

Substance of the speech before the Lords of the Privy Council, on the subject of incorporating the London University / [by Charles Wetherell].

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Wetherell, Charles, Sir, 1770-1846.
Royal College of Physicians of London

Publication/Creation

London : J. and F. Rivington, 1834.

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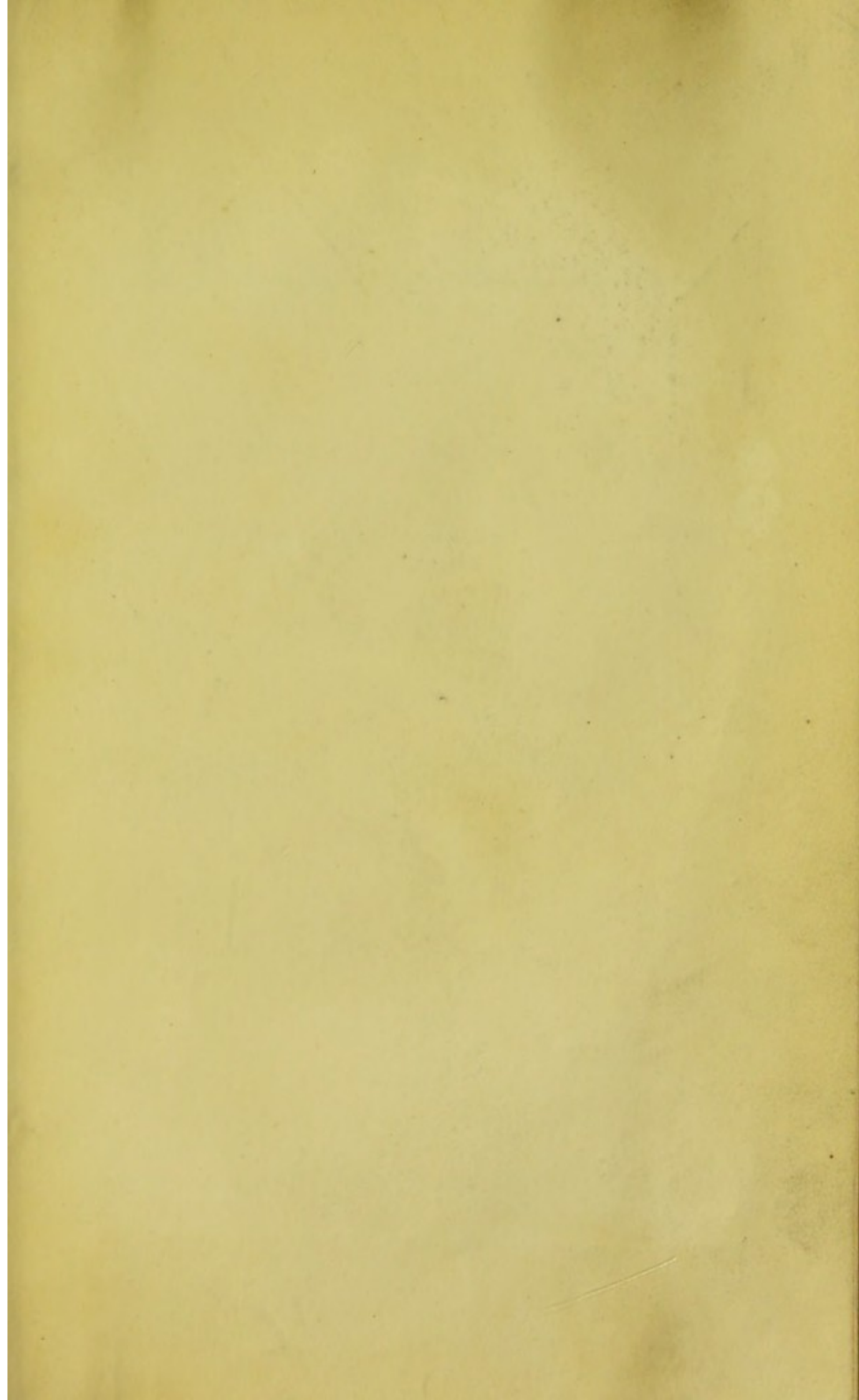
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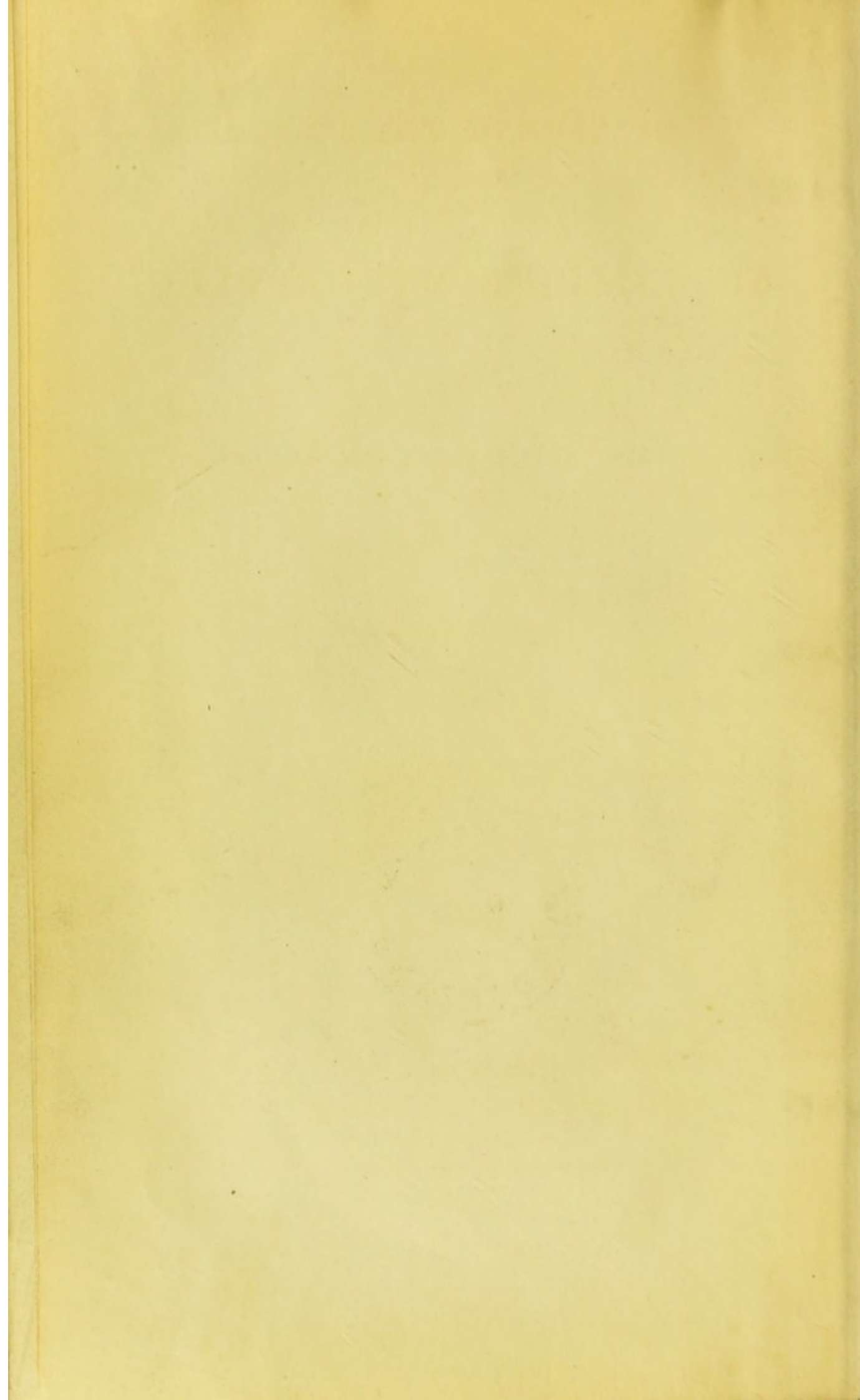
SIR CHARLES WETHERILL

MEMBER OF THE TRUSTEES

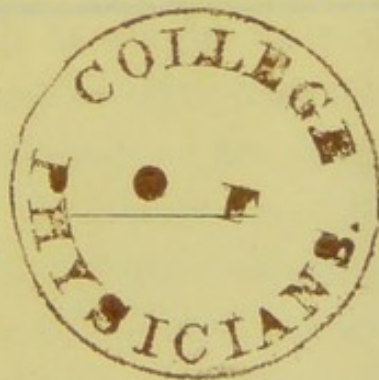
INCORPORATED

LONDON: 1852

PRINTED BY J. & J. JOHNSON



SUBSTANCE OF THE SPEECH
OF
SIR CHARLES WETHERELL,
BEFORE THE
LORDS OF THE PRIVY COUNCIL,
ON THE SUBJECT OF
INCORPORATING
THE
LONDON UNIVERSITY.



LONDON:
PRINTED FOR J. G. & F. RIVINGTON,
ST. PAUL'S CHURCH YARD,
AND WATERLOO PLACE, FALL MALL.

1834.

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SPEECH,

&c.

*At a Meeting of a Committee of his Majesty's Most Honourable
Privy Council, Council Office, Whitehall,*

THURSDAY, 24th APRIL, 1834,

IN THE MATTER OF THE LONDON UNIVERSITY.

MY LORDS,—I have the honour to appear upon this occasion as Counsel for the University of Oxford, and in support of a petition which has been presented by them to His Majesty, against the charter which is sought by a class of persons now calling themselves the University of London, and who have prayed of his Majesty, to incorporate them in that character. I feel, my Lords, placed in a most peculiar situation, perhaps the most peculiar in which any advocate ever stood before. For I cannot but know, that one noble and learned Lord, now sitting at the board (the Lord Chancellor) has in the House of Lords expressed himself in strong terms, in favour of the claims to this charter. I cannot fail to recollect that another noble Lord, filling no less high an

B

office than that of President of his Majesty's Council, is a subscriber, and one of the council of the institution.

THE MARQUIS OF LANSDOWNE.—You are mistaken.

SIR CHARLES WETHERELL.—I apprehend only in this respect, that your Lordship is not actually at the present moment one of the council.

THE LORD CHANCELLOR.—Perhaps you ought to recollect another noble Lord, who has helped you to the best argument that has been urged against the claim, that is, the argument they found the most difficulty in grappling with, which you may guess, they did find so from their being so very shy of coming near it.

SIR CHARLES WETHERELL.—I am satisfied your Lordship will feel that if I am permitted to follow up my own views, I shall not be found doing your Lordships injustice. I cannot but know that another noble and learned Lord is also, but perhaps from a mistake in the printer, represented to be a subscriber to the institution. I mean no less an exalted individual than the Lord Chief Justice of England.

LORD CHANCELLOR.—Then on the other side, you have to set off the Lord High Steward of the University of Oxford, and the late member for Cambridge, and another person whom I need not name, so that it is not all on one side.

SIR CHARLES WETHERELL.—Certainly, I have

the honour to see the Lord High Steward, he brings with him all the personal incidents belonging to that character, and I have no doubt at the same time, that of perfect candour, whatever may be his disposition to support the just privileges of his own university. My Lords, I cannot imagine myself, during a discussion on this subject, put in a state of conflict with the Lord High Chancellor of Great Britain, or with the Lord Chief Justice of England, or with the Lord President, though I should be compelled to deny, as I feel it my duty to do, the legality of the proposed charter. But I would not appear, I would even further say, I would not condescend to appear here, under the influence of restraint upon any point whatever. If I shall be obliged to ridicule this institution, and condemn it as inconsistent with all public policy (I was going to say of public decency), that view of the case would not place me in a position which would expose me to the necessity of throwing out allusions disrespectful or disagreeable to any individual, nor of impeaching their determination to be impartial, and they would remain the same objects of personal respect as if they were not at all connected with the contest now pending.

Notwithstanding, therefore, what may have been decided at the Council Board in Gower-street, or even the Common Council of the city of London, and though I may have the misfortune to be placed

in fearful collision with such great and powerful bodies, I must proceed at all hazards. I am persuaded that any opinion which any Privy Councillor now summoned to this board may have expressed elsewhere in favour of the charter, any countenance he may have given to it, any thing which he may have said or done on antecedent occasions, will be considered by him as of such a foreign nature as to be entirely forgotten. All private and individual feelings will be lost and merged at this board in the public duty of persons sworn and bound in their abstract, constitutional, and legal character of Privy Councillors to advise the Crown. It is this reflection alone that has given some consolation to the humble individual who has now the honour to address you, for it would be a most painful thing for me in addressing a tribunal, in many respects the highest in this country, to tell the promoters of a charter, once countenanced and advocated by several of your Lordships, that they have been labouring under a state of perfect ignorance of the law. It would otherwise seem a strong thing to say,—it would in any other view appear a personal disrespect to the advisers of the Crown in their character of Privy Councillors, to say,—

But it must, I fear, be said, that according to all the general principles of the law of the land, the part which some individuals have formerly taken, would incapacitate them to give any advice what-

ever to the Crown on this subject. There is indeed no challenge practically allowed by the constitution to any Privy Councillor sitting at the board. If there were, I would avail myself of that challenge. But the forms of the constitution have not provided for such a case. It is no pleasant office for any man to undertake the task of alluding to all this. But the truth is, that many individuals eminent for their talents and consideration, have formerly in their private capacities, and under the influence of their particular notions and feelings, and while placed in relations towards the government very unlike those in which they now stand, made themselves the zealous patrons of this institution, no doubt from the most sincere conviction that it would be a desirable thing to raise it up as a competitor in rank and importance, and to add it to the ancient establishments of the country. But standing now in the very different situation of ministers of the Crown, they are bound to give up their private feelings and wishes, and even to repudiate what they have done under other circumstances, if in the exercise of their sacred duty in advising the Crown, it shall be made to appear that His Majesty ought not to consent to a project which they have themselves originally promoted. I am certain that my motives cannot be misunderstood in referring to any particular names. In fact, there are three or four of his Majesty's ministers directly con-

nected with this institution ; but this is not mentioned with the most distant approximation of disrespect to them for the reasons I have just stated ; and if any expression which may have dropped from me should seem to have such a bearing, I should say, *indictum puta*.

With regard to the petition of the University of Oxford, it seems to me that it is not necessary to enter into any detail of the contents. The purpose of it is to object in toto to the Charter sought for. My honourable and learned friend, however, who opened this case, alluded to one or two particular passages, in which it is stated, that they had been advised so and so. At this he expressed his surprise, and as it seemed to me was hunting about a little to find out their adviser, rather intimating that the advice was not good. But whether the advice has been well or ill given, or whether the terms and composition of their petition be such as other persons would have used or not, it is at present not material to inquire. But high authority will hereafter be adduced for the advice which has been given.

Before entering at large into the general and leading topics of the objections to the Charter, some parts of the opening speech of my honourable friend must be adverted to, and here I must take the liberty to express some surprise on my part. A complaint has been raised that the science and art of medicine and surgery have been most

grievously impeded by the non-existence of such an institution as is sought for ; but it now turns out that the injured doctors, surgeons, and apothecaries, can acquire no academical honours from the applicants for this Charter. It has been admitted that they are in no condition to give degrees, nor indeed to give any aid whatever to the medical school of London. They have no hospital and no patients ; the mode of instruction by Clinical Lectures being the best of all, unfortunately they have no sick men as subjects for the lecturer. This is the *Materia Medica* upon which they found their pretensions. It may be an unsupportable grievance that the population of the City of London, its suburbs, and environs, amounting all together, as we are told, to some fourteen or fifteen hundred thousands of souls,—a population compared with that of Denmark or Saxony, or some other, not inconsiderable foreign states,—should labour under the want of a Medical University. But the gentlemen who now present themselves to relieve his Majesty's subjects from such an evil, have forgot that they are not yet furnished with pots, phials, and medicine chests, or the common pharmacopæia of a chymist's shop. But still they must have the power to give degrees. Says my honourable and learned friend in his opening, why am not I to have my doctors, surgeons, and apothecaries graduated in London ? How shocking is it that every aurist, oculist, dentist, chiropedist, and

whole platoons of his Majesty's medical subjects should have been so scandalously ill-treated? Why I should be tempted to say that the affair had become very serious, indeed, if the Common Council of the City of London, at their Guildhall assembled, declare that they must address his Majesty upon the subject. One would suppose the grievance to be so intolerable, that following the example of the "Trades' Union," it would almost justify "a Medical Union" of all members of the faculty to assemble to put it down and redress themselves. But, after all this remonstrance and complaint, my honourable friend, so distinguished for his talents, must not here lose the tribute due to him for the candour of his statement. For in truth he says, We have no means "*at present*" for a Medical School. But never mind that;—let us have a charter, as the lawyers say, *de bene esse*. We shall then have a potentiality of acquiring means by and by, and then we shall be able to get on. Now, unwilling as I am to occupy a moment of your Lordships' time beyond what the exigency of duty requires, I must request you to observe the singular state of this case. When I see this large assemblage at Guildhall, the coadjutors of this Institution, assisting them in their complaint; when I see the Institution already assuming the title of a University, praying of the Crown to realize their pretensions, and to found them as such; when I hear them asking of his Majesty to

allow them the power to confer on the medical body, a class of men so learned and distinguished, the same rank and state now exclusively derived from Oxford and Cambridge ;—when I hear this on one side, and recollect what I have just heard stated in this place, I must say, with all humble deference and respect to the Common Council, who presented their petition to his Majesty on the Throne, that when they graced and went along with the procession to St. James's, they lost a day to trade, and did not gain it to medical science. They complain to the King that medical degrees are not given by their friends, the London University,—says the learned advocate for the so titled University. Medical degrees we are not in a condition to give :—and it was for this and nothing else that the tradesmen deserted their tills and counters in Cheapside, and posted up to St. James's to rescue his Majesty's subjects round the Metropolis, numerous as a Continental state, from such ill treatment and desertion. What other persons may think of such amusing proceedings as these I know not ; but I shall venture to say what I think of them. I think they are fit to be worked up into a farce to be played at some of the minor theatres, Sadler's Wells, for instance. They may be fit for the Council Board at Guildhall, but do not deserve to carry much weight with such an illustrious assembly as is convened here. I am compelled to say, further, that the

privilege of addressing the Sovereign on the Throne has somewhat the appearance of being abused, or if that be too strong language, I would soften it down, and say that it had been rather ridiculously used. My Lords, in pursuing the claims of this Institution to their Charter, I must allude next to the list of patriotic persons announced to us as subscribers to it. Great names, indeed, are sounded in our ears. We have heard read the names of a Duke of Sussex, a Duke of Devonshire, a Duke of Norfolk, and a Duke of Somerset; persons certainly carrying with them a considerable sanction to any undertaking. But I should wish to ask my honourable friend, why he did not first announce the name of the Lord Chancellor, for in rank and station he precedes the whole Dukery? Why omit the name of the President of the Council, who in this place at least, precedes every body? Why is this parsimonious doling out of the names of the Subscribers? Why again did he omit to mention some others of his Majesty's Ministers, I presume because, to use a city phrase, these ministerial friends are already "*posted*" in the ledger of the London University. That is the only reason why I can suppose that these eminent persons have not been catalogued by my honourable friend with the illustrious list he has read over to us. In point of fact it was, perhaps, unnecessary to enumerate them, because for three or four years back they are known to have been the public patrons of the

Institution. But whatever be the meaning of this, I must take the liberty to say, that these Goldsmids in wealth, these Devonshires in landed property, these Norfolks in ancient rank, these profound lawyers and great statesmen, will not affect the nerves of any person, unless he be indisposed to perform his duty. It is not to be supposed that they have subscribed for the purposes of profit on their money, but they can only be looked at as if they were subscribers to any other institution, to the London Cemetery Company, or any other Company, as if they had the vulgar plebeian names of Smith and Thompson. For all the purposes of the present question, if it is to be fairly disposed of, they can only be recognised as A. B. C.

Now I shall next advert to another ground of recommendation of the Charter by my Honourable Friend. It is not to be an establishment for the purposes of religion: religion is an ingredient which, it is allowed, is not to enter into the concoction of it, but it is still to have a very great influence on the moral conduct of the inhabitants of London. Those sensual vices, those immoralities of human nature, those propensities to dissipation, those deflections from purity, that state of physical sensuality, which are too observable in a metropolis, are to be totally lost in the establishment of this attractive, intellectual, academical Society. Such a topic as this, however ingenious, is new; it may, perhaps, be a leaf picked from the Journal of the

Common Council. One has been at Paris, where institutions and societies of this description exist in abundance ; but I have never yet heard that they had much improved the moral habits of the people there. But the London University is to have a far different effect : all moral improprieties are to be absorbed by the destructive power—the consuming flame of—this new intellectual system. For my own part, I beg to say, I much doubt whether, in the list of criminals—in the list of those unfortunate persons, the victims of vice—of those wretched objects who, under the dispensations of Providence, are devoted to misery—a single one will be deducted. As a practical argument, I cannot subscribe to it ; but if this Society is to have the extraordinary effect of putting an end to immorality, permit me to ask, whether a University, founded on no principle of religion, no use of prayer to the Almighty, not even in the admission of Christianity, will not lamentably increase what I shall call religious sensuality ? Instead of those vices, the cure of which is anticipated, we are to have a Society, the basis of which is to be—emancipation from all religion. Now, I assert, and I think that experience will confirm me, that the most demoralizing, the most injurious of all sensualities with which man can be inflicted, is that which invites the mind to roam abroad, to expatiate and devote itself to all the vice and wickedness in which the sensualist in religion may indulge himself. I think it is an

overwhelming set off against the expected improvement in the moral habits of the inhabitants of the metropolis. If this University is to have its attractions, and engage the attention of those who would otherwise be ruined by dissipation, I will be bold enough to say, I think it better to leave vice to its own curse, and immorality to bring on its own ruin, than to have a system established, by which the debauchery of the body is to be prevented at the expense of the worse debauchery of the mind.

The next general ground, urged so strongly by my honourable friend, is the increased demand for education. This is a popular thesis to enlarge upon. I know it is the opinion of some persons, that a country cannot be over educated: there is no such thing in their view as ultra-education. Now, such a wide field of speculation as this I cannot go into, nor will I enter into the lists with the maintainers of that principle; but, taking it to be so for the purpose of the argument, is it essential that the Society should be a University? Would not a college, or school, or seminary, in Gower-street, with their plan of instruction, impart as large a supply of attainments in literature. In its character of a school, this institution may be wanted, or it may not; but, after every thing I have heard on this subject, I am still at a loss to perceive why that sort of institution, which is technically known as a University, is so indispensable to the inhabitants of London.

In proceeding further to allude to the points insisted upon on the other side, there is one which unfortunately has been touched upon very slightly ; and that is, the question what sort of property is it on which this University is to be engrafted. This has been nearly passed over : but I must press it upon your attention, as a matter of great moment. Property, it may be said, is not always to be weighed in too nice scales ; but unless they have that certain and continueing endowment, which will sustain them in that respect and superiority of rank and station, which are absolutely necessary to so high a character, I wish to ask what will be the consequence ? Now what is the nature of their property ? assignable shares, at present at a discount of £75. It is rather strange that this point was missed at the meeting of the Common Council. They could hardly consider it as a mark of solidity of finance, equally promising with the Religious, Literary, Legal, and Medical advantages of the Institution which they referred to in their address. But if we were to ask a Cheapside-man to take a money or trade view of the subject, and to waive a little of theology, law, and literature ; and if he looked into the Price Current of this morning, and found the shares of the to-be-founded University worth $21\frac{3}{8}$ each, he would say upon the *meum* and *tuum* of the thing, there is nothing particularly inviting in it : but when the value of these shares is considered, we

must not stop here. I shall undertake to demonstrate to-morrow, that of the London University, the Archbishop of Canterbury, the eminent and venerable Prelate now sitting at the board, must unavoidably and of necessity be the Visitor. This will make the shares tumble down to nothing: they will be as unsaleable as Columbian Bonds or Greek Stock. This visitatorial character I shall prove belongs to the Primate, and that the Crown can found no University on any other principle. That will be one of the propositions which I confidently assert I shall make out when I enter into the main grounds of my case: this will make their shares look downwards indeed. But this subject of the income and property of the Institution will hereafter require to be inspected more closely. The proposed Institution being only one corporation, must subsist and be maintained exclusively on its own funds and property; and without these it cannot be a place of education. Whereas in the Universities of Oxford and Cambridge, the case is widely different; in both of these, each College has its own endowment and funds. The property of the University, as such, need be comparatively little, because each College maintains its own establishment, and is for that purpose entirely independent of the corporate constitution of the University. In truth, the separate Colleges support the University. If this has escaped the attention of the Great Council lately

held in the City, which may be, it will not have the same fate here. I have ever understood, and I know from experience, that the rule has hitherto been, that the Crown will never grant a Charter for a College, a School, or for any object of the most common and ordinary description, without the assurance of adequate property to support it. I should hope that a rule indispensable in a weaker case, can, and will not be sacrificed upon so serious an occasion. We have heard of exclusion from the Universities complained of, and the necessity of a new foundation. The Crown is called upon to confer upon it extraordinary powers; and to create an honourable competition and rivalry: and Doctors and Masters of Arts are to issue in abundance from Gower-street. And all this is to be done when the learned body is literally in a state of insolvency. It is no fiction to say, that a sheriff's officer will very probably go and fasten up the doors of their lecture-rooms and museum, and an advertisement will appear for the sale of a bankrupt university. How is this honourable competition with Oxford and Cambridge to be carried on without money, the sinews of war. An expedient has been undoubtedly offered by the honourable and learned civilian, and the advocate for, and a member of, the Council in Gower-street, who performs all his miscellaneous duties with great talents, and who, I think, was ill used, when his name was not read

over with the list of Dukes. He admits, that all the buildings necessary for the medical branch stand not at present on terra firma. They are mere castles in the air, reared by the imagination, and sympathizing friendship of the Common Council of London. But then says the learned civilian, Give us the Charter as a nucleus, and wealth will follow as a consequence. Do not look at the *uti possidetis*, but look at what we shall have bye-and-bye, look at contingencies and reversions. One would really almost suppose that the title of the London University was so attractive as to be enough and more than enough to make money pour in from all quarters ; possibly it may gather to itself the unemployed capital of the East India Company and the Bank of England, at present so barren and unprofitable. Now, I maintain, that for the Crown to act on the mere speculation of adequate means is a departure from an invariable practical rule on the subject of Charters.

I am next led on to call your Lordships' attention to another highly important consideration involving the conduct and duty of the Crown upon this occasion ; I mean the point, what is to be the constitution of this establishment. This point has been studiously kept out of view ; not a word has been said about it. But I find that it is to be formed entirely on the principle of a Joint Stock Company, with assignable shares. The shareholders elect what is called a Council, and this

Council is to make bye-laws, and to be armed with the authority of making all the interior regulations of the body. I have looked through the sketch of their Charter, and this is the whole of what I can collect from it. Now, the affairs of the London Cemetery and the Southampton Rail Road may be very usefully conducted in this manner. The shareholders at their pleasure call their meetings, and elect a chairman and a committee. But is the joint stock principle to be made a model for the constitution of a third University to be called into existence as the rival and equal of the two ancient Universities of which His Majesty is himself the head. I must further appeal to every experienced Member of this Board, whether another of the rules on which the Privy Council invariably acts with reference to Charters is not to require a distinct and preliminary statement as to what is to be the government, and who are to be the governors, of any society incorporated for the purposes, and combined with the performance, of any important public trust and duty, in order that the Crown may be assured, that the powers which it delegates may be properly administered? and in order to effectuate this, proper provisions are always introduced into the Charter. Such is the rule; and the history of Charters from the earliest time to the latest moment proves it. And as a further security in Charters of this description, the Crown either names or approves of the first go-

vernors. But here, upon the most important occasion of modern times, the joint-stock principle of government is to supersede the precaution of the Crown, which is to be entirely thrown aside.

LORD CHANCELLOR.—Can you tell me how they manage with the shareholders at King's College?

SIR CHARLES WETHERELL.—Yes; I have looked at that, my Lord.

LORD CHANCELLOR.—Perhaps you can answer this question. What is the title in law by which a University College could be named, and could be pleaded?

SIR CHARLES WETHERELL.—If this question applies to University College at Oxford, it is called the Great Hall of the University.

LORD CHANCELLOR.—It is called the Great Hall of the University in Oxford? You see the view with which I put the question. The King's College is incorporated by Charter from the Crown; but being a college, it is only incorporated as such, and can have no power of granting degrees.

THE BISHOP OF LONDON.—It has at its head Official Governors, but not elective.

THE LORD CHANCELLOR.—The name of University, you know, would not give it the nature of a University. Suppose an incorporated Charter to be given to the body called the University of London, to be and be called a College, and not a University, a collegiate body; but by the name of

such a University it would be no more a University than a College of Oxford would be : it would not be made a University by force of the Charter. It might have a name, but its nature is not changed.

SIR CHARLES WETHERELL.—That is one of the points to which I shall to-morrow call your Lordships' attention.

THE LORD CHANCELLOR.—Another question might be, suppose no Charter was granted at all, and that the body goes on as it now is, without applying for the Charter, whether as a University, or a collegiate body, not a University, and supposed to assume to itself to grant degrees ; what remedy would there be, taking the degree for what it is, *valeat quantum* as a testimony that a person has received a certain education, and is possessed of the skill consequent on that education, and that the public are to give acceptance to those degrees, and the man is called in without asking whether it is a London University degree, or an Aberdeen, or an Edinburgh, or a St. Andrew's degree ? Suppose they called in a Dr. Smith, and prescribed *quid juris*, what remedy would those who regulate the Universities of Edinburgh or St. Andrew have ?

SIR CHARLES WETHERELL.—There may be remedies, my Lord ; but the point is so novel that it cannot be easily answered.

LORD CHANCELLOR.—London University, you see, gives up something, if there is nothing to

prevent that ; if in consideration of the Crown granting the Charter, it agrees to take the Charter under certain conditions, such as visitation, not transferring shares by purchase, and any other limitation : such as to be excluded from granting certain degrees, such as to keep the power of making Masters of Arts, and Doctors of Law, and Bachelors of Law, but not to take the power of granting Medical degrees, but that that might be vested in a central body ; I throw that out.

SIR CHARLES WETHERELL.—I have considered all these points, and shall be prepared to state before your Lordships the view I take of them. As to King's College, I have seen a copy of their Charter, and the first answer as to the shareholders is, that it is not a University.

LORD CHANCELLOR.—I thought your argument went not to an University, but to the absurdity of incorporating any joint stock company.

SIR CHARLES WETHERELL.—By no means ; I thought I had guarded myself sufficiently against any such supposition. It is one thing for the Crown to grant a Charter, incorporating a school upon the principle of a joint stock company, it is another thing to found an University on that principle ; but the truth is, the King's College is not founded on the ordinary principle of a joint stock company, where the shareholders make their own bye laws and system of government. In the first place, in King's College, the Charter requires the doctrines

of the Church of England to be taught ; secondly, it has a visitor named by the Crown, that Right Reverend Prelate the Archbishop now sitting at the end of the Board ; thirdly, there are particular provisions as to who the governing Council are to be, and how they are to be continued : they are not persons “ cheered ” into the chair of the Council, but persons named and approved by his Majesty. There is a certain Sir Nicholas Conyngham Tindal, Chief Justice ; there are indeed no Dukes ; but, in going on, I see the name of a certain Sir Launcelot Shadwell ; I further see our trusty and well-beloved Sir Robert Inglis, Sir John Richardson, Knight, and a Reverend Archdeacon, one of the Chaplains of the Archbishop. The very rule I have just alluded to has been followed up ; and there are many checks and other provisions which it is not necessary to mention, introduced into the Charter, for the purpose of regulating the influence of the shareholders, and preventing any improper interference by them. Now, if I have assailed the Gower-street Institution upon the principle of its joint stock government, I have not been caught in my own snare, for the Government of King’s College is, in every respect, the reverse of it.

I wish now to say a very few words upon what has fallen from my learned friend, in noticing an expression used by Dr. Copleston, the learned Bishop of Llandaff, in a very able pamphlet of his. Some years ago, a very violent attack was made on

the University of Oxford, not indeed for their want of orthodoxy in religion, but in Greek and general science. I think it came from St. Andrew's, or Edinburgh, or some other northern rival. This very learned individual undertook to answer the metaphysician and Grecian, and he was thought to have done so with great success; but a passage occurring in this work is referred to by my learned friend, importing that "the University of Oxford is not a national institution." Without going through the whole of the Tract, the distinct bearing of this expression will be misunderstood. The different colleges may be most properly said not to be a national institution, for they are not founded by the Crown; but it is not meant to say, that the academic or collective body of the University is not a national institution. The learned writer would be much misunderstood in having the expression so construed.

These preliminary remarks I conceived myself bound to make, and to-morrow I shall state to your Lordships the two propositions I mean to contend for, which in substance are, that his Majesty cannot legally grant the Charter, and these propositions I hope to establish.

*At a Meeting of a Committee of his Majesty's Most Honourable
Privy Council, Council Office, Whitehall,*

SATURDAY, 26th APRIL, 1834.

IN THE MATTER OF THE LONDON UNIVERSITY.

SIR CHARLES WETHERELL.—My Lords, in concluding the address I had the honour to begin on Thursday in this case, I stated that I should undertake to bring forward propositions directly asserting that the Charter sought for cannot be legally granted. It is obvious that the question of legality in the order of discussion precedes that of good policy, because whatever favourable view may be taken of the question of public good or of general policy in conceding such a measure, it would come to nothing if the Institution sought to be established cannot be legally founded by a Charter. The proposition of expediency might, for the purpose of the argument, be admitted, for the proposition of illegality, if decided in the affirmative, would dispose of the other. I had, therefore, first intended to proceed directly to argue the question of law for the reasons just stated. But I was diverted, as I think necessarily, from that purpose and driven to make the observations I offered by the extraordinary statements I heard on the other side. Before I enter upon the subject more precisely, there are some main circumstances to which it will be necessary to call your Lordships' atten-

tion, in order that some clear proposition of fact may be laid down, connected with the question of law. I heard a learned friend behind me ask whether there was to be laid any distinct statement before the Board as the basis on which the Charter is to stand. This alluded particularly to the sort of instruction, literary and religious, which it may be proposed to pursue in this Institution ; and I apprehend such a statement ought regularly to have been produced, and might, I conceive, to have been required. The Privy Council, who have to advise the Crown upon the concession or refusal of a Charter for a new University, must first be informed upon the preliminary inquiry, what is or what is not to be the religious discipline of the place. Without information on this subject, how can you advise his Majesty ? But from a sincere desire of saving your Lordships' time, I would waive calling for a statement upon the point of religious education. But I only do so because it is an understood thing, and I assume it as an understood thing, that in this University, as it is already termed, not only the doctrine, discipline, and worship of the Church of England are not to be conformed to, but that no form of Christianity whatever is to be there maintained.

I say this because there having been some time since a Council held in Gower-street, at which a distinguished Member of Westminster Hall, now filling the highest situation in the Law of this

country, was present, and in which discussion he took a part, it is allowed to be as clear as any mathematical datum, that within its walls religion of no sort whatever is to enter. The rule might be well expressed in this short sentence, Religion "*hujus loci non est.*"

And their plan is well adapted to their maxim, and carries it completely into effect: there is to be no church or chapel; there is to be no lecture in divinity of any sort or description; no test administered at any time to any of its pupils or members; no Sacrament or profession of faith; no religious rite whatever; and it is therefore scarcely necessary to add, no chaplain, preacher, reader, reading-desk, or congregation. It had so happened, it seems, that an ill-natured rumour was given out by some ill-natured person, that some sort of religious faith had endeavoured to creep into the University. Upon this, its dearest friends, its chief patrons and warmest supporters felt deeply for its interests. They said, we shall be knocked up if there is any idea that any thing of the kind is to be permitted. It cannot possibly go on: the shareholders will withdraw their subscriptions; the stock will vanish, and it will become almost as bad a speculation as the South Sea bubble.

I will state nothing here for which I have not authority. I will overstate nothing: but I will not omit to state the truth. You will learn with surprise, that this injury to the character of the

Institution was gravely complained of, and made a matter of debate at a council. And upon that occasion, I find this point of the nullity and absence of religion advocated, maintained, and asserted before that council in the terms I am about to read from the publication I hold in my hand. The eminent individual alluded to said, “ that he had no objection to the discussion in “ which his two honourable and gallant friends “ who spoke last, and the honourable proprietor “ who preceded him, had spoken. On the contrary, there was nothing more desirable, than that “ any honourable proprietor should state to his “ brother proprietors any thing which he considered an abuse in the Institution. He felt that “ every thing which had been urged was spoken in “ a feeling, friendly to the Institution, and of general confidence in the Council ; but though he admitted this, he would concur in all the observations which he had heard. As to the insinuations, that the Council had given any sanction to “ a departure from the great principle which was, “ he might say, ‘ the foundation and corner-stone “ ‘ of the Institution,’ in giving any particular form “ of religious instruction, as part of a system of “ education within the walls of the University, he “ was sure his honourable friends, and the other “ honourable proprietors were mistaken. The principle upon which the University was founded, in “ that respect, was not one of indifference to reli-

“ gion, but one of real respect, one of universal
 “ tolerance, which kept aloof from any connection
 “ with any one particular form of religious worship,
 “ more than another, for the purpose of leaving
 “ every person connected with the University at
 “ perfect liberty to follow that which was most con-
 “ sonant to his own conscientious feelings. This
 “ was the principle on which the University was
 “ founded. It was that on which the Council had
 “ invariably acted, and he should be sorry to find,
 “ that a contrary impression should be found to
 “ exist to any extent, for most certainly he could
 “ state that it would be wholly unfounded.”

Upon this authority, I apprehend I am here at
 liberty to state it as a fact, that the Council of this
 to-be-founded University, makes it, to use the ex-
 pressions of their own members, “ the foundation
 and corner-stone of the Institution,” that there
 shall be no one religion adopted in preference to
 another ; but every person is to be left to his own
 conscientious feelings.

I think I might stop here, but there are some
 things about which your Lordships would be left
 much in the dark if I did, though I may have
 stated enough : but there are many other circum-
 stances connected with this principle of respect to
 all religions deserving of close attention. Any one
 might suppose from this that the authenticity of
 the Sacred Writings was not meant to be disputed
 in this place ; that in this algebra of negations, this

nullity of any particular faith, this perfect indifference to forms, the authenticity of the Holy Scriptures might be admitted without breaking in upon the main principle, or at least left to its own fate. For the principle of indifference is to take no part for or against religion as disclosed in the Sacred Writings : that is the fair meaning of the word.

But when I open the London University Calendar, I do not find this fairness quite realized. For as it appears to me, at least, in several ways this neutrality is broken. The authenticity and inspired character of the Sacred Writings, it appears to me, from their mode of instruction, is intended to be denied. I have looked through their course of lectures to see how they bear upon this : if I look into the Hebrew department, to which I shall first call your attention, I find in page 46, of the London University Calendar, that a learned individual, Professor Hyman Hurwitz, is charged with the office of Lecturer in Hebrew. One would be tempted under this title to expect that the Sacred Volume, which in the history of Christianity is called the Bible,—a name which in common speech carries with it some kind of respect—one would, at least, expect that the Bible should be called the Bible. But really in Gower-street, there is what I was going to call—I do not know whether I am taking an improper liberty—a perfect “Biblophobia,” a fear not only of admitting the contents of the Sacred Volume, but of speaking of it by its com-

mon name. How do your Lordships suppose the Professor deals with it? I shall quote his words :—
 “I propose shortly to give during this period, a brief sketch of the ancient Hebrew Literature, to show its importance in a philosophical point of view.” We hear nothing of the prophecies, nothing of the religious history of the Jews, nothing as to the promised appearance of the Redeemer of mankind on earth.

Matters of this nature, the professor proposes not to lay before his pupils; in a religious point of view, he has nothing at all to do with them. Now I am myself quite at a loss to know for what purpose the Old Testament is to be lectured upon in a philosophical point of view, unless it is to lead the human mind into error, and to adopt that as philosophy which the doctrines of Christianity require us to believe as the sacred revelation of the Deity. Then the Professor goes on to say, “I propose to begin a regular course of reading, consisting of such portions of the ancient records” of the Hebrews, as will “serve to explain
 “their archæology. The account they give of the
 “primitive state of mankind; the gradual invention
 “of some of the arts, origin of nations, and geogra-
 “phical position of countries,” &c. &c.

If the Professor had been an attorney's clerk, he might have picked up the expression, “Ancient records,” from some of the offices in the Inns of Court, and it might be ex-

cusable enough from a *maladie de metier*, from a predilection for legal phrases in an attorney's clerk, and particularly till that class of the profession are graced with the title and dignity of Masters of Arts, an advantage now so improperly withheld from them, and which they are to derive from the London University. But in a university indifferent to any form of religion, and open to all, I should not see any great harm in a Professor calling it the Bible or Old Testament. But if I look through the whole of the scheme of Lectures in Hebrew, I do not find, from one end of it to the other, a word or a syllable, an implication, an approach to treating that sacred volume as a part of the inspired writings. The book is not to be lectured upon in that character, nor is it to be applied to any such use. The primitive state of mankind, and the arts, and ancient geography, are the subjects of inquiry; and the sacred volume is only to be estimated in the same manner as you would read Josephus, or Diodorus Siculus, or any Pagan historian. In that way, and in that way alone, does it seem to me to be treated.

If I look to the head of Greek Literature, I should expect to find the Greek Testament used. I should be very sorry to misrepresent, if I do so it is unintentional; but unless I am misinformed, the New Testament is not one of their class books. It is not for me indeed to criticise the literary scheme of this Institution, but it has been

a received notion for centuries in this country that the Greek Testament is most useful to initiate the Greek scholar, not looking at it merely as a work of religion, but as easy Greek. But those gentlemen say, though the Greek Testament is the easiest Greek, there is a certain tinge of religion about it, as a portion of the sacred writings, and it cannot be allowed.

If I look again to the English studies, I find, with great consistency and parity of reason, no Bible, no New Testament, no Prayer-book, or any book of any religious description whatsoever. This principle of indifference to forms of religion is, in my apprehension, much more than fairly carried into effect, because by this non-use of the Sacred Volumes, they are by implication as it were condemned. These gentlemen do not say as the Bible Societies do, "read the Sacred Volumes, we will not oblige you to take our expositions and commentaries, you may read and be your own expositors of their doctrines." No, say these liberals, these ultra-liberals, whose latitudinarianism you cannot measure by any line, the Bible or the New Testament shall neither be heard of nor spoken of in this place, for this would carry with it a predilection in their favour from the Professors or Members of the University, and it would tend to make the pupils think, that they contain the Divine Revelation.

I need not, I think, call before your Lordships

witnesses to prove, or require a statement, as to what is or is not to be done on this topic. I have before stated, that there is to be no chapel or place of worship : if there shall chance to be a sick Professor, or a sick student, there is to be no minister to afford him consolation, he is left to his fate in “ extremis ;” and even the last holy office, if it is deemed important, cannot be performed, or in plain words, that there is an emancipation from, and banishment and repudiation of even the name of religion in any of its multiplied shapes.

Having put your Lordships in possession of these circumstances, it is convenient that I should now state the propositions for which I mean to contend, and I have committed them to writing, in order that the individual who proposes to maintain them may not retire from his own propositions on his part, and, secondly, in order that those whose duty it may be to oppose them, may also not retire from them on their part. The other day, surprise was expressed as to who had advised the University upon this subject. Now there may sometimes be good reasons for withholding that information ; but upon this occasion there is no reason whatever. Such responsibility as belongs to me as a lawyer I shall venture to charge myself with, when I state to your Lordships the two propositions I am about to read.

Of these the first is, That the King, whether as

Supreme Head of the Church of England, or by virtue of any prerogative belonging to him as the Head of the executive Government of this realm, or otherwise, cannot legally incorporate a University in England, other than such as shall conform with the doctrines, discipline, and worship, of that Church: the second proposition is, That the incorporation of a University, upon the principle, and for the purpose of their not so conforming, would be a breach of various statutes and laws of the realm, and among others, of a statute passed in the 13th and 14th of King Charles the 2d, commonly called the Act of Uniformity. These two propositions are, as your Lordships will perceive, distinct propositions of law, and I should hope that they are clearly expressed, in order to raise the question of the legality of the Charter now under consideration.

LORD CHANCELLOR.—Let me see that I understand you. Do you confine it to a University, or do you extend your proposition to the Crown not having the right of incorporating a College?

SIR CHARLES WETHERELL.—My proposition in its terms is only applied to a University. I am aware of a distinction that may be made between a University, a College, and a School: but whatever may be the principle as to a College or School, it is not essential to my proposition to go into these cases: but I should not object to extend it.

LORD CHANCELLOR.—And it is confined to England, I suppose. You do not extend it to Scotland?

SIR CHARLES WETHERELL.—I have confined it to England; and it is unnecessary to carry it further. As this Institution is to be founded within the Province of Canterbury, I have thought it more precise to apply the propositions to a University to be founded in that Province. The noble and learned Lord at the head of the table has asked me whether I extend it to Scotland.

LORD CHANCELLOR.—The King is no more head of the Church of Scotland than you are.

SIR CHARLES WETHERELL.—It is for that very reason that my proposition, in distinct terms, speaks of the King as “Head of the Church of England.” I should, as a private individual, think it would be competent to the King to found a University in Scotland upon very different principles. But that is a point which has nothing to do with the question. I confine my proposition to England, that the question may not be embarrassed by any power which His Majesty may have as King of Scotland, or with any other question than simply the erection of a University within the Province of Canterbury.

LORD CHANCELLOR.—I wish to call your attention to these distinctions with respect to the head of the Church. The King in England, as we know, is, in causes civil, supreme; but he has no

supremacy, and no jurisdiction whatever in any ecclesiastical matters in Scotland.

SIR CHARLES WETHERELL.—It is perfectly so : nor does my proposition in the slightest degree assert the contrary ; but it is studiously framed with reference to England only. I do not know whether I shall have occasion to call your Lordships' attention to what His Majesty's duties are, as Conservator of the rights of the Kirk of Scotland. Having stated the legal points to which I am about to call your Lordships' attention ; I must say I have found the investigation of this subject an arduous duty. It will be a reproach to no man if he does not bring to this case an immediate and perfect knowledge of what can be, or cannot be legally done upon the subject of constituting a New University by Charter ; because it so happens, that such a case is a matter entirely unexplored by the Privy Council. There have been in history, as we know, at different times, ideas entertained in a general way, for such a purpose ; amongst others, Wolsey thought of establishing a University at Ipswich ; and there have been, from time to time, traces of distant intentions. But the project of a new University, whether for Dissenters from the Church upon the one hand, or for Members of the Church of England on the other, is not only a subject undebated at the Privy Council ; but it so happens, that there are no Treatises or Dissertations dealing with it in a prac-

tical point of view, from whence any accurate information can be derived. And the reason of this is, that such a project has never been reduced into any shape or form, for any distinct deliberation. And, consequently, in an inquiry which relates to the law of the case, resort must be had to general legal principles, and to such reasoning upon the question, as is fairly applicable one way or the other.

I must here observe, that my learned friends on the other side have entirely passed over the question of what may be legally done. The feasibility of the plan in point of law has been assumed. There is no person more acute and sharp-sighted than my learned friend, but any man who looks at this subject through the atmosphere of Gower-street is very likely to have his visual powers a good deal obstructed, and he may not view the case as distinctly as he would through an atmosphere less prejudiced than what is floating about that quarter. That is the only possible motive which can induce me to believe that any person can *per saltum* come to the conclusion that the thing was clearly legal, and that the only consideration was the propriety and expediency of the project itself. But from some fatality or other, every consideration connected with that indispensable question, what can the Crown legally do, in its executive capacity, in becoming the instrument to carry it into effect, has been thrown overboard.

In commencing to support my own propositions,

and in proceeding to inquire what His Majesty can legally do, as the Supreme Head of the Church, or as the Head of the State (for I must in the argument blend the two capacities together), the first point I shall contend for is, that the regulation and government of a University is, by the law of England, as it has been several times adjudged, matter ecclesiastical ; that is to say, in precise legal phrase, that by the law of England a University is subject to the ecclesiastical visitation of the Archbishop.

This rule is sanctioned by the authority of several decisions. It has been so decided upon three several occasions at different intervals. I will state the circumstances of each case distinctly and particularly. The first occurred in the reign of Richard the II. The second in that of Henry the IV., and the last in the time of Charles the I., when Laud was Archbishop. The case in the 13 Henry the IV. A.D. 1411, is to be found at length in the Parliamentary Rolls of that year. It is in the fifth volume, page 651, of the printed copy of the Rolls¹. And I will now mention the general circumstances which gave rise to it. The then Primate was visiting the diocese of Lincoln, in which I apprehend at that time the University of Oxford was situate, the diocese of Oxford being subsequently taken out of that of Lincoln, and he came to the University, “*ad exequendum in forma*

¹ Vide the Appendix, which contains a copy verbatim.

juris ecclesiastici ibidem visitationem suam," and upon that occasion, the Chancellor, Richard Courtney, the Proctors, and others adhering to them, unjustly obstructed him, "atque ei absque rationabili causa resistebant." The subject was referred to the King in Council by both sides, who agreed to submit to the King's judgment and order, "de et super jure et impedimento visitationis et jurisdictionis prædictæ." The allegations and answers of the parties were fully considered, and a former case which occurred in the time of Richard the II. was produced, which arose from the University claiming a right to be exempt from visitation by a bull from the Pope. This matter had also been referred to the King in Council, who had decided that the right of visitation of the Chancellor, Proctors, and all other members of the University, "nec non Universitatis prædictæ etiam ut Universitatis" did belong and ought to belong to the Archbishop and his successors. This judgment of Richard the II. is confirmed and made the ground of that of Henry the IV., which follows nearly the language of the former, and decrees and orders, "quod prædictus Archiepiscopus et successores sui in perpetuum habeant visitationem et jurisdictionem in Universitate prædicta, tam Cancellarii Commissariorum quam procuratorum ejusdem Universitatis qui pro tempore fuerint, nec non omnium doctorum, magistrorum, regentium, et non regentium, ac scholarium ejusdem Universi-

tatis, quorumcunque, eorumque servientium, aliarumque personarum, cujuscunque statûs vel conditionis extiterint, et etiam ejusdem Universitatis ut Universitatis." The decree then directs all persons to submit to it.

The great accuracy of the expressions occurring in these proceedings is deserving of attention. The right is not claimed as derivative under any commission or delegation from the Crown ; but, " Jure Metropolitico," " Jure Ecclesiæ," as belonging to the substantive and independent character of the Primate, and it is so adjudged ; and it is equally clear, that the visitation is not merely of the persons who compose the University in their individual character, but of the University in *its* corporate character, " Universitatis ut Universitatis." This judgment was probably intended to have the force of a statute, and is entered upon the Rolls according to the habit of those times as an Act of Parliament.

Now, upon this case, whether it has the force of a judicial decision, or of statuteable authority, I maintain that two principles are clearly established. One is, that by the law of this realm, the visitation of a University is matter of an ecclesiastical nature, otherwise it could not by possibility belong to a person claiming " jure Ecclesiæ ;" the second is, that the right is an original and independent right, inherent in the character of the Primate, and not a derivative right.

It would here be almost superfluous to observe, that whenever the principles of law invest any person with a right and power of visitorship, the law combines with the right the obligation to perform its duties. That principle is not peculiar to this case: it is a pervading principle, and applies to every institution. It is not a mere abstract right; but from the individual or individuals who are the depositaries of the power, there is by law expected and required an actual and practical exercise of the duties of the visitatorial office.

LORD CHANCELLOR.—Do you hold that the Archbishop of York at present has a visitatorial power in the University of Durham?

SIR CHARLES WETHERELL.—No, my Lord; that is a University constituted under a particular Act of Parliament, with its own particular government provided for it by the Act; but I should say that he had it, unless an Act of Parliament took it away.

LORD CHANCELLOR.—That does not signify; are you aware when the last visitatorial act was performed by the Metropolitan?

SIR CHARLES WETHERELL.—Not very accurately.

DR. LUSHINGTON.—By Archbishop Laud.

SIR CHARLES WETHERELL.—I do not know, nor do I care, when it was performed; it is a right which cannot be alienated. The Crown cannot take it away. The Crown might as well attempt to take away the visitatorial power of the

King's Bench, or of the Lord Chancellor, in matters which belong to them. The thing is inalienable, and it cannot be taken away. A statute may say, that the Primate shall not visit, but no Charter can say it; a Charter saying so, is a perfect piece of waste paper. A piece of an old brief at Doctors' Commons would not be more waste paper than a Charter, asserting that the Archbishop shall not visit, and attempting to exclude him; and therefore I care little for the purpose of my argument, whether any Primate has visited the Universities since the time of Henry IV., or the time of Charles I. I shall presently show that the King has the right to visit the Universities, a right which I believe has been totally forgotten on this occasion. I care little whether his Majesty George I., or George II., or George III., or George IV. visited the Universities of Oxford or Cambridge. I should like to hear any lawyer tell me, that the right would for that reason be lost to his present Majesty; therefore, when I hear that Laud was the last person who visited, I can assure my Learned Friend that I shall have a crow to pull with him about Archbishop Laud; for I have a book here which gives an accurate account of the proceedings which occurred in his time. They are to be found at length in Rushworth's Historical Collections, vol. iii. p. 325; and I doubt whether they have met with the attention they deserve.

When I heard the name of Laud put forward,

it was perhaps meant to insinuate that peradventure there may have been more prudent Prelates. If that be the meaning intended to be conveyed, I should perfectly agree in the remark ; but we are not here upon the personal prudence of the individual, and it will not follow that no succeeding Archbishop is to have the right of visitation, because a former Archbishop may not have exercised the right discreetly ; though, as far as I can collect from history, I am not aware that there was any thing improper in the Archbishop's conduct upon that occasion. However, that is entirely immaterial to the main point. He claimed the right, and on both sides the matter was referred to the King, who held a Council at Hampton Court. The case was perfectly investigated, and with very great liberality, as much so as is practised at the present day. The King directed his then Attorney-General, Sir John Bankes, to argue the case for the Archbishop, giving him, as it were, a license to plead against the Crown. This claim was *pro tanto* a diminution of the King's power, as visitor and founder ; undoubtedly, his Majesty was interested in excluding the Archbishop, because that would confine the power to himself alone.

I will read Sir John Bankes's argument. He says, " The question in short is, whether the Archbishop of Canterbury, as Metropolitan, ought to visit the Universities of Oxford and Cambridge, as being within his province ? This doth no way

intrench upon your Majesty ; for it must be acknowledged that your Majesty is the supreme ordinary, and hath supreme jurisdiction, and may visit both Universities by your commission ; notwithstanding you may do it by your Lord Archbishop, that is an undoubted right. My Lord Archbishop hath a double capacity : the one as Archbishop, the other as Chancellor of Oxford." - - - " He desires to do equal justice, and to offer no otherwise to that honourable person the Chancellor of Cambridge than to himself. Bishoprics and Archbishoprics are all of them of your Majesty's and your Royal progenitors' foundation, originally donative long before the Conquest, and before time of memory ; and as ancient as the Archbishop, so ancient is the jurisdiction. The visitation of the Archbishop is of common right, and not of special persons, but of the clergy, and the people in all causes that be ecclesiastical, and in all places within his province, without any manner of exception. By the statute of the 21st Henry VIII., it doth appear that all houses of religion, all Colleges, &c. are within the visitation of the Archbishop of the province ; and by another statute express provision is made, that in all places, as well exempt as not exempt, the Archbishop shall have power to reform and punish those that do aught against the orders of the Church Common Prayer, &c. It will appear, that in the time of Edward the I., Richard the II., and Edward the

IV., the Archbishop visited the University in his own Metropolitcal right, and not by any Bull from the Pope. And there is as urgent necessity in these times. Many things may be omitted by the Chancellors, that are commonly great men, and many things to be reformed concerning the administration of the Sacraments and the orders of the Church." In Cambridge there were many chapels never consecrated. "In the review of all ecclesiastical laws appointed by Act of Parliament, in the times of Henry the VIII. and Edward the VI. which show the opinion of the times, it appeareth expressly there should be no exemption of Colleges from the Archbishop's visitation." It seems from this, that Mr. Attorney-General Bankes had found out a case in the time of Edward the I., which I have missed.

LORD CHANCELLOR.—Is that the whole of the Attorney-General's argument? Have you read the whole of it?

SIR CHARLES WETHERELL.—Yes, my Lord. I have read the whole of what is contained in Rushworth. Sir John Lamb then follows on the same side. Mr. Gardiner, the Recorder of London, is heard for the University of Cambridge. The case was argued for the University of Oxford by Serjeant Thin, and there is a dialogue between him and the King. It is not necessary to read it. I will only say, if one could suppose that His Majesty had been himself a Serjeant, practising in his

own Court of Common Pleas, he would have been preferred to his own Serjeant, for the King's Majesty had much the best of it against the King's Serjeant. During the discussion, Lord Holland, one of the Council, says, If your Grace pleases, you may do it by commission, the King may grant it you. Then, says the Archbishop in answer, no; I desire it by my own power. And accordingly the right was so adjudged, and a formal and regular judgment was drawn up. I have not with me, at the present moment, the volume of Rushworth which contains it: but the judgment is no doubt entered in the Privy Council Books of the day.

LORD LYNTHURST.—What is the date of it?

SIR CHARLES WETHERELL.—1636¹. It is not improper that I should advert to a particular part of the order, respecting frequency of visitation. It seems there had been what is called a late custom to visit *semel in vita tantum*. How this had arisen is not explained; but the adjudication goes on to declare, that notwithstanding this late custom, he might visit the Universities by “himself or his Commissaries as often as any great emergent cause should move him, provided that

¹ Vide the Appendix, which contains the Order in Council, bearing date 21st June, 1636; and the King's Letter to the Universities of Oxford and Cambridge: and likewise a Letter of Vossius to Laud, congratulating him on the subject.

neither he or any of his successors should, after the first visitation, visit upon such emergent causes, unless it be first made known to His Majesty and his successors, and approved by him or them."

A regulation of this kind is wholesome enough ; for recollecting that these learned Bodies have their boards of heads of houses, their convocations and senates, their chancellors, and a regular system of government, well adapted to all necessary purposes, an officious interference of visitation would be improper : and therefore a declaration is introduced as to the mode of exercising it.

LORD CHANCELEOR.—Are you acquainted with any other case of visitatorial power with a qualification ; that is to say, that the visitor shall have the right not (as it appears inherent in the very idea and essence of a visitatorial power), of going of his own free will, and without being put in motion ; but that he shall have it only with that qualification. Have you any other instance in which that power is fettered and tied down in its exercise, unless there shall be a previous communication of the cause.

SIR CHARLES WETHERELL.—No, my Lord, I do not recollect any case directly similar to this. Periodical visitations are common.

LORD CHANCELLOR.—That would not be to visit oftener than once.

SIR CHARLES WETHERELL.—But this qualifica-

tion in effect does not confine the visitation to once only ; but requires it as often as there shall be cause, though the competency of the cause is to be approved of by the King. Now, my Lords, if the question be put to me, how often Archbishops have visited the Universities, I think it not very material to inquire. I have already pointed out the reasons why there can be no occasion for the frequent exercise of the power. As far as religion is concerned, they are subject to the general statutes and the law of the land, and to the particular directions of the Act of Uniformity ; as far as their discipline is concerned, they are regulated by their own admirable system of government ; consequently, unless some gross enormity or some emergent cause should occur, which cannot well happen, there can very rarely indeed be a call for it. The power is, however, co-extensive with the whole body, and impartial between the highest and lowest member. The Duke of Wellington and His Royal Highness the Duke of Gloucester, —those two illustrious individuals are equally visitable by the Primate, in their character as Chancellor, as any other person : but the decision in the time of Charles I. adverts to the high station of the Chancellors, and to their avocations, and gives them the privilege of appearing by proxy. This shows how minutely the whole subject was then examined.

Now, after this, do I overstate the case, when I say, or should I not understate it, if I omitted to say, that the right of the Metropolitan to visit the Universities within his province, is as clear as the jurisdiction of the King's Bench to visit a borough town or any other corporation. Surely I shall not be told, that because day after day enormities have not arisen; because departures from the National Church, irreligion, profaneness, and blasphemy, have not sprung up in the Universities, *de anno in annum*, crying aloud for the Visitor; a thing which it is next to impossible should ever happen, without a flagrant neglect and breach of duty by all the governing authorities of the place, —I shall not be told that non-visitation under such circumstances, can be set up in bar of the right. His Grace, the present Primate, Dr. Sutton, Dr. Moore, and the list of eminent men who have filled that distinguished office since the time of Laud, may not one of them have ever interfered with the Universities; but yet I think any person will not carry out of this room the name of a Lawyer, who should therefore conclude, that though just occasion should require it, there can never be any interference again.

LORD CHANCELLOR.—You appear here as Counsel for the University of Oxford. Suppose that his Grace the Archbishop were to issue a notice to the University, that he understood from some information that there were various things requiring visita-

tion, and that he was minded forthwith to exercise the visitatorial power, should you, upon being asked by the University, whether they could resist that power or not, which had not been exercised for about two centuries, and which rested upon that one case or two cases: one in the time of Henry IV., a Parliament case, and the other in the time of Charles I. ? Suppose you were asked the question, Shall we, or shall we not, bow to the Archbishop's visitatorial power now in the year 1834 ?—Should you say, Of course you must.

SIR CHARLES WETHERELL.—I should say so, certainly ; I should say, look at all these express decisions, and if you choose to get into hot water and fight the battle for nothing, you may do it.

LORD CHANCELLOR.—Suppose a second question were put.—I am supposing that your clients were minded rather to resist than to foster this right against themselves—suppose they were to say, Does the non-exercise of this power for a couple of centuries, and its very scanty exercise for a thousand years before that, make no difference.

SIR CHARLES WETHERELL.—In my view, none at all ; there is no prescription against it.

LORD CHANCELLOR.—Then suppose a third question.—Does the visitatorial power exist for the benefit of the visitor, or is it not coupled with a duty ? Is it a power, from the exercise of which the visitor has a right to withdraw ?

SIR CHARLES WETHERELL.—If any man was to

put the question to me, I should take a pinch of snuff directly. I should say, you might as well tell me, that because the Court of King's Bench had not visited a Corporation for three centuries——

LORD CHANCELLOR.—Suppose that the King's Bench had never visited not only any particular Corporation, but no Corporation at all, would you think that nothing against the writ?

SIR CHARLES WETHERELL. — Your Lordship really is deluging and flooding me with so many impossible as well as possible cases, that I want a canoe to swim away upon. I should however say, that the non-exercise of the power of visitation, going back to a great length of time, is nothing against the right upon any general principle. Because Tresilian, or other Chief-Justices, who lived many hundred years ago, did not exercise their powers, I think the noble and learned Chief Justice sitting here would say, what have I to do with that?—there might be a reason for it. But my Lords, I really cannot fight such windmills as these. I cannot do more than say, that there is no principle of prescription against the Archbishop's right of visitation, any more than there is against the visitatorial right of the Court of the King's Bench. But after all, what are the facts of the case? My learned friend tells me, that from the time of Charles the I. to the present moment,

practically speaking, there has been no interference. My answer to that is, that according to my recollection of the history of the University of Oxford, there has not been an occasion calling for it. With that of Cambridge I am not so well acquainted. I shall therefore conclude by asserting, that upon any legal rule or principle, or upon any analogy, there is not the slightest colour for saying, that the right and duty attaching to the office of Primate have been in any degree affected.

My Lords, a noble and learned Lord in a former part of the argument alluded to schools and colleges; and put a question to me, which I presume meant whether the Crown could found a college or a school on the same principle as the University. It is enough for me to state my proposition *quoad*, that institution which is defined to be a University: but in my humble endeavours to collect together such materials as might be useful, I have prepared myself to meet such a question, though it is fearful odds, when the noble and learned Lord throws out so many cases to be answered impromptu. I have looked into the subject, and for the purposes of illustration and analogy merely I will resort to it: but I will not rest my case of a University upon the rule as to a college or school. I will not pour water into my wine; for whatever might be the legal authority

for visiting institutions of that nature, it would not follow that the law might not be quite different as to a University.

But the subject of colleges and schools, I think is deserving of particular attention; I am ready to go into it; and I have the authority of a Lord Keeper in 1700, and likewise of my Lord Chief Justice Kenyon in the year 1795 to produce. Now it so happens, that the visitation of a grammar school is also a matter of ecclesiastical jurisdiction; and the bearing of this principle is by no means unimportant. Instead of weakening and rendering improbable and questionable the grounds upon which the jurisdiction of an Archbishop over a University is established, it operates strongly the other way, and as a general principle is highly confirmatory of its existence. There are several cases relating to schools; but I will refer to two principally. The first is Cox's case; which was heard before Lord Keeper Wright, in the Court of Chancery in 1700: it is reported in 1st P. Williams, 29. The substance of the Case was this: a schoolmaster named Cox, was libelled against in the Spiritual Court at Exeter, for teaching school without a licence from the Bishop; and, in consequence of this, he applied to the Court of Chancery for a prohibition to stay proceedings in the Spiritual Court. The question was, whether the obtaining of such a licence was not a necessary preliminary depending upon the discretion of the

Bishop. The case was fully argued in the Court of Chancery ; and Lord Keeper Wright lays down the law in these terms. He says, " Both Courts may have a concurrent jurisdiction, and a crime may be punishable both in the one and the other. The Canons of a Convocation do not bind the laity without an Act of Parliament ; but I always was, and still am of opinion, that keeping of school is by the old laws of England, of ecclesiastical cognizance," and the prohibition was refused. Peer Williams, who was an acute special pleader, had found out that the libel in the Court at Exeter had been for teaching school generally, which would include writing and dancing schools, which to be sure were not very spiritual matters ; and the language of the prohibition was set right, in effect, declaring and establishing the rule that grammar schools were matters of ecclesiastical cognizance, and that the Licence of the Bishop was necessary. The law so stated, seems not to have been questioned afterwards, till the year 1795, when Dr. Markham filled the See of York. That very eminent and distinguished Prelate, was an Archbishop as well as Laud, not indeed of Canterbury but of York ; and if Laud may be treated as not always the most discreet of men, Dr. Markham, for his moderation and well considered conduct, may perhaps stand in a better light. He refused a licence to a schoolmaster, to teach a Grammar School at Skipton : the ground of re-

fusal was insufficiency in point of learning. Upon this the schoolmaster applied to the Court of King's Bench for a Mandamus to compel the Archbishop to grant the licence ; but the Court refused the Mandamus.

Lord Kenyon expressed himself in the way I will read. "Whoever will examine the state of the grammar schools in different parts of this kingdom, will see to what a lamentable condition most of them are reduced ; and would wish that those who have any superintendence or controul over them, had been as circumspect as the Archbishop of York has been on the present occasion. If other persons had equally done their duty, we should not find, as is now the case, empty walls without scholars ; and every thing neglected, but the receipt of the salaries and emoluments. In some instances that have lately come within my own knowledge, there was not a single scholar in the schools, though there were very large endowments belonging to them." In order to support a return to a Mandamus, it is not necessary that every part of the return should be good, it is sufficient if enough appear on this return, to show that the Archbishop was justified in what he did ; and I think he was not only justified, but it was his bounden duty to do what he has done in this case. I choose to avoid saying any thing respecting the Canons made in 1603, whether they did or did not extend to the province of York ; or,

if they did, whether they do or do not affect the question, though they were fully and ably explained by Lord Hardwicke, because it is not necessary to resort to them for the Archbishop of York's justification. His Counsel very properly laid his foundation deeper: he resorted to the ancient Canons received in this country long before, and properly said, that it was immaterial whether they were made in this kingdom or at the Councils of Lateran or Trent; for that, as they had been received and adopted here, they had acquired the force of laws in this country; and to be sure, if this were not so, the world has been deceived upon this subject; and not only the Judges, in making the several determinations upon this branch of the law, but all the text writers, also have been under a mistake. In deciding this case we may rely on what Lord Keeper Wright said in Cox's case, that keeping of schools is by the old laws of England of ecclesiastical cognizance. The several instances cited from Oughton go a great way to prove this; and the statutes referred to, 23 Eliz. c. 1., 2 Jac. 1. c. 4. & 1., and 14 Car. 2. c. 4., recognize the power of the Ordinary to licence schoolmasters. Then, on what ground, and for what reason is that licence required? By referring to analogous cases, I answer, that the Ordinary may examine the party applying for a license respecting his qualifications; there is no doubt but that the Ordinary may examine ecclesiastical persons pre-

sented to him for institution. Then it was objected that the Archbishop had exceeded his authority in this case, because he wished to examine Withnell as to his sufficiency in learning. "I have been anxious not to go into any points that do not immediately belong to the cause, but I cannot forbear saying, I think that if the Archbishop had examined into the moral character and religious tenets of this gentleman, as well as to his learning, he would not have exceeded his duty; perhaps indeed the Archbishop was satisfied respecting the former, and only doubted with regard to the latter." In his opinion, the other three learned Judges of the Court, Mr. Justice Ashurst, Mr. Justice Grose, and Mr. Justice Laurence, concurred. The case is reported in 6 Term Reports, 492—the King and the Archbishop of York.

Such was the state of the law as to schools in the year 1775, as laid down in the Court of King's Bench, by Lord Kenyon and the other able persons who then sat in that Court, and so it is at the present moment.

With respect to the occasions on which this power of refusing licenses may be properly and justifiably exercised, they are matters foreign to the question. We are here investigating a principle; we are inquiring whether the instruction given in a University, which is partly religious and partly learned, is not, from its nature, matter of ecclesiastical cognizance, which may fall within the jurisdiction of the Primate. And though, in my humble opinion,

this question would not be governed by the existence or non-existence of an analogous rule with respect to schools; yet the law is, that the analogous rule with respect to schools does exist, for they are under the jurisdiction of the Bishop.

LORD CHANCELLOR.—Do you carry your proposition so far as this? There is, for instance, a college, called Highbury College, and there is another called Hackney College, founded by the funds of Dissenters, for the benefit of Dissenters, and some of them for teaching the peculiar doctrines of those sects, Unitarians, Presbyterians, Anabaptists, and Independents, and some are for preparing persons for the ministry of Dissenters. Do you hold that the Archbishop or the Bishop of London, for instance, the Bishop of the diocese, has a right to go and superintend the education of those Dissenting Divines?

SIR CHARLES WETHERELL.—No, my Lord, undoubtedly not.

LORD CHANCELLOR.—I am supposing them to be grammar schools. You are aware that the Court of Chancery has always held grammar schools to be schools not for teaching English grammar, but for teaching Greek, Hebrew, and Latin. Suppose that Highbury College is founded by the funds of Dissenters, for the purpose of bringing up ministers, it would be going far to say, that being a grammar school, the Bishop of London has a right to visit it.

SIR CHARLES WETHERELL.—I do not contend

for any such thing. We all know, that since the Toleration Act there may be schools for Dissenters and for the education of Dissenting ministers. Your Lordship will have before you, in the Court of Chancery, the case of Lady Hewley's trust in due time, and a very curious one it is; I believe you are apprised of it already. No doubt there exist, in various shapes, seminaries and schools of a particular kind for Dissenters, with which the diocesan has no concern. It would lead us into a very lengthy discussion to go into the history of grammar schools. With those institutions which are sanctioned in this country since and under the protection and particular provisions of the Toleration Act, and other acts following up its principle, the Diocesan has no right to interfere; but they stand upon a perfectly different footing from the ordinary case of what is called a grammar school.

Now, my Lords, after tracing out this historical inquiry respecting Universities, and the incidents belonging to them, I presume, with all humility, to think, that I have clearly made good the point in my favour: that of this new University to be founded in Gower-street, the Right Reverend Prelate sitting at the table will be and must be *de jure* the visitor. However this may be the harbinger of unwelcome sensations in that place, I assert that to be so, and I further assert, that no Charter can prevent its being so. The plenary power of an Act of Parliament may easily strip and spoliage, as

other Acts may have done and may still do ; but short of this, I maintain the right to be clear. And I am bold enough to think I have realised what I stated on a former day, however unexpected such an idea may have been. Your Lordships will, I think, anticipate the bearing of this point upon the final question we are discussing. Can the King legally found an University in the province of Canterbury, in which, *ex hypothesi*, no religion is to be taught, or in which practically every irreligion may be taught, in which the first elements of Christianity may be denied ? Can he by his Charter legally authorize this body to become a living fountain of profaneness of every kind ? Can he legally found an Institution, in which its lecturers may teach, and its students imbibe, opinions, which, if they were inculcated in either of the two other Universities within his province, the Archbishop would have a right, and would be bound to stop instantly, and not suffer to go uncorrected ? Your Lordships are aware, that however seldom the case may happen, it has happened, that individuals have been expelled from the Universities for blasphemy. A case of this sort occurred in Cambridge in 1795.

If, at Oxford or Cambridge, a head of a house, or a professor or tutor, should be found denying and overturning the true religion of Christ (an expression that occurs in several statutes I shall hereafter refer to), I hope no man would question

the right of the Archbishop to interfere, and to proceed to the length of expulsion, or to any mode of remedy which the nature of the case might require, if the ordinary powers of the Government in the Universities could not reach it. Would he not then be bound in his Metropolitan character to visit? But in Gower-street, at the very same moment, the Metropolitan character is to be inert. And the same King, himself the visitor of both Universities, and whose Archbishop, like himself, is bound to visit them; the same King is to initiate and legitimate, and almost to direct, the streams of irreligion to flow in another University unrepended and irreprehensible, either by himself, or the Primate. It was in order to meet such a state of things, that I have, in my first proposition, alluded to the King as the Head of the Church; and the general basis of it is, that these are matters ecclesiastical, which fall equally within the exercise of the duty of the King in that character, as of the Primate.

LORD CHANCELLOR.—It occurs to me, that a great deal of this is very important, and very curious matter. But will you just permit me to call your attention to one point. You and Mr. Bickersteth appear before the Council to support what is contained in the prayer of your Petition; and I apprehend, that it will not do for Oxford or Cambridge, or any College, to prefer a petition for one thing, and then to ask ten times more in their

contention at the bar ; because there would be no end of it : you contend in your argument, that there should not be a Charter granted ; not only that there should not be the power of granting degrees, but that there should be no charter granted. But your Petition goes to no such matter ; but that no degrees should be granted by the body, or conferrable by the body to be incorporated (assuming that it will be incorporated), provided those degrees have similar names with the degrees granted at Oxford and Cambridge.

SIR CHARLES WETHERELL.—That is the Cambridge Petition.

LORD CHANCELLOR.—But the Oxford Petition does not even pray against medical degrees ; but your argument has been directed against granting any Charter of any kind whatever.

SIR CHARLES WETHERELL.—Their petition is, in substance, against any Charter, and my argument goes *funditus* to the whole of it. Now, my Lords, if any person coming in contact with the principles I have stated in my propositions, should ask this question, Has not the King, as head of the Church himself, a right to vary from this duty ? I say, No. He is bound by the common law as head of the Church, for he always had that character by the common law : he is bound by the ecclesiastical law, and he is moreover bound expressly by several statutes. I maintain, that he is bound through these three sources of obligation, not to do any act

in his executive capacity injurious to the Church of which he is the head. Your Lordships recollect the maxim *Nil Rex potest nisi quod de jure potest*. It is not the annexing the Great Seal to a Patent, which will make it valid ; it is not even the recommendation of the Privy Council, that can make it valid ; if the subject-matter granted is unsustainable at law the Charter is null and void. In addition to the obligations I have mentioned, there is still another which, entertaining the notions I do, I will not omit most strongly to rely upon ; I mean the obligation of the oaths His Majesty is required to take, which I presume are still binding at the Council Board ; though, as it is asserted, he is relieved from them in Parliament.

This indispensable question, what are the legal obligations imposed upon the Crown, must be closely examined ; the point must be fairly met ; and for this purpose the various statutes, which have passed since the Reformation must be referred to ; many of them, however, need not be gone into in detail, for they must be familiar to your recollection. I have asserted in my propositions that the King cannot, by virtue of any prerogative whatever, either as head of the Church or otherwise, establish a University, not conforming to the doctrine, discipline, and worship of the Church of England ; and that so to do would be a direct breach of the law. My authorities to

support this statement, I shall now produce. What may have been the state of the Church in early days, what the King could formerly have done in conjunction with the convocation, or what he could have done by his own power without them, is now become matter merely of history. I should, however, not scruple to state, that there was no time at which the King could himself have done an act of injury to the Established Church, or innovated upon the ecclesiastical law; but into this retrospective inquiry it is unnecessary to enter. What the King can now do is the question. The state of the law upon this question, I take to be perfectly clear. It was settled by a solemn decision of the Judges, in the time of James I., which defined what the powers of the Crown are. The case which I refer to, was *Cawdry's Case*, 5 Coke, and the case commonly called the *Case of the High Commissioners*, which is reported in 12 Coke. The Commissioners of Ecclesiastical Causes, had under their commission, introduced great encroachments beyond their legal powers; and the subject of inquiry was, what the King could authorize by his commission. The particular facts of the case need not be mentioned. I cite the case for the general rule it contains. The resolution of the Judges is expressed in these terms. "First of all it was resolved by all, that before the statute of the 1st Elizabeth, cap. 1. the King might have granted a commission to hear and

determine ecclesiastical causes ; but then, notwithstanding any clause in their commission, the Commissioners ought to proceed according to the ecclesiastical law allowed within the realm, for he “ can-
 “ not alter neither his temporal nor his ecclesiastical
 “ laws within this realm by his grant or commission.”
 The principle here laid down is, that the King cannot by his great seal alter his ecclesiastical laws, either in his executive capacity as head of the Church or head of the civil state, for the one is not contradistinguished from the other. As a rule of law, I have never heard this questioned, nor do I believe it ever has been ; but we must not only inquire what are the powers of the Crown on this important subject, but what are its direct duties as head of the Church ; for it is undeniable, and must not be forgot, that this capacity of supreme head of the Church is not an abstract idea, but a practical principle of the constitution.

I will not detain you by detailing the different statutes which passed for transferring the supremacy from Rome to this kingdom ; but there is one, every word of which is material to be attended to, and I will therefore take the liberty to read it : it is the statute of 26 H. 18. cap. 1—“ Albeit the King’s Majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognised by the clergy of this realm in their convocations ; yet, nevertheless, for corroboration and confirmation thereof, and for the in-

crease of virtue in Christ's religion within this realm of England, and to repress and extirpate all errors, heresies, and other enormities and abuses heretofore used in the same, be it enacted, by authority of this present Parliament, that the King our Sovereign Lord, his heirs, and successors, Kings of this realm, shall be taken, accepted, and reputed, the only supreme head on earth of the Church of England, called *Anglicana Ecclesia*, and shall have and enjoy annexed and united to the Imperial Crown of this realm, as well the title and style thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities, to the said dignity of supreme head of the same Church belonging and appertaining; and that our said Sovereign Lord, his heirs and successors, Kings of this realm, shall have full power and authority from time to time, to visit, repress, redress, reform, order, correct, restrain, amend, all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner of spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm." Now, is it not apparent from this statute, that the supremacy is vested in the

Crown, for the express purpose (for such are the very terms of it) that in the character of supreme head of the Church, the King may protect the Church, and as far as the law will allow, prevent departure from it.

Here is a positive duty prescribed, to visit, repress, and restrain, all such abuses and enormities, as by the ecclesiastical law ought to be or may be repressed. These are surely very cogent expressions. Now, I need hardly remind your Lordships, that the statutes which passed in the time of Henry VIII. respecting the supremacy, were re-enacted and confirmed upon the accession of Queen Elizabeth. This may not have been strictly necessary. It may have arisen from the interruption of Queen Mary's reign, and perhaps from a subtlety which I believe had been attempted to be spread about that a Queen could not perform the duties of the supremacy.

Now, my Lords, I apprehend, that what in the construction of these statutes would be deemed abuses reprehensible if done by any person in the Church, or in whatever manner promulgated, whether by lectures, sermons, or in any other shape, cannot receive a sanction from His Majesty, consistently with his duty as supreme head of the Church, from whatever quarter they may proceed. Can they become not reprehensible, if they shall take place within a University of which the King is the founder?

It is indisputable, that there are many abuses and attacks of religion, and of the particular religion of the Church of England, so flagrant that the common law of the country requires them, from time to time, to be punished. In these cases, the Crown, acting through its various ministers, not only ecclesiastical but civil, is bound to repress them ; and, in fact, proceeds accordingly. Now I ask, can a University be legally founded, whose system is to permit and sanction such attacks as these ; but what is more, actually to invite and encourage them ? If this can be maintained, then this most extraordinary proposition can be maintained, that while the King is bound by direct statutes, which define his duty as Supreme Head of the Church, to correct all those abuses, he may at the same time become, in the most direct sense, a law breaker, by granting a charter operating as a licence for their practice. This is the view which I take of the strict obligations imposed upon the Crown, to maintain the religion of the Church. And upon this view of it, I have brought home to my own humble judgment, a persuasion, that conformity to the doctrine, discipline, and worship of the Church is the basis on which the King must stand. But instead of performing all these obligations to preserve the purity of the Christian Religion, they are to be avoided by the exercise of a sort of dispensing power, and for this purpose the Lord Chancellor is

to put the great seal to a patent designedly and industriously meant to operate, in an inverse ratio, to all these duties, and which will not fail to effectuate the most mischievous and vicious consequences.

Before I leave this part of the subject, I conceive that I ought not entirely to pass by, the alternative alluded to in my first proposition between the King's legal power as head of the Church, and his general prerogative as head of the civil state. I thought it right to call your Lordships' attention to these two different capacities—the union of which is the reason of the King's being called, *mixta persona*. But, although they exist in legal contemplation, for the practical purposes of the present question, I cannot conceive how any distinction can be drawn between them. It would be impossible to abstract the character of the King as the civil head of the state from his ecclesiastical character as head of the Church. This would be to blow hot and cold at the same time, to exert the prerogative of granting a Charter in one capacity, entirely to supersede the other.

In what I have hitherto offered to your Lordships' notice, I have only traced the subject down to the time of Queen Elizabeth; but, in pursuing it further, my authorities multiply. Instead of finding the duties of the Crown relaxed, they are made more binding; instead of the powers of the

Crown being increased upon matters of religion, they are largely abridged—nay, they are reduced to nothing.

I have stated that to grant the Charter would be a breach of several laws and statutes, and I have argued the case upon general rules and principles; but there is a statute, the direct provisions of which apply to the case of a University—I allude to the act commonly called the Act of Uniformity, which I must now press upon your particular attention, for I believe it has been forgot that there exists such a thing. I need say two words only as to the history of it. It was thought desirable, after the Restoration, to compile together the prayers which were to form the service of the National Church—to be called the Book of Common Prayer. This compilation having been presented to the King, the Book was annexed to the Act; and it is only on account of its length that it was not printed in extent so in the Statute Book, for it is literally part and parcel of an Act of Parliament.

I will now read the material clauses of the Act. It is declared, by Sec. 1., “ That the said Book of Common Prayer, and of the form of ordination of bishops, priests, and deacons, with the alterations and additions which have been so made and prescribed to his Majesty by the said convocations, in the book which shall be appointed *to be used* by all that officiate in *all cathedral* and collegiate churches and chapels, and in all chapels of colleges and *halls*

in both the Universities, and the Colleges of Eton and Winchester, and in all parish churches and chapels within the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, and by all that make or consecrate bishops, priests, or deacons, in any of the said places, under such sanctions and penalties as the Houses of Parliament shall think fit."

By sec. 8, it is provided, that every dean, canon, and prebendary, of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors of, or in *any college*, hall, house of learning or hospital, and every *public* professor and reader in either of the Universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and every person in holy orders, and every school-master, keeping any public or private school, and every person instructing or teaching any youth in any house or private family as tutor or school-master, who, upon the first day of May, 1662, or at any time thereafter, shall be incumbent, or have possession of any deanery, canonry, prebend, mastership, headship, fellowship, professor's place, or reader's place, parsonage, vicarage, or any other ecclesiastical dignity or promotion, or of any curate's place, lecture or school, or shall instruct or teach any youth as tutor or school-master, shall, before the feast day of St. Bartholomew, 1662, or at or before his or their respective admission to be incumbent, or have pos-

session aforesaid, subscribe the declaration or acknowledgment thereby provided, the material part of which is, "that he will conform to the Liturgy of the Church of England, as it is by law established."

By the positive requisitions, therefore, of this Act, conformity with the doctrine, discipline, and worship of the Church of England, is required from both the Universities; and it is effected by requiring from every person holding any office the pledge I have mentioned.

Now, my Lords, I suppose that no person will contend that, because in the year 1662 there was no third University in existence, the expression, "both the Universities," did not mean all Universities. If this were not the meaning of it, how strange would be any other construction? It would leave it open to the Crown to erect a third, a fourth, a fifth; and, if five, fifty Universities, Colleges, or houses of learning, and so on *ad infinitum*, to every one of which he would in truth grant a dispensation from the Act of Uniformity, and by these means annihilate it. I should say, that any violence done by James the II. in the days of the dispensing power, was not more violent; I should say that any interference of his with the Church of England, by his indulgence in favour of liberty of conscience, was not a more gross infraction of the law, than would be a Charter avowedly constituting the machinery of the Lon-

don University, in order that its teachers may become studious violators of the doctrines of the Church thus established, and made part of a public statute, equally binding on the Crown and its subjects : for not one word, nor one syllable of the service of the Church so established, has the Crown the least authority to change or alter. The general scope of the Act, as intending to embrace all Universities, it is impossible to question. I should hardly expect to be driven into an argument of mere legal criticism, as to whether “two” could be taken to mean “all.” But if I should, authorities are not wanting to show that an example is, in legal construction, often taken for a whole class. The decision upon the ancient statute of *Circumspectè agatis*, is an illustration of this. It directed, that the Bishop of Norwich should be protected in the exercise of his spiritual jurisdiction. Some acute lawyer having raised the question, whether all other Bishops might not be left unprotected, it was ruled in a decision upon this statute, that the name of the bishop of Norwich was only used in the statute, *exempli gratiâ* ; and that the provisions of it extended to all bishops. But I would not leave the interpretation of the Act on this footing. In order to meet any ingenuity, I will call your attention to the general words of the Act, which are, “in every college, hall, house of learning, or hospital ;” and again, besides the two Universities, in “every college

elsewhere." Here is enough, surely, to bring it home to the London University.

Passing on from this period, I next come to the Toleration Act; the history of which is so familiar: and I look into it to see what changes, and to what extent, it has made in the Act of Uniformity. It introduces a large relaxation in favour of Dissenters; and most properly. It authorises and protects their places of worship; but still it requires a test from the minister or teacher of every congregation, who must subscribe a declaration, "that he acknowledges the Holy Scriptures of the Old and New Testament, to be given by Divine inspiration." In all other respects, the Act of Uniformity is left untouched. The last Act to which I shall refer, as connected with this subject, is the Act of the 19th George III. cap. 44. which was introduced to give further relief to dissenting ministers and schoolmasters. But here again they are required to sign a distinct declaration.

BISHOP OF LONDON.—Will you read the declaration they are required to make?

SIR CHARLES WETHERELL.—The declaration is in these words. "I do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant; and as such, that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed will of God; and that I

do receive the same as the rule of my doctrine and practice." So that your Lordships perceive no person can acquire a legal licence to be a common schoolmaster, unless he goes the length of this declaration. What will your Lordships say to the London University, who are afraid of the names of the Old and New Testament; whose apology for not using them, is the dread that some ill-natured person should take notice of it, and accuse them of having some sort of religious faith. It has been the policy of this country, the wisdom of which no person will question, to extend and enlarge the principles of toleration as far as may be practicable, consistently with the safety of the Church. In following up this rule tests have from time to time, for some purposes, been abolished; and, for others, they have been reduced to the narrowest compass. A belief in Revelation is all that is now necessary to be acknowledged by a schoolmaster asking for a licence. This is not much; but little as it is, it is rejected by this Institution. If I look into the sketch of their charter, I look in vain for any authority, direct or indirect, requiring the very limited declaration I have just alluded to. The governing body will submit to no such thing; they insist upon having a pantheon for all religions: but in which total, unfortunately, a belief in Christianity is not included.

I am unwilling unnecessarily to take up your Lordships' time, withdrawn as it must be from

other important engagements ; but I should myself be subject to censure, and failing in respect to the Board, if I omitted anything I might deem material ; and I shall, therefore, go on to call your attention to another difficulty in which His Majesty is placed on this subject. You, no doubt, have in recollection that principle of the constitution, by which His Majesty, *Parens Patria*, as he is named, has the power and the duty of superintending the guardianship of minors, who are made wards of the Court of Chancery. This power he exercises in the person of his Lord Chancellor. If the parental authority is abused in the education of a child, the Lord Chancellor, as representing His Majesty, has a power to supersede it, and assume the guardianship. This power, large as it is, had been acted upon by Lord Chancellors of great name ;— by Lord Nottingham and Lord Thurlow. When a noble and learned Lord, now sitting at the board, (Lord Eldon) held the great seal, the case of Mr. Shelley's child came before him ; he was made a ward of the Court by his relations, who made it apparent that his father was breeding him up as an atheist. The learned Lord declared, that his authority was clear ; and that he would act upon it : which he did, by making proper orders for the child's education. In the subsequent case of Mr. Wellesley, though it turned on different considerations, the noble Lord carried into effect the same principle of jurisdiction, by the orders which he

made for the care and protection of his children. An appeal from these was afterwards brought in the House of Lords, but they were sustained by the additional and concurring authority of Lord Redesdale, Lord Manners, and Lord Lyndhurst. Now, strange as it may seem, this sort of occurrence may take place : some young person, a pupil at this legitimated institution, may be made a ward of Chancery. The Lord Chancellor would, no doubt, ask the parent, Where is this child of yours bred up, in such doctrines as I hear of?—Bred up in a University founded by his Majesty, says the parent. The Chancellor would, no doubt, do his duty ; he would say, I must really cancel the King's Charter : he cannot license his subjects to breed up their children in this manner ; I cannot allow this breeding up of children in what is termed in one of their books, Hebrew philosophy.—But these inconsistencies, under which his Majesty is to be placed, do not end here. I have before shown, as I confidently think, that the Archbishop has a right to visit if the institution is incorporated as a University ; but it must also have another visitor—the King must of necessity be the visitor of it in his character of founder. It will be necessary to examine this subject a little more minutely, and particularly with reference to the power of conferring degrees, and the nature of a University. The only place where I can find any legal discussion on matters

so little brought under consideration as these, is the argument of Mr. Attorney General Yorke, in Dr. Bentley's case, which is reported in 2nd Lord Raymond, 1345. That most eminent scholar had been sued by Dr. Conyers Middleton, a man not much less learned than himself, in the Vice-Chancellor's Court at Cambridge, for the great sum of three guineas. Bentley was contumacious, and would not appear, and the Vice-Chancellor's Court suspended him from his degrees. Upon this, he applied to the Court of King's Bench to be restored. The sentence against him was supported by Mr. Yorke, who appeared for the University, and contended that a degree was a right or title deprivable within the jurisdiction and powers of a University; and this led to an inquiry respecting the nature of a degree. I will read a passage from Mr. Yorke's argument. As to the objection that suspension from the academical degrees is not a proper punishment for a contempt of the Court, he says, "That
 " by the rules of the civil law, it is the only proper
 " punishment. And it is like an outlawry in the
 " temporal courts, it is to compel the party to come
 " in and answer; and upon his doing that, the sus-
 " pension is taken off. And these degrees cannot
 " properly be called freeholds, nor civil temporal
 " rights; they were originally only in nature of
 " licenses to professors in several professorships, and
 " are now titles of distinction and precedence. 'The
 " 'power of granting degrees flows from the Crown.'

“ If the Crown erects an University, ‘ the power of
 “ ‘ conferring degrees is incident to the grant.’
 “ Some old degrees the University have abro-
 “ gated, some new they have erected ; and they
 “ are taken notice of in acts of Parliament for col-
 “ lateral purposes ; and though the acts have an-
 “ nexed collateral privileges to them, that will not
 “ alter the nature of them, nor take away the
 “ power the University had over them before ; no
 “ more than if it should be enacted by an Act of
 “ Parliament, that none but such as were educated
 “ at Eton, Westminster, and Winchester, should be
 “ capable of degrees, would it restrain the Univer-
 “ sity from exercising the power they have over
 “ degrees, upon such persons educated at those
 “ schools, upon whom they should be conferred.
 “ It does not follow, that if temporal rights are
 “ annexed to these degrees, the University would
 “ be deprived of their power of degrading. A
 “ bishop has a freehold in his bishoprick, and a
 “ right to sit and vote in Parliament ; yet he may
 “ be deprived by his metropolitan. Bishop of St.
 “ David’s v. Lucy, ante 447. The ecclesiastical
 “ court may excommunicate for contempt ; and
 “ that affects the party’s temporal rights of suing,
 “ &c. This punishment by suspension does not
 “ differ in reason from those cases ; therefore he
 “ concluded, this suspension was a proper punish-
 “ ment for the contempt.”

In this proposition of Mr. Yorke, two principles

are laid down. The first is, that the "granting degrees flows from the Crown;" and the second is, that if "a University be erected, the power of granting degrees is incidental to the grant." I much question whether either of these principles has been adverted to by the parties applying for this grant: but here they must be closely examined, in several points of view. There can be no difficulty here upon the doctrine of foundership. The subject-matter granted, is the power of conferring degrees; an emanation, as Mr. Yorke expresses it, from the Crown. It is the concession of this power that constitutes the direct purpose and the essential character of a University. Upon these grounds it is, that the King being the grantor of the charter of incorporation, is the founder of the institution, and in virtue of that character is visitor, according to the general principles of the law of foundership. The law upon this point I take to be so clear, that I shall not refer to Sir W. Blackstone or any other authorities. It is, in truth, upon these principles that the Crown became the founder of the two ancient Universities; and, as a necessary consequence, their visitor. It would be a very ridiculous thing to imagine, that a man's buying up a £100 share in this company, should give him a right of foundership.

The second point stated in Mr. Yorke's argument is equally material to be kept in view, namely, that the power of conferring degrees is

incident to a University, and some particular remarks must be borrowed from it. Allusion was made the other day by Dr. Lushington to a passage stated in the Oxford petition, importing that they had been advised that it was matter of great doubt whether a proviso in the charter, restricting this institution from conferring degrees in divinity, would be binding and effectual, and some surprise was expressed at it. That advice I gave, and I considered Mr. Attorney-General Yorke as my coadjutor, in giving it, for it is founded upon his opinion. I understand that a charter is now asked for to make a University, who are not to grant theological degrees. There is something very whimsical in this : for theological learning is, beyond all doubt, one of the main purposes and characteristics of a University. But say these gentlemen, (and their friends and advocates, at the Common Council at Guildhall, said the same thing,) to be sure it will be too bad to have a University pretending to give degrees in theology, for we have neither Θεός in the place, nor Λόγος. The Deity and Revelation we intend not ourselves to recognise—we shall ask only for degrees in arts, law, surgery, and medicine. But even the surgical or medicinal degree is likely to be amputated ; at present, at least, they have no means to confer it. In this state of things, independently of the general legal argument with which I have troubled your Lordships, to show

that theology, according to the doctrines of the Church of England, must form a part of the instruction given in an institution which is to be established as a University. This question of law arises :—How can this anomalous and strange body be constituted in the manner professed ? It is to be a “ University,” but degrees in theology it is not to give. But Mr. Attorney-General Yorke tells us, that the power of giving degrees is incidental to the grant. If this be law, is not the power of conferring theological degrees equally incident to the grant, as other degrees ; and if this be so, how can you constitute a University without the power of giving “ all ” degrees ? The general rule of law undoubtedly is, that where a subject matter is granted which has legal incidents belonging to it, the incidents must follow the subject granted ; and this is the general rule as to corporations ; and it has been decided upon that principle, that as a corporation, as an incident to its corporate character, has a right to dispose of its property, a proviso against alienation is void.

EARL OF ELDON.—What are the precise grounds upon which this is referred to the Privy Council ?

LORD CHANCELLOR.—I believe it is a mere reference of the petition, without saying to advise upon what, but merely referring the petition.

LORD LYNDHURST.—Referring the petition generally to the consideration of the Privy Council.

LORD CHANCELLOR.—Exactly. Any question

arising out of the terms of the reference is matter for our consideration.

EARL OF ELDON.—Have you a copy of the proposed charter?

SIR CHARLES WETHERELL.—There is a draft of the proposed charter. By this charter it is extremely ambiguous what is meant or not meant to be granted, whether it is the mere “name,” or the substantial power and character of a University. I do not say that it would be impossible to grant the name, merely and simply, just as the King may give a person a license to assume the name of Johnson or Wilkins; but then expressions must be used to show distinctly what is meant. It is absolutely essential that his Majesty should know what it is that he grants, and what incidents belong to it; and it is for that reason that I have pressed particularly upon your Lordships’ attention the points contained in Mr. Yorke’s argument.

Now, I shall pass on to examine some of the practical consequences which will follow from the power of this new University to grant degrees. I find that in the course of stating my authorities, I have accidentally omitted to mention the canons, which I ought to have referred to among my authorities, to show that the King cannot vary the ecclesiastical law. But there is one which it is very convenient to refer to in this part of the case, that is the 127th Canon of the Canons of 1603, which are

collected in Gibson's Codex, Title 43, cap. 2. p. 1027 : it is a Canon respecting the qualification of persons who shall exercise any duty in the ecclesiastical courts. It is in these terms, " That no man shall hereafter be admitted a Chancellor commissary or official, to exercise any ecclesiastical jurisdiction, except he be of the full age of six and twenty years at the least, and one that is learned in the civil and ecclesiastical laws, and is at the least a Master of Arts or Bachelor of Law, and is reasonably well practised," &c. &c.

The canons, as your Lordships know, are binding upon the King ; he has no authority to alter them ; so that by the law, as it now stands, no person can ask to enter into these offices in the Ecclesiastical Court, unless he be a Master of Arts, and of course, by the existing law, he must be a Master of Arts, conforming to the established doctrine of the Church, for it is only by that means that the degree can now be obtained in the two ancient Universities.

I understood Dr. Lushington to express his surprise with regard to what institutions are alluded to in that part of the Oxford petition, which says, that the assumption of the title of Master of Arts, under the authority of the London University, would break in upon many of the institutions of the realm. Here is one of those institutions. But there is another class of the ancient institu-

tions of the realm, and a very extensive one, which would be broken in upon.

There are in this country a vast number of schools and seminaries of learning, of hospitals, and other bodies of different descriptions, which have been from time to time founded from remote antiquity up to the present moment. They have been established by their founders, in order that they may be for the benefit and enjoyment of the members of the National Church. The greatest part of them have endowments in land and other property, and in almost all of them there are various offices, places, and stations, which, by charter or usage, and other regulations, are required to be filled by Masters of Arts or other graduates of the two ancient Universities; for to them alone they belong, it being pre-supposed by their degrees that they are believers in the doctrines of the Church of England. And these stations they are to fill for the purpose of inculcating and teaching those doctrines, and thus maintaining the National Church. But it is now matter of complaint, that Dissenters are deprived of the equipollent rank and title of Master of Arts and of other degrees, and in order to equalize them in rank, title, and privilege, the new University is to be established as a medium through which this equality is to be obtained.

Now I assert that to grant a Charter, under which persons graduated at the new University

are to have this equivalent rank and title, is to give them an opportunity of personifying a character which they have no pretension to assume. It is actually to make the King a wrong doer and an auxiliary in the perpetration of a fraud. It is to enable persons under pretence of these degrees to claim equal rights, civil and religious, to intrude into these endowments under the assumption of a false character; and to enjoy all those emoluments and profits which were given and intended for members of the Church exclusively. These are the grounds upon which I assert that this principle of equal rank and privilege will become an engine of gross deception and fraud. These are some of the institutions which it is notorious are to be undermined and made the object of attack.

Throughout the whole of this important case, I have felt it to be my duty not to travel beyond those views of it which I am unavoidably obliged to enter into. Under that impression, I hold in my hand a document which I cannot but think I am bound to notice. The addresses and petitions which have been presented to his Majesty, I apprehend constitute matter upon which I may with propriety comment—upon which indeed I am bound to comment. I learn from the public prints, that the Crown is to have a new petition presented to it, and that at a meeting of the Protestant Dissenters held at Dr. Williams's Library in Red-cross-street, this resolution was passed—"That

the University of London, although affording the means of a liberal education, is unable to confer on its students those degrees which would be incentives to exertion and rewards of success, a circumstance which this meeting the more laments because that institution offers its advantages of instruction without any interference with the theological principles of its students, repudiating the practice of presenting a temptation to hypocrisy in religion as a necessary preliminary to distinction in letters." This I should pass by were it not to be put into a serious shape.

A more gross libel was never uttered against any man or any body of men, than what is contained in this resolution, which is to be laid in the form of an address at the foot of the throne ; for it asserts that inasmuch as there is to be no preliminary religious test in the Gower-street Institution, it will prevent that mass of hypocrisy, that base meanness which these gentlemen propose to tell his Majesty have been practised by all the graduates of the two ancient Universities, but (what is still more interesting to your Lordships), by almost every member around this Board, that hypocrisy, through the medium of which a noble and learned Lord, the Lord Chief Baron, became a Fellow of Trinity College, and first Wrangler of his year in the University. Through hypocrisy in religion alone did he, as these men calumniously assert, obtain these ho-

nours. The Lord Chief Justice of England also was not less hypocritical ; for, my Lord, as it is asserted, it was only by a mean sacrifice, and surrender of your reason, in conforming to the doctrines of the Church of England, that you acquired a high degree in the University of Cambridge. On this side of the table, the class of legal hypocrites is not smaller : an ex-Lord Chancellor, who held for twenty-five years the great seal, who was a Master of Arts in the University of Oxford, and, I believe, a short time a tutor there, has now for the first time, after a long life, to learn something quite new and unexpected. It was not by your Lordship's sincere belief in the religion of the Church, that you became a graduate, acquiring great reputation in the University, and there commencing that splendid career which afterwards led you to the acquisition of the highest honours in this kingdom, and with them of the inestimable reputation of holding them so long, equally with the approbation of your sovereign and of the people.

Amongst your Lordships there is also a junior hypocrite of the legal class, a young Chief Justice of the Common Pleas. Really this resolution of the Redcross-street Dissenters carries the spirit of acrimony, the *odium theologicum* beyond common decency, nay, almost Christian forbearance : and I say this, because the charge includes the greatest part of His Majesty's Cabinet, of whom many are

now present. I believe a noble earl, now holding the office of the Privy Seal, obtained one, if not two degrees, at Christchurch. As to the two Archbishops, of course they can be nothing but hypocrites. At the end of the table I see several of His Majesty's Ministers who are graduates; they will be astonished to hear, that they are also in the list. I understand the noble Lord at the head of the Government did not take a degree at Cambridge, and his Lordship has therefore, by the mere blessing of good fortune, escaped the anathema of Redcross-street. After thus hunting down and degrading your Lordships, say these councillors of the throne, we have a safe cure for all this. As to the Lyndhursts, the Eldons, the Denmans, and the rest of your Lordships, say these gentlemen, we will take pretty good care to have none of these legal, theological, ministerial, and official hypocrites, for the future. At the London University we will have no such cant and hypocrisy; there shall be no religion there, touching or concerning which it shall be practicable for any man to be a hypocrite. Such are the notions your Lordships are called upon to adopt. You are, in other words, by this address called upon to make a report to the Crown, in unison with the sentiments declared in this extraordinary resolution.

In the course of the observations I have had the honour to make, there was one topic to which I alluded generally, namely, the principle of the

obligation imposed upon his Majesty by his oath to maintain the established religion of the country. This topic I feel compelled to call your Lordships' attention to. I am here happily relieved from that political casuistry which relates to the question, whether his Majesty in his legislative character can be bound by an oath? Upon that subject it has been said, that it is inconsistent with the exercise of the legislative function, that his Majesty as one of the three estates of the realm, can be subject to any obligation *à priori*. I have not to enter into this point at all, but I presume it will be admitted, that if the coronation oath does not bind the King either in his legislative or executive capacity, the result will be that an oath may be no oath at all. It may be the pleasure of parliament to establish an University upon such terms and conditions as it think fit; but let it be remembered, that your Lordships are here to advise the King as to what he may legally do in his executive capacity; and there can be no occasion upon which the executive act of the king is more distinct and direct, than that of granting a charter. In truth his Majesty in legal contemplation is present here, and might in fact be so, if he thought fit; and he is supposed, if the charter be conceded, to say, "Lord Chancellor, put my great seal to this patent." I know no occasion, therefore, in which, in a more personal sense, the crown is acting in its executive capacity.

I need not remind your Lordships, that before the union with Scotland, the Scotch nation, who were never wanting in attention to what they deemed essential to their own interests, reasoned in this way. They said, the Kirk of Scotland being now the established religion of this country, we will not leave it to privy councillors, chancellors and ministers, to defend the Kirk of Scotland, but we will have an Act of Parliament passed (which in fact was passed in the Scotch Parliament, before the union was ratified), and this shall be embodied in the articles of union, and Queen Anne and her successors shall be made to swear, that they will maintain in Scotland the Presbyterian Church and Government, and the doctrine, discipline, and worship thereof. And by another act passed in the English Parliament, before the union, and also made an article of the union, the successors of her Majesty are required to swear that they will maintain the Church of England, and the doctrine, worship, discipline and government thereof. I presume that, in practice, this oath, in its precise terms, is still continued. If it is not, it ought so to be. These terms are rather more precise than the language of the Coronation Oath, which are to maintain the profession of the Gospel, and the Protestant Reformed religion, as established by law

My argument upon this subject cannot be long. It has been said upon high authority that Legisla-

tive discretion cannot, from the nature of the thing, yield to any restraint whatever. Be this so, for the purposes of the argument, and then it may be justifiable and desirable, it may be good statesmanship and good policy legislatively to carry any measure whatever ; but if the other alternative be also true, that the Executive character cannot be bound, and that the King can give personal absolution to his own mind, instead of relieving his conscience by the sanction of the Legislature, I must own it appears to me that an oath may be formed on purpose to be broken ; and there are, certainly, authorities for this—such was the opinion of a celebrated judge of oaths, Suarez, a Jesuit.

From his skilful treatise upon the subject I will read this passage. He says :—“ I maintain that, intrinsically, there is no evil in falsehood, even when confirmed by an oath ; so that, as often as, for an honest cause, one uses words in a sense differing from the mind of him that uses them, he commits no perjury nor any sin when he confirms them with an oath. For example, if a man promises, or contracts externally, without an intention of fulfilling, and is questioned by a judge, and summoned to declare whether he has so promised, he may reply that he has not, because such answer may have a legitimate sense, viz. I have not promised in a sense that binds me ; he may, therefore, not only swear that he has not promised, but that he has not used such words, understanding that he

did not pronounce them with a design to promise thereby, or in any way that should oblige him to confess them." This is the definition of an oath given by a celebrated Spanish Jesuit, Suarez; and this gentleman is eulogized for this by a celebrated French writer, M. L'Advocat, who says of this Suarez, "that he was a very eminent scholastic divine," who taught "*theology*" with credit at Alcala, Salamanca, Rome, and many other places. Here is a theologian for you! I must say I cannot but think that the time may come, in this country, when we may have to consider whether an oath does not really mean this,—that the promiser promises not to keep his oath.

I am ready to admit, that if the practical scheme before your Lordships is not injurious to the Church, my argument upon oaths is good for nothing: but who will deny it to be injurious to the Church, when the promoters of the plan, in pretty plain terms, tell you that they do mean to injure the Church, and to put an end to its exclusive national character.

I have thought it my duty, perhaps too strongly, but not more so than I felt necessary, to present these considerations to your Lordships, upon a matter never yet discussed at the council board, nor ever yet seriously investigated. Assuming the point of expediency, of statesmanship, and good policy; assuming that the utility of this Institution were as palpable on the one side as I maintain the mischief

of it is palpable on the other ; supposing the project were as much to be coveted, as I say it is to be shunned and avoided ; still the question is, how can all this be legally accomplished ? There must be a “ *via legis* ” for it ; and that *via legis* is not a Charter.

My Lords, before I leave this subject, I cannot but remind you of the infinite danger of that principle of liberalism on which this London University is to be founded. It carries with it an absolute contempt of the national Church, and what is still more dangerous, a contempt of those feelings of affection and attachment, by which the people of this country are bound to it, from a sincere belief in the purity of its religion. The King by his charter, is to found an atheistical institution, which will operate like the liberal proclamation of indulgence which issued from that ill-fated monarch James II., in conjunction with his coadjutor, Lord Chancellor Jefferies, sometimes the tool of the sovereign, and sometimes making the sovereign his tool ; sometimes misled, and sometimes misleading the sovereign, of whose great seal he had the custody. But when he sanctioned his sovereign’s proclamation of indulgence, he did an act which lost to him and his family the splendid crown of these realms, and made him an outcast from our shores, for daring to pull down the established religion. And this great inheritance devolved upon the illustrious family now upon the

throne, under a promise, and upon an oath, to maintain that system and that establishment, the desertion and breach of which had justly led to such consequences. Let any man read over King James's proclamation of indulgence, and he will find in it a perfect fac simile for the scheme and policy of that universal tolerance and liberty of conscience, for the encouragement of which the King is now to be advised to found the London University. Let any man say, whether this is less to injure and insult the Established Church, than was the attempted intrusion of Catholicism by James II. ; and not less will the public indignation be excited, and their feelings violated by an attempt to abolish all true religion, and to substitute perfect infidelity.

ERRATUM.

Page 7 last line, *for* chiropedist *read* chiropodist.

APPENDIX.

PARLIAMENT ROLLS, Vol. IV. p. 651, 13 Hen. IV.

MEMORANDUM, quod venerabilis in Christo Pater, Thomas Archiepiscopus Cantuarensis in presenti Parlamento nostro exhibuit quandam Petitionem una cum Cedula eidem annexa, in hæc verba. A tres sovereign Seignor notre Seignor le Roy supplie humblement votre humble Chapellein, Thomas, Ersevesque de Canterbris, qe pleise a vous, tres sovereign Seignor, par assent des Seignors Espirituelx et Temporelx, et les Communes, en cest present Parlement, de grauntier, approver, ratifier, et confermer, tout ceo q' est compris en une Cedula a iceste Bille annexe; et qe mesme ceste Cedula puisse estre enrollee et enacte en cest present Parlement, solonc la fourme et effect de mesme la Cedula: Et qe mesme la Cedula, et tout ceo q' est compris en icelle, soient de ataunt de force, effect, et auctorite, et mesme les force, effect, et auctorite cient et teignent, come ils ussent este faitz en cest Parlement et par auctoritee de mesme le Parlement.

Memorandum quod cum Ricardus Secundus, nuper Rex Angliæ, propter diversas dissensiones, lites, et discordias quondam habitas in Universitate Oxoniensi, super jure et titulo Visitationis dictæ Universitatis, ac de quadam Bulla Exemptionis pre-tensa ad excludendum Archiepiscopum Cantuarensem tunc existentem, et successores suos, ac quoscumque alios Ordinarios infra

Universitatem prædictam, ac quoscumque fundatores dictæ Universitatis ac Collegiorum ejusdem Universitatis a Visitatione dictæ Universitatis, et ab omni jurisdictione ordinaria per eosdem Archiepiscopum, Ordinarios, ac Fundatores, et suos successores, ac Commissarios suos, in eadem Universitate facienda et exercenda ; per Breve suum venire fecerit in Cancellaria sua apud Westmonasteriam Bullam prædictam, et Cancellarium et Procuratores dictæ Universitatis ad tunc existentes, sufficiens warrentum sigillo communi Universitatis prædictæ sigillatum pro se et Universitate prædicta habentes, et secum in Cancellaria prædicta deferentes, ad exhibendum, publicandum, ostendendum, et presentandum, coram dicto nuper Rege in Cancellaria prædicta Bullam prædictam, necnon ad respondendum ibidem, et ulterius faciendum et recipiendum quod per eundem nuper Regem et Consilium suum ordinatum fuisset et diffinitum prout de recordo in eadem Cancellaria plenius liquet. Ac postmodum iidem Cancellarius et Procuratores pro se et tota Universitate prædicta, submiserint se de materiis prædictis ordinationi et diffinitioni dicti nuper Regis ; Qui quidem, nuper Rex, habita inde matura et pleniori deliberatione cum Consilio suo, ac clare considerans Bullam prædictam fore impetratam in prejudicium Coronæ suæ, ac Legum et consuetudinum Regni sui enervationem, et in Hereticorum, et Lollardorum, ac Homicidarum, et aliorum malefactorum favorem et audaciam, dictæque Universitatis verisimilem destructionem, Ordinavit et per Breve suum precepit et inhibuit dicto Cancellario, Magistris, Doctoribus, et Scholaribus Universitatis prædictæ, in fide, ligeantiâ, et dilectione quibus sibi tenebantur, ac sub pœna omissionis Privilegiorum Universitatis prædictæ, et sub forisfactura omnium aliorum quæ sibi forisfacere poterant, ne dictam Bullam in aliqua sua parte exequi seu exercere seu beneficium aliquod exemptionis per Bullam illam aliququaliter reportare seu recipere presumerent, sed omnibus exemptionibus et privilegiis in ea parte contentis, coram tunc dilecto Clerico suo Magistro, Ricardo Ronhall, quem ad eos ex causa prædicta destinavit, palam et publice pro imperpetuo renunciarent, ac super renuntiatione hujus-

modi quandam certificationem sibi sub sigillo dictæ Universitatis, ac publica instrumenta fieri, et sibi per eundem Clericum suum transmitti, facerent, sub pœnis supra dictis. Postmodum negantibus præfato Cancellario, et aliis sibi adhærentibus, nomine Universitatis prædictæ, visitationem prædictam ad dictum Ricardum nuper Regem solum et insolidum pertinere: Consideransque quod Visitatio Universitatis prædictæ ad præfatum Archiepiscopum et successores suos, ac ad Ecclesiam suam Cantuariensem pertinuit, et pertinere debuit, quodque ipse aut progenitores sui Cancellarium ac Universitatem prædictam retroactis temporibus minime visitare consueverant; voluit et ex certâ scientiâ suâ declaravit, quod visitatio Cancellarii ac Procuratorum dictæ Universitatis, qui pro tempore forent, necnon omnium Doctorum, Magistrorum, regentium et non regentium ac Scholarium ejusdem Universitatis quorumcunque, eorumque servientium, aliarumque personarum cujuscunque status vel conditionis extiterint, Libertatibus aut Privilegiis dictæ Universitatis utentium, seu illis gaudere volentium, nec non "Universitatis prædictæ etiam ut Universitatis," ad præfatum Archiepiscopum et successores suos ac Ecclesiam suam prædictam pertinuit et pertinere debuit, ac futuris temporibus pertineret. Postmodumque prædictus nuper Rex per diversa Brevia sua Cancellario, Procuratoribus, Magistris, Doctoribus et Scholaribus Universitatis prædictæ preceperat, quod ipsi Archiepiscopo prædicto et successoribus suis in visitatione sua prædicta in eadem Universitate facienda, in omnibus sub pœnis prædictis parerent et obedirent. Postmodumque sicut datum fuit intelligi Domino nostro Regi Henrico quarto post Conquestum, quod visitante Thoma Archiepiscopo Cantuari jure suo metropolitico Diocesam Lincolnensem, anno regni dicti Henrici Regis duodecimo, venit ad prædictam Universitatem Oxoniensem ad exequendam in forma juris Ecclesiastici ibidem visitationem suam, Ricardus Courtenay, adtunc Cancellarius Universitatis prædictæ, ac Benedictus Brent, et Johannes Byrch adtunc Procuratores dictæ Universitatis, ac quamplures alii eis ad-

hærentes in eadem Universitate, dictum Archiepiscopum de visitatione sua prædicta et jurisdictione ejusdem Archiepiscopi manu forti injuste impedierunt, et ei absque causa rationabili resistebant. Super quo diversæ lites, dissensiones, et discordiæ inter præfatum Thomam Archiepiscopum, et eosdem Cancellarium et Procuratores, ac alios Scholares Universitatis prædictæ eorumque fautores, de et super jure et impedimento visitationis et jurisdictionis prædictarum motæ fuerint et exortæ in Universitate prædicta. Et super hoc, presente Thoma Comite Arrundell, et aliis personis honorabilibus secum existentibus in Universitate prædicta, tam præfatus Archiepiscopus pro se et Ecclesia sua prædicta, quam præfatus Ricardus Courtenay, Cancellarius Universitatis prædictæ, et Benedictus Brent et Johannes Byrch, Procuratores ejusdem Universitatis, pro se et eorum adhærentibus in materiis prædictis, ac pro Universitate prædicta, per assensum eorundem adhærentium, se submiserunt, et concesserunt stare arbitrio, judicio, et ordinationi ac decreto illustrissimi Principis et Domini dicti Domini nostri Regis Henrici, de et super jure et impedimento Visitationis et Jurisdictionis prædictarum per dictos Magistrum Ricardum Cancellarium, et sibi adhærentes præstites ac de dissensionibus, litibus, et discordiis prædictis, et earum dependentiis. Et super hoc dictus Dominus noster Rex Henricus dictum Magistrum Ricardum Courtenay, Cancellarium, ac dictos Benedictum Brent, et Johannem Byrch, Procuratores, venire fecit coram eo in propria persona sua apud Lambhith, in crastino nativitatis beatæ Mariæ dicto anno regni sui duodecimo, ad faciendum et recipiendum, quod per eundem Dominum Regem de avisamento Consilii sui foret consideratum in materiis prædictis. Et prædictus Archiepiscopus ibidem coram præfato Domino Rege comparuit. Et tam præfatus Archiepiscopus quam iidem Cancellarius et Procuratores adtunc ibidem coram dicto Domino nostro Rege submissionem prædictam in omnibus ut prædictum est fore factum in forma prædicta recognoverunt. Et ibidem concesserunt stare arbitrio, judicio, et ordinationi ejusdem Domini nostri Regis de

et super jure et impedimento visitationis et jurisdictionis prædictarum, ac aliis materiis prædictis, et omnibus dependentiis earundem. Qui quidem Dominus Rex postea, XVII. die mensis Septembris, dicto anno duodecimo, apud Lambhith prædictâ auditis et intellectis tam allegationibus quam responsionibus partium prædictarum et etiam habens considerationem ad dictam submissionem factam tempore dicti Regis Ricardi, ac Ordinationem, judicium, et determinationem super eandem submissionem, tangentes visitationem et jurisdictionem præfatam: ac clare considerans, quod visitatio Universitatis prædictæ etiam ut Universitatis, et omnium in Universitate predicta commorantium, ad dictum Archiepiscopum et successores suos ut de jure Ecclesiæ suæ prædicta pertinet, et de jure pertinere deberet, et quod iidem Cancellarius et Procuratores, ac alii eis in hac parte adhærentes, eundem Archiepiscopum de visitatione et jurisdictione prædictis injuste et absque titulo seu rationabili causâ manu forti impedierunt, dicta judicium, ordinationem, et determinationem prædicti Ricardi nuper Regis ratificavit, approbavit et confirmavit, pro imperpetuo duratura. Et ulterius, tam auctoritate sua Regia, quam virtute submissionis prædictæ sibi factæ adtunc ibidem, arbitratus fuit, ordinavit, consideravit, decrevit, et adjudicavit, quod prædictus Archiepiscopus et successores sui imperpetuum habeant visitationem et jurisdictionem in Universitate prædicta, tam Cancellarius, Commissarii, quam Procuratores ejusdem Universitatis qui pro tempore fuerint; necnon omnium Doctorum, Magistrorum, regentium et non regentium, ac Sclarium ejusdem Universitatis quorumcumque, eorumque, servientium, aliarumque personarum cujuscumque status vel conditionis extiterint, et etiam ejusdem Universitatis ut Universitatis. Et quod Cancellarius, Commissarii, et Procuratores Universitatis prædictæ qui pro tempore fuerint eorumque successores et omnes alii in dicta Universitate pro tempore commorantes futuris temporibus, eidem Archiepiscopo et successoribus suis in visitatione et jurisdictione Universitatis prædictæ etiam ut Universitatis, in omnibus pareant et obediant. Et quod nec dicti Cancellarius, Commissarii, nec Procuratores Universitatis prædictæ nec eorum

successores nec aliquis alius in Universitate prædicta, aliquod privilegium seu beneficium exemptionis ad excludendum præfatum Archiepiscopum, seu successores suos de visitatione et jurisdictione prædictis in Universitate antedicta, colore alicujus Bullæ, seu alterius tituli cujuscumque, erga prædictum Archiepiscopum aut successores suos, clament, habeant, seu vindicent ullo modo in futurum. Et quod quotiens Cancellarius, Commissarii, vel locum-tenens ipsorum, vel alicujus ipsorum, vel Procuratores dictæ Universitatis, qui pro tempore fuerint, vel eorum successores, sive aliquis eorum, impedierint vel impedierit præfatum Archiepiscopum vel successores suos, aut Ecclesiam suam prædictam, aut ipsorum vel alicujus ipsorum Commissarium vel Commissarios, de hujusmodi visitatione seu jurisdictione dictæ Universitatis, vel in aliquo contravenerint, vel aliquis eorum contravenerit, dicto arbitrio, ordinationi, sive judicio, per præfatum Ricardum nuper Regem factis, sive arbitrio, judicio, decreto, considerationi vel ordinationi, ipsius Domini nostri Regis Henrici in hoc casu, vel si aliquis dictæ Universitatis in futurum impedierit dictum Archiepiscopum, vel successores suos, aut Ecclesiam suam prædictam, aut ipsorum vel alicujus ipsorum Commissarium, vel Commissarios, de visitatione sua, aut jurisdictione antedicta, vel in aliqua contravenerit dicto arbitrio, ordinationi, sive judicio per præfatum Ricardum nuper Regem, in forma prædicta factis, vel arbitrio, judicio, decreto, considerationi, seu ordinationi ipsius Domini nostri Regis Henrici: Et quod Cancellarius, Commissarii, et Procuratores Universitatis prædictæ tunc non fecerint diligentiam et posse eorum adjuvandum dictum Archiepiscopum, vel successores suos, aut Ecclesiam suam prædictam, seu Commissarium, vel Commissarios suos, in hujusmodi casu: Ac etiam ad puniendos hujusmodi impediētes et resistentes, quod totiēns omnes Franchesiæ, Libertates, et omnia privilegia ejusdem Universitatis, in manus Domini Regis vel hæredum suorum seisianur, in eisdem manibus ipsorum Domini Regis vel hæredum suorum remansura, quousque prædictus Archiepiscopus, vel successores sui, pacificam visitationem et jurisdictionem in forma prædicta in dicta Universitate habuerit,

vel habuerint; et etiam totiens Cancellarius, Commissarii, et Procuratores ejusdem Universitatis qui pro tempore fuerint, et eorum successores, ac Universitas prædicta, solvant, et teneantur solvere, ipsi Domino nostro Regi Henrico, et hæredibus suis, mille libras legalis monetæ Angliæ.

Qua quidem Cedula visa, ac cum matura et diligenti deliberatione examinata et intellecta, dictus Dominus Rex in pleno Parlamento asseruit et declaravit omnia et singula in eadem Cedula contenta per ipsum, secundum quod in eadem continetur, facta, arbitrata, ordinata, considerata, decreta, et adjudicata in omnibus esse et extitisse. Et sic de assensu Dominorum Spiritualium et Temporalium, necnon Communitatis in eodem Parlamento existentium, qui super eisdem pleniorum deliberationem similiter habuerunt, et eisdem Decreto et Judicio plenarie consenserunt et aggreaverunt, eandem Cedula, et omnia et singula in eadem contenta, concessit, approbavit, ratificavit, et confirmavit; quodque eadem Cedula in Rotulo Parlamento, secundum formam et effectum ejusdem irrotularetur et inactaretur. Ac etiam, quod eadem Cedula et omnia in ea contenta sint tanti et talis valoris, effectus, et auctoritatis, et eosdem valorem, effectum, et auctoritatem habeant et teneant, ac si in præsentis Parlamento, et per auctoritatem ejusdem Parliamenti facta extitissent.

Et puis apres, sur diverses matires moevez par entre le dit Ercevesque et d'Everwyk, sur certaines Privileges pretenses par le dit Ercevesque d'Everwyk pur le College appellée la Quenhalle en la Universitée d'Oxenford, le dit Ercevesque de Canterbris, en presence du Roy et des Seignors, en le dit Parlement promyst, que si le dit Ercevesque d'Everwyk purroit sufficientment monstrier ascum privilege, ou especialté de record, par ount le dit Ercevesque de Canterbris ne deust user, n'exercer, sa visitation du dite College, il se vorroit ent abstinier, Sauvante à luy toutefoitz la visitation de les Escolers demurrantz en le dit College, solonc les Juggementz et Decrees faitz et donez par le dit Roy Richard, et par nostre Seignor le Roy Henry q'or est, come en le record ent fait pluis pleinement est declarez.

WILKIN'S CONCILIA, VOL. IV. 525.

THE Archbishop of Canterbury's right of visiting the two Universities debated and determined in Council.

At the Court at Hampton - Court,
the 21st of June, M.D.CXXXVI.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY.

Lord Archbishop of Canterbury.	Earl of Dorset.
Lord Keeper.	Earl of Holland.
Lord Treasurer.	Earl of Morton.
Lord Privy Seal.	Earl of Sterline.
Lord Duke of	Lord V. Wentworth.
Lord Marquis Hamilton.	Mr. Treasurer.
Lord Chamberlain.	Mr. Vice-Chamberlain.

Mr. Secretary Windebank.

This day His Majesty, sitting in Council, was graciously pleased to hear and determine a difference and debate lately risen between the Lord Archbishop of Canterbury, his Grace, and the two Universities of England, concerning the right of visiting the said Universities, "jure metropolitico," in the presence of the Lord Archbishop of Canterbury, being also Chancellor of the University of Oxford, and of the Earl of Holland, Chancellor of the University of Cambridge, and of the persons sent and authorized by each of the said Universities, and of the Counsel of all of the said parties. In the first place, it was of all sides acknowledged to be the undoubted right of the Crown to

visit the said Universities whensoever His Majesty pleaseth ; and it was on all parts confessed that the Archbishop, in right of his metropolitical Church of Canterbury, hath power to visit his whole province, in which the said Universities are situate, and are under the same power, unless they could show privilege and exemption, which they then offered to show ; but were not such as did or could give satisfaction. And His Majesty, upon full hearing of the proofs on both sides, and great consideration had of them, declared : That by no papal bull they could be exempted ; and likewise, that by none of the charters they were exempted ; and, lastly, the omission of the Archbishops to visit, since the visitations shown unto His Majesty, could no way in this case be a prescription, to bar the right of the metropolitical see. But it appeareth to His Majesty, for and in affirmance of the right of the Archbishop, that actually both the Universities had been visited by three of his predecessors, “*jure metropolitico*,” and not by any legatine power ; and that the metropolitical right coming into question upon the resistance of the University of Oxon to be visited by the Archbishop, it was upon great advice and full hearing of both parties adjudged for the Archbishop by His Majesty’s predecessors King Richard II. —and afterwards, upon a like rehearing and re-examination, adjudged and affirmed by King Henry IV., and both of them judgments upon a third and full re-examination, established by Act of Parliament 13 Henry IV., now showed by the Archbishop under the great seal of King Henry IV., and the Archbishop produced before His Majesty the original renunciation of all privileges from any pope by the University of Cambridge, under the hands of the heads of houses there. Upon which right so clearly appearing, both by practice and resolution of the Kings and Parliament, His Majesty, with the advice of his Council, declared and adjudged the right of visiting both Universities as Universities, and the Chancellors’ Scholars, their servants, and all others enjoying the privileges of the said Universities, to belong to the Archbishop and metropolitical Church of Canterbury by them-

selves or commissaries, and that they shall be from time to time obedient thereunto. Whereupon the Archbishop made an humble motion to His Majesty; first for himself, that he would be graciously pleased, that he might have this sentence drawn up by advice of His Majesty's learned Counsel, and put under the broad seal, to settle all differences that might hereafter arise. Then on behalf of both the Universities, that though they were to be visited by the Archbishop and his successors, yet that they should not be visited by the Bishop of the diocese, or Archdeacon, but should perpetually remain free and exempt from the visitation and jurisdiction of the Bishop, and Archdeacon of the places where they are. But then, since it was declared his right to visit "metropolitice," and that it was not limited by law, how often he might visit; therefore, notwithstanding the late custom of visitation "semel in vita tantum," he might visit the Universities by himself or his commissaries, as often as any great emergent cause should move him thereunto; provided that neither the said Archbishop, or any of his successors, after his first visitation, shall visit on such emergent cause, unless the said cause be first made known to His Majesty and his successors, and approved by him or them; all which was graciously granted by His Majesty and so settled. And lastly, whereas it was alleged, that the Chancellors of either University were, and are likely to be, persons of great honour and eminency, and therefore it might be inconvenient that they should be called to such visitations, it was declared by His Majesty, that such inconvenience would easily be helped, for that in course of law the Chancellor would be allowed to appear by his proxy. *Litera Regia de visitatione Universitat Oxon et Cantabrig per Archiepiscopum Cantuar.*

Carolus, Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Rex, fidei defensor, &c. : omnibus, ad quos præsentis literæ pervenerint, salutem. Suborta nuper lite et controversia inter reverendissimum in Christo patrem Archiepiscopum Cantuariensem et Universitates nostras Oxonii et Cantabrigiæ, super jure et titulo visitationis metropolitici Universitatum prædictarum, præfato

Archiepiscopo jus visitandi prædictas Universitates sibi et ecclesiæ suæ metropoliticae Christi Cantuariensi vindicante ; præfatisque Universitatibus se a visitatione prædicta exemptas esse prætendentibus, liteque et controversia prædicta ad nos, et iudicium et sententiam nostram regiam delata ; nos ad stabiliendam pacem inter partes prædictas, et ad tollendam inperpetuum huiusmodi controversiæ materiam, reverendissimum in Christo patrem, prædilectumque et perquam fidelem consiliarium nostrum Gulielmum, providentia divina Cantuariensem Archiepiscopum, totius Angliæ primatem et metropolitanum, et Universitatis Oxoniensis Cancellarium, necnon prædilectum et perquam fidelem consanguineum et consiliarium nostrum Henricum, comitem Holland, Universitatis Cantabrigiensis Cancellarium, aliosque nonnullos a prædictis Universitatibus mandata sufficientia habentes, venire fecimus coram nobis et consiliariis nostris in aula nostra apud honorem nostrum de Hampton Court, vicesimo primo die mensis Julii, anno regni nostri duodecimo ibidemque auditis et intellectis quæ per partes prædictas hinc inde dici et allegari potuerunt, habitaque cum præfatis consiliariis nostris deliberatione matura, ad definiendam et dijudicandam litem et controversiam prædictas processimus in modum sequentem : primo et ante omnia, per probationes legitimas, et per confessionem utriusque partis nobis constabat, nos jure coronæ nostræ regni Angliæ habuisse et habere potestatem visitandi Universitates prædictas quoties et quandocumque nobis et successoribus nostris visum fuerit ; præfatumque Archiepiscopum, jure ecclesiæ suæ metropoliticae Christi Cantuariensis habuisse, et habere potestatem visitandi totam provinciam suam Cantuariensem in qua Universitates prædictæ positæ sunt. Cum vero ex parte Universitatum propositum esset, Universitates prædictas per quasdam chartas nostras et prædecessorum nostrorum, et bullas papales fuisse exemptas, et immunes ab omni visitatione, et jurisdictione Archiepiscopi prædicti, eandemque immunitatem legitimo temporis usu fuisse præscriptam ; ex parte præfati Archiepiscopi coram nobis ostensum et probatum fuit, tres præ-

decessores suos Archiepiscopos Cantuarienses actualiter visitasse Universitates prædictas, jure ecclesiæ suæ metropoliticae Christi Cantuariensis et non per potestatem legitimam; ortaque olim lite inter Archiepiscopum Cantuariensem et Universitatem Oxonii super jure visitationis prædictæ tempore Richardi II. prædecessoris nostri regis Angliæ, eundemque prædecessorem nostrum, plene auditis quæ per partes utrinque proponi potuerunt, pro Archiepiscopo et jure visitationis suæ judicasse; eademque controversia iterum emergente inter Archiepiscopum Cantuariensem et Universitatem Oxonii tempore Henrici IV. prædecessoris nostri regis Angliæ, eundem prædecessorem nostrum similiter pro Archiepiscopo prædicto et jure visitationis suæ prædictæ pronunciassse et determinasse; easdemque sententias et determinationes per actum Parliamenti anno tertiodecimo Henrici IV. fuisse ratificatas et confirmatas: quinetiam nobis constabat, prædictas exemptiones et immunitates a visitatione metropolitica Archiepiscopi Cantuariensis vel earum aliquam per aliquam chartam nostram vel prædecessorum nostrorum non fuisse concessas, easdemque per bullas papales concedi non potuisse, nec per cursum temporis citra actuales visitationes Archiepiscoporum prædictorum fuisse legitime præscriptas, nec de jure nostro ecclesiastico potuisse præscribi; præfatusque Archiepiscopus coram nobis protulit schedulam subscriptam manibus magistrorum collegiorum Universitatis Cantabrigiæ in qua prædicti magistri pro se et Universitate sua, privilegiis et immunitatibus papalibus Universitati prædictæ concessis renunciabant. Quibus omnibus per nos consideratis, habitaque deliberatione cum præfatis consiliariis nostris, judicavimus et determinavimus jus visitandi Cancellarios, magistros, et scholares Universitatum prædictarum et successores suos, eorumque servientes, aliasque personas pro tempore existentes, libertatibus et privilegiis Universitatum præfatarum utentes; necnon Universitates prædictas, ut Universitates, spectare et pertinere ad præfatum Archiepiscopum et successores suos, et ecclesiam suam metropolitica prædictam per se aut commissarium seu commissarios suos exercen-

dum ; et quod præfati Cancellarii, magistri, scholares, et reliquæ personæ privilegiis Universitatum utentes, eorumque successores perpetuis futuris temporibus, eidem Archiepiscopo et successoribus suis, eorumque commissariis in visitatione et jurisdictione Universitatum prædictarum in omnibus pareant et obediant. Cum vero coram nobis præterea proponeretur non satis constare, quoties visitatio prædictarum Universitatum exerceri debeat ; ad amputandas similes controversias infuturum, ordinavimus, quod licebit præfato Archiepiscopo et successoribus suis, visitare Universitates prædictas, non tantum semel in vita sicuti in reliquis partibus provinciæ Cantuariensis nuper usitatum fuit, verum etiam quod licebit eis eorumque singulis post primam visitationem metropolitica finitam, prædictas Universitates per se vel commissarios suos visitare, quotiescunque illud necessarium præfatis Archiepiscopis visum fuerit, ex causa rationabili et legitima per nos et successores nostros primitus approbanda. Cumque præterea coram nobis proponeretur ex parte Cancellariorum prædictorum, futurum valde incommodum sibi et successoribus suis, præ dignitate personarum suarum, si in visitationibus prædictis personaliter debeant comparere ; declaravimus jure satis consultum esse eorum incommodis in hac parte, cum possint in visitationibus prædictis per procuratores suos comparere. Denique per præfatum Archiepiscopum a nobis humiliter petitum fuit, ut hoc nostrum judicium et declaratio potestatis visitandi Universitates prædictas, sibi et successoribus suis jure ecclesiæ metropolitice Christi Cantuariensis competentis, non possint infuturum extendi ad episcopos et archidiaconos locorum, in quibus Universitates prædictæ positæ sunt, et ut præfatæ Universitates per præfatos episcopos et archidiaconos inposterum non possint visitari, et ut hoc nostrum judicium, ordinationem, et determinationem sub magno sigillo Angliæ confirmare dignaremur. Cujus petitioni annuentes, declaravimus, quod Universitates prædictæ per episcopos et archidiaconos inposterum non visitentur, et hoc nostrum judicium, ordinationem, et declarationem sub magno sigillo Angliæ communiri et confirmari jussimus ; mandantes

præfatis Cancellariis magistris et scholaribus Universitatum prædictarum ut visitationi præfati Archiepiscopi et successorum suorum se submittant, et ut nullam exemptionem seu immunitatem adversus visitationem prædictam sibi vindicare præsumant. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste meipso apud Westmonasteriam tricesimo die Januarii anno regni nostri duodecimo.

Per ipsum Regem,

WOLSELEY,

Epistola Geraud Johannis Vossii ad Archiepiscopum Cantuariensem de jure visitandi Academias Angliæ.

Reverendissime in Christo pater, domine illustrissime, mihi gaudeo, Britanniae gratulor, Deo gratias ago de immissa animo tuo cogitatione sanctissima revocandi juris ejus, quo reverendissimi Cantuarienses præsules jam ab antiquis temporibus in lustrandis regni Anglici academiis frui solent. Sane non corpora solum nostra fluxa et fragilia sunt, sed humana etiam instituta, licet optima, facile per incuriam in pejus vergunt, eoque ad retinendum grande illud disciplinæ bonum nihil exoptatius a Deo et rege potuit evenire, quam ut priscum jus tanto præsuli restitueretur, perque eum potissimum labantibus moribus obviam eatur; cui ut sacrorum, sic morum bonorum præcipue cura incumbit, quique sic sanctimoniam ab aliis exigere sciat, ut eadem præcedat cæteros. Sunt quidem florentissimæ academias ambæ, sed cura tua deinceps se vincent ac pulchriores pulchrioresque semper exurgent, quod bonum suum sapientissimi quique per se sine dubio vident, ac magis et magis intelligent; nec solum nostra ætas, sed posteritas etiam ut sui temporis emendatori gratias propterea semper aget.

Numen cœleste oro, ut tibi, illustrissime ac reverendissime domine, longævam ac prosperam largiatur vitam.

Reverendissimi ac illustrissimi nominis tui cultor et cliens devotissimus,

GERAUD JOHANNES VOSSIUS.

THE END.

GILBERT & RIVINGTON, PRINTERS,
ST. JOHN'S SQUARE, LONDON.



