, that the king exerciſed that authority illegally *.

" Now take it the other way. Suppoſing the fact to be, that the college of phyſicians were underſtood by all men to have a diſcretion whom they would elect; that exerciſing that diſcretion, they had elected men who were not of either of the univerſities; that the king judged this an improper exerciſe of their diſcretion; that he ſo repreſented to them, and that being ſtruck with this repreſentation, they determined that in future they would chooſe only thoſe who were members of the univerſities of Oxford or of Cambridge; that from the revolution, down to the preſent time, this regulation has been purſued by the

* Mr. Gibbs probably did not know that during the period he alludes to, and long afterwards, phyſicians who had not ſtudied in the univerſities of Oxford or Cambridge, might be incorporated at either for a trifling ſum, and afterwards admitted fellows, which reconciled them to the impoſition.

the college, and that no one has been found to break in upon it; this ſhews that the letter of Charles was not an illegal uſurpation of the prerogative, but a repreſentation to them, that they had been improperly exerciſing a diſcretion which all men at that time ſuppoſed to reſide in them; that in conſequence of that repreſentation, they had governed that diſcretion by the rules then recommended to them; not becauſe they were impoſed upon them by the illegal prerogative of the king, but becauſe they thought them legal, and therefore they have abided by them from that time to the preſent; it ſeems to me, therefore, that in either one way or the other, it is impoſſible Dr. Stanger can be entitled to what he aſks for *.

" I have admitted, that if theſe bye-laws contravened a clear exiſting right of Dr. Stanger, they could not be ſupported; but it appears to me that the bye-law is a reaſonable one; conſider what the object of the college is. The object of the college is, that there may be governors appointed, who may ſuperintend the practice of phyſic in London and within ſeven miles round. At

* Mr. Gibbs appears to have been ignorant that phyſicians who had not graduated at the Engliſh univerſities, were admitted not long after the Revolution as honorary fellows, and more lately by favour. Neither their own ſenſe of the propriety of the meaſure, nor the king's repreſentation ever induced the college to confine admiſſion (for any conſiderable period) to thoſe who had been educated in the Engliſh univerſities.

At the time that theſe bye-laws were madē, there were two univerſities exiſting in this kingdom, over which, to certain purpoſes that I need not ſtate to your Lordſhip, this ſociety has a ſuperintendance (no reflections I am ſure will be caſt by my learned friends on either of them) in which the ſcience of phyſic is taught *. Beſides that, I may ſay it without offence to any foreign univerſity—we all know that the literæ humaniores have been cultivated at Oxford and Cambridge, at leaſt with as much ſúcceſs and as much celebrity as in Scotland.

" It is no trifling recommendation of thoſe who are to be put at the head of ſuch a diſtinguiſhed body as that of phyſic in this country, that they ſhould be men eminent in literature; there is no want of inſtruction in the ſcience of phyſic in Oxford or Cambridge; there ſhould be ſomething more in thoſe who have the government of this learned body, they ſhould be men of letters; there ſhould be ſome teſtimony of their having there diſtinguiſhed themſelves. It was therefore enacted by this college of phyſicians, which has the ſuperintendance of the practiſers of phyſic in this kingdom, who ſaw that the dignity of that profeſſion could not be better ſupported than by excluding

* For the inadequacy of Oxford and Cambridge, as ſchools of phyſic, ſee p. 18.

excluding from the higheſt offices in it thoſe who had not certain qualifications; they enacted, that none ſhould be received, not into the practice of phyſic, but into the government of the profeſſion, excepting thoſe who had been educated in the univerſities of Oxford or Cambridge, with the diſcipline of which they were well acquainted.

" There may be men, as my learned friend Mr. Erſkine ſtated, much better than I can ſtate; who, though they have not had the advantage of that education which the college of phyſicians think the beſt, may ſo diſtinguiſh themſelves by the ſuperiority of their own natural underſtandings, by their elevated genius, that they may raiſe themſelves above the rank to which men of better educations have been able to riſe; for theſe men there is an opening at the comitia majora, if they are preſented by one; and thoſe who made the bye-laws, the majority of the body, conſent, they may be received to examination. So if the preſident, every alternate year, ſhould find a perſon eminently diſtinguiſhed, who had not the education which the bye-law preſcribes, ſuch perſon may be received to the examination; but it ſeems to me that the bye-law itſelf, independent of this, is a reaſonable bye-law. Nothing can be more reaſonable than that thoſe who are admitted to the government of the Engliſh ſociety of phyſic

ſhould

ſhould have been educated in one or other of the two Engliſh univerſities, in each of which univerſities there is a proviſion for the ſtudy of phyſic.

" This I remember, upon the former occaſion, was likened to the Maidſtone caſe, which it does not appear to me to reſemble; in which it was ſaid, that a bye-law reſtraining the number of the eligible is illegal; that was a caſe where the charter required that thoſe of a ſelect body ſhould be choſen out of a larger deſcription of corporators; the freemen, I ſuppoſe; and it gave to that larger deſcription the right of being elected into that other body the bye-law declared to be illegal, in that caſe it was a bye-law that lopped off a part of them."

Lord *Kenyon*. " There was no examination, there they came in as a matter of right *."

Mr.

* In the Maidſtone caſe (in which Lord Mansfield preſided) it was decided that a corporation by charter cannot make bye-laws *inconſiſtent with the intention, or counteracting the directions, of their charter*. Bur. Rep. Vol. IV. p. 2204. If to require a degree from particular univerſities be ſuperadding a qualification *inconſiſtent* with the intent of the charter, (and Mr. Gibbs admits, there is nothing in the charter about doctors of Oxford or Cambridge;) if ſuch a requiſition *counteract* the directions of the charter, which includes all men of the faculty of gravity and learning, the deciſion in the Maid-

Mr. *Gibbs*. " I will trouble your Lordſhip no further upon that part of the caſe. It appears to me, that upon the true conſtruction of the charter, the ſtatutes and the uſage, Dr. Stanger, independently of this bye-law, could have no right to be admitted into this college; and that even if he had an inchoate right, that it is a reaſonable bye-law; and this excludes him."

Mr. *Dampier*. " I ſhall trouble your Lordſhip as ſhortly as I can, upon the ſame ſide as Mr. Erſkine and Mr. Gibbs.

" I ſhall firſt take this matter, totally independent of any bye-laws, and examine what right Dr. Stanger has which has been violated; for the enjoyment of which right he applies to this court. It has been admitted by Mr. Serjeant Adair here, that he has no title as a licentiate. The admiſſion is a little varied from the claim Dr. Stanger gave in to the college; becauſe that claim begins by ſtating, that he is a doctor of phyſic, publicly and legally exerciſing the faculty of phyſic in the City of London; he could not legally and publicly exerciſe his faculty of phyſic in

ſtone caſe apparently determines the bye-law in queſtion to be illegal. The intervention of an examination to aſcertain the title to a corporate privilege does not affect the application of the legal principle. The principle of the Maidſtone caſe extends to the annulment of all bye-laws made in reſtriction of privileges *expreſſed or clearly intended* by a charter.

in the City, without having that licence; the help of which licence he now rejects. If his licence be not his title, what is it? It was ſtated by one of the learned gentlemen, that he was one of the faculty, this therefore is the firſt time ſince the granting of this charter that this title is ſet up; that every one of the faculty who has confidence enough to ſwear to his own title to be a fellow, has a right to demand of them to examine him to ſee whether he is qualified to be, not a practiſer in this profeſſion, but a governor of this profeſſion. I deſire to diſtinguiſh between the two, the practiſer is one that belongs to the faculty in common; the fellow is a governor of the body. It is for the injury done to this title, that Dr. Stanger now comes to this court.

" The nature of this corporation is this. There are two claſſes of men upon the face of the charter, and upon the face of the act of parliament. The college who are to govern, and thoſe who are to be licenced by the college to practiſe, and who are to be under the government and ſuperintendence of the college. The college has by law and by this charter, the government of a learned profeſſion; the charter does not give any limitation of number, nor does it give any regulation as to the continuation of the ſucceſſion; it appears to me that one reaſon why the crown in granting that charter did not limit their number,

and did not regulate the ſucceſſion, was, that it being a learned profeſſion, it muſt naturally fluctuate according to the degree of learning which muſt at different times be different in this kingdom; therefore, it left to the corporation to enlarge or to narrow their number, according as the circumſtances of that profeſſion which they were to govern might require, and left it to their diſcretion to admit or not admit ſuch of the faculty as they the college ſhould think fit, into the exerciſe of the government of their profeſſion *. It is not hinted here that the ſucceſſion of this college is in danger, that their number is narrow. Then that brings this corporation into the ſituation of all other corporations, where there is an indefinite number of corporators; they are limited in their choice of ſuch as are to practiſe; they muſt admit none but what are groundly learned and deeply ſtudied in phyſic; but that does not give all that are groundly learned and deeply ſtudied in phyſic, a right to obtrude themſelves into the government of the profeſſion; upon that ground they may be admitted to exerciſe their profeſſion;

* Under all the fluctuations of medicine, it has never been adequately taught in the Engliſh univerſities. If a diſcretion was actually veſted in the college, it is evident they have not attended to the *circumſtances of the profeſſion*, or they would not have made education in incompetent ſchools a criterion of fitneſs. The abuſe would be a ſufficient reaſon for depriving them of this privilege, if they were otherwiſe actually inveſted with it.

profeſſion; they may be admitted to the profits of that profeſſion; but it does not give them ſuch a title to the government as will entitle them to call upon this court for the aid of a mandamus.

"The act of the fourteenth and fifteenth of Henry VIII. after having confirmed the charter by which theſe two claſſes of men, the college who are to govern, and the licentiates who are to be governed, were raiſed, directs, that none but groundly learned and deeply ſtudied men, ſhall be ſuffered to practiſe. It does not ſay, that all ſuch groundly learned and deeply ſtudied men ſhall be admitted to the government of the college *; and I apprehend the very reverſe to be the true conſequence, becauſe the college are by this ſtatute to govern themſelves, and all who are to practiſe. All who are to practiſe muſt be groundly learned; but if all thoſe who practiſe and are groundly learned are entitled to be of the college, where are thoſe practiſers who are not of the college, whom the college is to govern? According to the argument of Dr. Stanger, the moment they are groundly learned they are to be of the college: that

* The act of the fourteenth of Henry VIII. enacts, 'That 'noe perſon of the ſaid *polityke body and commonaltie* bee ſuf-'fered to exerciſe and practyſe phyſyk, but oonly thoſe perſons 'that be profound, ſad, and diſcreete, groundly learned, and 'deeply ſtudied in phyſyk.' Can any lawyer doubt that thoſe who poſſeſſed theſe qualifications were to be of the *politic body and commonalty*, and if members, that they were to be alſo entitled to all the privileges conveyed by the charter and ſtatutes?

that would totally deſtroy theſe two orders of men, which the charter, the uſage, and the deciſions of this court, have ſo fully recognized.

" Upon this ground, I think, Dr. Stanger having accepted his licence, has thereby eſtopped himſelf from this claim; becauſe he converts that grounded learning which has got him admitted into that claſs of licentiates who are to be governed by the college, he converts that licence into a title to annihilate the very order in which he now is; it is making that which gives him the right to practiſe, and ſubjects him to the juriſdiction of the college, a means to overturn the government of the college; to ſay that he will immediately, inſtead of being governed by the college, become a governor. A governor of whom? Of nobody; if the college is to include all that are groundly learned and deeply ſtudied in phyſic, all the licentiates will immediately become members of the college, and leave none under the words of the charter to be ſuperintended by the college, but the college itſelf. I alſo apprehend this claim of Dr. Stanger is upon ſkill only; for he comes, and merely ſwears himſelf to be of the faculty; that would be deſtructive of the admitted rights of the college. In all caſes, I think, it has been admitted, that the college has a right to make bye-laws; and that ſuch bye-laws as require a proper mode of education are good.

" Now

" Now a claim founded upon ſkill alone certainly goes beſide, and in contradiction to that right; for let the college require what mode of education they will, let their doors to admiſſion be thrown as wide open as they can, by means of that education; certain it is, that a man may ariſe, who by his natural talents, and the power of his genius, may attain to that ſkill which others attain by the help of a regular education; he may arrive to equal ſkill, and then, according to this claim, he has a right to come into the college in defiance of that bye-law which is admitted on all hands to be reaſonable. Thus far I have argued it on the ſuppoſition that there is no bye-law upon the title Dr. Stanger has upon the words of the charter and act of parliament. I have endeavoured to ſhew that it is diſcordant with the conſtitution of the college, which requires that they ſhould have the diſcretion of electing whom they ſhould think fit; that it goes in direct contradiction to the diſtinction made by the charter between the fellows and the licentiates, and contradicts that which is on all hands admitted to be the right of the college, namely, the making of bye-laws requiring a proper mode of education *.

" As

* If by a proper mode of education, a courſe of ſtudy in approved medical ſchools, ſufficient to make a learned phyſician, and a degree conferred by a reputable univerſity, after previous teſts of learning, be meant, the licentiates are deſirous that ſuch a mode of education ſhould be required.

" As to the reaſonableneſs of the bye-laws themſelves, the three bye-laws are; firſt, that no one ſhall be a fellow unleſs he is a doctor of Cambridge, Oxford, or Dublin, after having performed all things preſcribed by the ſtatutes of the ſaid univerſities. There is another which has been made ſince the deciſion of the caſe in Sir James Burrow, which ſtates; that any fellow may propoſe a licentiate of ſeven years ſtanding, and if of thirty-ſix years of age. And there is a third bye-law, by which the preſident is enabled to propoſe a licentiate to be admitted a fellow, who, if approved, may be admitted without examination.

" The college, in the firſt place, have paid a reſpect to the univerſities of this realm, and in doing ſo, they have done no more than the legiſlature did before them; for the third of Henry VIII. expreſsly provides, that their examination ſhall not be prejudicial to the univerſities of Oxford or Cambridge. And the fourteenth and fifteenth of Henry VIII. which confirms this charter, has a proviſo alſo in favour of the univerſities *. They have adopted a like conduct to that which is obſerved in other learned profeſſions, and which the legiſlature has recognized in the profeſſion of the church; becauſe in that profeſ-

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* Theſe proviſos, or ſaving clauſes, are matters of courſe, where the privileges of incorporated bodies might otherwiſe interfere with each other: there is a proviſo in the charter in favour of the City of London.

ſion certain privileges are given to degrees in regard to diſpenſation, without which the dignities to be holden by thoſe degrees cannot be obtained. And therefore the principle upon which they have done this, I conceive to be a principle recognized by the legiſlature, and approved of by conſtant practice.

" It is ſtated in the affidavit, that the time required for obtaining a degree in phyſic at Oxford and Cambridge, and the time required at any other univerſity, are extremely different. At Oxford or Cambridge it is, I think, fourteen years; Lord Coke ſays it is to be preſumed, that every doctor of the univerſity muſt be within the ſtatutes; that none can be a maſter of arts under ſeven years, nor a doctor of phyſic under ſeven years more *, therefore it gives that preference to an education at the Engliſh univerſities; they ſay your education at that univerſity, and the age you muſt be of before you can get that degree, gives you a title to come to us to ſee whether you have thoſe qualifications or no. This bye-law inſures to all who are to govern this learned profeſſion a learned education; it inſures a conſiderable time of reſidence at the place where they

* The period of actual ſtudy in the Engliſh univerſities for arriving at a doctor's degree, ſeldom exceeds three or four years; and it may be procured by leſs than one year's actual reſidence. See Ferris on the college of phyſicians, p. 114.

they have certainly an opportunity to learn thoſe literæ humanæ, which, ſuperadded to their ſkill in phyſic, can be no diſadvantage to thoſe who are to govern ſuch a learned body; and as great and learned men have been educated in the univerſities in this nation as any nation that ever had the profeſſion in it; theſe bye-laws in favour of the members of the univerſity do not take away any right from any body. The college before had it in their power to reject any one; they now ſay by their bye-laws, if you have been in the univerſities of Oxford or Cambridge, we bind ourſelves to elect you. A uſage of two hundred years has confirmed theſe bye-laws, and this is the firſt time ſo large a title, as being one of the faculty, has been ſet up ſince the granting the charter. They leave openings to ſuch as have not had the good fortune to be educated at theſe univerſities, to come in in other ways. They can be propoſed by one fellow; and if their character is ſuch, that the majority preſent think it fit they ſhould be examined, they are entitled to examination. If they are of ſuch eminence as to attract the notice of the preſident, and he will vouch for their character, they are admitted without any examination at all.

" I was prepared, hearing that the objection to the bye-law was, that it narrowed the number of

of the eligible, to diſtinguiſh this caſe from the Maidſtone caſe; but after what has fallen from your Lordſhip, I do not think it neceſſary to detain you on that head."

Mr. *Warren.* "It appears to me that the firſt queſtion is—Who are the perſons that were incorporated by virtue of this charter? My friends will tell me whether they mean to argue, that all the perſons at the time of granting the charter, who were then practiſing phyſic; or all the perſons ſince the charter practiſing phyſic, were incorporated by it. My friends will relieve me, I dare ſay, from contending againſt that conſtruction of the charter. If it is meant to be contended that they were, I will ſtate what I conceive to be a ſufficient anſwer.

"Your Lordſhip will obſerve, that the preamble of the ſtatute ſtates, that there were a variety of people then practiſing phyſic within London and ſeven miles round, who were unfit; and therefore, it ſays, in order to correct ſuch practices, and in order to preſerve the health of his Majeſty's ſubjects, a charter ſhall be paſſed, enacting, that a college or corporation of phyſicians ſhall be erected, which ſhall be erected for the ſole and ſingle purpoſe of *advancing the ſcience*

of

of phyſic, and of correcting all thoſe bad practices *.

" Your Lordſhip ſees from this preamble, that at the time of paſſing the ſtatute, a variety of very unfit perſons were practiſing in London. If my friends mean to contend, that all perſons then practiſing were incorporated, then they mean to contend, that all the bad practitioners in London were incorporated; then, inſtead of correcting thoſe who were unfit, this corporation would conſiſt of nine-tenths of thoſe who are unfit to practiſe. I conceive that to be a complete anſwer to any ſuppoſition that the original charter could mean, to incorporate all thoſe that were then practiſing †. And in reſpect of all now practiſing, I will ſtate what Mr. Juſtice Yates ſays in 4 Burrow.

' I am far from thinking that all the men, of ' and in London, then practiſing phyſic, were in-
' corporated

* Can the limitation of the college to eight members (to which number Mr. Warren contends it may be legally confined) be compatible with the intent of the legiſlature to *advance the ſcience of phyſic?*

† Mr. Warren, in this part of his argument, finds it convenient to take no notice of the act of the third of Henry VIII. by which the legal practiſers of phyſic (whom alone the ' omnes homines ejuſdem facultatis,' was intended to include) had been authorized to practiſe, after having given teſts ſimilar to

'corporated by the charter. The immediate 'grantees under the charter were the ſix perſons 'particularly named in it. The reſt were to be 'admitted by them. They were not ipſo facto 'made members. They were firſt to give their 'conſent before they became members—They 'could not be incorporated without their con-'ſent, much leſs are future practiſers of phyſic, 'of and in London, actually incorporated by 'this charter.

'If the inhabitants of a town are incorporated, 'yet every one muſt be admitted before he be-'comes a corporator—The crown cannot oblige 'a man to be a corporator without his conſent. 'He ſhall not be ſubjected to the inconvenience 'of it, without accepting it, and aſſenting to it. 'Upon moving for an information in nature of 'quo warranto againſt a corporator, it is neceſſary 'to prove that the corporator has accepted*.' Therefore upon the authority of this caſe, and upon the authority of this opinion of Mr. Juſtice Yates, when this very point was argued in this court,

to thoſe ſince required under the charter, conſequently thoſe who were *unfit* to practiſe, or to become fellows, could not be included.

* This argument of Mr. Juſtice Yates, tends to prove, only, that thoſe phyſicians who were meant by the *homines facultatis*, could not be made corporators by the charter without their conſent: it does not invalidate the title of thoſe who poſſeſſed the qualifications required by the charter, and who choſe to avail themſelves of the grant.

court, your Lordſhips will be ſatisfied that thoſe who were then practiſing phyſic, could not be immediately members of the corporation; and much leſs that thoſe who ſince have practiſed phyſic, can by virtue of practiſing phyſic, become members of that corporation, becauſe this likewiſe follows, that if any perſons now practiſing in London, in oppoſition to the corporation of London, who were bad practitioners, yet, by virtue of that practiſe, they muſt become members of this corporation.

" I ſhall follow the ſame mode of argument, that two of my learned friends who have juſt preceded me have—I ſhall firſt conſider who this charter had in view, at the time it paſſed. It ſays, they ſhall chooſe every year out of the college, ' aliquem ' providum virum, et in facultate medicinæ ex- ' pertum in præſidentem ejuſdem collegii ſive ' communitatis ad ſupervidendum recognoſcen- ' dum et gubernandum, pro illo anno collegium ' ſive communitatem prædictam et omnes ho- ' mines ejuſdem facultatis et negotia eorundum.'

" I will read thoſe paſſages in the charter, which appear to me to ſhew that the perſons who poſſeſſed the charter, and the legiſlature when afterwards they paſſed the act of parliament, had in view two different ſets of perſons at that time. I have juſt ſtated one paſſage; in another

another part of the charter, it goes on to ſay, 'et quod prædictus præſidens collegium ſive 'communitas et eorum ſucceſſores congrega-'tiones licitas et honeſtas de ſeipſis ac ſtatuta 'et ordinationes pro ſalubri gubernatione ſuper-'viſu et correctione collegii ſeu communitatis 'prædictæ et omnium hominum eandem facul-'tatem in dicta civitate'—that they ſhall make laws not only for their own government, but for the government of all others, practiſing phyſic within the city of London. Then it ſays, and which has not yet been obſerved upon—'Præterea volumus et concedimus, pro nobis et 'ſucceſſoribus noſtris, quantum in nobis eſt, quod 'per præſidentem et collegium prædictæ commu-'nitatis pro tempore exiſtentes, et eorum ſuc-'ceſſores in perpetuum, quatuor ſingulis annis 'per ipſos eligantur qui habeant ſuperviſum et 'ſcrutinium, correctionem et gubernationem om-'nium et ſingulorum dictæ civitatis medicorum 'utentium facultate medicinæ in eadem civitate 'ac aliorum medicorum forinſecorum quorum 'cunque facultatem illam medicinæ aliquo modo 'frequentantium et utentium infra eandem civi-'tatem et ſuburbia ejuſdem.'

" I argue from that, there was a clear difference in the minds of the perſons who paſſed theſe charters, in reſpect to the meaning of the words omnes homines diſtinguiſhing them when it ſays four

four perſons ſhall be choſen, who are every year to judge and determine upon the practiſers of phyſic; becauſe it there does not ſay, and ſhall be choſen by the college, and all other men*. Again, where it comes to ſpeak of being exempted from offices, it ſays, that the members of the college only ſhall be exempt; it does not ſay, the members and all others practiſing phyſic†; therefore the conſtruction of this charter muſt neceſſarily be, that there were in view two different perſons, one of whom were the fellows, the other the licentiates."

Mr. *Serjeant Adair*. "Between thoſe that are actual members of the college, and other perſons legally practiſing, there is certainly a diſtinction."

Mr.

* The term college, always means the collective body; had the words, "and all other men," been added, ſuch an expreſſion might have been conſtrued to imply what Mr. Warren contends for, that they were not members.

† Mr. Warren has miſunderſtood this part of the charter, the meaning of which is directly the reverſe of what he repreſents it. The words of the charter are "volumus quod nec "Preſidens nec aliquis de collegio prædicto medicorum nec "ſucceſſores ſui *nec eorum aliquis exercens facultatem illam quo-* "*quo modo* in futuro infra civitatem noſtram prædictam et "ſuburbia ejuſdem ſeu alibi ſummoneatur aut ponatur in "aliquibus aſſiſis juratis inqueſtis," &c. words more incluſive cannot be uſed, they extend the privilege to the loweſt practitioner, the college might think proper to permit to practiſe.

Mr. *Warren*. "Then we come to this queſtion —Admitting there is that diſtinction, which is a diſtinction taken by Lord Mansfield in the caſe that has been ſo often mentioned, the queſtion is —What ſort of qualification a man muſt have to become a member of the college? And what ſort of a qualification a man muſt have to become a licentiate? If my friends can ſhew that there is a different qualification neceſſary to become a member of the college, from that which is neceſſary to entitle a perſon to become a licentiate, or to practiſe by virtue of letters teſtimonial; and if they can ſhew that Dr. Stanger has that different qualification, I will grant they make out their title. But upon that point I aſk my friends, what are the different qualifications that either of theſe perſons are to have; and whether the college would be acting according to the power given them, if they were to give letters teſtimonial to a perſon not ſkilled to practiſe phyſic; if they cannot give letters teſtimonial to a perſon not ſkilled, to a perſon incompetent to the practice of phyſic?—I aſk your Lordſhip what is the neceſſary conſequence; is it not that every man who has a licence is a perſon competent to practiſe phyſic? Then if every man that has a licence, is competent to practiſe phyſic, what merit has a member more? His merit can only be, that he is competent to practiſe phyſic,

and has a ſufficient ſhare of knowledge in the profeſſion.

" Now let us ſee what is Dr. Stanger's claim, the ſubſtance of his affidavit is this—I have taken a degree of doctor of phyſic, in Edinburgh; I have ſtudied abroad; I have obtained a licence at home; I have practiſed under that licence; I am a Greſham lecturer, and a phyſician to the Foundling Hoſpital; and becauſe I have all theſe qualifications I am entitled to be a fellow. What is the anſwer? Why, it was becauſe you had theſe qualifications, that we licenſed you to practiſe phyſic. Then if this man ſo appointed has been appointed without a direct breach of the charter, he has been appointed by virtue of his knowledge in phyſic; but by virtue of his knowledge in phyſic, he is not entitled to be made a governor of the college.

" Then my friends will ſay, I am ſetting up a ſet of individuals with a power of encreaſing or decreaſing their number annually — The firſt anſwer to that would be, that this is the corporation, within the conſtruction and ſpirit of the charter. If it be ſo, that is an anſwer. But there is another anſwer to be given to that queſtion, under the preciſe words and ſpirit of this charter. Your Lordſhip will obſerve, that at the

end

end of the act which made this charter itself an act of parliament, there is an addition; it says, that the six already named, taking two more to them, shall be called elects. Now the answer to these questions of my friends is this—that the college would at all times be complete if it consisted of eight members only*; there is a point beyond which they cannot be decreased, but there is no point to which they may not encrease themselves. Your Lordship will observe, that by this charter there are to be four censors chosen annually; there are to be eight elects, and one of these elects is to be president. Then all the college need constantly to exercise all the functions, are, the eight elects, four censors and a president†. Then if there be no definite number assigned by this charter, of whom this corporation is to consist; and if I can shew from the words of the charter, that all the faculties and functions

* The words of the act are, "that the six persons before "said in your most gracious letters patent named as *principals*, "*and first named* of the said commonalty and fellowship, "choosing to them two more *of the said commonalty*, be called and "ycleped elects." If the six were the first named of the commonalty, and were to choose two more out of it, does not that priority and choice imply a body which would allow of precedence and choice? Besides, the censors cannot be chosen out of the elects, whom they are appointed, by the statute, to examine. The offices are incompatible.

† This subsequent sentence would seem to imply, that the college must necessarily contain twelve members, if the following did not contradict this liberal extension of the franchise.

functions of the corporation can be carried into complete exiſtence by eight members only, I ſubmit that is a fair and true conſtruction of this charter*.

" When your Lordſhips look at the part I have cited, you will ſee there muſt be eight elects, four cenſors, and a preſident, theſe can diſcharge all the duties that are ſaid to belong to the corporation and college; which are to make bye-laws for the government of themſelves, and for the government of all other perſons practiſing phyſic within the city; which are to have the correction and government of bad practitioners; and which are to bring actions, if they pleaſe, againſt thoſe who practiſe without a licence. This charter not only takes notice of two ſets of perſons, the members of the college, and the licentiates, but

* The functions of moſt corporations may be, and are in fact, carried on by a few officers; but is it a legal inference, that thoſe few officers may confine the privilege of incorporation to themſelves excluſively, more eſpecially where they are to be choſen expreſsly *out of and by a fellowſhip or commonalty?* The cenſors were created by the *charter* five years before the *ſtatute* was enacted, which firſt eſtabliſhed the order of elects, and they were to be choſen annually by the college for ever. Who could chooſe them if the college were reduced to eight members, whoſe offices are incompatible with theirs? Mr. Warren, in his zeal to preſerve, and even narrow the monopoly, contradicts himſelf, overlooks the moſt obvious and binding regulations of the charter and ſtatute, and argues in oppoſition to the moſt eſtabliſhed rules of law with regard to corporations.

but it does ſuppoſe that there may be perſons exiſting, who are practiſing without a licence; but as againſt thoſe it ſimply gives the college the power of bringing an action, becauſe they are practiſing without a licence; that ſhews the licentiates muſt be themſelves the omnes homines there meant, becauſe they are ſaid to be thoſe for whom the bye-laws are to be made*; but the perſons practiſing without a licence, are not to be governed by the bye-laws, but are to have actions brought againſt them for a penalty for practiſing without that licence. Then I ſubmit to your Lordſhip upon theſe grounds, and upon the authority of Lord Mansfield, that there are theſe two different ſorts of perſons in view; that the qualifications of them both are the ſame; that the omnes homines can extend only to licentiates, and cannot be carried by any conſtruction

* Mr. Warren here confounds the powers and functions of the cenſors with thoſe of the college, or collective body, and then draws an erroneous concluſion. The charter does not give the college the power "ſimply of bringing an action "againſt perſons practiſing without a licence," but authorizes them to exact a ſpecific fine of five pounds from perſons for every month they ſo practiſe. It empowers the cenſors to take cognizance of the practice of all who exerciſe the faculty of phyſic, within the juriſdiction of the college, whether licenſed or unlicenſed, ſtationary or itinerant, and to puniſh them by fines and impriſonment, (by which Mr. Warren muſt mean, the power ſimply of bringing an action) for unſkilful and bad practice. The bye-laws were to extend to all who practiſed phyſic within the college juriſdiction.

ſtruction forward, to reach perſons practiſing in the city, without any licence at all.

" I come now to conſider the bye-laws. The firſt bye-law to which Dr. Stanger objects, is that bye-law which in ſubſtance ſays—That no perſon ſhall be admitted into the order or claſs of fellows of the ſaid college or commonalty, unleſs he ſhall have been a candidate for a year; and that no perſon ſhall be admitted into the order or claſs of candidates, unleſs he ſhall have been created a doctor of phyſic, in the univerſity either of Oxford or Cambridge. In reſpect to the caſe of the King *v.* Spencer—I do not mean to trouble your Lordſhip with any argument concerning it; but I will ground what I am going to ſtate upon the principle there laid down by your Lordſhip*, and upon that principle I hope to ſhew that this is a good bye-law. The bye-law they ſaid there, (without ſtating what it was) was defective, becauſe it ſuperadded a new qualification to the party, which was not according to the charter, but contrary to the ſpirit of it—Then it will be contended, that this bye-law calls for a new qualification, in the party applying, contrary to the charter, and not within the ſpirit of it—It will be admitted to me, that no perſon is entitled to become

* This caſe was decided when Lord Mansfield, not Lord Kenyon, was chief juſtice.

become a member of this college till after examination.

" I ſhall now contend that this is a good bye-law, as connected with the charter, in order to give to the college, previous to examination, a ſufficient and probable teſt of what is the ability, the integrity and conduct of the perſon*.

" In the firſt place it will be ſaid, that this bye-law is reſtrictive, that it is illegal, and not within the ſpirit of the charter. In point of fact, every bye-law is undoubtedly reſtrictive. A bye-law, which ſays a man ſhall have knowledge of a certain kind, is reſtrictive; a bye-law, that ſays, he ſhall be ſkilled in Latin, is reſtrictive; a bye-law, that ſays, he ſhall be ſkilled in Greek, is reſtrictive†; then is this a bye-law that a man cannot

* This is the real ground upon which the legality of the bye-law depends: if a degree from Oxford or Cambridge, be the *only probable and ſufficient teſt* of the ability and integrity of a claimant for admiſſion into the fellowſhip of the college, a bye-law requiring it is good: if, though a good teſt, there be *others which are ſufficient*, by the admiſſion of which the objects and utility of the college would be extended, it is a bad bye-law. How does Mr. Warren eſtabliſh the *excluſive ſufficiency* of this teſt?

† This bye-law is not objectionable merely becauſe it is reſtrictive, but becauſe it impoſes a reſtriction which is unreaſonable. A bye-law requiring previous ſtudy, where there are

cannot get over? Are the doors of the univerſity ſhut againſt any man? Is not every body entitled to go there for admiſſion, and is not every body admitted there, that can paſs a reaſonable examination? Then how can this be argued as a reſtriction in any other way, than a man may ſay it is a reſtriction to call upon him to act prudently, wiſely, and moderately, becauſe it is a reſtriction upon his paſſions, which he wiſhes to indulge. To conſider this part of the argument, as applying ſimply to a perſon who conſiders beforehand, that he is to be educated to practiſe phyſic; your Lordſhip will ſee in that view it is not a reſtriction in fact; the only caſe in which it can be a reſtriction in fact, is the caſe, we will ſuppoſe, of a perſon who having been educated to a ſcience different from phyſic, wiſhes late in life to become a practiſer in phyſic; he ſays, how hard it is for me, that after having continued for many years in the practice of ſomething foreign from

are efficient opportunities of medical improvement; requiring ſuch proficiency in the dead or modern languages as may be neceſſary for attaining medical knowledge; requiring conſiderable proficiency in every branch of medicine, is a good reſtriction in a medical college: but a bye-law requiring a man to ſtudy, where he cannot, without ſacrificing religious opinions; without incurring greater expence than he can conveniently afford; where the vacations are much longer than the periods for ſtudy; where the opportunities of profeſſional improvement are intirely inadequate; a bye-law impoſing ſuch unreaſonable reſtrictions is indiſputably bad.

from phyſic, now I think fit to be a practiſer in phyſic, here is a bye-law ſtands in my way, which ſays a man cannot be a fellow in the college, without having obtained a degree in one of the univerſities*.

" Now let us conſider whether this bye-law is not a teſtimony to the morality, to the integrity of the perſon—Whether it is not a teſtimony of his having paid attention to proper ſtudies to enable him to attain that degree? If we were arguing for the firſt time—Whether this is a proof of all theſe circumſtances I am ſtating, perhaps we ſhould have that difficulty which always occurs in arguing upon a new queſtion.

" But this has been determined in point of fact, by what Mr. Erſkine has ſaid about the bar —No man can practiſe in the courts in Doctors Commons without taking a degree of doctor in laws; no perſons are admitted in the church, unleſs they have taken a degree in the univerſity. By the ſtatutes of Henry VIII. a doctor of laws, or

* If many are precluded; if all can employ their time, and money, and induſtry, more advantageouſly, does it remedy the injuſtice of the reſtriction, that the doors of univerſities, liable to theſe objections, are open? The doors of St. Andrews are open, but would Mr. Warren contend, that it would be a legal reſtriction to confine admiſſion into the college, to thoſe alone who had been educated there?

or a doctor in divinity is entitled to take two benefices for the cure of ſouls. In ſhort, wherever I turn myſelf, I ſee in all the profeſſions in this country, that the taking a degree of doctor, whether a doctor of phyſic, a doctor of divinity, or a doctor of laws, has always been looked upon as the beſt teſtimony of a man's character, and of his having employed his time in a manner beneficial and honourable to himſelf.

" When it is ſaid in reſpect to the ſituation of a member of parliament, in reſpect to a juryman, that no man ſhall exerciſe either of theſe offices unleſs he has a monied qualification to ſuch an amount, What is the inference? It is that a man in ſuch a ſituation will act with integrity. My friends may ſay, that is no proof; ſo they may ſay, that being educated in the univerſity, is no proof that a man has ability.—I am not ſtanding upon poſitive proof, but probable proof.—If the law of this country has ſaid, that the poſſeſſion of £.600 a year be a probable proof of the integrity of a member of parliament, that a monied qualification is a probable proof of the integrity of a juryman, I may urge that this ſort of degree is the moſt probable proof of the ſkill and knowledge of the perſon who has taken that degree—I am now arguing this point as if this were a bye-law made yeſterday; but I do not ſtand in that ſituation; this bye-law has been in exiſtence,

either

either in form or ſubſtance, for very little ſhort of two centuries *.

" It is beyond all doubt, that the main intention of this charter was for the encouragement of phyſic, not for the encouragement of phyſicians; not to give any *appropriate quality or advantage to individuals* †, but the main deſign was for the encouragement of phyſic. Have my friends any affidavit to ſhew a decline of knowledge in the college, that the ſtate of phyſic is in a worſe ſituation now than formerly? If there is no affidavit of that ſort, then I contend that this bye-law cannot be a bad one. Under the exiſtence of this bye-law the college has riſen to the ſtate in which it now is; which it is unneceſſary, and which perhaps it would not be very delicate for me to argue, is, the moſt flouriſhing ſtate ‡.

" But

* This argument proves only what has never been diſputed, that a degree from Oxford or Cambridge is one reaſonable preſumptive proof of medical learning.

† Do the titles, offices, ſalaries, and power of the college, give no *appropriate quality or advantage to individuals?*

‡ Is the flouriſhing ſtate of a medical college (the main intent of which, according even to Mr. Warren, is for the *encouragement of phyſic, not phyſicians)* to be inferred from the *diſproportionate emoluments of a few individuals*, or from the *ſucceſs of the body in improving medicine?* If the fellows taken from the order of licentiates, and a very few others, be excepted, what has the college individually or collectively done for the encouragement of phyſic? They may have treaſures in their archives, to which Mr. Warren has had acceſs, but theſe have not hitherto been promulgated.

" But there is ſtill one other way of conſidering this queſtion; I conſider it plain beyond diſpute, that as the college are to judge of the qualifications of a perſon before he is to be admitted, they have the power to preſcribe what mode of education he ought to purſue, in order to enable him to be admitted. Suppoſing we ſtood upon a bye-law which ſhould be in ſubſtance this—That no man ſhould be admitted unleſs he has a competent knowledge in Greek; unleſs he has a competent knowledge in ſome particular part of phyſic to be ſpecified, your Lordſhip would admit theſe to be good bye-laws. How would your Lordſhip, ſitting here, legally know what ſort of qualifications were neceſſary to entitle a perſon to admiſſion, but that you muſt take it upon the degree of credit you attach to the parties paſſing the bye-law.

" Then upon this bye-law I may argue in this way. You admit that we may preſcribe a mode of education, and are to be the judges of it. Then we ſay, we have looked over all the univerſities in the world; not England, Scotland, and Ireland only, but we know from our own knowledge, experience, and obſervation, what are the ſituations of the univerſities in which the ſcience of phyſic is taught, and in our opinion, there is no mode of education ſo well adapted to attaining a knowledge in the ſcience of phyſic, as

that

that preſcribed by the univerſities of Oxford and Cambridge. If the college of phyſicians are to be the judges of the neceſſary qualifications of perſons to be admitted, I ſhall contend, that you muſt likewiſe admit that they are to be judges of the primary ſteps that are to lead to theſe qualifications *.

" I have argued ſo far upon the charter and upon the bye-law; but there remains a third queſtion, which is perſonal to Dr. Stanger, which will turn upon the ſituation in which Dr. Stanger ſtands before you. It appears by his affidavit, that he has taken out letters teſtimonial; that he is what is now called by the name of a licentiate. It appears further, that at the time this licence was granted him, he gave his faith and promiſe that he would obey all the ſtatutes of the college. I aſk then, at the time when this licence was granted him, what could be his underſtanding of the terms of it, and what could be the underſtanding of the college of thoſe terms? If I could make out

* Mr. Warren, after arguing that the college enjoy an arbitrary power of confining admiſſion to eight perſons, contends alſo, that they excluſively are the judges, not of the qualifications only, for election into this ſelect body; but of the primary ſteps which lead even to theſe qualifications. It would follow from theſe arguments, that the eight elects might confine admiſſion into the college to their own offspring, and that the corporation might be perpetuated by one family.

out that both parties, at that time, underſtood that he being a licentiate, would not endeavour to come into the college, unleſs he had taken the degree of doctor of phyſic in the univerſity of Oxford or Cambridge; if I could make out that he conceived he was not entitled to make that application, unleſs he became a doctor of phyſic of the univerſity of Cambridge or Oxford; then I ſhould contend, that this was a voluntary reſignation on the part of Dr. Stanger, and that he cannot come here to complain of any injury perſonal to himſelf, when he was himſelf the origin of that injury. If the words are to have any meaning, it muſt be underſtood, on his ſide, to be a reſignation; it muſt be underſtood by the college, that he would never endeavour to infringe that bye-law which ſays, no man ſhall be admitted unleſs he is a doctor of phyſic of Oxford or Cambridge, unleſs he gives to the words of the oath at the time he took it, a meaning different from that which the words will bear.

" Then I ſhall ſay in the words of Lord Manſfield—What is this but a trick upon the college? I admit, not the ſame ſort of trick as before; that he does not come here, claiming upon the foot of his being a licentiate; but he comes in oppoſition to his ſolemn promiſe, and calls upon your Lordſhip to ſanction, what appears to me, to be a violation

a violation of ſomething leſs formal, but not leſs ſacred than an oath; a violation of an agreement entered into without compulſion, and with a full knowledge at the time of its force, and its conſequent operation. If he had been under the neceſſity of taking this licence, I grant this part of my argument would be greatly weakened; but according to his own poſition, he might then have applied to be admitted as a member of the college; he did not chooſe to apply to be admitted as a member of the college, but he applied to be admitted as a licentiate. And I ſay, that was a virtual reſignation of any chance he had to be admitted as a member of the college *.

" Then

* This illiberal argument, which had never been admitted by the judges in any of the former trials, and which was repeatedly diſcountenanced by Lord Kenyon in the late trial, was urged by Mr. Warren with a degree of acrimony which betrays collegiate prejudice if not vindictiveneſs. Dr. Stanger became a licentiate without being acquainted with his right to the fellowſhip, and without a previous knowledge of the bye-laws. He ſubmitted to take a licence without much inquiry, after the example of much abler men who had deſcended to it, ignorant of their legal claim to the fellowſhip, or doubtful of the practicability of eſtabliſhing their title. Upon ſubſequent examination of the charter, acts of parliament, bye-laws, opinions, and deciſions relating to the college, he conceived, and was ſupported in that opinion by the beſt legal opinions, that the reſtrictive bye-law complained of was illegal, and that it was no breach of his engagement to reſiſt an illegal bye-law. He found that the moſt diſtinguiſhed of the licentiates had during a long period contended againſt this bye-law in repeated law-

ſuits,

" Then it may be ſaid, the public have a claim to the advantage of his ſkill. As far as they can be benefitted by his practice they have that advantage. But they have a title to call upon him, to act as cenſor or other officer of the college. I ſubmit that under the authority of all theſe caſes, which are ſtated in the caſe of Mitchel *v.* Reynolds, in Peere Williams; thoſe caſes in which it is determined, that a perſon may reſign the power of trading within a particular diſtrict, I ſay, that Dr. Stanger may reſign the right and power of practiſing phyſic in the City. I ſay ſtill more, he can reſign the right and power of governing thoſe who practiſe phyſic in the City. Then, if there be no legal bar from the public benefit to his reſignation of this power, I ſay, that he has reſigned it as far as it is in the power of words to convey a reſignation*; and that he now calls upon your Lordſhip to enforce and to

ſuits, without the ſlighteſt imputation. He alſo found that the licentiates had, by the expreſs terms of their engagement, *the option of obeying any of the bye-laws, or of paying a fine*; which he never refuſed. This condition is here (conſidering the manner in which Mr. Warren preſſes the argument) very uncandidly concealed.

* Becauſe a perſon may reſign his right of carrying on trade, where he might interfere with another who gives him a conſideration for the reſignation, Mr. Warren adds, to his other extraordinary arguments, that an engagement to obey the bye-laws, generally, of a corporation, implies a legal ſurrender of a right to the franchiſe, if one of theſe bye-laws reſtrain that right illegally!

to ſanction the violation of a ſolemn agreement *.

" Then there comes another queſtion upon the form and the mode of this application, which was taken notice of by my learned friend Mr. Gibbs, and on which Mr. Juſtice Lawrence made ſome remark. We have ſet forth a bye-law, which ſays, no perſon ſhall be a member of the college unleſs he has been a candidate for a year. Mr. Serjeant Adair admitted that this ſtanding alone would be a good bye-law. I conceive Dr. Stanger ſhould have applied to the court to ſet aſide that bye-law. The learned judge ſays, we have drawn up our bye-law in ſuch a way, that he cannot make his application. If requiring a perſon to be a candidate for a year is a good bye-law, why could not the application have been made to be admitted into the order of candidates? My friends admitted, that requiring a perſon to be a candidate

* The college may be limited to eight members.—They are the only judges of the qualifications of candidates, and the mode of attaining them.—If this extent of power be not ſecure under the charter and ſtatutes, provided the college can induce thoſe, who might conteſt the uſurpation to ſign bye-laws (whether legal or illegal, known or unknown, poſitive or conditional;) which enact that none ſhall be admitted but ſuch as comply with the conditions impoſed by the college; ſuch ſignature implies a legal ſurrender, and a moral obligation to ſacrifice their chartered rights. Such are the arguments of Mr. Warren!

date for one year was a good bye-law; but that it was bad, inaſmuch as it was connected with that part which ſays, no man ſhall be a candidate till he has firſt taken his degree of doctor of phyſic, in the univerſities of Oxford or Cambridge. If that be not a good bye-law, and your Lordſhip ſhould grant a mandamus, then Dr. Stanger would become a fellow of the college, without ever having gone through the probationary ſtate, which all others have gone through; becauſe the mandamus would be to examine him in order to admit him as a fellow; if, upon examination, he were found ſufficient, he muſt be admitted a member of the college, without having gone through any probationary ſtate at all."

Lord *Kenyon*. "If to be a candidate for a year is admitted to be a legal bye-law, certainly he muſt conform to the legal bye-law."

Mr. *Serjeant Adair*. "Your Lordſhip will find they are one and the ſame bye-law; and I am afraid cannot be ſeparated. I apprehend that I ſhould be told, and I do not know whether your Lordſhip, upon conſideration, might not yet tell me ſo; that if we applied under this particular bye-law that required to be a candidate, we ſhould have been told, as we were when contending the right to be a licentiate—you cannot

at

at once claim the benefit of one part of this bye-law, and object to the other; if you apply under a bye-law to be a candidate, which alone creates a candidate, you cannot apply till you qualify yourself according to that bye-law to be a candidate."

Lord *Kenyon*. "This muſt ſtand over to ſome other day."

Adjourned.

THE KING,

VERSUS

THE PRESIDENT AND COLLEGE OF PHYSICIANS.

COPY from Mr. Gurney's short-hand Notes of the Argument in the Court of King's Bench, May 13, 1797.

MR. SERJEANT ADAIR,

" I AM to addreſs your Lordſhip in ſupport of the rule granted to ſhew cauſe, why a writ of mandamus ſhould not iſſue, commanding the preſident and college of phyſicians to examine Doctor Chriſtopher Stanger, as to his qualifications and fitneſs to be admitted into the corporation, as a member or fellow thereof; and to ſubmit to the court alſo, ſuch anſwers as occur to me, to the reaſons that have been alledged againſt this rule being made abſolute.

" In order to bring this queſtion to a point, it will be neceſſary, ſhortly, to ſtate to the court, as well preciſely what it is that we demand, as the title upon which we demand it; and for the bet-

ter

ter underſtanding of that, to recal the attention and recollection of the court to ſuch particulars of the conſtitution of this learned and reſpectable corporation, as appear moſt directly connected with the queſtion which your Lordſhip has now to decide. It ſeems to be material to attend to the firſt inſtitution, and the progreſs of this learned corporation; to the charter itſelf, and to the two acts of parliament of Henry the VIII. one of which preceded, and the other followed that charter; and the order of time in which theſe paſſed, as well as the nature of ſome of the proviſions of them, appear to throw a conſiderable light upon the queſtion, at leaſt in the view in which it has preſented itſelf to my mind.

" The firſt public act which will be under the conſideration of the court is, the ſtatute of the third of king Henry the VIII. by which it was enacted among other things, 'That no perſon 'within the City of London, nor within ſeven 'miles of the ſame, ſhall take upon him to ex-'erciſe and occupy as a phyſician or ſurgeon, 'except he be firſt examined, approved, and ad-'mitted by the Biſhop of London, or by the 'Dean of St. Paul's, for the time being, calling 'to him or them four doctors of phyſic.' Your Lordſhip will ſee, therefore, that at the time of the paſſing this act, there was no corporation or college

college of phyſic; but by this act, all his Majeſty's ſubjects were reſtrained from the exerciſe of a profeſſion ſo extremely important to the public, till their fitneſs had been made to appear by a previous examination, by the perſons to whom authority, for the firſt time, was given by the ſtatute in queſtion, to make ſuch examination. From the moment of the paſſing of that act, your Lordſhip ſees that a diſtinct line was drawn, who might or who might not lawfully practiſe phyſic within the limit it preſcribes. From the moment therefore of the paſſing of that act, there were certain perſons, excluſively, entitled to the practice of phyſic within thoſe limits, and who, in the legal acceptation of the word might, and who only could be called men of the faculty of phyſic. Your Lordſhip therefore will find, that at any period ſubſequent to that ſtatute, there was a particular deſcription of men to whom, and to whom only, that term, 'men of the faculty of 'phyſic,' could be applied; and in the view which I have of the ſubject, that obſervation ſeems material for the right underſtanding of the charter, which followed the act within about ſeven years; for it ſeems to make it impoſſible accurately to underſtand the deſcription in the charter, of the perſons to whom the privileges given by that charter were meant to be granted, and to whom they were meant to be confined, without

accurately

accurately underſtanding who were the perſons of that deſcription antecedent to granting the letters patent.

" Having premiſed this, let us ſee who it is that are incorporated by the charter. It is granted, firſt, to certain ſpecific perſons by name, then eminent in the profeſſion of phyſic, that they ſhould be a perpetual college, who ſhould exerciſe the faculty of phyſic within the diſtrict that I have already ſtated to the court. It grants to thoſe doctors by name, that they, and all the men of the ſame faculty, and in the aforeſaid city, ſhould be a body, a perpetual community or college; and then it ſtates the particular conſtitution of that body ſo incorporated; the election of officers, and the authority that thoſe officers ſhould exerciſe over the members of that corporation.

" I have already ſtated, that it was neceſſary to the right underſtanding of the words which incorporate thoſe perſons by name, omnes homines ejuſdem facultatis, that whoever is to decide upon the conſtruction of theſe charters ſhould have a clear knowledge, who at the time of granting the charter were omnes homines ejuſdem facultatis, and that will afford a full anſwer to all the chimerical objections that have been ſtated by my learned friend on my left hand, particularly, and

adopted

adopted by my friends after him, that it would open the door to every tooth-drawer and bottle-conjuror, and every man of the moſt vague deſcription in this city; becauſe I have already pointed out to the court, that there were perſons at the time of paſſing this charter, to whom alone the words omnes homines ejuſdem facultatis could be applied, and that was unqueſtionably in the tenth of Henry the VIII. to ſuch perſons only as were of the faculty of phyſic, purſuant to the directions of the ſtatute of the third of the king; and therefore, in the tenth year of Henry the VIII. when the letters patent were granted, I contend, and with great confidence, that no man could be conſidered as homo ejuſdem facultatis, who had not been ſo elected, purſuant to the directions of the act. That at once furniſhes a decided anſwer to all theſe apprehenſions, of throwing open the doors of this temple of learning to people utterly unfit to enter into it, and its being profaned by men of that deſcription; becauſe, by no poſſibility, by the terms of that charter, can any perſons be legally admitted but ſuch as ſhall be legally authorized by the means preſcribed, as well by that act as the letters patent themſelves; therefore, the perſons who had at any time a right to demand to be admitted of that corporation, cannot be the perſons who take upon themſelves to exerciſe the practice of phyſic, whether qualified or not;

not; but it can be only applicable to perſons duly authorized to practiſe, by the means pointed out by the legiſlature and the letters patent *.

" Thus having endeavoured to ſhew what is the only true conſtruction of the deſcription of perſons intended to be incorporated by the letters patent, I am now to ſtate what I conceive to be the effect of theſe letters patent, and that leads me to notice, as I go along, upon the points to which they apply the arguments that have been urged by the learned gentlemen on the other ſide; and as the obſervation, with reſpect to the conſtruction of the letters patent, furniſhes an anſwer to the arguments of my friend on my left hand, ſo the conſtruction of the letters patent, with reſpect to the perſons, ſeems to be equally an anſwer to the argument of Mr. Warren, by which he contended, and he reſted himſelf upon great authorities, particularly Mr. Juſtice Yates, that it could hardly be contended conſiſtently with thoſe authorities, that every man, even legally exerciſing the faculty of phyſic, was ipſo facto a member of the corporation by virtue of the letters patent. I do not feel myſelf called upon ſo to contend

* Mr. Serjeant Adair proves, afterwards, that phyſicians, reſiding within the college juriſdiction, are legally entitled to examination for the licence, which he conſiders as a neceſſary ſtep to enforce examination for the fellowſhip.

contend to ſupport this rule, and I ſhould feel the weight of thoſe authorities extremely, if it were neceſſary for me to ſupport that propoſition.

" Your Lordſhip knows that a charter of new incorporation, (for upon that alone can this argument operate) addreſſed to a number of men of any deſcription, does not, ipſo facto, inveſt them with all the corporate rights; there is ſomething more requiſite than the mere iſſuing the letters patent, and perſons being within the deſcription of thoſe letters patent. All that a new charter gives, is the option of becoming members of the corporation ſo created, if they chooſe to accept the privileges ſo granted, upon the conditions on which they are granted, and to be admitted regularly; for that is neceſſary to becoming a member of any corporation, in order to be entitled to thoſe franchiſes, either under the charter or bye-laws ſubſequently made under the power given in the charter.

" I contend, therefore, not that omnes homines ejuſdem facultatis are by force of the letters patent completely, and de facto members of this learned corporation; but that they have that ſort of inchoate right which authorizes them to tender themſelves for admiſſion into that corporation, according to the forms lawfully preſcribed, either by

by act of parliament, the charter of incorporation itſelf, or bye-laws, lawfully made, purſuant to the power inherent in the corporation, or expreſsly granted by letters patent. I think that mode of putting the claim gets rid of the authorities that have been urged againſt us, upon the ſuppoſition that I was bound to contend that which I do not; namely, that theſe gentlemen applying were ipſo facto members of the corporation. Indeed, the rule itſelf furniſhes an anſwer to ſuch a ſuppoſition, for we have only prayed to be put in a ſituation of being admitted members of that corporation; and I ſhall ſhew your Lordſhip, preſently, that we do not, even unqualifiedly, claim a right in the ſituation in which we now ſtand to be immediately admitted; but we ſubmit to that requiſite which is lawfully annexed as a previous requiſite for every perſon who claims to be admitted a member of a body, which not only enjoys privileges, but privileges in which the public are intereſted, and to which a truſt duty is annexed.

" Where the privileges of a particular body of men are not granted to them for their own ſole benefit, but the public are intereſted in them; ſuch as require integrity, ſkill, and different qualities, which render men fit to be inveſted with a public truſt according to the ſubject matter of that truſt; no man, I ſay, can have an unqualified

right

right to claim admiſſion into ſuch a body, and the qualification of fitneſs muſt be aſcertained in ſome regular mode lawfully preſcribed, to entitle to ſuch admiſſion; and, therefore, that advice has been purſued in the preſent application to the court for Dr. Stanger, who is not ſingular in conceiving himſelf to be inveſted with this public truſt; he does not, however, rely upon the opinion of his own fitneſs, leaſt of all will he rely upon that of any man, or even upon the opinion of the public; but he ſays, try my fitneſs, I offer myſelf to that examination; you have a truſt on the part of the public, not to admit an unfit perſon, but to admit thoſe who poſſeſs the qualifications required by law. I tender myſelf to you for examination; if after that examination you will venture your character and credit as men, that I am an unfit perſon to be admitted to what I claim, I allow you have a right to refuſe; and, therefore, the mandamus prayed is not to admit, but to examination, without which no man can claim to be admitted into this learned body.

" Your Lordſhip ſees diſtinctly, by this time, what, and what alone it is, that Dr. Stanger claims; he claims to be admitted to an examination in the mode preſcribed by law (which I ſhall explain hereafter more particularly) to aſcertain whether he is or not fit to be admitted a

fellow

fellow of the college of phyſicians; that is the thing which he claims, to be examined as to his fitneſs for that admiſſion, which he afterwards expects.

" The next point to be conſidered is, the title under which he claims it; for I have already admitted, that every man who ſuppoſes himſelf fit to be a member of the college of phyſicians, that every man whom the public ſuppoſes fit to be a member of the college of phyſicians, has no right either to be admitted, or to tender himſelf for admiſſion, becauſe, independently of any bye-law whatever, the act of parliament and the charter have deſcribed, who, and who alone, have a claim to be members of the college; and no man that does not come within the deſcription of the charter, or act of parliament, let his qualifications from nature, as my learned friend ſuppoſes that ſome men may have derived intuitive knowledge, let his knowledge in the practice of phyſic be what it may, has any right.

" It remains next for me to ſtate the title under which we claim what we aſk, and that will lead to two queſtions—Firſt, Whether that title is good in itſelf in the outſet? And, in the next place, whether there is any bar to it? Whether

ther there is any thing which can have a legal operation to defeat that title.

" The title I ſtate, therefore, to be under the letters patent themſelves; it will remain open for the other branch of the argument, to ſee whether there is any thing elſe that will operate as a bar to that prima facie right—We claim under the letters patent a right to be admitted, if fit to be admitted, fellows of the college. Dr. Stanger claims as being ejuſdem facultatis, within the limits of the charter, and it is for that purpoſe alone that Dr. Stanger has ſtated the fact, of his having been admitted to the practice of phyſic; it is to ſhew that he is that, which without it he could not be homo ejuſdem facultatis in civitate; he could not be ſo, for the reaſons I have ſtated before, under theſe letters patent, unleſs he had been admitted to the practice of phyſic, by perſons to whom that authority is given; firſt, by the acts of parliament, afterwards by the charter, theſe letters patent being ſubſequently confirmed by the ſtatute of the 14 and 15 Henry VIII.; and perhaps that confirmation might be deemed neceſſary, becauſe a doubt might have ariſen whether the ſtatute of 3 Henry VIII. having given a diſtinct deſcription in what manner perſons ſhould be admitted to practiſe phyſic within the limits, and by whom they ſhould be examined, a doubt might be entertained

tertained of the authority of the crown to have varied that limitation, unleſs theſe letters patent had been confirmed by act of parliament; but, however, no ſuch doubt can operate, becauſe the letter patent, confirmed by the 14 and 15 Henry VIII. have diſtinctly ſubſtituted a new deſcription to that which was firſt erected by the 3 Henry VIII. who ſhall be deemed omnes homines ejuſdem facultatis, within the limits preſcribed; therefore it is abſolutely neceſſary for Dr. Stanger, in order to make any claim at all; admitting that every man who fancies himſelf qualified, is not, therefore, entitled to admiſſion into this learned body; it became, therefore, neceſſary for Dr. Stanger to ſhew that he was one of the perſons who, as we contend, in the true conſtruction of the letters patent, are entitled to be admitted, if they are found capable.

" Our title and our claim, therefore, is under the letters patent themſelves, and having ſtated Dr. Stanger, in our affidavit, to be homo ejuſdem facultatis, under the legal ſenſe of that word, within the limits of the charter; he ſays, I tender myſelf to be examined, try whether I am in learning, character, and morals, fit to be a member of your college or not; if you can conſcientiouſly after that trial ſay I am not, that will be a full anſwer to any ſubſequent mandamus, after an

examination

examination to admit; but, I conceive, that no anſwer could be given to a mandamus, which only ſtates that Dr. Stanger is one of the perſons deſcribed by the charter, as homo ejuſdem facultatis, and that no anſwer can be given to his claim, that they ſhall examine; that they to whom, I admit, the law has given the whole power of examining and deciding, ſhould examine, whether he has all the qualifications which the law requires, to be admitted into that body.

" At the time when the conſtitution of this learned body was ſo much the ſubject of diſcuſſion, the application was undoubtedly ſo framed as not to bring on any final deciſion, upon any queſtion ſimilar to what I am now arguing, which might have prevented any future difficulty; yet it was ſo canvaſſed, as to draw from able and learned judges very ſtrong declarations as to the effect and conſtitution of this learned body, and as to the duties impoſed upon them by that conſtitution, and the noble Lord who then preſided, ſtated, ' There is no doubt, ' that where a party who has a right, has no ' other ſpecific legal remedy, the court will aſſiſt ' him, by iſſuing this prerogative writ. There ' can (ſays Lord Mansfield) be as little doubt, ' that the college are obliged, in conformity to ' the truſt and confidence placed in them by the ' crown

'crown and the public, to admit all that are fit, 'and reject all that are unfit.' I admit that this part of what is ſtated by Lord Mansfield refers only to the right of practiſing phyſic within the limits in queſtion; but it contains this principle, that the diſcretion of the college to admit to the practice of phyſic is not an arbitrary diſcretion, but that they are abſolutely bound to admit all that are fit, of which fitneſs they are the judges; but if it were neceſſary in this part of the caſe, if that were what we now claim, I ſhould deny, for it ſeems to me that the words of the learned judge will fortify me in ſo denying, that they had any authority to enquire beyond the actual fitneſs of the perſon applying to be a licentiate, and that they would have no authority to enquire in what manner that fitneſs had been obtained, for they are bound to admit all that are fit, and to reject all that are unfit.

"They have no authority, therefore, to ſay, we do not enquire whether you are fit or not, unleſs you have been educated at this or that univerſity; unleſs you have purchaſed this or that previous qualification; but they are to enquire, whether at the time I apply to them to be allowed to practiſe phyſic, I am fit to be entruſted with the care of the lives and health of his

Majeſty's ſubjects, if I am, the words of the learned judge are, that they are bound to admit all that are fit; 'for under the reaſon, and ſpirit, 'and true conſtruction of this charter, and this 'act of parliament, no perſon ought to be ſuf-'fered to practiſe phyſic but only ſuch as have 'ſkill and ability, and have diligently applied 'themſelves to the ſtudy, and are well grounded 'in the knowledge of it. And on the other 'hand, all perſons who are ſo qualified, and have 'beſtowed their time, and money, and labour, in 'the proper ſtudies that tend to ſuch qualifica-'tions, have a right to be admitted to exerciſe 'their profeſſion; and the public have alſo a right 'to the aſſiſtance of ſuch a perſon, who has by 'his labour and ſtudies rendered himſelf capable 'of ſerving the public by giving them proper 'advice and directions.'

"That a claim to be examined merely, is the proper ſubject of a mandamus, I have alſo the ſame high authority—'If they are inſufficient, the 'court may grant a mandamus; if they ſhould 'refuſe to examine the candidate at all, the court 'would oblige them to do it.' If, therefore, they ſhould refuſe to enquire into the fitneſs of any perſon who offers himſelf to be examined as a licentiate, the court will oblige them to do it.'

"Thus

" Thus far the authority I have been ſtating, applies to the right of practiſing phyſic, and to that only, it does not go the length of a direct application to the claim of being admitted, or being examined, previous to the admiſſion to be a fellow of that learned body; but in the courſe of the ſame continued litigation, the ſame authority goes wholly to that extent, and ſhews that the qualification of fitneſs is the only qualification. I beg to be underſtood throughout, that in fitneſs I include character as well as learning, but that the qualification of fitneſs, is the only qualification required."

Lord *Kenyon*. " My Lord Mansfield does not confine it to their learning. Now ſuppoſe a biſhop be to enquire into the morals; the biſhops have laid down a rule, I believe, that they will have a teſtimonial from ſo many clergymen."

Mr. *Erſkine*. " From three clergymen."

Mr. *Serjeant Adair*. " I have laid in my claim, to be underſtood throughout, not to confine the word fit to the ſkill and learning of the party, but to include character, morals, every thing in truth to which the word fit can properly be applied; but I am contending that fitneſs alone, in that large ſenſe of the word, as applied to the

ſubject matter, is the requiſite which the charter authorizes the college to require.

" I have ſtated that opinion as to the practice; I will now ſhew it extends to what we claim, the right of being admitted a member and fellow of that corporate body; Lord Mansfield ſays, in 4 Burrow 2202. 'I think that every perſon of 'proper education, requiſite learning and ſkill, 'and poſſeſſed of all other due qualifications, is 'entitled to have a licence; and I think that he 'ought, if he deſires it, to be admitted into the 'college. But I cannot lay it down, that every 'man who has a licence from the college, by 'letters teſtimonials to practiſe phyſic in London, 'and within ſeven miles of it, does thereby ac-'tually become a member of the college, and 'obtain a right to vote in corporate elections.' I have ſtated, that I do not contend that every perſon admitted to practiſe phyſic, thereby actually becomes a member of the college, but that he has a right to it, if, ſubſequently to that admiſſion, he can ſhew himſelf poſſeſſed of the qualifications requiſite for a member of the college, and deſires to be ſo admitted.

" In another page Lord Mansfield ſtates, 'nothing can make a man a fellow of the col-'lege, without the act of the college.' That alſo I admit

I admit in its fulleſt extent, and he admits there muſt have been two acts for it at leaſt—Firſt, the act of examination, afterwards the act of admiſſion—'The firſt act to be done by them 'is the judging of the qualifications of the can- 'didate. The admiſſion into the fellowſhip is an 'act ſubſequent to that. The main end of the 'incorporation was to keep up the ſucceſſion, 'and it was to be kept up by the admiſſion of 'fellows after examination. The power of ex- 'amining and admitting after examination, was 'not an arbitrary power, but a power coupled 'with a truſt. They are bound to admit every 'perſon, whom upon examination they think fit 'to be admitted within the deſcription of the 'charter, and the act of parliament which con- 'firms it.'—Theſe words are very ſtrong—*They 'are bound to admit every perſon whom they think fit 'to be admitted, within the deſcription of the charter, 'and the act of parliament which confirms it.*'

" Here is, therefore, an expreſs authority, in terms that every man, who brings himſelf within the deſcription of the charter and the act, has a right to apply to be examined, and that the college are bound to admit him if he is fit—I ſhall call your Lordſhip's attention hereafter to that, when I come to conſider the reaſons the college have given, why they will not examine into the fitneſs of Dr. Stanger. 'The perſon who comes

'within

'within that deſcription;' that is the deſcription of the charter and act, for that is what alone is referred to, 'has a right to be admitted into the 'fellowſhip, he has a claim to ſeveral exemp-'tions, privileges, and advantages, attendant upon 'admiſſion into the fellowſhip, and not only the 'candidate himſelf, if found fit, has a perſonal 'right, but the public has alſo a right to his 'ſervice, and that not only as a phyſician, but as 'a cenſor, as an elect, as an officer in the offices 'to which he will upon admiſſion become eli-'gible.'

"Thus far, therefore, I have been arguing for the right, which Dr. Stanger claims, to be admitted if found fit, and for the college to exerciſe their diſcretion upon that fitneſs, by the only mode which the charter and act of parliament point out; which is an examination into that fitneſs, and I have ſtated an authority to ſhew, that Dr. Stanger, having clearly ſhewn himſelf to be, within the charter and the act, homo ejuſdem facultatis, has a right from that alone, by the expreſs terms of this authority, to be admitted into the fellowſhip, if the college, in the exerciſe of their public truſt, and confidential power annexed to that truſt, do deem him upon that examination fit; and I contend that they cannot judge of his fitneſs, by any previous requiſite not required by the act and letters patent, but that the

the only mode, by which they can judge of that fitneſs, is by what the charter and act preſcribe.

" I have ſtated what it is that we claim, which is to be examined, and at preſent nothing more. In the next place, I have ſtated in what right we claim it; which is by ſhewing ourſelves to be within the deſcription of the charter and acts, to be one of thoſe perſons who were meant to be incorporated, and by the authority I have cited, of Lord Mansfield in the former caſe, that having that qualification which the charter requires, we have a right to be examined, and if found fit to be afterwards admitted.

" Now it remains to be conſidered, if I have ſucceeded in making out that point under the charter and acts of parliament, whether there is any thing elſe in our way, the legal operation of which ſhould defeat that right, or prevent its taking effect. I ſubmit that there is not; and I ſhould have pretty ſtrong ground to collect, that it was the opinion of the court, upon the former application, that if the claim had been ſtated, as we now ſtate it, not as a claim under any of the bye-laws of the college, but under the charter and acts of parliament alone, that nothing could have defeated that claim but the circumſtance of unfitneſs, to be aſcertained upon examination;

for

for the very bye-law, under which, by the affidavits in anſwer to this rule, they claim a right of refuſing to examine the fitneſs of Dr. Stanger, was in exiſtence, and under contemplation of the court at the time; that the ſentiments I have ſtated to your Lordſhip, were uttered by the learned judges who had the bye-law in queſtion before them, which ſuperadds another qualification, diſtinct from fitneſs, though it may be one of the means by which that fitneſs may be acquired— with this bye-law before them, when it is ſpecifically ſtated, that all the perſons poſſeſſing fitneſs are within the deſcription, not of the bye-laws, but of the charter and acts of parliament; there is a ſtrong implication indeed, that it was their opinion, that if that right had been claimed under that, upon which alone it was duly founded, and not under that upon which it could not have been founded, that it was the opinion of the court, that there was nothing which could defeat that right.

" Your Lordſhip knows, that in this mode of putting the queſtion, no former claim has been diſtinctly ſtated; for the perſons making the former applications had embarraſſed themſelves with queſtions how far different bye-laws can be ſeparated from one another; how far the whole ſhall be conſidered as one code; and be wholly adopted or rejected; and how far different parts of the

ſame

ſame bye-law may be ſeparated, and one enforced and the other rejected; theſe embarraſſments are all ſteered clear of by the preſent mode of application; and my friends have not argued ſtrenuouſly, indeed they have ſtated in honour to the learned body they repreſent, that they are not wiſhed to be arguing very ſtrenuouſly any technical objection, for undoubtedly Dr. Stanger cannot claim his right of admiſſion, unleſs he founds his right upon ſomething independent of thoſe bye-laws; his claim, if I am right, is complete without reference to any of the bye-laws, becauſe the charter preſcribes the mode in which perſons can become homines ejuſdem facultatis, that does not depend upon any bye-law of the corporation, and in that right alone, as having previouſly become a man of the ſame faculty, in that right alone under the charter, and not any bye-law, it is that Dr. Stanger conceives himſelf entitled to apply for admiſſion, and he does not contend that any regulation of this learned body, or even the charter itſelf, does make him a fellow of the college, or give him a complete title ſo to be made, till his fitneſs is examined into.

" My friends have argued, that Dr. Stanger was eſtopped making this application, becauſe it was contrary to the ſtatutes and ordinances of that

that learned body, and that when he had been licenſed to practiſe phyſic, he had faithfully promiſed to obey all the ſtatutes and ordinances; I apprehend he is not in the ſmalleſt degree affected by that argument. In the firſt place, my friend, in ſtating what he faithfully promiſes, ſtopped ſhort in the middle of it, which is frequently a convenient mode of argument, but not a convincing one, for he promiſed to obey all the ſtatutes and bye-laws, *or to ſubmit to the penalties annexed*, which he is ready to do; but farther I contend on the part of Dr. Stanger, that if there was no ſuch reſtriction to this declaration, the meaning of it in itſelf in any court of juſtice, or on any principle of honour and of conſcience, is, that he will conform to all the lawful ſtatutes and ordinances of that body. Dr. Stanger is in the very terms of his engagement at liberty to oppoſe all or any of the ſtatutes, ſubmitting to the penalty for ſo doing; but he is at liberty to ſay, that ſuch and ſuch are not ſtatutes of the college, becauſe they are not lawful ſtatutes.

" I now come again to that which muſt ultimately be the real queſtion in this cauſe—Is the bye-law, which if valid, excludes Dr. Stanger, a lawful ſtatute of the college or not? Is it a reaſonable ordinance within the meaning of the charter

charter and act of parliament? I ſhall contend that it is not; I have already ſtated a pretty ſtrong implication, that when that bye-law was before the court upon the former application, the court did not think it was a good one. Lord Mansfield concluded in the caſe of the King *v.* Dr. Aſkew, with a recommendation to the college to ſettle all other matters amongſt themſelves, without coming to this court; at the ſame time, intimating to them a caution againſt narrowing their grounds of admiſſion, ſo much that even if a Boerhaave ſhould be reſident here, he could not be admitted into their fellowſhip.

" Now, moſt undoubtedly, that applies to the preſent caſe, for if a Boerhaave, or a man of equal qualifications, in this very learned profeſſion, were to apply to the college, being reſident in London, to be admitted a fellow, he could not under this bye-law be admitted."

Lord *Kenyon*. " If I underſtand the bye-law right, that is not quite accurate, becauſe he may be admitted, if he is of thirty-ſix years of age, and has been a practiſer of phyſic for ſeven years, if any one of the college will propoſe him."

Mr. *Serjeant Adair*. " I have not forgotten that patch, which has been applied ſince to the wound

wound of which I ſhall ſpeak preſently, which appears to me to make it worſe than it was before. I will firſt conſider the operation of the bye-law itſelf, as it ſtood at the time of the caſe that I am now ſtating, and then I will conſider the attempts made ſince to remedy it, which have been argued at length by my learned friends —I ſhall firſt contend, that the bye-law as it then ſtood was bad, and appeared to be ſo, by implication in the court of King's Bench at that time. I ſhall then ſhew your Lordſhip, that all the ſubſequent attempts to amend it, have only gone to ſhew their conſciouſneſs that it wanted to be amended, but inſtead of amending it, they have made it a great deal worſe.

" I will therefore conſider the bye-law firſt that requires a doctor's degree in one of the Engliſh univerſities, or an Iriſh degree with an eundem to the Engliſh univerſities; this is the bye-law that ſubſiſted at the time of the former argument, and was in full force. I contend that it is bad, for this reaſon, becauſe it ſuperadds a qualification not required by the charter of incorporation, and though the Maidſtone caſe, which has been alluded to in the different diſcuſſions of this buſineſs, is diſtinguiſhable in many important particulars from the preſent; and though many diſtinctions might be drawn from the nature of the rank

claimed

claimed in the preſent caſe; yet the principle of the caſe appears to me to apply, and it never has been ſhaken.

" The principle of that caſe I take to be this; not that reſtrictions may not be made by bye-laws ariſing from the nature of the franchiſe claimed, as ſuch as may contribute to the good order of the corporation, though they may tend to exclude certain individuals, who without thoſe beneficial regulations would have a right; it would be perverting it to carry it any further; but I take that principle, truly underſtood, and indeed as it is expreſſed in all the reports I have ever ſeen of that deciſion, which has always, I believe, been held ſatisfactory, it is to be underſtood to be this; that the body itſelf acting under the conſtitution given by the crown, which they have accepted, ſhould not be at liberty, under pretence of regulation, to change eſſentially the conſtitution given them by the charter of incorporation, and to ſuperadd qualifications which ſhould limit and narrow the right of being elected, and exclude perſons who under the charter would have a right to be ſo elected.

" Then I have only to ſhew that this is a qualification ſuperadded to what the ſtatute requires as to the perſons to be elected. The regulation

of

of the mode of electing we do not meddle with. We do not impeach the power of the corporation to make bye-laws for directing the mode of their own examination; they, who have a right of examining, are competent to say in what manner they will examine; they are competent to prescribe the particular mode, and persons coming to be examined are bound to conform to those rules which merely apply to their own regulation of their right of examining."

Lord *Kenyon*. "But you will not be satisfied by going to be examined, if they insist that one of the tests of fitness is, that the person must be a member of one of the universities; that will do you no good."

Mr. *Serjeant Adair*. "Certainly not—I conceive, that nothing can be by law a test of fitness under a charter, which says, that all persons who are fit shall be admitted; nothing but examination in some way or other, which is the mode prescribed by the charter, can be the test of that fitness. Your Lordship sees to what it would extend if they have a right to say, that the test of fitness shall be a sine qua non test; a degree in one or other of the English universities, they have a right to confine it to one university; they have a right to say, that a man shall not only be a doctor,

but

but ſhall have been a doctor for twenty years; in ſhort, if they have a right to ſay, that independently of any conſideration of honour, of morals, of character, of ſkill, of practice or experience; if they have a right to ſay, independently of all theſe conſiderations, you ſhould have been for any particular time in a ſpecific ſituation which ſhall alone qualify you to exerciſe thoſe talents, I ſay it is eſtabliſhing a new conſtitution, directly contrary to their charter; for inſtead of being an incorporation of omnes homines ejuſdem facultatis, within the limits of the charter, it is an incorporation only of doctors of the two univerſities of Oxford and Cambridge; that is a ſenſe and conſtruction which I conceive can never be put upon this charter. A charter which expreſsly incorporates certain perſons by name, and all others of a certain deſcription, can never be conſtrued to be a charter incorporating nobody but doctors of phyſic of the univerſities of Cambridge and Oxford; and I ſhall ſhew your Lordſhip bye-and-by, that if it were poſſible to put that conſtruction upon the charter, if they can conſtrue the charter to be an incorporation only of doctors of phyſic in Cambridge and in Oxford, all their bye-laws are bad, as I ſhall preſently ſhew.

" Firſt, I contend that no ſuch conſtruction can be put upon the charter; and that unleſs

that

that conſtruction is put upon the charter, they are clearly ſuperadding a qualification to that required by the charter, which they have not a legal authority to do; for all the qualification required by the charter is, that they ſhall be omnes homines ejuſdem facultatis, appearing ſo to be after the examination effected by theſe letters patent; and to ſay, that they ſhall be members of this or that particular body, is making the letters patent an incorporation only of that particular body; which I contend is a conſtruction that cannot poſſibly be put upon the charter, and without which it is impoſſible to ſupport this bye-law.

" The bye-law, ſuppoſing it to be a total excluſion of all perſons who have not the qualification of being doctors of phyſic in Oxford or Cambridge, I apprehend, is clearly void upon all the principles of law; becauſe it is altering that charter which incorporates all the lawful practiſers of phyſic in London, and making it an incorporation, not of all the doctors of phyſic in London, but only of the doctors of phyſic of Oxford and Cambridge; it is ſuperadding a qualification, which not only makes a change in the conſtitution of a part of the corporation, but makes a change in the conſtitution of the whole, and makes it actually a different corporation from that which was created by the charter.

" The

" The charter created an incorporation of certain doctors by name, and of ſuch perſons as ſhould lawfully practiſe phyſic within the limits deſcribed in future in ſucceſſion. The bye-law makes an incorporation, not of ſuch perſons, but an incorporation of doctors of phyſic alone of Oxford or of Cambridge. I am arguing it now as if it was a law which utterly excluded all other perſons, therefore I contend that bye-law is clearly void, and the college felt that ſo much, that they judged it neceſſary to relax it, as they think, conſiderably; for it appearing manifeſt, that if nobody could be of this corporation who were not doctors of Oxford or Cambridge, it would be a corporation of doctors of Oxford and Cambridge only, which is directly contrary to the charter; therefore, they have opened a little wicket to let in certain perſons who could not claim by that previous right, intending this as an anſwer to the objection, the force of which ſeems to have been admitted by the attempts to elude it. I truſt that the only operation of theſe ſubſequent attempts will be, to ſhew a conſcioufneſs that they were neceſſary.

" To this bye-law, which would change entirely the corporation, and would confine it as a corporation to the doctors of Oxford or Cambridge, there are two exceptions; one, that a

perſon who has been a licentiate for ſeven years, and who is thirty-ſix years of age, may be propoſed by any fellow of the college to be examined; and that he may, if the major part ſhall conſent, be examined in the mode preſcribed by that bye-law; and if upon that examination he is found fit, he may afterwards, with the conſent of the major part of the comitia majora, be admitted a fellow of the college. With reſpect to that, I ſubmit it is bad in another point of view, and more objectionable than the bye-law of which I have been ſpeaking. The bye-law, againſt which I have been hitherto arguing, is one which, whether good or bad, legal or illegal, is at leaſt fair and impartial, as far as the deſcription of it goes; for it gives a right to all doctors of phyſic of Cambridge or Oxford to do that which I ſay the charter gave a right to all practiſing in London to do; that is, to apply to be examined; and it retains no right in the body to give a preference to this or that particular individual, but every doctor, who ſhall apply to be examined, has a right to be examined, and if found fit, has a right to be admitted. But this bye-law is of quite a different complexion, becauſe it gives the body what is directly contrary to the ſpirit of the charter, and ſtill more directly contrary to every word that was ſaid by the court

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of King's Bench upon the former occaſion; it gives them an arbitrary and diſcretionary power of refuſing to examine perſons, who, it is conceded, may lawfully be admitted if they are examined; and that is, in the firſt place, an admiſſion that other perſons than doctors of phyſic of Oxford or Cambridge may lawfully be admitted, if the college think fit; not if they ſhould think fit if the perſon is qualified, but in the vulgar ſenſe of the words, if they ſhould ſo pleaſe; that is a power which the law never gave, a diſcretionary power of refuſing perſons, who by the very bye-law they allow to be capable of being admitted; for their bye-law is bad if it gives leave to admit, ad libitum, perſons incapable of being admitted; therefore this bye-law muſt either give the college the power of diſpenſing with the law of the land, and admitting, ad libitum, as they ſhall think fit, perſons not qualified by law, perſons not fit, or it muſt give a power of refuſing, ad libitum, perſons who are by law fit. I entreat the ſerious attention of the court to that dilemma, applied to the bye-law of which I am now ſpeaking; that it does give a power of admitting, ad libitum, perſons who by the law of the land are not qualified to be admitted, or it gives them a power of refuſing to admit perſons that are qualified; for here they are not to be examined, if they do not chooſe it, there muſt be the conſent of the majority previous

to this examination; therefore I inſiſt that this bye-law is clearly bad of itſelf, and cannot mend the other, though it is an admiſſion that the other wanted to be mended.

" The other is ſtill worſe, for it gives the moſt monſtrous power, coupled with a public truſt, that I believe ever was claimed, or that ever ventured to ſhew its face in a court of juſtice; for it gives them a power of admitting any perſon without being examined at all; this is in a corporation where a public truſt is conferred, and a public duty impoſed, where the charter requires the qualification of fitneſs and no other, this bye-law allows the preſident to propoſe a candidate, and he ſhall be admitted, whether fit or not. I am not imputing to theſe very reſpectable gentlemen, that any one of them is capable of acting upon this bye-law according to the ſpirit of the bye-law itſelf, or of being guilty of ſo monſtrous an abuſe as admitting unfit perſons into the college; it is enough for me to ſay, that the bye-law authorizes them ſo to do. The law does not ſuppoſe a perſon is incapable of abuſing power, it is meant to reſtrain abuſe; therefore, I contend, that there never was a more monſtrous bye-law brought into a court of juſtice than this, which gives the preſident a right, without examination of fitneſs, to introduce a member every two years. It appears

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to me that theſe are therefore miſerable patches, to endeavour either to cure or conceal the wounds in the bye-laws; and that they are infinitely more inexpedient in point of public convenience, and infinitely more againſt the ſpirit of the charter, than even that reſtrictive bye-law I have before obſerved upon. The queſtion therefore reſolves itſelf to this:

" Firſt—Whether every man, ejuſdem facultatis, in the City of London; whether every man legally qualified to practiſe phyſic in London, has not a right, under this charter, to tender himſelf, not to be admitted but to be examined, and ſay, enquire whether I am by my ſuperior ſkill in phyſic, by my morals, by my ſituation, taking in all theſe requiſites which ought to concur, whether I am or am not, beſides practiſing in phyſic, fit to be truſted with a ſhare in the direction and management of this corporation; examine me; admit me if I am fit, reject me if not? If that is the true conſtruction of the charter, then I contend that a bye-law, which abſolutely ſhuts the door to ſuch perſons, and confines admiſſion to perſons only of a different deſcription, cannot upon the principles of law be ſupported, as it changes entirely the perſons of whom the corporation ſhould conſiſt, ſaying, it ſhall conſiſt not of men

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of the faculty of phyſic in London, but of doctors of the univerſities of Oxford or Cambridge.

" In the next place, if it cannot—Whether it can be mended by the miſerable expedient which I have been ſtating?

" One word, and but a word, need be ſaid upon a queſtion which I ſhould not have introduced at all, if it had not been argued upon at ſome length by my learned friends; and that is with reſpect to the expedience and propriety of this reſtriction, ſuppoſing it to be warranted at law. I ſtand upon the principle, that it is not warranted at law; that it is ſuperadding a qualification diſtinct from fitneſs, and different from the qualification required by the charter. But my learned friend has made an eulogium on the two univerſities of Oxford and Cambridge, which I am ſure I ſhall not be ſo unworthy a ſon of one of thoſe univerſities, as to contradict a ſingle word of. I have not the leaſt doubt that any young gentleman of genius and of great application; and I beg to lay ſtreſs upon that, of genius and great application; may, by the help of that genius and great application, acquire a competent knowledge of phyſic, by purſuing his ſtudies at Oxford or Cambridge.

" But

" But I would venture, without the leaſt difficulty, to refer it to my friend; and let the event of this cauſe depend upon the anſwer to it. I would make my friend the arbitrator, and allow him to anſwer the queſtion; whether a man with equal genius and equal application, may not as well acquire a competent knowledge in the ſcience of phyſic in the univerſity of Edinburgh, and other univerſities which may be mentioned, as at either of the learned univerſities of Oxford or Cambridge? I think I can foretell what would be the anſwer of my learned friend; that with an equal genius, and with a great deal leſs application, with the aſſiſtance he might have there, he might acquire that knowledge. There is nothing in the univerſities of Oxford or of Cambridge that will hinder a man from becoming a phyſician, if he pleaſes. In Edinburgh, if he applies to his ſtudies, it muſt be difficult to avoid it. The ſcience of phyſic is not confined to that univerſity; nor do I think it would help this bye-law if they extended it to that learned univerſity of which Dr. Stanger is a member. My objection is, that it is eſtabliſhing a teſt of fitneſs not required by the charter, and contrary to the ſpirit of it; it is ſuperadding a qualification which may or may not confer a fitneſs. I admit it may; but I am ſure my friend will not contend that every man who ſtudies in the univerſities of Cambridge

or

or Oxford, is fit to be a lawyer; is fit to be a divine; is fit to be a phyſician; he may, if he does his duty, become fit to be a member of either of theſe learned profeſſions, but it is not neceſſarily connected with the character of fitneſs at all, when the only requiſite appointed by that charter is the character of fitneſs.

" I have already ſo treſpaſſed upon the time of the court, and I know that any omiſſion I may have made in the diſcuſſion of this queſtion will be ſo ably ſupplied by my friends who will follow me, that I ſhould be unpardonable if I treſpaſſed any further upon the time and patience of the court."

Mr. *Law*. " I am of counſel on the ſame ſide—I think the learned Serjeant has properly preſented to your Lordſhip's attention the two points which are immediately before you, for your conſideration.

" Firſt—Whether the gentleman making this application bottoms himſelf properly upon the charter to claim the thing he prays?

" In the next place—Whether if he does, there be any valid bye-law in the corporation that bars that claim?

" In

" In order to conſtrue the general language of the charter, what is meant by the omnes homines ejuſdem facultatis—it will be neceſſary to look at what was the ſituation of the faculty at the time of the granting that charter, which your Lordſhip recollects was in the tenth of Henry VIII. Seven years before that time there had paſſed an act of parliament, regulating the practice of phyſic within the City of London, and its neighbourhood; which required, that all perſons who ſhould practiſe in the faculty of phyſic, ſhould undergo an examination by the Biſhop of London and Dean of St. Pauls, calling to their aſſiſtance four perſons properly ſkilled in phyſic, and after ſuch examination, they ſhould be permitted to practiſe.

" The charter incorporates by name ſix perſons then exiſting, ſo qualified. There then follow, in addition to the words incorporating theſe ſix perſons, et omnes homines ejuſdem facultatis, in the City of London, and practiſing the ſcience within the City of London. Now what are omnes homines ejuſdem facultatis? Certainly, with reference to the antecedent ſtatute of the third of Henry VIII. I ſubmit it means, all perſons then lawfully practiſing the ſcience of phyſic; and if that be the meaning, then all the difficulty and the danger that my friend preſſed upon us ſo much is entirely obviated, of tooth-drawers and bottle-

conjurers

conjurers coming here, and obtruding themſelves upon the college with a claim to examination; no perſon can claim to be examined who is not prima facie under that charter entitled to practiſe; and no perſon is entitled to practiſe, as marked out by that charter confirmed by the act, that has not obtained upon due examination a licence; it certainly therefore is reſtricted to licentiates, who can come here claiming an admiſſion into the fellowſhip.

" If perſons are improperly repelled from being licentiates, they may come here to eſtabliſh that firſt qualification, but they cannot come here unleſs they have had firſt the ſeal of approbation paſſed by the college upon them, both in point of literature and morals, they are expreſsly by the ſtatute required to be diſcreet perſons, groundly learned and deeply ſtudied in phyſic; we do not contend that all perſons who are ejuſdem facultatis, are ipſo facto incorporated; if we did contend that, it would be in the teeth of our own application; it would be abſurd to apply for a mandamus to admit us to be that which the form of our argument would be that we were already. It would be in the teeth of what is laid down by Mr. Juſtice Yates, and the reſt of the learned judges, in the caſe of Dr. Letch. We contend that we are inchoate members in virtue of the licence that

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we have obtained to practice phyſic, and that we are entitled, if we ſubmit to ſuch further examination as the college in their juſtice and wiſdom may judge to be a reaſonable teſt of fitneſs, in reſpect of learning and morals, having offered, as we ſwear in our affidavit, to meet that examination. We therefore pray to have it put in a courſe of trial, and themſelves the triers of that queſtion, whether we are entitled to be admitted members of that ſociety. The charter incorporating ſix perſons by name, and all men of the faculty of phyſic, are to be admitted members; that maſs of perſons deſcribed the omnes homines ejuſdem facultatis, who are fit to claim admiſſion, having the qualities to which ſuch admiſſion is due. There is nothing in the general words of the ſtatute which repeals this.

" But one of my friends (I think Mr. Warren) ſaid—Why, you have contended here, that all perſons are to be incorporated, and yet the ſtatute recites the vicious practices of ſeveral perſons which required the inſtitution of the college itſelf; this is in the teeth of the very reaſon for inſtituting the college, which is to be a college for excluſion, whereas you are arguing for the admiſſion of all perſons. We argue no ſuch thing, we know that the ſtatute was made in order to puniſh thoſe very perſons; we cannot, with the knowledge of that,

that, contend that this is a general ſtatute of incluſion of all perſons fit or unfit.

" This charter had an immediate view to the ſtatute of the third of Henry VIII. for it ſays, to deter them as well by our laws lately paſſed, as by the conſtitutions which are to be enacted and made by this college to puniſh ſuch perſons; therefore it was not meant to include as members perſons of that unfitneſs, upon which he has commented properly, but to include thoſe that were fit; and the only thing we pray is, that we may be admitted to a trial, whether we are fit in learning and morals, and if we are fit, ſo as to lay our foundation upon the fair conſtruction of the ſtatute applied to the antecedent act to which it immediately refers, that we ſhould not be repelled by any bye-laws brought forward to defeat us.

" It is ſaid the charter contemplates two deſcriptions of perſons. Our argument admits of two deſcriptions of perſons; there are thoſe who are already incorporated, and thoſe who are to be a fund out of which the future corporation is to ariſe; and the queſtion is, whether there is a word in the charter which repels any perſon of competent learning and fitneſs, from making that claim? I ſubmit there is not a word that repels a perſon groundly learned in the ſcience of phyſic,

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(and whether he be ſo, we pray may be enquired) from making a claim to be a fellow of the college.

" It may be ſaid, and I think with juſtice, that a different meaſure of fitneſs may be required for filling the governing functions of the corporation, and being merely licenſed to practiſe phyſic. We do not quarrel with that meaſure; all that we deſire is, that that meaſure may be meted equally, and all perſons that have a competent degree of learning may be admitted; that all perſons who have a competent degree of purity of character may be admitted, to the ſame general benefits, under one general law of the land. I contend, therefore, that the charter and the act, opened the door to all perſons reſident in the neighbourhood of London, who were qualified to be admitted to practiſe, and who are qualified in reſpect of learning, to claim to be admitted to the governing functions, and to be aſſociated as members of the corporation.

" I do not pretend to ſay that they may not enhance that qualification, and make it much higher in point of literature for perſons who are to practice even the general ſcience of phyſic; but let that be equal; let it not be ſaid, that

though

though you are as learned as Boerhaave, though you have as much ſcience as ever adorned the moſt learned man of their own body, and more learning is not to be found; if you have all the moral virtues, which ever adorned the moſt illuſtrious character; and more does not exiſt than in that body; yet you ſhall not be admitted to thoſe functions which entitle you to the practice of phyſic.

" Lord Mansfield has ſaid, they have a right to give the public the benefit of their ſkill and knowledge, as cenſors and as elects, and in every function, when they may be called upon to exerciſe it. It does not ſeem the exact time of day in which one is to contend, that learning is to be acquired within a ſquare mile of the banks of the Cam and the Iſis; we look at the quantity of learning a man poſſeſſes, and not where he acquired it, and however fit our univerſities may be at this moment for the ſtudy of abſtract ſcience; I will venture to ſay, with all deference, that they are not ſo peculiarly fit for the ſtudy of phyſic."

Lord *Kenyon*. " You will hardly abide by that obſervation, when you conſider who are the chymical profeſſors at preſent."

Mr.

Mr. *Law*. " I know there are chymical and anatomical lectures read, but the opportunities of attaining a knowledge of the ſcience are by no means equal to what are to be found in the capital; they are men of eminent ſkill themſelves, but this city, and Edinburgh, and other cities in which perſons uſed formerly to be graduated, afford the beſt opportunities of medical improvement; all our great phyſicians, in former times, were graduated at foreign univerſities, and thoſe moſtly in capital cities, where they had an opportunity of ſeeing thoſe experiments, which are the baſis of phyſic, as well as all other ſciences. There is not a word in the charter which points out the members of the two univerſities as being the perſons who are to conſtitute the college; and, I believe, the argument of the learned Serjeant is unanſwerable upon this ſubject; that if they are to be conſtrued, as the college would conſtrue them, in point of practice, it would be a virtual incorporation of the doctors and the phyſicians of Cambridge and Oxford, excluſive of all other perſons; but if they have a right to take theſe men excluſively, they might have choſen one, they might have denied another; in that way they would make thoſe arbitrary teſts of fitneſs, to the excluſion of thoſe who might be the fitteſt and faireſt claimants of the right to ſuch admiſſion.

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" The queſtion now before your Lordſhips, militates with no deciſion of the court in the caſe of Dr. Letch, the caſe of Dr. Archer, and the caſe of Dr. Fothergill, in all of thoſe caſes the parties application was miſconceived. Dr. Letch bottomed himſelf upon a ſuppoſed election under the bye-laws, and he claimed an election by the comitia minora; there were two votes one way, two another; that body to which it belonged by the bye-laws to ſay, they would approve or diſapprove of that election, diſapproved of it; he claimed under bye-laws, and did not make his caſe come under them. In the caſe of Dr. Aſkew, the queſtion was, whether the licentiates were not, without any form of admiſſion whatever, incorporated members? There might be an inchoate right, but that muſt be perfected by admiſſion; therefore that failed. Dr. Archer founded his claim upon the licence merely, that by virtue of that licence he became a fellow; now by virtue of that he became nothing but what that licence conveyed—a perſon entitled to practiſe phyſic."

Mr. *Juſtice Lawrence*. " When a man becomes homo ejuſdem facultatis, he is not entitled to be admitted but as homo ejuſdem facultatis; your argument ſeems to go to overturn the deciſion in Dr. Archer's caſe."

Mr.

Mr. *Law.* "There was not any charter ſtated to the court in his caſe; but he ſtates himſelf to be licenſed, and that in conſequence of that licence he was entitled."

Lord *Kenyon.* "He ſtated, that by virtue of the licence merely, he was entitled."

Mr. *Juſtice Lawrence.* "You lay your finger upon this, that the charter gives you an inchoate right; but will you find the charter that ſays you have an inchoate right; it ſays, the college have a right to examine you."

Mr. *Law.* "I ſubmit that all inchoate rights, of that ſort, are ſubject to this limitation, which the ſtatute announces, that they ſhall be fit, groundly learned, and ſo on. Then it comes to this, whether we fall within the deſcription, in reſpect of learning, which the ſtatute points out, or it would lead to the miſchief, that every perſon whatever, who might chooſe to denominate himſelf of the faculty, muſt be admitted; but he muſt be of the faculty firſt, and he cannot be otherwiſe but by a licence deſcribed, firſt by the third Henry VIII. and afterwards by the other licence, ſubſtituted in the place of it by the charter, confirmed by the act of parliament. Dr. Archer claimed by virtue of the licence only,

he claimed paramount to all examination; he claimed paramount to all queſtions about his moral character or learning, in any other reſpects, as to any right of the ſociety to exact a higher degree of learning from perſons admitted into the corporation above theſe, that might be ſimply or generally licenſed; therefore his application was vicious, becauſe he reſted it upon the foot of the licence given him for the purpoſe of authorizing him to practiſe, but containing no certificate of his moral or literary fitneſs*.

" The ſame objection lay to the caſe of Dr. Fothergill, he claimed paramount to any examination, and he might not chooſe, at his advanced period of life, to ſubmit himſelf to that examination, which might have been fitter at an earlier period; therefore he did not make the application, now made, tendering himſelf for examination: our offer is to be examined. It is ſaid, that at the time we were admitted licentiates, that we excluded ourſelves from any further claim. Now how is that? Dr. Stanger is aſked, What do you aſk for? he ſays, to be admitted a licentiate; he is aſked if he demands more; he does

* Mr. Law has miſtaken this point. The licence is a certificate of learning and character, aſcertained by previous enquiry and examination. The licence denominates a licentiate *vir doctus & probus*, a deſcription which correſponds with the qualifications required by the charter.

does not then, he was not to look to all the poſſible contingencies in which it might be his pleaſure to demand more, nor did he renounce any right; a licence was the only thing he looked to then, and that was granted. But, ſay they, you entered into an engagement, by which you pledged your faith to the ſociety, that you would not contravene any of their laws—It does not appear that theſe laws were known to him, it is not ſtated, which it ſhould be, in order to make it obligatory upon him."

Lord *Kenyon*. "I think you need not argue that point."

Mr. *Law*. "If that is no eſtoppel, I will then conſider, whether ſuppoſing him to have a claim founded—"

Mr. *Juſtice Groſe*. "I do not conſider the argument by the gentlemen ſhewing cauſe againſt the rule, as preſſing that point, but rather chooſing that the court ſhould decide upon the great ground."

Mr. *Law*. "That was thrown out; but I will do the gentlemen the juſtice to ſay, they argued the point as they did all others, with

great liberality—with a liberality which became them, and thoſe that inſtructed them; but they did not reſt upon that ſo much as upon other parts of the argument. Then having ſhewn, that under the words ejuſdem facultatis, licentiates have the right of tendering themſelves to further examination, as to the ulterior degree of fitneſs which the college may reaſonably require from perſons who do become members of the governing body; the queſtion then is, whether they are eſtopped from that claim by any bye-law? There are bye-laws that eſtabliſh three diſtinct claſſes—candidates—licentiates, and fellows. It is neceſſary, and is coupled with the qualification of being a candidate, that they ſhould have an academical degree; it is incorporated with the qualification to become a candidate, that they muſt have a degree from one or other of the univerſities of Cambridge or Oxford. I have humbly ſubmitted already, and I will not travel over that again, that it was unfit to impoſe by way of reſtriction, that they ſhould neceſſarily be perſons graduated at either of thoſe univerſities, and I think I may draw with me the authority of the learned Judge who preſided in this court when the queſtion was laſt before it:—that all perſons who are qualified in reſpect of learning and morals, and are licentiates, have

a right

a right to apply to offer themſelves for examination, and if found fit upon examination, to be admitted. The queſtion will be therefore, whether the objection, which applied to the conſtitution of the college, in the form in which it exiſted then under the bye-laws in 1765, applies equally to the college under the regulations which have ſince been made reſpecting admitting perſons to the fellowſhip of the college?

" There have been two bye-laws made ſince; one certainly, if it is meant to provide at all for the ſupply of perſons and the ſucceſſion of the order, is inadequate, and ſubject to moſt of the obſervations that the learned Serjeant has made upon it. With reſpect to the honorary fellowſhip, it is certainly liable to ſome exemptions, and is no adequate ſource of ſupply for continuing the corporate exiſtence of the body. Then how does the other obviate the excluſion which we complain of in favour of the two univerſities? that a perſon who has attained the age of thirty-ſix years, who has been ſeven years a licentiate, who ſhall undergo five ſucceſſive ballotings, for there is a balloting upon the firſt propoſition; and I would take the liberty of preſſing upon your Lordſhips, that this is an inadequate mean of obtaining the admiſſion of gentlemen who have not had the advantage of an univerſity degree into the

the college, becauſe there are no compulſory means of enforcing a propoſing of them as candidates; it is not imperative upon the fellows, but they may, if they pleaſe, propoſe them; and therefore the whole body of medicine, who have not had the advantage of academical degrees, depending upon that, have not an adequate mean of acceſs to the fellowſhip, conſidering it as a corporate right.

" My friends have compared it with the means of acceſs to the bar, through the medium of the inns of court; they are voluntary ſocieties, they are not corporations, and there are good reaſons why they declined becoming corporations. No mandamus can go to them to compel them to admit; there may be good as well as bad reaſons why they have not a charter of incorporation; but certainly they might have been troubled with many applications which are now avoided. They are voluntary ſocieties, they are ſubject to the direction and ſuperviſion of your Lordſhips, and the other judges. All they have done upon the ſubject is this—that inſtead of a perſon being propoſed, as of courſe, who has kept his terms, it is made the buſineſs of ſome one, who does propoſe the perſon, to enquire reſpecting his fitneſs, and to enable himſelf to ſtate to the reſt of the benchers, that that perſon is, according to enquiry,

quiry, not unfit to receive admiſſion to the ſituation of a barriſter:—But this is a corporate right, the party here claims a right under the charter, for the enjoyment of which his remedy is immediately by application to your Lordſhips for a mandamus.

" My friend has ſaid, an academical degree is neceſſary for obtaining admiſſion to orders; it certainly is not ſo by any canon of the church—"

Lord *Kenyon*. " Mr. Erſkine did not ſay ſo; he ſaid, many of the biſhops had impoſed that rule upon themſelves, and I believe nobody ever quarrelled with that rule."

Mr. *Law*. " The rule certainly is not univerſal, that rule would be impracticable. I know in ſome of the northern dioceſes it is not adhered to, the canon upon that ſubject requires that they ſhould have a competent ſkill in the learned languages; but the reaſon why the degree is required, is for the purpoſe of ſhewing a ſecluſion from ſecular employ for a certain time, and that they have not been buſy in ordinary and degrading occupations in inferior life, which might render them unfit to be in the miniſtry; that is one among the main reaſons, and I believe the principal reaſon, why they do require a reſidence at the

the univerſity for a certain time before they admit them into holy orders. The rule is ſo far from being univerſal, that one of thoſe learned and illuſtrious perſons that has ſat upon the bench of biſhops within our memory, certainly had not the benefit of that education, I allude to the author of the Divine Legation; it is therefore by no means an excluſive teſt; it does not preclude perſons from the ſituation of being miniſters in the church or the higheſt orders of the profeſſion. He had an honorary degree from Cambridge, doctor in divinity, from archbiſhop Herring; therefore I contend that this bye-law, which depends upon favour, which is the only opening to perſons who would otherwiſe be excluded by the bye-law, appropriating to the univerſities alone the right to the fellowſhip; the only two doors opened are, one by favour of the preſident alternately every year, which was totally unfit to admit omnes homines ejuſdem facultatis, which was meant to be of univerſal and extenſive efficacy; and the other door open to them is by an approbation on at leaſt five ſucceſſive ballots, and that at a period of life conſiderably later than that at which perſons are admitted, who have obtained academical degrees.

" My friend ſaid, this wicket had had the credit of letting through it Doctor Carmichael Smith,

Smith, and others; I believe he miſtook that, for theſe were by the gratuitous gift of the preſident; but it ſhews clearly that this bye-law, which was profeſſed to be opening a general door for all perſons qualified in point of learning and morals, has not admitted more than one, and that bye-law has been in force a conſiderable number of years. I contend before your Lordſhip, that the charter referring to antecedent ſtatutes, incorporated all perſons of learning and competent morals, that that is all that the ſociety are to judge of, and that we have no objection to their judging of by ſuch teſts as they may propoſe as to our univerſal fitneſs and moral qualities—to theſe teſts Doctor Stanger tenders himſelf.

" I hope nothing I have ſaid will be treated as an illiberal return to my friends for their liberality to my client; for I aſſure them, that I feel as much reſpect as any man for the learned body which they repreſent—if there be one profeſſion more learned than another, I am willing to yield the palm of that ſuperior learning to the profeſſion of phyſic. We have treated that ſociety, I hope, with the reſpect that belongs to it, and we only crave that we may have the benefit of that which the legiſlature has given us, and that which the king's grant has given us; namely, a right to ſit among them, and fill thoſe functions for which it

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is not contended that we may not be equally qualified by learning and morals, the only qualifications pointed out by the act of parliament."

Adjourned.

THE KING,

VERSUS

THE PRESIDENT AND COLLEGE OF PHYSICIANS.

COPY from Mr. Gurney's short-hand Notes of the Argument in the Court of King's Bench, May 16, 1797.

MR. CHAMBRE,

"I AM to trouble your Lordſhip with ſome further obſervations in ſupport of the rule againſt the college of phyſicians. From what fell from the court in the courſe of Mr. Law's argument, I preſume that ſome of the objections which have been relied upon by the gentlemen on the other ſide, and which raiſed a kind of preliminary queſtion, are abandoned, and that the court now mean to proceed upon the general merits of the caſe; by the general merits of the caſe, I mean the general conſtruction of the charter and acts of parliament, the bye-laws and their validity. I had obſervations to offer to the court on the other points, which if I am right in my idea of what fell from the court, it is unneceſſary to trouble them with; but if I make any miſtake in that matter,

matter, I would, in the firſt place, ſay a word or two upon theſe objections.

" Some of the objections that have been made to the preſent application, ariſe from the perſonal ſituation of Dr. Stanger. Many arguments have been built upon the circumſtance of his being a licentiate, and the terms and conditions upon which he accepted that licence ; it has been ſaid that he has choſen his ſituation, and is concluded by his election. That he is concluded by any election, I have not yet heard any argument to prove ; a perſon is not compellable to become a member of the college, whatever his right may be, he may delay it as long as he pleaſes, he may chooſe to practiſe under the licence of the college as long as he pleaſes, without any other title ; but if his ſituation and his qualifications at any time afterwards entitle him to be admitted a fellow, I preſume, that by ſo chooſing for a time, to avoid the burthen of the offices that may be imcumbent upon a perſon, who is a member, to perform, or if for any other reaſon he chooſes to wave that privilege, he cannot be precluded by that means from being admitted afterwards to obtain a right, which, as we contend, the general law of the country, and the particular charter of this college, give to all the king's ſubjects that have the neceſſary qualifications ; a

perſon

perſon ſo abandoning ſhould at leaſt know, and be told, that in accepting the ſituation which he does accept, he is abandoning any future ground of application to come into the college.

" The only argument that I have heard urged upon that part of the ſubject, is the engagement that a licentiate in expreſs terms enters into with the college ; that has been contended by ſeveral of the gentlemen, Mr. Erſkine in particular, to be an eſtopel. I will not obſerve upon the miſtake that he made in ſtating that this engagement was upon oath ; it is not upon oath. But I preſume it is an engagement which cannot extend to or be applied to the purpoſe for which the gentlemen would endeavour to uſe it; ſee what is the occaſion on which Dr. Stanger, and other licentiates, are called upon to enter into this engagement ; they apply to the college for a permiſſion to practice within certain limits ; in that practice, by the charter of the college and by the ſtatutes, they are ſubject to the controul of the college ; they agree they will obſerve the ſtatutes and the orders of the college. In what? In regulating their practice while they are ſo practiſing under that permiſſion. How can this engagement be conſtrued to extend further? An engagement indiſcriminately to obſerve all bye-laws, could not be conſtrued to extend to any

which

which are not legal bye-laws; if a bye-law is not legal, it is no bye-law at all. Are all the bye-laws read and ſtated to them at the time of admiſſion? Nothing of that ſort appears.

"I contend that this engagement is merely, that while the perſon continues in practice under their licence, that in the courſe of his practice he will ſubmit to be regulated by ſuch orders and rules as the college in its corporate capacity ſhall think fit to preſcribe to thoſe that are practiſers; it cannot extend to any thing elſe, for the other bye-laws are for their own internal regulation, for the government of themſelves. He cannot be called upon to obſerve bye-laws which are not made for the regulation of his conduct, but are made merely for the regulation of thoſe who have the choice and election, if it is to be called an election, of thoſe that are to be admitted into the college; any thing that concerns their own internal regulation, or the rules by which they are to conduct themſelves as a college, cannot extend to him, and therefore this argument of an eſtopel, cannot apply to the caſe. There is another thing in the form of the engagement. It is not an abſolute engagement to obey all their ſtatutes; but it is, in the alternative, to obey all their ſtatutes or pay the penalties; that clearly ſhews what ſort of ſtatutes they are, that they are

rules

rules of practice, to be obſerved under ſuch penalties upon the non-obſervance of them.

Another objection has been made to the form of the application—that it is an application for admiſſion. It is ſaid, that it is a good bye-law to require that the perſons claiming admiſſion ſhould be candidates a year, in order to be admitted into the college. I think that is eaſily anſwered, becauſe this bye-law, which ſays that there ſhall be ſuch a claſs of candidates, is ſo qualified as neceſſarily to draw into queſtion the validity of the bye-law which we contend againſt. We cannot, by the exiſting bye-laws, be admitted into this claſs of candidates, unleſs we are doctors of the univerſities of Oxford or Cambridge, or have taken the degree without diſpenſation; that is a condition annexed to any admiſſion into the claſs of candidates, and the gentlemen who make that objection ſeem to forget, that upon the former application we did apply in that way; we applied to be admitted into this claſs of candidates, and then they raiſed the objection:—'You come here under a bye-law of 'the corporation; if you found your claim upon 'that bye-law, you ſhall not come to be admitted, or to be examined, under that bye-'law; and, in the ſame breath, ſay it is an in-

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'valid bye-law." But in truth, it is ſo connected with the other bye-law, the validity of which we mean to contend, that it is impoſſible for us to be received under that bye-law, or make any application under it.

" Upon this we have had the opinion of the court on a former occaſion; we were then turned round, becauſe of our application to the comitia minora; we were told we ought to make our application to the comitia majora, who are the whole body of the college; we have done ſo, we have made our application under the charter. If we were to make our application under the bye-law, we could only make it to the comitia minora, which was the very ground upon which the court refuſed the former application. The application now made by Dr. Stanger, does not exclude any form of examination which the college may think fit to preſcribe; if they ſend him to the comitia minora for examination, in the uſual manner, he does not object to that; he requires to be examined. If they chooſe he ſhould continue in the probationary ſtate a twelvemonth, to that he does not object; if they require that as a teſt of his abilities, and of his moral character, they may take that time to enquire into all theſe circumſtances.

" In

" In the preſent form of the application, it was made to the comitia majora when duly aſſembled, and in the form of the application now made to the court, nothing of that ſort is refuſed or objected to on the part of Dr. Stanger; on the contrary, he abſtains from preſcribing any thing as to the mode of examination, and he tells them he ſhall ſubmit to ſuch previous examination, and ſhall give them ſuch ſatisfaction, concerning his abilities and his qualification for that which he ſeeks, as they ſhall in their wiſdom think proper. The anſwer to that is, that he is not entitled to what he aſks, and in ſhewing cauſe againſt this rule, they ſet up by their affidavit this bye-law, (the validity of which we conteſt) as the ground of their rejection. I truſt this ſort of objection, made with reſpect to the form, cannot by any poſſibility prevail, and that the court will decide this application upon the true and real merits of the caſe.

" The act of parliament which paſſed in the third year of Henry VIII. has been ſtated already; which was to reſtrain perſons, not duly qualified, from the exerciſe of phyſic. It directed certain modes, by which all who were permitted to practiſe, were to have their abilities tried and examined by perſons who were then preſumed to be of competent ſkill; none were to practiſe

but them; and, therefore, from the paſſing of that act, till the tenth of Henry VIII. when the college obtained their charter, there were no legal practiſers of phyſic, excepting thoſe who had been examined by the Biſhop of London, and the Dean of St. Paul's, taking to them ſuch aſſiſtance as the ſtatute preſcribes.

" Then comes the charter, which expreſsly incorporates all men 'ejuſdem facultatis;' that charter incorporated all who have been permitted to practiſe under the act of the third of Henry VIII. When I ſay that it incorporated them, I beg to be underſtood, I do not mean that without their own conſent, each man became an actual corporator, his conſent was neceſſary, and a form of admiſſion was neceſſary; but when I ſay that it incorporated them all, I mean, that it gave all who had been ſo examined, and who were then legally practiſing the faculty of phyſic, a right of incorporation, and that is all we contend for upon the preſent occaſion; it manifeſtly appears to have been ſo underſtood by the college themſelves, for in the fourteenth and fifteenth of Henry VIII. when they thought it prudent to apply to parliament for an act to confirm the charter, and to make ſome additional regulations, it is pretty remarkable, that they do not petition the crown in their corporate name, but

but deſcribe themſelves as individuals, and deſcribe themſelves in ſuch a ſort of way, as to ſhew clearly of whom the corporation was then underſtood to conſiſt; the ſix who are firſt-named in the charter, are named, and 'all other men of 'the ſame faculty;' under that general deſcription they ſay, that the king having incorporated, and made of them and their company a body and a perpetual commonalty; therefore, it manifeſtly appears from thence, how they themſelves underſtood their charter, and that they conceived, that all who were then lawfully practiſing were, by the operation of that charter, entitled to admiſſion into that college. The act recites, that it would be 'expedient and neceſſary to provide, 'that no perſon of the ſaid politic body and com-'monalty aforeſaid, be ſuffered to exerciſe and 'practiſe phyſic, but only thoſe perſons that be 'profound, ſad, and diſcreet, groundly learned, 'and deeply ſtudied in phyſic;' ſo that even thoſe who were of the body politic at that time, were conſidered as being ſubject to that teſt of enquiry, as being ſubject to the controul and examination of the body at large, and that even they might be reſtrained, if they did not practiſe properly.

"Thus the corporation was conſtituted; neither the charter nor the act of parliament pro-

vided for the means of continuing this body, but they muſt by law and neceſſity have within themſelves the means of continuance. How were they to be continued? Why, in the form in which they were incorporated. When the ſtatute ſpeaks of perſons to be elected, it directs the mode of electing; the ruling perſons in the college are to conſiſt of the eight elects; the manner of chooſing them, and the manner of ſupplying any vacancies that might happen in that body, are provided for by that ſtatute. The ſtatute did not think it neceſſary to make any proviſion for continuing the body at large, having in clear and explicit terms ſaid of whom that body ſhould conſiſt, that it ſhould conſiſt of all perſons exerciſing the faculty of phyſic; none could exerciſe the faculty of phyſic, but thoſe who had before been duly examined, and thoſe who ſhould thereafter upon examination be found qualified, and be permitted to practiſe phyſic, by the college themſelves, upon the ground of that qualification.

" It was truly ſaid (I think by Mr. Warren in his argument) that this inſtitution was founded not for the benefit of phyſicians, but for the benefit of phyſic; it was not intended for the benefit and advantage of the members of the univerſity of Oxford, or the univerſity of Cambridge, or a particular claſs of men, who might get

get into the corporation in London, and chooſe to retain to themſelves the power, privileges, and emoluments attached to the ſituation, it was for the profeſſion at large; it was meant to inſtitute a corporation, in the form it exiſts in many other corporations, not devolving all power upon the ſelect body, but giving a power to the body at large, and there was no inconvenience in conveying ſuch a power, becauſe that commonalty was not, as I inſiſt, of perſons without qualifications, of perſons who have only the accidental qualification of reſidence, and of a practice derived from no other title but their own choice and will to practiſe; none could practiſe but under the teſt of the examination of the college, and as all were intended, who had the qualifications which rendered them fit to be uſeful to the public, and to turn their talents and acquirements to their own advantage, all ſuch were entitled by this charter, as I conceive, to be admitted into the college.

" But it is ſaid, that the charter ſuppoſes there might be many practiſers in the city of London, and within the limits preſcribed, who were not members of the college; and the words relied upon for that purpoſe are, when it ſays no one ſhall practiſe phyſic, ' niſi ad hoc admiſſus ' ſit.' It might be doubtful what was meant by theſe

theſe words, whether it is, that none ſhould practiſe, but thoſe who were admitted into the college as members, the propriety of their admiſſion was a ſubject referred to the judgment of thoſe who conſtituted the body; it might be doubtful whether that was meant by the charter, or whether it meant a diſtinct body of men. It might be the meaning of the charter, that previous to an admiſſion into the college, as a preliminary qualification, there ſhould be an admiſſion to practiſe, in order to make thoſe perſons, perſons exerciſing the faculty; this might probably have been the meaning of the charter, and agreeably to that appears to have been the practice under the charter, not from any bye-laws ſtated on the preſent affidavits, but from bye-laws, ſtated on former occaſions, it appears that admiſſion to practiſe was conſidered as a neceſſary previous qualification for admiſſion into the college; for by a ſtatute, dated in the year 1565, or thereabouts, that was required. And in another ſtatute, that was made in the year 1582, it was ordered, that no one ſhould be admitted into the college, unleſs he had been a perſon practiſing by a licence, for a twelvemonth before his admiſſion; but whether that is the conſtruction of the charter or not, or whether it might refer to other perſons who might practiſe by licence, becauſe they were not properly qualified

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to undergo that more ſevere examination, which the college might think neceſſary before they admitted perſons into their body; or whether it might refer to thoſe who of their own choice did not wiſh to become members of the body, yet ſtill might wiſh to exerciſe their profeſſion, and practiſe within the limits; in either of theſe caſes it is ſufficient to anſwer in the words of the charter. Indeed I do not know that it is neceſſary to refer to perſons of that deſcription, becauſe there are many others who might practiſe, not generally, but for particular purpoſes. But I conceive the true meaning of the charter in theſe words was, that none ſhould be admitted to general practice, either as a member of a college, or in any way but under the licence of the college; and none of the ſuppoſitions that I have made, which I conceive are fair ſuppoſitions, affect the right upon which the preſent claim to examination is founded.

" Another objection that has been more ſtrongly, I think, relied upon is this—That if all were to be admitted who poſſeſs the neceſſary requiſites for the practice of phyſic with benefit to the public; if all in conſequence of the teſt of ability only were to be admitted, and none elſe to be admitted to any ſort of practice, why all would be governors, and there would be none to govern.

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Would that conſequence follow? There are various ſubjects of their government; perſons not chooſing to be admitted members of the college, as I mentioned before; perſons who are declared to be ſubject by the charter itſelf to the regulation of the college; foreign phyſicians coming here to practiſe; perſons concerned in the adminiſtration of medicine, and in the vending of medicine, but not preſcribing as phyſicians; there are a variety of ſubjects and of perſons to which their power of regulation might extend. But is it a conſequence, that if all the qualified perſons were entitled to be admitted members of the college, and to a ſhare in the government, that there would be none to be governed. All corporations, as I conceive, are for the regulation and for the government of the individuals of whom thoſe corporations conſiſt; as a body they govern, but as individuals they obey; and the language of this charter leaves no doubt of the power of the college as a body to govern, and to preſcribe rules to all the individuals of whom it might conſiſt.

" The power of making bye-laws extends to the rule of government of the college, and all men exerciſing the faculty of medicine. Now it is indifferent whether that word is to be conſtrued as meaning the corporate concerns of the college as a body, and that all men of the faculty, mean

mean the individuals of whom the college conſiſts, or that the college means the members of the college; and all other men of the faculty mean perſons exerciſing the faculty, but who are not members; then the regulation and the government muſt mean the regulation and the government of thoſe individuals, who in the courſe of their practice have been admitted into the college.

" The power that is given to the college to be executed by their cenſors is equally admitted; it expreſsly declares, that they ſhall have the correction of all phyſicians, without at all limiting their juriſdiction to thoſe who are, or to thoſe who are not members of the corporation; and therefore, as well upon the ground of the general law reſpecting corporations, (which neceſſarily muſt be ſo where the whole body of a corporation is to have the government there is nobody to govern) the individuals of whom the corporation conſiſts muſt neceſſarily be ſubject to the government of the whole body as a body.

" Then it ſeems, that as a rule for the conſtruction of this charter, a conſiderable degree of ſtreſs has been laid upon the uſage that is ſuppoſed to have obtained. If the meaning of the language of this charter, and the language of the

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act is not ambiguous, but is obvious, no uſage could be received to contradict it; but even if we are limited to an enquiry into the uſage that has prevailed, it appears to me, that the force of the uſage is ſtrongly with us. Of all uſage, that is the moſt important, which is contemporary or nearly contemporary with the charter, or the thing that is to be expounded. Now, from the time of obtaining the charter, which was in the year 1518, down to the year 1637, we hear nothing of any reſtriction that is at all like that which is now contended for; nothing that did not leave admiſſion into the body of this corporation open to every individual who poſſeſſed thoſe qualifications which are neceſſary to be poſſeſſed under the terms of the charter, and for the public benefit.

" In the year 1637, there is a bye-law, which is near an hundred and twenty years after the granting of the charter, which impoſes ſome degree of reſtraint; by that bye-law the performance of exerciſes and diſputations is required in one of the two univerſities. But it likewiſe appears, that that bye-law was not acted upon; and we have no account whatever of the bye-law being in force till we come to the period when Charles II. ſent to the college that letter which has already been ſtated; and there the excluſive privilege

lege given to the univerſities of Oxford and Cambridge is ſuppoſed to have originated, and continued ever ſince. I ſhould conceive, that no great force would be given to the illegal mandate of an arbitrary prince; but when that letter comes to be attended to, it is not that which the gentlemen ſuppoſe it to be, for it does not require any reſidence at Oxford or Cambridge at all; it does not require, that they ſhould have accompliſhed all things neceſſary to obtaining their degree without favour or grace; it does not make it neceſſary that they ſhould reſide ten years to obtain a degree in phyſic; they may be educated whereever they pleaſe; have ſpent their time in the ſtudy of phyſic wherever they pleaſe; nothing more is required of them than that they ſhall get incorporated in the univerſity of Cambridge or Oxford; a mere form, which at that time of day might be purchaſed almoſt as readily, (and ſo it continued for a great length of time,) as a degree in phyſic may probably be purchaſed at Aberdeen; it was a mere form and ceremony, and furniſhed no teſt of abilities in the party at all; and upon this teſtimonial, to the time of the bye-laws which were lately repealed, in order to make way for thoſe in queſtion, down to that time, I do not find any pretence for ſetting up this excluſive privilege, which is given to graduates

duates of the univerſities of Oxford and Cambridge.

" We are not told in the affidavits, upon which cauſe is ſhewn, at what period of time the firſt bye-law giving this excluſive privilege was made, we are only told, that by the exiſting bye-laws ſuch an excluſive privilege is given *. We were upon a former occaſion told, that all the old bye-laws were repealed, and that new ones were made, and therefore the regulations at preſent exiſting muſt be of bye-laws which were made ſince the deciſion in the caſe of the King *v.* Dr. Archer, took place. But, however, it does appear by the bye-laws that were ſtated upon theſe occaſions, that thoſe reſtrictions and thoſe privileges conferred upon the univerſities of Oxford and Cambridge, originated in 1752, only, and almoſt ever ſince that period it has been a ſubject of conteſt and litigation; therefore I do ſubmit, that even if your Lordſhip was to take the uſage into conſideration, it would be found that the evidence of uſage is a medium to explain this charter, if it requires explanation; that this medium of explaining the charter

* By this artful concealment the college attempt to give an appearance of antiquity to the conferring of the excluſive right of admiſſion upon the graduates of Oxford and Cambridge, when it was in fact enacted later than the middle of the preſent century, ſee p. 87.

charter preponderates exceedingly in favour of the conſtruction for which we now contend, down to the time of the letter of Charles II. with the interruption only of a bye-law made 190 years after the charter down to that period; it does not appear that there was any kind of reſtriction whatever, but that all perſons who poſſeſſed the requiſite qualifications might receive their admiſſion into this learned body.

" If that be ſo, let us conſider for a moment, the validity of theſe bye-laws, and firſt of that bye-law which excludes all others, without any modification; that bye-law which came under the conſideration of the court in the caſe of the King *v.* Dr. Aſkew, and in Dr. Archer's caſe; it ſeems to me to be impoſſible that that bye-law can be ſuſtained alone, either upon the ground of conſiſtency with the charter, or of its being reaſonable. I do not mean to ſay any thing diſparaging of the univerſities of Oxford or Cambridge. I do not mean to diſpute the merits of thoſe inſtitutions; their utility to the public, and the advantage that they have been of to general learning. I do not mean to enquire at all how far the college of phyſicians might, in compliment to the learning and abilities of thoſe who admit perſons to degrees in theſe univerſities without further examination, receive their teſtimonials as

a teſt

a teſt of perſons coming from thence to be admitted into their college; that I do not diſpute in the ſmalleſt degree; what I diſpute is, the excluſion of all others, becauſe thoſe who have ſtudied ten or eleven years in theſe univerſities, and had the means of acquiring, and may in fact have acquired a great treaſure, both of general and particular learning in this branch; it does not follow from thence that the neceſſary learning for this purpoſe is not to be acquired elſewhere.

" It impoſes a monſtrous hardſhip and injuſtice upon perſons who may happen to diſapprove of the modes of education there; it is a great hardſhip and injuſtice upon thoſe who cannot afford for the courſe of ten or eleven years to expend two hundred a year or more in their maintenance and education, till they can turn their learning, their talents, and acquiſitions, to profit and advantage; it is a great hardſhip to thoſe whoſe talents and whoſe acquirements may be as great as any that can be acquired in thoſe univerſities or elſewhere, it impoſes a very unjuſt hardſhip upon thoſe perſons; there may be many who may ſuppoſe that the rules of government at Oxford and Cambridge are too lax; there may be many who in the exerciſe of their judgment may think that a more private mode of education for the principal branches of learning may be attended with greater

advantages;

advantages; ſome may be reſtrained from ſending their ſons or going themſelves to the univerſity, from their religious opinions; all theſe circumſtances may abſolutely exclude and prevent the greater part of the ſubjects of this country from receiving their education there *. Theſe are circumſtances which would render this bye-law, even if it were not directly repugnant to the charter, which meant the admiſſion of all that were duly qualified, an unreaſonable bye-law, and not to be carried into execution. But not to reſt merely upon theſe reaſons, from the charters themſelves, from the acts of parliament, and from the reaſonableneſs of the bye-law; not to reſt upon arguments of our own upon that ſubject, let us ſee how this caſe ſtands upon authority.

" It is ſomewhat remarkable, that the gentlemen who have argued on this ſide, have hardly ever glanced at any thing that was ſaid by the court when the caſe of the King *v.* Dr. Aſkew, came before the court; they have not meddled with the arguments; they have not meddled with the poſitions that were laid down by the court, any

* Theſe circumſtances, and the inferiority of Oxford and Cambridge as ſchools of phyſic, in fact, prevent nine-tenths of the phyſicians of Great Britain, and ninety-nine out of a hundred of thoſe who ſtudy phyſic in this country, from ſtudying it in theſe univerſities.

any otherwiſe than in one or two inſtances, to garble expreſſions, and take a half ſentence or a ſentence from another which explained it.

" The opinion of Mr. Juſtice Yates, among others, was alluded to, as proving that all who were qualified were not entitled to admiſſion into this corporation. Mr. Juſtice Yates, as plainly as language can ſpeak, is there only endeavouring to prove that the mere qualification, the mere ability to diſcharge the duties of the practice of phyſic, the mere ability to be uſeful as a member of the corporation, is not of itſelf that which conſtitutes a perſon a member; for he follows it up by ſaying, that none can be a member of a corporation without his own conſent, and that previous admiſſion is neceſſary. All that he means by that expreſſion is, that they are not actually incorporated. He inſtances the caſe of a charter incorporating inhabitants at large, he ſays, every inhabitant is not under the neceſſity of becoming a member, it is in his own choice whether he will do ſo or not; this is the only objection which Mr. Juſtice Yates, in that part of the caſe, makes to the admiſſion of thoſe who then claimed to be admitted; in all other reſpects his opinion is as clear and unequivocal as any one of the learned judges who delivered their ſentiments upon that occaſion.

" Mr.

" Mr. Juſtice Aſton, who in ſome degree differed from the reſt of the court, differed only in expreſſing his opinion with more ſtrength; he ſeemed to incline, that the admiſſion of itſelf alone, and without any other circumſtance, under the words of the charter, and the words of the act, conſtituted a man a member of the corporation; that opinion however he departed from in the ſubſequent caſe of the King, *v.* Dr. Archer; but his opinion differed from the reſt of the judges only in this ſingle circumſtance, that it was more ſtrong in favour of thoſe who made the application than that of the other judges.

" It is ſaid that the public intereſt is ſufficiently attended to, by admitting all to practiſe phyſic whoſe qualifications entitle them ſo to practiſe. This again is directly contrary to what is ſaid by Lord Mansfield and the court. My Lord Mansfield, in expreſs terms ſays, that the public are entitled not merely to their abilities in the courſe of their own private practice, but entitled to the benefit of their abilities as cenſors, as members of the corporation, as giving their judgment in all the buſineſs to be tranſacted by the corporation, in forming their judgment upon the merits and qualifications of other perſons who apply. That the public are entitled to the benefit of their

abilities in all theſe characters and capacities, and that themſelves are entitled, under this charter, to all the perſonal advantages and exemptions that reſult from that ſituation.

" My learned friend, Mr. Erſkine, inſtead of ſtating what the opinions and the rules were, which were laid down by the court upon that occaſion; in order to get rid of the force which theſe opinions had, choſe to entertain a ſuppoſition that Lord Mansfield meant to refer to ſomething elſe, and not to the bye-law which is at preſent the ſubject of diſcuſſion. When Lord Mansfield ſays, that the then exiſting bye-laws of the corporation were formed upon a narrow principle, and might exclude even a Boerhaave himſelf; Mr. Erſkine ſuppoſes him to have alluded to this circumſtance only, that in ſome of their bye-laws it is required, that thoſe who are to be admitted ſhall be Britons by birth. Look at the whole of what is ſaid in the report, and ſee if that could poſſibly be the narrow meaning of Lord Mansfield upon that occaſion; quite the reverſe; the excluſion of foreigners was never touched upon in the argument: but Lord Mansfield ſays, it is ſaid that there are among the licentiates men whoſe abilities, attainments, and moral character, would do honour to this ſociety, or to any other

body

body of learned men. If that be ſo, can any bye-law be good which will exclude perſons of that deſcription from the college?

" Lord Mansfield ſpeaks of the character which he knew belonged to a great many of thoſe who were then in the ſituation of licentiates, and among them were ſome known to every body to be among the moſt eminent of the profeſſion; ſpeaking of them generally, he ſays, in expreſs terms, that any bye-laws which would tend to exclude or reject them, muſt neceſſarily be bad; that all who are duly qualified are entitled to be admitted; all who are qualified by their attainments, in whatever univerſity or by whatever courſe of ſtudy they acquired thoſe attainments, and qualified in point of morals:—his Lordſhip's poſition is a broad one, that all ſuch are entitled to be admitted into the college.

" In this inſtance as well as the other I alluded to before, what paſſed upon the former occaſion ſeems to be forgotten. Upon the former argument the court will recollect that Mr. Erſkine, who undoubtedly was well inſtructed by thoſe who were capable of giving him every inſtruction reſpecting facts, had not recourſe to this evaſion of the meaning of what Lord Mansfield ſaid; but he explained to the court in what manner the

now exiſting bye-laws had been regulated and modified in conſequence of theſe general obſervations made by Lord Mansfield. My learned friend ſays, the moſt learned and able men that have exiſted in the profeſſion were conſulted upon the occaſion, and, in order that Lord Mansfield's objection might be obviated, with their advice and with their aſſiſtance the preſent bye-laws were formed. This brings us to the new bye-laws which have modified the bye-law of which I have already been ſpeaking.

" In what way this conſultation was had I do not know, nor have we the means of knowing, but we may judge a little from what they did. Were the licentiates called in to conſult upon this occaſion? Certainly not. It is manifeſt from what they have done, that they told thoſe with whom they adviſed, that the court having been clearly of opinion that they muſt open the door for the admiſſion of others, as well as thoſe who had taken their degrees at Oxford or Cambridge, they took advice, in order to make that door as narrow as poſſible; and ſo very narrow has the wicket been, that, from that period of time down to the preſent, not a ſingle individual has been found able to creep through it. Mr. Erſkine mentioned the names of Dr. Hugh Smith, and two other perſons; I think they were not admit-

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ted into the college under the bye-law, which is the material and only bye-law that is to be conſidered as a modification of the other; if they were admitted into the college, it was under the power that is given to the preſident, once in two years, to propoſe a gentleman to be admitted into the college, which is a ſingle perſon, for this power cannot be exerciſed oftener than once in two years; this one perſon, if the college thinks fit, may be admitted into the college, and when admitted, is to be admitted without any examition at all—to be admitted merely as an honorary member.

" Suppoſing there were twenty, thirty, or forty perſons at this preſent time poſſeſſed of every qualification neceſſary to make them members of the college, what length of time would it take before they could be admitted? They cannot be put into this ſituation, I think, till they have been ten years in practice as a licentiate; they muſt be above thirty-ſix years of age. How can this bye-law then be conſidered as any reaſonable modification of that bye-law declared by the court to be illegal, and confeſſed to be illegal by the college themſelves? Thoſe who have a right to be admitted, are not to be compelled to ſubmit to court admiſſion as a favour without any teſt of their abilities; to be admitted to

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the number of one in two years: if they have a right under the charter to be admitted, upon giving full and ample teſtimony of their abilities, they ought to be received upon the foundation of their merit, and not upon the foundation of the particular favour of the preſident and the college, without any examination, or any teſt of their abilities at all.

" Then what is the other bye-law, and which is the material and the only one that can be relied upon on this occaſion? The whole of this bye-law has not been ſtated. It ſeems to be taken for granted, that a propoſition by any one of the fellows would be ſufficient to let in a fair claim to examination, and that if any one of the licentiates, conceiving himſelf duly qualified to be admitted into this college, could get any one fellow to propoſe him, he muſt be received to an examination. It is quite contrary.

" In the firſt place, this bye-law, I think, illegally reſtrains the application till the perſon has got paſt the middle period of life; it reſtrains him from availing himſelf of his faculties and induſtry till he is turned of thirty-ſix years of age; but when he has been practiſing for ſeven years as a licentiate, and when he has completed his thirty-ſixth year, why any one fellow may propoſe

poſe him, it is true; but he is not admitted under that propoſal, he cannot be received even to an examination under the expreſs terms of that bye-law, unleſs a majority of the whole college conſent, not to the admiſſion, but unleſs by an arbitrary vote to be taken by ballot, they conſent to enquire whether he is fit or not.

" How does that correct the diſeaſe of the other bye-law? Why it is an arbitrary rule that could be calculated for no other purpoſe whatever than to veſt the power in the college, conſiſting at preſent almoſt entirely of thoſe who are members of the two univerſities, who, without any reflection or imputation upon the morality of their conduct, might be ſuppoſed to be influenced by a ſtrong bias in favour of their own univerſities; it is putting it in their power, by their own arbitrary votes, to exclude a Boerhaave, a Sydenham, or any man, let his qualifications be ever ſo great, and to exclude him without putting his talents and abilities to any teſt whatever. The authority which has decided already upon this queſtion, and the deciſion in Dr. Archer's caſe, does not ſeem to me at all to militate with the opinion declared in the former caſe, nor with the argument.

" It

" It does not appear that any one of the court changed his opinion upon that which is now the ſubject of conſideration. Dr. Archer, who then applied, had been admitted as a licentiate under a particular bye-law paſſed in the year 1737; that bye-law ſtates, that there might be many perſons who might not poſſeſs qualifications ſufficient to be entitled to admiſſion into the college, who might, nevertheleſs, have learning, ability, and integrity ſufficient to be of uſe to the public in their private practice, and therefore the college by this bye-law ſay, that they will in future grant admiſſions of that ſort. Dr. Archer was admitted a licentiate under that very bye-law, in which he acknowledged, in the very terms of his admiſſion, that he had not undergone thoſe examinations which were neceſſary to entitle him to apply for admiſſion into the college; he did not offer himſelf to any further examination, or to give any further ſatisfaction to the college in reſpect to his abilities, or in reſpect to his morals, but he grounded his title ſolely upon that admiſſion which was thus qualified by the bye-law under which he had been admitted; the court ſay he ſhould not found his qualification upon that admiſſion alone, but in other reſpects, every one of whom the court was then compoſed, ſeem to have retained their general opinion.

" If

" If theſe opinions are not to prevail now, I wonder when we can ever meet with a deciſion which is to be relied upon. When has the court been filled with perſons of greater eminence, of greater ability; with perſons who were more an honour and ornament to their profeſſion? There never was a period in which the court was filled with more reſpectable judges, and never did any caſe come before the court which was heard with more patience, with more attention, and more deliberation; and after more frequent arguments than that very caſe which was ſo decided, and upon which all the judges in expreſſing their opinions were unanimous. This opinion given, in the firſt inſtance, in the King *v.* Dr. Aſkew, was afterwards in Dr. Archer's caſe confirmed. If theſe opinions are not to form an authority to which reſort may be had in conſtruing the charter, and in determining what is the law upon the preſent ſubject, I do not know that *any deciſion*, or that any *ſeries of deciſions*, can in *any caſe* be reſorted to; it will be in vain that the judges from time to time have laid down rules, and have decided caſes which have been always underſtood to ſerve as a *guide to thoſe who come after them*, it will be in vain to look to any of the caſes heretofore reported, if we are not to look to them *as ſtrong authority as can be to the preſent point*.

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" The caſe has been fully ſpoken to already; what I ſubmit is, that it was the intention of the charter to incorporate all that were fit, that the utility is anſwered by incorporating all that were fit; that it is anſwered in a more extenſive degree, becauſe it lets in thoſe who, without any diſparagement to the univerſity of Oxford or Cambridge, certainly in reſpect of the particular ſcience of phyſic, poſſeſs advantages conſiderably ſuperior to any that can be attained in the univerſity of Oxford or Cambridge. Dr. Stanger, who makes the preſent application, has reſided and been a member of the univerſity of Edinburgh, which is confeſſedly allowed to be the beſt ſchool in Europe for the ſtudy of phyſic; there he has taken his degree; there he has received that kind of teſtimonial of his ability, which certainly does not of itſelf entitle him to admiſſion, but which ſurely may be conſidered as a ſufficient ground for the college to think him a perſon worthy of their attention, when he deſires only to be examined touching thoſe abilities. The rejection of perſons ſo educated, and who may, for aught the college know, be poſſeſſed of every qualification neceſſary to conſtitute a good and able phyſician; a rejection not merely as a practiſer of phyſic, but as a member of the college, in tranſacting that buſineſs which belongs to them to tranſact; a rejection of his judgment, when it might

might be material to receive that judgment, cannot be juſtified.

" It cannot be conſiſtent with this bye-law, with the uſage which has prevailed under the charter for one or two centuries, a uſage commencing immediately after granting the charter itſelf, and continued for that period of time; it cannot be conſiſtent with the authorities I have cited; it cannot be conſiſtent with the public convenience, and the right each individual is entitled to who can poſſeſs himſelf of the neceſſary qualifications, a right of being put upon an equal footing with others who poſſeſs, perhaps, no greater qualifications than himſelf; it is an injuſtice to all who reſide in parts of the kingdom remote from Oxford and Cambridge, and this bye-law impoſes an invidious diſtinction between thoſe who may be educated in the univerſities of Edinburgh and Dublin; for this very bye-law at this moment allows, that a perſon educated in the univerſity of Dublin may, by getting incorporated in the univerſity of Oxford or Cambridge, without a month's ſtudy there, obtain that qualification upon which they will examine him, and admit him if they think fit.

" It happens that thoſe who teach the ſcience of phyſic in the univerſity of Dublin, at this moment

ment are, almoſt to a man, thoſe who have taken degrees in the univerſity of Edinburgh :—but it is unjuſt—it is partial—it is depriving thoſe to whom it would be convenient to receive their education where there are ſeminaries, where they may receive education in every branch of ſcience; it would be depriving them of thoſe privileges which they are juſtly entitled to under the general language and purview of this charter, and under the authorities of the deciſions which have taken place.

" If I have omitted any thing that is material to be urged in addition to what I have ſaid, and what has been ſaid before me, I am ſure the gentleman who is to ſpeak after me upon this ſubject, who has beſtowed great pains and attention upon it, will amply compenſate thoſe neglects and omiſſions."

Mr. *Chriſtian.* " I am of council on the ſame ſide, and I fully agree with Mr. Erſkine, and the gentlemen on the other ſide, that, in diſcuſſing this queſtion, we ought to conſider what was the object of the charter, and what the intention of the crown, in incorporating the college of phyſicians. If we find that in the charter no preference whatever is given to the graduates of Cambridge and Oxford, and if we find in conſtruing

ſtruing the charter, that a gentleman of the deſcription of our client, who has reſided three years in the univerſity of Edinburgh, and who has graduated there, has an equal right to admiſſion to a fellowſhip in this corporation with the graduates of the univerſities of Oxford and Cambridge; then I ſhall ſubmit to the court, from decided cates and general principles of law, that it is impoſſible for the college, by any bye-law, or ſtatute of their own, to deprive him of that right.

" Your Lordſhip the other day intimated, that there was a diſtinction between this caſe and the caſe of the King *v.* Spencer. In that caſe it was determined, that in no caſe could you narrow or limit the right of thoſe who are eligible. Lord Mansfield ſays in that caſe, that the number of electors may be reſtrained by a bye-law, but you cannot narrow the number of the perſons out of whom the election is to be made.

" Your Lordſhip intimated, that there might be a difference, becauſe here an examination was neceſſary. I humbly ſubmit that there muſt be an examination of the right and title of a perſon claiming as of right to be a corporator under every charter; therefore, whether the right is by birth, marriage, or apprenticeſhip, there muſt be a previous examination

mination of the title of the claimant. If a right depends upon learning and morals, that is a previous title, and there muſt be an examination with regard to the party's morals and learning; theſe may be aſcertained by perſons appointed for that purpoſe, who are competent to determine, certum eſt quod certum reddi poteſt; therefore if we offer ourſelves for examination, and can ſhew that we are the perſons originally deſcribed by this charter, then I ſubmit we have as good a title to admittance, and they are under as much neceſſity to admit us, as if in another corporation we had made out our right by indentures of apprenticeſhip, and proved a ſervice under them.

" If there were one charter which incorporated all the men of learning in a certain town, and another which incorporated all the inhabitants of that town, the principle of conſtruing theſe two charters muſt be preciſely the ſame; and it would be a bad bye-law, both under one charter and under the other, which ſhould reſtrain the eligibility to the men of learning and to the inhabitants, who ſhould reſide in a particular ſtreet.

" In the King *v.* Spencer, 3 Burrow, 1835, Mr. Juſtice Yates ſaid:—'In the caſe of the 'King *v.* Tucker, mayor of Weymouth, a bye-

'law

'law by the mayor and aldermen, that the mayor 'ſhould be choſen out of the aldermen, was held 'bad.' I ſubmit that if a charter had incorporated all perſons legally practiſing phyſic, or of the faculty, who were graduated at Cambridge, Oxford, Edinburgh, or Dublin; I ſubmit that under this authority your Lordſhip would be bound to ſay, that if a bye-law reſtrained it to graduates of Edinburgh or Dublin, that ſuch a bye-law would be null and void. Then I ſhall endeavour to prove that this bye-law is equally void and illegal.

" This charter, perhaps, is as clear and intelligible, and as conſiſtent in every part of it, as any charter that was ever given by the crown. I have read it many times with great attention, and every word of it is operative, and is conſiſtent with the other parts; but there is one general expreſſion in it, viz. omnes homines ejuſdem facultatis, and which is the foundation of the grant of the crown. The charter was granted at the requeſt of ſix learned phyſicians at that time, three of them the king's phyſicians, who had been graduated abroad. The charter was granted to them and three others, and to all men of the ſame faculty practiſing phyſic in London; that is the only ambiguous expreſſion in the whole of this charter, therefore to explain what was meant

by

by all men of the ſame faculty, we muſt reſort to other ſtatutes, and other laws then exiſting upon the ſubject, to which, no doubt, this charter muſt have had a reference.

" I ſhall go a ſtep higher than the learned gentlemen who have gone before me, in explaining the meaning of thoſe words; for I find that in the ninth Henry V. the parliament had taken into conſideration the ſtate of phyſic at that time. I firſt found this record in a publication upon this ſubject by Sir William Brown, in a pamphlet which he entitles, A Vindication of the College; he ſays, a tranſcript of it is preſerved among the archives of the college, but I find it alſo in the rolls of parliament, vol. 4. p. 158. After a long preamble in the language of the times, deploring the miſerable ſtate of phyſic at that time, it enacts, that 'no man of no manner of eſtate, 'degree, or condition, practiſe phyſic from this 'time forward, who had not long time uſed the 'ſchools of phyſic in ſome univerſity, and been 'graduated in the ſame, under the penalty of 'forty pound to the king, and long impriſon-'ment;' but it ſtates, that there may be perſons able to practiſe not ſo graduated, theſe are directed to repair to one of our univerſities, on a certain day, and if they are able to paſs a ſtrict examination, they ſhall be admitted to a degree,

elſe

elſe they are to be reſtrained from practice, the law then was, that any perſon graduated in any univerſity whatever, might practiſe, and any other might be reſtrained under the penalty of forty pound. With regard to the Aberdeen degrees we have heard ſo much of, they certainly are a diſgrace to thoſe who give, and who receive ſuch degrees, which are given to perſons who have not long time uſed the ſchools of phyſic; who have not been there at all in fact; theſe are a fraud upon the rights and honours of univerſities, and ought, upon every occaſion, to be regarded as null and void, to all intents and purpoſes.

" The next act is the third Henry VIII. cap. 11. which all my learned friends have taken notice of, to explain the nature of the charter. This act enacts, that every one ſhould be examined by the Biſhop of London, or the Dean of St. Paul's, taking to his aſſiſtance four learned phyſicians, and it ſettles the limits of the juriſdiction, which ſtill exiſts, that is, to London and ſeven miles around. Seven years after this the charter was granted, and the object of this charter is expreſſed in the preamble in a few words —' Quibus tam ſui honoris tam publicæ utilitatis ' noſtræ curæ ut ſperamus erit malitioſorum quo- ' rum meminimus inſcitiam temeritatemque tam

'exemplo gravitateque ſua deterrere quam per 'leges noſtras nuper editas ac per conſtitutiones, 'per idem collegium condendas punire:'—or the object of this charter is fully expreſſed by the following words, 'improborum hominum auda-'ciam compeſcere:' therefore the king declares that there ſhall be, 'collegium perpetuum doc-'torum et gravium virorum;' and then by the 'charter, the king grants to theſe ſix phyſicians, 'quod ipſi omneſque homines ejuſdem facultatis, 'de et in civitate prædictâ ſint in re et nomine 'unum corpus et communitas perpetua, ſive 'collegium perpetuum.' Who are the objects of this grant, and who have a right to claim under it? All perſons who are of the ſame faculty, not every man pretending to practiſe phyſic, but perſons who had been graduated in ſome univerſity, after having long time uſed the ſchools of phyſic, and who alſo had been examined by the Biſhop of London, and Dean of St. Paul's, and four learned phyſicians.

"Mr. Warren, in his argument, the other day, after ſtating his premiſes, drew a concluſion with as much confidence as if his argument was an unanſwerable demonſtration; he ſaid our conſtruction would admit all thoſe perſons that had been deſcribed by the preamble of the

the charter, and whom it intended to exclude; but Mr. Warren had not obſerved, that the will of the king was, that it ſhould be a perpetual college doctorum et gravium virorum. Theſe were the only perſons to be admitted into this college; but if that were not ſufficient to reſtrain the general words, of all men of the ſame faculty; four years after an act is paſſed, where the deſcription of perſons to be admitted into this ſociety is this; *viz.* that they ſhall be ſad, diſcreet, groundly learned, and deeply ſtudied in the practice of phyſic. Every one then of that deſcription, may and has a right to be admitted into the college; the charter was confirmed in the fourteenth and fifteenth Henry VIII.; I have ſaid that there was no deſcription of members of the college in the charter, but what were deſcribed under the words doctorum et gravium virorum. The tranſlator of Lord Coke's reports, has rendered doctorum et gravium virorum, not learned and grave men, but doctors and grave men.

" Before this I obſerved, that all perſons practiſing phyſic were to be graduated in ſome univerſity, but this charter is confirmed by the fourteenth and fifteenth Henry VIII. and the firſt clauſe, after reciting the charter, is, ' and foraſ-' much that the making the ſaid corporation is

 ' meritorious,

'meritorious, and very good for the common-
'wealth of this your realm, it is therefore expe-
'dient and neceſſary to provide, that no perſon of
'the ſaid politic body and commonalty aforeſaid,
'be ſuffered to exerciſe and practiſe phyſic, but
'only thoſe that be profound, ſad, and diſcreet,
'groundly learned, and deeply ſtudied in phyſic;'
then it ſays, that all perſons ſhall be examined by
a preſident and eight elects; the eight elects are
firſt introduced by this act; then it ſays, 'In dio-
'ceſes in England, out of London, it is not light
'to find alway men able ſufficiently to examine
'(after the ſtatute) ſuch as ſhall be admitted to
'exerciſe phyſic in them; that it may be enacted
'in this preſent parliament, that no perſon from
'henceforth be ſuffered to exerciſe or practiſe
'in phyſic through England, until ſuch time as
'he be examined at London, by the ſaid preſi-
'dent and three of the ſaid elects, and to have
'from the ſaid preſident or elects, letters teſtimo-
'nials of their approving and examination, ex-
'cept he be a graduate of Oxford and Cam-
'bridge, which hath accompliſhed all things for
'his form without any grace'—Here is ſomething
in favour of the two univerſities.

"It is argued by ſome of the gentlemen on the other ſide, that this act had given privileges to

to the two univerſities; and alſo in the ſtatute before, it is enacted, that that act ſhould not be prejudicial to the univerſities of Oxford and Cambridge; it ſeems there to be an unneceſſary compliment, merely in reſpect to the univerſities, becauſe it appears that the two univerſities had no right whatever affected by the ſtatute with regard to candidates being examined to practiſe in London, it applied only to practiſers in the country; and there the privilege begins, and there it ends.

Mr. Chriſtian referred to Dr. Bonham's caſe, 8 Coke's Reports, 107. and to Dr. Weſt's caſe, in 10 Modern Reports, 353; " this court there ſay, the univerſities may give a man a reputation, but they can give him no right whatever. The qualification in the ſtatute, it is ſaid, applied only to licentiates; I conceive that is perfectly unfounded, for that is a qualification of the members of the college. I need only read the words of the act to anſwer the argument of Mr. Dampier—' that no ' perſon of the politic body and commonalty ' aforeſaid be ſuffered to exerciſe and practiſe ' phyſic, but only thoſe perſons that be profound, ' ſad, and diſcreet, groundly learned, and deeply ' ſtudied in phyſic.' No perſon ſhall be of the body politic or commonalty, theſe words are uſed everywhere as ſynonimous to the college, throughout

throughout the charter; therefore no perſon ſhall be a member of the body politic, is the ſame as ſaying, no perſon ſhall be a member of the college, but thoſe that are profound and groundly learned; the only qualification of the licentiates in the charter is, 'nemo in dicta civi-'tate aut per ſeptem milliaria, in circuitu ejuſ-'dem exerceat dictam facultatem niſi ad hoc per 'dictum præſidentem, et communitatem ſeu ſuc-'ceſſores eorum qui pro tempore fuerint admiſſus 'ſit per ejuſdem præſidentis et collegii literas 'ſigillo ſuo communi ſigillatas.' Every perſon before that, admitted to the practice of phyſic, was to be examined by the Biſhop of London. Now every one of the faculty is to be admitted by the preſident and college, therefore, every one muſt have a licence or admiſſion to practiſe; a licence inſtead of being a bar to the college, is a neceſſary and introductory ſtep; no one can be of the faculty of London till he has obtained it; perhaps the college may conſider the admiſſion into the claſs of candidates as equivalent to it, for it was determined in Dr. Bonham's caſe, that a doctor of the univerſity had no right to practiſe, till admitted to practiſe by the college. In all caſes whatever, where a perſon is admitted as a member of the college, he muſt have a licence to practiſe.

" Mr. Erſkine argued, that if Dr. Stanger was admitted every tooth-drawer and vagabond in London might make the ſame application. Every perſon who takes a degree in an Engliſh univerſity, muſt have a licence before he practiſes in London; if when Dr. Stanger applied, none of theſe rabble followed him; if he ſhews from his learning that he anſwers the deſcription in the charter, there is little probability that he ſhould be followed by the perſons deſcribed by Mr. Erſkine. Mr. Erſkine ſaid alſo, that no one would ſtudy in the univerſity, if perſons of Dr. Stanger's deſcription were admitted—I am ſure the two univerſities are upon this occaſion indifferent and impartial ſpectators. We do not admit more than about *one upon an average in a year*, and I dare ſay, that one would not be encreaſed or decreaſed in an hundred years, if Dr. Stanger, and perſons of his learning and reſpectability, are admitted fellows of the college.

" Mr. Gibbs inſiſted, that there was a diſcretion veſted in the fellows, how many and whom they would admit, and that this is a diſcretion which cannot be controlled, unleſs it is proved that they act corruptly. It might be a degree of arrogance in me to argue a point of law againſt Mr. Gibbs, if this was his ſerious opinion; but I ſhall read in anſwer to his argument what

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Lord Mansfield has laid down upon the ſubject, he ſays—'The college are bound to admit every 'perſon, whom upon examination they think to 'be fit to be admitted within the deſcription of 'the charter, and the act of parliament which con-'firms it. The perſon who comes within that 'deſcription has a right to be admitted into the 'fellowſhip, he has a claim to ſeveral exemptions, 'privileges, and advantages, attendant upon ad-'miſſion into the fellowſhip, and not only the 'candidate himſelf, if found fit, has a perſonal 'right, but the public has alſo a right to his ſer-'vice, and that not only as a phyſician, but as a 'cenſor, as an elect, as an officer in the offices to 'which he will upon admiſſion become eligible.'

"And again his Lordſhip ſays, 'It has been 'ſaid there are many amongſt the licentiates, 'who would do honour to the college, or any 'ſociety of which they ſhould be members, by 'their ſkill and learning, as well as other valuable 'and amiable qualities, and that the college 'themſelves, as well as every body elſe, are ſenſi-'ble that this is, in fact, true and undeniable. If 'this be ſo, how can any bye-laws which ex-'clude the poſſibility of admitting ſuch perſons 'into the college, ſtand with the truſt repoſed in 'them of admitting all that are fit? If their bye-'laws interfere with their exerciſing their own 'judgment,

'judgment, or prevent them from receiving into 'their body perſons known or thought by them 'to be really fit and qualified, ſuch bye-laws 'require regulation. I think that every perſon, 'of proper education, requiſite learning and ſkill, 'poſſeſſed of all other due qualifications, is en-'titled to have a licence, and I think that he 'ought, if he deſires it, to be admitted into the 'college.'

" It is certainly true that ſeveral clauſes in the charter ſhew, that there might be phyſicians admitted and licenſed to practice, who were not fellows of the college; if they had all a right who were of the faculty and graduated at any univerſity, they were not made fellows of the college till they were actually admitted. We ſubſcribe entirely to the judgment given on the former occaſion, that a licence is not of itſelf an admiſſion into the fellowſhip, but it is no preclufion; I am inclined to think it neceſſary as a preliminary ſtep; but all we contend is, that it is no bar to the college; there are many expreſſions in the charter, which certainly diſtinguiſh the college from other men of the faculty who practiſe phyſic. The words are, collegium et omnes homines ejuſdem facultatis. Mr. Dampier upon theſe words grounded a very curious argument; he ſays, that the fellows are the governors, and the

the licentiates the governed; that if they admit one licentiate, they may admit them all; that then all will become governors, and there will be this ſoleciſm or monſter, a government without any perſons to govern. I do not know what ſoleciſm or monſter there may be in that, but the charter has repeatedly ſaid, that the college or members of the college, were perſons who were to be governed; the governors and college are diſtinct, therefore a fellow of the college clearly by this charter was not conſidered as a governor. This appears from many clauſes in the charter, as 'præſidens, collegium, et eorum 'ſucceſſores ſtatuta et ordinationes pro ſalubri 'gubernatione et correctione collegii facere va-'leant.' 'Præſidens et quatuor, qui ſingulis 'annis eligantur habeant correctionem et guber-'nationem omnium et ſingulorum medicorum.' 'Gubernatores ac communitas facultatis,' &c. &c.

"An argument was preſſed the other day which I was ſorry to hear, becauſe it might wound the feelings of a very honourable mind; it was ſaid that Dr. Stanger had pledged his faith to obſerve the ſtatutes."

Lord *Kenyon*. "That was put an end to immediately as it was mentioned."

Mr.

Mr. *Chriſtian.* "It ſeemed to be preſſed and relied upon as a ſerious argument."

Lord *Kenyon.* "Certainly not."

"Mr. *Chriſtian.* "Then I ſhall ſay nothing more upon that point, but I ſhall come to the uſage—It has been ſaid repeatedly, that this is an uſage which has exiſted ever ſince the creation of the college. Thoſe who urged that argument are unacquainted with the real hiſtory of the college; but I muſt explain to your Lordſhips, that in the two univerſities, when gentlemen have ſtudied in one of them only, his degrees are conferred by creation; but graduates in other univerſities may be admitted ad eundem gradum, which is called incorporation. About two hundred years ago, the graduates from any univerſity perhaps in the world were admitted, ad eundem, in the Engliſh univerſities, upon payment of the fees. I have enquired of gentlemen who have been educated at Oxford, and they tell me that incorporation and admiſſion, ad eundem, was put an end to long ago, or put under ſuch reſtrictions as almoſt amount to a prohibition; on looking into the Cambridge ſtatutes, I find, that till the beginning of the laſt century, any perſon might be admitted paying their fees. Then in 1624, there is a ſtatute reſpecting perſons admitted

mitted ad eundem, or incorporated, in theſe words.

(Mr. Chriſtian read the ſtatute.)

" In the year 1696, a ſtatute was made by our univerſity in theſe words.

(Mr. Chriſtian read the ſtatute.)

" By the firſt of theſe ſtatutes it was required, that foreign graduates ſhould keep an act or diſputation in the public ſchools at Cambridge, which no one would think unreaſonable, but by the ſecond, no one can be admitted, ad eundem, at Cambridge, unleſs he has graduated at Oxford or Dublin. So that from this time all incorporation is excluded, except of perſons who come from Oxford or Dublin. But originally in the college of phyſicians, foreign graduates certainly were not excluded, for in the firſt bye-law they made, they thought it reaſonable that perſons who had taken degrees abroad ſhould be incorporated in one of the Engliſh univerſities. Thoſe who had their teſtimonials from foreign univerſities, would have no objection to be examined in one of our univerſities, and whether this bye-law was legal or not legal it would not be

be objected to. I find that the ſtatute depoſed to by Mr. Roberts, is in a book, in the year 1692; he ſays, he had found among the muniments of the college a certain book, purporting to be a book of ſtatutes; but the ſtatute de candidatis then exiſted, by which any perſon who was graduated abroad might be admitted into the college, producing his diploma, and alſo a teſtimonial, that he had been admitted, ad eundem, in one of our univerſities.

" It may be ſaid, perhaps, that this uſage of excluding all but graduates of the Engliſh univerſities, began in 1637. I am inclined to think that that bye-law the preſident has ſtated in his depoſition, means nothing more than referring us to this ſtatute, for it is;—That all perſons that ſhall be admitted to the fellowſhip, ſhall produce a degree of one of the Engliſh univerſities, and that they had kept all their exerciſes there; which is to induce your Lordſhip to think that foreign graduates were not at that time admitted. I am inclined to think that it means nothing more than if they had been incorporated in one of the Engliſh univerſities, that they ſhould ſhew they had kept all the terms neceſſary. The preſident ſtates:—' It alſo appears by the ſame books of ' annals, that his late majeſty King Charles II. ' by a letter addreſſed to the ſaid college, bearing

' date

'date the twelfth day of February 1674-5, re-
'citing or ſetting forth, that the ſaid king had
'been informed that there were ſeveral pretended
'phyſicians or doctors, graduated in univerſities
'beyond the ſeas, who by indirect means endea-
'voured to be received into the ſaid college as
'honorary fellows, without incorporation into ei-
'ther of our univerſities.'

" The learned preſident has not ſtated what Mr. Roberts ſtated upon the laſt occaſion, viz. as is expreſsly required by the ſtatutes of the college. The letter of Charles II. only deſired that they would obſerve what was required by their ſtatutes, which was, that foreign phyſicians ſhould be incorporated in one of the Engliſh univerſities; this ſhews how the uſage began, that foreign graduates were denied admiſſion into the college; when they came to the college they would be told, we have a ſtatute againſt you, you muſt ſhew your letters of incorporation; they would naturally ſay, it is impoſſible for us to be incorporated into an Engliſh univerſity, they have denied us that privilege; but from that time thoſe bye-laws which excluded them, certainly were void. A bye-law which is impoſſible to be complied with, Sir John Pratt ſays expreſsly, in Strange's Reports, is void; therefore the ſtatute requiring that theſe foreign phyſicians ſhould be graduated

graduated in one of the Engliſh univerſities, into which they could not obtain admiſſion, ad eundem, was void with reſpect to them.

" As to uſage, it is ſaid that theſe bye-laws exiſted from the time of the foundation of the college. I have a book of Dr. Goodall's, written in the reign of Charles II. it is a very full hiſtory of all the proceedings of the college from the foundation till that time. I looked through it by the index, which is a copious one, and throughout the whole of the book I find there is no where any more reſpect paid to a degree in the Engliſh univerſities, than in any foreign univerſity. There are certain caſes where they have denied licences to graduates from Engliſh univerſities. The college of phyſicians have not themſelves paid more reſpect to an Engliſh than to a foreign degree; and here is a letter to the Lord Chamberlain, who recommended a perſon to admiſſion into the college which they refuſe, ſaying that he was ignorant of the very principles of his art. I need not cite other caſes, but in many other inſtances they ſay, they know the courſe of the univerſities, and they are ſure from the ignorance of the party, he could not have obtained a degree in any univerſity abroad.

" It is remarkable that theſe bye-laws are ſo expreſſed, that they do not even ſuppoſe a caſe that

that a graduate from Cambridge or Oxford ſhould ever remain in the claſs of licentiates; that they ſhould all be admitted into the college, let their degrees of learning be what they may. Theſe are partial admiſſions, and conſequently they muſt be conſidered as partial excluſions, indeed they are almoſt total excluſions of gentlemen of the higheſt learning. At that door at which Mr. Erſkine ſaid many had entered, bowing to the bye-laws, no one has ever been admitted. There was a gentleman once propoſed by a friend of his, and inſtead of putting it to the vote, whether the majority preſent would conſent that he ſhould be examined, it was aſked if any one would ſecond the motion—that is not required by the bye-law, and becauſe no one would ſecond it, his name was dropped. The bye-law is, that if any one ſhould propoſe another, and if they ſhould conſent. Now under the charter, I conceive, that if a perſon ſhews he is legally practiſing phyſic in London, they are bound to examine him, therefore that part of the bye-law, I conceive, is void; a perſon cannot obtain admiſſion under that bye-law without having five majorities in his favour; a graduate of Cambridge or Oxford need have only one. It was ſaid, that theſe degrees from the Engliſh univerſities were the beſt teſts of learning and character, ſurely theſe would not be a better teſt than a ſtrict and ſevere examination had by

the

the cenſors and elect, the perſons appointed by the charter and by the ſtatute for that expreſs purpoſe.

" It has been ſaid, there are various diſtinctions in favour of perſons who have taken degrees in the univerſity, in the church, and in the law; but I conceive theſe caſes do not apply, for with regard to the biſhops admitting into orders, and the benchers calling perſons to the bar, theſe are caſes not founded upon any charter; here we are in a court of law upon the conſtruction of a charter. Theſe are caſes not founded upon any charter; therefore if we prove that we come under the deſcription of the perſons upon whom the favour of the king was conferred by this charter, I conceive your Lordſhips are bound, in conſtruing the charter, not to be influenced by argument from analogies of that kind; theſe might be proper topics before the two houſes of parliament, if they were granting a charter, or the Attorney General in adviſing the King to grant a new charter; but we are here arguing in a court of law merely upon the conſtruction of a charter already granted by the crown.

" If your Lordſhips decide that theſe bye-laws are good, you muſt determine that they would have been equally good if the univerſities of

Cambridge and Oxford had been omitted, and Edinburgh and Dublin ſubſtituted in their places; if they are good, your Lordſhips muſt alſo determine, that Oxford and Cambridge have a power of excluding each other. I do not know from which univerſity there is a majority of fellows; gentlemen from Oxford might ſay theirs is a better univerſity for the education of a phyſician, and they might make a bye-law that all doctors graduated in Oxford ſhould be admitted into the college, and that thoſe graduated at Cambridge ſhould only be licentiates.

" Mr. Warren ſaid, this was a reſtriction that might be got over, as if it were requiring that a perſon ſhould have a competent knowledge of Latin or Greek, who by his induſtry might obtain it. It might be got over if the bye-law reſtrained it to Oxford only, ſo it might if thoſe from Oxford had a majority from any one college; if they were all from Chriſtchurch, and a bye-law were made that only graduates from Chriſtchurch ſhould be admitted into this college, if there was a ſufficient number to keep up the ſucceſſion, they might vote themſelves fellows and governors, and keep the reſt only as licentiates; under this charter every one is to be admitted to be licenced to practice by the college, therefore if they have a power of ſaying, we admit

admit only to the fellowſhip graduates of Cambridge and Oxford, they have the ſame power to ſay, we will grant no licence but to graduates of Cambridge and Oxford.

" It would ill become me, I am ſure, to inſtitute any compariſon unfavourable to the Engliſh univerſities, but there are great authorities who have recommended a foreign education as the beſt for a phyſician. I mean the preſidents of the college of phyſicians in their different Harveian orations; Dr. Mead was a foreign graduate himſelf, he came in when the ſtatute admitted of incorporation; had he been graduated ſince the two univerſities refuſed to admit, ad eundem, he would never have been preſident of the college of phyſicians.

" Dr. Mead, in his oration in 1724, ſays—' Hi ' nimirum veterum ſapientum more, relictâ patriâ ' terras alio ſole adierunt Italiam imprimis anti- ' quum illud muſarum ſacrarium.' And Sir William Brown, who was well known to be a very zealous champion for the two Engliſh univerſities, in his praiſe of Linacre, ſays in 1753, ' Fugit ſe ' rudem, incultum, illiteratum; rediit urbanus, fa- ' cundus, eruditus, Oxoniæ reverſus iſtas ſecum ' advexit diſciplinas quas antea eò loci fruſtra ' quæſiverat.' Sir William is followed by Sir

George Baker, in 1761, thus, 'An fortunam Li-'nacri miſeram ac miſerandam putem eò quod 'domi non haberet unde diſceret; an felicem eum 'potius prædicem, cui contigit ea foris didiciſſe, 'quæ poſſent et ipſum patriæ, et patriam terrarum 'orbi commendare.'

"This again is adopted by Dr. Warren, in 1769, almoſt with a degree of plagiariſm.

'Qui cum domi non habuerit unde diſceret in 'Italiam, humanitatis et elegantiæ tune temporis 'domicilium migravit.'

"How much the corporator and the elegant ſcholar are at variance!

"It is very remarkable that the hall of the college is adorned with three buſts, but they are the buſts of perſons who were never graduated in the Engliſh univerſities, *viz.* Sydenham, Harvey, and Mead.

"Our client, by this application, does not wiſh to deſtroy or ſubvert this ancient venerable inſtitution, but he wiſhes to ſupport the college with all its chartered rights; the public will be equally benefitted whether the members of the college have

have acquired their learning in one univerſity or another, whether on the ſouth or north ſide of the Tweed. If we look round the courts of Weſtminſter Hall, we ſee the graduates of the univerſity of Scotland eminent in profeſſional learning, and diſtinguiſhed by every ſpecies of elegant and uſeful knowledge. No one venerates more than I do the two univerſities of this country, but the inceſſant adulation beſtowed upon them, at laſt becomes naufeating; let them look at Weſtminſter Hall, and they will ſee thoſe whoſe talents have been cultivated in the Scotch univerſities, who have riſen to the higheſt ſtations in their profeſſion by their learning and the energy of their own minds; why ſhould not the profeſſors of phyſic obtain the ſame advantages? If the graduates of Cambridge and Oxford poſſeſs a ſuperiority of learning, they have nothing to apprehend from a competition; the foreign graduates, conſcious of their inferiority, would rarely offer themſelves for examination. Our client has ſufficient confidence in himſelf that he has attained that degree of knowledge in his profeſſion, and acquired that competent degree of learning, which entitle him to a participation of the honours of the college of phyſicians; and I truſt your Lordſhips will, upon this occaſion, grant a mandamus, to have it aſcertained how far that confidence is well founded."

Lord

Lord *Kenyon*. " If in deciding this caſe, it were neceſſary for us to anſwer all the arguments that have been addreſſed to us, I ſhould have deſired further time to conſider of the ſubject, but as the grounds on which I am warranted to determine the caſe lie in a very narrow compaſs, and as I have formed my opinion upon it, I wiſh to put the queſtion at reſt now.

" By what fatality it is, that almoſt ever ſince this charter has been granted, this learned body has ſome how or other lived in a courſe of litigation *, I know not; one is rather ſurprized when one conſiders that the *ſeveral members of this body, including the licentiates, the commonalty of this corporation* †, are very learned men; and as much as it is

* No litigations ſubſiſted betwixt the great body of phyſicians in this metropolis and the college, prior to the recent excluſion of a majority of them from the benefits of the charter.

† If Lord Kenyon includes the licentiates as *members* of this body forming the *commonalty* of this corporation, can he poſſibly deny that they are members entitled to all the privileges conveyed by the charter and ſtatute? Lord Mansfield ſaid, 'I 'conſider the words ſocii, comunitas, collegium, ſocietas, col-'lega and fellows, as ſynonimous terms, and every ſocius or 'collega as a member of the ſociety or corporation or college.' Burrow's Reports, vol. iv. p. 2195. The perſons to whom the charter was granted were to form 'unum corpus et comu-'nitas perpetua ſive collegium perpetuum,' they were to elect a preſident

is not generally the fruits of learning, at leaſt not the beſt fruits of learning, to get into litigation, one cannot well tell how theſe learned gentlemen have fallen into ſo much litigation *. I am not ſure whether the fault reſts with any of them, I very ſincerely wiſh, after having looked into the caſes which have from time to time been decided, that the learned judges, who did decide the caſes, had confined themſelves to the point that was before them, and had not dropped hints which perhaps invited, if they did not inſtigate, litigation †.

" It

preſident out of their own body, to chuſe cenſors, and to ſupply all the officers, and perform all the corporate functions. The act of parliament everywhere uſes the words *commonalty*, fellowſhip, and corporation, as ſynonimous. The act ratifies the letters patents granted to the corporation of the *commonalty* and fellowſhip; the elects, the higheſt officers after the preſident, are to be choſen out of the *commonalty*. It appears impoſſible that a man can be of the commonalty without being legally entitled to all the privileges of a member.

It is as eaſy to tell why the great body of phyſicians have endeavoured to emancipate themſelves from dependence and inferiority, and to recover privileges for which they are conſcious of being equally qualified with the graduates of Oxford and Cambridge, as it is difficult to account, on any fair or liberal principle, why the graduates of theſe univerſities ſhould perſiſt to deprive them of thoſe privileges.

† It is difficult for upright minds not to revolt at injuſtice, not to point out its iniquity, and the mode of redreſſing it.

Lord

" It is fit that I ſhould put the mind of Dr. Stanger, in caſe it is in an uneaſy ſituation, in a perfect ſtate of repoſe with regard to one thing, undoubtedly his moral character is not at all tainted by the application that is now made. I have not the honour of knowing him, I have heard nothing but to his advantage when I have heard him ſpoken of, and I dare ſay, all the eulogy which his warmeſt friends could beſtow upon him, his character both as a moral and a profeſſional man deſerve.

" What the parties are contending for, that is worth the expence and anxiety of this litigation I cannot ſee; and to minds ſo formed and gifted as the minds of thoſe perſons are, perhaps the anxiety is infinitely more than the expence*; the public has the benefit of their aſſiſtance in their

Lord Kenyon, much to his honour, has not always repreſſed his feelings, where chicanery has eluded ſubſtantial juſtice, or fair claims and meritorious exertions have been fruſtrated by erroneous procedure.

* The expence, anxiety, and animoſity attending this conteſt, including all the lawſuits, have been very conſiderable. How much more wiſe would it have been for the college to have employed the large ſums miſpent in this ruinous litigation, in promoting the intereſts of thoſe of whom they are the natural guardians? How much more benevolent to have promoted a liberal and friendly intercourſe between members of the ſame profeſſion, *formed and gifted* as they in general are? How much more beneficial to have directed their powers to profeſſional improvements?

their ſtate of licentiates, and the emoluments, which are the fair fruits of every man's labour, who has had a liberal education, are alſo within their reach, exactly in the ſame degree as thoſe who are called the fellows of the college *.

" Mr. Chambre, towards the cloſe of his argument, in very ſtrong and weighty words, preſſed us with the authority of thoſe that have gone before us. No man reflects with more veneration than I do upon thoſe characters, and no man is leſs apt to put himſelf in compariſon with thoſe characters. If the point had been decided by thoſe characters, preciſely in point, or like it, I ſhould have bowed to the authority that had decided thoſe caſes; but if I am to believe the judges who decided, the main ground upon which the caſe was there decided againſt that bye-law was, becauſe the college had made bye-laws which interfered with their exerciſing their own judgment, and *prevented them from receiving into their body perſons whom they thought and knew to be fit and qualified*; that is the ground Lord Mansfield lays down, and if I had found that exiſting among theſe

* His Lordſhip would not conſider the advantages of the law as equally within the reach of that profeſſion, if thoſe only who had graduated at Oxford or Cambridge were eligible to its higheſt offices. Such a reſtriction in that profeſſion would have deprived this country of his ſervices as Lord Chief Juſtice of the King's Bench.

theſe bye-laws, it would have become *me to have adhered to that deciſion becauſe it was decided*, and I ſhould readily add to it, that *my own judgment would have followed that deciſion* * ; but in the ſame ſentence

* Lord Mansfield and his colleagues decided, that a bye-law which confined admiſſion to the graduates of Oxford and Cambridge was bad, *becauſe it prevented the college from receiving into their body perſons whom they thought and knew to be fit and qualified.* Lord Kenyon admits he was bound to abide by that deciſion, and that he approves of it. Lord Kenyon confirms by obvious implication what Lord Mansfield had eſtabliſhed, that the college have not an arbitrary power of confining admiſſion, but that they have a 'power coupled with a 'truſt, and are bound to admit all that are fit.' If Lord Kenyon puts the ſame conſtruction on the words *fit and qualified*, as Lord Mansfield did, it neceſſarily follows, that he muſt equally conſider every bar to the admiſſion of a *fit and qualified* perſon as illegal. Lord Mansfield repeatedly ſaid, that by fitneſs he meant competent learning, ſkill, and character, in which meaning it may be fairly inferred, Lord Kenyon agrees with him, for what other conſtruction can be put. When Lord Mansfield aſſerted that fitneſs gave a legal title to admiſſion, he indeed added, that 'ſuch bye-laws as only require a *proper edu-* 'cation, and a ſufficient degree of ſkill and qualification may 'be ſtill retained.' But after concurring with Lord Mansfield that fitneſs, including a proper education, gives a legal title, can Lord Kenyon conſiſtently be of opinion that a bye-law is good which requires that a phyſician, after having had the beſt education which can be obtained, and having even aſcertained his fitneſs, muſt have completed his 36th year, and have been five years *of the commonalty*, or in a licenced ſtate, before the fellows can exerciſe a diſcretionary privilege (which gives him no poſitive right) of propoſing him? Can ſuch reſtraint be conſtrued within Lord Mansfield's meaning as a neceſſary or reaſonable ſecurity for a *proper education, and a ſufficient degree of ſkill and qualification?*

ſentence Lord Mansfield goes on to ſtate, that there are bye-laws requiring a *proper education*, that even ſuch bye-laws would be received in a different manner by him; I do not affect to ſtate the words, but it is to that effect.

" The munificence, the wiſdom, and the unexampled generoſity of our anceſtors, have founded in this country two univerſities, furniſhed with profeſſors of different kinds, liberally and amply endowed; they have had, we have been told, kings and queens as their nurſing fathers and mothers, and every body has ſpoken of them with reſpect and regard. I ſhould be ſorry if the time ever came in which thoſe, who have been more intimately acquainted with the univerſities than others, whom they have received into their embraces, and who have cultivated in the higheſt degree the attainments of literature there, ſhould become ſuch graceleſs ſons of kind mothers, as for the ſake even of an argument in a particular cauſe, to forget the thanks and the allegiance that they owe to them. I hope that time will never come. They certainly are not bodies to be ſcoffed at, and treated with diſreſpect, in the preſent caſe, this is admitted *.

" I do

* The moſt ſanguine admirers of the Engliſh univerſities will hardly contend that the comparative opportunities and incitements

" I do not go through the preliminary arguments, for it is admitted on all hands, that when a perſon is made a licentiate, he does not de facto become that which this application tends to make him. It is admitted that he is to be examined, and I think it is admitted, that thoſe, who call themſelves the college, are the dernier reſort reſpecting his fitneſs; the application ſeems to be made ad verecundiam, that Dr. Stanger, if examined, would appear to be ſuch a perſon as they could not conſiſtently with any modeſty or decency reject *.

" I ſuppoſe it is taken for granted, that they are judges in the laſt reſort, if they are not, I proteſt I do not know where to go. Is a jury of twelve freeholders to decide upon it? I do not know where the laſt reſort is to be, unleſs it is to the college of phyſicians †. Mankind are fallible, and it is poſſible that there might be *better teſts* found out; but the queſtion we have to decide, is not

citements to improvement which they afford, bear any proportion to their endowments. In many univerſities, at home and abroad, equal opportunities of improvement, in every branch of ſcience, may be had, where their endowments do not equal thoſe of one college in theſe cumbrous eſtabliſhments.

* The application was made ad juſtitiam, and by no means ad verecundiam. The merits or the ſucceſs of an individual was of no importance in this great queſtion.

† It never was diſputed that the deciſion, after examination, reſts with the college.

not whether this is the beſt, but whether this is not a reaſonable teſt of the fitneſs of the party; for if the bye-law is a reaſonable bye-law, there is no doubt but they had a right to make it, for the power of making bye-laws is expreſsly given to them by their charter *. If we look round into the concurring opinions of all mankind, we may receive ſome information upon this ſubject, in all orders and degrees of men: the legiſlature, to be ſure, may enact unreaſonable things, but we are not to ſuppoſe that that which is enacted by the legiſlature is unreaſonable; yet has not the legiſlature, when they have conferred favours in the church, and other favours, looked upon perſons as being of certain degrees in the univerſities as fit paſſports to receive favours; to the higher degrees greater favours are annexed, to maſters of arts in ſome ſtatutes about pluralities and ſo forth, batchelors of arts in ſome ſtatutes, doctors of divinity have others †.

" If

* Lord Kenyon ſeems to admit that the teſts adopted by the college are not the beſt. If the difference betwixt them and the teſts which Lord Mansfield allowed might be retained, to ſecure a proper education, were ſlight, they might be ſuſtained notwithſtanding better might be found. But they appear in direct oppoſition to Lord Mansfield's judicial opinion approved by Lord Kenyon, for they allow no right to examination to thoſe who are *well educated* and may be *fit*.

† The univerſities and the church have an intimate connection and mutual intereſt in ſupporting each other. They have long

" If we look into our profeſſion, and once lead ourſelves to ſuppoſe that the regulations made in the ſeveral houſes for the education of the law are unreaſonable; to be ſure that is not the preſent caſe, becauſe they are not corporations to which a mandamus will go, but I have a right to refer to them as well as to any corporations, to ſee what is in the eſtimation of mankind reaſonable; we know perſons are to continue ſo many years. It has been ſaid, and it paſſed current for a great while, that Lord Chancellor Jefferies was never admitted in any of the inns of court; Sir James Burrow with great induſtry, found out where he was admitted; he was certainly a man of great abilities, but with great and flagrant faults. It does not follow that eating mutton within the walls of the inns of court and attending commons there confer a knowledge upon the ſtudents; but the queſtion is, whether it is not reaſonable to ſuppoſe, that the habits of life they follow there, and the converſations they hold upon legal topics, are probable means of advancing a perſon in the knowledge of that profeſſion,

long enjoyed great political influence. Maxims of policy exiſt which have generally led the government to ſelect the dignitaries of the church from perſons who have imbibed their tenets in the Engliſh univerſities, and induced the legiſlature to grant them the privilege of plurality of livings. Theſe circumſtances do not apply to the faculty of phyſic, which weakens the analogy contended for.

profeſſion, in which he is a candidate for a degree*.

" If we look among the profeſſors of the civil law in Doctors Commons, a perſon muſt be a graduate, I believe, in one of the univerſities; he muſt do more than that, however capable he may be by exertion of greater abilities than the common claſs of mankind; he muſt be not as Pythagoras's ſcholar, five years liſtening, but he muſt be one year dumb, he muſt liſten one year to improve himſelf. Rules and orders, *if wiſely conſtructed, are adapted to the common claſs of mankind*, and it is not becauſe Scaliger, and ſome other men, have been endowed with abilities beyond the common courſe of mankind, that therefore all civil inſtitutions for advancing learning are to be fruſtrated, becauſe they happen to ſtand in the way of one or other of theſe perſons†; they

* The licentiates do not object againſt teſts of education in phyſic being required infinitely more concluſive of medical inſtruction than attending the inns of court and eating commons are of legal knowledge; or than even attending the terms of the Engliſh univerſities is of improvement in medicine.

† The objection to theſe rules is, that they are not wiſely conſtructed; that they are calculated to prejudice thoſe they ought to promote; that they are accommodated to the intereſts of a few inſtead of the common claſs of mankind; that they not only exclude a *Boerhaave*, or the moſt eminently diſtinguiſhed individuals, but a *great majority* of a profeſſion; that inſtead of advancing medical improvement, they diſcountenance and repreſs it.

they are, as I ſaid before, to be adapted *as far as human wiſdom can go, to the capacities of the common herd of mankind*; but can any man living ſay, that that bye-law, which makes a certain degree to be attained, as we are to ſuppoſe, and as I will ſuppoſe, not knowing to the contrary, by ſuperior learning in univerſities, a paſſport to the honour which is here contended for, is an unreaſonable bye-law*?

" If it had been a ſine qua non, if it had controlled the parties who are to form their judgment, and taken from them all power of deciſion upon candidates, it would have had that ſeed of death in it, which *Lord Mansfield found in that bye-law which he decided to be bad*; but this is not ſo, here every perſon has *a right*† *to addreſs himſelf*

* It is not unreaſonable to require a degree, nor a degree obtained by reſidence and after examination in a reputable univerſity: but it is highly unreaſonable to require a degree from one or two particular univerſities; and a glaring abſurdity, as well as injuſtice, to require it excluſively from univerſities liable to all the objections which have been pointed out againſt Oxford and Cambridge.

† What ſort of right is that, the enjoyment of which depends upon the will of another, upon the option of thoſe who have an intereſt and a bias not to extend it? A licentiate, within the terms of the bye-laws, has no right to offer himſelf for examination. The favour of a fellow to propoſe is a ſine qua non, and afterwards that of the college to admit to examination another. Every phyſician, except the graduates of Oxford and Cambridge, is thus dependent on the will and caprice of the fellows.

ſelf to the honourable feelings of thoſe breaſts, which Dr. Stanger muſt at laſt have addreſſed himſelf if this mandamus went, if they find him to be, (as I am inclined to believe he is from what I hear of him) poſſeſſed of all the requiſites of medical learning and moral character, he will addreſs as powerful arguments to thoſe gentlemen, *every individual of whom is called upon to exerciſe his opinion upon the ſubject, he is not to wait to be ſeconded**, the bye-law does not require that, if any one propoſes him the queſtion is ſubmitted to a majority; it goes then to that tribunal, which, I hope and believe, is the *ſanctuary of honour and good faith, and he may as well addreſs himſelf to them now as if this mandamus went*; they are not bound to admit, all they are *bound to do is to examine*†.

I ſee

* When Dr. Sims was propoſed by Dr. Burges, under the bye-law referred to by Lord Kenyon, the college *refuſed to enter into a ballot*, under a pretence that the propoſal was not ſeconded, which is not required by the bye-law. Lord Kenyon's knowledge of the honour and good faith the college diſplayed upon that occaſion, might have led him to be cautious in confiding the extenſion of a right, which could be ſecured by law, to a body who had ſo betrayed their engagement.

† Notwithſtanding this obligation, to which they were bound to adhere by their enactment of the law; to which they were additionally pledged by urging it as a plea for the deciſion they obtained; notwithſtanding it was rivetted by this ſolemn charge and adjudication of Lord Kenyon; the college immediately afterwards *refuſed to enter into a ballot* to admit to examination Dr. Wells, *within the ſtrict terms of this bye-law*, propoſed by Dr. Pitcairn!

I ſee nothing unreaſonable in the bye-law, when I find that the biſhops will not ſatisfy themſelves by enquiring in any indefinite manner into the character of thoſe who apply for orders, but will inſiſt upon teſtimonials ſigned by a great number of clergyman; when I find every man is doubting and diſtruſting his own erring judgment, and does chooſe to reſort to other teſts of fitneſs, and they appear the moſt reaſonable that can be, I think theſe gentlemen diſcharge their duty, and that this is a reaſonable bye-law*; upon theſe grounds, without going further into the topics which have been argued, and which I wiſh had not been gone into upon former occaſions, at leaſt by the Bench, becauſe I do think it has been attended with uneaſy conſequences, that it has raiſed a great deal of anxiety in the minds of

* The analogy of the practice of the church and the bar only countenances the requiring of teſts auxiliary to examination, but not impoſing unreaſonable delay, and almoſt inſuperable obſtacles. The ſignatures of three clergymen may be obtained by any candidate of good character for holy orders in one day, and no reſpectable ſtudent of law, eligible and deſirous to be admitted to the bar, was ever delayed admiſſion for want of a member of the inns of court to propoſe him. Allowing the full weight of theſe analogies, and of every argument which could poſſibly operate, Lord Mansfield, one of the cleareſt, wiſeſt, moſt diſpaſſionate, and unbiaſſed judges that ever ſat upon the bench, did not think this bye-law reaſonable. There is good reaſon for believing, that ſome of the higheſt legal authorities in this country agree with Lord Mansfield in that opinion.

of the parties, and led on to a litigation which, perhaps, would not have taken place if it had not been for that*, I am bound upon my beſt judgment to refuſe this application."

Mr. *Juſtice Aſhhurſt*. "Though this queſtion has taken a very long time in diſcuſſion, I think it is now reduced into a very narrow compaſs.

"The gentlemen who are of counſel for Dr. Stanger, do not contend that by being a licentiate of the faculty, he is ipſo facto become a member of the body; they only ſay, that every man who is fit to practiſe has a right to offer himſelf for examination without any ſuperadded qualification; and, therefore, upon that account, the bye-law requiring every perſon before he can be admitted a licentiate, to be a doctor of one of the two univerſities of England, or that of Dublin, in order

* It is impoſſible that a body of men ſo numerous, enlightened, and independent, as the phyſicians of London, could tamely ſubmit to a privation of thoſe profeſſional honours and advantages, which every principle of equity and policy, and apparently of law, entitled them to, if Lord Mansfield had not decided that every competent phyſician had a legal claim to be admitted a fellow of the college. Until a ſyſtem be adopted which ſhall extend admiſſion, as a matter of right, on impartial grounds, to all who are duly qualified, it would be vain to expect their acquieſcence.

order to entitle him to offer himſelf for examination, is in itſelf a void bye-law*.

" All corporations have a power inherent in their original conſtitution, of making bye-laws, and of courſe ſuch kind of bye-laws as concern the regulation of their own body. The ſole queſtion then is, is this a bye-law of regulation or is it not†? My Lord Mansfield (whoſe opinion has been much relied upon) ſays ſuch as only require a proper education, and ſufficient degree of ſkill and qualification, may ſtill be retained; there can be no objection (he ſays) to a caution of this ſort, and the rather, if it be true, that there are ſome amongſt the licentiates unfit to be received into any ſociety‡. It does appear to me very clear, that this bye-law may properly be

* The licentiates do not inſiſt that every man who is fit to practiſe merely, but that every *well educated phyſician of good character* is entitled to this right. The college, previouſly to granting a licence, require teſts of graduation and reſidence in ſome univerſity.

† The queſtion undoubtedly is, whether it be a *good and legal* bye-law of regulation?

‡ If there be among the licentiates men who are unfit to be received into any ſociety, the college betray their truſt by giving them a teſtimonial of learning and probity, and by ſuffering them to practiſe. But if in the numerous body of licentiates, exceptionable perſons be found, that is a good reaſon for excluding ſuch characters: but why exclude thoſe who, as Lord Mansfield ſaid, would do *honour to any ſociety?*

be conſidered as a bye-law merely of regulation, and Lord Mansfield admits that ſuch as only require a *proper education*, may ſtill be retained; what then can be a more fit or a ſafer teſt of a proper education and fitneſs than the having ſtudied fourteen years in one of our learned univerſities, and after having been examined by perſons competent to the ſubject, and been admitted to a degree of doctor in phyſic*? This, it ſhould ſeem to me, would prevent in limine the danger of that happening which Lord Mansfield complains of, the admiſſion of perſons among the licentiates who are unfit to be received into that ſociety†; indeed the legiſlature itſelf, ſo along ago as the fourteenth and fifteenth of Henry VIII. has ſhewn its opinion reſpecting how much ſtreſs ought to be laid upon ſuch a kind of teſt, for therein ſpeaking about country phyſicians, the legiſlature ſays, that no perſon ſhall be ſuffered to practiſe phyſic in England, until ſuch time as he has been examined in London, by the preſident and three elects, and has from

* To have ſtudied in Edinburgh and other ſchools, where phyſic is taught, would be a more fit and a ſafer teſt.

† The learned judge ſeems to be of opinion, that it would be better if the licence to practiſe as well as incorporation were confined to graduates of Oxford and Cambridge, that is, if all the phyſicians in this metropolis, were educated where the means of inſtruction are ſo inferior, that not one ſtudent in phyſic, out of one hundred, is educated there.

from them letters teſtimonial of their approbation and examination; and then it goes on, except he be a graduate of Oxford or Cambridge, who hath accompliſhed all things for his form without any grace. So high an opinion have the legiſlature of that teſt, that they diſregard every other qualification, provided a man has that, they do not even require him to undergo an examination for the practice in the country. If the legiſlature at that time laid ſo great a ſtreſs upon it, one may fairly infer, that it is not ſuch a teſt of admiſſion as ought now to be found fault with*.

" It is not unnatural to ſuppoſe, that on the great increaſe of London, and the number of candidates that applied, many of whom, perhaps, were of low education, and not fit to be received into the body, that they thought it more fit to ſtop that inconvenience in limine; for otherwiſe that learned body would have had ſo many people preſſed upon them, that they, perhaps, would have found it impoſſible to do their duty to the public,

* That exemption in favour of graduates of the Engliſh univerſities, was by no means granted on account of their ſuperiority as ſchools of phyſic, but becauſe their graduates muſt have given teſts, which other practiſers or pretenders might, or might not, have given. That the crown and parliament were ſenſible of the inferiority of Oxford and Cambridge, as ſchools of phyſic, when the charter and act of parliament were granted, may be inferred from a variety of circumſtances. See p. 41. 44. 74.

public, as profeſſional men, by adminiſtering their aſſiſtance, as their whole time might have been entirely filled up with that one purſuit; and, therefore, by putting this very proper check, by making it neceſſary that they ſhould be of one of the learned univerſities in this country, or of Dublin, before they ſhould have even a title to come and inſiſt upon an examination, they appear to me by this bye-law of regulation to have placed ſuch a guard as was very fit to be impoſed*. I would not be thought to infer, that the gentleman now applying, is in any degree deficient in any qualification, either of a gentleman or a ſcholar, I believe he is very much the reverſe, I believe him to be perfectly competent; but, however, general laws cannot give way to individual caſes, and as this law has been of ſo long ſtanding, and we muſt ſuppoſe it is found to be attended with general convenience †, we, therefore,

* The learned judge is entirely miſtaken in this ſuppoſition. The regulation, ſo far from being adopted in limine, was not adopted, ſo as to confine examination for the fellowſhip to thoſe who had ſtudied in Oxford, Cambridge, or Dublin, till above 200 years after the charter was granted. Beſides, the college examine thoſe for a licence whom they refuſe to examine for incorporation, which occupies as much time and attention, the examiners are alſo paid for each examination, and would rather be diſpoſed to increaſe than diminiſh the number. On no probable ſuppoſition could the number of candidates occaſion any inconvenience.

† A preſumption of benefit from any uſage, can only be inferred where poſitive diſadvantages cannot be made to appear.

fore, ought to abide by it; and, therefore, I entirely concur with my Lord Kenyon, that this being a bye-law of regulation, it is fit to be continued."

Mr. *Juſtice Groſe.* " This motion calls upon the court to grant a mandamus to compel the college of phyſicians to examine Dr. Stanger, that he may after ſuch examination be admitted a fellow of the college. This being a motion for a mandamus to a body incorporated by charter, we muſt ſee that we are authorized in what we do by that charter, or by ſome bye-law founded upon the charter, or ſome uſage founded upon ſome bye-law.

" It is to be obſerved, that this is not a precriptive corporation, *it can claim, and in fact it does claim, nothing but from the charter and the act of parliament which confirms that charter**. On examining the act of parliament and the charter, it ſeems to me that King Henry VIII. erected a corporation, conſiſting of a preſident, ſeven elects, and an indefinite number of fellows and commoners. The election of a preſident is by the charter

* Where, either in fact or by implication, does the charter or act authorize the college to confine admiſſion to the graduates of Oxford or Cambridge; or to exact more rigorous teſts from phyſicians educated in one univerſity than in another?

charter to be annual, ſo is the election of the four ſupervifors, who are to have the government of all phyficians practiſing the faculty of medicine in the city of London, and its ſuburbs, and ſeven miles round. The elects are to be choſen whenever there is a vacancy, within thirty or forty days.

" It appears that the intention of the charter was to put an end to the miſchief occaſioned by the ignorance and the avarice of ſome empirics, who in reality knew nothing of the ſcience of medicine; for this purpoſe the charter meant to erect and perpetuate a college *conſiſting of phyſicians**, to give them a power of electing officers for particular purpoſes; of making bye-laws and ordinances; of admitting perſons under their ſeal to the practice of phyſic, and prohibiting all but thoſe perſons from practiſing; of puniſhing ſuch as practiſed improperly, and of ſuperviſing the medicines and the preſcriptions, for that, I think, is a proviſion in the charter. The great object, however, was to prevent ignorant pretenders from practiſing, and to admit thoſe who were in the language of the act, diſcreet and groundly learned in phyſic to practiſe†. Theſe are

* It was to conſiſt of *phyſicians*, not of graduates of Oxford and Cambridge, and ſuch others alone as they choſe.

† The *diſcreet and groundly learned* were to be admitted to practiſe as *members of the commonalty and politic body* by the expreſs

are the great objects, and for this purpoſe the appointment is, as I ſaid before, of preſident, elects, and ſuperviſors.

" I obſerve, that how or when the fellows are to be choſen or admitted, is not ſpecified any where in the charter, but it is left to the diſcretion of the perſons named in it to provide for*, under the general power given them to perpetuate the corporation, and to make ſtatutes and ordinances for the well governing, ſupervifion, and direction of the college, and all the men practiſing phyſic. The charter is, therefore, totally ſilent as to any election of a fellow, and as to any examination, an examination is incidental to an election, and the charter being ſilent as to

preſs words of the ſtatute. See note to Lord Kenyon's ſpeech, p. 454.

* The terms of the charter warrant a directly oppoſite concluſion. The grant was to the perſons named in it, and *to all other men of the ſame faculty*. It allowed the perſons named no diſcretion with reſpect to admiſſion in the firſt inſtance. The charter ſpecifies the qualifications for incorporation, which implies that no diſcretion was to be exerciſed, but that of aſcertaining and determining whether candidates poſſeſſed the requiſites mentioned in an adequate degree. The ſtatute was prayed for, in the name of the ſame perſons to whom the charter had been granted, and in the name of *all other men of the ſame faculty*, which implies that no diſcretion of limiting the admiſſion of *men of the faculty duly qualified*, had been exerciſed during the time which elapſed between the charter and act of parliament. Lord Mansfield was decidedly of opinion that the college had not a diſcretionary power of rejecting, which is ſanctioned by Lord Kenyon.

to the election and examination, what have the college done? They have made bye-laws by which they have aſcertained, as I conceive, the criteria of fitneſs of future candidates, and have pointed out the manner of education; the circumſtances under which, and the perſons by whom they may be named as candidates *.

" But to theſe there are objections; one objection is, that the bye-laws are illegal. They particularly object to one, by which perſons are required to be graduates of the univerſities of Oxford, Cambridge, or Dublin; the objection is, that it ſuperadds a qualification. It does not ſeem to me to ſuperadd a qualification; I conceive that it is only aſcertaining a criteria of fitneſs †. But it is ſaid, for that was ſtrongly inſiſted

* The charter does not point out when and how the college are to elect, but by a clear deſcription of thoſe, who are to conſtitute the college which implies the obligation of electing perſons within that deſcription, both the charter and ſtatute point out who are to be elected. The college are bound to preſerve the ſucceſſion agreeably to the *original incorporation and deſcription*. The criteria of fitneſs, which may be reaſonably required, muſt accord with the qualifications expreſſed or clearly implied.

† Though it may aſcertain a criterion of fitneſs, if that criterion be indiſpenſibly required without being indiſpenſibly neceſſary, and to the excluſion of equal or better teſts of the ſame nature, it is a ſuperadded qualification, which may defeat the intent of the charter, and which, in fact, changes the original conſtitution of the college.

ſiſted upon by a learned gentleman who argued the other day; that being licentiates they have an inchoate right. If by an inchoate right is meant, that they had thereby one qualification, which added to other qualifications, may in future give them a right, I admit it in this ſenſe; but then they muſt have the other qualifications in order to be examined, and what theſe qualifications ſhall be, thoſe who are by the charter conſtituted the judges of fitneſs, are alone by the charter, in my opinion, ſelected to fix and point out *. If by this inchoate right any thing more is meant, I confeſs I cannot aſſent to the propoſition.

" I cannot help obſerving, that it is admitted by the motion, that the college have a right to inſiſt that they ſhall be examined as a teſt of their capacity and fitneſs. But this right is not expreſsly given them by the charter; there is not one word ſaid of any obligation either to admit or to examine, but it is incidental to them, as having the power of admitting of making bye-laws,

* This would be an unqualified power of requiring whatever qualifications they pleaſe. What other qualifications beſides being *grave, diſcreet, groundly learned, and deeply ſtudied in* phyſic, can be required conſiſtently with the charter and act, or with the nature of the inſtitution?

laws, and judging whether they are fit or not *. Now if they have that power—I reſort to the expreſſions of the learned Lord, in conſequence of whoſe opinion, I take for granted, this motion was thought of; my Lord Mansfield ſays—It is true that the judgment and diſcretion of determining upon this ſkill, ability, learning, and ſufficiency to exerciſe and practiſe this profeſſion, is truſted to the college of phyſicians; and this court will not take it from them, nor interrupt them in the *due and proper* exerciſe of it. The ſame reaſon, in my opinion, that authorizes them to judge, gives them a power of fixing upon the mode of judging, and I conceive *they are much better judges of the mode than we ſitting here can be* †. They have made it a rule, that every candidate ſhould

* Without examination, the fitneſs of candidates could not be aſcertained; without admiſſion, the ſucceſſion could not be preſerved. Theſe duties, without being mentioned, are obviouſly implied, becauſe the college could not ſubſiſt without them. But the ſilence of the charter with reſpect to theſe obvious duties, does not imply a power of arbitrary limitation, which might defeat the intent of the grant, or alter the nature of the ſucceſſion.

† Moſt corporations might be better judges of the mode of admitting their members than courts of law, provided they were *diſintereſted and unbiaſſed*; but as it frequently happens that corporate bodies, or thoſe who direct them, are *intereſted parties*, it has been wiſely eſtabliſhed that they ſhall be controuled by impartial courts of law, and obliged to act in conformity with the grants of the crown and acts of the legiſlature.

ſhould be of ſuch a ſtanding; ſhould be propoſed by a fellow, and having ſuch previous qualifications, ſhould be propoſed by the preſident; theſe ſeem the chief bye-laws that are now complained of.

" I muſt confeſs that I think theſe bye-laws are reaſonable; and I ſee nothing inconſiſtent with the charter in requiring theſe qualifications, any more than there is in inſiſting upon thoſe modes of education, which my Lord Kenyon and my brother have juſt alluded to, and which it is unneceſſary for me to repeat. And I obſerve that Lord Mansfield, in the paſſage ſtated by my brother Aſhhurſt, ſays, ſuch of them (ſpeaking of bye-laws) as only require a *proper education, and a ſufficient degree of ſkill and qualification, may ſtill be retained.* In purſuance of that opinion of Lord Mansfield the college have framed a ſyſtem of bye-laws, by which the perſons to be admitted fellows are required to be graduates of the univerſities of Oxford or Cambridge, or Dublin, where they may have had a proper education; and their being graduates will be the teſt of their having thoſe requiſities of learning and morality which make them fit ſubjects of examination for the purpoſe of this admiſſion. In the making of theſe bye-laws, I think the college have ſhewn a due and proper attention to execute faithfully the truſt

truſt repoſed in them; to attain the purpoſes intended by the charter, namely, to give the public a ſucceſſion of men whoſe ſkill may adminiſter relief and comfort to their fellow creatures labouring under the diſeaſes incident to human nature, and whoſe learning and abilites may regulate in future the practice of that ſcience, of which the members of this college have been for the laſt century the ornament, as well as the admiration of the age in which they have lived *. This ſeems to me the real ground upon which I am warranted in refuſing this mandamus."

Mr. *Juſtice Lawrence.* " This is an application for a mandamus to compel the college of phyſicians to examine Dr. Stanger, in order that he may be admitted a fellow or member of the college of phyſicians; and the foundation of the application is, that Dr. Stanger, by having been admitted to practiſe phyſic, is become what is deſcribed in this charter, one of the homines facultatis, which, it is ſaid, gives him a right to admiſſion, if on examination he ſhall be found fit, and that every bye-law which at all militates with the admiſſion of any perſon who is a licentiate, is a bad bye-law.

" Dr

* The greateſt ornaments of the faculty of phyſic have been either excluded the college, or admitted in an indirect manner. See p. 82.

" Dr. Stanger's counſel have been under the neceſſity of inſiſting on the licence giving him a right to examination; for if the being admitted a member of the body be matter of election, it is immaterial whether the bye-laws be good or bad. It ſeems to me, that the inſufficiency of the proviſions of the ſtatute 3 Henry VIII. probably gave riſe to this charter; the object of which was to eſtabliſh a better mode of determining who were proper perſons to be licenſed to practiſe phyſic, and to prevent the practice of ignorant empyrics. If this was the object of the charter, it was not neceſſary that all men of the faculty ſhould be members of the body*; all that was neceſſary was, that it ſhould be compoſed of a ſufficient number of learned and diſcreet practiſers of phyſic, who ſhould have a power of continuing the ſucceſſion in perſons of the ſame deſcription with themſelves; and that ſuch perſons ſhould have the power of authorizing other people to practiſe, and of reſtraining thoſe from practiſing who were unfit to practiſe. If this were

* This was no doubt one and a main object; but did thoſe phyſicians who planned and obtained the charter mean to ſecure no benefits for the profeſſion itſelf? Were the *privileges and exemptions* granted by the crown and parliament not intended as benefits to the *homines facultatis?* Were the *honours, endowments, and wealth*, which were likely to be accumulated in ſuch a body politic, intirely out of the contemplation of thoſe who obtained and granted the charter and act?

were the object of the charter, it does not ſeem to me to have been meant that the governors ſhould exceed thoſe to be governed; or that the power of making laws to govern this body ſhould be given to a greater number, when it might be more properly exerciſed by a ſmaller number *.

" It is ſaid, that it is a miſtake to ſuppoſe that admitting the licentiates to be members of this college, will extinguiſh the perſons to be governed, becauſe when they become members of the college, they are ſtill perſons to be governed. It is certainly true, that by the proviſions of this charter, thoſe that are members of the college will be ſubject, as all the members of a corporation are, to the government of that corporate body. But it is admitted by the counſel on behalf of Dr. Stanger, that there were two diſtinct claſſes

* If incorporation might be confined to the few who could, and who alone do aſcertain the qualifications of others for practiſing, the college might be reduced to a preſident and four cenſors, diminiſhed ſtill farther than even Mr. Warren contended, who admitted the neceſſity of eight members: but the power of examining and authorizing to practiſe is only one object, and if it were the ſole function of the college, the words of the charter and act coupled with the words of the preceding ſtatute third Henry VIII. clearly prove, that thoſe who have been *approved*, are eligible to exerciſe it.

claſſes under the charter, that *ſome perſons were to practiſe** who might not be fellows of the college; then it would have the effect of extinguiſhing one claſs of perſons to be governed, and extinguiſhing, in a way not for the advantage of the public, that claſs, which it is the object of the charter to govern, namely, thoſe that practiſe phyſic†.

Mr. Chambre in his argument has contended, that the omnes homines ejuſdem facultatis, may be conſtrued to mean the individual members of the corporation; but if ſo, how can the bye-laws be made to affect the licentiates? becauſe if they are to be conſidered as members of the body, perſons then would be entitled to practiſe phyſic without being ſubject to their bye-laws, becauſe bye-laws operate only upon thoſe

* It is conceded, that perſons might be authorized by the college to practiſe, without being admitted corporators, provided they were not duly qualified for, or declined the fellowſhip; but it is denied that ſuch proviſion in the charter authorizes the rejection of thoſe who are *duly qualified*.

† If by extinguiſhing one claſs as they now exiſt, depreciated by a ſtigma of inferiority, and depreſſed by many obſtacles to their advancement, they could be revived under a new deſcription, with additional incitements and opportunities to be uſeful, it would be manifeſtly for the advantage of the public, as well as the profeſſion. See p. 115.

thoſe who are members of the body*; the clauſe in the charter that gives the exemption from ſerving on juries, ſpeaks of the perſons exerciſing the faculty of phyſic in London, and ſeven miles round, as contradiſtinguiſhed from the members of the college, ‘ nec preſidens nec aliquis de ‘ collegio prædicto medicorum, nec ſucceſſores ſui ‘ nec eorum aliquis exercens facultatem illam†;’ therefore it does ſeem to me, that thoſe who are called the homines facultatis in this charter, are not the individual members of the college; it was for the government of them that this charter was inſtituted; therefore I do feel the argument, that if the licentiates were all to become members of the college, it would be extinguiſhing thoſe perſons who were in the view of the legiſlature at the time that this charter was granted.

“ It

* All who practiſe phyſic within the juriſdiction of the college, whether members or not, are ſubject to the ſuperviſion and controul of the cenſors; they are equally amenable to the legal regulations or bye-laws of that board. The words of the charter are, “ habeant ſuperviſum, &c. ſingulorum me- “ dicorum, aliquo modo utentium facultate medicinæ,” &c.; the words are explicit, and confirmed by act of parliament. They undoubtedly authorize the extenſion of ſuch regulations as are neceſſary and reaſonable, for accompliſhing the end of the charter, to all perſons deſcribed by it.

† The word eorum here applies to thoſe inferior practitioners who might, and for a long time did, practiſe under the permiſſion of the college; but the *homines facultatis* were expreſsly incorporated.

" It was ſaid by Mr. Chambre, that there might be ſome perſons who might chooſe to practiſe phyſic, who might not chooſe to become corporators, and thereby to be ſubject to the burthens of the different offices impoſed upon them, and that this would ſupply the claſs to be governed by the fellows of the college; but that is improbable; it is not to be ſuppoſed that as the *principal object of the charter was to incorporate thoſe who were ſkilled in phyſic**, and to prevent thoſe from practiſing who were unfit, that they to whom the charter was offered would refuſe the advantages of this corporation†. If it occurred to

* If it was the *principal object* of the charter to incorporate thoſe who were *ſkilled in phyſic*, what can be legally required from candidates for incorporation beyond proof of adequate opportunities for attaining, and teſts of actually poſſeſſing *that ſkill?* How can any limitation, becauſe the functions of the college can be diſcharged by a few, be conſiſtent with this principal object? How can any limitation to the graduates of univerſities, which may be, and in fact are the worſt medical ſchools in Europe, be conſiſtent with it? How can bye-laws which raiſe obſtacles, almoſt inſurmountable, againſt the *beſt ſkilled in phyſic*, be compatible with this main object?

† Mr. Juſtice Lawrence aſſerts, that it was the *principal object* of the charter to incorporate thoſe who were *ſkilled in phyſic*, and contends that thoſe, who were *eligible*, would not refuſe the *advantage of being members.* This opinion will at leaſt juſtify all the efforts of the licentiates to participate in theſe *advantages*, to which that *ſkill in phyſic* gives a *title*, which they believe themſelves poſſeſſed of, and for the proof of which they ſolicit an opportunity of giving any real teſts which have ever been required.

to the crown to be a proper thing for the regulation of the faculty of phyſic, that every phyſician ſhould be a member of this body, it ſeems, that inſtead of doing what they have done, they would have made it neceſſary, that every perſon who practiſed phyſic in London, or within ſeven miles round, ſhould become members of the body, as is the caſe with companies in ſome cities and corporate towns, of which perſons carrying on certain trades are obliged to be free*.

" Now ſeeing that there is an uncertainty, perhaps, in ſome degree, with reſpect to what may be the meaning of the words omnes homines ejuſdem facultatis, it ſeems to me, that the uſage that has prevailed ought to be deciſive, eſpecially as the uſage is conſiſtent with the deſign of the incorporation. It is ſaid, indeed, that the uſage is in favour of Dr. Stanger's claim; I confeſs I cannot ſee that. It has been ſaid, there have been no bye-laws produced earlier than a hundred years ago; but does it follow that before that time every perſon had a right to be admitted;

* The charter, by conferring honours and advantages on thoſe competent phyſicians who chooſe to become members, ſecured an adequate and ample ſucceſſion effectually, without impoſing an obligation; a mode which has been generally adopted in charters. Coercion ought never to be employed where it can be diſpenſed with.

mitted; Dr. Stanger has not produced a ſingle inſtance of any perſons being admitted into this body as a matter of right, and we muſt therefore take it, that they came in by election. Then how are we to conſtrue this charter, when Dr. Stanger cannot quote a ſingle inſtance of any perſons having been admitted upon this claim he makes, from the time of the granting the charter to the preſent hour *. I think, when the title ſet up by the licentiates is a little examined, it will not be found to ſtand upon ſo good a ground as is ſuppoſed by their advocates; for if they have any right, it muſt be under the words of the charter, ‘ quod ipſi omneſque homines ‘ ejuſdem facultatis, de et in civitate prædicta ‘ ſint in re et nomine, unum corpus et communi-

‘ tas

* If by election Mr. Juſtice Lawrence means a ballot, in which the college might exerciſe their judgment, whether the candidate for admiſſion was duly qualified in character, learning, and ſkill, Dr. Stanger never contended that he had a right to be admitted into the fellowſhip without ſuch election. He conſequently never attempted to prove that any perſon was ever incorporated without election. Inſtead of proving that particular individuals had been admitted through the title under which he claimed, it was proved, that the uſage had been to examine and admit every phyſician qualified in learning, ſkill, and character, during more than a century and a half after the charter was granted, and that, till after the middle of even the preſent century, it was the uſage to examine and admit every competent phyſician, wherever educated, provided he had purchaſed a degree of mere incorporation at Oxford or Cambridge.

'tas ſive collegium perpetuum;' but if this gave Dr. Stanger the right, the college could not reſiſt his claim, though he would not ſubmit to an examination. If every homo ejuſdem facultatis, within London or ſeven miles round, becomes incorporated by it, it ſeems to me that Dr. Archer went the right way to work when he ſaid, admit me, for I am a homo facultatis, and the charter incorporated every one of that deſcription. The charter does not ſay, that all men of the faculty, who on examination ſhall be found fit to become the governing part of this body ſhall be admitted; but if it has ſaid any thing in their favour, it has given them the right as ſoon as they become men of the faculty*. Suppoſing a charter incorporated all the weavers of a town; a man

* The charter incorporated all of the faculty who had been examined and approved, under the prior act, which implied that all who had been examined and approved, as duly qualified for the fellowſhip, were to be admitted in future. But the charter, by implication at leaſt, admits that a claſs with inferior qualifications may be allowed to practiſe without being members. The college during a long period authorized partial and inferior practitioners, apothecaries, and ſurgeons, to practiſe merely, but lately have degraded the beſt educated and beſt qualified phyſicians to this inferior claſs. Dr. Archer was examined for a permiſſion to practiſe, and could not prove that he had paſſed that ſpecies of examination which candidates for the fellowſhip undergo. He could not therefore ſay, he was a homo facultatis, in that ſenſe which gives a legal title to the fellowſhip without farther teſts.

a man who ſerves an apprenticeſhip, and exerciſes the trade of a weaver, has a right to be admitted. In the preſent caſe, if a perſon has fitneſs by becoming a man of the faculty, then further examination is not neceſſary; therefore, it ſeems to me, that there is no ground for a diſtinction, between a man who is licenſed to practiſe, coming and requiring to be admitted under this charter without examination, and applying, as Dr. Stanger does, to be admitted after examination; this is no more, as it ſeems to me, than a contrivance to get out of Dr. Archer's caſe, and to ſet up a right on the ground of being a licentiate*.

" Mr. Chriſtian, in the courſe of his argument, has ſeemed to feel that a little, becauſe he has not exactly agreed with what was laid down by Mr. Gibbs, who argued on behalf of the college, that the ſame degree of learning is neceſſary for the one as for the other; he ſays, the act of parliament directs that no perſon ſhould be of that body politic, but ſuch as are profound, ſad, diſcreet, men groundly learned, and deeply ſkilled in

* This *contrivance*, juſtified by equity and law, was obviouſly ſanctioned by Lord Mansfield, and the able judges his colleagues; and this ground of application is intirely free from the objections which prevented the ſucceſs of Dr. Archer's and Dr. Fothergill's claims.

in phyſic; then if it be, as he conceives, that this is to be a college conſiſting only of very learned and well-informed men, what becomes of the argument of the omnes homines ejuſdem facultatis? becauſe there is an end to that ground; for then it comes to this, that there ſhall be a perpetual college of men, profoundly learned in the ſcience of phyſic, who may exerciſe the practice of phyſic in the city of London, and ſeven miles round; then it does not make every man of the faculty ſo, it only ſays there ſhall be ſuch a perpetual college*.

" The attention of the court has been drawn particularly to the third of Henry VIII. It has been ſaid, that the perſons who at that time were licenſed under the authority of the Biſhop of London, or Dean of St. Paul's, to practiſe phyſic, were at the time of the charter men of the faculty, and that they and the ſix perſons named,

* The charter ſays, there ſhall be a perpetual college of grave and learned men, and that all men of the faculty (who had given teſts of their gravity and learning) ſhall be members. The ſtatute ſays, that no perſon of the *ſaid politic body and commonalty* be ſuffered to practiſe phyſic, but thoſe that be diſcreet, profound, groundly learned, and deeply ſtudied in phyſic. Mr. Chriſtian inſiſts, that all men of the faculty, who have theſe qualifications, have a right to be admitted; but does not contend that men with inferior qualifications, may not be permitted to practiſe under the direction and controul of the cenſors.

named, were the perſons meant to be incorporated; but the words of the charter will not be found to extend to all thoſe perſons; after it recites the purpoſes for which the charter was intended to be granted, it goes on and ſays—'quæ quo facilius rite peragi poſſint memoratis 'doctoribus Johanni Chambre, Thomæ Linacre, 'Fernando de Victoria, medicis noſtris, Nicholai 'Halſewell, Johanni Franciſco, et Roberto Yax-'ley, medicis conceſſimus quod ipſi omneſque 'homines ejuſdem facultatis, de et in civitate 'prædicta ſint in re et nomine unum corpus et 'communitas perpetua, ſive collegium perpe-'tuum;' that is, all the men practiſing phyſic of and in the city of London. Does that extend to perſons practiſing in other places? that cannot be contended*. Dr. Stanger deſcribes himſelf by his affidavit, as being of ſome place in the county of

* It clearly extends to all perſons reſiding within the college juriſdiction. The charter grants, in compliance with the petition of ſix perſons therein named, that a perpetual college ſhall be formed of grave and learned men, who practiſe phyſic in London and in its *ſuburbs, within ſeven miles around.* In the very next ſentence, the charter proceeds to grant to the aforeſaid perſons, that they and *all men of the ſame faculty of and in the aforeſaid city*, be in name and in deed one body and perpetual college. The words, *de et in civitate prædicta*, taken in context with the ſentence immediately preceding, obviouſly import the college juriſdiction. The ſuburbs of London muſt at the period when the charter was granted, have contained a majority of thoſe who were intereſted in the grant, and probably of thoſe who petitioned for it.

of Middleſex*; now if that conſtruction had been adopted, it would have excluded the greater part of thoſe who have been members of the college, practiſing phyſic in Oxford, Cambridge, and other places beyond theſe limits, as not falling within the deſcription of thoſe perſons of whom, according to the conſtruction, the college is to conſiſt†.

" Taking the whole of the charter together with the uſage, it ſeems to me, that this conſtruction will reconcile all difficulties: it might be the intention of the crown, in granting this charter, to incorporate the ſix perſons named, and ſuch perſons as fell within the deſcription of the charter, de et in civitate prædicta, who were deſirous of being admitted at that time‡; but I conceive it was not the intention of the crown to give that

* Not more than two or three members of the college reſide in the *city of London*, and very few ſo near the college as Dr. Stanger.

† Men reſiding without the limits of the college cannot undoubtedly claim a right of being incorporated, it is no where even implied: but men reſiding within theſe limits, whether in the city or its ſuburbs, who were grave and learned, were expreſsly to conſtitute the corporation. It aggravates the injuſtice of the college, that they admit, without exception, graduates from Oxford and Cambridge, *wherever they reſide*, which was never intended by the charter, whilſt they exclude a majority of the faculty reſiding *within London and its ſuburbs*.

‡ It was explicitly and poſitively ſo enacted.

that right to any perſon in future: when they were incorporated, it was their duty to keep up their ſucceſſion in the ſame way that every corporation is bound to keep up the ſucceſſion; when the charter ſpeaks of theſe ſix men as homines facultatis, it inſerts them, as if enumerating at that time every perſon practiſing in the city of London; all of whom might, if they thought proper, accept the charter, and become members of the college; if they did not think fit ſo to do, only thoſe that did accept would become fellows of the college, and then they muſt look at the words of their charter, and at the object of their inſtitution, and they *muſt elect* the perſons who are deſcribed according to the language of the times in the charter and act of parliament, as *perſons who are profound, ſad, diſcreet, and groundly learned, as Lord Mansfield ſaid**.

" It has been argued, that the public have an intereſt in theſe gentlemen (I dare ſay many of them

* That is preciſely what is inſiſted by the licentiates, that according to the words of the charter, and the object of the inſtitution, the college *muſt elect* thoſe who are deſcribed in their charter and the act of parliament, as perſons *profound, ſad, diſcreet, groundly learned, and deeply ſtudied in phyſic.* The charter and ſtatute do not allow by implication a power of electing or refuſing; they do not imply an option between perſons educated in one univerſity in preference to the graduates of another. The college muſt chooſe, and they muſt chooſe perſons deſcribed by the charter and ſtatute.

them well deſerve the commendations that have been paſſed upon them) becoming members of this college. The public certainly are intereſted in care being taken that *empirics and ignorant people ſhould not practiſe* *, and in having a ſufficient number of perſons of an oppoſite deſcription to take care of their health; the public intereſt is attended to while the college is kept up, by whoſe means the ſucceſſion of fit men in this metropolis is perpetuated †. The public are intereſted in there being a ſufficient number of proper perſons licenced to practiſe phyſic, but while there are fit men of that deſcription, it is nothing to the public, whether exerciſed by gentlemen who are members of the univerſities of *Oxford or Cambridge, or by perſons educated at the different univerſities of Europe* ‡; ſo long as the college licence proper perſons,

* The public are certainly not indebted to the college for any care of that kind. They do not even diſtinguiſh men of the higheſt qualifications by thoſe honours which would moſt effectually raiſe them in the eſtimation of the public above illiterate impoſtors. Empirics and ignorant people are *tolerated*, whilſt the moſt eminent phyſicians in the metropolis are only *licenced*.

† The ſucceſſion of fit men to practiſe might have been kept up by the Biſhop of London or Dean of St. Paul's, and four approved phyſicians, which would have ſuperſeded the neceſſity of the college, had that been its only object.

‡ Mr. Juſtice Lawrence admits that competent phyſicians educated *in the different univerſities of Europe*, are as fit as the graduates of Oxford or Cambridge, and conſequently as well entitled to the fellowſhip; and it certainly is nothing to the well

perſons, and reſtrain improper perſons; ſo long as there are perſons ready to take over again, as often as neceſſary thoſe offices they execute, I think all the intereſt the public have in it is fully conſulted. And it is a miſtake to ſuppoſe that the licentiates have not *the ſame privilege as the members of the college*, for it appears to me, that the exemption from ſerving on juries, &c. extends to all the faculty, as well as to the members of the college†.

" We have been preſſed much with the dicta of Lord Mansfield, in the King *v.* Dr. Aſkew‡; we

public whether thoſe who practiſe phyſic, or are admitted fellows, be members of the univerſities of Oxford or Cambridge, or of the different univerſities of Europe, if duly qualified. But is it not material to the public that a few perſons from the former ſhould not monopolize (to the prejudice of a numerous profeſſion) all the direct and many indirect advantages ariſing from a corporate inſtitution impartially granted for the benefit of the community and of all that are *fit* in the medical profeſſion?

† Have they the privilege or emoluments of being preſident, elects, cenſors, regiſter, librarian, commiſſioners for granting licenſes; of being lecturers under the different bequeſts made to the college, of being ſupported by the influence of that powerful body? What Mr. Juſtice Lawrence calls the ſame privileges as the members of the college is a permiſſion to practiſe, and an exemption from ſerving on juries, equally poſſeſſed by every member of the apothecaries company, and in effect by every impoſtor in phyſic.

‡ What Mr. Juſtice Lawrence intitles the *dicta* of Lord Mansfield, Lord Kenyon conſiders as a *deciſion* that the bye-law

we cannot but bow with the utmoſt deference to every deciſion of Lord Mansfield. But in that caſe, it was not the point before the court, the only queſtion there was, Whether by being licentiates they were members of the body? that is the only part of the caſe that the court decided. Whether Lord Mansfield's opinion would have been the ſame, if he had heard the caſe put in the light it has now been put, we cannot tell, it is ſufficient to ſay, it was not the point before the court*.

" On the queſtion reſpecting the validity of the bye-laws, I can hardly add to what has already been ſaid by the court, and ſhall therefore only ſay, that I agree with them in thinking the bye-laws reaſonable. It ſeems to me to be rather undervaluing the advantages to be obtained at our univerſities, to ſay they only treat of abſtract ſciences, as if a man by ſpreading plaiſters

law of unqualified excluſion was bad. Lord Kenyon farther aſſerted, that if he had found that bye-law exiſting, in the ſame unqualified manner, it would have become him to have adhered to that *deciſion*, becauſe it was *decided*. Dicta ſo delivered, ſo admitted, and ſo confirmed, conſtitute an authority not eaſily ſhaken.

* For the proof that Lord Mansfield was deciſively of opinion, that the college have not an arbitrary right of election, and that they are bound to admit all that are qualified by education, character, learning, and ſkill, ſee p. 96.

ters in the ſhop of a ſurgeon, would be as fit to become a phyſician, as if he had ſpent ſix or ſeven years in ſtudying abſtractedly phyſic in one of our univerſities*. I entirely concur with my Lord and my Brothers, that this application ought to be refuſed."

Lord Kenyon decided the queſtion between the college and the licentiates in favour of the former, on the ground that the exiſting bye-laws, taken together, were reaſonable, though he admitted that better might be found. But Lord Kenyon confirmed the opinion of Lord Mansfield, that bye-laws which prevented the college

* What opportunities of ſtudying phyſic, even abſtractedly, do theſe univerſities afford? Are lectures read there on phyſiology, pathology, materia medica, or on the theory and practice of phyſic? Are ſocieties eſtabliſhed for diſcuſſing ſpeculative ſubjects in medicine? Are there ſtudents to compare opinions? Theſe ſchools are ſo abſtracted from all means of medical inſtruction, that many apothecaries ſhops might well ſupply better opportunities. But this remark appears to imply, that thoſe who are not graduates of Oxford and Cambridge, have ſcarcely enjoyed any advantages but thoſe which a ſurgeon or an apothecary's ſhop ſupply; this is an error, which could only ariſe from Mr. Juſtice Lawrence, (the ſon of a fellow of the college of phyſicians, and a member of one of the Engliſh univerſities,) being unacquainted with the courſe of education which the licentiates in general purſue. For an account of the comparative opportunities of medical inſtruction in Oxford and Cambridge, and in Edinburgh and other univerſities, ſee p. 15, and the following.

college from receiving into their body, *perſons whom they thought and knew to be fit and qualified, were bad*; which implies, that all unreaſonable obſtacles to the incorporation of competent phycians are *bad*.

Mr. Justice Ashurst gave his opinion in favour of the college, on the diſtinct ground, that the exiſting bye-laws were reaſonable regulations, for ſecuring a *proper education and fitneſs* in candidates; from which it may be fairly inferred, that he agreed with Lord Mansfield and Lord Kenyon, that the college are not empowered, arbitrarily to confine, or to impoſe unreaſonable reſtrictions upon admiſſion.

Mr. Justice Grose was of opinion, that the college enjoy the power of regulating the time and mode of electing their members, and that the criteria of fitneſs required by the preſent bye-laws, *including thoſe which extend admiſſion to the licentiates*, are reaſonable.

Mr. Justice Lawrence has delivered an opinion, which ſuſtains a more arbitrary power in the college than they ever contended for. His opinion would make this ſcientific inſtitution, founded by a learned faculty, the benefits of

which were originally extended impartially to all fit perſons in a numerous profeſſion, and expreſsly conveyed to their ſucceſſors, an inſtitution which was intended to diſtinguiſh and reward merit, as narrow and abſolute as any petty corporate oligarchy in the kingdom. According to his opinion, it would be more advantageous to confine than to extend admiſſion, and provided the offices of the corporation are filled, (and a ſufficient number of perſons licenced to practiſe) the ends of the charter are attained. A Hervey and a Sydenham, as well as a Boerhaave and a Cullen, the graduates of Oxford and Cambridge, as well as thoſe of Edinburgh and Leyden, may be equally rejected!

Notwithſtanding this opinion, and that the power of admitting members is (ſince the late deciſion) in effect little leſs than arbitrary, let us hope that men ſo enlightened, and in their conduct as individuals ſo reſpectable, as the fellows in general are, may yet adopt in their corporate capacity thoſe principles of juſtice and liberality which govern their private conduct.

May they atone for their paſt meaſures, arreſt the growing obloquy in which they are held by the public, reconcile themſelves with a profeſ-

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ſion they have ſo long injured, and which, if united, may eaſily eclipſe, and perhaps, annihilate their inconſiderable body.

Let them revert to the principles of their inſtitution, and the practice of their founders. Let them cheriſh and reward merit, promote ſcience, ſuppreſs impoſtors, and benefit the community. Let them adopt the advice of Lord Mansfield, and in conformity with the *truſt and confidence repoſed in them, admit all that are fit*. The college of phyſicians will then enjoy the conſciouſneſs of doing right, the approbation of mankind, the united exertions of the faculty, and the wiſhes of the community that they may for ever flouriſh.

FINIS.

141